INDEX

	PAGE
Certificate of Chancellor	1
Writ of Error	2
Return	4
Caption of Indictment	4
Indictment	5
Plea to Indictment	7
Jury Panel	7
Motion for Foreign Jury	9
Judgment Roll	9
Order Assigning Counsel	13
Bill of Exceptions and Record	14
Motion for Foreign Jury, Argument	21
Motion for Adjournment, Argument	24
Examination of Jurors	35
Testimony	127
Charge	304
Request for Testimony by Jury	317
Verdict	320
Defendant's Requests to Charge	321
Certificate of Stenographer	322
Certificate of Court	323
Stipulation as to Exhibits	325
Assignments of Error	327
Specifications of Causes for Reversal	354

New Jersey State Library

INDEX

TESTIMONY.

Witnesses for the State.

PAGE

Frank M. Wyborn:
Direct ---- 127
Cross ---- 132

Edward H. Schwartz:
Direct ---- 132
Cross ---- 140

William E. Ogden:
Direct ---- 142
Cross ---- 145

Louis Martin Talmadge:
Direct ---- 146
Cross ---- 160
Redirect ---- 167

Theodore Palmer:
Direct ---- 169
Cross ---- 175

Ludwig K. Wokol:
Direct ---- 180

Frank Cuneo:
Direct ---- 182
Cross ---- 193
Redirect ---- 197

Franklin Edwin Stevens:
Direct ---- 198

Thomas Edward Finnegan:
Direct ---- 199

PAGE

Henry Costy:
Direct ---------- 203
Cross ---------- 206

Jesse Witham:
Direct ---------- 207

George P. Nimmo:
Direct ---------- 208
Cross ---------- 209

Edward H. Schwartz:
Recalled, direct ---------- 214
Recalled, cross ---------- 215

Charles Strand:
Direct ---------- 218
Cross ---------- 240

Louis Martin Talmadge:
Recalled, cross ---------- 264

Witnesses for the Defendant.

John H. Boland, 2nd:
Direct ---------- 15

James Lynch:
Direct ---------- 268
Cross ---------- 274
Redirect ---------- 295
Recross ---------- 297

Certificate of Chancellor.

[Filed March 30, 1926.]

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY vs. JAMES LYNCH, *Defendant.*	On Indictment for Murder. Certificate of Chancellor.

On indictment and conviction in the Bergen County Court of Oyer and Terminer of the crime of murder in the first degree.

This is to certify that application has been made to me for the allowance of a writ of error to be issued out of the New Jersey Supreme Court for the review of the judgment of the Bergen County Court of Oyer and Terminer, convicting the said James Lynch of the crime of murder in the first degree, and that I have refused to order a writ of error for the review of said judgment.

Dated at Trenton, New Jersey, March 30th, 1926.

E. R. WALKER,
Chancellor.

Endorsed:
Filed Mar. 30, 1926.
A True Copy.
THOMAS BARBER,
Clerk.

Writ of Error.

[Filed April 7, 1926.]

New Jersey, ss.

The State of New Jersey to, Charles W. Parker, Esq., one of the Justices of the (Seal) Supreme Court of the State of New Jersey, and to the Judge of the Court of Common Pleas of the County of

Bergen, constituting the Court of Oyer and Terminer, holden at Hackensack, in and for the County of Bergen, of the term of December in the year of our Lord nineteen hundred and twenty-five.

Because in the record and process, and also in giving of judgment upon a certain indictment against James Lynch, late of the Township of New Barbadoes in the County of Bergen, aforesaid:

"That James Lynch late of the Township of New Barbadoes in the said County of Bergen, on the twenty-first day of January in the year of our Lord one thousand nine hundred and twenty-six at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did wilfully, feloniously and of his malice aforethought kill and murder one Frank Brannon, contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same."

Pro ut the said indictment and the several counts therein, whereof, before you, he, the said James Lynch hath been indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said James Lynch, as it is said, manifest error hath intervened to the great damage of the said James Lynch, as from his complaint we have received

information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said James Lynch, 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 Court of Errors and Appeals, in the last resort in all causes of law, to be held at Trenton, on the 19th day of April 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 and customs of New Jersey ought to be done.

WITNESS, Edwin Robert Walker, Esq., our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 30th day of March, A. D. one thousand nine hundred and twenty-six.

THOMAS F. MARTIN,
Clerk.

JOHN B. ZABRISKIE,
Attorney.

Presented in open court April 7, 1926.

CHARLES W. PARKER,
Justice Supreme Ct.
Judge Bergen O. & T.

Return.

The answer of the Court of Oyer and Terminer of the County of Bergen within mentioned

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify and return to the Court of Errors and Appeals of the State of New Jersey at Trenton at the day and year within contained in a certain schedule to this writ annexed as we are commanded.

CHARLES W. PARKER,
WILLIAM M. SEUFERT,
Judges.

Caption of Indictment.

BERGEN COUNTY COURT OF OYER AND TERMINER and GENERAL GAOL.

DELIVERY, holden at New Barbadoes, in and for the County of Bergen, on the second Tuesday of December, in the year of our Lord one thousand nine hundred and Twenty-five.

BERGEN COUNTY, ss: Be it remembered, That at a Court of Oyer and Terminer and General Gaol Delivery, holden at New Barbadoes, in and for the County of Bergen, on the second Tuesday of December, in the year of our Lord one thousand nine hundred and Twenty-five, before the Honorable Charles W. Parker, Esquire, Associate Justice of the Supreme Court of the Judicature of the State of New Jersey, and William M. Seufert, Esquire, Judge of the Court of Common Pleas of the said

Indictment.

County of Bergen, according to the form of the Statute in such case made and provided, by the Oath of

Charles F. Hunter
Henry P. Jansen
John W. Sharp
James H. Dunning
Joseph B. Foley
Edwin C. Lane
Charles H. Gompert
William F. Barry
Samuel Kraft
David S. Greenberg
Clinton V. Meserole
Charles H. Bohn
Edward G. Brown
Gilbert J. Mearns
Howard D. Black
George H. Payson
David H. Burbank
Charles S. Gall
Charles S. Merton
Eugene E. Rich
William Scheelje
John G. Edsall
John Harmon

good and lawful men of the body of the County of Bergen aforesaid, duly summoned and returned, and then and there sworn and charged to enquire in behalf of the State of New Jersey, in and for the County of Bergen.

It is presented in manner and form following:

The bills herewith presented are true Bills.

A. C. HART,
Prosecutor of the Pleas.

CHAS. F. HUNTER,
Foreman.

Indictment.

BERGEN OYER AND TERMINER.

December Term, A. D. 1925.

Bergen County, to wit: The Grand Inquest of the State of New Jersey in and for the County of Ber-

gen, upon their respective oaths, PRESENT, That

—JAMES LYNCH—

late of the Township of New Barbadoes in the said County of Bergen, on the twenty-first day of January in the year of our Lord one thousand nine hundred and Twenty-six at the Township aforesaid, in the County aforesaid, and within the jurisdiction of this Court, did wilfully feloniously and of his malice aforethought kill and murder one Frank Brannon, contrary to the form of the statute in such case made and provided, against the peace of the State, the Government and dignity of the same.

WITNESSES:
Garrett A. Dawson
John Guidetti
John Valuzzi
Nathan H. Allyn

A. C. HART,
Prosecutor.

Plea to Indictment.

BERGEN OYER AND TERMINER.

February 18, 1926.

Before Hon. LUTHER A. CAMPBELL, Justice of the Supreme Court.

THE STATE
vs.
JAMES LYNCH
} Indictment for Murder.

The defendant being charged in this Indictment pleaded Not Guilty. Defendant remanded for trial.

Jury Panel.

BERGEN QUARTER SESSIONS.

February 19, 1926

Before WILLIAM M. SEUFERT, Judge of Common Pleas Court.

THE STATE
vs.
JAMES LYNCH
} Indictment for Murder.

In the presence of the Court and Clerk the following panel of 48 Jurors was drawn to be served upon the defendant in accordance with the Statute:

1. Delaplaine Hoyt
2. John S. Abel

Jury Panel.

3. George Van Orden
4. Alfred H. Eckel
5. Cecil M. Christie
6. Matthias R. Lukena
7. Frederick H. Blume
8. Alice C. Wilson
9. Richard Sawyer
10. Charles G. Smith
11. Harry T. Matier
12. Jennie Knowles
13. Andrew Van Orden
14. Anton Alonzo
15. Edward J. Irwin
16. George C. Schaffert
17. William Peters, Sr.
18. Andrew Fleming
19. Florence J. McIntyre
20. Peter Van De Moere
21. Italo A. Alessi
22. Margaret Bertail
23. Charles Sichler
24. Franklin G. Harrison
25. William R. Huntington
26. Frank J. Gerardi
27. Lorenzo W. Kenyon
28. John W. Lawlor
29. William J. Warnser
30. Arthur N. Cowperthwait
31. Charles A. Quackenbush
32. Louis M. Teffeau
33. Edward J. Welke
34. Robert Grange
35. George T. Yonkers
36. Charles A. Bearce
37. Clara Bertram
38. Margaret A. Kreis

Motion for Foreign Jury—Judgment Roll.

Judgment Roll.

39. Thomas B. Costello
40. C. William Schreivogel
41. Marie S. Huser
42. Stanley S. Hazzard
43. Alfred S. Maule
44. Mary B. Mann
45. Carolyn Doughty
46. Rudolph C. Otten
47. Edward J. Roggenburg
48. Fred W. Buesking

Motion for Foreign Jury.

BERGEN OYER AND TERMINER.

February 23, 1926.

Before Hon. CHARLES W. PARKER, Supreme Court Justice.

THE STATE
vs.
JAMES LYNCH
} Indictment for Murder.

Motion for a Foreign Jury by John B. Zabriskie.
Motion denied.

Judgment Roll.

BERGEN OYER AND TERMINER.

December Term, A. D. 1925.

Before Hon. WILLIAM M. SEUFERT, Judge of the Court of Common Pleas, no Supreme Court Jus-

tice present and said Indictment was sent up to the Oyer and Terminer Court for Trial.

And afterwards, to wit: on Thursday the eighteenth day of February in the year of our Lord one thousand nine hundred and twenty-six at the session of said Oyer and Terminer of the December Term one thousand nine hundred and twenty-five before the Hon. LUTHER A. CAMPBELL, Esquire, Associate Justice of the Supreme Court at Hackensack here cometh the said James Lynch under the custody of George P. Nimmo, Esquire, Sheriff of the County of Bergen aforesaid being brought to the Bar here in his proper person by the Sheriff aforesaid, and having heard the Indictment read and forthwith being commanded of and concerning the premises in the said Indictment above specified and charged upon him how he will acquit himself thereof, he says he is Not Guilty thereof, and thereof for good and evil he puts himself upon the County, and Archibald C. Hart, Esquire, Prosecutor in behalf of the State in this behalf, doth the like.

Therefore, let a jury thereupon come before the Judge of this Court of Oyer and Terminer aforesaid at Hackensack aforesaid And whereas on the nineteenth day of February A. D. one thousand nine hundred and twenty-six at the December Term A. D. one thousand nine hundred and twenty-five on motion of Archibald C. Hart, Esquire, Prosecutor of the Pleas, the Court ordered that a Struck Jury be drawn in the Court of Quarter Sessions, no Supreme Court Justice being present. And the same having been done.

Therefore, let the Struck Jury come before the Judge of the Court of Oyer and Terminer aforesaid at Hackensack aforesaid on the twenty-third day of February A. D. one thousand nine hundred and twenty-six of the December Term A. D. one

thousand nine hundred and twenty-five of twelve good and lawful men and women, each of them shall be a citizen of this State and resident within the County of Bergen aforesaid, above 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 of the said James Lynch to recognize upon oath whether the said James Lynch be guilty of the Murder in the Indictment aforesaid specified or not guilty; as well the said Archibald C. Hart, Esquire, Prosecutor of the Pleas who prosecutes for the State aforesaid and James Lynch have put themselves upon the Jury and the same day is given to the parties aforesaid at the same place

On return day, to wit: on the twenty-third day of February as yet of the December Term in the year of our Lord one thousand nine hundred and twenty-five at Hackensack aforesaid the Hon. Charles W. Parker, Esquire, Justice of the Supreme Court of New Jersey aforesaid and William M. Seufert, Judge of the Court of Common Pleas for said County as well the said Archibald C. Hart, Esquire, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, and the said James Lynch aforesaid being brought to the Bar in his proper person by the Sheriff of Bergen County and the Jurors of the said Jury by the Sheriff of the County aforesaid for this purpose empannelled and returned to wit: George Schaeffer, Stanley S. Hazzard, Louis M. Teffeau, Charles A. Quackenbush, Frank J. Gerardi, Alice C. Wilson, Italo A. Alessi, William J. Warnser, Charles A. Bearce, Anton Alonzo, Charles Sichler, and Julius Zimmerman being called come who being chosen tried and sworn to speak the truth of and concerning the premises upon their oaths

say that the said James Lynch is Guilty of Murder as charged in the Indictment as above supposed against him

And afterwards, to wit: on Wednesday the twenty-fourth day of February in the year of our Lord one thousand nine hundred and twenty-six as yet of the December Term A. D. one thousand nine hundred and twenty-five aforesaid it was demanded of the said James Lynch if he hath or knoweth anything to say whereof the Court ought not to proceed to judgment against him, who nothing further saith unless he hath before said.

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 this Court now here commanded and adjudged that the said James Lynch suffer the punishment of death and do appoint the week beginning on Sunday the fourth day of April one thousand nine hundred and twenty-six as the week within which such sentence must be executed.

STATE OF NEW JERSEY,
COUNTY OF BERGEN, } ss.:

I, JACK L. FOX, Clerk of the County of Bergen and also Clerk of the Court of Oyer and Terminer and Common Pleas Court for said County, do hereby certify that the foregoing is a true copy of the Judgment Roll in the above case.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of
(Seal) said County and Courts at Hackensack this eighth day of April A. D. one thousand nine hundred and twenty-six.

JACK L. FOX,
County Clerk.

Order Assigning Counsel.

COURT OF OYER AND TERMINER.
BERGEN COUNTY.

THE STATE OF NEW JERSEY
vs.
JAMES LYNCH
} Order.

An order having been made in the above entitled cause on the nineteenth day of February, 1926, substantially in the following language, namely:

"The defendant having made application to the Court for the appointment of Counsel and it appearing that the defendant is without funds to employ Counsel, it is hereupon, on this 19th day of February, 1926, ORDERED, in accordance with the provisions of the Act in such case made and provided that JOHN B. ZABRISKIE, be and is hereby appointed to represent the said defendant in the above matter."

And it appearing that said order made as aforesaid on the nineteenth day of February, 1926, has been either lost or mislaid,

Now therefore, it is on this twenty-ninth day of March, 1926, ordered as of the nineteenth day of February, 1926, that in accordance with the provisions of the Act in such case provided that JOHN B. ZABRISKIE be and is hereby appointed to represent the said defendant in the above matter.

WM. M. SEUFERT,
One of the Judges of the Bergen
County Court of Oyer and Terminer.

Endorsed:
Filed Mar. 31, 1926.
JACK L. FOX,
County Clerk.

Bill of Exceptions and Record.

Motion for Foreign Jury.

BERGEN COUNTY COURT OF OYER AND TERMINER.

THE STATE vs. JAMES LYNCH, *Defendant.*	On Indictment for Murder.

Hackensack, N. J., February 23, 1926.

Before—Hon. CHARLES W. PARKER, Justice of the Supreme Court, and Hon. WILLIAM M. SEUFERT, Judge of the Court of Common Pleas.

APPEARANCES:

For the State, Hon. A. C. HART, Prosecutor of the Pleas, and Hon. CHARLES J. McCARTHY, Assistant Prosecutor of the Pleas.

For the Defendant, JOHN B. ZABRISKIE, Esq.

The Court: Mr. Prosecutor, the Court of Oyer is in session.

The Prosecutor: I move the trial of the case of State v. James Lynch, homicide.

The Court: Is the prisoner in court?

The Prosecutor: Yes, sir.

The Court: Is the defense ready to proceed?

Mr. Zabriskie: If your Honors please, I caused to be served on the Prosecutor on Saturday, which was the earliest possible moment that I could, a notice for an application for a foreign jury in this case, and I offer at this time to produce testimony so that there will be something by which your Honors can determine whether or not there should be a foreign jury awarded for this case.

The Court: How much testimony do you want to offer, Mr. Zabriskie?

Mr. Zabriskie: Just a few minutes.

The Court: The Court will hear you.

Mr. Zabriskie: I will call Mr. John Boland.

JOHN H. BOLAND, 2nd, sworn as a witness on behalf of the defendant testified as follows:

Direct examination by Mr. Zabriskie:

Q. Mr. Boland, are you connected with the Hackensack Evening—or with the Bergen Evening Record? A. I am.

Q. And have you with you the newspapers that have been printed by that paper since the 21st day of January, 1926? A. I have those copies mentioned in the subpoena.

Q. Yes. And will you produce them? A. They are here. (Copies of newspapers produced.)

John H. Boland, 2nd, direct.

Mr. Zabriskie: Will the officers just get them so the front pages can be shown to his Honor,—the honorable judges? I would ask, if your Honors please, that they be marked successively D-1, 2, and so on.

The Court: Well, you may mark the whole thing. (Copies of newspapers designated Exhibit D-1.)

The Court: How many are there?

The Witness: Twenty-seven, your Honor.

The Court: There is one for each letter of the alphabet and one besides, isn't there. You can mark them A to Z and double A.

Q. Then I call your attention particularly to the issue of January 25th. Will you find that, Mr. Boland? A. (Paper produced.)

Mr. Zabriskie: And I call your Honors' attention to that, if your Honors will look at it particularly; I call your attention to the article as a whole, which I won't take the time to read; but I call your attention to the picture which purports to be the defendant James Lynch, and to the words under the picture, "The gunman which shot and killed Brannon."

The Court: Yes.

Q. Now, are you familiar with the circulation of the Bergen Evening Record, Mr. Boland? A. I have brought a certified copy for the months of January and February—

Q. Yes. A.—as requested in the subpoena.

Q. And can you give me the approximate circulation, or the exact circulation, on the first or second day of January of this year? Can you give that? A. I cannot give it to you individually, that is, as per that day; I can give it to you for the month of January or for the month of February up to date.

The Court: That will do. What is that?

The Witness: January, 11,552 copies per day.

The Court: February?

The Witness: February to date, 12,001.

Q. So there has been a big increase in the circulation during the pendency of this case, has there not?

The Court: About 500 copies.

The Witness: Approximately, your Honor, yes.

Q. About five thousand? About how many?

The Court: Four hundred and fifty, I guess.

The Witness: Four hundred and fifty.

Q. That is the average per day up to the present time? A. Well, it is impossible, your Honor,—the figures for February are the average daily gross. It is impossible at this time to state the average net paid because that is not figured up and computed.

The Court: What were the figures for December; have you got those?

John H. Boland, 2nd, direct.

The Witness: I am not in possession of those, your Honor.

The Court: Can you tell us anything about the circulation of the paper?

The Witness: No, sir; I am not inside.

The Court: Well, do you know whether 500 copies is the normal growth of the paper or not?

The Witness: I would say, your Honor, that we are a fast growing newspaper.

Q. Now, can you say as to in what parts of Bergen County that paper circulates and is read? A. It is in a radius of 15 miles of Hackensack, 15 to 20 miles.

Q. And can you name some of the different towns in which it is furnished every day? A. Bogota, Maywood, Englewood, Teaneck, Little Ferry, Harrington Park, Saddle River Township.

Q. Ridgewood? A. Yes, Ridgewood.

Q. Isn't it a fact that it circulates in practically all of Bergen County, or the greater part of it? A. Certain sections.

Q. Yes. Now, is it or is it not a fact that there has been an increase in the circulation due to the interest in something that has occurred, say in the latter part of January or the early part of February? A. Well, I would not care to go on record as defining the reason for our growth. It is a natural growth.

The Court: What is the population of Bergen County, Mr. Boland?

The Witness: Approximately 270,000, according to an estimate—

The Court: The circulation you said was what?

The Witness: For the month of February to date, your Honor, 12,001 copies per day; that is the average daily gross.

The Court: Yes.

The Witness: And for January 1, 1926, to January 31, 1926, inclusive, the average daily net paid circulation, 11,552. I may explain to your Honor, if you wish, that we are a member of the National Board of Audit, and it is necessary to compute our circulation according to the average daily net paid circulation.

The Court: Well, that is all right. Then you circulate, let us say, you circulate about one paper for every 25 people in Bergen County?

The Witness: I would say that was the figure, your Honor.

The Court: Well, that is what the figures show?

The Witness: Yes.

Q. Well, isn't it a fact that according to the last census of Bergen County published, the population is 210,000?

The Court: I do not know.

The Witness: The official census I would not question.

Mr. Zabriskie: Well, perhaps the Court will take judicial notice of that, 210,000.

The Court: Well, I am inquiring about facts. I am not asking about judicial notice. However, go on.

Mr. Zabriskie: Well, I can produce the Legislative Manual.

The Court: The Court is quite willing to concede, if there is anything of that kind, that the Legislative Manual would show 210,000 as the census of 1920.

Mr. Zabriskie: I think that is correct. That is my best recollection. I have not looked at it recently. Those are the matters I wanted to bring to your Honor's attention by this witness.

The Court: Well?

Q. Mr. Boland, you read other newspapers, I suppose, as well as the Evening Record, do you not? A. I try to.

Q. Yes. And have there or have there not been accounts in other papers of this murder the same as there have been in your paper, for instance, in the Hudson Dispatch, which circulates here? A. Being a journalist, I would naturally expect the other newspapers would carry accounts of the story.

Q. Yes.

The Court: Mr. Boland, these accounts in this paper are what your newspaper would publish in any sensational murder case?

The Witness: They are, your Honor.

Mr. Zabriskie: I have no further questions.

The Court: All right. That will be all.

Mr. Zabriskie: That was the testimony I was able to produce. Of course, I presume I could produce a great many people who could tell about the temper of the people, but the testimony I have is the basis of my motion, your Honors please.

The Court: Well, Mr. Zabriskie, I do not suppose there ever was an important murder case when public excitement was not aroused by the matter. But you recollect that a short time ago there was a very vigorous effort made to get a foreign jury in Hudson in the railroad police guard case where it was claimed that public excitement was so strong that it called for a foreign jury, and the Supreme Court did not think it necessary to go into the testimony on the other side at all, I think. They overruled the application, and in the Genese case out there in Somerset County there was not even an application.

Mr. Zabriskie: Yes. But in the Kluxen case out in Morris County, that was a case, as I recall, where the Court exercised its discretion and found it advisable to import a jury from Essex County.

The Court: Well, that is true. The Court did exercise its discretion in the Kluxen case, and I happen to know something about the Kluxen case. The reason the Court did award a foreign jury in that case, if I recollect rightly, and am properly in-

formed, was that it was made perfectly plain that the entire community was convinced, without having heard evidence, of the guilt of Kluxen.

Mr. Zabriskie: Well, I am quite sure, if your Honors please, if I had the time I could show your Honors it is the same condition here prevailing in this case. Now, if your Honors had the time to read those articles, you will see where rewards were offered, large rewards, offered by the citizens of Hackensack, those people connected with business in Hackensack, so that it really is all settled. I do not think there is anywhere where we have a fairer class of jurors than we have in Bergen, but I think in this particular case, there is a sort of a subconscious feeling on the part of everybody that this man Lynch, whoever he may be, is guilty, and it just seems to be in their minds just a question of how soon we can find him guilty. Now, if I had the time, I am satisfied I could bring witnesses from almost any community, because in conversation that I have happened to overhear, why, there does not seem to be any question about a trial; it seems to be a question of going to the formality of convicting this man, and I could show that temper.

The Court: People talk very loosely until they are sworn as jurors, and when they are sworn as jurors, they become a little more careful.

Mr. Zabriskie: I am afraid there has been so much talk, there is a sort of a subconscious feeling.

The Court: Well, Judge Zabriskie, Judge Seufert and I think that, while, of course, there has been a certain amount of public excitement about this case, as about any case, Mr. Boland has already told us that this is just about the sort of thing that would occur in any murder case of a sensational character, and, of course, it is the kind of a thing we constantly get. If you read the case of the State v. Overton back in thirteen, you will find that same sort of thing is prevalent, and that an application for adjournment was overruled there and held proper. So we think that you have protection for your client in case you know or have reason to believe that any of the jurors that are summoned is partial and would not decide the case according to the evidence. You have got both your peremptory challenge and you have got your right to a challenge for cause, and then you can examine and find out. We think that the application had better be overruled.

Mr. Zabriskie: I will just object—I understand it is discretionary—for the purpose of the record.

The Court: You may have everything you are entitled to. Mr. Stenographer, enter an exception for Judge Zabriskie on that.

Motion for Adjournment—Argument.

Defendant's counsel prays an exception of the above ruling of the Court, which is allowed and sealed.

C. W. PARKER, Judge. (Seal)

Mr. Zabriskie: Then, if your Honors please, I am going to ask for an adjournment of this case. As your Honors know, the arraignment only occurred a very short time ago, and my assignment to the case occurred on Friday, occurred Friday at about noon, if I remember correctly; in fact, it was just before noon and, unfortunately, I had made some appointments for that day which I could not postpone; so instead of sitting right down to work as I otherwise would have, I really used a good part of Friday afternoon on other matters. On Saturday I did everything that I could, and Sunday and yesterday even, I did not take any holiday, and I did not really observe the Sabbath, but I did all that I could, and I tried to get certain people here and especially the lawyer in New York who I thought would be familiar with the case from his connection there. But his office advised me, —in fact, I got hold of him before he went away, but he said he had appointments in Albany of such a nature that he could not get here until today; he has not arrived yet, so far as I know; and so I have had absolutely no information, co-operation or assistance from that source. The wife has not been able to get here. She was supposed to get here this morning and she has not yet arrived, and so I have had no chance to get the information.

The Court: I suppose you could have seen her on Monday or Saturday.

Mr. Zabriskie: I have not seen her at all. I would not know her if I saw her this minute.

The Court: It seems rather strange if the wife of the defendant cannot be induced to come over to New Jersey.

The Prosecutor: Well, she is here now, sir.

Mr. Zabriskie: Where is she, please?

The Prosecutor: Outside.

The Court: That takes care of that. As to the lawyer, I suppose you had plenty of opportunity, at least, you should have had opportunity to see him, even at Albany. Did you go to Albany?

Mr. Zabriskie: No. I felt that if I went away I would lose so much time, that I would really be just following up one end, so I stayed right at headquarters trying to get everything circulating here. I would not have called your Honor on the telephone if I could have run over and seen your Honor, because I felt I would lose so much time, and I did not want to be put to criticism later on.

Now then, from investigation of the case, and from what I have been able to learn, I am led to believe that the Prosecutor is go-

ing to use men who have criminal records against Lynch. Now, of course, I can ask them on cross-examination whether they were convicted of crime, and I am reasonably sure they will say no. Now, because I have not had the time to get the official records to contradict them, I will be in a very peculiar handicap on that point of view. Of course, I cannot guarantee what the Prosecutor is going to do.

The Court: Haven't you any assistant working with you?

Mr. Zabriskie: Mr. Hendrickson is cooperating with me. All my work has been during closed office time, but I am satisfied that one of the principal witnesses is a convict and has been convicted of the crime of homicide, and I know if he goes on the stand or, at least, I feel reasonably sure, he will say no and I cannot contradict him of record because I have not been able to get the record; and I do not know how many more instances there are, but I think that is going to be so with one of the principal witnesses.

The Court: It may be that if you are correct about your facts the Prosecutor will relieve you from anxiety in that regard; I do not know.

The Prosecutor: I beg your pardon, sir?

The Court: I say, it may be that if Mr. Zabriskie is correct about the criminal record of one or more of these men, that the

Prosecutor will relieve him from the necessity of proving it; I do not know.

The Prosecutor: As a matter of fact, not one of these persons associated with the defendant in the commission of this crime has any criminal record whatsoever.

The Court: So far as you know.

The Prosecutor: Well, they have answered that, sir; and, moreover, if counsel—

The Court: I only want to hear you on that one point; that is all.

The Prosecutor: That is the point upon which I am going to address your Honors. If counsel should ask any of these witnesses concerning their criminal record, he will be the examining counsel; he will be asking them, and he will be unable to deny their answer by any other evidence that he might subsequently be able to produce.

The Court: I do not know about that.

Mr. Zabriskie: I do not agree with the Prosecutor at all.

The Prosecutor: Well, I will read the law, sir.

The Court: What do you want to read, the first section of the evidence act?

The Prosecutor: Yes.

The Court: All right. Go ahead and read it.

The Prosecutor: Well, I am going to assume that your Honor knows it verbatim.

The Court: No, I do not.

The Prosecutor: (Reading) "No person called as a witness in any action or proceeding of a civil or criminal nature shall be excluded because of his having been convicted of crime, but such conviction of crime may be shown on the cross-examination of the witness for the purpose of affecting his credibility," or by the record. Now, if he chooses to produce the record, it is part of his case to show the conviction, he is enabled to do so, and then he can, of course, break down, if it is possible, the testimony of the witness. But if he chooses to question this witness himself as to whether he has been convicted of crime, he may not thereafter deny it.

The Court: Have you got any authorities on that point?

The Prosecutor: Yes, sir. Now, a witness who has been convicted of a crime, and on cross-examination denies it, cannot be contradicted by other witnesses to whom he may have admitted the crime. Then the query is, can he be contradicted by the production of the record of his conviction? Well, sir, counsel has the privilege of proving the conviction of the witness in one of

two ways: by the production of record, or by the question, and if he determines to cross-examine and to prove the character of the witness by that cross-examination, he then is estopped from producing the record of that.

The Court: It is always unwise, Mr. Hart, for the Court to cross a bridge before it gets to it; but I am inclined to say now, if Mr. Zabriskie failed to elicit on cross-examination from any one of these witnesses the fact that that witness had been convicted of a crime, he would not be required to produce it afterward. I know of no authority to the contrary. But that, however, is not your real point.

Mr. Zabriskie: If your Honors please, I am assigned by the Court, and I want to do my full duty. Now, I have read almost all of those files of the "Record," and it seems to be a matter that is in the newspaper that one of these men, I would say who it is, Strand, was found guilty of some crime, and I am advised it is homicide, and served time in the Elmira Reformatory for that. If that is admitted by the Prosecutor, why, then I won't be in such a bad position.

The Court: Have you communicated with the reformatory?

Mr. Zabriskie: I have not had time.

The Court: You can telegraph or telephone.

Mr. Zabriskie: But I did not think there was going to be any controversy on the point. I thought all those things could be taken care of. Of course, I do not think, even if I did telegraph, and I got a reply, that would not put me in a very good position; but I am told in such a manner that I believe it to be true.

The Prosecutor: Well, my information was different; but in the light of what Judge Zabriskie said, I will examine Strand and find out whether he was convicted and, if so, we will admit it, sir.

The Court: You mean you will examine him before the jury is impanelled?

The Prosecutor: He will admit it himself on the stand.

Mr. Zabriskie: I do not think the Prosecutor can speak for this man. Of course, he will deny it, I do not doubt. That is the reason I am in this position. Of course, I do not feel that I have had time to give the case the study that I should, due to the difficulty that I have outlined, and other difficulties, and that legal situation.

It is on those grounds that I address my motion or my application for an adjournment. Of course, it might be that the Prosecutor could confer with Mr. Strand now, and he might be able to get the truth, and that will help somewhat.

The Court: Well, we will see what can be done about that.

The Prosecutor: Concerning, first, the allegation that Strand was convicted and sentenced to serve time in Elmira in the New York State Reformatory, I find now, sir, that that is true, and I have here a parole and his release from the State Reformatory which I will keep in my possession, and when counsel for the defense asks for it, if he does,—

Mr. Zabriskie: What charge, Mr. Prosecutor?

The Prosecutor: —I will give it to him. Manslaughter.

The Court: That answers your purpose?

Mr. Zabriskie: That does, as far as that is concerned. Then, of course, there remains the general fact that—

The Court: You have not had time to get up the case?

Mr. Zabriskie: Yes.

The Court: Well, as to that, Mr. Zabriskie, if you have finished what you have had to say,—

Mr. Zabriskie: Yes.

The Court: —it would seem, of course, at first blush that when a prisoner is arraigned on Thursday evening and is told to get ready

for trial on the charge of murder on the following Tuesday, as if the Court was in a little of a hurry, and ordinarily the Court does not do that sort of thing. I think counsel will agree the time that is considered reasonable by all hands is always given. The situation in this case has circumstances that differentiate it from other cases. According to the State's claim, as I understand it, this defendant Lynch after the homicide went almost immediately to New York State; he had to be discovered, located, arrested and extradited. He resisted extradition, and that was, I think, a very few days after the homicide, several weeks ago. I think it was after this date had been fixed for all this group of cases that there was this resistance to coming over to New Jersey, resistance to the proceedings; there was a habeas corpus, wasn't there?

The Assistant Prosecutor: Yes, sir.

The Court: And there were the usual dilatory and defensive motions in order to prevent his being brought over here and, as I gather from the statements of the Prosecutor, every time that this matter was in court in New York and adjournments were asked and were resisted by the officials of New Jersey, it was stated in open court that this trial was set for the 23rd day of February, that all arrangements were being made, and that there would be objection to any delay because of the fact that there had been delay in the New York courts. Now, this man had counsel in New York. His counsel, I

assume, was there with him. His counsel was advising him, and his New York counsel was, therefore, responsible for delays which now turn out to have been unnecessary because, as has been seen, he might just as well have come here in the first place. I do not know what these habeas corpus proceedings were. If he had counsel in New York, he could and should have had counsel in New Jersey. I confess, personally, to being quite unable to understand why, if he could pay counsel in New York, of his friends, they could not pay counsel in New Jersey to look after his interests in case he should be brought over here. So that, in view of all that situation, he was fully apprised of the fact that this trial was coming on, and if he by his own action has prevented his assigned counsel in New Jersey from getting the grasp of the case that he should have had, I do not think the courts ought to be held to blame for that. Now, those are the reasons that lead the Court to say—

Mr. Zabriskie: May I say just one more word?

The Court: —that the trial ought to go on.

Mr. Zabriskie: I just wanted to call attention to one thing. From what the prisoner tells me, the counsel in New York only went into one phase of the case, which was the technical side of the extradition; he apparently did not go into anything further. So it is only really since last Thursday night that he has known legally just what he has been charged with.

The Court: Yes. But he was told, you may make these motions for delay, if you wish, you may make these motions for extradition; you are warned if you are extradited, your trial is coming on on the 23rd of February; that is right, isn't it?

Mr. Zabriskie: Yes. But he did not really know what the indictment contained until last Thursday, Thursday night, when Justice Campbell presided.

The Court: Why the extradition proceedings told him what the indictment contained, didn't they?

Mr. Zabriskie: Well, that is the first time he was asked to plead, as I understand it.

The Court: I know. But when there is a request for extradition, the indictment goes over with the papers, doesn't it?

Mr. Zabriskie: I did not know whether it was on complaint or on the indictment.

The Prosecutor: Our witnesses were produced before him; he required the production of witnesses in New York on the proof of the case in the official way in New York City, and his lawyer was there.

Mr. Zabriskie: But was the man within the jurisdiction and reasonably presumed to have—

The Court: Well, I think nothing further may be said.

Examination of Jurors.

Mr. Zabriskie: How do I understand the ruling?

The Court: We think the case ought to go on.

Mr. Zabriskie: Your Honors will allow us, for the sake of the record, an exception?

Exception to this ruling of the Court, allowed and sealed.

C. W. PARKER, Judge. (Seal)

Examination of Jurors.

(The panel of jurors was then ordered to be brought to the court room.)

Mr. Zabriskie: Mr. Prosecutor, where is Mrs. Lynch?

The Prosecutor: Is Mrs. Lynch in court? (No response.)

The Assistant Prosecutor: She is outside.

Mr. Zabriskie: The Prosecutor said that she was here.

The Assistant Prosecutor: The officer at the door said that she wanted to get in, and Lynch's brother and sister's folks.

The Court: The Sheriff may return a panel.

The Sheriff: 46, Marie S. Huser.

Examination of Jurors.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Excused.

The Sheriff: 36, Robert F. Grange.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Mr. Grange, you live in Ridgefield Park?

The Juror: Right.

Mr. Zabriskie: And you read some of the Bergen County papers, do you?

The Juror: Yes.

Mr. Zabriskie: Do you read the Bergen Evening Record sometimes?

The Juror: Yes.

Mr. Zabriskie: Have you been reading it during January and February?

The Juror: Yes.

Mr. Zabriskie: Of this year?

The Juror: Yes.

Examination of Jurors.

Mr. Zabriskie: Have you been reading the accounts of this hold-up, or whatever it is called?

The Juror: I have.

Mr. Zabriskie: And by so doing, have you formed some opinion?

The Juror: Yes.

Mr. Zabriskie: I challenge for cause, your Honor please. Just one moment. (To the Juror) Have you formed an opinion as to the guilt or innocence of the defendant Lynch?

The Juror: Guilt.

Mr. Zabriskie: What do you say?

The Juror: Guilt.

Mr. Zabriskie: You have found him guilty. I challenge for cause.

The Court: Let him be sworn on his *voir dire.*

ROBERT F. GRANGE, sworn on his *voir dire,* testified as follows:

By the Court:

Q. Now Mr. Grange, you say you have got an opinion in the case derived from your newspaper reading, and other sources, probably; is your opinion so firmly fixed that you could not decide this

case upon the evidence that is produced in court? A. Not exactly, no.

Q. You do not think so? A. No.

Q. Well, in case the evidence failed to show him guilty beyond a reasonable doubt, do you think that you would be inclined to vote for an acquittal under the instructions of the Court in that regard? A. I think so.

By Mr. Zabriskie:

Q. But you sort of subconsciously feel that he is guilty, don't you? A. Yes.

Q. And we practically have to show you or demonstrate that in order for you to find him not guilty, isn't that so? A. Yes.

Mr. Zabriskie: I still claim I have a right—

The Court: Then the Court will pursue that further. The instructions of the Court to the jury will be that the jury ought not to convict the defendant unless the evidence shows him to be guilty beyond a reasonable doubt. Do you think you could follow that instruction? A. I would try to.

The Court: And that the burden of proof is on the State. Would you be guided by that? A. I would try to.

By Mr. Zabriskie:

Q. You say that you will try to, but you do not feel confident that you could give a verdict in accordance with the evidence, do you, Mr. Grange? A. Well, may be.

Q. What do you say? A. It might be a little bit that way.

Q. It might be difficult for you to do so? A. Yes.

Q. And knowing your own powers and abilities, you have doubt as to your ability to be governed by the evidence produced here, isn't that so? A. Yes.

The Court: The Court does not think that Mr. Grange has shown such incompetency as to justify a challenge for cause. It is, therefore, denied.

Mr. Zabriskie: Your Honor will permit an exception to be taken to that ruling?

The Court: Yes.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

Mr. Zabriskie: And I will challenge him peremptorily.

The Court: Yes.

(Juror excused.)

The Sheriff: Number one, John S. Abel.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Examination of Jurors.

Mr. Zabriskie: Mr. Abel, you also live down in Ridgefield Park?

The Juror: Yes, sir.

Mr. Zabriskie: And you read Bergen County papers?

The Juror: Yes, sir.

Mr. Zabriskie: And do you sometimes read the Bergen Evening Record?

The Juror: Yes, sir.

Mr. Zabriskie: And have you been reading that paper in January and February of this year?

The Juror: On and off; yes, sir.

Mr. Zabriskie: And have you been reading some of these accounts of this hold-up which is alleged to have occurred at the Susquehanna Station here, and the express office?

The Juror: Yes, sir.

Mr. Zabriskie: Have you talked to people to some extent about this case?

The Juror: Yes, sir.

Mr. Zabriskie: And have you from your reading and from your conversation formed an opinion as to whether or not Lynch is guilty?

The Juror: Well, I cannot say that I did.

Mr. Zabriskie: Yes.

The Juror: And I cannot say that I didn't.

Mr. Zabriskie: You really have the feeling now, though, that he is guilty, haven't you?

The Juror: Well, I couldn't say that I have a feeling that he is guilty. I feel that somebody is certainly guilty.

Mr. Zabriskie: Yes. And you are inclined to think that he is the man?

The Juror: Well, according to the papers, I would say yes.

The Court: In other words, if what the papers say is true, he is the man?

The Juror: He is the man; yes, sir.

The Court: But if the Court told you to be guided entirely by the evidence and to forget all about the papers, could you do that?

The Juror: Well, I don't see why not.

Mr. Zabriskie: I have no further questions.

The Court: Challenge overruled. Oh, you do not challenge him. Is he satisfactory?

Mr. Zabriskie: Well, I have not said that yet. I will just except to the ruling.

Examination of Jurors.

The Court: Well, the Court has not ruled. You have not challenged him.

Mr. Zabriskie: Oh, I challenge for cause.

The Court: You do?

Mr. Zabriskie: Yes.

The Court: Well, the challenge is overruled.

Mr. Zabriskie: Exception.

Defendant's counsel prays an exception to this ruling of the Court, which is allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Court: I suppose it is unnecessary to swear him on this matter, in view of what he said?

Mr. Zabriskie: Yes. I think I will challenge peremptorily.

The Court: All right.

(Juror excused.)

The Sheriff: 71, George Schaeffer.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Schaeffer, you live at Englewood Cliffs Borough?

The Juror: Yes, sir.

Examination of Jurors.

Mr. Zabriskie: Do you read Bergen County papers?

The Juror: Very seldom.

Mr. Zabriskie: Have you heard any discussion of this Lynch case?

The Juror: No, I have not.

Mr. Zabriskie: You do not know anything about the case at all?

The Juror: I do not know nothing.

Mr. Zabriskie: Satisfactory to the defense.

The Assistant Prosecutor: Satisfactory to the State.

(Sworn as Juror Number 1.)

The Sheriff: 13, Frederick H. Blume.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Mr. Blume, have you read something in the papers about this case?

The Juror: I did, yes.

Mr. Zabriskie: Have you formed some opinion of the case?

Examination of Jurors.

The Juror: Well, I cannot say that I did.

Mr. Zabriskie: Are you acquainted with Prosecutor Hart?

The Juror: No.

Mr. Zabriskie: You live in Emerson?

The Juror: Yes, sir.

Mr. Zabriskie: That was the former home of the Prosecutor's family.

The Juror: I have only lived there two years.

Mr. Zabriskie: I think I will challenge peremptorily.

(Juror excused.)

The Sheriff: 54, Matthias R. Lukena.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mr. Lukena, have you read something about this case in the papers?

The Juror: I have read something about it, yes.

Mr. Zabriskie: Have you formed some opinion?

The Juror: No, I have not.

Mr. Zabriskie: What papers have you been reading?

The Juror: Well, I read the Passaic Daily News.

Mr. Zabriskie: And that has had considerable—that circulates in—

The Juror: Oh well, I do not think I have read the story in that single paper. I have read the Evening World; I have read the story in a general way. I do not know the name of any of the prisoners; I do not think that I can recall.

Mr. Zabriskie: Have you formed some opinion of the case.

The Juror: No, I haven't formed no opinion.

Mr. Zabriskie: What is your business? You say you are a foreman?

The Juror: I am a foreman; yes, sir.

Mr. Zabriskie: Of what?

The Juror: Becton & Dickinson, East Rutherford, surgical instruments.

Mr. Zabriskie: I will excuse Mr. Lukena.

(Juror excused).

Examination of Jurors.

The Sheriff: 43, Delaplaine Hoyt.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

The Assistant Prosecutor: The juror is acceptable to the State, sir.

Mr. Zabriskie: The defense will excuse Mr. Hoyt.

(Juror excused).

The Sheriff: 47, Edward J. Irwin.

(No response).

The Court: Mr. Irwin turns out to be legally exempt; consequently, he is not in service. Call another name.

The Sheriff: 40, Stanley S. Hazzard.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mr. Hazzard, have you read anything in the newspapers about this case?

The Juror: Very little, sir.

Mr. Zabriskie: Have you discussed the case with anybody?

The Juror: Slightly.

Examination of Jurors.

Mr. Zabriskie: Have you formed any opinion as to the guilt or innocence of the defendant in this case?

The Juror: No, sir.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: Are you acquainted with Judge Zabriskie, his attorney?

The Juror: I know him.

The Assistant Prosecutor: The juror is satisfactory.

(Sworn as Juror Number 2.)

The Sheriff: 58, Alfred S. Maule.

The Juror: The name is Mante, M-a-n-t-e.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: I just want to ask for a ruling, or an exception on the record on the ground that we were not served with a panel containing the name of this juror who is being interrogated now.

The Court: Well, you mean that you were served with a panel containing the name of Alfred S. Maule?

Examination of Jurors.

Mr. Zabriskie: Alfred S. Maule and, consequently, we have had no opportunity of examining as to the eligibility of this man who is produced before us now.

The Court: Well, he is put down as a salesman from Harrington Park, isn't he, Mr. Zabriskie?

Mr. Zabriskie: Yes, sir; a salesman, Harrington Park Borough. Of course, Mante is an entirely different name and would lead one to believe it was an entirely different race from what one would gather from the name of Maule.

The Prosecutor: We will tender an agreement to excuse the juror by consent, sir.

Mr. Zabriskie: Just for the sake of the record, I would like to make this objection, and object to the proceeding on that ground.

The Court: The Court will overrule the objection at the present time. You may enter your exception.

Defendant's counsel prays an exception to the above ruling of the Court, which is allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Prosecutor: The State will excuse this gentleman, sir.

The Court: Well, that does not entirely meet the objection, but the State is entitled to do that.

Examination of Jurors.

The Prosecutor: Yes, sir.

(Juror excused).

The Sheriff: 74, C. William Schreivogel.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mr. Schreivogel, you live in Garfield?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read some of the Bergen County papers?

The Juror: Some.

Mr. Zabriskie: Do you read the Record sometimes?

The Juror: The what?

Mr. Zabriskie: Do you read the Bergen Evening Record?

The Juror: No, sir.

Mr. Zabriskie: Have you read anything at all about this case?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed an opinion in this case, that is, do you think this man Lynch is guilty or do you think he is not guilty?

The Juror: Well, I have not read enough about it to form any opinion.

Mr. Zabriskie: Have you discussed the case very much?

The Juror: No, sir.

Mr. Zabriskie: How many times have you talked about the case to people, do you suppose?

The Juror: That I cannot say.

Mr. Zabriskie: What do you say?

The Juror: I do not know.

Mr. Zabriskie: Well, a dozen times or so?

The Juror: No, I have not talked of it.

Mr. Zabriskie: You say you are manager; manager of what?

The Juror: Automobile broker.

Mr. Zabriskie: In Garfield?

The Juror: Yes, sir.

Mr. Zabriskie: I will excuse Mr. Schreivogel.

(Juror excused).

The Sheriff: 57, Harry T. Matier.

Examination of Jurors.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory, sir.

Mr. Zabriskie: Is that the way you spell your name, M-a-t-i-e-r?

The Juror: M-a-t-e-e-r.

Mr. Zabriskie: I make the same objection,——

The Court: That is overruled. That is quite near enough.

Mr. Zabriskie: —that I made in the other case. Your Honor will allow an exception?

The Court: You may have an exception, yes.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

Mr. Zabriskie: You say you are a machinist?

The Juror: Yes, sir.

Mr. Zabriskie: Employed in Woodridge Borough, or in New York City?

The Juror: New York City.

Mr. Zabriskie: Have you read something about this case, Mr. Mateer?

The Juror: Yes, I have, in New York papers, the World and Journal.

Mr. Zabriskie: Have you formed any opinion in the case?

The Juror: Well, I have, to some extent.

Mr. Zabriskie: That is, you think that the defendant is guilty, that is——

The Juror: Well, I do, to a certain extent.

Mr. Zabriskie: Yes.

The Juror: I would have to hear the trial.

Mr. Zabriskie: Are you French or German extraction?

The Juror: Scotch.

Mr. Zabriskie: Oh, Scotch. You say you have an idea as to whether or not this man is guilty, at the present time?

The Juror: Yes, sir.

Mr. Zabriskie: You think that he is guilty. I challenge for cause.

The Court: Well, do you think you could decide this case on the evidence alone, Mr. Mateer? If the Court told you that you were to consider only the evidence, would you

disregard your view that you obtained from the papers?

The Juror: Why, no; I wouldn't.

The Court: You do not think so; you are not sure about that?

The Juror: No, sir.

The Court: Well, Mr. Prosecutor, do you want to say anything?

The Assistant Prosecutor: Would you be guided by the evidence in the case as you heard it in the court room today?

The Juror: By the newspapers.

The Assistant Prosecutor: Or by the newspapers? Which would govern you in your verdict as a juror?

The Juror: Well, the newspapers. I have got quite an opinion from the newspapers already, from what I have read.

The Assistant Prosecutor: Will listening to the evidence today change that opinion?

The Juror: Well, I guess it would.

The Assistant Prosecutor: You guess it would. Would you follow the instructions of the Court what to consider and what to reject in reaching your opinion?

The Juror: Well, I think so.

Examination of Jurors.

The Assistant Prosecutor: You would.

The Juror: Yes, sir.

The Court: He says, "Yes."

The Prosecutor: Yes.

The Court: Anything further?

Mr. Zabriskie: You really feel that this man—that the evidence would have to prove to you that he was innocent?

The Juror: Yes, sir.

Mr. Zabriskie: I still maintain that same ground.

The Court: He will be excused for cause.

(Juror excused).

The Sheriff: 31, Andrew Fleming.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mr. Fleming, you live at Woodcliff Lake?

The Juror: Yes, sir.

Mr. Zabriskie: And do you sometimes read the Bergen County papers?

The Juror: Very seldom, sir.

Examination of Jurors.

Mr. Zabriskie: Have you heard anything at all about this case?

The Juror: Very little, sir.

Mr. Zabriskie: You knew that you were coming today to possibly sit in a murder case?

The Juror: No, sir; I did not know.

Mr. Zabriskie: You did not know that?

The Juror: No, sir.

Mr. Zabriskie: How long have you been living in Woodcliff Lake?

The Juror: Four years.

Mr. Zabriskie: And where were you living before that?

The Juror: In New York.

Mr. Zabriskie: New York City?

The Juror: Yes, sir.

Mr. Zabriskie: What was your occupation there?

The Juror: Mill-wright.

Mr. Zabriskie: Are you acquainted with Prosecutor Hart?

The Juror: No, sir.

Mr. Zabriskie: Or Mr. McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Are you acquainted with any of the Prosecutor's detectives, Mr. Garrett Dawson?

The Juror: No, sir.

Mr. Zabriskie: Do you feel that in this case you have an open mind, that you can sit in that case today and decide it without being influenced by anything that you have read heretofore or heard heretofore?

The Juror: It is hard to say, sir.

Mr. Zabriskie: What is your best judgment? Knowing yourself as you only can know yourself, does this man have to prove himself innocent today in order to get your vote for acquittal?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Court: Suppose the Court told you that before you could convict this man, he would have to be proved by the evidence guilty beyond a reasonable doubt; would you follow that instruction of the Court?

The Juror: Yes, sir; I would.

The Court: You think you could?

The Juror: Yes, sir.

The Court: Then you would not entertain that, you would not allow that previous notion that he was guilty to influence you in the matter?

The Juror: No, sir.

The Court: All right.

The Assistant Prosecutor: Satisfactory, sir.

The Court: Was there a challenge?

Mr. Zabriskie: Just a second. I have not made any challenge. I challenge for cause, yes. I take an exception to that ruling and make a peremptory challenge.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

(Juror excused.)

The Sheriff: 41, Alfred H. Heckel.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

The Assistant Prosecutor: Satisfactory to the State, sir.

Mr. Zabriskie: Of what are you a salesman, Mr. Heckel?

The Juror: I am hard of hearing.

Examination of Jurors.

The Court: What do you sell?

The Juror: Cotton goods.

Mr. Zabriskie: Well, can't you hear what I am saying now?

The Juror: I beg your pardon?

Mr. Zabriskie: I challenge on the ground he is physically unqualified for jury service.

The Court: It does not seem as if he could hear very well, does it?

The Assistant Prosecutor: No.

The Court: He will be excused.

(Juror excused.)

The Sheriff: 89, Andrew Van Orden.

(No response.)

Mr. Zabriskie: I just want to make a formal objection to proceeding on the ground that there are several—this is the second juror who should be here in court today, served on the panel of forty-eight, who should be in attendance, and I object on the record.

The Court: Very well. Have you finished what you had to say?

Mr. Zabriskie: Yes.

Examination of Jurors.

The Court: Objection overruled. I have decided it a dozen times.

Mr. Zabriskie: Just for the sake of the record, exception will be allowed?

The Court: Very well.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Sheriff: Arthur N. Cowperthwait.

(No response.)

Mr. Zabriskie: I make the same objection.

The Court: Mr. Cowperthwait not answering, the Court directs the Sheriff to call the next name. Judge Zabriskie excepts on the ground that the panel is not complete?

Mr. Zabriskie: Yes.

The Court: Objection overruled. Exception. Call the next.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Sheriff: 90, George Van Orden.

The Clerk: Juror look upon the prisoner, prisoner, look upon the juror; do you challenge?

Examination of Jurors.

Mr. Zabriskie: Mr. Van Orden, do you live in Edgewater?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read the Bergen County papers?

The Juror: Once in a while.

Mr. Zabriskie: Do you read the Evening Record?

The Juror: Yes, sir.

Mr. Zabriskie: You have read the different accounts of this alleged hold-up and shooting here at the Susquehanna Station?

The Juror: Yes, sir.

Mr. Zabriskie: And have you formed some opinion in the case?

The Juror: Well, not much.

Mr. Zabriskie: I challenge peremptorily.

(Juror excused.)

The Sheriff: 70, Richard Sawyer.

The Clerk: Juror look upon the prisoner; prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Excused, sir.

(Juror excused.)

Examination of Jurors.

The Sheriff: 10, Margaret Bertail.

(No response.)

Mr. Zabriskie: Just for the sake of the record, the same motion as heretofore.

The Court: Very well. The same ruling. Take your exception.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Sheriff: 53, John W. Lawlor.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Lawlor, do you read the Bergen County papers sometimes?

The Juror: Hudson County papers.

Mr. Zabriskie: Hudson Dispatch?

The Juror: Dispatch and Observer.

Mr. Zabriskie: And you read it regularly?

The Juror: Every evening.

Mr. Zabriskie: And I presume you have read about this case of State against Lynch?

The Juror: Yes, sir.

Examination of Jurors.

Mr. Zabriskie: Have you formed some opinion in the case?

The Juror: Yes.

Mr. Zabriskie: And in order to acquit him, he would have to show you that he was innocent?

The Juror: Right.

Mr. Zabriskie: Is that right? I make a challenge for cause.

The Court: Do you mean to tell me, Mr. Lawlor, that if you were sworn as a juryman to try this case and give it a true verdict on the evidence, you would not be able to do it because of your newspaper reading?

The Juror: Well, according to the papers, he is guilty, in my estimation.

The Court: According to the papers?

The Juror: Yes, sir.

The Court: Well, I know; but suppose you swear to return a verdict on the evidence that is given to you, do you mean to say that you will allow what you have read in the papers to affect your judgment of the evidence?

The Juror: To a certain extent, yes.

The Court: You think it would. Well, I am very sorry. That is all. You may go.

(Juror excused.)

The Sheriff: 45, William R. Huntington.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory, sir.

Mr. Zabriskie: Mr. Huntington, in what capacity are you employed by an express company?

The Juror: I am manager of the Armour car department.

Mr. Zabriskie: Do you read the Bergen County papers?

The Juror: No.

Mr. Zabriskie: To some extent? New York papers?

The Juror: Yes.

Mr. Zabriskie: You have been reading about this Lynch case, have you?

The Juror: Oh, yes, naturally.

Mr. Zabriskie: You have formed an opinion, have you?

Examination of Jurors.

The Juror: Yes, I think so.

Mr. Zabriskie: In order to get your vote for acquittal, he would have to show you he was innocent, isn't that so?

The Juror: He certainly would.

Mr. Zabriskie: I challenge him for cause, your Honor.

The Court: The Court is very sorry to see that these gentlemen who are called to serve on the jury find themselves so influenced by newspaper reports that they are unable to regard the obligation of an oath. You are excused, Mr. Huntington.

(Juror excused.)

Mr. Zabriskie: For the sake of the record, I want to take an exception to your Honor's remark as being inclined to influence jurors to withhold their real opinion and their real sentiment, if your Honor will allow an exception on the record.

The Court: You may have it.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Sheriff: 27, Carolyn Doughty.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mrs. Doughty—it is Mrs. Doughty, is it?

The Juror: Yes.

Mr. Zabriskie: You live in Rutherford?

The Juror: Yes.

Mr. Zabriskie: And do you read the Bergen County papers?

The Juror: And the Passaic Daily News.

Mr. Zabriskie: And the Passaic Daily News?

The Juror: Yes.

Mr. Zabriskie: Have you read about this case?

The Juror: The headlines.

Mr. Zabriskie: You have not read it in detail?

The Juror: No.

Mr. Zabriskie: Have you formed any opinion as to whether the defendant in this case is guilty?

The Juror: Well, I have not.

Mr. Zabriskie: You have not. So your mind is still open?

The Juror: Yes.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: We would like to excuse this juror, sir.

(Juror excused.)

The Sheriff: 83, Louis M. Teffeau.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: You are in the insurance business, are you, Mr. Teffeau?

The Juror: Yes.

The Assistant Prosecutor: Where?

The Juror: In Newark.

The Assistant Prosecutor: By whom are you employed?

The Juror: Zurich Insurance Company.

The Assistant Prosecutor: Do you know Mr. Zabriskie or Mr. Hendrickson, representing this defendant?

The Juror: No, sir.

The Assistant Prosecutor: Satisfactory, sir.

Mr. Zabriskie: What kind of insurance is that that you are connected with, Mr. Teffeau?

The Juror: Casualty insurance.

Mr. Zabriskie: What do you mean by casualty?

The Juror: Automobile liability.

Mr. Zabriskie: Oh, I see. And you say you live in Woodridge?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read any Bergen County papers at all?

The Juror: No, sir.

Mr. Zabriskie: Do you read the Newark News?

The Juror: No, sir.

Mr. Zabriskie: What paper do you read?

The Juror: The Evening World.

Mr. Zabriskie: In the Evening World, have you read anything about this case?

The Juror: The headline only.

Mr. Zabriskie: Have you formed any opinion of any kind?

The Juror: No, sir.

Mr. Zabriskie: Your mind is absolutely open at the present time?

The Juror: Absolutely.

Mr. Zabriskie: Is that the way you spell your name, T-e-f-f-e-a-u?

The Juror: Yes, sir.

Mr. Zabriskie: That is——

The Juror: French.

Mr. Zabriskie: Extraction?

The Juror: Yes, sir.

Mr. Zabriskie: Would you feel that, in order to get your vote for acquittal, this man would have to show you he was innocent?

The Juror: I would be guided by the evidence.

Mr. Zabriskie: You would be guided entirely by the evidence?

The Juror: Yes, sir.

Mr. Zabriskie: Have you talked to any detective in this case?

The Juror: I have discussed the case with nobody.

Examination of Jurors.

Mr. Zabriskie: Satisfactory.

(Sworn as Juror Number 3.)

The Sheriff: 87, Peter Van De Moere.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Van De *Meer*——

The Juror: Moere, if you will excuse it.

Mr. Zabriskie: M-o-e-r-e?

The Juror: Yes, sir.

Mr. Zabriskie: That is Holland extraction, isn't it?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read the Bergen Record sometimes?

The Juror: Very little.

Mr. Zabriskie: You read it some?

The Juror: Once in a while, yes.

Mr. Zabriskie: Have you read anything about this case in it?

The Juror: Very little.

Examination of Jurors.

Mr. Zabriskie: Are you acquainted with Prosecutor McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Or Prosecutor Hart?

The Juror: No, sir.

Mr. Zabriskie: Any of the detectives connected with the Prosecutor's Office?

The Juror: No, sir.

Mr. Zabriskie: Have you formed any opinion in this case at all?

The Juror: No, sir.

Mr. Zabriskie: You have an absolutely open mind?

The Juror: Yes, sir.

Mr. Zabriskie: Do you know any justice of the peace at all? Do you know Judge Greenberg up in your district there?

The Juror: No, sir.

Mr. Zabriskie: Where is your farm located, Mr.——

The Juror: Fairlawn Borough.

Mr. Zabriskie: Well, but where in Fairlawn?

The Juror: Right on the River Road and Fairlawn Avenue.

Mr. Zabriskie: In order for this man to get your vote for acquittal, would he have to show you that he was innocent?

The Juror: Certainly.

Mr. Zabriskie: I object for cause.

The Court: Is the State satisfied?

The Assistant Prosecutor: Would you listen to the evidence here and base your verdict on the evidence?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge peremptorily.

(Juror excused.)

The Sheriff: 67, Charles A. Quackenbush.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Are you acquainted with Mr. Zabriskie?

The Juror: No, sir.

The Assistant Prosecutor: Where in Park Ridge do you live?

Examination of Jurors.

The Juror: On Main Street.

The Assistant Prosecutor: Satisfactory.

Mr. Zabriskie: Do you read the Bergen Record sometimes, Mr. Quackenbush?

The Juror: Once or twice.

Mr. Zabriskie: Have you heard this case discussed?

The Juror: No, sir.

Mr. Zabriskie: Your mind is absolutely open on the case?

The Juror: Yes.

Mr. Zabriskie: Have you heard about any of the details of the case at all?

The Juror: Only what I saw in those two papers.

Mr. Zabriskie: Well, what papers did you see that in?

The Juror: The Bergen County——

Mr. Zabriskie: The Record?

The Juror: The Record, is it?

Mr. Zabriskie: The Bergen Record. And can you sit down in this case now with an absolutely open mind and listen to the evidence in this case and feel that you will be

guided entirely by that in arriving at a verdict?

The Juror: Absolutely.

Mr. Zabriskie: Satisfactory.

(Sworn as Juror Number 4.)

The Sheriff: No. 49, Lorenzo W. Kenyon.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory to the State, sir.

The Court: Well, it is for the defense to challenge first.

Mr. Zabriskie: I thought we were alternating.

The Court: You were alternating. The State had the first challenge on Mr. Quackenbush.

Mr. Zabriskie: Mr. Kenyon, you say you are an auditor. Where?

The Juror: Well, it depends upon how recently you ask for an answer to that question. No, I am not an auditor at the present time.

Mr. Zabriskie: What is your occupation now?

Examination of Jurors.

The Juror: I am secretary of a New York corporation. They call me a corporation executive.

Mr. Zabriskie: Have you read something about this case?

The Juror: Yes.

Mr. Zabriskie: From what paper?

The Juror: Why, I do not know as I can say off hand. I regularly read the New York Times and the New York Telegram, and also the papers that are published in the eastern part of the county, and what I have read, I have—has been in those papers, and possibly I may have seen it in others because I at times pick up in New York at noon time other papers which happen to be convenient.

Mr. Zabriskie: Have you formed some opinion in this case from reading the newspapers?

The Juror: Well, based on what I have read in the papers, which has not been a great deal, if I took that as a guide, I would say that I would have formed an opinion——

Mr. Zabriskie: Yes.

The Juror: —although I do not always take entire—entirely as a full fact and truth what I may see in the newspapers.

Mr. Zabriskie: But you would place on him the burden of showing you that he was innocent in order to vote for acquittal, isn't that so?

The Juror: Well, it is a rather hard question to reply to.

The Court: Well, suppose——

The Juror: I believe that whatever situation that I was placed in, either on the jury or elsewhere, other conditions being equal, that I could do full justice to the situation, irrespective of what other opinions or ideas I might have received prior to that time.

Mr. Zabriskie: But as your mental condition exists now isn't it a fact that you feel that he has to "show me that he is innocent in order to get my vote for acquittal"?

The Juror: Well, if you—if you are trying to place me in such a position so that you can readily—so that you can excuse me, I hope you will, because I am in a position business-wise where it would be a calamity for me to have to serve on this jury; on the other hand, as an American citizen over a great many years, I have never shirked any duty that came my way, and have done and am doing a great deal of civic duty, as much as I can. I have served the United States Government in its naval service; I have served the State of Connecticut, and I also have served the State of New Jersey on its armed forces, and I am ready to do any duty that comes my way.

Examination of Jurors.

The Court: Excuse the Court for interrupting you; but the real question is whether, if you were sworn as a juror in this case to decide the verdict on the evidence, you can decide the case on the evidence without reference to newspapers?

The Juror: I do not believe in my present state of my personal affairs, I do not think that I would be qualified to serve on this or any other jury. At the same time, when my personal affairs were not in such a form, I could give this or any other case a full and fair service under any conditions, sir.

Mr. Zabriskie: Then I make a challenge for cause on both grounds, the second ground being that his mind is apparently in such a condition from his own personal business affairs that he is really not qualified at this time to sit in this case. I may ask you one more question: You would be in a hurry to get away, wouldn't you?

The Juror: Why, under normal situations——

Mr. Zabriskie: I mean now?

The Juror: —no, but in this present situation, yes, absolutely, not only in a hurry to get away, but I am not qualified, I think, to even consider the case.

The Court: All right. Is that all?

Mr. Zabriskie: Yes.

Examination of Jurors.

The Court: Well, have you anything to say?

Mr. Zabriskie: I think, taking the answers, although they have not been directly responsive, they show that he has formed some opinion; and, in the second place, his mind is more on other affairs, so that he does not feel, even himself, that he is qualified to sit; and, in the third place, that haste is not something with which we want the case settled, it is justice; and on those three grounds as covered by those comments, I challenge for cause.

The Court: Very well. The challenge is overruled.

Mr. Zabriskie: Your Honor will allow me an exception?

The Court: You may have your exception.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Assistant Prosecutor: Satisfactory to the State, sir.

Mr. Zabriskie: I will excuse this juror peremptorily.

(Juror excused.)

The Sheriff: 38, Franklin G. Harrison.

Examination of Jurors.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Are you acquainted with Judge Zabriskie, who represents the defendant?

The Juror: No, sir.

The Assistant Prosecutor: The Juror is satisfactory to the State, sir.

Mr. Zabriskie: I challenge peremptorily.

(Juror excused.)

The Sheriff: 33, Frank J. Gerardi.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Gerardi, do you hold any official position in Moonachie?

The Juror: Yes, sir.

Mr. Zabriskie: What is that position?

The Juror: Mayor.

Mr. Zabriskie: What do you say?

The Juror: Mayor.

Mr. Zabriskie: You are mayor. You have read about this case, haven't you?

The Juror: A little.

Mr. Zabriskie: What do you say?

The Juror: A little.

Mr. Zabriskie: And you have talked about the case some?

The Juror: Not much.

Mr. Zabriskie: Is your mind open now? Can you really—is Mr. McCarthy counsel for Moonachie, by the way?

The Juror: No.

Mr. Zabriskie: Are you acquainted with Mr. McCarthy?

The Juror: No.

Mr. Zabriskie: Are you acquainted with Mr. Hart?

The Juror: No.

Mr. Zabriskie: Is your mind open on this case now so that you can——

The Juror: Yes, sir.

Mr. Zabriskie: Satisfactory to the defense.

The Assistant Prosecutor: Satisfactory to the State, sir.

Examination of Jurors.

(Sworn as Juror Number 5.)

The Sheriff: 64, William Peters, Senior.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: How long have you lived in Wallington, Mr. Peters?

The Juror: 33 years.

The Assistant Prosecutor: Married?

The Juror: Yes.

The Assistant Prosecutor: Your occupation is painter?

The Juror: Yes, sir.

The Assistant Prosecutor: Are you acquainted with Mr. Zabriskie, the attorney——

The Juror: No, sir.

The Assistant Prosecutor: Satisfactory, sir.

Mr. Zabriskie: Excused peremptorily.

(Juror excused.)

The Sheriff: 20, Cecil M. Christie.

Examination of Jurors.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: I will excuse Mr. Christie.

The Court (Judge Seufert): Peremptorily, Mr. Zabriskie?

Mr. Zabriskie: Yes.

(Juror excused.)

The Sheriff: 15, Fred W. Buesking.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory, sir.

Mr. Zabriskie: Mr. Buesking, you live at Maywood?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read the Bergen Record?

The Juror: Yes, sir.

Mr. Zabriskie: Have you read it in connection with this case, to some extent?

The Juror: Yes, sir.

Examination of Jurors.

Mr. Zabriskie: Have you formed some opinion in the case?

The Juror: Yes, sir.

Mr. Zabriskie: Would it be necessary, in order to get your vote for acquittal, that this man should show you that he was innocent?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause

The Assistant Prosecutor: Would you follow the law as the Court gave it to you, follow the instructions of the Court as to the law and the evidence?

The Juror: Well, if they could prove to me that he was guilty or innocent, yes.

The Court: Well, suppose you were told by the Court to put aside any opinion you might have formed by reading the newspapers, and to decide the case entirely on the evidence; could you do that?

The Juror: I believe I could.

Mr. Zabriskie: Well, supposing that the scales were evenly divided; supposing there seemed to be just as much truth to the testimony on one side as on the other; what would be your verdict, guilty or not guilty?

The Juror: Well, from what I have read in the papers, and before the evidence produced by the Court, I——

Examination of Jurors.

Mr. Zabriskie: You would say guilty?

The Juror: —would say guilty.

The Prosecutor: Now, if you are accepted as a juror, and you hear the evidence, all of the evidence, and the Court instructs you how you are to treat that evidence, would you treat that evidence in accordance with the Court's instructions, or would you cast it all aside and judge this case by what you have read in the newspapers? What is your answer?

The Juror: I would be governed by the Court, I guess.

The Court: Anything further?

Mr. Zabriskie: No. I challenge for cause.

The Court: Suppose the Court told you that in order to find the defendant guilty you would have to be satisfied of his guilt on the evidence beyond a reasonable doubt; do you think you would acquit him if you have a reasonable doubt of his guilt on the evidence?

The Juror: I do not know. I would have to hear it first.

The Court: You would have to hear the evidence?

The Juror: Yes, sir.

Examination of Jurors.

The Court: Yes. All right. Challenge overruled, Mr. Zabriskie.

Mr. Zabriskie: Your Honor will allow me an exception, and I will challenge peremptorily.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

(Juror excused.)

The Sheriff: 60, Florence McIntyre.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: That is Mrs. McIntyre?

The Juror: Yes.

Mr. Zabriskie: Mrs. McIntyre, have you read anything about this case?

The Juror: Very little.

Mr. Zabriskie: Have you read something?

The Juror: Yes, a little.

Mr. Zabriskie: Have you read enough to form any opinion in the case?

The Juror: No, I think not.

Mr. Zabriskie: Your mind is entirely open?

Examination of Jurors.

The Juror: Yes.

Mr. Zabriskie: You are marked down here as being a merchant at Hohokus Township.

The Juror: Not any more; just a housewife.

Mr. Zabriskie: Yes, I see. So your mind is open now, and your verdict would be according to the evidence, and in accordance with the Court's instruction, would it?

The Juror: Yes, sir.

Mr. Zabriskie: And you feel absolutely sure about it?

The Juror: Positive.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: We will excuse Mrs. McIntyre, sir.

(Juror excused.)

The Sheriff: 51, Margaret A. Kreis.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: We will excuse this juror.

(Juror excused.)

Examination of Jurors.

The Sheriff: 97, Alice C. Wilson.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mrs. Wilson?

The Juror: Miss Wilson.

Mr. Zabriskie: Miss Wilson, you live in Ridgefield Park?

The Juror: Yes.

Mr. Zabriskie: And do you read Bergen County papers?

The Juror: No.

Mr. Zabriskie: The New York papers?

The Juror: Yes.

Mr. Zabriskie: Have you read anything at all about this case that you are being called in today?

The Juror: Only the headlines.

Mr. Zabriskie: Have you formed any opinion of any kind?

The Juror: No.

Mr. Zabriskie: So your mind is absolutely open now?

The Juror: Yes, sir.

Mr. Zabriskie: To go according to the evidence and the Court's instructions?

The Juror: Yes, sir.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: Satisfactory to the State, sir.

(Sworn as Juror No. 6.)

The Sheriff: 2, Italo A. Alessi.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory to the State, sir.

Mr. Zabriskie: Satisfactory to the defense.

(Sworn as Juror No. 7.)

The Sheriff: 92, William J. Warnser.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Warnser, your business is in New York, is it?

The Juror: Yes, sir.

Mr. Zabriskie: You say yes?

The Juror: Yes, sir.

Mr. Zabriskie: And do you read the Bergen County papers?

The Juror: No, sir.

Mr. Zabriskie: Do you know Prosecutor Hart?

The Juror: I do not.

Mr. Zabriskie: Do you know Assistant Prosecutor McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Did you ever meet Garrett A. Dawson?

The Juror: No, sir.

Mr. Zabriskie: Have you met anybody that is connected with the Prosecutor's Office?

The Juror: No, sir.

Mr. Zabriskie: Do you hold any position in the municipality in which you live?

The Juror: No, sir.

Mr. Zabriskie: Official position, I mean?

The Juror: No, sir.

Examination of Jurors.

Mr. Zabriskie: You have never been a justice of the peace, or anything?

The Juror: Yes, I have.

Mr. Zabriskie: You have been a justice of the peace where?

The Juror: Norwood.

Mr. Zabriskie: And how long were you a justice of the peace there?

The Juror: One year.

Mr. Zabriskie: You say you have read something about this case?

The Juror: Nothing.

Mr. Zabriskie: Nothing. So you do not know anything about the facts?

The Juror: No, sir; I do not.

Mr. Zabriskie: Not a single thing?

The Juror: No, sir.

Mr. Zabriskie: What papers do you read when you read?

The Juror: The Sun.

Mr. Zabriskie: So you absolutely know nothing of this case; that is a positive fact, is it?

The Juror: Yes.

Mr. Zabriskie: You know nothing about this case?

The Juror: Not the details. I read the headlines; that is all.

Mr. Zabriskie: Now, from reading the headlines, did you form any opinion at all?

The Juror: Why, I did not know who was in it.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: Are you acquainted with Mr. Zabriskie?

The Juror: No, sir.

The Assistant Prosecutor: Doesn't he represent you? Did he ever represent you?

The Juror: No, sir.

The Assistant Prosecutor: Or your brother?

The Juror: No, I haven't any brother.

The Assistant Prosecutor: You haven't any brother?

The Juror: No.

The Assistant Prosecutor: Satisfactory to the State, sir.

(Sworn as Juror No. 8.)

Examination of Jurors.

The Sheriff: 79, Charles G. Smith.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Where are you employed, Mr. Smith?

The Juror: John Wanamaker.

The Assistant Prosecutor: John Wanamaker in New York?

The Juror: Yes.

The Assistant Prosecutor: How long have you lived in Woodridge?

The Juror: Five years.

The Assistant Prosecutor: Do you know Mr. Zabriskie?

The Juror: No, sir.

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Have you read something about this case, Mr. Smith?

The Juror: Considerable, yes, sir.

Mr. Zabriskie: What did you say?

The Juror: Considerable.

Examination of Jurors.

Mr. Zabriskie: In what paper?

The Juror: Why, the New York World, the Times, Bergen County Record.

Mr. Zabriskie: You have formed some opinion in it?

The Juror: I certainly have.

Mr. Zabriskie: And in order to get your vote for acquittal, it would be necessary for this defendant to show you that he is innocent?

The Juror: It would have to be mighty strong evidence, I am afraid.

Mr. Zabriskie: In other words, he has to clear himself?

The Juror: Yes, sir.

Mr. Zabriskie: I object to him for cause.

The Prosecutor: If you were accepted upon this jury and heard the evidence following the taking of your oath to serve, and the Court instructed you in the law as applied to that evidence, would you determine the guilt or innocence of this defendant on what you have read or had read theretofore in the newspaper, or would you determine the guilt or innocence, because of your oath, because of the evidence and because of the instructions of the Court?

Examination of Jurors.

The Juror: Well, it would have to be mighty strong.

The Prosecutor: I ask you, yes or no, to that?

The Juror: Yes, if it was strong enough. It is not alone newspaper, but——

The Prosecutor: You would be governed, in short, by the evidence and the instructions of the Court on the law, wouldn't you?

The Juror: If it was strong enough.

The Court: The Court is not satisfied with the mental attitude of this juror. He will be excused.

(Juror excused.)

The Sheriff: 50, Jennie Knowles.

(No response.)

Mr. Zabriskie: I just make the same objection as heretofore. I am not satisfied but what it may be a futile objection, but for the sake of the record.

The Court: Very well. Objection overruled. Enter your exception. Call the next name.

Mr. Zabriskie: Exception.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

Examination of Jurors.

The Sheriff: 98, George T. Yonkers.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Yonkers, you live at Fort Lee Borough, do you?

The Juror: Yes.

Mr. Zabriskie: And you read the Bergen County papers to some extent?

The Juror: Yes.

Mr. Zabriskie: Have you read anything about the alleged hold-up on the 21st of January, and robbery and shooting, and so on, here at Hackensack?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion?

The Juror: I have.

Mr. Zabriskie: And in order to get your vote for acquittal, will it be necessary for this defendant to show you that he was innocent?

The Juror: If the evidence is strong enough, yes.

Examination of Jurors.

Mr. Zabriskie: Do you feel now that in order to get your vote for not guilty——

The Juror: Yes.

Mr. Zabriskie: —this man would have to show you by the evidence that he was innocent?

The Juror: I would.

Mr. Zabriskie: That is the way you feel about it?

The Juror: Yes.

Mr. Zabriskie: I challenge for cause.

The Court: That is in the absence of any instructions from the Court, I suppose, as to how you——

The Juror: Yes. In the absence of instructions from the Court.

The Court: Now, suppose you were sworn to decide the case exclusively on the evidence, and told by the Court to decide the case exclusively on the evidence, and that you ought not to convict the defendant unless he was found guilty on the evidence beyond a reasonable doubt, would you feel that you could follow that instruction and decide the case?

The Juror: I would feel, if the evidence was equally balanced, I would vote for the——

Examination of Jurors.

The Court: No. Suppose the Court told you if you had a reasonable doubt on the evidence of the guilt of the defendant, that you ought to acquit him; would you follow that instruction?

The Juror: I would.

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: You say if the evidence were evenly balanced, you say guilty?

The Juror: Yes, sir.

Mr. Zabriskie: On that ground, I challenge for cause.

The Prosecutor: In the absence of the Court's instructions, was the answer of Mr. Yonkers. We oppose the challenge.

The Court: The objection to the juror is overruled. You may have an exception.

Defendant's counsel prays an exception to the above ruling of the Court, which is allowed and sealed.

C. W. PARKER, Judge. (Seal)

The Court: Do you want to challenge him peremptorily?

Mr. Zabriskie: I will challenge him peremptorily.

(Juror excused.)

Examination of Jurors.

The Sheriff: 56, Mary B. Mann.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Are you married?

The Juror: No.

The Assistant Prosecutor: Do you know Mr. Zabriskie?

The Juror: No.

The Assistant Prosecutor: Satisfactory.

Mr. Zabriskie: Mrs. Mann—you say Miss Mann?

The Juror: Miss Mann.

Mr. Zabriskie: Have you read something about this case?

The Juror: Some; I have read a little.

Mr. Zabriskie: How long have you been living in Englewood?

The Juror: Ten years.

Mr. Zabriskie: Have you formed any opinion in this case?

The Juror: Yes, I have.

Mr. Zabriskie: It is an opinion of guilty?

The Juror: Yes.

Mr. Zabriskie: And if the evidence was about evenly balanced here, you would feel that you would have to convict this man and find him guilty, would you?

The Juror: Oh, my mind is open to conviction.

Mr. Zabriskie: Your mind is open to conviction?

The Juror: Yes.

Mr. Zabriskie: What has been your occupation recently, Miss Mann?

The Juror: I was a bookkeeper up till last year, and then I stayed home since.

Mr. Zabriskie: At the present time, you really feel this man is guilty?

The Juror: Yes.

Mr. Zabriskie: I challenge——

The Court: One moment.

Mr. Zabriskie: —peremptorily.

The Court: If you were told to consider the case——

Examination of Jurors.

Mr. Zabriskie: That is a peremptory challenge.

The Court: Oh, is it a peremptory challenge?

Mr. Zabriskie: Yes.

The Court: Oh, all right.

(Juror excused.)

The Sheriff: 62, Rudolph C. Otten.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: I will challenge Mr. Otten peremptorily.

(Juror excused.)

The Sheriff: 93, Edward J. Welke.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory, sir.

Mr. Zabriskie: Are you employed in New York, Mr. Welke?

The Juror: Yes, sir.

Examination of Jurors.

Mr. Zabriskie: Do you read the Bergen County paper sometimes?

The Juror: I do.

Mr. Zabriskie: The Record?

The Juror: Yes, sir.

Mr. Zabriskie: Did you read it during the months of January and February of this year?

The Juror: I have, occasionally.

Mr. Zabriskie: Have you read something about this——

The Juror: I have.

Mr. Zabriskie: —case? Have you formed some opinion in the case?

The Juror: Not a decided opinion; no, sir.

Mr. Zabriskie: But you have formed some opinion?

The Juror: Well, according to the newspaper records, yes, partly, but not a decided opinion.

Mr. Zabriskie: I challenge peremptorily.
(Juror excused.)

The Sheriff: 68, Edward J. Roggenburg.

Examination of Jurors.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Roggenburg——

The Juror: My name is Poggenburg. It should be "P," Poggenburg.

Mr. Zabriskie: I make the same objection as in the case of the other names that were not correct, because it certainly is a very different thing, R and P.

The Court: Overruled, for the present, Mr. Zabriskie, subject to renewal.

Mr. Zabriskie: Exception.

The Court: Yes, take your exception.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

Mr. Zabriskie: You say "outside man." Just what is your position, Mr. Poggenburg?

The Juror: I am treasurer of a fish concern, and also the outside representative.

Mr. Zabriskie: Have you read some newspapers about this case?

The Juror: Only in the New York papers.

Mr. Zabriskie: You have formed some opinion, have you?

The Juror: Just casual, that is all; just a hazy opinion; nothing definite.

Mr. Zabriskie: You think he is guilty, do you, this man that is before us today, Mr. Lynch?

The Juror: The way you would read it, you would think he was, yes.

Mr. Zabriskie: What did you say?

The Juror: I say, from what you read, you would think he was.

Mr. Zabriskie: And that is your opinion at the present time?

The Juror: No, that doesn't follow.

Mr. Zabriskie: In this case, I would suggest that the Prosecutor and I exclude him by consent, and then the objection is washed out as far as this man is concerned.

The Prosecutor: No. The prosecution, sir, will not consent.

Mr. Zabriskie: I challenge peremptorily.

(Juror excused.)

The Sheriff: 9, Charles A. Bearce.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Examination of Jurors.

The Assistant Prosecutor: Where do you work, Mr. Bearce?

The Juror: Why, in Suffern, New York.

The Assistant Prosecutor: What kind of work?

The Juror: Part of an automobile establishment.

The Assistant Prosecutor: Satisfactory to the State, sir.

Mr. Zabriskie: Have you read anything in the paper about this case, Mr. Bearce?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed any opinion in the case?

The Juror: Somewhat.

Mr. Zabriskie: Do you feel the man is guilty?

The Juror: Not necessarily.

Mr. Zabriskie: Is that the way you spell your name, B-e-a-r-c-e?

The Juror: Yes, sir.

Mr. Zabriskie: That is correct, is it?

The Juror: The State of Maine.

Examination of Jurors.

Mr. Zabriskie: I beg pardon?

The Juror: The State of Maine.

Mr. Zabriskie: I see. You have lived in Maine, have you, for a while?

The Juror: Yes, sir; born and brought up there.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: Are you acquainted with Mr. Zabriskie?

The Juror: No, sir.

The Assistant Prosecutor: Still satisfactory.

(Sworn as Juror No. 9.)

The Sheriff: 23, Thomas B. Costello.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Costello, you live at Maywood?

The Juror: Maywood; yes, sir.

Mr. Zabriskie: And you read the Bergen Record sometimes, do you?

The Juror: Sometimes; yes, sir.

Mr. Zabriskie: Did you read anything about this case?

Examination of Jurors.

The Juror: I read a little, yes.

Mr. Zabriskie: Did you form some opinion in the case?

The Juror: No.

Mr. Zabriskie: You have no idea?

The Juror: No.

Mr. Zabriskie: Do you know Prosecutor Hart?

The Juror: No, sir; I never saw the gentleman before.

Mr. Zabriskie: You never saw him before. Do you know Assistant Prosecutor McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Did you ever hold any position in connection with the police force?

The Juror: No, sir.

Mr. Zabriskie: You have never been connected in criminal matters in any way?

The Juror: I never have.

Mr. Zabriskie: You are of Irish extraction, are you?

The Juror: Yes, sir.

Examination of Jurors.

Mr. Zabriskie: In order to justify you in finding a verdict of not guilty, would this man have to prove to you he is innocent, as your mind is now?

The Juror: I haven't any definite conclusion at all. I haven't read enough about the case to decide it.

Mr. Zabriskie: Well, what paper do you read, you say?

The Juror: I generally read the—sometimes the Hudson Observer.

Mr. Zabriskie: Yes.

The Juror: Sometimes the New York Journal and once in a while the Bergen Record.

Mr. Zabriskie: I see.

The Juror: But I haven't read much on this case.

Mr. Zabriskie: But you have read some.

The Juror: A little, yes.

Mr. Zabriskie: You do not know anything about Brannon's people, I suppose?

The Juror: No, sir.

Mr. Zabriskie: You do not know what nationality they are, or anything of that sort?

The Juror: No, sir; I do not.

Mr. Zabriskie: A peremptory challenge.

(Juror excused.)

The Sheriff: 3, Anton Alonzo.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory to the State.

Mr. Zabriskie: Mr. Alonzo, you live in Englewood Cliffs Borough?

The Juror: Yes, sir.

Mr. Zabriskie: That is the correct way to spell your name?

The Juror: A-l-o-n-z-i, instead of "o".

Mr. Zabriskie: Have you read anything about this case, Mr.——

The Juror: I have not.

Mr. Zabriskie: You do not really know anything about it?

The Juror: I have not.

Mr. Zabriskie: You do not read the Bergen Record? And have you read any New York paper about this?

The Juror: Well, I read the World.

Mr. Zabriskie: You read the World. Did you read anything about this case?

The Juror: I haven't followed that case

Mr. Zabriskie: Your mind is absolutely open now?

The Juror: It is.

Mr. Zabriskie: Satisfactory.

The Court: Let him be sworn.

(Sworn as Juror No. 10.)

The Sheriff: 11, Clara Bertram.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mrs. Bertram,—

The Juror: Yes, sir.

Mr. Zabriskie: —you also live in Englewood Cliffs Borough?

The Juror: Yes, sir.

Mr. Zabriskie: Have you read anything about this case, Mrs. Bertram?

The Juror: Only just the headlines.

Mr. Zabriskie: Yes. Have you kind of made up your mind about it at all?

The Juror: I haven't read enough to make up my mind.

Mr. Zabriskie: So you can sit there with an open mind,—

The Juror: Positively.

Mr. Zabriskie: —and listen to the evidence and then find a verdict in accordance with the evidence and in accordance with the Court's charge?

The Juror: I could.

Mr. Zabriskie: Satisfactory.

The Assistant Prosecutor: Excused.

(Juror excused.)

The Sheriff: 77, Charles Sichler.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory to the State, sir.

Mr. Zabriskie: Mr. Sihler,—

The Juror: Sichler.

Mr. Zabriskie: Your name is spelled—

Examination of Jurors.

The Juror: S-i-c-h-l-e-r. Pronounced Sickler.

Mr. Zabriskie: Oh, S-i-c-h-l-e-r.

The Juror: Yes, sir.

Mr. Zabriskie: And you live up at New Milford?

The Juror: Yes, sir.

Mr. Zabriskie: And how long have you lived there, Mr. Sichler?

The Juror: 22 years.

Mr. Zabriskie: Have you read the newspaper accounts of this alleged—

The Juror: Just the headlines.

Mr. Zabriskie: Just the headlines?

The Juror: I didn't have a chance to read any more because I had four sick-a-bed since the 2nd of January up until yesterday, when I got them out of bed.

Mr. Zabriskie: Then you have not really formed any opinion in this case?

The Juror: None whatsoever.

Mr. Zabriskie: You are a steamfitter; that is, you have—

The Juror: Yes, sir.

Mr. Zabriskie: —a place in New York, or a place up there?

The Juror: I used to be in business in New Milford, but I am working now.

Mr. Zabriskie: Well, would your anxiety to get home interfere in any way with your deliberations as a juror in this case, if you were drawn as a juror?

The Juror: What do you mean by that?

Mr. Zabriskie: Well, would it affect you, would you decide quickly and probably without giving full consideration in order to get back home?

The Juror: Why, nothing to bring me home.

Mr. Zabriskie: Now it is all right; conditions are so there is no hurry to get away?

The Juror: I am working for the—working now; I was in business.

Mr. Zabriskie: I see. Are you acquainted with Prosecutor Hart?

The Juror: No, sir.

Mr. Zabriskie: Have you ever met him at all?

The Juror: No, sir.

Mr. Zabriskie: Or with Assistant Prosecutor McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Garrett A. Dawson?

The Juror: No, sir.

Mr. Zabriskie: Have you ever had any occasion to have any dealings with any official in Bergen County?

The Juror: I did, but I never showed up.

Mr. Zabriskie: Well, what do you mean by that?

The Juror: Because when I lost my business and I got sued, I never come in, because I knew it was no use.

Mr. Zabriskie: Yes, I see.

The Juror: They had the "goods" on me.

Mr. Zabriskie: Satisfactory to the defense.

(Sworn as Juror No. 11.)

The Court: Does that exhaust the special panel?

The Sheriff: Yes, sir.

The Court: Well then, before resorting to the general panel, there will be a recess.

It is about one o'clock now, anyhow. Sheriff, you may put in the names of the rest of the general panel and call from that. That is what the statute calls for. If there is any mistake about that, let me know.

Mr. Zabriskie: No. I am quite satisfied. I agree with your Honor absolutely. If you exhaust all of those, you can go to the tales.

The Court: Proceed, Mr. Sheriff.

The Sheriff: 18, Nina E. Carlisle.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mrs. Carlisle?

The Juror: Yes.

Mr. Zabriskie: Mrs. Carlisle, you live at Emerson?

The Juror: Yes.

Mr. Zabriskie: And do you read the Bergen Record sometimes?

The Juror: No. I read the Westwood papers occasionally.

Mr. Zabriskie: Have you been reading the New York papers about this case?

The Juror: Oh yes, a little.

Mr. Zabriskie: Well, have you formed any opinion about whether this man is guilty, Mr. Lynch, or whether he is not guilty?

The Juror: Not a definite one, no. Naturally, the press would prejudice anyone.

Mr. Zabriskie: Now, supposing today the evidence seems to be evenly divided, would you find him guilty or innocent under those circumstances?

The Juror: I think my conscience would guide me in that case.

Mr. Zabriskie: Well, what would that be, guide you to say guilty, or guide you to say innocent, or don't you know?

The Juror: Well, the evidence—

Mr. Zabriskie: You would go according to the evidence?

The Juror: Yes, according to the evidence.

Mr. Zabriskie: In order for you to find a verdict of not guilty, do you feel he would have to prove to you that he was innocent?

The Juror: Naturally; I think so, yes.

Mr. Zabriskie: I challenge for cause.

The Court: Do you mean that you start with the idea that he is guilty, and that he has got to show his innocence, that he is innocent; otherwise, you would convict him; is that your idea?

The Juror: No. I mean that the evidence—

Examination of Jurors.

The Court: If the evidence showed he was guilty, you would find him guilty?

The Juror: I would, yes.

The Court: If the evidence did not show him guilty, you would find him innocent?

The Juror: I think I could rely on my conscience and judgment.

Mr. Zabriskie: Have you ever been in court before you were on this panel?

The Juror: No, never; never as a juror.

Mr. Zabriskie: And is your husband alive?

The Juror: Yes.

Mr. Zabriskie: Has he had any connections with courts in any way?

The Juror: I think he was on the jury last fall.

Mr. Zabriskie: On the jury. Is he a friend of Prosecutor Hart, do you know?

The Juror: No. I do not know Prosecutor Hart, only by reputation.

Mr. Zabriskie: Do you feel, then, that you can go into this case with an absolutely open mind and give this man a fair and square deal?

The Juror: I do.

Mr. Zabriskie: Yes. Satisfactory.

The Assistant Prosecutor: Excused.

(Juror excused.)

The Sheriff: 26, Amy L. Dickinson.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Are you married?

The Juror: Yes.

The Assistant Prosecutor: Any children?

The Juror: No.

The Assistant Prosecutor: Excused.

(Juror excused.)

The Sheriff: 14, Frederick Bohlander.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Bohlander, you live in Teterboro?

The Juror: Yes, sir.

Mr. Zabriskie: An office holder there?

Examination of Jurors.

The Juror: I am.

Mr. Zabriskie: What position do you hold?

The Juror: Councilman.

Mr. Zabriskie: I beg pardon?

The Juror: Councilman.

Mr. Zabriskie: Councilman. Have you read something about this case?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed an opinion in the case?

The Juror: Why, I haven't formed an opinion, no.

Mr. Zabriskie: Well, in your mind, do you think that this defendant is guilty at the present time?

The Juror: Well, it all depends on—

Mr. Zabriskie: What do you think? What do you think now?

The Juror: I think he should be.

Mr. Zabriskie: You think he should be guilty?

The Juror: Yes.

Mr. Zabriskie: It is up to him to clear himself now before you will give him a verdict of not guilty?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Assistant Prosecutor: Would you be guided by the evidence here in court and by what the Court tells you in finding him guilty or innocent?

The Juror: Well, he would have to come pretty strong.

The Assistant Prosecutor: Come pretty strong which way?

The Juror: (No response.)

The Assistant Prosecutor: Well, which would you believe, the facts as brought out in evidence before you, or what you had read in the newspaper before today?

The Juror: Why, I would have to hear the evidence brought up.

The Assistant Prosecutor: And then you would act on the evidence and the law as given you by the Court, would you?

The Juror: (No response.)

Examination of Jurors.

The Court: Well, if the Court told you not to convict a man unless you were satisfied that he was guilty on the evidence before you, without reference to the newspapers, Mr. Bohlander, do you think that you would be able to deal with the case on that basis?

The Juror: Well, if he would prove guilty, why, I would convict him.

The Court: Well, if he was not proven guilty, what then?

The Juror: Well, then you could not convict him.

Mr. Zabriskie: Supposing the evidence was about equally balanced, wouldn't you be influenced by what you have read and what you have heard about this case, Mr. Bohlander?

The Juror: Well, of course, naturally, I would be more for conviction, I suppose, than I would be for—

Mr. Zabriskie: Yes.

The Court: Well, you better excuse him. Call the next.

(Juror excused.)

The Sheriff: 4, Charles R. Anderson.

Examination of Jurors.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Where do you live in East Paterson, Mr. Anderson?

The Juror: Rosedale Avenue.

The Assistant Prosecutor: It is in the Rosemont section?

The Juror: Yes, sir.

The Assistant Prosecutor: Do you know Judge Zabriskie?

The Juror: No, sir.

The Assistant Prosecutor: What?

The Juror: No, sir.

The Assistant Prosecutor: Do you know anything of this case?

The Juror: Yes, sir.

The Assistant Prosecutor: How long have you lived in East Paterson?

The Juror: Three years.

The Assistant Prosecutor: Satisfactory.

Mr. Zabriskie: Where is your place of business, Mr. Anderson?

Examination of Jurors.

The Juror: Meyer Brothers, Paterson.

Mr. Zabriskie: You have been following up this case to a certain extent?

The Juror: I sure have; yes, sir.

Mr. Zabriskie: And, naturally, you have formed your opinion?

The Juror: I certainly have.

Mr. Zabriskie: You think, right now, he is guilty?

The Juror: I sure do.

The Court: You may excuse him. Call the next.

(Juror excused.)

The Sheriff: 55, Marie M. Machold. (No response.) 35, Benjamin F. Goodwin.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Goodwin, you live in Ridgefield Park?

The Juror: Yes, sir.

Mr. Zabriskie: And do you read Bergen County papers sometimes?

The Juror: I do.

Examination of Jurors.

Mr. Zabriskie: Do you go to New York each day?

The Juror: Yes, sir.

Mr. Zabriskie: And you buy a Record in the tube sometimes.

The Juror: Yes, sir.

Mr. Zabriskie: And have you followed up this case to a certain extent?

The Juror: Very closely.

Mr. Zabriskie: What did you say?

The Juror: Very closely.

Mr. Zabriskie: And so you have an opinion in the case?

The Juror: I have.

Mr. Zabriskie: You feel at the present time this man is guilty?

The Juror: I do.

Mr. Zabriskie: And you are satisfied of that?

The Court: Do you object to him?

Mr. Zabriskie: I challenge for cause, your Honor, yes.

Examination of Jurors.

The Court: Excused. Call the next.

(Juror excused.)

The Sheriff: 85, John Thomson.

(No response.)

The Sheriff: 100, Julius Zimmerman.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Prosecutor: The State or defense?

The Court: As the peremptory challenges are exhausted for the defense, I suppose the rule with regard to taking turns is hardly applicable any more, so it is for the State to say whether it is satisfied in the first instance.

The Assistant Prosecutor: This juror is satisfactory, sir.

Mr. Zabriskie: Mr. Zimmerman,—

The Juror: Yes, sir.

Mr. Zabriskie: —you live at Rutherford?

The Juror: Yes, sir, right.

Mr. Zabriskie: And, of course, you know Prosecutor Hart, don't you?

The Juror: No, sir; I do not.

Examination of Jurors.

Mr. Zabriskie: And the Assistant Prosecutor, McCarthy?

The Juror: No, sir. I never met him.

Mr. Zabriskie: What papers do you read, Mr. Zimmerman?

The Juror: New York Sun and Tribune.

Mr. Zabriskie: Have you read anything about this case at all?

The Juror: I have, somewhat.

Mr. Zabriskie: And have you formed any opinion in this case at all?

The Juror: No, sir; I have not.

Mr. Zabriskie: Do you know the names of the different men involved in this case?

The Juror: No. I did not follow it up closely enough.

Mr. Zabriskie: I beg pardon?

The Juror: I did not follow it up closely enough.

Mr. Zabriskie: Have you been talking with people at all about the case?

The Juror: Oh, in a general way.

Mr. Zabriskie: Have you any opinion now as to guilty or not guilty?

Examination of Jurors.

The Juror: I have not.

Mr. Zabriskie: Satisfactory.

The Court: Well, Mr. Zimmerman will not be sworn as yet, but he may take his seat, subject to being sworn later. I mean right here with the jury, yes. That completes the twelve jurors. We shall need two officers to attend this jury. Have them sworn now, Sheriff. (Two officers sworn.)

I wish to say a word to the jury before they are dismissed for luncheon. You have been sworn into a murder case and, under the invariable rule in such cases, the practice is that the jury are to be kept together and not to be allowed to scatter to their homes until the conclusion of the case. It is unfortunate, but it is one of the necessities arising out of the character of the case. You will be allowed to communicate with your friends, with your relatives and business associates to the end that you will be supplied with such ordinary necessities as are proper under the circumstances. The Sheriff will take care of you and see that you are provided with living quarters during the trial and also with your meals, but you will have to be kept together and not allowed to be scattered through the town.

Now, Juror Number 12 has not yet been sworn. Mr. Zabriskie, I have purposely refrained from swearing number twelve for reasons that are obvious. The question is whether there is any objection to number twelve associating with the other jurors without having been sworn as a juror?

Mr. Zabriskie: No objection on my part.

The Court: Very well, I wanted to let you know that that was your idea. You are subject to the same regulations and there is a legal reason why you have not been sworn.

You may be excused now until a little after two.

(Recess at 1:15 o'clock P. M.)

After Recess. (2:30 o'clock P. M.)

The Court: Anything further, Mr. Zabriskie, at this time?

Mr. Zabriskie: I just wanted to make the general motion to object to the proceeding with the present panel on the ground that it is not drawn from a panel as contemplated by the statute, which provides that the panel of forty-eight shall be served upon the prisoner two entire days before the trial, and the inaccuracies were such that is was impossible, at least, in one case, that of Maule or Mante, to so designate the juror as to permit the defendant to make the investigation concerning the qualifications of the juror that is contemplated by law.

The Court: Well, the objection will be overruled, and the twelfth juror will be sworn.

Mr. Zabriskie: Your Honor will allow me an exception?

The Court: You may take your exception.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

(Julius Zimmerman sworn as Juror No. 12.)

The Court: You may proceed, Mr. Prosecutor.

The Prosecutor opens the case to the Jury on behalf of the State.

Testimony.

FRANK M. WYBORN, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. You have been a photographer for how many years, Mr. Wyborn? A. Over twenty years, sir.

Q. You are in business in Hackensack? A. Yes, sir.

Q. Did you, at the request of the Prosecutor's Office, make a series of photographs in and about the Susquehanna Station at Main and Mercer Streets? A. Yes, sir.

Q. Did you make a photograph of the intersection of Moore Street, the end of Moore Street and Salem? A. Yes, sir.

Q. Camden Street, rather? A. Camden.

Q. And I show you four other pictures, two showing a house and two a barn or stable, and ask if you made those at the request of the Prosecutor's Office? A. Yes, sir.

Q. When were those photographs taken? A. Some were taken January 25th, January 29th, February the 7th and 8th.

Q. Do they correctly represent conditions as you found them? A. Yes, sir.

The Assistant Prosecutor: I offer in evidence this series of photographs—fourteen.

Mr. Zabriskie: I just make the one objection that their taking was so remote from the time of the occurrence in question that they cannot portray the conditions as they existed on January the 21st, as I think there was a fall of snow between that time and the time the pictures were taken.

The Assistant Prosecutor: I think that would go to the weight.

The Court: Is that the only objection? Have you looked at them?

Mr. Zabriskie: That is the only objection.

The Court: Have you seen them?

Mr. Zabriskie: I have seen them, yes, today.

The Court: Well, so far as relates to other—

Mr. Zabriskie: Well, the Rocksch house, I do not know anything about that. As to the other conditions, I can see there is a difference, as, I recall, between January 21st when there was no snow on the ground.

The Assistant Prosecutor: There was an intervening snow storm, but I mean as to the conditions of buildings and streets.

The Court: Well, that will not invalidate the pictures as evidence. The jury can make all necessary allowances, if necessary.

Mr. Zabriskie: I ask an exception.

The Court: Yes.

Exception allowed and sealed.

C. W. Parker, Judge. (Seal)

The Court: The photographs will be admitted.

(Fourteen photographs marked Exhibit S-1 to S-14 inclusive in evidence.)

Q. What does S-1 show, if you know? A. It is the north side of the station and American Express office.

The Court: Where?

The Witness: Hackensack, New Jersey.

Q. What station? A. Susquehanna Station.
Q. Susquehanna Station. All right. A. Yes, sir.

Frank M. Wyborn, direct.

Q. Look at number two. What does that represent? A. That is the north side on Moore Street looking south.

Q. South on Moore Street? A. Yes,sir.

Q. All right. Look at number three. A. Looking south. This is from the north side.

Q. Yes. Correct. Look at number three. What is that? A. This is the north side also.

Q. The north side of what? A. Of the American Express office, Hackensack.

The Court: You are speaking now of the Main Street Station, of course?

The Witness: Yes, sir; Hackensack.

The Court: Is there any other station, in Hackensack?

The Witness: Another Susquehanna?

The Court: Yes.

The Witness: On the Susquehanna?

The Assistant Prosecutor: Well, there is, sir; Prospect Avenue.

The Witness: Oh, Prospect Avenue. I have forgotten that.

Q. Look at number four. A. All right.

Q. What direction were you looking in number four? A. I am looking northwest at the same station.

Q. What is the name of the street at the right of the picture? A. To the right here is Moore Street.

Q. All right. Look at number five. And what street were you standing on when you took that picture? A. On Mercer Street, looking north at the same office, American Express office.

Q. Look at number six. A. Yes, sir.

Q. What street is that? A. That is Mercer Street looking towards Main; in other words, looking west.

Q. Look at number seven. What is that? A. Well, this is on the south side of the American Express office, looking into the office here, I would say where the cage is.

Q. All right. A. That is the only way I can explain that.

Q. Hold up number eight and show the jury what that is. Tell them what it is. A. This is from the west side; in other words, the big door, looking in where they had the freight, and so forth.

Mr. Zabriskie: I do not think the jurors can see it.

Q. Now look at number nine. Hold that up, and let the jury see what it is, and tell us what it is. A. That is from the south side looking north showing this same door and also the small door entering into the office.

Q. All right. What does picture number ten represent? Hold it up. A. This is Moore Street looking north towards Oritani.

Q. What is the name of the street crossing it there at the mid-center of the picture? A. I think that is Camden Street.

Q. Camden Street? A. Camden Street.

Q. Now, number eleven, what is that a picture of? A. That is a house over in Teaneck.

Q. And number twelve? A. Well, this first one was the rear of it.

The Court: Number twelve, the same house, showing the front?

The Witness: Number twelve, the same house, showing the front.

Q. Number thirteen? A. That is a garage in the back.

Q. Of what? A. Of this house.

Q. Number fourteen? A. That is the interior of the garage, of that same garage.

The Assistant Prosecutor: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Do you recall the 21st of January? A. Yes, sir.

Q. At that time, there was no snow on the ground, was there? A. No.

Mr. Zabriskie: I think that is all.

The Assistant Prosecutor: That is all, Mr. Wyborn.

EDWARD H. SCHWARTZ, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. Mr. Schwartz, did you at the request of the Prosecutor's Office take measurements and make a

sketch of that part of the Main Street Susquehanna Station that included and embraced the American Railway Express portion? A. Yes, sir.

Q. Who made the measurements and notes? A. I made the survey, taking measurements; also drew the plan.

Q. And is it a correct representation of the conditions as you found them? A. It is, sir.

Q. When did you take those measurements? A. January the 30th, 1926.

Q. These figures on it, are they correct as to distance? A. They are, sir.

Q. Are there any distances to be presumed or breaks in the lines? A. No; unless there is angles, such as any distance at an angle; that, of course, is not shown; that would have to be measured and the measurement given.

Q. Drawn to scale, is it? A. Yes, sir.

The Assistant Prosecutor: I offer in evidence this floor plan, purporting to be a floor plan.

By Mr. Zabriskie:

Q. Well, are you a draftsman, Mr. Schwartz? A. Engineer and draftsman; yes, sir.

Q. And connected with what concern? A. I am now connected with the Newark Police Department; have been for nearly twenty years.

Q. With the what? A. The Newark Police Department.

Q. Then you are connected with the prosecution of criminals and have been for the last twenty years? A. The last twenty-five years.

Q. The last twenty-five years? A. Or twenty years past with Newark.

Edward H. Schwartz, direct.

Q. When did you get your experience as a draftsman? A. I graduated in 1892 and worked for several years at that, and since that time, since being in the Newark Police Department, I have made many surveys in homicides and manslaughter cases for Essex County.

Q. Now, you say that that is a true representation— A. Yes, sir.

Q. —of the floor plan? Does it show all the places where there are openings? A. Yes, sir.

Q. Now, I want to call your attention to the line I am now touching; I do not know just how to describe it.

The Court: Well, that is the one that is marked steps, three-inch rise.

Q. Where are the steps shown there? A. Why, my dear sir, to show a floor plan,—

Q. I asked you a question. A. It shows by this line here, and also marked steps, three-inch rise.

The Court: There isn't any—

A. The step is two feet, two inches wide. It is only a floor, and then it goes down one step; it doesn't show any rise or any tread.

Q. I thought you said it is a rise? A. Just as if you were stepping off of this on there (indicating).

Q. Oh, then, what do these solid lines indicate (indicating)? A. That indicates a counter or desk, three feet, three inches in height, or three feet, five inches in height.

Q. Take it as a general rule, a solid line, does that mean a partition between rooms? A. No. This does not mean a partition. It means, merely shows the step or the break that would be in the

floor to give that three-inch rise from this part of the office to that (indicating).

By the Court:

Q. Well, you simply have drawn a rather heavy black line? A. That is all.

Q. Which floor is the higher, the one where the word "step" is, or the one where it is not? A. This is the higher. (Indicating.)

Q. Where the word "step" is, is three inches higher than the one on the left? A. Yes, sir.

By Mr. Zabriskie:

Q. So then, between the room that is in front of the cage, and the room that is designated as office, there is nothing of that sort, it is an open space? A. An open space, with the exception of this slight rise and the three feet, five inches desk.

The Court: Do you want to have that noted, Mr. Zabriskie, that there is no partition there?

Mr. Zabriskie: I think it ought to be.

By the Court:

Q. Suppose, Mr. Schwartz, you write there with your pencil, "no partition." A. (Marking on sketch.)

Q. Now, make an arrow-head pointing to that line. A. (Marking on sketch.)

Q. That is right.

Mr. Zabriskie: I was wondering whether the Prosecutor has more than one of those we could have over night.

The Court: Anything else, Mr. Zabriskie, about this map?

Mr. Zabriskie: No. With that correction, I do not see any objection to it, your Honor.

By the Court:

Q. Well now, let me see. Now Mr. Schwartz, let us get straightened out on some of these other matters which tended rather to deceive me, because you have got these heavy black lines. Here (indicating) you have the words "counter, height three feet, five inches"? A. Yes, sir.

Q. That indicates a sort of a standing desk? A. Yes, sir.

Q. And this little red thing with a mushroom, what is that, electric light? A. Electric light over the desk.

Q. All of these mushrooms with red spots indicate electric lights? A. They indicate electric lights.

Q. Now, where you have the words "wire cage, wood partition," and so forth, that is a partition; that is a double line? A. That is a partition, yes, sir; the upper portion being wire and the lower portion being wood.

Q. But where you have six feet six inches, adjoining one of these electric lights, that is simply the edge of a desk? A. And it also means the length of the room, the cage.

Edward H. Schwartz, direct.

Q. But I am talking about this black line adjoining the six feet six inches; that is simply the edge of a desk, is it? A. It is; yes, sir.

The Court: This ought to be shaded, these things. I think I will ask Mr. Schwartz just to shade these articles of furniture so that they will be readily distinguishable; is that right?

Mr. Zabriskie: Yes, sir; I think that would be a good idea.

The Court: Anything further?

Mr. Zabriskie: I think not.

The Court: Subject to these pencil notations, it will be permitted in evidence.

(Sketch marked Exhibit S-15 in evidence.)

By the Assistant Prosecutor:

Q. Now I show you another sketch, and I ask you if you made it at the request of the Prosecutor's Office? A. Yes, sir.

Q. What does it show? A. It shows Mercer Street, Moore Street, the New York, Susquehanna and Western Railroad tracks, the station of the Susquehanna Railroad, and the express company's office to the east or the rear of the station.

Q. And there is a little inset here at the top. What does that show? A. Merely shows the intersections of the streets from Mercer to Camden Street, through Moore and Main.

Q. And you made the notes? A. Yes, sir.

Edward H. Schwartz, direct.

Q. And you reduced it to a map? A. Yes, sir.

The Assistant Prosecutor: I offer it in evidence.

By Mr. Zabriskie:

Q. That is made to a scale? A. Yes, sir. A scale of ten feet to one inch, or one inch equals ten feet.

Q. You made actual measurements on this? A. Yes, sir.

Q. You made it to a scale? A. Yes, sir.

Q. Yourself? A. Yes, sir.

Q. Who held the tape? Who was working with you? A. Why, I think Mr. Dawson and Mr. Bartenwerffer.

Q. You did not depend on another map; you made it actually yourself? A. Oh no.

Mr. Zabriskie: No objection.

(Sketch marked Exhibit S-16 in evidence.)

(Exhibit S-16 placed upon the board before the jury.)

The Witness: A pencil mark will do?

The Court: Oh yes, anything that will indicate that those are articles of furniture and not divisions of the floor.

By the Assistant-Prosecutor:

Q. Mr. Schwartz, will you step down and indicate the different points on this map. What is the general direction of north relative to the board?

A. As shown by the arrow, we may say Main Street runs north and south, as does also Moore.

Q. Show us Main Street? A. (Indicating.)

Q. What is the general direction of the court house if you continue down Main Street? A. It would be south.

Q. Further down? A. Yes, sir.

Q. Where is Mercer Street? A. The street showing the car tracks, etc.

Q. Where are the Susquehanna Railway tracks? A. So marked.

Q. Where is Moore Street?

By the Court:

Q. That is also marked? A. Yes, sir. They are all marked.

Q. Yes.

By the Assistant Prosecutor:

Q. Now, what occupies this outline, this section here (indicating)? A. Railroad waiting room, the station of the New York, Susquehanna Railroad.

Q. And what is to the east of the station? From the baggage room, we will say, of the railroad company, what is east? A. An open space, and then the continuation of the American Railway Express Company, grouped over by the roof.

Q. Does that show the doors? A. Yes, sir.

Q. It shows the doors of the American Railway Express Company? A. This is one door here (indicating) looking east; yes, east; and another large door here (indicating) to the south of the building; a small door here (indicating) to the west or, north, rather; and another smaller door to the south. Inside—

Q. Where was the cage inside? A. Right here (indicating).

By the Court:

Q. Now, some of these doors are marked, Mr. Schwartz, as swing doors; that is right, isn't it? A. Yes, sir.

Q. Are any of them sliders? A. Yes, sir. This large door is a sliding door, and also is this one (indicating).

Q. You better mark them, then, and show that. A. Well, there is a larger map, they are marked.

Q. Oh, very well. All right.

The Assistant Prosecutor: That is all with the witness at this time. I might like to recall him later when the other map is completed. You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Then, if I understand you correctly, Mr. Schwartz, there is a door here (indicating)? A. Yes, sir.

Q. A sliding door? A. Yes, sir.

Q. That is the one I am now indicating which is at the westerly end? A. Westerly end.

Q. Of the American Railway Express Company building? A. Yes, sir.

The Court: Why not put that on the map; say 'sliding door" there?

The Witness: Well, suppose I mark it "S D"?

The Court: All right. "S D" will do; something that will indicate something. The

other one the same way, while you are about it.

The Witness: (Marking on sketch.)

The Court: All right.

Q. Now, you have also noted another sliding door at the south side of the American Express Company building, the large room? A. Yes, sir.

Q. And then there is a door between the room that is marked American Railway Express Company building and this little space I am now pointing to which—well, we will call that the business room, isn't it? A. Yes, sir. The cage faces that. Here is the cage here, but the desk is shown here (indicating). This is the entrance from the street, from Mercer Street, through this door here, is one step; this is the entrance to the package or express room as shown here (indicating). This is where the first of that step occurred.

Q. And that is the point, now, I am now showing, that is open space right there (indicating)? A. That is.

Q. In other words, a person could walk, the way I am going now, he could come through here and then just step down a step and step up one step? A. Yes, sir.

Q. And how big a step? A. Just a small three-inch rise.

Q. Just a small three-inch rise. And so he could walk around to get into the cage? A. Yes.

Q. And the cage has a door also? A. It has.

Q. And the door going into the cage opens inward, doesn't it? A. Yes, sir.

Q. The door that goes from the business room, that is, the room in front of the cage, that door

opens inward also; that is, if you are inside, you have to pull the door to get out? A. Yes, sir.

Q. Then, from the conditions that you found at the time that you made this Exhibit S-15, a person could walk from the main room which is marked as the express package room into what I will call the business room in front of the cage, and so without any obstruction into the office as it is marked on this S-15, and so right around to the cage? A. Yes, sir.

Q. Through the door which opens to the cage? A. Yes, sir.

Q. There would be nothing to obstruct him, as you found the conditions? A. Oh no, nothing at all.

Mr. Zabriskie: I think that is all just at this time.

The Assistant Prosecutor: That is all. Doctor Ogden.

WILLIAM E. OGDEN, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. Doctor, you are the County Physician of Bergen County? A. Yes, sir.

Q. Did you, on or shortly after January 21st, perform an autopsy on the remains of a subject known as Frank Brannon? A. Yes, sir.

Q. Where? A. In the Hackensack Hospital morgue.

Q. When? A. The 21st day of January, 1926.

Q. What did a superficial examination of the remains show? A. A bullet wound.

Q. Where?

Mr. Zabriskie: I did not understand.

A. A wound on the left—

Mr. Zabriskie: A bullet wound?

A. —side.

Q. Could you indicate on your own person just about where that bullet wound was? A. It was about the tenth rib.

Q. Will you stand up? A. In the axillary line. The axilla is this part of the arm (indicating), and it was right below the tenth rib. That bullet wound went through the—out on the opposite side, on the eighth rib—

Q. All right, Doctor. Did you open up the—

A. —on the axillary line.

Q. Did you open the remains? A. I did.

Q. And what was the course of that bullet?

A. The course of the bullet was from left to right and upwards and slightly backwards.

Q. And through what organs did it pass?

A. That passed through the cortex, that is the outer tissue of the left kidney, and through the mesentery of the transverse colon.

Q. What is that, Doctor? A. The transverse colon is the big intestine that goes across the body. The mesentery is the peritoneum that fastens it to the back. This bullet passed through the mesentery and through the colon, and through the outer lobe of the liver, and up through the diaphragm and out at the eighth rib. The right side was full of blood from the—the abdomen was full of blood

and part of the right side around the lung.

Q. What was the cause of death, in your opinion, Doctor? A. Hemorrhage.

Q. Caused by what? A. A bullet.

Q. Could a bullet such as this one I show to you have caused that injury? A. Yes, yes. I did not see the bullet.

Q. No. I say, a bullet like this, could that have caused the injury you speak of? A. It might have, yes.

Q. What other marks did you find on him beside these two bullet holes? A. There was a cut on the chin just below the lip on the left side.

The Assistant Prosecutor: May I have this bullet marked for identification, sir, at this time?

(Bullet designated as Exhibit S-17 for identification.)

A. (Continuing) This cut was like a dig about a half an inch one way, and the skin was tipped up so that there was a sort of a lip in this cut.

Q. What would be apt to cause that? A. He was hit with something or else he fell on it.

Q. Any other marks on the face or body? A. I did not notice any other marks.

By the Court:

Q. Well, did this bullet puncture any important blood vessels? A. Why, yes; it punctured the small vessels in the mesentery; the mesentery is full of small vessels; it punctured the vessels in the kidney; it punctured the liver; and that is full of vessels.

Q. And this was what we might call a combined hemorrhage from all those— A. Yes, sir.

Q. —small arteries, is that right? A. Yes, sir.

Q. You mean the subject bled to death? A. Yes, sir.

The Assistant Prosecutor: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. How far away from the heart was the line of this bullet? A. Pardon?

Q. How far from the heart was the line of the bullet's travel? A. How far from where?

Q. From the heart.

The Court: The heart.

A. Oh. Oh, the bullet was not near the heart.

Q. Nowhere near the heart? A. No.

Q. How far away would you say, approximately? A. Oh, the bullet must have been three inches away from the heart.

Q. And could you tell whether the bullet had— you said it took an upward course; could you tell whether it had entered on the left side and went out the back? A. Yes. It went up as far as the left—where the tenth rib is from the eighth.

Q. I see. A. Across the body.

Q. And then, if the man was shot facing, he must have been, naturally, shot by someone facing him? A. He was shot in the side.

Q. He was not shot in the back, in other words? A. No. In the side.

Q. But he was not shot in the back? A. No.

Mr. Zabriskie: I think that is all.

By the Court:

Q. Doctor, did you point out to the jury the approximate place where the bullet entered? A. Why, yes.

Q. Show it to me, will you? A. This is the axilla (indicating), and this bullet entered about the tenth rib, the tenth rib.

Q. Yes. A. And went through, slightly upwards, as far as the tenth rib is. The eighth rib is above the tenth; it went up.

Q. Well, what is the last rib? A. The twelfth.

Q. The twelfth, eh? A. But that is a floating rib.

Q. The tenth is the last rib that comes around in front, is that right? A. The axilla line.

Q. So it entered below all the ribs at that point? A. Right in that rib, the lower margin.

The Assistant Prosecutor: That is all, Doctor. Doctor Gilady.

The Witness: Doctor Gilady is in Detroit.

LOUIS MARTIN TALMADGE, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. Mr. Talmadge, you are employed by the American Railway Express? A. Yes, sir.

Q. And how long have you worked for them? A. 1920.

Q. A little louder so we can all hear you. 1920? A. Yes, sir.

Q. Where were you last employed by them? A. Last?

Q. Yes. A. Hackensack, at present.

Q. You still are? A. Yes, sir.

Q. How long have you been employed in Hackensack? A. Since April the first, 1924.

Q. Who was in charge of that office as representative agent of the company on the 21st of January? A. Myself.

Q. How long have you been in charge of that office? A. Since April the first, 1924.

Q. Did you have anybody working for you? A. Yes, sir.

Q. Or with you? A. Yes, sir.

Q. Who? A. Theodore Palmer and Frank Brannon.

Q. Now, do you recall the morning of January 21st? A. Yes, sir.

Q. Were you working that morning? A. Yes, sir.

Q. And what time does this train known as 903 come in? A. 9:37, sir.

Q. Did it come in on time that morning? A. As far as I can recall; yes, sir.

Q. And did anybody come on that train, get off that train, connected with the railway business? A. Not that—not to my knowledge, not get off, no.

Q. And when did you first see Frank Brannon that morning? A. When did I first see him? At eight o'clock when he reported for duty.

Q. And what time did Palmer go to work that morning? A. He was there when I reached there at eight o'clock.

Louis Martin Talmadge, direct.

Q. Now, tell us what happened after the 9:37 train got in. I withdraw that question at this time. Now, I direct your attention to Exhibit S-7, and ask you what that shows? A. It shows the part of the interior of the office of the American Railway Express.

Q. What part of the interior of the office? A. Showing the cashier's cage and the counter.

Mr. Zabriskie: Just turn it this way a second, please.

The Witness: All right. (Exhibiting S-7.)

Q. Now, where was your desk in that office? A. Over to the right of the counter.

Q. To the right of what? A. This counter here (indicating).

Q. Hold it up so the jury may see it, and then let counsel for the other side see it. A. (Exhibiting S-7 to the jury.)

Q. And who occupied that cage that is shown there? A. Theodore Palmer, the cashier.

Q. What were his duties? A. Take charge of all accounts and handle valuable shipments.

Q. And what were your duties? A. Manager of the office.

Q. Did James Brannon come into the portion of the office where the cage is shortly before ten o'clock? A. Frank Brannon did.

Q. Frank, I should say. A. Frank Brannon; yes, sir.

Q. And what was he doing there after the 9:37 train came in? A. Checking the freight that came in off of the 9:37 train.

Q. And where was Palmer? A. In the cashier's cage.

Q. And what part of the office was Frank Brannon busied in? A. The freight room.

Louis Martin Talmadge, direct.

Q. The freight room. That is the westerly half—— A. Yes, sir.

Q. —of the building? And did anybody come in just shortly after that? A. Yes, sir; there did. A man, a tall man came in and asked to ship a trunk.

Q. Do you think you could identify the man that came in and asked about a trunk? A. Yes, sir.

The Assistant Prosecutor: Just step outside the door. (Man appears.)

Q. Is that the man? A. Yes, sir.

The Assistant Prosecutor: Indicating—I guess there is no question—indicating Charles Strand?

Mr. Zabriskie: Yes.

The Assistant Prosecutor: All right; that is all.

Q. And what did he say, if you remember, about the trunk? A. He would like to ship a trunk.

Q. Who did he ask that of? A. Well, myself and Palmer were both there working, and Palmer answered, 'Yes".

Q. And after that, what happened? A. Why, I rose from my desk and stepped over to the clerk's desk, and on the point of raising the desk, I heard shots ring out.

Q. Now, just a moment. Could you point out where your desk was at the time he asked that question? A. Yes, sir.

Q. On the sketch? Will you step down, please? Now, this——

Mr. Zabriskie: May he stand a little to the left, so I can see him?

Louis Martin Talmadge, direct.

Q. This large room on the left is known as what you call a freight room, I think you call it? A. Yes, sir.

Q. In your express company? A. Yes, sir.

Q. Now, where was your desk in the room that is to the east of the office? Where is your desk? A. Right here (indicating). About where that mark is.

By the Court:

Q. Where this electric light bulb is? A. Yes, sir; right under that.

Q. Right in the middle of the room? A. I would not say the middle of the room.

Q. I mean, in the middle of that end of the room? A. Yes, sir.

By the Assistant Prosecutor:

Q. Where was the cage where Palmer was? A. Across here (indicating).

Q. Where do you keep the safe? A. The safe in the corner.

Q. All right. Just sit down. A. (Witness resumes the stand.)

Q. What did your company keep in the safe? What was the safe there for? A. Valuables for protection during the day.

Q. And after this man came in and asked you about the trunk, then what happened? A. Well, I stepped over from my desk, over to the clerk's desk with my back to Cashier Palmer, and I heard two shots ring out, and then Strand turned and walked out. And as I turned around, I saw this short man with a gun in my face. I got a second glance and saw Strand standing by the door leading to Mercer Street.

Louis Martin Talmadge, direct.

Q. Can you point out the man you describe as the short man who put the gun to your face? A. Yes, sir.

Q. Is he here? A. Yes, sir.

Q. Point him out. A. Sitting at the extreme end of the desk (indicating).

Q. I think there is no question about that, the defendant, James Lynch? A. Yes, sir.

Q. And what did you do when James Lynch put the gun to your face? A. Held my hands up, as ordered.

Q. Who told you to hold your hands up? A. Lynch.

Q. And where were the shots fired? A. In the freight room.

Q. In what part of the freight room, if you can tell? A. Well, that would be pretty hard to say; in the center of the freight room.

Q. Where did you see Brannon after that? A. In the inside, in front of the cashier's cage.

Q. Directing your attention to Exhibit S-7, could you give us a general idea—hold it up and give us a general idea where you saw Brannon lying? A. Yes, sir. His head about along here extending over this way (indicating).

Q. Now, probably you can step down and point it out on the map, too. A. Yes, sir. His head was right along here and his feet lying over here (indicating).

Q. Indicating a point marked "no partition"? A. Yes, sir.

By the Court:

Q. His head was which way? A. Over here (indicating).

Q. Oh, yes, Mr. Talmadge, this desk of yours, was it a roll-top? A. No, sir. A flat top desk.

Q. I thought you said that when you heard this man say that he wanted to ship a trunk, you closed your desk? A. Oh, no, I rose from the desk.

Q. Oh, you rose from the desk? A. And stepped over to the clerk.

Q. And how big is that desk? A. Four feet long, about.

Q. Two and a half wide? A. Two and a half wide, I should judge; yes, sir.

Q. Well, is there a chair in front of it? A. Beside, yes, sir. They were setting back to back, the two desks were, the clerk's desk.

Q. Come over here and show me where those were. They do not seem to be on this sketch. A. Under each one of these lights was a desk, back to back.

Q. Under the three lights. And the lengthwise of the desk is—— A. This way (indicating).

Q. —lengthwise of the station, is that right? A. Yes, sir.

Q. Well, now, are those two desks right up against each other? A. Yes, sir.

Q. This is three-quarters of an inch to a foot. So if that is six inches, it would be about eight feet, wouldn't it? A. No. This light here——

Q. This light here where my finger is, under the word "office", a little distance, does that hang from the ceiling? A. Yes, sir.

Q. Well now, then, your chair would be toward the window here on Mercer Street, is that right? A. The back of it; yes, sir.

Q. The back of your chair would be toward the window on Mercer Street. Then the back of Palmer's chair would be toward the railroad? A. Palmer's was a stool.

Q. Well, Brannon had—— A. Yes, sir.

Q. —this other desk here? A. Yes, sir.

Louis Martin Talmadge, direct.

Q. The back of that chair would be towards the railroad? A. Yes, sir.

Q. Then the two desks were something like this little pencil sketch of mine here, one there and one about like there (indicating), is that right? A. Yes, sir.

Q. One chair here and a chair there (indicating)? A. Extending all the way over to the side.

Q. All the way over? A. Yes, sir.

Q. All the way over like that (indicating)? A. Yes, sir.

Q. Right up against the window? A. Yes, sir.

Q. And this was Brannon's regular place, was it? A. Yes, sir.

Q. Well now, you were sitting here (indicating)? A. Yes, sir.

Q. In your chair? A. Yes, sir.

Q. When somebody came in and said he wanted to ship a trunk? A. Yes, sir.

Q. And where was he when he said that? A. Right at this corner, right along here (indicating).

Q. Right by these words, "no partition"? A. Yes, sir.

Q. And then where was Talmadge? I do not mean Talmadge. I mean Palmer. A. Right in here (indicating), working.

Q. Palmer was in the cage? A. Yes, sir; standing.

Q. Palmer said "All right" or "Yes"? A. Yes, sir.

Q. This double black line is nothing but a wire, isn't it? That is a wire enclosure? A. Yes, sir.

Q. So that you can see through it and hear through it? A. Yes, sir.

Q. Then when you got up, pushed your chair back and rose from your desk, you heard the shots? A. As I reached here (indicating), this

man turned to go out, and I heard the shots.

Q. As you reached here, that is the place? A. There was a little offset there.

Q. About the place where the two desks join? A. Yes, sir.

Q. Is that right? Then you heard the shots? A. Yes, sir.

Q. Where were you going? A. Over here to check some valuable shipments.

Q. Nothing to do with the trunk? A. No, sir.

Q. Then you heard the shots? A. Yes, sir.

Q. And then you turned around? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And then what? A. I saw this man Lynch here with a gun in my face, and Strand standing by this door and Brannon slumping to the floor.

Q. And you saw Brannon crumple to the floor? A. Yes, sir.

Q. And he was up against this that is marked shelf desk, is that right? A. I would not say he was up against it; he was near it.

Q. Well, near it? A. Yes, sir.

Q. All right.

By the Assistant Prosecutor:

Q. And after that, after you had put your hands up, what did Lynch do? A. Ordered me over by the window.

Q. That is the window on the Mercer Street side? A. No, sir; on the side nearest to Moore Street.

Q. The Moore Street side? A. Yes, sir.

Q. Did you go? A. Yes, sir.

Q. And then what was done? A. He ordered Palmer out of the cage, and he done it, also over by me.

Q. A little louder. A. He moved also over by me, stepped over by me, sideways, also.

Q. And what did Strand do? A. He stood guard by this counter.

Q. And then what happened? A. Lynch went in and got the money; asked where the money was, and got it.

Q. Where was the money? A. On the—the bags of money were on the stool and the payrolls were laying on top of the safe.

Q. Do you mean this safe that is shown here in the northwest corner of the enclosure? A. Yes, sir.

Q. And where was the stool? A. Right by the cashier's counter there, where that mark is there (indicating).

Q. Now, I show you three bags, and ask you if you can identify them? A. Yes, sir. They are the bags that the money were in.

Q. And I show you one bag in particular and its contents, and ask you if you can identify the bag? A. Yes, sir.

Q. These were closed when you had them, though, weren't they? A. Laying folded on the stool.

Q. Were they open or closed A. These bags, you mean?

Q. No. I am referring to the darker, the larger, of the three bags. A. Just as it is now, only folded over for a cushion on the stool.

Q. I show you two large pieces of paper marked "New York Telephone Company", and tell me, if you can, if these were in either of the bags? A. I did not see those, but they are always packed. That is the list of the—the list of the payrolls that are in those packages consigned to the New York Telephone.

The Assistant Prosecutor: I offer in evidence two bags.

Mr. Zabriskie: No objection.

The Court: No objection. They may be marked.

The Assistant Prosecutor: Perhaps as one exhibit, sir?

The Court: Yes.

(Two bags marked Exhibits S-18-a and S-18-b respectively, in evidence.)

The Assistant Prosecutor: And I ask leave to have these two pieces of paper marked for identification, sir, at this time, marked "New York Telephone Company", for identification.

(Two pieces of paper marked Exhibits S-19-a and S-19-b respectively, for identification.)

By the Court:

Q. Mr. Talmadge, I show you the photograph marked S-8, and I wish you would tell me on the map where that doorway is that is shown in the photograph. A. It was on the west end of the American Railway Express.

Q. Well, could you show it to me here? A. (Referring to sketch.) Well, it would be right here (indicating).

Q. Oh, yes. That is the entrance to the whole office? A. Yes, sir.

Q. And that wooden partition with a scale against it is this partition here (indicating)? Yes, sir.

Q. All right.

Louis Martin Talmadge, direct.

The Court: Go on, Mr. McCarthy.

By the Assistant Prosecutor:

Q. I show you a book marked "Value book, January 2, 1925," and ask you to look at it and tell us, if you can, what it is? A. Yes, sir. It is our register of value of shipments that we made signed by the messenger who receipts for same on the train.

Q. Who makes it out? A. Cashier Palmer.

Q. In your office? A. Yes, sir. That is the entry of January——

Q. And as a shipment is put on the train, where is the receipt from the man on the train to your office? A. We tear out one here and give it to him, and he signs it across here.

Q. Now, I direct your attention to this page with the entry of two bags, it is under date of January 21st, 10:13; has that any reference to Exhibit S-18, the bags themselves? A. That is the two bags that were stolen.

Q. Now, where was this receipt book at the time? A. Laid on the stool on top of the two bags.

Q. With the bags? A. Yes, sir.

The Assistant Prosecutor: I offer it in evidence.

Mr. Zabriskie: No objection.

(Receipt book marked Exhibit S-20 in evidence.)

Q. Who is Bianchi? A. The messenger on the train.

Q. That was the man working for the express company, working on the 10:13 train.

The Assistant Prosecutor: (Reading Exhibit S-20 to the Jury.)

Q. This third bag, the darker and larger of the three, did that have money in it? A. No, sir; it laid on the stool as a cushion.

Q. Was that taken, too? A. Yes, sir; it disappeared that day.

Q. Now, who took these full bags out? A. Lynch.

Q. And who took this third bag out? A. They were all together.

Q. Who took it? A. Lynch.

The Assistant Prosecutor: I would ask to consider this dark bag marked in evidence.

(Marked Exhibit S-21 in evidence.)

Q. And which door did they go out of, Lynch and Strand? A. The door on Mercer Street side.

Q. The small door, or the sliding door? A. The small door.

Q. Where did they go? A. Why, they turned to the left to go east.

Q. Bore left. Yes? A. Going east on Mercer Street.

Q. To where? A. To their car parked on the oposite side of the street, on Moore Street.

Q. Which way was that car facing? A. North.

Q. Towards the tracks? A. Yes, sir.

Q. And what kind of a car was it? A. A dark, drab car with natural wood color wheels, nickel radiator, two doors, open outward, one of them was standing wide open; it had a short bumper in the back.

By the Court:

Q. Touring or closed? A. Closed sedan.

By the Assistant Prosecutor:

Q. And was there anybody in the car? A. Yes, sir.

Q. Could you see them very well? A. Not very well; no, sir.

Q. And then where did they go, Lynch and Strand? A. Strand climbed in the car, and they started off, and the little fellow, drug him a ways before he got in, Lynch.

Q. Drug who away? A. Lynch.

Q. Now, from which window did you see all this, the window in the Mercer Street side, or the window at your desk on the Moore Street side? A. The other window on the Moore Street side.

Q. The window on the Moore Street side? A. Yes, sir.

Q. What did Lynch do to Palmer while in the course of this operation? A. He ordered Palmer out of the cage, and when Palmer was going around, with one hand down by the side, he pulled the trigger.

Q. Who did? A. Lynch. And the gun did not explode. He then stepped over, Palmer, finally, by the window, and Lynch in the cage after the money, asking where the money was. He stepped in after.

Q. And what did you do after they left? A. As soon as they went out of the door, I turned to see where they was going. I saw the car, and saw the license number on it, and immediately notified the police.

Q. And was Brannon alive or dead? A. Well, he was breathing, yes, sir; he was alive.

Q. Did you see his corpse afterward, attend the funeral? A. Yes, sir.

Q. Is he dead now? A. Yes, sir.

Louis Martin Talmadge, cross.

Q. Do you remember the number of the car? A. Yes, sir. 4-N-2346-New York.

The Assistant Prosecutor: I would ask to have two plates marked for identification at this time, purporting to be New York license plates.

(Two plates marked Exhibit S-22 for Identification.)

Q. Did you go up to the hospital with—— A. No, sir; I sent the cashier, Palmer.

Q. With Brannon's body? A. Yes, sir.

Q. Was he alive when he went to the hospital? A. Yes, sir; he was alive.

Q. Just one thing to make it clear: This office of the American Railway Express in which all this happened is in Hackensack? A. Yes, sir.

Q. In Bergen County here? A. Yes, sir.

The Assistant Prosecutor: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Mr. Talmadge, how did you spend yesterday morning? A. How did I spend yesterday morning?

Q. Yes. A. Why, working up in one of the apartments in 40 Passaic Street.

Q. Up until what time? A. Well, I should judge around twelve o'clock.

Q. Continuously? A. I beg pardon.

Q. Continuously? A. Well, that is from nine-thirty, I should say, or nine, up to that time.

Q. Then what did you do after twelve o'clock? A. I was called down to the American Railway Express office.

Q. And when you got down there, you found

Mr. Hendrickson and Miss Feld and Mr. Hart and myself there, did you not? A. Yes, sir.

Q. Now, how did you spend the time after Mr. Hendrickson and Miss Feld and I left? A. After you left, I was in the office a few minutes, and then I went home.

Q. And with whom were you in the office a few minutes? A. Prosecutor Hart and two of the employes of the express company and Detective Dawson.

Q. How long were you in conference with them? A. Oh, five to ten minutes.

Q. Well now, five or ten, or longer? A. No, no longer. About ten minutes, I should judge.

Q. Well, is your recollection better now or was it better yesterday when you were talking in the presence of Miss Feld, Mr. Hendrickson and myself and Prosecutor Hart? A. I should judge it is better now.

Q. It is better now. Why is it better now than it was then? A. Well, I was just a little nervous when I came down, hustling down. I did not know what they wanted me for.

Q. You were asked yesterday if you knew who did the shooting, were you not? A. I do not recall I was asked who done the shooting.

Q. Don't you remember you said you did not know who did the shooting yesterday? A. Well, I didn't really see it done; no, sir.

Q. Well, didn't you say yesterday that you did not know who did the shooting? A. Maybe I did; yes, sir. But I do not recall it now.

The Court: Has he said who did it today?

The Assistant Prosecutor: No, sir; he has not.

The Court: I am asking Mr. Zabriskie, has the witness testified who did it today?

Mr. Zabriskie: Well, I thought he gave an answer, substantially, he meant that.

Q. Well, do you know today who did the shooting? A. No, sir; I do not.

Q. You do not. Yesterday when you came down you say you were excited? A. Yes, I was.

Q. Why? A. Well, there was a strange car around the house for a couple of hours; I didn't know what they were after.

Q. You had been kind of worrying about something? A. Yes, sir.

Q. Now, I asked you this question yesterday. You were making good and fair answers to the best of your recollection and ability, weren't you? A. Fair; yes, sir.

Q. And do you remember saying this: that you did not immediately give attention to what was being said by Strand, that you went on with your figuring, and then there was a shot, and you turned around, and you saw Brannon fall near to the point where I was standing, and that point being about there (indicating), and that when you looked up, Lynch was standing a foot away from you? Do you remember?

The Court: What was the question?

Mr. Zabriskie: Will you please repeat the question?

The Court: Well, the question is whether he remembers saying that?

Mr. Zabriskie: Yes. In the presence of those who were present yesterday.

The Court: All right.

Louis Martin Talmadge, cross.

A. I do not think I said that right that way; no, sir.

Q. You did not say it that way? A. No, sir; I did not.

Q. Well, as a matter of fact, didn't you say that Brannon's head was practically about there where I was standing, which would be very close to the step that is—— A. Yes, sir; where it was.

Q. And didn't you say further that the only way you could make any distinction between them was that one was tall and the other was short? A. Well, I gave a fairly good description of them at the time.

Q. Yes. Now then, when you were talking to a newspaper reporter on or about the 21st or 22nd, didn't you say that it was your opinion that it was the taller of the two that did the shooting? A. Not to my knowledge; no, sir.

Q. You do not recall making any such statement as that? A. No, sir.

Q. There were revolvers lying right there on the desk in your office that day, were there not? A. Yes, sir; two of them.

Q. Two of them. And one of them was on the desk of Palmer, who was in the cage; isn't that so? A. Yes, sir.

Q. And where was the other one, Mr.—— A. Laying on my desk.

Q. Laying on your desk? A. Yes, sir.

Q. But you did not at any time attempt to use your revolver, did you? A. No, sir. I did not.

Q. And then did I understand you correctly to say today that you saw Lynch pull a gun aiming it at Palmer, and the gun did not go off? A. Yes, sir.

Q. And that you are positive of? A. Yes, sir.

Louis Martin Talmadge, cross.

Q. That this defendant Lynch aimed a gun at Palmer? A. Yes, sir.

Q. Do you know whether it was the gun that was lying on Palmer's desk or whether it was some other gun, or don't you know? A. No, sir; it wasn't that gun. It was a blue steel gun.

Q. A blue steel gun? A. Yes, sir.

Q. When is the first time that you told that, if I may ask, Mr. Talmadge? A. The first time, the day it happened.

Q. So you are sure it was not the gun that was lying on Palmer's desk that was used by the men who came in there that day, or either of them; that you are sure of? A. It wasn't picked up, only by Palmer.

Q. Now then, this line, this dark line which extends from the safe all the way or nearly to the door that goes into the business office, that is all glass, isn't it? A. Yes, sir.

Q. So that when Palmer was sitting at his stool by his desk, he could look right out and see what was going on in the express package room? A. Yes, sir.

Q. And he could also see what was going on in the front? A. Yes, sir.

Q. And on the side, so he had easy vision of what was going on in that room? A. Yes, sir.

Q. Did you notice anything different about Palmer's conduct that day from any other day? A. After it happened; yes, sir.

Q. No. I mean, before it happened? A. No, I did not, no, sir. I was really busy. I did not notice it.

Q. Well, you were the man that was in charge? A. Yes, sir.

Q. Was it customary to leave the bags of mon-

ey lying on that stool? A. Yes, sir; until it was put in the safe; yes, sir.

Q. How long, as a matter of fact, was it lying on the stool? A. It was signed for at 9:50, and this happened between 9:50 and 10:00 A. M.

Q. This happened at what time? A. Between 9:50 and 10:00 A. M.

Q. Are you sure about that, Mr. Talmadge? A. Yes, sir.

Q. Didn't this happen around a quarter after ten? A. No, sir; the train had been gone by that time.

Q. So you say it happened between 9:50 and 10:00? A. Yes, sir.

Q. Now, when you looked out you say you saw the car standing there, and you saw it start off? A. Yes, sir.

Q. You did not see any revolver in anybody's hand as they were running toward the car? A. No, sir; not the two men.

Q. Then, you had a pretty clear vision, then? A. Yes, sir.

Q. And the danger was away? A. Yes, sir.

Q. And you did not grab up your gun then to do any shooting? A. I was too far away from my gun.

Q. By the way, what caliber gun was that that was on your desk? A. A 38.

Q. And what caliber gun was that that was on the desk of Palmer? A. 38.

Q. Both 38 caliber? A. Yes, sir.

Q. Now then, when Mr. Brannon was talking to you about the trunk, you did not look up right away; the first thing that really attracted your attention was the sound of a gun-shot? A. Mr. Brannon didn't say anything about a trunk.

Q. Not Brannon, but Strand. You did not look

up right away; you were busy, weren't you, with figures? A. Yes, sir.

Q. And the real thing that attracted your attention was the sound of a gun going off, wasn't it? A. No, sir; I got up before the gun was shot.

Q. Well, after that, when you got up, you walked in this direction, that is, towards the north? A. Yes, sir.

Q. And you had gotten to a certain point. Now, what were you going there for? A. To check the address on a shipment.

Q. So your mind was not so busy at that time, there was nothing unusual in your mind at that time? A. No, sir.

Q. And then, while you were there, you heard the gun, and no sooner than you looked around, you say there was a man within a foot of you? A. Yes, sir.

Q. And you say that man was Lynch? A. Yes, sir.

The Court: Mr. Talmadge, are those two desks in the same position in the office today that they were then?

The Witness: Yes, sir. Unless they were moved today. I haven't been there yet today.

The Court: Well, at last accounts, they were in the same position?

The Witness: Yes, sir.

Q. Just one question more? Now, do I understand you to say that today there were two shots fired? A. Yes, sir.

Q. And yesterday, do you recall saying there was one shot fired? A. Not me; no, sir.

Q. You do not recall that? A. No, sir.

Louis Martin Talmadge, re-direct.

Mr. Zabriskie: I think that is all.

The Court: Anything further from this witness?

Mr. Zabriskie: I think not, your Honor.

The Court: I mean, from the prosecution.

The Assistant Prosecutor: Just one question overlooked on direct, sir.

Re-direct examination by the Assistant Prosecutor:

Q. The revolver that lay on the counter in Palmer's cage, what caliber was that? A. 38.
Q. 38 long or short? A. Long.

The Assistant Prosecutor: That is all.

The Court: I want to say to counsel that this map made by Mr. Schwartz, while very neatly and beautifully executed, does not suit me, because I do not think that it exactly gives the correct impression, because it indicates in such shape that it looks like a wall or a partition, when it is nothing in the world but a little three-inch rise, and it fails to indicate those two desks, the position of which I think is rather important to an understanding of the occurrence. I am wondering whether it would not be a good idea to have Mr. Schwartz modify this sketch by erasing that heavy black line there where the step is, and also by locating those two desks.

The Assistant Prosecutor: Well, the reason the two desks were not put on was because they were movables. The sketch, the

outline, shows things that were more or less of a permanent nature, and, of course, the two desks can be shown on the map, as the testimony now stands.

The Court: Well, they might be sketched on it in pencil, if you please. How about that, Mr. Zabriskie? Wouldn't it be a good idea?

Mr. Zabriskie: Yes. And I think, perhaps, it is so near five, why couldn't the jurors go and take a look at those premises? I think at a glance they can see more than they can from this map.

The Court: We will consider that. There is always a great deal of risk about sending a jury to look at a place, because they are not under the control of the Court. I guess a good many of them know it, anyway.

Mr. Zabriskie: But it seems to me just a few minutes there, they can get the whole situation there better than from a map.

The Court: Is Mr. Schwartz still in court?

The Assistant Prosecutor: He is about, sir.

The Court: I will see you, Mr. Schwartz, before you leave today. Are you going to be here at the close of the session?

Mr. Schwartz: Yes, sir.

By Mr. Zabriskie:

Q. How long have you known Palmer? A. Since April 1, 1924.

Theodore Palmer, direct.

By the Court:

Q. When you came there? A. Yes, sir.

The Court: That is all.

The Assistant Prosecutor: That is all.

THEODORE PALMER, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. You worked for the American Railway Express? A. Yes, sir.

Q. In the office at Hackensack, New Jersey? A. Yes, sir.

Q. What was your work there? A. Cashier.

Q. And prior to January 21, 1926, was there any shortage in your accounts? A. Yes, sir.

Q. How long had that shortage been accruing or running up? A. Since about September.

Q. And where do you live? A. Bogota.

Q. With whom did you live at the time you were arrested? A. My aunt.

Q. And about how short were you on January 21st? A. $433.00.

Q. Now, do you recall the morning of the 21st of January? A. Yes, sir.

Q. Were you on duty there after the 9:37 train came up from Jersey City? A. Yes, sir.

Q. Where in the office were you? A. In the cage.

Q. And what were you doing? A. Why, I was running some pre-paids up, I believe.

Q. Pre-paid shipments? A. Way-bills.

Q. Way-bills? A. Yes, sir.

Theodore Palmer, direct.

Q. Do you know Charles Strand? A. Yes, sir.
Q. Did he come in? A. Yes, sir.
Q. At about what time? A. About ten o'clock.

The Assistant Prosecutor: (To an officer.) Will you bring Strand to the door again, please? (Man appears.)

Q. Now, is this Charles Strand that came into your office at the time you say? A. Yes, sir.

Q. And what did Strand say? A. "Can I ship a trunk here?"

Q. Did you expect him? A. No, sir.

Q. Who answered him? A. I did.

Q. And then what happened? A. I said, "Yes, sir."

Q. Where was Brannon at that time, the messenger? A. The clerk?

Q. The clerk, rather. A. He was in the freight room.

Q. That is the room adjoining your cage? A. Yes, sir.

Q. And where was the last witness, Talmadge? A. He was at his desk.

Q. In the same room with you? A. Yes, sir.

Q. And after Strand asked about a trunk, then what happened? A. Why, he turned around and took hold of the door, I believe.

Q. That is the door to Mercer Street? A. To Mercer Street.

Q. Yes. Go on. A. And a second or so later, why, a shot went out; I heard a shot.

Q. And where was Brannon? A. Brannon was in the freight room.

Q. Where did he fall? Did he fall? A. Why, I didn't see him until after, and he was inside then in front of the cage.

Q. And where was Lynch, this defendant? A.

Theodore Palmer, direct.

Just after the shot came in, he came in through the freight room door to the office.

Q. And did he have anything in his hand? A. A revolver.

Q. What did he say when he came in? A. He said, "Get 'em up."

Q. Did you? A. Yes, sir.

Q. What did Talmadge do? A. He got 'em up also.

Q. And then what did Lynch or Strand do? A. Lynch ran in the cage. He first asked, "Where is the money?" He ran in the cage and got the money and backed out.

Q. Did anybody tell him where the money was? A. Yes, sir.

Q. Who? A. Both of us.

Q. Both? A. Talmadge and I.

Q. I show you these bags, Exhibit S-18, and ask you to look at them and tell us if those are the bags that the money was in that morning? A. Well, I am positive of that one. The tag is gone on that, but the other one was one like that.

Q. Indicating the second of the two bags in Exhibit S-18, indicating Exhibit S-18-b. Now, I show you S-21, and ask you if this looks like another bag which you were using for a cushion? A. Yes, sir.

Q. How much money was in the bags in Exhibit S-18? A. Around about nineteen hundred and—around about eighteen hundred.

Q. And were these bags for delivery in Hackensack, or were they going somewhere? A. Going to New York.

Q. When were they to have gone to New York? Would this Exhibit S-20, this receipt book, show it? A. Yes, sir.

Q. When were they to have left Hackensack office? A. 10:13.

Q. On the 10:13 train to Jersey City? A. Yes, sir.

Q. Did you have a gun? A. Yes, sir.

Q. What kind of a gun was it? A. The make, you mean?

Q. Yes. I do not care for the name of it. The general description of it, what caliber? A. Why, I believe it is a 38.

Q. Long or ordinary 38? A. Long; yes, sir.

Q. Coming back a moment to Exhibit S-18, the bags; is there any mark on there that would tell you what time these bags containing money came into your office? A. Yes, sir; 9:50.

Q. Who made that entry? A. The bank messenger.

Q. What other moneys were taken by Lynch? A. Two telephone payrolls.

Mr. Zabriskie: I object to it, your Honor please, it is absolutely—what other moneys?

The Court: You mean leading?

Mr. Zabriskie: Leading.

The Court: Did Lynch take any other money besides the bags?

The Witness: Yes, your Honor.

Q. How much more, if you know? A. Why, one contained—one envelope contained $256.00, and a package contained $2,006.18.

Q. Who was the other shipper? A. The New York Telephone Company.

Q. How did the New York Telephone funds come into your office? In what shape, how were they

wrapped up? A. A sealed package and a sealed envelope.

Q. I show you some torn paper and ask you to look at it, and tell us if you ever saw that before? A. Yes, sir.

Q. And what did you do with this paper when you received it from the telephone company? A. I received it off the 9:37 train, took it in the cage and placed it on top of the safe.

Q. You did it without opening it? A. No, I never opened it.

The Assistant Prosecutor: I offer this wrapper, paper purporting to be a wrapper, in evidence.

Mr. Zabriskie: No objection.

(Marked Exhibit S-23 in evidence.)

By the Court:

Q. This money that was in the canvas bags, was it in bills or partly in metal? A. It was all currency.

Q. All bills? A. Yes, sir.

By the Assistant Prosecutor:

Q. And then how did Lynch and Strand leave? How did they go out? A. They backed out the door.

Q. What door? A. The first door on the Mercer Street sidewalk.

Q. Did you see which way they went? A. No, sir.

Q. What did you do? A. Well, after—after they went out, I went around into the cage. I got my gun and on the way out of the cage, I stopped.

I seen a car going over the tracks north on Moore Street.

Q. Did you get the number? A. No, sir.

Q. Do you know who was in the car? A. No, sir.

Q. Did you see Cuneo around that day? A. No, sir.

Q. What was done with the body of Brannon, with Brannon, rather; he was still alive? A. Sir?

Q. What was done with Brannon's body? A. Why, somebody with an automobile—we placed him in the car and we took him to the hospital.

Q. Was he alive at the time they took him out? A. Yes, sir.

Q. Did you go to his funeral? A. No, sir.

Q. Did you go the hospital? A. Yes, sir.

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

Q. Was he dead then? A. After we were there about 15 minutes.

Q. Were you there at the time he died? A. Yes, sir.

Q. Well, did you pre-arrange this robbery? A. No, sir.

Q. Did you talk it over with anybody? A. With Kalman.

Q. Did you expect anybody in that morning? A. Yes, sir.

Q. Did you fix the time? A. Yes, sir.

Q. At about what time did you expect him? A. About ten o'clock.

Q. Now, are you positive that the man who was in your office with Strand is this defendant, James Lynch, seated at the end of the counsel table? A. Yes, sir.

The Assistant Prosecutor: You may cross-examine.

Theodore Palmer, cross.

Cross-examination by Mr. Zabriskie:

Q. You say that Strand came in at about ten o'clock? A. Just about that.

Q. Before or after it? A. I cannot say.

Q. And did you or did you not expect Strand to be coming over at about that time? A. I didn't know it was Strand was coming. I expected somebody.

Q. Because you really had helped to frame up this whole thing, isn't that so? A. Yes, sir.

Q. And the man that you framed it up on was the man who had been working by your side for several months, isn't that so?

The Court: Which one do you mean, Talmadge or Brannon?

Mr. Zabriskie: Brannon.

A. I framed it up?

Q. Well, you arranged it, didn't you? A. Arranged what?

Q. Arranged that somebody should come there and you would turn over money to them? A. Yes, sir.

Q. Without resistance? A. Yes, sir.

Q. And the man who would have the custody of the money was likely to be Brannon, your side-partner, isn't that so? A. No, sir.

Q. Well, who was the one who would be likely to have the money? A. I was.

Q. And then you were going to turn it over to the man who showed up? A. Well, he was going to take it.

Q. And he wasn't going to shoot anybody, then? A. No, sir.

Q. You did not know that? A. No, sir.

Q. You had no idea that you were jeopardizing the life of your partner, Brannon? A. No, sir.

Q. Or of Mr. Talmadge, or of anybody else? A. No, sir.

Q. And then, after Brannon was dead, you sent flowers to the funeral, and you didn't tell the truth for some time afterwards, did you? A. No, sir.

Q. And you even went so far as to go up to Highland Falls? A. Yes, sir.

Q. And identify two poor Italians to see whether or not they were the ones that had something to do with this, and then came back, still without telling the truth, isn't that so? A. Yes, sir.

Q. When did you start to tell the truth about this, Mr. Palmer? A. That Sunday. I forget just what the date is. The Sunday following.

Q. That was when you saw that the evidence was pointing toward you? A. Yes, sir.

Q. And then you told the whole story? A. Yes, sir.

Q. Now, have you told the whole story? A. Yes, sir.

Q. You expect by giving this testimony in here that you are going to be let off a little easier than you otherwise would, don't you? A. No, sir.

Q. You do not? A. No, sir.

Q. Do you expect to stand trial, or do you expect that you are going to plead and get something less than the electric chair? A. No, sir.

Q. You expect to stand trial? A. Yes, sir.

Q. Nobody has indicated to you in any way that it would be a little better for you, so far as sentence is concerned, if you tell a certain story? A. No, sir.

Q. That you are sure of? A. Sure of.

Q. Now then, do you say, under the solemnity of an oath——

The Prosecutor: I object.

Q. —that this man Lynch took any of those things off of that chair that was in the cage there that day?

The Assistant Prosecutor: I object to the form of the question—under solemnity of an oath.

The Court: The question is not objectionable. You may answer it, Palmer.

The Witness: Sir?

The Court: Do you now say, under oath, that Lynch took any of those things off of that chair, is it?

Mr. Zabriskie: Yes. Off the chair in the cage.

The Witness: Yes, sir.

Q. What was the other man doing? What was Strand doing all the time he was there? He was the first one in, wasn't he? A. Yes, sir.

Q. He was there for how long? A. A few seconds.

Q. A few seconds? A. Maybe a minute.

Q. What was he doing there in that minute? A. Well, after he had turned around and the shot went off, he came——

Q. Whose shot went off? A. And the shot went off, I say.

Q. Oh. A. He came back and said, "Stick 'em up."

Q. That is, Strand said, "Stick 'em up"? A. Yes, sir.

Q. Did he have a gun with him? A. Yes, sir.

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

Q. Is that the only thing he did, was just "put up"—who was he aiming the gun at? A. Why, the both of us, I guess, Talmadge and I.

Q. Well, after he had said "Stick them up", didn't he grab the stuff and run? A. No, sir.

Q. Why are you so positive about that? A. Because I seen Lynch go in and take it.

Q. Haven't you been asked to say that Lynch was the man that did that part of it? A. No, sir.

Q. How did you start running short, Mr. Palmer? A. Well, my aunt was sick, and I used some of it to take care of the house.

Q. Did you ask anybody to give you any financial assistance? A. No, sir.

Q. So you were going to get the money—you were going to get a part of this money? A. Yes, sir.

Q. How much were you supposed to get? A. A quarter.

Q. Did you ever see Lynch before that day? A. No, sir.

Q. It was the very first time? A. Yes, sir.

Q. But you had seen Strand before that day, hadn't you? A. No, sir.

Q. You never saw him before? A. No, sir.

Q. And yet you knew who he was when he came in? A. No, sir.

Q. You were sitting there on the little stool, weren't you? A. Yes, sir.

Q. And you could look out into the big room, couldn't you? A. Part of it.

Q. Well, isn't this one long window for a distance of about six feet? Isn't there about six feet of window space there? A. You mean in the partition?

Q. Yes. A. I guess there is six foot.

Q. So that you could look and see what was going on out there, couldn't you? A. Almost all of the room.

Q. And didn't you see somebody coming in there? A. No, sir.

Q. Well, what was the sign that you were going to give that everything was all right for the money to be handed over? A. I wasn't to give any sign.

Q. They were just to come in and you were to hand it right over? A. Yes, sir.

Q. Now, you had planned this out with some other boys, hadn't you? A. Yes, sir.

Q. And how long before this had you planned it out? A. Sunday before.

Q. And whom did you plan it out with? A. Kalman.

Q. Anyone else? A. No, sir.

Q. Kalman lives in Bogota, the same place as you? A. Yes, sir.

Q. And didn't you talk to anybody besides Kalman? A. No, sir.

Mr. Zabriskie: I think that is all.

The Assistant Prosecutor: That is all. Mr. Wokal.

Mr. Zabriskie: I just want to ask one question more.

By Mr. Zabriskie:

Q. Who was the man that aimed at you and pulled the trigger, you say, that did not go off? A. Lynch.

Q. The gun was lying on your table, from the gun that was lying on your table, or a gun that you say that he carried? A. The one that he carried.

Q. That you are sure of? A. Yes, sir.

Mr. Zabriskie: That is all.

Ludwig K. Wokal, direct.

LUDWIG K. WOKAL, sworn as a witness on behalf of the State, testified as follows:

The Court: How do you spell your name?

The Witness: W-o-k-a-l.

Direct examination by the Assistant Prosecutor:

Q. Mr. Wokal, you are a taxi driver working for the Brady Taxi Service of Hackensack, are you? A. Yes, sir.

Q. Were you on duty at the taxi stand on the Mercer Street side of the Susquehanna Railroad on the morning of January 21st? A. I was.

Q. Did you hear any shots? A. I did.

Q. What happened? Who did you see after you heard shots? A. Well, immediately after the shots, I didn't see anybody; I didn't go to look for anyone. I have—I have seen—I have heard the noise, rather, and not thinking that it may be——

Q. What you saw, Mr. Wokal. A. Well——

Q. Where was the noise? Where were the shots—— A. In the——

Q. —as near as you can tell us? A. In back of me.

Q. In back of you. And in a building, or in the open? A. In the open. I was in the open, and the shots were from behind, the way it seemed to me.

Q. And what part of the station were you and your taxi standing? A. On the south side of the station.

Q. The waiting room part, or the express company part? A. The baggage room part.

Q. The baggage room part. That is the far or easterly end of the waiting room? A. Of the waiting room; yes, sir.

Q. The railroad baggage part? A. Yes, sir.

Q. Did you see anybody moving around there after the shots were fired? A. Not immediately after the shots were fired.

Q. Well, did you at any time afterward? A. Yes, afterwards.

Q. Yes. Who did you see? A. I have looked to see what the noise was about, and knowing that it was a pistol shot, I was in front of my machine, and I run in back of it to see what it was, and I see two men coming—backing out of that little side door of the express office.

Q. Were they both the same size? A. That I couldn't say, because they seemed to be in a hurry, and they were sort of squatting and more running than anything else.

Q. Where did they go after they came out of the small door from the office? A. Well, they ran, not exactly around the corner, but the corner sort of hid them from my view, the corner of the building.

Q. What direction, Moore Street or Main Street? A. Toward Moore Street.

Q. And what direction did you go after that? A. In back of them, right after them.

Q. Did you see where they went when they got to Moore Street? A. No, sir.

Q. Then where did you go? A. I jumped in my machine, knowing that there was something up.

Q. Go on. A. And instead of following down the same course they were, I took Main Street down, thinking that they must come out of one of those side streets there.

Q. When you say down, you mean up, don't you, north? A. I mean going north, yes.

Q. Yes. Did you go north on Main Street? A. I went north on Main Street.

Q. Did you see them after that? A. No, sir.

The Assistant Prosecutor: That is all.

Mr. Zabriskie: No questions.

By the Assistant Prosecutor:

Q. Did you recognize the faces? A. No, sir. I didn't see their faces.

The Assistant Prosecutor: Cross-examine.

Mr. Zabriskie: No questions.

FRANK CUNEO, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. You live in Woodridge? A. I do.

Q. And you worked as a bus driver on the East Rutherford bus line, did you? A. No. I was a repairman and mechanic.

Q. A repairman for the East Rutherford-Hackensack bus line? A. I was.

Q. Now, did you ever see the defendant, James Lynch, as seated at the end of the counsel table, in court here? A. Yes, I did.

Q. Do you know Charles Strand who was in the same witness room with you a few moments ago? A. I do.

Q. And when did you see them first? A. Why, Monday morning, about the 17th of the month, I believe.

Q. The Monday before this robbery? A. The Monday before the robbery.

Q. Where did you see them? A. On Main Street, in front of a drug store which is number seventy-five.

Q. Seventy-five, Main Street? A. Right out here, yes.

Q. Where did you go with them? A. I went riding up around through Rochelle Park, around the County Home, back to Hackensack, stopping in front of the Public Service building on Main Street, which is number 235.

Q. And where did you go from there? A. Why, I left.

Q. And after you left the Public Service,—I did not hear your answer—where did you go? A. Why, Charlie Strand and myself walked down around the American Express to get a general idea of the surroundings, which we did.

Q. Well, was there any conversation by Lynch, or in his presence, about this American Express office that day? A. Why, I had nothing to say with Lynch, but I did with Mike Corcoran.

Q. He was with them, too? A. He was with Corcoran and Strand.

Q. And when you and Cuneo went out to go down to the express company office——

The Court: No.

A. Strand.

The Court: This is Cuneo.

Q. Where was Lynch? A. Up in the car with Mike Corcoran.

Q. Now, that was on Monday? A. Yes.

Q. When did you next see them after that? A. Thursday morning.

Q. Where did you go first? A. What do you mean?

Q. Before you saw them. A. Oh, I just got up out of bed, had breakfast, met them down at the ferry.

Q. In what? A. In my car.

Q. What kind of a car was yours? A. A Buick car.

Q. Sedan or coupe? A. Coupe.

Q. Coupe. And you went to the ferry? A. Yes, sir; I did.

Q. Which ferry? A. The Fort Lee ferry on the Jersey side.

Q. At Edgewater? A. At Edgewater, about eight-thirty.

Q. Now, did you see Lynch and Strand and Corcoran? A. Yes.

Q. About what time did they get into Edgewater? A. About—well, I couldn't say that, because they were there when I got there.

Q. And what kind of a car were they in? A. Chrysler sedan.

Q. What color? A. Why, that buff color, yellow, dark yellow.

Q. And when you met, what was said in Lynch's presence? A. Why, very little; because Charles Strand rode with me, and Lynch rode with Corcoran.

Q. And did you make any stops? A. Yes, we stopped—we left the ferry, and we stopped at Fort Lee and bought a ball of twine. Charles Strand bought the ball of twine.

Q. Well, where was Lynch and Corcoran then? A. In the Chrysler following us.

Q. When you stopped to buy the ball of twine, what did they do? A. Why, went on beyond the top of the other hill, and waited for us.

Q. Did you go in when he bought the ball of twine? A. No, sir; I waited outside.

Frank Cuneo, direct.

Q. What was done with the twine? A. Cut up in lengths about three or four feet long.

Q. Was there any conversation about the twine when Lynch was around? A. No.

Q. After you started again from Fort Lee, where did you and Strand and Corcoran and Lynch go? A. Why, they followed Strand and myself to Spring Valley Road in Maywood, where the license plates were changed on the Chrysler.

Q. And what license plates were put on? A. I just don't remember—recall the number.

Q. What kind of a plate did it have on before? A. New York.

Q. New York. And who changed them? A. Charles Strand changed the front one and Mike Corcoran changed the back one, and Lynch handed some tools I had to Mike Corcoran.

Q. This was over in Maywood? A. Over in Maywood on Spring Valley Road.

Q. Where did you go from Spring Valley Road, and Spring Valley Avenue, in Maywood? A. I and Mike Corcoran rode to Englewood, and——

Q. Who suggested that? A. Mike Corcoran.

Q. All right. And where was Lynch and—— A. Lynch and Strand?

Q. —Strand, then? A. Lynch and Strand rode back to the—in front of the Public Service building on Main Street, where we were the Monday before. It was arranged to meet them there.

Q. And when you came back to there, where did you go? A. Why, Mike left me and joined Strand, and Lynch and I went up about two hundred feet on Main Street, stopping about one hundred and fifty feet from Camden Street, which——

Q. This side of Camden or the other side? South or north? A. South, this side of Camden, this side away from Camden Street, in front of the church, the library.

Q. Yes. And where did Lynch, Strand and Corcoran go in the Chrysler? A. Went to pull the job.

Mr. Zabriskie: If the Court please, he wasn't with them; I object.

The Witness: As far as I know.

The Court: Well, they started off in what direction?

The Witness: Going—coming back towards the station.

Mr. Zabriskie: There is no question now.

I have an objection.

The Assistant Prosecutor: It is his Honor's question.

The Court: Well, the question is, they started off in what direction? And the witness answers, I take it, in the direction of the station.

Q. Now, when did you next see those three and the Chrysler car again? A. Why, on my clock, which is on the dash of the Buick car, it was about two minutes past ten.

Q. Was the Chrysler moving then? A. Yes; turning the corner coming from Camden Street into Main.

Q. And what did you do when that Chrysler and those three men came out of Camden into Main? A. I waited a few minutes to see if there was anybody chasing them. With that, I see nobody. I took my time, and started my engine and followed them to Anderson Street. When they got to Anderson Street, I was at Passaic Street. That is a distance of about three city blocks. I seen

them turn right, and I followed right on behind them, and caught them before they reached the top of the other hill over Cedar Lane.

Q. Which, the one at Elm Avenue? A. Queen Anne Road, the second hill.

Q. And then where did you and they go? A. Why, they—they—they passed me then, and we got down near the Blue Bird and continued on around to——

Q. The Blue Bird is where? A. Down Teaneck Road and Cedar Lane.

Q. All right. A. We turned down Teaneck Road, which is left, and over——

Q. North? A. —north to what they call Robinson Street, Teaneck, and I went beyond that to Washington, to Forest Avenue, which is two—or one block above that; it is really two blocks, the main road leading into Englewood, and I——

Q. Yes. A. —stopped my car there, and walked around to the house, which is about three blocks away.

Q. Whose house did you walk down to? Who lived there? A. I didn't know at the time. I do now. A fellow by the name of Rocksch.

Q. I show you a picture, Exhibit S-11, and ask you is that a picture of Rocksch's house? A. Yes.

Q. And what is S-12? A. It is the front part of the house.

Q. Whose house? A. Rocksch's house.

Q. And 13 and 14, what are they? A. That garage there didn't look nothing like that when I seen it. That is the garage.

The Court: Which one?

The Witness: Both of them. But the inside wasn't like that when I seen it.

The Court: Never mind the inside. Take the one of the outside. Which one is that?

The Witness: That is the garage.

Q. S-13?

The Court: S-13 is the garage. 14, you do not recognize?

The Witness: I don't recognize.

Q. Well, when you got to Rocksch's house, what were Lynch, Strand and Corcoran doing? A. Just pushing the car in.

Q. In where? A. In through the garage.

Q. Into Rocksch's garage? A. Yes, the rear end.

Q. Well, was Rocksch's car there? A. Why, yes; it was outside, about ten feet from the garage. It was pushed back.

Q. By the way, who was driving the Chrysler car when the three of them were in it, as far as you saw? A. Mike Corcoran.

Q. And where did Lynch and Strand sit, if you remember? A. Why, when I first met them, Lynch was sitting in the rear; Lynch and Strand were sitting in the rear down at the ferry, but from then on, I didn't know how they arranged. When we left the ferry, Lynch—Lynch and Corcoran were sitting in the front seat.

Q. And what did Lynch and Strand and Corcoran do after they were pushing the Chrysler car into Rocksch's garage? A. Mike Corcoran went out and broke one of the rear window panes in this door which leads to the kitchen.

Q. Does it show that door on Exhibit S-11? A. You cannot see the window.

Q. Well, just about where, in what general di-

rection? A. Right there (indicating); this window right down there.

Q. All right. Just hold it up so counsel for the defendant may see it, and the Court. Now, just hold it around this way once again and let the jury see it. A. (Exhibiting S-11 to the jury.)

Q. Is that a lattice work there, or is it solid? A. It is lattice work.

Q. And before they broke the window that you were just speaking of, did you go in the garage? A. Yes.

Q. What did they do in the garage before they came out? A. Mike—they were breaking parts—breaking open these different bags and packages.

Q. Bags? A. No, I didn't see that.

Q. You didn't see these? A. No, sir; I did not.

Q. Did you see a package in any wise resembling this package? A. Yes.

Q. S-23. A. I seen that one; envelopes were in that, pay envelopes.

Q. I show you S-19 for identification, a and b, and ask if you saw those? A. No, sir; I did not.

Q. Who was breaking them open? A. Strand and Mike Corcoran.

Q. And where was Lynch? A. Out—out at the rear of the garage.

Q. Meaning the door section? A. The door section. Myself and Strand and Corcoran were standing inside. Lynch was on the opposite side nearest the door.

Q. And what was Lynch doing? A. Keeping guard over me so I wouldn't run out, I guess.

Q. What did he say? A. I wanted to get away, and he threatened me to stay back, when he—when he told me a man was shot, "we had to shoot a fellow."

Q. Who said that, do you remember? A. Mike Corcoran.

Q. Mike Corcoran said that? A. Yes.

Q. Was Lynch there? A. Yes.

Q. Just after that was said, what did you say? A. "Was the fellow hurt bad?" With that, Lynch broke his gun open and said, "This is the one that got him," pulling out an empty shell. I asked him where did it get him, and he said, "In the bag," meaning the stomach.

Q. Yes. And then you went in the house after the window was broken? A. No, I didn't go into the house.

Q. Who went into the house? A. Mike Corcoran, Strand and Lynch. And I came on back to Hackensack.

Q. Was any money given to you? A. No, not at that time.

Q. Did you go back to the house? A. I did.

Q. Where did you go to in Hackensack when you came back the first time? A. Back to Main and Mercer Street.

Q. You came back to Main and Mercer Street in what? A. In my car.

Q. Did you stay there long? A. Yes. About an hour and a half or two hours.

Q. And then when did you go back to Rocksch's house? A. About an hour after, an hour and a half.

Q. Who was there when you went in? A. Lynch, Corcoran and Strand.

Q. What were they doing? A. Charles Strand was counting the bills, and Lynch was counting the change, lying on the floor, and Mike Corcoran was downstairs keeping guard.

Q. And anything said, any conversation about it? A. Why, no, there was very little, because they

were busy counting the money. There was something said about notches, which I didn't know the meaning of.

The Court: Never mind about the notches.

We do not want to hear about that.

Q. And then, was any money given to you? A. No, not at that time.

Q. When was it given to you? A. What do you mean, when I——

Q. Did you ever receive any money? A. Yes.

Q. From Strand or Lynch? A. They told me there was two thousand dollars there for me, which I wrapped up and took downstairs, and it lay downstairs.

Q. Who wrapped it? A. I wrapped one bundle, and Mike Corcoran wrapped the other.

Q. What did you wrap it in? A. Newspaper.

Q. And did you take the money? A. I didn't right then. I went back later on for it.

Q. Where did you go that second trip before you took the money? A. I came back to Hackensack and stayed around all day until it got dark, about five oclock.

Q. And did you go back to Rocksch's house again? A. I went back about five o'clock.

Q. Who was there then? A. Mike Corcoran, Strand and Lynch.

Q. What were they doing when you went back the second time? A. Nothing. Just hanging—hanging around.

Q. Did they say what they were there for, or why they were waiting? A. They were waiting to get away.

Mr. Zabriskie: I object, trying to give his conclusion.

The Court: Well, he was asked whether they said what they were there for. Did they say anything about what they were there for?

The Witness: No, they did not.

The Court: All right. Well, strike that out.

Q. And how long did you stay this last trip to Rocksch's house in the evening? A. About ten minutes.

Q. Did you all leave together, or did you leave first? A. I left first.

Q. And what did you take with you? A. The two thousand dollars.

Q. And then where did you go with the money? A. Over to Teaneck.

Q. What did you do with it? A. Boarded it.

Q. How long did you leave it boarded? A. Until Sunday, Saturday night.

Q. Then where did you take it? A. Down home.

Q. And what did you do with it, then? A. Oh, I——

Q. When you got it home? A. I bunked it, hid it.

Q. Where did you hide it? A. Underneath the floor.

Q. The same place that it was when it was taken out, was it? A. Yes.

The Assistant Prosecutor: You may cross-examine. There will be a question I would like to bring him back on direct; I want to produce an exhibit; I will have to get it first; so I am willing to have the cross-examination proceed.

Frank Cuneo, cross.

The Court: Any objection to cross-examining at this time, then?

Mr. Zabriskie: No.

The Court: All right, go on.

Cross-examination by Mr. Zabriskie:

Q. Now, you have given four different stories or conceptions about this case, have you not, Cuneo? A. No, sir; no, sir; I have not.

Q. How many have you given? A. Why, the one story.

Q. Well, haven't you signed four different papers, four different confessions? A. Yes.

Q. And the second was longer than the first, wasn't it? A. Yes.

Q. And the third was longer than the second? A. I just don't recall that.

Q. And the fourth was a very long one? A. No.

Q. No? A. I don't believe there was a fourth.

Q. You expect that if you can assist in convicting Lynch you will get some consideration for turning State's evidence, don't you? A. I do not.

Q. Well, you didn't tell the whole truth right at the beginning, did you? A. I did.

Q. Well then, why did you make four different statements? A. Why because the first statement was just from Costy to me, just what was said between us, how it arose; but Costy seen the fellows.

Q. Now, what was in that statement, as near as you can recall it? A. Just how Costy came to me and told me about it, and how he got it from Talmadge, and Palmer.

Q. And you didn't connect up Lynch in that first statement at all, did you? A. No, sir.

Frank Cuneo, cross.

Q. Now, in the second statement, what was in that? A. It was just how everything went from time to time.

Q. Where did you get that expression from, "shot in the bag," meaning the stomach? A. Why right from Lynch.

Q. Why, did he say? A. He said so.

Q. Did he say that meant the stomach? A. Yes. He pointed it to me.

Q. You knew Strand the best of all, didn't you? A. No, I did not.

Q. Well now, just tell what was in the first confession? Just tell the jury what you said in the first confession? A. Why, it was more of questions being asked of me.

Q. What did you say in it? A. Well, the questions that were asked me, how did I hear about the plan.

Q. Yes. A. And it was just the way Costy came to me.

Q. What did you say? A. It was just the way Costy came to me, and the way I went to the fellows in New York, meaning Mike Corcoran; I didn't know Lynch at the time.

Q. Then you are the man that went over for the New Jersey men and made arrangements with the New York men to come over here and get this money? A. Yes.

Q. Because it had been arranged. So far as you knew, it was going to be just simply the taking of easy money? A. Yes.

Q. That is correct, is it? A. Yes.

Q. You knew, or had been told, that this agent was going to just hand up the money when a man called at a certain time? A. He wasn't going to hand it to him, but it would be there. It would be easy for him to get.

Q. Well, he wasn't going to offer any resistance? A. No.

Q. They were just simply going to walk in and walk away with the money, and you were going to get a part of it? A. Yes.

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

Q. This is the first— A. Yes, sir.

Q. —time that you have been involved? A. Yes, sir.

Q. That you are sure of? A. Why,——

The Prosecutor: I object to that.

A. —involved——

The Prosecutor: Involvement does not mean——

Mr. Zabriskie: I withdraw the question to save time.

Q. Well, you call Strand by his first name? A. Yes.

Q. You are well enough acquainted with him for that? A. Yes.

Q. And also Corcoran? A. Yes. No. I knew Corcoran by his last name, Mike Corcoran.

Q. And you have known Corcoran for a long time, haven't you? A. About four months.

Q. Well, you knew him before you knew these other fellows, didn't you? A. Yes.

Q. And Corcoran was placed under arrest at one time in this, wasn't he? A. I believe so, yes.

Q. And then Corcoran was released, wasn't he? A. I believe so, yes.

Q. And yet Corcoran is the man that was in the automobile that was used at the American Express station that morning? A. Yes.

Q. In other words, Corcoran was the big man in the deal, wasn't he? A. Yes, sir.

The Prosecutor: I object to that, your Honor please.

The Court: Well, I suppose it is a mere adjective. As a matter of fact, Corcoran was the man——

The Witness: That I spoke to.

The Court: —that you spoke to, and that brought these men over, is that right?

The Witness: Yes, sir.

The Court: And that drove the automobile?

The Witness: Yes.

Q. When did you take that money from the place where you had it hidden over in Teaneck? A. Between five and six o'clock.

Q. What day? A. That same evening, that same day, Thursday the 21st of January.

Q. When did you make your first statement to the Sheriff, or some other authority? A. Sunday evening, which is about the 23rd or 24th, that is three days beyond the ——

Q. Now, you did not tell the truth then, as far as you went, did you? A. Yes.

Q. You are positive of that? A. No. I didn't in my first statement; I didn't, no.

Q. Then you didn't tell the truth in the first statement, did you? A. No.

Q. You told the Sheriff that the money was hid over there in Teaneck and let him go there and spend a lot of time digging around for it? A. It was there.

Q. Well, you had taken it away when you had made that statement, hadn't you? A. When you first threw the question to me, I just forgot myself.

Q. So you didn't tell the truth in the first statement, did you. A. I did.

Mr. Zabriskie: That is all.

Re-direct examination by the Assistant Prosecutor:

Q. I show you two packages, and ask you are these the packages that you put in your home? A. Yes.

Q. Bunked, as you call it? A. Yes.

Q. Containing eighteen hundred odd dollars? A. Yes.

Q. Where in your home did you have them? A. Why, in the bath room, underneath the floor.

Q. Underneath the floor. And are they in the same condition now, as nearly as you can see? A. Yes.

Q. As they were when they were taken out from under your bath room floor? A. Yes.

The Assistant Prosecutor: I offer in evidence two bags purporting to contain $1861.00.

Mr. Zabriskie: I have no objection.

(Two bags marked Exhibits S-24-a and S-24-b in evidence.)

The Assistant Prosecutor: That is all.

Franklin Edwin Stevens, direct.

FRANKLIN EDWIN STEVENS, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. Mr. Stevens, you are one of the tellers of the Peoples Trust & Guaranty Company in Hackensack? A. I am.

Q. Are you? A. I am.

Q. And I show you a tag attached to Exhibit S-18-a, and ask you if you recognize any of the writing that is on that tag? A. Yes. That is Mr. Mason, the man who made up the shipment.

Q. Mr. Mason is also a teller in the Peoples? A. Yes. And I—that particular bag, while my name is not on it, I witnessed the sealing of it.

Q. You witnessed what? A. The sealing, the placing of the money in the bag, and the sealing of it.

Q. How much money was placed in Exhibit S-18-a, if the tag will show you? A. It is $1800.00.

Q. And in what denominations was that money? A. Well, it was one-dollar bills.

Q. Now, I show you a piece of paper, that I would ask be marked for identification.

(Paper marked Exhibit S-25 for Identification.)

Q. I ask you if you can recognize that? A. That is my initials, my wrapper.

Q. And what was that one? A. One hundred one-dollar bills.

Q. You put that wrapper one? A. I did.

Q. And you initialed it? A. I did.

Q. Why did you initial it? A. That is an indication, in the case of a shortage, so that I am the man responsible; I wrapped it up.

The Assistant Prosecutor: I offer S-25 for identification into evidence.

Mr. Zabriskie: No objection.
(Paper marked Exhibit S-25 in evidence.)

The Assistant Prosecutor: You may cross-examine.

Mr. Zabriskie: No questions.

THOMAS EDWARD FINNEGAN, sworn as a witness on behalf of the State, testified as follows:
Direct examination by the Assistant Prosecutor:

Q. Mr. Finnegan, you are employed by the New York Telephone Company in the Hackensack Office, are you? A. No, sir; New York Office.

Q. New York Office. Oh, yes. Pardon me. And I show you these two sheets which have been offered for identification as S-19-a and b, and ask you to look at them and tell me if you ever saw them before? A. Yes, sir.

Q. What are they? A. Two payrolls, of a package, of one of two packages that I sent to Hackensack on the 20th of January, this year.

Q. To pay the employes working in Hackensack? A. Yes, sir.

The Assistant Prosecutor: I offer S-19 for identification, a and b, in evidence.

Mr. Zabriskie: No objection.
(Marked Exhibit S-19-a and b in evidence.)

The Court: January 20th, Mr. Finnegan?

The Witness: Yes, sir.

The Court: What day of the week was that?

Thomas Edward Finnegan, direct.

The Witness: Monday.

The Court: When did this thing occur?

The Assistant Prosecutor: Thursday morning, sir; the 21st.

Q. Now, I show you another paper, S-23 in evidence, and ask you if that is the way the payroll was shipped that day, I mean, in the completed package? A. Yes, sir.

Q. In that form? A. Yes, sir.

By the Court:

Q. What is that, the remains of an envelope? A. No. That is the wrapper of a package.

Q. The wrapper of a package? A. Yes, sir.

Q. Now, were these sheets inside of it, or how? A. These sheets are inside of the package.

Q. And the money, too? A. And the money is in pay envelopes, small envelopes, for the individual people.

Q. Little pay envelopes, and then the sheets are wrapped up together in that package, is that right? A. Yes, sir.

The Assistant Prosecutor: You may cross-examine.

Mr. Zabriskie: No questions.

The Court: Probably we shall conclude the day's work at this point, ladies and gentlemen, and the Sheriff has arranged all suitable matters for your comfortable accommodation, and you will have to make yourselves as comfortable as possible until tomorrow morning at ten o'clock, when we will assemble here promply and get to work again.

Testimony.

I think I told you at the noon recess that you could get in touch with your families and business associates, and I assume that that has been done. If there are any further communications you wish to make, there is no reason why you should not make them under the direction of the officers that are detailed to attend you.

The Court will now stand adjourned until tomorrow at ten.

(Adjournment taken at 5:00 o'clock P. M., until tomorrow, Wednesday, February 24th, 1926, at 10:00 o'clock A. M.)

Hackensack, N. J., February 24, 1926,
10:00 o'clock A. M.

TRIAL RESUMED.

The Assistant Prosecutor: We are ready to proceed, sir.

Mr. Zabriskie: I just want to say one thing at this time, your Honors please. There is just one concession—if it be a concession, which I do not consider it to be in this case—that this jury be allowed to go up and view the actual scene. If it meant taking them off in automobiles and by so inconveniencing your Honor in any way or Judge Seufert or anybody involved so that it would prolong the trial, I would be loth to ask it; but it seems to me looking at the diagram is so misleading as compared with seeing the scene itself——

The Court: The Court is inclined to do it, Mr. Zabriskie. What about that, Mr. Prosecutor?

The Assistant Prosecutor: Satisfactory, sir.

The Court: Can that be done at the noon recess, or do you want it done now before you go ahead?

Mr. Zabriskie: It does not make any difference to me, sir.

The Court: We will declare a recess a little bit earlier.

The Prosecutor: We would much rather have it done now, if it is done at all, sir.

The Court: Well, when the State's case is finished, let me know.

The Prosecutor: The State would much rather have it done now, before the State proceeds.

The Court: Oh, I see. What you mean is, send the jury now?

The Assistant Prosecutor: It will only take a few minutes, sir.

The Court: Yes, and no. Well, we have ordered some automobiles to take the jury up there. Are you willing to put on a couple of witnesses while they are coming?

The Assistant Prosecutor: Yes. We will do that. Officer Costy, come forward.

Henry Costy, direct.

HENRY COSTY, sworn as a witness on behalf of the State, testified as follows:

The Court: What became of that sketch that Mr. Schwartz was to fix up? Is Mr. Schwartz here today?

The Assistant Prosecutor: Yes, sir.

Direct examination by the Assistant Prosecutor:

Q. Mr. Costy, you are an officer of the Township of Teaneck Police Department? A. I am.

Q. And did you search the premises shown on these pictures, Exhibits 11, 12, 13 and 14?

Mr. Zabriskie: What is the first name of this witness?

A. Yes, sir.

Q. What is your first name? A. Henry.

Mr. Zabriskie: Nothing to do with the Costy involved in this matter?

Q. You are a brother of the Costy indicted in this case. A. Yes, sir.

Mr. Zabriskie: I did not ask him for that reason, but I just wanted to know his connection with the defendant.

Q. Who was with you at the time, Officer? A. Officer Witham.

Q. Of the Teaneck Police Department? A. Yes, sir.

Q. Who else? A. That is all.

Q. Now, I show you Exhibits S-18-a and b, and ask if you saw these before? A. Yes, sir.

Q. Where did you find those? A. Up on top of the garage.

Q. What garage? A. In the back of this house.

Henry Costy, direct.

Q. Who lives in that house shown in these pictures? A. Mr. Rocksch.

Q. Rocksch. Do you know him? A. No, sir.

Q. Pointing to Exhibit S-13, where in that garage did you—hold it up—where in the garage did you find these bags? A. Over there. There is a little partition up over the door here, inside. (Indicating.) Between the partition and the ceiling.

Q. A little louder; keep your voice up. Now, I show you this Exhibit S-21 and ask you where you found that, if you did? A. In the same place.

Q. And Exhibit S-23? A. In the same place.

Q. Exhibit S-19 a and b? A. In the same place.

The Court: And those are the telephone payrolls?

The Assistant Prosecutor: The telephone payrolls.

The Witness: The same place.

Q. Were they loose or in a package, Exhibits S-19-a and b? A. They were just the way they are now.

Q. And Exhibit S-20, did you find that? A. Also.

Q. The same garage? A. Yes sir.

The Court: What is S-20?

The Assistant Prosecutor: S-20 purports to be the express messenger's receipt, or train messenger's receipt for the shipment.

The Court: It would be much easier for the purpose of the record if you describe them so as to show what they are.

Q. Now, I show you Exhibit S-25, a band that is used to put money together in; did you find that there? A. No, sir. Officer Witham found that.

Henry Costy, direct.

Q. Were you there at the time? A. Yes, sir.

Q. And I show you two automobile plates bearing the numbers 4-N-23-46. A. Also in the same place.

Q. New York, 1926. Where did you find them? A. Up in the garage.

Q. Were these plates on a car? A. No, sir; in with the bags.

The Assistant Prosecutor: I offer these two plates, S-22 for Identification, in evidence.

Mr. Zabriskie: No objection.

(Two license plates marked Exhibit S-22 in evidence.)

Q. And I show you an envelope and a slip marked "Paymaster's Division, New York Telephone Company." Did you find that there too? A. That was also up in the garage.

The Assistant Prosecutor: I offer it in evidence.

Mr. Zabriskie: No objection.

(Marked Exhibit S-26 in evidence.)

Q. Now, were all of these things in the same part of that garage? A. Well, it was partitioned off by two by fours.

Q. I mean all these exhibits. A. Yes, sir.

Q. That I have shown you, were they all in the same place? A. Yes, sir.

Q. And that was exactly where? Could you point it out on this picture, Exhibit S-14, which shows a close-up of the garage door? A. It was up here, right up around in there (indicating).

Q. Just once again so Judge Seufert may see it. A. Up in here (indicating).

The Assistant Prosecutor: You may cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Mr. Costy, you have been co-operating with the Prosecutor's Officers in connection with this case, haven't you? A. No, sir.

Q. Haven't you been helping them? A. Oh, yes, sir.

Q. Yes. You have been helping them in working out this case and bringing it up to its present stage? A. Only by finding the— —

Q. Well, doing everything that you could? A. Yes, sir.

Q. As an officer. You heard the Prosecutor's opening here yesterday? Were you here yesterday? A. Not yesterday morning; no, sir.

Q. You were not here. Well, it is your own brother that is the Costy that was the friend of Kalman in this case, isn't it? A. Yes, sir.

Q. And you naturally have that brotherly love that you do not want him to sit in the electric chair, if possible, do you? A. Yes, sir.

Q. You want to help him, don't you? A. I do.

Q. Yes.

Mr. Zabriskie: That is all.

The Assistant Prosecutor: That is all. Officer Witham.

JESSE WITHAM, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. Did you search Rocksch's garage with Officer Costy of your Police Department? A. Yes.

Q. And I show you Exhibit S-26, an envelope and a slip marked, "Paymaster's Division, New York Telephone Company." Did you find that there? A. Yes.

Q. And I show you S-25 in evidence, a band used to bind bills together. Did you find that there? A. Yes.

Q. And I show you this exhibit, the express messenger receipt book, S-20. Did you find that there also? A. Yes.

Q. And two sheets, S-19-a and b, New York Telephone Company payroll list. Did you find that? A. Yes.

Q. And a piece of wrapper, S-23, marked, "New York Telephone Company." Did you find that there too? A. Yes.

Q. And two automobile license plates, S-22 in evidence. Did you find those? A. Yes.

Q. And two bags, S-19-a and b, marked "Federal Reserve Bank." Did you find them there? A. Yes.

Q. And another bag, S-21. Did you find that? A. Yes.

Q. Were they all in the garage? A. All in the garage.

Q. Now, I show you S-14 in evidence, the garage door of Rocksch's garage, and ask you to hold it up and point out to the jury where in the garage you found these exhibits? A. Right here (indicating), a partition in the ceiling.

The Assistant Prosecutor: You may cross-examine.

The Court: Let me see that picture.

Mr. Zabriskie: No questions.

The Court: Well, I have one or two.

(Referring to photograph.) No questions; that is all.

The Assistant Prosecutor: That is all, Officer. Sheriff Nimmo.

GEORGE P. NIMMO, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. You are the Sheriff of Bergen County? A. I am.

Q. Did you, on the day of this robbery, or shortly thereafter, go up to the American Express Company's office at Hackensack, New Jersey? A. I did.

Q. Who with? A. Undersheriff Donaldson.

Q. And I show you a bullet and ask you if you ever saw it before? A. I did.

Q. Where did you find it? A. In the room—what I think is termed the package room of the American Express Company at Hackensack, about three or four inches from the door entering the office.

The Court: Well, wait a minute.

Q. I show you Exhibit S-8.

By the Court:

Q. Here is the sketch marked S-15. On the sketch marked S-15, just show me, Sheriff, where you found it. A. This is supposed to be the express room, here, is it not (indicating)?

Q. No. Here is where the express— A. That is the package room?

George P. Nimmo, cross.

Q. That is the main package room, as I understand it. A. And that is the entrance of the door, if I understand it.

Q. This is Mercer Street (indicating). A. Mercer Street. Right about there (indicating).

Q. Just outside that door? A. Just outside that door, that is, three or four inches from the door.

Q. Yes.

The Court: You better recall Mr. Schwartz to say what he has done with that sketch, later on.

By the Assistant Prosecutor:

Q. Will you step down, Sheriff, please, and show on this map, show the jury where you found that bullet? A. Just here (indicating).

Q. The space that is marked "express package room"? A. Right about there (indicating).

Q. Now, I have a picture here, Sheriff, Exhibit S-8. Could you indicate to the jury on that picture as nearly as you can where you found it? A. Yes. That scale there was removed, and it was right where the scale stood, right about three inches from the door on the floor.

The Assistant Prosecutor: That is all, Sheriff. I offer this bullet in evidence. I will need an envelope. Any objection?

Mr. Zabriskie: No. No objection.

(Bullet designated as Exhibit S-17 in evidence.)

The Assistant Prosecutor: That is all. Cross-examine.

Cross-examination by Mr. Zabriskie:

Q. Sheriff, will you indicate on the diagram

there, as nearly as you can? If there is no objection, I think a mark may be made with a pencil.

The Court: Mark the letter "B" there with a pencil.

A. The door here, right about here (marking on sketch).

Mr. Zabriskie: A juror wishes to ask a question.

The Witness: Surely.

A Juror: Is that a wire screen between those stalls or a partition?

The Court: I do not know that the Sheriff can tell you that. Mr. Schwartz will when he comes back, and you will also have an opportunity of seeing the place itself. If you will just defer your inquiry until Mr. Schwartz comes back, you can ask him that question. I do not think the Sheriff knows.

The Witness: I do not.

Q. Now, you say this occurrence, so far as you know, took place on the 21st of January somewhere around ten and ten-fifteen, somewhere in that neighborhood? A. I believe it did.

Q. Yes. And when did you find this bullet, Sheriff? A. Between three and three-thirty in the afternoon.

Q. Of that same day? A. Of the same day.

Q. You did not go there alone, did you? A. I did not. In company with Undersheriff Donaldson.

Q. And anybody besides you and Undersheriff Donaldson? A. There was from three to five other men in the baggage room at that time.

George P. Nimmo, cross.

Q. And there had been, as a matter of fact, a great many people around there that day, isn't that so? You saw a great many? A. On the outside; yes.

Q. Well, and there were quite a good many that came inside, weren't there? A. There were about five when Undersheriff Donaldson and I got on the inside.

Q. About what time? A. Between three and three-thirty, the day of the murder.

Q. Of course, you do not know whether or not there were other people in the meantime around, do you? A. I cannot say. I was not there.

Q. When you came there, was the back door open or closed, that is the door that goes toward the station? A. I cannot answer that.

Q. Well, were there any precautions against people coming in there promiscuously? A. I do not know.

Q. Did you have any trouble in getting in? A. None whatsoever.

Q. Did you have to ask anybody? A. I did, to get into the baggage room.

Q. Into the baggage room? A. I believe the man who I now know as Talmadge was standing there.

Q. When you say the baggage room, you mean the——

The Court: The express room?

The Witness: The express room. That is the large room.

Q. The room in which the bullet was found? A. The room in which the bullet was found.

Q. And Talmadge was there? A. I think it was Talmadge, yes.

Q. But after this thing occurred, business went on the same as usual there? A. Well, I cannot answer that.

Q. Well, you have in your investigation of this case heard of more than one shot being fired, haven't you?

The Assistant Prosecutor: I object to this as hearsay, sir.

Mr. Zabriskie: I would like to question him as to his knowledge.

The Assistant Prosecutor: But it would be hearsay knowledge, sir.

The Court: Well, yes. It seems to be hearsay, Mr. Zabriskie.

Mr. Zabriskie: Well, it is cross-examination. It is testing him.

The Court: I know; but hearsay is not any more admissible on cross than it is on direct.

Mr. Zabriskie: For the purpose of testing the accuracy of the witness.

The Court: The question will be excluded, as it now stands.

Mr. Zabriskie: Your Honor will allow an exception?

The Court: Yes.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

Q. Did you see any guns of any kind when you were up there, Sheriff? A. I did not.

George P. Nimmo, cross.

Q. I will just ask one question more. Do not answer it until the Court has ruled. Didn't you hear, and don't you know from information you have received in this case, that Palmer, the man in the cage, shot either once or twice, either in or in close proximity to this building?

The Assistant Prosecutor: The same objection, sir, hearsay. The Sheriff does not pretend to have been at the scene at the time this happened. This was in the afternoon he went there.

The Court: Excluded.

Mr. Zabriskie: Your Honor will allow an exception?

The Court: Take your exception.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

Q. Was your attention called to any other bullet holes in or about the building in which this shooting occurred? A. I did not see any bullet holes at all.

Q. Wasn't your attention ever called to the fact that there was a bullet hole, for example, up in the —I think they call it the coping, up over the door? A. No, sir.

Mr. Zabriskie: That is all.

The Assistant Proscutor: That is all, Sheriff.

By the Court:

Q. Sheriff, this bullet, I suppose, was loose on the floor, wasn't it? A. It was.

Edward H. Schwartz, recalled, direct.

Q. And in such a situation that it might have been kicked around accidentally by somebody, is that right? A. Positively. It was lying there loose.

The Assistant Prosecutor: That is all, Sheriff. Mr. Schwartz.

EDWARD H. SCHWARTZ, recalled as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. Mr. Schwartz, since you were on the stand yesterday, have you followed the Court's instructions in modifying this map so as to show the location of the two desks in the office? A. I did, sir.

Q. Will you point them out to the jury? A. These two outlines marked "flat top desk", "flat top desk," giving the dimensions and the height.

Q. And this line here (indicating), the heavy line, is that a solid partition or just a screen? A. No, sir. It is a wood partition four feet from the floor, where the glass sash begins; the sash is about three feet in height and two feet two inches in width. There are three of them. An unobstructed view can be had through this cage through these windows to this larger room, or vice versa.

By the Court:

Q. Now Mr. Schwartz, this picture S-8 shows part of that screen you are talking about? A. It shows this portion about here (indicating), including this door and this large door here (indicating).

Q. And it shows part of those glass windows? A. Yes, sir; parts of the glass windows.

Edward H. Schwartz, recalled, cross.

The Assistant Prosecutor: You may cross-examine.

By the Court:

Q. Oh, Mr. Schwartz, did you make that change about this little step? A. I did, sir. I removed that line, as you instructed me to. I merely put a dotted line.

Q. And that is an open passage and simply a little three-inch riser? A. No obstruction there, with the exception of this counter, a passage between the counter and the building wall.

Cross-examination by Mr. Zabriskie:

Q. And then this is a door opening into the big room? A. It is, sir.

Q. And in which there is a glass window, through which one can plainly see from this space in front of the cage in through the big room? A. Yes. There is no obstructed view there.

Q. And there is an unobstructed view from either of these two desks out toward Moore Street? A. Yes. There is no obstruction there.

Q. You can refer to your diagram and answer the questions, if you like, Mr. Schwartz. The distance, Mr. Schwartz,— —

Mr. Zabriskie: This is a little out of order, but I am doing it to save time while Mr. Schwartz is here.

Q. The distance from the window adjacent to where these desks are placed to—well, the point to the side of—the opposite side of Moore Street, would be about how many feet? A. Forty-two feet two inches to the curb, the opposite side of Moore Street.

Edward H. Schwartz, recalled, cross.

Q. Well now, then, have you paced it off? Assuming that an automobile were standing here at the side, allowing for the width of an automobile, pacing over directly to the window, how many feet do you think that would be? A. About thirty-seven feet.

Q. It would be about twelve paces, then, as we step along; one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve; something like this, the distance from the window to the place where the automobile was parked? A. Well, merely surmising it is about that distance, it would be about thirty-seven feet that you have got to reduce or minus the width of the automobile from the curb.

Q. Yes.

Mr. Zabriskie: That is all.

The Assistant Prosecutor: That is all, Mr. Schwartz. Charles Strand.

The Court: If you are going to call Mr. Strand, I think this is a good time to have the jury go and make their visit.

Mr. Zabriskie: If your Honor please, now as I understand it, I would prefer not to go up myself, and not have anybody from the Prosecutor's office; just let the jury go with the officers.

The Court: I think the jury and the officers in charge of them should go alone. The officers should not tell the jury anything whatever about the *locus in quo*, or anything with reference to the case. They should simply take them up there and let them look at the express office, identify it,

if you please, with the photographs and with the diagram, and draw their own conclusions from what they see on the ground. And the Court will ask the jury to be very careful not to ask any questions of anybody as to what happened, or how things were, or how they are, or get any information whatever about the case except right here in this court room from a witness under oath and in the presence of the Court.

A Juror: Where was the bullet found, the particular spot where the bullet was found?

The Court: You can locate that by taking up the sketch with you and verifying it by the sketch. The Sheriff has marked the place, hasn't he? Yes, by this small letter "b" here on the sketch. Now, when you have that sketch up there with you, you can check that up by the sketch; it is just outside the jamb of that door.

A Juror: Inside the baggage room?

The Court: Well, yes; it is in the baggage room; not the baggage room, the— —

The Assistant Prosecutor: The freight room, sir.

The Court: It is called here the express package room. It is the large room, what you would call the ante-room to the private office, as I take it; is that right, Mr. Zabriskie?

Mr. Zabriskie: Yes, your Honor.

The Court: I do not want to be telling this jury anything that you are going to object to.

Mr. Zabriskie: I think that is correct. That is the large room.

The Prosecutor: I should tell the Court that the express office does not open until half past ten, and it became necessary to send an employe of the express company, who has been in court, ahead to open the office so that he will be there, and my whole purpose in sending him there was so that he might open the office to receive them. The officers accompanying the jury may tell him to step aside if it pleases the jury to have him.

The Court: Now, the jury may as well retire.

(The jury retired to view the office of the American Railway Express Company at the N. Y., Susquehanna & Western R. R. station, Hackensack, N. J., in charge of two officers; Exhibits S-1 to S-10 inclusive, and Exhibits S-12 to S-14 inclusive, photographs, and Exhibit S-15, the sketch, were taken with them by the jury.) (10:40 o'clock A. M.)

(The jury returned at 11:00 o'clock A. M.)

CHARLES STRAND, sworn as a witness on behalf of the State, testified as follows:

Direct examination by the Assistant Prosecutor:

Q. You live in New York, do you, Mr. Strand?

A. Yes, sir.

Charles Strand, direct.

Q. Married? A. Yes, sir.

Q. Any children? A. Yes, sir.

Q. And do you remember the hold-up of the American Railway Express office in Hackensack? A. Yes, sir.

Q. Do you remember the day of the week that was? A. The 21st of January, 1926.

Q. Now, on the Monday before that, were you in Hackensack? A. Yes, sir.

Q. Who with? A. James Lynch and Mike Corcoran.

Q. A little louder. A. James Lynch and Mike Corcoran.

Q. By James Lynch, you mean the defendant seated at the end of the counsel table there? A. Yes, sir.

Q. And in whose automobile did you come out? A. Corcoran's.

Q. What kind of an automobile was it? A. A Chrysler car.

Q. An open or closed? A. A closed car.

Q. And a sedan or coupe? A. Sedan.

Q. And where did you come to in Hackensack? A. Come to?

Q. Yes. A. Come over the 125th Street ferry.

Q. And then where did you go? A. Up Main Street.

Q. Hackensack? A. Yes, sir.

Q. Do you remember where you stopped on Main Street? A. We stopped in front of a drug store.

Q. Was it near this building? A. I couldn't tell you.

Q. And anybody get out of the car? A. Yes, sir.

Q. Who? A. Corcoran.

Q. And who stayed in the car? A. Me and Lynch.

Q. Did you or Lynch say what you were doing in Hackensack? A. No, sir.

Q. And did Corcoran come back in the car? A. After a while; yes, sir.

Q. Did he go in the drug store? A. Yes, sir.

Q. And after a while, when he came back in the car, did you go anywhere? A. Not—not then; not for ten minutes.

Q. You stayed there? A. Yes, sir.

Q. And after ten minutes, where did you go? A. We waited there. Corcoran come out of the druggists after him telephoning.

Q. And did anybody else come up after you had waited ten minutes? A. Yes, sir.

Q. Who? A. Frank Cuneo.

The Assistant Prosecutor: (To an officer) May he come to the door, please? (Man appears.)

Q. Is this the person you mean is Frank Cuneo? A. Yes, sir.

Q. The witness. Who introduced him? Who introduced Cuneo to you? A. Corcoran.

Q. Was Lynch there? A. Yes, sir.

Q. And then where did you go with Cuneo and Lynch and Corcoran? A. Took a ride in back of the State roads, through the woods.

Q. A little louder. A. In the back woods, through the woods, on the State road.

Q. Did you come back to Hackensack? A. Yes, sir.

Q. Where did you go to in Hackensack when you came back? A. Stopped at the Public Service.

Q. This was the Monday before the robbery? A. Yes, sir.

Q. The Public Service on Main Street? A. Yes, sir.

Charles Strand, direct.

Q. And what did you do then? A. We parked there.

Q. Yes. What did you-- A. Cuneo said, "Somebody come out with me and go down to the railroad station." So Corcoran said, "Go ahead, Charlie, go down with him."

Q. And Lynch was there when this was said? A. Yes, sir.

Q. Yes. And did you go down with— A. Yes, sir.

Q. —Frank Cuneo to the Hackensack station? A. Yes, sir.

Q. Who stayed in the car? A. Lynch and Corcoran.

Q. And did you go back to the car again? A. Yes, sir.

Q. And where did you go when you got back to the car? A. We went—we sat in the car for a few minutes, and was talking.

Q. Who was talking, all of you? A. The four of us.

Q. About what? A. That Corcoran said to Cuneo he should give him a ring.

Q. What else? A. That was all, and Cuneo left, and we went back to New York.

Q. Was there any conversation before you and Frank Cuneo went down to the railroad station as to where you were going or what you were going to do? A. Yes, sir. I asked him.

Q. Was Lynch there? A. No, sir; I was alone with Cuneo.

Q. And when did you next see Lynch after that Monday before the robbery? A. Thursday morning.

Q. Thursday of the robbery? A. On the 21st.

Q. Where did you meet him? A. Tenth Avenue, Thirty-fourth and Thirty-fifth.

Charles Strand, direct.

Q. Who made the appointment? A. I do not know.

Q. Well, who told you to be there at Tenth Avenue and Thirty-fourth? A. I was supposed to meet Corcoran at his house with the car.

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

Q. Was Lynch in the car? A. Not—not then.

Q. Where did you meet Lynch, you and Corcoran? A. Thirty-fourth Street and Thirty-fifth Street, Tenth Avenue.

Q. On Tenth Avenue between Thirty-four Street and Thirty-fifth Street? A. Yes, sir.

Q. Well, Lynch lived right near there, didn't he? A. Yes, sir.

Q. Where did you go after you met Lynch? A. Went up Tenth Avenue to Seventy-second Street and Broadway, through Seventy-second to Riverside Drive, up Riverside Drive to the ferry.

Q. To the Edgewater Ferry, Fort Lee Ferry? A. Yes, sir.

Q. And did you come over the ferry? A. Yes, sir.

Q. Did you three meet anybody when you got to Edgewater? A. Yes, sir.

Q. Who? A. Not right away.

Q. Well, after a while, who? A. Cuneo.

Q. And was he in a car or not? A. He was in his own car.

Q. What kind of a car did Cuneo have? A. Buick.

Q. Closed or open? A. Closed.

Q. A sedan or coupe? A. Coupe.

Q. Do you remember the color of it? A. Yes, sir.

Q. What? A. Blue.

Q. And what did you do when you met—when Cuneo came around to the ferry? A. Cuneo

parked about two hundred feet away from our car; he walked on and got in the car.

Q. Got in your car with you three, you mean? A. Yes, sir, sat in the Chrysler car with us. Pulled out two pieces of paper; one was a map of the express office, how to go in.

Q. Yes. And was anything said at that time as to what you had the map for, or anything of that kind? A. How to go in.

Q. How to go in the express company building? A. And where the money would be laid.

Q. And then did any of you leave the ferry house? Did you leave Edgewater then? A. Yes, sir.

Q. And who was in the car with you? A. Cuneo.

Q. Cuneo was in the car. Well, you got in Cuneo's car, do you mean? A. Yes, sir.

Q. And when did you next see Lynch after you and Cuneo and the others left Edgewater? A. They followed Cuneo's car.

Q. Just take your time. Now then, did you come to Hackensack? A. Yes, sir.

Q. Which of the two cars was first, the Cuneo car or the Corcoran car? A. Cuneo's car.

Q. Did you stop in Hackensack? A. We stopped before we hit Hackensack.

Q. What did you do then? A. Stopped and got out to buy a ball of cord.

Q. And when you got to Hackensack, where did it stop, where did you stop? A. When we first hit Hackensack?

Q. Yes. The first stop in Hackensack. A. We went right clean through to Main Street. Right clean through to Main Street. I do not know what street we turned; we turned to the left.

Q. You turned to your left? A. Towards the woods, towards the west.

Charles Strand, direct.

Q. You turned toward the woods. Went how far? A. Yes, sir. It is over about a mile or a mile and a half. We come to a short block and we went in the center of that short block and changed plates.

Q. I see. Now, I show you Exhibit S-22, this plate 4-N-2346. Did you put those plates on the Chrysler or take them off; which did you do? A. They were put on the Chrysler.

Q. While you were standing there? A. Yes, sir.

Q. In the woods. Well, what plates were on before they changed plates, do you remember? A. The right plates that belonged to it.

Q. And after the plates were changed, where did you go then? A. We—Cuneo and Corcoran got in the car, in his car.

Q. Got in Cuneo's car? A. Yes, sir.

Q. Or Corocoran's? A. Corcoran and Cuneo got in Cuneo's car.

Q. Got in Cuneo's car. Yes? A. In the Buick.

Q. In the Buick. And then where did you go? A. And me and Lynch was in Corcoran's car, the Chrysler.

Q. Who drove it? A. I drove the Chrysler. And they told me to meet them at 235, at the Public Service.

Q. 235 Main Street, Hackensack? A. Yes, sir.

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

Q. And when you got there, what did you do? A. I stood there. Cuneo and Corcoran went some place to look the roads over.

Q. And then what car did you get in? A. I stood in the Chrysler car at the Public Service.

Q. You stayed in the Chrysler car. And who left? Did the Chrysler leave the Public Service? A. It stood there until Cuneo and Corcoran come back.

Charles Strand, direct.

Q. When Cuneo and Corcoran came back, then who got in the Chrysler? A. Corcoran, me and Lynch.

Q. Who drove it? A. Corcoran.

Q. Where did you drive to? A. Drove straight down Main Street across the railroad tracks.

Q. To where then? A. And down to the next block, we turned to our left.

Q. You turned to your left? A. Down one block, turned to our left again.

Q. Oh. And do you remember the name of the street? Did you find out the name of the street that you came up? A. Moore Street.

Q. So then, as I understand it, you crossed the railroad tracks? A. Going down— —

Q. Did you pass the station? A. Yes, sir.

Q. Down another block? A. Yes, sir,

Q. And then turned left? A. Yes, sir.

Q. And left again into Moore Street? A. Yes, sir.

Q. Then, when you got into Moore Street, how far did you go on Moore Street? A. To where the buses are.

Q. To where the buses are? A. Yes, sir.

Q. And where did the Chrysler stop, do you remember? A. Right at the factory there.

Q. At the factory? A. Yes, sir.

Q. Who got out? A. Nobody got out.

Q. Well, did you go some more; did you move after that? A. No, sir; stood there for a while.

Q. Yes. A. There was a car standing up between the railroad track and the car track.

Q. Between the railroad station— A. The track and the car track.

Q. On Moore Street, you mean? A. Yes, sir. Corcoran wanted to pull the car in there.

Q. Yes. A. So we went in there for a while.

Q. And did you get in there after a while? A. No, sir. So while we were standing there, Corcoran said, "Get out." Lynch gets out first, and I followed Lynch.

Q. Yes. And where did you go? A. Walked up to the corner.

Q. What corner? A. To Mercer Street corner.

Q. Mercer and? A. And Moore.

Q. Yes? A. Lynch crosses up—goes up to Main Street, looks at the cop's booth.

Q. Is there a police booth there? A. Right at the bank; yes, sir.

Q. And what did he do after that? A. Crosses over and comes down on the American Express side.

Mr. Zabriskie: I beg pardon. I did not hear that.

The Court: "Crosses over and comes down on the American Express side."

Mr. Zabriskie: Who did that?

The Court: Lynch?

Mr. Zabriskie: I beg pardon?

The Court: Lynch.

Q. And then where did you or he go? A. I was standing at the lunch wagon side.

Q. That is across the street? A. Yes, sir.

Q. Yes. A. Lynch called me over.

Q. Speak out good and loud, now. Did you go? A. I goes over; yes, sir.

Q. Yes. And anybody go in the express company office? A. Not then.

Q. Well, afterwards? A. We—I hesitated.

Q. Yes. A. So he said, "Go ahead."

Q. And did you? A. I said, "Wait a minute,

Jim; don't go too quick." He said, "Go ahead; go ahead in." So I said, "All right." I went in the Mercer Street door. He goes around——

Q. The Mercer Street door. Just wait a moment, now. I show you a picture. Now, here is Exhibit S-5. Do you see that? A. Yes, sir.

Q. Exhibit S-5. Now, does that show the door you went in? Look at it. A. Yes, sir.

Q. Where? A. (indicating on Exhibit S-5).

Q. Now, I am going to hold it up and show the jury. Now, put your finger again on where it was. A. The small door (indicating).

Q. And where did Lynch go? A. He walked around where the railroad tracks are.

Q. Yes. A. And he went in the big sliding door between the station, the railroad station and the express, and walks in through that big sliding door.

Q. Well, what did you do when you went in the office part? A. I asked to ship a trunk.

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

The Assistant Prosecutor: Will you stand up, please, Mr. Talmadge? (Man stands).

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

Q. And Palmer, that is in the witness room? A. Yes, sir.

Q. And what did they say to you? A. He said, "I will be with you in a minute."

Q. All right. Then when did you next see Lynch? A. All of a sudden, I heard a shot. I turned around and I seen a man fall. Lynch came in, hollers "hands up"; I am running out to the door. Lynch comes over to me and sticks a gun in my side, and said, "Get inside or I'll give you or the others the same dose I give this man inside." And I went over to where——

Charles Strand, direct.

Mr. Zabriskie: Just a little slowly so we get that accurate.

Q. Go slowly and speak out loud. "And you went over"—go on. A. I went over to the railing where I was talking to Palmer or Talmadge, and I stood there; and Lynch said, "Go in and get the money." As he said that, he said, "Wait a minute. I want to get this fellow inside; he is hollering too much out there." So he goes in and drags the man in and puts him in the express office and lays him in the center of the floor, and comes over to me and pushes me in the face and said, "Go in and get the money,"——

Q. Take it easy. A. —which I did. He told me to take it off the safe and off the stool, come out with the money.

Q. Was it in bags like this, Exhibit S-18-a and b, bags like that? A. Yes, sir; the bags which they get like that.

Q. At the time were they sewed up tight? A. They were sewed up.

Q. Then where did you and Lynch go? A. Come out of the cage. He said, "Get the rest of it." I said, "There is no more there." He said, "There is, go in again." I had to go in again. I said, "There is no more." So he turned around and he asked the two men standing there in front of him if there is any more money, where is the rest of it? They said, "There is no more; he is telling you the truth." So he said, "Go ahead out." I walks out and goes to the car. As I was going out, I stepped over the body.

Q. Of the man that died? And then did you get in the car? A. Yes, sir.

Q. And what street did you go on, the car, you and Lynch? A. Moore Street.

Charles Strand, direct.

Q. Up Moore Street? A. Yes, sir.

Q. Then where did you go from there? A. As far as we could go.

Q. On Moore Street? A. Yes, sir.

Q. And then where did you go after that? A. Turned to our left to Main Street.

Q. And then do you remember where you went? A. We turned to our left as far as we could go on Moore Street.

Q. Yes. A. Up to Main Street; then turned to our right.

Q. Now, just wait a minute now, please. Now, here is a picture, S-10 in evidence. Is that where you turned from Moore Street into the other street, or do you recognize it? A. Yes, sir; I do.

Q. Is that where you turned? A. Yes, sir.

Q. You turned around—show the jury what you showed me. A. Turned right around (indicating).

Q. And then, when you turned around on that street, you got into Main Street, did you? A. Yes, sir.

Q. And where did you go on Main Street. A. As far as the lights, the blinker lights.

Q. And then did you turn? A. Yes, sir.

Q. What direction? A. Right.

Q. How far did you go on that road? A. As far as we could. There was a blue sign there.

Q. Did you cross the Hackensack River? A. Yes, sir; we crossed a bridge.

Q. And now I show you another picture, Exhibit S-12, supposing to represent Rocksch's house; did you go there? A. Yes, sir.

Q. And what did you three do when you went to Rocksch's house? A. Pulled in here at the entrance of the gate. I had to get out and open up the gate. The gate was closed.

Charles Strand, direct.

Q. Now, on the way to Rocksch's house, what did Lynch do, anything? A. Yes, sir.

Q. What? A. The money bags——

Q. What did he do? A. —was cut open.

Q. What did he do? A. He took the money out and put it in his pocket.

Q. What did he do with the money, put it all in his pocket? A. Not all of it; he couldn't get it all.

Q. And what did you do with the money; did you have anything to do with it? A. I put some in my pocket; yes, sir.

Q. How much did you put in your pocket? A. Well, what was left there.

Q. How much was that, do you know? A. No, sir; I do not.

Q. And did you have any money on you at the time that you were arrested by the New York police? A. Yes, sir.

Q. I show you an envelope purporting to contain one hundred and sixty-three one-dollar bills. Where did you get that $163.00 from? A. That was the money.

Q. From where? A. From the American Express office.

The Assistant Prosecutor: I offer the package in evidence, sir.

Mr. Zabriskie: No objection.

(Marked Exhibit S-27 in evidence).

Q. Do you remember where you were, where the automobile was at the time that you put money in your pocket, and Lynch put money in his pocket? A. Where it was then?

Q. Yes. Was it in Hackensack, or some other place? A. Yes, sir. I didn't know where it was; no, sir; I didn't know.

Q. Now, to proceed. You went in this drive-

way, you say, just showing the jury on Exhibit S-12 Rocksch's house. Go on, now, and show us what you did. A. Corcoran drove the car, passing this here gate. I had to get out to open the gate. He drove in. There was a garage over here, a slanting wooden garage.

Q. That is this garage on S-13, a garage or shed? A. Yes, sir; that is the garage. There was a pipe up against—holding the two doors. I took the pipe down and opened the doors. There was a car inside.

Q. What kind of a car was it, do you remember? A. A Ford car.

Q. A Ford. Yes? A. Me, Cuneo, Lynch, and Corcoran pushed the Ford car out, got the car out, we pushed it back, and Corcoran got in and drove the car into the wooden garage.

Q. Drove what car? A. The Chrysler car.

Q. Drove the Chrysler. And what was done then in the garage after you had driven the car in? A. The money was taken out of the car and the bags was put up in the unfinished ceiling in the garage.

Q. That is these bags, Exhibit S—— A. Yes, sir.

Q. ——18-a and b, and Exhibit S-21? A. Yes, sir.

Q. And was this Exhibit S-23 around there? A. Yes, sir.

Q. Was that put in the same place? A. Yes, sir.

Q. And these other things, the Exhibits S-19, I think,—yes, 19-a and b, the telephone company payroll, were they put there? A. Yes, sir.

Q. And this receipt book, where did that come from? A. That was in the big bag with the telephone book.

Q. And that was put there, was it? Exhibit S-20, this book S-20, was that there? A. Yes, sir.

Q. And these, S-26, a New York Telephone Company envelope and a paymaster's receipt, was that there too, or one like it? A. I couldn't tell you that. I didn't see that.

Q. A little louder. A. I didn't see this.

Q. And what was done with these plates, Exhibit S-22, the 4-N-2346? A. They were brought up by Frank Cuneo.

Q. Where? A. And told to change them.

Q. Who changed them? A. Why, me and Lynch changed them.

Q. Where did you leave them? A. We left them up in the unfinished ceiling.

Q. And did Lynch say anything in the garage? Did Lynch do any talking in the garage? A. Yes, he did. He told Cuneo—he told Cuneo to go down to the express office after——

Mr. Zabriskie: Is this that you heard?

The Court: Did you hear him say this?

The Witness: Yes, sir.

The Court: Yes. All right.

Q. What did he tell him? A. He told Cuneo to go down to see how everything is down at the express office. Cuneo said he would, but not right away.

Mr. Zabriskie: I beg your pardon. Has the time been fixed when that statement was made?

The Court: You can fix it.

Q. Then where did you go from the garage? A. Cuneo went out of the garage first. He went up to this here house. All of a sudden I heard a window go through.

Q. And what window was broken? I show you Exhibit S-11. See if you can give us an idea of what window was broken. A. The door window here on the porch (indicating).

Q. S-11, all right. It was broken; and then where did you go, or what did you do? A. He went in there.

Q. Who? A. I didn't see him go in, but he must have went in. He got Lynch out first.

Q. Yes. A. Lynch went out afterward, while he called Cuneo out.

Q. Out of the garage, you mean? A. Out of the garage, one at a time. Then he called me out.

Q. And where did Lynch go when he was called out of the garage? A. Into the house.

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

Q. What did you do, all of you do, when you went in the house? A. We went in the house. We walked around, and they didn't see no place to sit, so they went upstairs. We went up one flight to the front.

Q. Did you know this man Rocksch? A. I knew him; yes, sir; but I never knew where he lived.

The Assistant Prosecutor: (To an officer) Might he be called to the door? (Man appears).

The Court: Who is that standing in the doorway?

The Witness: That is Rocksch, Mr. Rocksch.

Q. All right. Well, when you all got in the house, Rocksch's house, what did you do? A. Went upstairs one flight to the front, and on the right hand side there was a bed room. We went

in the room and the money was thrown on the bed.

Q. And did you have anything to do with the money? A. Not then.

Q. After? A. That was the time Cuneo was sent to go down.

Q. Did he say why he wanted—did Lynch say why Cuneo was to go to the express office?

Mr. Zabriskie: I object to leading.

The Assistant Prosecutor: Well, I will withdraw the question.

Q. Tell me all that Lynch said about Cuneo going down? A. He just told him to go down to see how everything is, and to find out if they got the number of the car, and find out if the man is dead.

Q. And did Cuneo leave the house? A. He left.

Q. How long was he gone? A. About an hour and a half.

Q. What were you and Lynch and Corcoran doing while Cuneo was away? A. Opened up this here package here with the red seals on it, this here yellow package.

Q. Marked "New York Telephone Company," S-26, is it? 23, this Exhibit S-23? A. Yes, sir.

Q. Yes. A. Opened it up. There was envelopes. They started tearing the envelopes open and taking the money out. So I helped them tear them open. They got all the money out. I went down and burned them in the stove.

Q. Burned them? A. Burned them up in the stove downstairs, and they told me to stay down there and watch out.

Q. And then? A. They were upstairs.

Q. Did you go up afterwards? A. After a while, when they called me up; yes, sir.

Q. What did you do? A. They called me up, and they said, "There is your money on the bed."

Q. "There is your money"? A. Yes, sir.

Q. And did you take it? A. Yes, sir.

Q. How much money was it? A. I couldn't tell you; it was all unwrapped.

Q. Then what did you do? A. I took it and I put it in my pocket, and I went downstairs.

Q. And then? A. I was down there with them, and we started playing cards.

Q. What room were they playing cards in? A. I was playing in the kitchen, and we were playing in the dining room.

Q. And when did Cuneo come back? A. He come back, in about an hour and a half's time he come back.

Q. Did he stay there all afternoon when he came back? A. No. He come back—he come back about after twelve, a little after twelve.

Q. Twelve o'clock in the afternoon, day time? A. Yes, sir.

Q. And what was said by Lynch, or by Cuneo to Lynch when he came back? A. Cuneo—Cuneo said that the man ain't dead, and they don't know who done it. He said there was about thirty-six thousand dollars taken.

Q. Then what did you do then, or at the house? A. Cuneo and me and Lynch played cards.

Q. Did Lynch say anything to Cuneo when he told him that about not being found; did Lynch say anything? A. Found?

Q. When Cuneo came back and said he had been to the express office, what did Lynch say?

Mr. Zabriskie: I object as leading.

The Assistant Prosecutor: I am only fixing the time.

Mr. Zabriskie: He said, "What, if anything, did he say"? I object to the form.

The Court: I do not see any objection to it. What is the objection?

Mr. Zabriskie: I object on the ground that it is leading, and I think it goes beyond simply recalling the incident.

The Court: Well, the question is a formal question; when Cuneo came back and reported, did Lynch say anything and, if so, what? I suppose you can reframe it that way. Go on, Mr. McCarthy.

The Assistant Prosecutor: Will you read it?

(Question read.)

The Court: If anything?

Q. If anything? A. He asked him if the man is dead, or if they found out the number of the car. He said no, that they thought it was a yellow car or a blue car or a Velie, never thinking it was a Chrysler car.

Q. And then what did you four do then? A. We played cards.

Q. Did you stay there all afternoon, all four of you? A. Yes, sir. No, sir; not all of us.

Q. Who left? A. Cuneo left in an hour, about an hour after that.

Q. Was he gone long? A. He was gone until about six o'clock at night.

Q. And who was there when he got back to the house? A. Me. Corcoran and Lynch.

Q. And what were you doing all afternoon? A. Playing cards.

Q. Well, didn't you eat that day at all? A. Yes, sir.

Q. What? A. Yes, sir. Cuneo——

Q. Where? A. —brought it back at six o'clock.

Q. When Cuneo came back the second time, was there any conversation? A. Yes, sir.

Q. Was Lynch there? A. Yes, sir.

Q. What did Lynch say? A. Lynch just asked him how did the fellow make out. Cuneo said he died, and that they got the license plates numbers.

Q. What did Lynch say then, if anything? A. What?

Q. What did Lynch say? A. He said, "Well, I gave him a chance; why didn't he take it?"

Q. And what time did you leave Rocksch's house? A. About twenty minutes to seven.

Q. What time did Lynch leave? A. The same time.

Q. What time did Cuneo leave? A. He left with Corcoran.

Q. Was that before or after—— A. Yes, sir.

Q. —you and Lynch left? A. Corcoran and Cuneo went first to show him where the car was.

Q. In whose car did you leave? A. I didn't leave in no car.

Q. How did you get back to New York? A. By bus.

Q. A bus over what ferry? A. Dyckman Street ferry.

Q. Which way did Lynch go? A. The same way.

Q. Did you go to New York with Lynch? A. Yes, sir.

Q. Where did you leave Lynch in New York? A. Seventy-seventh Street, between Second and Third Avenue, in front of Corcoran's house.

Q. Did you have a gun that day? A. No, sir.

Q. Did anybody in your party have a gun here in Hackensack? A. Yes, sir.

Q. Who? A. Lynch and Corcoran.

Q. When did you first know that Lynch had a gun? When did you first see a gun on Lynch? A. When we got to Edgewater ferry, over on the New Jersey side.

Q. When did you last see Lynch's gun that day? A. Getting taken out of the Buick car in front of Corcoran's house at Seventy-seventh Street, between Second and Third Avenue.

Q. When you were in Teaneck, did you see Lynch's gun? A. Yes, sir.

Mr. Zabriskie: Now, I object as being absolutely leading, putting the answer right in his mouth. He only has to say yes to that, because he made an answer that the Prosecutor did not like. It is an absolutely leading question.

The Court: Well, the Prosecutor will be careful not to lead.

Mr. Zabriskie: I object to this line.

The Court: Well, the question has been answered, so the Court cannot very well do anything about it.

Q. When did you see a gun in Teaneck? A. On the dresser in Rocksch's house.

Q. Who put it there? A. Lynch.

Q. Was there any conversation at the time? A. Yes, sir.

Q. Who spoke; who did the talking? A. Lynch.

Q. What did he say? A. He broke open the gun, he pulled it open.

The Court: Mr. McCarthy, be a little bit careful about what was said at this point.

The Assistant Prosecutor: Very well, sir.

Q. And did you see Corcoran with a gun? A. Yes, sir.

Q. When did you first see Corcoran's gun? A. I seen it at the express office.

Q. When did you see Lynch next after you left him that night in New York? A. Thursday night.

Q. Yes, after that Thursday night. A. I didn't see him until Sunday night in police headquarters.

Q. Now, going back to the time that you and Lynch were in the express company office, where was Corcoran? A. Outside in his car.

Q. Did he get out of the car at all? A. No, sir.

Q. Was the motor running,—— A. Yes, sir.

Q. —or was the car stopped entirely? A. Running.

The Assistant Prosecutor: You may cross-examine.

The Court: One moment.

By the Court:

Q. Strand, I understood you to say something about a remark made by Lynch when he heard the man was dead. Will you repeat what he said at that time? A. When he was dead?

Q. Yes. When he heard he was dead. A. He said, "I gave him a chance, a good chance; why didn't he take it?"

Q. Yes.

The Assistant Prosecutor: Now, one question I overlooked.

By the Assistant Prosecutor:

Q. Now, will you point out the Lynch that you are talking about all through your testimony? A. Yes, sir.

Charles Strand, cross.

Q. Where is he in the court room? A. Sitting down over there (indicating).

Q. Indicating the defendant.

The Assistant Prosecutor: You may cross-examine.

Cross-Examination by Mr. Zabriskie:

Q. Strand, you seemed to be on the point of crying while you were on the stand. Why was that? A. It hurts me; that is why.

Q. Well, what hurts? A. Because I was threatened into this here crime to come over here.

Q. By whom were you threatened to come to the crime? A. By Corcoran and Lynch.

Q. Well, the first trip over here, didn't you and Corcoran go down and get Lynch? A. He is telephoned.

Q. Yes or no? A. I didn't go down for Lynch. Corcoran went for Lynch.

Q. The second time that you came over, isn't it a fact that you drove with Corcoran in Corcoran's car down to Lynch's house to get Lynch? A. I didn't know where we were going; no, sir.

Q. Didn't you get Lynch right at his house? A. Yes, sir.

Q. On the second time, the day that this deed was committed? A. Yes, sir.

Q. Yes. And didn't you on the first time? A. On the first time, I didn't know where we were going.

Q. Yes. But you went to Lynch's house with Corcoran, didn't you? A. Yes, sir; we did; yes, sir.

Q. What is Corcoran's first name? A. Mike.

Q. And you always called him Mike, did'nt you? A. Yes, sir.

Q. Now, I ask you again, why were you crying? Were you crying on account of your wife and

children? A. No, sir.

Q. Were you crying on account of Lynch's wife and youngster here? A. No, sir.

Q. You know them, don't you? A. Yes, sir.

Q. Yes. You know that is his wife, don't you? A. Yes, sir.

Q. And you know that that little youngster is his, don't you? A. Yes, sir.

Q. Now, can you give me any better answer why you were crying, almost, on the stand. A. Yes, sir.

Q. Why? A. Well, it hurted me to see that man get shot.

Q. Well, as soon as the man was shot, did you do anything, help out, or—— A. I wanted to run out.

Q. Now, you have talked to a great many people about this case, haven't you? A. No, sir.

Q. Well, you have made some statements, haven't you? A. I made a confession.

Q. You and Corcoran were locked up together, or at the same time, weren't you? A. Yes, sir.

Q. And you were in jail in New York a couple of days, weren't you? A. Yes, sir.

Q. And Corcoran at the same time was in jail a couple of days, wasn't he? A. No, sir.

Q. How long? A. I couldn't tell you. I heard that he got out, he got out.

Q. Don't you know, Strand, that it was on your story that you absolutely exonerated Corcoran so that he was let out of jail? A. Under threats.

Q. Answer my question. Isn't it a fact that it was on your story, in which you said that Corcoran had nothing to do with this case,— A. I couldn't—

Q. —that Corcoran was let out of jail, and the blame of this thing was put on this man Lynch, if you know?

Charles Strand, cross.

The Assistant Prosecutor: Objected to as already answered. He said under threats, he did.

The Court: No. Counsel is entitled to a direct answer. Answer it directly.

A. I couldn't tell you if he was.

By the Court:

Q. Well, the question is, whether under threats or otherwise, you made any statement that Corcoran had nothing to do with it? A. Yes, sir.

Q. Did you say that? A. Yes, sir.

Q. You did make that statement.

The Court: That is what you wanted, Judge Zabriskie?

By Mr. Zabriskie:

Q. Well, you did make the statement that Corcoran was innocent, in New York, didn't you? A. Yes, sir; under threats.

Q. Well, you made it? A. Yes, sir.

Q. Now, you subsequently made a confession in the presence of Mr. John Valuzzi, who is connected with the Prosecutor's Office, did you not? A. Yes, sir.

Q. You made that on about January the 24th, did you not? A. Yes, sir.

Q. By the way, how long have you been driving an automobile, Strand? A. About eleven years.

Q. Eleven years? A. Yes, sir.

Q. Did you ever have an automobile accident whereby anybody was killed? A. No, sir.

Q. Have you ever been convicted of crime? A. Yes, sir.

Q. Do you know what homicide is? A. Yes, sir.

Q. Isn't homicide the crime of which you were convicted? A. Yes, sir.

Q. And on which you were sent to Elmira Reformatory? A. Yes, sir.

Q. And on which you served a sentence? A. Yes, sir.

Q. And that was how long ago? A. 1909.

Q. 1909. Now, in this statement to which I have referred to John Valuzzi, did you say this: "I met James Lynch at 8:45 A. M. on January the 18th at Seventy-Seventh Street and Second Avenue, New York"? A. I do not remember.

Q. You do not remember? A. No, sir.

Q. Didn't you then say, "He asked me to go to Jersey with him"? A. I do not remember.

Q. Didn't you say, "At nine o'clock, we took a trolley to the Edgewater Ferry, and after crossing the ferry, took another trolley at Edgewater and went to Hackensack?

The Assistant Prosecutor: I object to this line, sir. Counsel is reading from a newspaper,——

A. No, sir.

The Assistant Prosecutor: —attempting to test this witness's recollection by what purports to be something in a newspaper.

The Court: It does not make any difference. The counsel is entitled to use the newspaper as a basis of his question; but the question is whether the witness actually made any such statement. Go on.

Q. And didn't you say, "We got off at the Susquehanna Depot at Main and Mercer Streets at ten-thirty A. M."? A. I do not remember; no, sir.

Charles Strand, cross.

Q. Well, might you have said these things? A. Well, I might. No, I didn't say them.

Q. Well now, you might, and no; which do you mean? You might, or no? A. I didn't say them.

Q. You didn't say them? A. No, sir.

Mr. Zabriskie: I will ask you, Mr. Prosecutor, to produce the first statement from which the copy was given to the Evening Record.

The Assistant Prosecutor: No notice.

Mr. Zabriskie: I will ask for it at this time so there will be no argument about it later on.

Q. Didn't you say there, "We met Edward Young, who told Lynch and myself to wait and he would show us a railroad detective. We didn't see him then"? A. I didn't know Edward Young.

Q. Didn't you mention Young's name? A. I didn't know Cuneo's name.

Q. I don't care whether you knew him or not. Aren't you the man that used Young's name? A. Not Edward Young; no, sir.

Q. Didn't you say Young? A. Frank Young.

Q. Frank Young. Well, who is Frank Young? A. Well, that is this man Cuneo.

Q. Oh, then you had Young and Cuneo confused? A. Well, he showed me a clipping of a paper.

Q. Who did? A. Cuneo. Of a robbery, of a fur robbery; and I asked—his name was Frank, and I said, "What is your name, Frank Young? And he said yes.

Q. When was that? A. That was the time when he was coming over here to Hackensack the day of the robbery.

Charles Strand, cross.

Q. So you had been over here talking to others about this? A. No, sir; that was the Thursday.

Q. Well, that was the same day? A. That was the day of the robbery; yes, sir.

Q. Well then, you did use—say that much of the statement; you did use the name Young, didn't you? A. Well, he told me that his name was Young.

Q. So that is the reason you used it in the statement, isn't that so? A. Yes.

The Court: Before you go on with this matter, do you want some statement that you claim was in the possession of the Prosecutor?

Mr. Zabriskie: I would like to have the first confession with such well-known facts that it was published in the paper in quotation marks, so I assume that it must have been taken right from the original. And I ask the Prosecutor, and if Mr. Valuzzi is here, I would ask——

The Prosecutor: Valuzzi is here.

Mr. Zabriskie: —for that statement, so I can use that, too, as a basis of the newspaper——

The Court: Of course, you are aware of the rule that if you call for a paper in possession of the other side and inspect it, why, you are required to put it in evidence?

Mr. Zabriskie: I am satisfied to do that, your Honor; yes, sir.

The Prosecutor: We know of no statement which has been given to the Evening Record and, in fact, no statement was given

by our office to the Evening Record or any other individual or newspaper.

The Court: That does not seem to be especially the question. Counsel is asking for what he calls the first confession made by this witness Strand. Now, you have got that, or you haven't got it.

The Prosecutor: There was a statement given by Strand to the New York detectives. That we haven't. Later, Strand gave his first confession to us.

The Court: Well?

The Prosecutor: Here is the one which he gave to us.

The Court: Very well. Is that what you want?

Mr. Zabriskie: Just let me ask a question.

Q. Isn't it a fact that in New York City you made a confession, as you call it, and signed and sworn to, and on the instance and by the examination of Mr. John Valuzzi? A. I made it in front of Detective Solomon and Cronin, and Mr. Valuzzi was there with me.

Q. Well, isn't Mr. Valuzzi the man who did the talking that finally got you to come across and tell some of the truth? A. He did. He said something.

Q. Isn't Mr. Valuzzi the first man to whom you really did tell any part of the truth? A. Yes, sir; but I didn't make no confession to him.

Q. Well, I am asking you if you did not make these statements; I am asking you now— A. No, sir; I did not.

Q. —did you sign anything at the time Mr. John

Valuzzi was there? A. I did.

Q. What was that? A. To the New York men, I signed some statements; yes, sir.

Q. Yes. Well now, the one I am talking about is the first one that you signed when you had refused to tell the truth, and when Mr. Valuzzi finally got you to tell the truth; that is what I call the first statement.

The Prosecutor: I object to that, because the question is not properly predicated.

Mr. Zabriskie: I will withdraw it to save time.

Q. Now then, in that statement, did you not say, "We got off at the Susquehanna Depot at Main and Mercer Streets at 10:30 A. M." to John Valuzzi? A. No.

The Prosecutor: Now, I object to that, if your Honor please.

Mr. Zabriskie: He said no.

The Prosecutor: Because, if there be a statement in writing, the statement is the best evidence.

The Court: No. The objection is overruled.

The Prosecutor: I respectfully present my objection.

The Court: Has he answered yet?

Mr. Zabriskie: I think he has.

The Court: The objection has been overruled.

Q. Did you not say there, "We met Edward Young, who told Lynch and myself to wait and he

would show us a railroad detective; we didn't see him then"? A. I don't remember; no, sir.

Q. You do not remember? A. No, sir.

Q. You said something like that to Valuzzi? A. I did not; no, sir.

Q. You do not remember? A. No, sir.

Q. Well, you did not, or do not remember? A. I did not.

Q. And then did you say that Ed Young then said he would look in the lunch room for Teddy Palmer? A. No, sir.

Q. Didn't you say, "Young pointed Palmer out to me," and "there he goes to the office"? A. Yes, sir; that was on Main Street restaurant, not in the lunch room.

Q. That you did say? A. Yes, sir.

Q. That was in the statement that you signed for Mr. Valuzzi? A. Yes, sir.

The Prosecutor: If I may be permitted to interrupt counsel, I have two statements which were given to the police in New York City in connection with Mr. Valuzzi, and I will be delighted to have counsel present them in evidence.

Mr. Zabriskie: Well, I do not know those are the ones I want. I want the one that was signed as the basis of this article that appeared in the paper on January 25th. Mr. Valuzzi is the one that can tell.

The Prosecutor: One of these two statements is signed by Strand and is the statement made in the presence of Valuzzi.

Mr. Zabriskie: On January 24th?

The Assistant Prosecutor: Yes.

The Prosecutor: And this is the first statement which was made.

The Court: The 24th? That is the date of the robbery, wasn't it?

The Assistant Prosecutor: The 21st.

The Witness: No.

Mr. Zabriskie: The 21st, your Honor.

The Prosecutor: I would be very glad to have counsel use either one.

Mr. Zabriskie: The one of the 24th is the one I want.

The Prosecutor: There is no date upon this statement, sir.

The Court: Wasn't it sworn to, Mr. Hart?

The Prosecutor: No. In the presence of the witnesses; just the names of the witnesses. The State tenders to counsel the first two statements which were made by this man, and made in the presence of Valuzzi, one dated 10:30 P. M. Sunday evening, January 24th, and the other undated.

Mr. Zabriskie: The one of January 24th is the one that I want to see.

The Prosecutor: (Handing paper to counsel.)

Mr. Zabriskie: Now, if your Honor please, I wish the Prosecutor would be a little bit fair. Here is a statement made in New York City in the presence of Detective Cronin, Sheriff Nimmo and Undersheriff Donaldson at 10:30 A. M. It does not mention Valuzzi at all.

The Prosecutor: The Prosecutor resents the implication of unfairness, because the State said one of these statements was made in the presence of Valuzzi. If counsel will be good enough to look at both of these statements, he will find one made in the presence of Valuzzi.

Mr. Zabriskie: That is the only one I am interested in.

The Prosecutor: Then it is not the statement made in the presence of Valuzzi. The second one was, and counsel has it.

Q. That is your signature (indicating), is it, Strand? A. Yes, sir.

Q. And that was something that you signed after reading that? A. Well, I didn't read it. I didn't read it now. If you will let me see it——

Q. One, two, three, four, five, six pages? A. Yes, sir.

Q. Yes. Now then, didn't you——

The Court: One moment.

The Assistant Prosecutor: May it be marked, sir?

The Court: Do you want that marked for identification?

Mr. Zabriskie: Yes.

The Court: Very well. Let it be marked for identification. It cannot properly come in evidence on the State's case.

(Paper marked Exhibit D-1 for Identification.)

Q. Now then, before Mr. Valuzzi, and also in the presence of Walter C. Sullivan and John J. Cronin, did you not say——

The Court: Now, hold on a minute, Judge Zabriskie. You have there a statement which the witness acknowledges having made in writing?

Mr. Zabriskie: Yes, sir.

The Court: What do you want to do now? Do you want to get him to say he did not say certain things that are in the statement?

Mr. Zabriskie: I want to test his veracity now, your Honor, to ask him again substantially as I asked him before, in the light of this new development; I am attacking his veracity now.

The Court: I do not exactly see where the veracity comes in. If he admits he made that statement, that is just as much a test of his veracity as if you read it all through and asked him whether he said that.

Mr. Zabriskie: I just want to ask him a few points now; I am not going through the whole——

The Court: Well, the witness having already admitted that he signed that statement, and that he is acquainted with its contents, has admitted that he said everything that is in it.

Mr. Zabriskie: Well, if your Honor takes that view,——

The Court: I do not overrule you, but it seems to me you are wasting time. Now, of course, the witness will very naturally say "Yes, I said that."

Q. Now, I just want to ask you one more ques-

tion, just one. Now, in that six-page paper which has now been marked D-1 for Identification, did you tell the truth? A. Repeat that again, counsel.

The Court: In that six-page paper which has now been marked for identification, did you tell the truth?

The Witness: In front of Detective Cronin; yes, sir.

Q. Detective Cronin and Sullivan and Mr. Valuzzi? A. Yes, sir,

Q. In that paper did you tell all the truth? A. Yes, sir; as much as I know.

Q. In that paper did you mention a man by the name of Young?

The Assistant Prosecutor: I object to that. The paper speaks for itself. It is produced and the paper is there and the jury can read it.

The Court: It may be answered.

A. I mentioned Young.

Q. And in that paper did you mention Corcoran?

A. I do not know. I do not remember.

Q. Now, will you take the time to refresh your memory? Did you anywhere in that paper use either the name of Mike or Mike Corcoran?

The Assistant Prosecutor: I object for the same reason, the paper speaks for itself.

Mr. Zabriskie: Testing his memory.

The Court: Let him answer.

A. I do not remember.

The Court: If you do not want that paper, you better give it back to the Prosecutor.

Mr. Zabriskie: Well, I want it later on.

The Court: Yes, I know; but the general custody is with the Prosecutor.

Mr. Zabriskie: (Handing paper to the Prosecutor.)

Q. How long did you know Corcoran? A. About going on four years.

Q. Where is Corcoran now? A. I do not know.

Q. You knew him intimately for about four years, didn't you? A. No, sir.

Q. Well, you went out with him sometimes, didn't you? A. Once in a while; yes, sir.

Q. And he was a man who was considered a big man, wasn't he? A. I do not know, sir.

Q. Haven't you ever heard that when he "beat it", as they say in the slang phrase, that he took out money out of banks in New York aggregating about $65,000? A. No, sir.

The Assistant Prosecutor: I object as hearsay.

Mr. Zabriskie: I am asking him if he ever heard it.

The Court: What of it, if he did?

Q. When you went out with Corcoran, he was the man that paid, wasn't he? A. He did.

Q. He is the man that had this Chrysler automobile, isn't he? A. He did.

Q. He owned that himself? A. Yes, sir.

Q. Now, I am not sure whether the question was answered or not. Isn't it a fact that you were convicted of homicide? A. Sir?

Q. You were convicted of homicide, were you not, for which you spent or served time some nineteen years ago? A. Yes, sir.

The Court: I thought he had testified to that.

Mr. Zabriskie: Yes, sir; but I wanted to make sure.

Q. Now then, when you came to Hackensack on Monday the 18th, you did not come by way of trolley cars, but you came by way of automobile, all the way, didn't you? A. Yes, sir.

Q. And any other statement about that is wrong; that you are sure of? A. That I can remember; yes, sir.

Q. And when you came over on the 18th, you and Corcoran had quite a lot of talking, didn't you? A. Over here?

Q. Yes. A. No, sir.

Q. Well, didn't you go around and look the express company place over? A. No, sir; Corcoran wasn't with me.

Q. Oh, he wasn't with you that day? A. No, sir; he wasn't with me at the express office.

Q. Well, wasn't he here in Hackensack? A. He was.

Q. Where did you meet him? A. Him and Lynch stood up at the Public Service.

Q. Then you met here, didn't you? A. Yes, sir.

Q. And he called up Cuneo? A. Yes, sir.

Q. He made arrangements, didn't he? A. Yes, sir.

Q. And you and Corcoran didn't even tell Lynch what was up that day, did you? A. I didn't know myself what was up.

Q. Well, I say, neither you nor Corcoran on the 18th told Lynch what was up, what was doing? A. I didn't know myself, sir.

Q. Yes. And on this 21st, down at the ferry, Cuneo brought a map showing just how things

were to be done? A. Yes, sir.

Q. And then, on the way over, you bought a ball of cord? A. Yes, sir.

Q. And what was the idea of buying so much cord? A. I was told to buy a ball.

Q. And how many pieces did you cut it up into? A. About six pieces.

Q. How many men were you going to bind up? A. I didn't know.

Q. More than one? A. Yes, sir.

Q. You thought there was more than one that was going to be bound up; but it was to be a fake bind-up, was it? A. Yes, sir.

Q. Now, are you familiar with this diagram up here? I am now referring to——

The Assistant Prosecutor: S-15.

Q. —Exhibit P.-15.

The Court: S-15.

Q. Or S-15, I should say.

The Court: You mean the large scale?

Mr. Zabriskie: That is the one that is——

The Court: Yes.

Q. You have seen that before? A. No, sir; I never seen it before.

Q. Well, just take a look at it. A. (The witness leaves the stand and examines sketch.)

The Court: The one on the right, the one on the right.

Mr. Zabriskie: No, if your Honor please; I want this one here (indicating).

The Court: Well, that is the small scale.

Mr. Zabriskie: Well, it is the small scale, but it takes in a bigger territory.

Q. Now, here is the express company office; here is Moore Street; here is the trolley track (indicating). Where do you say the automobile was placed on the day of this occurrence just before the occurrence took place? A. Between the railroad tracks and the car tracks.

Q. That you are sure of? A. Yes, sir.

Q. I understood you to say on your direct examination it was by the factory; so, as a matter of fact,—— A. At the factory first.

Q. At the factory first? A. Yes, sir. There was a car standing there.

Q. Yes. A. And he couldn't come over.

Q. Now, you say that you walked around in the small door? A. Yes, sir.

Q. And you engaged somebody in conversation there, didn't you? A. Yes, sir.

Q. And who was that? A. The clerk.

Q. Which one? A. Talmadge.

Q. And that was what you were supposed to do, weren't you? A. Yes, sir.

Q. And how long were you talking to Talmadge? A. I just went in and asked him to ship a trunk, could I ship a trunk from here, and he said yes.

Q. Yes. And then you say you were talking to him, and you heard some shooting? A. Yes, sir.

Q. Well, where were you standing when you saw the shooting? A. Talking—standing right at the partition, like they got there before you get into the office.

Q. But you could not see who did the shooting, you say? A. What?

Q. But you could not see who did the shooting? A. I seen the man fall, and Lynch ——

Q. No. But you could not see who did the shooting, could you? A. Well, I seen Lynch and the man there.

Q. Could you see who did the shooting, yes or no? A. I seen Lynch and this man there.

Q. Could you see who did the shooting? A. Well, I did, after he came in.

Q. Then you did not see the act of shooting, did you? A. I seen the smoke coming out of the gun.

Q. Did you see the act of shooting?

The Assistant Prosecutor: I object as answered, sir.

The Court: You did not see anybody actually stand up and aim a gun and fire it?

The Witness: The two of them was in the corner, your Honor.

The Court: I understand; but just get straight on that. You did not see anybody stand up and hold out a gun and shoot it?

The Witness: Well, I seen the guns; yes, sir.

The Court: Well, I mean at the time the shooting was done, did you see the shooting done?

The Witness: I heard the shots.

The Court: You heard the shot. I am asking you whether you saw it?

The Witness: No, sir; I did not see it.

Q. Now, you say you saw the guns. What guns did you see? A. I see two guns.

Q. What two? A. The ones Lynch had.

Charles Strand, cross.

Q. Oh, now you say Lynch had two guns? A. He had two going in; yes, sir.

Q. What kind of guns? A. Blue steel.

Q. Just alike? A. Yes, sir.

Q. Corcoran didn't have any gun? A. Yes, sir.

Q. Oh, he did have a gun? A. Yes, sir. I see three guns. There was four guns altogether.

Q. Who had the fourth one? A. Corcoran had two.

Q. Oh, Corcoran had two, and Lynch had two? A. Yes, sir.

Q. And you didn't have any? A. No, sir. I wasn't supposed to have any. I was just supposed to go in and ask to ship a trunk and come out.

Q. Now then, you say that Lynch came in, that he gave orders to you, that Lynch gave orders to these other men, that he got the money, that he put a gun in your pocket, that he went and got this unfortunate man and dragged him in, and then he ran with the money out to the car; that is your story, isn't it? That is your story, isn't it? A. No, sir; it is not my story.

Q. No? A. No, sir.

Q. Well, all these acts that I have named, you say Lynch did? A. Well, he did; yes, sir.

Q. And you all that time were standing still? A. I was standing; yes, sir.

Q. Who was the first man back into Corcoran's car? A. The first man?

Q. Yes. A. I was.

Q. Strand,-- A. I was the first man that got in that car; yes, sir.

Q. —isn't it a fact that the car dragged you, that Lynch was in there waiting until you came running with the bags, and the car dragged you because they made a start a little bit too quick for you, and that they pulled you in? A. No, sir.

Q. That is not true? A. No, sir; it isn't.

Q. Why did you make this confession and turn State's evidence in this case, Strand? A. Well, I'll tell you, counsel. I come up on this witness stand and tell the truth, and nothing but the truth; and I made my confession, I made a complete confession.

Q. Well, you didn't make a confession until you saw the law getting more and more around you, did you? A. No, sir; I made a confession.

Q. You didn't make a confession until that rat, Palmer,—you found out that Palmer had told something, and you thought Palmer—you didn't see Palmer, but you found that Palmer had let the cat out of the bag; then you decided, "I will get back at that rat and involve Palmer," isn't that so?

The Assistant Prosecutor: I object as multifarious.

The Court: A pretty long question to answer.

Mr. Zabriskie: I withdraw it.

Q. Isn't it a fact that you did not make any confession until you learned that Palmer had involved you? A. No, sir, I made a confession in police headquarters in New York before Palmer or anybody else. I involved Palmer.

Q. Oh, you involved Palmer? A. Yes, sir.

Q. Why did you make that confession? A. I couldn't stand it any longer.

Q. Well, didn't you make this confession after Palmer came over and picked you out of a line-up after he passed you three times; isn't it then that you made your confession? A. After he picked me out; yes, sir.

Q. After he had picked you out, then you came

across and made a confession, didn't you? A. I told the truth; yes, sir.

Q. Well, you made the confession that we have got here and marked as D-1 for Identification before Mr. Valuzzi; that is the confession you made? A. I made a confession before three and four of them, yes.

Q. Why did you make that confession? A. I wanted to tell the truth about it.

Q. Didn't you want to save your hide, as they say? A. I didn't say nothing at all; no, sir.

Q. Didn't you think that if you turned around and helped out the State they would make it a little easier for you? A. I did not; no, sir.

Q. That you are sure of? A. Yes, sir.

Q. Now Strand, honestly do you expect to stand trial, or do you expect to have your counsel go up before the Court asking to receive a plea so that you won't get the electric chair? A. I am not asking nothing; I wasn't promised anything. I am here to tell the truth.

Q. You do expect to go on trial then, do you? A. I expect so; yes, sir.

Q. And no one has told you that by turning State's evidence you may have your life saved instead of going to the electric chair? A. No, sir; nobody haven't told me anything.

Q. Well, when they caught you, you had $163 of this stolen money in your pocket, didn't you? A. Yes, sir.

Q. You were caught with the goods, weren't you? A. Yes, sir.

Q. Now then, when you were up there at this house that has been referred to as Rocksch's house, Cuneo was there, wasn't he? A. Yes, sir.

Q. And how soon after you arrived there did Cuneo come back to Hackensack? A. Well, he

stood there about fifteen minutes.

Q. Then he went. So he was back in— A. What?

Q. Did he tell you what time he got back to Hackensack?

The Court: Who?

Q. Cuneo. A. No, sir.

Q. Do you know how long it takes to drive from where this thing occurred over to Rocksch's house? A. No, sir; I do not.

Q. Does it take more than ten minutes at the most? A. I couldn't tell you.

Q. You have no idea? A. Well, say at least fifteen minutes.

Q. Fifteen minutes. So he stayed there with you about fifteen minutes, and then he came to Hackensack, or he said he came to Hackensack, didn't he? A. Yes, sir.

Q. And didn't he tell you that he had been right at the place where the thing happened? A. Yes, sir.

Q. Yes. Right at the express company office? A. Yes, sir.

Q. And right at the station? A. Yes, sir.

Q. Now, do you say that Cuneo did not have a gun that day, or don't you know? A. I do not know.

Q. You do not know? A. No, sir.

Q. Didn't Cuneo come over here for the express purpose of planting a bullet, as you fellows call it? A. Planning a what?

Q. Planting a bullet. A. I do not know what you mean.

Q. Putting a bullet in the place so as to shift the blame? A. No, sir.

Q. You never heard that talked of before? A. No, sir; never.

Q. That you do not know anything about? A. No, sir.

Q. And did you know about Rocksch's place? A. I did not know it.

Q. You knew Rocksch, didn't you? A. I knew him, but I didn't know where he lived.

Q. Yes. You knew him in New York? A. I only met him once; it was in New York.

Q. He held a position in connection with a court over there, didn't he? A. I didn't know him until I was introduced to him.

Q. But you have found out he was connected with a court over there? A. Yes, sir.

Q. In what position, do you know? A. I do not know; no, sir.

Q. And then you were sent downstairs to do some burning? A. Yes, sir.

Q. And then you came upstairs, and they said "That is yours"? A. Yes, sir.

Q. And Cuneo said there was $36,000.00 taken? A. Yes, sir.

Q. And you didn't bother to count your money; they said "That is yours", and you took it? A. Yes, sir.

Q. It is all true? A. Yes, sir.

Q. And you do not know yet how much it was? A. I did when I got to New York.

Q. Well, how much? A. $500.00.

Q. Cuneo got $2,000.00, didn't he? A. I didn't know what he got.

Q. Were you here yesterday? A. Yes, sir.

Q. Didn't you hear him say that he got $2,000.00? A. No, sir; I did not.

Charles Strand, cross.

The Assistant Prosecutor: I object as immaterial, sir, whether he heard it or not.

Q. Corcoran didn't get out of the car at all on the 21st, did he; while you and Lynch were outside of the car, he stayed right at the wheel? A. Yes, sir.

By the Court:

Q. Mr. Strand, did I hear you say something about seeing smoke coming out of a gun? A. Yes, sir.

Q. Where was the gun when you saw smoke coming out of it? A. In his hand.

Q. In whose hand? A. Lynch's hand.

By Mr. Zabriskie:

Q. And that is something you rehearsed with the officers as well as with the court, isn't that so? A. Sir?

Q. That is something you rehearsed with the officers, as well as telling it to the court? A. I made it in the confession.

Q. Your first confession? A. I made the confession here in Hackensack.

Q. In Hackensack, yes. And that was after you had talked to a good many of your friends, isn't it? A. I haven't talked to anybody.

Q. Well, over in New York they gave you more privileges than you had here, didn't they? A. No, sir, they did not.

Q. Didn't they let you talk to your friends? A. No, sir. The only one came was my wife.

Q. And aren't you expecting Corcoran with his boodle to be able to help you?

The Assistant Prosecutor: I object to the expression.

Louis Martin Talmadge, recalled, cross.

The Court: How about that? Aren't you expecting Corcoran with his money to be able to help you?

The Witness: No, sir; no, sir.

Q. Lynch almost had to force you to take the money at the scene, there, didn't he? A. He pushed me in; yes, sir.

Mr. Zabriskie: I think that is all.

The Assistant Prosecutor: That is all, sir.
The Court: That is all.

The Assistant Prosecutor: The State rests.

Mr. Zabriskie: Well, if your Honor please, I wanted to ask that Mr. Talmadge answer one or two questions, and I was going to ask them, of course, before the State rested.

The Assistant Prosecutor: All right. We will re-open, if the Court will permit it.

The Court: On cross, you mean?

Mr. Zabriskie: Yes, sir. There was something I did not know yesterday.

The Assistant Prosecutor: All right; we will permit it.

LOUIS MARTIN TALMADGE, recalled for further cross-examination, testified as follows:

By Mr. Zabriskie:

Q. Mr. Talmadge, you said yesterday, substantially, that your recollection while on the stand was better while on the stand than it had been on

Louis Martin Talmadge, recalled, cross.

last Sunday morning; Sunday morning, or was it Monday morning? Monday morning; and you gave as a reason that you were nervous at that time because a strange automobile had for a couple of hours been in the neighborhood of your house? A. Yes, sir.

Q. Did you report the presence of that automobile by telephone or otherwise to the police authorities of Hackensack? A. No, sir; not then; no, sir.

Q. Why not? A. Well, I wasn't in my apartment; I was in another apartment, looking out the window.

Q. But they had a telephone in that place, did they not? A. Yes, sir.

Q. And you did not, although you were alarmed for about two hours; and you knew of the importance of this case? A. Yes, sir.

Q. And you saw what you considered a suspicious car? A. Yes, sir.

Q. Passing to and fro about the place where you were located, without notifying any police authorities.

The Court: Do not sum up, Mr. Zabriskie. Get the answer from him as to whether he reported it, and then you can comment on that later.

Mr. Zabriskie: Well,——

By the Court:

Q. When did you first report it, if at all, Mr. Talmadge? A. When I got to the office, riding in Mr. Brady's taxi, he brought me down, and I reported it then.

Louis Martin Talmadge, recalled, cross.

By Mr. Zabriskie:

Q. And then when Prosecutor Hart and Mr. Hendrickson and Miss Feld and I were all together, you were still nervous then; you said that, did you not? A. Yes, sir.

Q. And at the present time, you are on a two-weeks' leave of absence from your duties at the station, are you not? A. At the present time?

Q. Yes. A. No, sir. I am not on a leave of absence; only just while I am in court.

Q. Isn't it a fact, sir, that you are at the present time on a two-weeks' leave of absence, two weeks' vacation, if you want to call it that? A. No, sir; I am not.

Q. Then if somebody in that express office has told that to me, they have made a mistake?

The Assistant Prosecutor: I object, sir.

The Court: Hold on. That is a mere question of inference and argument.

Mr. Zabriskie: May that question be answered, your Honor?

The Court: No, sir. I say that is a mere conclusion.

Q. You say positively now that you are not on a two-weeks' vacation at the present time— A. Yes, sir.

Q. —from your duties? A. Yes, sir; I do.

Mr. Zabriskie: That is all.

The Assistant Prosecutor: No questions. The State rests.

Mr. Zabriskie: I want to ask, under these circumstances, to have the right to produce a man that I talked to this morning at the

Louis Martin Talmadge, recalled, cross.

American Express office.

The Assistant Prosecutor: It would be a collateral issue, sir.

The Court: Well, you can produce a man as much as you want to on your own case. It is a question whether the testimony will be received.

Mr. Zabriskie: Since there are this and several other little odds and ends, if we can take a recess until half past one, I can surely wind up without any difficulty.

The Court: Well, that will be the order. The jury will be excused until half past one.

(Recess at 12:26 o'clock P. M.)

AFTER RECESS. 1:30 P. M.

Mr. Zabriskie: If your Honor please, the witness that I expected to present surprised me, and I cannot put him on the stand. I mean, I have no further use for the witness at the present time.

The Court: Well, what was this witness, somebody you proposed to call to contradict Mr. Talmadge, or something?

Mr. Zabriskie: I wanted to get some evidence so that they could get the facts.

The Court: Well, that is part of your defense, isn't it, after you have opened?

Mr. Zabriskie: Yes, I suppose that is so.

Mr. Zabriskie opens the case to the Jury on behalf of the Defendant.

JAMES LYNCH, the Defendant, called as a witness in his own behalf, after being duly sworn, testified as follows:

Direct examination by Mr. Zabriskie:

Q. Lynch, you are the defendant in this case? A. Yes, sir.

Q. Now, speak up loudly enough so— A. Yes, sir.

Q. —these members of the jury can hear. And where do you live? A. 442 Tenth Avenue, New York City.

Q. And how long have you lived in New York City? A. All my life.

Q. And what is your occupation? A. Longshoreman.

Q. And for whom do you work? Who is your employer? A. Well, I was boss loader there.

Q. And for how long have you been a boss loader there? A. For the last four years.

Q. And about how much money per week were you making? A. About $50 average yearly.

Q. For how long? A. For the past four years.

Q. How long have you been married? A. The last seven years.

Q. And that woman over there (indicating) is your wife? A. Yes, sir.

Q. And that is your youngster (indicating)? A. Yes, sir.

Q. And have you worked continuously or not since you were married? A. Yes, sir.

James Lynch, direct.

Q. Did you know a man named Michael Corcoran? A. Yes, sir.

Q. And did you know Strand, who was on the stand? A. Yes, sir.

Q. Do you recall the morning of the 18th, I think it was Monday? A. Yes, sir.

Q. And did you see Corcoran on that day? A. Yes, sir.

Q. Where? A. At my house.

Q. And with the automobile? A. Yes, sir.

Q. With Corcoran's automobile? A. Yes, sir.

Q. And did you have a conversation with Corcoran? A. He asked me to take a ride to Jersey with him on some business.

Q. And did you come? A. Yes, sir.

Q. Was Strand with him at that time? A. Yes, sir.

Q. Now just tell what occurred on that trip. A. Corcoran called me up in the morning on the telephone and asked me to be ready when he come down to come out with him. So I was ready, and I come down. They blew the horn, and I went down and got into the car; we rode to 125th Street ferry, come over to Jersey, and come up into Hackensack. Corcoran got out of the car and called up a man by the name of Frank on the telephone. He waited for about fifteen minutes for him to come, and he got into the car there and had a conversation with Corcoran, and then drove about four blocks, turned around and come back again, and we stopped at about the same place where we started. And he and Strand got out of the car and went away for about a half an hour, and then they come back and he spoke to Mike for about, say fifteen minutes, and Mike come back to the seat and told us that he would give us a call

when he would want us.

Q. Now, did they let you into what was going on on that day? A. No, sir. I didn't know anything about the conversation.

Q. Then when was the next that you heard from Corcoran? A. Wednesday night, he told me he would give me a ring Thursday morning.

Q. And did you have any conversation with him at that time? A. I told him when he called up, I didn't like the idea of coming out.

Q. Yes. A. So he told me there was nothing to it; that the money was actually going to be handed to us, and he come down and explained it at the door to me when I went down and met him in the car.

Q. And then he came the next morning? A. Yes, sir. He called me on the 'phone before he came.

Q. And did he come down in his Chrysler car? A. Yes, sir; him and this Charles Strand.

Q. And what was said then? A. Well, he said that he had it all fixed with that man by the name of Frank, with two men at the Susquehanna Station, that there would be nobody in the place; but we only had to walk in and get the money and walk out; that there was no guns needed in the thing, and there would be no guns in this place, that this man Mr. Palmer would see that everything was out of the way.

Q. How did he come to talk about guns, if you remember? What did you say to him? A. Well, I told him I didn't want to come if it was actually a hold-up; that I had one conviction for the Sullivan law, and if I got pinched again, it meant maybe about seven years to me.

Q. And then what happened that morning when he did come on the 21st? A. He told me there was

nothing to it, that the money was actually going to be handed to us; there was nobody going to be in the station whatsoever to start any opposition, that the money was there to be taken, it was going to be handed to us.

Q. You say there was nobody there. You mean no opposition? A. There would be no opposition to have to handle any kind of stuff.

Q. And then what happened? Just tell what happened. A. And on Thursday morning——

Q. About the trip on Thursday morning. A. Well, they come down and met me and we come out into Jersey.

Q. Where did he come to that morning? A. 442 Tenth Avenue.

Q. That is where you were staying? A. Yes, sir.

Q. And with the Chrysler car? A. Yes, sir.

Q. And then what? A. They rang—they blew the horn, and I come down, and I got into the car with them and we come up and come across the Fort Lee Ferry, and we were too early, then we went in and ate. We come out and waited, and then he met this man by the name of Frank. So Frank come in and showed him, or Strand, rather, showed them on the papers; I didn't know what the papers were. So then Strand got into the car with, now, Cuneo, and drove off ahead, and me and Mike Corcoran followed behind. So we drove for a few miles, coming on into like Hackensack. They stopped and bought cord, Strand; and, now, Cuneo,—we had to wait at the other end for them to come then; and we drove then in like in the outskirts of a city, and they stopped like on the road and changed the license plates.

Q. Did you take any part in the changing of the license plates? A. No, sir.

Q. Did you touch a tool? A. No, sir. I sat in the car.

Q. Did you get out of the car at all? A. No, sir.

Q. All right. Then what? A. Strand and Corcoran changed the license plates. Then Corcoran got into the car with Cuneo, and I got in—I still was in the Chrysler, and Strand come in and drove the Chrysler, followed them into—into Main Street and stopped, and they drove and kept on going, and we waited for Corcoran to come back again.

Q. Then what? A. Corcoran got into the car with us then, and drove up over the railroad station, turned all the way around to his left and stopped in front of a big warehouse. Me and Strand got out and walked together down—walked right over to the station and we stood together. So he looked in the window and he must have got a sign for to go in. He come over to me, and he waved for the car to pull up from where Corcoran was standing.

Mr. Zabriskie: Now, where are the exhibits?

(Exhibits produced.)

Q. Now, I call your attention to the Exhibit S-4, and I ask you if you can indicate to the jury in which window Strand looked? A. Right in through this here window (indicating).

Q. All right. That is indicating the window on the—well, the nearest window in the express building, nearest the telegraph pole on S-4. Then what occurred after that? A. Strand looked—Strand told me to go around to the back door, and he says, "Give me time to get inside, into the office." And he says, "You wait there until you get the signal to come in." I went to the back office and looked in and I couldn't see—I could just about see.

Q. That was to a big room? A. Into the big room. And I could just about see Strand in it, and Palmer talking to him through the cage. Well, I got the nod for to come in, like from Palmer, and I walked in through the door, opened the little door and walked in, and I was on the far side of Strand when I heard a shot.

Q. What did you do then? A. I was dumfounded for the minute, for the time being, that there was supposed to be no guns used in it. I didn't know whether there was someone maybe in the place shooting at me then.

Q. And what did you do? A. I stood there for a minute and then I went to turn to go out.

Q. Do you mean sixty seconds, or (snapping fingers)? A. Sixty seconds, for the minute. So Strand pushed past me and walked into the cage then. I turned and walked out the door, and walked down and got into the car. I was in the car seated before Strand actually come to the car, and Corcoran started off before Strand got in, and Strand had his arms full with bags, and I had to pull Strand into the car. We were started off before Strand had got onto the car.

Q. Then what occurred? A. We drove up about two blocks; then he turned off to his left, and I think he turned to his right on the—on the roadway.

Q. And to whose house did you go? Had you ever been to Rocksch's place before that? A. No, sir.

Q. Lynch, did you have a gun at all that day? A. No, sir.

Q. Did you ever make a statement over in Rocksch's house, or anywhere else, that you had shot somebody in the bag? A. No, sir.

Q. Did you at any time say, "I gave the fellow

a chance, and he wouldn't take it," or something like it that day? A. No, sir.

Q. Did you get any of the money that was divided up at Rocksch's? A. No, sir.

Q. Did you get a nickle out of this thing? A. No, sir.

Mr. Zabriskie: Cross-examine.

Cross-examination by the Assistant Prosecutor:

Q. Work steadily, you say? A. Yes, sir.

Q. As a boss loader, is that right? A. Yes, sir.

Q. You earned $50 a week? A. Yes, sir.

Q. You were not working on January 18th, Monday, were you? A. Well, I went down to the dock whenever I got time to go down, see? I wasn't supposed to be there at no time, but I went down to see if my men were working, and then give them a hand.

Q. You were not working on January 21st, were you? A. No, sir.

Q. You weren't working on January 22nd, were you? A. January 22nd, I was down to the dock that day.

Q. But you did not work, you did not stay there? A. I stayed for a couple of hours and give them a hand.

Q. And you were not working on January 23rd, were you, the day before you were arrested? A. No, sir. There was only a half a day's work that day, and it was most collecting, to get the money in on that day.

Q. But you did not go down to a place of business and stay there on any day all day on any of those days, did you? A. No, sir.

Q. Do you call that working steadily? A. Well, I do. Well, it is my personal work.

Q. Who for? A. What?

Q. Who were you working for? A. For myself; for myself.

Q. For yourself? A. Yes, sir. I got thirteen men working for me.

Q. Under what name do you work for yourself? A. James Lynch.

Q. Where is your office? A. There is no office. We don't—we do our work on the dock. We have a little office on the dock we do our work in, make up our receipts at night.

Q. Where did you work last? Give us the name, please. A. United States Trucking.

Q. For how long did you work for them? A. For about five years.

Q. No. I mean while you were working as a boss of the longshoremen, for whom did you work last before you were arrested? A. For the I. M and M, Mercantile Marine.

Q. International Mercantile Marine? A. International Mercantile Marine.

Q. And when did you last receive any money from them for working for them? A. My wife received $36.00 this past week.

Q. For how many days was that? A. For five days and a half.

Q. And with thirteen men? A. Yes, sir.

Q. Five and a half days? A. Yes, sir.

Q. Total pay, $36.00. A. $36.00.

Q. Now, how long had you known Corcoran? A. Known Corcoran—for the past three years.

Q. Where did he work, if you know? A. He worked in the E-Z Taxicab Corporation.

Q. Now, was business good in the months of November and December? A. Well, it is continuously all around.

James Lynch, cross.

Q. You were not looking for any position at that time? A. No, sir.

Q. Where did you live in the month of December? A. At 330 West 77th Street.

Q. Do you move very often? A. What?

Q. Do you move very often? A. Well, not very often.

Q. Why did you have to wait so long to think to tell us where you lived two months ago? A. Well, I wanted to think where I was living.

Q. And what time was it when Corcoran telephoned you on the 18th that he wanted to go out to Hackensack on some business? A. About half past seven to eight o'clock in the morning.

Q. You hadn't gone down to see whether your men were working at that hour of the morning, had you? A. Well, that was too early; no, sir; they don't go to work until eight o'clock.

Q. Did he say on the telephone what kind of business he had in Jersey? A. No, sir.

Q. Well, when you saw him later, did you ask him what you were going over for, to New Jersey for? A. On the way coming back, he stated that we were going to get some money off a fellow out here; he was going to hand the money to us.

Q. But you went and left New York at that hour of the morning when he called for you, and did not ask him where you were going? A. No, sir.

Q. Why? A. He told me he was taking me to Jersey on business.

Q. And you did not ask him what business? A. No, sir.

Q. Just went right with him? A. Went right with him.

Q. Didn't he tell you it was a fake hold-up you were to come out and do? A. No, sir. He never explained it to me.

James Lynch, cross.

Q. And you didn't ask? You had no curiosity? A. I didn't ask.

Q. As to where you were going, or why you were going, did you? A. No, sir.

Q. And on the 21st, you did not ask where you were going or why? A. I knew on the 21st.

Q. What did you know? A. That we were going out there, and the money was going to be handed to us.

Q. That it was to be a hold-up, is that right? A. No, sir; not a hold-up.

Q. Not a fake hold-up? A. He didn't actually say a fake hold-up. It was—there was three—there was two men at the railroad station supposed to be in on this.

Q. And you were going to rob them, weren't you? A. Sir?

Q. You were going to rob them, weren't you?

Mr. Zabriskie: I object, putting the same question in a different way. I submit there aren't a dozen people in the court room know the technical definition of robbery, and it is attempted to be put to this man. I object to that question in that form.

The Assistant Prosecutor: It is a matter of simple English. The word "rob" is understood by everybody.

Mr. Zabriskie: It is very technical English.

The Assistant Prosecutor: I am not asking in a technical sense; just the ordinary English sense.

The Court: Well, give the sense in which you mean the word "rob".

Q. They were going to take money away from somebody that they did not take it away from, isn't that right? A. The money was going to be given to us.

Q. A gift? A. Yes, sir.

Q. Three of you to go get one gift? A. Well, there was going to be given three shares back out of the money; that is why it was supposed to be handed out.

Q. But there were three of you to accept a gift at the Hackensack station? A. Yes, sir.

Q. Did you believe that story when he told you that? A. Yes, sir.

Q. Well, why did he say it was all fixed, there was nothing to it, if it was just going to go there and receive a present? A. Well, because he had two men at the railroad station that was in on that.

Q. In on what? A. In on giving out the money.

Q. Giving it away? A. Yes, sir.

Q. No force was to be used? A. No force.

Q. And whose money were they to give out, their own? A. I do not know whose money it was.

Q. That did not interest you at all to find out whether it was their money, or whether it was money of somebody else, did it? A. No, sir.

Q. And you did not ask? A. No, sir.

Q. You did not suspect anything? A. No, sir.

Q. And when you got to the station, you say you did not take a gun out of your pocket? A. No, sir.

Q. Did you have it out when you went in? A. No, sir.

Q. Did you put your hands in your pockets at all? A. No, sir.

Q. Did you take your hands out of your pock-

ets? A. My hands was out of my pockets all the while.

Q. How did you drop this letter, Lynch, in the Hackensack Station if you did not take your hands out of your pockets? A. I do not know. Maybe taking out my handkerchief.

Q. Oh, now you say you took your handkerchief out of your pocket; is that right? A. Well,——

Mr. Zabriskie: He said "maybe".

A. —you got to take out your handkerchief sometimes.

Q. That is your letter, isn't it? A. Yes, sir.

Q. Why did you apply for a position on December 2nd if you were working steadily? A. That ain't as a position.

Q. Well, what is it? A. You get a lend of an automobile, and pay for it. You pay for it.

Q. Well, what did you want an automobile for? A. For to take my wife and son out.

Q. Oh, you wanted to engage a taxi system to take your wife and son out? A. Just one car; you get a private car.

Mr. Zabriskie: I object to that. We all know what the pay-as-you-go system is.

The Assistant Prosecutor: There isn't any evidence, sir.

The Court: I do not——

Q. You were making application for taxi service to take your wife and child out? A. Take them out for an afternoon ride.

Q. On Holidays and Sundays, of course? A. Yes, sir.

Q. Because you worked steadily on all the other days? A. Yes, sir.

James Lynch, cross.

Q. Well, did they send you a card with this letter? A. No, sir; I got no card with it.

Q. Did you read the letter when you got it from them? A. Yes, sir; I read it.

Q. You didn't notice any card in it? A. Well, I didn't have much idea in going to get a car; I never even went to reply to get the car.

Q. Well, the letter that you dropped out of your pocket, you had received in the early part of December, hadn't you? A. Yes, sir.

Q. And you were applying for taxi service in the winter time to drive your wife and child around? A. Yes, sir.

Q. Well, didn't it occur to you, you might use your friend Corcoran's automobile occasionally? A. Well, I wasn't going with Corcoran.

Q. Oh, didn't you go around with Corcoran much? A. No, sir.

Q. Then you were quite surprised, weren't you, when he invited you early in the morning to go over to Jersey? A. Yes, sir.

Q. And you didn't ask him any more questions than you have told us about? A. No, sir.

The Assistant Prosecutor: I would ask this letter be marked for identification at this time.

(Letter marked Exhibit S-28 for Identification.)

Q. Well, when you came to Hackensack that first day, Monday, you say you waited a half an hour for Strand and Frank Cuneo to come back? A. Yes, sir.

Q. And when they came back, you did not ask them, "Where were you"? A. No, sir. I took no conversation with either one of them.

Q. You didn't say, "You kept me waiting a long

while," or anything of that sort? A. No, sir.

Q. You didn't ask them where they went? A. No, sir.

Q. Or why they went? A. No, sir.

Q. You just sat there? A. I just sat there. They spoke to Corcoran.

Q. Now, on the 21st, that Thursday, you did not ask any questions; but they stated where you were going to go? A. Well, I had known we were going out there to get the money given to us.

Q. Oh! And what did you stop to get string for? A. I didn't stop to get no string.

Q. Well, why did they stop? A. I do not know.

Q. But they did stop, you have told us today? A. They did stop, but I didn't know why they stopped to get the string.

Q. But you knew they stopped to get string, to get cord? A. Yes, sir.

Q. And you never asked why? A. No, sir.

Q. You just waited for them to get string? A. Yes, sir.

Q. You did not know they were buying string to tie somebody up? A. No, sir.

Q. And you did not suspect anything in their stopping to buy string? A. No, sir.

Q. When they changed the license plates on the automobile in the woods, you did not suspect anything? A. Yes, sir; I knew what they were doing that for.

Q. What? A. Well, they didn't want the number of the car to be taken.

Q. Why not? A. Well, the money was getting given to them.

Q. Given, yes. A. Yes, sir.

Q. And they didn't want the car number known, is that right? A. Corcoran's number known.

James Lynch, cross.

Q. Well, wasn't there anything significant in your mind in their going into the woods, or off in the outskirts of Hackensack? A. No, sir.

Q. You thought it was perfectly all right, they were changing the plates for some very good reason? A. Yes, sir.

Q. Is that right? You did not ask why? Did you get out when they were doing it? A. No, sir. That was the suggestion of Corcoran and Strand to change the plate numbers.

Q. Who suggested it? A. It was between Corcoran and Strand, I do not know.

Q. Well, it was Corcoran's car. You do not think Strand suggested it, do you? A. Well, they done all the talking between the pair of them.

Q. What did you do, just sit there? A. Yes, sir.

Q. Weren't you worried about there being something unusual in their changing? A. No, sir.

Q. Did they explain to you why they were going to do it? A. No, sir.

Q. And you did not ask? A. No, sir.

Q. Now, Corcoran did not get out of the car all that morning, did he? A. Yes, sir.

Q. That morning of the 21st? A. Yes, sir.

Q. When? A. He got out and got into Cuneo's car.

Q. Yes, coming over. But I mean after I got to Hackensack, and had changed the plates, did he get out of the car at all after that? A. Well, he didn't get into his car; he went away in Cuneo's car.

Q. He went away in the Chrysler, didn't he, from Hackensack? A. Sir?

Q. He went away in the Chrysler, didn't he, from Hackensack? A. Yes, sir; but I mean after he changed his license plates.

Q. Well, they changed the license plates twice

that day, didn't they? A. I do not know.

Q. Well, they took them off again when they got to this garage in Teaneck, didn't they? A. Well, that was Corcoran and Strand must have done that.

Q. You didn't know about that? A. No, sir.

Q. Well, they had brought you out as a passenger in the automobile that Thursday morning, hadn't they? A. Yes, sir.

Q. Didn't it occur to you they ought to have taken you back in the automobile? A. Yes, sir.

Q. Why did you go back in a jitney bus? A. Well, there was no automobile to take me back.

Q. Well, the Chrysler was there, wasn't it? A. Well, Corcoran wasn't running this Chrysler.

Q. Well, it was there, and Corcoran was there too, wasn't he? A. I ain't got the privilege of running Corcoran's car.

Q. So you started from a place in Teaneck where you had never been before, and went to New York by bus? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Where did you get the bus? A. I do not know. Strand got the bus.

Q. Oh, Strand got it? A. Yes, sir.

Q. And did you talk to Corcoran or Strand afterwards about having brought you out to Jersey in the automobile and then letting you get home by bus? A. No, sir.

Q. You didn't talk about that at all? A. No, sir.

Q. Now, directing your attention to what happened around the railroad station that morning, the automobile in which you were, stopped opposite the place here, didn't it, the south corner of Moore and Mercer? A. Yes, sir.

Q. Why, do you know? Did they say why? A. What did it stop there for?

Q. Yes. Did they say why they stopped there in that particular place? A. Well, they were waiting for the time.

Q. What time? A. For the man to give out the money.

Q. What time was it to be? A. About ten o'clock.

Q. Did they say what man was going to give it? A. They did not state.

Q. Was there a car between the trolly track and the railroad track on Moore Street while you were standing there? A. Yes, sir.

Q. And when that car got out of the way, then the car in which you were moved up into that position between— A. No, sir.

Q. —trolley and the railroad track? A. No, sir.

Q. Well, how long after it left? A. We got out of the car down by that warehouse, and me and Strand walked over together, and we stood in front of the express office and he looked in the window and I——

Q. The front of it? You mean the Mercer Street side where the trolley is? A. Right over by where the trains run.

Q. Oh yes. That is——

Mr. Zabriskie: S-4, is that the number?

The Assistant Prosecutor: I think it is, yes.

Q. That is a picture shown as S-3, a picture shown as S-3. A. Right here (indicating).

Q. You and Strand got out and stood there? A. Yes, sir.

Q. Where was Corcoran? A. He was down the block by that warehouse.

Q. In the automobile still? A. Yes, sir.

Q. Did you look in? A. No, sir.

James Lynch, cross.

Q. What did you stand there for? A. I was waiting for Strand. Strand looked in the window.

Q. Which window did he look in? Just hold it up so the jury may see it. A. None of these windows.

Q. None of those. Does it appear on S-1? A. No, sir.

Q. Would it appear on S-2, or S-6? A. It would, over to the—that far window there.

Q. Oh, do you mean the window facing Moore Street? A. Yes, sir.

Q. The side of it? A. Yes, sir.

Q. Well, didn't you look in? A. No, sir.

Q. How far were you away from Strand when he looked in? A. I was standing around here on the corner.

Q. That is to say, you were standing—Strand was looking in the window here on the Moore Street side? A. Yes, sir.

Q. Now, where were you standing, on the railroad track side? A. Yes, sir.

Q. Or the trolley track side? A. Over by the railroad track side.

Q. How long did you stand there? A. I would say about five minutes.

Q. Well, was he looking in the window five minutes? A. Well, he didn't look. We stood there, and he gave the car a signal to pull up. Then he told me——

Q. Stand right near the corner? A. Yes, sir.

Q. Well, you were within five feet of him, weren't you? A. Yes, sir.

Q. And he gave the car a signal to pull up? A. Yes, sir.

Q. Well, did the car pull up? A. Yes, sir.

Q. Where did it pull to? A. It pulled to just between the two car tracks.

Q. You mean between the trolley tracks on Mercer Street and the railroad tracks? A. Yes, sir.

Q. Just across the street from where you were? A. Yes, sir.

Q. Then what happened? A. He told me to give him a chance to get into the office.

Q. Yes. A. And then told me to come in from the back door.

Q. How did you know there was a back door? A. He showed me that.

Q. Oh! When did he show it to you? A. While we were standing there that couple of minutes. He said "You can go down there to go in."

Q. Could he show you the back door from Moore Street or from any section near Moore Street? A. We were standing right on the very corner.

Q. Well, did you go in the back door? A. Yes, sir.

Q. Did you have any trouble finding it? A. No, sir.

Q. The back door was the big sliding door, wasn't it? A. Yes, sir.

Q. Did he tell you what to do when you went there? A. He told me to wait until I get the signal to come in.

Q. And then you say you went in? A. When I got the signal to come in.

Q. Well, afterwards, you did go in, didn't you? A. Yes, sir.

Q. And when you looked in there, you saw Strand and Palmer talking, you say? A. Yes, sir; they were in conversation.

Q. Having a conversation? A. Yes, sir.

Q. In the presence of Talmadge, this witness that we had here? A. They were standing. Talmadge was inside the screen and Strand was outside the

screen, and Talmadge give me a bow with his head to come in.

Q. And that was the signal? A. Or Palmer; yes, sir.

Q. Well, you know you were not doing anything wrong up to that point, were you? A. Yes, sir.

Q. What did you need a signal for to go into an express company office? A. Well, that is the way I got told to come in.

Q. You were just obeying the orders, were you? A. Yes, sir.

Q. To get a present? A. Yes, sir.

Q. You had to have a signal when it was time to come in? A. Yes, sir.

Q. Well, didn't you think it funny that Strand, a big fellow like him, couldn't take the present by himself? A. No. He was going in to have things fixed for me to go in and get it.

Q. Who was to give you the present? A. It was to be handed to him.

Q. Who was to give it to you? A. I didn't know.

Q. How many men were there in the station when you looked in, beside Strand? A. Him and Palmer, and now Mr. Talman, or Talmadge.

Q. And where was Strand standing when you looked in? A. Inside the door.

Q. That is the Mercer Street door, this door here (indicating)? A. Yes, sir.

Q. And you looked in from the barred door, and you had a view something like that, didn't you, in S-8? A. Yes, sir.

Q. And will you point out on S-8 just about where Strand was standing? A. He was standing right inside this door.

Q. Inside? A. Yes, sir.

Q. That is not a door; that is a window, isn't it? A. Well, right inside.

Q. Inside that door? A. Yes, sir.

Q. Now, is it the other side of that door? A. Yes, sir.

Q. And where was Palmer? A. He was standing right here (indicating), at this here window.

Q. And they seemed to be just talking? A. Yes, sir.

Q. Where was Brannon, the man who was killed? A. I didn't see Brannon.

Q. You didn't see Brannon at all? A. No, sir.

Q. Well, how did he get between you and Strand when he fell? A. I don't know. I was inside the office when he fell.

Q. And did Brannon get into the office at all? A. I do not know.

Q. Well, you were looking around, weren't you? A. No, sir.

Q. While you were walking, after you got the signal, while you were walking from the door to the office where Strand was, Brannon somehow or other got in between you, is that what you say? A. No, sir.

Q. Where did Brannon come from? A. I do not know.

Q. Where did he fall? A. Well, it was a man laying in the door as I went out the door.

Q. That is the first you saw of him? A. Yes, sir.

Q. Did you hear a shot? A. Yes, sir.

Q. What direction did it come from, behind you or in front of you? A. I do not know.

Q. What? A. I do not know. I just heard the shot.

Q. Well, you were the only one in the big package room at the time, weren't you? A. No, sir; I was inside of the office in front of Mr. Talmadge when I heard the shot.

Q. Were you past this door here (indicating)? A. I was inside in the office.

Q. Oh, just in front of the cage, you mean? A. I was halfway into the cage.

Q. Oh, going around? A. In Mr. Talmadge's office I was, when I heard it, right inside.

Q. Will you look at Exhibit S-7, and see if you can describe on S-7 where you were when you heard a shot? A. (Referring) I was over to this —I cannot pick out on this here paper.

Q. Well, could you show us on the chart here? A. I could tell you by this here better.

Q. All right.

Mr. Zabriskie: Tell better by referring to which one is that, that is S-8?

The Assistant Prosecutor: S-8.

A. I was away over to the right of Strand when I heard the shot.

Q. Well, in order to get to the right of Strand, you had to pass a little door, a little swinging door, didn't you? A. Yes, sir.

Q. And how far had you passed that swinging door when you heard the shot? A. I was well on the far side of Strand at the time.

Q. Were you inside the swinging door? A. Yes, sir.

Q. How far? A. On the other side of Strand, going into the cage.

Q. Going into the cage? A. Yes, sir.

Q. What were you going into the cage for? A. We were supposed to get the money.

Q. Who said so? A. What?

Q. Who planned that? A. Well, it was Strand's——

Q. Well, you were going in the cashier's cage to get this present? A. Yes, sir.

Q. And you heard a shot? A. Yes, sir.

Q. Exactly where was Strand standing when you looked around after you heard the shot? A. He was coming in past me into the office.

Q. And Palmer was in front of you in his cage, wasn't he? A. Yes, sir.

Q. And Talmadge was alongside of you? A. Yes, sir.

Q. Partly in front and partly alongside of you? A. Yes, sir.

Q. And Strand was right near you? A. Strand was to the left of me.

Q. Well, who do you say fired that shot? A. I do not know.

Q. There was nobody else there except you five, you five, including the——

Mr. Zabriskie: I object. You can ask him, but you cannot tell him.

The Assistant Prosecutor: I think I am allowed to go along that line within reasonable limits.

The Court: I think so.

Q. Was there anybody in that place except Palmer, Talmadge, Strand, yourself and the deceased? A. No, sir.

Q. Did you know that the deceased was shot from the left side? A. No, sir.

Q. Which way did he fall, Lynch? A. I do not know.

Q. Well, which way did he finally land up on the ground? A. I just seen the man lying there as I went out the door.

Q. In what direction was his head pointing, for instance? A. Into the office.

Q. Towards the door that you had come in? A. Yes, sir.

Q. Did you have to step over him to get out? A. No, sir.

Q. His feet were toward the package room, weren't they? A. Yes, sir.

Q. Well, did you find any revolvers around there? A. No, sir.

Q. You didn't have any? A. No, sir.

Q. Strand didn't have any, did he? A. No, sir.

Q. Did you see any revolver lying near Brannon—— A. No, sir.

Q. —as he lay there? Well, what did you run for? A. I heard this shot, and I knew I was in a bad place, so no more than I got an opportunity, Strand passed me and went to the cage, I walked right out the cage and walked down to the automobile and got in it.

Q. Walked with the money? A. No, sir.

Q. Well, you went in to get a present. There was no harm in that, as you thought, was there? A. No, sir.

Q. And yet, as soon as you heard somebody fire a shot somewhere, you ran? A. Well, I knew it was time to go out of the place.

Q. You ran so fast that you got ahead of Strand and got into the car ahead of him, didn't you? A. Strand crossed into the cage, and I walked right out through the door and got into the car.

Q. Well, one or the other of you had to step out of the other's way, didn't you? The cage entrance is only, apparently, two feet three, isn't that right? A. I do not know.

Q. A small door. And when you were coming out, he was going in, is that it? A. Well, I was right here, and he just pushed past me into the cage.

Q. And you brushed past him, or—— A. And I walked right out through the door and down to the car and got into the car.

Q. Well, how did you come to drop this letter? A. I do not know.

Q. Was that before you went in the cage or after? A. I do not know.

Q. You didn't know you dropped it? A. No, sir.

Q. How long have you known Strand? A. A little over a year.

Q. Very friendly with him? A. No, sir.

Q. Did you know him any better than you knew Corcoran? A. No, sir; I didn't know him as well.

Q. And yet when they told you they were coming out to Hackensack to get a present, you didn't question either one of them? A. No, sir.

Q. Well, didn't you ask them why they were picking on you to accompany them to New Jersey? A. No, sir.

Q. You just went, didn't you? A. Yes, sir.

Q. How long are you married? A. 7 years.

Q. How much? A. 7 years.

Q. Where were you married? A. In Fourteenth Street Church.

Q. What is the name of it? A. Saint Bernard's.

Q. And where were you working at that time? A. In the United States Trucking Corporation.

Q. Were you working for them in August of 1922? A. Yes, sir.

Q. In October of 1922? A. No. It was just about that time I got the dock works.

Q. What? A. Just about that time I got the work at the docks.

Q. Where were you working in the early part of 1923, then? A. For the United States Trucking Corporation.

Q. In 1919 were you working for the United States Trucking Corporation? A. Yes, sir.

Q. In the month of March? A. Yes, sir.

Q. And April? A. Yes, sir.

Q. Steadily? A. Yes. sir.

Q. Every day? A. Yes, sir.

Q. Well, you got no money at all, is that correct? A. Yes, sir.

Q. Well, you saw them cutting these money bags open, S-18 and 21? A. I didn't see the bags cut open.

Q. Where were you? A. I was sitting in the back of the car, and the money was dumped on the floor of the car.

Q. Who dumped it on the floor of the car? A. Strand.

Q. How did they get the money out of the car? A. When they pulled into the garage.

Q. Who took it out? A. Strand.

Q. Who took it upstairs? A. Strand.

Q. Who counted it out, counted it, opened the envelopes, and counted it? A. Strand and Corcoran.

Q. You didn't do anything at all, did you? A. Well, I stood—I was there with them.

Q. Well, you went there to help them, didn't you? A. Yes, sir.

Q. And yet you didn't do anything, is that correct? A. Well, I was standing there, I stood there, and they done the opening and counting.

Q. Were your men working that day? A. Yes, sir.

Q. Well, you didn't go back around closing time to see whether they had quit ahead of time or not, did you? A. Well, they quit when they get done work, when the docks closed.

Q. And you didn't get home until after dark?

A. No, sir.

Q. Didn't you ask them what you were waiting for all this time in this strange house? A. No, sir.

Q. How did they get in this house, as shown in Exhibits S-11 and 12? A. Corcoran breaking a door window.

Q. Breaking a window, as shown on Exhibit S-11? A. Yes, sir.

Q. That did not surprise you? A. No, sir.

Q. You didn't think that was unusual at all? A. No, sir.

Q. To get in the house by breaking the window? A. No, sir.

Q. You say you went in the cage to have this man give you some money, that is correct, isn't it? A. Yes, sir.

Q. It did not occur to you as odd that the bags were marked "Return to the Federal Reserve Bank of New York," did it? A. No, sir.

Q. Well, what was this bag taken for, Lynch, do you know? A. I do not know.

Q. Well, did you go for bags or parcels? A. I do not know. I didn't know what way it was given.

Q. Well, didn't you know what was in Exhibit S-23? A. I didn't handle it.

Q. Did you ever see what was in it? A. No, sir.

Q. You did not? A. No, sir.

Q. Well, the money did come out of it, didn't it? A. Well, Strand and Corcoran done all the opening.

Q. Well, you saw them open it? A. No, sir.

Q. No? A. I was at the back of the car.

Q. Corcoran and Strand opened this, did all the opening? A. Yes, sir; in the garage.

Q. Well, didn't you say a while ago that they

opened it in the car? A. Well,——

Q. Threw it out on the floor of the car? A. The money bags was opened in the car, and they was open in the garage.

Q. Who opened the money bags in the car? A. Strand.

Q. Where? A. While we were driving along.

Q. Were you sitting with him? A. Yes, sir.

Q. You didn't have anything at all to do with it? A. He dumped them right out on the floor.

Q. And you didn't have anything at all to do with them? A. No, sir.

Q. Can you drive an automobile? A. Yes, sir.

Q. How long have you been able to drive an automobile? A. About 5 years.

The Assistant Prosecutor: That is all.

Re-Direct Examination by Mr. Zabriskie:

Q. Lynch, did you ever sit in the witness chair in your life before today? A. No, sir.

Q. And now will you please explain to the jury about the kind of work you are engaged in in New York? Just explain your business and the way it is run and who runs it, and just how it is operated down there in New York? A. On certain trucks, you know, put so many men. The ships bring in certain stuff, and you unload it on the dock, and then truckmen come down to the dock to pick the stuff up.

Q. So you meet them at the dock just for the sole purpose of loading the stuff on the trucks? A. They come to haul it from the docks.

Q. And how many of you fellows are there in your particular branch? A. There is thirteen steady men.

James Lynch, re-direct.

Q. Thirteen steady men. A. Sometimes, we got——

Q. And out of that crowd, who is the one that is the responsible man? A. I am the responsible man.

Q. You are the responsible man? A. Yes, sir.

Q. Now, take it these days that have been referred to when you were away. Did the work go on just the same? A. Yes, sir; a man by the name of Daniel Lynch takes care of that.

Q. And if a man is away one day, do they dock him for that, or do they divide up the total profit evenly, regardless of a day or two like that? A. No, sir.

Q. They do not dock him? A. Yes, sir; they dock him.

Q. They do dock him? A. I am the only man gets on the dock full pay.

Q. You are the only man on the dock that gets full pay, because you are the head man; you are—— A. Yes, sir.

Q. —the responsible man? A. Yes, sir.

Q. But you have to see that the work is properly done? A. Yes, sir.

Mr. Zabriskie: I think that is all.

By the Court:

Q. Are we to understand that this system is that the head man goes there or not as he feels like it, and the other thirteen men do the work, and he takes the money?

Mr. Zabriskie: I will ask him about that.

By Mr. Zabriskie:

Q. Did you hear the Court's question? A. Yes, sir.

James Lynch, re-cross.

Mr. Zabriskie: Will you read it, Mr. Stenographer?

(Question read.)

The Witness: Yes, sir; they split up what they get with him.

By Mr. Zabriskie:

Q. With the head man? A. Yes, sir.

Q. And do you give them a hand, as a rule? A. Yes, sir.

Q. But whether you do or not, why, you get paid? A. Yes, sir; I get paid.

Q. Is that the usual way they work on the docks? A. Yes, sir; right along.

Q. And how many gangs are there doing exactly the same thing? A. All along the North River.

Mr. Zabriskie: That is all.

By the Assistant Prosecutor:

Q. Then they don't need a boss, do they, at all? Can you answer that? A. Sir?

Q. Then they don't need a boss in those gangs at all, do they? A. Well, yes, they have to have a boss.

Q. You say that today is the only time that you ever were on the witness stand? A. Yes, sir.

Q. Do you remember Judge McInerny in New York City, Special Sessions Judge? A. Yes, sir.

Q. Do you remember being on the stand before him? A. No, sir.

Q. On May 13, 1919? A. No, sir.

Q. You were not on the stand that day? A. No, sir.

Q. Do you remember Judge Nolan, Special Sessions? A. Yes, sir.

James Lynch, re-cross.

Q. You were not on the stand before him in 1922? A. No, sir.

Q. When you were arrested in the Tombs, you secured a habeas corpus writ, didn't you?

Mr. Zabriskie: I object, your Honor please. That is immaterial.

The Court: Well, how is that material?

The Assistant Prosecutor: Well, I will put it in another way.

The Court: Yes.

Q. Didn't you state in New York City under oath that you were not in the State of New Jersey on Thursday, January 21st? A. No, sir.

Q. You did not state that in your habeas corpus application? A. No, sir.

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

The Assistant Prosecutor: That is all.

Mr. Zabriskie: That is all.

Now, where is that D-1 for Identification? I just want to offer this in evidence now, this paper marked Exhibit D-1 for Identification.

(Paper marked Exhibit D-1 in evidence.)

The Court: Well, hadn't it better be read?

Mr. Zabriskie: Yes, I will read it.

This is the Exhibit D-1, headed "Police Department, City of New York.

"On January 17th, 1926, at 77th Street and Second Avenue, about 8:45 A. M., I met James Lynch and asked me to go to Jersey. We boarded a trolley car at 9:00 A. M. and rode to the Edgewater Ferry, and boarded a

trolley car and got off at Hackensack at Susquehanna Station. At about 10:30 A. M., and met Frank Young and he told James Lynch and I to wait and he would show us the railroad detective but we did not see him. Frank Young then said he would look in the lunch room and look for Teddy Palmer.

"Frank Young then went in the lunch room, met Teddy Palmer, and I saw him talking to Palmer, then Frank Young came out and asked me if I had seen Palmer, and if I had a good look at him. Young and I then walked toward the corner of the bank and stayed there until Teddy Palmer came out. Young then again pointed him out to me and said, 'there he goes to the office,' James Lynch was standing on the corner.

"Young then told Lynch and I that he would let us know when the big money would be at the office, either Wednesday or Thursday, he was not sure, but he would let Lynch know when to come over. We then came back to New York, Lynch and me.

"On Wednesday, the 20th day of January, at about 7:30 in the evening, I met Lynch at Seventy-seventh Street and Second Avenue, and he told me that Young had notified him that tomorrow (Thursday) was the big shipment, and that Lynch and I was to meet him at the Edgewater Ferry with the big Buick car.

"The following morning, Thursday, January 21st, 1926, Lynch and I met Young on the Jersey side (Edgewater) at about 8:15 A. M. and we got in the car and parked at the ferry for a short time, about a half hour;

while waiting, Young then showed us the plans of the American Express office at Hackensack, N. J., how to get in, that the doors would be left wide open for us, and that the railroad detective would see to that. We had written under the plan where the money would be located; there would be two packages on the safe and two envelopes on the stool. Young then showed Lynch and I a list of the amount of money that would be laying around. On the bottom of the map there was a sketch of how the money would be laying by the cage. Young that the railroad detective would not be there."

There seems to be a word omitted.

"After this conversation describing the outlay, we left Edgewater Ferry and went to Hackensack through Main Street, and Young took us some place in the woods to kill time. We all stood in the Buick car for about three-quarters of an hour, as Young had told us that we had plenty of time, that we did not need to be there until 10 o'clock, that the train would come and take the money at 10:10 A. M.

"We left the woods at about 9:45 A. M., and drove down Main Street, Hackensack, and arrived at the Public Service Station at 215 Main Street, and parked there for about six or seven minutes, then drove up Main Street, past the bank and turned to the left on the first block apast the bank. We then went up Moore Street, and stopped at the jitney bus stand at the corner of Mercer Street, and Lynch and I got off and went over to the railroad station and looked in the American Express Company office. I

then told Lynch that I did not want to hold up the place; he told me, 'You go ahead and go through with it.' Lynch then went back to where the big sliding door was and told me to go around to the front of the office and ask about a trunk which I did. While standing talking to a man at the office, I heard a shot in the back, and Lynch came in the door and said, 'Put them up or I will give you the same dose I gave this guy" (meaning the man he had shot and had fallen to the floor), and then Lynch said to me, 'Get in there and get the money, or I will give it to you, and pull your gun out,' which I did. I walked in the office, and Lynch said to me, while he was pointing the gun at Teddy Palmer and the other man in the office, 'Pick up the money off the safe and off the stool and look around the floor for the rest of it.' I said to Lynch that there was no money on the floor. He said, 'look again.' I looked and told him that there was none there. He then spoke to the two men, 'Where is the rest of the money?' They said there is no more. I then picked up two sacks and two packages, two off the safe and two off the stool, as was explained in the plan. I went out with the packages and put them in the car,——

"I went out with the packages and put them in the car, and Lynch followed me with the two guns in his hand. We got in the car with Young at the wheel and went up Moore Street, two blocks, and turned left on Main Street, up Main Street to the signal light, and turned right and went straight ahead. While we were riding, Lynch cut the money

bags open, and told him I was going to leave; he told me to stay, but I wanted to get out of the machine. Lynch then handed me $500, one dollar bills. I then got off with my money and they went to meet the other car. I then took a bus to Dyckman Street Ferry and came over to New York, and then went to the moving pictures, Seventy-seventh Street and Third Avenue, and then went home.

"I have made this statement voluntarily under no duress in the presence of the following officers and I have been informed prior to making this statement of all my rights.

CHARLES STRAND."

"Witnesses, Walter C. Sullivan, John J. Cronn, John Valuzzi." And some characters I do not understand.

The defense rests. I am going to ask the Prosecutor to open.

The Assistant Prosecutor: We have a little rebuttal, sir.

Mr. Zabriskie: Oh, I beg your pardon.

The Assistant Prosecutor: I offer S-28 for Identification in evidence.

Mr. Zabriskie: May I see it, Mr. Prosecutor?

The Assistant Prosecutor: Certainly (handing paper to counsel). Any objection?

Mr. Zabriskie: No objection.

The Court: Let it be marked and read.

The Assistant Prosecutor: I will read it.

(Paper marked Exhibit S-28 in evidence.)

The Assistant Prosecutor: (Reading) "Mr. James Lynch, 330 West Seventy-seventh Street, New York Ctiy, New York.

"Dear Sir: With pleasure we advise you of the approval of your application for Yellow Drive-It-Yourself System Service. Enclosed herewith is your identification card which bears your lease number in the upper right-hand corner. By presenting same you will be able to rent a car any time at any of our stations on a moment's notice. Should you lose your card, kindly notify us at once.

"Trusting you will like our service and tell your friends about it, we remain,

"Very truly yours,

"Yellow Drive-It-Yourself System, Inc.

"P. S. Will appreciate your passing the enclosed rate cards to your friends. Your recommendation will be considered sufficient to entitle anyone to our service."

My attention has been called to the fact I omitted to read the date. December 2nd, 1925. Mr. James Lynch, and then as read.

That is all. That is the end of our rebuttal, sir.

The Court: Well, the defense asks an opening.

The Prosecutor: May it please your Honors, Ladies and Gentlemen of the Jury: As an opening and not as an argument of the case, the State believes that this defendant is guilty of murder in the first degree.

Charge.

It believes that it has shown that on the 21st of January of this year, the defendant, whilst engaged in a robbery, with possibly one and perhaps two other persons, took the life of a human being. It believes that the death of one Frank Brannon ensued from the committing or attempting to commit robbery by the defendant, either alone or whilst associated with others. That it occurred in this way, briefly: That whilst three persons were occupied in their pursuits, their several pursuits, as employes of the American Express Company in the express office in Hackensack, this County, one James Lynch, the defendant, accompanied by Strand, entered this place for the purpose of committing robbery, and whilst there, that the death of a human being ensued in the course of the prosecution of this robbery.

Mr. Zabriskie sums up the case to the jury on behalf of the Defendant.

The Prosecutor sums up the case to the jury on behalf of the State.

The Court then charged the jury as follows:

THE STATE
vs.
JAMES LYNCH
} Charge.

PARKER, J. Members of the Jury: The indictment charges this defendant with the murder of a young man named Brannon, I think is the name,— I have not seen the indictment and I do not know

what his first name is, but you will have the indictment before you; here it is, or a copy of it,—one Frank Brannon; that the murder was committed here in Hackensack on the 21st day of January last, a little over a month ago.

The theory of the State in this case, as you are probably well aware by this time, is that the killing was perpetrated in the execution of what the State claims was legally a robbery of the express office at the Hackensack Station, where you went and looked over the ground. Now, robbery is the crime of unlawfully and feloniously taking the money or property of another by violence and putting him in fear. That is my recollection of the definition, and I think that is substantially right; if not, I will ask counsel to correct me in due course. And our statute says—and you may as well have its exact language—that if any person who, in committing, or attempting to commit any one of various crimes, of which robbery is one, or any unlawful acts against the peace of this State of which the probable consequence may be bloodshed, shall kill another, then such person or persons so killing as aforesaid shall be guilty of murder.

In this State there are two degrees of murder known as first degree and second degree, and another statute says that indictments for murder shall charge murder generally, but that on the trial the jury shall ascertain and declare by their verdict whether they find the murder, if murder it was, to have been murder of the first or murder of the second degree; and that will be within your functions in this case, although only, I think, to the extent that will be defined in a few moments.

There is another section of the Crimes Act which it is important that you should bear in mind, because it deals fundamentally with the degrees of

murder and limits your consideration very materially. It says murder which shall be committed in perpetrating or attempting to perpetrate any burglary, robbery, and so on,—including robbery, you see,—shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree. Consequently, if this defendant was a participant in a robbery at that time and there was a killing in the execution of that robbery, and I may as well say now as at any time, either by himself or by any other principal engaged in that robbery, he is guilty of murder, and he is guilty of murder in the first degree. I used the word "principal" just this moment, and it is proper that you should understand what that means. A principal in the commission of a crime is either the person who directly commits it or someone who is present aiding and abetting; and one is called a principal in the first degree and the other is called a principal in the second degree. For your purposes, the distinction is not legally important.

The story, as I gather it to come from the mouth of the State's witnesses and as the State claims the truth to be, is about like this: That Palmer was short in his accounts, found himself in trouble, was casting about for some means of apparently straightening out his deficit, that he got into communication with some one or more of these persons, and the result of it all was, to make a long story short, that certain persons were imported, let us say, from New York for the purpose of accomplishing a hold-up of the express office, and the proceeds of the hold-up were to be divided among Palmer and his associates, and Palmer thereby was to obtain sufficient funds to make up the deficit that appeared on the company's books. The two men that, concededly by the testimony of both,

were there present in the express office were the defendant Lynch and the witness Strand. You heard Strand's evidence and you heard Lynch's evidence, and each of them says that they both were there, and each of them says that there was a shot fired, and each of them says that the money was taken away; and if the money was taken away against the will of Mr. Talmadge, whatever may have been the will of Mr. Palmer, if it was taken from Talmadge's custody by force or violence or putting him in fear unlawfully, that was a robbery. And if, in the perpetration of that robbery, either Lynch or Strand fired the shot that killed Brannon, both of them are guilty of murder, and both of them are guilty of murder in the first degree.

There is another phase of this case that I shall come to in a few moments and, consequently, that will amount to something of a reservation with regard to what I have just said, and that relates to the actual knowledge and belief of Lynch as to what was doing at the time he did it, at the time he did what he did; and I do not know whether it is best to deal with that now or not, I think, on the whole, that it is. Lynch and Strand, if the State's claim is adopted by you, were engaged in a common purpose, the robbery of Talmadge as chief custodian of this money. On this theory, as I have said, both were principals and equally guilty for the acts done by either. And if death ensued from the committing or attempting to commit that robbery, the offense was murder whether the blow was struck by the one or the other; I mean, whether the shot was fired. And, as I have said, by this Section 106 which I read to you a moment ago, that kind of murder is by the statute murder in the first degree. But Lynch's claim, as I understand it, is in substance that he went into this matter on the assur-

ance from the other parties to the previous conspiracy that in effect this was to be not a real hold-up, but what may be called a fake hold-up, and that those officials of the company whose duty it was to care for the money were in the plot, and that a show of force was needed merely to create an appearance of innocence on their part and nothing more. Apparently, this should involve Talmadge and possibly Brannon. But the question as bearing on Lynch's degree of guilt is not so much what the actual facts were relating to the complicity of the express people as what Lynch honestly believed they were at the time the plan was in process of execution. Lynch has testified to that effect, and the inference you are expected evidently to draw from his testimony is that he was merely assisting somewhat as a dummy, if you please, in the carrying out of a fraudulent scheme to rob the express company by an apparent hold-up, that he had no idea of shooting anybody, that he had no idea of committing any genuine robbery, that he was simply going over there to help the other people carry through their little scheme that they had fixed up with the express people; and if there was nothing more to it than that, or if Lynch honestly believed up to the time that it was put into effect that there was nothing more than that, this request that has been submitted to me may be applicable, and I will charge it to be the law. Here it is: If you find that Brannon came to his death while grand larceny was being perpetrated or attempted to be perpetrated by the defendant Lynch and others co-operating with him, then, and in that case, you are justified in finding this defendant James Lynch guilty of no higher degree of murder than murder in the second degree. Because, you see, if there was no violence and putting in fear, there

was no genuine robbery or the crime of robbery either was not actually being committed or Lynch would not intentionally be committing robbery, but his intention would be to participate in something that amounted in law to grand larceny. But there are difficulties about that and, of course, the first one is whether you place the necessary degree of credence in Mr. Lynch's story on this subject to justify you in reaching a degree of reasonable doubt with respect to the State having sustained the burden of proof of the main case.

Now, to go on: If up to the time of demanding the money Lynch believed the mere demand and pretended force were all that were needed, you would be at liberty to regard the so-called hold-up as a mere grand larceny up to the time when, if at all, Lynch realized that the hold-up was to be not pretended but real. But if and when he realized that it was not pretended, but that it was real at any time before it was complete and the money secured, he would be a participant in a robbery in actuality, and the rule first given would not apply. So you see, if for example, when Talmadge was backed up against the wall with his hands up in the air, and Lynch and Strand were trying to carry this thing through, Lynch might have reached that point with the idea that it was a mere fake, but if at that point it came across his consciousness that this was no fake, but that it was a real thing so far as Talmadge was concerned, and he then went on and the shot was fired, after that he would be just as guilty of robbery as if he had gone into it in the first instance. His duty necessarily as soon as he found it was more than a fake hold-up was to quit.

(To counsel.) I do not understand the shots were fired before the hands went up, were they?

Mr. Zabriskie: I did not quite get that point.

The Court: I do not understand the shot was fired before they had these men holding up their hands?

Mr. Zabriskie: I do not recall it. I think there was a difference of testimony on that point. I really cannot answer that question off hand.

The Court: Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent: If at any time before the firing of this shot Lynch realized that it was a real hold-up and not a fake one, why, he was then participating in a robbery, and the firing of a shot after that time would make him guilty of murder, and murder in the first degree. Now, did Lynch do this shooting, or didn't he? Because, while it may not legally be of importance, it may have some extra legal importance in your minds, especially as bearing on the question whether, in case you find a verdict of guilty in the first degree, you ought to find with it a recommendation of life imprisonment under the statute as you are empowered to do, and as I shall presently instruct you. Lynch says he did not have any gun. Lynch also says he did not fire any shot. I do not find anywhere in my notes of his evidence that he says that Strand fired the shot, nor does he even accuse Strand of firing the shot. I may be wrong about that. Somebody fired a shot, and somebody fired a shot that inflicted a fatal wound on unfortunate young Brannon. The only two who were actually on the ground putting this thing through

were Lynch and Strand. Corcoran, while legally present, was around the corner sitting in the car. Certainly, it cannot be claimed very well that Talmadge fired it, or that Palmer fired it. There is not any explanation of any kind to show that it was accidental. And besides what I am going to quote from my own notes, as far as I have it, there are some matters that Mr. Hart, the Prosecutor, quoted to you from the testimony that tend to show that Lynch was the man. First, you will remember,—and when I undertake to cite this evidence it is your recollection that you are to rely on and not my notes,—that Cuneo testified that after they got to the Rocksch house, there was a talk about someone being shot, and that Lynch showed his gun and said that was the one that did it; and someone asked him, "Where did you get him?" And he said, "I got him in the bag." Then, further on, I have in my notes of the Strand testimony, that Strand heard a shot, saw a man fall, and that Lynch had a gun, and that a moment afterwards he stuck it into Strand's side and said he would give him the same dose as he gave the other, "Go in and get the money," and that Lynch pulled in the wounded man, saying that he was making too much noise. At another place in the testimony, I think it was Strand said at one place, and in another place when I asked him the question myself, I think you will remember, that he testified that he saw smoke coming out of the gun that was in Lynch's hand; and in another place that Lynch did have a gun, and that Lynch remarked at some stage of the proceedings, with respect to the deceased Brannon, "I gave him a good chance," and "why didn't he take it?" Of course, all that is competent as regards Lynch, and it may satisfy you that he not only was there and not only partici-

pated in the robbery, but that he actually fired the shot.

Now Members of the Jury, when a defendant is placed on trial on a criminal charge, he is presumed to be innocent, and law says that the State has the burden of proving his guilt generally beyond a reasonable doubt, I mean, his general guilt, his guilt of the charge in the indictment. The burden is on the State to prove him guilty beyond a reasonable doubt. And the question is then asked, what is a reasonable doubt? And it is one of those things that is very hard to define; but our Court of Errors and Appeals has undertaken to define or, rather, to say when it exists. A reasonable doubt is not a mere possible 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 they feel an abiding conviction to a moral certainty of the truth of the charge. And that, of course, brings you to the consideration of the weight and effect and value to be given to the evidence that has been produced in the case.

Our law, I am glad to say, entitles the Court to comment, and comment with substantial freedom, upon the evidence; but the rule, of course, is that the comments of the Court on the evidence, when the Court chooses to make them, are not in any way controlling on the jury. First, last and all the time, the jury are the judges of the evidence. They are the judges of its weight; they are the judges of its value, the judges of its effect. They are the ones whose memory is to be the test as to what the evidence was. Of course, now that we have stenographers in the trial of cases, the jurors sometimes ask that some of the testimony as given may be read to them by the stenographer. That is not

done very often, although it is sometimes. But, fundamentally, it is for the jury to remember what the evidence was and to give it the value that they say it is entitled to, and any comments of the Court are in no way controlling on them. But there are one or two rules that it is worth while to bear in mind, and I have been asked to charge you with respect to the bearing upon the value of Strand's testimony of the fact that he had been convicted of a crime. We have a statute that says, in effect, that conviction of a crime does not render the party incompetent to testify. He is entitled to go on the witness stand and testify, even although he has been convicted of a crime, but that the fact of such conviction may be drawn out of him on cross-examination or may be proved by the production of the record of his conviction for the purpose of affecting his credit. And the long and short of that is, Mr. Strand has admitted that he was convicted of a crime, manslaughter, I think it was, wasn't it?

The Assistant Prosecutor: Yes, sir; homicide, it was called.

The Court: Some kind of homicide, I think, manslaughter, or something of that kind, in the State of New York. That is admitted. You are entitled to take that into consideration and say how far and to what extent the credibility of his story is to be considered by you as affected by the fact that he was convicted of that crime in New York; and so, in a somewhat analogous way, is the testimony of these other people who were concerned in the getting up of this thing. Here are Palmer, Cuneo and one or two others, I need not mention their names, who have gone on the witness stand here and testified as to what they had to do with it and what they know about it and where

they were, and so on. Of course, they are all participants in the original conspiracy, and, as accomplices, if you please, their testimony should be received with more or less caution, because they are all under indictment for this very same crime, for a participation in this crime, or some crime that is closely related to it, and they have not yet been tried, and you see very plainly that their testimony has some liability to be affected by their own personal situation, and make such allowances for that as you think right. But you will not, I trust, overlook the fact that whatever the testimony of these other people may have been, you have got the statement of Lynch himself that he was there, and there was a shot fired, there was a man killed, and that the money was taken, whether he fired the shot or whether the other man did.

Mr. Zabriskie: If your Honor please, in accordance with your suggestion, I sent up the statute which gives the definition of robbery. I gave it to Judge Seufert.

The Court: Well, the statute of robbery Mr. Zabriskie calls my attention to, and I think it does not materially differ from what I told you. Any person who shall forcibly take from the person of another money or personal goods and chattels of any value whatever by violence or putting him in fear, and his aiders, procurers and abettors, shall be guilty of a high misdemeanor, and so forth. Well now, "take from the person" means take from the personal custody, and if Mr. Talmadge was unwilling in the premises, why, that was a robbery.

Charge.

There is one other matter, I think, and then I am done.

Mr. Zabriskie: I just call your Honor's attention to my requests number four and five. I do not know whether you have them in mind or not.

The Court: Well, I have charged that Mr. Zabriskie calls attention to the request that the defendant, James Lynch, cannot be convicted unless you are satisfied of his guilt beyond a reasonable doubt.

Mr. Zabriskie: No.

The Court: Suppose you let me go on with this.

Mr. Zabriskie: I did not want to stand by and——

The Court: We have a statute that says this: Every person convicted of murder in the first degree, his aiders, abettors, counsellors and procurers, shall suffer death unless the jury shall by their verdict and as a part thereof upon and after consideration of all the evidence recommend imprisonment at hard labor for life, in which case this and no greater punishment shall be imposed. So that if you reach a verdict of guilty in the first degree, then the statute charges you with a consideration of the evidence for the purpose of ascertaining whether you ought to add to your verdict of guilty of murder in the first degree this recommendation of life imprisonment; and that is committed to your good judgment and discretion upon the evidence in the case. If you do add that

recommendation, that is necessarily the sentence that the Court imposes; if you do not, the ordinary punishment of death is imposed.

Mr. Zabriskie: I think your Honor has covered everything I have requested.

The Court: Yes.

The rule of reasonable doubt, I might add, also extends to the degrees of crime, and I have said there is a possibility under this indictment that you would feel justified in convicting of second degree on the theory that this defendant Lynch had no idea that he was engaged in a real robbery. The burden, of course, is on the State to satisfy you both as to the commission of the crime and as to the degree; so that in order to be murder in the first degree the State would have to satisfy you by the test I have enunciated that the defendant was guilty of that particular crime.

I think that is all that need be said at this time. Let the officers be sworn.

(Two officers sworn.)

The Court: The jury may retire.

(The jury retired at 5:13 o'clock P. M.)

Mr. Zabriskie: Just a general exception, if your Honor please.

The Court: Very well, Mr. Zabriskie.

Exception allowed and sealed.

C. W. PARKER, Judge. (Seal)

(The jury returned at 5:31 o'clock P. M.)

Request for Testimony by Jury.

The Court: The Court has received this written message which I suppose comes from the Jury: We would like,—is that written testimony of Talmadge?

A Juror: I inquired for the testimony, your Honor, part of the testimony of Mr. Talmadge.

The Court: Well, I do not know just how to tell you what part you want, Mr. Zimmerman. We asked the stenographer and he said the testimony runs over an extent of perhaps thirty typewritten pages.

A Juror: I would like to have our minds refreshed on that part of his testimony where he said that two men ordered his hands up, Mr. Lynch and Strand; was that so?

The Court: Well, we can look that up and let you know, I guess. That would be in his direct examination, wouldn't it?

A Juror: I believe it would.

The Court: Well, Mr. Stenographer, I have on my notes here that Mr. Talmadge says he was agent, and so on, the 9:37 came in that morning as usual; that Brannon was in the freight room checking the incoming freight; that a tall man came in and asked to ship a trunk, and he then identified Strand; that Palmer was there, and Palmer said yes. Talmadge closed his desk and stepped over to the clerk's desk, and heard two shots. That he saw a short man with a gun in his hand, "was told to put up my hands." Is that about where you want it?

Request for Testimony by Jury.

A Juror: Yes, sir.

The Court: Now, see if you can find that, Mr. Stenographer, right there.

(The previous testimony of the witness LOUIS MARTIN TALMADGE, given on direct examination, was read as follows:)

"Q. And after this man came in and asked you about the trunk, then what happened? A. Well, I stepped over from my desk, over to the clerk's desk with my back to Cashier Palmer, and I heard two shots ring out, and then Strand turned and walked out. And as I turned around, I saw this short man with a gun in my face. I got a second glance and saw Strand standing by the door leading to Mercer Street.

"Q. Can you point out the man you describe as the short man who put the gun to your face? A. Yes, sir.

"Q. Is he here? A. Yes, sir.

"Q. Point him out. A. Sitting at the extreme end of the desk (indicating).

"Q. I think there is no question about that, the defendant, James Lynch? A. Yes, sir.

"Q. And what did you do when James Lynch put the gun to your face? A. Held my hands up, as ordered.

"Q. Who told you to hold your hands up? A. Lynch."

(The previous testimony of the witness LOUIS MARTIN TALMADGE, given on cross-examination, was read as follows:)

"Q. And the real thing that attracted your attention was the sound of a gun going off, wasn't it? A. No, sir; I got up before the gun was shot.

"Q. Well, after that, when you got up, you

walked in this direction, that is, towards the north? A. Yes, sir.

"Q. And you had gotten to a certain point. Now, what were you going there for? A. To check the address on a shipment.

"Q. So your mind was not so busy at that time, there was nothing unusual in your mind at that time? A. No, sir.

"Q. And then, while you were there, you heard the gun, and no sooner than you looked around, you say there was a man within a foot of you? A. Yes, sir.

"Q. And you say that man was Lynch? A. Yes, sir.

"The Court: Mr. Talmadge, are those two desks in the same position in the office today that they were then?

"The Witness: Yes, sir. Unles they were moved today. I haven't been there yet today.

"The Court: Well, at last accounts, they were in the same position?

"The Witness: Yes, sir.

"Q. Just one question more. Now, do I understand you to say that today there were two shots fired? A. Yes, sir.

"Q. And yesterday, do you recall saying there was one shot fired? A. Not me; no, sir.

"Q. You do not recall that? A. No, sir.

"Mr. Zabriskie: I think that is all."

The Court: That seems to be all there is on that subject. The jury may as well retire.

(The jury again retired at 5:45 o'clock P. M.)

Verdict.

(The jury returned at 6:59 o'clock P. M.)

(The Clerk calls the jury.)

The Clerk: Members of the Jury, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: What do you find?

The Foreman: Murder in the first degree as charged.

The Clerk: Hearken to your verdict as it shall be recorded at the Clerk's desk. You say you find the defendant guilty of this charge?

The Court: Murder in the first degree?

The Foreman: Murder in the first degree.

The Clerk: And so say you all?

The Jurors: Yes, sir.

The Court: Well, Members of the Jury, you have tried this case very patiently and carefully. You are discharged until next Monday, with the appreciation of the Court for your service.

(The jury was discharged.)

The Prosecutor: I respectfully move the sentence of the prisoner, sir.

The Court: Have counsel anything to say?

Mr. Zabriskie: Well, is there any great haste, your Honor, that the sentence be imposed at this time?

The Court: Well, I do not know that there is any great haste, nor do I know that there

is any particular reason for deferring sentence. Of course, if a writ of error is taken, that will suspend the operation of the sentence.

The prisoner may stand. James Lynch, the jury impanelled in this case has found you guilty under the indictment of murder in the first degree, and the only thing for the Court to do is to impose the sentence provided by law. The sentence of the law is that you shall suffer the penalty of death in the manner provided by law within the week beginning on Sunday, the fourth day of April, 1926.

Let the prisoner be remanded.

Defendant's Requests to Charge.

The Defendant's requests to charge as originally submitted to the Court are as follows:

1. The defendant, James Lynch, cannot be convicted unless you are satisfied of his guilt beyond a reasonable doubt.

2. The defendant, James Lynch, has not made any admission in this cause, and, therefore you cannot convict him unless you are satisfied of his guilt beyond a reasonable doubt from the evidence.

3. The burden of proving the guilt of the defendant beyond a reasonable doubt is upon the shoulders of the State, and if the State has failed to establish the guilt of the defendant beyond a reasonable doubt, it is your duty to acquit.

4. The jury has the right if it finds the defendant guilty of murder in the first degree, upon and after consideration of all the evidence, to recommend imprisonment at hard labor for life.

5. In case you believe the story of the State as

to the manner in which Brannon met his death, then the responsibility is upon you to determine whether or not the facts and circumstances of the case, as you find them from the evidence, are of such character as to make it proper for you to make a recommendation of life imprisonment.

6. In case you find the defendant guilty as charged in this indictment and you recommend imprisonment at hard labor for life, it will be within the province of the proper authorities to prolong the term in which this defendant shall remain in State's prison at hard labor, until the day of his death, if the circumstances warrant it.

7. If you find that Brannon came to his death while grand larceny was being perpetrated or attempted to be perpetrated by the defendant, James Lynch and others cooperating with him, then, and in that case, you are justified in finding this defendant James Lynch guilty of no higher degree of murder than murder in the second degree.

8. The law permits a person who is a witness to be asked on cross-examination if he has been convicted of a crime for the purpose of affecting his credit.

THE STATE OF NEW JERSEY
vs.
JAMES LYNCH

Certificate of Stenographer.

I, ARTHUR L. ROBINSON, Official Stenographer of the Bergen County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken at the trial of the case of the State of New Jersey v. James Lynch, defendant, under indictment for

Certificate of Court.

murder, which trial was held before the Bergen County Oyer and Terminer in and for the County of Bergen and a jury on the dates of February 23rd and 24th, 1926, at Hackensack, New Jersey.

Sworn and subscribed to before me this 14th day of April, 1926.

ARTHUR L. ROBINSON,

ROSE FELD,

Notary Public of New Jersey.

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JAMES LYNCH,
Plaintiff-in-Error.

In Error.
Certificate.

We, Charles W. Parker, a Justice of the New Jersey Supreme Court and Judge of the Bergen County Court of Oyer and Terminer and one of the Judges who presided over the trial of the aforesaid cause, and William M. Seufert, President Judge of the Bergen County Court of Common Pleas and a Judge of the Bergen County Court of Oyer and Terminer and one of the Judges who presided over the trial of the aforesaid cause, do hereby certify that the foregoing constitutes the true and entire record of the plaint, judgment of the Court and all proceedings in the said cause,

Certificate of Court.

and the entire record of all the testimony and proceedings had upon the trial of said cause and that the same is returned by the plaintiff-in-error therein with the writ of error, bringing up the bill of exceptions as signed and sealed in the said cause, together with all things touching and concerning same and all other papers and matters upon which the said cause should be heard and determined.

Dated this sixteenth day of April, A. D. One Thousand Nine Hundred and Twenty-Six.

CHARLES W. PARKER,
WILLIAM M. SEUFERT,
Judges.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

vs.

JAMES LYNCH,
Plaintiff-in-Error.

Stipulation as to Exhibits.

It is hereby stipulated by and between the Prosecutor of the Pleas, in and for the County of Bergen, counsel for the State, and John B. Zabriskie, counsel for plaintiff-in-error in the above cause, subject to approval of this Court, that in lieu of printing the same, all exhibits in this case not appearing in full in the testimony, may be used upon the argument, though not printed, such exhibits being as follows:

S-1 to 14 inclusive, photographs.
S-15, Map or sketch.
S-16, Map or sketch.
S-17, Bullet.
S-18, 2 bags for money, marked A and B.
S-19, 2 pieces of paper marked N. Y. Tel. Co., A and B.
S-20, Receipt book.
S-21, Rag called "dark bag."
S-22, Two N. Y. license plates.
S-23, Paper wrapper for money (page 155 of testimony).
S-24, 2 bags for money, A and B.
S-25, Piece of paper (wrapper for bills).
S-26, Slip of paper (envelope and slip marked Paymaster's Div. N. Y. Telephone Co.
S-27, Package of 163 one-dollar bills.

Stipulation as to Exhibits.

D-1, Issues of Bergen Evening Record of January 21st, 1926, January 22nd, 1926, January 23rd, 1926, January 25th, 1926, January 26th, 1926, January 27th, 1926, January 28th, 1926, January 29th, 1926, January 30th, 1926, February 1st, 1926, February 2nd, 1926, February 3rd, 1926, February 4th, 1926, February 5th, 1926, February 6th, 1926, February 8th, 1926, February 9th, 1926, February 10th, 1926, February 11th, 1926, February 12th, 1926, February 13th, 1926, February 15th, 1926, February 16th, 1926, February 17th, 1926, February 18th, 1926, February 19th, 1926 and February 20th, 1926, marked A to Z and double A.

Dated Hackensack, N. J., May 1st, 1926.

A. C. HART,
Prosecutor of the Pleas of Bergen County, Counsel with the State.

JOHN B. ZABRISKIE,
Counsel for Plaintiff-in-Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY, *Defendant in Error,* *vs.* JAMES LYNCH, *Plaintiff in Error.*	*On Writ of Error to Bergen County Court of Oyer and Terminer.* *Assignments of Error.*

Afterwards, to wit, on the return day of the said writ of error, before the New Jersey Court of Errors and Appeals, comes the said James Lynch, by John B. Zabriskie, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused to grant the defendant's motion for a foreign jury.

2. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused the defendant's application for an adjournment of the trial of the cause, notwithstanding the assignment of counsel had taken place only four days before trial, including Saturday, Sunday and a legal holiday (Washington's Birthday).

3. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Robert F. Grange, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 36, Robert F. Grange.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Mr. Grange, you live in Ridgefield Park?

The Juror: Right.

Mr. Zabriskie: And you read some of the Bergen County papers, do you?

The Juror: Yes.

Mr. Zabriskie: Do you read the Bergen Evening Record sometimes?

The Juror: Yes.

Mr. Zabriskie: Have you been reading it during January and February?

The Juror: Yes.

Mr. Zabriskie: Of this year?

The Juror: Yes.

Mr. Zabriskie: Have you been reading the accounts of this hold-up, or whatever it is called?

The Juror: I have.

Mr. Zabriskie: And by so doing, have you formed some opinion?

The Juror: Yes.

Mr. Zabriskie: I challenge for cause, your Honor please. Just one moment. (To the Juror) Have you formed an opinion as to the guilt or innocence of the defendant Lynch?

The Juror: Guilt.

Mr. Zabriskie: What do you say?

The Juror: Guilt.

Mr. Zabriskie: You have found him guilty. I challenge for cause.

The Court: Let him be sworn on his voir dire.

ROBERT F. GRANGE, sworn on his voir dire, testified as follows:

By the Court. Q. Now Mr. Grange, you say you have got an opinion in the case derived from your newspaper reading, and other sources, probably; is your opinion so firmly fixed that you could not decide this case upon the evidence that is produced in court? A. Not exactly, no.

Q. You do not think so? A. No.

Q. Well, in case the evidence failed to show him guilty beyond a reasonable doubt, do you think that you would be inclined to vote for an acquittal under the instructions of the Court in that regard? A. I think so.

By Mr. Zabriskie:

Q. But you sort of subconsciously feel that he is guilty, don't you? A. Yes.

Q. And we practically have to show you or demonstrate that in order for you to find him not guilty, isn't that so? A. Yes.

Mr. Zabriskie: I still claim I have a right——

The Court: Then the Court will pursue that further. The instructions of the Court to the jury will be that the jury ought not to convict the defendant unless the evidence shows him to be guilty beyond a reasonable doubt. Do you think you could follow that instruction? A. I would try to.

The Court: And that the burden of proof is on the State. Would you be guided by that? A. I would try to.

By Mr. Zabriskie:

Q. You say that you will try to, but you do not feel confident that you could give a verdict in accordance with the evidence, do you, Mr. Grange? A. Well, may be.

Q. What do you say? A. It might be a little bit that way.

Q. It might be difficult for you to do so? A. Yes.

Q. And knowing your own powers and abilities, you have doubt as to your ability to be governed by the evidence produced here, isn't that so? A. Yes.

The Court: The Court does not think that Mr. Grange has shown such incompetency as to justify a challenge for cause. It is, therefore, denied.

Mr. Zabriskie: Your Honor will permit an exception to be taken to that ruling?

The Court: Yes."

4. Because the said Court before whom, &c., at and upon the trial of the said issue so joined overruled defendant's challenge for cause as to John S. Abel, a member of the special panel, who made answers and testified as follows:

"The Sheriff: Number one, John S. Abel.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Mr. Abel, you also live down in Ridgefield Park?

The Juror: Yes, sir.

Mr. Zabriskie: And you read Bergen County papers?

The Juror: Yes, sir.

Mr. Zabriskie: And do you sometimes read the Bergen Evening Record?

The Juror: Yes, sir.

Mr. Zabriskie: And have you been reading that paper in January and February of this year?

The Juror: On and off; yes, sir.

Mr. Zabriskie: And have you been reading some of these accounts of this hold-up which is alleged to have occurred at the Susquehanna Station here, and the express office?

The Juror: Yes, sir.

Mr. Zabriskie: Have you talked to people to some extent about this case?

The Juror: Yes, sir.

Mr. Zabriskie: And have you from your reading and from your conversation formed an opinion as to whether or not Lynch is guilty?

The Juror: Well, I cannot say that I did.

Mr. Zabriskie: Yes.

The Juror: And I cannot say that I didn't.

Mr. Zabriskie: You really have the feeling now, though, that he is guilty, haven't you?

The Juror: Well, I couldn't say that I have a feeling that he is guilty. I feel that somebody is certainly guilty.

Mr. Zabriskie: Yes. And you are inclined to think that he is the man?

The Juror: Well, according to the papers, I would say yes.

The Court: In other words, if what the papers say is true, he is the man?

The Juror: He is the man; yes, sir.

The Court: But if the Court told you to be guided entirely by the evidence and to forget all about the papers, could you do that?

The Juror: Well, I don't see why not.

Mr. Zabriskie: I have no further questions.

The Court: Challenge overruled. Oh, you do not challenge him. Is he satisfactory?

Mr. Zabriskie: Well, I have not said that yet. I will just except to the ruling.

The Court: Well, the Court has not ruled. You have not challenged him.

Mr. Zabriskie: Oh, I challenge for cause.

The Court: You do?

Mr. Zabriskie: Yes.

The Court: Well, the challenge is overruled.

Mr. Zabriskie: Exception."

5. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 58 of the special panel was Alfred S. Mante instead of Alfred S. Maule as it was written on the panel served upon the defendant.

6. Because the panel of jurors served upon the defendant was defective in that it contained what purported to be the names of jurors, to wit: Harry T. Matier, Alfred S. Maule and Edward J. Roggenburg, when in fact persons by such names were not upon the panel from which the special panel was drawn.

7. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 57 of the special panel was Harry T. Mateer instead of Harry T. Matier as it was written on the panel served upon the defendant.

8. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Andrew Fleming, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 31, Andrew Fleming.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mr. Fleming, you live at Woodcliff Lake?

The Juror: Yes, sir.

Mr. Zabriskie: And do you sometimes read the Bergen County papers?

The Juror: Very seldom, sir.

Mr. Zabriskie: Have you heard anything at all about this case?

The Juror: Very little, sir.

Mr. Zabriskie: You knew that you were coming today to possibly sit in a murder case?

The Juror: No, sir; I did not know.

Mr. Zabriskie: You did not know that?

The Juror: No, sir.

Mr. Zabriskie: How long have you been living in Woodcliff Lake?

The Juror: Four years.

Mr. Zabriskie: And where were you living before that?

The Juror: In New York.

Mr. Zabriskie: New York City?

The Juror: Yes, sir.

Mr. Zabriskie: What was your occupation there?

The Juror: Mill-wright.

Mr. Zabriskie: Are you acquainted with Prosecutor Hart?

The Juror: No, sir.

Mr. Zabriskie: Or Mr. McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Are you acquainted with any of the Prosecutor's detectives, Mr. Garrett Dawson?

The Juror: No, sir.

Mr. Zabriskie: Do you feel that in this case you have an open mind, that you can sit in that case today and decide it without being influenced by anything that you have read heretofore or heard heretofore?

The Juror: It is hard to say, sir.

Mr. Zabriskie: What is your best judgment? Knowing yourself as you only can know yourself, does this man have to prove himself innocent today in order to get your vote for acquittal?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Court: Suppose the Court told you that before you could convict this man, he would have to be proved by the evidence guilty beyond a reasonable doubt; would you follow that instruction of the Court?

The Juror: Yes, sir; I would.

The Court: You think you could?

The Juror: Yes, sir.

The Court: Then you would not entertain

that, you would not allow that previous notion that he was guilty to influence you in the matter?

The Juror: No, sir.

The Court: All right.

The Assistant Prosecutor: Satisfactory, sir.

The Court: Was there a challenge?

Mr. Zabriskie: Just a second. I have not made any challenge. I challenge for cause, yes. I take an exception to that ruling and make a peremptory challenge.

9. Because the Court erroneously and to the prejudice of the defendant rebuked the juror, John W. Lawlor, in the presence of the remaining members of the panel, upon examination of said juror, which was as follows:

"The Sheriff: 53, John W. Lawlor.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Lawlor, do you read the Bergen County papers sometimes?

The Juror: Hudson County papers.

Mr. Zabriskie: Hudson Dispatch?

The Juror: Dispatch and Observer.

Mr. Zabriskie: And you read it regularly?

The Juror: Every evening.

Mr. Zabriskie: And I presume you have read about this case of State against Lynch?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion in the case?

The Juror: Yes.

Mr. Zabriskie: And in order to acquit him,

he would have to show you that he was innocent?

The Juror: Right.

Mr. Zabriskie: Is that right? I make a challenge for cause.

The Court: Do you mean to tell me, Mr. Lawlor, that if you were sworn as a juryman to try this case and give it a true verdict on the evidence, you would not be able to do it because of your newspaper reading?

The Juror: Well, according to the papers, he is guilty, in my estimation.

The Court: According to the papers?

The Juror: Yes, sir.

The Court: Well, I know; but suppose you swear to return a verdict on the evidence that is given to you, do you mean to say that you will allow what you have read in the papers to affect your judgment of the evidence?

The Juror: To a certain extent, yes.

The Court: You think it would. Well, I am very sorry. That is all. You may go."

10. Because the Court proceeded with the hearing of the cause notwithstanding the fact that several of the jurors, to wit: Edward J. Irwin, Andrew Van Orden, Arthur N. Cowperthwait, Margaret Bertail, and Jennie Knowles, who were named in the panel served upon the defendant did not appear in Court at the call of their names on the day of the trial of the cause.

11. Because the Court erroneously and to the prejudice of the defendant rebuked the juror, William R. Huntington, in the presence of the remaining members of the panel upon the examination of said juror, which was as follows:

"The Sheriff: 45, William R. Huntington.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory, sir.

Mr. Zabriskie: Mr. Huntington, in what capacity are you employed by an express company?

The Juror: I am manager of the Armour car department.

Mr. Zabriskie: Do you read the Bergen County papers?

The Juror: No.

Mr. Zabriskie: To some extent? New York papers?

The Juror: Yes.

Mr. Zabriskie: You have been reading about this Lynch case, have you?

The Juror: Oh yes, naturally.

Mr. Zabriskie: You have formed an opinion, have you?

The Juror: Yes, I think so.

Mr. Zabriskie: In order to get your vote for acquittal, he would have to show you he was innocent, isn't that so?

The Juror: He certainly would.

Mr. Zabriskie: I challenge him for cause, your Honor.

The Court: The Court is very sorry to see that these gentlemen who are called to serve on the jury find themselves so influenced by newspaper reports that they are unable to regard the obligation of an oath. you are excused, Mr. Huntington.

(Juror excused).

Mr. Zabriskie: For the sake of the record, I want to take an exception to your Honor's remark as being inclined to influence jurors to withhold their real opinion and their real sentiment, if your Honor will allow an exception on the record.

The Court: You may have it."

12. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Lorenzo W. Kenyon, a member of the special panel, who made answers and testified as follows:

"The Sheriff: No. 49, Lorenzo W. Kenyon.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory to the State, sir.

The Court: Well, it is for the defense to challenge first.

Mr. Zabriskie: I thought we were alternating.

The Court: You were alternating. The State had the first challenge on Mr. Quackenbush.

Mr. Zabriskie: Mr. Kenyon, you say you are an auditor. Where?

The Juror: Well, it depends upon how recently you ask for an answer to that question. No, I am not an auditor at the present time.

Mr. Zabriskie: What is your occupation now?

The Juror: I am secretary of a New York

corporation. They call me a corporation executive.

Mr. Zabriskie: Have you read something about this case?

The Juror: Yes.

Mr. Zabriskie: From what paper?

The Juror: Why, I do not know as I can say offhand. I regularly read the New York Times and the New York Telegram, and also the papers that are published in the eastern part of the county, and what I have read, I have—has been in those papers, and possibly I may have seen it in others because I at times pick up in New York at noon time other papers which happen to be convenient.

Mr. Zabriskie: Have you formed some opinion in this case from reading the newspapers?

The Juror: Well, based on what I have read in the papers, which has not been a great deal, if I took that as a guide, I would say that I would have formed an opinion,——

Mr. Zabriskie: Yes.

The Juror: —although I do not always take entire—entirely as a full fact and truth what I may see in the newspapers.

Mr. Zabriskie: But you would place on him the burden of showing you that he was innocent in order to vote for acquittal, isn't that so?

The Juror: Well, it is a rather hard question to reply to.

The Court: Well, suppose——

The Juror: I believe that whatever situation that I was placed in, either on the jury

or elsewhere, other conditions being equal, that I could do full justice to the situation, irrespective of what other opinions or ideas I might have received prior to that time.

Mr. Zabriskie: But as your mental condition exists now, isn't it a fact that you feel that he has to "show me that he is innocent in order to get my vote for acquittal"?

The Juror: Well, if you—if you are trying to place me in such a position so that you can readily—so that you can excuse me, I hope you will, because I am in a position business-wise where it would be a calamity for me to have to serve on this jury; on the other hand, as an American citizen over a great many years, I have never shirked any duty that came my way, and have done and am doing a great deal of civic duty, as much as I can. I have served the United States Government in its naval service; I have served the State of Connecticut, and I also have served the State of New Jersey on its armed forces, and I am ready to do any duty that comes my way.

The Court: Excuse the Court for interrupting you; but the real question is whether, if you were sworn as a juror in this case to decide the verdict on the evidence, you can decide the case on the evidence without reference to newspapers?

The Juror: I do not believe in my present state of my personal affairs, I do not think that I would be qualified to serve on this or any other jury. At the same time, when my personal affairs were not in such a form, I could give this or any other case a full and fair service under any conditions, sir.

Mr. Zabriskie: Then I make a challenge for cause on both grounds, the second ground being that his mind is apparently in such a condition from his own personal business affairs that he is really not qualified at this time to sit in this case. I may ask one more question: You would be in a hurry to get away, wouldn't you?

The Juror: Why, under normal situations,——

Mr. Zabriskie: I mean now?

The Juror: —no, but in this present situation, yes, absolutely, not only in a hurry to get away, but I am not qualified, I think, to even consider the case.

The Court: All right. Is that all?

Mr. Zabriskie: Yes.

The Court: Well, have you anything to say?

Mr. Zabriskie: I think, taking the answers, although they have not been directly responsive, they show that he has formed some opinion; and, in the second place, his mind is more on other affairs, so that he does not feel, even himself, that he is qualified to sit; and, in the third place, that haste is not something with which we want the case settled, it is justice; and on those three grounds as covered by those comments, I challenge for cause.

The Court: Very well. The challenge is overruled.

Mr. Zabriskie: Your Honor will allow me an exception?

The Court: You may have your exception."

13. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Fred W. Buesking, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 15, Fred W. Buesking.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory, sir.

Mr. Zabriskie: Mr. Buesking, you live at Maywood?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read the Bergen Record?

The Juror: Yes, sir.

Mr. Zabriskie: Have you read it in connection with this case, to some extent?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion in the case?

The Juror: Yes, sir.

Mr. Zabriskie: Would it be necessary, in order to get your vote for acquittal, that this man should show you that he was innocent?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Assistant Prosecutor: Would you follow the law as the Court gave it to you, follow the instructions of the Court as to the law and the evidence?

The Juror: Well, if they could prove to me that he was guilty or innocent, yes.

The Court: Well, suppose you were told by the Court to put aside any opinion you

might have formed by reading the newspapers, and to decide the case entirely on the evidence; could you do that?

The Juror: I believe I could.

Mr. Zabriskie: Well, supposing that the scale were evenly divided; supposing there seemed to be just as much truth to the testimony on one side as on the other; what would be your verdict, guilty or not guilty?

The Juror: Well, from what I have read in the papers, and before the evidence produced by the Court, I——

Mr. Zabriskie: You would say guilty?

The Juror: —would say guilty.

The Prosecutor: Now, if you are accepted as a juror, and you hear the evidence, all of the evidence, and the Court instructs you how you are to treat that evidence, would you treat that evidence in accordance with the Court's instructions, or would you cast it all aside and judge this case by what you have read in the newspaper? What is your answer?

The Juror: I would be governed by the Court, I guess.

The Court: Anything further?

Mr. Zabriskie: No. I challenge for cause.

The Court: Suppose the Court told you that in order to find the defendant guilty you would have to be satisfied of his guilt on the evidence beyond a reasonable doubt; do you think you would acquit him if you have a reasonable doubt of his guilt on the evidence?

The Juror: I do not know. I would have to hear it first.

The Court: You would have to hear the evidence?

The Juror: Yes, sir.

The Court: Yes. All right. Challenge overruled, Mr. Zabriskie.

Mr. Zabriskie: Your Honor will allow me an exception, and I will challenge peremptorily."

14. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to George T. Yonkers, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 98, George T. Yonkers.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Yonkers, you live at Fort Lee Borough, do you?

The Juror: Yes.

Mr. Zabriskie: And you read the Bergen County papers to some extent?

The Juror: Yes.

Mr. Zabriskie: Have you read anything about the alleged hold-up on the 21st of January, and robbery and shooting, and so on, here at Hackensack?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion?

The Juror: I have.

Mr. Zabriskie: And in order to get your vote for acquittal, will it be necessary for this defendant to show you that he was innocent?

The Juror: If the evidence is strong enough, yes.

Mr. Zabriskie: Do you feel now that in order to get your vote for not guilty,——

The Juror: Yes.

Mr. Zabriskie: —this man would have to show you by the evidence that he was innocent?

The Juror: I would.

Mr. Zabriskie: That is the way you feel about it?

The Juror: Yes.

Mr. Zabriskie: I challenge for cause.

The Court: That is in the absence of any instructions from the Court, I suppose, as to how you——

The Juror: Yes. In the absence of instructions from the Court.

The Court: Now, suppose you were sworn to decide the case exclusively on the evidence, and told by the Court to decide the case exclusively on the evidence, and that you ought not to convict the defendant unless he was found guilty on the evidence beyond a reasonable doubt, would you feel that you could follow that instruction and decide the case?

The Juror: I would feel, if the evidence was equally balanced, I would vote for the——

The Court: No. Suppose the Court told you if you had a reasonable doubt on the evidence of the guilt of the defendant, that you ought to acquit him, would you follow that instruction?

The Juror: I would.

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: You say if the evidence were evenly balanced, you say guilty?

The Juror: Yes, sir.

Mr. Zabriskie: On that ground, I challenge for cause.

The Prosecutor: In the absence of the Court's instructions, was the answer of Mr. Yonkers. We oppose the challenge.

The Court: The objection to the juror is overruled. You may have an exception."

15. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 68 of the special panel was Edward J. Poggenburg instead of Edward J. Roggenburg as it was written on the panel served upon the defendant.

16. Because the Court overruled the objection of the defendant to proceeding with the trial notwithstanding the alleged defects in the panel of jurors served upon the defendant.

17. Because the Court erred in sustaining the objection of the Prosecutor of the Pleas to the following question put by defendant's counsel to state's witness, George P. Nimmo:

"Q. Well, you have in your investigation of this case heard of more than one shot being fired, haven't you?

The Assistant Prosecutor: I object to this as hearsay, sir.

Mr. Zabriskie: I would like to question him as to his knowledge.

The Assistant Prosecutor: But it would be hearsay knowledge, sir.

The Court: Well, yes. It seems to be hearsay, Mr. Zabriskie.

Mr. Zabriskie: Well, it is cross-examination. It is testing him.

The Court: I know; but hearsay is not any more admissible on cross than it is on direct.

Mr. Zabriskie: For the purpose of testing the accuracy of the witness.

The Court: The question will be excluded, as it now stands.

Mr. Zabriskie: Your Honor will allow an exception?

The Court: Yes."

18. Because the Court erred in sustaining the objection of the Prosecutor of the Pleas to the following question put by defendant's counsel to state's witness, George P. Nimmo:

"Q. I will just ask one question more. Do not answer until the Court has ruled. Didn't you hear, and don't you know from information you have received in this case, that Palmer, the man in the cage, shot either once or twice, either in or in close proximity to this building?

The Assistant Prosecutor: The same objection, sir, hearsay. The Sheriff does not pretend to have been at the scene at the time this happened. This was in the afternoon he went there.

The Court: Excluded.

Mr. Zabriskie: Your Honor will allow an exception?

The Court: Take your exception."

19. Because the Court before whom said cause was tried, at and upon the trial of the said issues

so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The theory of the State in this case, as you are probably well aware by this time, is that the killing was perpetrated in the execution of what the State claims was *legally a robbery of the express office* at the Hackensack Station, where you went and looked over the ground. Now, robbery is the crime of unlawfully and feloniously taking the money or property of another by violence and putting him in fear. That is my recollection of the definition, and I think that is substantially right; if not, I will ask counsel to correct me in due course. And our statute says—and you may as well have its exact language—that if any person who, in committing, or attempting to commit any one of various crimes, of which robbery is one, or any unlawful act against the peace of this State of which the probable consequence may be bloodshed, shall kill another, then such person or persons so killing as aforesaid shall be guilty of murder."

20. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"There is another section of the Crimes Act which it is important that you should bear in mind, because it deals fundamentally with the degree of murder and limits your consideration very materially. It says

murder which shall be committeed in perpetrating or attempting to perpetrate any burglary, robbery, and so on,—including robbery, you see,—shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree. Consequently, if this defendant was a participant in a robbery at that time and there was a killing in the execution of that robbery, and I may as well say now as at any time, either by himself or by any other principal engaged in that robbery, he is guilty of murder, and he is guilty of murder in the first degree. I used the word "principal" just this moment, and it is proper that you should understand what that means. A principal in the commission of a crime is either the person who directly commits it or someone who is present aiding and abetting; and one is called a principal in the first degree and the other is called a principal in the second degree. For your purposes, the distinction is not legally important."

21. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The story, as I gather it to *come from the mouth of the State's witnesses* and as the State claims the truth to be, is about like this: That Palmer was short in his accounts, found himself in trouble, was casting about for some means of apparently straightening out his deficit, that he got into communication with some one or more of these persons, and the result of it all was, to make

a long story short, that certain persons were imported, let us say, from New York for the *purpose of accomplishing a hold-up of the express office,* and the proceeds of the hold-up were to be divided among Palmer and his associates, and Palmer thereby was to obtain sufficient funds to make up the deficit that appeared on the company's books. The two men that, concededly by the testimony of both, were there present in the express office were the defendant Lynch and the witness Strand. You heard Strand's evidence and you heard Lynch's evidence, and each of them says that they both were there, and each of them says that there was a shot fired, and each of them says that the money was taken away; and if the money was taken away against the will of Mr. Talmadge, whatever may have been the will of Mr. Palmer, if it was taken from Talmadge's custody by force or violence or putting him in fear unlawfully, that was a robbery. And if, in the perpetration of that robbery, either Lynch or Strand fired the shot that killed Brannon, both of them are guilty of murder, and both of them are guilty of murder in the first degree."

22. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"But the question as bearing on Lynch's degree of guilt it not so much what the actual facts were relating to the complicity of the express people as what Lynch honestly believed they were at the time the plan

was in process of execution. Lynch has testestified to that effect and the inference you are expected evidently to draw from his testimony is that he was merely assisting somewhat as a dummy, if you please, in the carrying out of a *fraudulent scheme to rob the express company* by an apparent hold-up, that he had no idea of shooting anybody, that he had no idea of committing any genuine robbery, that he was simply going over there to help the other people carry through their little scheme that they had fixed up with the express people;"

23. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"Now, to go on: If up to the time of demanding the money Lynch believed the mere demand and pretended force were all that were needed, you would be at liberty to regard the so-called hold-up as a mere grand larceny up to the time when, if at all, Lynch realized that the hold-up was to be not pretended but real. But if and when he realizd that it was not pretended, but that it was real at any time before it was complete and the money secured, he would be a participant in a robbery in actuality, and the rule first given would not apply. So you see, if for example, when Talmadge was backed up against the wall with his hands up in the air, and Lynch and Strand were trying to carry this thing through, Lynch might have reached that point with the idea

that it was a mere fake, but if at that point it came across his consciousness that this was no fake, but that it was a real thing so far as Talmadge was concerned,and he then went on and the shot was fired, after that he would be just as guilty of robbery as if he had gone into it in the first instance. His duty necessarily as soon as he found it was more than a fake hold-up was to quit."

24. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The Court: Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent: If at any time before the firing of this shot Lynch realized that it was a real hold-up and not a fake one, why, he was then participating in a robbery, and the firing of a shot after that time would make him guilty of murder, and murder in the first degree."

25. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The only two who were actually on the ground putting this thing through were Lynch and Strand. Corcoran, while legally present, was around the corner sitting in the car. Certainly, it cannot be claimed very

well that Talmadge fired it, or that Palmer fired it. There is not any explanation of any kind to show that it was accidental."

26. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

> "But you will not, I trust, overlook the fact that whatever the testimony of these other people may have been, you have got the statement of Lynch himself that he was there, that there was a shot fired, there was a man killed, and that the money was taken, whether he fired the shot or whether the other man did."

27. Because the evidence in the case did not warrant a conviction of a higher degree of murder than murder in the second degree.

28. Because the verdict of the jury was contrary to the evidence.

29. Because the verdict rendered by the jury was contrary to the charge of the court.

And the said plaintiff in error, James Lynch, prays that judgment aforesaid be reversed, annulled and altogether held for nothing and that he may be restored to all things he has lost by reason of the aforesaid judgment, &c.

JOHN B. ZABRISKIE,
Attorney for Plaintiff-in-Error.

Endorsed:
Service acknowledged
May 7th, 1926
A. C. HART,
Prosecutor of the Pleas.
Filed May 8th, 1926.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

JAMES LYNCH,
Plaintiff in Error.

On Writ of Error to Bergen County Court of Oyer and Terminer.
Specification of Causes for Reversal.

James Lynch, the plaintiff in error, by John B. Zabriskie, his attorney, hereby specifies the causes in the record relief upon for the relief or reversal in the aforesaid cause as follows:

1. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused to grant the defendant's motion for a foreign jury.

2. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused the defendant's application for an adjournment of the trial of the cause, notwithstanding the assignment of counsel had taken place only four days before trial, including Saturday, Sunday and a legal holiday (Washington's Birthday).

3. Because the defendant was prejudiced by the misinformation on the part of the State to the effect that his wife and other members of his family were present in the Court House at the time argument was being made for an adjournment.

4. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Robert F. Grange, a member of the special panel, who made answers and testified as follows:

Specification of Causes for Reversal.

"The Sheriff: 36, Robert F. Grange.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Mr. Grange, you live in Ridgefield Park?

The Juror: Right.

Mr. Zabriskie: And you read some of the Bergen County papers, do you?

The Juror: Yes.

Mr. Zabriskie: Do you read the Bergen Evening Record sometimes?

The Juror: Yes.

Mr. Zabriskie: Have you been reading it during January and February?

The Juror: Yes.

Mr. Zabriskie: Of this year?

The Juror: Yes.

Mr. Zabriskie: Have you been reading the

Mr. Zabriskie: Have you been reading the accounts of this hold-up, or whatever it is called?

The Juror: I have.

Mr. Zabriskie: And by so doing, have you formed some opinion?

The Juror: Yes.

Mr. Zabriskie: I challenge for cause, your Honor please. Just one moment. (To the Juror) Have you formed an opinion as to the guilt or innocence of the defendant Lynch-

The Juror: Guilt.

Mr. Zabriskie: What do you say?

The Juror: Guilt.

Mr. Zabriskie: You have found him guilty. I challenge for cause.

The Court: Let him be sworn on his voir dire.

Robert F. Grange, sworn on his voir dire, testified as follows:

By the Court. Q. Now Mr. Grange, you say you have got an opinion in the case derived from your newspaper reading, and other sources, probably; is your opinion so firmly fixed that you could not decide this case upon the evidence that is produced in court? A. Not exactly, no.

Q. You do not think so? A. No.

Q. Well, in case the evidence failed to show him guilty beyond a reasonable doubt, do you think that you would be inclined to vote for an acquittal under the instructions of the Court in that regard? A. I think so.

By Mr. Zabriskie:

Q. But you sort of subconsciously feel that he is guilty, don't you? A. Yes.

Q. And we practically have to show you or demonstrate that in order for you to find him not guilty, isn't that so? A. Yes.

Mr. Zabriskie: I still claim I have a right——

The Court: Then the Court will pursue that further. The instructions of the Court to the jury will be that the jury ought not to convict the defendant unless the evidence shows him to be guilty beyond a reasonable doubt. Do you think you could follow that instruction? A. I would try to.

The Court: And that the burden of proof is on the State. Would you be guided by that? A. I would try to.

By Mr. Zabriskie:

Q. You say that you will try to, but you do not feel confident that you could give a verdict in accordance with the evidence, do you, Mr. Grange? A. Well, may be.

Q. What do you say? A. It might be a little bit that way.

Q. It might be difficult for you to do so? A. Yes.

Q. And knowing your own powers and abilities, you have doubt as to your ability to be governed by the evidence produced here, isn't that so? A. Yes.

The Court: The Court does not think that Mr. Grange has shown such incompetency as to justify a challenge for cause. It is, therefore, denied.

Mr. Zabriskie: Your Honor will permit an exception to be taken to that ruling?

The Court: Yes."

5. Because the said Court before whom, &c., at and upon the trial of the said issue so joined overruled defendant's challenge for cause as to John S. Abel, a member of the special panel, who made answers and testified as follows:

"The Sheriff: Number one, John S. Abel.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: Mr. Abel, you also live down in Ridgefield Park?

The Juror: Yes, sir.

Mr. Zabriskie: And you read Bergen County papers?

The Juror: Yes, sir.

Mr. Zabriskie: And do you sometimes read the Bergen Evening Record?

The Juror: Yes, sir.

Mr. Zabriskie: And have you been reading that paper in January and February of this year?

The Juror: On and off; yes, sir.

Mr. Zabriskie: And have you been reading some of these accounts of this hold-up which is alleged to have occurred at the Susquehanna Station here, and the express office?

The Juror: Yes, sir.

Mr. Zabriskie: Have you talked to people to some extent about this case?

The Juror: Yes, sir.

Mr. Zabriskie: And have you from your reading and from your conversation formed an opinion as to whether or not Lynch is guilty?

The Juror: Well, I cannot say that I did.

Mr. Zabriskie: Yes.

The Juror: And I cannot say that I didn't.

Mr. Zabriskie: You really have the feeling now, though, that he is guilty, haven't you?

The Juror: Well, I couldn't say that I have a feeling that he is guilty. I feel that somebody is certainly guilty.

Mr. Zabriskie: Yes. And you are inclined to think that he is the man?

The Juror: Well, according to the papers, I would say yes.

The Court: In other words, if what the papers say is true, he is the man?

The Juror: He is the man; yes, sir.

The Court: But if the Court told you to be guided entirely by the evidence and to forget all about the papers, could you do that?

The Juror: Well, I don't see why not.

Mr. Zabriskie: I have no further questions.

The Court: Challenge overruled. Oh, you do not challenge him. Is he satisfactory?

Mr. Zabriskie: Well, I have not said that yet. I will just except to the ruling.

The Court: Well, the Court has not ruled. You have not challenged him.

Mr. Zabriskie: Oh, I challenge for cause.

The Court: You do?

Mr. Zabriskie: Yes.

The Court: Well, the challenge is overruled.

Mr. Zabriskie: Exception."

6. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 58 of the special panel was Alfred S. Mante instead of Alfred S. Maule as it was written on the panel served upon the defendant.

7. Because the panel of jurors served upon the defendant was defective in that it contained what purported to be the names of jurors, to wit: Harry T. Matier, Alfred S. Maule and Edward J. Roggenburg, when in fact persons by such names were not

upon the panel from which the special panel was drawn.

8. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 57 of the special panel was Harry T. Mateer instead of Harry T. Matier as it was written on the panel served upon the defendant.

9. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Andrew Fleming, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 31, Andrew Fleming.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror, do you challenge?

Mr. Zabriskie: Mr. Fleming, you live at Woodcliff Lake?

The Juror: Yes, sir.

Mr. Zabriskie: And do you sometimes read the Bergen County papers?

The Juror: Very seldom, sir.

Mr. Zabriskie: Have you heard anything at all about this case?

The Juror: Very little, sir.

Mr. Zabriskie: You knew that you were coming today to possibly sit in a murder case?

The Juror: No, sir; I did not know.

Mr. Zabriskie: You did not know that?

The Juror: No, sir.

Mr. Zabriskie: How long have you been living in Woodcliff Lake?

The Juror: Four years.

Mr. Zabriskie: And where were you living before that?

The Juror: In New York.

Mr. Zabriskie: New York City?

The Juror: Yes, sir.

Mr. Zabriskie: What was your occupation there?

The Juror: Mill-wright.

Mr. Zabriskie: Are you acquainted with Prosecutor Hart?

The Juror: No, sir.

Mr. Zabriskie: Or Mr. McCarthy?

The Juror: No, sir.

Mr. Zabriskie: Are you acquainted with any of the Prosecutor's detectives, Mr. Garrett Dawson?

The Juror: No, sir.

Mr. Zabriskie: Do you feel that in this case you have an open mind, that you can sit in that case today and decide it without being influenced by anything that you have read heretofore or heard heretofore?

The Juror: It is hard to say, sir.

Mr. Zabriskie: What is your best judgment? Knowing yourself as you only can know yourself, does this man have to prove himself innocent today in order to get your vote for acquittal?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Court: Suppose the Court told you that before you could convict this man, he would have to be proved by the evidence guilty beyond a reasonable doubt; would you follow that instruction of the Court?

The Juror: Yes, sir; I would.

The Court: You think you could?

The Juror: Yes, sir.

The Court: Then you would not entertain that, you would not allow that previous notion that he was guilty to influence you in the matter?

The Juror: No, sir.

The Court: All right.

The Assistant Prosecutor: Satisfactory, sir.

The Court: Was there a challenge?

Mr. Zabriskie: Just a second. I have not made any challenge. I challenge for cause, yes. I take an exception to that ruling and make a peremptory challenge.

10. Because the Court proceeded with the hearing of the cause notwithstanding the fact that several of the jurors, to wit: Edward J. Irwin, Andrew Van Orden, Arthur N. Cowperthwait, Margaret Bertail and Jennie Knowles, who were named in the panel served upon the defendant did not appear in Court at the call of their names on the day of the trial of the cause.

11. Because the Court erroneously and to the prejudice of the defendant rebuked the juror, John W. Lawlor, in the presence of the remaining members of the panel, upon examination of said juror, which was as follows:

"The Sheriff: 53, John W. Lawlor.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Lawlor, do you read the Bergen County papers sometimes?

The Juror: Hudson County papers.

Mr. Zabriskie: Hudson Dispatch?

The Juror: Dispatch and Observer.

Mr. Zabriskie: And you read it regularly?

The Juror: Every evening.

Mr. Zabriskie: And I presume you have read about this case of State against Lynch?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion in the case?

The Juror: Yes.

Mr. Zabriskie: And in order to acquit him, he would have to show you that he was innocent?

The Juror: Right.

Mr. Zabriskie: Is that right? I make a challenge for cause.

The Court: Do you mean to tell me, Mr. Lawlor, that if you were sworn as a juryman to try this case and give it a true verdict on the evidence, you would not be able to do it because of your newspaper reading?

The Juror: Well, according to the papers, he is guilty, in my estimation.

The Court: According to the papers?

The Juror: Yes, sir.

The Court: Well, I know; but suppose you swear to return a verdict on the evidence that is given to you, do you mean to say that you will allow what you have read in the papers to affect your judgment of the evidence?

The Juror: To a certain extent, yes.

The Court: You think it would. Well, I am very sorry. That is all. You may go."

12. Because the Court erroneously and to the prejudice of the defendant rebuked the juror, Willia R. Huntington, in the presence of the remaining

members of the panel upon the examination of said juror, which was as follows:

"The Sheriff: 45, William R. Huntington.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory, sir.

Mr. Zabriskie: Mr. Huntington, in what capacity are you employed by an express company?

The Juror: I am manager of the Armour car department.

Mr. Zabriskie: Do you read the Bergen County papers?

The Juror: No.

Mr. Zabriskie: To some extent? New York papers?

The Juror: Yes.

Mr. Zabriskie: You have been reading about this Lynch case, have you?

The Juror: Oh yes, naturally.

Mr. Zabriskie: You have formed an opinion, have you?

The Juror: Yes, I think so.

Mr. Zabriskie: In order to get your vote for acquittal, he would have to show you he was innocent, isn't that so?

The Juror: He certainly would.

Mr. Zabriskie: I challenge him for cause, your Honor.

The Court: The Court is very sorry to see that these gentlemen who are called to serve on the jury find themselves so influenced by newspaper reports that they are unable to regard the obligation of an oath.

you are excused, Mr. Huntington.
(Juror excused).

Mr. Zabriskie: For the sake of the record, I want to take an exception to your Honor's remark as being inclined to influence jurors to withhold their real opinion and their real sentiment, if your Honor will allow an exception on the record.

The Court: You may have it."

13. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Lorenzo W. Kenyon, a member of the special panel, who made answers and testified as follows:

"The Sheriff: No. 49, Lorenzo W. Kenyon.

The Clerk: Juror look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: The juror is satisfactory to the State, sir.

The Court: Well, it is for the defense to challenge first.

Mr. Zabriskie: I thought we were alternating.

The Court: You were alternating. The State had the first challenge on Mr. Quackenbush.

Mr. Zabriskie: Mr. Kenyon, you say you are an auditor. Where?

The Juror: Well, it depends upon how recently you ask for an answer to that question. No, I am not an auditor at the present time.

Mr. Zabriskie: What is your occupation now?

The Juror: I am secretary of a New York corporation. They call me a corporation executive.

Mr. Zabriskie: Have you read something about this case?

The Juror: Yes.

Mr. Zabriskie: From what paper?

The Juror: Why, I do not know as I can say offhand. I regularly read the New York Times and the New York Telegram, and also the papers that are published in the eastern part of the county, and what I have read, I have—has been in those papers, and possibly I may have seen it in others because I at times pick up in New York at noon time other papers which happen to be convenient.

Mr. Zabriskie: Have you formed some opinion in this case from reading the newspapers?

The Juror: Well, based on what I have read in the papers, which has not been a great deal, if I took that as a guide, I would say that I would have formed an opinion,——

Mr. Zabriskie: Yes.

The Juror: —although I do not always take entire—entirely as a full fact and truth what I may see in the newspapers.

Mr. Zabriskie: But you would place on him the burden of showing you that he was innocent in order to vote for acquittal, isn't that so?

The Juror: Well, it is a rather hard question to reply to.

The Court: Well, suppose——

The Juror: I believe that whatever situa-

tion that I was placed in, either on the jury or elsewhere, other conditions being equal, that I could do full justice to the situation, irrespective of what other opinions or ideas I might have received prior to that time.

Mr. Zabriskie: But as your mental condition exists now, isn't it a fact that you feel that he has to "show me that he is innocent in order to get my vote for acquittal"?

The Juror: Well, if you—if you are trying to place me in such a position so that you can readily—so that you can excuse me, I hope you will, because I am in a position business-wise where it would be a calamity for me to have to serve on this jury; on the other hand, as an American citizen over a great many years, I have never shirked any duty that came my way, and have done and am doing a great deal of civic duty, as much as I can. I have served the United States Government in its naval service; I have served the State of Connecticut, and I also have served the State of New Jersey on its armed forces, and I am ready to do any duty that comes my way.

The Court: Excuse the Court for interrupting you; but the real question is whether, if you were sworn as a juror in this case to decide the verdict on the evidence, you can decide the case on the evidence without reference to newspapers?

The Juror: I do not believe in my present state of my personal affairs, I do not think that I would be qualified to serve on this or any other jury. At the same time, when my personal affairs were not in such a form, I could give this or any other case a full

and fair service under any conditions, sir.

Mr. Zabriskie: Then I make a challenge for cause on both grounds, the second ground being that his mind is apparently in such a condition from his own personal business affairs that he is really not qualified at this time to sit in this case. I may ask one more question: You would be in a hurry to get away, wouldn't you?

The Juror: Why, under normal situations,——

Mr. Zabriskie: I mean now?

The Juror: —no, but in this present situation, yes, absolutely, not only in a hurry to get away, but I am not qualified, I think, to even consider the case.

The Court: All right. Is that all?

Mr. Zabriskie: Yes.

The Court: Well, have you anything to say?

Mr. Zabriskie: I think, taking the answers, although they have not been directly responsive, they show that he has formed some opinion; and, in the second place, his mind is more on other affairs, so that he does not feel, even himself, that he is qualified to sit; and, in the third place, that haste is not something with which we want the case settled, it is justice; and on those three grounds as covered by those comments, I challenge for cause.

The Court: Very well. The challenge is overruled.

Mr. Zabriskie: Your Honor will allow me an exception?

The Court: You may have your exception."

Specification of Causes for Reversal.

14. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Fred W. Buesking, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 15, Fred W. Buesking.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

The Assistant Prosecutor: Satisfactory, sir.

Mr. Zabriskie: Mr. Buesking, you live at Maywood?

The Juror: Yes, sir.

Mr. Zabriskie: Do you read the Bergen Record?

The Juror: Yes, sir.

Mr. Zabriskie: Have you read it in connection with this case, to some extent?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion in the case?

The Juror: Yes, sir.

Mr. Zabriskie: Would it be necessary, in order to get your vote for acquittal, that this man should show you that he was innocent?

The Juror: Yes, sir.

Mr. Zabriskie: I challenge for cause.

The Assistant Prosecutor: Would you follow the law as the Court gave it to you, follow the instructions of the Court as to the law and the evidence?

The Juror: Well, if they could prove to me that he was guilty or innocent, yes.

The Court: Well, suppose you were told

by the Court to put aside any opinion you might have formed by reading the newspapers, and to decide the case entirely on the evidence; could you do that?

The Juror: I believe I could.

Mr. Zabriskie: Well, supposing that the scale were evenly divided; supposing there seemed to be just as much truth to the testimony on one side as on the other; what would be your verdict, guilty or not guilty?

The Juror: Well, from what I have read in the papers, and before the evidence produced by the Court, I——

Mr. Zabriskie: You would say guilty?

The Juror: —would say guilty.

The Prosecutor: Now, if you are accepted as a juror, and you hear the evidence, all of the evidence, and the Court instructs you how you are to treat that evidence, would you treat that evidence in accordance with the Court's instructions, or would you cast it all aside and judge this case by what you have read in the newspaper? What is your answer?

The Juror: I would be governed by the Court, I guess.

The Court: Anything further?

Mr. Zabriskie: No. I challenge for cause.

The Court: Suppose the Court told you that in order to find the defendant guilty you would have to be satisfied of his guilt on the evidence beyond a reasonable doubt; do you think you would acquit him if you have a reasonable doubt of his guilt on the evidence?

The Juror: I do not know. I would have to hear it first.

Specification of Causes for Reversal.

The Court: You would have to hear the evidence?

The Juror: Yes, sir.

The Court: Yes. All right. Challenge overruled, Mr. Zabriskie.

Mr. Zabriskie: Your Honor will allow me an exception, and I will challenge peremptorily."

15. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to George T. Yonkers, a member of the special panel, who made answers and testified as follows:

"The Sheriff: 98, George T. Yonkers.

The Clerk: Juror, look upon the prisoner, prisoner look upon the juror; do you challenge?

Mr. Zabriskie: Mr. Yonkers, you live at Fort Lee Borough, do you?

The Juror: Yes.

Mr. Zabriskie: And you read the Bergen County papers to some extent?

The Juror: Yes.

Mr. Zabriskie: Have you read anything about the alleged hold-up on the 21st of January, and robbery and shooting, and so on, here at Hackensack?

The Juror: Yes, sir.

Mr. Zabriskie: Have you formed some opinion?

The Juror: I have.

Mr. Zabriskie: And in order to get your vote for acquittal, will it be necessary for this defendant to show you that he was innocent?

The Juror: If the evidence is strong enough, yes.

Mr. Zabriskie: Do you feel now that in order to get your vote for not guilty,——

The Juror: Yes.

Mr. Zabriskie: —this man would have to show you by the evidence that he was innocent?

The Juror: I would.

Mr. Zabriskie: That is the way you feel about it?

The Juror: Yes.

Mr. Zabriskie: I challenge for cause.

The Court: That is in the absence of any instructions from the Court, I suppose, as to how you——

The Juror: Yes. In the absence of instructions from the Court.

The Court: Now, suppose you were sworn to decide the case exclusively on the evidence, and told by the Court to decide the case exclusively on the evidence, and that you ought not to convict the defendant unless he was found guilty on the evidence beyond a reasonable doubt, would you feel that you could follow that instruction and decide the case?

The Juror: I would feel, if the evidence was equally balanced, I would vote for the——

The Court: No. Suppose the Court told you if you had a reasonable doubt on the evidence of the guilt of the defendant, that you ought to acquit him, would you follow that instruction?

The Juror: I would.

The Assistant Prosecutor: Satisfactory to the State.

Mr. Zabriskie: You say if the evidence were evenly balanced, you say guilty?

The Juror: Yes, sir.

Mr. Zabriskie: On that ground, I challenge for cause.

The Prosecutor: In the absence of the Court's instructions, was the answer of Mr. Yonkers. We oppose the challenge.

The Court: The objection to the juror is overruled. You may have an exception."

16. Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 68 of the special panel was Edward J. Poggenburg instead of Edward J. Roggenburg as it was written on the panel served upon the defendant.

17. Because the Court overruled the objection of the defendant to proceeding with the trial notwithstanding the alleged defects in the panel of jurors served upon the defendant.

18. Because the Court erred in sustaining the objection of the Prosecutor of the Pleas to the following question put by defendant's counsel to state's witness, George P. Nimmo:

"Q. Well, you have in your investigation of this case heard of more than one shot being fired, haven't you?

The Assistant Prosecutor: I object to this as hearsay, sir.

Mr. Zabriskie: I would like to question him as to his knowledge.

The Assistant Prosecutor: But it would be hearsay knowledge, sir.

The Court: Well, yes. It seems to be hearsay, Mr. Zabriskie.

Mr. Zabriskie: Well, it is cross-examination. It is testing him.

The Court: I know; but hearsay is not any more admissible on cross than it is on direct.

Mr. Zabriskie: For the purpose of testing the accuracy of the witness.

The Court: The question will be excluded, as it now stands.

Mr. Zabriskie: Your Honor will allow an exception?

The Court: Yes."

19. Because the Court erred in sustaining the objection of the Prosecutor of the Pleas to the following question put by defendant's counsel to state's witness, George P. Nimmo:

"Q. I will just ask one question more. Do not answer until the Court has ruled. Didn't you hear, and don't you know from information you have received in this case, that Palmer, the man in the cage, shot either once or twice, either in or in close proximity to this building?

The Assistant Prosecutor: The same objection, sir, hearsay. The Sheriff does not pretend to have been at the scene at the time this happened. This was in the afternoon he went there.

The Court: Excluded.

Mr. Zabriskie: Your Honor will allow an exception?

The Court: Take your exception."

20. Because the Court before whom said cause was tried, at and upon the trial of the said issues

so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The theory of the State in this case, as you are probably well aware by this time, is that the killing was perpetrated in the execution of what the State claims was *legally a robbery of the express office* at the Hackensack Station, where you went and looked over the ground. Now, robbery is the crime of unlawfully and feloniously taking the money or property of another by violence and putting him in fear. That is my recollection of the definition, and I think that is substantially right; if not, I will ask counsel to correct me in due course. And our statute says—and you may as well have its exact language—that if any person who, in committing, or attempting to commit any one of various crimes, of which robbery is one, or any unlawful act against the peace of this State of which the probable consequence may be bloodshed, shall kill another, then such person or persons so killing as aforesaid shall be guilty of murder."

21. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"There is another section of the Crimes Act which it is important that you should bear in mind, because it deals fundamentally with the degree of murder and limits your consideration very materially. It says murder which shall be committeed in per-

petrating or attempting to perpetrate any burglary, robbery, and so on,—including robbery, you see,—shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree. Consequently, if this defendant was a participant in a robbery at that time and there was a killing in the execution of that robbery, and I may as well say now as at any time, either by himself or by any other principal engaged in that robbery, he is guilty of murder, and he is guilty of murder in the first degree. I used the word "principal" just this moment, and it is proper that you should understand what that means. A principal in the commission of a crime is either the person who directly commits it or someone who is present aiding and abetting; and one is called a principal in the first degree and the other is called a principal in the second degree. For your purposes, the distinction is not legally important."

22. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The story, as I gather it to *come from the mouth of the State's witnesses* and as the State claims the truth to be, is about like this: That Palmer was short in his accounts, found himself in trouble, was casting about for some means of apparently straightening out his deficit, that he got into communication with some one or more of these persons, and the result of it all was, to make

a long story short, that certain persons were imported, let us say, from New York for the *purpose of accomplishing a hold-up of the express office,* and the proceeds of the hold-up were to be divided among Palmer and his associates, and Palmer thereby was to obtain sufficient funds to make up the deficit that appeared on the company's books. The two men that, concededly by the testimony of both, were there present in the express office were the defendant Lynch and the witness Strand. You heard Strand's evidence and you heard Lynch's evidence, and each of them says that they both were there, and each of them says that there was a shot fired, and each of them says that the money was taken away; and if the money was taken away against the will of Mr. Talmadge, whatever may have been the will of Mr. Palmer, if it was taken from Talmadge's custody by force or violence or putting him in fear unlawfully, that was a robbery. And if, in the perpetration of that robbery, either Lynch or Strand fired the shot that killed Brannon, both of them are guilty of murder, and both of them are guilty of murder in the first degree."

23. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said Jaes Lynch, charged and instructed the jury as follows:

"But the question as bearing on Lynch's degree of guilt it not so much what the actual facts were relating to the complicity of the express people as what Lynch hon-

estly believed they were at the time the plan was in process of execution. Lynch has testestified to that effect and the inference you are expected evidently to draw from his testimony is that he was merely assisting somewhat as a dummy, if you please, in the carrying out of a *fraudulent scheme to rob the express company* by an apparent hold-up, that he had no idea of shooting anybody, that he had no idea of committing any genuine robbery, that he was simply going over there to help the other people carry through their little scheme that they had fixed up with the express people;"

24. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"Now, to go on: If up to the time of demanding the money Lynch believed the mere demand and pretended force were all that were needed, you would be at liberty to regard the so-called hold-up as a mere grand larceny up to the time when, if at all, Lynch realized that the hold-up was to be not pretended but real. But if and when he realizd that it was not pretended, but that it was real at any time before it was complete and the money secured, he would be a participant in a robbery in actuality, and the rule first given would not apply. So you see, if for example, when Talmadge was backed up against the wall with his hands up in the air, and Lynch and Strand were trying to carry this thing through, Lynch

might have reached that point with the idea that it was a mere fake, but if at that point it came across his consciousness that this was no fake, but that it was a real thing so far as Talmadge was concerned,and he then went on and the shot was fired, after that he would be just as guilty of robbery as if he had gone into it in the first instance. His duty necessarily as soon as he found it was more than a fake hold-up was to quit."

25. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The Court: Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent: If at any time before the firing of this shot Lynch realized that it was a real hold-up and not a fake one, why, he was then participating in a robbery, and the firing of a shot after that time would make him guilty of murder, and murder in the first degree."

26. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"The only two who were actually on the ground putting this thing through were Lynch and Strand. Corcoran, while legally present, was around the corner sitting in the car. Certainly, it cannot be claimed very

well that Talmadge fired it, or that Palmer fired it. There is not any explanation of any kind to show that it was accidental."

27. Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows:

"But you will not, I trust, overlook the fact that whatever the testimony of these other people may have been, you have got the statement of Lynch himself that he was there, that there was a shot fired, there was a man killed, and that the money was taken, whether he fired the shot or whether the other man did."

28. Because the evidence in the case did not warrant a conviction of a higher degree of murder than murder in the second degree.

29. Because the verdict of the jury was contrary to the evidence.

30. Because the verdict rendered by the jury was contrary to the charge of the court.

31. Because the defendant was prejudiced by the refusal of the Court to sustain his challenge to the array.

32. Because counsel was forced to proceed with the defense without adequate time for proper preparation of defendant's defense.

And the plaintiff in error, James Lynch, prays that the judgment aforesaid be reversed and altogether held for nothing, and that he may be re-

Specification of Causes for Reversal.

stored to all things which he has lost by reason of the said judgment, &c.

JOHN B. ZABRISKIE,
Attorney for Plaintiff-in-Error.

Endorsed:
Service acknowledged
May 7th, 1926.
A. C. HART,
Prosecutor of the Pleas.
Filed May 8th, 1926.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY, Plaintiff-Defendant in Error, *v.* JAMES LYNCH, Defendant-Plaintiff in Error.	**On Indictment for Murder.** **On Writ of Error to Bergen Oyer and Terminer.**

BRIEF FOR DEFENDANT—PLAINTIFF-IN-ERROR.

James Lynch was indicted for murder by the Bergen County Grand Jury. He was charged with the slaying of Frank Brannon, an employee of the American Express Company, at Hackensack, on January 21st, 1926.

Without counsel, he was arraigned Thursday *evening, February 18th, 1926,* before Justice CAMPBELL. A plea of not guilty was entered.

Notwithstanding the fact that Lynch had no counsel, the case was set down for trial for *Tuesday, February 23rd, 1926.* Accordingly, the defendant had only Friday, Saturday, Sunday and Monday (Washington's Birthday) in which to prepare for trial.

On *Friday, February 19th, 1926,* about noon, counsel was assigned to represent Lynch. The assignment was not made in open court. The defendant had no means satisfactory to him to determine the genuineness of the assignment.

His case had attracted the highest degree of publicity ever given to a murder case in Bergen County. Rewards for conviction of the alleged mur-

derer of Brannon stimulated the activity of police officers and detectives to such a degree and such extremes were resorted to in order to get evidence on which to convict, that the defendant had decided to do no talking to anyone without the advice of a certain S. Earl Levene, the lawyer who had represented him in extradition proceedings in New York City.

Mr. Levene's appointments were such that although reached by telephone, he could not arrange to come to New Jersey to investigate and report to Lynch as to the advisability of conferring with the lawyer purporting to have been assigned. Consequently, at the outset, assigned counsel labored under the difficulty that results from having an uncommunicative client.

As indicated to the Court at the time of assignment, the engagements of assigned counsel were such that the labors relative to this case could not be begun before Saturday morning. Counsel confidently expected that at least a short continuance of the trial would be granted for the reasons advanced on the application for that purpose.

Saturday morning, February 20th, 1926, being a half holiday, preceding a generally observed holiday (Washington's Birthday), found practically all offices without occupants. No one could be reached by telephone or otherwise who could give any assistance to the defendant, and no one could be procured known by Lynch who could vouch for the status of assigned counsel.

On Tuesday, February 23rd, 1926, trial was moved. The defendant was alone and without the witnesses who could have been obtained if time had been given him. His former lawyer, Mr. Levene, had gone to Albany on the Saturday preceding and did not return in time to participate or advise in any way in connection with

the defense. Even the defendant's wife, sick in bed in New York, could not appear until near the conclusion of the trial, on its second day. She was not present at all on the first day. A verdict of guilty of murder in the first degree was found at the conclusion of the second trial day.

The facts having to do with the alleged killing of Brannon were substantially as follows:

Theodore Palmer was an employee of the American Express Company at its Hackensack office. He was short of money. He kept bad company and among his associates were Stephen Kalman and Arnold Costy, who in turn had an associate of similar or worse character named Frank Cuneo. Cuneo apparently had connections with a master gangster in New York, one Mike Corcoran, who was closely associated with another, Charles Strand.

These men planned to procure money from the express company office. It was arranged that Theodore Palmer, the trusted employee of the express company, was to arrange matters at the express office at an agreed time so that money belonging to the company would be easily accessible and could be taken from the express company's office without force, without shooting, and in fact without any resistance or trouble of any kind.

Corcoran and Strand sought out James Lynch, the plaintiff in error, to induce him to co-operate with them in procuring the money. Lynch had been arrested and convicted, on his own admission, of carrying a gun under the Sullivan Law in New York. That was his first and only experience in court. He expressed reluctance about coming to New Jersey on the mission described to him even though no force was to be used, because of this conviction in New York. However, he was absolutely dominated by Corcoran and Strand, and

finally acceded to their demands and participated in the scheme—not to commit robbery, but to assist in the plot as suggested by Theodore Palmer, the trusted employee of the express company. Palmer was to see to it that none other than parties to the scheme would be present at the agreed time and that the intended loot would be in full view and easy of access.

On the morning of the crime, Corcoran drove his car, containing Lynch and Strand, to the express office. He himself remained in his automobile.

Strand went inside the express company office and pretended to engage an inmate in a conversation about shipping a trunk. Lynch, at a signal from Palmer, given according to the prearranged plan, came in through the baggage room and thence to the express office. When he had arrived in the express office, he heard a shot fired nearby, and he made a hasty escape through the Mercer Street door of the express office to the automobile in which Corcoran was sitting and to which Strand followed. It developed that Brannon had been shot and he subsequently died without making any statement.

Frank Cuneo, Theodore Palmer, Stephen Kalman, Arnold Costy, Charles Strand, James Lynch and Mike Corcoran were indicted for murder.

When Lynch was located, the press of Bergen County painted him as a terrible criminal with a gunman's record. He was made the target of attack and it was his conviction that was sought above all. Rewards for conviction had been offered by various organized bodies and indignation was at fever heat in all Bergen County before and at the time of trial.

Corcoran, the gang leader, was taken into custody in New York. Strand was also apprehended. Upon the false statement of Strand that Corcoran

had no connection with the affair, *Mike Corcoran, the master mind, was released from custody and is still at large.* After his release, Lynch was involved and arrested.

Attempts to administer even-handed justice to the master minds and real culprits were made secondary to the efforts to convict Lynch.

Charles Strand—self-confessedly guilty of serving time for homicide in New York and on a par with Mike Corcoran, the escaped gang leader, was induced to turn state's evidence; so was Theodore Palmer, the trusted employee of the American Express Company, who initiated the train of events that brought about the occurrence; so was Frank Cuneo, who had been the means of importing into Bergen County the activities of Corcoran and Strand.

Although on the trial of the case and in the prosecutor's argument, it was emphatically contended that no immunity had been promised to these men for their testimony—Strand, Palmer and Cuneo—the real conditions were soon disclosed. *While the jury in the Lynch case were deliberating,* Strand, Cuneo and Palmer were allowed to retract their pleas of not guilty. Pleas of non vult were accepted and *the same evening,* the following sentences were meted out: Charles Strand "not less than 12 years nor more than 30 years"; Theodore Palmer "not less than 15 years nor more than 30 years"; Frank Cuneo "not less than 15 years nor more than 30 years."

The cases against Costy and Kalman for murder were nolle-prossed and they entered pleas of guilty to highway robbery and were sentenced to imprisonment in the New Jersey State Reformatory at Rahway.

The defendant denied shooting Brannon and denied any knowledge of any intended use of force

or show of force and testified that, upon hearing a shot, he retired forthwith from the scene without any attempt to do any unlawful act.

The case is brought before this Court on assignments of error and specification of causes for reversal. The entire record is brought up under Section 136 of the Criminal Procedure Act of 1898.

The assignments of error and the specification of causes for reversal fall into the following classifications:

Specifications of Errors and Causes for Reversal.

1. The refusal of the Court to grant defendant's motion for a foreign jury.

Exception, page 24, line 2.
Assignment of Error No. 1.
Specification No. 1.

2. The refusal of the Court to grant an adjournment.

Exception, page 35, lines 13 and 14.
Assignment of Error No. 2.
Specification No. 2.

3. The overruling of certain challenges for cause of jurors, to the prejudice of the defendant in that all his peremptory challenges were thus caused to be exhausted before the trial panel was completed.

Exception, page 39, line 20;
page 42, line 19;
page 57, line 23;
page 77, line 25;
page 84, line 11;
page 96, line 28.

Assignments of Error Nos. 3, 4, 8, 12, 13 and 14.
Specifications Nos. 4, 5, 9, 13, 14 and 15.

4. The Court's overruling defendant's objection to proceeding when it developed that the special panel served on defendant was defective.

Exception, page 48, line 33;
page 51, line 28;
page 101, line 24;
page 59, line 12;
page 59, line 29;
page 61, line 13;
page 93, line 35;
page 127, line 5.

Assignments of Error Nos. 5, 6, 7, 10, 15 and 16.
Specifications Nos. 6, 7, 8, 10, 16 and 17.

5. The Court's rebuking certain jurors because of their inability to "stand indifferent between the state and the defendant."

Exception, page 64, line 30.
Assignments of Error Nos. 9 and 11.
Specifications Nos. 11 and 12.

6. Certain alleged errors in the charge of the Trial Court.

Exception, page 316, line 38.
Assignments of Error Nos. 19, 20, 21, 22, 23, 24, 25 and 26.
Specifications Nos. 20, 21, 22, 23, 24, 25, 26 and 27.

7. The contention that the evidence in the case did not warrant a conviction of a higher degree of murder than murder in the second degree.

Assignments of Error Nos. 27 and 28.
Specifications Nos. 28 and 29.

8. The contention that the verdict rendered by the jury was contrary to the charge of the Court.

Assignment of Error No. 29.
Specification No. 30.

9. The contention that the defendant was prejudiced by the refusal of the Court to sustain his challenge to the array.

Exception, page 127, line 5.
Specification No. 31.

10. The contention that counsel was forced to proceed with the defense without adequate time for proper preparation of defendant's defense.

Exception, page 35, lines 13 and 14.
Specification No. 32.

ASSIGNMENT NO. 1.

SPECIFICATION NO. 1.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused to grant the defendant's motion for a foreign jury (page 23, line 30).

While the granting of a motion for a foreign jury is ordinarily considered as being discretionary, still it is contended there is a question if there was not a commission of error under the circumstances such as those presented in this case.

The examination of the various persons summoned as jurors confirmed the defendant's contention that the people of Bergen County, to a large extent, had not only formed an opinion that the defendant was guilty, but that they were unable to free their minds from the effect of the prejudice created by reading newspaper articles and hearing discussions of the so-called Lynch murder case.

For example, the "Evening Record," one of the newspapers circulating in Bergen County, had an average daily net paid circulation of 12,001 copies (p. 19, line 6). The population of Bergen County is 210,703. Making appropriate deductions for the number of infants and illiterates, this newspaper alone had a substantial influence. In that paper pictures of Lynch were shown, under which was written "The gunman which shot and killed Brannon" (p. 16, line 33).

The influence of this paper and other papers was so effectual that juror after juror admitted that he had formed the opinion that the defendant at the bar was guilty and that the defendant would have to clear himself in order to get the juror's vote for acquittal.

For example, Robert F. Grange, the first juror who was interrogated, answered on his *voir dire* as follows:

"Q. And we practically have to show you or demonstrate that in order for you to find him not guilty, isn't that so? A. Yes" (p. 38, lines 16-19).

"*By Mr. Zabriskie*:

"Q. You say that you will try to, but you do not feel confident that you could give a verdict in accordance with the evidence, do you, Mr. Grange? A. Well, maybe" (p. 38, lines 35-40).

"Q. What do you say? A. It might be a little bit that way.

"Q. It might be difficult for you to do so? A. Yes.

"Q. And knowing your own powers and abilities, you have doubt as to your ability to be governed by the evidence produced here, isn't that so? A. Yes" (p. 39, lines 1-10).

Certainly such jurors were not in the frame of mind to "stand indifferent" between the state and the defendant.

ASSIGNMENT NO. 2.

SPECIFICATION NO. 2.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused the defendant's application for an adjournment of the trial of the cause, notwithstanding the assignment of counsel had taken place only four days before trial, including Saturday, Sunday and a legal holiday (Washington's Birthday) (page 35, line 5).

> "The Court before which any person shall be tried upon indictment is hereby authorized and required to assign to such person, if he is not of ability to procure the same, counsel, not exceeding two. * * *" (2 C. S., p. 1838, Section 56, P. L. 1898, p. 885.)
>
> "In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense." (New Jersey Constitution, Article 1, Section 8.)

It is contended that when the statute and constitution provide that the defendant shall have the assistance of counsel in his defense, it is the intention that such counsel shall have at least a reasonably adequate time for preparation of the defendant's case. Otherwise the statutory and constitutional provisions would be of little efficacy in protecting the rights of defendants.

In this case, counsel for defendant had practically only one-half day of open-office time in which to prepare for this important jury trial.

That one-half day of open-office time was a Saturday morning, prior to a holiday following a Sunday.

As is now customarily the habit in offices of many professional and business people, most employers and employees were absent. Consequently, counsel was left in a position where he could get no assistance from any one on that day.

Defendant's New York counsel was reached while on the point of leaving for Albany (p. 24, line 27). Defendant's wife could not be reached (p. 24, line 36). The Court at the trial was misled into believing that the defendant's wife was in Court at the time the trial was moved (p. 25, lines 15-22), but subsequent developments disclosed that to be untrue (p. 35, lines 23-29), and the fact is that she did not appear until the case was near its conclusion on the second day of trial. Consequently counsel was without any assistance of any kind in preparing defendant's case, either prior to or during the trial.

The defendant stood absolutely alone. He did not know whether or not to confide in counsel purported to have been appointed by the Court. The appointment was not made in open court. It was made in his absence. He had no means of knowing whether or not the alleged appointment of counsel was just another of the many ruses practised by detectives to get information and statements from him.

There was no Judge available on Saturday morning to assure the defendant that the assigned counsel was his bonafide representative. No one whom defendant knew could be brought to New Jersey to verify the truth as to the appointment of counsel. As a result, the defendant could not and did not give any information to his assigned counsel prior to trial, and, consequently, witnesses

were not and could not be located and subpoenaed, who if they had appeared before an impartial jury would undoubtedly have convinced the jury of facts that would have resulted in a verdict different from that which was rendered.

ASSIGNMENT NO. 3.

SPECIFICATION NO. 4.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Robert F. Grange, a member of the special panel (page 39, line 15).

The juror, Robert F. Grange, admitted that innocence would have to be demonstrated in order to find the defendant not guilty (p. 38, line 25) and that he doubted his own ability to be governed by the evidence in court (p. 39, line 10).

The defendant was obliged to exercise a peremptory challenge on this biased juror. Defendant exhausted all of his peremptory challenges before the trial panel of twelve was obtained and was obliged to accept, finally, the juror who became juror Number 12. This juror although making answers that would not appear to disqualify for cause under the law, was still an ardent advocate among the jurors for conviction. His activity in the case indicated him to be a man of unusual courage and persuasion. Reference is made to the juror, Mr. Zimmerman (p. 317, lines 9 to 22).

In the case of *Wilson* v. *State,* 60 N. J. L., 171, at pages 181, 182, the examination of the juror disclosed that he had formed an opinion, but he answered that, if the state failed to prove the case against the defendant, that he would not feel that

he should be convicted. He therefore stood *indifferent between the state and the defendant,* and the challenge for cause was overruled. The Court said in that case:

"Since the trial of the case of State *v.* Spencer, it has been the accepted law of this state that it is not a ground of principal challenge to a juror that he has expressed an opinion on the matter to be tried, if it was not done through malice or ill-will.

"In that case, reported in 1 Zab., 196, Chief Justice Hornblower says: 'A declaration of opinion to disqualify a juror, therefore, must be such a one as implies malice or ill-will against the prisoner, *thereby showing that the person challenged does not stand indifferent between the state and him.*

"This declaration was approved without any qualification by our Supreme Court, in an opinion delivered by Chief Justice Green, in State *v.* Fox, 1 Dutcher, 566.

"This question was again raised in Moschell *v.* State, 24 Vroom, 498, and the rule adopted in the cases above cited was inflexibly adhered to." *Wilson* v. *State,* 60 N. J. L., 171, at 182.

It is contended in this case, however, that the challenge of Grange was improperly overruled because of the mental condition disclosed by the last questions and answers he made, among which are the following (p. 38, lines 35 to 40, and p. 39, lines 1 to 10).

"*By Mr. Zabriskie*:

"Q. You say that you will try to, but you do not feel confident that you could give a verdict in accordance with the evidence, do you, Mr. Grange? A. Well, maybe.

"Q. What do you say? A. It might be a little bit that way.

"Q. It might be difficult for you to do so? A. Yes.

"Q. And knowing your own powers and abilities, you have doubt as to your ability to be governed by the evidence produced here, isn't that so? A. Yes."

Counsel for the defendant calls attention at this time to the fact that all of his peremptory challenges were exhausted before the selection of the panel of twelve trial jurors, and that the defendant was therefore prejudiced by the overruling of this and other challenges for cause.

The case presented here is therefore distinguishable from that in the case of *State* v. *Martin,* Volume 4, N. J. Advance Reports, page 312, at pages 315 and 316, where the Court said:

> "The plaintiff in error next contends that the trial judge erred in disallowing challenges to the polls for cause. There were four jurors who were examined and were challenged by the defendant below. Assuming for argument that the challenges were made and wrongfully disallowed, the record discloses no harm or prejudice to the defendant by these rulings. The jurors mentioned were not members of the jury which tried the defendant. They must have been, therefore, challenged peremptorily. The defendant was allowed twenty peremptory challenges. He challenged peremptorily sixteen jurors. *His peremptory challenges were not exhausted when the drawing of the jury was completed.* He was therefore not harmed by the rulings of the trial judge, of which he now complains. Such rulings constitute no ground for reversal. *Drake* v. *State,* 53 N. J. L., 23."

ASSIGNMENT NO. 5.

SPECIFICATION NO. 6.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of Juror 58 of the special panel was Alfred S. Mante instead of Alfred S. Maule as it was written on the panel served upon the defendant (page 48, line 27).

Section 54 of the Criminal Procedure Act of 1898, Chapter 237, page 885, provides as follows:

> "Any person who shall be accused and indicted for treason, shall have a copy of the indictment, and a list of the jury and witnesses to be produced on the trial for proving the said indictment, *mentioning the names and places of abode of such jurors* and witnesses, delivered unto him at least three entire days before the trial; and *in murder,* misprision of treason, manslaughter, sodomy, rape, arson, burglary, robbery, forgery, perjury or subornation of perjury, *shall have such copy of the indictment and list of the jury,* two entire days, at least, before the trial."

It is contended that this provision exists in order that a defendant may have an opportunity to investigate as to the character and prejudices of the jurors who are likely to try him. The name "Alfred S. Mante" failed to give any clue as to the identity of the juror whose name was Alfred S. Maule, and the defendant was deprived of the benefit of the investigation contemplated by law (p. 47, line 24).

The misnomer of the juror Maule was especially prejudicial to the defendant in this case because

of the extremely limited time granted to counsel to do all the necessary work, including investigation of character of jurors, prior to trial day.

This defect is not cured by the doctrine of *idem sonans*. It might perhaps have been argued that the defendant did not suffer, had it not been for the fact that all of his 48 peremptory challenges were exhausted before the trial panel was selected. They were in fact exhausted before juror Number 12 was drawn (p. 123, lines 20-25).

It may be argued that the defendant responded "satisfactory" to the twelfth juror. However, it is claimed that this is immaterial since the defendant has no right of selection of jurors.

> "The right of challenge in the selection of a jury is a right of exclusion, not of selection." *State* v. *Langhans*, 95 N. J. L., 213.

It is contended that counsel had the right to make a response of "satisfactory" in order to avoid the creation of that prejudice in the mind of a juror which often results from indicating to him that counsel did not want him upon the jury panel.

ASSIGNMENT NO. 6.

SPECIFICATION NO. 7.

Because the panel of jurors served upon the defendant was defective in that it contained what purported to be the names of jurors, to wit, Harry T. Matier, Alfred S. Maule and Edward J. Roggenburg, when in fact persons by such names were not upon the panel from which the special panel was drawn.

The line of reasoning under specification 6 applies also to this specification.

ASSIGNMENT NO. 9.

SPECIFICATION NO. 11.

Because the Court erroneously and to the prejudice of the defendant rebuked the juror John W. Lawlor in the presence of the remaining members of the panel, upon examination of said juror (page 63, lines 1 and 2).

The members of the Court will undoubtedly take judicial notice of the dignified mien of Justice Parker and the overpowering effect of the slightest indication of disapprobation by him, upon members of the rank and file of ordinary men and women.

Consequently, it is contended that when the learned Justice said to this juror "You think it would. Well, I am very sorry. That is all. You may go" (p. 63, lines 1 and 2), the remarks had the probable effect of causing jurors yet to be called to conceal their real mental attitude rather than be the objects of similar rebuke.

It is contended that this rebuke is prejudicial to the rights and interests of the defendant.

ASSIGNMENT NO. 11.

SPECIFICATION NO. 12.

Because the Court erroneously and to the prejudice of the defendant rebuked the juror William R. Huntington in the presence of the remaining members of the panel upon the examination of said juror (page 64, lines 15-20).

The remark of the Court was: "The Court is very sorry to see that these gentlemen who are called

to serve on the jury find themselves so influenced by newspaper reports that they are unable to regard the obligation of an oath. You are excused, Mr. Huntington" (p. 64, lines 15-20).

It is contended that these remarks were prejudicial to the defendant, as argued under specification No. 11.

ASSIGNMENT NO. 12.

SPECIFICATION NO. 13.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Lorenzo W. Kenyon, a member of the special panel (page 77, line 20).

> "The Juror: I do not believe in my present state of my personal affairs, I do not think that I would be qualified to serve on this or any other jury" (p. 76, lines 11-14).

This juror's mind was in such a condition that he was not qualified to serve as a juror in any case, and he stated that he was not qualified even to consider the case (p. 76, lines 10-18).

It is contended that the defendant was prejudiced in being obliged to use a peremptory challenge on this disqualified juror.

ASSIGNMENT NO. 13.

SPECIFICATION NO. 14.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Fred W. Buesking, a member of the special panel (page 84, lines 1 and 2).

This juror testified that if the scales were evenly divided, then his verdict would be guilty (p. 82, lines 30-40, and p. 83, lines 1-3).

It is contended that the juror did not "stand indifferent between the state and the defendant," and, therefore, the defendant should not have been required to use a peremptory challenge to eliminate him from the trial panel.

See

Wilson v. *State,* 60 N. J. L., 171, at page 181, 182, *supra.*

ASSIGNMENT NO. 14.

SPECIFICATION NO. 15.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to George T. Yonkers, a member of the special panel (page 96, lines 27 and 28).

The juror stated that if the evidence were evenly balanced, he would say guilty (p. 96, lines 15-20).

It is contended that the juror did not stand "indifferent between the state and the defendant," and therefore the defendant should not have been required to use a peremptory challenge to eliminate him from the trial panel.

See

Wilson v. *State,* 60 N. J. L., 171, at pages 181, 182, *supra.*

ASSIGNMENT NO. 15.

SPECIFICATION NO. 16.

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of Juror 68 of the special panel was Edward J. Poggenburg instead of Edward J. Roggenburg as it was written on the panel served upon the defendant (page 101, line 18).

The same line of argument as contained in specification No. 6 applies here.

ASSIGNMENT NO. 19.

SPECIFICATION NO. 20.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 305, lines 10-28) :

> "The theory of the State in this case, as you are probably well aware by this time, is that the killing was perpetrated in the execution of what the State claims was legally a robbery of the express office at the Hackensack Station, where you went and looked over the ground. Now, robbery is the crime of unlawfully and feloniously taking the money or property of another by violence and putting him in fear. That is my recollection of the definition, and I think that is substantially right; if not, I will ask counsel to correct me in due course. And our statute says—and you

may as well have its exact language—that if any person who, in committing, or attempting to commit any one of various crimes, of which robbery is one, or any unlawful act against the peace of this State of which the probable consequence may be bloodshed, shall kill another, then such person or persons so killing as aforesaid shall be guilty of murder" (p. 305, lines 10-28).

It is contended that there was no evidence upon which it could be predicated that the killing was perpetrated in the execution of what was legally a robbery.

There were only two witnesses called by the state who were possibly in a position to testify as to whether or not an intention to rob existed in the mind of Lynch to and including the time when Brannon was shot. These men were Frank Cuneo and Charles Strand.

The most that can be said in this case is that there existed a conspiracy, if it may be so called, to take money from an employee of the express company illegally, but without force.

Cuneo testified as follows:

"Why I had nothing to say with Lynch, but I did with Mike Corcoran" (p. 183, line 25). (Referring to Monday preceding occurrence, p. 182, lines 38-40.)

"Q. And when you met, what was said in Lynch's presence? A. Why, very little, because Charles Strand rode with me, and Lynch rode with Corcoran" (p. 184, lines 25-29).

"Q. Was there any conversation about the twine when Lynch was around? A. No" (p. 185, lines 3 and 4).

"Q. Because it had been arranged. So far as you knew, it was going to be just simply the taking of easy money? A. Yes.

"Q. That is correct, is it? A. Yes" (p. 194, lines 33-36).

"Q. You knew, or had been told, that this

agent was going to just hand up the money when a man called at a certain time? A. He wasn't going to hand it to him, but it would be there. It would be easy for him to get" (p. 194, lines 36-40).

"Q. Well, he wasn't going to offer any resistance? A. No.

"Q. They were just simply going to walk in and walk away with the money, and you were going to get a part of it? A. Yes" (p. 195, lines 1-9).

Strand testified as follows:

"Q. Did you or Lynch say what you were doing in Hackensack? A. No, sir" (p. 220, lines 1 and 2).

"Q. Was Lynch there? A. No, sir; I was alone with Cuneo" (p. 221, line 33).

"Q. And you and Corcoran didn't even tell Lynch what was up that day, did you? A. I didn't know myself what was up" (p. 254, lines 33-35).

"Q. You thought there was more than one that was going to be bound up; but it was to be a fake bind-up, was it? A. Yes, sir" (p. 255, line 14).

Accordingly, the statement that "The theory of the State in this case, as you are probably well aware by this time, is that the killing was perpetrated in the execution of what the State claims was legally a robbery of the express office at the Hackensack Station" (p. 305, lines 9-15) was not justified by the evidence adduced and was harmful. The expression "legally a robbery of the express office," it is contended, was misleading and prejudicial to the defendant.

Lynch's testimony corroborates the State's witnesses on his mental attitude and knowledge and understanding of the project in which he was supposed to take part. His testimony is as follows (p. 270, lines 2-40, and p. 271, lines 1-12):

"Q. Now, did they let you into what was going on on that day? A. No, sir. I didn't know anything about the conversation.

"Q. Then when was the next that you heard from Corcoran? A. Wednesday night, he told me he would give me a ring Thursday morning.

"Q. And did you have any conversation with him at that time? A. I told him when he called up, I didn't like the idea of coming out.

"Q. Yes. A. So he told me there was nothing to it; that the money was actually going to be handed to us, and he come down and explained it at the door to me when I went down and met him in the car.

"Q. And then he came the next morning? A. Yes, sir. He called me on the 'phone before he came.

"Q. And did he come down in his Chrysler car? A. Yes, sir; him and this Charles Strand.

"Q. And what was said then? A. Well, he said that he had it all fixed with that man by the name of Frank, with two men at the Susquehanna Station, that there would be nobody in the place; but we only had to walk in and get the money and walk out; that there was no guns needed in the thing, and there would be no guns in this place, that this man Mr. Palmer would see that everything was out of the way.

"Q. How did he come to talk about guns, if you remember? What did you say to him? A. Well, I told him I didn't want to come if it was actually a hold-up; that I had one conviction for the Sullivan law, and if I got pinched again, it meant maybe about seven years to me.

"Q. And then what happened that morning when he did come on the 21st? A. He told me there was nothing to it, that the money was actually going to be handed to us; there was nobody going to be in the station whatsoever to start any opposition, that the money was there to be taken, it was going to be handed to us.

"Q. You say there was nobody there. You mean no opposition? A. There would be no opposition to have to handle any kind of stuff."

Page 276, lines 23-28, as follows:

"Q. Did he say on the telephone what kind of business he had in Jersey? A. No, sir.

"Q. Well, when you saw him later, did you ask him what you were going over for, to New Jersey for? A. On the way coming back, he stated that we were going to get some money off a fellow out here; he was going to hand the money to us."

Page 277, lines 5-18, as follows:

"Q. And on the 21st, you did not ask where you were going or why? A. I knew on the 21st.

"Q. What did you know? A. That we were going out there, and the money was going to be handed to us.

"Q. That it was to be a hold-up, is that right? A. No, sir; not a hold-up.

"Q. Not a fake hold-up? A. He didn't actually say a fake hold-up. It was—there was three—there was two men at the railroad station supposed to be in on this."

Page 278, lines 1-40, and page 279, lines 1-2, as follows:

"Q. They were going to take money away from somebody that they did not take it away from, isn't that right? A. The money was going to be given to us.

"Q. A gift? A. Yes, sir.

"Q. A gift? A. Yes, sir.

"Q. Three of you to go get one gift? A. Well, there was going to be given three shares back out of the money; that is why it was supposed to be handed out.

"Q. But there were three of you to accept a gift at the Hackensack Station? A. Yes, sir.

"Q. Did you believe that story when he told you that? A. Yes, sir.

"Q. Well, why did he say it was all fixed, there was nothing to it, if it was just going to go there and receive a present? A. Well, because he had two men at the railroad station that was in on that.

"Q. In on what? A. In on giving out the money.

"Q. Giving it away? A. Yes, sir.

"Q. No force was to be used? A. No force.

"Q. And whose money were they to give out, their own? A. I do not know whose money it was.

"Q. That did not interest you at all to find out whether it was their money, or whether it was money of somebody else, did it? A. No, sir.

"Q. And you did not ask? A. No, sir.

"Q. You did not suspect anything? A. No, sir.

"Q. And when you got to the station, you say you did not take a gun out of your pocket? A. No, sir.

"Q. Did you have it out when you went in? A. No, sir.

"Q. Did you put your hands in your pockets at all? A. No, sir.

"Q. Did you take your hands out of your pockets? A. My hands was out of my pockets all the while."

Page 281, lines 35-38, as follows:

"Q. Why not? A. Well, the money was getting given to them.

"Q. Given, yes. A. Yes, sir."

Page 284, lines 1-12, as follows:

"Q. Yes, did they say why they stopped there in that particular place? A. Well, they were waiting for the time.

"Q. What time? A. For the man to give out the money.

"Q. What time was it to be? A. About ten o'clock.

"Q. Did they say what man was going to give it? A. They did not state."

Page 286, lines 37-40, and page 287, lines 1-25, as follows:

"Q. In the presence of Talmadge, this witness that we had here? A. They were standing. Talmadge was inside the screen and Strand was outside the screen, and Talmadge give me a bow with his head to come in.

"Q. And that was the signal? A. Or Palmer; yes, sir.

"Q. Well, you know you were not doing anything wrong up to that point, were you? A. Yes, sir.

"Q. What did you need a signal for to go into an express company office? A. Well, that is the way I got told to come in.

"Q. You were just obeying the orders, were you? A. Yes, sir.

"Q. To get a present? A. Yes, sir.

"Q. You had to have a signal when it was time to come in? A. Yes, sir.

"Q. Well, didn't you think it funny that Strand, a big fellow like him, couldn't take the present by himself? A. No. He was going in to have things fixed for me to go in and get it.

"Q. Who was to give you the present? A. It was to be handed to him.

"Q. Who was to give it to you? A. I didn't know."

Page 288, lines 26-40, as follows:

"Q. Where did Brannon come from? A. I do not know.

"Q. Where did he fall? A. Well, it was a man laying in the door as I went out the door.

"Q. That is the first you saw of him? A. Yes, sir.

"Q. Did you hear a shot? A. Yes, sir.

"Q. What direction did it come from, behind you or in front of you? A. I do not know.

"Q. What? A. I do not know. I just heard the shot.

"Q. Well, you were the only one in the big package room at the time, weren't you? A. No, sir; I was inside of the office in front of Mr. Talmadge when I heard the shot."

Page 289, lines 39 and 40, as follows:

"Q. Well, you were going in the cashier's cage to get this present? A. Yes, sir."

Page 290, lines 1-18, as follows:

"Q. And you heard a shot? A. Yes, sir.

"Q. Exactly where was Strand standing when you looked around after you heard the shot? A. He was coming in past me into the office.

"Q. And Palmer was in front of you in his cage, wasn't he? A. Yes, sir.

"Q. And Talmadge was alongside of you? A. Yes, sir.

"Q. Partly in front and partly alongside of you? A. Yes, sir.

"Q. And Strand was right near you? A. Strand was to the left of me.

"Q. Well, who do you say fired that shot? A. I do not know."

Page 291, lines 15-28, as follows:

"Q. —as he lay there? Well, what did you run for? A. I heard this shot, and I knew I was in a bad place, so no more than I got an opportunity, Strand passed me and went to the cage, I walked right out the cage and walked down to the automobile and got in it.

"Q. Walked with the money? A. No, sir.

"Q. Well, you went in to get a present. There was no harm in that, as you thought, was there? A. No, sir.

"Q. And yet, as soon as you heard somebody fire a shot somewhere, you ran? A. Well, I knew it was time to go out of the place."

Page 292, lines 15-23, as follows:

"Q. Did you know him any better than you knew Corcoran? A. No, sir; I didn't know him as well.

"Q. And yet when they told you they were coming out to Hackensack to get a present, you didn't question either one of them? A. No, sir.

"Q. Well, didn't you ask them why they were picking on you to accompany them to New Jersey? A. No, sir."

Page 294, lines 18-21, as follows:

"Q. You say you went in the cage to have this man give you some money, that is correct, isn't it? A. Yes, sir."

Page 295, lines 22 and 23, as follows:

"Q. Lynch, did you ever sit in the witness chair in your life before today? A. No, sir."

Page 297, lines 29-40 and page 298, lines 1 and 2, as follows:

"Q. You say that today is the only time that you ever were on the witness stand? A. Yes, sir.

"Q. Do you remember Judge McInerny in New York City, Special Sessions Judge? A. Yes, sir.

"Q. Do you remember being on the stand before him? A. No, sir.

"Q. On May 13, 1919? A. No, sir.

"Q. You were not on the stand that day? A. No, sir.

"Q. Do you remember Judge Nolan, Special Sessions? A. Yes, sir.

"Q. You were not on the stand before him in 1922? A. No, sir."

ASSIGNMENT NO. 20.

SPECIFICATION NO. 21.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 305, lines 37-40 and page 306, lines 1-25) :

> "There is another section of the Crimes Act which it is important that you should bear in mind, because it deals fundamentally with the degree of murder and limits your consideration very materially. It says murder which shall be committed in perpetrating or attempting to perpetrate any burglary, robbery, and so on,—including robbery, you see,—shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree. Consequently, if this defendant was a participant in a robbery at that time and there was a killing in the execution of that robbery, and I may as well say now as at any time, either by himself or by any other principal engaged in that robbery, he is guilty of murder, and he is guilty of murder in the first degree. I used the word 'principal' just this moment, and it is proper that you should understand what that means. A principal in the commission of a crime is either the person who directly commits it or someone who is present aiding and abetting; and one is called a principal in the first degree and the other is called a principal in the second degree. For your purposes, the distinction is not legally important" (p. 305, lines 37-40 and p. 306, lines 1-25).

It is here reiterated that there was no legal evidence of Lynch's perpetrating or attempting to perpetrate a robbery.

ASSIGNMENT NO. 21.

SPECIFICATION NO. 22.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 306, lines 25-40 and page 307, lines 1-19):

> "The story as I gather it to come from the mouth of the State's witnesses and as the State claims the truth to be, is about like this: That Palmer was short in his accounts, found himself in trouble, was casting about for some means of apparently straightening out his deficit, that he got into communication with some one or more of these persons, and the result of it all was, to make a long story short, that certain persons were imported, let us say, from New York for the purpose of accomplishing a hold-up of the express office, and the proceeds of the hold-up were to be divided among Palmer and his associates, and Palmer thereby was to obtain sufficient funds to make up the deficit that appeared on the company's books. The two men that, concededly by the testimony of both, were there present in the express office were the defendant Lynch and the witness Strand. You heard Strand's evidence and you heard Lynch's evidence, and each of them says that they both were there, and each of them says that there was a shot fired, and each of them says that the money was taken away; and if the money was taken away against the will of Mr. Talmadge, whatever may have been the will of Mr. Palmer, if it was taken from Talmadge's custody by force or violence or putting him in fear unlawfully, that was a robbery. And if, in the perpetration of that robbery, either Lynch or Strand fired the shot that killed Brannon, both

of them are guilty of murder, and both of them are guilty of murder in the first degree" (p. 306, lines 25-41 and p. 307, lines 1-19).

The statement that "And if, in the perpetration of that robbery, either Lynch or Strand fired the shot that killed Brannon, both of them are guilty of murder, and both of them are guilty of murder in the first degree" (p. 307, lines 16-19) was without foundation, because, as appears later, the unquestioned fact was that the shooting, by whomsoever done, occurred before any one attempted to take anything from Talmadge's custody or anyone else's custody by force or otherwise.

ASSIGNMENT NO. 22.

SPECIFICATION NO. 23.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 308, lines 13-27):

"But the question as bearing on Lynch's degree of guilt is not so much what the actual facts were relating to the complicity of the express people as what Lynch honestly believed they were at the time the plan was in process of execution. Lynch has testified to that effect, and the inference you are expected evidently to draw from his testimony is that he was merely assisting somewhat as a dummy, if you please, in the carrying out of a fraudulent scheme to rob the express company by an apparent hold-up, that he had no idea of shooting anybody, that he had no idea of committing any genuine robbery, that he was simply going over there to help the other people carry through their little scheme that they had fixed up with the express people" (p. 308, lines 13-27).

The conclusive testimony is to the effect that the idea was not to carry out a "fraudulent scheme to rob the express company" (p. 308, line 22), but to have the money turned over without force to the person who appeared. See State v. Noel, 4 N.J. Adv. Rep. 854, cited page 35 infra.

ASSIGNMENTS NOS. 23 and 24.

SPECIFICATIONS NOS. 24 AND 25.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 309, lines 15-38):

> "Now, to go on: If up to the time of demanding the money Lynch believed the mere demand and pretended force were all that were needed, you would be at liberty to regard the so-called hold-up as a mere grand larceny up to the time when, if at all, Lynch realized that the holdup was to be not pretended but real. But if and when he realized that it was not pretended, but that it was real at any time before it was complete and the money secured, he would be a participant in a robbery in actuality, and the rule first given would not apply. So you see, if for example, when Talmadge was backed up against the wall with his hands up in the air, and Lynch and Strand were trying to carry this thing through, Lynch might have reached that point with the idea that it was a mere fake, but if at that point it came across his consciousness that this was no fake, but that it was a real thing so far as Talmadge was concerned, and he then went on and the shot was fired, after that he would be just as guilty of robbery as if he had gone into it in the first instance. His duty necessarily as soon as he found it was more than a fake hold-up was to quit" (p. 309, lines 15-38).

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 310, lines 15-23):

> "The Court: Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent: If at any time before the firing of this shot Lynch realized that it was a real hold-up and not a fake one, why, he was then participating in a robbery, and the firing of a shot after that time would make him guilty of murder, and murder in the first degree" (p. 310, lines 15-23).

There is absolutely no testimony in the case to indicate that there ever was a time before the shooting that Lynch realized or had reason to believe that there was a real hold-up contemplated.

The whole charge up to this point was on the erroneous theory divulged by the colloquy between the Court and counsel (p. 309, lines 39 and 40, and p. 310, lines 1 to 19) as follows:

> "(To counsel): I do not understand the shots were fired before the hands went up, were they?
>
> "Mr. Zabriskie: I did not quite get that point.
>
> "The Court: I do not understand the shot was fired before they had these men holding up their hands?
>
> "Mr. Zabriskie: I do not recall it. I think there was a difference of testimony on that point. I really cannot answer that question offhand.
>
> "The Court: Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent," etc.

Under all of the testimony in the case, it is absolutely conclusive that the deceased Brannon was shot by someone in the outside room known as the baggage room as shown on photograph marked as Exhibit S-8 and sketches marked Exhibits S-15 and S-16, and that no demand had been made before the shooting and that there had been no force or pretended force evinced up to that time.

The Court was of the opinion (p. 309, lines 39 and 40) that the shots were fired after someone said, "Hands up," as indicated by the question addressed to counsel:

> "I do not understand the shots were fired before the hands went up, were they?"

It is unfortunate that the Court was under this misapprehension, but the Court's recollection of the testimony up to this point was erroneous and to the great prejudice of the defendant, and it is contended that the subsequent part of the charge, to wit: "Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent" (p. 310, lines 15-18) was an additional error and did not remedy the condition. It needs no argument to demonstrate that the ordinary lay juror is not in a position to discriminate as to what part of the charge was to be taken at full value and what was to be discounted.

Counsel for the defendant wishes to emphasize at this point that a reading of all of the testimony in the case discloses that there is not a scintilla of evidence in the entire case to indicate that Lynch was apprised at any time of the alleged fact that force of any kind was to be used in the transaction.

It is contended that there is some analogy to the situation presented in the case of *State* v. *Noel* (4 N. J. Advance Reports, 854), in which the Court said:

"In his charge to the jury the trial judge stated that Dr. Markens, a witness called in the state's main case, testified that the defendant knew the distinction between right and wrong. This witness did not so testify. It was a statement of a fact of importance which was directly contrary to the evidence. At the conclusion of the charge counsel for the defendant took an exception to this portion of the charge, specifically calling the court's attention to the fact that the court had stated that Dr. Markens had testified that the defendant knew the distinction between right and wrong, and that he had not so testified. The trial judge did nothing to correct this statement in the charge after his attention had been directed to it. The state contends that it was mere comment and not a statement of a fundamental fact, and that the following portion of the charge sufficiently apprised the jury that they were not to rely on the court's statement of the evidence, viz.: 'The jury, however, are the sole judges of the facts—that is, the weight of the evidence, the credibility of the witnesses, and, as judges of the facts, you have a right to draw such inferences from the facts as you see fit. If I, in referring to the testimony, omit some parts which you think are important, or, if I emphasize some part of the testimony which, in your judgment, is not justified, of course you are not to follow the court in its deductions as to the evidence. I am not attempting to decide this case upon the facts, and any reference that I make concerning evidence is only with the hope of elucidating that testimony.' We do not think this part of the charge corrected this erroneous statement. We also do not deem the statement mere comment. It was a misstatement concerning the evidence on the most important question the jury had to decide. * * * In the case of Smith & Bennett *v.* State, 41 id., 370, a misstatement with relation to a fact of moment—that is, that it was proved, when there was no testimony to support it, was held

to constitute reversible error. In the present case we are of the opinion that upon this ground the judgment should be reversed" *State* v. *Noel,* Volume 4, N. J. Advance Reports, page 854 at page 869.

ASSIGNMENT NO. 25.

SPECIFICATION NO. 26.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 310, lines 39 and 40 and page 311, lines 1-9) :

> "The only two who were actually on the ground putting this thing through were Lynch and Strand. Corcoran, while legally present, was around the corner sitting in the car. Certainly, it cannot be claimed very well that Talmadge fired it, or that Palmer fired it. There is not any explanation of any kind to show that it was accidental" (p. 310, lines 39 and 40 and p. 311, lines 1-9).

This part of the Court's charge overlooked the fact that there was an open door to the baggage room (see Exhibits S-8 and S-15), by means of which another person could have made an entrance and fired one of the shots that hit Brannon. The phrase "There is not any explanation of any kind to show that it was accidental" (p. 311, lines 7-9) tended to convey to the jury the idea that the burden was upon the defendant Lynch to prove the occurrence of an accident.

ASSIGNMENT NO. 27.

SPECIFICATION NO. 28.

Because the evidence in the case did not warrant a conviction of a higher degree of murder than murder in the second degree.

> "Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree; and *all other kinds of murder shall be murder in the second degree;" P. L. 1917, Chapter 238, page 801.*

Talmadge testified that Frank Brannon was busied in the freight room (p. 148, lines 39 to 40).

He further testified that the shots were fired in the freight room (p. 151, lines 18 and 19); that it was hard to say where, but "in the center of the freight room" (p. 151, lines 20 and 21), and that *after the shooting* he saw Lynch with a gun in his face and with Strand standing by the door and Brannon slumping to the floor (p. 154, lines 18 and 20).

There was no eye-witness to the shooting. No one saw Lynch shoot. No one admits seeing Strand shoot. No one in the case claims that any force was used or attempted to be used or contemplated to be used before Brannon was shot.

The reasoning of *State v. Biango,* 75 N. J. L., 284, seems applicable to the case at bar. There the Court said:

> "The act of stabbing, being unlawful, was a breach of the peace, and, being without justifiable provocation, was malicious; and, where

> an act possessing these attributes resulted in death, the homicide was murder at the common law, and is murder in the second degree, under our statute."

It is contended that even the clearly manufactured statements of Cuneo and Strand—men who were trying to procure and who by their servility to the wishes of the prosecution did procure a high degree of immunity from punishment for their acts—do not take this case outside of the statute or the decisions with reference to murder in the second degree.

Cuneo made statements as follows:

> "Just after that was said, what did you say? A. 'Was the fellow hurt bad?' With that, Lynch broke his gun open and said, 'This is the one that got him,' pulling out an empty shell. I asked him where did it get him, and he said, 'In the bag,' meaning the stomach" (p. 190, lines 9-15).

Strand, the man who had theretofore been convicted of homicide (p. 243, lines 1-10)—the man who by falsification had brought about the release of Corcoran (p. 241, lines 31-34 and p. 242, lines 13-25)—the man who by his assistance to the State was able to secure a sentence of twelve to thirty years, testified as follows:

> "Q. What did Lynch say? A. He said, 'Well, I gave him a chance; why didn't he take it?' " (p. 237, lines 16 and 17).
>
> "Q. Yes. When he heard he was dead. A. He said, 'I gave him a chance, a good chance; why didn't he take it?' " (p. 239, lines 30-32).
>
> "Q. Then you did not see the act of shooting, did you? A. I seen the smoke coming out of the gun" (p. 257, lines 11 and 12).

"By the Court:

> "Q. Mr. Strand, did I hear you say something about seeing smoke coming out of a gun? A. Yes, sir.

"Q. Where was the gun when you saw smoke coming out of it? A. In his hand.

"Q. In whose hand? A. Lynch's hand.

"By Mr. Zabriskie:

"Q. And that is something you rehearsed with the officers as well as with the court, isn't that so? A. Sir?

"Q. That is something you rehearsed with officers, as well as telling it to the court? A. I made it in the confession" (p. 263, lines 11-25).

The above is perhaps the most damaging testimony against Lynch in the case. It is contended that even this testimony does not take the case beyond second degree murder.

ASSIGNMENT NO. 28.

SPECIFICATION NO. 29.

Because the verdict of the jury was contrary to the evidence.

To justify a court in setting aside a verdict in a criminal case under P. L. 1921, page 951, on the ground that it is against the weight of the evidence, the verdict must so clearly appear that it is against the weight of the evidence as to give rise to the inference that it is the result of mistake, passion, prejudice or partiality.

State v. *Karpowitz,* 98 L., 546, cited in *State* v. *Mosley,* N. J. Advance Reports, page 1972.

It is contended in this case that the verdict came within the category above indicated.

As above argued, it was not a case in which a higher degree than second degree murder could have been properly found.

ASSIGNMENT NO. 29.

SPECIFICATION NO. 30.

Because the verdict rendered by the jury was contrary to the charge of the Court.

The Court charged as follows (p. 308, lines 13-40, and p. 309, lines 1-21):

> "But the question as bearing on Lynch's degree of guilt is not so much what the actual facts were relating to the complicity of the express people as what Lynch honestly believed they were at the time the plan was in process of execution. Lynch has testified to that effect, and the inference you are expected evidently to draw from his testimony is that he was merely assisting somewhat as a dummy, if you please, in the carrying out of a fraudulent scheme to rob the express company by an apparent hold-up, that he had no idea of shooting anybody, that he had no idea of committing any genuine robbery, that he was simply going over there to help the other people carry through their little scheme that they had fixed up with the express people; and if there was nothing more to it than that, or if Lynch honestly believed up to the time that it was put into effect that there was nothing more than that, this request that has been submitted to me may be applicable, and I will charge it to be the law. Here it is: If you find that Brannon came to his death while grand larceny was being perpetrated or attempted to be perpetrated by the defendant Lynch and others cooperating with him, then, and in that case, you are justified in finding this defendant James Lynch guilty of no higher degree of murder than murder in the second degree. Because, you see, if there was no violence and putting in fear, there was no genuine robbery or the crime of robbery either was not actually being committed or Lynch would not inten-

tionally be committing robbery, but his intention would be to participate in something that amounted in law to grand larceny. But there are difficulties about that and, of course, the first one is whether you place the necessary degree of credence in Mr. Lynch's story on this subject to justify you in reaching a degree of reasonable doubt with respect to the State having sustained the burden of proof of the main case.

"Now, to go on: If up to the time of demanding the money Lynch believed the mere demand and pretended force were all that were needed, you would be at liberty to regard the so-called hold-up as a mere grand larceny up to the time when, if at all, Lynch realized that the hold-up was to be not pretended but real."

Lynch's testimony was as follows (p. 270, lines 2-40, and p. 271, lines 1-12):

"Q. Now, did they let you into what was going on on that day? A. No, sir. I didn't know anything about the conversation.

"Q. Then when was the next that you heard from Corcoran? A. Wednesday night, he told me he would give me a ring Thursday morning.

"Q. And did you have any conversation with him at that time? A. I told him when he called up, I didn't like the idea of coming out.

"Q. Yes. A. So he told me there was nothing to it; that the money was actually going to be handed to us, and he come down and explained it at the door to me when I went down and met him in the car.

"Q. And then he came the next morning? A. Yes, sir. He called me on the 'phone before he came.

"Q. And did he come down in his Chrysler car? A. Yes, sir; him and this Charles Strand.

"Q. And what was said then? A. Well, he said that he had it all fixed with that man by the name of Frank, with two men at the Sus-

quehanna Station, that there would be nobody in the place; but we only had to walk in and get the money and walk out; that there was no guns needed in the thing, and there would be no guns in this place, that this man Mr. Palmer would see that everything was out of the way.

"Q. How did he come to talk about guns, if you remember? What did you say to him? A. Well, I told him I didn't want to come if it was actually a hold-up; that I had one conviction for the Sullivan Law, and if I got pinched again, it meant maybe about seven years to me.

"Q. And then what happened that morning when he did come on the 21st? A. He told me there was nothing to it, that the money was actually going to be handed to us; there was nobody going to be in the station whatsoever to start any opposition, that the money was there to be taken, it was going to be handed to us.

"Q. You say there was nobody there. You mean no opposition? A. There would be no opposition to have to handle any kind of stuff."

Page 276, lines 23-28, as follows:

"Q. Did he say on the telephone what kind of business he had in Jersey? A. No, sir.

"Q. Well, when you saw him later, did you ask him what you were going over for, to New Jersey for? A. On the way coming back, he stated that we were going to get some money off a fellow out here; he was going to hand the money to us."

Page 277, lines 5-18, as follows:

"Q. And on the 21st, you did not ask where you were going or why? A. I knew on the 21st.

"Q. What did you know? A. That we were going out there, and the money was going to be handed to us.

"Q. That it was to be a hold-up, is that right? A. No, sir; not a hold-up.

"Q. Not a fake hold-up? A. He didn't actually say a fake hold-up. It was—there was three—there was two men at the railroad station supposed to be in on this."

Page 278, lines 1-40 and page 279, lines 1-2, as follows:

"Q. They were going to take money away from somebody that they did not take it away from, isn't that right? A. The money was going to be given to us.

"Q. A gift? A. Yes, sir.

"Q. A gift? A. Yes, sir.

"Q. Three of you to go get one gift? A. Well, there was going to be given three shares back out of the money; that is why it was supposed to be handed out.

"Q. But there were three of you to accept a gift at the Hackensack station? A. Yes, sir.

"Q. Did you believe that story when he told you that? A. Yes, sir.

"Q. Well, why did he say it was all fixed, there was nothing to it, if it was just going to go there and receive a present? A. Well, because he had two men at the railroad station that was in on that.

"Q. In on what? A. In on giving out the money.

"Q. Giving it away? A. Yes, sir.

"Q. No force was to be used? A. No force.

"Q. And whose money were they to give out, their own? A. I do not know whose money it was.

"Q. That did not interest you at all to find out whether it was their money, or whether it was money of somebody else, did it? A. No, sir.

"Q. And you did not ask? A. No, sir.

"Q. You did not suspect anything? A. No, sir.

"Q. And when you got to the station, you say you did not take a gun out of your pocket? A. No, sir.

"Q. Did you have it out when you went in? A. No, sir.

"Q. Did you put your hands in your pockets at all? A. No, sir.

"Q. Did you take your hands out of your pockets? A. My hands was out of my pockets all the while."

Page 281, lines 35-38, as follows:

"Q. Why not? A. Well, the money was getting given to them.

"Q. Given, yes. A. Yes, sir.

Page 284, lines 1-12, as follows:

"Q. Yes. Did they say why they stopped there in that particular place? A. Well, they were waiting for the time.

"Q. What time? A. For the man to give out the money.

"Q. What time was it to be? A. About ten o'clock.

"Q. Did they say what man was going to give it? A. They did not state."

Page 286, lines 37-40 and page 287, lines 1-25, as follows:

"Q. Having a conversation? A. Yes, sir.

"Q. In the presence of Talmadge, this witness that we had here? A. They were standing. Talmadge was inside the screen and Strand was outside the screen, and Talmadge give me a bow with his head to come in.

"Q. And that was the signal? A. Or Palmer; yes, sir.

"Q. Well, you know you were not doing anything wrong up to that point, were you? A. Yes, sir.

"Q. What did you need a signal for to go into an express company office? A. Well, that is the way I got told to come in.

"Q. You were just obeying the orders, were you? A. Yes, sir.

"Q. To get a present? A. Yes, sir.

"Q. You had to have a signal when it was time to come in? A. Yes, sir.

"Q. Well, didn't you think it funny that Strand, a big fellow like him, couldn't take the

present by himself? A. No. He was going in to have things fixed for me to go in and get it.

"Q. Who was to give you the present? A. It was to be handed to him.

"Q. Who was to give it to you? A. I didn't know."

Page 288, lines 26-40, as follows:

"Q. Where did Brannon come from? A. I do not know.

"Q. Where did he fall? A. Well, it was a man laying in the door as I went out the door.

"Q. That is the first you saw of him? A. Yes, sir.

"Q. Did you hear a shot? A. Yes, sir.

"Q. What direction did it come from, behind you or in front of you? A. I do not know.

"Q. What? A. I do not know. I just heard the shot.

"Q. Well, you were the only one in the big package room at the time, weren't you? A. No, sir; I was inside of the office in front of Mr. Talmadge when I heard the shot."

Page 289, lines 39-40, as follows:

"Q. Well, you were going in the cashier's cage to get this present? A. Yes, sir."

Page 290, lines 1-18, as follows:

"Q. And you heard a shot? A. Yes, sir.

"Q. Exactly where was Strand standing when you looked around after you heard the shot? A. He was coming in past me into the office.

"Q. And Palmer was in front of you in his cage, wasn't he? A. Yes, sir,

"Q. And Talmadge was alongside of you? A. Yes, sir.

"Q. Partly in front and partly alongside of you? A. Yes, sir.

"Q. And Strand was right near you? A. Strand was to the left of me.

"Q. Well, who do you say fired that shot? A. I do not know."

Page 291, lines 15-28, as follows:

"Q. —as he lay there? Well, what did you run for? A. I heard this shot, and I knew I was in a bad place, so no more than I got an opportunity, Strand passed me and went to the cage, I walked right out the cage and walked down to the automobile and got in it.

"Q. Walked with the money? A. No, sir.

"Q. Well, you went in to get a present. There was no harm in that, as you thought, was there? A. No, sir.

"Q. And yet, as soon as you heard somebody fire a shot somewhere, you ran? A. Well, I knew it was time to go out of the place."

Page 292, lines 15-23, as follows:

"Q. Did you know him any better than you knew Corcoran? A. No, sir; I didn't know him as well.

"Q. And yet when they told you they were coming out to Hackensack to get a present, you didn't question either one of them? A. No, sir.

"Q. Well, didn't you ask them why they were picking on you to accompany them to New Jersey? A. No, sir."

Page 294, lines 18-21, as follows:

"Q. You say you went in the cage to have this man give you some money, that is correct, isn't it? A. Yes, sir."

Page 295, lines 22 and 23, as follows:

"Q. Lynch, did you ever sit in the witness chair in your life before today? A. No, sir."

Page 297, lines 29-40, and page 298, lines 1 and 2, as follows:

"Q. You say that today is the only time that you ever were on the witness stand? A. Yes, sir.

"Q. Do you remember Judge McInerny in New York City, Special Sessions Judge? A. Yes, sir.

"Q. Do you remember being on the stand before him? A. No, sir.

"Q. On May 13, 1919? A. No, sir.

"Q. You were not on the stand that day? A. No, sir.

"Q. Do you remember Judge Nolan, Special Sessions? A. Yes, sir.

"Q. You were not on the stand before him in 1922? A. No, sir."

Cuneo testified as follows:

"Why, I had nothing to say with Lynch, but I did with Mike Corcoran" (p. 183, line 25). (Referring to Monday preceding occurrence, p. 182, lines 38-40.)

"Q. And when you met, what was said in Lynch's presence? A. Why, very little; because Charles Strand rode with me, and Lynch rode with Corcoran" (p. 184, lines 25-29).

"Q. Was there any conversation about the twine when Lynch was around? A. No" (p 185, lines 3 and 4).

"Q. Because it had been arranged. So far as you knew, it was going to be just simply the taking of easy money? A. Yes.

"Q. That is correct, is it? A. Yes" (p. 194, lines 33-36).

"Q. You knew, or had been told, that this agent was going to just hand up the money when a man called at a certain time? A. He wasn't going to hand it to him, but it would be there. It would be easy for him to get" (p. 194, lines 36-40).

"Q. Well, he wasn't going to offer any resistance? A. No.

"Q. They were just simply going to walk in and walk away with the money, and you were going to get a part of it? A. Yes" (p. 195, lines 1-9).

Strand testified as follows:

> "Q. Did you or Lynch say what you were doing in Hackensack? A. No, sir" (p. 220, lines 1 and 2).
>
> "Q. Was Lynch there? A. No, sir; I was alone with Cuneo" (p. 221, line 33).
>
> "Q. And you and Corcoran didn't even tell Lynch what was up that day, did you? A. I didn't know myself what was up" (p. 254, lines 33-35).
>
> "Q. You thought there was more than one that was going to be bound up; but it was to be a fake bind-up, was it? A. Yes, sir" (p. 255, line 14).

It is contended that without a question, the real facts proved in the case were substantially as outlined by the Court in the part of the charge above quoted, and pursuant to which the jury had no right to find the defendant Lynch guilty of a higher grade of murder than murder in the second degree.

As pointed out heretofore under the argument under Specifications 24 and 25, it is unfortunate that the Court was under the impression that some acts tending to indicate force or putting in fear occurred before the shooting. However, counsel for the defense challenges the State to find anywhere in this case any evidence of any show of any force or show of force or evidence of anything that could have put Lynch on notice that a robbery was to have been committed before the firing of the shot that killed Brannon by whomsoever that shot may have been fired.

ASSIGNMENT NO. 30.

SPECIFICATION NO. 31.

Because the defendant was prejudiced by the refusal of the Court to sustain his challenge to the array (page 126, line 39).

Same line of reasoning as under Specification No. 6.

ASSIGNMENT NO. 31.

SPECIFICATION NO. 32.

Because counsel was forced to proceed with the defense without adequate time for proper preparation of defendant's defense (page 35, line 5).

Same reasoning as presented under Specification No. 2.

For the reasons above set forth, it is respectfully urged that the conviction should be set aside and a new trial ordered.

JOHN B. ZABRISKIE,
Of Counsel with Defendant.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *Defendant in Error,* vs. JAMES LYNCH, *Plaintiff in Error.*	On Error in the Bergen County Court of Oyer and Terminer.

BRIEF FOR DEFENDANT IN ERROR

The State of New Jersey, the defendant in error, respectfully presents:

FACTS

The defendant, James Lynch, was indicted for the murder of Frank Brannon, a young man in the employ of the American Railway Express Company, at Hackensack, on January 21st, 1926.

Briefly, the facts are as follows:

Theodore Palmer was employed by the American Railway Express Company as its cashier at its Hackensack, New Jersey, office. This was in charge of one Louis M. Talmadge, and the third, the only other employee in that office was one Frank Brannon.

Theodore Palmer had embezzled moneys of the American Railway Express Company which came into his possession as its cashier, and he feared discovery. In order to procure moneys to replace those which he had stolen, he conceived the idea of having some person, with his assistance, rob the American Express Company at the Hackensack office, he, Palmer, to receive a part of the stolen moneys in compensation for his assistance.

He confided this scheme to one Kalman and the latter approached one Costy, who informed him that he knew of one who would procure a "gunman," commit the robbery and divide the stolen moneys. Upon Palmer acquiescing, Costy solicited one Frank Cuneo, and he in turn, procured one Corcoran, Strand and the defendant, Lynch, to commit the crime.

On Monday, the 18th day of January, 1926, the last three men, together with Cuneo, visited Hackensack and studied the terraine. The day fixed for the robbery was Thursday, January 21st, 1926. On that day, Cuneo drove his automobile to the Edgewater Ferry in Bergen County, where he met Lynch, Corcoran and Strand. These three were within a Chrysler automobile driven by Corcoran. Strand left Corcoran's automobile and entered Cuneo's automobile. Corcoran and Lynch in a Chrysler automobile, Cuneo and Strand in Cuneo's automobile, drove from Edgewater to Hackensack, stopping for a few minutes at a store on the way to purchase twine to be used in confining the victims.

Both of these cars drove first to Maywood, a

community adjoining and situate immediately to the west of Hackensack. In a secluded place in Maywood the cars stopped and the license on the Chrysler car (the car occupied by Corcoran and Lynch) was changed.

The two cars were then driven direct to the scene of the robbery, Cuneo remaining in his automobile on a side street and Corcoran, driving Lynch and Strand, going direct to a point approximately one hundred feet from the American Railway Express Company's office in Hackensack, their car stationed on the east side of Moore Street immediately east of the "lunch wagon," shown on Exhibit S-16.

The location of the several rooms in the American Railway Express Company's building, and the division thereof and the furniture therein are shown upon Exhibit S-15.

Upon leaving Corcoran's car, Lynch walked to Main Street and looked at the Police Booth, then crossed over Mercer Street to the Susquehanna Railroad Station, and walked easterly to the American Railway Express office. Lynch then called Strand to him and directed him to enter the small door of the American Railway Express Company's office, which opened upon Mercer Street, to enter the office and tell the person therein that he wanted to ship a trunk, this for the purpose of directing the attention of the people within away from Lynch. Lynch entered the packing room of the American Railway Express Company evidently through the large doors opening toward the west.

Brannon was within. Strand was at the southeast corner of the "counter" when the shot or shots were fired in the packing room of the American Railway Express Company. Lynch entered, holding two revolvers, one of them smoking, and ordered everyone within the office to "hold up his hands." Lynch then told Strand to "go in and get the money," and he added, "wait a minute, I want to get this fellow (meaning Brannon) inside; he is hollering too much out there."

Thereupon, Lynch went into the packing room of the American Railway Express Company and dragged into the office the body of Brannon, laying him upon the floor of the Express office.

There was money in the office of the American Railway Express Company, belonging, a part to the New York Telephone Company and a part to the Peoples Trust & Guaranty Company, of Hackensack, aggregating over $6,000. This money was in packages within the "cage." Lynch thereupon seized this money and he with Strand hurriedly left the office and ran to the Corcoran automobile, which by this time had taken a position on Moore Street directly east of the "office."

Frank Brannon died because of the defendant, Lynch, shooting him. Brannon was shot in his effort to protect the property of his employer, the American Railway Express Company, or the property which was entrusted to the care of his employer, The American Railway Express Company, by the New York Telephone Company and the Peoples Trust & Guaranty Company of Hackensack.

Upon reaching the Corcoran automobile in their effort to escape, Corcoran, Strand and Lynch drove to the home of one Rocksch, where they were later joined by Frank Cuneo, and the loot was divided. Under cover of darkness they later returned to New York City, where Lynch remained in hiding until he was apprehended. He resisted extradition and sued out a writ of habeas corpus. Subsequently, he was brought into New Jersey, was arraigned and entered a plea of "not guilty." Trial had been theretofore fixed for February 23rd, 1926, and on that day, the case proceeded. The jury returned a verdict of "Guilty of murder in the first degree," and the Court imposed a death sentence upon the defendant.

As assignments of error numbered 4, 7, 8, 10, 16, 17, 18 and 26 and Specifications of reversal numbered 3, 5, 8, 9, 10, 17, 18, 19 and 27 are not argued, they are deemed to be waived.

Manda v. U. S. Exp. Co., 85 N.J.L. 720.

P. S. Elect. Co. v. Bd. of P. U. C., 88 N.J.L. 603.

Assignment No. 1, Specification No. 1

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused to grant the defendant's motion for a foreign jury.

ANSWER

Section 78 of the Criminal Procedure Act (2 Compiled Statutes, p. 1845) provides that the Supreme Court may in its discretion order trials by foreign juries in all criminal cases which may have been commenced in that court, or may be removed to that court from any other court, and whenever in their opinion a fair and impartial trial cannot be had before a jury of the proper county, may, upon motion in behalf of the State, or on the part of any defendant, order an indictment found at any Court of Oyer and Terminer, or at any Court of Quarter Sessions, to be tried by a foreign jury in the court and county in which said indictment was found.

Where the trial court is vested with discretion, the ruling will not be set aside unless there has been a manifest abuse of that power.

Finkelstein v. Glismar, 91 N.J.L., p. 46.

Luckenbach v. Sciple, 72 ibid 476.

The testimony of John Boland, an official of the "Bergen Evening Record," shows that the same amount of publicity would be given in any sensational murder case. See Page 20, line 35.

The mere fact that the homicide in question received considerable publicity through the medium of the newspapers presents no valid reason for the calling of a foreign jury. If this reasoning were sound, the Court then would be compelled in every instance to grant a request for a foreign jury where the newspapers of a certain County had given a large amount of space to the detailing of a certain crime. Such a practice would seriously hamper and interfere with the speedy and impartial administration of Justice.

Bergen County consists of seventy-one separate municipalities. There was no evidence before the Court to show that the hostility to the defendant was so great throughout the entire County that a fair trial was impossible. Foreign panels are only granted when it can be affirmatively shown that the entire county is so aroused that the constitutional rights of the defendant are prejudiced.

The only evidence presented in support of this motion was that of John H. Boland, and had to do with the publication of news of the homicide in one newspaper—the "Bergen Evening Record" —a publication with an average daily circulation of about 12,000 copies (p. 17, f. 10), in this County of 270,000 people (p. 18, f. 40).

Moreover, it is provided (see 78 Crim. Pro. Act 2 Comp. Stat. p. 1845) that the motion shall be addressed to the *Supreme Court!* This motion was not so addressed! It was presented to the Hon. Charles W. Parker, while presiding as a Judge of the Court of Oyer and Terminer of Bergen County, sitting with Hon. Wm. M. Seufert, an Associate Judge (see p. 15, f. 10 and the Court's determination, p. 23).

Assignment No. 2, Specification No. 2

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, refused the defendant's application for an adjournment of the trial of the cause, notwithstanding the assignment of counsel had taken place only four days before trial, including Saturday, Sunday and a legal holiday (Washington's Birthday).

ANSWER

This motion is addressed to and is within the discretion of the Court.

> A refusal to grant an adjournment was upheld in Commonwealth vs. Bezek, 168 Pa. 603, where the defendant contended his counsel was assigned only on the Friday before the Monday on which the case was called, and that he was unable to speak English and it was impossible to secure an interpreter or prepare a defense.

It is true that the present Counsel of the defendant was assigned on February 19th, 1926 but it is also true that he had other counsel from about January 24th, 1926. The argument of this Counsel had to do largely with the brevity of time within which *he* might prepare the defense—not the brevity of time allowed the defendant himself!

It appears (p. 32, 33 and 34) that the defendant was arrested in New York City shortly after January 21st, 1926! That he resisted extradition, and caused a habeas corpus to be issued! Upon each appearance in the New York Courts, this State openly declared that this case had been fixed for trial on February 23rd, 1926, and that the defendant must be prepared for that day—that dilatory measures in New York would not effect a postponement of the N. J. trial.

However, in the light of the testimony offered at the trial, the defendant did not suffer by going to trial on the scheduled date. Even if he had been granted an adjournment, there was no additional evidence of any weight that he might have presented.

Assignment No. 3, Specification No. 4

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Robert F. Grange, a member of the special panel.

ANSWER

The general rule concerning jurors who may have formed an opinion is as follows:

> "The fact that the proposed juror has formed and expressed, or has formed without having expressed an opinion, as to the issue to be tried, is, as a matter of law, a disqualification, unless it appears that he cannot find an impartial verdict on the evidence without being influenced by an opinion." Abbot's Criminal Trial Brief, Third Edition, 8319.
>
> The above rule is stated in Wilson vs. State, 60 N.J.L. 171.

In that case examination of the prospective juror showed that he had formed an opinion that the defendant should be hung. However, the prospective juror further stated that despite that opinion he would not vote for a conviction unless the State established the guilt of the defendant.

The examination of Grange clearly shows that he would not convict the defendant unless the evidence established his guilt beyond a reasonable doubt. See page 38, lines 29-34. Hence the ruling of the Trial Court was correct.

Assignment No. 5, Specification No. 6

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of juror 58 of the special panel was Alfred S. Mante instead of Alfred S. Maule as it was written on the panel served upon the defendant.

ANSWER

Errors and irregularities in making up the jury list which are in no way prejudicial to the defendant do not invalidate it nor furnish ground for successful challenge.

Gardner v. State, 55 N.J.L. 17.
State v. Brooks, 30 ibid 356.

It is true that the correct name of Juror No. 58 was Alfred S. Mante, and not Alfred S. Maule; but the State contends that the defendant suffered no injury. The record is barren of any evidence which would show, because of the misspelling, that the defendant investigated the wrong person. The record fails to show that the defendant examined into the eligibility of any of the jurors called. Furthermore, the Sheriff, even with the incorrect name, identified and served the juror for duty. If the defendant had exercised his privilege of investigating the prospective jurors, he would have undoubtedly investigated and been enabled to in-

vestigate the juror who actually appeared for duty. The error in spelling was purely clerical and did not prevent the service and identification of the juror.

The rule of our State is followed in other jurisdictions, to wit,—that it must appear, because of the irregularity, that the defendant was prejudiced.

See Henny vs. People, 198 Ill. 162.
Seibert vs. People, 143 Ill. 571.
People vs. Boston, 309 Ill. 77.

Furthermore, the State insists that the misspelling of the name of the juror is not sufficient ground for challenge of the array.

The following cases hold the above principle:

Jewell vs. Commonwealth, 22 Pa. 94.
Commonwealth vs. Walsh, 124 Mass. 32.
Brinkley vs. State, 54 Pa. 371.
State vs. Neagle, 65 Maine 468.
Bell vs. State, 115 Ala. 87.

The defense was not prejudiced, for this Juror was excused by the State (p. 48, fol. 40).

Counsel's motion (p. 47, fol. 30) would seem to have been made to the array. It is somewhat vague. Assuming it to have been made to the array, the motion was properly denied.

This determination of the Court seems not to have been prejudicial to the defendant.

See 136 Crim. Pro. Act.

Assignment No. 6, Specification No. 7

ASSIGNMENT

Because the panel of jurors served upon the defendant was defective in that it contained what purported to be the names of jurors, to wit: Harry T. Matier, Alfred S. Maule and Edward J. Roggenburg, when in fact persons by such names were not upon the panel from which the special panel was drawn.

ANSWER

The reasons expressed under the answer to Assignment No. 5, Specification No. 6 are here repeated.

After an examination, this juror, Matier, was excused on the defendant's motion, and for cause. Maule was excused by the State.

Assignment No. 9, Specification No. 11

ASSIGNMENT

Because the Court erroneously, and to the prejudice of the defendant, rebuked the juror, John W. Lawlor, in the presence of the remaining members of the panel, upon examination of said juror.

ANSWER

There was no error in the remarks of the Trial Court. Persons who are called for jury service should be able to discharge their obligations as jurors.

The Court asked the juror, John W. Lawlor, page 62, line 30, the following question: "Well, I know, but suppose you swear to return a verdict on the evidence that is given to you, do you mean to say that you will allow what you have read in the papers to affect your judgment of the evidence?"

The juror answered "that it would to a certain extent." Page 62, line 39. Therefore, the Court was justified in remarking that it "was very sorry."

It is absolutely essential, in order that justice may prevail and the guilty be punished, that jurors decide cases on evidence presented, and not upon opinions formed prior to the trial.

This did not prejudice the defendant. The juror did not serve upon the panel. He was excused by the Court for cause.

Assignment No. 11, Specification No. 12

ASSIGNMENT

Because the Court erroneously and to the prejudice of the defendant rebuked the juror, William R. Huntington, in the presence of the remaining members of the panel upon the examination of said juror.

ANSWER

The same reasons expressed in the answer to Assignment No. 9, Specification No. 11, serve as the answer to this assignment.

Assignment No. 12, Specification No. 13

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Lorenzo W. Kenyon, a member of the special panel.

ANSWER

The juror in response to a question of the Court (page 75, line 12) answered as follows:

"I believe that whatever situation that I was placed in, either on the jury or elsewhere, other conditions being equal, that I could do full justice to the situation, irrespective of what other opinions or ideas I might have received prior to that time."

Applying the rule laid down in the case of Wilson vs. State, 60 N.J.L., 171, it is contended that the juror was competent to act. Therefore, the Court was correct in overruling the objection made by the defendant.

Assignment No. 13, Specification No. 14

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to Fred W. Buesking, a member of the special panel.

ANSWER

The juror, Fred W. Buesking, replied in response to a question of the Court that he could put aside any opinion and decide the case on the evidence. See page 82, line 30.

The juror further stated that he would be governed by the instructions of the Court. Page 83, line 20.

Applying the rule expressed in 60 N.J.L. 171, it is respectfully contended that the ruling of the learned Court was correct.

Assignment No. 14, Specification No. 15

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled defendant's challenge for cause as to George T. Yonkers, a member of the special panel.

ANSWER

The juror stated that he would follow the instruction of the Court and acquit the defendant if the State failed to establish the guilt of the defendant beyond a reasonable doubt. (Page 96, line 10).

The Court in following the rule expressed in 60 N.J.L. 171, was correct in overruling the challenge to the juror, George T. Yonkers.

Assignment No. 15, Specification No. 16

ASSIGNMENT

Because the said Court before whom, &c., at and upon the trial of the said issue so joined, overruled the defendant's objection to proceeding when it developed that the correct name of Juror 68 of the special panel was Edward J. Poggenburg, instead of Edward J. Roggenburg as it was written on the panel served upon the defendant.

ANSWER

The same argument expressed in answer to Specification No. 6 is advanced as the answer to this Assignment.

Assignment No. 19, Specification No. 20

ASSIGNMENT

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury, as follows (page 101, line 18):

"The theory of the State in this case, as you are probably well aware by this time, is that the killing was perpetrated in the execution of what the State claims was legally a robbery of the express office at the Hackensack Station where you went and looked over the ground. Now, robbery is the crime of unlawfully and feloniously taking the money or property of another by violence and putting him in fear. That is my recollection of the definition, and I think that is substantially right; if not, I will ask Counsel to correct me in due course. And our Statute says and you may as well have its exact language, that if any person who, in committing, or attempting to commit any one of various crimes of which robbery is one, or any unlawful act against the peace of the State of which the probable consequences may be bloodshed, shall kill another, then such person or persons so killing as aforesaid, shall be guilty of murder." (Page 305, lines 10-28).

ANSWER

Conceding for the purpose of argument that the entire plan was to stage a "fake" hold-up, the evidence clearly shows that that intention, or scheme, was changed when Lynch shot Brannon. There is ample testimony in the case to show that Lynch actually shot Brannon. The State respectfully refers to the argument of Assignment No. 28, Specification 29.

The witness, Strand, testified as follows (page 227, line 32):

Q. All right, then when did you next see Lynch?

A. All of a sudden, I heard a shot. I turned around and I seen a man fall. Lynch came in, hollers, 'hands up'; I am running out to the door. Lynch comes over to me and sticks a gun in my side and said, 'Get inside or I'll give you or the others the same dose I give this man inside.' And I went over to where * * *"

Talmadge further testified that when Lynch entered the Express Office he had two revolvers in his hands and ordered both Talmadge and Palmer to throw up their hands. (See page 154, lines 9-28; pages 163, 164, lines 36-18.

The moment that it was necessary for Lynch to use force in order to carry out the general scheme the crime immediately became that of robbery. Robbery is unlawful taking of money or property of another by violence and putting him in fear.

The State respectfully submits that under the evidence the only reasonable inference that could have been drawn by the jury was that Lynch actually used force in carrying out the crime.

Counsel for the defendant stresses the fact that Lynch's mental condition was such that he never contemplated a robbery, that he came to Hackensack merely for the purpose of staging a "fake" hold-up. This argument is untenable owing to the fact that, no matter what Lynch's intentions may have been theretofore, the moment he used force and actually fired the shot at Brannon, a robbery then and there resulted.

Assignment No. 20, Specification No. 21

ASSIGNMENT

Because the Court before whom said cause was tried at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 305, lines 37-40, and page 306, lines 1-25):

> "There is another section of the Crimes Act which it is important that you should bear in mind, because it deals fundamentally with the degree of murder and limits your consideration very materially. It says murder which shall be committed in perpetrating or attempting to perpetrate any burglary, robbery, and so on, including robbery, you see, shall be murder in the first degree; and all other kinds of murder shall be murder in the second degree. Consequently, if this defendant was a participant in a robbery at that time and there was a killing in the execution of that robbery, and I may as well say now as at any time, either by himself or by any other principal engaged in that robbery, he is guilty of murder, and he is guilty of murder in the first degree.
>
> I used the word 'principal' just this moment and it is proper that you should understand what that means. A principal in the commission of a crime is either the person who directly commits it, or someone who is present

aiding and abetting; and one is called a principal in the first degree, and the other is called a principal in the second degree. For your purposes, the distinction is not legally important."

ANSWER

The same reasoning given in Answer to Assignment No. 19, Specification No. 20, Assignment 28, Specification No. 29, serve as the answer to the above assignment.

Assignment No. 21, Specification No. 22

ASSIGNMENT

Because the Court before whom said cause was tried at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 306, lines 25-40, and page 307, lines 1-19):

> "The story as I gather it to come from the mouth of the State's witnesses and as the State claims the truth to be, is about like this: That Palmer was short in his accounts, found himself in trouble, was casting about for some means of apparently straightening out his deficit, that he got into communication with some one or more of these persons, and the result of it all was, to make a long story short, that certain persons were imported, let us say, from New York for the purpose of accomplishing a hold-up of the Express Office, and the proceeds of the hold-up were to be divided among Palmer and his associates, and Palmer thereby was to obtain sufficient funds to make up the deficit that appeared on the Company's books. The two men that, concededly by the testimony of both, were there present in the Express Office were the defendant, Lynch and the witness, Strand. You heard Strand's evidence and you have heard Lynch's evidence, and each of them says that they both were there, and each of them says that there was

a shot fired, and each of them says that the money was taken away and if the money was taken away against the will of Mr. Talmadge, whatever may have been the will of Mr. Palmer, if it was taken from Talmadge's custody by force or violence or putting him in fear unlawfully, that was a robbery, either Lynch or Strand fired the shot that killed Brannon, both of them are guilty of murder, and both of them are guilty of murder in the first degree."

ANSWER

It makes no difference when the shooting took place whether it took place before the perpetration of the crime or after. The test in this case is, whether Lynch at the opportune moment made up his mind to commit a robbery, and in effecting that robbery, he killed Brannon, who was the intervening force to avoid the alleged hold-up. There is no dispute, after a careful perusal of all of the testimony, that Lynch entered this place of the American Railway Express office with two guns, and whether a "fake" hold-up or not was designed does not enter into this case after the moment that Brannon was shot. The testimony points most conclusively against Lynch as intending to put away Brannon, for, in several instances, it has been testified to that Lynch said he wanted to give Brannon a chance, but Brannon wouldn't take the chance; that Lynch then pulled a gun and gave him "it in the bag," to use his own words.

We respectfully present here the reasons appearing in answer to Assignment 28, Specification 29.

Assignment No. 22, Specification No. 23

ASSIGNMENT

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (page 308, lines 13-27):

> "But the question as bearing on Lynch's degree of guilt is not so much what the actual facts were relating to the complicity of the express people as what Lynch honestly believed they were at the time the plan was in process of execution. Lynch has testified to that effect, and the inference you are expected evidently to draw from his testimony is that he was merely assisting, somewhat as a dummy, if you please, in the carrying out of a fraudulent scheme to rob the express company by an apparent hold-up, that he had no idea of shooting anybody, that he had no idea of committing any genuine robbery, that he was simply going over there to help the other people carry through their little scheme that they had fixed up with the express people."

ANSWER

As argued heretofore, there is ample evidence in the case to show that a robbery had been planned.

The State once again contends that the moment that Lynch used force in disposing of Brannon, who happened to interfere with his plans to take the

money, that the crime immediately became robbery.

The evidence in this case shows that Brannon knew nothing of the alleged hold-up; that Brannon actually interfered with the supposed taking of the money; consequently, the plans of the others to stage a "fake" hold-up were frustrated the moment Brannon showed resistance.

All of the specifications which seek a reversal upon the theory that Lynch believed that he was about to have money "handed" to him, and did not believe that he was to rob, are futile, when one contemplates that Lynch made no agreement with any other person in the express office—only with others who he said told him he would have money handed to him—moreover, that the money was the Express Company's or another's and not the conspirator's; that all of the plans were surrounded by caution even to changing motor plates, looking into windows, awaiting a nod or signal! And finally when confronted by opposition in the person of Brannon—who as an employee of the Express Company had a duty to protect its property—avoided the opposition by taking Brannon's life! The agreement to have money "handed" to him was made by Lynch—if at all—directly or indirectly with persons who did not own the money.

Assignments Nos. 23 and 24, Specifications Nos. 24 and 25

ASSIGNMENT

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined, between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (Page 309, lines 15-38):

> "Now, to go on: If up to the time of demanding the money Lynch believed the mere demand and pretended force were all that were needed, you would be at liberty to regard the so-called hold-up as a mere grand larceny up to the time when, if at all, Lynch realized that the hold-up was to be not pretended but real. But if and when he realized that it was not pretended, but that it was real at any time before it was complete and the money secured, he would be a participant in a robbery in actuality, and the rule first given would not apply. So you see, if, for example, when Talmadge was backed up against the wall with his hands up in the air, and Lynch and Strand were trying to carry this thing through, Lynch might have reached that point with the idea that it was a mere fake, but if at that point it came across his consciousness that this was no fake, but that it was a real thing so far as Talmadge was concerned, and he then went on and the shot was fired, after that he would be just as guilty of robbery as if he had gone

into it in the first instance. His duty necessarily as soon as he found it was more than a fake hold-up was to quit." (Page 309, lines 15-38).

ANSWER

There is no question but that Lynch knew that the transaction he was entering into was more than a mere demand and pretended force. We carefully peruse the testimony of Charles Strand, his accomplice, which is as follows: (Pages 256, 257, 258, end of line 30).

The answers presented to the assignments and specifications against the Court's charge, hereinbefore appearing, are here repeated.

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined, between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (Page 310, lines 15-23):

> "THE COURT: Well, if I have gotten the evidence wrong about that, let me modify that by saying this, withdrawing what has been said on that subject, so far as it is inconsistent: If at any time before the firing of this shot Lynch realized that it was a real hold-up and not a fake one, why, he was then participating in a robbery and the firing of a shot after that time would make him guilty of murder, and murder in the first degree." (Page 310, lines 15-23).

Every bit of testimony indicates that there was a time before the shooting that Lynch realized, or had reason to believe, that there was a real hold-up contemplated.

The answers presented to the assignments and specifications against the Court's charge, hereinbefore appearing, are here repeated.

It is further argued that the whole charge up to the point indicated was on the erroneous theory divulged by the colloquy between the Court and Counsel. (Page 309, lines 39, 40, and Page 310, lines 1-19).

It is a well settled rule of law that the jury are the sole judges of the fact, for the Trial Court charged the jury as follows (Page 312, lines 33, 34 and 35):

> " * * * First, last and all the time, the jury are the judges of the evidence. They are the judges of its weight; they are the judges of its value, the judges of its effect * * *"

There is no evidence in the entire case which would show that the deceased Brannon was shot by a person other than Lynch in the outside room. A careful perusal of all the testimony indicates that at the time of the shooting the deceased, Brannon, and Lynch, were the only two persons in the back room; that immediately after the shooting, Lynch appeared with two guns, one of which was smoking, as testified to, particularly by Strand and by Talmadge.

The Plaintiff in Error lays great stress on the point that a reading of all the testimony in the case discloses that there is no evidence in the entire case to indicate that Lynch was apprised at any time of the alleged hold-up that force of any kind was to be used in the transaction. The mere fact that Brannon resisted him, and that it was necessary to use firearms, was enough to apprise Lynch that he was not there to receive a present.

The answers presented to the assignments and specifications against the Court's charge, hereinbefore appearing, are here repeated.

ASSIGNMENT

Because the Court before whom said cause was tried, at and upon the trial of the said issues so joined, between the State of New Jersey and the said James Lynch, charged and instructed the jury as follows (Page 310, lines 39-40, page 311, lines 1-9):

> "The only two who were actually on the ground putting this thing through were Lynch and Strand. Corcoran, while legally present, was around the corner sitting in the car. Certainly, it cannot be claimed very well that Talmadge fired it, or that Palmer fired it. There is not any explanation of any kind to show that it was accidental."

There was no error in this particular part of the charge. The testimony and the facts that were presented to the jury were in line with the Court's

instructions under this particular item, and in emphasizing the fact that there is not any explanation of any kind to show that it was accidental did not convey to the jury the idea that the burden was upon the defendant, Lynch, to prove the occurrence of an accident, because, coupled with that testimony was the testimony previously given by Talmadge and Strand, that Lynch, in substance, was in possession of two guns one of which was smoking immediately after the firing of the shots, and that Lynch was seen walking from the fallen body of Brannon.

Assignment No. 27, Specification No. 28

Because the evidence in the case did not warrant a conviction of a higher degree of murder than murder in the second degree.

ANSWER

Talmadge testified that Frank Brannon was busy in the freight room, as indicated (page 148, lines 139 and 140); but he also testified that immediately after the shooting Lynch was seen with two guns, one of which was smoking as he walked from the baggage room; corroborated by Strand, whose testimony was in like substance, to wit: Lynch was seen coming from the direction in which the shots were fired with guns in his hands, one of which was smoking.

Assignment No. 28, Specification No. 29

ASSIGNMENT

Because the verdict of the jury was contrary to the evidence.

ANSWER

In the Karpowitz case, cited by the Plaintiff in Error, the Court of Errors and Appeals sustained the lower Court, and held:

> "That the Appellate Courts should be *cautious* in setting aside the verdict of a jury upon the ground that the verdict is contrary to the weight of evidence. It should only be done when it is *clear* that the verdict is the result of mistake, passion, prejudice or partiality."

A careful perusal of the evidence in the case at bar reveals that it is devoid of any of the material elements cited in the Karpowitz case.

We have from Lynch, the defendant, his admission that he was at the site of the murder at the time of the murder, and that the reason for his being there was because he had been told that money "was actually going to be handed to us" (page 270, fol. 16), that "there would be nobody in the place, we only had to walk in and get the money and walk out; that there was no guns needed in the thing and there would be no guns in this place; that this man, Mr. Palmer, would see that everything was out of the way." (Page 270, fol. 25). That "there was nothing to do, that the

money was actually going to be handed to us; there was nobody going to be in the station to start any opposition; that the money was there to be taken, it was going to be handed to us." Page 270, fol. 40; Page 271, fol. 1-8.)

Throughout the testimony of Lynch he adhered to this explanation expressly and almost verbatim each time.

He at first objected to joining in the enterprise for fear that there might be "opposition" or that "guns might be used." The character of this expedition must have been apparent to him. He testified that whilst in the express packing room he did not put his hands in his pockets (page 278, fol. 38), yet admitted in the next few lines that he had dropped a letter which had been in his pocket, probably whilst taking a handkerchief out of his pocket. The fact is, that he dropped this letter out of his pocket whilst taking a revolver out of it. That must impress every one as the time and the cause of the dropping of the letter.

His whole description of his movements at the time of the murder is of the conduct of a robber engaged in such an undertaking, ruthlessly bent upon destroying all opposition.

He (Lynch) knew that the money was not Palmer's. He evidently knew that Palmer was an employe of the American Railway Express Company, and that the money was the property either of that Company, or one of its customers. He must have known that, even if he received this money from Palmer as he expressed it—as a gift, that at

the time of his receiving it the method would be by robbery. Palmer did not rob nor undertake to rob his employer; Lynch undertook to do this and he murdered Brannon whilst so occupied.

Lynch was the sole witness for the defense.

The State was fortunate in inspiring every one of the conspirators in this matter to tell the correct version of their arrangements and conduct—that is to say, all but the defendant, Corcoran. That these men testified to the truth for the State, and without any assurance of compensation by the State, is apparent from their answers. That all of them suffered because of their conduct and because of their disclosures is disclosed by the brief of the Plaintiff in Error in which the history of the attitude of the Court and the State to these men subsequent to the trial of Lynch is set forth.

Palmer was short in his accounts as cashier of the American Railway Express Company to the extent of $433. (Page 169, line 30). In his anxiety to obtain moneys to cover this shortage he talked with one Kalman about pre-arranging "this robbery." (Page 174, fol. 28). Through two others one Cuneo was reached, and he made arrangements with the New York men (Corcoran, Strand and Lynch) to come to Hackensack and commit the robbery. (Page 194, fol. 30). The first day of this coming was Monday, January 18, 1926, when they surveyed the premises. On the morning of January 21st, Palmer, the cashier, was working with Talmadge, the manager of the office of the American Railway Express Company, and Frank

Brannon, an employe, in that Company's office in Hackensack, when, according to Talmadge (page 149), Strand entered the office and asked about a trunk (page 150, fols. 30-40): "I stepped over to the Clerk's desk * * *. I heard shots ring out and then Strand turned and walked out, and as I turned around I saw this short man (Lynch) with a gun in my face. I got a second glance and saw Strand standing by the door leading to Mercer Street."

Strand evidently had no gun. He had been talking to Talmadge when the shots were fired, and these shots were fired in the express packing room.

Immediately following the shots, according to Talmadge (page 151, fol. 16) Lynch appeared in the small office and told every one to put his hands up. Lynch took the money bags, which had been theretofore within the cage, and took them out with him (page 158, fol. 10). Whilst Palmer was the cashier in this office, he was not the manager of it, and if any pre-arrangements had been made with Palmer they weren't made with either the manager, Talmadge, or with Brannon, whose duty it was to protect the money.

Palmer testified (p. 175, fol. 36) that the man who was coming was "going to take the money" and not that the money was to be handed to the man.

This is the testimony of those who were within the office. The complete story came from the lips of Strand.

He testified about the preliminary visit on January 18th and about the conduct of the several participants, and that at the time arranged for the actual robbery Lynch and he left the automobile in which they had been riding and Lynch walked to Main Street and looked at the "cop's booth" (page 226, fol. 15), and then crossed over to the American Express Company's office; that then Lynch called him, Strand, over (page 226, fol. 34), and from there on is a description of the conduct of Lynch and Strand covering pages 226, 227, 228 and 229 of the Case.

The significant admission by Lynch was contained in his words to Strand, "Wait a minute, I want to get this fellow inside; he is hollering too much out there." (Page 228, fol. 10). "This fellow" was Brannon, whom Lynch had just shot. In the remainder of Strand's testimony there is a general description of the conduct of the participants from the time of the murder until their apprehension.

The further admission by Lynch—and the very significant phrase—were the words of Lynch appearing at page 239, folio 30, referring to Brannon:

> "I gave him a chance, a good chance; why didn't he take it?"

We may reasonably believe that the chance that Lynch gave Brannon was to withhold interference in Lynch's plan to get the money of Brannon's employer. Brannon apparently interfered with his

plan, and, just then Lynch became a robber, if he was not at all times a robber, for he obtained the moneys through putting Brannon in fear, and destroyed him.

Whilst there was no one who actually saw Lynch shoot Brannon, immediately following the firing ot the shots Lynch entered the small office of the Express Company from the packing room carrying a smoking gun in his hand. (Page 263, fol. 18).

The Jury were justified in determining that Lynch had killed Brannon.

Cuneo testified that Lynch admitted his shooting (page 189, fol. 38) and that he sad: "We had to shoot a fellow." He also told Cuneo (page 190, fol. 10), and referred to a gun in his hand: "This is the one that got him—in the bag."

Assignment No. 29, Specification No. 30

ASSIGNMENT

Because the verdict rendered by the jury was contrary to the charge of the Court.

ANSWER

The Court quite properly upon examination of the charge instructed the jury as to the law with respect to its finding of a verdict in first degree murder and second degree murder. The evidence conclusively pointed to a first degree verdict, and the jury quite providently adduced from the evidence in accordance with the charge of the Court its finding of first degree murder.

Assignment No. 30, Specification No. 31

ASSIGNMENT

Because the defendant was prejudiced by the refusal of the Court to sustain his challenge to the array.

ANSWER

In the absence of any prejudice that might appear against the accused, even mere formal irregularities are disregarded.

There is no proof that the selection of the jurors was improvidently made, or any thing done to prejudice the defendant. They were properly chosen in accordance with the statutory provision by the proper officers entrusted and appointed for this purpose.

There is nothing in the record in this case from which it would appear that a proper challenge to the array should be made.

Assignment No. 31, Specification No. 32

ASSIGNMENT

Because counsel was forced to proceed with the defense without adequate time for proper preparation of defendant's defense.

ANSWER

The same answering reason as presented under the answer to Specification No. 2.

For the reasons above set forth, we respectfully urge that the conviction be affirmed.

Respectfully submitted,

Archibald Dart

Prosecutor of the Pleas,

John J. Brohm, Jr.

Assistant Prosecutor of the Pleas,

Attorneys of the Defendant in Error.

Dated: August 30, 1926.

Exhibit 51


That Charming
Havana Flavor
BETWEEN
THE ACTS
LITTLE CIGARS

Exhibit
52


PRATT COMPANY.
OFFICE, 50 CHURCH ST. NEW YORK
CHEMISTS
ECIDE,"
ECIDE
E SCALE.
JOBBING DEP'T.
WATCHMAN
ON DUTY FROM
7 A.M. TO 7 P.M.
RAIL ROAD CROSSING
DANGER
AMERICAN EXPRESS MONEY ORDERS

Exhibit
S 3


AMERICAN RAILWAY EXPRESS
IT IS EASY TO
Pay Bills or Remit
Money with
AMERICAN EXPRESS
MONEY ORDERS

Exhibit
S 4


FURNITURE
WATCHMAN
ON DUTY FROM
7 AM TO 7 PM
RAIL
GROSSING
ROAD
DANGER
AMERICAN RAILWAY EXPRESS
SECURE YOUR
STEAMSHIP TICKETS AND ALL
TRAVEL ACCOMMODATIONS
THROUGH THE
AMERICAN EXPRESS
TRAVEL DEPARTMENT
MONEY ORDERS
FOR SALE HERE

Exhibit
S 5


AMERICAN RAILWAY EXPRESS
SECURE YOUR
STEAMSHIP TICKETS AND ALL
TRAVEL ACCOMMODATIONS
THROUGH THE
AMERICAN-EXPRESS
TRAVEL-DEPARTMENT
MONEY ORDERS
FOR SALE HERE

Exhibit
S6




Exhibit
57



Exhibit
58

Exhibit
59





Exhibit
S 10

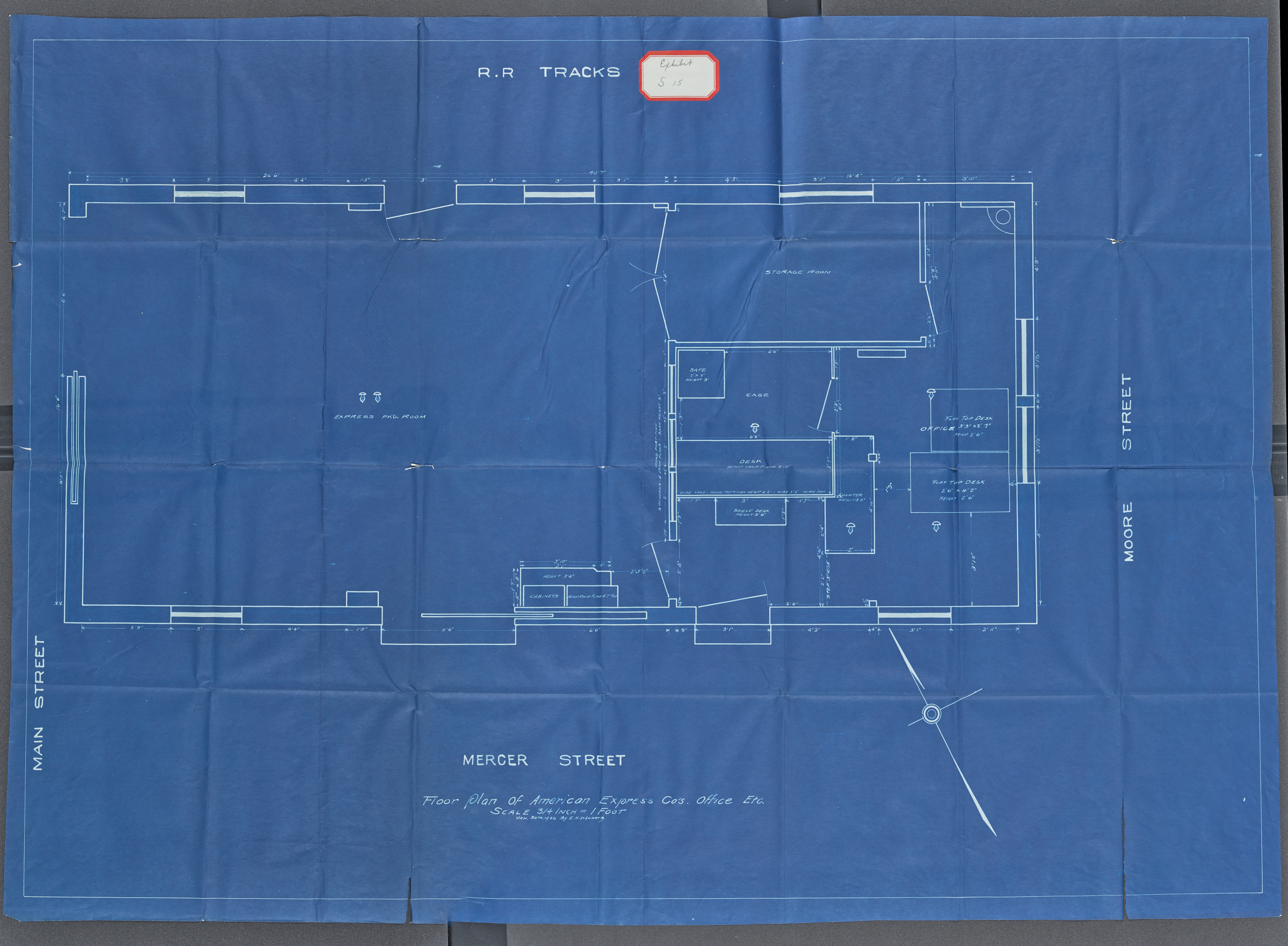

Exhibit
S11

Exhibit
S12



Exhibit
513

Exhibit
S14


R.R TRACKS
Exhibit
S 15
STORAGE ROOM
EXPRESS PKG. ROOM
SAFE
CAGE
DESK
SHELF DESK
COUNTER
FLAT TOP DESK
OFFICE
FLAT TOP DESK
CABINETS
MAIN STREET
MERCER STREET
MOORE STREET
Floor Plan Of American Express Co's. Office Etc.
SCALE 3/4 INCH = 1 FOOT
JAN. 30TH. 1926 BY E.H. SCHWARTZ