PROPERTY OF
RECEIVED
OCT 15 1935
NEW JERSEY STATE LIBRARY
TRENTON

17.

Erastus Mead Hudson—Direct

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., February 7th, 1935.

TWENTY-SEVENTH DAY.

Present:
Hon. Thomas W. Trenchard.

Appearances:
Mr. Wilentz,
Mr. Lanigan,
Mr. Hauck,
Mr. Peacock,
Mr. Large,
For the State.

Mr. Reilly,
Mr. Fisher,
Mr. Pope,
Mr. Rosecrans,
For the Defendant.

(10:02 A. M.)

(The jury was polled and all jurors answered present.)

ERASTUS MEAD HUDSON resumed the witness stand.

Direct Examination (continued) by Mr. Pope:

Q. Doctor, I think I showed these to you yesterday? A. Yes, sir.

Q. And those were you measurements taken by you, at the time, of the various dimensions of the

ladder? A. (Examines papers.) Yes, I think those are correct; yes, sir.

Q. And they are correct? A. I would say so; yes, sir.

Q. As of the time they were taken? A. Yes, sir.

Mr. Pope: I desire to offer them in evidence.

The Court: Well, have you shown them to the Attorney General?

Mr. Pope: He had them over night.

Mr. Wilentz: I would like to examine on them before— may I examine on those notes before they are received?

Mr. Pope: Surely.

The Court: Yes, he may be examined upon them.

By Mr. Wilentz (voir dire):

Q. Doctor, will you take a look at your notes? They were made, I take it, about that time? A. Yes, I think these were made in March, 1932.

Q. Well, there is no doubt in your mind, is there, when they were made? A. The exact day I am in doubt, but they were made during the month of March.

Q. There is no doubt about the month? A. No, between March 13th and the end of the month.

Q. So that there is no doubt about the month? A. I am quite certain I was not down there in April, so it must have been March.

Q. Well, will you swear positively that those

papers were made by you in the month of March, 1932? A. Yes, to the best of my knowledge and belief.

Q. Sir? A. Yes, sir; to the best of my knowledge and belief.

Q. Now, did you take those measurements all on one day, the measurements? A. I took these measurements with Trooper Kelly. We both measured the ladder, both the same time.

Q. All on one day? A. Yes, sir.

Q. Did you reduce those measurements and those other details to writing on that day or did you— A. At some subsequent date.

Q. Sir? A. At some later date.

Q. Some later date. Well, on one day you did take the measurements and you took some notes, didn't you? A. Just what is on here, that is all.

Mr. Wilentz: Yes.

Q. Sir? A. Just what you see here.

Q. Those were the notes you took the very day then that you were taking the measurements? A. Yes, sir.

Q. Now yesterday, when you were talking about rail 16, you said, "Yes, I remember this rail with the knot and the two nails on each side. I think somewhere in these charts there is reference to it, if I am not mistaken." Will you look at the chart you have? A. These charts do not show that knot and the two nails.

Q. Well, I am referring to your testimony. A. Yes, that's correct.

Q. "I remember this rail with the knot and the two nails on each side. I think somewhere in these charts there is reference to it, if I am not mistaken." Are you mistaken? A. Well, with reference to these charts; yes, sir.

Q. With reference to this answer, please, are you mistaken? A. Not to the answer; no, sir.

Q. Well, when you said there was a reference to it, if you are not mistaken, there is no reference to it, is there? A. Well, in the question I said that if I am not mistaken—

Q. Yes. A. We were talking pretty fast.

Q. Yes. A. And I said if I am not mistaken, in these measurements—

Q. There is a reference to the knot with the two nails? A. There is some reference to the knot with the two nails.

Q. The fact is, there isn't a reference to the knot and the two nails, is there? A. The question wasn't answered correctly.

Q. Will you please answer the question? A. Not on these charts, no.

Q. No. A. No, sir.

Q. You were talking so fast, you say, yesterday, that you made that observation? A. I was not talking to fast; no, sir.

Q. I understood you to say that yesterday you were talking so fast— A. I said we were going along pretty fast and these papers were handed to me and at a casual glance—

Q. Handed to you; they were your papers, weren't they? A. Yes, but I have other notes somewhere—

Q. Have you got them with you? A. No, but I have written a sort of chronology.

Q. These charts you were talking about yesterday, I think somewhere in these charts— A. That is what I thought, that is correct.

Q. You were mistaken about that? A. Not that I thought; no, sir.

Q. Not that you thought, but you were mistaken about that, that there was some reference to it, to the nail holes and knot? A. It is evident to me that

there is no mention on these of the knot and two nail holes.

Q. It is evident to you that there isn't? A. Not after looking over them now.

Q. When did you look them over? A. I mean just now.

Q. Where did you see these just now? A. When you gave them to me.

Q. You have looked at the chart today? A. I did before I identified them.

Q. It was just this minute I handed them to you. A. It doesn't take long to look them over.

Q. Where is this rail? A. The top section, sir.

Q. You read your testimony during the night, didn't you? A. No, sir; I haven't read a word of it.

Q. You haven't had it? A. No, sir.

Q. You haven't discused it either, I suppose? A. No, sir.

Q. Will you please show us anywhere on any of those charts any reference to nail holes. A. I told you, sir, that on these charts there is no reference to nail holes.

Mr. Wilentz: Mr. Clerk, where is the ladder?

The Clerk: I have sent for it.

By Mr. Wilentz:

Q. Is there any reference to any nail hole in any of those charts that you made at the time? A. No, I said these charts—

Q. Please answer the question. Is there any reference to any nail hole in those charts? A. No, sir; they are not made for that purpose.

Q. You have answered the question, please. Do

you remember the numbers of the rails? A. I don't understand the question.

Q. Well, the rails are numbered; we refer to them by certain numbers, 13, 14, 15, 16, 17 and so forth. A. No, sir; I don't remember those numbers.

Q. Do you remember any of the rails? Do you remember one rail number as distinguished from another rail number? A. Yes.

Q. Do you remember any rail number? A. Well, if you showed me a rail and asked me what number it was, I wouldn't be able to tell you.

Q. Yes. A. But I would know whether it was the top section, the righthand, the lefthand, or what section of the ladder and what rail.

Q. But you don't know the rails by their numbers? A. Not as they are numbered in evidence; no, sir.

Q. Now you stated, "Yes, I remember this rail with the knot and the two nails." A. Yes, sir; I do remember it.

Q. And you have no such reference in those charts? A. Not in these charts; no, sir.

Q. Yes. Those are the only charts you brought with you? A. These are the only charts that I have, but I have notes where from day to day I wrote down little memoranda and so forth, what I did at that time.

Q. Now, of course, you appreciate, Doctor, with your intelligence— you are a member of the medical profession, aren't you? A. Yes, sir.

Q. And that is really your profession? A. Yes, sir.

Q. This is sort of a hobby with you, isn't it, started out to be? A. Started with a hobby; yes, sir.

Q. Yes. You appreciate, however, whether it is a hobby or not, the importance of this matter of holes, do you not? A. Well, the matter of holes

hasn't anything to do with the hobby, the finger-print part, that is a hobby.

Q. But I say you appreciate the importance of the holes in this case, with reference to this case. A. Well, I don't exactly understand your question, Mr. Wilentz.

Q. I see. Well, all right, sir. Now do you remember the number of nail holes in that ladder, in the rails? A. I remember there was just one nail hole.

Q. I am talking about the rails, all the rails, not one rail. A. All the rails.

Q. Do you remember whether there were any nail holes in the other rails? A. There was only one nail hole made by a square nail.

Q. Do you remember whether there were any other nail holes in any of the rails? A. Not that I recall; no, sir.

Q. Do you mean by that that you don't remember seeing any nail holes in any of the other rails? A. I saw only one nail hole made by a square nail in the entire ladder.

Mr. Wilentz: Will you repeat the question and we will ask the Doctor if he won't please answer it.

(The last question was read as follows: "Do you mean by that that you don't remember seeing any nail holes in any of the other rails?")

A. Well, at one time in measuring the ladder I remember some of the cross slats were loose and, of course, when they came out there were holes made by the nails.

Q. Do you remember any nail holes in the rail

of the ladder? A. Do you mean round holes or square holes?

Q. Any kind of holes. A. I remember nail holes on the face where the cross slats had been nailed in. After the cross slats had been knocked out—

Q. Do you mean by that the rungs? A. Yes, the rungs.

Q. No, I mean exclusive of the rungs, do you remember whether any of the other rails had nail holes? A. Well, the rung would have a hole and the rail would have a hole, too.

Q. Exclusive of the rungs, of where the rungs were put in. A. There were holes made by round nails where the rungs were put in.

Q. Will you do us the kindness of getting away from the rungs now— anything else except the rungs. Do you remember any nail holes in the rails exclusive of such nail holes as were caused by the rungs? A. Well, you see, your question is confusing because there are round nails and square nails.

Q. I don't care whether they are round or square. I am talking about nail holes. A. When the—

Q. Please answer the question. There are six rails, I understand. A. Yes, sir. When the ladder was measured—

Q. No; never mind about the ladder being measured. Now please let's stand by the rails and the nail holes. A. Well, I saw some of the nails where the cross—

Q. Just a minute. Now, do you see this rail? A. Yes.

Q. This one? A. Yes.

Q. The opposite one? A. Yes.

Q. And the other one. What I want to know is, along these rails do you remember any other rail with any nail holes at all? A. On the face of the rail—

Q. Please answer the question yes or no. Do

you remember any nails in any of these rails exclusive of the rail to which you testified yesterday? A. You mean nail holes?

Q. Nail holes. A. Nail holes. Well, I saw only one hole made by a square nail.

Mr. Wilentz: May I have an answer to the question, if your Honor please?

The Court: Yes, Doctor, we would like to have you answer the question as best you can.

The Witness: Well, sir, I am a bit confused, whether he means holes made in the edge of the rail, where the cross bars are nailed on, or whether he means holes in the side.

Q. You are confused by my question, is that it? A. Yes, sir; the manner in which—

Q. All right. I will ask it again, sir. A. In which you ask it; yes, sir.

Q. Well, I am sorry I haven't the ability to ask the question as you want it. A. No, I will give you an answer to any question you ask me.

Q. What I want to know is just this: Take rail 17. A. Which rail is that, please?

Q. I don't know which rail it is; one of the rails; any rail. A. Yes.

Q. We will take any rail. A. Yes.

Q. Exclusive of the rail to which you referred yesterday with the one hole, nail hole. Will you tell me whether or not at the time that you inspected and observed this ladder, you observed any nail holes in any portion of those rails, of any of those rails, exclusive of the nails that would necessarily come in because of the construction of the rungs? A. Well, exclusive—

Q. Now please answer the question yes or no. Did you or didn't you? A. Exclusive of the rung, I did not see any nail holes.

Q. You did not. Will you say that there are no nail holes in the rails of this ladder, exclusive of the rail to which you testified yesterday and— A. I would say they were not at that time.

Q. Not at that time? A. Yes, sir.

Q. You mean that you did not see them? A. I did not see them.

Q. They may have been there? A. I don't think so, because I went over it very carefully.

Q. Will you say that they weren't there? A. Yes, to the best of my knowledge and belief they were not there.

Q. To the best of your knowledge and belief? A. Yes, sir.

Q. Did you make a note of it? A. I made several notes, but whether that question which you have asked me, or whether that material which you have asked in your question, whether that is in the notes or not I can't say.

Q. You don't know whether you made any notes with reference to nail holes? A. I have a recollection of making notes in reference to that one hole, because—

Q. Did you make any notes with reference to rail holes— or nail holes?

Mr. Pope: Now, let him answer. Go on and answer it, Doctor.

By Mr. Wilentz:

Q. Did you make any reference in your notes to nail holes?

Mr. Pope: Now, I respectfully persist that the gentleman be permitted to answer. He

started to answer the question. He said, "I made some notes of that one particular nail hole, because"— and then he was shut off.

The Court: Well, the record speaks for itself as to what his testimony is. This question seems— the present question seems to be a plain question.

Mr. Pope: Then he should have an opportunity to answer it.

The Court: Exactly so. And he is given that opportunity now.

By Mr. Wilentz:

Q. Did you make any notation in any of your notes with reference to nail holes? A. I haven't seen the notes for a long time.

Q. Did you make any notation in your notes, any reference in your notes to nail holes? A. I don't know.

Q. You don't know? A. No.

Q. Why didn't you say so in the first place, instead of—

Mr. Pope: I object to the Attorney General scolding the witness.

The Court: Well, that is a pertinent thing: "Why didn't you say so at first?"

Mr. Pope: Of course, your Honor is running the court and not me.

The Court: Yes.

Mr. Wilentz: That is fortunate, too.

By Mr. Wilentz:

Q. Will you take a look at that nail hole? A. Yes, sir.

Q. Will you say that nail hole wasn't there in rung 14 and the other nail hole wasn't there at the time you examined this ladder? A. I don't remember these nail holes.

Q. Will you say they weren't there? You are talking about your recollection. Now, tell us. A. To my knowledge and belief they were not there.

Q. Take a look at this nail hole here. (Indicating a different section of the ladder.) A. The same answer. It has been cut around the outside.

Q. To your knowledge and belief. A. Yes.

Q. How about this one here (indicating another section of the ladder)? A. The same answer.

Q. What is the same answer? A. To the best of my knowledge and belief those holes were not there when I saw the ladder. Those are round holes, anyway.

Q. Whether they are round or square they are nail holes, aren't they? How about these nail holes here, that nail hole (indicating rail 16)? A. May I see the other side?

Q. What has the other side to do with this side? We are talking about this nail hole. A. The head of the nail was on this side and it came through on the other.

Q. You remember that? A. I think the head is on the one side.

Q. Do you remember that nail hole? A. Yes, I would say that is a nail hole I remember.

Q. One nail hole. Do you remember the other one? A. No, I do not remember that nail hole.

Q. Would you say it was not there? Take a look

at that crack there. A. Well, that crack stops right where the two nails have been driven in.

Q. I know that, but do you remember that hole with reference to that crack? A. That hole was driven after that nail was put in.

Q. After what nail was put in? A. This nail.

Q. Whether it was driven after this nail was put in or not, do you remember that nail hole when you saw it? A. No, sir; that nail hole wasn't there. Those two holes were not there when I saw the ladder.

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

Q. There is no question in your mind about that? How about this nail hole on number 17? A. That is a small nail hole made apparently by a round nail.

Q. Do you remember that hole there at the time you examined this ladder? A. No, sir.

Q. Would you say it wasn't there? A. Yes, I will say to the best of my knowledge and belief that hole was not there.

Q. To the best of your knowledge and belief? Will you swear it wasn't there, or don't you know? A. Well, that is as near swearing as I can say.

Q. That is as near swearing as you can say. How near is that? A. That the hole wasn't there.

Q. Are you swearing that it was not there at that time. A. To the best of my knowledge and belief those holes weren't there.

Q. What does that mean, "To the best of your knowledge and belief?" A. It means I am practically certain.

Q. What is that? A. Practically certain.

Q. Practically certain? You may be mistaken; is that what you mean? A. It is possible, but I don't think that I am.

Q. You don't think that you are? A. Yes, sir.

Q. How many nail holes were there altogether in

these rails when you examined them, in all the rails? A. I remember one hole because—

Q. Never mind the "because." You remember one. Do you remember the others?

Mr. Pope: I think he is entitled to answer why.

A. I said I have already said—

The Court: Well, he may say so, either now or on cross-examination.

By Mr. Wilentz:

Q. What is the answer to the last question?

(Last answer read as follows: "A. I said I have already said—")

A. —that I saw only one nail hole.

Q. You have already said you only remember one nail hole? A. Yes, sir.

Q. So that so far as these six rails are concerned, you remember just one nail hole? A. Yes. I will tell you why, if you will allow me to, sir.

Q. You will have plenty of opportunity. I think you spent over an hour yesterday on it. And that nail hole was in what rail? A. That nail hole was in the top section on the lefthand side.

Q. Top section? A. Lefthand side.

Q. And when you say the lefthand side, do you mean as you— A. As you face the front of the ladder, yes.

Q. As you face the front of the ladder? A. Yes; face the— face the cross pieces.

Q. In other words, assuming that this was the front of the ladder— A. And tip it the other way up, so it is—

Q. The other way around, you mean? A. Yes. One more qualification— just so the ladder, the top of the ladder, is up.

Q. So that the top of the ladder is up? A. That is the top of the ladder down there (indicating).

Q. Yes, I understand. You mean in this manner? You don't mean that, do you? You mean the way I had it before? A. Well, that section you have there is not the top section, sir.

Q. Well, I am not talking about the top section. I want to know the manner in which you looked at it. A. I mean that section is— you had it right the first time.

Q. Just a minute. Will you please stay with me a minute, sir? A. Yes, sir.

Q. Now, if I put it this way, I would have it up right so far as this section was concerned, wouldn't I? A. Yes, sir; you were right before.

Q. That is the way I originally had it? A. You were right before, yes.

Q. So that when you say right, you mean facing it with the rungs facing— A. When you are facing it as you are facing it now, the lefthand side of the rail as you hold it in your left hand.

Q. Yes. When you apply your process— by the way, the New York police use your process, do they? A. I don't know, Mr. Wilentz.

Q. Well, you tried to induce them to, didn't you, at some time or other? A. No; in 1920 I was in the New York Police Department, and I met Mr. Kuhn, Mr. Frederick Kuhn, and Inspector Farrot, Joseph Farrot.

Q. Please, now, will you tell us, did you try to induce them to use your process? A. I didn't try to induce them to use my process; no, sir. I just showed them the process at that time.

Q. So far as you know, they do not yet use your process, do they? A. I have no idea.

Q. You have no idea. And, at any rate, on March 1st, 1932, your process you know was not being used by the police authorities; isn't that so? A. I don't think that it was.

Q. You don't think it was? A. It was used in Europe a great deal but not in this country.

Q. In Europe. So that regardless of the merits of your process the New Jersey State Police were not using it at that time, were they, on the 1st or 2nd day of March? A. Well, I mean—

Mr. Peacock: Mr. Attorney General, the jury say they can't hear the witness.

By Mr. Wilentz:

Q. Well, on March 1st and some time prior to the 10th or 11th of March, whenever it was that you came down— A. Yes, sir.

Q. —you know, do you not, that the New Jersey State Police didn't know of your process and didn't use it? A. Well, those to whom I spoke, I know that they did not know the process and had not used it before, and I didn't think that it was anything unusual, because it was a European method.

Q. It wasn't unusual that they didn't have your process? A. No, sir.

Q. No. And when you actually came down you found that they didn't know about it and that they weren't using it; isn't that so? A. They were very glad to learn about it.

Q. Why don't you please answer the question? When you came down you found out that they hadn't known about it and hadn't used it, isn't that so? A. Yes.

Q. All right. And so far as you know now, in March, 1932, no police department in the country was using it, isn't that so? A. Well, I won't go so

far as to say that, because my knowledge is limited on that.

Q. So far as you know, I said. A. So far as I know, yes.

Q. So that you can answer that question Yes, can't you? A. So far as I know, no department was using it.

Q. That is exactly the question. Now, when your process is applied to a piece of wood, it discolors it, doesn't it, for the time being? A. Well, immediately, sir—

Q. Why don't you please answer the question? Does it discolor it or doesn't it? A. Well, there is a time element there, after two years it would be very dark, immediately there would be no discoloration.

Q. When does the reddish part enter? A. When it is exposed to sunlight.

Q. Right away? A. Takes about usually four or five minutes.

Q. Well, not two years then? A. The first thing that comes out are the little fingerprints.

Q. Does it take four or five minutes, or two years, for it to show the reddish part when it is exposed to the sun? A. The fingerprints come out in about five minutes.

Q. I am not talking about the fingerprints; I am talking about the discoloration of the ladder. A. Then the background comes out, the longer it is exposed, the darker the background gets.

Q. Now, will you please answer the question. When a piece of lumber is treated to the process, your process— A. Yes.

Q. —and it is exposed to the sun— A. Yes.

Q. —how long does it take before that piece of lumber is discolored? A. Why, discoloration would begin in five minutes.

Q. All right. How long would it last? A. And

that discoloration would continue, even though it were not exposed to the sun, it would continue to grow darker and darker.

Q. Grow darker and darker? A. Yes, sir.

Q. So that your process would actually cause a discoloration in time of the piece of lumber that was treated? A. The entire piece; yes, sir.

Q. Will you take a look at that photograph and see if this piece of lumber shows any stains or any marks of having been treated by your process. A. That would be impossible to say from the photograph.

Q. Give me your best judgment. Does that piece of lumber shown by this photograph show any evidence of being stained or treated by your process? A. I couldn't answer that from a photograph.

Q. Will you give us your best judgment? You see the grain, you see the wood, it is a clear picture, isn't it? You see the knot—

Mr. Pope: Object to the question. How can the witness say if he says he can't answer?

The Court: Well, he may say so.

A. If that was treated, that piece of wood that you have photographed— it may have been treated with a very dull solution of silver nitrate— it may have been seen. It may have been later treated with a different chemical to remove the stain, so I don't see how you can expect me to answer that question, sir. I mean—

Q. Will you answer the question now? Does the picture of this piece of wood indicate to you that that wood was treated by your process? A. Well, that is a technical question that I don't see—

Q. Well, I will withdraw it and see if I can't change it then. From looking at this picture, would

you say that this piece of wood or piece of lumber shown by this picture has any evidence in that picture of having been treated by the solution and the preparation that you use for your fingerprint method? A. Well, there is no evidence from the photograph whether it was treated or whether it was not treated.

Q. All right. That is what I wanted you to say. You see the photograph and no evidence or— A. No evidence one way or the other.

Q. Please don't argue with me too much and explain. All you have to do is answer the questions. A. That is what I am trying to do.

Q. I disagree with you. I don't think you are, sir. Now, will you take a look at that picture again?

Mr. Wilentz: Pardon me. Mr. Stenographer, will you please mark this for identification?

(The photograph was marked S-294 for identification.)

Q. While we are waiting, Doctor, are you writing a book? A. (No answer.)

Q. Sir? A. No, sir; I am not.

Q. You are not? A. No, sir.

Q. You are sure about that? A. I was asked to write a manual for the State Police of New Jersey, but I haven't; I haven't done so yet.

Q. You are not writing a book? A. No, sir; I am not at the present time.

Q. Now, I want to show you 294 for identification. Do you see what purports to be a nail hole there? A. Yes, sir.

Q. Do you see what purports to be a nail hole there? A. Yes, sir.

Q. If this picture were taken in March, 1932, showing these nail holes, then would you appreciate that you were mistaken in your testimony?

Mr. Pope: Which rail?

A. Well, if I knew personally what this photograph was—

Q. A part of rail 16. Assuming that this is a part of rail 16, regarding which you testified yesterday, and that this picture were taken in March, 1932, would you agree that possibly you were mistaken yesterday in your testimony? A. Well, under your premise I would say yes.

Q. All right. If this rail had been examined by persons other than the State Police of New Jersey in March, April and May, 1932, and reports were filed during those months, showing these four nail holes, would that induce you to believe that possibly you were mistaken? A. No, sir; that wouldn't.

Q. If the United States Government reports showed in 1932, that there were four nail holes, these very four nail holes, would that lead you to change your mind? A. No, sir; it would not.

Mr. Pope: I object to the question because there is no evidence upon which such a question can be based.

The Court: Well, you see, Mr. Pope, he is testing the accuracy of the witness's testimony. I see no objection to it.

Mr. Pope: But his hypothesis is based upon a false premise.

The Court: That is quite true. The Doctor understands that perfectly, and he is stating "On your premise, I answer so and so."

Mr. Pope: May we have an exception?

The Court: Take your exception.

(Exception allowed and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Q. Do you recognize either of these nail holes as being the nail holes that you saw, or one of the nail holes that you saw (showing Exhibit 294 for identification to the witness). A. Not from the photograph; no, sir.

Q. Do you recognize what it attempts to portray? Do you recognize which rail it is? A. No, I wouldn't recognize which rail.

Q. You wouldn't? A. No.

Q. Would you say it is not a picture of part of rail 16? A. I have no idea what the photograph is.

Q. You have no idea and you can't tell from the photograph? A. Who took it or anything about it.

Q. Never mind who took it. You have no idea from this photograph what it is, whether it is a part of this ladder or whether it isn't? A. It might have been part of the model of the ladder.

Q. It might have been part of the model of the ladder, not of this ladder, you mean? A. I don't know.

Q. You see a big knot there, don't you? A. I see what would suggest it, it is not very large.

Q. It is a knot? That is one of the things that attracted your attention in Rail 16? A. The knot that attracted my attention had two nails on each side.

Q. But it was a knot? A. Yes, but the nails—

Q. The nails didn't attract your attention, did

they? A. Yes, because they were put there for the purpose evidently of strengthening that rail.

Q. You found saw cuts, did you not, in the rail, in the rails? A. Well, I saw some cuts, naturally, where the boards had been cut out, the cross parts nailed in.

Q. Did you see any saw cuts in addition to the cuts that are necessary in order to build the ladder? I mean did you see an extra saw cut or an impression of a saw cut? A. What I would call saw cuts, yes.

Q. We are talking about what you would call them. And you made a notation of it, did you not? A. Not of the saw cuts.

Q. Take a look at your notes and see if you didn't. A. These are just measurements here.

Q. All right. Will you let me see it? Maybe I can find it. A. There is the bottom.

Q. Looking at this picture of a piece of wood. met by a rung apparently which is apparently taken to show the grain of the rung, you see a knot, do you not? A. Yes, sir.

Q. And you see a nail hole, do you not? A. Yes, sir.

Q. And you see that more particularly upon which there is this nail hole and the knot? A. Yes, sir.

Q. Tell me, does that board look as if it had been discolored by your processes, as if it had been treated by your processes up to the time this had been taken. A. It might have been colored and then decolorized, I don't know.

Q. But its present indication? A. You can't tell from the photograph whether it was or not.

Q. If it had been treated by your process, it had been decolorized, so now the picture shows no evidence of it, is that so? A. No, that isn't so.

Q. Does it show any discoloration by your

process? A. I explained you can't tell that from the photograph.

Q. You wouldn't say from this photograph that this picture shows discoloration, would you? A. That might have originally a very faint pinkish stain over the whole thing.

Q. I know what it might have been originally or what it might have shown originally. I want to know what it shows to your mind as you look at it, a fingerprint expert and a doctor, and a man of intelligence, and a man with the power of observation, as you look at it? A. There is no fingerprint on it.

Q. As you look at it. A. Right here—

Q. No fingerprint on it? And you know we are talking about discoloration— does this board show any evidence of discoloration from this picture and by this picture? A. You mean having been discolored by the silver nitrate?

Q. Yes. A. You couldn't tell from the photograph, you would have to analyze the original.

Q. So far as you look at the photograph, you wouldn't say that it was discolored or shows any evidence of discoloration? A. I don't think you could expect a person to say, because you would have to analyze it chemically.

Q. You see the knot hole, don't you? A. I see it.

Q. Is that the photograph of a knot? A. Yes.

Q. That is a different color than the rest of the wood, isn't it? A. Yes.

Q. That is shown by the photograph? A. Yes, also the grain.

Q. The grain is shown, isn't it? A. Yes.

Q. Now will you tell me whether there is shown in that piece of wood any discoloration that might come from a process such as you use? A. Well, you can't photograph the silver nitrate.

Q. You don't like to answer the question, do you, Doctor? A. I would be very glad to, Mr. Wilentz—

Mr. Pope: I object to that observation.

The Court: That observation may be stricken out.

By Mr. Wilentz:

Q. Now you did make a notation of saw cuts in your notes. Take a look at it and see if you didn't. A. Well, that just indicates—

Q. Now, why don't you please answer the question? Did you make a notation of saw cuts in there? A. Not what I call a notation.

Q. Haven't you got the word "sawcut" in there in your handwriting? A. Yes, seven-eights of an inch after it; yes, sir.

Q. But you have got the word, haven't you, in there? Will you please look at it. A. These were measurements of the ladder. It means the distance that they were cut down.

Q. May I have an answer?

The Court: Yes, Doctor.

A. Yes, the word is there.

The Court: The word "sawcut" is there?

The Witness: Yes.

By Mr. Wilentz:

Q. It is there? A. Yes.

Q. The State Police didn't write that in, did they? A. It looks like my handwriting.

Q. Looks like your handwriting. Will you say it is your handwriting or it isn't? A. I think it is; yes, sir.

Q. You think it is. Now, may I see those notes again?

Mr. Peacock: What was the answer?

Mr. Wilentz: Yes, he thinks it is.

Mr. Hauck: May we have it marked, will you mark it?

The Reporter: S. 295 for identification.

(Photograph referred to was marked State Exhibit S-295 for identification.)

Mr. Wilentz: That is the second exhibit indicated to the witness— While you are, pardon me, Doctor— before we start talking about this one will you please have this one marked?

The Reporter: S-296 for identification.

(Photograph referred to was marked State's Exhibit S-296 for identification.)

By Mr. Wilentz:

Q. I show you Exhibit S-296 for identification. Can you recognize that picture as being the ladder or a part of the ladder? A. (Witness examines exhibit.) It is similar in construction.

Q. Will you say whether or not you can tell from that picture whether the picture shows that that ladder shown in the picture was treated to your process? A. No, because you can't photograph silver nitrate; you can only tell by a chemical analysis.

Q. You can't tell from this picture whether or not

the object shown here was treated to your process and discolored? A. No, sir; your certainly cannot.

Q. Well, it looks different than the other picture, doesn't it, of the other part of the rail, I showed you a few moments ago? A. The rails have some mottling on here.

Q. What do you mean by "mottling?" A. Mottling shows the discoloration of the rails.

Q. Discoloration of the rails, yes. A. But whether that discoloration is due to silver nitrate, mercury or iodine or what, there is no way of telling from the photograph.

Q. So that S-296 does show some discoloration? A. Well, it shows, in the photograph it shows a change of— there might be powder on there, for all I know.

Q. Didn't you just say that it shows some discoloration, but whether it is due to silver nitrate or something else you can't tell from the picture? A. Yes, sir.

Q. But it does show some discoloration, doesn't it? A. Well, what I would call discoloration; sort of a pattern on here, as if—

Q. I am using your words. It does show some discoloration, doesn't it? Will you please answer whether it does or not? A. Why yes, I said it did; yes, sir.

Q. Yes. And the others do not? A. Apparently not.

Q. Apparently not. When I talk about the others I talk about 294 and 295. All right, sir. So your process will show fingerprints for two years; six months, we will say? A. Under ordinary conditions—

Q. Yes. A. —on wood or on paper, it will bring out prints that are—

Q. Yes. If a man kept a ladder for a couple of months in a damp garage, where there was no heat,

in the months of December, January and February, would that interfere with his fingerprints, if he had any on there? A. No, I would call those ordinary conditions.

Q. A damp garage? A. Yes, sir.

Q. In the winter time? A. If the—

Q. You would call those ordinary conditions? A. Yes, sir.

Q. If he kept it in a warm house, would that be ordinary conditions? A. Yes, sir.

Q. So that wet or dry— A. Damp or dry.

Q. Damp or dry? A. Yes, sir.

Q. Those are ordinary? A. Yes, sir.

Q. What is extraordinary, unusual? A. If the ladder had been in a boiler room somewhere, where escaping steam had risen and condensed on the ladder, so that the surface had become wet, naturally those little salt crystals left by the fingerprints would dissolve in that wet surface and—

Q. Supposing the ladder were kept up in an attic, where it was raining in through a window, or alongside of a pipe that was leaking, so that when the water came downstairs, it would show about one-half of inch of water on the floor; supposing the ladder was kept in an attic under those conditions, would that be ordinary conditions? A. Well, I don't think there would be enough water vapor in the air to dissolve the salt crystals and make—

Q. Supposing the ladder were out in the open on a March night, when it rained and snowed the day before, and it was misty and moist, on damp ground, in the Sourland Mountains, and had been lying out there from a quarter after nine until one o'clock in the morning, in that sort of atmosphere and under those conditions, would that affect any fingerprints on the ladder? A. Not the conditions you stated, sir.

Q. Not the conditions? A. No.

Q. It would have to pour on it or what? A. Have to rain right on it.

Q. Have to rain right on it? A. Then the underside would be protected from the rain.

Q. And the dampness and the snow on the ground, if there was any, the damp ground wouldn't affect it at all? A. The air must be very damp, must be very humid.

Q. I am talking about the ground now. A. Yes, sir.

Q. The wet ground. That wouldn't affect it at all? A. The damp ground or wet ground?

Q. Wet ground. A. And the ladder right down in the wet ground?

Q. The ladder on the ground. Would that affect it, or is that ordinary conditions? A. Well, those parts of the ladder that—

Q. Are those ordinary conditions, or would that affect it?

Mr. Pope: Let him answer.

A. I don't understand your question.

Q. You don't understand the question? If this ladder had fingerprints on it when it was brought to the Lindbergh Estate on the night of March 1st, 1932, when there was some snow and some rain and some wet on the ground yet, soft ground, and it remained there, wet ground— A. Yes, sir.

Q. —and it remained there from 9:15, in misty, moist air and it remained there from 9:15 until about one o'clock the next morning, would you consider those conditions ordinary conditions? A. Well—

Q. Please answer the question. Would you or wouldn't you? A. Not in reference to the entire ladder.

Q. In reference to anything, would you consider

those ordinary conditions? A. The part of the ladder—

Q. Will you please answer the question?

Mr. Pope: I think the witness is entitled to explain.

Mr. Wilentz: He is under cross-examination, if your Honor please. He is an intelligent witness, an expert.

Mr. Pope: Yes.

Mr. Wilentz: I don't see why he can't answer the question.

Mr. Pope: And he wants to answer the question.

Mr. Wilentz: I disagree with counsel. I don't think he wants to answer. That is why I am trying to get him to.

The Witness: I will be very glad to answer.

The Court: Just one moment. I have already indicated to counsel that counsel will have ample opportunity to have this witness make such explanation as he cares to make on re-direct examination.

Mr. Pope: Then I object to the question because the question assumes facts which are not substantiated by the evidence and which did not exist at the Lindbergh Estate at that time.

The Court: I overrule the objection. Answer the question—

Mr. Pope: Exception.

The Court: —as best you can.

The Witness: Yes, sir.

By Mr. Wilentz:

Q. Would you consider those ordinary conditions? A. Not in reference to the entire structure.

Q. In reference to the portion that was immediately on the ground. A. Extraordinary conditions, unusual conditions.

Q. Sir? A. The part that was in contact with the ground would have no fingerprints, naturally; but the part above it, where it was not wet, that would be back in the class of ordinary conditions.

Q. So that the part lying immediately on the ground would be affected by it, wouldn't it? A. Yes, it would be wet.

Q. And if it was wet such fingerprints as were there would be obliterated or interfered with? A. Yes, sir.

Q. So we have disposed of the part that is touching the ground? A. Yes, sir.

Q. Now, we have a part that isn't touching the ground? A. Yes, sir.

Q. Being subjected to the atmospheric conditions. If it had rained at all during that time or if water fell on it in any way, would that interfere with it? A. Yes, that part would be wet, would be interfered with.

Q. Any part that was wet? A. Yes, sir.

Q. Supposing there was so much dampness and so much moisture or whatever it is, that the atmospheric conditions caused, exclusive of the rain, but actually caused a wetting— A. A wet surface.

Q. —a real wet surface. Would that interfere with it? A. Yes, sir.

A. Now, don't you know, Doctor, that you can take a piece of cloth or take a piece of wood, or you can take a shoe, you can take your tie, you can take your shirt, you can put it outside and it doesn't have to rain for it to get wet, real wet; you know that, don't you? A. No, sir; I do not.

Q. If the atmosphere is moist or not? A. It could be damp.

Q. Not only damp, but— A. But that is a different material than wood, that is an absorbent material.

Q. You mean to say if a woman hung out clothes at night, it hadn't rained prior thereto, it was very moist at the time, very damp, way up in the mountains, so wet that the ground still remained wet for hours and hours, and hours later that it had not snowed, regardless of the atmospheric conditions and actually the absence of rain or snow, those objects would not get wet? A. Well, I have camped out a great deal under those conditions and I have never know clothing to get wet, what I would call wet.

Q. Well, I don't mean dripping wet. A. Well, that is what I mean by wet, dripping wet.

Q. Did you ever get up in the morning, when the dew— A. Yes, sir.

Q. —was so severe that it would drip right off anything that was out on a line? A. Not as severe as that; no, sir.

Q. Not as severe as that? A. No, sir.

Q. You wouldn't say that doesn't happen, would you? A. I think it happens along the seacoast, but not back in the interior.

Q. Well, that is just a guess on your part, isn't it, that is just a guess on your part? It is a casual observation? A. Casual observation.

Q. Yes. Of course, you haven't gotten to the point where you are an expert on that? A. No.

Q. But your ordinary experience doesn't reveal to you that even in the absence of rain atmospheric conditions may be such during a damp night, during a moist night, that an object exposed to the elements on such a night would actually get not only moist but wet? A. I wouldn't say it would get wet; no, sir.

Q. If it did get wet, however, the fingerprints would disappear or be useless, if there were any? A. Well, from my own knowledge, I would say yes.

Q. All right, that it what we want, your knowledge. Assuming now for the moment that there were fingerprints on this ladder, if later on prints were imposed over them, that would cause them to disappear, is that not so? A. If you had such a print showing one print over the other, one print would have no effect on the other print.

Q. Please don't argue with me. You know what I want, I just want an answer to my question. A. I am trying to answer your questions accurately.

Q. I disagree with you, all I want is the answer. A. I am trying to give you an intelligent answer.

Q. Supposing that Mr. Hauptmann had his hands on this rail— A. Yes.

Q. —and then on March 1st, 1932— A. Yes.

Q. —and then this ladder was taken down to a Governor's crime conference— A. Yes.

Q. —and officials from all over the country came there and the police chiefs and the mayors and all these fellows came down and they started examining the ladder and one fellow out of all this great number happened to put his fingers just about where the other fingers were, that would obliterate so far as identifying Hauptmann's fingerprints, wouldn't it? A. It might and it might not. One would be superimposed over the other.

Q. If one was superimposed over the other—A. And fingerprints are not alike. There would be some details, some little lines, some little configurations.

Q. Would they be identifiable? A. I would have to see the impressions, to tell you, sir.

Q. You would have to see the impressions? There would be an interference, wouldn't there? A. There would be an interference, yes.

Q. Now, your method is a good method, is it not, you think? A. Yes, and I think the State Police think so, too.

Q. You know that Troopers Kelly and Sjostrom handled this ladder, you know that, do you not? A. I know Trooper Kelly did, I don't know about Sjostrom.

Q. You know your method didn't bring out his fingerprints? A. I don't know.

Q. Did you ever look at the prints they did bring out? A. No, I have never seen them.

Q. Did you ever count them? A. I have never counted them.

Q. Then why did you swear yesterday that there were 500 when you never saw or counted them? A. I said there were about that number.

Q. Why did you say that? A. Because every place on the ladder where they put silver nitrate brought out an impression.

Q. Did you see the result of the test? A. Yes, I saw it after it was exposed to the sun.

Q. Did you see the prints that were taken? A. I saw the prints that the silver nitrate developed. There were many complete prints.

Q. Did you see the prints? Did you see the pictures? A. On the ladder, I didn't see the pictures.

Q. Never mind the ladder. A. The pictures you mean? I never saw the pictures, no.

Q. You know what I mean by the prints, the

papers that were taken as a result of your process, so that they can be brought into a courtroom or some place and be examined? A. After they are photographed?

Q. The photographs, yes. A. I don't know how many photographs were taken.

Q. You didn't count them? A. I wasn't present.

Q. You didn't see— A. I wasn't present when the photographs were taken.

Q. You don't know what those photographic reproductions amounted to, do you? A. No. But I do know that they bring out—

Q. "No" is enough, please—

Mr. Pope: Please let him answer.

Q. We will give you a chance to explain it a little later. When you said 500, you don't mean, do you, sir, that 500 photographic reproductions of fingerprints developed as a result of the test, do you? A. I don't recall saying photographic reproductions. I said that the process developed more than 500 fingerprints and fragments of fingerprints.

Q. But you don't know the nature of them, do you? A. You mean who they belonged to and that sort of thing?

Q. Well, you didn't take any pictures of them; you didn't produce them in any photograph, so that you would attempt to classify them, did you? A. I had no interest in that. I found the finger prints.

Q. I know you had no interest. You have an interest today, haven't you, today and yesterday? A. In identifying them? No, sir.

Q. You have no interest in identifying them. A. No, sir.

Q. Do you know how to classify a finger print? A. I have classified finger prints; yes, sir.

Q. Do you know how to classify finger prints? A. There are thirty—

Q. Do you know how to classify them? A. Under which system? sir?

Q. Under any system? A. Well, there are a great many different systems.

Q. When did you learn to classify finger prints? A. It is part of the medical manual in the navy.

Q. Please answer the question? A. To classify finger prints by the Henry System.

Q. When did you learn to classify finger prints, not as a physician, as a finger print man, if you ever learned to classify them? A. Yes, I can classify finger prints.

Q. When did you learn to classify them? A. I would say in 1919, 1920.

Q. Now, you had a camera, I think. Do you call it a finger print camera, in your place? A. Well, there is a finger print camera; yes, sir.

Q. You had one when Kubler and Kelly visited your place one day, didn't you? A. Yes, sir.

Q. And Kubler and Kelly instructed you how to use it, didn't they? A. No, I wouldn't say that. I mean we—

Q. Well, you asked them to show you how to use it, didn't you? A. No, I have used them before.

Q. But you did ask them for instructions about it, didn't you? A. They brought some films over, which were very sensitive films.

Q. Did you ask them to instruct you how to use it? A. I asked them what exposure would use with those particular films.

Q. You asked them? A. What exposure to use.

Q. What exposure? A. That is it.

Q. You didn't know, did you? A. Because I had never used those films before.

Q. Yes. You didn't know at that time? A. Not the exact number of seconds; no, sir.

Q. You weren't particularly interested in nail holes, were you, when you examined this ladder? A. One; yes, sir.

Q. You were interested in that one? A. Yes, sir.

Q. Were you particularly interested in saw cuts? A. No, sir.

Q. But you marked the saw cuts down and not the nail hole? A. In reference to measurements, where measurements were made from the board.

Q. You did mark down the saw cuts, but not the nail holes? A. Yes. On those papers, you mean.

Q. Did you use a magnifying glass when you came down to look at these prints on the ladder? A. I had a little hand lens that I looked at them through.

Q. Not a magnifying glass? A. Well, it is the same thing— not a microscope, but it is a small lens, magnifies three or four diameters.

Q. Was it sufficient to reveal the prints to you? A. I could see them with the naked eye.

Q. Well, did you see them through this glass or didn't you, the glass— A. I think I did sometimes.

Q. You are not sure about that, are you? A. I mean there were prints you could see.

Q. Are you sure about it? A. Not positive; no, sir. I think it is immaterial.

Q. Sir? A. I think it is immaterial.

Mr. Wilentz: I move that that be stricken out, if your Honor please.

The Court: Yes, that may be striken out.

By Mr. Wilentz:

Q. Now, did you mark down the number of prints or fingermarks that you saw on this ladder any place? A. No, because my understanding—

Q. No. Please, now; never mind the "because." I just want to know whether you marked them down. A. The number of fingerprints?

Q. Yes. A. No, sir.

Q. Or the number of fingermarks? A. No, sir.

Q. You saw 500, you say? A. I would say at least that.

Q. Yes. A. At least that.

Q. Five hundred what? A. Fingerprints and fragments of fingerprints.

Q. Is that altogether, the 500 fragments and fingerprints? A. Yes.

Q. Does that include fingermarks? A. Well, a fingermark is a fingerprint; yes, sir.

Q. A fingermark is a fingerprint? A. Yes, sir.

Q. You mean if there is a mark indicating that a finger was on that, that is sufficient for classification purposes? A. Sometimes, if you have only two or three ridges, you can identify the fingerprints by the pores that are in those ridges.

Q. And sometimes they are of no value at all; isn't that so? A. Absolutely.

Q. Now, how many of these 500 were of value, so far as you know? A. I have no idea.

Q. How many were distinguishable, so far as you know, for classification purposes? A. I never saw the photographs, so I have no idea.

Q. So you don't know? A. No.

Q. So actually you don't know whether, when this ladder was exposed— when this ladder was— I withdraw that.

Q. Actually you don't know what was the result of the subjection of this ladder to your process? A. I know the result, because I saw the result; yes, sir.

Q. So far as identification purposes, you don't know? A. You mean at a later date?

Q. Well, when the pictures were taken, so as to

be used for useful purposes. A. What they did with the pictures, I have no idea.

Q. Well, you don't know whether the pictures resulting from your process were of any value or not, do you? A. No, sir.

Q. No. Did you ever testify in court before as a fingerprint expert? A. Yes, I testified for the Department of Justice.

Q. When? A. In, I think it is 1929, as an expert fingerprint— chemistry.

Q. Chemist? A. Chemistry, fingerprint chemistry.

Q. Not as a fingerprint expert? A. An expert in fingerprint chemistry, detection of fingerprints.

Q. You did not testify concerning fingerprints at any time in any court, except as to chemistry? A. Well, they qualified me as a fingerprint expert.

Q. As to chemistry, isn't that the fact? A. No, they asked me classification at that time.

Q. Sir? A. They asked me classification at that time. The record would show.

Q. Oh, I know the record will show. Now, supposing that this ladder were kept in a garage for several months where there was no heat and where there were such conditions that other objects in the garage in similar positions became wet on many occasions, would that interfere with prints on the ladder? A. Subject to the same material, yes.

Q. Yes. If, instead of one person superimposing his fingers at the point and over the point where other finger prints had been first placed, if there were dozens of people who superimposed their finger prints at the same place, that certainly would obliterate any finger prints, wouldn't it? A. Very probably.

Q. And if hundreds of people handled the ladder to such an extent that some of them, more than one of them we will say, put his finger prints and super-

imposed them over others, why, that would obliterate it, wouldn't it? A. Yes, the photographs would show that.

Q. Now, of these prints, of these five hundred markings that you talked about, if there were five hundred, or if there were five thousand, you wouldn't say that any of those were there March the 1st, would you? A. Why, they were developed—

Q. Will you please answer the question? Will you say that any of them were there March the 1st? A. They might have been before or might have been after.

Q. Will you say whether they were there March the 1st, so far as you know?

Mr. Pope: He is answering.

A. I would say some would be there by March 1st.

Q. Which ones? A. I have no idea.

Q. How can you say some were there if you have no idea? What is it, a guess? A. No. I would eliminate every one that touched the ladder since March 1st.

Q. Why, don't you know people from all over this country handled that ladder day after day before that process ever touched it? A. That makes no difference. I'd eliminate the finger prints of every man that touched it.

Q. Why, don't you know that Kelly, who touched it and handled it— that your process never revealed his finger prints? A. I never saw him touch it without gloves.

Q. Don't you know that Kubler, who touched it and handled it— that your process never revealed it? A. We all wore gloves those days.

Q. Don't you know that Colonel Lindbergh, whose hands touched it— that his finger prints were

never revealed by your process? A. I don't know, sir.

Q. You don't know that. And don't you know, as a matter of fact, that Kelly, Kubler, and Colonel Lindbergh handled that ladder without gloves? A. No, sir; I don't know that.

Q. You don't know that? A. No, sir. When I was there he handled the ladder with gloves.

Q. Who? A. Kelly.

Q. Only Kelly? A. And Sergeant Kubler.

Q. Now you do know, do you not, that men who have had a criminal career use gloves in an effort to avoid showing finger prints? A. Yes, sir.

Q. Yes. You know that criminals use gloves when they want to avoid showing finger prints? A. Yes, sir.

Q. And there is no way of detecting a finger print then, isn't that so? A. I think so. The French claim they can do it.

Q. Never mind about the French claim. So far as you know? A. As far as I know they can't do it.

Q. Can you classify this print (hands witness print)? Would you like to have a glass? A. There is some lines up in this upper right hand corner which, if enlarged, might be of value in identification.

Q. And it might not be? A. You couldn't tell until it was enlarged.

Q. You can't tell. So that you can't tell that this print has any value for identification purposes? A. That would have to be enlarged.

Q. Would this help you (referring to glass)? A. No. I don't think it would. You would have to put it under high power microscope—

Q. You didn't have a high power microscope? A. —to see if there are any pores there.

Q. This is the result of your silver nitrate process, this is one of the results? A. Well, it is a very poor

photograph of some of the fingerprints that I saw.

Q. It wouldn't be due to a very poor process, would it? A. Some of the finger prints were very clear.

Q. Some of them, yes. A. Yes.

Q. But some of them weren't, were they? A. Yes.

Q. That's right; and this is one of the poor ones then, is that what you mean? A. I don't know whether it is the fingerprint—

Q. Will you please do me the kindness to use—did you use a glass like this (indicating)? A. No, one that doesn't magnify quite so much as that.

Q. Smaller? A. But if this is put under a microscope—

Q. Yes. A. —and enlarged, so that you can see the pores—

Q. Yes. A. —it might prove of value in identification.

Q. But you didn't use a microscope when you looked at the prints, the originals, did you? A. There were too many of them.

Q. Sir? A. There were too many.

Q. Whether there were too many or not you did not use it, did you, a microscope? A. I made no attempt to identify them. I simply went out there to assist the police in getting these prints.

Q. You made no attempt to identify them for classification purposes, did you? A. No, sir.

Q. And you say this one, it would appear it was a poor job (indicating)? A. Photography, yes.

Q. Yes. And you couldn't classify it from this picture, could you? A. (No answer.)

Q. You couldn't classify the fingerprint? A. Well, if you will permit me, I think—

Mr. Wilentz: Mark that, will you, please.

The Reporter: S-297 for identification.

(Photograph marked S-297 for identification.)

Q. Are you an expert on photography, sir? A. No, I am not.

Q. You don't know whether this is a good photographic job or not, do you? A. I know several of the prints were very, very good, very clear, very clear-cut and sharp.

Q. Now, we will be here for just a little while (picking up one section of the kidnap ladder). I want you to pick out the nail hole that you remember seeing in this rail 16. Take your time. Take the rail, take a look at it. Put a nice circle around it with a pencil, if you will, please? A. I would say it is this hole up here (indicating).

Q. Put a circle around it, will you please, a big circle. A. (The witness complies.)

Q. Now, hold it there for a minute, please. Now will you put "H"— I think your name is Hudson, isn't it? A. Yes.

Q. Put an "H" over it, a big capital "H". A. (The witness complies.)

Q. Now you are sure about that, aren't you? A. Yes, I would say that I am.

Q. Well, you would say that you are. That means you swear to God that that is the truth? A. So far as I am able to swear, yes.

Q. As far as you are able to what? A. As far as I know; yes, sir.

Q. That that is the hole? A. Yes, sir.

Q. And you remember it because of the nail holes and the knot? A. Because of the square hole.

Q. And you distinguish it because you see that board, don't you, 16? A. Not particularly that board. I can only recall one square nail hole.

Q. Yes; and that's the nail hole? A. And it is in that board, yes.

Q. That's the nail hole. Naturally, if that is the nail hole, that's the board? A. Yes.

Q. So that that is the board you saw, isn't it? A. Yes, if that is the nail hole.

Q. Rail 16 is the board you saw there in March, 1932, isn't it? A. Yes, sir.

Q. Yes. And if this matches with Hauptmann's attic wood, why then, this is a part of it, isn't it? A. A part of what, sir?

Q. The attic; if this is a part of one of the pieces of wood that came from the attic? A. Well, if it came from the attic, it came from the attic.

By Mr. Wilentz:

Q. Yes. And if it was a part of the piece of wood that was in the attic, then it came from Hauptmann's attic? A. Yes, sir.

Q. But you are sure that board was there, aren't you, this rail, 16, you are sure of that, in March, 1932? A. Yes, I am sure of it. By "there" you mean on the ladder?

Q. On the ladder. A. Yes.

Q. And if in 1932 Government men in Washington, Government men in Wisconsin, policemen in New Jersey, and others, made reports in 1932 that there were four nail holes and described them then in the reports, will you still say that they are mistaken and you are right?

Mr. Pope: I object to the question.

The Court: I think I will have to exclude that.

By Mr. Wilentz:

Q. Are you willing to stake all your testimony about there being only one nail hole at that time in that ladder in that rung?

Mr. Pope: I object to the question.

The Court: I will sustain the objection.

Q. Did you attempt to get any fingerprints off the toys in the room? A. Yes, sir.

Q. Were they revealed? A. Yes, sir; Kelly and I revealed the fingerprints off the toys.

Q. How many toys did you have to use before you revealed them? A. I don't recall exactly how many; I think four or five on the little blocks of wood.

Q. Yes. Did every one of the toys reveal fingerprints that were distinguishable? A. No, not every one; no, sir.

Q. No. So that the very toys that the child used, many of the toys did not reveal fingerprints at all? A. No, because there was at least a period of three or four days—

Q. Never mind the "because;" they didn't, did they? A. Some did and some didn't.

Q. Some did and some didn't. Now— and the conditions in the room were ordinary, weren't they? A. I don't know.

Q. In the child's nursery? A. I should think they would be; yes, sir.

Q. Yes. Even with your process some didn't reveal fingerprints, isn't that so? A. The silver nitrate process?

Q. Even with your process some did not reveal fingerprints, isn't that so? A. That was a powder process that was used.

Q. Any process, did they reveal— A. The powder process revealed fingerprints on some toys and not on some others.

Q. How about your process? A. That was only used on the ladder and on the paper, the little books that were found there.

Q. Why didn't you use your process on the toys? A. Because you don't use it on a painted surface.

Q. I see. So that your process doesn't work on a painted surface, does it? A. Not applied in that manner; no, sir.

Q. Well, you have just said it doesn't work on a painted surface. Now, do you want to qualify it? A. It isn't used on a painted surface.

Q. Why is it used on a painted surface? A. It isn't, only used where the fingerprints soak into the material, and fingerprints—

Q. And the fingerprints don't soak into a painted surface? A. Fingerprints don't soak into a painted surface.

Q. A fingerprint doesn't soak into a painted surface? A. No, sir; it does not.

Q. And this finished window sill is a painted surface, isn't it? A. This here?

Q. A finished window sill is a painted surface? A. Yes.

Q. And, therefore, your process cannot be used successfully on that sort of surface? A. No, it couldn't be of use.

Q. So Mr. Hauptmann could have had his hands on the window sill morning, noon and night, and it wouldn't be revealed by your process, isn't that so? A. Silver nitrate process—?

Q. Yes. A. Yes.

Q. You remember while you were in the navy in the years 19— were you in the navy in 1919 and 1920? A. Yes, sir.

Q. Did you make a charge against six men, who were then found to be innocent? A. No, sir.

Q. You did not? A. No, sir.

Q. And you were not the subject of an investiga-

tion by the Federal Government because of that? A. No.

Q. Did you accuse any of the men at that time as being degenerates? A. No, sir; there was a court of inquiry of which I was one of the members of the court.

Q. Did you charge them with being degenerates? A. The court, I couldn't do that personally.

Q. Did you charge them with being degenerates? A. That was the action of the court.

Q. Did you charge them with being degenerates? A. I did not personally.

Q. You did not? A. No.

Q. As a result of your examination, did you charge them with being degenerates and they were found to be innocent? A. I don't understand what you mean by "as a result of the examination."

Q. As a result of any examination that you made or conclusion that you reached? A. I sat on the court and the court came to a certain conclusion.

Q. Was that reversed? A. I have no idea.

Q. You don't know? A. No. The court consisted of several officers.

Q. Now, with reference to this stein, did you see the stein there that day? A. I was there two weeks later, I don't recall any stein.

Q. If the stein was a painted surface and a rough surface, would it be subject to your process so as to reveal fingerprints if there were any? A. Not silver nitrate process, no.

Q. No. Any corrugated surface would not reveal fingerprints, would it, with your process? A. Well, a corrugated cardboard will reveal fingerprints where the corrugations come in contact with the fingers.

Q. But not a corrugated stein, you would not say that, would you? A. If treated with powder, it should.

Q. I am talking about your process, please. A. I don't know what you mean by my process.

Q. Silver nitrate? A. Silver nitrate process?

Q. Yes. A. On a non-absorbing surface the silver nitrate process is not used.

Q. It isn't used? A. No, sir.

Q. Because it can't be successfully used? A. It doesn't soak in.

Q. How about a baby's crib, the kind that you saw in the Lindbergh home, could you use your process successfully there? A. No, I would not use silver nitrate on a crib of that character; no, sir.

Q. All right, sir. So far as the interior of the house is concerned, the painted surface, the baby's bed, the window sill, the powder process was correct? A. That was the best in that case.

Q. It is still considered a standard process? A. Oh, yes.

Q. The process Mr. Kelly used is still considered a substantial, old sound process? A. That was the best process to use in that nursery.

Q. It is used by all police departments in the country? A. Yes, sir.

Q. And your process is not used by any police department, so far as you know? A. Not in this country. It is used in Europe.

Q. I am talking about this country. A. I think the State Police have used it for the last two years, the State Police of New Jersey.

Mr. Wilentz: I think that is all.

The Witness: Thank you.

Mr. Wilentz: Did you say "thank you?" You are welcome.

Re-Direct Examination by Mr. Pope:

Q. Doctor— A. Yes, sir.

Q. —you tried to tell the Attorney General why you remembered the cut nail. Will you tell the jury now why you remember the cut nails? A. Well, I remember that the nail was in the end of this rail and the lumber appeared to be lumber such as would be used in crating and I noticed that where the nail had been driven through, the wood was not tore out from the side where the nail came out, came through, which made—

Q. What did that indicate? A. —which made me think that there was a little cleat had been against the surface and the nail driven through into the cleat. So I made a great many inquiries as to what kind of a crate would have a wooden cleat with a square nail holding it so that the cleat wouldn't turn around, and that is why I remember that one nail hole. If there had been another nail hole there— I remember I also thought that perhaps this board was used to support a piece of frame or scantling or something of that kind where a nail would be driven in at the top and one driven in at the bottom, but the nail hole only being the top would rule out that possibility.

Q. Now I want to call your attention to this rail again. Which one is the one that you marked, Doctor, the one up there? A. This one here.

Q. By the knot. Yes. Your conclusion was the reason why this didn't show any splitting off on the inside was because it had been against something? A. Because there had been something against the other side where the nail had been driven through.

Q. That is what attracted your attention to it, for one thing? A. Yes, I remember asking a good many people what kind of a crate would have a little

piece of wood in like a cleat, held in position by a nail of that character.

Q. Now, you started to explain to the Attorney General what would happen if one fingerprint or one palm print was superimposed upon the other. Will you just explain what you meant by that and what would happen? A. Well, it might be—

Q. And what would be the effect? A. It might be superimposed so that there would be complete obliteration of both. Again it might be superimposed so that one print would be a little sidewise, giving enough of the ridge detail of each print so that the print could be identified.

Q. Then even though there be one print superimposed upon another, is it often possible to make an identification in spite of the superimposition? A. You might be able to make it and you might not. It depends on the way they were superimposed.

Q. In other words, it would depend upon how much of the original print you would be able to bring out without interference? A. How much overlapping on the two prints.

Q. I understood you to say that you saw the fingerprints on the different portions of the ladder. Now, when you speak of 500 or more prints, do you mean that you saw that number of prints on the wood of the ladder before it was photographed? A. Well, I don't want you to get the impression by prints that the print is a complete, perfect print.

Q. No. I know that. A. When I say fingerprint, I mean that I saw at least 500 places where there were partial prints or complete prints— fragments, as we call them.

Q. Fragments? A. Yes.

Q. And prints together? A. Yes, sir.

Q. In other words, there were over 500 markings, fingermarkings? A. I suppose you could call it markings.

Q. Yes. Now, after the prints had been developed, I mean after the fingerprints had been developed on the wood and after they were photographed by the State Police, were you never invited to come and inspect the photographs? A. Well, that's a different department. I mean I simply went out there to do what I could to enable them to detect fingerprints, and once they were photographed, that was up to a different department to take them and identify them.

Q. Then your purpose in going there was not to assist in the identification of prints if they were found? A. Yes. I simply went with the hope that I could get some finger prints for them.

Q. Your hope was to develop the prints? A. Yes, sir.

Q. Leave the identification to the Identification Bureau of the State Police? A. Yes, sir.

Q. You were asked by Mr. Wilentz if you marked down the number of prints that were on the ladder and you started to say, "I did not mark down the number of prints because—" And then you were shut off. What did you want to say, because what? A. Well, I just don't see why the number is material, whether it is five hundred, six hundred or four hundred. It is simply these prints were found, complete prints and fragments of prints and photographs were made, as I understand, that those photographs sent to the Identification Department.

Q. Now, did Mr. Kelly or Mr. Kubler tell you how many photographic prints they obtained from the ladder by the use of your process? A. No, not the number; no.

Q. Not the number? A. No.

Q. Did they tell you how much film they used in making the photographs? A. Well, I gathered that a good many films were used.

Mr. Wilentz: No, just please answer the question.

Q. Well, did they tell you? A. Not the number, no.

Q. Not the number. Now, you were asked a number of questions about atmospheric conditions and about the effect of dampness and water and other atmospheric conditions— A. Yes.

Q. —upon the ladder. Whatever may have been the atmospheric conditions to which this ladder was subjected at the Lindbergh estate or in other places, your testimony is that your process developed about five hundred prints. A. And fragments, yes, sir.

Q. And fragments. From your experience in developing fingerprints upon objects that had been used in the commission of a crime, what would you think of allowing that object to be handled by several hundred people in a period of ten days before it had been thoroughly and carefully examined by you?

Mr. Wilentz: Just a minute. I object to the question, your Honor please, as not being material and not being proper re-direct.

The Court: Well, I think I will have to sustain that.

Mr. Pope: It is based on the Attorney General's question. He said "they let thousands of people handle this ladder in ten days."

The Court: Well, how can it be?

Mr. Pope: I can't conceive of that, but it may be possible, maybe they did.

The Court: Well, how could it be material

what this witness thinks about it? That seems to be the point of the objection.

I want to ask the doctor a question or two to clear up a matter in my own mind.

By the Court:

Q. Doctor, I think you testified that you were out there on three or possibly four different days? A. Yes, sir.

Q. Can you be sure what days they were? A. I arrived on the 13th of March.

Q. On the 13th. That was the first day you were there? A. Yes, sir. That was Sunday. I went again on the next day which would be Monday, the 14th, again on Tuesday, the 15th. Then I think I went out the following Saturday or Sunday and went after that and the week after that.

Q. Well then— A. I think the 26th.

Q. Then you must have been there more than four days? A. Perhaps.

Q. Yes. A. I think the 26th or 27th of March was the last time I was there.

The Court: I see. All right.

I think I perhaps interrupted you, Mr. Pope.

Mr. Pope: No, that is all right, your Honor. That is quite all right. I am glad you did.

By Mr. Pope:

Q. Now I just have one question and then I think I will be through. The Attorney General has asked you about this particular rail. I think this is the one.

Mr. Wilentz: Yes, 16.

Q. Which now appears to have the— A. The other side of it.

Q. Huh? A. The other side of it.

Q. Which appears to have the four cut nails into it, and he asked you if that piece of wood that was in that ladder when you were there on March the 13th, 14th, and 15th—if this particular piece of wood was in existence anywhere, either at the Lindbergh home or at the Hauptmann home or in the attic or anywhere, with four cut nail holes into it, on March the 13th, 14th, 15th or the subsequent days on which you were at the Lindbergh home and examining it, and it now appears with four cut nail holes in, then would you say that that is the piece of wood that you examined?

Mr. Wilentz: Just a minute, if your Honor please.

Mr. Pope: Wait a minute.

Q. Would you say that that is the piece of wood that you examined at the Lindbergh home when you were there and in which you found only one cut nail hole?

Mr. Wilentz: Just a minute, sir. The witness has already testified that is the piece of wood he saw in March, that rail. Now, if your Honor please, it is not up to counsel for the defense to discredit its own witness.

Mr. Pope: I am not trying to discredit anybody; I am trying to explain. The trouble of it was the hypothetical question submitted by the Attorney General did not involve all of the facts.

Mr. Wilentz: It wasn't a hypothetical question. I said to him, "Is this the nail hole?" He said Yes. "Then this nail hole was in this rail"? "Yes." "This piece of lumber"? "Yes." "This piece of lumber you saw there that night"? And he said "Yes."

What else is there to it?

The Court: That seems to be the testimony, as I recall it. What is the purpose, Mr. Pope?

Mr. Pope: He was asked a number of questions—if the Federal agent had this, and if some Federal report contained this, and if somebody else said this and that.

Mr. Wilentz: Counsel objected to that and your Honor sustained those objections.

Mr. Pope: Then he went on and asked him about this particular piece of wood. Now, I think—

The Court: And if that was the nail hole that he saw and he said yes.

Mr. Wilentz: He marked it.

The Court: He marked it.

Mr. Wilentz: Put his initials on it.

The Court: What utility is there in going over this thing again, Mr. Pope?

Mr. Pope: I think it is important and I think we are entitled to it.

The Court: Now, just what is your question? Suppose you state the question again.

Q. You were shown this rail, you were asked by Mr. Wilentz if that was the board that you saw at the Lindbergh home when you were there in March, 1932, and you identified it as being the board that you saw there? A. Yes.

Q. Now I ask you if this particular board that now appears in the ladder was in existence either at the Lindbergh home or at the Hauptmann house in the Bronx with four cut nail holes in the board as they appear there now on March the 12th, 13th or the 14th, whenever you looked at it and saw it, then would you say that that is the board that you looked at at the Lindbergh estate?

Mr. Wilentz: Just a minute; just a minute. Now if your Honor please, I object to the question as being impossible of an answer. In the first place, Mr. Pope predicates his question on the fact that this man says "Yes, this is the board." Then he says, "If this board had four nails, will you say now it isn't the board"? He has already testified it is the board. It is his witness.

The Court: Yes, I think there is no doubt but what the Doctor has testified that that was the board and that was the nail hole that was in it. I don't myself see the point of your question.

Mr. Pope: Well, I think that was rather a shrewd method of questioning of the Attorney General, which was hardly calculated to bring out fairly and fully the exact facts.

Mr. Wilentz: I object to the statement, if your Honor please. I think it is a cheap assertion.

Mr. Pope: Now, please, Mr. Wilentz. And that we have a right to explain it, if there is any explanation; there may not be any. I don't know.

The Court: Well, I will overrule your present question. I don't think you can explain it with the question that you put.

Mr. Pope: May I have my exception?

The Court: You may have your exception.

(Exception allowed, the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Mr. Pope: That's all.

The Court: Is there anything further, Mr. Attorney General?

Mr. Wilentz: Are you through, sir?

Mr. Pope: That's all.

Mr. Wilentz: Just one question, if your Honor please.

Re-Cross Examination by Mr. Wilentz:

Q. I think yesterday you said something about remembering this particular situation about the nail

hole because of the knot and the two nails on each side. Is there a knot with two nail holes—with two nails—on each side? A. Yes, there is a knot with two nails.

Q. Is that why you remember the nail hole? A. No, no.

Q. What significance did that have to you? A. The knot, the knot with the two nails was peculiar, because—

Q. And is that what reminded you of the rail? A. Yes, sir.

Q. How about the nail hole? Did that remind you of the nail hole? A. The knot didn't remind me of the nail hole, no, sir.

Q. Where is the nail hole with reference to the knot and the two nails? A. Well, it is in the end of that board.

Mr. Wilentz: All right, sir. Thank you. That's all Doctor. Thank you.

Re-Direct Examination by Mr. Pope:

Mr. Pope: Well, may I have those notes to Mr. Wilentz?

Mr. Wilentz: What notes.

Mr. Pope: That the doctor had, that you had last night.

Mr. Wilentz: Here they are (handing same to Mr. Pope).

Q. These were your notes, were they not, Doctor? A. Yes, sir.

Q. And what did you do with them last night? A. Mr. Wilentz asked if he could see them and I said certainly, and I gave them to him.

Q. So he had them all night? A. Yes, sir.

Q. Doctor, assuming that this particular rail that we have been speaking about is the rail that you saw in March, at which time you say that it contained only one cut nail hole? A. Yes.

Q. Have you explained the appearance of four cut nail holes in the rail as it is now?

Mr. Wilentz: I object to that, if your Honor please, as being—

The Court: You may ask him if he knows anything about how these other holes got in this ladder, if he put them there.

Mr. Wilentz: All right, if he knows how.

Q. All right. Can you tell how they got in there, Doctor? A. No, sir, I have no idea.

Q. But they were not there when you saw it, were they? A. No, sir.

Re-Cross Examination by Mr. Wilentz:

Q. Nothing happened to these notes which you so kindly entrusted to me last evening, did there? A. Not to my knowledge.

Q. Are you a little suspicious about it? A. No, sir.

Mr. Wilentz: Thank you, sir, that is all.

The Court: That seems to be all, Doctor, thank you.

Mr. Pope: That is all, Doctor.

By Mr. Wilentz:

Q. Just a minute. Did you just say to Mr. Pope that those holes were not there or to the best of your knowledge or recollection they were not there? A. Well, all my answers are to my best knowledge and belief. I am telling the truth just as nearly as I can do so.

Q. Just as nearly as you can? A. Yes.

Q. Your recollection may be faulty, or can it not be faulty? A. I wouldn't go to the extreme to say that it can't be.

Q. It would be very extreme if your recollection was faulty, isn't that what you mean? A. I mean I am certain concerning that hole, that there was only one nail hole there at the time I was out there.

Q. Yes, you are positive now. A. Yes, sir.

Q. And that is based, of course, upon the fact that your recollection, you have confidence in your recollection and it would only be an extreme case where you would be wrong? A. Well, that and the fact that I questioned people to find out why they would have a little block of wood in a crate fixed with a square nail, so it wouldn't turn.

Q. Yes. You set up your recollection and judgment against the judgment of men in Washington, men in Wisconsin and other men who saw the ladder at the same time? A. I would stick to my opinion, yes.

Mr. Pope: I object to the question.

Mr. Wilentz: All right.

The Court: What was the doctor's answer?

Mr. Wilentz: He said, he would stick to his opinion.

The Witness: I said I would stick to my opinion.

The Court: You would what?

The Witness: I would stick to my opinion.

The Court: Yes. Is that all gentlemen?

By Mr. Wilentz:

Q. And as to the photographic reproductions taken before you ever saw the ladder, you would still trust your recollection against them, would you not? A. I would have to be certain of the photographic evidence.

Q. In other words, you wouldn't trust anybody but yourself? A. Yes.

Mr. Wilentz: That is all.

By Mr. Pope:

Q. Doctor, have you no interest in the outcome of this case, have you? A. No, sir; absolutely not.

Mr. Pope: That is all, sir.

By Mr. Wilentz:

Q. Did you write a letter of congratulations to the defense attorneys? A. Did I—?

Q. Did you say congratulations to them in the course of this trial in a letter? A. (No answer.)

Q. You can't remember that, can you? A. (No answer.)

Mr. Pope: Did you or didn't you? Not to me you didn't?

Mr. Wilentz: The question isn't answered, is it?

The Witness: I am not on the stand now.

(The witness had left the stand.)

By Mr. Wilentz:

Q. Did you write Mr. Fisher a letter of congratulations on the course of this trial? A. Not in reference to this trial.

Mr. Wilentz: I see. You have no interest in it.

The Court: Counsel seem to want to take a five-minute recess. That may be done.

(At 11:36 a. m. a short recess was taken.)

(11:50 A. M.)

(After a short recess the jury was polled and all jurors answered present.)

Mr. Fisher: William Whithead.

WILLIAM WHITHEAD, sworn as a witness on behalf of defendant.

Direct Examination by Mr. Fisher:

Q. Mr. Whithead, do you know Millard Whited? A. Yes, sir.

Q. How long have you known him? A. All my life.

Q. How old are you? A. Fifty-four.

Q. Have you seen Millard Whited frequently in the last fifteen or twenty years? A. Yes, sir.

Q. Talked with him? A. Yes, sir.

Q. Talked to other people about him? A. (No answer.)

Q. Talked to other people about him, heard him discussed with other people in the community? A. Yes, sir.

Q. Have you talked with other people in your neighborhood? A. Yes, sir.

Q. About the reputation of Millard Whited? A. Yes, sir.

Q. For truthfulness, honesty—for truthfulness, have you talked to them about whether he tells the truth or not? A. Yes.

Q. About whether he is honest or not? A. No, sir.

Q. Have you talked to them about whether Whited is an honest man or isn't? Have you talked to people about that? A. Yes.

Q. What is the reputation of Millard Whited in his own community for truth and veracity?

Mr. Wilentz: Just a minute. I would like to find out whether this gentleman knows what "veracity" means.

Mr. Fisher: I will strike "veracity" and leave it "truth."

By Mr. Fisher:

Q. What is the reputation of Millard Whited for telling the truth, being honest? A. No good.

Mr. Fisher: All right, cross-examine.

Cross-Examination by Mr. Wilentz:

Q. Well, Mr. Millard Whited never was in jail so far as you know? A. No, not that I know of.

Q. But you were, weren't you? A. I were at one time.

Mr. Wilentz: That is all.

Mr. Fisher: Just a minute.

Re-Direct Examination by Mr. Fisher:

Q. What were you in jail for, Mr. Whithead?

Mr. Wilentz: Oh, no, just a minute, if your Honor please. I don't think that makes any difference now. He is talking about the other man's reputation for truth and veracity. Now we are going through a process with this gentleman.

Mr. Reilly: I think the question is improper. The Attorney General is too smart a lawyer to put that question, was this man convicted? He might have been unjustly arrested, he might have been unable to give bail as many a man has, and because Mr. Whithead's reputation as to truth and veracity has been questioned, whether he has been in jail is no criterion that he is a man that does not tell the truth.

The Court: What are you now arguing?

Mr. Reilly: I think we should be permitted to ask—I think we should be permitted to ask this gentleman on the stand whether he was con-

victed and what he was convicted of. It might have been some simple offense.

Mr. Wilentz: Well, all right. I will withdraw the question if he wants to tell us all about it.

Mr. Reilly: What was he convicted of?

Mr. Fisher: Withdraw the question.

Mr. Wilentz: Sir? You withdraw the question? That is all, sir.

Mr. Fisher: That is all.

(Witness leaves the witness stand.)

Mr. Fisher: George E. J. Lenz.

GEORGE E. J. LENZ, sworn as a witness on behalf of the defendant:

Direct Examination by Mr. Fisher:

Q. Where do you live, Mr. Lenz? A. Hopewell.
Q. In the town? A. No, sir, Featherbed Lane.
Q. Do you know Millard Whited? A. Yes, sir.
Q. The witness who testified here? A. Yes, sir.
Q. How long have you known him? A. You mean Whithead here?
Q. I mean Millard Whited? A. Millard Whited, about 20 years.
Q. Did you testify in the Bronx, in the proceedings in the Bronx over there in connection with this case? A. Yes, sir.
Q. How old are you, Mr. Lenz? A. 45.
Q. Do you know a number of people in the neigh-

borhood of Hopewell who are acquainted with Millard Whited? A. Yes, sir.

Q. Have you discussed with those people in the community where he lives his reputation—? A. Yes, sir.

Q. —for truthfulness, his reputation for truthfulness, have you discussed that? A. Yes, sir.

Q. What is the reputation of Millard Whited as to telling the truth? A. Not good.

Q. Would you say his reputation was bad as to truthfulness?

Mr. Wilentz: Just a minute. He has answered the question.

By Mr. Fisher:

Q. Your answer is "not good"? A. Yes, sir.

Mr. Fisher: You may take the witness.

Cross-Examination by Mr. Wilentz:

Q. You and Mr. Whited had some personal difficulties, didn't you? A. Yes, sir.

Q. You sold him some lumber and he didn't pay for it, and you had a quarrel with him, isn't that right? A. No, sir; didn't have no quarrel; don't quarrel with nobody.

Q. Didn't you have a fight with him? A. No, sir.

Q. About the lumber? A. I didn't have no fight.

Q. Well, what? A. What do you mean, a fight? Just what—

Q. Well, you had a controversy with him? A. That's better.

Q. That's better, is it? A. Yes. (Laughter.)

Q. And the controversy was about some lumber

that he bought from you, isn't that right? A. Yes, sir.

Q. And he didn't pay you? A. No, sir.

Q. And he told you he wouldn't pay you because he thought the lumber was stolen, isn't that right? A. He thought so.

Q. He thought so? A. Yes.

Q. He wouldn't pay you for the lumber because he told you that he thought that lumber which you were trying to sell him— A. Yes, sir.

Q. —was stolen lumber? A. Yes, sir.

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Fisher:

Q. It wasn't stolen lumber, was it? A. No, sir.

Q. And he has never paid you yet for it, has he? A. No, sir.

Q. So in addition to being untruthful, he doesn't pay his bills too well? A. No, sir.

Mr. Fisher: That's all.

Re-Cross Examination by Mr. Wilentz:

Q. He is a poor man, you mean, is that it? A. I don't know how poor he is or how rich he is.

Q. Well he didn't have the money to pay you? A. I don't know; he said he wasn't going to pay.

Q. You know he gets up early in the morning and works late at night, you know that, don't you? A. Yes.

Q. You know he doesn't collect any ransom money, don't you? A. Yes, sir.

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Fisher:

Q. You work hard, don't you, Mr. Lenz? A. Yes, sir.

Q. And you don't collect any ransom money, do you? A. No.

Q. And it was your lumber Whited took? A. Yes, sir.

Q. And you haven't gotten paid for it? A. Yes, sir.

Q. And you are a poor man. A. Yes, sir.

Q. And you could use the money, couldn't you? A. Yes.

Re-Cross Examination by Mr. Wilentz:

Q. And you haven't got any ransom money and that is why you are not the defendant, isn't it? A. No, sir.

Mr. Reilly: I object to that.

Mr. Wilentz: I will withdraw it.

Mr. Reilly: Well, don't put such questions that you have to withdraw.

Mr. Wilentz: That is all.

(The witness left the stand.)

Mr. Fisher: Mr. Diehl.

WILLIAM DIEHL, sworn as a witness on behalf of the defense.

Direct Examination by Mr. Fisher:

Q. How do you pronounce your name? A. D-i-e-h-l, Dile.

Q. Mr. Diehl, how old are you? A. Fifty.

Q. Where do you live? A. Hopewell.

Q. Do you know Millard Whited? A. Yes, sir.

Q. How long have you known him? A. Always known him.

Q. How long do you say you have known him? Millard Whited. A. Always known him. Born and raised there by him.

Q. Live in the same neighborhood with Mr. Whited? A. Yes, sir.

Q. Have you discussed Mr. Whited's reputation with people in your community? A. Yes, sir.

Q. Talk to people about him? A. Yes, sir.

Q. Heard people talk about him? A. Yes, sir.

Q. What would you say as to his reputation for telling the truth? A. 'Tain't any good.

Mr. Fisher: Cross-examine.

Cross-Examination by Mr. Wilentz:

Q. Do you remember testifying in the Bronx, in New York, or trying to testify? A. Yes, sir.

Q. You remember you were up there in that courthouse? A. Yes, sir, I do.

Q. Before the Supreme Court Justice? A. Yes, sir.

Q. About the very same subject. A. Yes, sir, I do.

Q. And you remember being asked this question: "Have you discussed with them the reputation for veracity and honesty of Millard Whited"? And your answer was: "No, sir." A. Yes, sir.

Q. And the question again: "Have you"? And the answer was: "No, sir." A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. And when you then testified that you had not discussed the reputation for veracity and honesty of Millard Whited with anybody they wouldn't let you testify any further. You remember that, don't you? A. Yes, sir.

Q. So in the Bronx you swore that you had never discussed this man's reputation for honesty and veracity and here you swear that you have.

Mr. Fisher: That is objected to, your Honor, because it is not a fact. He is asked here does he—

The Court: I shall have to ask you not to interrupt this sort of examination. You stated your objection. I overrule it.

Proceed, Mr. Attorney General.

By Mr. Wilentz:

Q. Now, in addition to that you also— Is this your signature, Mr. Diehl, or is it Dile? A. Diehl.

Q. Diehl. Take a look at it. A. It is.

Q. Sir? A. Yeah.

Q. Yes, you mean, don't you? A. Yeah.

Q. What is that paper? Take a look at it? A. I can't read it.

Q. Can't read it? A. No, sir.

Q. You signed it, didn't you? A. Yes.

Q. Did you know what you signed? A. No, sir.

Q. Sir? A. No, sir.

Q. Did you know it was about Whited? A. Yes, sir.

Q. You knew it was about Whited? A. (No answer.)

Q. You knew it was about whether or not you had discussed Whited's reputation with anybody, didn't you? A. Yes, sir.

Q. You knew that? A. Yes.

Q. Didn't you say, "William Diehl, 50 years old, single"?

Mr. Fisher: Now, may it please your Honor, I object to this, because the witness has said that he didn't know what he signed.

Mr. Wilentz: Well, I am going to try to help him.

Mr. Fisher: Well, that is no way to help him, sir.

The Court: Well, if he has a knowledge he signed it—

Mr. Fisher: That is right.

The Court: I suppose there is a presumption he knew what he signed—at least the Attorney General has a right to inquire about it.

Mr. Wilentz: I will ask that be marked for identification.

Mr. Fisher: May I take an exception to your Honor's ruling? I think the presumption is overcome by his testimony.

The Court: How is that?

Mr. Fisher: I think any presumption which might arise might be overcome by his testimony.

The Court: Well, he hasn't finished testifying yet. Maybe that will be so after we get through with him, but the Attorney General may proceed.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

The Reporter: Exhibit S-298 for identification.

(Paper referred to was marked State's Exhibit S-298 for identification.)

By Mr. Wilentz:

Q. At any rate, in the Bronx, in New York, you testified under oath that you had not discussed the reputation of Mr. Whited for veracity and honesty, isn't that so? A. Yes.

Q. And here you testify that you have discussed his reputation for honesty and veracity today?

Mr. Fisher: Now, that is the question I object to, because it incorporates a statement that is not a fact. In the testimony, sir, the question was: "Have you discussed his reputation with anybody for truthfulness," which, to a man on the Sourland Mountain is a vast difference from veracity, sir.

The Court: Well, perhaps the Attorney General had better modify his question.

Mr. Wilentz: I will sir.

By Mr. Wilentz:

Q. In the Bronx you testified that you had not discussed Mr. Whited—I will withdraw that. In the Bronx you testified that you had not discussed with

anybody the reputation for veracity and honesty of Millard Whited; that is so, is it not? A. Yes, sir.

Q. And here you testify that you have discussed the reputation of Mr. Whited for honesty? A. (No answer.)

Mr. Fisher: I don't think the record will show that. I think the record shows truthfulness.

Mr. Wilentz: Here you have testified to honesty, haven't you?

Mr. Fisher: That is objected to.

Mr. Wilentz: Let him answer the question instead of counsel answering it for him.

By Mr. Wilentz:

Q. Today you have sworn that you have discussed with others the reputation of this man Millard Whited as to honesty, haven't you? A. Yes, sir.

The Court: Does he say yes?

Mr. Wilentz: Yes.

Q. And you are here today, you a man who swore one way one time in the Bronx and another way here today, you are here talking about another man's reputation for honesty?

Mr. Fisher: That is objected to as a characterization.

The Court: I don't think it is necessary to characterize. The objection is sustained.

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Fisher:

Q. Mr. Diehl, do you know what the word "veracity" means? A. No, sir.

Q. Do you know what it means to tell the truth, you understand that in English, do you not? A. Yes, sir.

Q. And you talked to people about Whited as a man who tells the truth or not?

Mr. Wilentz: If your Honor please, that is not proper re-direct. That is his original question. This is not supposed to be an endless situation. We have got to get through some time. On direct examination that was the specific question, "Have you discussed with somebody else the truthfulness of this man"? He has answered that question. Now I have a right to cross-examine him on that very point without having him go back again to ask him the same question.

Mr. Fisher: I think the Atttorney General raised an entirely different issue when he got into the veracity and the honesty and found it wasn't the same as the question asked the witness here. I think I have a right to show he understands what the word "truthfulness" means, but not what "veracity" means.

Mr. Wilentz: Is it contended that he doesn't understand what the word "honesty" means?

Mr. Fisher: I haven't gotten that far yet. If you will just be a little patient, Mr. Attorney General, we may accommodate you.

Mr. Wilentz: If your Honor please, I think that the only purpose of this gentleman's visit

to the stand is with reference to honesty and veracity.

Mr. Fisher: And truth.

Mr. Wilentz: And that is the only question the Court should permit. Now he is being asked the same question that he was asked on direct and that I object to.

The Court: I will sustain the objection.

By Mr. Fisher:

Q. You get a pretty good idea of how a man stands in his community from living with him all your life, don't you, Mr. Diehl? A. Yes, sir.

Mr. Wilentz: I object to that, if your Honor please. Just a minute.

The Court: I sustain the objection

Mr. Fisher: That is all.

Re-Cross Examination by Mr. Wilentz:

Q. Do you know Lenz, who was just on the stand? A. Yes, sir.

Q. What about his mental condition? Do you know anything about that? A. No, sir.

Mr. Fisher: Objected to.

The Court: I sustain the objection.

Mr. Wilentz: All right, that is all.

(Witness excused.)

Mr. Reilly: Mrs. Hile.

AUGUSTA HILE, sworn as a witness in behalf of the defendant:

Direct Examination by Mr. Reilly:

Q. Mrs. Hile, are you the mother-in-law of Mrs. Henkel? A. Yes.

Q. You are the lady she mentioned yesterday when she was testifying here, is that correct? A. Yes.

Q. You knew Isidor Fisch, did you? A. Yes, from the beginning he came.

Q. How many years? A. I knew him the first day he came into this country.

Q. About how long ago was that? A. He came '25.

Q. 1924? A. Yes—'5—November, 1925.

Q. 1925? A. Yes.

Q. Did he ever live in your house? A. No.

Q. He never lived in your apartment, did he? A. (No answer.)

Q. Did he borrow from you some money?

Mr. Wilentz: Just a minute. Just a minute. I object to it as not being material, if your Honor please.

The Court: Well, it has appeared somewhere in this case that—

Mr. Wilentz: Oh, it is not important, of course. I will withdraw the objection if your Honor has any doubt about it.

Mr. Reilly: It may not be so very, very important, but the lady's name was mentioned yesterday, and so that there could be no inference

from the fact that she didn't come down here, I put her on the stand.

By Mr. Reilly:

Q. Did he borrow some money from you? A. Yes.

Q. How much? A. $4,350.

Q. Did he pay it before he sailed for Europe? A. Not a cent.

Q. When did you last see him? A. Oh, I see him, I have seen him on the 2nd of December before he sailed in 1933.

Mr. Reilly: You may examine.

Cross-Examination by Mr. Wilentz:

Q. Do you know whether he invested that money in a pie-baking company? A. The first part he did, I loaned it to him in three parts.

Q. Yes, ma'am. You loaned it to him in three parts? And he wanted the money to invest in a pie business? A. Yes, sir.

Mr. Wilentz: That is all. Thank you.

Re-Direct Examination by Mr. Reilly:

Q. Did he invest any in the fur business, the balance of it? A. He did too, the second and third parts.

Q. And you know he was in the fur business, don't you? A. Yes.

Mr. Reilly: That is all.

Re-Cross Examination by Mr. Wilentz:

Q. Tell me, how much was the first part? A. $1500.

Q. Yes, ma'am. And then how much later? A. One thousand eight hundred and fifty.

Q. Yes, ma'am. And then how much? A. And the last part was a check in the Greenwich Bank for $1,000.

Q. You operated a business yourself some time then, didn't you? You used to run a restaurant? A. I did.

Q. And Mr. Fisch told you he needed some money in a pie company and you loaned it to him? A. Yes.

Q. And then some fur business, and you loaned it to him again. A. Exactly.

Q. Do you run a business now? A. No.

Mr. Wilentz: That is all, Mrs. Hile.

The Witness: Thank you.

Mr. Reilly: Karl Henkel.

KARL HENKEL, sworn as a witness on behalf of the defense:

Direct Examination by Mr. Reilly:

Q. You spell that with a "K," do you, Karl? A. Yes.

Q. Karl Henkel, with a "K"? A. Yes.

Q. Where do you live? A. 156th Street, 342.

Q. 156th Street? A. That is right.

Q. 342? A. That is right.

Q. 342—156th Street. A. That is right.

Q. Bronx? A. Yes, sir.

Q. New York? A. Yes, sir.

Q. How long have you been in the United States? A. Nine years, 1926.

Q. And you are the husband, are you, of Mrs. Henkel, who was on the stand yesterday? A. Yes.

Q. How long do you know Isidor Fisch? A. I know him since 1926.

Q. In America? A. Yes.

Q. How long do you know Hauptmann? A. About 1932.

Q. Where did you meet Fisch? A. I was living with Fisch in one apartment, Fisch, Uhlig and me.

Q. Fisch, Uhlig and you? A. Fisch, Uhlig and me.

Q. Now you will have to keep your voice up, you know. Have you anything in your mouth, any chewing gum or anything? A. No.

Q. All right. Please speak up so we can hear you. You say that you and Uhlig and Fisch lived together? A. That is right.

Q. In the same apartment, is that correct? A. Right.

Q. Whose apartment? A. It was the apartment of the three of us.

Q. Did the three of you maintain this apartment? A. That is right.

Q. When was that? A. This was 1926, with 1928.

Q. Then after that you were married, is that right? A. That is right.

Q. You left the gang and went on with your wife to a separate home? A. That is right.

Q. And Uhlig and Fisch lived together, is that it? A. Lived together, yes.

Q. Where do you say you first met Hauptmann? A. Hunters Island.

Q. Hunters Island. A. That is right.

Q. Were you one of the group of Germans that went up there for the sports— A. Yes.

Q. —and the bathing? A. Yes.

Q. How long before your wife met Hauptmann or how long after your wife met Hauptmann— A. I think—

Q. —did you meet him? A. Maybe a couple days before, eight days maybe.

Q. Before or after? A. Before me.

Q. She did? A. Yes, sir.

Q. And you met him at Hunters Island? A. Yes, sir.

Q. Did you become friendly after that? A. Yes.

Q. Both families? A. Yes.

Q. Did you ever visit his home? A. Yes.

Q. Did he visit your home? A. Yes.

Q. Did you know he was coming in now and then for a cup of coffee in the morning? A. Yes.

Q. Did you have any objection to it? A. No.

Q. Have you ever had the slightest thought in your mind that there was anything irregular or improper between Hauptmann—

Mr. Wilentz: Just a minute.

Q. —and your wife? A. No.

Mr. Wilentz: I object to the question about the thought he had in his mind.

Mr. Reilly: Well, the inference was made here yesterday—

Mr. Wilentz: I object to the question regardless of the argument. The question is whether he ever had a thought in his mind. It is not material to the cause at all and it is not admissible.

Mr. Reilly: I think it is admissible. I don't know, but I imagine that that line of reasoning was well laid down by the State of New York in the People vs. Thaw many years ago and which has been followed in most of the States of the Union, that a man's actions are predicated upon what he learns or thinks, only in that case it was the wife.

The Court: Well, I think the pertinent question is objectionable. You may inquire, if you like, whether he had any feeling against this man.

Mr. Reilly: I will take your Honor's suggestion.

By Mr. Reilly:

Q. First did you ever see anything improper between your wife and Hauptmann? A. No.

Q. Did you ever have any feeling that there was anything improper between them? A. Never.

Q. When you visited Hauptmann's home, how did he treat his wife and child? A. Nice.

Q. When was the last time you saw Fisch? A. Fourteen days before he left for Germany.

Q. Fourteen days? A. I think it was fourteen days.

Q. Where did you see him? A. He was up in mein house.

Q. Did you go down to the dock to see him off? A. No.

Mr. Reilly: You may inquire.

Cross-Examination by Mr. Wilentz:

Q. So you knew both Fisch and Hauptmann, Mr. Henkel? A. Yes, sir.

Q. You were perfectly satisfied that Mrs. Henkel served coffee to Mr. Hauptmann two or three times a week when you weren't there? A. I trust my wife.

Q. Certainly. And you introduced Hauptmann to Fisch, did you not? A. That is right.

Q. You didn't meet Hauptmann until July, 1932? A. That's right.

Q. That was eight days about after your wife met Hauptmann? A. Why, not exactly eight days; she met him in the week, and I came out the next Sunday.

Q. You met Hauptmann at Hunters Island, not your house? A. Right.

Q. Mrs. Henkel didn't bring Hauptmann to your house to introduce Hauptmann to you, did she? A. I introduced Hauptmann to Fisch in my house. I met him in Hunters Island. After that I became friendly and bring him to mein house. In mein house I introduced Fisch to Hauptmann.

Q. That was in July or August, 1932, is that right? A. Yes, sir.

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Reilly:

Q. Did Fisch tell you afterwards that he had known Hauptmann before he came to your house?

Mr. Wilentz: I object to that, if your Honor please.

The Court: I will have to exclude that.

Q. Did Fisch at any time after that discuss Haupt-

mann as to when he met him? A. Not Fisch. My wife told me—

Mr. Wilentz: Just a minute. This is something his wife told him that Fisch told her.

Q. Later on did your wife—just say Yes or No and wait for the Attorney General to object— A. Yes.

Q. Later on did your wife tell you that Fisch had discussed—

Mr. Wilentz: Please don't answer.

Q. —when he had met Hauptmann, with her?

Mr. Wilentz: Just a minute; just a minute now. I object to that if your Honor please.

The Court: The objection is sustained.

Mr. Reilly: Exception.

The Court: Take your exception.

(Exception allowed and the same is signed and sealed accordingly.

(s. s.) THOMAS W. TRENCHARD,
Judge.

Q. Were you here in court yesterday? A. I was here.

Q. Did you hear your wife testify? A. Yes.

Q. As to what Fisch told her? A. Yes.

Q. About meeting Hauptmann? A. Yes.

Q. You believe your wife, don't you? A. Yes.

Mr. Wilentz: Just a minute now; just a minute now. I move that be stricken out.

The Court: I sustain that objection and strike out the answer, if he has answered.

Mr. Reilly: I except.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Mr. Reilly: That's all.

Mr. Wilentz: That's all, sir.

The Witness: Okay.

Mr. Reilly: Henry Uhlig.

HENRY UHLIG, sworn as a witness on behalf of the defense:

Direct Examination by Mr. Reilly:

Q. Where do you live, Uhlig? A. 520 East 157th Street, the Bronx.

Q. Now you were Fisch's best friend, weren't you? A. Yes.

Q. How long did you know him? A. Since 1922.

Q. How many of his relatives are in this country now? A. Well, I don't know. All I know is from the papers.

Q. You haven't seen them? A. No.

Q. Or made any effort to get in touch with them? A. No.

Q. Where did you first meet Fisch? A. In Leipsig, Germany.

Q. You came over here with him, didn't you? A. He came about a month later than I did.

Q. What year? A. 1925.

Q. Where did you go to live? A. We lived in 532 157th Street.

Q. Who with? A. I first lived with the family of Mr. Kirtn for a year. We then took an apartment on the same floor together.

Q. Did the last witness live with you part of the time? A. He later moved into our place.

Q. How long did you live with Fisch? A. We lived up there till 1932, the beginning of '32.

Q. What business was Fisch in? A. He was a fur cutter.

Q. A fur cutter? A. Yes, sir.

Q. What business did he go in after he came to America? A. Well, he told me he indulged in different business than that.

Q. That's what I want to know; what kind of business? A. The pie-baking business.

Q. Well, that failed, didn't it? A. Well, he told me that that failed.

Mr. Wilentz: No, just a minute, if your Honor please, I object to this.

The Court: Well, I don't see how I can admit that.

The Witness: Answer it?

The Court: I sustain the objection.

Mr. Reilly: I think, your Honor—I have

no right to think, but the ruling is correct, because I don't want any conversation.

The Court: I didn't assume that you did.

Mr. Reilly: No, I didn't.

The Court: So the—

By Mr. Reilly:

Q. I don't want any conversation. I want to know from your own knowledge. A. What was the question?

Q. Did you know whether he was in the pie-baking business or not? A. Yes.

Q. Now, you have been down to the Attorney General's office, haven't you? A. Mr. Wilentz? No.

Q. Were you examined by any of his investigators? A. By Jersey officials?

Q. Yes. A. Mr.—Captain Lamb.

Q. Yes. When was that? A. Two or three days after Mr. Hauptmann's arrest.

Q. They took a statement from you, didn't they? A. Yes.

Q. Yes. They didn't call you, though, did they?

Mr. Wilentz: I move that be—I object to the question, if your Honor please, that is apparent, the jury knows we didn't call him.

The Court: Well, has the witness answered?

The Reporter: He has not, your Honor.

By Mr. Reilly:

Q. Now, what other business was he in besides

the pie-baking business? A. Fur dealing business.

Q. Fur dealer? A. Yes.

Q. For how many years was he in that business? A. Well, that I couldn't tell you exactly.

Q. Well, what business were you in? A. I was a fur cutter.

Q. Were you working all the time you were living with Fisch? A. Not all the time.

Q. Fisch supported you, didn't he? A. He did not.

Q. Well, he gave you money from time to time, didn't he? A. He did not.

Q. He paid your passage to Europe? A. That is a lie. He did not pay my fare. He paid my fare with the money that he took from me to invest in his phoney bakery.

Mr. Wilentz: I move that that be stricken out.

The Court: Yes, strike it out.

By Mr. Reilly:

Q. How much money did you give him for the bakery? A. I gave him $400.

Q. And how much was your passage to Europe? A. It was—the ticket was $208 round trip.

Q. Did you have any money with you when you sailed? A. Yes, I did.

Q. Now, will you describe, please, to this jury Fisch's physical condition when he left here, his appearance. A. Fisch was very sick and he was coughing. He also had a little blue bottle with him to expectorate into and I took good care of him on the boat, because he was always weak and went to bed early and didn't take part in anything.

Q. How long had he had that cough? A. He had that cough since 1929.

Q. Can you describe the cough? A. To me it sounded like a consumptive cough.

Q. He had it for how long? A. Since 1929.

Q. So that he had that cough in April, 1932, didn't he? A. Yes, he did.

Q. Now, when you went to Germany with Fisch, do you know how much American money a traveler could take into Germany at that time? A. You could take in any amount of money.

Q. You had to register it, though, didn't you? A. Yes.

Q. You had to register the money that you took in, with the Government, the German Government? A. Yes, you did.

Q. Did you register your money? A. Yes, I did.

Q. Now, if you wanted to make an exchange of American money, did you exchange any in Germany? A. I did not. I took traveler's checks with me, made out in German marks.

Q. Were you familiar at that time with the regulations covering exchange of American money into German marks, when you were there? A. We were told them.

Q. Where would you exchange that if you wanted to exchange American money? A. You would have to go to the bank and take American passport with you and it would be stamped in there.

Q. They were stamped on the passport, the amount of your exchange? A. Yes.

Q. Is that correct? A. Yes.

Q. So that any person that had American money in Germany when you were there with Fisch and wanted to exchange it for German money would have to take it to a registered bureau of some kind, a bank or travel bureau, exhibit his passport and have a notation made of the money? A. Yes, sir.

Q. Now, in addition to that, there is a German police card, isn't there, made out by everyone that enters Germany? A. Yes, sir.

Q. Did you make one out? A. Yes, I did.

Q. Do you know whether Fisch made one out or not? Were you with him when he made one out? A. No, I wasn't with him when he made it out.

Q. This form that you make out when you went into Germany at the time you went in with Fisch is known as the police card, is it not? A. Well, registration—

Q. With the police? A. Police card? I don't understand the question.

Q. When a person enters any foreign country or foreign city, and especially directing your attention to Germany in 1933, just before Christmas— A. Yes, sir.

Q. —when you and Fisch arrived, wasn't it the custom there and hasn't it been the custom for years for the person as soon as he arrives in any particular town, no matter where it is or as many towns as he visits, he must immediately fill out a police card? A. Yes.

Q. Whether you go to a hotel, you fill out a police card? A. Yes, sir.

Q. Whether you go to a boarding house or whether you go to your own home, is that correct? A. That is right.

Q. That is the German regulations? A. That is right.

Q. And it contains all the information concerning your name, address, passport, is that correct? A. Yes.

Q. Where you came from? A. That is right.

Q. And how long you are going to stay? A. Approximately how long you are going to stay.

Q. Yes. You made one out, didn't you? A. I did.

Q. How long did you stay there? A. I stayed there till the last week in March—in April.

Q. Now, do you remember going over on the boat, there was a Mr. and Mrs. Schwartz on the boat? A. I do.

Q. Now, do you remember when you landed at Hamburg, was it? A. Yes, sir.

Q. Did you land at Hamburg? A. Hamburg.

Q. Were you standing next to Fisch when the Custom Officers came on board? A. Yes.

Q. How much baggage did Fisch have? A. He had two pieces of baggage.

Q. Well, what were they? A. There was one big suitcase and a bag—a zipper bag.

Q. Now, what—the suitcase, had he purchased that in the United States? A. He told me he bought it second-hand.

Q. No, no.

Mr. Wilentz: No.

A. He said—

Mr. Wilentz: No. Just a minute, now.

Q. Do you know of your own knowledge? A. No.

Q. All right. Well, you had been his pal. A. Yes, sir.

Q. How long before he took the boat to Europe did you see that bag? A. About two weeks.

Q. And you lived with him at that time, didn't you? A. No.

Q. Well, you were in his company all the time, weren't you? A. Yes, I would go up to see him.

Q. Well, this is a new bag that suddenly appeared on the scene two weeks before he sailed? A. Yes.

Mr. Wilentz: Now, I object to that as not being—

The Court: Well, I—

Mr. Wilentz: Well, he said yes. All right.

The Court: Well, I think that is rather objectionable. On that account—

Mr. Wilentz: I don't want to—

By Mr. Reilly:

Q. Well, there was a bag that you hadn't seen, is that correct, in the possession of Fisch until two weeks before he sailed, is that correct? A. Yes.

Q. Now, did you ever see the inside of the bag? A. Yes.

Q. What kind of a lining did it have? A. It had a light plaid lining.

Q. Was it cloth or paper? A. I couldn't say that.

Q. How large a bag? Describe it with your hands, please. A. It would be about that large, that high, and that—it had an extension on one side.

Q. It was a regular traveler's grip, was it? A. Yes.

Q. Was it filled with wearing apparel? What did he have in it? I will put it that way.

Mr. Wilentz: I object to that.

Q. If you know.

Mr. Wilentz: I object to that.

A. I don't know what he had in his bag.

Mr. Wilentz: All right.

Q. But you saw the inside of the bag some time, did you? A. Yes, he showed it to me.

Q. What kind of a lining did it have? A. A light plaid lining.

Q. Cloth? A. My knowledge isn't that much, that I know whether it is linen or cloth, or what.

Q. It wasn't paper, was it? A. No, it was stiff.

Mr. Wilentz: He said he didn't know, twice, whether it was cloth or paper.

By Mr. Reilly:

Q. Well, how did Fisch act as he stood being examined by the emigration authorities at Hamburg?

Mr. Wilentz: I object to that, if your Honor, please.

The Court: How did he act? I don't see the materiality of it.

Mr. Reilly: I may be able to connect it up later.

The Court: Well, at the moment it seems to be immaterial.

Mr. Reilly, we will now take a recess until 1:45. Let the people remain seated in the court room until after the jury has retired.

(At 12:33 P. M. the jury retired.)

The Court: Now the prisoner will be remanded to the custody of the Sheriff and he may retire.

(The prisoner retired in the custody of the Sheriff.)

The Court: We will now take a recess until 1:45.

(At 12:36 P. M. a recess was taken until 1:45 o'clock P. M.)

(1:45 P. M.)

AFTER RECESS

(The jury was polled and all jurors answered present.)

HENRY UHLIG resumed the stand:

Direct Examination (continued) by Mr. Reilly:

Q. Do you recall the day you sailed from New York with Fisch? A. Yes, sir; 6th of December—the 6th of December, 1933.

Q. And what date did you land in Germany? A. I landed in Germany the 15th of December, 1933.

Q. Now, do you remember being in the home of Fisch's— Where did he go, to the home of his parents? A. Yes.

Q. Were you there the day he went to the hospital? A. I was there, but he had left already.

Q. Well, did you at any time see Fisch give his sister any papers? A. No, I did not see that.

Q. Sure about that now? A. Yes, sir.

Q. You know his sister, don't you? A. Yes, I do.

Q. She was in Leipsig, wasn't she? A. Yes.

Q. Fisch was living in her house? A. Yes.

Q. He went to the hospital? A. Yes.

Q. Were you there the day he went to the hospital?

Mr. Wilentz: He has already said—

A. I was there, but he had left already.
Q. You are sure about it? A. Yes. I was in the house.
Q. Did you ever say that you were there when Fisch gave some papers to his sister?

Mr. Wilentz: I object to that, if your Honor, please. He has already said that he was not there. It is his witness. What he said at some other time—

The Court: This is your witness, Mr. Reilly.

Mr. Reilly: Yes, but I am going to try to show that he is a hostile witness.

Mr. Wilentz: Hostile?

Mr. Reilly: I am going to try to show that this witness is more concerned in his memory and affection for Fisch than he is for—

Mr. Wilentz: Well, now, if your Honor, please, there is no basis or foundation for that, and not only that.

Mr. Reilly: Maybe I can develop it.

The Court: Maybe you can. It hasn't appeared yet, Mr. Reilly. I sustain the objection.

Q. How long did you spend in Germany with

Fisch? A. From the time I landed until the day he went to the hospital I saw him I would say twice a week.

Q. Did you live in the same town? A. Yes.

Q. You knew he left some bundles with Hauptmann, didn't you? A. Yes.

Q. After he died you went back to Hauptmann's, didn't you, and tried to get the bundles? A. Yes.

Q. He wouldn't give them to you, would he? A. He did.

Q. What did he give you? A. We went down into his garage and he showed me two suitcases.

Q. Did you take them? A. No, we left them there.

Q. In particular you were looking for a little small package that Fisch left, weren't you?

Mr. Wilentz: Now to that, if your Honor, please, I object.

The Court: Yes. Yes, I will sustain the objection at this time.

Mr. Reilly: May I have an exception?

The Court: Take your exception.

(Exception allowed and the same is signed and sealed accordingly.

(s. s.) THOMAS W. TRENCHARD,
Judge.

Q. Now Fisch had been educated in Saxony, hadn't he? A. Yes, sir.

Q. That's Germany, isn't it? A. Yes, sir.

Q. He had, did he not, a Saxon dialect? A. He did.

Q. He wrote, did he not, with Saxon script?

Mr. Wilentz: I object to these things—

The Witness: Yes.

Mr. Wilentz: I object to these things being testimony, not questions.

The Court: It is leading, Mr. Reilly. I sustain the objection.

By Mr. Reilly:

Q. How did he write? What was the character of his handwriting in connection with the way he had been taught in the schools of Saxony? A. It was more or less that German script somewhat, the pointed—

Q. Were you educated in the German schools, too? A. A few years.

Q. Now, Fisch had a friend named Kern, didn't he? A. Yes.

Q. Kern was a fur hunter? A. Yes.

Q. Kern lived where? A. He also lived in Leipsig.

Q. In this country where did he live? A. He lived in numbers of places; I lost track of him.

Q. Where did he live March 4th, 1932? A. That I don't know.

Q. Isn't it a fact that Kern, Fisch's friend, lived in Brooklyn, March 4th, 1932?

Mr. Wilentz: The witness has said he doesn't know.

Mr. Reilly: Maybe I can refresh his recollection.

The Witness: I don't know that.

By Mr. Reilly:

Q. Did you ever know Kern to live in Brooklyn? A. Yes.

Q. When did he live in Brooklyn, to your knowledge? A. He lived in Brooklyn in 1927.

Q. How long did he live there? A. How long he lived there I don't know.

Q. He may be living there yet, for all you know?

Mr. Wilentz: Oh, I object, if your Honor, please.

A. He still lives in Brooklyn.

Mr. Wilentz: I move the answer be stricken out, if your Honor, please.

The Court: Strike it out.

Mr. Wilentz: I object to the question.

Mr. Reilly: I except.

The Court: Well, let me know what the answer is. I couldn't hear it.

(The Reporter read the answer: "He still lives in Brooklyn.")

The Court: The answer is he still lives in Brooklyn.

The Reporter: Yes, your Honor.

The Court: Well, I won't correct that. I don't know the materiality of this.

Mr. Reilly: I will try and connect it up, sir.

By Mr. Reilly:

Q. Do you know what they call the part of Brooklyn Kern lived in? A. He lived in, I think it is Williamsburg.
Q. Yes.

Mr. Reilly: Now, may I have the second ransom note, please?

(Captain Snook handed Mr. Reilly a ransom note.)

The Court: Mr. Uhlig, when you testify I wish you would raise your voice, speak deliberately and rather loudly so that we can all hear.

The Witness: Yes, sir.

The Court: Just remember that, please.

The Witness: Yes, sir.

By Mr. Reilly:

Q. In your business connections with Fisch, especially in the pie baking company, did you ever see him write? A. Yes, sir.
Q. Did you ever see him print anything? A. Yes. He was in the habit of printing things.
Q. Yes. Well, I show you the State's Exhibit S-19, an envelope addressed to Colonel Lindbergh, mailed Brooklyn, New York, March 4th, 9. P. M.,

and ask you to look at it carefully. (Witness examines envelope.) Does that resemble—

Mr. Wilentz: Oh, I object to that, if your Honor, please.

Mr. Reilly: Well, I can reframe the question.

Mr. Wilentz: All right.

Q. Does that resemble Fisch's printing?

Mr. Wilentz: I object to that, if your Honor, please.

The Court: If it is a question of handwriting, of course, if the witness can testify that he knows Fisch's handwriting—

Mr. Reilly: He said he knew it. He saw him write and saw him print.

The Court: Saw him print?

Mr. Reilly: And write. And this is a printed envelope. Now it may be that he will say yes or no. I don't know. But possibly the man is familiar with Fisch and he may or may not know.

The Court: Well, what is the question?

(The pending question was read as follows: "Does that resemble Fisch's printing?")

Mr. Wilentz: I object to the question, if your Honor, please.

The Court: I will allow the witness to answer that question, if he knows.

Mr. Wilentz: Do you know?

The Witness: No, I don't know.

By Mr. Reilly:

Q. Where did Hauptmann, this defendant, live in March, 1932, if you know? A. I didn't know Mr. Hauptmann that time.

Q. What month did you get acquainted with him? A. In the fall of 1932.

Q. Where was he living then? A. I don't know.

Q. Met him in Hunters Island? A. I met Mr. Hauptmann in Mr. Henkel's house.

Q. Well, that wasn't in Brooklyn, was it? A. No, in 127th Street, in Manhattan.

Q. Harlem? A. Yes, sir.

The Court: I will interrupt you for a moment, Mr. Reilly. I have another communication here from members of the press who are assigned seats in the gallery. They complain of conditions there. The complaint relates to matters that I cannot determine from this viewpoint. Hereafter, if the members of the press in the gallery have any complaints to make about conditions in the gallery, they will address their complaints, instead of addressing them to me, to the Sheriff, and the Sheriff will see to it that the orders of the Court, which he perfectly understands, are carried out.

You may proceed now, Mr. Reilly.

Mr. Reilly: I think that's all, General.

Cross-Examination by Mr. Wilentz:

Q. Mr. Fisch was an American citizen, wasn't he? A. Yes.

Mr. Wilentz: That's all, Mr. Uhlig.

Mr. Reilly: Mr. Manley.

WALTER MANLEY sworn as a witness in behalf of the defendant:

Direct Examination by Mr. Reilly:

Q. Now, Mr. Manley, just sit back and get comfortable. You live in the Bronx? A. Yes.

Q. How long have you lived there? A. For thirteen years.

Q. What is your business? A. Paint.

Q. How long have you been in that business? A. About 28 years.

Q. Are you Danish? A. Yes.

Q. Do you know Fredericksen's bakery? A. Yes, sir.

Q. Did you ever do any work there? A. I done twice is all.

Q. So you know Mr. Fredericksen quite well? A. About eight or nine years.

Q. On March 1st, 1932, were you in the bakery? A. Yes.

Q. What time? A. Quarter after seven.

Q. And what were you doing there? A. Buying some Danish pastry and bread.

Q. Did you see Mrs. Hauptmann there? A. Yes.

Q. Did she wait on you? A. Yes.

Q. Did you see anybody else there that you see

in the court room? A. I see Mr. Hauptmann sitting over there. (Pointing in direction of defendant.)

Q. You saw him in the bakery? A. Yes, sir.

Q. Where was he, what part of the bakery? A. He was in front of the bakery, sipping coffee.

Q. In the front part of the bakery? A. Yes, drinking coffee.

Q. Mr. Manley, did you afterwards tell what you saw—just answer this yes or no—to some man in the past two months on a job that you were working on in New York? A. Yes.

Q. A man named Grant? A. Yes.

Q. Did he communicate with me? A. Yes.

Q. Is that how you came to be a witness here? A. Yes.

Q. Have you been under subpœna for the last seven or eight days? A. No.

Q. Well, have you been asked to come down here during the last seven or eight days? A. Yes.

Q. Were you ill? A. I was sick in bed.

Q. Did you come from your sickbed here to testify? A. Yes.

Mr. Reilly: The witness is yours.

Cross-Examination by Mr. Wilentz:

Q. What is your present occupation? A. Painter contractor.

Q. Are you employed? A. Yes, I got a super's job now, because there is nothing to do now. I have been working for myself for twenty-three years.

Q. Just a minute. What are you doing now? A. I am doing painting now.

Q. CWA? Yes, and I work for different jobs, painting.

Q. CWA? A. Yes.

Q. You knew Mrs. Hauptmann, did you not? A. Yes, sir.

Q. You have known her for quite some time? A. Yes, sir.

Q. You knew her at least since 1932? A. Yes, I know her from 1928 or '29.

Q. And you knew Mr. Hauptmann? A. No, I never know Mr. Hauptmann before that night.

Q. Well, you knew him that night, anyway? A. Yes, I certainly do.

Q. You knew that was Mr. Hauptmann? A. Yes, sir.

Q. So on March the 1st, 1932, you knew Mrs. Hauptmann? A. Yes, sir.

Q. You had known her since 1928? A. Yes, sir.

Q. And on March the 1st, 1932, you knew Mr. Hauptmann? A. Yes.

Q. You read, do you not? A. If I what?

Q. You are able to read, are you not? A. Oh, yes.

Q. And you read newspapers? A. Oh, yes.

Q. Now, in 1934, did you see the newspapers with pictures of Mr. Hauptmann and Mrs. Hauptmann? A. I see it 1934, yes, after September, that was the time.

Q. Yes, after he was arrested? A. After he was arrested.

Q. Did you go to the Bronx court house— A. No, sir.

Q. —and tell the judge that was holding the court there? A. No.

Q. Did you tell the District Attorney? A. No, sir.

Q. Did you tell the policeman? A. No, sir.

Q. You didn't notify any of the authorities? A. No.

Q Did you notify Mr. Fawcett? A. No.

Q. What time were you in the bakery? A. I was about quarter after seven.

Q. Quarter after seven? A. Yes.

Q. What time did you leave? A. I was there about four minutes—four, five minutes—three, four, five minutes.

Q. Was Mr. Hauptmann drinking coffee then? A. Yes, sir.

Q. Just one cup? A. I couldn't tell how many cups; he was drinking coffee while I was there three or four minutes.

Q. Did it look like a lot of coffee he was drinking from quarter after seven until half past eight? A. Well, I don't know.

Q. You saw him drinking a cup of coffee? A. Yes, sir.

Q. Nothing else? A. That is all.

Q. He had a cup of coffee in front of him? A. Yes.

Q. And he was drinking it? A. Yes.

Q. You are a very sick man, aren't you? A. I certainly is.

Mr. Wilentz: All right, sir, that is all.

Mr. Reilly: Thank you, sir.

(Witness leaves the stand.)

Mr. Reilly: Mr. Friedlander. Will you see if he is on the front stoop?

(There was no response.)

Mr. Reilly: He apparently is not here. May I inquire if the Court will ask the Attorney General whether we are to have Miss Alexander for the purpose of cross-examination?

The Court: You may ask him.

Mr. Reilly: General, do you expect the young lady to attend again?

Mr. Wilentz: Well, of course, I don't know—she hasn't been here every day since the request was made and naturally she is not here now; but I will discuss it with Mr. Reilly at our recess hour.

Mr. Reilly: All right.

Mr. Wilentz: With some other matters.

Mr. Reilly: I watched for her every day and I didn't see her here.

Mr. Pope: Mr. Seal.

STANLEY SEAL sworn as a witness on behalf of the defendant:

Direct Examination by Mr. Pope:

Q. Mr. Seal, where do you live? A. Flemington, 18 Bonnell Street.

Q. How long have you lived in Flemington? A. Between three and four years.

Q. And what is your occupation? A. Pattern maker.

Q. How long have you been a pattern maker? A. Between eleven and twelve years.

Q. And where are you employed? A. Foran Foundry.

Q. And will you just tell the jury briefly what kind of patterns you make in the foundry, a com-

plete description of them? A. Wood patterns; wood patterns.

Q. Wood patterns? A. (No answer.)

Q. And during the past eleven or twelve years have you been accustomed to working with tools? A. Yes, sir.

Q. Your work is entirely upon wood, is it not? A. Yes.

Q. During that time? A. (No answer.)

Q. Are you familiar with planes and plane bits? A. Yes.

Q. And have you a general familiarity with the markings of plane bits, that plane bits will leave upon wood? A. Yes.

Q. If a nick develops in the wood? A. Yes, sir.

Q. And have you constructed a small wooden plane there for demonstration purposes? A. Yes, I made this.

Q. Will you explain that to the jury, just explain how it is constructed and why? A. These two pencils here represent the nicks in the plane. I can demonstrate it better.

Q. They represent, the two pencils are placed merely for the purpose of demonstrating the distance between two points? A. Right.

Q. Be it a thousandth part of an inch or three inches or a foot? A. (Nods head.)

Q. And that is what you have the pencils going through there for? A. Where can I tack this down; right here?

Mr. Wilentz: What is the next question? Just a minute, young man.

Q. And you constructed that yourself? A. Yes, sir.

Q. Now, from your experience as a woodworker, is it possible to recognize with any degree of cer-

tainty the markings of a plane bit upon a piece of wood? A. I don't know.

Q. And trace it from the wood to that particular plane bit?

Mr. Wilentz: He said he didn't know.

The Witness: I don't know.

Q. Does it make any difference in what manner the plane is held and the blade passed over the wood as regards the marks that will be shown by the plane bit if there are nicks in it? A. Yes.

Mr. Wilentz: I object to it. He has said he didn't know whether they left marks.

Mr. Pope: He didn't say anything of the kind.

Mr. Wilentz: I will leave that to the Court.

The Court: What was the answer of the witness?

The Witness: Yes.

The Court: Let it stand.

By Mr. Pope:

Q. Now will you take your plane there and demonstrate to the jury why it makes a difference in the markings of the nicks in the plane bit because of the angle or position in which the plane itself is held while it is passed over the wood? A. Yes, sir.

(Witness demonstrates on end of Judge's bench.)

A. You run it straight—

Q. Now you will have to talk out loud so the jury can hear you. A. You run the plane parallel with the edge of the board first as near as possible; it makes a mark that wide (indicating). Now I run it on an angle, it makes a difference.

Q. It makes a different mark? A. A difference of about five-eighths of an inch or three-quarters.

Q. That is the difference in between the ridges? A. Between the two.

Q. Your pencil that you have used in your demonstrating planes there are used for the purpose of demonstrating ridges that would be made by a plane bit? A. Yes.

Q. Assuming that there were only two nicks in the plane bit— A. Yes.

Mr. Pope: We offer this.

The Reporter: In evidence?

Mr. Pope: Yes.

The Court: Any objection?

Mr. Wilentz: I don't know, there seems to be some printed matter on the other side.

Mr. Pope: Not the printed matter, it is just simply printing for a concert of the symphony orchestra, it means nothing at all, just a piece—the only thing we offer, of course, is this, for the purpose of showing the difference in the markings.

Mr. Wilentz: May I reserve my objection for the time being and see, maybe I will consent to it?

By Mr. Pope:

Q. Now, do you also have a jointer plane with you? A. Yes. (Produces.)

Q. And have you any nicks in your jointer plane? A. Well, there might be some if you magnify them with a microscope.

Q. I see. Well, now, will you just use your plane and show us with the plane itself what difference it makes in the angles— A. Where shall I clamp the board?

Q. —depending on how the plane is held? A. Shall I clamp the board right here?

Q. Oh, yes. A. (Clamps board to side of Judge's bench.)

Q. Maybe I can help you. Now, explain to the jury what you are going to do. A. Take a cut straight first, parallel with the board. (Does so.) Now I will cut one on an angle; on an angle. (Does so.) That was about forty-five degrees, I guess; I have got a protractor there.

Q. A bevel protractor? A. Yes. (Planes another shaving.) Now, if there were two nicks in that plane it would make a narrower—it would be different widths when you plane on an angle. It would be wider when you plane straight than it would be when you plane on an angle. (Illustrating.)

Q. In other words, as you turn the plane on the angle, the width between the plane markings narrows up? A. Narrows up, yes.

Q. Now, were there any markings on the board, or is your bit smooth? A. Smooth. (Planes off another shaving.) Smooth.

Mr. Pope: Cross-examine.

Mr. Wilentz: No questions, young man.

Mr. Pope: Can I help you take your things?

The Witness: Yes.

Cross-Examination by Mr. Wilentz:

Q. As long as you are here for a minute your plane knife had no nicks in it, did it? A. You couldn't see them with the naked eye.
Q. You don't see any nicks? A. No.
Q. And it doesn't show up on the experiment? A. No.
Q. Absolutely smooth? A. Smooth.

Mr. Wilentz: Thank you, sir.

(Witness excused.)

Mr. Pope: Is the plane here that was in evidence? Do you have that?

Mr. Wilentz: We will get it for you. Bring it out, please, will you? The plane. Is that what you want, Mr. Pope?

Mr. Pope: Yes, just the plane. That is all.

Mr. Wilentz: I understand counsel is recalling the witness?

Mr. Pope: Yes. My associate suggested something to me which did not occur to me and I think, perhaps, it will be better to recall him.

STANLEY SEAL resumes the stand.

By Mr. Pope:

Q. Just put your board back there again. Put it on this side. Put the handle on this side and I will help you. Now this blade, I don't know, it has been out and in, you may have to set it so it will cut a shaving. (Handing the witness a plane.) Now take a shaving off one end of the board with that plane—wait until we get the exhibit number for the record—Exhibit 177—and take it as nearly straight as you can take it all the way across the board. (The witness proceeded with the demonstration.) Now then, just turn the board over. Well, can you angle it and by using half of the board show the difference in the angle? A. You will have to plane it off smooth.

Q. I don't want you to do that. I want you to leave the marks on the board. Turn your board around. Now hold the plane on an angle and take a shaving off. (The witness proceeded with the demonstration.) Now does that show the difference in the markings? A. That should show a difference, that should show the difference.

Mr. Wilentz: It should show the difference?

The Court: It should show the difference, he says.

Mr. Pope: Is there any objection to our sawing the board in two in the middle so the jurors can compare the difference in the markings without turning it over?

The Court: Have I any objection?

Mr. Pope: Have you any objection, Mr. Attorney General to sawing the board in two to make it easier for comparison?

Mr. Wilentz: You mean when you finally use it, you want it sawed in two?

Mr. Pope: Yes.

Mr. Wilentz: I don't see any objection as to whether it is cut in two or not.

Mr. Pope: We offer the board in evidence.

Mr. Wilentz: I have no objection.

The Court: It will be admitted. I understand the Attorney General is not going to object to your sawing the board in two if you want to.

(The board was received in evidence as Defendant's Exhibit D-61.)

Q. Just a minute now. Now will you mark with a lead pencil, if you can, which side you planed on an angle and which side you planed straight. Mark an "A" on the side that you planed at an angle. A. (Witness marks exhibit.)

Q. And then mark an "S" on the side that you planed straight. A. (Witness complies.)

Mr. Pope: All right, that is all.

Cross-Examination by Mr. Wilentz:

Q. Regardless of whether you planed it straight along or you planed it at an angle, so far as the nicks

are concerned, whether there is a distance between them or otherwise, the nicks are the same distance apart? A. In the planed side only.

Q. And on the piece of lumber? A. No, they are different on the lumber, different widths.

Q. Is it the same width, the relative position, between one nick and the other on each side, whether they be at an angle or straight, the nick itself? A. The same depth.

Q. The same what, sir? A. The same depth.

Q. What do you mean "same depth"? A. The height of the nick, how far down the plane blade goes.

Q. You can tell it is the same nick? A. Yes, you could tell it is the same nick.

Q. I mean, you can tell it is the same nick in that blade? A. Yes.

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Pope:

Q. But the difference between the two nicks or three nicks changes as you change the angle of the plane, doesn't it? A. It changes in width.

Q. Changes the width between the nick? A. The height stays the same.

Q. The height stays practically the same. And it also changes the size of the ridge, doesn't it, when you angle the bit? A. Yes, makes it narrower.

Q. Makes the ridge narrower? A. (No answer.)

Re-Cross Examination by Mr. Wilentz:

Q. You have just used this plane, haven't you? A. Yes.

Q. It shows nicks on both sides, doesn't it, on both sides of this piece of wood that you used? A. Yes.

Q. In other words, you have used Mr. Hauptmann's plane and, in using it on your piece of lumber here, 61, after using it, each side which you used with Hauptmann's plane shows nicks from the plane, doesn't it. A. Shows nicks, but not alike.

Q. Well, you have changed the angle? A. Yes.

Q. That's why? A. That's why they are not alike.

Mr. Wilentz: All right, sir; that is all.

Mr. Pope: That is all, Mr. Seal.

The Court: Are you ready to proceed?

Mr. Fisher: Mr. Pope has gone out for another witness.

The Court: Oh, yes.

Mr. Pope: Hugh Orr.

HUGH ORR sworn as a witness in behalf of the defendant:

Direct Examination by Mr. Pope:

Mr. Pope: Mr. Orr is rather hard of hearing and I will probably have to stand close to him.

Q. You may look at the jury, but I still stand here where you can hear me. A. Yes.

Q. Can you hear me now. A. Yes.

Q. Where do you live, Mr. Orr? A. Brockton, Massachusetts.

Q. And how long have you lived there? A. Well, I have—

Q. For a number of years? A. Not constantly. That is my home town. I was born in Brockton, but for some years I was a resident of Boston, about fifteen years out of a total of—

Q. Are you a graduate— A. —of sixty years. I am sixty years of age.

Q. You are graduated from what institutions of learning? A. Massachusetts Institute of Technology.

Q. And what courses did you take? A. I took the course in architecture, which involves other courses in the physical, in physics, mechanics, applied mechanics, and things of that sort.

Q. And for how long have you practiced since your graduation? A. Well, ever since.

Q. I see. And when were you graduated from Massachusetts Tech? A. In 1897.

Q. And you are— A. But I kept my office for a period of thirteen years, from 1903 to 1916.

By Mr. Pope:

Q. Mr. Orr, have you examined the photographs of the plane markings in evidence in this case? A. Yes.

Q. Are the so-called plane bit markings, showing upon those photographs, solid bodies? A. Yes.

Mr. Wilentz: Just a minute. All right. The question is answered. He has answered the question.

Mr. Pope: Do you want to cross-examine him?

Mr. Wilentz: On what?

Mr. Pope: On his qualifications.

Mr. Wilentz: Is it contended that he is qualified.

Mr. Pope: Absolutely.

Mr. Wilentz: Well, then I do.

The Witness: That's too simple to—

Mr. Pope: All right, then. Go ahead.

By Mr. Wilentz: (voir dire.)

Q. You are an architect, are you not? A. You will have to speak a little louder.

Q. You are an architect, are you not? A. Yes, I am an architect.

Q. That is your profession? A. Yes.

Q. Have you ever testified in court— A. I have.

Q. Just a minute. A. Didn't you say have you?

Q. Have you ever testified in court as to the variations in grain? A. No, sir.

Q. Weight or strength of lumber. A. No, I haven't had any occasion to.

Q. You have had no occasion to. Have you ever made a study of the variation in grain, weight or strength of lumber? No.

Q. Have you made a particular study of defects in lumber? A. No, sir.

Q. Have you made—as a matter of fact, you haven't made any particular study of lumber, have you? A. Well, not as a—to—if you say a special study, no.

Q. Well— A. Only what would come within the range of a knowledge—

Q. —of an architect. A. —architect's practical use of lumber, its strength.

Q. In other words, you are an architect, and when you design or draw sketches for the construction of buildings, of course, buildings have got to be built with something? A. Oh, yes.

Q. And some of the buildings are built with lumber? A. Yes.

Q. And that is your connection and contact? A. Yes.

Q. And that is the extent of your experience with lumber, is it not? A. Yes, sir.

Q. Do you know the names of any of the authorities on identification of wood? A. I couldn't tell you offhand, no, sir.

Q. You don't know any, do you? A. I will let it go that way. I just as soon have it that way.

Q. You just as soon have it that way. Have you ever made a study of marks made by particular tools, machinery or other agencies upon wood and lumber? A. No, sir.

Q. You have not. Do you know what spring wood is? A. Pardon me?

Q. Do you know what spring wood is? A. Well —not—I might have a hazy idea about it.

Q. Hazy idea? A. But let it go, it is of no consequence to me.

Q. Let it go, it is of no consequence to you? A. Yes.

Q. You mean you would rather not qualify as knowing what it is? A. Yes.

Q. Do you know what is meant by summer wood? A. Not by that name.

Q. In other words, you and I can agree that you don't know sufficient about wood— A. I am not a wood expert.

Q. Wood, its birth or growth or anything else about wood, so that you could testify about it. A. No, sir.

Mr. Pope: The witness is not called to testify on the subject of wood at all.

Mr. Wilentz: He is called to testify on the subject of physics and purely of physics and that is all.

By Mr. Pope:

Q. Did you take a course in physics in Massachusetts Tech? You did, did you not? A. Yes, all students have to.

Q. And in your course in physics, did you learn to measure solid bodies? A. It is common knowledge.

Mr. Wilentz: Pardon me a minute. Do you contend now that he is qualified on physics?

Mr. Pope: I contend that he is perfectly qualified to testify to the questions that we are going to ask him, sir.

Mr. Wilentz: When you have completed what you consider the qualifications questions I would like to know it so that I may examine him on that.

Mr. Pope: This witness is merely called to testify to the markings, the dimensions of the markings made by the plane bit on the wood, that is all. He is not called to testify to annual growth or rings or strength of wood or anything of that sort. It is purely a question of physics, on the three dimensions.

Mr. Wilentz: He has testified he is not qualified to testify as to any markings made

upon lumber by any of these tools and instruments. That was one of the specific questions I asked him. Will you please read back the record, if the Court has no objection, as to the question I asked him, whether or not he knows anything or something to that effect as to the markings on wood by implements and machinery, and so forth.

Mr. Pope: He asked him if he had made any special study of that and he said he had not.

The Reporter: The record has gone upstairs. We will have it back in a moment.

Mr. Pope: I have no objection to the Attorney General asking him any questions regarding his knowledge and qualifications on physics, if he wants to.

The Court: It is for you to qualify him, Mr. Pope.

Mr. Pope: I have done so. I have shown he is a graduate of Massachusetts Tech and among the studies and courses he took there was physics. Now I propose to ask him three or four questions of physics, that is all.

The Court: Well, you stated here a moment ago for what purpose you undertook to qualify this man as an expert, and that was his expertness in showing the markings on wood, or something to that effect.

Mr. Pope: No.

The Court: No? That is not it?

Mr. Pope: Identification of markings on wood.

The Court: Identification of markings?

Mr. Pope: The possibility of identifying markings on wood without the measurements of the three dimensions. That's all. That's purely a question of physics.

The Court: Well, now, you think you have qualified him, do you?

Mr. Pope: I think so.

The Court: Well, the Attorney General may cross-examine him then.

By Mr. Wilentz (voir dire):

Q. Do you know that markings on wood depend upon the grain of the wood? A. That would affect shape, size and so forth; give various—

Q. That's one of the very important factors, isn't it? A. Yes. Yes, there are a great many.

Q. In other words—

Mr. Peacock: We can't hear the witness.

Q. In other words, one piece of wood having markings by a tool might show one mark and another piece of wood with different kind of grain would result in a different mark? A. Yes.

Q. And, of course, you have had no experience, study or training in grain, have you? A. No. I am not testifying to that at all.

Q. Certainly. Therefore, since you have had no experience or study with reference to grain, you are not in a position to testify as to markings upon grain or wood? A. I am only testifying as to the possibility of certain solid bodies being measured. They certainly can be.

The Court: I don't hear a word the witness says.

Mr. Wilentz: "I am only testifying as to the possibility of certain solid bodies being measured."

Q. But aside from that? A. Aside from that—

Q. No, I will withdraw that. Just a minute now. You don't want us to understand that you know enough about grain or wood so that you could identify markings made by tools? A. No. I am only talking about measurements.

Q. No. That's right. A. Measurements.

Q. And you cannot identify, you don't attempt to say that you can identify, do you, sir, any markings made by planes or other tools on wood? A. No.

Q. No? A. That is, anything except that they may be measured.

Q. In other words, if there is a mark on a piece of wood that is an inch long you could measure it? A. Measure it, and I can measure its depth and its width.

Mr. Wilentz: Well, I think the jury probably could do that too, if your Honor, please.

The Witness: That is all.

Mr. Wilentz: And I think that this man hasn't qualified as to—

The Court: I don't think he has qualified.

Mr. Pope: This man is not called for the purpose of identifying markings on different kinds of wood at all. He is a physicist called solely for the purpose of discussing and telling this jury whether it is possible to identify with any degree of accuracy markings that are made by a plane bit or anything else that creates a solid body without the measurements of the three dimensions. Now that is purely a case of physics and it isn't anything else. And that is the only thing he is called for.

Mr. Wilentz: May I ask just one question more of the witness? Maybe it will help the Court?

The Court: Yes.

By Mr. Wilentz:

Q. You are an architect, I understand? A. Yes.
Q. You are not a physicist? A. Not a physicist.
Q. No.

Mr. Wilentz: Well, now, counsel says he qualifies him as a physicist. He says he isn't.

The Witness: You must recollect that physicist means—

By Mr. Wilentz:

Q. Just one minute. You said "No"? A. And knowledge means another thing. You know what one, two, three is, what two feet long four inches wide—

Q. That is right. A. And one inch thick is, common knowledge.

Q. Yes, sir. What you mean, sir, is that you are qualified to testify to what is knowledge? A. Yes.

Q. Sure. And as an illustration of that you say to me, "I know what two inches and three inches and so forth"— A. Yes. In regard to the three dimensions of a solid body.

Q. Certainly, length, height and thickness. A. Right.

Q. And if they give you a measure, you can measure? A. Yes.

Q. The length, the height and the thickness? A. Yes.

Q. But you are, not a physicist? A. Not at all.

Q. You are an architect? A. Yes, sir. I am something else.

Mr. Wilentz: That is all right. I have no quarrel with you.

By Mr. Pope:

Q. But you did take a course in physics in Massachusetts Tech, did you not? A. Yes.

Q. And do you or do you not understand the laws of physics? A. Well, within the range of the general course that is taught in my study. They don't— unless you take—

The Court: I don't hear a word the witness says.

A. Unless you take the course in physics you don't become a physicist, but about all students at M. I. T. take a general course, physics, chemistry and there are other subjects; what I am testifying to is merely common knowledge.

Mr. Wilentz: "What I am testifying to," the witness says, "is merely common knowledge."

Mr. Pope: So then he has a right to testify even then. Not as an expert, if he is—

Mr. Wilentz: If you call him to testify as to common knowledge. The witness has been submitted to the prosecution as an expert; that is the only reason why I asked any questions.

Mr. Pope: Oh, no. The witness is called here to testify to a question of physics purely, and nothing else. I told you that time and time again.

Mr. Wilentz: I don't want to quarrel with counsel, but I disagree with the gentleman.

Mr. Pope: I don't understand that a man has to be a professional physicist in order to testify to something that is very, very common on what are the rudiments of physics. I am not a physicist myself, but I know a little bit about physics.

The Court: Well, Mr. Pope, you evidently undertook to qualify this gentleman as an expert and I think that you have failed to do that. Now, that is as far as I need go at this time. Whether or no he can testify to the dimensions of an object that is submitted to him, just as you might testify to it or I might testify to it, that is a different question.

Mr. Pope: All right.

The Court: And if you want to proceed along that line, you may do so.

By Mr. Pope:

Q. Now, then, Mr. Orr, you have examined the so-called plane bit markings— A. Come around this way, please. (Indicating to the left of witness stand.)

Q. You have examined the so-called plane bit markings, have you not? A. I have.

Q. Are they or are they not solid bodies? A. They are solid bodies, the markings themselves as they exist on the wood, being parts of the wood itself, are solid bodies, as is the wood.

Q. Now, referring to the photographs, do the photographs of the plane bit markings show any third dimension of the— show any third dimensions of the planed surface by actual measurements? A. No.

Q. Can they be defined for the purpose of identification unless measured in all three of their characteristic dimensions? A. Characterizing?

Q. Characterizing, I mean. A. Yes.

Q. Characterizing dimensions in all portions of them? A. No, they can't be identified otherwise.

Mr. Pope: Cross-examine.

Cross-Examination by Mr. Wilentz:

Q. I show you Exhibit S-239. Do you see the grain of that wood as shown by this exhibit? A. You can see some of it. You can't tell what it is.

Q. Well, you see it, don't you? A. Yes, what the photograph shows, that is all I see.

Q. Yes. The photograph shows the grain matches, doesn't it? A. I wouldn't say it does.

Q. Would you say it doesn't, or you don't know? A. I am not testifying to the matching of grain.

Q. You don't know anything about it? A. I am not an expert on that subject.

Q. All right, then. You are not an expert on anything in particular, are you, sir? You are not an expert on— well, I will withdraw that question. That is all right, that is all. A. No, I wouldn't want to call myself an expert.

Q. All right, sir. A. Only I can testify to being competent in certain—

Q. When you talked about solid objects— A. Competent in certain lines, that is all.

Q. When you told Mr. Pope that the marking was a solid object—is that what you told him?

Mr. Pope: Solid body.

A. Certainly.

Q. A solid body? A. A solid body, a part.

Q. And you said it was a solid body because the piece of lumber of which it is a part is a solid body? A. Yes, being an area upon it.

Q. In other words— A. If it happened to be a groove, it would be a space in that case, but it still would be subject to measurements, but these—

Q. By "still"— A. But these marks in evidence are areas or solid things, bodies that ride above the general surface of the board.

Q. In other words, a mark upon the wood, whether is is a groove or what it is— A. Yes.

Q. —is in your opinion a solid body? A. No, you added two things, one is the reverse of the other. The empty is a groove and the arris is a solid body, but they are both subject to measurement.

Q. They are both subject to measurement? A. Yes, sir.

Q. Is the arris a solid body? A. Yes, sir.

Q. Is it a solid body because it is a part of the piece of wood itself? A. Not because of it, but it happens to be a part of the wood, it is not a solid body necessarily because of that. It could be separated and still be solid. It is wood. We generally recognize wood as being solid, that is all.

Mr. Wilentz: And I think that will be all. All right.

Mr. Pope: That is all, Mr. Orr. That is all, Mr. Orr.

(Witness excused.)

CHARLES J. DeBISSCHOP, sworn as a witness on behalf of the defense.

Direct Examination by Mr. Pope:

Q. Mr. DeBisschop, where do you live? A. Waterbury, Connecticut.

Q. And what is your business? A. I am general contractor, boat building, wrecking houses.

Q. And what experience have you had in lumber? A. In 19— or 1898 I worked for Turrill Brothers in Wolcot at lumbering.

Q. And will you tell us what you were doing? A. We cut the trees down and brought them to the mill and sawed them.

Q. What kind of lumber was it you were working in at that time? A. At that time it was mostly oak and chestnut.

Q. What other experience have you had in working in lumber? A. In 1910 and '11 I worked for Frank Tyler, Manchester, Connecticut, had charge of the cutting of the trees and lumber.

Q. And then after that? A. In 1912 and '13 I

worked for A. D. Bridge & Sons, Hazardville. In 1912 I had charge of A. D. Bridge & Sons Mill in Hazardville. In 1913 I had charge, entirely charge, of their mill in West Worthington, Massachusetts.

Q. And what kind of lumber did you handle at that time? A. We handled pine, spruce, hemlock, beech, dead chestnut—

Q. North Carolina pine? A. Well, we wouldn't call it North Carolina pine, but it is the imitation of North Carolina pine.

Q. What is known as southern pine? A. Yes.

Q. And what was the approximate capacity or output of that mill of southern pine per annum? A. Well, we had the men standard— the men in West Worthington— we produced about 150,000 a week.

Q. Now then, after that, where did you go? A. What is that?

Q. After 1913? A. I went in the contract business for myself, went to the Scoville Manufacturing Company for Turner Construction Company of New York, and handled all their lumber for those large ammunition factories. I had charge of all the lumber, all the brick, all the glass; all the material, every pound in those large ammunition went through my hands.

Q. Well now, who inspected the lumber for the Scoville Ammunition Company? A. I did before we unloaded it from the cars.

Q. And approximately how much lumber did you handle in the course of a week or a year? A. Why, I couldn't tell that. Sometimes we had fifteen carloads in a day and sometimes we didn't have but two.

Mr. Pope: May we have the photograph of rail 16 brought in, the photographs of the rail?

Mr. Wilentz: Just announce what you want, Mr. Pope, and the men will bring it in.

Mr. Pope: We would like to have the photographs of the ladder rail, of the attic floor, and the piece of attic floor board.

Mr. Pope: And we want the photographs of the two ends of the flat surface and the board itself.

By Mr. Pope:

Q. Now, during your experience have you ever had any occasion to match up the gains in wood or to study the grains in wood? A. Yes, sir; we have. We have had lots of it.

Q. Just tell us what experience you have had in studying and matching and identifying grains in wood. A. We have tried, we have had to try to match them for different cabinetmakers and so forth and so on, get the grains to match, birch, white birch, it seems the cabinetmaker has used a lot of that, black birch, cherry, North Carolina pine and all kinds, matched to get a piece that looked, if people break anything, we would look around and get a piece to match it.

Q. How frequently has that occurred in your experience? A. About, pretty nearly every night and Sunday. These people generally come around in day times, too, but there isn't hardly a day gone by but what somebody wants a piece of wood to match something that they broke. I have at the present time probably 125 different kinds of wood at my home. I have a pile of 100,000 feet of— I have just taken down a big new building just constructed, the bank went into the receiver's hands and I took the building down and there is 100,000 feet

piled up of North Carolina pine. Some call it Nigger pine, some call it scrub red pine, but it is North Carolina. In Connecticut we call it roofers.

Q. Roofers? A. Yes.

Q. Have you examined the ladder rail in this ladder known as Number 16. A. Yes, I have.

Q. How many times have you examined it; have you made a careful examination of it? A. Three times.

Q. This one here is the one I refer to (indicating). A. Three times.

Q. Have you also had any experience in the planting and raising and propagation and treatment of trees, forestry? A. I have.

Q. What? A. I brought these with me, I have raised, I have got about 37,000 young trees that I have raised at my home. These are what, as near as we can get, it is a North Carolina pine seedlings. We raise pines from these. These are the North Carolina pine seedlings. Here we have, I went right out in front of my driveway and picked out here, these are the cones from the spruce that we raise (indicating).

By Mr. Pope:

Q. How many specimens of those trees have you on your own place at the present time? A. I have got about, pine and spruce on my own place I have that I know the names of, I have about 47 different kind of spruce, pine, hemlock and different kind, and I have seven kind that I have had the State of Connecticut, Mr. Philly, of the State Forestry, has brought the United States men there, and we have seven kind of pine that no one has been able to identify as to the correct name of.

Mr. Wilentz: I move that that be stricken

out, the last part, that no one has been able to identify.

The Court: Strike that out.

The Witness: Well, the—

Mr. Wilentz: Just a minute now, please. Will you please sit down for a minute.

Mr. Pope: Can we have the easel, Mr. Hahn?

Mr. Wilentz: Have you qualified him? Do you submit him as to his qualifications?

Mr. Pope: Yes.

Mr. Wilentz: If you do, we want to examine him.

Mr. Pope: Go ahead.

Mr. Wilentz: I understand counsel submits him to us as to his qualifications now.

The Court: Very well.

By Mr. Wilentz (voir dire):

Q. Right now you are a contractor, a builder, and an excavator, are you not? Is that right? A. Well, they say I am a nursery man. I don't know.

Q. Turn around a little bit, so the jury can see you, too, sir. They say that you are a nursery man, is that the fact? Are you a nursery man? A. I have a nursery, a large one, as large a one as there is around.

Q. Is that your business? A. Huh? It is one of my businesses.

Q. I see. So you are a nursery man; you operate a nursery, road building and general contracting and excavating business.

(At this point, 3:00 p. m., a man who had fainted was carried from the courtroom.)

Q. Now, Mr. Witness, this bank building that you were talking about, with all the lumber, in that connection, all you are doing in that is tearing the building down as a wrecker, isn't that so? A. We are reconstructing that building. We tore it down and we are reconstructing it on our own property.

Q. And that bank building and the lumber there has nothing to do with any study in lumber, has it? A. It certainly has.

Q. What is it? A. To take it up and see how careful you can take it up without breaking it.

Q. Oh, I see. A. And that is only one instance of lumber we have. We have probably 150,000 other kinds of lumber at my house.

Q. Did you ever match grain in two pieces of lumber to see if the two pieces were of the same origin—now wait a minute—to see if they were of the same origin? A. I have done that for the last thirty years.

Q. To see if they were of the same origin? A. I make a specialty— every minute's time I have I devote to them, to trees.

Q. What does that mean? A. What is that?

Q. What does it mean? A. Why, to see the different kinds of trees and see if you can get them to match. When you have got a pile of lumber in there, a lot of pieces, you have got to go over quite a few pieces to get some lumber to match.

Q. What does it mean when you say two pieces of wood have grain of the same origin? A. The circle on a tree, after a tree gets three years old, a hardwood tree, it will show each year, it will show a development of one year's growth, a circle. A softwood tree takes five years to make the first circle. After that it goes every year.

Q. What do you mean, now then, when you say that you do it so very often, matching the grain of two pieces of lumber to see if they are of the same origin? A. Well, to see— people come up there and want the same kind of lumber.

Q. Same kind of lumber? A. Yes.

Q. In other words, if a person wants a piece of pine— you know what pine is? A. Yes.

Q. And if they want Ponderosa you know what Ponderosa is? A. Yes.

Q. And you know the other various forms of lumber? A. Yes.

Q. Can you tell by looking at the grain in the wood the age? A. Why, each circle forms the—

Q. Can you tell me by looking at the grain? A. Yes; yes, sir.

Q. And can you tell, for instance, whether two pieces of lumber, if they ever were connected before, whether or not once they were separated, can you tell me whether they were at one time connected? A. I can.

Q. You can. Have you ever read any authorities on the identification of wood, read any books on the subject? A. I have.

Q. You have? A. (Nods head.)

Q. What authorities have you read on the subject? A. Well, I read them through the Farm Forestry.

Q. What book did you ever read? A. I never read any book.

Q. On the identification of wood? A. On Farm—

Q. What books? A. I read Farm Forestry book.

Q. Upon the identification of wood? A. Farm Forestry.

Q. Did you ever read an article in Farm & Forestry about the identification of wood? A. Yes.

Q. By whom, by Mr. Koehler? A. Mr. Koehler and several different ones.

Q. Yes. You have read Mr. Koehler's articles, haven't you? A. Yes, I have.

Q. Did you ever— that is Farm & Forestry, you say? A. It is Forestry.

Q. Sir? A. Farm & Forestry, you get it through the State.

Q. Farm & Forestry— A. You get it through the State Forest—

Q. Never mind who you get it from, Farm & Forestry, that is the name? A. I think that is the name, you get it through the State—

Q. But you have read articles in Farm & Forestry about the identification of lumber, is that so? A. Yes.

Q. What? A. Yes.

Q. And some of them written by Mr. Koehler, of the United States Government? A. I think so, yes— I am sure.

Q. You are sure? A. Yes.

Q. Well, don't you know, as a matter of fact, that Mr. Koehler never contributed one article and his name never appeared on one article in Farm & Forestry? A. I didn't say that his name had appeared in that paper.

Q. You said articles by Koehler. A. I have.

Q. In Farm & Forestry? A. I said I thought I read about Mr. Koehler. I didn't say I did.

Q. Then you said you are sure. A. I said, I didn't say— I say I have read on the Farm & Forestry book, I don't know whether it is Mr. Koehler or who— I haven't read any books—

Q. Now, do you know the name of any person whose articles you have read about the identification of wood? A. I can't remember any now. I have read a lot of them.

Q. Anyone? A. Huh?

Q. Anyone? A. No, I can't say that I do offhanded.

Q. Now, the only matching that you have done of wood is when some— you say you have done it, I think, to use your own language, pretty nearly every day and Sundays? A. Uh huh.

Q. You have matched up grain? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. And what you mean by that is, I suppose, if somebody wants a piece of pine to match some other pine they come in and ask you, "Mr. So and So, have you got pine, a piece of pine?" A. No, there is quite often a dispute about the age of trees in town, or something, and I—I go down and settle the dispute on the circles on the trees, the age and so forth.

Q. In other words, isn't it a fact that all you ever did in connection with matching grain was to do what the average carpenter would do? A. No, sir; I made a study of it myself.

Q. You have made a study? A. Yes, sir.

Q. Since 1913 you have been a builder and contractor? A. What is that?

Q. Since 1913— A. I have done building, I have kept around— I would have, on my nursery I kept about eight men.

Q. In the nursery? A. Yes.

Q. And a builder and a contractor and an excavator. A. Yes, sir. Through the good times we kept about a hundred and fifty men, I did myself.

Q. Not matching lumber? A. No. We had different gangs.

Q. Not testing lumber? A. No; not all.

Q. Not identifying lumber? A. No, doing all different kinds of work.

Q. Do you remember any article in any manazine, book or any other place with reference to the identification of wood that you have ever read? A. I remember reading them, but I don't remember who wrote them.

Q. What do you remember reading, if anything? A. Well, different things about the way trees grow and how they grow.

Q. As to the growth of trees? A. Yes.

Q. And you read that in order to be able to plant trees? A. Yes. And I have had the experience of planting trees.

Q. When did you read them? A. I have read them for the last thirty years.

Q. Still reading them? A. I haven't read them. I have had three operations in the last three years and I have been— I haven't done any reading.

Q. You have had some difficulty with you eyesight, you mean? A. No, sir. I have had a throat operation and I have had two operations, stomach operations, appendicitis—

Q. I mean, your eyes are all right, both of them? A. Yes, sir; I have got as good eyesight, I think, as there is in the country.

Q. You have good eyesight, sir? A. Yes.

Q. Sandbags? A. Yes.

Q. How do you test lumber with sandbags? A. Put them across a piece of, for instance, one table to the other and test them on with the bags, with the weights on them.

Q. What is that test, to see if it will break? A. Yes.

Q. What has that to do with grain? A. We are talking about testing.

Q. Testing the variation in grain? That was

the question. A. When we test them, we cut off a piece of board and put, match the ends together.

Q. All right. Let me ask the question again— A. To see if the rings will match.

Q. Have you ever made a study of the variation in grain of lumber? A. Yes.

Q. How have you made the study? What was the study? What did it consist of? A. We keep cutting boards apart and trees down to see how they look inside.

Q. Well, you don't cut them down to see how they look, do you? A. Absolutely. If we see a rare tree, we cut it down to see what it brings, what it develops.

Q. And is that the extent— A. Not only that. In these trees here, in grafting these trees, when we graft a tree in here, we take and bead the graft we are putting in and we have it match the circles on the tree we are grafting. We try to get a tree the same age and we graft it on the tree the same age and we get the rings to match in in grafting it.

Q. Have you ever had occasion to ascertain, have you ever studied to find out where a certain piece of wood came from? A. What is that?

Q. Did you ever have occasion and did you actually make a study to find out where a certain piece of wood came from? A. Yes. When we get a rare specimen, we have.

By Mr. Wilentz:

Q. Have you ever testified in court as to the identity of wood? A. I had a case against the Western Union Telegraph Company myself.

Q. How long ago? A. Twenty-six years ago.

Q. Who represented you in that case? A. I represented—

Q. Who was your lawyer? A. Cabell Morris, of New Haven.

Q. Cabell Morris, of New Haven? A. Cabell Morris, of New Haven.

Q. Did anybody else? A. Professor George Speers.

Q. Anybody else? A. That is all. The main question on that was trees, what you call a tree.

Q. Is that the case you testified in? A. Yes.

Q. That is the case in which you were a party; isn't that right? A. Yes.

Q. And that had something to do with the telephone or the Western Union Telegraph Company trespassing on your property? A. Yes, they cut down a lot of trees.

Q. Have you ever testified in court as to the identity or as to defects in the grain of lumber? A. No. I have been asked a good many times, but I never did testify.

Q. You have not, have you? A. No.

Q. And, of course, you have never written any articles on the identification of wood or anything in connection with lumber or wood? A. No, sir.

Q. Have you ever made a study in connection with the strength of lumber? A. No, I have not, in ways—

Q. You have said No, if you don't mind, please. Have you ever made a study of the weight or the—I will withdraw that.

Q. Have you ever made a study of the variation in weight or the variation in grain of lumber? A. Yes.

Q. What did your study consist of with reference to those two subjects? A. When we want to use certain lumber, we have what we call a tester there, we have sandbags to test them.

Q. Sandbags? A. Yes.

By Mr. Wilentz:

Q. Now, tell us about that occasion, any one example, as to why anyone wanted to know from you where a piece of wood came from and what caused your study. A. Well, we have got a piece of wood in here—

Q. No, I am asking as to why or who it was, or why anyone came to you. A. I can't remember, but I have got—

The Witness: Have you got those bird's-eye maple there, Mr. Pope?

Q. Do you remember anyone that ever asked you to find out, that had some reason and came to you and asked you for the origin of any piece of wood, where it came from? A. Yes. There was a cabinet-maker asked me here not long ago to get a piece of bird's-eye maple.

Mr. Pope: They are up there.

Q. Just to get a piece of bird's-eye maple, is that it? A. Yes, sir; and here is one of them now.

Q. And so you got a piece of bird's-eye maple? A. Yes.

Q. Well, do you know where that was grown? A. Yes, sir.

Q. Where? A. West Worthington, Massachusetts.

Q. Where? A. West Worthington, Massachusetts.

Q. I suppose any lumber man could send for it and get it? A. Huh?

Q. I suppose any lumber man could send for it and get it? A. Not that particular thing.

Q. No. That's because you have it? A. No.

Q. What then? A. It is hard to match that lum-

ber; that is what I mean, that particular thing, to get it matched.

Q. Hard to match? A. Yes.

Q. Have you got the piece that matches with it? A. I did have.

Mr. Pope: Is this it (handing another piece of wood to the witness)?

A. You can get an idea how hard it is to match that wood there. There is part of it. The piece that he wanted, that he wanted to match. And this is what I got to match, this half of it matches it. Up there it don't; it runs out in a different grain.

Q. I see. Who sent it down to you? A. I went to West Worthington and got it.

Q. You got it out of a lumber yard? A. Yes, sir; I got it— let's see, the date is on it here; I think, somewhere.

Q. From a lumber yard? A. In 1912.

Q. Did they come from the same tree? A. Huh? No, sir.

Q. You say they didn't? A. One piece was growed in Connecticut and one piece was growed in Massachusetts.

Q. Different pieces? A. Yes, sir.

Q. From different trees? A. Yes, sir.

Q. Well, then, how can they match? A. Well, this is the nearest we could get to it.

Q. Oh, well, then that's different. You got the nearest you could. A. And it does match.

Q. Well, you mean it look alike? A. Well, it matches.

Q. It is a different grain, isn't it? A. No, sir.

Q. Different age, isn't it? A. No, sir.

Q. You mean the same age? A. Yes, sir.

Q. Why do you say so? A. Huh?

Q. Why do you say so? A. Because it has been showed on magnifying.

Q. Has it the same angles? A. Yes, sir.

Q. How many? A. I don't know.

Q. Well, didn't you— A. I haven't looked it over. I just grabbed—

Q. Didn't you look over the number of rings? A. Not within the last two years. I have had these in my place.

Q. You just had them in your place? A. Yes, sir.

Q. I thought you got them from a cabinetmaker. A. I did, in 1912. This is some that was left over.

Q. In 1912? A. Yes, sir.

Q. You have had them since 1912? A. Yes, sir.

Q. And you haven't looked at it since then? A. I have got hundreds and hundreds of pieces.

Q. Now answer the question. You haven't looked at it since then? A. No, sir.

Q. You don't know how many angular rings there are? A. No, sir.

Q. And you don't know the age of the woods? A. I haven't look at it since I have brought it down.

Q. You have a recollection then in 1912 that they were of the same age? A. That's what they said. They put them down—

Q. That's what who said? A. The cabinetmaker; and at that time they were the same age.

Q. That is, the cabinetmaker told you they were the same age? A. I looked over and checked with him.

Q. You checked with him? A. Yes, sir.

Q. Take a look at them now and tell us the age of it. A. You can't.

Q. You can't tell them? A. No, sir; there ain't no one can tell the age.

Q. No idea? A. No, sir.

Q. How did you tell them? A. At that time you

could see the circles, each year, on that. You can't now.

Q. Why not? A. Well, look at them.

Q. They are planed off? A. No, but they are sawed, and this is hard maple, and they don't show it.

Q. I see. A. If it was a pine, a North Carolina pine, it would show the year circles. There is no marks there to show the age.

Q. Have you made a study of marks made by tools, machinery and other agencies on wood? A. Well, we had to, when we—

Q. Well, did you? A. Yes.

Q. And you know, you have made a study of the marks which are made by various tools, planes and so forth, on wood, haven't you? A. I haven't made a study, but in our line of business we had to really make a study to see that the lumber went out smooth.

Q. You haven't made a study, you say? A. Not as a study.

Q. No. A. We done it as a practical business.

Q. But as you saw the lumber go through the plane, why, naturally, you observed what marks were made? A. Absolutely; right.

Q. But you haven't made any particular study as between one mark and another, have you? A. No, sir.

Q. No. A. Not— only what went through the planes.

Q. In other words, as a practical business man, when a mark was made on a piece of wood, you would see it? A. No, we had to— we would run our hands over it to see, when the planers were running we went in and inspected it to see if it was right.

Q. That is it. A. And when the power on a planer, no matter whether it has got a governor on, it goes down from 25 to 27 revolutions, hundred revolutions, a minute, no matter how, what kind

of governor you have got on, if it is crowded a little it will slow up the speed and make an irregular mark on lumber, no matter what— it don't need to be a high blade.

Q. Did you ever photograph wood for identification purposes? A. No, sir.

Q. Do you know what spring wood is? A. Spring wood?

Q. Yes. A. I don't know what you would call spring wood, or else it is something—

Q. Well, you don't know then. Do you know what summer wood is? A. Well, summer wood is soft wood and spring wood is soft wood.

Q. Soft wood? A. Yes.

Q. They are both soft wood? A. Well, yes, spring and summer wood. That's what we have always—

Q. You mean spring and summer season? A. Yes.

Q. Is that what you mean? A. Yes.

Q. You never heard of spring wood and summer wood otherwise? A. No, sir.

By Mr. Wilentz:

Q. I think you told us that you were familiar with a great number of kinds of wood? A. I have, yes. I have got altogether on my hardwood now—

Q. You said yes. As an expert on wood do you use the microscope? A. I have sometimes.

Q. You mean a magnifying glass? A. Yes.

Q. You don't mean a microscope? A. No, magnifying glass.

Q. Do you know the difference? A. Yes.

Q. You don't use a microscope, do you? A. No. I have, but I am not making a practice of it.

Q. You don't use a microscope in examining wood any way, do you? A. No.

Q. If you don't use a microscope, can you tell me how you are able to examine and compare wood? A. I don't think anyone with ordinary wood needs any—

Q. Microscope? A. Microscope. He does on this hard maple.

Q. Anybody that wants to make an ordinary comparison does not need a microscope? A. Not on North Carolina pines and soft woods. This wood here you absolutely do.

Q. In other words, as an expert, you ought to use the microscope, but for ordinary purposes you don't need one? A. I think you don't gain anything by using a microscope on soft wood. The circles are very plain and very distinct.

Q. What is meant by edge grain lumber, do you know? A. Well, there is two ways, the way it happens to go in the mill. For instance—

Q. What does it mean, edge grain lumber? A. It means that one is up and down and the other is this way (indicating), it depends. This piece of board here is edgeways.

Q. It is what? A. This is edgeways, if it is sawed that way. It would show each year different.

Q. What is edge grain lumber, do you know? A. Not edge grain.

Q. That is what I am asking, do you know what edge grain lumber is? If you don't know, please say so. A. It is the way you saw it, if that is what you mean.

Q. You don't know what edge grain lumber is, do you? A. The way we understand it is the way you saw it, the way the log goes into the mill, whether it is edgeways or flatways.

Q. Do you know how to tell how many knives there were in the planer that dressed the surface of a board by looking at the board? A. I do not.

Q. Have you ever made a study of the cuts made on lumber by machine planers for the purpose of

determining the number of knives used in the planer? A. I have not.

Q. Have you ever made any study of markings made by hand planers? A. Yes, to a certain extent.

Q. To what extent? A. Well, when my men building hard wood finish— when there is a piece of wood with marks in— I just finished up a house here a while ago with hard wood finish and the plane, it was rough, where some of the carpenters, and I blamed one and the other and no one said they done it.

Q. And you couldn't find out? A. Yes, sir. I took every man, made him plane a board.

Q. I see. A. And I found out which one done it.

Q. You can tell, can't you? A. Yes, sir.

Q. When a plane makes a mark on a piece of wood you can tell it, can't you, by finding the plane? A. Yes, sir.

Q. No question about that in your mind? A. No.

Q. Sir? A. Yes.

Q. And you found that out from all the planes in the place, you could tell which plane it was that made the mark on the board?

Mr. Pope: I object to this. This has nothing to do with his qualifications.

Mr. Wilentz: Yes, it has.

The Court: I think so.

Mr. Pope: No. He is not called here for the purpose of testifying on plane marks.

The Court: I don't know what he is called here for yet. We are trying to find out whether he knows anything about wood to the extent

that he might be qualified as an expert to speak upon wood. Now—

Mr. Pope: To speak upon the grains of woods and the matching of woods, character and kinds of wood.

The Court: Are you telling us now what he is called for?

Mr. Pope: That is right.

The Court: For the matching of wood and the grains of wood.

Mr. Pope: That is the examination and discussion of wood.

The Court: All right.

Mr. Pope: Not plane marks.

Q. In connection with wood, in connection with wood and marks made upon wood in order to identify wood, the effect upon wood by tools and implements, you know, do you not, that if a plane makes a mark on a piece of wood, you can tell which plane it was if you can find the plane, isn't that so? A. Well, not all times, because a man might hold it a different way and it would not make the same mark.

Q. Most of the times it would, wouldn't it? A. A percentage of the times it would.

Q. A percentage of the times it would, and you found it that way, didn't you? A. I found it a percentage of the times, sometimes it would.

Q. Well, you found it once when you looked for it? A. I found that this plane is the one that done it.

Q. Yes, and you found that plane made the same marks? A. Yes.

Q. That you saw on the piece of lumber? A. Yes.

Q. In other words, you have dealt in lumber, buying it, selling it, worked in a mill while it was being planed, you are a contractor and naturally you deal in lumber, you are a practical lumber man? A. Yes, and I have—

Q. Is that it? A. I raise all my own trees.

Q. You raise trees? A. My own. I have got 50,000—

Q. Is it a farm? A. Huh?

Q. Is it a farm? A. I have got three farms.

Q. Three farms. Do you raise chickens on the farms? A. Yes.

Q. Sir? A. I have got a man that takes care of my chickens and cows.

Q. Yes, do you sell chickens, too?

Mr. Pope: I object to that.

The Court: Mr. Attorney General, why go into that? Why go into the matter of selling chickens— we could spend the weekend—

Q. Did you ever testify in any case in which— have you ever testified in any case in connection with the identification of wood or in connection with your studies on lumber? A. I have testified in Winters vs. The State of Connecticut, regards to damage to trees.

Q. Damage to trees? A. Yes.

Q. Do you mean as to the value of the trees that were grown? A. Yes.

Q. Not as to the value of any specific lumber? A. Yes, the value of the damage, what it would cost to replace, get the same size trees they cut down; we had to keep a portion of them to measure to get a tree to duplicate the same year. This Mr. Winters wanted the trees of the same year.

Q. Were you ever represented by any of the lawyers in the court? A. What is that?

Q. You never were represented by any of the lawyers in this courtroom, were you? A. No, sir.

Q. Are you being paid by a newspaper? A. No, sir.

Q. You are not?

Mr. Wilentz: That is all.

The Court: Well, now, Mr. Attorney General, do you think that he is qualified ?

Mr. Wilentz: Not as an expert, if your Honor please.

The Court: Not as an expert?

Mr. Wilentz: No, sir. We don't say that the gentleman hasn't handled and dealt with lumber and that he doesn't deal in lumber pretty nearly every day as a contractor, and we don't dispute his statements as to his whereabouts during these years, but we feel that he hasn't the technical knowledge to qualify as an expert. If they want to have him here as a lumber man and he holds himself out to the jury as a practical lumber man, why that is a different matter.

The Court: Do you think that you have qualified him as an expert?

Mr. Pope: Well, that depends upon what you mean by "as an expert." I didn't think that even the State's great witness qualified as an expert. He is not called as a wood technologist. He is called as a man who has had

years and years of practical experience in the identification of wood, the study of wood, the matching of grains, the determination of rings, annual rings, the growth of wood, the age of the wood, and whether one piece matches up against another board. He is called more as a practical man than what you would call perhaps a highly specialized technical expert.

The Court: Well, now, it may be that for some purposes, whether we call him as an expert or as a practical lumber man, his test might be of value. And, of course, its value and weight is a question for the determination of the jury. You may proceed with your examination.

Mr. Pope: May we have a little recess now?

Mr. Wilentz: May I inquire if your Honor please, of counsel whether this is the last witness so that I may be able to make arrangements for the rebuttal?

Mr. Reilly: It is not the last one.

(Counsel conferred out of hearing of the jury.)

The Court: The air is very bad in here. We will take a recess for five minutes and you might give us a little air in here.

(At 3.26 p. m. a short recess was taken.)

(3:44 P. M.)

(After a short recess the jury was polled and all jurors answered present.)

(The witness resumed the stand.)

The Court: Now you may proceed, Mr. Pope.

Direct Examination (continued) by Mr. Pope:

Q. Mr. DeBisschop, have you some samples of lumber that you have brought with you that show matching of grain? A. I have.

Q. Will you produce them? Take them up one at a time, or a pair at a time, whichever you want to. A. Well, what do you want to have me do?

Q. Now, then, is this the first pair? A. This is one pair.

Q. All right. Now, first off, just tell the jury where those two pieces of board came from. I don't mean the particular mill. A. These pieces of board are both what we call North Carolina pine in Connecticut. That is, we call them roofer boards. This board here came down from 187 North Main Street, Waterbury, on a roof. This building was built 47 years ago by a man named Jacobs in Waterbury. This piece of lumber here came from a building of the LaCourse Storehouse in Waterbury, which finally got into the hands of the Merchant Trust, it went into the receivers' hands—

Q. Never mind the history of the building; we are not interested in that. But they came from two— A. Two separate building.

Q. Two different buildings entirely? A. Yes. This piece of wood is between five and six years old. This piece of wood is 47 years old. This piece of wood we had to wash in order—

Mr. Wilentz: Now if your Honor please, I want to call your Honor's attention in connection with this to this apparent effort by way of comparison that when we made an effort to do the same thing in reference to a photograph of a different piece of wood and the comparison that Mr. Pope said:

"We have no objection to the General using any photograph which he says will help him show the identity of the grain in the end of the ladder rail and in the end of the board taken from the attic floor, but we do most strenuously object to his showing photographs of other pieces of lumber entirely unconnected with this case, which were not taken from this attic, which were not taken from the ladder and which had no connection whatever, either with the house or the ladder or the kidnaping or anything else, and introducing something entirely foreign to this case, in this case, even though it is only done for the sake of comparison."

We therefore make the same objection at this time.

The Court: I haven't the slightest idea of what Mr. Pope is driving at or what his purpose is. I think that we will get the best results by his putting directly to the witness the quesion which he desires to be answered and then the Attorney General may object to them and I will rule upon them.

By Mr. Pope:

Q. Now will you tell us why you produced those two pieces of lumber? What do you want to show by that?

Mr. Wilentz: I object to that question as opening the door for anything.

The Court: The objection will be overruled for a moment.

A. These pieces of wood come from two different buildings.

The Court: Well, we have had that. Now, Mr. Pope, will you put to this witness such question as you desire to be answered that has not already been answered?

Mr. Pope: Well, yes.

By Mr. Pope:

Q. Now just— A. Do you want me to stand?

Q. No. Just turn the two ends, the two grain ends, the fresh cut grain ends of those together. Do both of these ends show the annular rings? A. They do.

Q. Yes. And of course the one seems to be very much darker than the other. Why is that? A. It is older.

Q. Older? A. This one here—

Q. Just wait a minute. A. The darkest one is the five-year-old one.

Mr. Wilentz: Just a minute. Let's have a question, and I don't care if it is a little leading.

The Court: Yes.

Mr. Pope: I want to have the two boards identified in some way, that is all.

By Mr. Pope:

Q. The darker one is how old? A. The darker one is the newer lumber and the lighter one is the older. It shows—

Q. That is the saw-cut shows on the— A. No, it shows the years and rings.

Q. Now, the rings are shown on that, are they? A. Yes, sir.

Q. And those are entirely different boards? A. Yes, sir.

Q. Now, I ask you this question: In spite of the fact that those boards come from different places, and are different boards of different age, do the grain rings on the two boards match? A. You asked a question I can't answer; you said different ages.

Mr. Wilentz: All right; he can't answer.

The Court: He cannot answer?

The Witness: Wait a minute. I can't answer that.

Mr. Wilentz: Just a minute now.

The Court: One moment. You are not deaf, are you?

The Witness: No.

The Court: Well, just listen.

Mr. Pope: Well, perhaps I included something in my question that the witness didn't know.

The Court: Put another question.

By Mr. Pope:

Q. I understood you to say that those two pieces of board which you hold in your hands came from different places? A. Yes, sir.

Q. And from buildings that were built at different times? A. Yes, sir.

Q. Now, I ask you in spite of that fact do the grains in the boards match? A. Yes.

Q. And will you show to the jury and explain to the jury how and in what way they match. A. Go over here? (Leaves stand and goes before jury.)

The Court: Don't whisper to the jury.

Mr. Wilentz: Let's hear what you say.

The Witness: I am not saying anything. This matches—

The Court: Now be quiet in the courtroom. I am going to clear the courtroom if you are not more quiet.

Mr. Wilentz: Pardon me. Just stand right over here and explain it nice and loud, so the Court and counsel can hear it.

A. You put these two together like that.

Mr. Pope: Certainly he can go close enough to show the jury.

Mr. Wilentz: Just so he talks a little loud.

The Witness: You put them together like that and they match exactly. (Demonstrates before jury.)

Mr. Wilentz: All right; to the jury, don't worry about me.

Mr. Pope: Yes, to the jury.

The Witness: There is a different color there, but the grains are exactly the same; they will match right in circles and when you put those boards together, whichever way you do it, this way or that way (indicating), the top surfaces do not match, yet the grains do match.

By Mr. Pope:

Q. Now just put them together flat and show the jury whether or not the top grains match or do not match, when put together end to end.

Mr. Wilentz: What is the answer, they do or they do not match?

The Witness: They do not match.

A. That has a large yellow streak. This has a narrow streak in here. They do not match. There is difference in them. You see what I mean? Here and here. They do not match.

Mr. Wilentz: All right, what is next?

A. They match on the ends.
Q. All right.

Mr. Pope: May we have these marked in evidence, your Honor?

Mr. Wilentz: Yes, we have no objection to them being marked.

The Court: They may be marked.

The Reporter: D-62 and D-63.

(Pieces of wood received in evidence and marked Defense Exhibits D-62 and D-63.)

Q. Now take up the next two, will you? Now give us the history of those boards, just a brief history.

Mr. Wilentz: Well, that I object to, if your Honor please.

The Court: The objection is overruled.

A. This board was got at Smith's Lumber Company. I went down there and asked Mr. Smith for—

Mr. Wilentz: I object to this, if your Honor please.

Q. Never mind. You got it at Smith Lumber Company? A. I got it at the Smith Lumber Company.

Q. And where is the Smith Lumber Company located. A. On Meadow Street, Waterbury.

Q. Waterbury. When did you get it? A. On February 4th.

Q. All right. And where did the other board come from? A. This other board came from the Manituck Lumber Company. I picked out a piece of it.

Q. And when did you get that? A. This was got some time in—this was got about three months ago.

Q. I see. A. I took this one to Smith's Lumber Company to match it, to see if I could find a match in Smith's Lumber Company.

Q. I see. A. This comes from Smith's Lumber Company. This comes from the other company, and

I took this piece down to see if I could find one. He showed me a pile of lumber and I went out and sorted it out and I finally found one that I think matched.

Q. Now what kind of wood are they? A. Well, that's a better class of pine.

Q. Well, is it N. C. pine? A. Yes, but—

Q. Better grade? A. Better grade.

Q. Better grade. Now how do the end grains compare in those two pieces, in spite of the fact that they came from different places? A. The end grain compares identically the same.

Q. Take it down and show the jury. A. Well, wait a minute now.

The Court: Hold on. You simply answer the questions that counsel puts to you and cut out these remarks of yours.

Mr. Pope: I will give you the chance about the top.

(The witness stepped down before the jury to exhibit the two pieces of wood in his hand.)

Mr. Wilentz: Just a minute now, just exhibit it to the jury. That is all you have got to do.

The Witness: I won't say anything.

(The witness proceeded with his exhibition to the jury.)

Mr. Pope: Take your time so the jury can see them, too.

The Witness: These grains count exactly the same, you can count them.

Mr. Pope: Let the gentlemen in the back row see it there. Just a minute before you leave there, just lay them down flat in the rails so the jurors can see them end to end. Do the grains match on the top?

The Witness: The grains don't match no matter which way you put them, the grains on top.

Mr. Wilentz: What is that?

Mr. Pope: They match on the end, but they do not match on the top, is that it?

The Witness: No matter which way you put them.

By Mr. Pope:

Q. No matter which way you put them they do not match on the top. A. You see that, that is over here.

Mr. Pope: We offer these.

Mr. Wilentz: No objection.

(Two pieces of lumber used by witness in demonstration received in evidence and marked Defendant's Exhibits D-64 and D-65.)

Mr. Pope: Will you make that one 64; that is the one he spoke of first, and this one 65.

The Court: Now then, Mr. Pope, put another question.

By Mr. Pope:

Q. Take up your next pair, Mr. DeBisschop. A. Well, this?

Q. No, I will come to that in a few minutes. No, the next one there. A. These?

Q. That is right, the bird's-eye maple. I think you told Mr. Wilentz, you gave Mr. Wilentz the history of those two pieces of bird's-eye maple, did you not? A. Yes.

Q. And one of them was how much older than the other? A. No— well, I don't know.

Q. I don't mean— A. One of them was given to me to get a match in 1912. I got a match for it and this is some that was left over.

Q. I see. A. And one piece, this piece, is from Massachusetts, and this piece is from Connecticut. Now, those match exactly, but they can't with the naked eye be seen. They would have to be enlarged with a photograph or magnifying glass. Yet, if they are put under anything they will match exactly, grains.

Q. Have you examined them with a glass? A. Yes, I examined those.

Q. Take them down and show them to the jury.

Mr. Wilentz: He says it can't be shown anyway, Mr. Pope. I have no objection to it—

Mr. Pope: Well, I know. They can't be shown as an exact match, but they can be shown as an approximate match.

The Witness: This shows—

Mr. Wilentz: Just a minute.

By Mr. Pope:

Q. Can you see the practical matching of the grain with the naked eye? A. Yes, I think they can. It is not the grain. This is the bird's-eye maple.

Q. Yes. A. It is a very rare wood. That is what they put on floors. Those things are the same thing. Now, you turn them boards over and you see. (Exhibits boards to the jury.) You understand these boards are not—

Mr. Wilentz: Just a minute. Mr. Pope will ask you questions.

By Mr. Pope:

Q. What did you want to explain? A. These are— the boards are not sawed to match. They could be matched if the cabinetmaker matched them. They are just sawed crooked.

Q. All right. I guess that is all right. Let Mr. Case see them, too, if he wants to.

Mr. Pope: Now, may I have these marked.

Mr. Wilentz: No objection.

(The two pieces of bird's-eye maple used in demonstration by the witness were received in evidence and marked Defendant's Exhibits D-66 and D-67.)

By Mr. Pope:

Q. Do you have with you a piece of oak? A. I do.

Q. For the purpose of showing how grain will

depart from its natural course? A. I have.

Q. In a very short space, in the wood itself? A. I have.

Q. Will you produce it? A. (Witness produces piece of oak.)

Q. Now, will you go down to the jury and show the jury how the grain starts in that piece of oak and how it changes in a distance of— what? Have you got that measurement here A. This is a distance of two inches.

Mr. Wilentz: Of course, there is no oak in this case, if your Honor please, that I know of and— just a minute— I didn't want to object at all, but I really would like to save some time, and I must object to this, because there is no oak in this case.

The Court: I don't see that there is any oak in this case.

Mr. Pope: Now, it is only done for the purpose of showing how erratic the grain is and how it will change its course and I am going to follow it up by asking the witness if the same thing is true of North Carolina pine and all kinds of wood.

The Court: Ask him about this—

Mr. Wilentz: The question can be asked direct.

The Court: —about North Carolina pine.

By Mr. Pope:

Q. Do other kinds of wood other than North

Carolina pine show the same kind of grains? A. It does.

Q. And this is merely for the purpose of illustration and not for comparison with North Carolina pine? A. No, any trees.

Q. Any trees? A. Trees.

Mr. Wilentz: All right— Oh, pardon me. Is the question answered?

Q. Now, how often in your experience have you seen the erratic course of grains shown in specimens of wood of North Carolina pine or any other kinds of wood? A. Well, in ten trees— Have you got that piece of pine there? It is down under the desk there.

Q. (Handing witness a piece of a tree.) It looks more like a—

Mr. Wilentz: Christmas tree.

Mr. Pope: Yes, it looks like an Irishman's walking stick.

A. In ten trees cut and sawed that size with a little saw, we find three with the grain running the same way, the trees were the same age, of course, and naturally the trees were planted at the same time, and naturally they are the same age, but we found only three out of the ten that you couldn't tell them apart, three of those. Of course, the age, I admit they were all planted the same time, I planted them myself. Naturally, there had to be the same circles, but there were irregularities, the same as in this.

Q. And were the growing conditions substantially the same? A. Yes, the same piece of ground.

Q. Well, aside from that, how frequently have

you seen the erratic departure of grain from its natural course in your examination of wood? A. Well, it departs a lot. I should say about 25 per cent.

Q. All right, sit down. Now I will ask you just to take the piece of wood and show to the jury what you mean by the erratic departure of grain from its normal and natural course.

Mr. Pope: I may say to the Court that this is only introduced for the purpose of showing the tendency of grain in wood to depart from it natural course, purely as a matter of illustration.

The Court: Well, he has already testified that he has seen it happen in about 25 per cent. of his observations. What utility is there now in exhibiting this piece of wood to the jury?

Mr. Pope: The particular utility is to show that it will do that very thing within a space of two inches which otherwise might seem to be unbelievable.

The Court: Well, let it be exhibited then to the jury.

Mr. Wilentz: Just a minute, please. It is not pine, if your Honor please, it has absolutely nothing to do with this case, I submit.

The Court: Is it oak?

Mr. Wilentz: Just a minute. They wouldn't let us show a picture of something for comparison and objected to it.

The Court: The question is not what you were permitted to do, the question now is what Mr. Pope shall be permitted to do. And this I exclude. I see no relevancy at all.

Mr. Pope: The Judge says we may not do it. May we have an exception?

The Court: You may have your exception.

(Exception allowed, and the same was signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

By Mr. Pope:

Q. Now, have you made a study of the ladder rail, the ladder rail Number 16, and the piece of wood marked State's Exhibit S-226? A. I have.

Q. And how many times did you study them? A. Three times.

Q. Then where did you see them? Here in Flemington? A. In Flemington, yes; the court house.

Q. And have you also studied the photographs of the ladder rail and the board said to have been taken from the attic, which is S-226? A. Yes.

Q. And still another photograph, these photographs at the bottom of State's Exhibit S-231? A. Yes.

Mr. Wilentz: Do you want the witness to take this?

Mr. Pope: Yes, I do.

Mr. Wilentz: Mr. Witness, will you take this

Mr. Pope: Thank you, Mr. Attorney General.

(Section of ladder placed on jury rail before the jury by the witness.)

Q. Turn it over. A. (Ladder and board, Exhibit S-226, placed end to end on rail before the jury by the witness.)

Q. I ask you if from your study of these two pieces of board you believe that they are all a part of the same board, that they were sawed apart and that there is missing between the end of the ladder rail and the end of the board in the attic a small piece about an inch and three-quarters in length? A. I would say they are an entirely different board, owing to this knot here, which would show pitch and a darker color, far past the inch and three-eighths; probably that is a little more than that. Also, if you will notice, these here are not the same knot—

Q. Now, pardon me. "These here" doesn't mean anything on the record. Will you call them rings, or whatever they are? A. These rings are not the same kind of a knot ring as those there. These project out. If it was the same piece of lumber, with an inch and an eighth put in there, this heart here, the pitch in this, would project down a good deal further than this does now. This knot here would project the opposite way, this way. Neither one has done that. This heart in here— Now, if you notice any of the other hearts in here, you will notice how far they go— a big circle heart in here. If you had a— this is a big heart in here. I don't happen to see a big heart in here. But this big heart in here would project back a dark color in here; whereas this pine, North Carolina pine, has been exposed, as I understand it, to the weather; it would naturally be of a harder surface, soft— when

you laid your hand over this it would be a kind of a wooly thing; where this in here, by being under cover, should be harder; the pitch in it would be harder. Instead of that, the pitch in here is softer, the wood.

The Court: Anything further, Mr. Pope?

Mr. Wilentz: Pardon me, will you mark the side he was explaining at the time?

Mr. Pope: Wait a minute. Don't turn the other side.

Mr. Wilentz: I know, but I want to be able to refer to the side that he had.

Mr. Pope: All right. You may refer to both sides.

Q. Now, then, put it this way; no, let the ladder be. Now I am turning the board, the so-called attic board, S-226, over on the other side, and I ask you if there is any matching there? A. No.

Q. And if not, why? A. Well, you have got the heart there. You have got a good deal the same type, but your heart is all set. It is too far that way.

Q. The heart is on which, on the attic board? A. Yes, it is here. See?

Q. Yes. A. And here is the heart here. No matter what you done, no matter where you put it, according to Mr.— it should be over that way, an inch and three-eighths, and they certainly do not match. There is the heart, and here is the heart, running this way; also showing the year's growth in here; the grain is of a different type than that, considerable. That knot— This should be all

knotted. If you will notice, these grains are running, inclined to run, that way (indicating). You will notice they are all running that way and they should be— you see the grains in the knot in here should be of a wavy side, like this. See what I mean? And yet these grains are clear, and they are running that way.

Q. So that in your opinion it doesn't make any difference which end of this board you turn up and try to match it against that end, it is impossible to do it? A. It can't match, not so far as the face surface of either side—

Q. Now, taking the general appearance of this board marked State's Exhibit S-226 and comparing it on both sides with the general appearance of the ladder rail, is there in your judgment any similarity between the two boards which would lead you to believe that they were both at one time a part of the same board? A. No, sir, it is tree nature to have this pitch, if it runs in the top, that pitch comes from a bruise and it wouldn't certainly be a bruise so high, it would be a bruise down lower. Mr. Koehler has told me this is the top. That pitch would have to come—naturally you would have more pitch in the bottom. When your pitch on North Carolina pine increases on the height, it is because that tree has been bruised considerably when it was young and that board don't show any stains of pine like that whatsoever.

Q. Now, take the—comparing the general characteristics of the grain formation in State's Exhibit S-226 with the general characteristics of the grain formation in the ladder rail, is there any similarity? A. No. The knots in here, you look at those knots, see, the knots in all trees go the same. These knots in here have got a good deal more curls all over, and are rougher as they go in here.

Q. The knots, I suppose, are limbs on a tree? A. Limbs on the tree. This originally was in here. You notice there is a knot in there, you see how much smoother they go with that curly thing like these in here, these knots in here look more curly; they are not in there, see how curly they are? A tree, the development of your upper part of your tree all depends upon the nature and the way the lower bottom of your tree has been taken care of when it was young. If this tree had been bruised a lot in the bottom it would have gnarly spots, and it would increase as it grows to the top. This pitch, it is practically a disease, that pitch in there, injured.

Q. This streak of pitch, long streak of pitch— A. You see—

Q. —in the center of the board, S-226, you think represents an injury? A. Yes, sir; when it was younger. But here is— This knot in here, you can see, you match in here. This is the way it is supposed to be matched, isn't it? Is that the way they are supposed to be matched? Which is the top? Which is the top here?

Mr. Wilentz: Just a minute. He wants to know— Are you asking Mr. Koehler which is the top?

The Witness: Yes.

Mr. Wilentz: Well, I am afraid—

The Court: The witness ought not to ask questions. He ought to answer questions.

Mr. Wilentz: Is there any question now pending?

By Mr. Pope:

Q. Well, do they match either way? A. No.

Q. No matter which way you turn the board over? A. No.

By Mr. Pope:

Q. If you turn it as it is now or turn it over? A. No.

Q. What I wanted to ask you was is there sufficient similarity between the attic floor board, S-226, and the ladder rail— A. No, sir.

Q. —to enable anyone to say they are both a part of the same board? A. No, sir. If they were the same board there would be—one, two, three, four, five, six, seven—seven knots in that board there. Here you have got—

Q. In how many feet? A. They are the same length, aren't they?

Mr. Wilentz: You see, your Honor—

The Court: I have told the witness that he must not ask questions. He must confine himself to answering questions.

Mr. Wilentz: I have no objection to Mr. Koehler answering his questions, but I think it is irregular.

Mr. Pope: We don't need it.

The Witness: One, two, three. In this same length there is three knots and in this top limb there is seven.

Mr. Pope: That is an additional reason

why you believe it is not a part of the same board?

Mr. Wilentz: I object to that. Oh, all right.

By Mr. Pope:

Q. Now, I want to call your attention to the photograph marked S-233. At the left of this photograph we are told that that is an enlarged photograph of the ladder rail, and at the right of this photograph we are told that there is a photograph of the attic floor, and there is the square in the notch showing an inch and three-eighths difference between the two. You see those blue lines on here, the blue pencil lines? A. Yes.

Q. Those pencil lines were put there by Mr. Koehler and he told the jury that in his opinion that was the way the grain on that board originally ran before the inch and three-quarters notch was sawed out and they were separated. What have you to say about that? A. This heart, if it was sawed out, this heart would go back and project in here (indicating on the exhibit.) Where it hasn't. Here is your grain here. All the way through here is your grain. There is no similarity of a heart up above here whatsoever.

Q. I now call your attention to State Exhibit 231 and here we have a cut-off portion of the photograph of the ladder rail No. 16, butting up against the end of the board from the attic floor. Do you think that those rings are continuous and that they were a part of the same board? A. Whoever set this up here, it is on an angle. It is on an approximately forty-five angle, and by putting it on an angle, they compare fairly good. They don't compare in fact, but fairly good, but put up that way it should be—

it is on an angle. This piece here is away up at the top there. It is put on there to make it match. This piece in here on this here is supposed to be the identical pieces, only it is reversed around. Now in this piece here, this end here, if you watch the circle, the trees, the years, every one of them is perfect. If you will watch them on this picture here there is a "V" on all them.

Q. Now I want you to show that "V" to the jury. A. You notice all that "V" in there going up. See them "V's"? See those "V's." There is one, two, three, four, five and then it jumps down to here, six. That was all "V's" in them. They are not in this. This is supposed to be—

Q. Now show it to these gentlemen back here. A. There is the "V's" in them, in them marks here. There is none in these whatsoever. That is the same picture as that. You see the "V's" in there everybody?

Mr. Wilentz: No. We don't want him to be asking questions.

The Witness: There are six rows there, six years' growth there with the "V's" in it. There is none in this here whatsoever. That there is right here and there is no "V's" in it.

Mr. Wilentz: Are your getting this, Mr. Stenographer?

The Reporter: Yes.

The Witness: That there is right here. That has six years' growth there. There are six rows with a double "V" in it, "V's" in it, and on this side is the same thing—there is none. It is the same picture, only it is it re-

versed around. That is the same picture there and right there (indicating.)

Q. All right, Mr.— A. Do you want to show it to the Judge?

Q. No. Now, I call your attention to the photograph at the bottom of this picture marked State's Exhibit S-233 and entitled "Board from the attic floor." Did you see the "V's" in that photograph that you have been speaking about? A. Which board?

Q. This one here. (Indicating.) A. That is this board (referring to S-226)?

Q. That is that board, yes. Do you see the "V's" there, too? A. Yes.

Mr. Wilentz: The question seems to be answered.

The Court: He answered yes, did he not?

Mr. Wilentz: Yes.

Mr. Pope: Yes, he did.

(Witness resumes the witness stand.)

Q. How did you become interested in this case, Mr.—

Mr. Wilentz: Well, if your Honor, please, I don't think that is material, to ask every witness how he became interested in the case.

Mr. Pope: Oh, I think—

The Court: You don't have to have that, do you Mr. Pope?

Mr. Pope: Well, I think we have a perfect right to show how the gentleman—every other witness has been asked—

The Court: Can you get at it shortly?

Mr. Pope: Yes, I just simply asked him how he became interested in the case.

Mr. Wilentz: I object to it, if your Honor, please, for the reason that it is absolutely impossible to meet any explanation the man may make. He opens the door wide for anything.

Mr. Pope: It will take about five words, I think, to answer it.

Mr. Wilentz: Apparently counsel knows the answer, but if your Honor, please, it doesn't matter. I submit very respectfully it is not material how he became interested. That may be cross-examination, but certainly not direct.

The Court: I will exclude the question.

By Mr. Pope:

Q. Well, you are not acquainted with any of the attorneys representing the defendant, are you? A. No.

Q. Never had any business connection with them? A. No.

Q. All right. You have no interest in the outcome of the case? A. No, sir.

Mr. Pope: That's all.

The Witness: Mr. Pope—

Mr. Wilentz: Just one minute, please, will you?

Cross-Examination by Mr. Wilentz:

Q. Mark an "A" at the end of each one of these edges that meet and match, as you say, on D-62 and D-63, capital "A." A. (The witness marks the exhibits.) Can't read that. What do you want, a V-shape? Can't mark the other one very good.

Q. Now then you mean that where you put the "A's" they should match, is that it? A. The circles, yes.

Q. That's where they should match, the grain? A. What is that?

Q. The grain should match there? A. This way, yes; this way (indicating.)

Q. Well, which ever way you put them. A. Get one on one side and one on the other.

Q. Take your time now.

Mr. Pope: Don't be in a hurry. You have got all day.

Mr. Wilentz: Yes.

A. I wondered if you had—

Q. No use talking to yourself, because— I mean the only time to talk is when you want to answer the question.

Mr. Pope: I object to the Attorney General either scolding or chastizing the witness.

Mr. Wilentz: I am not scolding him.

Mr. Pope: Or admonishing him. The Court is here for that purpose.

The Court: Yes. There is no need of this discussion, I think. He was asked to do certain things. Has he done that?

Mr. Wilentz: No. I am waiting for him to do it. He kept talking and I tried to tell him it wasn't necessary.

The Court: Yes.

A. (The witness marks the boards.)

Q. All right. Now take a look at those two edges and make sure that those are the two edges that you say match, so far as the grain is concerned? A. Yes, sir.

Q. Are they? A. Yes.

Q. Sir? A. Yes, sir.

Q. Are they the two edges that match? A. Yes.

Q. So far as grain is concerned? A. Yes.

Q. And you have marked an "A" on those ends, is that so? A. Yes.

Q. Well, now, you see you marked an "A" on the other end before. Now that's why I want you to adjust it. You see the "A" here? A. I have got an "A" on each end.

Q. This "A" you don't want then, is that it? A. No.

Q. All right. Now let me see, so we will have no mistake about it. You have got a red "A" there? A. And a red "A" on the other side.

Q. And that "A" there (indicating)? A. Yes.

Q. And the black one you crossed off on the other end. You made a mistake when you marked them first, is that what you mean? A. No, I had it wrong ways.

Q. You had it the wrong way. You had the wrong end? A. Yop.

Q. Now, mark these ends that you contend match by putting an "A" on these boards. A. (Witness marks on boards.)

Q. They are the two ends that match so far as grain is concerned? A. Yes.

Q. Neither set matches, so far as surface is concerned, is that it? A. Yes.

Q. Now, you have brought these exhibits yourself? A. Yop.

Q. You have had them with you for some time? A. No, sir.

Q. Well, you went and got them somewhere? A. I got them out there— I have had them, but I didn't—

Q. How long have you had them? How long have you had these boards, the Exhibits D-62 and D-63, with you? A. I got them—

Q. How long have you had them in your possession and custody? A. I have had them in my possession, that is, the lumber— I went and got them out of the lumber pile—

Q. How long, please? A. Oh, it is five months.

Q. Five months. How long have you had them with the knowledge that you were going to use them in this case? A. Tuesday— Monday afternoon at four o'clock.

Q. Monday afternoon at four o'clock? A. Yes.

Q. Now, today is Thursday and up till Monday afternoon you hadn't been down here to look at the ladder or anything? A. No, sir.

Q. When was the first time you saw the ladder? A. Tuesday.

Q. Tuesday? A. No, Wednesday, I mean.

Q. Wednesday—yesterday? A. Yes.

Q. Is that what you mean? A. Yes.

Q. So that the only time that you have devoted to the examination of the ladder and the grain and

the study that you have made has been since Wednesday? A. Yop.

Q. How much time did you spend Wednesday in inspecting the ladder? A. Probably three hours altogether.

Q. Three hours. And that inspection also, your inspection of the other piece of wood, S-226, was also limited during that time, wasn't it? A. Yes.

Q. Now did you spend any time today inspecting and examining the ladder and S-226? A. No, I didn't.

Q. So your entire investigation in this case so far as the ladder itself is concerned, so far as your observation of the ladder and that board, S-226, is limited to about three hours, is that right? A. Yes.

Q. How old is the board D-62? A. (After examination.) It is fourteen year marks on here.

Q. How old is it? A. Counting the pith—

Q. How old is it, please, if you know? You don't have to explain anything to me. All I want is an answer as to how old you think this board is, if you know. A. Fourteen years.

Q. Will you say it is fourteen years old? A. If the circles are correct.

Q. Is it a guess? A. No, it is according to the rings there. Each year makes a ring.

Q. Can you tell by this board how old it is? A. Yes.

Q. And will you say how old it is? A. Fourteen, if I counted them right there.

Q. If you counted them right? A. Yes.

Q. Nobody stopped you from counting them right. Take a look at it again. A. (After examining the exhibit.) Sixteen.

Q. Sixteen? A. Counting out to the ends here.

Q. Now is it fourteen or sixteen? A. Sixteen.

Q. Is it your judgment now that this D-62 is sixteen years old? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. There is no question in your mind about it? A. No.

Q. Take a look at D-63 now and tell us the age of that. A. (Witness examines board.)

Q. And talk up loudly, please, so that— A. Sixteen years.

Q. Sixteen? A. (Nods head.)

Q. Both the same age? A. Yes, sir.

Q. Those boards are sixteen years each or the trees are sixteen? A. The trees.

Q. The trees are sixteen years, is that what you mean? A. Yes, that is what you meant, isn't it?

Q. All I want is what you mean, sir. A. The trees.

Q. The trees are sixteen years old? A. Each, yes.

Q. Don't you remember just a short while ago when you were answering Mr. Pope's question that you said that one board was forty-seven years old and you wrote it on there with your own red pencil? A. That is the board. I thought you meant about the tree.

Q. That is what I am talking about. A. I am talking about a board that came off a building that was built forty-seven years ago, and that came off a building that was built five or six years ago (referring to another board), but that has nothing to do with the age of the tree.

Q. So that the boards are of the same age? A. The tree is, not the boards.

Q. The tree from which these boards came? A. Yes.

Q. Is that it? A. Yes, not the boards.

Q. Do you know whether they are a part of the same tree? A. Huh?

Q. Do you know whether they are a part of the same tree? A. They couldn't be. One is forty-

seven—built forty-seven years ago, come out of a building, and the other one came out of a building built six years ago.

Q. Well, how could it—that is what I am trying to find out, maybe I don't understand it—how could this board which is only sixteen years old have been inserted in a building forty-seven years ago? A. It was cut—I am talking about the—I am talking about the age of the tree, you are talking about the age of the board.

Q. Did you give us the age of the other two boards? A. Huh? No, I haven't.

Q. Will you take a look at them and tell us. A. (Witness examines boards) Seven.

Q. Each? A. (Nods head.)

Q. Each one is eleven years old? A. Seven.

Q. Seven. You mean the boards or the tree? A. The tree.

Q. Seven years. You told us 62 and 67, the other pieces, that they were not cut from the same tree? A. What is that?

Q. Did you say that the other boards which I exhibited to you a moment ago were not cut from the same tree? A. They couldn't be very well. One was out of a building that was built forty-seven years ago and the other was out of a building that was built five and a half or six years ago.

Q. You say that they are not? A. No.

Q. They are not cut from the same tree? A. Couldn't be.

Q. How about these boards that you just had now, 64 and 65? A. Well, they come from two different mills.

Q. I know about the mills. Did they come from the same tree? A. No, because the stains on the outside there, the saps, don't match. The years do, the circles match exactly, but the outside stains don't match.

Q. The outside stains? A. No, sir.

Q. But the grain matches? A. The grain, inside grain matches. The year's growth in it matches exactly.

Q. Do the grains match or just the year's growth? A. The grains match.

Q. Not the year's—in addition to the year's growth? A. The year's growth, the year's growth inside is the grain.

Q. You didn't cut these two exhibits, 62 and 63, off from the same board, did you? A. No, sir.

Q. Will you tell us of what lumber this ladder is made? A. What is that?

Q. Will you tell us of what lumber this ladder is made? A. It is made of fir and North Carolina.

Q. What kind of fir? A. Well, it looks to me like a Douglas fir.

Q. What else? Huh?

Q. What else, if anything? A. I don't know as it is made out of any other kind, only Douglas fir.

Q. What about the rails? A. I haven't looked at—the rails are made of pine and fir.

Q. The rails are made of pine and fir. A. Well, I haven't looked at the—only at this one piece.

Q. If you don't know, say so. A. I don't know.

Q. Why don't you say so instead of saying pine and fir, if you don't know? A. You asked me what the ladder was made of.

Q. Yes. A. And I said it is made of fir and pine.

Q. And you don't know, the fact of the matter is you don't— A. I know that there is fir in it.

Q. What are the rungs made of? A. I don't know. I haven't examined them.

Q. What are the rails made of? A. Made of pine.

Q. How many rails are of pine? A. Huh? I haven't examined only the one rail.

Q. That is all you have examined? A. Yes, sir.

Q. You looked at it for three hours. A. I didn't time— I looked at it three different times.

Q. Three different times? A. Yes.

Q. When? A. I looked at it in here through the noon hour, yesterday, and we were up in yesterday afternoon and last night.

Q. Up, looking at the ladder in your possession— For three hours you examined it yesterday? A. Not altogether three hours on the ladder.

Q. Well, you told us three hours. How much time did you spend looking at the ladder? A. Well, I don't know. I think about an hour yesterday noon and an hour last night and then we looked at the tools in there for about an hour, I think.

Q. Well, then two hours? A. Yes.

Q. About two hours? A. Yes.

Q. And the only thing you looked at was that rail that they pointed out to you? A. Yes.

Q. Rail 16? A. Yes.

Q. You looked at the tools, too, didn't you? A. Yes.

Q. Spent an hour at that? A. Approximately an hour, I guess, I don't know.

Q. Did you look at photographs, too? A. Yes.

Q. You know, of course, of Mr. Koehler, don't you? A. Yes, I have met him.

Q. You know his reputation, do you not? A. Yes.

Q. You have seen this drawing? A. Yes.

Q. You saw it before you came in this courtroom, didn't you? A. What is that?

Q. You saw it before you came in the courtroom? A. The only one I saw was in the paper; no, sir; I never saw it.

Q. Did you see it in the back room? A. I saw it in the back room yesterday.

Q. That is what I am talking about. A. Yes.

Q. And you say that that is not the way that board was connected? A. No, sir.

Q. Why not? A. I have told you the way the grains are.

Q. That doesn't show— A. If that board was the same board—

Q. Use the same end, please. A. This end here, starting to go up, up, up, instead of going over, and whoever has drawed these lines has drawn them to correspond and make it look as if they were meeting.

Q. They do correspond on there, don't they? A. Yes, but this particular growth here—look at the width there, look here, they are tightening together, the pencil marks.

Q. They had to meet? A. They had to do it to make them look the same.

Q. Aren't these nice and tight there where they meet? A. They shouldn't be.

Q. Here on the board itself. A. They shouldn't be. Here is a wide space here and he has drawn a line here, it is very narrow, almost running in as if the tree made no growth at the time.

Q. Here they are narrow. A. They should be narrow here going to the knot.

Q. What does that indicate? A. Because every knot squeezes them up tight together, but here they should not be so near together.

Q. The board in the immediate vicinity of that knot, that is where the lines come right close together, is that not right? A. They should there.

Q. Now just sit down. Then the board in the position right in the immediate vicinity of that knot, that's where the lines come right close together, isn't that right? A. They should there, but they—

Q. And they taper away, from that knot they taper away and they get further apart, don't they? A. No, not on—

Q. You mean they continue right from the knot

throughout the entire board, the same width? A. No, they don't taper away. It is marked off. They shouldn't go—

Q. But they do taper away from the knot, do they not? A. No.

Q. Aren't these closer at the point where they meet the knot? A. They are at where they meet the knot, yes.

Q. Yes. And from that point they start to spread away a little bit? A. Yes, but they shouldn't spread that way; they should spread up, the way that's going; that's going up.

Q. They spread up? A. Yes.

Q. They should spread up? Well you see that they spread down here, on this side, don't they? A. They spread down in here but—

Q. Just a minute now. We are staying right there. You say they spread up. The fact is they spread down over here, don't they? Do they or don't they? A. Huh?

Q. Don't they spread down here, from this knot? A. No, I wouldn't say so.

Q. Please answer the question. A. I should say not.

Q. Don't you see these circles down—one, two, three, four, five, six? A. I don't see them all. There is some of them down.

Q. How many of them are down? A. One, two.

Q. One, two? Point out the one, two. A. Well, there is one here; two, three.

Q. Three. How about the fourth one? A. No, I wouldn't—

Q. Now take a look at that. A. I wouldn't call that going down. It is going over this way.

Q. Well here; if you put your line straight, isn't the edge of that down? A. It is not going down to meet this one.

Q. Well it does meet it, doesn't it? A. Any one can draw a line to make it meet it, but it is down.

Q. But it is down, in a downgrade, isn't it? A. Yes; but if it was let be carried out, it would never meet that one over there; it would meet one up here.

Q. So that it is one, two, three, four lines downgrade, isn't that so? A. Yes.

Q. Not three and not two? A. Yes.

Q. All right, sir. All right. Now, just have a seat for a minute. (Witness resumes stand.) What kind of wood is S-226? That is that piece of wood there. A. Which piece,—here?

Q. The independent piece there. A. This?

Q. Yes. A. North Carolina pine.

Q. What part of rail, what kind of wood is No. 16? A. Which is 16? I don't see any number on it.

Q. That is the rail you looked at for two hours yesterday. A. That there? That is a better grade North Carolina pine.

Q. Where is it? A. Right there.

Q. That is the one nearest you, isn't it? A. Yes.

Q. Are they both sapwood? A. Huh?

Q. Are they both sapwood? A. Well, I wouldn't call this one here sapwood; I would the other one.

Q. What are— One of these is and one of them isn't; is that it? A. Yes.

Q. Both flat grain? A. Yes.

Q. Both have knots? A. The lower rail has three and the top one has seven, which is contrary to anything there ever was.

Q. Contrary to what? A. The upper—as the tree grows up it grows faster and it clears itself with less knots—I can show you it here.

Q. Let me have that again, sir, please. A. A tree, a pine tree, as it grows—when it first grows, it grows on this type here, it is bushy (indicating small branch of pine).

Q. Where are the knots, at the top or the bottom? A. On the bottom.

Q. You mean there are more knots on the bottom than there are at the top? Just leave that alone, please. Are there more knots at the bottom than there are at the top? A. Yes.

Q. It is your understanding then that the bottom of the tree has more knots than the top? A. Yes.

Q. And which part of the tree is S-226: the bottom or the top? A. Yes, the top.

Q. What is that, the top or the bottom? A. Top.

Q. Who told you that? A. From experience.

Q. Mr. Koehler? Mr. Koehler? A. Sir?

Q. Told you that, didn't he A. No, he did not.

Q. Didn't you just ask him which was the top? A. No, sir; I asked him which was the top or the bottom of the garret floor.

Q. Couldn't you tell? A. Huh?

Q. Couldn't you tell? A. Well, I could tell, certainly, by the nail holes; I wanted to see which one that they claimed.

Q. Oh, I see. You can tell by the nail holes? A. Yes, I can tell by the board.

Q. You can't tell from an inspection of the attic floor which is the top and which is the bottom? A. I haven't been in the attic.

Q. No. I mean about this particular board. A. Yes, you can tell.

Q. Which is the bark side of the lumber? A. What is that?

Q. Which is the bark side of it? A. I don't know whether you can tell on this one or not.

Q. Well, if you can, say so. A. This is the bark side (indicating).

Q. Just put a little X on there, will you, please. A. (Witness marks on board with red and black pencils on S-226.)

Q. Can you tell now which is the top and which is the bottom of that board? A. What is that?

Q. Can you tell now which is the top and which is the bottom of the board, and how you can tell us how you can tell it. A. (Witness examines board.) You can tell this is the top (indicating).

Q. Is that the same side that you put the other mark on? A. What is that?

Q. Is that the same side you? A. No.

Q. Is that the same side? A. No.

Q. That is opposite to the side that you marked with the "x." A. Yes. The reason this is the top side—do you want to know the reason?

Q. No. The reason why the top— A. That is the way the—

Q. Why do you say that is the top, the part you just showed us? A. Because there are more knots in it and it runs out. There are more knots in here. It runs out. It carries itself up.

Q. It is the top because it has more knots? A. Yes.

Q. I thought you said a minute ago it is the bottom that has the more knots. A. Huh?

Q. Didn't you say a minute ago that it is the bottom that has the most knots? A. I do. I said the bottom, to match this piece, would have more knots than that piece here. I do say the bottom has more knots. I still say it.

Q. But in this case the top has more knots. A. I don't see in this case—

Q. The board itself has more knots. A. This board?

Q. S-226? A. Compared to what board?

Q. Compared to the side of the ladder. A. That board has nothing to do with this board.

Q. Which has the more knots? A. This board here.

Q. S-226? A. Whatever was on the bottom of this board would have more knots in than this piece.

Q. And that is because it is your notion that this board, S-226, was the top of some other board? A. Yes, sir.

Q. Was it sawed off of something, cut off of some other board? Will you take a look at it and see? A. Well, you can't tell whether it is cut off or not or whether it came from the mill that way.

Q. Well, if you can't say so, just say that. A. I can't tell whether it came from the mill that way or was cut by some man. It is sawed off, it has been sawed off, that is certain.

Q. Have the knots anything to do with the branches? A. What is that?

Q. Have the knots anything to do with the branches? A. Yes, sir.

Q. What have they to do with the branches? A. When a tree is small, they have more branches. As the tree grows up, I have a tree—

Q. Please answer the question. A. The reason there is more knots in here is because a tree, when it is young, a pine, it is nature that it grows very slow and it has branches, as it grows, as the pine gets seven to eight years old, it will make a growth of anywhere from 24 to 28 inches. I have some specimens here in the car that last year, that same pine growed 28 inches.

Q. How about below the branches? A. It grows, when it is young it grows very small and knotty, it has a lot of limbs. It grows very slow, a pine does, the slowest—

Q. Below where the branches are do they have any knots? A. Certainly, every tree starts with branches when it starts. It has got to have it. The but of a tree never grows up, it stays there. It is the growth up in here. The branches in the bottom never grow up.

Q. Therefore they are studded and spotted with knots, is that it? A. Yes.

Q. You mean that every branch has a knot? A. Certainly.

Q. Will you take a look at S-226, please, and tell us from which side the nails were driven, where the nail holes are shown (indicating Exhibit S-226)? A. Is this S-226?

Q. Yes. A. The nails went in from that side (indicating).

Q. Is that the same side you marked an "X," is that right? A. Yes.

Q. Will you take a look at the ladder, rail 16, and tell us from which side these nail holes were nailed, this one here with the circle around it and this one here? A. (After examining) They were drove from the inside, but it is hard to tell. They are not the same nail holes. They are smaller nails than are in this board.

Q. What kind of nails are they? A. Cut nails.

Q. Cut nails? A. Cut nails.

Q. Both of them? A. One is a number 6 and one is a number 8 nail.

Q. Both cut nails? A. Yes, sir; one is a number 6 and one is a number 8.

Q. Have you got a 6 and an 8 here with you? A. No, sir, I haven't.

Q. Did you have them with you? A. No, sir.

Q. Did you have them yesterday afternoon? A. No, sir.

Q. Did you test them with 6's or 8's? A. No, sir.

Q. How far apart are joists usually placed in a building? A. Center to center, 16 inches.

Q. Sixteen inches. Do you know whether or not these nail holes that you just examined in 226—not in 226, but in the rail ladder, whether they are not 16 inches apart? A. I haven't measured them.

Q. Didn't measure them.

Mr. Wilentz: Your Honor, are we going to finish the defense today?

The Court: Sir?

Mr. Wilentz: Are we going to finish the defense today?

Mr. Pope: No.

Mr. Wilentz: So I will know whether to hold over this witness.

Mr. Reilly: We have one or two more witnesses.

Mr. Wilentz: One or two more?

Mr. Reilly: One or two more.

Mr. Pope: We will finish tomorrow.

Mr. Fisher: Tomorrow morning.

Mr. Pope: Tomorrow morning.

Mr. Reilly: By noon recess.
I tried to keep my promise for Thursday, Judge, but these things will bob up.

The Court: Now, Mr. Attorney General, do you want to finish your cross-examination?

Mr. Wilentz: Well, I thought if they were going to finish tonight— I understood at first they were going to call one witness; if it is one or two now, why, of course I can see that they

probably won't want to go on. Personally I would like to finish tonight if we could.

The Court: Yes. But apparently the defense cannot finish tonight.

Mr. Reilly: No, your Honor we can't.

The Court: Yes. Now the question is—

Mr. Wilentz: Then we will ask that— I was going to conclude if we could finish the case, but since we can't, then I will ask that this witness return tomorrow.

The Court: Return tomorrow?

Mr. Wilentz: Yes.

Mr. Pope: Well, can't we finish with this witness? We are keeping him here at a great expense and he is very anxious to get back.

The Witness: Mr. Pope. I want to get a hold of that man.

The Court: We will take a recess now until tomorrow morning at ten o'clock. The people will remain seated in the courtroom until the jury retires.
The jury may retire.

(At 4:52 p. m. the jury retired.)

The Court: The prisoner may now retire.

(The prisoner retired in the custody of the Sheriff.)

The Court: The people will remain seated. I wish to see the Sheriff before I go home tonight. Will one of the officers notify him to come to my office.

We will now take a recess until tomorrow morning.

(At 4:54 P. M. an adjournment was taken until tomorrow morning, Friday, February 8, 1935, at ten o'clock.)

Opening of Twenty-Eighth Day

STATE VS. HAUPTMANN

Flemington, N. J., February 8th, 1935.

TWENTY-EIGHTH DAY

Present:

Hon. Thomas W. Trenchard.

Appearances:

Mr. Wilentz,
Mr. Lanigan,
Mr. Hauck,
Mr. Peacock,
Mr. Large,
For the State.

Mr. Reilly,
Mr. Fisher,
Mr. Pope,
Mr. Rosecrans,
For the Defendant.

———

(10:02 a. m.)

(The jury was polled and all jurors answered present.)

The Court: Counsel may proceed.

Mr. Reilly: We are waiting a minute for Mr. Pope to arrive.

The Court: Now Mr. Pope has arrived, you may proceed.

Mr. Pope: The Attorney General consents that I ask the witness a couple of more questions.

CHARLES DE BISSCHOP resumed the stand.

Direct Examination (resumed) by Mr. Pope:

Q. I want to show you a piece of pine which you have produced. I put that paper around it because of the gum on it. Can you illustrate to the jury from that piece of pine what you meant when you said to them yesterday that State Exhibit 226 was a piece of butt wood, whereas the ladder rail came out of a tree higher up and above the butt. Can you illustrate and explain to the jury about that? A. I can if I get the other pieces.

Mr. Pope: You may have all you want.

Mr. Wilentz: I object to the illustration unless it is yellow pine, if your Honor please.

The Witness: It is yellow pine.

Mr. Wilentz: If it is yellow pine, I have no objection.

By Mr. Pope:

Q. That is, it is southern pine? A. Yes, sir, this seed came from North Carolina. The reason

this tree was cut, we couldn't get it in the car coming down from Connecticut. These—it was sawed off here. This shows you here the knots in that tree as it grows.

Mr. Wilentz: Just a minute, if your Honor please. I object to this demonstration because we can't get a board of the type that we have here or the size out of that sort of tree. It is manifestly an improper illustration. It can't possibly—

Mr. Pope: That isn't the purpose.

Mr. Wilentz: It is evident from merely looking at it, if your Honor please, you don't have to be a lumberman or contractor to tell that. Now, if they have a tree of yellow pine or North Carolina pine or Carolina pine from which such a board might come so that the illustration might be of some force and effect, that is different, but to bring in a tree of this kind for illustration, when it is impossible to illustrate the point because, if your Honor please, no board of that size can possibly come from it, I object to it.

The Court: I don't know the precise purpose of Mr. Pope's question.

By Mr. Pope:

Q. Do all trees grow the same way, all yellow pine trees grow the same as that one did?

Mr. Wilentz: I object to that, your Honor.

A. No.

Mr. Wilentz: For the reason that I suppose all trees grow the same way, from the ground.

Q. Do they form and shape up the same as that is? A. They do not.

Mr. Wilentz: Now if your Honor please—

The Court: One moment.

Mr. Wilentz: Well, he has answered, they do not.

Q. Now I will ask you this question, before you explain the illustration. I think you did tell us yesterday about the difference between the knots and how much closer they are together at the butt of the tree than they are after the tree grows up and gets up in the air; after it gets up in the air, I think you said they spread farther apart. Is that what you mean? A. (Witness nods.)

Q. Now does this particular sample tree which you have here illustrate the general method of growing of a pine, southern pine tree, whether it is large enough to cut a one foot board or only large enough to cut a one inch piece?

Mr. Wilentz: I object to that, if your Honor please, for the reason that this is not a proper illustration.

The Court: I will sustain the objection.

Q. Well, this sample that you have brought

here, you brought here for what purpose, to show what?

Mr. Wilentz: I object to that, if your Honor please, as not being material, for what purpose he has brought it.

Q. No, to show what?

Mr. Wilentz: I object to that, if your Honor please, because the very object—

The Court: I sustain the objection.

By Mr. Pope:

Q. Regardless of the size of the sample of southern pine which you hold in your hand, does it correctly illustrate the method of formation of tree wood?

Mr. Wilentz: I object to that, if your Honor please.

A. Yes.

Mr. Wilentz: I move the answer be stricken out.

The Court: Strike it out.

Mr. Pope: Now, if your Honor please, may I be heard?

The Court: Surely.

Mr. Pope: The purpose of this illustration is to corroborate the testimony of the

witness and to show the jury that there is a reason in the natural normal growth of trees, why one board cut out of a tree can be located by a tree man as what is known as a butt board, in other words, a board that was cut from the butt of the tree because of the additional number of knots in it, and because of their closeness together, that as the tree grows up the knots spread wider apart and you have less knots in a board.

The Court: You may ask him, if you wish, Mr. Pope, if he is able to identify a butt board.

By Mr. Pope:

Q. Are you able to identify a butt board? A. Yes.

Q. Will you tell the jury how you identify a butt board from a tree. A. May I illustrate on this?

Mr. Pope: I would like you to. May he illustrate it?

Mr. Wilentz: No.

By Mr. Pope:

Q. Does that fairly and truly depict the method of growth of a butt board? A. Yes.

Mr. Pope: Now, he says it does, and I ask that he be permitted to illustrate, use the sample for the purpose of illustration to show how a butt board grows.

Mr. Wilentz: If your Honor please, we would have no objection to the illustration if it was a fair one, if they brought in the type of board from which the ladder rail could have come or from which S-226 came. The trouble about that is, that this is clearly and plainly deceptive, because it doesn't properly illustrate, and if it is brought here for the purpose of illustration it can't be done. It can only deceive; it can't help. Now, if they wanted to properly illustrate, I take it, if your Honor please, that there should have been here today something from which a board this size or the rail this size could have come.

Mr. Pope: Well, manifestly that isn't correct, because in the first place we couldn't bring a 60 or 80 foot tree into the courtroom. In the second place, the growth of trees and the lumber that comes from trees is relative, purely relative and this sample is purely a relative sample, that is all. It shows the manner in which the trees make their growth and that is all we desire to use it for, not for the purpose of showing how big a knot would be on a board that is six inches wide.

Of course, it would be proportionately smaller on a small butt, but the method of growing is exactly the same, because trees are trees after all, whether they are small or whether they are large.

The Court: Now, what is your question, Mr. Pope?

Mr. Pope: I desire the witness to illus-

trate to the jury how it is possible for a practical lumber man to determine a butt board from a board that comes from some other portion of the tree.

Mr. Wilentz: And we object to using this piece of pine as an illustration.

The Court: Well, I think I will permit it to be done, if you can do it shortly, Mr. Pope.

Mr. Wilentz: If what, sir?

Mr. Pope: If he can do it shortly.

The Court: If he can do it shortly.

A. (Witness takes two pieces of small pine tree and matches them end to end.) How we tell the difference between a butt cut, second cut or top cut,— we have generally three cuts in lumber—a butt cut always has more knots, the knots are smaller, they are just as large when they start to grow, when they are young, but as this tree grows older, the knots will be there, but the tree grows harder and makes a more compact knot, but as the tree grows older, here is your other cut, here is a growth in here, it starts in here; there is only two inches growth, a three-inch growth, six-inch growth, eight-inch growth, about eight inches, then it jumps up into here, then about 24. Here is another one about 20 and there is another one 28 and the top one there is 29 inches. To show that you get less knots as you proceed the tree, the second cut, you get less knots. It is very easy to see. Everybody can see how, how you get more knots.

The Court: Well—

By Mr. Pope:

Q. And is that so with all southern pine trees? A. Yes, sir.

Q. Does that rule hold good with all southern trees? A. I have another southern pine here, yellow pine.

Q. All right.

Mr. Wilentz: Just a minute, sir. I think that the purpose of your Honor's permission has been met.

The Court: It seems that it has been served.

Mr. Pope: This particular piece, the witness has merely cut off for me one of the outside growths of pine for the purpose of showing—

Mr. Wilentz: Just a minute, please, Mr. Witness.

Mr. Pope: Wait a minute— For the purpose of showing the jurors how the knots show through and run through, that is all. If you object to it I won't press it. Do you object to it?

Mr. Wilentz: Well, it isn't a matter of objection. The question has been answered, as I understand it.

The Court: I think the question has

been answered, that is, the question that you put for the purpose of illustrating your point I think has been answered.

Mr. Pope: I now wanted to ask the witness to remove the outside bark and make a cut, an axe cut into it to show the jurors what he means by the knots running through and how it will show on the inside. If the Attorney General objects to it all right.

The Court: He seems to be objecting.

Mr. Pope: All right.

By Mr. Pope:

Q. Mr. Witness, if this particular board here that is in evidence (showing Exhibit S-226 to the witness) had been attached to and was nailed fast to floor joists in the attic of a house, and had lain there for some two or three years, would there be any markings or indications on the under side of the board where it comes in contact with the joists, the floor joists that would show on the board? A. There should be a mark approximately every 16 inches.

Q. That is, assuming that the floor joists are set 16 inches on center? A. Yes.

Q. Now, if this board was nailed to floor joists, with eight or ten penny cut nails, iron cut nails not toed in but nailed to the joists on the top and had been nailed there for a couple of years, could that board be removed from the joists without showing the marks of a chisel or a bar, or the marks of a hammer or a nail extracting tool? A. It could not.

Q. Do you see any marks of a bar or a nail extracting tool or a hammer? A. No, sir; there is no marks.

Q. Shown there as having been used to remove that board from the floor joists? A. There is no marks on either side. The only mark is right here, when the nail was drove in. That is the only mark there. There is a hammer mark right there (indicating).

Q. The face of the hammer shows on the board? A. Yes. That is the only mark on the whole board.

Q. No hammer mark showing the extraction of the nails? A. No, sir.

Q. In any of the holes? A. No, sir.

Q. And no mark underneath showing where a bar or anything else had been used to loosen the board from the floor? A. No, sir.

Q. Do you see any marks of joists on the under side of that board? A. No, sir.

Q. Shadows of joists? A. No, sir.

Q. How many years have you been engaged in removing flooring and timbers and tearing down houses, and things like that? A. For the last eight years.

Mr. Pope: That is all.

Cross Examination (Resumed) By Mr. Wilentz:

Q. You mean in wrecking buildings? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. Of course when you are wrecking buildings, you remove them the easiest way? A. We do not. We take them up to save the lumber.

Q. You say you do not. As I understand it, your testimony is that this board was never a part of a floor? A. Huh?

Q. Is it the intention of your testimony to say that S-226 was never a part of the floor? A. It is not my intention, it shows no marks whatsoever.

Q. You mean by that it was never nailed down? A. I am not saying it was not nailed down.

Q. That is the effect of what you are saying? A. There are no marks to show it.

Q. Isn't that the inference you want to carry to the jury that this S-226 was never nailed down because you find no evidence of it being nailed down? A. There is no evidence of it being taken up.

Q. You want to carry the impression to the jury that the board was never nailed down to joists? A. What is that?

Q. You want to carry to the jury the impression that this S-226 was never nailed down to joists?

Mr. Pope: I object to that, if your Honor please, it is not a question of what the witness wants to carry to the jury. His testimony is "I find no marks on that board which would indicate to me that it had been taken up." It is for the jury to say what inference shall be drawn from that testimony.

The Court: Don't you think he may cross examine on that subject matter as to what inference he wants the jury to draw from his testimony?

Mr. Pope: No, that is clearly the province of the jury and it is not for the witness to say what inference shall be drawn from a statement of fact.

The Court: I will overrule the objection.

Mr. Pope: May I have an exception?

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Wilentz:

Q. Was it your intention when you talked about the joists and the markings on S-226 to convey the meaning that this board in your opinion had not been nailed down to joists? A. No, sir.

Q. So that you won't say that was not nailed down to joists, will you? A. I will not.

Q. So far as you know, this had been nailed down? A. If it was nailed down—

Q. Answer the question: So far as you know, it had been nailed down to joists? A. It might have been.

Q. You won't say it was not? A. No.

Q. All right. What did you say about six and eight penny nails? You said in some part of this wood there were six penny nails and in the other part eight penny? A. Yes.

Q. You were talking then about S-226 and you were talking about Rail 16 of the ladder. A. Yes, sir.

Q. Now, take a look at these two nails and tell me if you can what size nails they are. A. They are neither one standard.

Q. I am not asking you about whether they are

standard. I am asking about the size. A. They are supposed to be a six and an eight.

Q. Is the smaller one supposed to be a six and the other an eight? A. Yes.

Q. Are they cut nails? A. Yes.

Q. Excuse me a minute. Is this a six penny cut nail? A. Yes.

Mr. Wilentz: I offer it in evidence.

Q. Is this an eight penny cut nail? A. Yes, sir.

Mr. Wilentz: I offer that in evidence.

Mr. Pope: I object to them because they are not the kind of nails used in this board.

The Witness: No, they are not.

Mr. Wilentz: Just a minute. Who says they are not?

Mr. Pope: May I ask the witness—

The Court: You may examine about them—

Mr. Pope: Then may the admission of the nails be held until I have had an opportunity?

The Court: I see no occasion for withholding the admission of these nails. There has been a good deal of testimony about six penny nails and eight penny nails.

Mr. Pope: But, if your Honor please, I don't want the State to get in here a pair

of nails that are a different kind of cut nail from the kind that was used in these boards.

The Court: Well, for the purpose of this record, the nails may be admitted, and if you can demonstrate that there is no question to go to the jury with respect to these nails, why, you may move to strike them out.

Mr. Pope: All right.

The Reporter: Exhibit S-299 and Exhibit S-300.

(Two nails referred to received in evidence and marked State Exhibits S-299 and S-300.)

By Mr. Wilentz:

Q. Now, this, is this the eight penny nail? A. Yes.

Q. Will you say that this eight penny nail was not used in that ladder or, either in the ladder, or S-226, the floor board? A. That nail never was.

Q. This nail never was in either one? A. Not that nail.

Q. Well, why not? Why do you say it wasn't? A. There might have been another nail used.

Q. Why do you say this one wasn't? A. (Examines nail.) Because there is no marks. It is an impossibility to take a nail out of lumber in as straight a condition as that.

Q. You say then because it is that straight it is impossible that that nail had been used? A. Yes, sir.

Q. And it is your testimony then that this nail had never been used anywhere? A. Yes, sir.

Q. Is that your testimony? A. Let's see that.

Q. Well, now, you have looked at it and you have sworn to it. Do you want to reconsider your answer? A. Can I look at it again?

Q. Yes, you can. Do you want to reconsider your testimony?

Mr. Pope: No, he doesn't want to reconsider anything.

Mr. Wilentz: Now, just a minute, if your Honor please. Now, if your Honor please, the witness—

Mr. Pope: I object.

Mr. Wilentz: Now, this witness is on cross examination and I object to the help that counsel is trying to give him. It is a very simple matter—

Mr. Pope: I object to that now.

The Court: You have put a question to this witness and he desires to look at that nail.

Mr. Wilentz: Yes.

The Court: Your reply is that he has already looked at it.

Mr. Wilentz: Yes.

The Court: But I think he may look at it again.

Mr. Wilentz: But I would like to ask him if it is impossible—of course, if your Honor overrules me—what I would like to ask him now is—of course, if it is improper, your Honor has sustained it, of course I will have to abide by it.

Q. Do you want to look at this nail now, because you want to reconsider your testimony on the very point which you just testified to, namely, that it is your sworn testimony that this nail—

Mr. Wilentz: What number is it?

The Reporter: The larger one? S-300.

Q. —that S-300 had never been used?

Mr. Pope: I object to the question. Manifestly that is an improper question.

The Court: The objection is overruled.

Mr. Pope: He has asked another question and the witness wants to see the nail.

The Court: Yes. Well, he may see the nail; you need not be concerned about that.

Mr. Pope: May the jury be instructed to disregard the statement of the Attorney General contained in that question?

Mr. Wilentz: Why, the question has been allowed.

Mr. Pope: Did the Court overrule my motion?

The Court: What statement do you say you want the jury instructed to disregard?

Mr. Pope: If you have overruled my objection, then I have nothing more to say.

The Court: Well, I have overruled several of your objections. Now what is your motion?

Mr. Pope: I object to this question because it incorporates in it a statement which is not justified by the fact. The witness was asked a question regarding this nail. He answered that question. Now he is asked another question and a different question and the witness says, "May I see the nail before I answer?" And then the Prosecutor goes on and he says, "Do you want to see the nail because you want to change your testimony from what you have just given?" That is unfair, manifestly that is unfair, your Honor.

The Court: That is what you say. I have a different opinion about it and I will overrule your objection.

Mr. Pope: May we have an exception?

The Court: Take your exception.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Now will you answer the question? Do you want to see this nail in order to reconsider the testimony which you just gave, in which you stated positively that this nail had never been used? A. I may and I may not want to change my testimony.

Q. You may? A. May or may not.

Q. Now will you take a look at it and determine whether you want to change your testimony (handing nail to the witness)? A. Yes, I would say it had never been used.

Q. You would say it had never been used? A. Yes, sir.

Q. Would you be surprised to learn that it had been one nail taken from the attic board, S-226? A. I would be awful surprised.

Q. You would. Now, the higher a tree goes, the knots get larger as they go up, do they not? Please answer the question. Do they or do they not? A. Not necessarily larger.

Q. The knots do not get larger? A. They get thicker.

Q. Thicker. Well, when you say thicker, do you mean wider? A. No, more of them in the same space.

Q. I am talking about the size of them. A. They don't change in size.

Q. Doesn't the size of the knot depend upon the size of the branches? A. Yes.

Q. And as the tree grows up and gets older, don't the branches get bigger? A. Not on pine.

Q. I am talking about pine. A. Not on pine.

Q. Will you take a look at this picture and tell me whether or not that isn't a correct picture of forest pine, yellow pine? Take your time. A. That's a good picture. The same cones, I have here.

Q. That's a good picture, isn't it? A. But it

don't show any of the knots. Yet, when you cut that tree down, the knots are there.

Q. Is that a good picture? You say it is a good picture of yellow pine? A. Well, yes, it is a good picture of yellow pine.

Q. Yes. Forest pine? A. Short leaf pine.

Mr. Wilentz: I offer it in evidence.

Mr. Pope: This is southern pine? Did the witness say it is southern pine?

Mr. Wilentz: He says it is a good picture.

Q. Is it southern pine? A. It is not the—

Q. Is it southern pine? A. It is not the pine—

Q. Is it southern pine, please? A. It is a southern pine.

Q. Yes. A. But not the kind of pine in the board.

Mr. Pope: Then I object to it.

Mr. Wilentz: Well, mark it for identification then.

(The board was marked S-301 for Identification.)

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Pope:

Q. Just one question. You were asked yesterday by the Attorney General something about the number of years old this particular board was and you counted the rings in the board. I may

not have heard exactly, but I understood you to say something about sixteen years.

Mr. Wilentz: No, that is not the board he was testifying to.

Mr. Pope: Well, which one was it?

Mr. Wilentz: Some board that he brought.

The Witness: It is the board I brought.

Q. Oh, the board you brought? A. (Nods head.)

Q. Well, when you spoke of sixteen years, just what did you mean by that? A. I meant that it showed sixteen years in the section, in the solid section of the board.

Q. Sixteen years? A. Didn't represent the sixteen years in the tree. The tree might be 50 years old.

Q. Oh, sixteen years of growth in the board? A. Yes.

Q. Is there any definite way that you know of to tell the age of a tree by examining the ends of a one by six board? A. No, sir.

Mr. Pope: I want to see that.

Q. I see that there are a couple of splits that have developed in these two boards which you had yesterday. Will you tell us about those splits. A. Those splits, those splits were not in the board yesterday. They come from being out in the wet, and you put that where the heat is and there will be more splits within a day or two in this board; there will be several splits in it as the dampness dries out. You put this on a hot radia-

tor and it will be more warped and more splits in it.

Q. How were those boards packed together when you brought them here? A. What is that?

Q. How were they packed when you brought them here? A. They were together, they were wet, they had never been in the heat, for the last five months, they were out in our car here, stayed out in front of the hotel all night; they had never been in where the heat was until the day they were brought in here and I made the statement on the statement that one of these boards was washed in order to —

Q. Who washed it? A. It was the oldest board that was washed so we could see the marks and grains on it.

Q. Who washed it? A. I did.

Q. What did you wash it with? A. Warm water and soap.

Mr. Pope: That is all.

By Mr. Wilentz:

Q. So that the splits that you see in the boards now, D-62 and D-63, were not there yesterday afternoon: is that what you said? A. Yes, when I showed it to the jury it was not split.

Q. When you showed it to the jury there was no split. These boards had been out of your hands, in the County Clerk's safe, all night, hadn't they? A. Yes, sir.

Q. And no State Police has had possession of them? A. No, sir; but the heat will make them crack.

Q. We will get to the heat in a minute. There were no splits in these boards when you left them

yesterday? A. Not when I showed them to the jury.

Q. That is what I am talking about, when you showed them to the jury at four o'clock yesterday afternoon. Don't you see this split, pretty nearly all the way across that board? A. Yes. I am talking about the matched ends—

Q. No split in that board there? Well, there is a split in the end, isn't there? A. No, but the matched ends, we had them matched.

Q. You talked about splits in the boards. A. On the matched ends.

Q. You didn't qualify it. A. That is what I meant.

Q. Take a look at the matched ends: do you see that all the way across there? A. Yes.

Q. The other split? A. Yes, sir.

Q. Neither one of those was there yesterday? A. No, sir. The heat will make them do it sometimes in an hour.

Q. Let me show the jury these splits that suddenly got in.

Mr. Wilentz: Will you please take them, Mr. Juror, and take your time about it and show them 62 and 63. (Exhibiting boards to the jury.)

Q. Now, when did you first get possession of these boards for the purpose of having them for this case, referring to 62 and 63? A. Monday afternoon.

Q. Monday afternoon from your yard, from your stock? A. Yes, sir.

Q. And I take it that originally they were larger boards? A. What is that?

Q. In your yard, were they larger boards? A. Yes, sir.

Q. You cut them off so you wouldn't have to bring the whole piece, is that it? A. True.

Q. Sir? A. True.

Q. You sawed them, did you? A. Huh?

Q. Did you saw them? A. My man did.

Q. Your man did. Did you see him do it? A. Yes, I was right there with him.

Q. You saw him operate on these boards? A. Yes, sir, I was right there.

Q. How big were the boards originally. A. What is that?

Q. How big were the boards originally from which these pieces were sawed? A. These were out of a gable, short ends, one board was about five feet long and the other was about three feet.

Q. Yes. Now I want you to take a look at the grain of this board, these two boards, D-62 and D-63, with the ends as you have them, the matching ends, the grain. Now do you see that? A. Yes, I do.

Q. Now do you see that break in the ends here at A, where you have an A on one board, on D-62? A. I do.

Q. And do you notice that there is a corresponding break immediately opposite? A. I do.

Q. And do you notice too that the surface matches? A. It matches nearly, but it don't match.

Q. Exactly, doesn't it? A. No, it doesn't.

Q. Just take a look at those ridges now. A. No, sir. That line there is quite a lot heavier than that there.

Q. You say it is a different type of pine? A. No, sir, the same pine.

Q. Same type of line? A. But that dark line is quite a lot heavier than that line.

Q. And isn't the reason for that because there has been a piece cut from that? A. No, sir, there has not.

Q. And if that piece were in there it would be the same identical board. A. No, sir, there has not.

Q. Isn't it a fact that that is just what you did? A. No, sir.

Q. Didn't you actually cut out a piece and leave that home? A. I did not.

Q. Will you take a look at the back of these boards? Do you notice the black spots on each of them? A. Yes, sir, they are both tar papered over.

Mr. Wilentz: Now I will give the jury a look at these boards. I will put the A's together.

By Mr. Wilentz:

Q. One has been washed, hasn't it? A. What is that?

Q. One has been washed. A. The oldest one.

Q. Yes.

Mr. Pope: Never mind your pointing. Let the jury do their own looking.

Mr. Wilentz: Sir?

Mr. Pope: Never mind drawing lines. Let the jury do their own looking.

Mr. Wilentz: I am not drawing any lines. I almost did it again.

Now, may we turn it over? Oh, well, you have already testified about the black spots.

The Witness: Both are tar papered.

Mr. Wilentz: Pardon me. May I pass these two back? Put the two A's together, please.

Mr. Wilentz: That's all. That's all, Mr. De Bisschop.

Re-Direct Examination by Mr. Pope:

Q. First of all, just let me show you a couple of nails. Are those floor nails (showing to witness)? A. Yes, sir.

Q. Yes. And they are different from the kind the Prosecutor showed you, aren't they? A. They are a six and an eight.

Q. Yes. A. Yes, sir; they are different.

Mr. Pope: I offer these in evidence.

Mr. Wilentz: No objection.

The Court: They may be admitted.

The Reporter: Exhibit D-68 and D-69.

(The 6-penny nail was marked Defendant's Exhibit D-68 and the 8-penny nail Defendant's Exhibit D-69 in evidence.)

Q. I want you to show the jury something about these boards too. Which side of that particular board has been nailed against something? I don't know what. A. This side.

Q. That is the face? A. Yes.

Q. And it shows where, on the end? A. Where it is marked.

Q. Any face markings of this other board having been against any other object. A. No, sir.

Q. No. Now, let me see them again. Now look at the back of these boards. Do you see any difference in the saw cut on the back of those two boards? A. Yes, sir; I do.

Q. And will you describe the difference in saw cut? A. These are a good deal larger saw cuts. Those are smaller and rougher.

Mr. Pope: Now I want the jury to look at those saw cuts, on the back of the board.

Q. They don't use the same, they don't use different saws for sawing the same board, do they, in a mill? A. No.

Q. While the jury is looking at that, I may ask you this question: Are tongue and groove boards cut to what they call standard sizes? A. Yes, they are.

Q. Regardless of what mill turns them out they are cut to standard? A. They are supposed to be six inches, but they don't any of them stand up, but they are standard.

Q. Well, they dress them out, don't they? A. Yes, they dress off.

Q. They dress off about how much? A. Well, sometimes a quarter of an inch, three-eighths. I haven't measured those.

Q. Now I want you to look at the boards again, the back of the boards again, and look at the saw cuts on the boards and see as they are put together with the tongue, if the sweep of the saw on this board, or the angle or curvature of the saw on the first one is the same or anywhere near the same as the sweep or curvature of the saw cut on the second board? A. No, they are not.

The Court: Are you through, Mr. Pope?

Mr. Pope: I have nothing further with the witness, your Honor, I wanted the jury to see the sweep of the sawcuts.

Re-Cross Examination by Mr. Wilentz:

Q. Are the planer marks on these boards the same? A. What is that?

Q. Are the planer marks on the boards the same, the two boards that are now being exhibited to the jury? A. What is that?

Q. Are the planer marks on these boards the same? A. I don't know. It don't show any.

Q. You don't know? A. It don't show any planer marks.

Q. All right. You say they don't show any? A. No, sir.

Mr. Wilentz: That is all.

(Witness excused.)

Mr. Pope: There seems to be some misunderstanding on my part. I offered this little diagram that was drawn by the young man when he was on the stand yesterday solely for the purpose of showing how two lines will spread apart as you angle the same points, and it is only for the purpose of showing that that I offer it.

The Court: Is there any objection?

Mr. Wilentz: I wouldn't have any objection except that I don't like the fact that it has been used on some advertisement that gives it a local touch.

Mr. Pope: It was just a piece of paste board that was picked up and used by the man for that purpose. We will agree that the tickets for a concert symphony have nothing whatever to do with the case.

Mr. Wilentz: I did not want to connect the symphony orchestra with this exhibit. I have no objection if the young man gets another piece of paper outside of the court room and makes the same thing and brings it in and we will let it go in.

Mr. Pope: All right, suppose we do that, just a plain piece of paper.

Mr. Wilentz: Yes. Just so long as there is no printing on it. I won't say that I will object to it even if he doesn't but I should prefer to have it that way. If you can't get it, I may consent to it anyway.

Mr. Pope: Is Mr. Bolmer in the room? This is a slightly different form of testimony, but this witness has been here for three or four days at considerable inconvenience and I would like to call him. It will be very short.

WILLIAM BREVOORT BOLMER, sworn as a witness on behalf of the defense.

Direct Examination by Mr. Pope:

Q. Mr. Bolmer, where do you live? A. Route 31, four miles out of Princeton.

Q. And do you live in what is known as Bol-

mer's Corner? A. Near the intersection of the road from Hopewell to New Brunswick.

Q. And is that what we call Bolmer's Corner? A. It is.

Q. Yes. And what business do you conduct there? A. At the present time I am running a service station.

Q. And in March of 1932 what business were you engaged in? A. The same.

Q. Would you mind looking around this way, please. A. Certainly.

Q. And where was your service station located at that time? A. The corner of the road from Hopewell to New Brunswick, with the road from Somerville to Princeton.

Q. Now, may I ask you one other question about that road: the Hopewell road, if you pass on over Route 31, does that take you into Rocky Hill? A. Yes, sir.

Q. How long have you lived in that vicinity at Bolmer's Corner? A. Well, I have been away several times, but my legal residence has been over thirty years there.

Q. Yes. And did you go to Princeton to school? A. Graduated in 1914, Civil Engineering.

Q. And how long have you been keeping a service station at that corner? A. Five years, since the hard times started.

Q. Do you know where the Princeton Airport is? A. I do.

Q. It is not very far from you, is it? A. Oh, a little over three-tenths of a mile.

Q. And do you know where the entrance—

Mr. Pope: May we have a little less noise here, if your Honor please?

The Court: I should certainly like it if we could. Of course, that was coughing.

Mr. Pope: We can't help that.

The Court: I assume people can't help that, but I would appreciate it and counsel would appreciate it if people would keep as quiet as they possibly can.

By Mr. Pope:

Q. Do you know where the entrance to the Princeton Airport is? A. Yes, sir.

Q. Now who lives in the first large house on the opposite side of the road north of the entrance to the Princeton Airport? A. The Reed family.

Q. That is the Reed place, isn't it? A. Yes, sir.

Q. And how far is that from the entrance to the Princeton Airport? A. Three to four hundred feet.

Q. Now going back to around the latter part of February, 1932, did any persons drive up to your service station which caused you to take particular notice of them? A. They did.

Q. What kind of a car did they have? A. A Ford model A dark green coupe.

Q. And was there anything on that car that attracted your attention?

Mr. Wilentz: Just a minute.

A. There was.

Mr. Wilentz: Just a minute now. I would like to know when.

The Witness: It was on—

Mr. Wilentz: Just—

Mr. Pope: Let him give the date.

Q. The date of the first visit? A. I can't give you the date of the first visit. I was giving the date of the last visit.

Q. Well how many days before was the date of the first visit? A. Several weeks.

Q. What? A. Several weeks.

Q. Several weeks before. How many times did this same party drive up to your service station? A. Three or four.

Q. Three or four times. Now then, the date when you noticed something peculiar or something fastened to the car, what date was that? A. That was March the 1st, 1932, 1:15 a. m.

Q. And you mean by that that it was 1:15 in the morning? A. Yes, sir.

Q. Following February 29th? A. Yes, sir.

Q. Now will you tell the Court what it was that was fastened to this car that attracted your attention? A. A poor looking ladder. It took me quite a while to know that it was a ladder.

Q. Well now, just describe it and tell the jury. You see you saw it and they didn't. Now you just describe what you saw. A. Well, I saw, they can easy see what I saw if you let them look at it —I saw that ladder.

Q. And what makes you think that is the same ladder? A. I never saw another like it and the man said he was going to do a nursery job.

Mr. Wilentz: I move that be stricken out, your Honor.

The Court: What is that?

Mr. Pope: He said that the man said he was going to do a nursery job, and I consent that it be stricken out.

The Court: Strike it out.

By Mr. Pope:

Q. Now, for what purpose did these men come up, drive up from your station? A. To get gas.

Q. And did you serve them with gas? A. I did, nine gallons.

Q. How much gas? A. Nine gallons.

Q. Now, while the car was there with the ladder, did you actually, physically touch the ladder yourself? A. I did, three times.

Q. And did you have a good chance to look at it? A. Yes, sir.

Q. Will you describe to the jury the lighting that you have around your service station there? A. There is a Sunoco gas pump with a high standard, I would say 15 feet, and it had a 75 watt bulb in it at the time facing downwards at an angle, toward two pumps, one a Sunoco pump and one a Standard pump.

Q. Now, with regard— A. The Standard pump had lights on.

Q. Now, with regard to the lights that were there, upon which side of the car was the ladder which you looked at? A. It was on the side towards the lights, the right hand side.

Q. How many men were in the car, how many people? A. One man, one woman.

Q. One man and one woman? A. Yes, sir.

Q. Would you recognize the man if you saw him again? A. I would.

Mr. Pope: Stand up, Mr. Hauptmann.

(The defendant stands up.)

Q. Is that the man? A. Positively not.

Q. Will you describe the man that was in the car? A. Well, I am poor at describing people, but the best thing I can say is that he looked like the picture.

Mr. Wilentz: Just now, if your Honor please, just a minute, just a minute.

Mr. Pope: Now, don't say anything about a picture.

Mr. Wilentz: Now just a minute.

Mr. Pope: Now, please let me handle my witness, I won't let him—

Mr. Wilentz: May I make an objection without my delightful adversary indicating to me what we ought to do about it?

The Court: Oh, yes, but there is no occasion for any excitement here, I think.

Mr. Pope: Not at all.

The Court: No. What is this question?

Mr. Wilentz: What—

Mr. Pope: I asked the witness to describe the man and I don't want him to say that it looks like anyone, I want him to describe the man that he saw as best he can.

Mr. Wilentz: And I object to that for the

reason, if you Honor please, that it is not competent or material. He has already said it was not this defendant.

The Court: I don't think that is a sufficient answer, Mr. Attorney General.

Mr. Wilentz: Well, if your Honor please, it is 1:15 in the morning, nine or ten hours before the crime, it is miles away from the crime.

Mr. Pope: Oh, no; oh, no.

Mr. Wilentz: I don't think it is competent or material, if your Honor please.

The Court: Well, I think the question may be answered.

Mr. Wilentz: They have already proven by their witness, if your Honor please, that the car at a later time near the Lindbergh place was a Dodge with a ladder in it, and that the man resembled Hauptmann. That is their proof by their witness.

The Court: And now they are proposing to prove—

Mr. Wilentz: To prove that hours before at a different place there was some ladder and some man in a car, in a different car.

Mr. Pope: And different people in the car, in this car.

The Court: You may proceed, Mr. Pope.

By Mr. Pope:

Q. All I want you to do is just describe as best you can this man that you saw. You saw him how many times in all? A. Three or four.

Q. All right. I want you to describe him to the jury as best you can and please don't say that he looked like anything you saw. A. He was about five feet ten or eleven, which is my height. I looked level into his eyes. His face was thin, it was longer in proportion to its width than many faces that I have ever seen, not any but many. And I would say he weighed 132 to 140 pounds, 130 to 140 pounds.

Q. Was there anything else that you noticed about him? A. Well, his hair was dark. He was smooth faced.

The Court: He was what? I wish you would speak distinctly.

The Witness: His hair was dark, he had a smooth face, no moustache or beard.

By Mr. Pope:

Q. Now please don't say where or when or anything, but have you since seen any pictures that you recognized or were identified as that man? A. I think so.

Q. And when and where did you see those photographs?

Mr. Wilentz: I object to that unless they are here, if your Honor please, to give us an opportunity for some sort of examination.

The Court: Yes.

The Court: Yes. The question is when and where did you see them?

Mr. Pope: Yes.

Mr. Wilentz: I object to that as being in the nature of hearsay, if your Honor please. If they are in the room I won't object.

The Court: Are you able to produce these pictures, Mr. Pope?

Mr. Pope: Every witness for the defense has been asked by the Prosecutor if he saw pictures of John Jones or Frank Smith or somebody else in the newspapers and they said they did.

The Court: Yes, I know. I merely asked you if you were able to produce them.

Mr. Pope: Yes, I am going to produce a photograph, but I first ask him when he first saw the pictures.

The Court: Well, why not produce them?

Mr. Pope: I can't produce the pictures that he first saw because they are not in existence, I suppose, at this time.

The Court: Your question is whether or no he ever saw any pictures that resembled this man?

Mr. Pope: Yes, that is it, when and where he first saw pictures.

The Court: And you tell me that you are going to produce those pictures?

Mr. Pope: I am going to produce another picture, not the same ones that he saw. He may have seen them in the newspaper and, if he did, why, the newspapers have probably been thrown down in the cellar and burned up and destroyed by this time. However, I won't press it.

By Mr. Pope:

Q. I show you Defendant's Exhibit 39, ask you to look at that picture and tell the jury what you think about that picture, as compared with the man that you saw at your station.

Mr. Wilentz: He is shaking his head sideways. What does that mean?

The Witness: I haven't answered the question, yet, sir.

A. (After examining D-39.) That is not the man.
Q. That is not the man. All right.

Mr. Wilentz: Referring to exhibit what?

Q. You have never seen that picture before, have you?

Mr. Wilentz: What exhibit is that?

Mr. Pope: 39 (showing to Mr. Wilentz.)

Q. How much—

The Court: Mr. Pope, may I see you a minute?

(The Court spoke to Mr. Pope out of hearing of the jury.)

By Mr. Pope:

Q. How much opportunity did you have to look at the lady that was with this man, see her? A. Not—I could see her face, about here somewheres (indicating). She looked out once.

Q. Oh, I see. Would you or would you not be able to recognize a picture of that lady if you saw it? A. No, I could only say it was similar.

Q. Oh.

Mr. Pope: Cross examine.

Cross Examination by Mr. Wilentz:

Q. Did you ever report this to the New Jersey authorities? A. I did not.

Mr. Wilentz: That is all.

Re-Direct Examination by Mr. Pope:

Q. Why?

Mr. Wilentz: I object to the "Why?" if your Honor please. He didn't.

The Court: What is that?

Mr. Wilentz: I object to the question on

re-direct as to why he didn't do it. I take it it is not material. We have a right to know whether he did or whether he didn't. We have asked the question and he said No.

The Court: And now he has asked why?

Mr. Wilentz: Yes.

The Court: I think that is proper.

The Witness: May I answer it?

By Mr. Pope:

Q. Tell the jury. A. I did not recognize the description given to me of the ladder. I understood that this ladder—

Mr. Wilentz: Just a minute.

The Witness: (Continuing.) —was large and could not be put—

Mr. Wilentz: Just a minute.

Mr. Pope: He is giving the reason why.

The Witness: I was given the right to answer.

The Court: One moment.

The Witness: Yes, sir.

The Court: There has been an objection made.

The Witness: Pardon me.

The Court: And until the Court has an opportunity to rule on it we would like you to keep quiet.

The Witness: Pardon me. I am sorry.

Mr. Wilentz: I object to what he understood as being something within his own mind that none of us can argue.

The Court: I think that is objectionable, Mr. Pope.

Mr. Pope: Yes. All right.

By Mr. Pope:

Q. Now, don't tell us, don't try to tell us anything that you thought to yourself, but just give us your real reason why you didn't report it.

Mr. Wilentz: He has already given it. He says he didn't recognize something.

A. The picture of the ladder that I saw was extended. I saw the ladder nested. I did not think the ladder in the picture would nest. For that reason I didn't think it was the same ladder and I didn't want to make a fool of myself by talking about something I didn't know about.

Mr. Wilentz: All right.

Q. Now, having seen the ladder itself what is your opinion? A. It is the same ladder, sir.

Mr. Pope: That is all.

Re-Cross Examination by Mr. Wilentz:

Q. You saw the ladder in the car? A. No, sir, it was on the side of the car.

Q. On the side of the car? A. (Nods head.)

Q. Was it a section ladder? A. It was sectional ladder, nested, three sides slid together.

Q. Yes. But when you saw that sectional ladder in sections, a picture of it, you concluded it wasn't the ladder. A. I didn't think the ladder would nest.

Q. You concluded that it wasn't the ladder then, didn't you? A. I didn't think it would nest.

Q. Yes. A. If it wouldn't nest it wasn't the same ladder?

Q. Therefore you thought it wasn't the same ladder? A. Because it wouldn't nest.

Q. You read descriptions of the ladder in the paper? A. I did.

Q. You read that it was a section ladder. A. I did.

Q. But a good many section ladders don't nest.

Mr. Wilentz: Now, just a minute.

A. You can't tangle me up.

Q. You are a little too anxious. A. I am willing to tell the truth.

Mr. Pope: I object to the Prosecutor scolding the witness.

The Court: I have already cautioned you that when there is an objection you are to keep quiet and be kind enough not to be so free with your talk.

The Witness: Yes, sir.

The Court: Simply answer the questions. Now you understand that, don't you?

The Witness: May I ask, tell you something, sir?

The Court: No, not unless counsel see fit to have you do so.

Mr. Wilentz: May I ask a question so we can get through with this case, if your Honor please, as speedily as possible?

By Mr. Wilentz:

Q. Did you see a Dodge suburban or any other kind of suburban car with a ladder in it? A. No, sir.

Q. You didn't see a suburban car with a ladder in the back on the floor, did you? A. No, sir.

Q. You didn't see a Dodge car of any kind with a ladder in it, did you, that night? A. Oh, no.

Q. What you saw was a Ford? A. A Ford model A.

Q. With a ladder tied on the outside of it? A. The front end was a little in front of the headlight.

Q. The ladder tied on the outside of it? A. On the outside.

Q. And a man and a woman? A. A man and a woman.

Mr. Wilentz: That is all.

Mr. Pope: That is all, Mr. Bolmer.

(Witness excused.)

Mr. Pope: Mr. Mielk.

EWALD MIELK, sworn as a witness on behalf of the defendant.

Direct Examination by Mr. Pope:

Q. Mr. Mielk, what is your occupation? A. Millwork.

Q. And how long have you been engaged in that occupation or trade or calling? A. Since 1909.

Q. And where have you been employed, operated or worked? A. That is my own plant.

Q. And that is where? A. At Lindenhurst, New York.

Q. And will you describe that plant to the jury briefly? A. It consists of motor, planer, several saws, joiner, tenon machine and mortise machine, and boring machine.

Q. And what do you manufacture? A. Special millwork as a rule, just orders.

Q. And prior to your engaging in that business, what was your occupation? A. Shop man with a firm in New York, manufacturing concern.

Q. Well now, will you tell the jury just what you mean by shop man, what kind of shop it was? A. Why, carpentry and millwrighting and changes that were necessary in a manufacturing plant.

Q. Now, are you a carpenter and millwright by trade? A. Yes.

Q. How many years of experience have you had in carpentry and millwright work altogether? A.

I was eighteen years with the firm in New York, from '92 till 1910.

Q. Now, during those years have you become familiar with North Carolina pine, or southern pine, as it is sometimes called? A. Yes, sir.

Q. And approximately how much of it have you handled? A. Why, a good many million feet in that time.

Q. And have you had any experience in that time in matching the grains of wood? A. For panel purposes.

Q. And how much experience have you had in matching grains? A. Well, all that time that I operated the mill.

Q. And have you during your experience had occasion to use a plane, a hammer and a saw? A. Yes, sir.

Q. And in your experience have nicks sometimes developed in the blade of your plane? A. Oh, yes, they do.

Q. Now, what usually causes a nick to develop in a plane blade? A. Why, there may be some grit on the board, sand.

Q. And what else may cause the nick? A. Well, that's about the only thing that will cause the nick, unless you hit a nail, which wouldn't very likely occur to a mechanic, because he would see that the nails were out.

Q. Well, now, how often and how frequently do nicks develop in plane bits? A. Why, that is pretty hard to tell.

Q. In ordinary use? A. That's pretty hard to tell, how frequently.

Q. Well, what I mean is, is it a rare occasion or is it something that happens— A. No, quite common.

Q. Quite common? A. Quite common.

Q. Have you examined the ladder rail in this

case and the floor board, piece of a board, marked State Exhibit S-226? A. Yes, sir. Yesterday afternoon during a short recess.

Q. And from your examination of this board, S-226, and Rail 16 in the ladder, are you able to express an opinion as to whether or not they were ever part and parcel of the same board?

Mr. Wilentz: Just a minute now. Will you please answer that question yes or no, if counsel has no objection.

Mr. Pope: Yes.

By Mr. Pope:

Q. Just yes or no. A. Yes.

Mr. Pope: You may inquire, if you wish, Mr. Wilentz.

Mr. Wilentz: I object, if your Honor please—there is no question now.

Mr. Pope: Do you want to ask him anything about his qualifications? I submit the witness is qualified.

Mr. Wilentz: I object that he is not qualified to tell whether these two were a part of the same board.

The Court: Well, he seems to have had considerable experience in millwork and planing, has he not?

Mr. Pope: Carpentry.

Mr. Wilentz: But no experience at all as to the identification of wood.

The Court: Well, is he now being asked as to the identification of wood?

Mr. Wilentz: As to whether these two came from the same board.

The Court: Well, is it the purpose of counsel to ask the witness to examine these boards and find out whether or no there is anything about them that from his experience would indicate they were two boards?

Mr. Pope: That is it. He is not called as a wood technician, he is called as a practical man experienced in the handling of lumber and working in lumber and in dealing with lumber and in matching lumber covering a period of many years.

Mr. Wilentz: If your Honor please—

The Court: I don't think that is objectionable.

Mr. Wilentz: If your Honor please, may I then submit a few questions at this time?

The Court: Yes.

By Mr. Wilentz:

Q. You examined this ladder and this lumber yesterday at the noon recess or one of the recesses? A. In the afternoon, a short recess of about five minutes.

Q. Your experience in reference to matching grain I think you said was for panel purposes? A. Yes.

Q. That was your testimony, was it not? A. That has been our work.

Q. That has been your experience so far as matching of grain, for panel purposes? A. Panel purposes in the matching of grain.

Q. What you are interested in is whether or not there is a similarity so that the pieces that you match will be similar, is that right? A. As near as possible.

Q. But you don't match the pieces for identity, to see whether or not the two pieces came from the same board originally? A. I wouldn't try it.

Q. No, you wouldn't try it and you wouldn't try it because you haven't practiced that, have you, you haven't made any study or made any attempt to find out? A. Not technical.

Q. Well, technical or otherwise, you have never tried to find out whether two pieces of wood, separated when they came to you, were ever at any one time the same board, have you? A. No, I have not.

Q. Nor have you ever made any study or any practice of trying to ascertain whether or not two pieces of board, once disconnected, had ever come from the same tree? A. Never had occasion to.

Q. Never had occasion to. You haven't read any articles on wood identification, have you? A. (Shakes head.)

Q. You shake your head. You mean No? A. No, sir.

Q. And you have never read any books on wood identification, have you? A. No. I have not.

Q. No, sir? A. Just practical experience, that is all.

Q. Yes, you are a practical lumber man, you have worked at the business? A. Yes, sir.

Q. For a number of years, and you know yellow pine when you see it? A. I do.

Q. And you know Ponderosa pine when you see it? A. (Nods head.)

Q. And you know other types of wood? A. Unless you painted it over so I can't tell by the grain.

Q. Yes. And generally if no one is trying to fool you you can tell the wood, that is true, isn't it? A. Yes.

Q. And you know enough about the business that if somebody came in and brought you a piece of lumber, and said, "We would like to have something that matches this, that is similar," you could go out and look over the lumber, and you can tell what is similar and what isn't, can't you? A. I would.

Q. And you can't tell, and never attempted to tell, and you are not able to tell now, once wood is separated into various pieces, that you could, after being separated, tell whether or not they came from the same piece of wood? A. If nothing had been taken out you could.

Q. If nothing had been taken out? A. Yes.

Q. If a piece— A. If there is any separation, why—

Q. If there is any separation? A. That would be all—

Q. If there is any separation, you couldn't tell, could you? You have said no? A. If anything had missed, if anything was missing between.

Q. Yes. You couldn't tell? A. The only—

Q. Will you please answer the question? You couldn't tell if there was anything missing between them, is that right? A. Whether it is the same piece or not, no, positively not.

Mr. Pope: What?

Mr. Wilentz: He positively couldn't tell.

The Witness: That it was the same piece if anything was missing.

By Mr. Wilentz:

Q. If there was any piece missing, once a board was separated, so that it was no longer one board, and at the point where it had been separated a piece was missing, another piece had been cut out, you positively couldn't tell that at all, could you? A. Please let me have that again.

Q. If a board, any board were cut into parts, say two parts or three parts, you have stated that if there was anything missing in that operation, one piece of board cut off from the other, you would be unable to identify them as being the same board if they later came to you? A. To say that they are mates.

Q. Sir? A. To say they are mates.

Q. You would be unable to do so? A. I don't think anybody would.

Q. You don't think anybody would. All right.

Re-Direct Examination by Mr. Pope:

Q. Supposing an inch or three-quarters was missing off the ends. A. What is that?

Q. Supposing there was only an inch or three-quarters missing. A. There would be a variation in the grain.

Q. I am not talking about the grain, I am talking about the identification of the piece. A. Well, that would necessitate the grain matching, to be necessary to say that it was the same piece.

Q. It would be? A. It would be.

Q. All right, now. Have you examined these boards then? A. Just a short time yesterday afternoon.

Q. And did you examine the grain where they were said to match up with the grain in the ladder rail? A. Not close enough.

The Court: What is that?

Mr. Wilentz: "Not close enough."

Q. Well, did you examine it close enough to express an opinion?

Mr. Wilentz: Just a minute now. If your Honor please, I object to that. That's his witness. He said he didn't examine it close enough.

The Court: I exclude the question.

Q. Well, was your examination of the grain in the board and the ladder rail sufficient to enable you to form an opinion as to whether there was or was not a matching of the grain in this board and the ladder rail?

Mr. Wilentz: Just a minute now. I object to the question if your Honor please. The gentleman has already disqualified himself for that purpose.

Mr. Pope: Oh, no, he hasn't.

The Court: I exclude the question.

Mr. Pope: May I have an exception, sir?

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Are you familiar with the manner in which southern pine grows and forms into a tree? A. Yes, sir.

Q. Where do the most knots appear in a board cut from a tree of southern pine?

Mr. Wilentz: Just a minute. May I ask the witness a question as to his familiarity before the questions are answered?

The Court: Yes.

By Mr. Wilentz:

Q. Have you observed—I take it you have observed southern pine trees growing, and you know where they grow? A. I happen to have a grove right in back of my mill that I have maintained for twenty years.

Q. Where is that? A. On Long Island.

Q. All right, sir. On Long Island? A. On Long Island.

Q. How much southern pine is in that grove? A. Very little of it.

Q. Very little of it? A. Very little of it.

Q. What do you call very little? A. Well, I wouldn't go into the number of trees because there is probably 4000 trees in that plot entirely.

Q. Well, you don't know how many.

Mr. Wilentz: All right.

By Mr. Pope:

Q. Ever been down south? Have you? A. To a certain extent.
Q. What? A. Oh, yes; somewhat over the country.
Q. In North Carolina, South Carolina, Georgia? A. Not through all of them.
Q. What is that? A. Not through all of them, no.
Q. Have you been down—

The Court: Did he say he had been through all of them?

The Witness: I say I haven't been through all of them.

The Court: Not through all of them.

The Witness: He mentioned three states there.

Q. Well, have you been down in the pine belt? That's what I want to know. A. Yes.
Q. The southern pine belt, have you been down there? A. Well, in the cities and towns, but not outside, where those pine trees grow.
Q. Do you know how southern pine trees grow? A. I do.

Mr. Wilentz: I object to the question, his qualifications.

The Court: I don't see its materiality.

If you have anything in your mind that you want to have this witness testify to I wish you would ask him the question.

Mr. Pope: I want this witness to testify that he knows how a tree develops, how it makes it limbs, where it makes its limbs. Then I am going to ask him if it is possible to tell whether a board was cut from the butt of a tree or from the top of the tree.

The Court: Ask your question.

Q. Now, from your knowledge of southern pine trees, is it possible to tell whether a board was cut from the butt of a tree or from the middle of the tree or from the top of the tree, or which section of the tree it comes from, by examining the board—

Mr. Wilentz: Just a minute.

Q. —and its knots.
Q. By examining the board and its knots—

Mr. Wilentz: Just a minute. I understand from your Honor's indication to counsel what your Honor's inclination is, but deferentially and very respectfully I object to this question, if your Honor please, for the reason that he has indicated himself that he has no knowledge, just a superficial knowledge, as to southern pine, pine trees. He has never seen them grow and for that reason—

The Court: Well, I understood him to

say that he has been in most of the Southern States.

Mr. Wilentz: He said only in the cities, never where the pine trees grew.

By the Court:

Q. Have you ever been out to the pine woods of the South? A. Not going through the woods, but you travel through that section of the country by way of the road and you can't miss them.

The Court: Yes. Mr. Attorney General, I understood the witness to say that he had planted some trees of his own on a grove in Long Island.

Re-Cross Examination by Mr. Wilentz:

Q. You, as I understand it, travelling through the South, said before that you only went into the cities, the large cities. A. But there are wide open stretches between those cities when you get South where you travel through these sections.

Q. And the observation you have made is that while in an automobile or train going through— A. Yes.

Q. —you have never gone down there to visit the pine sections for the sake of looking at the pine? A. No, I have not.

Q. Did you ever study the growth of pine trees, southern pine trees? A. Not pine in particular.

Q. Did you ever study the growth of southern pine trees? A. Not in particular, no. Not pine in particular.

Q. You have made no study of it at all? A. Not in that particular.

Q. What you mean is that you have seen southern pine— A. Observation.

Q. You have seen southern pine trees as you have seen other trees? A. Positively.

Q. And having the same powers of observation as the rest of us, why, you are now attempting to give us what you saw as the result of your observation? A. Yes, sir.

Mr. Wilentz: I urge the objection of the State, if your Honor please.

The Court: The objection is sustained.

Mr. Pope: I pray exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Pope:

Q. Now do you know of any other way that a man could possibly tell how a tree grows except by looking at it?

Mr. Wilentz: Just a minute now. I object to that, if your Honor please, as calling for an expert opinion from some lecturer or some person who has made a study as to the many ways or what ways a tree can be described.

The Court: The objection is sustained.

Mr. Pope: Pray an exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Pope:

Q. During all of your years of experience in millwork, have you or have you not been handling sawing, cutting, dressing, planing, and turning out in the finished product southern pine lumber among other lumber? A. I have.

Q. And have you any idea of approximately how many million or how many billion of feet you have handled during those years, of southern pine? A. Why, all told probably 10,000,000 feet in the time that I conducted the yard and mill there.

Q. And does that experience enable you to judge and compare southern pine lumber?

Mr. Wilentz: Just a minute now. I think that is a matter for the Court to determine. He tells his experience and then the Court determines, as I understand it, what that experience enables him to do.

The Court: The question is overruled.

Q. Is or is not southern pine a very common lumber, a very common species? A. In North Carolina it is, yes.

Mr. Wilentz: What is the answer?

The Witness: In North Carolina it is a very common species.

By Mr. Pope:

Q. Do you know approximately how many billions of feet the normal annual output in normal times of southern pine is? A. I wouldn't want to say.

Q. You don't remember? A. I am not sure.

Q. I show you State Exhibit No. 226 and I ask you what kind of wood that is. A. That would be the top end of the tree.

Q. What is the name of the wood?

Mr. Wilentz: If your Honor please, I move the first part be stricken out as not responsive.

Mr. Pope: I consent to that. Don't worry so.

Mr. Wilentz: I am not a bit worried. Don't be a bit concerned about the State worrying.

By Mr. Pope:

Q. Is this North Carolina pine? A. North Carolina pine.

Q. Are there different grades of North Carolina pine? A. In the grading after it has been cut.

Q. That is what I mean. There are different grades of North Carolina pine? A. Yes.

Q. And how would this piece, State Exhibit 226, grade? A. No. 2 common.

Q. What is No. 2 common usually, generally used for and sold for: for what purpose? A.

Sheathing or, in some localities, they call it roofers.

Q. In some localities they call it roofers. Can you tell us from what portion of the original pine tree this particular board, S-226, was taken?

Mr. Wilentz: Just a minute. I object to that, if your Honor please. It has been proven he is not qualified.

Mr. Pope: I asked if he could tell us.

The Court: He may answer it yes or no.

The Witness: Yes.

By Mr. Pope:

Q. What part of the tree did this board come from?

Mr. Wilentz: I object to it, he has been proven to be not qualified.

The Court: I admit the question.

By Mr. Pope:

Q. Answer the question. A. What part?

Q. Yes. A. The upper part of the tree. It is not a butt cut.

Q. It is not a butt cut. Tell the jury why you say that came from the upper part of the tree, that it is not a butt cut. A. Because of the spacing of the knots.

Q. If it were a butt cut the knots would be spaced how? A. Closer.

Q. I now show you ladder rail No. 16. Will

you come down here and look at it, please. I ask you what kind of wood is that. A. North Carolina pine.

Q. And how would that grade?

Mr. Wilentz: May we get the witness over where we can hear him?

The Court: Is the witness whispering to the jury?

Mr. Wilentz: No; he is answering, but not quite loud enough.

A. It is North Carolina pine.

By Mr. Pope:

Q. How would that grade? A. No. 2 common.

Q. Is there any difference between that piece of wood in the ladder rail and this piece of wood known as State's Exhibit No. 226?

Mr. Wilentz: I object to the question, if your Honor please, for the very same reason. It is trying to get the same answer in a different way that your Honor has excluded.

Mr. Pope: The Court has never excluded this answer and I have never tried to get it. I am asking if there is any difference between these two boards in grading and structure.

Mr. Wilentz: He said No. 2 common, each of them.

Mr. Pope: No. 2 common covers a multitude of sins, if you know anything about lumber.

The Court: Repeat the question, please.

(Question read by reporter as follows: "Q. Is there any difference between that piece of wood in the ladder rail and this piece of wood known as State Exhibit 226?")

The Court: He may answer the question.

By Mr. Pope:

Q. Is there any difference? A. In the material itself?

Q. Yes, in the board.

Mr. Wilentz: And in the material.

A. In the board, yes.

Q. And what difference? A. There is more life in this board than there is in that.

Mr. Wilentz: More life, is that it?

The Witness: More life.

Q. More life. Now, will you explain to the jury what you mean by "more life" in the attic board than there is in the ladder rail?

Mr. Wilentz: May we have the witness take the stand if there isn't an exhibition?

Mr. Pope: No. I want him to show the jury.

Mr. Wilentz: Just a minute, or if there is some exhibition, I have no objection.

Mr. Pope: It isn't an exhibition, if your Honor please, and I object to that statement.

Mr. Wilentz: I mean, if he wants to exhibit it, I don't see why counsel should get so sensitive.

The Court: I have to come down here, because I can't hear what is going on. (The Judge leaves the bench and goes down near the witness, who is before the jury.)

Mr. Pope: I would like you to see this anyway.

The Court: I see it.

By Mr. Pope:

Q. Now, show the jury what you mean. A. The different shading in the rings here, they are darker here than they are here.

Q. And the different shadings indicate what? A. More life, this is darker.

Q. Now, I call your attention to this long streak on there, and I ask you what that is. A. That is caused by a bruise.

Q. Is that what they call a sap streak? A. Yes.

Q. Caused by an injury? A. Yes.

Q. And do you see any sap streaks caused by injury in the other? A. I do not.

Q. Now, what does the difference in the size and the spacing of the knots in the so-called attic floor board, S-226 and the ladder rail, indicate—

Mr. Wilentz: Now I object to that, if your Honor please.

Q. —to a practical wood man?

Mr. Wilentz: I object to that, I object to the question, if your Honor please, as calling for a conclusion.

Mr. Pope: Oh, no, it doesn't. I am asking what, as a fact, that indicates,—

Mr. Wilentz: Now just a minute.

Mr. Pope: —to an experienced wood man.

The Court: Answer the question.

A. A young tree has more branches and as the tree increases in size and gains a better footing, the lower part of the tree prunes itself by rot. the branches drop off and the others remain alive, and the extra strength through the roots sends up faster growth.

Mr. Wilentz: If your Honor please, this witness has absolutely no right to this sort of testimony under your Honor's prior ruling, because it is only getting in an effort to expert opinion, as to expert knowledge of the growth of these trees, when he hasn't qualified.

The Court: I have only ruled so far that this witness has qualified himself, so far as the matching of grains of wood are concerned.

Mr. Wilentz: Oh, I see, and as to the growth.

By Mr. Pope:

Q. Now, having that in mind, is the ladder rail a part of the same board that was found in the attic floor?

Mr. Wilentz: Just a minute; just a minute, if your Honor please, he has disqualified himself with respect to that, I respectfully submit to your Honor he stated he could not tell in his direct examination, or, rather in his cross.

The Court: I think he has.

Mr. Pope: No, or, no he hasn't, oh, no, I don't think he said that at all

The Court: I think he did.

Mr. Wilentz: I press the objection if your Honor please.

Mr. Pope: He said that if any part, if there was any part of the board removed he might not be able to tell, but I am now showing him two boards and I ask him if there is any relationship between those two boards.

Mr. Wilentz: No, there was positive proof and only proof here that that board was separated and there was a piece missing, he says under those circumstances he cannot tell.

The Court: I exclude the question.

By Mr. Pope:

Q. I ask you this question: Look at these boards and in view of the fact that you have stated that there is more life in the one board, known as the attic board, than there is in the board known as the ladder rail, that there is a difference in the kind, the size and the spacing of the knots and that there is a difference in the grain colors, can you, as a practical wood man, tell this jury whether they ever were, in fact, a part of the same board? A. They are not.

Mr. Wilentz: If your Honor please, I object to the question and I move that the answer be stricken out for the same reasons heretofore advanced.

The Court: Strike out the answer.

Mr. Pope: The answer, of course, would be Yes or No to that question.

The Court: I understood—

Mr. Wilentz: He answered it and—

The Court: I understood him to make either an affirmative or negative answer to the question.

Mr. Wilentz: That is true.

The Court: Whether it was negative or affirmative, I cannot tell because the witness drops his voice and I cannot hear him, although I am standing right alongside of him.

Mr. Pope: Well, my answer to that then, of course if he did that, it wasn't responsive to my question. My question calls for a Yes or No answer. Will you let me repeat the question again?

Mr. Wilentz: Your Honor please, your Honor has sustained the motion to strike out the answer. May I ask that counsel be refrained from asking the question again?

Mr. Pope: The answer was not responsive to my question.

The Court: I struck out the answer to the question. Now, counsel may frame another question if he likes, I will rule upon that, but I think that we ought to so arrange this examination that we can be heard without standing immediately alongside of the witness. I think the witness had better resume the witness chair and probably counsel will then be able to hear what he is testifying to.

A. (The witness resumes the stand.)

By Mr. Pope:

Q. I ask you from your practical experience as

a carpenter, a millwright, and one who has handled millions of feet of southern pine lumber, if, by looking at these two boards which I have shown you, the State's Exhibit, one known as the attic floor board and the other the ladder rail, bearing in mind the fact that the one board shows more life than the other board, that the one board shows larger knots and more of them in the same relative space, and that the one board shows a different color in grain than the other board, I now ask you if as a practical mill man and from your years of experience you are able to tell this jury whether the two boards were ever one and the same board. Now just please answer yes or no. A. No.

M. Wilentz: Just a minute.

Mr. Hauck: He said no.

Mr. Wilentz: He said he can't tell. All right.

Q. All right. A. There is a—
Q. What?

Mr. Wilentz: Just a minute now, please. There is no question.

Q. I didn't hear you. Am I to understand you that you cannot tell? Is that what you mean?

Mr. Wilentz: Now just a minute, if your Honor please. He has already answered the question.

The Court: He has already answered that question.

Mr. Pope: Well, I want to be sure that—

The Witness: There is a wrong impression there, on the question.

Mr. Wilentz: Just a minute, please. You wait until you are asked a question.

Mr. Pope: That's just what I thought. Now if your Honor please, we have some rights in this courtroom, besides the Attorney General. If the witness has given us a wrong impression, may we not correct that impression?

The Court: Certainly you may; certainly you may.

Mr. Pope: Now may I ask the witness this question?

The Court: Yes.

By Mr. Pope:

Q. Will you tell us what you meant by your answer No?

Mr. Wilentz: I object to that, if your Honor please.

The Court: I sustain the objection. You may ask him if he intended to state what he did state.

Mr. Pope: Yes.

By Mr. Pope:

Q. Did you intend to state that you could not tell or that they were not a part of the same board? A. That they were not part of the same board.

Mr. Wilentz: That I move be stricken, if your Honor please.

Mr. Pope: All right.

By Mr. Pope:

Q. Now, I ask—

Mr. Wilentz: Just one minute, please.

Mr. Pope: I consented to its being stricken. What more do you want?

Mr. Wilentz: I didn't hear you consent to it, and I ask that the jury be directed by the Court to disregard it.

The Court: Do you consent that the answer be stricken out?

Mr. Pope: The answer was not strictly responsive to my question.

The Court: It will be stricken out.

Mr. Pope: Yes.

By Mr. Pope:

Q. I now ask you were they are part of the same board.

Mr. Wilentz: Just a minute now. If your Honor please, Mr. Pope speaks of rights. Here is a man that had five minutes of examination, admits on the stand that he cannot identify two pieces of wood, once separated, particularly so if another piece was missing. That is exactly the testimony in this case. He swears positively he can't, he is not able to. He could have measured seventeen million pieces of lumber or yellow pine—a five minute examination by a man who is not an expert, or even by an expert, if your Honor please, who admits he is not qualified to tell.

The Court: The only admission—

Mr. Pope: That is the very—

The Court: Just one moment now. I either haven't made myself plain or counsel have misunderstood me. I determined that this witness had disqualified himself to match the grains of lumber.

Mr. Pope: Yes, your Honor.

The Court: I incline to think that your examination of this witness, which depends in part on the matching up of grains of lumber, is irregular and, for that reason and for that reason alone, I sustain the objection to it.

Mr. Pope: Well, I didn't intend to in-

clude in my question any question about the matching of the grains of lumber, only the color of it, that is all.

The Court: Well, you have, I think, included in your question at least part of it.

Mr. Pope: Well, I am sorry if I did. If I did, I didn't mean to. I did it unconsciously. Then I will reframe the question.

By Mr. Pope:

Q. From your experience as a carpenter and as practical mill man and a millwright, and from your handling, dressing, working, and using millions of feet of southern pine lumber, and from your personal inspection of the board known in this case as the attic floor board, and from your personal inspection of the rail of the ladder, known as Rail No. 16, regardless of any question of the matching of grains, but taking into consideration the appearances of the wood, the fact that one piece of wood shows more life than the other, that the one piece shows more knots than the other, that it shows a different knot formation: will you tell the jury whether those two pieces of wood were at one time a part of or one and the same board.

Mr. Wilentz: Just one minute, please. May I read to your Honor exactly the question and answer heretofore when we were attempting to determine whether he was qualified on this very point, because I have in mind, if your Honor please, that your Honor's recollection as to the limit to

which he disqualified himself may not have taken into consideration these questions and answers: "If a board, any board were cut into parts, say two parts or three parts, you have stated that if there was anything missing in that operation, one piece of board cut off from the other, you would be unable to identify them as being the same board if they later came to you? A. To say that they are mates.

"Q. Sir? A. To say they are mates.

"Q. You would be unable to do so? A. I don't think anybody would.

"Q. You don't think anybody would. All right.

"Q. Will you please answer the question. You couldn't tell if there was anything missing between them, whether there was any piece missing or not? A. No, positively not."

It doesn't take in only the grain, it takes in anything. He has testified—we were not talking about grain at the moment. Here is a man with a five-minute inspection—a lumberman, yes, a man that operated a mill possibly, or worked in a mill, yes. There is some limitation to his knowledge notwithstanding the fact that he had a mill at one time or had some connection or experience with lumber. He is now attempting to testify to what he positively testified he couldn't do earlier in the examination, that he could not, without any limitations, not as to grain or anything, that he could not, positively not tell whether two boards, one separated from the other, were at one time the same board if

they were brought to him. That is the specific question.

Mr. Pope: And that testimony had specific relation to the matching up of the grains in the two pieces of wood.

Mr. Wilentz: I will read it: "If there was any piece missing"—let me give you the question before that.

Mr. Pope: The Court has ruled on that already.

Mr. Wilentz: All right.

The Court: The witness may answer this question.

By Mr. Pope:

Q. Answer the question. A. Were those pieces of one board?

Q. Yes. A. They are not.

Q. Now I ask you this question: Assuming that those two pieces of board—I will strike that out.

By Mr. Pope:

Q. Can you or any other man take a piece of board and cut it, cut an inch and three-eighths out of the board, and then determine, by matching up the grains on the end, without having the inch and three-eighths piece which is missing, whether that was originally one and the same board?

Mr. Wilentz: Well, if your Honor please,

of course this is the same line of examination, and I urge just as strongly the objection.

The Court: You object? I sustain the objection.

Mr. Pope: I pray an exception.

The Court: Take your exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Pope:

Q. Have you seen and inspected this plane, plane bit, (showing S-177 to the witness)? A. I have not.

Q. Will you look at it? A. There are some nicks in it.

Q. You see it nicked? A. Yes.

Q. Now, from your experience in using planes, would it be possible to identify marks made by that plane bit on a board without first obtaining the three measuring dimensions and comparing them, and without knowing what angle the plane was held to the board, when the stroke across the board was made?

Mr. Wilentz: Just a minute. I object to the question.

The Court: I sustain the objection.

Mr. Pope: Well, he says he has been using planes for years.

Mr. Wilentz: I think, if your Honor please—

The Court: It is not a question of his using planes for years, but I think the question is objectionable in other aspects.

Mr. Pope: It is not a matter of scientific knowledge, your Honor. It is just purely a matter of plain experience, whether a plane bit makes a mark or not. You permitted Mr. Koehler to testify to it.

The Court: Why, of course, I did. And you may ask this witness about what kind of a mark that plane would make, if you want to.

Mr. Pope: All right; I will ask him in that way.

By Mr. Pope:

Q. Looking at that plane bit, what kind of marks would that make on a piece of, say, Pondoso or Ponderosa pine, as it is sometimes called? A. There would be ridges on it.

Q. What? A. Beads would appear on the surface.

Q. Beads would appear on the surface? A. Yes.

Q. And would it make any difference in the shape and formation and size of those bodies, those beads, the way you held the plane or the angle it was held? A. Yes.

Q. And would it make any difference how many times the plane bit had been used? A. (No answer.)

Q. In other words, do the—

Mr. Wilentz: No. Let him answer the question, please.

The Court: Would it make any difference how many times the plane bit had been used?

Mr. Pope: Yes. The plane bit had been used.

The Court: He may answer that question. He may answer it but he doesn't seem inclined to answer it.

Will you answer it?

Mr. Pope. The reporter will repeat it for you if you wish.

The Court: Perhaps by your hesitancy you mean you don't know; is that it?

The Witness: No, not that. I didn't quite get the drift of the question.

The Court: Oh, yes.

The Witness: What the use of it, the length of time it was used—what effect that would have on it?

By Mr. Pope:

Q. No, the number of times. A. The number of times?

Q. The number of times it was used, yes. A. It would work out about the same.

Q. It would work out about the same? A. If it was a good blade, the nicks in there probably would remain for a long time.

Q. Now, does an ordinary cheap plane bit chip or nick easier than a good plane bit? A. They do.

Q. And that's a cheap bit, isn't it? A. About the average in use.

Q. All right. You may put it down, or give it to me. I show you Defendant's Exhibits 62 and 63, and ask you to look at the saw marks on the back. Tell the jury if there is any difference in the size, character, and type of ripsaw that was used to rip those two pieces of board.

Mr. Wilentz: I object to the question, if your Honor please. He shows no qualifications.

Mr. Pope: He ran a mill for 16 years and used a ripsaw.

The Court: What is the question?

(Pending question read by the reporter.)

The Court: Well, how is that material to this case? How is it material?

Mr. Pope: Well, I may be anticipating, that's all, your Honor, but this morning there was a lot of talk about a couple of checks that had appeared in these boards over night, and the intimation was that it had at one time been a part of the same

board. Now I want to show that the saw marks on the back of the board show that they are two entirely different boards.

Mr. Wilentz: They have been his witnesses. We haven't had any on this board at all. We asked some questions about it.

Mr. Pope: Yes, but you asked about the checks and I have a right to meet it if I want to.

The Court: This board's relation to this case is very remote, and I don't myself see the materiality of these sawmarks on the board.

Mr. Pope: I will explain it to you. When the other witness was on the stand it was developed by his testimony that overnight a couple of checks had developed in these two boards.

The Court: A couple of checks?

Mr. Pope: Yes, splits.

The Court: Splits?

Mr. Pope: They call them splits; we call them checks; whichever it is.

Now they attempt to hold these checks together and they made a beautiful exhibition of it to the jury this morning, evidently for the purpose, because the question indicated that, of carrying the idea to the jury that these two boards were at one time a part of one board.

Now if they want to give the jury that impression and that examination and that evidence, I have a right to show the jury that they couldn't have been a part of the one board, because the saw markings on the back are so radically different.

Mr. Wilentz: That is what I object to: Counsel's testimony, if your Honor please.

The Court: You object to what?

Mr. Wilentz: I object to his stating the fact, being that they are different.

Mr. Pope: Well now, the Court asked me, sir.

Mr. Wilentz: I know that, but even when the Court asks a question that doesn't permit counsel to enter into the record things as facts which may not be so.

The Court: I will allow this question to be answered.

The Witness: The saw marks are different.

The Court: The saw marks are different. All right.

By Mr. Pope:

Q. Now, is there any difference in the size of the two boards, I mean the dressed size of them?

Mr. Wilentz: I object to the question

as not being material to this issue, not being competent, just a matter of taking up time.

The Court: I will allow the question to be answered.

A. One board is thinner than the other.

The Court: Is what?

The Witness: One board is thinner than the other.

Mr. Pope: All right. Do you want to see these?

Mr. Wilentz: Whenever you are through.

Mr. Pope: Do you want it?

(Hands board to counsel.)

Mr. Pope: That is all.

By Mr. Wilentz:

Q. The color in the grain between one and the other board that you talked about before—do you know what that was due to, the difference in the color? A. Well, the one might have been an early dead tree and the other a live tree.

Q. I am talking about the difference in color between rail 16 and S-226. A. I understand.

Q. Is that the reason you attribute? A. The one that is lighter might have been on the verge of dying on the stump.

Q. Might it have been due to some chemical

process used in connection with finger print efforts? A. No, I wouldn't say that, because I don't know anything about finger printing.

Q. You don't know effect finger print solutions have upon lumber, do you? A. I don't.

Q. And you don't know whether or not acids cause a difference in color or whether they don't, do you, sir? A. It depends on what kind of acids they use, I presume.

Q. You don't know, of course? A. I don't.

Q. —were used? A. I don't.

Q. So you don't know what effect the acids had on rail 16? A. I don't.

Q. Still one of the reasons you give for the difference, the dissimilarity, is the difference in color? A. That is the only reason I can see on there.

Q. That is the only reason you can see. Now you have been asked and you stated that this board, S-226, was the top of a tree? A. Yes.

Q. Did you hear the last gentleman say that the fact that there were more knots on there indicated that it was the bottom of the tree? A. I did not.

Q. Will you take a look at this rail, and which has the more knots—rail 16. A. The closer spacing—

Q. Which has the more knots? A. Well, I could cut that down to the same width as that, and have less knots in it than there is in there now.

Q. But it is your testimony that that board, in your opinion, S-226, is the top? A. Is the top of the tree. It is higher than this, the next cut.

Q. And you didn't hear the last gentleman testify that that couldn't be so because it had more knots in it, and he numbered them—you were sitting here and heard the testimony, didn't you?

A. I wouldn't want to go back to that testimony now and swear to it.

Q. Well, you were here yesterday and you heard the last gentleman testify, numbering, I think he said seven knots on that board and a lesser number on this board.

Mr. Pope: Now I object to the question.

Q. Didn't you hear him testify that that couldn't be the top because there were more knots, and there were only more knots at the bottom? Didn't you hear that?

Mr. Pope: I object to the question—

The Court: I admit the question.

Mr. Pope: For two reasons. In the first place, that wasn't the testimony—

Mr. Wilentz: I disagree with you.

Mr. Pope: —and the second is he can't ask this witness to qualify or characterize or discuss some other witness's testimony.

The Court: The question is whether or no he heard that testimony. Now he may answer it Yes or No.

By Mr. Wilentz:

Q. Did you hear it? A. I heard the testimony, but I don't recollect that was the same.

Q. You won't. Where do you live, sir? A. Lyndhurst, Long Island.

Q. And the extent of your entire investigation

of these exhibits, S-226 and the ladder was for five minutes yesterday afternoon? A. Possibly five minutes, yes.

Mr. Wilentz: That is all.

The Court: That is all, sir.

Mr. Pope: That is all.

(Witness excused.)

Mr. Pope: We are pretty well depressed with the air in here and may we have a little recess?

The Court: Yes, we may have a recess for five minutes.

(At 12:02 p. m. a short recess was taken.)

(12:10 p. m.)

(After a short recess the jury was polled and all jurors answered present.)

The Court: Counsel may proceed.

Mr. Reilly: The defense rests.

The Court: The Attorney General may proceed.

Mr. Wilentz: Mr. Farber.

REBUTTAL

JOSEPH J. FARBER, called as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Farber, in 1932, what business were you engaged in? A. Insurance brokerage.

Q. Where did you live? A. 2446 Yates Avenue, Bronx, New York City.

Q. Have you been a candidate for public office? Just answer yes or no.

Mr. Reilly: I object to whether he has or not.

Mr. Wilentz: Let me ask the question, please.

The Court: All right.

Q. Have you been a candidate for public office during recent years? A. I have, sir.

Mr. Wilentz: Just a minute, please.

Mr. Reilly: I object to whether he has or has not, that doesn't qualify him as a witness.

The Court: Well, I am not sure that the question is asked for the purpose of qualifying him. I don't know what the purpose of the question is.

Mr. Wilentz: The question is asked for the purpose of identifying the witness.

The Court: Identifying him?

Mr. Wilentz: Yes, show who he is.

Mr. Reilly: That is no way to identify him, because he ran for public office. Many of us in this room have run for public office and we don't get any identification from it.

The Court: Well, if it is objected to I sustain the objection.

Q. How long have you lived in New York, sir? A. Some twenty-five years.

Q. Now, on the night of April the 2nd, 1932, where were you? A. At what hour?

Q. Well, at about ten o'clock. A. I was at premises 1350 Sixth Avenue, Borough of Manhattan, City of New York.

Q. What premises are they? A. That is the premises of Levine Bros., L-e-v-i-n-e, which is a combination delicatessen specialty shop and restaurant.

Q. I see. And did you have your car there that night? A. I did, sir.

Q. Did you have an automobile accident that night? A. I did, sir.

Q. With whom? A. With a car operated by one Benjamin Heier.

Q. And as the result of that accident did your car sustain any damages? A. It did, sir.

Mr. Reilly: I object, whether it did or did not.

Q. All right. Now, where did this accident occur? A. This accident occurred on the easterly side of Sixth Avenue, between 54th and 55th Streets, Borough of Manhattan, City of New York.

Q. Is that in the Bronx or in Manhattan? A. In Manhattan.

Q. Do you know how far that is from St. Raymond's Cemetery?

Mr. Reilly: I object to this on the ground that it is not in rebuttal. We did not ask anything about any accident.

The Court: Objection overruled.

Mr. Reilly: Exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

The Witness: Sixth Avenue between 54th and 55th Street, Manhattan, is eight and a half miles south of St. Raymond's Cemetery in the Bronx.

By Mr. Wilentz:

Q. Are you sure that Benjamin Heier was the man who was in the car that had an accident with you at ten o'clock that night? A. I am sure.

Mr. Reilly: I object to it as leading.

The Court: I overrule your objection.

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Reilly:

Q. Is this your first appearance in court? A. Yes, sir.

Q. How long have you been down in Flemington? A. Since 10:20 last night.

Q. I suppose you took your watch out and made a note of that 10:20 last night? A. No, sir, but I can explain it.

Q. I don't want you to explain it. Did you take a watch out? A. No, sir.

Q. Did you take a tape measure between the point of the accident and St. Raymond's Cemetery and measure the eight and a half miles; did you, yes or no? A. I did not, but I know exactly how many miles it is.

Q. Do you know how many blocks it is?

Mr. Wilentz: Just answer the question.

A. About 170 blocks.

Q. Did you count them? A. In my mind, yes, sir.

Q. Oh, in your mind. Now, what time do you say this accident happened? A. Ten o'clock p. m.

Q. Eight and a half miles? A. Correct, sir.

Q. You are sure it wasn't 10:30? A. No, sir.

Q. You never made a mistake in your life? A. I have.

Q. Did you ever make a mistake in time? A. I might have.

Q. Well, did you? A. I might have; that is my answer.

Q. Who sent for you to come down here? A. The Attorney General.

Q. When? A. Yesterday.

Q. Did you spend last evening with him? A. I did not, sir.

Q. Or any of his staff? A. I saw some of his staff.

Q. Where were you last evening? A. Last night?
Q. Yes. A. At a hotel in Trenton, New Jersey.
Q. Do you know the name? A. Hotel—
Q. Hildebrecht, wasn't it? A. —Hildebrecht.
Q. In the lobby during the evening, weren't you? A. For a few minutes.
Q. Having a pretty good time? A. I did not, sir.
Q. You weren't talking to anybody up there at all about half past eleven? A. For a few minutes.
Q. And your expenses and your room were paid for by the State of New Jersey? A. Just my room, sir; not even my meals.
Q. Not your food? A. No, sir. I ate outside. I did not eat at the hotel. I don't like hotel food.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. What time did you arrive last night, Mr. Farber? That is all I want: what time did you arrive in Trenton? A. 10:15 and 10:20 p. m.
Q. Last night? A. Correct, sir. Was never in Trenton or Flemington in my life prior thereto.

Mr. Wilentz: That is all. Thank you, sir.

(The witness left the stand.)

Mr. Wilentz: Mr. Otto Larsen.

Well, one question of Mr. Farber.

Mr. Farber, you have never been convicted of any crime, have you?

The Witness Farber: No, sir.

Mr. Wilentz: Mr. Larson.

ARTHUR LARSON, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Larson— A. Yes.
Q. —you are the gentleman who was in court the day that Mr. Carlstrom testified? A. Yes, sir.
Q. You are the man that stood up— A. Yes, sir.
Q. —when he said "Arthur Larson"? A. Yes, sir.
Q. In 1932 what did you do for a livelihood? What work did you do? A. Painting.
Q. You were a painter. A. Yes, sir.
Q. And did you work in Dunellen some time in the year 1932? A. Yes, sir.
Q. For whom, Mr. Larson? A. For Christiansen.
Q. And when you worked for Mr. Christiansen —is Mr. Christiansen here today? A. Yes.
Q. When you worked for Mr. Christiansen, did you work on a new house he was building? A. Yes.
Q. And do you remember whether or not you worked there some time in February and March? A. Yes.
Q. 1932. A. Yes.
Q. Now, on the night of March the 1st, 1932, the night of the Lindbergh crime, where were you? A. In Dunellen, New Jersey.

Q. Where did you sleep in Dunellen, New Jersey? A. In the house where I worked.

Q. Who else slept there that night? A. Carlstrom.

Q. What time did you see him when you went to bed? A. Between nine and ten.

Q. Between nine and ten o'clock in Dunellen, New Jersey? A. Yes, sir.

Q. In the Christianson home? A. Yes, sir.

Q. Had he been there all evening? A. Yes, sir.

Q. Now, you heard this Carlstrom over your radio? A. Yes, sir.

Q. When it happened, didn't you? A. Yes, sir.

Q. Now the next day on March 2nd where did you go? A. I was down to get some paint, went down to get some paint.

Q. And did you go any other place that day? A. I bought some newspapers at the same time.

Q. What else did you do that day? A. I went back to the house.

Q. Did you finally go to New York on March 2nd? A. No.

Q. Did you get word some time on March 2nd that your wife was sick? A. Did I get work?

Q. Did you get word on March 1st, March 2nd, 1932, about your wife being seriously sick? A. I can't say it was March 2nd or March 3rd.

Q. You don't know whether it was March 2nd or 3rd? A. No, I can't say.

Q. All right. Now, how many weeks about did you work in Dunellen, New Jersey, with Carlstrom, while he was there? About how many? A. About two weeks or maybe a little more.

Q. And during those weeks did either you or Carlstrom leave Dunellen, New Jersey, any week day or night? A. We did not.

Q. The only time you would leave was week-ends, isn't that so? A. Only week-ends I left.

Q. And would you leave and go to your family? A. Family.

Q. You have a family? A. Yes.

Q. You did have at that time? A. Yes, sir.

Q. A wife and children? A. Yes.

Q. How many children? A. Two.

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Reilly:

Q. Stay where you are. The other morning you stood up over in this corner, didn't you? A. Yes, sir.

Q. While Carlstrom was still on the witness stand. A. Yes.

Q. You weren't here the day before the morning you stood up? A. No.

Q. Who brought you down here that morning? A. Detective from the Bronx.

Q. A detective from the Bronx? A. Yes, sir.

Q. A detective from the Bronx came to your house the night before you arrived here and brought you down here? A. Yes.

Q. You have been down here ever since? A. Yes.

Q. When did you go home? A. The same night, I think.

Q. Don't you know? A. Yes.

Q. Was it the same night? A. Yes.

Q. You are sure? A. Yes.

Q. You are sure it wasn't the next day? A. No.

Q. When did you come back? A. I come back the last time?

Q. This time. Did you come back today, yesterday or the day before, or when did you come back here? A. I come back this week.

Q. What day? Don't look at anybody, just look

at me. What day did you come back? A. This is the third day I am here.

Q. This is the third day, you are sure of it? A. Yes.

Q. What day of the week did you come back? A. Wednesday.

Q. What time? A. About six o'clock at night.

Q. At night? A. Yes.

Q. Did you come back here or did you come to Trenton? A. To Trenton.

Q. Who brought you back at that time? A. I don't know. Some detectives.

Q. A State detective from Jersey? A. I think so.

Q. You know where Trenton is, don't you. A. Yes.

Q. You could find it yourself, couldn't you? A. I am not so sure.

Q. You had been there the week before, hadn't you? A. Yes.

Q. Now it is a fact, isn't it, that Carlstrom was in charge of this house as caretaker, that is right, is it not? A. Yes, sir.

Q. And it is a fact that he is in this country properly, is that correct? A. Yes.

Mr. Wilentz: I object to that.

Q. Are you in this country properly? A. Yes.

Q. When did you come over? A. 1912.

Q. 1912, on a visa? A. No, as an emigrant.

Q. As an emigrant? A. Yes.

Q. Did you have your card from your Government? A. Yes.

Q. What Government? A. United States Government.

Q. United States Government. What country did you come from? A. Sweden.

Q. Where is your card? A. I have it up in my coat.

Q. Where? A. In my coat pocket.

Q. Have you taken out your first papers? A. Yes.

Q. Now, when did you go to work in Carlstrom's house down here in Jersey, what date? A. Carlstrom's?

Q. Yes. A. It was Christiansen's house.

Q. Christiansen's house. A. Some time in February.

Q. What day? A. I can't say for sure.

Q. What date? A. Between around the 18th or 20th.

Q. You can't tell me the date? A. Not exactly.

Q. And you can't tell me the date? A. Not exactly.

Q. All right, what month? A. February.

Q. Sure about it? A. Yes.

Q. The early part or the latter part? A. In the latter part.

Q. Did you stay there the first night? A. Yes.

Q. Where did you sleep? A. Upstairs, second—

Q. What part of upstairs? A. Front room upstairs.

Q. In a bed? A. No, on a mattress?

Q. On a mattress? A. Yes, sir.

Q. Where did the other young man sleep? A. Along side of me, on a mattress.

Q. Who took care of the furnace? A. Mr. Carlstrom.

Q. He was in charge of the house? A. Yes.

Q. There is no doubt in your mind but what March 1st, 1932, was his birthday, is there? A. I don't know.

Q. No. Did you hear him testify it was his birthday? A. I heard that, yes.

Q. Did you see his card? A. No, I didn't.

Q. Date of birth? A. No.

Q. March 1st, 1932? A. No, I never see it.

Q. How many days were there in February, 1932? A. February, 1932? 29 days.

Q. What day of the week was the 29th day? A. On a Monday.

Q. Have you been looking over a calendar? A. No.

Q. You are sure about his? A. Yes, because—

Q. All right. A. I remember it is leap year.

Q. Leap year? A. Yes, Leap year.

Q. When was the last Leap Year before that? A. I can't say.

Q. You can't say that. Well, now, where were you at six o'clock on February 28th? A. Six o'clock on February 28th?

Q. 1932. A. I was home.

Q. What were you doing at that hour, if you know if you can remember? A. I can't remember.

Q. You can't remember? A. No.

Q. Tell me what you were doing at ten o'clock February 28th, 1932, if you can remember? A. No, I can't remember.

Q. Tell me what you were doing at nine o'clock, February 29th, 1932, if you can remember. A. I think I was working.

Q. You think you were working? A. Yes.

Q. You are not sure? A. No.

Q. Do you think you were painting at nine o'clock at night? A. No, I used to eat supper; we used to eat around six and seven.

Q. Where? A. In Dunellen, where I worked.

Q. In a restaurant? A. No, in the same house we worked.

Q. In the house? A. Yes; and some time I used to start work a little—

Q. Some time. Now, did you work on the 29th

of February? A. I worked on the 29th of February.

Q. At nine o'clock at night? A. No, not at nine.

Q. That's the hour, nine o'clock. What were you doing, if you can remember? A. I think I was sitting around.

Q. You were sitting around? A. Yes, I was in the house.

Q. What were you doing on March 2nd, at eight o'clock? A. March 2nd?

Q. Yes, at eight o'clock. A. I was out working.

Q. Where? A. In the house, in Dunellen.

Q. Working, painting? A. Yes.

Q. What were you doing at nine o'clock March 3rd? A. On March 3rd?

Q. Yes. A. I am not sure if I was home or if I was in Dunellen. I can't be sure if I send out that message on the 2nd or the 3rd.

Q. You can't be sure where you were? A. No, but the 2nd I was in Dunellen because I know I was painting.

Q. Are you working now? A. Yes.

Q. What for? A. Boss in New Rochelle, painting.

Q. A. boss in New Rochelle? A. Yes.

Q. How long have you been working there? A. About seven years.

Q. Seven years? A. Yes.

Q. When did you work out here, 1932, didn't you? A. Yes.

Q. Well, that is less than seven years ago? A. Yes, but I was out there between—he had no work at that time.

Q. How long have you been working for this man on this job? A. On the—

Q. New Rochelle. A. New Rochelle?

Q. This job. A. Where, before or—

Q. No, now, you are working now you say? A. Yes.

Q. For a man in New Rochelle? A. Yes.

Q. When did you go to work for him? A. Last Tuesday.

Q. And before that, when did you go to work for him? A. About two weeks before that date.

Q. What day of the week, two weeks before? A. I can't remember.

Q. What date? A. I can't remember.

Q. What was the date of last Tuesday? A. I don't know.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. You had never been convicted of any crime, have you? A. No.

Mr. Wilentz: Thank you, that is all. Mr. Christenson.

OSCAR HILBERT CHRISTENSON, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Christenson, where do you live? A. 598 East 139th Street.

Q. New York City? A. Yes.

Q. And how long have you lived in New York? A. I lived in New York since 1908.

Q. During—since that time, however, you built a house in Dunellen, did you not? A. I built a house in Dunellen, yes.

Q. And did you move out there? A. I moved out there, yes, sir, March the 30th.

Q. March the 30th? A. Yeah, 1932.

Q. 1932. Did you keep a record of the cost of the house? A. I did. I kept a little record just from memoranda for myself.

Q. Will you take a look at S-277 for Identification and tell us whether or not that is the record? A. This the record, yes, I kept on just for myself, on that house, I built in Dunellen, New Jersey, North Washington Avenue.

Q. Does this record include every item of expense for help out there, the laborers, for instance? A. Everything is in this book.

Q. The caretaker Carlstrom's salary, Larson's salary? A. Yes.

Q. And other items of expense in connection with the building of this house? A. Yes.

Q. And the dates? A. Yes.

Mr. Wilentz: I offer the book in evidence.

Mr. Reilly: I object to it upon the ground that any items concerning the last witness, Larson, are incompetent, irrelevant and immaterial, not proper rebuttal; any items as to any other people that he paid moneys for running errands are incompetent, irrelevant and immaterial and not proper rebuttal; and as to any items concerning Albert Carlstrom as incompetent, irrelevant and immaterial and not strict rebuttal.

May I submit this to your Honor? I think there are two pages.

Mr. Wilentz: Those two pages—there is one page there, for that matter, that we offer, both for the purpose of contradicting the witness Carlstrom and for the purpose of submitting the witness Larson.

Mr. Reilly: May we have no argument while the Court is examining as to its admissibility.

(The Court examines memorandum book.)

The Court: This is, of course, undoubtedly subject to use by the witness.

Mr. Wilentz: Well, then, I can do without it, if it is subject to use by the witness, so we won't have any confusion.

The Court: I think that must be so.

Mr. Wilentz: For the moment then, will you reserve decision on the offer?

The Court: Yes.

By Mr. Wilentz:

Q. You say this book is in your writing? A. Absolutely.

Mr. Reilly: I object to the book being shown to this witness unless he says his recollection is faulty and he can't remember without it. This is strict rebuttal.

The Witness: I don't need this book.

By Mr. Wilentz:

Q. You don't need the book. All right.

Mr. Reilly: I don't think you could pos-

sibly rebut anything Larson said here nor are we concerned with any boys that ran errands.

The Court: I suppose the purpose of this examination is to show by this witness, if you can, that this man Carlstrom, as I remember the name, was present in Dunellen on March the 2nd and I have already indicated to counsel that I think that it is proper enough for this witness, having made that memorandum at the time that this work was going on, to use the memorandum for the purpose of refreshing his recollection, and he may testify from that.

By Mr. Wilentz:

Q. Now, on March the 1st, Mr. Christensen, were Mr. Carlstrom and Mr. Larson both employed by you, March the 1st, 1932? A. According to my record—

Mr. Reilly: I object to that.

Q. Were they employed by you? Did they work for you? A. Yes, sir.

Q. And what was the work that Carlstrom was assigned to and paid for and hired for?

Mr. Reilly: I object to that, because there is no question in rebuttal, but what Larson told the truth and Carlstrom said the same thing. He was a caretaker.

Mr. Wilentz: There is a grave question whether Carlstrom told the truth.

The Court: This question is unobjectionable. You may answer it.

Mr. Reilly: Exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Wilentz:

Q. What was Carlstrom's work and Larson's work?

Mr. Reilly: I object to the question. Carlstrom's work I have no objection to, but Larson, he can't be called to sustain Larson who is a rebuttal witness.

A. Carlstrom was—

Mr. Reilly: Wait a moment, please.

The Court: One moment. I overrule the objection.

Mr. Wilentz: Answer the question please.

Mr. Reilly: Exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Answer to the question. A. Carlstrom was keeping the fire in the boiler down in the cellar and Larson was doing the painting.

Q. I see. Now, the keeping of the fire, was that a day job or a night job or what was it? A. No.

Mr. Reilly: Now I object to that unless he saw it and saw him keep it.

A. —He was not—

Mr. Reilly: This man was off in Brooklyn, somewhere, and delegated some work—

Mr. Wilentz: I know, but he engaged him, if your Honor please, and he has a right to tell that he engaged him for.

Mr. Reilly: But, that is no evidence that the man was there or was not there on March 1st in the evening, unless he saw him there.

Mr. Wilentz: It is a circumstance from which the jury may infer, among other things, if your Honor please.

Mr. Reilly: No, I think it is not, it is a circumstance, which might just as well develop in favor of Carlstrom or any other one, if this man wasn't in Dunellen or wherever it was, Dunellen that night, March 1st.

The Court: I have already indicated what I conceive to be the purpose and the only purpose of this examination. I have indicated that the witness may be asked a question as to whether or no he can tell from an examination of his books, whether or not Carlstrom, if that is the name, was there on that night.

By Mr. Wilentz:

Q. Did you pay Carlstrom for working March 1st, 1932? A. I did.

Q. And what was his employment, what were the hours of his employment? A. There was no hours set for him; he was sent out there, used to doing, to take care of the fire.

Q. Was that to include day and night? A. That I don't know.

Q. Was the fire to be taken care of at night? A. As long as the fire was taken care of, I didn't care if he left there or not.

Q. On March 2nd did you send anybody from your place to Dunellen?

Mr. Reilly: I object to whether he did or did not if it wasn't Carlstrom.

Mr. Wilentz: We have a right to support the story of Mr. Larson too, if your Honor please.

Mr. Reilly: I think not.

Mr. Wilentz: It is in corroboration.

Mr. Reilly: We can't call anybody in here to corroborate Larsen. If we did

and called somebody to corroborate this man, we would go on indefinitely. That, as I understand, is the strict rule of rebuttal.

The Court: What is the question?

Mr. Wilentz: Whether he sent a messenger to Dunellen on March 2nd, 1932.

The Court: I don't see that that has anything to do with it.

By Mr. Wilentz:

Q. Do you know whether Mr. Larsen's wife was sick on March 2nd, 1932?

Mr. Reilly: I object to whether she was sick or not.

The Court: You see, Mr. Reilly, you interrupt while the question is being put and I can't hear the question.

Mr. Reilly: I am afraid he will answer it.

The Court: Please caution the witness not to answer until you have made your objection, and I think you will get along better. I want to hear the question. That is the thing I am interested in. Now, will the question be repeated to me.

By Mr. Wilentz:

Q. Do you know whether or not Larson's wife was ill in March, 1932? A. Yes.

Mr. Reilly: It is irrelevant and immaterial whether she was or was not.

The Court: The witness answered the question, did he?

Mr. Wilentz: Yes.

The Court: I will let it stand.

Q. Do you know when Carlstrom quit work there? A. I went over—Yes; I went over specially to Dunellen and got Carlstrom over to my house to help me move at 409 East 135th Street; then he moved with us on March 30th, and then he was there about two, three days, then I took him down to New York, left him off at 40th Street.

Q. And that was the last he worked there? A. That was the last. That is the time I gave him the twenty dollars.

Q. You gave him twenty dollars? A. Yes.

Q. And left him there? A. And left him there.

Q. Do your records show that Mr. Larson was working too on March the 1st? A. Yes, it does.

Mr. Reilly: I object to that.

The Court: Well, I seem to have a good deal of difficulty in getting my idea over. My idea is that this witness might be asked the questions and be permitted to use this memorandum for the purpose of serving his recollection.

Q. Was he working March the 1st, 1932? A. So far as I remember. If he left, I don't know.

Q. Well, when you look at your records to re-

fresh your recollection, do you say— A. He should be there, yes.

Q. Was Larson working on March the 1st, 1932, after having looked at your records? A. He should be there, yes.

Q. Well, was he or wasn't he? A. Well, so far as my record and I remember he should be there. If he left there, I don't know.

Q. Yes. You weren't in Dunellen, of course. A. I was over in New York, and I don't know if he left there, but he should be there.

Q. Did you pay him for March the 1st? A. I paid him.

Mr. Wilentz: Yes. That's all.

Cross Examination by Mr. Reilly:

Q. You saw neither one of them March the 1st, did you? A. No, I didn't see either one of them.

Mr. Reilly: That's all.

Mr. Wilentz: That's all, sir.

Did your Honor want to continue? It is ten minutes past our adjournment time.

The Court: The flight of time had escaped me. We will now take a recess. The people will remain where they are in the court room. The jury may retire and come back at 1:45.

(At 12:37 p. m. the jury retired.)

The Court: The prisoner is remanded to the custody of the sheriff.

(The prisoner retired.)

The Court: The Court will now take a recess until 1:45.

(At 12:40 a. m. a recess was taken until 1:45 o'clock p. m.)

AFTER RECESS.

(1:48 p. m.)

(The jury was polled and all jurors answered present.)

Mr. Wilentz: Mr. Wilton. Is Corporal Wilton here?

Mr. Fisher: He is coming.

GEORGE G. WILTON, called as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Wilton, you are connected with the New Jersey State Police? A. Yes, sir.

Q. In what capacity? A. Photographer.

Q. And were you a photographer connected with the Department in 1932? A. Yes, sir.

Q. And particularly prior to March 1st, 1932? A. Yes, sir.

Q. Where did you live before you joined the Department? A. In Easton, Pennsylvania.

Q. Now, will you take a look at this photograph and see whether or not, that is one of the photographs—whether or not that is the production of your work. A. Yes, sir.

Q. Showing you Exhibit S-294 for Identification. Now, will you take a look at S-295 for Identification. A. Yes, sir.

Q. Did you make these photographs? A. Yes, sir.

Q. I show you S-296 for identification. A. I didn't photograph this.

Q. You didn't photograph that? A. No.

Q. Now, do S-294 for identification and S-295 for identification correctly portray—when did you make those photographs? A. March the 8th, 1932.

Q. March 8, 1932? A. Yes, sir.

Q. Do those photographs—what are they, 294 and 295? A. 294 and 295.

Q. —correctly show that portion of Rail 16 of this ladder as it appeared on March the 8th, 1932? A. Yes, sir.

Mr. Wilentz: I offer the photographs in evidence.

Mr. Reilly: May I examine on the photographs?

Mr. Wilentz: Yes, you may.

By Mr. Reilly:

Q. Is this the original size of the camera? A. No, sir.

Q. These are enlargements; correct? A. Yes.

Q. When do you say you took them? A. March the 8th, 1932.

Q. How long have you been a photographer? A. I have been a photographer over eleven years.

Q. Over eleven years? A. Yes.

Q. Where is there anything on these photo-

graphs to show the dates that you took them? A. There is nothing on the photographs.

Q. There is nothing on the photographs. Anything on the plate? A. No, sir.

Q. Don't you know that every good photographer when he takes a photograph to be marked in evidence marks some place on the plate which will be shown on the picture the date when he took it? A. No, sir.

Q. Have you any records to show when you took it? A. Yes.

Q. Where are they? A. In my pocket.

(Witness hands counsel paper.)

Q. This is made by yourself, isn't it? A. Yes.

Q. Yes. Typewritten? A. Yes, sir.

Q. And outside of a date that you have at the top of this there is nothing to indicate on this form when you took these pictures, is there? A. Well, the date's on the report, yes, sir.

Mr. Wilentz: A little louder.

Q. I say outside of the date you have typewritten at the top of this report, there is nothing to show when you took it? A. No, sir.

Q. Nobody witnessed the taking of it? A. No, sir.

Q. Nobody signed the plate? A. No, sir.

Q. Nobody signed the proofs? A. No, sir.

Q. How was the enlargement made? A. I made the enlargement in a dark room.

Q. Nobody was present? A. No, sir.

Q. Nobody saw it? A. No.

Q. It is only your word? A. Yes.

Q. And you are a State Trooper? A. Yes.

Q. You were told before you came here that

you were going to testify as to when you took those pictures in 1932? A. No, sir.

Q. You didn't know what you were called for? A. No. I have got a lot of pictures.

Q. You didn't know you were going to be examined?

Mr. Wilentz: I can't hear a word you are saying, Mr. Witness, and I take it the jury can't either.

By Mr. Reilly:

Q. You say you didn't know before you took the witness stand what you were going to be asked about these pictures? A. No, sir.

Q. Not a thing? A. No, sir.

Q. Why did you take this report in your pocket concerning these two pictures? A. I have carried that report —

Q. How long have you carried it? A. Since I have been in the courtroom.

Q. How many other pictures did you take for this trial. A. No other pictures.

Q. Only these two? A. There are fourteen pictures altogether.

Q. Fourteen pictures of what? A. Of the ladder.

Q. You took them all at once? A. Yes, sir; there are fourteen pictures.

Q. Well, now, I want to know just how you enlarge these pictures. What was the size of your camera? A. Four by five.

Q. Four by five. Just hold your hand up and show the jury, will you, four by five? A. You mean the plate?

Q. Yes. A. About like that (illustrating).

Q. Was it a plate or was it a film? A. Film.

Q. Where is the film? A. In Trenton headquarters.

Q. Where is that? A. In Trenton headquarters.

Q. Why didn't you think to bring that along with a report? A. I didn't think it was necessary.

Q. Well, now, don't you know as a photographer of fourteen years that— Withdrawn. Indicate on this photograph what you claim to be nail holes (showing witness exhibit S-294).

Mr. Wilentz: We haven't gotten into that, if your Honor, I would like to have a chance to examine my own witness.

The Court: Yes. Let him tell what was in it.

Mr. Wilentz: The question now is as to the admissibility of the pictures.

Mr. Reilly: I object to the introduction of these. They are not the original products of a plate in a camera, which was exposed and a photograph of some object thereupon printed. These are apparently enlargements of the original.

Mr. Wilentz: Made by this witness, the original and the enlargements.

The Court: I think they are admissible.

Mr. Reilly: Exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: Will you please mark them?

The Reporter: S-302 and S-303.

(Photographs received in evidence and marked State's Exhibits S-302 and S-303.)

By Mr. Wilentz:

Q. Can you tell us what rail these pictures indicate? A. Well, I don't know the number, this wasn't numbered at the time.

Mr. Reilly: A little louder. We want to hear it. It is not confidential.

The Witness: I say this rail had no number at the time.

Q. I see. They are pictures of the rail then? A. Yes, sir, of the ladder.

Q. Do you know which rail? A. Well, I later found out it was rail 16.

Q. Well, can you tell by looking at the nail holes and by looking at the rail? A. Yes, sir.

Q. Well, come down and take a look at it, please; take your time. A. (Witness examines rail of ladder.)

Q. Now, picture S-302 has two nail holes? A. That is taken from the other side.

Q. Taken from the other side? A. From the inside that is.

Q. From the inside. Well, where are they? All right, point them out. A. I just put the

photograph this way, there it is (indicating), there is my writing on there, G. G. W., on March 8th, 1932, when I photographed it.

Q. Do you spell nails n-i-a-l-s? A. I made a mistake, yes, sir.

Q. Now, I notice in the picture it also has the words n-i-a-l-s? A. Yes, sir.

Q. That is Exhibit S-302.

The Court: Speak up please, speak up.

Q. Now, will you try to find that portion of the rail which is shown by Exhibit S-303? A. Yes, sir.

Q. Was the picture taken from the opposite side? A. Yes, sir. It will show this way, at this angle. There is a split, shows a nail hole, a piece of lumber broken out

Q. Shows the split, shows the nail hole, shows a piece of lumber cut out of it: is that what you said? A. Broken out of it.

Q. Broken out of it? A. Yes, sir.

Q. Take this pencil—what is your last name? A. Wilton.

Q. Put a "W" alongside of that. A. Yes.

Q. Put a W-2. A. Yes, sir. (Witness marks.)

Q. Put W-2 alongside the other two nail holes. A. On both of them?

Q. Just a W-1 right alongside there. A. (Witness marks.)

Q. So the point you marked W-1, that is supposed to indicate the nail holes shown on 302, and where you have got W-2 is intended to indicate the nail holes shown at 303: is that right? A. Yes, sir.

(Photographs handed to the jury for examination.)

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Reilly.

Q. Now, on March 1st were you a corporal? A. Yes, sir.
Q. Doing photographic work? A. Yes, sir.
Q. On March 2nd were you a corporal? A. Yes, sir.
Q. And every day down to the 8th? A. Yes, sir.
Q. Where did you take the pictures? A. In my office in Trenton.
Q. Where? A. Trenton.
Q. You didn't change anything on the ladder before you photographed it? A. No, sir.
Q. You didn't add anything to it? A. No, sir.
Q. It was the way it is there? A. Yes, sir.
Q. The ladder was in the same form it is here? A. No.
Q. Was it taken apart? A. There were some nails showing out of one of the rungs.
Q. There weren't any nails in it when you got it, the nails that were showing? A. The nails stuck out on one of the rungs.
Q. Nails stuck out on one of the rungs. Which one? A. Partly pulled out.
Q. Which one? A. I can't say. I would have to see my photograph.
Q. You would have to see your film, wouldn't you? A. No, I would have to see my photograph.
Q. What did you do with the film? A. The film was filed in Trenton headquarters.
Q. What did you do with the picture after you took it? A. I developed it.
Q. Yourself? A. Yes, sir.
Q. You didn't send it any place? A. No, sir.
Q. So that somebody had stuck a couple of nails in something, is that correct? A. Sir?

Q. Somebody had stuck a couple of nails in some part of the ladder, is that right? A. Why, I know these were the two nails supposed to hold that rung to the rail.

Q. Were they that way when you photographed it? A. Yes, sir.

Q. That way when you saw the ladder? A. Yes, sir.

Q. Are these the same two nails over here? A. No, sir.

Q. Two more nails? A. Yes, sir, further on.

Q. Who drew the nails out? A. I don't know, sir.

Q. Who prepared the ladder for you to photograph? A. The ladder was brought to me by Trooper Kelly.

Q. Yes. Well now, you notice how nicely scooped out around this corner these nail holes are? Did you prepare this nail hole? A. No, sir.

Q. For pictures? A. No, sir.

Q. You didn't do any scraping around there? That has been scraped, hasn't it? A. I really couldn't say.

Q. Well, look at it. A. I don't know whether it has been scraped or not.

Q. Different color wood, isn't it? A. Yes, sir.

Q. Lighter? A. Yes, sir.

Q. Cleaner? A. Well, yes, sir.

Q. Stands out more? A. Yes, sir.

Mr. Wilentz: We can't hear a word he is saying.

Q. Well, let's look at the other one. Do you see that? A. Yes, sir.

Q. A piece of wood is out, isn't it? A. Yes, sir.

Q. You don't know who pulled it out? A. No, sir.

Q. You don't know who prepared it? A. No, sir.

Q. And you don't know whether anybody drove a nail through there before you were asked to photograph it, do you? A. Well, that I don't know.

Q. No. A. It is a nail hole.

Q. A nail hole? A. Yes, sir.

Q. Anybody could put one in there between the 1st of March and the 8th? A. (No answer.)

Mr. Wilentz: Oh, I object to that. That's apparent to everybody.

The Court: I will allow the answer to stand.

Q. What did you do with the films after you developed them? A. Put them in a hypo and kept them.

Q. And kept them in your possession? A. Yes, sir.

Q. All the time? A. Well, they were filed in my office, yes, sir.

Q. What do you call your office? A. Photography Section of the State Bureau of Identification.

Q. Well, now, don't you have any system over there whereby in an important case—not the Lindbergh case, but any important case—that when you are photographing an exhibit like this, which might be required at some future time for evidence, to have a witness see you take the picture? A. No, sir.

Q. No? A. I do all the photographing in Headquarters.

Q. I see. What do you suppose would have happened if you died, between the time you took this picture and this trial?

Mr. Wilentz: I object to it, if your Honor please.

Mr. Reilly: If you object, that is all. Here is your form back.

Re-Direct Examination by Mr. Wilentz:

Q. Just one question: The pictures which you testified you took on March the 8th, 1932 showed the conditions on that date, isn't that so? A. Yes, sir.

Q. And the nail holes that are shown in those pictures were in that rail on March the 8th, 1932. A. Yes, sir.

Mr. Wilentz: That is all, officer, thank you.

Re-Cross Examination by Mr. Reilly:

Q. Did you take this picture? A. Yes, sir, I developed it.

Q. You developed it. Who took it? A. I really don't know. It is either Trooper Kelly or Sergeant Kubler. It is a B Troop photograph.

Q. Is there anything about this picture by which you can show the jury that you developed it? A. No, sir.

Q. Just your recollection? A. Yes, sir.

Q. Where did you get the plate from? A. The plate came from B Troop.

Q. B-troop? A. Yes, sir.

Q. When? A. Well, that I don't know. I developed and printed all the photographs.

Q. And the plate for this is in the possession then of the State Bureau of Identification? A. Yes, sir.

Q. Your Bureau? A. Yes, sir— No, sir, not my Bureau.

Mr. Reilly: Now we offer this picture in evidence that we talked about at some previous time. Trooper Kelly was on the stand and he said he didn't know who developed the photograph.

The Court: Did Trooper Kelly say he took the picture?

Mr. Reilly: Yes, sir.

Mr. Wilentz: I thought he was shown a newspaper picture. That is my recollection. He was shown a newspaper picture.

Mr. Reilly: That might be.

Mr. Wilentz: If counsel wants that picture in, I have no doubt that if they will exhibit it to us we will be able to get along. All I want to do is to have a chance to exhibit it to Trooper Kelly, or whoever it is. We won't need any formal proof of it either.

All right, officer, that is all.

(Witness excused.)

Mr. Wilentz: Sergeant Schultz.

FRED H. SCHULTZ, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. I want to show you S-294 for identification and ask you whether or not you took that picture. A. I took a picture similar to this but not this enlargement.

Q. You never took that enlargement? A. No, sir.

Q. Do you know who took this enlargement? A. No, sir.

Q. You do not? A. No, sir.

Mr. Wilentz: I withdraw the witness. That is all, young man.

Mr. Betts.

HAROLD S. BETTS, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Betts, by whom are you employed? A. The United States Forest Service.

Q. Were you connected with the United States Forest Service in March 1932? A. Yes.

Q. And in April 1932? A. Yes.

Q. Were you connected with the service before Mr. Hauptmann's arrest in September 1934? A. I have been connected with the Service for 30 years.

Q. Did you have submitted to you for inspection the kidnap ladder prior to Mr. Hauptmann's arrest? A. Yes.

Q. Will you tell us when you saw the ladder, the date you saw the ladder. A. May 23rd, 1932.

Q. May 23rd, 1932. Will you tell us whether or not you saw at that time rail 16 of exhibit—what is the number of this exhibit? S-211? A. Yes.

Q. Will you tell us whether or not at the time you saw it, whether you observed any nail holes and if you did observe it, whether you made a record of it at the time? A. I observed the nail holes and made a record of it.

Q. Did you file a report at the time, some time in May or June, 1932, showing the nail holes in that board? A. I did.

Q. And have you that original report here? A. I have.

Q. Filed in June, 1932? A. June 1st, 1932.

Q. Yes, sir. Does the report refresh your recollection? A. Yes, indeed.

Q. Will you tell us how many nail holes there were in rail 16? A. Four.

Q. And what kind of nail holes? A. Four.

Q. What was your observation at the time as revealed by your report? A. Made by old fashioned cut nails, two of the nail holes were at an angle.

Q. Now, will you take a look—you saw this ladder during the recess, the noon recess, didn't you? A. Yes, sir, I saw it in the morning.

Q. And you also saw your report? A. Yes.

Q. Now, will you take a look at this ladder and see whether or not—in your report does it refer to a number rail? A. Yes, 16.

Q. Was it numbered at the time? A. Yes, we numbered it.

Q. By one of these little clips? A. Yes.

Q. Who numbered it? A. My assistant.

Q. Your assistant numbered it? A. Yes.

Q. Are these the clips you used for numbering them, if you know? A. Exactly the same kind.

Q. Have you a drawing of the ladder in your report? A. I have.

Q. And what rail? Is rail 16 on your drawing? A. It is.

Q. What rail is it? A. (Indicates on ladder.)

Q. The top section? A. The top, top left, facing the ladder.

Q. The top left facing the ladder? That would be the—what do you mean? Oh, the top section, the left rail? A. Yes, sir.

Q. Is that it then? A. That is it.

Q. Rail 16.

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Reilly:

Q. The date is May what? A. May 23rd.

Q. Of course, that was the first time you saw it? A. Yes.

Q. Is that right? A. Yes.

Q. You saw it in Washington? A. In Washington.

Q. What division are you connected with, sir? A. The United States Forest Service of the Department of Agriculture.

Q. And your secretary is who? Who is the Secretary of Agriculture? A. You mean the present Secretary?

Q. Yes. A. Wallace.

Q. Did he give you permission to come here? A. Well, this was before his—the then Secretary of Agriculture instructed the—

Q. You didn't understand my question. I said did the present Secretary of Agriculture give you permission to come here and testify?

Mr. Wilentz: Oh, I object to the question as not being material.

Mr. Reilly: It is material.

Mr. Wilentz: Just a minute.

Mr. Reilly: I will connect it up.

The Court: Well, he may answer.

A. I disremember whether the present Secretary was in force or his predecessor was in force.

By Mr. Reilly:

Q. Well, certainly you didn't ask somebody in 1932 for permission to testify in 1935, did you? A. Oh, not to testify, no.

Q. That's what I am talking about. A. To inspect the ladder, you mean?

Q. No, I am asking you whether the present Secretary of Agriculture gave you permission to come here— A. Yes.

Q. —and testify? A. Yes.

Q. Now, do you know Mr. Looney, a wood expert, connected— A. I have heard of him.

Q. —with the Public Works Department? A. I don't know him.

Q. Of the Department of Interior. A. I knew of him.

Q. You know of him? A. Yes.

Q. You have heard of him in the last week? A. Yes.

Q. In connection with this case? A. Yes.

Q. Did you know that the Secretary, his Secretary, refused him permission to come here and testify for the defense, when his report would be favorable to us?

Mr. Wilentz: Oh, now—

A. I did not.

Mr. Wilentz: You see how prejudicial that is, if your Honor please, and unfair, the statement—

The Court: You object to it?

Mr. Wilentz: Yes, certainly; and I ask that it be stricken from the record.

The Court: I sustain the objection and strike it from the record.

Mr. Reilly: I ask an exception.

The Court: Take your exception.

(Exception allowed and same signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. You know Mr. Looney in Washington? A. I don't think I have ever met him. My Assistant does.

Q. You know of him? A. Yes, I know of him.

Mr. Wilentz: If your Honor please, I ask that counsel be instructed that he knows as a lawyer that that question wasn't fair, and I ask the Court to tell counsel not to repeat it.

Mr. Reilly: Oh, no, I don't know as a lawyer that it wasn't fair at all.

Mr. Wilentz: To say in the record—

The Court: What question are you talking about now?

Mr. Wilentz: The question that your Honor overruled, the statement made by him as to what another witness would testify to in favor of the defense.

The Court: Yes?

Mr. Wilentz: Counsel knows, he has had enough experience to know that that question is not admissible and I ask that the question be not repeated.

Mr. Reilly: I never repeat anything when I am overruled by the Court. Your Honor has overruled me.

The Court: Counsel stated that he proposed to undertake to connect this matter up and he may in his own mind have had some justification for asking the question. I am not disposed to admonish counsel. I depend upon counsel not to pursue that line of questioning.

By Mr. Reilly:

Q. May I ask you this question, and don't answer it until the Attorney General objects, if he wishes to. Is Mr. Looney connected with some portion of the United States Government under the construction department or the Department of the Interior now, public works? A. My understanding is that Mr. Looney is a member of the investigative division of the N.R.A. Now personally I don't know him. He has communicated

with the office several times to get information on wood.

Q. On wood? A. Yes.

Q. He has communicated with your office concerning wood? A. Yes.

Q. And his inquiries have covered how long a period on wood?

Mr. Wilentz: I object to that as being not at all material.

The Court: Yes, I think I will have to sustain that objection.

Mr. Reilly: I respectfully take an exception and will not pursue that line any further.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Reilly:

Q. Looking at the ladder, of course you are not able to tell us, are you, Mr. Witness, when these nail holes were put in before you saw it? A. No.

Q. That is all.

Re-Direct Examination by Mr. Wilentz:

Q. You don't know the defendant Hauptmann, do you? A. No.

Q. And my understanding is that the nail holes which you have testified to, you made note of that in May, 1932? A. Yes.

Mr. Wilentz: That is all, sir.

Mr. Budreau.

ALFRED BUDREAU, sworn as a witness on behalf of the State.

Direct Examination by Mr. Peacock:

Q. Mr. Budreau, where do you live? A. Yonkers, New York.

Q. Where did you live in October, 1933? A. Mountainville, New Jersey, in back of "The Barrens."

Q. Are you married? A. Yes, sir.

Q. In October, 1933, did you know Bertha Hoff? A. I did.

Q. She has testified in this case that in October and November, 1933, you came to her house with a man named Isidor Fisch? Is that true? A. No, sir.

Q. Do you know Isidor Fisch? A. No, sir.

Q. Did you ever go to her house at Corona, number 4052—92nd Street, Bayside, with a man named Isidor Fisch who had bundles with him? A. No, sir.

Q. In October, 1933? A. No.

Q. You did not? A. No.

Mr. Peacock: Cross examine.

Cross Examination by Mr. Reilly:

Q. You are subject to epilepsy, aren't you? A. Who?

Q. You. A. No, sir.

Q. Didn't you have an epileptic— A. No, sir.

Q. Do you know what I am going to ask you? A. I do.

Q. Now I will frame the question: Didn't you have an epileptic fit in this courtroom yesterday? A. I did not.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Peacock:

Q. You just fainted from the heat, didn't you? A. Yes, sir.

Mr. Reilly: You are not testifying. I ask that that be stricken out.

The Court: That will be stricken out. You may ask the question.

By Mr. Peacock:

Q. Tell the jury what happened to you. A. Well, it was too hot in here and I had been sick a few years back, and I spoke to my wife yesterday. I said, "I better go out, the heat is getting me," and I started to go out. That is all I remember.

Q. You just fainted? A. That is all. But I have never had a fit.

Re-Cross Examination by Mr. Reilly:

Q. How old are you? A. I am fifty-one next birthday.

Q. And you have been sick? A. Yes, sir.
Q. For how long? A. Oh, for about five years.
Q. And fainting spells? A. I didn't get that.
Q. Fainting spells? A. Once in a while.
Q. Yes. And of course you don't know how you act when you faint, because you are out? A. I know how I act when I come to.
Q. Yes, but you don't know how you are acting while you are in the faint, do you? A. I know an epileptic when I see him.
Q. But you can't see yourself when you are out, can you? A. No, I can't see myself when I am out.
Q. Do you know Mrs. Hoff? A. I do.
Q. And she spent some part of a summer, on your farm, didn't she? A. She did.
Q. Down here in Jersey? A. Yes.
Q. With her two children? A. Right.
Q. And was she married at that time? A. I suppose she was; she had children.
Q. And she had them there on your farm? A. She did.
Q. And she spent several months there, didn't she? A. No, sir; one night.
Q. Only one night. Well, the children spent how many months? A. One week.
Q. One week? A. If I remember right.
Q. Were they boarders? A. Well, if you want to call it boarders.
Q. Did you know her before she came to the farm? A. I did.
Q. How many years? A. Well, I can't tell you exactly, but I should say eight or nine.
Q. Did you know her up in New York? A. I knew her in New York.
Q. Did you know her in Jamaica? A. Jamaica? No.
Q. In Corona? A. Yes.

Q. Astoria? A. Yes.

Q. So that she knew you? A. Absolutely.

Q. She couldn't be mistaken? A. Yes.

Q. And if you and Fisch came to her house she would recognize—

Mr. Wilentz: Object to this as no testimony. He says positively they didn't come.

Mr. Reilly: I have a right to ask him whether or not she would know his face if he came to her—

The Court: Yes, let him answer the question.

By Mr. Reilly:

Q. You wouldn't be any stranger if you came to her house? A. Who do you mean?

Q. Mrs. Hoff. She would know you? A. Absolutely.

Q. Couldn't be any mistake about the man she knew over in New York and the man who visited her and the man on whose farm she had spent a night while the children spent a week? A. I think she would know me; she'd ought to.

Q. When were you sent for to come down here? A. Tuesday, I think.

Q. And where were you then? A. I was at home in Yonkers.

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

Q. What is your business? A. I am a painter.

Q. How many years have you been a painter? A. All my life.

Q. In Yonkers? A. No.

Q. When did you leave Jersey? A. 1931, October 5th.

Q. Did you have any brothers? A. No—stepbrothers.

Q. Stepbrothers. How many stepbrothers? A. One.

Q. Was he on the farm here with you? A. Never was in New York in his life. He never was in New York or Jersey in his life.

Q. Where does he live? A. Massachusetts.

Q. Well, who was on the farm here with you when Mrs. Hoff spent a night with the children? A. There was a young fellow from Phidalephia.

Q. What is his name? A. Martines.

Q. Martines, M-a-r-t-i-n-e-z, correct? A. I don't think he spelled his name with a "z," I couldn't say.

Q. How long do you know him? A. Since he is about that high.

Q. And you don't know how he spelled his name? A. No, I don't.

Q. He is a Spaniard, isn't he? A. No, a Hungarian.

Q. Hungarian. Was he there when Mrs. Hoff was there on the farm with the children? A. I just don't recollect.

Mr. Reilly: That is all.

By Mr. Peacock:

Q. He used to work on your farm, didn't he, young Martinez? A. Yes, he worked for me.

Q. Did you live in this County at that time? A. Well, if you call Mountainville in Hunterdon County, all right; that is where I lived.

Q. You did live in this County.

Mr. Peacock: That is all.

Mr. Levenson.

JOSEPH O. LEVENSON, sworn as a witness in behalf of the State.

Direct Examination by Mr. Peacock:

Q. Where do you live, Mr. Levenson? A. Sir?

Q. Where do you live? A. In the Bronx, 1491 McComb's Road.

Q. Talk a little louder so all the jury can hear you. What is your business? A. Real estate.

Q. And what was your business on March 1st, 1932? A. Real estate.

Q. And on the evening of March 1st, 1932, you remember where you were? A. Yes, sir.

Q. Where were you? A. I was at Mr. and Mrs. Jung's house.

Q. Mr. Jung's house? A. Yes, sir.

Q. What was his first name? A. Henry Jung.

Q. And where did they live at that time? A. On Forest Avenue, the Bronx.

Q. And what time did you arrive at the Bronx? A. About 7:30.

Q. And how long did you stay there? A. I stayed there until after midnight.

Q. Do you know Isidor Fisch? A. I only met him once.

Q. And where did you meet him? A. I met him at Jung's house.

Q. And was he there when you arrived at the house? A. Just a few minutes later.

Q. And was he there when you left? A. He left about five minutes before me.

Q. Now why did you go to Mr. Jung's house that night? A. Mr. Jung invited me.

Q. Did you do any business with Mr. Jung and with Mr. Isidor Fisch that night? A. Yes, sir.
Q. What business did you do?

Mr. Reilly: I object to it as incompetent, irrelevant, immaterial, what business he did; this is not rebuttal.

Mr. Peacock: It is rebuttal, your Honor, and for the purpose of corroborating the witness and other witnesses' testimony as to the date and the happenings that took place that night.

Mr. Reilly: That was part of the main case, the corroboration, and I state that this is not proper rebuttal. We haven't produced any Mr. Jung in here at all, nor has anybody said that Isidor Fisch was in Hopewell March 1st, so far as I know, in this case.

Mr. Peacock: They may not have said it, but there were a lot of insinuations—

Mr. Reilly: Oh, no.

Mr. Peacock: —through the trial as to where he was, and we are going to prove where he was.

The Court: You may proceed with your proof.

Mr. Reilly: May we have an exception to this entire line?

The Court: Take your—you may have an exception where you think you need it.

Mr. Reilly: All right, I will put them in.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Now did you make out some notes at Mr. Jung's house on March the 1st, 1932? A. I did.

Q. I show you notes dated March the 1st, 1932; I ask if they are the notes that you made out at the Jung house at the time Isidor Fisch was there.

Mr. Reilly: And I object to it as incompetent, irrelevant and immaterial.

The Court: Well, my notion is that he may examine those notes for the purpose of refreshing his recollection as to the date and I think that ought to be the extent of the examination.

Mr. Peacock: That is all it will be, your Honor.

A. May I answer?

Q. Were they made out on that date? A. Yes, sir.

Mr. Peacock: I offer them for purposes of identification.

The Court: Are they objected to?

Mr. Reilly: For Identification.

Mr. Wilentz: Just for Identification.

The Court: Oh, I see They may be marked.

The Reporter: S-304 for Identification.

(Twelve notes marked S-304 for Identification.)

Mr. Peacock: Cross examine.

Cross Examination by Mr. Reilly:

Q. You say your business is insurance? A. Real estate.

Q. Real estate? A. Yes, sir.

Q. Well, now, just talk up nice and loud as though you were selling me a piece of property. A. Yes, sir.

Q. How long did you know Jung? A. A number of years.

Q. How many years? A. About close to seven years, seven or eight years.

Q. Where is your office? A. 136 East 57th Street.

Q. Where was it in 1932? A. In 1932? In the same place.

Q. How long have you been there? A. A number of years.

Q. How many years? A. About four years now.

Q. Where do you live, in the Bronx? A. At the present? In the Bronx, yes, sir.

Q. In 1932 where did you live? A. In the Bronx.

Q. What part? A. On Jerome Avenue.

Q. How far from Jung? A. Well, it would be east in the Bronx—

Q. How many blocks? A. I couldn't tell by the block.

Q. What kind of night was March 1, 1932, was it raining? A. The usual night, dark night.

Q. Not the usual night, was it raining? A. I don't recollect if it was raining.

Q. Was it clear? A. Well, the usual night.

Q. That's won't do. I want to know if it was clear, rainy, snowy or what kind of night it was? A. I don't remember.

Q. What kind of house did Jung live in, an apartment house, private house? A. It was an apartment house.

Q. What floor? A. On the second floor.

Q. Front or rear? A. Well, I couldn't describe it, it run the whole length of the apartment.

Q. How many times were you there before March 1st, 1932? A. In that particular house, once.

Q. How many times after that? A. Not in that particular place.

Q. That is the only time you were in that particular house to see Jung? A. After he moved to another apartment—

Q. You say March 1st, 1932—

Mr. Wilentz: Give him a chance to answer it.

Q. Am I correct in saying that March 1st, 1932, was the only time you visited that house while Jung lived in it? A. No, sir.

Q. Did you ever visit Jung before or after that in that house? A. Not in that house—

Q. That is what I am talking about. A. I visited him before in that house once.

Q. I didn't say anything about before. I ask you how many times you visited Jung in that particular house. Was that once? A. In that particular house not once, I said once more.

Q. More than once? A. Yes.

Q. When was the next time? A. Not after March 1st, before March 1st I did.

Q. When was the first time before March 1st? A. It must have been a few months before.

Q. Not must have been, when was it? A. A few months before.

Q. You don't know the date? A. No.

Q. Or the day? A. No.

Q. Or the hour? A. No, it was a Sunday afternoon.

Q. What kind of a day was that? A. It was very nice and light, very nice day.

Q. You remember it was a nice light day? A. Yes, because I took a walk.

Q. On a Sunday afternoon, because you took a walk. What part of February was it? A. It wasn't in February.

Mr. Wilentz: He didn't say February.

Q. What month was it? A. It was in the winter.

Q. How many months before or after March? A. Before March.

Q. Before March? A. Yes.

Q. What month? A. It must have been around December.

Q. Don't you know when it was? A. It was in December, the latter part of December.

Q. That is what you are willing to say now, it was December, is that right? A. Yes.

Q. December what year? A. '31.

Q. Where did you meet this fellow Fisch? A. At Jung's house.

Q. Describe him. A. He was a dark complected fellow.

Q. How tall? A. Around five four or five five.

Q. What did he weigh? A. I couldn't tell.

Q. How many times did he cough in your presence? A. I don't remember how many times.

Q. Did he cough at all? A. Well, he might have coughed.

Q. You don't remember, do you? A. I couldn't tell.

Q. How long was he in your company that night? A. For about close to four hours.

Q. You didn't go to see him, did you? A. No, sir.

Q. He didn't sign any papers? A. Not that I know of.

Q. You didn't give him any papers? A. Not that I know of.

Q. You didn't give him any notes? A. Not him.

Q. You didn't take any notes from him? A. Not from him.

Q. That is what I am talking about. Did you ever see him again? A. No.

Q. Did you ever see his picture? A. In the paper.

Q. When? A. Sunday I saw it in the Telegram. I don't remember what day, but I saw it in the Telegram.

Q. You have got a poor memory? A. I don't know.

Q. When did you see Fisch's picture in the paper? A. About two or three weeks ago.

Q. How did you come to be a witness in this case? A. I was called to be a witness.

Q. Who told you to be a witness? A. Detective Leef came up to my office.

Q. Who? A. Leef.

Q. Came to your office? A. Yes.

Q. When? A. That was over a week ago.

Q. That was over a week ago. Did you know Leef before he came there? A. No, sir.

Q. Did you ever see him before? A. No, sir.

Q. Did you know Isidor Fisch has been dead a couple of years? A. I heard he was dead.

Q. Did you know any of his relatives? A. No.

Q. You were not in court any time during the trial? A. No, sir, except yesterday.

Q. Before that you weren't here? A. No, sir.

Q. Did you have any communication with this family that you say you called on? A. No, sir.

Q. Since that night of March? A. No.

Q. Nobody knew what you knew, you hadn't written to the Attorney General, you hadn't written to him, had you? A. To the Attorney General, no, sir.

Q. Anybody else? A. No, sir.

Q. Did you write to anybody? A. Pertaining to this case?

Q. Yes. A. No, sir.

Q. How did anybody in the world know you were in Schwartz's home—I mean Jung's home? A. How did they know? Detective Leef has known.

Q. You didn't tell anybody? A. I don't know how he found out.

Q. A strange man out of the clouds dropped into your home and said, "Come down to Flemington, and testify," is that it?

Mr. Wilentz: Just a minute. He didn't come out of the clouds.

The Court: I think you had better reframe that question.

Q. He was a stranger, wasn't he? A. Yes, sir.
Q. Right? A. Yes.
Q. You didn't know him? A. No, sir.
Q. He dropped into your office? A. Yes, sir.
Q. And he tells you about something that happened in Jung's house in 1932, right? A. He asked me about it, if that was so.
Q. Yes, but you hadn't told him. A. No, sir, after he asked me I answered the question.
Q. And you hadn't seen Jung? A. No, sir.
Q. And you hadn't talked it over with Jung? A. No, sir.
Q. And you hadn't been in the police station? A. No, sir.
Q. And you had no contact with the police? A. No, sir.
Q. And at the time you saw Isidor Fisch's picture you didn't tell anybody you had seen him in Jung's house? A. No, sir.
Q. You were just sitting in your office and the door opened and a strange detective came in? A. I wasn't there the first time he came.
Q. Well, whenever you were there, he did come in and saw you and you were sitting in your office? A. That is right.
Q. And the same man came in? A. That is right.
Q. And told you something about somebody whom you knew nothing about. A. That is right.
Q. And you expect us to believe that? A. That isn't—

Re-Direct Examination by Mr. Peacock:

Q. What you told us was the truth, wasn't it? A. Yes, sir.

Q. And he was there that night? A. Yes, sir.

Q. You have never been convicted of crime, have you? A. No, sir.

Mr. Peacock: That is all.

ERNA JUNG, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

The Court: What is the name, madam?

The Witness: Erna Jung.

The Court: Now, Mrs. Jung, won't you in giving your testimony speak out loudly so that everybody can hear? Thank you very much.

The Witness: Yes. On December, 19—

The Court: Just a minute.

Mr. Wilentz: Pardon me. Did your Honor ask a question.

The Court: Oh, no. The lawyer will ask you the questions.

Q. Where do you live, Mrs. Jung? A. 5120 19th Avenue in Brooklyn.

Q. And where did you live in 1932? A. 772 Forest Avenue in the Bronx.

The Court: Where is it, madam? You are not speaking very loud.

The Witness: 772 Forest Avenue in the Bronx.

The Court: That is good; that is good.

Q. In the Bronx? A. (The witness nods.)

Q. And did you know Isidor Fisch? A. Yes.

Q. Did Mr. Fisch call at your home on the night of March the 1st, 1932? A. Yes.

Q. Was there some business transaction at your home? A. Yes.

Q. And as a result of that business transaction did you get a series of notes? A. Yes.

Q. Promissory notes; that night? A. Yes.

Q. Were they drawn in your house that night? A. Sure.

Q. And is that how you remember the night? A. Yes; because we were looking forward already to that March the 1st.

Q. You were looking forward to it? A. Yes.

Q. You had some money coming to you, is that it? A. Yes; since December, 1931.

Q. Now, who was there that night, if you remember? A. Mr. Levenson, Mr.—

Q. That is the gentleman who was just on the stand? A. Yes.

Q. Yes. A. And my husband.

Q. Yes. A. And Mr. Albert Boehn.

Q. Boehn, B-o-e-h-n. A. Yes, a friend.

Q. Albert Boehn. A. Yes.

Q. Yes. A. And another friend of him that just came along.

Q. Another friend of Mr. Boehn's? A. Yes; Lutz was his name; and Mr. Fisch.

Q. Give us your best recollection, Mrs. Jung

as to the hours during which Mr. Fisch was at your home during that night; your best recollection, as best you can remember it. Was it in the evening? A. Yes.

Q. Between what hours was he there, if you remember? A. Between 7:30 or 8:00 until about a quarter to 12 or 12 o'clock.

Q. I see.

The Court: Until 12 o'clock?

The Witness: Yes.

Mr. Wilentz: A quarter to 12 or 12 o'clock.

A. (Continuing.) I am sure because we was up until about half past 12 that night.

Q. Now, did Detective Leef from New York Police Department come around to see you in investigation? A. First to me before he came to Mr. Levenson.

Q. And then you told him about Mr. Levenson? A. Yes.

Mr. Reilly: Now, I don't like to object, but that is leading.

Mr. Wilentz: I think you are right about that.

Mr. Reilly: You are such a nice fellow, I don't like to object.

Q. Mrs. Jung, had you seen Mr. Fisch before that time or after that time? A. I think once before.

Q. You think once before? A. Once before; it must have been in January.

Q. Must have been in January, 1932? A. Yes.

Q. You didn't belong to any societies with Mr. Fisch, did you? A. No.

Q. Are you of German descent, madam? A. Yes, sir.

Q. I see. Thank you.

Mr. Wilentz: That is all.

Cross Examination by Mr. Reilly:

Q. You come from Leipzig? A. No.

Q. Where? A. From Munich, from Munich.

Q. Well, that's a long way off from Leipzig, isn't it? A. Oh, yes.

Q. Well, that is a long ways off from Leipzig, isn't it? A. Oh, yes.

Q. The other part of Germany, isn't it? A. Yes, Bavaria.

Q. Where does your husband come from? A. Dusseldorf.

Q. Dusseldorf? A. Yes.

Q. On the Rhine? A. Yes.

Q. That is a long way off from Leipzig? A. Yes, I guess so; I don't know.

Q. You never knew Fisch in Germany? A. No, I didn't.

Q. What is your husband's business? A. Business?

Q. Yes. A. Well, he is a machinist and lamp business and radio tubes, whatever they make in Jersey.

Q. What was his business in 1932? A. Making radio tubes for the Cable Radio Tube Corporation, in Brooklyn.

Q. And how long are you married? A. Seven years.

Q. How long were you married in 1932? A. About two years, two and a half.

Q. And before that had you worked? A. Yes.

Q. As a maid? A. Yes, in private.

Q. Did you ever work in Englewood? A. No.

Q. Did you ever work in Jersey? A. I never was in Jersey. This is the first time I come in Jersey.

Q. First time you were ever here? A. Except in Long Branch, in Asbury Park, when I was single I worked there.

Q. That is still in Jersey. A. Is it?

Q. Now, Isidor Fisch did not belong to any group that you or your friends belong to? A. No.

Q. Is that correct? A. No.

Q. You are German? A. (Nods head.)

Q. And all your friends are German, is that right? A. (Nods head.)

Q. And all the people you associated with were German? A. Yes.

Q. Is that right? And came from the same part of Germany, possibly, that you did, is that correct? A. Who?

Q. Your friends in this country. A. I haven't got very many friends in this country.

Q. How far did you live on March 1st, 1932, from the 42nd Street Ferry? A. From the 42nd Street Ferry I—

Q. New York, yes. A. Well, I don't know. Forrest Avenue is 156th Street, near Westchester Avenue.

Q. About 105 blocks? A. Yes, 110 blocks, right.

Q. Did you ever ride it in an automobile? A. No.

Q. You know you can do it in about 15 or 20 minutes, don't you? A. I don't know.

Q. Well, coming down from your house to the 42nd Street subway, the 42nd Street subway station, how many minutes does it take? A. It is Jackson Avenue station going down to 42nd Street, 25 minutes.

Q. Did you ever time yourself? A. (No answer.)

Q. That is your best recollection? A. Yes.

Q. You didn't write down when Isidor Fisch left that night, did you? A. No, I didn't write down.

Q. There was nothing about that night at that time that made you remember anything about Isidor Fisch? A. Well, I know that he was here, because a friend of us sent him here because he was sick. That is why I know it was Isidor Fisch was here at that time.

Q. Did he cough in your house? A. Not quite—

Q. He suffered from consumption, didn't he? A. Yes.

Q. You knew that, didn't you? A. Of course I did.

Q. Those who have consumption cough, don't they? A. Well, he had hoarse throat. He used to say "excuse me,"—you know.

Q. I don't know. I am asking you because I wasn't there. Is this funny to you, to come down here and testify? A. No.

Q. Outside of these notes, who is the friend you say sent Isidor Fisch to you? A. Named Mr. Schloesser.

Q. Mrs. Schloesser? Why did she send Fisch to your house? A. Because he was sick.

Q. Are you a nurse? A. No.

Q. Do you treat people with consumption? A. That is why Mr. Fisch came, because he said Mr. Schloesser was sick.

Q. Mrs. Schloesser was sick? A. Mr. Schloesser.
Q. Mr. Schloesser? A. Yes.
Q. So he came to tell you that? A. Yes.
Q. He didn't come there to tell you that because he had a couple of hours to cover, so as to remember the early part of the evening of March 1st?

Mr. Wilentz: I thought Mr. Reilly didn't make any such contention a while ago.

Mr. Reilly: I am testing the young lady's recollection.

Mr. Wilentz: If it is just for the purpose of testing the lady's recollection, I don't object.

By Mr. Reilly:

Q. Now, can you tell us what kind of a night it was March 1st, 1932? A. I know it was foggy.
Q. Foggy? A. (Nods head.)
Q. What kind of a night was the 2nd of March? A. I can't recall.
Q. And the 29th of February, what kind of a night was that? A. I don't know.
Q. Or the 22nd of February. A. I don't know.
Q. Or the 8th of March? A. (No answer.)
Q. You don't know? A. No.
Q. How many times had this real estate or insurance man or whatever he was, been in your house before March 1st? A. Oh, a few times.
Q. How many times? A. I don't think he was up in Forrest Avenue because we only lived there for a while.

Q. Had he ever been there before? A. In your house—

Q. In this house, March 1st. A. In this house—I don't remember.

Q. You don't think he was there at all— That was the first visit to that house? A. Maybe.

Q. Don't you know? A. I don't know.

Q. You have a poor memory, haven't you? A. No, but—

Q. You haven't a very good memory, have you? Have you? A. (No answer.)

Q. Now, how did you come to be a witness in this case? A. How did I become—

Q. How did you become a witness? A. Because I know Mr. Fisch was in our house that night.

Q. When did you suddenly remember that? A. I know that since I see Mr. Fisch's picture in the paper the first time, and before I ever mentioned seeing the name in his paper.

Q. When did you see his picture in the paper for the first time? A. Well, when the trial was going on, I suppose.

Q. During this trial? A. Since Mr. Hauptmann insisted that he had the money from Mr. Fisch and I said, "That is Mr. Fisch." Since that time we have been mentioned Mr. Fisch's name.

Q. I know, but they printed Isidor Fisch's picture in the paper, didn't they, when Mr. Hauptmann was in The Bronx? A. Yes.

Q. Yes. So you saw it then, is that right? A. (Nods head.)

Q. And how many times did you see Isidor Fisch's picture in the paper while the hearings were going on in The Bronx last September, and October? A. Well, I seen his picture about five, six times.

Q. Five or six times? A. Yes.

Q. After you saw it the first time did you do anything about it? A. No.

Q. After you saw it the second time did you do anything about it? A. No.

Q. After you saw it the third time did you do anything about it? A. I don't think so.

Q. Well now, this gathering in your house on that particular night, was some private business of your husband and yourself with this real estate man, right? A. It was not with this real estate man. He just came up there to visit us. He plays chess and he came up to play chess with my husband that night.

Q. I see. The real estate man came in? A. Yes.

Q. And sat down—please look at me. A. Yes.

Q. He came in and he sat down, is that right? A. (Nods head.)

Q. About what time did he arrive? A. 7:30, 8:00.

Q. And were you having dinner or were you finishing dinner? A. We were finishing dinner.

Q. Was there anybody playing checkers then? A. No.

Q. Well, after he arrived, what was the first thing the real estate man did? Look at me, please. A. We was talking with him just, I suppose private affairs, then we mentioned that we expected a gentleman in the house that owes us money and as soon as the door opened, about eight o'clock, Mr. Schlesser didn't come, it was Mr. Fisch came in.

Q. Mr. Fisch had nothing to do with the private affairs? A. He—

Q. Did he? A. Well, but he must have been a friend—

Q. I say he had nothing to do with this private affair, did he?

Mr. Wilentz: Well, she has answered that he didn't. He came there for a friend.

Q. You were expecting a friend to do some business with? A. Yes.

Q. Who was the friend? A. Mr. Schlesser.

Q. All right. She didn't show up, did she? A. No.

The Reporter: Is it Mr. or Mrs. Schlesser?

The Witness: Mr. Schlesser.

Q. Mrs. Schlesser. A. Mr. Schlesser.

Q. Mr. Schlesser? A. Yes.

Q. Oh, I got it, Mr. Lester. It is Mr. Schlesser, is it? A. Yes.

Q. Mr. Schlesser didn't show up, did he? A. No.

Q. He wasn't there at all that night? A. No.

Q. So Fisch appeared on the scene, did he? A. Yes.

Q. Had you ever seen him before? A. Yes.

Q. With Schlesser? A. With Schlesser.

Q. Where did you first meet Fisch? A. With Schlesser on January.

Q. Where? A. In 1932.

Q. Where? A. In our house.

Q. Schlesser brought him? A. Yes.

Q. Did you know Fisch was in some business? A. Yes.

Q. What kind of business? A. Pie baking corporation.

Q. In 1932? A. No, after that.

Q. After that? A. I mean before, before 1932.

Q. Did you know that the pie baking company folded up and went out of business in 1930?

Mr. Wilentz: Oh, well, now—

A. Yes, I know that.

Q. You knew that. So he went in the pie baking business in 1932, wasn't it? A. But there was a friend of Mr. Schlesser, and he had a right to bring him up and he came.

Q. I asked you what business he was in in 1932, and you told me the pie baking business.

Mr. Wilentz: Now, counsel has evidently misunderstood the last answer—before 1932.

A. He was in the pie business—

Mr. Wilentz: Before 1932 she said he was in the pie baking business and I know Mr. Reilly wouldn't want to be exercised about it unless he was correct.

Mr. Reilly: This is the only form of exercise I take.

By Mr. Reilly:

Q. He was in the fur business, wasn't he, in 1932? A. Yes.

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

Q. Was Schlesser in business with him? A. I don't know that.

Q. Well, now, when he came into the house, did he sit down and join the game of checkers? A. No.

Q. Did the real estate man play checkers? A. No, because we talked about business.

Q. Who played the checkers you told us about a minute ago? A. I said chess. I said, he was

going to come up to play chess, but we told them we expected friends and we didn't play.

Q. Did you play any games that night? A. No, sir.

Q. How many people arrived that night in your apartment that didn't live there? A. Four.

Q. Who was the first to arrive? A. The first was Mr. Levenson.

Q. What time? A. About seven, between seven fifteen and seven thirty.

Q. When was the next time you had company in your house, if you can remember? A. I think the Saturday after.

Q. You are not sure? A. No, I am not sure.

Q. Who was the first person who came the next time you had company in the house if you can remember? A. That was Mr. Schlesser.

Q. What time did he come when he came the next time? A. About eight o'clock.

Q. Do you write down each time some guest arrives at your house? A. No, because I remember a few days when he got, well, he came to excuse himself, because he sent Mr. Fisch.

Q. You are sure he came at eight o'clock or is that guess work? A. That is guess work.

Q. Who was the second person to arrive at your house on March 1st? A. Mr. Boehn and Mr. Lutz.

Q. What time did they come if you know? A. They came five minutes after Mr. Levenson was here. They came five minutes after Mr. Levenson was here.

Q. You don't know what time it was, though? A. No.

Q. You didn't look at the clock? A. (No answer.)

Q. Who was the fourth person to come? A. Mr. Fisch.

Q. What time did he come, if you can remember? A. Eight o'clock.

Q. Did you look at the clock? A. Between seven and—

Q. Did you look at the clock? A. I did not.

Q. Did you write it down? A. No, I didn't.

Q. It is guess work, isn't it? A. Yes.

Q. Now, who was the first to leave? A. Mr. Fisch was the first one left.

Q. Yes. What time did he leave? A. A quarter to twelve.

Q. Did you write it down? A. No.

Q. That's guess work, too, isn't it? A. It is not guess work, but I said to my husband, "See that they get out because"—

Q. Never mind what you said to your husband.

Mr. Wilentz: She is answering the question now as to whether it is guess work or not. She wants to show it isn't.

Q. Did you write down when he left? A. No.

Q. Did you tell your husband to write it down? A. If I know I was going to be here today I would have written it down.

Q. But you didn't tell your husband to make any note of it either, did you? A. No.

Q. That's guess work, isn't it? A. Yes.

Q. Now, because you have some papers in your house that bear the date of March the 1st, 1932, after you have talked to Detective Leef, you say now that's the night Fisch was in your house, is that right? A. Yes.

Q. Now, when did you talk to Leef first? A. Mr. Leef came up with Mr. Schussler.

Q. When? A. When? A few weeks ago.

Q. Two weeks ago? A. I didn't write it down.

Q. You never saw Leef? A. No, I didn't.

Q. And you hadn't told Leef anything about Fisch being in your house? A. Yes.

Q. You had told Leef before he came to your house? A. I never met Mr. Leef before.

Q. Until two weeks ago? A. Until—the first time he came up to my house.

Q. Yes. But you hadn't told Leef anything about, or written to Leef or telephoned him, anything about Fisch? A. No.

Q. Is Leef from your precinct, your detectives police station? A. I don't know.

Q. Where does he come from? A. From the Bronx.

Q. The Bronx? A. Yes.

Q. You hadn't written to the District Attorney of the Bronx that you knew Fisch? A. Somebody must have sent Mr. Leef.

Q. You didn't? A. I didn't.

Q. Your husband didn't? A. No.

Q. No. You didn't notify any newspaper reporter or newspaper that you knew Fisch? A. No.

Q. Is that right? A. No, I didn't.

Q. Then out of— I will withdraw that. (Laughter.) In walks Mr. Leef, is that right? A. Yes.

Q. Two weeks ago, while this trial was going on. A. About three weeks ago, it was.

Q. About three weeks ago? A. Yes.

Q. Have you met any of Fisch's relatives, since they have been over here? A. Yes.

Q. When did you meet them? A. I met them in Jersey since—

Q. You met them in Trenton? A. In Trenton.

Q. In the hotel where the District Attorney, the Attorney General, has them? A. Yes.

Q. Has accommodations for them; when did you meet them? A. Last night; before I went to bed, I ran into Mr. Pincus Fisch.

Q. And you were introduced to him? A. Yes.

Q. You had quite a little kaffee klatch, didn't you, and a little talk. A. Kaffee klatch? Well, the people was very sick and we felt sorry for them.

Q. So you talked over what? Don't look down there, please. Of course I can understand why you are looking down there, but we will pass that for the minute. After you talked to Fisch last night then you decided to come over here today and tell this story, is that right? A. I was here yesterday all day long.

Q. Yes. But then you were taken over to this hotel last night? A. Well, I am staying there.

Q. Yes. How long have you been staying there? A. Wednesday night.

Q. Who brought you down here? A. The detective.

Q. Who? A. The detective.

Q. Detective Leef? A. Yes.

Q. Yes. And all your expenses are being paid over there, right? A. Yes, sir.

Q. And all your meals, is that right? A. I don't know yet.

Q. You don't know yet. Well, you have had the meals, haven't you? A. Yes, but I might get the bill yet.

Q. You haven't paid for anything yet, have you? Have you paid for anything? A. Not yet.

Q. No. You know you don't have to pay, don't you? A. I don't know.

Q. But it is a fact that after seeing these pictures, five, six, seven times, of Isidor Fisch, you never said a word to anybody? A. No, because—

Q. Not because. You didn't say a word to anybody? A. No, I didn't.

Q. That's right.

Mr. Reilly: That's all.

Re-Direct Examination by Mr. Wilentz:

Q. Just a minute, madam. You have been in New Jersey at the request of the police, haven't you? A. Yes.

Q. So that if Mr. Reilly and his case finished Wednesday we wouldn't have to hold the jury here to wait for you. You have been waiting, isn't that right? A. Yes, I have been waiting three weeks, if they would need me.

Q. Yes. And as soon as you get through you are going home, aren't you? A. Yes. And if I wouldn't have to I wouldn't come here.

Q. And of course you don't expect to pay for the hotel expenses where the State sent you? A. I don't think so.

Q. You never knew Mr. Pincus Fisch, the gentleman that the State of New Jersey brought from Germany before, did you? A. No.

Q. And you are here to tell about what happened, isn't that so? A. Yes.

Q. You have never been convicted of any crime, have you? A. No.

Q. You have never been in any insane institution either, have you? A. No.

Mr. Wilentz: That's all.

HENRY JUNG, sworn as a witness on behalf of the State.

(Confusion in the court room.)

The Court: Those people who are talking in the court room will have to keep quiet. We can't carry on in this fashion.

If they do not keep quiet, the court room will have to be cleared.

Direct Examination by Mr. Wilentz:

Q. How do you spell your name, Mr. Jung? A. Henry G-u-n-g.

Q. J-u-n-g, you mean? A. Yes; J-u-n-g.

Q. All right. Now you are the husband of the lady who was just on the stand? A. Yes.

Q. And as a result of a business transaction you had some money coming from Mr. Schlesser and from a Mr. Boehn, is that right? A. Yes.

Q. On March the 1st, 1932, did you receive a series of notes? A. Yes, I did.

Q. Six or more notes; at night; at night on March the 1st, 1932? A. At night.

Q. Have you looked at the notes? A. Yes.

Q. Now, did you see Isidor Fisch on the night of March the 1st, 1932? A. Sure I did.

Q. Was he at your home? A. Yes.

Q. Between what hours, as best you can remember? A. About seven-thirty to eleven o'clock.

Q. I see. That's your recollection? A. Yes.

Q. Seven-thirty to eleven o'clock? A. Yes.

Q. You have been in court all afternoon, have you, with your wife? A. Oh, yes.

Q. Yes. And when did you come down? Did you come down with your wife to Trenton? A. Yes.

Q. At the invitation and at the expense of the State of New Jersey? A. Yes, I did.

Q. Have you any interest in the case at all? A. No.

Q. You are no particular friend of Isidor Fisch? A. No.

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Reilly:

Q. Are you working? A. Yes.

Q. What are you doing? A. Machinist.

Q. May I see those notes marked for identification, please. —So you had some business dealings with a man named Boehn? A. Yes.

Q. And who else? A. Schloesser, Charlie Schloesser.

Q. And Boehn never paid his note, did he? A. Not yet.

Q. Neither did Schloesser? A. Partly.

Q. Which note did he pay? A. Well, some of them.

Q. Which note did he pay? A. Well, it was our agreement that he was to pay me half of this note each month.

Q. How many notes did they make out? A. Twelve of them.

Q. How much was paid on any of these indebtednesses? A. Only one note was paid.

Q. What note was that? A. The first note.

Q. The first note? A. By Mr. Schloesser. I mean Isidor Fisch paid me that.

Q. What? A. Isidor Fisch paid me that for Mr. Schloesser.

Q. I don't care who paid it. The first note was paid? A. Yes, sir.

Q. What did you do with the note? A. I think I gave a receipt to Isidor Fisch.

Q. You gave back the note, didn't you? A. No, I didn't. The note is still there.

Q. You mean to tell me a man would pay off a note without getting back his note? A. Mr. Schloesser didn't sign those notes. They are only signed by Boehn. Mr. Schloesser paid me.

Q. When were those notes made out? A. March the 1st, 1932.

Q. You are sure about it? A. I am sure about it.

Q. Look at these notes and see if the ink isn't almost still fresh on these notes?

Mr. Wilentz: Just a minute. The tone of counsel's voice won't change the ink, if your Honor please.

Mr. Reilly: It may impress it upon the witness.

A. I will tell you them notes mean money to me. I keep them in a clean place.

Q. You see that ink, don't you? A. Oh, yes.

Q. You say that that was put on there in 1932? A. March the 1st, 1932.

Q. Did anybody witness it? A. Oh, yes.

Q. Who? A. Mr. Levenson made them out, Mr. Boehn was in the house present and Mr. Lotz and my wife.

Q. Who witnessed the notes? A. All of them.

Q. Where is it on the notes? A. Well, there is nothing on the notes, because you don't need to sign a note from somebody else.

Q. Who brought the notebook up to the house? A. From a stationery store I got it.

Q. Where is the stub? A. What did you say, please?

Q. Where are the stubs? A. The stubs, I got them still home.

Q. They didn't tell you to bring those along, did they? A. No.

Q. They didn't tell you to bring the book down? A. No.

Q. Who was the first person who asked you to bring these down? A. It was Detective Leef.

Q. How did he know anything about them? How did he know about the notes? A. I made some notes, some receipts out for Mr. Fisch and

signed my notes and he found my name on the receipts and he found me.

Q. Fisch has been dead two years? A. I know.

Q. Where did he find any receipts from you to this dead man? A. I don't know, but he found them.

Q. That is guesswork, isn't it? A. No, it is not guesswork.

Mr. Reilly: Well now, counsel asked him how he happened to find them; he is giving his thoughts about it.

A. I signed my handwriting on certain receipts. Fisch brought me some money up from Schloesser.

By Mr. Reilly:

Q. When? A. Oh, I think the notes must be in the possession of the Court.

Q. No, we are testing your memory, Mister, you are the man who was there. When? A. Well, I can see that too. (Examines book.) That is May 26th, 1932, a $10 receipt was signed.

Q. And go on, what was the rest? A. That is about all; that is all, $10 receipt.

Q. Ten dollars? A. Yes.

Q. Who gave you the ten dollars? A. Mr. Fisch.

Q. Is that the only ten he gave you on the note? A. Yes. I signed the receipt book.

Q. And the first note wasn't paid, was it? A. Yes, I got in my book too, but it wasn't paid.

Q. Paid by somebody else, wasn't it? A. By Mr. Schloesser.

Q. By Mr. Schloesser, he is the man that owed you the money? A. Yes.

Q. And who is this Albert Boehn who signed the notes? A. He owed me the money too.

Q. They both owed it? A. Yes.

Q. What was Mr. Schloesser's business? A. Salesman, I think.

Q. Salesman? A. Yes.

Q. In what line? A. Provision line.

Q. A man in this country quite some years? A. I think so.

Q. Used to doing business? A. Yes.

Q. Was he a salesman for a wholesale house? A. I think so.

Q. Well, don't you know? A. Well, they told me he was a salesman for Kron.

Q. Kron, K-r-o-n? A. Yes.

Q. Now, you don't want us to believe that a salesman like Mr. Schloesser would pay a note and not get the note back, do you? A. Well, he didn't sign the note, Boehn signed those notes.

Q. That doesn't make any difference who signed them. You know as long as these notes are out, do you not? A. (Shakes head.)

Q. Do you know as long as you hold these notes— A. Yes.

Q. —at the due date, and the due date of the first note that I have— Withdrawn.

Q. When was the $10 paid to you? A. May 26th, 1932, by Fisch.

Q. And when was the balance paid to you on Note No. 1? A. I haven't got the date any more; I have got only marked when I received it.

Q. Well, give us your best recollection. A. Must be about a month or two later.

Q. It was all paid by who? A. By Mr. Schloesser.

Q. The end of what month? A. Well, you can say it was in the end or a couple days later.

Q. Your best recollection: when was the first note paid? A. Oh, about April.

Q. 1932? A. Yes.

Q. Right. But when was the note due? A. Each month it was made out.

Q. Was the first note made out March 1st,—it was due when? A. The first note was due March 1st— I mean April.

Q. April 1st? A. Yes.

Q. And the second note was made out, was for June 1st, 1932, and the third note was July? Right? A. Yes.

Q. And the fourth was August? A. Yes.

Q. But at the end of March there was nothing paid, was there? A. No, not by Boehn, but Schloesser paid $26.

Q. Who? A. Schloesser paid $26.

Q. Have you taken any legal action to collect these notes? A. No.

Q. Did you give them to any lawyer to bring suit? A. No.

Q. Where do you say they have been? A. The notes? Oh, in my apartment.

Q. Where? A. In my apartment at home.

Q. In your house? A. In my papers. I keep my papers together.

Mr. Reilly: I would like to have this first note in evidence.

Mr. Wilentz: We offered them and they objected to them. We will put them all in evidence.

Mr. Reilly: I will take them all after examining him. Is it the State's exhibit?

Mr. Wilentz: You are offering them.

Mr. Reilly: All right, as the defendant's exhibit.

(The notes referred to were received in evidence as Defense Exhibit D-70.)

Re-Direct Examination by Mr. Wilentz:

Q. I suppose you want these notes back so that if they are good some time you can collect. We are very much obliged to you, Mr. Jung. You can come down now. No, just come back for a minute. Those notes that you got were gotten to replace an old note, one note? A. Sure.

Q. Is this the note it was gotten to replace? A. Yes, sir, this is the note.

Q. Dated February 6th, 1932? A. Yes, sir.

Q. Payable 24 days after date? A. Yes, sir.

Q. Signed by Schussler? A. Yes. It is only Schussler.

Q. This $700 note was given in place of a note that was coming to you before that, is that it? A. That's right.

Q. Take a look at the ink on that. You are sure that was in February, 1932? A. I am sure about it.

Mr. Wilentz: We offer it for Identification.

(The note referred to was marked State's Exhibit S-305 for Identification.)

Mr. Wilentz: If counsel wants it, they may have it in evidence.

Mr. Wilentz: All right, sir.

Mr. Reilly: Wait a minute, I am not through.

Re-Cross Examination by Mr. Reilly:

Q. Did you bring this down here, too? A. Yes.

Q. Who did you give it to? A. I give it to one of the gentlemen, I don't recall, I think, I think it was—

Q. From the Attorney General's office? A. Yes.

Q. Now there is no mistake about this: This man Schlesser—is that his name? A. Yes.

Q. He borrowed some money from you? A. Oh, yes.

Q. $700? A. $700.

Q. Is that right? And he couldn't pay it all at once, could he? A. No.

Q. How many notes did he give you? A. Well, he gave me some notes before when I give him the money.

Q. How much did you give him originally? A. I think it was one.

Q. What? A. One before.

Q. How much did you give him? A. Money?

Q. Yes. A. $700.

Q. $700? A. (Nods head.)

Q. That was the largest sum you ever gave him in one lump? A. Yes.

Q. Right? A. Yes.

Q. So there isn't any doubt that he owed you $700 and he made out a note for it, right? A. That is right.

Q. And that was one note, and he made that out when? A. March the 1st.

Q. The $700 note I am talking about? A. The month before,—March it was.

Q. What date? A. It was the first—I don't

think it was—the 6th or 7th, something like that. I don't recall the day.

Q. Was that the first note he ever made out for $700? A. No, he made a note before, but it was due the month before and he couldn't pay so he made me out this one.

Q. $700? A. Yes.

Q. All were $700? A. $700.

Q. And we have the January—you made out a note for $700? A. Yes.

Q. February he couldn't pay it so he made out another note for $700? A. Yes.

Q. Right? A. That is right.

Q. What did you do with the note he made out in January? A. He tore it up himself.

Q. You gave it back to him, didn't you? A. Yes.

Q. But you hung on to the note that he made out February 1st, 1932, for $700? A. Yes.

Q. You held on to it? A. Yes.

Q. So March the 1st came around, you want us to believe, and the man came up to you and said, "I can't pay you." A. Mr. Schlesser wasn't in my house that time, only Mr. Boehm.

Q. Mr. Boehm came up and said, "Schlesser can't pay you?" A. No. I think he start—Boehm was a friend of mine and he wanted to pay me back and not Schlesser, but he never paid me back yet, see?

Q. Boehm was assuming Schlesser's debt, is that right? A. No.

Q. Boehm wanted to pay you back Schlesser's debt, is that right? A. Yes.

Q. So he came up to your house without Schlesser? A. Yes.

Q. And he said, "Let me pay back Schlesser's debt at $50 a month;" is that right? A. I say he stand good for it.

Q. Did he say "Let me pay back Schlesser's

debt?" A. No, he didn't say "Let me pay back." "I stand good for it."

Q. He said, "I will stand good for it?" A. Yes.

Q. So then you had somebody make out these notes? A. Mr. Levenson made out the notes.

Q. I see. And why didn't you give Mr. Boehm back Schlesser's note? A. This note?

Q. Yes. A. I didn't.

Q. You see you were holding $1400 worth of notes, weren't you? A. I know that.

Q. You want us to believe that, don't you? A. Well, I want to make sure—

Mr. Reilly: I offer in evidence the note of February the 6th, 1932.

The Court: It will be admitted.

(The note was received in evidence and marked Defense Exhibit D-71.)

Mr. Reilly: And I will read it to the jury. "February 6th, 1932, $700. 24 days after date I promise to pay to the order of Henry and Erna Jung seven hundred and 00/100 dollars, 772 Forrest Avenue, Bronx, New York, due March 1st, signed Charles R. Schlesser." On the back "This note is in place of the note for $725 loan due 11/30/1931, paid on account 11/28 in cash $25."

By Mr. Reilly:

Q. Now, you know that these notes were made out in the last two weeks, don't you? A. No.

Q. And this is the original note. A. No, that is not.

Q. You don't want us to believe that anybody would assume the obligation of a friend without taking back the friend's note, do you? A. Yes, that is the truth.

Q. That is what you want us to believe?

Mr. Wilentz: He says that is the truth. That isn't what he wants you to believe.

Q. So it was a $725 loan, wasn't it? A. No, $700 loan.

Q. What does it say on the back of this note? A. That is $25 interest he promised me.

Q. What interest? A. For the money.

Q. You were charging him $25? A. I am charging him nothing, he paid it to me.

Q. Yes, he paid on account in cash $25. A. Yes.

Q. But doesn't this read: "This note is in place of the note for $725 loan"—loan, is that right? A. Yes.

Q. No interest on here, is there? A. Well, it was—

Q. Read it. A. I can read it.

Mr. Wilentz: Let him answer it now, please.

Q. Is there any interest on there?

Mr. Wilentz: Give him a chance to read.

A. That gives me $25 interest. That was a $725 sum.

Q. Is there anything on that note that says anything about interest, on the back or the front? A. No, there isn't.

Q. You are well schooled, aren't you? A. Yes.

Mr. Reilly: That is all.

By Mr. Wilentz:

Q. Mr. Jung, you don't know any of the parties in this case, do you? A. Not one.

Q. And you are not interested in the outcome of this case, are you? A. No.

Q. And you are here because you have been required to come here, isn't that so? A. Yes.

Mr. Wilentz: That is all, thank you.

Re-Cross Examination by Mr. Reilly:

Q. Did you have a subpoena served on you? A. No. Detective Leef called me to come.

Q. You know a detective can't walk in your house and take you by force over here? A. I am not a lawyer and don't know.

Q. You never had a subpoena, did you? A. No.

Q. You came here willingly? A. Not exactly willingly.

Q. You have been here three days or four days? A. No, two days.

Q. How long did you know Leef before he came in your house the first time? A. I never saw him before.

Q. You don't know anything about him? A. No.

Q. Or how he knows anything about this? A. I think he finds some handwriting of mine in Fisch's possession.

Q. You think that is how he got the note? A. He showed me the one note, I think.

Q. He told you about the note? A. He showed me the note and the receipt.

Q. Which is it, the receipt or note? A. The receipt that Fisch brought to me from Schlesser.

Q. When was it? A. It must have been about April 6th, or somewhere along there.

Q. When? A. 1932.

Q. Isn't that the only time Fisch was in your house? A. No, I saw Fisch many, many times afterwards.

Q. What house? A. 772 Forrest Avenue.

Q. In April? A. In April, yes.

Q. You weren't living there in April? A. I wasn't, Schlesser was.

Q. When did you move in? A. I moved in in the Fall of 1931.

Q. You are still living there? A. No.

Q. When did you move out? A. I moved out about the—it must have been around April. Let me think it over, about end of April.

Q. What year? A. 1932.

Q. You moved out in April. What date did Fisch pay the money? A. About the 6th of April.

Q. About the 6th? A. Yes.

Q. How many times had Fisch been in your house before the 6th of April? A. Only once.

Q. How many times after that was he in Forrest Avenue? A. Many times.

Q. In Forrest Avenue? A. Yes.

Q. In Forrest Avenue? A. In Forrest Avenue—

Q. In Forrest Avenue? A. I don't recall exactly. About once.

Q. That would make three times, is that right? A. Yes.

Q. Was your wife home every time he came in? A. I don't know.

Q. You don't remember that? Did he come at night or did he come in the daytime? A. It was in the evening because I was working.

Q. Was your wife home in the evening? A. Yes.

Q. Would she be home in the evenings? A. Not always.

Q. Not always. Do you ever remember any time he came there that your wife wasn't home? A. I think he was there once when my wife wasn't home.

Q. Which month? A. I think it was in April.

Q. That is guesswork, isn't it? A. No, no; I think I made out a receipt for $10.

Q. And your wife wasn't home? A. No.

Q. You put that on the receipt, didn't you? A. I signed my name on the receipt, I received the ten dollars.

Mr. Wilentz: Is that all, Mr. Reilly.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. You have never been convicted of crime, have you? A. No.

Mr. Wilentz: That is all.

(Witness excused.)

Mr. Wilentz: May we have our recess now? It is awfully warm in here, your Honor.

The Court: We will take a recess for five minutes.

(At 3:16 p. m. a short recess was taken.)

(3:37 p. m.)

(After a short recess the jury was polled and all jurors answered present.)

Mr. Wilentz: We will ask that Professor Priest be sworn as an interpreter. He has already been sworn as a witness. I don't know whether it is necessary to have a special oath. I think it is.

Court Clerk Fell: Do you want him to be sworn as a special witness?

Mr. Wilentz: As an interpreter.

Mr. Peacock: He has been sworn as a witness. He should be sworn specially as an interpreter.

Clerk Fell: But for this one witness?

Mr. Wilentz: That is right.

GEORGE MADISON PRIEST, sworn as interpreter.

HENNA FISCH, sworn as a witness in behalf of the State, through the Interpreter.

Direct Examination (through the Interpreter) by Mr. Wilentz:

Mr. Wilentz: Now, Professor, if you don't mind, I think if you sit down here instead of sitting so close, the witness will answer more loudly and you will.

(The Interpreter took a seat at table of counsel for the State.)

By Mr. Wilentz:

Q. Madam, where do you live? A. In Leipzig, Sedan Street.

Mr. Wilentz: A little louder, Professor. It is for the benefit of the jury. The reporter will get it.

A. (continued.) Sedan Street, 17-A.

Q. Is that in Germany? A. Yes.

Q. You had a brother called Isidor? A. Yes.

Q. Did he come to Germany at the end of 1934? 1933? A. Yes.

Q. When he came to Germany did you meet him? A. Yes.

Q. And where did he go to live when he came to Germany? A. He came home to their dwelling.

Q. To whose dwelling? A. He came first to the old dwelling where they used to live but she had moved. She had moved to another dwelling.

Q. Well, did he come to your house to live while he was in Germany? A. Yes.

Q. Is that where he lived during his entire stay except for the time that he was in the hospital? A. Yes.

Q. You say that you met him at the boat when he arrived?

Mr. Reilly: I object to that. She didn't say that at all.

Q. Well, where did you meet him when he arrived? A. At the station.

Q. What station was that? A. The main station in Leipzig.

Q. Is that a railroad station? A. Yes.
Q. Did he bring his baggage with him to your home? A. Yes, he brought it to their home.
Q. What did he bring to their home?

Mr. Reilly: May I interrupt?

The Interpreter: She was about to say a handbag and a satchel.

By Mr. Wilentz:

Q. What else? Please let us have the answer, Professor, instead of talking to her about it. What did she say? I will ask the question again, please. First tell us about how big the satchel was? A. It was so long that a shirt could lie flat in it and there would be a little space at the end of the shirt.
Q. What other bag or baggage did he bring besides that? A. Only that one bag. One thing came through by express.
Q. What was it that came by express? Please tell us what she said and don't start questioning her. A. A brown satchel, a brown valise.
Q. Was it a trunk or a valise? A trunk with a handle? A. No, not a trunk, a satchel.
Q. How big was that? A. (Indicates.)

Mr. Wilentz: About three or four feet in length, Mr. Reilly?

Mr. Reilly: Yes.

Q. Now, did you inspect the bags and the baggage? Did you open them or did he open them?

Mr. Reilly: I object to it as leading.

Q. Who unpacked the baggage? A. They both unpacked the bags; she helped, because—

Q. "No, no. "Helped," make it that way. A. I helped because my brother was too weak.

Q. And did you see everything and anything that was in those bags? A. Yes.

Q. Tell us as best you can remember what was in those bags. A. Two suits of clothes, a blue and a gray suit, six shirts, a woolen shawl, two pairs of shoes, a pair of house shoes or slippers, a few cravats—

Q. Ties, you mean? A. Ties, yes, sir; yes.

Q. Yes. A. —already made up.

Q. Ready made ties? A. Ready made ties.

Q. What else? A. A collar box.

Q. Did he have collars? A. They were loose in this collar box.

Q. Did he have a razor and blades and tooth brush and tooth paste? A. Yes, he had them. In addition to the bag which she has described, he also had a small bag with a zipper apparatus.

Q. Now what else, if anything, did he have that you remember?

The Interpreter: She doesn't remember.

A. I don't remember definitely anything else that he had. Whatever else he had was in connection with his dressing.

Mr. Wilentz: With his what?

The Interpreter: With his dressing.

Mr. Wilentz: Wearing apparel?

The Interpreter: Toilet articles.

Mr. Wilentz: Toilet articles.

The Interpreter: Yes.

Q. Do you remember what date it was that he arrived in Germany? A. It was a Saturday on the 16th or 17th of December.

Q. 1933? A. Yes, yes.

Q. And how long did he remain at your home before he went to the hospital? A. Until the 27th of March.

Q. 27th of March, 1934? A. Yes.

Q. Did you see and observe everything that was in either or both of those bags that came to the house with Mr. Fisch, or came later by express? A. Yes, everything.

Q. Now, in March, 1934, he went to the hospital, did he not? A. Yes.

Q. How long did he remain at the hospital? A. Two days.

Q. And did he die after those two days? A. Yes.

Q. Do you know how much money he had in his possession when he arrived in Germany while he was living with you, while he was at your home? A. He had altogether 1500 marks in travelling checks.

Q. How much is that in United States money, if you know? A. About $500.

Q. Five or six hundred dollars she said in American money? A. She said it might be about $500.

Q. In the year 1932, did you receive any money from Isidor Fisch or did you send him any money?

Mr. Reilly: I object to that as incompetent, irrelevant and immaterial, not proper rebuttal.

Mr. Wilentz: Well, I won't press the question if counsel objects to it.

Q. Now you have come here from Germany at the invitation of the State of New Jersey, have you not? A. Yes.

Q. And you have been living at a hotel in Trenton at our request and invitation? A. Yes.

Q. And all your expenses for your trip over here and your expenses at the hotel are being paid by the State of New Jersey, isn't that so? A. Yes.

Q. And you came over with your brother and with a nurse, isn't that so? A. With a wife of her brother.

Q. And the nurse is the nurse who attended Isidor during his last illness, isn't that so? A. Yes.

Q. Did your brother Isidor Fisch when he arrived in Germany so far as you know have any other things of value except what you have already related? A. No, not as far as I know.

Q. And, of course, you are only testifying to what you know. A. Yes.

Mr. Wilentz: That is all, take the witness.

Cross Examination by Mr. Reilly:

Q. You speak English, don't you? A. I can't speak it well.

Q. Versehen ze English?

Mr. Wilentz: I am at a disadvantage if Mr. Reilly is going to speak in German, please.

By Mr. Reilly:

Q. Of course you did not meet your brother at Hamburg. A. No.

Q. Hamburg is how far away from Leipzig? A. By fast train about six hours.

Q. Of course there are banks in Hamburg. A. Oh, yes.

Q. And banks in Leipzig. A. Yes.

Q. And the first you saw of your brother was at the front door of your house, is that correct? A. At the main station.

Q. Did you meet him at the main station? A. Yes.

Mr. Wilentz: Louder, Mr. Interpreter.

Q. What was his general appearance when you saw him?

Mr. Wilentz: Loud now.

A. So badly that I didn't—

Mr. Wilentz: To the jury.

A. So badly that I didn't, he looked so badly that I didn't know whether it was my brother.

Q. He had a bad cough, didn't he? A. At that moment of meeting he did not cough loud, but he merely looked very badly.

Q. Well, when he went home that evening he coughed and he expectorated, did he not, and he had all the marks of a progressive case of tuberculosis? A. He did not cough very hard, but he coughed hard enough to frighten me.

Q. Now, when he came over there he came on a visit, didn't he? A. Yes.

Q. He had his return passage, didn't he? A. Yes.

Q. So you have no means of knowing if he left anything at Hamburg from where he was to sail, if he ever came back to America? A. When he came to Hamburg he was not able to go right on to Leipzig and he spent one night in Hamburg.

Q. You didn't see him in Hamburg? A. No.

Q. Now, after he died your family retained a Mr. Lowenheim, lawyer, of Leipsig, did you not? A. Yes. They gave no permission to a lawyer; they merely questioned him.

Q. Do you know whether or not Dr. Lowenheim tried to retain in America an attorney, in New York, to act for your family in the recovery of Isidor Fisch's estate? A. Yes.

Q. And the lawyer here wanted a one hundred dollar retainer, didn't he? A. Yes.

Q. And did you and your family submit the following list of property which you claimed your brother Isidor left when he sailed for Europe: furs, pelts, stocks, a restaurant company, and a bundle that was hidden?

The Interpreter: I would like to hear that once more, please.

Mr. Wilentz: Did you submit a list.

(The Interpreter speaks to the witness in German.)

Mr. Wilentz: No, not— go ahead.

A. No.

By Mr. Reilly:

Q. Who was it retained Dr. Lowenheim? A. They merely went— we merely went to Lowen-

heim to ask questions because we knew that Lowenheim acted in affairs in foreign countries.

Q. And you supplied Lowenheim with a list of the property you were trying to obtain in the United States, didn't you? A. No.

Q. And didn't Dr. Lowenheim at your request and at the request of your family write three letters to a New York attorney, in which, in one of the letters or in all three, you made a claim for Isidor's estate, consisting of furs, pelts, stocks, restaurant company, and a bundle that was hidden?

Mr. Wilentz: If he knows whether Doctor somebody wrote those letters.

Mr. Reilly: Oh, yes. Well, I am asking her.

A. He didn't know. He could only look around in this country for an attorney.

Q. You say he did not submit to an attorney in New York on behalf of you and your family a list or, rather, inquiries as to an estate of more than $20,000, which estate was composed of furs, pelts, stocks, restaurant company and a bundle that was hidden?

(The interpreter speaks to the witness in German.)

Mr. Wilentz: Oh, no, put in the amount $20,000.

(The interpreter speaks further to the witness in German.)

Mr. Wilentz: Just a minute. Give us the answer, please.

A. It is possible that her brother— we didn't know what Isidor had in this country. My older brother heard from America—

Mr. Wilentz: Just a minute. That I object to.

The Court: What the elder brother—

Mr. Wilentz: Heard from America.

The Court: What do you think about it Mr. Reilly?

Mr. Reilly: I think that is rather stretching a point.

The Court: I think so. That will have to be stricken.

By Mr. Reilly:

Q. But I am not asking about that. You mean Pincus, don't you? A. Yes.

Q. Well, no matter what Pincus heard from America you did put in a claim for $20,000 estate, didn't you?

Mr. Wilentz: She has alrady stated several times no such thing. She said all they did was to go to the lawyer.

Mr. Reilly: All right.

Mr. Wilentz: And she said that several times.

Q. See if I am correct in this: After the Attorney in the United States requested $100 retaining fee wasn't it then that your brother Pincus decided that he would come to America and administer the estate himself? A. We made no decision.

Q. You had not yet come to that decision, but it had been discussed, had it not? A. We intended eventually to make the trip.

Q. For that purpose. A. Only in general to see what my brother had.

Q. Yes, because under no other consideration could you get a passport out of Germany, could you? A. I think probably we could have gotten it.

Q. Am I correct in saying the correct name of the firm in Leipzig was Lowenheim, Brite und Dick? A. Yes.

Q. Do you remember the day your brother went to the hospital? A. On the 27th of March.

Q. What time of the day? A. About one o'clock.

Q. Before your brother went to the hospital do you recall him handing you a package of papers and having you tear them up and throw them in the fire while you stood or sat alongside of him? A. There were two slips of paper.

Q. There were some papers? A. Yes.

Q. And they were burned? A. Yes.

Mr. Wilentz: No. Give us the full answer. I know what was—

A. There were two slips of paper, two small pieces of paper and she tore them up and she burned them herself.

Mr. Wilentz: Yes. But didn't she say, "And I know what they are?" Ask her that.

(The interpreter speaks to the witness in German.)

Mr. Reilly: No. I object to what she—

Mr. Wilentz: Well, the only reason I wanted to suggest to the interpreter that was what she answered after she said, "I burned the two"—and possibly I am overstepping my part here but I understand just a little of it, if your Honor please. Sometimes a little is worse than none at all, but my understanding was that after she said, "I burned the paper and I know what they were," and the interpreter didn't add it.

Mr. Reilly: Well, if you are going to give it, General, you might just as well testify. You are qualifying as a very fine German scholar.

Mr. Wilentz: Well, I will leave that to the interpreter, of course, if your Honor please.

Mr. Reilly: I say that part is not permissible.

The Court: Will you let us have the answer? Let us see what the answer is. Did the reporter get the answer?

(The reporter read the answer: "An-

swer: There were two slips of paper, two small pieces of paper and she tore them up and she burned them herself.")

Q. Well, now, they were papers given to you before Isidor left your house to go to the hospital, weren't they? A. They lay around before he went to the hospital, where she could see them at any time; but just before he went to the hospital—

(The witness speaks to the interpreter in German.)

A. (continuing) Yes. He put his handkerchief into his pocket and touched these papers and said, "You can burn them."

Q. Well, he took them out of his pocket, didn't he? A. His handkerchiefs were in a drawer and he went into this drawer and took out some handkerchiefs, before he went to the hospital and, as he did that, he saw these papers and told her then to tear them up and burn them.

Q. But he didn't burn up his return passage, did he? A. No.

Q. And he didn't burn up any of his money? A. No.

Q. And he didn't burn up any of his other property? A. (The interpreter shakes his head.)

Q. But irrespective—

Mr. Wilentz: What is the answer? Just a minute. What was the answer?

The Interpreter: "He burnt up nothing else."

Mr. Reilly: Yes. He burnt up nothing else?

The Interpreter: Yes.

By Mr. Reilly:

Q. Now, Isidor was an American citizen, wasn't he? A. Yes.

Q. And you made a report, did you not, to the American Consul in Leipsig about Isidor's death? A. Yes.

Q. Who made the report? You? A. I went.

Q. And when you went to the American Consul in Leipsig—where is the American Consul's office in Leipsig? A. On Schild Street.

Q. And what is his name? A. Dr. Busser, B-u-s-s-e-r.

Mr. Wilentz: A little louder, Mr. Interpreter.

Q. Then you personally put in a claim to the American Consul at Leipsig for the estate of Isidor Fisch, that your brother left in this country, for $20,000?

(The Interpreter speaks to the witness in German.)

Mr. Wilentz: How much, please? Just a minute.

A. I did not. I made no claims because I had no idea what I could claim.

Q. Well, leaving out the amount of money, did you put in a claim for the property he left in this country? A. I asked the consul what steps I should take in order to come by what my brother had in this country.

Q. And the consul asked you, "What do you think your brother left?" didn't he? A. No.

Q. Do you mean to say the American Consul began an investigation—did he begin an investigation? A. No.

Q. Didn't you appeal to the German-Foreign office and didn't they appeal to the Consul General in New York on behalf of your family? A. No.

Q. No inquiry came to the Consul General in New York, you say, through your family or from your family?

(The interpreter speaks to the witness in German.)

Mr. Wilentz: Just a minute. Of course, she can't know that. That is apparent. I don't like to object, but it is impossible for her to know what the Consul General in New York received from the Consul General in—

The Court: Well, the interpreter might be asked to ask her the question as to whether or no she knows anything about that subject.

A. The American Consul in Leipzig advised her to turn to the Polish consul.

Q. Then you are Polish, not German? A. Polish.

Q. Then you are not Deutsch? A. Yes.

Q. Polish. Did you appeal then to the Polish Consul in Leipzig? A. I did not go to the Polish Consul.

Q. How long had you been in Germany from Poland? A. We came from Austria in 1904 when I was in my second year.

Mr. Reilly: Danke schon.

Re-Direct Examination by Mr. Wilentz:

Q. I have just two questions. What were the two papers that you caused to be burned?

(The witness proceeded to answer in German.)

Mr. Reilly: I object to it as incompetent, irrelevant and immaterial before the answer is given.

Mr. Wilentz: No, I was talking here. I don't know how we can dispose of counsel's objection. I don't know what the answer is. If counsel will say that he will make no point of the two papers I won't ask the question.

Mr. Reilly: No.

Mr. Wilentz: Then let's have the answer.

By Mr. Wilentz:

Q. What were the two papers? A. My brother had written on these slips a list of the things which he had sent to us from America in the preceding years.

Q. Well, what were the things that he sent to you during the preceding years?

Mr. Reilly: Now, I object to that. That is not competent. She has told us that he had on the list those things. It seems they

are unimportant, the things that he sent home.

Mr. Wilentz: Well, counsel brought it out, if your Honor please and, if he wants to make a point of it, let's find out what it is.

Mr. Reilly: We have in evidence that he had a list of things that he sent home, I assume they were gifts, in the year 1929.

Mr. Wilentz: Well, can we agree that they were a list of gifts then?

Mr. Reilly: No; I won't agree to that, no.

Mr. Wilentz: Well, that is what you said they were. Testimony is that these papers, as I understand it, contained a list of gifts.

Mr. Reilly: That is what the witness says.

By Mr. Wilentz:

Q. Well, what were those? A. He noted what he had sent home, ten dollars here, ten dollars there.

Q. How much altogether? A. About, a little over a thousand dollars.

Q. The whole family, I think she said? A. The whole thing, the whole family.

Q. For how long a period? A. Five to six years.

Q. Did you ever send any money to him? A. Later.

Q. How much? A. Later I sent him money.

Q. Did you ever send him any money in 1932? A. Yes.

Q. How much?

Mr. Reilly: I object to it as not competent.

The Court: I do not see how it is worth while to pursue that.

Mr. Wilentz: All right; just one other question.

By Mr. Wilentz:

Q. Did you find anything in his belongings or anything indicating any bank deposits in Hamburg? A. No.

Mr. Wilentz: I think that is all.

Re-Cross Examination by Mr. Reilly:

Q. Well, you know there are safe deposit boxes in the banks in Germany, isn't that right?

The Interpreter: Pardon me. Is that a question?

Mr. Reilly: Yes. Are there safe deposit boxes in the German banks?

A. As far as I know there are, but I have never had anything to do with such things.

Q. Now, how large were these sheets of paper, just to show us the size, first (handing a sheet of yellow paper to the witness)? A. (The witness

indicates on the sheet of paper) About a foot long.

Q. About a foot long. And how many were there? A. Two, two.

Q. Two. And you say that your brother had on these two sheets of paper, one foot long each, just a record of gifts that he had sent home to the old country, to the family, is that right? A. Yes.

Q. And they were burned the day he went to the hospital? A. Yes.

Q. Were they in a book? A. No. I have seen them lying loose.

Q. Were they in a wallet? A. No, no; quite loose.

Q. Were they as long as this pad? A. (In English) No.

Q. Show me how long they were. A. (The witness indicates.)

Mr. Wilentz: What did she say?

Mr. Reilly: Mark it, please.

(The witness marks the paper handed to her by examining counsel.)

A. (The witness speaks in German.)

Mr. Wilentz: What does that mean?

The Interpreter: About, about.

Q. From here to here (indicating). A. Yes.

Q. As wide as this? A. (In English) Nein, nein. (The witness speaks further in German and indicates on paper handed to her by examining counsel.)

Mr. Wilentz: We have got a ruler here.

When you are through Mr. Reilly, we will just measure it and we will stipulate.

Q. So (indicating)? A. (In English) Yes.

Mr. Reilly: I will offer it in evidence.

Mr. Wilentz: Yes. No objection.

The Reporter: Exhibit D-72.

(Yellow sheet of paper used in examining witness received in evidence and marked Exhibit D-72.)

Q. Were they flat? A. (Through the interpreter.) They were a little bit ruffled.

Q. Were they folded? A. Yes, they had been.

Q. And when you first saw them, you saw them take them out of his wallet, didn't you? A. That was a long time before.

Q. Yes, yes; but he took them out of his wallet, in which he kept his money, his tickets, and everything else? A. Yes.

Mr. Reilly: That is all.

Mr. Wilentz: That is all, and danke schon.

(Confusion in the court room.)

The Court: Those who are making noise will be picked up by the officers and marched out of the courtroom. The officers are here for the purpose of keeping order and I expect them to do so, and in doing

that they must pick up the people that are making this racket in the courtroom and march them out.

Mr. Wilentz: General O'Ryan.

JOHN F. O'RYAN, sworn as a witness on behalf of the State.

The Court: What is the name?

Court Crier Hann: General O'Ryan.

The Court: John S. O'Ryan?

Mr. Hauck: John F., your Honor.

The Court: John F. O'Ryan.

Direct Examination by Mr. Wilentz:

Q. General, what is your title, sir? A. Military title?

Q. Yes, your military title? A. Major General in the United States Army in reserve at the present time.

Q. And you commanded a division in Europe during the War? A. Yes.

Q. And were you the Police Commissioner of the City of New York in September, 1934? A. I was.

Q. And particularly were you Police Commissioner on the day of the arrest of this defendant Bruno Richard Hauptmann? A. I was.

Q. Some time following his arrest, you had a conversation with this defendant, did you not. A. I did. I did on the following day.

Q. It was testified here in this court by this

defendant that before certain moneys were found in his garage that he told you where those moneys were, is that correct? A. No, that is not correct.

Q. Were the moneys found before he revealed anything to you as to any place where they were placed—yes or no, please? A. I didn't get the question.

Q. The moneys were discovered without any information from him then, is that it? A. Oh, yes. The money had been found before he told me about where the money could be found.

Q. Do you happen to remember—if you don't say so, General—when the first money and the second moneys and the third moneys were found as to the respective times?

Mr. Reilly: I object to that unless they were found in the General's presence.

Mr. Wilentz: All right. I won't press the question and I submit the witness.

Cross Examination by Mr. Reilly:

Q. Do you know, General, that you were brought down here just for your appearance before the jury?

Mr. Wilentz: I object to that question.

The Court: The objection is sustained.

Mr. Reilly: Exception.

The Court: Take your exception.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Reilly:

Q. You are also a lawyer? A. Right.
Q. You are, aren't you? A. Yes.
Q. You know the quality and value of evidence? A. I think so.
Q. And did you know what you were going to be asked on the witness stand? A. I did.
Q. And did you know that it wasn't relevant?

Mr. Wilentz: I submit it is very relevant, if your Honor please, and very important, and I think counsel knows that.

The Court: I sustain the objection.

Mr. Reilly: I except.

The Court: Take an exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Reilly:

Q. Now, at any time when the money was found were you present? A. No.

Mr. Reilly: I move to strike out the testimony of Major General O'Ryan of the United States Army on reserve as not

competent, relevant or material and not proper rebuttal.

The Court: I decline to strike it out.

Mr. Reilly: I take exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: That is all General, and thank you sir.

(Witness excused.)

Mr. Wilentz: Officer Konetski. Officer, before you take the stand, we have got a lady from New York we want to dispose of.

Mrs. Kohl.

SELMA KOHL, sworn as a witness in behalf of the State in rebuttal.

Direct Examination by Mr. Wilentz:

Q. Mrs. Kohl, you were the landlady of the house in which Isidor Fisch lived, were you not? A. Yes, sir.

Q. And he lived there when he left for Germany? A. Yes, sir.

Q. And how long had he lived there? A. Well,

he came in the Spring, 1932, after the 23rd of April, some day after the 23rd of April.

Q. 1932? A. 1932.

Q. And he lived in your house up until the time he left for Germany, is that it? A. The 6th of December he left.

Q. 1933? A. Yes.

Q. What did he have, a room, or a suite of rooms, or what? A. He had a small room, the smallest room I had in the house.

Q. Was it the cheapest room you had in the house? A. Yes.

Q. How much did he pay a week for the room? A. Three dollars and a half.

Q. Did you observe how much clothes he had? A. Very little.

Mr. Wilentz: All right; take the witness.

Cross Examination by Mr. Reilly:

Q. Mrs. Kohl, Fisch was in the fur business, wasn't he? A. Yes.

Q. In fact, he employed a bookkeeper, didn't he? A. Well, I don't know anything about that, that he employed a bookkeeper.

Q. Louise Helfert, Miss Helfert? A. Yes, sir.

Q. Helfert? A. Yes, sir.

Q. Did she live across the street from you? A. No, she lived right in my house.

Q. But she did live across the street at one time? A. No, she moved from my house after I put her out, she moved across the street to 152.

Q. And you brought her back again, didn't you? A. Oh, no, I never will.

Q. Did she—

Mr. Wilentz: Just a minute.

Q. I understood you to say—possibly I didn't hear you correctly—that you said she lives in your house. A. She lived for seven years in my house, 149 East 127th Street.

Q. She did live there? I see. A. Yes, sir.

Q. Then you put her out? A. Yes, sir.

Q. But whether you put her out or didn't put her out— A. I did put her out.

Q. I say, whether you did or didn't put her out, she was Fisch's bookkeeper, wasn't she? A. Well, I don't know.

Q. You don't know? A. No.

Q. And you had a lot of other people living in your house too? A. Yes, sir.

Q. You had a furnished rooming house, didn't you? A. Yes, sir.

Q. And you had Uhlig living in your house? A. No, sir.

Q. No? Well, give me the names of some of the people that lived in your house. A. Well, Mr. ———

Q. When Fisch lived there. A. When Fisch lived there? Mr. and Mrs. Henkel lived there and Fisch the same time, and Miss Helfert lived there the same time. Now, did I have to tell you all my roomers I have in the house? You want to add more?

Q. It wasn't such a big house, was it? A. Oh, yes; I have ten rooms to let, Mister—

Q. You rented out ten rooms, did you? A. Yes, sir.

Q. Now, did Isidor Fisch come and say goodbye to you? A. Yes, sir.

Q. How long before he sailed? A. Well, he sailed, it was the 6th of December, and the 5th of

December I see Isidor Fisch at noon time, and he said, when I don't see you no more.

Q. He didn't want to see you? A. I am going to see you tomorrow and he came at ten or eleven, he said, goodbye to me.

Q. Well, when did you see him before that? A. Before I saw him a day before, before he— I saw him before he sailed and I saw him when he went out my house.

Q. And when did you see him in November? A. In November? Well, what—

Q. Did you see him in November in your house? A. Sure, he was living there.

Q. Well, I mean would he come down into your apartment? A. Always. He was—

Q. And did you help pack up when he sailed? A. No, sir.

Q. Did you see him the day he sailed? A. Yes, I saw him. He left between ten and eleven some time.

Q. And how many bags or valises did he take with him? A. Well, I saw he didn't have much— you see, I didn't exactly saw how many bags that Isidor took.

Q. Well, had some bags there? A. Oh, yes, he had a satchel there.

Q. He had a satchel? A. Yes.

Q. And he had a large suitcase? A. Uh-huh.

Q. And did he have a small suitcase? A. Well, I don't know.

Q. And a couple of hat boxes? A. No, he had no hat boxes at all.

Q. Is there any reason why your memory should be poor about what he took when he left your house?

Mr. Wilentz: Just a minute.

A. It is not poor. He don't have much to take; he didn't have much.

Q. All right. Then tell us, please, what he did have. A. Well, he had only a working suit and he had a Sunday suit with two pants, and he had a cheaply looking raincoat, and he had a winter suit, a blue dark winter overcoat, I mean, excuse me, I mean an overcoat, he had very little. Naturally, his wash and things—

Q. Did you see him packing his baggage? A. No. They don't show me.

Q. You don't know what he took? A. Well, he had—

Q. Do you? A. I didn't, he didn't have much to take, because he had nothing.

Q. Do you know what he had? A. Yes, I know; I guess I know what he had; not much.

Q. How many bundles did he have? A. No bundles.

Q. How many bags did he have? A. Well, I saw there two bags,—you see, a satchel I saw, he took out, naturally he took his things out.

Q. Well, a minute ago you told us you didn't see what he took. A. Well, I didn't count it, he took his belongings out, and that is all, you see.

Q. What time did he leave your house? A. Between ten and eleven the 6th of December.

Q. In a taxi? A. Exactly.

Mr. Reilly: That's all.

Mr. Wilentz: That is all, Mrs. Kohl. Thank you.

Officer Konietzko.

WILLIAM KONIETZKO, sworn as a witness on behalf of the State.

William Konietzko—Cross

Direct Examination by Mr. Wilentz:

Q. Officer, in 1932, and particularly on the 1st, 2nd, and 3rd days of March and during the month of March, 1932, were you connected with any police department of the State of New Jersey? A. I was.

Q. What police department? A. Princeton Township.

Q. Are you still connected with them? A. I am.

Q. In the capacity of an officer? A. Patrolman.

Q. Now, there has been some testimony that some policeman or patrolman took a man by the name of Harding to the State Police or to the Lindbergh home. Do you know whether you escorted the gentleman, Mr. Harding, either to the State Police or to the Lindbergh home? A. I did, in the presence of Patrolman Murray of the Borough Force in Princeton, to the home of Colonel Lindbergh.

Q. Did Mr. Harding talk to you about an automobile which he observed somewhere in the vicinity of Princeton, or wherever it was on or about March the 1st? A. Yes, on our way up to Colonel Lindbergh's he spoke of it—

Mr. Reilly: I object to it.

Q. He discussed it. Did he at any time mention a ladder being in the automobile which he had described to you? A. Not at all.

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Reilly:

Q. What did you take him up there for? A. Beg your pardon?

Q. What did you take him up for? A. I took him up on Major Schoeffel's request; I was requested to investigate a man who had directed a car to Colonel Lindbergh's home on March the 1st. I investigated that case for Major Schoeffel.

Q. All right. And Harding was the right man, wasn't he? A. Harding was the man whom I was to investigate.

Q. Sent out to get; right? A. To investigate.

Q. And you brought him up there. A. I took him up there.

Q. Was the ladder up against the window when he arrived there? A. I wouldn't say for sure.

Q. Is your memory poor? A. Well, my memory is fair.

Q. Fair. Did you write down what Harding said? A. I did not.

Q. Then you are depending as a policeman on your recollection of March the 2nd, 1932, is that right? A. My recollection, and part of the docket, the police docket.

Q. Who made it? A. Why, I made the entry of Major Schoeffel's coming into the office.

Q. Did you put down what Harding said to you in the docket? A. No.

Q. That's all I am interested in. A. No, I did not.

Q. Is there anything in the world but your memory, as far as what he said to you? A. No.

Q. Why didn't you make a record of it? A. I didn't think it was necessary.

Q. And why didn't you have him sign it? A. I didn't think it was necessary, it wasn't my case.

Q. You just took him up because somebody sent for him, is that right? A. Right.

Q. And turned him over to somebody else, is that right? A. Right.

Mr. Reilly: That's all.

Re-Direct Examination by Mr. Wilentz:

Q. Well, your memory, talking about good memories and bad memories, would you venture an Opinion as to whether your memory is as good as Mr. Harding's?

Mr. Reilly: I object to that. He can't testify to that.

Mr. Wilentz: I withdraw the question.

Q. You never were convicted of any crime, were you? A. Absolutely not.

Mr. Wilentz: That's all.

Re-Cross Examination by Mr. Reilly:

Q. Now, wait a minute, please. I will ask you this: whether a man is convicted of a crime or not, if he happens to be in the neighborhood his presence there because of his conviction does not excuse him from investigation, does it?

Mr. Wilentz: Just a minute, if your Honor please. That's not material.

Mr. Reilly: I think it is very material.

Mr. Wilentz: And it is argument, whether it excuses somebody from investigation.

The Court: I will sustain the objection.

Q. Did you know he was convicted of crime when you went out to get him? A. Never.

Q. If he told you, in view of your superior's orders to bring him in, that he had been convicted of crime, would that fact cause you to let him go before you talked to him?

Mr. Wilentz: I object.

A. That would make no difference.

Q. I thought not.

Mr. Wilentz: That is all, sir.

Mr. Wilentz: Does your Honor want to continue? It is quite warm.

The Court: I think we might as well take a recess until tomorrow morning at ten o'clock.

In the morning the Sheriff will exclude all spectators from the courtroom with the exception of those that can be seated and who give him some sort of promise that they will be orderly.

The jury may now retire and come in tomorrow morning at ten o'clock.

(At 4:36 p. m. the jury retired.)

The Court: The prisoner has gone out, has he?

The audience may now retire.

(Whereupon at 4:39 p. m. the further trial of this cause was adjourned to Saturday, February 9th, 1935, at 10 o'clock.)

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., February 9th, 1935.

TWENTY-NINTH DAY.

Present:
Hon. Thomas W. Trenchard.

Appearances:
Mr. Wilentz,
Mr. Lanigan,
Mr. Hauck,
Mr. Peacock,
Mr. Large.
Mr. Stockton,
For the State.

Mr. Reilly,
Mr. Fisher,
Mr. Pope,
Mr. Rosecrans,
For the Defendant.

(10:00 A. M.)

(The jury was polled and all jurors answered present.)

The Court: Counsel may proceed.

Mr. Wilentz: Mr. Bornmann.

LEWIS J. BORNMANN, recalled as a witness in behalf of the State, in rebuttal.

Direct Examination by Mr. Wilentz:

Q. You are a detective, are you, Mr. Bornmann; you have been sworn? A. Yes, sir.

Q. My recollection is that you testified that you, together with some of the carpenters of the New York Police Department, caused S-226 to be removed from the attic of Mr. Hauptmann's home. A. That is correct.

Q. There has been some testimony as to whether or not this board had ever been nailed down to a floor. Did you get possession of the nails that came from this board? A. Yes, sir; I pulled the board up, broke it off, then asked Police Carpenter Cramer to drive the nails through, which he done, and extracted them with a pair of pliers.

Q. He extracted them with a pair of pliers? A. Yes.

Q. Did you get possession of the nails at the time? A. Yes, sir; I did.

Q. How many nails came out of the board? A. Eight nails out of that piece there.

Q. Will you tell me whether the nails have been in your possession? A. Yes, sir; they have.

Q. And are those the nails— how many of them are there? A. There are seven here and—

Q. And the one introduced by me yesterday? A. —is the eighth.

Q. S-300— is that the eighth? A. Yes, sir.

Q. Well, at any rate, they are tagged together. One is S-300. Is that the other one? A. Yes, sir; that is the other one.

Q. Did you give that to me yesterday in the court? A. Yes, sir; I did, at your request.

Q. Now will you point out to the jury the eight nail holes. Take your time, now. A. (Witness leaves stand.) One—

Q. Just put it right on here, please. A. One, two, three, four, five, six, seven, eight.

Q. All right. Now will you just return to the

stand for a minute and take those nails again that you just held? Now is there one nail in that collection that is shaped differently than the other nails? A. Yes, sir; one of them.

Q. Pick it out, will you please? A. This one is much thinner (producing a nail).

Q. And it has a hook on top, hasn't it? A. Yes, sir; it has.

Q. Will you come down and fit that in the hole from which it came? A. (The witness leaves the stand and steps before the jury.) From this hole right here.

Q. Just a minute, now. I notice, Officer, that there is a little recess there. A. Yes, sir; that's where this nail was drove, driven in there and made that depression.

Q. And when moved down would that fit right in? A. Yes, sir.

Q. The recess? A. (The witness inserts the nail. Board with nail inserted exhibited to the jury by Mr. Wilentz.)

Q. Will you just step back a minute? A. (The witness resumes the stand.)

Mr. Wilentz: I will offer the nails for the moment for identification, this package of six nails here, and the one nail that is in the board.

The Reporter: S-306 for identification, package of nails.

(Package of nails marked S-306 for identification.)

Mr. Wilentz: Take the witness.

Cross-Examination by Mr. Fisher:

Q. You are the one who holds the lease to the house in The Bronx, aren't you? A. That's right.

Q. You testified on the stand that the defense could go in whenever they wanted to? A. If I was present, yes.

Q. Oh, it had to be that you were present?

Mr. Wilentz: I object to the question.

Q. Do you say—

The Court: This is not sur-rebuttal.

Mr. Fisher: Well, I assume I may ask the question and have it objected to.

The Court: Yes, you may ask the question.

By Mr. Fisher:

Q. Do you say now that your testimony on the stand included the statement, "If I am present you can go in the house"?

Mr. Wilentz: Just a minute, Officer, please. I object to the question as not being cross-examination.

The Court: The objection is sustained.

Q. Well, did you go over to the house with us at any time?

Mr. Wilentz: I object to the question as not being proper cross-examination.

The Court: "Did you go over to the house with him at any time?"

Mr. Fisher: Did you go over to the house with us at any time?

The Court: To what house?

Mr. Fisher: To the house in The Bronx where Hauptmann lives and where that particular piece of lumber, you say, was taken from.

Mr. Wilentz: Objected to as not proper cross-examination.

The Court: You may answer the question.

A. No, I did not.

Mr. Wilentz: The question contemplates with Mr. Fisher?

By Mr. Fisher:

Q. With Mr. Fisher.

Mr. Wilentz: Answer the question.

A. No, I did not.

The Court: Just a minute. I don't understand what this question is.

(Question read by the Reporter as follows:

"Q. Well, did you go over to the house with us at any time?")

A. No, I did not.

Mr. Wilentz: Answer the question.

Q. Did we make an application to the State to go over and see that attic?

Mr. Wilentz: Just a minute. I object to that, if your Honor please.

The Court: The objection is sustained.

Q. Now, you say those are the nails that you took out of the attic of the Hauptmann house, is that right? A. Out of that board; yes, sir.

Q. Out of that particular board? A. Yes, sir.

Q. That is two of them, is that correct? A. Yes, sir; they all belong, come out of this bunch, they all are—

Mr. Wilentz: Now wait. Let's see now.

Mr. Fisher: Oh, I haven't— I am no magician.

Mr. Wilentz: No, never mind about it. I just want to know if it is out of the package; if you say that it is, all right.

Mr. Fisher: I took them directly out of this. He handed them to me.

Mr. Wilentz: You have a handful of nails and I wondered which was which.

Mr. Fisher: I have two hands, Mr. Wilentz.

A. Whatever nails come out of that package, they are the nails.

Q. Now, are they the nails; you have identified them to us?

Mr. Wilentz: I submit the answer has been made, if your Honor please. He says if they came out of that package—

The Court: Yes.

Mr. Wilentz: —they are the nails.

Mr. Fisher: I am asking him, sir, to identify them as the nails.

The Court: He has already done that. You may put it to him again, if you wish.

Q. Are they the nails? Do you now say they are the nails that came out of the Hauptmann attic, out of this board that you have just identified here? A. The nails that are in that package are the nails that came out of that board.

Q. So that you identify them then only because they are in a package and not because you can look at the nails and know where they came from? A. Because I know the nails in that package came out of the board.

Q. And that is the only reason you know they are the nails? A. Yes, sir.

Q. Yes. Now watch those very carefully in that hand and take a look at these three nails, these two nails. A. They are different type nails altogether.

Q. As to the material, would you say those nails had ever been used?

Mr. Wilentz: He is not a nail expert, if your Honor please. We haven't attempted to qualify him to that extent and it is not proper cross-examination whether or not a nail has been used. Their gentleman testified to that, not this man.

The Court: Has he already testified that he took those nails out of the board?

Mr. Wilentz: Those are the other nails. He is handing him new nails.

The Court: Oh!

Mr. Wilentz: Different nails altogether.

The Court: I sustain the objection.

By Mr. Fisher.

Q. But you now say that the reason you know they are the nails you took out of the board is because you found them in that paper? A. Not because I found them in that paper, because I know they are the nails that came out of that board.

By Mr. Fisher:

Q. You are basing your answer solely upon the fact that you find the nails in a paper in which you put them, is that correct? A. Because I know those nails had been in our possession; I had them taken from that board and they have been in our possession ever since.

Q. Have you carried them on your person every minute of the time since they were taken from that board? A. No, I have not.

Q. No. And you identify them then only because they are in the paper which you identify; is that correct?

Mr. Wilentz: Well, if your Honor please, that has been answered so many times—

The Court: Yes, that question has been answered several times.

Mr. Fisher: Very good, sir.

By Mr. Fisher:

Q. Suppose I should hand you that nail, would you say that that nail, as it appears to you in your hand, came out of Board 226? A. Not just as it appears to me in my hand; no, sir.

Mr. Fisher: That's all.

Mr. Wilentz: That is all, Officer; thank you.

By Mr. Fisher:

Q. Wait just a minute; just a minute. Which side of 226 is the under side? Which is the side that was down to the cross beam? A. This side right here. The marks of the beams will show there.

Q. How much clearance— you say this is the under side? A. Yes, sir.

Q. And the marks of the beams will show? A. Yes, sir; right across there; you can see them right there.

Q. That you say is the mark of a beam; is that correct? A. That's correct; and these two nail holes denote where the nails were.

Q. But aside from the nail holes, you say there is the mark of the beam on there? A. A slight mark there.

Q. A slight mark? A. A light mark.

Q. A light mark. Now, how much clearance was there from the bottom of this beam to the floor of the attic? A. It is a 2 by 8 beam, I think.

Q. So that would be 8 inches from the top of the floor to the top of the beam, is that right? A. That's correct, 2 by 8.

Q. How did you get the board up with 8-inch clearance underneath it? What sort of instrument did you use? A. No instrument was used whatsoever.

Q. Well, how did you do it? A. This part—

Mr. Wilentz: Go ahead, please, Officer.

A. This end of this board came midway between two beams; take your fingers like that and pried the board up.

Q. With your hand? A. Yes, sir.

Q. And did you use any instruments at all in order to do that? A. Not to do that; no.

Q. How did you get the nails out of the board? A. As you are prying it loose, you turn the board over, and Police Carpenter Cramer drilled them through with a hammer, and then extract them with a pair of pliers.

Q. Drove these nails through? A. Yes, sir.

Q. With a hammer on the way out, is that it? A. Taking all precaution to keep them straight.

Q. I see. Hit them like this and drove them out straight; is that right? A. Yes. You can see a slight mark there.

Q. Take the chair, please. A. (Witness resumes stand.)

Q. What date was that done, Sergeant? A. It was September 26th, 1934.

Q. How long after the arrest of the defendant Hauptmann? A. Seven days.

Q. When you got a hold of this board to yank it up, like this, did the nails pull through the board and stay in the beam, or did they come out with the

board? A. I said they stayed in the board and that we had driven them through.

Q. None of them stayed in the beam? A. No, sir; they did not.

Q. Square nails, weren't they? A. Square nails; yes, sir; cut nails.

Mr. Fisher: That's all, Sergeant.

Mr. Wilentz: Mr. Koehler, will you be sworn, please?

Court Crier Hahn: He has already been sworn.

ARTHUR KOEHLER, recalled as a witness in behalf of the State in rebuttal:

Direct Examination by Mr. Wilentz:

Q. Mr. Koehler, you were in court the other day when a young man from Flemington or some place illustrated the operation with a plane that he brought here? A. I was.

Q. You were here, too, when he illustrated the operation of the plane owned by the defendant Hauptmann? A. I was.

Q. Did you examine those plane marks made by Hauptmann's plane? A. I did.

Q. Were the plane marks made— No. Withdraw that. What have you to say as to the similarity or dissimilarity between the marks made by Hauptmann's plane on the lumber that he brought here and the rungs of the ladder?

Mr. Pope: I object to the question. This witness has not shown any qualifications to testify, showed any experience about handling

the planes or the kind of marks the planes make on boards when they are used with bits that have notches in them or nicks in them. That is not a part of the wood technologist's job. That is part of the job of a man with practical experience in the handling of planes, handling of wood. This witness has never testified that he ever had any practical experience.

The Court: The objection is overruled.

Mr. Pope: May I have an exception?

The Court: You may.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

The Witness: Read the question.

Mr. Wilentz: Will you please repeat the question?

(The Reporter repeated the question as follows: "What have you to say as to the similarity or dissimilarity between the marks made by Hauptmann's plane on the lumber that he brought here and the rungs of the ladder?")

A. On the edge of the board that he planed by holding the plane parallel or straight with the edge of the board, the marks are identical with those on the ladder rungs. On the other edge, where he held the plane diagonally across the board, the marks are closer together.

Q. But does that interfere with the identification of the plane marks themselves? A. No.

Q. Whether they are closer together or not? A. It is easier to determine—

Mr. Pope: We object to that. It calls for a conclusion.

Mr. Wilentz: All right. If he objects to it, I will withdraw it.

Q. I want to show you two exhibits, D-62 and D-63 that have been in court several days. You remember the testimony yesterday about the splits in these boards? A. Yes.

Q. The gentleman from out of the State that testified, I think from Connecticut, that testified that the age, where the ends which matched, the grain— will you take a look at them, please— you have already, haven't you? A. As to the age did you say?

Q. No, you have already looked at these boards, haven't you? A. Yes.

Q. On several occasions in court? A. Yes.

Q. Will you tell us whether from your examination you can tell whether or not those two exhibits were at one time one and the same board? A. Yes, these two.

Mr. Pope: Wait a minute. "Yes" is the answer.

Q. Give us your reasons.

Mr. Pope: This witness is not qualified and hasn't qualified himself to identify two pieces of board that may have or may not have been a part of the same board at any time.

The Court: Well, it was determined at least two weeks ago that this witness was qualified for just this purpose.

Mr. Pope: Not for that purpose, if your Honor please.

The Court: I think it was. I overrule your objection.

Mr. Pope: May I have an exception?

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Q. Tell us why, Mr. Koehler. A. Those two boards were at one time part of the same board for a number of reasons. In the first place the pattern or the groove produced in the middle of these two boards is in identically the same place and of the same depth and width as can be demonstrated very simply by putting these two boards together, one on top of the other with the edges corresponding and then that center bead corresponds exactly.

Q. Just come down and show that center bead exactly as it matches. A. (Witness steps down to demonstrate to the jury.) I hold the two outer edges parallel, then you can see that that center bead—

Q. What do you mean by the "center bead"? Take this pencil, will you? A. These two grooves in the middle of the board constitute what is called the center bead.

Q. Now, put them together and show just how they match there.

Mr. Pope: Don't mark those boards.

Mr. Wilentz: What is it, sir? Just a minute.

Mr. Pope: Don't mark them.

Mr. Wilentz: What is that supposed to mean?

Mr. Pope: I object to the witness marking our exhibit.

Mr. Wilentz: Counsel marked them during the recess as I understand from Mr. Hauck.

Mr. Pope: No, I did not.

By Mr. Wilentz:

Q. Go ahead, please. Don't be concerned about the interruption unless it is to the Court. A. Having the edges of the two boards parallel you can see that that center bead in the two boards is in exactly the same place; also the middle bead in exactly the same place and you can see that better by close inspection.

Q. All right, now, Mr. Koehler; are there any other reasons? A. Yes.

Q. All right, give us the other reasons. A. That was comparing the faces of the two boards. Now, the backs of the two boards are rough, as you can see. They still show the original sawcut. One has been smoothed off slightly. That has been done rather recently, because the wood looks rather fresh where it has been smoothed off.

Q. Mr. Koehler, it has been testified to by the gentleman who brought these exhibits here, that one

piece was washed and the other wasn't. Now, would the washing do it or was some other effort made, so far as you can tell, to smooth it off? A. No, this was planed.

Q. Yes. A. That was planed slightly.

Q. So that the difference in appearance of the back of D-63, as compared with D-62, is caused by that being planed, is that it? A. Yes.

Q. In addition to being washed? A. Yes.

Q. And prior to its planing would you say that D-63 and D-62 had the same rough surface on the back? A. Yes.

Q. Does the planing show clearly so that a carpenter could tell that this piece was planed? A. Yes.

Q. Is there any question in your mind at all about that? A. No.

Q. That prior to that planing of that piece of board there, that was just as rough as the other? A. Yes.

Q. Now, are there any other reasons, sir, that lead you to the conclusion and the opinion that these two were at one time one and the same board? A. Both of these boards have black spots on them here and there. One of them has more than the other. But this one has at least two black spots. So they look as though they were of the same material.

Q. You mean by that some type of tar as the witness testified? A. It looks like that.

Q. Yes, sir. Now, how about the grain; does the grain match? A. The grain on the end of the two matches except on this side, where there is a knot in one of the pieces.

Q. And how do you explain that, sir? A. Well, it is obvious that these two boards were not exactly next to each other, because if you put them next to

each other, the edges are not in line. There is a little— like a V there. Futhermore—

Q. Do you mean, sir, that—

Mr. Pope: Let him tell what he means.

Q. All right, sir. Mr. Koehler, suppose you proceed. A. All right. Furthermore, when I put the two ends close together like that, the grain does not match directly. There is an offset there. In order to get the grain to match directly, I have got to offset one board from the other.

Q. Mr. Koehler, did you hear the gentleman from Connecticut testify that the grain did match exactly at those edges? A. The grain on the end matched.

Q. Yes. A. Yes; and I agree with him in that respect. But when I hold the two boards a little distance apart, about an inch and a quarter or so, then the grain matches up directly from one to the other. I can demonstrate that, if I may do so, by putting these onto that other board, so that they will be held in that position.

Q. Well, do whatever is necessary to demonstrate it, sir.

(Witness proceeds as directed with demonstration.)

A. Having the two boards about that distance apart, with a gap of an inch and a quarter between them, and then having the edges parallel, you can see how the grain from one runs right into the grain of the other. There is a perfect match.

Q. Will you put your finger along that showing what you mean by the grain running into the other? A. These dark and light lines, they are different widths, but they correspond in the two boards. There is a particularly wide dark band in one of these boards and that also shows in the correspond-

ing place in the other board. (Exhibiting to jury.)

Q. All right, sir, thank you. Now, the same gentleman from Connecticut, I think it was, testified to Exhibits D-64 and D-65, saying that the grain matched. Tell us at the point "A" indicated by him, tell us whether in your opinion they do or they do not. A. The grain neither matches on the end, because one of these has five annual rings in it and the other has six annual rings in it and the curvature is not the same, neither does the grain match, and it faces, no matter which way you put them together, they do not match.

Q. Now, with reference to S-226 and the ladder rail 16, there was considerable testimony as to the knots. My recollection is one gentleman testified that S-226 was the top of the piece of wood of which it originally was a part and the other gentleman testified that it was the bottom edge, basing it upon the question of knots. Now, Mr. Koehler, will you tell us what, in your opinion, the position of S-226 was with relation to the board which it originally was a part?

Mr. Pope: I object to the question. This witness hasn't shown that he knows anything about how trees grow or how boards are cut out of trees. He is merely a wood technician, that is all, nothing more, that has nothing to do with the lumbering or the making of boards or preparing them. He has not qualified himself to express an opinion on a question of this kind.

The Court: The objection is overruled.

Mr. Pope: Exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Mr. Pope: And we also object to the question because it says that one gentleman said that it was the top board and another said it was the bottom.

The Court: Isn't that so?

Mr. Pope: No, that is not quite correct.

The Court: What is the fact?

Mr. Pope: One gentleman said it was taken from the butt limb of the tree and the other from the top. The butt is the first, the butt limb is second and the top is the third.

By Mr. Wilentz:

Q. Will you please answer the question, Mr. Koehler?

The Court: You may answer the question.

A. This board was above Rail 16 in its original position in the tree.

Q. Why do you say that, sir? A. It is possible to determine from the slope of the knots which end of the board was the top end.

Q. But there is testimony here, sir, that this particular board, S-226, has a greater number of knots than Rail 16, and there is further testimony that in fact, in the growth of a tree there are more knots at the bottom of a tree rather than on the top; is

that the fact, that there are more knots at the bottom than there are at the top? A. Why, no, it is common knowledge that when a tree gets to be of a size so that lumber can be cut from it, there are practically no limbs near the bottom of the tree, but the limbs are up at the top of the tree. It is also known by anyone who has any experience with cutting of logs and lumber, that the butt logs produce most of the clear grades of lumber, and the knotty lumber comes from the top logs. In fact, logs are sometimes left in the woods, top logs are left in the woods, simply because they are too knotty, not because they are too small.

Q. So that there isn't any question in your mind then, sir, that so far as trees from which lumber is cut, not the little ones that were here in court yesterday, but trees of sufficient size from which lumber might be cut and produced, that the greater number of knots are at the top? A. Yes.

Q. And also as to the size of the knots— no, I will withdraw that. Now you have heard the testimony of the two gentlemen that have been here the last day or two with reference to rail 16 and with reference to S-226. Do you still say, sir, that rail 16 and S-226 at one time were the same board? A. I do.

Q. Now what have you to say as to the size of the nails from the attic floor, whether eight-penny nails fit in the attic board, S-226? A. Yes, I fitted eight-penny nails in there and they fit just right.

Q. Did you fit the nails that Mr. Bornmann gave you at the time? A. I did.

Q. So that you at one time had possession of the nails that Mr. Bornmann had? A. I did.

Q. And you returned the nails to him? A. I returned them to Captain Lamb.

Q. Captain Lamb. Did you take those nails and fit them into the board? A. I did.

Q. I want to call your attention particularly to one nail hole here and I suppose it is apparent to everybody that it fits, isn't that so? A. Yes.

Q. Sort of an angle? A. Yes.

Q. What have you to say as to the— What is your opinion as to the size of the nails that were used in Rail 16 when it was affixed to the attic floor of the Hauptmann home? A. The same sized nails.

Mr. Pope: Object to the question. I don't see how he can tell.

The Court: You don't see how he can tell?

Mr. Pope: No. He may be asked his opinion as to what size those holes now appearing in the board indicate as to the size of the nails, but he never saw this on the attic floor.

Mr. Wilentz: The question is answered and I am willing to ask the question as Mr. Pope suggests.

By Mr. Wilentz:

Q. The nails in Rail 16 indicate the use of what size nails? A. Eightpenny cut nails.

Q. Eightpenny cut nails. I want to show you S-301 for identification, which I showed to the witness before and ask you whether that is NC pine, whether that shows correctly trees from which NC pine is cut? A. Yes, it does.

Q. Are those what are known as forest trees? A. Yes.

Q. And are the forest pine trees the trees from which NC lumber is produced? A. Yes.

Q. And cut? A. Yes.

Mr. Wilentz: I offer it in evidence.

Mr. Pope: No objection.

Mr. Wilentz: Excuse me. No objection.

The Court: It will be admitted.

(Photograph received in evidence and marked State Exhibit S-307.)

By Mr. Wilentz:

Q. Now, the other afternoon, when one of the gentlemen held up some little object which was apparently some trees or the early growth of a tree and called it yellow pine, from your observation of that, what have you to say as to whether that was yellow pine or white pine? A. That piece he called yellow pine is white pine.

(Photograph handed to the jury for examination.)

Q. Now, while the jury is observing or inspecting that photograph for a minute, do you recall the testimony by somebody about V's, the V's as shown, theV-ring, I think it was referred to as in the grain? A. I do.

Q. Or in the surface— I don't remember which— of either the ladder rail or the attic floor, or both. My recollection is that the testimony was that one piece showed V-rings and the other piece didn't. And that I take it was one of the reasons given by the witness for indicating what he considered a dissimilarity. Is that the way to have it, sir, or around the other way? A. Either way is all right.

Q. Either way. Well, we will start it this way.

Now will you come down and point to the V-rings in either or both.

(Witness leaves the stand to demonstrate.)

A. May I remove this?

Q. Whatever is necessary to do, please. A. These two photographs are the end grain on this board S-226 and of the ladder rail No. 16, respectively. They are placed one on top of the other with one edge of the rail just about in line with the bottom of the groove in the floor board, because that is the position they had on the attic floor when the nails were put through these two pieces into corresponding nail holes in the joists. With those two pieces superimposed like that, we can see a V or dent in the annual rings of the floor board, but we cannot see it in the ladder rail No. 16, because that part has been cut off. That would be right past the edge of the rail here.

Q. Now just one minute there, sir. Now, this is truly the picture of the ladder rail, isn't it? A. Yes.

Q. I understand then, sir, that this part was cut off? A. Yes.

Q. But not by you? A. No.

Q. I mean, it was once affixed to the ladder. A. Yes.

Q. Now, if it had been continued there, can you tell from the grain whether or not the V's would have shown right in the same position? A. It would.

Q. Now, are there any V's any other place in the ladder rail which do show? A. There is a slight dent here. It is not quite as pronounced.

Q. I mean the ladder rail. A. Well, there is a corresponding dent in the ladder rail, right there.

Q. Ordinarily this is a downward ring, isn't it? A. Yes; it curves up here.

Q. Then it curves up here a little bit, is that what you mean? There is the V there? A. Yes.

Q. I know I am in the way here. Now will you take the stand for a minute, please? A. (The witness resumes the stand.)

Q. This ladder has been washed at your request, hasn't it, in preparation for this trial? A. Yes.

Q. I mean, it wasn't washed to hide or evade anything, was it? A. No.

Q. Before I forget it, my recollection is that the second lumber man—

Mr. Wilentz: What was the name of the second lumber man?

Mr. Pope. Mielke.

Mr. Fisher: Mielke, M-i-e-l-k-e.

Q. Mr. Mielke, my recollection is, testified that these boards were of a different width or thickness. What have you to say as to that? A. As I remember he said they were of different thickness, and when held side to side, as he did, they do show a difference in the thickness of the two edges; but when held end to end, the two corresponding ends which are marked "A" on each one next to each other, they are absolutely the same thickness all the way across. I mean they correspond in thickness all the way across. Now that difference in thickness on the edges is due to the fact that each of these boards is thicker on the side where the tongue is and thinner on the side where the groove is, and both of them run from thicker to thinner, from the tongue to the groove side. So that there is another point of similarity between the two.

Q. Mr. Koehler, there has been testimony about nail holes, and prior to the arrest of Mr. Hauptmann, the defendant in this case, you examined this ladder on various occasions, did you not? A. I did.

Q. Now, did you make any observation as to the nail holes in rail 16 prior to his arrest? A. I did.

Q. When did you make those observations and what did those observations reveal in reference to nail holes in rail 16 of the ladder? A. When I first examined the ladder, which was the first week in March, 1933, I noticed that there were four cut nail holes in rail 16 and I so stated in my report dated March 8th, 1933.

Q. Now then, again, did you on another occasion, prior to Mr. Hauptmann's arrest, did you again measure the distances between the nail holes and make a note of that? A. Yes, in November, 1933, I made a diagram of rail 16 and on that diagram indicated the distances between the nail holes in the rail.

Q. And all of that, sir, before the arrest of the defendant Hauptmann? A. It was.

Q. And did the nail holes which you measured in 1934 prior to his arrest, and the nail holes which you observed in 1933 prior to his arrest— were those the nail holes which matched with the holes in the joists in Hauptmann's attic when you fitted it? A. They were.

Mr. Wilentz: Take the witness.

Cross-Examination by Mr. Pope:

Q. Mr. Koehler, there is no way in determining the angle at which a plane was held when it was passed over the edge of a board, is there? A. Not unless the plane chatters. If it chatters, as they sometimes do, then it leaves little waves.

Q. The plane did not leave little waves in this instance, did it? A. Yes— that is which instance? Beg your pardon.

Q. The one that you have been talking about. A. You mean on the board planed here the other day?

Q. Yes. A. I did not notice whether it chattered there or not.

Q. Now, when you studied and observed the plane marks on the ladder and when you undertook to duplicate them with the Hauptmann plane, if we may call it such, you tried to use the plane at the angle that you thought the man might have used it at in planing the rungs, didn't you? A. I tried to use it at the angle the plane commonly is used. That is, you run it as nearly parallel to the edge as you can.

Q. Different workmen handling a plane use it at different angles, do they not? A. Not a long plane like that; that wouldn't make much difference in the angle there, because that plane is intended to make a smooth straight edge.

Q. You are not a carpenter, are you? A. I have worked with wood quite a little.

Q. I say you are not a carpenter? A. I am not a carpenter by trade.

Q. You have had no practical experience in carpentering, have you? A. Yes, I have.

Q. What do you mean, you have built boxes and bird houses and such things? A. No, I have helped my father build houses, barns, cabinets.

Q. Have you ever been engaged in woodcraft in the woods? A. Yes, I have worked in the woods.

Q. Lumbering the mill? A. Yes— not in the mill; that is, I have visited mills.

Q. Then your knowledge of millwork is from observation and study? A. Yes.

Q. Not from practical experience? A. I have had a little practical experience.

Q. Mr. Koehler, do you read a vernier caliper? A. Yes.

Q. Have you one with you? A. It is not vernier caliper; I have one graduated to hundredths of an inch.

Q. You can read a vernier caliper? A. Yes.

Q. What are the subdivisions on the bar of a vernier caliper reading in thousandths?

Mr. Wilentz: If your Honor please, while I have no objection to the line of testimony, except I want to object, but I don't think it is material. The only reason for the objection is I would like to save a little time.

Mr. Pope: I may present him with a venier caliper for getting the measurements of boards.

The Court: I suppose it may be cross-examination. I don't know what it is just for the moment, but counsel thinks he does and he may proceed.

A. In a vernier caliper the vernier has one more or one less division than, of course, a certain unit on the scale itself.

Q. I mean the bar, what is the unit of division of the inch on the bar on the vernier caliper? A. Oh, that depends on the caliper, that wouldn't be constant.

Q. Is there any difference in measuring in thousandths of an inch? In any caliper, micrometer or vernier? A. You restrict it to thousandths of an inch, is that it?

Q. Yes, how many times is the inch subdivided on the bar of a micrometer or vernier caliper reading in thousandths of an inch? A. That would de-

pend again on the make, because in some the bar is longer than in others.

Q. Will you just repeat the question? You probably didn't understand it.

Mr. Wilentz: Now, the question has been answer, sir.

Mr. Pope: No, it hasn't.

Mr. Wilentz: I disagree with you.

The Court: There has been an answer to your question. Whether or not it is satisfactory to you, I can't tell.

Mr. Pope: It isn't a question of being satisfactory, I asked him not the length of the bar, I asked him how many times is the inch subdivided on the bar of a vernier caliper.

Mr. Wilentz: That is not the question that was asked.

Mr. Pope: That is the question.

The Court: Well, you may frame such a question. I think the witness answered the question that was put to him, but if you think not, you may put another question.

Mr. Pope: Well now, I don't want any misunderstanding about it. May the stenographer repeat the question which I put to the witness.?

The Court: I think it will serve every purpose for you to frame another question.

By Mr. Pope:

Q. How many times is the inch subdivided on the bar of a vernier caliper measuring in thousandths of an inch? A. You mean the vernier scale, by bar, do you mean—

Q. No, the bar is the bar and the vernier is the vernier. A. Well, if the bar is subdivided into thousandths of an inch, there are a thousand per inch.

Q. Is it possible with machinery to subdivide the inch into one thousand parts. A. Yes.

Q. It is. Have you ever seen a caliper or any other measure that was subdivided by engine machinery into one thousand subdivisions? A. Yes, I have seen microscopic scales a number of times.

Q. Workmen do not use a microscope. A. No.

Q. When they use a vernier caliper do they? A. Yes.

Q. Microscope? A. No, vernier caliper.

Q. Yes. Do they use a microscope over a vernier caliper reading in thousandths of an inch? A. Not as a rule.

Q. No. It would be impossible to count one thousand subdivisions of an inch even with a powerful magnifying glass, wouldn't it, if it were possible to make them? A. No, I have seen finer divisions than that which can be counted with a microscope.

Q. Equal divisions? A. Yes.

Q. How many subdivisions are there on the vernier of a vernier caliper reading in thousandths of an inch? A. It depends upon how long the vernier is.

By Mr. Pope:

Q. It doesn't make any difference if it is one inch long, the scale, does it? It is an inch; an inch is an inch the world over, isn't it?

Mr. Wilentz: Well, I think if your Honor please, we can agree that an inch is an inch the world over.

The Court: Yes, I think we can agree about that.

Mr. Pope: He says it depends on how long the vernier scale is.

Mr. Wilentz: That is right.

By Mr. Pope:

Q. Did you ever see a vernier scale that was longer than one inch? A. No; and I don't remember seeing one that long.

Q. No. Then how many times is it divided on the vernier scale? A. Well, it depends upon how much the vernier scale is supposed to cover.

Q. In thousandths, reading in one-thousandths of an inch, how many times is the inch divided on the vernier scale? Now, if you don't know, say so.

Mr. Wilentz: Well, he says he has never seen one an inch long; and I think, if your Honor please, that while the lecture may be very interesting, I don't think it is helpful in this case. He has answered that question several times, if your Honor please.

The Court: Yes.

Mr. Wilentz: About the one inch; he says he never saw one one inch long. How can he tell them how many divisions there are?

By Mr. Pope:

Q. Well, I will put it this way: Would it be possible to have a vernier and read against a bar that was not one inch long? A. Yes.

Q. You read an inch against an inch, on a vernier, don't you? A. You can read a quarter of an inch against a quarter of an inch.

Q. Certainly you can. Well, then, I will ask you: In your own way, how many times is the, whatever the subdivisions may be, divided on the vernier, on a vernier caliper, reading in thousandths of an inch? A. If you had four ten thousandths of an inch on the caliper—

Q. Oh, no; one-thousandth. A. You have got to have more than one in order to read a vernier.

Q. Vernier calipers read in one-thousandths, in ten-thousands, in hundred-thousandths and in millionths of an inch, don't they? Now, I am talking about a vernier reading in thousandths, nothing else.

Mr. Wilentz: What is the question?

A. Yes.

Q. I ask you how many subdivisions are there on the vernier, of a vernier caliper, reading in thousandths of an inch. Can you tell me or can't you? A. It depends on the make, and how long the vernier scale is.

Q. Well, no matter how long it is, how does it compare with the bar scale then? A. They are either wider or narrower on the vernier scale.

Q. Well, which is it? A. They are wider.

Q. They are wider? A. Yes.

Q. Then how could you determine a thousandth of an inch, if the vernier was longer than the inch on the scale? A. I could demonstrate it to you with a vernier, but it is pretty hard to describe.

Q. As a matter of fact, they are just one subdivision narrower, aren't they? A. Which is narrower?

Q. The vernier is one subdivision narrower than the scale? A. I believe you are right.

Q. Yes. And the bar is divided into forty equal divisions, isn't it, always? A. No.

Q. Or one-fortieth part of an inch? A. No. That would depend upon the make of the bar.

Q. Did you ever see a vernier caliper when the bar was ever divided into more or less than forty subdivisions to the inch? A. I don't recall.

Q. No. Now, leaving that for the moment, the nick ridges on the rungs are solid bodies, aren't they? A. Yes.

Q. And they can readily be measured in their three dimensions, can't they? A. It would be exceedingly difficult and practically impossible to measure the fine ridges made by the fine nicks on account of the variability of the wood itself.

Q. The fine nicks or the fine ridges made by the fine nicks are solid bodies, aren't they? A. Yes.

Q. Every solid body may be measured in its three dimensions, may it not? A. It may.

Q. Yes. You made no attempt to measure these bodies in any of their dimensions, did you? A. Except the distance apart.

Q. And did you make an accurate measurement of the distance apart? A. I compared them with others.

Q. And the distance apart varies with the angle to which the plane is held while being passed over the wood, doesn't it? A. Certainly.

Q. Yes. So that you never made any attempt to ascertain any one of the three dimensions of these solid bodies, did you? A. No; I didn't think it was necessary.

Q. Whether you thought it was necessary or not, you didn't do it, did you?

Mr. Wilentz: He has already answered the question that he didn't.

A. I made an observation as to their relative size, but not an accurate measurement.

Q. Did you ever do anything like that before?

Mr. Wilentz: Like what before, may I ask?

Q. Like testing out, undertaking to identify the markings of a plane bit upon a piece of wood. A. I have identified numerous markings on—

Q. Did you ever attempt before in your life to identify the markings of a plane bit upon a piece of wood?

Mr. Wilentz: He has already answered numerous times.

The Court: He has answered the question. He may answer it again, if he wishes to.

A. Yes.

By Mr. Pope:

Q. When? A. Oh, at various times.

Q. And for what purpose? A. To compare the marks on wood with those made by a plane.

Q. Was that done at various times during the pendency of this investigation? A. Even previous to that.

Q. And did you ever testify in court before in your life as to the plane markings on a piece of wood? A. No.

Q. No. This is the first time you ever undertook to do that, isn't it? A. Yes.

Q. And even this time you didn't attempt to get any measurements?

Mr. Wilentz: He has already answered that.

A. I got relative measurements.

By Mr. Pope:

Q. Now isn't it a fact, Mr. Koehler, that in the absence of measurements of the three dimensions that the probability of the markings being alike or made by two different planes varies only with the number of planes in the world in that condition? A. No, it varies with the number of markings made by the plane, if there is only one marking—

Q. I say the probabilities, the probabilities in the absence of accurate measurements, the probabilities of the markings being made by different planes from the one you examined varies only according to the number of planes in the world?

Mr. Wilentz: Well, he has answered that it doesn't.

Mr. Pope: No, he hasn't.

Mr. Wilentz: That it varies according to the nicks in the plane, not the number of planes.

Mr. Pope: The nicks have nothing to do with the markings.

Mr. Wilentz: He says it has. Maybe you are right, but the witness says it has.

The Court: That I understood to be his testimony. If you have any doubt about it, you may put another question.

By Mr. Pope:

Q. I ask you if it isn't a fact that the markings—strike that out. Isn't it a fact that in the absence of accurate measurements of the three dimensions of the plane markings shown on the ladder, the probabilities of those markings being made by the plane in evidence varies only with the number of planes in the world? A. No, and with the number of nicks in the plane.

Q. Well, of course, the nicks might be in any other plane in the world, might they not? A. Yes, but not that number.

Q. Then it varies only with the other planes in the world, doesn't it? A. No, the number of nicks in the plane have got to be taken into consideration and their distance apart.

Q. All right. Now a plane with smaller nicks and the spaces closer together than on the defendant's plane if stroked at a lesser angle than the stroke angle used by you with this plane, it could make markings of the same shape and the same size apart, couldn't it, the same distance apart? A. You say used at a lesser angle, you mean angle with the length of the board?

Q. At a different angle. A. Will you read the question again?

Q. Well, you used the plane with an angle of about o degrees. A. Yes.

Q. Now, using a plane at the angle, perhaps of sixty degrees, say, with the same number of nicks in it— A. Yes.

Q. —for the same reason, with smaller nicks and the spaces closer together than on the defendant's

plane used by you, if stroked at an angle, for instance, of sixty degrees, being a less angle than you used, then the stroked angle of this plane and the markings of the same would—the markings of the same would be practically the same shape and the same distance apart, wouldn't they? A. I don't understand your question. You say a less angle, and you said I used an angle of zero. I don't see how it could be a less angle.

Q. Pardon me, I meant a greater angle—sixty degrees would be greater than zero, of course.

Mr. Wilentz: The witness has answered he doesn't understand the question.

Q. Well you do now, don't you? A. Yes.

Q. And what is your answer? A. As I understand it, if the nicks are closer together and the plane is held at a greater angle, with the length of the board that I held it, the marks made on the board would be much closer together than they were as I made them.

Q. That is your answer, is it? A. Yes.

Q. Now, since you have not established, Mr. Koehler, what the dimensions of the nicks, or the spacings are in the defendant's plane, and have not established what the dimensions of the nick ridges and the spaces on the ladder rungs are, in fact, having established no dimensions at all of the solids of the ridges on the board and the nicks in the plane, your whole premise fails, and your statement is merely an opinion, isn't it? A. No, I can measure the distance between houses in a block without measuring the size of the houses.

Q. But, you didn't— I am not talking about measuring houses, I am talking about measuring solid bodies on the edge of a piece of wood, you have said that you didn't measure them? A. No, I didn't.

Q. Then, your premise fails, doesn't it? A. No.

Q. And you are expressing merely an opinion from what you see? A. No, I say that I am expressing a fact. Those plane marks correspond.

Q. How can you determine a fact and identify two solid bodies without obtaining first their tree dimensions? A. I am not identifying solid bodies, I am identifying the distance between them.

Q. You told us that you were identifying solid bodies? A. I didn't say that I was.

Q. You told us these were solid bodies on the ladder rail?

Mr. Wilentz: I know, but that is different than saying he identified solid bodies.

Q. Well, are you not, after all, expressing merely your opinion that those nicks were made by this plane?

The Court: He has already answered that question.

Mr. Pope: No, he hasn't.

The Court: I say he has.

Mr. Pope: May I have an exception?

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Q. Did you measure the thickness of the two boards which you had here this morning and which

you say came out of the same board? A. Measured them some time ago.

Q. Wait a minute. Defendant's Exhibits 62 and 63. A. Yes, I put a caliper on them.

Q. All right. Now what do they measure? Take 62, for instance, that is forty-one sixty-fourths in thickness is it? A. Did you say number 62?

Q. Yes. Measure on the edge; measure them both on the edge.

Mr. Wilentz: Measure them, please, wherever— May I suggest that the witness be permitted to measure them wherever he thinks it is proper?

Mr. Pope: He may pick out a low or a high spot on the board. That is possible. That is not a measurement.

The Court: Well, he may measure as he thinks advisable and if that does not suit Mr. Pope he can indicate where he wants him to measure it.

A. This one is forty-six thirty-seconds on the thick edge.

Q. How many? A. I beg your pardon?

Q. Have you got number 62 or 63? A. 62. I should have said sixty-fourths. I will give it in thirty-seconds. It is just scant twenty-three thirty-seconds of an inch on the thicker edge and just scant twenty-one thirty-seconds on the thinner edge.

Q. Twenty-one thirty-second on the thinner? A. Yes.

Q. Now just measure the other board. A. I will take the thicker edge first.

Q. And the same measure. A. The thick edge,

it is scant twenty-three thirty-seconds, and on the thinner edge is it scant twenty-two thirty-seconds.

Q. Your caliper is the same as mine, isn't it? A. Yes, I got it in the five and ten cent store.

Q. That is right. I didn't get mine at the five and ten cent store. Now, just caliper this edge here, will you? Put your caliper in the center there and draw it up tight against the edge. Did you lock it? A. No, it is unlocked very easily.

Q. Then try mine, and lock it.

Mr. Wilentz: Well, now, suppose you permit the witness to do it.

Mr. Pope: All right. Just a minute.

By Mr. Pope:

Q. Is that a fair tight fit—don't force it. A. Yes, it is, over here.

Q. Along the edge? A. Yes.

Q. All the way along? A. A little bit loose.

Q. Well, do you want to make it tighter? A. A little tighter, yes.

Q. Now try it. A. That is good.

Q. Now try it on the edge of the other board. A. Wait a minute. I have got the wrong—

Q. No you haven't. You have got the right edge. A. That is thinner there.

Q. Hah! And there is a difference of three sixty-fourths of an inch, isn't there, practically?

Mr. Wilentz: Just wait a minute.

Q. Don't move the caliper.

Mr. Wilentz: Please let the witness do the demonstrating as long as the questions are being asked of him.

A. I am not sure of the corresponding edges there.

Q. Well, try it again. Now that is the groove edge, isn't it?

Mr. Wilentz: Please let him try it.

Q. Don't force the caliper now.

Mr. Wilentz: You do just as you please, Mr. Witness, may I suggest, for the demonstration?

The Court: Yes, he is asked about the thickness.

The Witness: Yes, measured in the middle here this one is thicker on the edge than this one.

Q. This one is thicker and this is a very fair fit all the way along, isn't it, and this one is a very loose fit all the way along, isn't it? Do you see a difference? Quite a difference there, isn't there? A. It is according to your calipers.

Q. Well, you don't—

Mr. Wilentz: Just a moment, please.

Q. You don't question the accuracy of the calipers, do you? A. No, but I question the place where it was measured.

Q. Well, try it again, then. I measured it all along the board, didn't I, in one spot, and it is a trifle thicker than it is in others, that's true, but it is a fair measurement all along the board, isn't it? A. No, not in comparing them to see if the two boards are cut off the same board.

Q. I didn't ask you that. A. All right, the ends here, there isn't so much difference.

Q. But there is still a difference, isn't there? A. A slight difference, yes.

Q. Yes. Let's see. You didn't change the caliper, did you? A. Yes, I did.

Q. Well, you changed it? A. I was measuring at the end there.

Q. I see. This is a fair tight fit with the caliper, isn't it? A. Yes.

Mr. Pope: (To the jury.) Please try it on the grooved section of the board for yourself and see if there is any difference.

I will offer this caliper in evidence so the jury may take it with them.

Mr. Wilentz: No objection.

The Court: It may be admitted.

(The caliper was received in evidence and marked Defense Exhibit D-73.)

Q. Now, Mr. Koehler, the standard widths of boards of that character is twenty thirty-seconds, isn't it? A. You say width?

Q. The standard width set by planing machines for making boards of that character? A. No.

Q. Is in all plants made twenty thirty-seconds, isn't it? A. No, the width is five and five-eighths inches.

Q. Oh, I beg your pardon, sir; I mean the thickness, standard thickness of a dress board of that character, after it passes through the mill, leaves it approximately twenty thirty-seconds, doesn't it? A. No.

Q. Well, what is it, then? A. Either twenty-four or twenty-five thirty-seconds.

Q. Then this one board, if it is forty-one sixty-fourths is narrower than standard width, is that right? A. It is thinner.

Q. Yes. And the other board, if it is forty-six sixty-fourths, is what, is that an uncommon width, or a departure from standard? A. You said forty-six sixty-fourths?

Q. Forty-three— Yes, forty-six sixty-fourths. Twenty-three thirty-seconds, that is. A. It is narrower than standard.

Q. Narrower than standard? A. Yes; thinner, I would say.

Q. Thinner.

Q. Now what is the standard size of the tongue in boards of that character, standard thickness of the tongue? A. I don't know.

Q. You don't know? A. No.

Q. Well, what is the standard width of the groove? A. I don't know.

The Court: He has answered your question, Mr. Pope.

Mr. Pope: Yes. I am waiting for the jury to get through with the board, your Honor. Perhaps I can go on with something else.

Q. What kind of wood are these two boards, Mr. Koehler? A. Yellow pine; a kind commonly called North Carolina pine.

Q. I show you Defendant's Exhibit Number 62 and I ask you which side of that board was nailed against something else? A. It looks as though something had been nailed against the finished side of the board.

Q. Either that or else the finished side of the board was nailed against something else, isn't that right? A. Yes.

Q. All right. Now, will you just look at the nail holes in there and tell me which side of the board the nail went through?

Mr. Wilentz: Just a minute. There is no testimony yet that the nail went through, as I recollect it.

Mr. Pope: Well, look through the hole and you can see that it evidently did.

Mr. Wilentz: I know, but—

Mr. Pope: All the way through.

Mr. Wilentz: But there is no indication as to when that hole was put in there.

The Court: Well, what is the question?

Q. (Pending question read by the Reporter.)

Mr. Pope: Which side of the board was the head of the nail?

The Court: There is no testimony, as I recollect it, with reference to that nail hole there.

Mr. Wilentz: Just a minute now. I want the witness to understand that these boards were not with the ladder last night in the safe of the County Clerk's office, where we thought they would be. Now I don't mean to infer anything at all, but I just want the witness to

know that; they weren't in the possession of the County Clerk during the night. That's all.

Mr. Pope: We didn't want them on any steam heater. They were not impounded, sir, with the County Clerk. They were our exhibits.

Mr. Wilentz: That's all right. They were left in there one night, and last night they were taken elsewhere.

Mr. Pope: They were taken to Mr. Koehler, because he wanted to examine them.

Mr. Wilentz: And the only purpose of my remarks is just merely to inform the witness, so he won't be misled as to their whereabouts.

Mr. Pope: He won't be misled; don't worry.

By Mr. Pope:

Q. There is a nail hole in there?

The Court: The witness may answer the question or have the question repeated.

A. The nail was driven through from the rough side of the board.

Q. And that is an old nail hole, isn't it? Wasn't put through there last night, was it? A. There is no rust or any indication around there as to its age. I couldn't say.

Q. I didn't ask you how old?

Mr. Wilentz: He has answered the question.

Q. But I say it is an old nail hole? A. I can't tell.

Q. Would you say it was driven through there last night? A. I couldn't say from looking at it.

Q. You cannot tell whether it was or not? A. I couldn't say from looking at it.

Q. Well, does it strike you as being an old nail hole or not, or a fresh nail hole? You are a wood technologist.

Mr. Wilentz: He has already answered, he can't tell.

The Court: You can't tell?

By Mr. Pope:

Q. Can't you tell? A. I can guess.

Q. Well, guess then. A. I think that is an old nail hole.

Q. Yes. Now, do you see some nail holes in this board? A. Yes.

Q. Two of them, aren't there? A. Yes.

Q. Perhaps more, I didn't look. And where were the heads of those nail holes?

Mr. Wilentz: Just one minute. I want to ask counsel first, if your Honor, please, who put the mark around the nail.

Mr. Pope: Somebody put the mark around the nail.

Mr. Wilentz: That is what I wanted to know, and that is why I asked before; when

counsel suggested that we make no marks on the board I indicated at the time it was my impression that counsel had put some marks on it, not for any improper purpose.

Mr. Pope: Before it was introduced in evidence.

Mr. Wilentz: Yes.

Mr. Pope: To direct attention to a split, that is all.

Mr. Wilentz: Now—

Mr. Pope: Do you want me to rub it off? I will do it.

Mr. Wilentz: Now I just want to know who put it there.

Mr. Pope: I did. I am not sure. I won't say yes and I won't say no.

Mr. Wilentz: That is quite in keeping, if your Honor, please.

By Mr. Pope:

Q. Which side was the head? A. I can't tell in that case.

Q. Well, look at the indentations here on the smooth side of the board? A. That doesn't look like a dent of a nail head.

Q. That doesn't? A. No.

Q. That has been pulled out. Doesn't that look like nail holes? A. Yes, it looks like nail holes.

Q. Well, is there any indication of the head on the other side? A. No.

Q. It is right—it is clean and smooth, isn't it? A. Yes.

Q. On the other side? A. Yes.

Q. And do the fibers show which way they are pressing out from the board? A. No, not distinctly.

Q. Not distinctly. So, you are unable to say whether in your opinion those are the indentations from the head of the nail or not? A. Yes, I am unable to say.

Q. I see. Now, you said that this board, referring to Exhibit D-63 had been planed? A. Yes.

Q. Has it been planed or has it been scrubbed with something like sapolio or soap? A. I don't know whether it has been scrubbed or not.

Q. Yes. Well, can you see a single plane mark on that board, on that side of the board? A. The high spots are smooth; the saw wouldn't leave them that way.

Q. But, can you see a plane mark? A. I don't know whether I could by this light or not.

Q. Well, could you see it by any light? A. I might if I had the right light.

Q. Well, if it was planed, it was planed with a common ordinary plane, wasn't it? A. Well, I don't know.

Q. Well, you don't mean to say that it has been run through a planing machine, do you. A. I don't know.

Q. Well, does it look as though it had been run through a plane? A. No, I see no indications on it.

Q. Does it look as though it was planed on a hand planer? A. I don't see any indications of nicks from a hand planer or anything like that.

Q. And if it had been planed by a hand planer, it would show markings by the side of the plane, or

the edge of the plane, wouldn't it? A. Not necessarily on a rough board like that.

Q. Now, Mr. Koehler, both of these boards were cut with a rip saw, weren't they, in the mill? A. I couldn't tell from the markings whether a rip saw or a cross-cut saw was used. But lumber is always cut with a rip saw.

Q. They don't use cross-cut saws to rip boards, do they? A. No.

Q. Look at the saw markings on there; they are at a different angle and different curvature, aren't they, on the two boards? A. Shall I mark on there what I think the curvature is?

Q. No, just answer the question. A. As far as I can see they are the same.

Q. As far as you can see they are the same. Then I will let the jury see. Will you just notice the saw marks on this board, the nearest one to you? A. Yes.

Q. It curves from the left to the right? A. Yes.

Q. Then do you see where the saw marks pick up on the next board? A. Yes.

Q. Well, they begin at a high point and run down like that and curve over? A. No.

Q. They don't, eh?

Mr. Pope: We will let the jury look at them. Maybe their eyes are better.

Q. You spoke of the apparent location of the bead in the center of each board and you called attention to the fact that the bead in each board was about equally distant from the edge of the board, is that correct? That's what you did, didn't you? A. You mean in one board it was equally distant from the two edges?

Q. Both of them, no, equally distant from the edge in both boards. A. Yes.

Q. Yes. Now, that bead is put on there by a molding machine with a beader, isn't it? A. Yes.

Q. And those beaders are standard, are they not? A. No, not to narrow limits.

Q. They are standard manufacture, aren't they? A. There are different companies that make them and they are not all alike.

Q. They are not all alike, the bead machines manufactured? A. No.

Q. They are not made to a standard? A. Not to a very fine standard.

Q. Will you give me the name of one company that makes a bead that is different in size and dimensions, from any other company? A. No, I cannot do that.

Q. No. Then why do you say that they are not standard? A. Because I have seen them differently in different boards.

Q. Oh. Where did you ever see them differently in different boards? A. I have seen center beaded stock a number of times. I remember comparing boards.

Q. You mean—

Mr. Wilentz: Let him answer the question, please.

Q. Do you mean that there are different styles of center beading? A. If by styles you mean that they are radically different, no; but there are different patterns for each knife that makes them. Those knives are sharpened every once in a while.

Q. Why, of course. A. And when they get resharpened, why, they get a slightly different shape.

Q. Do they get a different shape? A. Slightly.

Q. They merely take off a little more metal, don't they? A. A little more metal.

Q. The knife still remains a beading knife, doesn't it? A. Yes.

Q. Yes, certainly. And there isn't any difference between the rule used by a man in a South Carolina mill to make a piece of standard tongue and groove board, beaded in the center, and the rule used by the man in a North Carolina mill to make the same kind of a board, is there? A. Not in the grading rule, no.

Q. They all use the same rule, the same two-foot rule, or whatever they are, standard rules, don't they? A. Oh, you mean the measuring rules?

Q. To set their fence. A. I suppose so.

Q. Yes. So that after all boards of that character are standard sizes, are they not? A. That does not necessarily follow.

Q. No. Of course, a board will change its size overnight sometimes due to atmospheric conditions, wouldn't it, slightly? A. Yes.

Q. Yes. And when boards have been wet or have been damp or have been piled and have been taken out of a pile and brought into a warm room, those boards will shrink, will they not? A. Yes, if they have become moist enough so that they will dry out when they are brought into a warm room, they will shrink.

Q. Well, if they have been piled in a rough lumber pile in a yard and are cut off of the ends of the boards and brought into a warm room and left into a warm room overnight they will shrink, won't they? A. Yes, under normal conditions they will.

Q. Yes. Under normal conditions they will shrink. They will shrink anyway, won't they, if they have been damp? A. Yes, if they have been damp and the room isn't damp.

Q. Certainly. Now, the black spots that you mentioned on those boards, are they not spots which

look like tar paper, stains from tar paper? A. They look like it.

Q. Yes. You do admit, however, that the grains in these two boards match? A. Yes.

Q. Yes. Now, of course, if those two boards were ever together they had to be together that way, didn't they (indicating)? A. Yes.

Q. Or else this way? A. That is, if they were close together.

Q. I say, if they were ever a part of one board, they had to be together that way or this way? A. No, they might be a part of one board and several feet be between.

Q. Oh, they might be, but that is what I am coming to. I mean that is the natural normal position in which they would be together, whether there was a piece taken out of here or not, the normal run of the board? A. End to end, certainly.

Q. Certainly, end to end. Now, just look at the saw cuts on the end there. Does that look as if those two ends had ever been together? A. You mean the saw cut on the end grain?

Q. Yes, the saw cut. A. No, those saw cuts do not correspond.

Q. No. Then is it your idea that the witness for the purpose of deceiving us cut those boards apart and cut a piece off of one end of them? A. I don't know why he did it, but that is what he did, in my opinion.

Q. Well, is it your idea that it has been done? A. Yes, there is a piece missing between the two.

Q. And you say that because the grains match, don't you? A. They match practically perfectly when you hold them a short distance apart.

Q. They were brought here for that very purpose, to show that grains match? A. Yes.

Q. Now, you say that they were once a part of

the same board, because you find that the grains match? A. Yes.

Q. And that is really your only reason for it, isn't it? A. No. The heart wood in the two, this darker portion, is exactly the same width in the two; you can see from there to there (indicating).

Q. That is just what the witness spoke of.

Mr. Wilentz: No. He said it was already—

Q. When you talk about the heart, don't you mean the color, don't you—

Mr. Wilentz: He said the surfacing.

The Court: We will have to proceed in an orderly fashion. Now, what is the question?

By Mr. Pope:

Q. When you speak of the heart wood, you mean the coloring, don't you, referring to the coloring? A. I mean this coloring of the darker portion in the center of the board. Every tree has a dark color called the heart wood.

Q. That is what I mean, so we both agree, don't we? A. Yes.

Q. And every tree has heart wood, so-called, the heart wood, doesn't it? A. If it is old enough.

Q. Well, if it is old enough to make boards like this? A. Yes.

Q. And that heart wood is darker than the outer edges of the board, isn't it? A. In most trees.

Q. Well, isn't it so in almost every tree? A. No, in spruce, in white spruce there is no difference in the color of the heart wood, the sap wood.

Q. I believe you said that you examined the nail holes some time in 1933—was it? A. Yes.

Q. Would you mind telling me the date again. A. It was the first week in March, 1933.

Q. That was a year after the kidnaping. A. Yes.

Q. And how do you account for the staggering of the nails in the one by six pieces, one by six piece? If you can account for it. A. In this wider board, you mean?

Q. What? A. In that S-226?

Q. Yes. A. That's because the joists underneath that board were spliced with the ends, one along side the other, and one nail was driven into one joist and the other into the other joist.

Q. That's the way you account for the staggering? A. Yes.

Q. Now, you referred to the two pine boards and you said, I am referring now to the Defendant's Exhibits 64 and 65—you said that the end grains there do not match. A. Yes.

Q. Well, they match better than the end grains on the ladder rail and on the attic floor, don't they? A. No.

Q. You don't think a piece has been sawed out of here, too, do you? A. I don't know what the connection is between the two.

Q. I see. And you, as a wood technologist, say that those grains, those end grains there, do not show a better matching than the end grains that you have called attention to, on the attic floor board and the ladder rail. A. Matching them the way I matched them, these do not show as good matching as those.

Q. Now, as a matter of fact, the ends on the ladder rail and the other do not match anyway, do they? A. Yes, they do.

Q. And referring to your exhibit 232, where you have attempted to draw lines with a blue pencil from one end to the other, that merely represents your

opinion of how the missing block of wood, which you never saw, might have fitted in there and shown grain markings, doesn't it? A. No; that is merely a connecting up of corresponding rings in the two ends.

Q. That is merely your opinion, isn't it? A. No, I actually did—

Q. You never saw the missing block, did you? A. Well, that isn't a question, as I understand it.

Q. Well, you cannot tell what the markings were on a piece of wood that you never saw, can you? A. No, I don't intend to say it.

Q. Then you are expressing your opinion of how those markings appeared on that missing block? A. I am showing there how corresponding rings in the two connected up.

Q. But whatever you are showing, you may base your opinion upon your showing if you wish, but you are expressing your opinion of the way that missing block would look if you had it here to insert in there, aren't you? A. No, I stated that there is nothing—

Q. All right, you said no. Of course, you never saw the so-called missing block, did you? A. No.

Q. And you never saw a photograph of it? A. No.

Q. Did you? And yet you are not expressing an opinion of how the grain looked in a piece of wood that you never saw?

Mr. Wilentz: Well, if your Honor, please—

A. I am not expressing that opinion.

Mr. Wilentz: —he stopped him from explaining before. He has answered the question. I won't press it.

The Court: Did you answer the question?

The Witness: Yes.

The Court: Let me have the answer.

Mr. Pope: He says he is not expressing an opinion.

The Court: Yes. Now then, Mr. Pope.

By Mr. Pope:

Q. Do I understand you to tell this jury that that is the way the grain would look on the missing block if it could be produced and presented here in court? A. No, I said when those rings are connected up—
Q. All right.

Mr. Wilentz: Go on, answer the question.

The Court: Answer the question.

A. I said when those rings are connected up like that, there is nothing inconsistent about that pattern.
Q. Well then, it is a matter of opinion, isn't it, based on what you see? A. Yes.
Q. Yes. A. But not—
Q. Certainly.

Mr. Wilentz: Not what?

The Witness: Not what he is trying to get at.

By Mr. Pope:

Q. What am I trying to get at? A. The way I

understood your question, you said that that is my opinion that that is the way the pattern ran. It is my opinion that there is nothing inconsistent about that pattern.

Q. Then you are expressing your opinion that there is nothing inconsistent? A. Yes.

Q. In the pattern as you have reconstructed it. That is what we have been trying to get at for an hour.

The Court: Now are you through with that?

Mr. Pope: That is all. We finally got it.

Q. Now, how high do these Southern pine trees grow, average height? A. Sixty, seventy, eighty feet, depending upon the soil.

Q. About— A. Sometimes a hundred.

Q. And the approximate output is about twelve billion feet per year, isn't it, in normal times? A. Of Southern pine?

Q. Yes. A. Something like that. I don't remember those figures.

Q. In normal times twelve billion feet, board feet? A. (No answer.)

Q. That is approximately correct? A. Yes.

Mr. Wilentz: He has answered.

Q. Now assuming that you have a Southern pine tree such as we have been talking about that is eighty feet high and the lumberman wants to cut it into twenty-foot lengths, what would you call the first cut, the cut nearest the ground? A. Butt log.

Q. Butt log. And what would you call the second cut? A. Second log.

Q. But it would still be the butt log, wouldn't it?

A. No. The butt log is always the one next the stump.

Q. What would you call the third? A. Third log.

Q. But they would all three still be butt logs, wouldn't they? A. No.

Mr. Wilentz: He has already answered they wouldn't. That is why we are taking so much time.

The Court: He has already answered your question, Mr. Pope.

Mr. Pope: If your Honor, please, the Attorney General repeatedly asked witnesses questions five, six, seven, eight, nine, ten times over; so if we offend once in a while—

The Court: You may even be permitted to do it yourself if you insist upon it, but I am telling you that he has already answered your question.

By Mr. Pope:

Q. Now, may I see your picture, sir, the picture of the—(showing photograph to witness). This is a picture of a short-leaf yellow pine tree, or three or four short-leaf yellow pine trees.

Q. Now, would you mind coming down here to the jury a minute with that picture and tell me when that tree started to grow, if down near the ground it was not covered with limbs? A. Yes, when it started to grow.

Q. Yes, and as it grew up it pruned itself of the short limbs, didn't? A. The lower limbs.

Q. Of the lower limbs, and what was the, what

was the influence of those lower limbs upon the board when it is lumbered and sawed? A. The knots left by those limbs show near the center of the trees.

Q. Small knots, aren't they? A. Yes.

Q. Because of the pruning process. A. Yes.

Q. Now, as the tree grows up, when it gets up above the ground, then there are limbs on it, aren't there? A. Yes.

Q. And when you first commence to get into the limb section of the tree, the limbs are thick, are they not? A. Do you mean the limbs are close together?

Q. Yes, you may go and sit down. Thick or close together. A. Well, it depends on the tree. Of course in some trees they are closer together than in others.

Q. These trees, these trees. A. Well, even in short-leaf pine, some are closer together than others.

Q. Is this short-leaf pine? A. Which?

Q. What we have been talking about, the ladder rail? A. That is so-called North Carolina pine, or loblolly.

Q. Is it short-leaf quality? A. That I can't say, whether it is short-leaf or loblolly pine.

Q. You are a wood technician, aren't you? A. Yes.

Q. And one of the purposes of your science is to identify woods, isn't it? A. Yes.

Q. You can't say whether this is short-leaf or long-leaf, now. Yellow pine? A. No, I made a thorough study of those specimens and you cannot tell them apart.

Q. I see. Well, then, is this picture (S-307) of short-leaf yellow pine—is this a fairly accurate picture of South Carolina pine trees, such as these boards are said to have been cut out of? A. Yes, it looks that way.

Q. They look that way? A. Yes.

Q. Well, are they accurate pictures of those trees? A. Well, I haven't seen trees just like that.

Q. Now, those are Western conipers, are they not, Mr. Koehler? A. No.

Q. You say those are not. That is not a picture of Western coniper trees? A. Short leaf; short-leaf yellow pine.

Q. Well, there are billions of feet of short-leaf yellow pine in the West? A. No.

Q. Among the coniper forests, are there not? A. No, none there.

Q. None there. Well, where did that picture come from? Did you bring it here? A. I obtained that from a lumber dealer.

Q. Where? A. In Trenton.

Q. So then you don't know whether it is Southern pine, North Carolina pine, South Carolina pine, or what it is, do you? A. So far as the species is concerned, I know nothing more than what it says on here; but this was introduced to show certain principles of tree growth—and it is correct, so far as that is concerned.

Q. It shows the method or the principles of tree growth after it has matured, doesn't it? A. In the background there are some smaller trees.

Q. Yes. A. Which are not matured.

Q. But when the tree is first planted and when it starts to grow from the ground, the bottom limbs are close to the ground, are they not? A. Yes.

Q. And as the tree grows up, the bottom limbs drop off or prune themselves? A. They do.

Q. And then you come into the limb section, the first limb section of the tree, and there they are thick, are they not? A. As a rule.

Q. And that is still called the butt section of the tree, isn't it, among lumber men? A. No.

Q. And aren't those, aren't the knots in the boards cut from that section which you call the sec-

ond section of the tree, are they not called among lumber men and by lumber men, butt knots? A. Never heard that expression.

Q. Never heard it? A. No.

Q. I understood you to say that the little sample of tree that was cut in two, which the gentleman from Connecticut brought here, is no North Carolina pine or Southern pine? A. I said it was not yellow pine.

Q. Well, I am asking you if it is Southern pine? A. If by Southern pine you mean yellow pine, no. If by Southern pine you mean to include some of the white pine that grows in the mountains in North Carolina, yes, it might be.

Q. By Southern pine, by yellow pine, by short-leaf or long-leaf pine I mean that kind of pine that there is in S-226 and nothing else? A. Now what is the question, please?

Q. Do you say that the tree which was brought here by Mr.—I can't just recall the name, the gentleman from Massachusetts, and was exhibited here is not the same kind of a pine tree that this one is?

Mr. Wilentz: He didn't testify to that. He said one was white pine, as I remember it, not yellow pine.

Mr. Pope: I don't care what he calls them, I asked if it is the same kind of pine as that board.

Mr. Wilentz: He has never said it was or wasn't.

Mr. Pope: Let him say.

A. That stem which he held up here most of the time is not the same as that.

Q. Now what is the difference? A. That stem was white pine and this is yellow pine; considerable difference.

Q. You mean the stem, the part of the tree or the two parts of the tree that he had here is white pine? A. Yes.

Q. And you set up your judgment against the man who planted and raised the tree, do you? A. I won't change my opinion no matter what he says about it.

Q. That is merely your opinion, isn't it? A. Why, I think it is more than opinion. I know what white pine looks like.

Q. Did you ever have any experience in planting and growing pine trees? A. No, but I had in identifying them.

Q. You haven't planted and grown thousands and thousands of pine trees, have you? A. No, not thousands.

Q. No, that is all.

Mr. Wilentz: Just one question and then, if your Honor, please, I understand the jury wants a recess and we certainly do.

Re-Direct Examination by Mr. Wilentz:

Q. After the examination by Mr. Pope, is there anything in that examination, question or answer, that causes you to change or modify your opinion as to the relationship between S-226 and the ladder rail? A. Nothing.

Mr. Wilentz: That is all, sir.

(Witness excused.)

Mr. Wilentz: May we have a recess, if your Honor, please, for five minutes?

The Court: Take a recess for five minutes.

(At 11:49 A. M., a recess of five minutes was taken.)

(After a short recess.)

(Twelve noon.)

(The jury was polled and all jurors answered present.)

Mr. Pope: If your Honor, please, my associate has called my attention to the fact that when Mr. Koehler was on the stand and I asked him about the butt section of the tree, that I used "butt" and not the butt end. May I just ask Mr. Koehler about that, that I left the word "ends" out of my question, the butt end section.

The Court: Yes.

Mr. Wilentz: Is it limited to that one question?

Mr. Pope: Yes, it is limited to that one question.

Mr. Wilentz: Just stand up where you are, Mr. Koehler. Is that all right?

Mr. Pope: That is all right.

By Mr. Pope:

Q. Mr. Koehler, when I asked you about the three sections of the tree, I asked you if these were not called the butt sections. I meant to ask you if the lower end of each of the three or four sections of the tree is not called the butt end? A. (From the floor of the court room.) Yes, it is.

Mr. Wilentz: Mr. Singer.

LEO SINGER sworn as a witness in behalf of the State in rebuttal:

Direct Examination by Mr. Wilentz:

Q. Mr. Singer, you live where? A. 2386 Ryer Avenue.

Q. And did you live there in March, 1932? A. Yes, sir.

Q. And particularly on March 1st, 1932? A. Yes, sir.

Q. Do you know Mr. Kiss, the man who testified in this case for the defense? A. I do.

Q. Did he come to your home some time in March, 1932— Just answer the question yes or no. A. March, maybe the end of March or the early part of April.

Q. Some time in March? A. Yes, sir.

Q. When he came to your home did you have a radio there? A. I did.

Q. When did you buy that radio?

Mr. Reilly: I object to this as not rebuttal. There is nothing in the testimony of Mr. Kiss concerning any radio.

Mr. Wilentz: That is proper rebuttal. I will connect it up, if your Honor, please—

The Court: Well—

Mr. Reilly: You can't rebut something that is not in the evidence.

Mr. Wilentz: We will show, if your Honor, please, by way of connection, that when Mr. Kiss came to this man's home they discussed the radio and the radio didn't get there until March 10th. That is rebuttal.

Mr. Reilly: There may be lots of things about a radio— There is no evidence in Kiss's—

The Court: That seems to be in confirmation of an affirmative fact which I understood you to establish as part of your case.

Mr. Reilly: No, sir.

Mr. Wilentz: Well, I will withdraw the question for a minute.

By Mr. Wilentz:

Q. What date was Mr. Kiss at your home? A. Mr. Kiss came to my home some time the end of March or the early part of April.

Q. And how do you tell that it was after the 1st of March—was it after the 1st of March? A. It was way after the 1st of March.

Q. And how do you tell that it was after the 1st of March? A. When Mr. Kiss came up to me—he called me up—

Mr. Reilly: Now I object to conversations to establish anything.

The Court: Never mind about the conversation.

By Mr. Wilentz:

Q. Never mind about the conversation. Can you tell it by the fact that you had a radio in your home?

Mr. Reilly: I object as leading. They will get this radio in no matter how they get it in.

Mr. Wilentz: It belongs in.

Mr. Reilly: It is not in Mr. Kiss's testimony.

Mr. Wilentz: I withdraw the question, anyway.

By Mr. Wilentz:

Q. How many times was Mr. Kiss at your home? A. Once.

Q. Once? A. Only once.

Q. Was he there on March the 1st, 1932? A. Positively no.

Q. Did you get a report of his testimony over the radio? A. I heard his testimony January 31st, at 2 o'clock in the afternoon.

Q. I see. And as a result of that did you get in touch with the authorities? A. I did; that is, I made a statement to the press to the fact that I am going to.

Mr. Wilentz: Now you may take the witness.

Cross-Examination by Mr. Reilly:

Q. Now what date did you say he was in your house? A. Some times late in March; late in March or in early part of April.

Q. But he was in your house? A. He was.

Q. And he knows you? A. He knows me.

Q. No doubt about that? A. No.

Q. How long do you know him? A. I met Mr. Kiss some times in 1930.

Q. Yes. And after Kiss testified here, which was on a Thursday, wasn't it? A. Yes, sir, Thursday.

Q. Yes. You have a daughter in your family, haven't you? A. I have.

Q. How many daughters? A. One.

Q. One. How old is she? A. She is—she will be twenty-one February the 12th.

Q. Is she here in court? A. No.

Q. Is she down here in Flemington? A. She is not.

Q. Is she in Trenton? A. No, sir.

Q. She is engaged to be married, isn't she? A. No; not that I know of.

Q. Is she keeping company? A. No.

Q. But she was very much put out, wasn't she, that her name and address was mentioned in the paper? Wasn't she? A. So was I.

Q. She was, wasn't she? A. She was?

Q. Yes. A. Well, I didn't see her name in the paper at all.

Q. You didn't see—but your name and your address was in the paper, wasn't it? A. Yes.

Q. And she felt very hurt about it, didn't she? A. Very much, so was I.

Q. Yes. I am talking about your daughter now. And wasn't it after your daughter, twenty-one years of age, saw her name and heard her name over the

radio and saw her name in the newspapers, that she told you to try and counteract Mr. Kiss's testimony and take her name out of the papers? A. That is not the truth, sir.

Q. Now, I suppose you know everything you did in March, 1932, every day of the month? A. No, I don't.

Q. And everybody that was in your house in March, 1932, the exact date they were there, do you? A. I don't.

Q. No. And you can't tell me, can you, how many people came to visit you in March, 1932? A. No, sir.

Q. Or what days they came? A. No, sir.

Q. Or what time of the day they come? A. What time of the day I could tell.

Q. Every person? A. Almost every person, yes.

Q. Don't they come in the daytime or do they come at night? A. In the daytime I am not home.

Q. So you don't know who comes in the daytime? A. No.

Q. In the evening when you are home you have many visitors? A. No, sir.

Q. Well, you have some visitors during the month? A. Very few.

Q. You haven't any friends at all? A. I have many friends.

Q. You have many friends. How long have you lived in New York? A. Twenty years.

Q. Now, as a matter of fact, Mr. Singer, you came down here, did you not, at the request of a certain columnist of a New York newspaper? A. No, sir.

Q. What made you hesitate, to think whether you did or didn't? A. I didn't come here on his invitation.

Q. Well, he talked to you, didn't he? A. Yes, many of them did talk to me.

Q. Many of the columnists, but one in particular induced you to come down here, didn't he? A. No, sir.

Q. Did he promise your daughter a theatrical engagement? A. No.

Q. Did he? A. Positively no.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. So far as you know, he doesn't know your daughter, does he? A. No, he don't know my daughter. He has seen my daughter then when he come up to my house.

Mr. Wilentz: That is all; thank you.

OTTILIA HOERBER, sworn as a witness in behalf of the State, in rebuttal:

Direct Examination by Mr. Wilentz:

Q. Mrs. Hoerber, is that your signature (showing paper to witness)? A. Yes.

Q. And who did you give this paper to? A. I give this—Mr. Fisch was coming to me in my house mit us.

Q. Did you give it to Mr. Fisch?

Mr. Reilly: I object.

A. Yes.

Mr. Wilentz: Just mark it for identification, please.

(Paper referred to marked State Exhibit S-308 for Identification.)

Q. You don't know how the State got possession of this paper, do you?

Mr. Reilly: I object to it.

A. No.

Q. Do you know how the State got possession of this paper? A. No.

The Court: Well, there is an objection here. What is the point of the objection?

Mr. Reilly: It doesn't make any difference how the State got it. This woman might give an answer which would be very detrimental to the defense and would not be competent.

Mr. Wilentz: She has already said No.

Q. Can you tell when you gave him this paper? A. On the 2nd April, 1932.

Q. You gave Mr. Fisch this paper you say on the 2nd of April, 1932. Where? A. In my house.

Q. What time of the day or what time of the night was he there? A. He was coming after we had supper, about seven o'clock.

Q. And how long did he stay that evening? A. Oh, I can't say exactly.

Q. I don't want to know exactly. A. But he talks to us for one-half hour, with my son, then I talk business with Mr. Fisch. This may be nine or the half past nine.

Q. That he left? A. It can't be ten o'clock—I am not more exact.

Q. That is your best judgment? A. Yes.

Mr. Wilentz: I offer the paper in evidence. (Hands paper to Mr. Reilly.)

Q. Oh, whose handwriting it is, outside of the signature? Who wrote that paper out? A. Who wrote the paper out?

Q. The receipt—who wrote out the receipt? A. I suppose Mr. Schlesser, but I am not exactly.

Q. You don't know it? A. I don know it. I suppose Mr. Schlesser.

Mr. Reilly: Well then, I object to it.

Mr. Wilentz: Well, all right, if it is objected to, I won't press it. I thought maybe counsel wanted—

Mr. Reilly: Is that all?

Mr. Wilentz: That is all.

Cross-Examination by Mr. Reilly:

Q. When were you first asked to come down here? A. Mr., Mr.—

Q. When? A. Oh, when I come first here?

Q. Last week? A. I come on Wednesday evening.

Q. You have been down here ever since? A. Mr., Mr.—

Q. Have you been down here ever since? Well, now you certainly know where you have been since last Wednesday, don't you? A. I was here since last Wednesday, I was here every day in the court here.

Q. Yes. Well, then, at night you were back in Trenton? A. Yes.

Q. Is your memory good? A. Yes.

Q. What time did you leave here last Wednesday to go back to Trenton? A. In the evening.

Q. What time? A. Oh, we were, six o'clock back in Trenton.

Q. Sure of that? A. No, Wednesday, I wasn't—excuse me, that is a mistake—we was coming on Wednesday to train, and the first time I was on Thursday morning here in the court, that is correct.

Q. So that you made a mistake in the last week, didn't you? A. I made a mistake?

Q. In the last week, didn't you? A. I say Wednesday instead Thursday.

Q. Well, it was a mistake, wasn't it? A. Yes, that was a mistake.

Q. Now, tell me what time you got over to Trenton Thursday night. A. We was there about six.

Q. Not about what was it, is that the best you can say, about? A. Well, it was all over here, we went down.

Q. Thursday night. Well, what time did you get back to Trenton? A. After five o'clock.

Q. Well, how much after five o'clock? A. I can't say.

Q. You can't remember, can you? Now, did you go back to Trenton Friday night? A. Yes.

Q. What time did you go back to Trenton Friday night? A. The same time.

Q. The exact minute? A. We was six o'clock in Trenton, because I know it.

Q. Six o'clock in Trenton? A. Yes.

Q. How many people did you see Thursday night? A. (No answer.)

Q. In Trenton? A. In Trenton?

Q. How many? A. Thursday night, how much I see?

Q. A great many A. I see, I see.

Q. A great many? A. On Thursday I see Mr.—

Q. No, the number of people. I don't mean their names. A. You want—?

Q. The number. A. To who I asked?

Q. Yes. A. There was many people at the hotel, you know.

Q. No, I mean the people you were in contact with and spoke to; how many people Thursday night, if you can remember? A. Six.

Q. Six? A. Yes.

Q. No more? A. There was Mr.—I suppose six.

Q. Six. You suppose it is six? A. Yes.

Q. Now this is last Thursday; that is the day before yesterday? A. Yes.

Q. That is what I am talking about. A. Yes.

Q. And you only suppose it is six? A. Yes.

Q. How many did you talk to last night, if you can remember? A. Oh, last night I talked mit—with more people there.

Q. How many? A. Oh, about 10, 12.

Q. About ten or twelve? A. Yes.

Q. And you talked over what you were going to testify to here today? A. We were talking over—

Q. Didn't you? A. Yes; we were talking over the case.

Q. Yes. And who brought you down from New York? A. Mr. Kurtz, a lawyer.

Q. A lawyer? A. Yes.

Q. Now you say April the 2nd, what year? A. Yes.

Q. What year was this Fisch in your house? A. April 2nd, 1932.

Q. What day of the week? A. This was a Saturday.

Q. What day of the week was the 16th of April, 1932, do you know? A. Pardon me, what?

Q. What day of the week was the 16th of April, 1932, if you know? A. Saturday.

Q. The 16th? A. No, the 2nd.

Q. Well, I am asking you about the 16th. What day of the week was that, if you know? A. The 16th of April?

Q. Yes, 1932. A. I don't know.

Q. All right. What day of the week was the 23rd of April, 1932? A. The 23rd?

Q. Of April, 1932? A. Why, I don't know.

Q. Now when Fisch came in, did he sign a ticket just what time it was, when he came to your house? A. What time? Oh, no.

Q. No. Now you are trying to remember, is that a fact? A. Yes.

Q. After talking to a lawyer and after talking to some people for the last two nights in Trenton? A. Yes.

Q. You come down here and do your best to remember that Fisch was in your house between seven and nine? A. Yes.

Q. That night? A. Yes.

Q. Is that right? A. That is right.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. And you have a paper which you signed on April the 2nd, 1932, to refresh your recollection, haven't you? A. Yes, I have one.

Q. Now how old are you, Madam? A. Sixty-one.

Mr. Wilentz: I see. All right.

Q. Where did you live in 1932, in April? A. 1692 Lexington Avenue, New York.

Q. Near what street? A. Lexington Avenue.

Q. Near what cross street? A. 106th Street.

Q. 106th Street? A. Yes.

Q. Is that Harlem or the Bronx? A. No, that is Harlem.

Q. Harlem? A. Or we say—how do we say—Manhattan.

Q. It is the East Side of New York? A. Yes, das is right.

Q. And the Bronx is the East Side of New York: is that right? A. Right.

Q. Do you know where St. Raymond's Cemetery is in the Bronx? A. No, I don't know it.

Q. Well, 116th Street would be only 100 blocks from 216th Street, wouldn't it? A. Excuse me; you say 116, I say 106th Street I live.

Q. One Hundred and what? A. 106th, not 116th.

Q. 106th? A. Yes.

Q. 106th. All right. I don't want to confuse you as to where you live. A. Yes, but—

Q. 106th: I have that right? A. Yes.

Q. That would be only 100 blocks away from 206th, wouldn't it? A. Yes.

Q. And 150 blocks from 256th Street, correct? A. That is correct.

Q. That would be about three or four miles difference between 256th Street and where you lived in the Bronx on the East Side of New York, on April 2nd, 1932. A. That's right.

Q. Did you ever ride it in an automobile? A. I?

Q. Yes. Did you ever go up New York from your house out through Pelham in an automobile? A. I have ride with automobile, but I don't know my way where this was.

Q. Well, it wouldn't take much more than ten or fifteen minutes, would it, to ride from your house at 106th Street, East Side, Manhattan— A. Yes.

Q. (Continuing.) —to 250th Street or 260th Street or 270th Street, St. Raymond's Cemetery on the East Side of Manhattan, would it. A. Maybe.

Q. About ten or fifteen minutes in an automobile? A. Yes, I think so.

Mr. Reilly: That's all.

Mr. Wilentz: That's all, madam. Thank you.

ERNEST MILLER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Peacock:

Q. Mr. Miller, where do you live? A. Closter, New Jersey.

Q. And what is your business? A. United States Brown Potter Works.

Q. On March 1st, 1932, did you know Violet Sharpe? A. Yes, sir.

Q. Were you with Violet Sharpe on the night of March 1st, 1932? A. Yes, sir.

Q. Where did you first meet her? A. Where did I first meet her?

Q. Yes. A. I was going towards Englewood and two girls were walking along the side of the road.

Q. No. I mean on the night of March 1st, what time did you see her the first time? A. The first time on March 1st?

Q. Yes. A. At eight o'clock.

Q. Where did you see her? A. I met her at the Morrow Estate.

Q. Who was with you at the time? A. Elmer Johnson and K. Minners.

Q. Did you have an automobile? A. Yes, sir.

Q. You said at eight o'clock you met her at the Morrow Estate? A. Yes, sir.

Q. Did Violet Sharpe and Johnson, Minster and yourself go anywhere in an automobile? A. Yes, sir.

Q. Where did you go to? A. Orangeburg Peanut Grill.

Q. And what is the Peanut Grove? A. Well, it is a place where they dance and have something to eat and drink.

Q. Do you know about what time you arrived at Peanut Grove? A. About eight-thirty a quarter to nine.

Q. Did you and Katherine Minners and Johnson and Violet Sharpe stay at the grill that evening? A. Yes, sir.

Q. Until what time? A. About ten-thirty, quarter to eleven.

Q. What did you do then? A. Drove to the Morrow Estate, Englewood and left her off in the same place by the door.

Q. At the Morrow house? A. At the Morrow Estate in Englewood.

Q. Did you see her go in the Morrow house? A. Yes, sir.

Q. About what time did you arrive there? A. About eleven o'clock.

Q. Then from the time that you met Violet Sharpe at eight o'clock at the Morrow Estate she was constantly in your company until you returned her to the Morrow home at eleven o'clock on the night of March 1st, 1932, is that correct? A. She was with us from eleven, from eight o'clock to eleven o'clock.

Mr. Peacock: Take the witness.

Cross-Examination by Mr. Reilly:

Q. I show you exhibit 46 for the defense and ask you if that is Violet Sharpe's picture? A. (Witness examines photograph.) Yes, sir that is her.

Q. She had a sister, didn't she? A. She had a sister, yes, I believe, I don't know.

Q. Did you ever meet her? A. Why, I don't remember her pictures at all.

Q. I didn't ask you about any pictures, did you ever meet the sister? A. Well, I don't know who the other girl was that rode with her.

Q. Were you going to say picked up? A. Sir?

Q. Were you going to say picked up? A. No.

Q. Well, I will go back and ask you, how did you meet Violet Sharpe? A. She was walking along the road. She asked me for a ride.

Q. You didn't know her? There was no introduction? A. She waved her hand, I stopped.

Q. Yes, she got in your car, did she? A. Well, she must have mistaken me for somebody else.

Q. Oh, I see. You have got a face that corresponds with somebody else she must have known, is that it? A. I don't know.

Q. Well, I suppose— A. And I asked her how far she was going, she said Englewood.

Q. When was this March 1st, March 1st? A. No, that was about, I would say about a week before.

Q. Well, now, just tell me where you met her the first time you ever saw her. A. The first time I ever saw her was near the Morrow's estate.

Q. You live in Englewood? A. I live in Englewood? No.

Q. Where do you live? A. I live in Closter, New Jersey. That's my home. I live now since I was married in Bergenfield.

Q. Let's get back to 1932 when you weren't married—is that right, you weren't married? A. I weren't married then, no, sir.

Q. How near to the Morrow estate did you live in 1932? A. I didn't get that.

Q. How near to the Morrow Estate did you live in 1932? A. How near? About I think around five or six miles.

Q. What were you working at at that time? A.

I wasn't working at all, only doing odd jobs here and there.

Q. When was the last time you "odd jobbed" before you picked up this girl on the road? A. Odd jobs?

Q. Yes. A. I do not know. Don't remember.

Q. Are you still odd jobbing? A. No, sir.

Q. What are you doing now? A. United States Bronze Powder Works; been there about five or six months.

Q. Was anybody with you the night you first met this Violet Sharpe? A. The first night I seen her?

Q. Yes. A. No.

Q. Did she tell you her name? A. Yes, I did.

Q. Did she tell you her name? A. No, sir.

Q. And the first night you drove her where? A. The first night we were out together?

Q. Yes. A. Orangeburg, Peanut Grill.

Q. Peanutville? A. Peanut Grill. They don't serve pretzels there, that is why they call it Peanut Grill.

Q. Just turn around and face this jury that you are trying to talk to and we will try to get this over with. Peanut Grill, is that what they call it? A. Peanut Grill, that is what they call it.

Q. All I want to know from you is what time in the evening did you see the strange girl on the road that you didn't know that hailed you and got into your car? A. I don't remember exact date or time.

Q. And the very first time—it was dark, wasn't it, when you met her the first time? A. Very first time?

Q. Yes. A. I do not remember. I think it was in the afternoon. I am not sure.

By Mr. Reilly:

Q. Do you pick up so many girls on the road

around Englewood— A. I am not in the habit of it.

Q. Wait a moment. Do you pick up so many girls in the afternoon on the roads around Englewood that you don't remember what time it was or what day it was? A. I am not in the habit of picking up girls.

Q. This girl you did take in your car? A. Yes, I did.

Q. That's what we call "picking up," isn't it? A. Not exactly.

Q. What do you call it? A. If the girl takes me for somebody else, I don't call that picking up.

Q. Well, you found that out as soon as she got in the car, that you weren't the man she thought you were? A. No, I didn't know what was on her mind.

Q. Did she ever tell you she took you for somebody else? A. Yes.

Q. That night, the first night you met her? A. Probably she did.

Q. Well, don't you know? A. It is quite a ways back to remember correctly.

Q. I don't suppose you ever studied for the Police Department. Why the smile? Do you think it is funny? A. Well, I have got nothing to be ashamed of.

Mr. Wilentz: He isn't smiling.

Mr. Reilly: Yes, he is.

Mr. Wilentz: Just a minute. Just a minute now. The witness wasn't smiling at all.

The Witness: I always smile, as far as that goes.

The Court: I think that is not proper cross-examination.

Mr. Wilentz: Young man, please don't fight with Mr. Reilly.

The Witness: I am not excited.

Mr. Wilentz: No, just a minute. Please don't fight with Mr. Reilly. Answer his questions.

The Witness: I am not fighting.

Mr. Wilentz: Just answer his questions.

The Court: So we will strike out Mr. Reilly's admonition to the witness not to smile.

By Mr. Reilly:

Q. You know I wasn't on the road and I want to get some information from you, who was on the road. Now I want to know was it the afternoon or the evening that you first saw this girl on the road. A. I don't remember.

Q. Do you remember the date? A. No, I do not.

Mr. Peacock: The witness has answered that three or four times, that he didn't remember.

Mr. Reilly: Well, there has been so much interruption, I want to lead him along from that spot, if I am permitted.

The Court: Proceed, Mr. Reilly.

By Mr. Reilly:

Q. Where did you take her the very first night

she got in your car? A. Orangeburg Peanut Grill.

Q. How long did you spend in her company? A. From eight till eleven.

Q. Did you ever see her again? A. Well, she was down at the Morgue, I seen her.

Q. That's all? A. I mean when she was dead.

Mr. Reilly: That's all.

Mr. Peacock: Miss Minners.

CATHERINE MINNERS, sworn as a witness on behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Miss Minners, where do you live? A. 471 Grand Avenue, Palisade Park.

Q. Where did you live in March, 1932? A. Same address.

Q. In March, 1932, did you know Ernest Miller, the witness who has just been on the stand? A. Yes, sir, I did.

Q. Did you know Elmer Johnson? A. Yes, sir, I did.

Q. Did you know Violet Sharpe? A. Just that one night that I went out. I only knew her for three hours.

Q. On March 1st, 1932, were you at the Morrow estate when Violet Sharpe got into the car with these two young men and yourself? A. Yes, sir.

Q. Where did you go that evening? A. Peanut Grill in Orangeburg.

Q. What time did you get to the Morrow estate the first time when Violet got into the car, do you remember? A. You mean when I first went up?

Q. Yes. A. About quarter to eight—eight o'clock.

Q. Where was Violet when you first saw her? A.

Ernest Miller went in and received her and I was introduced to her that night at the car.

Q. Then the four of you drove to the Peanut Grill at Orangeburg? A. Certainly did.

Q. How long did you spend at this grill? A. We spent about two to three hours at this grill.

Q. Now did you come back in the car together, the four of you? A. We certainly did.

Q. Where did you go when you got to Englewood? A. We took the girl home and then Ernest took Elmer home and then I was taken home.

Q. Where did you take her when you took her home? A. Right to the Morrow headquarters.

Q. And about what time was it you let her out of the car? A. It was about half past ten to a quarter to eleven.

Q. Yes. Did she go in the house? A. Beg pardon?

Q. Did Violet go in the house at that time? A. Elmer escorted her right to the door.

Q. And you didn't see her after that? A. No, sir, I didn't.

Q. Then do I understand the night of March the 1st, 1932, from eight o'clock until eleven, Violet Sharpe was constantly in your company? A. She certainly was.

Mr. Peacock: Cross-examine.

Cross-Examination by Mr. Reilly:

Q. Now did you talk over with the last witness the testimony you were going to give here. A. No, sir, I didn't.

Q. How long have you known him? A. Which one?

Q. The last witness. A. The last witness—about seven or eight months.

Q. How did you get acquainted with him? A. I was introduced to him by another party.

Q. When? A. About a year ago, or a couple of years ago. I don't remember.

Q. Which is it—no longer than two years ago, is that right? A. Well, I am not sure. That is why I don't say. I don't remember.

Q. Well, now, you told us a year ago, two years ago, then you looked down and around and you say you are not sure. Now, which is it? Look at me, please. A. I knew him in—year before 1932.

Q. Well, what year was that? A. 1931.

Q. How many years ago was that? A. Three years ago, four years ago, rather.

Q. Well, a minute ago you said it was a year ago, then you said it was two years ago, then you looked around and you said you didn't know, and now you say it is four years ago. Isn't it a fact you only met him about six months ago? A. No, sir, it was longer than that.

Q. Well, I want to know now what day you met the last witness and where you met him and who introduced you to him. Can you answer me? I don't remember, sir.

Q. You don't remember who introduced you to him, do you? A. Yes, I do.

Q. Who? A. A fellow from Closter.

Q. What is his name? A. Joseph O'Neil.

Q. Joseph O'Neil. When did he introduce you? A. I don't remember. It is far back.

Q. What were you doing on the night of February 28th, 1932? A. I don't remember, sir.

Q. How many days in the month of February, 1932? A. 29.

Q. What were you doing on the 29th? A. I don't remember.

Q. What were you doing on the 2nd of March? A. I don't remember.

Q. Who were you with on the 3rd of March? A. I don't remember.

Q. Were you married then? A. No, sir, I am not married—

Q. Are you married now? A. No, sir.

Q. Where is the Morrow Estate? A. It is in Englewood.

Q. What part of Englewood? A. I don't know. I was only there once.

Q. All right. How do you get into the estate? A. You go up through a steep hill.

Q. How do you get into the estate? A. You go up the driveway.

Q. Yes. What is at the beginning of the driveway, if there is anything there? A. There wasn't a soul there at the driveway.

Q. What is at the beginning of the driveway? A. I don't quite get your question.

Q. Is there a guard house there or a keeper's house, at the beginning of the Morrow estate? A. I didn't notice anything.

Q. Is there a chain across the driveway? A. I didn't notice anything.

Q. Was there a chain there that night? A. I don't remember.

Q. How far up the driveway did you go, if you ever went up at all? A. It was a little ways past the Morrow Estate, the headquarters there.

Q. Headquarters of what? A. The Morrow household.

Q. What kind of a house do they live in? A. I didn't take particular notice.

Q. Describe it. A. I didn't take particular notice.

Q. Did Violet Sharpe come out the front door or the rear door? A. She came—the back door.

Q. What back door? A. Of the household, the headquarters.

Q. Headquarters. Who taught you "headquarters?" A. Well, that is the name of it.

Q. You don't call a person's home "headquarters." A. Where they work they do.

Q. But you do call State Police where they live headquarters, don't you? A. Then say the staff. It could be the household staff.

Q. It could be. Well, I want to know: what was it? Did she come out of the garage or did she come out of the front door? A. She came out of the headquarters, where she worked.

Q. What part of the headquarters? A. The side door.

Q. Of what kind of a building? A. I didn't take particular notice.

Q. How far away was your car calling for this maid in the Morrow home, how far away were you from the Morrow house? A. About fifty feet.

Q. Who left the car to go up to get Violet Sharpe? A. Ernest Miller.

Q. Isn't it a fact the horn was blown? A. No, sir, it was not.

Q. He went up. Did he ring a bell? A. He certainly did.

Q. Who came to the door? A. I don't know who came to the door, I was sitting in the car.

Q. You never saw the girl before? A. No, sir, I didn't.

Q. Did you ever see her since? A. No, sir, I didn't.

Q. You knew she had a sister working in Englewood? A. No, sir, I didn't.

Q. Did you know she had a sister working in Englewood at the time of the kidnaping? A. No.

Q. Do you know she had a sister who worked in Englewood who since went to England? A. No, sir.

Mr. Wilentz: Of course, if your Honor

please, we have no objection to a question, but the statement or the inference by counsel, we deny that she had a sister working in Englewood.

Mr. Reilly: Well now, you are not testifying.

Mr. Wilentz: Well, I know, but the point is I don't want counsel to testify either.

The Court: We will take a recess now.

Mr. Wilentz: Oh, if your Honor please, if you will bear with us, we can finish in a half hour, if there is no objection from the jury and counsel and the Court. We may be able to finish the entire case in a half hour. What do you suggest?

The Court: Well, I don't see that there is any occasion for depriving this jury of its usual routine.

Mr. Wilentz: Oh, that is what I say, if there is no objection from the Court and jury—

The Court: Well—

Mr. Reilly: Could I ask your indulgence to finish with this witness? I will be only a minute or two. I don't want to break—

The Court: Yes.

By Mr. Reilly:

Q. Did you find out, refreshing your memory, that Violet Sharpe had a sister working in and around Englewood? A. No, sir, I didn't.

Q. Now, the girl that came out of the house you had never seen before? A. No, sir.

Q. And what kind of a night was March the 1st, 1932, in that part of Jersey? A. I imagine it was windy.

Q. I didn't ask you for your imagination. I want to know what it was. A. Well, it was windy.

Q. Yes. Was it raining? A. I don't remember.

Q. Had it been raining the day before? A. I don't remember.

Q. Was the night muddy and damp and wet? A. I don't know.

Q. Did you have your rubbers on? A. No, sir; I didn't.

Q. And a strange girl got into the car and drove where? A. To the Peanut Grill in Orangeburg.

Q. That is a speakeasy and was a speakeasy then, wasn't it? A. Yes, sir.

Q. And what did you have to drink there? A. Two glasses of beer.

Q. And how many glasses of beer— or what did she drink? A. She didn't have any beer at all.

Q. I suppose she was drinking soda water? A. She had coffee.

Q. Coffee. She had left the Morrow Estate to come over to a speakeasy to drink coffee? A. Well, I was the one that suggested the Peanut Grill.

Q. Her condition wasn't such that she required coffee, was it?

Mr. Wilentz: Oh, I object to that, if your Honor please.

Mr. Reilly: Withdrawn.

By Mr. Reilly:

Q. Did she give any reason for drinking coffee

in a speakeasy? A. No, sir; she didn't.

Q. Who told you to remember that on March 1st, almost three years ago, a girl you had never seen in your life before drank coffee in a speakeasy? A. I made a statement on June—

Q. I don't care anything about the statement. Who asked you to say that; some State Trooper? A. No, sir; they didn't.

By Mr. Reilly:

Q. Now, of course—was there dancing? A. Yes.

Q. You were interested in the people that you were with? A. Yes, sir.

Q. That night? A. Yes, sir.

Q. And you were with the boys? A. Yes, sir.

Q. Did you resent the fact that they brought another girl along? A. No. We wanted a foursome.

Q. I see. You wanted a foursome? A. Yes.

Mr. Reilly: Have you got that yet?

The Reporter: Not yet; no, sir. It is coming right down.

Q. That grill was fifty miles from Englewood, wasn't it? A. No, sir; it was not.

Q. Forty miles? A. No. sir.

Q. Where was it? What township? A. I don't know what township.

Q. Where did you live at that time? A. Palisades Park.

Q. Palisades Park? A. Yes, sir.

Q. On the Hudson? A. No, Palisades Park.

Q. Palisades Park is on the Hudson River, isn't it? A. No, sir; that's Palisades Amusement Park.

Q. Well, do you live anywhere near the Amusement Park? A. Yes, sir.

Q. Did you go there that night? A. I certainly did not.

Q. Did you know Betty Gow? A. No, sir.

Q. About how many miles would you say this Englewood Estate of the Morrows was from your home? A. I imagine about four, four or five miles.

Q. What time— who picked you up that night? A. Ernest Miller and Elmer Johnson.

Q. About what time? A. About 7:30.

Q. Did you drive right away down to the Morrow Estate? A. Yes, sir.

Q. You had never been on the Morrow Estate before? A. No, sir; I hadn't.

Q. You didn't know whose estate it was? A. Well, I knew it was the Morrow Estate, after they told me that I was going up there.

Q. Somebody told you you were going up there? A. Yes, sir; I received a phone—

Q. Well, you knew they had several maids working up there, didn't you? A. No, I didn't.

Q. How big was the house from the outside; a large house? A. I didn't take particular notice.

Q. What time do you say you left the speakeasy? A. About 10:30 to a quarter of eleven.

Q. Now, Palisades Park, where you live, is how close to Alpine, New Jersey? A. I don't know, sir.

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

Q. How close to the Englewood Ferry that runs over to the New York side? A. I don't know, sir; I have never been on the ferry.

Q. Well, is there a ferry that runs from Englewood? A. I don't know, sir.

Q. What is the nearest ferry that runs from the Jersey shore, the nearest to your home, the nearest to the New York side? A. 125th Street.

Q. 125th Street. And 125th Street— were you

here the other day? Isn't there another ferry at Yonkers? A. I imagine there is, but I don't know anything about it.

Q. That's further up, isn't it? A. I don't know, sir.

Q. You don't know; and you have lived in Palisades for how long? A. Seventeen years.

Q. Seventeen years? A. Yes, sir.

Q. And you don't know what the ferries are that run from your part of Jersey to New York? A. No, sir; I am not observing that way. I am not very observing that way.

Q. You are not very observing anyway, are you? Are you? A. Well—

Q. You haven't a very good memory, have you? A. I have on March 1st.

Q. Yes. A. Very good.

Q. That's the only night that you can remember in your life, isn't it? A. Yes, sir; distinctly.

Q. That's the only night that you can remember in your whole life distinctly, is that right? A. Yes.

Q. And that's after you talked to the State Police? A. No, sir.

Q. You did talk to them, didn't you? A. I made a statement; yes, sir.

Q. Yes? A. In June.

Q. You made a statement after the girl had died? A. Yes.

Q. Yes. A. And I reported it before, too.

Q. Of course, you didn't know she was going to take poison, did you? A. No, sir.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Peacock:

Q. You say you reported it before. When did you report the fact you had been with her on March

1st? A. About three days after the kidnapping.
Q. To whom? A. Chief of Police McLean, of Alpine.

Mr. Peacock: That is all.

Re-Cross Examination by Mr. Reilly:

Q. That was the time Violet Sharpe was under suspicion and you were brought in?

Mr. Wilentz: We object to that question.

Mr. Reilly: Withdrawn.

Q. You hadn't done anything, had you? A. No, sir.
Q. You hadn't kidnapped any baby, had you? A. No, sir.
Q. You hadn't worked for the Morrows, had you? A. No, sir.
Q. You hadn't any information where Lindbergh lived? A. No.
Q. You hadn't done a thing? You were not under suspicion, were you? A. No, sir.
Q. But you did make a statement to somebody three days afterwards you say or four days afterwards? A. Yes, sir.
Q. In connection with Violet Sharpe, is that correct? A. Yes, sir; as a coincidence.
Q. And you are still alive? A. Yes, sir.

Mr. Reilly: That is all.

Mr. Wilentz: There is no question about that, is there? About your being alive? That is all.

The Court: We will presently take a recess. The jury may be excused now and may come back at 1:45.

(At 12:41 p. m. the jury retired.)

The Court: The prisoner is now remanded to the custody of the Sheriff and he may retire.

(The prisoner retired at 12:43 p. m.)

The Court: The Court will now take a recess until 1:45 p. m.

(At 12:44 p. m. a recess was taken until 1:45 p. m.)

(1:49 P. M.)

(The jury was polled and all jurors answered present.

Mr. Wilentz: Elmer Johnson.

ELMER JOHNSON, sworn as a witness in behalf of the State, in rebuttal:

Direct Examination by Mr. Wilentz:

Q. Mr. Johnson, where did you live in March, 1932? A. 155 Hudson Avenue, Englewood, New Jersey.

Q. In Englewood? A. That is right.

Q. Were you out with Violet Sharpe on the night of March 1st, 1932? A. Yes, sir.

Q. Who else was in the party? A. Miss Minners, Catherine Minners, and Ernest Miller.

Q. Is that the lady and the gentleman who preceded you on the stand? A. Yes, sir.

Q. Where did you get on the car that evening? A. Why, right at where I lived at the time.

Q. Where was that? A. 155 Hudson Avenue.

Q. In Englewood? A. In Englewood.

Q. Who called for you? Who was in the car at that time? A. Why, Ernest Miller.

Q. Just Ernest? A. Just Ernest Miller.

Q. And then you and Ernest Miller went to call for Miss Minners? A. Yes, sir.

Q. And from there where did you go? A. We went up to the Morrow home.

Q. Did you know and had you known before that time where the Morrow home was located? A. Yes, sir.

Q. So that there is no question in your mind as to the home you went into? A. No.

Q. Now, when you got there, did you meet Miss Sharpe? A. That is right.

Q. About what time of the evening was that? A. Oh, I will say quarter to eight, eight o'clock.

Q. And from there where did the party go? A. We went to the Peanut Grill in Orangeburg, New York.

Q. The four of you? A. Four of us; yes, sir.

Q. Mr. Reilly has suggested that it is a refreshment or speakeasy. I take it that it was some place of entertainment? A. That's right.

Q. And about what time did you leave there? A. We left there about half past ten.

Q. And from there did you return to Englewood? A. That's right.

Q. Do you recall about what time it was that you arrived back at the Morrow home? A. About a quarter to eleven, eleven o'clock.

Q. And when you arrived at the Morrow home did Miss Violet Sharpe alight from the car and go in, so far as you know? A. Yes, I brought her to her door.

Q. You brought her to the door? A. Yes, sir.

Q. I see. To the door of one of the houses there? A. Yes, sir.

Q. Is there a difference— are there two separate houses there? A. Why, I don't really know.

Q. You don't? A. It was the pantry or the kitchen, back door.

Q. The pantry or kitchen? A. Yes.

Q. And you left her there? A. That's right.

Q. So that on the night of March the 1st, 1932, Miss Sharpe was in your company and the company of these two people who preceded you on the stand, from somewhere around eight o'clock to somewhere around eleven o'clock at night? A. Yes, sir.

Q. Subsequently, after the news of this crime had been flashed around the country and had become the matter of newspaper concern, did you have occasion to report it or talk about it to the chief of police? A. No, sir.

Q. You did not? A. No, sir.

Mr. Wilentz: All right, sir; that's all. Take the witness.

Cross-Examination by Mr. Reilly:

Q. You had lived in Englewood quite some time? A. Why, yes.

Q. How many years? A. One year.

Q. What year? A. 1931, part of 1932.

Q. Then where did you live, please? A. I moved to 44 Hart Street, Brooklyn.

Q. When was the first time you were asked to be a witness in this case? A. Why, the 4th; February the 4th, 1935.

Q. February 4th, 1935, you were asked by whom? A. By State Police, New Jersey State Police.

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

Q. What was your business when you lived over here in Englewood? A. Why, I was assistant cook out there.

Q. Where? A. It was the actors' home, 155 Hudson Avenue.

Q. The actors' home? A. The actors' friends home.

Q. Where is that? A. 155 Hudson Avenue.

Q. Englewood, New Jersey? A. Englewood, New Jersey, that is right.

Q. For the whole year that you lived there you were an assistant cook in the actors' home? A. Yes.

Q. Since then what have you been doing? A. Well, I have been doing the same kind of line of work.

Q. Well, you know many actors, don't you? A. No, sir.

Q. You know some actors? A. No, sir.

Q. What are you doing for a living now? A. Why, I am working in the Hotel Gramatan, New York, Bronxville.

Q. Hotel Grammerton, in The Bronx? A. Bronxville.

Q. Bronxville? A. New York.

Q. Do you know Inspector Bruchmann, of The Bronx? A. No, sir.

Q. Do you know any of the detectives in The Bronx? A. No, sir.

Q. Sure about it? A. Positive.

Q. None of them ever come in the Hotel Gramatan, Bronxville, do they? A. No, sir.

Q. You never saw any of them there? A. No, sir.

Q. Now, the Hotel Gramatan is in Bronxville? A. Yes, sir.

Q. Above the Bronx, is it not? A. Above Mount Vernon.

Q. Yes. A. Yes.

Q. But it is on the eastern shore of Manhattan, of New York? A. Yes, sir.

Q. And it is between New York City and Pelham? A. And Pelham—why, I suppose it is.

Q. Don't you know? A. I don't.

Q. How long have you worked in the Hotel Gramatan? A. Oh, six months.

Q. Six months. And you don't know it is between New York City and Pelham? A. Well, I don't know where Bronxville is.

Q. Do you know whether it is between New York and Mt. Vernon? A. It is past Mt. Vernon.

Q. Past Mt. Vernon? A. (Nods head.)

Q. It is a residential hotel, isn't it? A. Yes, sir.

Q. A beautiful hotel built up on the rocks, is that right? A. Yes, sir.

Q. Who asked you in 1935 to be a witness in this case? A. Why, the State Police.

Q. Of Jersey? A. Yes.

Q. Which State Policeman? A. Pardon?

Q. Which State Policeman? A. Oh, Corporal Horn, Mr. Horn.

Q. And did he bring you here to Jersey? A. Yes, sir.

Q. When? A. Fifth.

Q. Of February? A. Yes, sir.

Q. And kept you in the Hotel Hildebrecht— is it in Newark? A. Not in Newark; no sir. No, sir.

Q. Trenton, rather. A. Trenton.

Q. That is the State witness headquarters. A. Well, I suppose it is headquarters.

Q. Well, you have seen them around there, haven't you— A. Yes.

Q. —other witnesses and State Policemen, and

your board has been paid for and your meals have been paid for, correct? A. Yes, sir.

Q. Were you born in the United States, Johnson? A. No, sir.

Q. Where were you born? A. Sweden.

Q. Now, isn't it a fact that you are being substituted in this case for Red Johnson, who was in the car with Violet Sharpe on March 1st, 1932? A. No, sir.

Q. Did you know Red Johnson? A. No, sir.

Q. Of Englewood. Did you know he worked for the Morrows? A. No, sir.

Q. You never heard that, did you? A. No, sir.

Q. You know he is over in Denmark, don't you? You have heard that, haven't you? A. No, sir.

Q. And you are from Sweden. When did you come from Sweden? A. In 1920.

Q. Now, where were you the 28th of February, 1932? A. I don't remember.

Q. Where were you the 29th? A. I don't remember.

Q. Was there a 29th in February, 1932? A. Well, I don't know. If it was a leap year, probably.

Q. Don't you know? A. No, sir.

Q. Where were on March 2nd? A. I don't remember.

Q. Where were you March 3rd? A. I don't remember.

Q. Where were you ten days ago? A. In the Hotel Gramatan.

Q. What were you doing? A. I was working.

Q. What day of the week was ten days ago? A. I don't remember.

Q. This woman that got into the car; had you ever seen her before? A. No, sir.

Q. Never seen her since? A. No.

Q. Didn't see her in any morgue, did you? A. No, sir.

Q. Do you know how many Sharpe girls worked in Englewood in March and February, 1932? A. No, sir.

Q. When she got in the car, when did you first learn her name was Sharpe? A. Well, I was introduced to her.

Q. Miss Sharpe? A. Miss Sharpe.

Q. And you went out with Miss Sharpe and you drove with Miss Sharpe how many miles? A. Oh, I should judge about 12 miles.

Q. You say this grill is only 12 miles from Englewood? A. I suppose it is.

Q. Isn't it nearer 40? A. No, sir.

Q. Where had you ever met the Minners girl before that night? A. I met her through Ernest Miller.

Q. When? A. Down at my home.

Q. She wasn't Swedish? A. No, sir.

Q. She wasn't Danish? A. No, sir.

Q. Neither was Sharpe, was she? A. No, sir.

Q. Who's car was it? A. Ernest Miller's.

Q. How long did you spend in this speakeasy? A. Oh, an hour and a half, two hours.

Q. You were here when the others testified this morning? A. Yes, sir.

Q. You heard what they testified to? A. Yes, sir.

Q. And you went to lunch with them? A. Yes, sir.

Q. Look at this picture (showing witness a photograph). Does that resemble the girl with a hat on? Take a good look at it. A. Yes, sir.

Q. It does. That's all.

Mr. Wilentz: What was the answer?

Mr. Reilly: Yes, sir.

The Witness: Well, I don't know, I didn't see the picture very well.

By Mr. Reilly:

Q. Well, get a good look. A. No, sir.
Q. "No," now. A. No, sir.
Q. Have you looked around the courtroom since you said "Yes, sir, it does"? A. No, sir.
Q. All right, maybe I will show you a better one. Does that resemble the girl with her hat on? A. No, sir.
Q. Did the girl have her hat on? A. Well, I don't remember.
Q. How was she dressed? A. I don't remember.
Q. How tall was she? A. Well, she was about my— above five foot nine.
Q. What did she weigh? A. About 125 pounds.
Q. How old? A. I should judge about, she was over 25.
Q. Over 25? A. (Nods head.)
Q. Had you been on the Morrow Estate before that time? A. No, sir.
Q. Now, where is the Morrow Estate in Englewood? A. Well, it is, it is on the road, on the road, on Engle Street, past Morristown, past Morristown, it is, I mean, Englewood, it is—
Q. Past Morristown, past Englewood, that is what you said, wasn't it? A. Well, I am sorry.
Q. Now, tell me what street it is on or what road it is on. A. Well, I really can't tell you.
Q. How long did you live there? A. I lived where?
Q. In Englewood. A. For about a year.
Q. About a year and you don't know the road? A. No, sir.
Q. Now, in driving from the station how far is it by distance, by motor? A. What station?

Q. Englewood station, the railroad. A. Oh, I should say about ten minutes.

Q. How near is it to the river? A. I really don't know.

Q. From where the Morrow Estate is can you see the river or is it— A. The Hudson River?

Q. Or is it down— A. No, I don't think so.

Q. You don't think so? A. No.

Q. How much of a road is there from the entrance gate to the front door of the Morrow Estate? A. Oh, just about a block and a half.

Q. Block and a half distant? A. (Nods head.)

Q. Three or four hundred feet? A. I'd say.

Q. What is at the entrance of the Morrow Estate? A. Gate.

Q. What kind of a gate? A. Iron gates.

Q. Was it closed that night? A. No, sir.

Q. Don't you know it is always closed? A. I don't know.

Q. How did you get in that night? A. We went right by.

Q. Who opened the gate? A. Nobody.

Q. Did you see any watchmen? A. No, sir.

Q. What did you do, drive up to the front door? A. Yes, sir.

Q. Right up to the front door? A. Right to the front door of the pantry.

Q. Of the pantry. Where is the front door of the pantry? A. Well, I can't recall that now.

Q. Is it in the garage? A. No, sir.

Q. Is there a door that leads from the garage to the house? A. It is a big mansion there.

Q. It is a big mansion. I know where it is, but I am asking you. A. (Nods head.)

Q. Now, I want to know what door it was that this girl came out? A. The pantry door.

Q. Pantry door. Which side of the house? A. Don't know.

Q. How did you attract her attention? A. What is that?

Q. Did you blow the horn? A. No, sir. Ernest Miller went inside.

Q. Went up and rang the front door? A. (Nods head.)

Q. Don't shake your head. Put it on the record. He rang the front door bell? A. Yes.

Q. And she came out? A. No. He went inside.

Q. He went inside? A. Yes.

Q. The front door? A. (Nods head.)

Q. And this girl was a maid in the house, wasn't she? A. Yes, sir.

Q. Just an ordinary servant girl, isn't that right? A. Yes, sir.

Q. Did you write down March the 1st on any paper? Did you? That night? A. No, sir.

Q. Get her autograph or anything? A. No, sir.

Q. Get her photograph or anything? A. No, sir.

Q. You have read in the paper, haven't you, many times, that Red Johnson was connected with this case?

Mr. Wilentz: Just a minute, just a minute.

Mr. Reilly: All right. If you don't want it, I will withdraw it.

Mr. Wilentz: No.

Mr. Reilly: All right.

Mr. Wilentz: I don't know that anybody has put that in the paper but Mr. Reilly.

Mr. Reilly: Oh—

Mr. Wilentz: That's the reason for my objection.

The Court: Well, the question is withdrawn now.

Mr. Wilentz: Yes; all right.

Re-Direct Examination by Mr. Wilentz:

Q. You have given a statement to the police about this; you gave a statement to the police about this a long time ago, didn't you? A. Yes, sir—
Q. Years ago, I take it? A. Well.
Q. A couple?

Mr. Reilly: Don't lead. Let him tell.

A. 1932.
Q. Yes. And the police—

The Court: 1932?

Mr. Wilentz: 1932.

The Witness: Yes, sir.

Q. And the police have had your statement, and now, when the case is on, you have been brought to court, haven't you? A. Yes, sir.
Q. And you have been the guest of the State of New Jersey as a material witness, haven't you? A. Yes, sir.
Q. Waiting for the defense to rest so we could call you for rebuttal, isn't that so?

Mr. Reilly: I object to the form of that question, waiting for the defense to rest.

Mr. Wilentz: Well, you brought it out.

Mr. Reilly: I object to the form of the question.

The Court: You may answer, if you know.

Q. Waiting to be called as a witness? A. Yes, sir.

Q. Yes. And you have been in Trenton as the guest of the State of New Jersey, and at the expense of the State of New Jersey, so that you could be at Flemington and not hold the jury up? A. Yes, sir.

Q. When they wanted you.

Mr. Reilly: I object to this stump speech in the form of a question.

Mr. Wilentz: Well, I think it is permitted, if your Honor please, because of counsel's interrogation.

The Court: I will allow it to stand.

Mr. Reilly: I except.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

(s. s.) THOMAS W. TRENCHARD,
Judge.

Mr. Wilentz: That is all, sir.

Re-Cross Examination by Mr. Reilly:

Q. And you have been over there with the whole Fisch family, haven't you? A. No, sir.

Q. Four or five of them, haven't you? And the German nurse, haven't you?

Mr. Wilentz: Just a minute, now. Let him answer the question. He says "No, sir."

A. I don't know, sir.

Q. You haven't seen any of them, have you? A. No, sir.

Q. You haven't seen the German nurse over there, have you? A. Yes, sir.

Q. At the expense of New Jersey, who hasn't been called— you know that, don't you? A. (No answer.)

Mr. Wilentz: Well, does counsel want an answer?

Mr. Reilly: I want an answer, yes.

Q. Have you seen the German nurse over there? A. German nurse; yes, sir.

Q. Yes. Have you seen or heard of her being called here?

Mr. Wilentz: Well, what difference does that make?

A. Through the newspapers.

The Court: I don't think it makes any difference.

Mr. Wilentz: No, no.

Re-Direct Examination by Mr. Wilentz:

Q. You say you saw the German nurse? A. Yes, sir.

Q. She is a very fine looking woman, too. A. She is.

Re-Cross Examination by Mr. Reilly:

Q. And her expenses are being paid for by the State of New Jersey, do you know that? A. I do not.

Q. Yes. And the expenses for this trial and this jury are being paid for by the State of New Jersey for good cause.

Mr. Reilly: That's what the Attorney General thinks; we think it is a waste of money.

Mr. Wilentz: That's what the State thinks.

The Court: I will ask counsel to refrain from making these irrelevant speeches. It only tends to confusion, gets us nowhere, throws no light upon the case.

Mr. Wilentz: Your Honor please, I want to say in deference and apology to your Honor, we didn't start it.

The Court: No matter who started it, Mr. Attorney General, I want it stopped.

GEORGE MARSHALL, sworn as a witness in behalf of the State, in rebuttal.

Direct Examination by Mr. Wilentz:

Q. Mr. Marshall, you were employed at the Morrow home in some capacity in 1932, were you? A. I was night watchman there.

Q. Night watchman? A. Yes, sir.

Q. And on the night of March 1st, 1932— of course, you remember the night of the crime, do you not? A. I do.

Q. On that night did you see Violet Sharpe? A. Yes, sir.

Q. About what time did she leave the premises, and what time did she return? A. Well, I got there at half past eight, and she was out just a little while. I asked where she was and she said—

Q. She was out? A. She was out at that time.

Q. Well, what time did she come back? A. Very close to 11 o'clock.

Q. That night? A. Yes. I ring up at 11 o'clock; the reason I know—

Mr. Reilly: I object to it.

Q. Now, please, all you have got to do is answer the question. Mr. Reilly will give you the chance to make that explanation. A. Yes, sir.

Q. But at any rate at about eleven o'clock you say? A. Yes.

Q. You saw Miss Violet Sharpe. A. Yes.

Q. Come in to the Morrow premises. A. I won't say, within ten minutes one way or the other, or so, but—

Q. Around eleven o'clock? A. Yes, sir.

Q. You saw her that night? A. Yes, sir.

Q. Of March the 1st, 1932? A. Yes, sir.

Q. The night of the crime? A. Yes, sir.

Q. You knew Miss Sharpe, didn't you? A. Yes, sir.

Q. You had known her for some time? A. Yes, sir.

Q. Was there any other Miss Sharpe that worked at the Morrow home at that time? A. No, sir.

Q. And you knew Miss Violet Sharpe? A. Yes, that is right.

Q. There is no question in your mind that you saw her come in then that night at that time? A. Yes.

Q. How old are you, Mr. Marshall? A. More than sixty-one.

Mr. Wilentz: Thank you, sir; that is all.

Cross-Examination by Mr. Reilly:

Q. Mr. Marshall, how long have you worked for the Morrows? A. About four years and a half.

Q. As watchman on their estate? A. Yes, sir. In the house.

Q. In the house? A. In the house.

Q. Not out on the grounds? A. No, sir.

Q. Mr. Marshall, in 1932, how many servants did the Morrows have? A. I couldn't tell you exactly, unless—

Q. Well, to the best of your recollection. A. Well, there must have been eight or nine in the house.

Q. Did they have a second chauffeur known as Johnson? A. No, sir.

Q. Did they ever have a chauffeur or a man working around the place named Red Johnson? A. No, sir.

Q. Did you ever meet Red Johnson, the friend of Violet Sharpe? A. Yes, sir.

Q. How many times did you meet Red Johnson before—

Mr. Wilentz: I object to the question as not being material at all.

Mr. Reilly: I think it is very material.

Mr. Wilentz: There is not a thing in the

case about Red Johnson except that he once lived in this country and is now over in some other country and that he knew Miss Betty Gow.

Mr. Reilly: There is a whole lot in the case.

Mr. Wilentz: There isn't a word in the case.

Mr. Reilly: I asked the last witness whether or not he wasn't being substituted in this case for a man, Red Johnson, who was out that night with Violet Sharpe?

Mr. Wilentz: I say in response to that, if your Honor please, that Mr. Reilly has had enough experience to know better, that he has no right to inject the name of Johnson at this time. He injected it early in the case. His case is closed. It is barren of any reference to Red Johnson and it is an outrage, I submit, if your Honor please, to drag these names in in this way.

Mr. Reilly: I think I can meet this objection without these speeches and without being condemned for this or that. Every time I ask a question that doesn't fit in with the theory of the prosecution I must be condemned. I asked Dr. Condon about Red Johnson and I asked his interest in Red Johnson and I asked where Red Johnson was, and he said Red Johnson was in Denmark. Now, if there was a Johnson in Englewood the same night at the same time who knew Violet Sharpe I think I

can inquire as to the reliability of this witness as to who he saw that night.

Mr. Wilentz: That was not the question, if your Honor, please.

The Court: You may submit that inquiry, if you wish to.

By Mr. Reilly:

Q. Mr. Marshall, will you please tell me how many times you saw this Red Johnson.

Mr. Wilentz: I object to the question, if your Honor, please, for the reasons heretofore indicated.

Mr. Reilly: This is for the purpose of identification, so he can fix it in his mind. I don't want to be rough with Mr. Marshall, a man of his age; I respect his age.

The Witness: Be as rough as you like; I will tell you the truth.

He was there several times; I met him there.

By Mr. Reilly:

Q. And he was a friend of Sharpe's and the other servants? A. Not particularly Miss Sharpe.

Q. Well, he knew her? A. Oh, certainly, he met her.

Q. Now, Mr. Marshall, did you ever meet her sister, Violet Sharpe's sister? A. Yes, I have.

Q. And did she work in and around Englewood? A. She worked in Englewood, yes.

Q. In one of the houses? A. Yes, sir.

Q. Do you know whose house she worked in? A. I think it was McKay apartments; who it was for, I can't tell you.

Q. Well, all right, just your best recollection. A. Yes.

Q. Was she in and around Englewood March 1st, 1932? A. I didn't see her.

Q. Did you see her after that date? A. Yes.

Q. How many days after that did you see her? A. I can't tell you that.

Mr. Wilentz: I can't hear a word you are saying.

Q. Did you see her a few days after or a few days before, so you could definitely say? A. Well, I couldn't say.

Q. To the best of your recollection, whether or not she was in and around there March 1st? A. I couldn't tell you within, I couldn't tell you how many days. I didn't take much stock in her coming and going.

Q. You made no entry in the book? A. No.

Q. You had no time clocks to check up the servants? A. No, I—not the servants. I had a time clock, but not for the servants.

Q. Not to check up the servants? A. No.

Q. Did you know Betty Gow? A. Yes.

Q. Now, as I understand you, on March 1st, 1932, you came on duty— A. Yes, sir.

Q. —inside the house some time in the afternoon. A. No, I didn't come—

Q. Early evening? A. I came on about quarter past eight, something like that.

Q. Quarter past eight? A. Yes.

Q. Which was your usual time? A. Yes, sir, I generally always got there before nine.

Q. Have you lived in and around Englewood for a long time, sir? A. Fifty-four years.

Q. Can you tell me how much difference—rather, how long it would take to ride from the Morrow estate to the Alpine Ferry? A. Alpine Ferry by car?

Q. Yes. A. Oh, you could get there in twenty, twenty-five minutes.

Q. And the Alpine Ferry connects with Yonkers, New York? A. Yes, sir.

Q. Now, you saw Violet Sharpe go out? A. No, sir.

Q. When you arrived she was out, as far as you know? A. Yes.

Q. All you know is that you saw her come back? A. Yes, sir.

Q. Some time that night? A. Yes, sir.

Q. And you made no record of it? A. No, sir.

Q. And you are trying now to recall accurately something that happened in 1932, to the best of your knowledge and belief? A. Yes, sir.

Mr. Reilly: That is all, thank you.

Re-Direct Examination by Mr. Wilentz:

Q. But you did have occasion to recall it early in 1932, didn't you? A. Yes, sir.

Q. You were asked then, were you not? A. Yes, sir, I was around there then.

Re-Cross Examination by Mr. Reilly:

Q. Was that after she committed suicide? A. Before that.

Q. The day before? A. Oh, no, it was two or three weeks before.

Q. Two or three weeks before. When did she

commit suicide? A. Well, she was in a very nervous condition—

Q. I didn't ask you that.

Mr. Wilentz: When?

Q. What is the date of her suicide? A. I couldn't tell you that.

Q. What month? A. I couldn't tell you that even.

Q. What time did you— Who did you see go in and out of the house on the last day of February, 1932? A. (No answer.)

Q. What servants did you see go in and out of the house on the last day of February, 1932? A. There were no strangers that I could place.

Q. Have you any recollection as to who went out, who of the servants went out, on the 29th or the 28th? A. Well, if I remember right, I don't think it is the 29th, is it?

Q. Well, the last day of February, 1932. Who did you see go out, if you can remember? A. (No answer.)

Q. If you can't remember, just say so. A. Well, they go in and out in a taxi, they go and come, and I may be way up at the other end of the house.

Q. That's right. A. I can't keep track of them that way.

Q. That's a large house? A. Yes, sir; it is over three hundred foot long.

Q. How many rooms? A. I could never tell you.

Q. And you are the watchman? A. Yes, sir.

Q. And you don't know how many rooms? A. No, sir.

Mr. Reilly: That's all.

By Mr. Wilentz:

Q. March 1st, 1932, had some significance to you, didn't it? A. Yes, sir.

Q. That was the night that your employer's grandchild was kidnaped? A. Yes, sir.

Q. So that night— A. I remember it very well.

Q. —you had occasion to have checked up immediately thereafter, didn't you? A. I did.

Mr. Wilentz: That's all. Thank you, sir.

By Mr. Reilly:

Q. Just a moment. On March 1st, 1932, your employer was Mrs. Morrow? A. Yes, sir.

Q. She was in Europe, wasn't she? A. No, sir; she was home at the house at the time that this thing happened.

Q. When did she come back from Europe? A. I couldn't tell you that. I know she was home this night when the boy was kidnaped.

Q. When did she go to Europe? A. Couldn't tell you that.

Q. Didn't she go to Europe in February or March that year? A. Not to my knowledge.

Q. Did she go in the early winter? A. I know she was in Europe, but I couldn't tell you what time it was.

Q. Isn't it a fact she was in Europe and came back after the kidnaping? A. No, sir; she was right there the night the youngster was kidnaped.

Q. Where did you see her that night? A. I went up—I got the telephone—

Q. Where did you see her? A. Up at her room door. I went up, knocked on the door, says "They want you at the telephone."

Q. Never mind what you said. What time? A. Very close to 11 o'clock.

Q. Then there was lots of confusion in the house after that? A. Not right away.

Q. But within a few minutes?

Mr. Wilentz: Let him answer.

Q. Within a few minutes?

The Court: Let him answer the question.

A. Mrs. Morrow answered the phone after I told her about it.

Q. After she answered the phone there was great excitement? A. Well, no. Mrs. Morrow took quite a little while. I came down, rang up my clock. I had to ring up at 11 o'clock.

Q. Please. I don't care about that. I am directing your attention to this fact: Was there or was there not excitement in the Morrow home after Mrs. Morrow received word of the kidnaping? That is easy enough to answer. A. No, there was no great excitement.

Q. No great excitement? A. No. They had all gone to bed, the biggest part of them.

Q. And none of them got up? A. I wouldn't say that. There wasn't very many home that night.

By Mr. Wilentz:

Q. You didn't stay there to see them redress, did you? A. No.

Q. You are a calm man, anyhow? A. Yes.

Q. Night watchmen usually are, aren't they? A. Yes.

By Mr. Reilly:

Q. Who was home that night? A. Well, I could not really tell you. I know Mrs. Morrow was the only one home that I could remember right.

Q. Well, I want to know who constituted, on March 1st, 1932, the Morrow household. A. Well, they had a housekeeper there.

Q. No, I want the family.

Mr. Wilentz: Tell him who was there.

Mr. Reilly: You can ask him, if you please. I am entitled to ask this question.

By Mr. Reilly:

Q. I want to know what members of the Morrow family were home. A. Well, there is lots of nights I go up there and never see them.

Q. How many lived there at that time? A. Well, Colonel Lindbergh and his wife were there at the time.

Q. March 1st?

Mr. Wilentz: Let him answer.

Mr. Reilly: Please, Mr. Attorney General, I am conducting this cross-examination.

A. Pardon me.

Mr. Wilentz: I think the witness should be allowed to answer the question.

A. You asked me how many lived there.

By Mr. Reilly:

Q. Yes. A. You didn't say on March 1st.

Q. I am directing your attention now to the latter part of February and March 1st. A. Mr. Lindbergh, Colonel Lindbergh and his wife were stopping there, and the nurse and also the baby.

Q. Who is the nurse? A. Betty Gow was at that time.

Q. Now, Mr. Marshall, please—you are over sixty years of age— A. Yes.

Q. You understand my question: What members of the family— A. Well, I told you as far as I know.

Q. Well, the nurse is not a member of the family, is she? A. Why, no.

Q. Now give me the members of the Morrow family that lived there, anywheres from the 15th of February down to the 1st of March. A. I couldn't tell you; lots of times I go up there nights and they would be off in some sitting room, like that, I never butted in. I don't go in and look over to see who is there and who isn't there.

Q. You haven't a very good memory about that, have you? A. I never butt in anything don't concern me, no.

Q. Now, I am going to inquire into this line, whether you butted in or not. Was Senator Morrow there? A. No.

Q. He had passed away how many months before? A. I couldn't tell you that.

Q. Were you there when he passed away? A. Yes.

Q. Were you there at the funeral? A. Yes, sir.

Q. And you couldn't tell us the date? A. No, sir.

Q. After the Senator passed away, there was his wife, Mrs. Morrow; correct? A. Yes.

Q. Did he have any sons or daughters living there? A. Not at home. Miss Elizabeth was there.

Q. How many sons did he have? A. One.

Q. Who was he? A. Mr. Dwight, Junior.

Q. Where was he at the end of February? A. He was to some college; I couldn't tell you.

Q. When was the last time you saw him in Englewood before March 1st? A. I suppose it would be about January some time when he was home on his vacation.

Q. You haven't any recollection of the date? A. No.

Q. Any other members there besides Miss Elizabeth and the mother and the Colonel and Mrs. Lindbergh and the baby? A. Not at that time.

Q. Well, the Colonel and Mrs. Lindbergh were at Hopewell, weren't they? A. Yes.

Q. And the nurse was at Hopewell? A. Yes, sir.

Q. Then there was nobody in this great big mansion that night, as far as you know, of the family, but Mrs. Morrow and Miss Elizabeth? A. Yes.

Q. Was Miss Elizabeth there that night? A. Well, I wouldn't swear that she was.

Q. You wouldn't swear to that. All right, that's all.

Mr. Wilentz: That's all, sir. Thank you. Now, if your Honor, please, I want to have a word here with counsel.

(Discussion at side bar between Court and counsel.)

Mr. Wilentz: Mrs. Dwight Morrow.

ELIZABETH MORROW sworn on behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Mrs. Morrow, you are the mother of Mrs. Lindbergh, are you not? A. Yes.

Q. There has been some testimony with reference to the situation in your home on that night of March the 1st, 1932, and all I want to inquire about is with reference to the whereabouts of Miss Violet Sharpe on that night. Were you at home on the night of March the 1st, 1932? A. I was.

Q. And was Miss Sharpe there that day? A. She was there that day and that night.

Q. Now will you tell us about what time the last time you saw her that evening? A. She served dinner, which was at about seven o'clock, and I did not see her after a quarter before eight, about, until I saw her much later in the evening.

Q. Did you see her at about a quarter to eight that evening? A. I saw her at approximately quarter of eight.

Q. And then you didn't see her again, you say, until quite some time later that evening? A. I didn't see her again until after eleven o'clock that night.

Q. I see. And did you see her after eleven o'clock that night? A. I did see her, yes.

Q. Would you say it was before twelve, before midnight? A. It was much earlier than that.

Q. I see. And when you say you saw Miss Sharpe at the times that you have indicated, I take it you mean in the Morrow home? A. Yes, she served dinner that night.

Q. And when you saw her some time after eleven and considerably before twelve, it was in the Morrow home, I take it? A. It was.

Q. Yes, ma'am. Now the household at that time consisted of whom, on that very night, Mrs. Morrow? A. Are you asking of the immediate family?

Q. Yes, ma'am. A. That night in the house there were only two, my daughter Elizabeth and myself, of the immediate family.

Q. I see. Miss Gow, I take it, had gone down to Hopewell. A. She had gone to Hopewell.

Q. Now, was Miss Sharpe in the home all day during the daytime as nearly as you can remember? A. As nearly as I recall she was there all day.

Q. I see. She was employed in your home in what capacity? A. She was employed at the house as a waitress.

Q. Did her sister ever work at your home in Englewood? A. Never.

Q. So that the only member of the family that was employed by you and the late Senator was Miss Violet Sharpe. A. The only member of the Sharpe family.

Q. There has been some suggestion as to the possibility—no I will withdraw that. That is all, Mrs. Morrow.

Cross-Examination by Mr. Reilly:

Q. Mrs. Morrow, you employed a butler. A. Yes.

Q. His name was— A. Septimus Banks.

Q. And was Miss Elizabeth home that evening? A. She was.

Q. So that there was just service for two? A. Service for two.

Q. At which the butler presided? A. He did not serve that night.

Q. Did he serve the night before? A. I don't know, because I was on the train.

Q. Had you been away for a few days? A. I had been away over the week-end.

Q. Did he—did the butler serve the next night? A. The night of the 2nd of March, I was not there. You see, I was in Hopewell, so I don't know.

Q. Well, now, was it the custom in your home for the butler to serve you, and the waitress to serve your daughter at the same table and at the same time? A. The butler served sometimes with the waitress and sometimes alone.

Q. Was the butler's night off, March 1st? A. He was in the house that night, but not serving.

Q. How many other maids did you have at that time? A. We had a cook and housemaid and seamstress five, there were six other maids in the house.

Q. Six other maids in the house? A. In the house.

Q. Quite a large house, wasn't it? A. Quite a large house.

Q. This last man was your night watchman? A. Mr. Marshall who just testified was our night watchman.

Mr. Reilly: I think that is all, Mrs. Morrow.

Mr. Wilentz: That is all.

Mr. Wilentz: I just want to check up these exhibits, if your Honor please.

(Counsel confer.)

Mr. Wilentz: Exhibit S-293 that is in for identification, if your Honor please, goes in by consent. It is intended to be a picture of the entrance to Woodlawn Cemetery.

The Court: It may be admitted.

The Reporter: S-308.

(The picture was received in evidence and marked State's Exhibit S-308.)

Mr. Wilentz: The State rests.

STATE RESTS.

Mr. Wilentz: We are agreeing, if your Honor please, to make a notation on the back of some of the exhibits that that is the entrance to Woodlawn.

Mr. Pope: Woodlawn and not St. Raymond's.

Mr. Wilentz: So that when it gets to the jury they will know what it is.

Mr. Reilly: The defense rests, if your Honor please. And between now and Monday we will check over some of the exhibits that have been marked for identification, and if I find any that I think should be offered in evidence, I will do so on Monday morning. We have no surrebuttal and we rest.

DEFENSE RESTS.

Mr. Wilentz: If your Honor please, as I understand it, both sides close their case at this time subject to some oversight on the part of counsel in failing to have admitted an exhibit which is now admitted for identification, but which through the stress of the hours that we have worked here, we may have overlooked to offer in evidence.

Mr. Reilly: That is right.

Mr. Wilentz: And with that understanding, of course, there will be no more testimony. Both sides rest, is that right?

Mr. Reilly: That is right.

Mr. Wilentz: Now may I suggest, too, if your Honor please, that when court adjourns this afternoon, will your Honor give counsel some time so that we may upon a procedure with reference to the closing arguments, particularly with reference to time?

The Court: You wish to interview me about the summation?

Mr. Wilentz: Yes, if your Honor please.

The Court: Certainly.

Mr. Wilentz: After the adjournment of court tonight.

The Court: Certainly.
Now apparently the only other—

Mr. Reilly: Mr. Rosecrans desires to renew a motion.

Mr. Rosecrans: I now move, at the conclusion of the entire case, for the direction of a verdict of acquittal upon the same grounds as heretofore set forth in the motion for the direction at the end of the State's case. And with the Court's acquiescence I shall not repeat those

reasons and presume that they will be considered again as if spread in full upon the record.

The Court: Well, I will deny your motion.

Mr. Rosecrans: I pray an exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.)

(s. s.) THOMAS W. TRENCHARD,
Judge.

Mr. Reilly: So that the jury may thoroughly understand this procedure now, I understood that your Honor holds it is a question of fact to be determined by them?

The Court: That is it.

Mr. Wilentz: I think, if your Honor please, that because of the hour—I take it that counsel has no desire nor would it be advisable to commence summation at this time, because it would only be interrupted by the week-end. I think that Mr. Reilly has no desire to commence at this time.

Mr. Reilly: No, I want to go over the exhibits.

Mr. Reilly: No. I have to go over the exhibits.

Mr. Wilentz: Not only because it is not our desire to do, but because it wouldn't be helpful.

Under those circumstances, I take it, we are ready to adjourn.

Mr. Reilly: We are.

The Court: I can well understand how counsel needs some little time to examine these exhibits, because there is quite a mass of them.

Mr. Reilly: About 350.

The Court: And many of them when they were produced were marked for identification, and I do not suppose that counsel know, and certainly I do not know whether those that were really intended to be admitted as exhibits, whether they actually were admitted and marked as exhibits. That thing, of course, can be looked into and that would seem to furnish some reason why counsel should be given some little time to do that very thing. I know of nothing further that should detain the Court here today, and perhaps I ought to say a word to the jury before the jury retires.

(To the jury:) Ladies and gentlemen of the jury, I wish that you would not go out either today or tomorrow on a bus ride. I wish that you would not do that, and please do not do it, nor undertake to do it. Of course, there is no reason in the world why you should not take appropriate exercise in the custody of your officers, either on the hotel verandah or on the pavements, if the pavements are fit to walk on. I haven't been out through the village myself, but if the pavements are nice to walk on, you may very well like to walk, and I would think it might be rather a good thing for you, so with that admonition I will say to you that you may

now retire and come in at ten o'clock on Monday morning.

The jury will now retire. The people will remain seated until the jury has had a chance to retire.

(The jury retired.)

The Court: The prisoner is now remanded to the custody of the sheriff and he may retire.

(The defendant retired in the custody of the sheriff.)

The Court: The audience may now retire. The Court will take an adjournment until ten o'clock Monday morning.

(At 2:39 P. M. the further trial of the case was adjourned until Monday morning, February 11th, 1935, at ten o'clock.)

Opening of Thirtieth Day

STATE vs. HAUPTMANN

Flemington, N. J., February 11, 1935.

THIRTIETH DAY

Present:

Hon. Thomas W. Trenchard.

Appearances:

Mr. Wilentz,
Mr. Lanigan,
Mr. Hauck,
Mr. Peacock,
Mr. Large,
Mr. Stockton, III,
For the State.

Mr. Reilly,
Mr. Fisher,
Mr. Pope,
Mr. Rosecrans,
For the Defendant.

(10:06 a. m.)

(The jury was polled and all jurors answered present.)

The Court: Counsel may proceed.

Mr. Rosecrans: If the Court please, the defense requests that the defense open shortly upon the points upon which they

intend to rely for conviction.

The Court: I understood that it is agreed that the State shall make an opening and then the defendant is to reply.

Mr. Rosecrans: Yes.

The Court: And then the State is to conclude. What more than that do you want?

Mr. Rosecrans: No, that is all. I thought that you wanted that definitely stated, because it is usual to request that.

The Court: Well, I think that is well understood. Counsel may proceed.

SUMMATION BY MR. HAUCK.

Mr. Hauck: May it please the Court, ladies and gentlemen of the jury: I watched you ladies and gentlemen in this courtroom day in and day out. You have listened to over a million and a half words of testimony. You have watched some 380 exhibits to be entered in this case.

And I want to congratulate you, ladies and gentlemen. I want to congratulate you for your patience, for the fact that you have sat here and listened not only to the testimony but sometimes to the arguments of counsel.

It is customary in criminal cases and especially customary in Hunterdon County in criminal cases for the defense to demand from the State what is known as an opening and it is my assignment as Prosecutor

of the Pleas in Hunterdon County to give this opening to you.

When the Grand Jury of Hunterdon County indicted Bruno Richard Hauptmann for the murder of Charles A. Lindbergh, Jr., the responsibility was mine to try that indictment. Realizing that I had a very small staff and realizing that the expense would be great for the County of Hunterdon, I went to the Attorney General and I requested his assistance and he graciously accepted by taking charge of the prosecution of this case, and I want to take this opportunity of thanking him and thanking his staff for the splendid assistance they have given me.

Members of the Jury, the State of New Jersey contends that they have proven in this case not only beyond a reasonable doubt but conclusively and overwhelmingly that Bruno Richard Hauptmann is guilty of murder in the first degree, that he is guilty of the murder of the infant, Charles A. Lindbergh, Jr.

Colonel Lindbergh and Mrs. Lindbergh left Englewood on the night preceding the kidnaping. They were accompanied by their son. They came to Hunterdon County to their home in East Amwell Township. At the home in East Amwell Township were Ollie Whateley and Mrs. Whateley, Ollie Whateley acting as a butler and Mrs. Whateley as the housekeeper.

It is important for the State of New Jersey to prove in this case what is known as the corpus delicti. We have proved that to you. We have proved the body of the child. We have proved that the infant

child, Charles A. Lindbergh, Junior, was murdered. We have shown you by the testimony that that infant child was with his parents, Colonel and Mrs. Lindbergh, at their home in East Amwell Township, and that in the afternoon of March 1st it was a normal, active child, that it played, that it talked, and that it walked; that it had toys and did all those things that my little children do, and all those things that your children have done at the age of twenty months.

We further showed you by the testimony that in the afternoon of March 1st, in response to a telephone call, Miss Betty Gow, the child's nurse, arrived at the Lindbergh home. When she arrived there, because of the fact that the child had a cold, she prepared an extra little garment. She took some material, some material that had a scalloped edge, and she fashioned a little shirt, and she borrowed some thread, some colored thread, green or blue, whatever it was, and she fashioned this little garment to put on the chest of that child; and we have shown you that that child was clothed with that garment, that it had an additional little shirt, and it had over it a one-piece sleeping garment. And then you heard the testimony of Mrs. Lindbergh, how on that very afternoon she walked around the window, under that southeast window in the baby's nursery, and she threw a pebble up at the window, and the child looked out of the window, and she waved to it, talked to it, and then how, that very evening, she and Miss Gow prepared the baby for bed; how that southeast window

was shut, the shutters were closed and how the room was prepared, and Miss Gow told you that the baby was fastened in the crib by the covers being pinned down to the mattress and she rubbed a little Vick's Vaporub on its chest and gave it a slight physic because of the fact that it had the cold. Now at eight o'clock Miss Gow said she looked at her watch as she left the room and she went downstairs and she had something to eat. Colonel Lindbergh and Mrs. Lindbergh were downstairs and upstairs in the room adjoining the baby's room. At about ten o'clock she went back up into the room to see how the baby was and as she got up in the room, she didn't light the light at first, she left the door open and the light came in from the hall and she walked into the room and she connected the electric heater, walked over to the crib, listened for the baby's breathing.

And you remember how she testified the baby wasn't there. Then she testified how she went into Mrs. Lindbergh's room and she said to Mrs. Lindbergh, "Have you the baby?" and she said, "No," and she said, "Where is the Colonel?" He was downstairs, that she was going down to see if the Colonel had the baby.

And then the testimony was that she went downstairs and she asked Colonel Lindbergh and Colonel Lindbergh said, "Why, no. Isn't the baby in its crib?" And he ran upstairs with Miss Gow and he rushed into the baby's room and then he rushed into a closet and he grabbed a rifle and he ran into his wife's room and he said, "Anne, they have stolen our baby."

Then the testimony shows that while Colonel Lindbergh and Ollie Whateley were out in the woods searching for the baby, that those three women went downstairs, the mother, the nurse and the housekeeper, and there they remained silent in prayer, hoping that all would be well.

But, it was only a short time after when that baby's body was found on the road to Mount Rose.

Now ladies and gentlemen of the jury, we have further shown you in this case that the infant child, Charles A. Lindbergh, Jr., was forcibly taken from his crib.

Miss Gow testified that the covers were pinned to the mattress. Further we have the fact that it was a very short distance from the top of the blankets to the head of the crib, which showed and which was proof that the baby must have been yanked from that crib forcibly and the fact that when she went in the room, when Colonel Lindbergh went in the room after the baby was taken, that the covers still bore the impression of that little body.

Furthermore, at the very outside of the building, right below the southeast window of that nursery, was first a footprint and alongside of the footprint was the double marks of the bottom of the very ladder that you see in this courtroom, and that ladder was placed, the two sections of it by the officers in an experiment, the bottom placed in those self-same ladder marks and the testimony was that where the top of the ladder touched the building 30 inches below the window, there were marks from wood from the ladder on the side of the building.

Furthermore, the ladder was broken, and we have further proof that inside of that window on the window sill was a ransom note; on the window sill was a mudprint, on the suitcase belonging to Colonel Lindbergh beneath the window was another mudprint; alongside of the suitcase was another mudprint, and that the mudprint led from that very window over toward the crib in which the baby had been placed by Betty Gow—all of which is definite, conclusive, overwhelming proof that that body was forcibly taken from its crib by the defendant.

Then on May 12th we have the finding of the body of the child. It was Colonel Lindbergh's child. Colonel Lindbergh and Betty Gow positively identified that child as Charles A. Lindbergh, Jr.

Furthermore, the garments were compared. The garments were identified by Mrs. Lindbergh, by Mrs. Whateley, and also by Miss Gow. There is no dispute on this point because counsel for the defense stood up in this court and said, "We do not dispute the fact that this was the child of Colonel Lindbergh that was found. It is sufficient when Colonel Lindbergh states in this court that that was his child."

Ladies and gentlemen, instead of reviewing these facts, it would have been possible for me to have taken the Attorney General's opening as he gave it to you. I could have taken that opening and said, instead, as he said, "We will prove to you," or "We will show to you,"—we have proved to you, or we have shown you.

At this time I want to challenge defense

counsel, to show you, the members of the jury, a single statement in the Attorney General's opening that we have failed to prove conclusively.

Now let me pass to the cause of the death of the child.

Dr. Mitchell, the County Physician, testified that the child died from a fractured skull, and the fractured skull was of such an extent that it caused instantaneous death. It wasn't a mere blow. It was a severe blow. And we have proved to you that that baby was killed by the fall from that ladder. We have shown you that that very ladder was found on the Lindbergh premises and that, by an experiment, when that ladder was placed next to the Lindbergh home, the marks of the broken ladder left marks against the building.

We had an experiment performed, and it was so testified in this court, to show that a man went up the ladder and on the way down, with the bundle in his arm, the ladder broke, in exactly the same place as this ladder broke with the defendant, Bruno Richard Hauptmann, on it. And we have proved to you conclusively that that fall caused the baby's death when it received the fractured skull, which was of such an extent that it caused instantaneous death.

Furthermore, we have proved that Colonel Lindbergh sitting in his home that very night at about 9:10 heard a crash. He thought at first that it was the crash of some crate out in the kitchen, but you can infer that that crash that Colonel Lindbergh heard was the very crashing of that very ladder outside of the nursery win-

dow. There is further proof that this child died instantaneously. Betty Gow testified that out in the driveway on the Lindbergh estate in the County of Hunterdon she found a thumbguard some time afterward. She testified that that metal thumbguard was fastened over the finger and that it was tied by her securely in a knot over the sleeping garment, and that it would be impossible to remove that thumbguard without yanking off the sleeping garment from the child; and you can infer that the defendant in leaving the premises with the child, in order to have in his possession identification, the baby's sleeping garment, realizing that the baby was dead, yanked that garment off the baby and at that time that thumbguard was dropped on the premises.

And he did do that because of the fact that he needed that garment, and he did have that garment, and he returned that garment, and in return for the garment received $50,000 of Colonel Lindbergh's money.

Now, members of the jury, it is necessary for the State of New Jersey in this case to prove one of two things, that either the blow which was inflicted on this baby was inflicted in the County of Hunterdon, or else that death ensued in the County of Hunterdon. We have proved both to you. We have proved first that the blow was inflicted by the fall from the ladder, and secondly that death ensued immediately, by the doctor's testimony, both having occurred in the County of Hunterdon. Further proof of this, as I have already men-

tioned, is the yanking of the sleeping garment. But there is another thing. If you will remember the testimony, where the baby's body was found, and you can easily infer with the testimony that after that little curly headed baby's garment was yanked from the body and the thumb-guard was dropped, that he hurried on to his car, and when he got in his car you can assume by the testimony that the defendant wouldn't dare to stop to dispose of the baby's body near the Lindbergh estate, an alarm might be given, he might be caught; and then as he drove on toward his home in the Bronx, toward Hopewell, that houses became thicker and thicker, cars might be around, people, so that he couldn't dispose of the body there; but it was not until he had passed the school, until he had passed the orphanage asylum, until he found the first safe and convenient place from the Lindbergh home, and it was there on Mount Rose Road that he went in from the road, into the woods, which was thick with undergrowth, and there hurriedly scooped a grave and hurried on to the Bronx. And that is proof that the baby died on the premises, because if the baby died elsewhere it wouldn't be buried so near the Lindbergh home. I want you to keep that in mind.

Now it is the contention of the State in this case that Charles A. Lindbergh, Jr., was killed in the commission of a burglary. You might say to me, "What is a burglary?" And my answer will be this: A burglary is the unlawful breaking and entering of a dwelling house in the night time

with the intent to either commit a battery or with the intent to steal. This was in the night time; it was between 8 p. m. and 10 p. m., it was 9:10 p. m. It was the dwelling house of Colonel Lindbergh and his family. There was a breaking and entering. The testimony that I have already covered, the fact that when the baby was put to bed, pinned in its crib, the window was shut, the shutters were fastened, and when they went into the room again the shutters were open and at the very foot of that window were the marks of a ladder, that that ladder was broken, that there was a foot print on the outside, and that in the inside was a note, the mud prints, the mud print on the window sill, the mud print on the suit case, and the mud prints that led over to that baby's crib—all evidence, perfect evidence, of a breaking and entering. And then we showed you an experiment also, how it was possible it was done by a man going up the ladder, then came out the window with the bundle and the ladder broke; as the ladder did break this crime was committed.

Now, what about the intent? We say that this defendant had both intents: that he had the intent to commit a battery; he had intent to commit a battery when he forcibly yanked the infant, Charles A. Lindbergh, Jr., from the crib. We also say that he had the intent to steal, and he did steal. He stole the baby's sleeping garments and he stole the baby. And the proof that he stole the baby's sleeping garment is the fact that that garment was yanked off it at the lane, and the fact that the person that left the very original ran-

som note in that window turned that very sleeping garment over to Dr. Condon to receive $50,000 of Colonel Lindbergh's money.

Isn't that an intent to steal, intent to commit a battery?

Now, you might say to me,—and I will say to you, Bruno Richard Hauptmann, who sits in this very court room, did all of these things. We have proved conclusively and overwhelmingly that he has done these things. We have first shown you by the evidence, by the testimony, that Bruno Richard Hauptmann planned this crime a long time.

The ransom note found in the window sill said, "We planned this for a year," words to that effect.

Not only that, but we showed you that he watched the Lindbergh home. We brought the witness Whited here, a Hunterdon County resident, who came in this court room and testified that he saw that man (pointing), and he pointed that man out,—about February 19th and about February 27th, near the Lindbergh estate, five or six feet away from him, and that witness didn't come to us and tell a story in 1934 and 1935, but he described that very man the very next morning after the baby was taken from its crib.

Before the kidnaping this was; before the murder of that child. And then we have the witness Rossiter, on the Saturday before the kidnaping, he told how he was driving by the Princeton Airport and he saw a car and a man by the car, and he saw some man in distress, and he got out

of his car and he went over to help him and he looked at that man and watched him from three to five minutes, and he identified that man as Bruno Richard Hauptmann. This was before the kidnaping, before the murder.

This is proof that he planned and he plotted this very crime which he committed.

The Attorney General in his opening said something about a ladder, that we would show to you that there was a ladder found on the premises—and there is a ladder. You have heard that ladder discussed. We have brought into this court room a man by the name of Koehler.

Mr. Koehler gave the most wonderful testimony that I have ever heard. He came into this courtroom and he told you how, for months and months, over a period of a year and a half, before anybody ever knew of Bruno Richard Hauptmann, he went from mill to mill, to mill, and he tried to trace this lumber.

Finally he went down to Senator Dorn's Mill, and he found that they had a machine down there and that this machine had three sets of pulleys, that lumber of the same size of the rungs of that very ladder was planed by that machine.

He found out that there were three shipments from that mill; that the first shipment was lumber cut with one pulley, that the middle shipment was the lumber cut by the makeshift pulley, and that the last shipment was made by a plane using a different sized pulley. But the middle shipment, the lumber planed by the plane with the makeshift pulley, was the only

lumber that made certain marks on the lumber, the same kind of lumber as that found in that ladder.

He traced that lumber. Senator Dorn said he saw the carload leave his mill.

Then we brought a man here from the lumber dealer. He said that he received that car. Then we traced that car into the very neighborhood in which the defendant, Bruno Richard Hauptmann, lived, to the National Millwork & Lumber Company.

But that isn't all. We showed you that the defendant Bruno Richard Hauptmann not only worked in that very lumber yard, but also that he purchased lumber from that very lumber yard in December, 1931, and that Mr. Koehler found a piece of similar lumber in that lumber yard as part of a bin.

And remember this: that all of this was done a year and a half before the arrest of Mr. Bruno Hauptmann.

Nobody knew of Bruno Richard Hauptmann at that time in connection with this case.

Then we took you into this man's attic. We had Mr. Rauch, the owner of the house, here; and he told you how the attic had all its boards intact on the floor; that the board that was later shown to be missing was originally part of the ladder.

And then we brought Mr. Koehler here again on the stand, and he took the board from the attic, Exhibit S-226, and he took the rail of the top section of that ladder, and he laid them out here before you—silent testimony; testimony that couldn't lie—and he showed you many things. He

showed you, first, that in the ladder rail were four holes.

And he showed you how they took that very board and placed it over the holes in the joists and that the nails fitted in the holes; and we showed you by photographs that these holes were in the ladder when the ladder was found. The photographs were taken March 8th, 1932, long before the time Bruno Richard Hauptmann was ever arrested, long before anybody knew about his attic.

He also showed you and stated positively that that board found in the attic was at one time connected with the rail No. 16 of the ladder found in the Lindbergh home. He showed you the sawdust; he showed you the knots and he showed you the grains and he brought here his photographs, mute evidence of truth. But that is not all we showed you about that ladder, ladies and gentlemen, we showed you that this very defendant, Bruno Richard Hauptmann, had a plane among his tools, his carpenter tools, and we showed you by the evidence that that very plane was used in planing this ladder.

The marks were shown on the tracings of the paper.

We also show you that there was a chisel found on the Lindbergh premises; that there was a chisel of this size missing from the kit of carpenter tools of Bruno Richard Hauptmann the very sized chisel that was found on the premises.

Mr. Koehler testified that a chisel of that size was used in cutting out the notches for the rungs in the ladder, and if you go

to his set of tools you will find another chisel of the identical make, and very same kind of a chisel as was found and left on the Lindbergh premises.

Furthermore, Mr. Koehler testified that there were clamps found in the tool chest that could have been used to hold these boards together when they were sawed. He further testified that he had sawed with his tools, saw cuts similar to those saw cuts.

But there is more evidence that spells out to the very world Hauptmann, Hauptmann, in this case, and I am going to turn to the ransom notes.

There were several ransom notes in this case. The first note was a ransom note that was left by the murderer of this child on the very window sill of that room. The next note was mailed to Colonel Lindbergh, and the next note was mailed to Colonel Breckinridge, and the rest of the notes were either delivered or mailed to Dr. Condon.

We have proved to you conclusively, overwhelmingly, that the writer of the first note was the writer of all the notes. All the symbols were similar, and the elder Osborn testified and showed you by his device that the little punch holes showed, when they were held up together, that all these holes had the same space between them, and between the edge of the paper and the hole nearest the edge of the paper.

Furthermore, we showed you that the wording was similar, similar statements in different notes. We showed you by the experts and by the notes themselves, that one note would refer to another note, just like

a history, reading from the first note to the very receipt of $50,000 that was handed by Dr. Condon to the defendant, Bruno Richard Hauptmann.

We have further shown you that the paper of note Number 1, left on the window sill, and the paper of the second note, was the same identical sheet of paper that had been torn apart and one piece used to write the original note, and the second piece used to write the second note. And we have shown you conclusively that the writer of every single one of these notes was the defendant, Bruno Richard Hauptmann.

I am not going over all the experts' testimony in this case. It would take me all day. But we brought experts from all over, all over the United States, some from the East, some from the South, some from the Middle-West, and a man from the far West, including a Government expert—you heard their testimony, you saw their exhibits—to prove that the writer of all these notes was Bruno Richard Hauptmann. They showed you the misspelling, they showed you the similarities, they showed you the dissimilarities, they showed you the use of certain words, they showed you the peculiar "X" in the "Bronx," they showed you the lack of the crossing of the t's, the lack of the dotting of the i's, hundreds of other similarities and dissimilarities, the spelling of the word "boad"; and then the witness Sellers did this: He took from the ransom notes certain letters and he arranged them on the chart, so that you could see the signature of Bruno Richard Haupt-

man, which was so real that Bruno Richard Hauptmann could have written that signature on the chart—mute evidence that shouts out Bruno Richard Hauptmann in this case.

And then we have the sleeping garment. One of the notes said, "I will deliver the sleeping garment to you,"—words to that effect. This very sleeping garment that was put on that child the night of March the 1st was delivered by the writer of the note, by Bruno Richard Hauptmann, to Dr. Condon, the very sleeping garment. Mrs. Lindbergh said, "This is the sleeping garment," and told where she purchased it.

Every bit of this evidence connects Bruno Richard Hauptmann with the murder of the infant Charles Lindbergh, Jr.

But we have more than that in connection with the actual kidnaping and murder. We have the witness Hochmuth, the old man that stood on cross examination, the old man that on the very late morning of March 1st, the day of the murder, said he was on his porch and a car drove around the corner too fast and almost went in the ditch and the car stopped; and in that car was a ladder and the man's face grew red, and the man stared at him, and he identified Bruno Richard Hauptmann.

He said, "Those eyes."

And then another witness came in court, a defense witness,—Lupica,—the former Princeton student. Lupica said the very night of the kidnaping, at the end of the Lindbergh lane he saw a man in a Dodge automobile of dark color, and in that car was a ladder which he afterwards saw in

the Lindbergh premises; and he said that that man resembled Bruno Richard Hauptmann,—their witness.

Now, all these things connect Bruno Richard Hauptmann with the kidnaping. They have shown and proved to you conclusively that Bruno Richard Hauptmann was the murderer of the infant child, Charles Lindbergh, Jr.

But there is more,—reams of testimony, days of evidence.

Then we brought the witness, Mrs. Achenbach, the neighbor woman. And Mrs. Achenbach said that a day or two after the kidnaping the defendant and his wife came to her home; that he limped and his wife said that he had had a fall.

Then we brought Miss Alexander here. Miss Alexander said she saw Bruno Richard Hauptmann—identified him—watching Dr. Condon in a railroad station, testimony that hasn't been denied, during the negotiation of the ransom in the Bronx.

But there is more than that even. There is another silent witness that shouts out, and that is that board that was taken from the closet of Bruno Hauptmann's home, a board on which is not only the address of Dr. Condon, but Dr. Condon's original telephone number, a board in the writing of Bruno Richard Hauptmann which, under oath in the Bronx, he said was his, a board that wasn't out where the whole world could see it, but was in the closet of Bruno Richard Hauptmann's home.

But that isn't all.

Then we have Dr. Condon, Dr. Condon, the man who was for fifty years or more a

teacher, Dr. Condon, the man who was willing to give his time, who was willing to give his money, who was willing to give his very life so that the child could be returned to its parents, the man who went up and down the country. What did Dr. Condon say?

Dr. Condon said: Bruno Richard Hauptmann was the man that jumped off the fence in Woodlawn Cemetery; Bruno Richard Hauptmann was the man that he sat an hour and twenty minutes next to on a bench across the street; and Bruno Richard Hauptmann was the man to whom he handed $50,000 of Colonel Lindbergh's money; the man that gave him a receipt in the same writing—an hour and twenty minutes next to him on the bench. And he said the defendant Bruno Richard Hauptmann was the "John."

Then comes more testimony: Perrone the taxi driver, Perrone the man that was sitting in his taxicab when he says the defendant came up to him and said, "Take this note to this address." He came into this courtroom and said, "That is the man that gave me the note," written in the same handwriting, proved by the experts, "which I took to Dr. Condon." Another witness.

Then we have more testimony. Colonel Lindbergh testified that on the night of April the 2nd when he went to St. Raymond's Cemetery and he sat in the car, he heard a voice, and the voice called "Hey Docteur!" And he said the same voice that he heard in that cemetery was the voice of Bruno Richard Hauptmann.

You who have heard that voice on the stand here would never forget it.

Then there is something else in this case: Bruno Richard Hauptmann lived in the Bronx. St. Raymond's Cemetery was in the Bronx. Woodlawn Cemetery was in the Bronx. The money was found in a garage in the Bronx—everything in the Bronx. The National Millwork & Lumber Company was in the Bronx, where this very defendant lived all during these negotiations.

Now you can disregard the personal identity, disregard the handwriting experts, disregard Whited, disregard the ladder, disregard Lupica, disregard all those things, but I want you to remember this: that the man who got the $50,000 handed to him was the man who had buried in his very garage approximately $15,000 of this very money, buried not in a shallow grave, like the Lindbergh baby was buried, along Mount Rose Road, but buried in a garage, in a can behind a beam—Bruno Richard Hauptmann.

And it was Bruno Richard Hauptmann that wrote these notes; it was Bruno Richard Hauptmann that wrote the notes that said to build a box of certain dimensions; and the notes instructed them what to do, to go to this place and look under a stone and find another note, and do this and do that,—the defendant Hauptmann. And remember this, remember that at the bottom of some of these notes appeared the word "singnature," "singnature," and as soon as Bruno Richard Hauptmann received the $50,000 from Dr. Condon, what

happened? No more notes, no more notes sent, no more notes received—the notes stopped; furthermore, the baby was dead and the writer of those notes, the defendant, knew the baby was dead at the time he accepted $50,000 and turned over the receipt in the cemetery.

Furthermore, we have proved to you conclusively and overwhelmingly that this man had every bit of the $50,000.

We brought a Government man in here and had figured,—figures that don't lie; figures of his brokerage accounts; figures of his banking account; figures of his mortgages; figures out of his own diary, out of his own book, and we showed you by his own statements and by this testimony that he received approximately $50,000 that he couldn't account for, try as he did,—couldn't account for.

And here is another thing: the very day that the $50,000 was paid over in the cemetery, that very day, April 2nd, this defendant resigned from his job, didn't work any more, became a gentleman of leisure,—became a stock broker: the day the $50,000 was paid over.

Then we come down to his arrest. The arrest sounds almost like fiction.

President Roosevelt had called us off the gold standard, they were calling in all the goldback bills and the gold certificates. The banks and the police and the grocery stores and the gasoline stations and everybody were watching for Lindbergh ransom bills.

Lists were printed and sent out. And suddenly one day in September the defend-

ant Bruno Richard Hauptmann went to a gas station near his home and purchased some gasoline, and he gave a bill, and the attendant, Mr. Lyle, was wide awake, and he asked him about it. And he said, "Oh, I have a hundred more of those home,"—words to that effect. And the attendant wrote on the man's license number and it went to a bank and the bank looked at it and the bank called the police and they checked up and found that Bruno Richard Hauptmann was the man that owned this car. And then they trailed him, they followed him and suddenly they closed in on him and when they picked him up he had another ransom bill right in the very pocket of his clothing in a wallet. More evidence, this very money in his pocket. Then he testified, he admitted that he used another one of these bills to buy a pair of shoes for his wife and then when they took the man to his house they looked through his house and couldn't find anything. They took him to the police station, and they were suspicious of his garage because he was looking out the window at his garage, and they said to him, "Have you got any money in the garage?" And he said, "No." But they dug around in his garage and they found first over $13,000. They went to the defendant and they said, "What about this?"

And he said, "Yes, it is Lindbergh money, but it's all I have got." And then they went back again and they dug around again, and they found the board, and in the board was $840 more with a little pistol and he said, "Yes, that's with it, too, but

that's all there is." And then he told them the Fisch story, how Fisch gave him a box and he put it up in the closet on a shelf and it leaked and he put it out there to dry. But we brought a witness in this court room who proved to you that Bruno Richard Hauptmann passed one of these bills at a theater long before Fisch ever left this country.

Then we showed you his brokerage accounts, how he gambled with these moneys, moneys, and we showed you more than that,—the man that stopped work on April the 2nd, 1932, how he spent money. He took a trip to Florida, he sent his wife to Europe, he bought a $400 radio, he bought a shot gun, he bought a pair of field glasses for $125. He bought his wife lots of dresses. He went on hunting trips,—the man that didn't work from April the 2nd, 1932, except an odd job now and then, and the man that consistently lost money in the Stock Market in New York City, Bruno Richard Hauptmann.

Now, there is more than that to this case that ties Bruno Richard Hauptmann and you can consider this: his guilty conscience, the fact that when he was arrested he tried to disguise his handwriting, the fact that when they asked him if he wanted a lawyer, he said, "Oh, what's the use!"

His attitude on the stand, his misstatement, and his lies and his lies, and his lies, here and in The Bronx.

Now, ladies and gentlemen, I could go on all day, but the Attorney General will give the main summation and he will answer Mr. Reilly, all the statements that he

tells you in this courtroom; but before sitting down I want to say one thing to you, and that is this: this testimony has been presented to you by over a hundred people, God-fearing, honest, truthful people, who came to here in behalf of the State of New Jersey.

I watched you people sworn in, I watched your names drawn out of the box, and I watched you take your oaths, and I know that you have a duty and that you have an obligation; and when I was sworn as Prosecutor of the Pleas of Hunterdon County I was given a duty by the Governor of the State and by my office, and that duty, among other things, was to try fairly the defendant, Bruno Richard Hauptmann; and as Prosecutor of the Pleas I am going to insist that you members of the jury perform your duty the same as I have performed my duty; and when the oratory of Mr. Reilly has left your ears, and when the sympathy that covers your heart has been brushed, and when you go in the room to deliberate, I am going to ask you to remember that the responsibility of the State of New Jersey has then ended, and the responsibility is then yours to weigh the evidence and bring in a verdict in this case.

And I am going to say this in closing: Remember, we are not required to have a picture of this man coming down the ladder with the Lindbergh baby; but we have shown you conclusively, overwhelmingly, beyond a reasonable doubt, that Bruno Richard Hauptmann is guilty of the murder of Charles A. Lindbergh, Jr.

Thank you.

The Court: The Court will take a recess, at the request of counsel, for five minutes.

Mr. Wilentz: We are presenting the State's requests, and we are exchanging with counsel for the defense our respective requests.

(At 10:55 a. m. a short recess was taken.)

The Court: I understand, of course, that the Attorney General is ready and would like to have some additional time tonight. But we have, by common consent, settled upon 4:30 in the afternoon as a proper time for recess, and I do not feel that there is any such emergency presented to me as would induce me to break through that settled rule here, because the air is not good in this court room and we all of us have to conserve our energy and strength; so that I think that as usual, we will take a recess now until tomorrow morning at ten o'clock, and the jury may now retire. Come in tomorrow morning at ten o'clock.

(At 4:35 p. m. the jury retired.)

The Court: The prisoner is now remanded to the custody of the sheriff and he may retire.

(The defendant retired in the custody of the sheriff.)

The Court: The Court will now take a recess until ten o'clock tomorrow morning.

Summation by Mr. Hauck

(Whereupon at 4:37 p. m. the further trial of the case was adjourned until to-morrow morning, Tuesday, February 12th, 1935, at ten o'clock.)

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., February 12, 1935.

THIRTY-FIRST DAY.

Present:
Hon. Thomas W. Trenchard.

Appearances:
Mr. Wilentz,
Mr. Lanigan,
Mr. Hauck,
Mr. Peacock,
Mr. Large,
Mr. Stockton, III,
For the State.

Mr. Reilly,
Mr. Fisher,
Mr. Pope,
Mr. Rosecrans,
For the Defendant.

(10:00 A. M.)

(The jury was polled and all jurors answered present.)

The Court: That aisle will have to be cleared.

The courtroom is manifestly overcrowded. There is no question about that. I will ask the Sheriff to see to it that that doesn't happen at the afternoon session.

The people who are here must remain quiet.

There is to be no demonstration of any kind at any time, no manifestation of approval or

disapproval of anything that happens here. I want the officers to be vigilant and see to it that quiet is maintained so that we may conduct the business in an orderly fashion, and if there is any disobedience of this order I want the offenders brought up here and they will be dealt with.

Have the jury been polled?

Clerk Fell: They have.

Mr. Wilentz: May it please your Honor, in connection with your Honor's statement about demonstrations, might I ask, too, that so far as the defendant and his wife are concerned, I may have the right to proceed without any demonstration from that quarter.

The Court: You certainly may. There is to be no demonstration or interruption of any kind, proceeding from any person.

Let that be perfectly understood.

SUMMATION BY MR. WILENTZ:

Mr. Wilentz: May it please your Honor and men and women of the jury: You men and women with whom we have spent all these days, I want you to know how I feel about the very patient and kindly consideration that you have given us. Of course, we are also very deeply appreciative of the very kindly help that has come from the Court.

As far as I am concerned, I have been obsessed and possessed during this entire trial with the feeling and the knowledge that we are bound by the ethics of the profession that has always been honored and which we hope will continue in the future to be honored.

As far as I am concerned, too, of course, I have been governed with the thought that has always been with me that I am here as the Attorney General of the State of New Jersey and I am not only here for the State of New Jersey, men and women, but I am here representing the people of this country.

My delightful adversary says that you are not to be governed by the clamor of the mob that wants the life of this man. Let me say to you that if there is such a clamor, if there is such a demand for the life or for the sentence of this man, it is not because of anything that you have done or that I have done. It must be because of the evidence that has come from the lips of credible witnesses sitting here under oath.

If there is such a clamor from the American people as is indicated by my adversary, the American people aren't swung so easily as a people, it seems to me that if there is such a clamor so far as they are concerned, there must be a good basis for it. But after all you are the judges of the fact, and you are to determine whether or not that clamor, if there is such a clamor, is based upon the truth.

Now, I have come here at the request of your Prosecutor. I have come here at the direction of the Governor of the State, the then Governor and the present Governor; and I have spent every minute since October, 1934, and applied myself every moment; and each day and each night, as I proceeded along in this cause, the more I proceeded, the more convinced I was that I was pursuing a righteous and proper cause.

"Judge not, lest ye be judged," my adversary says, but forgets the other biblical admonition,

"And he that killeth any man shall surely be killed," "Shall surely be put to death."

For all these months since October, 1934, not during one moment has there been anything that has come to the surface or light that has indicated anything but the guilt of this defendant, Bruno Richard Hauptmann, and no one else.

Every avenue of evidence, every little thoroughfare that we traveled along, every one leads to the same door: Bruno Richard Hauptmann.

Now, it is a great distinction, men and women, and it is a great honor to represent the people in this cause, but that distinction and that honor, just as it is in every other case, is only the child of responsibility, and I feel my responsibility and have felt it. I have lost more weight in this case than this defendant, only because I wanted to be sure, only because I wanted to be certain, only because I wanted to be positive.

I have never prosecuted a man in my life. Why, the very thought of prosecuting a man for a crime goes against the very soul and the very grain of my system. I wouldn't take the job of Prosecutor from any Governor.

It just so happens by a freak of circumstances that I happened to be the Attorney General when this case comes, and it is in a small county. There is no staff of the Prosecutor, just one lone prosecutor, and I am called. I have to do my duty. And so it is a responsibility upon which is borne this situation. But I am unafraid. No defense counsel can worry me or frighten me or intimidate me—what if ten years from now somebody else confesses! That is the old army game, of trying to intimi-

date men and women sitting in a jury box—that maybe, possibly— why, everything is possible, everything is possible.

If it were the law of the land that we were to be governed merely by possibilities, we wouldn't try these cases.

No, my responsibility is going to come to an end soon, and I welcome that end, let me tell you. I want to return to my family, too, and get away from this business of running up every morning with these maddening crowds and publicity seekers. I want to get away from it all. I am naturally a homeloving person. I want to get back evenings to my children.

I know how it must be with you who have been locked up. At least, I have seen them over the weekend. I know how it must be with you; weeks and weeks locked up. But that is not my fault. That is not the Court's fault. Everything that has happened in this courtroom, men and women, everything, you may lay to the door of the gentleman sitting over there between the guards.

And so it is not only my responsibility, but now comes yours, and yours is a distinction, too, and an honor. As long as you live, and as long as your children's children's children live, they will remember that you as citizens made this sacrifice, that you sat night after night closed in a hotel room and walking up and down a balcony, without the right sometimes to go out for a ride, without the right to see a moving picture show or to have any form of recreation at all; that you served this county and served the State and served this Nation.

If you are going to do your duty, do it right.

All we ask of you, we do ourselves.

My friend, the Prosecutor, Tony Hauck, Judge Large, the rest of the staff, Colonel Lindbergh and all of us— we don't ask from you one thing that we would not do ourselves, and that is to do your duty.

You have substantially the same oath that I have and we don't want you to compromise. You can't compromise with murder and murderers. If you get the feeling that this case is what Mr. Reilly says, a perfect case, it is your solemn duty to find a verdict of murder in the first degree.

Oh, yes; there have been cases and there are cases in which a jury properly makes a recommendation of mercy. When a man is charged with murder, because he kills somebody that seduced his daughter, a jury probably can say, "Well, there is an aggravation there. While he had no right to take the law in his own hands, there was some aggravation there, there was provocation there, he was a father."

"True, he had no right to violate the law. We will find him guilty, but we recommend mercy." That is a proper case, maybe, for mercy, but this is not. Either this man is guilty or he is innocent. And if he is guilty you have got to convict him. Don't let anybody intimidate you; don't get weak if you think he is guilty. Now, Mr. Reilly says for the defense that we have got to prove, in order to sustain this indictment, he says we have got to prove that Hauptmann did this job and did it alone. Well, that is a matter of law, that is not anything else. You don't have to worry about that. And I say to you jurors that that is not the law. So far as Hauptmann is concerned he could have had fifty help him; if he partici-

pated in this murder that's all you have got to deal with. He can bring in Violet Sharpe's corpse and body and lay it right alongside of him if he wants; he can bring Isidor Fisch's grave from Germany and put it alongside of him. That doesn't help this defendant in this case a bit. If he participated in this crime, he is guilty, and it doesn't matter whether six, ten, or fifty helped him. Now all this talk about others is clearly the effort of an experienced criminal lawyer to confuse and befuddle a jury. If the jury will only be confused by some question they can't answer in their mind, he is hopeful that that will implant the germ of reasonable doubt to such an extent, at least, that they will recommend mercy. There is nobody at that table that doesn't feel he is guilty; I don't care what they say. The effort is plain, the effort is evident, to try to implant in the heart of one juror, just one— if only one will say, "Well, I can't understand how this happened, I can't understand how that happened"— just because they can't answer a question to themselves. There may be some questions you can't answer, but there sits the man that can answer them. He will be thawed out, he is cold; yes, he will be thawed out when he hears that switch; that's the time he will talk.

Now, counsel also says that we have got to prove that the child died on March the 1st, and that it had to be in East Amwell Township, and he says, "Now, men and women, you have got to be governed merely by common sense. Let's just take common sense, no technicalities." Why, counsel would have you think that if this child died just as he stepped over East Amwell Township, you have got to acquit him. Coun-

sel thinks that if the child's last breath came just as he got over the county line, you have got to acquit him. What foolishness. Any place in the county of Hunterdon, if this child received this blow, whether it died then or whether it died the next day, if it received the fatal blow in the county of Hunterdon anywhere, this man is guilty of murder in the first degree. That is the law as I understand it, first degree, and the Court will charge you about it.

You can imagine what a great joke, what a great joke it would be in this civilized Nation— just imagine that if it so happened that the man stepped over the boundary of East Amwell Township— how ridiculous this country and this Nation would be in the eyes of the whole world that we couldn't prosecute a man who had committed a murder.

He could admit it, they claim, but if he stepped over the boundary line, or if the last breath happened after March 1st— you are not interested in that. What this jury and what this world wants to know is this: Who is the fellow that took this child?

When you have decided that he is the man, that is all you have got to worry about. Never mind the lawyers' arguments, that is all you have got to be concerned with. Is he the fellow that went into that room and took that child? That is all you have got to be concerned about.

Now, let's see. What are some of the admitted facts? There isn't any question that at the time of this crime Colonel Lindbergh was an international figure.

There is no question that he and Anne Morrow had a twenty months' old baby. There is

no question, and it is admitted and conceded that on the afternoon of March 1st that baby was home and it was a normal baby.

There is no doubt that on that night the baby was stolen. It is admitted, it must be admitted, that it was stolen by the person who was in the room and left the note.

There is no doubt that the person who was in the room and left the note stole the baby and took from that child a sleeping garment. That sleeping garment was returned following the series of other notes.

As a result of those notes and the sleeping garment, $50,000 was paid, and there is no doubt that the child was dead— murdered. Now, that is admitted.

Now, men and women, you ask yourselves many questions; the world has asked many questions— such a crime, who would do such a thing? Well, I can't comprehend, you can't imagine, because you are not so constituted, you haven't that sort of a system. Could you ever believe that in this land anybody, anybody would even get the thought of going down to East Amwell Township to Lindbergh's home to take this child? It just can't be believed.

You can ask yourselves that question as easily as many others, but we know that it happened. What type of man would murder the child of Colonel Charles A. Lindbergh and Anne Morrow, Colonel Lindbergh who, once a poor boy, for the sake of achievement, for the sake of science, one evening stepped into an aeroplane and spanned the ocean, risked his life, subjected himself to the waves, and, of course, he flew with a few letters of introduction, and the next day found himself the most popular and the most glorious man in this

world; a man who has been an inspiration to every child in this world. Why, a tot, as soon as he gets to talk, wants a little aeroplane for a toy. What does it mean? — It is ambition; it is an ambition to invention, an ambition to everything; the inspiration of the children of the Nation.

Anne Morrow, the cultured daughter of a former Ambassador to Mexico and a late United States Senator, a man who surely, if he had lived, would be President of the United States.

Who would be the type of person that would take a child like that and murder it? Who could there be?

Why, men and women, if that little baby, if that little, curly-haired youngster were out in the grass in the jungle, breathing, just so long as it was breathing, any tiger, any lion, the most venomous snake would have passed that child without hurting a hair of its head.

Now, what type of man, what type of man would kill the child of Colonel Lindbergh and Anne Morrow?

He wouldn't be an American. No American gangster and no American racketeer ever sank to the level of killing babies. Ah, no! An American gangster that did want to participate in a kidnaping wouldn't pick out Colonel Lindbergh. There are many wealthy people right in the City of New York, much more wealthy than Colonel Lindbergh. I don't know that the Colonel is wealthy at all. As a matter of fact, I think he had a tough job scraping up the few dollars here, there and everywhere to make up the ransom money.

There are many wealthy people in New York.

Oh, no, it had to be a fellow that had ice water in his veins, not blood.

That is the first thing.

It had to be a fellow who had a peculiar mental make-up—who thought he was bigger than Lindy, that when the news of this crime came out he could look at the headlines screaming across the page, just as the headlines screamed across the pages when Lindy made that famous flight.

It had to be a fellow that was an egomaniac, who thought he was omnipotent. It had to be a secretive fellow. It had to be a fellow that wouldn't tell anybody anything. It had to be a fellow that wouldn't tell his wife about his money, who would conceal the truth from her. It had to be a fellow that wouldn't trust a bookkeeper, that would take books and enter every little item, groceries, boats, everything, himself. It had to be a fellow that could undergo hardship, not ordinary hardship; it had to be a man that you could kill in cold blood here and he wouldn't tell if he didn't want to—the kind of a fellow that would stow away on a boat and travel three thousand miles to sneak into the country in a coal bin, without food, without water, a man that could undergo that hardship, and when he was apprehended in court he would go back again and try it over again. That's the type of a man. Try it over the second time and then the third time, a man that could undergo that sort of a hardship. It had to be the sort of a man that, when he did break and enter a home, he would break the burgomeister's home, he would go through the window of the mayor's home in Germany, not the ordinary citizen, not because the mayor was a rich man, but because the mayor was a respected man

over there, he was the most respected man in his community, the burgomeister. It wasn't that he had the money, but there is something in the mental make-up of the type of man that would kill the Lindbergh child that would prompt him, when he did burglarize, when he did open that window and go in to get money, it would have to be somebody of position; it would have to be the type of man that wouldn't think anything of forsaking his own country and disgracing his own nation; it would have to be the sort of a fellow that would leave everything behind and flee and go to another country and another land, a strange land; it would have to be the type of man that would forsake his own mother, sixty-five years of age, and run away. Yes, it would have to be the type of man that would hold up women at the point of a gun, women wheeling baby carriages. And let me tell you, men and women, the State of New Jersey and the State of New York and the Federal authorities have found that animal, an animal lower than the lowest form in the animal kingdom, public enemy Number I of this world, Bruno Richard Hauptmann; we have found him and he is here for your judgment.

Now, yesterday afternoon we spent some time with counsel for the defense, and we have contended, as the Prosecutor told you, that the Prosecutor has proved this case by overwhelming and conclusive evidence. That's witnessed by the fact that Chief Counsel for the defense says, "This case is too perfect." He says we have a perfect case. And how do they attempt to meet this perfect case? That's a fair question, isn't it? How do they attempt to meet it? Why, they attempt to meet this testimony in this way: they start out by trying to assassinate, to

assassinate the character and reputation of everybody that dared to come here and be useful, men who have lived honorable and decent lives, public and privately, men sixty, seventy, eighty, it didn't matter at all, scathing denunciations, right from the first to the last.

Why, "Judge not lest ye be judged," what a text! What a text for a defense that starts right out to rip the heart and soul out of Americans that are sworn to do their duty and are here only for that purpose.

If the State were on the level!

Did you ever hear in a courtroom a statement like that before If the State were on the level! Who in the State is not on the level?

Oh, they are very kind to the Attorney General. Of course, the Attorney General wouldn't do it.

I want the gentlemen of the defense to know that I am not concerned about their sparing my feelings. If the rest of these men with whom I am associated are tarnished with this stick, I am tarnished with it too. And so is Tony Hauck. And so is Judge Large. And so are these other men who spend their lives in the service of the State.

The State is not on the level!

Schwarzkopf, please stand up.

Jury, look at Colonel Schwarzkopf. Take a look at his eye. Does he look like a crook, a graduate of the United States Military Academy; a man who served his Nation against his Fatherland, on the fronts in Europe. Does he look like a crook?

Don't you suppose he is sorry for a German? He has German blood running through his veins. Do you imagine Colonel Schwarzkopf is going to frame this fellow up? For

three years he left the fields roam with this man, with all men, suspects here, suspects there, nobody was brought before this jury. Why? Because they didn't have the right man.

Schwarzkopf has been pilloried around this State and around this Nation by ambitious newspaper men and others who would like to write stories about anything, by people who wanted to make a goat out of men, and here this calm, delightful father of children sat by year after year, just trying to do his duty, and he has got to come finally to this courtroom to have somebody from New York call him a crook.

"Judge not lest he be judged." Yes, Colonel Schwarzkopf is good enough for the Governor of the State of New Jersey, he is good enough for the Senate of the State of New Jersey, he is good enough for Colonel Lindbergh who suffered this terrific loss, he is good enough for Anne Morrow and the Morrow family, but for the gentlemen of the defense and Mr. Hauptmann he suddenly becomes crooked.

What do you think of that?

Inspector Bruckman, will you do me the honor to stand up, please.

Jurors, look at Inspector Bruckman, one of the highest commanding officials in the New York Police Department, who became an Inspector after twenty-seven years, risking his life many days and many nights, with an invalid wife at home. He has to listen over the radio that he is a crook today, a German.

And they say that because he is a German he marked on that board in German script what this man admitted he himself marked.

Now, let's see.

Why, men and women, this case *is* a perfect case. Why, I sleep it, I eat it, I dream it, I live

it, and every moment it is Hauptmann, Hauptmann, Hauptmann, all the time!

And he say that Bruckman, Bruckman, who has never been convicted of anything, Bruckman, who has lived an honorable life, Bruckman, in charge of a Police Department that has eighteen thousand men—the greatest Police Department in the world,—an honorable man, a fine man, did these things.

Just look at Bruckman and tell me: does he deserve that sort of treatment for this burglar, this murderer and convict?

They say Bruckman must have walked in there and, because he was a German, marked these boards which you will be able to see with a magnifying glass.

What was the testimony about that board when the man was under oath?

"So that when you looked at Exhibit A—"

—this is under sworn testimony in the Supreme Court in New York, just a few months ago, with the protection of the Supreme Court of New York, nobody forcing him, weeks after he was arrested—

"So that when you looked at Exhibit A, which was presented to you by the District Attorney of the Bronx County and you looked at the handwriting thereon, you said that was your handwriting, isn't that so?"

"I said that is my lumber. I could not make out the handwriting."

Next question:

"You said the number on there is your handwriting?"

"Answer: Yes."

"What about Decatur?"

That is spelled out here.

"I could not make out whether that is my handwriting and numbers."

"The numbers are in your handwriting, are they not?"

"They are."

"But the other writing you are not sure of?"

"I could not make it out."

"You would not say it was not your handwriting, would you?"

"I would not say exactly, no."

Then when he was examined by District Attorney Foley, who treated him as he told you, forced him to do nothing, treated him as a gentleman, helped him, gave him every consideration, what did he say there?

"Hauptmann, yesterday I showed you a piece of wood from your house with Condon's address and phone number on it; is that correct?

"Yes.

"You admitted that you wrote that on the board, is that so?

"Yes.

"You have been well treated?

"Yes.

"Your lawyer has visited you here in private?

"Yes.

"You have visits from your wife?

"Yes.

"You have been allowed to conduct your defense without hindrance?

"Yes.

"I have given you cigarettes?

"Yes.

"I have helped you in every way?

"Yes.

"Is that all true?

"Yes."

And so it is charged, with that as a basis, that is the basis that unfortunately under our system of government, men are permitted, with the protection of the courts, are permitted to assassinate men of good character and reputation. What do you think of that? Why, you know we have gotten to the stage in this country, we have gotten to the stage in this country where criminals think they can do anything, if they get the right lawyer, that's all there is to it. All they need is the right mouthpiece. Why, police crookedness—I am not talking about anybody in this case but just generally talking about police crookedness, men and women.

I am a member of a profession, as I said before, which is a noble profession and always will be, but in this profession there are more crooks amongst the lawyers than there ever will be amongst policemen, and the sooner we all take notice of that the better off we will all be.

Inspector Bruckman is no crook.

Mr. William Frank, stand up, please. (Mr. Frank stands up.)—Special agent of the Treasury Department of the United States of America, they say that he falsified the compilations in the record, and those records we got from Hauptmann's books, those records we got from the brokerage accounts, those records we got from his bank account, those records we took from his own handwriting and from his own statements, and Special Agent William Frank has got to be assassinated in order to save this man Hauptmann. What do you think of that?

Corporal Wilton. Why, men and women, when you talk about the State Police, what a fertile field it is for ambitious, young lawyers, how they love to talk about them.

Who would you call upon if you needed a

policeman tomorrow? Why, the Government of the State has assigned the police—if you had some trouble home you would have to call the State Police, and who are they? Are they a gang of brigands? Why, they are your boys and my boys, ambitious to make an honest living. They don't take ex-convicts; they don't take lunatics there, they take men who are physically fit, they take men with the average intelligence.

Now, they don't take lawyers, and they don't take college professors, they take boys that are willing to earn a hundred dollars a month or a hundred and twenty-five dollars a month, but clean boys, Yankees, Americans, citizens, men who they believe will be honest, and honorable, as they were before they came.

Corporal Wilton, they said, "Who took these photographs?" "Where are they?—"Of these nail holes?" Why, they said he must have taken —it looks so fresh you can see it must have been taken within forty-eight hours.

Why, that ladder has been reposing in the safe of the County Clerk for weeks. What do you think of that? For weeks it has been in that safe over there, where nobody could get it unless both sides were available, and they say Corporal Wilton manufactured these photographs! They forget to tell you about the record that they asked him to produce. They asked him to produce the record when he took it, and he took out his report and handed it to counsel —March the 8th, 1932.

They forget about Mr. Betts, who came here from Washington and made a report about these nail holes. He saw this ladder in May, 1932, he filed a report in June, 1932, and he came here post-haste from Washington when he

read the testimony of this very ambitious writer of a book, Dr. Hudson.

So Dr. Hudson wouldn't think of coming here for any advertisement! Oh, no, he is beyond that, because he testified for the defense. The people that answer the radio calls for Mr. Reilly, they are just prompted, they are just prompted by a desire to seek justice and do justice. We didn't go over the radio, men and women. The State of New Jersey can't reduce itself to that sort of a level.

I am not finding fault with the defense, but I say, so far as we are concerned, no radio talks for us, not before the trial, not during the trial, and not after the trial.

But Dr. Hudson must have been listening on the other end of the radio. So Corporal Wilton, he has got to be assassinated. Arthur Koehler, who has devoted his entire life in the service of the United States Government, at nothing else but this very work, he must be looking for advancement, a man who went up and down the length and breadth of this country before he ever knew such a person as Hauptmann lived or existed; who went from one mill to another, from one plant to another, following lumber, pieces of lumber, and who finally found in the Bronx lumber yard the lumber he was talking about, the type of lumber.

He knew, we knew, the world knew, that the man that built that ladder got part of the lumber from the Bronx lumber yard.

When? After he was arrested? After Hauptmann was arrested?

Oh, no. One and a half years—one and a half years before Hauptmann was ever arrested, we came to that Bronx lumber yard and there we were stuck; we knew it came from there; we

knew someone purchased lumber there, we couldn't find that fellow.

And what happens when he is arrested?

It develops he worked there. What else happens? It develops in December, 1931, he bought nine dollars and some cents' worth of lumber there.

So Arthur Koehler, Arthur Koehler, has got to be assassinated, assassinated by a lumber man from Connecticut and Massachusetts, or Massachusetts and one from Long Island.

Why, Hunterdon County, Middlesex, Mercer, they are full of carpenters and contractors. They couldn't get one of them to come in. They had to go up to Long Island or Massachusetts; the radio was working again; and that in an effort to assassinate Arthur Koehler, that has worked his entire life. Koehler—does that mean anything to you? Doesn't it sound like a German name? Do you think he would have any prejudice against Hauptmann? What is there in life of Koehler? He is at the top of the heap in Government service. He cannot get any advancement. There is no advancement that he seeks. He cannot get to be a big lawyer and plead cases and get big fees—nothing. That's his job. He has dedicated his life,—but he has got to be assassinated in this scheme in order to free Hauptmann.

Major General John F. O'Ryan is just a bluff. Now why was Major General O'Ryan brought here? Not only that, but my delightful adversary says he ceased to be Commissioner for very good reasons, Major General O'Ryan, who saw service in command of a division of the United States Army, Major General John F. O'Ryan, who was Police Commissioner of the City of New York at the time of

Hauptmann's arrest. We didn't bring Major General O'Ryan here, in the first place, but when this defendant got on the stand and said, "Why, before they found the second batch of money I told the Commissioner,"—we had to bring the Commissioner here to show you that he didn't.

We had to bring him here, and we took him away from a conference with the President to bring him here. And then he has to be assassinated, too, the inference thrown out that there was something wrong with Major General O'Ryan—he is just a bluff.

Oh, not only that. They don't stop with that. The entire line has to be crushed, right down into the gutter and into the muck they try to drag everybody, alongside of Hauptmann: Osborn, eighty years of age; his son; Tyrrell; Cassidy, Stein, Walter Sellers and Souder. Why, they dismissed those men with a wave of the hand by saying, "You can get them for so much a day."

Why, Dr. Souder of the Federal Government isn't getting a cent a day. That is his duty in connection with his job.

Osborn has lived to be eighty. He has lived to be eighty years of age. He doesn't know when he will have to answer the call of God and I don't think he would take with him at this stage of life, I don't think he would want to take with him the feeling that he sent a man to death unless he was positive—unless he was positive.

Men have traveled from one end of this country and from the other to Flemington to testify. Why? At great expense to the State of New Jersey? I don't know. They haven't charged us a cent yet. But whatever the expense is, men and women, the Attorney General

stands responsible for it. It was his plan. It was his notion. It was his idea.

Why? Why, I didn't want to take any chances either. I sent to every part of this country, to the best men in the country, and said, "Tell me what you think about it."

Separately—did you hear what one of the witnesses said? "The Attorney General says he won't stand for any conferences between handwriting experts. He wants their opinions separately."

And out from Los Angeles came an opinion from a man respected and honored by the courts, the courts' representative in the most famous cases in the world. What was it? Hauptmann.

Up here from Montclair, New Jersey, from Mr. Osborn, Senior—what was it? Hauptmann.

From Virginia, from the southern gentleman, what was it? Hauptmann.

From Washington, from the Federal Government, what was it? Hauptmann.

Every place every one—Hauptmann. But they are just so much a day.

What do you think of that? They have to be assassinated for Hauptmann—Hauptmann the convict, Hauptmann the burglar, Hauptmann the murderer. They have to kill everybody in his path—just clear the way for Hauptmann.

They spent twenty minutes talking about the defense witnesses. All day on this floor yesterday, talked about everything in the world except the defense's case. For twenty minutes from 4:10 to 4:30, counsel talked about the defense witnesses, all of them, and that is all they were worth.

Did they tell you anything about their hand-

writing experts? Do you remember the day in here, there stood counsel for the defense and said to the Court, "Give us this adjournment, we want our handwriting experts, we want our handwriting experts, not one,—to look over these ransom notes and these exhibits, and we will show them down at the Hotel in Trenton where the General has his headquarters." And we adjourned court and we did show them to them.

I don't remember the names, they are in the record, Malone, Meyers and others, four or five or more, and only one man, all the way from East St. Louis, only one man would dare walk into this courtroom to say that it wasn't Hauptmann.

Before these men ever got into the case representing this defendant, the record shows that we submitted, we let the handwriting experts come down and look at the original notes way back in October, September and October, 1934, to look over all the exhibits right at State Police Headquarters.

And where is he? Why isn't he here? Why aren't those other experts here? You know the reason. They wouldn't dare say it is not Hauptmann's, because, of course, they are Hauptmann's. Hauptmann says they look like Hauptmann's. But that doesn't make any difference. They have got to murder and assassinate each and every one of these men, there is no giving way.

They talk about the defense not having any money, handicapped for money. There is not a scintilla of evidence, there is not one word of evidence, there is not the slightest bit of proof that they haven't money.

I think they have got lots of money. That is

my notion against their notion that they haven't got money; money coming from cranks and idiots and fools, un-Americans all over the country, pouring in enough money to hire what they consider the four best lawyers available, to get the best criminal lawyer in the East.

There wasn't a lawyer in the State of New Jersey that they thought could do the job as well, a man with a reputation of thousands of cases, a man who has represented more criminals in the big Metropolis than any other man, according to reputation.

So there must be something about this case, there must be some money somewhere; certainly they wouldn't represent a murderer just to represent him.

What is there that would attract high-priced lawyers and famous lawyers to a man charged with the murder of the Lindbergh child?

Certainly they don't want to glory in the blood of the Lindbergh baby. It must be because of their oath to their professional duty. It must be because of that and because they are paid to do the work.

No money? Who said no money?

Enough money to bring the handwriting expert from East St. Louis and a lumber man from Massachusetts or Connecticut, and another man from the other place, and the witness who testified to nothing from Warsaw, New York; enough money for radios and everything else.

No money?

Just an effort to prejudice this jury; just an effort to appeal to the jury.

Why, I think they have probably spent more money than the State has.

Now there is some talk about some more gentlemen in this case. Red Johnson. Red

Johnson had the unfortunate experience of being fond of Betty Gow, who had the unfortunate experience of finding it necessary to earn a livelihood, and it so happens she worked in the Lindbergh home. And so Red Johnson, because he knew her, and because he talked to her on the telephone the day of the crime, or the day before the crime, was apprehended. Now Red Johnson was permitted to go back to Norway, not by me. I had nothing to do with the case at the time. He was permitted to go back to Norway because the New Jersey authorities, the New York authorities, the Federal Government, they checked him and they rechecked him and they looked up his relatives and they looked up his activities and checked where he was that night and where he had been the night before, they checked his bank accounts, the bank accounts of his relatives, they had Scotland Yard checking up, or the Norwegian Government, whoever it was, checking up his relatives and they found, "Well, what is the use of holding this fellow?" Don't you think that the police would have been delighted long before they ever heard of Hauptmann; if they thought for one minute that Red Johnson had anything to do with it, would they let him go back? Why, in one breath my adversary says the State of New Jersey is wasting money, they brought the Fisches here, but they didn't bring Red Johnson. Why bring Red Johnson here? Because they want us to bring him? Just to satisfy counsel for the defense? If we would have brought him here they would have said we have wasted all this money bringing Red Johnson here. I thought about bringing Red Johnson here, after counsel made some

of his statements. When I found out the record of Red Johnson, that he had been cleared, that he had been checked, there was no necessity to spend that money. And what is there in the record? Nobody accuses Red Johnson of anything in this case, outside of the defense counsel; and that is hardly sufficient. I can't meet all the insinuations of counsel; I am supposed to meet, the State is supposed to meet the testimony. That's all.

Now, that's Red Johnson.

While we are talking about Red Johnson, and in the same breath it is said that we spent a lot of money in bringing the Fisches over here, and we only called one. I want to tell you why I brought the Fisches over, men and women, and if there is any criticism for it, it doesn't have to be shared by anybody, I take the blame. I will answer to the Governor and the Legislature. I will answer to Senator Prall of Hunterdon County. Let me tell you why I brought the Fisches here. I know what it means to deal with criminals who are charged with murder. I have represented them for years. I know something about their means and their methods. I know some of the defenses that they try to put up. I have had some experience. I have never prosecuted a murder case in my life, I have never prosecuted anybody, I don't want to do it again; but I am not altogether unacquainted with court practice. I have tried some cases myself before, and I could see, I could see what I was up against.

And I could see, I could see— I knew that if I didn't bring the nurse over to this country that attended Isidor Fisch on his death bed, I knew somebody would pop up on that stand,

one of those ex-convicts, one of those idiots, he would get upon that stand and tell this jury that Isidor Fisch confessed to this crime.

And let me tell you, nobody would get away with that on me. So I brought the nurse, a German nurse, from Germany—it wasn't expensive at all—and we brought her here, she came over with her nurse's gown, she wears it every day—an elderly woman, I don't know, I think she must be about sixty-five, can't speak English, can't speak anything else, and she sits in that hotel, she sits there at my request, at my invitation, at the State's expense, because I thought in dealing with so desperate a character as I knew we were dealing with, I wasn't going to take the chance of them planting any doubt in this jury's mind with anything like that. I didn't need Hanna Fisch here at all.

But counsel kept talking about Hanna Fisch. From the testimony it wasn't necessary to produce a bit of evidence about Fisch; but from the way that counsel caroused around here about the Fisches, and every second day he was telling you what he was going to prove about him—they never proved a thing—as long as she was over here, I thought I would bring her in and show this jury at least who a sister of this dead man was.

Now, that is the story of the Fisches. That is why we brought them over, and if any further explanation is made, men and women, I am perfectly willing to make it to the constituted authorities.

But so far as this jury is concerned, I hope that that is sufficient and disposes of it.

Now, Betty Gow has been, from the very first day, the subject of quite some attack.

Mr. Hauptmann wasn't satisfied with murdering this child. Why, he wants to leave in the train and in the wreck the lives and the reputations of all these people. It wasn't enough to hasten the death of Violet Sharpe; everybody else has to be absolutely crushed. If they are not dead, they have to be crushed; and Betty Gow is one of them.

We hold no brief for Betty Gow. But, after all, suppose you worked in this house. We couldn't do anything to you except arrest you; and then if we investigated you and found out there was no basis for it, why, we would have to let you go.

That was done about everybody.

But Betty Gow came here from Scotland; true, at the expense of the State. If Betty Gow had one scintilla of guilty knowledge, there was the slightest germ in her system that indicated any knowledge, she didn't have to come here. If there was anybody in the world that might have gotten on that stand while she was in this country, she was in danger, wasn't she?

She came from Scotland by invitation. Of course we paid her way. A twelve dollar a week maid couldn't be expected to pay her passage up and back. We have got to keep her here. Every day we have had to keep her here, to be ready in case they said something about her that wasn't true. And once they found out that Betty Gow was in this country, that stopped all talk about Betty Gow.

Contrast that and compare that with the Defendant Hauptmann over in the Bronx. Boy! When he heard the State of New Jersey wanted him, did he say, "I'll come over?"

Oh, no! He wouldn't come to the State of

New Jersey until after we had a trial before the Supreme Court.

We had to get a Governor's warrant of the State of New Jersey. We had to go over to the Governor of the State of New York. We had to then go before the Supreme Court. We had to go to the Appellate Division. We had to go up and down the line to induce the gentleman who said he was innocent to come over here and prove it. How about that as compared with Betty Gow?

Now counsel talks about Dr. Condon. I am not going to spend any time on him now, because I am coming to him later.

And then even Mrs. Morrow and Colonel Lindbergh are not altogether spared. They are paid the very gracious compliment, instead of calling them liars, they say they are mistaken.

Now, counsel for the defense brings in this lady from Yonkers, Mrs. Bonesteel, and he says Mrs. Bonesteel knows—a woman that had never seen Violet Sharpe in her life except that one occasion—she knows where Violet Sharpe was on March the 1st, a woman who, when shown a picture of Violet Sharpe, another picture, wouldn't know whether it was or it wasn't. But be that as it may, Mrs. Bonesteel knows but Mrs. Morrow is mistaken, the grandmother of the child that was killed is mistaken as to who was in that house on that night and when they were there, the grandmother who got the call at eleven o'clock and who the next day or that night rushed down to Hopewell, she is mistaken.

Now, members of the jury, I don't know you, of course I don't. If you were in my

county where I know most of the people and they know me I could tell by looking at your eyes whether you swallow that sort of hocum. But after all, we are right close together, you must be the same kind of people. It can't be possible that just because a man comes in here and wears a mask of sincerity, has a reputation as a big lawyer, it cannot be possible that that could fool you. It cannot be possible that that could confuse you. I cannot believe it. Mrs. Morrow was mistaken, but Mrs. Bonesteel wasn't.

Four people have come in here, not one of them with a blemish—youngsters, yes. Who would you pick to be out with Violet Sharpe that night? She wouldn't be out with famous lawyers, no, she would be out with some young fellow, yes, that wanted to go to a cabaret or wanted to go to some other place, but hard-working boys, boys that earn an honest livelihood—no ex-convicts, no idiots, no lunatics.

They are wrong, too; Mrs. Morrow is mistaken. Every woman that came into this court room was charged with seeking a moving picture contract. Cecilia Barr, who has worked for twenty-five years and whose very appearance would indicate to you that it isn't likely, no matter what she did, that she would get a moving picture contract.

Cecilia Barr, she had to get a moving picture contract, too.

Now, there have been some questions that might arouse, that you might want an answer to that counsel asked. Counsel wanted to know, "Where is that footprint that was found in the cemetery?" Well, you will remember that several days after the money was paid it seems that

in the interim Dr. Condon went with Colonel Lindbergh on this flight to find the baby.

Several days thereafter, Colonel Breckinridge and Dr. Condon and Earl Hacker, an architect, not an amateur, but an architect, went up there to look over the cemetery and they found a footprint, and the testimony is that they took an impression of it, and when counsel came to that in the case, counsel for the defense says, "We would like to know whether you will bring it up."

Now, we didn't introduce that footprint, and I will tell you why. That footprint was found two or three or four days afterwards. We couldn't introduce it. It wasn't admissible. Why, there might have been any number of people—we think it was the footprint of the man that got the money, we thought so, but it wasn't admissible, we thought, but we had it, and when counsel asked for it, we brought it, and it was back in that room with evidence waiting for his call, just like he called Sisk to the stand, two or three times; just like he recalled Kelly to the stand—they were always ready and willing and did testify again and again—that footprint was ready for production any time they wanted it.

Then, counsel wants to know where is the phonograph record? Did you hear him ask Mr. Sisk, of the Department of Justice, if there was such a record, and did he have it, and would he produce it? Why, sure, that phonographic record has been alive and awake waiting for him to call for it, to put his voice on for you.

I would have loved if you had heard the story all over again, Condon telling about this

conversation, "Will I burn if the baby is dead? Are you German, John? No, I am Scandinavian. Have you got the money? No, I haven't got the money. Doesn't Colonel Lindbergh think we are the right party?"

Mr. Reilly: We must make an objection to this, if your Honor, please. I hate to interrupt the Attorney General, but he is now talking about something which he assumes would be in the record, if it was called for, and I say it is highly improper. He should be confined to the evidence in the case.

Mr. Wilentz: I am talking about Dr. Condon's testimony, and I want to remind counsel that I didn't interrupt him.

Mr. Reilly: Well, I can't help it, General, if you are going to talk about things that are not in the evidence.

Mr. Wilentz: All right.

Mr. Reilly: He is talking about a record he says "I would love to have it in, I would love to have it over again."

Mr. Wilentz: Yes, if your Honor, please, and—

Mr. Reilly: Now, that is not in the record, and only five minutes ago he talked about pictures, the first, second and the last picture of Violet Sharpe, which are not in the record, not offered in evidence by him and we cannot sit here, sir, and permit him to testify and not sum

up on the evidence in the case, I respectfully say.

The Court: Well, didn't you make some inquiry of some one of the witnesses about this record?

Mr. Reilly: I asked him if he had it, yes, sir.

The Court: Yes, and didn't you ask him to bring it here?

Mr. Reilly: I asked him would he bring it.

The Court: Yes. Now, I haven't observed anything as yet that is irregular in the summation of the Attorney General. Of course, he understands, and he will be required to argue concerning the evidence in the case, and the legitimate inferences that flow in his judgment from that evidence, and I do not think that he has failed in that respect yet, so you may proceed, Mr. Attorney General.

Mr. Reilly: And I respectfully except.

Exception allowed.

(s. s.) THOMAS W. TRENCHARD,
Judge.

Mr. Wilentz: Yes. If that record were produced, he had the chance to produce it, he asked for it like I asked for these other people, and he should have called for it.

It was there, that object was there, ready for him. And I wouldn't have commented on

it at all; I wouldn't have said a word about it if he hadn't asked the question about the record.

Now, why didn't they call for the record? Were they afraid of it? The phonograph record. Were they afraid that that record that was given years ago, before Hauptmann was ever arrested, were they afraid that that would even be more damaging than the lip testimony of Dr. Condon? Not given to the State Police, but given to the Federal Government. What was the reason that prompted them and caused them to refrain from asking for the record? We couldn't produce it as our evidence. We had to produce Dr. Condon, so that counsel could cross-examine him. We couldn't produce the record. It wasn't admissible from us. Sure; it must have been because they would have heard it all over again, the same thing, the voice, the imitation of the voice, "Doc-tor." "John." "The baby is well." "Tell Mrs. Lindbergh not to worry."

God! men and women don't you understand? You are talking about the voice of Hauptmann —Condon talked to him Hauptmann talking about "the baby is well." "Give me the fifty thousand dollars."

Why, if this wasn't a case concerning Colonel Lindbergh's child—you talk about the prestige of Colonel Lindbergh and the position of the Morrows—if it were the child of an ordinary citizen this case would have been over in one week, and that man would have paid the penalty by this time. But the fame and the glory and the name of Lindbergh has attracted lawyers. It has attracted newspaper men. It has attracted photographers. It has attracted

curiosity seekers. It has attracted convicts. It has attracted idiots, lunatics. The whole world wants to get in under the glory of the Lindbergh and crush him more and more, just to get a little notoriety.

It would have been over in a few days if it was anybody but Colonel Lindbergh.

No Edward J. Reilly would have come to New Jersey for the son of an ordinary citizen if he was killed. And, of course, that is true of the rest of us. We wouldn't have been here with such elaborate preparations, either, I don't suppose.

But I don't want you to get the notion that the prestige or the position of Colonel Lindbergh or the Morrows was ever used in the slightest degree. Why, just let me give you a little illustration.

Here is his first born child murdered. In after years a man is arrested. The man that he believes killed his child. Now just look at this picture and the Attorney General of the State is a young man who never prosecuted a criminal case in his life. Why the State is full of experienced lawyers, famous lawyers, lawyers whose names will go down in the history of the law. Why one word, I think, from Colonel Lindbergh or Mrs. Morrow to the Governor of this State and that's all that would have been needed, I think, and the Governor would have said, "Pick out any lawyer you want to have in the State, it is your child that was killed, and if you want some lawyer to prosecute this case representing the State you can have it." I don't think there is any doubt that just the mere suggestion by Colonel Lindbergh or Mrs. Morrow, such is their position and rightly so—but,

no, not Colonel Lindbergh, not Mrs. Morrow, they didn't care who it was. If Dave Wilentz was good enough for the Governor of the State of New Jersey and for Senator Prall to confirm as Attorney General, if he was the appointee, if he was the man that belonged there, it didn't make any difference whether he had ever had any experience or not. He was satisfied to let law and order take its course. That is the prestige—that is why Colonel Lindbergh is the type of man he is. It is an honor to sit in the same room with him, men and women, let me tell you. I don't have occasion to talk to the Colonel very much because it is such a terrible thing. What would I talk to him about except this case? How could I talk to him day in and day out about it? It is his child, you know, but that is the type of man he is. Modest, shy, asking nothing from anybody, except to be left to have a few peaceful moments. The prestige of the Morrows and the prestige of Colonel Lindbergh are well deserved and well earned. No, he wants law and order to take its course. I don't know whether I could sit in that chair day after day a few feet away from the man that I thought murdered my child. I don't think he would ever live to face a jury. Mr. Reilly says he would have torn him limb from limb. God! I don't know, nobody can tell how you would feel under those circumstances. But for me it seems to me I could not contribute that to law and order day in and day out. The man who has the audacity to come in and admit that he perjured himself in the Bronx, that he lied to Foley; the man that could sit there charged with murder and then call an honest citizen sitting on the stand

a liar, to stand up in open court—you have to take the type of animal we are dealing with—a man that will sit there on the stand and look at the Attorney General of the State and say to him, "You are lying" in open court!

No, Colonel Lindbergh has contributed a whole lot to law and order in this case. Talk about the mob clamoring. Maybe they are lucky those mobs are not here. Everybody has contributed to law and order in this case, in the orderly process, in the orderly prosecution of this case. So that I hope disposes of the phonograph record.

They say that every suspect should have been checked. Every suspect should have been watched.

Now, I assume they mean by that, that that should have been done before Hauptmann was arrested, right after the crime. And that's fair; that's reasonable, that's right. What do you think the Government did? What do you think the police did? What do you suppose New York did?

Why, don't you know that Betty Gow and Violet Sharpe— every detective agency in the world that was available must have searched into the lives and the records of every member of the family, right to this date, every dollar they spent.

Why, they don't know, when they go into a store in Scotland and buy two dollars' worth of meat or groceries, they don't know that there aren't Scotland Yard detectives checking it.

The family of Violet Sharpe and the family of Betty Gow— I don't know whether they know it— but from the date of this crime they haven't moved one inch, not only themselves,

but the immediate members of their families and people that they frequent and people that they associate with, they are not free from surveillance for one minute of the day or night.

Talk about checking! They don't spend a quarter, if it is possible to check them, that it isn't checked— right from that day.

And Dr. Condon, his sons, lawyers, his daughter, the wife of an architect, himself and his elderly wife— why, from the very day that money was paid, they looked at every bank account and every dollar that was spent by them, to see if they had more money. It didn't have to be Lindbergh money— to see if there was more money, did they live differently. Their wires must have been tapped; people moved next to them to watch them and observe them. It must have been done.

The Government of the United States has spent a fortune— talking about New Jersey— the Federal Government, why, President Hoover said right at the start:

"We will move heaven and earth to find out who is this criminal that had the audacity to commit a crime like this."

And that same spirit has been continued under President Roosevelt.

Talk about checking? Certainly! They say we should have watched every suspect and checked him. Why, there are hundreds of people who have been watched and checked whose names never entered here and every check-up and all the watching and all the investigation revealed that they had absolutely nothing to do with it.

Counsel says, "Where is the box, the box in which the money was delivered to Hauptmann"?

He says the testimony is that Hauptmann put his hand down for the man who got the money, put his hand down and put the money in his pocket. That is not the fact. He doesn't mean to intentionally misstate it, but the fact is, the testimony is, that when Condon gave him this box with the money in it, he put the box down and he said, "Wait a minute, Doctor," put his hand in, took a few bundles of the money, looked at it, and he said, "It is all right," and stuck that in his pocket. Then he took the box. And if there is anything else that counsel would like to know about where that box it, I will refer him to the gentleman who sits right in back of him, Mr. Hauptmann. He will tell him.

Now, Mrs. Achenbach testified that on the 2nd or 3rd day of March, 1932, Hauptmann and his wife were at her home and they talked about a limp. Counsel then said, "Why, they testified this man jumped off from a nine-foot wall."

But men and women, that was twelve days or ten or eleven days afterwards. Anyway, *you* couldn't jump off a wall like that. It would take an athletic gentleman like Mr. Hauptmann, not a consumptive little fellow like Fisch. He wouldn't be climbing up a nine-foot wall. You can bet your life on that.

But aside from that, he had a limp. It wasn't the sort of limp that stopped him from walking. That was on the 2nd of March or the 3rd of March. He had until the 12th. That is why he waited until the 12th to deal, while he was getting over this limp.

The contention is made by the defense that if the defense had its way, if the defense were the police authorities of the Nation and of the

State of New York and the State of New Jersey, they would have watched every mail box.

It had been suggested. It is not an original thought with the gentlemen of the defense. Every newspaper man in the world had a theory and had a suggestion about this case at the time it broke. I had one, myself, and I wasn't the Attorney General then. You lived in the county and you had your theories and you asked yourselves questions.

But, unfortunately, we can't operate a government that way. Somebody has to be in charge. Somebody has to be responsible.

It was suggested by the police that every mail box in New York be watched. They knew early from the letters that that was where he lived, somewhere in New York.

But they didn't want the man that was sending the letters.

Counsel says if he was in St. Raymond's Cemetery he would have torn this man limb from limb. Colonel Lindbergh didn't want anybody torn limb from limb. He didn't want the fellow that was mailing the letters. What he wanted first was his baby, see?

Now, is it hard for you to understand that? Can't you hear a father saying, "Yes, I want the man punished. But, please, first let me get my baby back, will you? I don't care what it takes, don't watch any mail boxes, if there is a gang, if there is more than one, and you catch the fellow at a mail box, that is the end of the rest of them. They will kill the baby and get away. Don't touch anybody. Let's get the baby back and then I want every policeman in the world and every citizen to try to get him."

Right or wrong, that is the way a human being acts.

So I am sorry, I am sorry we couldn't follow the suggestion of the defense about what we should have done at that time.

It is stated that Colonel Lindbergh was stabbed in the back by someone in his household, someone who was disloyal to him.

You know, I should love, if it were true, to be able to say to you that two or three people did this. It would be so much easier for me. I know just about, at least I hope I do, how the human mind operates in a situation like this.

I know how difficult it is to believe that one person committed this crime. It makes it more difficult for the prosecution— not that it is important, because if fifty people did it, if Hauptmann was one of them, that would be all there was to it. But I would like to be able to show that, if it were so, if that were the fact.

You see the trouble about it is that you are limited just like I am. We have to be bound by what we know, what the proof is, not what we might imagine, as reasonable people.

Every bit of evidence, every scintilla of evidence, every living person that knows anything about it, every living policeman, every government agent, every one of the constituted authorities finds himself in the same position— that all evidence leads only to Hauptmann, only to Hauptmann.

Don't you suppose, don't you suppose the police, if it were so, would love to say that Violet Sharpe helped Hauptmann, and that would settle that argument about somebody inside?

They don't have to protect poor Violet Sharpe— Violet Sharpe, whose death was hastened by this man.

There is no point to it. Don't you see how ridiculous it is? Her family is over in Europe somewhere. What difference would it make to them if they could close the book that way, if it were the truth?

Don't you see how much easier it would be for all of us? But it is not the fact.

Why should we blame this dead girl? Why, if Violet Sharpe had any part or plan at all, participated in any plan, she wouldn't wait for that child to get down to Hopewell, a place she never visited. She worked in Englewood. If she were going to help anybody to kidnap this child, she would help them while that child was at Englewood. That is where she could help. She couldn't help them down there.

Betty Gow! Why, Betty Gow had that child in her sole custody and possession, while the Colonel and Mrs. Lindbergh were flying through the heavens on many occasions. She had that child in her sole custody and possession up in Maine. She had that child in her sole custody and possession pretty nearly every hour of the day, except for the evening times or the hours that Mrs. Lindbergh was available.

If she were going to participate in this thing, she didn't have to wait for that sort of arrangement. Not only that, but don't you remember that Betty Gow didn't even know, Betty Gow didn't know till that afternoon that the Lindberghs were going to stay there. She had expected them to come back.

It was about twelve or one o'clock that she got a telephone call from Mrs. Lindbergh to come down, they think they will stay.

Now, if she participated, if she had any guilty knowledge, aside from everything else, and aside from the fact that there is no proof

of it, why, she wouldn't, this scheme wouldn't have been concocted between twelve noon and seven or eight o'clock at night.

Now you can't indict people, you can't convict them, dead or alive, just because some lawyer says so, just because he doesn't know what happened. I sympathize with him because he doesn't know what happened. The police for years have been investigating this case, and counsel wants to solve this entire case by insinuation and reference borne only in his mind. But you are governed by the evidence, men and women. You are not governed by speeches that are made by lawyers, whether it is me or anybody else. You have got to recollect, if I make a mistake about the testimony or if counsel makes it, you have got to recollect as best you can the testimony and be governed by that.

Now, there isn't a word of testimony, there isn't a word of testimony that smears Betty Gow or Violet Sharpe. But if there were, even if you should get to the feeling, and I don't want you to, because I don't want you to carry it on your conscience in later life— don't get the feeling that either one of these girls had anything to do with it, because you would only have the right to do that if you heard some testimony about it, and you have heard none at all. Don't do yourselves that injustice, because you would never forgive yourselves later in life.

Now, Whateley, he was the butler, he lived there; and Whateley had a dog and the dog didn't bark. Well, he didn't bark because he was— oh, he was such a distance away; all the way over on the other extreme end of this house, in the kitchen. How would the dog hear what was happening upstairs, way in the

extreme end. But no, they have got to say something about Whateley; Whateley, who was checked, whose parents, that were dead in their graves were checked, Whateley and his wife who were checked, Mrs. Whateley, who still works there. They had to say something about Whateley, and what was it? "Don't you know, Colonel, that Whateley and Violet Sharpe used to go out together?"

Did you hear any word of testimony about Whateley and Violet Sharpe going out together?

Don't you think that is an outrage? Why did they have to impose upon us this situation about Whateley while his wife is living? Why did they have to impose this shame upon Mrs. Whateley?

If they have no respect for the dead, what is the occasion for crushing this woman? Not a bit of evidence. Anything. Nothing too mean; nothing too disgraceful to plant some little germ of doubt in the mind of one juror, their only hope.

And so Mrs. Whateley has got to be crushed as well as her husband.

Not one single dollar, not one ransom dollar was ever traced to anybody connected with any member of the household.

And, if Colonel Lindbergh, as big as he is, and Mrs. Lindbergh, as big and glorious as she is, and Mrs. Morrow, too, who have the right to engage whatever maids or servants they want, still have faith in Mrs. Whateley, in Betty Gow and everybody else, I can only say this for them: that it just indicates the type of people that they are, unwilling to charge against any living soul or any dead soul any improper act that is not properly proven. And

if it is all right with Colonel Lindbergh and Mrs. Morrow that these people have no implication— and they are the bereaved ones, men and women of the jury— don't you hold it against them; don't you substitute yourself because of some query in your mind.

If it is good enough for the Lindberghs and the Morrows, and they are satisfied, after living with these people and after the Government has checked them, please don't take the word of counsel, who has an interest, that there must have been something.

There isn't one bit of evidence. No chisel of Betty Gow's was found on the premises. No chisel that looked like anything that Betty Gow ever had or Violet Sharpe or Whateley. No note in the room written by them or anybody that ever could write like them, no imitation of their signature.

The note in the baby's nursery didn't look like their handwriting; it looked like Hauptmann's.

Certainly, why wouldn't Colonel Lindbergh and the rest of them clear them?

No moneys found in their garages; no ransom money found in Betty Gow's garage or Violet Sharpe or Whateley.

If Whateley left any money when he died it would have been discovered somewhere. Scotland Yard, United States Federal Detectives, New Jersey and New York, nobody has ever found one scintilla of evidence that implicates any one of those people.

And we protest and object, because we had the right under the law, we protest and object to this jury meditating one second about any of those people, because you are bound by the

proof, and there isn't one bit of proof that implicates any of them.

Now, if you don't want to comply with the law and your oath of office in that respect, but you still think it is possible it is some of them and you want to feel that way about it, that doesn't excuse Hauptmann.

If your Honor please, may be have an adjournment at this hour?

The Court: Yes. We will take a recess for five minutes.

(At 11:27 a. m. a short recess was taken.)

(11:40 A. M.)

(After a short recess the jury was polled and all jurors answered present.)

Mr. Wilentz: (Continuing summation):

May it please your Honor and men and women of the jury:

You know, I really hate to take all this time with this jury. This is one of the necessary evils in the practice of law— the jury, after listening to all the testimony, then has to sit down and listen to the lawyers after they have heard it all. Probably there is some good that comes out of it. I take it, at least, it must do this much good: that when the defense counsel, who properly asks certain questions as to why the State didn't do this or didn't do that, maybe it does some good, because it may arouse in the minds of the jury something important that he overlooked, which the State ought to answer;

and so the State has the opportunity and, if they fail in their answer, then they ought to fail, if it is something material.

Now, let me just suggest to you jurors one thing, which may not be altogether connected, but which is important. Please don't get the idea that the State has got to prove everything that it starts out to prove, everything beyond a reasonable doubt. That's a joke. Just because we allege one fact, that doesn't mean we have got to prove that fact and every other fact that we allege in order to show that this man is guilty. That's not the fact at all, and we will come back to that.

You and I know, of course, that there can't be any more serious crime than the crime of murder. There can't be, because it involves the taking of a life. And with all our civilization and with all our mad desire and rush for money and for everything else, with all the jealousies and everything that there is in the world, with all the ambition, the taking of a life has always been considered the most serious crime.

Let me tell you, men and women, that even that, the crime of murder, which shrink into absolute insignificance, this murder even of the Lindbergh child would shrink into absolute insignificance in comparison to the crime that would be committed if this man were freed. That would be the crime of the century.

To let him roam the streets of this country and make every woman in her home shudder again; that would be a real tragedy, an American tragedy!

That is why I told you men and women, that is why I told you I am so consumed, every inch

of me, every ounce of me cries out to you, "Please do your duty!"

I am not worried about myself. I get crank letters and threats and all that sort of thing. They don't bother me. I don't need any guards. My family doesn't need any guards. We are insignificant, all of us. Nobody is really important in this world. You know, the world goes on.

Why, I could be striken here this moment and it wouldn't matter at all.

The county of Hunterdon, the county of Middlesex, everything else would go on, just as it always had.

Presidents, great men, die. McKinley was assassinated. The world still went on.

We are so insignificant as individuals; everybody is insignificant. But the Nation isn't. Civilization isn't. Society isn't. And if you ever freed this man—it couldn't be, it wouldn't be possible—but if any such thing were to happen, the murder of the Lindbergh child, as I say, that murder even would shrink into insignificance compared with the crime of which you would be guilty in letting this man roam the streets.

Counsel says we have got to place Hauptmann in the room. Sure we have got to place Hauptmann in the room, and when I get to reenacting this crime again, as I hope to before I am through, you will be convinced, if you aren't already convinced, that he was in that room. But we don't have to prove it by anybody that was sitting there and watching him. We don't need a moving picture of it. We don't need any eye witness. "Why," he said, "how would a man do it that had never been in the room before?" Well, what does counsel

want us to do, show that he walked in there and had a dress rehearsal of this crime? An experienced burglar doesn't need any rehearsal; he doesn't go in the room first to see how it looks and then go out and come back another time. He had an elaborate education. He had a generous education before he came here. Why, let me tell you, men and women, that fellow would have been arrested within six months of the crime, if one thing had happened.

You know it and I know it, and when this crime took place they knew right away that it was probably a German, somebody of German descent.

And, oh, his Nation will never forgive him for the disgrace he has brought to them. Of course, they are no more responsible for him—the German people and the government are no more responsible for this act than was the Italian government for the murder of Mayor Cermac, of Chicago, when they tried to assassinate President Roosevelt, if he was an Italian, I don't remember. No Nation is responsible for any criminal of its own country.

But here is where the American people are up against something with this gentleman. They knew from the notes, "The child is in gut care." "Our, o-u-e-r, house, h-a-u-s-e." And all those words that indicate clearly that it was somebody of German descent. And then that drawing in that note of the box with the dimensions, they knew or thought it was probably a carpenter.

Now they knew that the fellow who committed this crime was no amateur, they knew he was a criminal. A man might commit a crime, even though he never committed one before, but not one like this.

It would take a man with, as I said before, with ice water in his veins instead of blood. It would take a hardened criminal, and so they look for the criminal records, that is the experience of police, they looked in the records. Where would they look? They looked in the records in New York and in New Jersey and in Pennsylvania and in California.

Oh, if he had been, if his record, if he hadn't sneaked into the country, if he hadn't fooled the United States Government when he came in, if he hadn't fooled America when he came in, and they knew, if his record was a matter of record, if his record in Germany was a matter of record in the United States, they would have struck that record.

But he had it. He fool them. He sneaked into the country. And no living person in the United States of America knew who he was, outside of a sister out on the coast.

He would have been apprehended long ago. He had a liberal education, as I said before, in crime.

Counsel says, "Why, if it was anybody that walked into that room except somebody that knew the child, that child would have sensed it."

Well, I don't think that's exactly a fair statement of fact. I think that a stranger could walk into a child's room, a nursery, if the child were asleep, without the child awakening.

But let me tell you this: this fellow took no chance on the child awakening. He crushed that child right in that room into insensibility. He smothered and choked that child right in that room. That child never cried, never gave any outcry. Certainly not. The little voice was stilled right in that room. That's a fair

inference that comes from its failure to cry; either there in the room or outside.

He wasn't interested in the child. Life meant nothing to him. That's the type of man I told you about before that we are dealing with.

Public Enemy Number One of the World! That's what we are dealing with.

You are not dealing with a fellow who doesn't know what he is doing. Take a look at him as he sits there. Look at him as he walks out into this room, panther-like, gloating, feeling good.

Certainly he stilled this little child's breath right into insensibility right in that room— whether it drew another breath or not doesn't make any difference, but that child never could make an outcry. The smudges on the bedsheet cry out evidence of that fact that Betty Gow testified to, the fact that the child didn't cry out when it was disturbed. Yanked— how? Not just taken up, the pins are still left in the bedsheets. Yanked, and its head hit up against that board— must have been hit. He couldn't do it any other way. Certainly it must have hit up against that board. Still no outcry. Why? There was no cry left in the child. Did he use the chisel to crush the skull at the time or to knock it into insensibility? Is that a fair inference? What else was the chisel there for? To knock that child into insensibility right there in that room.

Counsel wants to know why it didn't cry out. There is the answer for you.

Counsel says that there was a beer stein on the window sill. Well, you know and I know the Lindbergh's didn't have a beer stein in the baby's room. What it was and from a picture

of it, if it is in, was something that had the shape of a beer stein, but was a baby's toy. As you lifted it, it would play music very likely.

But it wasn't on the window sill. This window sill and this window were so constructed that there was a little recess over on the side. Oh, I don't know, if there is a picture, it will be revealed. It was probably about the size of this "W" and there was enough room for that little toy to be placed there without being disturbed. It wasn't in anybody's way. It wasn't in the way of this gentleman.

And what is the difference? Somebody went into that room—Hauptmann got into that room, beer stein, toy, or no beer stein or toy.

Would they like to have this gentleman acquitted because there was a toy on the window sill?

Don't tell me they are going to deny that the child is dead, or that it committed suicide. Is the beer stein or the toy of any avail to them? Certainly not!

Counsel talks about there being no mud on the ladder. Why, their own witness, Schwarzkopf, in answer to Mr. Fisher, told them there was mud, mud all over.

Where is that suit case? There was mud on the suit case. Why, I suppose the gentleman just brushed over it. Here it is. I suppose the inference is that you couldn't brush over it, that it would crush, or something. I don't know about it, but I will stand on the suit case and let's see what happens to it,—160 pounds. He didn't stand on it, he just moved over it.

Now I didn't plant the suit case. Colonel Lindbergh didn't plant it.

Mud on the suit case, mud on the carpet.

They want to have pictures of the mud. Well,

if we knew that at the time of the crime counsel was going to defend this man and that this man was going to be here now we'd have brought the mud here for him.

When we don't bring in the mud, they say we should have brought it in. When we bring in the ladder, they say it is too much.

Now, there has been a lot of talk about bungling, of the State Police. Of course, the State Police are human; they are just ordinary beings, as I indicated before. You know some of them; very likely you have had an opportunity to observe fellows like Jack Wallace and other men who come up into your county. They are the ordinary type of fellows. I guess some of them are better natured than others; some of them are taller than others, some of them shorter, but they are ordinary human beings.

But supposing there was bungling; supposing Kelly should have gotten fingerprints and didn't. He announced that fact before Hauptmann was ever arrested. If his failure to get fingerprints was at all due to his lack of ability, it was so before Hauptmann was ever arrested. If his failure to get prints from the ladder was due to any lack of ability, that was so before Hauptmann was ever arrested. This failure and lack didn't occur because of Hauptmann's arrest. The whole world hasn't turned crooked against Hauptmann. There is still some honesty left. That side of the table hasn't got the monopoly on honesty and truth,—not by a long shot.

Supposing that Corporal Kelly didn't get these prints, and supposing that there were prints to be gotten: it wasn't designed against Hauptmann.

The point I want to make is that if anybody bungled anything, if they did, that doesn't re-

lieve this defendant who is guilty of murder. The murderer cannot excuse himself by the bungling of any fingerprint man, if there was one. Not by a long shot. He cannot walk out of this courtroom just because somebody didn't do the job as well as somebody from New York, the expert thinks it ought to have been done. It has absolutely nothing to do with the guilt of this defendant and he cannot attempt to excuse himself in that way.

Now, while we are talking about bungling this case, who was closest to the case? Hauptmann and the defense or Lindbergh and the prosecution? Counsel asked Colonel Lindbergh what he thought about the police. He says, "I think the State of New Jersey has a very good State Police." The man most affected, the man most closely concerned, the man who would have a grievance if there was bungling, the man who would have a right to complain. He says, "I think New Jersey has a good State Police."

Now one of the alleged weak spots picked out for attack by the defense is the fact that Dr. Condon was always alone. You see, jurors, I am taking these things as they were given to you yesterday, not because I attach any significance, but I can't risk the chance in this case, after all these weeks, after these millions of words, after all this effort, because it is so important, it is such an important case, I can't risk missing one of them for fear that that may be just the question that one of you jurors wants answered. And so you will have to put up with me, please, and be patient with me.

While I am at that patience, I want to tell you, too, that throughout all these days that we have been here, you are not at all accustomed to my peculiarities and my eccentricities and man-

nerisms, and maybe some of them have been offensive to you; while I have been examining jurors, or, rather, examining witnesses, cross-examining them, arguing with counsel, presenting arguments to the Court, I want you to know that at no time did I mean to be offensive to anybody. It may be because of the absolute enthusiasm that consumes me as a result of the positive conviction I have in the case, that some of the things that were said by me may have sounded offensive to you; but I want you to know it was never intended that way, not even to the insane man on the stand, or the man that was convicted. I had to bring that out as a matter of protection to this jury, so they would know; but it was never intended to be offensive.

Now counsel says that he would like to suspect Dr. Condon because Dr. Condon was always alone in his negotiations. Well, that's not the fact. Now let's look at the record. Dr. Condon was never alone. Dr. Condon never moved without Colonel Breckinridge or Colonel Lindbergh, except when he was to meet the kidnaper.

Now when kidnapers and murderers want to negotiate for money, they don't come down to the Flemington Courthouse before a jury and a judge, they don't go into a theater and get up on the stage and say, "I am the kidnaper, I am the murderer, where is Dr. Condon? I want to deal with him." They pick out some place where they won't be seen, some quiet place, a cemetery—very appropriate by Hauptmann anyway; everything else about him has been dealing with the dead, either morally or physically dead. The people he blames are physically dead; the people that he brought here into this courtroom, most of them, are morally dead,

never had a sense of responsibility, most of them, didn't have a moral brain in their system, brought here from the jails—and I didn't send them to jail, and I didn't make them convicts; they were convicts before they came here.

That is the type that he deals with—physically dead and morally dead. He picked out the cemeteries as his meeting place—half way, one on one side of his home, one on the other side of his home, and of course he didn't have a crowd there.

He met Dr. Condon alone on those occasions, and so, isn't that sufficient answer to the defense when they keep harping about the fact that Dr. Condon was always alone.

He says what a fool this man would be. First the State pictures him as a master mind and then they say, why, on the other hand, the State says, what a fool he was. We picture him as a fool.

The history of crime, the history of every crime, shows that no matter how brilliant the criminal is, somewhere he slips.

It was only his egomaniac traits, his egotism, the fact that he thought that he was bigger than everybody else, the Big Shot, that he thought that he could walk into that cemetery and talk to Condon without a mask or anything. He wouldn't go around the streets with a mask; of course not.

He thought "What could they do to me? They would never find the baby with me."

He knew the baby was dead. He killed it. He knew that. What would they do to him?

Why, he would then say, "I just tried to play a trick on Condon and tried to get some money." And he would get a jail sentence, if they couldn't pin anything else on him. That

wouldn't mean anything to him. Why, he broke out of jails. That wouldn't be anything. He was willing to take that chance. But whether it was foolish for him to do it or not, he did it.

And that is one of the reasons—it isn't the reason—he is here.

Why, if that was the only thing the State had, if we didn't have another thing, men and women, except this man Condon coming in and sitting on this stand and saying, "There is the fellow I gave the money to," that would be all we would need to convict him of murder in the first degree.

Do you know that men have been convicted of murder in the first degree on a note, one note, without anybody seeing him do anything?

Why the Molineaux case that they have been talking about in all these things that these handwriting experts testified to was a case which only involved handwriting.

But if Condon came here and did nothing else and there was nothing else in the case except that Condon pointed him out as being the man he talked to for an hour and twenty minutes, the man that said, "Doesn't Colonel Lindbergh know we are the right party"— "party," not "parties"; the letters say that, too— "Doesn't Colonel Lindbergh know we are the right party? If he doesn't, we will send him the sleeping suit." "All right, I won't take seventy, I'll take fifty"— who is he dealing for? Some boss? Oh, no! He couldn't settle for fifty, if the price was seventy, unless he was the boss, unless he was alone. He would have to ask his associates.

No, he settled right away for fifty thousand,

as you remember. Condon dealt with him alone on those occasions.

Well, we have only recovered one thumbguard and the question is directed against us as to where is the other one. I would like to answer that question and, like Mr. Reilly, I don't want to fool you.

The gentleman over there between the guards can tell you where the other one is. Unfortunately, I cannot. I don't know where the other thumbguard is.

Now, supposing Condon were dead—I don't like to interrupt by taking this drink. I suppose I really ought to pass a drink to the jury, but I have never seen it done. So maybe I had better refrain. But if any member of the jury really wants a drink I think they are entitled to it.

Now, counsel disposes of Mr. Perrone by the statement, "Are you going to believe any trash like that?"

Well, you know, I think that is why Mr. Reilly is such a good lawyer. I really do.

I couldn't with five thousand years of experience do the job he did here yesterday, to stand up here for the greater part of the day and present the arguments that he did, with five thousand years of experience I could not equal that performance.

I want to tell you that is a masterpiece, to stand up with that massive sincerity, making believe he means it, with all the dignity that is his, and he is a good-looking fellow, too, you know, and outside of the courtroom a splendid fellow, and say to you, "Do you believe that trash about Perrone?"

Why, Perrone is a delightful fellow— never convicted of crime, never was in the insane

asylum, and all Perrone did, Perrone was another victim of this defendant; he picked Perrone to deliver the note, and if Condon had died and he wasn't here to testify, if Perrone came in and said, "That is the man that gave me the note to deliver to Condon," that would be enough to send this man to the chair, because when you have got the fellow that wrote the notes, you have got the fellow that had the sleeping garment, and the fellow that had the sleeping garment had the baby.

And so Perrone. Now you know when Perrone delivered this note he was soon interrogated by police. Who do you suppose Perrone got the note from, before Hauptmann was arrested— five foot nine, muddy blond, of German extraction, muscular, athletic. Who did Condon talk to on the bench? Who did Condon give the money to? A man of either German or Scandinavian descent. What did he say before Hauptmann was arrested? Five feet nine, of muddy blond complexion, had a German accent, muscular, athletic, about 35 years of age— Perrone, too, somewhere around 35, 30 to 35 I think he said— before he was arrested. What descriptions did the others give, whoever it was that was here in the case? The same thing. Does it look as if they are in this grave conspiracy? Has everybody suddenly conspired, the State of New Jersey, the agents of the State of New York, Colonel Lindbergh and Colonel Schwarzkopf and Colonel Breckinridge went over to New York to Inspector Bruckman and they got General O'Ryan and Sam Foley, the Bronx District Attorney in; then they got hold of Condon, then they took Perrone, and they took Miss Alexander and they came over and got Hauptmann and then

they got Whited, and then they called on the Attorney General and they went to Washington and they got the President of the United States to get his Attorney General, Homer Cummings, and Secretary Morganthau to get his agents— and I am going to come to the Treasury Department in a minute— and we all sat around a room and we conspired against Hauptmann. That is the defense.

What a story!

If they can feed this jury that sort of a story, then something has been invented to take the place of food.

Now let me just tell you something about the Treasury Department, just to give you an idea how off the track the defense is on this case. Why, they haven't yet found out what it is all about! Do you know that yesterday the defense said to you that this agent, Mr. Frank, special agent of the Department, he is with the Treasury Department, he came here and he compiled the figures; all he did and all we asked him was "Mr. Frank, have you taken the brokerage accounts and the bank accounts of this defendant?"

"Yes."

"Did you total the figures?

"Yes.

"How much money went into the brokerage accounts, how much money went into the bank accounts?

"Sixteen thousand in the brokerage after April the 2nd, nine thousand into the bank accounts."

What about the other moneys?

Sixteen and nine are twenty-five and fourteen-eight or fifteen thousand are forty-four, or something like that.

They totalled up to 44,000.

Do you know what counsel said about the Federal Treasury agent yesterday? He said that these men are interested in this case, and were interested at that time, that they checked every bill and would have checked every bill, because they solicited the favor of United States Senator Morrow, who might have and probably would have become President. Why, Senator Morrow was dead before this crime took place. Senator Morrow died in October, 1931. He was spared the shame that his fellow-Americans had to endure, that in this country the son of so illustrious a citizen, the most famous man in the world, a man who sought nothing but peace and quiet in the hills of Hunterdon County, he was spared that shame and degradation, aside from the crush that it would have been to his heart. But he was dead at the time.

And yesterday counsel would have had you believe, not improperly—he probably didn't know—that these men came here and gave you figures or did whatever they did because in 1932, at the time of this crime, and after the crime, while they were checking these bills, all these Treasury agents were on the job because they wanted to seek preferment, advancement, promotion, through the efforts of Senator Morrow.

And he says, "Do you believe any trash like Perrone?"

Now, I am not as familiar with the places in The Bronx as defense counsel, and probably you are not. But his statement about the loneliness of that place where Perrone got this note, I think I have the right to give my impression about as long as he has given his.

My belief, as the testimony shows, is that

Gun Hill Road, right at the section, right at the corner, is an apartment house. It isn't a lonely spot at all. Of course, it isn't 42nd Street and Broadway, where some woman saw a woman on a car with a baby.

It isn't that sort of a busy spot. But it is busier than the main street of Flemington, right there. In New York they call it a desolate place, yes. But it is not the Bronx Parkway. It is right there at Gun Hill alongside some road—Knox Road, or something like that—and there are houses there and there are street lights there. And, of course, that was as good a spot as he could find.

But it is not out in the wilderness. That is where Perrone got the note, in the Bronx.

Now, one of the other things that counsel talked about was that it would be impossible for Colonel Lindbergh to remember the voice of the defendant. I want to say for counsel that at least with all the things that were done in this case and which I have criticized and which I hope isn't too offensive to the other side—but after all I am not concerned with their feelings in this thing, I have got a greater duty. My job is to do this job just the way it ought to be done as I see it, to the best of my ability, and I will say for him that the best thing that happened in this court yesterday was when he concluded his summation and he talked to Colonel Lindbergh, and I think it was an apology, and I think it was a gracious gesture, and yes, it was an apology to Colonel Lindbergh.

Well, getting back to Colonel Lindbergh, and trying to be nice about it, he said, "It would be impossible for Colonel Lindbergh to remember the voice of the defendant." Lindy, whose

ears were trained to the hum and the whir of every litle wheel in that motor that went across that ocean. Lindy, whose very life has been built up by that keen intellect and keen training and keen mind and keen hearing, so that he has traveled more miles, very likely, than every other aviator, who has such a feeling and certainty about his own keen senses that he was the first in the world to risk his life and travel alone across the ocean—he who had no concern about his ability to hear and to see, when one hundred and twenty million people that night were on their knees praying for the safe arrival of Lindbergh in France—Lindbergh with that keen hearing, when he was out in that plot, out there near St. Raymonds—the greatest moment in his life. Why, the trip across the ocean meant nothing to him, that was insignificant.

There he was to get his baby back. My, God, men and women, did you ever come into a house and find your child missing and you didn't know what happened to him, and you were only away for twenty minutes and it was meal time? Why, you get so distracted, your wife runs out, she is frantic, she can't eat, nobody can eat, nobody can rest, you are on the telephone calling up, "Did you see so and so, did you see Johnnie? Do you know where Johnnie is? Did anybody see him?" Two hours and you are panic stricken.

And here was Lindy out there at St. Raymond's Cemetery, mind you, just about able to reach for the fellow that had his baby.

He almost could touch him. He could have gone out and talked to him, but he didn't dare, —the greatest moment in his life! He was going to find out where Anne's baby was. He was

going to bring it back and he is sitting there in the stillness of the night. Then that voice comes out, "Hey, Doktor, hey Doktor." God! Could you ever forget it? Would anybody ever forget it? How many nights do you think he hears that in his sleep? How many nights do you think his entire soul is wracked and wrecked with it. God, it seems to me I have heard it so often, "Hey Doktor." His hope. But not the ordinary voice, oh, no. Why, if that man said one word in this room above a whisper I wouldn't have to look around. I could tell you it was Hauptmann. There is a different quality. There is a different tone. There is something weird about it, something weird about it. And Lindy remembered that voice. And who is to say that he didn't? Are you going to substitute your judgment for his? He was in that automobile in that cemetery, not you or I. Lindy, whose ears were trained; Lindy, whose child was involved; Lindy, whose happiness was involved, whose heart was crushed; Lindy there with his money waiting for his child and Mr. Reilly says, "Why, he couldn't—how could Lindy remember?"

Why, that voice! God! I can't sleep after I hear it nights myself. And he says that Lindy wouldn't remember it!

Well, nobody is to be spared in this case, so we come to a gentleman by the name of Dr. Mitchell. I hope that Justice Trenchard were on this jury when they are talking about Dr. Mitchell, because I take it everybody in Trenton knows Dr. Mitchell. I hope that some people from Trenton were on this jury, when counsel says, "I wouldn't have him testify in an accident case."

Dr. Mitchell, who has received the honor and distinction for years of being the County Physician. Sure, he is not connected with any staff of any hospital. The rules of the hospitals there prohibit the County Physician from being on the staffs. That's something the gentleman didn't know when he made the observation. He didn't mean to make an improper one. But Dr. Mitchell—maybe he isn't citified, maybe he should have filed some sort of a different statement; but he made a statement at the time, long before Hauptmann was arrested. He didn't know anything about Hauptmann. Of course, he is an American and if he is against Hauptmann it is because he thinks that Hauptmann murdered this child. But he didn't testify to anything that he didn't have in his written report; and counsel asked him for the report, and it is in evidence.

And what does it say? The child died as the result of a fractured skull; a fractured skull that was so extensive that, he testified here, death must have been instantaneous.

And so Dr. Mitchell—"Doctor, what would you have done if you died?" Well, supposing the Doctor can't answer the question; what has that got to do with Hauptmann? What has that got to do with whether he murdered the child or not?

No, Doctor Mitchell can't be spared either.

I want to tell you men and women, it may be possible. I have seen many lawyers with weak cases. I have been in courtrooms where there have been insinuations, insinuations that weren't warranted. I have seen some good lawyers in cases that tried to get away from the facts and started off on that line of insinuations. They didn't go as far as we have gone in this case, I

will say that. I have never seen that before, never before in my life, and if I live to be a million years old, never again will I hear the number of insinuations, and unfair ones, that I have heard in this case.

And you know what the purpose is. The purpose is that maybe one of them, maybe, you will think something about Betty Gow or maybe you will think something about Violet Sharpe or maybe you will think something about Corporal Kelly or maybe you will think something about somebody else, and, maybe, that will plant a germ.

Now supposing Dr. Mitchell did die. We had a Coroner. The Coroner filed a report. It is down in Trenton. It is in evidence, the death certificate.

The death certificate says the child died as the result of a fractured skull. That was before Hauptmann was in this case. And what difference does it make whether the skull was fractured more extensively or whether it wasn't, whether there was a little hole there or a little hole there.

The condition of the body—you get a look at that body. You get a look at that baby the night it was taken, the picture of it, and take a look at that body where he left it in that grave, subject to the elements and to be torn and eaten limb by limb by the animals that came along there, a dead baby. Get a look at it. We have the records here.

And what difference does it make, the extent? You know and I know that the child died, it was killed. You know it was murdered.

So let's get back to the common sense that we have been admonished about and forget the nonsense about these technicalities.

Counsel wants to know where the missing money is and he points out in the case as one of the alibis that the money which he got originally was from Fisch. That is the money in the garage. I am going to come to that later.

He says further as an excuse for the other moneys, that he got most of that from Fisch, too. Now, if Fisch got the ransom money and Fisch gave him the $15,000 to pay into the brokerage accounts—Mr. Reilly says, Well, that wasn't ransom money that we paid to the brokerage accounts, because a dollar never came back.

Well, if it isn't ransom money from Hauptmann, it wasn't ransom money from Fisch. I don't know whether I make myself clear at all.

The money that was paid to the broker, a good part of it, he says, came from Fisch. The inference is that Fisch gave him the money in the shoe box. Fisch gave him this money.

Of course, not a living soul has testified that he ever saw Fisch give him two cents, outside of Hauptmann. Hauptmann's wife never saw him give him a dollar. Hauptmann's friend Kloppenberg never saw him give him a dollar. The broker never saw him give him a dollar, not a quarter, not a check—and Fisch had a check account and Hauptmann had a check account—not one person living, not one book. Fisch left his books with Hauptmann. Do you remember Mrs. Hauptmann's story. He left these satchels. There were some papers and books of Fisch's when he went to Europe. Of course he destroyed those, very likely. They weren't there when we got there, but not a living soul ever saw this man get a dollar from Fisch. But supposing he did. Fisch never had

any ransom money, because whatever he gave him to give to the broker, whether it was a dollar or ten dollars, that money, counsel says, never came back, never came back from the Government check.

Now, supposing these bills weren't marked. Do we have to find every bill? Why Hauptmann says himself he passed twelve or fifteen and we have only got three or four of those here. We don't know where they are. But not a bill, so far as the evidence is concerned, not a ransom bill has been passed in the United States or the world, so far as the evidence in this case is concerned, since his arrest or since his indictment. Now, what about this money? He says, "Where is the $35,000?" "It must be in some vault." It must be nothing. It must be, because counsel says so. We haven't substituted counsel's opinion for sworn testimony yet, and he won't get away with it. Neither Hauptmann nor anybody else, not if I have any notion about the common sense of anybody.

There are not twelve people in the United States of America, there are not twelve people in this world that you could put in to this jury box and pick them that could believe this defendant.

No, sir; not alone twelve people picked from one County.

He deposited sixteen—this is after April 2nd, now, mind you—never mind about what he had, he had two hundred dollars between him and starvation on April 2nd, 1932. He had planned this thing for a year, he wrote, and he did.

Let me show you. Do you know this fellow took a trip to California in October, 1931,

and he had no money. He was running down to his last few dollars. He was set for it, he was strengthening himself; he had this planned out; he stopped keeping books a month after the child was born, a month after the child was born.

You may think it is fantastic, you may think that is funny. God! you have got to know what goes through the mind of a man that would crush a child. It is a different mind, it is a different soul, it is a different being.

Men and women, you have got to stretch yourselves to understand. You haven't dealt with that sort of animal, the lowest form of animal,—that is what you are dealing with: no heart, no soul. The only thing is he has the appearance of a man, he wears the clothes of a man, that is all there is to identify him.

Yes, he writes in the notes "This kidnaping was planned for a year already," and he did. He has only got a few hundred dollars, a few hundred dollars, and he goes on a trip to the Coast, and he comes back October, 1931, October, 1931; and in December, 1931, the broker sends for $74 that he wants, and he hasn't got it, he doesn't want to put it up.

So anyway, we are down to April the 2nd, 1931. Now, maybe you don't catch the significance of the questions as to when he met Fisch. I want to tell you why, why they struggled so hard against showing that he didn't meet him until July or August. We contend that this defendant never met Fisch, never knew Fisch, until July or August at the earliest, 1932; and so we tried to prove by their witnesses, not by ours, by Gerta Henkel, the lady that operated a coffee kitchen, by Mr. Henkel, and by Haupt-

mann and Hauptmann's wife,—when did he meet Fisch. We didn't know. So when he was arrested and we asked him, he said, "I think July or August, 1932." Yes, July or August, 1932, several months after the crime.

"Where did you meet him?"

"Mrs. Henkel introduced me to him."

So we asked Mrs. Henkel: "Do you know anything about Fisch and Hauptmann?"

"Yes."

"When did Fisch meet Hauptmann?"

"I introduced him at my home, July or August, 1932."

We asked Mr. Henkel. Yes.

Everybody told the same story. Now, when he gets on the stand, Hauptmann, only Hauptmann though, he slips back away from his statements. He slips back away from everything else. He says at the end of March or early April. Now, why? I will tell you why. He made certain deposits. The brokerage accounts will show it. He had deposited certain moneys in April. He deposited moneys in the brokerage accounts in May, he deposited moneys in June; he deposited them in July. How was he going to explain where that money came from? He couldn't say Fisch gave it to him.

He was going to blame the money on Fisch, but he couldn't say Fisch because he never had met Fisch until the end of July or August. Don't you see? So he says, "Well, I must have met him at the end of March or April." But he never did, according to his own witnesses. So he starts right in in May. He has got this money, he is around passing bills and getting silver in change for it, a bill here and a bill there, and he deposits hundreds of dollars worth of silver during these years.

Oh, he said, the bank clerks, they were also in conspiracy against him. Not only that, but he starts depositing these moneys. He puts $16,942.75 in brokerage accounts. He puts $9,073.25 in banks. Fisch never gave him any money or anybody else ever gave him any money to put in his wife's maiden name in a savings bank. $3,750 in cash, which he gave to a lawyer for a mortgage; $120 in gold coins at home; $14,600 ransom money in the garage; $5,500 which he wrote to the Fisch family and which he testified on the stand he gave to Fisch from his private bank account, for furs; $49,986 unaccounted for; $49,986 unaccounted for, after April the 2nd, 1932, and between that time the date of his arrest. Now he wants to know where the money went. That's where the money went. We can't trace all these bills. Billions of dollars went into the Federal Treasury. The banks were closed. Everybody in the business world was dealing in cash. Why, I remember one instance where I had thousands and thousands of dollars in one consignment from men to hold for them, because they wouldn't trust the banks. I didn't look at the bills to see if they had a gold certificate on the front. If they had been gold backs I might have, but just that gold seal I never would have thought of it. Those moneys have been pouring in. There are a lot of people in this world who after a week or so forget these things.

But whether there is another dollar, whether there is $35,000 found or not, to me that $15,000 in that garage—if I were on this jury I would say; that is enough for me.

The Court: Mr. Attorney General, we will

take a recess now until 1:45. The people will remain seated until the jury has retired.

(At 12:31 P. M. the jury retired.)

The Court: The prisoner is remanded to the custody of the Sheriff and he may retire.

(At 12:33 P. M. the prisoner retired.)

The Court: The Court will now take a recess until 1:45 P. M.

(Whereupon at 12:37 P. M., a recess was taken until 1:45 P. M.)

AFTER RECESS.

(1:50 P. M.)

(The jury was polled and all jurors answered present.)

Mr. Wilentz: May it please your Honor, men and women of the jury:

I know that it isn't a pleasant task for anybody to pass judgment upon another, particularly where life is at stake, and one of the efforts to intimidate this jury against the full performance of its duty has been reference here and there to circumstantial evidence.

Of course, as I have indicated to you before, men who plan and commit crimes do not take any moving picture cameras with them, and they do the best they can to avoid detection, so far as the actual commission of the crime is concerned.

Sometimes they are successful and sometimes they are not.

And in many cases there is only circumstantial evidence. And you have no right to disregard circumstantial evidence.

You are to be bound by the law, as I am.

Take a man who has been shot. They find a man shot and the doctor takes him. He is dead. They operate on him and they take a bullet out of him. Then along comes Jones and Jones says that Smith shot him. They find Smith's gun. They find a bullet gone from Smith's gun, and it is a .32 calibre gun.

Another fellow says Smith did it and another fellow says Smith did it—and it has happened.

Then the doctor operates on the man and performs an autopsy and no .32 calibre bullet is found at all. They find a .45 calibre bullet. That .45 calibre bullet is circumstantial evidence.

Is it better than the testimony of the men who testified that he was shot by that gun with a .32 calibre bullet? Why, of course it is. Of course, it is.

Some circumstantial evidence, when it starts to testify and when it starts to scream, all the lip evidence in the world can't overcome it. Now I don't mean by that that we have only circumstantial evidence.

May I, if your Honor please, ask the assistance of the police, so that the gentleman outside won't do the summing up?

The Court: Yes, yes.

Mr. Lanigan: We have just sent a note down to Captain Nicol.

The Court: Won't one of the State Troopers go down there and ask that that man be quiet? Tell him he must be quiet so that we may properly conduct the proceedings in court.

Mr. Wilentz: You know, I don't know whether you have ever been to Yellow Stone Park, but out in Yellow Stone Park I think they have a lot of wild bears, at least they used to be wild, but after contact with the people out there, and after contact with humanity they have tamed down to where you can trust them, and they permit them to roam around. But every once in a while one of those animals returns to his real animal state and he hurts somebody or he kills somebody. What do you think they do with that bear? They shoot him, they kill him. Now, the attendant doesn't like to do it, but that bear is a menace, and they put him out of the way. That's what you have got to do with this fellow.

Now, I was talking, before the interruption, about circumstantial evidence. While I do believe that in many instances circumstantial evidence is of the strongest character and is the best evidence many times, we do not rely upon circumstantial evidence alone. The circumstantial evidence in this case is sufficient but, in addition to that, we have the positive identification of this man by Dr. Condon. That is not circumstantial. We have got it by Perrone. That is not circumstantial.

We have got the board in the closet. That is not circumstantial. That is his board. He admits it is his, his writing.

Hochmuth is not circumstantial.

Whited is not circumstantial.

Lupica is not circumstantial.

Colonel Lindbergh's identification is not circumstantial.

The brokerage accounts, the sleeping garments, and the fifteen thousand dollars in gold in the garage is not circumstantial. And any one of these things is sufficient.

Now, I think pretty nearly 40 days—I have covered the insinuations of counsel in his address yesterday, and I take it there is more required of me than that—nearly 40 days ago I talked with you about what the State hoped to prove as to what happened on the night of March 1st, 1932.

You will remember that Colonel Lindbergh and his wife were living at their home. He came home to Hunterdon County, as you will recollect, because the Colonel and his wife cannot walk into a restaurant, you know, they cannot walk the streets of a small town like Flemington, they cannot go to a theatre—they are cursed because of their glory and their fame—not into a public institution can either of them walk without being mobbed by the curious, by the interested, and by everybody else.

And, of course, they are entitled to their share of happiness, and so they thought they would come out into the quiet hills of Hunterdon County, and that is why they built their home here, thinking it was just the type of place that they would want.

And it was on that night that the Colonel, coming back after a hard day, came to his family and he found his family, but instead of his baby, he found a cold chisel, a make-shift ladder and a blood-curdling note.

Well, you remember the testimony. There is no use in my going over it very much, but I shall just refer to it briefly.

There he is in that house. Fear grips him. He says to his wife, "Anne, they have stolen our baby."

He grabs a rifle; out, up and down the highways, with Whateley, trying to find some trace of either the child or the person who has the child. Anne sits there in silent prayer, as you have heard, with the rest of the women of the household, praying for the return of that child. And one hundred and twenty million people that prayed for the safe arrival of Colonel Lindbergh in France, hundreds of millions of people all over this world, the next day were praying, consciously or unconsciously, for the return of that child to Anne Lindbergh.

The police came. Newspapermen came. Photographers came. Cranks came. People that wanted to help. Everybody came and rushed to the Lindbergh place.

You can imagine the job that Colonel Schwarzkopf and his police were up against—people trampling over one another.

Just take a look at this room. That will give you just a small idea of what happened, the way people have been coming here.

Why, it is a miracle that you could keep any order in this room.

You can imagine—and here we have officers waiting for the people, to take care of them, to see that they are properly regulated—You can imagine what happened at that Lindbergh home.

And pretty soon everybody had solutions, everybody had ideas, and every crank wrote letters—thousands and thousands and thousands, hundreds of thousands of letters, and ideas and suggestions. Everybody could solve the crime.

But what did the police have? The police had a note. The police had a ladder. They had a chisel. Now when they found that ladder everybody in the world knew they had found it. When they found that note everybody in God's creation knew it. When they found that chisel everybody knew it. They didn't know Hauptmann yet. Nobody planted that chisel on Hauptmann. Don't forget that. Everybody in the world—it was recorded in the records that that chisel was there. It was recorded in the records that that ladder was there. Nobody planted it on Hauptmann; and so there it is, a ladder, a chisel and a note. Well, from there where did they go? What is the next thing? Why, the next thing is in accordance with the promise of the kidnaping-murderer in two days Colonel Lindbergh got another.

Now there was one thing about this fellow, the fellow that committed this crime. He had planned it. He wasn't going to let any faker come in and take that money. He had something on that note so that Colonel Lindbergh could tell, if another one came, that it was from the right party.

Now, every time there is a kidnapping—there are a certain number of insane people who are not committed to asylums, you know, and they immediately try to write letters, and cranks, and they say, "We did it." Why, some people walk into a station and say, "I committed a crime," when they never did. They have just an insane notion. But this fellow, this fellow was no fool; he wasn't going to let anybody get that fifty thousand. So he put down at the bottom of each note: "Our singnature."

Let me have one of those.

(Ransom note produced by Captain Snook.)

And he put his signature on there. There was no mistake about that. There it is. You couldn't reproduce it. There it is; the blue circle, the red center and the holes; "B" in blue, for Bruno; "R" in red for Richard; holes, "H" for Hauptmann. "Our singnature." Nobody could reproduce that except Bruno Richard Hauptmann; and to make sure they were right he made all those papers of the same kind.

And the only notes that had that handwriting were the notes with his "singnature" on, and I am going to come to "singnature" pretty soon, and I am going to show to you what a shocking perjurer he is in this court room, right out of his own lips. Don't let me forget that word, "singnature."

He has got it in here, "singnature." So he has this symbol. Now, the police get another one, he says, "Have 50,000 $ redy 25,000 $ in 20 $ bills, 15,000 $ in 10 $ bills and 10,000 $ in 5 $ bills. After 2—4 days we will inform you where to deliver the mony—m-o-n-y."

I want to show you something while you are here. This is a note Mr. Hauptmann got from somebody to whom he loaned $200. It is in evidence, admittedly his. Do you see the way he writes the 200 with the dollar mark after the 200, and the dollar mark after the 200, and then the dollar mark—200 and then the dollar mark?

Well, that, I won't say that is only peculiar to one man, there may be some other people that do that, I think some of the foreigners do, very likely, I won't say, but the fellow that

wrote these notes, he had this same peculiarity.

He never put a dollar mark down but what he didn't put it after the numbers. Just take a look at the first figures, 50,000, then the dollar mark, 25,000, then the dollar mark, 15,000, then the dollar mark, 20 dollar bills, how does he make the 20? A twenty dollar like you do? No, the 20 and then the dollar mark. The 15,000, and then the dollar mark, and so on and so forth in every note, he never puts a dollar mark in any of these notes, and in any of his writings where it should be.

That nobody planted on him, and that nobody dictated to him. That he made out in 1932. Wait until you get this in the room and look at his handwritings on the notes and everything else. You don't need any expert for it. But that right now I am just calling your attention to that dollar mark, you will see it all over.

And so they get another note.

Did the same fellow write the two of them? Why, Number 2 note,—Number 2 note was taken from the same piece of paper as Number 1. That's the testimony, just torn off, one sheet of paper at one time and torn off, and he used this for one and this for two: that's the sworn testimony and it is uncontradicted.

Yes, the first one was disguised a little bit more than the second. But at any rate, they had the chisel, they had the ladder, they had the note, then they had the second note.

Now, then they come along and they get another note. Now they are having difficulty. The kidnaper is not getting any answer. He thinks the police are taking Colonel Lindbergh's mail. He writes to Breckinridge and

Breckinridge—it takes time for the letter to come down from New York, somebody to deliver it—they are getting all kinds of mail, but the only mail they are paying any attention to is mail with the symbol, the signature.

When they get one of those they know they are dealing with the right one. He was able, he was shrewd, he was keen, he couldn't spell well, but he had something up in that mind, a brilliance there that many men have and, instead of turning those talents to honest endeavor, they turn them to crooked, criminal pursuits. And there he was.

And then Breckinridge came and nothing was happening. It seemed that no matter how the notes went, they couldn't get together. They had to get a go-between somehow or other.

At that stage, March the 9th, after seven or eight days, everybody in this country wanted to help solve this crime. Why, I wanted to help solve it, as an ordinary citizen. People all over the country were putting articles in papers how to do it, offering this suggestion, offering this advice, offering themselves. Every citizen in the country from the President of the United States down offered himself to act.

Was it any wonder then that a man of 75 years of age, Dr. Condon, a man who had been a teacher and educator, a professor, a man who was interested in boy scouts and girl scouts and civic endeavors, a man who never had a blemish on his character, a kindly soul, an ambitious soul, should interest himself in this. They say he is eccentric.

Hah, I remember the day even in my age when they used to think that a man when he got on to sixty-five or seventy should be respected.

I remember the time when they thought it was a matter of reverence and proper dignity to be respectful to people of years.

Instead of that, why, a man cannot walk into this court room if he is over 45 years of age without being branded eccentric, because he is old.

I don't expect to make 75, let me tell you that. My life is entirely too violent for that. But if I ever do, if the Lord ever spares me and I am one-half the man at seventy-five that old John F. Condon, the Doctor from The Bronx, is, I want to tell you, if it is possible, I will be more grateful to the Lord than I can imagine any person; because I am always grateful to the Lord.

Dr. John F. Condon at seventy-five!

Now, what did Condon do? Condon wrote a letter to his paper, Condon wrote a letter to his paper and he said something about offering himself as a go-between and offering a thousand dollars. Condon, who had brought up children and reared them through the schools and the institutions, not who was arrested for running a cheap cabaret and a dive in New York, not a fellow that testifies he was out with a girl because he suddenly becomes heroic and wants to shield the name of a girl, and the record doesn't show that any such girl ever existed, or her family, that they ever existed—a man who, instead of being where he said he was, was having an automobile accident, a perjurer that stunk to heavens! And they accuse this fellow, Condon, a man who has lived an honest life.

Yes, I don't have to defend Condon. What difference does it make to me? I will never see Condon, I suppose, as long as I live. He is no

sister in law of mine. But they have got to tear down Condon.

Now, what did Condon do? Condon risked his life, risked his life for Colonel Lindbergh, just as millions of people would.

Colonel Lindbergh thinks Condon is all right. Colonel Breckinridge, a member of President Wilson's Cabinet, thinks he is all right and thought he was all right. He must have been all right.

So Condon goes out and he puts this ad in the paper and he gets the next letter. Now we have the next clue. "Mr. Condon, we will trust you."

Why, Condon was such a substantial citizen in The Bronx, he was just as well known in The Bronx as the Mayor of your community is to you, probably better,—because Mayors came and went, Mayors would come and go. But Condon for years was a character.

Whenever there was any patriotic service, whenever there was any demand for anything like that, no worry about money or material benefits; Condon was there.

Did you see him on the stand? What was his symbol? No fraternity, no nationality, no religion, no ex-service button,—the American Flag. That's Condon, and that's what he wore when he came here, and that's what he wears every day of his life. That's his emblem.

And so Condon got this letter, and even Mr. Hauptmann would trust Condon, and he wrote him so. "If you are willing to act as a go-between, please follow the instructions. Handle the enclosed letter to Mr. Lindbergh."

All right. Dr. Condon get this letter and when he calls up—they were getting thousands

of calls—somebody at the other end of the wire said, "Open it up and see what it is." You couldn't get Colonel Lindbergh's home in those days because there were too many people, but if a fellow said he got that, that signature, it admitted him. It didn't make any difference, it didn't have to be Condon. It could have been Bitz, it could have been Spitale, it could have been anybody. They dealt with the lowest form on earth, not the highest,—just to get that child back. So they said to him, "What's on there? Open it." Condon became a little confused, but no more confused maybe than his examiner at the time, and he did say at first that he didn't open it, or he opened it. I don't remember. But the fact is the testimony was, from Colonel Breckinridge, as I remember, or Colonel Lindbergh, that they told him to open it. And they did. And when they got this with the symbol on it they said, "Come down." All right. Now we have more clues, you see. We are getting somewhere now. The police were still up against a stone wall because Colonel Lindbergh wants his child back, remember that. Condon isn't dealing with any police. Condon isn't interested in apprehending anybody. He wants to do something. He comes down with that letter. Now they can have all the inferences and insinuations they want; but remember what Condon said, remember what Lindbergh said. Where did he sleep that night? In the baby's nursery?

Can you imagine a man seventy-five that has lived a clean life, that was in that nursery praying to God that he could help, could you imagine him if he had anything to do with the killing of a baby, can you imagine him sleeping in that baby's nursery—Dr. John F. Condon?

Did you see his daughter here—one of the most delightful, wholesome souls that I have ever seen in my life, as sweet as sugar and as pure and wholesome as anything could be. That is a sort of a sample.

So Dr. Condon comes down there to this home and sleeps in the nursery, Colonel Lindbergh fixed him up. There were policemen downstairs, policemen all over, reporters all around—the world must go on, you know—the public must have the news. Hundreds of reporters and photographers and movie cameras and everything—Condon gets this little room in the nursery, he wants to see it, and he says to Mrs. Lindbergh, "I am going to bring that baby back for you and put his arms around your neck."

All right, he is told to negotiate. He puts an ad in the paper because of instructions from Colonel Lindbergh. Colonel Breckinridge goes right with him. They go to the house, Colonel Breckinridge stayed at that house every minute, he slept there, he ate with Condon.

While everything was being—and what happens? A taxi driver comes in and says, "Dr. Condon, I want to see Dr. Condon." "I am Dr. Condon."

"Well, here is a note." He delivers the note.

How did Perrone know it was Hauptmann? Why, as he gave him the note, this fellow Hauptmann, as Perrone was backing away, he looks back and he sees the fellow writing his license number down. So when they asked him about the fellow, he had his description, of course.

But, anyway, let's get back to Condon.

Now, we have in addition to Condon another

clue. We have Perrone, the man who delivered it.

Perrone didn't know a thing about Hauptmann's arrest until 1934. Did he give the description? Did he give the description of Hauptmann in 1932, so as to be a plant?

A plant—I think that possibly must be the way some criminals get away with their crimes in New York, and I think the word "plant" is a favorite one of lawyers, criminal lawyers, who try to have their clients escape justice, blame it on the police and call it a plant.

Can you imagine Perrone planting something in 1932?

You know, Hauptmann never denied that he gave that note to Perrone on the stand. That is my recollection of the testimony. I don't think he ever mentioned it.

But be that as it may, Perrone gives the description of the man. I told you about it before: about five foot nine; about thirty to thirty-five, or something like that; of German extraction; at least he spoke with some German accent, he thought; muddy blond hair—fitting Hauptmann to a T.

All right. So we have another clue now. We have Perrone.

And that note to Perrone: why was it delivered? It was delivered because this was planned and plotted.

When the note was delivered—he couldn't mail that note because he wanted to meet him and he didn't want to give him time to get in touch with anybody except the people of the house as soon as he delivered it.

"You be at this and this place in three-quarters of an hour."

Have you got that note?

"After three-quarters of an hour, be on the place. Bring the money with you."

Naturally, he couldn't mail the letter. He couldn't send a Western Union, by telegraph. He had to have that delivered, to give Condon three-quarters of an hour so he wouldn't have any chance to fix up anything on him.

He tells him what to do: "Follow the instructions. Take a car and drive to the last subway station from Jerome Avenue line, one hundred feet from the last station on the left side is an empty frankfurter stand with a big open porch around, and you will find a notice."

Give me the photograph of that frankfurter stand.

"You will find a notice in the center of the porch underneath the stone. This notice will tell you where to find me."

All right, he goes there. In three-quarters of an hour he gets there. He gets to the frankfurter stand. He follows the directions and, under the frankfurter stand, he finds a note, just as he is directed, alone some place.

There (referring to picture) is the frankfurter stand.

"You walk in there with a big open porch around. You will find a notice in the center of the porch underneath a stone."

He goes there and he walks to the center. Underneath the stone is a note:

"Act accordingly."

"After three-quarters of an hour be on the place. Bring the money with you."

All right. He gets to the stand, to the frankfurter stand,—and here is what he gets: "Cross the street,"—now he is at the frankfurter stand

—"Cross the street and follow the fence from the cemetery."

That is Woodlawn Cemetery.

"Direction to 233rd Street. I will meet you."

So he goes there and there is a man with a handkerchief, in the back of this cemetery wall.

There (referring to photograph) is the Woodlawn Cemetery, the entrance to Woodlawn Cemetery. We have it written on the back so you will be able to see it. And there behind those iron gates is a man finally waving a handkerchief.

Condon goes up to him and he says, "I see you."

They get to talking. It is way back, and it is a tremendous cemetery—you have no idea how big it is. It extends for blocks and blocks. They have caretakers, of course, and way back in the bushes this man Hauptmann hears the rustle of the leaves, some bushes or branches, and he becomes alarmed and he climbs up over that fence and gets on one of those things and jumps off.

Now, he knows that there is nobody there, but Hauptmann and he crosses the lawn here.

Oh, he isn't running, as counsel would have you believe. He runs across the street and he sees nobody is chasing him except Condon, so he stops, and Condon walks up to him.

They get to across the street and there is a park. No crowds around there. Don't get any mistaken idea about that. They get across to a park.

These pictures will tell the story. And there is the little house, and there is the little bench—just enough away from the sidewalk so that they can sit there. And they sit there and talk

for an hour and twenty minutes—an hour and twenty minutes.

You needn't be surprised about that, because you heard Dr. Condon on the stand—yes, he is a talkative old gentleman, sure, he is retired; he has nothing to do except to enjoy life and enjoy life's experiences and observations, and when people have nothing else to do, the most harmless and the most useful thing to do is to sit around with your fellow man and talk to him, get his observations about life and his point of view and everything, and that is Condon's habit, it is his life now.

So Condon sits there with him with an important mission. Now we have got these other notes, and now we have got another thing, we have got a description of the man from Condon.

What was the description? Five foot nine, muddy blond, German or Scandinavian; all those things, the age and everything.

"Well," he says, to Condon, "have you got the money?"

"No, I haven't got the money."

And he goes through the whole thing, and he tells me, "Yes, we are the right party. Yes, we got the baby." "Yes, we got the baby." That is what his statement was. "Doesn't Colonel Lindbergh believe we are the right party? If he doesn't want to give up the money that way, we will send him the baby's sleeping suit."

So what is next? He sends him the baby's sleeping suit with a note, and when the baby's sleeping suit—and it took a couple of days before he sent it, he had to wash it very likely, he had to do something to it, several days intervened, the testimony in the record will reveal it

that it took several days before he sent it, and then along comes this sleeping suit in a package, and it comes into that house of Condon's. And who is there? Breckinridge, Lindbergh, and Condon and the daughter and other people. And when they see this sleeping suit, when Colonel Lindbergh sees it, why, of course, you know after all it is his child, he has some notion about its size; he has some notion about what it wears and everything—there weren't many people who knew anything about the type of sleeping suit or what it wore; every crank in the country was trying to find out what it was that they had on the child—that was being guarded. But when he saw that, and he showed that to Anne, showed it to Betty Gow, they knew, in addition to the man with the symbol, in addition to everything else, there wasn't any question then that it was the right man. Lindy thought then he was dealing with the right man. The State says he was dealing with the right man. Now, jurors, you have got to decide it was the right man. The fellow that was in that room took that baby, and the fellow that took the baby had the sleeping garment. What more do you want? Is it possible that you would want anything else? And so here is the sleeping garment that he returned. Well, Condon was still advising, "Don't pay that money," he says to Colonel Lindbergh, "unless they produce the baby." That was his advice, his opinion, that was his observation. What did Mr. Kidnaper and Murderer say? He knew very well he would never produce that baby, but he knew something else, he knew if he waited long enough they would put up the money, because the hope, the hope and the desire to have

that child was greater than anything else in the world. And so he writes him, "Colonel Lindbergh will have to come to us."

"We won't compromise, Colonel Lindbergh will have to come to us." Nothing that Condon could have told him there or could have told him any other place. He writes in the letters, in the notes, "We can wait," he says, "the Colonel will have to come, he will have to meet our terms." And he tells him to put these ads in the paper.

Now, we have got another piece of evidence —we are still looking for the man—we have got another piece of evidence, with the sleeping suit—all right, what is next?

The money is prepared and they go down to St. Raymond's Cemetery and a man hollers, "Hey, Doktor." Colonel Lindbergh is there and hears his voice.

Ah, we are hoping that some day we will get the man whose voice Colonel Lindbergh heard. Another piece of evidence, another clue. Then, down into the cemetery, the money is given to somebody. Who is it given to? The man that we meet at Woodlawn Cemetery.

Along this fence, and when he gets all through he says, right along here (indicating on photograph), this is St. Raymond's Cemetery, this is the street along which they met, this is the fence that the fellow says was smooth—he had never seen that fence before, that is St. Raymond's Cemetery, that is the concrete wall he had never seen in his life, that is this fellow Heier, this fellow Heier that Mr. Reilly tried to protect yesterday in his summation.

He couldn't recognize that fence. He said it went smoothly around and I said to him, "Didn't

it get step-like?" He said, "No," he said, "there was a dent in there, there was a driveway through the concrete wall."

There is none at all. It ends there. There is a wall there and then there are bushes. That is the way it was at that time, and across that hedge, that is where the money went. That is the way they stood. One man on one side of the hedge and the other man on another side.

Now, when he gets all through and he gets this money, he makes the bargain, "All right, I will take 50,000 instead of 70,000, that is all right," and he turns over and he says to Condon, "Your work is perfect," and he shakes hands with him.

Sure it was perfect, he got the 50,000. Lindbergh, sitting right up there. All right. Who was it that got the money? This was asked all before this trial, all before Hauptmann was arrested.

What does Condon say? "The same man, the same man that I met at the other place, I met at St. Raymond's Cemetery, the same man, five foot nine, a muddy blond, of German extraction." "The baby is well, the baby is well," he kept saying, "Tell Mrs. Lindbergh not to worry," when he dipped his hands into that box to take out some money, when he was writing that letter, he was not only willing, he not only murdered this child, he not only crushed Colonel Lindbergh's heart and the heart of Anne Morrow, but even with that misery, he wasn't satisfied, he wanted to steal their money, too.

That is the sort of an animal, that is the sort of a murderer we are dealing with.

And so, he takes that money, and so we have got that additional clue.

Now, in addition to that we then have fifty thousand dollars in money which we circulated, another clue. Now, so we have all these things and we sit by and we wait, and what happens?

Some fellow in a shoe store gets a twenty dollar bill. Who gave it to him? A man about five foot nine, of German extraction, muddy blond, athletic—the same description.

We find on the arrest that is the man.

A vegetable stand, miles away from the Bronx—the shoe store, miles away, "Who gave it to you?" "Five foot nine, muddy blond," the same story.

Do you remember the testimony about the Faulkner money and nobody could tell who deposited twenty-nine hundred, or something like that in gold? Take a look at his accounts and you will see twenty some hundred dollars, twenty some hundred dollars, that Faulkner money, somebody walked in and exchanged twenty-eight or twenty-six hundred—I forget which it was—exchanged some place gold and got other money. That was an exchange, not a deposit, with the name of J. J. Faulkner, the name of a man who never could be found. Nobody knows who exchanged that money, but around that time in May or whatever the testimony shows, 1933, you will find over $3,000 in one deposit in Mr. Hauptmann's account. Where did he get the money?

And so we have got this $50,000 now, we have got fifty thousand more clues. We are waiting now, waiting to see what happens. Now we know already, Colonel Lindbergh has already flown up there, up in the skies and in the heavens, up around Massachusetts, New York and Connecticut, looking for his child—sent

him off on this wild goose chase—cruelty. Why he would cut your heart honestly with a razor and think nothing of it and go upstairs and eat. That's how cold-blooded this murderer is—sent up there on this wild goose chase. And he is sitting back now and the world, everybody, is searching. As time goes on, some people forget, but the Government doesn't forget, and the Federal agents are checking. Every time a bill comes in, they try to find him, and they are getting the same reports: in New York, New York, New York, New York—all the money is in New York. They draw a circle; right around here it is being circulated.

When he goes for vegetables, he is away from his home. When he goes for shoes he is away from it. He suddenly started to become a shopper, this carpenter.

Well, at any rate, they are getting these clues, until finally one day he stops down and buys a few cents worth of gasoline; not ten gallons, he didn't want much gasoline, he wanted enough to get the bill changed. When he wanted vegetables he bought ten cents or fifty cents, some cents anyway, less than a dollar; he couldn't remember how much. He would get nine dollars and some cents change. He would take that change and deposit it in his savings account. That is where he got the four hundred and some dollars worth of silver. You see? That's where he got these moneys for deposit.

All right, he goes to this gasoline man and he is stuck. He knows. The fellow says to him, "Well, you don't see many of these any more," and he says—mind you, he is so afraid of this gold that he is hiding it in the garage,

so afraid of it that he is hiding it in the garage, but he would take the chance of taking a ten dollar bill and giving it to a gas station attendant. So he goes to this attendant and the attendant sees it, and Hauptmann doesn't know that he has written down his number. He doesn't know that. And the gas station attendant doesn't think anything about Lindbergh. He sees it is a gold bill, and so he marks down the number, thinking they may have some trouble about it, and they trace his car. Then there is an arrest. You see, I am trying to go as fast as I can. Then they have got another clue. Who is the fellow that passed the bill? We have got another clue. We have got another witness, Lyle. Who is the man? The same man, five foot nine, muddy blond, of German extraction, athletic; and we have got the number, the registration number.

All right, we arrest him. Do we get a clue with his arrest? Sure. Talk about shrewd, and canny! Did they find him with a lot of those bills? Not much. He was taking out one at a time. They found in his pocket a twenty dollar bill, only one though. The garage was loaded with it, thousands and thousands of dollars' worth, but he only took out one; they weren't going to catch him with more than one.

So they arrested him. He had his story ready. Oh, it didn't hold up, but he had it ready.

"Where did you get this bill?"

Did he have a guilty knowledge of the murder of the Lindbergh child or didn't he? If he didn't, would he tell the truth? Sure he would. What did he say? He admits it here on the stand; there is no dispute about this, men and

women. He said, "This twenty dollar bill is part of $300 which I have saved and collected because of inflation and because of gold. The rest of the three hundred I spent already, and this is the last one."

Well, that was fine, wasn't it? What could you do to a man that had a twenty dollar bill? You couldn't do anything to him, he hadn't committed any crime, except possibly he violated or offended the gold laws of the country. So they took him back to his home, because his description, the five foot nine, the muddy blond, all those things lent an indication that he was the man that had passed the other moneys.

They took him back to his home and they found nothing. They tried to get him to do something else and they became suspicious of him.

Now he gets down to the station. He gets down to the station and they ask him to write.

Now, you will remember what he said. He made those misstatements—this is where I come to the "singnature"—he made those misstatements because they were dictated to him.

Now, you weren't there and I wasn't there. I don't believe this hokum about police and all these things that they try to hand us. But just the same, that's his testimony.

Now, he wants to explain why he made these mistakes, the same mistakes that he made in the ransom letters. Now, naturally, if he wrote "not" n-o-t-e in the ransom notes, and then when they told him to write, in the police station, request writings, and they spelled it for him, you couldn't hold that against him. If they told him to write it n-o-t-e and he put the "e" on at police dictation, you cannot very well

charge him with misspelling; it has been dictated.

Now, he wanted to show that he didn't write "singnature" with an "n" in it. He wanted to show that the word "singnature"—well, I have got it anyway—in the ransom note, was spelled with an "n" and that when they dictated to him they told him to spell it that way.

Now, did they tell him to spell it that way?

I am going to prove to you conclusively that when he swore on the stand here that they told him to spell "signature" with an "n" that he committed downright and absolute perjury, just like he did in most of his testimony. In order to do what?

Why does a man commit perjury? What is perjury?

Perjury is the willful misstatement of a material fact under oath.

Why, do you know if we should get perjury rampant in this country, I mean if people would take those things lightly and come on the stand and swear to false things, do you know what would happen?

If I had a piece of property or a chattel or something, they would swear it away from me. There wouldn't be anything worth a dollar. Your life wouldn't be worth anything if perjury became rampant—if you can't take the sacred oath on the witness stand.

If you can't believe that, then there isn't an American institution that means a thing.

Why would a man commit perjury, such a serious offense, second only to murder, I think? Why would he do it?

He would do it only because he would want to escape from the electric chair. That is the

only reason that he should want to do it, if at all.

Now, did the police teach him to write "signature" as he testified under oath? Here is his testimony:

"Well, now, in writing, did you spell the word of your own free will or did they tell you how to spell the word?"

"Some of them words," some of them, "they spell it to me."

"How do you spell 'not'?"

"N-o-t."

The gentleman had a dictionary in his cell. Of course, he just happened to have it. It happened that he had it. He wasn't practicing up on his misspelling of these words.

"Did they ask you to spell it n-o-t-e?"

"I remember very well they put an 'e' on it."

He didn't have the nerve to say, "They told me to spell it n-o-t-e," but he said he remembered something about an "e" at the end of it.

"How do you spell 'signature'?"

"S-i-g-n-a-t-u-r-e."

That was in this court. You remember it.

"Did they tell you to spell it s-i-n-g—"

"They did."

"So when they were dictating the spelling that was not your own free will in spelling?"

"It was not."

Now, he swears we told him to spell "signature" that way.

You can take the request writings. Here is one of them. You go through every one of those misspelled writings and there isn't the word "signature" on one of them to show that we ever asked him to spell it, right or wrong.

What do you think of that?

And here he is in this court room. He knew the importance of that "signature."

There isn't the word "signature" in any one of these exhibits, the request writings, that we asked him to write.

Yes, we asked him to write this:

"We were not in Sound Hall," because "Sound" is somewhere in there, "where the robbery—" the "the"—we wanted the the's because he has a lot of the's in the other place.

"House" we wanted to see how he would spell it, would he spell it h-a-u-s like he did in the ransom note. We wanted to see how he would spell "New York," "ladder,"—to see if he would spell it l-a-t-t-e-r.

Why, there isn't, as I said before, in fourteen pages of request writings the word "signature." It doesn't appear any place. We never asked him to write it, and you have it here before you, his request writings.

Look through them and see.

And still he swears on the stand in this court room that we told him to spell "signature" in the request writings with an "n."

What a fake! What a fraud! What a joke! Defense! Wasting the taxpayers' money here.

Sure, if there is any wasting, that is where it is, with that kind of a phoney defense.

Perjury is a joke in this case. They seem to take it so lightly. They would swear to anything—anything to save Hauptmann.

Well, now, I think before I got into the "singnature" we had him at his arrest with the twenty dollar bill.

He is arrested and they ask him to write these papers, and they take these request writings. They take the note that we find in his

home, and they come to the authorities, and what to do about it?

Is this the man's handwriting?

And so it is distributed among handwriting experts all over the country to make sure.

This is murder—this is important—nobody is going to take a chance on this. No lawyer, no prosecutor, is going to walk into this blindly. He is not going to be made a fool of and let his State become the subject of ridicule.

He is going to be sure before he walks into this thing. Did the State of New Jersey walk over there September 19th and ask them to send this man here for murder? Not much. Colonel Schwarzkopf and the Attorney General say, "No, not yet." Not at the time of his arrest, because at that time they found this twenty dollar bill on him and that's all, and we haven't gotten reports from handwriting experts. We haven't searched his garage, haven't done any of the things. So he is up there in New York and they start the search and they find a piece of paper in his home, writing paper and you take a look at it. It is a cheap paper and you will put it up as you get into the room and you will see the bond mark on it, the type of paper it is. And you take the notes, the ransom notes, you will see it is the same type of paper, exactly the same. That is from his home. Now they say to him—here is a man in custody. He knew it was important. The police, the world—the world is asking to find out what has happened. The Commissioner of the City of New York, the Commissioner of Police, thought it was important enough to be in on this case, and he is there talking to him, and what does he do? Nothing.

That is his story, and that's all there is to it. So they send carpenters up. They go through his house, cannot find anything in his house. They go to his garage. Lo and behold! They find concealed in that garage—there is a picture of it, right on the side where the window is, they find concealed somewhere along the window in a fake compartment two thousand dollars, and they bring it to him and they say to him, "How about this money," or words to that effect. "Well"—substantially "that's all there is." And they keep working and the next thing you know they find an oil can concealed underneath in another secret compartment, about ten thousand dollars, and they bring that to him, and he still says that's all.

Then, the next day, Mr. Foley says to him, "Are you sure that is all the money there is?" "Yes, that is all." And he says, "How about this?" "Is this Lindbergh money, too?" And he says, "Yes."

Guilty knowledge? Did he know? And when they have got it altogether, they know all about it, then he says, it was Fisch that gave him that money. And then he says, when he says Fisch, he says he had it up in the closet, and he did this and he did that—now, did he have it?

Why, did you hear the elaborate statements of my delightful adversary about Fisch, two or three days ago? "I am going to prove this and I am going to prove that about Fisch, and I am going to prove this."

Why, he didn't prove anything except that Fisch was a poor man. He didn't prove anything except that Fisch died in poverty. He didn't prove anything except that Fisch never

owned an automobile, never drove an automobile, had the cheapest room. He didn't prove anything except that Fisch was a fine fellow, an American citizen, and that while he was in this country he suffered tuberculosis during one of his visits to some resort and died as a result of it.

He proved that Fisch expected to come back. He proved that Fisch gave him everything that he had in the world before he left, and that he supplied him with the money for the trip. That is what he proved. He didn't prove anything else, not another thing about Fisch.

But if it is contended that his best friend, Fisch, if it is contended that his best friend, Fisch, was a party to it with him, as I said this morning, let them bring the grave of Isidor Fisch alongside of all the other graves they have brought into this courtroom, if it is any consolation and comfort to this party, if it is any consolation and comfort to him, let them bring the dead in here; if he helped Mr. Hauptmann, and there isn't a scintilla of evidence that he did, that doesn't excuse Hauptmann, not a bit.

We found no gold notes in Isidor Fisch's possession, not one. We didn't find a thing in his possession, either in this country or elsewhere. And during all this time there hasn't been one ransom bill that turned up in Germany, not one, not a single solitary one— all in the Bronx.

Now the search goes on. We have got the man and we have got his handwriting, and he has got the money; and the next thing they do, they are searching through his house and they find this board, and they bring it down to you.

Now, after all, we are looking for the man

that got the dough from Condon; that's what we are looking for, that's the fellow. Once we get the fellow that got the dough, we know who committed this crime, especially if the fellow that got the dough wrote the notes.

And so they bring in this thing from his closet, and they ask him about it and he says, "Yes, it is my lumber. Yes, I wrote the numbers. I don't remember about the handwriting." That's the second day; the first day he says, "Yes, I wrote it, all." And they ask him why. What excuse do you think he gave? "Well," he says, "I must have been interested in the case and I must have been sitting in that room where the closet is and, you know," he says, "I have a habit; I have a habit." And he wrote this number down.

Now he didn't write any other numbers in the kitchen or any other place. He had a habit.

"Did you have Dr. Condon's number on your closet door, his telephone number?"

The number had been gone since June, 1932; they had a new number. So many people started calling up when they found out it was Jafsie.

"Did you have it?"

"No."

"Did you have it written on the inside of a closet?"

"No."

What did he conceal it for? Because he had the guilty knowledge of the crime, because he participated in the crime, because he is the murderer. But he thought he rubbed it out. It was on the inside of a closet. It was a little difficult to get in; that's why he put it there in the first place. And what he did was, one day he took some dirty cloth or something and he

leaned into the closet and he started to scrub it, and he left a smudge there; the smudge is still there; part of it is erased, but the tracing is still there. And, men and women of the jury, when you get this board in your room, you look at the notes and take a look at the handwriting. You don't need an expert. Take the numbers, 2974, compare it with the numbers on the letters to Condon. Take a look at the number at the bottom, Sedgwick 3-7154, and as much of it as you can see. You will be convinced, and he admits that that is all there is to it. Of course, today, somebody has sold him a new story; somebody has told him, since he got to New Jersey, "Now, you can't admit that when you get to Jersey, because in Jersey you are on trial for your life. In New York you were only on trial to see if you were coming to Jersey. And if you admit that you put that on that board, you are gone."

Somebody sold him that story. He never would have changed it for any other reason. Oh, and how he squirmed when he started on that. He knew that was wrong. He is the all-powerful. He thought he could sit on that stand and withstand anything. And he didn't, he squirmed when somebody told him what to do. He is accustomed to telling others what to do. He will order his counsel around, he would order the Court around if he thought he could get away with it. Strong! He is stronger than the gang of us put together, all the lawyers at the two tables. That fellow has got a will power and a won't power. Steel that comes right from the heart. But let me tell you he had to gulp on that one. Yes, he told the District Attorney and he told the people in The Bronx, and he told the police, and

he testified under solemn oath in The Bronx that he wrote it, but he wouldn't dare admit it here. You have got to believe that he did it. There are no two choices about that. Well, there he is again. Why is he denying it? Guilty knowledge, guilty conscience, if he could have such a thing as a conscience. In order to do what? Why, commit perjury, again and again, and again and again; save himself from the electric chair. That's all. And so we have got another clue.

All right, we are still working, we are still working, and we get up into his attic.

Oh, they say we wouldn't let them get up into the attic. The poor boys, we wouldn't let them— terrible thing, we wouldn't let the defense do this and we wouldn't let them do that.

They have had six or seven weeks of a trial here—whatever it was—and anything they are entitled to they can get from this Court. The only trouble I find is that we have treated this fellow entirely too well.

I never even walked in to ask him a word. I never went in to annoy him for a second. I wouldn't get close enough to him. If I had my choice I wouldn't get in the same room, I wouldn't become contaminated, I wouldn't want to breathe the same air.

I think too much of my friends and my wife and my kids to be around him at all— I feel itchy, I feel oozy, I just couldn't stand being anywhere near him. I never walked into that jail even to get a confession from him.

I had to come down from The Bronx with him when the State of New York decided he had to come here, and all I did with him, as the testimony shows, as he walked into that jail, I said to him, "Mister, do you want a cigar,

or a cigarette before you go up to your cell?" And I forget what he answered, and I said to him, "Do you want to go up into your cell for a while or do you want to stay here for a while?" And I forget what it was, but everything was all right. And from that minute to this, as far as I am concerned, I have never talked to him and I never would as long as I live.

We have treated him too well, and they say we won't let them get up into the attic. Why do they have to get up into the attic? What is there about the attic that he doesn't know? He has lived there. What is there about the attic that Mrs. Hauptmann doesn't know? Why can't they get all the information?

Did their plumber say this was the attic, the picture we show? What is mysterious about it? Did their plumber witness say that this wasn't the condition? He didn't even see the wires, the plumber that was looking for this.

But be that as it may, did he say that was wrong? We had the owner of the house, you had this witness, the plumber. No, that is the condition.

What would they see up there? No, but counsel wanted to go up there on a Sunday morning while the Attorney General was home sick in bed and couldn't make arrangements that Sunday morning, and I told him any other morning, but no, it had to be Sunday morning. Any morning during the week they could have gone up with their wood expert.

So the charge is made here in open court that has absolutely no basis for it, that they would not be permitted up in the attic.

What have we got to hide up in the attic, or anywhere? What do I care about hiding

anything? What difference does it make to the Attorney General of the State of New Jersey what the outcome of this thing is?

Are we going to make any profit on it? Is the State of New Jersey going to get rich on this thing? No. But there is the attic and there is no dispute about it, and there is the board from the attic. There is the rail taken right out of that attic. You can see the knotholes even in it now. Here they are, just as plain as anything in the world.

Plant! Plant! It is infectious; once you get using the word "plant" you have got to use it every time.

Now, an ordinary carpenter, not an expert, could tell right away that one of these rails had once been used as a floor board. It is that type of wood apparently, and they got to worrying when they saw these nail holes in 1932, if they ever found a fellow that was guilty they might find some place where that might come from. And so they took it up and they laid it down there.

And sure enough, the nail holes fit exactly. And from there on they continued their investigation.

But it doesn't make an difference. We don't have to prove that to you. We don't have to prove that that rail comes from that attic. Supposing we had no ladder; supposing he did take it back with him; supposing he destroyed it— my God! we don't have to give you a moving picture of this crime. We don't have to give you one iota of proof about this ladder to convict this man. But it is there and we are giving it to you for what it is worth.

Now, how do they try to get away from that. They bring in Dr. Hudson, Dr. Hudson, who

wrote down exactly what he found. Not a word about any nail holes.

Now, he comes here and testifies to one. I want to tell you what I think about Dr. Hudson. I think the gentleman may feel that he has a fair recollection; but he entered this case in order to attract the attention of the world to what he considers a good solution, a good chemical solution for fingerprinting; and if Hudson gets away or got away with his testimony in this case, he would make millions of dollars. That's what would happen. Everybody in the world, in the country, if he could only say that his testimony— his testimony— freed Hauptmann.

Now, it wouldn't be about the fingerprinting or anything; that has nothing to do with it.

If you believe there was only one nail hole on there, he might get away with it.

And so, men and women, he comes in and he testifies about one nail hole. Well, I don't know how many nail holes were in this board in 1932.

I wasn't there. You weren't there, were you?

So the Attorney General of the State of New Jersey, knowing that this ladder had gone to Washington in 1932 sent to Washington and said, "Send that man down here tomorrow"— tonight, right away! "I want to find out about these nail holes. This is serious."

So he comes down, Mr. Betts. They didn't even examine him. He came down here and he spent the night. And the next morning he is on the stand, peruses the report, gives it to counsel— four nail holes, the picture of the ladder, Rail 16. He put the numbers on— You remember it— in 1932.

Now, you have got to believe, if you believe the defense at all, that what we did was to take the rail and punch those holes in it to fit those nails.

What a joke! What a joke!

The whole world hasn't turned crooked over night and surrendered honesty and decency to the defense.

Not only that, but Koehler's records show the same thing, the drawing of the distance between the holes and everything.

Now they want to show you that Mr. Koehler, who made this experiment, who talked about the plane marks and everything, that maybe he was mistaken.

So they bring in these two boards and Koehler says that they are part of one and the same board. And they say, "Isn't it a fact that one is thinner than the other?"

He says, "Yes, it is thinner, here and there."

And the wood expert at counsel's table starts to give him the measurements.

Now, where these two boards join or should join they are of the same thickness. As it proceeds— it was separated, you will remember Koehler said— it gets thinner. But you smell these boards and you will find one has been tampered with and one hasn't. You get the odor from it.

Why, overnight they said— They had to put our ladder in a safe. They wouldn't let anybody near that unless they were there— plants. But the boards, after the first night, out walked the defense with the boards and this very minute the odor of these board is different than it ever was. They know it is going to the jury, maybe today.

These board, I think, have been tampered

with. Why, they suddenly got all sorts of breaks and everything. The fact of the matter is, if you put them together, you will find one of them will run right into the other, one of them will run right into the other, which is the best proof that at one time or another they were the same board. And that is the thing on which they want to crush Koehler.

They could have gotten carpenters from all over if they wanted just carpenters. They could have gotten carpenters from the State of New Jersey. But, no, they had to get a fellow that has a nursery up in Connecticut. And I have no quarrel with him, if he can profit at the expense of Colonel Lindbergh and the State of New Jersey. Lord knows, there are enough people who have tried it. If he can get away with it, more power to him, unless he is caught!

Now, you aren't to let a little poppy-cock like that destroy the testimony of a man like Koehler, who has devoted his services to this all his life.

But forget that, and forget the ladder rail, if you want to. How about the testimony of Koehler and the testimony of The Bronx lumber yard, that a year and a half before Hauptmann was ever arrested they traced parts of this ladder, they traced parts of that lumber to The Bronx lumber yard.

They didn't know who worked there. They didn't know who brought it there. But they traced it there. And they knew that before Hauptmann was arrested.

Now that is not a plant.

Now, we have the ladder and we have the lumber, and we have the attic board and we have the board in his room. We have all these things. And we have the money and we have

the notes— and he wrote them. Everything Hauptmann. And we ask ourselves the same question that Mr. Reilly asked yesterday: where is the rest of the money, because we are still trying to find out.

So we make an investigation of bank accounts and brokerage accounts. And, lo and behold, Hauptmann again. We find the money. We find $50,000 of unaccounted for wealth— $50,000—within fourteen dollars.

Now I didn't put the money in his brokerage accounts. I didn't put the money in his bank accounts. He put it in there. And he hasn't accounted for it.

His foolish story about Fisch he has no explanation for. Not a single soul ever saw, as I told you this morning, Fisch give him a dollar. But we will go beyond that.

Where are those books of his?

We don't rely on our witnesses about his money. We rely upon him. I want the books of account.

You will find in this book every item in which he dealt, every item— the fur item, the stock transactions— you will find the number of stocks, the shares, the price, everything in meticulous accounting and you will find separated from that, one little transaction that he had with Fisch, and he wrote the letter about it, he says, early in 1933 he entered into a little transaction for Isidor, a little transaction for Isidor— I knew it would come out right, and it did come out, and he made $103 for Isidor, his best friend Isidor, and he has got that in the book here, and he has got every other transaction in the book. And if you take these books, as we took them, the money transac-

tions, and you take the brokerage accounts and the bank accounts, they fit exactly.

He was a wonderful bookkeeper. Oh, he was a carpenter, he was a burglar, he was everything else, he was a murderer, but he was a good bookkeeper, too.

Every item is in here and it fits exactly with the accounting that we have got— $50,000 accounted for from his own books, not from our testimony.

So, we continue the search. Now, we have accounted for all the money, but we didn't have to. We don't have to account for all the money. If we found $20 on him and nothing else, and he was the writer of the notes, and he is the fellow that surrendered the sleeping garment, why, that is all we need.

But no, we have gone beyond that. Let me show you something about the handwriting. I am going to try to conclude as soon as I can. I know that you must be convinced beyond any doubt, but I cannot afford the risk, I cannot afford to take a chance.

I want to talk to you about the handwriting for a minute. I have talked to you already about it. Now, I want you to take a look at these lines, this is what he wrote at the police station, one, two, three, four.

When I am through, will you please give the jurors these books.

Now, you will notice when he starts down here, the next line, he changes it altogether. Take a look at it now. He disguises it again. This is one disguise and this is another. It is a different form of handwriting altogether. It starts with a different slant. He knows what he is up against. See (indicating). He knows

what the handwriting is for, he is going to write it, but he is going to fool them.

So he starts that in one form, then he starts this in another form. The little books will even show it to you more pointedly. They are in evidence and I am going to give them to you.

Then I want to point out some things about it.

Now, will you give each juror one of those charts, please, one for each of you jurors, and this will just take a minute.

(Mr. Peacock hands books of photographs to the jurors.)

Now, I am just going to point out some of these things, if you don't mind, please.

Now, you have got page 1, right there, where the request writing is; that's a picture of the same thing on there.

"We were in the Sound," and so forth; right on top.

Now, I want you to go along on that first line, and you will see the word "the," the word "the" right next to the last word, "the roppery."

Now, you jurors have seen that "t-h-e." Now, will you look over here and I will show it to you on this big board. There is the "the." It is the same "the" in his writing here. Here it is. Hauptmann writing, Hauptmann writing, Hauptmann writing, conceded writing; here the ransom notes. Just take a look at that. You couldn't duplicate that.

The uncrossed "t," the same "e," the same form of "h." Here it is again, each side.

Now, I am going to come to some similarities and dissimilarities after a while, but I just

want to show you that. Now, that's number 1. I am not going to take too much time.

Now, the second line you will see a "6," "between 6" —oh, there are a lot of things in here, but I am just going to take that— "between 6 and 12." Now, take a look at that 6 and then come over here and take a look at the ransom note 6. Here is that same 6. Here is the ransom note 6. It looks just like an o, if you forgot it was a 6 for a minute, the way he writes it, except that he has a hook in, whereas his ordinary o is open.

Then get to the word "our" in the same letter. "O-u-e-r"— "ouer" in the Hauptmann writing— here it is. Here is the same ouer in the note with the open "o" spelled wrong, both of them, "ouer," open "o," misspelled the same way instead of "our." Now then you come to another "d" on the next line. Well, I have already pointed out to you the "v," the similarity. Then no more on that line. Then I want to show you a word in the next line "did," it is supposed to be right here. Now, as a matter of fact, there it is not spelled "did" at all, it is really "tit" instead of "did"— "tit". Now, look at it here, right here (indicating). There is a beaut for you. Look at that, the anonymous letter, the ransom letter, the same identical thing as in the requested writing. What do you think of that for a "d"? The same thing as there "dit," "dit"—uncrossed "t." The "d" or "t", whatever it is, the same thing. You couldn't tell it if you didn't read the rest of the letter, you wouldn't know what it meant.

All right, the next one on the same line, the word "note." All right, he says maybe we spelled it for him. What about the open "o"?

What about the uncrossed "t"? The same identical thing.

All right. Now, men and women, will you please turn over that page, because I am only going to do it just for a short illustration, right on that page— and these things are going to the jury room with you— you will have plenty of time. You don't need an expert. I want to tell you, when you are through with it, take it home, show it to your children. They will tell you who wrote it, if you show them the ransom note and the conceded writing, the children at school will tell you, one guess.

Now, the second page—have I the chart here of the second page— all right. Now, you have heard Mr. Trendley, the gentleman from St. Louis, talk about the first note. Now, on the first page we have "we" and other things from the first note. In the next classification we have things from the second note. Then we have them from the other notes. Now, look across at the "we's," first note, second note and from other notes and see whether or not the same hand wrote it, aside from the fact that it is the same symbol and all about the same subject. I want to show you the writing of the "jou," all the same, the "v's," all the same; the "a-l-" in all right and already, the two t's, the "s", the uncrossed t's and the "Dears," four of them right across. Just to connect all the ransom notes as being written by the same person. And, while you are about it, when you get into the jury room, I want you to take a look at the letter, Exhibit 260, in which he writes to his broker in 1931. You will find the "Dear Sir" he wrote to Colonel Lindbergh on there identical with the first note, identical with some of the other notes, "Dear Sir," the same thing.

And the reason I call your attention to it, it is a peculiar kind of "s," a peculiar kind of "d", and the "please", "Please will you carry in my debit." And that "d" in that debit. Wait till you see the "d" in that "debit." If that isn't a picture and ringer for the "Dear Sir" in another of these notes. Peculiar, very peculiar— you couldn't do it if you tried it, in the word "debit."

Maybe this jury can see it from here. There it is, "debit." I mean it is a piece of art, if that is what you like to follow. You will be able to see it in your room, but it is right there. I just want you to get a little glance at it, "debit." The d's in there; and that letter wasn't introduced because of its handwriting, that is the letter in which in December, 1931, he writes, "I cannot pay the $74." That is only a couple of months before this kidnapping and murder. He wants them to wait for a few days. "By this time I will settle mein debit balance $74."

All right, now, please, if you will turn to the next one. The next one is also to show that the same hand that wrote the first note wrote the other notes— the "were," the "ready," the misspelling, r-e-d-y, the misspelling in all the other notes is the same as r-e-d-y, "money" m-o-n-y, "anything" a-n-y-d-i-n-g, "signature" as "singnature," in one note and "singnature" in another note, "singnature" in this third note, this $50,000 with the dollar mark after the 50, $70,000 with the dollar mark after the 70,000— "We warn you," "We have warned you," "We warn you again," and so forth, to show it is from the same person.

Now, then, the next page; and I am only going to take one of these books, and we have got scores of them that we have got for you,

but there are certain things that this book shows that I want to call your attention to.

Now, the next one the "pay," the "day" and the "July," showing the y's, exactly the same curve, the same everything.

The "baby," "money," "robbery," all the y's in there, "nursery," "by" b-i, "city," "city," and then at the end you have got the "expected," the "x" in it.

Now, let me have the motor vehicle license, please. Now, this "x" that is in this "expected," he wrote a real "x." Sometimes in this request writing, when he came to write an "x" there, he wrote the "x" that you would write.

Sure, he did sometimes, but sometimes he wrote the phoney "x," and I will show it to you in his motor vehicle card.

"Bronx, New York." This is his writing; no question about that, the "x" right in that. I just want you to take it and pass it along. You will have them in the jury room. It will just take you a second. And while you are looking at it, look at the word "expected" in the ransom note, and the word "expenses" in the ransom note, the "x" in explain, three of them there, just the same as he has got it in his motor vehicle license for expenses.

Can you imagine anybody else duplicating that?

Just the "x," the x's in "expected" and "expenses" and the "x" at the end of "Bronx", right on top.

Now, the next page shows similar similarities and I am not going to spend much time on that. I want you to go to the next one. Because I feel maybe I am taking up too much time. The next one is the most important one,

in my opinion, and that's— I am going to show you what I mean by it. I don't know whether we have a big chart, and we don't need it as long as we have these. That's this page. See if we have all got it. That's it, right here. Yes, that's it; that's right, only open that clasp, please. That's right. Now, have you all got it open? Now, I want to show you something. I want you to look first at the middle two columns; that's Hauptmann's own handwriting and that's Hauptmann's handwriting again. You will see they are entirely different. Now, you see the "j." This is not a part of the ransom notes, this is his own handwriting. He wrote a "j" once that way and then he wrote it again that way. They are different, altogether.

Now, "police" and "papers" he wrote. They are different. You couldn't tell from those things that the same hand wrote them, but he did. Then you will take the "we" and the "wit." You couldn't tell from that that the same hand wrote it. And they are not ransom notes, they are admittedly his. Then "later" and "ladder," there is a little similarity but not much, and the bottom one you wouldn't tell at all. Now, on one side of those two columns, to your left is a copy of the figures in the ransom note. On the right, the extreme right, is a copy also of his handwriting. Now, when you take this you will see that the ransom notes look nearer his writing over here, the j's, than his own admitted writing over there. There are dissimilarities; but in the very dissimilarities you can find his handwriting. In other words, the "j" on the ransom note is like this "j". Now, if we only had this "j" to compare it with, which is also his, we couldn't tell; but these, the first and third, are identical.

The "p" in "police"— now, that "p" in "police" there, which is his handwriting, doesn't look like the ransom note "p" in "police," but the "p" over here in "papers" and the "p" over here in "police," they look identical with the ransom notes.

So that you can compare his own writing, his own two admitted writings and you will find some dissimilarities. But when you have 13 or 14 notes and a lot of his own writing, you can find him screaming all out of it.

There is the "p" in "police." There it is over here, not this one which is also his, but this one again— making that little circle. It looks like a "b," if you didn't know it was "police." It would look like a "b," "b-o-l-i-c-e."

Then in the "we"— here you are: "with" and "we," both of them. Now, they are identical.

But the two admitted Hauptmann handwritings don't look at all alike there, and so it is right down the line.

So you have the dissimilarities, too. We have not only picked on the similarities.

Now, if you will turn over to the next page you will find all the misspelled words, the ransom notes and the defense writings— "be" spelled b-e-e, "money" spelled m-o-n-y, "anything" spelled a-n-y-d-i-n-g, "not" spelled n-o-t-e, "later" l-a-t-t-e-r, "House" h-a-u-s, "our" o-u-e-r, and so forth.

Now we come to the sleeping garment, and there I want to show you something that the handwriting experts didn't testify to, but I am going to show it to you from a book that is in evidence.

I want you to look at that sleeping garment. You will find "Ave." A-v-e. Now, look at the

"A." Look at the whole thing, but look particularly at the "A." It isn't crossed at all, there is no line there connecting the two ridges. The "A" is absolutely open— A-v-e. It is a peculiar one. It is unlike anything probably that you ever saw. It is possible some one else may do it, that is true.

Now, I want to show you his address book. This hasn't been pointed out by anybody yet. I want to show you the name of one of his friends, Fred Gleiffer, 8618 91 Avenue.

Why, you could take a picture of this sleeping garment address "Ave." and it wouldn't look any better than this A-v-e right in here.

And throughout this entire book you will find the same "Ave." that is on the sleeping garment "Ave."— the "A" just two hooks, not crossed at all, the "v" separated, the same kind of a "v" and the same kind of an "e." And you have it in this book. It is right in here. You can find it any number of times, particularly where this hook is. The name is Gleiffer, 8618 91 Avenue. And again down here, "Grant Avenue."— still open. Right throughout here you find it.

I wish that we had the time to go over all of this. I would love to pass this out to you.

Not only that, this is the book which I showed him, and I wanted to show about the n's and the m's for "mister," when he wrote the ransom note, the "Mister" on "Mr. Colonel Lindbergh"— identical in here with "Mr. Isidor Fisch." Identical.

The w's that he has all over here—identical with his book.

It may be easy to copy a "w," but they are identical, just as you see them on the Hauptmann writing and the anonymous letters.

But there is one thing in here— that "New York" that I made him underline when he was on the stand, because I didn't want you to miss that— S-257.

Now, he has this "New York" in this fashion. You have the book right there and you will find that while it is smudged a little bit, the "N" starts with a little hook.

Here is the best picture of it, right here. You see that hook up on top and that hook up there.

You try and find somebody that writes an "N" that way.

He has it four times on one page in his address book— four times.

And he underlined it for me— "Deutschland" something "New York," "New York." The same thing. Identical.

I had him underline it— "New York" again, "New York" again.

Now, he has a hyphen between there. I don't place much stock in the hyphen; I don't care about that at all.

True, it is a similarity, but I don't put much stock in it. But there that "N", that "Y"— why, they are identical with all of these things, identical with this sleeping wrapper, the "New York," the same "N" as there.

Now, this is his book and there are so many things in this book, if you will only have the time, if it is necessary at all— the word "Dodge", the D's and everything about his handwriting. Why, it is just a picture of his ransom notes, that is all— the numbers.

And when he comes to this automobile accident that he talked about, and Alexander Berg, the "x," you will find the "x" again right as you have got it in the ransom notes—there it is, Alexander Berg, there is a check there, you

will find it, you will find Third Avenue on the same page, the open "a" again, the same thing as the sleeping garment.

Why, the books reek with evidence, and he says it looks like it.

Now, not only that, but then we have got the "boad." When we get to his handwriting, that is a peculiar thing, isn't it? I mean, after all, you don't spell "boat" that way. And when did he write "boad"? He wrote "Boad" when he got the $50,000. It is an important note, it is not only a ransom note, this is the fellow that got the $50,000 on the spot.

Have I got that "boad"? No, I mean the ransom note. As soon as I get through with this handwriting, we will take a little recess, if you don't mind, if your Honor please, as soon as I get through with the handwriting and then I will conclude shortly.

Now, when he got the $50,000— you know, after all, jurors, we spent so much time in this case, thirty days or more than forty days altogether, more than thirty days of trial time, you have got to be generous with me and you have got to be patient with me, please.

Now, when he got that $50,000, he told them where the boy was, "On the boad Nellie," b-o-a-d. Now, here is his book. We didn't write it for him, it is a book of his accounts from California, of his trip in California. And there he has got all these items. Oh, it goes through everything, his book of accounts, his expenses.

He was keeping this little account because Kloppenburg was with him and Kloppenburg was supposed to pay one-third, you see, so he put down every item, 80 cents for this and 50 cents for film and a bridge, he evidently paid 75 cents

car fare, fare 50 cents, films $1, camp 50 cents, airplane ride $12, and he has got from day to day what he spent. And we found this book. Frankly, I didn't notice the word "boad" until I walked into the room here that morning. No secret about it at all. But just in turning the pages, the word "boad" struck somebody, who pointed it out to me, and there it was, b-o-a-d, just exactly as he has got it in here— not only the misspelling, but everything; "boad."

Now that was a little peculiar. And he comes from Saxony, he says, and it was natural that he should write "boad," b-o-a-d, if he wrote it at all. And so we find it here, and we find it there.

And what explanation does he give?

"Well," he says, "now after all that may have been eight years ago I wrote it in this book"; he says, "You know a man learns something in eight years, he changes." Or whatever he said. But the next day I showed him that this was about the California trip which he wrote in 1931, three months before the murder. So it wasn't eight years at all. Do you see? He got caught there, and, of course, he tried to squirm out, so he says, "Well, that was about eight years ago; men change," he said. Well, here is the answer: he is the fifty thousand, b-o-a-d, right there. I have had it stamped there so that you can see it when you get in the jury room.

Now, what else? This little book also shows his meticulous records. I want to get through with the handwriting. Every time he he has "anything," he writes "anyding"; every time he says "everything," he writes "everyding"— just that "d" in there, just like in the "boad." He writes "w-e-r-e" for "where," in-

stead of w-h-e-r-e; "gut"— every time he wants to say the child is in good care he says "the child is in gut carè," g-u-t, or g-u-t-e; "singnature" for "signature"; senventy for seventy, Lindenbergh for Lindbergh, the extra "n" in there all the time; m-o-n-y for "money," instead of m-o-n-e-y; the dollar sign after the amount; note for not; the for they; hte, he has got it reversed. Now, in his book of accounts he has got an account for Curtiss-Wright. He spells Curtiss-Wright the way he spells the "ght," and the "hgt," and you will see them as you look at them. He has got them transposed. When he wants to say "be there," he says sometimes "by" instead of b-e— sometimes he spells it b-e-e.

Now people make these mistakes, of course, but they would make all the mistakes together. You see what I mean? In other words, all these characteristics are his. You may make a mistake, you may spell note n-o-t-e, but if you spell note, n-o-t-e, you wouldn't spell signature, s-i-n-g— somebody else would make that mistake. But he makes all these mistakes. Two hundred and ninety-seven undotted i's; 391 uncrossed t's. That's in his request writing. In the notes there are 507. Just about balance. He never crosses the t's, except in a very rare instance; he never dots his i's, except in a very rare instance; he never closes the o's, except in a very rare instance. When you get the broker's letter, as I have pointed out already to you, you will get the X. And I think that substantially covers the handwriting.

Now, the reason I have spent so much time on handwriting, men and women, is this: that if you come to the conclusion, as you must, that he wrote those notes, that's all you need; that's

all anybody needs. The fellow that wrote the notes is the fellow who got the $50,000. The fellow that wrote the note with the sleeping garment is the fellow that had the sleeping garment. The fellow that had the sleeping garment had the baby. He was in the room and he left the note, but he had to have the baby to have the sleeping garment. It is the same chain. But more important than that, after he is out of that room for three days he writes a letter, and he says, the fellow that writes the letter says, "Why don't you follow the instructions of the note that we left in the baby's room?" The writer says, that we left in the baby's room; that is his confession, that is his admission, "We left it in the baby's room." "We are the right party." He tells Condon "We are the right party." He tells Lindbergh, "We are the right party." The notes alone are sufficient to convict him of murder in the first degree.

Now I will come to the other parts right after this recess and possibly in ten or fifteen minutes will conclude. May we have a recess, if your Honor please?

(At 3:25 a short recess was taken.)

(After a Short Recess.)

(3:37 P. M.)

(The jury was polled and all jurors answered present.)

MR. WILENTZ (continuing summation):

I know some of the members of this jury have been ill, and I wasn't told until a minute

ago that one of them has been quite ill, and I wouldn't have taken as much time.

Now I will try to conclude.

One of the very important things in this case is the question of when this gentleman stopped his work. We said he quit on the 2nd of April, or the 4th of April, said he worked two days in April. And the record book here shows that he did not work on April 2nd, but did come back and resigned on the 4th.

I think they give him credit for two days or something like that but, whatever it is, it is agreed, it is admitted, that on April 2nd, whether he worked or whether he didn't work, that was the last day, if not that day, Monday— that he hasn't done an honest day's work since, that is the day the ransom money was paid.

He says that he quit his job because they only paid him $80 a month. We say he quit his job because he got $50,000. Did he get $80 a month? His proof, not ours— he brought it in— his proof shows that he was getting $100 a month. Here is the exact and the original page brought in by the defense, not planted by the police, and this is the copy of everybody's payroll, not only Hauptmann's, and the significant thing is that it doesn't say that he worked April the 2nd. It says there that he only worked two days in April, and our man testified yes, he worked Friday and he worked Monday. He quit Saturday. That was the day he made arrangements to collect the ransom.

But his story about quitting on account of $80 a month, that is just another one of these alibis and excuses. He had to tell you why he quit. Supposing he did quit on account of getting $80 a month instead of $100. He

didn't try to get a job any other place. Of course not. He had too much money. He had more money than this jury and myself, all of us put together.

Now, I am going to dismiss that, and it is important.

I didn't want to get away from the handwriting without giving you the opinion of J. Clark Sellers, one of the most famous men and one of the most delightful citizens of this world, from Los Angeles, a man that was appointed by the Court in the Rudolph Valentino case, in the case of Jean Harlow's husband, the man who was called upon to determine the handwriting in the Hickman murder case— that was another kidnaping and murder case— and the man whose record on this stand never indicated one reversal.

And that sums up the opinion of every one of these men: Osborn, Stein, Tyrrell, Walter Cassidy, Souder.

"I am convinced absolutely that Mr. Hauptmann wrote the ransom notes and addressed the envelopes in which they were sent, and addressed the wrapper in which the sleeping suit was returned. I am not only saying that Hauptmann wrote the ransom documents, but I am saying no one else did. So convincing to my mind is the proof that Mr. Hauptmann wrote each and every one of these ransom notes that he might just as well have signed each and every one of them."

Now what did Hauptmann do? He left his home in the Bronx, he came down with his automobile; he had been around planning it. He was seen in the vicinity one or two or three times. Oh, it doesn't matter; he may have been seen there before or he may have never been

seen there. Criminals, as I said before, never rehearse these things. He came down there with that ladder. He built it as a carpenter would. He just knew exactly what it would do. It is a light ladder; when it is put together it fits in exactly. The sections aren't just put right here so that they will fit. If they would, I could twirl it around, a man who never did any physical or manual labor in his life, myself, I could carry that ladder in one arm and twirl it around. It was a cinch for this fellow, a cinch for this fellow. He had the three sections. When he saw that the third section would hit that shutter—he didn't think Lindbergh would be home that night; Lindbergh was supposed to be making a speech that night in New York—all the papers carried it, I think the testimony shows. He came there, and when he put those two sections together, it was easy. Why if this ladder was up, I would climb it for you. It is a cinch. And he walked in there, this fellow with the panther step, this fellow with the big hands, he walked in there, into that room, and in to that baby, and there he grabbed that child; out he came, out that window. Oh, it was a little difficult; it would have been easier if there were two or three of them. But whether anybody was with him or whether anybody was not, he was there. It is his ladder; it is his note. He was in that room.

And down he comes. The child is dead. He had crushed that child already, mind you, into insensibility before he came out of that room. The ladder breaks and down he comes along this rail, this wooden rail there that is down there at the bottom, alongside the Lindbergh home, underneath the window, the testimony is.

There, you will see the ladder marks right

with this rail there, it is a sort of a boardwalk and whether the child hit the concrete wall of the house or hit anything, the child's skull was crushed.

Sure, Mr. Reilly says, the mud would have been thrown up, and the mud was thrown up, the holes show it. The ladder holes are a little larger than it would take for the ladder.

And there, knowing the child was dead, as he walked out to get to his car, as he was sneaking out, hundreds of feet away, still on the Lindbergh estate, he took the sleeping garment and he ripped it off that child, and he had the sleeping garment.

Now, men and women, don't be weak, don't be weak. If he got that sleeping garment from somebody else, he had a chance to tell it to you. If he wrote those notes for somebody else, he had the chance to tell it. He hasn't told his lawyer a thing; he hasn't told this jury a thing; he didn't tell the Judge in the Supreme Court a thing—he has got nothing to tell.

No, he proceeded on his way. If he left the body right there on the Lindbergh premises, he would never collect the money. He had to hide it. He hid it in the first convenient place, the first convenient place where he thought they would never find it. He didn't need the body, all he needed was that sleeping garment to get the money. He was right, he got the money, nobody else.

Now men and women, I told you before, I cannot be too emphatic about it, not because it is my notion of the law, it is the Court's: If we had to prove by an eye witness this man walking up this rail, if we had to prove that to you, why the Court would have told you in the

first place. There was nobody in the bedroom when he came in. Nobody saw him walk in. As I told you before, civilization and society would sink to such low levels that nobody would be protected, there would be no society; there would be no civilization, if we cannot cope with murderers and criminals in the fashion that we are. The trouble about civilization, the trouble about the people, decent people, is that they have bent backwards trying to be fair. Criminals go forward, thinking of nothing. We are all trying—we are scared to death—somebody says we are not treating them nice enough.

Now you have got hundreds of reason, every uncrossed "t," every undotted "i," the chisel, the ladder, the sleeping suit, the tracing of the wood to the Bronx lumber yard, the ransom notes, Hochmuth, their witness Lupica, Rossiter, Perrone, Miss Alexander, Cecilia Barr, the closet board, the plane marks, the board in the attic, the word "boad," the bank accounts, the brokerage accounts, the radio, the $400 radio at a time when he wasn't working, this poor carpenter—his poor wife that had slaved—he lost her money in the stock market before this case, had paid $400 for a radio. I have earned ten or fifteen thousand dollars a day myself and never bought a $400 radio. And here is a poor carpenter, a poor carpenter, a poor carpenter that had slaved at $100 a month, frugal, thrifty, that kept an account of eighty cents for this and eighty cents for that and he spends $400 for a radio. When? During a time when the country was in the midst of the worst depression in its history, 1932. $125 for field glasses, field glasses! Talk about luxury! Trips to Florida. Every one of these things is important and not

denied. That's not my story, that's his. Why, that radio, that radio should convict him. The field glasses should convict him. That shows the guilty knowledge. That shows easy come, easy go. That's the story. Why, I remember some of the jurors when they were being questioned, one of the jurors said no, he never owned a radio—this fellow with a $400 radio without a job, not working, not looking for work.

He buys a canoe.

Colonel Lindbergh's identification of his voice, if it is good enough for Colonel Lindbergh under oath, if Colonel Lindbergh says to you, "That is the man who murdered my child," men and women, that is good enough.

Now, you hesitate before you reject that kind of testimony. He didn't volunteer that. Counsel asked him what his opinion was. Counsel asked him who he thought—I didn't ask him—counsel asked him who he thought was the murderer of his child.

He sends his wife to Germany when he isn't working. He dresses her. He gives her a trip to Germany. She bought a chest of silverware there. God! I don't care if she buys five thousand sets of silverware. There isn't anything I wish—people, if they want to go to Germany, it is all right with me. I am not a bit envious of anybody. But all I want them to do is not to take this money as the result of a murder. That is all.

She bought her silverware in Germany with money and the fruits of this ransom money which he got because he had the baby's sleeping suit.

The ten dollar bill he gave to Lyle is a rea-

son for his conviction. The twenty dollar bill that he gave to the vegetable man and the twenty dollar bill to the shoe store man. The fact that he concealed the money from his wife, that he hid it in that garage, the fact that he hid it at all is the best indication of his guilt. His lies to the authorities, his lies to the Bronx, his perjury before the Supreme Court there, his perjury here about signature.

He stopped work on April the 2nd, don't forget that. And don't forget that you are not dealing with a man who comes in here clean. Don't forget that you are not dealing with a man that is not experienced in crime. Don't forget that when you found that $15,000 you found it in the garage of a man who, Condon said, gave him the sleeping suit; who eight of the best experts in the world said wrote the notes that went with the sleeping suit, who wrote the note that was in that nursery. Don't forget it is the same man who bought lumber from the Bronx lumber yard. We knew that before he was arrested. The same man from whose attic that lumber came. Don't forget all these avenues fit right in.

Now, the State of New Jersey takes no pride in this prosecution, men and women. Do you suppose that the Governor and the Legislature feel that they would like to get into this thing? Why, we have only tried this case, we are only a party to this case for the same reason that you are.

Hauptmann made us the victims; he picked Hunterdon County, he picked the State of New Jersey, as the scene of his crime and we, as victims, have got to suffer for it.

We have got to come here to try the case, because the Constitution says that the trial shall

be had in the district in which the crime was committed. Very likely, up in Newark or in New York, the court rooms are larger, it would be more convenient, but no, we had to come to Flemington and we had to come to the State of New Jersey, because of Hauptmann, because of Hauptmann's conduct, because he selected East Amwell Township as the scene of his crime. And so we are here, to do nothing except our duty. And all we ask is that you do your duty.

We are not concerned about what the mob is clamoring for, as counsel refers to it, but you can bet your life if there is a clamor from the people of this country for this man's conviction, regarding which I don't know anything, except as referred to by counsel, I have sufficient faith in the American people to know that it is their honest belief and conviction that he is the murderer. Otherwise, there would be no clamor, if there is one.

Now, my adversary took the liberty of addressing Colonel Lindbergh in his closing, and I am going to do the same thing.

I want you to know, Colonel, that we cannot return your baby. No king, no nation, or no country can. There is no question about that. We could try this case forever, we could go on for days and days—we couldn't do anything for Colonel Lindbergh. But we could do one thing in this case, let me tell you—this jury can, by its verdict, do one thing for the Colonel, for Anne, for the country—we can make the country a little bit more secure, we can make the children a little safer, we can make women a little happier.

This fellow has been the inspiration for the greatest series of the meanest crimes in the history of the world.

Why, the American gangster never knew what it was to murder a child or murder anybody kidnaped. He would take the person and he would return him for the money. There was some honor amongst thieves. There was some honor in those gangs. When they took a man and they said, "Pay the ransom," they gave the man back. They wouldn't take a child and murder him. He taught them a new system.

He said, "Take the fellow you are going to kidnap, murder him, and they can't catch you. How can they catch you, because you haven't got him? How are they going to get you?"

He taught them that and since that time this country has been cursed with the meanest and worst series of crimes it has ever experienced. He hastened the death of Violet Sharpe. He disgraced Betty Gow. He has brought shame down upon Condon, unfair shame, in this court room, vilification and abuse.

Why, he has left in the train of his activities not only the meanest series of crimes and been the inspiration for them, but he has caused more sorrow in millions of homes in this country than anybody could calculate.

Why, for months, for years, as soon as a mother came into a house and found a child was missing, the first thought was, "The child is kidnaped." Panic in every home, sorrow in every home.

And I want to tell you, men and women, yes, we can't restore this child. We can't do it. I have no doubt that people in this country would lay down their lives for him, but we can't do it and they can't do it in any other country.

But if this jury will do its duty, we can trans-

late Colonel Lindbergh's loss and worry into some gain for civilization, to show that whether we catch a man walking into the room or not, we can crush them, we can crush these snakes, we can crush these criminals, that society isn't so weak that we can't deal with them. That's the job that you can do. You can serve society so society will gain, even at Colonel Lindbergh's loss; and I know that if civilization will have some little gain out of it, as difficult as it is, Colonel Lindbergh will feel that the effort in this case has been worth while, notwithstanding his great loss.

Now, men and women, I have been here all this time, and I want to say to you again I appreciate very keenly, I appreciate more than I can tell, not only through all this trial, but through all these hours that I have been with you this afternoon, when some of you are ill and not feeling well—can't I say to you again that as far as I am concerned I have no interest. There isn't a thing in this world that the Attorney General of New Jersey wants except to be left alone, to lead a normal and happy life. He doesn't want any promotions; he has no ambition, the Lord has been very good to him. If he should die tomorrow he would have no feeling of regret, and no feeling other than that the Lord has been marvellous to him. I am here just to do my duty, as you are. We want nothing but a square deal for the people. There is no gain in it for this table—Tony Hauck, who doesn't get an extra dollar for every one of these days—men who have spent their lives, day and night, working. Why? Men who never wronged anybody, never an evil thought has crossed the mind of a fellow

like Tony Hauck. He couldn't sit at that table if he didn't think and wasn't convinced this fellow was guilty. The same thing with Judge Large, Bob Peacock, Joe Lanigan, Stockton and the rest of the boys.

Let me tell you, all we want is a square deal. We want no disgrace on the State of New Jersey.

Gosh! how we have worked for that, to present this case and this proof with fairness, with decency, so that the United States of America and the world would feel, "Yes, we will convict him, but we convict him fairly."

Mr. Reilly says the case is too perfect. No case can be too perfect. But it is perfect; and it is only perfect because of his conduct. Every piece of evidence that we have he has presented to us.

Now, men and women, as I told you before, there are some cases, there are some cases in which a recommendation of mercy might do. But not this one, not this one. Either this man is the filthiest and vilest snake that ever crept through the grass, or he is entitled to an acquittal. And if you believe, as we do, you have got to convict him.

Now, I want to say something about this, about the members of the profession that have participated in this trial. Just forget us all. Please forget Mr. Reilly and Mr. Fisher and Mr. Pope, and Mr. Peacock and Tony Hauck and Judge Large—all of us.

If you know any of us, of course, you don't know all of us, but if you are at all friendly with any of the men at the table, just remember that we are merely doing our share and our part in this case. We are only actors; our per-

sonalities, our conduct, the friendships that you may have with any of the members, or relation, if there is any, no matter how distant, remember it has got nothing to do with this case.

You determine it absolutely upon the evidence and forget Wilentz and Reilly and everybody else—determine it upon the evidence, the weight of the evidence.

Did you ever see that scale, the American scale of justice? Here is how it hangs now (indicating), way up there is the testimony of the State of New Jersey, way down in its lowest ebb is Hauptmann, Hauptmann, dangling on there, dangling on the hope and on the straw, right at the bottom of that scale, hoping that one juror, one juror may do it, may do it for Fisher, may do it for Reilly, may do it for somebody else, hoping that he will get life imprisonment instead of death.

What does life imprisonment mean? Nothing. Maybe in fifteen years he will walk the streets again. The scales are up there with Hauptmann dangling down there, only because of the testimony.

We have proven it overwhelmingly, conclusively, positively. Now, jurors, there is no excuse, you would never forgive yourself if you didn't do it, you wouldn't be happy, you wouldn't feel right, honestly you wouldn't.

You convict this man of murder in the first degree. The Grand Jury of the County of Hunterdon had the courage to do it. The State of New Jersey has the courage. They stand here unafraid and ask for the penalty. Why? Because they know they are right.

Now, jurors, it is up to you, we leave the burden with you. I assure you, when I sit down, that is the end of this case with me.

It is your responsibility and grave as it is, important as it is, it is still your responsibility and don't shirk it. You have got a chance to do something for society that nobody else in the entire county of Hunterdon will ever have an equal chance and you have got to do that, you have got to do it. If you bring in a recommendation of mercy, a wishy-washy decision— yes, it is your province, I will not say a word about it, I will not say another word, once I sit down here in this case so far as the jury and its verdict is concerned. But it seems to me that you have and you will have the courage if you are convinced, as all of us are, the Federal authorities, the Bronx people who were there, the New Jersey State Police who were here, the lawyers who were here, Colonel Lindbergh who was here, everybody that has testified, if you believe with us, you have got to find him guilty of murder in the first degree.

Of course, if you want to line up with Hauptmann, if you want to get over to that side of the rail, men and women, I can find no fault with you, provided it is based on the testimony.

A Voice: If your Honor please—

Mr. Wilentz: If your Honor please, I want that man taken out. Take him out.

Mr. Reilly: If your Honor please, may I address you?

Mr. Wilentz: May we have it at side Bar, if your Honor please?

The Court: Yes, certainly.

Mr. Reilly: May we have the jury polled as to whether they heard what he said?

Mr. Wilentz: Did he say anything?

Mr. Reilly: He shouted out something.

Mr. Wilentz: If he did, it would be in your favor.

Mr. Reilly: No, it wouldn't.

Mr. Wilentz: Did he say anything? I didn't hear anything.

The Court: I don't know whether he did or whether he didn't. I didn't hear anything myself except "Your Honor."

Mr. Wilentz: I stopped him as soon as he started.

Mr. Reilly: I think he ought to be committed to an insane asylum. They tell me he is a rector of a small church up on the banks of the Hudson here, more of a mission. He came to see me once and I threw him out. He was here the very first day dressed that way and I had the troopers throw him out. He is the brother of that man that escaped in Georgia, Burns.

Mr. Wilentz: I think he ought to be put in jail anyway.

Mr. Reilly: So do I.

The Court: Where is he now?

Mr. Wilentz: I don't mean now, but after the jury is out, if your Honor please, I think this fellow ought to be jailed. He has enough intelligence to know better than that.

Mr. Large: After the jury retires.

The Court: After the jury retires?

(Further conference of counsel was held at side Bar.)

Mr. Wilentz: If your Honor please, counsel have agreed that while we don't know what the intruder did say or didn't say, that if the jury heard it, whatever it was, of course, they will disregard it.

Mr. Reilly: Yes.

The Court: Yes.

Mr. Wilentz: And we ask, too, if your Honor please, that at the conclusion of this case, your Honor deal properly with the gentleman who interrupted the Court proceedings for contempt of Court.

The Court: Yes.

Well now, let me say to you ladies and gentlemen—I wish someone would take that thing away. I like to look at people when I talk to them.

Ladies and gentlemen of the jury, it is very unfortunate that this scene had to occur here and that it did occur. I don't imagine that the jury heard anything that this man said, except

his exclamation that he wanted to address the Court; but if, perchance, you did hear anything that he said, my instruction to you is, at the request of counsel on both sides, that you utterly and entirely disregard anything that you heard and forget the scene.

Now, I had rather hoped to be able to charge you tonight, but the hour is now late and, if I undertook to charge you and send you out tonight, it would be long after the recess hour when you would get out, and I would personally think that it is better for us to take an adjournment until tomorrow morning at ten o'clock, unless some member of the jury has some communication to make to the Court to the contrary.

I think it is better for you to get a good night's sleep and take the case in the morning with a fresh mind.

The jury appears to acquiesce in that, and so the jury may retire now and come in tomorrow morning at ten o'clock.

(At 4:08 P. M. the jury retired.)

The Court: The prisoner is now remanded to the custody of the sheriff.

(The defendant retires in the custody of the sheriff.)

The Court: The Court will now take a recess until tomorrow morning at ten o'clock.

(At 4:10 P. M. the further trial of the case was adjourned until tomorrow morning, Wednesday, February 13th, 1935, at ten o'clock.)

Opening of Thirty-second Day

STATE vs. HAUPTMANN

Flemington, N. J., February 13, 1935.

THIRTY-SECOND DAY

Present:

Hon. Thomas W. Trenchard.

Appearances:

Mr. Wilentz,
Mr. Lanigan,
Mr. Peacock,
Mr. Large,
Mr. Hauck,
Mr. Stockton,
For the State.

Mr. Reilly,
Mr. Fisher,
Mr. Pope,
Mr. Rosecrans,
For the Defendant.

(10:04 a. m.)

(The jury was polled and all jurors answered present.)

The Court: Is the defendant in court?

Court Clerk Fell: The prisoner is here.

The Court: The officers will now close

the doors and not let any people in or out until the jury has been instructed and retired.

THE COURT'S CHARGE

TRENCHARD, J.

Ladies and gentlemen of the jury:

The prisoner at the bar, Bruno Richard Hauptmann, stands charged in this indictment with the murder of Charles A. Lindbergh, Jr., at the Township of East Amwell in this County on the first day of March, 1932.

It now becomes your duty to render a verdict upon the question of his guilt or his innocence and upon the degree of his guilt, if guilty. In doing this you must be guided by the principles of law bearing upon the case that I will now proceed to lay before you.

In the determination of all questions of fact, the sole responsibility is with the jury. You are the sole judges of the evidence, of the weight of the evidence, and of the credibility of the witnesses. Any comments that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as you may find them. You must not consider what I shall say concerning the evidence as being accurate, but you must depend upon your own recollection. You must not only consider the evidence to which I shall refer, but you

must consider all of the evidence in the case.

In this, as in every criminal case, the defendant is presumed to be innocent, which presumption continues until he is proved to be guilty.

To support the indictment and to justify a conviction, the State must prove the facts sufficient for that purpose by evidence beyond a reasonable doubt; and that burden never shifts from the State. If there be reasonable doubt whether the defendant be guilty, he is to be declared not guilty.

Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all of the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

But if, after canvassing carefully the evidence, giving the accused the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should so declare by your verdict.

To make out a case of guilt, the State must establish by evidence beyond a rea-

sonable doubt, first, the death of Charles A. Lindbergh, Jr., as a result of a felonious stroke inflicted on the first day of March, 1932, at the Township of East Amwell in this County.

To support that charge the State has produced evidence to the following effect. The fact of death seems to be proved, and admitted. At the time of his death the child was about twenty months old. On the evening of March 1st, 1932, the child was prepared for bed by its mother and its nurse, Betty Gow, at the Lindbergh home in East Amwell Township in this County.

The evidence is to the effect that the child was then in good health, a normal child except for a slight cold; that the mother and the nurse securely fixed the covering about the child, and about eight o'clock left the room and closed the window; that between that hour and ten o'clock the child was removed from the bed by some person and carried away, with the clothing in which it had been put to bed, which clothing has been described to you.

There is evidence from which you may conclude, if you see fit, that the person who carried away the child entered the nursery or child's bedroom through the southeast window of the nursery room, by means of a ladder placed against the side of the house, under or near the window, and that this occurred shortly after nine o'clock at night.

You will recall the evidence of Colonel Lindbergh to the effect that, as he was sitting in his living room downstairs, he heard a strange noise about that time, the sound

of wood on wood, like the striking of two pieces of wood together, like the boards of a crate falling together off of a stand or chair.

Colonel Lindbergh testified that he could not tell at the time where the sound came from, and at the moment he did not think much about it. Later, at about ten o'clock, when the disappearance of the child became known, a strange and broken ladder was found, about sixty or seventy feet from the south east window, with indications that it had been used in entering and leaving the window; and also there were the imprints of a man's shoe in the soft ground under or near the window.

Miss Gow and Mrs. Whateley testified that later, about April 1, 1932, they found the thumbguard, which Miss Gow had securely tied to the wrist of the child's sleeping suit when she put him to bed, that they found this thumbguard in the road leading from the Lindbergh home and on the Lindbergh property, with the knot still untied, from which you may possibly conclude that the sleeping suit was stripped off of the child at that place.

There is also evidence to the effect that there was a dirty smudge on the bed clothes, and also on the floor of the nursery, leading from the window to the child's crib, and a ransom letter left on the window sill. Later, the child's dead and decomposed body was found by a colored man in or hard by a shallow grave, not far from the road, a few miles away, in Mercer County.

Dr. Mitchell, who performed the autopsy,

testified that the child died of a fractured skull, the result of external violence, that the fracture extended from a point about an inch and a half posterior to the left, it extended forward probably three or four inches, it extended upward to one of the fontanels, it extended backward around the back of the head; in other words, it was a very extensive fracture.

He further testified that, in his opinion, death occurred either instantaneous or within a very few minutes following the actual fractural occurrence. It is the contention of the State that the fracture described by Dr. Mitchell was inflicted upon the child when it was seized and carried out of the nursery window down the ladder and when the ladder broke.

Now, the ladder has been placed in evidence. Its broken condition when found in the yard has been described to you.

The fact that the child's body was found in Mercer County raises a presumption that the death occurred there; but that, of course, is a rebuttable presumption, and may be overcome by circumstantial evidence. In the present case the State contends that the uncontradicted evidence of Colonel Lindbergh and Dr. Mitchell and other evidence, justifies the reasonable inference that the felonious stroke occurred in East Amwell Township in Hunterdon County, when the child was seized and carried out of the nursery window and down the ladder by the defendant, and that death was instantaneous; and from the evidence you may conclude, if you see fit, that the child was feloniously stricken on

the 1st day of March, 1932, at the Township of East Amwell in this county, and died as a result of that stroke.

Secondly, the State, in order to justify a verdict of guilty, must establish by the evidence, beyond a reasonable doubt, that the death was caused by the act of the defendant. The uncontradicted evidence is that the child was left by the mother and the nurse in the nursery, and the window was then closed.

The evidence justifies the inference, if you see fit to draw it, that the window was maliciously opened and the child seized shortly after nine o'clock that night. You will, of course, recall the evidence to the effect that almost immediately after it was discovered that the child had been taken from its crib in the nursery, there was found the ransom letter, demanding fifty thousand dollars, on the window sill, on which was placed a peculiar symbol and peculiar punch holes, and stating that directions would later be given for the delivery of the money. There is also evidence to the effect that a few days later Colonel Lindbergh received a second letter with like symbols, referring to the original ransom letter, and reiterating that directions for the delivery of the ransom money would be given. Meanwhile, Colonel Breckinridge, the friend and counsellor of Colonel Lindbergh, had identified himself with the case in an endeavor to help his friend.

There is evidence to the effect that a few days before March 9, 1932, Dr. Condon had inserted an advertisement in The Bronx

newspaper in effect offering to act as a go-between; that a few days later Dr. Condon received a letter in effect accepting his offer to act as a go-between, and enclosing a letter to Colonel Lindbergh, telling Dr. Condon that after he got the money to put words in the New York American that the money is ready, and the letter to Colonel Lindbergh said Condon may act as go-between, to give him the money, with directions as to the package; and how thereafter the baby was to be found.

This letter to Colonel Lindbergh, as I recall the testimony, contained the peculiar symbols of the original ransom letter. The evidence is to the effect that immediately Dr. Condon drove to Hopewell and conferred with Colonel Lindbergh and with Colonel Breckinridge and, with their acquiescence, he inserted the advertisement, "I accept; money is ready."

Dr. Condon testified that shortly thereafter he received a letter addressed to him, and delivered to him by a taxicab driver, giving him instructions how to proceed. The taxicab driver testified that he was given that letter by the defendant Hauptmann. Dr. Condon testified that, as a result of the directions contained in that letter and another letter, he first had, on March 12th, 1932, an interview in Woodlawn Cemetery with a man whom he identifies as the defendant, after talking with him for more than an hour. In that interview Dr. Condon said that the defendant, after having run away from the gate, said, among other things, "It is too dangerous. Might be 20 year or burn. Would I burn if the

baby is dead? I am only a go-between."

Dr. Condon also testified in effect that the defendant said that the baby was being held on a boat by others, that "We are the right parties," that the baby was held in the crib by safety pins, and he said that he would send the sleeping suit. Dr. Condon further testified that later he received the sleeping suit, and other letters containing further directions, and finally a letter directing that the money be ready by Saturday night and to put an advertisement in the newspaper, "Everything O. K." and that these directions were complied with by him, Condon, with the acquiescence of Colonel Lindbergh and Colonel Breckinridge, the latter of whom had been in close touch with Dr. Condon during practically the whole of the ransom negotiations.

There is testimony to the effect that on this Saturday night, April 2, 1932, there was delivered to Dr. Condon's residence a letter containing further instructions, and that as a result thereof on that evening Colonel Lindbergh, who was there waiting, drove Dr. Condon to the entrance to St. Raymond's Cemetery with the ransom money; that Dr. Condon alighted and contacted with a man, and after some talk and some delay handed him the package containing fifty thousand dollars of ransom money, thirty-five thousand dollars of which was in gold certificates, the numbers of which bills had been taken.

It is argued that Dr. Condon's testimony is inherently improbable and should be in part rejected by you, but you will observe

that his testimony is corroborated in large part by several witnesses whose credibility has not been impeached in any manner whatsoever.

Of course, if there is in the minds of the jury a reasonable doubt as to the truth of any testimony, such testimony should be rejected but, upon the whole, is there any doubt in your mind as to the reliability of Dr. Condon's testimony?

There is evidence to the effect that after Dr. Condon alighted with the money he was hailed by a man on the other side of the hedge, to whom he finally delivered the ransom money.

Colonel Lindbergh testified that the voice that hailed Condon was that of the defendant. Dr. Condon testified that the man to whom he delivered the money was the defendant. This is denied by the defendant, and there is other testimony bearing upon the matter, and so that question becomes one for your determination.

It is argued that Colonel Lindbergh could not have identified that voice, and that it is unlikely that the defendant would have talked with Condon. Well, those questions are for the determination of this jury, after having patiently listened to the evidence bearing upon those topics. If you find that the defendant was the man to whom the ransom money was delivered, as a result of the directions in the ransom notes, bearing symbols like those on the original ransom note, the question is pertinent: Was not the defendant the man who left the ransom note on the window sill of the nurs-

ery, and who took the child from its crib, after opening the closed window?

It is argued by defendant's counsel that the kidnaping and murder was done by a gang, and not by the defendant, and that the defendant was in nowise concerned therein. The argument was to the effect that it was done by a gang, with the help or connivance of some one or more servants of the Lindbergh or Morrow households.

Now do you believe that? Is there any evidence in this case whatsoever to support any such conclusion?

A very important question in the case is, Did the defendant Hauptmann write the original ransom note found on the window sill, and the other ransom notes which followed? Numerous experts in handwriting have testified, after exhaustive examination of the ransom letters, and comparison with genuine writings of the defendant, that the defendant Hauptmann wrote every one of the ransom notes, and Mr. Osborn, Senior, said that that conclusion was irresistible, unanswerable and overwhelming. On the other hand, the defendant denies that he wrote them, and a handwriting expert, called by him, so testified. And so the fact becomes one for your determination. The weight of the evidence to prove the genuineness of handwriting is wholly for the jury.

As bearing upon the question whether or not the defendant was the man to whom was paid the ransom money in the cemetery, you will, of course, consider the evidence to the effect that the defendant had written the address and telephone number of Dr. Condon on the door jamb of his

closet; and if you believe that he did, although he now denies it, you may conclude that it throws light upon the question whether or not he was dealing with Dr. Condon.

As I have said, the defendant denies that he was the man who was paid the ransom money, and there is other testimony which, if credible and believed by you, supports his statement.

You will consider, as bearing upon that question, the fact that a record of the serial numbers of the ransom money was retained. Now, does it not appear that many of the ransom bills were traced to the possession of the defendant? Does it not appear that many thousands of dollars of ransom bills were found in his garage, hidden in the walls or under the floor, that others were found on his person when he was arrested, and others passed by him from time to time?

You may also consider in this connection the evidence to the effect that shortly after the delivery of the ransom money the defendant began to purchase stocks in a much larger way and to spend money more freely than he had before.

The defendant says that these ransom bills, moneys, were left with him by one Fisch, a man now dead. Do you believe that?

He says that he found them in a shoe box which had been reposing on the top shelf of his closet several months after the box had been left with him, and that he then, without telling anybody, secretly hid them, or most of them, in the garage, where they

were found by the police. Do you believe his testimony that the money was left with him in a shoe box, and that it rested on the top shelf in his closet for several months?

His wife, as I recall it, said that she never saw the box; and I do not recall that any witness excepting the defendant testified that they ever saw the shoe box there.

As bearing upon the question whether or not the defendant was the man who took the child and left the ransom letter on the window sill, you should, of course, consider the evidence with respect to the ladder, if you find, as seems likely, that it was used in reaching the nursery. That the ladder was there seems to be unquestioned. If it was not there for the purpose of reaching that nursery window, for what purpose was it there? There is evidence from which you may conclude, if you see fit, that the defendant built the ladder, although he denies it. Does not the evidence satisfy you that at least a part of the wood from which the ladder was built came out of the flooring of the attic of the defendant?

In this connection you should consider the marks upon the wood, and give the evidence in respect thereto such weight as you think it entitled to, after a consideration of the credibility of the witnesses who testified in respect thereto.

The defendant has offered himself as a witness in his own behalf, and the law makes him a competent witness, notwithstanding his very deep interest in the event of the trial. His evidence is not to be rejected merely for the reason that he is

interested, but his interest in the result may be taken into consideration by you as an important circumstance upon the question of his credibility, the question whether he is telling the truth. You should also consider his testimony in view of its inherent probability or improbability, in the light of all of the facts and circumstances as disclosed by the evidence. It appeared on the examination of the defendant here in court that he has been heretofore convicted of crime. That testimony may be given consideration by you as affecting his credit as a witness, and for that purpose only. The defendant denies that he was ever on the Lindbergh premises, denies that he was present at the time that the child was seized and carried away. He testifies that he was in New York at that time. He denies that he received the ransom money in the cemetery and says that he was at his home at that time on the evening of April 2, 1932.

This mode of meeting a charge of crime is commonly called setting up an alibi. It is not looked upon with any disfavor in the law, for, whatever evidence tends to prove that the defendant was elsewhere at the time the crime was committed, at the same time tends to contradict the fact that the crime was committed by the defendant, where as here, the presence of the defendant is essential to guilt, and if a reasonable doubt of guilt is raised, even by inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt.

As bearing upon the question of whether or not the defendant was present at the

Lindbergh home on March 1st, 1932, you, of course, should consider the testimony of Mr. Hochmuth, along with that of other witnesses. Mr. Hochmuth lives at or about the entrance of the lane that goes up to the Lindbergh house.

He testified that on the forenoon of that day, March 1st, 1932, he saw the defendant at that point, driving rapidly from the direction of Hopewell; that he got in the ditch or dangerously near the ditch, and that he had a ladder in the car, which car was a dirty green. This testimony, if true, is highly significant. Do you think that there is any reason, upon the whole, to doubt the truth of the old man's testimony? May he not have well and easily remembered the circumstance, in view of the fact that that very night the child was carried away? The defendant, as I have said, denies that he was there or ever in the neighborhood; but, as bearing upon that question, you should consider the testimony of other witnesses, that the defendant was seen in the neighborhood, not long before March 1st, 1932, and give it such weight as you think it is entitled to, after considering the credibility of the witnesses, as disclosed by the evidence.

The defendant has produced some testimony besides his own, that he was in New York on the day and evening of March 1st, 1932, and some testimony besides his own, that on the evening of April 2nd, 1932, when the ransom money was delivered, he was at his home.

This testimony produced by the defendant I shall not attempt to recite in greater

detail. It should be given consideration by you and given such weight as you think it is entitled to, after considering it in connection with all of the other evidence in the case, bearing upon these questions and all other questions in the case, determination of which would tend to throw light upon the case.

You should consider the fact, where it is the fact, that several of the witnesses have been convicted of crime, and to determine whether or not their credibility has been affected thereby; and where it appears that witnesses have made contradictory statements, you should consider that fact and determine their credibility as affected thereby.

The evidence produced by the State is largely circumstantial in character. In order to justify the conviction of the defendant upon circumstantial evidence, it is necessary not only that all of the circumstances concur to show that he committed the crime charged, but that they are inconsistent with any other rational conclusion.

It is not sufficient that the circumstances proved coincide with, account for and therefore render probable the hypothesis that is sought to be established by the prosecution. They must exclude to a moral certainty every other hypothesis but the single one of guilt, and if they do not do this, the jury should find the defendant not guilty.

And when the case against the defendant is made up wholly of a chain of circumstances, and there is reasonable doubt as

to any fact, the existence of which is essential to establish guilt, the defendant should be acquitted.

But the crime of murder is not one which is always committed in the presence of witnesses, and if not so committed, it must be established by circumstantial evidence or not at all.

And where the essential facts and circumstances are proved, which cannot be explained upon any other theory than that the defendant is guilty of the crime charged against him, such evidence should be considered as satisfactory and convincing as that of the most direct and positive character.

If the State has not satisfied you by evidence beyond a reasonable doubt that the death of the child was caused by the act of the defendant, he must be acquitted.

But if, on the other hand, the State has satisfied you beyond a reasonable doubt that the child's death was caused by the unlawful and criminal act of the defendant while seizing, stealing and carrying away the child and its clothing, of which unlawful act against the peace of the State, the probable consequences might be bloodshed, it is murder; and if murder, the degree thereof must then be determined.

Now, our statute declares, among other things: Murder, which shall be committed in perpetrating, or attempting to perpetrate any burglary, shall be murder in the first degree.

The State contends that the murder in this case was committed in perpetrating a burglary, and is murder in the first degree.

I charge you that if murder was committed in perpetrating a burglary, it is murder in the first degree, without reference to the question whether such killing was wilful or unintentional; and I further charge you, as requested by the defendant, that in order to convict this defendant you must be satisfied, beyond a reasonable doubt, that the death of the child ensued from committing, or attempting to commit, burglary, at or about the time and place in question.

Our statute relating to burglary says:

Any person who shall, by night, wilfully or maliciously break and enter any dwelling house with intent to steal, commit a battery, shall be guilty of a high misdemeanor.

If, therefore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house with intent to steal the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree.

In the circumstances of this case you must be satisfied that the window was shut and that it was raised and opened by the defendant and that he entered the house.

There is evidence from which you may conclude, if you see fit, that the defendant feloniously, wilfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child; that defendant brought the ladder to the Lindbergh

house in East Amwell Township in this county, and placed it up against the house near the nursery window; that shortly after nine o'clock at night he ascended the ladder, maliciously and wilfully opened the closed window and entered the nursery room; that he seized the child and its clothing and carried it out of the nursery room window, and that the fracture of the skull which caused the child's death was inflicted when the child was seized by the defendant and carried out and down the ladder, and when the ladder broke.

If you find that the murder was committed by the defendant in perpetrating a burglary, it is murder in the first degree, even though the killing was unintentional.

If there is a reasonable doubt that the murder was committed by the defendant in perpetrating a burglary, he must be acquitted.

I am requested to charge, and do charge, that each juror must reach his own judgment after discussion of the facts with his fellow jurors.

If you find the defendant guilty of murder in the first degree, you may, if you see fit, by your verdict, and as a part thereof, recommend imprisonment at hard labor for life. If you should return a verdict of murder in the first degree and nothing else, the punishment which would be inflicted on that verdict would be death.

If you desire to return a verdict of murder in the first degree, coupled with imprisonment for life, then you must so put it in your verdict, because the law reads that every person convicted of murder in

the first degree, his aiders, abettors, counselors 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.

The Clerk may swear these constables to safely keep the jury until they have agreed upon their verdict.

———

(At 11:14 a. m. the constables were sworn.)

———

The Court: I will ask the jury to remain where they are for the moment. There has to be some little preparation made in the room where you are to go, and the guards may be seated.

If any persons desire to retire from the courtroom now, if they will do so very quietly, they may go.

The Court has not adjourned, the court is going right on, but I indicate there is no reason why people who desire to retire shall not do so if they will do so quietly and without interruption.

EXCEPTIONS TO CHARGE

Mr. Pope: I don't know whether we ought to have a conference between ourselves before we make these exceptions, or

whether I should ask for exceptions to the charge as given by the Court and leave to my confrere Mr. Rosecrans, to except to those requests which we think were not fully covered by the Court's charge. Shall we take that course?

The Court: Just one moment. The Court is trying to transact business. Now unless the people will keep quiet and stop this talking and buzzing and humming, the court room is going to be cleared. Now it is for the people to determine what course is going to be pursued here.

Mr. Wilentz: If your Honor please, may I suggest that the messengers have no more right to disturb this room than anybody else while the court is in session, and we have got enough constables, if your Honor please, to keep people seated. Now we had their promise today that that would be done; and I suggest, if your Honor please, if your Honor doesn't mind, I am asking the constables too for the State if they won't please keep people seated until this proceeding is terminated.

The Court: Now then, are there any exceptions to the charge?

Mr. Pope: Yes. May we divide the entry of exceptions between us?

The Court: Whatever you like; it is immaterial to me.

Mr. Pope: All right.

Mr. Rosecrans: Do you wish them made now?

Mr. Pope: Yes.

Mr. Wilentz: If your Honor please, can't that be done at side Bar, with the reporter and your Honor?

Mr. Rosecrans: After the retirement—

Mr. Wilentz: Of the jury.

The Court: After the retirement of the jury?

Mr. Reilly: May I suggest that we spend the next few minutes straightening out the exhibits, and after the jury retires to their room we then take our exceptions?

The Court: It may be done if you like.

Mr. Reilly: Yes.

Mr. Pope: But it doesn't make any difference to us.

Mr. Wilentz: Except this, that we do have to go in and arrange the exhibits, and there is no occasion to hold them, sitting here; and as long as counsel for the defense is satisfied, and the State is satisfied, if your Honor has no objection, we will prefer that too.

Mr. Pope: Well, I shall only take about

two or three minutes, as far as I am concerned.

Mr. Wilentz: I know, if your Honor please, but that's just the point. Now we have got to agree with somebody on the defense side. Mr. Reilly is suggesting one thing, Mr. Pope suggests another.

The Court: Well, I am indicating to counsel that I am ready to listen to applications for exceptions to the charge, either now or at side Bar after the jury has retired; it makes no difference to me.

Mr. Pope: But I apprehend that they must be taken in the presence of the defendant. I don't know about that. I think they should be.

The Court: Yes, I think that is true.

Mr. Pope: We desire to except to—

Mr. Wilentz: Well, now, if your Honor please, the point that I want to make is, if your Honor please, that of course counsel is entitled to his objections, but he is not entitled to a speech to the jury on the objections. That's the point.

Mr. Pope: I am addressing the Court, not the jury.

Mr. Wilentz: Well, I know that. That's why I am talking to the Court too. Now, I think, if your Honor please, if counsel will step up to the Bar, and the reporter is

right here, and take such exceptions as he pleases, won't that satisfy the purpose?

The Court: I think that I am bound to concede to counsel for the defendant the right to state his objections to the charge and to have an exception.

Mr. Large: Yes, but Mr. Reilly has agreed that that should be after they retire.

Mr. Wilentz: After all, the suggestion has been made by defense counsel, the chief of the defense counsel that it be done after the jury retires.

The Court: Well, very well, I have no objection to that.

Mr. Reilly: Mr. Pope is in charge of the law, always has been. I wouldn't think of overstepping the line.

The Court: There is no reason, I suppose, why these exceptions shouldn't be taken in the presence of the jury.

Mr. Pope: No reason otherwise either, that I know of.

Mr. Wilentz: Except the desire to have it taken—

Mr. Pope: Except that the Court may desire to comment further to the jury after listening to our exceptions.

Mr. Wilentz: Well, if your Honor please,

that is so, of course, but that is why I suggested, if your Honor please, that the exceptions be taken as they usually are, at side Bar with the stenographer there, and then if your Honor feels that as the result of the exceptions your Honor wants to make the additional charge, it is done.

The Court: Well, suppose that this jury room be prepared and the jury be allowed to retire with the guards, and then the exceptions will be stated. Is that satisfactory to you, Mr. Pope?

Mr. Pope: I don't know whether that is the proper course to pursue or not. I rather—

The Court: Well, it is the course I will pursue. I don't propose to sit here and talk about this thing forever.

Mr. Wilentz: I understand the jury room is ready. Is it, Sheriff?

Sheriff Curtiss: It is all ready.

The Court: The jury may retire.

(At 11:23 a. m. the jury retired.)

The Court: I want to say to the jury that the exhibits will be handed to the Foreman. Where are the exhibits?

Mr. Reilly: They are all being prepared.

Mr. Peacock: They are being sent in.

Mr. Reilly: May we send them in—

The Court: By the guard.

Mr. Reilly: —by the guard, after the Attorney General has certified they are correct.

Mr. Wilentz: We will agree upon the exhibits, if your Honor please.

The Court: All right.

Mr. Pope: Now, if your Honor please, first off may I say that I am not a stenographer and, of course, your Honor will appreciate that in trying to take down in longhand what your Honor said in the course of your charge, I may fall far short of repeating the language. But I shall try to give you the substance of it, so that you will understand to what we refer. We desire to except to that portion of your Honor's charge in which your Honor said to the jury in substance that the State contends that the death of Charles A. Lindbergh, Jr., was the result of a felonious stroke inflicted March 1st, 1932, at East Amwell Township in the County of Hunterdon, and to support that charge the State has produced evidence tending to prove the fact of death on March the 1st, 1932.

That on that date the child was prepared for bed at the Lindbergh home by Mrs. Lindbergh and Betty Gow, in East Amwell Township; that the child was at that time in good health, except for a slight cold;

that the coverings were securely fastened in the crib; that the window of the nursery was closed; that the child was afterwards removed from the crib and carried away in its clothing; and that the State has produced evidence from which you may conclude that the person entered the south east window of the nursery room by means of a ladder for that purpose shortly after nine o'clock, and that a strange ladder was found with indications it had been used to enter the window.

We except to that because we say that the evidence does not prove that there were any indications that this ladder had been used to enter the window; that there is no inference supported even by circumstantial evidence which would justify such an inference.

We further except to that portion of your Honor's charge, because we contend that there is no evidence in this case which would justify the inference that anyone entered the nursery room from the outside or that would have a tendency to contradict the inference that the baby was taken out of the nursery room either down the stairs or handed out of the window by someone else to the person on the ladder, if anyone was on the ladder.

That is the whole, the inferences which should be drawn from those circumstances, if they are not supportable at all, should have been left entirely to the jury.

Second. We except to that portion of your Honor's—

The Court: I grant your exception.

Mr. Pope: Thank you.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: We except to that portion of your Honor's charge in which the Court said in substance to the jury that on April 1st, Miss Gow and the other lady—

Mr. Fisher: Mrs. Whateley.

Mr. Pope: —Mrs. Whateley, were walking in the grounds, and that Miss Gow found the thumb guard in the road which had been tied to the sleeping suit of the infant child.

That we think was a serious misconception of the evidence, unintentional of course. The evidence is that it was tied to the sleeping suit, from which you may conclude that the suit was stripped off at that point.

Our objection is, we say that that was a serious misconception of the evidence in that respect.

Our recollection of the evidence is that this thumbguard was tied around the wrist of the child, but on the outside of the sleeping suit and in no way fastened to the sleeping suit, and that the inference that it may have come off or may have fallen off or may have been taken off at that point is just as reasonable as the inference suggesting that the sleeping suit was stripped off

of the child at that point. We further object to that—

The Court: You may have your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: Shall I wait each time?

The Court: Well, whatever you like. I am telling you—

Mr. Pope: No, I will do that. We further object to that portion of your Honor's charge in which you said in substance that the body of the child was later found in Mercer County; that it is the contention of the State that the fracture was inflicted while the child was carried from the crib and down the ladder, when the ladder was broken. Then I think you continue to say that the presumption is that death occurred in Mercer County, but that is a rebuttable presumption; that the State contends that the fatal blow was struck when the child was seized in the nursery, lifted from the crib and carried down the ladder and that death was instantaneous or occurred within a very few minutes thereafter. To whatever the language was that your Honor used in that respect, we desire to respectfully except.

The Court: Why so?

Mr. Pope: Because there is nothing in this case which would in any way justify the inference that the fatal blow was struck or sustained by the child either in the nursery or while being carried down the ladder; and the best proof of that is the sudden kaleidoscopic change which the State made between its original theory when it opened its case to the jury and its final theory when it summed up to the jury.

In opening, the State told the jury that "We will prove to you that this child received the blow which caused the fracture when the ladder broke, that it then struck its head first against the window sill and then afterwards against the little cat walk or board walk that ran along the side of the house."

Mr. Lanigan: Pardon me, I didn't catch that word. Did you say kaleidoscopic?

Mr. Pope: And in its final argument to the jury, the State argued that the death blow was struck in the nursery at the time the child was taken from the crib, and that that, in their theory, was what stifled its cry and enabled the kidnaper to get away with it.

Now we respectfully submit to your Honor that there is no evidence in this case, either direct or circumstantial, that will in any way support either one of those theories; that it is just as reasonable that the child received the fatal blow over in Mercer County or some other county as it is

that it received it in East Amwell Township in this county, and that there is no evidence in this case which the jury has any right to consider which even tends in the slightest degree to rebut or overcome the presumption that the fatal blow was delivered at the point where the child's body was found.

And that is particularly justified by the testimony of the County Physician. Of course, we are not arguing, and we are not unmindful of the fact that if the blow was struck in one County and death occurred in the other, it might be different, but the presumption is, as your Honor told the jury, that death occurred where the body was found, and if death occurred instantaneously, then the presumption that the blow was struck there has not been met and has not been overcome.

To that we desire to except for those reasons.

The Court: Exception granted.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: The third exception which I desire to take is covered by the one which I have just already entered.

Your Honor then referred to the finding of the ransom note on the window sill, with the symbol on it, and you referred to the various letters which were sent, one to Dr.

Condon, one to Colonel Breckinridge, one enclosed in Dr. Condon's letter for Colonel Lindbergh, and the letter delivered to the taxicab driver, and so forth, and after referring to those letters you then said to the jury—that is, in substance—"it was not the man who received the ransom money, the man who took the child from the crib after opening the window."

We submit that there is no evidence in this case that the window was ever opened from the outside or that the window was opened, if it ever was, by someone from the outside, that it is just as consistent to believe, and even more reasonable, that the window was opened from the inside, and that this hypothesis is more credible than any other, and that the jury should have been so instructed.

The Court: I will grant you an exception.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: We desire to except to that portion of your Honor's charge, in which, after discussing these matters that I have referred to, you said in substance, but particularly these words: "If you find, as seems likely, that the ladder was there for the purpose of reaching the nursery window,"—and then you went on and told them what conclusions they might draw.

We except to that, because we say that

since this rests entirely upon inferences to be drawn from the evidence, if any such can be found to justify the inferences, that it should have been left to the jury without the suggestion "as seems likely."

We think that this is particularly true in this case since there was no evidence to justify anything like a conclusive inference that the ladder was used for that purpose or that the child was carried down the ladder. That remains in speculation in the case. At most, it rests upon inferences to be drawn from the evidence and the words "as seems likely" we think were not apropos to the evidence in this case.

The Court: I grant you an exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: You then told the jury in substance "If the State has satisfied you beyond a reasonable doubt that the death of the child occurred while he was being stolen from the nursery in his sleeping garments by the defendant it would be murder," and then you continued to say "And if murder was committed in the perpetration of a burglary or a battery, it was murder in the first degree." We except to that, because we say that there is no evidence in the case that would justify the jury in concluding that the death of this child oc-

curred in or during or while a burglary was being committed.

That if in fact a burglary had been committed, that the death of the child occurred after the crime had been completed. We rest that upon not only the lack of evidence in the case, but upon the fact that the dead child's body was found in Mercer County, which raises the presumption that that was the place where death occurred, and that there is no evidence in the case to justify the conclusion that death occurred anywhere else, or that it even occurred while the perpetrators of the crime were endeavoring to escape from the scene.

The Court: You may have an exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: And we except to that portion of the Court's charge, in which you said, in substance, that the jury might find that the defendant ascended the ladder, entered the room, seized the child in its sleeping garments, carried it out of the window, and that the fracture was inflicted while the child was being carried out and down the ladder, when the ladder broke—whatever the language was that your Honor used in that comment. We respectfully suggest that it was not justified by the evidence in the case, and indeed that it is

contrary to the theory of the State which the State itself argued to the jury; namely, that the child was stricken a fatal blow while it was yet in the nursery, and that the child was dead when it was carried out of the nursery and down the ladder, or that it died within a few moments after the blow was struck.

Mr. Reilly: Now, Mr. Rosecrans.

The Court: You may have your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Pope: And may I also have a general exception to the charge, under the statute?

The Court: Well, yes, I think the statute awards you the right to a general exception. you may have it.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: If the Court please, I desire to pay my respects to the Court and compliment the Court upon the lucid and learned exposition of the law as laid down to the jury, but since I feel constrained to

disagree in certain particulars, I desire to take the following exceptions.

I except to the refusal of the Court to charge certain requests, which were submitted over my signature, and which refused requests are numbered 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 15, 16, 19, 20, 21, 22, 23, 24. And I desire to except to the refusal of the Court to charge each of such numbered requests; and Mr. Fisher also desires me to except to the refusal of the Court to charge the requests as submitted by Mr. Fisher over his signature.

The Court: Well, now, what requests do you think I should have charged that I did not charge, and to which you were entitled?

Mr. Rosecrans: I set forth the numbers. Shall I repeat them?

The Court: Yes; and do it slowly, so that I can check up on your list here. I have a copy of your list in my hand.

Mr. Rosecrans: Well, Number 1—

The Court: Number 1; is that one I refused?

Mr. Rosecrans: Yes. Number 2 I understand was charged; I took it it was charged.

The Court: Yes.

Mr. Rosecrans: Number 3, 4.

The Court: Yes.

Mr. Rosecrans: Five.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Six.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Seven I understand was charged.

The Court: Yes.

Mr. Rosecrans: Eight.

The Court: That I refused, didn't I.

Mr. Rosecrans: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Nine, ten.

Mr. Wilentz: Just a minute. I think your Honor did charge that.

The Court: That I charged in effect.

Mr. Wilentz: I think almost in explicit language.

Mr. Rosecrans: I may have missed that. I withdraw that No. 9, if the Court please. I must have missed that. Ten.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Eleven.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Twelve.

The Court: Yes.

Exceptions to Charge

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Fifteen.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Sixteen.

The Court: That I charged in effect.

Mr. Rosecrans: I withdraw that. Seventeen I understand was charged in effect.

The Court: Was charged in effect.

Mr. Rosecrans: Eighteen was charged in effect. Nineteen, I except to the refusal to charge.

The Court: Yes.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: Twenty the same.

The Court: Charged in effect.

Mr. Rosecrans: Twenty-one.

The Court: Twenty was wrong?

Mr. Rosecrans: I will withdraw 20, if the Court's recollection is it is charged in effect.

The Court: I made that notation.

Mr. Rosecrans: 21.

The Court: 21, I seemed to charge in effect, didn't I?

Mr. Rosecrans. I haven't it so marked. Is that the Court's recollection?

The Court: One moment. Oh, I think I charged that in effect.

Mr. Rosecrans: Perhaps so.

The Court: 21.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: 22.

The Court: Yes.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: 23.

The Court: 23 I charged in effect.

Mr. Rosecrans: I withdraw that one. 24.

The Court: That I charged in effect.

Mr. Rosecrans: That is all of that.

Now, if the Court please, there is just one other thing. I desire to except to that part of the Court's charge in which the Court charged, "You are entitled to conclude from the evidence that the child was feloniously stricken at the Township of East Amwell and died as a result of a stroke so inflicted there," or words to that effect.

The Court: What is your point, that there is no evidence?

Mr. Rosecrans: That there is no evidence.

The Court: That there is no evidence justifying it?

Mr. Rosecrans: Yes.

Exceptions to Charge

The Court: Take your exception.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: I desire to except to that part of your Honor's charge in which your Honor charged "The evidence justifies the inference that the window was maliciously opened and the child was seized shortly after nine o'clock on the night in question," or words to that effect.

The Court: Are you saying that there is no evidence in this case which justifies the inference that that window was opened and a man went in: is that what you are saying?

Mr. Rosecrans: I think there is no evidence of a burglary, of a burglary and entering, that part of a burglary, that the window was closed both before and after the child was taken.

The Court: Well, you may take your exception.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: And I desire to have an

exception as to the Court's charging the phrases and sentences throughout the Court's charge, as follows, "Do you believe that?" "Does not the evidence satisfy you?" "Do you think that there is any reason to doubt?"—for the reason that these questions so submitted to the jury tended to withdraw from the jury their right to depend entirely on their own recollection of the evidence.

The Court: You may have your exception.

(Exception allowed and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Rosecrans: And I further except to the Court's charge in which the Court defines the crime of burglary.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Fisher: Now, may it please your Honor, Mr. Rosecrans mentioned briefly some of the exceptions, and I should like to except to your Honor's refusal to charge those requests submitted over my signature, and more specifically the first six requests.

The Court: Let me see what they are, Mr. Fisher.

Mr. Fisher: I don't have my copy before me, because it was given to the stenographer, and no copy has come down, but I believe the first six dealt with the sufficiency of handwriting testimony; I think it is Nos. 1 to 6, and I desire to except to your refusal to charge those specific requests.

The others, I believe, you covered in substance.

The Court: One moment. Handwriting? Well, you see, the first four relate to handwriting.

Mr. Fisher: First four. Well, I am sorry, the stenographers have our copy.

The Court: What?

Mr. Fisher: The stenographers have our copy of it, and the purpose of it—

The Court: Just look at it and see. (Handing papers to Mr. Fisher.)

Mr. Fisher: Thank you very much, sir. I desire to except to Request 1, 2, 3, 4. No. 5, I believe, your Honor charged.

No. 6 I believe your Honor charged.

No. 7 I believe your Honor charged.

No. 8 is so close, I believe it was included in your Honor's general charge and I will take no exception.

Likewise, your Honor came very close to

that. It is the first four requests, your Honor, that I specifically except to.

The Court: Yes. You may have your exception to my refusal to charge the first four requests contained in the document signed by yourself.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Fisher: That is right, sir; and I desire to further except to your Honor's failure to incorporate in your Honor's charge anything that has to do with the sufficiency and weight which should be given to handwriting testimony, expert handwriting testimony, sir.

The Court: Didn't I tell the jury specifically that that was a question for their determination only?

Mr. Fisher: I mean under the decisions as cited.

The Court: Well, you may have your exception to what I did or what I failed to do,—which was it?

Mr. Fisher: Now, both.

The Court: Both. Very well, you may have your exception to what I said on the handwriting.

Mr. Fisher: Thank you very much, sir.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: Well, if there is anything left to that charge I had better get up here and except to it. I want to be in a position where I can grab a train quickly when I get through. But seriously, your Honor, I desire to except to the language used by the Court in its charge concerning Dr. Condon's testimony where the Court used language to the effect that he was corroborated by several witnesses whose credibility has not been impeached, and then the question later on as to the defendant's explanation as to whether or not he met Dr. Condon. I think it has been commended on by one of my brothers: "Question: Now do you believe that?" "Question: Is there any evidence to support that," as tending to take away from the jury their individual opinion which is necessary in this case for them to determine, and substitute the query and the opinion of the Court given in that quotation. To that I pray an exception.

The Court: You may have it.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: I respectfully except to the omission by the Court of the mention of any defense witness by name, except the defendant and the omission from the charge of the Court directly to the jury that there was no evidence in this case that anyone ever saw the defendant in the nursery, in Hopewell, or in New Jersey on the night of March the 1st, 1932, and for that I pray an exception.

The Court: You may have it.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: I respectfully except to the comparison by the Court in comparing the defendant's alibi witnesses as to March the 1st, 1932, and to the omission by the Court of the enumeration of the alibi witnesses by name or other indication, and the comparison of the defendant and his alibi witnesses to one Hochmuth, and the Court's description of Hochmuth as "this old man —could he be mistaken?" And to that I pray an exception.

The Court: Well, he was the State's witness.

Mr. Reilly: Yes, but there was a comparison.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: I except to the Court's omission to charge the jury, when charging defendant's interest in the case, that he, being the defendant, had a vital interest in the case—the Court omitted to instruct the jury that they might also take into consideration the interest of Colonel Lindbergh, the father of the child, and that of his relatives and servants who testified, from his home, and that they might draw from the close relationship of those relatives and servants, and the Colonel himself, and his interest, that they too had an interest in the case. To that I pray an exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: I respectfully except to the Court's omission to charge the jury that if the burglary was committed and over with and the child died afterwards in some other place than Hopewell, there could be

no conviction of murder under this indictment. To that I pray an exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: I pray an exception to the Court's omission to instruct the jury that the defendant is not compelled to explain any circumstance in the Court's definition of circumstantial evidence. To that I pray an exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: And I pray an exception to the omission to enlarge to the jury the importance of the testimony of any expert, handwriting, finger prints or wood, and to charge them that expert testimony is, at best, hearsay and opinion evidence, and it is of the lowest form of hearsay evidence admissible under the rules of courts of law in criminal cases. It was not enlarged, nor was it constructive enough to be of sufficient value to this jury in a case of this importance. As to that I pray an exception.

The Court: Take your exception.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: My final request for an exception is to the omission of the Court to charge that if the defendant did act as a go-between, as Dr. Condon says, and the jury had a reasonable doubt that he was the person who took the baby out of the nursery, that acting as a go-between would not be sufficient for a conviction of murder under this indictment. To that I pray an exception.

The Court: That I said that?

Mr. Reilly: No, that you didn't say it, did not charge it.

The Court: Oh. Well, was I asked to charge it?

Mr. Reilly: I don't know, your Honor, what was in the requests.

The Court: I spent a great deal of time on those requests.

Mr. Reilly: I know; and sometimes it is a little bit difficult to anticipate just what, in a case of this kind, the Court is going to charge.

The Court: Well, I now understand your position. I give you the exception that you desire.

Mr. Reilly: Thank you.

(Exception allowed, and the same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: If your Honor please, counsel agrees that from this time on, except for the Press, the authorized representatives of the press, and the parties in interest, I mean by that, counsel, that this room be cleared of spectators and kept cleared from now until after the rendition of the verdict, that there is no occasion for spectators from now on. If your Honor has no objection—

The Court: That seems reasonable. That is quite reasonable, I think. It gives those of us who have work yet to do a chance to have a place to work in.

Mr. Reilly: That's right.

Mr. Wilentz: Yes.

The Court: Not overrun by mere spectators. Well, cannot the officers carry out that sort of an order?

Mr. Wilentz: Yes.

Mr. Reilly, will you enter your consent on the record?

Mr. Reilly: Yes, yes. That is consented to by counsel for the defense.

The Court: Yes. All right. Let the officers follow those directions that have been indicated by the lawyers and myself.

Mr. Reilly: May the defendant be remanded, subject to the return of the jury?

The Court: How is that?

Mr. Reilly: May the defendant be remanded subject to the return of the jury?

The Court: Oh, yes. The prisoner is remanded to the custody of the sheriff to be returned in court when the jury has returned its verdict.

Mr. Reilly: Yes.

(At 12:09 the defendant was remanded to the custody of the sheriff and retired.)

REQUESTS TO CHARGE.

Hunterdon County Court of Oyer and Terminer.

THE STATE OF NEW JERSEY, *Complainant,* *vs.* BRUNO RICHARD HAUPTMANN, *Defendant.*	Sur Indictment for Murder. Requests to Charge.

The Court is requested to charge the jury in the following particulars:

1. There is no evidence in this case that the murder was committed in Hunterdon County.
2. The body of the child in question having been found in Mercer County the legal presumption is that the death occurred in Mercer County.
3. This presumption has not been rebutted or overcome by any competent evidence.
4. There is no evidence that the child in question was feloniously stricken in Hunterdon County.
5. There is no evidence in this case of a wilful, deliberate and premeditated murder having been committed by this defendant.
6. There is no evidence in this case of a completed crime of murder in any degree or manslaughter having been committed by the defendant in Hunterdon County.
7. In order to convict this defendant you must be satisfied beyond a reasonable doubt that the death of this child ensued from the committing or attempting to commit burglary at or about the time and place in question.
8. There is no evidence in this case that this

defendant committed or attempted to commit the crime of burglary on March 1st, 1932, at the place in question.

9. If you are satisfied from the evidence that the death of this child did not ensue from the committing or attempting to commit burglary but was the result of some unrelated cause, it is your duty to acquit the defendant.

10. If you find that the death of the child in question occurred in Mercer County and ensued from the commission of a burglary in Hunterdon County you should acquit the defendant.

11. The record and evidence conclusively shows that the burglary, if any was committed by defendant, was committed more than two years before the finding of the indictment and therefore, the defendant is entitled to a verdict of acquittal.

12. There is no competent evidence in this case that this defendant was present at the scene of the crime in question at or near the time in question.

15. There is no evidence in this case to justify a conviction of murder in any degree.

16. The jury in considering the evidence must start with the legal presumption of the defendant's innocence, which presumption must continue throughout all their deliberations, unless the evidence establishes beyond a reasonable doubt the defendant's guilt.

17. The defendant is not required to satisfy the jury of his innocence but the burden is always upon the state and the state must prove beyond a reasonable doubt that the defendant is guilty of the crime charged.

18. The burden of proof never shifts from the state in a criminal trial, but throughout the whole trial the burden of proof is always upon the state, to prove the defendant's guilt of the crime charged beyond a reasonable doubt.

19. A presumption of good character always exists as to the defendant and may, of itself, be sufficient to raise a reasonable doubt as to the defendant's guilt.

20. If there is in the mind of the jury a reasonable doubt as to the truth of any testimony on the part of the state such doubt must be resolved in favor of the defendant by the rejection of the testimony.

21. The duty is upon the state to prove the defendant guilty beyond a reasonable doubt and no duty is cast upon the defendant to cause the jury to entertain a doubt as to his guilt.

22. If there is in the mind of any juror a reasonable doubt of the defendant's guilt, fairly arising from the evidence in the case, the juror has no right to consent to a verdict of guilty in deference to or from respect to the other jurors' belief or opinion. Such juror must stand by and abide by his own belief formed in his own mind from the whole of the evidence in the case in which he believes, including the testimony of the defendant.

23. Each juror must reach a conclusion. Eleven jurors are not competent to reach a verdict in the case. All must reach that conclusion. No juror is relieved from responsibility by letting any member of that body agree upon a verdict and then consenting to it, because it is the judgment of the others. Each juror must reach his own judgment after discussion of the facts with his fellow jurors.

24. If there is in the mind of the jury one or any number of theories consistent with the defendant's guilt, fairly springing from the evidence in the case, which the jury believe, and but one theory consistent with the defendant's innocence, fairly arising from the evidence in the case, including the defendant's testimony, which the jury

also believe, the jury must disregard and put aside all those theories of his guilt and adopt that one theory of his innocence, and render a verdict of not guilty. For, in such condition of the case there would be a reasonable doubt of the defendant's guilt, and the defendant should be acquitted.

Respectfully submitted,

EGBERT ROSECRANS,
of counsel for defendant.

THE STATE OF NEW JERSEY, *Complainant,* *vs.* BRUNO RICHARD HAUPTMANN, *Defendant.*	On Indictment for Murder. Requests to Charge. On Behalf of Defendant.

1. All doubts respecting the competency of the opinion of experts in handwriting, based upon mere comparison, as evidence, have been removed by the Statute. (Rev. p. 381, Sec. 19): but it must be esteemed proof of low degree. Very learned judges have characterized it as much too uncertain, even when only slightly opposed, to be the foundation of a judicial decision. Gurney vs. Langlands, 5 Barn. & Ald. 185; Doe v. Suckermore, 5 Ad. & El. 751; 1 Greenl. Ev. Sec. 80, note (2); Stark. Ev. 173, note (e). (30 Equity, page 201. Mutual Benefit Life Ins. Co. vs. Brown.)

2. It has been said by an eminent law writer with respect to the evidence of handwriting experts that this kind of evidence is most unsatis-

factory, very inconclusive, most unreliable and of the lowest probative force. (Moore on Facts, Sec. 615.)

3. A jury is not bound to accept the opinion of an expert as to disputed handwriting, even when uncontradicted. It should consider it as an argument rather than as proof, and to make allowances for all the disturbing influences by which the judgment of the expert may be moved. (1 Whart. on Ev. Sec. 722.)

4. What has been said respecting the value of the opinions of experts in handwriting, based upon mere comparison as evidence, may also be said respecting opinions of wood experts based upon comparison, it is much too uncertain even when only slightly opposed to be the foundation of a judicial decision.

5. With respect to circumstantial evidence, the jury is instructed that the conclusions sought to be reached by the use of circumstantial evidence, must be the only one that can fairly and reasonably be drawn from the circumstances, and must exclude every other reasonable hypothesis.

6. If after considering all of the circumstantial evidence in this case it appears to the jury that the conclusions sought to be reached by the State by the use of circumstantial evidence can be or has been explained by any other reasonable hypothesis, then such circumstantial evidence so explained should be entirely rejected.

7. It is not the duty of the defendant to meet or to explain or to overcome the conclusions sought to be reached by the State by the use of circumstantial evidence but it is the duty of the State to satisfy the jury beyond a reasonable doubt that the circumstantial evidence upon which the State relies cannot be fairly and reasonably explained by any other reasonable hypothesis.

8. In order to prove a fact by circumstances there should be positive proof of the facts from which the inference or conclusion is to be drawn. The circumstances themselves must be shown and not left to rest in conjecture, and when shown, it must appear to the satisfaction of the jury, beyond a reasonable doubt, that the inference or inferences, sought to be drawn, is or are, is the only one or are the only ones which can fairly and reasonably be drawn from these facts.

9. The burden of proof is cast by law upon the State to prove each and all of the essential elements of the offense charged by evidence which clearly establishes guilt beyond a reasonable doubt.

This burden rests upon the State throughout the trial and is never shifted.

Reasonable doubt is not a mere possible doubt. It is that state of the case which, after a careful 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.

If, therefore, after you have carefully and entirely compared and considered all of the evidence in the case, your mind is left in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge, then you have what the law considers a reasonable doubt, and it is your duty to give the benefit of such reasonable doubt to the defendant and to acquit him.

10. In connection with circumstantial evidence "the circumstances must exclude to a moral certainty every other hypothesis but the single one of guilt. If they do not do this, the jury should find the defendant not guilty. I have said that

when a case against the defendant is made up wholly of a chain of circumstances and there is a reasonable doubt of any fact, the existence of which is essential to establish guilt, the defendant should be acquitted." From the charge of Mr. Justice Trenchard to the jury in the case of the State of New Jersey vs. William Henry Wyckoff.

LLOYD FISHER
of counsel for deft.

THE STATE OF NEW JERSEY,
vs.
BRUNO RICHARD HAUPTMANN.

On Indictment for Murder.
State's Request to Charge.

1. If you find any witness, including the defendant, has testified wilfully falsely with respect to some material fact, you may draw the inference that such witness has likewise told the untruth in other respects, and you have the power to disregard all of his testimony as false.

State vs. Martin, 77 N.J.L. 652
State vs. Dugan, 84 N.J.L. 603
Addis vs. Rushmore, 74 N.J.L. 649

2. There is a maxim of law which holds: False in one, false in everything. While this maxim is not a mandatory rule of evidence, it is, however, a permissible inference that the jury may or may not draw when convinced that an attempt has been made to mislead or deceive them in some material respect. This rule applies not only to the defendant in the case, but equally to any witness, who, the jury believes, has testified falsely, wilfully in relation to some material fact. (Same authorities.)

3. If you find that part of the defendant's

testimony is discredited by documentary proof, and by the contradiction of disinterested witness, you have the right to disregard as unreliable, his testimony with respect to material facts which lie solely within his knowledge.

Sinclair vs. Do. 57 N. J. E. 222.

4. The State contends that the defendant killed Charles A. Lindbergh, Jr., during the perpetration of a burglary. In view of the testimony that this murder was committed in the perpetration of a burglary, the defendant is either guilty of murder in the first degree or he is not guilty. If you believe from the evidence in this case that the defendant committed a burglary of the home of Colonel Lindbergh, and in the course of his escape or during the perpetration of this burglary, killed Charles A. Lindbergh, Jr., is guilty of murder in the first degree.

State vs. Gimbell 107 N.J.L. 238.

State vs. Giampetro 107 N.J.L. 120.

5. If you find from the evidence in this case beyond a reasonable doubt that the defendant intentionally or unintentionally killed the Lindbergh child during the perpetration of a burglary of the Lindbergh home, he is guilty of murder in the first degree. For such a killing to be during the perpetration of a burglary, it is sufficient if the killing, intentional or unintentional, was an emanation of the act of burglary, during the actual burglary or during the escape.

State vs. Mowser, 92 N.J.L. 474

State vs. Gimbell, 107 N.J.L. 241

State vs. Turco, 99 N.J.L. 96

6. In determining the credibility of the defendant as a witness, you should take into consideration his interest in the result of the case and his record of previous convictions.

State vs. Randall, 95 N.J.L. 452

Requests to Charge

7. It is proper for the jury to consider why it was that the defense did not call upon expert witnesses who, on his behalf, examined the disputed handwritings for the purpose of determining their identity and authorship. The fact that the defendant failed or refused to call these witnesses may be considered by the jury in determining the effect to be given to the evidence submitted by the defendant, but not as proof against him, for the material and necessary facts in support of the State's case must be proved by the State.

State vs. Callahan, 76 N.J.L. 426.

Respectfully submitted,

(*Signed*) David T. Wilentz,
Attorney General.

(*Signed*) Anthony Hauck, Jr.,
Prosecutor of the Pleas.

Dated February 11th, 1935.

DEMAND FOR BILL OF PARTICULARS

HUNTERDON OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* BRUNO RICHARD HAUPTMANN,	Sur: Charge on Indictment Murder.

To—Anthony M. Hauck, Jr., Esq., Prosecutor of the Pleas of Hunterdon County:

The defendant demands that you answer forthwith the following questions:

1. Is it the intent of the indictment to allege that murder was committed with premeditation and with malice aforethought?

2. Is it the intent of the indictment to allege that the murder was committed while the indicted subject was engaged in the commission of a felony?

This demand is made by reason of the fact that the indictment recites as follows: "That Bruno Richard Hauptmann on the first day of March, in the year of our Lord, one thousand nine hundred and thirty-two, with force and arms, at the Township of East Amwell, in the County of Hunterdon aforesaid and within the jurisdiction of this Court did wilfully, feloniously and of his malice aforethought kill and murder Charles A. Lindbergh, Jr., contrary to the form of the Statute in such case made and provided, and against the peace of this State, the Government and dignity of the same," and from the indictment the defense has no way of ascertaining the nature of the charge against the defendant, and must have the

information sought above in order to properly prepare a defense for the defendant.

3. If the contention is that the crime was committed while in the commission of a felony, please state the nature of the felony?

4. Does the State charge, under the indictment, the said Bruno Richard Hauptmann as a principal or as an accessory?

5. If as an accessory, does the State charge the said Bruno Richard Hauptmann with being accessory before the fact or after the fact?

6. If charged as an accessory, does the State contend that the said Bruno Richard Hauptmann was within the State of New Jersey at the time of the commission of the alleged crime and if so, at what point in New Jersey?

7. Does the State contend that the said Bruno Richard Hauptmann was solely responsible for the crime or was a member of a group responsible for the crime?

8. Does the State contend that all the alleged ransom notes were written by the same hand?

9. Does the State contend that the so called ransom notes were written by Bruno Richard Hauptmann?

10. Where does the State contend that the said Charles A. Lindbergh, Jr. died?

11. When does the State contend that the said Charles A. Lindbergh, Jr. died?

12. What does the State contend was the cause of the death of the said Charles A. Lindbergh, Jr.?

LLOYD FISHER,
of counsel with the Defendant.

Demand for Bill of Particulars

HUNTERDON OYER AND TERMINER

THE STATE OF NEW JERSEY, *Complainant,* *vs.* BRUNO RICHARD HAUPTMANN, *Defendant.*	Sur Indictment for Murder Petition.

To the Honorable Thomas W. Trenchard, Judge of the Court of Oyer and Terminer of the County of Hunterdon:

Your petitioner respectfully shows unto your Honor

1. That he is charged under the statutory form of indictment with the crime of murder by an indictment presented by the Grand Jury of the County of Hunterdon.

2. That your petitioner is unable to determine from the indictment the nature of the case which the State proposes to submit against him and is unable to adequately prepare his defense without a bill of particulars.

3. On November 26, 1934, your petitioner caused to be served upon the Prosecutor of the County of Hunterdon a Demand for a Bill of Particulars, copy of which is hereunto annexed.

4. That the State has refused to furnish your petitioner with a bill of particulars as requested.

Your petitioner therefore prays a rule directing the State to show cause before this Court at some convenient date to be fixed, why a bill of particulars should not be furnished to the defendant in answer to the twelve questions submitted in the

demand therefor, or to such of said twelve questions as shall be approved by the Court.

Respectfully submitted

BRUNO RICHARD HAUPTMANN,
Defendant.

STATE OF NEW JERSEY,
COUNTY OF HUNTERDON, } ss.

Bruno Richard Hauptmann, being duly sworn upon his oath says:

I am the petitioner mentioned in the foregoing petition. I have read the same and the allegations therein contained are true to the best of my knowledge and belief, and particularly is it true that I cannot adequately prepare my defense and safely go to trial upon the indictment presented against me without the information requested in my demand for bill of particulars.

Sworn and subscribed to
before me this 11th day
of December 1934.
BRUNO RICHARD HAUPTMANN.

(Seal)

LAURA APGAR,
Notary Public of New Jersey.

Demand for Bill of Particulars

HUNTERDON OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* BRUNO RICHARD HAUPTMANN,	Sur: Charge on Indictment Murder.

To—Anthony M. Hauck, Jr., Esq., Prosecutor of the Pleas of Hunterdon County:

The defendant demands that you answer forthwith the following questions:

1. Is it the intent of the indictment to allege that murder was committed with premeditation and with malice aforethought?

2. Is it the intent of the indictment to allege that the murder was committed while the indicted subject was engaged in the commission of a felony?

This demand is made by reason of the fact that the indictment recites as follows: "That Bruno Richard Hauptmann, on the first day of March, in the year of our Lord, one thousand nine hundred and thirty-two, with force and arms, at the Township of East Amwell, in the County of Hunterdon aforesaid and within the jurisdiction of this court, did wilfully, feloniously and of his malice aforethought kill and murder Charles A. Lindbergh, Jr., contrary to the form of the Statute in such case made and provided, and against the peace of this State, the Government and dignity of the same," and from the indictment the defense has no way of ascertaining the nature of the charge against the defendant, and must have the information sought above in order to properly prepare a defense for the defendant.

3. If the contention is that the crime was com-

mitted while in the commission of a felony, please state the nature of the felony?

4. Does the State charge, under the indictment, the said Bruno Richard Hauptmann as a principal or as an accessory?

5. If as an accessory, does the State charge the said Bruno Richard Hauptmann with being accessory before the fact or after the fact?

6. If charged as an accessory, does the State contend that the said Bruno Richard Hauptmann was within the State of New Jersey at the time of the commission of the alleged crime and if so, at what point in New Jersey?

7. Does the State contend that the said Bruno Richard Hauptmann was solely responsible for the crime or was a member of a group responsible for the crime?

8. Does the State contend that all the alleged ransom notes were written by the same hand?

9. Does the State contend that the so called ransom notes were written by Bruno Richard Hauptmann?

10. Where does the State contend that the said Charles A. Lindbergh, Jr. died?

11. When does the State contend that the said Charles A. Lindbergh, Jr., died?

12. What does the State contend was the cause of the death of the said Charles A. Lindbergh, Jr.?

LLOYD FISHER,
of counsel with the Defendant.

Demand for Bill of Particulars

HUNTERDON OYER AND TERMINER

THE STATE OF NEW JERSEY, *Complainant,* *vs.* BRUNO RICHARD HAUPTMANN, *Defendant.*	Sur Indictment for Murder. Answer to Petition for Bill of Particulars.

And now comes the State of New Jersey, by Anthony M. Hauck, Jr., Prosecutor of the Pleas of the County of Hunterdon, and says that the indictment returned into this court in the above entitled cause is a complete and sufficient answer to each and every specification and particular set forth in the petition and prays that the said petition be dismissed.

Dated December 13, 1934.

ANTHONY M. HAUCK, JR.,
Prosecutor of the Pleas,
Hunterdon County.

Demand for Bill of Particulars

HUNTERDON OYER AND TERMINER

THE STATE OF NEW JERSEY, *Complainant,* *vs.* BRUNO RICHARD HAUPTMANN, *Defendant.*	Sur Indictment for Murder. Rule to Show Cause.

A duly verified petition having been presented to the Court for a Rule to Show Cause why the Prosecutor of the Pleas of the County of Hunterdon should not furnish defendant with a bill of particulars, and the Court having duly considered same,

It is, on this eleventh day of December, 1934, upon motion of Lloyd Fisher and F. A. Pope, of counsel with the defendant, ORDERED that the Prosecutor of the Pleas of the County of Hunterdon show cause before this Court on Thursday, the thirteenth day of December, instant, in the Court House in Flemington, at twelve-thirty P. M., why the prayer of the petition should not be granted and a bill of particulars furnished to the defendant.

It is further Ordered that a copy of this rule, together with a copy of the petition be served upon the Prosecutor of the Pleas forthwith.

THOMAS W. TRENCHARD,
Judge.

Demand for Bill of Particulars

HUNTERDON OYER AND TERMINER

THE STATE OF NEW JERSEY, *vs.* BRUNO RICHARD HAUPTMANN,	Sur Indictment for Murder. Answer to Bill of Particulars.

To: Fred A. Pope and Lloyd Fisher, Esquires,
Attorneys for Bruno Richard Hauptmann.

Gentlemen:

In accordance with the Order to Show Cause made in the above entitled matter on December 13, 1934, by his Honor Thomas W. Trenchard, Judge of the Hunterdon Oyer and Terminer, answer is hereby made to the specification or particular number twelve, as follows:

Question No. 12. What does the State contend was the cause of the death of Charles A. Lindbergh, Junior?

Answer: The State contends that the cause of the death of Charles A. Lindbergh, Junior, was a fracture of the skull, the result of external violence.

ANTHONY M. HAUCK, JR.,
Prosecutor of the Pleas,
Hunterdon County.

ASSIGNMENT OF ERRORS

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* BRUNO RICHARD HAUPTMANN, *Plaintiff in Error.*	Sur Indictment for Murder. Assignment of Error.

Afterwards, that is to say, on the return of the Writ of Error in the above case in the New Jersey Court of Errors and Appeals comes the said Bruno Richard Hauptmann by C. Lloyd Fisher, his attorney, and Egbert Rosecrans and Frederick A. Pope, his counsel, and says that in the record and proceedings aforesaid and also in the matters recited and contained in the bill of exceptions, and also in the giving of judgment aforesaid, there is manifest error in this to wit:

GROUP A.

1. There is manifest error in this, the Court erred in permitting the witness, Joseph, J. Farber, upon direct examination, over objection of the defendant, to answer the following question:

Q. Do you know how far that is from St. Raymond's Cemetery?

2. And also in this, the Court erred in permitting the witness, Oscar Hilbert Christenson, upon direct examination, over objection of the defendant, to answer the following question:

Q. What was Carlstrom's work and Larson's work?

3. And also in this, the Court over objection of the defendant, permitted the witness, Arthur Koehler, upon direct examination by the State, to answer the following question:

Q. Were the plane marks made— No. Withdraw that. What have you to say as to the similarity or dissimilarity between the marks made by Hauptmann's plane on the lumber that he brought here and the rungs of the ladder?

4. And also in this, the Court over objection of the defendant, permitted the witness, Arthur Koehler, upon direct examination by the State, to answer the following question:

Q. Give us your reasons.

5. And also in this, the Court over objection of the defendant, permitted the witness, Arthur Koehler, upon direct examination by the State, to answer the following question:

Q. Now, with reference to S-226 and the ladder rail 16, there was considerable testimony as to the knots. My recollection is one gentleman testified that S-226 was the top of the piece of wood of which it originally was a part and the other gentleman testified that it was the bottom edge, basing it upon the question of knots. Now, Mr. Koehler, will you tell us what, in your opinion, the position of S-226 was with relation to the board of which it originally was a part?

6. And also in this, the Court erred in admitting in evidence over the objection of defendant, the line of testimony of A. D. Osborn upon direct examination, as to the handwriting upon the wrapper, Exhibit S-53.

7. And also in this, the Court erred in permitting the witness, Dr. Mitchell, over objection of

the defendant, upon direct examination to answer the following question:

Q. Will you give us your opinion, Doctor, based upon your experience, the experience which you have related and the experience that you have not related, as to the time of death as related to the fracture?

8. And also in this, the Court erred in permitting the witness, Swayze, over objection of the defendant, upon direct examination to answer the following question:

Q. I will repeat it, if you don't mind; will you please tell us, if you can, your opinion as to the relationship between the fractures that you have just described and the time of death?

9. And also in this, the Court erred in permitting the witness, Koehler, over objection of the defendant, to answer the following question upon direct examination:

Q. From your experience, from your investigation and examination of these pieces of lumber, what have you to say as to whether or not there isn't a piece missing that originally connected the two pieces?

10. And also in this, the Court erred in permitting the witness, Arthur Koehler, over objection of the defendant, to answer the following question upon direct examination:

Q. And then show them the marks that you say correspond with the piece of the ladder.

11. And also in this, the Court erred in permitting the witness, Koehler, over objection of the defendant, to demonstrate to the Jury the plane in evidence upon a piece of Ponderosa pine.

12. And also in this, the Court erred in permitting the witness, Arthur Koehler, over objection

of the defendant, upon direct examination to answer the following question:

Q. All right. Tell us what size chisel was used in the construction of that ladder, and what part of a chisel of that size was used, if it was.

GROUP B.

1. There is manifest error in this, the Court below refused to strike out the following answer to the following question asked of the witness, Frank A. Kelly, upon direct examination, although duly moved by the defendant so to do, (the previous question was: Q. Are you talking about marks on the walls of the house? A. I am talking about marks on the wall of the house, yes, sir.):

Q. Yes, sir. What kind of marks were they? A. Ladder marks.

2. And also in this, the Court below refused to strike out the following answer to the following question asked of the witness, Frank A. Kelly, upon direct examination, although duly moved by the defendant so to do:

Q. Not what they could have been made by—what were they, according to your observation? You saw them there? A. I would say paint.

3. And also in this, the Court below refused to strike out the following answer to the following question asked of the witness, Amandus Hochmuth, upon direct examination, although duly moved by the defendant so to do:

Q. Yes, sir. All right, sir. Now, you said just now something about a ladder: was there a ladder in the car? A. I saw something, some of the ladder in it.

4. And also in this, the Court erred in denying the motion of the defendant to strike out the testimony of Morton Clemmer Maish upon the grounds stated.

5. And also in this, the Court erred in denying the motion of defendant to strike out the Exhibit, S-228.

GROUP C.

1. There is manifest error in this, the Court erred in refusing to permit the witness, Harold S. Betts, to answer the following question asked upon cross-examination by the defendant:

Q. Did you know that the Secretary, his Secretary, refused him permission to come here and testify for the defense, when his report would be favorable to us?

2. And also in this, the Court erred in refusing to permit the witness, Harold S. Betts, to answer the following question asked upon cross-examination by the defendant:

Q. And his inquiries have covered how long a period on wood?

3. The Court erred in refusing to permit the witness, John F. O'Ryan, to answer the following question asked upon cross-examination by the defendant:

Q. Do you know, General, that you were brought down here just for your appearance before the Jury?

4. And also in this, the Court erred in refusing to permit the witness, John F. O'Ryan, to answer the following question asked upon cross-examination by the defendant:

Q. And did you know that it wasn't relevant?

5. And also in this, the Court below refused to permit the witness, Charles A. Lindbergh, to

answer the following question asked upon cross-examination by the defendant (relating to John Curtis):

Q. And he was convicted of withholding information from you, is that correct?

6. And also in this, the Court below refused to permit the witness, Joseph Anthony Perrone, to answer the following question asked upon cross-examination by the defendant:

Q. What do you expect?

7. And also in this, the Court below refused to permit the witness, Frank J. Wilson, to answer the following question asked upon cross-examination by the defendant:

Q. Yes. Now, while testifying in that cause, as the result of your investigation conducted during the period about which you were questioned by the Attorney General, were you asked this question during the trial of the indictment against John Hughes Curtiss: 'Question: Could not the truth or falsity of Mr. Curtiss' investigation have been established as to contact with the actual kidnaping gang at any time by any person, Colonel Lindbergh, the police, or anybody else, demanding that we produce a writing bearing that symbol or discontinuing his activity in the case?

8. And also in this, the Court below refused to permit the witness, Frank J. Wilson, to answer the following question asked upon cross-examination by the defendant:

Q. And in answer to that did you state 'Not him himself, but he is in touch with other persons and for that reason I do not care to give his name?

9. And also in this, the Court below refused to permit the witness, Frank J. Wilson, to answer

the following question asked upon cross-examination by the defendant:

Q. Mr. Wilson, I ask you this further question: if on the trial of the indictment against John Hughes Curtis you were asked this question: 'If you disclosed this man's name—'

Mr. Wilentz: What page?

Mr. Fisher: Page 394.

Q. 'If you disclosed this man's name, would it affect the people this man is in touch with who are suspected of this crime?

10. And also in this the Court below refused to permit the witness, Frank J. Wilson, to answer the following question asked upon cross-examination by the defendant:

Q. In March and April, 1932, did you refer to the crime as being committed by a gang?

11. And also in this, the Court erred in refusing to permit the witness, Condon, upon cross-examination, to answer the following question:

Q. Did you ever say a woman took part in the negotiations?

12. And also in this, the Court erred in refusing to permit the witness, Stein, upon cross-examination, to answer the following question:

Q. Now, let me ask you this, in connection with a person writing by request, what is his mental attitude most likely to be?

13. And also in this, the Court erred in refusing to permit the witness, Whited, to answer the following question asked upon cross-examination by the defendant:

Q. Down at your home in Lambertville when you first got in the case, did you get any money to have your picture taken?

GROUP D.

1. There is manifest error in this, the Court erred in permitting the witness, Mr. Souder, over objection of the defendant, to answer the following question upon re-direct examination:

Q. All right. Now, has anything been brought to your attention by counsel that in any way alters the opinion you have heretofore expressed as to the identity of the writer of the ransom notes?

2. And also in this, the Court erred in permitting the witness, Koehler, over objection of the defendant, upon re-direct examination to answer the following question:

Q. Without a break, yes. Now, if that same man was going up, I think Mr. Pope says going up and down, if that same man going up and down this particular ladder weighing 170 or 175 pounds—taking Mr. Pope's figure—and then coming down having an additional load of 30 pounds, would not that ladder break?

3. And also in this, the Court erred in permitting the witness, Koehler, over objection of the defendant, upon re-direct examination, to answer the following question:

Q. Well, appreciating that, Mr. Koehler, and having discussed with Mr. Pope the qualities of the various pieces of wood that make up this ladder and particularly North Carolina pine, do you still say that S-226 and rail 16 were at one time one and the same board?

GROUP E.

1. There is manifest error in this, the Court erred in refusing to permit the witness, Joseph

J. Tartell, upon direct examination, to answer the following question:

Q. During the past two years—have you had any occasion during the last three or four years to test Mrs. Barr's recollection of your face—

Mr. Wilentz: I object to it.

Q. —her intelligence to remember you as a patron at the window?

2. And also in this, the Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. Did you on more than one occasion experience a mistake in change which you received from Mrs. Barr at the Sheridan Square Theatre?

Mr. Wilentz: Just a minute. I object to the question.

Q. —during the past three years?

3. And also in this, the Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. And during that time did you talk with Miss Barr about her ability to remember you as a patron who had been to the window on numerous occasions during the past three years?

Mr. Wilentz: Just a minute. I object to the question if your Honor please.

The Court: I will sustain the objection.

Q. —as to her ability to recognize your countenance?

4. And also in this, the Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. I call your attention to one specific occasion and ask you if on one specific occasion which you remember during this period, you handed to Miss Barr a five dollar bill?

5. And also in this, the Court erred in refusing to permit the witness, John E. Seykora, upon direct examination, to answer the following question:

Q. Yes, you wouldn't take a man's word in an important case like this, would you, without investigation?

6. And also in this, the Court erred in refusing to permit the witness, Frank A. Kelly, upon direct examination, to answer the following question:

Q. Was it demonstrated on the rail of the ladder which is now here before you?

7. And also in this, the Court erred in refusing to permit the witness, Frank A. Kelly, upon direct examination, to answer the following question:

Q. What are they, Sergeant?

8. And also in this, the Court erred in refusing to permit the witness, Oscar John Bruchmann, upon direct examination, to answer the following question:

Q. And did Fisch talk to you?

9. And also in this, the Court erred in refusing to permit the witness, Oscar John Bruchmann, upon direct examination, to answer the following question:

Q. Now the fare from the point you took Fisch

at the point he entered your cab to where he alighted from the cab was how much?

10. And also in this, the Court erred in refusing to permit the witness, Theron J. Main, upon direct examination, to answer the following question:

Q. What did he say?

11. And also in this, the Court erred in refusing to permit the witness, Theron J. Main, upon direct examination, to answer the following question:

Q. Then you are out. But in this group or bunch of gold notes that Isidor Fisch had, which he exhibited to you— Will you give your best recollection—and that is all we want—if you can tell us, how big the roll was? Or just describe it, please.

12. And also in this, the Court erred in refusing to permit the witness, Henry Uhlig, upon direct examination, to answer the following question:

Q. In particular you were looking for a little small package that Fisch left, weren't you?

13. And also in this, the Court erred in refusing to permit the witness, Charles J. DeBisschop, upon direct examination to answer the following question:

Q. All right, sit down. Now I will ask you just to take the piece of wood and show the jury what you mean by the erratic departure of grain from its normal and natural course.

GROUP F.

1. There is manifest error in this, the Court erred in admitting in evidence over the objection of the defendant, the letter marked State Exhibit S-272.

2. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the letter marked State Exhibit S-274.

3. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the letters marked State Exhibits S-275 and S-276.

4. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the photographs marked State Exhibits S-302 and S-303.

5. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the memorandum book marked State Exhibit S-262.

6. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the bill marked State Exhibit S-168.

7. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the ten dollar gold certificate A57232100A marked State Exhibit S-169.

8. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the bill marked State Exhibit S-170.

9. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the bill marked S-172.

10. And also in this, the Court erred in admitting in evidence over the objection of the defendant, 83 ten dollar gold certificates and newspaper marked as one exhibit, S-178.

11. And also in this, the Court erred in admitting in evidence over the objection of the defendant, one thousand dollars in ten dollar bills marked State's Exhibit S-179.

12. And also in this, the Court erred in admitting in evidence over the objection of the defendant, a paper and $1,000.00 marked Exhibit S-184.

13. And also in this, the Court erred in admitting in evidence over the objection of the de-

fendant, the remaining eleven or twelve packages of bills marked Exhibits S-185, S-186, S-187, S-188, S-189, S-190, S-191, S-192, S-193, S-194, S-195.

14. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the certified copy of a mortgage marked Exhibit S-206.

15. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the chisel marked Exhibit S-210.

16. And also in this, the Court erred in admitting in evidence over the objection of the defendant, the ladder marked Exhibit S-211.

17. And also in this, the Court erred in admitting in evidence over the objection of the defendant, S-103 for identification, marked Exhibit S-213.

18. And also in this, the Court erred in admitting in evidence over the objection of the defendant, a photograph marked Exhibit S-229.

GROUP G.

1. There is manifest error in this, the Court erred in refusing to admit in evidence on behalf of the defendant a photograph or newspaper clipping showing stein in recessed window.

GROUP H.

1. There is manifest error in this, the Court erred in refusing to permit the witness, John E. Seykora, upon re-direct examination, to answer the following question:

Q. Do you know that not an agent from the Department of Justice was permitted to see the ransom note on March the 2nd, 1932?

2. And also in this, the Court erred in refusing to permit the witness, Karl Henkel, upon re-direct examination, to answer the following question:

Q. Later on did your wife tell you that Fisch had discussed—

Mr. Wilentz: Please don't answer.

Q. —when he had met Hauptmann, with her?

3. And also in this, the Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination, to answer the following question:

Q. Well, was your examination of the grain in the board and the ladder rail sufficient to enable you to form an opinion as to whether there was or was not a matching of the grain in this board and the ladder rail?

4. And also in this, the Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination to answer the following question:

Q. Now, from your knowledge of southern pine trees, is it possible to tell whether a board was cut from the butt of a tree or from the middle of the tree or from the top of the tree, or which section of the tree it comes from, by examining the board—

Mr. Wilentz: Just a minute.

Q. —and its knots?

5. And also in this, the Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination to answer the following question:

Q. Now do you know of any other way that a man could possibly tell how a tree grows except by looking at it?

6. And also in this, the Court erred in refusing

to permit the witness, Ewald Mielk, upon re-direct examination to answer the following question:

Q. Can you or any other man take a piece of board and cut it, cut an inch and three-eighths out of the board, and then determine, by matching up the grains on the end, without having the inch and three-eighths piece which is missing, whether that was originally one and the same board?

GROUP I.

1. There is manifest error in this, the Court erred in striking out the testimony of the witness, Karl Henkel, as follows:

Q. You believe your wife, don't you? A. Yes.

GROUP J.

1. There is manifest error in this, the Court erred in admitting in evidence over objection the line of testimony as to conversations between and actions of Joseph O. Levenson, Henry Jung and Isidor Fisch on the night of March 1st, 1932.

2. And also in this, the Court erred in admitting in evidence over objection of the defendant the line of testimony of the witness, Arac, as to the statements made by the defendant to District Attorney Foley in New York City.

3. And also in this, the Court erred in admitting in evidence over objection of the defendant the line of testimony as to further statements made by the defendant to District Attorney Foley in New York City.

GROUP K.

1. There is manifest error in this, the Court

erred in denying the motion of the defendant to strike out the testimony of John F. O'Ryan upon the grounds stated.

2. And also in this, the Court erred in denying the motion of the defendant to strike out the testimony of the witness, Hirsch, upon the grounds stated.

10

GROUP L.

1. There is manifest error in this, the Court refused to permit the witness, H. Norman Schwartzkopf, to answer the following question asked upon direct examination by the defendant:

Q. Yes. Now, from that official report did you ascertain that the person who is alleged to have built the kidnap ladder wielded a saw with his or her left hand?

20

2. And also in this, the Court refused to permit the witness, H. Norman Schwartzkopf, to answer the following question asked upon direct examination by the defendant:

Q. Who would know that? (As to whether Rosner brough Spitale and Bitz in as intermediaries.)

GROUP M.

30

1. There is manifest error in this, the Court erred in permitting the witness, Peter H. Sommer, over objection of defendant, upon cross-examination, to answer the following question:

Q. Then he say to you, or rather he asked you: "Describe the people that you saw on the trolley car who were afterwards on the ferryboat?" and you described the same two men; isn't that the fact? "They were on the ferryboat, on the car coming down, then they

40

was on the ferryboat. Describe them. They were the two men. Describe them. One was, I would say about five foot nine, the other was about five foot four, one was short. They sat directly in front of me smoking cigarettes, so being as they were smoking cigarettes, I lit a cigarette." What have you to say about that explanation?

2. And also in this, the Court erred in permitting the witness, Benjamin Heier, over objection of defendant, to answer the following question on cross-examination:

Q. But you wouldn't travel to St. Raymond's Cemetery, to help this jury with the name of the street that you were parked on?

3. And also in this, the Court erred in permitting the witness, Charles J. DeBisschop, to answer over objection of defendant the following question on cross-examination:

Q. You want to carry to the jury the impression that this S-226 was never nailed down to joists?

4. And also in this, the Court erred in permitting the witness, Charles J. DeBisschop, to answer over objection of defendant the following question on cross-examination:

Q. Do you want to look at this nail now, because you want to reconsider your testimony on the very point which you just testified to, namely, that it is your sworn testimony that this nail—

Mr. Wilentz: What number is it?

The Reporter: The larger one? S-300.

Q. —that S-300 had never been used?

5. And also in this, the Court erred in permitting the defendant, Bruno Richard Hauptmann, to answer over objection of defendant the following question on cross-examination:

Q. Didn't you place in the "n" "in Senventy" just like you placed the "A" in "signature" and for the same reason?

6. And also in this, the Court erred in permitting the defendant, Bruno Richard Hauptmann, to answer over objection of defendant the following questions on cross-examination:

Q. Read it. A. The baby would be back long ago—

Q. You would not— A. Oh, go farther?

Q. Yes. Further. Just the rest of the paragraph: The baby would be back long ago— Then go ahead. A. Well, I have to—

Q. Sure; take your time. It is hard for you to read, isn't it? A. You bet it is.

Q. All right; then take your time. A. What is this word?

Q. Would. A. Would?

Q. Yes. A. You would not get any result from police.

Q. Go ahead: Because— A. Because— What is that?

Q. This. A. Because this—

Q. Please read it. A. Because this kidnaping— I can't make out the next, the next word.

Q. Yes. What is the next? A. plan for a year already.

Q. Go ahead. A. but we—can't make out the next one.

Q. Isn't it was?

Q. Take a look at it. A. I don't know what the next word means.

Q. All right. What is the next one after that? But we— A. afraid.

Q. Afraid, yes. What is next? A. the boy.

Q. Yes. A. would not.

Q. Yes. A. Can't make out the next two words.

Q. Bee, what is that? would not bee. A. I can't— A. The last word is enough.
Q. That word is strong, isn't it? Look at it; see if you can tell. Not be strong enough, isn't that what it is? A. When you tell me, I can make it out.
Q. Yes. Now you make it out. A. Yes.
Q. Strong, not be strong enough. A. Yes.
Q. So that you have read "the baby would be back long ago. You would not get any result from the police because this kidnaping" —then a word you couldn't understand— "planned for a year already, but we was afraid the boy would not be strong enough."

7. And also in this, the Court erred in permitting the defendant, Bruno Richard Hauptmann, to answer over objection of defendant, the following question on cross-examination:

Q. Pointing to the "X" in Exhibit S-108 under the "Hauptmann Writing". How about this "x", in "expected"?

The Court: What is it he is being examined upon?

Mr. Wilentz: Whether or not the "x" in "Alexander", which is his writing, I am asking him whether that "x" is similar to the "x" in "expected" in Exhibit S-108 which is in evidence.

8. And also in this, the Court erred in permitting the defendant, Hauptmann, upon cross-examination, to answer the following question over objection of the defendant:

Q. What did you put in it?

GROUP N.

1. There is manifest error in this, the Court erred in refusing to direct a verdict of acquittal

at the conclusion of the State's case, on motion of the defendant, upon the grounds stated.

2. And also in this, the Court erred in refusing to direct a verdict of acquittal at the conclusion of the entire case, on motion of the defendant, upon the ground stated.

GROUP O.

1. There is manifest error in this, because the Court charged the Jury as follows:

"The evidence is to the effect that the child was then in good health, a normal child except for a slight cold; that the mother and the nurse securely fixed the covering about the child, and about eight o'clock left the room and closed the window; that between that hour and ten o'clock the child was removed from the bed by some person and carried away, with the clothing in which it had been put to bed, which clothing has been described to you."

2. And also in this, because the Court charged the Jury as follows:

"You will recall the evidence of Colonel Lindbergh to the effect that, as he was sitting in his living room downstairs, he heard a strange noise about that time, the sound of wood on wood, like the striking of two pieces of wood together, like the boards of a crate falling together off of a stand or chair.

"Colonel Lindbergh testified that he could not tell at the time where the sound came from, and at the moment he did not think much about it. Later, at about ten o'clock, when the disappearance of the child became known, a strange and broken ladder was found, about sixty or seventy feet from the south east window, with indications that it had been used in

entering and leaving the window; and also there were the imprints of a man's shoe in the soft ground under or near the window."

3. And also in this, because the Court charged the Jury as follows:

"Miss Gow and Mrs. Whateley testified that later, about April 1, 1932, they found the thumbguard, which Miss Gow had securely tied to the wrist of the child's sleeping suit when she put him to bed, that they found this thumbguard in the road leading from the Lindbergh home and on the Lindbergh property, with the knot still untied, from which you may possibly conclude that the sleeping suit was stripped off of the child at that place."

4. And also in this, because the Court charged the Jury as follows:

"It is the contention of the State that the fracture described by Dr. Mitchell was inflicted upon the child when it was seized and carried out of the nursery window down the ladder and when the ladder broke.

"Now, the ladder has been placed in evidence. Its broken condition when found in the yard has been described to you."

5. And also in this, because the Court charged the Jury as follows:

"The fact that the child's body was found in Mercer County raises a presumption that the death occurred there; but that, of course, is a rebuttable presumption, and may be overcome by circumstantial evidence."

6. And also in this, because the Court charged the Jury as follows:

"The evidence justifies the inference, if you see fit to draw it, that the window was maliciously opened and the child seized shortly after nine o'clock that night."

7. And also in this, because the Court charged the Jury as follows:

"It is argued that Dr. Condon's testimony is inherently improbable and should be in part rejected by you, but you will observe that his testimony is corroborated in large part by several witnesses whose credibility has not been impeached in any manner whatsoever."

8. And also in this, because the Court charged the Jury as follows:

"Of course, if there is in the minds of the jury a reasonable doubt as to the truth of any testimony, such testimony should be rejected but, upon the whole, is there any doubt in your mind as to the reliability of Dr. Condon's testimony?"

9. And also in this, because the Court charged the Jury as follows:

"If you find that the defendant was the man to whom the ransom money was delivered, as a result of the directions in the ransom notes, bearing symbols like those on the original ransom note, the question is pertinent: Was not the defendant the man who left the ransom note on the window sill of the nursery, and who took the child from its crib, after opening the closed window?"

10. And also in this, because the Court charged the Jury as follows:

"It is argued by defendant's counsel that the kidnapping and murder was done by a gang, and not by the defendant, and that the defendant was in nowise concerned therein. The argument was to the effect that it was done by a gang, with the help or connivance of some one or more servants of the Lindbergh or Morrow households.

"Now do you believe that? Is there any evi-

dence in this case whatsoever to support any such conclusion?''

11. And also in this, because the Court charged the Jury as follows:

''You will consider, as bearing upon that question, the fact that a record of the serial numbers of the ransom money was retained. Now, does it not appear that many of the ransom bills were traced to the possession of the defendant? Does it not appear that many thousands of dollars of ransom bills were found in his garage, hidden in the walls or under the floor, that others were found on his person when he was arrested, and others passed by him from time to time?''

12. And also in this, because the Court charged the Jury as follows:

''You may also consider in this connection the evidence to the effect that shortly after the delivery of the ransom money the defendant began to purchase stocks in a much larger way and to spend money more freely than he had before.''

13. And also in this, because the Court charged the Jury as follows:

''The defendant says that these ransom bills, moneys, were left with him by one Fisch, a man now dead. Do you believe that?''

14. And also in this, because the Court charged

''He says that he found them in a shoe box which had been reposing on the top shelf of his closet several months after the box had been left with him, and that he then, without telling anybody, secretly hid them, or most of them, in the garage, where they were found by the police. Do you believe his testimony that the money was left with him in a shoe box, and that it

rested on the top shelf in his closet for several months?''

15. And also in this, because the Court charged the Jury as follows:

''As bearing upon the question whether or not the defendant was the man who took the child and left the ransom letter on the window sill, you should, of course, consider the evidence with respect to the ladder, if you find, as seems likely, that it was used in reaching the nursery. That the ladder was there seems to be unquestioned. If it was not there for the purpose of reaching that nursery window, for what purpose was it there?''

16. And also in this, because the Court charged the Jury as follows:

''There is evidence from which you may conclude, if you see fit, that the defendant built the ladder, although he denies it. Does not the evidence satisfy you that at least a part of the wood from which the ladder was built came out of the flooring of the attic of the defendant?''

17. And also in this, because the Court charged the Jury as follows:

''As bearing upon the question of whether or not the defendant was present at the Lindbergh home on March 1st, 1932, you, of course, should consider the testimony of Mr. Hochmuth, along with that of other witnesses. Mr. Hochmuth lives at or about the entrance of the lane that goes up to the Lindbergh house.

''He testified that on the forenoon of that day, March 1st, 1932, he saw the defendant at that point, driving rapidly from the direction of Hopewell; that he got in the ditch or dangerously near the ditch, and that he had a ladder in the car, which car was a dirty green. This testimony, if true, is highly significant.

Do you think that there is any reason, upon the whole, to doubt the truth of the old man's testimony? May he not have well and easily remembered the circumstance, in view of the fact that that very night the child was carried away?"

18. And also in this, because the Court charged the Jury as follows:

"Our statute relating to burglary says:

"Any person who shall, by night, wilfully or maliciously break and enter any dwelling house with intent to steal, commit a battery, shall be guilty of a high misdemeanor.

"If, therefore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house with intent to steal the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree."

19. And also in this, because the Court charged the Jury as follows:

"The State contends that the murder in this case was committed in perpetrating a burglary, and is murder in the first degree.

"I charge you that if murder was committed in perpetrating a burglary, it is murder in the first degree, without reference to the question whether such killing was wilful or unintentional; and I further charge you, as requested by the defendant, that in order to convict this defendant you must be satisfied, beyond a reasonable doubt, that the death of the child ensued from committing, or attempting to commit, burglary, at or about the time and place in question."

20. And also in this, because the Court charged the Jury as follows:

"There is evidence from which you may conclude, if you see fit, that the defendant feloniously, wilfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child; that defendant brought the ladder to the Lindbergh house in East Amwell Township in this county, and placed it up against the house near the nursery window; that shortly after nine o'clock at night he ascended the ladder, maliciously and wilfully opened the closed window and entered the nursery room; that he seized the child and its clothing and carried it out of the nursery room window, and that the fracture of the skull which caused the child's death was inflicted when the child was seized by the defendant and carried out and down the ladder, and when the ladder broke."

GROUP P.

1. There is manifest error in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"There is no evidence in this case that the murder was committed in Hunterdon County."

2. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"This presumption has not been rebutted or overcome by any competent evidence."

3. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"There is no evidence that the child in question was feloniously stricken in Hunterdon County."

4. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"There is no evidence in this case of a wilful, deliberate and premeditated murder having been committed by this defendant."

5. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"There is no evidence in this case of a completed crime of murder in any degree or manslaughter having been committed by the defendant in Hunterdon County.

6. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"There is no evidence in this case that this defendant committed or attempted to commit the crime of burglary on March 1st, 1932 at the place in question."

7. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"If you find that the death of the child in question occurred in Mercer County and ensued from the commission of a burglary in Hunterdon County you should acquit the defendant."

8. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"The record and evidence conclusively shows that the burglary, if any was committed by defendant, was committed more than two years before the finding of the indictment and therefore, the defendant is entitled to a verdict of acquittal."

9. And also in this, the Court although duly

requested by the defendant, refused to charge the jury as follows:

"There is no competent evidence in this case that this defendant was present at the scene of the crime in question at or near the time in question."

10. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"There is no evidence in this case to justify a conviction of murder in any degree."

11. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"A presumption of good character always exists as to the defendant and may, of itself, be sufficient to raise a reasonable doubt as to the defendant's guilt."

12. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"The duty is upon the state to prove the defendant guilty beyond a reasonable doubt and no duty is cast upon the defendant to cause the jury to entertain a doubt as to his guilt."

13. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"If there is in the mind of any juror a reasonable doubt of the defendant's guilt, fairly arising from the evidence in the case, the juror has no right to consent to a verdict of guilty in deference to or from respect to the other jurors' belief or opinion. Such juror must stand by and abide by his own belief formed in his own mind from the whole of the evidence in the case in which he believes, including the testimony of the defendant."

14. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"All doubts respecting the competency of the opinion of experts in handwriting, based upon mere comparison, as evidence, have been removed by the Statute, (Rev. p. 381, Sec. 19); but it must be esteemed proof of low degree. Very learned judges have characterized it as much too uncertain, even when only slightly opposed, to be the foundation of a judicial decision. Gurney vs. Langlands, 5 Barn. & Ald. 185; Doe v. Suckermore, 5 Ad. & El. 751; 1 Greenl. Ev. Sec. 90, note (2); Stark Ev. 173, note (e). (30 Equity, page 201. Mutual Benefit Life Ins. Co. vs. Brown.)"

15. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"It has been said by an eminent law writer with respect to the evidence of handwriting experts that this kind of evidence is most unsatisfactory, very inconclusive, most unreliable and of the lowest probative force. (Moore on Facts, Sec. 615.)"

16. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"A jury is not bound to accept the opinion of an expert as to disputed handwriting, even when uncontradicted. It should consider it as argument rather than as proof, and to make allowances for all the disturbing influences by which the judgment of the expert may be moved. (1 Whart. on Ev. Sec. 722.)"

17. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"What has been said respecting the value of the opinions of experts in handwriting, based upon mere comparison as evidence, may also be said respecting opinions of wood experts based upon comparison, it is much too uncertain even when only slightly opposed to be the foundation of a judicial decision."

18. And also in this, the Court although duly requested by the defendant, refused to charge the jury as follows:

"With respect to circumstantial evidence, the jury is instructed that the conclusions sought to be reached by the use of circumstantial evidence, must be the only one that can fairly and reasonably be drawn from the circumstances, and must exclude every other reasonable hypothesis."

19. And also in this, the Court failed to state to the jury that there was no evidence in the case that anyone ever saw the defendant in the nursery in Hopewell or in New Jersey on the night of March 1, 1932 although such fact was material to the issue.

20. And also in this, the Court failed to state to the jury that they might also take into consideration besides the defendant's interest, the interest of Colonel Lindbergh, the father of the child, and that of his relatives and servants who testified although such fact was material to the issue.

21. And also in this, the Court failed to instruct the jury in defining the effect of circumstantial evidence, that the defendant was not compelled to explain any circumstances although such instruction was material to the issue.

22. And also in this, the Court failed to instruct the jury that if they found from the evidence that the burglary was complete before the murder of

the child occurred that the defendant should be acquitted, although such instruction was material to the issue.

GROUP Q.

1. There is manifest error in this, that the rights of the defendant guaranteed by the sixth Amendment of the Constitution of the United States were contravened in that the defendant was not accorded a trial by a jury of the State and District wherein the crime was alleged to have been committed as the defendant was tried in the County of Hunterdon instead of the County of Mercer, State of New Jersey, which County and District had been previously ascertained by law; and the Hunterdon County Court of Oyer and Terminer was therefore without jurisdiction.

2. And also in this, that the rights of the defendant guaranteed by the fourteenth Amendment of the Constitution of the United States (Section 1) were contravened in that the defendant was deprived of life and liberty without due process of law for the following reasons:

a. Because of the biased and exaggerated newspaper reports and stories which were communicated to all citizens of the County, State and Nation for months before the trial and which unduly inflamed the members of the jury panel against this defendant and caused it to lose sight of the rule of law that a defendant is innocent until proven guilty beyond a reasonable doubt.

b. Because of the hysterical mob spirit with which the jury was surrounded during the entire conduct of the trial both during and between sessions of the Court, which was contrary to established principles of justice and which

unduly influenced the jury against this defendant.

c. Because of the picture of a Circus Maximus which was daily presented to the jury during all of the conduct of the trial and which deprived it of its calm judgment and reason and made a mockery of justice.

d. Because of the daily presence of Colonel Charles A. Lindbergh at the trial which unduly influenced the jury to view him as the real prosecutor and constantly presented to the jury the picture of a bereaved father for whose sorrow the world demanded a sacrifice.

e. Because of the repeated outbursts in the courtroom during the trial which moved the defendant to pray for a mistrial on several occasions but which motions were denied and which outbursts unduly influenced the jury against the defendant.

f. Because of the inflammatory summation of the State's counsel which went far beyond the evidence and which unduly influenced the jury against the defendant.

g. Because of the varying theories of the State as to the guilt of the defendant which were unsupported by evidence but which were presented to the jury by way of argument of State's counsel, as founded upon testimony.

h. Because the Court in its charge to the jury by its queries and comments on evidence portrayed emphatic approval of the State's theories and witnesses and thereby impaired a free and unbiased verdict.

i. Because the Court in its charge to the jury was argumentative to a degree which made comments on evidence characteristically an act of advocacy.

Assignment of Errors

GROUP R.

1. The plaintiff in error having elected to take up the entire record with his writ of error says that there is manifest error in that the verdict was against the weight of evidence.

FREDERIC A. POPE.

EGBERT ROSECRANS,
Of Counsel with
Plaintiff in Error.

LLOYD FISHER,
Attorney for
Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STATE OF NEW JERSEY, *Defendant in Error,* *vs.* BRUNO RICHARD HAUPTMANN, *Plaintiff in Error.*	Sur Indictment for Murder. In Error Specifications of Causes for Reversal.

And now comes the said Bruno Richard Hauptmann, by C. Lloyd Fisher, his attorney, and Egbert Rosecrans and Frederick A. Pope, his counsel, and the entire record of the proceedings had upon the trial of this cause having been returned by said plaintiff in error with the writ of error, bringing up the bill of exceptions as signed and sealed in the cause, he says that in such record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error and that said plaintiff in error on the trial below suffered manifest wrong and injury and prays that this Court remedy such wrong and injury and give judgment accordingly, and order a new trial and for said purpose he specifies the following causes in the record relied upon for relief and reversal:

GROUP A.

1. The Court erred in permitting the witness, Joseph J. Farber, upon direct examination, over objection of the defendant, to answer the following question:

Q. Do you know how far that is from St. Raymond's Cemetery?

2. The Court erred in permitting the witness, Oscar Hilbert Christenson, upon direct examina-

tion, over objection of the defendant, to answer the following question:

Q. What was Carlstrom's work and Larson's work?

3. The Court erred in permitting the witness, Arthur Koehler, over objection of the defendant, upon direct examination by the State, to answer the following question:

Q. Were the plane marks made— No. Withdraw that. What have you to say as to the similarity or dissimilarity between the marks made by Hauptmann's plane on the lumber that he brought here and the rungs of the ladder?

4. The Court erred in permitting the witness, Arthur Koehler, over objection of the defendant, upon direct examination by the State, to answer the following question:

Q. Give us your reasons.

5. The Court erred in permitting the witness, Arthur Koehler, over objection of the defendant, upon direct examination by the State, to answer the following question:

Q. Now, with references to S-226 and the ladder rail 16, there was considerable testimony as to the knots. My recollection is one gentleman testified that S-226 was the top of the piece of wood of which it originally was a part and the other gentleman testified that it was the bottom edge, basing it upon the question of knots. Now, Mr. Koehler, will you tell us what, in your opinion, the position of S-226 was with relation to the board of which it originally was a part?

6. The Court erred in admitting in evidence over the objection of defendant, the line of testimony of A. D. Osborn upon direct examination,

as to the handwriting upon the wrapper, Exhibit S-53.

7. The Court erred in permitting the witness, Dr. Mitchell, over objection of the defendant, upon direct examination to answer the following question:

Q. Will you give us your opinion, Doctor, based upon your experience, the experience which you have related and the experience that you have not related, as to the time of death as related to the fracture?

8. The Court erred in permitting the witness, Swayze, over objection of the defendant, upon direct examination to answer the following question:

Q. I will repeat it, if you don't mind; will you please tell us, if you can, your opinion as to the relationship between the fractures that you have just described and the time of death?

9. The Court erred in permitting the witness, Koehler, over objection of the defendant, to answer the following question upon direct examination:

Q. From your experience, from your investigation and examination of these pieces of lumber, what have you to say as to whether or not there isn't a piece missing that originally connected the two pieces?

10. The Court erred in permitting the witness, Arthur Koehler, over objection of the defendant, to answer the following question upon direct examination:

Q. And then show them the marks that you say correspond with the piece of the ladder.

11. The Court erred in permitting the witness, Koehler, over objection of the defendant, to dem-

onstrate to the Jury the plane in evidence upon a piece of Ponderosa pine.

12. The Court erred in permitting the witness, Arthur Koehler, over objection of the defendant, upon direct examination to answer the following question:

Q. All right. Tell us what size chisel was used in the construction of that ladder, and what part of a chisel of that size was used, if it was.

GROUP B.

1. The Court erred in refusing to strike out the following answer to the following question asked of the witness, Frank A. Kelly, upon direct examination, although duly moved by the defendant so to do (the previous question was: Q. Are you talking about marks on the walls of the house? A. I am talking about marks on the wall of the house, yes, sir.):

Q. Yes, sir. What kind of marks were they?

A. Ladder marks.

2. The Court erred in refusing to strike out the following answer to the following question asked of the witness, Frank A. Kelly, upon direct examination, although duly moved by the defendant so to do:

Q. Not what they could have been made by—what were they, according to your observation? You saw them there?

A. I would say paint.

3. The Court erred in refusing to strike out the following answer to the following question asked of the witness, Amandus Hochmuth, upon direct examination, although duly moved by the defendant so to do:

Q. Yes, sir. All right, sir. Now, you said just

now something about a ladder: was there a ladder in the car?

A. I saw something, some of the ladder in it.

4. The Court erred in denying the motion of the defendant to strike out the testimony of Morton Clemmer Maish upon the grounds stated.

5. The Court erred in denying the motion of defendant to strike out the Exhibit S-228.

GROUP C.

1. The Court erred in refusing to permit the witness, Harold S. Betts, to answer the following question asked upon cross-examination by the defendant:

Q. Did you know that the Secretary, his Secretary, refused him permission to come here and testify for the defense, when his report would be favorable to us?

2. The Court erred in refusing to permit the witness, Harold S. Betts, to answer the following question asked upon cross-examination by the defendant:

Q. And his inquiries have covered how long a period on wood?

3. The Court erred in refusing to permit the witness, John F. O'Ryan, to answer the following question asked upon cross-examination by the defendant:

Q. Do you know, General, that you were brought down here just for your appearance before the jury?

4. The Court erred in refusing to permit the witness, John F. O'Ryan, to answer the following question asked upon cross-examination by the defendant:

Q. And did you know that it wasn't relevant?

5. The Court erred in refusing to permit the

witness, Charles A. Lindbergh, to answer the following question asked upon cross-examination by the defendant (relating to John Curtis):

Q. And he was convicted of withholding information from you, is that correct?

6. The Court erred in refusing to permit the witness, Joseph Anthony Perrone, to answer the following question asked upon cross-examination by the defendant:

Q. What do you expect?

7. The Court erred in refusing to permit the witness, Frank J. Wilson, to answer the following question asked upon cross-examination by the defendant:

Q. Yes. Now, while testifying in that cause, as the result of your investigation conducted during the period about which you were questioned by the Attorney General, were you asked this question during the trial of the indictment against John Hughes Curtiss: 'Question: Could not the truth or falsity of Mr. Curtiss' investigation have been established as to contact with the actual kidnaping gang at any time by any person, Colonel Lindbergh, the police, or anybody else, demanding that we produce a writing bearing that symbol or discontinuing his activity in the case?

8. The Court erred in refusing to permit the witness, Frank J. Wilson, to answer the following question asked upon cross-examination by the defendant:

Q. And in answer to that did you state 'Not him himself, but he is in touch with other persons and for that reason I do not care to give his name?'

9. The Court erred in refusing to permit the witness, Frank J. Wilson, to answer the following

question asked upon cross-examination by the defendant:

Q. Mr. Wilson, I ask you this further question: if on the trial of the indictment against John Hughes Curtis you were asked this question: 'If you disclosed this man's name—'

Mr. Wilentz: What page?

Mr. Fisher: Page 394.

Q. 'If you disclosed this man's name, would it affect the people this man is in touch with who are suspected of this crime?'

10. The Court erred in refusing to permit the witness, Frank J. Wilson, to answer the following question asked upon cross-examination by the defendant:

Q. In March and April, 1932, did you refer to the crime as being committed by a gang?

11. The Court erred in refusing to permit the witness, Condon, upon cross-examination, to answer the following question:

Q. Did you ever say a woman took part in the negotiations?

12. The Court erred in refusing to permit the witness, Stein, upon cross-examination, to answer the following question:

Q. Now, let me ask you this, in connection with a person writing by request, what is his mental attitude most likely to be?

13. The Court erred in refusing to permit the witness, Whited, to answer the following question asked upon cross-examination by the defendant:

Q. Down at your home in Lambertville when you first got in the case, did you get any money to have your picture taken?

GROUP D.

1. The Court erred in permitting the witness, Mr. Souder, over objection of the defendant, to answer the following question upon re-direct examination:

Q. All right. Now, has anything been brought to your attention by counsel that in any way alters the opinion you have heretofore expressed as to the identity of the writer of the ransom notes?

2. The Court erred in permitting the witness, Koehler, over objection of the defendant, upon re-direct examination to answer the following question:

Q. Without a break, yes. Now, if that same man was going up, I think Mr. Pope says going up and down, if that same man going up and down this particular ladder weighing 170 or 175 pounds—taking Mr. Pope's figure—and then coming down having an additional load of thirty pounds, would not that ladder break?

3. The Court erred in permitting the witness, Koehler, over objection of the defendant, upon re-direct examination, to answer the following question:

Q. Well, appreciating that, Mr. Koehler, and having discussed with Mr. Pope the qualities of the various pieces of wood that make up this ladder and particularly North Carolina pine, do you still say that S-226 and rail 16 were at one time one and the same board?

GROUP E.

1. The Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. During the past two years—have you had

any occasion during the last three or four years to test Mrs. Barr's recollection of your face—

Mr. Wilentz: I object to it.

Q. —her intelligence to remember you as a patron at the window?

2. The Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. Did you on more than one occasion experience a mistake in change which you received from Mrs. Barr at the Sheridan Square Theatre?

Mr. Wilentz: Just a minute. I object to the question.

Q. —during the past three years?

3. The Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. And during that time did you talk with Miss Barr about her ability to remember you as a patron who had been to the window on numerous occasions during the past three years?

Mr. Wilentz: Just a minute. I object to the question if your Honor please.

The Court: I will sustain the objection.

Q. —as to her ability to recognize your countenance?

4. The Court erred in refusing to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

Q. I call your attention to one specific occasion and ask you if on one specific occasion which you remember during this period, you handed to Miss Barr a five dollar bill?

5. The Court erred in refusing to permit the

witness, John E. Seykora, upon direct examination, to answer the following question:

Q. Yes, you wouldn't take a man's word in an important case like this, would you, without investigation?

6. The Court erred in refusing to permit the witness, Frank A. Kelly, upon direct examination, to answer the following question:

Q. Was it demonstrated on the rail of the ladder which is now here before you?

7. The Court erred in refusing to permit the witness, Frank A. Kelly, upon direct examination, to answer the following question:

Q. What are they, Sergeant?

8. The Court erred in refusing to permit the witness, Oscar John Bruchmann, upon direct examination, to answer the following question:

Q. And did Fisch talk to you?

9. The Court erred in refusing to permit the witness, Oscar John Bruchmann, upon direct examination, to answer the following question:

Q. Now the fare from the point you took Fisch at the point he entered your cab to where he alighted from the cab was how much?

10. The Court erred in refusing to permit the witness, Theron J. Main, upon direct examination, to answer the following question:

Q. What did he say?

11. The Court erred in refusing to permit the witness, Theron J. Main, upon direct examination, to answer the following question:

Q. Then you are out. But in this group or bunch of gold notes that Isidor Fisch had, which he exhibited to you—Will you give your best recollection—and that is all we want—if you can tell us, how big the roll was? Or just describe it, please.

12. The Court erred in refusing to permit the

witness, Henry Uhlig, upon direct examination, to answer the following question:

Q. In particular you were looking for a little small package that Fisch left, weren't you?

13. The Court erred in refusing to permit the witness, Charles J. DeBisschop, upon direct examination to answer the following question:

Q. All right, sit down. Now I will ask you just to take the piece of wood and show the jury what you mean by the erratic departure of grain from its normal and natural course.

GROUP F.

1. The Court erred in admitting in evidence over the objection of the defendant, the letter marked State Exhibit S-272.

2. The Court erred in admitting in evidence over the objection of the defendant, the letter marked State Exhibit S-274.

3. The Court erred in admitting in evidence over the objection of the defendant, the letters marked State Exhibits S-275 and S-276.

4. The Court erred in admitting in evidence over the objection of the defendant, the photographs marked State Exhibits S-302 and S-303.

5. The Court erred in admitting in evidence over the objection of the defendant, the memorandum book marked State Exhibit S-262.

6. The Court erred in admitting in evidence over the objection of the defendant, the bill marked State Exhibit S-168.

7. The Court erred in admitting in evidence over the objection of the defendant, the ten dollar gold certificate A57232100A marked State Exhibit S-169.

8. The Court erred in admitting in evidence

over the objection of the defendant, the bill marked State Exhibit S-170.

9. The Court erred in admitting in evidence over the objection of the defendant, the bill marked S-172.

10. The Court erred in admitting in evidence over the objection of the defendant, 83 ten dollar gold certificates and newspaper marked as one exhibit, S-178.

11. The Court erred in admitting in evidence over the objection of the defendant, one thousand dollars in ten dollar bills marked State's Exhibit S-179.

12. The Court erred in admitting in evidence over the objection of the defendant, a paper and $1,000.00 marked Exhibit S-184.

13. The Court erred in admitting in evidence over the objection of the defendant, the remaining eleven or twelve packages of bills marked Exhibits S-185 to S-195 inclusive.

14. The Court erred in admitting in evidence over the objection of the defendant, the certified copy of a mortgage marked Exhibit S-206.

15. The Court erred in admitting in evidence over the objection of the defendant, the chisel marked Exhibit S-210.

16. The Court erred in admitting in evidence over the objection of the defendant, the ladder marked Exhibit S-211.

17. The Court erred in admitting in evidence over the objection of the defendant, S-103 for identification, marked Exhibit S-213.

18. The Court erred in admitting in evidence over the objection of the defendant, a photograph marked Exhibit S-229.

Assignment of Errors

GROUP G.

1. The Court erred in refusing to admit in evidence on behalf of the defendant a photograph or newspaper clipping showing stein in recessed window.

GROUP H.

1. The Court erred in refusing to permit the witness, John E. Seykora, upon re-direct examination, to answer the following question:

Q. Do you know that not an agent from the Department of Justice was permitted to see the ransom note on March the 2nd, 1932?

2. The Court erred in refusing to permit the witness, Karl Henkel, upon re-direct examination to answer the following question:

Q. Later on did your wife tell you that Fisch had discussed—

Mr. Wilentz: Please don't answer.

Q. —when he had met Hauptmann, with her?

3. The Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination, to answer the following question:

Q. Well, was your examination of the grain in the board and the ladder rail sufficient to enable you to form an opinion as to whether there was or was not a matching of the grain in this board and the ladder rail?

4. The Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination to answer the following question:

Q. Now, from your knowledge of southern pine trees, is it possible to tell whether a board was cut from the butt of a tree or from the middle of the tree or from the top of the tree, or which section of the tree it comes from, by examining the board—

Mr. Wilentz: Just a minute.

Q. —and its knots?

5. The Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination to answer the following question:

Q. Now do you know of any other way that a man could possibly tell how a tree grows except by looking at it?

6. The Court erred in refusing to permit the witness, Ewald Mielk, upon re-direct examination to answer the following question:

Q. Can you or any other man take a piece of board and cut it, cut an inch and three-eighths out of the board, and then determine, by matching up the grains on the end, without having the inch and three-eighths piece which is missing, whether that was originally one and the same board?

GROUP I.

1. The Court erred in striking out the testimony of the witness, Karl Henkel, as follows:

Q. You believe your wife, don't you? A. Yes.

GROUP J.

1. The Court erred in admitting in evidence over objection the line of testimony as to conversation between and actions of Joseph O. Levenson, Henry Jung and Isidor Fisch on the night of March 1st, 1932.

2. The Court erred in admitting in evidence over objection of the defendant the line of testimony of the witness, Arac, as to the statements made by the defendant to District Attorney Foley in New York City.

3. The Court erred in admitting in evidence over objection of the defendant the line of testimony as to further statements made by the defendant to District Attorney Foley in New York City.

GROUP K.

1. The Court erred in denying the motion of the defendant to strike out the testimony of John F. O'Ryan upon the grounds stated.

2. The Court erred in denying the motion of the defendant to strike out the testimony of the witness, Hirsch, upon the grounds stated.

GROUP L.

1. The Court erred in refusing to permit the witness, H. Norman Schwartzkopf, to answer the following question asked upon direct examination by the defendant:

Q. Yes. Now, from that official report did you ascertain that the person who is alleged to have built the kidnap ladder wielded a saw with his or her left hand?

2. The Court erred in refusing to permit the witness, H. Norman Schwartzkopf, to answer the following question asked upon direct examination by the defendant.

Q. Who would know that? (As to whether Rosner brought Spitale and Bitz in as intermediaries).

GROUP M.

1. The Court erred in permitting the witness, Peter H. Sommer, over objection of defendant,

upon cross-examination, to answer the following question:

Q. Then he says to you, or rather he asked you: "Describe the people that you saw on the trolley car who were afterwards on the ferryboat?" and you described the same two men; isn't that the fact? "They were on the ferryboat, on the car coming down, then they was on the ferryboat. Describe them. They were the two men. Describe them. One was, I would say about five foot nine, the other was about five foot four, one was short. They sat directly in front of me smoking cigarettes, I lit a cigarette." What have you to say about that explanation?

2. The Court erred in permitting the witness, Benjamin Heier, over objection of defendant, to answer the following question on cross-examination:

Q. But you wouldn't travel to St. Raymond's Cemetery, to help this jury with the name of the street that you were parked on?

3. The Court erred in permitting the witness, Charles J. DeBisschop, to answer over objection of defendant the following question on cross-examination:

Q. You want to carry to the jury the impression that this S-226 was never nailed down to joists?

4. The Court erred in permitting the witness, Charles J. DeBisschop, to answer over objection of defendant the following question on cross-examination:

Q. Do you want to look at this nail now, because you want to reconsider your testimony on the very point which you just testified to, namely, that it is your sworn testimony that this nail—

Mr. Wilentz: What number is it?

The Reporter: The larger one? S-300.

Q. —that S-300 had never been used?

5. The Court erred in permitting the defendant, Bruno Richard Hauptmann, to answer over objection of defendant the following question on cross-examination:

Q. Didn't you place in the "n" in "Senventy" just like you placed the "A" in "signature" and for the same reason?

6. The Court erred in permitting the defendant, Bruno Richard Hauptmann, to answer over objection of defendant the following questions on cross-examination:

Q. Read it. A. The baby would be back long ago—

Q. You would not— A. Oh, go farther?

Q. Yes. Further. Just the rest of the paragraph: The baby would be back long ago— Then go ahead. A. Well, I have to—

Q. Sure; take your time. It is hard for you to read, isn't it? A. You bet it is.

Q. All right; then take your time. A. What is this word?

Q. Would. A. Would?

Q. Yes. A. You would not get any result from police.

Q. Go ahead: Because— A. Because—what is that?

Q. This. A. Because this—

Q. Please read it. A. Because this kidnaping— I can't make out the next, the next word.

Q. Yes. What is the next? A. Plan for a year already.

Q. Go ahead. A. but we—can't make out the next one.

Q. Isn't it was?
Q. Take a look at it. A. I don't know what the next word means.
Q. All right. What is the next one after that? But we— A. Afraid.
Q. Afraid, yes. What is next? A. The boy.
Q. Yes. A. Would not.
Q. Yes. A. Can't make out the next two words.
Q. Bee, what is that? would not bee. A. I can't — A. The last word is enough.
Q. That word is strong, isn't it? Look at it; see if you can tell. Not be strong enough, isn't that what it is? A. When you tell me, I can make it out.
Q. Yes. Now you make it out. A. Yes.
Q. Strong, not be strong enough. A. Yes.
Q. So that you have read "the baby would be back long ago. You would not get any re- result from police because this kidnaping" —then a word you couldn't understand— "planned for a year already, but we was afraid the boy would not be strong enough."

7. The Court erred in permitting the defendant, Bruno Richard Hauptmann, to answer over objection of defendant, the following question on cross-examination:

Q. Pointing to the "x" in Exhibit S-108 under the "Hauptmann Writing." How about this "x," in "expected"?

The Court: What is it he is being examined upon?

Mr. Wilentz: Whether or not the "x" in "Alexander," which is his writing, I am asking him whether that "x" is similar to the "x" in "expected" in Exhibit S-108 which is in evidence.

8. The Court erred in permitting the defendant, Hauptmann, upon cross-examination, to answer the following question over objection of the defendant:

Q. What did you put in it?

GROUP N.

1. The Court erred in refusing to direct a verdict of acquittal at the conclusion of the State's case, on motion of the defendant, upon the grounds stated.

2. The Court erred in refusing to direct a verdict of acquittal at the conclusion of the entire case, on motion of the defendant, upon the grounds stated.

GROUP O.

1. The Court erred in charging the jury as follows:

"The evidence is to the effect that the child was then in good health, a normal child except for a slight cold; that the mother and the nurse securely fixed the covering about the child, and about eight o'clock left the room and closed the window; that between that hour and ten o'clock the child was removed from the bed by some person and carried away, with the clothing in which it had been put to bed, which clothing has been described to you."

2. The Court erred in charging the jury as follows:

"You will recall the evidence of Colonel Lindbergh to the effect that, as he was sitting in his living room downstairs, he heard a strange noise about that time, the sound of wood on wood, like the striking of two pieces

of wood together, like the boards of a crate falling together off of a stand or chair.

"Colonel Lindbergh testified that he could not tell at the time where the sound came from, and at the moment he did not think much about it. Later, at about ten o'clock, when the disappearance of the child became known, a strange and broken ladder was found, about sixty or seventy feet from the southeast window, with indications that it had been used in entering and leaving the window; and also there were the imprints of a man's shoe in the soft ground under or near the window."

3. The Court erred in charging the jury as follows:

"Miss Gow and Mrs. Whateley testified that later, about April 1, 1932, they found the thumbguard, which Miss Gow had securely tied to the wrist of the child's sleeping suit when she put him to bed, that they found this thumbguard in the road leading from the Lindbergh home and on the Lindbergh property, with the knot still untied, from which you may possibly conclude that the sleeping suit was stripped off of the child at that place."

4. The Court erred in charging the jury as follows:

"It is the contention of the State that the fracture described by Dr. Mitchell was inflicted upon the child when it was seized and carried out of the nursery window down the ladder and when the ladder broke.

"Now, the ladder has been placed in evidence. Its broken condition when found in the yard has been described to you."

5. The Court erred in charging the jury as follows:

"The fact that the child's body was found

in Mercer County raises a presumption that the death occurred there; but that, of course, is a rebuttal presumption, and may be overcome by circumstantial evidence."

6. The Court erred in charging the jury as follows:

"The evidence justifies the inference, if you see fit to draw it, that the window was maliciously opened and the child seized shortly after nine o'clock that night."

7. The Court erred in charging the jury as follows:

"It is argued that Dr. Condon's testimony is inherently improbable and should be in part rejected by you, but you will observe that his testimony is corroborated in large part by several witnesses whose credibility has not been impeached in any manner whatsoever."

8. The Court erred in charging the jury as follows:

"Of course, if there is in the minds of the jury a reasonable doubt as to the truth of any testimony, such testimony should be rejected but, upon the whole, is there any doubt in your mind as to the reliability of Dr. Condon's testimony?"

9. The Court erred in charging the jury as follows:

"If you find that the defendant was the man to whom the ransom money was delivered, as a result of the directions in the ransom notes, bearing symbols like those on the original ransom note, the question is pertinent: Was not the defendant the man who left the ransom note on the window sill of the nursery, and who took the child from its crib, after opening the closed window?"

10. The Court erred in charging the jury as follows:

"It is argued by defendant's counsel that the kidnaping and murder was done by a gang, and not by the defendant, and that the defendant was in nowise concerned therein. The argument was to the effect that it was done by a gang, with the help or connivance of some one or more servants of the Lindbergh or Morrow households.

"Now do you believe that? Is there any evidence in this case whatsoever to support any such conclusion?"

11. The Court erred in charging the jury as follows:

"You will consider, as bearing upon that question, the fact that a record of the serial numbers of the ransom money was retained. Now, does it not appear that many of the ransom bills were traced to the possession of the defendant? Does it not appear that many thousands of dollars of ransom bills were found in his garage, hidden in the walls or under the floor, that others were found on his person when he was arrested, and others passed by him from time to time?"

12. The Court erred in charging the jury as follows:

"You may also consider in this connection the evidence to the effect that shortly after the delivery of the ransom money the defendant began to purchase stocks in a much larger way and to spend money more freely than he had before."

13. The Court erred in charging the jury as follows:

"The defendant says that these ransom bills,

moneys, were left with him by one Fisch, a man now dead. Do you believe that?''

14. The Court erred in charging the jury as follows:

''He says that he found them in a shoe box which had been reposing on the top shelf of his closet several months after the box had been left with him, and that he then, without telling anybody, secretly hid them, or most of them, in the garage, where they were found by the police. Do you believe his testimony that the money was left with him in a shoe box, and that it rested on the top shelf in his closet for several months?''

15. The Court erred in charging the jury as follows:

''As bearing upon the question whether or not the defendant was the man who took the child and left the ransom letter on the window sill, you should, of course, consider the evidence with respect to the ladder, if you find, as seems likely, that it was used in reaching the nursery. That the ladder was there seems to be unquestioned. If it was not there for the purpose of reaching that nursery window, for what purpose was it there?''

16. The Court erred in charging the jury as follows:

''There is evidence from which you may conclude, if you see fit, that the defendant built the ladder, although he denies it. Does not the evidence satisfy you that at least a part of the wood from which the ladder was built came out of the flooring of the attic of the defendant?''

17. The Court erred in charging the jury as follows:

''As bearing upon the question of whether

or not the defendant was present at the Lindbergh home on March 1st, 1932, you, of course, should consider the testimony of Mr. Hochmuth, along with that of other witnesses. Mr. Hochmuth lives at or about the entrance of the lane that goes up to the Lindbergh house.

"He testified that on the forenoon of that day, March 1st, 1932, he saw the defendant at that point, driving rapidly from the direction of Hopewell; that he got in the ditch or dangerously near the ditch, and that he had a ladder in the car, which car was a dirty green. This testimony, if true, is highly significant. Do you think that there is any reason, upon the whole, to doubt the truth of the old man's testimony? May he not have well and easily remembered the circumstance, in view of the fact that that very night the child was carried away?"

18. The Court erred in charging the jury as follows:

"Our statute relating to burglary says:

"Any person who shall, by night, wilfully or maliciously break and enter any dwelling house with intent to steal, commit a battery, shall be guilty of a high misdemeanor.

"If, therefore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house with intent to steal the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree."

19. The Court erred in charging the jury as follows:

"The State contends that the murder in this

case was committed in perpetrating a burglary, and is murder in the first degree.

"I charge you that if murder was committed in perpetrating a burglary, it is murder in the first degree, without reference to the question whether such killing was wilful or unintentional; and I further charge you, as requested by the defendant, that in order to convict this defendant you must be satisfied, beyond a reasonable doubt, that the death of the child ensued from committing, or attempting to commit burglary, at or about the time and place in question."

20. The Court erred in charging the jury as follows:

"There is evidence from which you may conclude, if you see fit, that the defendant feloniously, wilfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child; that defendant brought the ladder to the Lindbergh house in East Amwell Township in this county, and placed it up against the house near the nursery window; that shortly after nine o'clock at night he ascended the ladder, maliciously and wilfully opened the closed window, and entered the nursery room; that he seized the child and its clothing and carried it out of the nursery room window, and that the fracture of the skull which caused the child's death was inflicted when the child was seized by the defendant and carried out and down the ladder, and when the ladder broke."

GROUP P.

1. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no evidence in this case that the murder was committed in Hunterdon County."

2. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"This presumption has not been rebutted or overcome by any competent evidence."

3. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no evidence that the child in question was feloniously stricken in Hunterdon County."

4. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no evidence in this case of a wilful, deliberate and premeditated murder having been committed by this defendant."

5. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no evidence in this case of a completed crime of murder in any degree or manslaughter having been committed by the defendant in Hunterdon County."

6. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no evidence in this case that this defendant committed or attempted to commit the crime of burglary on March 1st, 1932, at the place in question."

7. The Court erred in refusing to charge the

jury as follows although duly requested by the defendant:

"If you find that the death of the child in question occurred in Mercer County and ensued from the commission of a burglary in Hunterdon County you should acquit the defendant."

8. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"The record and evidence conclusively shows that the burglary, if any was committed by defendant, was committed more than two years before the finding of the indictment and therefore, the defendant is entitled to a verdict of acquittal."

9. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no competent evidence in this case that this defendant was present at the scene of the crime in question at or near the time in question."

10. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"There is no evidence in this case to justify a conviction of murder in any degree."

11. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"A presumption of good character always exists as to the defendant and may, of itself, be sufficient to raise a reasonable doubt as to the defendant's guilt."

12. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"The duty is upon the state to prove the defendant guilty beyond a reasonable doubt and no duty is cast upon the defendant to cause the jury to entertain a doubt as to his guilt."

13. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"If there is in the mind of any juror a reasonable doubt of the defendant's guilt, fairly arising from the evidence in the case, the juror has no right to consent to a verdict of guilty in deference to or from respect to the other juror's belief or opinion. Such juror must stand by and abide by his own belief formed in his own mind from the whole of the evidence in the case in which he believes, including the testimony of the defendant."

14. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"All doubts respecting the competency of the opinion of experts in handwriting, based upon mere comparison, as evidence, have been removed by the Statute, (Rev. p. 381, Sec. 19); but it must be esteemed proof of low degree. Very learned judges have characterized it as much too uncertain, even when only slightly opposed, to be the foundation of a judicial decision. Gurney vs. Langlands, 5 Barn. & Ald. 185; Doe v. Suckermore, 5 Ad. & El. 751; 1 Greenl. Ev. Sec. 90, note (2); Stark Ev. 173, note (e). (30 Equity, page 201. Mutual Benefit Life Ins. Co. vs. Brown.)"

15. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"It has been said by an eminent law writer with respect to the evidence of handwriting

experts that this kind of evidence is most unsatisfactory, very inconclusive, most unreliable and of the lowest probative force. (Moore on Facts, Sec. 615)."

16. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"A Jury is not bound to accept the opinion of an expert as to disputed handwriting, even when uncontradicted. It should consider it as argument rather than as proof, and to make allowances for all the disturbing influences by which the judgment of the expert may be moved. (1 Whart. on Ev. Sec. 722)."

17. The Court erred in refusing to charge the jury as follows although duly requested by the defendant:

"What has been said respecting the value of the opinions of experts in handwriting, based upon mere comparison as evidence, may also be said respecting opinions of wood experts based upon comparison, it is much too uncertain even with respect to circumstantial evidence, the jury is instructed that the conclusions sought to be reached by the use of circumstantial evidence, must be the only one that can fairly and reasonably be drawn from the circumstances, and must exclude every other reasonable hypothesis."

19. The Court erred in failing to state to the jury that there was no evidence in the case that anyone ever saw the defendant in the nursery in Hopewell or in New Jersey on the night of March 1, 1932, although such fact was material to the issue.

20. The Court erred in failing to state to the jury that they might also take into consideration besides the defendant's interest, the interest of

Colonel Lindbergh, the father of the child, and that of his relatives and servants who testified although such fact was material to the issue.

21. The Court erred in failing to instruct the jury in defining the effect of circumstantial evidence, that the defendant was not compelled to explain any circumstances although such instruction was material to the issue.

22. The Court erred in failing to instruct the jury that if they found from the evidence that the burglary was complete before the murder of the child occurred that the defendant should be acquitted, although such instruction was material to the issue.

GROUP Q.

1. The Court erred in that the rights of the defendant guaranteed under the common law and the ancient established practices of the Courts of the State of New Jersey and of the United States were contravened in that the defendant was not accorded a trial by a jury of the County wherein the crime was alleged to have been committed as the defendant was tried in the County of Hunterdon instead of the County of Mercer, State of New Jersey, which latter County was the place where the crime, under the uncontraverted evidence was presumed to have been committed, as the body of the child was found there; and the Hunterdon County Court of Oyer and Terminer was therefore without jurisdiction. County of Hunterdon instead of the County of Mercer, State of New Jersey, which County and District had been previously ascertained by law; and the Hunterdon County Court of Oyer and Terminer was therefore without jurisdiction.

2. The Court erred in that the rights of the de-

fendant guaranteed by the fourteenth Amendment of the Constitution of the United States (Section 1) were contravened in that the defendant was deprived of life and liberty without due process of law for the following reasons:

a. Because of the biased and exaggerated newspaper reports and stories which were communicated to all citizens of the County, State and Nation for months before the trial and which unduly inflamed the members of the jury panel against this defendant and caused it to lose sight of the rule of law that a defendant is innocent until proven guilty beyond a reasonable doubt.

b. Because of the hysterical mob spirit with which the jury was surrounded during the entire conduct of the trial both during and between sessions of the Court, which was contrary to established principles of justice and which unduly influenced the jury against this defendant.

c. Because of the picture of a circus maximus which was daily presented to the jury during all of the conduct of the trial and which deprived it of its calm judgment and reason and made a mockery of justice.

d. Because of the daily presence of Colonel Charles A. Lindbergh at the trial which unduly influenced the jury to view him as the real prosecutor and constantly presented to the jury the picture of a bereaved father for whose sorrow the world demanded a sacrifice.

e. Because of the repeated outbursts in the courtroom during the trial which moved the defendant to pray for a mistrial on several occasions but which motions were denied and which outbursts unduly influenced the jury against the defendant.

f. Because of the inflammatory summation of the State's counsel which went far beyond the evidence and which unduly influenced the jury against the defendant.

g. Because of the varying theories of the State as to the guilt of the defendant which were supported by evidence but which were presented to the jury by way of argument of State's counsel, as founded upon testimony.

h. Because the Court in its charge to the jury by its queries and comments on evidence portrayed emphatic approval of the State's theories and witnesses and thereby impaired a free and unbiased verdict.

i. Because the Court in its charge to the jury was argumentative to a degree which made comments on evidence characteristically an act of advocacy.

GROUP R.

1. The Court permitted the Attorney General, in his summation to the jury, to state:

"There is nobody at that table that doesn't feel he is guilty; I don't care what they say."

2. The Court permitted the Attorney General, in his summation to the jury, to state:

"What type of man would murder the child of Colonel Charles A. Lindbergh and Anne Morrow, Colonel Lindbergh who, once a poor boy, for the sake of achievement, for the sake of science, one evening stepped into an aeroplane and spanned the ocean, risked his life, subjected himself to the waves, and of course he flew with a few letters of introduction, and the next day found himself the most popular and the most glorious man in this world; a man who has been an inspiration to every

child in this world. Why, a tot, as soon as he gets to talk, wants a little aeroplane for a toy. What does it mean?—it is ambition; it is an ambition to invention, an ambition to everything: the inspiration of the children of the Nation.

"Anne Morrow, the cultured daughter of a former Ambassador to Mexico and a late United States Senator, a man who surely, if he had lived, would be President of the United States.

"Who would be the type of person that would take a child like that and murder it? Who could there be?

"Why, men and women, if that little baby, if that little curly-haired youngster were out in the grass in the jungle, breathing, just so long as it was breathing, any tiger, any lion, the most venomous snake would have passed that child without hurting a hair of its head."

3. The Court permitted the Attorney General, in his summation to the jury, to state:

"And let me tell you, men and women, the State of New Jersey and the State of New York and the Federal authorities have found that animal, an animal lower than the lowest form in the animal kingdom, public enemy Number 1 of this world, Bruno Richard Hauptmann; we have found him and he is here for your judgment."

4. The Court permitted the Attorney General, in his summation to the jury, to state:

"I think they have got lots of money. That is my notion against their notion that they haven't got money; money coming from cranks and idiots and fools, unAmericans all over the country, pouring in enough money to hire what they consider the four best lawyers avail-

able, to get the best criminal lawyer in the East."

5. The Court permitted the Attorney General, in his summation to the jury, to state:

"Then, counsel wants to know where is the phonograph record? Did you hear him ask Mr. Sisk of the Department of Justice if there was such a record, and did he have it, and would he produce it? Why, sure, that phonographic record has been alive and awake waiting for him to call for it, to put his voice on for you.

"I would have loved if you had heard the story all over again, Condon telling about this conversation, 'Will I burn if the baby is dead? Are you German, John? No, I am Scandinavian. Have you got the money? No, I haven't got the money. Doesn't Colonel Lindbergh think we are the right party?' "

6. The Court permitted the Attorney General, in his summation to the jury, to state:

"Why, if this wasn't a case concerning Colonel Lindbergh's child—you talk about the prestige of Colonel Lindbergh and the position of the Morrows—if it were the child of an ordinary citizen this case would have been over in one week, and that man would have paid the penalty by this time. But the fame and the glory and the name of Lindbergh has attracted lawyers. It has attracted newspaper men. It has attracted photographers. It has attracted curiosity seekers. It has attracted convicts. It has attracted idiots, lunatics. The whole world wants to get in under the glory of The Lindbergh and crush him more and more, just to get a little notoriety.

"It would have been over in a few days if it was anybody but Colonel Lindbergh."

7. The Court permitted the Attorney General in his summation to the jury, to state:

"Why one word, I think, from Colonel Lindbergh or Mrs. Morrow to the Governor of this State and that's all that would have been needed, I think, and the Governor would have said, 'Pick out any lawyer you want to have in the State, it is your child that was killed, and if you want some lawyer to prosecute this case representing the State you can have it.' I don't think there is any doubt that just the mere suggestion by Colonel Lindbergh or Mrs. Morrow, such as their position and rightly so—but no, not Colonel Lindbergh, not Mrs. Morrow, they didn't care who it was."

8. The Court permitted the Attorney General, in his summation to the jury, to state:

"That is the prestige—that is why Colonel Lindbergh is the type of man he is. It is an honor to sit in the same room with him, men and women, let me tell you."

9. The Court permitted the Attorney General, in his summation to the jury, to state:

"It is his child, you know, but that is the type of man he is. Modest, shy, asking nothing from anybody, except to be left to have a few peaceful moments. The prestige of the Morrows and the prestige of Colonel Lindbergh are well deserved and well earned."

10. The Court permitted the Attorney General, in his summation to the jury, to state:

"No, Colonel Lindbergh has contributed a whole lot to law and order in this case. Talk about the mob clamoring. Maybe they are lucky those mobs are not here."

11. The Court permitted the Attorney General, in his summation to the jury, to state:

"Why, don't you know that Betty Gow and

Violet Sharpe—every detective agency in the world that was available must have searched into the lives and the records of every member of the family, right to this date, every dollar they spent."

12. The Court permitted the Attorney General, in his summation to the jury, to state:

"The family of Violet Sharpe and the family of Betty Gow—I don't know whether they know it—but from the date of this crime they haven't moved one inch, not only themselves, but the immediate members of their families and people that they frequent and people that they associate with, they are not free from surveillance for one minute of the day or night."

13. The Court permitted the Attorney General, in his summation to the jury, to state:

"And Dr. Condon, his sons, lawyers, his daughter, the wife of an architect, himself and his elderly wife—why, from the very day that money was paid, they looked at every bank account and every dollar that was spent by them, to see if they had more money. It didn't have to be Lindbergh money—to see if there was more money, did they live differently. Their wires must have been tapped; people moved next to them to watch them and observe them. It must have been done."

14. The Court permitted the Attorney General, in his summation to the jury, to state:

"But let me tell you this: this fellow took no chance on the child awakening. He crushed that child right in that room into insensibility. He smothered and choked that child right in that room. That child never cried, never gave any outcry. Certainly not. The little voice was stilled right in that room.

That's a fair inference that comes from its failure to cry; either there in the room or outside."

15. The Court permitted the Attorney General, in his summation to the jury, to state:

"Certainly he stilled this little child's breath right into insensibility right in that room,—whether it drew another breath or not doesn't make any difference, but that child never could make an outcry. The smudges on the bedsheet cry out evidence of that fact that Betty Gow testified to, the fact that the child didn't cry out when it was disturbed. Yanked,—how? Not just taken up, the pins are still left in the bedsheets. Yanked, and its head hit up against that board,—must have been hit. He couldn't do it any other way. Certainly it must have hit up against that board. Still no outcry. Why? There was no cry left in the child. Did he use the chisel to crush the skull at the time or to knock it into insensibility? Is that a fair inference? What else was the chisel there for?—To knock that child into insensibility right there in that room.

"Counsel wants to know why it didn't cry out. There is the answer for you."

16. The Court permitted the Attorney General, in his summation to the jury, to state:

"That wouldn't mean anything to him. Why, he broke out of jails."

17. The Court permitted the Attorney General, in his summation to the jury, to state:

"Why, if that was the only thing the State had, if we didn't have another thing, men and women, except this man Condon coming in and sitting on this stand and saying, "There is the fellow I gave the money to," that would

be all we would need to convict him of murder in the first degree."

18. The Court permitted the Attorney General, in his summation to the jury, to state:

"—and if Condon had died and he wasn't here to testify, if Perrone came in and said, 'That is the man that gave me the note to deliver to Condon,' that would be enough to send this man to the chair, because when you have got the fellow that wrote the notes, you have got the fellow that had the sleeping garment, and the fellow that had the sleeping garment had the baby."

19. The Court permitted the Attorney General, in his summation to the jury, to state:

"Oh, no, it had to be a fellow that ice-water in his veins, not blood."

20. The Court permitted the Attorney General, in his summation to the jury, to state:

"You haven't dealt with that sort of animal, the lowest form of animal,—that is what you are dealing with: no heart, no soul. The only thing is he has the appearance of a man, he wears the clothes of a man, that is all there is to identify him."

21. The Court permitted the Attorney General, in his summation to the jury, to state:

"There it is: the blue circle, the red center and the holes; "B" in blue, for Bruno; "R" in red for Richard; holes, "H" for Hauptmann. "Our singnature." Nobody could reproduce that except Bruno Richard Hauptmann; . . ."

22. The Court permitted the Attorney General, in his summation to the jury, to state:

"Why he would cut your heart honestly with a razor and think nothing of it and go upstairs and eat. That's how cold-blooded this mur-

derer is—sent up there on this wild goose chase."

23. The Court permitted the Attorney General, in his summation to the jury, to state:

"The gentleman had a dictionary in his cell. Of course, he just happened to have it. It happened that he had it. He wasn't practicing up on his misspelling of these words."

24. The Court permitted the Attorney General, in his summation to the jury, to state:

"What a fake! What a fraud! What a joke! Defense! Wasting the taxpayers' money here.

"Sure, if there is any wasting, that is where it is, with that kind of a phoney defense.

"Perjury is a joke in this case. They seem to take it so lightly. They would swear to anything—anything to save Hauptmann."

25. The Court permitted the Attorney General, in his summation to the jury, to state:

"Of course, today, somebody has sold him a new story; somebody has told him, since he got to New Jersey, 'Now, you can't admit that when you get to Jersey, because in Jersey you are on trial for your life. In New York you were only on trial to see if you were coming to Jersey. And if you admit that you put that on that board, you are gone.'

"Somebody sold him that story. He never would have changed it for any other reason."

26. The Court permitted the Attorney General, in his summation to the jury, to state:

"And down he comes. The child is dead. He had crushed that child already, mind you, into insensibility before he came out of that room."

27. The Court permitted the Attorney General, in his summation to the jury, to state:

"Colonel Lindbergh's identification of his voice, if it is good enough for Colonel Lindbergh under oath, if Colonel Lindbergh says to you, 'That is the man who murdered my child,' men and women, that is good enough."

28. The Court permitted the Attorney General, in his summation to the jury, to state:

"We are not concerned about what the mob is clamoring for, as counsel refers to it, but you can bet your life if there is a clamor from the people of this country for this man's conviction, regarding which I don't know anything, except as referred to by counsel, I have sufficient faith in the American people to know that it is their honest belief and conviction that he is the murderer."

29. The Court permitted the Attorney General, in his summation to the jury, to state:

"But we could do one thing in this case, let me tell you—this jury can, by its verdict, do one thing for the Colonel, for Anne, for the country,—we can make the country a little bit more secure, we can make the children a little safer, we can make women a little happier."

30. The Court permitted the Attorney General, in his summation to the jury, to state:

"This fellow has been the inspiration for the greatest series of the meanest crimes in the history of the world."

31. The Court permitted the Attorney General, in his summation to the jury, to state:

"There may be some questions you can't answer, but there sits the man that can answer them. He will be thawed out, he is cold, yes, he will be thawed out when he hears that switch; that's the time he will talk."

32. The Court permitted the Attorney General, in his summation to the jury, to state:

"He wouldn't be an American. No American gangster and no American racketeer ever sank to the level of killing babies. Ah, no!

33. The Court permitted the Attorney General, in his summation to the jury, to state:

"It would have to be the type of man that would forsake his own mother, sixty-five years of age, and run away.

34. The Court permitted the Attorney General, in his summation to the jury, to state:

"Why, 'Judge not lest ye be judged.'—what a text! What a text for a defense that starts right out to rip the heart and souls out of Americans that are sworn to do their duty and are here only for that purpose."

35. The Court permitted the Attorney General, in his summation to the jury, to state:

"And so it is charged, with that as a basis, that is the basis that unfortunately under our system of government, men are permitted, with the protection of the courts, are permitted to assassinate men of good character and reputation. What do you think of that? Why, you know we have gotten to the stage in this country where criminals think they can do anything, if they get the right lawyer, that's all there is to it. All they need is the right mouthpiece. Why, police crookedness—I am not talking about anybody in this case but just generally talking about police crookedness, men and women."

36. The Court permitted the Attorney General, in his summation to the jury, to state with reference to Major General O'Ryan:

"We had to bring him here, and we took him away from a conference with the President to bring him here."

37. The Court permitted the Attorney General,

in his summation to the jury, to state with reference to defense witnesses:

"And where is he? Why isn't he here? Why aren't those other experts here? You know the reason. They wouldn't dare say it is not Hauptmann's, because, of course, they are Hauptmann's. Hauptmann says they look like Hauptmann's. But that doesn't make any difference. They have got to murder and assassinate each and every one of these men, there is no giving way.

38. The Court permitted the Attorney General, in his summation to the jury, to state:

"Why, I think they have probably spent more money than the State has."

39. The Court permitted the Attorney General, in his summation to the jury, to state with reference to Red Johnson:

"He was permitted to go back to Norway because the New Jersey authorities, the New York authorities, the Federal Government, they checked him and they rechecked him and they looked up his relatives and they looked up his activities and checked where he was that night and where he had been the night before, they checked his bank accounts, the bank accounts of his relatives, they had Scotland Yard checking up, or the Norwegian Government, whoever it was, checking up his relatives and they found, 'Well, what is the use of holding this fellow?' "

40. The Court permitted the Attorney General, in his summation to the jury, to state:

"I wouldn't get close enough to him. If I had my choice I wouldn't get in the same room, I wouldn't become contaminated, I wouldn't want to breathe the same air.

"I think too much of my friends and my

wife and my kids to be around him at all—I feel itchy, I feel oozy, I just couldn't stand being anywhere near him. I never walked into that jail even to get a confession from him.

41. The Court permitted the Attorney General, in his summation to the jury, to state in reference to the attic in Hauptmann's home in the Bronx:

"What would they see up there? No, but counsel wanted to go up there on a Sunday morning while the Attorney General was home sick in bed and couldn't make arrangements that Sunday morning, and I told him any other morning, but no, it had to be Sunday morning. Any morning during the week they could have gone up with their wood expert.

42. The Court permitted the Attorney General, in his summation to the jury, to state:

"I want to tell you what I think about Dr. Hudson. I think the gentleman may feel that he has a fair recollection; but he entered this case in order to attract the attention of the world to what he considers a good solution, a good chemical solution for fingerprinting; and if Hudson gets away or got away with his testimony in this case, he would make millions of dollars. That's what would happen. Everybody in the world, in the country, if he could only say that his testimony—his testimony—freed Hauptmann.

43. The Court permitted the Attorney General, in his summation to the jury, to state:

"But you smell these boards and you will find one has been tampered with and one hasn't. You get the odor from it. Why, overnight they said—They had to put our ladder in a safe. They wouldn't let anybody near that unless they were there—plants. But the boards, after the first night, out walked the defense

with the boards and this very minute the odor of these boards is different than it ever was. They know it is going to the jury, maybe today.

44. The Court permitted the Attorney General, in his summation to the jury, to state:

"These boards I think have been tampered with. Why, they suddenly got all sorts of breaks and everything. The fact of the matter is if you put them together you will find one of them will run right into the other, one of them will run right into the other, which is the best proof that at one time or another they were the same board. And that is the thing on which they want to crush Koehler.

45. The Court permitted the Attorney General, in his summation to the jury, to state:

"He hasn't told his lawyer a thing; he hasn't told this jury a thing; he didn't tell the Judge in the Supreme Court a thing—he has got nothing to tell."

46. The Court permitted the Attorney General, in his summation to the jury, to state:

"Either this man is the filthiest and vilest snake that ever crept through the grass, or he is entitled to an acquittal. And if you believe, as we do, you have got to convict him.

47. The Court permitted the Attorney General, in his summation to the jury, to state:

"Here is how it hangs now (indicating), way up there is the testimony of the State of New Jersey, way down in its lowest ebb is Hauptmann, Hauptmann, dangling on there, dangling on the hope and on the straw, right at the bottom of that scale, hoping that one juror, one juror may do it, may do it for Fisher, may do it for Reilly, may do it for somebody else, hoping that he will get life imprisonment instead of death."

48. The Court permitted the Attorney General, in his summation to the jury, to state:

"You convict this man of murder in the first degree. The Grand Jury of the County of Hunterdon had the courage to do it. The State of New Jersey has the courage. They stand here unafraid and ask for the penalty. Why? Because they know they are right."

49. The Court permitted the Attorney General, in his summation to the jury, to state:

"If you bring in a recommendation of mercy, a wishy-washy decision—yes, it is your province, I will not say a word about it, I will not say another word, once I sit down here in this case so far as the jury and its verdict is concerned. But it seems to me that you have and you will have the courage if you are convinced, as all of us are, the Federal authorities, the Bronx people who were there, the New Jersey State Police who were here, Colonel Lindbergh who was here, everybody that has testified, if you believe with us, you have got to find him guilty of murder in the first degree."

50. The Court permitted the Attorney General, in his summation to the jury, to state:

"I don't know that the Colonel is wealthy at all. As a matter of fact, I think he had a tough job scraping up the few dollars here, there and everywhere to make up the ransom money."

51. The Court erred in that the rights of the defendant guaranteed by the fourteenth Amendment of the Constitution of the United States (Section 1) were contravened in that the defendant was deprived of life and liberty without due process of law and was denied the equal protection of the laws in that the Attorney General in

his summation to the jury overstepped the bounds of propriety and fairness which should characterize the conduct of such an officer and because said summation contained improper insinuations, assertions, expressions of personal opinion and comments upon facts not in evidence, all of which calculated to mislead the jury to the prejudice of the defendant and involved a question of public policy; the particular statements so complained of and referred to being particularly set forth in the several Specifications as pointed out above in this Group R.

GROUP S.

1. The Attorney General in his opening to the jury said:

> "Then as he went out that window and down that ladder of his, the ladder broke. He had more weight going down than he had when he was coming up. And down he went with this child. In the commission of that burglary, that child was instantaneously killed when it received that first blow. It received a horrible fracture, the dimensions of which when you hear about it will convince you that death was instantaneous."

2. The Prosecutor of the Pleas in his opening to the jury, which was demanded by the defendant at the conclusion of the entire case, said:

> "And we have proved to you that that baby was killed by the fall from that ladder."

3. The Prosecutor of the Pleas in his opening to the jury, which was demanded by the defendant at the conclusion of the entire case, said:

> "We had an experiment performed, and it was so testified in this court, to show that a man went up the ladder and on the way down,

with the bundle in his arms, the ladder broke, in exactly the same place as this ladder broke with the defendant, Bruno Richard Hauptmann, on it. And we have proved to you conclusively that that fall caused the baby's death when it received the fractured skull, which was of such an extent that it caused instantaneous death."

4. The Prosecutor of the Pleas in his opening to the jury, which was demanded by the defendant at the conclusion of the entire case, said:

"We have proved first that the blow was inflicted by the fall from the ladder—."

5. The Prosecutor of the Pleas in his opening to the jury, which was demanded by the defendant at the conclusion of the entire case, said:

"And then we showed you an experiment also, how it was possible it was done by a man going up the ladder, then came out the window with the bundle and the ladder broke; as the ladder did break this crime was committed."

6. There was a material variance in the theory of the State as to the manner of the death of the child as expressed in the aforementioned excerpts from the openings and that expressed in the summation of the Attorney General as set forth in Specifications Nos. 14, 15 and 26 under Group R whereby the defendant suffered manifest wrong and injury and which material variance involved a question of public policy.

7. The Court erred in that the rights of the defendant guaranteed by the Fourteenth Amendment of the Constitution of the United States (Section 1) were contravened in that the defendant was deprived of life and liberty without due process of law and was denied the equal protection of the laws because of the material variance

in the theories of the State as to the manner of the death of the child as expressed in the aforementioned excerpts from the openings and that expressed in the summation of the Attorney General as set forth in Specifications Nos. 14, 15 and 26 under Group R.

8. The rights of the defendant guaranteed by Article 1, Section 8 of the Constitution of the State of New Jersey were contravened in that the defendant failed to be informed of the nature and cause of the accusation in that there was a material variance in the theory of the State as to the manner of the death of the child as expressed in the aforementioned excerpts from the openings and in the summation of the Attorney General as set forth in Specifications Nos. 14, 15 and 26 under Group R.

GROUP T.

1. The Court erred in that the rights of the defendant guaranteed by the Fourteenth Amendment of the Constitution of the United States (Section 1) were contravened in that the defendant was deprived of life and liberty without due process of law and denied the equal protection of the laws which involved a question of public policy for the reason that the jury was not properly sequestered and separated from the mass of the community as the jury intermingled with the general populace and were subjected to expressions of popular opinion detrimental to the defendant.

GROUP U.

1. The constables and bailiffs in charge of the jury during its deliberation failed to comply with

the usual oath administered to such constables and bailiffs in that meat and drink were supplied to the jury and said constables and bailiffs spoke and communicated with the jury without order of the Court as to matters detrimental to this defendant in that they were advised that if a verdict was not returned at a certain hour in the evening the presiding Justice would leave the Court House and they would have to remain out until morning because no verdict would be received until then; all of which was contrary to the ancient common law practices recognized and followed in this State in the trial of capital cases and was contrary to public policy and the rights of the defendant were thereby violated as guaranteed to him by Section 1 of the Fourteenth Amendment of the Constitution of the United States.

GROUP V.

1. The verdict was against the weight of the evidence.

EGBERT ROSECRANS,
Of Counsel with Plaintiff in Error.

FREDERICK A. POPE,
Of Counsel with Plaintiff in Error.

C. LLOYD FISHER,
Attorney for Plaintiff in Error.

Certificate of Entire Record

CERTIFICATE OF ENTIRE RECORD

HUNTERDON COUNTY COURT OF OYER AND TERMINER

THE STATE OF NEW JERSEY, *Complainant,* *vs.* BRUNO RICHARD HAUPTMANN, *Defendant.*	On Indictment for Murder. Certificate of Entire Record.

I, Thomas W. Trenchard, Judge of the Hunterdon County Court of the Oyer and Terminer, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of the above mentioned indictment and is returned with the bill of exceptions signed and sealed in the cause.

THOMAS W. TRENCHARD,
Judge. (L. S.)
Hunterdon County Oyer and Terminer.

INDEX

STATE'S WITNESSES

PAGE

Opening Statement for State by Mr. Wilentz—
Direct 1

Walter E. Roberts—
Direct 14
Cross 32

Anne Morrow Lindbergh—
Direct 58

Charles A. Lindbergh—
Direct 77
Cross 116
Re-Direct 207

Charles E. Williamson—
Direct 208
Cross 216
Re-Direct 225
Re-Cross 226

Elsie Whateley—
Direct 227
Cross 244

Index of Witnesses

Bessie Mowat Gow—
Direct 254
Cross 279
Re-Direct 772

Joseph Wolf—
Direct 341
Cross 348
Re-Direct 360

Lewis J. Bornmann—
Direct 361
Cross 375
Re-Direct 389

Frank A. Kelly—
Direct 389
Cross 418
Re-Direct 432

Nuncio DeGaetano—
Direct 432
Cross 439

Amandus Hochmuth—
Direct 444
Cross 450
Re-Direct 462
Re-Cross 467

John J. Lamb—
Direct 470

Arthur Koehler—
Direct 471
Cross 472

Index of Witnesses

Frank A. Kelly—
Direct 479

John J. Sweeny—
Direct 480
Cross 488
Re-Direct 503
Re-Cross 511

Joseph Anthony Perrone—
Direct 512
Cross 522
Re-Direct 543

James J. O'Brien—
Direct 547

P. Milton Gaglio—
Direct 548
Cross 553

Max Rosenhain—
Direct 558
Cross 561

Alfred J. Reich—
Direct 562
Cross 580

John F. Condon—
Direct 588
Cross 673

Index of Witnesses

John F. Condon (continued)—
Re-Direct 809
Re-Cross 818

Henry Breckinridge—
Direct 822
Cross 836
Re-Direct 842
Re-Cross 843

Myra Condon Hacker—
Direct 844
Cross 847

William F. Horn—
Direct 853
Cross 855

Thomas J. Ritchie—
Direct 864

Frank J. Wilson—
Direct 882
Cross 897
Re-Direct 919
Re-Cross 927

H. Norman Schwarzkopf—
Direct 937
Cross 939

Albert S. Osborn—
Direct 941
Cross 1012

Index of Witnesses

Hildegarde Olga Alexander—
Direct 1051
Cross 1058
Re-Direct 1073

Elbridge W. Stein—
Direct 1074
Cross 1112
De-Direct 1151

John F. Tyrrell—
Direct 1154
Cross 1178
Re-Direct 1246
Re-Cross 1246

Herbert J. Walter—
Direct 1248
Cross 1265
Re-Direct 1272

Morton Clemmer Maish—
Direct 1272
Cross 1274
Re-Direct 1276
Re-Cross 1277

Harry M. Cassidy—
Direct 1279
Cross 1291

Wilmer T. Souder—
Direct 1301
Cross 1311
Re-Direct 1336

Index of Witnesses

Albert D. Osborn—
Direct 1337
Cross 1348
Re-Direct 1383
Re-Cross 1384

Clark Sellers—
Direct 1386
Cross 1408

William J. Allen—
Direct 1433
Cross 1439

Orville Wilson—
Direct 1444
Cross 1447
Re-Direct 1451
Re-Cross 1451

Andrew Zapolsky—
Direct 1453
Cross 1457

Harry W. Walsh—
Direct 1462
Cross 1466
Re-Direct 1473
Re-Cross 1474

Walter H. Swayze—
Direct 1475
Cross 1481

Charles H. Mitchell, M. D.—
Direct 1481
Cross 1488

Index of Witnesses

Stuart W. Cragin—
Direct. 1506

Longstreet Hinton—
Direct 1510

Stephen C. Reynolds—
Direct 1511

Henry E. Schneider—
Direct 1512

William F. Wilkinson—
Direct 1513

Hiram E. Manville, Jr.—
Direct 1514

Francis D. Bartow—
Direct 1515

Thomas Tring—
Direct 1517

Daniel R. Bowen—
Direct 1519

William Echtermauer—
Direct 1520

John Helmich—
Direct 1520

John Joseph Lyons—
Direct 1522
Cross 1529

Index of Witnesses

Miran John Ozmec—
Direct 1530

William R. Strong—
Direct 1531
Cross 1533

John Joseph Lyons (recalled)—
Direct 1534
Cross 1535

William F. Seery—
Direct 1535
Cross 1541
Re-Direct 1552
Re-Cross 1576

Elmira Dormer—
Direct 1577
Cross 1581
Re-Direct 1582

Thomas H. Sisk—
Direct 1582
Cross 1595

Henry Eichin—
Direct 1599
Cross 1610
Re-Direct 1616
Re-Cross 1622

John Wallace—
Direct 1629
Cross 1667
Re-Direct 1678
Re-Cross 1679

Index of Witnesses

Ella Achenbach—
Direct 1681
Cross 1692

Walter Lyle—
Direct 1708

Stanley R. Keith—
Direct 1710
Cross 1711

James Paul Petrosino—
Direct 1713
Cross 1718
Re-Direct 1719

James M. Cashman—
Direct 1720

Charles F. W. Enklen—
Direct 1723

Anselm Cramer—
Direct 1729

Maurice W. Tobin—
Direct 1730
Cross 1737

Henry D. Bruckman—
Direct 1740
Cross 1744

Benjamin Arac—
Direct 1755

Index of Witnesses

William Mulligan—
Direct 1771
Cross 1773
Re-Direct 1775
Re-Cross 1777

Joseph H. Burkard—
Direct 1779
Cross 1787

Harry Trister—
Direct 1789
Cross 1790
Re-Direct 1791

Herman Riedrich, Jr.—
Direct 1792
Cross 1794
Re-Direct 1797
Re-Cross 1799

William E. Frank—
Direct 1804
Cross 1822
Re-Direct 1881
Re-Cross 1892

Barney L. Fink—
Direct 1897
Cross 1898

Edward F. Morton—
Direct 1900
Cross 1907
Re-Direct 1915

Index of Witnesses

Cecile M. Barr—
Direct 1916
Cross 1919
Re-Direct 1927

William M. Cody—
Direct 1929
Cross 1931
Re-Direct 1939

Lewis J. Bornmann (recalled)—
Direct 1942
Cross 1957

Thomas H. Sisk (recalled)—
Cross 1960

John J. Finn (recalled)—
Direct 1969

Elsie Whateley (recalled)—
Direct 1971
Cross 1974

Willard Whited—
Direct 1981
Cross 1987
Re-Direct 2034

Charles B. Rossiter—
Direct 2036
Cross 2041

Max Rauch—
Direct 2059
Cross 2061

Index of Witnesses

Joseph Jennings Dorn—
Direct 2062
Cross 2068
Re-Direct 2085
Re-Cross 2087

William M. Schluter—
Direct 2091
Cross 2093

David Hirsch—
Direct 2098
Cross 2099
Re-Direct 2102
Re-Cross 2106

Lawrence Miller—
Direct 2111
Cross 2114
Re-Direct 2122

Frank A. Kelly (recalled)—
Cross 2126
Re-Direct 2138
Re-Cross 2142

John A. Lyons—
Direct 2145
Cross 2148

Lewis J. Bornmann (recalled)—
Direct 2150
Cross 2160

Charles F. W. Enkler (recalled)—
Direct 2172
Cross 2177
Re-Direct 2185

Index of Witnesses

Anselm Cramer (recalled)—
Direct 2188
Cross 2190
Re-Direct 2195
Re-Cross 2196

Arthur Koehler—
Direct 2197
Cross 2298
Re-Direct 2333
Re-Cross 2344

Motions to Dismiss 2356
Opening statement in behalf of the defendant by Mr. Fisher 2376

DEFENSE WITNESSES.

Bruno Richard Hauptmann—
Direct 2398

Christian Fredericksen—
Direct 2405
Cross 2411
Re-Direct 2414
Re-Cross 2415

Katy Fredericksen—
Direct 2416
Cross 2418
Re-Direct 2419

Index of Witnesses

Bruno Richard Hauptmann—
Direct (Resumed) 2424
Cross 2537

George Madison Priest—
Direct 2818

Bruno Richard Hauptmann—
Cross (Resumed) 2832
Re-Direct 2866
Re-Cross 2895

Anna Hauptmann—
Direct 2907
Cross 2928
Re-Direct 2958
Re-Cross 2962

Elvert Carlstrom—
Direct 2964
Cross 2970
Re-Direct 3062
Re-Cross 3065

Louis Kiss—
Direct 3067
Cross 3078
Re-Direct 3111
Re-Cross 3113

Index of Witnesses

August Van Henke—
Direct 3114
Cross 3122
Re-Direct 3131
Re-Cross 3132

Lou Harding—
Direct 3134
Cross 3138
Re-Direct 3165

John M. Trendley—
Direct 3167
Cross 3168
Re-Direct 3269

Peter H. Sommer—
Direct 3274
Cross 3279
Re-Direct 3326
Re-Cross 3328

Sebastian Benjamin Lupica—
Direct 3336
Cross 3348
Re-Direct 3353
Re-Cross 3356

Hans Klippenburg—
Direct 3357
Cross 3364
Re-Direct 3381
Re-Cross 3382

Index of Witnesses

Anna Bonesteel—
Direct 3387
Cross 3393

Joseph Dutt—
Direct 3400
Cross 3401

Carl Herman Joerg—
Direct 3402
Cross 3404
Re-Direct 3404

Paul Vetterle—
Direct 3405
Cross 3409

Thomas H. Sisk (recalled)—
Cross 3410
Re-Direct 3414

Russell H. Snook—
Direct 3415
Cross 3422
Re-Direct 3422

H. Norman Schwarzkopf (recalled)—
Direct 3423
Cross 3458

Philip Moses—
Direct 3481
Cross 3488
Re-Direct 3499

Index of Witnesses

Maria Muller—
Direct 3500
Cross 3505
Re-Direct 3509
Re-Cross 3511

Joseph T. Tartell—
Direct 3511

Louise Wollenberg—
Direct 3519
Cross 3522

Otto Wollenberg—
Direct 3524

Bertha Hoff—
Direct 3527

John E. Seykora—
Direct 3534
Cross 3542
Re-Direct 3544
Re-Cross 3548

Benjamin Heier—
Direct 3550

Victor Schussler—
Direct 3551
Cross 3554
Re-Direct 3554
Re-Cross 3555

Hilda Heyne—
Direct 3555
Cross 3557

Index of Witnesses

Otto Heyne—
Direct 3558
Cross 3559

Benjamin Heier—
Direct 3559
Cross 3568
Re-Direct 3620
Re-Cross 3623

George Steinweg—
Direct 3624
Cross 3629

Sam Streppone—
Direct 3635
Cross 3641
Re-Direct 3641
Re-Cross 3641

E. Paul Sjostrom—
Direct 3646
Cross 3665
Re-Direct 3665
Re-Cross 3666

Louis Kubler—
Direct 3668
Cross 3680
Re-Direct 3681
Re-Cross 3682

Frank A. Kelly (recalled)—
Direct 3683
Cross 3705
Re-Direct 3709
Re-Cross 3715

Index of Witnesses

Oscar John Bruchmann—
Direct 3717

Gustave Miller—
Direct 3726
Cross 3739
Re-Direct 3749
Re-Cross 3750

Theron J. Main—
Direct 3751
Cross 3758
Re-Direct 3764
Re-Cross 3766

Gerta Henkel—
Direct 3768
Cross 3771
Re-Direct 3778
Re-Cross 3781

Erastus Mead Hudson—
Direct 3785
Cross 3816
Re-Direct 3862
Re-Cross 3872

William Whithead—
Direct 3875
Cross 3877
Re-Direct 3877

George E. J. Lenz—
Direct 3878
Cross 3879
Re-Direct 3880
Re-Cross 3880

Index of Witnesses

William Diehl—
Direct 3881
Cross 3882
Re-Direct 3887
Re-Cross 3888

Augusta Hile—
Direct 3889
Cross 3890
Re-Direct 3890
Re-Cross 3891

Karl Henkel—
Direct 3891
Cross 3895
Re-Direct 3895

Henry Uhlig—
Direct 3897
Cross 3914

Walter Manley—
Direct 3914
Cross 3915

Stanley Seal—
Direct 3918
Cross 3923
Re-Direct 3926
Re-Cross 3926

Hugh Orr—
Direct 3927
Cross 3929

Charles De Bisschop—
Direct 3940
Cross 3987

Index of Witnesses

Charles De Bisschop—
Direct 4006
Cross 4015
Re-Direct 4024
Re-Cross 4026

William Brevoort Bolmer—
Direct 4033
Cross 4043
Re-Direct 4044
Re-Cross 4046

Ewald Mielke—
Direct 4048
Cross 4051
Re-Direct 4054
Re-Cross 4055

REBUTTAL.

Joseph J. Farber—
Direct 4087
Cross 4090
Re-Direct 4092

Arthur Larsen—
Direct 4093
Cross 4095
Re-Direct 4100

Oscar Hilbert Christenson—
Direct 4100
Cross 4109

George G. Wilton—
Direct 4110
Cross 4117
Re-Direct 4120
Re-Cross 4120

Index of Witnesses

Fred H. Schultz—
Direct 4121

Harold S. Betts—
Direct 4122
Cross 4124
Re-Direct 4128

Alfred Budreau—
Direct 4129
Cross 4129
Re-Direct 4130
Re-Cross 4130

Joseph O. Levenson—
Direct 4134
Cross 4137
Re-Direct 4142

Erna Jung—
Direct 4143
Cross 4146
Re-Direct 4158

Henry Jung—
Direct 4158
Cross 4160
Re-Direct 4165
Re-Cross 4166

Henna Fisch—
Direct 4173
Cross 4178
Re-Direct 4188
Re-Cross 4190

Index of Witnesses

John F. O'Ryan—
Direct 4193
Cross 4194

Selma Kohl—
Direct 4196
Cross 4197

William Konietzko—
Direct 4200
Cross 4201
Re-Direct 4203
Re-Cross 4204

Lewis J. Bornmann (recalled)—
Direct 4205
Cross 4207

Arthur Koehler (recalled)—
Direct 4215
Cross 4229
Re-Direct 4265
Re-Cross 4267

Leo Singer—
Direct 4267
Cross 4270
Re-Direct 4272

Ottilia Hoerber—
Direct 4272
Cross 4274
Re-Direct 4277
Re-Cross 4279

Ernest Miller—
Direct 4279
Cross 4280

Index of Witnesses

Catherine Minners—
Direct 4285
Cross 4286
Re-Direct 4294
Re-Cross 4295

Elmer Johnson—
Direct 4296
Cross 4298
Re-Direct 4306
Re-Cross 4307

George Marshall—
Direct 4309
Cross 4311
Re-Direct 4315
Re-Cross 4315

Opening Summation by Mr. Hauck 4331
Court's Charge 4498
Exception to Charge 4516
Requests to Charge 4549
Demand for Bill of Particulars 4558
Assignment of Errors 4567
Certificate of Entire Record 4649

INDEX OF STATE EXHIBITS

Exhibit No.	Description.	Page.
S- 1	Two-mile radius map	22
S- 2	Diagram of east elevation of Lindbergh house and diagram of southeast corner room on second floor	27
S- 3	Map of outlines of Lindbergh house, measured on outside	33
S- 4	First and second floor plans of Lindbergh house	45
S- 5	Map of area in immediate vicinity of Lindbergh property	52
S- 6	Photograph of child	63
S- 7	Photograph of screen and crib	65
S- 8	Photograph of east window, dresser, etc., in room	65
S- 9	Photograph of articles of furniture in room	66
S-10	Photograph of crib	67
S-11 and S-12	Photographs of views of nursery room	67
S-13	Flannel shirt worn by child	69
S-14	Sleeveless shirt	70
S-15	Sleeping suit	70
S-16	Thumb guard	72
S-17 and S-18	Envelope and note left on window sill	84
S-19 and S-20	Envelope and note received by Colonel Lindbergh in mail at East Amwell Township	92
S-21— S-22— S-23—	Envelope and two notes received by Col. Breckinridge.	100
S-24—(For Ident.)	Notes received by Dr. Condon	101
S-25—(For Ident.)		
S-26—(For Ident.)		
S-27—(For Ident.)	Notes received by Dr. Condon	102
S-28—(For Ident.)		
S-29—(For Ident.)	Notes received by Dr. Condon	103
S-30—(For Ident.)	Part of piece of wrapping paper containing sleeping suit	103
S-31—(For Ident.)	Envelope and note received with sleeping suit	104

Index of State Exhibits

Exhibit No.	Description.	Page.
S-32—(For Ident.)	Envelope and note addressed to Dr. Condon	104
S-33—		
S-34—(For Ident.)	Envelope	
S-35—(For Ident.)	Note	104
S-36—(For Ident.)	Envelope	104
S-37—(For Ident.)	Note	105
S-38—(For Ident.)	Note	105
S-39—(For Ident.)	Note obtained from under table in front of florist shop	108
S-40—(For Ident.)	Note	111
S-24, S-25, S-26—	Received in evidence	184
S-29—	Piece of cloth used by Miss Gow on baby's shirt	259
S-30—	Piece of Cloth with scalloped edging	261
S-31—(For Ident.)	Photograph of footprint	360
S-32—(For Ident.)	Ladder	370
S-33—(For Ident.)	Dowel pin	372
S-34—(For Ident.)	Chisel	372
S-35—	In Evidence—Photograph of exterior of grounds	374
S-36—	In Evidence—(S-31 for Ident.) Photo of footprint	399
S-37—	In Evidence—(S-6 for Ident.) Photograph	400
S-38—	Photograph of house	412
S-39—(For Ident.)	Suitcase	434
S-40—(For Ident.)	Extension ladder	489
S-41—	Photograph of Van Cortlandt Park	573
S-42—	Envelope postmarked March 9, 1932, New York, N. Y., 12 noon, received by Condon	594
S-43—	Envelope (S-25 for Ident.)	596
S-44—	Note (S-26 for Ident.)	597
S-45—	Envelope addressed to Col. Lindbergh	597
S-46—	Copy of ad in New York American	602
S-47 and S-48—	Envelope and note to Condon	605
S-49—	Photograph of frankfurter stand and vicinity	609
S-50—	Envelope	610
S-51—	Note found at frankfurter stand	610
S-52—(S-31 for Ident.)	Letter received by Condon	632
S-53—	Brown envelope containing sleeping suit	633

Index of State Exhibits

Exhibit No.	Description.	Page.
S-54	—Ad in N. Y. American, "I accept. Money is ready"	637
S-55 and S-56	—Envelope and note	638
S-57	—Ad in N. Y. American—March 22	639
S-58	—Ad in N. Y. American—March 20	639
S-59	—Ad in N. Y. American—April 2	639
S-60 and S-61	—Envelope and note	640
S-62	—Ad in N. Y. American—March 26	640
S-63	—Ad in N. Y. American—March 31	640
S-64 and S-65	—Envelope and letter, April 1st	643
S-66 and S-67	—Note and envelope	645
S-68	—Note (S-39 for Ident.)	647
S-69	—Envelope	647
S-70	—(S-40 for Ident.) Note received night of April 2, at St. Raymond's Cemetery by Condon	661
S-71	—Advertisement—April 6	668
S-72	—Specimen of handwriting of defendant taken September 20, 1934	861
S-73	—Specimen of handwriting of defendant taken September 20, 1934	864
S-74	—Specimen of handwriting of defendant taken September 20, 1934	864
S-75	—Specimen of handwriting of defendant taken September 20, 1934	864
S-76	—Specimen of handwriting of defendant taken September 20, 1934	864
S-77	—Specimen of handwriting of defendant taken September 20, 1934	864
S-78	—Specimen of handwriting of defendant taken September 20, 1934	871
S-79	—Specimen of handwriting of defendant taken September 20, 1934	871
S-80	—Specimen of handwriting of defendant taken September 20, 1934	871
S-81	—Specimen of handwriting of defendant taken September 20, 1934	871
S-82	—Specimen of handwriting of defendant taken September 20, 1934	871

Index of State Exhibits

Exhibit No.	Description.	Page.
S-83	Specimen of handwriting of defendant taken September 20, 1934	871
S-84	Specimen of handwriting of defendant taken September 20, 1934	871
S-85	Specimen of handwriting of defendant taken September 20, 1934	874
S-86	Specimen of handwriting of defendant taken September 20, 1934	877
S-87	Specimen of handwriting of defendant taken September 20, 1934	878
S-88-S-96	Defendant's application for automobile licenses	879
S-97 and 98	Specimens of handwriting of defendant taken September, 1934	941
S-99	Original list of serial numbers on yellow sheets	884
S-100	Letter, Col. Lindbergh to Ogden B. Mills, Secretary of Treasury	885
S-100A	Envelope	885
S-101	Printed copy of circular containing list of serial numbers	886
S-102	(For Ident.) Package containing 966 gold certificates, $14,600	889
S-103	(For Ident.) Five dollar bill, "Loew's"	892
S-104 and S-105	Photographic reproductions of parts of notes	957
S-106	Photographic reproduction on transparent film of 11 devices	865
S-107	Photographic enlargement of various clippings from defendant's handwriting	972
S-108	Ditto	973
S-109	Photographic enlargement of various clippings from ransom notes	973
S-110	Additional words and letters for comparison (photographic enlargements)	984
S-111	Ditto	984
S-112	Ditto	989
S-113 to -S-113E	(Six photographs for jury)	995

Index of State Exhibits

Exhibit No.	Description.	Page.
S-114— S-115— S-116— S-117— S-118— S-119— S-120—	Sets of photographic specimens of handwriting submitted by witness Stein	1080
S-121— S-122— S-123— S-124— S-125— S-126— S-127— S-128— S-129— S-130—	Ten sets of photographic reproductions of specimens of handwriting submitted by witness John F. Tyrrell	1157, 1158
S-131— S-132—	Photographic reproductions of specimens of handwriting submitted by witness Herbert J. Walter	1249, 1250
S-133	Bromide enlargement, ditto	1251
S-134	Bromide enlargement, ditto	1257
S-135-S-136	Bromide enlargement, ditto	1264
S-137 to S-146, Inclusive	Ditto	1278
S-148	Photographic reproduction of specimens of handwriting submitted by witness Cassidy	1285
S-149	Set of eight photographic illustrations	1288
S-150 to S-156, Inclusive	Seven sets, ditto	1291
S-157	Photographic reproduction of specimens of handwriting submitted by witness Souder	1305
S-158	Ditto, chart	1310
S-159	Bromide enlargement of specimens of handwriting submitted by witness Albert D. Osborn	1341
S-160	Ditto, request writings	1344
S-161	Index book of cut-outs	1347
S-162	Book of enlargements	1347
S-163	Photographic reproduction of specimens of handwriting submitted by witness Sellers	1394

Index of State Exhibits

Exhibit No.	Description.	Page.
S-164	Ditto	1400
S-165	Photograph of scene at which body was found	1438
S-166	Death certificate (certified copy)	1480
S-167	Medical report of Dr. Mitchell	1506
S-168	$10 gold certificate, No. 73976634, Serial A	1528
S-169	$10 gold certificate, No. A57232100A	1541
S-170	$20 gold certificate, No. A35272048A, in envelope.	1555
S-171	Shoes and shoe box	1557
S-172	$20 bill found on Hauptmann, No. A35517877A	1561
S-173	(For Ident.) Six lottery tickets	1585
S-174	Map, Woodlawn Cemetery	1600
S-175	Photograph of St. Raymond's Cemetery (including Whittemore Avenue)	1628
S-176	Photograph of Hauptmann home and garage and vicinity	1632
S-177	Plane	1646
S-178	Envelope containing "83 ten's"	1649
S-179	Envelope containing "100 ten's"	1652
S-180	Photograph of interior of garage, including south wall.	1654
S-181	Shellac can	1656
S-182	Two cloths found in shellac can	1657
S-183		
S-184	Twelve envelopes containing $1,000 each, found in garage	1660, 1662
S-185		
S-186		
S-187		
S-188		
S-189		
S-190		
S-191		
S-192		
S-193		
S-194		
S-195		
S-196	Chest of tools	1723
S-197	Board (part of wall of garage)	1727

Index of State Exhibits

Exhibit No.	Description.	Page.
S-198— S-199— S-200— S-201— S-202—	Envelopes containing money found in board (S-197).	1731
S-203	Photograph of closet in Hauptmann's home	1734
S-204	(For Ident.) Board taken from closet	1735
	(Received in evidence)	1740
S-205	Envelope containing brokerage and bank accounts of Hauptmann and Anna Hauptmann	1771
S-207	(For Ident.) Employment record book of Majestic Apartments	1901
	(Received in evidence) as S-209	1904
S-208	Employment card of Hauptmann (Majestic)	1901
S-210	Chisel (S-34 for Ident., received in evidence)	1944
S-211	Ladder (S-32 for Ident., received in evidence)	1955
S-212	Dowel pin (S-33 for Ident., received in evidence)	1956
S-213	$5 bill, Loew's Sheridan Square Theatre (S-103 for Ident., received in evidence)	1970
S-214	Suitcase (S-39 for Ident., received in evidence)	1974
S-215	Photograph of attic in Hauptmann's home	2061
S-216	(For Ident.) Photograph of mill and machines in Dorn's lumber plant	2064
S-217	(For Ident.) Bill of lading	2082
S-218	Photograph of pulleys	2087
S-219	(For Ident.) Car receipt	2098
S-220	(For Ident.) Invoice	2098
S-221	(For Ident.) Invoice	2098
S-222	In Evidence—Invoice	2105
S-223	Piece of lumber from bin of National Lumber & Millwork Company	2121
S-224	Paper found in writing desk in Hauptmann's living room	2150
S-225	(For Ident.) Triangular piece of wood (bracket found in Hauptmann's garage)	2158
S-226	Piece of board from attic of Hauptmann's home	2159
S-227	(S-225 for Ident.) received in evidence	2160

Index of State Exhibits

Exhibit No.	Description.	Page.
S-228	Photograph of attic	2161
S-229	Photograph of attic (enlargement)	2220
S-230	(For Ident.) Photograph showing grain of ladder rail and attic board	2222
S-231	(S-230 for Ident.) received in evidence	2225
S-232	Photograph of knot in board	2228
S-233	Photograph of board	2230
S-234	(For Ident.) Paper used in demonstration	2245
	(Received in evidence)	2250
S-235	(For Ident.) Ditto	2246
	(Received in evidence)	2250
S-236	(No exhibit marked)	2249
S-237	(For Ident.) Impression of Rung 10, Sec. 3	2249
	(Received in evidence)	2249
S-238	(For Ident.) Photograph of marks of various planes	2253
	(Received in evidence)	2255
S-239	Photograph of portions of plane marks	2257
S-240	Chart showing pieces of wood in ladder	2265
S-241	Chart	2266
S-242	Diagram	2272
S-243	Chart	2273
S-244-S-245	Two enlarged photographs	2278
S-246	Diagram	2281
S-247	Diagram	2281
S-248	Photograph	2282
S-249	Diagram	2285
S-250	Chart	2286
S-251	Photograph of Hauptmann's automobile	2298
S-252	(For Ident.) Small book with handwriting	2548
S-253	(For Ident.) Signature slip	2548
S-254	(For Ident.) Signature slip	2548
S-255	German-American Dictionary	2574
S-256	Check for $74—"Senventy"	2576
S-257	Page of memorandum book	2580
S-258	Account book	2582
S-259	(For Ident.) Small German-American Dictionaries	2586
S-259	Note book of accounts	2590

Index of State Exhibits

Exhibit No.	Description.	Page.
S-260	Letter to broker, May 21, 1931	2593
S-261	Memorandum book (gray cover)	2606
S-262	Memorandum book (black cover)	2624
S-263	Registry receipt (letter from broker)	2633
S-264	Photograph of broom closet and kitchen in Hauptmann's home	2641
S-265	Memorandum book (of which one page was marked S-257)	2645
S-266	Notebook	2647
S-267	Notebook	2709
S-268	Pay check, Reliance Property Mgt. to Hauptmann, $36.67, March, 1932	2726
S-269	Pay check, $6.67, April	2727
S-270	(For Ident.) Calculation on sheet of paper made by Hauptmann on cross-examination	2795
S-271	(For Ident.) Letters, Hauptmann to Fisch family	2809
S-272	In Evidence—Letter, May 4/34, Hauptmann to Fisch family	2815
S-273	(For Ident.) Letter, July 8/34	2816
S-274	(S-273 received in evidence)	2828
S-275	Translations of S-272 and S-274	2832
S-276	Translations of S-272 and S-274	2832
S-277	(For Ident.) Christiansen's book (Dunellen)	3054
S-278	(For Ident.) Front page of New York Journal, October, 1934	3059
S-279	(For Ident.) September 24	3060
S-280	(For Ident.) September 29	3060
S-281	(For Ident.) September 27	3060
S-282	(For Ident.) September 27	3061
S-283	(For Ident.) September 28	3061
S-284	(For Ident.) September 29	3061
S-285	(For Ident.) October 1	3062
S-286	(For Ident.) September 24	3062
S-287	(For Ident.) Photograph shown to witness Peter H. Sommer on cross-examination	3284
S-288	(For Ident.) Another photograph, ditto	3301
S-289	(For Ident.) Affidavit (witness Sommer)	3316

Index of State Defense Exhibits

Exhibit No.	Description.	Page.
S-290—(For Ident.)	Photograph of woman shown witness Sommer on cross-examination	3330
S-291—(For Ident.)	Ditto	3330
S-292—	Page with autograph of Philip Moses	3491
S-294—(For Ident.)	Photograph shown Dr. Hudson on cross	3833
S-295—(For Ident.)	Ditto	3839
S-296—(For Ident.)	Ditto	3839
S-297—(For Ident.)	Ditto	3856
S-298—(For Ident.)	Paper shown witness Diehl on cross-examination	3885
S-299—	Sixpenny nail, cut, shown to DeBisschop on cross-examination	4019
S-300—	Ditto, eightpenny	4019
S-301—(For Ident.)	Board, piece of southern pine, shown DeBisschop on cross	4024
S-302—	Two photographs of Rail 16 produced by witness Wilton	4115
S-303—	Ditto	4115
S-304—(For Ident.)	Twelve notes to Jung	4165
S-305—(For Ident.)	$700 note, February 6, to Jung	4165
S-306—(For Ident.)	Package of six nails	4207
S-307—	Photograph of short leaf yellow pine	4226
S-308—(For Ident.)	Paper shown to witness Ottilia Hoerber on direct	4273
S-309—(S-293 Ident.)		4325

INDEX OF STATE DEFENSE EXHIBITS

D- 1—(For Ident.)	Photograph of Miss Gow	294
D- 2—(For Ident.)	Photograph of Miss Gow	294
D- 3—(For Ident.)	Photograph of Violet Sharpe	329
D- 4—(For Ident.)	Photograph of Miss Gow	329
D- 5—(For Ident.)	Photograph (unidentified)	329
D- 6—(For Ident.)	Photograph of Condon	329
D- 7—(For Ident.)	Sheet of standard handwriting of Dr. Condon made on cross-examination	679
D- 8—	Letter to Dr. Condon from Captain Eels	798

Index of State Defense Exhibits

Exhibit No.	Description.	Page.
D- 9	—Letter to Dr. Condon from Captain Eels	798
D-10	—Photograph	851
D-11	—(For Ident.) Card in handwriting of Isidor Fisch	1017
D-12	—(For Ident.) Envelope postmarked "Leipsig"	1213
D-13	—(For Ident.) Envelope postmarked Grand Central	1213
D-14	—(For Ident.) Envelope postmarked Washington, D. C.	1214
D-15	—(For Ident.) Postcard postmarked Station T	1214
D-16	—(For Ident.) Postcard postmarked Station T	1214
D-17	—(For Ident.) Postcard postmarked New York	1214
D-18	—(For Ident.) Postcard postmarked Schwaben	1216
D-19	—(For Ident.) Envelope postmarked New York, U. S. A.	1217
D-20	—(For Ident.) Envelope, typed, postmarked Netherlands	1218
D-21	—(For Ident.) Postcard postmarked Wulfrath	1219
D-22	—(For Ident.) Envelope (Fisch) postmarked Leipzig.	1243
D-23	—(For Ident.) Postcard postmarked White Sulphur Springs	1243
D-24	—(For Ident.) Letter in German signed "Isidor"	1272
D-25	—(For Ident.) Copy of portion of Walter exhibit	1277
D-26	—(For Ident.) Paper shown witness Souder on cross-examination	1336
D-27	—(For Ident.) Envelope shown witness Osborn on cross-examination	1357
D-28	—(For Ident.) Ditto	1357
D-29	—(For Ident.) Ditto	1358
D-30	—(For Ident.) Card shown to witness Sellers	1419
D-31	—(For Ident.) Ditto	1420
D-32	—(For Ident.) Photograph of gate and area surrounding St. Raymond's	1623
D-33	—(For Ident.) Photograph of Fisch shown to witness Mulligan of cross-examination	1774
D-34	—(For Ident.) Handwriting of witness Morton, on cross-examination	1914
D-40	—Photograph of gate of Woodlawn Cemetery	2463

Index of State Defense Exhibits

Exhibit No.	Description.	Page.
D-41—		
D-42—	In Evidence—Payroll records of Majestic Apts	2869
D-43—	Postcard, January, 1934, Fisch to Hauptmann	2884
D-44—	Meteorological Survey for August, 1934, in New York City	2963
D-45—	Photograph of Fisch, D-33 for Ident., received in evidence	3360
D-46—	Photograph of Violet Sharpe, D-1 for Ident., received in evidence	3388
D-47—	(For Ident.) Copy of Seykora report	3414
D-48—	(D-32 for Ident., received in evidence) aerial view of St. Raymond's Cemetery	3483
D-49—	(For Ident.) Letter, May 3, 1932, Judy Schwartz to Heier	3623
D-49—	Radio record of Fisch, May 10/33	3637
D-50 to D-59—	Ten photographs of ladder	3663
D-60—	Group of 57 photographs	3664
D-61—	Board used by witness Seal in demonstration	3925
D-62 and D-63—	Boards used by witness DeBisschop	3969
D-64 and D-65—	Ditto	3971
D-66 and D-67—	Ditto	3973
D-68—	Sixpenny nail shown DeBisschop on re-direct	4030
D-69—	Eightpenny, ditto	4030
D-70—	(S-304 for Ident.) Twelve notes to Jung received in evidence	4165
D-71—	(S-305 for Ident.) $700 note, February 6	4168
D-72—	Sheet of paper measured by witness Henna Fisch	4192
D-73—	Caliper	4245

INDEX

	Page
Summation—Defense	4687
Amendment of Assignments of Error	4789
Joinder in Error	4791
Exhibits	4793

STATE vs. HAUPTMANN

Flemington, N. J., February 11, 1935.

THIRTIETH DAY

(11:05 A. M.)

(The jury was polled and all jurors answered present.)

SUMMATION BY MR. REILLY:

Mr. Reilly: May it please your Honor, Mr. Attorney General, his staff, gentlemen of the defense, ladies and gentlemen of the jury:

I believe in approaching this case that I do it with a great feeling of responsibility.

I wish to give you a text from St. Matthew: "Judge not lest ye be judged," and ask of you in the consideration of this case that you bring into your hearts and into your consciences the feeling that you are weighing that which you cannot give back, if you take away—life.

And I can readily appreciate, ladies and gentlemen, at this time, after hearing the distinguished Prosecutor of the Pleas of this County in his statement, that your condition of mind at the present time must be more or less to the effect that this defendant must prove his innocence,—and that is not the law.

You are faced with a very, very difficult task. The responsibility, yes, is on your shoulders. But you are big enough, and you are American enough to be honest, and despite the position and the prestige and the wealth of the distinguished family who find themselves in the position here of being bereaved, the scales

of justice under that flag which is over your heads will bring to your minds the realization that despite the fact that this carpenter from Germany is on trial, our Constitution and our laws and our justice and our decency, and your honesty will compel the great State of New Jersey to prove this case not according to the theories of the prosecution, but according to the law of this State and the law of every state of our Union. Not guesswork, not inference, not "maybe's," and not speeches.

You want the law and you will get it from the distinguished jurist who sits here, but the evidence that comes from that witness stand has got to be evidence that convinces your conscience, your conscience, the still voice of your conscience, that it is good, and that it is honest and that it points toward this defendant as the murderer. And that is the only thing we are interested in in this courtroom today.

Now may I read to you the indictment. I am going to cut out all the legal phraseology, and I am going to talk the same kind of language that you understand; because only the Hudson River divides the town I live in, Tarrytown, from the Jersey shore across at Nyack and Alpine and other Jersey towns, so we can all speak the same language and try and get away from this legal phraseology which is so upsetting not only to laymen but to lawyers.

Now it says this, in plain language, but it is the pattern by which you must go; it says first that this defendant alone on the 1st day of March, and that doesn't mean the 2nd, the 3rd, the 4th, the 5th, it means the 1st and the 1st only, in the township of East Amwell, nowheres else, not Mercer County, not the Bronx, not Niagara Falls, East Amwell alone and

only therein, did wilfully, feloniously, and with malice aforethought kill the young Lindbergh baby.

Now what do I mean by "pattern"? There may be some pattern-makers on the jury. They get their pattern and they are obliged to make something according to that pattern.

The women use a pattern for dressmaking. The men use it in machinery. Now, if you make some other kind of a dress it doesn't fit the pattern. The mother goes into the kitchen and she is going to make a cake, and she wants to make a chocolate cake, and if some other kind of a cake comes out of the oven it is not according to her desire.

People play bridge; people play dominoes; people play all kinds of games. There are rules and then there are cards,—or there are checkers, which fit the rules,—and it is the same in a case at law.

It is not a game,—by that I mean something to fool you. But here is the pattern which his Honor will charge you at the close of this case, and I believe he will charge you—and I have no desire to step outside or beyond the boundary line of my distinguished friend on the Bench,—but I think I can go this far, to say, so that you will intelligently understand my résumé of the evidence, that his Honor is going to say this: that the State of New Jersey are relying here on proving these facts: that this defendant, alone, planned this crime, alone. Nobody else. If you find it was a gang, or three or four others, the pattern is wrong.

Having planned it, he came here, alone; and, alone, he entered that house, and, alone, he committed a burglary; and while in the commission of that burglary or felony this unfor-

tunate child was killed and was killed instantly.

Now, that is what they said in their opening they would prove.

And of course every defendant that comes into court is presumed to be innocent, but in this particular case it is quite apparent, from the very beginning, from the time he was arrested, that the burden shifted to him, subconsciously, or unconsciously, or no matter how you will have it, and he was placed in the position, not only of meeting that pattern, but of proving his innocence.

Now, we must begin somewhere at the beginning, and right at the very beginning let me say this: this is the crime of the century and you will have it howled into your ears by no matter how many gentlemen who make replying speech. There isn't any doubt about it, and I am not here to fool you.

Let's face this thing, because this case has come down now, in my opinion to this—common ordinary horse sense. By that I mean we are going to look at the evidence given by each witness and say to ourselves, what would be the natural way for that person to act?

And against that we are confronted with a lot of technicians and experts who, the best they can do, is at so much a day give us their opinions of things.

So I am appealing to your common, ordinary David Harum inherent American horse sense, that you gathered from this part of the country and which has been inherent since the days of the Revolution.

So I say at the very beginning that this is the crime of the century and it is the worst crime and the lowest type of crime ever committed, to my knowledge, or according to any

of the books I have ever read. But it is not the defendant who is guilty of it.

And no one holds in higher admiration than myself the distinguished father of this unfortunate child. It was never my pleasure to meet the Colonel personally, but in line with my duties I remember the day he landed in New York after his wonderful flight. It was part of my duty to march with the sailors of my detachment ahead of him, in honor of him. And my opinion of Colonel Lindbergh and his wonderful flight has never changed and never will.

And the distinguished family into whose midst he married, I have great admiration for —the family of the distinguished ex-Senator from this State, Dwight Morrow.

And of course it was a terrible thing, but we cannot be swept off our feet when there is no evidence. And into your County came this distinguished Colonel and flier, and in your County he built his home, and he surrounded it with every safeguard for privacy, for quiet, for peace and for repose; and he only used it for week-ends, and here we have a sketch of this beautiful home that he built for his wife and for his baby boy,—beautiful estate,—all the protection around it. He thought he was safe and he thought he was secure. But Bruno Richard Hauptmann never drove a nail in that house; Bruno Richard Hauptmann was never on those grounds; Bruno Richard Hauptmann was never standing on any road near Princeton, nor did any man, no matter who he was, see him standing on any road February 17th, 18th and 19th.

It is going to be rather difficult and it is going to take you quite some time, no doubt, in

the sanctity of your jury room, to coördinate and gather together all of the evidence in this case, and then to sit down and say to yourselves, Does it fit with guilt?

Now, they would have you in one breath believe that this man Hauptmann was a master mind, that he planned this himself and, the next minute, they would have you believe that he was the worst fool in the world, that he was dumb, that he didn't know anything; he would wear gloves making a ladder so his fingerprints wouldn't be left behind; and he would sit an hour and a half talking to Condon with his face exposed; in one the careful master mind, in the other the perfect fool. Now you cannot carry water on both shoulders, and whether he stood at the Princeton Airport, which I don't believe he did, because people, hundreds of people have tried to crash into this case, hundreds of people have tried to say they saw this and they saw that and they saw the other thing, and no doubt the Attorney General has rejected them as fast as we have, publicity, a desire for publicity, mistaken identity, for some reason a man comes forward and says, "Yes, I saw him. I saw him outside of Princeton Airport, but I have got to testify in a hurry because I am going to Philadelphia." And you remember that we suspended the examination of a witness to let this man, I think his name was Rossiter, take the stand. Did you look at him—shifty-eyed, sat around in his chair, he couldn't face you until finally I stood here and said, "Turn around and let the jury get a look at you." And for four minutes he looked at Hauptmann, but he never took the number of his automobile license, nor did he have a perfect description of his car nor did he know

anything about the neighborhood. Did he know where the nearest house was? Did he know anything? Now you know and I know if we were looking at a man, if we were suspicious, especially a salesman, the first thing we would look at would be the automobile license on the back, and we would know whether it was a New York license, a Jersey license or a California license. But no, he didn't look, and he left the stand, a stranger to me and a stranger to you, and flies off to Philadelphia.

Now, that is part of this wonderful scenario, because that is about all it is—as we go through it you will see that this case has been pieced together as you would write as a scenario, but it is not founded on honest facts.

If Hauptmann had said to this man, "How do you get from here to Hopewell? How can I get in the Lindbergh estate? What do you know about the Lindbergh house? Have they any guards? Have they any people around the place?" Or, asked some questions,—it might be suspicious, but any man could be standing in the road by a car, hundreds of people were under suspicion in this case, and I suppose several of them were arrested and turned loose afterwards, so I don't believe Rossiter, who dashed off to Philadelphia, any more than I believe Whited, who says in February Hauptmann was somewheres around the Lindbergh estate, because, ladies and gentlemen, there are certain concrete facts in this case that stand out like sore thumbs, and the first thing that you have got to decide when you go into your jury room is this: How in God's name did Hauptmann in the Bronx know anything about the Lindbergh home?

Now, Colonel Lindbergh's home was a reg-

ular castle. Colonel Lindbergh's home must have been guarded in some way.

Now, you can't get away from those facts. They are there.

I don't care about handwriting. I don't care anything about wood. Nor do I care about the ransom money for which this man stands indicted in The Bronx and for which he has to stand trial there. Nor am I going to allow you to pull the chestnuts out of the fire for Bronx County and say, "Well, because he had the money he must be guilty of something; therefore, we will send him away for something."

Let New York take care of that indictment. But that has nothing to do with this fact: how did Hauptmann know anything about Lindbergh's home?

And then it comes back to you, this indictment: Hauptmann alone, charged alone—and it can't be twisted now,—charged alone.

Now, is it possible, is it possible for any man, I don't care who he is—possibly for the architect, yes, or any of the people that worked on that house, but not a man in Bronx County, at least 75 to 100 miles away from Hopewell —to know anything about Colonel Lindbergh's home.

Colonel Lindbergh was stabbed in the back by the disloyalty of those who worked for him, and despite the fact that he courageously believes that there was no disloyalty in the servants' quarters, I say now that no one could get into that house unless the information was supplied by those who worked for Colonel Lindbergh. And this is no fairy tale. I am talking now from the record; I am talking from the evidence in this case.

And what is the evidence in the case? The evidence is, sir, that the first time in the history of Colonel Lindbergh's life that he ever stayed a Tuesday night in that house was this Tuesday night. Every other week-end was over Sunday night or early Monday morning. That is his own evidence. Who knew the baby had a cold and had to stay in Hopewell on Monday? Not Hauptmann. There was no doctor to give out the news. There were no trades people they suspected of giving out any news. Sunday night came and Sunday night passed, and this ridiculous assertion "I have planned this for a year" is ridiculous because nobody in God's world but Colonel Lindbergh, his lovely wife, his butler, his butler's wife, Betty Gow, the servants in the Morrow home, and Red Johnson, knew that Colonel Lindbergh was going to be in New York Monday night and would not be home Monday night. Now that's his own testimony. Then comes Tuesday, and Mrs. Lindbergh, believing that the child's cold is sufficiently important enough, sends for Betty Gow. Now, the Colonel can have all the confidence in the world he pleases in Betty Gow. I have none. He doesn't know where she came from. She came from an ordinary employment agency, or she came recommended by some woman for whom she worked. She comes from Scotland, and she comes here when they give her $700; otherwise, she wouldn't come.

You don't know what her antecedents were before she entered Colonel Lindbergh's home, nor do I. I don't know what her background is, and you don't know what her background is, but she was the only living person who knew on Tuesday afternoon that Mrs. Lindbergh

was going to stay at Hopewell Tuesday night, except the other servants in the Morrow estate.

And how many did they have? Many. They had a first chauffeur and a second chauffeur, who was afterwards replaced and now he is a watchman; they had five or six maids, they must have had gardeners. What do you know about the antecedents of those people? Nothing.

How do we know who Betty Gow talked to when she got the message Tuesday afternoon from Mrs. Lindbergh, "Come over, the baby is not well?" But she never communicated with Hauptmann.

So that I say, nobody in God's world knew that baby was going to be there Tuesday night, but this Gow girl.

And my learned friend and distinguished friend, the Attorney General may ask you to guess about this and may stand for thirty minutes giving Betty Gow the greatest recommendation in the world. I am saying to you this: Let's take her name out of it, let's call her No. 3.

Ask yourselves the question, from the evidence, who besides Mrs. Lindbergh knew they were going to stay Tuesday night? And then you will come back the same as I did and say, "Betty Gow," and I don't know how many others she may have told over at the Morrow servants' quarters.

Now, if, ladies and gentlemen, nobody knew where the Colonel was or when he would be home, and with regularity this family always returned to Englewood on Sunday night or Monday morning, how can we place that knowledge in Hauptmann's possession? You can't.

Now, as the house was constituted that night there was the butler, there was his wife, there was Betty Gow, Colonel, Mrs. Lindbergh and the baby; nobody else.

But there was one agency in that house that would only respond to its master, and that was that fox terrier dog; and it is very important in this case. I hope there are some dog lovers on the jury and some that have kept fox terriers,—the snappiest, scrappiest, quickest on-the-trigger dogs alive, when it comes to a watchdog. Who controlled that dog's movements that night? The butler.

I don't care what sound, the sound of the wind, or anything else, inherently and instinctively, these dogs can smell a stranger on the grounds, and that dog never even barked.

I don't know anything about these people, but I say the circumstances point absolutely along a straight line of guilt toward that butler and the servants who were disloyal to Colonel Lindbergh.

Here we have this beautiful mansion on top of the hill there on a March night, and the evidence is that the wind was howling, and up on the mountains there in Sourland there was a gale blowing. Mrs. Lindbergh, depending on Betty Gow, goes around the house performing her usual tasks of reading, having dinner, feeling secure in the safety of those she had brought into her home and placed her hand of protection over, her servants.

What happens? The little baby is put to bed with a cold. Now we can't get away from that. There are mothers and fathers on this jury. They know how children at that tender age, are susceptible within a half hour to a cold. And this little kiddy was so sick it

couldn't be moved back to Englewood. That was why they sent for Betty Gow—protection for the child. To rub the child's chest, to give it a little physic, and tuck him into bed. This nurse who went on the stand and blandly told you she loved that wonderful little baby, allowed herself to stay away from the baby from before eight o'clock until ten o'clock at night.

Do you believe that? Well, if she did it was part of the disloyal plan by which that baby was taken out of that house.

Now, I want you, if you will, please,—and it is my earnest prayer that you do,—to keep before you after I have finished my address to you these particularly important pieces of evidence; because before you begin to consider some of the outside matters that have been dragged in here,—fingerprints and handwriting and boards,—you have got to place Hauptmann in that room; because the State says that's the way the crime was committed: Hauptmann was in the room.

Now, let's see if he was or not. The little baby is put to bed, the lights are put out, but before that Mrs. Lindbergh and Betty Gow, without any gloves on, they are in their own home, go from window to window, closing and locking every window in the room but one.

You remember the French window was closed and locked, but the blinds were left in such a position where there would be some air.

Now, the excuse is given that the nursery window was warped, couldn't be closed. Now, when did it become warped or when did it become so prepared as to leave the inference behind it that that was the window the kidnaper came in? Anyhow, it was drawn in so that outside that house that night these shutters

were closed, not open, and around this side of the house (indicating); the French shutters were closed and locked. These shutters were locked; these shutters were drawn to as close as they possibly could be drawn. That's the evidence.

And despite what the Prosecutor says—I don't think he meant it—when they entered that room after this child had been taken from that window, the closed shutters were in the same condition as they were when they were closed and the baby put to bed.

Now, in order to kidnap that baby, as they would have you believe it was done, Hauptmann would have to know a lot of other things about that house, wouldn't he? Now, a man can't be convicted—and now I am appealing to the ladies on the jury, because of this fact, a woman's intuition, and a woman's sense of reasoning concerning babies and concerning nurseries comes to her as a God-given gift, and it is your duty, ladies, in passing upon this, particularly to recall to your minds what you know about children, sick children and young children. If you do that you will have no difficulty in this case in acquitting this defendant.

Public clamor is not going to have, in the squares of Flemington, a man drawn to his death or life imprisonment because the mob wants it. You women and you men have too much respect for your conscience and for your oath and for your Americanism to do that. Hauptmann would have to know in addition to the fact that Colonel Lindbergh was going to stay there Tuesday night, he would have to know the exact room in which the baby was kept, wouldn't he? Now you remember the Colonel's testimony. He says, "My child was

kept away from strangers; my child only knew the family and the servants who came in contact with it, Whateley, Mrs. Whateley, Betty Gow and the members of my family." The child no doubt was a shy, retiring, lovely little boy. Now Hauptmann would have to know what room that child was in, and he would have to know whether the Colonel was home or not home; he would have to know whether Mrs. Lindbergh was home or not home; he would have to know who was home; he would have to know when the baby was put to bed; and he would have to know when there was no person in that house at that present minute in the nursery. Is there any evidence he knew anything like that? Now you cannot infer and you cannot guess and you cannot say maybe, because before you go any further in the case you have got to put Hauptmann in that room.

A man can't come up to a strange house with a ladder and stock it up against the wall and run up the ladder, push open a shutter, and walk into a room that he has never been in before. That is what they would have you believe.

This is a scenario they have written. But it doesn't ring true to common sense, the common sense view of things. That is why they pick a jury, not composed of lawyers or judges —for the common sense view.

Now, they'd have you believe that Hauptmann came up to this house and, without knowing who was in the house, or whether his presence would be discovered, mounts a ladder 36 inches below the window sill, or 30 inches below the window sill.

Here is your ladder, and it is resting in the mud. And there are two sections. Oh, they

get around that by saying Colonel Lindbergh heard a noise; it sounded like a crate falling. It might just as well have been the branch of a tree cracking off, because there was a gale blowing.

Whatever it was, it didn't concern the Colonel enough to make any inquiry, because it very likely did sound like the crash of the limb of a tree.

The ladder is put into the mud. They would have you believe that Hauptmann went up two sections of that ladder. That brings him 30 inches below this window sill.

And they'd have you believe that he had gloves on,—30 inches below this window sill. Now he has to reach up. There is no need of any chisel, no need of any chisel. He reaches up and he finds that the shutters are just closed together. He opens the shutters, one back and the other back. Now how long do you suppose two loose shutters would stay back with a gale howling? They would be banging, banging, banging, back and forth. But nevertheless, with those shutters banging back and forth and a gale blowing, this man has to take himself by his two hands, and I don't see how he could get above the second section of the ladder, because he would have to hold on to the side of it, and he would have to hold on to the wall as he went up, to steady himself; but finally he is on the top rung now, and he is reaching three feet through the air, gripping the bottom of the window sill, of a house he had never been in, of a house where he doesn't know who is inside the room—and any fool would know that a Colonel of the United States Army would have a gun somewheres around and put a bullet through your heart; but nevertheless

he pulls himself up until he gets in such a position that he can shove this window up. That makes him at least five feet away from the top rung of the ladder. Now he has got to shove this window up, get a purchase underneath as the witness did here, and raise up this window; and here is a window with a shelf, and a beer stein on it for decorative purposes, and I don't care where it was, he didn't know it was there, if anybody ever went in that window, and a strange man is able to swing himself in the window without knocking the beer stein down, and a room that is absolutely dark, mind you, in which there are toys, furniture, table and chairs, and he has never been in the room before, and across the room is a crib that he never saw in his life—this man is able to navigate that room without bumping into the table or falling over a chair, gets over to the crib, where there is a sick child, a fretful child, a child that has just been given a physic, just had its chest rubbed—why that child would sense immediately the presence in that room of a stranger!

And the moment anyone put their hand on that child, that child's cry ringing out would have brought the mother from the room across the hall.

Now, I will leave it to you mothers if I am not right. The person that picked that child out of that crib, I give you my solemn word, the inference I draw, knew that child and that child knew that person. Nobody—it is humanly impossible to pick up a child 20 months old, unless that child had been doped—of course instead of a physic, if that child had been given paregoric or something, then the child wouldn't cry.

But who gave the medicine? Not Haupt-

mann. Who gave the physic? Not Hauptmann. And this little child is picked up, and they would have you believe that Hauptmann, this man who never saw the child and never knew the child and the child didn't know him, with a dog downstairs—now you have got a strange man in the house and all the doors open, goes back with a 25 or 30 pound child in his arms, swings himself out the window in the darkness and is able to find the top rung of that ladder, three feet below the window shelf, that rickety old ladder, and then as he finds himself on the window seat and his feet touching the top of the ladder, is able to turn, with a child in his arms and feel his way down the side wall and still hold on to the child and find the ladder, so that he can come down the ladder to the part where the dowel pin joins it together, and then they say the dowel pin broke —but unfortunately what they say is not evidence, because this is resting in mud, this is resting in mud.

And of course it is away from the building because it is joined, one of these pieces. Now, let us assume, you gentlemen who have farms, or are familiar with farms, can get this illustration very quickly. Let's assume this is in the mud, and this breaks in the middle and goes in; wouldn't it throw up around the foot of this ladder mud? Wouldn't it throw mud up in the form of a mound?

May I have that photograph, please, of the foot of the ladder?

Now, ladies and gentlemen, here is the photograph. There is the soft mud. There is no mound. That ladder was a plant and nobody went up that ladder that night, if it was ever up against the house. Nothing in that photo-

graph but just two holes stuck in the mud. Now, you cannot overcome the law that applies to certain things. Two sticks in the mud; break the stick in half; move it forward; throws the stick back into the mud and throws up a mound of mud.

Well now, what happens to the man on the ladder? The man on the ladder with the baby would fall, wouldn't he? He had nothing to grab onto, no handrail. He would fall with the baby and wouldn't he, in falling with the baby, make so much noise that the whole Lindbergh family would be out? But there isn't a sound.

And if he fell in the mud, a man his weight, with a baby, wouldn't there be some impressions in the mud? None.

You can't get away from these physical facts. There is nothing in the mud that indicates Hauptmann or anybody else fell in that mud and there is nothing in the mud that indicates the baby fell in the mud—nothing.

There is absolutely nothing, but one footprint of a man and one footprint of a woman. That is the evidence. I am not making it up: a footprint of a man and a footprint of a woman.

Did you take any plaster casts of that footprint? No.

Why not?

Well, I didn't think it could be done.

But Dr. Condon's son-in-law could take one in St. Raymonds Cemetery, and I don't suppose he is a police officer. Yet the footprint in the ground and the footprint in St. Raymonds Cemetery, neither one of them fit the footprint of this defendant, because if it did, the

Attorney General would have in twelve copies of it, one for each of you.

I say that that points out very strongly that no one went up that ladder.

A man coming through the darkness with that ladder, approaching Colonel Lindbergh's home, wouldn't dare use a flashlight because somebody might see it. So he is going by "dead reckoning" as the sailors say. He is going from wherever he started direct to that window, through the mud and through the mire and everything else that is there, and not a footprint, not one footprint, but one, is found.

Remember the evidence of the officer who found the ladder, the picture of the mud, the ladder over in the bushes, fifty to seventy-five feet away from the house, and not a footprint between the house and the ladder.

Now you can't walk in mud without leaving footprints. Not a footprint between the house and the ladder.

I say that ladder was a plant; that ladder was never up against the side of that house that night.

I will tell you why. If it broke—you remember the evidence about where the second section of this ladder rested, somewhere up here, and some detective went up and he said he found little fragments of wood in the stucco and a little scrape.

Well, now, that was from the ladder resting up against the house, no doubt, when they were photographing it. But if the ladder broke in the middle—and I wish I could do it here without tearing these maps, maybe I can do it here —if that went up against the house with the weight of a man and a baby, wouldn't that

broken part as it slipped with the weight of the man and baby coming down the stucco make a gash all the way down? And you don't find anything like that in the evidence. And it would have thrown the man to the right or thrown him to the left. He might have broken his neck or broken his arm. Not a sound, mind you, not a sound! And the man that falls off the ladder—dead guesswork, nothing but guesswork; and you can't convict on guesswork. They would have you believe the man fell off the ladder with the child, fell into the mud and left no impression that the child left no impression, only one footprint, no mud on the ladder as the man went up or came down, not a bit of mud on the ladder; and yet, if there wasn't any mud on the ladder, how in God's name could there be mud on the carpet in Colonel Lindbergh's nursery? No mud. They don't even say that there was mud on the bottom of it, where it was stuck into the mud; and yet it was examined within an hour, they brought the ladder into the house; no mud on the rungs, remember that, no mud on the bottom of the ladder, remember that; the ladder divided into two parts, two sections one part, one section another place. Now a man with a baby that he has just stolen from the most popular American of the day—what did he do with the baby? Did he put it down some place and direct his attention to carrying an old wooden ladder? Because that's what somebody must have done, if you believe the State. The baby must have been put down, and the man picks up one section of the ladder and puts it here, and goes back and gets two sections, joins them together, and puts them down here, all the time running the risk of detection and arrest, or

maybe being shot. Now would a man that kidnapped the Lindbergh baby pay any attention to the ladder?

Folding it up nicely and putting it under a bush, and putting another piece here, and then picking up the baby.

Well, how did he get off the ground? Nobody heard a motor; nobody heard an automobile; nobody heard anything.

Now, am I right in saying that you have a right to assume from this evidence that somebody disloyal to the Colonel entered that nursery that knew the baby?

Oh, it was so well planned by disloyal people, so well planned.

Whateley is downstairs some place, with the dog that knows him,—the dog that wouldn't bark when he makes a movement at him; and on the top floor, rear wing, over here (indicating), miles away, we might say, in the house from the sick baby is Mrs. Whateley and Betty Gow, talking about a masquerade dress; and the whole house between her and downstairs, second floor, left alone. And somebody comes in that knew that baby,—I don't know whether it came from the Lindbergh house or from the Morrow house, or where it came from; but those are the only two houses that held servants that had contact with this child.

And the Colonel is eating dinner, he is secure in the belief that he is safe, and his wife is there with him; and they are out of sight of the front door, and they are out of sight of the rear door, the servants' quarters, and all of a sudden comes the signal, "The coast is clear, they are at dinner." The telephone call from Red Johnson that she had only left two hours before.

Now, what do you know about Red Johnson, or what do I know about him? I don't know a thing about him. But I do know this: he was Betty Gow's pal, and the State of New Jersey spent thousands of dollars to bring the Fisch family over here, with nurses and everything else—your money—and only being able to put one of them on the stand, and they didn't raise a finger to bring back from Denmark the man that talked to Betty Gow while the Colonel was eating his dinner—Red Johnson.

Who is hiding things here? Who is hiding the truth?

Why wasn't Red Johnson brought back here? He entered this country illegally and he was allowed to go home. Was there any effort made to bring him back? No. Why? Ask yourselves that question. Why was the man that talked to Betty Gow while the Colonel was eating his dinner allowed to remain in the safety of Denmark?

No, the signal was given, "The coast is clear" and that child came down neither one those two staircases, wrapped in the arms of some person the poor little child had confidence in and that's why it didn't cry, that's why it didn't scream and there was no more breaking of a ladder, no falling in the mud, no injury to the child, because it would be just like falling into a bed of mortar or a bed of lime or a bed of mud, the impact of a man 180 pounds, because that they claim was the breaking point of the ladder. Let's assume he weighed 175 pounds and went up the ladder and it didn't break, coming down he weighs 175 plus a 30-pound child. Now you know ladders, if it broke like that you could fall in and the man would receive an injury to his head or to his

arm or to his body, and if the blow was strong enough to break the child's skull, it would be strong enough to do some damage to the man. The man could have fallen to the right, he could have fallen to the left and make so much noise the whole neighborhood would have heard it. But in this bed of mortar, this soft mud at the foot of this ladder there would be an imprint of the man's body and possibly the imprint of a child and yet there is nothing there, nothing there.

Now that's the first point you have to hurdle in this case. You have got to put Hauptmann in that room, and you have got to put him in through evidence and not guesswork. Now if the child—we must now take the Attorney General's theory of this case; that's all it is, just guesswork. He says, and he wasn't there, neither was I, neither were you, but he says the ladder broke; he says, "My theory is the ladder broke and my theory is that the child received a blow on the head which caused instantaneous death." Well, unfortunately you can't convict anybody of disorderly conduct on theories, much less murder in a first degree. Now you must search this evidence, this case for evidence, and you must find that the child came to its death between the hours of the kidnaping and midnight March the 1st on the estate of Colonel Lindbergh. You must find that from the evidence. Now, nobody saw it; nobody comes here and says, "Hauptmann, you fell off that ladder"; nobody comes here and says, "Hauptmann, you hit the child." You haven't a particle of evidence in this case when that child died. All you have, and the law is very strict, and his Honor will tell you this, very strict, there must be no doubt, no circumstan-

tial evidence or inferences or guesswork on this part of the case, the child's death must be established by direct evidence, direct evidence, and the cause of death by direct evidence; and of course they go for the cause of death to their medical examiner. Now where is there any evidence at all? Because they have a broken dowel pin and a cracked side of the ladder? Where is the evidence Hauptmann ever broke that or ever fell? There isn't any there. And there is no proof of the cause of death except this doctor. Now what does he say? The best he can say is this: Whenever the child received the blow, death was instantaneous. That's what he says. Whenever this child received that blow, death was instantaneous.

Well, "Whenever"—what does that mean? That doesn't mean March the 1st, 1932. That doesn't mean March the 1st, 1932, by falling off a broken ladder. That doesn't mean March the 1st, 1932, in the township of East Amwell.

That child could have lived four or five days some place. There were hundreds of places around Hopewell to hide that child for four or five days, or for ten days, and then the child could have died from falling off a table, falling out of a crib, or being struck, if you will have it that way, though it is an awfully cruel thing to think of. But "whenever" does not mean March the 1st, 1932—and that is the pattern, that is the indictment.

Now they would have you believe—and this is more of their moving picture scenario—that with a gale blowing, this note was left there. Either the kidnaper had time to lay the note down on the window when he came in—and if he did I wonder how long this envelope would rest on that window ledge, with the window

open, and over here the blinds of a window open so that there would be air and a draft, a howling gale outside, how long would this piece of paper rest on the ledge of that window before the breeze just took it and "st-st-st-st" across the room. It wasn't nailed and it wasn't pinned. There was nothing on top of it. It was just resting there. Or if he left it as he went out the window, he has a baby in his arm, holding the baby; whether he held it that way or under his arm, I don't know. He is fiddling for the ladder. He turns around and he lays the note down, because he has to lay the note down so quickly that he can shut the window behind him so it wouldn't blow away.

And the window was closed when they entered the room, and the shutters were drawn in when they entered the room, and the window hadn't been changed a bit when they entered the room. And yet this note is lying on the window seat, and the stein hasn't been knocked over, and the toys haven't been disturbed, and the chairs haven't been knocked over, and the table hasn't been moved.

But when it was time, when the child was gone, and everything was clear, this little sick child in the crib, Betty Gow up in the wing suddenly decided at ten o'clock at night she had better go downstairs and look at the child.

And now again I appeal to you fathers and mothers who have raised children: don't you think that with a child sick with a cold and a child of that tender age, who has been given a physic, no matter whose child it was, that the natural thing for the nurse to do would be to visit that room between a little after eight o'clock and ten o'clock at night, to look at the baby, or to change its underwear, or to see if

it rolled over, or see if it was fretful or wanted a little drink?

Now, I am talking common sense, horse sense. Don't you think that is what would have happened unless this signal brought somebody there that took that child out?

You can't get away from those facts. They are there. It is the testimony that they are there. The dog is quiet; nothing is disturbed. The window is in the same condition as it was before and there is a note lying there, and the child is gone.

Now they say there was mud on the floor. Well, Colonel Lindbergh said he dashed out of the house with his gun and he went through the woods and around the place with the butler, and of course he stepped in the mud and when he came back he went right upstairs again to the baby's room and he walked around the baby's room it is just as consistent that the mud came off his shoes as it is that it came off anybody else's shoes, because this mud on the window which they claim was there—where is the photograph of it? There isn't any. Where is the photograph of the footprint on the floor on the rug? There isn't any.

So, if there isn't any photograph, it is fair to assume that there never was anything there, except some mud which may have come off the Colonel's shoes as he came in from looking for his baby.

And there was another thing there that no man 175 pounds wouldn't have gone through that dress suit case. Well, that that suit case was right under that window bench and a man coming in the window and putting his foot down and finding an ordinary suit case, he weighing 175 pounds, I will leave it to you

whether his body wouldn't have forced his leg right through the suit case.

No marks, no broken suit case. Now, a 175-pound man cannot stand on a suit case, that is the suit case they exhibited here, without going through it.

No, that baby came down those stairs, and all the circumstances and inferences they talk about the ladder, don't ring true according to good common sense.

So the Colonel goes out and he notifies his friend, Colonel Breckenridge, and he notifies the State Troopers. And the first man that came in finds this note. Then they send for Kelly, the fingerprint man. What does Kelly do? It stands to reason and it is common sense that all over that room were fingerprints of Mrs. Lindbergh, Betty Gow, and maybe even the baby, as the baby restfully may have grabbed hold of the little crib.

Now, you cannot obliterate fingerprints by blowing them off something; and this was within an hour after the baby left. But if somebody had been instructed, some of the disloyal servants of Colonel Lindbergh had been instructed, that by taking a handkerchief and wiping around the crib or anything else that they touched, fingerprints would be wiped off —and somebody must have done it, because Kelly did not get a fingerprint of anybody in that room; he got some smudges, and he got some what appeared to be parts of a fingerprint. But certainly, when a mother leans over the cradle and grips the cradle with her hands like this, she doesn't go like that (illustrating). She doesn't smudge; she just puts her hands there, looking at the little sleeping infant.

They didn't even find fingerprints on the

glass that Betty Gow had handled when she gave the child the physic. Now, who rubbed them out? Who rubbed them out?

The hand of Death in this case has rubbed out many a person connected with it. They have all gone, all gone swiftly—and to retribution—as all the others in time will feel the hand of retribution. But it won't be this defendant, because he wasn't there.

Now Kelly comes in and Kelly says, "I am the fingerprint expert of the State Police. I went all over the room, looking for fingerprints. I didn't find one."

Then hundreds and hundreds of others, detectives and people, arrive.

Now, here is where the bungling of your State Police begins; and don't think that they didn't bungle it. And I am really surprised that a man like Colonel Schwarzkopf, a graduate of our great military academy, bungled this case, because within fifteen minutes after this case was discovered, what would you and I do? We would turn out every bloodhound and bulldog, hunting dog, in the neighborhood. We would turn out every bloodhound and bulldog, hunting dog in the neighborhood. This is the hunting section of Jersey. This isn't some cold asphalt street. A sniff of a child's garment to the bloodhounds or to any kind of a hound and they would have been in full cry; within an hour of Hopewell are some of the finest packs of hunting dogs to be found in the country. They will chase an anise seed bag, they will chase a fox, they will chase anything they are given a scent of and not an effort made that night to trace this child, and you don't call that bungling? Fingerprints of everything, would that be left to Kelly alone

or would you send for the greatest fingerprint men you could possibly get,—New York, Philadelphia, Washington or anywheres else immediately.

No! But they just take this note and they put it away I suppose. And the night passes. And of course Mrs. Lindbergh sat downstairs and prayed. Who wouldn't? Who wouldn't? Yes, and the Colonel prayed. Who wouldn't?

But I can't imagine any prayers coming from the woman that contacted the man who is still in Denmark while the Colonel was having his dinner. I can't imagine any prayers coming from her. There were no prayers, no loud prayers. She just sat there.

I don't know what was behind this kidnaping, whether it was for greed or for gain, for spite or hate or vengeance. I don't know. It was a horrible, a horrible thing. And, my God, it couldn't have been planned by any one person. It could not have been planned by one. It had to be planned by a group.

But the State stands here and says, "Kill Hauptmann. Close the pages. Let everybody else sink into oblivion and security. Kill the German carpenter!"

The mob wants the German carpenter killed, as mobs for the past two thousand years have cried for the death of a person under hysteria, when afterwards it was discovered that the person that was killed by the mob's vengeance wasn't guilty at all.

Circumstantial evidence is no evidence.

You can't bring back life. You can't pay back a debt after a man has gone to prison for life by saying, "Well, I made an honest mistake." Many a respected citizen of this county has been placed on trial, wrongfully.

Right in this courtroom 19 years ago in the Wyckoff case, the prosecutor then cried to heaven for the blood of a man, tried before this very distinguished jurist who is now on the Bench, I believe, and defended by Judge Large, who is part of the prosecution—circumstantial evidence, they cried for the blood of that man, they cried for the blood of that man.

Mr. Wilentz: If your Honor please, there is no evidence of that. Mr. Reilly knows that. Unfortunately I am not familiar with the history of the county, but I know it is not in the evidence.

The Court: No, it is not in the evidence, I believe.

Mr. Reilly: I am only calling it to your minds, ladies and gentlemen, because when you go into that jury room you are supposed to take into the jury room the knowledge of life that you have gained by the years that you have lived, and that is why I appeal to your horse-sense, your David Harum horse-sense, and your motherly intuition.

It wouldn't have to be Hunterdon County that a person would be charged with circumstantial evidence—every county in the world very likely had it. What you and I want here is somebody that saw Hauptmann do something, not halfwits out on the road on the 17th and 18th of February to come in here and tell you a story about a man who stepped out on the road and looked at them—not college boys who come in here and tell you, "Yes, I saw a man in a dark car with a Jersey license,"—and

Hauptmann's is New York,—"And he resembles Hauptmann."

Yes, thousands of men resemble Hauptmann. Hans Wollenburg who was on the stand here, and Kloppenburg, look a great deal like Hauptmann—a great many other Germans look like Hauptmann, but looking like a man is not saying, "You are the man."

What you and I want is somebody who is going to come in here and say, "I saw Hauptmann do something; I saw Hauptmann do something in connection with the murder,"—not having possession of ransom money or other money that New York County or Bronx County is interested in.

So we go on with the bungling of your State Police. And they have bungled. I don't have to tell you any instances. You have read of them; you have known of them; you have come in contact with them right in this County where they have bungled. But I say it was their duty to set every dog in this neighborhood loose, close every avenue of escape, every ferry, every bridge; and if he only had 12 or 14 officers working under him, the National Guard could have been mobilized by your Governor within an hour; and there is a unit of it right here in this very town.

And you say that isn't bungling? When the child of the greatest living American is taken from its cradle at ten o'clock at night on a mountain? It is immediate action that they want, not sit down looking at a lot of notes or something, or fooling around a ladder. And they have bungled it right down to date.

So everybody waited, everybody prayed. But there is no evidence that child died that night; no evidence that child was killed there.

Now, if you want to convict Hauptmann because the mob wants you to—and by the mob I mean the people of the world—and think it should be done, then all my prayers and pleadings won't do him any good. But I don't think that that is the way you value your oaths. Citizenship under that flag means a great deal more than going to war for it. It means upholding the law and seeing that no guilty man escapes, and, by the same token, that no innocent man suffers.

So they waited, and I don't know what they did, because you don't know, it is rather vague what they did to try and find the child; but of course the child was off the premises, the child was hidden away some place. And then came the second note. Now I would like you—I think I will refer to it after lunch because it is getting near time and we are all hungry, I am going to leave this thought with you for lunch, because it was my intention today to do this, talk about the kidnaping, its physical aspects, and how you would have to hurdle that when you got into the jury room, hurdle the fact that there is no evidence in God's world, much less this case, that Hauptmann was ever in that room.

But the learned Attorney General says, "We will now write the scenario and we will begin with this note, and we will proceed with the other notes, and if we can show that this is in his handwriting, A, then Z, the payment of the ransom money, must follow."

Leaving in your mind for consideration during the luncheon period that salient point before you can get to any of this, where from the evidence is there any proof that Hauptmann was ever in that room or ever touched that

baby; and where is there any proof in this case when the baby died, what place, and how, I shall ask his Honor if I may now stop for lunch.

The Court: We will take a recess until 1:45, but the people will remain where they are, remain seated, until the jury leaves the room.

(At 12:25 P. M. the jury retired.)

The Court: The prisoner is now remanded to the custody of the Sheriff and he may retire.

We will now recess until 1:45.

(At 12:27 P. M. a recess was taken until 1:45 o'clock P. M.)

AFTER RECESS

(1:48 P. M.)

(The jury was polled and all jurors answered present.)

Mr. Reilly (continuing summation):

It would be utterly impossible for any lawyer to repeat all of the testimony that has been taken here in the period allotted to me for summation. I am going to do as well as I can with the highlights, the important parts of the testimony and, if I should pass anything, I don't want you to think that I passed it because I am afraid of it or that I considered it unimportant.

Very likely the General, when he has his

chance tomorrow to address you, he will talk to you about a great deal of evidence that I have not talked about, and I wouldn't want you to get the opinion or the impression that I had passed something by here, because I didn't consider it important.

We have been 29 or 30 days here and to repeat the testimony of each witness would be more or less like a machine, so I hope that you will understand my position and the General's position, too, tomorrow, when he addresses you. He will very likely take less time than I am taking, but he will not stress points in his summation and don't get the impression that he is overlooking anything.

I think that we have played along so fairly and so nicely in this trial that we can still continue to go along that way.

Now may I address my remarks to you for a little time on the question of these notes.

It is not my intention to take the handwriting of each and every one of these experts. Expert evidence, his Honor will charge you, I believe, is nothing more nor less than opinion evidence.

What does opinion evidence mean? Opinion evidence means this: that this man says, "I think it is this," and another man says, "I think it is that." And the wise courts and judges have decided for many years that a jury has a perfect right to disregard expert evidence altogether and use their own common sense and that is what I am going to ask you to do in considering that matter which I now address myself to—the ransom notes.

You were very patient when Trendley was on the stand.

Trendley is honest. There is no doubt about that. Trendley for the second time in his life volunteered his services in a defense. This State of New Jersey has had two and a half or three years to prepare this case for the ultimate arrest of any person they thought should be arrested. We have had a very short time. Unlimited means have been at the hands of the State, and you could see that by the parade of these experts in handwriting. We took gladly, because Mr. Trendley goes back as long as Osborn, and from the list of cases he mentioned before he was qualified—I think he mentioned the celebrated Molineau case of New York that some of you older members of the jury may recall, the Roland Molineau case, and other cases that you may remember from the newspapers, and he was honest enough to say that once or twice, maybe three times, in forty years, he made a mistake. Now I think a man who admits his mistake and comes before you honestly and fairly, and then gives his testimony as opinion evidence, stands in a much better position than the gentleman who took the stand, Mr. Osborn, who had written books and testified many, many times, and yet I think in my cross-examination I showed that he had made mistakes.

Now of course it is very important for the prosecution in this case to try and pin this nursery note on Hauptmann. That is part of what I call their scenario.

But I ask you this, please, before finding that this is Hauptmann's handwriting, if you ever do, because he has denied it, keep in mind, please, the fact that there is no evidence except this produced by the prosecution which puts Hauptmann in the nursery March the 1st; and

this places him there through the opinion or guesswork, we will call it, of Mr. Osborn and those who followed him.

Now, when a man is approached, and expert is approached, you have a right to assume, because you are business men and you are thinking women, that all they have to do is to examine these letters and then say that Hauptmann wrote them, and they immediately go on the State's list of witnesses, and they expect to be paid and paid well—out of your pockets. I cannot imagine what the bill will be for this procession of experts. And yet when you take this note, as you took it so carefully and examined it in the examination of Mr. Trendley, I think you will agree with me that to take one word, "is," out of all those lines and compare that "is" to one "is" of Hauptmann's and say then that because that "is" in your opinion looks something like an "is" that he wrote, that is pretty slim evidence, opinion evidence, guesswork evidence, to put a man in a nursery of a house he knew nothing about it.

And while on the nursery, may I once more revert to the evidence again by that fireman-policeman.

Now, you recall how he testified, how he had to go up the ladder in the daylight, when the conditions were perfect, he could see everything he was doing, and he had to use two hands, but he went up the ladder, the shutters were not closed, he had them open. The window was prepared for him to make his entrance into that nursery, and yet this trained fireman, now a policeman, was obliged to use two hands to pull himself to swing into the room, and when he came out he carried a package, an imitation of the baby—and remember

his testimony—as he came out he had to lay the package down on the window seat and then swing around in the daylight, feel for the ladder, get on the ladder, get down a portion of the ladder and then reach up for the package.

Now, just imagine the changed conditions of the night of the kidnaping—darkness, unusual room, unusual surroundings, a live baby, a sick baby, a crying baby, whether or not Hauptmann or anybody else could take that sick baby and lay it down on a window ledge and then go down the ladder and then pick the baby up, whether or not there wouldn't be an outcry from the baby.

So that when you come to consider Note No. 1, please take into consideration all of the facts that lie behind the claim that Hauptmann left his note on a breezy window seat and pulled the window down after him and closed the shutters behind him and descended with this baby, and then the ladder broke.

Now I shan't go into each and every one of these letters because you will have them in the jury room. I want to trace their continuity.

Every expert that took the stand said that this was disguised handwriting. Now what benefit is a disguise?

If a person puts on a disguise and hides his own face and figure, characteristics, then he ceases to be what he was and assumes the character of the person he is attempting to disguise.

If this is disguised handwriting where is there any standard by which it can be examined with that certainty with which you will send a man to his death or with that certainty with which you would send a man away for life imprisonment? One "is," one "is."

And again I say to you and I believe that I am justified in drawing the inference: no one person could have planned this kidnaping, kidnap the child, taken care of the child, written notes, run around the different states, New York and New Jersey, mailing these notes, followed up the notes, and still take care of the child. This, as I said, and intimated in my cross-examination, this kidnaping was the work of a gang, and by a gang I mean a collection of people, bent on an evil undertaking.

Now here we have this letter, left on the window seat. What happens? They pick it up, they examine it for fingerprints, they don't find any. Now of course there has never been any claim made that the man that wrote this letter wrote it with gloves on. Mr. Trendley says it was written by a man with his left hand. Part of it is written and part of it is printed. If you will take that letter into your jury room and just look at it, just common sense good careful consideration, without being any experts at all, and then compare it with any one of these letters here, there isn't anything, by that I mean anything by which you or I can see—in other words, the picture of this letter, and the picture of this letter (indicating), as you look at it—there is no comparison at all. There might be a comparison in the hook on the end of an "l," or there might be a comparison on the end of the "t," the way the "t" branches off, but there are thousands and thousands of people, and in all the claim is that every one of these ransom notes is disguised, the handwriting is disguised—well, if it is disguised, of what benefit is it? Opinion evidence, guesswork evidence, four, five, six, seven so-called experts, charts, photographs, carfare,

all brought on here at an enormous expense. Each and every one of those experts saw Osborn's records before they testified, and I will warrant that each and every one of them saw his photographs and his records before they made up their lists. And so one made up a list with "the's" in, and another made up a list with "those" in and another made up a list with "dears" in, so that they all fitted in the one picture, at your expense—opinion evidence, guesswork evidence, at its best, because nobody saw Hauptmann write this note and nobody say Hauptmann write any of these notes.

Well, now, what is the background of these notes? And that is very interesting. Let's check them. Let's take No. 2. It is the envelope that concerns me most. Here we are over in Hopewell, New Jersey, Note No. 1. Here we are, Brooklyn, New York; Brooklyn, New York, Note No. 2, March the 4th, 9 p. m., Colonel Lindbergh.

Now, doesn't that show, doesn't it demonstrate clearly the work of a gang? Hopewell —Brooklyn—miles and miles apart; 75 to 100 miles away, note No. 2 is mailed; and what does it say? "We have warned you and to make anything public. Do not notify the police now you have to take the consequences."— I shan't read it; I am going to leave it to you. I am going to have you take these notes into your jury room with magnifying glasses. You are just as competent, you are just as capable as any handwriting expert that ever took the witness stand.

You have got your God-given senses. You can see. You can study. You can look, and you must keep in mind at all times that all of this is disguised.

Well, what happens when Colonel Lindbergh gets this second note? He puts it away and he waits.

Then comes Colonel Breckenridge's note. It is some more stumbling, I think, of the State Police—and we must keep these facts in mind, friend. This child was kidnaped, came of a family that had all the influence in the world to compel and could compel by one word from your State Police, to either the Police Department of New York State or any other State, to watch every mail box, every mail box in the city of New York, after this second note was mailed from Brooklyn. If they had done that, before the third letter was mailed, the man that was mailing the letters would be caught at the mail box. But no, they didn't, they just sat down, they were in a fog.

They certainly didn't expect somebody to drive up with the baby and hand it back to them. They covered no agency, they covered no post office. All of these stamps from New York bear on them the substation where the letter was received and where it was stamped.

Now, here we have Brooklyn, New York, with a "2" after it—Substation No. 2.

The writer of these letters could have been arrested or the mailer of these letters could have been arrested within 48 hours if somebody hadn't stumbled and bungled—just another Battle of Jutland—stumbling, bungling and blocking the path.

Now, when this second letter came to the Colonel, certainly when a letter came to Colonel Breckenridge, New York, N. Y., Station D, the New York police were assisting the New Jersey police. The police agencies of this

country were aroused, Federal, State, Internal Revenue, everybody; private detectives by the score.

Don't you suppose, after the New York police saw that letters were being mailed in New York City that one word from Colonel Schwarzkopf, or somebody else, "Cover the letter boxes," would have had some result? But no! Bungling, bungling all the time.

Then we come to the picture of what General Wilentz describes as a patriotic gentleman of the old school.

Well, General Wilentz, you are entitled to your opinion of Dr. Condon as a gentleman of the old school. I don't share that opinion with you.

I am trying to use common sense and I am going to ask you to use common sense.

Condon stands behind something in this case that is unholy, and I will bear it out, I think, by his testimony and by his actions.

I don't know Condon and you don't know Condon. I don't know his associates. I don't know who he associated with. I don't know who he met in that restaurant night after night in the Bronx, and they brought the owner down here. I don't know who he met on his different trips. I don't know anything about him.

But I do know that something stands out in this case that you and I have a right to inquire into before we will send anybody to jail for a day.

Here over in the Bronx is this man, close to City Island, close to the waterfront, who has a background. He may have all the college degrees in the world. Many a criminal had that. That is no criterion, that because you are a

college man you are the best person in the world, as far as character goes.

You will hear the General tomorrow when he says, "Oh, Lupica," and he will defame him. But he was studying for Princeton. You will hear the General defame the man from the gas station, a graduate of Princeton, who says he saw that ladder in a car with a man and a woman; but because he is a defense witness you will hear him defamed and yet the boy who was studying and the man that graduated, one studying for and one graduated from the same college that one of the distinguished gentlemen sitting at the prosecution table graduated from. So there is no criterion because you are on the side of the defense you must be defamed and because you are for the prosecution you must be glorified.

I don't know anything about Condon's background. I did ask him a question as to why he was transferred from one school to another. I tried to go into his past life. It was objected to.

But the thing that sticks out in this case is this: Now I am reading from Dr. Condon's testimony. Just as soon as the kidnaping had happened the man in Denmark, who was a suspect, Red Johnson—but he was a suspect under cover, they were investigating him, they wanted to know more about him.

The Condon in the Bronx knew nothing about Red Johnson unless he had a connection with him, and what is Condon's of the Bronx testimony concerning Red Johnson? It is hard to find here, because we weren't able to get a copy of the evidence, we didn't have the money.

"Then why did you pick out a local borough paper with a circulation of 150,000 with all of

New York's six million people, to insert your ad? A. Because these papers all led toward one poor miserable fellow that I thought was innocent. His name was Arthur Johnson."

Now, why should he think? What right did he have to think? Here was a man under suspicion, here is a man they haven't dared bring back, the man that received the telephone call from Betty Gow. Why should Condon come to the rescue of the only person in the world that they haven't brought back here if he didn't know him?

Let's go on and see what else he said.

"Arthur Johnson never lived in the Bronx."

"Answer: He lived at City Island." And so did Condon visit City Island.

"On Lamont's yacht?"

"On a boat."

"Correct. Which went sailing up and down."

"Yes, sometimes."

"Did you know Red Johnson?"

"I did not."

"Then why should you, a doctor of philosophy, an A. B., a professor of Fordham, suddenly decide that you would protect Red Johnson, a sailor on a yacht, unless you knew him? Answer: I will tell you why, because I hated to see an underdog and always gave him a chance throughout my life, and I had heard Arthur Johnson had nothing to do with it from many people."

Now that was a lie, because Arthur Johnson had only been in the case as a suspect three or four days. Condon didn't know it; Condon didn't know anybody that knew Red Johnson. He didn't go around asking for Red Johnson, any more than he went around asking "What do you think about Betty Gow?" "What do

you think about Violet Sharpe?" "What do you think about Whateley?" "What do you think about Mrs. Whateley?" "What do you think about the other servants on the Morrow and Lindbergh estate?"

"I was at that time going in and among people and questioning them concerning the probabilities of the case."

"What people told you Red Johnson had nothing to do with it?" Meaning the kidnaping.

"A number of sailors."

My Heavens, what sailors would know anything about this kidnaping! Why does this man lie when we pin him down to Red Johnson?

"I visited every single shipyard up and down the Sound."

And mind you, this was within three or four days of the kidnaping before he got the first note, or before he put his ad in the paper.

"What I could find and found out that Arthur Johnson was not that kind of a fellow."

Building up in 1935 an alibi for a man he knew was in Denmark and that they dared not return to this country.

Now, the next question—and I am through quoting from this, because I think you can recall it and, if you can't, I believe that you can have the testimony read to you in your deliberations. A few more questions and Dr. Condon was off his guard, voluble, acting, crafty, crooked, swinging around, telling hundreds of people, thousands of people, since the arrest of Hauptmann, "That's not John." Maybe I did tell them that." "Maybe I didn't tell them that."

Where is the security of this man?

Then a question was popped at him quick: "Did you learn that he—meaning Johnson —phoned Betty Gow at half past eight the night of the kidnaping?" "Did you know he phoned her at half past eight the night of the kidnaping?" Caught off his guard, here is his answer:

"I knew that the night of the kidnaping."

There is your record: "I knew that the night of the kidnaping."

Now, does he figure in this? Does he figure as part of this band that robbed Colonel Lindbergh of his child? Then all of a sudden an unheard-of thing happened. You wouldn't do it. I wouldn't do it. Rewards are spread all over the country. You remember that. Anything from $25,000 up. Colonel Lindbergh would have given his last dime to get that child back. The Morrow fortune would be spent to the last nickel to get that child back.

Every metropolitan daily, the Associated Press, the United Press, the International News with a spread all over the world, was trying to get a line on the kidnaper, and Mr. Condon goes to the Bronx News, as he tells us, and inserts a letter.

Did you ever see the letter? I never did. They had the editor of the Bronx News, they called his name here one day. He stood up here in the courtroom and he sat down again. I don't believe there ever was a letter, but I believe there was the same kind of a signal that passed between Betty Gow and Red Johnson at 8:15 or 8:30 that night when Condon put something in the Bronx News, a small inconspicuous paper.

Let us assume for the moment that somewhere in this State there is a small local paper

and there is a question which concerns the whole country. The minute that ad appears in the Bronx News, a little bit of a paper up in the Bronx, instantly from Brooklyn comes a reply to Dr. Condon.

There is no doubt about it.

"If you are willing to—" —I will come to the letter later. But I find an envelope here which says, "New York, Station, New York, N. Y., Station T"—the same handwriting. Brooklyn before, another station downtown—to Colonel Breckenridge.

The ad was put in the paper, if my recollection is correct, on the 7th, printed on the 8th, the child kidnaped on the 1st. Between the 1st and the 2nd, before he put his ad in the paper, nobody asking him to, he says he is around investigating the background of Red Johnson.

March the 8th, ad in the paper. I have never seen it. I have never seen the letter. I don't know what the ad is—just another one of those little things they kept out.

And here comes the answer right back. Now doesn't that indicate to you, ladies and gentlemen, somewhere a person was waiting for the signal from the Bronx News?

If it was put in the New York Times, or the New York Journal, with a million or a million and a half circulation, or the Mirror or the News, with a million or a million and a half daily circulation, with this thing planted on the front page, you might expect a reply. But here is a little paper tucked away and the minute it appears in the paper, the next day comes an answer:

"If you are willing to act as go-between."

"No, no, this was prepared. This was read and the alibi was the ad in the paper. And the

moment the ad was printed the answer comes.

What does Condon do? Does he go to a policeman? He does not. Does he go to a detective? He does not. He goes to a restaurant. He doesn't call up New York Police headquarters. He doesn't call Inspector Bruckman who has been sitting here for days preparing the case to be tried in the Bronx.

He doesn't call up any agency at all but he goes to a restaurant and he calls up Colonel Lindbergh and he insists on talking to him, and when he says—first he said, "I did not open the letter." Now, you remember that. "I did not open this letter, and the Colonel told me to come down and bring the letter." And I said, "Wasn't it after you opened the letter and told the Colonel you had a letter with the three symbols on it, that then he invited you to come down?"

"Yes. I forgot, I did open it. The Colonel told me to open it."

So he goes down there and he begins, and the letters keep on coming in, and all the other letters that Condon ever received, nobody ever saw him receive any, always Condon alone, always Condon alone, Condon alone.

Now, I don't know anything about this man, but he stands out in this case, and whether the General says he is a fine patriotic gentleman, that's his opinion; I have a different opinion and it is based on the fact that he was investigating Red Johnson; and after his investigation he puts an ad in the paper which brings an immediate answer, and from that time on Condon is doing everything, always alone, alone, alone.

And it is just as secure as the testimony of Betty Gow, when she comes on here and

blandly tells us on her oath that thousands of State Police, Government agents and investigators, photographers and everybody else had passed over for days, and days and days, and searched, no doubt with searchlights, flashlights, and fine-combed them with rakes, she is calmly walking down with her pal, Mrs. Whateley, in the afternoon of a lovely day, and she picks up the baby's thumbguard.

Now, do you believe that? Do you believe the State Police bungled to that extent? Do you believe that all the photographers and investigators and people that went over that road day after day didn't have just as good eyes as she had?

She didn't dig it up. She didn't scratch it up—lying right there was that thumbguard and not a particle of rust on it. But, the smart Attorney General, figuring that that would rest in your minds, that this thumbguard had no rust, brings on a man who makes them, and the best he could do is tell us that before he made them, somebody sent him a piece of wire which was made into a ring and he wore it on his finger, and because the wire ring did not rust, therefore he thought that would be rustproof steel and that is what he makes, Alice Blue, I think it is, or Baby Alice thumbguards out of. But this thumbguard, exposed to the elements of March, snow, rain, mud, dampness in Sourland Mountain, is picked up by Betty Gow as clean as the day it came out of the factory—a little bit bent, yes, a little bit bent, I suppose that is to show somebody walked on it.

Well, if the defendant as they charge tore that from the baby's sleeping garment, the thumbguard, why didn't he tear off two because

the baby was wearing two, one on each thumb. Where is the other one? Why plant things in this case? This case is planted, planted and planted against this defendant, and that thumb-guard stands out like a monument, because I don't believe it and you don't believe it. If it was found in the woods, if it was found in the leaves, if it was found in the snow, yes, but it was found on the roadway within one hundred feet of the headquarters of the State Police, the gate house, to Colonel Lindbergh's estate. So we have Mr. Condon, now he is in contact with the Colonel, and the next letter comes and it says, "Make a box." "Make a box." Now, there were hundreds of carpenters Colonel Schwarzkopf could have used to make a box. No doubt there were mechanics on the Morrow estate that could make the box, but no, Mr. Condon has to make the box, or have it made for him, five-ply and all this nonsense. "Well, who made the box? Who made the box? Why, I don't just recall his name." Well, you want to know and I want to know the carpenter that made that box. It wasn't Hauptmann. He makes the box and the letters keep on coming always to Condon. And then they bring in a chauffeur, Johnnie Perrone, and he says, "Oh, I was riding through Gun Hill Road." I am awfully sorry you couldn't be taken over to the Bronx to see this portion of the Bronx. I have gone through it many times,—see if I can find it. Here it is. Now you see this is a very good map, that a lot of streets are indicated here, but it does not show truthfully the condition of the surrounding country. It does, however, indicate—here is Bronx Park. Bronx Park,—I can only compare it to the pines and the scrub

oak that run between Lakewood and Toms River, if you have ever gone over that road.

This is a great big park, desolate at night; here and there a small park light, Gun Hill Road running through the park, where you wouldn't see one taxicab maybe in hours, and all of a sudden, as he is coming down from a call, a man steps out and says, "Take this to Dr. Condon, and here is a dollar."

Now, do you believe any such trash as that?

Why, any man could walk into a Western Union office and say, "Deliver this to Dr. Condon."

"How much?"

"Sixty cents."

He could walk into a post office in the Bronx, put a special delivery stamp on it, and it would be delivered within an hour to Dr. Condon.

But to stand in the Garden of Eden, you might as well say, waiting for a taxicab to come around the corner at night, on Gun Hill Road, the last place in the world you would see a taxicab, and suddenly step out and hail the man —now, what would Hauptmann or any one else be doing in the middle of Gun Hill Road and in the Middle of Bronx Park?

Just the figment of Condon's imagination, plus no doubt his friendship for Perrone. He must have known him.

There must be something behind that fellow too, because it is very significant that as these notes keep coming in, and everybody is on their toes, everybody is waiting for something—even April the 2nd, "we are now waiting with the money, we are waiting for the signal," a man walks up to Dr. Condon's door, rings the bell, hands him a note in front of his daughter,

Mrs. Hacker, and nobody can identify the man, nobody grabbed him, Colonel Lindbergh in the house, Breckenridge in the house, New York City police available.

If they had grabbed the man and taken the note away from him, they could have followed the directions in the note and they would have had the bearer of the note under arrest. No. Nobody can identify the man that came to the door, but Perrone could identify the defendant in the middle of Bronx Park at eight o'clock in the night, and the only light from a street lamp or a park lamp, and you know how dull they are.

Talk about plants in this case—everything seems to be planted in this case since this defendant was arrested,—and the impossible story that Condon has told us.

I want the pictures, please, of those graveyards.

(Captain Snook hands pictures to Mr. Reilly.)

Now, here we have got Hauptmann with a sprained ankle or something, Mrs. Ochenbach, or whatever her name is—oh, yes, she did send her child over to Germany with Mrs. Hauptmann; Mrs. Hauptmann came back and said, "Yes, you owe me some money," and Mrs. Hauptmann says it is still owing and "my husband paid it."

Her husband is alive, they don't bring him in, do they? They don't bring him in to say, "Yes, I paid Mrs. Hauptmann." It goes unchallenged, it is Mrs. Hauptmann's word.

Now, I have just fallen off a ladder, and I have sprained my ankle and I am around to

Mrs. Achenbach's and coming down a stoop and yet I am able to jump over a nine-foot wall, run down the street with Condon after me.

Do you believe that? Look at that gate, sir (handing photograph to jury), look at the size of that gate. Condon says the man was inside the cemetery and the gates were closed, he doesn't know whether they were locked or not, and the man shook a handkerchief or something and he went over and talked to him, and down the street is Al Reich, I think, in a car and, "Come out" he says, "come out, don't be a coward, come on out," and the man climbs up nine feet, and of course he had to jump off the top, because there is a spiked gate, and he runs, and the 71-year athlete, the great American is able to run down the street and catch up with him.

Now imagine a man who is writing ransom notes and who has stolen Colonel Lindbergh's baby, sitting down on a bench with Condon for an hour and a half, and his face is not covered. Why, I don't believe any such fancy story in my life, neither do you. I believe there was a man inside that cemetery, and I believe that that man was talking to Condon, but he was well covered up by the bushes that you see there, and I believe that when the guard came, that Condon speaks of,—and the guard they have not produced; they could produce the guard and say, "Yes, on such and such a night," because I imagine it is only one night in a year maybe that a man is found in a cemetery after they close the gates, especially half past eight at night, and the guard must make a report of everything he sees and hears that is wrong, and the guards are not taking any chances on people coming there to rob vaults, steal bodies, or

steal jewelry off bodies in vaults, and the guard is armed. The guard comes and the man hears the rustle, hears the guard coming, and he shimmies up and he goes over, and you bet he runs away. But he doesn't sit for an hour and a half, talking to Condon about his mother in Germany, and all that nonsense. Because, if that was the fact, why didn't Condon grab him? Why didn't Al Reich grab him? Why didn't somebody grab somebody in this case, before Hauptmann? Bungling, bungle somewheres, because I can't conceive, if Colonel Schwarzkopf and his officers knew that there was going to be a meeting over there at that cemetery or anywheres else, that they wouldn't have Condon shadowed and the people in contact with Condon arrested; and if they gave those suspects the same kind of a grilling and a beating that they gave this defendant, they would very likely get some information as to who wrote the letters. But they never contradicted by anybody on this witness stand the fact that Hauptmann was beaten in a station house in New York. They beat him and they beat him and they beat him, and they kicked him, he testified, and yet he couldn't confess to an act he was not guilty of; and yet, when they had these people delivering these notes in their hands three times, they let them slip through their fingers.

And then finally we come down to this preparing of the money. Colonel Lindbergh places too much confidence in those people who, he believes, should act right toward him. From the moment that child was taken out of that nursery, every suspect in this case should have been watched, followed and checked, and yet none of them were. Condon was a stranger;

they didn't know him from a hole in the ground. If he had told them "I am trying to protect Red Johnson," as he told us here, you can bet they would have watched him. Now, I can't conceive why they would allow him to build any box.

And if it was built by a carpenter, as he says it was, where is the carpenter, where is the box? You remember his testimony, "the man shoved the money into his pocket." Where is the box? Where is the footprint of the man that took the money that night? Missing.

So Dr. Condon says, "I have got a note April 2nd. We had better be ready." And they bring the money up there, fifty, seventy thousand dollars, in the box.

Colonel Breckenridge is not a detective. Colonel Lindbergh is not a detective. Al Reich, I don't know what he is,—ex-pug, hanging out with Condon, up in this cheap restaurant. But they have got within their hands the means and the power to pay the ransom that night. And what do they do? Somebody advised the Colonel, "You don't need any police." Somebody advises Colonel Breckenridge, "You don't need any police."

I can't conceive of any father in the world, whose child has been missing for days, who is about to come in contact with the person who is going to receive the money, that wouldn't be there on the spot, and kill the dog as he took the money out of Condon's hands.

I'd have torn him from limb to limb!

But they advised the poor Colonel to stay down on the street, in his car, a hundred feet away, and he hears a man, "Hey Docteur!" And he comes on the stand here with all the honesty of purpose and all the sincerity in his

heart, because he believes it, and he says "The voice I heard was the voice of the defendant."

But, Colonel, I say to you, it is impossible that you having lived for years in airplanes, with the hum of the motor in your ears for years, with the noise of the motor and the change of climatic conditions that you have lived under since you made your wonderful flight, to say with any degree of stability that you can ever remember the voice of a man two and a half or three years afterwards, a voice you never heard before and never heard since.

I don't challenge the Colonel's veracity or his truthfulness, but I can understand him. I can understand any father, torn by grief, a terrific grief, a silent grief. And there is no grief more lasting, no grief that hurts more than the silent grief. It is the man that can cry and the woman that can cry that give vent to themselves, but the man of iron who holds his grief within his heart, who tries and tries and tries not to crack, and sees before him a man charged with the crime can unconsciously and subconsciously make a mistake of judgment. And that, Colonel Lindbergh, I think you have done in this case.

But Condon, I have no excuse for him, because Condon says with his lies and his gestures that as he went down the street the voice again said, "Over this way, Docteur."

Colonel Lindbergh didn't hear that. "Over this way, Doctor," or "Come over this way, Doctor."

You will remember the testimony. Why, that graveyard of St. Raymond's should have been surrounded by police. That man, as he reached over and grabbed, wanted to grab fifty

thousand dollars, should have been pounced upon immediately.

But it was Condon, Red Johnson's friend, Condon, the ad-putter, Condon, who received the letter within 24 hours, that must have advised the Colonel, "I have got everything under control; don't worry, I will get it; we don't need the police."

And who saw Condon hand the $50,000 over the railing, or over a bush? Nobody—nobody in God's world but Condon.

And if a man was there to receive it and he comes back and he has got another note—Condon alone,—always Condon,—gave him the money, Condon alone.

Sitting on the bench, the golf bench in the park: Condon alone.

Woodlawn Cemetery: Condon alone.

Where is the guard that saw anything? They brought everybody else here, didn't they? Why not bring the guard? Because the guard saw nothing and the guard heard nothing, and to bring him here and have him admit that would make a liar out of Condon.

Over the fence in the graveyard, soft dirt, soft earth, a man kneels down and, of course, if he kneels down, he has got shoes on and he leaves impressions of some kind. Couldn't the police have been there an hour afterwards and roped off that space, as they roped off the footprint at Hopewell that night to preserve it, and in the morning couldn't they do what they did three days afterwards to the fresh-made grave, take a test of a foot and put it away and wait for a suspect to be arrested, and see if it fit his foot? No, they didn't do that. Bungling, Bungling. And they let Condon get away with that story,—that he handed fifty thousand

dollars across a bush, or a grave or something, to an unknown man, and took in exchange a receipt, which says, "The child is on the boat Nellie."

And then he leads the Colonel off on a wild goose chase from Bridgeport at six or seven o'clock in the morning, and brings him back on Sunday night, landing in Long Island City airport.

Did he go the next morning, Monday morning, to preserve the footprints?

He did not.

Did he send any detectives?

He did not.

But when he discovers three or four days afterwards—and he never explained to us how he discovered the fresh footprint in the fresh-made grave, who does he take back with him, —his son-in-law; and the amateur son-in-law was able to take a plaster of paris cast of this foot and I challenged them to bring it into court and I challenged them—I produced evidence that Condon repeated as best he could the voice he heard and it was made on a Victrola record and I challenged them to produce it and they admitted they had it and they don't bring it in here and they don't bring in the footprint. Now why? Because the footprint does not fit the defendant and the voice is not the defendant's, even the imitation of it. And then they talk about justice! Justice! Hang this man and cover up our sins! Yes, hang him, cover up their sins. Hang him and ten years from now after he is dead, have somebody on their death bed just about to meet their Maker, turn over and say, "I want to make a confession, I was part of the Lindbergh gang" and then where is our conscience, where are our feelings

when we have sent an innocent man to his death, and we think about the real culprit—he must be somewhere in the world. There must be two or three of them still alive, because no one man could do this. And then after poor Colonel Lindbergh comes back he must have had many bitter nights thinking of the inefficiency of the agency, over on a little hill, while the poor Colonel is out, I think, on a boat off the Virginia Capes led around by every harum scarum crackpot detective and everything else, but doing everything humanly possible to recover his child. He is off the Virginia Capes when the word comes the little baby's body is found at Mount Rose. And they pick up the poor little child's body and they bring it to a morgue. Now, I dislike very much to review that harrowing scene. I must speak about it briefly, because it is part of the case, but I don't want to make it any more difficult or more sad for the Colonel who is in the courtroom than I have to, because I have great respect for his feelings. But you remember the testimony, and this is very, very important; it goes right back to the pattern, it goes back to the indictment. Here was this little baby, who had lain some days in this shallow grave. No proof in the world that Hauptmann ever dug that grave, nobody ever saw him over here or anything, notwithstanding the speech of Mr. Hauck this morning that he ran there that night and was afraid and dug the grave and put the baby in there. That's all guesswork on the part of the prosecuting officers. But there is no evidence.

Now, they must prove the cause of death by direct evidence. So they called in the Coroner's Physician.

You saw him—a big, swaggering, blustering individual, who says he is a doctor.

"Are you connected with any hospital?"

"No."

Now, you and I know from our experience that every respectable, high-standing professional man is always connected with some hospital if he is a physician, or if he is a lawyer, is connected with some Bar Association. He is either consulting surgeon or he is administrating medical man, or he is diagnostician, or he is something. It is his standing in the profession.

He doesn't belong to anything.

And the poor little baby's body was so badly decomposed that all of the important organs were missing, and the detective unfortunately, in lifting up the body—and even the Doctor had to admit that the baby's skull, of that tender age, and exposed to the elements as it was, would be more or less in the same condition that you might have a decaying orange or grapefruit: it would be easy to lay it aside, open it up.

Now, we have—and he did it, no doubt, with the best of intentions, this detective picking up the body with a sharp stick, and as a result of his picking up the head with the sharp stick, he with sufficient force punctured a hole in this little child's skull.

Now, I say that the pressure is sufficient—and I think it is borne out by the evidence, and it is a fair inference for you to draw—the pressure of that stick on the little baby's skull, which hadn't formed into bone yet,—it was just more or less like muscular tissue,—if it was sufficient to force into that, it would be sufficient to almost crack it open.

And the cracks he found in the skull are no indication that the baby in life received a blow. Then he tries to say in medical terms, "Oh, yes, it was a blow, because I found a clot of blood on the inside of the brain, which I believe,"—he believes,—I would not take his word in an accident case, much less a case of death, a case of life and death like this,—"I believe," he says, "that that clot of blood inside shows me,"—he is a professional man,—that that clot was formed before death."

"Well, Doctor," I said,—and you would say the same thing,—"did you have anybody come in and look at you perform the autopsy?"

"No."

"You gave your report. Did you write it down?" "No,"—but he filled out a form which is on file. No inquest, no Coroner's jury called, no inquest, no care and attention that you would expect to be given to the child of Colonel Lindbergh.

Now, where is there any security in a report of that kind of a medical man? "Supposing, Doctor, you had died before anybody was arrested: What would happen to your evidence?" "Well, I don't know."

Now, supposing the State of New Jersey at some time did get the real kidnaper, the real culprit—not Hauptmann, who is innocent—and Dr. Mitchell was dead. How would they prove anything? They couldn't—no photographs, no backing up by any other physician, no record that you could bring into court, except the filing of a form, Coroner's physician form No. 8, "Baby come to its death by blow, external." But even that, he can't say, nor is there any doctor living—and I challenge them to bring one in here,—is there a doctor living

that can tell from the examination of that baby's body at that time, under those circumstances, when it died?

And remember, you are limited to March 1st, between ten o'clock at night and midnight. There isn't a doctor living that can tell when that poor unfortunate baby died, or what it came to its death from. The mere fact that he found the skull cracked might indicate a million things, but Mr. Wilentz in his opening said this: "I will show you that when the ladder broke the baby was smashed up against the wall and then fell, I think on the catwalk."

Now where is there any evidence of that? That's Mr. Wilentz's assumption, his guess, his inference, and he would like to have you believe it. Now you can't believe it when you take Dr. Mitchell's report. You can't hang a man on circumstantial evidence unless all of the innocent constructions covering the act are wiped away and only the guilty construction remains. Now you can't guess that this baby received its death blow, as Mr. Wilentz said, because he wasn't there, he knows nothing about it, he is the Prosecutor, he may believe it, he may think it fits in fine with this indictment, but that's not the fact and that's not the evidence. The pressure of that stick by that police officer, careless and clumsy, more bungling—that little child should have been treated with the greatest reverence in the world; it was very easy to allow the little baby's body to stay there until some trained mortician came with a little basket, and who knew how to gather up the child, and then you wouldn't have this careless bungling of a great big copper with a stick, unfortunately puncturing the head and the skull of this child, and of course there was force

enough for that undoubtedly to cause the little skull to crack, and that was the condition Dr. Mitchell found it in.

Well, as I say they had the Colonel going from here, going there, and going everywhere. He came back, saw his baby for the last time, the baby's body was sent and was cremated.

What is happening all this time around Hopewell? People are being questioned; people are being asked things. Now, a girl who is sophisticated and worldly enough as Violet Sharpe to go out on the road and flirt with fellows—that may be harmless—and ride off with them in cars, to speakeasies, even though she drinks coffee, I have my doubts about that, who can always get a position as a waitress, doesn't commit suicide because she fears she might lose her job. Life is too sweet. But the net is closing in; the net is closing in. Sharpe has said something; Sharpe has given a clue. That clue was investigated. I think it was Walsh of New Jersey had investigated Sharpe. It was the New Jersey Police that was doing the investigating. Suddenly detectives come back and they say, "Bring Violet down here again." "But you have just questioned her." "Never mind, we have got something we are going to ask her about now, bring her down." And a poison which is never permitted in any home, cyanide of potassium, I think it was, the most deadly, effective and quick-acting poison in the world this girl drained when she knows Inspector Walsh and the police have checked up and found something. She didn't do it because she feared she would lose her job. She did it because the woman from Yonkers, Mrs. Bonesteel told the truth. She was at the ferry with a blanket and she was at 42nd Street with a

child and that child was the Colonel's child, and while I have the greatest respect and always will have for the distinguished Mrs. Morrow, who appeared here at the last hearing of the court, I will say this: that I believe that she is honestly mistaken and I will tell you why, the inference I draw, and if my inference does not amount to anything, please reject it. In great houses like the Morrows, where there are any number of servants and the mistress of the house is living practically in exclusive privacy as she was after the death of the late Senator and where there was nobody there but Miss Elisabeth on March the 1st, it is a fair assumption to believe that the mistress of the house is served her dinner by the butler and the waitress serves the other members of the household who happen to be at the table.

And I have a right to assume from my knowledge of the world and the inference I draw, and I give this to you for your belief, that when Mrs. Morrow finished her dinner that evening she retired to her private quarters, very likely to read and to rest.

People of her station in life do not associate with their servants. If Mrs. Morrow required a glass of water or a glass of milk that evening, or any attention, and she pressed the bell or pulled the rope, the butler would respond, and he was on duty that night.

There were five other maids. Any personal attendance Mrs. Morrow required that evening undoubtedly was given to her by her personal maid and not a waitress; so I don't think that Mrs. Morrow remembers correctly that she saw Violet Sharpe at 11 o'clock or 12 o'clock March 1st, because it doesn't fit in with Violet Sharpe's suicide.

Whateley, who controlled the dog, his wife goes to Europe, he is suddenly stricken,—he is dead.

The sinister hand of Fate played strange tricks in Hopewell and in Englewood, concerning this unfortunate baby.

The man that was there with the dog, the man that had charge of the ground floor, he is stricken while his wife is off to Europe,—dead in two days.

Sharpe,—"bring her downstairs; I want to ask her something."—Dead!

And then you say—and you say that they had nothing to do with this kidnaping of this child, when Whateley was in control of that house that night, as butler, and controlled the dog, and Sharpe; that Mrs. Bonesteel—she is no convict, she is a respectable, decent woman, —do you suppose she comes down here and perjures herself? I don't believe it.

She saw that girl before that night; she was introduced by another maid; it was the end of the Alpine Ferry; the Alpine Ferry was the nearest Ferry from Jersey, from Englewood to New York. The girl was there over an hour, she has a blanket on her arm; a car pulls up, she waves, she runs out, and then they bring this parade in here of witnesses who say they were with her, they were with her on March 1st.

And what does this fellow say, the fellow that picked her up on the road?

Let me have that evidence please.

What does he say? It took a little cross-examination to get it. He says he was riding along in the car one night. It wasn't March the 1st, it was before March the 1st. There was a girl in the road. "She waved, I stopped,

she gets in the car. She says, 'Oh, I took you for somebody else.'"

That is a lie they have been handing out since the days of Eve.

Anyhow she doesn't get out of the car. She goes to the speakeasy. She has some coffee. And that is the only night he was out with her. And in that car was the other girl and the other boy.

"Question: Where did you take her the very first night she got into your car?"

Now he testified before that the very first night he met her was some time in February.

"Where did you take her the very first night?"

"Orangeburg, Peanut Grill."

"How long did you spend in her company?"

"From eight until eleven."

"Well, did you ever see her again?"

"Yes, down in the morgue."

Now I give you Violet Sharpe at Yonkers, New York side, and I give you Violet Sharpe at the 42nd Street Ferry with a baby, against this kind of truck that they bring in here, who swears under oath that the first time he met her was in February, that he took her to the Peanut Grill, and the next time he saw her was in the morgue. And when you ask his friends and associates for any other date in their lives they can't remember anything but March the 1st, 1932.

Now will you hang a man on that kind of evidence? Will you send a man to the chair on that?

Then add to that her suicide; because in her guilty heart and conscience she knew what she did. But stricken with fear and stricken with her conscience, she didn't know how much the

police had found out; and when they asked her the first time and she got away with it, she couldn't leave the Morrow estate without being subject very likely to arrest; but when they came back and said, "Bring her down again, we have got something this time we want to ask her," then the realization came to her, "They have got me, but they will never take me." Death was the quickest and the easiest way out of it. And this explanation that she did that because she was afraid that somebody would know that she was in a speakeasy is ridiculous. I am asking for an application of common horse sense; David Harum sense, please. This girl never killed herself because she feared the loss of her job, any more than Whateley was suddenly stricken with appendicitis or something. He was stricken with something that they dare not bring in and didn't bring in the record of his death; but he was dead and he died while his wife was in Europe, and he died —I don't know how he died or why he died. But he is the man that had the dog and muzzled the dog and kept the dog quiet the night that this unfortunate child was taken out of that house, down those stairs, and not down any ladder.

$50,000 handed over a grave; $50,000 given to a stranger. Immediately the United States Government finally wakes up. Something must be done. This is getting to be a scandal. The New York Police don't seem to be doing anything, because it is not in New York State. The New Jersey Police are falling down. Now here is $50,000 handed over; who is this man Condon that can take the Colonel for $50,000? Where were the police? Where were the detectives? Let's stop this nonsense. Let's issue

to every bank in the country, trust company, savings loan, anybody that touches money, a circular, thousands of them, all over the world, "Here are the numbers of the bills."

And what's the reply? What's the response? One bobs up in Albany; one bobs up here, one bobs up there. About $150 or $200 bobs up, because the man that got the money over the fence or over the grave had it, and it wasn't Hauptmann. And I will tell you why it wasn't Hauptmann. You couldn't get one of those gold notes through Wall Street for 15 minutes before it would be discovered. And not a note was ever found in the Wall Street district,—not a note!

There is $35,000 of this money missing. Where is it? If it was in circulation they would spot it immediately.

He had fourteen thousand some odd dollars in his garage and in his house; a couple of hundred dollars were spent.

Secret Service men said they picked up an odd dollar here, an odd bill there, something else. $35,000 missing, that never went through a bank, trust company, or anywheres else.

But the inference I draw is this: that somewhere, in a safe deposit box, under an assumed name, that $35,000 that Isidor Fisch had is resting there under a name that some day, when the payment isn't made on that box long enough, years to come, that box will be opened by Government authorities and they will find the $35,000 of this ransom money.

And how will you feel? And how would I feel if, when that money is found, because it must be some place, and Hauptmann hasn't got it,—it never passed through any bank, because the Government would know it,—and all this

nonsense about this fellow from Washington telling you the money came in so fast and so furious that they didn't look for ransom money is a lie. They weren't looking for ransom money from you and I,—they were looking for ransom money of a relative of the Senator from the State of New Jersey, the former Ambassador to Mexico, and one of the closest men in his lifetime to any President that ever served, and they weren't passing up any bets.

It wasn't John Jones' money that they were sliding through. Every man in the Treasury was on his buttons, right on his toes, he was looking for that, and if he discovered it, he would expect commendation, he might get reward. The friendship of the Senator, the friendship of Colonel Lindbergh, advancement, and no money went through the United States Treasury in this hodge podge manner, as this fellow tells you from the witness stand. That wasn't my money, that was the money of a man who stood so high with the Government that we send him to a foreign government to represent us.

Now I am asking for an application of good horse sense, please. Is it reasonable? Why, if anything should happen that the President of the United States should lose a thousand or fifteen hundred in cash and they had the numbers of the bills, they would pay just as much attention trying to find that money as they did Senator Morrow's money, Senator Morrow's son-in-law's money.

And to tell you that they didn't check up is a joke. Thirty-five thousand dollars of that money is some place.

They write the scenario and they say, "Well, look at what Hauptmann did. He went into

Wall Street. He spent money in Wall Street." They add up a set of figures and they show you that from the 2nd of April, 1932, down to the time of his arrest, he spent $50,000, or $35,000, just enough to make, with the $15,000 found in the garage, the $50,000 of the Lindbergh money.

And when we took the accounts with Hauptmann and their inspector for the United States Government was sitting here—I think his name was Ward or something like that, the man that was sitting here checking with them,—we ask, "Did you buy this?"

"Yes."

"Did you sell it the next day?"

"Yes."

The sales offset the buying. He showed it clearly. Nobody went back on the stand and contradicted him. He lost $5,000. They would have you think that he was spending Lindbergh money down to the day of his arrest, and yet when you look at the accounts, as you will, you will see that in July, 1933, when Isidor Fisch gave him the last $4,500 to balance the account, from July 2nd, I think it was, 1933, down to the day of his arrest, this defendant didn't put a dollar into his Wall Street account excepting one or two small dividend checks that came in that were credited to his account.

Now why try to fool you? Why try to drag this poor defendant in here and have you people fooled, send a man to the electric chair, send him away for life, in order to close this unfortunate chapter in American home life?

It isn't right and it isn't decent. Not a dollar of that money, of that ransom money, ever went through Wall Street or ever went through

a bank. One bank might slip up. But there was a bank in Mount Vernon. There was a Central Savings Bank. There was the bank that the brokers did business with. Then there was another brokerage account. I think there were three brokerage accounts. There were three or more banks. And not a brokerage account, not a bank account from anybody in the world found a dollar of this money.

Now, how can you say or anybody else say that Hauptmann used ransom money just because a set of figures added up on one side, but they forgot to correspond with the sales on the other side. And I think we have demonstrated that this defendant who was in the market long before the baby was kidnaped, who had money before the baby was kidnaped, who saved his money, went into the market, played, as the man said on the witness stand, that you could go into the market with three or four thousand dollars and you could shoestring it up to a million as many-a-man has done if he was fortunate in his tips.

Then Hauptmann up in the Bronx, in August, finds a box. Now what is unusual about that? He says Fisch gave it to him. Was there such a man as Fisch? Yes. Was he in the fur business? Yes. Was he in the fur business with Hauptmann? Yes. Was he down in Wall Street with Hauptmann? Yes. Who says so? Their witness from Wall Street, who testified concerning the account, says, "I saw Isidor Fisch in that room, in that market room, time and time again, with Hauptmann."

They didn't expect that to come out, but he told the truth. Fisch was down there.

And the defendant finds this box, shoe box, cardboard box. Now, we are not trying this

defendant for possession of Lindbergh money, and he can't be convicted of murder in New Jersey because he was in possession of Lindbergh money in New York; but that's what they have tried to build up here—a perfect case of attempted extortion, in the hope it will strike home and register with you people in a murder in the first degree verdict. Whatever he did in the Bronx subsequent to March the 1st, 1932, in this case lies in the indictment now against him in that count.

Now, if Hauptmann—in one breath they say, "Hauptmann, you are a master mind; you are clever, you are not wearing gloves; you are wearing gloves; you are shinning up poles and coming down poles," and all this thing; and the next thing say, "You are a dummy; you are talking for an hour and a half to Condon."

All right, for a minute the master mind, let's say he has got this money and he knows it is Lindbergh money, and he goes around the Bronx, leaving it in stores where he deals all the time; he goes to a gas station where they can write down his number; he uses ten or twelve of these bills, openly and aboveboard, in full sight of everybody.

He doesn't change his name, he doesn't move out of his house; he doesn't move out of the city; he doesn't go back to Germany; he doesn't go to Mexico, he doesn't go to another State,—but he starts to spend ten or fifteen of these bills in his own neighborhood, where anybody can check him,—buying a pair of shoes for his wife, buying gasoline, and when the man said to him, "Have you any more home?"—instead of saying to the fellow, "Now, don't bother me, I just got that from a cigar man down the street," evasive or crooked,

he said, "Sure, I have got ten or twelve or a hundred more home,"—and the man writes down his automobile license.

Now, if he had the guilty knowledge, if he had the guilty knowledge that this was Lindbergh money, wouldn't that inquiry from the gasoline man put him on his guard?

And if he had the guilty knowledge and the guilty conscience, wouldn't he go home and pack a bag and go in the garage and take the rest of the money and leave the Bronx, so that four or five or six or seven days afterwards, when they came back looking for him, after the bill had gone through the bank, they wouldn't find him?

Doesn't it strike you that he was acting just as an innocent man would act?

He didn't run away. He placed no significance, because he didn't know it was money that belonged to Colonel Lindbergh,—it was money that Fisch had left, and Fisch owed him money, and he saw no reason to turn it over to Fisch's relatives.

Now, whether morally, legally, or ethically you approve of that conduct, that conduct is not sufficient to find him guilty of murder.

And so he was arrested and they find another twenty-dollar bill in his pocket. He hasn't tried to pass that on anybody. And he says that when they asked him, "Have you any more money home," as he testified in the Bronx under oath, "Have you any more money home? Did you tell the police you had any more money home?" He said, "Yes, I told them there was some money in the garage." Well, of course they have got to overcome that, so they don't go and get a detective, they go and get former Police Commissioner O'Ryan of New York,

just because he has got a title. We have had colonels and generals, so now we must bring a general from New York State. If his name had been Grover Whalen or if his name had been Arthur Woods, former Police Commissioner, they wouldn't bring him down here at all. But let's parade this stuff, Major General John F. O'Ryan, U. S. A. Army retired. "Did he tell you in the Bronx anything about this money?" "No." "Well, General, were you in the garage when the money was found?" "No." Just a bluff, to sort of impress you by a high sounding title of a man that has ceased to be police commissioner of New York City quite recently for very good reasons. But they bring Hauptmann in. They take care of him down in Greenwich Street. And they try to get him to confess or make a statement, and he says, "I don't know anything about this at all." And then they say, "Will you write?" He says, "Sure, I will write. I am anxious to write. I want to be cleared of this thing." Now, is that the natural reaction of an innocent man, "I want to write. I want to be cleared of this thing." And they say, "Write this and write that." And Hauptmann says, "I wrote as I was told to write. They spelled words for me and I spelled those words as they told me to." And not one soul went back on that witness stand in all the rebuttal to contradict Hauptmann on that score.

"Write s-in-gna-t-u-r-e, singnature," and he wrote it. And Mr. Osborn, and they lay great stress on "singnature," great stress, and Mr. Osborn, the dean of all handwriting experts of the world, who is breaking his son in now so that he will take his place, gets up and has a chart "singnature." Here it is, from the ran-

som note. "All right, Mr. Osborn, what did you compare that with, taken from Hauptmann's handwriting?"

"Nothing."

There it is, i-n-g, he has got, nothing to compare it with.

"What did you compare?" I-s, is. Here it is. Osborn says this i-s is the same as that i-s. All right, I will stake all of Osborn's and all of his pals' and very likely $500 a day of your money on whether that looks like that (indicating), and I want to say to you, will you hang a man on that comparison? And that's the only i-s or anything else he has taken from the nursery note; and here is his "singnature," and there is no comparison, he has nothing to compare it with.

Hauptmann says, "Sure, I will write and I will spell what you tell me to spell," and nobody goes back and contradicts it. Well, of course, he is then in the hands of the New York City Police, not Jersey.

There is not bungling over there, because if there is anything lacking they will make it themselves.

You have had Bruckmann here and you have had him every day except today. Maybe he is around today. I haven't seen him. And all of his staff, one after the other, found things: one found this and one found that,—the same old gang,—in order to get ten or fifteen detectives in on a case you will find one fellow finding one chisel and the other fellow finding the tools, then the third one finds an old hat, and in time you have got ten fellows with blue cards all on the Lindbergh case,—and when they come up for promotion they pull out the old cards.

So they'd have you believe, the New York City police—not your Jersey police now—past masters in fixing evidence on people, that a man that never had a telephone in his life—because there is no evidence here that Hauptmann had a telephone—would crawl into a closet and would turn around in the dark closet and would take a board—I don't want it; you have seen it—a dark closet, mind you, that you have got to get into like this, and over in a corner on a board he would write Dr. Condon's telephone number as it was three or four years ago, before they made the change.

If he had it in a book, if he had it out in the kitchen where he used to write down the numbers, if he had it in his pocket, if he had it some place where he could use it when he wanted it, and in order to get it all he had to do was to walk into any drug store, any United Cigar Store or any other store, and pick up a book and look for Condon, and after he used it once or twice, if he ever did, he would memorize it, but of all the crookedness in this case, of all the plants that were ever put into a case, this board on the inside of a closet is the worst example of police crookedness that I have seen in a great many years.

And who found it? Did the ordinary patrolman find it? No. Did a detective find it? No. Did a lieutenant find it? No. Did a captain find it? No. And you go all the way up the grades, with all of these fellows, these blood hounds all over the house, a little voice led big husky Inspector Bruckmann into the closet and he turns around in the dark closet, and he says, "Aha! I have found it." The Chief Inspector of the Bronx. That puts him in the case. Condon's telephone number and

Condon's address from a man they claim was writing to Condon on and after March 8th, 1932.

Why, if Hauptmann, as dumb as they want you to believe in one minute, or as smart as they want you to believe in the next minute, ever wrote to Dr. Condon, you can bet he would never write down anything on wood in a closet that you have got to back into to find it.

Well, they haven't a very good case in the Bronx against Hauptmann up to now, but now they have got the telephone and they rip out the board—telephone number—and they rip out the board. Well, that won't do, there has got to be something else. Go out and get something else on this fellow now. We will rent the apartment to the New Jersey State Police at sixty or seventy-five dollars a month, and we won't let anybody in to look at it, and when we are getting ready for trial, and during the trial, when we ask permission to go into the attic and into the Hauptmann apartment it is denied. What are they hiding? What are they hiding from us that they don't want us to see where this board was ripped out, if it ever was ripped out? What is the State of New Jersey, if it is on the level in this case, hiding from the defense? Even after the trial starts we can't get in the house. We go over and Mrs. Rauch says, "No, the State Police have got it, you can't go in." Go to the State Police and they say, well, we can't get in. What are they hiding? Your great State and its prosecuting officers are supposed to be absolutely free from anything in the line of hiding, and I think the prosecuting officers are free, but I put all of the bungling and all of the monkey

business in this case on the State Police here and the City of New York Police; and no doubt tomorrow the General will say every lawyer that ever stood before the Bar when he has a weak case damns the police. I am not damning them because I have a weak case. I say that a house that is inspected day after day by detectives who are supposed to be bright and know their business, and go over every inch, it is a mighty peculiar thing that they cannot find anything. But the big inspector backing into the closet, he can find a number that nobody else could find.

I wonder if just about that time O'Ryan had resigned and maybe this man was looking for Valentine's job. I wonder was there anything like that in his mind when he backed into that closet. Because you know the Mayor did pick a copper,—Valentine,—and make him Commissioner, and he wasn't an Inspector until they raised him up.

I wonder what was in the mind of the man who suddenly discovered Dr. Condon.

Oh, the District Attorney, the Attorney General, will say, "But in the Bronx, Hauptmann said it was his handwriting."

Now, he didn't anything of the kind. He said this;—I can remember it. He was taken into the Bronx for a hearing as to whether or not there was sufficient evidence to bring him to the State of New Jersey. Now that is his constitutional right. He has that right. Anybody that lives in this country, illegally here or legally here, has a perfect right to compel the asking State to show, when you deny that you were there, to show by evidence sufficient to move you from one State to another. He wasn't taking advantage of fighting some new law.

His lawyers at that time thought it was the proper thing, in view of his denial, that he was in Jersey March the 1st, 1932, to ask the Court over there to entertain a writ, and the Court entertained a writ, and I imagine from reading this record that he was not accorded the time or the courteous treatment he was accorded here when he was on the witness stand.

Will you find that for me, please?

Mr. Pope: I will.

Mr. Reilly: Thank you.

And they put him on the stand, and the record will show—firing questions at him—the Attorney General objecting, asking another question; and he said, "It looks like my handwriting." But the very last answer he gave he said, "I can't say whether it is or whether it is not my handwriting."

And I will tell you why: They had all of his request writings and all of his figures and anybody could go in there, Bruchmann, Inspector Bruchmann, a German, Hauptmann a German, and Bruchmann could get a pretty fair imitation of German Hauptmann's figures and handwriting. They didn't send in a Kelly or a Polish detective or someone who would write maybe with a round hand, but they sent in a German, Bruchmann, and Bruchmann undoubtedly writes German script English, and he came out with a pretty good imitation of what this man said. He said, "It looks like my handwriting. I will not say yes, I will not say no, but I know I never wrote Dr. Condon's telephone number or address or anything else on anything, unless I wrote it in the kitchen; if I

was reading something and wanted to remember some little item I'd write it," I think he said, "over the clock or over the sink or something."

Even that wasn't strong enough for them.

So then they go in and rip out a board.

While I am getting the board, I am going to ask for five minutes recess. May I ask, your Honor, for five minutes?

The Court: Five minutes' recess?

Mr. Reilly: While I am getting the board out.

The Court: Yes.

(At 3:31 o'clock a short recess was taken.)

(3:32 P. M.)

(After a short recess the jury was polled and all jurors answered present.)

Mr. Reilly (continuing summation):

I just appreciate about how tired you all are listening to me. I ask your indulgence for a few more minutes; then I will be through. This is a job we both have to do.

Now, the Attorney General said, when he started his case in his opening:

"I will hang this ladder around Hauptmann's neck."

Now, there isn't any doubt but what Hauptmann is a carpenter, and that was demonstrated by his employment for the Majestic Apartments, and there was another little plant,

as we call it in these cases, in the Majestic Apartments. Now, if Hauptmann is guilty and all of this evidence is on the level, why plant something in the case? Hauptmann did not work April 2nd, that is what they say, and with a big hullaballo they brought a man down here with a time book. April 2nd was a Saturday.

The time book shows that on the 4th of April, when he came back for his tools, he didn't work, he resigned. April the 3rd was Sunday. This man testified, the timekeeper, "Yes, I kept that book. He was there on April the 2nd." There was a check mark—rather, April the 1st was a check mark, April the 2nd a circle. When you go into the jury room and get that time book, please put the magnifying glass on it, and underneath the circle you will find a check mark. They didn't know that I had in my possession a photostatic copy of the payroll, but I knew it, and I let the fellow go, I cross-examined him, and let him go. But he would be willing to send a man to the electric chair by changing the record of the man's employment. And we brought down the payroll beginning April the 1st, they paid off on the 15th. It shows on that payroll, because it was photostated in time and before the original payroll could be destroyed, because you haven't seen the original payroll, and I haven't, but the original photostatic copy of the payroll shows that Hauptmann was paid for working April the 1st and April the 2nd. Of course they wouldn't pay him for Sunday, he didn't work, and they wouldn't pay him for the day he resigned, because he didn't work, he came down to get his tools, and that company wasn't paying anybody that didn't work. But it was a

nice little plant to show that on April the 2nd he was only concerned in the ransom money, therefore he didn't work.

Well, he worked there and he worked there as a carpenter. I only hope there are some carpenters on the jury and I hope they examine this ladder very carefully, because this ladder was never made by any carpenter. I don't know who made it. It's been knocked down, put together, photographed—planted photographed, if you please, planted to deceive you, planted to make the crime to send this man to the electric chair, because you and I know that when a policeman takes a photograph of anything and he wants to identify it in court where he has no suspect, that on the plate they write down the date and the place they took the picture.

Now I want you to examine this ladder very carefully and when you examine it, please take into consideration some of the inconsistent things that the prosecution talk about. First they have got Hauptmann out in Hopewell, a week before the kidnaping, two weeks, looking over the ground. He is looking over the ground. Well, if he looked over the ground he would know just about how much ladder he would need to get up from the ground to get into a window and still not have the ladder sticking up in the air over the window. In other words, he would know he needed two sections and not three.

So then he goes home and he starts to build the ladder, I suppose, and he builds three sections, and this section that they talked about and talked about he never used. It was the other two sections that were used apparently, they say, put up to the house, and this section

was left alone. This is the top section and this is the board.

Well, I think you got a pretty fair impression of Dr. Hudson. Dr. Hudson is not like Dr. Mitchell, an altogether different type. Dr. Hudson is a distinguished looking gentleman, a practicing physician, a man who has given a life work of intensive study to medicine or anything else that he tackles. He looked like a man that had studied and was earnest, was honest in his convictions.

He was good enough for the State Police to send for when they wanted to get fingerprints, wasn't he? We didn't ring him in. They sent for him. They couldn't find a fingerprint on anything.

Perrone got a note from the defendant Hauptmann in Gun Hill Road, from the defendant's bare hands, because Perrone put no gloves on him, and that note, Perrone says, he gave to Condon—no fingerprints, no defendant's fingerprints on this (ladder).

Oh, the Attorney General said, he built it with gloves on. Who says so? That is not evidence. Who says he built it with gloves on?

Five hundred fingerprints taken off the ladder, and while it is true Dr. Hudson's test will not take fingerprints from paper or from glass, yet the black powder does, and they all use that.

Not a fingerprint. Well, that didn't help them very much, but they had to pin this crime on Hauptmann, that is all there was about it. It was going to be pinned on him if they tore his house to pieces or tore down his garage.

Now, Hauptmann didn't build the garage and didn't build the house, and whoever built the house, and whoever built the garage, of

course put some lumber in it. So, we have them finding a brace, an arm brace from the garage, and then you have got them coming in and tearing up a board from the attic.

Now, do you suppose this board was ever taken out of any attic floor? Examine it carefully. There isn't a mark on this board from any hammer.

Now you have got a board that is supposed to be nailed down, covering a catwalk in an attic, and the distance between the bottom of this board and the top of the ceiling of the room below is about eight inches.

"Oh," the detective said, "all I had to do was to reach in with my hand or something and pull it up. The nails came right out."

You might think this board was putty or something. Now you know they would have to take a pinch bar and pry it in and lift it up, and those nails that had been in there for all the time that house was built, seven years, would be in there so solidly that they would be part of the house. It would be a toss between these nails, square cut nails, as to whether they would stay in the cross piece they had been driven into, or whether they would come out with the board. Not a mark of a hammer, not a mark of a pinch bar, not a mark of anything!

Now Dr. Hudson says, "I examined this ladder at the request of the State Police. I went all over it. A miscroscopic camera went over every inch of this ladder. Over five hundred photographs of fingerprints were taken."

Now I would like to see, and so would you, the microscopic camera prints, the little prints, that show the four holes in this side of the ladder that they say were there March the 8th, 10th, 9th, 10th, 11th, or whenever Dr. Hud-

son was down there, 12th, 13th or 14th, 1932. You didn't see it and I didn't see it.

Let me have those photographs, please, the big photographs with the four holes.

Dr. Hudson, I don't believe, would commit perjury for President Roosevelt. I don't think he would commit perjury for anybody, much less for Hauptmann. Dr. Hudson stakes his professional integrity and honor on that witness stand. He says there was one hole: "Oh, we will get around that; we will bring in the photograph taken when Koehler saw it in 1932," and they bring in a great big photograph that was so fresh, so nice, and so clean you could almost see that it had been printed within 48 hours. His photographs that were taken 'way back last September or October; see the way they have been handled and torn.

Now, watch these when they come in—if they find them—brand new, lovely, clean, big photographs.

"When were they taken, Officer?"

He is sitting up there looking at his boss down here.

"Oh, they were taken in 1932, May the 13th."

"Where?"

"Down at Hopewell."

"When you examined the ladder?"

"Yes."

"Where is the plate?"

"I don't know where the plate is; that is an enlargement."

"Where is the date on the back of the plate?"

"I don't know."

"Was there ever a date?"

"I don't know."

"Who was there when you took it?"

"I don't know."

"Have you got any proof?"

"I don't know."

I will ask you, looking at those photographs, those enlargements, nice and clean and lovely as they are, whether you believe they were made in 1932, showing the holes in this board here and the side of the ladder and all this stuff.

Now why plant these things in the case? Why are they so desperate?

Dr. Hudson says, "I examined this and I found one hole."

"Well, if you saw photographs would you change your testimony?"

"I would not, I would not."

Well, Mr. Koehler comes in, and we come back now to expert evidence against horse sense. Mr. Koehler comes on. I don't know why he got into the case. I assume that the importance of the case compelled those in Washington at that time to send him up. He is nothing more nor less than what we call a "lumber cruiser." He goes around the country spotting groves of trees to see what they are good for, and reports down to Washington.

Remember this ladies and gentlemen of the jury: He never testified in his life before in a case like this. He never testified in his life before—he said so—in a case like this.

Now he'd have you believe by his testimony —and I don't see how he can sleep at night after giving that testimony where a man's life is at stake—that this carpenter, this defendant Hauptmann, who could buy any kind of wood in a lumber yard up in the Bronx, went out and got two or three different kinds of wood to

make this ladder: North Carolina pine, some other kind of pine, some fir in it, too. And he says to himself, "My goodness, I am short a piece of lumber! What am I going to do?"

There is a lumber yard around the corner. There is wood in the cellar, belonging to Rausch, so he crawls up into his attic and tears up a board. So he crawls up into his attic and tears up a board and takes it downstairs some place and saws it lengthwise and crosswise and every other wise to make the side of a ladder, the upper joint of which he never used or never needed.

I don't know as much about lumber as Mr. Pope. I wish I did. Mr. Pope is a very distinguished lawyer who has other good qualities. He has been close to Nature, living out here in Jersey, I suppose he has been more or less a man who has been in the woods and in gardens and everything else and understands those things. Maybe he is somewhat of a mechanic. I couldn't drive a nail without busting my thumbnail. He could very likely build a house.

We brought down here a man from Massachusetts, and I will stake his common, good old garden variety type of horse sense against any Koehler. Here is a fellow who has been up in Massachusetts for years, yes, he is a builder, a contractor, and an excavator. He has thirty thousand or more trees on his different estates. He plants them and he grows them and he watches them grow. He knows North Carolina pine because he grows it. Not Koehler, from the books. This fellow grows it, lives with it, brings it down here, shows it to you. He says, "You see this mark in here? That is a bruise, that is a bruise, that tree got a bruise

early in life." Koehler says, "I don't know, it might be some of the chemical left over from washing the board."

Now, whose word are you going to take? I am going to go all over Koehler's evidence. You got it and you got DeBisschop's evidence and you have got old Mielke, an old gentleman who has his own mill.

Now, the standard, as I understand, in these mills is the same the world over. A two-foot measurement of gauge in a mill in North Carolina is the same two feet in Alaska. The difference doesn't change the two-foot rule. And the bevel is the same. The log goes into the mill and it is cut, I believe, into one or two-inch boards; then it is taken out and it is planed down. You men on the jury have handled boards. Here we have down in North Carolina, South Carolina, billions and billions of board feet a year; and then Koehler has the nerve to come in here and tell us, I suppose they are like fingerprints,—there never were two boards in all the billion feet alike; and he says, "This board here was once a part of this board here."

De Bisschop says, "Nothing of the kind. The grain isn't alike; the knots are not alike. The general appearance and the general characteristics of this board are nothing like this board."

"How do you know?" says the Attorney General.

"Well, here are two boards," he says; "they perfectly match."

He shows it to you. One, he says, forty-seven years old; the other, five years old. Both the same age when their individual and respec-

tive trees were cut, and they match perfectly, the grain, the age.

Mr. Pope's examination developed, as you will remember, perfect markings in these two.

Koehler goes on the stand; his reputation is at stake; he is a great man from Washington. He looks at it and he says, "Ridiculous!" because he can't go back to Washington and face all the other fellows in the different departments and get laughed at.

De Bisschop gives his reasons, good, honest, conscientious reasons.

Koehler is testifying for glory, vanity, preferment, advancement. De Bisschop, not a dime; carfare not even paid; never saw Hauptmann in his life. His sense of justice,—and that's one of the grandest things of this country,—it is the sense of justice that our people have. When I say "our people" I don't mean the immigrants that just got off the boat, but you go into the valleys of New Jersey and go into rock-ribbed old valleys of Connecticut where they have been growing tobacco since the Indians lived there and you get these old fellows up there in Connecticut and Massachusetts and Vermont and they know their stuff, because they live with nature. You can say they live with God, peaceful, quiet people that go about their business in the daytime and they go home at night, no carousing, no cabarets, no running wild—out in the garden, out in their woods, out in the trout streams, close to nature, close to God and De Bisschop grew his trees, lived with them, from the bottom of his heart honest, and conscientious, good old American stock, comes down here, because he has a sense of justice; goes to all the trouble of bringing down his specimens, cutting down trees,—what

for? Notoriety? What can he sell? Because he read in the paper this fellow Koehler's testimony.

We started this case with practically nothing, but we sent an appeal out through the radio and through the news and in the theaters: "If there is any soul on God's earth that knows anything about this case, please come forward and tell us."

And this man up in Massachusetts, who doesn't know a soul in this courtroom, reading the Koehler testimony, says, "That fellow is wrong, and I am going down there and I am going to show he is wrong."

Now would he come down here and commit perjury, come down here and make a fool of himself, go to all this trouble? And his stuff rings true. He points it out to you that it is true and he says that board and that board were never the same. We can't get in the attic and see where the board came from.

I don't know who cooked up this idea of trying to make this ladder and this board agree but I don't thing this jury is going to stand for that kind of evidence.

Koehler was wrong many times. He was wrong on his measurements. They look alike; they are alike; they are absolutely the same. Mr. Pope took them over with a measuring instrument and found, I think it was 1-16th or 1-12th of an inch out of the way, planed differently, different saw marks.

Now, what are you going to do with that kind of testimony?

This case is too perfect from the prosecution's viewpoint and what they produced here. There isn't a man in the world with brains enough to plan this kidnaping alone and not with a gang,—that master mind wouldn't be a

carpenter—and then sit down and make the foolish mistake of ripping a board out of his attic and leaving the other half of it there to make the side of a ladder, a portion of which he never used.

You have got to use horse sense, and you have got to use common sense.

This board doesn't even look alike. Look at the knots in this rail and then look at the knots in this board, and then have you tell, have them tell us that you could push the nails in with your finger.

Every carpenter in the world knows, I think, that these nail holes are about 16 inches apart on all boards nailed on joists.

No, I am afraid this board was prepared; I am afraid this board was prepared for this trial. I am pretty certain that these pictures were prepared.

You and I take pictures with our little camera, and we write on the little film the date and the place.

Here we are dealing with a police agency. They are trying to perpetuate and keep something for a future trial. No date, no name.

Again I say to you, What would happen to these photographs if the man who took them died, and a trial came up after his death? How could you put them in here? Well, I will tell you how they would put them in: they would put some other copper on the stand and he would swear that he took them. But there isn't any date, there isn't any place, and there is no witness that saw him take them, and they come in here so lovely and fresh.

Now, of course, this board is important. It is important. If this ladder was built by Hauptmann and if the ladder was taken out to

Hopewell and this was one-half of this board, of course, it is important, and it brings us back where we first started from: How did Hauptmann get in the house, and how did he get in the room, and how did he know what was going on? So in this case you come right back where you started from, perfect circle of circumstantial evidence.

Now what does Hauptmann say? Hauptmann says, "I was not there. I don't know anything about Hopewell. I wasn't there. I never visited the Lindbergh estate. I was up in Fredericksen's calling for my wife." Mr. and Mrs. Fredericksen come down here. Mrs. Fredericksen says, "I was out. That is my regular Tuesday night." Fredericksen says, "I was there. I didn't see him, but Anna was waiting on the place." And I can imagine in a restaurant, a bakery like that, people coming in and going out, and eating, Hauptmann calling every Tuesday and Friday night for his wife, wouldn't be asking these customers who they were, wouldn't be bothering about them at all, never anticipating a kidnaping trial, minding his own business.

So the appeal goes out and the response comes back. Young Christenson says, "I was there," and he comes down here as clean an individual as took the stand in this case. "I was there. I went up to see a girl. It was too late and I didn't see her. I liked her." He wouldn't be the first boy that liked a girl that the girl didn't like. He was only just a poor, little laborer. "And I went in and I ate. Hauptmann was there."

Maybe you didn't pay particular attention, I was hoping you would, at the cross-examination of Christenson. The General just sat here

and he stalled along and he asked him about his grandmother, his grandfather, while the messengers dashed for that room back and forth, wires opened to New York, back and forth, wires opened to New York. The little boy said, "I told Mrs. Strauss in her kitchen down in Lindbrook," I think it was, "Long Island, when I read this in the paper. I said 'Mrs. Strauss, I know that man, I was there that night.'"

Well, Mrs. Strauss didn't come over here and tell you that he didn't tell her, did she?

And they bring over poor old Larson. Now what does Larson know? Larson against Christenson, who had a birthday March the 1st, and produced a proof of it. He says, "March the 1st he slept in the house with me."

"What was he doing February 28th?"

"I don't know."

"What was he doing February 29th?"

He says, "Was there a 29th that year?"

There is no other night that Larson can remember in the world but March the 1st.

Now, I believe Christenson. All right, we bring in the man about the dog.

The Fredericksen's had a dog, and Hauptmann walked the dog, and the man said, "That looks like my dog."

Perfectly natural.

"I lost a dog."

"Did you report the loss of the dog?"

"Yes, I reported it to the New York pound," where dogs that are lost should be reported as lost.

Anybody come here from the pound and say he didn't report it? And you know these wires have been opened and they are open now.

"Oh, you got a funny name, haven't you,

Mister? You changed your name a couple of times, didn't you?"

Yes, I guess he did. He said he had had a little family trouble. He changed his bank account. Safety first. That is no crime. So he must be discredited, he was not there, because he changed his name.

"You run a speakeasy, don't you? You run a saloon or a hotel or something?"

"Yes."

But he was there and that was his dog.

Manley came down here.

Now, when you put this behind each and every witness's testimony here, what impels these good, honest people to come here if they are not telling the truth.

Manley came out of a sick bed, you saw him, —there is no power on earth, unless we have a long investigation in New York before a Supreme Court Judge, that will bring a person into this state on a subpoena.

Manley leaves his sick bed—not for a movie contract like some of the witnesses for the prosecution, but because his sense of justice and decency tells him, "I saw that man and even though I am sick, get out of bed, I have got to go down there and tell them that man was in Fredericksen's restaurant March the 1st when I was there."

Not a dime from us, no bought and paid testimony like these experts for the State. He was there, he said. Well, if he was there, he wasn't in Hopewell.

Mrs. Bonesteel, "I saw Violet Sharpe." Sommer's: "I saw Violet Sharpe." "But, you were a witness in the Halls-Mills case, weren't you?"

"Yes." Well, we can't go out and pick these people out of colleges. Anybody could be on a

trolley car or a ferryboat, whether they had been Halls-Mills witnesses or whether they had testified in a civil case, or no matter how they testified, they were there.

Sommer says—and here is the sincerity of his story: "I reported the next morning to a detective in the Ralph Avenue Station House."

Now, I don't care whether Sommer had been in Sing Sing 25 times, if he saw Violet Sharpe with a baby and a man, and a blanket, and he went to the station house the next day and said to a detective, "I saw this, here is my name and address," if he didn't, why don't they bring the detective down here? And you know they checked him, and of course the reason why he is not here is because Sommer didn't report it, and so it goes all the way down the line with our witnesses.

This man who says, "I saw that ladder, I felt that ladder." The Princeton graduate. "I felt that ladder and I saw that ladder twice and I saw the man and woman in the car and the man was not Hauptmann." He is no crook. He is an honest, decent citizen from this State, right around here. And then they say Lou Harding, "Why, you beat your wife and you stabbed a fellow." "Sure, I did," he says, "and I will do thirty days again any time a man pulls a knife on me." He must have had a terrible conviction; they sent him away for assaulting a woman and they give him four days and call him back, so I guess there must have been something the matter with the conviction—four days! Throwing dust in your eyes. But whether he got four days or four years he was a good enough witness to be brought to Colonel Lindbergh's home March the 2nd, 1932, and asked, "What did you see?" "I saw a car and

I saw a ladder in it." And if they didn't bring him before Hauptmann after Hauptmann's arrest and ask him "Is this the man that was in the car?" That's more bungling. So he answered our appeal. People came in here—we are to be criticized because these people once or twice, some of them, have been in trouble.

And all of a sudden the trial is suspended to bring in this girl from the Bronx. Dr. Condon never, in all his testimony said he ever was in the Pelham station sending a telegram or having an argument with anybody. But they bring this dizzy young lady from the Bronx who is looking for a movie contract or something and she tells the impossible story,—plant number 999.

Now why put people like that into the case if your case is on the level? In the Pelham railroad station that she couldn't pick out on the map after coming home on the subway she walks downstairs, across the street into this railroad station where she passed telephone booths galore in the subway station and Dr. Condon is having an argument at the counter with the telegraph operator and Mr. Hauptmann standing over behind him with his arms crossed like Hawkshaw the detective, and she looks.

But why didn't they call back Condon and have Condon tell us that he ever was in that station or ever talked to that man? Of course not. She was a liar and they realized it as soon as she left the stand. Now, why plant people in this case?

Then they are going to have him pass money. "Oh, yes, we will have him passing money; long before he met Fisch we will have him passing money."

And who do they bring in? Cecelia Barr, from the moving picture theater, November the 26th, which just happened to be Hauptmann's birthday, Sunday night, about 15 or 20 miles away from Hauptmann's house, down in Greenwich Village, at the New York entrance of the Holland Tunnel, and he lives almost to the Yonkers line, this man would walk in with a folded five-dollar bill, folded, I think, in eight pieces, and give it to her; and after all these years she can come down and say, "Yes, that's Hauptmann."

A notoriety hunting young woman, trying to get her picture in the paper, and got it there. Very likely she thought she was advertising her theater, that everybody in New York would flock to her theater and buy tickets from her, to look at her.

Well, do you believe the people that were at his birthday party: good, honest, decent people? Yes, they are friends of his; but you saw the kind of people they were: hardworking, industrious people; no crooks, no convicts.

April the 2nd, he is supposed to be in St. Raymond's, behind a fence, getting $50,000. Kloppenburg said, "I was in his house."

The records show he worked all day. They played cards, they played music.

Yes, Kloppenburg is a friend of his, but he is telling the truth.

And so it goes down the list and down the line and witness after witness comes here and testifies for this defendant. The man in the brokerage house says, "Yes, Fisch was there."

And all of a sudden Isidor Fisch, who has not been absolved from this case, but who is very much in this case, goes to Mrs. Hoff, with Budreau, upon whose farm she lived, and he

has some bundles, and he wants to leave them. She says, "No, you can't leave them here."

And they bring Budreau in. He says, "I haven't seen her in seven or eight years." Well, I will take that lady's word, because that lady doesn't know Hauptmann at all. She said so on the stand. She is no friend of Hauptmann's, but she knew Budreau and she knew Isidor Fisch when he came to her house. Why would this mother come down here to commit perjury for a man she doesn't know?

And Isidor Fisch gives him the bundle and he puts it up in the closet, shoves it in the back, he doesn't know what is in it, and because Mrs. Hauptmann doesn't climb up and clean the top self off of a book closet, she isn't telling the truth.

Well, I wonder how many women of her size, who are going to have a baby are going to reach and climb up into a broom closet. The baby, I think, was born about sixteen or seventeen days before that birthday party, and after that, in 1934, she is nursing the baby and she is not climbing up—the poor little woman is not climbing up into a broom closet to look at a top shelf.

And the water comes down and the closet is wet, and the plumber comes here and he says, "I looked at it and I went up in the attic and the board was not missing." You will remember the picture. In order to get over to the window that was leaking—the photograph is here—you would have to walk along the catwalk and all he had was a little candle, and if that board was missing, it is a hundred to one he could fall right into that hole. But he didn't find anything missing.

Now, what is he lying for? He doesn't know

Hauptmann except that he lived there. He was Rauch's plumber. Everybody connected with the defense, because for the sake of humanity and justice they came here to help this man who is unjustly charged with crime, must be a perjurer.

But, the girl who saw Condon, she is no perjurer; Celia Barr, she is no perjurer, she can remember every five-dollar bill she ever saw when she was at that place—she is no perjurer, they must be treated with kid gloves, they are the prosecution witnesses, but everybody who comes here because the inherent drive of their soul and conscience sent them here, they are crooks.

Young Heier goes on the stand, he says, "I was outside of St. Raymonds"—he is a terrible convict, young Heier, he was convicted of running a cabaret without a license—terrible crime, plastered all over the world as a perjurer and a crook, because he was convicted of running a cabaret without a license. "I saw Isidor Fisch jump over the wall. My headlights were good." And because he said that, he is a perjurer. And because he tried to protect the name of a young lady who has since passed away, and several of us very likely have different ideas of his chivalry,—some think it was a mighty fine thing to do, others think he should have disclosed it without all the hesitation. That is in your lap, you can think about it.

But knowing these people and from whence they come as well as I do, from our Metropolitan city, here was a young man who was going out with a young lady, and there must have been some reason—maybe it was financial—that she married somebody else, maybe she

loved somebody else. And within a month after her marriage, she dies. And he comes down here because he found something in a closet, a memorandum of something—I cannot go into it, because it was not in evidence, but he found something and he read it and it recalled to his mind the incident, and he comes down to testify about it. So he is a perjurer, he is a crook, he has been convicted, you cannot believe him. I don't think you are going to weigh the evidence of those people that way, that wouldn't be right, it wouldn't be just. We put on three men from the hills as to Whited, three of the people that have lived up there since they were born, they can smell a fellow's reputation, they can size him up. You don't have to have any rules up there. A fellow is either good or he isn't any good. He pays his bills or he don't pay his bills; he is on the level or he is not on the level, and they come down out of the hills, —why? To be belittled and to be degraded and made little of because they are people from Sourland Mountain, because they come down here, because they are not well dressed?

They are honest. They are American citizens, and they can go back in their ancestry in this country, some of them, to the days of Washington and his Army, and they have got no excuse to offer to anyone as to their heritage under that flag; they may not be able to spell and they may not be able to talk our language the way we do, but they come down here and they tell you that their neighbor can't be believed. So because they are not city folks, they have got to be derided because they are witnesses for the defense.

And so I could go on all the way down the line, but I am not going to. I am through.

There has been a lot I haven't discussed, because I said I would limit my summation to one day. I have faith and confidence in your recollection that you will remember the evidence I have a firm belief that you all believe in the Golden Rule. I believe, looking in your faces, that that is what has carried you onward and forward all through your lives. The sturdy stock of this part of the country is notorious for its square-shooting.

The women, as I said before, inherently courageous and they have that gift of intuition that has come down from a long line. The men, good, sturdy stock, that cannot be fooled, and I haven't tried to fool you. I have tried to be honest and I have pled this case to the best of my ability.

I believe this man is absolutely innocent of murder. Whatever other charge there is against him in the Bronx will be disposed of. I don't think you are going to pick any cherries or chestnuts or anything else out of the fire for the District Attorney of the Bronx.

In closing, I wish to say to you that I appreciate the care and consideration that you have given us and the patience that you have given to this case.

And may I just extend to the distinguished jurist on the Bench, at this time, my thanks for his courtesy, and to all the lawyers connected with the case.

And I feel sure, in closing, even Colonel Lindbergh wouldn't expect you and doesn't expect you to do anything but your duty under the law and under the evidence.

May I say to him, in passing, that he has my profound respect and I feel sorry for him in his deep grief, and I am quite sure that all of

you agree with me, his lovely son is now within the gates of heaven.

The Court: It is the usual recess time. Have you anything to say, Mr. Attorney General?

Mr. Wilentz: If your Honor please, so far as I am concerned, I am ready and prepared, willing and anxious to start the summation for the State and that is only because, if your Honor please, that if it were so and if it were agreeable to the jury and to your Honor, that it might well be that we might close the case with your Honor's charge tomorrow. Now, of course, it is quite warm here and after all, I think it is strictly a matter for the jury and your Honor as to whether or not at this late hour you would want to continue, but I think possibly if we had a half hour or an hour, maybe we could finish by 12:30 tomorrow noon, and in that way save Wednesday's date, so that the jury would not have to come back possibly Wednesday for the charge, but as I say, if your Honor please, I submit—I don't know how it is possible to take a vote of the jury and I don't know what your Honor's inclination is, but whatever the decision is, I just want your Honor to know our position, that if your Honor should want it, we are ready to proceed.

The Court: I understand, of course, that the Attorney General is ready and would like to have some additional time tonight. But we have, by common consent, settled upon 4:30 in the afternoon as a proper time for recess, and I do not feel that there is any such emergency

presented to me as would induce me to break through that settled rule here, because the air is not good in this courtroom and we all of us have to conserve our energy and strength; so that I think that as usual, we will take a recess now until tomorrow morning at ten o'clock, and the jury may now retire. Come in tomorrow morning at ten o'clock.

(At 4:35 P. M. the jury retired.)

The Court: The prisoner is now remanded to the custody of the sheriff and he may retire.

(The defendant retired in the custody of the sheriff.)

The Court: The Court will now take a recess until ten o'clock tomorrow morning.

(Whereupon at 4:37 P. M. the further trial of the case was adjourned until tomorrow morning, Tuesday, February 12th, 1935, at ten o'clock.)

AMENDMENT OF ASSIGNMENTS OF ERROR

The Plaintiff in Error having heretofore filed certain Assignments of Error, he amends the same by adding to Group "O" certain paragraphs as follows:

GROUP O

21. There is manifest error in this because the Court charged the Jury as follows:

> "In the present case the State contends that the uncontradicated evidence of Colonel Lindbergh and Dr. Mitchell and other evidence, justifies the reasonable inference that the felonious stroke occurred in East Amwell Township in Hunterdon County, when the child was seized and carried out of the nursery window and down the ladder by the defendant, and that death was instantaneous."

22. There is manifest error in this because the Court charged the Jury as follows:

> "And from the evidence you may conclude, if you see fit, that the child was feloniously stricken on the first day of March, 1932, at the Township of East Amwell in this county, and died as a result of that stroke."

23. There is manifest error in this because the Court charged the Jury as follows:

> "But if, on the other hand, the State has satisfied you beyond a reasonable doubt that the child's death was caused by the unlawful and criminal act of the defendant while seizing, stealing and carrying away the child and its clothing, of which unlawful act against the

peace of the State, the probable consequences might be blood-shed, it is murder; and if murder, the degree thereof must then be determined."

24. There is manifest error in this because the Court charged the Jury as follows:

"Our statute relating to burglary says: Any person who shall, by night, wilfully or maliciously break and enter any dwelling house with intent to steal, commit a battery, shall be guilty of a high misdemeanor."

25. There is manifest error in this because the Court charged the Jury as follows:

"If, therefore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house with intent to steal the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree."

26. There is manifest error in this because the Court charged the Jury as follows:

"Numerous experts in handwriting have testified, after exhaustive examination of the ransom letters, and comparison with genuine writings of the defendant, that the defendant Hauptmann wrote every one of the ransom notes, and Mr. Osborn, Senior, said that that conclusion was irresistable, unanswerable and overwhelming."

C. LLOYD FISHER,
Attorney for Plaintiff in Error.
EGBERT ROSECRANS,
FREDERICK A. POPE,
Of counsel with Plaintiff in Error.

IN ERROR—JOINDER IN ERROR

And hereupon the State of New Jersey, defendant in error, by Anthony M. Hauck, Jr., Prosecutor of the Pleas of the County of Hunterdon, its attorney, comes into court and says that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and the said State of New Jersey prays here that the Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid, may be in all things affirmed.

ANTHONY M. HAUCK, JR.,
Prosecutor of the Pleas of the County of Hunterdon,
Attorney for Defendant-in-Error.

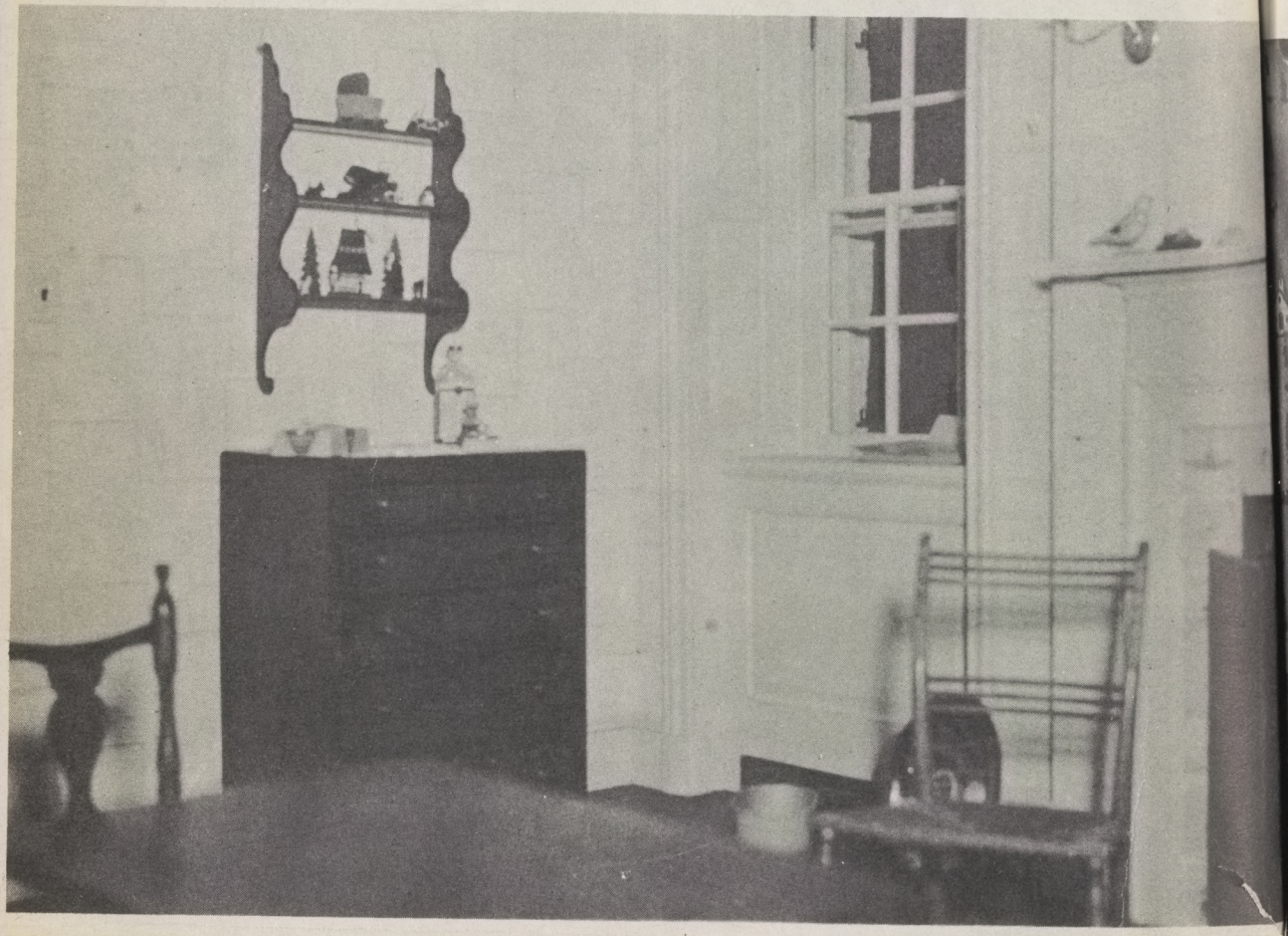
Dated April 25, 1935.



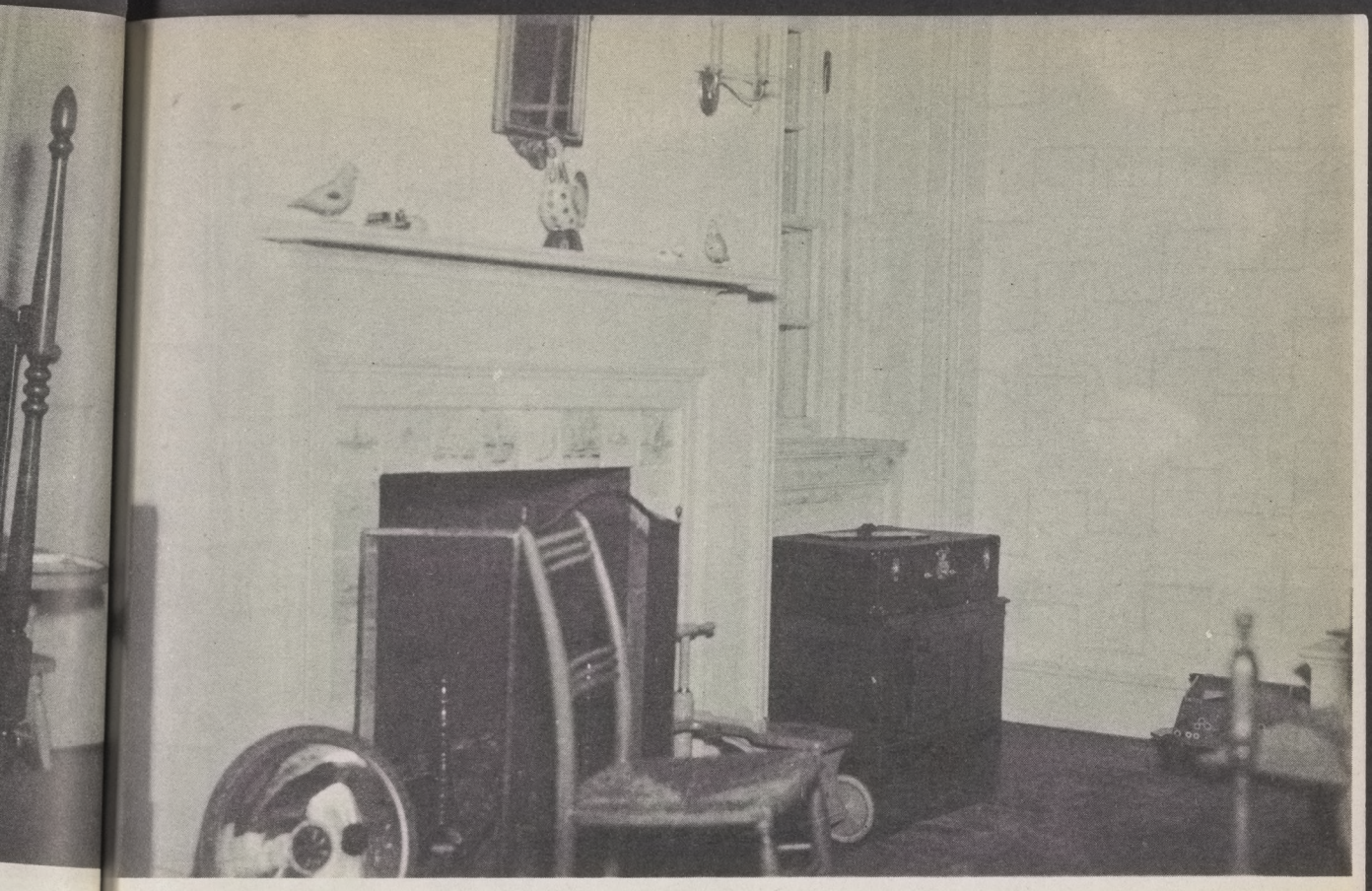


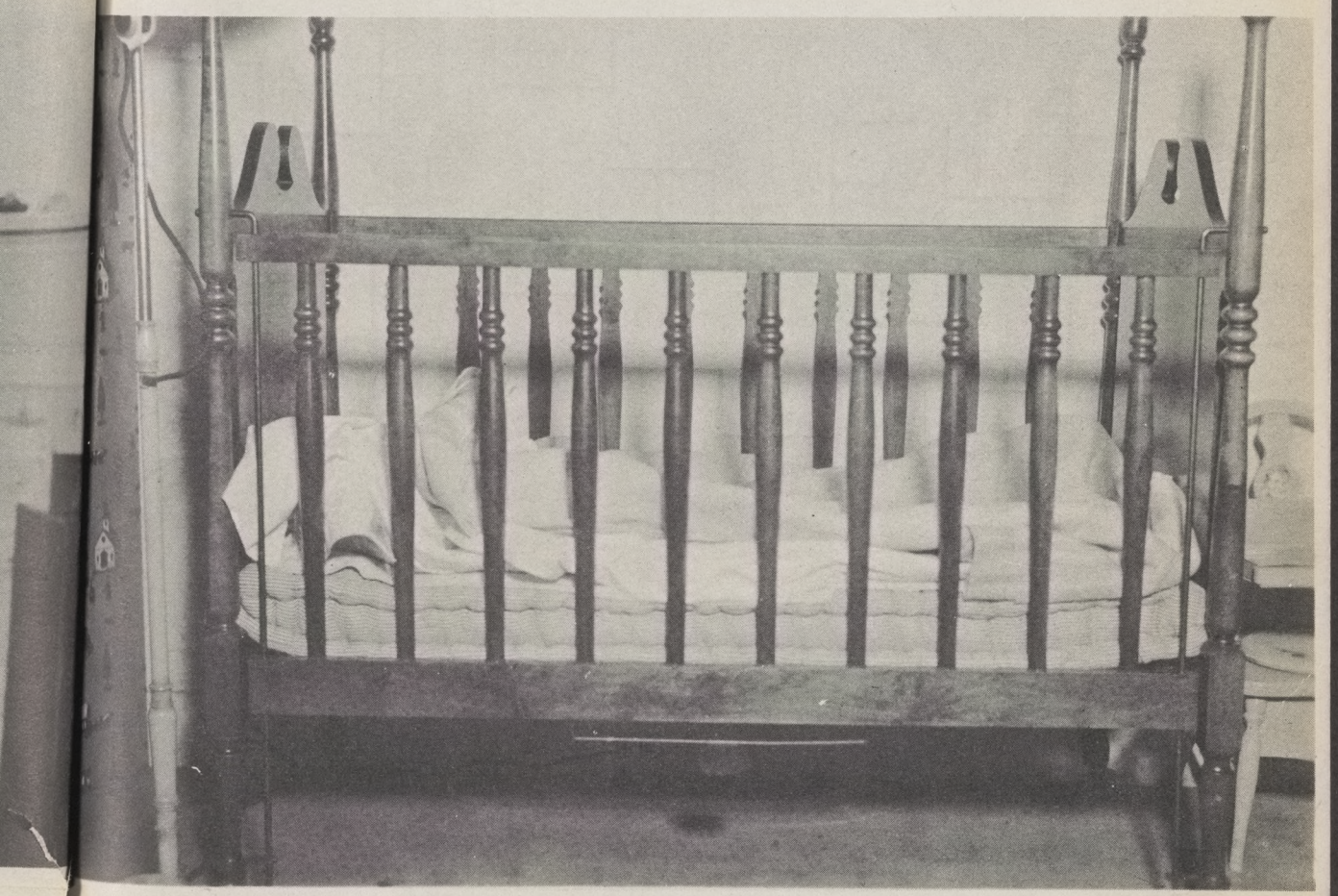
Lindbergh baby -- S-6



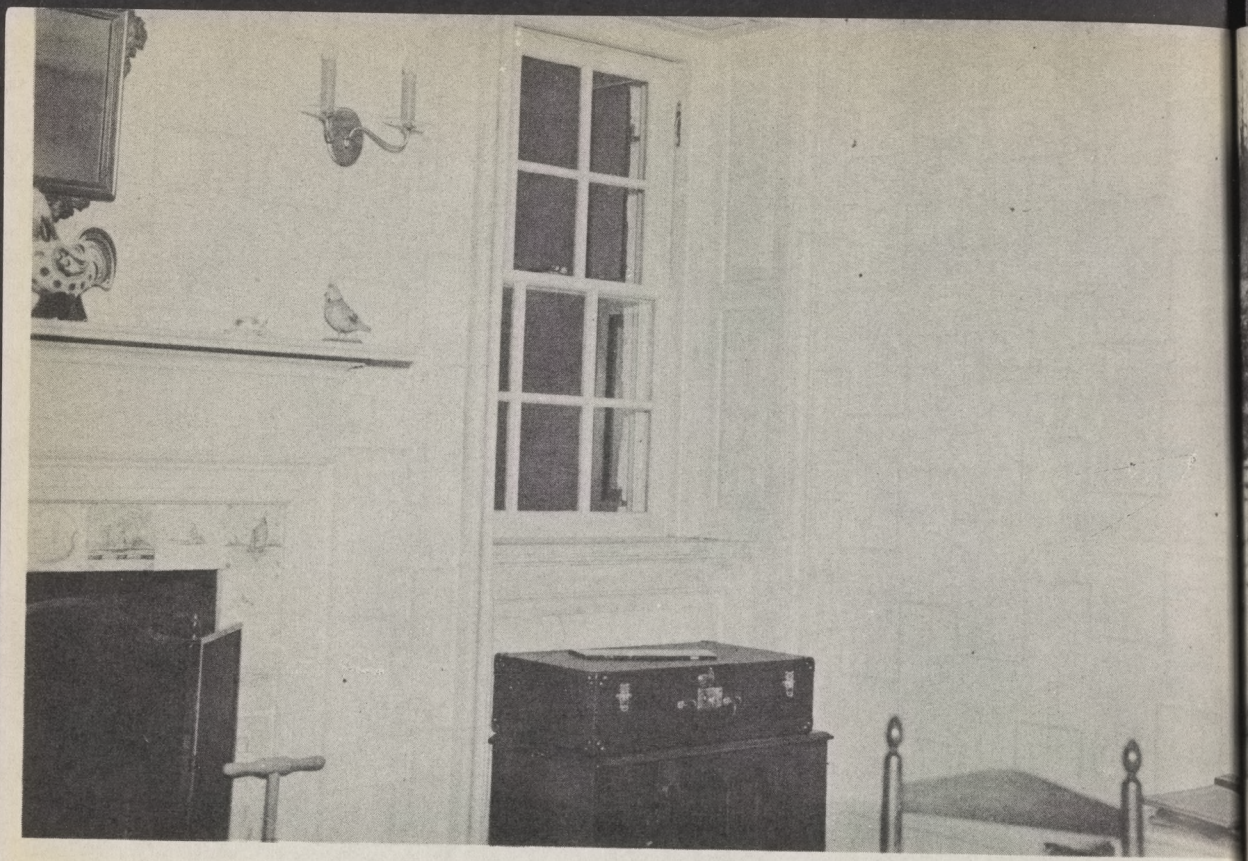


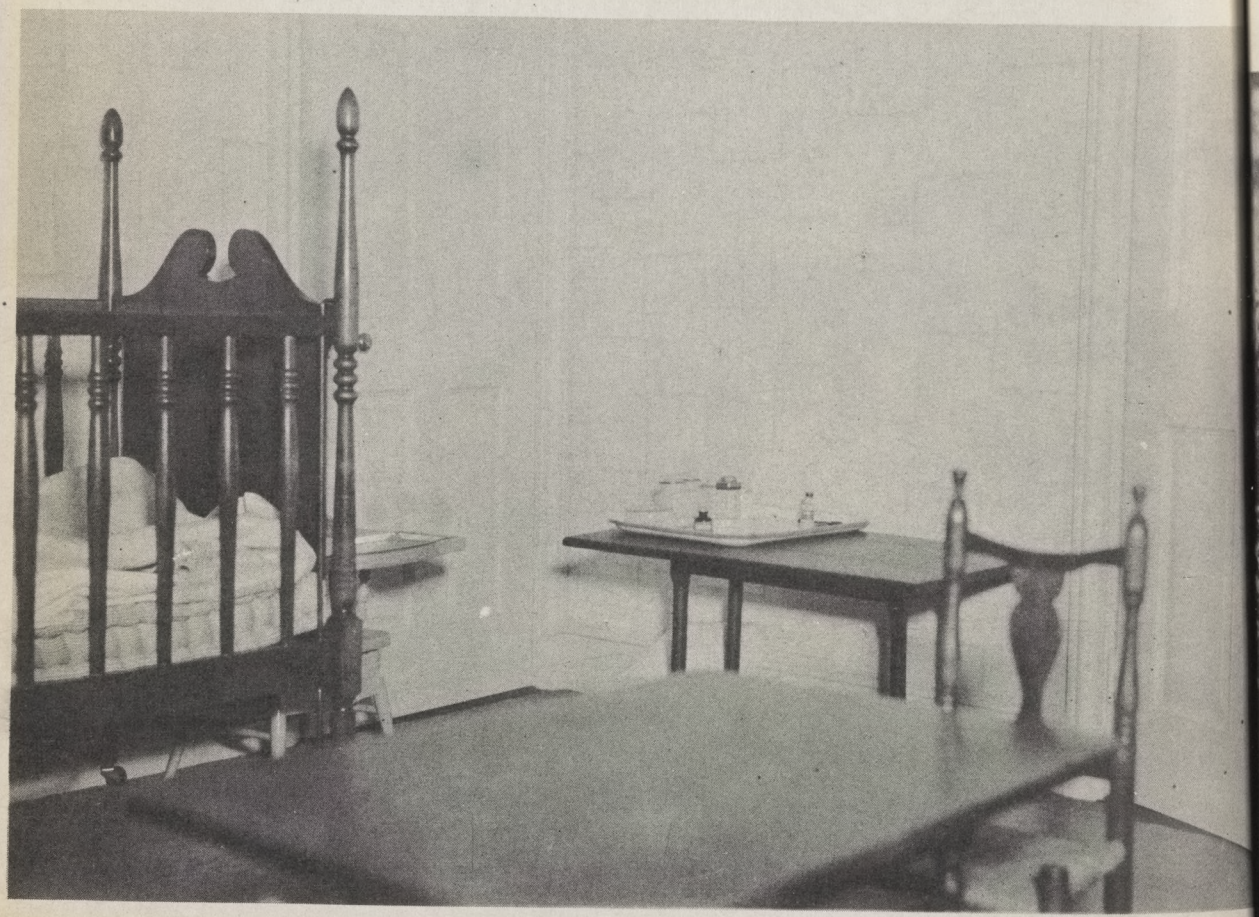
Views of nursery -- S-7 to S-12 incl.





Views of nursery -- S-7 to S-12 incl.

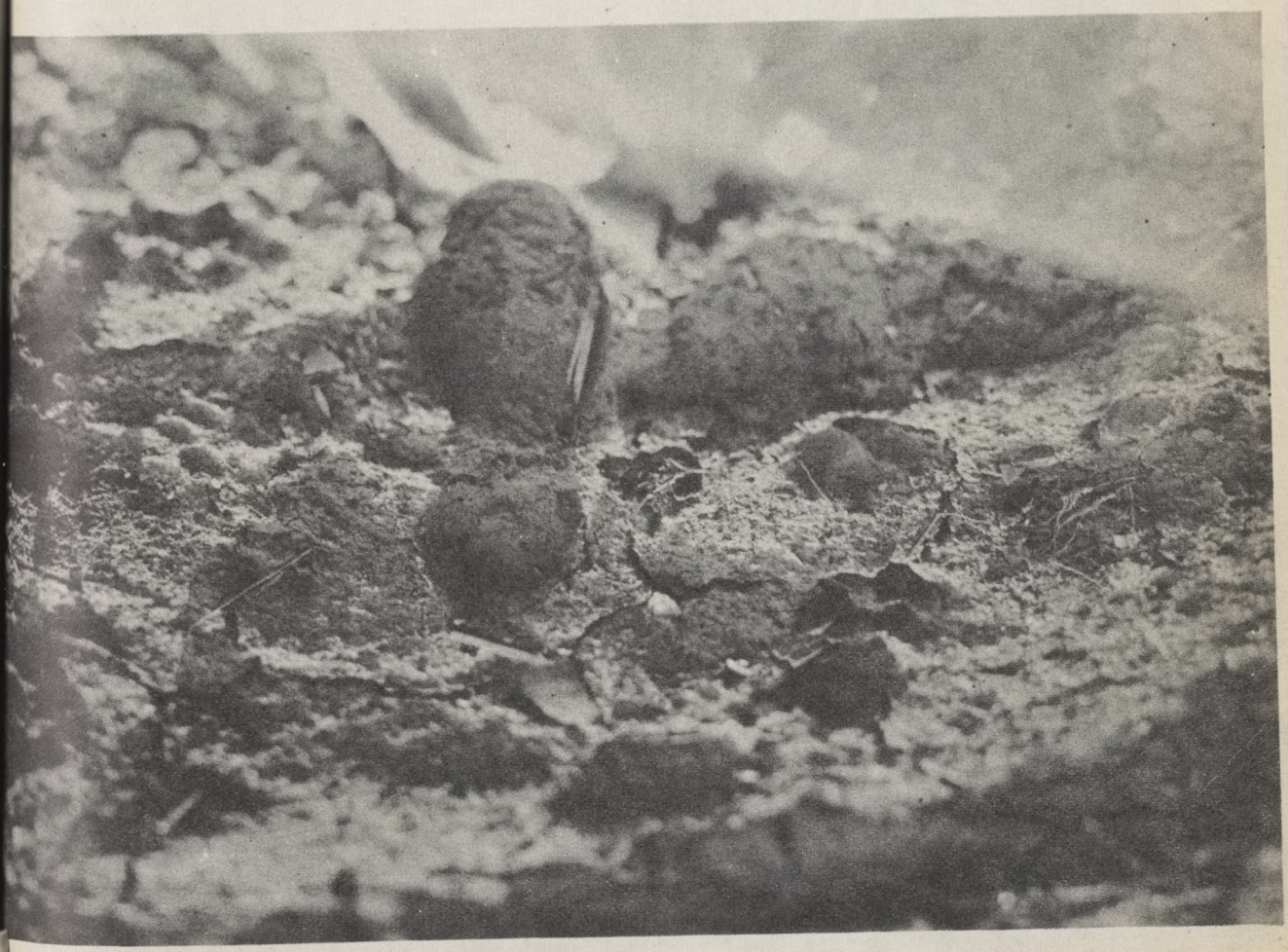




Views of nursery -- S-7 to S-12 incl.



Exterior of grounds -- S-35



Foot prints -- S-36



Ladder marks -- S-37



Lindbergh house -- S-38



Tool House Van Cortlandt Park -- S-41



Frankfurter Stand -- S-49

Dear Mr. Auer man fail to collect the money. there are no more confidential conference after meeting from mark 12 those arrangements to hazardous for us. we will not allow auer man to confer in the a way like before. circumstance will not allow us to make a transfare like you wish. it is impossibly for us. Why should we move the baby and face danger. to us no another person in the place is entirely out of question. it seems you are afraid if we are. the right party and if the boy is allright. Well you have auer singnature on the same as the fortune specialy them 3 thousand.

Note with sleeping suit -- S-52

Dear Mr. Auer we will send you the sleeping suit with the baby besides 1 means 3 5 extra expenses because we have to pay an other one. Please tell Mrs. Lindbergh that we worry the baby is well. we only have to give him more food as the last year

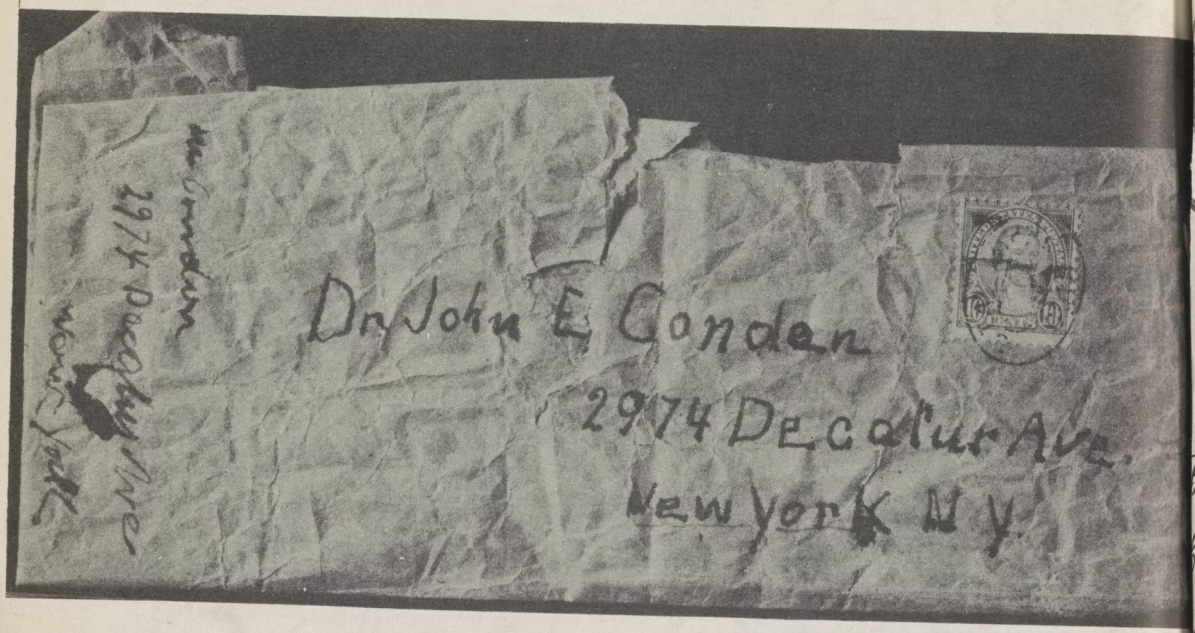
You are willing to pay the 70000 and 50000 $ without seeing the baby first we note. let us know about that as we New York American. we can't do other way.

because we don't like to give up. our safty place ... to ... the baby if you are willing to accept this deal put this in the paper.

I accept money is ready.

our program is:

after 8 hours we have the money received we will notify you where to find the baby if there is any happ, you will be responsible what will follow.



Wrapper with sleeping suit -- S-53



Baby's body, May 12th -- S-165

Department of Health of the State of New Jersey

Bureau of Vital Statistics

I, J. Lynn Mahaffey, *Medical Superintendent of the Bureau of Vital Statistics of the State of New Jersey, do hereby certify that the foregoing and annexed is a true copy of a certain Certificate of Death, as taken from and compared with the original remaining on file in my office.*

In Testimony Whereof, *I have hereunto set my hand and affixed the Official Seal of said Bureau, at Trenton, this* 8th *day of* November *A. D. 1934.*

J. Lynn Mahaffey

Medical Superintendent

Attest:
David S. Smith
State Registrar of Vital Statistics.

Certificate of Death -- S-166

State of New Jersey

STATE DEPARTMENT OF HEALTH—BUREAU OF VITAL STATIS

1 PLACE OF DEATH
County Mercer State NEW JERSEY Registered No. 42
Township Hopewell or Borough
City No. Found near Hopewell on Hopewell-Princeton Road.

2 FULL NAME Charles A. Lindbergh, Jr. If a veteran, what war?

3 Residence No. R. F. D. Hopewell, East Amwell Twp., Hunterdon Co., N. J.

Length of residence in city or town where death occurred (?) yrs. -- mos. -- days. How long in U. S. if of foreign birth? -- yrs. -- mos. --

PERSONAL AND STATISTICAL PARTICULARS

4 SEX	5 COLOR OR RACE	6 Single, Married, Widowed or Divorced
Male	White	Single

7 If married, widowed or divorced HUSBAND OF (or) WIFE OF ---

8 DATE OF BIRTH June 22, 1930

9 AGE Years	Months	Days	If Less Than One Day
1	8	9	-- Hrs. -- Min.

OCCUPATION
Trade, profession, or particular kind of work done, as spinner, sawyer, bookkeeper, etc. Child
Industry or business in which work was done, as silk mill, saw mill, bank, etc. -----
Date deceased last worked at this occupation (month and year) ---
Total time (years) spent in this occupation --

11 BIRTHPLACE Englewood, N. J.

MOTHER/FATHER
12 NAME Charles A. Lindbergh
13 BIRTHPLACE Detroit, Michigan
14 MAIDEN NAME Anne S. Morrow
13a BIRTHPLACE Englewood, N. J.

15 SIGNATURE OF INFORMANT (Address) Charles A. Lindbergh R. F. D. Hopewell, East Amwell Hunterdon County, N. J.

20 PLACE OF BURIAL Cremation ~~Burial~~ Rosehill Crematory
DATE May 13 19 32 Linden, N. J.

21 FUNERAL DIRECTOR (Address) Frank W. Swayze N. J. License No. 723 415 Greenwood Ave., Trenton

16 RECEIVED 5-13- 19 32 Howard H. Ely Local Registrar.

MEDICAL CERTIFICATE OF DEATH

17 DATE OF DEATH About Mar. 1, 1932

18 I HEREBY CERTIFY, That I ~~attended~~ deceased from May 12, 1932 to ~~last saw alive on~~ Examined Body found 5-12-32 19 -- and ~~said to have occurred~~ on the date stated above, at Unknown

The principal cause of death and related causes of importance in order of onset were as follows: Date of onset

Fractured Skull due to
External Violence.

Contributory causes of importance not related to principal cause: ---

Name of operation ---------- Date of -----
What test confirmed diagnosis? Investigation
Was there an autopsy? Yes
If death was due to external causes (violence) fill in also the following: ~~Accident, suicide, or~~ homicide? Yes Date of injury About Mar. 1 19 32
Where did injury occur? Unknown
Specify whether injury occurred in industry, in home, or in public place. Probably near Hopewell, N. J.
Manner of injury Fractured Skull
Nature of injury Due to Homicide

Was disease or injury in any way related to occupation of deceased? No
If so, specify ------

(Signed) Walter H. Swayze, Coroner
(Address) Trenton, N. J.

Certificate of Death -- S-166

WALTER H. SWAYZE
TRENTON, NEW JERSEY

May 12, 1932

pport on Unknown baby

Sex Undetermined due to marked decompesition of body.
General appearence badly decomposed
Left leg from knee down missing
Left hand missing
Right forearm missing
Abdominal organs except liver missing
Thoracic organs except heart missing
Eyes softened & decomposed
Skin of head ,face , portion of chest & right Foot discolored & decomposed
Body shows evidence of prolpnged exposure & usual decomposition that would occurin the course of approximately two to three months time depending on climatic and other conditions that might produce such results.
Special charasteristics -
Unusualy high & prominent forehead & cranium apparently greater in circumference than would be found in a child this age, The first toe of the right foot completely overlaps the large toe and the second toe of the right foot partialy ove overlaps the large toe,
there are eight upper and eight lower teeth, the upper incisors are well formed rather prominent but do not protrude, the two lower canines tend to divert towardsand are below the line of the adjacent teeth.
Height Thirty three and one half inches,light curly hair about three inches in length, and a section of skin on the right foot which had not become discolored indicated a child of the white race
The facial muscles the only ones of the body that had not deteriorated would indicate a well developed child.
Autopsy findings-.
General decomposition of the muscle of the entire body and other soft tissues except the face, But marked discoloration and some disfigurement of this part of the body existed due to softening of the eyeballs and a swollen condition of the lips and tongue.
there was also a fracture of the skull extending from the fontanel down the left side of the skull to a point posterior to the left ear where it bifurcatedinto two distinct fractures there was also a perforated fracture about a half inch in diameter on the right side of the skull posterior to the right ear, There was evidence of a hemorrhage on the inner surface of the left side of the skull at the point of fracture, the scalp was so badly decomposed that it was impossible to find any contusions or hemorrhagis external to the skull, The fontanel was not closed the opening in the skull at this point being about one inch in diameter.
Diagnosis of the cause of death is a fractured skull due to external violence

Signed: [signature]





Hauptmann House and Garage -- S-176



Interior of garage -- S-180

Interior of garage -- S-180

EMPLOYMENT RECORD

POSITION CARPENTER

NAME Richard HAUPTMAN

ADDRESS 1279 E 222 ST. BRONX, N.Y.

REFERENCE ALFRED M. GRIZZLE, 205 W. 21st ST.

AGE 32 MARRIED ✓ ~~SINGLE~~

SALARY $100 00

STARTED March 21-1932

LEFT OUR EMPLOY RESIGNED ~~DISCHARGED~~

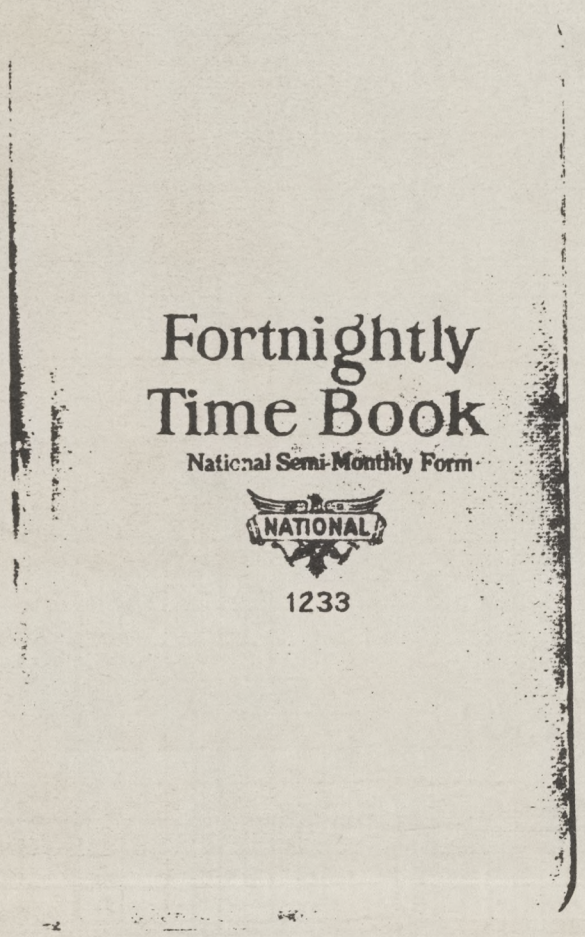
REASON

HIRED BY J. M. Fuecht

REMARKS

1 INCH
STATE BUR. OF IDENT.
N.Y. STATE POLICE

Employment Record card -- S-208



Sheets from Time Book -- S-209



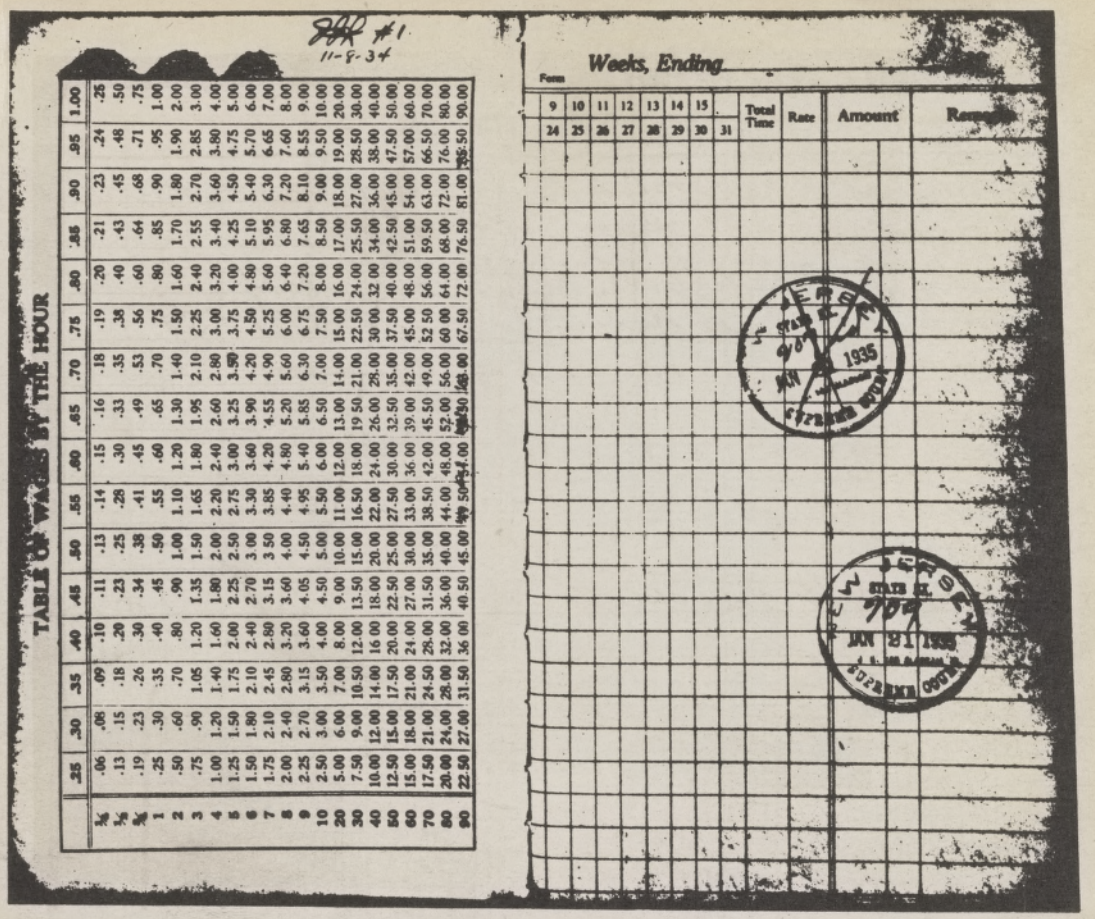


TABLE OF WAGES BY THE HOUR

	.25	.30	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85	.90	.95	1.00
⅛	.06	.08	.09	.10	.11	.13	.14	.15	.16	.18	.19	.20	.21	.23	.24	.25
¼	.13	.15	.18	.20	.23	.25	.28	.30	.33	.35	.38	.40	.43	.45	.48	.50
⅜	.19	.23	.26	.30	.34	.38	.41	.45	.49	.53	.56	.60	.64	.68	.71	.75
½	.25	.30	.35	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85	.90	.95	1.00
1	.50	.60	.70	.80	.90	1.00	1.10	1.20	1.30	1.40	1.50	1.60	1.70	1.80	1.90	2.00
2	.75	.90	1.05	1.20	1.35	1.50	1.65	1.80	1.95	2.10	2.25	2.40	2.55	2.70	2.85	3.00
3	1.00	1.20	1.40	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.00	3.20	3.40	3.60	3.80	4.00
4	1.25	1.50	1.75	2.00	2.25	2.50	2.75	3.00	3.25	3.50	3.75	4.00	4.25	4.50	4.75	5.00
5	1.50	1.80	2.10	2.40	2.70	3.00	3.30	3.60	3.90	4.20	4.50	4.80	5.10	5.40	5.70	6.00
6	1.75	2.10	2.45	2.80	3.15	3.50	3.85	4.20	4.55	4.90	5.25	5.60	5.95	6.30	6.65	7.00
7	2.00	2.40	2.80	3.20	3.60	4.00	4.40	4.80	5.20	5.60	6.00	6.40	6.80	7.20	7.60	8.00
8	2.25	2.70	3.15	3.60	4.05	4.50	4.95	5.40	5.85	6.30	6.75	7.20	7.65	8.10	8.55	9.00
9	2.50	3.00	3.50	4.00	4.50	5.00	5.50	6.00	6.50	7.00	7.50	8.00	8.50	9.00	9.50	10.00
10	5.00	6.00	7.00	8.00	9.00	10.00	11.00	12.00	13.00	14.00	15.00	16.00	17.00	18.00	19.00	20.00
20	7.50	9.00	10.50	12.00	13.50	15.00	16.50	18.00	19.50	21.00	22.50	24.00	25.50	27.00	28.50	30.00
30	10.00	12.00	14.00	16.00	18.00	20.00	22.00	24.00	26.00	28.00	30.00	32.00	34.00	36.00	38.00	40.00
40	12.50	15.00	17.50	20.00	22.50	25.00	27.50	30.00	32.50	35.00	37.50	40.00	42.50	45.00	47.50	50.00
50	15.00	18.00	21.00	24.00	27.00	30.00	33.00	36.00	39.00	42.00	45.00	48.00	51.00	54.00	57.00	60.00
60	17.50	21.00	24.50	28.00	31.50	35.00	38.50	42.00	45.50	49.00	52.50	56.00	59.50	63.00	66.50	70.00
70	20.00	24.00	28.00	32.00	36.00	40.00	44.00	48.00	52.00	56.00	60.00	64.00	68.00	72.00	76.00	80.00
80	22.50	27.00	31.50	36.00	40.50	45.00	49.50	54.00	58.50	63.00	67.50	72.00	76.50	81.00	85.50	90.00
90																

Form ... Weeks, Ending ...

9	10	11	12	13	14	15		Total Time	Rate	Amount		Remarks
24	25	26	27	28	29	30	31					

JAN 21 1935

Time Book for Two — National

Form ... Weeks, Ending MARCH 31 April 1st 1932

NAMES (Draw line through dates not used)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		Total Time	Rate	Amount		Remarks
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					
JAMES HACKETT	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			70			
DAN DUNNE	·	✓	✓	·	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			90			
JOS. CURRAS	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			70			
WILLIAM RICATER	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		70			
LAWRENCE FARLEY	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓			90			
WILLIAM BURNS	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
J.M. FURCHT	✓	✓	✓	✓	✓	✓	✓		·	·	·	·	·	·	·	·		20			
CONSTRUCTION																					
CARPENTERS																					
JAMES DAVIS	✓	✓	·	✓	✓	✓	✓		·	✓	✓	✓	✓	✓	✓	✓		115	3/18/6hrs	3/13-1½	
ROBERT LOCKHARD	✓	✓	·	✓	·	✓	✓		·	✓	✓	·	✓	✓	✓	✓		100	3/18/6hrs	3/13-1½	
ALLEN WILKINSON	✓	·	·	✓	·	·	✓		·	✓	·	✓	·	✓	✓	✓		100	3/18/6hrs	3/13-1½	
GUSTAV KASSENS	·	·	·	✓	·		✓		·	✓	✓	✓	·	✓	✓	·		100	3/18/6hrs	3/13-1½	
JOS. BURNSIDES	✓	✓	·	✓	·	·	✓		·	✓	·	✓	✓	✓	✓	✓		100	3/18/6hrs	3/13-1½	
RICHARD HAUPTMAN	○	●	●	○	●	✓	✓		·	·	✓	✓	✓	✓	·	·		100			
HANDY MAN																					
JAMES CROSBY	·	●	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	·	✓		80			
JAMES CULLEN	✓	·	·	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		90	3/18/9½hrs	3/13-2½	
DAVID DAVIS	·	·	·	✓	·	·	✓		✓	✓	✓	✓	✓	✓	✓	·		85	3/18/8½hrs	3/13-2	
JOHN A. CONNER	✓	✓	✓	✓	✓	✓	✓		✓	✓	·	·	✓	✓	✓	✓		90	3/18/9hrs	3/13-2½	

Sheets from Time Book -- S-209

Time Book for Two — National — Weeks, Ending April 15 1932

NAMES (Where line through dates not used)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15		Total Time	Rate	Amount		Remarks
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					
James Hackett	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
Dan Dunne	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
Jos Cuevas	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
William Richter	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
Lawrence Farley	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
[illegible] Smith																					
Construction																					
Im Furcht	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓						
Carpenters																					
James Davie	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓						
Robert Lockhead	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓							
Allen Wilkinson	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓							
Gustav Kassens	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓							
Jos. Buansides	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓							
Richard Hauptmann	✓	✓	✓	✓																	out 4/6
Alex Hamilton						✓	✓		✓	✓	✓	✓	✓	✓							
John Fordyce						✓	✓		✓	✓	✓	✓	✓	✓							
Handy Men																					
James Crosby	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓							
James Cullen	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓							

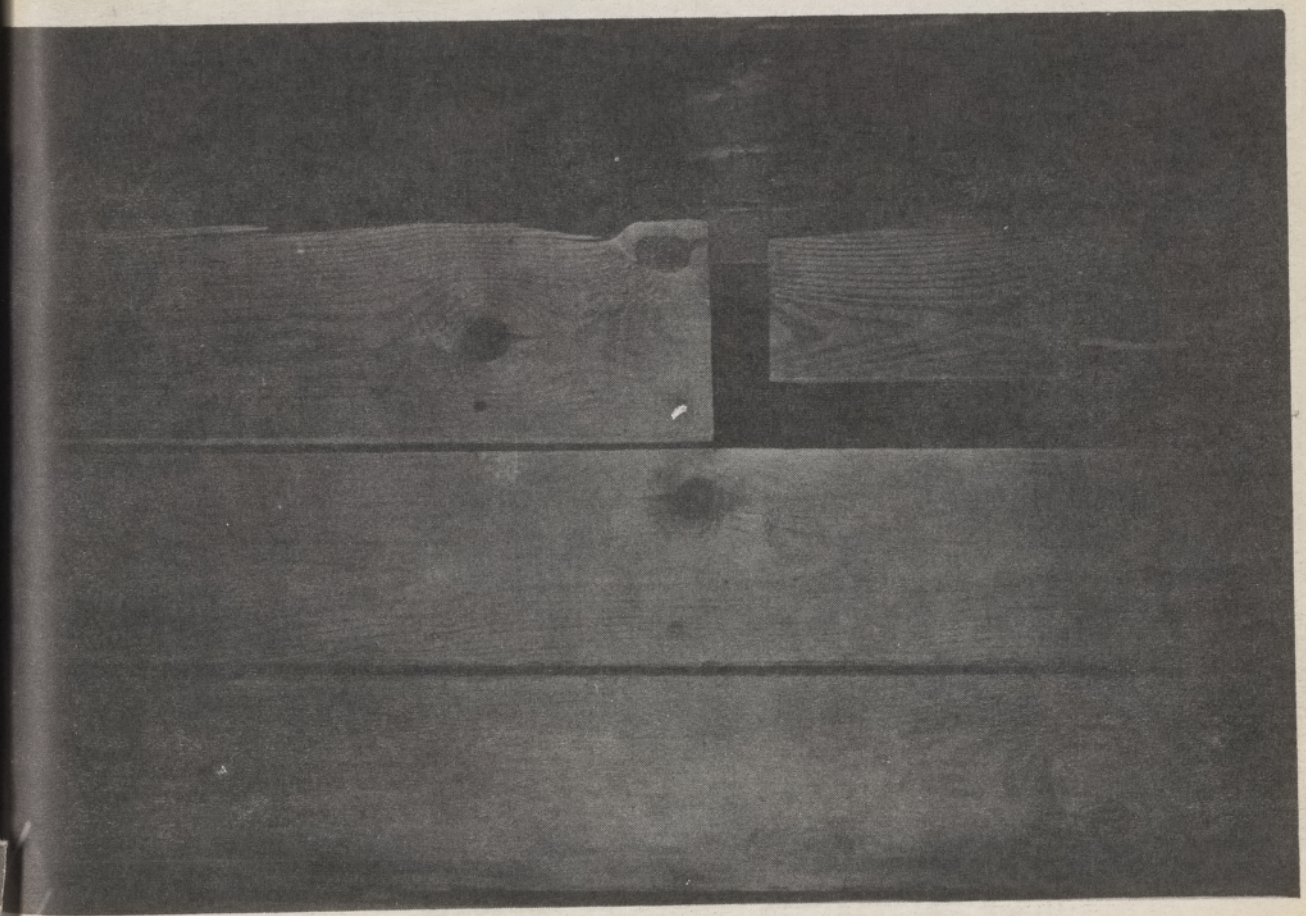
Sheets from Time Book -- S-209



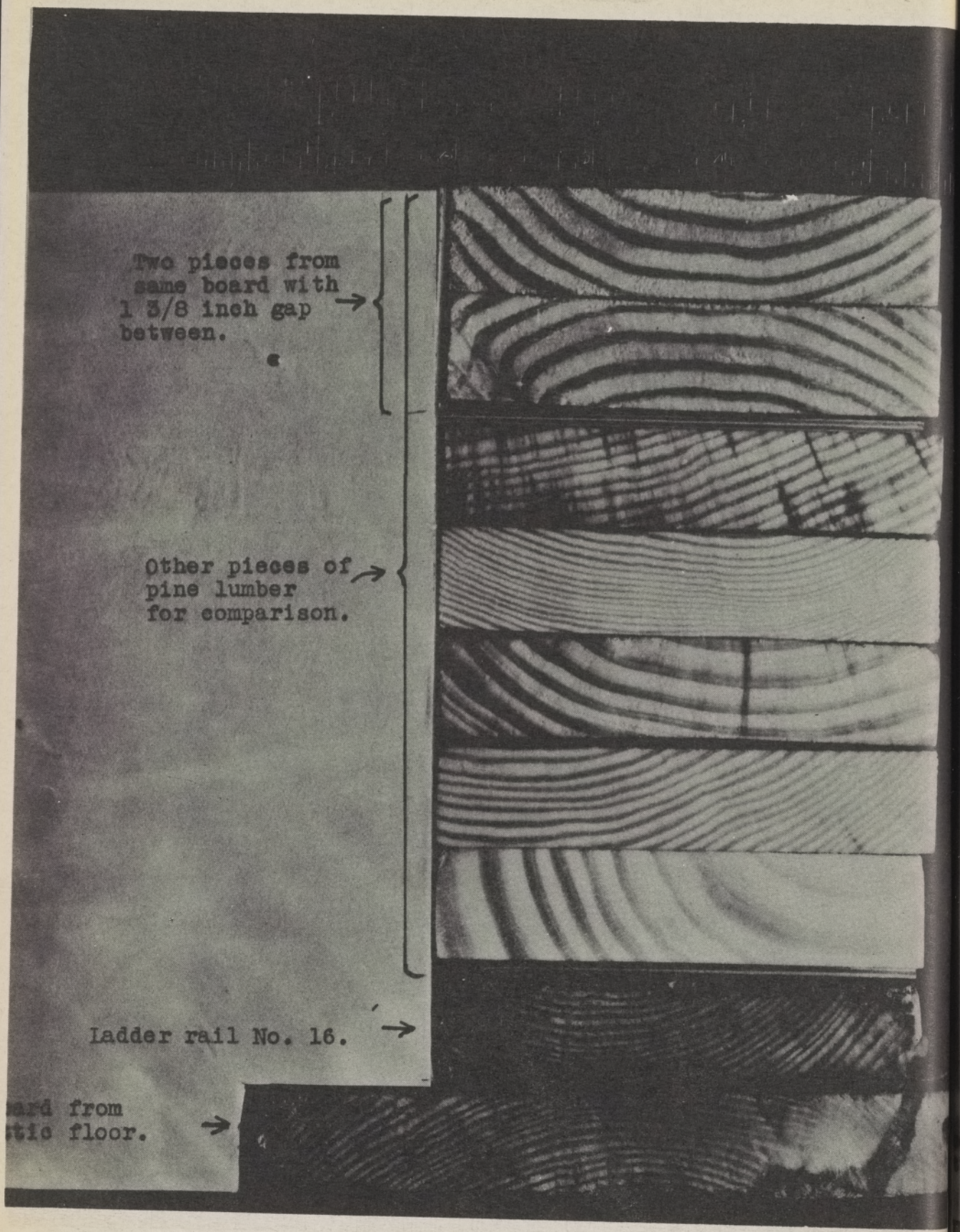
Interior of attic, Hauptmann Home -- S-215



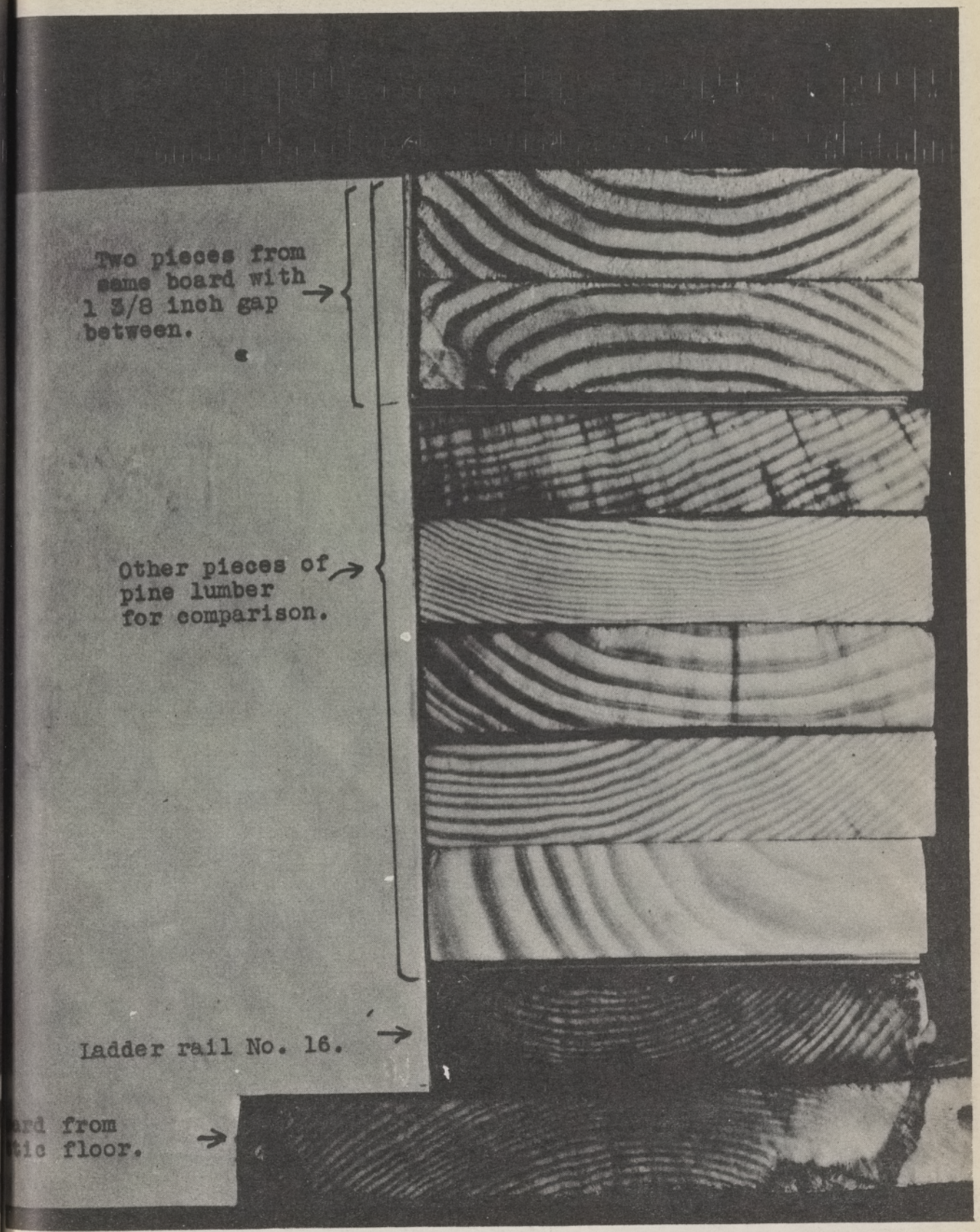
Interior attic ladder rail in place -- S-228



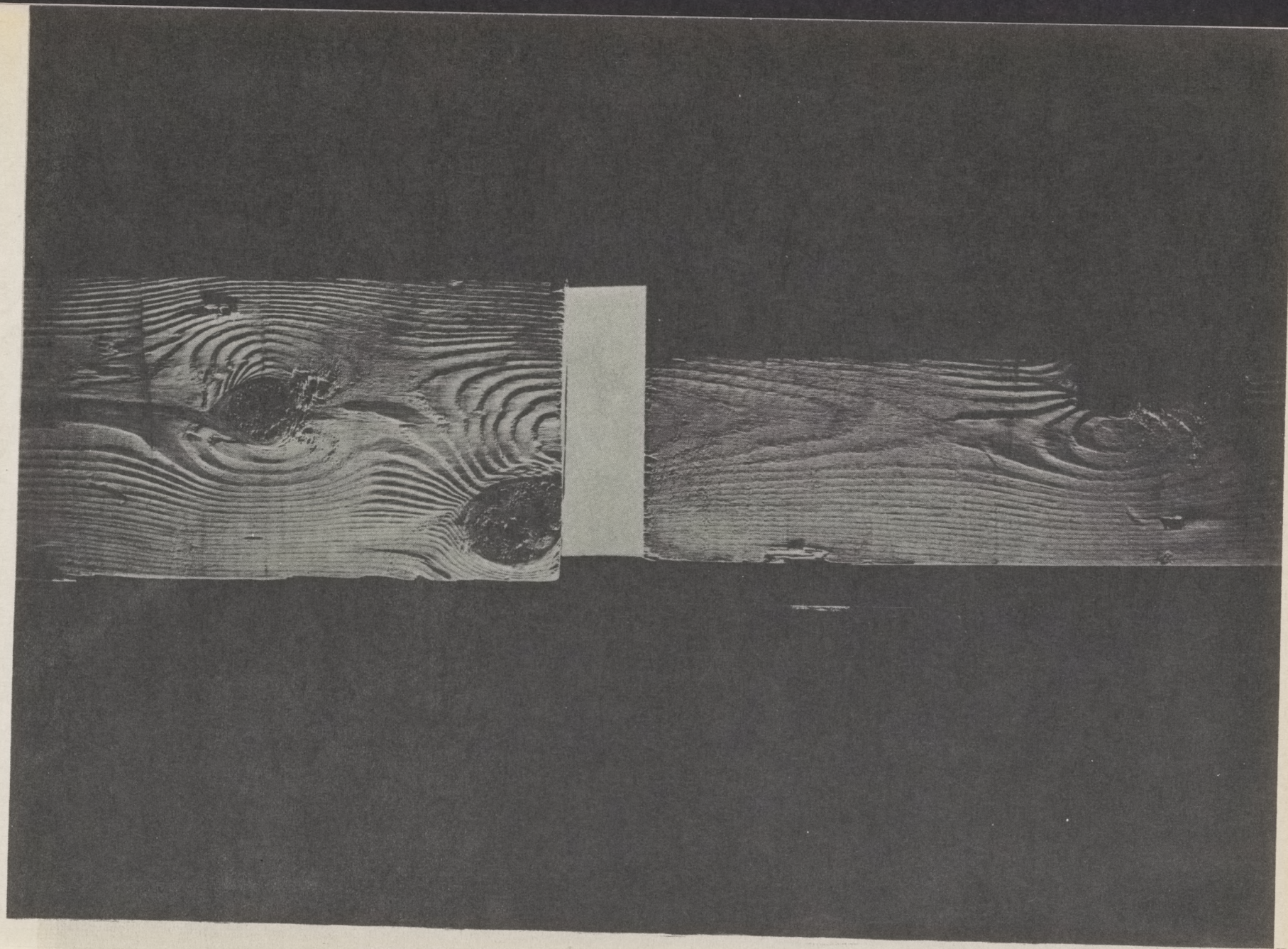
View from above, ladder rail and attic board in place -- S-229



End grain ladder rail 16 and board from attic floor with other boards. Two copies. (Two similar enlarged photographs were cut and matched and marked as exhibits -- S-230, 231 and 233

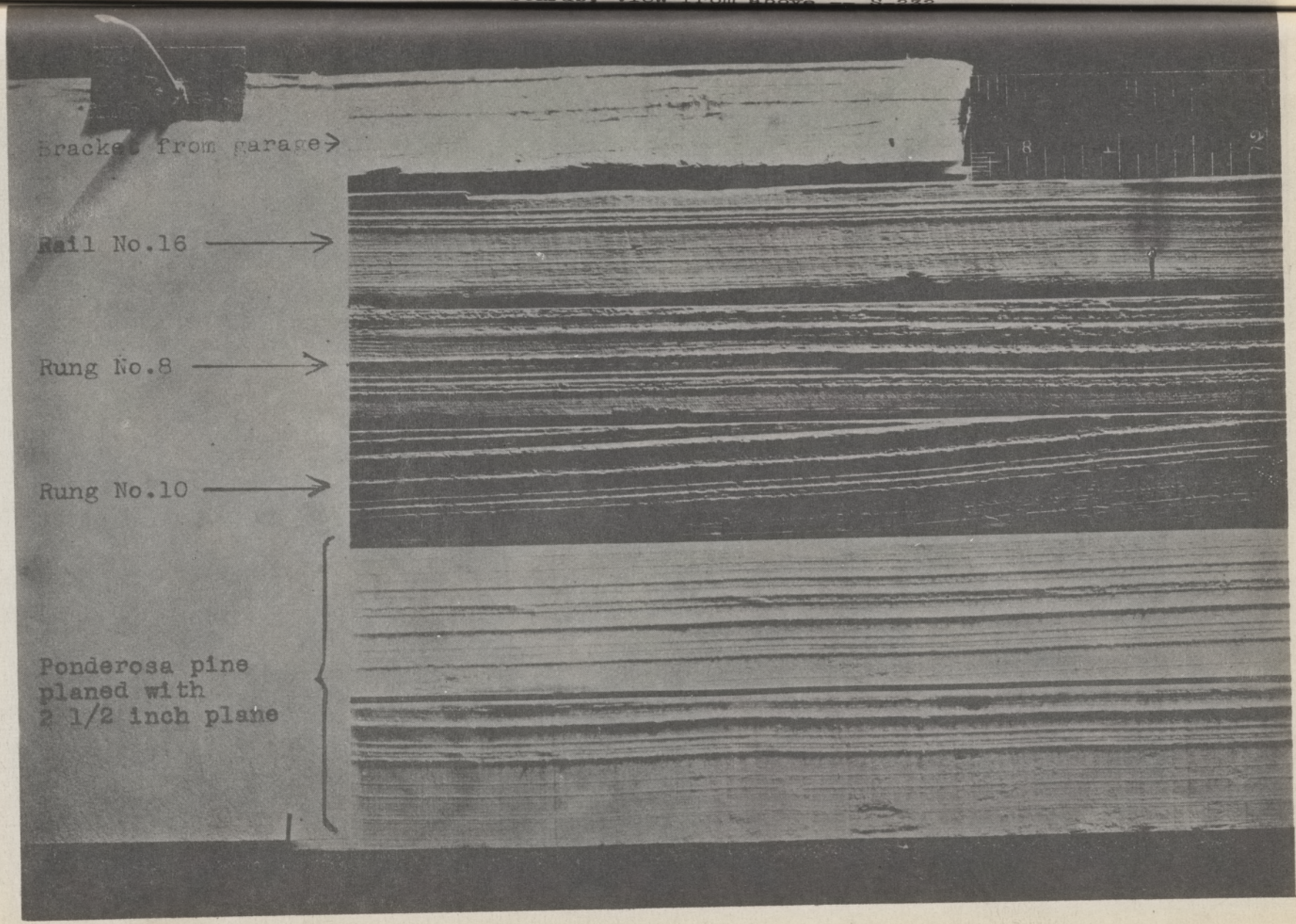


End grain ladder rail 16 and board from attic floor with other boards. Two copies. (Two similar enlarged photographs were cut and matched and marked as exhibits -- S-230, 231 and 233

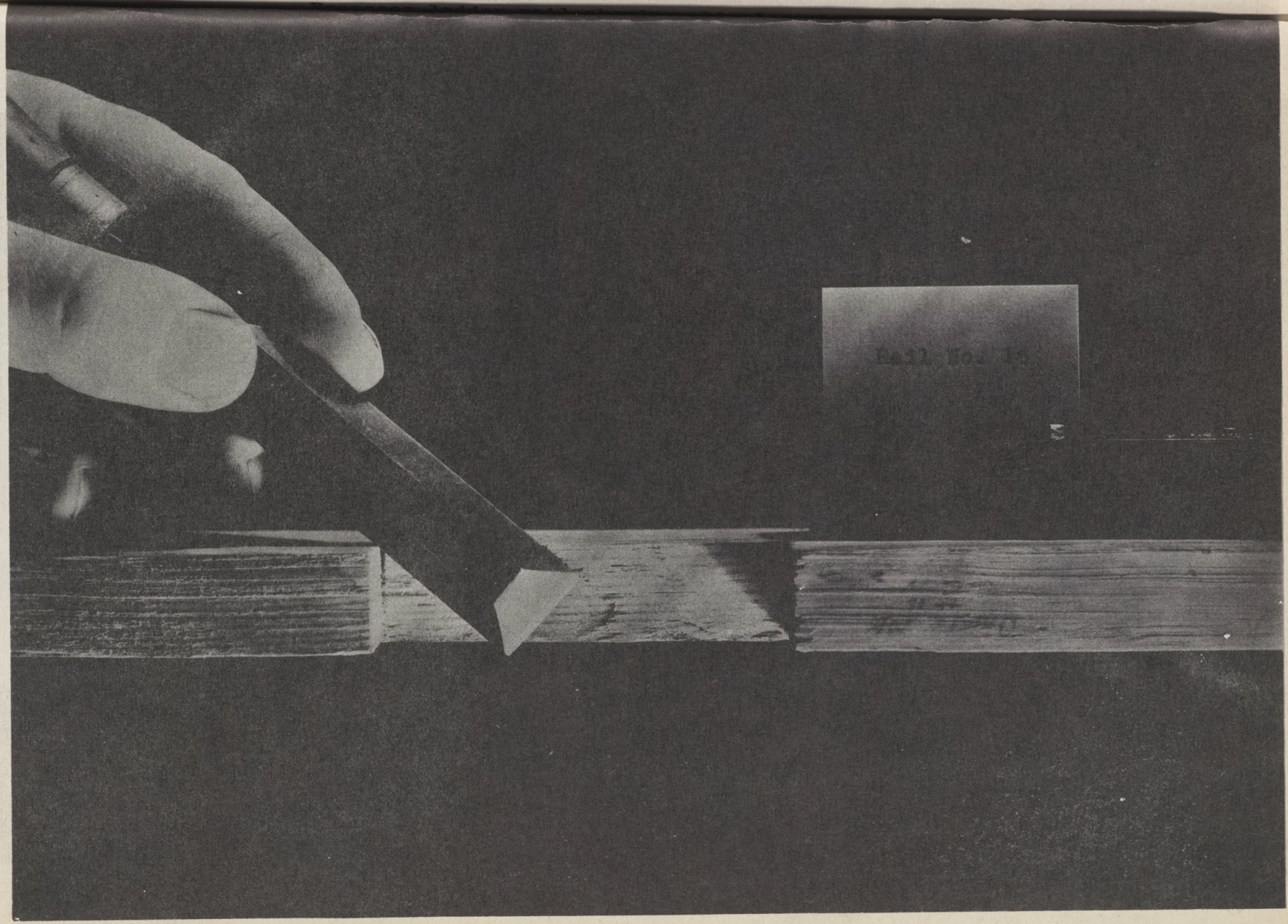


Grain of two boards, view from above -- S 233

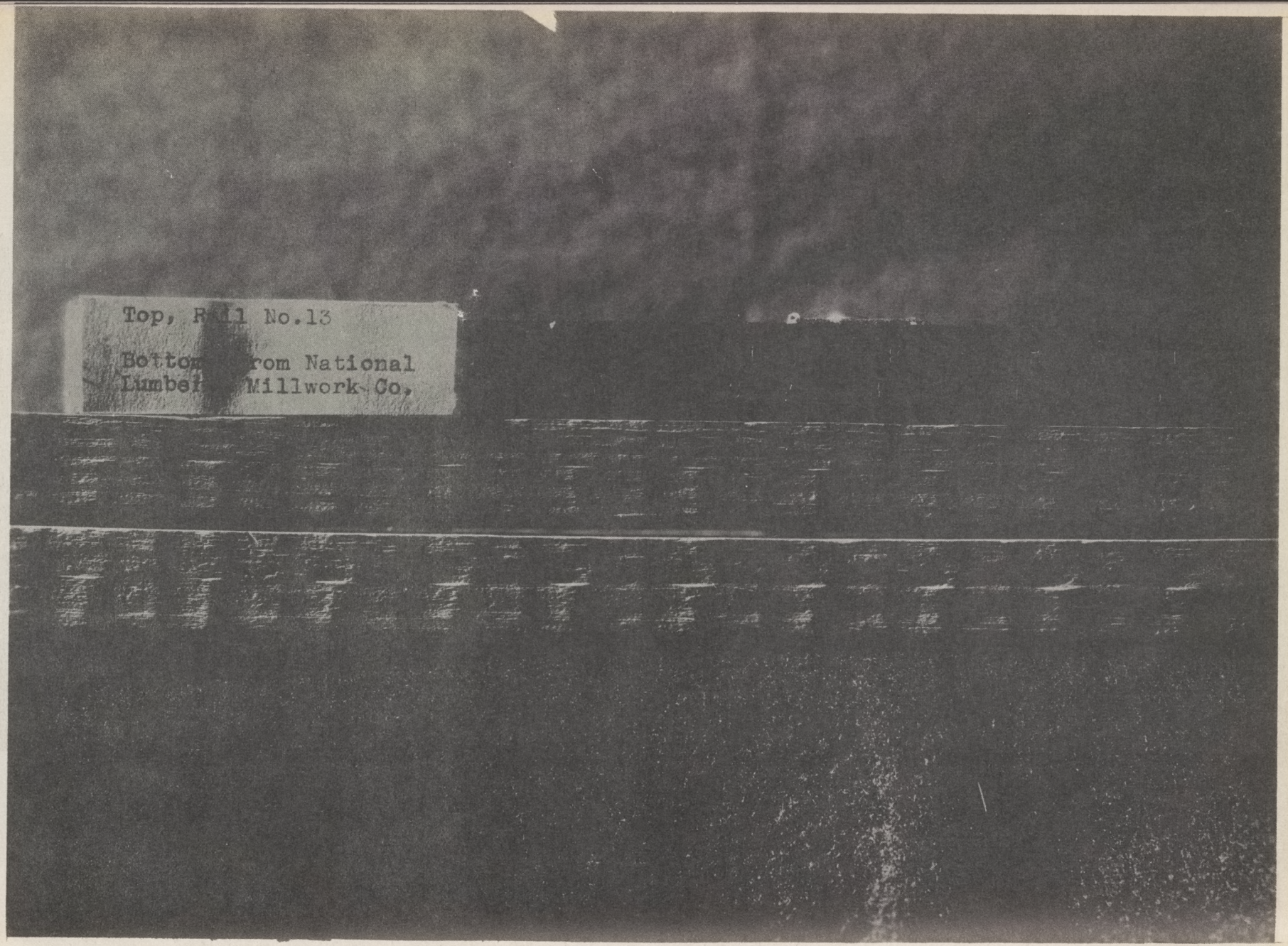
Grain of two boards, view from above -- S-238



Plane mark -- S-238

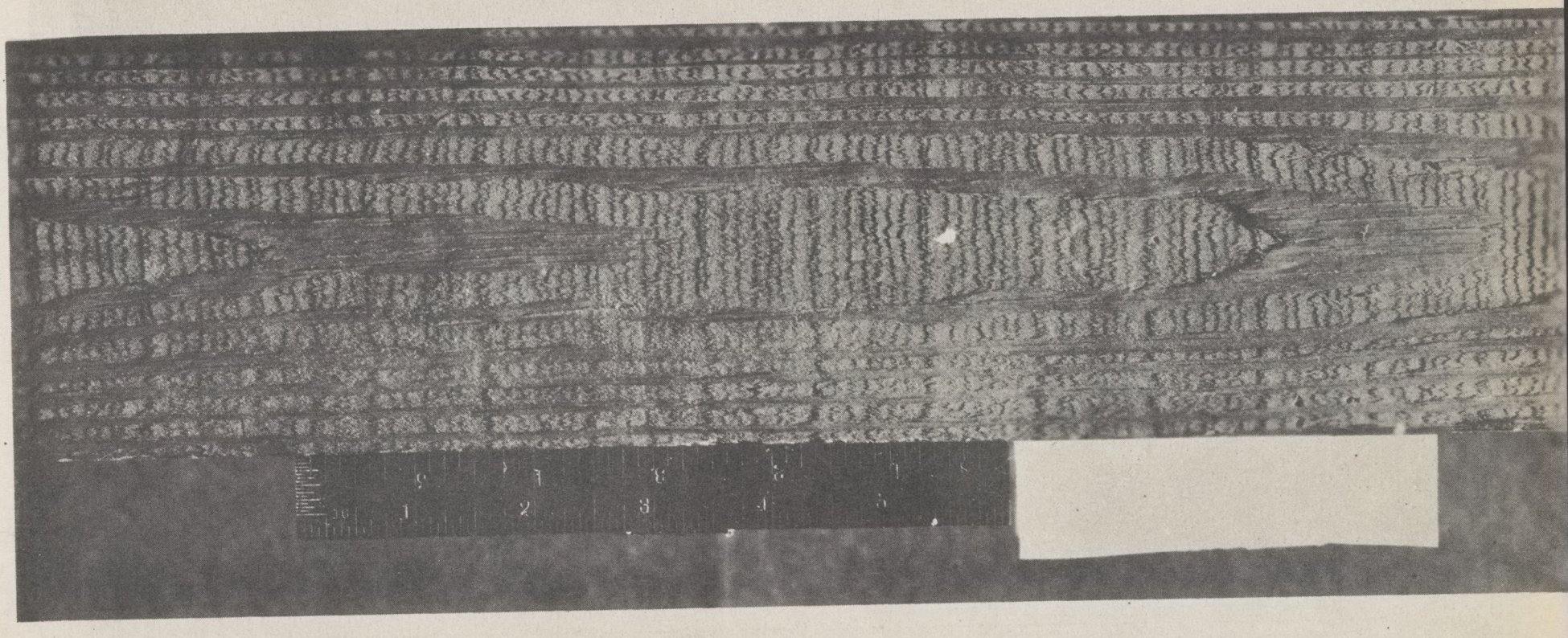


With chisel in mark -- S-241

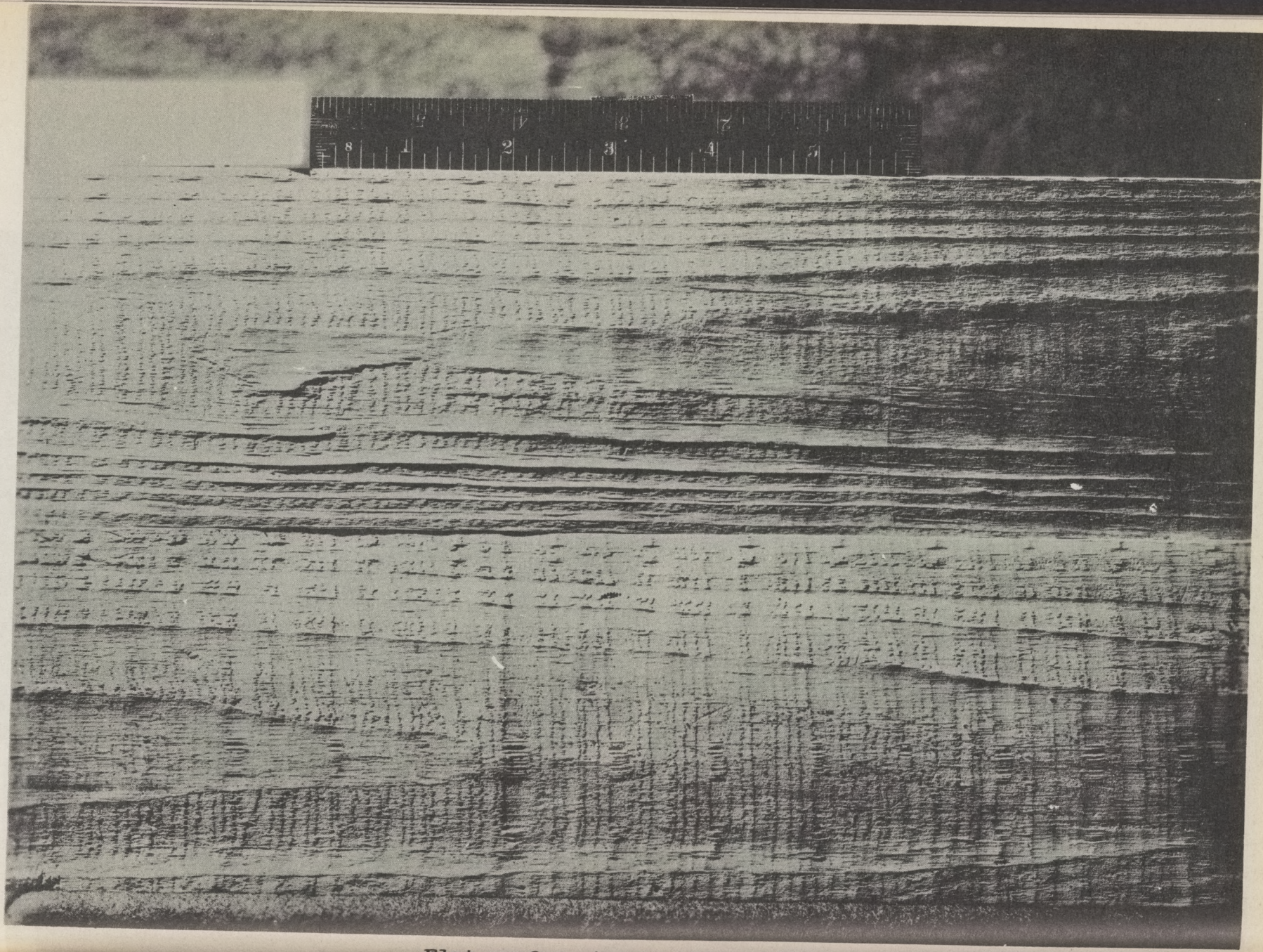


Edge of boards -- S-244

Edge of boards -- S-244

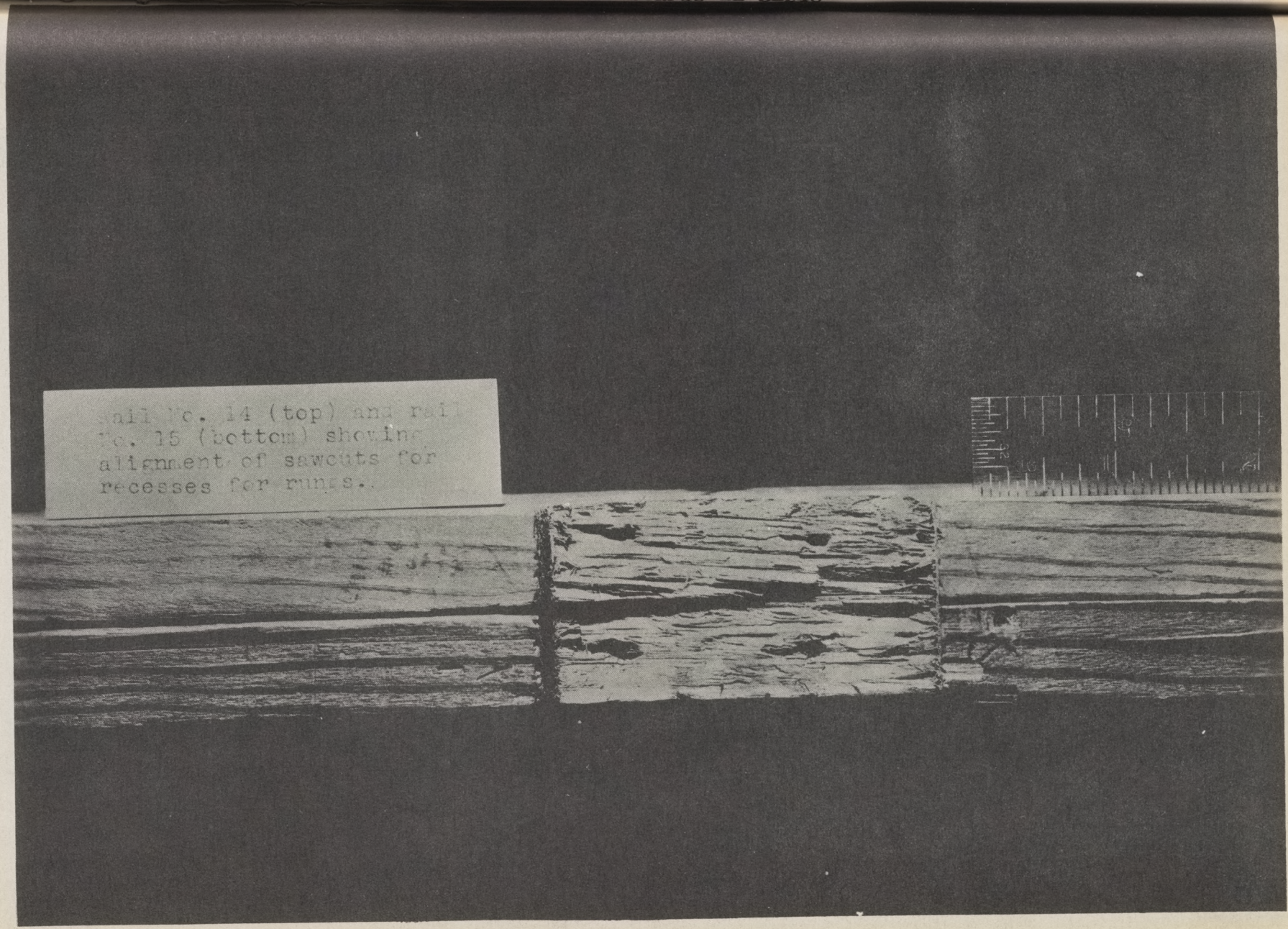


Flat surface of board -- S-245

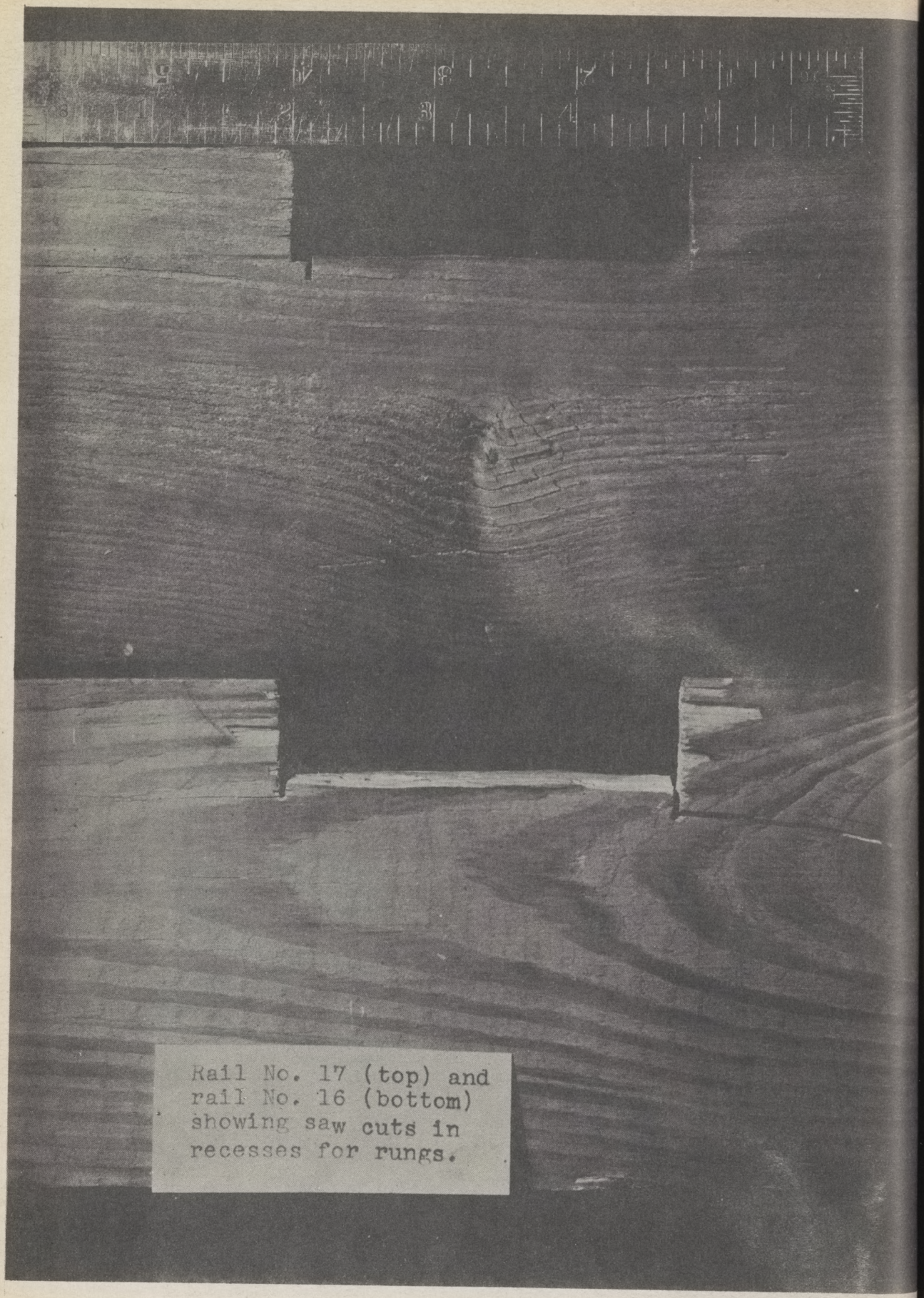


Flat surface two boards -- S-246

Flat surface two boards -- S-246

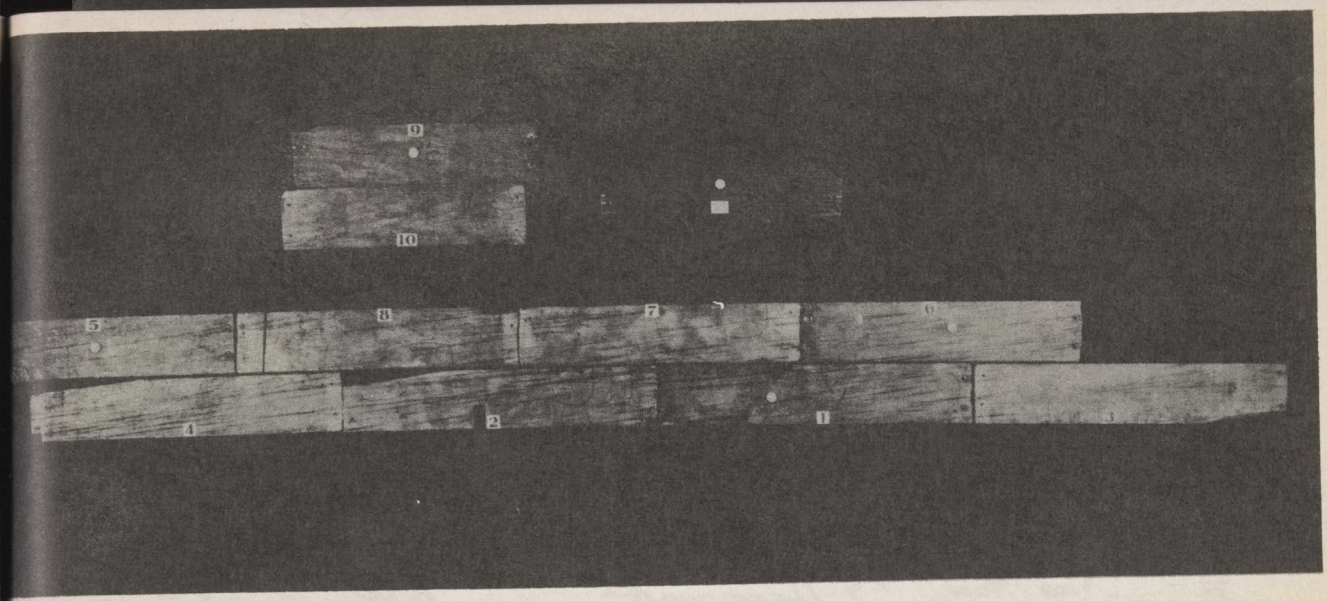


Recesses in rails -- S-247



Rail No. 17 (top) and rail No. 16 (bottom) showing saw cuts in recesses for rungs.

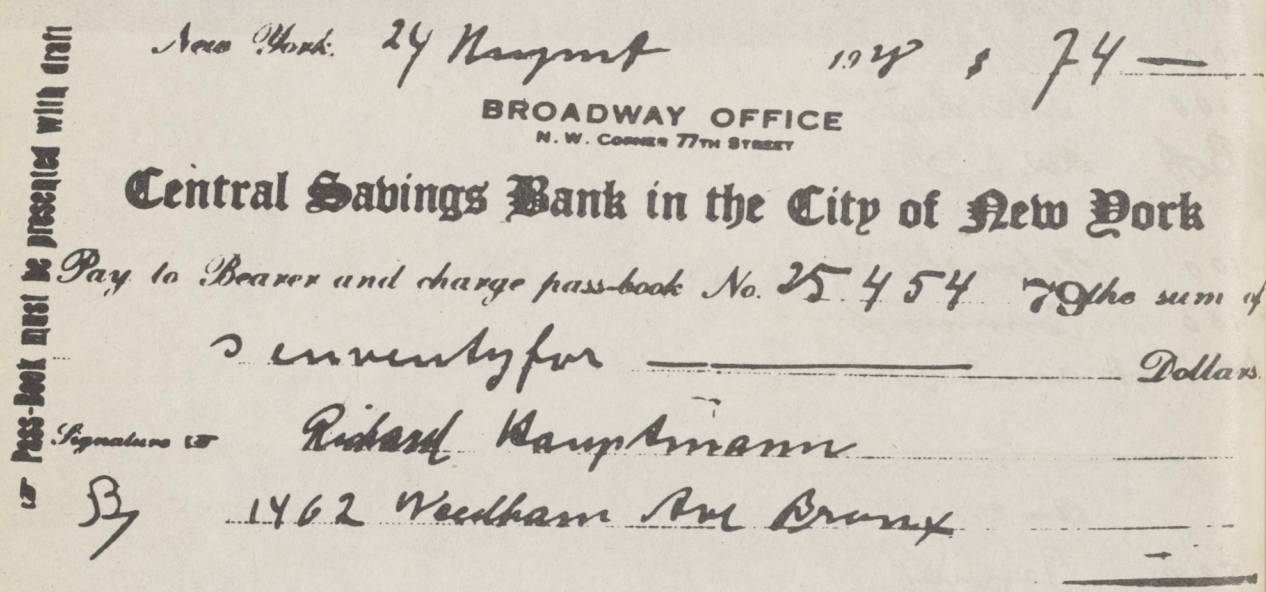
Recesses in rail -- S-248



Pieces matched -- S-249



Hauptmann car -- S-251



Pass-Book must be presented with draft

New York. 24 August 1927 $ 74—

BROADWAY OFFICE
N. W. Corner 77th Street

Central Savings Bank in the City of New York

Pay to Bearer and charge pass-book No. 25454 79 the sum of

Seventy four —— Dollars.

Signature of Richard Kaufmann

By 1462 Needham Ave Bronx

Check, Central Savings Bank, $74.00. (Senventy for) -- S-256 Id.

S-267 Id.

Sold:

100	Schenley Prod.	22.9	33	35 3/4	3	555	75
100	Commercial Solv.	19.10	33	31 3/8	6	227	—
100	" "						
4200	Schenley Prod.			34	6	701	50
10	Bethlehem Steel	26.9	33	36 1/4	3	601	—
100	Standard Brands	28.9	33	34 1/4	2	428	50
8 Bot	Doz. Cotton	17.11	33	912			
8 Bot	Doz. Cotton	18.10	33	940			
100	National Dist. new.	19.10	33	30 1/8	2	990	—
100	Commercial Solvents	19.10	33	31 3/8	3	113	50
2 Bot	an 2. Doz. Cotton (53.25)	21.10	33	928		15	30
					28	688	55

100	Unit Molasses	8.4	1934	4 1/8	1	617	04
100	General Elect.	25.10	33	2. 19 3 19 3/4 5.	9	627	50
100		29.10	33	3 1/4		306	80
200	Unit Molasses	8.11	33	3 3/4		733	50
100	U S Leather	27.10	33	9 3/8	1	846	—
100	Livingston Schild	30.1	34	17 1/4	1	605	—
100	National Dist.	2.11	33	94 3/8	9	408	50
	~~out in cash~~	1.11	33			30	— Rct.
100	General Electric	4.11	33	20 1/4	2	003	50
100	Schenly Dist.	7.2	34	32 1/2	2	230	75
100	Natl. Dist new.	2.4	34	29 1/4	2	901	—
100	U S Rubber	17.11	33	18 5/8	1	843	—
100	Baldwin Locom.	14.12	33	12 3/4	1	255	50
400	Unit Molasses	12.12	1933	3 3/4	1	467	20
100	National Dist.	27.12	33	21 7/8	2	166	—

Sheets from ledger, ledger S-258, pages 102 and 103 -- S-267 Id.

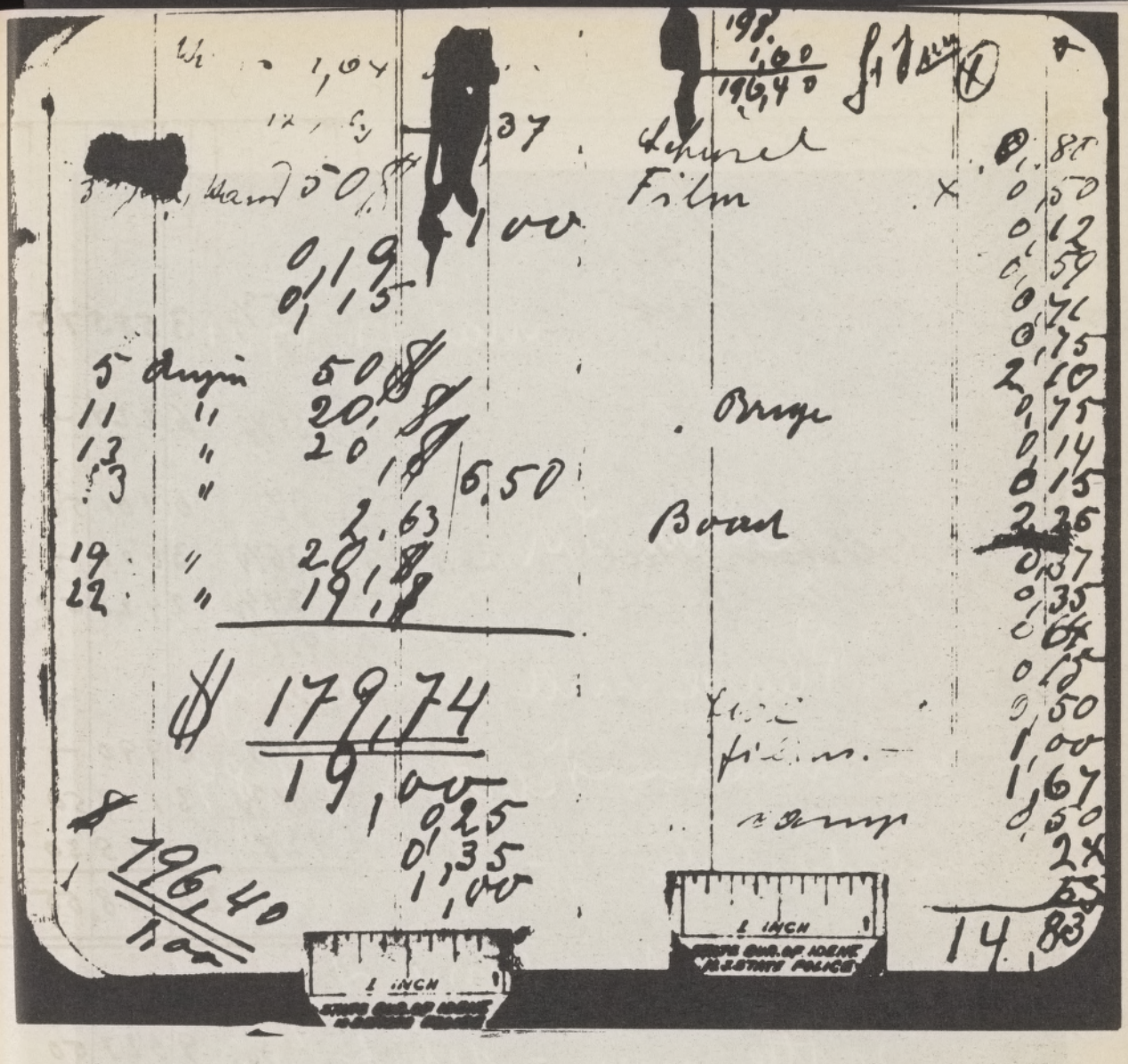
Bought:

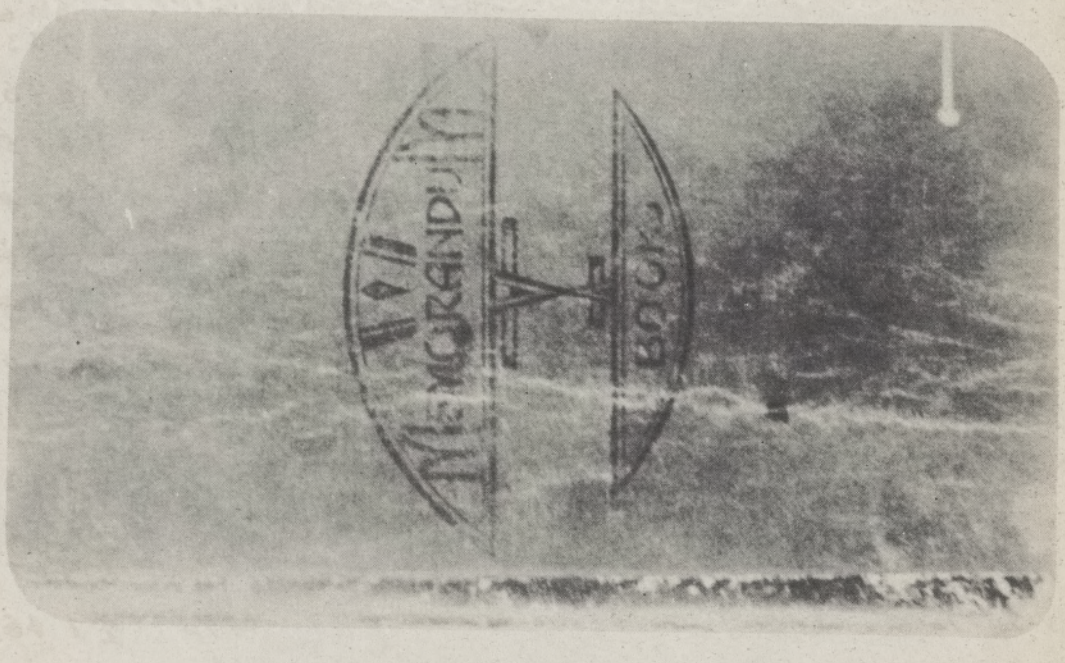
50	Schenley Prod.	11.9	33	40⅝	2	0	3	8	75
50	" "	11.9	33	42⅛	2	1	5	9	0
100	Commercial Solv.	14.9	33	41½	4	1	6	5	—
100	" " "	20.9	33	38	3	8	1	5	—
100	Schenley Prod.	22.9	33	37	3	7	1	5	—
100	Bethlehem Steel	22.9	33	34½	3	4	6	5	—
100	Standard Brands	28.9	33	23¾	2	3	8	7	50
Bot	aw. 2 Foz Cotten	6.10	33	948 div		2	1	2	30
		6.10	33	div			7	2	35
100	National Dist. new.	11.10	33	33¾ less	3	3	9	0	—
100	Commercial Solvents	19.10	33	32½	3	2	6	5	—
Kontr. 2 Bot	an. 2 Foz Cotten	21.10	33	936					
					28	6	4	1	80

Am 21.10.1933 gut in Stock 12.000 ℳ in tun 5.500 ℳ

500	General Electric	21.10	33	18	9	0	6	2	50
1100	United Molasses Ltd.	21.10	33	3	3	3	8	2	50
300	U.S. Leather	21.10	33	6½	1	3	1	5	—
1000	Eitingon Schild	21.10	33	2½	2	5	7	5	—
100	National Dist. Corp.	25.10	33	89	8	9	2	0	—
100	General Electric	30.10	33	18¾	1	8	8	7	50
	für Wallst. forecast.	1.11	33				3	0	— Rich.
100	Schenley Dist	6.12	33	37½	3	7	6	5	—
100	Nat'l Dist new.	9.11	33	32½	3	2	6	5	—
100	U.S Rubber	15.11	33	17⅜	1	7	5	0	—
100	Baldwin Locom.	18.11	33	12⅛	1	2	2	5	—
	~~für Wallstr. forecast~~	~~21.11~~	~~33~~				~~1~~	~~00~~	~~—~~
100	National Dist.	22.11	33	26	2	6	1	5	—

Sheets from ledger, ledger S-258, pages 102 and 103 -- S-267 Id.





Copies page note book, one page with word "boad" S-252. Note book -- S-259

Mai 21. 1931

Dear Sir:

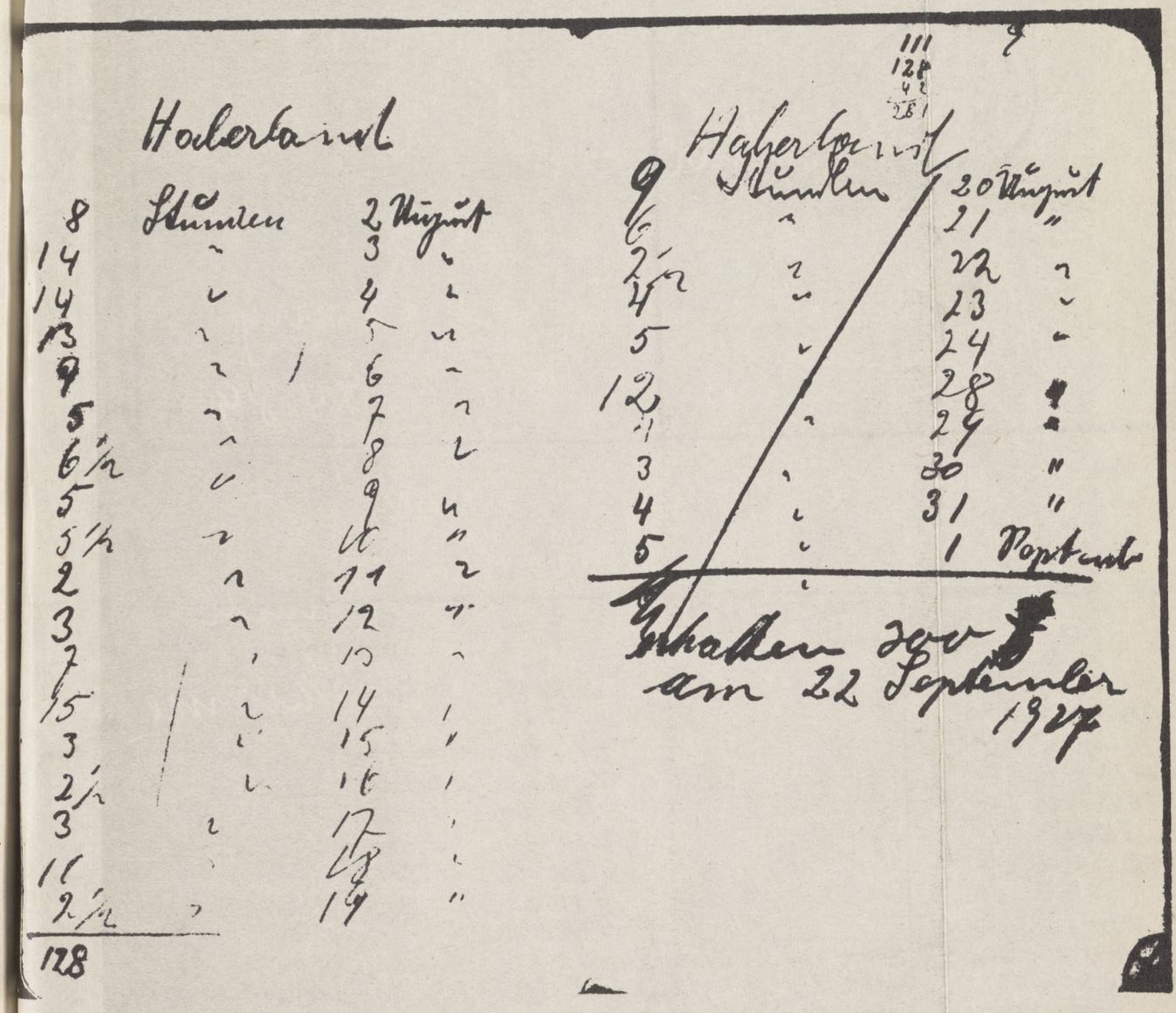
Please will you carry
in mein Debit $ 74.89
until Mai 25.

By this time I will
settle mein Debit balance
from $ 74.89

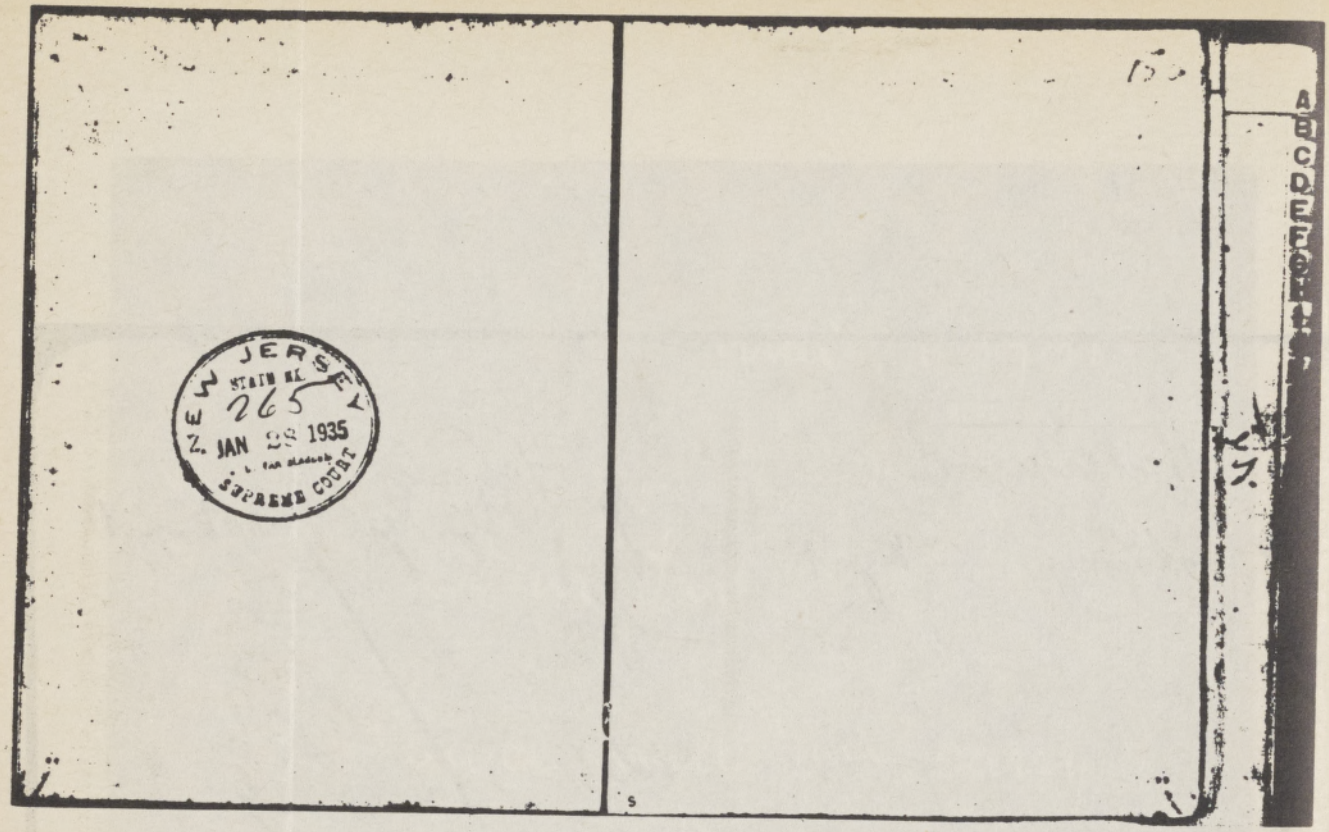
Yours very truly

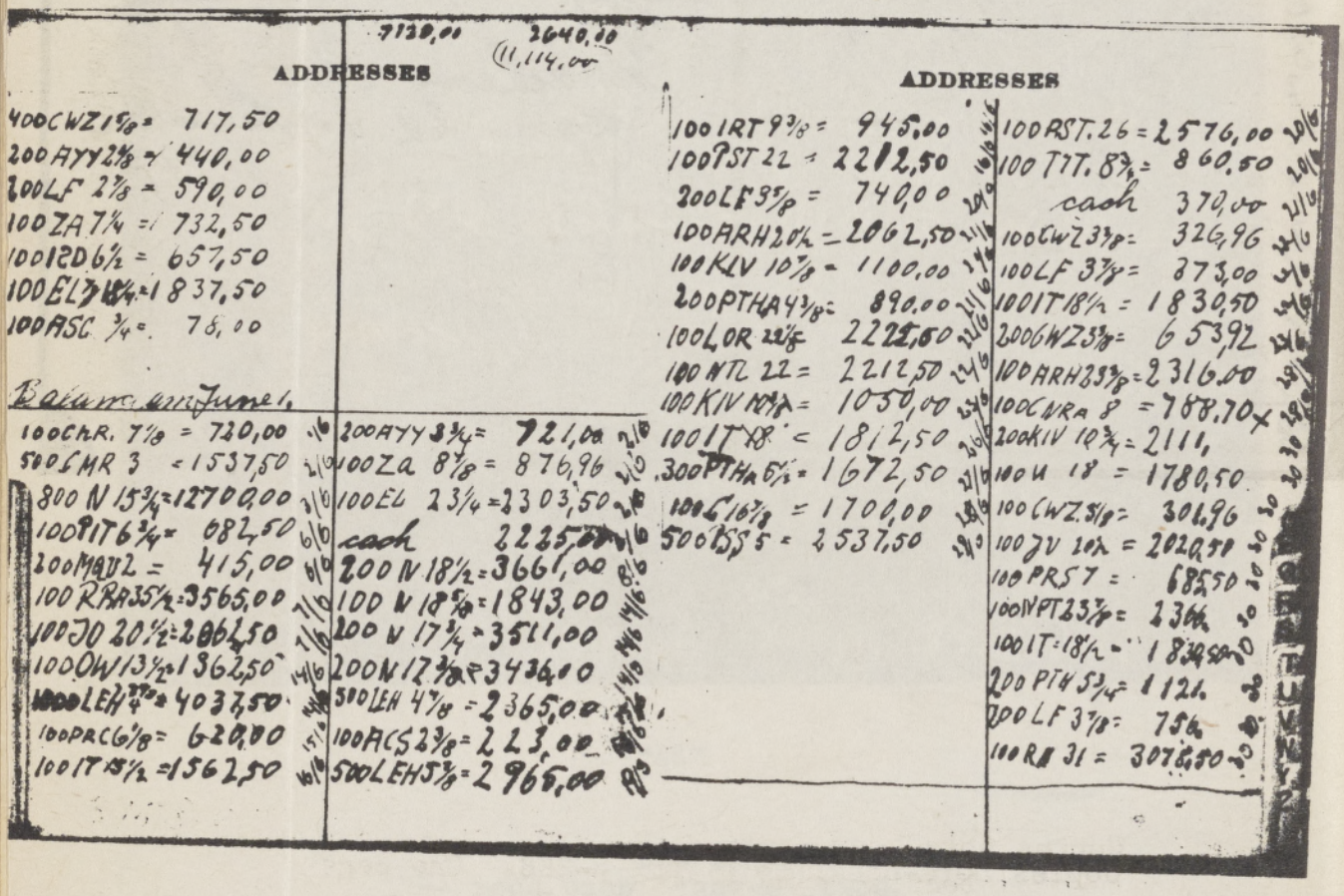
Richard Dumpmann
1462 Dearborn Ave

Copy letter to broker May 21, 1931 -- S-260



Copies pages from note-book -- S-261





ADDRESSES

400CWZ 1⅝ = 717,50
200AYY 2⅜ = 440,00
200LF 2⅞ = 590,00
100ZA 7¼ = 732,50
100IRD 6½ = 657,50
100EL 7 18¼ = 1837,50
100ASC ¾ = 78,00

Balance on June 1,

100CHR. 7⅛ = 720,00
500CMR 3 = 1537,50
800 N 15¾ = 12700,00
100PIT 6¾ = 682,50
200MAVL = 415,00
100RRA 35½ = 3565,00
100JO 20½ = 2061,50
100OW 13½ = 1362,50
100LEH 27½ = 4037,50
100PRC 6⅛ = 620,00
100IT 15½ = 1562,50

7130,00 2640,00 (11,114,00

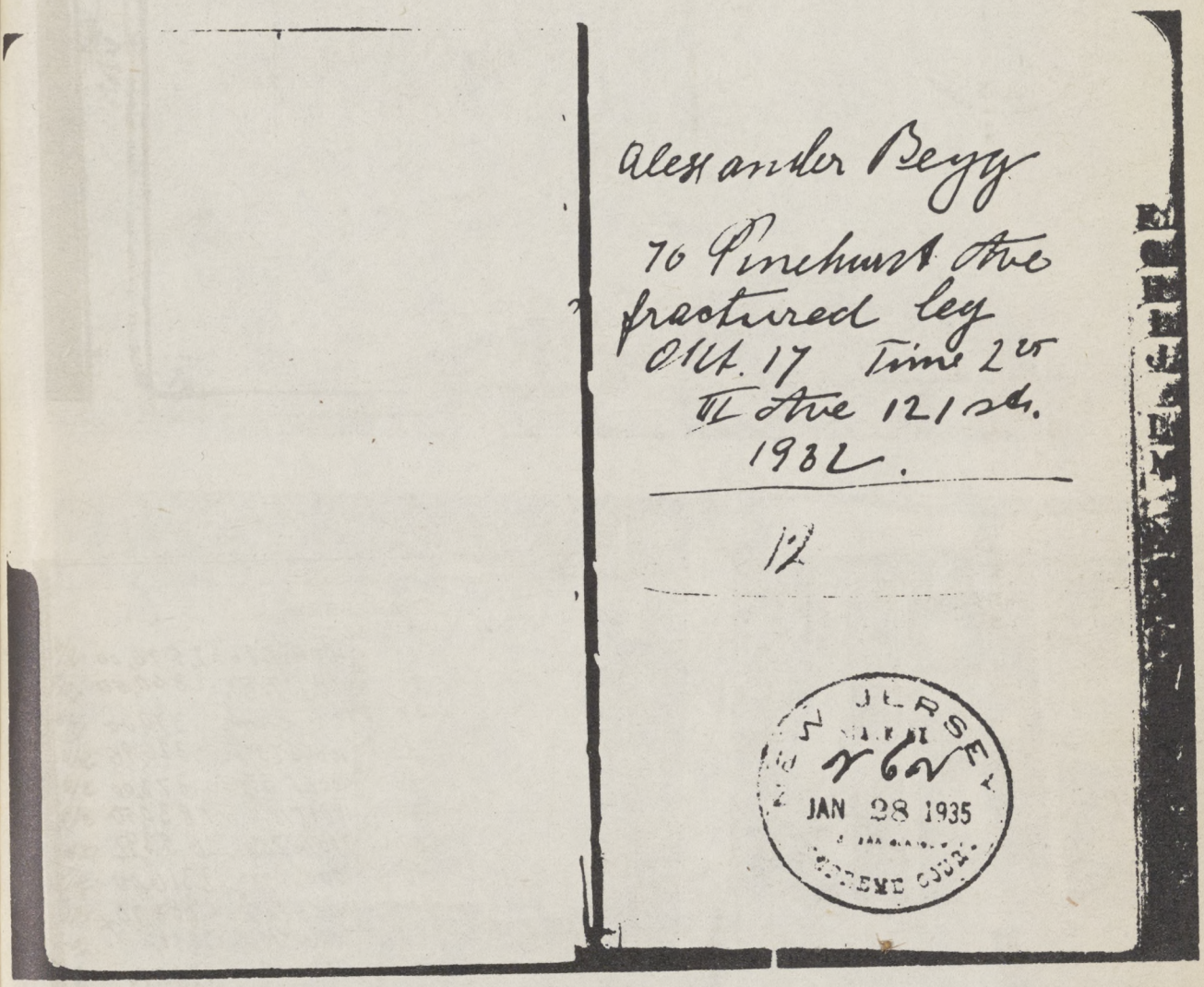
200AYY 3¾ = 721,00
100ZA 8⅞ = 876,96
100EL 23¼ = 2303,50
cash 2225,00
200 N 18½ = 3661,00
100 N 18⅝ = 1843,00
200 N 17¾ = 3511,00
200N 17⅜ = 3436,00
500LEH 4⅞ = 2365,00
100ACS 2⅜ = 223,00
500LEH 5⅜ = 2965,00

ADDRESSES

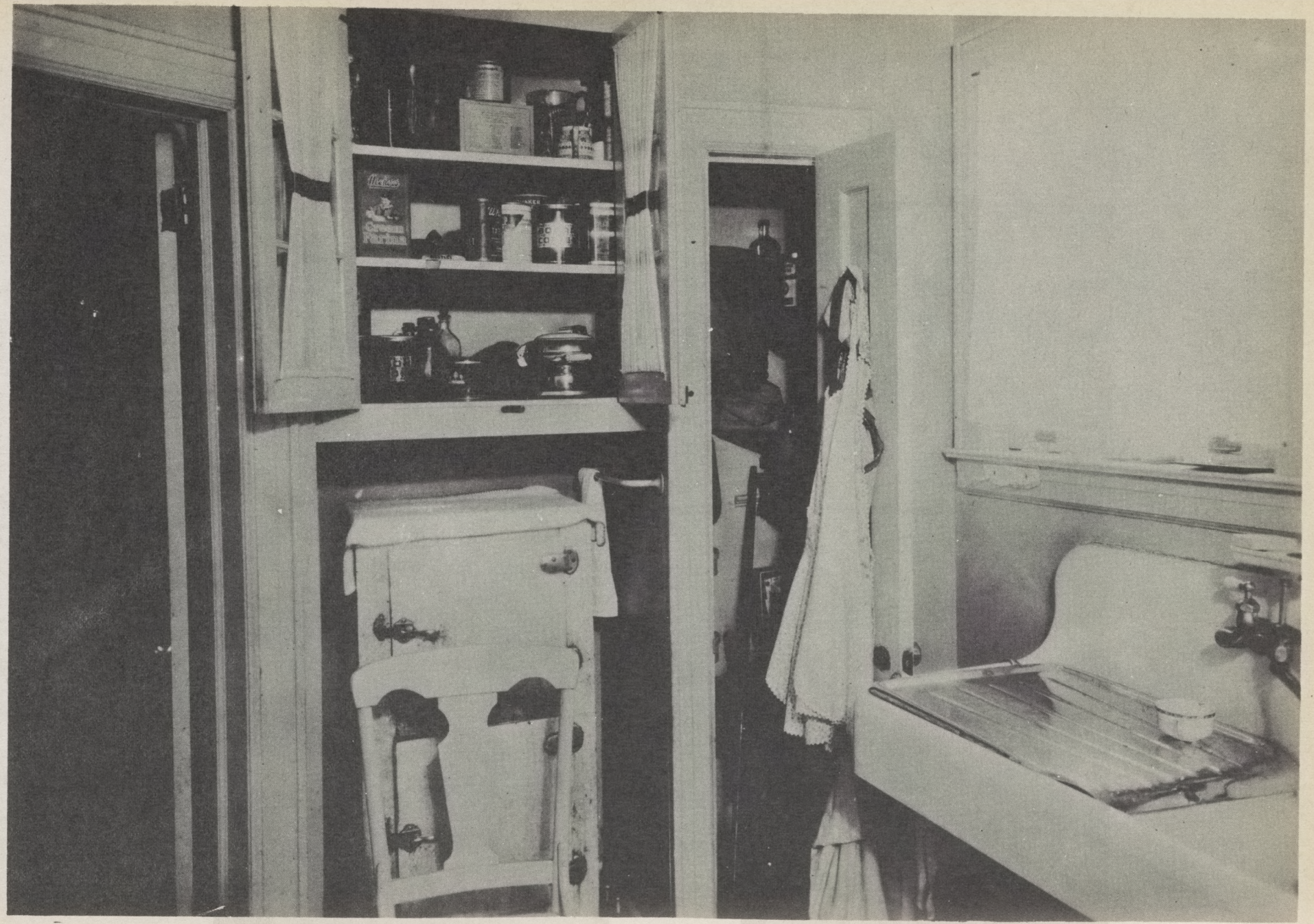
100IRT 9⅜ = 945,00
100PST 22 = 2212,50
200LF 3⅜ = 740,00
100ARH 20½ = 2062,50
100KLV 10⅞ = 1100,00
200PTHA 4⅜ = 890,00
100LOR 22⅞ = 2222,50
100NTL 22 = 2212,50
100KLV 10¾ = 1050,00
100IT 18 = 1812,50
300PTHA 6½ = 1672,50
100C 16⅞ = 1700,00
500BSS = 2537,50

100RST. 26 = 2576,00
100 TIT. 8¾ = 860,50
cash 370,00
100CWZ 3⅜ = 326,96
100LF 3⅞ = 373,00
100IT 18½ = 1830,50
200GWZ 3⅜ = 653,92
100ARH 23⅜ = 2316,00
100CNRA 8 = 788,70
200KLV 10¾ = 2111,
100U 18 = 1780,50
100CWZ 5⅛ = 301,96
100JV 10½ = 2020,50
100PRS 7 = 682,50
100NPT 23⅞ = 2366,
100IT 18½ = 1830,50
200PTH 5¾ = 1121,
200LF 3⅞ = 754,
100RR 31 = 3076,50

Copies pages from note-book--note book S-265.
One page S-257 Id. S-257 in evidence.

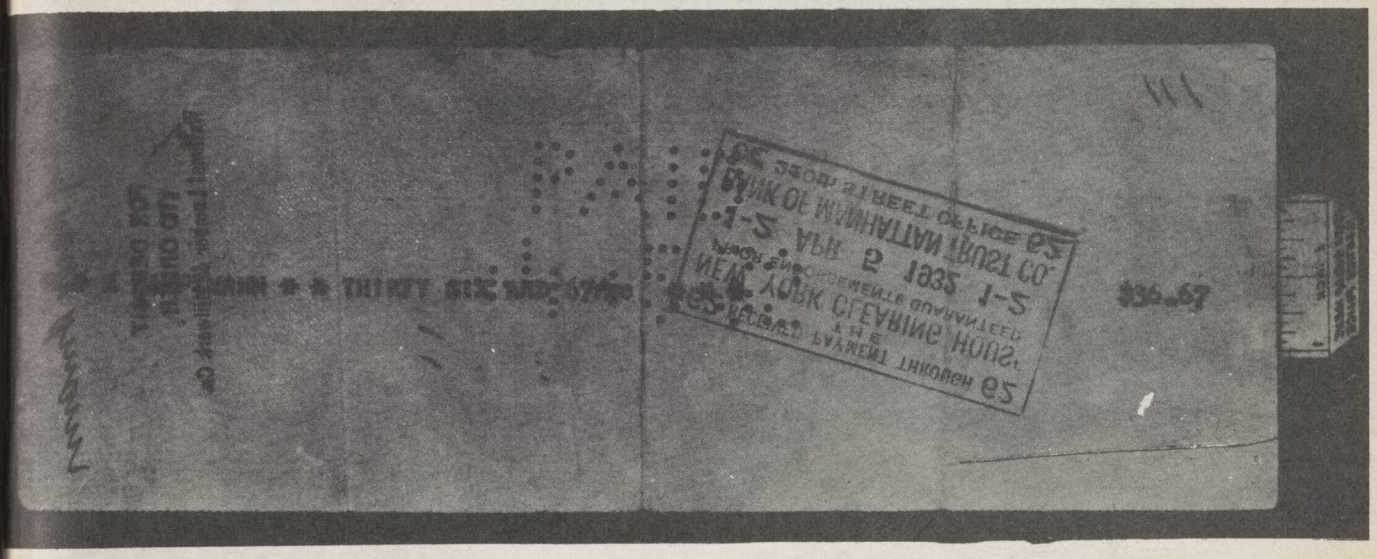


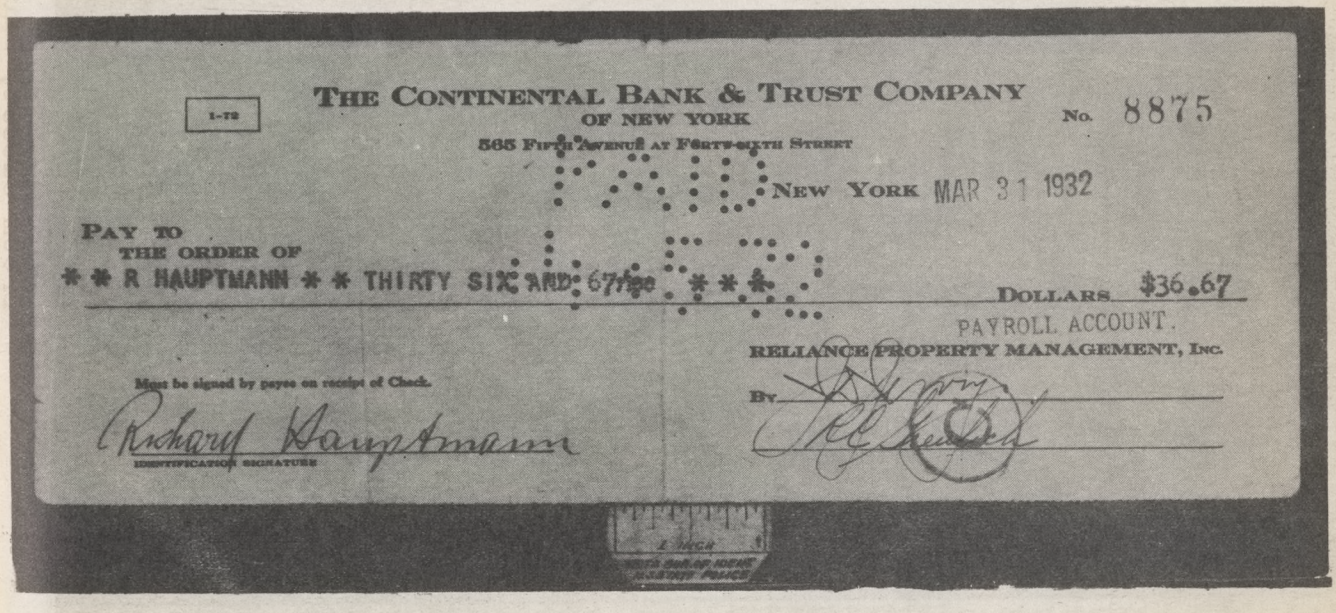
Copies note-book, note book S-266. One page bearing name Alexander Begg --
S-262



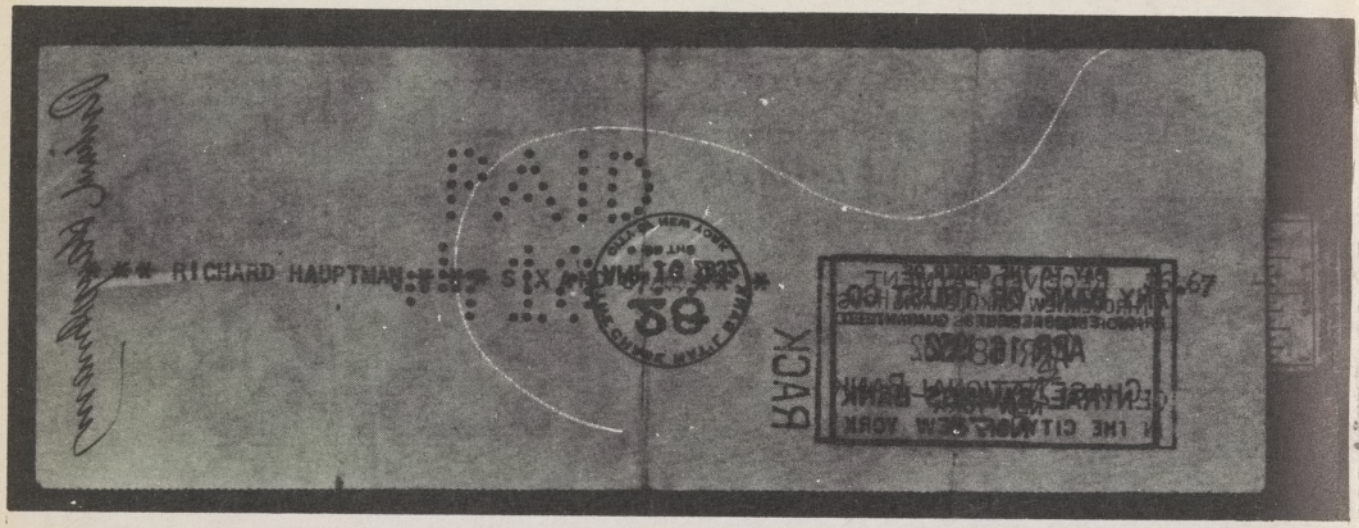
Broom closet, Hauptmann home -- S-264

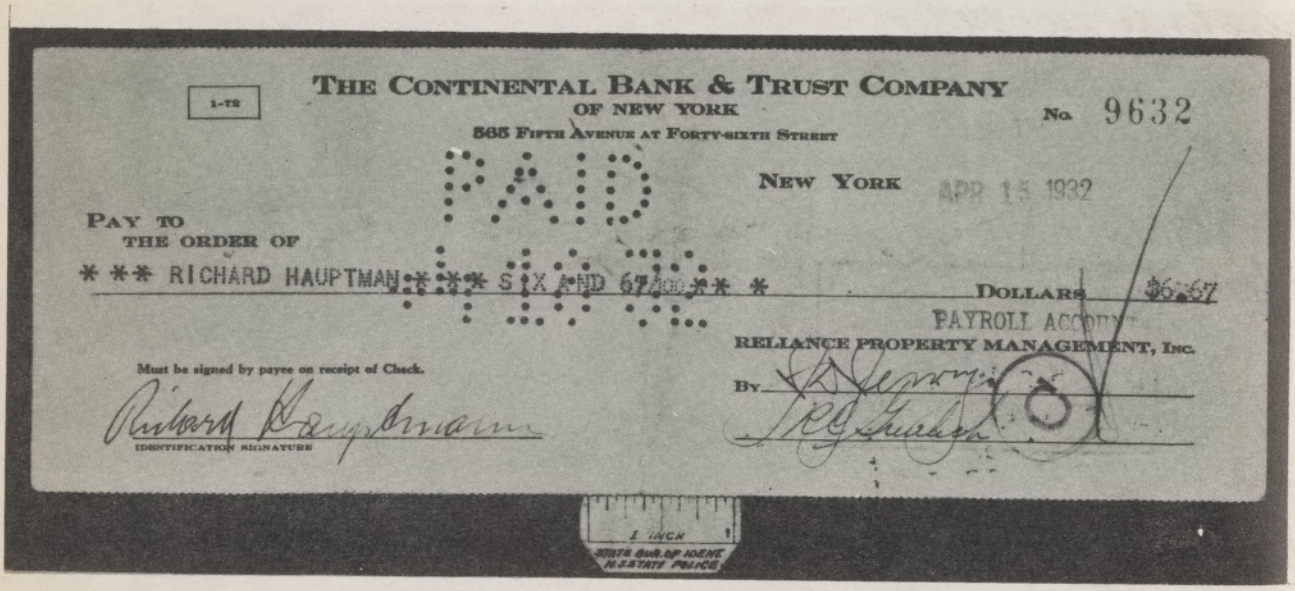
Broom closet, Hauptmann home -- S-264





Check, March 31, 1932, $36.67 -- S-268





Check, April 15, 1932, $6.67 -- S-269

New-York d. 4. Mai 1934

Sehr geehrter Herr Fisch!

Eine Woche zurück erhielt ich Ihre gewisse Nachricht von dem Hinscheiden ihres lieben Bruders und meines besten Freundes. Entschuldigen sie bitte die Verzögerung in der Rückantwort, es war mir aber nicht möglich, mich in die Lage zuversetzen, daß ich Isidor nicht mehr sehen soll. Er war mir der beste Freund, somit ich der einzige war, er wird mir immer in Erinnerung bleiben, denn er war der einzige, mit dem ich über alles sprechen konnte, ob Privat oder Geschäftlich.

Habe Isidor 1931 kennen gelernt, wir kamen öfters, bei einer bekannten Familie zusammen, selbige wohnte in Kleinen Hause, wo er wohnte. Haben sehr schöne Stunden dort verlebt. In der Sommerzeit gingen wir gewöhnlich zum Baden und Segeln, ich denke er wird ihnen von diesen schönen Stunden wohl erzählt haben, denn sie sind reich an Erinerungen.

Zur selben Zeit war meine Arbeit die selbe wie noch jetzt, Handeln in Aktien, mein Beruf von Deutschland ist Maschinenbauer, hier muß man aber um vorwärts zukommen, irgend etwas unternehmen wo mehr Geld darin ist. Im Frühjahr 1933 habe ich für Isidor eine kleine

Copies of letter dated 4th May, 1934 in German -- S-272

Transaktion unternommen, wo ich sicher war es konnte nur gewinnen, so ist es auch gekommen. Auf diese art sind wir so nach und nach immer mehr auf Geschäftlicher zusprechen gekommen. Ich gab ihm einige mal Geld für einkauf von fellen, so gab er mir auch die selbe summe für mein Aktion Geschäft, den Gewinn oder wenn wir verlust hatten teilten wir jedes mal. Alf diese Geschäftlich sachen brachten uns den entschluss zusammen ins Geschäft zugehen. Denn wir fanden hier einen Weg wo wir konnten unsere Zukunfft aufbauen. Denn nach seiner berechnung sagte er mir, dass er im Jahr 20 - 30 % an angelegten kapital verdienen kann. Gleicherseits sind im meinen Geschäft sehr grose schwierigen verhanden, ich kann fast alles verlieren kann aber auch wenn ich glücklich spekuliere ein vermögen gewinnen. Wir fassten wir den entschluss zusammen zu arbeiten, ein jeder in seinen fach und gegenseitig ½ mit ½ an Gewinn oder verlust. Machten uns auch aus, sollte einer mal mehr benötigen als die Hälfte von angelegten kapital, so soll es der andere von seinen Geschäft heraus nehmen was erforderlich ist. Es kann nur bei Fieber in frage, wenn er felle ankaufte. dieses wollten wir so führen bis Fieber from Deutschland zurück kommt, dann wollten wir eine gemeinschaftlichen konto eröffnen, und alle Angelegenheiten auf breite fahnen führen.

Am 1 November 1933 beschlossen wir unser Geschäft anzufangen mit 35000,00 $. ein jeder Halb. Nachdem wir alles verrechnet hatten war da Wert von meinen Aktien zu Zeit.

am 1. Nov. 1933 12000.00 $

Der Besitz an Fellen von Isidor ist folgender

100 Silver Fox	11000.00	
1000 Rl. Muscrat	1500,00	Zu diesen Fellen gab ich
2500 Muscrat	3500,00	ihm von meine privat Bank
300 Mulrat	3000,00	5500,00 $, so war meine
390 Ad. Vict Opossum	3900,00	hälfte (17500.00 $) in
	21900,00 $	full im Geschäft

Ferner sind noch 400 Kudrow Seal verhanden von einen alten Lott, es ist auch ½ und ½.

Am 13 November 1933, sagte Isidor ob ich von meinen Geschäft will 2000,00 $ abnehmen, für seine Reise, wenn nicht, wollte er etwas von den Fellen verkaufen, Kamen aber überein, das so besser ist, die Felle liegen zulassen, in falle einer Inflation, auch hofften wir das wir werden mehr bekommen wenn er wieder kommt. So nahm ich am 14 November 1933, 2000,00 $ von meinen Aktion Konto gab es Isidor. Einiges liess er in Reisecheks umwechseln. Wieviel weiss ich nicht, ich sagte ihm

Bin jetzt diese Tage herum gefahren, um erkundigungen einzuziehen, konnte aber nur erfahren das selbige Bäckerei Bankerott angesagt hat schon zwei Jahre zurück. Kann es aber nicht glauben, denn Isidor sprach noch kurz bevor er abfuhr davon, das da alles in Ordnung ist. In dieser Angelegenheit ist etwas in trüben. Ich persönlich glaube, das diese Backerei jetzt einen anderen Nahmen hat, oder hat Isidor dieses Geschäft unter anderen Nahmen geführt, vielleicht wegen Steuern? Darüber würden ja seine papiere im Schliepfach ausführlich auskunft geben.

Jetzt lieber Herr Fisch, möchte ich Ihnen darum bitten mir einige ausführlichkeiten zu schreiben, denn ich nehme an, das Isidor wohl etwas von wichtigen papiere bei sich gehabt hat. Würden Sie bitte von allen Sachen die über sein wirken aufschluß geben können, mir gewöhnliche abschrifften senden. Wie Rechnungen, wolleicht hat er die Lieferscheine von den fellen bei sich gehabt, und wo seine Bankfach ist. Ich weiß nicht in welchen Lagerhaus er die felle liegen hat, es ist alles auf seinen Nahmen, möchte alles schleunigst haben, auch sein Bankfach. Könnte ich Zutritt zu den fellen erhalten könnte ich etwas verkaufen oder Ihnen schicken wenn Sie es wünschen. Hoffe das die felle nicht schlecht werden.

Copies of letter dated 4th May, 1934 in German -- S-272

es soll nicht alles wechseln, denn der Dollar ist immer noch sicher genug.

Unsere Geschäftsabständigung demnach ist vollgemacht. Mein Teil war in Fell darin 17500.--.

Isidor konnte es nicht ganz in Fell einlegen, da er noch anders wo Gold angelegt hatte, welches ich weiter unten darlegen werde

Konto von Aktien 10000.-- $ Isidor 1/2 Richard 1/2
" " Fellen 21900,-- " 1/2 " 1/2

Doch bekomme ich von Isidors Hälfte von Fellen 7500,-- $ dann ist noch das Lob von 400 Kastrun Seal vahanden welches 1/2 sind 1/2 gehört.

Der Wert von meinen Aktien ist jeden Tag anders, jetzt 11000 - 12000, der Wert von den Fellen ist auch ziemlich gestiegen.

Ferner schuldet Isidor einer Frau mit Namen Mrs. Hille 3750,-- $ von Jahr 1931. Bei der Frau bin ich jetzt gewesen und habe es für richtig befunden. Dann hat Isidor einen Freund 2000,-- $ geliehen für ein Delikatessen-Geschäft, die Unterlagen wird wohl Isidor in seinen Bankfach haben.

Ferner sprach er zu mir daß er der Mitgründer von einer Bäckerfirma ist, da soll er wie er sagte. 10000,-- $ darin stecken haben.

Da wir erst alles nach seiner Deutschland reise auf
Seite nehmen schreiben wollten, so hab ich zu all den
Sachen, ohne Ihre Vollmacht keinen Zutritt. Victor
wollte tatsächlich erst mal ausfinden, wie die
Exportmöglichkeiten nach Deutschland liegen und
in besonderen mit Ihren waren firma. So war
bis jetzt unser Geschäft auf gegenseitigen Vertrauen
aufgebaut. Hab alles in meinen Büchern eingetragen
Ein und Verkauf, aber nicht die Lager wo er alles
liegen hat. Er sagte mir manchmal die Ecke. hab
es aber nicht vermerkt, wer hätte wohl an einen solchen
Fall gedacht.

Werden Herr Fisch, wie gedenken Sie jetzt
alles zu regeln! Ich erlaube mir hiermit Ihnen
folgenden, Vorschlag zu machen.

Wollen Sie selbst noch hier kommen, und
alles regeln, es würde Ihnen allerdings sehr viel
Zeit wegnehmen um alles in Ordnung zu bringen, denn
die Öffnung von den Bankfach kann nur durch Gericht geben
aber der Wert der Sachen würde es sicher lohnen.

Oder wollen Sie einen Anwald nehmen der alles
regeln soll. Zu diesen würde ich entschieden abraten.
Denn Sie werden wohl auch wissen wie die Leute in
solchen Fällen arbeiten und besonders in Amerika.
Am Ende wäre dann nichts mehr da, dieses wäre ein
Schlag für seine lieben Hinterbliebenen und auch für mich.

Copies of letter dated 4th May, 1934 in German -- S-272

Ein anderer Weg ist folgender: Wollen Sie mir das selbe vertrauen entgegen bringen wie Ihr verstorbener Bruder: dann würde ich hier die ganze Angelegenheit regeln. Soll ich es übernehmen, schicken Sie mir bitte alle Vollmachten. Gehen Sie bitte auf das Amerik-Consulat, denn Doctor war Amerik. Bürger, dort werden Sie wohl alles erfahren was an Papieren notwendig ist. Dieser Weg der doch, denke ich, wäre wohl der Beste und sicherste. denn ich bin ja finanziell auch sehr interessiert daran. Über Vertrauen gesprochen, sage ich Ihnen, Ihr lieber Bruder war mein bester Freund und sein Andenken soll mir immer heilig bleiben.

Auf Ihre geschätzte gefl.
Rückantwort wartend
Grüße ich Ihnen sowie Ihre lieben
Angehörigen

Richard Hauptmann
1279 East 222 St.
New-York.

Copies of letter dated 4th May, 1934 in German -- S-272

4

Durchschlag:

die Krankheit seiner Frau hat mich seiner Rückkehr 5 Jahre zurückgehalten, wo war selbige Zeit in Rochester. Dort hat er bei kaltem Wetter gebadet, und wie Ihnen bekannt sein wird ist er wieder vollkommen hergestellt, die ganzen Jahre, trotzdem er viel draußen tätig war. Wir brauchen nach Kurz vor seiner Abreise, daß wir die Wintermonate jedesmal nach Florida kommen werden. Dann der Winter hat sich wie gut gezeigt. Hatten auch vorgenommen daß wir den besten Winter ist im kalten Klima, Er wollte aber auch nur noch die Hochzeitstagsfeierlichkeiten mit seinen Kindern verbringen. Das Schicksal wollte es anders.

Eine Freude hat er sich nicht gehabt, nach in der Besitzung sich zurückzuziehen. Am liebsten war er in seinen Garten.

Habe auch noch zwei Koffer von ihnen hier in meiner Wohnung, wo sind seine Wintersachen darin. Wollten sie diese mitnehmen, werde ich selbige nach Deutschland schicken. Es sind Photographien Wäsche und andere kleine Sachen. Andere Fall werde ich selbst mit nach Deutschland bringen, denn ich gedenke nächstes Jahr mit Familie nach drüben zu kommen. Da wird es wie ein langersehnter Ehre sein bei ihnen vorzusprechen.

Copies of letter dated 4th May, 1934 in German -- S-272

Nachschrift.

Die Krankheit von Victor hat wohl seinen Ursprung 5 Jahre zurück, er war selbige Zeit in Rockford, dort hatte er wohl bei zu kalten Wetter gebadet und ein Kalt bekommen, welches ihn nie verlassen hat, trotzdem es sehr viel dafür getan hat. Er war sehr lange bei einen Arzt mit Namen K. Finkelstein in Behandlung

So sprachen wir noch kurz vor seiner Abreise, das wir die Wintermonate jedesmal nach Florida fahren werden, denn der Winter hat ihn nie gut getan. Hatten uns vorgenommen das es der letzte Winter in kalten Klima sein soll. Er wollte aber erst noch die Geschäftsangelegenheiten mit Ihnen besprechen. Das Schicksal wollte es anders.

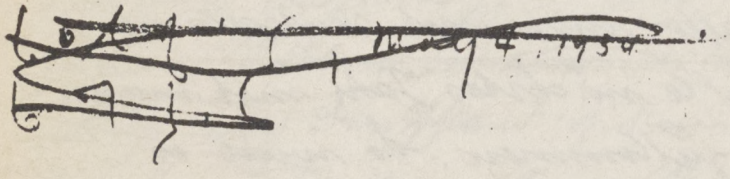
Eine Braut hat er hier nicht gehabt, er war in der Beziehung sehr zurückgezogen. Am liebsten war er in unseren Heim. Habe noch zwei Koffer von Victor in meiner Wohnung, es sind keine wichtigen Sachen darin. Sollten Sie aber interessiert sein, werde ich selbige nach Deutschland schicken. Es sind Photos, Wäsche und andere kleine Sachen darin. Anderen falls werde ich alles mit nach Deutschland bringen, denn ich gedenke nächstes Jahr mit meiner Familie nach drüben zu kommen. So wird es mir eine besondere Ehre sein bei Ihnen vorzusprechen. Hochachtungsvoll

Richard Hauptmann

Copies of letter dated 4th May, 1934 in German -- S-272

Ihr Ihrer geschätzter Gesch
Rückantwort wartet
~~verbleiben ich Ihnen Ihrer ich. Ihnen~~
sowie Ihre einem Empfehlungen





Copies of letter dated 4th May, 1934 in German -- S-272

29.
2. Ay. 34

New-York d. 8 July 1934

Sehr geehrter Herr Fisch.

Hiemit bestätige ich Ihnen dankend den Empfang Ihres werten Briefes vom 3 Juni 34.

Will gleich mit der Beantwortung Ihrer fragen beginnen.

Henry Uhlig wusste zum Teil über unsere Beziehungen. Die von Ihnen ausgestellte Vollmacht welche Sie Herrn Uhlig mitgegeben haben, hab ich gesehen, sie ist aber zu nichts nütze, selbst die Geschäfte geben Ihnen darüber keine Auskunft auch wenn sie diese Vollmacht vorlegen. So sagte mir Herr Uhlig das es so viel wie nichts ausrichten konnte.

An die von Ihnen angegebenen Firmen sind wir gewesen, haben aber nichts gefunden. Bei Stevenson Refrigerating Comp. N°521 10th Str in ich auch gewesen. Hier hat Fridon Felle liegen gemacht 1933, es sind so viel wie ich weiss die Katzen gewesen. Diese Felle hat Fridon an eine Firma verkauft, welche Rankerott angesagt hat. So ist keine Hoffnung verhanden den Betrag zu erlangen.

Betreff Frau Hille ist es so wie ich Ihnen in meinen ersten Brief geschrieben habe. da hat Fridon keinen Grundbetrag zurück erstattet.

Copy of letter dated 8th July, 1934 in German -- S-274

Ferner teilte ich Ihnen mit dass Isidor einen Freund 5000,-- $ gegeben hatte, ich weiss nicht den Namen, er sagte mir nur, dass es für ein Delikatessengeschäft ist. Sie schrieben mir, dass es der Herr Polek wär, bin jetzt bei den Herrn gewesen, und er sagte mir, dass er Isidor 800,-- $ gegeben hätte, er legte mir auch die Bescheinigung vor. Jetzt weiss ich nicht, ist dass eines und dieselbe Person, oder ist da noch jemand anders? darüber kann nur sein Bankfach auskunft geben.

Wie ich Ihnen schon mitgeteilt hatte, gibt es hier keine Bäckereifirma mit den Namen, Knickerbocker Pie Corp.

Über die Bankfach angelegenheiten kann ich hier garnichts tun., denn keine Bank gibt hier einen fremden Auskunft, ob die betreffende Person überhaupt ein Bankfach hat. Sie schrieben mir mit, dass Sie es haben schliessen lassen. Wünschen Sie mir mitteilen in welcher Bank überhaupt das Fach ist.

Betreffs das Bauplatzes sagte mir Isidor, das er selbigen, schon längst Zeit zurück verkauft hat.

II

Herr Uhlig war bei der jüdischen Chrysanthemum Association gewesen, er sagte mir, das der Vorstand Ihnen oder Ihrem Vater persönlich schreiben würde, ich nehme an, das es in der Zwischenzeit geschehen ist.

Da die weiter Herr Frost die Absicht haben, noch hier zu kommen, was ich auch als das richtige befinde um alles in Ordnung zu bringen, lasse ich die zwei Koffer noch hier liegen, denn es sind sachen dabei, was wohl das verschicken nicht erst wert ist.

In meinem letzten Brief habe ich Ihnen ganz vergessen den Empfang von der Ledertasche und der Waldzither zu bestätigen. Es ist alles in bester verfassung hier angelangt, meinen besten Dank für alles.

Betreffs des 4 Postens in den angeführten fellen heist es:

300 Nutria a: 10.ct - 3000,00 $

Hochachtungsvoll

Richard Hauptmann

1479 E 22 St.

New-York

Copy of letter dated 8th July, 1934 in German -- S-274

273
1935

New York, 4 May, 1934.

Dear Mr. Fisch:

A week ago I received your sad information concerning the death of your dear brother and my best friend. Please pardon the delay in my reply. It was however not possible for me to realize that I shall not see Isador again. He was my best friend just as I was his, he will always remain in my memory for he was the only man with whom I could talk about everything our private matters or business matters.

I made the acquaintance of Isador in 1932, we often met in the house of a family we know who lived in the same house where he lived. We have spent very pleasant hours there. In the Summer we usually went bathing and sailing, I think he probably told you of those pleasant hours, for they are rich in memories.

At the same time my work was the same as even now dealing in stocks and bonds, my calling in Germany was that of a machinist, here however in order to get on one must undertake something or other where more money is to be made. In the Spring of 1933 I undertook a small transaction for Isador in which I was certain that he could only win, and so it happened too. In this way we gradually came to talk more and more about business matters. I gave him several times money for the purchase of skins. And so he also gave me the same sum for my dealings in stocks and bonds, we shared every time the gain or if we had lost. All these business matters brought us to the decision to go into business together. For we found here a way where we could build up our future. For according to his reckoning he told me that he can earn twenty to thirty percent. per year on the capital laid out. At the same time in my business there are very great fluctuations, I can lose almost everything but I can also win a fortune if I speculate successfully. So we decided to work together, each in his branch and on a mutual basis of half and half in profit or loss. We also agreed that if one should at one time need more than the half of the capital laid out, the other should take from his business what is necessary. In the case of Isador it came into question only when he bought skins. We intended to carry this on in this way until Isador came back from Germany, then we were to open a common banking account and carry on all deposits in both names. On the first of November, 1933 we decided to begin our business with $35,000.00 each a half. After we had reckoned up everything the value of my stocks and bonds at the time on the first of November, 1933 was $12,000.00. Isador's possession in skins is as follows:

100	Silver Fox	11,000.00	
1000	Bl. Muskrats	1,500.00	
2500	Muskrats	2,500.00	
300	Mikren	3,000.00	
390	Act. Vick. Opossum	3,900.00	$21,900.00

For these skins I gave him $5500.00 from my private bank account so my half was in full in the business $17,500.00. Further there are still 400 Hudson Seal on hand from an old lot, which is also a case of half and half.

On the 13th of November, 1933, Isador asked whether I would take $2000. out of my business for his trip, if not, he would sell some of the skins but we agreed that it is better to leave the skins lying in case of an inflation, also we hoped we would get more when he came back again so on the 14th of November, 33, I took $2000. out of my stocks and bonds account and gave it to Isador. Some he had changed into travelers checks. How much I don't know, I told him that he should not change all, for the dollar is still safe enough.

Our business standing is accordingly as follows:

My part here in it in full $17,500.

Isador could not put in completely in full since he had invested money somewhere else which I will explain below.

The account in stocks and bonds $10,000. Isador half Richard half.

Account in skins $21,900.- Isador half Richard half.

I get from Isador half of the skins $7500. then there is also the lot of 400 Hudson Seal on hand which goes half and half.

The value of my stocks and bonds is different every day now $11,000.- $12,000. The value of the skins has also risen somewhat.

Furthermore Isador owes a woman by the name of Mrs. Hille $3,750. from the year 1932. I have now been at the house of this woman and have found it correct. Then Isador loaned a friend $2000. for a delicatessen business. Isador probably has the documents in his bank box.

Furthermore he said to me that he was one of the founders of a bakery. There he told me he has $10,000. invested.

Now in recent days I have gone about in order to obtain information, but I could learn only that this same bakery has announced its bankruptcy two years ago. But I cannot believe it, for Isador said shortly before he went away that everything there was in order. In this affair there is something obscure. I believe personally that this bakery now has another name, or Isador carried on this business under ~~ether~~ names, perhaps on account of taxes? In regard to this his papers in his safe deposit box would give detailed information.

Now dear Mr. Fisch I would like to ask you to write me some details for I assume that Isador probably had some important papers with him. Would you please send me usual copies in regard to all the affairs which can give complete information in regard to his activities such as bills, perhaps he had with him the storage receipts in regard to the skins and where his safe deposit box is. I don't know in what storage house he left the skins. It is all in his name, I would like to have everything locked up also his safe deposit box. If I could obtain access to the skins I could sell some or send to you if you wished it. I hope that the skins are not going bad.

Since we intended to write everything in the both names only after his trip to Germany I have no access to all the things without your authorization. Isador wanted chiefly first to find out about the export possibilities to Germany and especially with your valued firm. So up to the present time our business was based upon mutual confidence. I have entered everything in my books purchases and sales but not the storehouse where he has everything. He told the places many times but I did not make a note of it , who indeed would have thought of such a case as this.

Dear Mr. Fisch how do you plan now to regulate everything? I take the liberty of making you now the following proposition.

If you will come here yourself and regulate everything it would to be sure take a great deal of your time to put everything in order. For the opening of the safe deposit box can take place only with the authority of the court but the value of the things would certainly make it pay.

Or will you engage an attorney who is to regulate everything. I would certainly advise against your taking this step for you probably know how people work in such cases and especially in America. In the end there would be nothing left and this would be a blow for his dear survivors and also for me.

Another way is the following. If you will accord me the same confidence as your deceased brother then I would regulate the whole affair. If I am to take it over send me please all authority. Go please to the American Consulate for Isador was an American citizen there you will probably learn everything that is necessary in regard to papers. This way Mr. Fisch would probably be the best and surest for I too am indeed very much interested in it financially. To speak of confidence I tell you that your dear brother was my best friend and his memory shall always remain sacred to me. Awaiting upon your esteemed and kind reply I send my greetings to you as well as to your dear relatives.

Richard Hauptmann
1279 E. 222nd Street
New-York.

P. S. Isador's sickness probably arose five years ago, he was at

that same time in Rockfort, and there he probably took a bath in too cold weather and got a cold which never left him, inspite of the fact that he did very much for it. He was for a long time under the treatment of a physician named Dr. Finklestein.

So we said shortly before his departure that we would go every time to Florida for the Winter months, for the Winter never was good for him. We had planned that it would be the last Winter in a cold climate. But he wished first to talk over the business affairs with you. Fate willed it otherwise.

He did not have a fiance' here, in that respect he was very retiring. He was happiest in our home. I still have two trunks belonging to Isador in my apartment, there are no important things in them. But if you should be interested I will send the same to Germany. There are photographs, linen and other small things in them. Otherwise I will bring all of them with me to Germany for I plan to go over there next year with my family. So it will be an especial honor to me to call at your house with great respect

Richard Hauptmann
1279 E. 222nd Street
New-York

(This is in pencil)

7 6

AM 9 1935

New York
8 July, 1934.

Dear Mr. Fisch:

I herewith acknowledge with thanks to you the receipt of your esteemed letter of June 3, 34. I will immediately start with the answer to your questions.

Henry Uhlig knew about our relations in part. The authorization from you which you gave to Mr. Uhlig I have seen, but it is of no use, even the business people give you no information about them even if you present this authorization. Mr. Uhlig told me that he could accomplish as good as nothing. We have gone to the firms mentioned by you but have found nothing. I was also at the Stevensen Refrigerating Company, No. 521 Tenth Street. Isador had skins lying here in 1933, there were to the best of my knowledge the cat skins. Isador sold these skins to a firm, which announced its bankruptcy so no hope is present of securing the amount. In regard to Mrs. Hille things are as I wrote you in my first letter, Isador has not paid back the main sum.

Further I informed you that Isador loaned a friend $2000.00, I do not know the name, he only told me it is for a delicatessen business. You wrote me that it was Mr. Falek, now I have gone to see this gentleman and he told me that he had loaned Isador $800. He showed me also the receipt for it.

Now I do not know if that is one and the same person or is it still somebody else? Only his safe deposit box can give information about it. Also in regard to the bakery firm as I have already informed you there is no bakery firm of the name Knickerbocker Pie Corporation.

In regard to the safe deposit box affairs, I can do nothing at all here for no bank gives information to a stranger, whether the person concerned has a safe deposit box at all, you wrote me also that you have had the safe deposit box locked. Would you tell me in what bank the safe deposit box is.

In regard to the building lot Isador told me that he sold the same a rather long time ago.

Mr. Uhlig had been at the Jewish Chrzanover Association, he told me that the head would write to you or to your father personally, I assume that this has happened in the meantime.

Since you dear Mr. Fisch intend to come here which I also consider the right thing to do to put everything in order I will leave the two trunks stay here for there are things in them which are not worth the sending.

In my last letter I quite forgot to confirm the receipt of the leather traveling bag and the zither (guitar). Everything has arrived here in the best of condition, my best thanks

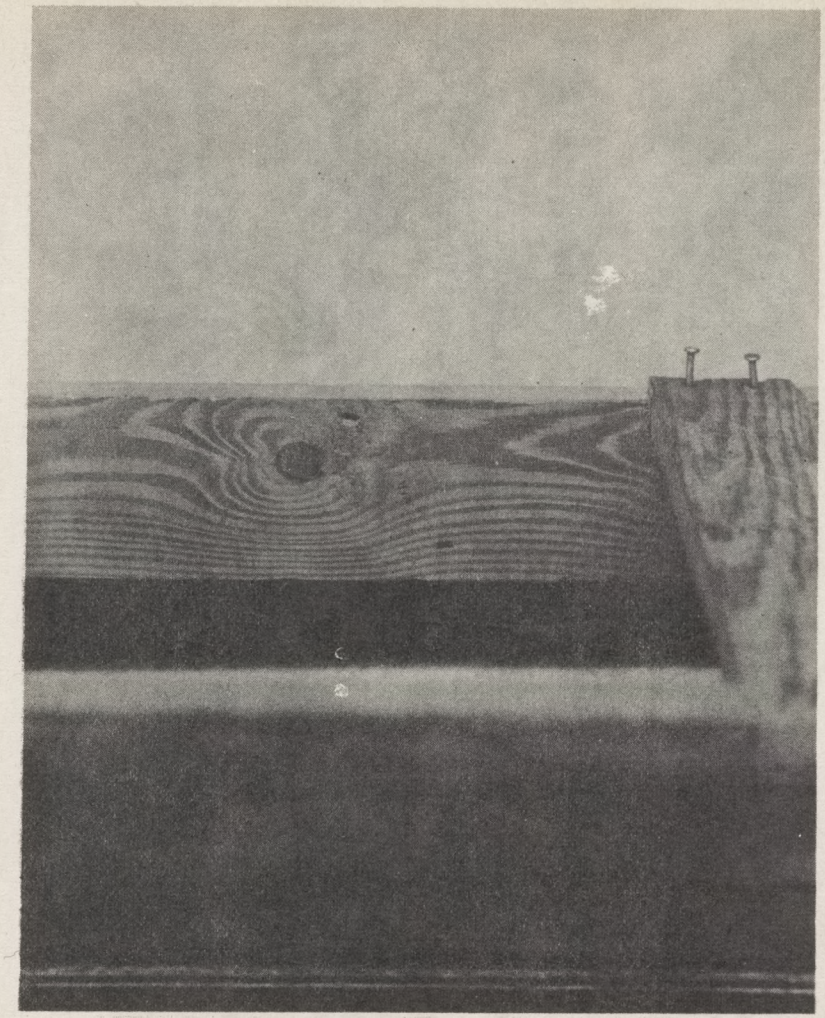
for everything.

With regard to the 4th item in the listed skins it should read:

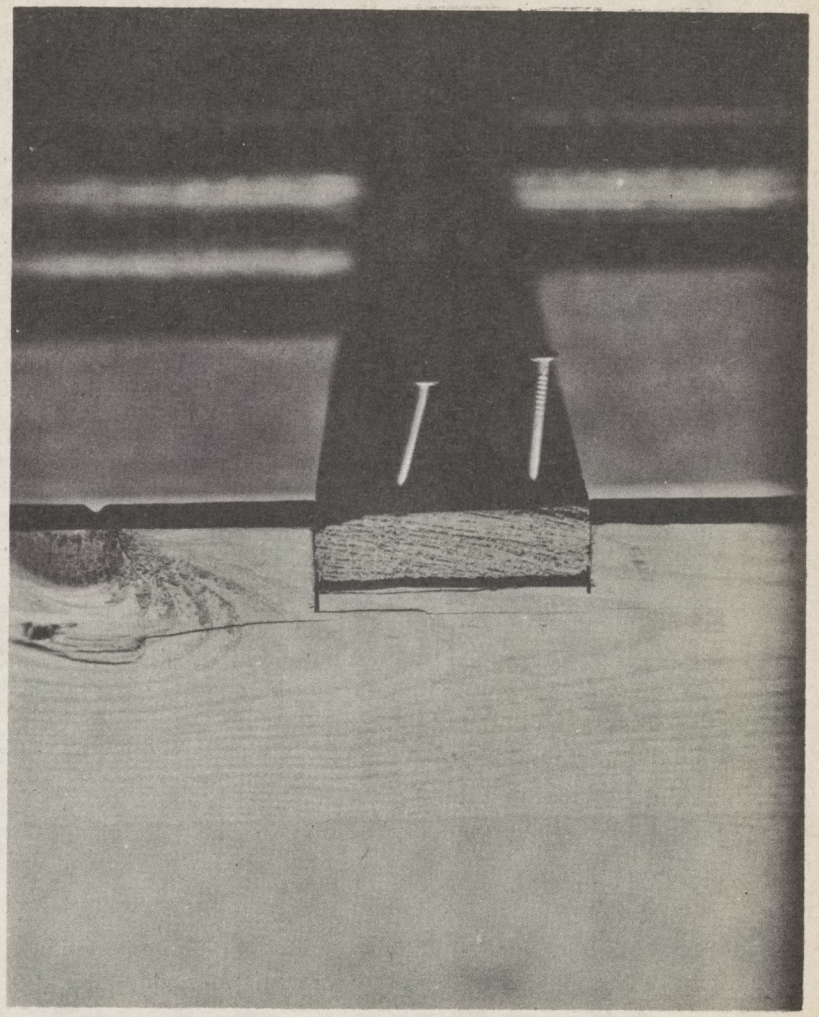
300 Nutria @ 10.00 - 3000.00.

Very respectfully,

Richard Hauptmann,
1279 East 222nd Street
New-York.



Nail holes -- S-303



Nail hole -- S-302

Nail holes -- S-303

Nail hole -- S-302



Woodlawn Cemetery -- S-308

TABLE OF CITATIONS

Cases: Page

Akin v. State, 98 So. 609 27

Berger v. U. S., 79 L. ed. Adv. Op. 667 ..... 8, 33, 53

Berry v. Comm. 13 S. W. (2nd) 521 30

Brown v. State, 62 N. J. L. 666, 695 56

Burroughs v. State, 137 Ind. 474, 37 N. E. 271 ..... 63, 67

Bateman v. Rider, 106 Tenn. 712, 82 A. S. R. 910 101

Brown v. Gosnell, 91 Iowa 448, 59 N. W. 340 101

Cook v. Commonwealth, 86 Ky. 663, 665, 667 10

Carter v. State, 170 S. W. 739 29

Corn v. Kaplan, 103 N. J. L. 628 45

Conners v. State, 45 N. J. L. 340 ..... 60, 76

Champion v. Chicago Fire, etc. Co. 104 N. J. L. 554 69

Commonwealth v. Pursel, 167 Atl. 399 ..... 95, 97

Commonwealth v. Trunk, 167 Atl. 333, 311 Pa. 555 ..... 95, 97

Commonwealth v. Stallone, 126 Atl. 56 95

Commonwealth v. Westley, 150 Atl. 94 95

Commonwealth v. Stoner, 108 Atl. 624 96

Commonwealth v. Myma, 123 Atl. 486 96

Commonwealth v. Ronnello, 96 Atl. 826 96

Commonwealth v. Williams, 309 Pa. 529 10

Clark v. State, 12 Ohio 483, 40 Am. Dec. 481 101

Downs v. N. J. Fidelity etc. Co., 91 N. J. L. 523, 525 ..... 60, 68, 76

Dolan v. People, 64 N. Y. 485 72

Fair v. State, 148 S. E. 144 30

Fidelity Union Trust Co. v. Reeves, 96 N. J. Eq. 490, 493 42

Gale v. People, 26 Mich. 157 10

Gardner v. State, 55 N. J. L. 17 ..... 68, 69

Graves, v. U. S., 150 U. S. 118 7

Hagar v. Reclamation District, 111 U. S. 701, 708 51

Hall v. U. S., 150 U. S. 76 7

Haight v. Vallet, 89 Cal. 245, 23 A. S. R. 465 101

Hardy v. Harbin, 154 U. S. 598-605 101

Harris v. State, 161 S. W. 125 20

Hayes v. Smith, 56 N. E. 879 26

Hemphill v. State, 165 S. W. 462 52

Jackson v. State, 49 N. J. L. 252, 254 56
Jenkins v. Hankins, 98 Tenn. 545, 41 S. W. 1028 26
Kresse v. Metropolitan Life Co., 111 N. J. L. 474, 480 98
Mahnken v. Meltz, 97 N. J. L. 168 47
Mass. Nat. Bank v. Shinn, 163 N. Y. 360 ..... 6, 48
McMichael v. Horay, 90 N. J. L. 142, 145 ..... 6, 48
Minner v. U. S., 57 Fed. (2d) 506 97
Mutual Benefit Life Ins. Co. v. Brown, 30 N. J. Eq. 193, 201 100
Nixon v. State, 80 S. E. 513 26
Patterson v. Surpless, 107 N. J. L. 305, 308 22
People v. Lewis, 249 N. W. 451, 264 Mich. 83 97
People v. Huter, 184 N. Y. 237, 77 N. E. 6 ..... 71, 73
People v. Myers, 162 N. Y. 357, 57 N. E. 758 72
People v. Marwig, 227 N. Y. 382, 125 N. E. 535 73
People v. Marendi, 213 N. Y. 600, 607, 107 N. E. 1058 73
People v. Smith, 232 N. Y. 239, 133 N. E. 574 74
People v. Bickerstaff, 190 Pac. 656 103
People v. Lamb, 96 Ill. 73 75
People v. McMahon, 244 Ill. 45, 91 N. E. 104 21
People v. Fielding, 158 N. Y. 542, 46 L. R. A. 641 23
People v. Watson, 111 N. E. 243, 216 N. Y. 565 27
People v. Schermerhorn, 96 N. E. 376, 203 N. Y. 5772 27
People v. Pindar, 104 N. E. 1137 27
People v. Montague, 71 Mich. 447, 39 N. W. 585 27
People v. Payne, 194 N. E. 539, 359 Ill. 246 29
People v. Quick 25 N. W. 302 30
People v. Slover, 232 N. Y. 264 7
People v. Esposito, 224 N. Y. 370 ..... 7, 10
People v. Malkin, 250 N. Y. 185 ..... 7, 10
People v. Wells, 100 Cal. 459 10
People v. Kresel, 277 N. Y. Suppl. 168 ..... 10, 28, 29
People v. De Martini, 199 N. Y. 426 ..... 10, 95
Pennoyer v. Neff, 95 U. S. 714 51
Powell v. Alabama, 287 U. S. 45, 77 L. ed. 159 53
P. R. R. v. Root, 53 N. J. L. 253 108
Quercia v. U. S. 53 S. Ct. 698, 289 U. S. 466, 77 L. ed. 1321 97
Rowland v. Wunderlick, 113 N. J. L. 223, 225 ..... 99, 100
Shaughnessy v. U. S., 17 Fed. (2d) 225 97

Slater v. U. S., 264 Fed. 18 97
Spalitto v. U. S., 39 Fed. (2d) 782 ..... 96, 97
State v. Barone, 96 N. J. L. 417, aff'd. 98 N. J. L. 292 102
State v. Belkota, 95 N. J. L. 416 ..... 6, 47, 48
State v. Burke, 81 N. J. L. 93 93
State v. Bush, 98 S. E. 281 103
State v. Bullit, 64 N. J. L. 379 66
State v. Carlino, 98 N. J. L. 48 71
State v. Clayton, 83 N. J. L. 676 93
State v. Compo, 108 N. J. L. 499 ..... 61, 76
State v. Cyty, 256 Pac. 793, 52 A. L. R. 1015 25
State v. D'Adaime, 84 N. J. L. 386 102
State v. Ferrone, 113 Atl. 452 17
State v. Forman, 97 N. J. L. 168 47
State v. Gossett, 108 S. E. 390 52
State v. Gutekunst, 24 Kan. 252 25
State v. Hadley, 113 N. J. L. 335 103
State v. Herbert, 92 N. J. L. 341, 350 ..... 44, 98
State v. James, 96 N. J. L. 132, 148 57
State v. Jones, decided June 13, 1935 (E. & A.) 75
State v. Lang, 108 N. J. L. 98, 103 57
State v. Le Blanch, 31 N. J. L. 82 57
State v. Lyons, 70 N. J. L. 634, 645 68
State v. MacQueen, 69 N. J. L. 522 87
State v. McCormack, 93 N. J. L. 287 11
State v. Moore, 32 Or. 65, 48 Pac. 468 28
State v. Neary, 106 N. J. L. 104 87
State v. O'Leary, 110 N. J. L. 36 ..... 6, 42 45, 47, 48
State v. Robinson, 152 N. W. 590 29
State v. Rosenberg, 97 N. J. L. 430 ..... 60, 78
State v. Sahazian, 98 N. J. L. 430 94
State v. Sandt, 95 N. J. L. 50 93
State v. Sherlock, 60 N. J. L. 31 87
State v. Shelton, 6 Kan. App. 662, 49 Pac. 702 28
State v. Shupe, 88 N. J. L. 610 ..... 6, 48
State v. Snook, 94 N. J. L. 271, 274 44
State v. South, 28 N. J. L. 28 66
State v. Stow, 83 N. J. L. 14 57

State v. Tonghanni, 96 N. J. L. 63 ..... 60, 76
State v. Turco, 99 N. J. L. 96 71
State v. Wilson, 1 N. J. L. 502 ..... 59, 71
State v. Wyckoff, 31 N. J. L. 65 57
Sunderland v. U. S., 19 Fed. (2d) 202 97
Tappin v. Moriarty, 59 N. J. Eq. 115, 116 69
Wallace v. U. S., 291 Fed. 972 ..... 96, 97
Weare v. U. S., 1F. (2r) 617, 619 97
Weitz v. State, 194 N. E. 386, Ohio Appel 29
Wilson v. State, 126 Ark. 354, 190 S. W. 441 26
Wilson v. U. S., 149 U. S. 60 7

Miscellaneous:

American Bar Association Journal (May, 1935 edition)
Article: "The Hauptmann Trial in Light of English Procedure" 129

American Mercury (April, 1935 edition)
Article: "Justice Goes Tabloid" 129

4 Blackstone's Commentaries 216 63
4 Blackstone's Commentaries 229 68
12 C. J. 1188, etc. 50
12 C. J. 1141 51
35 C. J. 903, Sec. 1 70
36 C. J. 736 Sec. 7 68
36 C. J. 856, Sec. 394 ..... 63, 67
50 C. J. 857 42
Constitution of the United States, 14th Amendment 49
Crimes Act, Sec. 151 64
2 R. C. L. 441, Sec. 39, note 20 ..... 20, 22
2 R. C. L. 406, Sec. 3 22
2 R. C. L. 410, Sec. 7 39
6 R. C. L. 707, Sec. 115 43
6 R. C. L. 434, Sec. 431 50
6 R. C. L. 435, Sec. 432 50
6 R. C. L. 370, Sec. 364 51
6 R. C. L. 372, Sec. 367 51
13 R. C. L. 883, Sec. 186 27
17 R. C. L. 65, Sec. 71 ..... 63, 67
Underhill's Criminal Evidence (4th Ed. 1935) 39, Sec. 30 105
I Wharton on Evidence, Sec. 722 100

STATEMENT

Plaintiff in error has sued out a Writ of Error out of this Court directed to the Hunterdon County Court of Oyer and Terminer to review a judgment of death upon an indictment for murder in statutory form. Plaintiff in error prosecutes the Writ on strict Writ of Error under Assignments of Error and also pursuant to the provisions of section 136 of the Criminal Procedure Act under which Specifications for Causes of Reversal have been filed. There was a general exception taken to the Charge of the Court under statutory authority (p. 4531, l. 25) and the errors complained of were duly assigned and specified.

The Specifications of Causes for Reversal set forth fifty-one excerpts from the summation of the Attorney General. In this summation the Court permitted the Attorney General to overstep the bounds of propriety and fairness which should characterize the conduct of such an officer, and the excerpts as set forth in those specifications show that the summation contained expressions of personal opinion as to the guilt of the defendant, comments upon facts not in evidence, improper insinuations, and a general appeal to prejudice by inflammatory argument.

The State indulged in legal gymnastics to spell out its theory that the death of the child ensued from the commission of a statutory burglary. The circumstantial evidence as to burglary was highly technical, the charge being that the house was entered by night with intent to steal a sleeping garment of no proven value and with intent to commit a battery upon a two-year-old infant. The State contended that the bed room window was reached by means of a ladder from outside and the evidence disclosed that the bed room window was closed before the alleged breaking and entry and that the window was in the same closed position after the child was taken from its crib, and there was no proof of any jimmying of the

window or other evidence that the window had actually been the means of entry.

The house where this burglary was alleged to have been committed was located in East Amwell Township in the County of Hunterdon and the body of the child was found several miles distant in the County of Mercer. There were no eye-witnesses, no fingerprints, and no direct evidence that the defendant had entered the room or was at the scene of the crime upon the night in question which was March 1st, 1932. There was no testimony as to flight from the scene and in fact the entire evidence in the case was entirely circumstantial and weak. This latter statement is borne out by the fact that the Attorney General in his summation entirely changed the State's theory as to the place of death and the instrumentality used. The Openings of State's counsel were predicated upon an entirely different theory.

This new theory injected into the case for the first time in the summation of the Attorney General involving a wilful, deliberate and premeditated killing in all of its essentials. The defendant had no further right to cross-examine and introduce evidence to combat this new theory. The Court was requested by the defendant to charge that there was no evidence in the case of a wilful, deliberate and premeditated murder (p. 4549), and this request was refused (p. 4533).

The sole testimony submitted to the jury from which the State contended that the jury could determine that death occurred in the County of Hunterdon, was the fact of the finding of a thumb guard which had been worn by the child and was attached by a string to the wrist outside the sleeping garment. In connection with the evidence of the alleged crime of burglary, there was no proof of the commission of a common law felony and no evidence introduced as to the value of the sleeping garment, which was the only personal property alleged to have been taken.

The Court submitted to the jury as the definition of burglary, our Section 131 of the Crimes Act which defines a certain high misdemeanor.

The Court submitted to the jury three distinct elements of the alleged statutory crime of burglary—the first being that the defendant broke and entered by night the house with intent to steal the child, the second being that the defendant broke and entered the house by night with intent to steal the sleeping garment, and the third that he broke and entered with intent to commit a battery upon the child.

The language used by the Court in its charge as to that important element of the case is as follows:

> "If, thereore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house with intent to *steal* the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree.
>
> * * *
>
> "There is evidence from which you may conclude, if you see fit, that the defendant feloniously, wilfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to *steal* the child and its clothing and commit a battery upon the child." (P. 4514, 11. 15-40)

The State's evidence and the openings of State's counsel and the Summation of the Attorney General which are part of the record all set forth in positive manner the fact that the taking of the sleeping suit was only for the purpose of keeping it temporarily with the object of using it as means of obtaining the ransom money and the child certainly was not the subject of larceny.

Therefore there was no evidence whatsoever of the crime of stealing as constituting an element of the alleged statutory crime of burglary.

For the purpose of convenience, the Assignments of Error and Specifications of Causes for Reversal have been grouped under headings and will be so referred to in this brief.

The Court will kindly note that a few errors in this voluminous record were overlooked such as: the Specifications of Causes begin at page 4600 but are erroneously headed at the top of each page as "Assignments of Errors"; the request for an opening by the State (page 4330) is erroneously set forth as a request for opening by "the defense"; the opening by the State so requested at the end of the case is headed "Summation by Mr. Hauck".

POINT I.

THE SUMMATION OF THE ATTORNEY GENERAL VIOLATED THE COMMON LAW AND CONSTITUTIONAL RIGHTS OF THE DEFENDANT.

In considering this point it must be remembered that the case now on appeal was of national interest and was not presented to the jury by the local Prosecutor of the Pleas. The State found it necessary to have as its representative the Attorney General of the State of New Jersey, the representative of the people of the State and in whom each citizen has the utmost confidence. His appearance in the case was bound to affect the jury by his mere presence at the trial and his statements and opinions would necessarily carry particular weight and influence with the jurors. In the very first part of the summation he brought this fact forcibly to the jury in the following words:

"As far as I am concerned, too, of course, I

have been governed with the thought that has always been with me that I am here as the Attorney General of the State of New Jersey and I am not only here for the State of New Jersey, men and women, but I am here representing the people of this country. * * * * Now, I have come here at the request of your Prosecutor. I have come here at the direction of the Governor of the State, the then Governor and the present Governor; and I have spent every minute since October, 1934, and applied myself every moment; and each day and each night, as I proceeded along in this cause, the more I proceeded, the more convinced I was that I was pursuing a righteous and proper cause." (C. B. 10, p 4359).

In the argument hereinafter expressed opinions are referred to and quoted in which summations of ordinary Prosecutor and District Attorneys led to reversals but in the case at bar the fact should not be lost sight of that the improper remarks of State's counsel in this case were particularly harmful to the defendant because he was the chief law officer of the State of New Jersey and admittedly there at the direction of the Governor of the State and the previous Governor.

Counsel is familiar with the Supreme Court decisions in this state to the effect that improper remarks made in summation are not ordinarily reviewable unless objection be made to the trial court at the time. But there never has been a pronouncement by this court on this subject so far as the industry of counsel can discover. However, in this case there was an objection, a ruling and exception taken during the summation. Moreover, the opinions dealing with the necessity for objecting to improper remarks of counsel in

criminal cases in the Supreme Court did not involve convictions of murder but related to lesser crimes. Also in the opinions of the Supreme Court the objectionable statements of the prosecuting officer were not as serious as in the case at bar and they were but isolated instances of improper remarks. The summation which is *part of the record* in this case *abounded* with objectionable statements and was of such a character as to involve a question of public policy so as to bring the matter within the exception to the general rule. This exception has been well recognized in the following cases:

State vs. O'Leary, 110 N. J. L., 36.
State vs. Belkota, 95 N. J. L., 416.
McMichael vs. Horay, 90 N. J. L., 142, 145.
State vs. Shupe, 88 N. J. L., 610, 612.
Mass. Nat. Bank vs. Shinn, 163 N. Y., 360.

The question as to what is meant by "a question of public policy" is discussed at length under point III of this brief.

It is also contended that the rights of the defendant guaranteed by the 14th Amendment of the Constitution of the United States were contravened by this summation in that the defendant was deprived of life and liberty without due process of law and denied the equal protection of the laws. This argument will be found under Point IV.

Our system of jurisprudence has maintained one proposition as the beacon of our enlightenment—that a defendant accused of crime is entitled to a fair and impartial trial. This has been scrupulously maintained by our appellate courts when individuals, always human, have by attack on public welfare become blinded to justice by

the desire for vengeance in the name of public interest.

Graves v. U. S., 150 U. S. 118.
Wilson v. U. S., 149 U. S. 60.
Hall v. U. S., 150 U. S. 76.
People v. Slover, 232 N. Y. 264.
People v. Esposito, 224 N. Y. 370.
People v. Malkin, 250 N. Y. 185.

That the prosecuting attorney in any case has much to do with the manner of conduct of the trial and that he can influence the atmosphere of such a trial is clear. That there is a burden upon the prosecuting attorney as a quasi-judicial officer to aid and maintain the proper judicial atmosphere and in doing so to prosecute the defendant solely on the facts of the case and by legitimate methods is well recognized. Improper insinuations and assertions, expressions of personal opinion, statements not based upon evidence and excessive argumentativeness are forbidden. All these are prohibited because they tend to distract the minds of the jurors from the actual facts and real issues and create against the defendant a prejudice born of the fact that the prosecuting attorney is recognized as a public officer who has apparently no interest in the case and who is at heart an altruist and interested solely in obtaining justice.

A study of the record in the instant case discloses that this defendant did not receive the fair and impartial trial to which every defendant is entitled. It also discloses that the prosecuting attorney went beyond the limits of non-partisanship and impartiality and attacked the defendant and the case with the virulence and venom of the nearly barbaric advocate who tilted in the lists for the case of his principal. But the age of defend-

ers and trials by combat has long since gone. Our civilization at least in its Penal Law and procedure prides itself on having, through evolution, completely annihilated primitiveness and barbarity.

In the recent case of Berger vs. United States, 79, L. ed. Adv. Op. 667, Mr. Justice Sutherland speaking for the Supreme Court of the United States, condemned such conduct in vigorous language and reversed a conviction. The opinion of the Court referring to the argument of the prosecuting attorney is as follows:

> "The prosecuting attorney's argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury. A reading of the entire argument is necessary to an appreciation of these objectionable features. The following is an illustration: A witness by the name of Goldie Goldstein had been called by the prosecution to identify the petitioner. She apparently had difficulty in doing so. The prosecuting attorney, in the course of his argument, said (italics added):
>
> "Mrs. Goldie Goldstein takes the stand. She says she knows Jones, *and you can bet your bottom dollar she knew Berger.* She stood right where I am now and looked at him and was afraid to go over there, and when I waved my arm everybody started to holler, 'Don't point at him.' You know the rules of law. Well, it is the most complicated game in the world. I was examining *a woman that I knew knew Berger and could identify him,* she was standing right here looking at him, and I couldn't say, 'Isn't that the man?' Now, imagine that! But that is the rules of the game, and I have to play within those rules."

"The jury was thus invited to conclude that the witness Goldstein knew Berger well but pretended otherwise; and that this was within the personal knowledge of the prosecuting attorney.

* * *

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should so do. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

"It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney will be faithfully observed. Consequently, improper suggestions, insinuations and, especially assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none."

From a cursory examination of the Berger case and information received from the counsel who argued it, it does not appear that any objections were taken at the trial to the principal improper remarks of the District Attorney which were

passed upon by the U. S. Supreme Court and there was no motion made for mistrial and the withdrawal of a juror at the end of the summation. It will be noted that the opinion of the U. S. Supreme Court nowhere refers to any objection having been made at the trial to the improper remarks of the District Attorney in summation. Considering these facts it follows that the highest court of this land has ruled that an improper *course* of conduct by a prosecuting officer in a criminal case violates the basic principle of fair trial even when no objection is made to the specific remarks until the matter is brought to the attention of the reviewing court.

The opinion of the U. S. Supreme Court referred to the following cases:

People v. Malkin, supra;
People v. Esposito, 224 N. Y. 370, 375-377;
Johnson v. United States, supra;
Cook v. Commonwealth, 86 Ky. 663, 665-667;
Gale v. People, 26 Mich. 157;
People v. Wells, 100 Cal. 459.

Other recent cases which also condemn such practice are the following:

People vs. Kresel, 277 N. Y. Suppl. 168;
People vs. De Martini, 199 N. Y. S. 426;
Commonwealth vs. Williams, 309 Pa. 529.

Mr. Justice Trenchard, speaking for the Supreme Court, said:

"It is always error for the prosecutor of the pleas in his summing up to the jury to declare his individual opinion or belief that the defendant is guilty, in such a manner that the jury may understand such opinion or belief

to be based on something which the prosecutor knows outside the evidence."

State vs. McCormack, 93 N. J. L. 287.

This summation abounded with objectionable statements such as declarations of opinion as to the guilt of defendant, comments on facts outside of evidence, statements of facts within the knowledge of the Attorney General only, unfair comments on prior convictions, unfair attacks on the character of the defendant although his character was not put in issue, insinuations that counsel for defendant had tampered with exhibits, unfair insinuations as to the opinion of defense counsel as to the guilt of accused and appeals to prejudice by inflammatory argument and which are all set forth under Group "R" in the Specifications of Causes for Reversal. Some of the objectionable statements are as follows:

(1) "Let me tell you, men and women, that even that, the crime of murder, which shrink into absolute insignificance, this murder even of the Lindbergh child would shrink into absolute insignificance in comparison to the crime that would be committed if this man were freed. That would be the crime of the century.

"To let him roam the streets of this country and make every woman in her home shudder again; that would be a real tragedy, an American tragedy,

"That is why I told you men and women, that is why I told you I am so consumed, every inch of me, every ounce of me cries out to you, 'Please do your duty!' "

(p. 4403 lines 30-40 and p. 4404 lines 1-2)

(2) "And if you ever freed this man—it couldn't be, it wouldn't be possible—but if any such thing were to happen, the murder of the Lindbergh child, as I say, that murder even would shrink into insignificance compared with the crime of which you would be guilty in letting this man roam the streets."

(p. 4404 lines 21-28)

(3) "What does life imprisonment mean? Nothing. Maybe in fifteen years he will walk the streets again. The scales are up there with Hauptmann dangling down there, only because of the testimony."

(p. 4492 lines 22-26)

(4) "Who would be the type of person that would take a child like that and murder it? Who could there be? Why, men and women, if that little baby, if that little, curly-haired youngster were out in the grass in the jungle, breathing, just so long as it was breathing, any tiger, any lion, the most venomous snake would have passed that child without hurting a hair of its head."

(p. 4366 lines 16-24)

(5) "He will be thawed out, he is cold; yes, he will be thawed out when he hears that switch; that's the time he will talk."

(p. 4363 lines 28-31)

(6) "Oh, no, it had to be a fellow that had ice water in his veins, not blood."

(p. 4367 lines 1-2)

(7) "And let me tell you, men and women, the State of New Jersey and the State of New York and the Federal authorities have found

that animal, an animal lower than the lowest form in the animal kingdom, public enemy Number 1 of this world, Bruno Richard Hauptmann."

(p. 4368 lines 21-27)

(8) "Talk about the mob clamoring. Maybe they are lucky those mobs are not here."

(p. 4393 lines 9-11)

(9) "Life meant nothing to him. That's the type of man I told you about before that we are dealing with.

"Public Enemy Number One of the World! That's what we are dealing with.

"You are not dealing with a fellow who doesn't know what he is doing. Take a look at him as he sits there. Look at him as he walks out into this room, panther-like, gloating, feeling good."

(p. 4407 lines 3-15)

(10) "You haven't dealt with that sort of animal, the lowest form of animal,—that is what you are dealing with: no heart, no soul. The only thing is he has the appearance of a man, he wears the clothes of a man, that is all there is to identify him."

(p. 4425 lines 15-20)

(11) "But every once in a while one of those animals returns to his real animal state and he hurts somebody or he kills somebody. What do you think they do with that bear? They shoot him, they kill him. Now, the attendant doesn't like to do it, but that bear is a menace, and they put him out of the way. That's what you have got to do with this fellow."

(p. 4430 lines 16-24)

(12) "That is the sort of an animal, that is the sort of a murderer we are dealing with."
(p. 4447 lines 37-38)

(13) "Why he would cut your heart honestly with a razor and think nothing of it and go upstairs and eat. That's how cold-blooded this murderer is—".
(p. 4449 lines 1-4)

(14) "Perjury is a joke in this case."
(p. 4454 line 32)

(15) "If I had my choice I wouldn't get in the same room, I wouldn't become contaminated, I wouldn't want to breathe the same air.
"I think too much of my friends and my wife and my kids to be around him at all—I feel itchy, I feel oozy, I just couldn't stand being anywhere near him."
(p. 4460 lines 27-30)

(16) "This jury can, by its verdict, do one thing for the Colonel, for Anne, for the country—we can make the country a little bit more secure, we can make the children a little safer, we can make women a little happier.
"This fellow has been the inspiration for the greatest series of the meanest crimes in the history of the world."
(p. 4488 lines 32-40)

(17) "Why, the American gangster never knew what it was to murder a child or murder anybody kidnapped."
(p. 4489 lines 1-3)

(18) "He taught them that and since that time this country has been cursed with the meanest

and worst series of crimes it has ever experienced."

(p. 4489 lines 17-19)

(19) "Why, he has left in the train of his activities not only the meanest series of crimes and been the inspiration for them, but he has caused more sorrow in millions of homes in this country than anybody could calculate."

(p. 4489 lines 24-28)

(20) "But if this jury will do its duty, we can translate Colonel Lindbergh's loss and worry into some gain for civilization, to show that whether we catch a man walking into the room or not, we can crush them, we can crush these snakes, we can crush these animals, that society isn't so weak that we can't deal with them. That's the job that you can do. You can serve society so society will gain, even at Colonel Lindbergh's loss; and I know that if civilization will have some little gain out of it, as difficult as it is, Colonel Lindbergh will feel that the effort in this case has been worth while, notwithstanding his great loss."

(p. 4489 line 40 and p. 4490 1-15)

(21) "Either this man is the filthiest and vilest snake that ever crept through the grass, or he is entitled to an acquittal. And if you believe, as we do, you have got to convict him."

(p. 4491 lines 24-28)

(22) "You have got a chance to do something for society that nobody else in the entire county of Hunterdon will ever have an equal chance and you have got to do that, you have got to do it."

(p. 4493 lines 5-9)

(23) "But it seems to me that you have and you will have the courage if you are convinced, as all of us are, the Federal authorities, the Bronx people who were there, the New Jersey State Police who were here, the lawyers who were here, Colonel Lindbergh who was here, everybody that has testified, if you believe with us, you have got to find him guilty of murder in the first degree."

(p. 4493 lines 14-22)

(24) "Never an evil thought has crossed the mind of a fellow like Tony Hauck. He couldn't sit at that table if he didn't think and wasn't convinced this fellow was guilty. The same thing with Judge Large, Bob Peacock, Joe Lanigan, Stockton and the rest of the boys."

"Let me tell you, all we want is a square deal. We want no disgrace on the State of New Jersey."

(p. 4490 lines 39-40 and p. 4491 lines 1-10)

(25) "We found no gold notes in Isidor Fisch's possession, not one. We didn't find a thing in his possession, either in this country or elsewhere. And during all this time there hasn't been one ransom bill that turned up in Germany, not one, not a single solitary one—all in the Bronx."

(p. 4457 lines 28-34)

(26) "There is nobody at that table that doesn't feel he is guilty; I don't care what they say."

(Defendant's counsel)

(p. 4363 lines 18-20)

(27) "They don't have to protect poor Violet Sharpe—Violet Sharpe, whose death was hastened by this man."

(p. 4397 lines 38-40)

In State vs. Ferrone, 113 Atl. 452, the highest court of the State of Connecticut in criticising a summation and reversing a conviction said:

> "But even if the jury had been told to forget or disregard these remarks it is reasonably certain that they could not or would not do so."

At the trial of this cause Mr. Reilly, a member of the New York bar, was chief counsel. At one point toward the beginning of the summation Mr. Reilly interrupted the Attorney General and objected to remarks made relative to a phonograph record of the voice of the defendant and conversations alleged to have been held by defendant with Dr. Condon, and that part of the summation, the objection and the ruling thereon are as follows:

> Mr. Wilentz: "Then, counsel wants to know where is the phonograph record? Did you hear him as Mr. Sisk, of the Department of Justice, if there was such a record, and did he have it, and would he produce it? Why, sure, that phonographic record has been alive and awake waiting for him to call for it, to put his voice on for you.
>
> I would have loved if you had heard the story all over again, Condon telling about this conversation, 'Will I burn if the baby is dead? Are you German, John? No, I am Scandinavian. Have you got the money? No, I haven't got the money. Doesn't Colonel Lindbergh think we are the right party?' "

> Mr. Reilly: We must make an objection to this, if your Honor, please. I hate to interrupt the Attorney General, but he is now talk-about something which he assumes would be

in the record, if it was called for, and I say it is highly improper. He should be confined to the evidence in the case.

Mr. Wilentz: I am talking about Dr. Condon's testimony, and I want to remind counsel that I didn't interrupt him.

Mr. Reilly: Well, I can't help it, General, if you are going to talk about things that are not in the evidence.

Mr. Wilentz: All right.

Mr. Reilly: He is talking about a record he says "I would love to have it in, I would love to have it over again."

Mr. Wilentz: Yes, if your Honor, please, and—

Mr. Reilly: Now, that is not in the record, and only five minutes ago he talked about pictures, the first, second and the last picture of Violet Sharpe, which are not in the record not offered in evidence by him and we cannot sit here, sir, and permit him to testify and not sum up on the evidence in the case, I respectfully say.

The Court: Well, didn't you make some inquiry of some one of the witnesses about this record?

Mr. Reilly: I asked him if he had it, yes, sir.

The Court: Yes, and didn't you ask him to bring it here?

Mr. Reilly: I asked him would he bring it.

The Court: Yes. Now, I haven't observed anything as yet that is irregular in the summation of the Attorney General. Of course, he understands, and he will be required to argue concerning the evidence in the case, and the legitimate inferences that flow in his judgment from that evidence, and I do not think that he has failed in that respect, yet, so you may proceed, Mr. Attorney General.

Mr. Reilly: And I respectfully except.

Exception allowed.

(s.s.) Thomas W. Trenchard,
Judge."

(p4387, line 30-p4389, line 30)

After this objection was overruled the Attorney General nevertheless continued in the following vein with reference to the phonograph record:

"Mr. Wilentz: Yes. If that record were produced, he had the chance to produce it, he asked for it like I asked for these other people, and he should have called for it.

It was there, that object was there, ready for him. And I wouldn't have commented on it at all; I wouldn't have said a word about it if he hadn't asked the question about the record.

Now, why didn't they call for the record? Were they afraid of it? The phonograph record. Were they afraid that that record that was given years ago, before Hauptmann was ever arrested, were they afraid that that would even be more damaging than the lip testimony of Dr. Condon? Not given to the

State Police, but given to the Federal Government. What was the reason that prompted them and caused them to refrain from asking for the record? We couldn't produce it as our evidence. We had to produce Dr. Condon, so that counsel could cross-examine him. We couldn't produce the record. It wasn't admissible from us. Sure; it must have been because they would have heard it all over again, the same thing, the voice, the imitation of the voice, "Doc-tor." "John." "The baby is well." "Tell Mrs. Lindbergh not to worry." God, Men and women don't you understand? You are talking about the voice of Hauptmann —Condon talked to him Hauptmann talking about "the baby is well." "Give me the fifty thousand dollars."

(p4389, line 34—p4390, line 30)

It is apparent from a reading of this part of the record that the Attorney General in his summation referred to and discussed before the Jury matters not in evidence and in fact testified as a witness. The Court, although distinctly requested by counsel for the defense, refused to stop the Attorney General.

By the action of the Court referred to above on p. 4389, and the Court's remark that it saw nothing irregular in the summation, further objection to the specific error about which complaint was made in Court and is reiterated now, was not required by the decisions relating to this particular feature.

Certainly all that was said in the future by the Attorney General in his summation along the lines objected to should be held subject to the objection already interposed and overruled by the Court.

2 R.C.L. page 441, Section 39—Text and note 20.

Court held it to be prejudicial error of the highest character for Prosecutor to refer to letters not in evidence and that if State had been able to introduce them they would have shown defendant's guilt, and such error would not be cured by instructions of trial judge that jury should disregard remarks.

Harris vs. State, 161 S. W. 125

Improper in any case and especially in one involving life to assume or state as facts matters not in evidence and base an argument thereon.

People vs. McMahon, 244 Ill. 45, 91 N. E. 104

Counsel urge that it became the duty of the Court on its own motion to admonish the Attorney General at such times when he was guilty of making improper remarks to the jury and that this duty devolved upon the court regardless of whether objection was made by defense counsel or not. The general text book authorities as relating to these propositions are as follows:

> "The failure of counsel to except to the ruling of the court in overruling his objection to an improper argument usually amounts to a waiver of any right thereafter to challenge the correctness thereof. But this rule is by no means an absolute one. While such ordinarily would be the effect, it is subject to the exception that if the improper remarks are of such a character that neither rebuke nor retraction can entirely destroy their sinister influence, a new trial should be promptly awarded, regardless of the want of an objection or exception."

2 R.C.L. p. 440, Section 39.

"It has been said that it is the duty of the presiding judge to interfere of his own motion to prevent a breach of privilege of counsel, and if he fails to do so, and the abuse of privilege is of such character as to produce the conviction that injustice resulted therefrom, the duty of the reviewing court is to apply the corrective by awarding a new trial."

2 R.C.L. p. 441, Section 39.

"In the exercise of its power to control proceedings at the trial, the court should compel counsel to keep within the bounds of propriety during his argument. In case he exceeds these bounds, the court should interrupt the argument on its own motion and admonish counsel that he must confine himself to proper argument."

2 R.C.L. p. 406, Section 3.

The position of a judge is not analogous to that of the moderator of a New England town meeting. On the contrary he is clothed with the power and it is his duty to see that all things are done in accordance with established practice and the law of the land. Especially is that so in New Jersey where we have invested the Judge with the broadest of powers.

In the civil case of Patterson vs. Surpless, 107 N. J. L. 305, at 308, Mr. Justice Lloyd speaking for this Court, enunciated the following proposition:

"Courts exist for the judicial determination of the rights of litigants and for the adminis-

tration of justice, and it is the duty of those presiding, as far as humanly possible, to see that the setting of each individual case shall be such that an impartial and just deliverance shall be had between the parties, and when counsel deliberately seeks to inject into a cause an element which has, and is designed to have, the effect of prejudicing the rights of one or the other of the litigants, it is the *duty* of the judge to guard against such effect, either by arresting the trial in limine, as was requested in the present case or by guarding against the pernicious results through proper instruction to the jury as was clearly indicated in the opinion cited above." (Italics mine)

This case resulted in an unanimous reversal and it can well be seen that this duty of the court to see to it that a fair trial be had applies with much greater force to a murder case in which a man's life is at stake and in which he was convicted of murder in the first degree.

The New York Court of Appeals in the case of People vs. Fielding, 158 N. Y. 542, 46 L. R. A. 641 in reversing a conviction upon improper remarks of state's counsel carefully discussed the general rules applicable, in the following language:

"We do not wish to express any views which would restrict counsel in fair argument, comment, or appeal. We object, however, to the assertion by the learned district attorney of facts not proved, to his inflammatory appeals to passion and prejudice, and to his threat to the jury of popular denunciation, all under the sanction of the trial court. If the record in this case is sustained

by the deliberate judgment of the court of last resort, it is difficult to see the limit of intemperate language, unproved assertion, or pernicious appeals on the part of counsel for the prosecution, except their own sense of propriety. The law, in our judgment, does not thus leave an accused person, presumed to be innocent until proved to be guilty, bound and helpless in the hands of his accuser. ***** So statements made by counsel, outside of the evidence, and subject to objection, which strongly tend to arouse sympathy, prejudice, or resentment in the minds of the jury, require a new trial, even if the court charges that they have nothing to do with the case, and must be disregarded. Halpern v. Nassau Electric R. Co. 16 App. Div. 90, 45 N. Y. Supp. 134; Bagully vs. Morning Hournal Asso. 38 App. Div. 522, 56 N. Y. Supp. 605. Language which might be permitted to counsel in summing up a civil action cannot with propriety be used by a public prosecutor, who is a quasi-judicial officer, representing the people of the state, and presumed to act impartially in the interest only of justice. If he lays aside the impartiality that should characterize his official action, to become a heated partisan, and by vituperation of the prisoner and appeals to prejudice seeks to procure a conviction at all hazards, he ceases to properly represent the public interest, which demands no victim, and asks no conviction through the aid of passion, sympathy, or resentment. By such a course, in the long run, he throws away much of his strength because his violent and reprehensible language betrays his bias, and finally weakens his influence with the jury. ***** Abuse of the defendant by the prosecuting

officer in his address to the jury, which was calculated to arouse their passions against him and materially prejudice him in the trial, has been held such error as would, of itself, cause a reversal. Stone v. State, 22 Tex. App. 185, 2 S. W. 585. Where the prosecuting attorney was permitted to comment on the personal appearance of the defendant, not as a witness, nor on account of his manner and bearing as such, but as indicating a probability of guilt, it was deemed sufficient to reverse a judgment of conviction. Bessette v. State, 101 Ind. 85. ***** In Newton v. State, 21 Fla. 53, it was held that where counsel for the prosecution, upon the trial of a cause before a jury, abusing his privilege to the manifest prejudice of the defendant, makes statements with regard to evidence being adduced not pertinent, and therefore not within his privilege, it becomes the duty of the judge to step in at once; and if he fails to do so, and the impropriety is great, it is ground for a new trial upon appeal."

In State vs. Gutekunst, 24 Kan. 252, it was held that where counsel referred to pertinent facts not before the jury, it became the duty of the court to stop state's counsel and that the court need not and ought not to wait for objection from opposing counsel. It became the duty of the trial court and not merely a discretionary matter to admonish the state's counsel and to instruct the jury in regard to improper remarks when counsel grossly abused his privilege in summation.

In the case of State vs. Cyty, 256 Pac. 793, 52 A. L. R. 1015, the court reversed a conviction upon the improper summation of state's counsel and observed as follows:

"***but whatever contributes to such an

abuse of a great power, it is the duty of the court, unsolicited, to reprimand instantly such misconduct.''

It is the duty of the trial court, sua sponte, to interfere and suppress the argument of counsel to the jury when he discusses issues not in the case and states facts not in evidence calculated to mislead and prejudice the jurors, and it is the court's duty to see to it that no such improper remarks are made by the prosecuting counsel, whether counsel for the accused does or does not object to the misconduct.

Jenkins vs. Hankins, 98 Tenn. 545 41 S. W. 1028

Improper remarks of the prosecuting counsel grossly prejudicial to the defendant should have prompted the trial judge of his own volition to rebuke the offender and instruct the jury to disregard the offensive language.

Wilson vs. State, 126 Ark. 354 190 S. W. 441

It is the duty of the trial court and is not merely a discretionary duty to interpose and admonish counsel who abuses his privilege in summation.

Hayes vs. Smith, 56 N. E. 879
Nixon vs. State, 80 S. E. 513

In capital cases the appellate court has the power to order a new trial for improper remarks of counsel when justice requires it, even when no objection has been taken.

People vs. Watson, 111 N. E. 243, 216 N. Y. 565, New York Court of Appeals.
48 Amer. Reports, 334 (See noted cases) p. 338 and 339.
People vs. Schermerhorn, 96 N. E. 376; 203 N. Y. 5772.
People vs. Pindar, 104 N. E. 1137.

A clearly prejudicial statement by counsel in argument to the jury need not be objected to in order to save the defendant's right to a new trial.

Akin vs. State, 98 So. 609.

The trial court itself is bound to see and provide affirmatively that no injustice is done to a person accused of crime upon his trial through the improper course and conduct of the prosecutor and when such conduct is carried to the extent that a fair trial is infringed, the court of appeal is bound to correct the wrong.

People vs. Montague, 71 Mich. 447 39 N. W. 585.

It is the general rule that the rights of a defendant in a capital case require particular protection and it follows that in capital cases the rules governing criminal procedure apply in all strictness, the policy of the courts being in favor of constructions and interpretations that are rigidly in favoritem vitae.

13 R. C. L. p. 883, Section 186.

The established rules of the common law and the principles of public policy apply with particular force to capital cases.

Furthermore these established rules and safe-

guards in the law for the protection of an accused whose life is at stake should be applied more strictly to a case in which the state relies for conviction purely upon circumstantial evidence.

State vs. Shelton, 6 Kan. App. 662, 49 Pac. 702.

State vs. Moore, 32 Or. 65, 48 Pac. 468.

In the recent well known case of People vs. Kresel (January 1935) the Appellate Division of the Supreme Court of New York in reversing a conviction referred to improper remarks of the Prosecuting Attorney in the following language:

"Appellant's counsel criticizes the summation of the District Attorney and asserts that he was permitted an unwarranted license of tongue. After careful consideration of the District Attorney's final argument it seems to us that he resorted to extraneous topics for the purpose of blinding the judgment and inflaming the passions of judge and jury. One would have to be possessed of a boundless credulity indeed to believe that it had no prejudicial effect.

"There are many things in this record which an impartial judge cannot contemplate with approbation. It is only possible to advert to a few.

"Although it was conceded that no one profited or lost because of the crime charged and that it had no effect of the closing of the Bank of United States, nevertheless, the District Attorney told the jury 'that we are concerned with was committed with relation to the Bank of United States.' He referred to bankers stealing 'depositors' money.' He pleaded with the jury to 'give a little atten-

tion to the poverty of depositors, who are mulcted by these people and do not worry about the poverty of this defendant.' He said appellant was nothing but a 'pilot fish' that guided sharks that scour the financial seas.' Kresel while nominally on trial on the charge contained in the indictment, was actually on trial for the crimes of every faithless banker.''

People vs. Kresel, 277 N. Y. Supp. 168.

It is improper for Prosecutor to say anything in argument the only effect of which will be to inflame passions of jury against accused without throwing light on question for decision.

People vs. Payne, 194 N. E. 539, 359 Ill. 246.

Statement of prosecuting attorney in prosecution of secretary of Building & Loan Association for making false report, that he, the prosecutor, believed accused was guilty and that futures of thousands of people were wrecked by failure of the Association held misconduct amounting to prejudicial error.

Weitz vs. State, 194 N. E. 386, Ohio Appel.

It is error for the prosecuting attorney in his address to the jury to comment on facts not in evidence or to use language calculated to excite the prejudice or inflame the passions of the jury.

State vs. Upton, 109 S. W. 821, 130 Mo. Appel. 316.
State vs. Robinson, 152 N. W. 590.
Carter vs. State, 170 S. W. 739.

The prosecuting attorney must be entirely impartial between the accuser and the accused and must act only in furtherance of justice and cannot be permitted to assert to the jury "under the solemnity of his official oath" his belief in the guilt of the respondent.

People vs. Quick, 25 N. W. 302.

In the following murder cases reversals resulted because of the prosecutor's statement in summation relating to the effect of life imprisonment;

Fair vs. State, 148 S. E. 144.
Berry vs. Com, 13 S. W. (2nd) 521.

The summation and general deportment of State's counsel in this case was of such a character that the ancient practices of the law were cast aside and the proceedings became a trial by oratory.

In concluding the argument as to this point, it is urged that it became the solemn duty of the court to interpose and admonish the attorney general at points in his summation when improper remarks were made and if this were not done at the time then at least the court should have in its charge instructed the jury especially to disregard all improper remarks of the attorney general as to facts not in evidence and appeals to prejudice. Nowhere in the charge of the court is there one single word of instruction to the jury to disregard the improper and prejudicial remarks of state's counsel. The jury was therefore left to its deliberation carrying with it not only the tacit approval of the presiding judge as to all that had gone before, but even his direct and outspoken approval of the remarks of the At-

torney General as to the statements contained on a phonograph record not in evidence. (Colloquy above reported and excepted to.)

POINT I A.

THE ATTORNEY GENERAL BULLIED AND ARGUED WITH THE DEFENDANT AND OTHER WITNESSES ON CROSS-EXAMINATION.

It will be impossible within the limitations of this brief to call attention to everything complained of but we earnestly invite the Court's attention to the cross-examination of the defendant. Throughout the whole examination, the Attorney General browbeat, bulldozed, belittled and chastised the witness, a few examples of which are as follows:

Q. Well, why didn't you say so in the first place instead of stalling with me and fighting with me? You have a habit of writing down telephone numbers, isn't that it? (This was objected to and the Court was asked to admonish the Attorney General and instruct the jury and notwithstanding the fact that there was no stalling and no fighting on the part of witness the Court declined to admonish the Attorney General or to instruct the jury to disregard it.) (C. B. 6, p. 2670.)

Q. This is funny to you, isn't it, you are having a lot of— You are having a lot of fun with me, aren't you?

Q. You are doing very well, you are smiling at me every five minutes?

Q. You think you're a big shot, don't you?

Q. "No," certainly, you shouldn't. You think you are bigger than everybody, don't you?

Q. Yes, you are the man that has the will power, that is what you know, isn't it?

Q. You wouldn't tell if they murdered you, would you?

Q. No, will power is everything with you, isn't it?

Q. Lying when you swear to God that you will tell the truth. Telling lies doesn't mean anything.

Q. Didn't you swear to untruths in the court house? Didn't you lie under oath time and time again. Didn't you?

Q. Yes, lies, lies, lies, about Lindbergh ransom money, isn't that right?

Q. You see you are not smiling any more, are you?

Q. It has gotten a little more serious, hasn't it?

Q. "I am a carpenter."

Q. That was funny, wasn't it?

Q. There is nothing funny about it. You had a good laugh, didn't you? Did you plan that in the jail there, did somebody tell you to give that answer when I asked you about the ladder, to stand in front of the jury and say "I am a carpenter"?

Q. Let me ask you something: you have got a peculiar notion about will power, haven't you? (C. B. 6, p. 2685-2687) at this point, C. B. 6, p. 2687, an objection to the abuse of the witness was interposed but the Court took no action.

Q. Wait a minute now. My God, don't you tell anybody the truth? (C. B. 6, p. 2703.)

Q. Who told you to say that, about your impression?

Q. One of your advisors?

Q. Weren't you told last night to say that?

Q. You weren't?

Q. Weren't you told in this court room to signal your wife when a witness was on the stand, to holler at her? (C. B. 6, p. 2733.)

The bulldozing and abuse of the other witnesses of the defendant was equally marked and uncon-

trolled. While great latitude is often allowed in cross-examination, nevertheless, it is the solemn duty of the Court, in the interest of justice to keep it, at least, within the bounds of court room etiquette and decency. A sound public policy not only sanctions but demands this.

Such a course of conduct by a prosecuting officer in a criminal case was condemned by the United States Supreme Court in the recent case of Berger vs. United States, supra, and was part of the reason given for the reversal in that case. The opinion of the Court relating to such conduct is quoted as follows:

> "That the United States prosecuting attorney overstepped the bounds of that propriety and fairness which should characterize the conduct of such officer in the prosecution of a criminal offense is clearly shown by the record. He was guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and in general, of conducting himself in a thoroughly indecorous and improper manner. We reproduce in the margin* a few excerpts from the record illustrating some of the various points of the foregoing summary. It is impossible, however, without reading the testimony at some length, and thereby obtaining a knowledge of the setting in which the ob-

jectionable matter occurred, to appreciate fully the extent of the misconduct. The trial judge, it is true, sustained objections to some of the questions, insinuations and misstatements, and instructed the jury to disregard them. But the situation was one which called for stern rebuke and repressive measures and, perhaps, if these were not successful, for the granting of a mistrial. It is impossible to say that the evil influence upon the jury of these acts of misconduct was removed by such mild judicial action as was taken."

POINT II.

THERE WAS A MATERIAL VARIANCE IN THE THEORY OF THE STATE AND THE PROOFS.

"The Attorney General in his opening to the jury said:

"Then as he went out that window and down that ladder of his, the ladder broke. He had more weight going down than he had when he was coming up. And down he went with this child. In the commission of that burglary, that child was instantaneously killed when it received that first blow. It received a horrible fracture, the dimensions of which when you hear about it will convince you that death was instantaneous."

(p 2. lines 21-29)

The Prosecutor of the Pleas in his opening to the jury, which was demanded by the defendant at the conclusion of the entire case, said:

'And we have proved to you that that baby was killed by the fall from that ladder.'

'We had an experiment performed, and it was so testified in this court, to show that a man went up the ladder and on the way down, with the bundle in his arms, the ladder broke, in exactly the same place as this ladder broke with the defendant, Bruno Richard Hauptmann, on it. And we have proved to you conclusively that that fall caused the baby's death when it received the fractured skull, which was of such an extent that it caused instantaneous death.'

(p 4337, lines 14-16, 22-32)

'We have proved first that the blow was inflicted by the fall from the ladder—.'

(p 4338, lines 35-36)

'And then we showed you an experiment also, how it was possible it was done by a man going up the ladder, then came out the window with the bundle and the ladder broke; as the ladder did break this crime was committed.' ''

(p 4340, lines 22-27)

The Attorney General in his summation materially varied the state's theory, as follows:

'' 'But let me tell you this: this fellow took no chance on the child awakening. He crushed that child right in that room into insensibility. He smothered and choked that child right in that room. That child never cried, never gave any outcry. Certainly not. The little voice was stilled right in that room. That's a fair inference that comes from its

failure to cry; either there in the room or outside.'

(p 4406, line 33—p 4407, line 2)

'Certainly he stilled this little child's breath right into insensibility right in that room,—whether it drew another breath or not doesn't make any difference, but that child never could make an outcry. The smudges on the bedsheet cry out evidence of that fact that Betty Gow testified to, the fact that the child didn't cry out when it was disturbed. Yanked,—how? Not just taken up, the pins are still left in the bedsheets. Yanked, and its head hit up against that board.—must have been hit. He couldn't do it any other way. Certainly it must have hit up against that board. Still no outcry. Why? There was no cry left in the child. Did he use the chisel to crush the skull at the time or to knock it into insensibility? Is that a fair inference? What else was the chisel there for?—To knock that child into insensibility right there in that room.

'Counsel wants to know why it didn't cry out. There is the answer for you.' "

(p 4407, lines 16-36)

" 'And down he comes. The child is dead. He had crushed that child already, mind you, into insensibility before he came out of that room.' "

(p 4483, lines 33-35)

The openings of the Attorney General and the Prosecutor of the Pleas set forth the theory of the State as to the death of the child was occurring

outside the bedroom and this was the theory upon which the case was tried and was the general charge which the defendant had to meet. The circumstantial evidence pointed to such a conclusion, if it pointed to any. However, in the summation of the Attorney General who, of course, had the final word in the case, this theory was materially varied by the allegation that the child was killed in the bedroom by a blow from a chisel. Of course, the defendant had no opportunity to reply.

In passing, it is brought to the court's attention that this change of theory demonstrates clearly at least the weakness of the state's circumstantial case, and such variance gave opportunity to the Attorney General to paint a picture of a cruel blow having been inflicted upon this infant in the bed room, and thereby inflaming the minds of the jury to the prejudice of this defendant.

This variance was particularly harmful to the defendant because of the fact that the indictment was one for murder in the statutory form. A bill of particulars was demanded but the particulars supplied by the State were of no assistance to the defendant in order to apprise him of the nature and cause of the accusation. (p. 4566) Since the case was tried on the theory that death resulted from the commission of a burglary this variance became particularly material.

This material variance involved a change as to the instrumentality causing death as well as a change of the locus of the crime.

Not only did it involve such changes but it injected into the case an entirely new theory as to the commission of the murder in that the State charged a wilful, deliberate and premeditated killing in all of its essentials. This change of theory pointed out the lethal weapon was a chisel that was brought with the defendant into the room when he climbed the ladder and that the defendant

crushed the child's skull with the same in the bedroom. The adoption of this theory deprived the defendant of the benefit of a charge by the Court as to the degrees of murder and manslaughter and precluded the defendant of the right to cross-examine and introduce evidence to combat this new theory involving a wilful, deliberate and premeditated killing. In this connection it is pointed out that this definite change of theory was not cured by the Court, and in fact, the Court refused to charge the following request submitted by the defendant.

> "5. There is no evidence in this case of a wilful, deliberate and premeditated murder having been committed by this defendant."

Not only that, but defense counsel, Mr. Pope, took specific exception to the Court's charge and pointed out to the Court this material variance in the theory of the State. Mr. Pope's words are referred to hereinafter under this Point.

It will probably be conceded that the object of an opening is to present to the jury the issue before them.

> "The text books and decisions which deal with the subject are distinctly agreed concerning the end and scope of the opening statement. They all represent it as a proceeding prefactory to putting in evidence; as practically necessary to make an advance exhibit of the legal nature of the controversy and its salient peculiarities, and to enable the judge, jury, and opposing counsel to apprehend the necessities of the plaintiff's case and correctly to understand the drift and bearing of each step and each offer of proof as it shall occur subsequently."

2 R.C.L. p. 410, Section 7.

It will be noted that at the end of the whole case the defense requested an opening by the State upon the points relied upon for conviction. Certainly in our practice and that established by the common law these openings are intended to mean something. In civil cases courts are careful to restrict a party to the issue raised by the pleadings and to prevent any material variance between the pleadings and the proofs. In criminal cases, we have of course no pleadings other than the indictment which in this case was in simple statutory form and gave meager information to the defendant as to the charge to be made. In such a situation the oppening of the state's counsel is particularly important as outlining the theory upon which the state would rely for conviction and in effect was a substitute for the pleadings filed in a civil case.

It is respectfully called to the Court's attention that after all the evidence was in, acting under the practice existing and recognized in this state as one of the heritages of the common law, the Court directed a motion of defendant that the Prosecutor make an opening. (p.4330—p.4331) This opening is not to be confused with the preliminary statement of the Prosecutor in opening any case after the arraignment and the paneling of the jury and which generally is utilized to advise the jury concerning questions of fact involved so as to prepare their minds for the evidence to be heard. The opening in the beginning of the case is necessarily of a more broadened scope than at the close of the case. The opening at the close of the case is a succinct statement of the evidence upon which the Prosecutor elects to base the State's case and the recapitulation of the grounds upon which the jury's verdict is sought and as far as the recep-

tion of evidence is concerned the case is considered to be at an end.

The opening at the close of the state's case when requested by defense and directed by the Court has a definite and fixed significance both factual and legal. The function is to apprise the Court, the jury and the defendant of the exact legal grounds which will justify the jury in exercising its extraordinary powers of deciding upon a verdict involving the liberty on the one hand or the punishment and death of the defendant on the other. It is no mere matter of form. Its precise and legal and logical content has a recognized place in our form of criminal jurisprudence. It is a moulding of issues that have been tried in a constitutionally authorized tribunal after the nature and the cause of the accusation have been legally and firmly prescribed in an indictment drawn up in accordance with time honored precedents in a tribunal recognized by the common law.

It is insisted that the reference to the printed state of the case will show that in the opening to the jury at the close of the state's case under the direction of the court, after a motion duly made therefor by the defendant, the Prosecutor of Hunterdon County, Mr. Hauck set forth the claims upon which the evidence was given upon which the State of New Jersey would rely in its demand for the conviction of the defendant.

What the defendant now claims to be a violation of his rights is contained in the summation of Mr. Wilentz, and consists in what the defendant claims is an unauthorized method of trying the defendant for a crime the nature and cause of the accusation being entirely different from that which was set forth in the evidence upon which the defendant was tried.

It is respectfully insisted that the change of the locus of the attack, the change in the lethal

method by which the crime was consummated, was in reality a substitution by the State of New Jersey, insofar as the homicide and its cause were concerned, a different homicide from that set forth in the indictment and the evidence which was presented to the jury in six weeks.

The evidence of the state was directed to the fact that the Lindbergh baby was killed by a fall on the ladder from which fall injuries were received as a result of which the County Physician testified as to the immediate cause of death.

According to the summation and claims of the State of New Jersey through its Attorney General, the place where the wound was inflicted was not on the ladder but in the upper room, the instrumentality with which the wound was given was not on the ladder or during the fall therefrom, but was done by a chisel wielded upon the baby's head by the defendant, injecting into the case a surprising and entirely new statement of the means whereby the homicide in question was committed and which was entirely unsupported by evidence.

It is not an answer to say that there are no reported cases covering such a situation because such a variance may never before have been attempted by a prosecuting officer. A material variance violates a rule of public policy and is contrary to ancient established practices, the principles of which are discussed under Point III.

It is further contended that this material variance violated the rights of the defendant guaranteed by the 14th Amendment of the Constitution of the United States in that the defendant was deprived of life and liberty without due process of law and denied the equal protection of the laws and this is discussed under Point IV.

POINT III.

PUBLIC POLICY IS THE POLICY OF THE LAW EXPESSED IN AND DERIVED FROM THE CONSTITUTION, LAWS AND JUDICIAL DECISIONS.

It is urged that there was a violation of a settled principle of public policy in the case at bar as relating to the summation of the Attorney General, as discussed under Point I, and as to the material variance in the theories of the state as discussed under Point II, and the following argument is addressed to the violations of such questions of public policy as set forth in the two preceding points.

The definition of this term is somewhat uncertain of meaning and the term has been well discussed in the text and footnotes found in 50 Corpus Juris, 857.

The definition of Mr. Justice Story is that the term comprehends any question which "conflicts with the morals of the time and contravenes any established interest of society."

In State vs. O'Leary, supra, by inference this court said that a question of public policy involved in "institute of law which is already beyond the control of the court and which belongs to the citizen as of right."

> "The principles and doctrine of public policy are matters of common professional knowledge. While the term is profound, as well as panacean in legal jurisprudence, it adimits of an exact definition. Its virtue and vigor lies in its flexibility of application, and while reported cases furnish guides, they rarely are compelling in precedent."

Fidelity Union Trust Co. v. Reeves, 96

N. J. Eq. 490, 493.
Decree affirmed 98 N. J. Eq. 412.

Discussion as to what is meant by a question of public policy will be found in 6 Ruling Case Law, page 707, Section 115, where it is said:

> "The courts have, however, frequently approved Lord Brougham's definition of public policy as the principle which declares that no one can lawfully do that which has a tendency to be injurious to the public welfare. This principle, it has been said, may be termed the policy of the law or public policy in relation to the administration of the law."

The plaintiff in error seriously contends that a reading of the Specifications referring to the summation and a perusal of the summation itself should lead this Court to the conclusion that there was a violation of a legal rule founded upon public policy which rule, it is contended, requires that the prosecuting attorney must conduct the trial in accordance with and confine his summation within the rules of law and that it further becomes the duty of the Court to see that this ancient rule be followed. It would seem to be a weak answer to say that the defendant's counsel should have objected at every opportunity, Many reasons may be advanced why counsel for the defendant in this or any given case might not interpose objection. Nevertheless, trials are not entirely battles of wits and prosecuting attorneys and presiding judges are under a duty to every defendant to observe fundamental rules of law.

It is also contended that the material variance between the openings, proofs, and summation, relating to the change as to the instrumentality causing death and the place where the death oc-

curred involving as it did a new theory of wilful, deliberate and premeditated killing, resulted in a violation of a question of public policy for it is a principle well grounded in the law that a defendant should be fairly appraised of the nature and cause of the accusation against him.

Mr. Justice Kalisch in State vs. Herbert, 92 N. J. L. 341 at 350, etc. referring to the necessity of adhering to doctrines of public policy and established precedents used the following vigorous language:

> "For the state it is further urged that to adhere to this doctrine of public policy might result in disabling the state to establish the guilt of the accused parties. But even so that does not afford a sound reason for disregarding a settled public policy which has prevailed for centuries and has received the sanction of our highest tribunal. It is far more pernicious to the efficient administration of the law to ignore precedents than to follow them, even though they may, occasionally, work a hardship.
>
> "Firmly established precedents should not be treated as mere antiquated judicial wisdom and out of joint with modern time, unless the reason which called them into being has ceased."

In State vs. Snook, 94 N.J.L. 271, at 274 this Court stated the result which would follow the violation of a rule of public policy in the following language:

> "This legal rule is founded on public policy. It is unimportant, therefore, whether or not the defendant suffered harm upon the merits of the case, for the violation of the

rule is in itself a sufficient ground to disturb the judgment. Unless this be so, it would leave the rule subject to be disregarded with impunity and lead to the subversion of the public policy which brought it into being."

Mr. Justice Kalisch, speaking for this Court in Corn vs. Kaplan, 103 N. J. L. 628, at 634, said:

"It is not palliating nor sufficient answer that the act complained of was done without evil intent, or that the results as reached by the jury was harmless to the litigant complaining. It is the possibility of harm that must be guarded against."

The complaints herein set forth relating to the summation under Point I and as to the material variance in the theories of the State as set forth in Point II could not be brought to the attention of this Court under Section 136 of the Criminal Procedure Act. Mr. Justice Heher, speaking for this Court in the case of the State vs. O'Leary, 110 N.J.L. 36 at 37, in referring to the action of the court in not properly ordering the sequestration of the jury, used the following words:

"Manifestly, the action complained of is not within this section, unless it was a denial of a matter that rested in the court's discretion, and for the reasons to be hereinafter stated this was not the case."

The arguments advanced by counsel in the case at bar under Points I and II seem to make it apparent that it was the solemn duty of the court to interfere on its own motion and the matters complained of are not the subject of judicial discretion which could be so lightly waived aside.

In the case at bar there was one objection and exception taken to the summation by defendant's counsel and no exception taken specifically to the material variance in the theory of the State although in his exceptions to the charge, Mr. Pope, a defense counsel, definitely brought to the attention of the court this material variance and the court did nothing to correct the impression made upon the jury although we contend it was the court's duty to do so. The wording of Mr. Pope's exceptions are as follows:

> "In opening, the State told the jury that 'We will prove to you that this child received the blow which caused the fracture when the ladder broke, that it then struck its head first against the window sill and then afterwards against the little cat walk or board walk that ran along the side of the house.'
>
> "Mr. Lanigan: Pardon me, I didn't catch that word. Did you say kaleidoscopic?
>
> "Mr. Pope: And in its final argument to the jury, the State argued that the death blow was struck in the nursery at the time the child was taken from the crib, and that that, in their theory, was what stifled its cry and enabled the kidnaper to get away with it." (p4526, 11 15-34)
>
> "Mr. Pope: And we except to that portion of the Court's charge, in which you said, in substance, that the jury might find that the defendant ascended the ladder, entered the room, seized the child in its sleeping garments, carried it out of the window, and that the fracture was inflicted while the child was being carried out and down the ladder,

when the ladder broke—whatever the language was that your Honor used in that comment. We respectfully suggest that it was not justified by the evidence in the case, and indeed that it is contrary to the theory of the State which the State itself argued to the jury; namely, that the child was stricken a fatal blow while it was yet in the nursery, and that the child was dead when it was carried out of the nursery and down the ladder, or that it died within a few moments after the blow was struck." (p. 4530, l 28—p. 4531, l 10)

Notwithstanding, it is contended that a review may be had here for the reasons expressed in the opinion in the case of State vs. O'Leary, supra, which pointed out the rule in the following language:

"But, notwithstanding the absence of an exception and the consequent inability of plaintiff in error to bring the action complained of before this court by bill of exceptions, a review may be had here. It is within the exception to the rule that an appellate tribunal will not consider questions not properly raised in the court below. The error, if such it be, is apparent on the record, and involves a question of public policy. The rule in this state is that questions concerning jurisdiction or public policy are exceptions to the general rule that the reviewing tribunal will not examine questions not raised below. State v. Forman, 97 N. J. L. 168; Mahnken v. Meltz, Ibid. 159. The court itself may notice these questions even if not raised. State v. Belkota, 95 Id. 416.

Reference is made to the following cases for further discussion of this rule.

State vs. O'Leary, 110 N. J. L., 36.
State vs. Belkota, 95 N. J. L., 416.
McMichael vs. Horay, 90 N. J. L., 142, 145.
State vs. Shupe, 88 N. J. L., 610, 612.
Mass. Nat. Bank vs. Shinn, 163 N. Y., 360.

In the case of State vs. Verona, 93 N. J. L. 389 at 392, the then Chancellor Walker speaking for this court, held that an error in the sentence involved a matter of public policy and used the following language:

> "This question was not raised in the Supreme Court, and while, ordinarily, a court of last resort will not hear a party as to a question not raised below, nevertheless, where it goes to the jurisdiction of the subject-matter, or where a question of public policy is involved, it will. State v. Shupe, 88 Id. 610. It must be perfectly apparent that *public policy forbids that a person should be deprived of liberty for a longer term than is provided by the law of the land.*" (Italics mine.)

It would seem to follow that to deprive a person of life and liberty through a judicial proceeding which violated every rule of ancient practice and precedent so far as the summation and change of theory are concerned would involve a question of public policy provided by the law of the land.

POINT IV.

THE DEFENDANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WERE CONTRAVENED BY THE SUMMATION AND MATERIAL VARIANCE OF THEORY.

> "Section 1, ***** nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."
>
> Constitution of the U. S., Amendment 14.

It is seriously contended that by reason of the highly prejudicial and improper remarks of the Attorney General in summation and his definite change of theory as argued in the preceding points constituted such a deprivation of the settled conception of a fair trial and departed so materially from the established procedure in criminal cases and violated the principles of justice inherent in the very idea of free government so as to contravene the rights of the defendant as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States.

The following are a few excerpts from text books defining what is meant by due process of law and equal protection of the laws.

> "It has been said that due process of law must be understood to mean law in the regular course of administration through courts of justice, according to those rules and forms which have been established for the protection of private rights."

6 R. C. L. 434, Section 431.

"By reason of the constitutional guaranty here under discussion it has been stated as a general principle that everyone is entitled to the protection of those fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions."

6 R. C. L. 435, Section 432.

"It has been said that the fundamental principles referred to are those principles of judicial procedure which existed and were recognized in the courts of England and the American colonies prior to the adoption of the federal and state constitutions,*****"

6 R. C. L. 435, Section 432.

Other references to what is meant by the term "due process of law" will be found discussed in 12 C. J. at p. 1188, etc.

The term "equal protection of laws" has been referred to as meaning the following:

"It has been repeatedly said that the guaranty of the equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances, in their lives, their liberty, and their property, and in pursuit of happiness. ***** This constitutional guaranty requires that all persons shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed, and also in exemptions from liabilities."

6 R. C. L. 370, Section 364.

"Due process of law guaranteed by the federal constitution has been defined in terms of the equal protection of the laws, that is, as being secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

6 R. C. L. 372, Section 367.

Further reference to the subject will be found in 12 C. J. 1141, etc.

Due process in procedure is a matter of substance and not of form. A mere mechanical compliance with the forms of law does not offset a denial of fundamental rights.

In the case of Pennoyer vs. Neff, 95 U. S. 714, the Supreme Court of the United States said in this connection that the Constitutional provision related to judicial proceedings meant:

"They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights."

The same Court in Hagar vs. Reclamation District, 111 U. S. 701, 708, said:

"By due process of law is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode pre-

scribed by the law."

The Supreme Court of South Carolina aptly phrased the definition of fair trial in the following words:

> "A fair trial means a trial before an impartial judge, and honest jury and *in an atmosphere of judicial calm.*"

State vs. Gossett, 108 S. E. 290.

The term "judicial calm" must be intended to include the conduct of the Attorney General as the highest law enforcement officer of the State.

The Texas Court of Criminal Appeals, in reversing a conviction upon the summation of the prosecuting attorney, referred to the Constitutional guaranty as applying to such a situation in the following words:

> "If the accused in a capital case is to forfeit his life, it should be done under the most solemn forms of the law. The court room and the courthouse and the judicial system are organized, not to convict upon mob law or by mob violence, but to convict under the due process of law guaranteed by the Constitution and laws of our country. No man's life, liberty, or property shall be taken except under due process of the law of the land. This is one of the solemn guaranties reserved in the Bill of Rights. ***** It will be the duty of the court ***** to see that the accused is convicted only under the due process of the law of the land."

Hemphill vs. State, 165 S. W. 462.

Mr. Justice Sutherland in the case of Berger vs. United States (Supra.) commenting upon a variance uses the following words:

> "The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial;" Cases cited.

It seems to counsel that in the instant case the Constitutional rights of this defendant were more seriously violated by the entire change of theory as to the nature of the killing as expressed by the Attorney General in his summation and which the defendant had no opportunity to rebut.

In the recent and famous "Scottsboro Case," the Supreme Court of the United States in reversing a conviction said:

> "One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence."

Powell vs. Albama, 287 U. S. 45., 77 L. Ed. 159

It is respectfully insisted that the Attorney General, a constitutional officer of the State of New Jersey, and an adminstrative officer entrusted with the prosecution of crime, is a representative of the State whose conduct and actions in capital

cases of the character of the instant case, come within the purview of the constitutional amendment regarding due process of law and the equal protection of the laws, and it cannot be successfully denied that in a capital case in a state whose heritage is of the common law and where the settled usages and modes of proceeding are derived from common and statute law of England as these English laws existed before the Declaration of Independence, should be observed in a capital case.

POINT V.

THE VENUE WAS IMPROPERLY LAID IN HUNTERDON COUNTY INSTEAD OF MERCER COUNTY.

This question was raised in the trial court by a motion for a directed verdict of acquittal at the end of the State's case (p. 2356); and by similar motion at the conclusion of the entire case (p. 4326); by requests to charge (p. 4549—Nos. 1, 3, 4, 6, 10); and by exception to refusal to charge as requested (pp. 4532-4534); and was duly assigned as error.

The indictment was for murder and in simple statutory form. The body of the child was found in Mercer County seventy-two days after the time of the murder alleged in the indictment. The legal presumption was therefore that the death occurred in the County of Mercer and the Court so charged. It is seriously contended that the case is devoid of evidence which would tend in any way to overcome this presumption. The only argument that can be advanced by the State is the fact of the testimony of the finding of a thumb guard worn by the child upon the night in question and which was found one month after March 1st, in the County of Hunterdon.

Even if the jury was entitled to believe, as argued by the Attorney General and charged by the

Court (4501) that the thumb guard found near the entrance to the Lindbergh Estate on April 1st, 1932, dropped to the ground when the sleeping garment was torn from the child at that point upon the night in question, it certainly would not follow that the child was thereby killed by such action or that it was dead when the thumb guard was removed. The Court charged the jury, in effect, that from the evidence of Col. Lindbergh and that of Dr. Mitchell it was justified in finding that the reasonable inference of such testimony was that the felonious stroke occurred in Hunterdon County (p. 4502 11. 25-40). Colonel Lindbergh, of course, did not testify to seeing any one touch the child and Dr. Mitchell simply testified that he examined the body in Mercer County after it was found and that, in his opinion, death occurred instantaneously from a fractured skull but he was careful to state that he, of course, did not know when or where this fracture occurred.

We assert without fear of contradiction that by searching this record from beginning to end, it will be impossible to find any fact stated by any witness, or any circumstance, that would justify the belief (a) that the sleeping garment was torn off of the child either before or after death at or near the point where the thumb guard was found; or (b) any evidence or circumstance that the sleeping garment was removed from the child either in Hunterdon County or Mercer County, rather than at some other place. While it may be argued that the fact that the sleeping garment was later returned was evidence of its removal from the child, nevertheless that does not justify the inference nor the comment by the Court that the sleeping garment was removed in Hunterdon County, or in any particular place. So far as the evidence goes, we do not know, and it is impossible for any one to even surmise, where the sleeping garment

was removed from the child. (See Court's Charge, p. 4501.)

Nor does Section 59 of our Criminal Procedure Act apply. This Act provides in short that whenever any persons shall be feloniously stricken or poisoned in one County and shall die of the same stroke or poisoning in another County the offender may be indicted and tried in either County. If applied to this case there would necessarily have to be proof of a *felonious striking* in Hunterdon County. For the purpose of this argument let us presume that the jury had a right from the evidence to conclude that there was a battery committed by the defendant upon this child when it was touched and lifted from the crib. And that certainly was the only circumstantial evidence of any battery or unlawful touching. But a battery at common law was not a felony. Blackstone states in Book 4 page 216:

> "The inferior offenses or misdemeanors, that fall under this head, are assaults, batteries, wounding, false imprisonment and kidnapping."

So also:

> "An assault with intent to commit murder, was not at common law, a felony."

Jackson vs. State, 49 N. J. L. 252, 254.

Our criminal code has, of course, abolished the common law distinction between felonies and misdemeanors but this relates to the degree of punishment.

Jackson vs. State, 49 N. J. L. 252-255.
Brown vs. State, 62 N. J. L. 666, 695 (bottom).

However, this statute, Section 59, comes to us from the common law by statute of 2 and 3, Edw. the VI, c. 24. Therefore, it is urged and it seems that there can be no contradiction that in order to bring a case within the application of this Section 59 of our Criminal Procedure Act that there must be proof of a *felonious striking* or a poisoning. To determine the definition of a felonious striking it is, therefore, necessary to have recourse to the common law definition of a felony.

This Court in State vs. Lang, 108 N. J. L. 98, at 103 deals with said Section 59 and the opinion states as follows:

> "The case of State vs. Wyckoff, 31 N. J. L. 65 and State vs. Le Blanch, ibid. 82, cited by counsel, relate to crimes not within the statute in question, and are therefore, irrelevant."

It is, of course, elementary that a crime is to be tried in the county where committed. This Court in State vs. James, 96 N. J. L., 132, 148 quoted with approval the words of Chief Justice Beasley as follows:

> "The general rule of law has always been that a crime is to be tried in the place in which the criminal act has been committed. It is not sufficient that part of such act shall have been done in such place, but it is the completed act alone which gives jurisdiction."

In the case of State vs. Stow, 83 N. J. L. 14, Chief Justice Gummere held that a violation of the election law through a letter written in Camden and received in Pennsylvania was not indictable in Camden and cited with approval State vs. Wyckoff, 31 N. J. L. 65, 68. Certainly such crime

was not within the purview of Section 59 under discussion.

There is one other theory which the State may contend would give jurisdiction to the Hunterdon County Court and that is that since death ensued from the commission of burglary in Hunterdon County that the indictment for murder could be tried there. But this cannot be for the reason that this indictment is for murder and does not relate in any way to burglary. The burglary was a necessary element in the State's case in order to convict this defendant at all. Since the indictment was for murder and death was presumed to have occurred in Mercer County and since this presumption was not rebutted by any evidence at all the trial should have been held in Mercer County where the death occurred and the proof of the burglary in Hunterdon County might then have been introduced in the Mercer County Court for the purpose of showing that the death in Mercer County ensued from the commission of a burglary in Hunterdon County. The indictment was not for burglary which was committed in Hunterdon County. It was for the murder which, if any there was, could only have been committed in Mercer County and the burglary was only one of the elements of proof in the case to bring the murder within Section 107 of the Crimes Act so that it would be murder in the first degree.

POINT VI.

THERE WAS NO PROOF OF THE COMMON LAW CRIME OF BURGLARY AND THE COURT ERRONEOUSLY CHARGED THE STATUTORY CRIME.

This question was raised in the trial court by a motion for a directed verdict of acquittal at the

end of the State's case (p. 2356); and by similar motion at the conclusion of the entire case (p. 4326); by requests to charge (p. 4549, Nos. 8 and 9 and by exception to refusal to charge as requested (p. 4533 etc.) and by specific exception to the charge (p. 4539 l 22), and was assigned as error.

Burglary at common law "is defined to be the breaking and entry into the mansion house of another, with the intent to commit some felony therein, and that in the night time."

State vs. Wilson, 1 N. J. L. 502, *p. 439.

We have no statutory definition of burglary.

Section 131 of the Crimes Act provides that it shall be a high misdemeanor by night to enter any dwelling house, etc. with intent to steal, commit battery, etc.

Section 132 of the Crimes Act provides that it shall be a high misdemeanor if any person shall by day break and enter any dwelling house, etc. with intent to steal, commit battery, etc.

Section 132a of the Crimes Act provides that any person shall be guilty of a high misdemeanor who shall break and enter any dwelling-house, etc. with intent to steal, etc. and thereby uses a high explosive.

Section 133 provides that any person shall be guilty of a high misdemeanor who shall enter either by day or night any dwelling-house, etc. without breaking the same with intent to steal, commit battery, etc.

None of the aforementioned sections give a true definition of the common law crime of burglary and none of them define the doing of any such acts as "burglary." All of them vary materially from the common law definition and all of them, of course, designate such crimes as high misde-

meanors. To be guilty of many of the acts described in Section 131 would certainly not be burglary at common law.

The Supreme Court in a well reasoned opinion and one which is of particular interest because it gives the entire history of the socalled statutory crime of burglary is that of Conners and Williams vs. State, 45 N. J. L. 340 where it was squarely held that this statute (Section 131) did not define the common law crime of burglary but created a statutory high misdemeanor and that one indicted under that statute was not entitled to twenty peremptory challenges nor a service of a copy of the indictment and list of jurors as provided in the Criminal Procedure Act for one indicted for burglary.

This court in the case of Downs vs. N. J. Fidelity etc. Co., 91 N. J. L. 523 at 525, in an opinion by the then Chancellor Walker referred to and approved this opinion in the Conners case and said that the statute, Section 131 of the Crimes Act,

> "does not do away with the distinctive offense of burglary at common law."

The Conners case was also referred to with approval in the following cases:

State vs. Tonghanni, 96 N. J. L. 63.
State vs. Rosenberg, 97 N. J. L. 430.

The Conners case held in effect that Sections 54 and 80 of the Criminal Procedure Act relating to the service of copy of indictment, list of jury and number of challenges when referring to the crime of burglary intended to mean the common law crime of burglary and not the statutory one. It is plain that if this is so that the word "burg-

lary'' in the murder statutes refers to the common law crime of burglary and not the high misdemeanor set forth in Section 131.

It is certainly elementary that criminal statutes should be strictly construed and this of course, applies with the greatest of force to the murder statute.

Not until the revision of the laws under date of 1877 did the designation ''burglary'' appear in the margin of this statute which is now Section 131 of the Crimes Act. In that revision of 1877 a somewhat similar statute was designated as Section 93. Since that revision this marginal reference of ''burglary'' has crept into the statutes but not by any authority of law. The revision of 1877 was compiled pursuant to an Act of the Legislature approved April 4, 1871 and the compilers were appointed Commissioners ''to revise, simplify, arrange and consolidate all the public acts, etc.'' Similar authority was given to future compilers. We have, for instance, a crime defined as arson and one defined as incest and another defining murder and other common law crimes have been defined by statute so as to vary materially from common law definitions. Where such crime is defined by statute it is, of course, no longer necessary to have recourse to the common law definitions. For instance, robbery has not been defined by statute as such but a certain crime resembling the common law definition has been designated as a ''high misdemeanor.'' In State vs. Compo, 108 N. J. L. 499, 501, this Court has observed that:

> ''The common law definition of robbery has, notwithstanding, been uniformly approved and followed in cases where homicide has been committed in the perpetration of a robbery.''

In the case at bar where the homicide is alleged to have been committed in the perpetration of a *burglary* it follows that the common law definition should also have been followed and charged.

The trial Court in its charge quoted from Section 131 of the Crimes Act in relating to the definition of burglary (p. 4514) and quoted in full under Point VII in this Brief. The trial Court also used the following language in that connection:

> "There is evidence from which you may conclude if you see fit, that the defendant feloniously, wilfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child;—"

Of course, stealing the child was certainly not larceny and breaking and entering with no intent to permanently deprive the owner of the sleeping garment was not stealing, as will be discussed at length under the following Point VII. At common law the stealing of its clothing, if under the value of 12 pence was petit larceny and not punishable by death and it is pointed out that the case is barren of any proof as to the value of this clothing so that even if that be called stealing there should have been proof of the value and being no proof the presumption is that the clothing had no value.

> "Inasmuch as larceny cannot be committed of things that have no value it is essential that it be shown that the property stolen had some value. ****** And without proof of the value of stolen property there can be no conviction, for in the absence of any evidence on the sub-

ject the court or jury cannot indulge in presumption to supply the omission."

17 R. C. L. p. 65, Section 71.

"Under an indictment for simple larceny proof that the thing charged to have been stolen had some value is indispensable to a conviction, even though the prosecution is for petit larceny only."

36 Corpus Juris, p. 856, Section 394.

In the case of Burroughs vs. State, 137. Ind. 474, 37 N. E. 271, it was held that the court or jury could not indulge in presumptions to supply the omission of some proof of value.

And furthermore, we have seen that to commit a battery upon the child was not a common law felony (4 Blackstone, *p. 216, supra) nor was kidnapping.

It will also be noted that our Section 106 of the Crimes Act defining murder and our Section 107 fixing the degree of murder insofar as they relate to a death ensuing from the commission of burglary and other common law crimes are of great antiquity and of course, antedate our Section 131 which is by mere marginal reference designated "burglary". Therefore, the word "burglary" in the murder statutes certainly must have reference to the common law crime and could be only changed as to definition by a definite statutory enactment.

It follows, therefore, that the case was barren of any evidence establishing a common law burglary and that the Court was in error in charging the so-called statutory definition of burglary.

POINT VII.

THERE WAS NO EVIDENCE OF INTENT TO STEAL AND THE COURT ERRONEOUSLY CHARGED THE JURY.

The State tried this case on the theory that death ensued from the commission of a statutory burglary. That there is no question as to this is borne out by the Court's Charge, as follows:

> "The State contends that the murder in this case was committed in perpetrating a burglary, and is murder in the first degree." (p. 4513 l 40)

The Court took as its definition of burglary Section 131 of the Crimes Act which reads as follows:

> "Any person who shall, by night, wilfully or maliciously break and enter any church, meeting-house, dwelling house, shop, warehouse, mill, barn, stable, outhouse, railway-car, canal-boat, ship or vessel, or other building whatever, with intent to kill, rob, steal, commit rape, mayhem or battery, and his counselors, procurers, aiders, and abettors, shall be guilty of a high misdemeanor."

The Court charged the jury as to that statute in the following language:

> "Our statute relating to burglary says: Any person who shall, by night, wilfully or maliciously break and enter any dwelling house with intent to *steal,* commit a battery, shall be guilty of a high misdemeanor.
>
> "If, therefore, the defendant by night wil-

fully and maliciously broke and entered the Lindbergh dwelling house with intent to *steal* the child and its clothing and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree.

"There is evidence from which you may conclude, if you see fit, that the defendant feloniously, wilfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child." (p. 4514 11. 15-40)

And in another part of its charge the Court instructed the jury as to this question of stealing in still different language, as follows:

"But if, on the other hand, the State has satisfied you beyond a reasonable doubt that the child's death was caused by the unlawful and criminal act of the defendant while seizing, *stealing* and carrying away the child and its clothing, of which unlawful act against the peace of the State, the probable consequences might be bloodshed, it is murder." (p. 4513 11. 22-30).

Therefore the Court definitely submitted to the jury the question of stealing as well as battery as constituting the elements present in the case in order to bring it within the statutory crime of burglary.

It is contended that there was no proof whatsoever of a stealing. The State's entire circumstantial case on this point was to the effect that the sleeping garment was taken incidentally to the removal of the child from the bed room and that

the sleeping garment was taken for the sole purpose of ultimately returning it to Colonel Lindbergh in order to secure the ransom money. This was definitely stated by the Attorney General in his summation to the jury, in the following words:

> "He didn't need the body, all he needed was that sleeping garment to get the money. He was right, he got the money, nobody else." (p. 4484 1.30)

And again the Attorney General said in his summation:

> "And so here is the sleeping garment that he returned." (p. 4445 1.30)

The State's evidence all pointed to this one purpose which the defendant was alleged to have in taking the sleeping garment. There was no intention to permanently deprive the owner of the sleeping garment and the case was tried entirely on the theory that the sleeping garment was taken solely with the intent to use it temporarily for the purpose of extorting money from Colonel Lindbergh.

Such a taking does not constitute stealing.

Chief Justice Greene in the case of State vs. South, 28 N. J. L. 28, discussed the necessary elements of the crime of larceny or stealing, setting forth the well-known principle that if the property is taken with the intention of only using it temporarily, and then returning it to the owner, it is not larceny.

Chief Justice Magie in the State vs. Bullit, 64 N. J. L. 379 quoted with approval this principle as set forth in State vs. South (supra) and used the following language:

"It had before then been decided in this Court that the crime of larceny was only committed when goods were taken with an intent to permanently deprive the owner of them, and that whether the taker had that intent or only an intent to use the goods temporarily, was a question for the jury."

Of course in the case at bar there was no question for the jury to decide because the State admitted and uncontraverted State's evidence showed that the sleeping garment was taken only with intent to keep it temporarily. It was actually returned.

Furthermore the case is entirely barren of any proof as to the value of this clothing, and there being no proof, the presumption is that the clothing had no value.

"Inasmuch as larceny can not be committed of things that have no value it is essential that it be shown that the property stolen had some value. ***** And without proof of the value of stolen property there can be no conviction, for in the absence of any evidence on the subject the court or jury can not indulge in presumption to supply the omission."

17 Ruling Case Law, page 65, Section 71.

"Under an indictment for simple larceny proof that the thing charged to have been stolen had some value is indispensable to a conviction, even though the prosecution is for petit larceny only."

36 Corpus Juris, page 856, Section 394.

In the case of Burroughs vs. State, 137 Ind.

474, 37 N. E. 271 it was held that the court or jury could not indulge in presumptions to supply the omission of some proof of value.

Of course it is elementary that when the State relies upon proof of a murder as ensuing from the commission of one of the designated crimes or felonies that it is incumbent upon the State to prove the basic crime relied upon, and in this case it was the duty of the State to prove the crime of burglary in all its essentials. (State vs. Lyons, 70 N. J. L., 634-645)

For the purpose of this argument, even if it be admitted that there was proof of a battery by the touching, certainly there was no proof of intent to steal for the reasons above set forth. Therefore the Court was in serious error in submitting to the jury two propositions for their consideration, one of which was bad (the stealing) and the other which for the purpose of this argument may be considered as good (the battery).

The Court fell into serious error when it submitted to the jury on the two occasions before cited, the legal proposition that the stealing of the *child* was an element of burglary for a human being cannot be the subject of larceny or stealing.

> "Larceny as an offense is concerned with personal property only." (36 C. J. 736, Sec. 6)

> "Theft is defined to be a popular term for larceny. 2 Bouv. Dict. (Rawle's rev.) 1115. Larceny is the felonious taking and carrying away of the personal goods of another. 4 Bl. Com. 229. And this animo furandi—that is, with intent to steal. Ibid. 232. See, also, Gardner v. State, 55 N. J. L. 17."

> Downs v. N. J. Fidelity & Plate Glass Ins. Co., 91 N. J. L. 523 (Ct. of E. & A. by Walker, C.) at 525.

If our Section 131 shall be taken as the statutory definition of burglary—which counsel does not admit should be—the word *"steal"* in that statute and its meaning becomes of peculiar importance in this case. The word has been the subject of judicial definition in this state in an opinion by Mr. Justice Depue as follows:

> "The word 'steal' or 'stealing' in a criminal statute, when unqualified by the context, signifies a taking which at common law would have been denominated felonious, and imports the common law offence of larceny."
>
> Gardner v. State, 55 N. J. L. 17, 24.
> Affirmed 55 N. J. L. 652.

This definition has received recent approval by the Court in the case of Champion vs. Chicago Fire etc. Co., 104 N. J. L. 554, 556.

While there can be no serious controversy that the stealing of a child—a human being—is not larceny it might be well to refer here to the fact that "by the common law there is no property in a dead body and the corpse can not be the subject of larceny." Toppin vs. Moriarty, 59 N. J. Eq. 115, 116.

Since we have pointed out through the opinion in the case of Gardner vs. State, supra, that the word "steal" signifies a taking which at common law would have been designated "felonious" it becomes important to consider one additional phase as to the so-called stealing of the child which might be thought to justify the charge of the Court in that particular, and that is the question of kidnapping. But kidnapping at common law was not designated "felonious".

> "At common law, kidnapping consists in

> the stealing and carrying away or secreting of any person, or, more properly, in the forcible abduction or stealing and carrying away of a person from his own country into another, and it is said to be the most aggravated species of false imprisonment. The offense was classified as a misdemeanor at common law."

35 C. J. 903, Sec. 1.

It hardly needs argument to convince that in this case those parts of the charge which define burglary as including the intent to steal the child were most prejudicial to the defendant. The taking of the child was the outstanding fact around which the State's case was built. From this part of the Judge's charge the jury had the right to believe and must have believed that the mere intent to steal this child constituted a sufficient intent necessary to the crime of burglary. It is plain to see that their entire verdict might have been and was probably, based upon that fact and the proposition of law submitted to it by the court.

The parts of the Charge complained of have been assigned as error and there were specific exceptions taken at the trial to the Court's definition of burglary. (p. 4539, l 25) (p. 4529, l 25, etc.)

POINT VIII

THE BURGLARY, IF ANY WAS COMMITTED, WAS COMPLETE IN HUNTERDON COUNTY AND SEPARABLE FROM THE MURDER PRESUMED TO HAVE BEEN COMMITTED IN MERCER COUNTY.

State vs. Carlino, 98 N. J. L. 48, and State vs. Turco, 99 N. J. L. 96, involved the crime of robbery. In those cases it was held by this court that the doctrine of flight applied and if death resulted from the felony while defendant was in flight that was part and parcel of the robbery. However, these cases are to be distinguished from the one under discussion for the reason that the State's theory in this case was that the murder ensued from the commission of a burglary and there was no evidence of flight. Burglary is a far different crime by nature than that of robbery because the crime of burglarly is complete when there is a breaking and entry coupled with an intention to commit a felony. Such crime implies no necessary flight. On the other hand, robbery does embrace the necessary element of flight from the scene with the booty.

From the earliest times burglary "is defined to be, the breaking and entry into the mansion house of another, with the intent to commit some felony therein, and that in the nighttime."

State vs. Wilson, 1 N. J. L. 502, *page 439.

The Court's attention is directed to the following cases involving charges of murder ensuing from the commission of burglary and which cases set forth the rule as to the time when the burglary should be considered as complete:

In the case of People v. Huter, 184 N. Y. 237; 77 Northeastern, p. 6, the facts as they appear in

this case, from Judge Haight's opinion are: That the defendant broke into a bakeshop, located on 3rd Avenue, between 54th and 55th Streets, New York, and had a horse and wagon in front of the premises; he had removed a crate of eggs, and placed it in the wagon and returned to the shop to get another crate when discovered by the watchman. He then went out of the premises pursued by the watchman, who later was joined by a Police Officer at 55th Street. The defendant turned and fired at the Officer, killing him. The judge charged the jury that if they found these facts to be so, they ought to find the defendant guilty of murder in the first degree, as the killing took place in the commission of felony.

The Court of Appeals of New York, however, held this to be error. They said:

> "It is true that he was immediately pursued by the watchman and by Officer Enright, but we incline to the view that this did not operate to continue the burglary after the defendant had abandoned the property that he undertook to carry away and had escaped from the premises burglarized."

The Court cited People v. Myers, 162 New York, 357; 57 Northeastern, 758, and pointed out there that the defendant had committed the crime of murder while still on the premises he was burglarizing and "before he had broken out on to the street."

The Court also cited the case of Dolan v. People, 64 New York, 485-487, where the Court said:

> "That the defendant could be said to be engaged in the commission of the crime UNTIL he leaves the building with his plunder."

Judge Haight said:

"Was the assault in this case upon the Officer a separate and independent felony from that of the homicide, or did it form a part of and become the chief ingredient of that crime?"

In the case of People v. Marwig, 227 New York, 382; 125 Northeastern, 535, the principal above enumerated was approved.

The Court said:

"It is evident, that if the criminals had escaped, and were a mile away from the place of the crime, it could not be said that they were then in the commission of a felony. At what distance from the place of the crime would the felony committed in the store end? The rule cannot depend upon some arbitrary measure of distance. It was said in People v. Huter, 184 New York, 237, that in all cases to which the attention of this Court had been called in which persons had been convicted of murder in the first degree by reason of the killing of a person while the accused was engaged in the commission of a burglary, the killing took place upon the premises."

In People v. Marendi, 213 N. Y. 600, 607, 107 N. E. 1058, 1060, it was said:

"Assuming that the defendant fired the fatal shot at Officer Murtha, the truth undoubtedly is that the shooting of O'Connell, if done by the defendant, was to escape the consequences of the earlier completed crime. On that theory the jury might very well have found that the defendant formed the deliberate and premeditated design to shoot any one who got in the way of his escape; but that did not justify the submission of

the case to the jury so as to permit a conviction of murder in the first degree for an unintentional homicide, committed without such a design."

In the Marwig case, a request to charge was submitted, which was very similar to the request in this case:

"If this evidence does not show that this shooting occurred while the robbery or the attempt at robbery was being made, but was after it was over and abandoned by the persons charged, that they cannot find the defendant guilty as charged in the indictment."

The Court charged this request with the additional statement, that if the jury were satisfied that a robbery had been made or attempted, that that attempt together with the efforts to escape was all and one a part of a continuance transaction. Said the Appellate Court:

"Here it will be noticed that the Court charged as a matter of law that the escaping upon the public streets was a part of the crime of robbery. The modification therefore, was incorrect."

The opinion in this case is a lengthy one, and there is such a thorough examination of the law on the subject in same, that the attention of the Court is most earnestly called to it.

In the case of People v. Smith, 232 New York 239, and 133 Northeastern 574, it appeared from the opinion of Chief Judge Hiscock, that defendant broke into the store of one Johnson. The proprietor's son found the defendant engaged in the commission of the crime of burglary, arrested him, took from his possession various articles, including a pistol, placed him in a chair and handcuffed him; then

the proprietor stepped to a telephone, and the defendant suddenly sprang and seized the gun, which stood near by, and shot causing the death of the son.

The trial judge charged in effect that if the defendant was engaged in the crime of burglary, and this homicide resulted, that he might be convicted of murder in the first degree. Presence upon the premises was made conclusive evidence of the continuance of the crime. The Appellate Court said in substance, that this was not correct, as it appeared as a matter of fact that the crime had been terminated before the homicide was committed.

In People v. Lamb, 96 Ill. p. 73, it appeared that Lamb and another had burglarized an establishment and the other while unloading the plunder some place distant from the scene of the burglary, murdered an officer who discovered him. Lambe had abandoned his accomplice after the burglary had been committed, and before the plunder had been removed to the place in question. It was held, that the shooting by his confederate was not murder in the commission of a felony, so as to hold Lamb.

POINT IX

ARGUMENTS HEREINBEFORE REFERRED TO ARE SUPPORTED BY THE RECENT CASE OF STATE VS. JONES.

Since drafting this brief there has been brought to my attention the opinion of this court in the case of State vs. Jones decided June 13th, 1935, and still unreported in which Mr. Justice Parker discussed the question as to whether or not burglary was a statutory crime and used the following language:

> "That theory raises the troublesome question, never decided in this court, whether the 'burglary' mentioned in Sections 106 and 107 of the Crimes Act is, on the one hand, burglary

at common law, viz., the breaking and entering by night into a mansion house with intent to commit a felony, (4 Blk. 224; 2 Bish. New Crim. Law, Sec. 90; 1 Russell on Crimes, 785) or, on the other, any act denounced in Sec. 131 of the Crimes Act, which, it may be noted, does not in its text describe violations as constituting burglary, but merely pronounces them high misdemeanors; (though in sections 123 and 129 certain described burnings are declared to be 'arson.') This question, never decided in this court has been considered in another phase in the Supreme Court, and adverted to more than once in other cases. See Conners v. State, 45 N. J. Law, 346; Downs v. Insurance Co., 91 Id. 523; State v. Tonghanni 96 Id., 63: State v. Rosenberg, 97 Id., 430. In State v. Lyons, supra, burglary was not suggested. In State v. Compo 108 N. J. Law, 499 at page 501, a conviction of murder in perpetrating a robbery, we quoted Section 120 of the Crimes Act as defining robbery, and added: 'The common law definition of robbery has, notwithstanding, been uniformly approved and followed in cases where homicide has been committed in the perpetration of a robbery', citing the Lyons case, at page 645, where the common law definition of robbery as stated by the trial court was expressly approved, and the statute (Crimes Act, Sec. 120) was not even alluded to."

Most of the cases cited in the opinion have been referred to and discussed heretofore in this brief.

The opinion in the Jones case also referred to the question of permitting the introduction of a new issue and the following pertinent comments were made:

"In opening, the prosecutor asked a first

> "In all criminal prosecutions, the accused shall have a right to a speedy and public trial by an impartial jury." Article I, Section VIII.

The constitutional guarantee of a speedy and public trial was accorded plaintiff-in-error and the publicity of the proceedings was subordinated to the orderly and proper manner in which the trial was conducted. Plaintiff-in-error was not deprived of the presence, aid or counsel of any person whose presence might be of advantage to him, and the proceedings at all times were conducted in an impartial, courteous and decorous manner. Throughout the trial the judicial poise of the presiding justice and the patience and courtesy with which he supervised the proceedings evoked the merited praise and admiration of all competent observers. The conduct of the trial was a model of judicial propriety to which the State can and does point with pride.

It is submitted that the verdict was justified by the weight of the evidence.

THE ASSIGNMENTS OF ERROR AND SPECIFICATIONS FOR REVERSAL

The Assignments of Error and Specifications of Causes for Reversal fail to show wherein plaintiff-in-error suffered manifest wrong or injury, or was precluded from maintaining his defense upon the merits.

Group A

1. There is no error in permitting the witness, Joseph J. Farber, to answer the question:

> Q. Do you know how far that is from St. Raymond's Cemetery?

because it was material how far it was from St. Raymond's Cemetery.

experiments, his identification of the flooring in the attic in Hauptmann's house and the side rail of the kidnap ladder as once having been the same piece of wood, was an outstanding feature of the testimony. His testimony was unshaken and uncontradicted and the weight thereof was a proper question for the consideration of the jury.

The testimony of Dr. John F. Condon is of like effect. He described clearly and accurately his meetings with plaintiff-in-error, payment of the ransom money and his identification was positive, emphatic and adroit, and skillful cross-examination in no way affected his story, and the weight to be given thereto was properly a question for the consideration of the jury and the court so charged.

With respect to the testimony of the witnesses, Miss Alexander, Joseph Perrone, Frank Wilson and Cecilia Barr, their testimony and the weight to be given thereto, were strictly jury questions. The probity of these witnesses is unquestioned and their standing in their respective spheres of life and in the communities in which they live, well and favorably known.

It was competent for the State to show the pecuniary condition of the plaintiff-in-error prior to the commission of the crime and his condition subsequent thereto. It was established that, after payment of the ransom money on April 2, 1932, plaintiff-in-error never worked again at his trade as a carpenter, but devoted his time to stock market speculation. His accounts showing balances running into the thousands of dollars and evidence to this effect was competent and material, admitted by the court and a proper subject for the consideration of the jury.

Concerning the remaining contentions of counsel, but brief answers are necessary:

The State Constitution provides:

> "In all criminal prosecutions, the accused shall have a right to a speedy and public trial by an impartial jury." Article I, Section VIII.

The constitutional guarantee of a speedy and public trial was accorded plaintiff-in-error and the publicity of the proceedings was subordinated to the orderly and proper manner in which the trial was conducted. Plaintiff-in-error was not deprived of the presence, aid or counsel of any person whose presence might be of advantage to him, and the proceedings at all times were conducted in an impartial, courteous and decorous manner. Throughout the trial the judicial poise of the presiding justice and the patience and courtesy with which he supervised the proceedings evoked the merited praise and admiration of all competent observers. The conduct of the trial was a model of judicial propriety to which the State can and does point with pride.

It is submitted that the verdict was justified by the weight of the evidence.

THE ASSIGNMENTS OF ERROR AND SPECIFICATIONS FOR REVERSAL

The Assignments of Error and Specifications of Causes for Reversal fail to show wherein plaintiff-in-error suffered manifest wrong or injury, or was precluded from maintaining his defense upon the merits.

Group A

1. There is no error in permitting the witness, Joseph J. Farber, to answer the question:

> Q. Do you know how far that is from St. Raymond's Cemetery?

because it was material how far it was from St. Raymond's Cemetery.

of the defendant practically says to the jury "Of course if there is any reasonable doubt as to the truth of any testimony in regard to Dr. Condon's evidence, such testimony should be rejected," but on the whole of Dr. Condon's testimony, according to the judge, how could there be any doubt in your minds as to the reliability of Dr. Condon's testimony.

The crux of the charge of the court is stated in a judicial interrogatory tone in the court's charge to the jury as follows:

> "Was not the defendant the man who left the ransom note on the window sill and who took the child from its crib after opening a closed window?" (p. 4506, ll. 38-40; p. 4507, ll. 1-2).

In regard to the ladder the court says:

> "If it was not there for the purpose of reaching the nursery window for what purpose was it there? * * * Does not the evidence satisfy you that at least a part of the wood from which the ladder was built came out of the flooring of the attic of the defendant? (p. 4059, ll. 17-20; 22-26.)

Then the court charged as follows:

> "The evidence justifies the inference, if you see fit to draw it, that the window was maliciously opened and the child seized shortly after nine o'clock that night." (p. 4503, ll. 13-16).

A mere reading of the foregoing comment immediately impressed not only the jury with the fact that the defendant, Hauptmann, maliciously ascended the ladder, opened the window, took the baby and committed the very crime of which he was charged

and instead of being the permissible comments permitted to a court, impressed the jury with the fact that from the circumstances of the open window and the appearance of the ladder that the judicial mind had becomed convinced of the guilt of the defendant of the crime for which he was on trial. The enormity and legal impropriety of this comment consists in the fact that the jury was naturally swerved by the judicial declaration that the person who put the ladder against the house was also the person who opened the window and was also the person who took the child and according to the evidence of the state was none other than the defendant, Hauptmann. The criticisms that have been heretofore made upon the isolation of the evidence incriminating the defendant and the judicial ignoring of the defense testimony constituted what the defendant claimed is an unwarranted invasion of the defendant's right to have the jury's consideration free and unimpaired by any comment from the court which denied to him the impartial consideration of all the State's evidence and all the defendant's evidence. The defense sets forth further conclusions which were contained in the charge of the court and insists that all these judicial queries bear a striking analogy to that species of leading questions whose use is forbidden to advocates.

> "The defendant says that these ransom bills, moneys, were left with him by one Fisch, a man now dead. Do you believe that?" (p. 4508, lines 31-34).
>
> "He says that he found them in a shoe box which had been reposing on the top shelf of his closet several months after the box had been left with him, and that he then, without telling anybody, secretly hid them, or most of them, in the garage, where they were found by the police. Do you believe his testimony that the money was left with him in a shoe box,

and that it rested on the top shelf in his closet for several months?" (p. 4508, lines 35-40; p. 4509, lines 1-5).

"There is evidence from which you may conclude, if you see fit, that the defendant built the ladder, although he denies it. Does not the evidence satisfy you that at least a part of the wood from which the ladder was built came out of the flooring of the attic of the defendant?" (p. 4509, lines 22-28).

And in relation to the finding of the thumb guard on April 1, 1932, by Miss Gow and Mrs. Whateley, the court said:

"From which you may possibly conclude that the sleeping suit was stripped off of the child at that place." (p. 4501, lines 25-29).

This conclusion is entirely unwarranted by the evidence for by the mere finding of a thumb guard which had been tied to the sleeping suit the court presented to the jury its conclusion and thereby precluded any other probable reason for the finding of the thumb guard and as to how it had become detached from the sleeping suit.

Speaking of the thumb guard "from which you may possibly conclude that the sleeping suit was stripped off of the child at that place." The fact that the thumb guard was found a long time after the kidnapping in the Lindbergh road might have justified the court in saying to the jury that the "thumb guard fell off or was stripped off at that place" but the mere fact that the thumb guard had been tied around the wrist of the child and the sleeping suit and not fastened to the sleeping suit would in no way justify the inference "that the sleeping suit was stripped off the child at that place." Nor was there any other evidence, circumstantial or

direct, from which such an inference or conclusion could be drawn.

In opening to the jury the Attorney General contended that the child came to its death when the ladder broke. After all of the evidence was in and in summation the Attorney General switched his theory and argued to the jury that the child's cry was stifled in the nursery and that the child was killed in the nursery. There is not a scintilla of evidence in the whole case, circumstantial or otherwise, to justify the court in calling the attention of the jury that death was inflicted "when it was seized and carried out the nursery window, down the ladder and when the ladder broke." No fact or circumstance can be found anywhere in the case to justify this inference. While that had been the original contention of the case, even that contention was abandoned by the State when it switched to the theory that death occurred in the nursery so that the comments of the court had no support either in the evidence or in the argument or contention of the state.

The only possible argument in support of the inference that the window was ever opened was the presence of a smudge of mud on the dress suit case and carpet which circumstances did not exclude any of the other reasonable hypotheses, and is of itself no argument in spport of the theory that the window had ever been open. As opposed to this is the undisputed evidence that there were no marks of any character found upon the window or the window sill of any instrument used to open the window and that the window itself was carefully dusted for fingerprints within a very short time after the kidnapping, that no finger prints were discovered, not even those of Mrs. Lindbergh who closed the window and that the stein setting on the window ledge had not been disturbed. In other words, there was no justification either in the evidence or the

circumstances narrated to justify the statement, "the evidence justifies the inference, if you see fit to draw it, that the window was maliciously opened and the child seized shortly after nine o'clock." In this connection it may be well to remember that an inference can only rest upon a fact, that an inference cannot rest upon another inference or a series of inferences, unless the original inference is founded on an unquestioned foundation of fact.

What justification is there in the evidence for the comment "but you will observe that his (Dr. Condon's) testimony is corroborated in large part by several witnesses whose credibility has not been impeached in any manner whatsoever." Whether the testimony of a witness has been corroborated either in large or small part by several witnesses and whether the credibility of any witness has been impeached, directly, indirectly, or by the witness himself for that matter, is not something to be stated as a positive fact by the trial judge, it is for the jury and for the jury alone to decide.

Nor was there any justification in the court adding the weight and strength of his own conclusions and justifications to the testimony of Dr. Condon as a witness when he inquired, "But, upon the whole, is there any doubt in your mind as to the reliability of Dr. Condon's testimony?" This witness's testimony was to be tested by the jury the same as that of any other witness. This particular comment standing alone perhaps would be of little consequence but when taken into consideration with all of the other comments criticized it adds weight to the burden which this defendant was unjustly and unreasonably required to bear.

Perhaps this interrogatory would not have been open to very much criticism were it not for the inclusion, "after opening the closed window." We have already discussed the utter lack of evidence that the window was ever opened.

Admittedly the evidence of all the theory of the state was largely circumstantial. Whether the kidnapping was done by a gang with the help or connivance of someone on the inside of the Lindbergh household was a circumstance to be considered by the jury. It is impossible to escape the conviction that under the conditions prevailing the probability of help or connivance of someone on the inside is a far more reasonable hypothesis than any theory advanced by the State. Hence, the interrogatory, "Now do you believe that?" was not justified. Is there any evidence in this case whatsoever to support any such conclusion?" Since there was no evidence in the case to support any other conclusion and since it rested if at all in circumstantial evidence, the circumstances in support of the defendant's theory were much stronger, much more rational and convincing than those advanced by the State. Standing alone this comment might not have been so serious but it also added to the burden of this defendant.

To be sure, the jury was entitled to say whether they believed the defendant's story that the money was left to him by one Fisch. But in this very important case and especially in view of the tremendous handicap under which this defendant was laboring, it certainly does seem that this question should have been left to the free, open, frank and impartial consideration of the jury because after all, it was the defendant's explanation, it was certainly reasonable and rational, and the jury should have been permitted to consider it without the definite suggestion of the trial judge that it was not worthy of belief by the use of the interrogatory, "Do you believe that?"

What has just been said applies with equal force to the interrogatory, "Do you believe his testimony that the money was left with him in a shoe box * * *"

Whether the ladder was used to enter the house

is purely a matter of speculation. It might be argued that there are possibly some circumstances pointing in that direction but there was neither evidence nor circumstances in the case which justified the trial judge in saying to the jury, " * * * consider the evidence with respect to the ladder, if you find, as seems likely, that it was used in reaching the nursery." This was a strong statement by the trial judge. Its tendency was to instruct the jury that the ladder was in fact used for the purpose of reaching the window. "As seems likely" coming from the distinguished trial judge, to whose every word the jury clung most tenaciously, had the effect of turning a conjecture into a fact and to take from the jury consideration of the other reasonable and equally probably hypothesis.

It is respectfully submitted that there was less justification for the interrogatory, "Does not the evidence satisfy you that at least a part of the wood from which the ladder was built came out of the flooring of the attic of the defendant?" One of the most bitterly contested points of this case revolved around this contention of the State. Equally honorable and well versed men with years and years of experience in the handling of wood, namely, Charles DeBisschop and Ewald Mielke, testified positively and gave strong reasons in support of their opinion that the two boards were never a part of the same tree and bore no relation to each other. Was the learned trial judge justified in belittling this evidence, in brushing it aside, and by the force of his comment and interrogatory, casting doubt upon it? There certainly was very strong evidence besides the appearance of the boards themselves refuting this contention of the State. The least that could have been accorded this defendant under the circumstances was to leave it to the open, free and uninfluenced discussion of the jury.

One need but read the testimony of the witness,

Hochmuth, (C. B. Vol. I, 444-467) to be convinced that the testimony of this witness was such as to require scrutiny and careful consideration and the question will immediately arise in one's mind, was not this old man suffering from hallucinations? On the whole is his testimony reasonable and probable? The interrogatory propounded by the trial judge, "Do you think that there is any reason, upon the whole, to doubt the truth of the old man's testimony?" invaded the province of the jury and added still more, and forcibly, to the overwhelming handicap under which the defendant suffered.

It is pointed out to the Court that on the law of alibi as set forth in the cases of State vs. Sherlock 60 N. J. L. 31, State vs. MacQueen, 69 N. J. L. 522, State vs. Neary, 106 N. J. L. 104, and numerous other cases in the State of New Jersey, the law is unquestionably that three mental operations can take place in the jurors' minds as to the effect of an alibi. In the first place, an alibi may be so convincing that the jury will unhesitatingly believe it to be true and in that case an acquittal would follow by force of logic. In the second place the jurors' minds may be in such a state that they disregard the alibi in its entirety, but there is a third mental posture in which the minds of the jury may remain in a state of doubt as to whether the alibi as proved is true or false, and in that wavering condition the defendant is entitled to the benefit of the reasonable doubt of the alibi, which in reality means the negation of the defendant's presence at the scene of the crime and the defendant is entitled under our law to an acquittal.

On page 4510 of the State of the Case, bearing on the question of alibi, the Court at page 4511, directed the jury to bring up the testimony of Mr. Hochmuth along with that of other witnesses and from lines one to thirty, the Court commented

upon the effect to be given to defendant's case in this matter.

> "The defendant, as I have said, denies that he was there or ever in the neighborhood; but as bearing upon that question, you should consider the testimony of other witnesses, that the defendant was seen in the neighborhood, not long before March 1st, 1932, and give it such weight as you think it is entitled to, after considering the credibility of the witnesses, as disclosed by the evidence." (p. 4511, ll. 21-31).

The Court at the bottom of page 4511, said:

> "This testimony produced by the defendant I shall not attempt to recite in greater detail. It should be given consideration by you and given such weight as you think it is entitled to, after considering it in connection with all of the other evidence in the case, bearing upon these questions and all other questions in the case, determination of which would tend to throw light upon the case."

Now in regard to the defense, in the charge of the Court, the Court said:

> "Defendant denies that he was ever on the Lindbergh premises, and denies he was present at the time the child was seized and carried away. He testified he was in New York at that time. He denies he received the ransom money in the cemetery. He says he was at his home at that time on the evening of April 2, 1932." (p. 4510).

The Court further said:

"This mode of meeting a charge of crime is commonly called setting up an alibi. It is not looked upon with any disfavor in the law for whatever evidence tends to prove that the defendant was elsewhere at the time the crime was committed at the same time tends to contradict the fact that the crime was committed by the defendant, whereas, here, the presence of the defendant is essential to guilt, and if a reasonable doubt of guilt is raised, even by inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt." (p. 4510).

The plaintiff in error complains that the initial reaction of the jury to the statement that the defense of alibi is not looked upon with any disfavor in the law is not a true statement of the legal effect of the force of the evidence of alibi as mentioned in the Sherlock case and those cases which have been cited above. The charge of the Court on the question of alibi and the emphasis on Hochmuth's credibility, were practically a direction to the jury that the jury should give such weight to the defendant's evidence as the defendant's evidence is entitled to and furthermore that the statement that defense of alibi is not looked upon with any disfavor in the law makes considerable difference both legal and factual from declaring that alibi is a legal defense proper to be urged by Hauptmann and subjected to the standard of comparison and judgment outlined in the various cases where the defense was urged and charges of the trial courts construed by our courts. The defense claims that the inapt expression of the word "disfavor" prepared the minds of the jury by substantially saying to the jury that the defendant has urged a defense which while it is not looked upon as one of the highest degree of integrity and probity is not regarded with any disfavor in the law. In

regard to the defense which the Court says is not looked upon with disfavor, the Court especially called the attention to the jury to the testimony of Mr. Hochmuth (on page 4511, State of the Case) wherein the Court spoke as follows:

> "Mr. Hochmuth lives at or about the entrance of the lane that goes up to the Lindbergh house.
>
> He testified that on the forenoon of that day, March 1st, 1932, he saw the defendant at that point, driving rapidly from the direction of Hopewell; that he got in the ditch or dangerously near the ditch, and that he had a ladder in the car, which car was a dirty green. This testimony, if true, is highly significant. Do you think that there is any reason, upon the whole, to doubt the truth of the old man's testimony? May he not have well and easily remembered the circumstance, in view of the fact that that very night the child was carried away. The defendant, as I have said, denies that he was there or ever in the neighborhood; but, as bearing upon that question, you should consider the testimony of other witnesses, that the defendant was seen in the neighborhood not long before March 1st, 1932, and give it such weight as you think it is entitled to, after considering the credibility of the witnesses, as disclosed by the evidence."

The defendant respectfully submits that the overemphasis of Hochmuth's testimony, and the underemphasis or failure to refer at any time whatever to any particular witness of the defendant (which failure was brought to attention of court see page 4543) constitutes an entirely unnecessary emphasis upon this particular witness's testimony, first, by reason of the interrogative form in which it was pre-

sented to the jury, and secondly in the failure to mention to the jury, if it did not already know it, that fairness to the defendant would call to the attention of the jury certain features in Hochmuth's testimony which would at least justify the jury not alone in doubting the truth of the old man's testimony as the court said, but would have placed the jury in the position of saying that the old man's testimony could not only be doubted because he was in reality a surprise witness, but because he had never come forward at any time prior to the trial.

He was eighty-seven years of age. He had never appeared in any court but Hunterdon County. If he had appeared in the extradition proceedings in New York, if he had come forth immediately as was the criterion of conduct prescribed for the defense witnesses by the Attorney General, there might have been no reason upon the whole to doubt the truth of the old man's testimony.

Hochmuth lived at or about the entrance of the lane that goes up to the Lindbergh house. In the long drawn out efforts of extradition the mere identification by Hochmuth in the New York Police Court would have saved the State of New Jersey much expense and effort. The very reason that the Court gave that Hochmuth may have well and easily remembered the circumstances in view of the fact that the very night the child was carried away was the night of the day on which he had seen Hauptmann at the entrance to the lane, by reason of the closeness of the home of Hochmuth and the interminable number of people who had traversed the road leading to the Lindbergh place, and the proximity of Lindbergh to him, and his constant availability to the State Police and the numerous police officials who uninterruptedly carried on the search for witnesses, it is baffling and extraordinary that the man who lived closer than any other person in the case to Lindbergh's house, failed to remem-

ber the circumstances of March 1, 1932, and for the very reason given why he should remember it because it was the night the child was carried away, the jury had the right to ask why did Hochmuth wait so long when he well and easily remembered the circumstances according to the presiding judge who asked the jury was there any reason to doubt the truth of the Hochmuth's testimony.

On pages 4512-4513 the Court charged as follows:

> "It is not sufficient that the circumstances proved coincide with, account for and therefore render probable the hypothesis that is sought to be established by the prosecution. They must exclude to a moral certainty every other hypothesis but the single one of guilt, and if they do not do this the jury should find the defendant not guilty." (p. 4512).
>
> "And where the essential facts and circumstances are proved, which cannot be explained upon any other theory than that the defendant is guilty of the crime charged against him, such evidence should be considered as satisfactory and convincing as that of the most direct and positive character." (p. 4513).

Each of these statements were used in relation to the probative effect of circumstantial evidence which as the Court said (at p. 4513, lines 5-10) in relation to the crime of murder may be established by circumstantial evidence. The defendant insists that the criterion of the proof engendered by circumstantial evidence violates the fundamental law of this state and upsets each legal postulate hitherto imbedded in our system of criminal jurisprudence. It is destructive of the definition of reasonable doubt and it imposes upon the defendant the burden of

practically establishing his innocence to the satisfaction of the jury. In reasonable doubt there is no doctrine of exclusion. The defendant is not compelled to prove his freedom from blame but excluding any impossible hypothesis the evidence in a case consists of factors of quality of testimony and evidence and numbers of persons or things and there is no physical or personal balancing of quality or quantity, and as was aptly stated in the case of State vs. Sandt, 95 N. J. L. 50 the charge of the Court put on the defendants the burden of showing that they were innocent beyond a reasonable doubt when by law they are to be assumed innocent until the state overcomes that presumption and establishes the guilt of the defendant, beyond reasonable doubt. In the case of State vs. Sandt, the manifest ambiguity in the charge tended to mislead the jury and no matter what other parts of the charge of the instant case on the subject of reasonable doubt attempted to carry an erroneous statement of the law, the jury is not, under the case of State vs. Clayton (83 N. J. L. 676) or under any other case, compelled to choose with unerring accuracy which of the two legal propositions is the proper one. In the case of State vs. Burke (81 N. J. L. 93) the trial court instructed that "It is not essential to overcome the presumption of innocence, that there must be direct evidence indicating the guilt of the defendant. If the circumstances incident to the situation admit of drawing an inference excluding any notion but that of guilt it would be sufficient to maintain the contention of the State that the presumption of innocence has been overcome." The conviction was reversed because of the erroneous instruction.

The Supreme Court in that case said the presumption of the defendant's innocence continues until overcome by proof establishing his guilt beyond a reasonable doubt.

See also State vs. Sahazian, 98 N. J. L. 430.

These remarks and charge of the Court on the question of the circumstantial evidence (p. 4512-4513) contravert and upset every legal postulate hitherto imbedded in our system of criminal jurisprudence. These expressions are destructive of the definition of reasonable doubt as it imposes upon the defendant a burden which the law does not constitutionally call upon him to bear. It was a practical declaration that unless defendant's innocence was established by the evidence in the case his acquittal was impossible under the charge of the court.

The charge of the Court at pages 4512-4513 was the imposition of a burden which substituted as satisfactory and convincing evidence, just as potent as that of the most direct and positive evidence possible, and deprived the defendant of the benefit of the rule of reasonable doubt and its intrinsic advantages, the most important of which is that of its ever-present and non-shifting character of the burden imposed by law.

The Court is referred in support of some of the foregoing argument under this point to the synopses of the following decisions from various jurisdictions:

Though it may be difficult from the printed pages of the record to form an opinion as to the accurate manner and character of speech of a trial judge in his charge to the jury yet it is contended by the plaintiff in error that the trial judge referred to the witnesses' testimony for defendant in a disparaging manner and insinuated that its truth was questionable and in other ways belittled their testimony and minimized its effect. Counsel is mindful of the fact that a trial court has a right to point out to the jury inconsistencies in witnesses' testimony. However, the limitation of the right is that there must be reasonable ground for his statement and

that it is not made as a binding direction or inference.

Commonwealth vs. Pursel, 167 Atl. 399.

"Where a Judge, although making a perfect charge, becomes partial toward one of the litigants and by intonation of voice, facial expression, gestures and emphasis, his attitude portrays emphatic approval of one side and all connected therewith, there must necessarily result an impairment of that free and unbiased verdict which, under our system of jurisprudence, is required essential to the administration of justice."

People v. DeMartine, 199 N. Y. S. 426, 205 App. Div. 80."

The charge of the trial judge was not a calm and dispassionate one or in expression or tenor a judicial presentation of the case or a fair and impartial summation of the evidence.

Comm. v. Trunk, 167 Atl. 333, 311 Pa. 555, rev. 161 Atl. 767, 105 Pa. Super. 569.

The tone and language of the judge in many parts was that of an advocate for the prosecution and therefore not such a judicial presentation of the case as the defendant was entitled to.

Commonwealth vs. Stallone, 126 Atl. 56; Commonwealth vs. Westley, 150 Atl. 94.

The practice of a judge entering into the trial of a case as an advocate is manifestly disapproved. The judge occupies an exalted and dignified position; he is the one person to whom the jury with rare exceptions looks for guidance and from whom the litigants expect absolute impartiality.

Commonwealth vs. Myma, 123 Atl. p. 486.

It is a fundamental right of an accused not to have his defense prejudiced by the judge's belittling his testimony or that of his witnesses and not giving them the benefit of its full effect.

Commonwealth vs. Stoner, 108 Atl. 624.
Commonwealth vs. Ronnello, 96 Atl. 826.

In Minner vs. U. S., supra, it was held by Circuit Court Judge Phillips of the Circuit Court of Appeals at page 513 that a trial judge "in summing up and commenting on the evidence should state the evidence fairly and accurately both that which is favorable and that which is unfavorable to the accused. His statements should not be argumentative but impartial, dispassionate and judicial and they should be so carefully guarded that the jurors are left free to exercise their independent judgment upon the facts."

Citing Spalitto vs. U. S. 39 Fed. * 2d * 782;
Wallace vs. U. S. 291 Fed. 972.

The use of queries by a Judge in commenting on evidence was condemned by the U. S. Circuit Court of Appeals in an opinion using the following apt language:

> "Under the Constitution one accused of crime is entitled to a determination by a jury of the fact questions involved. The jury can easily be misled by the Court. Its members are sensitive to the opinion of the Court, and it is not a fair jury trial when the Court turns from legitimate instructions as to the law to argue the facts in favor of the prosecution. The government provides an officer to argue the case to the jury. That is not a part of the Court's duty. He is not precluded, of course, from

expressing his opinion of the facts, but he is precluded from giving a one-sided charge in the nature of an argument. We do not think the error in this case is cured by the mere statement to the jury that they were not bound by his opinion, and that they should follow their own judgment."

Weare vs. U. S. 1 F. (2r) 617, 619.

The judge cannot sum up the evidence of the prosecution only and make comment on evidence in nature of argument to the jury (Minner v. U. S., 57 Fed. * 2d * 506; make statement for which there is no reasonable ground (Comm. v. Pursel, 167 Atl. 399, 110 Pa. Super. 110); use the tone and language of an advocate (Comm. v. Truck, 167 Atl. 333, 311 Pa. 555, rev. 161 Atl. 767, 105 Pa. Super. 569); usurp functions of the jury (People vs. Lewis, 249 N. W. 451, 264 Mich. 83); deprive the defendant of a fair trial (People v. Lewis, 249 N. W. 451; 264 Mich. 83); assume role of witness (Quercia v. U. S., 53 S. Ct. 698, 289, U. S. 466, 77 L. Ed. 1321, rev. (C. C. A.) 62 Fed. * 2d * 746, cert. gr. 53 S. Ct. 525; 289 U. S. 715, 77 L. Ed. 1468); distort testimony (Id.); add to testimony (Id.); make misleading and one-sided statements, (Id.); comment only on the evidence of guilt (Spalitto v. U. S., 39 Fed. * 2d * 782; Shaughnessy v. U. S., 17 Fed. * 2d * 225); try to argue the jury into a verdict (Sunderland v. U. S., 19 Fed. * 2d * 202); be argumentative to a degree which makes comment characteristically an act of advocacy (Wallace v. U. S., 291 Fed. 972); or color his charge so as to unfairly influence the jury (Slater v. U. S., 264 Fed. 18.

It is a recognized rule that it is error for a Court to charge a fact which is said to be not proof when

there is no testimony to support it. This rule applies alike to criminal as well as civil cases.

Kresse vs. Metropolitan Life Co., 111 N. J. L. 474 at 480.
State vs. Herbert, 92 N. J. L. 341 at 360.

And a misstatement of fact is not cured by a statement in the Court's charge that the jury is to rely upon its recollection of the evidence as such reference relates only to disputed questions of fact.

See State vs. Herbert, supra, at p. 360.

POINT XI.

THE COURT FAILED TO CHARGE THE RULE AS TO THE WEIGHT TO BE ACCORDED TO HANDWRITING TESTIMONY AND WHICH WAS MATERIAL TO THE ISSUE.

We recognize the rule that a trial judge is not required to adopt and charge a request in the language submitted even though such request contains quotations from cases or textbooks; but in this case the testimony of the handwriting experts was relied upon by the State and became one of the essential elements therein and since the trial judge undertook to comment upon this branch of the case, he was obliged to instruct the jury correctly. This, for the greater reason, that he unduly and erroneously emphasized the value and effect of handwriting testimony by referring to and quoting from the testimony of the elder Mr. Osborne (C. B. 10, p. 4507) as follows:

"Numerous experts in handwriting have testified, after exhaustive examination of the ran-

som letters, and comparison with genuine writings of the defendant, that the defendant Hauptmann wrote every one of the ransom notes, and Mr. Osborne, Senior, said that that conclusion was irresistible, unanswerable and overwhelming."

The court was specifically requested to charge as to the value to be accorded such handwriting testimony (C. B. 10, p. 4552, etc.). Exception was specifically taken to his refusal to charge as so requested. (C. B. 10, p. 4530, line 30, etc.). The Court's only charge as to the handwriting testimony is set forth above in the excerpt from the charge.

Exception was specifically taken to that part of the court's charge in the following language.

"Mr. Fisher: 'That is right, sir; and I desire to further except to your honor's failure to incorporate in your honor's charge anything that has to do with the sufficiency and weight which should be given to handwriting testimony, expert handwriting testimony, sir.' " (C. B. 10, p. 4541, line 15).

Exception was duly allowed and sealed (C. B. 10, p. 4542, line 1).

The words of Mr. Justice Case in Rowland vs. Wunderlick, 113 N. J. L. 223, 225 are pertinent and are as follows:

"The Court was thus in the posture of having been silent upon the fundamental law of the case, being requested to charge thereon and refusing, and thereafter, in charging the jury, of withholding that law so essential to the intelligent performance by the jury of their decision."

The argument of the plaintiff in error is, shortly that the requests should have been charged and that the matter having been presented for consideration by such requests and brought to the attention of the court the court completely failed to inform the jury as to the weight to be given to this material portion of the evidence in the case—the handwriting. Even in the absence of any requests to charge, it is contended that under the case last cited, it became the duty of the court to charge on this fundamental law of the case. See Rowland vs. Wunderlick, supra, at p. 226.

We have been unable to find any late case dealing with this subject in New Jersey. The last one seems to be Mutual Benefit Insurance Company vs. Brown, 30 N. J. Eq. 193 at p. 201, where Vice-Chancellor Van Fleet, referring to the value of handwriting testimony and the weight to be given to it, held:

> "But it still must be esteemed proof of low degree. Very learned judges have characterized it as much too uncertain, even when only slightly opposed, to be the foundation of a judicial decision."

Case affirmed, 32 N. J. Eq. 809.

It has been said by an eminent law writer (Moore on Facts, Sec. 615) with respect to the evidence of handwriting experts that this kind of evidence is most unsatisfactory, very inconclusive, most unreliable and of the lowest probative force.

And in 1 Wharton on Evidence, Sec. 722, referring to the effect to be given to it by the jury this eminent writer says:

> "It should consider it as an *argument* rather than as proof, and to make allowances for all

the disturbing influences by which the judgment of the expert may be moved."

Our deduction from a careful reading of the authorities and cases upon the subject leads to the conclusion that the discredit so often attached to expert testimony, particularly of this character, is directly traceable to the fact that it consists of conclusions and opinions, which are often uncertain at best, and in which one may be swayed one way or another by bias or interest without conscious dishonesty and that by our existing practice the experts are selected and paid by one of the parties and their use and utility as a witness necessarily depends on their forming an opinion *favorable to that side* and therefore, they become more or less of a paid advocate.

Haight vs. Vallet, 89 Cal. 245; 23 A. S. R. 465.

Clark vs. State, 12 Ohio, 483; 40 Am. Dec. 481.

Bateman vs. Rider, 106 Tenn. 712; 82 A. S. R. 910.

Hardy vs. Harbin, 154 U. S. 598-605.

And in Brown vs. Gosnell, 91 Iowa, 448; 59 N. W. 340, the court said:

"Opinions as to the genuineness of handwriting are, at best, weak and unsatisfactory evidence * * * generally testimony as to the genuineness of handwriting is the merest guess work."

Another important consideration to be given to the failure of the court to instruct the jury as to the weight to be given the handwriting testimony after he had referred to it in the charge is the prop-

osition of law referred to by Mr. Justice Kalisch in State vs. Barone, 96 N. J. L. 417 at 423, in commenting upon a somewhat similar proposition as follows:

> "Undoubtedly, in such a case where the court comments upon such testimony, it is its duty to explain to the jury the limitation and effect of such proof." Affirmed 98 N. J. L. 292.

Mr. Justice Kalisch in the case last cited referred to the opinion of this court in State vs. D'Adaime, 84 N. J. L. 386 where it was said with reference to the duty of the court to instruct the jury as to the limitations of certain proof:

> "The absence of such instructions even when not requested, might be sufficiently injurious to warrant reversal."

POINT XII.

THE COURT FAILED TO CHARGE AS REQUESTED.

The Court was requested to charge as follows:

> "21. The duty is upon the state to prove the defendant guilty beyond a reasonable doubt and no duty is cast upon the defendant to cause the jury to entertain a doubt as to his guilt." (p. 4551).

Exception was taken to the refusal to charge. (p. 4536).

The Court did charge the rule of reasonable doubt and instructed the jury on several occasions to the effect that the state must prove the facts beyond a reasonable doubt. (p. 4499, l. 10; p. 4513, l. 20;

4515 l. 20). Nowhere in the Court's charge is it stated to the jury that there was no duty cast upon the defendant to cause the jury to entertain a doubt.

In the case of State vs. Hadley, 113 N. J. L. 335, Mr. Justice Bodine said:

> "The duty was upon the State to prove the defendants guilty beyond a reasonable doubt, and no duty was cast upon the defendants to cause the jury to entertain a doubt as to their guilt."

See also State vs. Bush 98 S. E. 281; People vs. Bickerstaff 190 Pac. 656.

Insofar as the question of venue was concerned, the Court was requested to charge:

> "1. There is no evidence in this case that the murder was committed in Hunterdon County.
>
> 2. The body of the child in question having been found in Mercer County the legal presumption is that the death occurred in Mercer County.
>
> 3. This presumption has not been rebutted or overcome by any competent evidence.
>
> 4. There is no evidence that the child in question was feloniously stricken in Hunterdon County.
>
> 6. There is no evidence in this case of a completed crime of murder in any degree or manslaughter having been committed by the defendant in Hunterdon County.
>
> 10. If you find that the death of the child in question occurred in Mercer County and ensued from the commission of a burglary in Hunterdon County you should acquit the defendant."

These requests are found at page 4549.

These requests should have been charged pursuant to the argument advanced under Point V of this Brief.

Exception was taken to the refusal to charge them. (p. 4532.)

The Court was requested to charge in the following particulars:

> "8. There is no evidence in this case that this defendant committed or attempted to commit the crime of burglary on March 1st, 1932, at the place in question." (p. 4549 l. 40.)

This request also was refused, (p. 4533) and the argument thereunder will be found under Point VI of this Brief.

The Court was requested to charge:

> "5. There is no evidence in this case of a wilful, deliberate and premeditated murder having been committed by this defendant. (p. 4549).
>
> "15. There is no evidence in this case to justify a conviction of murder in any degree." (p. 4550).

The Court refused to charge the same (p. 4533). The argument as to the necessity of charging these requests is that since there was no proof of the commission of the crime of burglary that the only remaining proposition for the consideration of the jury was whether or not a murder had been committed other than one ensuing from the commission of a felony. In such a situation it was of course important that the degree of murder be charged under this indictment.

The Court was requested to charge:

"19. A presumption of good character always exists as to the defendant and may, of itself, be sufficient to raise a reasonable doubt as to the defendant's guilt." (p. 4551).

The Court refused to charge the same (p. 4535).

The argument as to the necessity of charging this request is that it is a fact that a presumption exists as to the good character of the defendant and since the defendant's character was not brought into issue in this case, it is contended that at least it was an element to be considered by the jury in connection with the rule of reasonable doubt, especially so since there was evidence introduced by the State of previous convictions of the defendant.

The Court was requested to charge:

"22. If there is in the mind of any juror a reasonable doubt of the defendant's guilt, fairly arising from the evidence in the case, the juror has no right to consent to a verdict of guilty in deference to or from respect to the other jurors' belief or opinion. Such juror must stand by and abide by his own belief formed in his own mind from the whole of the evidence in the case in which he believes, including the testimony of the defendant." (p. 4551).

The Court refused to charge the same (p. 4536 l. 40. The argument is that each juror must reach a conclusion upon his own responsibility and not consent to a verdict out of respect to another juror's belief or opinion.

The rule as to this is well set forth in the text in Underhill's Criminal Evidence (4th Ed. 1935) at page 39, section 30, as follows:

"On the other hand, every one of the jurors

must be convinced of the prisoner's guilt in order that his conviction should be sustained. The law contemplates, and demands, the concurrence of twelve minds in the conclusion that the accused is guilty, as indicted, before he can be convicted. Each individual mind has to arrive at this conclusion separately, and each juror, having in view the oath he has taken, and his duty and responsibility thereunder, should have his own mind convinced beyond a reasonable doubt upon all the evidence before he can conscientiously consent to a verdict of guilty. * * * Each juror must act on his own judgment of the evidence, and while he may be aided by conferring with his fellow jurors in reaching the truth, he is not required to surrender his conviction of the guilt or innocence of the prisoner, or his reasonable doubt of guilt, remaining after a consideration of the evidence and consultation with his associates, merely to prevent a disagreement."

The Court was requested to charge:

"24. If there is in the mind of the jury one or any number of theories consistent with the defendant's guilt, fairly springing from the evidence in the case, which the jury believe, and but one theory consistent with the defendant's innocence, fairly arising from the evidence in the case, including the defendant's testimony, which the jury also believe, the jury must disregard and put aside all those theories of his guilt and adopt that one theory of his innocence, and render a verdict of not guilty. For, in such condition of the case there would be a reasonable doubt of the defendant's guilt, and the defendant should be acquitted." (p. 4551).

The Court refused to charge the same (p. 4537). The Court took the position that this request was charged in effect, but a reading of the charge does not seem to counsel to bear this out. It is contended that the request was proper and material for consideration.

POINT XIII.

THE EXCLUSION OF THE TESTIMONY OF THE WITNESS, JOSEPH T. TARTELL, WAS PREJUDICIAL ERROR.

The witness, Mrs. Cecile M. Barr (C. B. 4 & 5, pl. 1916-1927) was to the effect that the defendant, whom she had never seen before and was unknown to her, came to her window and purchased a ticket for the theatre and gave her what later turned out to be one of the ransom notes. The witness, Joseph T. Tartell, (C. B. 8, p. 3511-3519) was offered by defense for the purpose of showing the jury that under exactly similar circumstances this lady was not able to identify him, was not able to remember his face although she had seen him on several occasions and who, on one occasion, had handed Mrs. Barr a $5.00 bill under circumstances which should have impressed it upon her mind and that she was not able to recollect or identify this witness.

This testimony would have not only affected the credibility of the State's witness but would have demonstrated to the jury that her ability to recollect faces and to identify persons who came to her window and bought tickets was open to serious doubt.

It is contended that this was greatly prejudicial to the defendant.

POINT XIV.

THE TESTIMONY OF KELLY AND MAISH WAS NOT THE SUBJECT OF EXPERT OPINION.

It may be stated as a general proposition that there are two classes of cases in which expert testimony as to the facts is admissible. To the one class belong those cases in which the conclusions to be drawn by the jury depend on the existence of facts which are not common knowledge and which are peculiarily within the knowledge of men whose experience or study enable them to speak with authority upon the subject. If, in such cases, the jury with all the facts before them, can form a conclusion thereon, it is their sole province to do so. In the other class we find those cases in which the conclusions to be drawn from the facts stated, as well as knowledge of the facts themselves, depend on professional or scientific knowledge or skill not within the range of ordinary training or intelligence. In such cases not only the facts, but the conclusions to which they lead, may be testified to by qualified experts.

> "Within the sphere of his special knowledge, he is competent to express his opinion; beyond that reach he is not competent."

C. J. Beasley, in P. R. R. vs. Root, 53 N. J. L. 253.

It is respectfully urged first that the witness Frank A. Kelly (C. B. 1, p408) was not qualified to express his opinion or to try to convey to the jury what kind of marks he saw on the wall of the house. The question will be found at line 30.

Q. "What kind of marks were they?"

The question itself was not objectionable because it was anticipated that the witness would describe what he saw and let the jury draw their conclusions therefrom but the answer was, "Ladder marks," and the court declined to strike this out.

There was nothing in the case to show that the witness, Kelly, had any knowledge whatever that would enable him to say whether these marks were made by a ladder or by the brushing of a branch of a tree or by some other object on the walls of the house. It was of utmost importance because from this testimony of a non-expert the jury was not left to its own conclusion as to what the marks might or might not be.

It is also argued that for the same reason the entire testimony of Morton Clemmer Maish (C. B. 3, p1272-1278) should have been stricken (motion to strike, p1279-1281). It will be observed from reading the short testimony ofthis witness, who was the manufacturer of the thumb guard, and who was called for the purpose of testifying to the effect of or the action of the weather upon the wire of which the thumb guard was made and whether it would corrode if exposed to the elements. The witness had no personal knowledge whatever on this subject. The only test he ever made of this wire (p1275) was to make a ring which he wore upon his finger for some time and under cross-examination (on the same page) he admitted that he made "no particular tests", that he was relying on someone who makes the wire and (p1276) because it didn't turn green on his finger he thought it was good wire, but that he made no tests in this part or any other part of the country and that he was giving his opinion (line 30) because the wire sent to him by the

manufacturer and made into a ring did not rust on his finger.

Manifestly this witness knew absolutely nothing about the characteristics of the wire or of the effect the elements would have upon it. His conclusions were based on hearsay.

POINT XV.

THE LADDER WAS IMPROPERLY ADMITTED IN EVIDENCE.

The ladder, State's Exhibit S-211, was improperly admitted in evidence. (C. B. 5, p1955) The evidence of the witnesses, Troopers Lamb, Kelly, Bornmann and Mr. Koehler clearly established that this ladder, which was discovered on the Lindbergh estate a short distance away from the house, was taken by the State Police force to their headquarters at Wilburtha and it was entirely torn apart, that it was afterwards in the possession of many different people and at one time was sent to Washington and there disassembled and examined by government experts. Mr. Koehler testified that the ladder was entirely taken apart, that all the nails were taken from it and given to a metallurgist who took the nails to his laboratory and had them in his possession several weeks before they were returned to the State Police, that the wood on the ladder had been treated with chemicals in an effort to bring out finger prints which discolored and changed the appearance of the wood. The rounds of the ladder had been removed and replaced, one of the rails of the ladder had been cut in two and joined together with a piece of strange board on the outside, a piece had been sawn out of one of the rounds by Mr. Koehler and the piece was not replaced nor produced in court. In other words,

the ladder was not in substantially the same condition as it was at the time it was found—it had been materially altered and changed and torn apart by the State Police. There was testimony that while it was in Washington it was in the possession of Mr. Harold S. Betts of the United States Forestry Service of Washington and was examined by a Mr. Looney. Before this ladder could be admitted in evidence it was the right of the defendant to have subjected to cross-examination each and every person that had the custody of it and each and every person that did anything to it or had anything to do with it.

It was further objected to and its admission was illegal because it was not connected up with and shown to have been in the possession of the defendant, Hauptmann. The learned trial judge seemed to think (C. B. 5, p1948) that the witness, Hochmuth, had testified "he saw the defendant in possession of this ladder," but reference to the witness's testimony (C. B. 1, p448) will show that all the witness stated was: "I saw something, some of the ladder in it," (referring to the automobile). He did not attempt to recognize *this* ladder—or a part of it. Indeed, he "saw something"—which may or may not have been a part of this ladder.

This ladder was one of the principal exhibits in the State's case and its erroneous admission was most detrimental to the defendant's case. Around it was built the theory of the State's circumstantial case and every safeguard known to the law should have been observed by the trial court before it was admitted.

The argument of defense counsel against the admission of the ladder in evidence sets forth the reasons why it should not have been admitted and this argument will be found at pages 1945-1955.

POINT XVI

THE VERDICT WAS AGAINST THE WEIGHT OF EVIDENCE

The testimony of Colonel Lindbergh as to the voice identification was of such nature that but little weight should have been given to it. His testimony was that a distance of more than 200 or 300 feet (Page 108) intervened between the spot where he was parked in an automobile and the spot where the conversation took place. His testimony differs, also, somewhat as to the extent of the conversation from that given by Dr. Condon. It must further be considered that Colonel Lindbergh had heard the voice of the man with Dr. Condon but once; that he then heard it out doors in the night time and that a period of almost three years had elapsed from the date upon which he alleges he heard the voice and the date of his testimony. It is conceded that he never heard the voice of the alleged kidnapper from the date of the passing of the ransom notes until he heard the voice of the defendant in the Bronx sometime in late September or early October 1934 (Page 113). It is also urged that there was a variance in the testimony of Colonel Lindbergh as given in the trial of the within defendant and the testimony as given in the trial of John Hughes Curtis, and this difference was brought out in the testimony during the trial of the defendant herein.

It is submitted that the testimony of Colonel Lindbergh was given far more weight than it was entitled to by virtue of the recognized fact that Colonel Lindbergh is considered one of America's outstanding characters and a National hero and that the position he occupies in life unduly and unfairly influenced the jury in this cause. If this were not so, certainly the jury would never

have believed the testimony that he could recognize the voice of the defendant, Hauptmann, under such circumstances, and after such a lapse of time. The daily presence of Colonel Lindbergh at the State's Counsel table was for the sole purpose of influencing, unfairly, the jury in this cause. There was no duty for the Colonel to perform that called for his daily attendance at the counsel table nor was there any duty to be performed by Colonel Breckenridge, the personal advisor of the Colonel Lindbergh, to be in daily attendance at the State's counsel table.

There was no evidence introduced at the trial which in any manner, shape, or form placed the defendant at the scene of the kidnaping of the Lindbergh baby at the time of the said kidnaping nor was there any reliable testimony which placed the defendant within the State of New Jersey at any time reasonably close to the date of the alleged kidnaping. The sole testimony placing this defendant in the State of New Jersey in the year 1932 fell from the lips of three witnesses, first, Rossiter, second Whithed and third Hochmuth.

It is submitted that the facts surrounding the testimony of the said Rossiter should have precluded the possibility of the jury giving any credence to his testimony. He testified that he spent some seven or eight minutes in the presence of the defendant, Hauptmann, three or four days prior to the kidnaping, at a point a number of miles from the Lindbergh home. The said Rossiter was unable to give the license number on the car and did not describe the car in any way similar to the Hauptmann car. He was unable to give any information whatever as to the physical surroundings at the point where he claims to have met the said Hauptmann. He concededly was a sales-

man and had an interest in getting publicity for his appearance in this trial as a witness.

As to the witness, Whited, no weight should have fairly been given to his testimony. It was admitted by Whited under cross-examination that when the officers called at his cabin the morning of March 2nd and aroused him from his slumber, that he the said Whited, thought they had come to call on him in reference to a robbery which had taken place in the neighborhood a day or so ago and which he the said Whited felt the officers were present to charge him with. He conceded under examination that when he told the story of seeing a man in the road that he thought the officers were in his house for the purpose of arresting him in connection with the alleged robbery.

Clearly, the said Whited story was born of the moment in an effort to cast suspicion on some fictitious person or character in an effort to divert suspicion from himself. No other person came forward to testify to having seen the party identified by Whited as the defendant, although his testimony was that it was in broad day light on each occasion when he saw the party whom he testified he recognized as the defendant. It is submitted that if there had been such a person in the Sourland Hills at the time specified by Whited, there would have been other persons passing the party who could have been produced to testify. Because of the selfish interest of Whited in establishing for himself an alibi; because of the total lack of corroboration because of the testimony of witnesses as to bad reputation of Whited as to truth and veracity, no credence should have been given to his testimony and any verdict based in whole or in part on his testimony must have been contrary to the fair weight of evidence. Whited was discredited by his own brother.

As to the witness Hochmuth. Facts are that the place where he resides is a considerable distance from the Lindbergh home; that the time he alleges he saw the defendant was some six or eight hours prior to the time fixed as the hour of the crime; that because of the infirmities of the above said Hochmuth, he could not possibly have identified anyone who drove by the road way and that under no circumstances could the said Hochmuth carry in his mind a mental picture of the party who he said he saw drive by his home from March 1932 until the month of October or November 1934, when he first saw the defendant Hauptmann. It is significant that the said Hochmuth was not called to identify Hauptmann at the hearing in the Bronx, indicating that although the pictures of the said Hauptmann had been in every newspaper circulating through the area where Hochmuth lived, for days, apparently Hochmuth had never signified his intention to recognize Hauptmann as the man he saw on March first until after Hauptmann was brought into New Jersey. The testimony of the said Hochmuth shows him to be eighty-seven years of age. The testimony of Hochmuth also indicates that the car in question went around the corner by his house, a distance of twenty-five feet from the house, and went off into the ditch at one side of the road and halted only momentarily, the witness saying approximately a quarter of a minute or fifteen seconds. The witness also describes the man he saw in the car in the following manner: (See page 445) "The car was about twenty-five feet away from me and the man in there looked out of the window like this." Question "Out of the window of the car you mean?". Answer,—"Yes, and he glared at me as if he saw a ghost."

It is submitted that the testimony clearly indicates that the eye sight of the said Hochmuth

for the purpose of seeing distances was defective and it was necessary for him to wear glasses (See page 455). No testimony was offered that he had glasses on at the time he indicated he saw the car in which the defendant was riding.

The said Hochmuth testified that the car was driving about forty miles per hour (See page 459). The said Hochmuth testified that he did not know how the party he saw was dressed and when asked the following question "How was the man dressed, if you can remember", he answered "Well, I think he had a dark shirt on." Question, —"You think he had a dark shirt on?" Answer— "You see all I took in was the face and those glaring eyes". Question,—"Give me this again, what was it?" Answer,—"All I took in was his red face and those glaring eyes". Question,—"You say he had a red face?" Answer,—"Yes". Question,—"like mine?" Answer,—"A little more red". Question,—"A little more red than mine?" Answer,—"Oh yes."

It is submitted that it is a fact that the said Hauptmann does not have a red complexion and there is no evidence that he did have a red complexion at the time of his arrest, and no evidence that he ever had a red complexion at any time. On the contrary, his complexion runs to a fair coloring. (See page 461)

The said Hochmuth also testified that he never mentioned the occurrence during which he says he recognized Hauptmann to any member of his family or to anyone else. He further testified that until the moment he was sworn on the witness stand he had never disclosed to a single human being just what he was to testify to. This was false testimony, admittedly false, because the State of New Jersey never would have had him sworn in as a witness unless they had known the nature of the testimony he was to give.

It is also significant that when asked whether he had been taken into the jail to see the defendant, Hauptmann, after his incarceration in the Flemington jail, the said Hochmuth testified as follows: (See page 461) Question,—"Were you taken to the jail sometime ago by the State Troopers?" Answer,—"Yes." Question,—"When". Answer,—"Oh, several days ago". Question,—"You saw the defendant there, didn't you?" Answer,—"I saw a figure in there but I couldn't see him." Question,—"Didn't they have you in there for thirty minutes?" Answer,—"maybe so".

The admitted fact is that the cell where Hauptmann was confined was always well lighted at all hours of the day and night and it is respectfully submitted that if the said Hochmuth could not see to identify the prisoner, Hauptmann, when he was taken before his cell in a well lighted cell block, and stood within six feet of the said Hauptmann, where he necessarily must have stood when taken to see Hauptmann, there was no possibility that he could have recognized Hauptmann at a distance of some twenty-five to thirty feet when the said Hauptmann was driving at the rate of forty miles per hour on a public highway in the month of March 1932.

In view of the testimony of Hochmuth as above related, it is respectfully submitted that the Court in his charge laid undue stress on the testimony of Hochmuth and made such favorable comment on the testimony of Hochmuth as worked great harm on the defendant.

The facts as presented to the jury by the State's witnesses indicate that not a single readable finger print was to be found in the nursery room, on any of the equipment therein, on the alleged kidnap ladder or on the chisel found on the premises, nor was there a single print found on any of the ransom notes. The later testimony of

Dr. Hudson indicates that there was any number of finger prints found about the kidnap room and on the kidnap ladder but none of the finger prints found on the kidnap ladder in the room or on the kidnap note were the finger prints of the defendant, Hauptmann. This testimony of Dr. Hudson's was conceded to be true by the State's witnesses although they could not agree to the number of readable prints found by the Doctor. It is inconceivable that if this crime had been committed by the defendant Hauptmann, if the ladder had been made by the defendant, Hauptmann, if the chisel had been carried by the defendant Hauptmann, if the ransom notes had been written by the defendant, Hauptmann, that somewhere there would not have been an impression of his finger prints.

It is submitted that the testimony of the so-called hand writing experts was incomplete and in no way tended to prove that the notes were written by the defendant, Hauptmann. The outstanding example of the inefficiency of the so-called hand writing experts and of the little weight that should be given their testimony, was the testimony of Albert D. Osborne, Sr. in connection with the hyphen in the word New York. The said Mr. Osborne testified that the word New York was never written with a hyphen and the fact, that the writer of the kidnap letter put a hyphen in New York and that Hauptmann in the request letter put a hyphen in the word New York, was a clear indication that the notes were written by one person. Before Mr. Osborne left the stand he was shown upward to twenty-five envelopes bearing the word New York and the address and in each case the word was hyphenated. It is further submitted that another of the hand-writing experts conceded that a man had served time in State Prison due to his mistake in testimony.

It is submitted that under the cases of the State of New Jersey that less weight is given to the testimony of so-called hand-writing experts than to any other type of professional testimony.

The State's own hand-writing expert, Herbert J. Walter, testified under examination that it was a simple matter for one to copy the hand-writing characteristics of any individual and so demonstrated before the jury.

In connection with the testimony of Arthur Koehler, the so-called wood expert, it is respectfully submitted that the type of testimony given by Mr. Koehler falls in the same general category as the type of testimony given by the alleged hand-writing experts although it is even less known in the law than the testimony of hand-writing experts. It was conceded by Mr. Koehler that he was making his first appearance as a witness in a criminal case, that he had had but little experience in attempting to detect crime by the use of his craft. His testimony was contradicted almost in toto by a practical lumberman brought in by the defense so that his testimony that a rail of the ladder was a part of the board out of the attic in the house occupied by Hauptmann was so fantastic as to be unworthy of belief.

The testimony of the witness, Dr. Condon, was such that no fair inference could be made as to the guilt of the defendant from his testimony. He contradicted himself repeatedly and dearly and if any consideration was given by the jury to Dr. Condon's testimony then the verdict was arrived at directly contrary to the weight of evidence.

The said Condon testified that he had spent one hour and ten minutes in a public park in the City of New York on a bench in conversation with an individual whom he later identified as Hauptmann. He testified that the park was well lighted and

that he had an excellent view of the man to whom he was talking. He testified that the man had a hacking cough similar to a consumption cough. From Condon's own testimony, in the summer of 1934 while he was riding in a bus not more than twenty miles per hour on a public street in the City of New York, he saw the man to whom he talked and whom he gave the ransom money to walking along the street in New York City, but he Condon did not cry out for the bus to stop, made no effort whatever to apprehend the man and failed to report the fact that he had recognized the man on the street to be the man he talked with and the man who collected the ransom money, to any police officers of New York City from the time he saw him to the date of his testimony. This incident in itself should disqualify Dr. Condon as a competent witness in this cause. It is inconceivable that any human being who had recognized the man whom he knew was guilty at least of collecting the ransom money would act as Condon testified he acted under the circumstances.

Attention also is called to the fact that Condon testified he interested himself in the Lindbergh kidnap case to protect the good name of Red Johnson, a character never produced by the State even though he was as available as the Fisch family and Bessie Gow who were produced. It was also brought out that Dr. Condon did not know Red Johnson, had not met him, according to his own testimony, and he has claimed that he was out to protect Red Johnson before Red Johnson's name had been mentioned in connection with the case.

Another peculiar part of the testimony in connection with Dr. Condon was the fact that he testified on direct examination that he had received a note alleged to be from the kidnapper within a matter of hours after he had inserted his first add in an obscure Bronx newspaper and in that latter to him

there was a sealed letter addressed to Colonel Lindbergh. The testimony of Condon is that he opened his letter, read its contents, and then went to the restaurant of one, Rosenheim, and before he had opened the enclosed letter to Lindbergh, he told Colonel Lindbergh what the insignia at the bottom of the letter was. It is true that later Condon attempted to change that testimony to say that Lindbergh had directed him to open the letter addressed to him during the telephone conversation and he did open it and then gave Lindbergh the insignia. It is significant, however, that that changed testimony came after Condon had been off the witness stand over night. The entire demeanor of Condon on the witness stand and the entire nature of his testimony tended to show that he was not testifying truthfully and fairly.

It is submitted also that the Court has the right to take judicial notice of the fact that Condon had made any number of statements to the public press contrary to the facts to which he testified while on the witness stand at the trial of the defendant. It is further conceded that there is nothing in the testimony of Condon, assuming that every word of his testimony could be believed that would in any manner, shape or form implicate the defendant, Hauptmann, in the crime of murder. All of Condon's testimony had to do with payment of the ransom money in the Bronx and under the most favorable circumstances his testimony could be only indicative of guilt of the party with whom he dealt as to the crime of extortion in Bronx County, New York. He made no attempt whatever to testify as to the presence of Hauptmann in New Jersey or as to his participation in the kidnap crime. Further, he made no attempt to tie the defendant, Hauptmann, up with any confederate or any group of confederates, so it is submitted that under no stretch of the rules of evidence

could the testimony of Condon be evidential as to the crime of kidnapping or murder.

It is submitted that the testimony of the State's witness Hildegarde Alexander, was without significance and that her testimony that she was in a station at New York City at a time when Hauptmann was following or was peering at Dr. Condon was repudiated by Dr. Condon himself who testified that he had never been in that particular station.

In connection with the testimony of John J. Sweeny, particular attention is called to the fact that in his testimony he states that it was necessary for him to use both hands to get from the ladder into the nursery room and from the nursery room back onto the ladder. This testimony should alone clearly defeat the claim of the State that the defendant carried the child out of the nursery room in one arm and descended the ladder.

The testimony of Joseph Perrone was so confused and so improbable as to be unworthy of belief. His presence as a witness who delivered the first note and the total absence of the messenger who is alleged to have delivered the final note on the night when the ransom money was paid creates a situation deserving of considerable thought. It is contended that there is no reason why the man who delivered the first note should be immediately available and checked on by Dr. Condon when the man, who brought the final note, the note which brought the passing of the ransom money, was not known and no effort apparently made to locate him or to ascertain who he was.

Particular attention is brought to the testimony of Frank Wilson in which it was conceded that $2790.00 of ransom money was deposited in the Federal Reserve Bank at the time the gold was called in, that the name on the deposit slip was J. J. Faulkner, that the party has never been identified by any member of the bank as Hauptmann and the

handwriting on the deposit slip clearly was not that of Hauptmann and there was no proof by the State that the deposit slip was written by any person other than J. J. Faulkner. It is also a matter of evidence that two other large amounts of money found their way to the bank and the passers of that money have never been identified as the defendant, Hauptmann.

It is respectfully submitted that the testimony of Colonel Schwartzkopf was so indefinite and so evasive and incomplete that there could have been nothing in his testimony that could in any way fairly influence the jury in this cause to find the verdict in this case as it was rendered.

Particular attention is called to the following testimony of Colonel Schwartzkopf, the man who states he was in sole and complete charge of the investigation.

"Q. From your own subordinates, from your own department, did you receive any information during the first ten days of March indicating that the person who made the so-called kidnap ladder wielded a saw with his or her left hand? A. Not that I recall; no, sir.

Q. Who was Squire Johnson? A. I understand that he was an employee of the Department of Institutions and Agencies.

Q. Was he asked by you to conduct an investigation? A. No, sir.

Q. Was he asked by the Governor of the State of New Jersey to do it? A. Not that I know of.

Q. Do you know whether or not he was? A. No, I do not.

Q. But the fact remains that he did submit in writing to you a report, didn't he? A. No, sir.

Q. He didn't submit a report to you? A. It was submitted I believe, to his Department, and they submitted it to me.

Q. Well, no matter how it got there, eventually

it got from Squire Johnson to you, didn't it. A. Yes, sir.

Q. And you still have it in your file? A. Yes, sir.

Q. So that to that extent it was an official report, wasn't it? A. Yes, sir."

It can be seen by this testimony just how Colonel Schwarzkopf twisted and squirmed and evaded and quibbled.

And again on page 3445 of the testimony.

"Q. Well, now, Colonel, as a result of Dr. Hudson's process, prints were developed on the ladder where no prints could be found before? A. Yes, sir.

Q. That's true, isn't it? A. Yes, sir.

Q. Can you say how many prints were developed by Dr. Hudson? A. I cannot say offhand. I would have to look that up.

Q. Several hundred? A. No, I don't believe so.

Q. If I should suggest to you 500 would you think that was too many? A. Yes, sir.

Q. And were some of the prints later identified? A. I would have to refer to my records on that, Mr. Fisher.

Q. Well, Colonel, at no time was the fingerprint of Bruno Richard Hauptmann identified as being on that ladder? A. Not that I have any knowledge of.

Q. Now you discovered by Hudson's process that you could get prints where Kelly couldn't find any? A. Yes, sir.

Q. Now did you submit to him the ransom notes and ask him to fingerprint those? A. (No answer.)

Q. Did you submit to Dr. Hudson the original ransom notes and say, "Here Doctor, you have had great luck with the ladder, here are the ransom notes; see what you can do with those"? A. We did submit the ransom notes to his process.

Q. Did you submit those to Dr. Hudson? A. We were using his process on them.

Q. Did Huson ever see the ranson notes? A. No."

This indicates very clearly the evasiveness of the Colonel's testimony and the total lack of proper investigation, indicated by the fact that he refused to show the original ransom notes to the one man who had been able to develop anything of evidential value along the finger print line, and thus all through the testimony of Colonel Schwarzkopf, the man who was assumed to have his finger on every salient fact in connection with the crime. One time after another reference to his testimony will disclose that he fell back on such answers as "I can't remember;" "I have no recollection;" "I would have to refer to my records" and other such evasive replies. From the attitude and demeanor of the witness, Schwarzkopf, the jury could not fairly have inferred any facts which point to the guilt of the defendant, Hauptmann, but on the contrary, from this testimony, they had the right to assume that the entire investigation of this case had been slovenly and carelessly handled; that a determined effort had been made to jealously guard any and all exhibits in this case from any investigative force other than the New Jersey State Police and that the witness on the stand deliberately attempted to refrain from any such evidence which might be of value, if truthfully recorded, to the defendant, Hauptmann.

As to the testimony given by the long line of witnesses, police members of the New York Police Department, the government agents, together with some New Jersey State Police relating to the finding of some of the ransom money, attention is particularly called to the fact that none of this testimony bears in any manner, shape or form on the crime alleged in the indictment under which this defendant was being tried. Giving it its most favorable con-

struction, it has to do only with the crime of extortion in Bronx County, New York. There is nothing in the testimony of any of these witnesses that even deals with the crime for which this man was being tried. In all their testimony there isn't a scintilla of evidence that anything was found that had any bearing on the crime of murder, and there isn't a scintilla of evidence that the defendant made to any of these witnesses any statement in which he in any way implicated himself in any crime. If the testimony of any of these witnesses was given weight by the jury in arriving at a verdict, then the verdict was arrived at contrary to the weight of evidence, submitted by these witnesses.

The great stress laid on the ransom money by the prosecution as evidenced by the great number of witnesses they called in connection with the finding of the money and the display of the money in the Court Room all aided to unduly prejudice the jury and to confuse their minds on the principal issue being tried, namely, whether or not the defendant was guilty of the kidnapping and murder of the Lindbergh baby on the first day of March, 1932, the said crime alleged to have been committed in the County of Hunterdon.

In connection with the testimony of Celia Barr, it is submitted that her testimony is pure fantasy submitted by a publicity-mad woman. It is beyond the realm of possibility that her testimony could have in it any truth. The physical facts surrounding her testimony precluded the possibility of its being truthful. The day she alleged the defendant passed a $5.00 ransom note to her at a theatre on lower seventh avenue, New York City happened to be the birthday of the defendant, Hauptmann and ample proof was submitted as to his whereabouts on that night. The further fact appears that his wife had delivered a baby less than three weeks prior to that date and the said Hauptmann had been spending

all of his spare time at home with his wife and his new baby. A further fact is that the moving picture house in which the said Barr works is some twenty miles from the said Hauptmann's home and there are unquestionably a thousand moving picture theatres much closer to the defendant's home than the one where the said Barr is employed. A further significant fact is that she was unable to identify a person produced before her who had not only bought a ticket before her window but had had considerable conversation with her about the Hauptmann case less than ten days before. The description given by the said Celia Barr of the man who passed the note to her at the time the note was discovered differed mattrially from the description of the said Hauptmann. It is submitted that it would be a physical impossibility for the woman, Barr, who sells probably several thousand tickets daily and every day to identify, after a period of a year, to an absolute certainty, the face of an individual who stopped at her window for the purpose of purchasing a ticket. It is submitted that the work of ticket sellers and ticket takers becomes almost mechanical and people who appear before them do not impress on their minds anything as to the personality of the person purchasing the ticket.

The testimony of Bessie Gow and Mrs. Whateley as to finding the thumb guard is such as is unworthy of belief. They contend that the thumb guard was discovered in the middle of the main road leading from the public highway to the Lindbergh home. It was lying there in plain view and not tarnished in any manner, by the elements. It is submitted that in the thirty days between the kidnapping of the child and the date of the finding of this thumb guard thousands of people had used that lane, travelled it both afoot and aboard vehicles; hundreds and hundreds of trips were made by public officers and reporters and it would have been a physical impos-

sibility for the thumb guard to have been in the position where they alleged they found it without being discovered by that time. The further fact that it showed no evidence of being tarnished or damaged by the weather is indicative of the untruthfulness of their testimony.

It is respectfully submitted that any and all testimony that has to do with the financial status of this defendant whether before or after the kidnapping of the Lindbergh child should have had no bearing whatever on the verdict of this jury, as such activities on the part of this defendant were in no way indicative of his guilt in connection with the kidnapping. The fact is Mr. Hauptmann had been trading in the Market prior to the kidnapping and continued to do so after the kidnapping. If that testimony was evidential as to anything it would again be evidential as to extortion in the Bronx and had no place in the case at bar, and if any consideration was given to that fact by the jury, then the verdict returned as a result of that consideration would be contrary to the weight of the evidence.

We respectfully submit that the Court has a right to consider the facts and circumstances surrounding this case and not close their eyes to the unusual situations arising and the Court has a right to and should of necessity take judicial notice of the facts and situations present during the trial of this indictment, as for example, the outcry of the man Burns at the end of the summation of the Attorney General, the continuous newspaper activity during the trial of the case, the presence of talking picture cameras in the court room and in operation during the taking of testimony, the continued presence of notables at State's counsel table during the progress of the trial the hue and cry constantly present immediately outside and adjacent to the court room while the trial was being conducted, the crowds through which the jury must of necessity pass to and from the jury box

to their quarters, all of which tended greatly to influence the jury contrary to the evidence which was being adduced from the witness chair. The Court also must of necessity consider that the facts as recited above had a tendency to attract from all quarters of the country publicity seeking persons, people whose sole interest in the case was to crash in for the purpose of personal advertising. Such as the witness, Rossiter, as the witness, Alexander, as the hand-writing experts and other experts, as the witnesses Condon, Gaglio, Rosenheim and Reich, Perrone, Whited, Hochmuth, Barr and Aschenbach et als. Because of their acute desire to take their place in the sun in this case, fanciful testimony was wrought in their minds and they came forth to testify to things which were fully imaginative and untruthful because of their desire for the public light. All of the testimony so procured is unworthy of common belief and should have been utterly and entirely disregarded by the jury and unquestionably would have been so disregarded in the average case, one which did not include Colonel Lindbergh, one of America's foremost citizens.

The facts as related in the paragraph set out above have been very fully commented on by noted authorities in recent publications, two of which are an article by Albert D. Robbins a noted English barrister in the May issue of the American Bar Association Journal entitled "The Hauptmann Trial in the Light of English Procedure" and an article appearing in the April 1935 issue of the "American Mercury" by Newman Levy "Justice Goes Tabloid." These articles clearly indicate that the Court ought not to close their eyes to the physical surroundings of this trial and to the furor which was constantly present during the prosecution of the case.

All of these facts as herein related were dwelt on at great length and were all brought to a climax by the summation of the Attorney General which

went to extremes greater than was ever gone to by any prosecution officer in the history of American Jurisprudence.

POINT XVII

THE JUDGMENT SHOULD BE REVERSED.

Respectfully submitted,
EGBERT ROSECRANS,
FREDERICK A. POPE,
Of Counsel with Plaintiff in Error.

C. LLOYD FISHER,
Attorney for Plaintiff in Error.

INDEX

Point No.	*Subject*	*Page*
	STATEMENT	1
I.	THE SUMMATION OF THE ATTORNEY GENERAL VIOLATED THE COMMON LAW AND CONSTITUTIONAL RIGHTS OF THE DEFENDANT	4
	Assignments: Group Q. 2f. (p4598)	
	Specifications: Group R. 1-50. (p4631)	
IA.	THE ATTORNEY GENERAL BULLIED AND ARGUED WITH DEFENDANT AND OTHER WITNESSES ON CROSS-EXAMINATION	31
	Assignments: Group M. 5, 6, 7, 8. (p4583)	
	Specifications: Group M. 5, 6, 7, 8. (p4616)	
II.	THERE WAS A MATERIAL VARIANCE IN THE THEORY OF THE STATE AND THE PROOFS	34
	Assignments: Group Q. 2g. (p4598) Group P. 4. (p4593)	
	Specifications: Group S. (p4645, etc.) Group P. 4. (p4625)	

Point No. *Subject* *Page*

III. PUBLIC POLICY IS THE POLICY OF THE LAW EXPRESSED IN AND DERIVED FROM THE CONSTITUTION, LAWS AND JUDICIAL DECISIONS 42

Assignments:
Group Q. 2. (p4597, etc.)

Specifications:
Group R. 51. (p4644)

IV. THE DEFENDANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WERE CONTRAVENED BY THE SUMMATION AND MATERIAL VARIANCE OF THEORY 49

Assignments:
Group Q. 2. (p4597)

Specifications:
Group R. 51. (p4644)
Group S. 7, 8. (p4646)
Group T. (p4647)
Group U. (p4647)

V. THE VENUE WAS IMPROPERLY LAID IN HUNTERDON COUNTY INSTEAD OF MERCER COUNTY 54

Assignments:
Group N. (p4585)
Group O. 18, 20. (p4591)
Group P. 1, 2, 3, 5, 6, 7. (p4592)

Specifications:
Group N. (p4618)
Group O. 18, 20. (p4623)

Point No. *Subject* *Page*

VI. THERE WAS NO PROOF OF THE COMMON LAW CRIME OF BURGLARY AND THE COURT ERRONEOUSLY CHARGED THE STATUTORY CRIME 58

Assignments:

Group N. (p4585)
Group O. 18, 20, 21, 22, 23, 24, 25. (p4591, etc.)
Group P. 3, 6, 10. (p4592)

Specifications:

Group N. (p4618)
Group O. 18, 20. (p4623)
Group P. 3, 6, 10. (p4625)

VII. THERE WAS NO EVIDENCE OF INTENT TO STEAL AND THE COURT ERRONEOUSLY CHARGED THE JURY 64

Assignments:

Group N. (p4585)
Group O. 18, 20, 24, 25. (p4591, etc.)
Group P. 6, 7, 10. (p4593)

Specifications:

Group N. (p4618)
Group O. 18, 20. (p4623)
Group P. 6, 7, 10. (p4625)

Point No. *Subject* *Page*

VIII. THE BURGLARY, IF ANY WAS COMMITTED, WAS COMPLETE IN HUNTERDON COUNTY AND SEPARABLE FROM THE MURDER PRESUMED TO HAVE BEEN COMMITTED IN MERCER COUNTY 71

Assignments:
Group N. (p4585)
Group P. 5, 22. (p4593)

Specifications:
Group N. (p4618)
Group P. 5, 22. (p4625)

IX. ARGUMENTS HEREINBEFORE REFERRED TO ARE SUPPORTED BY THE RECENT CASE OF STATE VS. JONES 75

X. THE COURT BY ITS CHARGE IMPAIRED A FREE VERDICT AND IMPRESSED UPON THE JURY HIS CONCLUSIONS AS TO THE EVIDENCE AND IMPOSED UPON THE DEFENDANT AN UNAUTHORIZED RULE AS TO REASONABLE DOUBT 78

Assignments:
Group O. 1-26. (p4586, etc.)

Specifications:
Group O. (p4618)

Point No. *Subject* *Page*

XI. THE COURT FAILED TO CHARGE THE RULE AS TO THE WEIGHT TO BE ACCORDED TO HANDWRITING TESTIMONY AND WHICH WAS MATERIAL TO THE ISSUE 98

Assignments:

Group O. 26. (p4790)
Group P. 14, 15, 16, 17. (p4595)

Specifications:

Group P. 14, 15, 16, 17. (p4627)

XII. THE COURT FAILED TO CHARGE AS REQUESTED IN OTHER PARTICULARS 102

Assignments:

Group P. (p4592)

Specifications:

Group P. (p4625)

XIII. THE EXCLUSION OF THE TESTIMONY OF THE WITNESS, JOSEPH T. TARTELL, WAS PREJUDICIAL ERROR 107

Assignments:

Group E. 1, 2, 3, 4. (p4574)

Specifications:

Group E. 1, 2, 3, 4. (p4607)

Point No. *Subject* *Page*

XIV. THE TESTIMONY OF KELLY AND MAISH WAS NOT THE SUBJECT OF EXPERT OPINION 108

Assignments:
Group B. 1, 2, 4. (p4570)

Specifications:
Group B. 1, 2, 4. (p4603)

XV. THE LADDER WAS IMPROPERLY ADMITTED IN EVIDENCE 110

Assignments:
Group F. 16. (p4579)

Specifications:
Group F. 16. (p4611)

XVI. THE VERDICT WAS AGAINST THE WEIGHT OF EVIDENCE.. 112

Assignments:
Group R. (p4599)

Specifications:
Group V. (p4648)

XVII. THE JUDGMENT SHOULD BE REVERSED 130

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

May Term, 1935

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* BRUNO RICHARD HAUPTMANN, *Plaintiff-in-Error.*	Sur Indictment for Murder. On Writ of Error to the Hunterdon Oyer and Terminer.

BRIEF FOR THE STATE

The Writ of Error in this cause brings for review the entire record of the proceedings had upon the trial of Bruno Richard Hauptmann, in the Hunterdon Oyer and Terminer, on indictment for the murder of Charles A. Lindbergh, Jr. The record is certified pursuant to the requirements of section one hundred and thirty-six of the Criminal Procedure Act. Hauptmann was sentenced to death on February 13, 1935.

FACTS

In the night of March 1, 1932, Charles A. Lindbergh, Jr., an infant, was kidnapped and murdered. The child was twenty months old. The locale of the crime was East Amwell Township, in the Coun-

ty of Hunterdon, where Colonel Charles A. Lindbergh, father of the murdered baby, maintained his residence.

On said March 1, 1932, the Lindbergh household comprised Colonel Charles A. Lindbergh, Anne Lindbergh, Charles A. Lindbergh, Jr., Ollie Whately, Elsie Whately and Bessie Gow. The Whatelys and Bessie Gow were in service in the Lindbergh home.

It was the custom of the Lindbergh family to spend the week-ends at their home in East Amwell Township, thereafter returning to the Morrow house in Englewood. The family came to the East Amwell home on Friday, February 26, 1932, but, the child having contracted a slight cold, the return to Englewood was postponed and Mrs. Lindbergh, her baby and the Whatelys remained and were at the East Amwell home on the day and night of said March 1st.

About eleven-thirty o'clock in the morning of March 1st, Mrs. Lindbergh telephoned the Morrow house at Englewood and instructed Bessie Gow to come to the East Amwell home. Miss Gow arrived during the afternoon. The baby's cold was much better. Bessie Gow dressed the child, after his nap, and played with him in the nursery for quite a time. Mrs. Whately joined them in the nursery. Mrs. Lindbergh, returning from a short walk about four o'clock in the afternoon, requested that the baby be brought downstairs to her, where he remained until about five forty-five o'clock, at which time the infant went into the kitchen and Bessie Gow took him upstairs for supper. While the child was having his supper, Mrs. Lindbergh came into the nursery and stayed with Bessie Gow and the baby until he was ready for bed. Miss Gow clothed the infant in a little flannel shirt, next to his skin, which she fashioned from material she had in the room and over which she placed a small woolen

shirt. In addition, the baby wore diapers, and a rubber covering thereon. Next Miss Gow put a sleeping suit on the child and to the sleeping suit affixed metal thumb-guards which were taped around the baby's wrists over the suit and knotted. Bessie Gow then laid the child in his crib and she and Mrs. Lindbergh closed the windows and fastened the shutters, with the exception of the shutter at the southeast window, which shutter they closed tightly by drawing it against the closed window but did not lock it due to a warping of the wood. The nurse then placed the crib clothing over the child, firmly securing the blanket to the mattress with large safety pins, and left the baby's room for the last time about eight o'clock. On her way to the kitchen, she passed through the living room, spoke to Mrs. Lindbergh, told her she had left the baby sleeping peacefully, breathing easily and comfortably settled for the night.

Colonel Lindbergh returned home about eight-thirty o'clock. While seated in his library, he heard a crash outside like the breaking of a crate. The time was between nine and nine-thirty P. M. Shortly before ten o'clock, Bessie Gow returned to the child's nursery. She crossed to the little crib, leaned over with her hands on the rail and discovered she could not hear the baby breathe. She bent down, felt all over the cot and discovered the infant was missing. She inquired of Mrs. Lindbergh if she had taken the child, and upon receiving a surprised negative answer, immediately went downstairs into the library and made a similar inquiry of Colonel Lindbergh. Colonel Lindbergh and Bessie Gow went to the baby's room. A hurried search of the room and of the house was without avail. After a frantic and fruitless search, Colonel Lindbergh said, "Anne, they have stolen our baby."

The police were at once notified and an investigation begun. The bed clothing in the crib was in

such a condition that it was impossible for the baby to have gotten out himself. The clothing was standing—the bed clothing was standing stiffly so that the opening where the baby had been was still there, the clothing had not collapsed. There was a muddy footprint on the window sill, another on a suitcase, directly under the southeast window, one on the floor pointing in the direction of the crib, a muddy spot on the radiator, and on the clothes of the baby's crib there was a dirty smudge, brownish in color, resembling mud. The muddy footprint of a man was found just outside the house where the ladder had been placed against the southeast window. On the sill of the southeast window a note was found. The window was closed. The note was the first ransom note.

A search of the premises disclosed a strange and broken three-section ladder a short distance from the house and, in the muddy ground directly under the window of the baby's room, were found indentations made by the ladder when it was placed against the building. A chisel was likewise found and subsequently, on the Lindbergh grounds, Bessie Gow found one of the thumb-guards which had been wrenched from the baby's sleeping suit to which it had been taped and tied.

The ransom note found in the baby's room demanded $50,000, specified the denomination of the bills and contained a symbol (''singnature'') or identifying mark which would thereafter be the sign used by the kidnapper in his endeavor to collect the ransom money. The subsequent ransom notes contained the same weird symbol as that on the note left in the baby's room and all of the notes were written by the same person.

A series of negotiations was carried on with the kidnapper by means of the ransom notes, fourteen in number. The kidnapper returned the baby's sleeping suit which he had stripped from the little

body, mute evidence that he had taken the child, and forwarded it to the stricken parents so as to impress them that they were dealing with the "right party." He wrote that the thing had been planned "for a year already." As a result of the receipt of these ransom notes and meetings, there was paid to the kidnapper the sum of $50,000 in St. Raymond's Cemetery, in the Bronx, New York City, by Dr. John F. Condon, a trusted agent of Colonel Lindbergh. The payment was made on Saturday night, April 2, 1932, and the $50,000 ransom money was in the denominations demanded by the kidnapper.

During all the time these ransom negotiations were in progress and the kidnapper was giving assurances that the child was safe and well, the little broken body lay in a hastily scooped-out shallow grave, exposed to the elements and the prey of the animals and rodents which infest the territory.

On May 12, 1932, the badly decomposed and horribly mutilated corpse of the baby was found a short distance from the Lindbergh home. The autopsy disclosed the baby had suffered three violent fractures of the skull and that death was instantaneous. The condition of the skull clearly showed that the baby had been alive prior to the striking and that the extensive nature of the fractures was the cause of the instant death.

From time to time after the payment of the ransom money on April 2, 1932, many ransom bills, the serial numbers of which had been taken, were detected. Nearly all of the bills were passed either in Manhattan or in the Bronx. On September 15, 1934, one Bruno Richard Hauptmann tendered a ten-dollar gold note at the service station of the Warner-Quinlan Company, 127th street and Lexington avenue, Manhattan. The bill was identified as a Lindbergh note. Hauptmann was placed under surveillance and on September 18, 1934, he was

taken into custody. At the time he was apprehended, there was found on his person a twenty-dollar gold note. This was likewise identified as a Lindbergh bill.

Hauptmann lived at No. 1279 East 222nd street in the Bronx. A search of his premises disclosed a vast amount of the ransom money. Beneath the floor of his garage and secreted in the rafters, there was ultimately found bills of various denominations, all identified by the serial numbers as being Lindbergh bills, and totalling $14,600. Cached alongside of the ransom bills was a small revolver. In the closet of his home, written on a piece of board, was the address and the telephone number of Dr. Condon. The floor board in his attic and one of the rails of the kidnap ladder were once the same piece of lumber and had been severed by the use of a saw.

After the payment of the $50,000 ransom money on April 2, 1932, Hauptmann never returned to his work as a carpenter, devoting his time to stock-market speculation.

Hauptmann was identified as being near the Lindbergh home on said March 1st. He was seen driving an automobile which contained a ladder. On two other occasions, but a few days prior to the commission of the crime, he was seen in the vicinity. The Lindbergh home is more than fifty miles from the Bronx.

Plaintiff-in-error was indicted in the Hunterdon Oyer and Terminer charged with the murder of Charles A. Lindbergh, Jr. Proceedings were initiated for his extradition to the State of New Jersey. After the granting of the extradition by the Governor of the State of New York, plaintiff-in-error resisted the rendition proceedings and attempted to stay the same by the prosecution of a writ of *habeas corpus* in the Supreme Court of New York. The Supreme Court, after due hear-

ing, dismissed the writ, whereupon the plaintiff-in-error prosecuted his appeal to the Appellate Division, which affirmed the decision of the Supreme Court, and thereupon on October 19, 1934, plaintiff-in-error was extradited to this State and confined in the Hunterdon County Jail at Flemington, New Jersey.

On January 2, 1935, plaintiff-in-error was placed on trial for murder in the Hunterdon Oyer and Terminer, and on February 13, 1935, having been found guilty of murder in the first degree, he was sentenced to death, which judgment the present writ of error seeks to review.

THE LAW

Plaintiff-in-error has predicated his appeal upon one hundred and ninety-five Assignments of Error and Specifications for Reversal, but has elected to argue but sixteen points in his brief. These will be considered in the order of their presentation.

POINT I

The summation of the Attorney-General was eminently proper. His argument and reasoning were justified by the evidence in the case and the legitimate inferences to be drawn therefrom.

Plaintiff-in-error fails and neglects to point out in what respect his "common law" and "constitutional rights" were invaded. But one exception was taken during the entire summation of the Attorney-General, and this trivial in character. No motion was made with respect thereto as required by law. At the conclusion of the summation, no exception was taken or motion made and a search of the Assignments of Error and Specifications for Reversal fails to disclose wherein counsel for the plaintiff-in-error either commented, excepted, or

requested the trial court to charge concerning the matter of which they now complain.

Counsel for plaintiff-in-error frankly admit in their brief that no exception was taken and offer the strange and naive excuse for failure so to do that "even if objections had been entered, they would have been of no avail so far as effect upon the jury was concerned."

The law of this State prescribing the rule to be followed in the matter of which counsel complain and which they failed to invoke, follows:

> *State* vs. *Terry,* 91 N. J. L. 543.
>
> "The rule in this State, undoubtedly is, that where counsel, in summing up to the jury, goes outside of the testimony and makes appeals based upon facts which have not been proved, but rest upon his unsupported assertions, the party injuriously affected must, in order to be relieved, move the trial court to order the remarks stricken out and to charge the jury that they should be disregarded; an objection only to the illegal remarks does not require the trial judge to strike them out of his own motion, and unless counsel requests their elimination no ground for review is laid."

In the case of *State* vs. *Corson,* 108 N. J. L. 14, the Court held:

> "The next ground of reversal is that the Court erred in refusing on motion of counsel for defendant, to withdraw a juror and declare a mistrial because of the fact that the prosecutor during his summation made a prejudicial remark which was not justified by the proofs. In our opinion there is no merit in this contention. As was stated by the Supreme Court in the case of *State* vs. *Terry,* 91 N. J. L. 539, 543: 'The rule in this State, undoubtedly is, that

where counsel, in summing up to the jury, goes outside of the testimony and makes appeals based upon facts which have not been proved, but rest upon his unsupported assertions, the party injuriously affected must, in order to be relieved, move the trial court to order the remarks stricken out and to charge the jury that they should be disregarded.' Counsel for plaintiff-in-error did not see fit to follow the course stated in the cited case, but in effect asked the Court to disregard that rule and to substitute therefor a rule of procedure not recognized by our Courts."

In *State* vs. *Sgro,* 108 N. J. L. 530, in discussing this rule, the Court said:

"The first ground of reversal is that 'the trial court erroneously permitted the prosecutor to make a statement, in his opening to the jury, which was prejudicial to the defendant.' The statement was as follows: '* * * At the end of the case, I am going to ask you * * * to bring in a verdict for the extreme penalty, not only as a punishment to him, but as an example to others.' It is contended that the last few words, 'as an example to others,' were improper and without justification and were injurious to such an extent to the defendant as to justify the Court in reversing the conviction. It appears from the record of the case that counsel for the defendant asked for an exception to the statement. He did not request the Court to direct a mistrial or to instruct the jury to disregard the statement. The statement by the prosecutor was justified for the reason that the punishment of a criminal is not only intended as a punishment to such criminal but also as a warning to others, for

the benefit of society. However, even though it was improper, the mere taking of an exception to his statement by the prosecutor affords no ground for reversal."

In the case of *State* vs. *Biango,* 75 N. J. L., at p. 284 it is stated:

"Improper statements by a prosecuting attorney in his summing up, with respect to which judicial action was not invoked at the trial, afford no ground for reversal of a criminal judgment, brought up under the one hundred and thirty-sixth section of the Criminal Procedure Act, where the record returned fails to show either what statements were in fact made or that such statements as were made were productive of manifest wrong and injury to the plaintiff-in-error."

In the case of *State* vs. *Lang,* 75 N. J. L., at p. 7 the Court held:

"The next cause of reversal is directed at an alleged error of the trial court in refusing to stop the Prosecutor of the Pleas in his summing up to the jury, upon the application of the defendant. The language complained of was that the defendant was 'a monster in his passions, licentious in his desires, beastly in his love, brutal when thwarted and cowardly when caught.' The evidence submitted to the jury showed that the defendant was the uncle of the girl whom he had killed, a brother of her mother; it was fairly to be inferred from the proof that he desired to marry her, notwithstanding the fact that a marriage between them would have been incestuous, and that if this could not be accomplished he desired to have her submit herself to his embraces, with-

out the sanction of a marriage ceremony. The proof also fairly supports the inference that he killed her because she refused to submit herself to his wishes. In view of these facts it seems to us that the prosecutor was within his privilege in making the statement which was objected to. It is necessary for the proper administration of justice, in the summing up to the jury, counsel should be given the widest latitude within the four corners of the evidence, and so long as he confines himself to the evidence, what is said by him in his discussion by way of comment, denunciation or appeal, affords no ground for exception."

In *State* vs. *Barker,* 68 N. J. L. 27-28, the Court held:

"The next exception argued before us was taken to a statement made by the prosecutor, in his summing up to the jury, that 'a verdict of acquittal would be a miscarriage of justice.' "

In the case of *People* vs. *Fielding,* 158 N. Y. 542, relied upon in support of this assignment, it is declared to be error to permit appeals by the Prosecutor of the Pleas to the prejudice of the jurors, based upon facts which have not been proved, but which rests wholly on his unsupported assertions; and that when proper exception is taken thereto, and it is apparent that such appeals may have influenced the jury in their verdict, the conviction should be set aside. Many cases are referred to, in the opinion of the Court, in that case, which support the conclusion reached. We approve the doctrine of that case, but we do not consider it applicable to the matter now under discussion. Nothing appears in the record sent up to show

that the prosecutor was not entirely within his privilege in making the remark which was objected to. Where counsel, in his summing up to the jury, confines himself to the evidence in the case, what is said by him, in its discussion, by way of comment, denunciation or appeal, affords no ground of exception. *Williams* vs. *Brooklyn Elevated Railroad Co.,* 126 Id. 96.

If the evidence clearly showed, as was contended by the prosecutor, that the defendant had committed an assault upon Kellar with the intention of killing him, and that his act was entirely without legal justification, a verdict of acquittal would, beyond question, have been a miscarriage of justice, and a statement to that effect by the prosecutor was entirely justifiable."

In *State* vs. *McCormick,* 93 N. J. L. 290, the Court held:

"It is next argued that there should be a reversal because the Prosecutor of the Pleas in a summing up to the jury characterized the defendant as a 'crook.' We think not. The evidence tends to show that the defendant committed the assault and battery upon the complaining witness because of her refusal to respond to his improper demands for money. In view of this, we think the prosecutor was within his privilege in making the statement objected to."

Counsel for plaintiff-in-error advert to the cases of *State* vs. *McCormick,* 93 N. J. L. 287; *State* vs. *Ferrone,* 113 Atl. Rep. (Conn.) 452; and *Berger* vs. *United States,* 79 L. ed. Adv. Op. 667 in support of their contention.

An examination of the *McCormick case* shows it to be without application. There the Prosecutor of the Pleas was telling the jury facts which he claimed he personally knew, dehors the evidence, thus attempting to influence the jury not to base their verdict on the evidence but on facts which he himself claimed to know.

In the *Ferrone case,* the facts are as follows: Four men were brought before the Police Court at Hartford by which the accused was discharged and his three companions held for trial and afterwards tried by the Superior Court in Hartford County. They were charged with having in their possession by night, without lawful excuse, instruments of house-breaking, known as "jimmies." They were found guilty and sentenced to State Prison. Subsequently, the accused was arrested and charged with the same crime committed with his companions at the same time and in the same manner and circumstances. During his trial, all the foregoing facts, except the conviction of his companions, appeared in evidence and references were frequently made to their trial. But no evidence was offered showing or tending to show the result of their trial. During the final argument, the State's attorney said to the jury:

> "If I saw fit to put the other three men away, why let Ferrone go?"

Counsel for the accused at once objected and moved that the case be withdrawn from the jury because of this remark.

It will be seen that this refers to happenings of a previous trial, furnishing no parallel to the instant case.

In the case of *Berger* vs. *United States, United States Supreme Court,* L. Ed. Adv. Op. Vol. 79-12, 668, the reading of the opinion of Mr. Justice Suth

erland will disclose that this case furnishes no support for the contention of plaintiff-in-error. The situation was as follows:

> "That the United States' prosecuting attorney overstepped the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense, is clearly shown by the record. He was guilty of misstating the facts in his cross examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said things which he had not said and persistent cross examination of the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and in general, of conducting himself in a thoroughly indecorous and improper manner. * * *
>
> The prosecuting attorney's argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury. A reading of the entire argument is necessary to an appreciation of these objectionable features. * * *
>
> The Court below said that the case against Berger was not strong; and from a careful examination of the record we agree. Indeed, the case against Berger, who was convicted only of conspiracy and not of any substantive offense as were the other defendants, we think may properly be characterized as weak—depending as it did upon the testimony of Katz, an accomplice with a long criminal record.

> In these circumstances, prejudice to the cause of the accused is so highly probable that we are not justified in assuming its nonexistence. *If the case against Berger had been strong, or as some Courts have said, the evidence of his guilt 'overwhelming,' a different conclusion might be reached. Moreover, we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential.*''

From a reading of the brief of plaintiff-in-error, it is not entirely clear whether he is attacking the entire summation as a unit, or whether his comments are directed only to certain portions which he alleges to be improper.

The State of the Case shows but a single exception, namely a reference to a phonograph record, a trivial incident of no materiality or consequence. His point, in general, is nothing more than that the Attorney-General vigorously asked for the conviction of plaintiff-in-error and the imposition of the extreme penalty. Plaintiff-in-error summarizes his argument in the following language:

> ''The prosecuting attorney is recognized as a public officer who has apparently no interest in the case and who is at heart an altruist and interested solely in obtaining justice.''

Not only is this broad, general statement vague and incorrect, but even if it were correct he has failed to show wherein the Attorney-General has done anything at variance with his sworn duty to obtain and establish justice.

The summation of the Attorney-General, despite the overwhelming character of the evidence against plaintiff-in-error was a temperate and moderate statement of the facts and of the legitimate inferences to be drawn therefrom, and, in addition, designed to meet the half-truths, the unwarranted inferences and insinuations and the despicable attack upon the State's witnesses, all of which, without basis in fairness or in fact, were interjected into the case by counsel for plaintiff-in-error.

If plaintiff-in-error believed he had suffered manifest wrong and injury by reason of the summation, he could have immediately taken refuge in his exception and motion to the trial court, whose impartiality has never been questioned. But for reasons to him best known he failed so to do but permitted the Court to deliver its charge to the jury and at the conclusion thereof, his counsel said: (*State of the Case,* p. 4531):

> "If the Court please, I desire to pay my respects to the Court and to compliment the Court upon the lucid and learned exposition of the law as laid down to the jury,"

The subject can be best summarized and the picture fully and completely presented by adverting to the comment of the presiding justice, who, at the time the lone and weak objection was interposed during the summation, said: (*State of the Case,* p. 4389):

> "The Court: Yes. Now, I haven't observed anything as yet that is irregular in the summation of the Attorney-General. But, of course, he understands, he will be required to argue concerning the evidence in the case, and the legitimate inferences that flow, in his judgment,

from that evidence, and I don't think that he has failed in that respect yet, so you may proceed, Mr. Attorney-General."

Plaintiff-in-error argues that public policy was involved and attempted to draw an analogy between this case and the case of *State* vs. *O'Leary,* 110 N. J. L. 36. The argument is that under the public policy involved, failure to take exceptions and request to strike out was not detrimental. If it were the established practice that the prosecuting attorney's summation shall be impartial, it is likewise an essential part of that public policy or established practice that any objections to statements made should be made at the time. No reason is offered by plaintiff-in-error for neglect and failure so to do.

The case of *State* vs. *O'Leary, supra,* is entirely different, for in that case, as the Court holds, the established practice of keeping the jury together in a murder case is an absolute rule; a rule beyond any discretionary powers and not within the province of the defense counsel to waive. On the other hand, it is the well-established practice that statements in a summation may not only be waived by defense counsel but, if considered objectionable, must be pointed out at the time.

This, it is submitted, is dispositive of the first point advanced by plaintiff-in-error.

POINT I-A

The cross examination of plaintiff-in-error was proper and the interrogation justified by the record, character, demeanor, cunning and evasiveness of plaintiff-in-error.

A word-picture of the plaintiff-in-error is best shown by the record of his cross-examination:

(*State of the Case,* pp. 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2596, 2659, 2660, 2661, 2662, 2663, 2665, 2666, 2677, 2678, 2685, 2686):

Mr. Wilentz:

"Q. Mr. Defendant, you came into this country, when you came here, illegally, didn't you?"

"A. Yes, sir."

"Q. And you have been in the United States of America since 1923, haven't you?"

"A. Yes."

"Q. Yes. You have had an opportunity in this Court today, and you still have an opportunity this minute to tell the whole truth. Have you told the truth?"

"A. I told the truth already."

"Q. All right. So that you stand now on the story that you have given today?"

"A. I do."

"Q. You stand on the story that you gave in the Bronx, in the court house?"

"A. To a certain extent."

"Q. Well, I am talking about the story that you swore to before a court in the Bronx. Do you stand on that?"

"A. To a certain extent, yes."

"Q. And to a certain extent, no?"

"A. To a certain extent, no."

"Q. Do you stand on the statements you made to District Attorney Foley or do you want to change those"—(No answer.)

"Q. Answer the question, please."

"A. You have to——"

"Q. About this case, not about the treatment, about the Lindbergh case, the murder, did you tell him the truth about that?"

"A. To a certain extent."

"Q. Now, Mr. Reilly asked you about the time that you were convicted in Germany and you told him yes and that you were paroled?"

"A. Yes."

"Q. That was true, was it?"

"A. It was true."

"Q. Now, when was it that you were paroled, 1919?"

"A. (Witness shakes head.)

"Q. 1923?"

"A. '23."

"Q. Well, all right. About how long before you came to the United States?"

"A. It was in the spring time."

"Q. All right. I think the exact question to you was, 'During the period of reconstruction in Germany, you were convicted of some offense there, is that correct?' And you said you were, spring time of 1919. You served how many years?"

"A. That means four years, isn't it?"

"Q. About four years. And when you came out as the result of that conviction and as the result of that parole, what did you do to follow a livelihood, as a means of livelihood?"

"A. I was trying to sell some goods, later I find out it was stolen."

"Q. You were trying to sell some goods which later were found to have been stolen, is that it?"

"A. Yes."

"Q. Now, let me refresh your recollection. In the County of Bautzen you were released on June 3, 1919, under parole, you remember that now?"

"A. It is—I can't remember the date."

"Q. About that?"

"A. About that."

"Q. Now, what happened then? You went and you sold some things that were stolen; is that it?"

"A. Yes."

"Q. And then what happened? Did you go back to jail again?"

"A. I got arrested."

"Q. And went back to jail again; is that right?"

"A. It was like police station, not quite a jail."

"Q. All right. How long did you stay there?"

"A. A couple of days."

"Q. And what happened?"

"A. They was working in the garden or in the yards, and I went out; the door was open and everything."

"Q. You escaped jail?"

"A. Yes."

"Q. Now, you were in jail for four years, and the Parole Board let you out on a parole?"

"A. Yes."

"Q. You understood, then, didn't you, that you were to behave yourself?"

"A. Yes."

"Q. You were back again in jail on the 19th of June?"

"A. Yes."

"Q. Within ten days, anyway, or fourteen days."

"A. (Witness nods.)

"Q. And being in jail you ran away from jail, you escaped from jail; isn't that right?"

"A. That is right."

"Q. Is it not a fact that on March the—that you were convicted of breaking and entering?"

"Q. On March the 14th or 15th, 1919, breaking and entering into a home through a window in Reichowitz (1) on the night of March the 14th and 15th, 1919—wasn't that one charge you were convicted of?"

"A. It was a charge."

"Q. Isn't it a fact that you were also convicted of breaking and entering into the Mayor's home on March the 15th and 16th, 1919?"

"A. It is about right. I can't remember."

"Q. Breaking in through a window—you went through a window, didn't you?"

"A. Yes."

"A. I was present but I can't remember I went through the window."

"Q. Isn't it a fact that you were convicted, you and another man were convicted of holding up two women with a gun?"

"A. It is."

"Q. Wheeling baby carriages."

"A. Everybody wheels baby carriages"—

"Q. Everybody wheels baby carriages, and you and this man with the gun held up these two women wheeling baby carriages, didn't you?"

"Q. Weren't you convicted afterwards of stealing some things out of a restaurant in Kamanz which you sold for thirty marks?"

"A. That is one I can't remember."

"Q. All right. We will pass that over then. In December, 1918, or January, 1919, weren't you convicted of stealing some clothing from a guest room in Kamenz and then exchanging that coat with your brother for another one?"

"A. I can't remember that coat."

* * * * * *

Page 2544:

"Q. You don't know. And you got on a boat then in 1923——

"A. Yes."

"Q. — without the invitation of the United States of America, didn't you?"

"A. Didn't have any money to come over in the regular way."

"Q. And you sneaked on a boat and tried to sneak into this country, didn't you?"

"A. That is true."

"Q. And they sent you back?"

"A. Yes, sir."

"Q. Then you sneaked on another boat and tried to sneak into the country and they sent you back again, didn't they?"

"A. Yes, sir."

"Q. And finally you sneaked in the last time?"

"A. Yes, sir.

* * * * * *

Page 2596:

"Q. Read it."

"A. 'The baby would be back long ago—'

"Q. 'You would not—'

"A. Oh, go farther?"

"Q. Sure; take your time. It is hard for you to read, isn't it?"

"A. You bet it is."

"Q. Well, were you in there in March at all, 1932?"

"A. Give me a chance to think a little bit."

"Q. Just keep looking at those numbers and tell me whether or not they are in your handwriting and that you wrote them, the numbers?"

"A. I can't remember putting them numbers on."

"Q. You didn't tell the truth there, you mean?"

"A. Well, I was quite excited then."

"Q. Do you remember why you had the hearing, that you did not want to come to New Jersey to face the charge that you are now facing? Do you remember that?"

"A. I don't know what is the reason for this."

"Q. Well, you were fighting extradition proceedings, weren't you?"

"A. I don't know what it, what it means."

"Q. 'And District Attorney Foley asked you if you recognized a certain piece of wood or lumber, do you remember that?' And your answer is, 'Yes.' Is that correct?"

"A. Well, I really can't remember what—all the questions."

"Q. Why, didn't we spend a half hour on that lumber in that Court?"

"A. I don't know how much you spend on it."

"Q. Well, you remember, do you—you were there, weren't you?"

"A. I suppose I was there."

"Q. You know what the hearing was about, don't you?"

"A. No, I really don't know what the hearing was about."

"Q. Didn't you know that Dr. Condon was an important figure in this case, didn't you know that?"

"A. I learn it after."

"Q. Just listen to this answer then, and tell me whether or not you made it: 'It is the same kind of wood your handwriting is on it? A. Yes, all over it.' Did you make that answer?"

"A. No, I don't think so."

"Q. Did you tell the truth in the Bronx Courthouse, Yes or No? And then if you want to explain it you may explain it as far as I am concerned?"

"A. Well, I guess I explain it first."

"Q. Will you please do us the kindness of abiding by the rules of the Court and answer first Yes or No, did you tell the truth about this board when you were being examined in the Bronx County Courthouse under oath about this board?"

"A. Then I say no."

"Q. You didn't tell the truth there?"

"A. No."

"Q. You think you are a big shot, don't you?"

"A. No. Should I cry?"

"Q. Lying when you swear to God that you will tell the truth. Telling lies doesn't mean anything."

"A. Stop that!"

"Q. Didn't you swear to untruths in the Bronx Courthouse?"

"A. Stop that!"

"Q. Didn't you swear to untruths in the courthouse? Didn't you lie under oath time and time again? Didn't you?"

"A. I did not."

"Q. Did you lie to them or did you tell them the truth? Did you lie to them or did you tell them the truth?"

"A. I said not the truth."

"Q. You lied, didn't you?"

"A. I did, yes."

"Q. Yes. Lies, lies, lies, about Lindbergh ransom money, isn't that right?"

"A. Well, you lied to me, too."

"Q. Did I ever ask you a question outside of this courtroom? Did I ever come into that jail to ask you a thing."

"A. No."

"Q. Did I ever ask you to sign a paper?"

"A. No."

"Q. Did I ever ask you to make a statement?"

"A. No."

It is submitted that the attitude and the evasive answers of plaintiff-in-error, and a consideration of his character as an admitted liar, his criminal instincts and record justified a searching and arduous cross examination. Plaintiff-in-error and his wife interrupted the proceedings by shouts and it was necessary for the Court to admonish them. The widest possible latitude, in an endeavor to test the credibility of a witness, is always the right of the cross-examining counsel.

A reading of the entire cross examination will disclose the fairness thereof, and its characterization by counsel for plaintiff-in-error is shown to be without substance.

POINT II

There was no variance in the theory of the State and the proofs.

Plaintiff-in-error alleges that there was a variance in the theory of the State and the proofs produced, and attempts to read into the summation of the Attorney-General a construction of his summation unwarranted in fact. In the brief of plaintiff-in-error, the following statement is made:

"The openings of the Attorney-General and the Prosecutor of the Pleas set forth the theory of the State as to the death of the child as

occurring outside the bedroom and this was the theory upon which the case was tried and was the general charge which the defendant had to meet. The circumstantial evidence pointed to such a conclusion, if it pointed to any. However, in the summation of the Attorney-General, who, of course, had the final word in the case, this theory was materially varied by the allegation that the child was killed in the bedroom by a blow from a chisel.''

A reading of the summation of the Attorney-General shows this statement to be unwarranted. What, in fact, the Attorney-General said was (*State of the Case,* pp. 4406-4407):

''Counsel says, 'Why, if it was anybody that walked into that room except somebody that knew the child, that child would have sensed it.''

Well, I don't think that's exactly a fair statement of the fact. I think that a stranger could walk into a child's room, a nursery, if a child were sleeping, without the child awakening.

But let me tell you this: This fellow took no chance on the child awakening. He crushed that child right in that room into *insensibility.* He smothered and choked that child right in that room. That child never cried, never gave any outcry. Certainly not. The little voice was stilled right in that room. That's a fair inference that comes from its failure to cry; either there in the room or outside.

He wasn't interested in the child. Life meant nothing to him. That's the type of man I told you about before, that we are dealing with.

Public Enemy Number One of the World!

That's what we are dealing with.

You are not dealing with a fellow who doesn't know what he is doing. Take a look at him as he sits there. Look at him as he walks out into this room, panther-like, gloating, feeling good.

Certainly he stilled this little child's breath right into *insensibility* right in that room—whether it drew another breath or not doesn't make any difference, but that child never could make an outcry. The smudges on the bed sheet cry out evidence of that fact that Betty Gow testified to, the fact that the child didn't cry out when it was disturbed. Yanked—how? Not just taken up. The pins are still left in the bed sheets. Yanked, and its head hit up against that board—must have been hit. He couldn't do it any other way. Certainly it must have hit up against that board. Still no outcry. Why? There was no cry left in the child. Did he use the chisel to crush the skull at that time or to knock it into *insensibility?* Is that a fair inference? What else was the chisel there for? He knocked that child into *insensibility* right there in that room.''

It will thus be seen that the summation does not charge a killing with a chisel as alleged by plaintiff-in error, nor bear the construction for which plaintiff-in-error contends.

The bill of particulars filed by plaintiff-in-error and which the State answered, described the cause of death as follows:

> Question No. 12—What does the State contend was the cause of the death of Charles A. Lindbergh, Jr.?
>
> Answer: The State contends that the cause of the death of Charles A. Lindbergh, Jr., was a fracture of the skull, the result of external violence.

The theory advanced by the State and upon which the case was tried was that the defendant feloniously, willfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child, the probable consequence of which might be bloodshed. The defendant brought the ladder to the Lindbergh house in East Amwell Township, placed it against the house near the nursery window, that shortly after nine o'clock at night he ascended the ladder, maliciously and willfully opened the closed window and entered the nursery room; that he seized the child and its clothing and did commit a battery, and that the fracture of the skull, which was the cause of the child's death, was inflicted during the perpetration of the felonious and unlawful act.

Plaintiff-in-error suffered no denial of right under the due process clause of the Federal Constitution, and he was sufficiently informed of the nature and the cause of the accusation against him by the indictment which charged murder in the statutory form and which indictment was further enlarged by the answer of the State to the bill of particulars. Plaintiff-in-error cites no cases in support of this point.

POINT III

Public policy is the policy of the law

In support of this point, plaintiff-in-error reiterates the contentions made under Points I and I-A. The definition of Mr. Justice Story and the pronouncement of this court in *State* vs. *O'Leary* as to what constitutes public policy correctly state the law but its application to the instant case is difficult to perceive. Counsel endeavors to draw an

analogy between this and the O'Leary case, the argument, in substance, being that where public policy is involved, the failure to take exceptions or requests to strike out are not detrimental. If public policy means that for which counsel contends, it is likewise an essential part of that same public policy or established practice that any objections to statements made must be made at the time. They cannot be the subject of afterthought or second guessing.

The case of *State* vs. *O'Leary* differs entirely from the present case. There the court held that the established practice of keeping the jury together in a murder case was an absolute ruling; a ruling beyond any discretionary power and it was not within the province or power of the defense counsel to waive the rules. On the other hand, it is well established that statements in a summation may not only be waived by defense counsel, but if objectionable, must be pointed out at the trial. It is necessary and essential for the proper administration of justice, that in the summing up to a jury, counsel shall be given the widest latitude within the four corners of the evidence, and the legitimate inferences that flow therefrom and so long as the prosecuting attorney confines himself to this, anything stated by him in his discussion by way of comment, denunciation or appeal is not grounds for error.

An analysis of the cases of *State* vs. *Belkota,* 95 N. J. L. 416; *McMichael* vs. *Horay,* 90 N. J. L. 148, and *State* vs. *Shupe,* 88 N. J. L. 610, show them to be without application in this instance.

Plaintiff-in-error fails to show a violation of established practices or settled public policy. The Attorney-General was certainly within his rights in demanding the extreme penalty. His characteri-

zations of the defendant were supported by the evidence. The rule is succintly stated in 22 *R. C. L.* 102, at paragraph 11.

> "The public interests, however, demand that a prosecution should be conducted with energy and skill. While the prosecuting officer should see that no unfair advantage is taken of the accused, yet he is not a judicial officer. Those who are required to exercise judicial functions in the case are the judge and the jury. The public prosecutor is necessarily a partisan in the case. If he were compelled to proceed with the same circumspection as the judge and jury there would be an end to the conviction of criminals. Zeal in the prosecution of criminal cases is therefore to be commended and not condemned."

In *State* vs. *Kent,* 27 L. R. A. 686 (N. D.), the Court in discussing the history of prosecuting attorneys shows how originally, private attorneys prosecuted for and on behalf of a complaining witness, and how the prosecuting attorney employed by the State takes his position. The Court said:

> "The best mode of reaching the truth is by the strenuous contentions of opposing counsel, each animated by the conviction that the case that he has espoused, is just. The public have some interests at stake in a criminal prosecution. May high zeal be displayed on one side and none be tolerated on the other? May not cross examination of witnesses be conducted and arguments to Court and jury be made by one who is as much convinced of the guilt of the accused as his counsel is persuaded of his innocence?

POINT IV

Plaintiff-in-error suffered no denial of right under the Fourteenth Amendment to the Federal Constitution and was accorded due process of law.

Under Point IV plaintiff-in-error advances and reiterates his contention made under previous points as to a denial of due process under the Fourteenth Amendment to the Federal Constitution. This contention is unsubstantial. The due process clause means no more than that in the regular course of administration according to established rules and forms which have been prescribed and which include notice, hearing and an opportunity to be heard, plaintiff-in-error shall have his day in court.

> "A criminal prosecution in the courts of the State based upon a law not in itself repugnant to the Federal Constitution and conducted according to the settled course of judicial proceedings, as established by the law of that State, so long as it includes notice, hearing and an opportunity to be heard before a court of competent jurisdiction, according to established modes of procedure, is due process." *Frank* vs. *Mangum,* 237 U. S. 309.

The rights of the plaintiff-in-error under the Fourteenth Amendment to the Federal Constitution and as accorded by Article I of the State Constitution, were preserved, and he was accorded due process.

This, it is believed, is dispositive of the contention of plaintiff-in-error under this point.

POINT V

The venue was properly laid in Hunterdon County.

Plaintiff-in-error contends that the body being found in Mercer County, the presumption is that the blow was inflicted and death occurred in the County of Mercer. Assuming, for the moment, such to be the presumption, such a presumption has no evidentiary value if there be any evidence whatever to the contrary.

It is only in the total absence of evidence to the contrary that a presumption is permitted to exist; and the presumption ceases to exist the moment any evidence is raised to the contrary.

Thus where there is no evidence at all on the subject, the presumption is that the driver of an automobile who is not the owner, was acting as the agent of the owner, but, the moment any evidence is produced, no matter how slight, such presumption ceases to exist, and only the affirmative evidence, that is, evidence introduced in the case, is to be considered.

In *Dunn* vs. *Goldman,* 111 N. J. L. 249, Mr. Justice Perskie, discussing the rule pertaining to presumption, says, with approval:

> "In the case of *Normandin* vs. *Parenteau,* 150 Atl. Rep. 460, a Rhode Island case, it was also said that a presumption is not evidence, but a mere legal excuse for not offering evidence, and if rebutted at all, it ceased to be a factor in the case.
>
> *In Smith* vs. *Tompkins, a Rhode Island case,* 161 Atl. Rep. 221, it was held:
>
> 'A presumption is not evidence and it has no weight as such. It only makes a *prima facie* case for the party in whose favor it exists.

It merely points out the party who has the duty of going forward.' (Cases cited.)

That a presumption is not evidence but merely a rule about evidence, is also held in the following cases: (Cases cited.)

In the case of *New London Water Commissioner* vs. *Robbins,* 82 Conn. 623 (at p. 640), the Court says: 'Presumptions have no probative force.' ''

Underhill on Criminal Evidence, par. 86.

''Venue need not be proved by direct or positive evidence. It is sufficient that it may be reasonably inferred from the facts and circumstances which are proved and are involved in the criminal transaction. The venue may be proved by circumstantial evidence, if the only rational conclusion from the facts in evidence is that the crime was committed in the county alleged, the proof is sufficient.

''If the evidence raises a violent presumption that the offense was committed in the county or if it may be reasonably inferred from the evidence, it is sufficient proof.'' *State* vs. *Andrews,* 21 Fla. 599.

''The place of the offense may be proved by circumstantial evidence. It need not be established by one who witnesses the infliction of the wound.'' 30 *C. J.* 290.

In the well-considered case of *Keith* vs. *State,* 61 N. E. 716 (Ind.) these questions of presumption and venue are discussed at length.

''Defendant, Keith, was charged with the murder of one 'Lora' (Nora Kifer). He had begun a liaison with her. He sent her a note to meet him at a designated spot in Warrick County, on April 3, 1900. She went to the rendezvous and was seen there passing back and

forth at dusk. That night was the last time she was seen alive. Six days later, her mother received a note postmarked Evansville, Indiana, stating that deceased was going to Chicago. The writing in the note and on the envelope was identified as being the writing of the defendant Keith. From the time of the receipt of the letter until May 22nd, defendant spoke to several persons about the mother receiving letters from the daughter. Defendant was seen going to Evansville on May 22nd, arriving about ten o'clock P. M. On May 23rd the body of a woman was found in a creek about two miles from Evansville, in Vanderburgh County. The head and upper part of the body was submerged. The body appeared to be dead about from six to eight weeks. It was identified as the body of the deceased. Subsequently deceased's slippers were found at a spot in Warrick County and in an old well nearby was found a hammer which had been used by defendant in and about his farm and human hair of the color, length and quality Nora Kifer had when last seen alive.

The Court said: "Appellant argues separately that the venue was not proven. This is really a part of the question whether the evidence sustains the verdict. The venue, like other material averments of the indictment, must be proven beyond a reasonable doubt. The indictment was returned by the grand jury of Warrick County. The dead body was found in Vanderburgh County. From the latter fact taken by itself, the presumption would be that the murder was committed in Vanderburgh County. But the probative force of the circumstances in evidence was to the effect that appellant slew deceased in Warrick County near the

canal bridge on the night of April 3d and cast her body into the well, where it lay until the night of May 22nd, when appellant removed it to Pigeon Creek, in Vanderburgh County."

The evidence in the present case clearly shows the kidnapping of the baby, the larceny of its clothing and the commission of the battery, all in the Lindbergh home. The ladder marks on the wall of the Lindbergh home, indicating where the ladder broke. The finding of the strange and broken ladder on the Lindbergh premises. The statement in one of the ransom notes, "Why did you ingnore the letter we left in the room?" The disrobing of the infant on the Lindbergh premises and the removal of the thumb-guard which was tied and taped to the baby's wrist. The finding of the thumb-guard approximately three thousand feet from the Lindbergh home, the medical testimony establishing that the child was alive prior to the skull fractures and that the nature and extent of the fractures was the cause of the instant death. The presumption, therefore, ceased to be a factor and is overcome by the affirmative evidence produced on the part of the State and the question was properly submitted to the jury.

POINT VI

There was proof of the crime of burglary.

It is argued that there was no proof of the common law crime of burglary, and that the court's charge respecting the degree of murder was erroneous.

Assuming for the present, that only the common law definition of burglary applies under section 107 of the crimes act, it is respectfully submitted that the evidence in the case, as well as the court's

charge, fully complied with the common law requirements of the crime of burglary as an element of the homicide.

THE EVIDENCE

In *State* vs. *Wilson,* 1 N. J. L. 439, burglary is defined thus:

> "The breaking and entering into the mansion house of another with intent to commit some felony therein, and that in the night time."

The other elements being conceded by the defense, it is their contentions that there was no evidence of intent to commit a felony. This argument, they base, on three grounds, namely:

A. That there was no intent to permanently deprive the owner of the sleeping garment.

B. That the stealing of the garment was petty larceny.

C. That there was no proof of value; therefore no larceny was proved by the State.

We shall answer these points in the order given.

A. The intent with which the garment was taken constituted larceny. It should be borne in mind that the defendant intended to use this article for his own purpose, to his own use and benefit.

In 36 C. J. 769, par. 120, it is stated:

> "One who takes the goods of another for the purpose of coercing him into paying a claim which he does not owe or to perform work which he is under no obligation to perform, intending to hold the goods until the claim is paid or the work is done is guilty of larceny."

Our case, however, is stronger than that, covered by the *Corpus Juris* quotation.

In our case, the defendant's interest and intent with respect to the garment, as it appears from the evidence, and as contended by the State, was not *to return* the garment to the *owner,* Colonel Lindbergh; but to make use of it for his own purpose, in order to prove his identity to anyone, be it the owner or other person, who may attempt to establish communications with the kidnapper. And it will be noted that he did not return the garment to the owner; he forwarded it to Dr. Condon, to prove to him that he, Dr. Condon, was in contact with the right party.

There was no evidence of an intent to return the garment to the owner after a temporary retaining of it. The proof showed an intent to make such use of the garment as necessary as evidence of identity, to the complete deprivation of the owner, of its use, if necessary. Hauptmann did not care whether Dr. Condon would return it to the owner. He was satisfied if Dr. Condon would accept it as evidence of his possession of the child. That, and only that, was his intent. This was not, therefore, a case of merely temporarily *retaining* the goods.

The intent to deprive the owner of the property is not the only felonious intent that meets the definition of the crime of larceny: The intent to appropriate the article to one's own use is also sufficient.

> The necessary intent may be "either to appropriate the property to the use and benefit of the taker (though he need not necessarily dispose of it to establish such intent) or to wholly and permanently deprive the owner of it; and taking property with intent to conceal it, for the purpose of inducing the owner to offer a reward for its return, and to obtain the reward, is sufficient to constitute the crime."

Currier vs. *State,* 60 N. E. 1023 (Ind.) and cases cited therein.

B. It is next argued that there being no evidence that the goods stolen were of the value of over 12 pence, no felony was shown; therefore no intent to commit felony, as a necessary element of the common law definition of burglary.

Under the common law, both grand and petit larceny were felonies, the distinction being in the punishment.

36 Corpus Juris, 800, par. 226.

In 4 Blackstone Comm., p. 239, he divides simple larceny, the dividing point being the value of 12 pence, and then says this about grand and petit larceny:

> "Offenses which are considerably distinguished in their punishment, but not otherwise."

In *People* vs. *Craig,* 195 N. Y. 1930, at p. 193, the court states:

> "At common law petty larceny was a felony."

Brill, Cyclopedia Crim. Law, Vol. 2, p. 1316, par. 791.

> "At common law both grand and petit larceny were felonies, though petit larcenies were not so severely punished."

It is therefore clear that it is immaterial whether the article was above or below the value of 12 pence.

It must be borne in mind that this defendant was not tried for larceny; nor was he tried for burglary. He was tried for murder, in which burglary was an element; and that element of burglary in turn,

was based upon a felonious intent in the breaking and entering. The question then, is this: Was it necessary to prove the value of the goods in order to prove the felonious intent?

In order to prove the crime of burglary, it was not necessary to prove the actual and accomplished larceny; the intent to steal being sufficient.

In the leading case on the point in our State, *St.* vs. *Wilson,* 1 N. J. L. 439, the court did not require any proof or finding of the value of the goods intended to be stolen and actually stolen. In his charge to the jury, the Court in the *Wilson* case said:

> "Did the prisoner open any chest, or appropriate to himself *any* part of the property of the owner, and manifest any intentions to steal it, or rather did he actually steal it, for the indictment charges, that the larceny was actually committed." (Italics ours.)

The opinion in the Wilson case is the basis of the defendant's definition of the common law crime of burglary; and there is no requirement there, of the value of the goods intended to be stolen. The Court in the *Wilson* case carefully enumerated every element necessary to constitute burglary, and made no mention of value.

Directly in point, and dispositive of the point raised by the defense, is the well considered opinion in the case of *State* vs. *Dixon,* 260 Pac. 138, which goes into the question most thoroughly. It is held in that case, that the *degree* of the larceny is not of the essence of the crime of burglary; therefore, it is unnecessary to prove the value of goods stolen.

At page 147, the Court said:

> "Counsel for defendant say there is no evidence of the value of any of the missing articles and make that the subject of assign-

ment of error. It is true there was no such evidence, but we consider the assignment without merit. This is not a larceny case; larceny is not the crime charged. The charge is burglary. It is charged that defendant feloniously entered a building, with intent to commit therein larceny. Upon the whole record, the proof shows that defendant did enter the building in question and did take therefrom and carry away and convert to his own use certain articles of personal property belonging to another; it shows an intent to commit larceny. If he did not commit larceny, because the articles taken had no value, that does not obliterate his intent to commit larceny, as shown by the act of taking unlawfully the property of another. However, even were the charge larceny, it would not be necessary to prove, by direct evidence, the value of the property taken and, therefore, was not necessary in this case. *When the degree of larceny is not of the essence of a charge* (as it is not here), *there does not have to be direct and positive evidence of the value of property unlawfully taken; but the property taken, if described and especially if made an exhibit and introduced in evidence, for the inspection of the jury as in this case, may speak for itself, and the jury may decide if it has any value, from its nature and usefulness.* 8 Enc. Ev. 140, 141, and cases cited. It has been so held in this jurisdiction:

'That the property was of some value may be inferred by the jury from the facts and circumstances in the case, even though, there be no direct testimony upon the point.' *Territory* vs. *Pendry,* 9 Mont. 67, 22 p. 760, citing authority."

In the case at bar, Miss Gow, the nurse, testified that the garment was *purchased* by Mrs. Lindbergh; that it was a Dr. Denton garment, and that it was one of 4 or 5 which the baby had. (*State of the Case,* p. 321, C. 35, etc.)

The garment was in evidence and inspected by the jury.

There was, therefore, evidence of its value.

Archibald, in his well known work on Criminal Law and practice states:

Star page 364.

> "Formerly, the stealing of goods, etc. of the value of twelve pence or under, was only petty larceny; above that value was deemed grand larceny; and in the indictment, therefore, it was necessary and material to show the value of the articles stolen:—But the distinctions between grand and petty larcency was abolished by statute 7 and 8 G. IV. c. 29, par. 2; since which, it does not appear to have been necessary to state or *prove* the value of the article stolen, and I therefore omit it in the indictment." (Italics ours.)

As we have noted above, both grand and petty larcenies being felonies at common law, then there is no distinction between the two, as elements of the felonious intent in the crime of burglary; there being no distinction between the two classes of larceny, it was unnecessary to state or prove the value.

And in *Territory* vs. *Pendey,* 22 Pac. 761, it is stated:

> "That the property was of *some* value may be inferred by the jury from the facts and circumstances in the case, even though there be no direct testimony upon the point."

So in *Houston* vs. *State,* 8 Engl. Ark. Rep. 66, it was held that proof that stolen horse possessed the power of locomotives and traveled a 100 miles would go to establish the fact that it was of some value.

In the case at bar, the garment was in actual use, which would establish the fact that it was of some value.

It is respectfully submitted, therefore, that the evidence in the case at bar fully sustained the charge of burglary as an element of the homicide.

THE CHARGE

It is urged by the defense, however, that the court submitted to the jury the statutory crime as defined by section 131, and not the common law definition of burglary.

We must view the charge in the light of the facts in the case. There was no contention that the defendant entered the house with intent to commit arson, rape, robbery, or sodomy; these particular felonies, as elements of the felonious intent of the burglary, were not involved. The felony, which the State contended as the felonious intent of the burglary, was to commit the crime of larceny, that is, to steal the child's garment.

The Court in his charge specifically included the intent to steal the clothing of the child. If he did also include the intent to steal the child and to commit a battery, these were included in *addition* to the stealing of the clothing and not as distinct and sufficient grounds of intent. These three intents were given conjunctively and not disjunctively. The court said:

> "If, therefore, the defendant by night wilfully and maliciously broke and entered the Lindbergh dwelling house with intent to steal the child *and* its clothing *and* to commit a battery on the child, he committed a burglary."

It is evident, therefore, that under the court's charge, the common law crime of burglary was fully included, and the jury could not find the fact or element of burglary without first finding the intent to steal the clothing.

It is respectfully submitted therefore, that the court did submit to the jury the common law requirements of the crime of burglary as an element of the homicide.

It is, therefore, unnecessary to argue whether or not section 107 of the crimes act, in using the word "burglary" only contemplates the common law definition of that term, or does it include the crime defined under section 131 of the crimes act.

It is respectfully submitted that it includes the crime defined under section 131.

In *State* vs. *Compo,* 108-L-499, the following syllabus is to be found:

> "The word robbery, as used in the statute defining murder in the first degree, *includes* the common law offense as well as that defined by our statute, *if the latter can be regarded as having a different meaning.*" (Italics ours.)

The italicised portions, and the circumstances of the *Compo* case, will perhaps clarify what we believe is a misinterpretation of the context of the opinion. In the opinion, it is stated:

> "The common law definition of robbery has, notwithstanding, been uniformly approved and followed in cases where homicide has been committed in the perpetration of a robbery."

This excerpt has been quoted by the defense as supporting the theory that the common law definition of burglary, exclusively, is to be applied. But it does not support such a theory. The syllabus makes it clear that both definitions are ap-

plicable; and a study of the facts and contentions in the *Compo* case will explain the use of the word "*notwithstanding*" in the above given excerpt, and will show the harmony between the syllabus and the quoted excerpt.

We must first bear in mind that section 120 of the crimes act, defining robbery, the element in the *Compo* case, uses the words "from the *person* of another," whereas the common law definition uses the expression "from the person *and the presence* of another."

In the *Compo* case, nothing was taken or attempted to be taken from the person of Lynch, the manager of Butler Brothers' grocery store. He was about to close the store when he was ordered to open up, so that the defendant could take the money from the register. The contention of the defense, on the appeal, being that there being no taking "from the person," the element of robbery was not shown. The court, then, *included* the common law definition of robbery as within the meaning of the word "robbery" used in section 107.

The syllabus, therefore, as given above, is not in conflict with the opinion, and is the law of the case.

There are authorities which go even further, and state that the usual and general understanding of these words, such as robbery, burglary, etc.—is contemplated when used not as defining the charge, but as the element determining the degree of the homicide.

Thus, Wharton, on Homicide, sec. 122, states:

> "The terms 'robbery,' 'burglary,' or 'rape' as used in the statute with reference to a murder in the first degree, do not so far differ in their technical sense from that of their popular use as to make them need specific definition when they are used in an indictment,

not in describing the offense charged, but only the attempt, as an element of the crime of murder."

In *Comm.* vs. *Manfredi,* 29 A. 404 (Pa.) the defendant was convicted of first degree murder. On this point, the court says:

> "It is true he (the court) did not enter upon any discussion of definition of 'arson,' 'robbery,' 'burglary,' or 'rape,' nor was it necessary he should do so. There was no hint of arson, and therefore no need to define it. Robbery and burglary were suggested by the circumstances:—But all of these terms are well understood as part of the general language, and their technical sense does not differ so far from their popular use as to need specific definitions, where they are used, not to describe the offense charged, but only the attempt as an element in the crime of murder."

Now, ever since 1796, the language used in section 131 has been recognized, designated, indexed and referred to by all compilers, reporters, and commentators, as the section defining burglary.

Thus, from Pennington's edition of the laws of New Jersey (1703-1820) to the present, this section has always been taken to define "burglary."

It is respectfully submitted, therefore, that by the common understanding of the law in New Jersey, section 131 is taken to define burglary; and, under the authority of the *Compo* case, the word burglary, as used in section 107, contemplates the common law definition as well as section 131.

POINT VII

There was an intent to commit larceny and larceny was committed.

It is contended here that there was no intent to steal:

We have argued under point six, the question of stealing the garment, with respect to the alleged intent to return. As we have stated above, there is no evidence of intent to return to the owner: the intent being to use it as evidence of identity; that it eventually came to Colonel Lindbergh's possession being incidental. We do not deem it necessary to argue the point any further under this point.

With respect to the argument that the court submitted to the jury the elements of stealing the child and committing battery, these were given as additional burdens upon the State to prove: and not as sufficient bases for a finding of burglary.

We have argued this point under the previous heading, and deem it unnecessary to argue it any further.

It is respectfully submitted, however, that "stealing" does apply to a human being. We must again bear in mind that here we are not concerned with larceny as an offense, but merely the meaning of the word "to steal" as used in definitions of burglary, supplying the felonious intent.

By the very definition of kidnapping, the word "to steal" is applied to human beings.

However, in the case at bar, we need not argue the point in view of the fact that the court required a finding of an intent to steal the clothing; and the other elements were required as additional elements.

However, under section 131 of the Crimes Act, which we respectfully submit should be included in

the definition of "burglary", the intent to commit battery would be sufficient in itself.

Counsel have failed to point out any portion of the charge wherein the court made the intent to steal the child, or to commit battery, sufficient. The court consistently required a finding of the stealing of the clothing.

It is respectfully submitted that no error is shown under this point.

POINT VIII

The burglary was not a completed act and the murder was the emanation of the act of burglary.

It is argued under this point that the burglary, if any, was completed in Hunterdon County and was separate from the murder. This was, of course, a question of fact for the jury to determine. And the court, at the request of the defendant, charged thus: "And I further charge you as requested by the defendant, that in order to convict this defendant, you must be satisfied, beyond a reasonable doubt that the death of the child ensued from committing, or attempting to commit, burglary, at or about the time and place in question."

There isn't any evidence in the case that the killing occurred *after* the burglary was complete. But assume for the present argument that the killing occurred during the escape, under the cases of New Jersey, such a killing being an emanation of the act of burglary, constituted a Res Gesta and, within the meaning of section 107 of the Crimes Act, would be a murder committed in the perpetration of a burglary.

The defendants claim that by reason of a so-called presumption the murder was committed in Mercer County. This point we have already

argued; the presumption, once overcome became non-existent, had no probative or evidentiary value. Apparently, the point stressed by the defense here is that the burglary was completed before the killing. The defendant has taken great pains to cite and quote New York cases to support the theory. The matter, however, is too well settled in this State to necessitate going to other jurisdictions for authority.

The rule as enunciated in the case of *State* vs. *Turco,* 99 N. J. L. 96 and *State* vs. *Gimbel,* 107 N. J. L. 241, and *State* vs. *Carlino,* 98 N. J. L. 48 is that it is sufficient if the killing be an emanation of the act of burglary. In the Gimbel case the killing occurred several miles distant from the place of burglary and several hours thereafter. The defense attempts to distinguish *State* vs. *Carlino* and *State* vs. *Turco* on the ground that these cases involve robbery which embraces the necessary element of flight from the scene; and then argues that burglary does not require escape. Escape is of course just as necessary in burglary as it is in robbery, because without escape there would not be safety in either; and robbery is completed technically prior to the escape, just as much as burglary may so be completed. The strength of the Turco and Gimbel case is that in both cases the rule is recognized that while technically and for the purpose of conviction under charge of burglary or robbery, such crimes may be complete yet these crimes will carry on throughout the escape in order to bring the culprit, under section 107 in the Crimes Act. Thus our Courts have adopted a rule clearly different from that of New York courts, wherein they hold that the immediate pursuit by a watchman would not operate to continue the burglary after the defendant had abandoned the property.

In *State* vs. *Gimbel,* the Court says:

> That while the robbery may be complete in itself, it may continue, so far as the killing in the perpetration of the robbery is concerned. While the robbery is complete, so as to render the perpetrator liable to conviction for it, yet the killing being done in an attempt to conceal the crime, protect the robber in possession of the loot and facilitate their flight; it is so clearly connected with the robbery as to be a part of the res gestae thereof, which may be an emanation of the act of the robbery, and although an act committed after the fact of robbing, it still constitutes of the res gesta of that act and is murder committed in perpetration of a robbery within the meaning of our statute, and consequently murder in the first degree.

As far as the evidence goes in this case, the killing of the child was simultaneous with the burglary. The clothing of the child alone would have done the defendant no good. He had to have the clothing of the child as evidence of his possession of the child, and at the same time he had to absent that child from the house. Therefore, whatever he did to the child was simultaneous with his commission of the burglary. There is no evidence in the case that he killed the child *after* the commission of burglary; such evidence should have come directly from the defendant himself, and there is none.

It is respectfully submitted that no error is shown under this point.

POINT IX

The statute of limitations is not applicable.

It is urged that the burglary was barred by the Statute of Limitations. That being so, the conclusion which the defense seeks to draw therefrom is not clear.

The statute of limitations which counsel has cited, does not by a proviso, exempt from its operative charges of murder: it is confined, by its very terms, to cases which are not punishable with death. This defendant was not charged, tried for, or convicted of burglary. Murder was the charge. And the State did not rely upon the fact that the defendant was a fugitive from justice, because, fugitive or not, the statute of limitations did not apply to the charge. Therefore, it was unnecessary to allege or prove that the defendant was a fugitive.

The excerpt from 8 R. C. L., p. 133, quoted by the defense, does not apply because that quotation contemplates a trial for a charge which has not been barred, and a conviction not on that charge, but on a lesser one, barred by the statute.

The element of burglary, in the case at bar, was merely a matter of evidence, supplying conclusively, by operation of law, the felonious and criminal intent. It takes the place of the malice aforethought, of deliberation, premeditation and wilfulness.

State vs. *Mouser,* 92 N. J. L. 474, at p. 483:

> "The legislature has made the crime of robbery a constituent element of murder in the first degree, where death ensues from the perpetrations or attempt to perpetrate the robbery. Evidently the legislature had in mind that robbery from the person is accompanied

by violence, often times by the use of deadly weapons, by wounding and maiming the victim, as well as by putting him in bodily fear. In order to protect human life and property, the lawmaking power declared robbery to be murder in the first degree where the death of a victim ensued in the perpetration of the robbery, irrespective of the fact whether the violence used was great or small. It would, therefore, be wholly immaterial whether or not the victim was struck on the head with a stick or died of fright, the guilt of murder in the first degree attaches to the act of robbery under the statute."

In 16 C. J. 222, par. 340, it is stated:

"Unless a period of prescription or limitation is fixed by law for a particular offense or crime, the prosecution for such offense or crime is not barred by lapse of time."

"It is one of the inherent rights of a state to apprehend and bring to trial those accused of a violation of its public criminal law. This right may be exercised without limitations of time, save in so far as the state by its own statute has seen fit to waive or limit its otherwise undeniable right." *Comm.* vs. *Wilcox,* 36 Pa. Sup. 244.

The right to prosecute is therefore inherent: and there is no statute in New Jersey limiting a prosecution for murder.

The defendant was not tried for the crime of burglary with a consequence of death. He was tried for murder, the element of the malice being supplied with the proof of burglary.

Murder is not barred by statutes of limitations.

Sikes vs. *State,* 92 S. E. 553 (Ga.).
Peo. vs. *DiPasquale,* 146 N. Y. S. 523.
Peo. vs. *Mather,* 4 Wend 229.

It is respectfully submitted that no error is shown under this point.

POINT X

The charge of the Court was scrupulously fair, detailed and impartial.

The charge of the presiding justice in the Hunterdon Oyer and Terminer was a masterly exposition of the law and his review of the evidence thorough and detailed. It is always the right and often the duty of the judge to tell the jury how the testimony strikes his mind, both as to its force and the inferences he would draw from it, and such expressions in his charge will not lead to a reversal, so long as the right and duty of the jury to decide for themselves all disputed questions of fact is pointed out in the charge and this the trial judge did.

The rule in this State is settled and clearly enunciated in the case of *State* vs. *Hummer,* 73 N. J. L. 714, wherein Mr. Justice Garrison, speaking for the Court of Errors and Appeals, said:

> "The point is made that the trial court stated to the jury that the testimony of the doctors and of the child herself seemed to establish the fact that she had at some period of time been assaulted. Whether this criticism of the charge be directed to such comment as a legal error or to a review of the judge's discretion, in either case the complete answer is (to adopt the language of Chancellor Zabriskie): 'It is the right and duty of a judge to comment

upon the evidence, and in cases where he thinks it required for the promotion of justice to give his views upon the weight of it, provided he leaves it to the jury to decide upon their own view of it.' The notion that it is any part of our judicial system that the jury, whether in civil or criminal cases, must be kept in ignorance of the impression made by the testimony upon the mind of the trial judge, is absolutely devoid of foundation. What our judicial system does require is not that jurors should be kept in ignorance of the impression made by the testimony, upon the mind of the judge, but that they should be informed that it is their right and duty to decide for themselves all disputed questions of fact according as the weight of the testimony appeals to them. 'So long as the duty of the jury to decide disputed questions of fact for themselves is pointed out in the charge,' said Justice Dixon in *Engle* vs. *State,* 21 Vroom 272, 'the judge's comments and expressions of opinion upon the testimony are not assignable for error.' 'A judge has an undoubted right to make such comments upon the testimony as he thinks necessary or proper for the direction of the jury,' is the earlier declaration of this court, in *Bruch* vs. *Carter,* 3 Id. 554. 'He may intimate an opinion as to the weight of evidence. But whether he will exercise all or any of these rights in a given case depends entirely upon his judicial discretion.' 'It is competent for the judge presiding at a criminal trial to lay before the jury for their consideration his own views and inferences from the proofs, and such expressions, no matter how ill-advised or erroneous, can be reviewed on a motion for a new trial, but not on a writ of error,' is Chief Justice Beasley's statement, in *Smith & Bennett* vs. *State,* 12 Id. 370. In view

of these expositions of the law, it must be obvious that legal error cannot be based upon the comments in question, and that even under the broader scope of the proceedings before us they cannot be deemed to be an abuse of judicial discretion for which a reversal can be had."

In *State* vs. *Overton,* 85 N. J. L., at *page* 292, Mr. Justice Parker, in delivering the opinion of the Court of Errors and Appeals, spoke as follows:

"The next point relates to comments of the trial judge on the evidence. Three excerpts from the charge are attacked; and for a proper understanding of them, it is advisable to quote the portion of the charge in which they occur, so as to show the context, indicating the parts excepted to by brackets.

'After the commission of the crime he wrote a letter, which is in evidence; when arrested he admitted the killing, and when he reached Newark he made a written confession. All of this evidence is before you.

('The evidence, to some of which I have alluded, indicates that the prisoner not only knew the act he had done, but contemplated the consequences that might result from the accident. Note particularly the language of the letter which he wrote immediately after the deed: "If I must die let me die." This expression would seem to negative his present testimony to the effect that he did not then realize that he was in this world. The letter goes on: "I am willing to go before God for this deed," and again, "If I must die the Lord save my poor soul." This language would seem clearly to indicate that the accused, at the time of the commission of the act was capable

of distinguishing between right and wrong and was conscious that the act was one which he ought not to have done. And in the written confession the words "I hope the Lord will forgive," he clearly indicated a realization on his part that there was some act to be forgiven which he ought not to have done.)

'The flight of the defendant after the commission of the deed is a circumstance tending to prove a consciousness of guilt.

'The motive to kill the deceased arose, the State claims, from the fact that he was forced to marry her; that the paternity of the child was in doubt in his mind; that she constantly nagged him; that on the night in question she had left her bed, got into an altercation with him, cut him with a knife and, as he says, "Did everything she could to make his life unhappy and got up in the night and would not let him sleep." (That he contemplated the commission of the crime is indicated by the fact that after his wife had been thrown down or pushed over by him he went to the back porch, found some clothes line, cut off a piece and returned to hang her with it.) Here, certainly, a sufficient interval of time had elapsed to enable you to say that, having determined upon the commission of the crime, he weighed such intent before carrying it into effect. After procuring the rope he placed it about the neck of his victim and attached it to the bed in such a manner that the natural consequence would be death. The intention to take life may be presumed from the use of instrumentalities, and in such a manner as would naturally accomplish that object. A sane man must be presumed to intend the necessary, natural and probable consequences of his own acts. If, therefore, one voluntarily or willfully does an

act which has a direct tendency to destroy another's life, the natural and necessary conclusion from the act is that he intended so to destroy such person's life. (These propositions in themselves furnish evidence of willful, deliberate and premeditated murder under circumstances of great atrocity.)

'You are to consider all the evidence there is in the case upon your own responsibility, and upon your own responsibility declare by your verdict whether the defence has been established.'

Counsel assert that 'a trial judge should not intimate any opinion upon the facts.' This rule does obtain in some jurisdictions, but it is not, and we think never has been, the rule in this State. On the contrary, it is always the right, and in many cases the duty, of the trial judge to express freely the impressions made on his mind by the evidence, thus giving the jury the benefit of his judicial experience, and suggesting to them points of weakness or strength that they might otherwise overlook, provided always the ultimate decision of disputed matters of fact is fairly left to them. *State* vs. *Hummer,* 44 Vroom 714; 718; *State* vs. *Schuyler,* 46 Id. 487, 489; *State* vs. *Bertchey,* 48 Id. 640, 644; *State* vs. *Pulley,* 53 Id. 579, 582.''

In *State* vs. *Dichter,* 95 N. J. L. 210, this Court said:

''The next assignment relates to the following portion of the charge: Do you believe that he thought he saw an opportunity to make money, and in his desire to make money, closed his eyes to facts and circumstances that would have been apparent to a man of ordinary intelligence and caution?

> The error alleged is that it is argumentative. Assuming that it is, it is the settled law of this State that a court has the right to comment upon the evidence."

In *State* vs. *Warady,* 77 N. J. L. 348, this Court concluded:

> "The first cause for reversal argued raises the question of the propriety of the following excerpt from the charge of the court: 'The jury in testing the truthfulness of the defendant and his daughter, are not to be unmindful of the fact, however, that the defendant has a great interest in the result of this trial, and that his daughter, as a near relative, shares that interest to some extent. Is that interest sufficient to impel him to give false testimony of the occurrences at the defendant's place of business at the time when Michael Kiss and Emma Papp had interviews with the defendant?'"

It is contended that the latter part of this instruction was erroneous. We cannot agree with this view.

Whatever the rule may be in other jurisdictions, it is entirely settled in this State that the judge may call attention to any matter affecting the credibility of a witness, and may comment upon the testimony and intimate an opinion as to its weight, whenever he thinks it necessary for the promotion of justice, so long as he fairly leaves the jury to determine the facts and draw their own conclusions as to the credibility of the witnesses and the weight of the testimony. *Bruch* vs. *Carter,* 3 Vroom 554; *Engle* vs. *State,* 21 Id. 272; *State* vs. *Simon,* 42 Id. 142; *State* vs. *Hummer,* 44 Id. 714.

An examination of the whole of the charge shows that the trial judge properly instructed the jury

that they were "the sole judges of the facts, of the credibility of each witness, and of the weight that is to be given to the testimony of each." It appears, therefore, that the Court was well within the rule which obtains in this State, and that there was no abuse of this matter of judicial discretion."

See also *Stern* vs. *Wagenheim,* 105 N. J. L. 21, 26; *State* vs. *Juliano,* 103 N. J. L. 663, 679; *State* vs. *Fuersten,* 103 N. J. L. 383, 388; *Graff* vs. *Louis Stern Sons,* 103 N. J. L. 13, 15; *Fiorentino* vs. *Farr & Bailey Manufacturing Co.,* 100 N. J. L. 143, 147; *State* vs. *Kaskevich,* 98 N. J. L. 23, 27; *State* vs. *Morehous,* 97 N. J. L. 285, 296; *State* vs. *Randall,* 95 N. J. L. 452, 456; *State* vs. *Schilling,* 95 N. J. L. 145, 151; *Chrisafides* vs. *Brunswick Motor Co.,* 90 N. J. L. 313, 314; *State* vs. *Lovell,* 88 N. J. L. 353, 355; *State* vs. *Lackawanna R. R. Co.,* 82 N. J. L. 747; *State* vs. *Herron,* 77 N. J. L. 526; *State* vs. *Donnelly,* 26 N. J. L. 463.

There was no error in the charge of the Court and it was in accordance with the law and based on the evidence.

POINT XI

The Court correctly charged the jury as to the weight to be accorded the testimony of the handwriting experts.

Eight recognized handwriting experts, gentlemen of national and international reputation, were witnesses on the part of the State, and all testified that the writing in the original note found in the child's nursery and in the subsequent notes, together with the writing on wrapping in which the sleeping garment was returned, was the handwriting of the plaintiff-in-error. There was produced at the trial the ransom notes, the wrapper in which the sleeping suit was contained, the envelopes in which the notes were mailed or delivered, the conceded writ-

ings of the plaintiff-in-error (notably a promissory note and various applications for automobile licenses) request writings of plaintiff-in-error taken after his arrest—in all, there were submitted to the experts fifty-five pieces of writing of plaintiff-in-error. The weight to be given to the testimony of these witnesses on behalf of the State is stated in *Gordon's case,* 50 N. J. Eq. 397. The rule is: (p. 422)

> "The theory upon which these expert witnesses are permitted to testify is that handwriting is always in some degree the reflex of the nervous organization of the writer, which, independently of his will and unconsciously, causes him to stamp his individuality in his writing.
>
> "I am convinced that this theory is sound. * * * Handwriting is an art concerning which correctness of opinion is susceptible of demonstration, and I am fully convinced that the value of the opinion of every handwriting expert as evidence must depend upon the clearness with which the expert demonstrates its correctness. That demonstration will naturally consist in the indication of similar characteristics, or lack of similar characteristics, between the disputed writing and the standards, and the value of the expert's conclusion will largely depend upon the number of those characteristics which appear or are wanting. The appearance or lack of one characteristic may be accounted to coincidence or accident, but, as the number increases, the probability of coincidence or accident will disappear, until conviction will become irresistible. Thus comparison is rated after the fashion of circumstantial evidence, depending for strength upon the number and prominence

> of the links in the chain * * * It follows that the expert who can most clearly point out will be most highly regarded and most successful."

Seldom, if ever, has a case been presented to a jury in which such a wealth of material for the purpose of comparison was at the disposal of the expert witnesses. There was introduced in evidence some fifty-five pieces of writing and designated as the conceded writings, the request writings of plaintiff-in-error and the ransom notes.

Mr. Albert S. Osborn, recognized as the outstanding authority in the United States on the subject of handwriting, testified as follows:

State of the Case, p. 945-946:

> "Q. Does the amount and the character of the writing which has been placed before you for comparison and examination give you sufficient material upon which to base a conclusion?"
>
> "A. Yes.
>
> "Q. What have you to say with respect to the amount of the writing?
>
> "A. The amount of the writing, in my opinion, is ample upon which to base a positive opinion."

Mr. Clark Sellers, an expert of international reputation testified as follows:

State of the Case, p. 1390:

> "Q. What have you to say with respect to the amount of material submitted?
>
> "A. I would say that it is amply sufficient, more than usual."

All of the witnesses on the part of the State testified in a similar manner. Their testimony was positive, certain and unequivocal and to the effect that

the writing in the ransom notes, the writing on the envelopes containing them and the writing on the wrapper of the sleeping suit were written by one and the same person, and upon comparison of the request and conceded writings with the ransom notes, that all of the writings were made by the plaintiff-in-error.

Mr. Albert S. Osborn stated his findings in the following language (*State of the Case,* p. 1012):

> "Because in my opinion the evidence of the physical evidence of connection between the admitted writings and the ransom writings and the request writings and the ransom notes, the physical connection between these writings, in my opinion, is irresistible, unanswerable, and overwhelming."

Mr. Clark Sellers, the concluding witness for the State on the subject of handwriting identification, summarized the testimony in the following language (*State of the Case,* p. 1407):

> "So convincing to my mind that Mr. Hauptmann wrote each and every one of these ransom notes is, I say, so convincing to my mind, that he might just as well have signed each and every one of them."

But one witness was offered by plantiff-in-error as to the writing in the ransom notes. He admitted, on cross examination, that his inspection of the notes was hasty, sketchy and cursory. He testified that the total time he spent in examining the fifty-five pieces of writing was approximately two and one-half hours. Some of the experts for the State had spent nearly two years in making a similar examination.

The amount of material upon which the examinations and comparisons were based and which led to

the opinions given by the State witnesses, it is submitted clearly met the rule as is established in this State in the *Gordon Case,* and led to the conclusion that plaintiff-in-error wrote each and all of the ransom notes.

POINT XII

The charge of the court was proper and the court was under no duty to charge as requested.

The court properly charged the doctrine of reasonable doubt as follows: (*State of the Case,* p. 4499.)

> "In this, as in every criminal case, the defendant is presumed to be innocent, which presumption continues until he is proved to be guilty.
>
> To support the indictment and to justify a conviction, the State must prove the facts sufficient for that purpose by evidence beyond a reasonable doubt; and that burden never shifts from the State. If there be reasonable doubt whether the defendant be guilty, he is to be declared not guilty.
>
> Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all of the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge. The evidence must establish the truth of the fact to a moral certainty, a certainty

that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it.

But if, after canvassing carefully the evidence, giving the accused the benefit of reasonable doubt, you are led to the conclusion that the defendant is guilty, you should so declare by your verdict."

Concerning the question of venue, the court properly charged the jury in the following language: (*State of the Case,* p. 4502.)

"The fact that the child's body was found in Mercer County raises a presumption that the death occurred there; but that, of course, is a rebuttable presumption, and may be overcome by circumstantial evidence. In the present case the State contends that the uncontradicted evidence of Colonel Lindbergh and Dr. Mitchell and other evidence, justifies the reasonable inference that the felonious stroke occurred in East Amwell Township in Hunterdon County, when the child was seized and carried out of the nursery window and down the ladder by the defendant, and that death was instantaneous; and from the evidence you may conclude, if you see fit, that the child was feloniously stricken on the 1st day of March, 1932, at the Township of East Amwell in this county, and died as a result of that stroke.

Secondly, the State, in order to justify a verdict of guilty, must establish by the evidence, beyond a reasonable doubt, that the death was caused by the act of the defendant. The uncontradicted evidence is that the child was left by the mother and the nurse in the nursery, and the window was then closed."

The court properly refused to charge "That a presumption of good character always exists as to the defendant and may, of itself, be sufficient to raise a reasonable doubt as to the defendant's guilt." The court properly charged: (*State of the Case,* pp. 4509, 4510)

> "The defendant has offered himself as a witness in his own behalf, and the law makes him a competent witness, notwithstanding his very deep interest in the event of the trial. His evidence is not to be rejected merely for the reason that he is interested, but his interest in the result may be taken into consideration by you as an important circumstance upon the question of his credibility, the question whether he is telling the truth. You should also consider his testimony in view of its inherent probability or improbability, in the light of all of the facts and circumstances as disclosed by the evidence. It appeared on the examination of the defendant here in court that he has been heretofore convicted of crime. That testimony may be given consideration by you as affecting his credit as a witness, and for that purpose only."

The court properly refused to charge that each juror must reach a conclusion upon his own responsibility and not consent to a verdict out of respect to another juror's belief or opinion because the court had, in effect, charged this request. The refusal was proper inasmuch as the court had, in substance and effect, charged this request.

POINT XIII

The exclusion of the testimony of the witness, Joseph T. Tartell, was not prejudicial error.

A reading of the testimony (*State of the Case,* p. 3511-3519) will show that no error was committed by the Court in the exclusion of the testimony of this witness. No foundation was laid for the introduction of the testimony in order to contradict the witness, Barr, offered on behalf of the State, nor was any time specified as to when the witness, Tartell, appeared at the theatre where Mrs. Barr was employed. The testimony was neither competent nor material and it was properly excluded by the trial court.

POINT XIV

The testimony of Kelly and Maish was competent and properly admitted by the Court.

The testimony of the witness, Kelly, was based upon observations made by him, concerning which he was certainly competent to testify and the testimony of the witness, Maish, was that of the manufacturer who had expert knowledge of the products made in his factory, and a reading of the testimony discloses it to be knowledge gained in his business as a manufacturer and, therefore, competent and material.

POINT XV

The ladder was properly admitted in evidence.

The history of the strange and broken ladder (State Exhibit S-211) follows.

The ladder was found on the Lindbergh premises on the night of the crime. Lieutenant Bornmann

found the ladder. (*State of the Case,* p. 1944). He turned it over to Trooper Kelly of the Identification Bureau for fingerprints. Bornmann sawed one side of the ladder into two pieces during the course of his investigation. The cutting was done for purposes of analysis. The whole ladder was produced in court. Kelly marked the ladder for identification—Section No. 1, Section No. 2, Section No. 3. Kelly and Bornmann both identified the ladder in court. Kelly gave the ladder to Captain Lamb, in whose custody it remained until Lamb returned it to Kelly, who, in turn, took the ladder to Washington for further analysis. While the ladder was in Washington for purposes of experimentation, Kelly was constantly with it. At night it was placed in a safe. At the conclusion of the experiments, Kelly returned from Washington with the ladder, bringing it to State Police Headquarters, where it was again placed in the custody of Captain Lamb. Koehler, the wood expert, received the ladder from Captain Lamb and at the end of his experiments, returned it to the Captain. A nail expert, Keith, then had the ladder and after experimenting with the nails, replaced them in the ladder in the presence of Koehler. (*State of the Case,* p. 1711.) The ladder is then returned to Captain Lamb, in whose custody it remained until the time of its production in court.

Relative to the admission of the ladder, the record shows the following: (*State of the Case,* p. 1950)

> The Court: "Mr. Pope, did not this witness who is now on the stand, say that this ladder was in the same condition as when found, with the exception of certain things that were designated?"
>
> Mr. Pope: "How can this witness say, Your Honor——"

The Court: "I am not undertaking to say how he can say it, I am suggesting to you that it seems to me that he did say so, and if so, I am wondering whether or not that does not open the way for the admission of the ladder."

After argument (*State of the Case,* p. 1955), the Court:

"I feel constrained to admit the ladder in evidence and it will be admitted."

The State traced the ladder and its custody from the time of the finding on March 1, 1932, until its production at the trial.

POINT XVI

The proofs were sufficient to satisfy a considerate mind beyond a reasonable doubt of the guilt of the plaintiff-in-error.

Counsel for plaintiff-in-error urges that the identification of the voice of Bruno Richard Hauptmann by Colonel Lindbergh is entitled to but little weight. The testimony is as follows:

Testimony of Colonel Lindbergh, *State of the Case,* p. 107-108-109:

"Q. And when he came back, did you recognize this as being the paper that he had then in his possession (handing to witness)?

"A. Yes, it is.

"Q. After this S-39 was exhibited to you did you still remain in the same place with your car?

"A. Yes, I did.

"Q. How far was that from St. Raymond's Cemetery, diagonally across the street?

"A. I should say it was about two or three hundred feet.

"Q. From the cemetery?

"A. Approximately.

"Q. On the opposite side of the cemetery, or on the same side?

"A. Diagonally across from the cemetery.

"Q. Diagonally across?

"A. Yes, probably closer to 200, but I don't feel able to estimate that exactly.

"Q. Approximately 200 feet anyway?

"A. Yes.

"Q. And what time of the night would you say it was, Colonel?

"A. That was in the vicinity of nine o'clock.

"Q. What was the condition of the weather? I mean was it clear?

"A. Oh, yes, the visibility was clear. I don't know whether it was overcast or not; I don't recall.

"Q. A clear night?

"A. Clear night as far as visibility was concerned.

"Q. And you remained seated in the car?

"A. Yes, I did.

"Q. And then what happened, Colonel? Proceed with your story.

"A. Dr. Condon, as I say, went to the corner of the cemetery, he stood there for a few moments, then he turned around and started to walk back across Whittemore, which runs next to the cemetery. When he arrived at about the center of Whittemore, I heard very clearly a voice coming from the cemetery, to the best of my belief calling Dr. Condon.

"Q. What were the words?

"A. In a foreign accent, 'Hey, Doctor.'"

State of the Case, p. 113:

"Q. On the night of April the 2nd, 1932, when you were in the vicinity of St. Raymond's Cemetery and prior to delivering the money to Dr. Condon and you heard a voice hollering, 'Hey, Doctor,' in some foreign voice, I think, as you referred to it—since that time have you heard the same voice?

"A. Yes, I have.

"Q. Whose voice was it, Colonel, that you heard in the vicinity of St. Raymond's Cemetery that night, saying, 'Hey, Doctor'?

"A. That was Hauptmann's voice.

"Q. You heard it again the second time where?

"A. At District Attorney Foley's office in New York, in the Bronx."

It is significant that counsel for plaintiff-in-error did not cross examine Colonel Lindbergh as to this phase of the testimony. It is not contradicted. It was a positive and direct identification of the plaintiff-in-error and stands unchallenged.

It is further contended that the testimony of Colonel Lindbergh was given far more weight that it was entitled to by virtue of the fact that Colonel Lindbergh is considered an outstanding character, a national hero and that his testimony unfairly influenced the jury in the cause. The statement is not in any way substantiated and no evidence was or is adduced on behalf of plaintiff-in-error to show by what occult or cryptic method the extent of the influence was determined. Counsel for plaintiff-in-error leave both the court and counsel for the State equally in the dark. Pure conjecture and speculation have never been considered as evidential and arguable matters in this forum.

Colonel Lindbergh never sat at the State's counsel table, the statement of plaintiff-in-error to the contrary. He occupied a seat in the court room, was a witness in the cause and his presence was requested by counsel for the State so that, in the event it should be necessary to call him, he could be available. The case was long and protracted and at what time his testimony might be needed was a matter depending upon day to day developments. He was present at the request of the State and not of his own initiative or motion.

Counsel for plaintiff-in-error aver that there was no evidence introduced at the trial which in any manner, shape or form places plaintiff-in-error at the scene of the kidnapping of the Lindbergh baby, nor was there any reliable testimony which placed plaintiff-in-error within the State of New Jersey at any time reasonably close to the date of the alleged kidnapping. Three witnesses positively placed Hauptmann in the State of New Jersey and their testimony stands as uttered.

Amandus Hochmuth, a witness on the part of the State, testified as follows:

State of the Case, p. 445-446-447-448.

"Q. On the 1st day of March, 1932, where were you residing?

"A. I was standing on the porch——

"Q. Where were you living then?

"A. The corner of what they call the Mercer County Highway and the road that goes up to Mr. Lindbergh's place.

"Q. In other words, that is at the main highway intersection with the lane that runs up to the Lindbergh place?

"A. Exactly.

"Tell us about your experience that morning.

"A. Well, I saw a car coming around the corner, pretty good speed, and I expected it to turn over in the ditch. And as the car was about 25—I should judge 25 feet away from me, the man in there looked out of the window like this.

"Q. Out of the window of the car you mean?

"A. Yes, and he glared at me as if he saw a ghost.

"Q. What time of the day was that?

"A. It was in the forenoon.

"Q. And the man that you saw looking out of that automobile glaring at you in the manner that you say, is he in this room?

"A. Yes.

"Q. Where is he?

"A. Alongside of the trooper there.

"Q. Alongside of the trooper?

"A. Yes (pointing his finger).

"Q. Well, at any rate, would you mind stepping down, please, and showing us?

"Q. Which side of the trooper?

"A. The man sitting between the trooper and the other man with the white shirt on.

"Q. The other man with what on?

"A. The man with the white shirt.

Mr. Wilentz: Now may the gentleman come down without objection?

The Court: I think so.

(The witness came down from the stand and advanced in the direction where the defendant Hauptmann was sitting.)

Mr. Wilentz: Will you please put your hand on his shoulder?

The Witness: Right there (touching the defendant with his hand).

Mr. Wilentz: May we have on the record. 'Indicating Bruno Richard Hauptmann'?

"Q. And when it made the turn into the lane, did it proceed or did it stop?

"A. It stopped as it got in the ditch.

"Q. Did it get into the ditch?

"A. Not yet, but it stopped there, and he pulled the ladder over to him.

"Q. You say that he stopped as he got into the ditch in making the turn?

"A. Into the ditch.

"Q. How long did it—did the car stop at all for any period of time?

"A. Well, I should say about quarter of a minute, or something like that.

"Q. A quarter of a minute?

"A. Yes.

"Q. Yes, sir. All right, sir. Now, you said just now something about a ladder. Was there a ladder in the car?

"A. I saw something, some of the ladder in it."

Millard Whited, who lived on the farm adjoining the Lindbergh Estate, a witness on the part of the State, testified as follows:

State of the Case, p. 1983, 1984, 1985:

"Q. In Skillman. In 1932 and particularly in February, 1932, did you know all the people who lived in and about that vicinity?

"A. I did.

"Q. Did you know them by name?

"A. Yes, sir.

"Q. Did you know them to speak to?

"A. Yes, all but one, one stranger there.

"Q. Did you know his face when you saw it?

"A. I know his face, yes, sir.

"Q. So that I understand it then that you knew when you saw them every person who lived in that vicinity?

"A. I did.

"Q. In February, 1932, did you see any strangers in that vicinity?

"A I did.

"Q. Tell me particularly did you see the defendant, Bruno Richard Hauptmann?

"A. I did.

"Q. When did you see him?

"A. As near as I could, to my best knowledge, around the 18th of February, 1932.

"The Court—What time?

"The Witness—The 18th of February, 1932.

"Q. Did you see him again after the 18th of February?

"A. I did.

"Q. When to your best recollection?

"A. Between the 25th and 27th of February.

"Q. Was that the February before the Lindbergh crime?

"A. It were.

"Q. Now tell us the first time that you saw the defendant, Hauptmann, where it was and under what circumstances.

"A. I was coming home for dinner with my car and he came out nearly on my ground or, I would say, within two or three feet, one way or the other—I could show you the very spot if I were there—and he stepped out to the side of the road when I came face to him, with the car, and I saw him when I was coming to him, and when I passed, through my window, I looked at him and wondered why and where he came from.

"Q. Through the window of what?

"A. Out of my car window; that is, the window was down, but out of the left hand side of the car.

"Q. Now, the second time you saw him, where was he and where were you?

"A. He was on the cross road that leads to Zion and I was coming up the road with the truck and trailer, and I saw him on the cross roads standing.

"Q. How far away from him were you when you saw him that time?

"A. Not quite as far as from here to the railing.

"Q. To the rail?

"A. Yes.

"Q. Will you give us your judgment about how many feet you think that is?

"A. Not over six.

"Q. Not over six feet. So that you were within six feet of him the second time.

"A. Yes, sir.

"Q. How far away or how close were you the first time you saw him?

"A. Perhaps about eight feet.

"Q. About eight feet. Did you see his face on both occasions?

"A. I did.

"Q. Now, is there any doubt in your mind at all with reference to the man that you saw on those two occasions in February, 1932?

"A. No, sir.

"Q. You say that was this defendant?

"A. I do."

Charles B. Rossiter, sworn as a witness on behalf of the State, testified as follows:

State of the Case, p. 2037, 2038, 2039:

"Q. Have you ever seen the defendant, Bruno Richard Hauptmann, before you have seen him in court here?

"A. I have.

"Q. And before you saw him in the Bronx?
"A. I have.
"Q. Did you see him in the year 1932?
"A. I did.
"Q. Where did you see him?
"A. On Route 31, near the Princeton Airport.
"Q. What day of the week was it?
"A. Saturday evening before the kidnaping.
"Q. About what time of the evening?
"A. Around eight P. M.
"Q. You say a Saturday evening?
"A. Saturday evening, that is right.
"Q. Where was this defendant, Hauptmann, at that time?
"A. He was at the rear of a car parked about 100 to 150 yards north of the Princeton Airport.
"Q. Parked?
"A. Parked, yes.
"Q. You mean his car was parked?
"A. His car was parked; whether it was his car I don't know, but he was the one that was there.
"Q. You say he was in the rear of it?
"A. He was standing at the rear of it.
"Q. Did you speak to him?
"A. I did.
"Q. What did he say?
"A. He said he was all right; he didn't need any help."

Plaintiff-in-error was likewise identified by a witness offered on behalf of plaintiff-in-error, one Sebastian Lupica. (*State of the Case,* pp. 3352 and 3353).

By Mr. Wilentz:
Q. Yes, and you so stated, did you not, to the Attorney-General in the presence of Pros-

ecutor Hauck and five or six other people, that the man you saw in the court room in the Bronx, Hauptmann, was the man you saw on the night of March first, resembled Hauptmann?

A. That Mr. Hauptmann has a resemblance to him.

Q. Did you say so?

A. (No answer.)

Q. And you have always said that he resembled Hauptmann, haven't you?

A. Yes, it is the truth.

Q. And you say so today, don't you, Ben?

A. Yes.

Q. You want to tell the truth, don't you?

A. Absolutely.

Q. Now when you went to see Hauptmann in the Bronx at the time you made the statement that the man you saw with the ladder, in a car, all alone, looked like Hauptmann, you made it for a newspaper first, did you not?

A. Well, as best I could under the circumstances, coming up to me it was a resemblance.

Q. Yes, no policeman told you to say he resembled him, did he?

A. No.

Q. Of your own free will and according to your conscience and of the best of your recollection?

A. That is right.

Q. You told everybody in the world that the man that you saw on March 1st in an automobile with a laddder in it looked like Hauptmann, isn't that right?

A. He has a resemblance, yes.

Q. And you came before the Hunterdon County Grand Jury and you so testified?

A. Yes.

Q. Isn't that so?
A. Yes.
Q. And that is your testimony today?
A. Yes.

There was found on the Lindbergh premises at the time of the crime a carpenter's chisel. It was described in the testimony as a ¾" chisel. A search of Hauptmann's premises and the finding of his tool chest—a very complete chest—disclosed that the one tool missing therefrom was a ¾" chisel and the inference to be drawn therefrom concerning the ¾" chisel found on the Lindbergh premises, was properly a jury question.

Plaintiff-in-error stresses the testimony of one Dr. Hudson, a volunteer defense witness who claimed to have discovered some secret process for the finding of fingerprints. An examination of the testimony of Hudson, and particularly his cross examination by the Attorney-General, will show that the psuedo process was unscientific, uncertain, had never been used by any recognized authority in this country and was unknown to the fingerprint experts of metropolitan police forces. The experiments which Dr. Hudson attempted to make months after the commission of the crime, disclosed nothing of value and his evasiveness on the witness stand only tended to augment the uncertainty which had been created by his direct examination. His demeanor and his manner of answering questions further engendered suspicion as to his truthfulness and fitness as a witness.

Concerning the testimony of Arthur Koehler, Mr. Koehler was offered as an expert witness, qualified as such, and testified to his many years of labor and experience largely spent in the service of the Federal Government, involving the study of wood. A reading of his testimony serves to impress one with his vast knowledge of the subject and his scientific

experiments, his identification of the flooring in the attic in Hauptmann's house and the side rail of the kidnap ladder as once having been the same piece of wood, was an outstanding feature of the testimony. His testimony was unshaken and uncontradicted and the weight thereof was a proper question for the consideration of the jury.

The testimony of Dr. John F. Condon is of like effect. He described clearly and accurately his meetings with plaintiff-in-error, payment of the ransom money and his identification was positive, emphatic and adroit, and skillful cross-examination in no way affected his story, and the weight to be given thereto was properly a question for the consideration of the jury and the court so charged.

With respect to the testimony of the witnesses, Miss Alexander, Joseph Perrone, Frank Wilson and Cecilia Barr, their testimony and the weight to be given thereto, were strictly jury questions. The probity of these witnesses is unquestioned and their standing in their respective spheres of life and in the communities in which they live, well and favorably known.

It was competent for the State to show the pecuniary condition of the plaintiff-in-error prior to the commission of the crime and his condition subsequent thereto. It was established that, after payment of the ransom money on April 2, 1932, plaintiff-in-error never worked again at his trade as a carpenter, but devoted his time to stock market speculation. His accounts showing balances running into the thousands of dollars and evidence to this effect was competent and material, admitted by the court and a proper subject for the consideration of the jury.

Concerning the remaining contentions of counsel, but brief answers are necessary:

The State Constitution provides:

"In all criminal prosecutions, the accused shall have a right to a speedy and public trial by an impartial jury." Article I, Section VIII.

The constitutional guarantee of a speedy and public trial was accorded plaintiff-in-error and the publicity of the proceedings was subordinated to the orderly and proper manner in which the trial was conducted. Plaintiff-in-error was not deprived of the presence, aid or counsel of any person whose presence might be of advantage to him, and the proceedings at all times were conducted in an impartial, courteous and decorous manner. Throughout the trial the judicial poise of the presiding justice and the patience and courtesy with which he supervised the proceedings evoked the merited praise and admiration of all competent observers. The conduct of the trial was a model of judicial propriety to which the State can and does point with pride.

It is submitted that the verdict was justified by the weight of the evidence.

THE ASSIGNMENTS OF ERROR AND SPECIFICATIONS FOR REVERSAL

The Assignments of Error and Specifications of Causes for Reversal fail to show wherein plaintiff-in-error suffered manifest wrong or injury, or was precluded from maintaining his defense upon the merits.

Group A

1. There is no error in permitting the witness, Joseph J. Farber, to answer the question:

Q. Do you know how far that is from St. Raymond's Cemetery?

because it was material how far it was from St. Raymond's Cemetery.

2. There is no error in permitting the witness, Oscar Hilbert Christenson, to answer the question:

> Q. What was Carlstrom's work and Larson's work?

because Carlstrom's work and Larson's work were material to the issue.

3. There is no error in Number 3 because Arthur Koehler had qualified as a wood expert and there was no objection to his competency as such an expert to testify to the question set forth in Number 3 concerning the plane marks.

4. There is no error in permitting the witness, Arthur Koehler, to answer the question set forth in Number 4 because the witness had qualified as a wood expert and there was no objection to his competency as such an expert to testify to the said question.

5. There is no error in permitting the witness, Arthur Koehler, to answer the question set forth in Assignment Number 5 because he qualified as an expert and he gave his opinion regarding testimony as to knots in wood.

6. There was no error in admitting the testimony of A. D. Osborn upon direct examination as to the handwriting upon the wrapper, Exhibit S-53, because he qualified as an expert on handwriting and there was no objection made to his qualifications as a handwriting expert at the time he testified and gave his opinion as to the handwriting on the wrapper, Exhibit S-53.

7. There is no error in permitting Dr. Mitchell to give his opinion as to the time of death as related to the fracture because he qualified as an expert and gave his opinion as to what he believed was the time of death.

8. As to Assignment Number 8, no such question was asked of the witness, Swayze, as set forth in Number 8 as follows:

> Q. I will repeat it, if you don't mind; will you please tell us, if you can, your opinion as to the relationship between the fractures that you have just described and the time of death?

That question was asked of Dr. Mitchell (*State of Case,* p. 1485 line 23), and it was a competent question because he had qualified as an expert and was qualified to give his opinion as to the relationship between the fractures he described and the time of death.

9. There is no error in permitting the witness, Koehler, to testify as set forth in Assignments Number 9, 10, 11 and 12, because he had qualified as an expert and gave his opinion from an examination of the lumber in question as to whether or not there was a piece missing which connected the two boards and as to whether or not the marks corresponded with the piece of the ladder, and to demonstrating the plane marks on a piece of Ponderosa Pine and to telling what size chisel was used in the construction of the ladder.

On the matter of the expert testimony of Mr. Koehler, the Court said: "I think the witness is qualified as an expert upon the subject matter" (*State of Case,* p. 2203, line 10). Mr. Koehler was qualified as an expert as the Court will find from an examination of the *State of the Case,* pp. 2205, 2206. After that examination, the Court asked Mr. Pope if he still wanted to question the witness as to his expert qualifications, and Mr. Reilly said: "May we preserve our rights to this extent, and have the Court pass upon the witness' qualifications, as to whether the Court thinks he is qualified or not." Whereupon, the Court said: "Yes, I would say to counsel now that I deem this witness to be qualified as an expert (*State of Case,* p. 2207.)

Group B

1. The Court was justified in not striking out the following question asked of the witness, Frank A. Kelly, because this question and answer were given without objection and because the same was material to the issue:

> Q. Are you talking about marks on the walls of the house?
>
> A. I am talking about marks on the wall of the house.

Mr. Reilly moved to strike that out as calling for a conclusion unless the ladder in his experiment made the marks, which motion to strike was made after the following questions and answers:

> Q. And, Kelly, tell us then, please, just exactly what you did in this experiment?
>
> A. In this experiment, I placed the ladder with two sections, with the lower part of it resting in these two marks that were found.
>
> Q. The marks are the marks referred to in this exhibit that is in evidence, S-37.
>
> A. Yes, sir.
>
> Q. All right.
>
> A. And found that after the bottom section was placed in those marks and the top part of the ladder rested against the house.
>
> Q. Yes.
>
> A. Upon examination I found that where this ladder, the top section of the ladder rested against the house, that directly over the top two rungs, or the braces on the side, there were two marks about an inch and a half to two and half inches long that could in my opinion be cause——
>
> Mr. Reilly—I object to your opinion.

Q. Not in your opinion, what did they do with them right with the ladder?

A. They were right with the ladder; yes, sir.

Q. On the house?

A. On the house.

Q. Are you talking about marks on the wall of the house?

A. I am talking about marks on the wall of the house; yes, sir.

Q. Yes, sir. What kind of marks were they?

A. Ladder marks.

The second answer to Kelly's was made without objection but a motion was made to strike which came too late and later on (*State of Case,* p. 414), the witness testified that the marks were made by paint, but the answer was made before objection was made. Witness further testified (*State of Case,* p. 415), as follows:

Q. Not what they could have been made by —what were they, according to your observation? You saw them there?

A. I would say paint.

There was no motion made to strike at that point.

2. There is no error in permitting the witness to testify that the marks were paint, which he was certainly qualified to testify to after an examination of the same.

3. There is no error in permitting the witness, Amandus Hochmuth, to answer the following question:

Q. Yes, sir. All right, sir. Now, you said just now something about a ladder; was there a ladder in the car?

A. I saw something, some of the ladder in it.

The witness testified he saw a ladder in the car and he identified Hauptmann as being the man with the car that contained the ladder and it was certainly material testimony as to Hauptmann going up the Lindbergh lane with a ladder which was subsequently found on the Lindbergh premises.

4. The court did not err in denying the motion of the plaintiff-in-error to strike out the testimony of Morton Clemmer Maish because Mr. Maish testified (*State of Case,* p. 1272) as to his business and as to the character of the thumbguard, and there was no motion made to strike out his testimony and if there is no motion made to strike, the assignment of error falls. Mr. Reilly proceeded to his cross examination (*State of Case,* pp. 1274, 1275, 1276), and the Attorney-General gave re-cross examination (*State of Case,* p. 1276), and there was no motion made to strike, and on further re-cross examination by Mr. Reilly (*State of Case,* p. 1277) there was still no motion to strike.

5. There is no error in the Court denying the motion of plaintiff-in-error to strike out Exhibit S-228, because this exhibit is a photograph of the attic and was testified to by Arthur Koehler and Bornmann as being a true representation of the attic at the time they examined it, showing that the board that remained on the floor was the end of Rail 16 which is attached to the ladder and at one time it was one and the same board, and this Exhibit S-228 was evidential.

Group C

1. There is no error in the Court refusing to permit the witness, Harold S. Betts, to answer the following question asked upon cross examination by the plaintiff-in-error, because it would be hearsay testimony and not evidential:

> Q. Did you know that the Secretary, his Secretary, refused him permission to come

here and testify for the defense, when his report would be favorable to us?

2. There is no error in the Court refusing to permit the witness, Harold S. Betts, to answer the following question asked upon cross examination by the plaintiff-in-error, because it would be hearsay testimony and not evidential:

Q. And his inquiries have covered how long a period on wood?

3. The Court properly refused to permit the witness, John F. O'Ryan, of New York, to answer to the following question, because it was not material to the issue, it was untrue, and there was no testimony ever presented by the plaintiff-in-error to show that the General was brought there just for his appearance before the jury:

Q. Do you know, General, that you were brought down here just for your appearance before the jury?

4. The Court properly refused to permit the witness, John F. O'Ryan, to answer to the following question, because it was not material to the issue:

Q. And did you know that it wasn't relevant?

5. The Court properly refused to permit Colonel Charles A. Lindbergh to answer the following question asked upon cross examination by the plaintiff-in-error (relating to John Curtis):

Q. And he was convicted of withholding information from you, is that correct?

The said John Curtis was tried in this Court for another crime entirely different from the crime of which the plaintiff-in-error was tried in this Court, and it was an attempt by counsel for the plaintiff-in-error to produce testimony that was given at the trial of the *State* vs. *Curtis,* which was entirely remote from the matter before the Court at this time, and it was immaterial whether Curtis was convicted of withholding information from the Colonel or not. Testimony of a criminal trial other than the one at issue is not proper in this State.

6. There is no error in the Court's refusal to permit the witness, Joseph Anthony Perrone, to answer the following question asked upon cross examination by the plaintiff-in-error, because the question was irrelevant, incompetent and immaterial at the outset and was improper:

Q. What do you expect?

See *State of Case,* p. 541, covering the testimony of Joseph A. Perrone on cross examination by counsel for plaintiff-in-error as to whether or not he received any money for testifying. On page 540 of the *State of the Case* he was asked the question:

Q. How much are you receiving a day for coming here?
A. I am not receiving anything.
Q. Have you been offered anything else?
A. No.

The witness had already answered he did not receive anything and had not been offered anything and the question in itself is immaterial.

7. Concerning Assignments Number 7, 8 and 9 relative to the testimony of Frank J. Wilson, this testimony was all concerning questions that had been asked at the trial of John H. Curtis, which have heretofore been referred to in this brief, and

is an attempt to get the witness to answer questions in another criminal trial foreign to the issue before this Court.

10. There is no error in the Court's refusal to permit the witness, Frank J. Wilson, to answer the following question asked upon cross examination by the plaintiff-in-error, as there was no foundation laid for this question because the witness was not asked whether he made the statement to any person in March or April 1932. The question was incomplete and gave the witness no information upon which to base an answer and the Court properly excluded the question:

> Q. In March and April, 1932, did you refer to the crime as being committed by a gang?

11. The Court properly excluded the question which the plaintiff-in-error upon cross examination asked the witness, Condon, as there was no foundation laid for this question because the witness was not asked whether he made the statement to any person. The question was incomplete as it gave the witness no information upon which he could base an answer:

> Q. Did you ever say a woman took part in the negotiations?

12. The Court properly refused to allow the following question asked the witness, Stein, upon cross examination by the plaintiff-in-error:

> Q. Now, let me ask you this, in connection with a person writing by request, what is his mental attitude most likely to be?

Mr. Stein, in his testimony, never qualified to pass upon the mental attitude of a witness. He qualified

to pass upon the handwriting, and the question was improper.

13. The Court did not err in refusing to allow the witness, Whited, to answer the following question asked upon cross examination by the plaintiff-in-error:

> Q. Down at your home in Lambertville, when you first got in the case, did you get any money to have your picture taken?

There is no evidence that Whited ever had any picture taken (see *State of Case,* pp. 1987 and 1988). There was no foundation for this question and it had been answered by Mr. Whited that he had never had his picture taken. Therefore the question as to whether he had obtained money to have it taken was certainly irrelevant.

Group D

1. The following question was a proper question and the Court did not err in permitting the witness, Mr. Souder, to answer the same upon re-direct examination:

> Q. All right. Now, has anything been brought to your attention by counsel that in any way alters the opinion you have heretofore expressed as to the identity of the writer of the ransom notes?

Mr. Souder qualified as an expert on disputed handwriting. On page 1303 of the *State of the Case,* Mr. Lanigan said:

> "I offer the witness as to qualifications."
> The Court—"Well, are his qualifications conceded?"
> Mr. Pope—"No objection at this time."
> The Court—"You may proceed."

Mr. Pope cross examined the witness concerning all of the testimony he gave on direct examination, covering every figure and letter on the charts and exhibits by the witness, Souder, and the witness stated that nothing had been brought to his attention by counsel for plaintiff-in-error that in any way altered his opinion which he had heretofore expressed, which was a proper question and answer.

2. The Court did not err in permitting the witness, Arthur Koehler, to answer the questions as set forth in Assignments Number 2 and 3 of this Group because the witness had qualified as an expert and gave his opinion after an examination of the exhibits in question.

> "The question whether a witness has some special knowledge or experience to qualify him to give opinion evidence, is a question of fact for the determination of the trial court, which evidence is not reviewable on error if there be any legal evidence to support it." *Burns* vs. *Delaware & Atlantic Telegraph Co.*, 70 N. J. L. 746.

Group E

1. The Court properly refused to permit the witness, Joseph J. Tartell, upon direct examination, to answer the following question:

> Q. During the past two years—have you had any occasion during the last three or four years to test Mrs. Barr's recollection of your face—

He was not a defendant in the cause and Mrs. Barr testified to having identified Hauptmann, and the question as to whether or not he had had an occasion to test Mrs. Barr's recollection of his face, or to remember him as a patron, was an improper question and properly excluded by the Court.

2. As to the question whether or not the witness, Joseph J. Tartell, had on more than one occasion experienced a mistake in change which he received from Mrs. Barr at the Sheridan Square Theatre, the Court did not err in excluding the same as not being proper cross examination.

3. The Court properly refused to permit the witness, Joseph J. Tartell, upon direct examination, to answer the question as to whether or not he talked with Miss Barr about her ability to remember him as a patron who had been to the window on numerous occasions during the past three years, as the same was improper direct examination.

4. The Court properly refused to permit the witness, Joseph J. Tartell, to answer the question as to whether on one specific occasion he had handed to Miss Barr a five-dollar bill, the same being improper direct examination.

5. There is no error in the Court's refusal to permit the witness, John E. Seykora, upon direct examination, to answer the following question:

> Q. Yes, you wouldn't take a man's word in an important case like this, would you, without investigation?

The Court properly excluded it because it was a question as to the witness' opinion as to testimony given by some other person and was improper examination.

6 and 7. The Court properly excluded the questions asked the witness, Frank A. Kelly, because Kelly was a witness for the State and he gave in detail everything that took place as far as he was concerned relative to fingerprints and an examination of the ladder and the Lindbergh home. He was then called by counsel for the plaintiff-in-error as a defense witness (see *State of Case,* pp. 3698 and 3699), and testified completely as to what was

done regarding the ladder, and the Court refused to allow these two questions because they had been testified to on previous occasions, both in his direct examination for the State, cross examination as a State witness and on direct examination for the defense.

8. The Court did not refuse to permit the witness, Oscar John Bruchmann, upon direct examination, to answer the question:

> Q. And did Fisch talk to you?

on page 3719 in the *State of the Case,* the witness answered to the aforesaid question:

> "He did, he wanted to know how I——

and was objected to by the Attorney-General as to what he said being immaterial because it was not in response to the question, "Did Fisch talk to you?" which the witness answered, "He did."

9. The Court properly excluded the question set forth in this assignment as to the fare from the point Fisch entered the cab to where he alighted and how much the fare was. This question was objected to by the Attorney-General and Mr. Reilly said that the purpose of this was to show that Fisch was practically throwing his money away and the Court properly stated (*State of the Case,* p. 3725):

> "He has stated the purpose, and I think the purpose is inadequate to support the question; and if the Attorney-General moves to exclude the question, I will exclude it."

The question was excluded, as it was certainly no defense on the part of the plaintiff-in-error in this case as to how much fare Fisch paid for riding in a taxicab.

10. The Court properly excluded the witness, Theron J. Main, from answering the following question:

Q. What did he say?

The Court allowed (*State of Case,* p. 3754), the witness to testify that he talked to a person whose picture was shown him in Court, but as to "What did he say?" the Court properly excluded it.

On page 3752, *State of the Case,* counsel for plaintiff-in-error asked the witness:

"Q. I show you Defense Exhibit 39 and ask you whether you saw that man in the bank?"

If the Court will examine page 4684 there is no Defense Exhibit 39 set forth in the list of exhibits, so that the testimony regarding the conversation with whom he talked or what he said is not before this Court on any Defense Exhibit marked 39. Mr. Reilly stated that his purpose in bringing him here was to show that Isidor Fisch wanted to exchange gold notes with him (*State of the Case,* p. 3754). But this was cured on page 3755 when the witness said that Isidor Fisch exhibited gold notes to him on the street and he took them from his pocket, and the testimony was properly excluded when he was asked this question:

Q. You didn't know Isidor Fisch, did you?
A. I didn't ever.

(*State of the Case,* p. 3756.)

11. The witness was not excluded from answering the question:

Q. Then you are out. But in this group or bunch of gold notes that Isidor Fisch had, which he exhibited to you—will you give your best recollection—and that is all we want—if

you can tell us, how big the roll was? Or just describe it, please?

On page 3756 of the *State of the Case,* the witness answered:

A. That would be just an assumption. That would be all. I couldn't say how many.

And again he said, page 3756 of the *State of the Case:*

A. It would just be an assumption. I couldn't tell how many.

So that the witness did answer the question and was not prevented from answering it.

12. The Court properly refused to permit the witness, Henry Uhlig, from answering the question:

Q. In particular you were looking for a little small package that Fisch left, weren't you?

This question was properly excluded because it was a leading question.

13. The Court properly refused to permit the witness, Charles J. DeBisschop, from answering the question:

Q. All right, sit down. Now, I will ask you just to take the piece of wood and show the jury what you mean by the erratic departure of grain from its normal and natural course?

This was properly excluded because the witness had already testified to this question, that he had seen it happen in 25 per cent. of his observations (*State of the Case,* p. 3976), and he further testified to the same question on page 3975 of the *State of the Case,* that he had seen the erratic course of

grains shown in specimens of wood of North Carolina pine or any other kinds of wood in ten trees. So that the witness did testify on the subject matter and was prevented by the Court from repeating it.

Group F

1. The Court properly admitted in evidence State Exhibit S-272, because it was a letter written by Hauptmann to the Fisch family, which was used in contradiction of Hauptmann's testimony.

2. The Court properly admitted in evidence, State Exhibit S-274 because it was a letter written by Hauptmann to the Fisch family which was used in contradiction of Hauptmann's testimony.

3. The Court did not err in admitting letters, State Exhibits S-275 and S-276, because they were translations and were testified to by an interpreter in Court.

4. The Court did not err in admitting photographs of Exhibits S-302 and S-303 because they were photographs of Rail 16, which was part of the ladder, which was offered in evidence, and the said photographs were made by Photographer Wilton and they correctly depicted Rail 16.

5. The Court did not err in admitting the memorandum book that belonged to the defendant Hauptmann because the book was presented to the defendant, Hauptmann. See *State of the Case,* p. 2618, and he was asked if that was his handwriting and he said "Yes," and the book was offered in evidence.

6. The Court properly admitted in evidence State Exhibit S-168, because it was the bill that Bruno Richard Hauptmann tendered to the witness, John Joseph Lyons, in payment for gasoline and it was one of the Lindbergh bills he passed, as testified to by Mr. Lyons (*State of Case,* p. 1526).

7. The Court properly admitted in evidence State Exhibit S-169 because it was a bill that had been passed to Mr. Levatino for the purchase of vegetables which Hauptmann admitted buying, and which was one of the Lindbergh bills.

8. The Court properly admitted in evidence State Exhibit S-170 because Hauptmann had tendered this twenty-dollar gold certificate for the purchase of a pair of shoes, which shoes were subsequently found in his house, which was one of the Lindbergh bills. (See *State of the Case,* p. 1555.)

9. The Court properly admitted in evidence State Exhibit S-172 because that was the bill that was found on Hauptmann's person at the time of his arrest, and was one of the Lindbergh bills. (See *State of the Case,* p. 1559.)

10. The Court properly admitted in evidence State Exhibit S-178 because the 83 ten-dollar bills which were found in Hauptmann's garage were Lindbergh bills and were initialed by John Wallace. (See *State of the Case,* pp. 1648 and 1649.)

11. The Court properly admitted in evidence State Exhibit S-179 because the 100 ten-dollar bills were found in Hauptmann's possession and as testified to by Witness Wallace (*State of the Case,* pp. 1651 and 1652) and were Lindbergh bills.

12. The Court properly admitted in evidence State Exhibit S-184 because that was a Daily Mirror newspaper wrapped around the money found in Hauptmann's garage.

13. The Court properly admitted in evidence State Exhibits S-185 to S-195, inclusive, which were twelve envelopes containing $1,000.00 each, found in Hauptmann's garage, and were Lindbergh ransom bills.

14. The Court properly admitted in evidence State Exhibit S-206, this being a certified copy of a mortgage, which represented money which Hauptmann had loaned on a mortgage after receiving the money from Dr. Condon.

15. The Court properly admitted in evidence the chisel, State Exhibit S-210, because it was a chisel that was found at the Lindbergh home and corresponded to a set of chisels belonging to the defendant, Hauptmann, which were found in his garage.

16. The Court properly received in evidence the ladder, marked State Exhibit S-211, because it had been testified to by Witnesses Bornmann, Enkler and Koehler, directly connecting the ladder in question with the defendant, Hauptmann.

State of the Case, p. 1952:

> "We have proven the possession of this ladder from the very time it was found upon the Lindbergh premises, within a short time after this crime was committed, up to the moment it came into this courtroom. Yes, there have been changes in that ladder made from time to time, for the very purpose, and with the intention that it could some day be brought into this very courtroom to help a Court and jury pass upon the innocence or guilt of a person charged with the crime in question. But we have explained those changes.
>
> "This ladder went from Bornmann to Kelly, from Kelly to Lamb. Kelly then took it from Lamb and took it to Washington; stood there and watched it; put it in a safe at night; brought it back the next day, or that day, back to Lamb again. Then the wood expert comes in. He has it. He returns it to Lamb. It remains with Lamb until it comes to this Court, each witness testifying that he brought it back in the same condition as he got it, with the exception that Kelly put the thumb-screws in there with the numbers on.
>
> Kelly marked Section No. 1, Section No. 2, Section No. 3. Koehler cut a piece of the wood

for experimentation and investigation purposes. Bornmann cut it in half for the same purpose. Koehler then put that together. The man who took the nails out put numbers on them to make sure they would go back as they should.

The middle clasps are there, so that we have the same ladder, the custody of it traced right to the very day it has gone into this courtroom, if your Honor please, and every moment of it explained—no question about any Dr. Hudson, he is not in our case—and we have explained every change.

Now, what is the purpose of an exhibit of this kind, if your Honor please? Why a gentleman down in Texas was shot or killed and the person who shot him shot him through his coat; he had one of these long-tail things, and the widow that she would give his clothes away, so some handyman in the town got his coat and it was a little too long, so they cut it off somewhere around the bottom, and then he saw this bullet hole and he patched it up, and he was walking around the street with it one day when the prosecuting attorney thought he would need that coat, so he got the coat and the defense objected that it was changed, and it was changed, and it was patched, and it was patched, but for the purpose of the case, if your Honor please, to show where the bullet hole and other things that were necessary to help a jury, the Court thought that it ought to be admitted, and it was admitted.

The point I am trying to make is that what we have exhibits here for is to try to help, and if those exhibits do not mislead the Court and the jury, if they haven't changed to such an extent to be misleading, if your Honor please, they are admissible.

> Now, we respectfully submit, then, if your Honor please, that we have proved the custody of this ladder, and the testimony is positive that in this courtroom stands the ladder substantially as it was the night it was found on that Lindbergh estate, and there is the testimony that this defendant came with a ladder that very day around that corner of Lindy's Lane—that is the testimony.
>
> So that, if your Honor please, we have spent so much time on it, I submit to you very respectfully—
>
> Now, if, perchance, some of the arguments with reference to this ladder have escaped the Court—not the arguments, but some of the testimony—may I submit to your Honor, your Honor's observations each time this ladder was offered?''

See testimony of Arthur Koehler (*State of the Case,* pp. 2197 to 2298, inclusive).

17. The Court properly received in evidence State Exhibit S-213, which was a five-dollar bill from Loew's Sheridan Square Theatre, which had been tendered by the plaintiff-in-error to Cecilia Barr and which had been traced by Lieutenant Finn, and which was one of the Lindbergh ransom bills (*State of the Case,* pp. 1969 and 1970).

18. The Court properly admitted in evidence, photograph marked Exhibit S-229, which was a photograph of the attic as heretofore explained and testified to by Witnesses Enkler, Koehler and Bornmann.

Group G

1. The Court properly excluded the newspaper photograph showing a stein in the recessed window of the home of Colonel Lindbergh, because there was no evidence on the part of any person that

such a photograph was taken or that it correctly depicted a scene in the Lindbergh home. The State offered in evidence a photograph correctly depicting the window which defendant was alleged to have entered. This photograph was made on the night the crime was committed and is a correct description of the window at the time the crime was committed. See *Exhibit* S-11.

Group H

1. The Court properly excluded the testimony of John E. Seykora as to whether or not an agent of the Department of Justice was permitted to see the ransom note on March 2, 1932, because it was hearsay testimony on the part of the witness.

2. The Court properly excluded the testimony of Karl Henkel as to what his wife told him concerning a conversation with Fisch, as it was hearsay testimony.

3, 4, 5 and 6. The Court properly excluded the testimony of the witness, Ewald Mielk, because he was not a wood expert and as admitted by Mr. Pope (*State of the Case,* p. 4051), he was only a wood technician. Furthermore, he never studied pine trees except going through the woods by traveling through that section of the country (*State of the Case,* p. 4059). Witness further testified from his years of experience, he was unable to tell the jury whether two boards were ever one and the same board (*State of the Case,* p. 4071). Witness further testified he could not tell whether there was anything missing between the two boards, as to whether or not they were one and the same board and that he would be unable to match the boards, and he said he did not think anybody would be able to do it (*State of the Case,* p. 4076).

Group I

1. The Court properly excluded the testimony of Karl Henkel, as follows:

> Q. You believe your wife, don't you?
> A. Yes.

This was a leading question and was immaterial and irrelevant in this issue.

Group J

1. The Court properly admitted in evidence the testimony of Joseph O'Levenson, Henry Jung and Isidor Fisch because it accounted for the presence of Isidor Fisch on the night of March 1, 1932.

2 and 3. The Court properly admitted evidence and testimony of the witness, Arac, who was a court stenographer from New York and who took down stenographically the statements of the defendant, Hauptmann, to District Attorney Foley (*State of the Case,* pp. 1755 to 1771, inclusive). The defendant was asked whether the statements were made of his own free will and he said they were, and that there were no promises made to the defendant at any time, and no threats made to him at any time (*State of the Case,* p. 1758). The Court asked Mr. Reilly if he desired to offer any testimony as to the voluntary or involuntary character of the confession or admission, and Mr. Reilly answered "Not at this time." The Court held that the statements made by the plaintiff-in-error were voluntary because Mr. Foley asked the defendant, Hauptmann, the following questions:

> Q. You have had visits from your wife?
> A. Yes.
> Q. You have cigarettes here that I have given you?
> A. Yes.

Q. Your child has been brought in to see you?

A. Yes.

Q. I have permitted your lawyer to visit you here in private with no guards in the room?

A. Yes.

Q. And he has had a stenographer with him?

A. Yes.

Q. And you have been allowed to conduct your defense without any hindrance from me?

A. Yes.

Q. I have helped you in every way possible?

A. Yes.

Q. Is all that true?

A. Yes.

Q. And the answers you make you make of your own free will without any compulsion or promise whatever?

A. Yes.

Group K

1 and 2. The Court properly refused to strike out the testimony of General John F. O'Ryan and the testimony of the witness, Hirsch, because it was testimony connecting the plaintiff-in-error with the crime with which he is charged.

Group L

1. The Court properly refused to allow the witness, H. Norman Schwarzkopf, to answer the following question:

> Q. Yes. Now, from that official report did you ascertain that the person who is alleged to have built the kidnap ladder wielded a saw with his or her left hand?

because it would be hearsay testimony.

2. The Court properly refused to permit the witness, H. Norman Schwarzkopf, to answer the following question:

> Q. Who would know that? (As to whether Rosner brought Spitale and Bitz in as intermediaries.)

because it would be hearsay testimony.

Group M

1. The Court properly permitted the witness, Peter H. Sommer, to answer the following question, because it was a question concerning the credibility of the witness and was proper cross examination:

> Q. Then he says to you, or rather he asked you: "Describe the people that you saw on the trolley car who were afterwards on the ferryboat?" and you described the same two men; isn't that the fact? "They were on the ferryboat, on the car coming down, then they was on the ferryboat. Describe them. They were the two men. Describe them. One was, I would say, about five foot nine, the other was about five foot four, one was short. They sat directly in front of me smoking cigarettes, I lit a cigarette." What have you to say about that explanation?

2. The Court properly permitted the witness, Benjamin Heier, to answer the following question on cross examination:

> Q. But you wouldn't travel to St. Raymond's Cemetery, to help this jury with the name of the street that you were parked on?

because it was a question concerning the credibility of the witness, and was proper cross examination.

3. The Court properly permitted the witness, Charles J. DeBisschop, to answer the following question on cross examination:

> Q. You want to carry to the jury the impression that this S-226 was never nailed down to joists?

because it was a question concerning the credibility of the witness, and was proper cross examination.

4. The Court properly permitted the witness, Charles J. DeBisschop, to answer the following question on cross examination:

> Q. Do you want to look at this nail now, because you want to reconsider your testimony on the very point which you just testified to, namely, that it is your sworn testimony that this nail——

as this was proper cross examination.

5. The Court properly permitted the questions asked of the plaintiff-in-error, Bruno Richard Hauptmann, in Assignments of Error, Numbers 5, 6, 7 and 8 of this Group, because the plaintiff-in-error had offered himself for cross examination and the questions asked him were proper cross examination of testimony that had been given by him in his direct examination, and the plaintiff-in-error having offered himself as a witness, was open to cross examination as decided by our Courts as follows:

> "When a defendant in a criminal case becomes a witness in his own behalf, it is in the discretion of the Court to allow him to be cross examined on the whole case, and the exercise of such authority is not reviewable error." *Disque* vs. *State,* 49 N. J. L. 249.

Group N

1. The Court properly refused to direct a verdict of acquittal at the conclusion of the State's case, and at the conclusion of the entire case, because our Courts have held as follows:

> "The denial of a motion to direct an acquittal at the close of the State's case on the trial of an indictment is not subject to review on error." *Burnett* vs. *State,* 62 N. J. L. 510.
>
> "Direction of a verdict for defendant in a criminal case rests in the discretion of the trial court." *State* vs. *Brown,* 72 N. J. L. 354.
>
> "But if there is any evidence to support the judgment, the verdict will not be disturbed." *Young,* 103 Atlantic 173.

Group O

There is no error in the Court's charge as set forth in Assignments Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, because the Court charged the jury as follows:

> "In the determination of all questions of fact, the sole responsibility is with the jury. You are the sole judges of the evidence, of the weight of the evidence, and of the credibility of the witnesses. Any comments that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as you may find them. You must not consider what I shall say concerning the evidence as being accurate, but you must depend upon your own recollection. You must not only consider the evidence to which I shall refer, but you must consider all of the evidence in the case."
>
> *State* vs. *Hummer,* 73 N. J. L. 714.

18. The Court did not err in charging the jury as follows:

> "Our statute relating to burglary says:
> 'Any person who shall, by night, wilfully or maliciously break and enter any dwelling house with intent to steal, commit a battery, shall be guilty of a high misdemeanor.'
> If, therefore, the defendant by night willfully and maliciously broke and entered the Lindbergh dwelling house with intent to steal the child and its clothing, and to commit a battery on the child, he committed a burglary; and if the murder was committed in perpetrating a burglary, it is murder in the first degree."

The law in this State is as follows:

> Crimes Act, Section 107;
> 2 Compiled Statutes, p. 1780.

19. The Court did not err in charging the jury as follows:

> "The State contends that the murder in this case was committed in perpetrating a burglary, and is murder in the first degree.
> "I charge you that if murder was committed in perpetrating a burglary, it is murder in the first degree, without reference to the question whether such killing was willful or unintentional; and I further charge you, as requested by the defendant, that in order to convict this defendant you must be satisfied, beyond a reasonable doubt, that the death of the child ensued from committing, or attempting to commit, burglary, at or about the time and place in question."

The law in this State is as follows:

Crimes Act, Section 107;
2 Compiled Statutes, p. 1780;
State vs. *Compo,* 108 N. J. L. 500.

20. The Court did not err in charging the jury as follows:

"There is evidence from WHICH YOU MAY CONCLUDE, IF YOU SEE FIT, that the defendant feloniously, willfully and maliciously broke and entered the dwelling house of Colonel Lindbergh in the night time with intent to steal the child and its clothing and commit a battery upon the child; that defendant brought the ladder to the Lindbergh house in East Amwell Township in this county, and placed it up against the house near the nursery window; that shortly after nine o'clock at night he ascended the ladder, maliciously and willfully opened the closed window and entered the nursery room; that he seized the child and its clothing and carried it out of the nursery room window, and that the fracture of the skull which caused the child's death was inflicted when the child was seized by the defendant and carried out and down the ladder, and when the ladder broke."

BECAUSE THE COURT LEFT ALL QUESTIONS OF FACT TO THE JURY, p. 4499.

Group P

The State reiterates the answer made to the specification contained in Group O.

The Court properly refused to charge as requested in Specifications 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of this Group because the Court properly charged as follows:

State of the Case, p. 4498:

> "In the determination of all questions of fact, THE SOLE RESPONSIBILITY IS WITH THE JURY. YOU ARE THE SOLE JUDGES OF THE EVIDENCE, OF THE WEIGHT OF THE EVIDENCE AND OF THE CREDIBILITY OF THE WITNESSES. Any comments that I may make upon the evidence will be made, not for the purpose of controlling you in your view of the facts, but only to aid you in applying the principles of law to the facts as you may find them. You must not consider what I shall say concerning the evidence as being accurate, but you must depend upon your own recollection. You must not only consider the evidence to which I shall refer but you must consider all of the evidence in the case."

State of the Case, p. 4499:

> "In this, as in every criminal case, the defendant is presumed to be innocent, which presumption continues until he is proved to be guilty."

State of the Case, p. 4502:

> "The fact that the child's body was found in Mercer County raises a presumption that the death occurred there; but that, of course, is a rebuttable presumption and may be overcome by circumstantial evidence."

State of the Case, p. 4507:

> "A very important question in the case is Did the defendant, Hauptmann, write the original ransom note found on the window sill, and the other ransom notes which followed? Nu-

merous experts in handwriting have testified, after exhaustive examination of the ransom letters and comparison with the genuine writings of the defendant, that the defendant, Hauptmann, wrote every one of the ransom notes, and Mr. Osborn, Senior, said that that conclusion was irresistible, unanswerable, and overwhelming. Upon the other hand, the defendant denies that he wrote them and a handwriting expert called by him, so testified. And so the fact becomes one for your determination. The weight of the evidence to prove the genuineness of the handwriting is wholly for the jury."

State of the Case, p. 4510:

"The defendant denies that he was ever on the Lindbergh premises, denies that he was present at the time that the child was seized and carried away. He testifies he was in New York at the time. He denies that he received the ransom money in the cemetery and says that he was at his home at that time on the evening of April 2, 1932.

This mode of meeting a charge of crime is commonly called setting up an alibi. It is not looked upon with any disfavor in the law, for, whatever evidence tends to prove that the defendant was elsewhere at the time the crime was committed, at the same time tends to contradict the fact that the crime was committed by the defendant, whereas here, the presence of the defendant is essential to guilt, and if a reasonable doubt of guilt is raised, even by inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt."

State of the Case, pp. 4512, 4513.

"And when the case against the defendant is made up wholly of a chain of circumstances, and there is reasonable doubt as to any fact, the existence of which is essential to establish guilt, the defendant should be acquitted.

If the State has not satisfied you by evidence beyond a reasonable doubt, that the death of the child was caused by the act of the defendant, he must be acquitted.

State of the Case, pp. 4513, 4514:

"The State contends that the murder in this case was committed in perpetrating a burglary, and is murder in the first degree.

I charge you that if that murder was committed in perpetrating a burglary, it is murder in the first degree, without reference to the question whether such killing was willful or unintentional; and I further charge you as requested by the defendant, that in order to convict this defendant, you must be satisfied, beyond a reasonable doubt, that the death of the child ensued from committing or attempting to commit burglary at or about the time and place in question.

A judgment in a murder case will not be reversed because of the refusal of requests to charge, when the principles of law therein were correctly and fully presented in the charge given.

Where requests have been correctly and fully covered in substance and effect in the charge given, such instruction need not be repeated in language chosen by the defendant." *State* vs. *Burrell,* 112 N. J. L. 330.

Group Q

Plaintiff-in-error suffered no denial of right under the common law and the ancient and established practices of the courts of the State of New Jersey and of the United States, nor was there any denial of due process accorded by the Fourteenth Amendment to the Federal Constitution, as alleged in Specifications 1 and 2 and the subdivisions thereof of this Group. The Court charged (*State of the Case,* p. 4502), as follows:

> "The fact that the child's body was found in Mercer County raises a presumption that the death occurred there; but that, of course, is a rebuttable presumption and may be overcome by circumstantial evidence."

With respect to the subdivisions of Point 2 of this Group—A, B, C, D, E, F, G, H and I, no objection was made by plaintiff-in-error during the trial, nor was any evidence produced as to the effect upon the jury. The recitals by plaintiff-in-error and the conclusions drawn therefrom by him have no basis in fact. The trial was conducted with great dignity by the presiding justice and in a calm and judicial manner. The charge of the Court was in harmony with the law, contained no hint of advocacy and reflected great honor upon the justice who so capably and ably presided. In the absence of evidence to support the specifications in this Group it is respectfully submitted that the allegations should fail.

Group R

Answering Specifications 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51

of this Group, the summation of the Attorney-General was a temperate and moderate statement of the evidence produced in the case and of the legitimate inferences to be drawn therefrom, which was strictly in accord with the law within the bounds of the case and reflected the high ethics which have always characterized one of the oldest constitutional offices under the government of this State.

Group R

1 and 2. There is nothing in the Attorney-General's remarks under these sections that is not true and there is nothing prejudicial to the plaintiff-in-error because the Attorney-General described the type of man who would kill the child of Colonel Lindbergh, and the position and station of Anne Morrow and Colonel Lindbergh were discussed at length, by counsel for plaintiff-in-error in his summation, and it is certainly true that Anne Morrow was the cultured daughter of a former Ambassador to Mexico.

3. This was the Attorney-General's comment upon the type of man who would murder the child of Colonel Lindbergh and it was clearly established by the evidence, and the Attorney-General's remarks were proper remarks as to characterizing the type of man who would kill the child of Colonel Lindbergh.

4. This comment by the Attorney-General was an answer to statements made throughout the trial, and in the opening of counsel for plaintiff-in-error and in the closing of counsel for plaintiff-in-error where repeatedly it was claimed, although there was no evidence to support the claim, that the defense did not have any money. The Attorney-General also said:

> "They talk about the defense not having any money, handicapped for money. There is not

> a scintilla of evidence, there is not one word of evidence, there is not the slightest bit of proof that they haven't money."

which remarks counsel for plaintiff-in-error did not include in this Assignment.

5. The reference to the phonograph record by the Attorney-General in his summation was in response to statements made by counsel for plaintiff-in-error and his demand in open court for the production of the phonograph record.

As to the second paragraph of Number 5, Dr. Condon testified (*State of the Case,* pp. 624, 626 and 627), as to Hauptmann saying, "Will I burn if the baby is dead?" Are you German, John? No, I am Scandinavian. Have you got the money? No, I haven't got the money.

Mr. Reilly made reference to the phonograph record (*State of the Case,* p. 4389), in the following manner:

> The Court—Well, didn't you make some inquiry of some one of the witnesses about this record?
>
> Mr. Reilly—I asked him if he had it, yes, sir.
>
> The Court—Yes, and didn't you ask him to bring it here?
>
> Mr. Reilly—I asked him would he bring it.

Further reference was made to the phonograph record in Mr. Reilly's cross examination of the witness, Thomas S. Sisk (*State of the Case,* p. 1962):

> Q. Now, isn't it a fact that after talking to Dr. Condon you had Dr. Condon imitate the voice of John at the cemetery and that imitation recorded on Victrola records?
>
> A. Why, we——

Q. Did you or not?
A. Yes, sir, we did.
Q. Where are those Victrola records?
A. Well, there was only one record, and I believe that is in Washington.
Q. May we obtain it?
A. Yes, I suppose so.
Q. Can you get it?
A. It will take a couple of days.

6, 7, 8 and 9. The comments complained of by counsel for plaintiff-in-error were statements made by counsel for the plaintiff-in-error itself in its summation and were only reiterated by the Attorney-General.

10, 11 and 12. The testimony plainly shows and the evidence presented in the case eliminated Violet Sharpe and Betty Gow from participation in this crime. There is not an iota of evidence connecting either one of these parties and they were investigated from every angle by the State Police of New Jersey, the Department of Justice and the New York Police, and constantly throughout the case Mr. Reilly refers to Betty Gow and Violet Sharpe and a half-dozen other people as being connected with the crime, but he offered no evidence to substantiate his remarks.

13. This is a proper remark by the Attorney-General concerning Dr. Condon and his family and was not prejudicial to the plaintiff-in-error. The Attorney-General properly replied to Mr. Reilly when Mr. Reilly made the statement to the jury that "Condon stands behind something in this case that is unholy," and further when Mr. Reilly said, "Dr. Condon was off his guard—voluble, acting, crafty and crooked."

14 and 15. The Attorney-General's comment in this instance was an endeavor to give his views to the jury as to how the child was killed—as to

whether the child was smothered or choked, and the jury has a right to infer from the facts and circumstances of this case as to how the child came to its death. The Attorney-General said, "That's a fair inference that comes from its failure to cry; either there in the room or outside," showing there could be a fair inference from the facts in the case.

16. The Attorney-General properly commented upon the fact that the defendant had broken out of jail because it was in evidence in this case that he had been convicted of crime in Germany, that he had escaped from jail, and that he had illegally entered this country on two occasions. (*State of the Case,* pp. 2400 to 2451.)

17. It was a proper comment by the Attorney-General as to Dr. Condon's statement on the witness stand when he said, "There is the fellow I gave the money to," as this was evidence in the case. (*State of the Case,* pp. 659, 660 and 661.)

18. This is proper comment by the Attorney-General as to whether "If Condon had died and he wasn't here to testify, if Perrone came in and said, "That is the man that gave me the note to deliver to Condon,' " because we have the man who wrote the notes. The evidence in this case of Mr. Sellers, Mr. Osborn and the volume of testimony of other handwriting experts after exhaustive examination of the ransom letters, comparison with the genuine writings of the defendant, that Hauptmann wrote every one of the ransom notes. Mr. Osborn, Senior, said "That that conclusion is irresistible, unanswerable and overwhelming." The Court said: "On the other hand the defendant denies that he wrote them." That fact then becomes one for determination by the jury as to the weight of the evidence to prove the genuineness of the handwriting in this case.

19 and 20. These were proper comments by the Attorney-General as to the character of a man who

would commit murder when he said "It had to be a man who had ice water in his veins and not blood," and when he said that the only thing he had was the appearance of a man, "He wears the clothes of a man, that is all there is to identify him."

It was proper comment for the Attorney-General when he characterized the signature of the ransom notes when he said: "There it is; the blue circle, the red center and the holes; 'B' in blue, for Bruno; 'R' in red for Richard; holes, 'H' for Hauptmann." The notes in question had a circle which was blue and another circle which was red and in these circles there were holes, and it was a proper inference from the signature to the notes which were offered in evidence.

22. The characterization as to the plaintiff-in-error by the Attorney-General, was proper comment as to what a "cold-blooded murderer" he was, as has been shown by evidence submitted in this case.

23. When the Attorney-General stated that "The gentleman had a dictionary in his cell," this was true because the warden at the jail testified he had a dictionary in his cell and it was offered in evidence and Hauptmann identified the dictionary as being one he had sent for. (*State of the Case,* p. 2573.) The dictionary was offered in evidence as State Exhibit S-255.

24 and 25. These were proper comments by the Attorney-General as to the character of a man who would commit such a crime and it was a proper inference from the evidence in the case.

26. The Attorney-General had the right to state that the defendant had crushed the child into insensibility before he came out of that room, because it was a proper inference from the testimony in this case.

27. The Attorney-General's comment concerning Colonel Lindbergh's identification of Hauptmann's voice, was a proper comment on the evidence because Lindbergh testified that he identified Hauptmann's voice and when asked by counsel for plaintiff-in-error who he thought kidnapped his child, he said "Hauptmann." (*State of the Case,* p. 202.)

28. The Attorney-General properly stated in his summation—"We are not concerned about what the mob is clamoring for," because this was in answer to Mr. Reilly's statement in his summation when he said—*State of the Case,* pp. 7342 and 7381:

> "Public clamor is not going to have in the squares of Flemington, a man drawn to his death or life imprisonment because the mob wants it.
>
> "Now, if you want to convict Hauptmann because the mob wants you to—and by the mob I mean the people of the world—and think it should be done, then all my prayers and pleadings won't do him any good."

The Attorney-General commented that he had sufficient faith in the American people to know that it was their honest belief and conviction that Hauptmann was a murderer, which was a proper inference from the facts in this case which proved conclusively that he was the murderer.

29, 30, 31 and 32. There is no prejudicial error in the Attorney's General's statements complained of, the same being merely a discussion of the effect of criminal acts upon society.

33. The Attorney-General's comment—"It would have to be the type of man that would forsake his own mother, sixty-five years of age, and run away," was a proper inference from the evidence in the case.

34. The Attorney's General's comment upon the text, "Judge not lest ye be judged," was in answer to Mr. Reilly's opening of his summation in which he used these same words, "Judge not lest ye be judged." When the Attorney-General stated after giving that text, that counsel for plaintiff-in-error started right out to rip the heart and souls out of Americans who were sworn to do their duty and were here only for that purpose, it was properly answering the summation speech of Mr. Reilly.

35. The Attorney-General's statement to the jury, in reply to statements of counsel for plaintiff-in-error, is proper comment because if you will read Mr. Reilly's statements you will find he did attempt to assassinate improperly, the reputation of every person who testified for the State, and charged everyone in the household of Colonel Lindbergh with the murder except the Colonel and his wife, and the Attorney-General's reply was proper under the laws of this State.

36. The Attorney-General's statement with reference to General O'Ryan—"We had to bring him here, and we took him away from a conference with the President to bring him here," was in reply to statements on the subject in the summation by counsel for plaintiff-in-error and questions to General O'Ryan by Mr. Reilly while he was on the witness stand.

37. The Attorney-General had a right to ask the jury why other experts were not in court because counsel for plaintiff-in-error had stated in court on various occasions that they had six or seven experts to examine the handwriting and in fact on occasions requested an adjournment of court to have its numerous experts examine the handwriting, which conference actually was held.

38. This comment by the Attorney-General was an answer to statements made throughout the trial, in the opening of counsel for plaintiff-in-error and in the closing of counsel for plaintiff-in-error where

repeatedly it was claimed, although there was no evidence to support the claim, that the defense did not have any money.

39. The statement of the Attorney-General that Red Johnson had gone back to Norway was true as testified to in this case.

40. There is no prejudicial error in the Attorney-General's statements complained of, it being merely a proper discussion of the effect of criminal acts upon society.

41. The Attorney-General's statement:

> "What would they see up there? No, but counsel wanted to go up there on a Sunday morning while the Attorney-General was home sick in bed and couldn't make arrangements that Sunday morning, and I told him any other morning; but no, it had to be Sunday morning. Any morning during the week they could have gone up with their wood expert."

was in answer to Mr. Reilly's statement that he had no opportunity to examine the Hauptmann home. This was proper comment on the facts in the case.

42. The Attorney-General had the right to state what he thought about Dr. Hudson as the result of Dr. Hudson's testimony and had a right to infer from the testimony and to present his views on the credibility of the witness.

43 and 44. The statement by the Attorney-General that if the jury would smell the boards they would find one had been tampered with and one had not, and that they would get an odor from the boards, was proper comment upon the evidence in this case because he presented the boards to the jury for their consideration and they could settle whether or not there was an odor from one of the boards, and from an examination as to whether or not they were tampered with.

45, 46, 47, 48 and 49. These were proper comments by the Attorney-General as to the conduct of the plaintiff-in-error as indicated by the record.

50. There was no prejudicial error in the Attorney-General's statement that he didn't know the Colonel was wealthy at all and that he thought the Colonel had a tough job scraping up the ransom money, because it was in answer to the statement on the subject by counsel for plaintiff-in-error in its summation and was not prejudicial to the plaintiff-in-error.

51. The above answers are given to the Assignments of Error under Group R and are proper comments made by the Attorney-General and inferences from the facts in this case. After giving his views of the evidence that had been presented, the Attorney-General further said to the jury—*State of the Case,* p. 4399:

> "Now you can't indict people, you can't convict them, dead or alive, just because some lawyer says so, just because he doesn't know what happened. I sympathize with him because he doesn't know what happened. The police for years have been investigating this case, and counsel wants to solve this entire case by insinuation and reference borne only in his mind. But you are governed by the evidence, men and women. *You are not governed by speeches that are made by lawyers, whether it is me or anybody else. You have got to recollect, if I make a mistake about the testimony, or if counsel makes it, you have got to recollect as best you can the testimony and be governed by that.*

After giving his inferences from the facts, the Attorney-General stated to the jury that it was their function to recollect the evidence and to use

their views and not his, and in addition to what the Attorney-General said, the Court in its charge to the jury told the jury:

> "In the determination of all questions of fact, the sole responsibility is with the jury. You are the sole judges of the evidence, of the weight of the evidence and the credibility of the witnesses. You must not consider what I say concerning the evidence as being accurate but you must depend upon your own recollection."

Group S

Answering Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of this Assignment, the opening of the Attorney-General and of the Prosecutor of the Pleas was a correct statement of the case, embraced the facts to be presented to the jury and was consistent with the theory of the State under which the evidence was presented.

Group T

The jury was properly sequestered and guarded in the manner provided by law. Unusual care was taken in this respect at the direction of the trial court.

Group U

With respect to the specifications contained in Group U, no objection was made during the trial by the plaintiff-in-error concerning the matters complained of, nor is any evidence adduced in support of the contention made.

Group V

The verdict was consistent with the evidence produced and sufficient to satisfy a considerate mind, beyond a reasonable doubt, that the plaintiff-in-error was guilty of murder in the first degree.

It is respectfully submitted that the entire record and proceedings in this cause are free from reversible error and that the judgment of the Hunterdon Oyer and Terminer should be affirmed.

Respectfully submitted,

David T. Wilentz,
Attorney-General,

Joseph Lanigan,
Robert Peacock,
Assistant Attorneys-General,
Of Counsel to the State of New Jersey,
Defendant-in-Error,

Anthony M. Hauck, Jr.,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

---

* Italics ours.

INDEX OF CASES CITED

B

PAGE

Berger vs. *United States,* 79 L. ed. Adv. Op. 667 13
Brill, Cyc. Crim. Law, Vol. 2, p. 1316, par. 791. 38
Bruch vs. *Carter,* 3 Vroom 554 57
Burnett vs. *State,* 62 N. J. L. 510 104
Burns vs. *Del. & Atl. Tel. & Tel. Co.,* 70 N. J. L. 745 89

C

Christafides vs. *Brunswick Motor Co.,* 90 N. J. L. 313 58
Comm. vs. *Manfredi,* 29 A. 404 (Pa.) 45
Comm. vs. *Wilcox,* 36 Pa. Sup. 244 51
Corpus Juris, Vol. 16, 222 51
Corpus Juris, Vol. 30, 290 33
Corpus Juris, Vol. 36, 769 36
Corpus Juris, Vol. 36, 800 38
Crimes Act, Sec. 107, 2 Comp. Stat. 1780 ...105-106

D

Dunn vs. *Goldman,* 111 N. J. L. 249 32

F

Frank vs. *Mangum,* 237 U. S. 309 31
Fiorentino vs. *Farr & Bailey Mfg. Co.,* 100 N. J. L. 143-147 58

G

Gordon's case, 50 N. J. Eq. 397 59
Graff vs. *Louis Stern Sons,* 103 N. J. L. 13-15 .. 58

H

PAGE

Houston vs. *State,* 8 Engl. Ark. Rep. 66 42

K

Keith vs. *State,* 62 N. E. (Ind.) 716 33

M

McMichael vs. *Horay,* 90 N. J. L. 142 29

N

Normandin vs. *Parteneau,* 150 Atl. Rep. 460... 32
New London Water Com'rs vs. *Robbins,* 82 Conn. 623-640 33

P

People vs. *Fielding,* 158 N. Y. 542 11
People vs. *Craig,* 195 N. Y. 193 38
People vs. *Di Pasquale,* 146 N. Y. 528 52
People vs. *Mather,* 4 Wend. 229 52

R

22 Ruling Case Law, p. 102, Par. 11 30

S

Sikes vs. *State,* 92 S. E. 553 (Ga.) 52
Smith vs. *Tompkins,* 161 Atl. Rep. 221 32
State vs. *Andrews,* 21 Fla. 599 33
State vs. *Barker,* 68 N. J. L. 19 11
State vs. *Belkota,* 95 N. J. L. 416 29
State vs. *Biango,* 75 N. J. L. 284 10
State vs. *Brown,* 72 N. J. L. 354 104
State vs. *Burrell,* 112 N. J. L. 330 109
State vs. *Carlino,* 98 N. J. L. 48 48

PAGE

State vs. *Compo,* 108 N. J. L. 499 43
State vs. *Corson,* 108 N. J. L. 12 8
State vs. *Currier,* 60 N. E. (Ind.) 1023 38
State vs. *Dichter,* 95 N. J. L. 203 56
State vs. *Dixon,* 260 Pac. 138 39
State vs. *Donnelly,* 26 N. J. L. 463 58
State vs. *Ferrone,* 103 Atl. Rep. (Conn.) 452 .. 13
State vs. *Fuersten,* 103 N. J. L. 383-388 58
State vs. *Gimbel,* 107 N. J. L. 241 48-49
State vs. *Herron,* 77 N. J. L. 523 58
State vs. *Hummer,* 73 N. J. L. 714 52-104
State vs. *Juliano,* 103 N. J. L. 663-679 58
State vs. *Kent,* 27 L. R. A. (N. D.) 686 30
State vs. *Kaskevich,* 98 N. J. L. 23-27 58
State vs. *Lackawanna R. R. Co.,* 82 N. J. L. 747 58
State vs. *Lang,* 75 N. J. L. 1 10
State vs. *Lovell,* 88 N. J. L. 353 58
State vs. *McCormick,* 93 N. J. L. 287 12
State vs. *Morehous,* 97 N. J. L. 285 58
State vs. *Mouser,* 92 N. J. L. 474 50
State vs. *O'Leary,* 110 N. J. L. 36 17
State vs. *Overton,* 85 N. J. L. 287 54
State vs. *Randall,* 95 N. J. L. 452 58
State vs. *Schilling,* 95 N. J. L. 145-151 58
State vs. *Sgro,* 108 N. J. L. 528 9
State vs. *Shupe,* 88 N. J. L. 610 29
State vs. *Terry,* 91 N. J. L. 539 8
State vs. *Turco,* 99 N. J. L. 96 48
State vs. *Warady,* 77 N. J. L. 348 57
State vs. *Wilson,* 1 N. J. L. 439 36-39
Stern vs. *Wagenheim,* 105 N. J. L. 21-26 58

T

Territory vs. *Pendey,* 22 Pac. 761 41

U

PAGE

Underhill on Criminal Evidence, Par. 86 33

W

Wharton on Homicide, Sec. 122 44

Williams vs. *Brooklyn Elevated R. R. Co.,* 126 N. Y. 96 12

Y

Young, 103 Atl. 173 104

99 MAY.1.1935

Filed after the Oral Argument by leave of Court.

Court of Errors and Appeals
of the State of New Jersey

The State of New Jersey, *Defendant in Error,* *vs.* **Bruno Richard Hauptmann,** *Plaintiff in Error.*	**Sur Indictment for Murder.** **On Error to Hunterdon County Court of Oyer and Terminer.**

Supplemental Brief for Plaintiff In Error

STATEMENT

In this Supplemental Brief submitted by special leave of the court granted upon the argument, counsel have discussed principally matters brought up on the argument and not included in the original brief and also replies to the state's brief and it is submitted with the hope that it may be of assistance to the court in reaching its decision as to the questions involved

It is pointed out that the legal arguments advanced for reversal are not "afterthoughts" as was suggested by the attorney general upon the argument. The question of value, lack of evidence as to breaking and entry, the fact that there is no statutory crime of burglary, the question as to venue and other important questions were

raised by motion for direction of a verdict of acquittal at the end of the state's case (p. 2356) and reference is made to the record for the arguments there advanced. This motion was repeated at the conclusion of the entire case and other questions were brought to the attention of the trial court at the time of entering exceptions to the charge, all of which will appear by the record and the references thereto in the original brief.

POINT I

THE SUMMATION OF THE ATTORNEY GENERAL WAS SO PREJUDICIAL THAT IT WARRANTS A REVERSAL.

(Supplementing Point I of original brief.)

The State has answered Point I upon the grounds that only one objection was taken during the summation and that the attorney general was justified in making improper remarks in summation because defendant's counsel had transgressed the rules in his summation. Both of these arguments will be answered herein.

First, as to the answer of the state that only one objection was made by defendant's counsel during the summation, this court is referred to a rather recent case in the Supreme Court of the United States where the following opinion was expressed:

> "Respondents urge that the objections were not sufficiently specific to justify a reversal. But a trial in court is never, as respondents in their brief argue this one was, 'purely a private controversy...of no importance to the public.' The state, whose interest it is the duty of court and counsel alike to uphold, is concerned that every litigation be fairly and impartially conducted and that verdicts of juries be rendered only on the issues made by the pleadings and the evidence. The public interest requires that the court of its own motion, as is its power and duty, protect suiters in their right to a verdict uninfluenced by the appeals of counsel to passion or prejudice. * * * Where such paramount considerations are involved, the failure of counsel to particularize an exception will not preclude this court from correcting the error."

N. Y. Central R. R. Co. vs. Johnson, 279 U. S. 310; 73 U. S. (L. ed.) 706.

The foregoing case was a civil case and the rule would apply with even greater force in a murder case where a life is at stake as was pointed out by Mr. Justice Parker in the recent case of State vs. Jones, 115 N. J. L. 257, quoted at page 77 of the original brief.

In a civil case which resulted in a reversal the United States Circuit Court of Appeals used the following language in commenting upon the failure to enter an objection to improper remarks upon summation:

"It is true that counsel for appellants did not object to many of the statements quoted above as illustrating the general nature of the closing arguments. But the failure to take affirmative action is not conclusive. The court should intervene sua sponte when necessary to secure a fair trial. Brown v. Walter (C. C. A. 2), 62 F. (2d) 798; August v. United States (C. C. A. 8), 257 F. 388, 391. In the latter case the ruling was predicated upon the opening argument of the Assistant United States Attorney, to which no objections were made, nor exceptions preserved."

Aetna L. Ins. Co. v. Kelley, 70 F. (2d) 589.

The court in the last mentioned case referred to the opinion of the United States Supreme Court in N. Y. Central R. R. Co. vs. Johnson, supra.

In discussing a similar question and relative to the want of an objection the Supreme Court of South Carolina used the following language:

"This court is bound, in a capital case to take notice, in behalf of the accused, of any error

apparent upon the record by which the prisoner has been deprived of any of the substantial means of enjoying a fair and impartial trial."

State vs. McNinch, 12 S. C. 89.

As was pointed out in the original brief there was an objection and exception taken during the beginning of the attorney general's summation relative to a statement of facts not in evidence and according to the authorities referred to in the original brief it did not become necessary to make repeated objections to this line of argument for once having taken an objection and the court having overruled the same there is no necessity for repetition of the objection to continuing misconduct along the same line in order to obtain a review on appeal.

"Where proper objection is made and exception saved to improper argument, it is not necessary that the objection and exception be repeated upon repetition of the improper argument."

3 C. J. 864.

Next, as to the answer of the State that the improper remarks of the attorney general in summation were excused because of some like action by defendant's counsel. Again the Supreme Court of the United States is referred to for authority that such is not the rule, and the following words were used as relating to criticism of a summation:

"Want of good judgment or good taste, or even misconduct on the part of either was not an issue in the case for the jury nor could it

excuse like conduct on the part of respondent's counsel."

N. Y. Central R. R. Co. vs. Johnson, supra.

Another sufficient answer in the words of the Supreme Court of the United States is found in the following quotation from the Berger case:

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done."

Berger vs. United States, 79 L. ed. Adv. Op. 667.

It has never been successfully contended that two wrongs make a right and the adoption of such a principle as advanced by the attorney general would lead to incalculable mischief.

To the same effect are the following opinions from courts of sister states:

And it is no sort of a justification to counsel for the State for having made statements in argument not warranted by the evidence, that counsel for defendant may have also traveled out of the record and made unwarranted statements in argument.

Campbell vs. People, 109 Ill. 565, 50 Am. Rep. 621; People vs. Mitchell, 62 Cal. 411.

And the fact that counsel for the accused in a prosecution for homicide went outside the record to tell the jury the circumstances of the death of the person killed does not justify coun-

sel for the State in stating to the jury his individual knowledge of the accused, and recounting to them circumstances of the killing of other persons by the accused, and such statements by the district attorney justify a reversal.

Tillery vs. State, 24 Tex. App. 251, 5 S. W. 842.

In the first place it must be conceded that the prejudicial remarks of the attorney general with which his summation abounded were highly improper according to the views expressed by the Supreme Court of the United States in the Berger case and by numerous other authorities. Furthermore, these improper remarks were much more serious than those condemned in the Berger case. According to the opinion of the Supreme Court of the United States in Mooney vs. Holohan, U. S. Supreme Court, L. ed. Adv. Reports, Vol. 79, No. 6, p. 347, it was held that improper action of prosecuting officers of a State will constitute a violation of "due process" and consequently a violation of a question of public policy and a denial of a fair trial. The Mooney case is quoted and referred to hereinafter. Consequently, under our decisions such as the O'Leary and other cases where fundamental rights have been invaded the Appellate Court will review even though no objection be entered in the trial court.

At page 16 of the State's brief, counsel for the defendant is quoted as complimenting the court upon a lucid and learned exposition of the law but the State has failed to quote the remainder of the sentence which qualified this compliment in the following words:

"But since I feel constrained to disagree in certain particulars, I desire to take the following exceptions."

(p. 4531, line 40, etc.)

The State has also failed to point out that this was the statement of one counsel made after other counsel for the defendant had taken a general exception to the charge (p. 4531, line 20) and had also taken particular exceptions.

At page 8 of the State's brief it is stated that counsel for plaintiff in error offer a strange and naive excuse for failure to object by stating that "even if objections had been entered they would have been of no avail so far as effect upon the jury was concerned." This statement is not found in the brief filed by the plaintiff in error but was a statement contained in a typewritten preliminary brief given to the State and what was really meant by counsel for plaintiff in error is set forth in the filed brief at the bottom of page 21 in a quotation from 2 R. C. L., p. 440, Section 39, where it was said that neither rebuke nor retraction could entirely destroy the sinister influence of a summation of the character of the one in question.

In conclusion, it is earnestly suggested to this court that a reading of many opinions delivered in this State and in other courts and especially by the trend of recent decisions it may safely be said that inertia of counsel does not relieve the prosecuting officer nor the trial judge from a duty, in a trial for a capital offense, from protecting the defendant against improper influence being injected into the cause and thus depriving him of a fair trial.

POINT II

THERE WAS A MATERIAL VARIANCE OF THE THEORY OF DEATH INJECTED INTO THE CASE UPON THE SUMMATION OF THE ATTORNEY GENERAL.

(Supplementing Point II of Original brief.)

As to the material variance in the theory of the State as first injected into the case, upon the summation of the attorney general it was suggested to counsel by one member of the court upon the oral argument that this might not be harmful because the trial court charged the jury that the State had tried the case upon the theory of death ensuing from a burglary. It is contended that this mere statement of the trial court did not cure this serious error. It will be recalled that on page 38 of the original brief it was pointed out that the trial court refused the request of the defendant to charge that there was no evidence in the case of a wilful, deliberate and premeditated murder. The State makes the issues and the issue it presented for trial through its openings was that the death resulted from the commission of a burglary. Counsel should not be permitted to wander from the issues and inject entirely novel ones upon summation. The attorney general might as well have said, "We charge a wilful, deliberate and premeditated murder." The State argues weakly that the attorney general did not state that the child was killed in the room and *part* of the summation is quoted in the State's brief but the State's brief fails to set forth the remainder of the objectionable matter where the attorney general gave his definition of insensibility when he said, "The child is dead," as will be found on page 36 of the defendant's original brief.

This was such a serious matter and was such a radical departure from the established practices

and from the openings and evidence in the case that the trial court should have definitely instructed the jury to disregard such issue and even had that been done it is doubtful if the error would have been cured and the harmful influence of the statements sufficiently removed from the minds of the jury so that it might be said that they were not influenced thereby.

This material variance is in a way coupled with the complaint as to the highly improper summation as discussed under Point I for the reason that the attorney general stated facts to the jury for which there was no basis to be found in the evidence.

Chief Justice Beasley in the case of State vs. Cucuel, 31 N. J. L. 249, lays stress upon the fact that the ancient practices under the common law may not be waived nor set aside and in a very emphatic and pointed interrogatory states that "if the power to alter in one respect the admitted mode of ancient procedure is conceded to the court, what power to alter the forms of the trial can be denied" and if the power of the trial court to alter these substantial forms of a capital trial is altogether lacking then with equal reasoning the power or right of the prosecuting attorney as the administrative officer of the State to inject into a capital case a vital change of the whole procedure is barren of any citation of authority and offends the admitted and immemorial usages which characterize our criminal jurisprudence in this State. Chief Justice Beasley pointed out that in this State the court "has ever conformed its practice with implicit obedience, to the ancient usages." The reasoning of Chief Justice Beasley has found recent approval by this court in the case of State vs. O'Leary, 110 N. J. L. 36.

No court in New Jersey has ever laid down the proposition which is concretely found in this case, that after a six weeks' trial where the homicide

was alleged to have occurred after a fall from a ladder that the State suddenly shifted its openly declared intention couched in its openings to an entirely different type of homicide consummated by means of which there was no evidence during the whole trial and at a place about which no mention was either made by witnesses for the State or for the defense.

The defendant was entitled as a matter of absolute law, which was not in any measure dependent upon grace or exercise of discretion by the trial court or subject to waiver by counsel, that the State of New Jersey be confined in its summation to the proof of the fall of the Lindbergh baby from the ladder. Not only is this a rule of procedure rooted in tradition and precedent at common law but under our system of government and jurisprudence it is a constitutional privilege of the defendant to be informed of the nature and cause of the accusation against him and to have the jury free from the injection of any new charge or semblance of a charge which violates his right to be so informed.

This change of scope and instrumentality is not alone a rule of procedure rooted in tradition and precedent but it is a solemn constitutional privilege devised for the protection alike of society and the accused and possesses the same vitality today in the law of the State of New Jersey as it had at the time of the formation of the original thirteen states. The considerations which buttress the existence of this right are as cogent and compelling today as when the common law first adopted the salutary rules that all trials should be upon stated issues and upon evidence delivered in open court in the presence of the parties.

In the present case no argument of convenience or expediency, no argument based upon the presumed intelligent type of jurors, no argument

based upon the fact that the jury were not influenced by the remarks of the attorney general as to the death blow inflicted with the chisel in the room, no argument that the jury would pick out with unerring accuracy the real method of homicide which the evidence disclosed and which formed the basis of the six weeks' trial, merits the slightest consideration. Any essential feature or circumstance which goes to make up the proceedings of a trial at law cannot be abandoned or waived by the defendant, his lawyers, the court or the prosecutor. No court in this or any other country under the common law has ever laid claim to such power.

Like the sequestering of a jury every essential part of a capital case is an institute of law which is wholly beyond the control of the court. The defendant in this case is not alone complaining about the impropriety of the attorney general's summation which is strikingly and manifestly dangerous to all orderly procedure but is alleging that the change in the method of the alleged homicide violated the defendant's fundamental rights in which he was entitled to be protected as a matter of common right and immemorial usage.

In the recent case of State vs. Jones, 115 N. J. L. 257, which has been referred to in the original brief, this court severely criticised a change of theory introduced by the State at the end of its case although in the Jones case it was not necessary for decision. In the case at bar this change of theory came after *all* the evidence was in and was first introduced upon summation. In the Jones case it was suggested that the defendant perhaps should have requested the benefit of further cross-examination. This court specifically stated that it did not pass upon this speculative feature but in words which carry a meaning which is unmistakable and unanswerable it characterises the whole proceeding as "a serious blemish upon

the orderly conduct of a trial where the life of a human being was at stake and where, above all other trials, such irregularities should not be allowed to creep in." This court further said that "the confusion incident to the addition of a new theory of first degree murder after the State rested, need not and should not have arisen." The injury which the defendant suffered in this regard in the trial of the case at bar was accentuated by the refusal of the trial court to charge as requested by the defendant to the effect that there was no evidence of a wilful, deliberate and premeditated murder, a reference to which request will be found in the original brief.

> "Where counsel having the burden of the issues includes issues not presented in this argument in chief in his closing argument, the fact that the adverse party does not request the right to argue in answer thereto does not cure its impropriety."
>
> 64 C. J. 249.

The Jones case was a strong one but the error committed by the change of theory was considered so serious that the court went out of its way to point out the manifest error of such a course of procedure.

POINT III

THE DEFENDANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES WERE CONTRAVENED.

(Supplementing Point IV of original brief.)

In support of the statement that improper actions of a prosecuting officer involve a denial of due process so as to contravene the provisions of the Fourteenth Amendment of the Constitution of the United States this court is referred to the opinion of the United States Supreme Court in the Mooney case in which the following words were used:

> "And the action of prosecuting officers on behalf of the State, like that of administrative officers in the execution of its laws, may constitute State action within the purview of the Fourteenth Amendment. That Amendment governs any action of a State, 'whether through its legislature, through its courts, or through its executive or administrative officers.' "

Mooney vs. Holohan, 79 L. ed. Adv. Op. 347.

The State at page 31 of its brief adopts the narrow view of what is meant by due process and which was the argument advanced in the Mooney case by the respondent and which in the Mooney case was characterized as entirely too narrow by the following words:

> "Without attempting at this time to deal with the question at length, we deem it sufficient for the present purpose to say that we are unable to approve this narrow view of the requirement of due process. That requirement, in safe-

guarding the liberty of the citizen against deprivation through the action of the State, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. Hebert vs. Louisiana, 272 U. S. 312, 316, 317, 71 L. ed. 270, 273, 47 S. Ct. 103, 48 A. L. R. 1102. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."

Mooney vs. Holohan, supra.

More than four hundred and fifty years ago the fundamental rule for the guidance of the trial of English criminal cases was stated by Chief Justice Fortescue in Chap, XXVII of his "De Laudibus" as follows:

"I would rather wish twenty evildoers to escape than one man to be condemned unjustly."

From this quotation it will be seen that the trial of a criminal prosecution in England before the Revolution required that the defendant be given a fair trial and that the prosecuting counsel should refrain from prejudicing the jury in any way against the prisoner.

"This court has never attempted to define *with precision the words 'due process of law.'

...It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard." Holden vs. Hardy, 169 U. S. 366, 389, 42 L. ed. 780, 790, 18 Sup. Ct. Rep. 383, 387. "The same words refer to that law of the land in each State, which derives its authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." Re Kemmler, 136 U. S. 436, 448, 34 L. ed. 519, 524, 10 Sup. Ct. Rep. 930, 934. "The limit of the full control which the State has in the proceedings of its courts, both in civil and criminal cases, is subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution." West vs. Louisiana, 194 U. S. 258, 263, 48 L. ed. 965, 969, 24 Sup. Ct. Rep. 650, 652.

Twining vs. New Jersey, 211 U. S. 79; 53 L. ed. 97, 107.

Mr. Justice Roberts in a recent opinion delivered in the United States Supreme Court discussed the meaning of due process and the guaranties under the Fourteenth Amendment in the following words:

"The fact that the right involved is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' (Hebert vs. Louisiana, 272 U. S. 312, 316, 71 L. ed. 270, 272, 47 S. Ct. 103, 48 A. L. R. 1102), is obviously one of those compelling considerations which must

prevail in determining whether it is embraced within the due process clause of the Fourteenth Amendment, although it be specifically dealt with in another part of the federal Constitution."

Snyder vs. Mass., 78 L. ed. Adv. Op. 319 at 337.

And again in the same opinion Mr. Justice Roberts said:

"But where the conduct of a trial is involved, the guarantee of the Fourteenth Amendment is not that a just result shall have been obtained, but that the result, whatever it be, shall be reached in a fair way. Procedural due process has to do with the manner of the trial; dictates that in the conduct of judicial inquiry certain fundamental rules of fairness be observed; forbids the disregard of those rules, and is not satisfied, if the result is just, though the hearing was unfair."

Snyder vs. Mass. (supra) at p. 339.

"Upon the State courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. Robb vs. Connolly, 111 U. S. 624, 637, 28 L. ed. 542, 546, 4 S. Ct. 544."

Mooney vs. Holohan (supra) at p. 349.

POINT IV.

THERE IS NO STATUTORY CRIME OF BURGLARY IN THIS STATE.

(Supplementing Point VI of original brief.)

In the original brief this matter was discussed at some length and the question was recently alluded to by this court in the case of State vs. Jones, 115 N. J. L. 257. Counsel has examined the original act of the Legislature as signed by the Governor and filed in the office of the Secretary of State and denominated "An act for the punishment of crimes. (Revision of 1899)." And in that original act, Section 131 (the so-called burglary act) is set forth as it is now found in the compilations but there is no caption nor any marginal reference containing the word burglary. Nor is there any caption or marginal reference whatsoever or side note whatsoever at that Section 131. In other words, the caption or marginal reference designating this Section 131 as "burglary" has crept into the compilations without authority of law and it follows that we have no statutory definition of burglary but simply a certain crime set forth in Section 131 which is a high misdemeanor. Therefore, the law controlling the case at bar was the common law definition of burglary which, as we have seen was, shortly, to break and enter the house by night with intent to commit a *felony therein.*

> "When a statute uses a term without defining it, and the term is well known in the common law, it must be supposed to have been used in the sense in which it is understood in that law, unless a different meaning of the term is ascertained to be the intent of the legislature."
>
> 8 R. C. L., p. 60 (Note 4.)

Since our murder statute uses the term "burglary" without defining it and the crime of burglary is not defined elsewhere in our statute law it follows that recourse must be had to the common law definition. Criminal statutes must be strictly construed and we may not indulge in a presumption to the effect that the legislature intended the high misdemeanor defined in Section 131 to be the present definition of burglary.

POINT V.

THERE WAS NO EVIDENCE OF ENTERING WITH INTENT TO STEAL AND PETIT LARCENY IS NOT A FELONY.

(Supplementing Point VII of original brief.)

This case was tried on the theory that death ensued from the commission of a burglary. We have seen that the common law definition of burglary should apply except insofar as any element may have been changed by statutory enactment. The felony which the State now claims was intended by the defendant when he broke and entered was to commit larceny (besides stealing the child and committing a battery upon it) and since there was no proof of the value of the goods intended to be taken it has been contended that this was fatally defective. Even if the court should be of the opinion that the jury might indulge in presumptions as to value (which it is contended it should not be permitted to do) the presumption would only be that the sleeping garment had a *nominal* value and constituted the intent to commit *petit* larceny. The entry must have been with *felonious* intent to meet the common law requirement of burglary. Even though some writers have stated that at common law petit larceny was a felony it becomes necessary first to determine whether that be so.

> "The term 'felony,' in the general acceptation of the common law, comprised every crime which at common law occasioned a total forfeiture of lands or goods, or both, and to which might be superadded capital or other punishment according to the degree of guilt."
>
> 16 Corpus Juris, 55, Sec. 6.

To the same effect is Blackstone's definition and

the discussion therein to be found at the beginning of Book 4, Chap, 7, *p. 94 and 95.

The punishment for petit larceny at common law was not total forfeiture of lands or goods or both but only as Blackstone points out as follows:

"For though the inferior species of theft or petit larceny is only punished by imprisonment or whipping at common law * * *"

4 Blackstone, *p. 237.

Moreover, we have by statute defined petit parceny to be a *misdemeanor* and thereby definitely classed that crime of stealing goods under the value of twelve pence at common law (now $20.00 under our statute) as a misdemeanor and thereby cleared the confusion as to whether or not petit larceny was a felony at common law.

See larceny statute, Section 158, Crimes Act. 2 Comp. Stat. 1792, Section 158.

"When the legislature itself names the offense, then there is no place for controversy; it is of whatever grade the legislature provides."

16 C. J. 55-56.

"The same acts cannot at the same time constitute a felony and a misdemeanor."

Borino vs. Gen. Registrars, etc., 86 Conn. 622, 86 Atl. 597.

Where by statute, petit larceny is a misdemeanor, and breaking and entering with intent to commit petit larceny is not burglary, an allegation of intent to commit larceny must allege the value

of the goods to show that the intent was more than to commit petit larceny. See:

Terr. vs. Duncan, 5 Mont. 478, 6 P. 353, People vs. Murray, 8 Cal. 519, Philbrick vs. State, 2 Tex. Appeals 517.

While it is true that crimes in this state are divided into high misdemeanors and misdemeanors, nevertheless we have not abolished all the common law legal rules growing out of the distinctions between felonies and misdemeanors and it has been held that the grade of the offense is now determined by the character and degree of the punishment. Therefore, since our statute, Section 158 of the Crimes Act, which defines petit larceny, provides that the punishment for such petit larceny shall be as for a misdemeanor, this is a statutory pronouncement that regardless of what the common law intended petit larceny to be, it is now held to be only a misdemeanor to steal under $20.00.

Regardless of whether or not petit larceny at common law was a felony (which we have contended is not) the history of our legislation in this State definitely shows that from the earliest times we have classed the stealing under a certain value as petit larceny and as a minor crime and not as a felony. Originally in the history of our jurisprudence which commenced when New Jersey was a colony, we recognized crimes as misdemeanors and felonies and this continued to be the distinction during the early days of statehood. Later, felonies (so-called) were never classed as such but we still retain the classification of "misdemeanor" which for its definition we must refer to the common law.

In our present Compiled Statutes we find the Constitution of 1844 which provides in Article II, Section 1, that a "person convicted of a crime

which now excludes him from being a witness'' was denied the right of suffrage.

In our State constitution adopted in 1897 we find a similar provision in Article II, Section 1, thereof and under that section is an historical note to the effect that the statute disqualifying witnesses in force at the time of the adoption of the constitution provided that persons convicted of certain high crimes (which were felonies at common law) included ''larceny of above the value of $6.00.''

By Section 71 of the Act to Regulate Elections, 2 Comp. Stat. 2100 it was provided that no person shall be entitled to vote who shall have been convicted of any high crimes including ''larceny of above the value of $6.00.'' In other words we classed petit larceny as a misdemeanor by statute in our Colonial and early State history.

That there can be no question as to the fact that our courts should refer to the statute law of the colony for the history of legislation and definitions, reference is made to the first constitution of New Jersey adopted in 1776 and which will be found in the Compiled Statutes where in Article XXII it was declared as follows:

> ''That the common law of England, as well as so much of the statute law, as have been heretofore practiced in this colony, shall still remain in force, until they shall be altered by a future law of the legislature. * * *''

The foregoing historical reference is given for the purpose of pointing out that in our early Colonial and State history of jurisprudence we have always classified petit larceny under a certain value as a misdemeanor and not a felony and therefore, it follows that taking the State's case from its strongest angle the breaking and entering was only with intent to commit a misde-

meanor. And we have seen that to convict this defendant it was necessary under the common law definition of burglary to prove that he broke and entered with intent to commit a *felony*. The proofs are conclusive that if the defendant broke and entered at all he did so with intent to commit a petit larceny—a misdemeanor. Therefore, the charge of the court to the effect that the breaking and entering with intent to steal the child and its clothing and to commit a battery was erroneous in all respects.

From all the foregoing it will be seen that we always recognized a distinction as to the nature of a larceny below a certain amount and classed such a petit larceny not as a high crime but as a misdemeanor and not a felony.

Words are to be construed according to the generally accepted meaning and the word "misdemeanor" has since the time of the common law conveyed the meaning of a minor crime—one less than a felony. Nor have we by statutory pronouncement changed its meaning.

Mr. Justice Day, speaking for the Supreme Court of the United States, observed:

> "This term 'misdemeanor' has been generally understood to mean the lower grade of criminal offense as distinguished from a felony."

U. S. vs. Stevenson, 215 U. S. 190; 54 L. ed. 153 at 157.

It is next pointed out there was no evidence in this case of an intent to steal the sleeping garment at the *time* of the breaking and entry. The circumstantial evidence all was to the effect that the breaking and entering was for the purpose of kidnaping the child and the State, time and time again said, through its counsel, that the sleeping garment was taken from the child out on the

grounds at a point where the thumb guard was found. In fact the trial court in its comment upon the evidence in relation to the finding of the thumb guard some considerable distance from the dwelling house said:

"From which you may possibly conclude that the sleeping suit was stripped off of the child at that place."

(P. 4501, l. 28.)

Now the definition of burglary must be borne in mind and that is stated among other things to be breaking and entering" with intent to commit a felony *therein.*" (See State vs. Wilson, 1 N. J. L. 439; 4 R. C. L. 415.)

"The felonious intent must exist at the time of the breaking and entering, and if it is not formed in the mind of the offender until afterwards, there is no burglary."

4 R. C. L. 429, Section 19.

"To constitute the crime of larceny the intent to steal must exist at the time of the taking. Wilson vs. People, 39 N. Y. 462, citing Lord Coke, who observes that the animum furandi must exist 'when the article cometh into his hands or possession.' Coke Inst. 107. The rule is elementary. 4 Blacks. Com. 232; Cutter vs. State, 36 N. J. L. 125; State vs. South, 28 Id. 28; Clarks Crim. L. 262."

State vs. Polom, 6 N. J. Misc. 901, 902.

To the same effect is the following:

"This intent must exist at the time of the

entry * * * larceny from a building will not constitute the crime unless the entry was made with such intent."

State vs. Sullivan, 199 Pac. 647, 17 A. L. R. 902.

In the aforementioned case the statute relating to burglary under discussion was the same as the common law definition so far as the intent to commit a felony was concerned. That case is also important as relating to a discussion and the meaning to be given to the possession of alleged stolen goods after the crime and it was there held that the possession of stolen goods is not sufficient to establish the burglarious entry of the building and that there must be proof of an intent to commit the felony at the time of entry.

In the case at bar there was no proof of intent as such but only as might be inferred from the possession of the sleeping garment and the evidence and theory of the State was that the entry was made with the intent to steal the child and therefore, the verdict was contrary to the weight of the evidence for the jury would not be entitled to believe that the defendant broke and entered with the intent at the time of stealing the sleeping garment.

It would be sheer nonsense to presume that in this case under the evidence presented that the person who made the elaborate preparations to enter the dwelling house at night did so with intent to steal a trifling sleeping garment. The evidence was conclusive that the person who entered did so with intent to steal or kidnap the child. The child was taken in its sleeping garment. There was no asportation of the sleeping garment from the possession of the child and asportation is a necessary element of larceny and the intent to feloniously take away from the per-

son having possession must be proven. The circumstantial evidence in this case led to the conclusion if any, that the sleeping garment was not removed from the person of the child until the intruder was some distance from the house. Therefore, the intent to take the sleeping garment was not the motive which prompted the breaking and entry but the intent to take the sleeping garment was formed some time after the intruder had left the premises and this did not warrant a jury in determining that the person entered the house with that original intent of stealing the sleeping garment and the court was therefore, not warranted in submitting that issue to the jury. The *intent* at the *time* of entry is the basis of the inquiry in order to make the act felonious.

The trial judge in his charge quoted the so-called burglary statute (Section 131) as defining burglary. This was plainly error. The jurors as citizens were presumed to know the law and especially the statute law and therefore relied upon that statute. The trial judge's later statements as to what constituted burglary referred to this statute. The quotations from the charge are set forth in the original brief. What the judge in effect charged the jury was that an entry with intent to steal the child in its clothing and to commit a battery on it was burglary and this was in effect, stating a case of false imprisonment or kidnaping under the common law and this crime under the common law was a mere misdemeanor as is set forth in Blackstone and the textbooks which are cited in the original brief. The charge of the court to the effect that the breaking and entry with intent to steal the child and its clothing and to commit a battery upon it was particularly misleading and erroneous as applied to the circumstantial evidence in this case. It coupled the intent to steal the clothing and to commit a battery with the principal intent to steal the child.

And we have seen that the entry with intent to steal the child was not a felonious entry at common law. It is elementary that a wrongful taking without felonious intent to steal is a mere trespass. In other words, the court erroneously made the stealing of the child the principal element of the felonious intent and linked therewith the stealing of its clothing and the battery upon it. If the indictment had been for common law false imprisonment or kidnaping the charge would have been proper and would have sustained the verdict. At best the circumstantial evidence spelled out a common law false imprisonment and the charge of the court on the law was to that effect. The child was taken away in its clothing and necessarily had to be touched to accomplish the false imprisonment. By Section 215 of the Crimes Act all *assaults, batteries, false imprisonments,* etc., of an indictable nature at common law are now declared to be misdemeanors.

In passing counsel desire to refer to page 37 of the State's brief where an Indiana case was cited to the effect that a taking with intent to induce the owner to offer a reward for the property constitutes larceny. The following distinction is pointed out:

> "But to take property with the intent of returning it, merely hoping for a reward, is not a felonious taking and hence not larceny."
>
> 36 C. J. 769, Section 122.

Reference is also made to the statement made by a member of the court upon the argument to the effect that the sleeping garment produced $50,000.00. It is argued that this can not be the measure of value as the test in all cases is the market value at the time of the taking and no value was proven in the case at bar. It is quite

conceivable that a person might be indicted for petit larceny for the stealing of a trinket that had a nominal value (less than $20.00) and that the proofs would show that the owner placed a high personal valuation upon this trinket by which he was induced to pay $50,000.00 for its return. But it would not follow that this established market value of the trinket to make the offender guilty of grand larceny simply by reason thereof.

POINT VI.

THE VERDICT WAS AGAINST THE WEIGHT OF EVIDENCE.

(Supplementing Point XVI of original brief.)

As was pointed out under Point V of this brief the jury was not entitled to infer from the evidence that the defendant broke and entered the home of Col. Lindbergh with intent at the time of stealing the sleeping garment therein. The intent was the basis of the inquiry to make the act felonious. Therefore, the special mental condition of the defendant at the time of entry constituted an essential part of the offense and it would be contrary to the weight of the evidence to permit the jury to infer that in this case the defendant broke and entered with intent to steal the clothing. His intent at the time of entry, under the circumstantial evidence introduced and the fair inferences to be drawn therefrom, plainly was to steal the child—to kidnap it—whether or no it was clothed or naked. The taking of the clothes was not the motive—the intent. And the intent to take the child did not constitute a felonious intent under the common law.

We argue that the verdict of the jury was contrary to the weight of the evidence; and we may even go further and state with considerable assurance that there was no evidence to support the verdict of murder.

The State relied principally, if not entirely, upon the testimony of Condon, Perrone, handwriting experts and other witnesses bearing on the ransom money. While these witnesses may have been important in the extortion case pending in New York, in our opinion, they cannot be considered a definite link in the kidnaping and murder charge tried in New Jersey.

Condon's entire testimony may be almost dismissed with one reference. His mere statement

that he talked with a mysterious "John" for over an hour on a park bench taxes one's credulity to the limit. Kidnapers do not take such chances. A sure chance of identification and capture.

The evidence of Anne Lindbergh, the housewife and mother, was that nothing in the room was disturbed, the safety pins still held the covers to the mattress. This would indicate that the child had been lifted carefully from the crib and by friendly hands, as there were no bloodstains or evidence of haste, anywhere. Thus, one of the State's theories is refuted by Anne Lindbergh, its most reliable witness.

Let us look for a moment at the physical surroundings and weather conditions. The house had been recently completed, the earth was still soft and muddy, no sod had as yet been established. When Anne Lindbergh walked around the house and stepped off of the catwalk she left her small footprint clearly embedded in the soft earth.

A pertinent question is—How did the kidnapers know that the southeast window lead into the nursery or that it was the only window in the room that could not be locked?

There was a thirty-five mile gale blowing at the time and yet it is argued that the defendant brought this frail ladder on which no man with any knowledge of carpentry would think of risking his life, to that spot, placed it against the side of the house without leaving his trail imprinted in the soft earth; climbed the ladder to next to the top rung 48 inches below the window sill, and with his left hand opened the shutters in a thirty-five mile gale, raised the window without the use of a jimmy or instrument, entered the room alone and obtained the baby.

The moment that window was opened with that gale blowing, all of the doors ajar in that section of the house would have slammed shut and the draft alone blowing the curtains would have been

sufficient to attract attention. Certainly, it seems sure that the watchful Scotch Terrier would have alarmed the household.

Then it is argued that the baby was lifted from the crib without disturbing the covering and with no outcry or alarm and carried out the window. There was a stein resting on the side of the window sill, yet this was not disturbed. That the kidnaper left a note on the window sill which the gale of wind did not disturb; that he then climbed out with the baby, carefully closed the window and closed the shutters and started down the ladder, and that the ladder broke and that he and the baby fell approximately five or six feet to the soft ground, and although the baby sustained an extensive fracture of the skull, there was no imprint in the soft earth or indication upon the catwalk showing where the man and baby fell. A few moments' reflection on this situation which was uncontradicted should be sufficient to convince that it was improbable. The conclusion is irresistible that it did not happen that way; that the window was never opened and closed; that the baby never came out of the window and certainly could not have met its death under that window or in the room without leaving some indication somewhere showing where its skull was fractured.

There was no mark on the window showing that it had been "jimmied" or that the steel chisel had been used to open the window. If there had been found a single finger print on the window sill or sash, if the window or shutter which had been carefully closed before the baby was taken had been found open when the crime was discovered, if the stein resting on this very window ledge had been disturbed, if in fine, there was present in this case even a single circumstance of the slightest value to indicate an entry, then the learned justice might have been justified in instructing the jury as he did that there was evidence of a breaking and en-

tering. Every bit of physical evidence, every permissible inference, every last circumstance pointed unmistakably, unerringly, to the fact that there was no entry from the outside.

It is only necessary to read the testimony of Officer Sweeney who made an experiment in the daytime with a good strong ladder to understand the improbability of this theory of the State.

Sweeney, an ex-fireman, trained on ladders managed to get into the window by the use of both hands but when he came out carrying a package of 35 pounds dead weight, he had to lay it on the window sill while he used both hands to support himself while he found the rung of the ladder with his feet and then he took the package which was not a live baby from the window sill and passed on down.

It is improbable that Hauptmann, weighing 175 pounds, carried a ladder about 55 pounds and the baby 35 pounds or a total of 265 pounds across the soft ground, leaving no prints in the mud and abandoned the ladder about 70 feet away. It is also significant that there was no mud found on any of the ladder rungs although it is said that there were smudges of mud in the room.

Why did the State switch from one theory to another vastly different between the beginning and the end of the trial? Was it because the attorney general realized that the original theory was impossible and could not be believed by any fair minded person? We argue that there can be but one answer to this question—the State did not know and could present no proof as to how, when or where the baby met its death. In that serious dilemma the attorney general argued to the jury without the slightest bit of evidence to support and with all the evidence tending to refute it, that the baby was crushed to death in the room. "What else was the chisel there for?" he asked the jury. The State resorted to theories,

unsupported by facts, and even then jumped from one theory to another fundamentally different.

We adopt the language of one great writer, reviewing the Hauptmann trial—"All the State proved was that the baby had been kidnaped, met a violent death, and that some of the Lindbergh ransom money had been found in the possession of Hauptmann."

We are told that no finger prints were found anywhere in the room or on the window or the window sill. This is so improbable that it is beyond perception. Anyone knows that there must have been finger prints at least of members of the household on the crib and on the window and the shutters which were closed by Mrs. Lindbergh. They were unable to find any finger prints on the ladder, yet Dr. Hudson, an unbiased witness in the case, found several hundred prints on the ladder, none of which were Hauptmann's. It is impossible to believe that Hauptmann could have handled the lumber and built this ladder without leaving his finger prints somewhere thereon. Yet with Dr. Hudson's very efficient process none were discovered. An outstanding fact and one which is convincing that Hauptmann never built that ladder.

We have often wondered why Squire Johnson, an expert on wood, selected originally to make a thorough investigation of this ladder and who did make a thorough investigation and submitted a full and complete report was not called as a witness to give the results of his investigation. But instead of using Johnson the ladder was sent to Washington to Mr. Looey and Mr. Koehler. And here again we are without the benefit of the findings of Mr. Looey. The conclusion is irresistible that both of these experts must have differed materially from the conclusions of the fantastic Mr. Koehler.

The jury did not properly consider and weigh

the evidence given by the defense alibi witnesses and well it might not as the court's charge failed to refer to any particular defense witness.

Testimony was produced covering the date of March 1st, 1932, which proved conclusively that the defendant Hauptmann was in the Bronx, City of New York, State of New York, on the night of March 1st, 1932, and he could not have been in West Amwell Township, Hunterdon County, New Jersey. There was no testimony of any kind or description placing the defendant in West Amwell Township after twelve o'clock, noon, on the day of March 1st, and the only testimony placing him anywhere within the State of New Jersey on March 1st, 1932, or several days before that date was the improbable testimony of the witness, Hochmuth.

On behalf of the defendant was produced the witness, Christian Fredricksen. (See page 2405, State of Case). His testimony was that it was the custom of Hauptmann to call for his wife on Tuesday evenings, and March 1st, 1932, was a Tuesday, and he must have been in the bakery shop of the witness in the Bronx, New York, on the night of March 1st, 1932.

The testimony of Katie Fredricksen (See page 2416, State of the Case) substantiated the testimony of the said Christian Fredricksen.

Elvert Carlstrom testified (See page 2964) that he saw the defendant in the bakery of Christian Fredricksen on March 1st, 1932, and he had two specific reasons for remembering that night, first, that March 1st was his birthday and second he had traveled in from Bound Brook, New Jersey, to that neighborhood for the purpose of attempting to see a young lady. The testimony of Carlstrom was unshaken by competent testimony and it clearly put the defendant, Hauptmann, in the Bronx, New York, at or about the time it is alleged

the Lindbergh baby was kidnaped in Hunterdon County, New Jersey.

The testimony Louis Kiss (See page 3067) clearly indicated that the defendant Hauptmann was in the Bronx the night of March 1st, 1932, and about the hour the crime was alleged to have taken place. And again, the said Kiss had perfect reason for remembering the day. The reason had to do with a child of the witness confined in a hospital.

August Von Hencke (See page 3114) indicated he saw the defendant in the Bronx, New York, the night of the crime alleged and based his recollection on a conversation had with Mr. Hauptmann in reference to a dog which dog the said Von Hencke thought was his.

Walter Manley testified (See page 3914) that he was in the Fredricksen Bakery Shop on the night of March 1st, 1932, and saw Mr. and Mrs. Hauptmann at a table talking together. No effort was made by the State of New Jersey to assail the testimony of Manley and certainly it should have been considered by the jury as being true when not even any effort was made to affect it. Likewise, the testimony of the defense witnesses mentioned above. Despite cross examination, in most every instance to assail the credence of the testimony of the witnesses that saw Hauptmann in the bakery, the testimony remained unshaken.

Clearly this evidence, when not opposed by the evidence of any eye witnesses who could testify they saw Hauptmann in New Jersey, should have been given considerable weight by the jury and their failure to consider that testimony indicates that their verdict was entirely against the weight of evidence.

As to April 2nd, 1932, the night the ransom money is alleged to have been passed, the testimony was that the defendant Hauptmann worked until five o'clock in the afternoon on a job in the

center part of New York City. The testimony of Hans Kloppenburg (See page 3359), a witness produced on the part of the defense, was that he was in the Hauptmann home on the evening of April 2nd, 1932, arriving there in the early evening and staying until rather late at night. Kloppenburg was an acquaintance of old standing and testified it was the custom of he and the Hauptmanns and on occasions other friends, all German people, to gather in the home of Hauptmann or one of the others and play music and have what they called a "Music Night." The testimony of Kloppenburg was in no way shaken on this point under cross-examination and the jury should have given attention to this testimony.

As to the evening of November 26, 1933, when the witness Celia Barr testified the defendant had passed a ransom note to her at her theatre on 12th Street, New York City, the testimony here so clearly proved to be improbable and impossible that no weight could be given by the jury to this testimony in arriving at their verdict.

It happened that the 26th of November is the birthday of the defendant, Hauptmann, and there was a birthday party given for him in his home at 222d Street, Bronx, some fifteen to twenty miles from the theatre where the said Barr works. There was produced at the trial one, Paul Vetterle, who testified he was present at Hauptmann's home on the night of November 26th, 1933, at the said birthday party and he testified that the defendant, Hauptmann, was there the entire evening.

Likewise, the testimony of Maria Mueller who testified she was present at the Hauptmann birthday party and that Hauptmann was there the entire evening.

Because of the testimony of these witnesses, the jury without question should have disregarded the testimony of Celia Barr.

In view of all the foregoing and that which has been said under a similar point in the original brief we respectfully submit that the verdict returned in this case was entirely against the weight of the evidence and was not based upon facts presented by way of evidence but upon mere theories advanced by the State upon argument and otherwise.

POINT VII.

THE JUDGMENT SHOULD BE REVERSED AND NEW TRIAL ORDERED.

Respectfully submitted,

EGBERT ROSECRANS,
FREDERICK A. POPE,
Of Counsel with Plaintiff in Error.

C. LLOYD FISHER,
Attorney for Plaintiff in Error.

TABLE OF CITATIONS

Cases: *Page*

Aetna L. Ins. Co. vs. Kelley, 70 F. (2d) 589.. 4
Berger vs. United States, 79 L. ed. Adv. Op. 667 6
Borino vs. Gen. Registrars, etc., 86 Conn. 622, 86 Atl. 597 21
Campbell vs. People, 109 Ill. 565, 50 Am. Rep. 621 ..... 6 10
Mooney vs. Holohan, 79 L. ed. Adv. Op. p. 347 7-14-15-17
N. Y. Central R. R. Co. vs. Johnson, 279 U. S. 310, 75 U. S. (L. ed.) 706.....3-4-6
People vs. Murray, 8 Cal. 519 22
Philbrick vs. State, 2 Tex. Appeals 517..... 22
Snyder vs. Mass., 78 L. ed. Adv. Op. 319 at 337 17
State vs. Cucuel, 31 N. J. L. 249 ..... 10 20
State vs. Jones, 115 N. J. L. 257 4-12-18
State vs. McNinch, 12 S. C. 89 5
State vs. O'Leary, 110 N. J. L. 36 10
State vs. Polom, 6 N. J. Misc. 901, 902 25
State vs. Sullivan, 199 Pac. 647, 17 A. L. R. 902 25
State vs. Wilson, 1 N. J. L. 439 25
Terr. vs. Duncan, 5 Mont. 478, 6 P. 353..... 22
Tillery vs. State, 24 Tex. App. 251, 5 S. W. 842 ..... 7 30
Twining vs. New Jersey, 211 U. S. 79, 53 L. ed. 97, 107 16
U. S. vs. Stevenson, 215 U. S. 190, 54 L. ed. 153 at 157 24

Miscellaneous:

4 Blackstone's Commentaries, Chap. 7, p. 94, 95 21
4 Blackstone's Commentaries, p. 237 21
3 C. J. 864 ..... 5 40

16 C. J. 55, Sec. 6 20
36 C. J. 769, Sec. 122 28
64 C. J. 249 13
2 Comp. Stat. 1792, Sec. 158 21
2 Comp. Stat. 2100, Sec. 71 23
Crimes Act, Section 131 18
Crimes Act, Section 158 21
"De Laudibus," Cap. XXVII by Fortescue, Chief J. 15
4 R. C. L. 415 25
4 R. C. L. 429, Sec. 19 25
8 R. C. L., p. 60 (Note 4) 18
First Constitution of New Jersey (1776), Art. XXII 23
Constitution of New Jersey (1844), Art. II, Sec. I 22
Constitution of New Jersey as amended (1897), Art. II, Sec. I 23

NEW JERSEY
Court of Errors and Appeals

STATE OF NEW JERSEY, *Defendant-in-Error,* *vs.* BRUNO RICHARD HAUPTMANN, *Plaintiff-in-Error.*	Sur Indictment for Murder. On Error to the Hunterdon Oyer and Terminer.

REPLY BRIEF FOR THE STATE OF NEW JERSEY, DEFENDANT-IN-ERROR

It is respectfully submitted that a reading of the Supplemental Brief of Plaintiff-in-Error and a re-reading and consideration of the cases, will disclose no argument, no reason, no case, nor any issue not fully considered and discussed in the main brief on behalf of the State of New Jersey, Defendant-in-Error.

Respectfully submitted,

DAVID T. WILENTZ,
Attorney-General,

JOSEPH LANIGAN,
ROBERT PEACOCK,
Assistant Attorneys-General,
Of Counsel to the State of New Jersey,
Defendant-in-Error,

ANTHONY M. HAUCK, JR.,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.