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15.

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., January 16, 1935.

ELEVENTH 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 Defendants.

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

HARRY M. CASSIDY sworn as a witness in behalf of the State:

Direct Examination by Mr. Lanigan:

Q. Where do you reside, Mr. Cassidy?

Mr. Pope: Just a moment. We did not get opportunity last night, your Honor, because court adjourned. This morning we desire to move to strike out the testimony of the

last witness, the witness who testified regarding the thumb guard.

Your Honor will recall his testimony, that the thumb guard was made of material known as monel metal, that he was the manufacturer of it and that he attempted to give an opinion as to how it would stand up, exposed to the elements, and that it would not corrode and not rust.

We submit that the witness was not qualified to express an opinion of that character.

He is not a metallurgist nor an engineer nor an expert of any kind. All that he knew about the character and quality of the metal was obtained by him from one simple experiment such as the making of a ring which he wore on his finger for a considerable length of time. But, of course, that is quite different to being exposed to the elements outdoors for a number of weeks. And his testimony seems to have been based entirely upon hearsay statements which he received from the manufacturer of the metal who recommended it to him to be of a certain character and quality.

We therefore think that the testimony should be stricken out, because the witness was not qualified to express the opinion which he did.

The Court: Is this motion opposed?

Mr. Wilentz: We, of course, oppose it, if your Honor please.

The Court: The motion is denied.

Mr. Pope: May we have an exception?

The Court: Take an exception.

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

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

Direct Examination by Mr. Lanigan:

Q. You reside where, Mr. Cassidy? A. Out in Highland Park, down in Henrico County, Virginia, right outside of Richmond.

Q. Louder, Mr. Cassidy. A. Louder?

Q. Yes, please. And your occupation. A. As a document examiner for the Chesapeake and Ohio Railroad Company.

Q. Over what period of time have you been engaged in the examination of questioned documents? A. It will be twenty years with the C. & O. Railroad Company in May of this year.

Q. And you are so continuously engaged? A. Yes.

Q. Have you testified in court on the subject? A. Yes, sir.

Q. In what states, please? A. Why, in Virginia, North and South Carolina, West Virginia and Kentucky.

Q. With respect to the federal jurisdictions where have you testified? A. I have testified in both Eastern and Western Districts of Kentucky, in both the Eastern and Western Districts of Virginia.

Q. Where did you testify in South Carolina? A. I can't remember the district. I don't know whether it is Eastern or Western, but it was the one where the judge had the red chair.

Mr. Lanigan: I offer the witness as to qualifications.

Mr. Rosecrans: Do you want to object to the qualifications?

Mr. Pope: No.

Mr. Rosecrans: We admit the qualifications.

By Mr. Lanigan:

Q. Now, Mr. Cassidy, I show you the original ransom notes and ask you if you made an examination and a comparison of those notes. A. Yes; it looks like they are all here.

Q. Yes. When did you first see those notes? A. I think it was December 20th; last year.

Q. 1934? A. 1934. That is the original notes.

Q. The original notes. And you made an examination at that time for what purpose? A. Well, to find out if they had all been written by the same person or not.

Q. Did you ascertain whether or not they had been written by the same person? A. Yes, sir; I have to my satisfaction.

Q. To your satisfaction. Now I show you the so-called request writings and ask you if you have examined those, the writings of Bruno Richard Hauptmann. A. Oh, I reckon they are all here. This looks like all the bunch that—

Q. That you examined? A. Yes, sir.

Q. Now I show you the automobile license and the notes, the genuine writing, and ask you if you have examined those? A. Yes, I think they are all here.

Q. Now, you have examined the genuine writing of Mr. Hauptmann? A. Yes, sir.

Q. You have examined the conceded writings? A. Yes, Sir.

Q. The request writings? A. Yes, sir.

Q. And you have examined the ransom notes? A. Yes, sir.

Q. Have you come to a conclusion as to the writer of these respective papers? A. Yes, sir.

Q. Who in your opinion is the writer? A. The same person who wrote those request writings and those standard, or conceded writings, I believe you called them here in the courtroom, is the same person that wrote all those ransom notes.

Q. If Bruno Richard Hauptmann, wrote the request writings and the genuine writings, your opinion of the writer of the ransom notes is whom? A. If Mr. Hauptmann wrote those request writings and standard writing, I feel compelled to say that he wrote those ransom notes.

Q. Now, have you prepared photographic illustrations? A. Yes, I have got a bag full of them here.

Q. Will you briefly give me one or two of your illustrations? A. There won't be a thing that I can show that hasn't already been shown. I have been in the courtroom part of the time and my evidence has been shot all to pieces, it has been absorbed.

Mr. Lanigan: Cross-examine.

The Witness: Do you want a couple of these photographs, you say?

Mr. Lanigan: I would like to have them unless counsel concede it is repetitious. Let me have one.

The Witness: Which one?

Mr. Lanigan: Any one, any one you select.

The Witness: Take these misspelled words, those are not all of them, but I think that is enough.

Mr. Lanigan: I offer this in evidence.

The Court: Any objection?

Mr. Pope: Yes. We do object to it because the witness has not given us any basis for any opinion on his part.

The Court: Well—

Mr. Pope: He says he examined the letters and that he concluded they were both written by the same person, but that isn't sufficient to warrant that testimony going to the jury.

The Court: What testimony going to the jury?

Mr. Pope: If he wants to use this photograph for the purpose of demonstration we do not object to it.

The Court: That, I suppose, is the purpose of it.

Mr. Pope: Oh, well, I thought it was merely to be admitted in evidence without explanation.

Mr. Wilentz: No.

Mr. Pope: Well, then the objections is withdrawn.

The Court: You may proceed, Mr. Attorney General.

Mr. Lanigan: I offer this for the purpose of illustration.

(Photograph received in evidence and marked Exhibit S-148.)

By Mr. Lanigan:

Q. I show you Exhibit 148 and ask you what that is. A. On the left hand side of this photograph are cutouts of misspelled words which I took from the photographs of the ransom notes. On the right hand side of this same photograph are cutouts of the same misspelled words misspelled in the same way that I took from the request writings that were submitted to me in this case.

Q. Does that photograph correctly illustrate the words you took from the ransom notes? A. Yes.

Q. Does it correctly depict the words you took from the request writings? A. Yes, sir.

Q. Now will you proceed to illustrate. A. This word "sound" s-o-u-n-d, as it should be spelled, is spelled s-o-n-d, and it is spelled once in the ransom note and twice in the request writing. The word "not" is spelled n-o-t-e. I have just got that illustrated here three times from the ransom notes and three times from the request writings, but these words were spelled, that is this word "not" was spelled n-o-t-e thirteen times in the ransom notes, if I counted them correctly—I think I did; I tried to—and eight times was spelled as n-o-t-e in the request writings. Would you-all like to see some of these photographs as I go along?

Q. Let me have your copies, if you have copies, please.

(Copies of photographs produced by the witness handed to the Court, defense counsel and jurors.)

Q. Proceed, Mr. Cassidy, please. A. The third section in this photograph shows the word "anyding." It is spelled—it is anything, a-n-y-t-h-i-n-g, and it is spelled anyding. That is a misspelling, but I am more inclined to say that that is a German characteristic.

The next section, the fourth section from the top to the left is the word "were," three times, and to the righthand side the word "were" is shown three times. Now in the ransom notes, this "were" was used for the word "where," where are you going, where have you been; and the same thing occurs eight times in these request writings.

In the fifth section here is the pronoun "our," o-u-r, and it is spelled o-u-e-r or a-u-e-r fourteen times in these ransom notes. In the request writings they occur five times. Now this word "our" is spelled correctly sometimes, in both the ransom notes and the request writings, but not all the time by any means.

The next word I have listed here is "ladder," and that is used as the word "latter," "I will see you latter in the night," or "later." "Don't be away from your home later, 'or something, I have forgotten just the words, there are so many of those notes, but the word "later" is spelled l-a-d-d-e-r, twice in the ransom notes and four times in the request writings. The word "later," this same word is spelled correctly sometimes too in both the ransom note and in the request writings.

Now, this word "bee," I would call that a noun, talking about a honey bee. It occurs once, I have got it listed here twice, but I will explain that afterwards, if I can. This noun "bee," b-e-e is used for

the verb "be" and it occurs twice in the request writings. Now, this "b-e-i" seems to me that it is very plain that the "i" has been added to the "e." I looked that up in my German grammar and found—don't think that I am a German scholar, but that word does occur in the German language, it means "in" or "at" or "by," or "within" the house, I don't know why that occurred, but I put it in there. What to me is very significant is the use of the word t-h-e for the pronoun t-h-e-y, and that occurs twice in the ransom letters and it occurs seven times in the request writings.

Q. Does that complete your chart? A. Completes that chart. I should just like to remark here I want to be conservative—at the same time I don't want to be mealy-mouthed.

Q. Go ahead. A. Now, if this was one of those ordinary anonymous letters, like I handle every day or every few days down there in Virginia on the road, I wouldn't hesitate to say that the same person wrote both of those sets of writings, I wouldn't care if they was written on the typewriter, because the same person—the possiblity or probability of two people spelling all those words wrong in the same way is so improbable that I would say that it is entirely negligible. Now, that's my honest opinion and I am giving it to you; but this is a serious case here. It is too important to decide it, I would say, just on that alone. I would decide an ordinary case on the strength of those eight misspelled words, but I don't feel like I should do it in a case of this importance. So if you will just bear and be patient with me for just one more illustration, I will be glad to quit.

Q. Proceed, please.

The Court: Proceed.

The Witness: Shall I go a little further?

The Court: Proceed.

The Witness: It is very kind of you all and I appreciate it.

Mr. Lanigan: These are offered as further photographic illustrations.

(Set of eight photographic illustrations received in evidence and marked State's Exhibit S-149.)

Q. S-149. A. S-149.

Q. Now Mr. Cassidy, these photographs illustrate what, please? A. This photograph that they are marking here, S-149, represents letters and characters, words, taken from the ransom notes and the request writings.

Q. And they truly depict both the ransom notes and request writings? A. Yes.

Q. Proceed, please. A. In the upper lefthand corner is the word "letters," l-e-t-t-e-r-s, and "letter," l-e-t-t-e-r. On the lefthand side are those cut from the ransom notes and photographed and over on the righthand side of these same letters are those taken from the request writings.

Now I have a list showing just where these came from, a complete list of them, but I don't think it is necessary to take up the time of this Court to show all that. I will just leave it here and if anybody don't believe how many stars is in the skies they can count them.

But to my way of thinking—

Q. Go to the next one, please. A. Well, I want to note here that none of these t's are crossed, and the writer of these ransom notes, and these request

writings, seems to be a very conscientious objector to crossing any t's. I don't mean to say that everybody crosses t's, but the writer of these writings, but at least he is one of the few that very seldom crosses a "t." That is, I mean a "t" that should be crossed. There are lots of those German t's that are crossed; what I mean by crossed, they have got that little curlicue down there at the bottom.

Now, those s's, round top s's, which are just to the right of the word "letters" are unusual, but in my experience they are not rare. At the same time there is not so awful many people that make those round top s's; possibly more down our way than there are in other parts of the country. I see them down there every once in a while. When you turn them upside down they look just like c's.

Now, to the right of that is a list of g's from the ransom notes and the request writings. You would never take them for g's; you would take them for y's. But they are g's; they have to be g's in the writing, to make sense out of the word they intend to spell. I have seen other people make open top g's like that, not very many of them.

Now next, to the left hand corner at the bottom, are some more y's, very illiterate y's; I see them some down home. Notice how those tails drag around to the left there, tails of the y's.

Now, the next photograph, I mean the next illustration here is the word "you" with the "y" made like a "j" and no dot over it. They are a rarity in my experience. But you have got some very experienced people here. I am just speaking what I know myself.

Now, these d's: I don't attach but very little significance to that; that is the next section there of d's, possibly 50 per cent of the Germans who have tried to write—may I say United States, or English—would make something like the same form

of "d," make it with an oval, then they lift their pen, go up to the top and bring it down. But just to the right of these d's, which are made what I would call in a more or less orthodox manner, are some d's that I never did see before nowhere—not yet—may see them tomorrow, but I haven't seen them yet. They are made like an and-sign, very convenient way to make them; but I just haven't seen anbody that made them that way.

I have given careful consideration to all these things, weighed them individually and weighed them collectively, and I have weighed them in connection with each other. Regardless of the seriousness of this charge, I feel that I am obliged to say that the person that wrote those request writings or standard writings, or conceded writings as they call them, is the same person who wrote all those ransom notes.

Now, I don't feel that this jury is required to have the patience to listen to me any further.

Q. How many sets of photographs illustrative of your opinion have you, Mr. Cassidy? A. There are nine of them.

Q. Nine sets? A. I paddled around in water making those photographs until I was afraid I was going to get webbed-fingered, but I did it, and there they are and you can have them.

Q. Some of them you have illustrated, two sets? A. Yes, I have.

Mr. Lanigan: If your Honor please, I desire to offer in evidence the remaining sets as illustrative of the testimony.

The Court: Is there any objection?

Mr. Fisher: No objection.

The Court: They will be received.

Mr. Fisher: Mr. Cassidy—

Mr. Lanigan: Mr. Fisher, before you start, may I get the sets from him, and then you may examine.

The Reporter: Exhibits S-150 to S-156, inclusive.

(Seven sets of photographs referred to were received in evidence and marked State's Exhibits S-150, S-151, S-152, S-153, S-154, S-155 and S-156.)

Mr. Lanigan: May we say for the record there are seven additional sets, photographs illustrating the witness's opinion.

Mr. Lanigan: Counsel may cross-examine.

Cross-Examination by Mr. Fisher:

Q. Mr. Cassidy, did you see any of the so-called request writings written? A. Oh, no, sir.

Q. And the same thing is true of the admitted writings? A. No, sir, I never saw any of them.

Q. They were simply delivered to you as the request writings and the true writings? A. Yes, sir, that is correct.

Q. And the ransom notes as the ransom notes? A. That is correct.

Q. Now, what have you to say as to the proper time to take request writings from a suspect? A. Well, I would say the most opportune time would be just as quick as you could get a suspect.

Q. That is right, as early as he is taken in custody? A. Yes, sir.

Q. The first thing that you do with a suspect would be to properly take specimens of his writing, is that correct? A. I certainly would, in a case like this.

Q. Well, now, would you think that a man might be perfectly normal and that his reaction in writing might be perfectly normal after he had been in custody and had been examined continuously from fifteen hours upward? A. Oh, I don't think he'd be absolutely normal unless he is a remarkable man.

Q. Unless he was a remarkable man? A. Yes, sir.

Q. You think the nervousness he would be undergoing might in some way show in his handwriting, is that true? A. Yes, I should think that it would.

Q. Then in your opinion a fairer time, if I may use that term, a more fair time to have taken the specimens would have been immediately on apprehension. A. Well, I think that would be the best time to take them at once.

Q. Now, let me ask you about the word which you say you found spelled n-o-t-e. How many times did you find that spelled that way in the ransom notes? A. Would you allow me to look at these?

Q. Certainly.

A. As I count them, there are thirteen of them in the ransom notes.

Q. In the ransom notes. Now, did you count how many times in the ransom note the word "not" was correctly spelled,—that is, n-o-t? A. In the ransom notes?

Q. Yes, in the ransom notes. A. I did, but I don't recall.

Q. Well— A. As I remember it, they were spelled wrong more than they were spelled right.

Q. But they were spelled right a number of times?

A. Yes, they were spelled right a number of times.

Q. In the ransom notes. You saw the word "not" properly spelled several times? A. Yes; more times in the request writings than in the ransom notes.

Q. For instance, I show you—I can't tell you what exhibit that is here. A. I can't either.

Q. It is the note that says "Dear Sir: Please hand enclosed letter to Colonel Lindbergh." It is in Mr. Lindbergh's interest not to notify the police." That very short letter. A. Yes.

Q. The word "not" is correctly spelled there, isn't it? A. Correctly spelled there, yes, sir.

Q. And you found it so several times— A. Yes, I did.

Q. —through the ransom notes? A. I did so, yes, I certainly did.

Q. Now, in the request writings did you also find the word "not" correctly spelled? A. Yes, sir.

Q. And did that indicate to you that the writer of the ransom notes, from the fact that it was spelled correctly sometimes and incorrectly others, might have been attempting to disguise his handwriting by the improper spelling? A. No, I wouldn't say that, Mr. Fisher.

Q. How would you account for the fact that he writes it n-o-t-e one time and n-o-t the next, and n-o-t-e the next, and so on? A. Well, I do the same thing myself.

Q. You mean a man chronically misspells sometimes? A. No, just some words. I have a terrible time spelling occasion. I can spell it two or three different ways.

Q. And sometimes it will be right and sometimes wrong? A. Yes, that's right.

Q. You think that is a normal habit in a human? A. Well, it is in me.

Q. And in the ransom writer, apparently? A. Apparently it is.

Q. Now I want to ask you this about proper use of such words as "hazardous," the spelling rather and the improper spelling of such words as "be." A. A lot of those big words are spelled right. I remember it.

Q. Did that have any significance to you at all? What conclusion did you draw? A. Yes, it did.

Q. What conclusion did you reach from that, Mr. Cassidy? A. I am inclined to think that that was with the writer of those ransom notes just like it would be if I was over in Germany. I would have to keep me a book right close to me, and I would look to the big ones and not the small ones, thinking I already knew about it.

Q. Let me ask you: If you wanted to look for a word like "hazardous," where would you start? A. I would start with Webster's Dictionary.

Q. How would you know where to look? A. I would look under the h's and the s's first and gradually come down to the z's and find it.

Q. You mean whoever wrote these notes took a dictionary and started with "a" and read down thousands of words? A. I don't think he would have to go to that extreme.

Q. Why would he start at "h?" A. It sounds like it would start with an "h."

Q. Would you think it peculiar that a man who couldn't spell "the" properly would even know there was such a word as "hazardous?" A. He does spell it properly.

Q. He spells it improperly, too? A. Yes.

Q. Would it seem strange to you that a man who could spell "be" improperly would even know of the existence of such a word as "hazardous?" A. If he had been over here any length of time or I had been in Germany, I would expect somebody would

know something about it.

Q. Mr. Cassidy, I want to be just as serious and honest in this case as you, I mean that is my object. A. I thank you. That is the way I look at it.

Q. I think you are giving consideration to it honestly. A. I thank you.

Q. Let me ask you this: Assuming someone, some penman had a specimen of the true writing of Richard Bruno Hauptmann with all its eccentricities, misspelling, peculiarities, its failure to cross t's and what-not, would it in your opinion be a difficult matter for the person who had that writing to copy Hauptmann's writing in such a way that it would be deceptive even to you experts?

A. I would say that for a small amount of writing and a very expert imitator or counterfeiter or forger, that he might be able to prepare one letter.

Q. Well, now— A. I mean, a short letter.

Mr. Wilentz: Let him finish.

Mr. Fisher: Just a minute. I want his answer.

Mr. Wilentz: Let him finish his answer please.

A. But, Gee Whiz, when you talk about fourteen letters, it looks like to me it would be almost an impossible task, Mr. Fisher.

Q. Let me ask you further, wouldn't that be more true as to the misspelling of the words than as to shaping of the words; in other words, if I had some of Hauptmann's writing in which he misspelled for example, I will say "not" and "the," wouldn't it then be a very simple matter for me in copying his writing to misspell those same words? A. I can't agree with you on that, sir.

Q. Well, now, do you mean to say— A. The misspelled words, of course, could be misspelled, but to misspell them in the same way he does and in his handwriting too, it looks to me like it would be a very, very difficult proposition.

Q. Do you mean to say, Mr. Cassidy, that if I pick up the true writing of Bruno Richard Hauptmann here now, and I want to imitate it as to misspelling, that it would be difficult for me to look at his writing where he misspelled "be," "b-e-e" and for me to put on my paper "b-e-e," would that be difficult? A. No, not just to put down b-e-e or b-e-i.

Q. The spelling itself wouldn't be difficult? A. No. I could do that.

Q. Certainly you could do it, anybody who had Hauptmann's writing could do it, could they not, and misspell every word he misspelled? A. Yes, if they had plenty of specimens of his handwriting and spelling.

Q. Without more than one specimen, couldn't they misspell the same words he misspelled? A. Well if they had one specimen and all these misspelled words occurred in it, I guess one specimen would be sufficient. One well will make a river if it is big enough.

Q. You bet. Now, let me ask you this further question. A. That is correct.

Q. You weren't present, I understood you to say, when the test or request writings were written, were you? A. I wasn't present when Washington crossed the Delaware but I've got a pretty good idea he got over on the Jersey side. (Laughter.)

The Court: Now, we have had enough confusion. The people must remain quiet if they are to remain here.

Q. Now, Mr. Cassidy, you weren't either place, were you? A. No.

Q. Where Washington crossed the Delaware or where the notes were written. A. No.

Q. You were absent both times. A. Absent both times.

Q. All right.

Q. Now, you don't know then how Hauptmann wrote, do you? I mean by that whether he was given a piece of paper to copy, whether words were dictated to him, or in what manner he was told to make the request writings? A. Well, I am going on faith. I have got a certain amount of faith in humanity and I just can't think all those officers would do a trick like that.

Q. Let's get off the faith— A. I hope they didn't.

Q. —and get back to evidence. A. You can't keep me—

Q. No, but I can keep you from expressing it. A. I beg your pardon. That may be incorrect.

Q. You weren't present, were you? A. No, sir.

Q. And for that reason you don't know how these specimens were taken? A. I couldn't possibly know.

Q. No. So that you don't know whether the word n-o-t-e was dictated to Hauptmann in that manner or not, do you? A. No, sir; I couldn't know.

Q. And when you pick up the request writings and you see n-o-t-e there, it may be that he was told to write n-o-t-e, so far as you know? A. If you can prove it, it will certainly help your case.

Q. So far as you know? A. Yes, sir.

Q. So far as you know, he might have been told to write n-o-t-e, is that correct? A. Yes, it could have happened.

Q. Yes, that is right. Well, that is fair enough.

Just one or two questions from your tests now, Mr. Cassidy, and then I am all through here,—thank God. A. You and me both; both of us.

Q. Just a minute. Now, I want to show you your—I am afraid ours isn't marked; it is the first one that was introduced, S-148, State's Exhibit 148, sir, and I call your attention to the very first word, "sound." Now, I ask you, in the first place, the "s" is considerably different, isn't it? A. Yes; one is more rapidly written, I would say, over here, than the one on the left.

Q. Well, one is different in character than the other, too, isn't it? A. Oh, yes.

Q. This one ends with a curl or what you call a whirligig? A. No, it has got a tit at the top of it.

Q. A tit at the top of it? A. Yes.

Q. That is mine, if you refer to that (indicating.) A. No, I am not talking about that. That sharp point, don't you see?

Q. Well, I am trying to talk about the rounded point down here, at the bottom. A. Oh, I beg your pardon.

Q. You don't see that on this "s," do you? A. No, sir.

Q. And where the "s" joins to the "o," this is disjoined, isn't it? There is no joinder there. A. There is a pen lift there between those s's.

Q. And there is no pen lift over here? A. That is correct, that is right.

Q. That is right. Well, to that extent the "s" is different again? A. Yes, sir. Not as to spelling, though, is it?

Q. No, not as to spelling. Now, that is getting back to the copy business again, isn't it? A. That is right.

Q. Let's stick to the writing for a minute. A. I beg your pardon; I beg your pardon.

Q. Yes. That is quite all right. Now we go

over here to the letter "n," is it supposed to be? A. I think that would be an "n," I would think that would be an "n," it could be a "u."

Q. Do those n's look alike to you? A. Well, does one of them look any more like an "n" than the other one?

Q. No, they both look like very bad n's, but do they look like similar n's? That is the question. A. They look like u's to me. I mean they look like n's to me.

Q. Do they look similar to you, Mr. Cassidy? A. Well, I would say that there is very little similarity as far as they are concerned.

Q. Very little similarity. Now we will go to the letter "d," the last letter in that word. Is there any similarity in what you term the loop? A. The loop, or do you mean the oval?

Q. The oval; whatever you call it. A. I believe that is the technical name for it.

Q. All right. A. There are lots of experts listening to me and I like them to know that I know something about it, you understand.

Q. Well, I like to be educated in technicalities too, so let's go right ahead then. A. Yes.

Q. That is the oval then? A. I would say that is the oval.

Q. And what do you call this (indicating?) A. I call that the stem.

Q. The stem? A. Or the staff of it.

Q. All right. Now, does the oval part look very similar to you, to this one (indicating?) A. No.

Q. And how about the stem? A. And the finishing stroke of the stem of the one from the request writing has got a long sweep, down below the horizontal line of writing.

Q. That looks entirely different than the "d" there, doesn't it? A. Yes.

Q. Now we have gone over the "s" and we have

gone over the "o" and we have gone over the "n" and we have gone over the "d"; and singly they don't look much alike, do they? A. No, I wouldn't think so.

Q. Now, does the word itself look much alike? A. Sir?

Q. The whole business, the whole four letters put together, do they make anything that looks very similar to you, now—honestly and fairly?

Mr. Fisher: Does the jury have this exhibit?

Mr. Wilentz: What word are you referring to?

Mr. Fisher: I am referring to the very first one, s-o-n-d. It is Exhibit 148, State's Exhibit 148.

(Exhibit produced by Mr. Lanigan.)

Mr. Fisher: That is the one.

The Witness: There is one for every two of you. That is all I made.

By Mr. Fisher:

Q. That is because of the depression? A. Well, you can call it anything you want to. I got tired.

Q. Now, do you remember the question? A. Perhaps you had better repeat it.

Q. (Question repeated as follows: "The whole business, the whole four letters put together, do they make anything that looks very similar to you, now,—honestly and fairly?") A. As to spelling yes.

Q. Then you— A. As to handwriting characteristics, very little.

Q. Very little. A. But I find differences throughout this writing.

Q. Now you have here n-o-t-e, spelled no-t-e in each one of your examples. A. Yes.

Q. You don't have the proper spelling anywhere on this example, do you? A. No. I accounted for that by saying that they occurred in both the ransom notes and the request writings.

Q. Now what have you to say in the word "note" as to the general slant of the writing? Compare the ransom notes and the true writings. A. The writing from the request writings has a more decided slant to the right than what the writing from the request, I mean from the ransoms.

Mr. Fisher: That is all, sir.

The witness: Well, I thank you.

Mr. Lanigan: Thank you, Mr. Cassidy.

Wilmer T. Souder.

WILMER T. SOUDER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Lanigan:

Q. Doctor, where do you reside? A. Washington, D. C.

Q. What is your occupation, position? A. I am a member of the Scientific Staff of the National Bureau of Standards. This is a Federal Bureau operating under the Department of Commerce. I am Chief of the identification laboratory of this Bureau.

Q. Federal Government? A. Yes, sir.

Q. Department of Commerce? A. Department of Commerce.

Q. And how long have you been a member of the Bureau, Doctor? A. I have been a member of this Bureau for nineteen years.

Q. And your duties are what? A. I am in charge of a section of this bureau. The greater part of my duties consist in managing and directing the work of this identification laboratory. The division of the bureau which I operate is known as the Weights & Measures Division.

Q. How long have you been actively engaged in the making of these identifications? A. I have been making identifications of handwriting, documents and similar materials for nine years.

Q. What special training have you had to prepare you for this work? A. I am a graduate of the University of Indiana with a degree of A. B. and A. M.; a graduate of the University of Chicago, degree of Ph. D.

Q. In what courts have you testified on the subject of handwriting? A. I have testified on the subject of handwriting in the Federal Court of Washington, D. C., in the Federal Court located in New Orleans, Louisiana, in the Federal Court located at Toledo, Ohio, in the Federal Court at Kansas City, Kansas, in the Federal Court located at Roanoke, Virginia; in the Federal Court, Anderson, South Carolina. Q. Doctor, how many document cases do you ordinarly handle in the course of a year? A. All document cases referred to us must be referred through the Government, there must be some Government angle or some reason why the Government is interested in the case. Those documents amount to about, why, I should say sixty per year during the last two or three years.

Mr. Lanigan: I offer the witness as to qualifications.

The Court: Well, are his qualifications conceded?

Mr. Pope: No objections at this time.

The Court: You may proceed.

Q. Doctor, when were you first consulted in this case? A. On April 1st, 1932.

Q. Will you kindly explain the nature of that conference, the purpose of the conference, please? A. On April 1st I was called into this case. I received a call earlier, but was in court in Toledo, Ohio, and could not appear until this date. I went at the request of the Bureau of Internal Revenue and the State of New Jersey to the home of Colonel Lindbergh and there was shown certain documents that had been received up to that date. I was asked to state whether those documents were all written by the same individual or not and to give such information and advice as I could give at that time.

Q. Doctor, I show you the so-called crib note, Exhibit S-18 and ask you if that is the note produced to you at that time? A. This is the document.

Q. I show you the subsequent notes, Nos. 2, 3, 4, 5 and 6, and ask you if you subsequently saw those notes? A. I have.

Q. I show you the subsequent notes up to and including the final note, and ask you if you have seen those notes? A. Yes, sir, I have.

Q. Over what period of time, Doctor, have you examined the ransom notes? A. I examined them in April, those that were available at that time, on April 1st; I examined them again in May, 1932.

I have made further examinations and comparisons in December, 1934.

Q. And, Doctor, the purpose of your examination and comparison was what? A. To contribute such information as was possible regarding the writer of this note and eventually to determine whether the individual could be identified who wrote these notes.

Q. I show you the request writings of Bruno Richard Hauptmann and ask you if you have examined those papers? A. (Witness examined papers at length.) I have.

Q. When did you first see the request writings? A. In December, 1934.

Q. I show you the genuine writing, the automobile licenses, the insurance card, and the Haberland note, the genuine writing of Hauptmann and ask you if you have examined those? A. (Witness examined papers at length.) I have.

Q. And when did you examine those, Doctor? A. In December, 1934.

Q. Now, you have examined the genuine writing, the automobile licenses, and the note? A. Yes, sir.

Q. You have examined the request writings of Mr. Hauptmann? A. Yes, sir.

Q. And you have examined the ransom notes? A. Yes, sir.

Q. What was the purpose of your examination of all of these documents? A. To see whether or not they were written by the same individual.

Q. As the result of your comparison and examination have you arrived at an opinion concerning the writer? A. I have.

Q. Will you express it, please? A. It is my opinion these three sets of documents were written by the same individual.

Q. Taking into consideration the genuine writing of Hauptmann and the request writings; if they were written by Mr. Hauptmann, what have you to

say as to the author of the ransom notes? A. If Mr. Hauptmann wrote request writings and the admitted writings, he also wrote the ransom documents.

Q. All of them? A. All of them.

Q. Doctor, have you any illustrations? A. I have two illustrations showing parts of the reasons justifying these conclusions.

Q. Now they are taken from what, Doctor? A. These are taken from the ransom documents and from the admitted writings and from the request writings of Mr. Hauptmann.

Q. Do they truly depict the ransom notes and the request writings? A. They do.

Mr. Lanigan: I offer them.

Mr. Pope: No objection.

Q. How many copies have you, sir? A. I have six copies for the jury and then I have my master copy and I have four extras.

Q. For counsel and the Court? A. For counsel, yes.

Mr. Lanigan: I ask that they be marked.

The Court: There being no objection, they will be marked.

(Received in evidence as one exhibit, S-157.)

Mr. Pope: The witness's name is not on here. May we have his name?

Mr. Lanigan: Wilmer T. Souder.

Q. Doctor, please proceed with the illustra-

tions. A. One of the copies marked for evidence has a small reproduction of the chart which contains some red lettering indicating the position from which the cutouts were taken.

The Court: Is that what you refer to as your master copy?

The Witness: No this is the key. This part here is the key to that.

The Court: But that sheet with the red writing is not upon these exhibits that counsel has distributed?

The Witness: It is upon one of them and is for the purpose of the record to identify the position from which they were cut.

This exhibit S-157 is divided into four parts, they are rectangles containing parts of the ransom notes and parts of the known writing. At the top you will find the cutouts from the ransom notes and across the dotted line in each of those rectangulars you will find below, the cutouts from the known writing.

Briefly, I call your attention to some of what I call the departures from the normal in handwriting. In studying this case we look for the peculiarities, those things which may be regarded as acquired characteristics of the individual, departures from normal or standard good handwriting, and I call your attention to the "E" in the upper exhibit, upper left corner, I call your attention to the small "a"—D-e-a. You will notice at the bottom of the loop of that "a" it has an angle that should be a rounding loop, that the part going over to the "r," strikes into that loop. The "r" appears

incomplete, it does not have the lift that it should have in its finishing.

A peculiar "s" resting over on its side. And I call your attention to the y-o-u. The next word below is a-f-t-e-r; the open "f" on the last stroke of the "f." F-o-r at the right of that. Those are all from ransom notes. Below I call your attention to the d's. There are four d's across the dotted line. Now we are in the first rectangle at the upper left. We know or it is admitted the same individual made all those d's and they are different. But to me they are similar to the one above.

I may say at this time that there are never, so far as I know, two letters made precisely alike in anyone's handwriting. With proper magnification, proper, elaboration and proper testing, it is possible to find differences in any two letters that any individual makes.

So this gives us a spread, an indication of the differences which we should expect in this individual's handwriting.

At the right we find a-f-e-r-y with that "f" open. J-o-u or y-o-u, which has been called to your attention so many times. The similarities on that indicate to me in this exhibit alone that they were very probably written by the same individual.

Passing to the right top we have the cut-out from the wrapper of the sleeping garment: "Mr. Condon, 2974 Decatur Avenue, New York," and at the lower right of that same section we have A-v-e, a cut-out from another of the ransom notes.

I call attention to the "C" in Mr. Condon, starting from the top toward the left, down, up and a turn in. Drop immediately below that, across the dotted line, and you find that

"C" starting to the left down, finishing with the turn in.

O-n— compare that with the o-n in the "Condon."

Passing to the "d" in "Decatur Avenue"—that could very nearly be called a "P," the short stem; and notice that below—across the dotted line and to the right you will find it.

A-v-e—started with a slight down stroke, the pressure of the pen, and in the right corner—make sure you are getting the right one, I will indicate it here (indicating)—drop down below that and you will find from the admitted writing A-v-e with that same pressure downward stroke making up that.

We have the narrow 2, rather long, 2 appearing in the wrapper signature, and the figure 2 below. The 9 appears above and below. The 7 and the 4 appear.

The "N" in the New York has been pointed out to you before and you find those comparisons across the line.

Quickly passing to the next rectangle, the lower left, dit, jou— d-i-t, j-o-u— two times. They are different in the kidnaping, in the ransom notes.

Below the dotted line we find d-i-t y-o-u. Anyone receiving a letter with the expression d-i-t y-o-u as it appears in the upper section, in my opinion would have reason to suspect that the writer writing the second letter, the d-i-t y-o-u, as it appears below the dotted line, might be the same individual, further increasing the suspicion in this case.

On the right of this lower left exhibit, h-a-l-l, it is very nearly an "n" with the bottom angle closed. H-a-e-l-t-h, notice the "h." Then, below the dotted line, h-a-u-p-t. Now, we have

had "a" above the dotted line and we have had "a" below the dotted line; those "a's" are different, yes, but above the dotted line and to the right we have small "a" which will match.

I call your attention to the "D-e-a-r," "Dear Sir," in this first rectangle. I call your attention to the "a" there and I call your attention to the "a" in this exhibit at the lower left, h-a-b-e-r-l-a-n-d, notice the corner, the bottom of the "a," notice the intersection of the next word, the next letter, beginning in that.

The "D" at the lower part of this exhibit, "j-o-u," again. Now, on the lower right we have the fourth section of this exhibit, "233 Street;" notice the "3," starting with an upward line, a little bit too long for normal writing.

The Three—the stroke of the three is too long. "Street." The "S" and the "t" starting from very near the top of the "S." The "r" is crowded into the "t." I will compare that now with the extreme lower right, "233 Str." and "East." You will note those same characteristics appear down there,—not absolutely the same, for we shall never find absolutely the same, but very similar.

The next I will call your attention to the top part of this rectangle, "I will meet you," the "i" very plain without the top loop. "Will meet," m-e-e-t. Notice that the second "e" in "meet" is crowded on to the "t" just below it. Notice that the small "e" is smaller, just as it was above, smaller than the first "e." "You."

Q. That completes that chart, Doctor? A. That completes that chart.

Q. Will you produce the next chart, please. A. (Produces chart.)

Q. Doctor, does this chart correctly depict the ransom notes and the request writings? A. It does.

Q. True photographic copy? A. Yes, sir.

Mr. Lanigan: I offer it in evidence.

Mr. Pope: No objection to it.

The Court: No objection; it will be admitted.

(Photographic reproductions of handwriting received in evidence and marked State Exhibit S-158.)

Q. Now, Doctor, will you kindly proceed with this illustration? A. S-158 is prepared in a manner similar to that, the previous chart. There are six rectangles, calling the upper left Number 1, the upper right Number 2, and so on. We will refer to those 1, 2, 3, 4, 5 and 6. I have selected in rectangle Number 1 "not out" and ask you without going into detail or great length to compare those t's, those words. Pass over to rectangle Number 2 on S-158—p-l-e-c-e, a straight line, with a mass of material wrapped around it. The wrapping of the top of that "p" suggests again and further heightens this opinion that the same party had written both. Notice at the close the "e" does not lift as it should but goes into parts, into a sort of indefinite manner.

In rectangle Number 3, m-o-n-y, m-o-n-y, m-o-n-e-y. Now those are all different. And below the dotted line you will find that they are all three different again. But notice the angular connection between letters and the saw-tooth appearance of the

tops of those. The saw-tooth appearance appears in certain places along there in those letters.

Number 4 is a comparison of the "X" in "Next" and "Bronx" which has been called to your attention previously.

Number 5 compares "H-t-e" which has been referred to you previously. And the last one is the digit, the number 6, which is very nearly a capital "O," a short stem at the beginning of the figure 6.

Q. That completes the charts, Doctor? A. That completes the charts.

Mr. Lanigan: Counsel may cross-examine.

Cross-Examination by Mr. Pope:

Q. Doctor, I understood you to say that you were graduated from a college in Indiana? A. Yes, sir.

Q. And then you attended another institution of learning? A. The University of Chicago.

Q. The University of Chicago.

Mr. Lanigan: The Constable has just sent word that the jury desires to recess.

The Court: Oh, the jury desires to recess?

Mr. Lanigan: Yes.

The Court: Then we will have to take a recess for five minutes. The jury may retire.

(At 11:04 a. m. the jury retired and a short recess was taken.)

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

The Court: Counsel may proceed.

(The witness resumed the stand.)

By Mr. Pope:

Q. When you were referring to your qualifications as a handwriting expert and mentioned your attendance at the two institutions of learning, did you want us to understand that you studied handwriting, the examination of handwriting, and the determination of disputed documents in those institutions of learning? A. May I answer in detail?

Q. You may just simply answer the question, did you study there or didn't you? A. During my service—

Q. Supposing I put it this way—I will change the question. At either one of the institutions of learning did you take any special course in the investigation of disputed handwritings? A. No, sir.

Q. It was just your general education, wasn't it? A. I would answer Yes, but I wish to explain.

Q. Is there any—

Mr. Wilentz: Just a minute now.

Q. Is there any—

The Court: Let him explain.

Mr. Pope: I think he has answered my question.

The Court: I know, but we cannot pin people down to a yes or no answer.

Mr. Pope: Usually on cross-examination.

The Court: What?

Mr. Pope: Usually on cross-examination.

The Court: Well, sometimes we do and sometimes we do not.

By Mr. Pope:

Q. All right. You may explain. Go ahead.

The Court: Let the witness explain.

A. I was employed by the National Bureau of Standards in 1911-1912. During my work there some instruments came from the laboratory of Mr. Albert S. Osborn for calibration. I became interested in this subject of handwriting at that time, handwriting and typewriting, and that has been a constant interest with me since. I went to the University of Chicago in 1913, and continued to finish my doctor's degree in physics, and that subject has been prominent in my mind, and I have looked for the relations of identification throughout my career. I came back to the Bureau of Standards in 1917. In 1925, with the approval of the officers of the Bureau of Standards, I began the identification of handwriting and typewriting.

Mr. Pope: I move that the entire answer be stricken out and the jury instructed to disregard it, because it is not responsive to the question that I asked and it does not touch the same subject matter. All that I asked the witness was whether he studied in either one of these institutions as a part of his curriculum the examination of disputed handwriting.

The Court: Well, I think the answer in part bears upon that general topic. I shall decline to strike it out.

Mr. Pope: All right, may I have an exception?

The Court: Yes, you may have an exception.

Mr. Pope: I don't know that I am entitled to it.

The Court: No, I don't know that you are.

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

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

Q. Now may I ask again, Doctor, if in any of the institutions of learning included the investigation of disputed handwritings? A. Yes, sir.

Q. And what? A. I took a special course at Northwestern University Law School, Chicago, in which the problems of identification were discussed and that is one of the subjects which was discussed.

Q. But your qualification to testify as a handwriting expert has been acquired by practice, observation, study, reading the literature of the "instruction" in that question?

Q. No. Yes, plus instruction from others.

Q. And where did you get instruction from others? A. At the Northwestern University.

Q. Was that a special course in handwriting? A. That was a special short course.

Q. Disputed handwriting? A. Yes, sir.

Q. Now, in making an examination of these various exhibits, which you had before you, including the so-called ransom notes, the standard writings and the admitted writings, have you on any of your charts, pointed out any of the discrepancies? A. I pointed out differences in my direct examination. I found no discrepancies which were not overcome by a positive identification.

Mr. Pope: Now I ask that the latter part of the answer be stricken out as not responsive. I only asked him if he found discrepancies.

The Court: Well, he seems to have been answering that question. I do not think that I will strike it out, Mr. Pope.

Q. In your examination of these various documents, do you want the jury to understand that you found no discrepancies between the handwriting in the ransom notes and the request handwritings? A. May I answer—

Q. Or that you do not present those discrepancies, which? A. May I ask for a definition of the word "discrepancy"?

Q. Well, you being a handwriting expert, I think you ought to know what I mean by the discrepancies that may exist in two different handwritings, if there are any. A. I shall define "discrepancy" as meaning absolute and positive differences which cannot be reconciled. I found none.

Q. You found no discrepancies in any of the handwritings which you thought you could not reconcile? A. That is correct.

Q. I see. A. Embodying my definition of "discrepancy."

Q. Now, the science, the true science of the examination of handwriting for the purpose of deter-

mining its genuineness requires that in order to prove two documents are written by different hands, discrepancies must be pointed out in them which cannot be accounted for by accident or by disguise. Is that correct? A. That is correct.

Q. That is correct. You were employed in this case to identify the writer of the ransom notes as the writer of the request writings, were you not? A. That was not my instruction. I was not ordered to identify anyone.

Q. No. But you understood that that was what you were expected to do, didn't you? A. No, sir; I was expected to examine the documents and report.

Q. How many documents did you examine altogether, including the ransom notes and the request writings? A. I estimate the number at 8,000.

Q. In this case, I mean. A. In this case.

Q. Eight thousand? A. In this case, 8,000 or more.

Q. And among those 8,000 the only evidences of similarities to the ransom notes which you found are those pointed out on the charts which you produced this morning? A. I will ask the question be repeated by the stenographer.

(The pending question was repeated.)

A. Not all of them.

Q. Were there any other striking similarities which you discovered, which you have not included in the chart? A. This is including the 8,000?

Q. As many as you have. A. In that 8,000 group of documents, there were documents would have "a's" like the a's in this, or they would be b's, c's or d's that were similar, on first appearance they looked as though they might be an agreement between one letter or more than one letter, but after careful consideration on all those documents, I re-

ported that they were not written by this individual, by the same individual who wrote the ransom notes.

Q. I see. Well now, perhaps you didn't understand me. I am not interested in the handwriting of others at the present time, but I am asking you how many documents in all did you examine, including the ransom notes, that you understood were written by the defendant in this case? A. Just those that were handed to me here.

Q. Yes. A. When I—

Q. Well, whenever they were handed to you? A. Yes, sir; that is correct.

Q. Yes. How many? Not eight thousand, did you? A. Oh, no.

Q. No. A. No. I think there are— well I didn't keep a list of them, but I should say there are thirty, something like that.

Q. In that neighborhood? A. More or less; in the neighborhood of thirty.

Q. Of course you were not present when the request writings were made, were you? A. No, sir.

Q. And you know nothing about the circumstances under which the samples— A. Nothing.

Q. —of the defendant's writing were obtained by the police, to be submitted to you? A. I know nothing about that part of the case.

Q. You know nothing about the instructions or orders that were given to the defendant when he wrote the request writings? A. I know nothing about that part of the case.

Q. Now you did refer in your testimony to the misspelling of the word n-o-t-e, did you not? A. I did not.

Q. Didn't you? Oh, I beg your pardon. I guess it was the witness previous. I withdraw that. Now, I want to take your exhibit number S-157. I think that the first thing you called attention to was the capital "D", is that correct? A. That is correct.

Q. And your conclusion was that the capital "D" in "Dear Sir" in the ransom note was similar to the capital D's which you have placed in the bottom of the diagram as the Hauptmann writing. A. To me as a handwriting man there are similarities.

Q. Well, take the capital "D" in the Hauptmann writing. Those D's are not unusual for German writers, are they? A. In my experience they are.

Q. A German writer, educated in Germany, coming to the United States and then endeavoring to write according to our form of writing, would you say that that was an unusual kind of a "D"? A. It is my opinion it is.

Q. To make? Do you mean to tell us that you have never seen another capital "D" made that way? A. So extreme as that, I have never seen a "D" made.

Q. Well, the matter of extreme in the formation of letters depends upon circumstances of how the man is writing, where he is writing, what he is writing on, whether he is in a hurry, whether he is writing leisurely and many other similar conditions, doesn't it? A. Yes, sir.

Q. So that not knowing the conditions under which the two capital D's of Mr. Hauptmann, which you have selected from among 80 exhibits, were written, you cannot say there is any similarity, can you? A. Between what now?

Q. The capital D's in the ransom notes. A. I testified that there was similarity between the D's above the dotted lines and below the dotted lines.

Q. Now, the similarity in the capital "D" consists in starting the first stroke of the "D" down and then going very sharply and very quickly over to the left side with a curl; is that what you mean? A. It is better described by saying—

Q. You describe it in your own language. A.

That the greater amount of area is to the left of the vertical line.

Q. Yes. A. The area to the left of the vertical line is excessive in my opinion.

Q. Well, haven't you often seen a man make a capital "D" and throw the loop way over a half an inch or an inch or more to the left? A. Yes, sir; but not so much out of proportion as we have it here.

Q. Well, haven't you seen a man make a capital "D" with a good sized loop and then bring it all the way down under the "D"? A. Yes, sir.

Q. Lots of times, haven't you? A. I wouldn't say lots of times, but I have seen it.

Q. And haven't you seen men make a capital "D" by drawing it over to the left and then curling it around inside of itself? A. I better change my testimony. I do not recall having seen the man do that.

Q. No, I mean seen the writing? A. But I have seen the writing that had that.

Q. That is what I mean, yes. And you have seen that quite often, haven't you? That is not uncommon, is it? A. It is with me.

Q. Now there is quite a marked dissimilarity, however, between the "D" in "Dear Sir," which I am pointing to and which is the first one at the top of the diagram showing the Hauptmann writing and the capital "D" in the ransom note, isn't there? A. Eliminate the word "marked" and I will say they are different.

Q. But they are dissimilar, are they not? A. They are not alike. They are different. They are dissimilar.

Q. Now, then, take the capital "D" in the word "Dodge," which is the second one that you show in your diagram. I assume that you obtained that from the automobile license— A. Yes, sir.

Q. —application? A. Yes, sir.

Q. And that "D" is dissimilar, is it not? A. Yes, sir; that is a third type of "D" that we have.

Q. Yes, sir; all by the same hand? A. In my opinion, they are all by the same hand.

Q. And that would be an indication of the fact that this writer changes the method of forming his letters from time to time? A. Undoubtedly.

Q. Undoubtedly. Now, I call your attention to the word "Dear" in the ransom note. You notice that there is a break between the "D" and the "e" in "Dear Sir." They are not connected? A. They are not connected.

Q. In the "Dear Sir" at the bottom in the Hauptmann writing, the "D" is connected with the "e," is it not? A. Perhaps.

Q. Is there any perhaps about it that two lines run directly from each other to the other, from one to the other, do they not? A. There is a heaviness of ink there that makes it so difficult for me to say that I would prefer not to testify on that point and request that the jury be shown that.

Mr. Pope: They have the chart, haven't they?

Mr. Lanigan: Do you want the jury to have the chart?

Mr. Pope: Yes. I think they should have the chart.

Mr. Lanigan: Which chart?

Mr. Pope: It is S-157.

The Witness: S-157.

The Court: Doctor, what is it that you wish the jury to hear particularly?

The Witness: There is a question whether there is a break between the "D" and the "e" in the first "Dear Sir" below the dotted line.

The Court: I see.

The Witness: And I would prefer not to testify on that subject whethere there is or is not a break between the "D" and the "e".

Mr. Lanigan: Well, now, so that the jury will not be confused, will Mr. Pope indicate which chart he wants, he handed them all to the jury.

Mr. Pope: Yes. S-157. Come here, Joe.

Mr. Lanigan: What?

Mr. Pope: Come here— And it is this particular "D" that I am referring to, "Dear". (Showing chart to the jury.)

Mr. Wilentz: Let the witness come down and show it.

Mr. Lanigan: Which chart is that on?

Mr. Pope: That is on S-157.

Mr. Wilentz: Let him tell what he is referring to.

Mr. Pope: It is on S-157, the chart in which the words "Dear Sir" occur.

Mr. Lanigan: If counsel will indicate which chart is to be taken back from the jury I will take that one back.

Mr. Pope: Let them have both of them. There are only two of them. They can hold them together.

Mr. Wilentz: Let the witness come down and show it.

Mr. Lanigan: Let the witness indicate that. That would be the best way out.

The Witness: (Stepping in front of the jury) The question is in regard to the "D" and "e" in "Dear Sir," whether or not there is a break between the "D" and the "e," whether or not the pen was lifted. I would prefer not to express an opinion upon that point.

By Mr. Pope:

Q. Did you examine that with a microscope? A. I did, sir.

Q. What power, by the way? A. Twenty.

Q. And did not the microscope tell you? A. I do not recall; I do not recall.

Q. Now I call your attention to the letter "a" in the word "Dear" and ask you to compare it with the letter "a" in the word "Dear" of the Hauptmann writing; they are dissimilar, are they not? A. I compared that on direct examination and compared that "a."

Mr. Lanigan: Just indicate it to the jury here.

The Witness: Compared the "a" in "Dear Sir" with the "a"—

Mr. Pope: Now, wait. I object to that. That isn't what I am asking you.

The Witness: Excuse me.

Mr. Wilentz: Let him answer the question.

Q. All I asked you was to compare the "a" in "Dear Sir" in the ransom note with the "a" in "Dear Sir" in the Hauptmann writing, in the first block or paragraph. A. There is a difference.

Q. There is a marked difference, isn't there? A. I prefer to say there is a difference.

Q. Well, isn't it quite a difference? A. If I define "quite," it means completely, absolutely.

Q. Is it not absolutely different then? A. There is not an absolute or quite difference there. There is not a complete difference then.

Q. Now then, compare the "s" in "Dear Sir," the word "Sir" with the "s"; would you say there was a difference there? A. There is a difference; the same answer applies.

Q. And is there not a marked discrepancy between those two letters? A. There is a difference. Discrepancy has not been defined.

Q. Do you want to play on words, do you? A. No, sir.

Q. What do you call a discrepancy between two letters? A. A discrepancy means an impossible, irreconcilable difference.

Q. That is your idea? A. That is my idea from a handwriting standpoint.

Mr. Lanigan: I ask that counsel's comment be striken from the record.

The Court: I think I will allow it to stand.

Q. Just refer to the letter "r," the little "r" in the "Dear Sir" at the top, and compare that with the "r" in the "Dear Sir" there. There is a difference between those, isn't there? A. Yes, sir.

Q. Yes. Now, use both the words "y-o-u" up here. And you compared that with the word y-o-u in the Hauptmann writing? A. Yes, sir.

Q. And you referred to it— The one you said looked as though it might have been intended for a "j." A. Yes, sir.

Q. Now, will you just look again at the y-o-u in the ransom notes and compare it with the y-o-u in the Hauptmann writing? A. Yes, sir.

Q. The writer in writing the "you" there has started to make the curve for the "y," hasn't he? A. He has failed to make the curve.

Q. He failed to make the curve for the "y"? A. He has omitted part of the "y."

Q. May not that be because the ink didn't flow on the pen? A. It is my opinion that that is not the explanation.

Q. I am not asking what your opinion was; I am asking you if you knew that that was the cause.

Mr. Lanigan: I ask that that be struck out.

The Court: The witness will have to state his best judgment, you know, Mr. Pope.

Mr. Pope: Then, of course, he won't state anything.

Mr. Lanigan: I ask that that be struck out.

The Court: Mr. Pope's remark?

Mr. Lanigan: Yes.

The Court: Strike that out.

Now the witness may complete his answer. I think the witness was undertaking to answer one of Mr. Pope's questions. Let him answer. Then if Mr. Pope doesn't like it we will deal with any observation that Mr. Pope has to make.

The Witness: May I have the question again, please.

(Last question and answer read by the Reporter.)

The Witness: That is my answer.

By Mr. Pope:

Q. Now I ask you again whether that is your explanation or not? I ask you if that may not have been caused by the failure of the pen to function? A. It is possible.

Q. Yes. A. Though not probable.

Q. There is a part of the curl or the "u" of the "y" there, isn't there? There is a mark there to the left? A. This document has been marked. Someone has put marks on this since it has been in my possession. I wish to ascertain whether the jury's documents are marked in a similar way.

Q. No. I put that there to call your attention to that in my examination. I am not asking you to pay any attention to any lead pencil marks you see on this document. You may use your own chart if you want to. A. I beg your pardon.

Q. What I am asking you is if there is not a

mark to the left at the top of the first letter "y." A. There is a beginning stroke.

Q. Extending downward to the left? A. No, sir; extending upward to the right.

Q. I asked you if it didn't extend downward to the stem of the "j". Now you say it extends upward to the right. A. It is my opinion that it does.

Q. You mean that he started to make it that way? A. That is my opinion.

Q. That is not what I asked you. Now look at the letter "Y" in the admitted handwriting. That is just a perfectly straight downward stroke, isn't it? A. Yes, sir.

Q. And there is no mark extending upward as you call it to the right to the top of the downward stroke, is there? A. That is correct.

Q. And then it does not curl around at the bottom like the "U" in the ransom note, does it? A. That one does not.

Q. But it goes straight up. A. Correct.

Q. Quickly and joins the "U" or the "O"? A. Yes, sir.

Q. So that that is a dissimilarity, isn't it? A. That is different.

Q. Well, different then, if you want to call it that. Now, passing over to the next diagram in the right and at the top of this same Exhibit 158, among the things you called attention to was the letter "D", wasn't it, the capital "D"? A. Yes.

Q. And you called attention to the "D" in Decatur Avenue and compared it with the "D" in the so-called Hauptmann writing? A. Yes, sir.

Q. And you thought that those two letters were similar? A. They bore some resemblance.

Q. They bore some resemblance. Those two letters consist of one downward stroke, one straight downward stroke and then just one U-curve, do they not? A. Apparently so.

Q. Yes. And there would be a similarity in that letter "D" made by almost anybody, wouldn't there? A. There would have to be if we call them D's.

Q. Yes. So they are two D's, aren't they? A. Yes, sir.

Q. Just a plain printed "D"? A. Yes, sir.

Q. Now your next observation in this page or in this block was to call attention to the capital letter "A" in "ave," and to compare it with the letter "A" in "Ave" of the Hauptmann writing, was it? A. That is correct.

Q. Now, I ask you to look at the letter "A" in "Ave." Is that letter completed, the capital "A"? A. The one from the wrapper does not bear the cross bar.

Q. The center cross bar is not there, is it? A. That is correct.

Q. The center cross bar, however, is there in the Hauptmann writing, isn't it? A. Yes, sir.

Q. So that is a dissimilarity, isn't it? A. That is a difference.

Q. Yes. A. Between those two.

Q. Now, going down to the next block, the third one on the lower lefthand side, you called attention there to the letter "Y", the small letter "y" in the word, in the words "Did you," did you? A. Yes, sir. I don't recall that I called attention to the small letter "y", but that is a part of the exhibit.

Q. Well, perhaps you did, that is part of the exhibit. Now, I ask you to look at the letter "y". Tell me, is that letter made by coming down sharply and then making a very slight turn or curve and going up and making rather a close loop? A. That is right.

Q. Right. Now, the letter "y" in the Hauptmann writing, however, illustrated below it, is made by going straight down? A. Downward.

Q. Downward, and then going slightly upward

and to the left, isn't it? Upward and then to the left? A. Upward and then to the right.

Q. Oh, I am talking about this part of it, we haven't completed the loop yet, but he starts to make the loop by going upward to the left, doesn't he? A. That is right.

Q. And then he makes a little curl, just a little slight curl? A. Yes, sir.

Q. And comes very sharply over to the right, but slightly upward? A. Yes, sir.

Q. So that that is dissimilar, isn't it? A. There is a difference.

Q. Yes. Now, referring to the third chart, fourth chart on this page, fourth block on this page, you called attention to the letter "3". A. Digit 3.

Q. Figure 3. A. Digit 3.

Q. Digit 3. Did I understand you to say that— Just strike that out. Do you notice how the digit 3 or the piece of paper upon which the digit 3 was written is pasted on to the original from which this photograph was taken? A. Did I notice?

Q. Do you notice? A. Will you repeat the question?

(The Reporter repeated the question: "Digit 3. Did I understand you to say that— Just strike that out. Do you notice how the digit 3 or the piece of paper upon which the digit 3 was written is pasted on to the original from which this photograph was taken?")

A. Yes, sir; I do.

Q. And the slant is quite different, isn't it? A. You mean the slant of the assembly of the letter?

Q. Yes, the slant, it is slanted to the right, isn't it? A. I do not detect it.

Q. All right. If you don't detect it, that is your answer, then. A. There is a dark line appearing

under the "3" which is under discussion and that line is a horizontal line appearing across the page.

Mr. Lanigan: Come down and illustrate it to the jury, please.

A. And the question is whether in pasting this on my normal exhibit I gave the "3" an improper slant.

Q. Oh, I didn't say improper, I said more slant. A. I am unable to detect a significant difference in that base line, which is a line on which I should have lined up those figures in which, I believe I did line up those figures.

Q. That is your answer then? A. The cut is true, it is slightly to the diagonal and has nothing to do with the base line which is a part of the original exhibit from which this is cut.

Q. Now, referring to Exhibit 158 and to the word "please," which you called attention to in the block at the upper right-hand corner of the exhibit, I understood you to call attention to the similarity between the letter "p" in "please" and the letter "p" below it in the word "police." A. Yes, sir.

Q. Do you think those p's are similar? A. I do.

Q. Why didn't you use the word "please" out of the request writings to make a comparison with the word "please" in the ransom note? A. I could have done so. There are two types of p's.

Q. Well, why didn't you do it? A. I didn't think it was necessary.

Q. Well, wasn't it because the word "please" in the request writings did not correspond with the word "please" in the ransom not? A. No.

Q. Well, it would have been much better and much easier for the jury to compare the word "please" from the ransom note with the word "please" taken from the admitted writings, wouldn't it?

Mr. Lanigan: Objected to. How can the witness tell what the jury thinks?

The Court: No, I am inclined to think it is proper cross-examination. You may proceed.

A. I must explain this selection of this letter. There are several p's in the ransom note of this type. There is another type of "P" appearing in the ransom note.

Q. And the other type of "p" that you refer to, was that used in the spelling of the word "please"? A. That was shown yesterday, in the exhibits yesterday.

Q. I see. A. And this "p" below is selected because of its similarity to the one above. The wrapped top, carelessly wrapped top of the "p" is a point to which I called attention.

Q. In other words, when you wanted to find a capital "P" to match up with the capital "P" in the word "please," you hunted all through the ransom notes to get one that looks like the "p" in "please," did you?

The Witness: I feel it necessary, if it please your honor, to make an explanation.

Q. Did you?

The Court: Well, answer the question as best you can. The question does not seem to be objectionable. You may answer the question, Doctor.

A. I did search for p's that would agree.

Q. Yes. And you disregarded the letter "p" in the world "please" that you found in the request writings because that did not agree? A. No, sir.

Q. Well, did that agree? A. It does not agree with that "p."

Q. That is the reason you didn't use a different "p"? A. It is not the reason.

Q. What is the reason then? A. In making these selections, in establishing this identity, one goes through three or four times and selects certain letters that show agreements, and comes to a tentative conclusion. Then one goes through again and attempts to find discrepancies; and there is a constant battle, trying to determine whether it was written and whether it was not written by the same individual. Now all the letters must be considered in that work. When you come to the conclusion, you make up your exhibits. Now at one time I had another exhibit and planned to use it, showing the "p" to which Mr. Pope refers, if it is the same one that I have in mind.

This exhibit must be limited. We cannot take every word in all the documents. There was no discrepancy which indicated a different writer at any place in these documents.

Q. Now, you haven't told me yet, after all that nice speech, why you didn't use the word "please" from the Hauptmann note for comparison with the word "please" in the ransom note. A. That is the other type "p."

Q. Oh, it was another type of "p"? A. Yes, sir.

Q. Well, now, that is the reason. You could have told me that long ago. Now I ask you to look at the capital "P" that you have selected and used here for the purpose of comparison, and is it your judgment as a handwriting expert that there is a similarity between those p's? A. It is.

Q. Well, the "p" in the word "please" from the ransom notes was made first with the downward stroke, making the stem of the "p," isn't that so? A. I believe so.

Q. And then the author, the writer, starts over to the left of that stroke and goes upward? A. At an angle.

Q. At an angle. And then makes a curl, a curve, and comes down and crosses the stem? A. Yes, sir.

Q. Doesn't he? A. Yes, sir.

Q. Then he goes over and makes a little loop, doesn't he? A. Yes, sir.

Q. And that loop extending just slightly to the right of the stem? A. That is right.

Q. And that is the completed "p" there, isn't it? A. That is complete.

Q. Now, the other "p"; will you state that the writer in making this other "p" did not start inside the loop to the left, go up, angling slightly to the right, and then come down? A. I would say that—

Q. To make the stem? A. To make the stem—Oh, I would not say that, no.

Q. Do you know whether he did that or not? A. We are talking about the vertical stroke.

Q. I am talking about the stem, as I call it— I don't know whether that is right or not. A. It is my opinion the vertical stroke does come down in this second stroke and is separate.

Q. I am asking you if it didn't start to come down first and then come down— A. I doubt it. It is my opinion he did—

Q. —like that (illustrating on chart). A. It is my opinion that he did not make an inverted "v".

Q. All right, that is your opinion.

Q. Well, however he made it he made the stem first, didn't he? A. I believe so.

Q. And then he started rather near the top to make the other portion the main part of the "p" and he came downward at a slight angle to the left, made a short curl, curve, and then upward on an angle and then down on a curve and then he made a loop, didn't he? A. Yes, sir.

Q. Small loop and then came all the way down almost to the main stem, making it look more like a "b" than a "p." A. There is some resemblance to a "b"; yes, sir.

Q. Well, it is a fairly good "b", isn't it? A. I didn't regard it as a "b".

Q. Disregarding the context, isn't it a better "b" than it is a "p"? A. Perhaps standing alone it could be read as a "b."

Q. Now, Doctor, if you were shown the "p"—

Mr. Pope: Let me have a little piece of paper here.

Mr. Lanigan: Here you are.

Q. (Continuing.) If you were shown the "p" and the "b" without the other words connected with it— without the other letters connected with it, and you didn't know what the other letters were, what letter would you pronounce the one at the top? A. I would pronounce it "p."

Q. And what would you pronounce the one at the bottom? A. I would want to see the rest of the word.

Q. Well, if you couldn't see the rest of the word, what would be your judgment as to what it was intended for. A. I would be in doubt.

Q. You wouldn't know whether it was a "p" or a "b" or an "r", eh? A. I might be in doubt.

Q. Well, you wouldn't call it a "p", would you? A. It could be.

Q. Anything could be. You don't want to answer? A. I said I would be in doubt.

Q. You would be in doubt, but it looks very much more like a "b" than it does like a "p." No doubt about that, is there? A. It looks like a "b" in some respects.

A. (Continuing.) The thing that influenced me in the identification of the letter—

Q. I didn't ask you that. A. —was a straight line—

Q. I didn't ask you that. A. Excuse me, I beg your pardon.

Q. I think with the exception of about one question, that is all I have to ask you. I am just wondering, Doctor, if in the study of your art of handwriting, examining of handwriting, etc., it was ever called to your attention, the famous Junius letters, the poison pen letters that were written in England in about 1659?

Mr. Lanigan: When?

Mr. Pope: 1659, wasn't it?

Mr. Lanigan: Oh.

Mr. Pope: Somewhere around there.

A. I believe that case is described in Ames book on Forgery. I am not familiar with the case.

Q. I am not talking about Ames book on Forgery, but there were a number of letters written by somebody signed Junius in England back in 1659. I ask you this question: Hasn't it been a matter of controversy between handwriting experts for 250 years as to who the author of the famous Junius letters was and the experts have never been able to agree?

Mr. Wilentz: Just a minute. We object to the question, if your Honor please, as not being material to this case.

Mr. Pope: I think it is. It goes to the value of expert testimony.

The Court: I think the Doctor may answer that question, if he knows anything about it.

Mr. Pope: My date may be wrong, 1659.

Mr. Lanigan: I am afraid your date is wrong.

Mr. Pope: I don't think it is.

The Court: If counsel want the question answered, I think it perhaps is cross-examination.

Mr. Wilentz: May I very respectfully call your Honor's attention to the fact that, to be charitable, I would say it is quite remote, and yet the cross-examination of handwriting experts is very wide and liberal.

May I add further that necessarily, whether or not it has been a controversy since 1600—and—something to the present date takes in a period of time that, if your Honor please, I am quite certain, no effort has been made in that direction, certainly not in recent years.

Mr. Pope: It was 1679, not 1659.

Mr. Wilentz: However, if your Honor feels that it ought to be answered—

The Court: The Doctor may make such answer to the question as he can.

A. I do not feel competent to make an answer based upon the Junius documents.

By Mr. Pope:

Q. Doctor, I show you a piece of paper here. Would you mind looking at that. Tell me whether that was written by one person or two persons, or more? A. I am unable to say, just snap judgment on it. There are many differences.

Q. You mean you would have to make an examination and study of it? A. It would take a long study. There are three answers possible— yes; no; I do not know. In many cases we answer "I do not know." It is possible.

Q. And is that your answer in this case? A. That is my answer.

Mr. Pope: May this be marked for identification.

The Reporter: D-26 for identification.

(Paper shown the witness by examining counsel marked Defendant's Exhibit D-26 for identification.)

Mr. Pope: That is all.

Mr. Lanigan: There is just one question on re-direct.

Re-Direct Examination by Mr. Lanigan:

Q. Doctor, in your comparison and examination you considered both similarities and dissimilarities? A. Yes, sir.

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. Pope: I object to the question as incompetent, irrelevant and immaterial, not the province and duty of counsel to change the Doctor's opinions at all.

The Court: I overrule the objection. You may answer.

Mr. Pope: May I have an exception?

The Court: Take your exception.

(Exception taken and same is sealed and signed accordingly.)

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

A. The answer is "No, sir."

Mr. Lanigan: Thank you, Doctor.

ALBERT D. OSBORN, Sworn as a witness on behalf of the State.

Direct Examination by Mr. Lanigan:

The Court: Albert G.?

The Witness: Albert D., your honor.

Q. You reside where, Mr. Osborn? A. Montclair, New Jersey.

Q. And your business office is where, sir? A. 233 Broadway, New York City.

Q. And your profession? A. Examiner of disputed handwriting, typewriting, ink, other questions relating to documents.

Q. And over what period of time have you been

so engaged? A. I have studied the subject for about twenty years, testifying fifteen years ago for the first time.

Q. How long have you been continuously engaged in the examination of questioned documents? A. Fifteen years.

Q. In what courts have you testified? A. I have testified in the Civil and Criminal courts of various states, fifteen states now.

Q. How about the Federal jurisdictions? A. I testified in Federal courts many times.

Q. Now, Mr. Osborn, I show you—You testified in how many states, sir? A. Fourteen states.

Q. You have read what books on the subject? A. I have read the leading books on the subject.

Mr. Lanigan: I offer the witness.

Mr. Fisher: No questions at this time, sir.

The Court: Well, I think that he is certainly qualified and the examination may proceed.

Q. Mr. Osborn, I show you the papers which have been identified as the ransom notes and ask you when you first saw those papers? A. I first saw them in May, 1932.

Q. And on how many occasions since May, 1932, have you seen them? A. I have seen the originals on two occasions. I have examined photographs of the originals on many occasions.

Q. And the purpose of your examination was what, sir? A. In the beginning it was to determine whether the first note was in the same handwriting as the rest of the notes. Since that time I have compared specimens submitted by the New Jersey State Police, by the Federal Government and occasionally

by the New York City Police of suspected writers of these ransom notes.

Q. About how many papers of suspected writers have you examined? A. I cannot say how many.

Q. Can you approximate it? A. Well I think Captain Snook must have submitted at least two or three hundred. Special Agent Sisk dug up the handwriting of every carpenter, I think, in this part of the country. I examined those on occasion. I examined specimens for the New York City Police, not as many as for the other two agencies.

Q. And have you been continuously engaged over the period then from 1932 to date in such an examination? A. Yes, sir.

Q. Your examination of the ransom notes was for what purpose? A. To determine whether they were all written by the same hand in the beginning, later as I say, to determine whether any of many suspects was the actual writer.

Q. Have you reached a conclusion as to whether or not the ransom notes were all written by the same hand? A. I have.

Q. What is your opinion concerning that, from your examination? A. In my opinion there is no question but they are all written by the same hand.

Q. I show you the request writings of Bruno Richard Hauptmann and ask you if you have previously examined those? A. I have.

Q. I show you the genuine writing, the automobile licenses and the promissory note of Bruno Richard Hauptmann and ask you if you have made an examination of those? A. I have.

Q. Based upon your examination of the genuine writings of Hauptmann, the request writings of Hauptmann and the ransom notes, have you reached an opinion concerning the identity of the writer? A. I have.

Q. Are you prepared to express it? A. Yes, sir.

Q. Please state it. A. In my judgment the writer of these standard and other writings, Bruno Richard Hauptmann wrote all the ransom notes.

Q. So that if Bruno Richard Hauptmann wrote the genuine writings and the request writings, what have you to say as to the identity of the author of the ransom notes? A. I believe he wrote all the ransom notes.

Q. Now have you any illustrations to illustrate the opinion you have just expressed? A. I have made a great many illustrations, I would like to use maybe one.

Q. For the purpose of brevity, supposing we use that one. A. I think Captain Snook went to get it.

Q. Captain Snook is bringing it. Let's have it. Get your easel there. Do you want your easel? A. Yes. (A chart is placed on the easel.)

The Witness: Where are the notes?

Q. The notes? A. I just want the wrapper.

Q. Here are all of the notes. Now, this bromide is what? A. That is a bromide enlargement showing at the left hand side the second address on the wrapper.

Q. All right. Does it truly depict the ransom notes and the writings? A. Yes, it does.

Mr. Lanigan: I offer it, if your Honor please.

Mr. Fisher: No objection.

The Court: It will be admitted.

The Reporter: It will me exhibit S-159.

(The bromide chart referred to was received in evidence and marked S-159.)

Q. Refer to it as Exhibit 159. A. This Exhibit 159 shows only a small amount of writing from the ransom notes and that writing is the writing on the end of the wrapper, Exhibit S-53. I examined and considered, of course, every word in the ransom notes and every word as written by Hauptmann. I am illustrating here just one piece of writing from the ransom notes. That is the writing on the end of the wrapper. I believe that when this defendant, I believe that when that writing was written, the writer was not on his guard; that is, that he let down somewhat in his attempt at disguise. The address was already on this wrapper in printing, but it is evident that before mailing it, to be sure that the package arrived at its correct destination, the address was put on again. This pack—

Mr. Fisher: Your Honor, I want to object to any testimony along that line for this reason: Your Honor will recollect very clearly that in the testimony of Dr. Condon, in reference to this wrapper, the address appeared on two separate places on the envelope.

The Doctor clearly testified, and the record will bear me out, that he couldn't say as to the second address, the one the witness is now testifying about; that the first address was clearly on there when it was received, but he had no recollection as to whether or no the second address was on the wrapper when it was received; and for that reason anything that has to do with the second address on the wrapping would not be evidential for the purpose which is now attempting to be used.

The Court: Well, this witness is testifying that he examined certain writings upon an envelope and he is proceeding to tell what he thinks about it, that is, his opinion respecting it and perchance who wrote it. Well now, there is testimony, as I recall, that this envelope in one fashion or another came from the hands of the defendant, so I would be inclined to think that there is enough evidence in the case even after giving considering to what you said about it, to justify the State in pursuing this question. Of course, after a while you are going to cross-examine and you may then bring these matters up.

Q. Proceed, Mr. Osborn, please.

Mr. Fisher: I pray an exception.

The Court: You may have an exception.

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

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

A. As I just said, I believe that when this second address was written on the wrapper, the writer let down his disguise, and he was not as consistent in his disguise as he was practically throughout the rest of the ransom writing; and therefore when that writing is enlarged and compared with writing of the defendant, as shown at the right, the similarity in many of the letters is obvious. It doesn't need to be pointed out. I will only speak of one or two letters. The "C" in Condon, for example, and the "C" on this side in the word "Conlly," as written when this defendant was asked to write. Occasion-

ally this defendant makes a "D" as in "Dear," and the same thing appears in "Decatur." On other occasions he makes a small "2" with a very small top and a small base, as in these figures 1279, from one of the auto license applications; and the same "2" with a small top and a very small base appears in that Decatur address. Another very distinctive connection is the capital "N" in New York, as it is made on the sleeping suit. It is an "N" that practically stands on one foot, and the same thing is found in the writing of the defendant in this abbreviation, New York, or in the word New York that is written out here, taken from his admitted writing.

It seems to me that when those words are compared in that manner, that the similarity, the distinct and individual similarity is obvious; and the hand that wrote the writing on that wrapper, I believe, is the hand of Richard Bruno Hauptmann.

Q. Have you another bromide? A. I have one of one of the request specimens, that is all.

Q. I would prefer to have it. A. I am afraid it is out in the other room.

Mr. Lanigan: Will you get it, please?

The Witness: It is in that roll, Captain Snook.

Mr. Lanigan: May I ask your Honor's indulgence for just a moment?

The Court: All right.

Q. Now, Mr. Osborn, what does that purport to be? What is that, please? Tell us what it is. A. It is an enlargement of one of the pieces of request writing written by this defendant at dictation.

Q. And correctly depicts the request writing? A. Yes, in enlarged form.

Mr. Lanigan: I offer it.

Mr. Fisher: No objections.

The Court: It will be admitted.

(Enlargement of request writing received and marked Exhibit S-160.)

Q. Now, please explain the illustration. A. This matter appearing on Exhibit S-160 I made up in 1932 for the purpose of using as a sample for request writing by suspected writers of the ransom notes. I didn't make it up as a literary gem in any sense of the word at all. I made it up to include certain words and common words that appear in the ransom notes. This particular piece of writing by the defendant, standing by itself, I think is strong indication of guilt, because it is quite evident that the writer made a strenuous effort at disguise in the first five lines and then suddenly stopped his disguise and wrote naturally. When this specimen was written it was two and a half years after the ransom notes had been written. The ransom notes were disguised throughout, in my judgment, and the first part of this specimen was disguised, and I believe that the writer of this specimen had only one disguise, and the first five lines here are distinctly like the writing in many ways in the ransom notes and it shows that the same hand that wrote this specimen also wrote the ransom notes.

You will probably recognize many words in here that have been used in the preceding testimony. I don't need to point them out. Naturally, in making this out I put the word "where" in to see how a

suspected writer would spell it. In the first line, "We were not near Smith Hall where the robbery," of course this writer wrote it as in the ransom notes, w-e-r-e. In the second line I put the word "our" in to see how the suspected writer would write "our." It is written in the ransom notes o-u-e-r, and when this suspected writer wrote it he also wrote it o-u-e-r. The next line I put the word "later" in because in the ransom notes it is spelled "latter" l-a-t-t-e-r, that is in the note S-20, the second note, for example, also in the third note, S-23. And when this suspected writer was asked to write that word, he wrote "latter," l-a-t-t-e-r, and it is the same throughout this specimen. This specimen was made up as a sample, taken from different parts of the ransom notes and when this suspected writer wrote it out he made many of the mistakes that are made in the ransom notes. I don't mean just in spelling, but in the actual making of the letter, they are the same as in the ransom notes.

Q. Illustrate some for me please. A. The word "not," for example, has been used by the previous witnesses. Also the word "were," or the word "place," with the final "e" going way down below the line, or the word "letters," because of the final "s," or the word "not" here, spelled n-o-t-e.

I also placed in this specimen the word "anything" in two places, because it was the apparent habit of this writer of the ransom notes to write "anyding" for "anything."

Q. Point those out to me, please. A. And when this writer came to the fourth line where I had the words "sending back anything," he wrote "anyding," and when he came to the same word again in the seventh line where I had "will be good for something later," he wrote "will be good for someding later." It seems to me that this specimen by itself is very strong evidence showing that this writer who wrote

this specimen out for the New Jersey State authorities, for the Federal authorities and for the New York City police is the actual man who wrote these ransom notes.

Q. Does the word "New York" appear there? A. Yes, "New York" appears in the fourth line with its hyphen; also with the "N" made in the wrong direction.

Q. Illustrate that, please. A. Well, it is right here (indicating). I don't think—it has been pointed out so many times; it is obvious.

Q. Mr. Osborn, how many charts or illustrations have you made? A. Oh, I have made about twelve but I am not going to try to use them here.

Q. But these two are illustrative of the remaining charts? A. To some extent.

Q. In other words, they bring out the opinion which you have expressed on the witness stand? A. Yes, sir.

Mr. Lanigan: I would like to offer them in evidence, after examination by counsel. They are all along this line. I think I can save some time in that respect.

Mr. Fisher: Yes, I can see no objection to that.

The Court: There being no objection, they will be admitted.

Mr. Lanigan: In other words, we will have them marked during the recess as the charts.

The Court: Yes. Of course they will be identified.

Mr. Lanigan: They will be identified by this witness and so marked.

You may cross-examine.

Mr. Fisher: Now, your Honor, it is five minutes of adjournment time. I am wondering if we can presume to have the recess at this time.

The Court: The people will remain where they are in the court room. Just a moment, please. The jury will retire and will return at 1:45.

(The jury retired at 12:25 o'clock.)

The Court: The prisoner is now remanded to the custody of the Sheriff and he may retire.

The Court will now take a recess until 1:45.

(Whereupon at 12:26 a recess was taken until 1:45 p. m.)

AFTER RECESS.

(1:43 p. m.)

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

(The following exhibits, by consent of counsel, were received in evidence:

Index book of cut-outs marked State Exhibit S-161.

Book of enlargments State Exhibit S-162.)

ALBERT D. OSBORN resumed the witness stand.

Cross-Examination by Mr. Fisher:

Q. Mr. Osborn, will you relate for me your qualifications, please,—that is, your educational qualifications in the line of preparing you for an expert in the examination of questioned documents. A. I have studied the different systems of handwriting, their relation to the identification of documents, I have investigated and studied reports of cases on this subject; I have studied the writing of foreigners who came to this country to see how their foreign education reflected in their writing when they learned to write English; I have read the leading books on the subject; I have conferred with others on these problems; I have done everything to qualify myself for this kind of work.

Q. Is there any school that teaches your art as it is taught, in other professional schools, say, a law school or a medical school? A. There isn't any.

Q. There isn't any? A. No, sir.

Q. Then you qualify simply by experience, is that correct? A. Well, you qualify well enough to convince the Judge that you are qualified to testify. It is up to the Court.

Q. There comes a time when you are attempting to testify, or there did come a time when you were attempting to testify in your first case, that is true, isn't it? A. Yes, that is true.

Q. And that stage could be reached by any gentleman at counsel table if he should elect to declare himself in the handwriting game, is that correct? A. He probably could try it.

Q. Yes. Now I mean by that that there is no peculiar or particular test imposed by the State of New Jersey or any other state that you have to pass to be admitted to practice your particular art, is that so? A. Yes, that is so.

Q. That is so. It is dissimilar then from law or from medicine or dentistry to that extent? A. As I understand, in some states you hang out a shingle and begin as a lawyer.

Q. Well, you can't do that in New Jersey, can you? A. Not in New Jersey, no.

Q. You know that you have to pass an examination submitted by the State of New Jersey through its proper tribunal. A. Oh, yes.

Q. Yes. Now you don't have to do that in your particular profession, do you? A. No, sir.

Q. Assuming that the Attorney General should desire to forego the field of law and enter your field, if he had a sign painted "David T. Wilentz, Handwriting Expert," so far as his right to put that out, it wouldn't be questioned, would it? A. No.

Q. That is right? A. I think he would be very good at it.

Q. I think so, too. I think most anybody who puts a sign out can be a handwriting expert, don't you? A. Well, that is what you think.

Q. Yes, that is right. Now, let me ask you this: what cases have you testified in in New Jersey criminal cases? A. I testified recently in Trenton before a committee of the Legislature in the investigation of Monmouth County. I testified at Mays Landing some time ago in the case of State vs. Lilliendahl. I have testified numerous times in Newark; one important case was State vs. Twardis, a lawyer, who was in trouble and still is.

Q. In jail, isn't he? A. He is in jail, yes.

Q. For robbing the Government of Czecho-Slovakia. A. No, that is not it.

Q. Which government was it? A. He burned down a building in Newark and unfortunately he wrote out some telegrams.

Q. And wasn't he sent to the New Jersey State

Prison? A. I don't know where he went, but I know he went to prison and didn't get out.

Q. The point you want to make is lawyers once in a while go to jail, isn't it, Mr. Osborn? Well, they seem to.

Q. And sometimes handwriting experts send people to jail that don't belong there, as the other expert, Mr. Tyrrell, who was here yesterday?

Mr. Lanigan: I object.

A. That is not true.

Q. He so testified, didn't he?

Mr. Lanigan: He did not, as the record will disclose.

The Court: I didn't get the question exactly.

(Last question read by the Reporter.)

The Court: Well, I don't recall about the other expert, Mr. Tyrrell, who was here yesterday.

Mr. Fisher: Very well; I withdraw the question.

By Mr. Fisher:

Q. You heard Mr. Tyrrell testify yesterday? A. Yes, I heard Mr. Tyrrell testify.

Q. And you heard Mr. Tyrrell testify that as a result of his testimony a man was sent to jail in the State of Wisconsin? A. I didn't understand it that way.

Q. You didn't understand it that way? A. No.

Q. And did you understand that the following day or some time very soon thereafter someone confessed that the writing he had identified as the man's was theirs and the man was released from prison? A. Yes; the man's cellmate in prison.

Q. You think that the big-hearted cellmate took the burden of the crime on his shoulders, and not that Mr. Tyrrell was mistaken; is that right?

Mr. Lanigan: I object.

The Court: That does not seem to be pertinent. I am dealing now with your last question. I will strike that out.

Mr. Fisher: Very good.

Q. Now, you testified in some other famous New Jersey cases, criminal cases, that you failed to mention, didn't you, Mr. Osborn? A. Oh, I have been in quite a few in New Jersey.

Q. You testified in several criminal cases here, among them the Mowel case in Bergen County? A. Yes.

Q. That is the case we sometimes refer to as the Von Moschzisker case? A. That's right.

Q. And in that case you appeared for the State? A. That's right.

Q. And the verdict was contrary to your testimony? A. That's right.

Q. So the jury down there didn't pay much attention to your experting?

Mr. Lanigan: Objected to.

The Court: Sustained.

Q. Now, are you a son of Albert S. Osborn, who

was the first professional witness or handwriting witness to testify here? A. Yes, sir.

Q. And are you associated with him in business? A. We have adjoining offices.

Q. Adjoining or joint? A. Adjoining.

Q. You are not in business together? A. No, we are just associated. We don't work on the same cases except at rare intervals.

Q. Usually you are separated in the cases that you work on, is that so? A. I haven't testified with him in five years.

Q. Well, what about laboratory work on cases you are each interested in, do you share that? A. No, we do not.

Q. Have you been in consultation with your father about this case and your testimony? A. I have been in consultation with him about this case, but nothing about my testimony.

Q. Have you gone over together your various exhibits in the case? A. He has never seen those exhibits before.

Q. He has never seen them? A. No, we decided to work absolutely independently in this case.

Q. Have you observed his exhibits until he produced them here in court? A. I have not.

Q. Now, you have adjoining offices there, but you say on this Lindbergh case, this case of the State vs. Hauptmann, you have never compared notes or showed each other your diagrams or anything of the sort, is that correct? A. That is right. Mr. Wilentz decided that the experts were not to talk to each other, and they have not done so.

Mr. Fisher: I move to strike that out, your Honor, as not responsive, no question.

Mr. Wilentz: Your Honor, it is responsive to the very point.

The Court: I think it is. I will let it stand.

Q. Did you ever testify in a case where your father was on the other side? A. Not yet.

Q. Not yet. So to that extent you work along pretty evenly, don't you? A. Why, no, I don't know anything about most of his cases. Occasionally, if it is an interesting question, he may show it to me. The same with myself.

Q. Now, did you hear your father testify in relation to the word "New York" in the ransom and the request writings? A. Yes, I did.

Q. (Addressing counsel for the State.) May I see the ransom and the request writings and the true writings? And did you hear him testify that in all his experience he had never observed a hyphen between the words "New" and "York"? A. Well, I can't recall his testimony now.

Q. Well, can you remember that part of it, Mr. Osborn? A. Yes, I think he said that.

Q. Well— A. If you say he did I will take your word for it.

Q. Don't take my word for it. Take the record, Mr. Osborn, for your own recollection. A. I was giving you my own recollection. I think he did.

Q. Do you remember his saying it? A. I think he said it. That is as far as I will go.

Q. Yes. Is that your observation from your twenty years of experience, too, that you never saw a hyphen between the words "New" and "York"? A. I don't believe I ever did.

Q. You don't believe you ever did? A. Yes, sir.

Q. Well, let's see if I can educate you.

Mr. Wilentz: I move that be stricken out.

Mr. Fisher: I consent to strike it, sir.

Q. I show you a document marked 14, defendant's 14 for identification, I guess it is, and ask you whether or not that is a postcard bearing the postmark "Washington, D. C. January the 8th, 1934"? A. Yes, sir.

Q. And that is some considerable time before the start of this case, isn't it? The Hauptmann angle of this case? A. (No answer.)

Q. If that is a difficult question— A. Yes.

Q. Yes. It is. Do you see a hyphen in there? A. I do.

Q. Between "New" and "York"? A. Yes, sir.

Q. That is the first one you ever saw, is it, Mr. Osborn? A. The first one I can remember of seeing.

Q. I see. Now I show you a letter marked 16 for identification and ask you to tell me the postmark on that. A. November 9th, 1934.

Q. And does that bear a hyphen between the words "New" and "York"? A. Yes.

Q. And that is the second one of those you ever saw, is that correct? A. That is correct.

Q. Yes. I now show you a letter or an envelope marked 13 for identification and ask you to look at the postmark. Can you— A. Apparently April 21st, 1933.

Q. That is right; and I ask you whether or not it bears a hyphen between the words "New" and "York"? A. Yes, sir.

Q. In New York City. And that is the fourth one of its kind you have ever observed? A. I think that is the third, Mr. Fisher.

Q. The third? A. Yes.

Q. Well, all right, the third. A. The third, in order.

Q. We will get to the fourth very quickly. A. Yes; here it comes.

Q. We are coming to the fourth now. A. That is fine.

Q. I show you a postcard marked 15 for identification and ask you the postmark on that? A. April 20th, 1934.

Q. And does it bear a hyphen between the words "New" and "York"? A. Yes, sir.

Q. And that is the fourth one? A. That is the fourth one.

Q. There we are. Now I show you postcard marked 18 for identification and ask you to give me the postmarking on that. A. May 4th, 1934.

Q. And does it bear a hyphen between the words "New" and "York"? A. Yes, I would say so.

Q. That is No. 5 under your observation? A. Yes, you have got the numbers right now.

Q. Now you have gone twenty years without seeing such a thing as that, haven't you? A. I am afraid I have.

Q. And in five minutes you have now seen four or five of them? A. That is right.

Q. Now I call your attention to an envelope marked 19 for identification. That is a foreign postmark, isn't it, from some foreign country? A. Yes.

Q. I can't make out the date; I don't know whether you can or not. Have you got a glass? A. I have a glass, yes.

Q. That is a foreign postmark, anyway, isn't it? A. Yes.

Q. And does it have a hyphen between "New" and "York" in the address? A. It does.

Q. And that is the sixth one now that we have showed you, is that correct? A. That is right.

Q. We will lay them out there so they are easy to see. Now I show you an envelope bearing identification 20 and ask you whether that is a foreign stamp, sent from a foreign country? A. Yes.

Q. Does that have a hyphen between "New" and "York" in the word New York? A. It does.

Q. And what is the type of writing on that particular exhibit? A. That is typewriting.

Q. Typewriting. And it has a typewritten hyphen? A. That is right.

Q. Is that correct? And that is No. 7 now under your observation? A. Correct.

Q. Correct? A. Yes.

Q. I now show you a postcard, Identification No. D-21, apparently sent from the Republic of Germany—is that correct? At least it bears a German stamp, doesn't it? A. Yes, sir.

Q. And can you tell the date on that? A. Not right off, Mr. Fisher.

Q. And does that have a hyphen between the "New" and "York"? A. Yes, sir.

Q. Now, that is another one added to the collection that you are seeing for the first time today; is that correct? A. Yes, sir.

Q. All right. Now, I call your attention to an envelope marked D-22 for identification, and ask you whether that is sent from a foreign country, from Germany. A. Apparently so.

Q. Now that, does that bear the words, "Bronx, New York"? A. It does.

Q. And between the word "Bronx" and the word "New York" is there a hyphen? A. Yes, sir.

Q. I ask you to read the return address on that exhibit; will you read it to the jury, please, if you can. A. Yes, sir. From I. Fisch, Leipzig.

Q. Thank you. I now show you an envelope marked D-12 for identification and ask you whether or not that seems to be a letter sent from Czecho-Slovakia? A. Yes, sir.

Q. And between the words "Bronx" and "New York" is there a hyphen? A. Yes, sir.

Q. And what return address or what name does

this envelope bear down in the left-hand corner? A. P. Fisch.

Q. Can we get the rest of that? A. Leipzig, C-1—you better pronounce the rest.

Q. Well, I will give up. Now I show you a post-card marked 17 for identification and ask you when and where that was mailed? A. New York, New York, March 19, 1934.

Q. And does that bear a hyphen between the words "New" and "York" in the word "New York"? A. Yes.

Q. Now I show you an envelope which I will ask the stenographer to mark, as it hasn't been marked before.

(Envelope marked D-27 for identification.)

Q. And ask you whether or not that shows a hyphen between the words "New" and "Jersey"? A. Yes, sir.

Q. Now, I show you an envelope which I will ask to have marked for identification.

(Envelope marked D-28 for identification.)

Q. And ask you whether that shows a hyphen between the words "New" and "Jersey"? A. Yes, sir.

Q. Was your observation as to hyphens peculiar to "New York"? Had you ever seen it between "New Jersey" before? A. I didn't mention the hyphen, Mr. Fisher.

Q. That mark between "New" and "York," which I understood you to say you had never seen in your observation of handwriting, was that also true of New Jersey as well as New York? In other words, had you ever seen the hyphen between the

words "New" and "Jersey" in your experience? A. I don't remember.

Q. Don't remember. So that it takes the same general class as "New York"? A. Oh, no, that's—well, you might say so.

Q. Well, what were you going to say about it?

Mr. Wilentz: He has answered the question.

Mr. Fisher: I am asking him another one.

Q. What were you going to say? How does it differ from "New York"?

Mr. Wilentz: He has already answered—

Q. I withdraw it. How does it differ?

Q. Yes. I will withdraw the question and reframe it. Would you say there was any difference in the words "New York" and the words "New Jersey," so far as dividing it by hyphen is concerned? A. Very little.

Q. Couple of more letters in the word "Jersey"? A. Yes.

Q. Now, I show you another envelope—which I ask to have marked for identification.

(Envelope marked Defendant's Exhibit D-29 for Identification.)

Q. —marked D-29 for identification and ask you whether that is an envelope regularly mailed through the United States mail. A. Apparently so.

Q. From where? A. Pasadena, California.

Q. On what address? A. Who to?

Q. No, on what date; what date was it addressed? A. January 5th, 1935.

Q. And does that bear a hyphen between the words "New" and "Jersey"? A. Yes, sir.

Q. Now, for the first time today, in all your twenty years of experience, you have come in contact with the word "New York" hyphenated; is that correct? A. That I remember of, yes.

Q. Then testimony given that that is a pretty unusual thing, a thing that is seldom ever done, that might be an error, mightn't it, in view of this handful we have with the hyphen in? A. Oh, I think you find it in other places; that is one of a hundred connections between Hauptmann and these ransom notes.

Mr. Fisher: Will you read my question, please, and let the witness answer it?

(The Reporter repeats question as follows: "Then, testimony given that that is a pretty unusual thing, a thing that is seldom ever done, that might be an error, mightn't it, in view of this handful we have with the hyphen in"?)

Mr. Wilentz: What is the answer, Mr. Stenographer?

The Court: You may answer the question.

Mr. Fisher: Pardon me, I didn't hear your Honor.

The Court: I say he may answer the question.

Mr. Wilentz: He has already answered it, if your Honor, please, and I am trying to get the answer from the stenographer.

(The answer was read by the Reporter as follows: "Oh, I think you will find that in other places, that is one of a hundred connections between Hauptmann and these ransom notes.")

Mr. Fisher: That isn't at all responsive, if your Honor, please, to the question. I should like to have it read again, if I may.

The Court: Well, you may frame another question if you like.

Mr. Fisher: Well, I should like to have this question read, if I may.

(The Reporter repeats question as follows: "Then, testimony given that that is a pretty unusual thing, a thing that is seldom ever done, that might be an error, mightn't it, in view of this handful we have with a hyphen in"?)

A. I can't see any error about it, because you found five or six, if you found twenty in the United States.

Q. What day did your father testify, Mr. Osborn?

Mr. Wilentz: Oh, I object to that as not being material; what day is a matter of record.

Mr. Fisher: In view of his last answer, I think it is material.

Mr. Wilentz: In view of what testimony?

The Court: I cannot see that it makes any difference, we all remember his testimony.

Mr. Fisher: I am trying to show, your Honor, we have had no time to survey or to scour the United States to secure these things.

Mr. Wilentz: I differ with the gentleman and move that his comments and explanation be stricken from the record as not being material to this cause.

The Court: You may strike that out and the witness may answer if he can on what day his father testified in this cause.

A. Last Friday.

Q. And, did he finish Monday morning? A. He did.

Q. And today is Wednesday, I take it? A. Today is Wednesday, I believe.

Q. That is right. So that less than forty-eight hours ago or about forty-eight hours ago he finished his testimony; is that correct?

Mr. Wilentz: I object to the question—

A. Monday morning.

Q. Yes.

Mr. Wilentz: —as calling for a conclusion.

By Mr. Fisher:

Q. Now I ask you, do you think we have had time as you just observed to scour the United States to get these specimens? A. Well, I think you have been doing a lot of work in this case.

Q. Yes. And you think that in twenty-four or forty-eight hours we have had time to scour the country and gather in these specimens? A. I don't

know how much work you have done in the meantime.

Q. Don't you think, Mr. Osborn, that there are any number of writings bearing the word "New York" just as it is written in those exhibits throughout the country—your honest opinion, now? A. Why, yes, of one hundred and twenty million people you can find a good many more people than you have there undoubtedly.

Q. Look at these and see if any of them are in the same handwriting, whether they are duplicates, or that many different people writing that way. A. I wouldn't answer that question off hand. That is the way the bank tellers do it and I spend about half of my time examining their mistakes. I don't do it the same way.

Q. Well, now, as a bank teller using the same ability that he uses, tell me whether you think any of them are in the same hand.

Mr. Wilentz: I object to him testifying as a bank teller, if your Honor, please. (Laughter.) The witness has answered that he cannot upon a summary view of these papers answer whether they are in the same handwriting.

The Court: That answer may stand. Now, then, Mr. Fisher, have you any further questions?

Mr. Fisher: Yes, I have.

Q. From a brief examination, aren't you able to say whether or not they are all in the same hand? A. When I examine any papers I examine them carefully, and when I report it is after—

Q. Very good. A. —careful examination and not before.

Mr. Fisher: Now, may I see the specimen writings, the ones we call the request writings.

(Exhibits produced by Mr. Hauck.)

Q. Now, do I understand that you are the author of this request writing here? A. That paragraph?

Q. Yes. A. Yes, sir.

Q. What is good practice in giving a subject something to copy, as to the context of it? A. Why, it is good practice, I believe, to leave out any words that would indicate the purpose, and that is why "Lindbergh" is left out, or "Condon" or "Hopewell."

Q. You mean you didn't want the writer of this note to know that he was being suspected in the Lindbergh case? A. That is it. It has been written hundreds of times.

Q. Don't you suppose that possibly there is just a bare possibility that Hauptmann might have known that he was suspected in the Lindbergh case when he made these specimen writings? A. I made that paragraph up in 1932, before this defendant had ever been heard of.

Q. So that it doesn't apply, your rule just stated, doesn't apply, so far as Hauptmann is concerned, does it? A. It applied to him and it applied to a hundred others. It applies to him particularly, I would say.

Q. Well, does it apply to him in view of what you know now, that he was held in custody fifteen hours? A. Absolutely.

Q. Do you think that at the end of fifteen hours he didn't know what he was being held for; is that right?

Mr. Wilentz: He didn't say that now.

Mr. Fisher: Well, I am asking him now to say.

Mr. Wilentz: All right; then he will answer it.

A. I understood he was writing willingly. Most people think they can disguise.

Mr. Fisher: May I have an answer to my question, sir?

The Witness: I tried to answer it. May I have the question repeated?

(Question repeated by Reporter as follows: "Do you think that at the end of fifteen hours he didn't know what he was being held for; is that right"?)

A. I can't say about what he thought, what he knew.

By Mr. Fisher:

Q. But you made it up, having in mind that the person who wrote it wouldn't know what he was suspected of, didn't you? A. Why, certainly.

Q. Yes. A. There have been hundreds of people suspected that were perfectly innocent. Finally they got the right man.

Q. That is your opinion, isn't it? A. Absolutely.

Q. Yes. And it was your opinion up in Bergen County that they had the right woman in Miss Mowel, wasn't it? A. And it is still my opinion.

Q. And the jury disagreed with you, didn't they? A. Oh, yes. I don't win every case I am in.

Q. No. A. Neither do you. (Noise in court room.)

The Court: Just a minute, please.

Q. No. I didn't win one with you on my side one day, did I?

Mr. Wilentz: Just a minute, if your Honor, please. This question I object to. The question was—

The Court: Of course, it was asked in such confusion that I was unable to hear it. Now, I want to say to the audience that they must keep quiet. We are here trying to understand one another, and we can't understand one another, if at intervals we are interrupted by laughter from the audience. Now, that ought to be perfectly plain to everybody, and I depend upon the audience in this room to keep reasonably quiet; if it does not, the room will have to be cleared.

Mr. Wilentz: I withdraw the objection to the question, upon reflection. I would rather have the witness answer.

The Court: Very well. Let the question be repeated.

(Question read by Reporter as follows: "I didn't win one with you on my side one day, did I"?)

Mr. Fisher: I will reframe the question.

By Mr. Fisher:

Q. Due either to poor lawyering or poor experting, a case in which we were jointly involved was decided against us, wasn't it? A. The case in which I testified, Mr. Large was on the other side. After my testimony he admitted that his client had written the letters. That is what I was here for. Then he went ahead and won the case anyway. I don't feel that that is my fault.

Q. Do you think that Mr. Large admitted that Judge Frech wrote the letters in the Frech case? A. That was my understanding.

Q. All right. A. And he went ahead and won the case anyway.

Q. Very good. Very good. Now, I ask you to look at the document marked 81 for identification. I have been waiting all these years to know that.

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

The Court: Yes, let it be stricken out. And I suggest that counsel avoid these side remarks.

Mr. Fisher: Very good, sir.

The Court: They merely interrupt the course of the trial and add to the confusion.

Q. What is on that exhibit? A. Shall I read it?

Q. No, just tell me, is it figures, letters, words?

A. Figures and printing.

Q. What are the figures? A. 30,000, 17,000, 70,000, 100,000, 25—shall I—

Q. Yes. Pardon me. A. 1, 2, 3—1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Q. Now, are the figures across the top figures similar to figures used in the ransom notes? I mean by that are the same figures used in the ransom note, that is 30,000, 17,000, 70,000, 100,000? A. Yes, that is true.

Mr. Fisher: May I have the ransom notes?

Mr. Hauck: Certainly. Do you want them all?

Mr. Fisher: Yes, so I can pick out the ones I want.

Q. Did you make any comparison by way of photograph of the figures in the ransom notes and in the request writing? A. I did in one instance.

Q. That was from what we call an admitted writing, wasn't it, $200? A. No, I considered the figures in the added address on the sleeping address as compared with the admitted figures of the defendant and they are distinctly alike, I believe.

Q. Well, did you compare the figures in here with any figures in this note? A. Yes, I compared all the writing in the request writing and in the admitted specimens of the defendant with the writing in the letters.

Q. And did you compare it with the figures that appear in State's Exhibit 43 in evidence? A. I did.

Q. Now, will you state that the $70,000 in here and the $70,000 here bear any similarity? A. Very little.

Q. Very little. A. That is right.

Q. And did that fact have anything to do with you leaving out of the photographed test the figures in the case? A. I didn't leave them out.

Q. Have you got them here? A. Not those particular figures, just—

Q. Does the fact that you don't have those figures here have any significance in view of the statement you have just made that they don't look alike? A. No, sir.

Q. You didn't purposely keep them away from this jury, did you? A. I did not.

Q. No. But you do say they look very little alike? A. In that particular place, yes.

Q. All right. How about the figures in State's Exhibit— A. S-18 that is.

Q. Is that S-18? A. Yes.

Q. In S-18. Are they similar in any way to the request figures? A. Not to any great extent in these two specimens.

Q. So that the figures generally throughout the request writings and in the ransom notes didn't bear much similarity, did they? A. Yes, they do.

Q. Well, show me, you pick me out an example of that. A. Well, can I turn this over?

Q. Yes, of course. (The witness turns chart over.) A. The Defendant Hauptmann's writing on this Exhibit S-159 is shown at the right. This writer occasionally makes the "2" with a small top and a small base as shown in the figures "1279" from one of the automobile applications. He doesn't make that figure every time he makes the "2," that is the reason I put these figures on this side, "4257," to show a variation. He makes these two style small "2's." The one at the left is a distinctive figure, because the top is very small, almost like a ball, and the base is very small. That is a distinctive "2" as made by this defendant and when he jotted down the second address on the sleeping suit I believe he made the same figure in the figures "2974."

Q. Now, you are assuming that Dr. Condon testified that this was on this envelope when it received by him, is that correct? A. I am not assuming anything about Dr. Condon, I know who wrote that.

Q. Are you assuming, do you know that Dr. Condon said in his testimony that he wasn't sure whether this lower part was on there when he received it or not? A. I did—

Q. Did you hear his testimony? A. I didn't hear it, I didn't read it.

Q. Will you say that the c's in the two addresses on there are similar on that very exhibit, referring now to 30, I guess, for identification? A. Not distinctly, no. The first address was printed. He was careful about that one. He jotted down the next one in long hand.

Q. Is that "c" similar to this one in make-up? A. Not to any great extent, no. One is written, one is printed.

Q. Well, isn't that a printed "c" starting "Condon" there? A. No, that is the way this defendant writes it, as he did in this instance and others.

Q. Capital "C" he writes like that always? A. I hadn't finished.

A Voice: May I interrupt the Court a moment? I want to ask Mr. Reilly if I may look at the testimony that was given.

The Court: No, you must keep quiet. We cannot permit interruptions of that sort at all. If counsel in this case are interested in having that person where he can see what is going on, they will indicate it and a place will be furnished for him, but we cannot permit an interruption.

The Voice: I am sorry, your Honor.

The Court: Proceed.

Q. Had you finished your answer, Mr. Osborn, to

that last question? I thought you had. A. I don't believe I had.

(The last question and answer was repeated by the Reporter.)

Mr. Wilentz: Do you want to finish your answer, Mr. Osborn?

A. Yes, I would say that the written "C" in "Condon" in the added address on the sleeping suit is the same as the written "C" in this specimen at the right by the defendant.

Q. Now I show you Exhibit 85 for identification and point out to you a "C" and ask you whether that is written or printed? A. That is supposed to be printed.

Q. Is it at all similar to the one that you say was written down here in the sleeping garment envelope? A. Yes, somewhat.

Q. So that there is a similarity between the printed "C" and the written "C" in the man's handwriting, isn't there? A. Yes, in some places.

Q. Now what have you to say as to the proper subject matter to give a party making request writings? A. Well, I think many times the worst thing to dictate to him is one of the actual letters, especially if it has been in all the newspapers as the last two were.

Q. Well, what would you suggest as a proper subject matter to dictate to a suspected person who is going to write? A. Well, I am not particularly proud of that paragraph, but I think it embodies what is necessary in this case in many ways.

Q. What have you to say as to the proposition that the suspected person should be given something that has continuity and something that is definite and you can read through and make sense of it? A.

Well, it is hard to read it as the defendant has written it, but that paragraph in printed form I am sure you wouldn't have any trouble with, Mr. Fisher.

Q. Well, you can read it clearly enough as it is here. A. Well, it sounds queer as he wrote it.

Q. He wrote it just as it was dictated to him? A. No, he did not.

Q. Didn't he? A. No, he didn't.

Q. If you substitute proper spellings for words that are misspelled in there, do you then say that that makes a good readable paragraph? A. Why, yes, I think you can read it.

Q. Without any break in thought, it deals with one subject, does it, throughout? A. In a general way, yes.

Q. Isn't it a fact that the best test to give a suspect is to have him write something that is continuous and which will hold his interest, as, for instance, something of travel or something of history? A. No, it is merely to give him some connected matter in the form of sentences, not individual words or individual letters.

Q. Authorities do say, don't they, Mr. Osborn that something connected and coherent is the best test? A. Yes.

Q. Yes. And when they say that you think they refer to such a specimen as you have behind you there? A. Yes, I think so.

Q. All right. Now what have you to say as to the proper time to take a specimen writing? A. I'd say as soon as possible, while he is willing to write.

Q. What have you to say as the best time being before he knows he is suspected? A. That depends, if the ransom notes, or if a ransom note is disguised, many times the specimen written after the time, such as a dictated specimen of this kind is the best kind of a specimen, particularly if he tries to disguise then as this defendant did.

Q. Well, as a general rule, in your experience, is the best time to take a specimen before the suspect knows he is suspected or after? A. I think we should have—both times—we should have them as we do here.

Q. And having been apprehended, what do you then say is the best time to take the specimen writing, as quickly as possible, did I understand you to say? A. Yes, I would say so.

Q. All right. Would there be likely to be any differentiation in the handwriting because a man had been under examination for the best part of fifteen continuous hours? A. It depends entirely on the individual, if he is easily flustered, it might make a difference.

Q. Would it have a tendency to show a nervous tendency in the writing? A. It depends on the individual.

Q. But, in view of your statement that the best time to take the specimen is as quickly as possible, would you think that a period of fifteen to thirty-six hours after apprehension would be the best time to take the specimen writings? A. Why, I can't say; it depends on the individual.

Q. Well— A. If he is easily excited it might make a difference. If he is a stolid sort of person it probably wouldn't make any difference at all.

Q. As between the two times to take the specimen, immediately after apprehension or from fifteen to thirty-six hours after apprehension, during which time the prisoner has been questioned by the police, which would you say would be more likely to develop a fair specimen of the man's handwriting? A. I can't say; it depends on the individual.

Q. Were you present when the specimens were taken? A. Not at the place, no.

Q. Any of them? A. No, sir.

Q. And they were simply handed to you as Mr. Hauptmann's writing, is that correct? A. Yes, certainly.

Q. Yes. Now, you don't know then, do you, Mr. Osborn, in what manner Hauptmann was directed to write these notes, these specimens? A. Well, I was told that night—

Q. Of your own knowledge, Mr. Osborn. A. I was not there, no.

Q. No. And you don't know whether the spelling of words was given to him by the party reading, or whether it wasn't, of your own knowledge, do you? A. Well, I know the same parties that got those specimens had dictated that paragraph before.

Q. Of your own knowledge, do you know whether or not the word n-o-t-e was dictated to this suspect as n-o-t-e or as the word "not"? A. Not of my own knowledge, no.

Q. Now, through the specimens the word "not" is correctly spelled a number of times, isn't it? A. Yes.

Q. And I refer you now to S-74 for identification. A. Yes, sir.

Q. And the word "not" is correctly spelled there, isn't it? A. That is right.

Q. And that happens throughout the request writings, doesn't it? A number of times "not" is correctly spelled? A. Yes, that is right.

Q. And a number of times it is spelled n-o-t-e, isn't it? A. Yes, it is.

Q. Would that indicate to you at all that the examining officer might have said to the man, "Write the word 'not' two different ways, once n-o-t and once n-o-t-e"? A. I can't believe the people getting these specimens would do anything like that.

Q. That is your very great faith and reliance in the police? A. Well, I know—

Q. That caused you to say that? A. I know who was taking the specimen.

Q. I mean that is all that caused you to say that, isn't it, the reliance that you have in the integrity of the police? That is the only thing you base that observation on? A. And the Federal Government, yes.

Q. Yes, and the Federal Government. You don't know, do you, Mr. Osborn, whether it was dictated n-o-t or n-o-t-e?

Mr. Wilentz: If your Honor, please, he has answered that.

Q. (Continuing.) Of your own knowledge?

The Court: Yes, he has already answered that.

Mr. Fisher: Very good.

The Court: Three or four times.

Mr. Fisher: Very good.

Q. Is there any way you can tell, Mr. Osborn, from the request writings whether the change in spelling is the result of dictation on the part of the examining officer? A. I think there is one way you can tell.

Q. Well, will you tell me what that way is, please? A. Because he spelled the words in the dictated specimens the same way that he spelled them in the ransom notes in so many instances that I can't believe it is a coincidence.

Q. Now, that, I can't either, sir, and that is the very reason for this question.

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

The Court: Well, you see, that is another comment.

Mr. Fisher: Very good.

The Court: Made by counsel.

Mr. Fisher: I will strike it.

The Court: No doubt inadvertently, which will have to be stricken out.

Mr. Fisher: All right.

Q. Now, you say that the reason you can't believe it was done that way in the request writings is because the word appears spelled two ways in the ransom notes, don't you? A. Yes.

Q. Right. Now the examining officers had those ransom notes before them when they put out the request writing dictation, didn't they? A. I do not believe they did.

Q. Well, they certainly had read the ransom notes, hadn't they, some of the officers, Colonel Schwarzkopf—

Mr. Wilentz: I—

Mr. Fisher: Pardon me. I want to complete the question.

Q. Certainly Colonel Schwarzkopf, whose name appears here, had read the ransom notes, hadn't he?

Mr. Wilentz: How does he know what

other people had read? It is just argumentative.

The Court: If he doesn't know he can say so.

Q. Do you know if Colonel Schwarzkopf, whose name appears here, had read the ransom notes? A. I know he read them. I know he did not make them public.

Q. But you know he read them? A. I am sure he read them.

Q. Well, now, let's go back to the original question. The word "not" is spelled wrong, you say, in the ransom notes. That is correct, isn't it? A. Yes, sir.

Q. And among the examining officers who gave out request writing there was Colonel Schwarzkopf, whose name appears on at least one of these exhibits. A. Yes, sir.

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

Q. Now, does it strike you then as being a purely identifying feature when there is a man present in the room who knew the word was spelled two ways in the ransom note—

Mr. Wilentz: What is the—

The Witness: He wasn't even dictating a ransom note. He was dictating this paragraph that you don't like, but it had "not" in it.

Q. And it was dictated to him after the contents of the ransom notes was known, is that correct? A. No, they didn't show the defendant the ransom notes then. The request writing was dictated to the Defendant Hauptmann after Colonel Schwarzkopf had knowledge of the contents of the ransom notes.

Mr. Wilentz: Just a minute. If your Honor, please, it is self-evident.

The Court: I sustain the objection. The witness has already answered the question the second time.

Q. Then with the knowledge that one of the examining officers knew the contents of the ransom note, do you still say that it is so very significant that the spelling was incorrect in the request writings.

Mr. Wilentz: Answer the question.

A. I'd say as was just said by Mr. Cassidy here that that one point alone is almost enough to show that this is the guilty man.

Q. The fact that he spells "not" n-o-t-e and n-o-t in request writings? A. Oh, no, not just "not"—"not," "our," "later" and so forth.

Mr. Wilentz: Just a minute.

Q. Let's take every misspelled word in the request writings. They were all known to be misspelled by Colonel Schwarzkopf at the time the request writings were taken, is that correct? A. I doubt it.

Q. You doubt that? A. I don't believe he could remember all those words.

Q. I see. Well, some of them were known, weren't they to the Colonel? A. Well, he wasn't as familiar with that paragraph as his assistants were. He didn't— I haven't finished yet.

Q. Pardon me. A. He don't go out and get people to write specimens. Captain Snook did and others.

Q. How about Captain Ritchie? A. Yes, he was there that day.

Q. How about Finn of the New York Police? A. Yes, Lieutenant Finn was there.

Q. Do you think they knew the contents of the ransom note or notes? A. I don't think they could repeat a part of them to save their lives.

Q. Do you think they knew there were some misspelled words in the ransom notes? A. They were probably familiar with the last two, as almost anyone is in this country. It has been in the papers so much. They weren't familiar with the others.

Q. Do you now say that it would have been impossible for whoever dictated the request writings to have dictated to Hauptmann incorrect spelling? A. When you say "impossible" that covers anything.

Q. It certainly does. It covers a big field. A. Yes, he might have sung to them. I don't know.

Q. Certainly. And he might have dictated "n-o-t-e," in certain spots in the request writings, mightn't he? A. I can't believe it.

Q. Again your faith in the great State Police organization—

Mr. Wilentz: Just a minute.

A. Excuse me—

Mr. Fisher: I was asking a question.

Mr. Wilentz: You weren't asking a question. You were directing some sarcasm.

Q. I will ask the question. Your opinion is based on your faith in the great State Police organization—

Mr. Wilentz: He has already answered several times, if your Honor, please.

The Court: I think he has and I will sustain the objection.

Q. Now, the man spells some rather big words here correctly, doesn't he? A. Yes, sir.

Q. He spells "hazardous" correctly. A. That is right.

Q. He spells "circumstance" correctly. A. That is right.

Q. Did it seem at all significant to you that he would misspell the word "the" and correctly spell "hazardous"? A. Yes, I think it shows something.

Q. Does that indicate to you the desire to disguise? A. I think he had a German-English dictionary.

Q. You think he did? A. I think so.

Q. Will you explain to this Court how a man would go about looking for the word "hazardous" if he didn't know it? A. He would look up the word in German.

Q. What word would he know in German? Would a man know hazardous, a man who would spell "be" wrong know the word "hazardous"? A. No, but he would know it in German. He could look up in his German dictionary and put it down.

Q. Assuming he is a German, do you think a man with sufficient intelligence to know the word "hazardous" would misspell "be" and "our" in English? A. Certainly. He would look up "hazardous," but he would try to spell "our," that is why the simple words are in this paragraph that I made up.

Q. I am trying to get at the meaning of the word "hazardous." You think a man who would misspell "be" would be intelligent enough to know the word

"hazardous" in German? A. Why, certainly, he would know it in his own language.

Q. I see. Do you know whether there is a similar word in the German language for our word "hazardous"? A. I couldn't tell you.

Q. No. Now, about the final "x;" about the final "x;" is that an unusual characteristic? A. I think you ought to think so by now.

Q. Well, I am asking you what you think by now. A. I certainly do.

Q. Did you ever see that before? A. Not made in just that way, no.

Q. Some of the request writings make a perfectly proper "x" at the end of "Bronx," don't they? A. He made it proper in all the request writings, which is very significant, I think.

Q. Did he make it proper in all the request writings? A. Yes, sir.

Q. Did it appear incorrect in any of the conceded writings? A. It did. Where he had written it before he was asked to write by request.

Q. So that the man at least knew how to make what one expert claimed a garden variety of "x," didn't he? A. He made that in those request specimens.

Q. Well, he knew how to make it, didn't he? A. Oh, yes.

Q. Yes. Now, did you find in your examination made instances where there was no similarity between words in the ransom notes and in the request writing? A. I found many instances where there were variations, but if the comparison is carried far enough, there are no real differences between the writing of this defendant and the writing in the ransom notes.

Q. You say that there wasn't a single dissimilarity in the ransom notes and the specimen writing, is

that correct? A. I guess you didn't hear what I said.

Q. I would like to hear what you said, sir. A. I said there are no real dissimilarites. There are some letters and words that are very different, but if the comparison is carried far enough, it is shown that it is a mere variation. You don't make the same word the same every time; neither did this defendant.

Q. And out of all the words and letters you brought in here possibly two dozen; is that correct, for comparison? A. I have only shown about two dozen.

Q. That is right. A. I have about—I have twelve more sets here, if you would like to go through them. I don't think anybody else would.

Q. No, not today; some other day. Now, let me ask you this further question: Assuming that there was in the possession of some individual genuine handwriting of Bruno Richard Hauptmann, would it be possible for that person to copy his writing in such a way as is done in the ransom notes, so that it would appear as it appears in the ransom notes? A. I think that is a probability that is so far-fetched that it is absolutely ridiculous.

Q. Is it a possibility, Mr. Osborn? A. Well, it is a possibility that the sun won't rise tomorrow morning, but I feel it will.

Q. That is quite likely in New Jersey. Is it a possibility that that could be done?

Mr. Wilentz: I submit the question has been answered twice.

Mr. Fisher: Well, about the sunshine, Mr. Wilentz, that isn't much of an answer.

Mr. Wilentz: If you want the sun taken out, I am satisfied.

Mr. Fisher: Very good.

Mr. Wilentz: But, if your Honor, please, the question has been answered.

The Court: I think it has.

Mr. Fisher: Very good, sir.

Q. As a matter of fact, if you invert a specimen of writing and continue it from the back, taking the last letter first and going through to the first letter, don't you get a great bit of similarity in handwriting? A. That is probably the worst way of doing it. Some have a misconceived idea that that is the way to make a forgery, but it isn't, because you can't write freely and naturally, like when you are following an outline. Why, you couldn't any more make these fourteen letters in that way than you could fly. You couldn't do it.

Q. Did you see an expert try it yesterday here? A. Yes, I saw him try it.

Q. And did you see the results? A. In enlargements, yes, that is not an original.

Q. Did you see the result, sir? A. I did.

Q. It had a great similarity, didn't it, to the word which he copied? A. Why, he was asked to copy.

Q. Certainly he was asked to copy, and it looked the same, didn't it? A. How would it look if he were to copy the ransom notes?

Q. How would it look if he were to copy the ransom notes? If a man were copying the writing of Bruno Richard Hauptmann, it would be just the same as it is here, wouldn't it? A. No, it wouldn't.

Q. Why? A. Because that was a great, big enlargement. He would have to do it in an actual size and he couldn't do it, it has been greatly enlarged.

Q. Couldn't a man have taken Hauptmann's writing and have it enlarged for the purpose of studying? A. Then copy it and have it enlarged? Ridiculous.

Q. Could he have it first to familiarize himself with it? A. Oh, yes, he could have it enlarged.

Q. And from the enlarged photograph he could familiarize himself with the twists and curls, couldn't he? A. That wouldn't be writing the letters.

Q. Could he do that, sir? A. Yes, he could do it.

Mr. Fisher: Yes, that is all.

Mr. Lanigan: Just a moment. Just a question on re-direct.

Re-Direct Examination by Mr. Lanigan:

Q. You have been shown a number of exhibits for identification by counsel. Do you know when those hyphens were inserted? A. I do not.

Q. Do you know who inserted them? A. I do not.

Q. How many pieces of paper did you examine? I am referring now to the ransom notes, to the conceded writings and to the genuine writings. Approximately how many pieces? A. I believe there is fifty-five in all.

Q. Were those fifty-five pieces of paper ample for the purposes of your comparison? A. Absolutely.

Q. Have you ever had a case where the material was so abundant? A. Not that I remember of. Fifteen ransom letters.

Q. Taking the conceded writings of Bruno Richard Hauptmann and the request writings of Bruno Richard Hauptmann and based on your comparison and examination, who in your opinion wrote the ran-

som notes? A. I believe there is no question but that Bruno Richard Hauptmann wrote those notes.

Mr. Lanigan: That is all.

Re-Cross Examination by Mr. Fisher:

Q. Just a question. I ask you to take these exhibits submitted by the defendant and tell me whether you see the slightest indication of a hyphen being added after the letter was written.

Mr. Wilentz: Just a minute. The witness didn't say it was added. He said he didn't know when the hyphen was inserted and he may need time for a careful inspection. He may need one of those things, I think you call them magnifying glasses, if your Honor, please.

The Court: Yes.

Mr. Wilentz: So I submit that if the witness wants some time for his opinion, the Court I submit may give it to him.

The Court: Oh, undoubtedly, if the witness wants time.

Mr. Fisher: I don't think he will need any to answer that question, your Honor.

A. I don't answer questions offhand, even if they look simple to you.

Q. Well, let me show you a typewritten one here. Is that a peculiar typewritten instrument, peculiar in shade to the usual American typewriter that I might have in my office, for instance? A. Not particularly, no.

Q. Not particularly. The color of the ribbon; is that a common color in everyday use in New Jersey in offices? A. Oh, many people use colored ribbons now.

Q. They do? A. Yes.

Q. Would you say that that could possibly have been added later, after it was sent through the post office in Germany? A. Why, of course, it could possibly be added.

Mr. Lanigan: What was his answer?

Mr. Fisher: Of course, it possibly could be.

Mr. Lanigan: Could be what?

Mr. Fisher: Added.

Q. Now, do you think that probably that was added after the letter was sent? A. I wouldn't say whether it had this way.

Q. What you want is plenty of time to look at it? A. I want plenty of time in any question of this kind, especially in a murder case.

Q. Now, Mr. Osborn, how much time would it take for you to look at the hyphens in these exhibits so that you could come back to this Court and make a report? I think that is a fair question.

Mr. Wilentz: Does counsel desire to make the witness his witness for the question?

The Court: I do not think he is making him his witness exactly. The witness has said that he must be careful and that he does not feel like giving an offhand answer, and that he ought to have time. Now, there the matter

stands. Now, Mr. Fisher is asking, "How much time do you want"? Now, let the witness answer that question.

The Witness: I cannot tell how much time I would need, your Honor.

The Court: No, of course you cannot.

By Mr. Fisher:

Q. Well, can you take them out today and testify tomorrow in reference to them? A. I will make no promises.

Mr. Fisher: I think that is all, your Honor.

CLARK SELLERS sworn as a witness in behalf of the State:

Direct Examination by Mr. Lanigan:

Q. Where do you reside, Mr. Sellers? A. Los Angeles, California.

Q. And your profession, please? A. I am an examiner and photographer of questioned documents.

Q. And your office is located where? A. Suite 1100-1101 Rowan Building, Fifth and Spring streets, Los Angeles.

Q. Do you maintain an office and laboratory exclusively devoted to the study and examination of documents? A. Yes.

Q. Of what does your office and laboratory consist? A. Well, of course, I have the regular office furniture. Then in addition to that I have special equipment, such as microscopes and special magnify

ing objectives for those microscopes, of various magnifying powers; special measuring instruments, cameras, lenses, color filters, ultra violet light equipment for special lighting purposes, specimens of handwriting of persons of various nationalities, samples of inks, paper, pens, pencils, typewriting specimens, a special reference library on the subject of disputed and questioned documents, and other equipment to assist me in the careful examination of all documents submitted to me for examination.

Q. Have you made a scientific study of handwriting identification and of other questions relating to disputed documents? A. Yes, I have.

Q. Over what period of time have your studies extended? A. Approximately twenty years.

Q. Over what territory has your experience extended as an examiner of questioned documents? A. On the Pacific Coast, in the Rocky Mountain States, in the Middle West, in the East, in Canada and in Mexico.

Q. Have you testified in the courts of any of the states of the United States? A. Yes, in various states.

Q. What states, please? A. In Washington, Oregon, California, Arizona, Nevada, Idaho, Montana, New York, Mexico, and I have had cases submitted to me from many other states.

Q. And you have likewise testified in the Federal Courts of the various districts? A. Yes, in several different states.

Q. Have you ever been appointed by any court as Court Examiner of questioned documents and to testify as to your findings with respect thereto? A. Yes, I have many times, and many times by the same Superior Court Judge.

Q. Will you detail for me briefly some of the cases in which you have been retained? A. In the kidnapping and murder of little Marian Parker I

examined the extortion letters in that case and identified William Edward Hickman as the writer of those letters. In the case of California vs. Stewart Gordon Northcutt, a kidnapping and murder case, I examined the documents in that case and testified. In the case of the State of Arizona vs. Winnie Ruth Judd, a murder case, I examined a confession letter and identified her as the writer of that letter and so testified. In the Mae West jewel robbery case I was appointed by the Superior Court Judge to examine the documents in that case. In the Rudolph Valentino estate case I examined documents. In the investigation into the mysterious death of Paul Bern I examined the documents for the foreman of the Grand Jury and the District Attorney who was investigating that case.

Q. Who was Paul Bern, just for the purpose of the record? A. Well, he was found dead and this was an investigation as to the cause of his death, if possible. He was the husband of Jean Harlow.

Q. Proceed. Any others? A. Yes. I examined documents in the extortion case in which documents were addressed to Eric Pedley, the noted polo star, and testified in that case. And I have examined documents for, extortion documents and anonymous letters written to moving picture stars, to directors of moving picture companies, to banks. I have examined documents for trust companies, for insurance companies, for Senator Tom Connolly of Texas, in a well-known Western will case. I have examined documents for the Department of Justice of the United States, for the Department of the Treasury, for the Post Office Department, for the Department of Internal Revenue, and for the United States District Attorneys in many different states.

Q. Have you made a study of photography for the purpose of making photographs to illustrate your testimony in court? A. Yes, I have.

Q. Have you written articles on the subject of disputed documents or handwritings? A. Yes, articles. I have never written any books, but I have written special articles on the subject.

Q. Are you on the faculty of any university teaching this handwriting as a special subject? A. I lecture in a special class dealing with identification and physical evidence for the University of Southern California. I lecture on the subject of disputed documents, questioned documents.

Mr. Lanigan: I offer the witness as to experiential qualifications.

The Court: Are counsel satisfied?

Mr. Pope: No objection.

The Court: No objection. The witness may proceed as an expert witness.

Q. Mr. Sellers, I show you the exhibits which have been introduced in this case and which are described as the ransom notes and ask you if you have seen those documents before? A. Yes, I have. I have examined the ransom notes in this case before.

Q. And your examination was for what purpose, sir? A. Well, for two purposes; first, to determine whether or not they were all written by the same writer; and, secondly, to determine, if I could, who wrote them.

Q. Did you reach a conclusion as to whether or not all of the ransom notes were written by the same person? A. Yes, I did.

Q. And what was the opinion you reached? A. I am convinced that each one of these ransom documents were written by the same writer.

Q. I show you the request writings in this case and ask you if you have examined those? A. Yes, I have examined the request writings in this case.

Q. I show you the genuine writings of Bruno Richard Hauptmann, consisting of one, two, three, four, five, six, seven, eight, nine automobile licenses, and further, a card of the Liberty Mutual Insurance Company, and what has been referred to as the Haberland note, and ask you if you have examined all of those as the genuine writings? A. Yes.

Q. From your examination of the genuine writings of Bruno Richard Hauptmann and the conceded writings of Bruno Richard Hauptmann and of the ransom notes, have you arrived at an opinion as to the writer? A. I have.

Q. Has the material that has been submitted to you for examination been ample? A. Yes.

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.

Q. And you have arrived at an opinion? A. Yes, I have a definite opinion.

Q. What is the opinion, sir, that you have arrived at? Please state it. A. I am convinced absolutely that the person who wrote these writings, the conceded writings and the request writings in this case which have been submitted to me as being the genuine writings of Bruno Richard Hauptmann, is the same writer who wrote each one of these ransom notes and who addressed the envelopes in which they were sent, and who addressed the wrapper in which the sleeping suit was returned. That is to say, that if Mr. Bruno Richard Hauptmann wrote these conceded and request writings, then he wrote these ransom notes.

Q. Have you prepared any illustrations which would outline the opinion you have just expressed? A. Yes.

Q. Have you them here? A. I think they are being sent for.

Mr. Wilentz: Yes.

(Two charts were brought in and placed against the wall, not exhibited.)

The Witness: I don't want them out yet.

Q. Proceed with your opinion, Mr. Witness.

The Witness: Your Honor, I think I can shorten this, if I make just a short general statement.

The Court: Has counsel any objection to that?

Mr. Lanigan: I haven't. I think it will expedite.

The Witness: And am I talking loud enough?

The Court: I think your voice is pretty good.

The Witness: Excuse me, I don't want to turn my back to the Court.

Q. Go ahead, please. A. I can't look at the jury and the Court, too. The combination of identifying similarities that I found in the design of the letters in these documents and in the use of rare and odd forms, and in the manner of writing, with no fundamental difference, are of such a nature that I am irresistibly led to a positive conclusion in this case.

In the examination of these request and conceded writings I found differences, that is, differences by the same writer, and when I compared those conceded and request writings with these anonymous extortion notes, ransom notes, I also found differences and I found similarities. And I considered those differences and I try to account for the differences between the conceded and the request writings and these ransom notes on the basis that they are due to a different writer. But I failed to find fundamental differences that would justify me in excusing them or accounting for them on that theory or basis. Personally I am convinced that those differences are due in the request and conceded writings, such as they are, that those differences are due to the natural variations of the writer and to attempted disguise, and likewise, I am convinced that the differences between the request and the conceded writings and the ransom notes are due to natural variation characteristics of the writer and attempted disguise.

The great stumbling block to successfully disguising one's handwriting is the inability to successfully avoid incorporating many of one's own handwriting habits, and habits in handwriting, the same as in other things, are formed by doing a thing repeatedly in a certain way until it becomes easier to do it in that way and more difficult to do it in any other way. Now, in my experience in examining anonymous letters, extortion letters, letters of this kind, I have found that many times the writer has attempted to disguise his handwriting, sometimes laboriously, went to great pains to disguise his writing; but always, especially in an extended amount of writing of this kind, the writer is confronted with an almost insurmountable number of difficulties. In the first place, the writer, to disguise his writings, must have a thorough knowledge of his peculiar handwriting characteristics, and it has been my experience that

most people do not have a knowledge, a thorough knowledge, even of their own peculiar handwriting characteristics; and in writing, the person who attempts to disguise his writing, to get rid of his own personalities and peculiarities, is limited to his own handwriting ability; he is limited to his own mental concept of how the letters should be formed, and he is enslaved by his own handwriting habits. And I think that is exactly what happened in this case; I think that Mr. Hauptmann started out in this first letter to laboriously disguise his handwriting, and, as he progressed further in that letter and also with the other letters, he disguised his handwriting to a various amount, but many times he let down, so that I am convinced that he did incorporate many of his own peculiar handwriting characteristics in these ransom notes to such an extent that there is no doubt but that he wrote them.

The Witness: Now if I might stand up, your Honor, and show these photographs, I will do it just as rapidly as I can.

The Court: Very well.

Q. Now, Mr. Sellers, what do these purport to be?

(The charts are placed upon the board.)

Q. What is this, please? A. Well—
Q. So that we can identify it. A. Well, so that the counsel can see it—

Mr. Lanigan: I want to offer this in evidence. It is a reproduction—

The Witness: Yes, it is a photograph—

The Court: No objection to its being received in evidence, it will be admitted.

Mr. Lanigan: I ask that it be marked.

(Photographic chart is received and marked S-163 in evidence.)

A. I would like to say, your Honor, that these photographs that I have here do not purport to give all of the reasons for my conclusion but merely my method of reasoning in reaching the conclusion. I would like to say, too, that these photographs were made and this preparation was made by me in Los Angeles before I came here and unfortunately some of the things are duplicated in the past. I didn't have any knowledge of what the other experts were using. I came to my own conclusions and made my own preparation and I will skip over those things as fast as I can.

The Court: Very well. I think that will be satisfactory.

Q. Proceed, please. A. May I have a pointer? (Pointer was handed to witness.)

Q. Now proceed. A. I don't like to leave the Court there—I have only one reference photograph here. Maybe I can get that to the Court so he can see.

The Court: Have counsel copies of this paper?

The Witness: I haven't extra copies, just the enlargement here, but I thought counsel can see it.

Mr. Lanigan: They may have it. I can follow the map. Suppose—

The Court: Mr. Reilly has a copy?

Mr. Lanigan: I am familiar with the map. I don't need a copy.

The Court: All right.

Mr. Lanigan: And a copy for the Court.

(The Court was handed a copy of the chart.)

The Witness: Of course, the identifying characteristics in handwriting are the same as they are in a person or in an automobile or a fingerprint, composed of the individualities, and of course if people wrote a perfect handwriting we would all write alike. But the extent to which each of us varies from a copy book or a standard of perfection, to that extent our handwriting becomes individual. And the more it varies from a copy book standard, the more peculiar it becomes and the more individual it becomes. And this handwriting of Mr. Hauptmann and his handwriting in these anonymous documents abound in variations and differences from the copy book standard of writing to such an extent that very often in the handwriting of Mr. Hauptmann, as the letter stands alone, I am frequently unable to read the letter, as this letter "t" as is shown in the lefthand column of the photograph marked—what is this exhibit number?

Q. S-163. Exhibit S-163.

A. Yes. Referring to S-163 in the left column there are characters taken from the writing in this case of Mr. Hauptmann. In the right column are characters taken from the ransom notes, and here are a column of letters as written by Mr. Hauptmann which, standing alone, I would be unable to read and, for that reason, I think they have some identification value. Not that I am saying because there is a "t" of this peculiar kind occurring in Mr. Hauptmann's writing and also in the ransom notes, that on that thing alone I would base a conclusion, or because this letter here, which is a sort of a fishhook letter, is Mr. Hauptmann's way of sometimes making a terminal "s," also found in the ransom notes made in the same manner, but I would say on those two points alone that these writings were written by Mr. Hauptmann. In fact, I have seen other people who make a terminal "s" like that, but always where I have examined the writings of different persons, while I have found some similarities, I have also found that there were the other differentiating fundamental dissimilarities.

I might compare some of these things to this scar (on witness's cheek). I have a scar on my left cheek that I have carried since I was four years old. Now, I don't say that that scar alone would identify me, but I do say that that scar is one of the characteristics and the personal facial characteristics of Clark Sellers, and it, in combination with other scars and characteristics would, I believe, differentiate me and identify me out of all the billion and a half people in the world, and I think these scars and moles and characteristics in the handwriting of Mr. Hauptmann will identify him as the writer of these ransom notes out of all the people in the world.

This peculiar character here shown the third from the top on this exhibit 163 which appears to be al-

most a small letter "o" is the manner in which Mr. Hauptmann sometimes makes a small letter "c" and in numerous cases in the anonymous letters, these ransom notes, a small letter "c" is made in that same peculiar manner. The "d" which looks like an "it" or a "u" with the last part of it higher than the first part; another peculiarity which is one of the characteristics which I sometimes find in the writing of Mr. Hauptmann is his manner of writing a small letter "g" so that it looks like a "y" and in some of the ransom notes they are made like y's in the same way. The capital "Y's" have already been spoken about so I will pass them over with this one remark that a combination of variations, of this kind have high identification value.

Now I think that my conclusion in this matter is further enforced by other peculiarities which, standing alone, could not be read for the letter they were intended to represent; and I might say, and I do say in these notes that they are made for the purpose of showing you both the similarities and the dissimilarities; they are not made up merely by taking only the closest one. As an illustration, the second "u" in the second column, that "y" which is made like a "j"; I could find many characters of that kind which are nearer to this ransom letter "y" or "j" than the one I used, but I am merely using this "j" to illustrate a principle of handwriting comparison. It has already been stated with the formation of the "j" without an upward tick, or the formation of a "y" without any introductory movement. Of course, in some instances Mr. Hauptmann joined the "y" or the "j" to the "o," and sometimes he lifted the pen. And likewise that is true of these ransom notes. Now as a further corroboration of my conclusion, there are many other characteristics which, standing alone, I do not believe would be read for the words or the letters that they were intended to represent.

That is true certainly of the manner in which Mr. Hauptmann sometimes made the word, so that standing alone it might be mistaken for a small or a capital letter "w"; and likewise the same thing occurs in these ransom notes. Sometimes Mr. Hauptmann made that beginning at the top without any introductory stroke; sometimes he began an introductory stroke at the base line, upward, and the downstroke made in the characteristic manner shown here. And that variation in form, a due admixture of each is likewise found in these ransom letters. Now here is an "o" which, standing alone, and I am referring now to S-163, the exhibit on the right of that photograph, and the lower photograph of the word "to," and comparing the formation of the letter "o" with the "o" in the ramson letters in the word "to," capital T-o or capital S-o—I believe it was intended for capital S-o, in the word "So."

Sometimes Mr. Hauptmann made the letter "o" so that it appears to be a small "b." Now, many persons, especially persons who learn to write in German, make an open "o" because they are taught to make it that way. So I don't think there is any point of this open "o" except to place Mr. Hauptmann in the classification of being a German writer, along with other characteristics. So to that extent it tends to narrow him down and put him in a certain class and to the same extent, the same characteristics tend to put the writer of these ransom notes within a certain class or group of national characteristics. But I am not only talking about, in these documents, the form of the letter or the word, but I am also talking about the manner in which it is written. You cannot, if you are going to examine handwriting, properly divorce the manner in which it is made, the handwriting habit, from the form in which it is made.

Now one may imitate by tracing or simulation the form, but it is a very, very difficult problem to simulate both the form and the manner of writing and do it fluently at one and the same time, and write this number of documents, fifteen, and there are hundreds and hundreds of words as they are there. I think it is a superhuman job for anyone else to attempt to simulate Mr. Hauptmann's writing. Not only that if someone attempted to simulate Mr. Hauptmann's writing he would not only have to have standards of Mr. Hauptmann's writing, but he would have to have standards of his disguised writing and then be able to choose and select those things which are peculiar which from a handwriting identification standpoint are identified. And then he would be confronted with the difficult task of putting them into execution and I don't believe that he could do it or any other man could do it.

(Counsel proceeds to remove chart from the board.)

Mr. Pope: I wouldn't take it down. Just leave it there. We may want to ask some questions about it.

Mr. Wilentz: If you want it down take it down.

Mr. Lanigan: I offer this as a correct reproduction.

The Court: Any objection?

Mr. Pope: Does he say it is?

The Witness: Yes, it is.

The Court: No objection, it will be admitted.

The Reporter: Exhibit S-164.

(Chart referred to was received in evidence and marked State Exhibit S-164.)

A. Referring to S-164 in the left we have some x's which I think are almost well known by this time, so I will pass over those. At the right hand lower portion of this Exhibit S-164 is the name "Hauptmann," as written by Mr. Hauptmann in that Haberland agreement. I believe it is Exhibit S-86, and below it characters cut out and pasted below the name "Hauptmann," cut from the ransom notes, so that those cutouts spell the name Hauptmann.

In examining and coming to a conclusion I found that Mr. Hauptmann did not always write the same words in the same way and that he had, within a certain field, arranged some peculiar varieties of writing many words. In the left column, on S-164 —pardon me. I will get the Court a copy of this.

Mr. Lanigan: May we have a five minute recess?

The Court: We will take a five minute recess. The jury may retire.

(At 3:18 a short recess was taken.)

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

By Mr. Lanigan:

Q. Now, Mr. Sellers, please resume with S-164.

A. In the left upper portion of Exhibit S-164, there

are a group of the words "the," t-h-e, as written by Mr. Hauptmann, and in the right column a group of words intended for t-h-e, taken from the ransom notes, and I prepared this chart for the purpose of showing the dissimilarities of the handwriting of Mr. Hauptmann as shown in the lefthand column, that is, as you look at them visually, it would be very difficult, at least for me, to say if I was confined to comparing the first t-h-e with the second, that they were written by the same person or that the third was written by the same person who wrote the fourth.

But I made this to show the variation or the variety or the field of variety of the manner of making the word t-h-e by Mr. Hauptmann. Now, this variation in the manner in which a person may write a word or a letter is of high identification value and it makes it difficult, if not impossible, for someone else to successfully imitate such a person's writing, for two reasons: one, that it is difficult for someone to imitate and write in the manner that Mr. Hauptmann does and, at the same time, know his field of variation or variety of making any one word or any one letter.

Now, I could go on here for hours pointing out to you the differences between the words t-h-e as made by Mr. Hauptmann, just the same as I might go on for hours pointing out the difference between a person's right eye and their left eye. But that is not the way to make an identification.

Handwriting is identified in exactly the same way as an automobile is identified, that is by finding a group, a sufficient group of characteristics, and the absence of fundamental dissimilarities; but once you have made the identification, if it is correct there is no use of you going further and examining all the other automobiles in the world to see whether that one might be yours too. In other words, I think it

is possible, if you identify correctly a handwriting, to say not only that one person wrote it, but that no one else did. And that is exactly what I am saying here about the handwriting in these ransom letters. I am not only saying that Mr. Hauptmann wrote them, but I am saying that no one else did, and I haven't all examined all the handwriting in the world either, but I am saying that on the same logical basis that if you identify your own automobile you don't have to go searching the rest of the world and examine every other automobile before you come back and say, "Yes, that's my automobile."

Mr. Hauptmann sometimes writes the word "the" so it appears to be -p-t-e or as a capital "U-p" and likewise the same thing is found in these ransom notes and it is put in with about the same due admixture of that type of the word "the" in the ransom notes as it is written in the admitted and the request writings here of Mr. Hauptmann. The next "the" is peculiar probably for its size, slant, proportions and the ending of the letter "e." The next "the" is made so that the first "T" is made with an upward stroke, a downward stroke and a crossing at the bottom, so that that letter appears standing alone to be a capital letter "S" and occasionally it is found that way in Mr. Hauptmann's writing and it is also occasionally found in these ransom notes. The h-l-e or the transposing of the "t" or "h" and the "t" has already been mentioned and that in combination with other transposing of the letter "h" is one of the identifying important handwriting characteristics in this case.

Now, in the handwriting of Mr. Hauptmann and in the anonymous letters we not only have the peculiarity of form of individual letters, the peculiarity of form of various words, but we also have peculiarities in misspelling, and I am calling attention to these misspelled words which already have been referred

to, and I am taking time now to mention them only for this reason, that some of those misspelled words were misspelled because the writer did not know the American sounds and, for that reason, I think some of the misspelling occurs and, likewise, I think for the same reason, the spelling occurs in the same way, misspelled in the ransom notes, because the writer did not know the American sounds. I think other words were misspelled plainly, or misspelled because he did not know how to spell them, but I am also calling attention to these misspelled words, not merely because they are misspelled but also for the manner in which they are written.

And the misspelling plus the manner in which they are written I think is significant here in this case.

Hurrying on to the next exhibit on this chart, S-164, in this case we not only have peculiarities in the manner in which individual letters are made, in which words are made, in which misspelling is combined with peculiar handwriting, but we also have an additional identifying feature, numerals. In my experience in examining anonymous letters I find that the writer of anonymous letters very frequently disguises numerals very little if at all. So that numerals alone sometimes may be the clinching evidence which identifiies the writer.

Now, I didn't pick out only the ones that were the nearest to the form in the questioned documents to present. I could have found a 1 and a 2 as made by Mr. Hauptmann and I did find 1's and 2's closer to the handwriting in the ransom notes that the ones I used here on the chart, S-164. But even though they are different in size there is a similarity in their proportions and in their design, even though they are different in size.

It is obvious without my taking time to go over some of these similarities or some of these dissim-

ilarities. These photographs were made merely for showing my reasoning processes, not all of the things I took into consideration, but they just briefly give you some of the ways in which I think handwriting should be examined in order to come to a correct conclusion, and this demonstration is not made for the purpose of showing you only the characteristics that I took into consideration.

This character here, near the center of that chart of numerals, looks, standing alone, almost like a capital letter "O," as written by some people, but it was the way in which Mr. Hauptmann writes a "6," and also the same character of a "6" is found in the ransom notes. Now, I can find other 6's in the admitted handwriting or in the request handwriting of Mr. Hauptmann which I think are as near or nearer to the "6" than that I used; but the "6" I used illustrates the principle of making that peculiar numeral.

Now, in the handwriting of Mr. Hauptmann we not only have peculiarities in form of letters, of words, of misspelling, combined with peculiar writing of numerals, but we also have the added identifying features of hand printing. Now, hand printing may be identified. In the Hickman case and in many other cases all of the letters were hand printed throughout, but there again the writer, even though he used the hand printing disguised, was limited to his own ability to write, and his own mental concept of how the letters should be formed. And many times writers are identified by the hand printing alone.

Now I am not saying that Mr. Hauptmann is the only man who made a printed "D" in two parts. I am merely pointing that out as one of the characteristics much as I think that if a man were described as weighing 300 pounds, it would be a significant characteristic of that man as differentiating him from

other people, not that there wouldn't be other people who would weigh 300 pounds, but I would say that that would be one of the description characteristics to keep in mind; wherefore I say the same thing about that "D," so that I know that in examined writings people made a "D" in two parts—this one was made so that it appears to be a cipher and a one to the right of it. The h's in other handwriting characteristics found in both of these admitted writings and in the ransom notes. The "n" has already been referred to, the variation of the form of the "n," the capital letter "N" as made by Mr. Hauptmann.

The first one I have illustrated at the right of this chart, exhibit S-164, is peculiar in that it is made with a downward stroke, an upward stroke, which retraces the downward stroke and then the finishing part of the "n" made so that it appears to be a capital "V" a capital letter "V," so there you have a combination almost of what might be termed the numeral "1" hooked on to a capital letter "V," and likewise whoever wrote those ransom letters did the same thing, it was the same handwriting movement and about the same ability to write.

The other "n" is made upside down, or, rather, it is not made in the correct manner as it should be made to form correctly a capital letter "n" likewise found in Mr. Hauptmann's writing and in these ransom notes.

I have here a photograph showing some variety forms of Mr. Hauptmann's manner of making a small letter "r" and when you go through dozens of words, scores of words, hundreds of words and you find a person has developed a habit within a certain field of writing such as Mr. Hauptmann's, then I think at least I do begin to think that that fellow has some odd combinations of identifying character-

istics in his handwritings, so odd that for someone else to be able to duplicate those in a style that these are duplicated, without getting in his own peculiarities, I think would be a superhuman test, and personally I have never met a man who had the ability to do it.

I saw Mr. Tyrrell, an expert penman, and I saw Mr. Walter here copy a few forms, but I also noticed this significant thing, that while they copied the form the manner in which they did it and the appearance afterward, showed that they were an artist, they did it so much better, so that I am confident with all of their skill, that they could not get rid of that ability as an artist and confine their characteristics only within the confines of what Mr. Hauptmann does.

And I am not saying that these are all the variations in Mr. Hauptmann's writing either, or in these ransom notes, and I am not saying that I found some characteristics, that is, some forms of letters in one that I did not find in the other, because I have; but I also in the examination of every writing in extortion letter cases that I have ever known of, I have found the same thing, but it did not prevent in many cases the true and correct identification of the writer.

There are one or two characters here of these r's that I think might bear describing, especially the one at the bottom which looks like a Greek form of the letter "e." That, I think, is a odd, rare form of the letter "r" in combination, of course, with other things. I wouldn't say—I would say that "r" is about like this scar I am talking about on my own cheek. It has high identification value. Standing alone I would say that it would not be sufficient to identify and I might say further that if someone that I was well known to, that I knew very well, and part of his face was covered up and I was only shown maybe the lobe of his ear or the tip of his nose

and said, "Well, can you identify the man from only those things?" I would say "No." If he covered up that part and showed me another part, "Can you identify the man only from that thing?" I would say "No," but it is the combination of things taken into consideration at one and the same time that lead to any correct identification by any method that I know of.

In examining these documents, I have also kept in mind an important thing, and that is the dangers of error, what might lead to error, such as mistaking a national characteristic for an individual characteristic; such as coming to a conclusion on too few characteristics, or such as having too few standards or too small an amount of disputed writings.

The character of the writing, the manner in which it was written, have been taken into consideration, having in mind many other things besides those which I have mentioned here; and I believe this combination of characteristics, some of which I have mentioned, others not mentioned, but in order to save time I will make this general statement, that a combination of characteristics of the kind that is shown here, and other characteristics in Mr. Hauptmann's writing, may just as truly identify him as a combination of scars, moles and birthmarks or whorls and loops in combination may identify a man by his fingerprints. So convincing to my mind that Mr. Hauptmann wrote each and every one of these ransom notes—it is, I say, so convincing to my mind, that he might just as well have signed each and every one of them.

The Court: I will ask counsel to excuse me for just a moment.

(The Court left the Bench for one minute.)

The Court: Proceed, gentlemen.

Q. With respect to this part of your illustration, H-a-u-p-t-m-a-n-n, those letters are taken from where, sir? A. From the body of the ransom notes and the signature part is taken from the body of the admitted writing or the conceded writing of Mr. Hauptmann, I think it is Exhibit E-86.

Q. So they have been taken from various sections of all of the ransom notes and placed in that manner? A. Yes.

Q. What have you to say with respect to the signature and the manner in which you have superimposed the lower signature? A. It draws attention, I think, to both similarities and dissimilarities which occur between the handwriting in the ransom notes as compared with the handwriting in this particular name "Hauptmann" as written by Mr. Hauptmann in Exhibit E-86.

Q. And the signature which is the genuine Hauptmann signature is taken from where, sir? A. From the conceded writing, that exhibit, Haberland agreement, being State's Exhibit No. 86.

Q. Dated when? A. Dated New York, 20th of July, 1933.

Mr. Lanigan: That is all. You may cross-examine.

Cross-Examination by Mr. Pope:

Q. Mr. Sellers, one of the illustrations which you used a moment ago was the possibility of identifying you by a little scar on your cheek and by other features. A. Yes.

Q. Now, may I ask you this question: even without the scar, after your appearance here today and

your very interesting discussion of this subject, don't you think that it is quite probable that any member of this jury would be able to identify you a week from today or two weeks from today or three weeks from today as the gentleman from California who spoke so interestingly upon the subject of handwriting in court? A. Well, I would hope they would, but I have been forgotten before.

Q. Well, don't you think they could? A. They may.

Q. Don't you think it would be quite easy for them to identify you within the course of a few days as the man who appeared before them as a handwriting expert in this case? A. Well, I hope I have an individuality of my own. I don't know how much they could remember it.

Q. And— A. I think this: that there has been many more misidentifications by personal experience than there have been by qualified experts on handwriting.

Q. But that would not be unusual, would it? A. What would not be unusual?

Q. For the ordinary person to recognize you after they had seen you and associated with you for a couple of hours and particularly when you had appeared as a distinguished witness in a very important trial? A. Well, of course that embodies that I am a distinguished witness. I don't say that.

Q. You don't object to it, do you?

The Court: Counsel invites you to make that statement.

A. Well, they may, I hope they would.

Q. Yes, but at the same time you wouldn't expect the members of this jury with no experience whatever in studying handwriting to take two, three, five

or seven specimens of your handwriting and compare them with somebody else's handwriting that might look to the uneducated and unskilled man similar, and to decide which was genuine, would you? A. Well, I don't know what the qualifications of this jury are along that line, I am not acquainted with anyone of them personally and I don't know what ability they have to recognize mine or anyone else's handwriting, after they have seen it once.

Q. Well— A. But, I don't think merely to look at one's handwriting and then either to carry a mental concept of it or on spot acquaintance with it, attempt to identify it again.

Q. Or, identify it either by very careful study? A. Well, I think that would depend on their qualification to do so.

Q. In other words, Mr. Sellers, the personal identification of Mr. Sellers as the handwriting expert who appeared in Trenton would simply be a matter of common observation, wouldn't it? A. Yes, I think most—

Q. And the identification of a man's handwriting—

Mr. Wilentz: Just a minute.

Q. —would be a matter of skill and practice, wouldn't it?

Mr. Pope: I am conducting this examination and I know when the witness has answered my question.

The Court: The witness has not finished his answer. I think he is entitled to finish it.

Mr. Pope: I think he said yes, and that is all I want.

A. Yes, I know sometimes a person would like to show the shade of meaning.

Q. You would like to argue with me, but I would not like to argue and I want you to answer my questions, that is all. A. No, I don't want to argue, Mr. Pope.

Q. The Attorney General will give you every opportunity to explain if you need to.

Q. Now, I repeat my question: the one is a matter of common observation and recollection of a face, isn't it? A. Yes, a—

Q. And the other—

Mr. Wilentz: Just a minute, please.

Q. The other is the—

Mr. Wilentz: Just a minute, please.

The Court: He wants to qualify that.

Mr. Wilentz: Yes.

The Court: Now, I suppose he is entitled to do that.

Mr. Wilentz: Will you finish your answer, sir?

The Witness: Yes.

A. (continuing) If they have no more experience, probably, in identifying people by their faces than they have by their handwritings, why, they could do them to about the same extent; but most people of general experience have more experience in identifying people by their facial characteristics than they do by their handwriting characteristics.

Q. Now, I repeat my question and I will ask you to pay attention to it, please, and to answer it: The recollection and identification of you or of any other person whom any member of the jury might have seen today would be merely a matter of personal observation and recollection of that particular face, wouldn't it? A. Why, I presume it would be.

Q. Well, is there any doubt in your mind about it? A. Well, you say observation and recollection.

Q. Yes. A. Now, the observation takes place when they see me, and the recollection may come at some future time; and if they remember enough of the characteristics, recollect them, why, then—

(At this point a window in the courtroom was broken.)

Q. Did you ever study fencing, Professor?

The Court: What is that: fencing?

Mr. Pope: I asked him if he ever studied fencing, yes.

Mr. Lanigan: Yes, under Junius, tell him.

The Court: Is that material, Mr. Pope?

Mr. Pope: No, I guess not.

By Mr. Pope:

Q. Now, the identification of handwriting would depend upon the person's skill and ability to study and cipher out and compare and identify, wouldn't it? A. And reason about it, yes.

Q. And reason about it? A. Yes.

Q. Yes. A. Yes.

Q. That is all on that subject. Now you also said that the identification of Mr. Hauptmann's handwriting was like identifying one's automobile. A. Yes.

Q. That was another illustration that you used. A. Yes, sir. I said that handwriting is—

Q. You don't think for a single moment that any lady or gentleman on this jury would have any difficulty identifying her own automobile, do you? A. No, I don't. That—

Q. And that would simply be a matter of using her faculties of observation and recollection wouldn't it? A. Yes.

Q. But the identification of handwriting is a vastly different science from that, isn't it? A. Same principle but different qualifications.

Q. Same principle but different qualifications; and the qualifications are the important part of it, aren't they? A. Well, yes.

Q. Yes? A. Yes. That's why I presume the Court allowed me to qualify here.

Q. That's it. If it were not for your special qualifications you would not be here today, would you? A. Well, I don't think so. I don't know why I should be.

Q. And you came all the way from the Pacific Coast, didn't you? A. Yes.

Q. To testify in this case. A. Yes. Yes, that's true.

Q. Now, I think that covers those two questions. Now, this exhibit which you have here which is made of a genuine signature as you say of Mr. Hauptmann— A. Well, that is his name Hauptmann as it appears in S-86 in the body of that document.

Q. But the one below it, marked "anonymous letters," is a reconstruction of the word "Hauptmann" by taking ten different letters from ten dif-

ferent notes or writings, isn't it? A. Well, from ten different places in the ransom notes.

Q. Yes. And that reconstruction was made by you yourself, wasn't it. A. Yes.

Q. So you did not mind anywhere in any of the anonymous notes the word "Hauptmann" which you could take out of the ransom notes? A. As one word?

Q. Yes. A. Oh, no.

Q. You had to take the "h" out of one place? A. Yes.

Q. The "a" from another place? A. Yes.

Q. Probably another letter? A. Possibly.

Q. And the "u" from another place? A. Yes.

Q. And probably still another letter? A. Well, I could have made that signature up from—

Q. No. A. Several different places.

Q. Yes, certainly. So that is really a reconstructed name made up by yourself, isn't it? A. Well, it is a constructed name of Mr. Hauptmann by the manner that I have already explained.

Q. Did you examine the handwriting of any other German emigrant who had been in this country for about seven years to see if you could reconstruct the name "Hauptmann" from his handwriting, too? A. I have examined the handwriting of many.

Q. Did you or didn't you? A. German writers.

Q. Did you or didn't you in this case? A. Yes.

Q. And did you try to reconstruct the word? A. Yes.

Q. "Hauptmann"? A. Yes.

Q. And whose handwriting did you use for that purpose? A. A girl's handwriting in the Henry E. Huntington Library in Pasadena, a girl who came from Germany, who learned to write in Germany, and came to this country; and also some handwriting

written for me in my presence by the German consul.

Q. Oh. And did any of their handwritings appear like the handwriting in the ransom notes or in the request handwriting? A. In some particulars.

Q. In some particulars? A. And very decided differences in others, fundamental differences.

Q. Well, then, of course, if there were fundamental differences you couldn't very well do it, could you? A. No, and I did not. I was unable to do it.

Q. Now, I think there is only about one of those charts that I want to bother you about. I want you to turn to the chart that you say contains the peculiar letter "x." Oh, that is right there. Is that an unusual form of making the letter "x" unusual form of making the letter "x"? A. Yes.

Q. You have never seen that form of letter "x" by a German immigrant before? A. Oh, if you say that sort of an "x"—

Q. Yes, that form of an "x." A. I have seen a form that was somewhat like this, but not of that form plus that execution by any other writer.

Q. What do you mean by that form plus that execution? A. The skill of the writing, the manner in which it is made, the formation, the proportions and the design of the letters.

Q. How many x's of Mr. Hauptmann did you examine? A. All x's which occur in the conceded and the request writing.

Q. And in the conceded and request writings there are at least as many as a half a dozen different forms of x's made by Mr. Hauptmann, weren't there? A. Well, I think there are two, three principle forms.

Q. Aren't there fully a half a dozen or more different forms? A. Not—

Q. Forms of x's made by Mr. Hauptmann? A. Some dissimilarities, but I would say there are three general types of x's.

Q. Well, now, aren't there some that are made

this way, by drawing a curved line to the right and then a cross-over? (Mr. Pope indicates by drawing pencil lightly over chart.) A. Yes.

Q. Yes, and there are some that are made by drawing the two curved lines joining the center together. A. Why, I am not able to follow your description there very well, but do you mean the form that I point to?

Q. I will write it for you on the paper so that you can do it. There, aren't there some made like that? (Indicating by writing on a sheet of paper.) A. I don't remember that form.

Q. You don't recall that? A. No, I don't.

Q. Is that a very unusual form of "x"? A. Made in the manner it is there with that execution.

Q. Have you ever seen it before? A. I have seen a—

Q. —in German handwriting? A. Just a moment. I have seen an "x" of that type but not of that execution outside of those written by Mr. Hauptmann.

Q. Well, I am only referring to the type. What do you mean by execution, Professor? I don't think I quite understand. A. I am not a professor. I don't rate that title.

Q. I understood you to say that you lectured in some college out there. A. I do, but that doesn't confer on me the title of professor.

Q. Well, then, I am giving it to you now then. A. Thank you.

Q. Will you show me what you mean by execution plus the form, or the form plus execution? A. Yes, the upstroke with a concave upward movement, a curve.

Q. Now, wait a minute, the upstroke, you mean going up like that (indicating)? A. Yes.

Q. Well, that is form, isn't it? A. Form plus execution of it.

Q. Yes. Every letter has to be executed in order to get the form. A. Yes, yes; but there are many different types of execution.

Q. Oh, of course. A. Yes. That is what we are talking about. Then the loop, a blind loop, or a closed loop—

Q. At the top? A. At the top of the first part of the "x," a downward stroke, which is curved to the right, making a concave downward stroke, a short closed—a sharp closed loop at the base of the downward stroke, movement of the pen to the left, then an upward stroke to the right, and then either a retracing of the upward stroke with the downstroke, or making an "e" formation out of it.

Q. Now— A. So that the letter appears, standing alone, almost like an s-e or an e-e combination.

Q. Well, it looks a little bit more like a double-e, doesn't it? A. Yes.

Q. As you have described it? A. Yes; I said like an s-e or an e-e.

Q. Then that is the form? A. Yes.

Q. Regardless of how it was made, whether he started at the right hand and made it by moving backwards, or whether he moved forwards, or began at the bottom, or began at the top? A. Yes.

Q. That is the manner in which he made it? A. Yes, of course.

Q. The form of the letter itself? A. Yes.

Q. That is all I am referring to. A. Yes; well, I was—

Q. And you do not see— A. Well, I was referring to the form plus the manner of execution, which also includes the skill with which it was made.

Q. Well, I don't care about the skill. All I want to know is have you not seen many forms of X's similar to the one you have delineated and described or photographed here on the exhibit? A. Not in the manner it is made there, no; never.

Q. In that same form? A. Not exactly the way that is executed.

Q. Oh, well, of course—did you ever see two x's that were exactly alike? A. No, I never have.

Q. Did you ever see two of any letters that were exactly alike? A. Microscopically speaking, no.

Q. We are not speaking about exactly. I am just merely asking you if you ever saw the letter "x" made in that form before? A. Well, I told you no.

Q. All right. That is sufficient. Now when you were examining the Hauptmann x's, did you find some x's that were just made by two lines that looked somewhat the figure 11 in his handwriting? A. Well, I don't recall an "x" that was made just as the numeral 11.

Q. Well, did you examine, for instance, the applications for automobile license? A. Yes.

Q. Where the word "Bronx" appeared? A. Yes.

Q. And you don't remember seeing that form? A. No. If you will point it out on the document—

Q. If you don't remember, all right. A. I don't remember and "x" made as the numeral 11.

Q. But you do remember x's made in different forms, do you not, in Hauptmann's handwriting? A. Yes, at least three types.

Q. At least three types. Now will you just look at this little card that I have here. It is not very legible, but I think you can make it out. I have a glass if you want it. A. A photograph.

Q. Yes, but look at the writing on there. Do you see that "x"? A. Well, I see the word, what appears to be the word "Bronx" on there.

Q. Yes, and look at the "X." That's all I am asking you to look at. A. Yes.

Q. Isn't that the same general form of "x" that you have been criticizing, or not criticizing, I don't mean that, you have been identifying and explain-

ing? A. Well, general form, that is a very broad statement. It is an "x" made, if it is an "x," it is made as two small letter e's.

Q. Now wait a minute, please. I move that that be stricken out. My question is this: Speaking of the form, not of the method of execution, but speaking of the form, is the "x" which I now show you on this card not of the same type and form as the X's which you found in the Hauptmann handwriting? A. No.

Mr. Wilentz: And I suggest—

Q. All right, that is your answer, no? A. Yes, absolutely.

(The card is marked Defendant's Exhibit D-30 for identification.)

By Mr. Pope:

Q. Do you mean by that that they are not exactly alike? A. No. You embodied in your question if they are the same form and type, and I say No.

Q. General form and type? A. Oh, well, if you say general type I would say Yes. If you want to include in it the other characteristics that would go into a handwriting identification I would say No.

Q. I am not attempting to have you identify this particular "x" or who wrote it. The only thing that I am getting at is whether or not anybody else uses an "x," that looks anything like that. Now, do you understand what I mean? I show you another one. See the "x" in that letter that I show you there. A. Where?

Q. Right here. I put a pencil mark under it there to call it to your attention, Christmas, "Xmas," X-m-a-s. A. Yes.

Q. Is that not the same general form and type of an "x" as the one you have on the board? A. No.

Q. No? All right. I show you another one inside. It appears again on the inside.

Mr. Wilentz: May we ask what date is on that purported exhibit?

Mr. Pope: Yes, I will give it to you in a minute.

Q. "Xmas." A. No. I would say it is neither of the same type nor form. I might say that I have a will case in my office—

Q. No. I don't want to know anything about your will cases. I just merely asked you if that was the same general type and form as the "X" which you have portrayed on the "x" here.

Mr. Wilentz: Just a minute.

Q. Now your answer is No, is it?

Mr. Wilentz: That is right.

Q. Is that your answer to it: No? A. Yes. It is No. (Laughter.)

Q. All right. Then I want that marked for identification.

(Card referred to marked Defendant's Exhibit D-31 for Identification.)

Mr. Wilentz: It is dated December 14th, 1934.

Q. Now in your examination of the writings of Mr. Hauptmann and also the disputed writings that

you call the ransom notes, did you make any examination or any study of the line qualities? A. Yes.

Q. In your opinion are the line qualities the same in the ransom notes? Strike that out. Did you examine each and every one of the so-called ransom notes? A. Yes, every note, every line, every word and every letter.

Q. And in your opinion is the same line quality displayed in each and every one of the ransom notes? A. No.

Q. Did you observe a distinct difference in line quality in the first ransom note, the one that was left on the window sill in the nursery?

Mr. Pope: What is the number of that?

Mr. Wilentz: S-18.

A. As compared with what?

Q. As compared with itself, S-18. Do you want to see it. A. No, I know what it is.

Q. The very first one. A. In other words, were there variations in the line quality in the one document, S-18, I believe it is—

Q. Yes, the note itself. A. Yes. Yes, there are.

Q. And they are quite noticeable? A. Well they are noticeable to me.

Q. Well, they are quite noticeable to the ordinary layman, aren't they, as you recall them? A. I would think so.

Q. Yes. Now, did you notice any difference in the line qualities in the conceded Hauptmann writings as compared with the line qualities in the ransom notes? A. Yes.

Q. Quite some difference, didn't you? A. Yes, I found some differences and some similarities.

Q. And did you notice a difference in the line qualities in the request writings, that is the ones that

were written for the police? A. As compared with themselves?

Q. As compared, no, as compared with the ransom notes. A. Yes, I found both dissimilarities and similarities.

Q. In your study of Mr. Hauptmann's conceded writings, would you say that he was a voluntary pressure writer or an involuntary pressure writer? A. Well, what do you mean?

Q. Just what I asked you; if you don't know you can say "I don't know."

Mr. Wilentz: No, he may not understand.

A. But—

Q. I mean is he a voluntary pressure writer? A. Well, he puts enough pressure on it to make the pen write when he writes, so that might be a voluntary act or it might be an involuntary act. I don't think your question is clear to me.

Q. Well, I don't know how I can make it any clearer to you, Mr. Sellers. You, after all, are a handwriting expert and I am just a country lawyer. A. Well—

Mr. Wilentz: Just a minute.

Q. My question is this, do you—

Mr. Wilentz: I object to the question, if your Honor please.

The Court: You object to the question? I am inclined to sustain that objection. I am in sympathy with the witness when he says he does not understand it. Now, you may reframe your question.

Mr. Pope: There isn't any pending, your Honor; there isn't any question.

The Court: I thought it was about the—

Mr. Pope: I am about to put one, I am about to frame one.

Mr. Wilentz: What I really objected to was his speech about being a country lawyer, that is what I objected to.

Mr. Pope: He objected to my statement that I was not a handwriting expert, I was a country lawyer. I will withdraw it, if he wants me to.

The Court: The point that I am interested in, Mr. Pope, and I assume that you are interested in, is this expression of yours.

Mr. Pope: That is right.

The Court: About this—

Mr. Pope: —voluntary pressure writer.

The Court: —voluntary pressure writer. Now the witness says that he does not understand the question.

Mr. Pope: All right.

The Court: And therefore I sustain the objection to it and invite you to reframe your question so that it might be better understood.

Q. Well, I will ask you this: Do you know what handwriting experts mean when they speak of a writer as a voluntary pressure writer? A. I have never heard that expression before, either in talking to experts or in any of the books I have ever read.

Q. You have never read about it? A. No.

Q. Nor heard of a voluntary pressure writer? A. No.

Q. Well, I don't exactly know myself what they mean by it. A. Well—

Q. But, my idea would be that the phrase means, is he a man who shades voluntarily as he writes, that is, by putting the pressure on voluntarily, or does he do his shading involuntarily, naturally and without thinking. Now, that would be my understanding of it, and I am not a handwriting expert. A. Well, if you are talking about shading, that depends partially upon pressure, partially upon habit, and to a great extent upon the flexibility of the pen.

Q. Well, the flexibility of the pen determines the width and breadth and thickness of the shading, doesn't it? A. Yes, plus the pressure.

Q. Well now, we will leave that out. Now, may I ask you this question—see if you can answer this. If you cannot, you may say so. From your study of Mr. Hauptmann's handwriting are you able to say whether he does his shading voluntarily or involuntarily? A. Why, I think to a great extent it is involuntary. In other words, he writes as he writes as a result of habit.

Mr. Pope: Now I think we have the question answered.

Q. In writing the ransom notes, in what position did you conclude that the writer held the pen? A. I did not conclude the position in which he held the pen.

Q. Did you give any consideration to that at all? A. Yes.

Q. And you came to no decision upon that question? A. He held the pen in certain cases—

Q. In his hand, I suppose? A. —in such a way—pardon me—in such a way that the nibs on the downstrokes slightly opened, which would indicate that the bowl of the pen was toward his body.

Q. Now, in what position did the writer hold the pen in the conceded Hauptmann writings? What I mean by the conceded Hauptmann writings, I refer now to the automobile license applications, and to the contract which you spoke of, and to the promissory note which I believe was submitted to you. A. Yes.

Q. As distinguished from the request handwritings that were obtained by the police. A. So that the bowl of the pen was toward the writer and slightly turned to the right.

Q. Slightly turned to the right? A. Yes.

Q. And in your judgment in what position did he hold the pen when he wrote the request handwritings for the police? A. In certain instances so that the bowl of the pen was toward the writer.

Q. Well, in certain instances. Were there other instances in which he held it differently, in your opinion? A. There were some instances in which I could not tell; there is no shading on some of them.

Q. I see. May I show you Exhibit 26 for Identification and ask you to look at it. A. I see it.

Q. Can you tell me whether there is more than one handwriting on that sheet of paper; that is, written by more than one person; without making, of course, a very technical study?

Mr. Wilentz: If your Honor please—

Q. I am asking for your snap judgment on it.

Mr. Wilentz: Just a minute. I don't want to be disrespectful, but I submit very respectfully that this I consider a trick question, not material to this cause. The very nature of the question indicates it: is this written by one man? Now, what difference does it make? The gentleman's qualifications, as I understood, were not objected to, they were conceded.

The Court: Yes.

Mr. Wilentz: It might properly be a question when his qualifications were concerned, and the mater was before your Honor, if there was to be an objection to his qualifications. It isn't a serious matter, if your Honor please; that isn't the reason that I call it to your Honor's attention. But I don't think it is a fair question.

The Court: What is there unfair about the question?

Mr. Wilentz: Whether or not—

Mr. Pope: And what is the trick?

Mr. Wilentz: Well, the trick is that it is apparently a prepared paper by one or more persons in an effort to get from this witness on the spur of the moment, by a glance, whether or not that was written by one or more persons, apparently written by penmen who have attempted to disguise the purpose.

Mr. Pope: Well, I ask that the Attorney General's opinion upon what this paper is and

how it was apparently written be stricken out, and that the jury be admonished to disregard it.

Mr. Wilentz: If your Honor please—

Mr. Pope: I would prefer to have that opinion come from some expert, who knew something about handwriting.

Mr. Wilentz: I advanced the remarks that I have, if your Honor please, as a part of my objections; and I respectfully submit to your Honor they should not be stricken out, whether your Honor sustains the objection or not.

The Court: Oh, I think there is no occasion for striking out the argument that has been made by the Attorney General on the paper that is placed in his hands by counsel, so that I am not troubled as to that phase of the matter. Will counsel let me see that paper?

Mr. Pope: Yes, sir.

The Witness: May I hand it over?

Mr. Pope: Yes.

The Court: And will the stenographer read to me the question.

(Question repeated by the Reporter as follows: "Q. May I show you exhibit 26 for identification and ask you to look at it? A. I see it. Q. Can you tell me whether there is more that one handwriting on that sheet of paper that is written by more than one person?")

The Court: Well, the Attorney General is suggesting that this is rather an unfair or perhaps an improper question because it involves the examination of a very considerable handwriting here. Now I suppose that primarily that question can be best answered by having the witness look at this paper and say whether or not he is prepared at this time to answer your question.

Mr. Pope: May I say to the witness that I am not expecting him to give an opinion, sir, which he is willing to be bound by? We are just merely asking for an offhand opinion. He has had no opportunity to examine it and study it. We do not expect that.

A. Well, I presume you want my best opinion.

Q. Yes. A. Of course, my best opinion can't be given under these circumstances. If a man brought a document—if you brought this document to my office and laid it on my desk, or a set of documents, and said to me, "Mr. Sellers, I want to know spot, right now, were these all written by the same person?" and I attempted to tell you, you'd say I was a fake and take up your papers and leave, because you'd know that I was attempting to do something that was unreasonable. And I don't now, or cannot, in either in fairness to myself or in fairness to you or to this jury or to the Court answer a question involving this amount of writing.

Q. I am not asking you, you know, to identify the handwriter. All I ask you is whether you feel that you can tell me, that you can give me an offhand opinion without studying it carefully as to how many persons, if more than one, wrote that paper?

Mr. Wilentz: If your Honor please, he has already answered the question.

The Court: He has already answered the question.

Mr. Wilentz: The rest is purely argumentative.

By Mr. Pope:

Q. In other words, you don't care to express an opinion?

Mr. Wilentz: That isn't fair.

The Court: What he has said is in the record.

Mr. Pope: All right.

Q. Where did you make the examination of the ransom notes, your examinations of them? A. In Trenton.

Q. And when did you make the examination? A. Part of my examinations were made in November, 1934, and part of them in December, 1934.

Q. And does that apply to all of the other documents which you examined? A. In this case, yes.

Q. That is what I mean, in this case. A. Yes.

Q. I am not talking about any other case. A. Yes.

Q. And how long were you in Trenton in November? A. I was here a few days in Trenton at which time I made some photographs which I took back to my office in Los Angeles, then I examined the documents again when I came here in December.

Q. Now, may I ask you this, did you photograph, did you personally photograph all of these exhibits? A. That I have used here?

Q. That you have used, well, that you used in your examination. A. Yes, I made some photographs here in Trenton when I was here of each of the ransom documents and of some of the request and the conceded writings. I also had some photographs previously submitted to me from the Attorney General's office and from Colonel Schwarzkopf.

Q. That were taken by the State Police? A. Yes.

Q. And those photographs you took to Los Angeles with you to your laboratory? A. Well, they had originally sent me those, then I came here to make a personal examination of the documents myself, and while I was here—

Q. No, all I am asking—

Mr. Wilentz: Let him answer, please.

Q. And at that time—

Mr. Wilentz: No. Wait a moment, please. Let him answer the question.

Mr. Pope: Yes or no answers my question. All I asked him was, did you then take those photographs to your laboratory in Los Angeles.

A. Yes. Yes, sir.

Q. That is all I want to know. A. Yes, I did.

Q. And did you also have in your laboratory in addition to the photographs which you took, photographs which had been taken by the State Police and supplied to you, furnished to you? A. Yes.

Q. And it was from those photographs, that is, both sets of photographs, that you made your studies and enlargements? A. Well, I made my

studies from original documents; I made the enlargements from the photographs; that is, I didn't put up documents themselves. I made photographs and cut those up.

Q. Of course, we understand that; and you made your enlargements from the photograph? A. Yes.

Q. That's all? A. Yes, that's true.

Q. That's all.

The Court: It is now—You are finished, Mr. Pope?

Mr. Pope: With this witness.

Mr. Lanigan: No re-direct.

The Court: We will take a recess until tomorrow morning at—one moment. One moment, now. I want the officers to prevent people from passing out of the courthouse. I have asked at least a dozen times for people to remain where they are until we have finished this ceremony; and if they won't do it without be enforced to, they are going to be enforced to stay where they are.

Let the officers prevent people from passing out of the courtroom, and that applies to the telegraph boys as well as anybody else.

Now, the jury may retire. Come in tomorrow morning at ten o'clock.

The Court: The prisoner is remanded to the custody of the Sheriff and he may retire with the guards.

(At 4:32 p. m. the prisoner retired with the guards.)

The Court: We will take a recess now until ten o'clock tomorrow morning. The people may retire.

(The further trial of the case was adjourned until tomorrow morning, Thursday, January 17, 1935, at ten o'clock.)

Opening—Twelfth Day

STATE vs. HAUPTMANN

Flemington, N. J., January 17, 1935.

TWELFTH 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.

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

The Court: Counsel may proceed when they are ready.

Mr. Peacock: William J. Allen.

WILLIAM J. ALLEN sworn as a witness in behalf of the State:

Direct Examination by Mr. Peacock:

Q. Mr. Allen, where do you live? A. 43 Roosevelt Street.

Q. And what is your business? A. Well, I work at the State Home for Girls, Pennington Avenue.

Q. 43 Roosevelt Street; what city do you live in? A. That is in Union Township.

Q. And on May 12th, 1932, where did you live? A. Same place.

Q. And what was your employment at that time? A. I was working for Willard Titus, the house moving concern from Glenmore.

Q. Now, on May 12th, 1932, were you on the Mt. Rose Road? A. Yes, sir.

Q. And where is the Mt. Rose Road with regard to the Lindbergh estate? A. Why, between Hopewell and Mt. Rose.

Q. And who was with you that day? A. Orville Wilson.

Q. Did you stop at any time? A. Yes, I stopped when I come from Princeton.

Q. And what did you do at the time you stopped? A. Well, I had to stop because of nature.

Q. Did you call any place? A. I went in the woods.

Q. And how deep in the woods did you go? A. Well, I was thirty yards anyhow, I imagine.

Q. And what was the character of the woods there? A. Well, I found a body—

Q. No, I mean was it bushy? A. Oh, it was in that spot.

Q. Yes. Now, when you went in there, tell the jury what you found? A. Well, when I ducked my head and went under the bush, I seen something, a skeleton. It looked like an animal when I first seen it. Naturally, I was going in the

woods anyhow, so I went right straight to it and I walked there and I looked down on it and I said, "Gee, that looks like a human being."

So I looked around this way and I seen a foot. So I knew it was a human being then. Then I called Wilson and he camed over to me. So I was in a hurry to go on where I was going, so I told him not to touch it.

Q. I show you a photograph and ask you if that correctly illustrates the spot where you found the baby (showing photograph to the witness)? A. That is absolutely the spot.

Q. And that was about thirty yards from the main highway, is that corect? A. Yes, as near as I can guess at it.

Mr. Peacock: I offer it in evidence, your Honor (handing to counsel for defendant).

Q. Then you left the scene, did you not? A. Well, I came back here, afterwards.

Q. No, I mean the first time you arrived there. A. Yes.

Q. You say you told Wilson to stay there. A. Yes.

Q. Then where did you go? A. Well, I went to where I was going.

Q. And where was that? A. Well, that was about—

Q. What? A. That was about ten yards away from the body.

Q. Then did you come out of the woods? A. I came back to the spot where he was.

Q. Then where did you go to? A. Well, him and I stood there looking at it.

Q. And after looking at it did you leave the woods? A. We left the woods, yes, sir.

Q. Then where did you go to? A. Why, I

went out and got on my truck and went into Hopewell.

Q. Did you see any officers in Hopewell? A. Well, I did, after I looked for one.

Q. Who did you find in Hopewell? A. Charlie Williamson.

Q. Who is Charlie Williamson? A. He is supposed to be the police of Hopewell, Special Police.

Q. Did you report the fact that you had found a body to Mr. Williamson? A. I did.

Q. Then where did you go? A. Well, I went into the pool room and got him out of there and brought him out on the street and told him.

Q. Did you go back to the scene of the body again? A. I did, after I went down and took the load I had on the truck, I took my boss's son and he came down and got me and I went with him back to the spot.

Q. Were the officers there when you returned? A. He left the same as I did. He brought me back to my work and left me there. Before he left me, I told him, I said, "Mr. Williamson, if you don't see me before quitting time I will be at 43 Roosevelt Street, Trenton.

Q. When you left there the officers were with the body, were they not? A. Yes, he went back there, I suppose.

Mr. Peacock: You may cross examine. I offer this photograph in evidence, your Honor, as a correct representation of the scene found by the witness at that time; it correctly depicts the scene where he found the child.

Mr. Fisher: That is objected to, your Honor, because there is no proof of the picture other than this man's word, there is no

proof as to who took it or under what circumstances it was taken, or when, and I submit at the moment it is not evidential.

The Court: Well, if the witness testifies that it is a correct likeness, he knows that it is a correct likeness, why isn't it admissible?

Mr. Fisher: It is inadmissible, because there is a method of proving photographs properly.

The Court: Oh, yes, there are many methods.

Mr. Fisher: Yes, and I don't think that this man, the distance that he was from the scene now is competent to testify what he saw there, as the man who actually took that picture. Did you see that picture taken?

The Witness: I didn't see it taken.

Mr. Peacock: He doesn't have to see it taken in the case of State vs. Fine, in Atlantic County, the State there held that the photographs are proper evidence if they correctly depict the scene. It is also held in the United States case of Baustian vs. Young, if they are correct depictions of the condition depicted at the time the witness saw it, it is proper.

The Court: Well, the witness seems to have testified that this is a correct likeness.

Mr. Fisher: He has, yes.

Mr. Peacock: He has.

Mr. Fisher: Do I understand that picture—

Mr. Peacock: Beg pardon.

Mr. Fisher: Do I understand the picture represents the scene and the body?

Mr. Peacock: The scene and the body at the time he arrived there, yes, sir.

The Court: If the Attorney General presses for the admission of this photograph under the present proof, it will be admitted.

Mr. Peacock: I press for the introduction of the photograph into evidence.

The Court: Yes.

Mr. Fisher: I pray an exception, your Honor.

The Court: You may have your exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Photograph marked S-165 in evidence.

Cross Examination by Mr. Reilly:

Q. Mr. Allen, are you familiar with these maps behind you? A. Well, I can't say I am so familiar with them.

Q. Well, here is Colonel Lindbergh's home—Now referring to S-1. Here is Colonel Lindbergh's home on the map and here is East Amwell, and if I am correct this is Rileyville over here. A. Uh—huh.

Q. Now, does it show on any of these maps? And here is the Mercer County line, Hopewell Township. Does it show on any of those maps? Can you indicate on any of these maps that road that you are speaking of—Mount Rose was the road? A. Mount Rose.

Q. Maybe it is on here. Here is Featherbed Lane. Is that anywhere near it? A. Well, I can tell you this. I don't know whether you know or not but I tell you where the road starts from that goes there. If you know where the old brick store in Hopewell—Question: well, here is Mount Rose on here. A. Oh—I am just trying to think of the German name. I know him personally. He got a garage there. It starts right there off of Main Street, goes out past the Catholic Home—do you know where the Catholic Home is?

Q. No, I don't. A. Well—

Q. Well, now, it is a fact, isn't it, that from the spot that you found the baby, or the road, there is a road runs through there? A. Yes, sir.

Q. If you stand on that road, off to the right you can see Colonel Lindbergh's home, can't you? A. Right straight ahead.

Q. Right straight ahead? A. Right straight ahead.

Q. And you have been driving a truck how many years? A. Eight years that truck.

Q. Well now, by truck from where you stood or your truck stood—. A. Yes.

Q. —about how many miles would it be by road to Colonel Lindbergh's home, using the roads in that neighborhood? A. Yes. Well, I would imagine about four miles and a half anyhow.

Q. Four miles and a half? A. That is the way I would judge it; of course, I never measured it.

Q. That is your best judgment? A. Yes, that is my best judgment.

Q. Now, are you familiar with that part of the country? A. No, I am not too much.

Q. That is all scrub oak, isn't it, off the road, off the road, bushes and trees? A. Where the child was found?

Q. Yes. A. Yes, sir; in the woods there.

Q. In the woods? A. In the woods.

Q. And this road you speak of runs through the woods? A. No, it don't through the woods.

Q. Alongside of the woods? A. Yes.

Q. It is not a macadam road, is it? A. Yes, it is a macadam road.

Q. It is a macadam road? A. A highway.

Q. It is a highway, is it? A. Highway from Hopewell to Princeton.

Q. Well, maybe that is on here. Here is Princeton and here is Hopewell (indicating on map). A. Yes, sir.

Q. There is the road past Mount Rose. A. Yes, sir.

Q. Down here and around in to Princeton.

Q. It was that general direction, was it not? A. Yes, sir. There is only one road that leads from Hopewell to Mount Rose into Princeton.

Q. This was about how far from the road? A. Well, I imagine 30 yards or a little better.

Q. Just describe, please, what it was that first attracted your attention? A. Did nothing attract

my attention going in there, because I was going in there, because I had a pain.

Q. I know. But as you were going in, something attracted your attention? A. Not until I got in the woods and went under this bush about that high (indicating with his hands).

Mr. Wilentz: Indicating how many feet?

Mr. Reilly: About five feet.

The Witness: About five feet high. It was very bushy and I ducked my head and went under there and after I went under there I looked up, and about ten feet away from there laid this skeleton.

By Mr. Reilly:

Q. You had no reason to go to that particular bush? A. No, sir, I didn't pick no place to go when I went in there.

Q. There was nobody around there? A. No, sir, I didn't see nobody.

Q. As far as you could see there was nobody around, just woods? A. Just woods.

Q. You could have stepped in ten feet, fifteen feet or twenty feet? A. Sure.

Q. There was nobody looking at you and there was nobody you wanted to get away from? A. No, I wasn't hiding.

Q. Because you were bashful, I mean. A. I wasn't bashful, but I just had to go in there, that is all. (Laughter.)

The Court: Please keep quiet.

Q. What I want to know is, was there anything

that indicated to you as you went under this bush —I don't want to lead you—but was there an arm exposed or a foot exposed or was the little body lying on top of the ground? A. Lying on top of the ground.

Q. Lying on top of the ground. A. On top of the ground. I couldn't help from seeing it.

Q. Was it fully exposed? A. Yes, sir.

Q. Was it lying on top of leaves or bushes? A. No, it was lying on top of some soft dirt that had been dug out of the hole.

Q. A hole you say had been scooped out? A. Well, that is the way it looked to be.

Q. What I want you to tell me is the way it looked? A. It looked like a hole about that long.

Mr. Wilentz: Indicating about four feet?

The Witness: No, about three feet, about that length (indicating). The appearance of it, from what I could see, it had been dug out about that deep (indicating).

Mr. Wilentz: About a foot?

The Witness: Yes. It had had rain on the dirt since it had been dug out, the way I could picture it at that time.

And it lay flat in his face in the dirt up to about around here (witness indicates by putting fingers on both sides of his cheeks with his two hands), so I couldn't see his face, I didn't know what it looked like.

Q. The body was lying on its face, correct? A. Yes.

Q. But the hole was open? A. The hole was open in places.

Q. In places? A. Yes.

Q. Right? A. Yes.

Q. And, did it indicate to you that it had been freshly dug? A. No, it didn't look like it was fresh.

Q. Now, had you ever hunted through that country? A. Oh, I have several years ago.

Q. Well, you know people who hunt through there, don't you? A. Yes.

Q. And when they hunt they have dogs? A. Sure.

Q. You had no dog with you this day? A. No, sir.

Q. Do you know on whose land this body was found? A. No, I don't.

Q. Was it the land, where, do you know whether it was the land of some institution or not? A. No, I don't, no institution, I don't think on that side of the road.

Q. Does the land on the other side of the road belong to some institution? A. Well, unless it belongs to the Catholic home there.

Q. Well, is there a home there? A. Yes, a Catholic Home.

Q. How near is that to the home? A. Well, that is—

Q. How near? A. Quite a ways back from the home.

Q. What do you mean by a home, orphan asylum? A. No.

Q. Hospital or what, I am not familiar with it. A. Well, it is a kind of hospital for children that ain't got no home.

Q. I see. And then you didn't disturb the body at all? A. No, sir.

Q. You just got back on your truck as you told

us and you went some place? A. Yes.

Q. And notified a police officer: is that correct? A. Correct.

Q. Who was with you? A. Orville Wilson.

Q. And how soon after that did you come back? A. Well, in 20 minutes I was back.

Q. With the officer? A. Yes, sir.

Q. And how long did you remain? A. Up there?

Q. Yes. A. Well, they were there about ten minutes after I took them back, I imagine.

Q. Then where did you go? A. They took me back to work.

Q. And took your name and address so they could check you? A. Sure.

Q. Just a moment, please.

Mr. Reilly: I think that suffices.

Mr. Peacock: That is all, Mr. Allen.

Orville Wilson.

ORVILLE WILSON, sworn as a witness on behalf of the State.

Direct Examination by Mr. Peacock:

Q. Mr. Wilson, on May 12th, 1932, where did you live? A. Woodsville; Woodsville.

Q. And where were you employed? A. W. S. Titus, Glenmore.

Q. And where is that located? A. Well, that is located between Pennington and Hopewell.

Q. Were you with Mr. Allen on a truck on this date? A. I was.

Q. And where were you going to? A. We were going from Princeton to Hopewell with a load of timbers.

Q. Who was driving the truck? A. Mr. Allen.

Q. And on the Mount Rose road did you stop at any time? A. We did.

Q. Can you tell us where that spot was? A. Well, it was. I would say about, oh, a mile or a little more possibly from Hopewell, between Hopewell and Mount Rose.

Q. Taking the Lindbergh home, would that spot be on the direct highway from the Lindbergh home towards Princeton? A. Well, that is on the direct, I would say, from Hopewell to Princeton; I imagine that was as near a way as you could go, yes.

Q. Concrete highway or macadam, was it, which? A. Macadam.

Q. Macadam highway? A. Yes.

Q. And about what time was it that you arrived at this spot on this day of May 12th, 1932? A. Well, it runs in my mind about between 2:00 and 2:30, I would say.

Q. Now when you stopped your truck, what did Allen do? A. He went in the woods.

Q. And did you see him while he was in the woods? A. Well, I saw—yes, I saw him in the woods.

Q. What was the character of the growth there, trees and brushes? A. Well, yes, there was, there was sort—not so thick along the road; of course after you got back a ways, why then there was quite some bushes and—

Q. Were there any ditches that you had to cross before you got to the scene where this child was? A. It seems to me there was.

Q. Yes. A. A ditch that we crossed.

Q. That ditch was between the road and the place where the child was? A. Yes, I think now, if I remember right.

Q. Did Allen call you after he had gotten in the woods some distance? A. He did.

Q. Did you go in the woods? A. I did.

Q. Now will you tell the jury what you saw when you arrived there? A. Well, I saw a body of a child or—you could see the foot of a child laying there, and of course the body, what you could see there, was composed pretty well.

Mr. Reilly: You mean decomposed.

Q. You mean decomposed, don't you? A. Yes, decomposed.

Q. And was that body in like a little grave? A. Well, it laid into a little trench, I would call it.

Q. And did you see the face of the body, or was the face down? A. The face was down.

Q. Did you see any clothes on that body? A. I think I saw a little piece of clothes of some kind.

Q. A little shirt? A. Sort of, yes, like around the edge of it, as though it was lying on it. I didn't see anything on the top, that I remember.

Q. Were there any leaves on the body, dirt, on any part of it? A. Leaves and dirt, sort of.

Q. Mr. Wilson, I show you a photograph and ask you if that correctly illustrates or depicts the scene of the place where you found this child's body? A. There is it, right here, Mr. Peacock (indicating).

Q. That is the body right there? A. Yes, that looks very much like it, yes.

Mr. Hauck: Referring to—

Mr. Peacock: Referring to Exhibit S-165.

Q. Now what is the next thing that you did

after you viewed this body in the woods? A. Well, we came out and got on the truck and went back to Hopewell.

Q. When you got to Hopewell, did you notify any officer? A. Allen did, yes, sir.

Q. Were you present when he notified the officer? A. Yes, yes, I sat in the truck while he went over and notified the officer.

Q. And what officer was that? A. That was Williamson.

Q. Yes. Did you afterwards go back to the scene where you saw this child? A. No, I didn't go, I went on, we went on down and unloaded the timbers. Then they came after Allen, took him away; I didn't go.

Mr. Peacock: I see. You may cross-examine.

Cross Examination by Mr. Fisher:

Q. Mr. Wilson, in what county was the body found? A. At Mercer County.

Q. In Mercer County? A. I would say, yes.

Q. And do you know who owns the land where the body was found? A. Well, I think the Catholic Institution owns that piece of ground. Now I am not sure. I am not very familiar with that ground but I think so.

Q. By the Catholic Institution you mean the St. Michael's Orphanage of Hopewell? A. I guess that is it.

Q. That is an institution where they have a great number of orphan children? A. Yes.

Q. Do you know what the orphan population of that institution is, how many children they have there? A. I do not.

Q. Do you know whether or not they have

children of varying ages, that is, real young children? A. I really don't know anything much about the institution.

Q. But you do know it is an orphanage. A. All I know is what I hear them say. I don't know.

Q. Well, now, there wasn't any path of any kind leading back into the woods? A. Any path?

Q. Yes. When Mr. Allen got off his truck there wasn't any path leading back in there, was there? A. No.

Mr. Wilentz: Did he answer it?

The Reporter: He said "No."

By Mr. Fisher:

Q. The ground there was exactly as it was, say 20 yards in either direction: is that right? A. Well, I would say I don't recollect any path or anything there that I saw.

Q. But I mean, Mr. Wilson, there is a stretch along there, maybe of 30 yards or 40 yards or 50 yards that is very much the same: isn't that a fact? A. Yes.

Q. Scrub timber? A. It was at the time grass, Indian grass.

Q. Dead grass? A. Yes, about this high (indicating); possibly—well, really I don't know; I would say two foot; might be more.

Q. Well, it is the normal dead grass that we get through there that we all know about in March? A. Yes, that is right.

Q. And then scrub trees of some kind? A. Little bushes, yes.

Q. Thick? A. Well, not—I wouldn't call it really thick. Of course, back there was a lot of bushes and trees.

Q. Well, Mr. Allen just testified that he had to

stoop down to get through. Were there briers and bushes? A. Well, there was a bush there possibly, yes, some low squatty bushes like, just for a little ways.

Q. Then in back of the little stuff—. A. Yes.

Q. —was there woods, were there big trees? A. Big trees, right.—Well, I wouldn't say big trees but it was—

Q. Twenty year timber? A. Yes, timber; some was quite good size trees.

Q. Now, and about the ditch right along the edge of the road there was a drop, wasn't there, in the form of a ditch? A. There was a ditch first between where the body laid and the road.

Q. Now, as a matter of fact, continuing the ditch along the road, that is, the gutter which dropped some—weren't there two ditches between the road and the body? A. Well, now, I wouldn't say.

Q. Isn't there? A. That would be impossible.

Q. Isn't there a little ditch just within, oh, perhaps 20 feet of where the body was found that goes down off through the wood there? A. There might be, on below there is a ditch; but just where that started now I never was—

Q. You have a recollection of there being such a ditch in the woods there? A. I remember this one ditch there, there was a ditch that we crossed.

Q. Then right at the road there is a ditch that goes down immediately off the road and before you start through the grass, is there not? A. Yes, there is a little place, you know, just off the road as I remember it—

Q. Isn't there within a very few feet of the spot and on the same side of the road a guard fence along there? A. A little rail fence, yes.

Q. Just a little bit to the north. A. I think a little above it if I remember aright.

Q. I suppose that would be toward the south, toward Princeton, anyway. A. I would say so, yes.

Q. That is there to protect traffic from the drop that immediately adjoins the road, is it not? A. I naturally suppose so.

Q. Mr. Wilson, Mr. Allen referred to the fact that he saw the skeleton there. Was that the way it impressed you? A. Well, I suppose the foot and the bones that lay there, naturally he might have noticed that first, that I don't know, but of course what little you could see of the body, you know, I don't know what he really thought about it, but I suppose that made him think—possibly he didn't see the foot. As I remember, the foot lay a little way from the body.

Q. From the rest of it? A. Yes.

Q. You say the body was rather badly decomposed? A. Yes, it was.

Q. Have you any recollection of the weather during March, 1932, as to whether it was cold or warm or terribly rainy or terribly dry? Have you any recollection of the weather in the month of March at all? A. I forget about the weather now. I don't know that I can tell just how it was.

Q. When Mr. Allen got off the truck, he went right straight back into the wood, did he? A. Right in the wood. Now really, I didn't watch him until he hollered to me and then he was standing still, but I suppose he went back into the woods.

Q. Well, so far as you know he might have gone ten feet up or ten feet down before he struck into the woods? A. Yes.

Q. And how long, if you can remember at this date, how long was he gone from the truck before he called to you? A. Oh, just a few, just a few seconds before he hollered to me.

Q. A very brief time? A. Yes, he hollered.

Q. Now, did you see him when he hollered? A. Yes, I could see him.

Q. The wood wasn't so thick, or the grass wasn't so thick that it hid him from your vision? A. No, sir, I could see it.

Mr. Fisher: I think that is all, Mr. Wilson. Thank you.

Re-Direct Examination by Mr. Peacock:

Q. Mr. Wilson, one question: Counsel asked you about the Catholic Home. That is on the opposite side of the road where you found the body, isn't it? A. That is on the opposite side of the road, yes.

Q. And the buildings are probably a half mile back from the road about where you saw this child, isn't that so? A. Well, I would imagine so, something like that, yes.

Q. You were asked about the trees along this road. You had to walk quite some distance back from the road before you hit the trees? A. Well, before you hit the trees, yes, I suppose just back of where the body lay, it was in the wood.

Mr. Peacock: That is all, Mr. Wilson.

Re-Cross Examination by Mr. Fisher:

Q. Just a minute. Mr. Peacock asked you whether or not that Catholic Orphanage, the buildings were a half mile back from the road. Now you don't mean, Mr. Wilson— A. I said it really didn't—

Q. Just wait. You don't mean that it is even close to a half mile from the highway immediately

in front of the Catholic Home to the buildings, do you? A. Well, the barn—I suppose he means the outbuildings, they are still further back yet than that.

Q. I take it the orphans wouldn't live in the outbuildings. They probably would be in the main buildings? A. Well, now—

Q. Will you give me your idea of the distance from the main road to the administration building or the center building of the Hopewell Orphanage? Is it more than a hundred yards, as a matter of fact? A. Well, it is not so far, not the main building, I would say.

Q. Would a hundred yards be a fair estimate? A. I imagine it is further than that.

Q. Well, how far would you say, Mr. Wilson? A. Well, possibly 500—

Q. 500 yards? A. I say possibly that.

Q. Possibly. That would be 1500 feet? A. Yes. That is—

Q. Something a little less than a third of a mile? A. I don't really just know. I have never been in the place but once in my life.

Q. But you wouldn't want to say to this jury that from the gateway abutting the road to the buildings of the orphanage home was a half mile, would you? A. That is from the main road?

Q. Yes. A. Well, possibly it isn't a half mile, but I don't know.

Q. As a matter of fact, it isn't more than a half mile from the spot where the body was found to the Hopewell Orphanage, is it? A. Well now, possibly not.

Q. Well, that— A. Three-quarters maybe.

Q. What? A. I say possibly a little more than a half mile.

Q. Well, you go out to the road from the orphanage, don't you, and you go down a slight

hill and then you start a rise and the body was found at a point opposite, about half way up that hill, is that correct? A. Well, I would say something half way, yes.

Q. And you wouldn't think that a half mile would be a bad estimate? A. I wouldn't imagine so, no.

Mr. Fisher: That is all, Mr. Wilson.

Mr. Peacock: That is all.

Sergeant Zapolsky.

ANDREW ZAPOLSKY, sworn as a witness on behalf of the State.

The Court: What is it? I didn't get it.

The Witness: Andrew Zapolsky.

The Court: Andrew—

The Witness: Zapolsky.

The Court: All right.

Direct Examination by Mr. Peacock:

Q. Mr. Zapolsky, are you connected with the New Jersey State Police? A. Yes, sir.

Q. And were you connected with that department on May 12th, 1932? A. I was.

Q. What rank do you hold in the State Police? A. Sergeant.

Q. May 12th, 1932, where were you that day? A. At the Lindbergh estate, Lindbergh home.

Q. And were you ordered to go to any place? A. I was.

Q. And where did you go to? A. To the gate of the Lindbergh estate.

Q. Anyone go with you? A. Detective Fitzgerald of Jersey City Police Department.

Q. Arriving at the gate of the Lindbergh estate did you proceed any further? A. Yes, sir.

Q. Where did you go to? A. At the gate we met Officer Wolfe and Officer Williamson and they—

Q. Of Hopewell? A. At the gate; of Hopewell; yes, sir.

Q. Yes. And you met these two officers at the Lindbergh gate? A. Yes, sir.

Q. Now, where did you and Detective Fitzgerald, Chief Wolfe and Chief Williamson go to? A. We went on the Mount Rose-Hopewell Road, approximately halfway between Hopewell and Mount Rose, and there the Hopewell officers pointed out the body of a child in the woods.

Q. Referring to Exhibit S-165 for the State, does that correctly depict the scene where you saw that child's body that day? A. Yes, sir.

Q. Arriving at the scene, what did you do, if anything? A. I turned the body over.

Mr. Fisher: I didn't hear that.

The Reporter: "I turned the body over." (Reading.)

Q. Before you get to that point in what position was the body when you arrived there? A. The body was lying on its face, down, in a shallow grave like.

Q. Any leaves or dirt on the body? A. Yes, sir, the leaves were covering parts of the body, and

the back of it, the back of the head, was bare. Some of the curly hair was around the head.

Q. Did you see any of the hair around the scene, outside of the head? A. Yes, sir.

Q. On the ground? A. Yes, sir.

Q. Did the body have any clothes on? A. It had a—I would call it an undershirt on.

Q. Now you say you turned the body over? A. Yes, sir.

Q. And who was with you when you did that? A. Fitzgerald.

Q. Did you turn it completely over? A. Yes, sir.

Q. Now how long were you there? A. Why, we left after we turned the body over, and compared the description and a picture we had.

Q. What do you mean, comparing your description? A. A description of the child that was given to us by our superior officers.

Q. Did you have a picture of the child at that time? A. Yes, sir.

Q. Comparing the picture with the body, who was that child? A. Colonel Lindbergh's child.

Q. After you had made your comparison where did you go? A. We returned to Hopewell.

Q. Who did you meet there? A. We met—first we placed a call for Captain Lamb, who was at the Lindbergh home.

Mr. Fisher: I can't hear the witness.

The Witness: First we placed a call for Captain Lamb, who was at the Lindbergh home.

Q. He was your superior officer, was he not? A. Yes. And notified him. Then we met Lieutenant Keaton of the New Jersey State Police, and Inspector Harry Walsh of Jersey City Po-

lice at Hopewell, and we directed them to the scene.

Q. Did you go back to the scene with Lieutenant Keaton and Inspector Walsh? A. We did.

Q. Arriving at the scene, what did you do, if anything. A. Why, Lieutenant Keaton and myself remained there and Inspector Walsh returned to Lindbergh's home and brought Colonel Schwarzkopf down to the scene.

Q. After Inspector Walsh came back what did he do? A. That I don't know.

Q. In your presence, I mean. A. I was then detailed to locate William Allen and Orville Wilson and get their statements, so what they done I don't know.

Q. Inspector Walsh—Did Inspector Walsh do anything to the body while you were present? A. Not in my presence.

Q. Is that all you did, Sergeant? A. Yes, sir.

Q. Can you trace the road on the lower map, Sergeant, from the Lindbergh estate down to Mount Rose Road, the spot where you found the body? A. I would say in just about that spot (indicating on map, Exhibit S-5).

Q. Where it is marked X on Exhibit S-5? A. Yes.

Q. Now trace the road from the Lindbergh property to where the spot is marked X, Sergeant. A. Here I take to be the lane to the gatehouse, from there you would have to turn right and come down all the way to the main road, and then you have to turn right there and come down to Hopewell, and at Wearts' Garage, you turn left and go toward Hopewell out toward Mount Rose, and then to the spot there, which is about halfway between Mount Rose and Hopewell.

Q. George, do you know the approximate distance from the Lindbergh property to the spot

marked "X"? A. I never clocked it or measured it, but in my judgment it would be approximately between five and a half to six miles.

Mr. Peacock: Cross examine.

Cross Examination by Mr. Fisher:

Q. Which road, Sergeant, was the body in back of? There seems to be two roads there, this one—which road goes to Princeton of these two, this one, doesn't it (indicating)? A. Yes.

Q. And this, then, is off to the right of the road as you go towards Princeton? A. It was off to the right of the road, yes, sir.

Q. Now, were you the first State Police officer on the scene? A. I was.

Q. Sergeant? And no one had been there to your knowledge except Wilson and Allen, is that correct? A. To my knowledge.

Q. Allen and Wilson? A. That is right.

Q. And the third person, then, to see that body was you and the fourth was the man that accompanied you? A. Yes, sir.

Q. Whom, I believe, you said was Fitzgerald, is that correct? A. That is right.

Q. Now, Wilson and Wolfe, were they with you? A. They were.

Q. There were four of you then, together, is that right? A. That is right.

Q. Now, when was that picture taken, if you know? A. I don't know.

Q. It wasn't taken at that time, was it? A. It was taken later, I believe.

Q. Later, yes. And you turned the body over after you got there? A. That is right.

Q. So that it doesn't depict, truly, then, the scene as Allen saw it, does it?

Mr. Peacock: That is objected to, your Honor, the witness is not clear when Allen first arrived there and Allen has testified that that truly depicted the scene when he arrived there, and I object to that question, and he was not there when this witness was there.

The Court: What is the present question?

(Question repeated as follows: "So that it doesn't depict truly then the scene as Allen saw it, does it?")

The Court: Well, that seems to be cross examination. You may answer it.

Mr. Peacock: My point is that he can't testify or can't answer that, this witness, what Allen saw, because this witness was not there when Allen arrived there. He is asking something that was in Allen's mind, and what Allen saw without this witness being present.

The Court: Well, perhaps I didn't get the point of the question. Will you repeat the question again?

(Pending question re-read by the reporter.)

Mr. Peacock: That is my objection.

The Court: Well, I think I will sustain the objection to the question in that form.

Q. Well, you heard Mr. Allen testify just a moment ago, didn't you? A. I did.

Q. And you heard him testify that he simply looked at this body and turned and left, didn't you? A. Yes.

Q. You heard him say that he didn't touch the body in any manner, shape or form, didn't you? A. I did.

Q. Yes. Now you were then with the next group that arrived there, weren't you? A. I was.

Q. And you reached down to the ground and turned the body over, didn't you? A. Yes.

Q. The body when you arrived there was face down on the ground? A. That is right.

Q. And you turned it over so that the body was face up? A. That is right.

Q. Now, if Allen's testimony here today is true, when the body was faced up, the same scene wasn't depicted there that he saw, is that true? A. I can't testify to what Allen saw.

Mr. Peacock: That is objected to.

The Court: Well, it is rather argumentative. What is the answer now?

(Answer repeated by the reporter.)

The Court: I will let it stand.

Mr. Peacock: I withdraw the objection.

Q. You can testify to what you heard him say under oath here this morning, can't you? A. I can testify to what I have seen.

Q. You can testify to what you heard Allen say under oath on this witness stand this morning, can't you? A. Yes.

Q. Yes. And you heard him say that he did not touch that body, didn't you? A. I did.

Q. Yes. Does this picture show the body face up or face down (showing photograph to the witness)? A. Face down.

Q. Face down. Then before that picture was taken there was another change in the position of the body, wasn't there? A. I don't know.

Q. Well, is that the way you left the body? A. No, sir.

Q. Then if you didn't leave it that way and the picture shows it that way, can you say whether or not the body must have been changed again after you last saw it? A. That wouldn't be my knowledge, that would be my presumption.

Q. How is the picture, up or down? A. Down.

Q. How did you leave the body? A. Up.

Q. And it would be hard for you to say whether it had been changed then before the picture was taken, wouldn't it? A. I don't know when the picture was taken.

Q. That is right. Now was the body covered? A. Somewhat, with leaves.

Q. The center of the body or the feet or the head? A. Parts of it. The head, the back of the head, was bare. The foot was sticking out, and the arm, and the left leg was missing.

Q. What have you to say as to the condition of the body generally? That is, as to its state of decomposition? A. Oh, where the clothing was on it was intact, and the face, that was in the ground, was preserved; when we turned it over it was white, and then when we returned from Hopewell it turned blue, we found it was blue.

Q. And you say that the body was in such condition that you could recognize it from the photograph of a living child, is that correct? A. Yes, the features were there.

Q. What county was the body found in, Sergeant, if you know? A. I am not familiar with that, but I believe it was in Mercer.

Q. Upon whose ground was the body found, if you know? A. I don't know.

Q. Do you know that immediately adjacent to the spot where the body was found there is an institution? A. Not immediately; I'd say about three-quarters of a mile.

Q. Well, let's say three-quarters of a mile. Do you know that three-quarters of a mile away there is an institution? A. Yes, sir.

Q. What is the nature of that institution? A. It is an orphanage.

Q. Do you know the number of inmates? A. No, sir.

Q. Do you know anything about the ages of the inmates of that orphanage? A. No, sir.

Q. Now, did you ever go back after you went to take Allen's statement to the scene of the finding of the body? A. No, sir.

Q. While the body was still there? A. No, sir.

Q. After turning the body over, you left and you never went back while the body was there? A. I did.

Q. Did you? Who was there when you went back? A. Nobody was there. I directed Lieutenant Keaton and Inspector Walsh to this scene.

Q. And was the body still there then? A. Yes.

Q. And then where did you go? A. I was detailed to locate Allen and Wilson and take their statements.

Q. And did you ever go back to this spot while the body remained there? A. Not after I was detailed to locate Allen and Wilson.

Q. Was there anything found around the body by way of instruments or tools? A. Not that I recall, not at that time.

Q. As a matter of fact, wasn't there a chisel found there? A. I don't know; I don't think so.

Q. Wasn't there a hammer found near the scene by a detective from the Mercer County Detectives' office? A. I don't know that.

Q. A tack hammer? A. No, sir; I don't know that.

Q. Did you see anything like that there? A. No, sir.

Q. Did you make any search of the surroundings? A. Immediate surroundings?

Q. Did you take any of the soil for analysis? A. It was taken, but I didn't take any.

Q. Did you take any, you were the first man there. A. No, sir.

Q. Did you go any considerable distance around to look for tracks or evidences of people being in there? A. Well, when my superior officers arrived, I was relieved of that detail.

Q. Before your superiors arrived did you do any of the things I have mentioned? A. No, sir.

Mr. Fisher: That is all, Sergeant.

Mr. Peacock: That is all.

Mr. Wilentz: Inspector Harry Walsh.

HARRY W. WALSH, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. You are a police officer connected with the Jersey City Police Department, I understand? A. Yes, sir.

Q. On May 12th, 1932, you were a police officer, too, were you not? A. Yes, sir.

Q. On that day as the result of a call or as the result of a notice did you go to the place at the Mount Rose Hill, I think it is in Mercer County, to view a body? A. Yes, sir.

Q. Are you the Harry Walsh referred to as having accompanied the last witness Sergeant Zapolsky and Lieutenant Keaton? A. Yes, sir.

Q. To that spot. Who else went with you at the time? A. Sergeant Moffet from the Newark Police Department.

Q. When you got there, who was there? A. When I arrived there Sergeant Zapolsky and Detective Fitzgerald from Jersey City were there.

Q. So when you came there, you came with whom? A. I came with what?

Q. Who accompanied you to the place? A. Lieutenant Keaton, State Police.

Q. When you got there did you see a body? A. Yes, sir.

Q. And having seen the body what did you do next? A. Well, I closely observed the body and conditions surrounding it and returned to the Lindbergh Home.

Q. When you got to the Lindbergh home, did you get a piece of material from somebody there? A. Yes, sir.

Q. I show you Exhibit 2, I think it is, or 29,—State's Exhibit S-29. Tell me if you can tell whether or not that happens to be the piece you took with you from the Lindbergh home.

Mr. Fisher: What is that, Exhibit 2?

Mr. Wilentz: S-29.

Q. If it isn't, officer, I wish you would say so. A. Well, it isn't. However, I was trying to identify it.

Mr. Fisher: It isn't?

Mr. Wilentz: "It is not."

Q. You did take a piece of cloth or something? A. Yes, sir.

Q. And when you got there to the place, what did you do with the cloth that you had? A. Matched it with a piece of cloth that was on the child's body in the form of a shirt.

Q. Let me show you Exhibit S-30 and ask you whether that is the piece. A. That is the piece of cloth.

Q. Exhibit S-30 is the piece of cloth then that you took from the Lindbergh home to the scene? A. Yes, sir.

Q. And you say you did what, you matched it? A. I matched it with a piece of cloth that was on the baby's body in the form of a shirt.

Q. I show you Exhibit S—State's Exhibit 13. Will you take a look at it, please, and tell me whether or not you can now tell whether that is the shirt with which you matched this piece of cloth that you just referred to, Exhibit S-30. A. It is.

Q. How did you match it, Inspector? A. With a very fine scalloped embroidered edge, which is identical with the edge on this.

Q. And, having done that, what did you next do? A. Well, I next slightly lifted the body from the ground, possibly one inch.

Q. And how did you lift it? A. With a stick.

Q. Now, when you were lifting the body with the stick, did anything happen? A. Yes, sir.

Q. What happened? A. The stick penetrated the skull.

Q. And was that an accident or design? A. The body was badly decomposed.

Q. Well, was it an accident, I mean? A. Yes, sir; absolutely.

Q. And did it, as the result of this penetration, make a little hole in the skull? A. Yes, sir.

Q. About—give us your best judgment. A. Well, I would say about the size of an ordinary lead pencil.

Q. I see. And then having done that, what did you do next? A. Cut the clothing from the body.

Q. What clothing did you cut besides the shirt that I just exhibited to you, being Exhibit S-13. A. Another similar sleeveless shirt.

Q. I show you State's Exhibit S-14 and ask you whether that is the sleeveless shirt that you refer to. A. It is.

Q. And having cut these garments from the body—did you cut them from the body of the child? A. Yes, sir.

Q. How did you cut them, Inspector? A. With a knife, while I held the body elevated from the ground.

Q. How did you hold it, with the hands? A. With a stick.

Q. And then I take it that you removed from the child's body these articles of clothing which you just testified you cut? A. Yes, sir.

Q. And you took those pieces of clothing where? A. Back to the Lindbergh estate or home.

Q. What did you do with it? A. May the 12th was a stormy day and the clothes were saturated with rain and with Captain Lamb nailed them up in the boiler room in the home to thoroughly dry them.

Q. Then I suppose you surrendered them to Colonel and Mrs. Lindbergh and the family? A. No, sir, I surrendered them to Colonel Schwarzkopf.

Q. Oh, I see. At the home you mean? A. Yes, sir.

Q. Tell us, please, in addition to that, while you were at the scene, referring to the place where the body was found, did you take a look at the ground there? A. Yes, sir.

Q. Will you tell us whether or not there was any place there that indicated some sort of an excavation of one kind or another? A. There was a depression in the ground, possibly about, I'd say roughly eight inches deep, ten inches deep.

Q. And about the length? A. Well, about the length of the torso of the child.

Q. And had the child been removed from that excavation or depression? A. When I arrived there it was laying on its back paralleling that depression.

Q. Paralleling. About how close to it? A. Six inches.

Q. And did you examine that excavation or depression in the ground there? A. Yes, sir.

Q. And what, if anything, did you find there? A. I'd been informed—

Q. What did you find there? A. A quantity of blond hair about five inches in length laying in semi-circle form at the end of the depression formed by the head of the body.

Q. And what did you do with that hair? A. I removed it with the clothing to the Lindbergh estate.

Q. And surrendered it to Colonel Schwarzkopf? A. Colonel Schwarzkopf.

Mr. Wilentz: That is all, thank you. You may have the witness.

Cross Examination by Mr. Fisher:

Q. Inspector, about how long was the depression in the ground in feet or inches? A. Well, I am giving you a rough guess now; I would say about two and a half to three feet.

Q. Two and a half to three feet. That is longwise? A. Yes, sir.

Q. And from eight to ten inches deep? A. About.

Q. And how did it seem to have been made? I mean by that, did it look as though it was dug out by hand or were there signs of instruments being used? A. I don't know. It gave me the impression that the child had been laying in it. I couldn't tell you whether it was dug out or whether it was caused by nature or whether or how it was made; I know that it was there, however.

Q. In other words, there is a possibility that the child might have been left on the surface and gradually nature worked the body down to where you saw it. A. That is altogether possible.

Q. Now did you report this matter of making a hole in the baby's head with a stick to the County Physician, Dr. Mitchell, who made the examination of the baby's body? A. I didn't have any occasion to make a report to the County Physician.

Mr. Wilentz: Just answer the question, please.

A. No, sir, I didn't.

Q. Did you report it to Mr. Swayze, the Coronor? A. No, sir.

Q. Did you report it to any of the examining physicians at all? A. No, sir.

Q. When did you make mention to anybody of the fact that you had made a hole in the child's

head with a stick? A. I reported it to Colonel Schwarzkopf immediately.

Q. The same day? A. Yes, sir.

Q. The very same day? A. Yes, sir.

Q. Did the hole you made go right through the bone structure, or —yes, the bone structure of the baby's head? A. It slightly penetrated the skull; I don't know what it went through.

Q. To penetrate the skull, it would have to go through some bone structure, would it not? A. It may have been just the flesh; I don't know.

Q. You think the brain is immediately adjacent to the flesh and might be penetrated without anything else being touched? A. From the condition of the body I doubt if there was a brain in it.

Q. The body was in pretty bad shape, was it not, Inspector? A. It was badly decomposed.

Q. How long was it, Inspector, from the date of the kidnapping till the day the body was found? A. The kidnapping occurred on March 1st and the baby's body was found on May 12th.

Q. That would be 72 or 73 days, about? A. About.

Q. Why was it necessary for you to use a stick to raise the body, Inspector? A. Because the entire body was veiled with vermin.

Q. You couldn't have used gloves? A. I didn't have them.

Q. How far is Hopewell from the scene? A. By the speedometer on the car I was in that day, four and a half miles.

Q. From Hopewell village? A. Main Street, one mile and one-eighth.

Q. By Main Street you mean Wearts' garage, where you make the turn? A. I guess that is where the garage is, Gebhardt's Hotel is there.

Q. From Gebhardt's Hotel to the scene is one mile and a tenth? A. One mile and an eighth.

Q. Did you make a survey of the scene, Inspector? A. Immediately surrounding the body, yes.
Q. Did you find anything at all there? A. I found a sack.
Q. What kind—burlap? A. Burlap bag.
Q. What about a thermos bottle, did you see anything of a thermos bottle? A. No, sir.
Q. What about a newspaper bearing date March 1st? A. No, sir.
Q. What about a tack hammer? A. No, sir.
Q. Did you ever see that tack hammer that is said to have been found very near—

Mr. Wilentz: Just a minute, if your Honor please. I object very strenuously to the "said to be found." There is no evidence in this case at all of any such thing.

The Court: No, there is not.

Mr. Fisher: I am asking if he knew of that.

The Court: Ask him if he saw there the tack hammer. You asked him and he said no.

By Mr. Fisher:

Q. Did you ever see after that date a tack hammer which was reputed to have been found at the kidnaping scene in the hands of the police authorities?

Mr. Wilentz: Just a minute, if your Honor please. I object to that as carrying with it an unfair inference, and therefore

it is an objectionable question. There is no basis for the question by counsel.

Mr. Fisher: This is cross examination, your Honor. I am trying hard to lay a foundation.

The Court: I think the question is objectionable for the reasons I have indicated.

Q. What have you to say as to the broken shovel? Did you find any broken shovel near the body? A. No, sir.

Q. Did you see any shovel there that day? A. No, sir.

Q. For what area did your examination entend? I mean, now, taking the body as a center, 20 yards in all directions? A About.

Q. Twenty yards. And you found nothing at all except a burlap bag? A. That is all.

Q. And do you know whose land the body was found on, Inspector? A. No, sir.

Q. Did it ever occur to you that that might be important in the investigation? A. It probably was, it didn't interest me.

Q. It didn't interest you at all, did it? A. No, sir.

The Court: "It didn't occur to me," he he said.

Mr. Fisher: Oh, I thought he said "It didn't interest me."

The Witness: I did say that.

The Court: You did?

The Witness: Yes, sir.

Q. And, although you were an investigating officer there, it never occurred to you to ascertain whose land the body was found on? A. I was observing orders in the investigation I made.

Q. Who gave you the orders? A. Colonel Schwarzkopf or Captain Lamb, whoever was in charge.

Q. Then, neither of those gentlemen gave you instructions to ascertain—. A. No, sir.

Q. —whose land the body was found on? A. No, sir.

Q. Do you know whether or not the body was found adjacent to an institution of any kind? A. I don't know that, sir.

Q. Did you observe going and coming a building to the left shortly out of Hopewell with a sign, "St. Michael's Orphanage"? A. No, sir, I did not.

Q. Do you know, Inspector, whether or not there is such a group of buildings immediately out of Hopewell on the lefthand side of the road between the place where the body was found and the village of Hopewell? A. No, sir.

Q. You never saw those as you went by? A. I may have, but paid no attention to them.

Q. And you can't say now whether or not within a half or three-quarters of a mile from where this body was found there is an institution called the St. Michael's Orphanage of Hopewell? A. No, sir.

Q. I see. (Addressing counsel for the State.) May I see those exhibits?

Mr. Wilentz: What exhibits?

Mr. Fisher: Just the cloth that he took down.

Q. Now what material is that, Inspector, if you know? A. A piece of flannel, as I understand it.

Q. Flannel? A. Yes, sir.

Q. Referring now to S-30. And what is there that is peculiar to you that identifies that? A. Scalloped embroidered edge.

Q. I see. And do you say also, referring now to Exhibit S-13, that that is a piece of flannel? A. Yes, sir.

Q. And it has a similar edge, scalloped edge, is that it? A. Identical.

Q. Identical. And because of that you say that that convinced you that the garments were the same? A. Yes, sir. That and the information that I had.

Q. Yes. Now, is that hand stitching? A. I don't know.

Q. Or is it machine stitching? A. I don't know.

Q. Did you ever see such stitching as that before in any garment of any kind, Inspector? A. I am not interested in sewing. I didn't.

Q. Did you ever see it? A. No, sir.

Q. You are not interested in sewing, are you, Inspector? A. No, sir.

Q. And you don't know much about it, do you? A. No, I don't.

Q. No. And for that reason you are not qualified to state whether that is a common stitching in flannel or not, are you? A. I can tell you now that it identically matches the scalloped edge on this piece of cloth that you are holding in your other hand.

Q. That is right. But whether both of them are very common, the flannel sleeping garment

or the flannel shirt, you don't know that, do you? A. I couldn't tell you that.

Q. No. It is quite possible, isn't it, Inspector, that such garments as that may be on sale in a thousand department stores in America? A. That is altogether possible.

Q. That is altogether possible? A. It is altogether possible.

Mr. Fisher: That is all, Inspector.

Mr. Wilentz: Just one thing, Inspector.

Re-Direct Examination by Mr. Wilentz:

Q. Of course you are not very familiar with that territory, are you? A. Not too familiar, no, sir.

Q. There has been some talk here about an orphanage. The County of Hunterdon has public schools, too, haven't they? A. Yes, sir.

Mr. Fisher: That is objected to, your Honor.

Mr. Wilentz: Well now, we are going to have the school in, if the orphanage is going in.

Mr. Fisher: Well, the school doesn't have to be on the site where the body was found.

Mr. Wilentz: The school happens to be across the street from the orphanage.

The Court: Well, I think the Attorney General may examine in respect to this

subject matter of institutions in the countryside; but he ought not to lead the witness.

Mr. Wilentz: That is admonition I will surely guide myself by.

Q. Inspector, do you recall seeing this orphanage that has been referred to by Mr. Fisher? A. No, sir.

Q. So that do you know whether or not there is a public school immediately opposite? A. No, sir, I do not.

Q. Do you happen to know whether or not there is a public school in Hopewell? A. No, I couldn't tell you that.

Q. Are you familiar with any of the public schools in Hunterdon and Mercer County in the vicinity of the Lindbergh home and up to and leading to the point and place where the body was found? A. The only school that I was familiar with was the one in Pennington, no other.

Q. Pennington? A. That was a normal school, I believe.

Q. A normal school. So that you are neither familiar with the location of the schools nor this institution referred to? A. No, sir.

Mr. Wilentz: Thank you, Inspector.

Re-Cross Examination by Mr. Fisher:

Q. You think there is a Normal School at Pennington, Sergeant? A. Well, I thought it was a Normal School.

Mr. Fisher: All right, sir.

Mr. Wilentz: That is all.

Mr. Peacock: Walter H. Swayze.

WALTER H. SWAYZE, sworn as a witness in behalf of the State.

Direct Examination by Peacock:

Q. Swayze, where do you live? A. Trenton, New Jersey.

Q. And in May 1932 did you hold any official position in Trenton? A. As Coroner, Mercer County.

Q. How long have you been Coroner? A. I had been Coroner at that time a little over two years.

Q. At that time, May 12th, 1932, did you receive a call from the State Police? A. I did.

Q. Do you know who you received that call from? A. I am not positive, but I think Captain Lamb.

Q. As a result of that call did you go to Hopewell? A. I did.

Q. Now, where did you go in Hopewell? A. To the road just outside of Hopewell, where I noticed a State Police—or what I thought to be a State Police car.

Q. Did you stop at the point? A. I did.

Q. Did you receive certain information from the State Trooper? A. Yes, I did.

Q. As a result of that information where did you go and what did you do? A. Why, I went into the woods and, after a roundabout trip, kind of in the woods, why, we came to a spot where there were some other troopers, and there was a body there.

Q. Do you know where that spot was? A. Why, I imagine about a mile and a half towards Mount Rose from Hopewell.

Q. On what road? A. On the Mount Rose-Hopewell Road.

Q. You say you arrived at that spot and you saw a body? A. I did.

Q. And where was that body? A. On the ground.

Q. And were any troopers there at that time? A. Yes, there were.

Q. Tell the jury what you noticed around that body, the condition of the body and the surrounding— A. I can only tell generally—

Q. Tell the jury what you saw concerning that body. A. Why, there was a body of a child. I couldn't give exact age at that time, but it looked like a youngster of about two years possibly, lying on the ground, head towards upper portion of the woods, the feet more or less towards the highway, and in partly decomposed condition.

Q. What did you do with that body? A. I placed it in a removal grip for that purpose and removed it to Trenton.

Q. Where did you take it in Trenton? A. The County Morgue.

Q. On that day did Colonel Lindbergh arrive at that morgue? A. Not that day.

Q. When? A. The following day.

Q. Yes. Did he identify that body that you took from the woods to that morgue as his child? A. Yes.

Mr. Fisher: That is objected to. The question should be what did he do when he came in there. He can't testify whether he identified it or not. He can only tell what the Colonel did. He isn't in position

to say, in the absence of the defendant, whether the Colonel said he identified it or not, he can only say what the Colonel did when he got there.

Mr. Peacock: He is not testifying to what the Colonel said. This is the connection of the history to the Doctor who performed the post mortem. The Colonel has testified that he identified that baby; Betty Gow has testified she identified the baby. I want to show that the Coroner was present when both identifications were made and the post mortem was made on the child, that these parties identified it.

The Court: I think that may be shown.

Mr. Fisher: That this witness can say what Colonel Lindbergh did?

The Court: No. He is saying he was present at this identification.

Mr. Fisher: May I have an exception, your Honor?

The Court: You may have an exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

The Court: Frame your question, Mr. Peacock.

Mr. Peacock: He has answered it.

The Court: What was his answer.

The Witness: I was there when the Colonel was there.

By Mr. Peacock:

Q. You were there when he made the identification? A. I was.

Q. Were you also there when Betty Gow made the identification of that child? A. Yes.

Q. Were you present when Dr. Charles Mitchell, the County Physician of Mercer County, performed the post mortem? A. I was.

Q. Did you assist in the performance of that post mortem? A. I did.

Q. Did Dr. Mitchell perform that autopsy, post mortem examination, on the same child that was identified by Colonel Lindbergh as his son and identified by Betty Gow as Charles A. Lindbergh, Jr.? A. Yes, sir.

Q. As a result of that post mortem or result of that examination, Coroner, did you issue a death certificate? A. I did.

Q. I show you a certified copy of the death certificate of Charles A. Lindbergh, Jr., certified by the Department of Health of the State of New Jersey, and I ask you if that is the certificate that you issued, signed by you. (Handing a document to the witness.) A. Yes, that is it.

Mr. Peacock: Pursuant to the provisions of Section 28 of the State of New Jersey Acts, I offer the death certificate of Charles A. Lindbergh, Jr., in evidence.

Mr. Fisher: May we see it, if your Honor please?

Mr. Fisher: We want to submit an objection to this, your Honor, at the present time until such time as we have had opportunity to examine the man who apparently signed the instrument.

The Court: Signed the what?

Mr. Fisher: The instrument being offered, the death certificate.

The Court: Well, is it— Let me see the paper. We have a statute upon this.

Mr. Fisher: Yes, under the statute it is wrong, I believe.

Mr. Peacock: Under Section 28, your Honor, of the Evidence Act, all transcripts of returns of deaths, and so forth, which are certified by the State Board of Health are admissible as legal evidence in any court of this State, cited in State vs. Koettgen, 89 N. J. Law, 678 at page 684, it says they shall be received in evidence; that is a certified copy from the State Department of Health and it is evidential, the witness having issued it, testified that he has signed it.

Mr. Reilly: While that may be true, if the Court please, he may have signed it, but what I am objecting to and counsel for the defense is objecting to now is that it states therein a cause of death. We desire not only to cross examine as to his ability to determine the cause of death, but we say that we are not bound; while

it may prove the corpus delicti, up to that point, the material question now to be asked is what in his opinion was the cause of death, I take it.

The Court: Well, of course you are at liberty to cross examine on the copy. I do not understand you are bound by anything that he says in the death certificate. The question now propounded to me is whether or not under our statute this is evidential for the purposes accorded it by the statute, and it seems to me that it is, so that it will be admitted.

The Reporter: State Exhibit S-166.

(Death certificate was received in evidence and marked State Exhibit S-166.)

Q. On or about—

Mr. Fisher: We want an exception, your Honor.

The Court: You want an exception to what?

Mr. Fisher: To your Honor's overruling our objection and admitting this in evidence.

The Court: Yes, you may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Coroner, after the autopsy was performed by Dr. Mitchell, what did you do with the body of Charles A. Lindbergh, Jr.? A. Why, arrangements were made to have the body cremated.
Q. Was the body cremated? A. It was.
Q. What did you do with the ashes of that child? A. I delivered them to Colonel Lindbergh.
Q. Delivered them to Colonel Lindbergh?

Mr. Peacock: You may take the witness.

Cross Examination by Mr. Reilly:

Q. Are you a physician? A. No.
Q. What is your business? A. I am an undertaker.
Q. So that when you made out the certificate, it was based upon information furnished to you by someone else in so far as affecting the principal cause of death? A. Correct.
Q. Is that right? A. Right.

Mr. Reilly: That is all.

Mr. Wilentz: Dr. Mitchell.

DR. CHARLES H. MITCHELL, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. How long, Doctor, have you been a physician licensed to practice medicine in the State of New Jersey? A. Almost 35 years.
Q. And in addition to your license to practice

medicine in May, 1932, did you hold an official position in the County of Mercer? A. County Physician of Mercer County, yes, sir.

Q. And in your capacity as County Physician of Mercer County, were you called to perform an autopsy upon the body of a child? A. Many times.

Q. Were you on May the 12th or 13th, 1932, so called? A. Yes, sir.

Q. By whom—and where did you go as the result of that call? A. I was notified by the Coroner that he had sent a body into the morgue in Trenton, known as Swayze's morgue on Greenwood Avenue. I called there about seven o'clock in the evening of May 12th to make or perform an examination and autopsy on that child.

Q. When you saw the remains of this child, what have you to say as to whether or not it was recognizable? A. The facial expression was quite good on this child. The facial muscles had not deteriorated, although the body generally was in a bad state of decomposition.

Q. Have you seen pictures of the Lindbergh child? A. For that matter, we had a picture of the Lindbergh child produced at the morgue that evening, and I made a comparison, the best I could between the picture and the facial expression of the child, and I was very much impressed with the fact that it was the same child.

Q. Now, Doctor, that was the only autopsy that you performed at that morgue that day, was it not? A. Yes, I think so, I don't recollect doing any other autopsy there.

Q. Was it the only autopsy upon a child that day? A. Oh, yes.

Q. How many autopsies would you say you

have performed in your experience? A. Oh, probably a thousand.

Q. How long had you been county physician? A. Eleven years. At that time, not quite; probably ten and a half years at that time; somewhere near eleven now.

Q. As the result of your examination, as the result of your autopsy, can you tell us what caused the death of this child? A. There was no question as to the cause of death. The child died of a fractured skull.

Mr. Reilly: I move to strike that out, "There was no question as to the cause of death." I ask that he answer the question.

A. The child died of a fractured skull.

Q. Can you tell us whether or not that fracture was the result of external violence? A. It had every indication of it, in my estimation, from my experience.

Q. And do you mean then that that is your positive opinion? A. Absolutely.

Q. What was the nature of this fracture with reference to whether or not it was extensive or not? A. Quite extensive. The fracture extended from a point about an inch and a half posterior to the left here, it extended forward, well, probably three to 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.

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.

Mr. Pope: We object to that question, if your Honor please. Manifestly it is not possible for this witness to express any such opinion as that, for this reason: it does not appear yet that any of the vital organs of this child were there, that any other part, any of the organs which might enter into its death were present or were examined by this physician, that he had any other means of determining whether the death was caused by the fracture or by some other cause, and it is perfectly apparent that a fracture of the skull might be caused even long after the death of the child; so that at most it can be nothing more than a guess on the part of the physician.

The Court: Well, he saw this fracture.

Mr. Pope: Yes.

The Court: He says it was a very extensive fracture. He is describing it, even describing the directions in which the fracture spread. Now, is it possible that an experienced physician is not permitted to tell what relation that fracture had to the cause of death?

Mr. Pope: No. That isn't possible if this body was not in a condition to determine whether there were any other caus of death. He might express an opinion, sir, quite properly, that if there were no other causes contributing to the death of the child, that this fracture would have been sufficient to have caused it. But be-

yond that it seems to us that he certainly cannot go.

The Court: Well, I think that the physician may express an opinion upon that topic. Of course it is all subject to your cross examination. The witness may answer the question.

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.)

The Witness: May I hear the question again, please?

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?

Mr. Pope: Now then, that we do object to. Certainly he can't tell that.

Mr. Wilentz: That is the same question, if your Honor please, whether if he knows.

The Court: He is asked as to an opinion.

Mr. Wilentz: That is right.

The Court: What is it that you object

to here? I thought I dealt with this subject.

Mr. Pope: Not this question, you haven't.

Mr. Wilentz: It is the same question.

Mr. Pope: It isn't within the power of any human being to express an opinion upon the relationship between that fracture and the cause of death in the absence of an opportunity to examine the other vital organs of the body.

Mr. Wilentz: The Court has already ruled on that.

Mr. Pope: As to the time death occurred, I mean.

Mr. Wilentz: I think the Court has ruled on that specific matter, the same language that counsel has used.

The Court: We don't seem to be concerned here with cause of death.

Mr. Pope: Time of death.

The Court: Time of death. Oh, I think I will have to admit the question.

Mr. Pope: May I have an exception?

The Court: Take the exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Can you remember the question now, Doctor? A. I think I can.

Q. Tell us. A. I would say death in this case occurred either instantaneous or within a very few minutes following the actual fracture occurring.

Q. There were some parts of this body missing when you performed this autopsy, were there not? A. Quite a lot of them, yes, sir.

Q. Did that interfere— I will withdraw that. Did that prevent you from ascertaining what in your judgment was the cause of death? A. Not by any means. I come to my conclusions as to the fracture occurring during life by virtue of the fact that on the inner wall of the skull at the point of fracture there was still the remains of a blood clot. That blood clot could not come there if the child was dead when the fracture occurred. That fracture occurred on a living child. It bled. The clot was still there or part of it. That indicated in my mind the blow was struck or the damage done, however it happened —I can't say—but it was done prior to the death of the child or at least some time during its life.

Then my answer to the other question: To the effect that I think it occurred immediately is proven by the extent of this fracture. It was so great, covered such an area, in my estimation, from my experience, that proved conclusively it was instantaneous or almost so.

Q. Now Doctor, of course you were not present

when the fracture was inflicted, were you? A. No, sir.

Q. What you are giving us, Doctor, is your best judgment on the basis of your many years of experience, is that not it? A. That is all, sir.

Mr. Wilentz: That is all I have with the witness. Someone tells me there has been a request from the jury for a recess. I don't know that, your Honor, that is hearsay (laughter).

Mr. Reilly: It is quite acceptable.

Mr. Wilentz: Counsel consents, if it is agreeable to your Honor.

The Court: You are in accord; I am in accord. We will take a recess now for five minutes.

(Whereupon at 11:30 a. m. a five-minute recess was taken.)

(After a short recess.)

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

Mr. Reilly: Are you through?

Mr. Wilentz: Yes; take the witness.

Cross Examination by Mr. Reilly:

Q. How long have you been a physician, Doctor? A. Thirty-five—thirty-four and a half years.

Q. Where did you graduate from? A. Uni-

versity of Pennsylvania, Philadelphia.

Q. Are you on the staff now of any hospital? A. I have the privileges of every hospital in Trenton, but I am not actively on the staff of any of them at this time.

Q. When were you last on a hospital staff? A. I was Assistant Surgeon in St. Francis Hospital for a period of 15 years, up until about when I became County Physician.

Q. And when did you become County Physician? A. About 11 years ago.

Q. How many autopsies have you performed on children under the age of two years? A. It is rather difficult for me to tell you, but I have performed, I think I can say in a conservative way, at least two a week, on all sorts of cases. Now, we will allow out of the entire lot ten per cent for children, I think, out of the thousand autopsies, I can safely say I performed a hundred on children, or more.

Q. Of all ages? A. Oh, no—yes, of all ages.

Q. Now, I direct your attention to a child two years old. How many autopsies did you ever perform on children of that age? A. I can't say; I haven't any record here.

Q. Did you ever perform one before? A. On a child of that age?

Q. Yes. A. Oh, yes.

Q. When? A. I can't state. I haven't any record to show that.

Q. Have you kept no records? A. I have kept records of autopsies. We keep a record of autopsies.

Q. Have you the record of this autopsy? A. I haven't got them here.

Q. Where are they? A. They are in the hands of the State Attorney, Attorney General.

Mr. Reilly: May we have them, sir

Q. Now, Doctor, in your opinion, how many causes of death are there? A. Oh, Lord. There is a book full of them. I couldn't tell you offhand, there are several dozen of them probably, of different causes of death.

Q. Yes. Well, repeat them for the jury, please. A. Oh, it is an impossibility.

Q. You can't repeat— A. Cardiac conditions, kidney conditions, lung conditions, brain conditions—

Q. All right. Wait. I will go down the list with you. Cardiac—heart, right? A. Yes, that is heart condition.

Q. All right. A. Lung condition, liver—

Q. Wait a minute. A. I beg your pardon.

Q. Did you examine the heart of this child? A. The heart was in such a condition it couldn't be examined.

Q. Now the next condition. A. Liver conditions.

Q. Did you examine the liver of this child? A. The liver also was present but not in a condition to prove anything as a form of pathology of it.

Q. The next cause of death. A. Oh, stomach conditions.

Q. Yes. A. No stomach there. Kidney condition, no kidneys there. Bladder, no bladder there. Lung conditions, no lungs there.

Q. And was the larynx there? A. The larynx was still present, but it was in a very much decomposed state.

Q. Did you ever see this child in its lifetime? A. I never did.

Q. And therefore you never treated the child, did you? A. Don't know anything about it.

Q. Did you know the child was ill on March the

1st and on February 28th? A. Have no idea about it.

Q. Did you know that the child was suffering from congestion of the lung and cold? A. No, sir.

Q. You didn't know that? A. I did not.

Q. You made no effort to determine in your autopsy any cause of death from choking, did you? A. We examined very carefully—

Q. Did you?

Mr. Wilentz: Let him answer it.

A. Let me answer the question, will you?

Q. I will let you answer the question. A. That is right. We examined very carefully by opening the mouth, putting the finger down the throat, also opening the chest, looking at the various organs that was left—very few of them left—examined the teeth, examined the tongue, tried to make as careful an examination under the conditions that we had to work on as it was possible to do. The odor itself almost made it impossible for a man to work over this child.

Q. Then your examination of the child's body was rather perfunctory, was it not? A. I wouldn't say so; I think it was a mighty good one, myself.

Q. This is the report you gave to the Coroner, is it? A. I will tell you in a moment. That is a report that was made out that night, the night of the autopsy.

Q. Did you make it? A. The Coroner typed it off at my dictation in his office, while I sat beside him and I read the report over to check on it to see whether it was as I stated.

Q. May I have it, please? How long did it take you to determine the cause of death? A. How long?

Q. Yes. A. Well, I first made a general ex-

amination of the external portion of the body, made different measurements of the length of the body, examined the teeth, examined the condition of the muscles, which were in a badly decomposed state; then after that I made an effort to open up the scalp, to dissect it, but in dissecting, in cutting, it was in such a decomposed state, it brushed back. Then I found this marked fracture on the left side, extending upward to the frontal posterior occipital bone, the bone in the back of the head. There was no laceration of the scalp over that point. There was no reason why there would be any external bleeding, because there was no opening in the scalp. But in taking it off the top of the skull, which I endeavored first to do, but the bones finally separted and fell off, and I found the various sutures, I found this evidence, the evidence of it on the inside as well as externally, and for an area, I would say, two inches in diameter around this centralized point where this fracture radiated from was an area of decomposed blood clot.

The brain substance itself was just past doing anything with, it was in the form, I would say of almost, well, probably a thick soup. We poured it out onto a table and made a very thorough examination of the entire contents of that brain, put our hands through it with gloves of course, and hunted very carefully for anything that might have been in that brain substance, and we also examined carefully the inner structures of the skull after we got the brain out.

The only thing I found was that in a hole on the opposite side of the head about an inch posterior, I think, it was about an inch posterior to the right ear, an opening into the skull about close to a half an inch in diameter, an irregular rounded hole.

Now, do you want me to describe the loss of these various organs, Mr. Reilly? I can tell you them, I think I have them right in my mind—the left foot was gone from the knee down; the both hands were gone.

Q. No, I am only talking about organs from which you could determine a cause of death. A. The organ I determined the cause of death on was this marked fracture of the skull which satisfied me from my experience that that was the cause of death.

Q. Well, now, I want to know how much experience you have had with children two years of age, how many children two years of age that you ever treated for fracture of the skull, if ever. A. I can't base my opinion on two year old children, that is impossible.

Q. That is what I am talking about. A. That is almost impossible, I have seen scores of fractures.

Q. On children two years old? A. No, sir, I can't specify a two year old child.

Q. What is the general characteristics, if you know, of the skull of a child, as to its thickness and pliability when the child is born? A. The pliability is quite free. The thickness is not very much. I think—I can't tell you its accurate thickness, but I think if I said an eighth of an inch it would cover the thickness of the skull bones.

Q. Quite true. And the skull of a child is very pliable, soft, and elastic, isn't it? A. You are right.

Q. And gives with pressure? A. It does.

Q. So that doctors have been known, after birth, for at least a year after birth, to be able to shape the head of a child? A. Well, I don't think I would want to go quite a year at shaping any child's head. I might see it within a few

days. In the first place, they don't do those things; it is not wise to—

Q. You never heard of it, did you? A. I have heard of it, and it is absolutely all wrong to try to shape the child's head at that time.

Q. In your opinion, it is all wrong? A. I have got a fairly good opinion on it. I think I am right about it anyway.

Q. That is your opinion? A. Yep.

Q. A child two years of age—its skull would not be as brittle as a child of ten? A. No, of course not.

Q. Or a man of thirty? A. You are right.

Q. As we grow older, the skull becomes more brittle, is that correct? A. You are right.

Q. And easier to fracture? A. Of course.

Q. Is that correct? A. Yes, sir.

Q. Now is there such a thing, Doctor, as bleeding after death? A. For the first few moments there is the gravitation of blood from vessels, but after—it takes about three minutes to four minutes for the blood stream, for the blood that has flowed out to become more or less of a jelly type. I would say three to six minutes would cover the jellying of the blood. Then after that, as the serum flows out, and then eventually in the course of an hour or two, you will begin to get the strict clotting of the blood. But the blood will flow just for a few moments as it gets into this jelly shape and then is not able to flow. It can be shaken out but it will not flow.

Q. How long in your opinion would a child two years of age after death, how long would it be before rigor mortis would set in? A. Well, that depends on so many things. It depends upon the surroundings, the temperature of the room, the cause of death. Sudden deaths produce rigor mortis a little earlier than slower deaths.

Q. Let's take rigor mortis out on land around Hopewell. A. Well, I should judge that the child's rigor mortis—

Q. Well— A. Do you want to say something?

Q. A child that age. A. A child that age? I would say—

Q. Two years. A. I would say that rigor mortis would set in within, under those conditions, from 18 to 24 hours.

Q. How long in your opinion would it take for a child, dressed as the body of this child was dressed, during the month of March, 1932, exposed to the elements, to die of exposure? A. Well, just what temperature are you speaking about? March can have various temperatures. I have seen it quite warm in March.

Q. You are familiar, are you not— A. I have —I live right down here.

Q. —with the usual temperatures? A. Do you mean average temperature?

Q. Yes. A. Well, say an average temperature of .32.

Q. Yes. A. I'd say a child of that age would be very apt to die of exposure within 18 to 20 hours.

Q. And let's assume that the child was suffering from throat affection or some chest condition; congestion, upon which it was necessary to rub Vick's, and to put two extra shirts to keep it warm: would such a condition of the chest, a child two years of age, lower its resistance? A. Any ailment would lower its resistance, any sickness it might be having.

Q. Well, wouldn't it be more susceptible in a child of two than it would in an older person? A. What do you mean by "susceptible"?

Q. Wouldn't the child be more susceptible to death with a bronchial or throat or lung condition

if exposed to the elements than an older person? A. Well, I don't know as it would. We take children with pneumonias and put them in open air rooms with the temperature even below freezing.

Q. Yes, but you keep them covered. A. Have our nurses sitting there with fur coats on to keep from freezing, themselves, and the child inhales the air. I don't care about the covers. It is the air gets into the lung, that is all.

Q. I am talking about the exposed body of the child. A. That is another proposition. You were talking about—if I am right—about the lung condition and not the exposed condition of the child entirely.

Q. Yes. A. Of course, the exposed condition—

Q. An exposed child suffering from lung condition. A. It depends on the lung condition. If it just had a little bronchial irritation, I don't think that would have any particular bearing on it. If it had pneumonia it would have, probably, a marked bearing on it.

Q. Let's assume the child was healthy and was exposed. Wouldn't it develop pneumonia, in your opinion? A. That readily?

Q. Yes. A. No, not necessarily.

Q. Within 12, 14, or 24 hours? A. It would depend much— Of course, you have got to go into so much detail. If the child was running a temperature, the probabilities are it could withstand that temperature for quite a little while until the temperature dropped below normal, which would create a loss of resistance immediately and subject the child to a great many things.

But it could develop a pneumonia, of course it could, there is no question about that. The child could develop it in its own home in a beautiful room with nice temperature, well taken care of.

Q. I am talking about out on the Hopewell terrain, not the home. A. I am talking about both places, it could get pneumonia in both places.

Q. It would die quicker out exposed. A. I judge it would, if it was out in the open it would probably die a little more readily.

Q. It had no medical attention— A. It would die probably as the result of exposure and lack of attention.

Q. Did you see this hole in the skull? A. This one on the right side?

Q. Yes. A. Yes, sir.

Q. Did you not determine the cause of death the first night to be a bullet hole until you found out a policeman had accidentally poked a stick in there? A. I never determined the cause of death as a bullet wound at any time anywhere, I made the statement in order to describe the hole that it was a rounded irregular hole, had the appearance of a bullet hole. That is the statement but that was merely a descriptive statement to give some thought as to the nature and the shape of the hole. I couldn't very well say a poker or an ice pick and describe that, because bullet holes of the head are more common and would be more descriptive than the other statement.

Q. And unless the bullet went through the head it would be found somewhere in the interior, the bullet? A. Well, if the bullet went into that hole it would never be found in the head, for a bullet the size of that hole would just blast the other side of the head right out.

Q. That is what I say. A. So you wouldn't have found it.

Q. That is what I say, if the bullet went in the head and went through the head, it wouldn't stay in the head, it would blast the other side out? A. Yes, certainly, you are right.

Q. Well, you recall this evening, do you, that you made the autopsy? A. Well, yes, I have a fairly—

Q. About what time was it? A. That I made the autopsy?

Q. Yes. A. I arrived there, I should judge, near seven o'clock, in that neighborhood, probably 6:45, seven o'clock; proceeded to do the autopsy, I think we spent an hour and a half in our efforts with what we had left to work upon, it took us about that time.

Q. Did any other doctor assist you? A. No, I had no other doctor.

Q. Did you know that Dr. Gettler, the toxicologist and pathologist of New York had been summoned to assist you in making this autopsy? A. I never heard of it before.

Q. You know Dr. Gettler? A. I don't know him, no.

Q. New York City toxicologist? A. No.

Q. Never heard of him? A. No, I don't—

Q. Never heard of him? A. I don't know, I may have heard of him, but I made no special notation of Gettler, so I rather say I don't know him.

Q. Were you responsible for the movietone people and the movie people making a picture of this child at the autopsy? A. No.

Mr. Wilentz: Just a minute, Doctor.

The Witness: I can answer that, if you want my part of it.

Mr. Wilentz: All right.

A. We didn't allow anyone to see that child. We didn't give any orders that anybody could

see it. The Coroner himself took special care to permit—to prevent people from getting in. We even called the police force in attendance, and asked them to keep everybody out. If there were any pictures made I didn't know it.

Q. Is your recollection very good about this? A. Exceptionally good about that.

Q. Now, do you know that pictures were taken, not moving pictures, but still pictures by movie cameras that night while you were there? A. I heard while I was in the office of the Coroner that some of the boys from the press made an effort to get into the building in order to take those pictures, and I immediately said "Call the police and prevent it." And from that time on I presumed it was being taken care of and no one was getting in there. If they got in there it was not with my knowledge, and I don't know whether they got in or not.

Q. Don't you know that they set up a regular moving picture studio, the same as they have here, with these lights all around the room, with your permission, that night? A. No, siree, not that time or any other time; and I don't intend to be blamed for that sort of a proposition. I wouldn't have allowed it, I didn't allow it, and I didn't even know it occurred.

Q. What instruments did you bring with you from your office to perform the autopsy? A. We didn't bring any from the office. We have a set of them, furnished by the County, down there.

Q. What instruments have you there? A. Oh, we have scalpels, forceps, costotomes, probes, scissors, saws—the usual routine set-up that we have for post mortem work.

Q. Now as you had this little body in front of you from which some of the hair had fallen off

the back of the head—am I correct? A. You are right, sir.

Q. And you said you put your finger down the child's throat. A. Yes, sir.

Q. What organs are down the throat? A. Trachea, and the larynx, pharynx, tonsils.

Q. Well, they were missing, weren't they? A. No, they were decomposed, they were not missing. The larynx and treachea were still there.

Q. What do you call the thor— A. Thoracic cavity, you are referring to?

Q. Thoracic organs. A. Why, the lung and heart—the lungs, rather and heart. The lungs in this case were absent, they were not there.

Q. Well, now, I just want to know what you did with the skull. Was the skull connected with the rest of the vertebrae to the body? A. Yes, sir.

Q. That had not been disconnected? A. Had not been separated in any way.

Q. Had not been disconnected in any way? A. Not at all.

Q. Nor separated? A. It had not.

Q. The face had turned a brown color, had it not? A. Rather a dark color when I saw it, sir.

Q. The eyes were missing? A. No, they were there, but they had softened up considerably.

Q. Now I want you to tell me, please, just what you did to the skull. A. Well, the face— I presume you include in the skull the face as a part of it?

Q. Yes. A. I first counted the teeth. I don't know whether that was just first or not, but that is one of the things.

Q. Were there any bruises on the face? A. There was no evidence of bruises. There was an evidence of this discoloration due to decomposition. The facial muscles were very much still in what I would consider a natural formation,

although discolored; the eyes were softened, that is, when opening the lid, the eyes had a different appearance than a normal eye. I don't know how I could describe it to make the jury understand it, but we call it a softened condition of the eye. The lips were swollen and slightly everted, the teeth were showing, were quite prominent due to this elevation of the lips.

Q. Which is natural in death? A. Well, in this case I think it was due to the fact that there was some distinction of the parts, probably due to decomposition as well.

Q. There was no doubt in your mind but what you were examining the Lindbergh baby, was there? A. At that time I didn't know. I didn't know at that time whether it was the Lindbergh baby or whose baby. Of course we had our own ideas.

Q. I mean you hadn't been told when you came over there? A. We were told that it was suspected to be the Lindbergh baby. I didn't know at that time.

Q. Had Colonel Lindbergh identified it? A. Not at that time.

Q. Had Betty Gow identified it? A. No, but I called the State Police and requested that Betty Gow come down and see the child to aid us in identification.

Q. Did she come while you were there? A. She came, but I didn't go in the morgue while she was there.

Q. You knew it was a case of very importance? A. We gave that case the same consideration that we give every case. We don't consider it important, we consider the individual, one we consider about as good as another when we come to do our work.

Q. You didn't consider this case important

enough—wait for a question, please. You didn't consider this case important enough to call in some other doctor of standing of either Pennsylvania, New Jersey or New York to join in the certification of the cause of the death? A. No, I didn't think I needed them.

Q. An hour and a half after you looked at the body you determined the cause of death? A. I certainly did.

Q. Where was this blood clot? Point it out on your own head, please. A. About an inch and a half posterior—this is inside the skull, not outside.

Q. You laid the skull open? A. We laid the skull open by endeavoring first to saw off the top of the skull, but then it began to come apart of its own.

Q. The skull was so pliable in a child of that age— A. That it broke off.

Q. —that you could practically open it like an orange, could you? A. At that time?

Q. Yes, certainly at that time. A. Yes, sir; decomposition had set in. Do you want me to answer this other question or do you want me to wander off into this new thing?

Q. No, we won't wander off at all. We will go back into whether or not the skull of this unfortunate child at this time wasn't so pliable because of its youth and exposure to the elements to practically open it like an orange. A. Yes, you could; it fell apart.

Q. Yes. A. Absolutely.

Q. And you don't want to convey to the jury that you had to use a saw, the same as you would do on my skull or on yours? A. We started to, but we found the bones were beginning to separate, so we decided—

Q. And you decided that was a good autopsy,—

to use a saw on a child? A. I certainly considered I did a good job.

Q. In your opinion, you did a good job? A. I am well satisfied with it.

Q. Yes, and well satisfied with yourself? A. Not at all.

Q. Now, I want to know whether or not you photographed the blood clot? A. We did not. My memory still holds to me, just as I saw it on that occasion.

Q. Didn't you think that at some time it might be possible, in view of the fact that it was afterwards determined, before this child had been sent for cremation, you knew it was the Lindbergh child, didn't you? A. That was taken—

Q. Yes. A. That was taken away, I did, yes.

Q. Yes. Didn't you think it important enough to preserve the evidence by picture, of what you found, didn't you? A. I felt my memory was just as good as the picture on that.

Q. There had been nobody arrested, had there? A. For this crime?

Q. At that time. A. At that time?

Q. Yes. A. Not to my knowledge.

Q. And did you take into consideration the fact that possibly before a suspect would be arrested you might die? A. I didn't give that a thought.

Q. Did you consider the fact that if you did die before an arrest was made no one could testify to the autopsy from a medical viewpoint?

Mr. Wilentz: Well, now, I don't know that that is the fact, if your Honor please.

Mr. Reilly: It is quite apparent it is the fact, sir.

Mr. Wilentz: I will withdraw it and let him answer. It will be shorter.

A. I don't know the law, to tell you the truth. I don't know how you work it. You fellows have got it around some way before you get through with it. (Laughter.)

Q. Just a moment, Doctor. You want it to appear now that you are ignorant of the law? A. I am ignorant of that part of the law. I really don't know what would happen if I did die.

Q. You have been performing autopsies for the Government—and by the Government I mean the State of New Jersey and a certain County—for many years? A. Yes, sir.

Q. And you have been testifying in court? A. Many times.

Q. On homicide cases and on other cases? A. You are right.

Q. And you say from the number of times and the years that you have testified, that you do not now know the law applicable to the preservation of a physician's testimony, a physician in your official capacity? A. All I know is I file a report. The report is accepted, I presume, as authentic. I give that to the prosecutor of my County, if it occurs there or, in this case, to the State, and that is what I consider the evidence that I am going to abide by when I testify. Now, if I should die—I don't want to appear ignorant of the law, but I am ignorant of that fact,—I don't know what would happen.

Q. Did any official, Colonel Schwarzkopf, or any official connected with this case, suggest that night that it might be advisable to not only have your findings but the findings of another physician? A. I don't recollect the Colonel speaking

to me about that. At least, I am quite sure he didn't.

Q. And you say there is no photograph in existence except your recollection and your memory of this blood clot? A. Absolutely. To my knowledge there isn't.

Q. Now, what is the medical term for this blood clot? A. That is what it is: coagulated blood.

Q. What is a thrombosis? A. That is a clot in a vessel.

Q. Yes. And a person or a child suffering from a clot in a vessel of the body can die, can they not, when that clot reaches the brain? A. You are right, sir.

Q. And you never saw this child, as you have testified, in life? A. Never in my life; no, sir.

Q. And don't know what it was suffering from? A. Haven't the slightest idea.

Q. If it was suffering from anything. A. I don't know, sir.

Q. So you came to your conclusion that because there was a clot on the brain and there were evidences of a cracked skull that the child died of a fractured skull? A. Based my conclusions on those facts.

Q. On that, is that right? A. On those facts, yes.

Q. Yes. Doctor, is it true that blood decomposes more rapidly than any other portion of the body or changes its chemistry? A. It is one of the softest tissues we have and, of course, the density of the tissue is in proportion to the decomposition. The softer it is the more quickly it decomposes. A blood clot I can safely say would decompose quite rapidly.

Mr. Wilentz: I suggest that we put the report in evidence.

Mr. Reilly: I assumed you were going to do it. It is part of your record.

Mr. Wilentz: I wasn't going to, but as long as it has been used, if there is no objection, I will offer that report made that night.

The Court: If there is no objection it will be admitted.

(Medical report received in evidence and marked State Exhibit S-167.)

Mr. Wilentz: That is all, Doctor, and thank you very much.

The Witness: You are welcome.

Mr. Hauck: Stuart W. Cragin.

STUART W. CRAGIN, sworn as a witness on behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you live, Mr. Cragin? A. Greenwich Village, New York.

Q. And by whom are you employed? A. J. P. Morgan & Company.

Q. And were you employed by the Morgan Company during the months of March and April, 1932? A. I was.

Q. And did your company at the request of Colonel Lindbergh on March 22nd, 1932, prepare two bundles of money, two packages of money? A. We did.

Q. I show you State's Exhibit S-99. What is

that book? A. This is the original record of the listing of the package of $50,000 of currency that was prepared by our office.

Q. Was this book prepared under your supervision and under your direction? A. It was.

Q. By whom? A. By about twenty of our employees including myself.

Q. After the package of money was prepared on the 22nd of March, what was done with it? A. It was put in the safe of the general manager's office and kept in there overnight.

Q. Mr. Cragin, what happened the next morning with the two parcels of money? And I am speaking now of the fifty thousand package and the twenty thousand package? A. Mr. Henton and I took the two packages up to the Fordham branch of the Corn Exchange Bank the following morning, that was the 23rd of March. When we got there we had a call from the office saying that there had been an error in the amounts of the denominations so we decided rather than try to make any substitution there we would bring the packages back to the office which we did along with the packages which were up there of unlisted money which we had substituted.

Q. Now when the packages were returned to your company, what was done with them? A. We made—we withdrew $5,000 in ten dollar bills and added $5,000 in twenty dollar bills, after taking a listing of the bills which we were adding.

Q. And was the change made in this book, marked Exhibit S-99? A. It was.

Q. So that this book, S-99, in evidence for the State, is a true copy of the listings of the $50,000 that was again taken back to the bank? A. That is correct.

Q. Now after that was done, what happened to

the package? A. In the afternoon I turned over the two packages to Mr. Hinton and Mr. Reynolds.

Q. Now some time between March the 23rd and April the 2nd did you call at the Fordham branch of the Corn Exchange Bank? A. I did.

Q. And what did you do there? A. I went there with Mr. Manville, Jr. We received two packages from Mr. Schneider, the manager, and took those two packages to Mr. F. D. Bartow's house at 57 East 66th Street, New York City.

Q. Who was Mr. Manville? A. He is the head of our Credit Department.

Q. And who is Mr. Bartow? A. He is one of the members of the firm.

Q. Of J. P. Morgan & Company? A. Of J. P. Morgan & Company.

Q. Now, when you took the packages from the bank to the Bartow home, what did you do with them? A. When I arrived there Mr. Bartow's butler opened the door and I went up to Mr. Bartow's bedroom with him and I put the packages in his closet. His butler then locked the closet up and I left.

Q. When was the next time that you went to the home of Mr. Francis Bartow? A. On Saturday morning April 2nd.

Q. And who went with you? A. D. R. Bowen, William Echtmeyer, and H. A. Watkins.

Q. And who are these gentlemen? A. Employees of the office.

Q. Of the Morgan Company? A. Yes.

Q. Where is Mr. Watkins now? A. He is a partner in Morgan & Company, Paris, resident abroad.

Q. He is now in Paris? A. Yes, that is right.

Q. And what did you do at Mr. Bartow's home on April 2nd, Saturday, April 2nd? A. I went up to this Mr. Bartow's bedroom and in the

closet, with his butler, the closet was opened and I was given two packages. We took them downstairs to his sitting room and opened the packages, recounted the money, sent for the head of our mail room, Mr. Helmich, who came up from down town and rewrapped the packages in the same way in which they had been done up before.

Q. Do you mind speaking out so the jury and the Court can hear you? A. Yes, excuse me.

Q. Now, will you describe how the money was recounted at that time? A. We recounted the money in the denominations in which they were.

Q. Were the denominations—was the money that you counted the same money that you originally sent to the Corn Exchange Bank from Morgan & Company? A. To the best of my knowledge it was.

Q. Were the packages of the same denomination? A. Identically the same.

Q. What did you do after the packages were rewrapped by Mr. Helmich? A. I accompanied Mr. Tring upstairs, put the packages in the closet, he locked the door and we left.

Q. Who is Mr. Tring? A. Mr. Bartow's butler.

Mr. Hauck: You may cross-examine

Mr. Reilly: This is merely a chain in the showing of certain money. There will be no cross-examination.

The Court: There has been a book used in the examination and counsel seemed to refer to it as if it were already an exhibit. Is it an exhibit?

Mr. Hauck: Yes, your Honor. It was placed in evidence by stipulation of the

opposing counsel by Mr. Frank Wilson. It is No. S-99.

The Court: Very well, that seems to be all, sir.

Mr. Hauck: Mr. Longstreet Hinton.

LONGSTREET HINTON, sworn as a witness in behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside, Mr. Hinton? A. New York City.

Q. And you are the Mr. Hinton that has been mentioned by Mr. Cragin as being a fellow employee of J. P. Morgan & Company? A. Yes, sir.

Q. Did you go with Mr. Reynolds on the 23rd day of March—I mean with Mr. Cragin on the 23rd day of March—to the Fordham Branch of the Corn Exchange Bank with two packages? A. Yes, sir; I did.

Q. And you were also the man that returned with the packages to the bank? A. In the afternoon, yes, sir.

Q. And were you present when the substitution was made? A. Yes, sir.

Q. I show you S-99. Will you tell me whether or not that contains the true listing of the bills that were placed in that package that was taken to the Corn Exchange Bank. A. Yes, sir; it does.

By the Court:

Q. Does that contain a schedule of all of the bills in both packages? A. No, sir; only the 50,000.

The Court: Only the 50,000.

Mr. Reilly: Would your Honor like to see it (tendering book).

The Court: "I don't think I will look at it, Mr. Reilly.

By Mr. Hauck:

Q. Were you also present in Mr. Bartow's house on April 2nd, when the money was recounted? A. No, sir.
Q. You were not.

Mr. Hauck: That is all, Any questions, Mr. Reilly?

Mr. Reilly: No.

Mr. Hauck: Thank you.

Mr. Reynolds.

STEPHEN C. REYNOLDS, sworn as a witness in behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside, Mr. Reynolds? A. New York City.
Q. And you also are an employee of J. P. Morgan & Company? A. I am.
Q. And you were employed by that firm on the 23rd day and during the month of March 1932? A. I was.
Q. Are you the Mr. Reynolds that Mr. Cragin spoke of as delivering with Mr. Hinton two pack-

ages to Mr. Schneider, the cashier of the Fordham Branch of the Corn Exchange Bank? A. I was, yes.

Mr. Hauck: Any questions, Mr. Reilly?

Mr. Fisher: No; no questions.

Mr. Hauck: Thank you.

Mr. Hauck: Mr. Henry E. Schneider.

HENRY E. SCHNEIDER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside, Mr. Schneider? A. New York City.

Q. And where are you employed? A. Corn Exchange Bank Trust Company, Fordham Branch.

Q. What is your title? A. Manager.

Q. Were you manager of that bank during the months of March and April, 1932? A. I was.

Q. And did a Mr. Hinton and another gentleman from Morgan & Company give you anything on the 23rd of March, 1932? A. They did.

Q. What did they give you? A. Two packages.

Q. And what did you do with those two packages? A. I placed them in a book vault.

Q. In your bank? A. Yes, sir.

Q. Who had access to that book vault besides you? A. My assistant manager.

Q. What is his name? A. William F. Wilkinson.

Q. Now some time between March the 23rd and

April the 2nd, did Mr. Cragin call again at your bank? A. Yes, sir, towards the end of March.

Q. What happened when he called? A. I returned those two packages to him.

Q. To Mr. Cragin? A. To Mr. Cragin.

Q. Were the packages in the same condition when you returned as they were when they were handed over to you originally by Mr. Hinton? A. Yes, sir.

Q. Nobody was trustee of the vault and had access to the vault besides you and Mr. Wilkinson is that right? A. No, sir.

Mr. Hauck: That is all. Any questions?

Mr. Reilly: No.

WILLIAM F. WILKINSON, sworn as witness on behalf of the State.

Direct Examination by Mr. Hauck.

Q. Where do you reside, Mr. Wilkinson? A. New York City.

Q. Whereabouts in New York City? A. At that time or the present time?

Q. Present time. A. 3640 Bronx Boulevard.

Q. Are you the Mr. Wilkinson that was mentioned by Mr. Schneider as being the assistant manager of the Fordham Branch of the Corn Exchange Bank? A. I am.

Q. Were you working for that bank during March and April— A. Yes, sir.

Q. —in the same capacity in 1932? A. Yes, sir.

Q. Were you present when the two packages were delivered to Mr. Schneider by Mr. Hinton and Mr. Manville? A. Yes, sir.

Q. Were you also present some day between

the 23rd of March and April 2nd when Mr. Cragin and another gentleman called for the packages? A. Yes, sir.

Q. Do you know where the packages were kept? A. Yes, sir.

Q. Where? A. In the book vaults.

Q. Did anybody else have custody or access to that vault besides you and Mr. Schneider? A. No, sir.

Q. Were the packages in the same condition when they were returned to Mr. Cragin as they were when they were originally delivered? A. Yes, sir.

Mr. Hauck: Any questions, Mr. Reilly?

Mr. Reilly: No.

Mr. Hauck: Mr. H. E. Manville.

HIRAM E. MANVILLE, JR., sworn on behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside, Mr. Manville? A. Pleasantville, New York.

Q. And where were you employed during the months of March and April, 1932? A. J. P. Morgan & Company.

Q. Are you the Mr. Manville that accompanied Mr. Cragin to the Fordham branch of the Corn Exchange Bank some time between March 23rd and April 2nd and obtained two packages? A. Yes, sir.

Q. What did you and Mr. Cragin do with those two packages? A. We took them down to Mr. F. E. Bartow's house, 67 West 66th Street—

Q. Will you speak up, please. A. We took this down to Mr. F. E. Bartow's house at 67 West 66th Street and handed them to Mr. Cragin, Mr. Bartow's butler, and accompanied him upstairs to Mr. Bartow's bedroom and saw him put the packages in the closet, lock the closet, and then we left the house.

Q. Then, you left the house? A. Yes.

Mr. Hauck: Any questions, Mr. Reilly?

Mr. Fisher: No questions.

FRANCIS D. BARTOW sworn as a witness in behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside, Mr. Bartow? A. New York City.

Q. And are you connected with the firm of J. P. Morgan & Company? A. I am a partner in that firm.

Q. Partner in that firm. You were also connected in the same capacity during the months of March and April, 1932? A. Yes.

Q. Did Mr. Cragin and Mr. Manville call at your home some time between March 23rd and April 2nd, 1932? A. They did.

Q. What did they have with them? A. They had two packages containing currency.

Q. And what was done with those two packages of currency? A. At my direction they delivered them to my butler named Tring.

Q. Were you present when the butler received the packages? A. No, I was in my office.

Q. Were you also present on April 2nd, 1932, when the money was recounted? A. I was not.

Q. You were not. Were you present on April 2nd when the money was delivered to Colonel Lindbergh, Colonel Breckinridge, and Mr. Reich? A. I didn't deliver any money to Colonel Lindbergh.

Q. You were not present when that was done? A. I delivered it to Al Reich.

Q. To Al Reich. Well, will you tell us what happened at that time, please? A. In the morning I had received an intimation that probably that money would be disposed of in the course of the day, and as a precaution, as it had been out of my possession for some time, days, as a precaution I sent Mr. Cragin with a group of men to my house to have it counted in the morning, instructing my butler to deliver it to him, and to see that it was put back in the closet where it was locked up. Mr. Cragin, when he was finished, reported that the count was correct and that the money had been delivered to my butler.

Q. You say that the money was out of your custody. Whose custody was it in during that time? A. The Corn Exchange Bank.

Q. The Corn Exchange Bank? A. Yes.

Q. Now was it out of your home from the time that it was delivered by Mr. Cragin and Mr. Manville a few days before April 2nd? A. Yes, in the Corn Exchange Bank.

Q. And was it out of your home from the last time it was delivered to your home up until April 2nd? A. No.

Q. During that time I take it it was in the custody of your butler and locked in your closet in your home? A. It was.

Mr. Hauck: Any questions?

Mr. Fisher: No questions.

By Mr. Hauck:

Q. One more question: Did Colonel Breckinridge call at your home also on April 2nd? A. Colonel Breckinridge called at my house, introduced me to a man by the name of Al Reich, requested that—he stated it was Colonel Lindbergh's request that I deliver the money to him. In order to verify that I called Colonel Lindbergh on the phone, who authorized me to make the delivery to him, and I did it.

Q. And you were authorized by Colonel Lindbergh? A. Yes.

Mr. Hauck: No further questions.

THOMAS TRING sworn as a witness in behalf of the State.

Direct Examination by Mr. Hauck:

Q. Mr. Tring, where do you reside? A. 57 East 66th Street, New York.

Q. Will you speak out so the jury can hear you, please. A. Yes, sir.

Q. That is the home of Mr. F. D. Bartow? A. Yes, sir.

Q. You are employed by Mr. Bartow as a butler? A. Yes, sir.

Q. Were you so employed during the months of March and April, 1932? A. Yes, sir.

Q. Do you recall some time between March 23rd and April 22nd that Mr. Cragin and another gentleman called at the home of Mr. Bartow? A. Yes, sir.

Q. What happened when they got there? A. They delivered to me two packages and I took

them up to Mr. Bartow's bedroom and I put them in the closet there, and I locked them up.

Q. Who was present when you locked them in the closet? A. Mr. Cragin.

Q. And what did you do, who had custody of the key and custody of the closet, rather? A. I did.

Q. Did anyone else during that period have custody of the closet at all? A. No, sir.

Q. And were you also present on April the 2nd, 1932, when Mr. Cragin returned to Mr. Bartow's home? A. Yes, sir.

Q. What happened that time? A. I took Mr. Cragin up to Mr. Bartow's room and gave him the packages.

Q. And he took the packages downstairs? A. And when they were finished with them they gave them back to me and I put them back in the closet again.

Q. On April the 2nd? A. Yes.

Q. Was the key ever out of your possession? A. No, sir.

Q. When were they again taken from the closet finally? A. The same day that they were counted. Mr. Bartow later on in the afternoon asked me for the packages, and I never saw them after.

Q. You delivered them to Mr. Bartow? A. Yes.

Mr. Hauck: Any question, Mr. Fisher?

Mr. Fisher: No questions.

Mr. Hauck: Now, if the Court cares to take a recess, I have just two or three—

The Court: Yes, we will have to take a recess now. I will ask the people in the

courtroom to remain just where they are until the jury has passed out.

(At 12:32 p. m. the jury retired.)

The Court: The prisoner is remanded to the custody of the Sheriff and he may retire with his guards.

(The prisoner retires.)

The Court: The Court will now take a recess until 1:45 p. m.

(At 12:35 p. m. a recess taken until 1:45 p. m.)

AFTER RECESS.

(1:49 p. m.)

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

Mr. Hauck: Daniel R. Bowen.

DANIEL R. BOWEN sworn as a witness by the State.

Direct Examination by Mr. Hauck:

Q. Mr. Bowen, where do you reside? A. 601 West 188th Street, New York City.

Q. Were you employed by J. P. Morgan Company during the month of March, 1932? A. I was.

Q. Did you go to the home of Mr. F. D. Bar-

tow on April 2nd, 1932, with Mr. Cragin and some other gentlemen? A. I did.

Q. What did you do there? A. We counted money there that was in some packages.

Mr. Hauck: Any questions?

Mr. Reilly: No.

Mr. Hauck: All right. Thank you.

WILLIAM ECHTERMAUER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside? A. Lynbrook, Long Island.

Q. Were you also employed by J. P. Morgan & Company during the months of March and April, 1932? A. I was.

Q. Did you go to the home of Mr. F. D. Bartow on April 2nd of that year? A. Yes, sir.

Q. What did you do? A. We counted the money in two packages.

Q. Was the money also re-wrapped at that time? A. Yes.

Mr. Hauck: Any questions?

Mr. Reilly: No.

JOHN HELMICH, sworn as a witness on behalf of the State.

Direct Examination by Mr. Hauck:

Q. Where do you reside, Mr. Helmich? A. Mount Vernon, New York.

Q. And were you employed by J. P. Morgan & Company during the months of March and April, 1932? A. I was.

Q. In what capacity? A. Head of the Mail Department.

Q. And were you called to the home of Mr. F. D. Bartow, on April 2nd? A. I was.

Q. Tell us what you did when you got there. A. I received a telephone call from Mr. Cragin who asked me to bring up some wrapping paper and some twine, to Mr. Bartow's house, and upon arriving there I was escorted to Mr. Bartow's home in the rear, the first floor rear, and thereupon I found a package on the table, which Mr. Cragin asked me to wrap. I wrapped it up, mucilaged both ends, tied it up with white twine.

Q. What happened to the package? Anything, in your presence? A. Why, I left it in the custody of Mr. Cragin and Mr. Watkins.

Q. You didn't know at the time what was in the package? A. No, sir.

Mr. Hauck: Any questions, Mr. Reilly?

Mr. Reilly: No.

Mr. Hauck: Thank you, Mr. Echtermauer.

Mr. Wilentz: If your Honor please, we are eliminating, with the very gracious consent of the defense, the calling of some 25 witnesses, being the men who took down the serial numbers of these various bills, in the employ of Morgan & Company and, in lieu of their testimony, as has already

been indicated to your Honor, we have presented, and what is now in evidence, a book with the serial numbers, and it is agreed that the money referred to by the various witnesses, which went to make up this ransom package of money, or packages, specifically the $50,000 given to Dr. Condon, and which he claims to have given to the defendant, that the bills referred to in the exhibit—what is the number?

Mr. Stockton: S-99.

Mr. Wilentz: —that the serial numbers reduced in Exhibit S-99 were the serial numbers on the bills referred to by the witnesses of Morgan & Company, and which went to Colonel Breckinridge or Colonel Lindbergh or Mr. Reich, and eventually to Dr. Condon.

Mr. Reilly: That is right.

Mr. Wilentz: We want to acknowledge our appreciation at this time, if your Honor please, of the delightful cooperation on the part of the defense.

Mr. Wilentz: Mr. John Joseph Lyons.

JOHN JOSEPH LYONS, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Where do you live, sir? A. 1916 Third Avenue.

Q. And, just turn around a little bit, raise

your voice a little bit, so that the last juror back here may hear you. In the Bronx? A. No, sir.

Q. Where? A. Yorkville.

Q. I can't hear you. A. Yorkville.

Q. And where did you work in the year 1934? A. 127th Street and Lexington Avenue.

Q. For whom? A. Warner-Quinlan.

Q. Now, particularly in the month of September, 1934, were you working for that concern? A. Yes, sir.

Q. Did you see Bruno Richard Hauptmann some time in 1934? A. Yes, sir.

Q. When did you see him? A. Ten o'clock in the morning.

Q. What day? A. September 15th.

Q. September 15th? A. Yes, sir.

Q. And what was the occasion? A. A dark Dodge sedan pulled in on the station and pulled to an ethyl pump.

Q. Drove to an ettel pump? A. Ethyl.

Mr. Peacock: Ethyl.

Q. Ethyl? A. Ethyl.

Q. Yes. A. Lyle grabbed the hose.

Q. Lyle, you say Lyle grabbed the hose? A. That is the manager.

Q. Mr. Lyle was the manager? A. Yes, sir.

Q. At that time, of the station that you are talking about? A. Yes.

Q. Who else worked there besides you and Lyle, anybody? A. Just the two of us.

Q. All right. You say Lyle grabbed the hose? A. Yes, sir.

Q. The gasoline hose, I suppose. A. Yes.

Q. What did he do? A. He served him five gallons of gas.

Q. Mr. Hauptmann? A. Yes.

Q. Then what happened? A. Well, I checked the water and wiped the windshield, then I come around the back of the car and by that time he was finished pumping the gas and I hung up the hose.

Then Lyle continued to get the money for the five gallons of gas.

Q. Did he get money for five gallons of gas? A. Yes, sir.

Q. What did he get? A. A ten dollar gold certificate.

Q. Did you hear any conversation between Mr. Lyle and Mr. Hauptmann the defendant?

Mr. Reilly: I object to it.

Mr. Pope: We object to it, your Honor please. We insist that this evidence has a tendency to prove, perhaps the commission of another crime, that it is entirely too remote, that it has not yet been connected with the kidnapping, nor is there any evidence as yet in this case to connect the defendant now on trial either with the kidnapping or with the money or the crime that is charged against him.

The Court: Before the Attorney General replies to that, I would like to have the question read to me.

(The reporter read the preceding questions and answers as follows:

"Q. What did he get? A. A ten dollar gold certificate.

"Q. And did you hear any conversation

between Mr. Lyle and Mr. Hauptmann, the defendant?''

The Court: Well, I am inclined to think, even without hearing from the Attorney General, that as the case stands that testimony is proper.

Mr. Pope: May I have an exception?

The Court: You may have your exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Wilentz:

Q. Answer the question, sir. A. I heard—

Q. Will you please take your hand away and sit up and talk out loud, please. A. Lyle asked Mr. Hauptmann if— He says, ''You don't see many more of them.''

Q. Who said that, ''you don't see many more of them''? A. Lyle.

Q. Lyle. What did Hauptmann say? A. He says, ''I only got a hundred more left.''

Q. All right. Now, after Hauptmann said, ''I only got a hundred more left,'' what then happened? Did he go away? A. He give him change and got in the car and went away. Two of us—

Q. Hauptmann got in the car, you mean, do you? A. Yes.

Q. And he started driving away? A. Two of us—

Q. All right; what did he do? A. Two of us walked away and walked in the office and Lyle wrote the license plate number down.

Q. Lyle wrote the license plate number down; on what? A. On the ten-dollar gold certificate.

Q. All right. Now take a look at this gold certificate and tell me, with some numbers in pencil on there, and tell me whether that is the gold certificate and whether that is the paper upon which Lyle wrote that number (showing to the witness)? A. That is the bill.

Q. That is the bill. Is that the bill that he got from Bruno Richard Hauptmann, the defendant in this case? A. Yes, sir.

Mr. Wilentz: I offer it in evidence.

Mr. Pope: We object to the introduction of the bill in evidence for several reasons. In the first place, it is in no way connected with the crime now charged against this defendant. Bruno Richard Hauptmann is in no way connected with the crime now charged against him. It has a tendency to prove the commission of another crime, which is not within the category of exceptions where proof of that kind may be introduced, such as for the purpose of proving motive, indentity, and so forth; the exceptions are very well known to the Court. We further object to it upon the ground that there is pending in the courts of New York against this defendant an indictment for extortion. We also object to it because it is remote, and it is not calculated to prove the crime laid in this indictment against this defendant.

Mr. Wilentz: Your Honor—

Mr. Pope: We object to it further, because it is incompetent, irrelevant and immaterial.

Mr. Wilentz: If your Honor please, before your Honor rules, may I be permitted a word in answer?

The Court: Yes.

Mr. Wilentz: Are you through?

Mr. Pope: Yes.

Mr. Wilentz: And the purpose of the answer, if your Honor please, is not that we feel it necessary on this question, but I cannot permit, on the part of the State, to have counsel make a summation speech of that kind, and therefore I want to say that it is our belief as against his that we have already proven that this defendant is guilty of the crime charged in this indictment, murder. That is our contention. The specific question, however, as to this bill is similar to the question just a moment ago ruled upon by your Honor, and if the other were admissible, then this certainly is admissible.

The Court: Well, this relates to the admission of the bill in evidence, does it not?

Mr. Wilentz: Yes, sir.

The Court: I am inclined to think, Mr.

Pope, that the bill should be received in evidence and it will be marked.

Mr. Pope: May we have an exception?

The Court: You may have your exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

The Reporter: Exhibit S-168.

(The ten dollar bill was received in evidence and marked State Exhibit S-168.)

Q. Now, S-168, which is a ten dollar bill which I have just referred to, you finally took that bill, did you not, somewhere? A. I took it to the bank.

Q. What bank did you take it to? A. Corn Exchange at 125th and Park Avenue.

Q. How did you get it from the company? A. I received that bill in my pay.

Q. As part of your pay? A. Part of my salary.

Q. Do you know the name of the teller or the bank to whom you presented it for change? A. Well, I forget his name, I would know him if I seen him.

Q. Did you present it for deposit or did you present it for exchange? A. I had a deposit going over to the bank, I made the deposit.

Q. For the company or for you? A. For the company.

Q. Yes. What did you do with this then? A. And after I made the deposit I got the book back.

Q. Yes. A. I said to the teller—

Mr. Reilly: I object.

Q. Never mind what you said to the teller, what did you do with the bill? A. I checked it with the teller, I asked him a question.

Mr. Reilly: I object.

Q. Never mind what you asked him, did you give him this bill and did he give you another in its place?

Mr. Reilly: Now, I object to that as leading.

Mr. Wilentz: I suppose it is leading, and if counsel objects to it, why, I will withdraw it.

Q. What did you do with this bill at the bank?
A. I got two five dollar bills for it.
Q. Well, why don't you say so?

Mr. Wilentz: That is all.

Cross Examination by Mr. Reilly:

Q. And then you put a claim in for the reward, didn't you?

Mr. Wilentz: I object to the question as not being material to this issue, if your Honor please.

Mr. Reilly: It goes to his motive in testifying.

Mr. Wilentz: Well, if that is of any comfort, I withdraw the objection.

The Court: The witness may answer the question, did you put in the claim for the reward?

A. Yes, sir, yes, sir.

Mr. Reilly: That is all.

Mr. Wilentz: That settles it.

The Court: Mr. Attorney General, will you let me have the exhibit number of that bill, that ten dollar you offered in evidence?

Mr. Wilentz: Yes. Exhibit 168. Is the gentleman from the bank here?

Mr. Peacock: Ozmec.

Mr. Wilentz: Come up, please. And the other gentleman from the bank.

MIRAN JOHN OZMEC, sworn as a witness by the State.

Direct Examination by Mr. Wilentz:

Q. Your first name is Miran? A. M-i-r-a-n.

Q. M-i-r-a-n? A. Right.

Q. You were employed in September 1934 at what bank? A. Corn Exchange Bank, Mount Morris Branch, 125th Street and Park Avenue.

Q. Do you know the gentleman who was just on the stand, Mr. Lyons? A. Right.

Q. Did you in September 1934 receive a ten dollar gold certificate from him? A. Yes, sir.

Q. What did you do with that certificate. A. I put it in the drawer.

Q. What kind of a drawer was it, specially designated for gold certificates? A. It has quite a few compartments where you keep one's, two's, five's, ten's, and twenty's and in the back you have a place for fifty's and hundred's and separate compartment for torn bills, and also a separate compartment for gold certificates.

Q. Did you have a compartment for gold certificates in September, 1934, in the bank in which you are employed? A. Yes, sir.

Q. Did you put the bill that you got from Lyons in that compartment? A. Yes, sir.

Q. And left it there? A. Yes, sir.

Q. Who got the bill from that compartment, if you know? A. Well, I wrapped up the money that night and I surrendered it to the head teller.

Q. Yes. A. And then, Tuesday following, it was discovered by Mr. Strong.

Q. What day was it that you got it? A. On the 15th of September.

Q. You don't know the number of this bill or anything, do you? A. No, sir.

Mr. Wilentz: All right, sir, that is all.

Mr. Strong.

WILLIAM R. STRONG, sworn as a witness on behalf of the State.

Mr. Wilentz: If Mr. Lyons is in the room, I don't want him to leave. I have a question I omitted to ask him.

Direct Examination by Mr. Wilentz:

Q. Mr. Strong, you work at what bank? A. The Corn Exchange Bank & Trust Company, Mount Morris branch.

Q. And you did in September, 1934? A. Yes.

Q. An in connection with your duties there, did you have occasion to inspect gold certificates that had been deposited or left at your bank? A. That was the requirement of every teller.

Q. Will you tell me whether or not this is one of the gold certificates which you found in your bank in September 1934 (showing to witness). A. (After examining booklet) 73976634; that is the bill.

Q. That is the bill, is it? A. That is right.

Q. How do you know it? A. Well, we have a booklet that had been sent to us by the Department of Justice, containing the numbers of the Lindbergh ransom notes. We also have a little chart before us that facilitates the checking of these bills at a moment's glance. I happened to receive this bill in an odd pack that had been made up by Teller Ozmec. It had been made up by him the previous day. In counting down the money I noticed these two gold bills and immediately had reference to the Lindbergh ransom note booklet. One of the bills, of course, was discarded and the other one conformed to the number in the Lindbergh ransom book.

Q. And, of course, having ascertained that, did you notify the authorities? A. I did, through our assistant manager.

Q. Through your assistant manager? A. (Nods affirmatively.)

Mr. Wilentz: We invite the attention of the Court, counsel and jury to the fact that 73976634, serial A, is one of the Lind-

bergh ransom bills on page 72 of State's Exhibit S-99.

The Court: What is the number, Mr. Attorney General, the number of the bill?

Mr. Wilentz: The number of the bill is 73976634, Serial A. That is Exhibit S-168.

The Court: All right.

Mr. Wilentz: And that number corresponds with the first bill listed on page 72 of Exhibit S-99; and for the benefit of counsel, on the printed circular, which I think we gave them for their convenience, it is on page 37, Exhibit S-101; that is the printed list.

By Mr. Wilentz:

Q. By the way, the printed list that you had, was it anything like S-101 (showing to witness)? A. (No answer.)

Q. If you don't recall, say so. A. No.

Q. You have a little special booklet, have you not? A. Yes.

Q. The information from your bank that went to the authorities did not go through you, it went through somebody else, did it not? A. It did.

Mr. Wilentz: All right, sir. Thank you, sir.

Cross Examination by Mr. Fisher:

Q. You simply passed that bill on to your

superior when you detected it was a ransom bill, is that right? A. Yes.

Q. Did you notice anything else about the bill except that it had the ransom numbers? A. No, sir.

Q. That is all you noticed on the bill at that time? A. Yes.

Mr. Fisher: That is all, sir.

Mr. Wilentz: Will Mr. Lyons please come back for one question, if he is here? Will you call him?

JOHN JOSEPH LYONS, recalled.

Direct Examination by Mr. Wilentz:

Q. I meant to ask you before and forgot about it: Your gasoline station, I take it, serves many patrons? A. Yes, sir.

Q. Have you regular customers there, too? A. Yes, sir.

Q. Where did you say it was located? A. 127 and 128 Lexington Avenue, 127 and 128 Lexington Avenue.

Q. Lexington Avenue? A. Yes.

Q. Was Mr. Bruno Richard Hauptmann, the defendant in this case, a customer of yours? A. No, sir.

Q. Was that the first time you had ever seen him? A. Yes, sir.

Q. Was that the first time so far as you know that he ever came to that gasoline station for supplies? A. Yes, sir.

Mr. Wilentz: Thank you.

By Mr. Fisher:

Q. How many hours do you work a day? A. Eight hours.

Q. And is your station a 24 hour station? A. All night.

Q. Open all night? A. Yes.

Q. So that sixteen out of the twenty-four hours you aren't around there, is that correct? A. Yes.

Q. And there might be many customers that wouldn't be there during your trick, and yet they would be customers of the station, is that correct? A. Well, I never seen him before.

Q. Answer the question, please: There might be any number of customers that would patronize that station in your off hours, isn't that true? A. Yes.

Mr. Fisher: That is all.

Q. What you mean is that while you were there, as I understand—

Mr. Pope: We object to what he means.

Mr. Wilentz: Yes, I think the objection is well directed. Thank you, sir.

(Witness leaves the stand.)

Mr. Wilentz: Agent Seery.

WILLIAM F. SEERY, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Seery, in 1934 you were connected with

the Federal Government, were you not? A. As a special agent, Division of Investigation, United States Department of Justice.

Q. And how long have you been connected with the United States Department of Justice? A. This is my fourteenth year.

Q. And in connection with your duties, did you have occasion to check Lindbergh ransom bills whenever and wherever you could? A. Since March, 1933.

Q. In 1934, particularly September, did you get notice of any situation with reference to the Bank at which the gentleman, Mr. Strong, worked? A. We did.

Q. And as the result of that did you come down and get a bill? A. At the Corn Exchange Bank at 125th Street and Park Avenue.

Q. Take a look at Exhibit S-168 and tell me whether you got that bill. A. Yes, that is the bill.

Q. Did anybody call your attention to the number on there? A. When we walked into the bank, in response to a telephone call from Mr. Dingledine to our main office, we questioned Dingledine as to the person or the identity of the person from whom this bill was received. He referred us to—

Mr. Reilly: I object.

Q. Well, as the result of what he referred you to, what did you do? A. Questioned Teller Ozmec, had Mr. Dingledine secure from Teller Strong the bill in question. Teller Strong brought the bill up, Corporal Horn of the State Police redeemed it with a ten dollar bill of ordinary currency.

Q. You mean by that, Mr. Horn of the State

Police presented a ten dollar bill and procured this from the bank? A. And received this bill, that is right.

Q. Right? A. While we were questioning Ozmec and Dingledine, Horn turned the bill over and noted the license number on the rear. He called our attention to this number and immediately it was apparent that it must be a license number.

Q. Well, at any rate, you got the bill. What did you do after you got it and looked at it, and whatever was apparent became apparent to you: what did you do? A. Lieutenant Finn then called the State Motor Vehicle License Division.

Mr. Reilly: I object.

Q. As the result of that call by Lieutenant Finn to the License Bureau, what happened? A. We secured a description of the individual, name and address, and the description of the individual to whom that particular license had been issued.

Q. Now, before you did that did you go down, did you make a checkup of gasoline stations? A. Prior to leaving the bank we questioned the teller as to the identity of his depositors who operated filling stations or garages.

Q. And as the result of that talk with the teller, or whoever it was you got there, did you make an investigation of gasoline stations and garages? A. We received three names. The first name was the Warner-Quinlan station, 127 Lexington.

Q. When you went to the Warner-Quinlan station, did you there find Mr. Lyons, who was on the stand just now, and a man by the name of Lyle? A. We did.

Q. And as the result of that talk between you

people and Lyons and Lyle, and the bill that you had, what did you do? A. We questioned them.

Q. Did you get a description from them of the man who gave that bill? A. We got a description—

Q. Do you remember the description? A. I remember that the description was practically identical with the description Condon had previously furnished us as to the man that passed the money.

Mr. Reilly: I move to strike that out as not responsive.

The Court: It may be stricken.

Q. At any rate, you got a description and did you later talk to this defendant Bruno Richard Hauptmann with reference to this bill and to that gasoline station? A. The morning we arrested Hauptmann I talked with him. He—

Q. What did he have to say with reference to the gasoline station and this particular exhibit, this ten-dollar bill? A. He admitted having—

Mr. Reilly: I object to this as calling for a conclusion.

Q. S-168. Not what he admitted, what did he say? A. He said he had tendered a ten-dollar gold certificate in payment for gasoline at the Warner-Quinlan station, 127th and Lexington Avenue.

Q. When? A. He thought the previous Saturday.

Q. Now on that very day that you got the call from this bank and got this bill, were you checking another gold bill? A. Checking two.

Mr. Wilentz: Now for the record, if your Honor please, so that there may be no question later, I am going to unseal this envelope, which is sealed for a purpose and has the initials "W.F.H." so that later when it is unsealed, I trust there will be no question about the time that it was opened.

Mr. Reilly: I imagine there is nothing up your sleeve there (laughter).

Mr. Wilentz: Nothing up my sleeve.

Q. Tell us, did you get two gold bills that day? A. We did, at the Irving Trust Company.

Q. Did you trace those gold bills to individuals? A. Not those two gold bills, we were not able to trace them to any particular individuals. We followed them out of the bank in two respective business houses but the various merchants were unable to tell us from whom the bills had been received.

Q. Well, did you get one from Levatino? A. I know the bill you refer to. That is ten dollar gold certificate number A57232100A. That bill was discovered 9-6-34 at the National Bank of Yorkville in a deposit made by R. Boken Fusca Company, 152 Third Avenue, received by them 9-5-34.

Q. Did you discuss that bill with the defendant, Bruno Richard Hauptmann? A. I did.

Q. Did you have the man there who had received the bill? A. Salvatore Levatino.

Q. What have you to say as to what Mr. Hauptmann, the defendant, said with reference to Levatino and the ten dollar bill you referred to?

Mr. Reilly: No, no.

Q. What did he say? A. "Don't you remember me giving you this bill?" to Levatino.

Q. You mean the bill you just referred to? A. Yes.

Q. Did you have the bill then in your possession? A. Corporal Horn had it in his possession.

Q. Was he there? A. Right.

Mr. Wilentz: I offer that bill with the envelope, it being stipulated that that is the only bill and the only enclosure. The bill being ten dollar gold certificate A57232100A.

Mr. Pope: We make the same objection that we made before to the offering of the other bill and for the same reason.

The Court: I will have to overrule your objection and give you an exception.

(Exception allowed, and the said was signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: We call—pardon me.

The Court: Now Mr. Attorney General, will you take time off to give me the number of that bill?

Mr. Wilentz: Yes, sir.

The Court: It has been repeated twice, but I didn't get it.

Mr. Wilentz: That is all right, sir. It is a ten-dollar gold certificate A57232100A.

The Court: Well, is there an "A" preceding the numbers?

Mr. Wilentz: Preceding and after, both.

Mr. Large: In both cases, Mr. Wilentz.

Mr. Wilentz: In both cases.

Mr. Large: In the preceding bill also.

Mr. Wilentz: And that particular gold certificate bears the serial number which is also included in Exhibit S-99 on page 70; and for the benefit of counsel, in Exhibit S-101 on page 32. I think you will want to follow that.

The Reporter: Levatino ten-dollar bill, marked Exhibit S-169.

(Bill was received in evidence and marked State's Exhibit S-169.)

Mr. Wilentz: Now if your Honor please, and counsel, we expect to recall this witness as to another line of questioning and another line of incidents, and at this time, for the purpose of cross examination, we give him to the defense.

Cross Examination by Mr. Reilly:

Q. You have testified that you were tracing these bills, is that correct? A. Since March, 1933.

Q. Since March, 1933? A. That is correct.

Q. Who traced them before that? A. Special Agent Manning, who is now Assistant U. S. Attorney for the Southern District of New York. He was tracing them. Mr. Sisk traced them for a while.

Q. Manning? A. Manning.

Q. He is now— A. Assistant U. S. Attorney.

Q. Assistant District Attorney? A. For the Southern District.

Q. Did Manning and Sisk make reports? A. Yes.

Q. When bills were turned in? A. That is right.

Q. Did you read the reports? A. Yes, I reviewed them.

Q. When did the first bill show up? A. Our records show that the first bill that we received any report of was reported on April 4th or 5th, 1932.

Q. At 96th Street and Amsterdam Avenue? A. At East River Savings Bank, 96th Street and Amsterdam Avenue, right.

Q. Now, 96th Street and Amsterdam Avenue is not near 1 West 72nd Street, is it? A. It is about 24 blocks, at least.

Q. 24 blocks. And 1 West 72nd Street, New York, is the Majestic Hotel, isn't it, or was? A. I assume— I know the Majestic Hotel is on 72nd Street; I don't know where it is.

Q. And it is right opposite the park? A. I don't know. I didn't visit the Majestic Hotel.

Q. Do you know the Majestic Hotel is in relation to Central Park? A. No, I do not; I never visited there.

Q. Have you ever passed 1 West 72nd Street?

A. Well, I know that the 1's West and East are right close to Fifth Avenue, and the park is on Fifth Avenue; I know that.

Q. Were you here in court when Special Agent Wilson testified, of your Department? A. In and out. He isn't with our Department.

Q. Was he with your department? A. He is with the Treasury Department.

Q. Well, he is a Government agent? A. That is right.

Q. Were you here when he testified that the first bill was passed in the neighborhood of the Majestic Hotel? A. I don't have any clear recollection. I remember him testifying but I don't have any clear recollection as to his testimony.

Q. Were you here when he testified that no ransom bills—and when I say ransom bills, I do that only for the purpose of referring generally to Exhibit 99 and the numbers contained therein —showed up any place except in New York?

Mr. Wilentz: Just whether you were here.

Q. Were you here when he testified to that? A. Well, I was in the court room when he was testifying but as to a distinct recollection of what his testimony was, I do not have it.

Q. Well, now, is it a fact or is it not a fact that ransom bills did show up in Albany, Utica, Troy and near Chicago? A. That is correct.

Q. Do you know when the ransom bills appeared in Albany? A. Yes, roughly, if you will bear with me a minute I probably can tell you.

Q. Yes. A. You are speaking of Albany, now?

Q. Albany. A. The first one that I have a record of was on April 28th, 1934, at the National

Commercial Bank & Trust Company of Albany, New York. It was a five dollar bill.

Q. But, it was one of the ransom bills? A. Five dollar ransom.

The Court: April 28th?

The Witness: April 28th, 1934.

Q. And it is fair to assume that Albany is about one hundred miles from New York City? A. About 90 to 100 miles from New York City.

The Court: And Mr. Reilly, if you will pardon me a moment, did you say April 28th, 1934?

The Witness: That is right, sir.

Q. Now, will you refer to your record, please, and tell me when it was the first bill appeared in Utica, New York? A. May 25th, 1934, another five dollar ransom bill.

Q. Utica is about 40 or 50 miles further north? A. Northwest.

Q. Northwest of Albany? A. Yes.

Q. Only one bill appeared in Utica? A. Well, now, you just asked me the first one.

Q. Yes. A. I will just look through the list. I have a recollection there were two bills at Utica, but I don't seem to find it.

Q. All right, go to Troy, New York, will you please, and tell me when the first bill appeared there. A. I can give you that Utica bill a little later. Troy Trust Company, five dollar ransom bill on May 10, 1934.

Q. Only one? A. Did I mention before as the Utica bill 5/25/34?

Q. I don't think you did. A. That is the other Utica bill.

Q. Did you go to Chicago? A. Nothing in Chicago, that was directed through the Federal Reserve Bank in Chicago. This had come from a small town in Michigan.

Q. What town in Michigan? A. I have listed here on my list only the bills that were discovered through the Federal Reserve Bank at New York and the neighborhood banks at New York City. Our reports contained a report from our Chicago office—

Q. You are giving your independent recollection? A. It was a town not very far from Chicago, but in Michigan.

Q. Chicago is a thousand miles from New York, more or less? A. About.

Q. Have you any recollection of the date? A. Yes, I believe it was the early summer of 1934.

Q. Early summer of 1934. Now have you a list with you or any independent recollection with you as to the bills that were discovered after the first bill of 96th Street and Amsterdam Avenue? A. Yes, I have notations, some I have dictated to a stenographer, or others I have made up in longhand.

Q. All right. What other cities were bills discovered in? A. (The witness examines a paper.)

Q. Is that a list you made? A. Yes, but it is in my own handwriting.

Q. All right; I don't want it. But does it begin with a bill, April 4, 96th Street and Amsterdam Avenue? A. Yes. 4-4 or -5; that is April 4 or 5.

Q. Yes. A. Yes, that is where it starts.

Q. What year? A. 1932.

Q. 1932. Now, begin with that point. Can you give us from your independent memoranda there— A. Yes, I believe I can.

Q. —the dates and the places the bills were passed, the cities? A. Outside of New York City?

Q. In New York and out of New York? A. I can read the list.

Q. Read it right down, please. A. April 4th or 5th, 1932, one $20 gold certificate or one $20 bill, B-04173050. Do you want all the details?

Q. I don't want that, but you have checked them? A. Yes.

Q. They correspond with this book? A. Yes, I know that.

Q. Now, just give us the dates, the cities and the amounts. A. All right. Well, that was discovered at the East River Savings Bank, 96th and Amsterdam Avenue, and traced to a David Marcus, of 215 West 91st Street, who was unable to inform us as to how the bill came into his possession.

The next was a five dollar bill, one five dollar ransom bill, discovered at the Bank of Manhattan Company, 4-14-32, traced to one of Schraft's Stores.

Next was a bill, a five dollar bill, discovered 5-19-32 at the Central Hanover Bank, traced to a Sinclair Oil Station, 62nd Street and Mill Avenue.

Next was a five dollar bill discovered 5-19-32 at the Chase National Bank, 7th Avenue and 41st Street and traced to Bickford's Restaurant, 7th Avenue and 41st Street.

Another five dollar bill discovered 5-23-32 at the First National Bank, 52 Wall Street, traced to Max Rubinstein Dry Goods Store, 150 Orchard Street, New York City.

Q. Orchard Street is in the lower East Side, isn't it? A. Yes.

Q. Ten miles from the Bronx easily. A. Ap-

proximately. Next was a five dollar bill—this is a long list.

Q. About how many bills—we will ask you that. A. Up to and including September 28th.

Q. What year? A. 1934,—I compiled a list of the bills recovered up until that time which included the twenty dollar bill found on Hauptmann at the time of his arrest.

Q. No, I don't want anything connected with the defendant. I want before the defendant's arrest. A. Oh, before it— Well, I wouldn't have that compilation. It was, as I say, September 28th I compiled that which would have to include the bills found up there.

Q. Well, give me the last one, the last date in August that you have. A. The last date in August was 8-30-34. That was a ten dollar ransom gold certificate number A024419688. That was discovered at the National City Bank and we couldn't determine the identity of the person from whom they received that.

Q. Now, what was the largest amount in your list there that you ever discovered at one time in New York City? A. Just one single bill at a time.

Q. Only one single bill at a time? A. At the— oh, I beg your pardon, at the Federal Reserve Bank there was recovered approximately May 1st, 1933, $2990, as I recall it now 297 ten-dollar bills and one twenty-dollar bill.

Q. That was an exchange on the gold embargo? A. Exchange on the gold embargo, and at that same time, approximately the same time, April 28th, there were two other large—

Q. What year? A. '33, between the 27th and 29th, fifty ten-dollar ransom gold certificates at the Manufacturers Trust, and between the 26th and 27th, or around that particular date, twenty-

four ten-dollar bills at the Chemical National Bank, and another additional 26 at the same bank, making a total of 50 there.

Q. Now, will you give me a list of— A. They were exchanges.

Q. Yes. Now, give me a list, please, if you have it, of the bills from other cities than New York. I would like to have the dates they were discovered.

Mr. Wilentz: I think he has already given us Albany, Troy and Utica, hasn't he?

Mr. Reilly: Yes. He has given us Albany, Troy, Utica and near Chicago.

Q. Now have you any other cities? A. Well, there was one traced June 30th, 1932, the Mount Vernon Trust Company, Mt. Vernon, New York.

By Mr. Wilentz:

Q. Mount Vernon Trust Company? A. Mount Vernon, New York.

By Mr. Reilly:

Q. Mount Vernon is quite close to New Rochelle? A. Right close to Yonkers.

Q. Mount Vernon? A. That is my recollection.

Q. Mount Vernon is on the Pelham Division. A. I don't know much about that end of New York; I assumed it was—

Q. You know Yonkers is on the Hudson River? A. That is right; one is east and one is west.

Q. What is it, Mount Vernon? Mount Vernon

is east toward New Rochelle. A. I guess that is correct.

Q. What other cities, please? A. Tarrytown,—Irvington, New York, rather.

Q. Just above Yonkers? A. Yes. You want the date on that?

Q. Yes. A. That is October 15th, 1932.

Q. October 15th, 1932. Was it a $20 bill or $10 bill? A. Ten dollar gold certificate. No,—Tarrytown was a five dollar bill.

Q. What other city, please? A. A ten dollar gold certificate, June 13, 1933, at the National Central Bank of Cherry Valley, New York.

Q. Cherry Valley is on the Jersey side of the Hudson? A. That was before I started to check the bills.

Mr. Wilentz: I can't hear you, sir.

The Witness: That was before I started to check the bills, and I didn't make that trip.

Q. Well, do you know where Cherry Valley is? A. I do not, no, sir. A. Ten dollar gold certificate discovered at the Federal Reserve Bank, traced to the Bank of New York & Trust Company, and we were unable to trace it any further than that. There was some suggestion—

Q. What city?

Mr. Wilentz: What town?

Q. What town? A. New York City, but there was some suggestion down there that—

Mr. Wilentz: No, no; never mind.

Q. No, we can't have that.

Mr. Wilentz: Mr. Reilly wants the cities outside of New York.

Mr. Reilly: Yes, that is all.

A. Newark, New Jersey.

Q. Yes. When? A. 3-12-34.

Q. March 12, 1934? A. March 12, 1934. Newark, on the 14th of March, 1934.

Q. How much? A. Two five dollar bills. Huntington, Long Island, 3-19-34.

Q. Do you know where Huntington is. A. Yes.

Q. That is about 25 or 30 miles east of Montauk Point, isn't it? A. I don't know how far it is from Montauk Point, but I figure it is about 45 miles from New York City.

Q. Huntington? A. Yes, Huntington, Long Island, 40 to 45 mile from New York City. Bloomingdale, New Jersey, on March 19th.

Q. Same year? A. 1934. Ridgefield Park, New Jersey, March 22nd, 1934. Those dates I am giving you are dates upon which the bills were discovered at the Federal Reserve Bank.

Q. Now, have you any cities outside of New York State that you have given? Is there one there for London? A. London? No bill was ever discovered there, as far as we know.

Q. As far as you know? A. That is right.

Q. Have you one for Greenwich, Connecticut? A. No Greenwich, Connecticut, as far as I know.

Q. Well, do you remember a report being made that a woman did pass, in 19— this is for the purpose of refreshing your recollection—that in the spring or summer of 1932—

Mr. Wilentz: Just a minute. May I inquire what sort of a report counsel means. A newspaper report?

Mr. Reilly: No, no, to the Department of Justice.

Q. That a woman passed in a store in Greenwich, or tried to pass—

Mr. Wilentz: What is the question, whether there was such a report?

Q. —a twenty dollar bill.

Mr. Reilly: Yes.

A. Never heard of it before, Mr. Reilly.

Q. How would a report come to your department if money was passed, some of these bills were passed in Europe through a bank that had an American banking department, or Cook's or a travel bureau? A. I can't very well tell you that, because no reports of any money having been discovered over there were ever made to us.

Q. That money could still be in circulation, couldn't it? A. Beg pardon?

Mr. Wilentz: What money?

If any money was passed there, American money, it could still be in circulation there? A. My guess is as good as yours. I don't know.

Mr. Reilly: I understand you are coming back with us, so I will stop now.

Re-Direct Examination by Mr. Wilentz:

Q. Mr. Seery, I take it that the extent or the amount of these bills in circulation you don't know, do you? A. The amount of the ransom bills in circulation?

Q. No. I will withdraw that. It is impossible, is it not, for any human being to know how much money is in circulation at the present time? A. Absolutely. They can tell you how much money has been issued by the Treasury Department.

Q. Yes. So that the—so far as the $50,000 in Lindbergh bills is concerned, those that have been received you know of, and the rest nobody knows where they are? A. Might have been destroyed by the Treasury Department.

Mr. Reilly: What?

Mr. Wilentz: "May have been destroyed by the Treasury Department."

Mr. Reilly: I move to strike it out as a conclusion.

The Court: Might have been destroyed?

Mr. Wilentz: May have been destroyed by the Treasury Department.

The Witness: Calling in the gold.

Mr. Reilly: It is objectionable; I object.

Mr. Wilentz: Counsel asked him, isn't it a fact it may be in circulation. Now, he has opened the door. Why can't we also stay in?

The Court: Now he says it may have been destroyed by the Treasury Department.

Mr. Wilentz: That is right.

The Court: Well, I think we will allow it to stand.

By Mr. Wilentz:

Q. Now, Mr. Seery, counsel asked you about a bill in Mt. Vernon? A. Yes, sir.

Q. From Mount Vernon, and you said the Mount Vernon Trust Company? A. Yes, sir.

Q. Do you know from your investigation whether or not this defendant Hauptmann had an account in the Mount Vernon Trust Company? A. I didn't make any investigation of that bill whatsoever; just a matter of record.

Q. Not the bill. Do you know from your investigation and from your talks from Hauptmann—

Mr. Reilly: I object to it.

The Witness: I can answer it.

Mr. Wilentz: Just a minute.

Mr. Reilly: I object. If the defendant—

The Court: Well—

Mr. Reilly: If the defendant ever said to this witness in a conversation along the lines indicated by the Attorney General, I don't see how I can object, but in his in-

vestigations and reports which he includes in his question—

Mr. Wilentz: Well, I will withdraw it, because if it is the fact we will prove it and, if it isn't, we won't.

Mr. Reilly: All right.

Q. As long as you have gone through some of these bills, let me direct your attention to twenty dollar gold certificate No. A35272048A. Did you discover that bill, that twenty-dollar bill in your investigation? A. That bill was discovered September 8th, 1934, at the Chase National Bank, 301 East Fordham Road.

Q. Who did you trace it to? A. We traced it to the Exquisite Shoe Corporation, 266 East Fordham Road.

Q. As the result of that tracing did you speak to Mr. Hauptmann as to that bill? A. The morning of the arrest, when he accompanied us back to the residence, a box containing shoes—

Mr. Reilly: I object to that.

Q. Did you discuss it with him? A. Yes, sir.

Q. What did he say to you or you to him with reference to this bill? A. We inquired as to whether or not he had passed this bill at the Exquisite Shoe Company in purchasing shoes that we found in the house that morning.

Q. What did he say? A. He said he tendered a twenty-dollar gold certificate at that particular shoe store about that particular date.

Q. For a pair of shoes? A. For a pair of shoes for his wife.

The Court: What is the number of that?

Mr. Wilentz: A35272048A, which I offer in evidence in the envelope.

Mr. Reilly: Subject to the objection raised by Mr. Pope before on the question of this money, which I take it will run to all of this money without further objection.

The Court: Well, I would not want to have you misled about that.

Mr. Reilly: Mr. Pope will be with us every time.

The Court: Mr. Pope or some member of counsel can make such objections as they are advised.

(The bill in its envelope was received in evidence as State's Exhibit S-170.)

Mr. Pope: May we have an exception?

The Court: Yes: The witness testified, as I understood him, that Mr. Hauptmann admitted that he passed a $20 gold certificate at a shoe store in payment for a pair of shoes, and this certificate that you have been examining about was a twenty-dollar gold certificate. Mr. Pope may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: Now Exhibit S-170 if your Honor please, which is the bill just referred to is found in the serial list in Exhibit S-99, that is the book with the numbers, on page 4; and again can be found in the printed exhibit, 101 on page 52.

By Mr. Wilentz:

Q. Now, speaking about this pair of shoes, did you in discussing with this defendant Hauptmann the shoes purchased and the money used for it, did you find the shoes? A. I believe Corporal Horn discovered the shoes, Corporal Horn or Agent Sisk.

Q. Were you there at the time? A. I was right there.

Q. Were the shoes exhibited to the defendant? A. They were.

Q. And when you discussed with him the question of the shoes purchased, what if anything did he have to say as to whether or not these shoes were the shoes to which you referred? A. Might I open it?

Q. Yes, you open it. You can't tell what is in it. (The witness opened the box.) A. This is the pair of shoes that he stated he had purchased with the twenty dollar gold certificate at the Exquisite Shoe Corporation.

Q. I notice that the shoe box, however, contains Jacobsen Brothers. A. Well, that is the trade name.

Q. Is for the Exquisite Shoe Company? A. That is right. It is vice versa, one way or the other. They have both names.

Q. It is the same difference, you mean. A. The same firm.

Q. Jacobsen Brothers and Exquisite something.

Mr. Wilentz: I offer the box with the shoes.

Mr. Fisher: I except as being cumulative. The bill is in which he passed there. The shoes can add no force.

The Court: I know, but even slight circumstances are evidential in a case of this sort and such a case is usually permitted to be built up by a series of anything that counsel may submit. I will allow it to be admitted.

Mr. Fisher: I pray an exception.

The Court: You may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

(The box containing the shoes is received and marked Exhibit S-171.)

Q. Exhibit S-171, referring specifically to the shoes they were found in the Hauptmann home, were they not? A. They were.

Q. In the presence of this defendant, isn't that so? A. In the presence of the defendant and his wife.

Q. Now, you have also testified to fifty ten-

dollar bills found at the Manufacturers Trust Company. Did you trace those fifty ten-dollar bills? A. I did not.

Q. Do you know from whom they came? A. I can tell you better from what our report would show.

Q. Take a look at it, please. A. This brief memorandum that I have here doesn't give the full details relative to the tracing of that particular amount of money.

Q. All right. Now, you testified to $2980 being in this bank— A. $2990.

Q. $2990, and we have had some testimony about that. Now, you have also located a much larger sum haven't you? A. Yes, at the residence—

Q. Mr. Reilly asked you about the various moneys and the tracings and the—

Mr. Reilly: Prior, prior to the arrest, I said.

Mr. Wilentz: Well, I am going to go beyond the arrest.

Mr. Reilly: Oh, that is all right. That is subject to attack.

By Mr. Wilentz:

Q. And the largest amount that you found was $2980 until Mr. Hauptmann's arrest, isn't that it? A. That is correct.

Q. Now, when he was arrested did you find more? A. At the time of his arrest, the day of his arrest, one $20 gold certificate was found in his possession.

Mr. Wilentz: Let's have the $20 gold certificate.

Q. When you say on his possession, what do you mean by that? A. I mean that as we pulled his car over to the curb, ordered him out of the car, and as he left the car, Lieutenant Keaton and Special Agent Sisk started to search him. Lieutenant Keaton reached down into his rear, I think, left hand pocket and took out a wallet. He opened the wallet in my presence and extracted one single $20 gold certificate that bore serial number—

Mr. Pope: We object to that.

Mr. Pope: We object to that.

The Court: Well, why?

Mr. Pope: Well, there are many reasons, not only for the reasons we have already expressed, but we object to this because this is entirely different from a case where, if burglary tools are found upon a man who has been arrested shortly after the burglary has been committed, or stolen property, which is known to have been stolen property, is found in the possession of the man shortly after the property has been stolen, there is no connection between the crime alleged to have been committed here and the obtaining of possession of this money. The evidence in the case shows that none of this so-called ransom money was obtained by anybody; however, that might have been, until it was passed over the hedge at St. Raymond's Cemetery in the City of New York, several weeks

after the alleged crime of kidnaping and the murder was committed.

It is not a part of the res gestae, there is no evidence that it came from the Lindbergh house. It is an entirely different situation from property that can be recognized as having been in some way connected with the commission of the crime itself.

It is entirely remote, it is not connected with the crime itself, therefore it has no tendency to prove the commission of the crime. The only thing that it has a tendency to prove, in our view, is that after the crime was committed that someone obtained from Colonel Lindbergh or from Dr. Condon this money which the State now seeks to introduce in evidence.

It is entirely disconnected with the original crime itself and entirely disconnected with the commission of the crime for which this defendant is now on trial.

The Court: Do you desire to be heard, Mr. Attorney General?

Mr. Wilentz: Why, if your Honor please, I didn't think that there was a person in this room who could feel that the tracing of this money was disconnected with this crime.

I think in the opening address to the jury, it was stated that the State would prove that there was a motive for this crime, and my recollection is that I stated that that motive was money.
it sufficient times, "Money, money, money!"

My recollection further is that I stated

It having been our theory as presented at the opening of the case that the motive for this crime was the obtaining of money and money having been obtained, we now trace this money, your Honor please. The motive? It is so connected that I can't possibly understand—and of course Mr. Pope isn't responsible because I can't understand—but I can't understand, if your Honor please, how any reasonable person can possibly contend at this stage that this Lindbergh money, this ransom money, paid as the result of a request from the kidnaper in letters proven to be in his handwriting, paid at the request of a man whose handwriting was found right in the very room, whose note was there and who later says "We were in the baby's room" moneys paid to that man as we have traced them from step to step from March 1st right up to this day, I can't possibly understand how seriously we can waste all this time and say there is no connection, no legal connection. So if your Honor please, we submit very respectfully to you that this is evidential and should be admitted.

The Court: My view is that it is evidential and I will admit it and counsel may have an exception if they want it.

Mr. Pope: We pray an exception.

(The twenty dollar bill was thereupon received in evidence and marked S-172.)

The Court: Mr. Attorney General, what is the pending question?

Mr. Pope: We would like to ask the Court to instruct the jury at this time that they are not to be influenced by the argument which was made by the Attorney General at this time, but they should wait and keep their minds open, wait until they hear the evidence in the case.

The Court: In the trial of most cases counsel feel called upon to argue questions of law on the admission of evidence. You argue it on your side, the Attorney General argues his side. Of course the jury understands and I am now telling them that they are not to abide by the arguments of counsel, but they are to rely eventually upon the evidence in the case, giving it consideration in the light of arguments that are then made by counsel in summation to the jury, as we call it; and then the Court too will have something to say in what the Court calls a charge to the jury. So when the time comes you consider the evidence, you consider the argument of counsel and you consider the instructions of the Court.

Have I made that quite plain?

Mr. Pope: You certainly have.

Mr. Wilentz: May I respectfully suggest to your Honor that what your Honor just said also goes for the comment of my delightful adversary who started the speech making. (Laughter.)

The Court: Note Mr. Pope's exception to the admission of the exhibit S-172.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: Now I think I offered the $20 bill, and it is marked S-172; and for the information of the Court and counsel, I don't know whether this number has been taken down, it is A35517877A.

The Court: That is the $20 gold certificate that was said to be on his person when he was arrested?

Mr. Wilentz: That is right, sir.

By Mr. Wilentz:

Q. Now at that time, I notice some names on here in pencil; who put those names on? A. They were initialed by representatives in charge of the three groups.

Q. Well who, who? A. A. Keaton, Arthur Keaton, Lieutenant New Jersey State Police, T. H. Sisk, in charge of the Department of Justice detail, and J. J. Finn, in charge of the New York Police detail.

Q. Three agencies together represented by these men, is that it? A. That is it.

Q. Now when this bill was taken from the person of Mr. Hauptmann, was there any discussion with the gentleman as to the source of the $20, where he got it? A. Yes.

Q. Were you present? A. I questioned him in the back of the automobile.

Q. What did he say was the source of this $20 bill, Exhibit S-172? A. He said that over a period of years he had been assembling gold certificates, fearing inflation, and that this represented part of the money that he had so assembled that he was now spending. We questioned him as to whether or not he had any more at home, and he said yes, approximately a hundred.

Q. A hundred what? A. He just said a hundred. We assumed that he meant—

Mr. Reilly: No—

Q. Never mind what you assumed. But he said a hundred? A. Yes.

Q. As the result of that statement did you go to his home to find the hundred? A. We did.

Q. What did you find there? A. A little better than a hundred dollars in gold coin.

Q. Gold coin, not gold certificates? A. Not gold certificates.

Q. And when that was called to his attention did he make any reference to his prior statement that he had a little better than a hundred? A. He said he had referred to the gold coin, not gold certificates.

Q. And the gold coin you are referring to, without opening it, please, is this? A. Six $20 gold coins.

Q. Six $20 gold coins.

Mr. Wilentz: May I have it offered in evidence?

Mr. Reilly: I notice, General, these are the only exhibits you don't let me look at.

Mr. Pope: We object to this because certainly there is no theory on which those coins can be exhibited in this case.

Mr. Wilentz: We won't offer it then.

The Court: It is withdrawn.

Q. At any rate, it was six $20 gold pieces. Now, did you ask him whether he had any more gold certificates or gold bills? A. We did.

Q. What did he say? A. He said no.

Q. He said no? A. No.

Q. And then when you were talking to him it was in his home, is that right? A. In his garage, apparently.

Q. I mean when you were talking to him where were you? A. We were talking in his home.

Q. In his home? A. In the bedroom at the rear of the house.

Q. Yes. Now, that was what date? A. That was the 19th of September, 1934.

Q. All right. No, Mr. Reilly asked you about various moneys and the tracing of these moneys, and you added in addition to those which you traced for him this $20 bill? A. Yes.

Q. Now, will you please start another—. A. All right.

Q. —list of moneys, if you can, a large amount, if you found any large sums? A. Under date of 9/20/34.

Q. That is September 20th, 1934? A. 1934, 390 ten-dollar gold certificates and 493 twenty-dollar gold certificates, all ransom gold certificates.

Q. How much money totaling? A. I will have to compute it.

Q. Well, give it to me again. A. 390 ten-dollar ransom gold certificates—.

Q. Yes. A. —and 493 twenty-dollar ransom gold certificates.

Q. 493? A. Yes, $20.

Q. $9,860 in twenties. Altogether $13,760? A. That is right.

Q. Gold certificates, Lindbergh money? A. Lindbergh ransom bills.

Q. The moneys listed in this S-99? A. Yes.

Q. And where did that money come from? A. Garage.

Q. Whose garage? A. From the garage of Richard Bruno Hauptmann.

Q. Now, in all your investigation from 1932 to date, did you find any money like that in anybody else's garage? A. I never found any money in anybody else's garage.

Q. None at all? A. None.

The Court: How much did he say that amounted to?

Mr. Wilentz: $13,760.

Q. Now, that is on the 20th of September? A. That is right. When that money was discovered.

Q. Was there any other moneys found in the garage of Bruno Richard Hauptmann that week? A. Under date of September 25th, 1934, 84 $10 ransom gold certificates were discovered in Hauptmann's garage in a beam.

Q. $840? A. $840.

Q. Also money of Colonel Charles Lindbergh? A. Lindbergh ransom money.

Q. The moneys included in this booklet, which contains those serial numbers? A. That is right.

Q. Checked against them? A. Checked against them.

Q. So that altogether $14,600 in moneys found

in Mr. Hauptmann's garage, gold certificates, Lindbergh money, ransom money; is that right? A. That is correct.

Q. That is in addition to the $20 bill you have presented here? A. Found on his person.

Q. In addition to those moneys that you have talked about being passed admittedly by him in the stores? A. Correct.

The Court: You say the bills that you found in the garage totalled fourteen thousand some odd dollars?

The Witness: Six hundred.

The Court: $14,600?

Q. Give me the denominations again and the amounts so that I can check the calculation. A. All right; 20th of September, 390 $10 gold certificates and 493 $20 gold certificates. Now on the 25th—

Q. Just one minute now.

Mr. Wilentz: Well that, I take it—is anybody checking this calculation—is 13,760, as indicated before.

Mr. Pope: We will take your word for it.

Mr. Wilentz: Thank you sir, that is the first time in this case.

A. (Continuing.) On the 25th of September, 1934, 84 ten dollar ransom gold certificates.

Q. 84 ten dollar— A. Ransom gold certificates.

Q. That is $840. A. Right.

Mr. Wilentz: I think that totals 14,600, as given to your Honor.

Q. Now, except for the bill in Chicago—

Mr. Hauck: Near Chiago.

Q. —near Chicago, were all the rest of these moneys that you have been telling counsel for the defense and myself about, in the vicinity of New York City? A. No, sir.

Q. And New Jersey? A. No, sir.

Q. Where were they? A. There were some upstate.

Q. Pardon me, any states outside of New York, New Jersey and the one bill that you found near Chicago. A. Yes.

Q. Illinois. A. There was three bills in Asia.

Q. In Asia? A. Yes.

Q. All right, sir. That is what I want. Now, will you tell me the total amount of bills— A. I can give you up until a certain date.

Q. The total amount of bills turned in and discovered. A. I can give you up until a certain date.

Q. Yes. A. Up until the 28th of September, 1934.

Q. All right. Give us the amount. A. Our records reflect—

Mr. Pope: Just a minute. We can't see how that can possibly be binding on this defendant unless there is some evidence to connect him with passing the other money.

Mr. Wilentz: That was the question. Pardon me.

Mr. Pope: That perhaps which has been traced to this defendant may be of some evidential value, but money which was passed by someone else or which is not traced to this defendant is certainly not evidential against this defendant.

Mr. Wilentz: May I suggest that the only reason for the question was that it was my understanding, if your Honor please, that counsel asked the question but tried to limit the witness to the total amount found up to the arrest of Hauptmann. What I propose by this question is to get the total amount, which I think has been testified to anyway, except that it hasn't been computed, questions having been directed to Agent Wilson and to this gentleman and then follow that with asking how much of that is Hauptmann money, admittedly, according to his testimony, so that we do not by that question attempt to connect the defendant Hauptmann with the other.

Mr. Reilly: Just a compilation.

Mr. Wilentz: That is all, just a compilation. Now, is there still an objection?

Mr. Pope: Well, no, if that is the understanding that it is merely a compilation we will withdraw the objection.

Mr. Wilentz: That is all.

The Court: The objection is withdrawn.

A. Compilation as of September 28th, 1934, five dollar ransom bills, 114, totalling $570.

Q. Just a minute, now. All right. Totalling how much? A. $570.

Q. Yes, sir. Proceed, sir. A. I beg your pardon, that is 115, totalling $575.

Q. Right. A. Ten dollar gold certificates, 907, totalling $9,070.

Q. Yes, sir. A. Twenty dollar Federal Reserve notes, four, totalling $80; twenty dollar ransom gold certificates. 498, totalling $9,960, a total of $19,685.

Q. Nineteen thousand what? A. Six hundred and eighty-five dollars.

Q. What was that $80 item that you spoke of? A. The $80 were Federal Reserve notes, twenty-dollar—

Q. In other words, as I understand it then, all the Lindbergh money wasn't gold certificates, was it? A. No, indeed.

Q. Do you know how much of it was? A. I believe $35,000 of the total $50,000 paid was in gold certificates.

Q. 35? A. Approximately $35,000.

Q. That is your understanding, and the other $15,000 in Federal Reserve? A. In five dollar red seal U. S. currency bills,—$5,000 in twenty dollar Federal Reserve notes.

Q. But not gold certificates? A. Not gold certificates.

Q. Now, this $19,685: does that include the $14,600 found in Hauptmann's garage? A. It does.

Q. Does it include the $20 found on his person? A. It does.

Q. Does it include the $20 bill paid for shoes at Jacobson's shoe store? A. It does.

Q. Does it include the $10 bill given at the gas station to Mr. Lyle? A. It does.

Q. By Mr. Hauptmann? A. Yes.

Q. Does it include the bill to that odd name that you gave? A. B-o-c-c-a-n-f-u-s-o, Boccanfuso & Company.

Q. That is Levatino? A. He is the boy employed by Boccanfuso that received the bill.

Q. Does it include the $840 found in the garage in the second instalment? A. Yes.

Q. All those bills that we referred to in the compilation and which you have included in your compilation are all bills which you have checked against the Lindbergh ransom serial numbers? A. They are.

Q. And they all correspond? A. They do.

Q. That is to say, they are part of the Lindbergh ransom money? A. They are.

Mr. Wilentz: I had not intended to get into the matter of the arrest, except as it was brought out on cross examination, so we will recall the witness later.

Mr. Reilly: May I ask the witness a few questions?

Mr. Wilentz: Certainly.

Re-Cross Examination by Mr. Reilly:

Q. In the socalled ransom money, there were $35,000 in gold certificates: correct? A. That is correct.

Q. And $15,000 in Federal Reserve notes? A. No. There was $10,000 in five dollar red seal 1928 series bills.

Q. They would not be called in by the President? A. No.

Q. They could still be in circulation? A. They could, and the $5,000 in Federal Reserve notes could.

Q. The $5,000 in Federal Reserve notes could still be in circulation? A. They could.

Q. And of the $15,000 you have just indicated, the red seal and Federal Reserve notes, only $80 has been spotted? A. Oh, no.

Q. How much? A. Of the $5,000, you have $570 recovered.

Q. When was that? A. During the entire period of investigation, starting as far back as April 14th, 1932. And then the four $20 Federal Reserve notes.

Q. So that if a person knowing that an embargo was on gold and that there was no embargo on Federal Reserve notes took a steamer to Europe with the $15,000 or some portion that he might have left, he could spend some of that in Europe and in Asia, could he not? A. I suppose he could exchange it.

Q. Didn't you get some bills back from Asia? A. I would like to explain that Asia bill. Colombo, Ceylon, five dollar bill, forwarded over here, and eventually reaching the Federal Reserve Bank. On investigation, disclosed that that particular bill had been deposited over there, exchanged at Colombo, Ceylon, in January or early February, prior to the payment of the ransom, and it had come back into the United States, and probably been included in the ransom money, because the money change is stamped on that particular bill.

Mr. Reilly: I move to strike that out. It is not responsive; it is guesswork; it is

probably this and probably that. It is listed in this list.

The Court: Well, it comes out as a result of your question to him, Mr. Reilly.

Mr. Reilly: I think not. I asked him whether or not a person having $15,000 that was not called, that he knew there would be no check so far as the banks are concerned, could take to Europe and spend it in Europe, or spend it in Asia, and he said Yes. I said, "You got some from Asia?" And he said yes.

Then he goes into this long harangue about an investigation that he thinks, or his conclusion that it might have been in Asia, and got around in a roundabout way into the Morgan bank.

The Court: Obviously, Mr. Reilly, the witness ought to be permitted to testify in response to your question or in response to a question by the Attorney General about this Asia phase of the matter.

By Mr. Reilly:

Q. Have you any personal knowledge of the bills in Asia? A. As a result of our investigation?

Mr. Wilentz: All of Mr. Reilly's questions and mine have included Asia and only because Mr. Reilly opened the door.

Mr. Reilly: No, I think not.

The Court: Well now, let Mr. Reilly pursue his investigation and then the Attorney General may amplify it if he wishes.

By Mr. Reilly:

Q. Have you any personal knowledge—of course you haven't. You have never been to Asia in your life, have you? A. No.

Q. What you are giving is hearsay? A. I am giving you the results of reports received.

Q. Of reports. That is hearsay, isn't it? A. Yes.

Q. You didn't make the reports, they were sent to you? A. Right.

Mr. Reilly: That is all.

By Mr. Wilentz:

Q. When you say what you are giving us is only reports, you are talking about Asia, aren't you? A. That is correct.

Q. When you talk about $14,000 gotten from Hauptmann garage, that is not hearsay, is it? A. No, sir.

Q. You know that? A. I saw it.

Q. Is that the truth? A. That is the truth.

Q. I want to clear it up. A. Yes, sir.

Q. Now, so far as this five-dollar bill from way out in Asia is concerned, is there any evidence at all that anybody took that to Asia to exchange after the ransom money was paid?

Mr. Reilly: I object to it. He doesn't know anything about it.

The Court: Well, he may say whether he knows or whether he doesn't know.

A. By reports—

Mr. Reilly: I move to strike it out as not responsive.

Mr. Wilentz: I won't even let him answer if he says he doesn't know. I am going to stop, if your Honor please.

Q. Now, outside of this five dollar bill in Asia—I withdraw that. This fifty thousand dollars, getting back again as I remember it, was $15,000 in non-gold, that is, certificates that were not gold certificates, you told us, is that right? A. That is my recollection of it.

Q. $35,000 in gold? A. That is correct.

Q. So that gold certificates issued as part of the Lindbergh money was limited to 35,000, isn't that so? A. That is correct.

Q. So that the Government of the United States, the State of New Jersey and the State of New York, and all other agencies have accounted for $19,685 or more than one-half of the Lindbergh gold bills, isn't that right? A. No, sir, it is not right.

Q. Well, you said 19,685. A. 19,000, that is correct, yes, sir.

Q. About 19— A. $19,000 in gold bills recovered, yes, sir.

Q. So that more than one-half of the Lindbergh gold bills have been recovered, accounted for, isn't that so? A. That is correct.

Q. Now, the $15,000 in the green backs, or whatever you call them, as distinguished from the

gold backs, there was no embargo on those, was there? A. They are still currency.

Q. So that the President hasn't called them in? A. No, sir.

Q. I take it that there is no dispute that they could be more freely passed, isn't that so? A. Obviously.

Q. Did you find any of those bills in Hauptmann's garage? A. No, sir.

Q. Only gold there? A. Only gold.

Mr. Wilentz: That is all.

Re-Cross Examination by Mr. Reilly:

Q. You made a thorough search? A. I beg your pardon?

Q. You made a thorough search of the garage? A. No, sir. I checked the bills after they had been recovered from the garage.

Q. Well, they made a thorough search, didn't they? A. I wasn't present when they were searching, Mr. Reilly. I don't know.

Mr. Wilentz: I think we will concede that.

Q. Don't you know they pulled the garage down? A. I heard rumors to that effect.

Q. And built a new one? A. (No answer.)

Mr. Reilly: That is all. Now may we have five minutes to digest this gold.

The Court: We will take a recess for five minutes.

(At 3:19 p. m. a short recess was taken.)

(After recess, 3:34 p. m.)

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

Mr. Wilentz: Mr. Stenographer, it is stipulated—it is the fact that Exhibit S-172 is one of the Lindbergh ransom bills and can be found on page 8 of Exhibit S-99.

Mr. Reilly: Yes.

Mr. Wilentz: We are going to call this lady from the orphanage. May we proceed, if your Honor please?

The Court: Yes.

MRS. ELMIRA DORMER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Madam, where do you live? A. St. Michael's Orphanage.

Mr. Peacock: Louder.

Q. St. Michael's Orphanage? A. St. Michael's Orphanage, Hopewell.

Q. And are you connected with that institution and in what capacity? A. I am a custodian of that.

Q. Custodian? A. Yes.

Q. On March 1st, 1932, were you custodian of this orphanage? A. Yes, sir.

Q. How many children did you have in the orphanage? A. 306.

Q. Was there any limitation or stipulation as to ages? A. No, sir.

Q. I mean, what was, how old was the youngest? A. Well, we are not allowed to take them less than two weeks old.

Q. Less than two weeks old? A. Yes, sir.

Q. So that they range anywhere from two weeks up? A. Up to sixteen.

Q. I take it that February 28th or 29th, I forget the day, the last day in February, but referring specifically to the last day in February and the 1st day of March, 1932, and the 2nd day of March, 1932, that you were familiar yourself personally with the attendance at your orphanage? A. Yes, sir.

Q. You knew the children, I mean? A. Yes, sir.

Q. Was there a child unaccounted for in that institution in February or March, 1932? A. None were missing. They were all accounted for.

Q. None were missing. A. (The witness nods affirmatively.)

Q. You recall, do you not, the finding of a body at Mount Rose somewhere? A. Yes, sir. That is across from our way.

Q. Yes. No child from your institution, was it, that was found there? A. Well, no, sir, because we had accounted for ours.

Q. You had accounted for all. A. (The witness nods affirmatively.)

Q. Now I had only gone into March, and I suppose I should continue into May. How about May 12th, 1932? Were any children unaccounted for? A. No, every day we know all the children and we account for them every day.

Q. So that in the year, 1932, there were no chil-

dren unaccounted for in your orphanage? A. No, sir.

Q. Now, let me ask you, madam—I suppose that you are familiar with that territory where this orphanage is located? A. Yes, sir; I have been there eight years.

Q. You have been there eight years? A. Yes.

Q. In addition to this orphanage is there a public school in the neighborhood? A. Yes, sir; about a block away.

Q. About a block away. In Hopewell, is it? A. Yes, sir.

Q. How far off the highway is your orphanage? A. Well, it is about another good sized block. It sets back from the road.

Mr. Fisher: What was the answer?

Mr. Wilentz: "It sets back from the road."

Mr. Fisher: About a good-sized block.

Q. And how far from there is the school, the public school? A. The public school is about a good sized block too.

Q. Are you on the same side of the road? A. We are on the other side.

Q. On the opposite side of the school? A. Yes, sir.

Q. And is it opposite to the side on which the body was found? A. The body was found on this side and the orphanage is on the other side.

Q. On the opposite side? A. Yes, sir.

Q. Are you familiar with the spot where the body was found in Mercer County? A. Yes, sir.

Q. How far would you say it is from that point to your school? A. Well, about ten good sized blocks.

Q. Are these books the books of attendance of your school? A. Yes, sir.

Q. As of those months? A. Yes, sir.

Mr. Wilentz: If there is any dispute about the attendance I will offer them. If there isn't, I won't.

Mr. Reilly: There is no dispute.

Mr. Wilentz: There is no claim that the child came from the orphanage.

Mr. Pope: No.

Mr. Wilentz: Am I to understand that there is no claim that this child came from the orphanage?

Mr. Fisher: I thought your proposition was if we didn't dispute the attendance you would not offer the books.

Mr. Wilentz: If there is any claim about it, I will offer them.

Mr. Reilly: I will say now that there has never been any claim but that this was Colonel Lindbergh's child that was found there. However, I am glad you brought the lady here because I want to ask her a couple of questions about the terrain. May I have the pointer, please?

Cross Examination by Mr. Reilly:

Q. Madam, this land is not fenced in, is it? A. No, sir. It is hemmed in.

Q. Sort of hedged in, is it? A. Yes, sir.

Q. You said something about the right hand side of the road and the left hand side of the road. A. Yes, sir.

Q. As I recall the road, if I was driving over from Princeton and arrived opposite the spot, opposite a line toward the spot where the body was found, the front of the car would be facing toward the flag, and the child's body was found on the left, is that correct? A. Yes, sir.

Q. And your institution is on the right, is that correct? A. Yes, sir.

Q. Have you ever known people to hunt over your land? A. Yes, sir.

Q. Now I ask you this question, without trying to be at all funny. Are there any watchdogs kept on your property? A. Yes, sir, Dannie.

Q. How many? A. One great big police dog, very large.

Q. He has the run of the land, has he not? A. Yes, sir.

Q. And who would have charge of him, your superintendent? A. We have a boy nicknamed "Cow Boy," he has charge of him.

Q. That dog is allowed to roam around over your land as a protection to your institution, is that correct? A. Yes, but we lock him up at a certain time.

Q. I know you lock him up. There are certain times he is allowed out, is that correct? A. Yes, sir, that is true.

Q. And are there other dogs in that neighborhood that you have seen? A. Well, I see a lot of dogs, but not there.

Q. And when people hunt or go hiking through there they are very often accompanied by dogs, is that correct? A. That is correct when they go hunting.

Mr. Reilly: Yes, that is all, thank you.

Re-Direct Examination by Mr. Wilentz:

Q. What time of night is the dog locked up? A. Oh, well, I don't know that.

Q. Well, did you as of February and March, 1932? A. Well—

Q. About what time? A. Well, about night time.

Q. When it gets dark? A. Yes, sir.

Q. The dog is locked up in the orphanage, is that right? A. No, out in back of the chicken coop.

Q. In back of some chicken coop. So at night the dog doesn't roam around, does he? A. No.

Q. Do you know anything about hunting, that is, the season? A. Well, I can hear the shooting.

Q. Well, there is no shooting in March, is there, out there? A. No, I don't think that is the season.

Q. You don't think that is the season. Thank you, Madam. A. You are welcome.

Mr. Reilly: Good afternoon.

Mr. Wilentz: Mr. Thomas Sisk.

THOMAS H. SISK, sworn as a witness in behalf of the State.

The Court: What is the name?

The Witness: Sisk, S-i-s-k.

The Court: Thomas H. Sisk?

The Witness: Yes.

Direct Examination by Mr. Wilentz:

Q. Mr. Sisk, are you connected with the Department of Justice? A. Yes, I am a special agent in the Division of Investigation, U. S. Department of Justice.

Q. How long have you been connected with the Department of Justice? A. Five years.

Q. And in that connection did you have an assignment with reference to the Lindbergh case? A. Yes, sir; I did.

Q. You remember, do you not, September, 1934, when Mr. Hauptmann was arrested? A. Yes, sir.

Q. Did you participate in connection with that arrest? A. Yes, sir.

Q. I notice that on the bill, the twenty-dollar bill, referred to as having been taken from his possession, your name is written thereon. Who wrote it? A. I did.

Q. And were you present then at the time he was apprehended? A. Yes, sir.

Q. Tell us the circumstances of the arrest. A. We pulled his car to the curb between 177th and 178th Streets, on Park Avenue, in New York City in front of a garage. He was pulled out of the car and Lieutenant Arthur Keaton of the State Police, and I believe a New York police officer, and myself started to search him. Lieutenant Keaton took from his rear left hand pocket a wallet, and out of that wallet, in Hauptmann's presence, he took a $20 gold certificate. Special Agent Seery

checked that bill in Hauptmann's presence and found it was one of the Lindbergh ransom bills.

Q. All right. A. And we then wrote our names or initials or whatever appear on there.

Q. Now you finally then got to the house, did you not? A. Yes, sir.

Q. You got to the house did you not? A. Yes, sir.

Q. I want to show you 1, 2, 3, 4, 5, 6, 7—we will take the 6th first—and tell me where you got those?

Mr. Pope: Six what?

Mr. Wilentz: Six pieces of paper.

A. These papers were found in Hauptmann's residence, in one of the rooms. I believe the front room, although I don't recollect positively if that was the room.

Mr. Wilentz: I offer them in evidence.

Mr. Pope: May we see them?

Q. This one intrigues me a little bit. Will you tell me whether or not you found that? A. No, sir, I never saw that before in my life.

Q. That is why I separated it. (Counsel for the defense examined the papers referred to at length.)

The Reporter: Shall I mark them as one exhibit?

Mr. Wilentz: Well, if you think you can.

The Reporter: I can clip them together.

Mr. Wilentz: We offer them.

Mr. Pope: We object to them, if your Honor please. They are incompetent, irrelevant and immaterial. They appear to be on their face merely lottery tickets and certainly cannot have any connection with this case against this defendant.

The Court: Well, I will have to hear you on that, Mr. Attorney General.

Mr. Wilentz: It is the contention of the State, if your Honor please, and we will prove it to be the fact in due order that this gentleman did not work from April the 2nd, 1932, which is the date of the payment of the ransom and we stated that we would prove to the jury that these moneys which he obtained were spent in certain fashion. I think that amongst the things we referred to was that he spent some money on lotteries. Now possibly I am premature about this; we can prove it in another way if counsel really objects, and if he objects I will ask that they be marked for identification and endeavor to present them later for admission.

The Court: I think perhaps that is the true course, Mr. Attorney General.

The Reporter: S-173 for identification.

Mr. Wilentz: I offer them for identification.

(Lottery tickets referred to were marked State's Exhibit S-173 for Identification.)

Q. Now, I show you S-172, being a twenty-dollar bill with your name on it. Is that the twenty-dollar bill that was found on his person? A. Yes, sir.

Q. Where did he say he got that twenty-dollar bill? A. He said that this particular bill was one of an accumulation of $300 in gold bills which he had accumulated for several months. I asked him where he got the bills and he said from different banks in New York during the past several months prior to the arrest. I asked him to name one bank and he named the Central Savings Bank of New York City. I asked him if he could name any other bank and he said no. I asked him if he had an account at the Central Savings Bank and he said yes.

So I said, "Well, we will go up there to the bank and see whether or not that bank gave you any gold certificates. If you have an account there, the tellers probably know you."

So then he said, "Well, no, I didn't get them at the Central Savings Bank. I just got them from every place that I went, and if I could get a gold certificate, I would get it, because of the inflation," or something of that—

Q. What did he say as to what had happened to the $300? A. He said that this particular bill here was the last one.

Q. All right. Following that, what happened then, as between the two of you? What did you do then? A. Why, I asked him if the statement that he had made to the filling station man that he had a hundred more was true, and he said "yes, that is a true statement." So I said, "Well, where are the hundred more?" He said, "Up at the house, up at my house in a tin box."

Q. Did you go up to the house? A. Well, we went up to the house; yes, sir.

Q. Am I excluding something you want to tell? A. We went up to the house, and he produced a small metal box with some sort of a lock on it, a combination lock and he opened that box and took out $120 in gold coins.

Q. I see. A. He said, "There is the $100 or more." We pointed out to him that that was gold coin and that we were talking about paper money, and he just didn't answer.

Q. All right. Now then you are in the house. I take that the other officers are there. A. Yes, sir.

Q. And you are talking about money. A. Yes, sir.

Q. When then happens, after you get through with this gold coin business? A. We started to search the house, each room systematically.

Q. In his presence? A. In his presence, yes, sir.

Q. Did he make any objection? A. No, he did not.

Q. All right. What happened? A. We had him sit down at a chair near the window almost alongside of the window in the rear room and we were searching that same room, I think two of us Corporal William Horn and myself.

Q. Corporal Horn is of the New Jersey Police? A. Yes, sir, of the New Jersey State Police.

Q. Yes? A. And Corporal Horn was searching a dresser or a chest of drawers next to a closet, and I was in the closet, delving around, looking at shoes, and going through clothes; and while doing so, I noticed that Hauptmann would get up a little from his chair and look out the window. He did that four or five times.

Q. Were you in the room when he was looking out? A. I was in the closet and I was kind of watching him, and when it appeared to me that—

when nobody was looking at him, why, he would sort of raise up and look out the window.

Q. And as you looked out that window in the direction that he looked, what would you face? A. Well, you would face the garage.

Q. How far is the garage from that window? A. Approximately fifty feet.

Q. Fifty feet. What room is that? A. That is on the second floor of the house, the rear room of the apartment occupied by the Hauptmann family.

Q. Is that what is or will be referred to as their bedroom, Hauptmann's bedroom? A. Yes.

Q. Was there a bed in there? A. Yes.

Q. All right. Now, so you say you were in the closet, searching, and then when you looked around, as I understand you, you observed him occasionally—. A. Yes.

Q. —looking out through that window; is that it? A. Yes.

Q. As the result of that what did you do? A. I called Lieutenant Arthur Keaton, and he observed it also, I believe. I then went over to Hauptmann and I said, "What are you looking at when you are sneaking these looks out the window?" And he said, "Nothing," so I tried to figure out what he was looking at, so I looked out myself.

Q. What did you see when you looked out? A. Well, the garden that is directly under the house, he was looking a little to the right of that, and the only thing there was the garage and a few trees in back of it. So I said—

Q. You mean to the left, don't you? A. I beg your pardon?

Q. As you are looking out, you mean the garden underneath and then to the left? A. No, to the right.

Q. All right. A. Then I ask him, I said, "Is

that where you have the money?'' or some such remark, and he said, ''No, I have no money.''

Q. I see. All right. Then what happened? A. Well, Lieutenant Arthur Keaton of the New Jersey State Police and Inspector John Lyons of the New York Police, and myself went down into that garage to search it.

Q. Yes? A. And we found that the two middle planks on the floor of the garage were loose, and we took a crow bar and we pried them up.

Q. Yes? A. And underneath them was some freshly disturbed dirt, as though some one had been digging.

Q. Yes? A. So we got a shovel or a spade and we dug down and we found a crock.

Q. What do you mean by that? A. Some sort of a crock.

Q. Crockery? A. I don't know what it was made out of. It was all covered with mud and I had it—

Q. Was it crockery? A. Yes, I imagine that is what it was, either crockery or some sort of heavy metal.

Q. Had it been buried there? A. It was about a foot underground.

Q. When you say a foot underground was it covered with dirt? A. It was covered with dirt and it had a lid on it and at the bottom was about a quarter—oh, about two or three inches of water.

Q. Water? A. Yes, sir.

Q. Still in there, water? A. Yes, sir.

Q. All right now. Did you remove it? A. Yes, sir; we did.

Q. Did you find any money in there? A. No, sir.

Q. All right. A. We questioned Hauptmann as to that jug. He denied knowing anything about

it, but the next day when we questioned him, he admitted that he had that money in there three weeks before he was arrested.

Q. In the jug? A. In that jug.

Q. All right, sir. What did you do that day?

The Defendant Hauptmann: Mister, Mister, you stop lying. You are telling a story.

The Witness: That appears in the transcript of testimony.

The Court: One moment. Let me suggest to the defendant that he keep quiet. If he has any observations to make, let him make them quietly through counsel.

By Mr. Wilentz:

Q. The statements that you are making now, did you make at that time and does it appear in the report?

Mr. Reilly: I object.

Mr. Wilentz: I withdraw it.

Q. Did you make the same statements at that time that you are making now? A. Yes, sir.

Q. Well now, getting back to the day that you were there in the house with these other officers and found this crockery, as I understand it, before you got away did you talk to him again? A. Yes, sir.

Q. How long were you at the house? A. We were at the house approximately an hour, maybe

an hour and a half, I don't know exactly about the time.

Q. Did you continue to talk to him about this situation in an effort to find the money? A. Yes.

Q. What happened then? Well, did he tell you? A. I asked him where he had bank accounts.

Q. Yes, sir. A. Or whether he had any safety deposit boxes anywhere.

Q. What did he say?

Mr. Reilly: I object to it as incompetent, irrelevant, immaterial.

The Court: Why so?

Mr. Reilly: Unless the bank accounts antedate—

The Court: The undertaking, if proven, is an admission of the defendant.

Mr. Reilly: Quite true, but I say it is not competent unless it antedates the payment of the money that has been called here the ransom money, this witness should not be permitted—and I take it the Court will not permit—the witness to ramble all around on general conversations—let's assume—he must be confined—let's assume that Hauptmann was to tell him in one of these conversations that off in Australia at one time he struck a man, or done something like that—

The Court: Oh, no; we will allow nothing like that.

Mr. Reilly: I know, but it will be in, Judge, the damage; that is why I ask you—

The Court: Well, now, I was assuming, without paying particular attention to the course of the examination, that these questions related to a time subsequent to the alleged obtaining of ransom money.

Mr. Wilentz: I am not interested in anything that preceded it, except this, if your Honor please: we are not only going to show, or attempt to show, if the Court will permit it, the accounts and moneys after the obtaining of the ransom money but we are also going to show his financial status before that as compared with it. In other words, if your Honor please, we are going to attempt to show that on the 1st day of April, for instance, he had certain moneys, certain securities; then from that time on we are going to attempt to show the difference.

The Court: Well, now, it is quite likely that you may be permitted to do that.

Mr. Wilentz: Yes.

The Court: What I am now interested in is the pending question, and Mr. Reilly objects to it. Now let us hear what that question is.

(Pending question read by the reporter as follows: "Q. What happened then? Well, did he tell you? A. I asked him where he had bank accounts.

"Q. Yes, sir. A. Or whether he had any safety deposit boxes anywhere.

"Q. What did he say?")

Mr. Reilly: That is too general.

Mr. Reilly: That is too general.

The Court: Well, it might I suppose well be confined a little bit, but I think by and large the ultimate purpose of the question is legitimate. We will see whether or not the Attorney General can frame a more confining question.

Mr. Wilentz: I don't know how, if your Honor please. I am asking about a conversation. I can't limit the conversation.

Mr. Reilly: All conversations are not admissible.

Mr. Wilentz: If it is not responsive—

Mr. Reilly: There is the damage.

Mr. Wilentz: I don't think, if your Honor please, that after the answer is in that counsel—well, maybe I had better not finish that. If I knew how to limit it, I would be glad to do it, but my present contention is that these accounts will show the moneys after the ransom. It may be that one of them—I am not familiar,—may have been a small account before. I see no damage to show what his bank account was

before. How can it be harmful? He should be eager to show it, it seems to me.

Mr. Reilly: We will be very eager when we get into the defense.

Mr. Wilentz: I am talking about his conversation about the moneys.

The Court: Well, I am inclined to think that the witness may answer the question, Mr. Reilly.

Mr. Wilentz: What is the last question and answer? I'll just repeat it for the Court: What did he say?

A. He said that he had bank accounts either in his own or his wife's name at Steiner Rouse & Company, New York City, E. A. Pierce & Company, New York City, Central Savings Bank, New York City, and the Mount Vernon Trust Company in Mount Vernon, New York.

Q. Was there anything said about a safe deposit vault? A. Yes, but I didn't talk to him about that. Someone else did.

Q. Did you accompany him anywhere? A. I was not present in connection with that safety deposit box.

Q. All right. Now, when you are talking about these accounts what else, if anything, was said between you and Hauptmann with reference to his moneys? A. I didn't go into the details on that. We wanted those names for investigative purposes so we could check them and then later he was questioned in detail as to those matters.

Q. All right, now. While you talked to him

was there anything said about his having a lawyer? A. Well, not at that time—later.

Q. When later? A. I believe on the 20th that some of us asked him if he wanted to get a lawyer.

Q. Where was that? A. That was down at the Second Police Precinct in Greenwich Street.

Q. New York? A. Yes, sir.

Q. And what did he say to that? A. He said, "What is the use?" That is all he said.

Mr. Wilentz: You may take the witness, Mr. Reilly.

Mr. Reilly: Are you going to use him again?

Mr. Wilentz: I will have him again. I am not so sure about it, but I will have the agent here throughout the trial, and if it should be found necessary to recall him, by either side, you can have him.

Cross Examination by Mr. Reilly:

Q. Now you are very much interested in this case, aren't you? A. Yes, sir.

Q. And were you in direct charge of the Department of Justice agents in this investigation? A. Yes, sir.

Q. When did you come into charge? A. In March, 1934.

Q. March, 1934? A. Yes, sir.

Q. Hadn't you worked on the case before that? A. Yes, sir, I had.

Q. How long had you worked on the case? A. Since November, 1933.

Q. And you were transferred to the New York

office, were you, to be working on the case? A. No, sir, I was not. I was already there.

Q. Where were you, in Jersey? A. No, I was already in the New York office. I was generally assigned to the New York office.

Q. What office were you in when you started this investigation or you were placed in the picture of the investigation? A. I was assigned on general assignment in the New York office.

Q. And you are the man then that obtained the ten dollar bill from the teller that passed from the gas station to the bank? A. No, sir, I didn't obtain that bill. Special Agent W. S. Seery, Corporal William Horn, of the New Jersey State Police, and Lieutenant James J. Finn, of the New York Police, were the ones that went up and took up the bill and conducted the subsequent investigation.

Q. But it was your order that placed the defendant under arrest, wasn't it? A. Well, yes, it had something to do with it.

Q. As a matter of fact, you actually apprehended him, didn't you? A. No, I don't say that I actually—

Q. Well, didn't you? You had a man named Finn with you, didn't you, of the New York City Police? A. There were eight other officers present.

Q. They kept the defendant standing an hour and a half on the sidewalk, didn't they? A. No, sir.

Q. How long did they keep him on the sidewalk waiting for Inspector Lyons of the New York City police? A. They kept him on the sidewalk about five minutes.

Q. Where did they take him then? A. They gave him a seat in the automobile.

Q. Did you keep him in the street for quite some time until Inspector Lyons appeared? A.

No, sir; he wasn't on the sidewalk more than about five minutes; I am sure of that.

Q. Did you keep him in the car? A. We had him in an automobile, yes, sir.

Q. How long did you keep him in the automobile before Lyons appeared? A. I don't recall that. I would say we had him in the car altogether, I would say around an hour that we had him in an automobile.

Q. Then where did you take him? A. We went up to his house with him.

Q. Right from the arrest? A. Yes, sir.

Q. Where was he arrested? A. He was arrested between 177th and 178th on Park Avenue in front of a garage, the number of which I am not sure of, but I believe it was 4722 or something like that.

Q. How long did you have him home before you landed him down in the Greenwich Street station? A. We had him in his house for about, approximately an hour and a half, I would say.

Q. Who else was in the house at that time of his family? A. Of his family? Mrs. Hauptmann was there.

Q. Who else? A. There was a woman, I believe a neighbor, who came into the hallway and talked to Mrs. Hauptmann, but no one else from the family at that particular time.

Q. Was the baby there? A. No, she left the baby downstairs, I believe, with the landlady.

Q. It was in the house, though? A. Oh, yes; I was referring to his own apartment.

Q. Then after being an hour and a half in his apartment, did you go to the Greenwich Street station house? A. Well, we stopped by a bank on the way down there to check a safety deposit box.

Q. You didn't go in? A. No, sir, I did not.

Q. Now, you say he told you he had an account

in Mount Vernon? A. He said that either he or his wife had accounts there.

Q. Well, didn't you ask him which one had it. A. Well, I believe we did, we made notes on it.

Q. All right, did you find out which one had it? A. Well, I didn't conduct the investigation.

Q. Well, who did? A. Well, I would have to refer to reports to find that out.

Q. Well, where are the reports? A. I have them available, I can get them.

Q. Will you bring them tomorrow? A. Yes, sir.

Mr. Reilly: May I continue my cross examination of this witness tomorrow?

The Court: Why, I think there is no objection to that is there, Mr. Attorney General?

Mr. Wilentz: Does counsel want to stop now with this witness?

Mr. Reilly: With this witness, yes.

Mr. Wilentz: I didn't hear the last question. What was it about?

Mr. Reilly: He is going to get some reports to refresh his recollection, he will be ready for cross examination tomorrow.

The Court: The witness has promised to bring certain reports that Mr. Reilly is interested in.

Mr. Wilentz: Yes, sir.

The Court: Mr. Reilly's application is now that he be permitted to finish his cross examination tomorrow.

Mr. Wilentz: That is agreeable to the State, if your Honor please.

The Court: That will be done.

Mr. Wilentz: Mr. Sisk, will you step down and come back tomorrow with such information as you can?

The Witness: Yes, sir.

Mr. Wilentz: Is the gentleman here from the Bronx with the maps?

Mr. Peacock: Henry Eichin.

Mr. Wilentz: Henry Eichin.

HENRY EICHIN, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Will you tell us please, your qualifications as an engineer, and surveyor and an artist at maps? A. I have studied at Columbia University for two years, I am a licensed land surveyor in the State of New York, a City Surveyor of the city of New York.

Q. You studied two years at Columbia? What profession? A. Engineering.

Q. Engineering? A. Yes. I have been making similar maps for the District Attorney of Bronx County for about eight years.

Q. About eight years. A. Yes.

Mr. Wilentz: I offer him as to his qualifications.

Mr. Reilly: What county is that, the Bronx?

Mr. Wilentz: The Bronx.

The Court: Any objection?

Mr. Wilentz: No objection, is there?

Mr. Reilly: No objection.

Mr. Wilentz: All right.

By Mr. Wilentz:

Q. Did you prepare this exhibit which we are now offering? A. I did.

Mr. Reilly: Did you give it a number, Mr. Stenographer?

The Reporter: Yes, sir.

Mr. Wilentz: We offer it in evidence.

Mr. Reilly: No objection.

(The map referred to was received in evidence and marked State's Exhibit S-174.)

(Map placed on wall to the right of jury.)

Henry Eichin—Direct

By Mr. Wilentz:

Q. What is your name, sir? A. Eichin, E-i-c-h-i-n.

Q. Your voice is a little thin, isn't it? A. Yes.

Q. Well, I want you to use it this afternoon. A. All right.

Q. And we will see if we can't get through with you by quitting time. This map—S—what number is it?

The Reporter: 174.

Q. S-174, I take it, is intended to show some part of The Bronx in the City of New York: isn't that right? A. That is right.

Q. And it is made at our request? A. Yes, sir.

Q. Now I want you to come down here, take this pointer, and very slowly point out just exactly what it shows, so that the people of New Jersey, who are in here, will know just what is intended to be portrayed by this map. A. All right.

Q. And if you make any mistakes, Mr. Reilly of Brooklyn will stop you. A. All right.

Mr. Wilentz: Now, where would you have the gentleman stand, if your Honor please? I don't want his back to your Honor, or—

The Court: Why, if he could stand in here on one of these steps, I think it would be nice. The jury can see and counsel can see.

Now, you may proceed.

The Witness: Yes, sir.

A. The map, starting at the upper left hand corner, shows Woodlawn Cemetery. Just north of Woodlawn Cemetery is 233rd Street, and on the northerly side of 233rd Street there are some tennis courts. On the easterly side of the tennis courts there is a small tool house. Along the westerly side of the map—

Q. Just a minute, please. Do you mean—will you let me have that other pointer. 233rd Street you are talking about, is that street shown there (indicating)? A. Yes, sir.

Mr. Wilentz: Am I in your way?

Mr. Reilly: No, but might I offer this suggestion, if it is permissible under the procedure here?

Mr. Wilentz: Yes, sir.

Mr. Reilly: It is marked, isn't it?

Mr. Wilentz: Yes, it is marked.

The Witness: Yes, sir.

Mr. Reilly: From where I sat, I couldn't see. I was going to suggest that you write it down as you went along, but it appears to be on here.

By Mr. Wilentz:

Q. From where we stand and the jury is, I don't think it is quite clear, but you have got some markings up there. What is that? I see you have got "tennis court." A. Yes, sir.

Q. Then you have a little black mark, and what is that, the tool shed you referred to? A. The tool house, yes, sir.

Q. The tool house? A. Yes, sir.

Q. All right. So that is 233rd Street, and that is Woodlawn Cemetery, and this I take it is what? A. This is Jerome Avenue.

Q. Jerome Avenue? A. That is Jerome Avenue.

Q. That runs down here. A. Yes, sir.

Q. All right. Now, what else did you intend to portray?

Q. So that is 233rd Street, that is Woodlawn Cemetery, and this I take it is what? A. This is Jerome Avenue.

Q. Will you show us please where the other cemetery is, St. Raymond's, is it on here? A. St. Raymond's is on the lower righthand corner of the map.

Q. It is marked St. Raymond's? A. Yes, sir.

Q. Tremont Avenue, which has been referred to, runs in front of St. Raymond's Cemetery or along there? A. Right.

Q. Where is Whittemore Avenue? A. Whittemore Avenue is the street that runs south from East Tremont Avenue to Balcom.

Q. So Whittemore Avenue runs from Balcom Avenue along St. Raymond's Cemetery and stops there (indicating on map), is that right? A. That is right.

Q. Both of these cemeteries are in the Bronx, are they? A. They are.

Q. Both in the Bronx? A. Yes.

Q. Do you know where Decatur Avenue is? A. Yes, sir.

Q. Please show us where Decatur Avenue is. A. Decatur Avenue is on the lefthand side of the map, starting at Fordham Road and running north to East Mosholu Parkway South.

Q. This is Decatur Avenue and is so marked? A. It is.

Q. And it runs from Fordham Road? A. Yes, sir.

Q. And runs—what is this, north? A. That is north.

Q. Up to—. A. East Mosholu Parkway south.

Q. East Mosholu Parkway—M-o-s-h-o-l-u? A. South.

Q. That is a street upon which Dr. Condon lived at the time. There is no objection to that, is there?

Mr. Reilly: No.

A. I know where Dr. Condon lives.

Q. Will you tell us where about on Decatur Avenue with reference to this map? A. He lives at 2974 Decatur Avenue which is indicated just south of East 201st Street.

Q. Fine. You have indicated it then with a little black mark? A. And the house number.

Q. 2974—so that where you have 2974 that is intended to be the residence of Dr. Condon? A. Yes, sir.

Q. Now have you indicated the residence of Mr. Hauptmann? A. Yes, sir.

Q. Where? A. The residence of Mr. Hauptmann is on 222nd Street at Needham Avenue, the number being 1279 East 222nd Street.

Q. Now then, East 222nd Street runs east and west, isn't that so? A. It does.

Q. And it is intersected at some point by Needham Avenue? A. Yes, sir.

Q. Is the Hauptmann house on East 222nd Street or is it on Needham Avenue? A. It is a corner house. It is on the corner of Needham Avenue and 222nd Street.

Q. A corner house? A. Yes, sir.

Q. Now I notice that to the west of Needham Avenue you have 1279. A. Yes, sir.

Q. I take it that is 1279 East 222nd Street? A. That is right.

Q. I notice to the right you have indicated a word "garage"? A. Yes, sir.

Q. Is there a garage there? A. There is.

Q. Is that intended by you to indicate the garage that goes with that home? A. It is.

Q. Is there actually some little lane or avenue between? A. Yes, sir, there is.

Q. And that is called Needham Avenue, isn't it? A. It is called Needham Avenue, yes.

Q. Now, will you explain the course from Hauptmann's home to Woodlawn cemetery as shown on that map? A. The best course to take in my opinion from Hauptmann's home to Woodlawn Cemetery would be to go easterly from Needham Avenue to Boston Road.

Q. Which is Boston Road? A. This is Boston Road here (indicating).

Q. Yes, sir. A. Then, south on Boston Road to East Gun Hill Road.

Q. East Gun Hill Road? A. Yes, sir.

Q. Yes, sir. A. Then westerly along East Gun Hill Road to Bainbridge Avenue.

Q. Yes, sir. A. Northerly along Bainbridge Avenue to the Cemetery.

Q. And of course the cemetery goes all along Bainbridge Avenue, is that it? A. It goes along Bainbridge Avenue and Jerome Avenue.

Q. So that the course that you talk of follows the pointer as I am indicating it, just follow it,

see if that isn't right, up there; that is Woodlawn Cemetery? A. That is right.

Q. Now, Gun Hill Road, is that an important highway? A. Gun Hill Road is an important highway, yes, sir.

Q. East 222nd Street is a side street, isn't it? A. Well, it is a wide street, but there isn't very much traffic on it.

Q. Is it an improved street pavement? A. The pavement is very poor.

Q. Well, isn't it a dirt street? A. It is a dirt street that has been sprinkled with tar.

Q. It isn't a city street to the extent that it has an improved pavement, is it? A. No, sir.

Q. Now, Gun Hill Road, I take it, is an improved road pavement? A. Gun Hill Road is an improved road.

Q. Now, going from Hauptmann's home, if you were to proceed from Hauptmann's home to the other cemetery, would you again strike Gun Hill Road? A. Yes, sir.

Q. Go down to Gun Hill Road again? A. Well, the shorter way would be to come down Boston Road to East Chester Road, which is also an improved highway, and that intersects again with Gun Hill Road, then easterly.

Q. Then easterly? A. Yes, along Gun Hill Road to Baychester Avenue.

Q. Yes, sir. A. Along Baychester Avenue through Pelham Park and down Eastchester Road to East Tremont Avenue.

Q. All right. And Tremont Avenue, of course, is the avenue upon which St. Raymond's Cemetery was, is that it? A. That is right.

Q. Now, you have got some little mark in here and you have got the Bergen Greenhouse. Is that intended to show the Bergen Greenhouse, the

florist shop there, called the Bergen Greenhouse? A. Yes, sir.

Q. And of course I take it that you have attempted to correctly depict the various distances and relationships? A. Yes, sir.

Q. What is the scale of your map? A. The scale of the map is one inch to 400 feet.

Q. These places, of course, you have indicated at our request? A. Yes, sir.

Q. Now, let me see. Have you any other little markings of that kind, so that before you get away we can find out what they were intended to indicate? A. Well, I show here Park Avenue down to 176th Street and I also show Jerome Avenue, West Gunhill Road, West Mosholu Parkway North, Gates Avenue and Knox Place.

Q. Oh, you do show Knox Place there? A. Yes, sir.

Q. Now, tell me—I don't think you have indicated the frankfurter stand there at Woodlawn Cemetery, have you? A. No, sir; I haven't. I could tell you approximately where that was.

Q. Do you think you could fairly accurately put an X and show us about where it is in relation to the cemetery? A. Yes, sir.

Q. All right. Will you do it, please, for us? A. I will. (Marks X on map.)

Q. Now, the point X that you make on that map, as I understand it, is intended to indicate the position of the frankfurter stand with relation to Woodlawn Cemetery? A. Right.

Q. I take it these little edges indicate avenues, you haven't continued them out? A. That is right.

Q. Is this map accurate? A. It is.

Q. What I mean by that is, is it approximately accurate or have you made a painstaking effort to be very accurate? A. I have made an effort to be very accurate.

Q. As to distances—and positions of roads. A. Yes, sir.

Q. And of course you haven't continued some of those roads, because there was no request made for it, is that right? A. That is right.

Mr. Wilentz: I offer the witness and with the further thought and suggestion that if inadvertently we have omitted to continue any road and counsel wants it, we will have this man come back and complete it.

Mr. Reilly: I don't think we can finish this afternoon.

Mr. Wilentz: Would you mind coming back tomorrow?

The Witness: No. I will come whenever you want me.

Mr. Reilly: Rather than have the cross examination broken up I will ask the Court's indulgence. You are within five minutes of adjournment. I ask that the map be left here and I will look it over this evening so I can have my ideas correct.

The Court: The Court will now presently take a recess. Everybody in the court room will remain quiet until the jury and the prisoner have retired. The jury will now retire. And we will adjourn until tomorrow morning at ten o'clock.

(The jury thereupon retired.)

The Court: The prisoner is now remanded to the custody of the sheriff and he may retire with the sheriff.

The Court will now take a recess until ten o'clock tomorrow morning. The people may retire.

(At 4:27 p. m. the further trial of the case was adjourned until tomorrow morning, Friday, January 18th, 1935, at ten o'clock.)

STATE vs. HAUPTMANN

Flemington, N. J., January 18, 1935.

THIRTEENTH 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.

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

The Court: Counsel may proceed.

HENRY EICHIN resumed the witness stand:

Cross Examination by Mr. Reilly:

Q. Suppose you have a pointer, with me, will you? A. Yes, sir.

The Court: This is the civil engineer, isn't it?

Mr. Reilly: Yes, sir; on cross.

The Court: Yes.

Q. I am now pointing to your map, which is known as Exhibit S-174, and I notice there are blank spaces that I am pointing to now. These indicate park areas, or are they street areas? A. Those are street areas.

Q. Is this the westerly boundary of the Bronx or the easterly? A. That is about midway in the Bronx; the westerly boundary is several miles to the west.

Q. Then this is not a complete map of the Bronx, is it? A. No, sir.

Q. Over here you have Pelham Bay Park, correct? A. Yes, sir.

Q. That borders on Pelham Bay? A. It does.

Q. Part of that is City Island, in or around that area? A. City Island is to the east of that.

Q. Then comes Hunters Island? A. Yes.

Q. Then Travers Island? A. That is right.

Q. All that area is on the edge of Long Island Sound? A. That is right.

Q. Now, as we proceed west we are proceeding towards the Hudson River, correct? A. That is right.

Q. As we come over here your map stops at Van Cortlandt Park. A. At the easterly side of Van Cortlandt Park.

Q. Yes, the easterly side. A. Right.

Q. Now, where is the railroad station, at the beginning of Van Cortlandt Park? A. You mean the subway.

Q. Yes, but it is elevated there. A. It is ele-

vated at that point. That is right about where I place my finger here on Exhibit S-174.

Q. Here (indicating)? A. Yes, sir.

Q. Well, here you have—this is the easterly side of Van Cortlandt Park? A. Yes, sir.

Q. I am talking about—you haven't shown here the westerly side of Van Cortlandt Park at all.

10 A. No, sir.

Q. Now, is all this area Van Cortlandt Park? A. It is down to about this point (indicating.)

Q. Down to about here? A. Yes, sir.

Q. It extends quite a way over? A. Yes, sir.

Mr. Wilentz: Supposing he marks it.

Mr. Reilly: Yes.

20 Mr. Wilentz: Just mark the southerly boundary of Van Cortlandt Park.

(The witness marks the map as requested.)

Mr. Wilentz: The line is intended to indicate about the southerly boundary of Van Cortlandt Park opposite Woodlawn Cemetery, is that correct?

30

The Witness: That is right.

Mr. Reilly: Will he be allowed to right it on his own map, Judge?

Mr. Wilentz: Yes.

The Court: I suppose there is no objection to that.

40

(The witness writes on the map.)

A. That mark on there is the approximate south line of Van Cortlandt Park.

Q. Now, where do you say your map indicates Dr. Condon's residence? A. Dr. Condon's residence is on the east side of Decatur Avenue, south of 201st Street and is indicated by the number 2974.

Mr. Reilly: Would we be permitted, Judge, to mark here 2974, Dr. Condon's residence?

Mr. Wilentz: I have no objection, except it is already testified and specifically put there for that purpose.

Mr. Reilly: I know, but maybe weeks from now the jury would like to know.

(Witness marks on map.)

Q. That stands for Dr. Condon's residence. A. That is correct.

Q. All right. Now, where is this frankfurter stand? A. At that point that I marked with the X yesterday.

Q. Now, where is this florist shop that the bench is supposed to be outside of? A. (Witness points it out on map.) That is already marked there.

Q. Bergen Green House? A. That is right.

Q. And the Hauptmann house? A. The Hauptmann house is indicated by No. 1279.

Q. Could we have an "H" on there? A. Yes, sir, (witness marks an "H".)

Q. And over here is St. Raymond's Cemetery? A. That is right.

Q. How many miles would you say it was from Woodlawn to St. Raymond's? A. As the crow flies?

Q. No, by motor. A. By motor, from what part of Woodlawn?

Q. Main gate. A. From the main gate (Witness measures it with pointer and compares it with scale). That is about four and a half miles.

Q. You indicated here yesterday the way you thought you would go from Hauptmann's house to some other point. What point was that? A. St. Raymond's Cemetery and Woodlawn Cemetery.

Q. I notice that you have certain streets here—this is East 222nd Street? A. Yes, sir.

Q. With the other streets cut out, there are half a dozen different ways you could go. A. Oh, yes.

Q. And the same way from the house to Woodlawn Cemetery, there are half a dozen different ways. A. Yes.

Q. You can go along here and down, or come down Boston Road and through Gun Hill Road back to the main entrance. A. Yes, sir.

Q. Does this show the elevated station of the New York Central Railroad, White Plains Division at the neighborhood of 233rd Street? A. No, sir.

Q. That would be over here to my right, would it not? A. No, sir. That would be approximately this point, 233rd Street just east of Webster Avenue. That is the New York Central Railroad.

Q. New York Central Railroad. As I recall the New York Central Railroad does pass Woodlawn Cemetery. A. It does, just east of the Woodlawn Cemetery.

Q. That is what branch? The White Plains branch? A. I think it is the Harlem River branch.

Q. That comes on up to those lakes— A. I think it does.

Q. That railroad station is not shown on here? A. It is not. It would be about there.

Q. The railroad station would be here? A. Yes, sir.

Q. And the subway station, where is that? A. The Jerome Avenue subway station is here.

Q. Jerome Avenue and what? A. Well, that is the end of the line.

Q. That is the end of the line? A. At Van Cortlandt Park.

Q. At Van Cortlandt Park? A. That is right.

Q. The end of the subway is here? A. Yes, sir.

Q. Will you put a "J" there too? A. (Witness complies.)

Mr. Wilentz: The "J" is intended to indicate the last stop on the Jerome Avenue subway line.

Q. Have you available a map of Bronx, the entire Bronx County, this side, made by any American map company, or anybody like that? A. I have a map showing the entire Bronx, yes.

Q. Have you that with you? A. I have it upstairs.

Q. Can I have it during recess? A. Yes, sir.

Q. Is it a Rand-McNally? A. No, it is a map that was made by the Topographical Bureau of the Bureau of the Bronx.

Mr. Reilly: Well, I don't suppose you would have any objection—

Mr. Wilentz: Certainly not. You may have it.

Mr. Reilly: —to our having it, if we need it, a map of the City of New York.

Mr. Wilentz: I think maybe we can agree to have it here so that it later on—

Mr. Reilly: Yes.

Mr. Wilentz: Will you leave it with Mr. Reilly, Mr. Eichin?

The Witness: Yes, I will.

Mr. Reilly: I think that is all at this time. Thank you.

Mr. Wilentz: I just have one or two questions.

Re-Direct Examination by Mr. Wilentz:

Q. I just have one or two questions. Now, of course, this is all a part of the great City of New York, isn't it? A. It is.

Q. Bronx is one of the Boroughs? A. Yes, sir.

Q. Now every section of New York is not as thickly populated as Manhattan, Broadway and those places, is it? A. No, sir, it is not.

Q. With particular reference to the section in and about Woodlawn Cemetery, what have you to say as to whether or not it is densely populated, or is it a quiet sort of country-appearing place? A. It is a quiet sort of country-appearing place.

Q. And particularly with reference to Woodlawn Cemetery, my recollection of your testi-

mony is that to the west is this park all the way down to where you have this line? A. That is right.

Q. And where you have this line do you mean that the park extends all the way up north paralleling Woodlawn Cemetery? A. That is right.

Q. Does it go beyond? A. It does.

Q. The northerly line of Woodlawn Cemetery? A. It does.

Q. For any great distance? A. Yes, I would say for at least a mile.

Q. So that particularly with reference to Woodlawn Cemetery—which is the main gate, by the way, as you understand it? A. Well, the main gate at Jerome Avenue is right here (indicating).

Q. Yes, and that is where you have indicated the little lines on the westerly side of Woodlawn Cemetery, is it? A. Right at the junction of Bainbridge Avenue and Jerome Avenue.

Q. Bainbridge Avenue. Now, of course, there are other gates there, aren't there? A. Yes, sir, there are.

Q. Up here at 233rd Street and—Where is Jerome Avenue? A. This is Jerome Avenue here (indicating).

Q. So that this extension here is Jerome Avenue and not Bainbridge Avenue, is that it? A. That is right.

Q. Is it Bainbridge Avenue up to the intersection here? A. It is.

Q. So that Woodlawn Cemetery, the westerly part particularly faces not only on Jerome Avenue but on Bainbridge Avenue? A. That is right.

Q. All of which is practically one road so far as Woodlawn Cemetery is concerned. A. Yes.

Q. Now, directing your attention specifically to the intersection of 233rd Street east and

Jerome Avenue, is there an entrance gate there? A. There is.

Q. Will you describe it for us as best you can? A. At the intersection of 233rd Street and Jerome Avenue on the south easterly corner there is an entrance to Woodlawn Cemetery.

Q. What is the entrance made up of? A. The entrance is made up of series of gates with stone piers between them.

Q. In front of these gates towards the west facing Jerome Avenue there is a small plot approximately 100 feet square.

Q. A plaza? A. Yes.

S. So that I notice you have a little diagram there right at that intersection that you are describing, a sort of little enclosure that you marked out; is that the plaza you speak of? A. That is the plaza.

Q. And your notion is that is intended to indicate about a hundred feet of space? A. Yes.

Q. Now, so that in addition to the main gate that you have indicated there is a gate and an entrance there, is that it? A. That's right.

Q. Now, considering only that portion of Woodlawn Cemetery from the vicinity of 233rd Street and Jerome Avenue and thereabouts for hundreds of feet either way on either side of Woodlawn Cemetery, whether it is to the north or whether it is to the east or whether it is to the west, are there any residences at all? A. There are no residences at the Jerome Avenue side of the cemetery, nor are there any residences north of 233rd Street for a considerable distance east of Jerome Avenue.

Q. What I am trying to get from you, sir, is if two men were standing in front of the gates at the intersection of East 233rd Street and Jerome Avenue, would there be any homes to the left, to

the right, to the north—I withdraw that—to the east, to the west, to the north or south in the immediate vicinity for hundreds of feet? A. No, sir.

Q. Specifically about how many hundred feet—away would the first house be? A. Well, I would say approximately a thousand feet.

Q. A thousand feet? A. Yes; that is to the best of my recollection.

Q. We want just your best judgment. If two people were standing at that corner or in the vicinity of that corner, so far as business or residences or any other form of buildings outside of parks and cemeteries, there are none to your recollection except about a thousand feet away? A. That is right.

Q. Am I to understand then that your notion about that vicinity is that it is a country of barren area, so far as traffic is concerned? A. Yes.

Q. Let's get over to the cemetery for a minute, —Whittemore Avenue particularly. Do you remember Whittemore Avenue? A. I do.

Q. Is there a grade there as you come from East Tremont Avenue? A. As you go south from East Tremount Avenue there is a grade downward.

Q. In other words, as you walk down from East Tremont Avenue along St. Raymond's Cemetery, along Whittemore, you are walking downhill? A. You are.

Q. What sort of road or street is Whittemore Avenue? A. That is a macadam roadway.

Q. Dirt shoulders? A. Dirt shoulders.

Q. About how wide? If you don't recollect, it is all right. A. The macadam is about 18 or 20 feet wide and on the easterly side there is a dirt path.

Q. No sidewalks at all? A. No sidewalks.

Q. No sidewalks at all? A. No.

Q. To the west of Whittemore Avenue—northwest, I suppose, strictly speaking—that is to say, directly opposite St. Raymond's Cemetery, in that block that I am indicating, bounded on the east by Whittemore Avenue, on the north by East Tremont, on the west by Waterbury Avenue and on the south by Balcom Avenue, what have you to say as to whether immediately opposite St. Raymond's Cemetery there are any residences or business properties and, if so, how many, if you remember? A. In that particular block, as I remember, there is only one residence.

Q. One residence? A. Yes, sir.

Q. And that, do you remember whether or not that is about in the center or about how far away from the corner? A. I would say that was about 150 feet toward the northwest from the intersection of East Tremont Avenue and Whittemore Avenue.

Q. So that along Whittemore Avenue across from St. Raymond's Cemetery there is just one residence in that block opposite? A. Yes, sir.

Q. Is that also a sort of a country area, I mean so far as population—not population—so far as traffic and people being around are concerned? A. It is.

Q. Is it a quiet place at night? A. Yes, sir.

Q. Now you have shown the Bergen Green House, and I take it along East Tremont Avenue there are business places and residences? A. There are, but they are pretty well scattered.

Q. Scattered? A. Yes.

Q. What I am trying to find out is whether or not it is a densely occupied and populated area in the immediate vicinity of St. Raymond's Cemetery? A. No, sir, it is not.

Q. And even on the main street, my under-

standing then is immediately opposite the vicinity of St. Raymond's Cemetery the houses are scattered, is that it? A. Yes.

Q. Do you happen to know, are you familiar with the New York Central Railroad and particularly the Fordham branch? A. Yes, sir.

Q. Will you tell us about where it runs, if you can? A. Starting at the southerly end of the map, it runs through Park Avenue.

Q. Yes, sir. A. To Fordham Road.

Q. Yes. A. From Fordham Road north it runs parallel with and just a little east of Webster Avenue all the way up to 233rd Street, which is the top of the map.

Q. Now that is the Fordham Branch or one of the branches of the New York Central Railroad? A. Yes, sir.

Q. Do you happen to know where the Fordham station, the Fordham branch of the New York Central Railroad is? A. Yes, sir, I do.

Q. Will you tell us where it is? A. It is right at just east of Webster Avenue on Fordham Road.

Q. Will you please put an N. Y. C. there? A. (The witness complies.)

Q. Now, N. Y. C. as put on this map is your notion of about where is located the Fordham branch, the Fordham Railroad station branch of the New York Central Railroad? A. Yes, sir.

Q. Now you have indicated to us your judgment as to the distance from one cemetery to another, and I think you said about four and a half miles? A. That is right.

Q. Tell me how far it is from Mr. Hauptmann's home to Woodlawn Cemetery, and how far it is from Hauptmann's home to St. Raymond's Cemetery, as a man would go by automobile, giving us your best judgment.

A. From Hauptmann's home to the main gate of Woodlawn Cemetery at the junction of Bainbridge Avenue and Jerome Avenue is about two and seven-tenths miles.

Q. Pardon me a minute. With reference to Woodlawn Cemetery I would like to have it from the gate at the corner of East 233rd Street and Jerome Avenue. A. That would be about a half mile additional.

Q. Altogether how much? A. Three and two-tenths miles.

Q. Now tell us how far it is from his home to the other cemetery, Whittemore Avenue, let us say. A. About four and three-tenths miles.

Q. Do you show Marion Avenue on that map? A. Yes, sir.

Q. Will you show me where it is indicated? Is it indicated? A. Marion Avenue on the map is indicated as starting from East Fordham Road and running north to 204th Street.

Q. Specifically, however, it parallels Decatur Avenue, does it? A. Yes, and one block westerly thereof.

Q. One block westerly of the avenue on which Dr. Condon lives? A. That is right.

Q. I suppose you do show too 204th Street and Bainbridge, the intersection? A. Yes, sir; I do.

Q. Where is that? A. That is right here.

Q. And how far is that, would you say, from Dr. Condon's home? Well, it is a couple of blocks anyway? A. Yes; it is about three blocks.

Mr. Wilentz: I think that is all.

Re-Cross Examination by Mr. Reilly:

Q. I show you a photograph and ask you whether or not it correctly represents the gate

and surrounding area of St. Raymond's Cemetery. A. (Examines photograph at length.) Yes, sir; it does.

Mr. Reilly: I ask to have it marked for identification.

(Photograph marked Defendant's Exhibit D-32 for Identification.)

Q. Will you sit down, please. Now, this St. Raymond's Cemetery has quite a gate, hasn't it, main gate? A. Yes, a substantial gate, as I recollect.

Q. And that leads to a road that runs through the cemetery, is that correct? A. Yes, sir.

Q. Where is that on the map? A. That would be right about there (indicating.)

Q. The gateway does not show on the map, does it? A. No, sir.

Q. Why not? A. I wasn't showing all the details of everything.

Q. Now is there not a street that runs through St. Raymond's Cemetery, a small street? A. Whittemore Avenue runs along the westerly side of what is now the cemetery.

Q. Is there any street that intersects the cemetery? A. There is a street along the south westerly side of the cemetery known as Balcom Avenue.

Q. What is this here that seems to cut in there? A. Those are streets that run up Eastern Boulevard as far as the cemetery, do not go into the cemetery.

Q. Across the street from the cemetery there is a large open plot with quite a large house on it, is there not? A. Yes, that is the house to which I referred a few minutes ago.

Q. And then a short distance away there is another house. A. As I recollect it, there is one group of buildings that all belong to that same house.

Q. About how many buildings would you say? A. Three or four.

Q. Across the street from the main gate there is a building, is there not? A. Yes, I believe there is a frame building on the corner.

Q. And across from that corner there is a house, is there not? A. Yes, a vacant house.

Q. Do you know whether it was vacant in 1933? A. No, sir, I do not.

Q. Here is another house, isn't it (referring to defendant's exhibit 32.) A. Yes, that is the Bergen Greenhouse.

Q. Here is a house here, too, is it not? A. Yes, sir.

Q. Here are car tracks, is that correct? A. That is right.

Q. What car line runs past St. Raymond's Cemetery? A. That car line runs along East Tremont Avenue to Westchester Square and then beyond Westchester Square into Third Avenue.

Q. And the cars were running as far as you know in 1932 and 1933? A. Yes, sir.

Q. Now, with the exception of you producing that map and pointing out a railroad station on it, I think we are through with you.

Re-Direct Examination by Mr. Wilentz:

Q. Just one thing. Mr. Reilly attempted to elicit from you information with reference to a street or some sort of street—speaking of St. Raymond's Cemetery, and may I also try to help in that direction. Do you see this little hook or these two lines there? A. Yes, sir.

Q. Well, isn't that what he is trying to find out? Will you tell us about that? Is there a little path or roadway in there? A. There is a roadway leading from Whittemore Avenue, about 250 feet southwesterly from East Tremont Avenue.

Q. In other words, from the corner where I have got my pencil? A. Yes.

Q. South? A. That is right.

Q. About 250 feet there is a pathway through the cemetery? A. A driveway.

Q. A driveway, some sort of a little roadway, that is what you want, is it? A. Yes.

Mr. Reilly: Yes, yes, is it open?

The Witness: There are gates there.

Q. But the point about it is that the cemetery is divided at least at that point? A. Well, there are several driveways through the cemetery, this being one of them.

Q. These little lines here indicate another little one, I suppose? A. Yes, sir.

Q. But specifically that one is a little pathway that runs across? A. That is right.

Q. About how wide is it, do you know? A Yes, about eighteen feet.

Q. About eighteen feet? A. Yes.

Q. That driveway and that portion of the cemetery—will you just wait a minute.

By Mr. Wilentz:

Q. Doesn't this about show that 18 foot area that you are talking about (showing photograph to the witness)? A. Yes, sir; it does.

Q. Of course, it now has this wire fence that you see? A. Yes, sir.

Q. That is the second part of the cemetery? A. Yes, sir.

Q. South of Tremont? A. Yes.

Mr. Wilentz: I would like to offer this just for helpfulness, with the understanding it does not show correctly the enclosure of the cemetery in 1932; it having been testified to that there was no iron fence there on the second portion at the time.

Mr. Reilly: This portion here (indicating)?

Mr. Wilentz: Yes, at those bushes there.

Mr. Reilly: Yes, yes, I have no objection.

Mr. Wilentz: We will offer it in evidence then for such purposes as it may serve in helping.

The Reporter: S-175.

(Photograph referred to received in evidence and marked State Exhibit S-175.)

By Mr. Reilly:

Q. That corresponds to this portion here to which I am pointing? A. Yes.

Mr. Wilentz: Pardon me a minute.

By Mr. Wilentz:

Q. Does that picture better illustrate Whittemore Avenue along the westerly line of St. Raymond's Cemetery, including this little alleyway, and the southern part of St. Raymond's Cemetery with the bushes, instead of the wire fence? A. Yes, sir; it does.

Q. With the exception of the two men who happen to be included in there? A. Yes, sir.

By Mr. Reilly:

Q. That is that cut you have described here, coming in from Whittemore Avenue?

Mr. Wilentz: Take a look at it.

A. This picture was evidently taken from a point about 50 feet southwesterly from the entrance to the cemetery from Whittemore Avenue.

Q. That would be about here (indicating)? A. Yes.

Mr. Wilentz: Tremont Avenue and—

The Witness: No, I mean from the little driveway that runs into the cemetery, and is looking north, northeasterly, to Tremont Avenue.

By Mr. Wilentz:

Q. In other words, standing down here (indicating)? A. Yes.

Q. South of Jerome, south of Tremont, and south of that little pathway? A. That is right.

Q. That took a picture of the roadway going up to Tremont Avenue? A. That is right.

Q. Including the little pathway? A. Yes, sir. It shows the entrance to the pathway.

By Mr. Wilentz:

Q. And including Whittemore Avenue? A. Yes, sir.

By Mr. Reilly:

Q. Which entrance is that? A. The entrance to the pathway is between these two wood posts.

Q. That would be to the right of the picture? A. Yes, sir.

Mr. Reilly: Are you going to offer this, General?

Mr. Wilentz: Yes, I think it will help.

Mr. Reilly: All right.

Mr. Hauck: Why don't you withdraw this, because this doesn't depict it.

Mr. Reilly: Take that away and substitute this.

Mr. Wilentz: We ask that this photograph be substituted and marked State's Exhibit S-175 in place of the one just before, given by consent of counsel.

The Court: Very well.

Mr. Wilentz: Leave that other one in the room back there.

The Witness: Yes, I will.

Mr. Wilentz: Mr. Wallace.

JOHN WALLACE, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Mr. Wilentz: Is Mr. Lyle in the room? Is he here today, does anybody know?

Q. Mr. Wallace, will you please tell us what your business was in September, 1934? A. Detective Sergeant of New Jersey State Police.

Q. Connected with what branch or with the entire department? A. Assigned to the Lindbergh case in the Detective Bureau.

Q. In connection with that assignment in September, 1934, were you in the Bronx, New York? A. I was, yes, sir.

Q. Tell us particularly what you did on September 18th, 1934? A. On the 18th?

Q. Yes. A. Together with Lieutenant Keaten, Corporal Horn, Trooper Duerr, New Jersey State Police, Lieutenant Finn, Detectives William Wallace and Chester Cronin of the New York City Police and Agent Sisk, and Agent Seery of the Department of Justice, we were at the vicinity of the Hauptmann home at 1279 East 222nd Street, Bronx.

Q. Did you remain there all night? A. We remained there until about a quarter to two in the morning of the 19th, 1934, September.

Q. Then you were relieved? A. Yes, sir.

Q. On the next day did you come back? A. We did, yes, sir.

Q. About what time? A. About seven o'clock in the morning of September 20th.

Q. From seven o'clock in the morning until about nine o'clock in the morning, what did you do? A. We remained in the vicinity of the Hauptmann home awaiting the defendant to leave his home.

Q. Who was with you at that time? A. The party was divided into three groups.

Q. Who was in your group? A. Detective William Wallace—

Q. That is the detective of New York? A. New York City. Myself and Trooper Dennis Duerr of the New Jersey State Police.

Q. Do you know who made up the other party? A. I do; yes, sir.

Q. Who were they? A. Lieutenant Keaten, Agent Sisk and Detective Chester Cronin were in another group.

Q. How about the third group? A. The third group consisted of Lieutenant Finn, New York City Police, Corporal Horn, New Jersey State Police, and Agent Seery of the Department of Justice.

Q. Now, that is about how the situation was at about nine o'clock in the morning: is that it? A. Yes, sir.

Q. And had there been a guard and a watch during the entire night, so far as you know? A. Only up to about a quarter to two on September 20th, as far as I know.

Q. Well, I mean the night before, September 18th, and the morning of September 19th. A. Until about a quarter to two.

Q. All right. Now, what happened in and about nine o'clock with reference to Hauptmann? A. The defendant left the front exit of 1279 East 222nd street.

Q. Was that the first time he left—what time was that about? A. That was approximately five minutes after nine in the morning.

Q. Had he left any time between nine and seven o'clock to take his wife to work, or any other place that morning? A. He did not; no, sir.

Q. Did he leave the building at all that morning? A. No, sir.

Q. So far as you know? A. Not that I know; no, sir.

Q. You got there about seven, you say? A. Yes, sir.

Q. So that at nine o'clock was the first time he came out, as I understand it from you, that morning between those hours? A. Yes, sir.

Q. What did he do? A. He walked to the stairway leading to the sidewalk.

Q. Yes. A. But he did not go down the stairway; he went across a concrete wall that would lead him in the direction of the garage.

Q. I want to show you a picture and ask you if that correctly portrays the Hauptmann home, the grounds around it and his garage at that time. A. It does; yes, sir.

Q. Whose car is it on the road in front of the house? A. That I couldn't say.

Q. Well, it is somebody's car? A. It is someone else's car, yes.

Q. How about the car beyond the garage? A. That I couldn't say; I don't know what that is.

Q. The grounds in the immediate vicinity are correctly shown by this picture then? A. They are, yes, sir.

Q. That garage is the old garage, not the new one, is it? A. That is the old garage.

Mr. Wilentz: We offer it in evidence.

The Court: There seems to be no objection. It will be admitted.

The Reporter: S-176.

(Photograph referred to received in evidence and marked State Exhibit S-176.)

Q. Tell me again how he came out of the house. Did he come out the front way or the back way? A. The front. There is two exits to the Hauptmann home which would be available—

Q. Two entrances? A. Two entrances and two exits.

Q. I see. A. One would be on the west side of the house—

Q. Well, is that the front part of the house? A. That would be the side.

Q. The side? A. The front is the south side of the house.

Q. I see. A. And this exit showing the south side of the house is the side that Hauptmann left at approximately 9:05 a. m. September 19th.

Q. Is that the entrance that is directly along the roadway of two hundred and thirty— A. East 222nd Street.

Q. East 222nd Street? A. Yes, sir.

Q. So that the doorway he came out of was the one along East 222nd Street, is that it? A. Yes, sir.

Q. And from there where did he go? A. The top of this car hides a step—

Q. Yes. A. —that would lead to the sidewalk.

Q. Well, did he go to the sidewalk? A. He did not. He walked along the curb, along the hedge.

Q. I see. A. And when he got to the east side of the house he was out of our sight.

Q. I see. All right. Then what did you observe him to do next? A. The next we saw the defendant was approximately a minute after he had passed out of sight, he came out of the driveway in a Dodge sedan which we had seen previously on September 18th, parked in the rear of the Hauptmann home.

Q. And as he came out of that driveway he was in the car, I take it? A. Yes, sir, alone.

Q. Driving it? A. Yes, sir.

Q. Where did he drive to? A. He came out what is known as Needham Avenue on East 222nd Street.

Q. Tell me whether or not this is an accurate picture of the Hauptmann car as you saw it that day? A. This is, as much as I can see of the car.

Q. Well, you mean you can't see all the sides of the car from the picture? A. No, sir, I cannot see the license number.

Q. Oh, I see. Would you have to see the license number? A. And the trunk on the rear of the car, yes, sir.

Q. There doesn't seem to be any there, does there? A. There does not, no, sir.

Q. All right. You saw him coming out of this driveway in this car. Now where did he go? What did he do and what did you men do? Tell us about this trip. A. He continued to East 222nd Street from Needham Avenue in the direction of Fordham Road, in an easterly direction to Fordham Road, or to Boston Road, made a right turn on Boston Road, and continued in a southerly direction on Boston Road to Pelham Parkway.

Q. What happened then? A. Continued over Pelham Parkway to Fordham Road.

Q. During all that time were you in an automobile too? A. Yes, sir.

Q. Were the three parties you referred to a while ago following? A. We were, yes, sir.

Q. In automobiles? A. Yes, sir.

Q. No official numbers or anything like that? A. No, sir.

Q. I mean your license tags were ordinary license tags? A. They were; yes, sir.

Q. All right. How far did this trip go then? A. We continued the trail of the Hauptmann car until we arrived at Park Avenue in the vicinity of Tremont Avenue and 178th Street.

Q. Let's see if we can find about where this place is, whether it is shown on this map (referring to S-174). This is the Hauptmann home. A. Yes, sir.

Q. You say he went from there to where, Boston Road? A. Boston Road.

Q. That is shown right here? A. Yes, sir.

Q. Then along Boston Road to where? A. In a southerly direction.

Q. All the way down to where? A. I believe—

Q. Bronx and Pelham Parkway? A. Pelham Parkway.

Q. And then where? A. To Fordham Road.

Q. And then to— A. To Washington Avenue, south on Washington Avenue to 189th Street, west on 189th Street.

Q. Yes. A. to Park Avenue and south on Park Avenue.

Q. All the way down to Tremont? A. In the vicinity of 4227 Park Avenue.

Q. Is that near Tremont? A. It is.

Q. It is right down at the bottom of this map. All right. What happened there? A. The defendant's car was blocked in the road due to a municipal sprinkler blocking the right of way. The de-

fendant tried to go around the car to the right and, at that time, his car came to a stop.

Q. Prior to that time had he proceeded slowly or what? A. He was traveling at a fairly good rate of speed.

Q. I see. How fast would you say? A. Well, his speed varied at different times according to traffic conditions. Sometimes I imagine he was traveling 40 or 45 mile an hour.

Q. All right. What happened when you got to this sprinkler and he attempted to pass it and was stopped because of this condition? A. His car came to a stop and Detective William Wallace was driving the Ford sedan in which we were in, Trooper Duerr was seated in the front seat alongside of Detective William Wallace and I was in the rear seat of the same car. Trooper Duerr left the right hand side of our car and shouted to Hauptmann to pull over to the curb, and I left the rear door of our car, went around the right hand side of the defendant's car, and slid in on the driver's seat with the defandant.

Q. How about the other details, the other two sections of the party: where were they? A. They were directly behind us and, as we had the defendant in custody, they came into the picture.

Q. All right. Then what happened? Now you are sitting alongside of Hauptmann in the car, your car is in back or in front of him? A. It was in back, slightly more to the center of the road.

Q. All right. Tell us then what happened there. A. The defendant was taken out of the car onto the sidewalk.

Q. Yes. When you say he was taken out, he was asked to come out? A. He was, yes, sir.

Q. I mean, was he grabbed or anything like that? A. No, he was just asked to get out on the

sidewalk which he did. I had a hold of his right wrist and led him out.

Q. Yes. What happened there? A. He was searched by Lieutenant Keaten and the officers.

Q. Lieutenant Keaten of the New Jersey Police? A. New Jersey State Police. In the left rear pocket a wallet was found which contained twenty-nine dollars.

Q. Was there included in that twenty-nine dollars a twenty dollar bill? A. A twenty dollar gold certificate, a five dollar bill, and four one dollar bills.

Q. Yes. A. The twenty dollar bill was checked and found to be a Lindbergh ransom note.

Q. Then what happened? A. The defendant was brought back into the car, after the signatures was placed on the bill by the officers.

Q. Do you remember who it was that put their names on this $20 Lindbergh ransom bill? A. Lieutenant Keaten, Agent Sisk and Lieutenant Finn.

Q. One representative of each of the three police and governmental departments that were represented that day, is that it? A. Yes, sir.

Q. And then what did you do if anything with Hauptmann? How long were you out there on the sidewalk? A. Just a few minutes. Hauptmann was put back in his car and he was questioned a few minutes by the officers.

Q. And then what happened? A. I was handcuffed to Hauptmann at the time, and I remained with him. We later returned to Boston—to White Plains Avenue and Gun Hill Road.

Q. Who were you waiting for there? A. I later learned Inspector Lyons.

Q. Inspector Lyons? A. Yes, sir.

Q. I see. He is an inspector of the New York Police Department? A. He is, yes, sir.

Q. What is the inspector's rank in the New York Police Department? I mean is he—do you know? A. I believe that he was in charge of the New York angle of the Lindbergh investigation.

Q. Well, at any rate, he is one of the high officials of the New York Department, is that it? A. He is, yes, sir.

Q. All right. Now you say you got to some place at White Plains Avenue and Gun Hill Road. Did you go there right from the scene of the arrest? A. We did, yes, sir.

Q. What did you do there? A. We waited until the arrival of Inspector Lyons.

Q. And when he arrived, where did you go? A. We continued back to the Hauptmann home at 1279 East 222nd Street.

Q. How long do you think it was that you remained there, at White Plains Avenue and Gun Hill Road, waiting for Inspector Lyons? A I would say 30 to 35 minutes.

Q. Now, when you, when Mr. Hauptmann was first apprehended, that is to say the place where his car stopped somewhere in the neighborhood of, I think, Tremont Avenue, you said, and you got into his car and the bill was taken out, was any explanation asked or did he make any explanation as to the twenty dollar gold certificate that was found in his wallet? A. Yes, sir.

Q. What was it that was said as nearly as you can remember? A. The defendant was asked as to how he came into possession of the twenty dollar gold certificate.

Q. What did he say? A. He stated that this bill was the last of three hundred dollars worth of gold certificates which he had had in his possession and accumulated in the past two years.

Q. Did he say how he had accumulated it? A. He was asked that question and never gave a

definite answer only saying that he received them from different places wherever he could get possession of them.

Q. I see. Now, when you got to his home did you take him into the house? A. Yes, sir.

Q. Who went into the house, the whole detail? A. I believe so, yes, sir.

Q. By the way, had, while he was down at Tremont Avenue or afterwards at White Plains, or somewhere on the way back home, was he asked whether or not he had any more? A. He was asked that in the car on Park Avenue. He stated he did not have any more, but he had $120 in gold pieces at home in a strong box.

Q. Did you find those gold pieces? A. On the return to the Hauptmann home we did, yes, sir.

Q. Now, when you got back to the home what happened there? A. Hauptmann was brought into what is known as the Hauptmann bedroom, on the north side of the home, and a search was made of the bedroom and the strongbox located and opened.

Q. Well, what else happened there? Tell us. I don't want to lead you. A. A search was made of the entire house by the investigators. I was handcuffed to Hauptmann all during the stay at the Hauptmann home, and he was asked questions about gold certificates and any other articles that may be in his possession.

Q. Did he state at any time that he had thousands of dollars of gold certificates in his garage? A. He did not; no, sir.

Q. Did he ever reveal that he had any gold certificates in his garage? A. No, sir.

Q. Did he reveal that he had any money in the garage? A. He did not; no, sir.

Q. Did he reveal that he had any money outside

of the gold pieces any place about his home, or any other place? A. No, sir.

Q. Did he deny that he had any gold pieces, pieces that were found in his home? A. He did; yes, sir.

Q. Now, after you left the Hauptmann residence where did you go? A. We continued to the Central Savings Bank at 73rd and Broadway, I believe the address is.

Q. Why? A. At that time, at the house, Hauptmann was asked about a safe deposit box and he informed us that he had one at the Central Savings Bank.

Q. Did you therefore go down to that bank to see the safe deposit box? A. Yes, sir.

Q. Was he there with you? A. He was; yes, sir.

Q. Was the box opened? A. It was, yes, sir.

Q. In his presence? A. Yes, sir.

Q. What was found there, if you know? A. There was a number of documents in the box; a note was made by Agent Seery at the time, the names of the documents I do not recall.

Q. Was there any money in that safe deposit vault? A. No, sir.

Q. No gold certificates or any other money? A. No, sir.

Q. How large a vault was it? A. It was a large vault.

Q. Was there room for money in the vault?

Mr. Reilly: I object to that.

The Court: Are you talking now about the box or vault?

Mr. Wilentz: The vault, the safety deposit box, that part of the vault occupied

by Hauptmann's box. However, I will withdraw the question.

By Mr. Wilentz:

Q. Was there room in Hauptmann's safety deposit box in that vault for any other moneys or any other papers?

Mr. Pope: Let him describe the size and shape and style of the box.

Mr. Wilentz: Tell us about it, please.

Mr. Pope: Let the jury judge.

A. To the best of my recollection, the box was approximately 14 inches long, about two inches deep and about five inches wide.

Q. Did the papers that were in the box occupy all the space, I mean was there room for other papers? A. It was pretty well crowded, yes, sir.

Q. Pretty well crowded. No money? A. No money.

Q. All right. Where did you proceed then? A. After leaving the Central Savings Bank, we continued to the Second Precinct at 156 Greenwich Street, New York City.

Q. That was on the 19th? A. On the morning or early afternoon of the 19th, yes, sir.

Q. What did you do then? A. I was still handcuffed to the defendant and we continued to the third floor of the precinct.

Q. Were you there when he was asked to make certain writings, when there were writings dictated to him? A. I was, yes, sir.

Q. Were the words spelled for him or was he permitted—

Mr. Reilly: I object to his leading.

Q. In what manner was it dictated? A. To the best of my recollection, the words were dictated and not spelled.

Q. Never mind to the best of your recollection; were they dictated or were they spelled for him?

Mr. Pope: I object to that question.

A. They were dictated.

The Court : Why do you object?

Mr. Pope: Because the witness has already testified that to the best of his recollection they were dictated to him and not spelled. Now, it seems to me that that is his answer, and that is all the answer he can make, to the best of his recollection.

The Court: I do not know that that is all the answer he can make.

Mr. Wilentz: What is the last question?

(Question repeated as follows: Were they dictated or were they spelled for him?)

Mr. Wilentz: And what is the answer?

(Answer repeated as follows: They were dictated.)

Mr. Wilentz: And what is the next question?

The Reporter: That is the last question, sir.

Q. Do you know whether or not they were dictated to him or spelled to him?

Mr. Pope: We object to the question. The witness has already answered.

The Court: I will overrule the objection.

A. I never heard any words spelled to the defendant.

Q. Well, what did you hear? A. I heard dictation.

Q. Dictation. And as a result of the dictation and in pursuance of the dictation what did the defendant do? A. He wrote what was dictated on a piece of paper.

Q. All right. Now the next day what did you do? A. On September 20th at approximately 9:00 a. m., as the result of instructions received, continued to the Hauptmann home in company with Detective James Petrosini, New York City police, and Agent Leon Turrou, Department of Justice.

Q. When you got there did you meet any other police officers? A. We were met there by Detective Edward Murphy and Detective Frank Dunn of the New York City Police.

Q. All right. Did you see Mrs. Hauptmann there? A. We did; yes, sir.

Q. Did you make a search of the place? A. A search was made of the Hauptmann home, yes, sir.

Q. Did you talk to Mrs. Hauptmann that day? A. I did; yes, sir.

Q. Did you speak to her about the garage?

Mr. Pope: I object to the question, as to what he said to Mrs. Hauptmann in the absence of the defendant as immaterial.

Mr. Wilentz: I haven't asked him what he said. I asked whether he spoke to her.

Mr. Pope: Whether he did or didn't, I object to it.

The Court: Do you object to his saying he spoke to Mrs. Hauptmann?

Mr. Pope: About any particular thing.

The Court: He hasn't asked about any particular thing.

Mr. Pope: He is now.

The Court: I have indicated that I will overrule that.

Mr. Pope: May I—yes.

The Court: So the thing now seems to be whether or no the Attorney General may ask if he spoke to Mrs. Hauptmann.

Mr. Pope: Yes.

The Court: I think that is all right.
Mr. Pope: He already said that he did.

Mr. Wilentz: Did he say so?

The Court: All right.

Mr. Pope: Now, I object to what he said to her.

The Court: I have indicated that I will overrule that.

Mr. Wilentz: There is no question pending on that subject.

The Court: So I understand, Mr. Attorney General.

By Mr. Wilentz:

Q. Now, was Mrs. Hauptmann in and about the premises during the time that you were there? A. Yes, sir.

Q. All right. Now, as the result of your search, did you find anything in the house? A. No, sir.

Q. Did you find a wooden plane? A. Not in the house; no, sir.

Q. Where did you find that? A. In the garage.

Q. So that after you got through with the house search, did you go to the garage? A. Yes, sir.

Q. What did you find there? A. I found a wooden plane, about 18 inches long, with a trademark "Sargent", Serial No. 3418, initials "V. B. M."

Q. I show you a wooden plane which seems to have some initials and some dates. Will you tell me whether or not that is the plane you have just referred to? A. Yes, sir.

Q. What are those initials? A. J. W.

Q. Who is J. W.? A. Myself.

Q. Did you put your initials on there? A. I did, together with the date September the 20th, 1934, 11:50 a. m.

Q. And is that the plane you found in the

Hauptmann garage on September the 20th, 1934? A. It is, and also has the scratch, the initial "H".

Q. Was that on there at that time? A. It was, yes, sir.

Q. Now the initials J. W. and the date on there in ink, with the hour—you put that on, didn't you? A. Yes, sir.

Q. I notice another J. W. on the other side. Did you put it on each side? A. I did, yes, sir.

Q. And both of those were inscribed by you? A. Yes, sir.

Q. I notice also E. F. J. R. and W. P. K. or something like that. Do you know what that comes from? A. I do, yes, sir.

Q. What are they? A. They are initials of other officers who brought the plane from New York City to New Jersey.

Q. So that except for the initials of the officers on this plane, the plane is in the same condition as it was the day you found it, is it? A. It is, yes, sir.

Mr. Wilentz: We offer the plane in evidence.

Mr. Pope: We object to this. There is no materiality shown yet, it is not in any way connected with this case, it was not found at the scene of the alleged crime, but found many miles away from there and there does not seem to be any connection.

The Court: Well, is it not a circumstance?

Mr. Pope: I cannot see how. They may have found a bed plank or some curtains or something else.

The Court: We are talking now about a plane, Mr. Pope. Is there not evidence in this case that somebody used a ladder to go up the Lindbergh wall?

Mr. Pope: There is, which must have been built by somebody but there is not a bit of evidence in the case yet that it was built by Hauptmann.

Mr. Wilentz: If counsel will be a little patient, your Honor please, we will show that it was built by Hauptmann. That is just what it is intended for.

The Court: I suppose so. I think, Mr. Pope, that I will have to admit this plane in evidence, you reserving the opportunity if you wish, to move to strike it out if it is not connected up.

Mr. Pope: Very well.

(The plane was received in evidence and marked State's Exhibit S-177.)

By Mr. Wilentz:

Q. Officer, as I understand it, the "H" which is carved in on the top of this plane—marked on there at any rate, whether carved or not—that "H" you say was on it at the time? A. Yes, sir.

Q. What else did you find? A. Detective—I didn't find anything else.

Q. What else was found in your presence or at that time while you were there? A. During the search of the garage in the presence of Mrs. Hauptmann, myself, Detective Dunn and Murphy, Detective James Petrosini of the New York City Police Department found two packages of gold certificates wrapped in newspaper, New York Daily News of June 25th, 1934, and New York Daily Mirror of September 6th, 1934, in the south wall of the garage in a compartment.

Q. Were there carpenters of the New York Police Department there? A. No, sir.

Q. There were not. How many bills did you say you found? A. In the two packages there was one hundred dollar—one hundred gold certificates in one package and 83 gold certificates in another package.

Q. Ten dollar certificates? A. Ten dollar gold certificates.

Q. What did you do with reference to identifying the money for future purposes? A. I immediately checked one bill together with the ransom list and found it to be Lindbergh ransom money. The money was counted in the presence of Mrs. Hauptmann and also initialed by the officers present.

Q. Did the bills contain your initials too? A. Yes, sir.

Q. Did you initial them? A. I did: yes, sir.

Mr. Wilentz: I am going to open S-102, which the testimony indicates was sealed by Mr. Wilson. (Opening package.)

Q. Would you be able, without too much delay, to pick out the package, taking your time right up there, of the moneys? A. Yes, sir.

(The witness takes the package referred to and removes a number of envelopes from it.)

(Mr. Wilentz takes two envelopes and opens them.)

Q. I notice that a piece of newspaper of the Daily Mirror with your initials, name on there, John Wallace; did you write that? A. I did, yes, sir.

Q. And is that a part of the newspaper that you refer to as having been found with this money? A. Yes, sir.

Q. Are these the bills which you initialed? A. Yes, with my initials "J. W." on the gold seal.

Mr. Wilentz: I offer the newspaper and 83 ten-dollar gold certificates in evidence as one exhibit.

Mr. Pope: We object to the reception of the newspaper and also to the reception of the bills for the reasons which we have already indicated to the Court in objecting to the former bills that were offered yesterday, and also because there has as yet been shown no connection between this newspaper and the bills and the defendant Bruno Hauptmann.

The Court: Didn't the witness say that they were wrapped up together?

Mr. Wilentz: Yes.

The Court: The bills and the newspaper

were wrapped in one package. Well, that seems to furnish some sort of connection. I think I will admit the bills and the newspaper.

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.)

Mr. Pope: I anticipate that the Attorney General will perhaps make offers of numbers of packages of these bills from this point on. We don't like to take up the time of the Court to object each time. May we at this time make a general objection to the reception of any of this so-called ransom money for the reasons indicated?

The Court: You see, Mr. Pope, each offer stands upon its own proof.

Mr. Pope: Then we will follow that course.

The Court: You seem to be able, without the use of any unnecessary time, to state your objections all right, and you may continue to do so.

(Package of money received in evidence and marked State Exhibit S-178.)

Mr. Pope: May we see what is on the envelope? May we look at the envelope?

(Envelope handed to Mr. Pope.)

Mr. Wilentz: Would counsel like to take a look at the bills too?

Mr. Pope: No. That is all right. These markings were put on by the Police Department.

Mr. Wilentz: Would your Honor like to see the bills too?

Mr. Pope: These markings were put on by the Police Department?

Mr. Wilentz: We withdraw the offer of the envelope—rather, we haven't offered it. Let him mark each bill.

Mr. Pope: No objection. We simply wanted to know if those markings were put on by the Police Department.

Mr. Wilentz: What difference does it make who put it on? It simply says "83 ten's." What difference does it make—

Mr. Pope: They were not put there by the defendant, were they?

Mr. Wilentz: My offer to have the envelope marked was for convenience's sake, so that we could hold it, that one package of money which was found, together in one

envelope; and that was the only purpose of it. Is it all right?

Mr. Pope: All right.

Mr. Wilentz: That is S-178.

Q. Now how about the other package? The other package I understood you to say was the other part of the eighteen hundred dollars, is that it? A. Yes, sir.

Q. Will you take a look and see if that is the paper in which it was found, and also—I think you said the Daily News (showing package to the witness). A. The Daily News, yes, sir.

Q. And are these the gold certificates you refer to, which you initialled? A. Yes, sir. J. W. on the gold seal.

Q. There are other initials on those bills too, are there not? A. Yes, sir.

Mr. Wilentz: I am only going to offer the money this time and ask that the exhibits be marked in this Police Department envelope which just contains the number of bills and the amount, not the newspaper.

Mr. Pope: We have no objection to the money being placed in the envelope for convenience, if the Court decides to admit it, but we do object to the admission of the money for the purposes already indicated.

The Court: Will you let me see that money, please?

Mr. Wilentz: Yes, sir (handing to the Court).

The Court: Now I will hand that back to you, Attorney General. What denomination were these other bills that—

Mr. Wilentz: Ten dollar bills.

The Court: They were all ten dollar bills?

Mr. Wilentz: These parcels were all ten dollar bills.

The Court: All right.

The Reporter: Exhibit S-179.

(Package of bills received in evidence and marked State's Exhibit S-179.)

Mr. Wilentz: That is Exhibit S-179, being the thousand dollars in ten dollar bills.

Mr. Pope: The money I assume was admitted and may we have an exception?

The Court: To this last, to the admission of these last bills?

Mr. Pope: Yes.

The Court: Yes, take your exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

The Court: That rests upon the same footing as the other exhibit.

Mr. Pope: Exactly.

Q. Sergeant, I show you a picture of what purports to be the interior of some enclosure. What is that? A. That is the Hauptmann garage.

Q. The inside? A. Yes, sir.

Q. One view of it? A. Yes, sir, showing the east and south wall of the Hauptmann garage.

Q. Where was this money found, the money just introduced in evidence? A. On the south east corner above the work bench of the Hauptmann garage.

Q. Was it concealed or was it not concealed? A. Concealed with a board nailed across two uprights, making a sort of a compartment in the wall of the garage.

Q. Are those uprights shown there in that picture (handing the witness a photograph)? A. It is, yes, sir.

Q. Are those the uprights you refer to? Point to them. A. There (indicating).

Q. Is that piece of board about the point where that compartment was built? A. Yes, sir.

Q. Does that correctly show a picture of that portion of the garage as you saw it that day? A. It does, yes, sir.

Q. Do you remember when it was taken? A. I do not.

Mr. Wilentz: We offer the photograph in evidence.

Mr. Pope: No objection.

The Court: If there is no objection, it will be admitted.

(The photograph was received in evidence and marked State's Exhibit S-180.)

The Court: I would like to look at that, Mr. Attorney General, please.

Mr. Wilentz: Yes, your Honor, and I was going to ask the witness to also exhibit it to the jury.

Will you indicate to the Court the uprights you refer to? Step around, please, and point out the point where this money was found concealed.

The Witness: In the south wall in the uprights going from the bottom to the top of the garage and the board across the uprights making a compartment.

The Court: Thank you.

Q. Now, will you step down, please, and point out—just get about here; be careful of that money; don't throw it over—and point out the uprights. Take your time, please. A. (Witness leaves stand and stands before the jury box.) This is the south wall of the Hauptmann garage. This would be the east wall of the Hauptmann garage—

Mr. Peacock: Turn around so that juror can see it.

A. (continued.) This is the south window and this is the work bench. The uprights running

from the bottom of the floor of the garage to the ceiling, and the compartment where the money was concealed is at this point, with a board across the two uprights, forming a compartment.

Q. All right, officer; you may be seated. A. (Witness resumes stand.)

Q. Now, the New York police officers continued to inspect and search in and about that garage after that, didn't they? A. Yes, sir.

Q. And did the New York officers find something there? A. Yes, sir.

Q. While you were there? A. Yes, sir.

Q. Tell us who it was and exactly what happened there. A. In the presence of Mrs. Hauptmann, Detective James Petrosini, Agent Turrou, Detective Frank Dunn, myself, Detective Edward Murphy, located a one-gallon shellac can underneath the work bench in the south window of the garage.

Q. Would you be able to tell the can if you saw it now? A. I would, yes, sir.

Q. Is it all right if I rip this paper off? A. Yes, sir.

Q. Do you know any reason why I shouldn't take it off? All right. Take a look at that receptacle and tell me whether or not this is the can. A. It is, yes, sir.

Q. Whose initials are they, A.F.M., or the other initials? A. I have my initials J.W. in the top righthand corner of the can.

Q. And were those initials placed there at that time, that day, September the 20th, 1934? A. Yes, sir.

Mr. Wilentz: I offer this shellac can and everything.

Mr. Pope: We don't see that they are

admissible. Of course, if he connects it up, we don't object to them at this time, but we reserve the right to move to strike it out if it is not connected.

Mr. Wilentz: Connected with what, if I may ask?

Mr. Pope: In other words, there is no materiality shown yet to this can. There might have been some chips on the floor, a thousand other things. We can't have everything admitted unless it has some bearing on the case. If it is contended—

The Court: I am wondering, Attorney General, whether the witness can connect this can up with the ransom money.

Mr. Wilentz: We are going to show now that it was loaded with it.

Mr. Pope: Oh, that is different (laughter).

The Court: Well, you may proceed. I think we understand one another.

(The can was received in evidence and marked State's Exhibit S-181.)

By Mr. Wilentz:

Q. Now, when New York Police officers located this can, what was found in it? A. Two cloths at the top of the can, and underneath the cloths twelve packages of gold certificates, ten and twenty-dollar denominations, wrapped in news-

papers dated June the 25th, 1934, and September 6, 1934, New York Daily News—

Mr. Pope: September the—

The Witness: September the 6th, 1934, New York Daily News and New York Daily Mirror.

Q. Sergeant J. W., that is your initials? A. Yes, sir.

Q. Did you put them on that day? A. I did, yes.

Q. Is that one of the pieces of cloth? A. It is, yes, sir.

Q. What about the other piece, a sort of towel, is it not? A. Yes.

Q. J. W., those are your initials? A. Yes, sir.

Q. Placed by you that day? A. Yes, sir.

Q. Is the date inscribed thereon? A. September 20, 1934.

Q. Did you put the date on or somebody else? A. I put it on.

Q. Both of these are the cloths you refer to as having been found in this shellac can? A. Yes, sir.

Mr. Wilentz: We offer them in evidence. Is there any objection?

Mr. Reilly: No objection.

(The cloths were received in evidence and marked State's Exhibits S-182 and S-183, respectively.)

By Mr. Wilentz:

Q. My recollection is that in addition to these cloths there was some money which you say was found there. A. Yes, sir.

Q. How much money? A. $11,930.

Q. $11,930? A. Yes, sir.

Q. What kind of money? A. Lindbergh ransom notes, gold certificates.

Q. Have you got them here? Can you tell them when you see them? A. I can, yes, sir.

Q. Pick them out, please (handing an envelope to the witness). A. (Witness produces bills wrapped in a newspaper.)

Q. Well, I notice a lot of initials anyway on this newspaper. Are yours on there somewhere, or were those initials placed on there in your presence? A. Yes, sir.

Q. Did you initial all the bills? A. I did; yes, sir.

Q. You bring them in here in envelopes and packages. Is that the way you found them? A. Yes, sir.

Q. What I mean to say, officer, is did you make up the packages or are these bills in the packages in which they were found? A. Just as they were found.

Q. So that when I present for evidence fifty twenty-dollar bills, making a total of a thousand dollars in one package, was there actually this package of fifty twenty-dollar bills together and separated from the others? A. Exactly the same, together with the same sheet of newspaper which wrapped the bills.

Q. So that there, in that can, were these various packages of money, is that it? A. Twelve packages; yes, sir.

Q. Twelve packages. And this is one of the twelve packages? A. It is; yes, sir.

Mr. Wilentz: For the sake of convenience and help I will offer the paper and the $1,000 as found at that time, according to the testimony.

Mr. Pope: And we object to that, sir, for the same reasons that we have already indicated.

The Court: It will be admitted.

Mr. Pope: We ask an exception.

The Court: And you may have your exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Reilly: You are marking the paper?

Mr. Wilentz: Does counsel want the paper marked?

Mr. Reilly: I mean you are offering this, aren't you?

Mr. Wilentz: Yes.

Mr. Reilly: Indicate the Daily Mirror and what you are offering.

Mr. Wilentz: I would like to have the exhibit number on the envelope, I think it will help.

Mr. Reilly: Go ahead. No objection.

Mr. Wilentz: We will keep them together.

Mr. Reilly: Keep them together.

Mr. Wilentz: Mark it as one exhibit.

The Reporter: S-184.

(The paper and money were received in evidence and marked State's Exhibit S-184.)

Q. Every one of these bills are initialled, are they not, that is your initials? A. Yes, sir, on the gold seal.

Q. And every one one was initialled and found in the presence of Mrs. Hauptmann, is that it? A. Yes, sir.

Q. Let's have the rest of it. (Witness hands Mr. Wilentz another package.) A. Fifty twenty dollar bills, the amount $1,000.

Q. Gold certificates? A. Gold certificates.

Q. Lindbergh money? A. Lindbergh ransom notes, wrapped in the New York Daily News, June 25th, 1934.

Q. In the original package, I mean the thousand dollars as indicated before? A. Yes, sir.

Mr. Wilentz: For the sake of brevity may I offer without objection the twelve or the remaining eleven together or, do you want me to offer them separate?

Mr. Pope: You can offer them all together if you wish.

Mr. Reilly: You may offer them in one batch.

Mr. Wilentz: Counsel agrees that I may offer them all together as different exhibits, one package at a time, but I make the offer now, and there is no point being made of the fact that I offered them together.

Mr. Pope. No.

Mr. Reilly: No. They will be exhibit—

Mr. Wilentz: Will you mark each envelope?

Mr. Pope: We object to the admission of each and every one of them for the reasons already indicated to the Court.

The Court: I understand that. This witness, I suppose, has or is expecting to testify that each one of these packages were found in this tin can.

Mr. Wilentz: That is right, he has already so testified.

The Court: He has so testified?

Mr. Pope: Yes.

The Court: Well, I think that makes it evidential, Mr. Pope, so that you may have your exception.

Mr. Pope: Thank you.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

The Reporter: They will be exhibits S-185 to S-196, inclusive.

(Envelopes referred to were received in evidence and marked State's Exhibits S-185, S-186, S-187, S-188, S-189, S-190, S-191, S-192, S-193, S-194, S-195.)

Mr. Wilentz (To the jury): Fifty twenty dollar Lindbergh bills, gold certificates.

The Court: Does it appear that somebody has made an examination of these bills and has determined that they are the ransom money?

Mr. Wilentz: The testimony is that every one of those bills bears a serial number which is included in the Exhibit S-99 which makes up the list of Lindbergh bills which is in evidence, and the positive testimony is that every bill is one of the Lindbergh ransom bills. That is in the record before this witness took the stand.

Mr. Hauck: And checked with a blue pencil in the list.

Mr. Wilentz: And checked with a blue pencil in the list.

Mr. Wilentz: Of course, we could, if counsel wanted it, take the bills and check them against the numbers, but I understand no point was made of that.

By Mr. Wilentz:

Q. I notice, Officer, in Exhibit S-193 that there is only $940. Is that the way it was found? A. Yes, sir.

Q. Then, Officer, there is another batch, Exhibit S-188 with $990? A. Yes, sir.

Q. That was found in that total, in that sum? A. Exactly, sir.

Q. So that except for these two packages, out of the twelve found in the can, the shellac can marked Exhibit S-181, all were $1,000 with the exception of these two packages? A. Yes, sir.

Q. As walked into the garage, could you with the naked eye find this Exhibit S-181? A. No, sir.

Q. Was it concealed? A. It was, yes, sir.

Q. Was it concealed within a paper or any wrapping of any kind?

Mr. Pope: We object to the question. Let the witness state.

Mr. Wilentz: I will withdraw it.

Q. Where was it concealed? A. Between underneath the work bench and the window of the south wall of the garage, the can was supported between uprights by two nails driven into the side wall of the garage. Across the uprights was a wide board, which would conceal the can from anyone's view.

Mr. Wilentz: Where is that exhibit showing the south wall? Is it here?

Mr. Large: It is right there.

Mr. Wilentz: Oh, pardon me.

Q. Exhibit S-180 shows the south wall, as I understand it: is that so? A. Yes, sir.

Q. Which is the south wall again: is that the one? A. The south wall is—

Q. That is the one with the bench running along it? A. The bench running along it and the window above the bench.

Q. You have already indicated that the first money was found along these uprights in the concealed compartments? A. Yes, sir.

Q. With relation to that wall where was that can found? A. Underneath the south window which is directly over the work bench, under the bench and between the uprights.

Q. Let's see now. Was it to the right of the window as you look at it, or underneath the window? A. Underneath the window.

Q. So that, therefore, it was under the work bench for one thing, wasn't it? A. Yes, sir.

Q. Under the window, for another? A. Yes, sir.

Q. In a compartment? A. Yes, sir.

Q. Between the uprights? A. Yes, sir.

Q. Concealed or open to view? A. Concealed.

Q. How was it concealed? A. By a wide board nailed across the uprights.

Q. Are the uprights shown on Exhibit S-180? A. No, sir.

Q. Well, doesn't the picture show it? A. Yes, sir; the uprights; yes, sir.

Q. Yes. Will you point to them? A. (Witness indicates.)

Q. Now, just step down here in front of the jury and show it—and take your time, please. Stand right here, about the center. A. (Witness leaves stand and indicates on photograph.) The two uprights underneath the work bench, running from the floor to the work bench directly below the window, these two uprights.

Q. All right. Now did you take anything else or was anything else taken that day while you were present? A. No, sir.

Q. Did you return then to the Second Precinct in the New York Police station? A. Yes, sir.

Q. Did you talk to Mr. Hauptmann the defendant then? A. I did, yes, sir.

Q. Having found this money did you talk to him about the money? A. Yes, sir.

Q. What did he say about it? A. He stated that he place these two packages of money, naming the one gallon can and the two packages wrapped in newspaper.

Q. The one gallon can you are referring to being S-181. A. Yes, sir.

Q. And the other packages being the $1,800 that are already in evidence in addition to the moneys found in the can. A. Yes, sir.

Q. That you say he stated he placed where? A. On the south wall of the garage.

Q. Well, had you talked to him about it first and told him you had found it? A. Yes, sir.

Q. All right. Now what else did he say about it? A. He stated that this money was placed there about two weeks previous to our finding it.

Q. Did he say anything about the condition of the money? A. He stated the money was wet and he had had it out in a basket, drying, in the garage.

Q. Yes. A. And after the money was dried, he wrapped it in a newspaper and concealed it where it was found.

Q. Did he say where it had been before he rewrapped it? A. He stated that the money had been in a shoe box in a broom closet in the kitchen of his home.

Q. Did you ask him whether he had any more money? A. I did, yes, sir.

Q. What did he say? A. He stated he did not have any more money.

Q. Did you ask him whether he had any more gold certificates? A. Yes, sir.

Q. What did he say? A. He said he did not have any more gold certificates.

Q. Did you ask him whether he had any more of Colonel Lindbergh's money? A. Yes, sir.

Q. What did he say? A. That he did not have any.

Q. Now, did you check all this ransom money that has now been introduced in evidence with the official list of serial numbers brought here by Morgan & Company? A. Not with the official list, no, sir.

Q. What did you check it with? A. With a circular from the official list.

Q. And did you find them on the circular of Lindbergh moneys? A. Yes, sir.

Q. Who did you give the moneys to after you got through with it, after finding it? A. The money was turned over to Inspector Lyons of the Second Precinct.

Q. I see.

Mr. Wilentz: May it appear in the record that these envelopes of moneys now in evidence were taken out of S-102 for identification, which envelope, S-102 for identi-

fication, was sealed until opened by counsel for the State in the presence of the Court this morning.

Mr. Reilly: Yes. Sealed by Wallace, wasn't it?

Mr. Hauck: Sealed by Wilson.

Mr. Reilly: Sealed by Wilson.

Mr. Wilentz: Sealed by Agent Wilson, who has already testified.

Mr. Wilentz: That is all with this officer.

Mr. Reilly: Before cross examining may we have five minutes to clear the court room air?

The Court: Yes. Do you wish to cross examine—

Mr. Reilly: No. Mr. Fisher is going to cross examine.

The Court: Very well, we will take a five minute recess.

(At 11:39 a. m. a short recess was taken.)

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

Cross Examination by Mr. Fisher:

Q. Sergeant, were you in court yesterday when Mr. Seery, Agent Seery testified? A. Yes, sir.

Q. Now, will you relate for me, please, the conversation that you had with Mr. Hauptmann when you discovered a twenty-dollar Lindbergh ransom note on his person at the time of the arrest? A. This would be on Park Avenue on the morning of September 20th, 1934.

Q. Well, where the arrest was made when you drove up and got in the car? A. Yes, sir.

Q. At that time, whenever it was— A. After getting in the car, I also asked the defendant how he had come in possession of the gold certificate.

He advised that this certificate was the last of $300 worth which he had had in his possession for a period of about two years.

Q. What did he say about having any more of them? A. He stated—he was talking about gold, not gold certificates.

Q. Yes. A. $120 in gold.

Q. And at that time he said that at home he had $120 in gold, is that right? A. Yes, sir.

Q. Did you hear Agent Seery testify yesterday as to the conversation that Hauptmann had at the time of his arrest when the $20 Lindbergh ransom note was found on his person? A. I wasn't present during all of Agent Seery's testimony.

Q. Did you hear him testify that Mr. Hauptmann said in response to a question, "I have got a hundred left"?

Mr. Wilentz: Did you hear him? That is the question.

Q. Did you hear Agent Seery say that yesterday on the stand? A. No, sir.

Q. Did you hear Agent Seery say he didn't know what Hauptmann meant, whether he meant a hundred dollars or a hundred bills? A. No, sir;

I don't believe I was in the room at that time.

Q. Did you hear at any time in Seery's testimony him make any mention of the fact that Hauptmann stated that he had $120 in gold? A. No, sir.

Q. Now, were you present Sergeant when all the request writings were made by Hauptmann? A. No, sir.

Q. Did you sign any of them? I don't remember? A. I have never seen the request writings. I have seen Hauptmann writing them, but I have never seen the request writings.

Q. I see. At what time of day and what day was it that you saw request writings made? A. The late afternoon or the early evening of September 19th, the day of his arrest.

Q. And who was present at the time, if you remember? A. I believe the writings at that time were being dictated by Colonel Schwarzkopf and Inspector Lyons.

Q. On the 19th you say? A. Yes, sir.

Q. And either late afternoon or early evening? A. Yes, sir.

Q. Take a look at State's Exhibit 97 and see whether or not that is the one you saw written. It bears the date September the 19th and was in the presence of Lyons and Schwarzkopf? A. Yes, sir.

Q. And there is one more marked S-98. A. Yes, sir.

Q. Now, I find only two so marked in the list of request writings. Will you say whether or not you saw Mr. Hauptmann write more than two specimens? A. I did, yes, sir.

Q. You saw him write more than two? A. Yes, sir.

Q. In whose presence was that, can you re-

member? How about Corporal Horn? A. Yes, sir, Corporal Horn.

Q. And— A. Lieutenant—

Q. —pardon me. Corporal Horn— When as to Corporal Horn? Will that help you any (handing witness document)? A. Approximately some time after midnight or the early morning of September the 20th.

Q. Well, that exhibit 72, State's Exhibit 72, is that apparently the specimen that you saw written at that time, together with this one, marked State's Exhibit 73? A. Yes, sir, signed by Corporal Horn.

Q. And still another one, marked S-74? A. Signed by Corporal Horn, yes, sir.

Q. And another one marked S-75, at the same time and same name? A. Yes, sir.

Q. And another one marked S-76 at the same time and the same name? A. Yes, sir.

Q. And another one marked S-77 at the same time and the same names? A. Yes, sir.

Q. Now who else did you see dictate any request writings to Mr. Hauptmann?

Mr. Wilentz: Just one minute, please, Mr. Fisher.

Mr. Fisher: Yes, yes, certainly.

Mr. Wilentz: The exhibits referred to by counsel in his examination now to which the witness has answered are Exhibits S-77, 76, 75, 74, 73, 72, 98 and 97.

Mr. Fisher: That is right.

Q. Did you see any of the rest of those written,

Sergeant, if you remember? A. I seen Lieutenant Finn dictating to the defendant.

Mr. Fisher: May I see those papers?

Mr. Wilentz: I will get that for you.

Mr. Fisher: Finn's. I think some of Finn's is in there.

Mr. Wilentz: Yes, (producing documents).

By Mr. Fisher:

Q. Well, Finn's name appears in some of these; in addition to the ones that Finn and Corporal Horn signed, did you see any of the others? Finn again appears in the notes. A. No, sir, I did not.

Q. Just the ones that are in there? A. Yes, sir.

Q. Now, at what time do you say the second group signed by Finn and Horn was written? A. The late night or early morning, the late night of September 19th or early morning of September 20th, 1934.

Q. Now, I show you Exhibit S-72 again and ask you if that indicates the time. A. It does; yes, sir.

Q. At 2:10 a. m.? A. September 20th, 1934.

Q. At 2:10 a. m.? A. Yes, sir.

Q. And does that agree with your recollection of it that that is about the time that it was done? A. About; yes, sir.

Q. Did you hear Lieutenant Finn say that a

mistake was made in that and that it was intended to be 2:10 p. m.? A. I didn't hear Lieutenant Finn's testimony.

Q. But you say now that regardless of what Finn testified to, it was 2:10 a. m.? A. Yes, sir; it was.

Q. Now, what time was the prisoner taken in custody, Sergeant?

Mr. Large: Do you want to mark those?

Mr. Fisher: They are already marked.

Mr. Large: But you didn't indicate about what you were talking.

Mr. Fisher: I was referring in the last one to Exhibit S-72.

By Mr. Fisher:

Q. And you say you didn't hear Lieutenant Finn testify, you didn't hear him on this stand testify? A. No, sir.

Mr. Wilentz: May I say to counsel that I think counsel is mistaken, that the one he testified to is this.

Mr. Fisher: No, here it is right here.

Mr. Wilentz: I mean Finn.

By Mr. Fisher:

Q. What time was Hauptmann taken in custody? A. Approximately 9:15 a. m., September 19th, 1934.

Q. The first writing you saw him do was in the late afternoon or early evening of the same day? A. By Colonel Schwarzkopf and Inspector Lyons.

Q. Had he been in custody constantly during that day? A. Yes, sir, he had.

Q. Most of the time handcuffed to you. A. Until he was brought in for a statement he was handcuffed to me.

Q. That was the major part of the day, is that right? A. That was in the vicinity of 2 p. m.

Q. Two p. m.—in the afternoon. You didn't find any money in the Hauptmann garage or house the first day, that is, September 19th, did you? A. I didn't search the Hauptmann garage.

Q. Do you know from your investigation whether anybody found any there the first day, the 19th? A. I don't believe so, no, sir.

Q. What time did you go back to the Hauptmann garage on the 20th? A. Approximately, arriving at the Hauptmann home in the vicinity of 10:00 a. m. on the 20th.

Q. Did you go first to the house on the 20th, your searching party? A. Yes, sir.

Q. And made a thorough search of the house? A. Well, a thorough search of the house occupied by Hauptmann.

Q. That is what I mean, the Hauptmann apartment, or whatever it was. It was a half of a house, the upstairs? A. The second floor of the house.

Q. How long did it take you to make your search of the house that morning, the 20th? A. We made a search of about an hour and a half in the house.

Q. Then you went to the garage. A. Yes, sir.

Q. Now, upon whose instructions, whose orders were you following when you went back to the Hauptmann's on the 20th at about ten o'clock?

A. I received my instructions from Colonel Schwarzkopf.

Q. Where? A. At the Second Precinct at 156 Greenwich Street.

Q. Who was present there when you received your instructions from Colonel Schwarzkopf to proceed back to the Hauptmann house? A. Inspector Lyons.

Q. How about O'Ryan? A. I don't recall General O'Ryan being present.

Q. But Inspector Lyons was there? A. He was.

Q. Where was the prisoner at that time? A. I don't recall seeing the prisoner at that time.

Q. Do you know whether he was in the same police station or not? A. He was in the same police station, yes, sir.

Q. Who arrived at the police station first that morning, you or Inspector Lyons, if you know? A. That I could not answer.

Q. Do you remember whether Inspector Lyons was there when you arrived? A. I could not say that.

Q. Now, as a matter of fact, Sergeant, didn't you go back to the Hauptmann house and look for money exactly where Bruno Richard Hauptmann told Inspector Lyons it would be found and Inspector Lyons had told you where it would be found? I refer now to the money in the garage. A. What date?

Q. On the 20th of September. A. No, sir.

Q. Didn't you go up to that house and garage with definite knowledge given you by Inspector Lyons that the money would be found secreted just where it was found? A. No, sir.

Q. Inspector Lyons gave you no such instructions? A. That is right.

Q. Did anybody else give you such instructions? A. No, sir.

Q. But Hauptmann had been in custody from nine o'clock the day before until ten o'clock the 20th, is that correct? A. Yes, sir.

Q. Yes. Now when you went up to the house, what was the purpose of the visit? To search for money? A. Yes, sir.

Q. Now you had a conversation with Mr. Hauptmann after the money was found, I understood you to say. A. Around 3:15 p. m., September 20th.

Q. And you had a conversation with him after that, is that correct? A. (No answer.)

Q. Is that right, Sergeant? A. That is the time that I had the conversation with him.

Q. With Hauptman? A. Yes, sir.

Q. And that was after he had found the money? A. Yes, sir.

Q. Now in that conversation with Hauptmann, you said that he told you that he had the money out to dry, or some such thing? A. He did, yes, sir.

Q. And where did he say it had been when it became wet? A. He stated in the broom closet in a shoe box.

Q. And didn't he also state where he got the shoe box with the money in it? A. He did, yes.

Q. And where did he tell you he got it? A. He stated that he got the shoe box or the money from Isidor Fisch.

Q. And that was within 30 hours of his arrest, is that correct? A. That was approximately, yes.

Q. Yes. It was 3:00 o'clock or 3:15 o'clock of the day after his arrest? A. Yes, sir.

Q. And at that time he told you that the money was received by him from one Isidor Fisch? A. Yes, sir.

Q. Is that correct? A. Right.

Q. Now let me ask you just one additional question: the money that you have laying along the rail here—I won't get it out again because the temptation is too great—that is the same money, isn't it, that was used as a basis for an extortion indictment in Bronx County, New York, the trial of which indictment is still pending?

Mr. Wilentz: Just a minute. I haven't any particular objection, except that it is not at all material and, of course, in addition to that, it calls for a conclusion on the part of this witness and, further, my objection is that it would only clutter up the record to go into a collateral proceeding, which has nothing to do with this, and I object to the question.

Mr. Fisher: I will incorporate in the question "If you know, sir."

Mr. Wilentz: I object to it anyway.

Mr Fisher: I think it is highly material.

Mr. Wilentz: It is absolutely immaterial, has no application in this matter at all. This charge is murder.

Mr. Fisher: I think that it is highly important, your Honor, because the very same evidence that is now attempting to be used in the trial of an indictment for murder in New Jersey was the basis, and still is the basis for an indictment alleging an entirely separate and distinct crime,

separated by miles of space and months of time, and I submit, sir, that it is highly competent in the trial of this issue for such a question to be propounded on cross examination of a State's witness.

Mr. Wilentz: I object to the question, if your Honor please, for the reasons heretofore advanced and for the additional reason that what counsel states now is not the fact and I ask that the comments in offering this question by counsel for the defense be stricken from the record.

The Court: Let me have the question.

(The reporter repeated the question: "Now, let me ask you just one additional question. The money that you laying along the rail here—I won't get it out again because the temptation is too great—that is the very same money, isn't it, that was used as a basis for an extortion indictment in Bronx County, New York, the trial of which indictment is still pending?")

The Court: I sustain the objection.

Mr. Fisher: And I respectfully 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. Fisher: That is all, Sergeant.

Mr. Wilentz: May I ask, if your Honor will instruct the jury to disregard any of these statements made by counsel on this matter?

Mr. Fisher: I think the argument is perfectly proper.

The Court: Mr. Attorney General, I have done that many times.

Mr. Wilentz: All right, sir.

The Court: I think the jury understands that counsel have the right to argue these questions relating to evidence.

The Court: And, of course what counsel say is not evidence. You are expected to determine this case from the evidence that you hear from witnesses and from exhibits and the like. Now, isn't that a satisfactory statement?

Mr. Wilentz: Yes, sir, if your Honor please.

Re-Direct Examination by Mr. Wilentz:

Q. In all these operations that you participated in, what have you to say as to whether or not the New York Police Department and the Department of Justice and other Federal agencies and your department worked together?

Mr. Pope: I object to the question as immaterial.

The Court: Well—

Mr. Wilentz: Only in the operations in which he participated.

The Court: Well, he has been testifying in effect to that already.

Mr. Wilentz: Yes.

The Court: Has he not?

Mr. Wilentz: Yes. I will withdraw the question.

Mr. Pope: I withdraw the objection.

Q. Will you answer the question, please, the objection is withdrawn. A. We worked together, the three departments.

Q. Now, counsel asked you whether Mr. Hauptmann had been in custody for 30 hours. The fact of the matter is, is it not, that he has been in custody every day since September 19th, 1934: isn't that it? A. I believe he has.

Q. All right, sir.

Mr. Wilentz: Thank you.

Re-Cross Examination by Mr. Fisher:

Q. Just a minute. Now, in reference to the harmony, isn't it the fact that at the time of the arrest the Department of Justice agents wanted to immediately go to the Hauptmann house and

make a search and that they were overruled by the New York officers and by your New Jersey officers, who insisted on waiting on a street corner for Inspector Lyons to get there?

Mr. Hauck: If he knows.

Q. If you know, of course. A. I never heard any such remark.

Q. Well, why was the delay on the street corner, awaiting the arrival of Inspector Lyons? You had eight or nine officers there, didn't you, all competent ones? A. At that time I did not know the reason for the delay because I was handcuffed to the defendant.

Q. Well, weren't you— A. And I didn't know until the arrival of Inspector Lyons.

Q. As a matter of fact, didn't the New York officers insist that Hauptmann be kept on the street corner, handcuffed to you, in order that Lyons could get there to grab the glory of the arrest?

Mr. Wilentz: Just a minute. I object to the "grab the glory".

Mr. Fisher: I beg your pardon.

Q. To get the credit for the arrest, sir?

Mr. Wilentz: Just a minute, sir. I object to that as being immaterial.

The Court: I don't think that is very material, Mr. Fisher.

Mr. Fisher: It is, because they raised the harmony question, your Honor.

Mr. Wilentz: I said nothing about harmony.

Mr. Fisher: Working together, which in my language means harmony.

The Court: No, the harmony idea was suggested by me as a fair conclusion from the testimony of the witness.

Mr. Fisher: I will withdraw the question, sir.

Mr. Wilentz: All right, officer.

Mr. Fisher: That is all, Sergeant.

(The witness leaves the stand.)

Mr. Wilentz: Is Mrs. Achenbach in the room?

ELLA ACHENBACH, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. A-c-h-e-n-b-a-c-h, is that right? A. That is right.

The Court: Ella?

Mr. Wilentz: Achenbach, A-c-h-e-n-b-a-c-h.

Q. How do you pronounce your name, madam? A. Okkenbock.

Q. Achenbach, is that it? A. That is right.

Q. Where do you live, madam? A. I live at 987 Trinity Avenue, The Bronx.

Q. And how long have you lived in The Bronx? A. 23 years.

Q. And 987 Trinity Avenue is how close to the home that Mr. Hauptmann occupied in March 1932? A. Well, I guess about six or seven miles.

By the Court:

Q. How is that, madam? Won't you speak a little louder so I can hear? A. I say six or seven miles.

Q. Six or seven miles? A. Yes.

Q. You lived away from Hauptmann, was that it?

Mr. Wilentz: She lives now away from where his house was at the time.

The Court: Oh, yes.

By Mr. Wilentz:

Q. Where did you live in March 1932? A. I lived at 1253 East 22nd Street.

Q. And how close or how far away from Hauptmann's home was it at the time? A. That is five city lots and a private house.

Q. I want to show you a picture and see if you can see both your home and Hauptmann's home on here. A. Yes, my house is right here (indicating).

Q. That is the side of your home you are pointing to? A. Yes, that is the side.

Q. The first house as you face the picture is the Hauptmann home? A. The first house is Van Buhren's house. That is next to Hauptmann.

And five city lots away from there comes my house.

Q. I see.

Mr. Pope: You say five miles, Mrs. Achenbach?

Mr. Wilentz: Five city blocks.

Mr. Fisher: A moment ago she said six or seven miles, didn't she?

Mr. Wilentz: Oh, no, no. That is, her present home now is five or six miles away from the Hauptmann home.

Mr. Wilentz: Does your Honor think it was 67?

Mr. Fisher: It was 6 or 7.

Mr. Wilentz: Yes, that is correct.

The Court: She first talked according to my understanding—

Mr. Wilentz: I will clear it up.

The Court: I think we better have the record read.

Mr. Wilentz: Or if your Honor wants I will clear it up in two questions.

The Court: Very well, clear it up.

By Mr. Wilentz:

Q. In March, 1932, as I understand it, your home was about five city lots away. A. From Hauptmann's house, yes, sir.

Q. Now, your home is about five or six miles away? A. Yes, that is right.

Q. All right. So that in March, 1932, you were a neighbor of Hauptmann's. A. We were neighbors.

Q. Did you know Mr. and Mrs. Bruno Richard Hauptmann at that time? A. I met Mrs. Hauptmann 1927, when I took her into my employment as a waitress.

Q. That is, she was employed by you as a waitress? A. Yes.

Q. In 1927. And when was it that you first met her husband, Mr. Bruno Richard Hauptmann? A. He used to come and call for her occasionally after work.

Q. She worked for you as a waitress? A. As a waitress.

Q. Now, in 1932 and specifically in March, 1932, do you remember the occasion of the Lindbergh kidnaping? A. I do.

Q. Do you remember that that was March 1st, 1932, do you not? A. I do.

Q. Did you see Mr. Bruno Richard Hauptmann some time in March, 1932, after the Lindbergh kidnapping? A. Yes, they came home from a trip.

Q. About how long after the kidnapping, March 1st, 1932, was it that you saw him the first time? A. It was the following day after the kidnapping or two days after the kidnapping.

Q. One or two days? A. Yes, sir.

Q. Where did you see him? A. Anna Hauptmann came to my front porch and told me they just came home from the trip.

Mrs. Anna Hauptmann: Mrs. Achenbach, you are lying!

Mr. Wilentz: If your Honor please, we object to these demonstrations, whether they are staged or otherwise.

Mr. Fisher: I ask that those remarks be stricken.

The Court: One moment. Who said that?

Mr. Wilentz: Mrs. Hauptmann.

The Court: This is the second time this thing has happened.

Mr. Fisher: I think the statement made is sufficient. What I resent, and I don't think it was intended, was the general remark, "whether they were staged or not".

The Court: Oh, well—

Mr. Wilentz: I insist upon that remark, so far as I am concerned, if your Honor please, very respectfully, I insist that it remain in the record, that is just what I meant, whether counsel resents it or not. This is the third time, if your Honor please, not the second, with a witness on the stand before and the delightful defendant addressed him from there yesterday and again today Mrs. Hauptmann. Now if your Honor please, is the Court conducting it or Mr. and Mrs. Hauptmann? I know the Court is, and so, if your Honor

please, I stand by the statement made by me for the State.

Mr. Fisher: The statement just made by counsel is far more unfair than the last statement.

The Court: One moment. I do not think that I will strike any of the statements of the Attorney General from the record. Of course, my anxiety is to conduct this trial in an orderly and fair fashion and I have assumed all the time that that is joined in by counsel.

Mr. Reilly: It certainly is.

The Court: Yes. Now, what has counsel to suggest to the Court in the way of dealing with this problem?

Mr. Wilentz: So far as the State is concerned, if your Honor pleases, I suggest that we may be permitted to bring witnesses here without being called names while they are testifying.

The Court: Of course, of course, but I am talking now about the outburst, these outbursts.

Mr. Wilentz: I have no suggestion, and I do not know as one can be made except what your Honor has already done to inform the parties offending. I have no desire to exclude any of the parties that are now in the room.

Mr. Reilly: Of course the Court will appreciate that both the defendant and his wife are under high tension, and as I said before, I have no desire to interfere with the judicial calm which has heretofore prevailed, and many times my patience has been attacked and I have sat under the benign influence of your Honor. I think the admonition which your Honor has administered is sufficient.

Mr. Wilentz: I agree sir. I think a judicial admonition to the defendant and his wife would be sufficient.

Mr. Wilentz: I agree, sir.

The Court: Well, this woman who made this outburst a moment ago I understand is Mrs.—

Mr. Reilly: The defendant's wife, yes.

The Court: Well, Madam, don't you see the impropriety of your interrupting this trial in an outburst of this kind?

Mrs. Hauptmann: I am sorry, your Honor, but I couldn't help it—

Mr. Wilentz: No. I am sorry if I am offending the Court, but may I state that I object to the lady making any addresses in the courtroom.

The Court: I am asking her whether or not she does not see the impropriety of that thing. Now you see that it was wrong

for you to make that outburst, don't you, Mrs. Hauptmann?

Mrs. Hauptmann: Yes, I see it—

The Court: You see that it was wrong, do you not?

Mrs. Hauptmann: Yes, sir, your Honor.

The court: Now will you promise me and these gentlemen here and the jury that you won't offend in that respect again?

Mrs. Hauptmann: Well, I will try to do, but sometimes I just can't help it.

The Court: But I am asking now whether or no you will promise to keep quiet.

Mrs. Hauptmann: I will.

The Court: Yes. And I think we have in effect that kind of a promise out of the defendant, haven't we?

Mr. Reilly: Yes, sir. In fact he wanted to address the Court yesterday, but I wouldn't permit it, because I didn't want anything interrupted, but he wanted to apologize to your Honor for his outburst.

The Court: Well, we will have to proceed.

Mr. Wilentz: I appreciate counsel's last remark, but I would appreciate it, too, if he joined with me in having it out of the

record that the defendant wanted to apologize. I think telling that to the Court in chambers or at side Bar is sufficient. I don't want it to be a part of the record in a matter of argument.

Mr. Reilly: Your Honor invited my reply as to whether I could certify that he would not do it again.

Mr. Wilentz: I think the reply was proper.

The Court: This is rather an embarrassing situation. However, we will have to proceed.

Mr. Wilentz: Now let's have the question, please, Mr. Stenographer, which provoked us. I want to know where we were at.

The Reporter: I will run up and get it.

Mr. Wilentz: Yes, please run up and get it. We are waiting, if your Honor please. The stenographer is going to get the question.

(The preceding questions and answers were read as follows: "Q. About how long after the kidnaping, March 1, 1932, was it that you saw him the first time? A. It was the following day after the kidnaping or two days after the kidnaping.

"Q. One or two days? A. Yes, sir.

"Q. Where did you see him? A. Anna Hauptmann came to my front porch and

told me they just came home from the trip.")

Mr. Fisher: I ask that that be stricken as not being responsive. I ask that the last question be stricken, because it is not responsive and deals with something that occurred in the absence of the defendant.

Mr. Wilentz: I consent to it being stricken. My purpose in asking it, if your Honor please, was to find out just what it was that caused the outburst.

Mr. Wilentz: I consent to it being stricken.

The Court: The objectionable part may be stricken out.

By Mr. Wilentz:

Q. She came to the porch that day? A. She came to the porch.

Q. Did Mr. Hauptmann come? A. She was there about—

Mr. Fisher: That is not responsive. He asked if Mr. Hauptmann came.

Mr. Wilentz: Just let her finish.

A. We were talking about 10 or 15 minutes, about her trip.

Q. Did he come? that is what I want to know. A. After that Mr. Hauptmann came up also.

Q. All right. When he came there, there were

Mr. and Mrs. Hauptmann and yourself on your sun porch: is that right? A. The three of us, yes.

Q. And in addition to what you were talking about, did you observe him: did you look at him?

Mr. Fisher: I don't think the time has been fixed.

Mr. Wilentz: A day or two after the kidnaping.

The Court: He fixed it as March 2nd or 3rd.

Q. Did you see him? Was he all right? A. He was all right while he was sitting there.

Q. Then what? Did you observe anything about him? What did you see about him? A. Before they went home, she said, "Oh, another thing happened to Richard; he hurt his leg."

Q. Was he there? A. Of course he was there. She said he sprained his ankle pretty bad.

Q. What did he do? A. While she was talking about his injury he bent down and gave his leg a massage-like stroke.

Q. With his hand, you mean? A. With his hand.

Q. Now, let me ask you: did you observe when he got up whether or not this leg condition showed in any way? A. Not when he got up, but when he went down the steps I did.

Q. How did he walk when he went down the steps? A. When he went down my front steps, he kind of supported himself on the side of the stoop.

Q. I see. Did he walk with a limp? A. As they were both walking toward their house, he was walking with a limp on the left leg.

Q. What does your husband do, madam, for a living? A. My husband is a baker, but at present he has a restaurant and tavern.

Q. And you are the mother of children, are you? A. I have three daughters.

Q. Three daughters. And how long did you say you lived in the Bronx, madam? A. As long as I am married, 22 years—23 years.

Q. 23 years? A. (No answer.)

Mr. Wilentz: That is all, take the witness.

Cross Examination by Mr. Reilly:

Q. Your husband now runs a restaurant. A. Yes, sir.

Q. Saloon? A. Yes, sir.

Q. Where? A. 431 East 154th Street.

Q. Now, Anna Hauptmann worked for you, didn't she? A. Yes, she did.

Q. Before she was married? A. No, after she was married.

Q. After she was married. What year did she work for you? A. She worked for me from Christmas, 1927, until Christmas, 1928.

Q. Now before this day that you have spoken of when did you see Anna Hauptmann before that? A. She came to me the first or second week in February.

Q. What day? A. I couldn't tell you the day.

Q. What day of the week? A. I couldn't tell you that, either.

Q. What time of the day? A. It was during—it was during school hours, in the afternoon.

Q. Between what hours? A. Well, between two and three, maybe a little after three.

Q. Where were you then when she came to you? A. I was in my house.

Q. Where? A. I was cleaning my bedrooms in the back.

Q. You were cleaning your bedrooms? A. Yes.

Q. How often do you clean your bedrooms?

Mr. Wilentz: I object to the question, if your Honor please?

Mr. Reilly: Now there is nothing funny about this question, Judge. I am asking it because I am testing her for her ability to remember anything.

A. That is all right. I give my bedrooms a thorough cleaning, because I was sewing for my two daughters for their graduation.

Q. All right. Do you clean it every day? A. Well, of course, a good housewife should do it.

Q. Every afternoon at the same time? A. No, not that; that was an exception.

Q. Anybody else there besides you? A. No. On that day I was all alone.

Q. This was in February? A. That was in February.

Q. This was in February? A. That was in February.

Q. Now, before that what day did she come to see you? A. Oh, I don't believe I saw her for quite some time before that.

Q. Over a year? A. Oh, no, not that long.

Q. Six months? A. No, it could be about three, four weeks.

Q. Three or four weeks. When did Anna Hauptmann take one of your children at your request to Europe? A. During the Summer, 1928.

Q. And she delivered the child to some relative of yours, is that right? A. She did, yes.

Q. And she brought back the child? A. Met

in Hamburg and they both sailed on the Bremen, coming back again.

Q. Did she bring the child back? A. She certainly did.

Q. And that was what year? A. 1928.

Q. Yes. And after she came back in 1928 she presented you with a bill for her expenses, didn't she? Yes or no. A. I guess that is right.

Q. And you haven't paid it yet, have you? A. Oh, my goodness—is that so? Is that what she said?

Q. I am asking you. A. My daughter was nine years old when she paid—

Q. Have you paid the bill in question?

Mr. Wilentz: Let her answer the question.

A. Yes.

Q. When? A. Well, I will ask my husband about that.

Q. When was the bill paid? A. Right after she come home.

Q. How much was the bill? A. That was half a ticket, half of the fare.

Q. How much? A. I don't remember; I don't know.

Q. And isn't it a fact that from the time she presented the bill and you refused to pay it, down to date, you haven't seen her once?

Mr. Wilentz: Just a minute. The testimony is exactly to the contrary.

Mr. Reilly: I know it is, but this is the cross examination.

Mr. Wilentz: Oh, all right.

Mr. Reilly: I remember the testimony just as well as you do.

Mr. Wilentz: Thank you, sir. I believe you are right.

Q. Now, isn't it a fact you haven't seen her until you saw her in this courtroom? A. Mrs. Hauptmann?

Q. Yes or no. A. No, I saw her several times.

Q. All right. Now, I want to know the exact day of the week in March that the Lindbergh baby was kidnaped, so far as you can remember. A. Well, that was either Wednesday or Thursday that she came to my house.

Q. That isn't the question, madam. The question is what day of the week do you say the Lindbergh baby was kidnaped? A. Well, I guess it was Tuesday.

Q. You guess it was what date? A. The 1st of March.

Q. Sure about it? A. Of course.

Q. When did you remember it, from the Colonel's question this morning, was it the first of March? A. No. I always knew the date of the month, but I never knew the day.

Q. You didn't write it down, did you? A. No, I did not, no.

Q. No, and one or two days afterwards, Anna Hauptmann you say came to your house? A. Yes.

Q. What time of the day? A. It was late in the afternoon.

Q. How late? A. Well, say about half past five, maybe six o'clock.

Q. Who was there? A. My husband was in the house and the children went in and out in the house.

Q. And who was in the room? A. My husband

was sitting in the little sitting room when Anna Hauptmann came in on my porch.

Q. Is your husband here? A. No.

Q. Are your children here? A. One of them is, yes.

Q. Between half past five and six o'clock. You are sure of that now? A. I am sure of that, yes.

Q. What date? A. The 2nd or 3rd day of March.

Q. What day of the week. A. Well, that was Wednesday or Thursday.

Q. You say she came first? A. She came first.

Q. How long after that do you say Richard came? A. Well, say about ten, fifteen minutes later.

Q. And he was all right when he walked in, is that it? A. I didn't notice anything on him. That is why—

Q. No cane? A. No.

Q. No crutch? A. I didn't notice any crutch, no.

Q. Well, wouldn't you notice a crutch if he had it under his arm? A. Oh, a crutch like that? No, he didn't have it.

Q. No cane? A. No cane.

Q. He didn't say, "Look at my sprained ankle?" A. No, he did not, no.

Q. He didn't say, "Look at the bandage?" A. No.

Q. He didn't smell any arnica? A. No.

Q. No liniment? A. No.

Q. Nothing on it? A. No, nothing.

Q. He just sat on the chair? A. That is right.

Q. That is, he scratched his leg, is that it? A. He massaged it.

Q. He massaged it.

Q. You don't know whether he had rheuma-

tism, do you? A. I don't know whether he has rheumatism.

Q. You don't know whether he had an ingrown nail, do you? A. No, I don't.

Q. You don't know whether he had an infected foot, do you? A. No.

Q. You saw no evidence of a sprain? By that I mean a bandage? A. No.

Q. Or a brace? A. No.

Q. Or anything else? A. No.

Q. And as he went down the stoop you say he did what? A. He balanced himself or supported himself on the wall.

Q. You have a railing, haven't you? A. No, it is not like a railing, it is like a wall.

Q. A wall? A. Yes.

Q. What kind of a stoop is it? A. Stone stoop.

Q. Stone stoop. How many steps? A. Oh, I guess about ten, eleven steps.

Q. Had it been raining that day? A. It had been raining the day before.

Q. Was your stoop still wet? A. I guess it was.

Q. Was there ice on your stoop—in March? A. No ice.

Q. Sure? A. No, no ice.

Q. Was there any ashes on the stoop? A. No.

Q. And as he went down he balanced himself against the wall? A. Yes.

Q. You hadn't given him anything to drink? A. Oh, no.

Q. Nothing in the house? A. No.

Q. How many steps did he have to go down? A. About ten or eleven.

Q. Ten or eleven steps, and as he walked away, what did you say he did? How did he act? A. He was limping.

Q. How was he limping? A. Well, the way you limp.

Q. The way I am limping now? A. Yes, just like that.

Q. With this foot? A. With the left foot he was limping, the left foot was the sore one.

Q. The left foot, I see. That was away back in what year? A. That was 1932.

Q. When for the first time did you tell anybody about Bruno Richard Hauptmann's limp? A. I told my husband after they were gone.

Q. I am not talking about your husband because I suppose you tell your husband everything.

Mr. Wilentz: She is talking about it. That is responsive.

By Mr. Reilly:

Q. When for the first time did you tell any official about the limp? A. About a couple of days after his arrest.

Q. That was last September, right? A. Right.

Q. And who was the official? A. Officials—they weren't officials—they were reporters.

Q. Reporters? A. Yes.

Q. I am talking about officials. A. That was not until about a week after Mr. Hauptmann was arrested.

Q. Who was the first official? A. Well, I don't know the name.

Q. Where—

The Court: Mr. Reilly, I think we had better take a recess.

Mr. Reilly: Yes.

Mr. Wilentz: Thank you, madam.

The Court: I want to warn the people here that unless they are inclined to co-operate with the rule announced by the Court, they are going to be excluded from the court house. There seems to be a coterie of ladies over in that direction of the room who spend a very considerable part of the time in giggling and laughing. Now, I am going to see if I cannot devise some measures to prevent that. We do not want it. And another thing, when I ask the people in this court room to remain seated until the jury has retired I expect them to remain seated, and I am going to take measures to enforce that rule. Now, if people want to come here, they have got to pay some attention to what the Court is trying to do.

The jury may retire and come in at 1:45.

(The jury thereupon retired.)

The Court: The prisoner is now remanded to the custody of the sheriff.

Take a recess until 1:45. The people may now go.

(At 12:35 a recess was taken until 1:45 p. m.)

After recess.

(1:49 p. m.)

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

ELLA ACHENBACH resumed the witness stand:

Cross Examination (continued)

By Mr. Reilly:

Mr. Wilentz: Now, if your Honor please, before we proceed with this witness, the State proposes to introduce and has proposed to introduce various brokerage, bank and other financial accounts of this defendant Hauptmann from a time preceding April 2nd, 1932, when the State claims this money was paid to him and for the period from that time up to the date of his arrest. And we have prepared this great mass of photostatic copies of the various instruments, checks, bank accounts, brokerage accounts.

We have in the courtroom today a great number of witnesses as the result of that, brokers, men who work in banks,—and your Honor can readily appreciate that if we have to call them and each one explain each item, that we will have a task that will easily take two or three days. The other day I discussed with Mr. Reilly of the defense the question of the brokerage accounts. It seems that in the State of New York, if your Honor please, a broker is not permitted to keep a loose leaf system with reference to his brokerage accounts, but he must have the bound volume. Therefore, we could not get the loose original leaves here. He would have to bring them here in a truck and it would be at least a truckload,

his books. Counsel for the defense, and particularly Mr. Reilly, has very kindly consented to waive that necessity and he said that photostatic copies would be sufficient. So we have prepared those photostatic copies and we have them here, but even with that, if your Honor please, it is a Herculean task to attempt to present here witness after witness in such a way that it would be helpful, either to the Court, the jury, or to counsel.

And so we suggest to your Honor that we present today, now, one copy and a little later three or four more copies so the other lawyers and the defense may have a copy of each one of these instruments.

We offer one set of these instruments in evidence. We will have one set for your Honor and a number of sets for the jury. Over the week-end we propose that either a Government accountant and an accountant selected by the defense, but at any rate, some certified accountant with whom both sides are satisfied, go over these figures so that when we come here the next time, one witness or two witnesses may be asked the question, "Have you examined these accounts and how much do they show?" and this particular and that particular, and in that way your Honor can readily see as counsel have agreed that we would save at least two days.

Of course, counsel has to go over these accounts. I can't just put a witness on and

go through with these questions without giving them an opportunity.

And for that reason we join, if your Honor please, the defense and the State join in asking you if you won't please give us tomorrow off for that purpose.

Now, we appreciate your Honor's inclination about the jury, and I want to say to the jury for both of us that we are just as anxious as they are to relieve them of this burden that is imposed upon them. But to come here in the fashion that we would have to come, with brokers and bankers, would be no relief to anybody but rather be an added burden. And so very respectfully, if your Honor please, without any other purpose, except to conserve time, serve your Honor and the jury and the case generally, we both join in this request, as I understand it, except for those things that Mr. Reilly may have to say.

Mr. Reilly: Last week, if your Honor will recall, we obtained an adjournment on Saturday, and counsel on both sides were engaged all of Saturday and all of Sunday. It was, I should say, about half past one in the morning, Sunday night, when I went to bed in Trenton, but we were able to relieve the jury of the presence of at least 25 intermediate witnesses and very likely saved a day and a half. Now, if the General were to bring these books from New York, despite what is in them, and we may attack that when it is presented, he would have to have, as he said a truck load of books from

each person that touched any account of the defendant. And that would mean endless days, maybe three days, because every time an exhibit was handed to the witness we would naturally be inclined to consult with the defendant, and I join with the General in saying that, over the week end, if we may have these photostatic copies and an opportunity to consult with the defendant, we may be in a position to proceed on Monday expeditiously, because we are all anxious to present this case in its proper course and as speedily as possible, and under your direction.

The Court: This matter has been broached to me before and I have considered it pro and con. I am very well satisfied that by adjourning over the week-end, that is, adjourning tonight until Monday morning, time will be saved and, therefore, I am quite willing to grant this motion, which is joined in by both sides, and I can assure the jury that it will make for more speed in the trial of the case.

Now, at this moment I want to say just another word to the jury. You will recall that last Saturday you were permitted to take a ride in the bus that was owned and operated by one of your guards. I am told that the jury rather enjoyed that—it was a relaxation—and that they would like to do it again, and counsel of both sides have authorized me to say to the guard and the jury that they may go tomorrow over the same route, if they wish. The route, of

course, you will recall very distinctly. My recollection is that it goes from here to—

Mr. Fisher: Frenchtown.

The Court: Frenchtown; from Frenchtown to Milford, and from Milford to some other little town up there, and from thence to Clinton, and then back to Flemington. Now, if you go, keep strictly to that route, do not depart from it, and my suggestion is to you that you do not go unless it is a fair day; do not go out in inclement weather and, if you do go, even in fair weather, why, be sure to get wraps enough so that you will not expose yourselves to cold. With that suggestion, I leave the matter to the jury.

Counsel may now proceed.

By Mr. Reilly:

Q. You have not spoken to anyone, have you, during the luncheon period about your examination? A. Not that I remember.

Q. You certainly can remember, can't you, within the past hour whether you spoke to anybody about this case or your testimony. A. Well, they asked me for my daughter's name.

Q. Who did? A. Some lady reporter.

Q. I am talking about officials. A. Oh, no, I didn't talk to any official.

Q. Now this trip to Europe that your daughter took with Mrs. Hauptmann, when was that? A. They sailed on the 26th of June on the York.

Q. 1930— A. 1928.

Q. 1928, and what ship? A. On the York.

Q. York? A. York.

Q. And you purchased a half a ticket for your daughter, didn't you? A. Yes, my husband purchased a half a ticket for my daughter.

Q. And Mrs. Hauptmann was going to Germany and she agreed to take your daughter over with her, is that right? A. Yes.

Q. When your daughter arrived in Germany she had to take a train to some other town, didn't she? A. She did.

Q. What town? A. To Siegen.

Q. And what province? A. In Westphalia.

Q. Westphalia. That is quite a distance from Bremerhaven, isn't it? A. I don't know.

Q. Weren't you ever there. A. I was too young when I came over here. I don't remember.

Q. Who was your daughter visiting? A. My daughter was visiting my husband's people.

Q. Your husband's father and mother? A. Yes.

Q. Mrs. Hauptmann paid for that ticket you know, on the train. A. Oh, no, she had extra money.

Q. How much? A. My husband gave her fifty dollars expense money.

Q. When? A. When she left.

Q. Fifty dollars, for what? A. For whatever she needed, for her train fare and whatever she needed.

Q. Didn't you tell Mrs. Hauptmann you and your husband for what ever she spent would pay her back? A. Of course we will pay her back if she didn't have enough.

Q. What bill did she present to you? A. She just told us that she had to pay the other half fare coming back.

Q. How much was that. A. My daughter was nine years old when she left, and she had her tenth birthday in Germany and, for that reason,

she had to pay the other half of the fare coming back.

Q. And how much was that? A. I don't remember; I believe it was $32 or $35. I don't know.

Q. Well, how much was the bill that Mrs. Hauptmann presented to you? A. She didn't present no bill at all. My husband paid her in cash whatever she asked for.

Q. How much did she ask for? A. I don't know. I am telling you it was about $35 or $32; I don't know.

Q. Well, you certainly discussed this bill with her, didn't you? A. No, my husband discussed with her, not me.

Q. It was your daughter, and you were glad to see your daughter return to this country, weren't you, weren't you? A. Of course I do.

Q. And Mrs. Hauptmann brought the girl back? A. Yes.

Q. She took her over, she sent her to her grandparents, picked her up in Germany, she brought her back safely, is that right? A. Yes.

Q. And weren't you discussing with Mrs. Hauptmann what kind of a trip the girl had? A. Of course.

Q. On the way over? A. Yes, and plenty of it, yes.

Q. Yes, and didn't she tell you about the different things that the girl had on the steamer, moving pictures and horse races and little drinks and the candy and souvenirs and the railroad fare and all those things? A. She had plenty of money for everything except for the return ticket coming back, the half ticket.

Q. And that was $32? A. Something like that.

Q. Something like that. And you can't tell us now how much Mrs. Hauptmann said you owed

her or your husband owed her? A. My husband paid her everything back and the wages she worked for.

Q. Did she go to work for you again? A. She certainly did.

Q. How did you pay her back, a dollar a week? A dollar a week on her wages? A. A dollar a week on her wages? She got eighteen dollars a week.

Q. How much did you pay her of this bill each week? A. She got it all in one amount.

Q. When? A. On her first pay day.

Q. What date? A. On, I don't know the date.

Q. What date did your daughter return from Germany? A. She returned on the 26th of October, I guess, or the 22nd or the 26th.

Q. 22nd or the 26th? A. Yes.

Q. You don't remember the date Mrs. Hauptmann was paid? A. Mrs. Hauptmann stayed home for about a week after she came back to settle her house.

Q. Do you remember when you paid her? That is what I am interested in, do you? A. The first Saturday after a week's work she got paid.

Q. Can you remember when it was? A. No, I don't.

Q. Can you remember the date they sailed? A. Of course, I do.

Q. What date was that? A. They sailed on the 26th of June.

Q. On the York? A. On the York.

Q. Now, isn't it a fact that you haven't paid Mrs. Hauptmann and that she is angry with you? A. No, absolutely not, she got every cent that is coming to her.

Mr. Reilly: That is all.

Mr. Wilentz: That is all, madam, thank you very much.

Is Mr. Lyle in the room? Here he is.

WALTER LYLE sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. In September, 1934, you were working for some gas station in The Bronx? A. Yes, sir.

Q. What was the name of the company by whom you were employed and where was the station? A. The Warner-Quinlan Company, 127th Street and Lexington Avenue, Manhattan.

Q. You were the gentleman in charge of that station? A. Yes, sir.

Q. And besides you there was whom? A. I had one attendant on me on duty in the daytime, one came on at four and one came on at twelve.

Q. Who was the man working with you that particular day? A. John Lyons.

Q. John Lyons. On that day did you see the defendant, Mr. Bruno Richard Hauptmann? A. Yes, sir.

Q. And what was the occasion,—what was the date? A. September 15th.

Q. 1934? A. 1934, right.

Q. What was the occasion of your meeting him or seeing him? A. He drove into the station to get gas. He drove up to the ethyl pump. I went over to his car and asked, "Should I fill the tank?" And he said, "No, just give me five." So I serviced his car and then when he started to pay me, he took an envelope out of his pocket and took a ten dollar gold certificate out of it. I looked at it, turned it over, and said, "You don't

see many more of these." He said "No, I only have about a hundred left." Well, when he said that I looked at him closely and gave him the change and he started to get in his car and I started back towards the office. When I got a few feet behind his car I turned around and noted the number, stepped in the office and wrote it on the margin of the bill. I looked out the window and saw him drive south.

Q. What kind of a car did he have, if you remember? A. He had a dark-colored Dodge sedan.

Q. I want to show you State's Exhibit 168. I want you to take a look at this bill and tell me whether that is the ten dollar gold certificate that Mr. Bruno Richard Hauptmann delivered to you? A. Yes, sir, that is the bill.

Q. How do you identify it? A. Because that is my handwriting on the license number.

Q. You say you put a number, his number on there? A. Yes, sir.

Q. What number did you put on there? A. 4U13-41.

Q. 4U— A. 13-41.

Q. Was that his license plate number on the date that you got this ten dollar bill? A. Yes, sir.

Q. The license number of the automobile? A. Right.

Q. The one he was driving that day? A. Yes, sir.

Q. Now of course at that time, I take it, you had no suspicion about the Lindbergh case particularly, did you? A. No, sir.

Q. You marked it down because it was a gold bill? A. Well, I knew they had been called in, it was a gold bill and I knew about the hoarding and I figured it was probably a gold hoarding case.

Q. I see. Now, when you gave him five gallons of gasoline, can you tell us how much his tank

would accommodate? A. Well, I don't know just how much it would have held, it wasn't full, he said, "Just give me five."

Q. Well, what size tank was it? A. Well, I would say about 12, 15 gallon tank, I don't know exactly.

Q. When you put the five gallons in did that fill the tank or was there room for more? A. Well, I don't recollect that just now.

Q. You don't know that. You say he took this bill out of an envelope? A. Yes, sir.

Q. You gave this bill to your employee as part of his pay, did you not? A. Yes, sir, I told him to take it over to the bank and change it.

Mr. Wilentz: That is all. No questions evidently, Mister. Thank you, sir. Now, Mr. Keith. We are calling a few witnesses irregularly in order that they may be able to return to their business, and we will finish up some little matters we have omitted.

STANLEY R. KEITH, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Keith, where do you live, sir? A. Montclair, New Jersey.

Q. Montclair, New Jersey? A. Yes.

Q. You formerly worked in this county, did you not? A. I did.

Q. With Taylor Wharton Company? A. Taylor Wharton Iron & Steel Company.

Q. And what is your business? A. I am a metallurgist.

Q. A metallurgist? A. Yes.

Q. Now, I want you to take a look at this ladder, these three sections with these nails in it—oh, they are tied together—you see the nails and these various little metal discs, is that what you would call it, metal discs? A. Metal tabs.

Q. Metal tabs. Did you affix the metal tabs that are affixed to these three sections of the ladder known as Exhibit S-32? A. I did.

Q. You affixed them? A. I did.

Q. You affixed them, I take it, so that you could identify the nails? A. So I could identify the nails.

Q. From whom did you get the nails? A. Captain Lamb.

Q. To whom did you return them? A. I returned them to Captain Lamb.

Q. Are those nails with the metal tabs on them the same nails you got from Captain Lamb and that you returned to Captain Lamb? A. Yes.

Q. Did you see anybody put the nails back in the ladder? A. I did.

Q. Who was it? A. The assistant to Mr. Koehler.

Q. Were you present when it was done? A. Yes, sir.

Q. Are those the nails with those tabs on them? A. Yes.

Mr. Wilentz: That is all I have with this witness.

Cross Examination by Mr. Pope:

Q. Who took the nails out? A. I couldn't say that, sir.

Q. Were they taken out in your presence? Were they taken out in your presence? A. They were not in my presence.

Q. Was the ladder in your presence, the ladder there —?

Mr. Wilentz: When, please?

Q. When the nails were turned over to you. A. No, the nails were not turned over to me as coming at the moment from the ladder. They were given to me—

Q. Where did this operation, whatever it was, with respect to the ladder, take place?

Mr. Wilentz: What operation, may I ask? He has testified he received the nails from Captain Lamb. He was there when they were put back, but he does not testify that he was there when they were taken out of the ladder.

Mr. Pope: I understand that.

Q. Where were you when the nails were received by you from Captain Lamb? A. In Captain Lamb's office at the Training School.

Q. At Wilburtha? A. Yes.

Q. And then what did you do with the nails? A. I examined the nails.

Q. At the school? A. Yes.

Q. Did you take them with you to your laboratory? A. I did.

Q. And where is that? A. I took them to my home.

Q. In Montclair? A. Montclair.

Q. How long did you have them? A. I got them

on October 19th and returned them on January the 15th.

Q. Then you had the nails in your possession from October the 19th to January the 5th? A. That is correct—in my possession only.

Q. And then you attached the little tags to the nails before you returned them? A. I did, sir.

Q. And then you returned them to Captain Lamb? A. To Captain Lamb.

Q. How? A. Personally handed them to him and he directed that they be taken over to where the ladder was so that they could be properly assembled and I went there in order to see that they were properly assembled so that I could subsequently identify them as such.

Q. And that was done at the school? A. That was done at the school.

Mr. Pope: That is all.

Mr. Wilentz: That is all, thank you.

Now Detective Cronin. Officer Cronin.

(There is no response.)

Officer Petrosino.

JAMES PAUL PETROSINO, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. In what capacity were you connected with the New York Police Department in 1934, September? A. Detective.

Q. And in that capacity were you engaged in this Hauptmann case? A. I was.

Q. Did you go with Sergeant Jack Wallace of the New Jersey Police to the Hauptmann garage some time in September? A. I did.

Q. Tell us about it. A. On September 19th, 1934, I was instructed by Inspector Lyons in company with Sergeant Wallace of Jersey and Leo Turrou, the Department of Justice man, to make an investigation and search at the house and garage; and at about ten o'clock we started searching the house, in which we found nothing.

Q. All right. Now after that what did you do? A. At about 11:30 we went into the garage.

Q. What did you find there? A. Found two packages.

Q. Packages of what? Tell us about it, please. A. Two packages of U. S. Gold certificates. In No. 1 package was 100 ten-dollar—100 ten dollars U. S. gold certificates.

Q. $1,000 altogether? A. That is one thousand; and in the other package was found 83 ten dollars U. S. gold certificates.

Q. Altogether $1,830? A. 1830.

Q. Where did you find them? A. In the south end, the southeast corner of the wall of the garage, in a compartment nailed inside of the wood.

Q. Could you see the packages or could you see the money by just looking at it, as you came in? A. No, you could not.

Q. Was it concealed? That is what I want to know? A. It was concealed.

Q. On the outside as you faced it, what was it concealed by? A Board? A. By a board, like a compartment.

Q. As you looked at it could you tell it was a compartment? A. Well, yes, you could tell it was a compartment.

Q. Now, what was done to the compartment? A. I put my hand inside.

Q. How did you get it in there? Wasn't it closed up? A. I lifted—no, it wasn't closed up, just two boards on each side, and with a board on the side of it, and inside that compartment was three loose boards. I lifted the boards out and put my hand in and picked out the two packages.

Q. Well, as you lifted the first board out, then as you put your hand in, then you had to lift another board did you? A. Yes, sir, three loose boards.

Q. How many? A. Three loose boards.

Q. Three loose boards? A. Yes, sir.

Q. Then you found this money? A. Yes, sir.

Q. Now, prior to finding that—I will withdraw that. Did you find that as the result of a search or did you know where it was? A. As a result of a search.

Q. Were you searching the whole garage? A. Yes, sir.

Q. Had anybody told you where it was? A. No, sir.

Q. All right, now. After that money was found what else happened then? A. That money was found in the presence of Mrs. Hauptmann.

Q. Yes. A. We then proceeded to the house to initial the same.

Q. To initial the money, you say? A. To initial the money.

Q. Was that the money that was initialled? A. Yes, sir.

Q. By whom? A. By myself, Wallace and Turro.

Q. So that the eighteen hundred and some odd dollars that you have just referred to of ten dollar gold certificates of Lindbergh money bear your initials? A. Yes, sir.

Q. Made there that day, as I understand it? A. Yes, sir.

Q. All right, sir. Then after you finished that operation what did you do? A. I left Detectives Murphy and Dunn in the garage, who continued to search while we were initialing the money. We then told Mrs. Hauptmann to put her hat and coat on, that we were going to continue to search the garage and then take her to Headquarters.

Q. Did you go back to the garage? A. We did go back to the garage.

Q. Did she accompany you? A. Right.

Q. All right. A. About 12:40 Detective Murphy found the one-gallon tin can concealed under the work bench.

Q. Did he have to rip any boards out? A. I think he had to rip one.

Q. After ripping the board out what did he have to do in order to find the can? A. He had to get underneath the work bench and pull the can out from its position that it was nailed in like.

Q. Was it nailed into a position,—what do you mean by that? A. Those two up-posts like, and the can was inside that, in between that.

Q. Well, what I am trying to find out is was it a simple proposition or was it difficult to get at it? A. No, it wasn't simple.

Q. It was difficult to get at it? A. Positively.

Q. Then when you found the can—the can is the one introduced in evidence this morning, isn't it? A. Yes.

Q. And at the same time—withdrawn. When you found the can what did you find in it? A. Twelve packages of United States gold certificate notes with two rags covering the money.

Q. How much money was in that can? A. 11,930.

Q. Did you include your initials on that money, too? A. I did not.

Q. You did not. Now, in addition to those moneys that you have just testified to did you find anything else there that day? A. There was found a plane by Sergeant Wallace.

Mr. Wilentz: Where is that plane? May I have it? I want it out.

Q. Was that the plane which you saw introduced in evidence today and which bears Jack Wallace's signature, or rather, his initials? A. It was.

Q. Are your initials on it? A. No, sir.

Q. Were they found in the Hauptmann Garage that day? A. It was.

Mr. Wilentz: I will just exhibit the plane to him and except for that you may cross examine.

Q. I show you exhibit 177, State's exhibit, and ask you if that is the plane you were talking about as having been found there? A. That is it.

Q. I exhibit to you also—

Mr. Pope: May we see the plane, General?

Mr. Wilentz: Certainly.

Q. I show you also an Erco can that is marked Exhibit 181 and ask you if that is the can in which these thousands of dollars were found. A. That is the can.

Q. And the cloths, Exhibit S-183 and Exhibit S-182, and ask you if those were found in the can

and whether or not these are the cloths to which you refer in your testimony. A. These are the cloths.

Mr. Wilentz: You may take the witness.

Will you tell Mr. Cronin he is the next witness, please,—to be available.

Cross Examination by Mr. Reilly:

Q. Do you know anything about planes? A. I do not.

Q. This is a Sargent plane, isn't it? A. From the name on the plane, I guess it is.

Q. You know it is a very common plane? A. I do not.

Q. Do you know it is a standard plane? A. I do not.

Q. Do you know what it is used for? A. Yes; I guess to scrape wood with.

Q. What kind of wood? A. I don't know.

Q. Is it a smoothing plane? A. I guess it is.

Q. You guess. Now, as a matter of fact, weren't there four or five planes there? A. I don't know.

Q. Small iron planes, and different sized planes? A. I don't know.

Q. Well, did you search the place? A. We searched the garage.

Q. You, I am talking about. A. I did.

Q. Did you search the place? A. I did.

Q. The garage? A. I did.

Q. The work bench? A. Yes, sir.

Q. Did you see any other planes? A. don't recall.

Q. Well, why can't you recall? A. Because I don't recall.

Q. Don't you want to recall? A. I just don't recall, if there was any planes there.

Q. Were there any screw drivers? A. I don't remember.

Q. Were there any files there? A. I don't remember.

Q. What kind of a work bench was it? A. Well, I guess—

Q. Not guess, you are a New York detective aren't you? A. I am.

Q. Is it your policy to testify by guessing? A. Sometimes.

Q. Are you guessing now? A. No, sir.

Q. Well, when did you testify that you guessed? A. I don't reall that.

Q. You don't remember that either? A. No.

Mr. Reilly: I guess that is all.

Re-Direct Examination by Mr. Wilentz:

Q. Just for a minute to get back to the serious parts about it. There is no guessing about that can or plane or those cloths? A. No guessing on that part.

Q. The money is real, is it not? A. It sure is.

Q. That is the money you found? A. It sure is.

By Mr. Reilly:

Q. Isn't this the fact, that other detectives found these different articles and to include you in the case they permitted you to put your initials on some money? A. No.

Mr. Wilentz: That is all, Officer. Thank you.

Mr. Wilentz: Is Detective Cashman here?

JAMES M. CASHMAN, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. You are a detective connected with the New York Police Department? A. I am.

Q. To which Mr. Reilly just referred, aren't you? A. Yes, sir.

Q. And in that capacity did you have any connection with the search of this garage? A. I did.

Q. What did you find in the garage, sir? A. On the night of September 19th, 1934, at about nine o'clock I went into the garage and I got a chest of tools.

Q. Chest of tools? A. Yes.

Q. Where was this placed? A. I couldn't see, it was very dark, and there wasn't any light from the garage.

Q. You found the chest, did you? A. On the floor, under the work bench.

Q. That night? A. Yes, sir.

Q. Now that was the night before some of the money was found? A. Correct.

Q. All right. I will have the chest of tools here in a minute and we will offer it. Who was with you when you found the chest of tools? A. Sergeant Hausling of the New Jersey State Police.

Q. Sergeant Hausling? A. That is right.

Q. Where did you take the chest of tools to? A. I gave them to Detective Cronin and we put them in Hauptmann's car with his clothing, and he drove the car, the clothing and the tools to 156 Greenwich street that night.

Q. And turned them over to whom? A. I don't

know. I didn't go down. I remained at the house.

(At this point a chest of tools was brought in front of the witness.)

Q. For a little fellow this is a pretty good job. A. You had better open that up.

Q. Yes. I am not used to heavy work. Will you come down and take a look at that and see if that is the chest of tools? A. You will have to get a screw driver to open it.

Q. Can't you open it with your fingers? A. Let me have a screw driver, will you?

Mr. Pope: May we ask the reporter for the full name of this witness?

The Court: Yes, certainly. What is the full name?

The Witness: James Cashman, C-a-s-h-m-a-n.

The Court: C-a-s-h-m-a-n.

A. (The witness opened the chest of tools.)

Q. Open it up all the way, Officer, if you can. A. With force?

Q. With anything. A. I think it will take the hinges off. (Opening tool chest wide.)

Q. All right. Now let it go at that. Just make an inspection of that or take the tools out, if you want and tell me whether they are the tools. A. Well, they appear to be the same.

Q. I don't want them to appear to be; I want to know if they are. A. I didn't mark them for identification.

Q. Take them out and take a look at them, please.

A. I recall those saws being in that holder. I recall the ball of twine.

Q. What I want to know is are those the tools that you found in that garage that night. A. In my opinion they are.

Q. What do you mean—in your opinion: are they or aren't they? A. I think they are.

Q. Why do you think so? A. Well, I haven't seen them since.

Q. Where have they been? A. I turned them over to Mr. Brody, the District Attorney,—

Q. All right; that is what I want to know. All right. Now, will you get back on the stand. You turned them over to Mr. Brody up at the Bronx District Attorney's office? A. That is correct.

Q. How about these pieces? A. Yes; they were on the work bench and they went down the same evening.

Q. They were on the work bench and went down the same evening? A. With those others.

Q. These two as well? A. That is right.

Q. These you recognize as being part—A. I do.

Mr. Wilentz: I offer these four pieces in evidence and I offer the trunk for identification.

Mr. Hauck: Offer them in evidence.

Mr. Wilentz: Well, I offer them all in evidence.

Mr. Fisher: No objection.

The Court: No objection, they will be admitted. They are all offered?

Mr. Wilentz: Yes, sir. I suggest they

be kept as one exhibit, that will include that chest of silver over there.

Mr. Reilly: The box.

The Reporter: Exhibit S-196.

Mr. Wilentz: The box and four pieces.

(Box and contents referred to were received in evidence and marked State's Exhibit S-196.)

Q. What do you call these, do you know? A. Vises, I think.
Q. Vises? A. I am not so sure.
Q. You are not so sure.

Mr. Reilly: No cross examination.

CHARLES F. W. ENKLER, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Your name is Charles F. W. Enkler? A. Yes, sir.
Q. You are also connected with the New York City Police Department, are you not? A. Yes, sir.
Q. And you are also a carpenter? A. Yes, sir.
Q. Is that the capacity in which you are connected with this Department? A. Yes, sir.
Q. That is, you work as a carpenter? A. At the time I was detailed.
Q. In that connection, in the month of September 1934 were you assigned to work in this Lindbergh case? A. I was.

Q. As a result of that assignment, did you go up to Hauptmann's garage in The Bronx? A. I did.

Q. Do you recall that day? A. September 25th.

Q. As the result of that assignment what did you do and with whom did you do it up in that garage? A. Officer Kramer, Mr. Wilson, Superintendent of Buildings, and Detective Tobin—

Q. Detective Tobin of the New York Department. A. New York City, and Mr. Bornmann of New Jersey.

Q. Bornmann? A. And Inspector Brockman, New York City.

Q. Were you assigned there by Inspector Brockman? A. We were ordered down through Superintendent Wilson.

Q. Through Superintendent Wilson? A. Yes, sir.

Q. Your assignment was to go down and tear that garage down, by way of a search, was that it? A. We didn't know what we were going to do. We were there under Inspector Brockman and he told us, he said, "There is some money—"

Mr. Fisher: That is objected to.

Q. What did you do when you went there? A. Well we tore down some trim in the living room.

Q. Never mind the house. I want the garage. A. Well, in the garage that was September the 26th.

Q. All right, September the 26th. A. We worked in there. We were knocking down some studding and some cross pieces, two by fours, and Officer Cramer, I was right alongside of him when knocked on a piece of two by four, about 15 inches long, and he discovered there was—

Q. Now just a minute. Before you get into that.

Mr. Fisher: Officer who was that?

Q. What was the officer's name? A. Cramer.

Mr. Wilentz: Counsel has asked at this point, Mr. Reilly has asked me to confer with himself and the Court with reference to a matter before we make an offer.

(Counsel and the Court confer out of the hearing of the jury.)

Q. I will see if we can't get back to that, you started to tell me about tearing down some sash or something in the house? A. In the house?

Q. Yes, and I took you away from there. Will you get back to the house for a minute? A. That was on September 25th we, wherever anything looked as though it was disturbed such as trim, floor, anything, why we would take it apart and see if there was anything in back of it, we would put it back in place again.

Q. Did you find anything in the house disturbed which you then took apart. A. No, we didn't. Some things looked as though they were disturbed, but we took them off and put them back.

Q. Well, did you find some trim disturbed in the house? A. The trim in the inside closet, the clothes closet in the bedroom, looked as though it was disturbed. We took it off and looked; there was nothing in there.

Q. What room is that? A. In the bedroom. I believe it was known as the nursery.

Q. The front room or the back room? A. It was the middle room.

Q. The middle room? A. Yes.

Q. And there was nothing there? A. Outside of some—

Q. Now, then, getting back to the garage again, I understand you and another carpenter from the Police Department and some other officers went in there and you made a search. How long did the search take you? A. Well, I should judge probably a half hour.

Q. A half hour before you found a certain piece of board? Is that it? A. Yes, sir.

Q. Now, was that board to all outward appearances a part of the wall? A. Much so; such as like a brace.

Q. A brace. A. Different pieces going along in the center.

Q. Could you tell from that board that there was any money concealed in it? A. No, sir.

Q. And so finally one of the officers, one of you carpenters took it off, is that it? A. Yes.

Q. You had taken other pieces of wood off, I suppose? A. Yes.

Q. In which you found nothing? A. Yes, sir.

Q. Finally you came to this piece? A. Yes, sir.

Mr. Wilentz: In order to follow instructions, I am going to lead this witness. Is it all right?

Mr. Reilly: All right.

Mr. Wilentz: All right.

The Court: Where did this board come from, the garage or the house?

The Witness: The garage.

By Mr. Wilentz:

Q. Is this the board you are talking about? A. Yes, sir.

Q. How can you tell it is the same board? A. By the holes.

Mr. Wilentz: I offer the board first.

(The board was received in evidence and marked State's Exhibit S-197.)

The Court: There seems to be no objection. It will be admitted.

By Mr. Wilentz:

Q. Will you step down here and tell us how that board faced you as you looked at it, which part of the board struck your eye as you went in? Put it up against the wall. A. Well, say this is a two by four and this is a two by four going up here, this (indicating Exhibit S-197 and holding same in a horizontal position) was toe nailed in.

Q. What do you mean by that? A. Nails on a slant.

Q. So you had to tear it down? A. Yes.

Q. That is the way you would see it as you walked into the garage? A. About like that.

Q. That is the side part, the complete part, smooth front that would be observable to the eye? A. Yes, sir.

Q. Then when you turned it around, when you tore it off and turned it around, no more smooth part was there? A. No.

Q. Holes in there? A. Officer Cramer is the one that hit that. I didn't find it.

Q. You want to make sure you tell of Officer Cramer. At any rate when it is turned around

and torn off the wall, then there were these holes that you see there. A. Yes.

Q. Just forget about this large hole for the moment. And directing your attention to—one, two, three, four, five round holes—when that was taken off by Officer Cramer and—what was the other police officer's name there? A. Tobin.

Q. And Bornmann. A. Bornmann.

Q. What was there that you found in those holes, small holes? A. There was small, there was bills rolled up in—very tight—small, to fit in each one of them round holes.

Q. Was there a roll of bills in each one of those five holes? A. Yes, sir.

Q. Money? A. Yes, sir; I believe so. We only took them out that far, then I had nothing to do with that any more.

Q. Yes. That is where the carpenter's job ended? A. Yes, sir.

Q. As soon as they struck money your job was finished? A. Yes.

Q. All right. A. Well, we had to build the garage again.

Q. You had to what? A. Tear the garage down and build it again.

Q. I see. Did you continue to search the rest of the garage, tearing it down? A. Yes.

Q. Did you find any other money then after you had found this? A. No more.

Q. You didn't count the money, I take it. A. No, sir.

Q. And you didn't mark the money? A. No, sir.

Q. Who was it that was there and took possession of the money? A. Officer Tobin and Bornmann. We wrapped it up in a piece of burlap bag. They weren't sure, you know, before they got away.

Q. Who did you give it to, that is all I want to know? A. Detective Tobin.

Mr. Wilentz: That is all I have with this witness.

Mr. Reilly: You can go back to New York.

Mr. Wilentz: We will recall this witness later with reference to some other feature of the house which doesn't fit right here.

Now, Mr. Cramer.

ANSELM CRAMER, sworn as a witness on behalf of the State.

Direct examination by Mr. Wilentz:

Q. You are also a carpenter connected with the Police Department, New York? A. Yes, I am a patrolman.

Q. And you are the Mr. Cramer to whom Mr. Enkler just referred? A. I am.

Q. And are you the officer who discovered and tore down this board? A. I am.

Q. Being Exhibit S-197? A. Yes.

Q. Now you were here, were you not, just a minute ago when the other officer exhibited the manner in which this was placed against the wall? A. Yes.

Q. Is that the correct position (illustrating)? A. Yes, sir.

Q. That is like this, where the flat side— A. Yes, that is it.

Q. Where the short flat side was visible to the eye? A. Yes.

Q. When you took it off to tear it down? A. To tear it down.

Q. Had it been nailed? A. Yes.

Q. And when you got it down and looked at the board, why, you found the holes—just forget about the big holes now, please. We will come to that some other time. All I want to direct your attention to is the small hole, the five small holes. A. In one, two, three, four, there was money. The others there was no money in. I put my finger in and pulled it out and shoved it back.

Q. You put your finger in, took the money out and gave it to Detective Tobin and the others? A. Gave it to Inspector of Buildings, Mr. Wilson, and he turned it over to Tobin.

Q. While you were there? A. Yes, sir.

Q. Yes, sir.

Mr. Wilentz: We submit this witness for cross examination with the request that we be permitted to call him back with reference to some carpenter work done in Mr. Hauptmann's home, which we will prove at a later date.

Mr. Fisher: No questions.

Mr. Wilentz: No questions, sir.

Detective Tobin.

MAURICE W. TOBIN, sworn as a witness on behalf of the State.

Direct examination by Mr. Wilentz:

Q. You are connected with the New York City Police Department as a detective? A. I am.

Q. And in that capacity in September, 1934, you went to the Hauptmann garage, did you? A. I did.

Q. Were you present when this board was taken from the wall? A. I was.

Q. The board I refer to being State's Exhibit S-197? A. I was.

Q. And what, just forget this large hole for the minute, please and what it contained, just referring to the five smaller holes, what was it that you saw contained therein when you were there? A. Each one of those holes contained a roll of ten dollar bills in gold certificates.

Q. Will you take a look at these envelopes, 1, 2, 3, 4, 5—five envelopes and tell us whether or not these are the bills, the money contained in Exhibit S-197 when it was found in the Hauptmann garage? (Witness examines envelope.) A. (After examining each of a number of envelopes) They are.

Mr. Wilentz: I offer five envelopes and money, merely for the purpose of the money, not for the envelopes, in evidence.

Mr. Fisher: Subject to the same objection—we offer the same objection heretofore offered by Mr. Pope each time the money has been offered.

The Court: It will be admitted.

(The envelopes referred to, with their contents of money received in evidence and marked State's Exhibits S-198, S-199, S-200, S-201 and S-202, respectively.)

Mr. Wilentz: There is no objection to having the exhibit number on the envelope?

Mr. Pope: No.

By Mr. Wilentz:

Q. Now as to envelope No. 1, it has a No. 1 on it, does that mean it was gotten out of hole No. 1? A. That is right.

Q. In other words, as I see it here, over these holes there are the numbers, No. 1, No. 2, No. 3, No. 4, No. 5. Were those numbers placed there by one of the officers in your presence? A. Yes, sir, placed there?

Q. Those numbers were not on those holes at the time? A. They were not.

Q. No. 1 then was placed there, I take it, for identification purposes? A. That is right.

Q. Out of hole No. 1 then was this $190 gotten? A. That is right.

Q. And similarly, I take it, the envelope No. 2 with $200 represents the very $200 that came out of hole No. 2? A. That is right.

Q. And similarly, on Exhibit S-201, there is $150 coming from hole No. 3? A. That is right.

Q. And the No. 3 on the envelope is intended to indicate that and to help: is that it? A. That is right.

Q. Similarly with No. 4, being $200 contained in Exhibit S-198, that $200, I take it, you mean was taken out of hole No. 4? A. That is right.

Q. And $100 taken out of hole No. 5, that money now being in State's Exhibit 199? A. That is right.

Q. So altogether there was two, three, four-fifty, six—eight-forty? A. That is right.

Q. Eight hundred and forty dollars. A. Yes.

Q. Did you check this money to find out if this was Colonel Lindbergh's money? A. I did, in company with other officers.

Q. And did they check? A. They did.

Q. Gold certificates, all of them? A. Every one.

Q. Now, were you with Inspector Breckman at any time when there was a search of the house? A. I was.

Q. And do you remember when Inspector Breckman tore down a piece of lumber from the inside of a closet? A. I do.

Q. I want you to take a look at this and see if this is the board that Inspector Breckman of the New York Police discovered and took out of the Hauptmann home? A. It is.

Q. What day was it that Inspector Breckman took this board? A. That was on September 25th.

Q. What closet was it? A. In a clothes closet in the nursery room.

Q. In the nursery room? A. Baby's nursery.

Q. In the baby's nursery room? A. Baby's room.

Q. The room that the Hauptmann family had for their child. A. That is right.

Q. Now, will you describe to us the kind of closet it was? Was it a large closet, a roomy closet or was it a narrow one, was it difficult to get in or was it easy to get in? A. It was an ordinary closet, I should judge—

Mr. Wilentz: Have we a picture here?

A. —I should judge approximately four foot long and about foot wide and I should judge about ten foot high.

Q. About ten feet high and the entrance space about four feet? A. Four foot.

Q. And the depth about one foot? A. About one foot.

Q. Is that what you mean? A. (No answer.)

Q. If you can tell from this picture, officer, tell me—Will you take a look at it and tell us whether that correctly shows that closet with the door torn off it. A. It does.

Q. That is the closet? A. It is.

Q. And shows correctly that closet, particularly the size of it, I mean, the width and the depth and the height? A. That is about right.

Q. The door being taken off? A. That is right.

Mr. Wilentz: I offer it in evidence.

Mr. Fisher: What date was it taken, Mr. Wilentz: Does it show?

Q. Well, does it show correctly that closet the day you were there in September, 1934? A. On September 25th, 1934.

Q. I mean is that a correct picture of that closet as of that date? A. It is.

Mr. Wilentz: I offer this in evidence.

Mr. Fisher: No objection.

The Court: There seems to be no objection to it. It will be admitted.

(Photograph referred to received in evidence and marked state Exhibit S-203.)

By Mr. Wilentz.

Q. Now, as you look at Exhibit S-203, you are looking into the closet aren't you. A. I am.

Q. Now this board which I have here in my hand, and which I will ask them to mark for the time being for identification—

Mr. Wilentz: Will you give me a number for it, please?

The Reporter: S-204 for identification.

(The board was marked S-204 for Identification.)

Q. 204 for identification; as you look at the closet, in the room looking at the closet, just as you are looking at it at this picture could you see this board S-204 for identification? A. You could not.

Q. Was it on the outside as part of the closet? A. It was not.

Q. Was it on the inside? A. It was on the inside.

Q. What part of the inside part of the closet did this make, S-204? A. It was on the inside on the lefthand side of the closet, facing against the part of the outside.

Q. So that in order to get to this, would you have to get inside the closet in order to see the outer part of the board, S-204? A. You would.

Q. All right. Did Inspector Bruckman squeeze in there? A. He did.

Q. And then this came out, is that it? A. That is right.

Q. This was taken out? A. Yes.

Q. Did it have "2974 Decatur Avenue" written on it when Inspector Bruckman brought it out? A. It did.

Q. And did it have this telephone number on—

no, withdraw that. Did it have this Sedgwick or something like that, 3-7154 on it. A. It did.

Q. And then of course it was taken by the department into its possession. A. It was.

Mr. Wilentz: I offer this board in evidence, now S-204 for identification, in evidence.

Mr. Pope: May I see it, Mr. Wilentz?

Mr. Wilentz: Yes, sir.

Mr. Pope: Will you suspend offering it in evidence until we have had a chance to cross examine. We may have no objection.

Mr. Wilentz: I offer it in evidence now and this completes my examination of him. I want to know if there is an objection to it.

Mr. Pope: Perhaps we will admit it after a few questions. May we ask a few questions before the Court finally determines?

The Court: You may offer it for identification.

Mr. Wilentz: I have done that. It is S-204 for identification. Now I offer it in evidence.

The Court: Counsel may cross examine and then we will listen to your motion that it be admitted in evidence.

Mr. Wilentz: It is S-204 for identification.

Mr. Pope: It is agreed that the figures "S-204 Id." were placed on there by the stenographer?

Mr. Wilentz: Yes. We ask everybody handling this board, your Honor please, to take special care of this pencil notation that I talked about because it rubs off.

The Court: Yes.

Cross Examination by Mr. Pope:

Q. As I understand your testimony, sir, this was a part of the trim on the inside of the door frame. A. It is.

Q. And as you stand in the closet and look out, on which side of the door was this board? A. It wasn't on the door.

Q. I mean on the door frame. A. It was on the inside.

Q. You have told us that. As you stand inside the closet and look out into the room, on which side of the door casing was this piece of board that is marked S-204 for Identification? A. That would be on the right hand side.

Q. On your right hand side as you were looking out? A. Yes.

Q. Now, I want to call your attention to the markings that were referred to by the Attorney General. See them? There are some figures there; can you see them? A. Yes; yes.

Q. Were they there when you took this board out? A. They were.

Q. Did you see them? A. I did.

Q. Did you see them before or after the board was taken out? A. I seen them before the board was taken out.

Q. And did you take it loose yourself? A. No, I did not.

Q. And were they in that condition when the board was taken out? A. They were slightly smudged, as you see there.

Q. Well, it appears as though this has been smeared, that is what I mean. A. Well, that is just what I mean; smudge is what I mean for smeared.

Q. And it was exactly like that when it was taken out? A. Yes; Yes, I will say so.

Q. I call your attention to the figure 7—I don't want to touch it, but you see the figure 7 here? A. Yes.

Q. In what appears to be 7154? A. I do.

Q. Has that figure 7 been touched up and made more legible? A. I don't think so.

Q. Then I call your attention to the "4." I ask you if that has been touched up and made more legible with a lead pencil? A. I don't think so.

Q. Who was the first person that discovered this piece of wood in the door? A. Inspector Bruckman.

Q. Bruckman? A. Bruckman.

Q. B-r-u-c-k-m-a-n? A. That is right.

Q. And were you there with him? A. I was.

Q. At the time? A. I was.

Q. And you were searching the house, too? A. I was.

Q. Now what time of the day was it, about? A. Around the noon hour.

(The witness examines the memorandum book.)

I should judge it was around eleven or twelve o'clock on the 25th of September.

Q. Now, no one noticed any figures on this piece of wood until Inspector Breckman squeezed into the closet as you say and then came out and reported to you what he had discovered? A. Not that I know of.

Q. Well, you were there, weren't you? A. I was.

Q. And you know that no one did discover any figures there until after the inspector had squeezed into the closet as you say and then came out? A. That is right.

Q. And when he came out, he announced to the rest of you what he saw? A. I was alongside of the inspector when he found it.

Q. You were in the closet too? A. I was right in the room as Inspector Breckman leaned into this closet or got into it and he discovered these numbers on the board.

Q. And when he discovered them, then he announced to the rest of you what he saw? A. That is right.

Q. And that directed your attention to it? A. That is right.

Q. And then you took a look? A. I did.

Q. I see. You are under Inspector Breckman are you? A. I am.

Q. And is he present here today? A. He is.

Q. Now, so far as you know were these numerals, contained on this board, submitted to the handwriting experts? A. That I couldn't say.

Q. How many other closets were there in the Hauptmann house that were examined by you men? A. I believe there were two more besides this one here that we speak of now.

Q. Did Inspector Bruckman squeeze into both of those closets? A. He did not.

Mr. Pope: That is all. Just one second.

Q. The only one he did squeeze into was the one the figures came out of? A. That is all I know of.

Mr. Wilentz: Thank you very much, sir.

I press my offer, of course, and hope there is no objection.

Mr. Pope: No objection.

(The board, previously marked State Exhibit S-204 for Identification, now received in evidence and so marked.)

HENRY D. BRUCKMAN, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Inspector, what is your rank in the Police Department of the City of New York? A. I am Inspector commanding the 18th Division, Bronx, that is the Detective Division in the Bronx.

Q. What are the ranks, will you tell me so that we will know just the position of your various officers, the detectives, the patrolmen, Inspector? A. Well, the detectives, of course, that is a designation, it is not a rank. The ranks in the Police Department starting with patrolmen are, patrolman, sergeant, lieutenant, captain, deputy inspector, inspector, deputy chief inspector, assistant chief inspector and chief inspector.

Q. So that there is patrolman, sergeant, lieutenant, captain—what is next? A. Deputy inspector.

Q. Deputy inspector. A. And inspector.

Q. And inspector. Is that your rank? A. Yes, sir.

Q. How long have you been connected with the New York City Police Department? A. 29 years.

Q. Were you an inspector September, 1934? A. I was.

Q. And in that capacity were you in charge of the detectives in that section? A. I was.

Q. And particularly in charge of the detectives who worked up at the, in the Hauptmann case there? A. I was.

Q. Did you also participate personally in the investigation up there? A. I did.

Q. I am referring now in the house. A. I did.

Q. I show you exhibit S-204 and ask you if you won't tell me where this board came from, who got it, and the circumstances relating to it? A. As to the circumstances, as a result of the investigation, the interviewing of various witnesses, I had a conversation with the Assistant Chief Inspector. As a result of the conversation with the Assistant Chief Inspector I communicated with the Superintendent of Buildings, Mr. Wilson. That was on the 24th day of September. As a result of that conversation I appeared at Hauptmann's home on the morning of September the 25th. I had a conversation with the carpenters in the presence of the detectives who were assigned to conduct the search. I wanted to give them the benefit of such knowledge as I gained during the course of the investigation, and I went there for the purpose of directing their attention along certain investigational lines. When I got to the room in which this closet is located I found they were clearing the room. It had not been fully cleared. The shelf was still in this closet and a clothes rack and a pole was in the closet.

Q. Is that shown in Exhibit S-203, the clothes rack and the pole (showing exhibit to witness)? A. Yes.

Q. All right. A. I instructed the carpenters to remove the shelf and this pole.

Q. Yes. A. And I entered the closet, and I said to those that were collectively present—

Mr. Pope: Never mind what you said.

Q. Never mind what you said. What did you find, sir? A. I entered the closet—and I backed up into the closet and, as I was in there, I observed what appeared to be a smudge and I put my glasses on and I looked at it and I addressed a remark to Detective Bornmann.

Q. Now, is the smudge that you say you observed on that board the apparent—I think Mr. Pope referred to it as a smear or something, a smudge.

Mr. Pope: The last witness called it a smudge.

Mr. Wilentz: What did you call it, Mr. Pope?

Mr. Pope: Well, I just asked him if it was in that condition, and he called it a smudge.

Mr. Wilentz: I thought you characterized it.

Q. Well, we will call it a smudge. Does it still have the smudge there that you referred to? A. Yes, sir.

Q. Now, was there any other smudge on there except that, which called it to your attention? A. No, sir.

Q. Was it the smudge, the smudgy appearance of it, that directed your attention to it? A. I observed that first.

Q. All right. Then you say you put your glasses on? A. I did.

Q. And then on close inspection what did you find? A. I observed the numbers.

Q. What were the numbers? Can you tell them now by looking at it? A. Yes, sir. "2974 Decatur" and 3-7154,—the first letter appears to me to be S, the second letter is not—I can't determine that; the next is DG, and I concluded it was "Sedgwick."

Q. 2974 Decatur Avenue, is that address familiar to you? A. Yes, sir.

Q. Whose address is it? A. Dr. Condon's address.

Q. And you found this you say in the closet of the Hauptmann home? A. Yes, sir.

Q. Did you check up at that time to find out what the other numbers with Sedgwick or what ever it is, 3-7154? A. I know what they were.

Q. What were they? A. Dr. Condon's telephone number.

Q. Was that Dr. Condon's telephone number in 1934? A. No, sir.

Q. That was Dr. Condon's telephone number when? A. In 1932.

Q. But you found the board there in 1934, did you? A. I did.

Q. All right, sir. When this board was found, I take it, Inspector, that eventually Mr. Bruno Hauptmann who was in custody was told about it, was he not? A. Yes, sir.

Q. Were you present? A. I was.

Q. Who else was present, sir? A. District Attorney Foley.

Q. Tell me, please, what if anything was said to

Mr. Hauptmann or what he said with particular reference limiting it to this board? A. He was asked whether he recognized the board as coming from his house and he said yes; he was asked whose handwriting it was in; he said he recognized the 2974 as his handwriting. Then Mr. Foley asked him whether he didn't write it all and he said he thought he did. Mr. Foley asked him how he happened to write it. He said, "Well, I was a little bit interested, the papers were full of the Lindbergh case and I was a little bit interested and I must have had a newspaper and probably was putting paper on the shelf in the closet and I copied down this number."

Q. Now, were you in the court room in The Bronx during the extradition proceedings of the State of New Jersey against Bruno Richard Hauptmann in an effort to bring him to the State? A. I was.

Q. You remember when he was on the stand? A. I recall him being on the stand, yes, sir.

Q. If you don't recollect his testimony Inspector you tell me. Do you remember what his answer was when he was asked under oath whether or not that was his handwriting? A. I don't recall.

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

Q. All right, sir, inspector.

Mr. Wilentz: And, with the privilege that we ask to recall the inspector about other matters, we surrender the witness.

Cross examination by Mr. Reilly:

Q. Were you in charge of the Bronx when the ransom money was paid? A. I was.

Q. Before that you were in charge of Chinatown, weren't you? A. No, sir.

Q. The lower part of New York? A. No, sir.

Q. Were you ever a captain there? A. No, sir.

Q. When did you come into the Bronx as an inspector? A. I came back in April of 1930.

Q. April, 1930? A. Yes, sir.

Q. And all these detectives in The Bronx are working under you: is that correct? A. Those that are assigned to The Bronx; yes, sir.

Q. How many of them are here: four or five? A. No, I don't think there are that many. I think at the present time that there is just one: Detective Tobin.

Q. So that you knew before you went into this closet Dr. Condon's address, didn't you? A. Frankly I must admit that I did not know it. It had slipped my mind.

Q. Didn't you know that the ransom money was passed over the hedge? Did you know that? A. The ransom money?

Q. Ransom money was passed over a hedge. A. I had read about it; yes, sir.

Q. And you had never met Dr. Condon in all the time you had been in The Bronx? A. Oh, yes.

Q. And you never asked him where he lived? A. I know the house in general. I know Dr. Condon's house, but frankly I didn't remember the number.

Q. Well, you have a pretty good memory, haven't you? A. Yes, sir; I have.

Q. And you knew he had a telephone in 1932? A. I didn't have any personal knowledge that he had a telephone.

Q. Didn't you know your men were communicating with him and investigating him? A. No. I think that is a mistake, counsel.

Q. You don't know that? A. I know my men were not investigating him.

Q. You know the men from the main office were investigating him? A. I wouldn't have any knowledge of that, counsel.

Q. In other words, you want this jury over here in Jersey to believe that a matter in The Bronx in which you were interested, the Headquarters downtown, the chief, the Commissioner and others would not know anything about it: is that it?

Mr. Wilentz: Just a minute. I object to the question, particularly that portion of it as to what he wanted the jury to believe. I think that is objectionable, if your Honor please.

The Court: I don't think it is, sir. He comes here and asks us to have good faith in his testimony.

Mr. Wilentz: The question is not what he does. The question is whether the question now submitted is proper, and I—

The Court: I think myself the question is a bit irregular, perhaps. I think I will sustain the objection. You may reframe your question if you see fit to do so.

Q. You want the jury to believe what you say, don't you?

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

Mr. Reilly: No, I don't think it is offensive.

Mr. Wilentz: All right, if you don't think so I will withdraw the objection.

A. I suppose the jury will judge my testimony the same as anyone else's. I am not interested in the final outcome of the case. I am simply here to tell the story as I remember it and as I know it.

Q. Now you are not concerned in the final outcome of this case, you say? A. Not —

Q. Is that right? A. Not as a police officer, no.

Q. Well now, as a police officer, if the crime of extortion was committed in this case, it was committed in your territory, wasn't it? A. Yes, sir.

Q. Yes. And as a police officer you are interested in the crime of extortion for which this defendant has been indicted in the Bronx?

Mr. Wilentz: Just a minute. Well, I will withdraw the objection. I think the witness can take care of himself.

Q. Aren't you? A. Yes, I am interested in all crimes committed in my—

Q. I am talking about this case.

Mr. Wilentz: Just let him answer the question, please.

A. Yes, sir. I am interested in the crime of extortion, as it occurred within my jurisdiction, it is my responsibility.

Q. And in your district and through your efforts this man was indicted in the Bronx, wasn't he? A. Well, I may have contributed, but I wouldn't say it was entirely due to my efforts.

Q. You did contribute? A. Yes.

Q. You testified before the Grand Jury? A. Yes, sir.

Q. Yes. In an indictment that now lies against him? A. Yes, sir.

Q. And under which indictment he was there when he was extradited here? A. That is correct.

Q. So you are concerned in the extortion case in New York? A. Not in the outcome.

Mr. Wilentz: Well, he didn't say he wasn't, if your Honor please.

A. Not in the outcome. I am concerned in so far as my responsibility is concerned.

By Mr. Reilly:

Q. You don't go into a case and arrest somebody and then sit down and say "I don't care if he is turned loose or convicted" do you?

Mr. Wilentz: I object to the question because the Inspector hasn't said that.

The Court: No.

Mr. Reilly: He said he wasn't interested in the outcome.

The Court: You may inquire of him what he means by that.

By Mr. Reilly:

Q. You have testified many, many times, have you not? A. Yes.

Q. In fact, you have a regular formula that you use when you start to testify, haven't you?

Mr. Wilentz: Just a minute, your Honor please. I submit that that is offensive.

Mr. Reilly: That is not offensive and I will show that he started his testimony with that formula.

Mr. Wilentz: Just a minute. Just because this man happens to be a police officer, your Honor please, he is not to be subjected to any treatment other than you would accord anybody else.

The Court: Well, he has asked the officer if he is testifying by a formula. Of course if it is, why, perhaps that is a significant thing. The officer can say whether he is or is not testifying by a formula.

The Witness: I would say that I am trying to conform to the rules of evidence as I understand it.

Q. Have you not a formula in the Police Department by which you begin your testimony and did you not begin your testimony today in answer to the Attorney General's first question, as follows—

Mr. Wilentz: I again object.

Mr. Reilly: I haven't finished my question.

Mr. Wilentz: Pardon me.

Q. —"Relying upon information which you supplied to so and so, and upon information I obtained from so and so, I found the carpenters and gave them orders to attend," and so forth and so on, didn't you?

Mr. Wilentz: Just one minute, please, Inspector.

The Court: One moment. That objection is sustained.

Mr. Reilly: I except.

The Court: Take your exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Now, without your glasses and, would it be possible to turn the lights out for a moment?

Mr. Reilly: Judge, I want the same condition, if I can, that existed in the dark closet.

Mr. Wilentz: Well, I don't know—I object to it only for the reason that I don't know with the lights out that it would be any darker or lighter, and I don't know just what the corresponding positions would be. I can't tell with lights out whether that would be the accurate position.

Mr. Reilly: All right, if you object I will withdraw it.

By Mr. Reilly:

Q. Now, was there an electric light in the closet? A. This closet did not have an electric light.

Q. Was there any light in the closet, any artificial light? A. No, excepting that it was on the 25th day of September; I know I left there at 11:15 a. m.; there is a reasonably large window in this room and I would say the light was fairly good.

Q. In the closet? A. In the closet; yes, sir.

Q. In the corner of the closet in which this board was found. A. No, that isn't a corner, there is a trim on the inside of a door and—

Q. Inside of a door? A. On the—yes, it is the inside of a jamb of a door; it is a trim. I think that is what you call it.

Q. Does it swing with the door? A. Oh, no; it is stationary.

Q. Stationary? A. Yes.

Q. Well now, here is a doorway, will you show us where the trim was? A. Well, if you come inside of this door here, I would say the trim was right here. (Witness steps inside door in the courtroom and points to board.)

Q. In the closet? A. Right here.

Q. In the closet? A. That is right.

Q. All right.

Mr. Wilentz: Adjoining it.

Mr. Reilly: We will get it on the record.

Q. The inside trim of the door of the closet,

which trim you would face if you had your back up against the wall of the closet? A. That is correct.

Mr. Wilentz: Immediately adjoining the door?

Mr. Reilly: Yes.

Q. And there was no artificial light in that closet? A. No, sir.

Q. Had any other detectives been in there before you that you know of? A. In the closet?

Q. Yes. A. Not to my knowledge.

Q. Had you been in any other closet? A. I think that I did, with other closets in a measure, something similar to what I did here.

Q. And you were the person that discovered these numbers, the first person, is that correct? A. Yes, sir.

Q. So far as you know? A. Yes, sir.

Q. And how many detectives had been there from your division or anybody's division the day before? A. Why, I don't know.

Q. Had some been there? A. Well, I have heard them testify that they were there.

Q. What date was this, Inspector? A. That the others were there?

Q. No, the date you say you found this. A. On September the 25th.

Q. When was the defendant arrested. A. My first knowledge of it was on the 20th of September.

Q. Does that check with the records, that he was arrested on September the 20th? A. I say that is my first knowledge of it.

Q. Yes. But you certainly know—I don't want to— A. I have no personal knowledge.

Q. You have no independent knowledge as to when he was arrested? A. No, I have heard them testify here that he came in on the 19th.

Q. On the 19th? A. Yes.

Q. Did Detectives from your division participate in the arrest? A. No, sir.

Q. Were detectives from your division ordered out on this case the next day? A. No, sir.

Q. Were they ordered out on the next day? A. Yes, sir.

Q. And what date would that be, the 21st. A. The 21st.

Q. Did detectives from your division examine this house the next day, the 21st? A. I am not sure.

Q. Where does Petrosino come from, your division? A. No. sir.

Q. Main office? A. Yes, sir.

Q. And the other detective that was here, I think his name was Cashman? A. No, he doesn't come from my command either.

Q. Then there were detectives from the main office division, that is the correct designation, Centre Street. A. Yes, sir, some would be called the main office division.

Q. They were there? A. Yes, sir.

Q. And you know they were searching for money, do you? A. What date?

Q. The 19th and 20th. A. Well, I have heard them testify to that.

Q. You have heard them testify and you have no reason to doubt their testimony. A. I have no independent knowledge of it.

Q. Then your men were ordered in, you say, on the 21st? A. Yes, sir.

Q. And did your men search the house, were they ordered to search the house? A. They were.

Q. They are fine detectives, are they not? A. Well—

Q. By that I mean men of vast experience in the police department and length of time. A. They are not all trained, some are in the process of training and some are trained.

Q. Were there any trained ones there? A. Well, I would say reasonably well trained, yes.

Q. Yes. They were searching for evidence, weren't they? A. Yes.

Q. They only had one floor of an apartment to go through, is that correct? A. No, that is not correct.

Q. Well, how much more did they have, in the house? A. Well, they had the floor of the apartment; they had an attic or a hanging ceiling, I would call it; they had a cellar; they had a garage.

Q. I am talking about the house now, Inspector? A. Well—

Q. Stick to the house. A. Of course it would all be part of the same search.

Q. Yes. How many rooms in this apartment that they had to search for evidence? A. Four rooms and bath.

Q. And how much of an attic, over one room or over two? A. It is a hanging ceiling. It is over the entire house.

Q. Is it a Queen Ann shape front, peak roof? A. Yes, but it is a hanging ceiling, it is not an attic.

Q. And the cellar is equally shared by the people who live downstairs? A. Yes, sir.

Mr. Reilly: Will the inspector be available in case we need him later?

Mr. Wilentz: Yes, we expect to use him again ourselves.

Thank you very much, Inspector.

Now, if your Honor please, may we have a few minutes recess?

The Court: Very well, five minutes' recess.

(At 3:32 p. m. a short recess was taken.)

(After a short recess the jury was polled and all jurors answered present.) (3:44 p. m.)

Mr. Wilentz: Will one of the stenographers from The Bronx please take the stand. What is his name?

Mr. Hauck: Arac.

BENJAMIN ARAC, sworn as a witness in behalf of the State:

Direct examination by Mr. Wilentz:

Q. Mr. Arac, were you a court stenographer in The Bronx on September 25th, 1934? A. Confidential stenographer to the District Attorney.

Q. Confidential stenographer to the District Attorney? A. Yes, sir.

Q. In that capacity did you take down the questions of District Attorney Foley and the answers of Bruno Richard Hauptmann, this defendant, on that day? A. Yes, sir.

Q. Will you please—have you the original notes, shorthand notes, of that questioning? A. I have.

Q. Will you read to me with reference par-

ticularly to the—do you remember District Attorney Foley asking Hauptmann some questions with reference to the board, which is now Exhibit S-204? A. Yes, sir.

Q. Take that testimony, take those stenographic notes, please, and tell us what it was.

Mr. Reilly: I object to this.

Mr. Pope: We object to that question, sir, that there has been no foundation laid for this testimony. It was made by the prisoner at the time when he was in the custody of the officers of the law, and in another suit, charged, as we understand, with another crime.

Mr. Wilentz: I meant to ask just one other question, and we will consider the objection made even after that.

Q. On September 25th, 1934, do you know whether or not the defendant was represented by counsel, had a lawyer? A. He was represented, yes, sir.

Q. I see. He wasn't present, however, at the time of this questioning, was he? A. That is right, he was not present.

Mr. Wilentz: We submit, if your Honor please, that the statements made by the defendant, voluntary statements made by the defendant are admissible.

Q. Were these statements voluntary?

Mr. Reilly: I object to that as calling for a conclusion.

Q. What was said prior to Mr. Foley's speaking to Mr. Hauptmann? A. Well, I was called into the room and the questioning was commenced immediately. I took down the answers. Towards the end of the first statement the defendant was asked whether the statement was being made of his own free will and he said that it was.

Mr. Reilly: May I inquire?

By Mr. Reilly:

Q. Were you there when he was first brought into the room? A. No, sir.

Q. Was he under arrest? A. Well, technically I don't know. He was in custody.

Q. He was in custody? A. He was manacled.

Q. He was manacled? A. Yes, sir.

Q. Do you know whether or not he was informed as to the constitutional rights? A. I can't say.

Q. Do you know whether he was informed that anything he might say might be used for or against him? A. Not in my presence.

By Mr. Reilly:

Q. Do you know whether he was informed that he did not have to make a statement as long as he was under arrest unless he desired to? A. Not in my presence.

Mr. Reilly: I say that this question and answer is not admissible upon the ground there is no proof that the man under arrest was advised of his constitutional rights—he was in the State of New York

at the time—and for that reason I urge that as a separate objection.

The Court: Well, is this in the nature of a confession?

Mr. Wilentz: No, if your Honor please, it is questions and answers with reference to this specific board and the writing thereon.

Mr. Reilly: That would be in the nature of a confession or admission.

The Court: Well, perhaps it might be well to inquire as to whether or not any promises or threats were made.

By Mr. Wilentz:

Q. Do you know whether any promises or threats were made to this man at that time? A. The District Attorney specifically—

Mr. Reilly: May that be answered yes or no, if your Honor please?

The Witness: Yes.

By Mr. Wilentz:

Q. You do know. Were there any promises or threats made, so far as you know? A. There were no promises made, no threats made; no, sir.

By Mr. Reilly:

Q. Were you there when the District Attorney

—of course you were not there when the District Attorney first saw the defendant, were you? A. No, sir.

Q. Whatever conversation passed between the District Attorney and any officials before you were called in the room you have no personal knowledge of, have you? A. No, sir.

Mr. Reilly: I urge the objection.

The Court: Do you desire to offer any testimony as to the voluntary or involuntary character of this admission or confession as you think it is?

Mr. Reilly: Not at this time, sir, because as I urged the objection, with all due respect to your Honor, I feel I am not compelled to.

Mr. Wilentz: May I further—I appreciate your Honor's present position, may I call Mr. Breslin upon that point to further help the record? Well, I am mistaken, I thought Mr. Breslin was there at the time, but he wasn't, so I will offer the witness and the question as I remember it was, was it asked by Mr. Foley and answered by Mr. Hauptmann.

Mr. Reilly: The Court hasn't made any ruling.

The Court: No, I haven't, but I will. I understand the basis of your objection to be that what was said was in the nature of a confession and you think it is—

Mr. Reilly: Not only a confession, but—

Mr. Pope: A statement or declaration.

Mr. Reilly: ——a statement or declaration, declaration against his own interests.

The Court: Well, do you or do you not claim that it was a declaration in the nature of a confession?

Mr. Reilly: I assume that it is, and I assume that is why it is offered, because I have no knowledge as to what he said.

The Court: And you are making that point?

Mr. Reilly: Preliminary point, yes.

The Court: Yes.

Mr. Reilly: Objection on that point.

The Court: And it being your contention that it was a declaration in the nature of a confession, your objection now is that it has not been shown that it was voluntary.

Mr. Reilly: Quite true.

The Court: That is your objection.

Mr. Reilly: And that he was not advised, before he said anything, of his constitutional right, that no man shall be compelled to be a witness against himself, that

he must be advised before he gives any answer that "You are under arrest; a statement is about to be taken from you. This statement may be used for or against you in any court of record. You are at perfect liberty to decline to answer any questions which are put to you."

Mr. Wilentz: I didn't know that to be the law in either state.

The Court: I overrule the objection made.

Mr. Reilly: I ask for 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: Now I don't wish to appear before the jury as pressing an objection which you have overruled, sir, nor as desiring to keep from their hearing anything this defendant said which was legal, but both counsel and your Honor appreciate our position. Therefore, may I again make this objection as a separate objection, as your Honor well knows under the practice?

I now object to the admission of this evidence on the part of this witness for the reasons already stated, in that it violates the Federal Constitution of the United

States and the rights of this defendant thereunder. Your Honor having—

The Court: I recognize your objection and I overrule it.

Mr. Reilly: I except.

The Court: Take your exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Wilentz:

Q. Will you please proceed. A. "Statement taken on September 25th, 1934, in the office of the District Attorney at 11:55 a. m."

Q. Will you tell us the first question. A. "Hauptmann, I want to ask you some questions about this board. You know it is from your closet in your own house, don't you? A. It must be."

At that point I marked a tag, marked it Exhibit 1, and put it around the board.

Q. Is the tag that you talk about marked around the board, which is now this exhibit referred to—I mean is this the board you were referring to, Exhibit S-204? A. Yes, that is right.

Q. The answer you say was, "It must be." The questions are by District Attorney Foley? A. That is correct.

Q. All right. A. "Q. It is the same kind of

wood, your handwriting is on it. A. Yes, all over it. Q. What did you write on that board? Read it to the stenographer. A. I can't read it any more.

"Q. Who rubbed it out? Can you read the address on it? A. 2974, I can't make out the first. I remember the number—. I read the number down below 37154.

"Q. What else can you read on that board that you wrote yourself? A. I can't read, that's a t u and r, another one I can't make out.

"Q. That is Dr. Condon's address, isn't it? A. I don't know.

"Q. Why did you write it on the board? A. I must have read it in the paper about the story. I was a little bit interest, and keep a little bit record of it and maybe I was just on the closet and was reading the paper and put down the address.

"Q. How did you come to put the telephone number on there? A. I can't give you any explanation about the telephone number.

"Q. Your only explanation for writing Dr. Condon's address on this board and telephone number is that you were probably reading the paper in the closet and you marked it down, is that correct? A. It is possible that a shelf or two shelfs in the closet and after a while I put new papers always on the closet and we just got the paper where this case was in and I followed the story of course and I put the address on there.

"Q. That is why you marked it on the door? A. That is the only explanation I can give.

"Q. Your answers to my questions here are made of your own free will, is that correct? A. Yes.

"Q. And all of the time you have been in my hands you have been well treated? A. Yes.

"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.

"Q. Is there anything more you want to say about it or add to it? A. No. About them two numbers, I am sure it was 500 or 1,000 dollar bills.

"Q. When you say those two numbers, you don't refer to anything on this board, when you talk of the two numbers you don't mean anything on this board, but other numbers written on the door? A. On the door.

"Q. But not on this piece? A. I can't remember where I put it.

"Q. And you say that they refer to bills of high denomination? A. Yes.

"Q. Is there anything else you wanted to add? A. No.

"Q. Do you remember the day that you wrote this memorandum on the board? A. No.

"Q. You remember that you did write it? A.

I must write it, the figures; that's my writing.

"Q. The writing is yours too, isn't it? A. I hardly can read it.

"Q. From what you see of it, it is your writing, isn't it? It is your figures and your writing? A. I really can't remember when I put it on.

"Q. Regardless of when you put it on, it is your figures and your writing, isn't it? A. The writing I can't make out so very clearly; I don't know.

"Q. Do you know who rubbed it out or tried to rub it out? A. No."

A little later the questioning was resumed.

Q. What time? A. at 12:21 p. m.

Q. All right. A. (Reading): "Q. Do you remember"—

Q. What interrupted the questioning at that point? A. I don't know. I was just told that was all.

Q. Was it noon hour, lunch hour? A. I was just asked to leave the room and then I was recalled.

Q. About what time? A. At 12:21.

Q. Well then, there was no luncheon between then? A. I didn't go out to lunch, no, sir.

Q. All right. A. "Q. Do you remember the date that you marked Dr. Condon's telephone number on the board in your house? A. Absolutely not.

"Q. You can't fix the time? A. No, sir, impossible.

"Q. Do you remember the time that you marked the numbers of the bills? A. No.

"Q. Did you mark first the telephone or the bills? A. I can't remember that. Question—"

Q. Just a minute. A. "Did you get—"

Q. Just a minute. I think that is all on that point. I want to see. I would like to have you

refer to any other questioning about this particular exhibit that we have now and direct your attention specifically to September the 26th, 1934. A. There is some.

Q. Which is the next day. A. There are one or two—

Q. Please refer to that and tell me if by inspecting your notes you can tell me whether they referred to this piece of wood again? A. Yes.

Q. Please give me those questions and answers. A. "Hauptmann, yesterday I showed you a piece of wood from your house with Condon's address and phone number on it; is that correct? A. Yes.

"Q. You admitted that you wrote that on the board? A. Yes."

That is all on that statement about that board.

Q. Will you please continue that day's questioning? A. "Q. I ask you, have you any more money hidden in the house—"

Mr. Reilly: I object to it as not part of this line of questioning as to the board. It is incompetent, irrelevant and immaterial.

Mr. Wilentz: Well, I don't think it is incompetent and irrelevant, but it is true that those are the remaining questions as to this board and I think with this witness I will stop at this point with the request that I may be permitted to recall him.

Thank you, sir.

By Mr. Reilly:

Q. May we have it directed to your attention and is it a fact the attorneys whoever they were,

representing Hauptmann, are not among the defense counsel at this table?

Mr. Wilentz: We stipulate that.

A. The only—

Mr. Wilentz: We can stipulate that.

Mr. Reilly: First let's get this. Is it stipulated, General?

Mr. Wilentz: Yes, sure: That the counsel for the defendant at that time is not counsel now and is not amongst the gentlemen who represent the defendant at the defense table now.

Mr. Reilly: Thank you.

Q. And counsel was not in the room at the time he was being questioned? A. Counsel was not there.

Q. Did you see him around the place? A. Well, he may have been; I don't know.

Q. You recall that? A. No.

Mr. Reilly: That is all.

Mr. Wilentz: My recollection is that that is already—yes, that is an exhibit (S-204).

Mr. Reilly: Your Honor, I do not know as I took an exception to my last objection. May I have an exception.

The Court: You may have your exception, sir.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: Now, I want to offer a set of these brokerage accounts in evidence. If there is going to be an objection I should like to make the offer now.

Mr. Reilly: Yes.

Mr. Wilentz: So that we may have a ruling and, if the ruling is adverse to us then, of course, there is no necessity to go through all this work.

May we argue the matter of whether or not formally and informally just as if the offer had been made, counsel not taking advantage of the lack of the exhibits being here for the moment.

Have you got a copy?

Mr. Fisher: No, we haven't.

Mr. Wilentz: Have those exhibits brought in and I will offer them.

My understanding then is that we are offering the following original records, the original records of the brokerage accounts of Bruno Hauptmann, and the bank accounts of Bruno Hauptmann. We also offer the brokerage accounts and bank accounts of Anna Hauptmann, whether they be in her maiden name or whether they be in her marriage name, only such accounts as were in her name since her marriage;

and proving—it being assumed that the proof is that Mr. Hauptmann gave the money for these accounts. We have that proof here.

Mr. Fisher: Yes.

Mr. Wilentz: And we will present it. Our contention being, if your Honor please, that we have a right, a legal right to show this man's financial condition as of the date of this crime, and such sudden wealth as came into his possession following the receipt of the moneys which were incident to the crime, and which moneys were obtained, we say because and in pursuance of his motive and in pursuance of the crime. We refer your Honor to the case in the Court of Errors and Appeals of our State of State versus Schuck, which was also a murder case:

In a prosecution for murder and robbery, evidence that defendant after the crime was spending money and carousing with girls, held admissible as tending to show the recent acquisition of money.

Specifically on the case the Court says:

"The testimony of Hellings and Jouse as to the prisoner spending money and carousing with girls in Philadelphia after the murder tended to show their recent acquisition of money; and as a large sum had been taken from the deceased, it was inferable that they got it in the robbery, as there was evidence tending to show that they not only murdered but robbed the deceased. In fact, the motive of the murder was robbery.

"The admissibility of such evidence is perfectly well settled. The acts were not concomitants of the crime for which the prisoner was on trial, but followed its commission and were not part of the res gestae at all."

That is all there is on the subject and I think it is not subject to any possible objection. We offer the exhibits.

Mr. Pope: May I say that we will not object to the introduction in evidence of these exhibits at this time if we may be privileged to reserve to ourselves the right to strike them out if, upon examination, we find that any of these exhibits are immaterial and are not proper evidence to be used in this case. We assure the Attorney General and we assure the Court that no formal objection will be entered to the introduction of these exhibits because of the character or nature of proof; that is, we will not require them to produce the original records as per our agreement during the noon recess, but we have not had an opportunity to examine any of these exhibits. We do not know what they show. We would not like to be prejudiced by having something in evidence which we think is not properly the subject of this inquiry and which should not be admitted.

Now if we may reserve that right, sir, we will raise no formal objection because of the nature of the proof which may be offered at this time.

Mr. Wilentz: I understand then counsel has no objection to these exhibits being

marked in evidence subject to their right to argue later that they are not material.

Mr. Pope: That is right, that they are not proper evidence in the case, whether they be immaterial or irrelevant or whatever the objection to them may be, but we will not raise any question as to the nature of their proof, that is to the manner of their proof.

Mr. Wilentz: All right. Now, will the stenographer mark these with the consent of counsel subject to that limitation and I would like to have Agent Frank, please, give to the defense right away at least two or three copies.

The Reporter: Can they be marked as one exhibit?

Mr. Fisher: One envelope.

Mr. Wilentz: Temporarily, suppose we mark it as one exhibit.

Mr. Pope: In a large envelope.

Mr. Wilentz: In a large envelope. I want the gentleman from Steiner-Rouse & Company, Mr. Mulligan.

Envelope marked S-205.

WILLIAM MULLIGAN, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Mulligan, you are connected with Steiner-Rouse, the brokerage house in New York. A. Yes, sir.

Q. And in what capacity? A. Customers' man.

Q. Customers' man. And in 1932, and prior thereto, were you so connected? A. Yes, sir.

Q. You know the defendant Mr. Hauptmann, Bruno Richard Hauptmann, do you not? A. Yes, sir.

Q. He was one of your customers? A. Yes, sir.

Q. Did he deal with your company? A. Yes, sir.

Q. In his own name or in whose name? A. Originally in his own name.

Q. Originally in his own name and then later was the account put in the name of his wife? A. Yes, sir.

Q. What name was that? A. Anna Schoeffler.

Q. Anna Schoeffler? A. Schoeffler.

Q. First, as I understand it, the account was in the name of Bruno Richard Hauptmann? A. Richard Hauptmann.

Q. And then transferred to the name of Anna Schoeffler? A. Yes.

Q. Now, did Mrs. Schoeffler deal directly with your firm or were the dealings through her husband, Mr. Hauptmann? A. Through Mr. Hauptmann.

Q. Were the moneys that came to Steiner, Rouse & Company moneys that Mrs. Hauptmann gave herself or were they moneys which were presented by Mr. Hauptmann? A. By Mr. Hauptmann.

Q. The cash moneys that came to your company for these brokerage accounts and for the purchase of these stocks, were they moneys that Mrs. Hauptmann brought to you or was the cash

brought by Mr. Bruno Richard Hauptmann? A. Brought by Mr. Hauptmann.

Q. Had you ever dealt with Mrs. Hauptmann at all? A. No, sir.

Mr. Wilentz: That is all I have with Mr. Mulligan unless there are some questions.

Mr. Reilly: Wait a minute, please.

Cross Examination by Mr. Reilly:

Q. When Hauptmann came to your office, was it quite frequently? A. Before opening the account?

Q. No, during the time it was opened and before he opened it. A. After he opened the account?

Q. After he opened it. A. Frequently.

Q. Yes. Did he come with anybody? A. No, sir.

Q. He never came with anyone? A. No, he never came with anybody.

Q. Did you know a man named Fisch? A. Yes, sir.

Q. Is that Isidor Fisch (showing photograph to witness)? A. Well, I have seen better— I know Fisch. I will recognize a better picture of him.

Q. Let's have some more pictures.

The Court: What did he say, Mr. Reilly?

Mr. Reilly: He said he knows Fisch. Let's have a better picture.

The Court: All right.

By Mr. Reilly:

Q. Is that a better picture of Fisch (showing a photograph to the witness)? A. Yes.

Q. Do you recognize him, if you saw Fisch on that picture? A. Yes, sir.

Mr. Reilly: I offer it for identification.

Mr. Wilentz: No objection.

The Reporter: D-33 for Identification.

(Photograph marked Defendant's Exhibit D-33 for Identification.)

Q. I show you this. Is that a picture of Fisch? A. It is hard to say in that one. I really—

Q. But the other one is all right? A. That one is all right.

Q. Was Fisch a customer of yours? A. No, sir.

Q. And when you saw Fisch there did you see him with Hauptmann? A. Yes, sir.

Q. How many times? A. About five or six.

Q. During what months and years? A. Well, my earliest recollection is the Spring of 1933.

Q. The Spring of 1933? A. Yes, sir.

Q. And their visits to your place of business during the five times that you saw them covered what period? A. Confined to the year 1933.

Q. Well, would you say then from the Spring to the end of 1933? A. Yes, I will say that.

Q. But you have no independent recollection of the months, have you? A. I remember there was some in the summer time.

Q. Some in the summer time? A. Yes, I might say late Spring or Summer.

Mr. Reilly: Will you call him again if you need him?

Mr. Wilentz: You don't need him?

Mr. Reilly: I don't need him.

Mr. Wilentz: Are you through, Mr. Reilly?

Mr. Reilly: I am through.

Re-Direct Examination by Mr. Wilentz:

Q. I just wanted to ask you if Mr. Fisch had an account with your firm. A. No, sir.

By Mr. Wilentz:

Q. Did he give you any moneys for the purchase of any stock? A. No, sir.

Q. All you know about him is that on several occasions when Mr. Hauptmann came in Mr. Fisch was with him on several occasions. A. Well, I would say that he met him in there, I wouldn't say they came in together, to my recollection.

Q. Met him in there. That is all.

By Mr. Reilly:

Q. You have a board room there, haven't you? A. Yes, sir.

Q. A board room for the benefit of the jury and those that don't know much about Wall Street is a room that has a board and the names of all the stocks. A. Yes, sir.

Q. And you have a boy running across to the ticker and telephone. A. No, we have an electric board, symbols.

Q. As the fluctuations of the different prices

of the stocks change, indications are made on the board, is that correct? A. Exactly.

Q. The public and others may come in, and especially your customers, and take chairs and watch the board. A. Yes, sir.

Q. If they desire to buy or sell, they indicate by giving an order. A. Yes, sir.

Q. Have you known of cases where people have dealt through a person who had an account with you?

Mr. Wilentz: I object to that as being entirely too general and not material to this case.

The Court: Well, that is rather far-fetched.

Q. I will ask you this question: Have you any independent knowledge as to whether or not Fisch purchased or sold stocks through the account of Hauptmann? A. He couldn't do it.

Q. He could ask Hauptmann to buy, couldn't he—"Buy me five, buy me ten, buy me fifteen," and give him the money? A. Yes, sir.

Q. Yes. And he could tell Hauptmann next week "That stock I bought or you bought last week for me, sell it," couldn't he? A. Yes, sir.

Q. And Hauptmann would give you the order? A. Yes, sir.

Q. And you would buy or sell? A. Yes, sir.

Q. And you wouldn't know where Hauptmann got the money? A. No, sir.

Mr. Reilly: That is all.

By Mr. Wilentz:

Q. And you don't know where Hauptmann got the money either, do you? You don't know where Hauptmann got the money, do you? A. No, sir.

Q. You don't know where he got the cash that was given to you, do you? A. Well, he told me he was in business—

Mr. Pope: We object to that.

Q. He told you he was in business? What business did he say he was in? A. Fur business.

Q. Hauptmann told you he was in the fur business? A. Yes, sir.

Q. You know you are talking about the defendant Bruno Richard Hauptmann? You understand that, don't you? A. Yes, sir.

Mr. Wilentz: That is all.

By Mr. Reilly:

Q. And he told you he was in the fur business with Isidor Fisch, didn't he? A. Yes, sir.

Q. And your concern banks through the Federal Reserve, don't they? A. Yes, sir.

Q. Yes. And at no time was there ever a gold certificate from Hauptmann sent back to your concern, was there? A. Not to my firm, no, sir.

The Court: To your what?

The Witness: Not to my firm.

Q. Why do you qualify it? A. Well, I would have been informed of it.

Q. I see. Do you know whether or not Hauptmann gave any gold bills, certificates, to your firm for stocks? A. I don't know.

Q. You don't know. Do you know whether he gave any Federal Reserve certificates that weren't gold in payment of stocks? A. I don't know that.

Q. The bills weren't checked by your firm, were they? A. No, sir.

Q. You just took the money and sent it to the bank for deposit? A. Yes, sir.

Q. Isn't that it? A. Yes, sir.

Mr. Wilentz: Thank you, sir.

By Mr. Reilly:

Q. But this money that you received during the day, your firm, in cash, that is sent to a recognized bank of New York City, is it not? A. Yes, sir.

Q. Of the Federal Reserve? A. Yes, sir.

Q. Do you know that the Federal Reserve have from the United States Government a pamphlet listing every one of the Lindbergh bills?

Mr. Wilentz: Does he know it of his own accord?

Mr. Reilly: Yes, does he know it.

Q. Do you know it? A. I know it now.

Q. You didn't know it then? A. No.

Q. And no Federal Reserve Bank in the Wall Street district of New York ever returned to your concern any bills, gold certificates or Federal notes certificates bearing the Lindbergh baby numbers, did it? A. Well, I will let somebody else answer that question.

Q. Well, as far as you know? A. To my knowledge, no.

By Mr. Wilentz:

Q. You are not there receiving any moneys back from the Federal Reserve Bank, are you? A. No, sir.

Q. And as a matter of fact, gold or no gold, they don't return them to the firm anyway, do they? They keep them when they get them, don't they? When the Federal Reserve Bank gets money they keep the money, don't they? A. I suppose they do.

Q. Sure. Lindbergh money or any kind of money. Now of course—oh, that is all.

By Mr. Reilly:

Q. You were a customers' man, were you? A. Yes, sir.

Q. I see. That is all.

Mr. Wilentz: That is all.

Mr. Burkard, please be sworn.

JOSEPH H. BURKARD, sworn on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. You are a member of the Bar of what State, Mr. Burkard? A. New York State.

Q. New York State and in your professional capacity as a lawyer you participated in the transaction by which a mortgage was given by Katie Yonker to Anna Hauptmann on the third day of January, 1933, isn't that so? A. Yes, sir.

Q. And the amount of that mortgage, I take it, was $3,750 (showing a paper to the witness)? A. Yes, sir.

Q. Are you the Mr. Joseph H. Burkard who

witnessed that mortgage? A. This is an assignment of the mortgage.

Q. An assignment or an assignment of the mortgage. Well, did you witness it? A. Yes, sir.

Q. Who did you represent in that transaction? A. Why, I represented Mr. and Mrs. Hauptmann.

Q. Did you handle the $3,750 which was paid for the assignment? A. I did.

Q. Who gave you the money? A. Mr. and Mrs. Hauptmann.

Q. Mr. and Mrs. Hauptmann? A. That is right.

Q. What do you mean by that? A. Well, both of them came to the office together.

Q. Who handed you the money? A. Well, I don't just recall who gave me the money. Both were there and the money was put on the desk and I counted it over, and called in the girl, sent it over to the bank for deposit.

Q. Was it in cash or by check? A. It was in cash.

Q. And who directed the name of the person in whose name the mortgage was to be taken? A. Mr. Hauptmann.

Q. Mr. Hauptmann told you to put the mortgage in the name of Mrs. Hauptmann, is that it? A. That is right.

Q. $3750? A. That is right.

Q. $3750? A. Yes.

The Court: $3750?

Mr. Wilentz: Yes. That is all. We offer a certified copy of the mortgage.

Mr. Reilly: Is this it? Well, I object to it upon the ground that there is no evidence here that this mortgage was purchased by Lindbergh money.

Mr. Wilentz: If your Honor please, may I just say—

Mr. Reilly: Or can an inference be drawn—

Mr. Wilentz: May I just say in answer to that, as a rule there isn't any identity or identification of moneys at all in these cases. As a rule, if your Honor please, the money of course has no earmarks. It so happens in this case, and it is just an added feature, that the serial numbers of these bills are known, but in this case which I cited to your Honor, in which it was determined that this sort of evidence was evidential, why, in that case there were no ransom numbers, there were no serial numbers, there was no identity of the bills; it was just a case of showing that money had come into the possession of the accused suddenly and, for that reason, sudden wealth, and for that reason it was admissible.

Mr. Reilly: As I recall this case it is a robbery case.

Mr. Wilentz: No, it is a murder case. State versus Schuck.

Mr. Reilly: Is this where they spent the money in Philadelphia?

Mr. Wilentz: I don't remember the case.

Mr. Reilly: This is the case where a man was on trial for murder and they offered

evidence of sudden wealth arising out of a robbery—

Mr. Wilentz: Out of a murder.

Mr. Reilly: Murder and robbery. Now the learned Attorney General seeks by a series of steps and circumstances to show that money was passed from Hauptmann, ransom money, along the line of sudden wealth. There is evidence here from the last witness that the defendant was in business with Isidor Fisch in the fur business, so they said. Now, here the lawyer goes on the stand and receives $3,750 in actual cash. The Attorney General says the money was not ear-marked. We say every dollar of the Lindbergh money was known, ear-marked, and the banks were prepared to receive it and watched for it. The man received $3750 cash, not Lindbergh money, and he sends it to his own bank, and to this day he has never received one word from the bank that that was Lindbergh money, because if he did Hauptmann would have been under arrest twenty-four hours after this mortgage was made.

Mr. Wilentz: Our offer, if your Honor please, is not based upon the identification of the money and Mr. Reilly is right: if we had had Mr. Hauptmann's number on that money, he would have been arrested then and that is right, we didn't have it at that time and that is why the trial has been delayed.

The Court: Will the stenographer re-

peat to me Mr. Reilly's motion? Mr. Reilly at a certain point in this examination made a certain motion.

Mr. Wilentz: When I offered the certified copy.

Mr. Reilly: I will repeat it, your Honor. I move to exclude this paper upon the ground that there is no evidence before this jury or from the examination of this witness that shows that this mortgage was purchased by ransom money, but the fact is the other way. A set of circumstances are sought to be relied upon here, and as I understand the law of circumstantial evidence, circumstantial evidence may be admitted where there is a hypothesis of guilt, excluding the hypothesis of innocence. Here we have a witness who goes upon the stand and testifies that he received in April some year, 1932 or 33, $3750 in United States currency which he deposited in the bank and gave these people an assignment of a mortgage. The bank had the numbers and had the circulars. Within twenty-four hours or within a month Washington or that bank would have been informed that that money or part of that money or all the money was Lindbergh money and the bank would immediately have called upon the attorney, the attorney disclosed his principal and Hauptmann would have been under arrest within a month. I say that there is nothing here by which an inference of guilt, of possession of Lindbergh money, can be drawn from the purchase of this mortgage or assignment of mortgage.

The Court: Will the reporters repeat for me now, if they can, Mr. Reilly's motion in respect to this matter.

The Reporter: As he just then made it, your Honor?

The Court: What?

The Reporter: As he made it just now?

The Court: No, no.

The Reporter: The original motion?

The Court: The original motion.

The Reporter: Do you want the questions before that, too, your Honor?

The Court: No, Mr. Reilly at the end, at a certain point of his examination, made a motion—

The Reporter: I have it.

Mr. Wilentz: Just a minute. We have offered the certified copy of the mortgage, and the answer is just made—

Mr. Reilly: The objection.

Mr. Wilentz: The objection is just made by counsel, and the reason for the objection, the objection to the offer, isn't it?

Mr. Reilly: Well, I made it twice. Now the Judge wants my first objection.

Mr. Wilentz: Oh, all right.

Mr. Reilly: And the reporter is now about to read it.

The Court: Yes. I want the first objection.

The Reporter (Reading): "Mr. Reilly: Is this it?

"Well, I object to it upon the grounds that there is no evidence here that this mortgage was purchased by Lindbergh money.

"Mr. Wilentz: If your Honor please, may I just say—

"Mr. Reilly: Or can an inference be drawn.

"Mr. Wilentz: May I just say in answer to that, as a rule there isn't any identity or identification of moneys at all in these cases. As a rule, if your Honor please, the money of course has no earmarks. It so happens in this case that it is just an added feature, that the serial numbers of these bills are known, but in this case which I cited to your Honor, or in which it was determined that this sort of evidence was evidential, why in that case there was no

ransom numbers. There were no serial numbers. There was no identity of the bills. It was just a case of showing that money had come into the possession of the accused suddenly, and for that reason, sudden wealth, and for that reason it was admissible."

The Court: I understand the Attorney General's position is that this is admissible upon the ground that it is inferable from this case that up to a certain point the defendant was a carpenter of very small means, and suddenly acquired a considerable spending power, and that this testimony is urged for the purpose of showing those two things.

Mr. Wilentz: That is right, exactly.

The Court: Well, the cases seem to justify the admission of the testimony. So it will be admitted.

Mr. Wilentz: That is all.

Mr. Reilly: We may later on move again, during the course of the trial, that it be stricken out?

The Court: Oh, yes, certainly.

Mr. Reilly: May we have an exception?

The Court: Take the exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Wilentz: That is all I have with the witness.

The Reporter: S-206, assignment of mortgage.

(Assignment of mortgage received in evidence and marked State's Exhibit S-206.)

Cross Examination by Mr. Reilly:

Q. Now it is true, is it not, Counselor, that you deposited this money in your bank? A. That is right.

Q. And in your own name or trust account? A. Trust account.

Q. You were a person that the bank could reach in a minute, because your name and address was on file? A. Yes, sir.

Q. Well known to the bank? A. Yes, sir.

Q. You had an office near the bank? A. Yes.

Q. Had been doing business with them for years? A. Yes, sir.

Q. And do you recall at the time you made the deposit—did you make this identical deposit? A. Yes, sir.

Q. On the day in question? A. Yes, sir.

Q. And within, I will say, within an hour of your obtaining the cash? A. Well, it was after 12 o'clock when the deposit was made, so that is why a separate deposit had to be made.

Q. Yes. Well, it was a separate deposit slip on that day, is that right? A. That is right.

Q. And what bank was it? A. Bank of the Manhattan Company.

Q. Bank of the Manhattan Company. With branches all over New York, including one in the Wall Street district: is that right? A. Right.

Q. And where is your branch? A. 1800 Myrtle Avenue.

Q. Borough of Brooklyn? A. Queens.

Q. And what was the date of the assignment? A. The assignment was dated January 3rd, but I got the money December 31st.

Q. January 3rd, what year? A. January 3rd of '33.

Q. '33? A. But the money I received December 31st of '32.

Q. 1932? A. That is right.

Mr. Reilly: That is all.

Mr. Wilentz: Now, if your Honor please, I appreciate that it is adjournment time, but I have some witnesses from banks from New York merely as to whether or not the cash which they received came from Mr. or Mrs. Hauptmann, and I would like, if there is no objection, too strenuous objection from the defense, to proceed for a little while.

Mr. Reilly: No. Certainly, go right ahead.

Mr. Wilentz: All right. Now, Mr. Harry Trister.

HARRY TRISTER, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. You are a clerk in the Bank of the Mount Vernon Trust Company, are you not? A. That is right.

Q. And you have been in there since 1923? A. That is right.

Q. Can you tell from your accounts when Mr. Hauptmann started his account? A. June 1st, 1932.

Q. June 1st, 1932. Now—

The Court: Did this man say he was a broker or a banker?

Mr. Wilentz: Clerk in the bank, at the Mount Vernon Trust Company.

Q. Now, I notice in the deposit slips which make up a part of this S-205, that the deposit slips show, that is, in addition to bills, there is silver. Have you made a compilation of the total silver coins, coins that were deposited? A. Yes, sir; we have.

Q. Can you tell us how much silver was deposited in 1932 and '33? A. Well, in 1932 there was deposited $232.75 in silver.

Q. Yes, and how much silver in 1933? A. I think it was $160.

Q. $186? A. I am not sure; I am not—

Q. Well, anyway, the accounts will show it, will they not? A. That is right.

Q. This account was in the name of Hauptmann and not his wife? A. No; Richard Hauptmann.

Mr. Wilentz: Oh, I thought it was in the name of his wife. All right.

Cross Examination by Mr. Reilly:

Q. Now, this account which, on the photostatic copy, bears at the top number 4314,—am I correct? A. That is right.

Q. In the name of Richard Hauptmann, was opened when? A. June 1st, 1932.

Q. June 1st, 1932? With $52? A. That is right.

Q. And then there were deposits of $105, and $175, and $12, withdrawals $250, $84 in, $40 in, $259.75 in, $200 in, $1.35 in, $3.70 out, $162 in, $138 in, $500 out, until what date did he withdraw the balance, which amounted to at that time of $198—maybe this would show it better, would it? A. The bank was restricted on March 4th, 1933, and ten per cent was made available for withdrawal and that is what he took out.

Q. Took out what? A. $22.03. That practically closed the account, that was all the available cash there was.

Q. In other words, the bank went broke, did it? A. Well, it was restricted.

Q. What does that mean: failed? A. No, it was reorganized.

Q. Well, there wasn't any money for the depositors, is that it? A. Well, not an awful lot.

Q. Well, the man had $198 in the bank and all he got out of it was $22.30? A. At that time; later on he got 55 more.

Q. How much? A. Later on he got 55 more.

Q. So we will say he got 175 altogether? A. Well, it is right on there.

Q. He got about $109.30. Well, that wouldn't indicate to you any sudden rise in the man's wealth to start a bank account with $52 and come out of the bank with about $150, would it?

Mr. Wilentz: Well, we will show, if your Honor please, if Mr. Reilly is just a little patient, regarding the conclusion of this witness—

Mr. Reilly: All right; I will withdraw the question. He is so young he wouldn't know about the evidence.

Re-Direct Examination by Mr. Wilentz:

Q. Do you know how much he deposited in cash in this bank, in the Mount Vernon Trust Company? A. Well, in 1932 his deposits amounted to twelve hundred and some odd dollars.

Q. In 1933 how much? A. $610.

Q. And when the bank was restricted how much cash was left there? A. May I refer to my record?

Q. Yes, please. A. When the bank was restricted there was a balance of $220.36.

Q. You don't know where the money went that he took out? A. No.

Mr. Wilentz: All right; that is all.

By Mr. Reilly:

Q. Just a moment, young man, will you? At any time while he was making these deposits were you ever instructed by anybody to say to

Hauptmann "You have been depositing Lindbergh ransom money?"

Mr. Wilentz: Oh, I—

Q. Had you? A. Will you repeat that question, please?

Q. Were you informed by anybody in the bank, your higher officials, that Hauptmann in his deposits to you had deposited Lindbergh ransom money? A. As far as I can recall his deposits were in small amounts.

Q. They were bills, weren't they? A. Small bills and a lot of change.

Q. Yes. And you had a circular, your bank had a circular—. A. That is right.

Q. —of all the fives and tens and twenties of the Lindbergh ransom money? A. That is right.

By Mr. Wilentz:

Q. By a lot of change you mean silver? A. That is right.

Q. When you say change you mean halves, quarters and dimes? A. That is right.

Q. Do you know whether Mr. Hauptmann was running a cafeteria or a nickel place? A. We had no idea of his business.

Mr. Wilentz: All right. That is all.

Now, will the man from the Central Savings Bank come up? Colonel Woodridge, Jr.

HERMAN RIEDRICH, JR., sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. You are connected with the Central Savings Bank, is it? A. Yes, sir.

Q. At what branch? A. Main office, Broadway and 73rd Street.

Q. Main office where? A. Broadway and 73rd Street.

Q. You have an account in your bank in the name of Anna Hauptmann? A. We have.

Q. In what name is it? A. At the present time?

Q. Yes. A. Anna Schoffler.

Q. That account—was that account in any other name before that? A. A joint account between Anna Hauptmann and Richard Hauptmann.

Q. Originally? A. No, the original account was Anna Schoffler.

Q. The original name of the account, when the account was started was? A. Anna Schoffler.

Q. Then changed to a joint account. A. Joint account Anna Hauptmann and Richard Hauptmann.

Q. Will you take a look at this and tell us when the account was started, if you can, and in whose name it was started (handing witness number of documents)? A. The original account—

Q. Take a look at it, the original account, when that account was first started? A. It was opened in January, 1928, was it not, or 1924? A. This particular account, the joint account?

Q. This particular account. A. January 16th, 1928.

Q. All right. Then it was a joint account in the name of Mr. and Mrs. Hauptmann, is that right? A. Right.

Q. Then it was changed to whose name? A. Anna Schoffler.

Q. Then it was changed to whose name? Was

it changed at any time to Anna Hauptmann? A. No.

Q. Right from Richard and Anna Hauptmann to Anna Schoffler? A. Yes.

Q. When was it changed to Mrs. Hauptmann's maiden name? A. March 25, 1933.

Q. March 25, 1933. Now the cash that was deposited in that account, was it deposited by Mr. Hauptmann? A. It was deposited by both at various times.

Q. Deposited by both.

Mr. Wilentz: All right, sir.

Cross Examination by Mr. Reilly:

Q. Have you a transcript from your bank from the very beginning of this account? A. I have, right from the start. Do you want the original or the photostats? Even the safe deposit box, the record of it.

Q. Will you pick out for me, please, because you are more familiar with banks and money than I am— A. Maybe not.

Q. —the photostat of the beginning of this account? A. Of the original account?

Q. Yes, the first time Anna ever walked in and signed her name. A. Anna Schoffler.

Q. Have you made these into a list, photostatic list, or are they just loose? A. They were in rotation according to the ledger card.

Q. Have you got a photostatic list of these, have you itemized them down? A. No, because I have the ledger card.

Q. Let me see that. Maybe that will help. Is that it? A. That is her signature card.

Q. Have you anything there that shows the first deposit in 1924? A. Here is the first one.

Q. All right now. Does it appear from a photostatic copy from Anna Schoeffler's signature card that she opened this account October 27th, 1924, under the name of Anna S-c-h-o-e-f-f-l-e-r, your ledger No. 4180? A. Yes.

Q. And was her initial deposit $100? A. Yes, according to the ledger, $100.

Q. And then she deposited from time to time under that name different amounts, didn't she? A. Yes, sir.

Q. And she withdrew different amounts? A. Yes, sir.

Q. Now when was the Anna Schoeffler account in your bank changed to any other name? A. May I look at the—

Q. Protected by the same person. (Addressing Mr. Wilentz.) General, have you a copy of this?

Mr. Wilentz: Yes, I have these dates for you, too, if it will help you.

Mr. Reilly: All right.

Mr. Wilentz: That is part of the exhibit. The account was opened that day and closed that date, new account in the other name. But all those are in the exhibits.

By Mr. Reilly:

Q. The General hands me a statement which shows that Anna and Richard Hauptmann opened a joint account 1/16/28. Have you anything there to indicate that? A. I have.

Q. All right. Let me see it please, so that you can testify that that is true. A. (Papers produced by the witness.)

Q. Now, does this—this is Anna Hauptmann again? A. Anna and Richard Hauptmann.

Q. Oh, I see. Anna and Richard. Now, I notice the initial deposit into the Anna and Richard Hauptmann account, your Ledger No. 25454, shows an initial deposit of $411.16? A. That is right.

Q. Was that a transfer from the account of Anna Schoeffler? A. It was.

Q. So that it was a continuous account, only a change of name? A. A change of name, yes.

Q. And that was in 1928? A. 1928.

Q. Four years after Anna started her account? A. That is right.

Q. In 1924; right? A. That is right.

Q. Now, in 1928, when did that account of Anna and Richard again go back into the name of Anna Schoeffler? A. March 25th, 1933.

Q. And when that account was opened how much was transferred from the Anna and Richard Hauptmann account? A. $2,528.35.

Q. $2,538.25? A. $2,528.35.

Q. And that was an account that covered from April 1st, 1928, down to March 5, 1933 an account of over five years' standing in your bank at that time? A. Yes, sir.

Q. And that account is still open in the name of Anna Schoeffler: correct? A. It is; correct.

Q. And that now bears a balance of how much? A. $1086.08. That is exclusive of April—of January interest, which is $6.78.

Q. Yes. Now, was there a withdrawal there of $1500 recently? A. On September 25, 1934, $1500.

Q. Yes.

Mr. Reilly: That went to the other law-

yer. I just wanted to trace that. I don't think you heard that, Judge.

The Court: No.

Mr. Reilly: I said that went to the other lawyer.

Q. Are these yours (papers)? A. Well, they are yours, if you want them.

Q. No, I have got a whole bag full.

Re-Direct Examination by Mr. Wilentz:

Q. While you are here will you tell us what was the balance in this particular account at the end of the year 1931, and at the beginning of the year 1932? Just take a look at it please. A. Well, may I refer to something?

Q. Yes, sure. A. Now, what is the question, please?

Q. How much money was in this account at the end of 1931 and the beginning of 1932? A. At the end of 19— during 1931, it was a balance of $77.26.

Q. $77.26? A. $77.26, that is true.

Q. That was the balance? A. That was, that was the balance in that account.

Q. That is how much was there? A. Yes.

Q. In other words, if Mrs. Hauptmann came to your bank and wanted all the money she had there, the most she could get would be $77.26, isn't that right? A. Just let me look at my own account, will you, please?

Q. Yes. A. $77.26 and at the end of 1931.

Q. On April 2, 1932, tell me how much money Mrs. Schoeffler had in the bank in this account? A. On April 2nd, 1932?

Q. Yes. A. Well, April 1st, she had $203.90.

Q. All right, that is April 1st she had $203.90, is that right? A. That is right.

Q. Tell me how much she had at the end of 1933 in this account? A. In this joint account you are now speaking of?

Q. In this account, how much money did they have in that,—did this woman have in this bank? A. $2528.35.

Q. At the end of 1933? A. In this account, there is another account. Now, I can't tell you both of them.

Q. Pardon me. This account ended, did it? A. This account ended March 25, 1933.

Q. How much did it have then? A. $2528.35.

Q. All right. Now go into the end of 1933, in the new account which was the transfer from this account to Anna Schoeffler,—isn't that it? A. That is right.

Q. The $2,500 approximate balance you just gave was when the account was in the joint names, isn't that it?

The Court: You dropped something down here.

The Witness: Your Honor, I will pick it up.

The Court: The Court Crier will get it for you.

Q. The twenty-five hundred and some odd dollars balance that you speak of, that was the balance when the account of Richard and Anna Hauptmann was closed, isn't that it? A. That is true.

Q. You say that is true? A. When Richard and Anna Hauptmann closed the joint account the

balance was twenty-five twenty-eight thirty-five.

Q. Then it changed into Mrs. Hauptmann's maiden name, is that it? A. Right.

Q. That was in March, 1933? A. Right.

Q. Now, at the end of 1933 how much money did Mrs. Hauptmann have in the name of Anna Schoffler. A. $5,040.85.

Q. Five thousand—. A. Forty dollars and eighty-five cents.

Q. Now, in 1934 on the date of Mr. Hauptmann's arrest how much money did Mrs. Hauptmann have in that account, September 19th, 1934? A. $2578.

Q. Thank you. And since his arrest there has been this $1500 withdrawn that you talk about. A. And some other smaller amounts.

Q. All right. So that at the end of 1931 there were $77.26 and the day he was arrested he had $2578 in this account? A. Right.

By Mr. Reilly:

Q. Now your bank is like other banks—you receive United States Government circulars to watch out for money? A. We do.

Q. You received a circular concerning the Lindbergh money? A. We did.

Q. Now, I again direct your attention to Anna Schoeffler's account opened October 27, 1924. A. Yes, sir.

Q. She kept depositing there small amounts until the end of 1924 she had, did she not, $418 there, or rather—Let's see now, I want to get the amount right. She had at the end of 1924 $200. A. Right.

Q. Then she kept depositing small amounts during 1925 and at the end of 1925 she had a grand total of $1,000? A. That is right.

Q. Then in 1926 she deposited small amounts and at the end of 1926 she had a total of $2739.28. A. That is right.

Q. Right. And then during 1927 she deposited small amounts so that at the end of 1927—that is withdrawn. Does it appear that August the 22nd, 1927, Anna Hauptmann had in this account, from the deposits previously made from the time she opened it, $4,000? A. Yes, sir.

Q. That was a grand total with interest of $4,038.28? A. That is right.

Q. Correct? Then did she on the 4th of October, 1927, have you draw a check, your bank draw a check for $3750 which was paid to the Bank of Manhattan Company, the Glen Ridge First Mortgage Company, Inc.? A. If the endorsement says so, that is right.

Q. Look at it and tell me.

Mr. Wilentz: We will agree that she did if there is any question about it.

A. Yes.

Q. That mortgage was purchased of $3750 in 1927, is that correct? A. Correct, yes.

Mr. Wilentz: May we agree that that is not the mortgage that is referred to in the evidence.

Mr. Reilly: No, that is not the one.

Q. Then here balance dropped down to about $288.28? A. Right.

Q. And at the end of 19— rather, the 16th of January, 1928, she had $411.16 which she transferred over to the joint account? A. Joint account.

Q. Now, did you make up one of these for the joint account? Have you one there for the joint account? Was this the same? A. Yes.

Q. Now, the joint account began at $411.16, the 16th of January, 1928, and with deposits, was there a deposit of $860 on January 16th, 1928? A. 16th of January, yes; $860.

Q. And that was prior to March 1st, 1932, wasn't it? A. Surely, yes.

Q. Yes. Now, do you see, coming down to the small deposits, do you see again the latter part of 1928 a deposit of $720? A. September 17th, 1928, $720.

Q. And that was prior to March 1st, 1932, wasn't it? A. It certainly was.

Q. On November 9th, 1929, do you see a deposit of $360.50? A. November 9th, 1929, $360.50.

Q. That was before March 1st, 1932. Will you look at the withdrawals and do you see a withdrawal on November 1st, 1929, of $2800? A. November 1st, 1929, $2800.

Q. And that was before March 1st, 1932? A. Yes.

Mr. Wilentz: How much was it?

Mr. Reilly: $2800.

Q. Coming down in 1930, do you see a deposit of $100, $300, of $296? A. Yes.

Q. All prior to 1932? A. All prior to 1932.

Q. And withdrawals of $500, $450 and other large amounts? A. That is what the account shows.

Q. Now we go into 1932, and there is a deposit all during 1932? A. According to the ledger card.

Q. Yes. And the first large deposit of 1932

was in October, October 25th, right? 8-17-35. A. August.

Q. August? A. 8-17-35.

Q. Yes. But she had drawn August 3rd $837? A. That is right.

Q. So you don't know whether she put part of that back, do you? A. No, no.

Q. And on the 12th she drew 350, of September, 1932? A. September? Yes, 350, September 12th.

Q. And on the 19th she deposited 250? Down at the bottom. A. Yes, 250 deposited on the 19th.

Q. And you don't know whether that 250 was part of the 350 she drew before? A. I wouldn't be able to tell that.

Q. No. A. I wouldn't be able to tell that.

Q. And then during 1932 her deposits only ran in amounts of 150, 147, is that correct? A. Yes.

Q. And since March, 1932, March 1st, or April, or rather, let's make it May 12th, I think it is, 1932, or '33—is that the date of the ransom, May—

Mr. Wilentz: April 2nd, 1932.

Mr. Reilly: April 2nd, 1932?

Mr. Wilentz: Yes.

Q. Since April 2nd, 1932, it was never called to your attention as a banker that the Hauptmann's were depositing in their account any Lindy ransom money, was it? A. It was not.

Mr. Wilentz: Is that all, Ed?

Mr. Reilly: Yes.

Re-Direct Examination by Mr. Wilentz:

Q. Your account, as I understand it, from April 2nd, 1932, to the date of Mr. Hauptmann's arrest increased over $2,000? A. That is right.

Q. And so far as you know neither Mr. Hauptmann nor Mrs. Hauptmann were occupied at any gainful occupation during 1933?

Mr. Reilly: I object to it.

Q. Don't answer the question—during the years of 1933 or 1934?

The Court: Well, does the witness know anything about it?

Mr. Wilentz: I don't know.

Q. Do you know whether or not either one of them were working a single day during any of those years? A. We wouldn't be able to tell it.

Q. Well, you don't know. All right, that is all.

The Court: Now, I think we ought to take an adjournment until Monday morning at ten o'clock. Let the people remain standing and let the jury retire.

(At 5:01 p. m. the jury retired.)

The Court: The prisoner is remanded to the custody of the Sheriff.

The Court will take a recess until Monday morning at ten o'clock.

(Whereupon at 5:04 o'clock p. m., the Court took a recess until Monday morning, January 21st, 1935, at ten o'clock.)

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., January 21, 1935.

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.

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

Mr. Wilentz: Agent Frank, will you please be sworn.

WILLIAM E. FRANK, sworn as a witness in behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Frank, you are connected with the United States Government and particularly with the Treasury Department of that Government, are you not? A. Yes, sir.

Q. And for how many years have you been so connected? A. I have been twelve years in the

Treasury Department, eight years in the Intelligence Unit of that Department.

Q. Now, have you made a compilation of the brokerage and bank accounts of Bruno Richard Hauptmann— and limiting yourself particularly to the accounts in evidence as exhibits, State's Exhibit S-205? A. Yes, sir; I have.

Q. Will you please tell us from that compilation how much moneys there were to the credit of Bruno Richard Hauptmann, the defendant, and/or his wife Anna Hauptmann, whether it be in her name, Anna Hauptmann, or in her maiden name— how much moneys there were to her credit and to his credit or to the credit of both on April 2nd, 1932? A. May I refer to my papers?

Q. Yes, surely. I want you to have them so you can help counsel for the defense and myself, both. A. (Referring to papers.) On April 2nd, 1932, the amount of cash that was in the bank, the Central Savings Bank, was $203.90.

Q. Now, $203.90— does that represent all the cash moneys to the credit of the Hauptmanns, either or both, in the banks as shown by the accounts in evidence under Exhibit S-205? A. Yes, sir; that is the total.

Q. Now, in addition to those moneys, were there stocks in the brokerage account to the credit of either or both of the Hauptmanns?

Mr. Reilly: May that be answered yes or no?

Mr. Wilentz: Yes, surely.

A. Yes.

Q. Now will you tell us what stocks there were? A. There were—

Mr. Pope: One moment. If your Honor please, we object to this testimony upon the ground that it is not a part of the res gestae, not material to this case, cannot in any way point to the guilt of this defendant, even if it is admitted and if it is true. I think it is irrelevant and immaterial.

The Court: What is the question?

Q. (Question repeated as follows: "Will you tell us what stocks there were?")

The Court: What is the preceding question?

Mr. Wilentz: I will reframe the question so that it includes the other one.

The Court: Yes.

Q. You have given us the amount of money to the credit of the Hauptmanns in the banks on April 2nd. Now, will you give us the amount of stocks to their credit in the brokerage accounts as shown by Exhibit S-205, which is already in evidence? It is just a compilation.

The Court: That is objected to?

Mr. Pope: That is objected to, yes, sir; for the reasons already indicated.

Mr. Wilentz: We have already answered the argument.

The Court: The objection is overruled.

Q. Answer the question, sir.

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.

A. There were fifty shares of Warner Brothers Pictures stock that cost $987.50.

By Mr. Wilentz:

Q. What was the market value on April 2nd, 1932?

Mr. Pope: We object to that as immaterial.

Mr. Wilentz: We want to show the value.

The Court: What stock was that, did you say?

The Witness: Fifty shares Warner Brothers Pictures.

Mr. Pope: Its market value does not make any difference unless it was sold or turned into cash.

The Court: Does it appear that that stock was held in the bank as collateral or something of that kind?

Mr. Wilentz: No, if your Honor please, it was stock in their account and we want to show the market value as of that date to show their worth.

The Court: Stock of the Hauptmanns?

Mr. Wilentz: That is right.

The Court: Held by bank?

Mr. Wilentz: No; held by the brokerage company. Held by them with the brokerage house, and we are attempting to show now only the cost to the Hauptmanns but as of the date that this ransom money was collected, we want to show the value of that stock that day in order to show their worth then; and then we proceed from there to show their worth thereafter.

The Court: The question is what was the market value of that stock?

Mr. Pope: We further object to it because this witness is not qualified to testify as to the market value of stock.

Mr. Wilentz: I will qualify him if that is the objection.

I understood that we agreed that in order to do away with the calling of brokers and bankers, that we would have one man make a compilation, and for that reason I asked counsel to withdraw that objection, because I understood that was a part of our agreement, because we had fifteen brokers here.

Mr. Pope: That is not the ground of the objection, sir. The ground of the objection is that this is incompetent, irrelevant and immaterial; the mere fact that they had this stock in the brokerage account or something else doesn't make any difference any more than the furniture in their house, piano in their house, those things, what their values were—

The Court: I understand—

Mr. Wilentz: As I understand, there is no point made of his qualifications as to the market value?

Mr. Reilly: Yes, we agree to that.

Mr. Wilentz: The agreement as to his ability to tell the market value, I understand, is withdrawn.

Mr. Pope: If he knows the market value.

The Court: Yes.

Q. Do you know the market value? A. Yes, sir; I have verified that.

Q. All right, what is the market value as of that date?

Mr. Pope: Has it been admitted?

The Court: Yes.

Mr. Pope: May we have an exception?

The Court: Yes.

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

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

Q. Tell us the market value, sir? A. $100, assigned for $2 a share that date.

Q. So that on April 2, 1932, the total cash and stock assets of the Hauptmanns as shown by Exhibit S-205 was $203.90 in cash and $100—

Mr. Pope: Now—

Q. —in stocks? A. Yes.

Mr. Pope: We object to that question, because that isn't what the witness says; what the witness said was that on that day he had 550 shares of Warner Brothers, which cost $987.50, but its market value was $100.

Mr. Wilentz: All right, I will reframe the question.

Q. So that on April the 2nd, 1932, the assets of the Hauptmanns so far as the brokerage and bank accounts shown by exhibit, State's Exhibit 205, was $203.90 in cash in banks and fifty shares of Warner Brothers, having a market value of $100, is that right? A. Yes, sir.

Mr. Pope: That is what we object to.

Mr. Wilentz: Well, he has answered it.

The Court: But you don't object to the qualification of the witness to speak about market values.

Mr. Pope: No.

The Court: And the other aspect of your objection is overruled.

Mr. Pope: We suggest that the question is very leading, that this witness is an expert accountant and he should be asked what the value of the stock was.

The Court: Well, that is the first time I have heard any suggestion that it was leading. My thought hasn't been directed as to that. Do you press that?

Mr. Pope: I do.

The Court: Well then—

Mr. Wilentz: He has already answered it, if your Honor please.

The Court: What was his answer?

Mr. Wilentz: His answer is Yes.

The Court: I will allow it to stand.

Q. Will you tell us now, please, Mr. Frank, how much cash, limiting yourself only to cash, was placed into the brokerage accounts by the Hauptmanns, in the accounts shown by Exhibit S-205, from April the 2nd, 1932, until September the 19th, 1934, the date of Hauptmann's arrest? A. The total cash deposits in all the brokerage accounts in the name of the defendant and his wife from April 2nd, 1932, to September 19th, 1934, was $16,942.75.

Q. Now, will you give us all the cash deposits in

the banks during the same period in the names of the defendant and his wife, whether it be in her maiden name or otherwise, as shown by the exhibits S-205. A. The total amount of cash deposits in the bank accounts in evidence was $9,073.25.

The Court: Now I would like to get those figures.

Mr. Wilentz: Yes, sir.

The Court: Won't the Reporter repeat the last two answers.

(The last two answers were read by the Reporter.)

The Court: That was a total of cash deposits?

Mr. Wilentz: In the banks, first of the cash in the brokerage accounts, and the second represents cash in the bank accounts.

The Court: Yes.

By Mr. Wilentz:

Q. Now, Mr. Frank, I take it that there were some withdrawals from those accounts as shown by the exhibit? A. Yes, sir.

Q. Could you trace any of those withdrawals? I mean from the bank to the brokerage, or from the brokerage to the bank account? A. Well, the figures that I have given are the net figures. The transfers have already been eliminated from these totals.

Q. So that am I to understand that there were

more moneys deposited than the figures you have given—

Mr. Pope: Now, we object to what the Attorney General is to understand. We suggest that the witness be allowed to testify.

Mr. Wilentz: I think counsel is probably right and I wouldn't want to offend him, if your Honor please.

By Mr. Wilentz:

Q. Tell us what you mean by exclusive of transfers? A. There were other deposits in the accounts during that time. They were check deposits or they were transfers from one account to the other. I have eliminated that and merely totaled the cash deposits that were in the accounts exclusive of any transfers between the different accounts.

Q. Are we to understand that certain deposits in the account were transferred and that you have eliminated those? A. Yes, sir.

Q. And that these amounts are exclusive of those transfers? A. Yes, sir.

Q. There were, however, were there not, some cash withdrawals that you could not follow or did not follow, weren't there? A. Yes, sir; the cash was withdrawn and I was unable to trace the disposition of it.

Q. I see. Have you inspected the brokerage accounts of the defendant and his wife? A. Yes, sir; I have.

Q. Can you tell us whether or not there was a profit or loss in the account up to April 2nd, 1932?

Mr. Pope: Which account, whose account?

Mr. Wilentz: In all the accounts, those in evidence, S-205. Answer the question, please.

Mr. Pope: Which account?

The Witness: Carleton & Mott. From the time that account opened until it closed, there was a loss in that account.

By Mr. Wilentz:

Q. How much?

Mr. Pope: Which account?

The Witness: Carleton & Mott.

Q. Will you give us the loss or profit of the Hauptmann brokerage accounts and then you can go back to each individual one, the profit or loss of the Hauptmann brokerage accounts, whether in his name or in his wife's name up to April 2nd, 1932?

The Court: This question relates to the profits or loss before April 2nd?

Mr. Wilentz: That is right.

The Court: 1932?

Mr. Wilentz: Yes, sir.

Q. Will you please give us the answer? A. Yes, sir. The loss in that account was $3,403.66.

Q. Now, will you give us the profit or loss of brokerage accounts of the Hauptmanns from April 2nd, 1932, to September 19th, 1934?

Mr. Pope: What was that figure?

The Reporter: $3,403.66.

The Court: That is before—

Mr. Wilentz: April 2nd, 1932.

The Court: And the next question relates to a profit or loss subsequent to April 2nd, 1932, and up to September, 1934?

Mr. Wilentz: That is right, sir.

Q. Will you give us that figure? A. There was a loss of $5,728.63.

Q. And so that the total stock market operations so far as the exhibits are concerned total a loss of how much? A. $9,132.29.

Q. Now, will you take your figures, exclude any assets at all, any moneys or any stock brokerage accounts, or anything else that was in the possession of these defendants on April 2nd, 1932, direct your attention exclusively to such moneys and stocks as came into possession of the Hauptmanns as shown by Exhibit S-205, that is to say, those assets which came into their possession after the 2nd of April, 1932, and will you total those assets, adding to those assets that you have here given, or the moneys paid in, rather, $14,600— is that the amount found in his garage? I don't remember the total. Take $14,600 by way of illustration.

Mr. Pope: We think the witness had better give us his own figures.

Mr. Wilentz: Well, it is in evidence.

Mr. Pope: Well, then we can find out what it is.

Mr. Wilentz: How much is it?

Mr. Large: $14,600.

Q. $14,600— Assuming that this defendant had $120 in gold in his home on September 19th, 1934, will you add that figure— A. Yes, sir.

Q. And a mortgage for which cash was paid in the sum of $3,750, which is in evidence— Now, will you please take those three figures, $14,600, which is in evidence, $120 in gold, which is in evidence, $3,750 mortgage, which is in evidence, all of which you assume for the purpose of your calculation was shown to have come into his possession after April 2nd, 1932— add that to the figures which you have given and tell us how much money it shows.

Mr. Pope: If your Honor please, we think that is a hypothetical question based upon facts which are not in evidence. I don't see how this witness is going to determine that.

The Court: Well, I suppose that—

Mr. Wilentz: I don't want to interrupt your Honor's thought, but my recollection is that the only items referred to are items in evidence.

The Court: That is my recollection. There was some talk here about a certain amount of gold, and I assume the Attorney General's figures in respect to that are correct.

Mr. Pope: I don't refer to those three items that he mentioned.

The Court: What items do you refer to?

Mr. Pope: The rest of his question is based upon a hypothetical question not in evidence. The Reporter can read it to you.

The Court: Well, what part of it is not in evidence?

Mr. Pope: The hypothetical portion. If the Reporter will read it to you—

Mr. Wilentz: I take it that counsel knows just the part he refers to, and if he wants to direct the Court's attention to it, I think he might do so.

The Court: Well, it will do no harm to have the question read.

Mr. Wilentz: All right.

The Court: Let it be read.

Q. (Repeated as follows: "Now will you take your figures, exclude any assets at all, any moneys or any stock brokerage accounts or anything else that was in the possession of these defendants on April the 2nd, 1932, direct your attention exclusively to such moneys and stocks as came into possession of the Hauptmanns as shown by Exhibit S-205, that is to say, those assets which came into their possession after April 2nd, 1932, and will you total those assets, adding to those assets that you have here given or the moneys paid in, rather, $14,600, is that the amount found in his garage"— and so on, and then "$14,600, assuming that this de-

The Witness: The total is $44,486.

Mr. Pope: How do you reach that total?

Mr. Wilentz: Tell us, please, how you reach that figure.

The Witness: The amount deposited in the brokerage accounts were $16,942.75, the total in the bank accounts was $9,073.25. Adding to that the three figures $14,600, $3,750 and $120 brings a total of $44,486.

By Mr. Wilentz:

Q. That is exclusive of any loans made by this defendant, if he made any cash loans, is it not? A. Yes, sir.

The Court: I think perhaps it may not be important and yet it may be important for me to have those figures.

Mr. Wilentz: Of course, if your Honor please.

The Court: Will the Stenographer be good enough to read that answer for me?

(The Reporter read the question and answer as follows: "Q. Tell us, please, how you reach that figure? A. The amount deposited in the broker accounts was $16,942.75, the total in the bank accounts was $9,073.25, adding to that the three figures $14,600, $3,750 and $120, brings a total of $44,486.")

Q. Mr. Frank, have you had an opportunity to

fendant had $120 in gold in his home on September 19th, 1934, will you add that figure, and the mortgage for which cash was paid, in the sum of $3,750, which is in evidence. Now, will you take those three figures, $14,600, which is in evidence, $120 in gold, which is in evidence, $3,750 mortgage, which is in evidence, all of which you assume for the purpose of your calculation was shown to have come into his possession after April 2nd, 1932, add that to the figures which you have given, and tell us how much money it shows?")

The Court: Now, what is it that you object to?

Mr. Pope: If the question is confined to the $14,600 and gold $120, mortgage $3,750, and the figures that are shown by State's Exhibit S-205, the question would not be objectionable, but the rest of it—

Mr. Wilentz: Well, we confine ourselves to that.

Mr. Pope: Anything outside of those items is objectionable.

Mr. Wilentz: We confine ourselves just to that.

The Court: Very well, that will be done.

By Mr. Wilentz:

Q. Confining yourself to the $14,600, the $120, $3,750, and the Exhibit S-205, show us what the total of those figures is?

total the amount of stock purchases since April, 1932? A. I could give the figures for each account, but I haven't totaled the three.

Q. Well, all right; let's have them.

The Court: The total of stock purchases subsequent to April 2nd, 1932?

Mr. Wilentz: That is right, sir.

A. I will have to do it by each separate account.

Q. All right, let's have them; name them. A. I couldn't even do it by account, I would have to do it by year.

Q. Well, let's have it by year. A. In 1929, the cost of stock purchased was $1,196; 1930, it was $6,913.13.

Mr. Pope: Six thousand— how much?

Mr. Wilentz: $6,913.13.

A. (Continued.) May I correct that? That was the cost of stocks sold in that year, there were other purchases which were carried forward into the subsequent year, which I carry in my opening inventory for the next year.

Q. Well, all right, then give us the next one. Will you please answer the question: What was the next year? A. 1931, the cost of stock sold in that year was $2,836.

Q. How about 1932? A. 1932 the cost of stock sold was $4,905.25.

Q. 1933? A. 1933, there were separate accounts running during the year; I would have to total it by account.

Q. Give us the account. What account are you referring to now? A. The first one I have is the

Anna Schoeffler account in Steiner-Rouse & Company.

Q. What accounts were you referring to just before, Steiner-Rouse or some other account? A. I referred to Carleton & Mott and Steiner-Rouse, both.

Q. I see. All right. Now, 1933. A. The total cost of stock sold in that year in the Anna Schoeffler account at Steiner-Rouse is $256,442.15.

Q. Two hundred and fifty-six thousand and what? A. Four hundred and forty-two, fifteen.

Q. Was there any other account that year? A. Yes, sir. There was a small commodity account, total purchase in that were— I haven't got the total of that figure.

Q. All right. Will you give us the stock transactions for 1934? A. $7,905 in the Richard Hauptmann account with E. A. Pierce & Company and $3,077.50 in the Steiner-Rouse account in the name of Richard Hauptmann.

Q. Now, the stock transactions in 1932, totaling $256,442.15— in whose name— 1933, in whose name was that account? A. Anna Schoeffler.

Q. That is Mrs. Hauptmann's maiden name, if you know? A. Yes, sir; it is.

Q. Now, these accounts that you have referred to from the very beginning of your testimony until this moment, are these accounts in the name or names of anybody else except Hauptmann, the defendant; his wife, Anna Hauptmann; or his wife Anna Schoeffler? A. May I have that question read?

Q. Are they in any names except those names I have just given you? A. No, sir.

Q. The amounts you have just given represent the cost of stocks sold? A. Yes, sir.

Q. Do you mean by that that that was the amount paid for them when they were purchased? A. Yes, sir; that is correct.

Mr. Wilentz: That is all, sir. Take the witness.

Cross-Examination by Mr. Reilly:

Q. Have you gone over the entire Exhibit Number 205? A. Yes, sir; I have.

Q. You are a Government expert on figures? A. I have worked at it for eight years.

Q. And you are familiar with deals in Wall Street? A. Yes, sir.

Q. Buying and selling of stock? A. Yes, sir, I am.

Q. Please turn to your records and find for me the very first evidence of a bank account from Mrs. Hauptmann when she was Anna Schoeffler? A. On October 27th, 1924—

Q. Now, wait until we get that. What bank? A. The Central Savings Bank, Account No. 4180.

Q. We will have to go along a little slowly with you until we find these. Yes; now we will go along together. This is Anna Schoeffler and the bank account is in the Central Savings Bank, City of New York. Right? A. Yes, sir.

Q. And that account opened 10/27/24. Right? A. That is correct; yes, sir.

Q. That was about eight years before the Lindbergh baby was kidnapped, '32. Right? A. Yes, sir.

Q. Yes. Now, how much did Anna Schoeffler deposit in her account for 1924? A. $200.

Q. And how much did she deposit for 1925? A. $1,126.38.

Q. And how much did she deposit for 1926? A. $1,865.

Q. These are all additional amounts? A. Yes, sir. That is the total of deposits in each separate year.

Q. In 1927? A. $2,186.59.

Q. And in 1928 the account— A. There is another account there also in 1927.

Q. 1927? What account was that? A. Well, you just want the total of that account there.

Q. Just tell me about this account. A. The total in that account was $2,186.59.

Q. So from the time she opened the account in 1934, until she closed it, the 16th of January, 1928, is that correct, when she closed it? A. Yes, sir; that is correct.

Q. How much had she deposited in that account? A. I haven't the total of those separate years.

Q. Will you please total it, I want to know just what she deposited for all those years? A. $5,377.97.

Q. And that was all before the date of the kidnapping of the Lindbergh baby, right? A. Yes, sir.

Q. Now, do you notice that she withdrew $3,750, April— October 4th, 1927? A. Yes, sir.

Q. Now, that corresponds in amounts to the same amount that you find was withdrawn for the purpose of a mortgage in 1932 or '3? A. No, sir; there was no amount drawn out before the bank account in 1932 or 1933, in that amount.

Q. Well, was there a two thousand— we will get to that later on. But there was $3,750 drawn out in October, 1927, correct? A. Yes.

Q. When the account was closed of Anna Schoeffler, January 16th, 1928, it left a balance of $411.16? A. Yes, sir.

Q. That passed into a joint account of Anna and Richard Hauptmann, joint account, correct? A. Yes.

Q. In the same bank? A. Yes, No. 25454.

Q. No. 25454, and that account ran to May 1st, 1929, did it not? A. No, sir, it ran until March, 1933, March 13th, I believe it is, 1933.

Q. March 25th, 1933, is right. A. Yes.

Q. In 1928, the first year that this joint account was opened in the name of Anna and Richard in the same bank, is that correct? A. Yes, sir.

Q. How much was deposited by them that year? Figure it up, please. A. There was deposited $2,-145.50 plus the balances from the previous account.

Q. Well, now, taking the transfer of $411.16 and add it to their deposits for the year 1928, how much went into that account, the joint account, four years before the Lindbergh baby was kidnapped? A. $3,-338.66.

Q. Now, what were the deposits in that account for 1929? A. $1,598.35.

Q. And in 1930? A. $1,417.50.

Q. And in 1931? A. $619.25.

Q. And in 1932? A. $3,146.52.

Q. And in 1933? A. In 1933 up until March—

Q. March the 25th. A. —when it closed there was $2,710.

Q. Now, you will notice also, will you not that there was withdrawn from that account— That question is withdrawn. I will go back a little. You will notice a deposit, will you, of January 16th, 1928, of $860? A. Yes, sir.

Q. And you will notice a deposit of July 16th, 1928, $242. A. Yes, sir.

Q. And you will notice September the 17th a deposit of $720. A. Yes, sir.

Q. That was all before the Lindbergh baby was kidnapped, wasn't it? A. Yes, sir.

Q. And in 1929 you will find a withdrawal of $2,800? A. Yes, sir.

Q. On the 1st day of November, 1929? A. Yes, sir.

Q. Correct. And in 1930 there were two withdrawals, June 14th and June 25th, one of $500 and one of $950? A. Yes, sir; that is correct.

Q. And that was at least two years before the kidnaping: correct? A. Yes, sir.

Q. And then you will find a withdrawal of $640 March 9th, 1931, won't you? A. Yes, sir.

Q. And then you will find deposits on the other side, in between different dates: is that correct? A. (No answer.)

Q. 5/4/31, 7/4— A. There were two deposits in that year subsequent to that withdrawal, one of $107.25, one of $215.50, making a total for the year of $619.25.

Q. And you will find a withdrawal on the 3rd of July, 1931, of $450? A. Yes, sir.

Q. But you will find on the same day before the withdrawal a deposit of $215.50, won't you? A. Yes, sir.

Q. In 1932, in May, you will find a withdrawal of $430: is that right? A. In 1932, in May, $430.

Q. Withdrawal? A. Yes, sir.

Q. On the 9th? A. Yes, sir.

Q. And you find a deposit— A. But that date is subsequent to the kidnaping.

Q. Yes. But you also find after the withdrawal of $430 on the 9th of the month a deposit on the 16th of $200: right? A. Yes, sir.

Q. And a deposit on the 23rd of 116? A. Yes, sir.

Q. Now you will find a withdrawal on the 3rd of August, 1932, of 837? A. Yes, sir.

Q. But on the 25th of the same month you will find a re-deposit or a deposit of $817.35 A. No, that is subsequent to the deposit.

Q. Yes, subsequent—first was the withdrawal of 837? A. Yes, sir.

Q. And then you will find the withdrawal is 837, is that right? A. Yes, sir.

Q. And deposit, twenty-two days after that, is $817— A. 35.

Q. Yes. A. But that is not a re-deposit of the previous amount.

Q. You don't know where the cash went? A. Yes, sir, I do.

Q. Where did it go? A. I don't know where the cash went to.

Q. Where did it go? A. No, I don't know where the cash went, the 837, but I do know where the 817.35—

Q. Where did it come from? A. It came from the brokerage account.

Q. A sale or a transaction? A. No, sir, he sold stock there and withdrew the cash and put it in that deposit.

Q. So that you have a double item, you have one of a sale in a brokerage account and the cash going in the same account? A. Yes, sir.

Q. The same amount goes into his bank account? A. Yes, sir, that is one of the items I eliminated in my computation.

Q. Now, you have a withdrawal of $350 September 12th, 1932? A. Yes, sir.

Q. And you have a deposit on the 19th of $250? A. Yes, sir.

Q. You have a withdrawal on December 7th, 1932, of $800. A. Yes, sir.

Q. You have a deposit on the following month January 10th, of $1,400. A. Yes, sir.

Q. You have a withdrawal in February of $500. A. Yes, sir.

Q. You have a deposit in March of $1,250. A. That is correct.

Q. And at the end of his account, March 25th, 1933, he had $2,526.35 balance. A. That is correct.

Q. But tell me, please, how much was deposited in all of the years the joint account existed, from 1928 down until it was closed. A. I will have to

total that. Total deposits in that joint account were $12,830.28.

Q. And that account started in 1928? A. Yes, sir. That figure includes transfers from one account to the other.

Q. One to the other. A. But not exclusive.

Q. It shows that they did $12,830.28 worth of cash transactions with the bank during that period in deposits? A. Not cash, cash and checks.

Q. All right. Without being technical they deposited in their account $12,830.28, whether it was cash, check, gold or whatever it was. A. Yes, sir, that is right.

Q. Now, the account went back to Anna Hauptmann, didn't it, in 19— Did it go back or where did it go in 1933, to Anna Schoeffler again? A. Yes, sir. The balance of twenty-five twenty-eight thirty-five was transferred to a new account, number one thousand—

Q. One hundred ten thousand— A. 110,071 in the name of Anna Schoeffler at the same bank, the Central Savings Bank.

Q. Will you pardon me a minute while I clip these together and keep them so they don't get mixed up? Now, we will go into the $110,071. A. Yes, sir.

Q. Now, that was transferred to Anna Schoeffler in the same bank. Correct? A. Yes, sir.

Q. And they took the balance of the joint account, Richard and Anna, and they transferred it on the ledger March 25th, 1933, with a balance of $2,528.35: is that correct? A. Yes, sir.

Q. Now, how much did she deposit for the balance of 1933? A. $2,512.50.

Q. Yes. Now, in comparison to that year there were in other years deposited, or there was deposited in the joint account amounts larger than that, were there not? Approximately, without— A. I will have to go back.

Q. All right; go back, please. A. (Witness examines papers.)

Q. Well, I will ask you this question: what was the deposit, if you can refer to it quickly, the deposit in 1925? A. $1,126.

Q. What was it in '26, please, if you can refer to it? A. $1,865.

Q. Those two figures were the fifteen—$1,800 approximately? A. Yes, sir.

Q. And '33 was what, $2,200? A. $2,512 and some cents.

Q. Within $700 of the years before the kidnaping, those two years that I have indicated? A. Yes, that is correct.

Q. This account had how much deposited in it in 1934? A. It was only one deposit of $111.50.

Q. At the time of Bruno Hauptmann's arrest in September, there was a balance of $2,570, is that correct? A. That is right, yes, sir.

Q. That corresponded, did it not, within $50 of the transfer from the joint account of March 25th, 1933, which was $2,528.35? A. Yes, sir. There was a $50 difference.

Q. $50 more, is that it? A. Yes, sir.

Q. Have you any other bank accounts there, have you the Mount Vernon bank account? A. Yes, sir.

Q. Will you get that please. In whose name was that? A. Richard Hauptmann, Mount Vernon Trust Company.

Q. The American National Bank & Trust Company of Mount Vernon, New York, is that correct? A. That was the prior name, at this time it was the Mount Vernon Trust Company.

Q. The Mount Vernon Trust Company, is that right? A. Yes, sir.

Q. That account of Richard Hauptmann was opened when? A. June 1st, 1932.

Q. And that was after the kidnaping? A. Yes, sir.

Q. Two months, three months? A. Yes, sir, three months after the kidnaping.

Q. April, May, June—three months after the kidnaping? A. Yes, sir.

Q. And two months after the ransom money was paid? A. Yes, sir.

Q. And he opened the account with a large sum of $52, didn't he? A. The sum of $52, yes, sir.

Q. And he made deposits of 105 and 100 and 75 and 12 and 84 and 40 and 259 and 200 and 162 and 138 and 139 and 186 and 230 and fifty-five dollars? A. Yes, sir.

Q. And he deposited between June, 1932, and February, 1933—is that correct? A. Yes, sir.

Q. How much? A. I have it by year, I would have to add the two together.

Q. Add the two, please. A. $1,837.75.

Q. And he drew out at different periods, like July, 1932, he drew out 250? A. Yes, sir.

Q. And in October he drew out 370? A. Yes, sir.

Q. And in November or December, that is. A. December 13th.

Q. He drew out 500? A. Yes, sir.

Q. And in February, 1933, he drew out 500? A. February 25th, 1933, 500.

Q. And when the bank folded up, or suspended payments, how much did he have there? A. $198.

Q. And 33 cents? A. Yes, sir.

Q. And there have been certain payments paid off on that difference? A. Yes. There was a cash payment of $109 and stock for the balance, $89.

Q. So that we have on that account, after the payment of the ransom money a deposit of about $1,500? A. $1,837.75.

Q. But less than $2,000? A. Yes, sir.

Q. Right. Any other bank account? A. What year?

Q. Any year; any time. A. Yes, sir; there is the Manhattan Savings Institution.

Q. I am going to bother you just a minute for those figures. I want to mark it on here; the total deposit in Mt. Vernon. A. $1,837.75.

Q. Thank you very much. Now we will go to the next bank account. Have you got it? A. Yes, sir.

Q. That is the Manhattan Savings Institution? A. Yes, sir.

Q. Account 629322, and that is a savings bank, isn't it? A. Yes, sir.

Q. Now the 20th of October, 1934, about two and a half years after the ransom money was paid—is that correct? A. The date of the opening there is August 20th.

Q. August 20th? A. 1934.

Q. August 20th, 1934. That would be two years and some months after the ransom money was paid? A. Yes, sir.

Q. He opened a savings bank account with $130, didn't he? A. Yes, sir.

Q. And the 1st of the next month, September, he put in $40? A. Yes, sir.

Q. And on the 11th of the same month he put in $40? A. Yes, sir.

Q. And on the 17th of the same month he put in $40—$50? A. $50.

Q. And his total deposits were $260, weren't they? A. Yes, sir.

Q. Any other bank account? A. No, sir, that was all. That was in 1927.

Mr. Wilentz: What was in 1927?

The Witness: The account that counsel just referred to, the Bank of Manhattan.

Mr. Reilly: Yes, I am looking—there is an extra sheet here; I think that the General must have given us one full set and part of another.

Mr. Wilentz: There is a complete set over there.

Mr. Reilly: I have a full set.

Mr. Wilentz: I see.

Mr. Reilly: But I mean we constantly come across these others and I just want to check them.

Q. Was there an account in the Bank of Manhattan 7614, in the name of Richard Hauptmann? A. Yes, sir, it was in the Bronxboro Bank and that merged with the Bank of Manhattan.

Q. I am showing you a photostatic copy of sheet 7614 and ask you if you refer to that. A. Yes, sir, that is the account.

Q. That is another account. A. Yes, sir, that was in 1927.

Q. Richard Hauptmann then did have an account in the Bronxboro Bank, is that correct? A. Yes, sir, number 7614.

Q. Number 7614. A. Yes, sir.

Q. He had it in 1927? A. Yes, sir.

Q. Five years before the kidnaping. A. Yes, sir.

Q. Right? A. Yes, sir.

Q. And that account ran to January 16, 1928. A. Yes, sir.

Q. When he closed it with a balance of $782, right? A. Yes, sir.

Q. So that Anna and Richard both had money before the kidnaping, did they not? A. Yes, sir.

Q. And they were both doing a banking business. A. Yes, sir.

Q. They were depositors in banks? A. They were depositors in banks.

Q. Their deposits ran $1,800, $2,100, as high as maybe $2,800 a year. A. Yes, sir.

Q. Both before and after the kidnaping? A. After the kidnaping they were higher than that.

Q. How much higher? A. 1933 the total deposits in the bank accounts were $5,607.50.

Q. What were the withdrawals? A. $1,022.03.

Q. And what was the withdrawal the next year? A. 1934, $319.30.

Q. And what was the balance when it was closed? A. $2,500 and some odd.

Q. Within $50 of what it was when it was opened? A. Yes, sir.

Q. Yes. Now, are you all through with bank accounts? Is that the last bank? A. Well, are you?

Q. No. I am asking you. You went over the bank accounts. I mean are there any more bank accounts? I don't want to annoy you. I just want to get through with the bank accounts. A. That is all the accounts there are in evidence here.

Q. That is all you have examined; that is all that is in evidence? A. Yes, that is correct.

Q. Now, let's go down to Wall Street. Let me have, please, the very first evidence you have of Bruno Hauptmann or Anna Hauptmann dealing in stocks. A. On November 1st, 1929, Richard Hauptmann opened a stock trading account with Carleton, Mott & Company.

Q. Just a moment until I get that. Yes, Carleton-Mott. A. Yes, sir.

Q. That was opened when? A. November 1st, 1929.

Q. That was some time before the kidnaping? A. Yes, sir.

Q. I suppose you have seen these, haven't you? A. Yes, sir.

Q. Now will you indicate there so I can start correctly the first purchase and I will go right along with you. A. (Witness indicated as requested.)

Q. Now I am reading, am I, from a photostatic copy of the ledger? A. Yes, sir.

Q. Of Carleton, Mott & Company, which is in evidence here, and the ledger bears in the corner, page 42, is it, or D-2? A. I haven't—no, those are the initials of the man who checked the account.

Q. What initials are they? A. D.T.

Q. D.T. All right, start with— A. He was the bookkeeper there.

Q. Start with D.T. Now, did Bruno Hauptmann on November the 6th—these are not very clear—buy 100 Aluminum? A. 100 shares Club Aluminum for $520.

Q. And he also bought forty American— A. Super Power.

Q. Super Power. He paid $520 for his Club Aluminum, didn't he? A. Yes, sir.

Q. He paid $1,066 for his American Super Can. A. Super Power.

Q. Super Power. A. Yes, sir.

Q. And he bought forty Fords of Canada, right? A. Yes, sir.

Q. For $1,196. A. Yes, sir.

Q. And he gave a check, he paid for it by paying November 1st before the stock was paid $200. A. Yes, sir.

Q. Correct? A. Yes, sir.

Q. That is, I suppose he had to make an initial deposit with the house. A. Yes, sir. He opened the account by making that deposit and then he bought the stock.

Q. I see. But November 1st, five days before he bought any stock, and at least two and a half years

before the kidnaping of this baby— A. Yes, sir.

Q. —he was in Wall Street buying stock, correct? A. Yes, sir.

Q. And he deposited on November 1st, 1929, $3,000. A. Yes, sir.

Q. Of which $200 was cash and a check for $2,800. A. Yes, sir.

Q. The total amount of his purchase was $2,782, is that correct, that initial purchase? A. Yes, sir.

Q. And I noticed underneath it the word check for $220.50; was that a refund? A. That was a withdrawal by him from the account, and the check which is attached to the exhibit there was deposited in his bank account.

Q. Well, that was an overpayment, wasn't it? In other words, he had given them $3000 and his purchase was only $2,782, and he took the balance remaining in a check of theirs for $220.50. A. Yes, sir. He drew out the credit balance in his account on that date.

Q. So that his entire $3,000 was divided into a purchase of $2,782 worth of stock, and a returned check from the Mott concern of $278— A. $220.

Q. $220.50. A. Yes, sir.

Q. And that ended up the $3,000. A. Yes, sir.

Q. He took the check for $220.50 and deposited it in one of his accounts, did he not? A. Yes, sir.

Q. What account? A. Central Savings Bank.

Q. I suppose he deposited it on or about November 6th, 1929, when he received it? A. Yes, sir; the check shows the date.

Q. I notice an item below here and I would like to have you explain it to the jury. It says, "All these three stocks which he purchased, they have marked 'On Hand.'" Does that mean that they kept the stock there subject to his orders? A. Yes, sir; the stock was left in what is called the street name and is held by the broker in his office.

Q. So if Mr. Hauptmann wants to sell, the stock is available: is that correct? A. Yes, sir.

Q. But not pledged for any collateral loan? A. No, sir; the account was even at that time.

Q. We find him on December 16th, 1929, which also is prior to the kidnaping, selling his Ford of Canada, do we not? A. Yes, sir.

Q. For $1,192.40? A. Yes, sir.

Q. He had purchased it for $1,196? A. Yes, sir; he had a $3.60 profit.

Q. Then there was some interest December 28th, interest of four per cent, amounting to $1.60 and cash of $76: is that correct? A. No, sir; he bought another block of stock, 50 shares of Fox Film—

Q. On the 30th. I am talking about the 28th. A. He delivered that in cash to balance his account.

Q. All right now, let's go back again. On the 16th he sells his Ford of Canada? A. Yes, sir.

Q. For $1,192.40? A. Yes, sir.

Q. On the 28th he gets interest of $1.60, doesn't he? A. Yes, sir.

Q. And on the 28th he gets cash of $76? A. He put that in.

Q. He put that in or he took it out? A. No, he put it in the account.

Q. He put it in the account. Then he had $1,270, didn't he? A. Yes, sir.

Q. In this account which he did not disturb, apparently, because on the 30th— A. He bought.

Q. —he bought 50 Fox Film A at 254? A. That is—

Q. Evening up the purchase of $1,270? A. Yes, sir.

Q. That was a cross sale and a repurchase, so far as the amount went? A. He had a balance in the account of $1,270 which he used to purchase that stock? A. That is the idea.

Q. Then they had on hand for him his 100 Club

Aluminum, right? A. Yes, sir.

Q. His 40 American Can Super— A. Power.

Q. Power, and his 50 Fox Film Class A?

A. Yes, sir.

Q. And that was December 30th, 1929? A. Yes, sir.

Q. Two years and some months before the Lindbergh kidnaping? A. Yes, sir.

Q. Now, I refer you to the large sheet, that is also a copy, is it, of the ledger account of Mott? A. Yes, sir. They changed from one form of bookkeeping to another at that time.

Q. It is just the purpose to keep the exhibits in regular order that I refer to these. A. Yes.

Q. And that is headed at the top Number 32, initialled D.T. and Richard Hauptmann, with a big "B" at the top here. Now, if we refer to that, December 31st, 1929, we find that they have on hand for him previously purchased his one hundred Club, his forty American Super Power, his fifty Fox Films, right? A. Yes, sir.

Q. And on January the 6th, there is a check here for $40. A. Yes, sir.

Q. Now, does that indicate $40 that he put in the account? A. No, sir. That was a withdrawal by him from the account.

Q. I see. On the opposite side I see that the withdrawal indicates a dividend that he received for his forty American Super Power. A. Yes, sir.

Q. So that he got a dividend and he withdrew it? A. Yes, sir, $40 dividend.

Q. $40 dividend. Now, on January 16th, 1930, I notice something here about fifty Fox Film dividend. A. Scrip.

Q. Dividend scrip. That was an issue that they made to him? A. Yes.

Q. For which there was no purchase price? A. That is correct.

Q. In lieu of dividend, I take it? A. Yes, sir.

Q. Now we come down to January 31st, 1930, and we find the same stock listed and being held subject to his orders. A. Yes, sir.

Q. Then on February the 5th, 1930, at least two years and one month before the kidnaping, we find him buying twenty-five National Cash Register for $2,033.13, don't we? A. Yes, sir.

Q. And on February the 6th, the next day, we find him buying one hundred Fairbank Company preferred for $2,120, don't we? A. Yes, sir.

Q. And that was before the Lindbergh kidnaping. A. Yes, sir.

Q. And on the other side of the ledger we find that he sold on February the 3rd forty American Super Power for $1,112.40, correct? A. Yes, sir.

Q. And on the 5th he sells his Fox Film A, at thirty and a half, is it? A. Yes, sir.

Q. For fifteen fifteen fifty. A. Yes, sir.

Q. So that on the 28th, at the end of the month, we find that the broker is holding for him his Club Aluminum, his National Cash Register, his Fairbanks preferred, and that he has a balance on hand to his credit with the broker of $1,529.92? A. No, sir. He owed the broker that amount; that is a debit balance.

Q. He owed that amount, did he? A. Yes, sir.

Q. I see. A. It is a margin account.

Q. A margin account? A. Yes, sir.

Q. Well, look up at the top of the page and you will see cash only, won't you? A. Yes, sir. When the account was opened it was a cash account, but at that period it became a margin account because there was—

Q. Then he began to deal on margin, didn't he? A. Yes, sir.

Q. Then he didn't have much cash, did he? In other words, I can go into the market, if I have a

margin account: is that correct? A. Yes, sir.

Q. And if I have a ten point margin I only have to deposit $100 for every $1,000 worth of stock I buy? A. That is correct.

Q. And it will appear on their books, if I went in there today and bought ten thousand dollars' worth of stock it would appear on their books as though it were a $10,000 purchase, wouldn't it? A. Yes, sir.

Q. But I would only have to put up $1,000 in cash: is that right? A. That is right; yes, sir.

Q. So that everything a man buys on margin on the purchase side at the purchase price does not really indicate the amount of money he put up, does it? A. No, sir; it does not show his equity in the account.

Q. No. It shows what they purchased it for and his credit is his margin? A. Yes, sir.

Q. Now we come over to February 28th, 1930, and we find that they are still holding his Aluminum and his Fox Film dividend scrip and his 25 National Cash Register and his Fairbanks Company preferred, is that right? A. Yes, sir.

Q. And that he is indebted to them in the sum of $1,537.81? A. And 81 cents.

Q. Correct? A. Yes, sir.

Q. That is his statement at the end of March, 1930? A. 1930.

Q. Correct? A. Yes, sir.

Q. In April the account remains the same up to April 11th, is that right? A. Yes, sir.

Q. When he sells his Club Aluminum for $538.-50? A. Yes, sir.

Q. He had purchased it for $520? A. Yes, sir.

Q. He also receives a dividend on the National Cash Register stock of $18.75? A. Yes, sir.

Q. So that his balance to the firm is then reduced to $986.50? A. $986.50.

Q. We are still in 1930? A. Yes, sir.

Q. And he is still in the market, right? A. Yes, sir.

Q. In April, 1930, he buys 100—April 30th—100 Fairbanks Company Preferred for $986.50, does he not? A. I don't see that.

Q. Here. A. Yes.

Q. Now can you find it in yours? A. No, sir, that was previously, that was purchased on February 6th, 1930. That must be a balance figure there.

Q. No, on February 6th—strike out the "No", please, and I want the General to stand right here with me so we will get this right, together, please.

Mr. Wilentz: That is right.

Q. February 6th, you will notice one hundred Fairbanks of $21.20. A. Yes, sir.

Q. But you see down here April 30th, one hundred Fairbanks preferred for $986.50, a difference there of $1,300, it couldn't be the same item. A. No, sir, that is not a purchase at that point, that is the balance at that time on April 30th, it is a balance of $986.50.

Q. Oh, is it? All right. A. Yes, sir.

Q. All right. Then they have transferred, so we will have it correct, they have transferred his balance of $986.50 that he owes, you say they transferred the balance that he owed over into the account? A. No, sir. At the end of the month they merely list the stocks long and show the debit balance against it, that stock was purchased in February, but he still had it on hand at the end of April.

Q. And they give him a value of $986.50. A. No, that is the amount that he owes in connection with those three stocks or four stocks.

Q. Well, then, why isn't it on the debit side?

A. They balance the account with it. Here it is. Balance $986.50.

Q. No. I am way down here. A. Yes, but the dates are the same, April 30th and April 30th.

Q. No. It is poor bookkeeping, because they are up here, General, and I am down here.

Mr. Wilentz: Well, they are right together, only they have got you between them.

Mr. Reilly: They are right together, but they are not the same.

Mr. Wilentz: You are between them.

Q. Well, anyway, they had transferred over what he owes, and it is not a purchase. A. No, sir, that was not a purchase.

Q. All right. Well, now, we have a purchase, have we not, on May 1st, fifty Utah Power— A. Utility Power & Light, A.

Q. For how much? A. I would have to total the figures.

Mr. Wilentz: Here. This will help you, maybe.

The Witness: I can get the total in a second.

Mr. Wilentz: All right.

A. $2,220.

Q. Yes, that was on margin. A. Yes, sir.

Q. He didn't put up any cash for it? A. No, sir, there was no cash delivered into the account.

Q. No? A. At that time.

Q. No. And he owed them then at the end of

May, he owed them $3,171.56? A. That is right, debit balance of that amount.

Q. And they were holding for him then, the end of May, his National Cash Register, his Fairbanks Company preferred and his Utility Power & Light. A. Yes, sir.

Q. And against that on June 11th he sells his Utility Power & Light. A. He sold ten shares of the fifty shares.

Q. For $365.60, right? A. Yes, sir.

Q. He sells ten National Cash Register A for $555.60. A. What is the date of that?

Q. That appears to be June 11th, the same day that he sold the Utility Power. A. Yes, sir. He sold 10 shares of National Cash Register A on that date.

Q. And the 14th he deposits $500 cash with them for his account: correct? A. Yes, sir.

Q. And on June 25th deposits $1,000 cash with them? A. Yes, sir.

Q. Now, have you any record where he drew the $500 from? A. Yes, sir. It was a withdrawal from the Central Savings Bank.

Q. And the $1,000? A. $950 was a withdrawal from the Central Savings Bank.

Q. And this was almost two years before the kidnaping? A. Yes, sir; that is right.

Q. So that on June 26th, when they closed his account for the—let's turn to the next sheet and get the closing of June. June 30th— A. He had a debit balance of $1,275.36.

Q. And that was arrived at in this way, wasn't it: they had on hand his National Cash Register, his 100 Fairbanks Company preferred— A. No, sir; they had 50 of that. He sold 50 during the month.

Q. What month? A. During the month of—

No, excuse me; that is a mistake. That was sold later in the year.

Q. Yes. Now, June 30th, so we will understand each other, reading from the transcript of his record, No. 24, June 30th, 1930, at least one year and ten months before the kidnaping, his brokers had on hand for him 15 National Cash Register, 100 Fairbanks Company preferred, 40 Utility Power & Light A, 100 Indian Motorcycle; is that correct? A. Yes, sir. Q. And that Indian Motorcycle was purchased by him on June 30th, 1930? A. Yes, sir.

Q. And he paid $1,286.51 for it? A. No, sir, the purchase of that 100 Indian Motorcycle was $520.

Q. Well, I have it $1,286.51 (indicating).

Mr. Wilentz: That is the debit.

A. That is the debit balance at that time.

Mr. Wilentz: You see, they have got it across here (indicating).

Q. I am reading from a transcript. A. Yes, sir.

Q. Of their books. Now am I reading correctly when I read this: June 30th, 1930, to balance on 100 Indian Motorcycle 1,286.51? A. No, sir. That figure applies to all those stocks.

Q. All of them? A. Those stocks were long at that time, and that was what he owed in connection with them.

Q. On all of them? A. Yes, sir.

Q. Well, it would have been better bookkeeping to bracket them, wouldn't it?

Mr. Wilentz: It would have been more convenient, Mr. Reilly.

A. Yes, sir.

Q. Yes. Because you see, to one unaccustomed to Wall Street, as I am, there is nothing against 15 National Cash Register, is there? A. No, sir.

Q. And there is nothing against 100 Fairbanks? A. But the notation there "To balance on" applies to all the stocks listed below it.

Q. Now we understand it.

Mr. Reilly: May I show it to the jury, this particular point, Judge?

The Witness: Yes, sir.

The Court: Yes.

(Counsel for State and defense displayed Exhibits to the jury.)

Mr. Wilentz: May I say at this point, if your Honor please, that we have copies of all these papers sufficient to provide for the jury, but we feel at this time we will not confuse them with it, but we will eventually, if counsel has no objection, give them complete copies of all these accounts.

Mr. Reilly: May I suggest to your Honor and to the Attorney General that if any juror has difficulty in following me that he may ask for his copy?

The Court: Surely.

Mr. Wilentz: That is agreeable.

Mr. Reilly: I ask at this time that the Court give me five minutes recess. The air in here is terrible and I would like to take care of my throat.

The Court: We will now take a five-minute recess.

(Whereupon at 11:35 a.m., a short recess was taken.)

(At 11:40 a. m. the jury was polled and the trial was resumed as follows:)

WILLIAM E. FRANK resumed.

Cross-Examination by Mr. Reilly continued:

Q. I think we were at the end of June, 1930, weren't we? A. May I have another one of these packages?

Q. Certainly. Get anything you want.

Mr. Wilentz: Here is a set.

Q. July, 1930, I am going to ask you about. Have you got that? A. Yes, sir.

Q. I call your attention to the July, 1930, account one hundred Indian Motorcycle, 1,274.89. Is that the amount he owed on all his stock that month? A. Yes, sir.

Q. Now, I call your attention to September 30th, 1930. That is the small sheet, D-1, this one. A. Yes, sir.

Q. And I notice that he owed the house $1,287.87, is that correct? A. Yes, sir.

Q. Now, in October did he sell any stock for $9,062.66? A. No, sir, he sold a hundred Indian Motorcycle for $313.70. The $9,062.66 was a debit balance on that date.

Q. When did he sell that? A. October 16th, 1930.

Q. They must have changed their bookkeeping

again, did they, the form on this short sheet here? A. Yes, sir; they changed the system.

Q. Can you tell me the condition of his account January 1st, 1931? A. Yes, sir. On January 1st, 1931, he had on hand 50 shares of Fairbanks Company preferred, 42 shares of Utility Power & Light A, and he owed the broker $379.91.

Q. You haven't that sheet, have you? A. Well, I have my figures from the sheet.

Q. Continuing on there, January 2nd, 1931, the January account— A. Yes, sir.

Q. —what were his operations during that month? A. He sold a fraction one and forty-four hundredths of Utility Power & Light for $6.99; he sold 50 shares of Fairbanks Company preferred for $268 and he sold 43 Utility Power & Light A for $1,019.53.

Q. What was the condition of his account at the end of the month? A. There was a debit balance— credit balance of $913.73.

Q. They owed him? A. Yes, sir.

Q. And they still had some of his stock? A. No, sir, the stock was sold out at that time.

Q. Everything was sold out? A. Yes, sir, leaving only cash in the account.

Q. I see, and that was January 1st, 1931? A. January 31st, 1931.

Q. January 31st, 1931? A. Yes, sir, the end of the month.

Q. Now, we find him in February buying Warner Brothers Pictures, don't we? A. Yes, sir, 50 Warner Brothers Pictures.

Q. He paid $987.50 for it, didn't he? A. Yes, sir.

Q. Did you check an account of Pierce & Company? A. Yes, sir.

Q. And when was that? A. It opened—

Q. When did the account open? A. In January, 1934.

Q. And it was opened by the purchase of what stock? A. One hundred shares Motor Products.

Q. Have we a photostat of that?

Mr. Wilentz: Yes, sure. Here it is right here.

Mr. Reilly: Have we got that?

Mr. Pope: No, that isn't it. Let me see, maybe it is.

Mr. Wilentz: Here is the whole Pierce account.

Mr. Pope: Yes, that is it.

Mr. Reilly: I have it. Thank you, General.

Q. Now, he opened that account in January 1934? A. January 18th, 1934.

Q. And he opened it with a check from the Central Savings Bank? A. Yes, sir.

Q. For $2,500? A. For $2,500.

Q. Correct. And he made different purchases, didn't he? A. Yes, sir.

Q. He bought Motor Products, is that it? A. Yes, sir.

Q. And did he buy Bullard Company? A. One hundred shares of Bullard Company.

Q. And he bought National Distillers? A. One hundred shares National Distillers.

Q. What is the next one? A. One hundred shares Eitingon-Schild.

Q. What is that? A. That is a manufacturing company.

Q. Manufacturing company. And did he sell off some of those? A. Yes, sir. Sold Motor Products, Bullard Company and the National Distillers.

Q. And then he, when he was ready to close that account, owed this concern, did he not, about $1,757.65? A. That was his debit balance in the account on July 27th, 1934.

Q. That means he owed them that? A. Yes, sir.

Q. And Steiner-Rouse & Company paid off his $1,757.65 indebtedness to Pierce? A. Upon the receipt by them of the 100 shares Eitingon-Schild and the 100 shares National Distillers, they paid E. A. Pierce & Company the amount that he owed Pierce, which was $1,757.65.

Q. And they took over the 100 shares of Eitingon-Schild & Company and 100 shares of National Distillers? A. National Distillers—Yes, sir.

Q. And then the stock that they took over they held as security or in escrow for his account— A. For the $1,757.65 that they paid for him.

Q. And charged him $1,757.65? A. Yes, sir.

Q. So that as far as he was concerned at that time there was no cash transaction, was there? A. No, sir.

Q. This is the letter, a photostatic copy of a letter that accompanied the transaction, to him; is that correct? A. Yes, sir.

Q. And that is the check of Steiner-Rouse & Company, photostatic copy, certified check to Pierce & Company? A. Yes, sir.

Q. Taking it up? A. Yes, sir.

Q There is only one other brokerage company he dealt with, Steiner-Rouse? A. Yes, sir, Steiner-Rouse.

Q. Will you refer, please to the beginnings of any transactions with that concern by either Anna or Richard Hauptmann. What year? A. The ac-

count with Steiner-Rouse opened on August 8th, 1932.

Mr. Reilly: In my photostats which I showed to you and also showed to counsel, there doesn't appear to be any year as far as this column is concerned.

The Witness: No, sir, the brokerage sheet doesn't show that. I think it will appear at the beginning of the next sheet which shows 1933.

Mr. Reilly: May I suggest to your Honor and to the Attorney General that if the jury are to receive copies of these exhibits, which undoubtedly they will, there should be some way that he could indicate upon the Steiner-Rouse exhibit and photostats that it begins August 8th, 1932. Would it be permissible for the Attorney General to write 1932 on this photostat?

The Court: If that is the known fact.

Mr. Wilentz: That is the fact.

The Witness: That is the fact.

Mr. Reilly: That is the fact, so that they won't be confused when they look at August and there is no date.

The Court: Very well.

By Mr. Reilly:

Q. So as to keep a continuity of accounts in mind,

Mr. Witness, again I will ask you when did the account of Pierce—did it ever close? A. No, that is Carleton-Mott (referring to the account counsel had in his hand).

Q. That account was closed on May 25th, 1932? A. Yes, sir.

Q. 1932. And then he begins his operations with Steiner-Rouse & Company in August, 1932? A. August 8th, 1932.

Q. So we have him in the street again in 1932 buying in August— Did he buy any stock in August? A. No, sir, he did not.

Q. Well, now, what is this item of August 8th, if that is the date he opened his account with Steiner-Rouse? A. Yes, sir, he delivered into the account on that day one hundred shares of Warner Brothers Pictures, and five hundred shares Curtiss-Wright.

Q. Now, Curtiss-Wright is a new name to me. When was that purchased? A. That was purchased on April 29th, 1932, for $600.

Q. What account, what firm? A. Carleton-Mott.

Q. He delivered the stock to Steiner-Rouse & Company and opened an account that way, is that it? A. No, sir, on April 29th, 1932, he delivered in, no, on April 8th, 1932, he delivered in $600 cash into the Carleton-Mott account and used it for the purchase of one hundred shares Curtiss-Wright and four hundred more shares making a total of five hundred shares Curtiss-Wright; he then had that stock delivered to him and kept it until August 8th when he opened the account with Steiner-Rouse by delivering in that stock and also fifty shares of— one hundred shares of Warner Brothers Pictures.

Q. Did he deliver any cash to them at that time? A. In August 1932 on the Steiner-Rouse account? No, sir; he did not.

Q. Now, at the end of August, 1932, what was the condition of his account with Steiner-Rouse?

A. He had a credit of $1,246.60, didn't he? A. Wait until I get that balance—

Mr. Wilentz: Can I help you with this?

The Witness: No, I have my own computation on it.

Mr. Wilentz: All right.

A. (continued) At the end of August 1932 he had a credit balance of $500 because he had withdrawn the $746.60, which we previously referred to.

Q. He had withdrawn by check $746— A. $746.60.

Q. —$746.60, although he had made no purchases or sales? A. Yes, sir; he had made a sale in August.

Q. Well, that is what I want to know. What did he sell in August? A. The 100 shares Warner Brothers Pictures and the 100 shares Curtiss-Wright.

Q. He sold those? A. Yes, sir.

Q. Will you show me, please, on this sheet where that is indicated. A. August 18th, Warner Brothers at $3 a share, $284.50; August 22nd, 500 shares Curtiss-Wright, $962.10.

Q. That is a sale, is it? A. Yes, sir. He delivered the stock in and then sold it.

Q. I see. That is what we want to get straight. 500 Curtiss-Wright? A. 500 Curtiss-Wright.

Q. Yes; not 100? A. No, sir.

Q. 100 Warner Brothers and 500 Curtiss, is that right? A. Yes.

Q. He sold that? A. Yes, sir.

Q. Then he drew out $746.60 cash and he had a balance of $500? A. A credit balance of $500.

Q. What were his operations in September? A.

He bought 100 shares Warner Brothers Pictures for $370, and 100 shares Radio for $882.50; against that he delivered into the account on September 15th, 1932, $170 in cash, on the 19th of September, 1932, $582.50 in cash, and he sold the 100 shares Radio on September 22nd, 1932, for $1,004.50.

Q. He had bought it for 882.50? A. Yes, sir.

Q. And he sold it for $1,004.50? A. Yes, sir.

Q. And he had a balance to his credit of $1,004.-50, did he? A. $1,004.50.

Q. Now what were his operations during October? A. He bought 200 shares of Allegheny for $440, 100 shares New York Central for $2,412.50; he delivered into the account on October 7th, 1932, $860. in cash. On October 21st, 1932, he sold 100 shares New York Central for $2,428.50; leaving him a credit balance at the end of October of $1,-440.50.

Q. So, he was constantly trading back and forth during the month. A. Yes, sir.

Q. In December was he trading? A. No, sir. He purchased one hundred shares of New York Central for $1,500 on December 28th, 1932, but there are no sales during that month.

Q. What was the condition of his account, please, December 31st, 1932? A. He had securities on hand that cost $2,820, and he owed the broker against that $568.59.

Q. The securities were Warner, Allegheny, Curtiss, and New York Central? A. They were one hundred shares Warner Brothers, two hundred Allegheny, three hundred Curtiss-Wright and one hundred New York Central.

Q. We now come into January, 1933, please. A. Yes, sir.

Q. Did he buy or sell anything during January, 1933? A. He bought one hundred shares of New York Central for $2,087.50.

Q. Did he sell anything in January? A. He sold on January 6th, 1933, three hundred shares of Curtiss-Wright for $652.26, one hundred shares New York Central on January 3rd, 1933, for $1,729.50.

Q. So that before he made his purchase of New York Central on January 13th he had sold stock at a value of approximately $2,380? A. Yes, sir.

Q. Right? A. Yes, sir.

Q. And then that was on the 6th, the last sale? A. Yes, sir.

Q. And then on the 13th he buys approximately $2,100 worth of stock? A. Yes, sir.

Q. Having sold it for 23 he buys 2,100? A. Yes, sir.

Q. Within ten days? A. Yes, sir.

Q. Or seven days. Now, what was the condition of his account in February as to sales and purchased? A. February 17th he purchased 100 shares.

Q. Pardon me. I see. Were there any more sales or purchases in January after the 13th? A. No, sir.

Q. All right. Now we will go to February. A. February—on February 17th, 1933, he purchased 100 shares Radio for $420; on February 27th, 1933, he bought in 200 shares of Curtiss-Wright for $340, 100 shares for $170 and a third block of 200 shares for $340, also 100 shares of Radio for $320.

Q. And yet at the end of the month he was only indebted to Steiner-Rouse and Company for how much? A. At the end of February, he had a debit balance of $1,165.93.

Q. Now he had often had debit balances of that size before that, had he not? A. Yes, sir. He delivered into the account on February 27th, 1933, $700 in cash.

Q. He had often done that before, delivered into different accounts, $500, $1,000? A. He did it

on at least three occasions before that.

Q. Before that. Now we come down to his purchases and sales from that date down to March 31st, 1933? A. He made no additional purchases in March, 1933, but on March 1st, 1933, he delivered $850 cash into the account.

Q. That reduced his indebtedness to the concern at the end of March to what amount? A. It eliminated his indebtedness entirely and gave him a credit balance of $1,673.90.

Q. He had that to work on? A. Yes, sir.

Q. Besides his stock? A. Besides the stock.

Q. He had $1,600 as of, we will say, April 1st, 1933, to work on? A. Yes, sir.

Q. When did the account change to "Anna"? A. On March 31st, 1933.

Q. That is when he cleaned up his indebtedness and had a balance to his credit? A. Well, the actual transaction, yes, sir. That occurred in that month.

Q. When did the account change to Anna? A. On March 31, 1933.

By Mr. Reilly:

Q. Now, is this the first transaction in the name of Anna April 3, 1933 (indicating)? A. Well, the account was—

Q. Apparently that is 1933 there. A. Yes.

Q. Here is April 3rd. A. That is right.

Q. Have you anything in the records that indicates how the account, so far as the figures went, was transferred on the books of Steiner-Rouse? A. Yes, sir. The stocks that were long, that were on hand, in the Richard Hauptmann account were one hundred shares Warner Brothers Pictures, two hundred Allegheny, two hundred Radio and five hundred

Curtiss-Wright. They were delivered over to this Anna Schoeffler account.

Q. Let me see now. That one hundred New York Central? A. No, sir. The hundred New York Central—

Q. Well, will you check them off if they show? A. The hundred New York Central was a purchase in the account.

Q. All right. First will you look at this photostat? A. Yes, sir.

Q. And check, if it shows there, the transfers of Bruno's stock to the Anna account? A. Yes, sir.

Q. Just check them off. This is not in evidence, this is my copy. You can check it, please. A. (The witness checked the copy handed to him by examining counsel.)

Q. As far as you know, it was Bruno that was operating? A. The account shows a power of attorney for the defendant to operate the account for Anna Schoeffler.

Q. He continued on making purchases as he had before the transfer of the name? A. Yes, sir.

Q. When the transfer of the name was made on the books of Steiner-Rouse & Company, he started with 200 Radio, 500 Curtiss-Wright, 100 Warner Brothers, 200 Allegheny Corporation, which he purchased before and dealt in and traded in: is that correct? A. Yes, sir.

Q. And his credit of about $1,600? A. No, sir; the $1,673.90 was not transferred over.

Q. That was left there? A. No, sir; the check was drawn out by him and, to open up a new account, he delivered in another check for $1,500.

Q. Did he deposit that $1,600 check? A. No, sir.

Q. He cashed it? A. The $1,600 check was cashed and a cashier's check for $1,500 was issued in exchange for it, plus $173.90 cash.

Q. It was the one transaction, he took a check from Steiner-Rouse & Company to some bank—do you know the bank, Central Savings Bank, was it? A. No, it was the National City Bank, Yorkville Branch.

Q. All right, and he handed in the Steiner-Rouse check endorsed to them? A. Yes, sir.

Q. Then they issued to him their own cashier's check for $1,500 and gave him the change? A. Yes, sir.

Q. And with that $1,500 check, which originally came from Steiner-Rouse & Company, he put it back, 1,500 in Steiner-Rouse? A. Yes, sir.

Q. So that it was one transaction? A. Yes, sir.

Q. It was not an additional 1,500, was it? A. No, sir, it was a transfer.

Q. Transfer? A. I excluded that in my computation that I gave previously.

Q. Now, we have him in April making certain purchases, have we? A. Yes, sir, on April 3, 1933, there was purchased 100 shares New York Central for $1,537.50.

Q. And on the 4th? A. 100 shares Radio for $359.

Q. And the 13th? A. 200 shares Container for $490.

Q. And the 19th? A. 100 shares Southern Pacific for $1,462.50.

Q. And the 21st? A. 100 shares Radio for $545.

Q. 100 Penn Railroad at? A. For $1,887.50.

Q. 300 Curtiss-Wright? A. $585.

Q. On the 25th? A. 100 shares Republic Steel for $1,052.60.

Q. 26th? A. 26th, 100 Dominion Stores, $161.50; on the 27th of April, 100 shares General Electric for $1,762.50.

Q. Now, at what did he sell? A. He sold 100 shares New York Central for—

Q. When? A. On the 11th of April.

Q. Now, that was, he sold 100 New York Central? A. For $1,729.50.

Q. That was before he purchased, made his purchases on the 13th of the 200 Container and the 100 Southern Pacific, right? A. Yes, sir, that is correct.

Q. And the Container and the Southern Pacific that he purchased on the 13th and 19th were practically within one hundred dollars of the amount he received for the sale of one hundred New York Central, $1,729.50. A. Yes, sir, the amounts are—

Q. He sells for $1,729.50 on the 11th, right? A. Yes, sir.

Q. And he buys on the 13th about $1,850 worth of stock. A. Yes, sir.

Q. Right? A. Yes, sir.

Q. Now, what about this sale of $769 on the 31st of March? I notice it on my photostat here. Is that a sale? A. Yes, sir. Two hundred shares of Radio that were delivered into the account were sold on that day for $769.

Q. So that he delivered two hundred Radio to them. A. Yes, sir.

Q. And he sells it immediately? A. Yes, sir.

Q. And has $769 to trade in. A. Credited to his account.

Q. And then, that was on the 31st of March, he buys, does he not, on the 4th, he buys Radio amounting to about $400. A. Yes, sir.

Q. Now, he sells on the 20th, does he not, about $1,900 worth of stock? A. I will have to see the account.

Q. 20 New York Central and 100—

Mr. Pope: 100 New York Central.

Q. Oh, 100 New York Central and 100 SS? A. Yes. That is Southern Pacific.

Q. Southern Pacific? A. 1,800, about 1,900 dollars' worth of stock on the 20th.

Q. On the 20th; he sells? A. Yes, sir.

Q. And then on the 21st he buys, the next day he buys about $2,900 worth? A. Yes, sir; that is correct.

Q. Then on the 25th he sells about close on to or within a few dollars of $2,600 worth of stock? A. Yes, sir.

Q. And on the 25th and 26th he purchases about $2,600 worth of stock? A. Yes, sir.

Q. And on the 26th he sells almost $600 worth of stock? A. $584.50.

Q. Yes. So in round figures about $600? A. $600.

Q. And on the 27th he buys about $1,800 worth? A. Yes, sir.

Q. So he was trading accurately back and forth that month, wasn't he? A. Yes, sir.

Q. And what was his balance, credit or debit, at the end of that month in 1933? A. His debit at the end of March 1933? He had a credit.

Q. No, April; April. A. April?

Q. Yes. A. He had a credit balance of $281.32.

Q. And how much stock were they holding of his at that time in addition to his credit? A. $6,927.50.

Q. From his different tradings back and forth? A. In order for him to acquire that stock, he delivered in cash in that month of $2,500.

Q. Yes. And all of his sales. A. Yes, sir.

Q. And all of his purchases. A. Yes, sir.

Q. What did he do in May? From April 30th down to the end of May— I think it runs to the 24th of May. A. On May 2nd he purchased 100 shares of Canadian Pacific for $1,237.50; on the same day he purchased 100 shares of Auburn Auto for

$4,665; on May 8th he purchased 100 shares Anaconda Copper for $1,337.50; on May 11th he purchased 100 American Foreign Power First preferred for $2,000; on May 11th, same day he purchased 100 shares Electric Power & Light 7 per cent. preferred for $1,637.50; on May 17th, 1933, he purchased 100 shares American Shipping & Commerce for $78; on the 18th of May, 100 shares Loft for $295 and on the same date another block of 100 shares Loft at $295; on the same date 100 shares Purity Bakeries for $1,737.50; on May 22nd, 1933, he made a withdrawal of $80 by check.

Q. Was that a dividend? A. No, sir, there were no dividends during that month. It was just a withdrawal. On May 23rd he purchased 100 shares American Zinc for $732.50; on May 24th he purchased 100 shares Electric Power & Light 7 per cent. preferred for $1,837.50 and on the same date 100 shares American Foreign Power first preferred for $1,987.50.

200 Radio for $1,465; 100 Radio for $732.50; another block of the same stock, of 100 shares, $732.50; and a third block of 100 shares Radio for $732.50; and 100 shares American Rolling Mills for $1,587.50.

On May 31st, 1933, 100 shares Interstate Department Stores for $657.50. During that month he sold—

Q. Give me the date, please. A. On May 18th, 1933, 200 shares Curtiss-Wright.

Q. Just a moment, please. Haven't you a sale on May the 1st? A. I have to match it up against the purchase. I can read from the account there.

Q. Yes, read from the account, please, and when you get your account, see if I am correct in this question: He starts with a balance credit of $2,800, does he? A. No, $281.32.

Q. $281.32. These photostatic columns and lines are rather difficult. When we get up into the thousands, you know, I get confused. $281.32, is that it? A. Yes, sir.

Q. Now, did he sell on May 1st? A. 100 shares Republic Steel for $1,129.50.

Q. When had he bought that? A. He bought that on April 25th, 1933, for $1,062.50.

Q. April 25th he bought 1,000—? A. 100 shares Republic Steel—

Q. What did he do with the Republic Steel? A. —for $1,062.50.

Q. And he sells it within six days? A. Yes, sir.

Q. And he makes a profit? A. Yes, sir; he made a profit of $67.

Q. So he was rid of what he purchased on the 25th, on the 1st? A. Yes, sir.

Q. Now, we have him selling on May 1st, haven't we, 100—A. Shares, General Electric.

Q. General Electric? A. For $1,829.50.

Q. And when had he purchased that, the 27th, hadn't he? A. Yes, sir; for $1,762.50.

Q. So within four days after he buys it he sells it and makes a profit? A. Yes, sir.

Q. It wasn't a very big profit but it was— A. I can give you that.

Q. —$62, wasn't it? A. $67.

Q. $67. But he sold it and only held it three or four days? A. Yes, sir.

Q. So he was constantly in the market trading, wasn't he? A. Yes, sir.

Q. He wasn't accumulating all this stock and putting it away in a safe deposit box, was he? A. No, sir.

Q. Now we have him selling— A. On May 3rd he delivered in cash of $2,575.

Q. Now we have him selling on the 15th? A.

One hundred shares Electric Power & Light, $2,-128.50.

Q. And we have him buying— A. That was bought on May 11th for $1,637.50.

Q. What did he sell it for? A. $2,128.50.

Q. So in four days what he purchased on the 11th he sells on the 15th and makes a $400 profit? A. $491 profit.

Q. Yes. And, of course, this is all remaining in Steiner-Rouse's account? A. Yes, sir, it was not drawn out.

Q. Nothing drawn out. He just trades on his money, back and forth? A. Yes, sir; that is correct.

Q. Now, what was his next sale? A. On the 15th he sold 100 shares Container A for $615.90.

Q. And he didn't make any purchases until the 17th? A. Well, there were purchases made on the 8th, 11th—

Q. No, I am talking about between the 15th and the 17th; there were no purchases? A. No. sir.

Q. So that remained to his credit with Steiner-Rouse, that $615.90? A. Yes, sir.

Q. Then we have him buying something on the 17th, and we have him selling on the 18th, at least $2,600 worth of stock, right? A. Yes, sir.

Q. And on the 18th we have him buying about 17, 19, 21, 22— about 23½, 2,300 and something? A. Yes, sir.

Q. But selling 2,600? A. Yes, sir.

Q. So he bought less than he sold that day? A. Yes, sir.

Q. But it was a trading transaction? A. It was an active trading account.

Q. Active trading. And then we have him selling on the 19th something like almost $10,000, haven't we, worth of stock? A. Two, three, four— over $10,000.

Q. Over $10,000 worth of stock. Now what

stock was it and when had he purchased it? A. There was 200 shares Curtiss-Wright sold for $559.84.

Q. Well, he had been carrying that all along all the time and dealing actively in it. A. Yes, sir.

Q. All right. We won't have to deal with that. A. One hundred shares Auburn Auto for $5,223.50.

Q. When did he buy it? He bought it on May the 2nd? A. On May 2nd for $4,665.

Q. And he made a profit of almost $600, didn't he? A. $558.50.

Q. In seventeen days? A. Yes, sir.

Q. And still that money remained in Steiner-Rouse? A. Yes, sir.

Q. What was the $1,310 worth of stock he sold that day, C. P.? A. Canadian Pacific.

Q. When did he buy it? A. On May 2nd he bought 100 Canadian Pacific for $1,237.50.

Q. And he sold it for $1,310? A. $1,310.

Q. Right? A. Yes, sir.

Q. He made a profit? A. Yes, sir.

Q. It remained in Steiner-Rouse? A. Yes, sir.

Q. All right. What was the next thing he sold? A. One hundred shares American & Foreign Power first preferred for $2,128.50.

Q. And he purchased it on the 11th for $2,000 didn't he? A. Yes, sir.

Q. So he made $128.50 there. A. Yes, sir.

Q. And that remained in Steiner-Rouse? A. Yes, sir. There was only one withdrawal on that amount of $80.

Q. We have him buying, rather, we have him buying some American Zinc on the 23rd for $732; is that right? A. Yes, sir.

Q. And we have him selling on the 24th almost $2,000 worth of stock, PTY? A. Yes, sir; Purity Bakeries.

Q. When did he buy that? A. He bought it on the 18th for $1,737.50.

Q. Right. He sells it on the 24th for $1,954 and makes a profit? A. Yes, sir.

Q. The profit remains there? A. Yes, sir.

The Court: Mr. Reilly, it is about our usual recess time.

The people in the courtroom will remain seated; stay where they are until the jury has retired. The jury may now retire and come back at 1:45 o'clock.

(At 12:32 p. m. the jury retired.)

The Court: The prisoner is now remanded to the custody of the Sheriff and he may retire. Court will now take a recess until 1:45 o'clock.

(At 12:34 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.)

WILLIAM E. FRANK resumed the witness stand.

Cross-Examination (continued) by Mr. Reilly:

Q. We were in the middle of May, weren't we? A. Yes, sir; 1933.

Q. Yes.

The Witness: May I have a transcript of the account, photostat of the account?

Mr. Wilentz (handing to witness): That begins May 24th; I think I gave you the last case. Finish that page.

Mr. Reilly: No, I hadn't gotten down to the bottom yet.

Q. We were about the middle of May, where he had made some purchases on the 18th and 19th. Now, if you will refer to your photostatic copy— A. Yes, sir.

Q. It does appear, does it not, that on the 18th of May he sold about 25,000— no, $2,500 of stock, right? A. Yes, sir.

Q. And he purchased on the 18th about $2,400 worth of stock, in round figures? A. Yes, sir; that is correct.

Q. He sold 100 D.O.S. on the 18th for $1,978.50, correct? A. Yes, sir.

Q. What does that mean? A. Dominion Stores.

Q. When was that purchased? I see it here, the 26th of April, correct? A. Yes, sir.

Q. On the 26th of April he purchased 100 shares of Dominion Stores for $1,612.50, right? A. Yes, sir.

Q. He sold the same stock on the 18th of May, 20 days afterward, for $1,978 and made a profit of about $360, correct? A. Yes, sir.

Q. That profit remained in his account in Steiner-Rouse? A. Yes, sir.

Q. Passing the small sales, he sold on the 19th 100 A. A. E.? A. Auburn Auto for $5,223.50; yes, sir.

Q. When did he purchase that? A. On May 2nd for $4,665.

Q. So he held it seventeen days and was able to make a profit of about $550. A. $558; yes, sir.

Q. And that remained in the Steiner-Rouse account. A. Yes, sir.

Q. To operate on. A. Yes, sir.

Q. Now I see another sale here of 100 C. P. for $1,310.50 on the 19th. C. P. is what? A. Canadian Pacific.

Q. When was that purchased? A. On May 2nd.

Q. So that also was held seventeen days and was purchased for how much? A. $1,237.50.

Q. And the profit on that deal was about $70? A. $73.

Q. $73. And that remained in the Steiner-Rouse? A. Yes, sir.

Q. For operation? A. Yes, sir.

Q. Now, on the same day, the 19th, he sold A. F. & W— A. F. W. I., is it, preferred? A. Yes, sir. American and Foreign Power first preferred.

Q. Purchased on May 11th, correct? A. Yes, sir.

Q. He purchased it for two thousand? A. Yes, sir.

Q. He sold it for $2,128.50, and made a profit of $128.50, which remained in Steiner-Rouse? A. Yes, sir.

Q. Now, on the 24th— that is withdrawn for a minute. After selling these different stocks on 15th, 18th and 19th, those that I have indicated to you that he made a profit in, he purchased from his account on the 23rd and 24th about $2,570 worth of stock. A. Yes, sir.

Q. Correct? A. Yes, sir.

Q. But on the 24th did he not sell 100 PTY? A. Purity Bakeries.

Q. And receive $1,954.50? A. Yes, sir; he did.

Q. When did he purchase that? A. On the 18th.

Q. Of May? A. Yes, sir.

Q. So that he only held it six days. And he purchased it, did he not, for $1,737.50? A. $1,737.50.

Q. And sold it for $1,954.50 and made less than $200 profit? A. $217 profit.

Q. $217 profit, which remained in Steiner-Rouse? A. Yes, sir.

Q. Then he sold, did he not, on the 25th RRR—that means— A. Radio; yes, sir.

Q. Five hundred shares at different prices? A. Yes, sir.

Q. And his entire sale of Radio that day amounted to— A. He sold them all at the same price, but different amounts.

Q. Different blocks, you mean? A. Yes, sir.

Q. Different blocks at the same price? A. Yes, sir.

Q. Very likely at different times in the day? A. Yes, sir.

Q. So he sold the 500 Radio for about $3,700? A. Yes, sir.

Q. Thirty-six something, right? A. Yes, sir.

Q. And he allowed that to remain on his account in Steiner-Rouse for trading? A. Yes, sir.

Q. When had he purchased Radio? A. Why, he bought those blocks at different times.

Q. Why, I noticed that he purchased all three, he purchased 200 on April 3rd, right? A hundred on the 4th and a hundred on the 21st, right, of April? A. Yes, sir.

Q. At different prices? A. Yes, sir.

Q. And made a profit, didn't he? A. Yes, sir.

Q. Now, he sold on the 26th A.E.M. for 1,623? A. A.G.M.

Q. Is it A.G.M.? A. Yes, sir.

Q. And that stands for what? A. American Rolling Mills.

Q. And when did he buy American Rolling Mills? A. On the 24th of May. He bought it on the 24th

for $1,587.50 and sold it on the 26th for $1,623.

Q. So his profit there on that— A. $35.50.

Q. That sale was only a $35 profit? A. And fifty cents.

Q. That he allowed to remain there? A. Yes, sir.

Q. Now, we will turn over to the next page. On May 24th I notice an item $1,987.50. Is that a purchase? A. No, sir; that is the—

Q. That is what it cost, I think the price of this stock he sold on the 26th, is that right, American Rolling Mills? A. Yes, sir; that is the one I just referred to.

Q. But, it is on another page? A. Yes, sir.

Q. So that might confuse us for that reason. So, what was the condition of his account at the end of May, 1933, please? A. At the end of May, 1933, he had a credit balance of $3,841.79.

Q. What was his credit balance at the beginning of May? A. $281.32.

Q. How much cash did he put in during the month? A. $2,575.

Q. So he put in approximately— he had two hundred and he put in twenty-five hundred, put in twenty-eight hundred for the month, right? A. Yes, sir.

Q. And he had a balance coming to him at the end of the month of $3,800? A. Yes, sir.

Q. So he made a thousand dollars profit apparently during the month? A. Yes, sir.

Q. Although he had dealt in $31,357.41 worth of securities. A. Yes, sir.

Q. We will now pass, please, to June, and we begin with a balance of $3,841.79. Is that correct, sir? A. Yes, sir; $3,841.79.

Q. Will you tell the jury, please, beginning with the item of your photostat, May 31st, the different purchases made by the defendant during that

month? A. Well, it begins on June 2nd. That May 31st is merely the balance at the end of the month. It is the stocks that were on hand in the account at that time.

Q. Well, will you read that off so the jury will know the stocks that the brokerage house had on hand? A. They had 400 shares of Curtiss-Wright, 100 of Warner Brothers, 200 Allegheny Corporation, 100 American Ship & Commerce, 200 Loft, 100 American Zinc, 100 Electric Power & Light 7 per cent. preferred; 500 Radio, 100 Interstate Department Stores.

Q. And those we have accounted for in the different tradings before this? A. Yes, sir.

Q. Now we will go down to the purchases in June, please; June 2nd is begins, doesn't it? A. He purchased 100 shares of Container A for $720.

Q. That would be $7 and some fraction a share? A. $7.12½ a share.

Q. Then on the 5th he bought— A. 300 International Nickel, $4,762.50; on the same date another 100 shares at $1,587.50; 400 shares of the same stock for $6,350; 500 shares Continental Motors for $1,537.50.

Q. That is the 5th? A. The 5th, all on the 5th.

Q. Now, June 1st, before June 5th, he sold, did he not, 500 Radio? A. Yes, sir.

Q. For $4,172.50? A. Yes, sir.

Q. He sold 100, what is that? A. Warner Brothers.

Q. Warner Brothers for $417.10? A. Yes, sir.

Q. So that day he had a sale operation of close on to $4,600? A. Yes, sir, that is correct.

Q. Then on June 5th, that is the day he bought all the International Nickel and Continental Motors, right? A. Yes, sir.

Q. He had a sale of 100— A. Electric—

Q. Light & Power? A. Power & Light.

Q. $2,333; 100 G. A.? A. American Zinc.

Q. $876.96? A. Yes, sir.

Q. 100 A. Y. Y.? A. Alleghany Corporation.

Q. 360.50? A. Yes sir.

Q. Another 100 Alleghany, 360.50, right? A. Yes, sir.

Q. Amounting to thirty-one, thirty-four, thirty-seven, thirty-eight, thirty-nine—close to $4,000? A. Yes, sir.

Q. And as against that on the 5th, he bought four, five, eleven, twelve—nearly $15,000? A. Yes, sir.

Q. But he was still dealing on margin? A. No, sir. To balance that he delivered in cash of $2,225 on the next day.

Q. Well, I am talking now about the 5th. The 5th he bought International Nickel? A. Yes, sir.

Q. And he sold approximately almost $5,000 worth of stock or $4,000 worth of stock? A. $4,000.

Q. $4,000 worth of stock. Then he made these heavy purchases? A. The purchases were—

Q. Then on the 7th, two days afterward— A. Yes, sir.

Q. —it says Cash here $2,225, that was apparently a margin call, was it? A. Yes, sir, the purchases at that time were in excess of the equity he had in the account. A. Yes, sir.

Q. I see. A. He had to put up more cash.

Q. More margin again, right? A. And he delivered in $2,225 in cash to margin his account.

Q. Now, on the 7th he sells, does he not? A. No, sir, there were no sales.

Q. Or was it the 9th? A. On the 9th he sold the International Nickel.

Q. For $3,661? A. Yes, sir.

Q. And allows it to stay with Steiner-Rouse. A. Yes, sir.

Q. When had he purchased that, on the 5th,

hadn't he? A. Yes, sir, he purchased it on the 5th.

Q. And he purchased on the 5th, 800 shares, didn't he? A. He purchased 800 shares.

Q. And he sold on the 9th how many, 200, right? A. 200 on the 9th, 100 on the 14th, 400 on the 15th, and another, the remaining 100 in the next month.

Q. Well, now, the Nickel that he sold in June, the sales began the 9th and ended the 15th on Nickel, 2, 4, 5, 7, right? A. Yes, sir.

Q. He had purchased eight, right? A. Yes, sir.

Q. His sales of Nickel in Junes amounted to— A. To about $12,000.

Q. About $12,000, which he left with Steiner-Rouse? A. Yes, sir.

Q. The date of the next purchase was— A. The 7th, 100 shares of Pittsburgh Screw & Steel.

Q. For $682; right? A. Yes, sir.

Q. And 200 Motormeter? A. Motormeter Gauge & Equipment for $415.

Q. It is not unusual for a man to go into Wall Street and buy lots of ten, fifteen, twenty-five and a hundred, is it? A. These were all 100 share lots.

Q. It was not unusual? A. No, sir.

Q. Operators deal in thousands of shares, don't they? A. Yes, sir.

Q. But the public going in usually deal in tens, fifteens and hundreds, do they not? A. To what period are you referring?

Q. 1933. A. In 1933 they would more likely deal in odd lot shares.

Q. Which some of us know to our sorrow. I want you to look, please, at the purchase on the 8th. A. Yes, sir.

Q. Alaska-Juneau. A. Alaska-Juneau.

Q. What is that? A. Gold stock.

Q. That was purchased for $2,062.50? Yes, sir.

Q. This man had quite a range of stocks, did he not? A. Yes, sir.

Q. And in most of the stocks he made a small profit, did he not? A. At this period there was a profit.

Q. That is what I am talking about. Then he bought some more Radio, did he not, on the 8th? A. Yes, sir; 100 shares for $3,565.

Mr. Wilentz: How many shares?

The Witness: 100 shares.

Q. Then on the 14th he bought New York Central—New York Ontario & Western—didn't he? A. New York Ontario & Western.

Q. For $1,352.50, right? A. Yes, sir.

Q. But on the 14th, the same day, he sold out Nickel, didn't he? A. Yes, sir; for $1,843.

Q. So for that day his sales were greater than his purchases, in amount? A. Yes, sir.

Q. Then on the 15th he purchased some Lehigh Valley, didn't he? A. 1,000 shares; 300 in one lot and 700 in another lot.

Q. For $4,000, right? A. Yes, sir.

Q. Now on the 16th he sells 500 what, Lehigh Valley? A. Yes, sir.

Q. He had purchased that when? A. On the day before; on the 15th.

Q. He purchased the thousand, didn't he? A. Yes, sir.

Q. He sold 500— A. On the 16th.

Q. For 2,365? A. That is right.

Q. And he sold 200 more of that on the 20th? A. He sold 500 more on the 20th; 200, 200 and 100.

Q. And he received for that? A. About $2,800.

Q. For the entire lot? Yes, sir. Well, no, to go back to the 16th, it would add another 2,300 onto it.

Q. Well, what did he buy it for? A. Making a total—

Q. He bought it for 4,000? A. $4,000.

Q. And he sold it for what, approximately? A. $5,230; $5,230.

Q. So in two days he made a profit of over a thousand, over a thousand dollars, correct? A. That is correct, yes, sir. $1,192.50.

Q. Which he allowed to remain with Steiner-Rouse? A. Yes, sir.

Q. For trade purposes? A. Yes, sir.

Q. Now I notice that he sold some A. C. S.—wait a minute, that is small—Leh, that is Lehigh Valley, on the 20th. A. Well, that is the 500 shares we just discussed.

Q. All right. Now here is P. T. preferred, Postal Telegraph, 100 on the 21st he sold. A. Postal Telegraph, yes, sir.

Q. He sold it for $2,576. A. $2,576.

Q. When did he buy it—he bought it on the— A. On the 19th for $2,212.50.

Q. So he made there over $300 profit. A. Yes, sir.

Q. Which he allowed to remain with Steiner-Rouse. A. Yes, sir.

Q. This brings us down to the end of May, 1933. A. End of June.

Q. End of June. Are there any more sheets? A. Oh, yes, there is quite a few.

Q. Have you more? A. I have a sheet that begins June 21st; is that the next sheet that you have? A. Yes, sir; that is the next one.

Q. At the end of June? A. Yes, sir.

Q. What was his, what was the condition of his account as to balances? A. He had a debit balance of $7,973.72.

Q. So that, if I am correct, he went into the ac-

count in the month with a credit of $3,841.79? A. Yes, sir.

Q. And he added to that margin call of $2,225? A. He added cash to the account of $2,575.

Q. $2,575? A. Yes, sir.

Q. What date was that? A. $2,225.

Q. Yes, $2,225, on June 7th; right? A. Yes, sir.

Q. So that he had placed in his account his balance of $3,841.79 for the beginning of that month, June? A. Yes, sir.

Q. He had added a margin call of $2,225? Yes, sir.

Q. He had purchased many shares of stock? A. Yes, sir.

Q. So he had sold— A. Yes, sir.

Q. —those he had not sold remained as security with Steiner-Rouse & Company? A. Yes, sir.

Q. And at the end of the month, from his various trading operations, he owed Steiner-Rouse $7,973.72? A. And 72 cents, yes.

Q. And he had done a trading business during the month of $50,531? A. I haven't that computation, but I would say that it was that amount, yes, sir; that is right; yes, sir.

Q. So that he started the month of June with certain stocks which he had purchased as we have described. A. Yes, sir.

Q. They being Loft, National Dairy, is that right? —haven't you one of these—?

The Court: Mr. Reilly, aren't you now talking about the month of July? I thought you had been over the month of June.

Mr. Reilly: It says here June 30th balance, and they have a statement there of what he left there as security.

The Court: This National Dairy, didn't he purchase that in July?

The Witness: No, sir, he purchased it in June.

Mr. Reilly: I want to get before the jury a picture of what was remaining with Steiner-Rouse & Company.

The Witness: I can read off the shares that were in the account at the end of the time: 100 Interstate Department Stores; 100 Curtiss-Wright, 100 International Nickel; 500 Continental Motors; 200 Motometer Gauge & Equipment; 100 Alaska Juneau; 100 Radio Preferred A, 100 Ontario & Western, 100 Philadelphia & Reading Co.; 100 Interborough, 300 Loft; 100 National Dairy; 100 Lorillard; 200 Motometer Gauge & Equipment rights; 200 Kelvinator; 100 International Telephone; 500 Pathe A, 100 Anaconda Copper; 100 Peerless Motors.

Mr. Wilentz: That is the end of what, June?

The Witness: At the end of June, 1933.

Q. That was along at the beginning of July.

Mr. Reilly: Pardon me.

Mr. Wilentz: Yes.

A. Yes, sir. Against which there was a debit balance of $7,973.72.

Q. The Loft had been purchased June 21st? A. Yes, sir. Well, I can trace back each one.

Q. Haven't you one of these? A. Yes, I have.

Q. All right. Refer to that. A. I would have to go back.

Mr. Wilentz: I thought we went over June.

Mr. Reilly We hadn't come to this sheet.

Mr. Wilentz: I see.

Mr. Reilly: No. I just asked him his balance.

Mr. Wilentz: I see.

A. Yes, that was purchased on June 21st.

Q. And Anchor? A. Anchor Cap was purchased on the 22nd.

Q. 22nd; and Kelvinator? A. On the 22nd.

Q. National Dairy. A. National Dairy on the 22nd; 100 National Dairy on the 23rd, 100 Lorillard on the 23rd, 200 Motometer Gauge rights were received into the account on that day—they were not purchased; on the 26th 100 Kelvinator; on the 27th, 100 International Telephone; one the 28th 200 Pathe A, and another 100 shares Pathe.

Q. Now, a great many of those stocks which you have just read off, which were purchased between the 21st of June and the 30th of June, you find in this list which you have just read off to us. A. Yes, sir.

Q. As being held. A. They weren't sold in that month.

Q. They hadn't been sold yet? A. Yes.

Q. But between the 23rd of June and the 30th of June, to be more accurate between the 23rd and

inclusive of the 29th, he had sold in the market about $7,000 worth of stock, hadn't he? A. Including the 29th?

Q. Yes. This side here (indicating.) A. About six thousand.

Q. Six thousand? A. Yes.

Q. Which he allowed to remain there? A. Yes, sir.

Q. Now he began his operations or continued his operations, rather, in July—he didn't make any purchase until the 5th, is that correct? A. Yes, sir.

Q. But he did make how many sales on July 3rd? A. 12 sales on July 3rd.

Q. And the 12 sales amounted to how much? A. Approximately $16,000.

Q. $16,000 worth of stock that he purchased he sold in the market? A. Yes, sir.

Q. And allowed to stay there with Steiner-Rouse? A. Yes, sir.

Q. Then on the 5th he began to purchase some more stock, didn't he? A. Yes, sir.

Q. And kept that up down to the end of July with quite a range of stocks? A. Yes, sir.

Q. And on the 17th—that is a small sale. We will make it the 19th. A. Yes, sir.

Q. He sold 100 C. for $2,156, didn't he? A. Yes, sir.

Q. When had he purchased that? A. I will trace it back. It may have gone back several months.

Q. All right; I will withdraw the question. I will just ask you this: between the 17th of July and the 31st of July he made sales of approximately— A. What were the dates, please?

Q. July 17th, this sheet.

Mr. Wilentz: 17th.

A. $13,000 and delivered in more margin at that time $4,500.

Q. And at the end of the month his balance due the concern, Steiner, Rouse & Company— A. At the end of July he had a debit balance of $4,038.04.

Q. Now, in August he began to unload, didn't he? A. No, sir, his stock—

Q. The beginning of August? A. —increased.

Q. The beginning of August he started to sell, didn't he? A. He sold in every month.

Q. Well, the 2nd day of August— A. Yes, he sold 100 Chrysler for $3,277.50, on the 4th he sold—

Q. Wait a minute, now, wait, I don't find that figure. August 2nd, 100 B. S., 367— A. No, that is the 1st of August.

Q. That is what I asked you 1st or 2nd? A. You asked me the 2nd.

Q. I have the 2nd, that is the 2nd. A. Oh, that is right, yes, sir.

Q. Yes, what are you looking at, purchases? A. Yes, sir.

Q. Ah, I am on the selling side now. August 2nd. A. You asked me if he unloaded, but he hadn't bought that yet.

Q. He hadn't bought it on the 2nd? A. He bought it on the 1st and sold it on the 2nd, but we hadn't discussed the purchase of it.

Q. All right. What was it, Bethlehem Steel? A. Yes, sir, 100 shares of Bethlehem Steel.

Q. Bought it on the 1st? A. Yes, sir.

Q. For $3,527.50? A. Yes, sir.

Q. That is quite an item in bookkeeping, isn't it? A. Yes, sir.

Q. When you turn it over on the 2nd, he sold it for $3,676 and made a profit of about $40; that is true, isn't it? A. Yes, sir.

Q. And on the 9th he sold 100 K., didn't he? A. Chrysler, yes, sir.

Q. When did he buy that? He had that, didn't

he? A. He bought that on the 2nd, 2nd of August.

Q. He bought it for $3,277.50? A. Yes, sir.

Q. He sold it seven days afterwards for $3,430? A. Yes, sir.

Q. He made a profit of less than $200 on that, didn't he? A. Yes, sir.

Q. On the 9th he also sold a hundred Lor. A. Lorillard.

Q. When did he buy that? A. That was purchased either in July or in June, I would have to trace back.

Q. I see here it is carried over into his account— A. He was long of it at the end of July.

Q. Long at the end of July and he got rid of it in August, right? A. Yes, sir.

Q. For $2,120.50. A. Yes, sir.

Q. Then on the 10th, he sold a hundred I. R. T. A. Yes, sir.

Q. A hundred A. C. F. A. Yes, sir.

Q. That would be almost $6,000 worth of sales. A. Yes, sir.

Q. When did he buy the A. C. F., on the 4th? A. Yes, sir, on the 4th of August for $4,852.20.

Q. So he made less than $200 on that deal. A. Yes, sir.

Q. Then on the 11th he sold 100 S. B. A. Standard Brands.

Q. $2,763.50. A. Yes, sir.

Q. When had be purchased that? A. That was carried over from the preceding month.

Q. And he got rid of it. A. Yes, sir.

Q. Then we have 100 Na. D. A. That is National Distillers.

Q. $9,121. That had been carried over. A. No, sir, that was purchased on August 9th.

Q. For $8,920. A. Yes, sir.

Q. And he sold it for $9,121. A. Yes, sir.

Q. He made $201. A. Yes, sir.

Q. On the 18th another 100 B. S., right? A. Yes, sir; Bethlehem Steel.

Q. $3,976? A. Yes, sir.

Q. And also 100 SHN for $3,918.25? A. Yes, sir.

Q. When did he purchase the BS? That was carried over, wasn't it? A. Yes, sir; that was.

Q. That was carried over and he got rid of it? A. Yes, sir.

Q. How about the SHN? What does that stand for? A. Schenley.

Q. Is that the liquor? A. Yes, sir; Schenley.

Q. Schenley. $3,918.25? A. Yes, sir.

Q. When did he buy Schenley? A. I can trace it more easily from my figures here.

Q. If you can't get it we will just pass it.

The Court: You may take time to look for that if you wish to; you may take as long as you wish.

A. Yes, sir.

Q. I see on the 18th. A. Yes, sir; it goes back and forth and you have to trace each item.

Q. Yes, all right. Let's see if I am right here. He purchased 100 Schenley on the 18th for $3,715, is that correct? A. Can I have the date again?

Q. Surely. The 18th; this sheet.

Mr. Wilentz: Here (indicating.)

A. Yes. Purchased 100 Schenley Distillers on the 18th at $3,715?

Q. Now, that is quite an item in bookkeeping, isn't it, $3,715? A. Yes.

Q. I mean big figures? A. Yes.

Q. And on the same day he sold the same stock, that he purchased in the morning, very likely, or

some time before the sale,—he sells it for $3,918; right? A. Yes, sir.

Q. And makes a profit of $203? A. Yes, sir.

Q. Now, on the 21st he sells NAD for about $9,500, doesn't he? Yes, sir

Q. When did he buy it? Is that National Distillers? A. Yes, sir.

Q. Is that what he bought on the 9th? A. No, he bought on the 11th.

Q. For $9,257.50? A. Yes, sir.

Q. And he sells it— A. $9,458.50.

Q. Another $201— A. Yes, sir.

Q. Profit. Now, so there were sales and purchases all that month back and forth? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. So at the end of the month, how did he stand with the house? A. At the end of August he had a debit balance of $11,735.90.

Q. And the house had his stock? A Yes, sir. I can— it had 500 Continental Motors; 100 New York Ontario & Western; 500 Budd Wheel; 500 Commonwealth & Southern; 100 Loft; 100 Lehigh Valley Coal; 300 U. S. Leather; 100 Schenley; 1,000 Premier Gold; 1,100 United Molasses, 100 St. Paul Preferred; 500 Warner Brothers Pictures; 500 Eitingon-Schild and 300 Alaska Juneau.

Q. That old Warner Brothers was purchased way back, wasn't it, months before and carried along, and Eitingon-Schild. None of those items— A. No, sir, I couldn't tell you that without tracing back each particular item.

Q. You recall we spoke about that? A. Well, he bought and sold that stock.

Q. At different times? A. Different times during the account.

Q. And that went on during 1933, 1934, didn't it? A. Yes, sir.

Q. And he would buy sometimes as much as fifty or sixty thousand dollars worth of stock a month? A. Yes, sir.

Q. On the bookkeeping side. A. Yes, sir.

Q. The buying, and he was active in selling. A. Yes, sir.

Q. And he was dealing on margin. A. Yes, sir.

Q. Now, when was the last date you have on this Steiner-Rouse? A. The account ran through 1924—1934.

Q. What date, some time in October?

Mr. Wilentz: (Handing witness a sheet.) Here is August and September, 1934.

A. The last photostat we have on it is up to September 14th, 1934.

Q. Yes. Now, we have August 31st, 1934, in the possession of Steiner-Rouse, a hundred American Water Works, 100 Chicago Northwestern, 100 Park Utah, 100 American Can buyers, 100 Purity Bakers, 100 National Bellas-Hess preferred, 100 Briggs and a credit balance of $1,242.41.

Q. So he cleaned up all his indebtedness the different moneys that there were and he stood to the good $1,242.41 balance due him? A. Yes, sir, he had a balance of that amount, credit balance.

Q. Credit balance? A. Yes, sir.

Q. It is nothing unusual for a man to go into Wall Street with a five or ten thousand dollar bank-roll, is there, and buy and sell on margin if he can get credit? A. No, sir; it is not unusual.

Q. And if he is fortunate enough to have profits and he can leave them with the firm, he can increase his buying capacity? A. Yes, sir.

Mr. Reilly: I think that is all.

Re-Direct Examination by Mr. Wilentz:

Q. Mr. Frank, counsel asked you, he says it is nothing unusual for a man to go into Wall Street with a ten thousand dollar—I think it was referred to as a bankroll. I take it that the unusual part is getting the $10,000: isn't that it? A. Yes, sir.

Q. Mr. Reilly has asked you about these profits. My recollection is that there hasn't been a word said about any losses with reference to the specific items directed to your attention. Were there losses? A. Yes, sir; there were losses in excess of the profits.

Q. So that when you say losses in excess of profits, do you mean that after these profits, profits, profits, the sum total was that there was a loss? A. A net loss; yes, sir.

Q. In what amount did the losses exceed the profits from the period of April 2nd, 1932, until the date of Mr. Hauptmann's arrest in September, 1934? A. $5,728.63.

Q. So that—

The Court: What was that figure?

The Witness: $5,728.63.

By Mr. Wilentz:

Q. So that when you gave all these figures about profits, did you take them into consideration when you figured on the total result, the net result in the account? A. Yes, sir.

Q. You gave him credit for these hundreds and these thousands of dollars of profit, did you? A. Yes, sir. The losses occurred subsequent to the period that I discussed with Mr. Reilly.

Q. We didn't get to the losses? A. No, sir.

Q. I see. (Laughter.) But Mr. Hauptmann got to the losses, did he not? A. Yes, sir.

Q. Hauptmann got to the losses? A. Mr. Hauptmann had the losses, incurred the losses.

Q. In April, 1932, and specifically April 2nd, 1932, up to that time Mrs. Hauptmann's account showed savings and moneys put in banks, did it not? A. Yes, sir.

Q. And also Mr. Hauptmann's? A. Yes, sir.

Q. Apparently they had been saving money in a bank account? A. Yes, sir.

Q. But on April 2nd, 1932, the net result of their savings and their efforts showed a balance of how much in the bank? A. (The witness started to examine papers.)

Q. Well, you remember. A. $203.90.

Q. That is it. That was all the cash in the banks, isn't that so? A. Yes, sir, that was the balance on that day.

Q. And the stocks, as I remember it, were 50 shares of Warner? A. Yes, sir.

Q. By the way, that was one of the stocks that there was a loss on, wasn't it? A. Yes, there was a large loss on that stock.

Q. How much was it he paid for 50 shares of Warner? A. $987.

Q. Well, it was over $900? A. Yes, sir.

Q. And on April 2nd, 1932, my recollection is, isn't it correct, that the value was about $100? A. $100.

Mr. Pope: Object to that question. What difference does it make what the value is? The way to establish a loss is not by showing what its value was on a certain day but what it sold for.

Mr. Wilentz: We withdraw the question. It has already been answered anyway.

The Court: It has been answered?

Mr. Wilentz: Yes, it was answered three times before that.

Mr. Pope: He answered before the objection was in.

The Court: Your objection was that the question is leading?

Mr. Pope: No. My objection is— supposing that as a matter of bookkeeping only an account showed on April the 2nd, 1932, a loss of $800 upon a stock. That is only a paper loss. It is not an actual loss because the man still has the stock. There were lots of people that bought stock, if your Honor please, before 1929, and if they had sold out on October 29th they probably would have shown losses of hundreds of thousands of dollars, but they didn't sell. They held the stock. They still have it. And while, of course, the present day market value may be less, that doesn't mean that it has yet been turned into a loss. You can't turn a stock into a loss unless it is sold. Then you can calculate the loss. But to say that on April 2nd a man owned 100 shares of Warner Brothers and because on that day the market value or quotation for that stock was only $100, if he didn't sell the stock on that day, it does not establish a loss of $800 as the Prosecutor is trying to do.

The Court: Well, your real objection is then that the Prosecutor is confined, so far as this item is concerned, to showing a paper loss?

Mr. Pope: That is it.

Mr. Wilentz: I will withdraw the question, if your Honor please.

By Mr. Wilentz:

Q. Tell us what was the actual loss when he sold it. A. Well, when the sale of that 100 Warner Brothers Pictures stock was sold on August 8th, 1932, it was at a loss of $788.25.

Q. That is not a paper loss, is it? A. No, sir; that is an actual loss.

Q. All right. Now, there is a—Mr. Reilly was speaking to you a while ago about the extent of the operations of people in 1932 and 1933. In 1933 the stock market operations were much less than they were before 1929, isn't that so? A. Yes, sir; very much less.

Q. All over the country? A. Yes, sir.

Q. And isn't it a fact, whereas prior to the crash of 1929, people bought thousands of shares, after the crash they bought many shares less, isn't that so? A. Yes, sir; I so testified.

Q. You so testified? A. Yes, sir.

Q. Was that the case with Mr. Hauptmann or was it the reverse? A. He bought more, a great many more shares in 1933, than he did in 1929, a great many more.

Q. Did he ever have 1,000 shares in his long account in 1929, 1930, 1931, prior to the payment of the ransom money? A. No, sir.

Q. Did he have more than 2,000 shares in his long account after 1932 and 1933, during some months? A. Yes, sir; he did.

Q. Did he ever buy $50,000 worth of stock in any month prior to the payment of the ransom money? A. No, sir.

Q. Did he buy $50,000 worth of stock month after month after the payment of the ransom money? A. Yes, sir.

Q. In 1931, did he get a demand from a broker for $71 as being short in his account? A. Yes, sir, there is in evidence in Exhibit No. 205, I believe it is, a letter where he asked the broker to carry forward the debit balance of $74.89.

Q. Is this the letter you refer to, being a letter to his broker—what broker is it? A. Carleton & Mott.

Q. Dated March 21st, 1931? A. May 21st.

Q. "Dear Sir: Please will you carry in mind debit $74.89 until May 25th?"

Mr. Pope: March 25th.

Mr. Wilentz: I think he means May. "By this time I will settle my debit balance from $74.89"—

The Witness: That is the letter I referred to.

Mr. Wilentz: "Yours very truly, Richard Hauptmann."

The Court: What is the date of that?

Mr. Wilentz: May 21st, 1931.

Q. Was that in answer to a telegraphic call from the broker to him to put up more money?

Mr. Pope: I object to the question. How does he know?

Mr. Wilentz: Don't get impatient.

The Witness: No, sir, I don't know whether that was in—

The Court: Repeat the question, please, to me.

(The question was repeated as follows: "Was that in answer to a telegraphic call from the broker to him to put up more money?")

The Court: He may answer that if he knows.

The Witness: I don't know.

Q. When was it that Hauptmann changed the account from his name or his name and his wife's name from the Hauptmann name to a Schoeffler name? A. March 31st, 1933.

Q. After the ransom money was paid? A. Yes, sir.

Q. Now he had an account originally in his wife's name, didn't he, Schoeffler, a bank account? A. A bank account.

Q. But that was before he was married, isn't that so? A. No, sir. That account contained in her maiden name while they were married.

Q. Yes, but it started before they were married. A. Yes, sir; it started before they were married.

Q. I notice that there are hundreds of shares of Curtiss-Wright. A. Yes, sir.

Q. Do you recall that? A. Yes, sir.

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

Q. Air Plane stocks. A. That is correct.

Q. Was this an active account before the ransom money was paid, these brokerage accounts?

Mr. Reilly: I object to the form of the question.

Mr. Wilentz: I will withdraw it.

Mr. Reilly: I think you should put in the dates.

Q. Prior to April 2nd, 1932, was it an active brokerage account that he conducted? A. The Carleton & Mott brokerage account was inactive from February, 1931, until April 8, 1932, when it was delivered into the account, cash, to buy more securities.

Q. During the years 1932 and 1933 was it an active, vital, vibrant account? A. No, sir. The Carleton Mott account closed at that time and the Steiner-Rouse account began in August of that same year.

Q. Was the Steiner-Rouse account an active account? A. Yes, sir, it was an active account.

Q. Were there purchases of as much as a thousand shares a day on some days? Will you take a look at it, please, in 1933? I direct your attention to April the 30th, say, 1933; does that indicate— A. That April is a balance figure.

Q. That is the balance. 800 shares of Curtiss-Wright, is that it? Did he have 800 shares of Curtiss-Wright long that day, in April? A. April 30, 1933. Yes, sir. There was 800 shares of Curtiss-Wright in his account at that time.

Q. That is 800 shares of Airplane stock, isn't it? A. Yes, sir.

Q. Now, will you take a look at May 1933? A. Yes, sir.

Q. He had Airplane stock in May too, didn't he? A. 400 shares of Curtiss-Wright.

Q. Yes. Do you know what business Colonel Lindbergh is in?

Mr. Reilly: I object to that. We have had enough about Airplane stock. I say the ques-

tion is incompetent, irrelevant and improper. He not only dealt in Curtiss Airplane stock, but he dealt in Schenley, National Distillers, Radio stock and a hundred other stocks, and I say it is merely an attempt to get again before this jury, in an improper way, the fact that the Colonel is interested in aviation.

Mr. Wilentz: That is the intention, but not improperly. That is the intention.

Mr. Reilly: And it is deliberate and it is improper. And now that he is says it is deliberate and intentional, I respectfully move for a mistrial and the withdrawal of a juror.

The Court: Mr. Attorney General, how do you think that it is relevant to the case as to what kind of business Colonel Lindbergh is in?

Mr. Wilentz In this way, if your Honor please—we want to show that he had a familiarity with airplanes, that he was interested in them. If your Honor please, he bought hundreds and hundreds of shares of stock, and that it was—

The Court: Suppose—

Mr. Wilentz: —and that he was conscious—

The Court: Suppose that you were permitted to show that Hauptmann—he is the one we are talking about?

Mr. Wilentz: Yes, sir, if your Honor please.

The Court: —had a familiarity with airplane stock, how would that be relevant?

Mr. Wilentz: Well, it is my notion, if your Honor please, that his familiarity with airplane stock, and particularly his original purchases and his greater purchases were of airplane stock, that indicates some connection and thought as to the man who was most prominent in aviation in the world. That is for the jury to determine, if your Honor please.

The Court: I do not see its relevance for the moment. I think—has the question been answered?

Mr. Wilentz: No, I don't think so, if your Honor please.

The Court: I will sustain the objection.

By Mr. Wilentz:

Q. I think you gave me date, sir—

The Court: One moment. There was some motion made here with respect to a mistrial?

Mr. Reilly: Yes, sir.

The Court: Well, that motion I will deny and I will instruct the jury to disregard this question in respect to Colonel Lindbergh's business along the line of aviation.

Mr. Reilly: And may I have an exception?

The Court: You may have an exception.

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

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

Q. Will you please tell for us month after month —no, I withdraw that. In July, 1933, will you tell me how much cash, please, how much cash was put into the Hauptmann brokerage account, that month specifically?

Maybe I can help you here. A. I have my figures here, it just takes time to get to them. On July 24th, 1933, there was deposited in the account of Anna Schoeffler with Steiner-Rouse & Company the amount of $4,500 in cash.

Q. $4,500 in cash? A. Yes, sir.

Q. Did that money come out of any of the Hauptmann bank accounts? A. No, sir, there were no withdrawals from his bank accounts at that time.

Q. Did there also go into the bank accounts of the Hauptmanns that very same month any cash? A. On July 20th, 1933, there was deposited in the joint account, the Central Savings Bank, an amount of $2,112.50.

Q. In cash? A. $2,000 of it was in cash and there was a check for $112.50 which was interest on a mortgage.

Q. That is one of the mortgages. A. Yes, sir.

Q. Is it correct then that in that month $6,500 in cash was placed in the brokerage and bank accounts by the Hauptmanns? A. Yes, sir.

Q. That one month? A. Yes, sir.

Q. And was that money taken from any of the— in other words was it a transfer from one to the other or was it fresh money so far as you know? A. There was no withdrawal from the brokerage ac-

count to account for the deposit in the bank account, there was no withdrawal from the bank account to account for the deposit in the brokerage account.

Q. Was there any sale of stock from which this money was taken from the brokerage account and put into the bank account? A. Stock was sold in the brokerage account but there was no cash withdrawal from the brokerage account.

Q. So whatever was sold in July stayed with Steiner-Rouse & Company as I understand it. A. Yes, sir, that is correct.

Q. In addition to that $4,500 in cash in there— A. Yes, sir.

Q. —and in the bank account separately $2,000 in cash? A. Yes, sir.

Q. Prior to July, 1933, the month before, was there cash put in there? A. In the brokerage account.

Q. Yes. A. On June 7th, 1933 there was a deposit of $2,225 in cash in the brokerage account at Steiner-Rouse.

Q. That cash in June, 1933, was that the realization of the sale of any stock or was that other cash? A. That was cash delivered into the account.

Q. Not as the result of the sale of any of the stocks in the account, was it? A. No, sir.

Q. Take a look at May, 1933, and particularly May 3rd, and tell me whether or not there was any cash deposit in that account then. A. On May 3rd there was deposited in the Steiner-Rouse brokerage account the sum of $2,575 in cash.

Q. Take a look at April, just a few days before, April 28th, 1933, and see if there was any cash put in there. A. There was a cash deposit of $2,500.

Q. That is just about five days before the May payment, isn't it? A. Five or six days.

Q. Five or six days. And all these figures, sir, as I understand it, are part and parcel, profits, losses,

and everything, are part and parcel of your computation this morning, isn't that so? A. Yes, sir; I have considered the losses and profits in making my computation.

Q. Which summary as I recall it was the payment of how much cash into the brokerage accounts, the total, from April the 2nd, 1932, until September, 1934? A. $9,073.25.

Q. Is that banks or brokers? A. In the bank account.

Q. That is cash that went into the bank? A. Yes, sir.

Q. How about the amount that went into the brokers from April the 2nd, 1932, to the date of his arrest, September, 1934? A. $16,942.75.

Q. And that is exclusive of transfers that you told Mr. Reilly about, where they gave him a check and he took it from the broker to the bank or from the bank to the broker? A. Yes, sir. These figures are exclusive of those transfers.

Q. You didn't charge him twice with any item, so far as you know? A. No, sir, I did not.

Q. And you didn't credit him twice with any item, so far as you know? A. No, sir, I did not.

Q. And you have been looking over these accounts for months, haven't you? A. Since October, 1934.

Q. Yes.

Mr. Wilentz: Mr. Frank, that is all so far as we are concerned.

Re-Cross Examination by Mr. Reilly:

Q. Now, let us get back again. There weren't any purchases or sales in this account; it was a trading account, wasn't it, back and forth, and a balance struck at the end of the month? A. There were purchases and sales.

Q. Yes. A. In the account.

Q. Yes, in the account. A. Yes, sir.

Q. What we call a trading account? A. Yes, sir.

Q. And taking the account from the very beginning down to the day that you closed it, it was closed in October this year—last year? A. The balance, the credit balance in the stock, I believe, are still in the account.

Q. You determined a $5,000 loss? A. Yes, sir; approximately.

Q. Covering what period? A. From April 2nd, 1932, to September 19th, 1934.

Q. And in addition to the $5,000 loss what stocks are now in the hands of Steiner-Rouse belonging to the defendant? A. I can give you the list; on September 19th, 1934, there were 100 shares American Water Works.

Q. How much did he pay for that, please? A. $5,677.50.

Q. Yes. Go on. A. And a credit balance of $1,242.41.

Q. Where did you arrive at the credit balance? A. That is what the broker has on hand to the credit of Mr. Hauptmann on that date.

Q. Where is your $5,000 loss: how do you make that up? A. Well, there was $16,000 put into the account, and there was $6,900 equity in the account in September, and there were some withdrawals from the account to make up the difference.

Q. What do you mean by equity? A. The amount standing to the credit of Mr. Hauptmann.

Q. How do you arrive at it? A. By taking the credit balance on that day plus the cost of the securities on hand.

Q. All right. Now you say your 100 shares of stock cost $5,000. A. No, sir. There were 1, 2,—400 shares of stock.

Q. All right. Give me the individuals, will you?

100 what? A. 100 American Water Works.

Q. How much did it cost? A. $2,362.50.

Q. It hasn't been sold yet, has it? A. No.

Q. No. And when the market comes back to the price he bought it or better he will have a profit won't he? A. If the price goes up when he sells it—

Q. Yes. A. —he will have a profit. (Laughter.)

Q. Yes, yes. Now, the next 100 shares or whatever you have there. A. 100 National Bellas-Hess preferred.

Q. What did he pay for it? A. $955.

Q. Yes. He hasn't sold it yet, has he? A. No, sir.

Q. All right. What is the next one? A. 100 Purity Bakeries.

Q. What did he pay for that? A. $1,762.50.

Q. What did he pay for the next one? A. 100 Chicago Northwestern for $557.50.

Q. They are all there in Steiner-Rouse? A. Yes, sir.

Q. In all of his deals, from April down till the account was closed, the loss was only $5,000? A. That is correct.

Q. Now, we talked about Curtiss-Wright, is that it, an air plane stock, 500 shares? A. Yes, sir.

Q. It cost a dollar a share, didn't it? A. He bought 300 of it for $510. Yes, that I would say, the approximate price, was about a dollar a share.

Q. A dollar a share. A. That is right.

Q. And if a man went into the market, in a good market or a poor market, and bought 200 shares of American Telephone & Telegraph, he would pay almost as much for the 200 shares as you would pay for 500 shares of Curtiss-Wright, would he? A. That would depend on the price of American—

Q. Yes. This American Telephone & Telegraph pays $9 a year, doesn't it? A. It has paid that.

Q. So it would be way up for two shares, wouldn't

it? A. Yes, sir, the price averages over $100 a share.

Q. Yes. And there are other stocks in the market that averages way over? A. Some that sell for $200 a share or better.

Q. Yes. And how about bank stocks? A. Some of those—

Q. Not now, but in the days when we dealt in them. A. Some of those even now sell for over a thousand dollars a share.

Q. A share, yes. Now you have talked a lot about cash here. One day in July, $4,500 cash—is that what you said? A. Yes, sir.

Q. You never heard of any of that cash coming back from the Federal Reserve Bank in Wall Street to Steiner-Rouse as being Lindbergh money, did you? A. No, sir, I did not.

Q. No. Nor did you hear of any dollar of cash deposited by Hauptmann in any account or in any bank ever coming back as Lindbergh ransom money, did you? A. No, sir, I did not.

Q. Now, of course, the market depends upon the fluctuation and a fellow's best guess, isn't that it? A. I think that is the general opinion.

Q. So if you can buy stock, even if you can buy 10,000 shares in the morning at 80 and sell it in the afternoon at 82 or 82½ and take your profit, it is a good day's work, isn't it? A. You are very lucky.

Q. Yes. Now he bought Fox, didn't he? A. Fox Film A, yes sir.

Q. At about 247, didn't he? A. I would have to check on the price; I don't recall it. Can you give me the date.

Q. It was very high, was it not? A. I don't specifically recall that stock. He bought 50 shares Fox Film A for $1,270.

Q. What did he sell it for, at a loss, or did he make a profit? A. He made a profit of $245.50.

Q. Do you know that it is down to $4 a share today? A. I am not familiar with the market value of that particular stock.

Q. I can tell you about that one.

By Mr. Wilentz:

Q. The stocks which are now remaining in the Hauptmann account, whether they show an appreciation or whether they show a depreciation, you haven't computed that as to profit or loss, have you?

A. You can't compute a loss until the stock is sold.

Q. But you didn't? A. No, sir.

Q. So that your loss figures, showing the loss of the Hauptmanns in stocks, have no relationship at all to the stocks which were not sold and which still remain in the brokerage account in the name of the Hauptmanns? A. No, sir.

Q. I forgot to ask you one thing: between 1924 and 1932, in the bank accounts of the Hauptmanns how much silver was deposited? A. From October, 1924, when the account was first opened to April, 1932, there was a total of the coin silver deposit, $1.47.

Q. A dollar forty-seven cents? A. Yes, sir.

Q. Approximately eight years—how much silver was deposited after the ransom money was paid April 2nd, 1932, until the date of his arrest September, 1934? A. The figure is $453.25.

Q. Thank you. A. In coin.

Q. That is all. Thank you.

Mr. Wilentz: That is all, Mr. Frank. Do you want anything else, Mr. Reilly?

Mr. Fisher: Yes.

Mr. Wilentz: Is Mr. Barney L. Fink of the

New York Telephone Company here? Is he in the courtroom? All right, just wait a minute Mr. Fink.

Mr. Reilly: I understand this witness is to be available.

Mr. Wilentz: Yes.

Mr. Reilly: And for that reason we will excuse him now.

Mr. Wilentz: All right, Mr. Frank, and thank you. May we have our usual recess now, if your Honor please?

The Court: A five-minute recess. (Whereupon at 3:06 p. m. a recess was taken.)

(At 3:17 p. m. the jury was polled and all jurors answered present.)

Mr. Wilentz: Mr. Fink, will you please be sworn.

BARNEY L. FINK sworn as a witness in behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Mr. Fink, you are connected with the New York Telephone Company, are you not? A. I am.

Q. And you are the commercial manager of the Kingsbridge-6 office? A. Yes, sir.

Q. Is that office of the New York Telephone Company the one that has territorial jurisdiction over Decatur Avenue, where Dr. Condon lives? A. Yes, sir.

Q. Will you tell us what Dr. Condon's telephone number was prior to April 12th, 1932? A. Sedgwick-3-7154.

Q. Spell Sedgwick. A. S-e-d-g-w-i-c-k.

Q. Was that telephone number of Dr. Condon's changed and, if so, when? A. It was changed.

Q. What date? A. On April 12, 1932.

Q. After that did he have a listed telephone number or a private number? A. He had a private telephone number.

Q. Was Sedgwick 3-7154 the telephone number of Dr. Condon of Decatur Avenue the Bronx, New York—was that his number until April 12, 1932, and particularly from March 1st, 1932? A. It was.

Q. It was. And in April it was changed, is that it? A. Yes, sir.

Mr. Wilentz: Take the witness.

Cross-Examination by Mr. Reilly:

Q. When was the phone put in originally? A. Telephone service established?

Q. Yes. A. July 6th, 1922.

Q. And published in the telephone book? A. My record that I have at hand does not go back farther than April 7th, 1930. From April 7th, 1930, until April 12th, 1932, it was published in the Telephone Directory under the number Sedgwick 3-7154.

Q. What date in April was it changed? A. April 12th, 1932.

Q. Now what was the new number? A. The new number is a non-published telephone number, Sedgwick 3-1177.

Q. Well, if I call Dr. Condon and used the old number would they connect me with him? A. No, sir.

Barney L. Fink—Cross

The Court: Prior to April 12th, as I understand you, the number was Sedgwick—

The Witness: 3—

The Court: 3-7154?

The Witness: Sedgwick 3-7154.

The Court: And on April 12th it was changed to Sedgwick 3-1—

The Witness: Sedgwick 3-1177.

Q. But, you didn't call in the books? A. Beg pardon?

Q. Just because you changed his number you didn't call in the books? A. No, sir.

Q. When was your next listing? A. The next directory closed April 22nd, 1932.

Q. And when was it printed? A. Printed, the printing started immediately thereafter.

Q. And the distribution was some time in July? A. No, early in May.

Q. Early in May? A. Yes, sir.

Q. And it takes about how long to distribute? A. Approximately a week.

Q. Do you pick up all the old ones? A. In so far as we are able to.

Q. You don't get them all? A. No.

Mr. Reilly: That is all.

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

Mr. Morton.

EDWARD F. MORTON, sworn as a witness in behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Mr. Morton, in 1932 what did you do in your quest to earn a livelihood? A. I was a construction timekeeper, sir.

Q. Employed by whom? A. The Reliance Property Management, at the Majestic Apartments.

Q. In connection with your work as a construction timekeeper, was it your duty to check in and check out the employees of that company? A. It was, sir.

Q. In 1932 did you know Bruno Richard Hauptmann, this defendant? A. Will you repeat that, sir?

Q. In 1932 did you know Bruno Richard Hauptmann, the defendant in this case? A. Yes, sir; I did.

Q. Did he work for the same company for whom you worked? A. Yes, sir.

Q. Did he come under the class of employees who were checked in and checked out by you as the construction timekeeper? A. Yes, sir.

Q. Did you, in connection with your duties, keep records? A. Yes, sir; I did.

Q. Time records? A. Yes, sir.

Q. Did you check in and check out the employees in your own hand, in your own book? A. Yes, sir; I did.

Q. I show you a book and ask you if this is your original book of entry with reference to the employment record of the employees of that company? A. Yes, sir, it is.

Q. Particularly with reference to March and April, 1932? A. Yes, sir.

Mr. Wilentz: I ask that the book be marked for identification for the time being, just the book.

(The book referred to was marked State's Exhibit S-207 for identification.)

Q. I show you a card at the head of which is printed "Employment Record," and ask you if the writing on that card is in your hand? A. Yes, sir, it is.

Q. Is that the employment card, employment record of Richard Hauptmann, the defendant, in this case? A. Yes, sir.

Q. The original record as you wrote it? A. Yes, sir.

Mr. Wilentz: I offer it in evidence.

Mr. Reilly: This is in the handwriting of this witness?

Mr. Wilentz: Yes, sir, so he testifies.

Mr. Reilly: No objection.

(The card was received in evidence and and marked State's Exhibit S-208.)

Mr. Pope: That is for identification?

Mr. Wilentz: No, in evidence.

Mr. Pope: We object to it in evidence. We understood it was for identification.

The Court: It was offered in evidence and no objection was made.

Mr. Pope: We object to it.

The Court: You now object to it?

Mr. Pope: Yes, sir, it is incompetent, irrelevant and immaterial.

The Court: Well, I think two things. I think in the first place your objection comes too late, after it was announced that there was no objection to its admission in evidence; I think that first. And secondly, I think it is admissible, and therefore it will remain in evidence.

By Mr. Wilentz:

Q. No, with reference to the book which is an exhibit for identification—

Mr. Wilentz: What number is it, Mr. Reporter?

The Reporter: S-207.

Mr. Wilentz: S-207. You pasted it on the inside?

The Reporter: Yes, sir.

Q. I understood you to say this book is in your handwriting? A. Yes, sir, it is.

Q. It is the original book? A. Yes, sir, it is.

Q. Does it include the employment time of Bruno Richard Hauptmann the defendant in this case? A. Yes, sir.

Mr. Wilentz: I offer it in evidence.

Mr. Pope: And we object to that. There certainly is no ground upon which a book of this character can be admitted in evidence for the purposes suggested by the Attorney General.

The witness might be permitted to use the book, I suppose to refresh his recollection or something of that kind, but the book itself is not evidential.

The Court: Well, I have no doubt at all, but what the witness may be permitted to testify to the facts shown in this book, using it as you suggest, to refresh his recollection; I suppose that is so. But I am also inclined to think that the book itself is proper evidence. Now why do you say that it is not? This witness has testified that that is his record book, that he kept it himself.

Mr. Pope: Because there is no issue in this case—

The Court: No issue in this case?

Mr. Pope: No issue in this case in which this book is evidential. It does not prove the presence of the defendant at the point alleged.

The Court: Well, Mr. Pope, I was rather assuming that, if not now, presently, certainly, it would be an issue in this case as to whether or not the defendant in March or April, or whenever it is, was employed there at the—what is it, the Hotel Majestic?

Mr. Wilentz: The Majestic Apartment.

Mr. Pope: The Majestic Apartment, I believe.

The Court: I had supposed—

Mr. Pope: There isn't any such issue yet.

Mr. Wilentz: We have a further connection we will show immediately if your Honor please.

The Court: Upon the assurance of the Attorney General that he makes that an issue, I will allow the book to stand in evidence.

Mr. Pope: May we have an exception?

The Court: You may have an exception.

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

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

(Record book reëmployment of defendant at Majestic Apartment received in evidence and marked State Exhibit S-209.)

Mr. Wilentz: Exhibit S-209?

The Reporter: In evidence.

By Mr. Wilentz:

Q. Now, tell me whether or not your original records for the month, for that period of the month of April, beginning April 1st, whether you can tell from that record whether or not Bruno Richard Hauptmann worked on April 1st, 1932. A. Yes, sir; I can. Bruno Richard Hauptmann did work on April 1st, 1932.

Q. All right, now; on April 2nd, 1932, the date alleged as the date when the ransom money was paid, tell me whether he worked that day.

Mr. Reilly: I object to the form of the question. I think we ought to have the question asked without dragging in the ransom money and aviation, every second breath.

The Court: Well—

Mr. Wilentz: I will reframe it, if there is any question about it.

Q. On April 2nd, 1932, tell me whether or not Bruno Richard Hauptmann worked.

Mr. Pope: Well, we object to that question; if it is for the purpose of proving a negative, certainly a book, a record book cannot be used for the purpose of proving a negative; it may be used for proving when he did work.

The Court: Well, you see, if he were to reframe his question for the purpose of proving a negative, you would object to it, probably, as leading. Now his question is put in a frame that seems to me entitles him to an answer, and the witness may answer the question.

Mr. Pope: May we have an exception?

The Court: You may have an exception.

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

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

A. No, sir; Bruno Richard Hauptmann did not work on April 2nd, 1932.

Mr. Pope: I move to strike out the answer, because it is evidence of a negative character from a record.

Mr. Wilentz: No. Pardon me—

The Court: I decline to strike out the answer.

By Mr. Wilentz:

Q. Now on April the 3rd— that was a Sunday, was it not? A. Yes, sir.

Q. Your company didn't work that Sunday? A. The construction workers did not work on Sunday.

Q. On Monday did Mr. Hauptmann return to work? A. Yes, sir, he did.

Q. And at the end of that day did he give any notice that he wasn't going to return again? A. No, sir.

Q. Did he return again? A. No, sir, at no time.

Q. Did he ever return again to work? A. No, sir.

Q. Was he discharged or did he quit? A. He resigned of his own accord.

Q. Did he give you any notice of his resignation? A. No, sir.

Q. The next time he returned was for his pay check, isn't that it? A. Yes, sir.

Q. And all these things, Mr. Morton, I take it you know of your own knowledge, is that so? A. Yes, sir.

Mr. Wilentz: Take the witness:

Mr. Wilentz: Just a moment.

By Mr. Wilentz:

Q. While you are here, does your book include the time from March 1st to March 15th? A. It does.

Q. And up to March 21st? A. To March 31st.

Q. Will you tell us whether or not Bruno Richard Hauptmann worked on any day from March 1st to March 21st for your company? A. Bruno Richard Hauptmann started work on the 21st of March, 1932.

Q. Does that mean he did not work for your company on the 1st day of March? A. It does.

Mr. Wilentz: Thank you, sir.

Cross-Examination by Mr. Reilly:

Q. When he did come to work for you, where did he come from, an agency? A. I do not know, sir.

Q. When did you first see the defendant working for the Majestic Apartments, if you ever did see him? A. On the morning of March 21st, 1932.

Q. Where did you see him? A. On the job.

Q. Was he working on the job? A. Yes, sir.

Q. What was he doing on the job? A. He was a carpenter, sir.

Q. Was he doing weather-stripping work? A. Yes, sir.

Q. That is a skilled carpenter work, is it not? A. No, sir, on the contrary, it is not.

Q. Are you a carpenter? A. No, sir, I am not.

Q. When did you last discuss your testimony with anybody from the Attorney General's office, this morning? A. No, sir.

Q. Yesterday? A. Yesterday.

Q. Where, in Trenton? A. Trenton.

Q. How many days have you been in Trenton? A. I came down last night.

Q. How many times have you talked it over before you came to Trenton? A. With whom?

Q. Anybody connected with the case officially? A. The only one that I have spoken to is Lieutenant Finn of the New York City Police.

Q. When did you talk to him the first time? A. That I can't recall offhand. Corporal Horn of the New Jersey State Police can answer that statement.

Q. I am asking you. A. I do not know.

Q. Have you any other business or profession besides this? A. No, sir.

Q. Are you studying any profession or business? A. No, sir.

Q. How long have you been in this business? A. I have been on this immediate job three years.

Q. What do you mean by on this immediate job? Isn't the apartment finished yet? A. It is finished, but I am retained in a maintenance capacity.

Q. What do you do in a maintenance capacity? A. I expedite service complaints and I keep time records.

Q. You are a sort of assistant manager? A. Assistant superintendent.

Q. Of the building? A. Of the building.

Mr. Reilly: Is this book in evidence, General?

Mr. Wilentz: Yes.

Mr. Reilly: May I see it?

Mr. Wilentz: Surely.

Q. This book is in your handwriting, is it? A. Yes, sir.

Q. Will you find the Hauptmann entry for me, please. A. Of what period, please?

Q. When he first started, when you say. A. Right here, sir (indicating).

Q. What day do you say he came to work for you? A. On the 21st of March.

Q. Now, will you take a piece of paper and a pen, please. Have you a pen? A. No, sir; I haven't.

Court Crier Hann: I will give him a pencil. Do you want a pen?

Mr. Reilly: Yes, I want a pen. Can I put it up there on the edge. May I have a pad, please?

Mr. Wilentz: You can put it right on the desk there, if it is more convenient.

The Witness: Very well, sir.

Q. Write "March 21st, 1932," please. A. (Witness writes.)

Q. Now will you print "Richard Hauptmann," please? A. (Witness writes.)

Q. And will you print "James Hackett," please? A. (Witness writes.)

Q. Thank you.

Q. Was James Davis, carpenter, hired before Hauptmann? A. Yes, sir, he was.

Q. How many men were hired the day Hauptmann hired? A. May I look at my book?

Q. Can't you recall? A. Carpenters?

Q. Yes. A. I would say one.

Q. What was his name A. Richard Hauptmann.

Q. Besides Hauptmann. A. None that I know of from my memory.

Q. Now, when he came to work didn't he come from an agency or didn't he have some kind of

a card to get the position? A. I don't know, sir. I did not hire Mr. Hauptmann.

Q. Who did? A. Joseph M. Fuecht, the superintendent in charge.

Q. When you went out on the job you say Hauptmann was doing carpenter work, is that correct? A. Yes, sir.

Q. You had this book with you, did you? A. Yes, sir, at all times.

Q. Did you ask him his name? A. Yes, sir.

Q. Is that the system that you have there, had there at that time, about new help, you would ask them the name? A. Yes, sir, when they were first hired.

Q. Wouldn't the superintendent or somebody give him the ticket, and say "Timekeeper this man is employed, this man is okay"—nobody, you couldn't walk in off the street and get a job, could you? A. No, sir, they couldn't, but when the superintendent hired a man he would fill out an original card and the card was turned over to me. Either that or the man was sent to me and I completed the employment record card.

Q. Now, where is the original card? A. That is it, sir.

Q. This is? A. Hauptmann was sent to me to fill out the card; it was made up in duplicate.

Q. Now, was this card made out by the superintendent? A. No, sir; it was made out by me.

Q. You printed it, "Carpenter, Richard Hauptmann, Address, References, Alfred M. Grizzle,"—right? A. Yes, sir.

Q. And then you started—then you wrote "32; $100 a month; March 21st, 1932; hired by J. M. Feucht"; is that his name? A. That is the correct pronunciation.

Q. And you wrote all this card? A. I did.

Q. Well, now, did you print Hauptmann's name

from this card in this book before you saw Hauptmann or afterwards? A. I printed Hauptmann's name in that book after I saw him.

Q. And you saw him working on the job? A. Yes, sir.

Q. Did you have this card with you? A. No, sir; that card was on file.

Q. And you asked him his name, did you? A. Yes, sir.

Q. And then you printed it in the book right there on the job, or back in the office? A. I printed his name in on the book, sir, from the employment card.

Q. When? A. On March 21st, the morning that he started.

Q. Then you checked him every morning after that? A. Yes, sir.

Q. When was the payroll made up for the 21st? A. That period ended, sir, on March 31st. The payroll was prepared and compiled on about the 26th of March.

Q. These carpenters were working under the NRA, were they? A. No, sir.

Q. Under the Blue Eagle? A. No, sir.

Q. No? Well, were they working under the Union rules of five days a week? A. No, sir.

Q. It was an open shop? A. It was an open shop.

Q. So these carpenters, you say, worked on Saturdays? A. Yes, sir.

Q. Every Saturday? A. Every Saturday, sir.

Q. Sure about that? A. That is, until—until they rearranged the construction of the building.

Q. What does that mean? A. That means that on May 1st, there being too much work for the maintenance superintendent, who was then in charge of construction, one Mr. James M. Horn, was put in complete charge and he reduced the hours of the workmen, effective May 1st.

Q. Did any carpenters work on April 1st? A. Yes, sir.

Q. And are their names in here? A. Yes, sir.

Q. Well now, I see, April the 1st, porters and I see painters? A. Turn over one or two more pages.

Q. And I see a long list of names without any distinctive heading at the top. I see another page of names, and I see another page of names, and then I come to the front hall. That is for the week of April 15th. Maybe you can pick out April the 1st, the carpenters. A. (Witness turned to page in book.)

Q. But this says up at the top of the page "Weeks ending April 15th"? A. Yes, sir.

Q. Did you pay twice a week? A. Twice a month.

Q. Twice a month. Now how many carpenters were working on the 1st? You have got James Davey here. A. He was the foreman, sir.

Q. And you have Robert Lockhead? A. Yes, sir.

Q. Then you have Allan Wilkinson? A. Yes, sir.

Q. Then you have written in a man named Sol. Reiss? A. Yes, sir.

Q. But you haven't any— you have a record of Reese coming to work in the middle of the month? A. Yes, sir.

Q. Then you have Gus Davidson, George Davidson? A. Yes, sir.

Q. And you have Joe Burnside? A. Yes, sir.

Q. And you have Gustav Cassins? A. Yes, sir.

Q. And Joe Burnside? A. Yes, sir.

Q. Then you have Richard Hauptmann crossed out? A. Yes, sir.

Q. But you have a check there for April 1st before it was crossed out, haven't you? A. I drew that line through his name after he had resigned, sir.

Q. I am asking you whether or not you have a check there for April the 1st? A. Yes, sir, I have.

Q. And you have a naught for April the 2nd, right? A. Yes, sir.

Q. Then you have a check that he worked on the 3rd and 4th, haven't you? A. Yes, sir.

Q. Underneath the naught which I suppose indicates that he didn't work, there is a check mark, isn't there? A. Underneath the naught?

Q. In other words, there was a check mark there and then you put a naught over it. A. I don't notice that.

Q. You don't notice it. Then you drew the line and wrote on the side something, did you? A. Yes, sir.

Q. You didn't draw the line through for Lieutenant Finn, did you? A. No, sir, I did not.

Q. When do you say Hauptmann resigned? A. On April 4th, 1932.

Q. What day of the week would that be? A. That was on a Monday, sir.

Q. What day was Sunday? A. April 3rd.

Q. Did any carpenters work on Sunday? A. No, sir.

Q. What does the check mark indicate on your book? A. For Sunday, April 3rd?

Q. No, no. For any day. A. That a man was present, with the exception of Sundays.

Q. That a man was present and worked, is that it? A. Yes, sir.

Q. What Sunday was there in March before April 2nd, was it the second or third Sunday in April? A. It is not clear, sir.

Q. What was the date of the first Sunday in April, 1932? A. April 3rd.

Q. April 3rd was Sunday? A. Yes, sir.

Q. Well, then, what was the Sunday before that: the 26th or 27th? A. The 25th— 26th.

Q. 26th. Now, every one of the carpenters on the 26th of March, which you claim was a Sunday, have

check marks opposite their names, just as though they worked there, haven't they? A. Yes, sir.

Q. And April 2nd, carpenters, you have an "O," is that right? A. For the carpenters.

Q. Yes, a naught for Hauptmann? A. Yes, sir.

Q. But you have a check marked the next day, April 3rd, haven't you? A. Yes, sir.

Q. He didn't work that day, did he? A. No, sir; he didn't.

Q. And you have check marks for the amount carpenters and painters and everybody else—? A. On Sundays, yes, sir.

Q. Then you don't keep your books accurate, do you? A. Yes, sir.

Q. You think that is accuracy, do you? And he worked Monday, the 4th, did he? A. Yes, sir.

Q. Did he work the 5th? A. No, sir.

Q. And he worked Friday, did he, or Saturday, the 1st of April? A. Friday, the 1st of April, he worked.

Mr. Reilly: I offer in evidence, or rather, I offer for identification—

Mr. Wilentz: No objection.

Mr. Reilly: —this sheet written by this witness.

The Reporter: D-34 for Identification.

(Paper referred to marked Defendant's Exhibit D-34 for Identification.)

By Mr. Reilly:

Q. Will you write your name and address on there, please? A. (Witness writes on D-34.)

Edward F. Morton—Re-Direct

Q. Now, isn't it a fact that on Sundays you had a skeleton crew of carpenters working? A. We did, sir, prior to the construction of the building, that is, prior to the inception of Horn.

Q. What date was that? A. That was on April 18th, 1932.

Q. So that in March you had a skeleton crew of carpenters working on Sundays? A. We had one, sir.

Q. One or two? A. There may have been two, Davies may have worked on Sundays; I can't recall.

Q. There may have been two? A. Yes, sir.

Q. In March? A. In March.

Q. And in April? A. And in April.

Q. Until Horn came along, is that right? A. Yes, sir; that is right.

Re-Direct Examination by Mr. Wilentz:

Q. Just one minute. As I understand, this man was employed, as the other employees were, by the month, is that right? A. Yes, sir.

Q. What was this man's rate of pay? A. $100 per month.

Q. Whether a man works Sunday or not, he was checked as being present, isn't that right? A. Yes, sir, he was.

Q. And every Sunday you checked men as being present, whether they were or not? A. That was to facilitate my time record.

Q. And when it came to the payment of a man's salary, you based it upon the day's work as against 30 days a month or 31, is that it? A. I based it upon the check marks.

Q. And when a man was absent, what did you put in there, a day that you were going to charge for absence, what did you put in the book for that, what was your system? A. A naught, sir.

Q. A naught? A. Yes, sir.

Q. That was to distinguish it from a check? A. Yes, sir.

Mr. Wilentz: All right, that is all. Thank you.

Mr. Wilentz: Miss Cecile Barr.

CECILE M. BARR, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Is your name Mrs. Barr? A. Mrs, yes, sir.

Q. Mrs. Barr. Mrs. Barr, where are you employed? A. At Loew's Sheridan, 12th Street and 7th Avenue, New York.

Q. What theater? A. Loew's Sheridan Theater.

Q. Loew's Sheridan Theater. A. That is right.

Q. Where do you live? A. At number 5 Milford Avenue, Newark, New Jersey.

Q. Newark, New Jersey? A. Yes, sir.

Q. You are employed in New York? A. Yes, sir.

Q. For what period of time have you been employed by the Loew's Theater in New York? A. Well, almost twenty-five years.

Q. Almost twenty-five years? A. Yes, sir.

Q. In what capacity were you employed by that theater in November, 1933? A. As cashier.

Q. Do you know the defendant, Bruno Richard Hauptmann? A. Yes, sir, I have seen him before.

Q. When was the first time you saw him? A. When he purchased a ticket at the window, November 26th, 1933.

Q. November 26, 1933? A. Yes, sir.

Q. What was the occasion that recalls to your mind the fact that he purchased a ticket at your

window on the night of November 26, 1933? A. Well, he came up, I wasn't busy at the time, it was about 9:30 in the evening, Sunday evening, and he threw a five-dollar bill in at me, which was folded three times in eight parts.

Q. Just one minute, now. I have got to find the five-dollar bill. Well, if there is no objection, we will use the ten. Will you show us what you mean on this ten-dollar bill, when you say folded in eight parts? A. It was folded in half (indicating with the bill.)

Q. Just a minute. Lengthwise in half, still retaining its length, is that what you mean? A. Yes, sir.

Q. Then what? A. Then again in half.

Q. To one-half its length? A. And then a third time (indicating with the bill.)

Q. When it was folded that way, what was it that was revealed to you, what part of the bill revealed itself to you? Did the amount of the bill reveal itself to you? A. Not until I opened it up.

Q. All right. Now tell us what did he do about the bill that was folded in eight parts? A. He threw it in at me, threw it in at the window as I looked up at him. And while I was opening it out, he stood there looking at me and I said, "Well, what do you want?" He looked up at the sign. We have three-price tickets. He looked up at the sign and said one forty. All that time I looked at him.

Q. Was there a forty-cent ticket, was that one of the prices for which you sold tickets? A. Yes, sir, 35, 40 and 60 cents were the prices.

Q. Did you give him change for the five dollars? A. Yes, sir.

Q. What did you do with the five dollars? A. I wrapped it for the bank.

Q. Together with the rest of your deposit? A. Yes, sir.

Q. Who took that money to the bank for deposit? A. Mr. Simons, the assistant manager.

Q. So that the five-dollar bill which you got from Hauptmann was given as part of the deposit to be made by Mr. Simons, is that it? A. Yes, sir.

Q. Now, the next day, November 27, or Monday, the 28th, whenever it was— A. The 27th.

Q. Was the next day the 27th? A. Yes, sir.

Q. Did you get a visit from the police? A. Yes, sir. When I reported to work—

Mr. Reilly: I object. She should answer yes or no, whether she did or not, many I suggest.

Q. Just limit your answer for the time being, please, to yes. A. Yes.

Q. Or no, rather—either one. A. Yes.

Q. Your answer is yes, is it? A. Yes, sir.

Q. And did you see that bill the next day? A. Yes, sir.

Q. In whose possession? A. Lieutenant Finn.

Q. Was Corporal Horn of the New Jersey Police with him? A. Yes, sir. No, sir; I don't think he was.

Q. You don't think he was? A. There were two other men with him. I don't know who this one man is. I hadn't seen him.

Q. You don't know; what is that? A. There were two men with him.

Q. You don't know who they were? A. No, sir.

Q. I see. Now, with reference to the date: are you certain about the date? A. Yes, sir; it was Sunday night, November 26th.

Q. 1933? A. Yes, sir.

Q. And with reference to the man who gave you that bill, are you certain as to that? A. Yes, sir.

Q. Positive? A. Yes, sir.

Mr. Wilentz: That is all, Mrs. Barr. Thank you.

Cross-Examination by Mr. Reilly:

Q. How long have you lived in Jersey? A. Twenty-five— twenty-four years.

Q. Do you maintain any address in New York? A. No, sir.

Q. Do you know a restaurant on West 15th Street, New York, Mariellies? A. No, sir.

Q. Right off Sheridan Square? A. No, sir.

Q. Well, your theater is on Sheridan Square, isn't it? A. No, it is at 12th Street and 7th Avenue.

Q. Well, it is close to Sheridan Square, isn't it? A. A few blocks down.

Q. You are in what is known as Greenwich Village? A. Yes, sir.

Q. And West 15th Street near 7th Avenue is in Greenwich Village, too, isn't it? A. Yes, the other side of 14th Street.

Q. Are you in the habit of eating in Mariellies Restaurant? A. Never been there.

Q. Where do you eat when you go off for your luncheon period? A. I don't go off for work until five o'clock and I eat at home before I leave.

Q. Every night you report at five? A. All but, well, two days I have long days, Wednesdays and Fridays are my two long days, then I have lunch right across the street from the theater.

Q. When did that theater open? A. I wasn't there—

Q. A couple years ago? A. —for the opening it has been open about twelve years.

Q. About twelve years? A. Yes, sir.

Q. And it is well patronized, isn't it, at night? A. Yes, sir.

Q. I suppose you can remember everybody that you saw go into the theater? A. No, sir.

Q. In the year 1932? A. No, sir.

Q. And everybody that went in in 1933? A. No, sir.

Q. How many five-dollar bills do you suppose you took in during 1932? A. I couldn't account for them.

Q. How many did you take in in 1933? A. Couldn't possibly remember that.

Q. Do you remember me? A. No, sir, just from seeing your pictures.

Q. No. Do you remember me in the flesh within the last three weeks? A. No, sir.

Q. Talking to you at your window? A. You mean last night?

Q. Not last night. No, I was in Trenton. A. the night before?

Q. Do you think you saw me last night? A. I thought I saw you the night before last.

Q. Where? A. Where I don't know.

Q. Now I am serious about this. Where do you think you saw me night before last? A. I don't know. If you didn't have glasses on, you look like a man that came up to the window (Mr. Reilly removed his glasses.) No, sir, I didn't see you. Now that I see you without your glasses, I didn't see you.

Q. Within the last three weeks have you seen me? A. No.

Q. At your window? A. No, sir, I don't remember you.

Q. Now the fact that you were going to testify at this trial was known in the public press, was it not, for the last three months? A. I guess so.

Q. You remember reading the story? A. Yes, sir.

Q. Do you know where the Fifth Avenue Hotel it? A. Yes.

Q. Fifth and Ninth Street? A. Yes, I have passed there.

Q. It is only a few blocks away from your moving picture theater? A. Yes, sir.

Q. Now, do you remember me having a conversation with you at your window within the last three weeks? A. No, sir.

Q. Did you have a conversation with anybody in the last three weeks at your window? A. Yes, sir, several people.

Q. Mr. Rao, stand up. (Mr. Rao stood up.) Did you see Mr. Rao in the last three weeks at your window? A. No.

Q. That is all, Mr. Rao. Now, how many people have come to your window in the last three weeks and talked to you about this case, about this particular five-dollar bill? A. A few of my regular patrons I spoke to.

Q. How many that were not regular? A I don't know. I don't remember.

Q. How many people have come and said, "We are reporters. Now we want to hear the story over again"? A. In the last three weeks?

Q. Yes. A. None.

Q. In the last month? A. None.

Q. Sure about it? A. Yes, sir.

Q. And you have been on duty every night from five o'clock until closing time? A. Yes, sir.

Q. Now, as a matter of fact, what time do you pull the shade down on the window and stop selling tickets? A. About ten o'clock.

Q. When does your second show begin? A. The last show, about nine o'clock.

Q. Nine o'clock? A. Yes, sir.

Q. And you say this was on a Sunday night, this five-dollar was given to you? A. Yes, sir.

Q. Now on Sunday night is it not a fact that your

theater fills up for the first evening show which is about 7:15 or 7:30, isn't it? A. About that.

Q. It fills up very rapidly between half past six and seven o'clock, doesn't it? A. Not necessarily.

Q. Isn't it a fact that people are unable to get a seat in the Sheridan Square— that is the name of it, Loew's Sheridan Square—are unable to get a seat in your theater on a Sunday night after 7:15. A. No, sir.

Q. What is it, a 600-seat house? A. No, sir; it is a 2600-seat house.

Q. It is filled on Sunday nights, is it not? A. Sometimes. It depends on the picture.

Q. There was a particularly good picture the 26th of November, 1932, was there not? A. Yes, sir.

Q. So the house was filled up, wasn't it? A. I don't remember.

Q. When did you last have a picture that was particularly good and filled the house on a Sunday night? A. This last Sunday.

Q. And the Sunday before that, the picture before that? A. Well, we did a fairly good business.

Q. You did a fairly good business about three weeks ago, did you not? A. Three weeks ago? I don't remember that.

Q. Well, maybe a month ago. A. We haven't done anything, any big business, in the last fourteen weeks,—nothing to speak of.

Q. However, people going to the theater for the first show in the evening on Sunday night come out about what time? A. It is usually a two-hour show: about that.

Q. They come out about nine? A. People that go in at seven.

Q. And usually the music plays for about 45 minutes? A. We don't have any orchestra, it is a continuous show.

Q. You have pictures? A. Yes, a continuous show.

Q. With music? A. (The witness nods affirmatively.)

Q. Do you know the Paramount reels? A. Sometimes.

Q. Sometimes the Hearst? A. Metrotone News.

Q. Sometimes the Fox? A. We don't show the Fox.

Q. No Fox? A. No Fox. (Laughter.)

Q. Any other news reel that you show? A. No, sir.

Q. Just those two? A. Metrotone and sometimes the Paramount.

Q. Now as the people come out of the lobby how do the people go in, in a separate line, on Sunday night? Do they come out one door? A. No, sir.

Q. And go in the other? A. No, sir, we have several exits, several doors.

Q. I mean, the entrance. A. The entrance, several doors, all around the place; six or seven doors.

Q. How do you hold them in line until the picture is over? A. We don't hold them in line.

Q. You let them go in and stand in the lobby? A. That is right.

Q. So anybody can walk up and buy a ticket and go in. A. That is right.

Q. No—

The Court: Mr. Reilly, I have some cough tablets here that are effective for me. I don't know how they will be for you.

Mr. Reilly: Thank you, Judge. Anything, I know that you give me will cure me.

(Laughter.)

Q. I miss the air of Sheridan Square. Now, at nine-thirty on a Sunday evening what part of the pro-

gram would be finished? A. Well, the short subjects would be on, sometimes the comedy, sometimes the news.

Q. Now, the man threw the bill in folded? A. Yes, sir.

Q. You said what did he want, he said, one, 40. A. Yes, sir.

Q. Have you a machine there that clicks out the change? A. Yes, sir.

Q. One, two, three and it is out? A. That is right.

Q. And the ticket comes snapping out through a machine? A. That is right.

Q. The man takes the ticket, takes the change, and passes away. A. That is right.

Q. The 26th of November, 1933, at 9:30 you say. A. That is right. About that.

Q. How was he dressed? A. He had on a dark suit, had a dark hat pulled way down over his forehead.

Q. A slouch hat down over his forehead. A. Yes, sir.

Q. Did he have his overcoat up? A. He didn't have any overcoat on.

Q. Sure about that? A. Yes, sir.

Q. Was it a cold night? A. Yes, sir.

Q. Very cold? A. Our record just says cold, clear and cold.

Q. Your record? A. Yes, sir.

Q. What does that mean? A. Well, we put down the weather every day.

Q. Did you put down the weather or did somebody else put it down? A. I put it down.

Q. "Clear and cold"? A. "Clear and cold."

Q. A man with no overcoat on? A. Yes.

Q. There were a great many people in that neighborhood, who go to the theater, who don't wear over-

coats, aren't there? A. Sometimes they run in without overcoats.

Q. Run in without overcoats? A. Yes, sir.

Q. Now, how far down was the slouch hat—

Mr. Reilly: Can I borrow one?

(A slouch hat is handed to Mr. Reilly.)

Q. How far down was it on the man's face? A. Well, down, way down on his forehead.

Q. Did he have a point on it, down like that (Illustrating)? A. I didn't particularly notice that.

Q. Well, it was an ordinary slouch hat? A. He had his hat pulled way down; I didn't notice what kind it was.

Mr. Reilly: May I put this on, Judge, without offending you?

The Court: Yes.

(Mr. Reilly pulls hat down.)

Q. All right, how far down was it? Was it down; down here, like that, is that right? A. That is right.

Q. And he is looking at you and you are sitting in behind a booth; right? A. Yes, sir.

Mr. Reilly: Thank you. (Takes off hat.)

Q. Now, you are sitting down like this: am I right (seated)? A. Yes, sir.

Q. And you have got one of these change things in front of you: right? A. Yes, sir.

Q. And this is a small cubbyhole arrangement, isn't it, curtains on the side? A. Yes.

Q. Right? A. Yes, sir.

Q. And just in front is a piece of glass, and here is brass and a small opening that the ticket slides out of, and the change slides out? A. Uh—huh.

Q. And you are sitting back on a low stool, is that right? A. Yes, sir.

Q. And you are alone in the booth? A. That is right.

Q. And it is 9:30, and a man throws a five-dollar bill in? A. Yes, sir.

Q. Now, of course, he is standing up and you are sitting down? A. That is right.

Q. And you are sitting how far back from the glass? A. About two feet.

Q. About two feet back? A. About that.

Q. And the mechanical operation of making change is pressing on some keys, the change slides out to him? A. That is right.

Q. While you pick up and throw out four ones? A. Yes, sir.

Q. A man takes his ticket and he goes? A. Yes, sir.

Q. Is that right? And that is the way it happened this night? A. Yes, sir; I suppose so.

Q. That is about as long as it took to sell the tickets too? A. To sell the tickets?

Q. Yes. A. (No answer.)

Q. Now, did you ever tell anybody since you got into this case that you couldn't remember the man, but that it would be a good ad for the Sheridan Square Theater? A. No, sir; never did.

Q. Haven't hundreds of people stopped at that window since then and asked you whether you are the girl in the Lindbergh case? A. I have had several people stop and ask me, yes, sir.

Q. Didn't you go to the manager and ask him whether or not he might be able to get you some moving picture work in Hollywood as a result of the

Loew's Theater—wait a minute. Did you or didn't you? A. I did not.

Q. Have you talked to anybody in Jersey about this case? A. No, sir.

Q. You are sure about it? A. Positive.

Q. Do you know any State Troopers? A. Well, I met one.

Q. What is his name? A. Corporal Horn. He called for me.

Q. When did you first meet him? A. When he called for me to bring me out to Flemington.

Q. Is that the first time you ever saw him? A. Yes, sir.

Q. The first time in your life? A. Yes, sir. No, the first time, when he came to tell me that he was going to take me out to Flemington at the theater, that was the first time.

Q. How long ago was that, a month or two ago? A. No, in October, I believe, when they indicted him.

Q. I see. That was the first time you saw anybody from Jersey? A. Yes.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. You appeared before the Hunterdon County Grand Jury that day Corporal Horn brought you, did you not? A. Yes, sir.

Q. And the day after the five-dollar bill was passed and the police came to you, did you give the police the best description you could the very next day? A. Yes, sir.

Mr. Wilentz: That is all, Mrs. Barr. Thank you very much.

The gentleman from the bank, the man that made the deposit.

Just a moment, Mrs. Barr: Do you remember the name of the picture that night?

The Witness: Oh, yes, sir, Walter Winchell's "Broadway Looking Through a Keyhole" (laughter).

Mr. Reilly: Just a minute. I want to recall her.

The Court: There is altogether too much confusion here and we must stop it. Are the officers here, Mr. Clerk? Won't you call the list of the officers?

(The Clerk polled the officers.)

The Court: Well, we have found out that at least two of the officers seem to be over here, in this part of the room. What I want the officers to do hereafter is to take stations down in the main body of the courtroom, that is, the officers who don't seem to be engaged upon the doors. Some of the officers are here in charge of the jury. Many of them are at the doors, I assume, but there are officers sitting around, apparently in this courtroom having no oversight at all over the audience. The officers are here primarily for the purpose of keeping order. The Court cannot undertake to keep order by itself. The Court has to rely upon these officers who are here for that purpose and I want these officers hereafter to take their stations down in the main body of the courtroom where this confusion and laughter arises about every fifteen

minutes. I want these officers to see to it that that confusion and laughter is stopped and they are authorized to take such measures as the Court will from time to time direct to stop that confusion and laughter. Between the officers and the Court, if there is proper coöperation I think that we can effectively stop it, if we have to take rather severe measures.

I dislike to talk this way, but I am bound to do what I can to maintain proper order in this courtroom in the interest of a fair and impartial and speedy trial and that I mean to do, and I want people to understand it.

Now then, let those officers, there are one or two officers—

Clerk Fell: I have some more names here.

(Called list of officers not previously called.)

Court Crier Hann: There is an officer in each aisle.

The Court: I hope I won't have to say anything more about this. I am informed that there are officers stationed around amongst this crowd. I want those officers to maintain order and these people who are disorderly, to the extent that they are interfering with the proper and decent and quiet course of this trial, I want the officers to identify these people who are making this disturbance and I will deal with those people. Now then, the trial will proceed.

WILLIAM M. CODY, sworn as a witness in behalf of the State:

Direct Examination by Mr. Wilentz:

Q. By whom were you employed in November, 1933? A. Corn Exchange Bank.

Q. And in your capacity in connection with the Corn Exchange Bank did you get a deposit from Loew's Theater in November, 1933? A. Yes, sir; I did.

Q. Did you find in that deposit any of the Lindbergh ransom bill numbers? A. I did.

Q. Which one? A. I found a five-dollar red seal bill, bearing the following marks—may I refresh—

Q. Give us the number, the serial number. A. B35435796A.

Q. When did you get that? What deposit was it, what date? A. On November 27th, 1933.

Q. Have you got the deposit slip which included that five-dollar bill? A. I have the original slip.

Q. The original? A. Yes, sir. (Producing.)

Q. I notice it is marked Sheridan Theater Account. A. Yes.

Q. Does that indicate the theater that it came from? A. Sheridan Theater, yes, sir.

Q. What is the date of the deposit slip? A November 27, 1933.

Q. Are you the young man who discovered the identity of the bill, with reference to the connection with the Lindbergh ransom money? A. I am, yes.

Q. What did you do when you once discovered it? A. I placed the bill aside with this deposit slip and reported to my manager, after Mr. Simons, who had watched me count the money, left the bank.

Q. Was Mr. Simons the man who made the deposit for the theater company? A. Yes.

Q. Did you eventually surrender it to the police? A. Within a short time, yes.

Q. Well, how soon? A. That same day, within an hour or so, I believe.

Q. Do you remember the policeman to whom it was delivered? A. Lieutenant Finn.

Q. And you delivered that $5 bill with that serial number to Lieutenant Finn, is that correct? A. I delivered it to the manager of the bank, Mr. Ainley, and he held it until Lieutenant Finn arrived, and it was turned over to Lieutenant Finn.

Q. Now give us that serial number again which you took from that bill which was surrendered to Lieutenant Finn so we will make no mistake about it? A. B 35,435,796—80.

Q. Thank you, sir. That is all.

Mr. Reilly: Is that the bill?

Mr. Wilentz: Yes, S-103 for identification.

Cross-Examination by Mr. Reilly:

Q. The Sherman Theater is on Seventh Avenue, correct? A. Yes, sir.

Q. Are you familiar with New York? A. Somewhat, yes.

Q. Where do you live, midtown or uptown? A. No, I live on Staten Island.

Q. That is the other way. Have you any idea and can you give us your best idea as to distances between your theater and 233rd Street in the Bronx as to— A. Miles?

Q. Miles, yes. A. I don't work in the theater, I work in the bank.

Q. Bank. Well, can you tell us the distance between the theater—you know where the theater is? A. Yes, sir, I do.

Q. And where are you, the Corn Exchange Bank at Fifth Avenue? A. No, Seventh Avenue branch, located at Seventh Avenue and 14th Street.

Q. Seventh Avenue and 14th Street, within a few blocks of the theater? A. Yes.

Q. Do you know where the theater is? A. Yes.

Q. Ever been in it? A. I don't recall.

Q. You know where it is, there is quite a plaza around there, is that right? A. That is right.

Q. Now, from that theater, how far would you say it was to 233rd Street in the Bronx? A. Well, it is quite a distance.

Q. A great many miles, isn't it? A. I wouldn't know the exact number of miles offhand, sir, no, but I should judge it might be about 15 miles.

Q. Now let me see the deposit slip, please? A. (Witness hands Mr. Reilly slip.)

Q. When this was handed in to your bank, there was $3,022.23, is that correct? A. Yes, sir.

Q. There was $1,771 worth of bills? A. Yes, sir.

Q. How many ones? A. I couldn't tell you that, sir.

Q. How many fives? A. A goodly number of ones and a goodly number of fives.

Q. What do you mean by a goodly number, a hundred of each? A. I wouldn't say but a great many of each.

Q. How many tens? A. There must have been a fair portion.

Q. As the denomination went higher, the number became lesser, is that correct? A. I would assume that.

Q. Very few twenties? A. That is true.

Q. There might have been some tens? A. There were some.

Q. And a great many ones and fives. A. Yes.

Q. And maybe some twos. A. Very few twos.

Q. Is there any indication on this deposit slip or have you any way of showing us how many fives there were? A. No, sir.

Q. How was the deposit made up? A. Their deposit is made up in lots of fifty dollars each, they have made a practice of wrapping up fifty dollars,

whether they get thirty-five ones and three fives, or twenty-five dollars worth of fives and twenty-five dollars worth of ones, and so forth.

Q. I assume that they do like other theaters, whenever the girl has a chance, she reaches in the drawer and takes fifty dollars worth of bills out and puts an elastic around it or a sticker wrapper marked "Fifty dollars." A. Yes, sir.

Q. That is either thrown back into the drawer or into the safe. A. Yes, sir.

Q. So they always have a working capital in the cash drawer of thirty or forty dollars. A. I presume that is the way they do.

Q. There is no distinction in the fifty dollar wrapper so far as the denomination is concerned, is that correct? A. It doesn't call for it.

Q. Ones, twos and fives all mixed in? A. As they make up the packages? Anything that might make up fifty dollars might be in the package marked "Fifty Dollars."

Q. As you took in the deposit what did you do, throw the fifty dollar packages to one side? A. I throw them in front of me.

Q. As you count them one, two, three, four, five—A. In this particular instance, in Loew's, I arrange them—in any deposit, as a matter of fact—I arrange them to check the number of fifty dollar packages to see if it corresponds and of course there would also be a small portion leaving a residue amount to make up the full total.

Q. Your bank is a rather busy bank on a Monday, is it not? A. Surely it is.

Q. Are you the only receiving teller? A. No, I am not.

Q. How many others? A. Four.

Q. As you took in the deposit, did you break the seals of each fifty or did you count fifty dollar packages? A. Did I break the seals?

Q. Yes. A. I counted the fifty dollar wrapper to get the sum total first.

Q. Absolutely. A. Then I checked to see if there were fifty dollars in each particular wrapper.

Q. You did that by going over with your thumb? A. No. I slipped it off. I counted it to see if the fifty dollars was in there.

Q. You found the deposit was correct? A. That is correct.

Q. And the man went on about his business. A. That is true.

Q. Then what did you do, divide the bills into compartments. A. I had been doing that as I went along, but when I arrived at that particular bill, I placed it aside with the ticket and with the wrapper and saved them, and presented the case to the manager.

Q. You didn't recall from your memory this number, did you? A. Not that particular number, but I knew it was in the scope of the Lindbergh bills because I had before me a slip which called to my mind the five dollar red seal bills which would be in the Lindbergh scope.

Q. Did you have the circular? A. I had a circular, yes, but I didn't consult the circular—what called my attention to the fact was the small slip which was in front of me.

Q. Have you a copy of that here? A. No, sir. I have another copy here, if I may refer to it.

Q. Stated off what?

Mr. Wilentz: Let's have it, please.

Q. Wait a minute, before you look at it. It started off B-61? A. No, it started off B-621, up to B-78 million.

Q. It started off B—what? A. Any red seal five dollar bill which would be in this following scope,

B-621000 to B-78000000 or A- from 78000000 to 99000000, would be or might be a Lindbergh bill. So, that being within that scope, I tossed it aside and referred to the slip, which I have here.

Q. Now, where is the B-621000? What do you mean by that? A. The number on the bill, where you see on that bill there, you see B—

Q. All right, I am referring now to 621000. A. That would be the scope of numbers in which the Lindbergh ransom money would be found.

Q. Well, where is the 621000 scope on a bill that begins— A. There is no 621 on that particular bill, sir. No, sir. I have another copy here, if I may refer to it.

Q. Started off what?

Mr. Wilentz: Let's have it, please.

Q. Wait a minute, before you look at it. It started off B-61? A. No, it started off B-621, up to B-78-million.

Q. It started off B—what? A. Any red seal five dollar bill which would be in this following scope, B-621000 to B-78000000 or A- from 78000000 to 99000000, would be or might be a Lindbergh bill. So, that being within that scope, I tossed it aside and referred to the slip, which I have here.

Q. Now, where is the B-621000? What do you mean by that? A. The number on the bill, where you see on that bill there, you see B—

Q. All right, I am referring now to 621000. A. That would be the scope of numbers in which the Lindbergh ransom money would be found.

Q. Well, where is the 621000 scope on a bill that begins— A. There is no 621 on that particular bill, sir.

Q. No 621 on this? A. No, sir.

Q. All right. What is the other scope? A. Within those numbers, I said.

Q. Within what numbers? A. Beginning—any number beginning with B-621000 to and including B-780———

Q. V? A. No, B.

Q. B-78000000? A. B-78000000, yes sir.

Q. Well this bill does not begin with 621,000 nor does it end with 78,000,000, does it? A. It is within that scope of numbers.

Q. Write it down on a piece of paper, please, and show me how this bill comes within the scope of 621,000 to 78,000,000? A. May I have a pencil? (Witness wrote on slip of paper and handed same to Mr. Reilly.)

Q. You mean then a bill that would start at 621,000, that is less than the first million? A. Yes, sir.

Q. And running up to 78,000,000? A. Yes, sir.

Q. That would be 77 million and a third, seventy-seven and a third million bills, is that correct? You have less—621,000 is within the first million, isn't it? A. Yes, sir.

Q. 78,000,000 is 78,000,000, isn't it? A. Yes.

Q. The difference between 621,000 and 78,000,000 is 77,379,000, right? A. It would be found within those numbers.

Q. Within that scope? A. Yes, sir.

Q. And you were sitting there looking for bills within 79 million numbers, is that correct? A. Well, the tip-off was that it was a red seal bill with B and came within that scope and I happened on it.

Q. The tip-off was that it was a red seal bill and that it was within 78—⅓ million of some number?

Mr. Wilentz: That is not what he said. The tip off he said was red seal and it started with a "B."

Mr. Reilly: That is true.

Mr. Wilentz: That is different.

Q. But all the red seals with the "B" that ran under 621,000 were all right weren't they? A I didn't bother looking for those.

Q. No, and all the red seal five's that were over 78000000 were all right, weren't they? A. Red seal five's?

Q. Yes, over 78000000, were all right, weren't they? A. If they had an A in front of them they were.

Q. An A in front of the five? A. An A in front of the 78000000.

Q. An A in front of the 78000000, is that right? A. That is right, between 78000000, from there on; you said above 78000000, sir, did you?

Q. No. A. May I have the question again?

Q. Within 78000000. A. Within?

Q. Yes. A. All A———

Q. That would have to have a B? A. It would have to have a B to be scrutinized by me.

Q. How many theatres bank with your branch? A. That is the only one.

Q. Banked at that time? A. That is the only one.

Q. That is the ony one. And the deposits on Monday morning in your bank, from depositors, would be from what lines of business? A. Diverse lines.

Q. Merchants in the neighborhood? A. Merchants of the neighborhood, yes.

Q. Does Hearn's Department Store bank with you? A. No, they do not.

Q. Orbach's? Any of those? A. No.

Q. Big department stores around 14th Street and Fourth Avenue? A. No, they do not.

Q. This is the only large account that you took

a deposit in that morning, is that correct? A. I would not say that.

Q. Well, tell me any other organization, firm or business that would send you on a Monday morning a large deposit except a theatre. A. There is a smaller number of department stores along there.

Q. But they are not open on Sunday? A. No; they are open on Saturdays, though.

Q. Yes. But what and who are they and what are their deposits, what do their deposits run to? A. 14th Street Department Store, William Kantor.

Q. A little louder. A. William Kantor.

Q. Yes. A. They have department stores in that neighborhood, but they wouldn't run quite as high as that, no sir.

Q. Now, when did you—when do you say you notified any agent of the United States Government? A. I notified my manager, who notified them.

Q. When? A. Immediately after finding the bill.

Q. What time of the day or night? A. It was in the morning.

Q. What time? A. Around 11 o'clock.

Q. And who took this bill away from you? A. I handed it to the manager and he in turn gave it to Lieutenant Finn.

Q. Did you ask, after you found the bill, did you ask whether or not this young lady had made up the deposit? A. Did I ask?

Q. Yes. A. No, sir; I did not.

Q. The only person in the bank that had handled this bill, then, I take it, was you? A. The only person in the bank, the manager, as I said before.

Q. Did he handle it? A. Yes, sir; he did.

Q. And you handled it? A. That is right.

Q. Did you ask who made up the package? A. Did I ask?

Q. Yes, at any time. A. No, sir; I did not.

Q. When the Department of Justice man came,

did he do anything to the bill in your presence? A. I don't recall, sir.

Q. Did he take your finger prints? A. No.

Q. Did he attempt to get any finger prints from the bill? A. No, sir.

Q. You know if you handled the bill your prints could be taken from it, don't you? A. Very likely they could, yes, sir.

Q. And if the manager handled it his prints could be taken? A. That is true, too.

Q. And if the lady who took the bill in that was folded she says eight times and she had to unfold it and the man threw it in to her, like that (indicating,) his finger prints would be on it too, wouldn't they? A. I assume they would.

Mr. Reilly: Yes. That is all.

Re-Direct Examination by Mr. Wilentz:

Q. Of course you do not know anything about finger prints, do you, young man? A. No, I do not.

Q. You are connected with the bank? A. No, sir. I said I assume.

Q. Let me ask you this, when you discovered this bill, tell me whether it had any evidences of being creased? A. I didn't notice that.

Q. You didn't know that? A. No, sir.

Q. All right, sir. Will you take a look at this bill and see if that is the bill that you are referring to? A. It is, yes, sir.

Q. Is it the identical bill? A. It is, yes, sir.

Q. Referring to Exhibit S-100 and— A. That is my initial.

Q. Just a minute. S-103 for identification. Is the word "Loew's" written on this in ink in your handwriting? A. Yes, sir, it is.

Mr. Wilentz: Thank you.

Mr. Reilly: General, may I have this marked for identification?

Mr. Wilentz: Yes, certainly.

The Reporter: Deposit slip marked D-35 for identification.

(Deposit slip marked Exhibit D-35 for identification.)

Mr. Wilentz: And will you mark this for identification for Mr. Reilly?

The Reporter: Another one D-36 for identification.

(Deposit slip marked Defendant's Exhibit D-36 for identification.)

The Court: Has the Attorney General finished with the witness?

Mr. Wilentz: Yes, your Honor.

The Court: It is the usual recess time. Let the audience remain seated until the jury have retired.

The jury may retire and come in tomorrow morning at ten o'clock.

(The jury retired.)

The Court: The prisoner is remanded to the custody of the Sheriff and may retire.

William M. Cody—Re-Direct

We will take a recess now until ten o'clock in the morning. The audience may go.

(Whereupon at 4:36 o'clock p. m., the Court took a recess until Tuesday, January 22nd, 1935, at 10:00 o'clock a. m.)

Lewis J. Bornmann—Direct, Recalled

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., January 22, 1935.

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.

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

Mr. Wilentz: Mr. Bornmann, will you please take the stand.

LEWIS J. BORNMANN, recalled as a witness in behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Mr. Bornmann, what is your title, sir? A. Detective, New Jersey State Police.

Q. You testified before, did you not? A. I have.

Q. I want you to take a look at Exhibit S-34 for Identification, which is a chisel, and ask you whether or not, when you found this chisel, you put any iden-

tification marks on it. A. I did. I found this chisel on the early morning of March 2nd, about one o'clock, on the Lindbergh Estate at Hopewell, and placed my initials thereon.

Q. Is that the chisel you referred to as finding near the same spot where you found the ladder? A. Yes, sir, it is.

Mr. Wilentz: I offer the chisel in evidence.

Mr. Pope: Well, we object to the introduction of the chisel because there is no evidence connecting it with the crime. The only evidence in the case is that this particular implement was found somewhere on the grounds of the Lindbergh estate. There isn't any evidence to show that it was in any way connected with the alleged crime, nor is there any evidence to show that it was ever in the possession of this defendant. Therefore, we think it is incompetent, irrelevant and immaterial.

The Court: Will the stenographer repeat the answer of the witness.

(The last question and answer were repeated as follows: "Q. Is that the chisel you referred to as finding near the same spot where you found the ladder? A. Yes, sir, it is.")

Mr. Wilentz: The proof up to this time, may I indicate, your Honor, with reference to the chisel is as follows: that this chisel was found near the ladder—

The Court: Mr. Attorney General, I am satisfied that it is entitled to go in in evidence

and unless you desire to argue it will be admitted.

Mr. Wilentz: No. That is all.

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.

(The chisel was received in evidence and marked S-210.)

By Mr. Wilentz:

Q. Mr. Bornmann, you have heretofore testified that you are the man that found the ladder and took it in the house. A. That is right.

Q. My recollection is then that you stated that you turned the ladder over to Mr. Kelly, the finger print man. A. Trooper Kelly of the Identification Bureau.

Q. Now, with particular reference to the side of this ladder that is cut in half here, I think that is a part of section Number, what is herein referred to as Section Number 1—do you know who cut that piece of wood in half? A. Yes, sir, I do.

Q. Who did it? A. I did it.

Q. Where? A. At the New Jersey State Police Training School, Wilburtha.

Q. In the presence of Captain Lamb? A. Yes, sir. In compliance with his instructions.

Q. In compliance with his instructions? A. Yes, sir.

Q. Was it done for investigation purposes? A. It was done for the purpose of further analysis.

Q. Further analysis? A. Yes, sir.

Q. And after cutting it you left it there in the possession of Lamb? A. Yes, sir; I did.

Q. Do you know who applied this other piece, I think there has been testimony—if you don't know, say so; if you do know, say so. A. Mr. Koehler.

Q. Mr. Koehler applied this white piece, fresh piece of white lumber here; is that it? A. Yes, sir; only for the purpose of holding the ladder together.

Q. All these references with reference to sections of the ladder and the ladder itself are to S-32 for identification. So that, Detective, these three sections comprising this ladder, S-32, is it substantially the same or is it the same with the exception of the changes that have herein been referred to, namely, the nails with their clips, having been taken out and put back, the one piece that you have just referred to, cut in half and then put together, as it was originally, these little white thumb tacks that have been referred to, the cut which Mr. Koehler testified to on Section 1 of the three sections of the ladder, with the exception of that and the numbers in writing, 1, 2 and 3, and the initials of the various troopers; is that the very same ladder that you found? A. Identically the same ladder.

Mr. Wilentz: We offer the ladder in evidence.

Mr. Pope: And, of course, we object to the introduction of the ladder in evidence for the reasons which have already been indicated to the Court. This ladder, as we understand it, is a piece of property that was discovered somewhere on the Lindbergh estate. Afterwards it was taken by the State Police to Wilburtha, the

State Police School, or Station, and there it was entirely torn apart.

The evidence in the case is that the ladder has since its discovery been in the possession of many different people; that it has been in many different sections of the country, that it has been to Washington, among other places; that it was at one time in the possession of a man by the name of Dr. Hunter—wasn't it?

Mr. Fisher: Dr. Hudson.

Mr. Pope: That it has been entirely taken apart and that there has been an attempt to reassemble it.

Mr. Pope: The wood expert, whose name I have forgotten for the moment, testified that the ladder was taken apart, that all the nails were taken out of it and that the nails were given to a metallurgist. He took the nails to his laboratory and he had them in his possession for several weeks; that he afterwards returned the nails to the State Police. The wood expert testified that either he or some other person in his immediate presence reassembled the ladder, putting the nails back as they were handed to him, but that he was unable to testify that the same nails were handed to him or that they were placed back in the same location where they originally were; that he took the nails as they were handed to him to another person and he put them into holes in the ladder and reassembled it. The ladder has been cut in two, at least one of the uprights of one of the sections of the ladder has been cut in two as testified to by this witness. It has been materially

altered in that respect. But, sir, our understanding is that any property that is found at the scene of the crime which can be in any way connected with the defendant and the commission of the crime may be received in evidence provided it is shown to the Court that the property is in the same condition that it was at the time it was discovered, and providing the witnesses who have had possession of that ladder are brought into court and each testify as to what they did with it, how long it was in their possession and to whom they turned it over.

In other words, the entire history of the property must be traced and its custody in to each person, and what that particular person did with it, if anything, must be sworn to and it must be followed through each and every person down to the time it is produced and offered in evidence. And each person who had the custody of the property must come in court and testify that he made no alteration in it, that it is in the same condition or substantially the same condition that it was when he received it.

There is evidence here that this ladder was in the possession of some fingerprint experts. One of them, I believe, discovered several hundred fingerprints upon the ladder. It is quite evident from looking at it that the ladder is somewhat discolored and different in that respect from what it originally was.

We submit, sir, that the history and the custody of this ladder from the time it was discovered on the Lindbergh estate down to the time when it was produced in court has not been followed, has not been covered, has not been testified to, and we cannot assume, sir, that any man who had the custody of this ladder did not make some changes in it.

That man who had the custody of it must come in court. He must tell us whether he made any changes in it; if he made any changes in it what those changes were.

It must appear very clearly to the Court by all this testimony that there has been no alteration in it since it was first discovered. The only way that that can be done is for each man who had the custody of it to come in court and tell us what he did with the ladder, what condition it was in when he received it, to whom he turned it over and its condition at that time.

There is a still further and even a stronger objection yet. There is no connection between this ladder and the defendant here on trial. No one has even suggested that this ladder was ever in the possession of this defendant. No one has even suggested that he had anything to do with building it; and it is therefore immaterial, irrelevant, and we submit that it should not be introduced in evidence at this time.

Mr. Wilentz: Does your Honor want a reply?

The Court: I am wondering whether Mr. Pope has overlooked the testimony of an old gentleman to the effect that on March the 1st, I think it was, he saw the defendant in the possession of this ladder. Have you overlooked that?

Mr. Pope: I haven't overlooked any such testimony. I wonder if the Court is referring to the old gentleman, Mr. Hocksmith, or Hochmuth?

The Court: That is the gentleman.

Mr. Pope: Well, I do not want to say that that witness did not testify to that, but I certainly did not understand him to say that he saw the ladder in the car at that time.

The Court: Well, can there be—

Mr. Pope: Or this ladder.

The Court: Can there be any doubt about that?

Mr. Pope: I don't know. I am not sure about that.

Mr. Wilentz: I think we can agree—

Mr. Pope: But even if he did, even if he did testify to seeing the ladder in the car, he did not recognize this ladder; he did not say that it was this ladder.

The Court: No.

Mr. Pope: That was about eleven o'clock in the forenoon, as I understand it, somewhere around there, he saw a car go by. He may have testified that he saw something that looked like a ladder in the car; I do not remember that, your Honor; and I do not say that he did not so testify; but he certainly did not give any description of any ladder.

But, one of the particular reasons why we object to this ladder is because the State Police have testified that it was in the possession of a Dr. Hunter—Hudson—a fingerprint expert, and that he had it in his possession, that it was in Washington and different other places, and

we say that this ladder should not be admitted in evidence until Dr. Hudson and the other men are brought here and testify what they did with the ladder, whether they made any alterations or changes in it, whether it is in substantially the same condition that it was when it was delivered to and by them surrendered to the State Police.

Without that we have a break in the link, we have a missing link in the chain, showing the custody and possession of this ladder from the time it was found until the day it is brought into court.

Now, I have never known of a case, your Honor, where the State has ever been permitted to introduce in evidence any property which they say was in some way connected with the crime without first showing the custody of that property from the time it was discovered down until the time it was introduced in court. And without showing by each of the people that had the custody of it that they have made no alteration in it.

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 it and, if so, I am wondering whether or not that does not open the way for the admission of the ladder.

Mr. Pope: That doesn't alter the rule of evidence, your Honor, because this witness say so. After all, you know, your Honor is the one that must determine that question; it is a Court question. This witness might say that the sun is shining outside, but you would not have to believe that when you know it isn't.

This witness cannot testify—here is a very important inquiry in this case. We do not want to disclose it at the present time, but here is a very important question in this case: We have a right to know that every one of those cross rounds or cross pieces in that ladder, which has been taken apart, according to the evidence, put back together again, are in exactly the same position that they were in when they took it apart, that the third round is in the proper place, that the second round is in the proper place.

Neither this witness nor anyone else can testify to that, except the people who have had it. We know that Dr. Hudson took this ladder apart; we want to know whether Dr. Hudson put it back in the same position that it was when he received it.

We have a right to examine him and we have a right to have him produced. We have a right to have every man produced and to subject every man to cross-examination who has had the custody and possession of this ladder since it was found. And until that right is afforded us, we respectfully submit that the ladder should not be admitted in evidence.

The Court: I think I will hear the Attorney General.

Mr. Wilentz: If your Honor, please, the

name of Dr. Hudson I do not recollect at all.

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 court room 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 court room, 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 handy man 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 been changed to such an extent to be misleading, if your Honor, please, then 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 court room 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? Or isn't it necessary?

The Court: I think I have those pretty well in mind.

Mr. Wilentz: Well, then it won't be necessary.

Then without taking any more time about it, may I just respectfully submit to your Honor that the first time your Honor did suggest, very properly, that we show a little further the custody, which we then did, and then with reference to the nails and such other changes as your Honor thought we might be able to show, and so we rest with that explanation.

Mr. Pope: Now may I just correct one erroneous idea that the Attorney General has. The State Police, I think it was Mr. Kelly, the State Police who was on the stand, testified under cross-examination that this ladder had been placed in the possession of Dr. Hudson for examination for the purpose of finding out if there were any fingerprints on the ladder. So it was in the possession of Dr. Hudson. Koehler has had it in his possession. We submit that we don't know that this ladder is in the same condition that it was when Dr. Hudson received it, we don't know that in its present

condition it may not be deceptive to this jury. There is one cross found on this ladder that we question very materially. We don't know and we don't believe that that was in that position when the ladder was originally found. There are some things about it that lead us to doubt that that was the piece of wood that was on the ladder.

The only way to satisfy this Court that that ladder is in substantially the same condition that it was the day it was found is to bring before you the witnesses that have had the custody of it and let them tell you what they did to it. We submit that it was in the possession of Dr. Hunter—Dr. Hudson—I can't remember the name, but the man who used it and who searched it for fingerprints. I think the testimony was that he found some five or six hundred fingerprints on the ladder.

The Court: I feel constrained to admit this ladder in evidence, and it will be admitted.

Mr. Pope: May we have an exception?

The Court: Yes.

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

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

(The ladder, previous marked S-32 for identification, was received in evidence and marked State's Exhibit S-211.)

Q. Now, Officer, there was a loose dowel pin you testified to as having been found on the premises. I

want to ask you whether or not that is the dowel pin? A. Yes, sir. This is the dowel pin.

The Court: What did he say to that, it was?

Mr. Wilentz: He said, "Yes, that is the dowel pin found on the premises that night."

The Court: The doll pin?

Mr. Wilentz: The dowel pin.

The Court: The dowel pin.

Mr. Wilentz: Any objection?

Mr. Pope: It is objected to for the same reasons we have already discussed and presented to the Court with respect to the ladder.

The Court: It will be admitted.

Mr. Pope: Then may we have an exception.

The Court: Yes.

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

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

(The dowel pin was received in evidence and marked State's Exhibit S-212.)

Mr. Wilentz: Will your Honor give me just a moment?

The Court: Yes.

(Counsel for the State and defense conferred.)

Mr. Wilentz: That is all, Officer.

Mr. Reilly: Wait a minute.

Mr. Pope: Are you through?

Mr. Wilentz: Yes.

Cross-Examination by Mr. Pope:

Q. Mr. Bornmann, I understand you to say that you are a sergeant? A. No, sir.

Q. Detective? A. Detective.

Q. Well, you are one of the detectives connected with the State Police? A. Yes, sir; that is correct.

Q. And are you connected with the Wilburtha Station? A. Assigned there for special duty.

Q. I see. Now, when this ladder was found to whom was it turned over? A. It was turned over to Trooper Kelly of the Identification Department.

Q. And then it was in Trooper Kelly's possession? A. Yes, sir; it was first.

Q. And in your possession? A. No, sir; not in my possession.

Q. Were you present when the ladder was examined for fingerprints? A. Yes, sir. Upon bringing it into the Lindbergh residence it was tested for fingerprints.

Q. That is by Trooper Kelly? A. Yes, sir; in my presence.

Q. And it was afterwards examined for fingerprints by Dr. Hudson, wasn't it? A. That I can't testify to.

Q. Do you mean that you were not present when Dr. Hudson was examining it? A. Dr. Hudson was not there at that time; no, sir.

Q. I don't mean the night at the Lindbergh estate, sir; I mean afterwards. A. If he came later I had no knowledge of it.

Q. You have no knowledge whatever of Dr. Hudson examining this ladder for fingerprints? A. No, sir; I had other details.

Q. Well, do you know Dr. Hudson? A. No, sir, I do not.

Q. Did you ever see him at the State Police barracks or headquarters? A. No, sir, I did not.

Q. Were there any photographs taken of the ladder, fingerprints on the ladder? A. That you will have to take up with the Identification Bureau.

Q. Well, I am asking you if you saw any. A. I have no knowledge of it, no, sir.

Q. You have no knowledge of it? A. No, sir. That is a different department altogether.

Q. Then you really didn't have the custody of this ladder, did you? A. I have testified that I turned it over to Trooper Kelly that night.

Q. Yes. And from that time on you had nothing to do with it? A. Yes, sir, after it came back to Wilburtha I had considerable to do with it.

Q. Well, how long a time elapsed between the time you turned it over to Trooper Kelly that night and its return to Wilburtha and into your personal possession? A. It was not in my personal possession; it was in—

Q. Well, your custody. A. Not in my custody, no, sir.

Q. Then whatever you had to do with it? A. From Trooper Kelly it came to Captain Lamb. It was in his custody.

Q. Well, what do you mean when you say, "It came back to Wilburtha and then I had considerable

to do with it"? A. I worked on it with Mr. Koehler at various times.

Q. Well, now, how long a time elapsed between the night it was discovered on the Lindbergh estate and its return to Wilburtha, when you worked on it with Mr. Koehler? A. Approximately three months, when it was returned to Wilburtha.

Q. And during those three months it had been where? A. In the possession of Trooper Kelly.

Q. Well, where is the Identification Bureau? A. Trenton.

Q. Then it had been in the Identification Bureau so far as you know during that interval? A. Trooper Kelly will have to testify where he had it.

Q. So that when you are testifying here today, you can only account for the ladder during that period that it was in your custody? A. That is correct.

Mr. Pope: That is all.

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

Your Honor, please, during the course of this trial Mr. Reilly reserved to himself the right to examine some witnesses—cross-examine, I should say—with reference to Mr. Osborn particularly there was some question about an examination of somebody's handwriting other than the defendant's. I think that we can agree and do agree that that can be deferred even after the defendant's case, but with reference to the cross-examination, or further cross-examination of Agent Sisk and the presentation by Trooper Kelly of the instruments necessary for some exhibition of testing fingerprints, I think those two things counsel wants—

Mr. Reilly: Yes.

Mr. Wilentz: —before the State rests.

Now, Mr. Sisk has been in court every day since the request has been made and, if counsel wants him, I suggest that this would be a good time for the examination.

Mr. Reilly: Any time would suit me.

The Court: Call him, Mr. Attorney General.

THOMAS S. SISK recalled:

Cross-Examination by Mr. Reilly:

The Court: The name of the witness is what?

Mr. Wilentz: Thomas Sisk, recalled for cross-examination.

Q. Now, you were going to look at your reports; is that correct? A. Yes, sir.

Q. You have looked at them? A. Yes, sir.

Q. Did you relieve Special Agent Mann—did you? A. I didn't understand that name.

Q. Did you relieve Special Agent Mann? A. I never heard of such a name.

Q. Who was the special agent you did relieve when you came into this case? A. Special Agent J. J. Manning.

Q. Manney? A. Manning.

Q. How do you spell it? A. M-a-n-n-i-n-g.

Q. Did you have anything to do with circularizing the bank with this list that was sent out? A. We circularized banking institutions on several occasions.

Q. And did you work in coöperation with the New Jersey State Police and New York Police? A. Yes, sir.

Q. Now, when you made reports, Sergeant Sisk, did you send a copy to the Department of Justice? A. We retained copies of reports in our own files in our New York office and we sent copies of those same reports to Washington.

Q. And did you also furnish a copy to Colonel Schwarzkopf? A. We furnished copies of reports to Colonel Schwarzkopf, yes, sir.

Q. And during the time, between the payment of the ransom money and the arrest of Hauptmann, did you visit nearly every bank in Greater New York and Westchester? A. Why, between the—what were those dates?

Q. Between the payment of the ransom money— A. Oh.

Q. —that would be in April, 1932, and the arrest of Hauptmann, had you visited— A. We visited banking institutions with the New Jersey State Police and the New York Police at various times.

Q. Was it reported to you when this bill was passed at the filling station? A. That bill was reported on September 18th, 1934.

Q. To you? A. I received the telephone call from Mr. Dingledine of the Corn Exchange Bank.

Q. And then you went into action to trace it, is that correct? A. Yes, sir.

Q. When was the identification made, if you know, of the twenty-dollar bill in Hauptmann's wallet? A. The identification of that bill as a ransom bill was made within two or three minutes after it was taken from his wallet by Lieutenant Arthur Keaten of the New Jersey State Police.

Q. Were you there? A. Yes, sir, I was.

Q. Did you want the question the defendant in

the New York Police Headquarters? A. Well, all of the officers—

Q. Did you want to? A. Certainly I wanted to.

Q. You were denied permission, weren't you. A. No, sir, I was not.

Q. Who was in charge in the New York Police Headquarters? A. Inspector John Lyons and Lieutenant James Finn.

Q. Now, in additon to your investigation into the banks, you questioned Dr. Condon, didn't you, several times? A. I talked to Dr. Condon on numerous occasions.

Q. Did you ever locate the box which was used to convey the ransom money? A. No, sir, we did not.

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.

Q. When did you first see the nursery note? A. Why, I didn't see the nursery note, but I saw a copy of it, an exact copy.

Q. When did you come in to the case? A. In November, 1933—you mean I as an individual or my department?

Q. You as an individual? A. In November, 1933.

Q. Did you ask them to see the original ransom note? A. It wasn't necessary; we had exact copies of them.

Q. By exact copies, were they photostatic or

photographic? A. They were photographic copies.

Q. The same size? A. Yes, sir; I believe so.

Q. Of course, you were working, were you not, under the direction of Mr. J. Edgar Hoover? A. Yes, sir.

Q. What is his position, so the jury will know, as his name has been mentioned here, and let's get the correct designation? A. Mr. Hoover is the Director of the Division of Investigation of the Department of Justice.

Q. Were you at the home of Hauptmann the night before he was arrested? A. Yes, sir.

Q. And there were police there, weren't there? A. Yes, sir.

Q. Hauptmann was home? A. Well, that I don't know.

Q. Well, didn't radio cars dash up there with the sirens blowing? A. I never heard any sirens blowing at all.

Q. Well, there were radio cars there, weren't there? A. I don't recall any radio cars being up there.

Q. Now, isn't it a fact, Mr. Sisk, that a plaster cast of the foot of the man that was in the cemetery that received the ransom money was taken by someone? A. Well, I wasn't working on the case at the time the ransom money was paid.

Q. Well, isn't it a fact that you know that a plaster cast of the man who received the money in the cemetery was taken and was taken by Dr. Condon's son-in-law?

Mr. Wilentz: Now, if your Honor, please, while I have no objection to it, the answer that the witness gave to the preceding question precludes any possibility of his answering that. He wasn't there and he couldn't know.

Mr. Reilly: Well, he has looked through his records and in the interests of justice a question was asked if a cast was taken of a man and if it is not Hauptmann's, despite all the rules of evidence, I think we are entitled to know it.

Mr. Wilentz: Well, now, if your Honor, please, may I just answer that? There is no such thing, despite all the rules of evidence, I respectfully submit.

The point, however, that occurs to me is that there was no such question directed to the gentleman when he was on the stand, Dr. Condon, where the gentleman might have answered whether there was or wasn't, but now the question is brought in the back door through a man who wasn't in the case till November, and who couldn't, according to his own testimony, have such knowledge as would be admissible, and for that reason we object.

Mr. Reilly: I think if he knows of the whereabouts of such plaster cast and its existence, and it was taken, we are entitled to know it, so we can trace it.

The Court: You may ask him if he knows it and how he knows it, and as to whether or no he knows its identity, and if he does, why then we will proceed further with the examination.

A. It is my understanding—

Mr. Wilentz: No. Just a minute. That is what I object to, if your Honor, please. I have no notion about what the witness's understanding is, but I feel that it is not proper.

By Mr. Reilly:

Q. I will put it this way: Is your information obtained from the official reports of this case, of the Department of Justice? A. Yes, sir.

Q. And you have examined those reports since you last left the witness stand? A. No, I haven't examined them since I last left the witness stand.

Q. Well, you said the other day that you were going to look at some reports or obtain some reports. Have you obtained them? A. Well, I looked at a few reports, but I didn't refer to any reports referring to the footprints.

Q. Well, have you any recollection in your mind without a report? A. Yes, sir.

Q. Now, from the information that you have learned officially on this case as an agent of the Department of Justice investigating the case, have you learned that a plaster cast of the footprint in the cemetery of the man who received the money from Dr. Condon was taken? A. I learned that a footprint, a plaster cast of a footprint was taken, but there is no positive connection between that footprint and the man who received the ransom money.

Q. How do you know? You were not there when the ransom money was paid? A. It is a matter of speculation.

Q. All right. Where was the footprint cast taken?

Mr. Wilentz: If he knows.

A. The cast—

Q. Yes, if you know. And if you know from your official reports. Was it taken in the cemetery? A. The cast was taken from a fresh grave near a retaining wall in St. Raymond's Cemetery.

Q. At or about the position where Dr. Condon

says he passed the money over the bush? A. About fifteen or twenty feet from that point, I believe.

Q. And who took it? A. It was taken by Ralph—

Mr. Wilentz: Well, just a minute. I take it this man doesn't know, if your Honor, please.

Mr. Reilly: He is about to tell us that he does know.

Mr. Wilentz: Oh, I know; but, now, if your Honor, please, if I should ask this witness or any other witness about reports he read—

The Court: I think the first question ought to be as to his personal knowledge.

Mr. Wilentz: Certainly; that is right.

The Court: And, upon that appearing, then of course he may testify.

Mr. Wilentz: Well, of course.

The Court: Otherwise we will have to consider the objection.

Mr. Wilentz: If you know personally, as I understand it, from your own personal knowledge.

Q. Well, of course, you were not there when the ransom money was paid, were you? A. No, sir.

Q. And you were not in the case then, were you? A. No, sir.

Q. And you couldn't be there the next day when a plaster cast was taken of a footprint, could you? A. No, sir.

Q. But your reports indicate, do they, that a plaster cast was taken by Condon's son-in-law? A. Yes, sir.

Mr. Wilentz: Well, now, if your Honor, please, that is what I object to.

The Court: I think that is a proper objection.

Mr. Reilly: This is not under cross-examination, but I am willing to make him my own witness on the proposition.

The Court: You may call for the report, if you wish.

By Mr. Reilly:

Q. Where is the report, Mr. Sisk, concerning the taking of the plaster cast of the footprint of the man on the newly-made grade in the vicinity of the spot where the money was passed over to Dr. Condon? A. The report is in my New York office.

Q. Can you obtain it and bring it to us? A. I can obtain it.

Q. Will you bring it here under the direction of his Honor? A. The only thing is that we have a ruling in our department that all reports are the property of the Attorney General of the United States and we are not allowed to give up those reports.

Q. Without permission from the Attorney General? A. Without permission from him.

Q. If you obtain that permission and if I wire today, will you bring the report, if you are directed by the Attorney General? You will have to, won't you?

A. If I am directed by the Attorney General, yes, sir.

Mr. Reilly: Then may we suspend the cross-examination or the examination of this witness, not suspend the case, go on with the case, but I shall make my inquiries in Washington and see that he is directed in the interests of justice to bring this report.

Mr. Wilentz: I have no objection to what counsel hopes to do with the Attorney General in Washington, but we are nearing the close of this case. For three days, or some days anyway, Mr. Sisk has been in this room. I have been under the impression, evidently the mistaken impression, that he would be called right away when he came back the next day. Yesterday I learned the counsel for the defense was waiting for me and I was waiting for him.

Now, we are about at the close of this case so far as the State is concerned. Maybe it will take another day. And I can't, if your Honor please, for the State permit—

Mr. Reilly: Well, I will settle that: I will call this witness as a witness for the defense.

Mr. Wilentz: Fine.

Mr. Reilly: And I call for his reports with him.

Mr. Wilentz: That is all right.

Mr. Reilly: And I will ask the Attorney General of this country in the interests of justice to direct him to furnish the reports.

Mr. Wilentz: We have no objection to that. I will see that this gentleman is here for that purpose every day.

That is all, Mr. Sisk.

Lieutenant Finn.

JAMES J. FINN, recalled.

Direct Examination by Mr. Wilentz:

Q. Lieutenant Finn, in November, 1933, as the result of information which you obtained from one of the banks did you get a five dollar gold seal Lindbergh ransom bill? A. I did.

Q. Will you tell us the serial number of the bill if you have it? A. B35435786A.

Q. Now, that bill, when did you receive the bill and from whom? A. I received the bill from William Cody, the teller in the Corn Exchange Bank at Seventh Avenue and 14th Street on November 27th.

Q. 1933? A. '33.

Q. When you received that bill did you—what did you then do? A. I made inquiries from Mr. Cody.

Q. What did you— A. And he informed me that the bill had been made in a deposit made by the Loew's Square Theatre in a night drop of the night previous.

Q. Did you go to the Loew's State Theatre with that bill? A. I did.

Q. And is this the bill which you exhibited the day that you went there to Mrs. Cecile Barr, showing the witness exhibit S-103 for Identification? A. Yes, sir.

Q. S-103, then, is the five dollar bill which you took from Cody at that bank and exhibited to Mrs. Cecile Barr? A. It is.

Q. Is it the only bill that you ever exhibited to her? A. Yes, sir.

Mr. Wilentz: Take the witness.

Mr. Reilly: I don't think there is anything we want.

Mr. Wilentz: That is all, Lieutenant. We offer Exhibit S-103 for Identification in evidence.

Mr. Fisher: The same general objection, your Honor, we make that has been asserted before to the admission of money.

The Court: Yes.

Mr. Fisher: We pray an exception.

The Court: It will be admitted.

Mr. Fisher: May we have an exception?

The Court: You may have an exception.

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

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

(Exhibit S-103, five dollar bill tendered at Loew's Sheridan Square Theatre, is now received in evidence and marked State Exhibit S-213.)

Mr. Wilentz: Mrs. Whateley.

ELSIE WHATELEY recalled as a witness in behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Madam, I forgot to ask you one or two questions the last time you were on the stand, particularly with reference to the thumb guard which is in this case.

Mr. Wilentz: Have you got it, Captain?

Will you tell us whether or not you were in company of Miss Betty Gow on a walk one day after this crime? A. Yes, sir, I was.

Q. Do you remember the date that you and Miss Gow found the thumbguard? A. It was about a month after the kidnaping.

Q. It was about a month after the kidnaping? A. Yes.

Q. Where? Tell us the circumstances, please. A. We were going down the drive.

Q. Just a little louder. A. I have a cold.

Q. I know you have a cold. Do the best you can, but try to speak a little louder. A. We were taking a walk down the drive in the afternoon about 3:30.

Q. Down where? A. Down the drive.

Q. Down the drive? A. Yes, sir.

Q. When you refer to the drive do you mean the Lindbergh drive? A. Yes, I do.

Q. From the home to the public road? A. Yes.

Q. How far did you walk? A. We went down to the gate.

Q. To the gate? A. Yes.

Q. And is that the gate that all of us have referred to as being the gate house which is right near the public lane? A. Yes, sir.

Q. So that, as I understand it, you walked from the house to the gate? A. Yes, we did.

Q. That is the entire distance to the public road? A. Yes, that is right.

Q. All right. And then what did you do? Did you get out on the public road? A. No.

Q. Or did you start to walk back? A. We started to walk back.

Q. Yes, ma'am. And what happened? A. About a hundred yards from the gate we saw this object lying on the ground.

Mr. Wilentz: Will you repeat that, please, Mr. Reporter?

(Last answer read by the reporter.)

Q. When you say a hundred yards, do you mean on your way back? A. On our way back, yes.

Q. Yes. And what happened to it then? A. Well, we both saw it there and Miss Gow picked it up.

Q. Miss Gow picked it up? A. Yes, we both looked at it of course.

Mr. Wilentz: Have you got it here, Captain Snook?

Q. Well, is that the thumb guard that was produced in evidence the other day when you were here when Miss Gow was on the stand? A. Yes, it was.

Q. Now, directing your attention specifically to the hour, I think it was between approximately nine o'clock and approximately ten o'clock on the night of the crime, the night of the kidnaping, the night that the child was taken, you recall that both you and Miss Gow testified you were up in your room. A. Yes.

Q. With the lights on. A. Well, I put the light on when I went into my room.

Q. Did it remain on during the entire time that you were there? A. Yes, the whole time, and when we came out of the room I switched it off.

Q. Was that the first time the light was switched off after you once got in there? A. That was the first time.

Q. Mrs. Whateley, do you recognize this, Exhibit S-39? A. Yes, I do.

Q. Do you recognize it sufficiently so you can tell whose it is? A. Well, it belonged to Mrs. Lindbergh and it came down with the baby's clothes in.

Q. Is this Exhibit S-39 the suitcase that was in the baby's nursery that night? A. Yes, it is.

Q. And is that the one shown by all the exhibits as being on top? A. That is the one.

Q. Near the window sill? A. Yes.

Mr. Wilentz: If your Honor will bear with me just one moment.

The Court: Very well.

Q. I show you Exhibit S-11. Does Exhibit S-11 show the nursery window, the southeast nursery window? A. Yes, it does; there it is.

Q. That is the only window shown on S-11, is it not? A. Yes.

Q. I notice a suitcase. Tell me whether or not that is the suitcase which is Exhibit—

Mr. Rosecrans, will you please take a look at that exhibit number?

Mr. Rosecrans: 39.

Q. S-39 for Identification. A. Yes, that is the suitcase.

Q. That is the suitcase? A. Yes.
Q. Which is S-29 for Identification? A. Yes.

Mr. Wilentz: I offer the suitcase in evidence.

Mr. Reilly: No objection.

The Court: No objection. It will be admitted.

(S-39 for Identification, suitcase now received in evidence and marked State Exhibit S-214.)

Mr. Wilentz: You may take the witness.

Cross-Examination by Mr. Reilly:

Q. Now, about the lights, Mrs. Whateley; you said that you went upstairs to your room— A. Yes.
Q. —as you have indicated here at the far wing. A. Yes.
Q. With Betty Gow. A. Yes.
Q. About what time? A. About nine o'clock.
Q. You left your husband— A. Downstairs.
Q. —in the kitchen? A. No, in the sitting room.
Q. Or the reading room off the kitchen? A. Yes.
Q. He was reading? A. Yes.
Q. Lights were in his room? A. Yes.
Q. Lights on in the kitchen? A. Yes.
Q. Do you know where the Colonel was then? Was he on the main floor? A. Well, that I couldn't tell.
Q. The lights were on on the main floor? A. Yes, they were.
Q. As you came up the stairs did you come up the rear stairs or front stairs? A. Oh, the rear stairs.

Q. As you came to the second floor was there a hall light? A. Yes, there was a hall and the light was on.

Q. Any lights in Mr. Lindbergh's apartment? A. That I couldn't tell you.

Q. A light in the bathroom? A. That I couldn't tell you.

Q. Isn't there a bathroom between the nursery and Mr. Lindbergh's apartment? A. Yes, but I wasn't anywhere near there.

Q. You knew nothing about the lights there? A. No.

Q. You had the first floor well lighted up? A. Yes.

Q. The second floor you know nothing about? A. No.

Q. The third floor, was there a light in the hall? A. There was a light on the second floor in our apartment.

Q. Turn around here, Mrs. Whateley. A. Yes.

Q. I take it these are the stairs you came up (indicating on a diagram on the wall)? A. Yes.

Q. Any lights along this corridor? A. One in the corridor, yes.

Q. Where would that be? A. Back by the bathroom.

Q. Right here in the cellar? A. Yes.

Q. A dome light? A. Just an ordinary bulb with no shade on it.

Q. In the ceiling? A. Yes, in the ceiling.

Q. And it lighted up this corridor sufficiently? A. Yes, it did.

Q. So people could walk along? A. Yes.

Q. Were there any lights along this corridor before you got to your home? A. That is the corridor I was speaking about.

Q. Well, now, here is your room, is that correct? A. Yes.

Q. How many lights in that room? A. There is one, only one, the ceiling light.

Q. How many windows? A. Three.

Q. No shutters? A. No.

Q. Now, what is this room (indicating)? A. The one next to mine?

Q. The bedroom? A. Well, that was Miss Gow's room.

Q. Was there a light in there? A. No.

Q. Now, is this a hallway? A. Yes, that is a hallway.

Q. Was there a light there? A. Just the one that I told you.

Q. One window there? A. Yes—there were two.

Q. Now, this corridor outside the nursery, the bedroom— A. Well, that I couldn't tell you, I was not—

Q. You didn't turn there to look? A. No.

Q. When did you first come into that corridor that night? A. When I went along to Mrs. Lindbergh's room at ten o'clock.

Q. Was there a light in the corridor then? A. Yes, sir.

Q. When you went to Mrs. Lindbergh's room— A. Yes.

Q. —was there a light in her room? A. Yes.

Q. Yes. Now, can you give us the exact date this thumb guard was found? A. Well, I should think about the 29th or 30th, I can't tell you just exactly.

Q. 29th of what? A. Of March.

Q. 29th of March? A. Yes.

Q. That is your best recollection? A. Yes, it is.

Q. You didn't write it down? A. No.

Q. Now let's go back to March 1st as to the weather, that was rather wet and soggy and muddy, wasn't it? A. Yes, it was.

Q. How was it on the 2nd of March?

Mr. Wilentz: Well, this isn't proper cross-examination. I have no particular objection.

Mr. Reilly: It goes to the finding of the mud guard which she brought out.

Mr. Wilentz: I withdraw it then. I think you are right.

Mr. Reilly: Or the thumb guard again.

A. I think if I remember, it turned colder and was freezing.

Q. When? A. On the 2nd it turned cold as near as I can remember.

Mr. Reilly: Coming down here I had a smashup, on my first visit to Flemington. The mudguard is in my mind, because I had to pay for it, so I have got to excuse myself every now and then for thinking of that accident.

Mr. Wilentz: That is all right.

Mr. Reilly: We will call it thumbguard in the future.

Q. Now you say it started to freeze? A. I think it did; as far as I can remember, it turned cold, anyway.

Q. I suppose you had the usual March weather? A. Yes.

Q. It would freeze today? A. Yes.

Q. And be cold for two or three days, and then there would be a sort of a thaw and fog up there in the mountain? A. Yes.

Q. And then the land would get soft and soggy, is that it? A. Yes.

Q. Then would come another freezing spell? A. Yes.

Q. Typical March weather, is that what you call it? A. Yes.

Q. And this particular road, you agree with Betty Gow that it was a gravel road—wasn't it? A. Yes, it was.

Q. And it ran from the home, as it is indicated here, down to the gateway, is that it? A. Down to the gatehouse, yes.

Q. The gatehouse? A. Yes.

Q. Now is that gate house large enough—does it correspond with the English gatekeeper's house? Is it that large, or is it just a guardhouse? A. Why, it is just an old farm house.

Q. A farm house? A. Yes, just a farm house.

Q. And that is down at what you call the gatehouse, is that right? A. Yes, the end of the drive.

Q. The end of the drive? A. Yes.

Q. That had been there very likely before the Lindberghs built the Hopewell house? A. Why it had, yes.

Q. How long was that drive, would you say, from the Lindbergh home down to the gate house? A mile? A. I should think it was nearly a mile.

Q. Nearly a mile? A. Yes.

Q. Now of course you were on duty every day, weren't you? A. Yes.

Q. After the kidnaping down to—on duty now? A. Yes.

Q. Is that right? A. Yes.

Q. Now there were a great number of people that came there? A. Yes, that is right.

Q. After the kidnaping, is that correct? A. Yes.

Q. There were State Police? A. Yes.

Q. Detectives, reporters? A. Yes.

Q. Curiosity seekers and everything else? A. Yes.

Q. Now how wide is this particular path? As wide as from here to the railing or wider? A. I should think it is about from where I am to the railing.

Q. I see. From there across? A. Yes.

Q. About 10 or 12 feet? A. Yes.

Q. Sufficiently wide for an automobile to ride down? A. Yes.

Q. Was it a roadway that automobiles went down? A. Yes, it was.

Q. And automobiles used that driveway, did they, during or right after the kidnaping? A. Yes.

Q. Bringing police and bringing different people there? A. Yes, to get up to the house.

Q. Now will you tell us just about where it was on the 29th of March that you picked up this thumbguard? A. It was about 100 yards from the gate.

Q. Now in relation to the width of the gravel, was it in the center? A. Yes, it was right in the center.

Q. Right in the center? A. Yes.

Q. And it was—

Mr. Wilentz: (As the Court steps to chart on the wall): That is not the map, if your Honor please. That is a map of the Bronx. If your Honor wants, we will remove it. The witnesses have already indicated it.

The Court: I wanted to make sure that I understood the testimony of the witness. Was it inside the Lindbergh property where you found this thumbguard?

The Witness: Yes, inside, about a hundred yards.

The Court: Yes. All right.

Q. How is the entrance to the Estate indicated beside this gate house? Is there a chain? A. No, they just had a rough wooden plank across, I would say about six inches wide; you lifted it up and down.

Q. Before the kidnaping there was no gate or chain? A. No, nothing.

Q. Or policeman or anybody there? A. No.

Q. You just drove right in? A. That is right.

Q. And after the kidnaping you say they put a plank across? A. Just a plank, yes.

Q. And then they had guards at that gate? A. Yes.

Q. About what time of the day was it? A. I should think about 3:30, as near as I can tell you.

Q. Daylight? A. Yes.

Q. You just walked along, you and Betty, on this road? A. Yes, we did.

Q. Taking a stroll there on the 29th of March or thereabouts? A. Yes, we did.

Q. And lying in the center of this gravel path, so that you could see it— A. Yes.

Q. —was this thumb guard? A. Yes.

Q. Which she bent down and picked up? A. Yes.

Q. Did you see her bend down and pick it up? A. Yes, I did. I was with her.

Q. Who saw it first? A. We both saw it together, about the same time.

Q. You both reached for it at the same time? A. Yes, sir; we did.

Q. You both reached together? A. Yes, we did.

Mr. Reilly: That is all.

Mr. Wilentz: That is all, Mrs. Whateley, and thank you.

May we have our usual recess at this hour, your Honor?

The Court: Yes, we will take a recess of five minutes.

(At 11:22 a. m. a short recess was taken.)

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

Mr. Wilentz: Mr. Whited.

MILLARD WHITED, sworn as witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Where do you live, Mr. Whited? A. Lambertville.

Q. That is in the County of Hunterdon and in the State of New Jersey? A. Yes, sir.

Q. How many years have you lived in New Jersey? A. Thirty-seven.

Q. How old are you? A. Thirty-seven.

Q. So that you have lived your entire life in this State? A. Yes, sir.

Q. And in 1932, and particularly from the first day of February, 1932, until after the first day of March, 1932, where did you live with reference to the Lindbergh estate? A. I lived within about a mile and a half of the Lindbergh estate.

Q. What was the nearest point of your place to the nearest point of the Lindbergh home, the building? A. About a mile.

Q. At that time did you own a farm there? A. I did.

Q. Do you own it now? A. No, sir.

Q. Did your farm adjoin the Lindbergh Estate? A. In about ten feet—

Q. You mean there was a strip of land— A.

Just a strip, about 10 feet between us.

Q. Do you know who owns that ten foot strip? A. No.

Q. What business were you in then, Mr. Whited? A. The timber business.

Q. Am I pronouncing your name correctly: Whited? A. Yes, sir.

Q. Timber business? A. Yes, sir.

Q. Did you say? A. Yes, sir.

Q. Did you own the farm at that time? A. I did.

Q. How long have you owned the farm? A. From the last of 1929, late in the Fall of 1929.

Q. Is that when you bought it? A. That is when I bought it.

Q. And when did you sell it? A. To the best of my knowledge I think I sold it the last of 1932 or —yes, it was the last of 1932.

Q. In addition to this timber business, did you also do any farming? A. I did.

Q. When you say the timber business, what do you mean by that? A. Cutting trees and carting them.

Q. Cutting trees and carting them? A. Yes, to the saw mill.

Q. So that was trucking a part of that work? A. Yes, sir.

Q. That you call timber business? A. Yes, sir.

Q. Had you lived on this particular farm before you bought it or did you move there when you bought it? A. I moved there when I bought it.

Q. Prior to that time where had you lived? A. Just across the way at a farm known as the Craft Farm.

Q. So that for how many years did you live in that immediate neighborhood and vicinity? A. I moved there the early part of 1929.

Q. But for how many years did you live near the Lindbergh estate? A. (No answer.)

Q. About how many years? A. About five years.

Q. How long? A. About five years.

Q. Well, you lived from 1930 or late in 1929— A. 1929 until —

Q. Until late in 1932, on your own farm? A. That is right.

Q. Prior to that you lived on a farm near there? A. Right.

Q. How long did you live on that farm? A. That is before I moved?

Q. Yes, before you moved to the one you bought? A. From the early spring of 1929, until the fall.

Q. And prior to that where did you live? A. And from there I moved out on the Hopewell Road.

Q. What was the name of that, Grafton? A. Craft.

Q. Before you moved to the Craft farm where did you live? A. I lived in Skillman.

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. Indicating the distance between— A. Between the rut of the road—

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, in the early morning of March 2nd, 1932 being the early hours of the morning after the Lindbergh child had been taken did you report to troopers or investigators that you had seen a stranger? A. I did.

Mr. Fisher: We submit the proper way is to let this witness tell what he did and not lead him to that extent.

Mr. Wilentz: I guess that is right.

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.

Q. Since that time you saw him in the Bronx, did you not? A. I did.

Q. You testified in the extradition proceedings in the Bronx at that time? A. I did.

Q. Who was at your home the night, the early hours of the morning of March 2nd, when people came to ascertain whether you had seen any strangers about the premises? A. There was three that I could name, but the other two I couldn't recall.

Q. Who could you name? A. Mr. Lindbergh, Wolfe of the troopers and just a minute—

Q. That is all right. A. Keening.

Q. Keaten? Keaten.

Q. And two others? A. Two other gentlemens.

Q. At that time, in March, 1932, when the troopers were there and Colonel Lindbergh was with

them, who made up the household in which you lived? A. I did.

Q. Who else lived there? A. Two brothers.

Q. Two brothers? A. Yes.

Q. Any other members of the family? A. My father.

Q. Some time around the 25th or between the 25th and the 27th or whenever it was you say you saw him the second time, in February, 1932, tell us what he wore, if you remember? A. A gray suit and a gray felt hat.

Q. How did he wear the hat? A. Just tipped a trifle forward.

Q. When you say a trifle, did it go over his forehead? A. Just about like that (illustrating).

Q. Did you see his eyes? A. I could.

Q. Did you see them? A. I did.

Q. Did you see his eyes the first time you saw him? A. I did.

Q. Did he have an overcoat on? A. He had a coat of some description hanging on his arm.

Q. Carrying it on his arm? A. On his arm.

Q. When you saw him was he in the roadway or near the bushes, or what? A. Just stepped out of the edge of the bushes.

Q. Stepped out of the edge of the bushes? A. Just stepped out of the edge of the bushes.

Q. The bushes on whose property? A. On to —practically on to mine and on what is known as the William Henry Wacker's Estate later.

Q. How close to any part of Colonel Lindbergh's Estate? A. The first time I would say it was a mile and a quarter.

Q. The second time. A. Not over a half a mile from the Estate.

Q. Now, some time in September, 1934, when the defendant was arrested, where were you living? A. In Lambertville.

Q. Were you away from Lambertville for a few days? A. No, sir.

Q. Well, you were up in Pennsylvania for a while, were you not? A. No, just over and back at night.

Q. Over and back at night? A. Yes.

Q. Did you read the papers with reference to his arrest? A. No, sir.

Q. Now I don't want to offend you, Mr. Whited, but do you mind if I ask you the question, can you read? A. A little, not much, not enough to understand the paper.

Q. Not enough to understand the paper.

Mr. Wilentz: You may take the witness.

Cross-Examination by Mr. Fisher:

Q. You can recognize a picture if you see it, can't you? A. What is that?

Q. You could recognize a picture if you had seen one? A. To a certain extent.

Q. Well, if you saw a picture of yourself, for instance, you would recognize that, wouldn't you? A. Not some of them.

Q. Well, you would recognize it if it was a good likeness of you, wouldn't you, a good picture, like the boys took that paid you thirty dollars back here yesterday?

Mr. Wilentz: Just a minute.

A. The boys didn't pay me thirty dollars.

Q. Did anybody take it, did you have your picture taken? A. No.

Q. Down at your home in Lambertville when you first got in the case, did you get any money to have your picture taken?

Mr. Wilentz: Now just a minute, if your Honor please, I object to the question, if your Honor please, that it is not material to this cause.

Mr. Fisher: It is very material, your Honor, to show the interest of this man in this testimony.

Mr. Wilentz: I don't think it is any more material than it is as to what compensation counsel gets in the case on either side, I don't think that is material, whether a photographer offered or paid any money to a person for the permission to take a picture some years after the crime, I do not think it is material to this cause, and I think that witnesses are entitled to some protection against this sort of questioning.

The Court: What is the pending question?

(The pending question was read as follows:

"Q. Did anybody take it? Did you have your picture taken? A. No.

"Q. Down at your home in Lambertville, when you first got into the case did you get any money to have your picture taken?")

The Court: Well, I must say that I don't see the pertinency of that objection. What is your theory about it, Mr. Fisher?

Mr. Fisher: My theory is that we have a right to show the interest of this witness in this case if he is here and we can indicate it clearly for the purpose of making a dollar for him-

self, clearly for the purpose of seeking publicity and through publicity making money, then we have a right to show the things he has done to indicate that desire. If he, for instance, asked the photographers for $50 to take his picture no later than yesterday or $65 the day he was called in the case, we feel that is evidential to show his interest and his reason for being in this case. It affects his credibility, we believe.

Mr. Wilentz: I move that that last comment "For instance yesterday" about him asking the photographer be stricken. There is no basis for the statement, nothing in the record. The point I want to make, if your Honor please, is, every witness that comes here can't have the question shot at him about publicity just by the mere asking.

Mr. Fisher: No witness has been, sir.

Mr. Wilentz: I beg your pardon. The last lady on the stand here yesterday was not asked as to money but was asked as to whether or not she wasn't going to get a movie contract and whether or not she wasn't seeking publicity. This is worse than that, if your Honor please. This is a question of whether or not at Lambertville some time, years after the crime, a photographer paid him for the privilege of taking his picture.

Mr. Fisher: What is his interest in the case, first when he was announced as a witness in the case—

Mr. Wilentz: I disagree with the gentleman.

The Court: I will have to ask that the question be read again.

Mr. Wilentz: The testimony has been taken out, but the question was whether he was paid money for taking his picture at Lambertville.

Mr. Fisher: After he was announced as a witness in this case.

Mr. Wilentz: After he was announced as a witness.

The Court: Paid money by the photographer is that the idea?

Mr. Fisher: That is the idea, by the photographer.

The Court: Well, I think I will sustain the objection.

Mr. Fisher: May we note an exception?

The Court: Take your exception.

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

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

By Mr. Fisher:

Q. When did you buy your farm over in the Sourland country? A. The latter part of 1929.

Q. Who did you buy it from? A. From the Ten Eyck Brothers.

Q. Is it in Hunterdon County or Mercer County? A. Hunterdon County.

Q. Did you get a deed? A. I got a contract of it.

Q. You didn't own the farm then? A. I owned the farm then.

Q. You had a contract to buy it? A. No, not a contract to buy it but a contract between me and him.

Q. Was it a deed? A. A deed, yes.

Q. Where is that deed? A. Where is the deed? I have the deed.

Q. Have you it with you? A. No, I haven't it with me.

Q. Did you ever record it in the Hunterdon County Clerk's office? A. It was recorded. Potts at Kingston took care of it.

Q. Well, did you have it recorded in the Hunterdon County Clerk's office? A. No.

Q. Who is Potts? A. Potts was a justice of the peace at that time in Kingston.

Q. When did you sell your farm? A. When did I sell it?

Q. Yes. A. The last part of 1932.

Q. Who did you sell it to? A. I can't answer that question because I can't remember his name.

Q. You don't know who you sold it to? A. I can't—

Q. How much did you get for it when you sold it? A. $2150.

Q. And did you give him a deed? A. Yes, he got a deed for it.

Q. Who else signed the deed besides you? A. Ten Eyck and Ten Eyck's brother.

Q. I see. How about your wife, did she sign? A. She signed, yes.

Q. Yes. And do you know whether that deed is recorded or not? A. I couldn't answer that question.

Q. Do you know who did that work for you? Did Potts do that? A. No.

Q. Who did it? A. A man in Somerville.

Q. What man in Somerville? A. I can't tell you. I can take you to his office.

Q. Ten Eyck Brothers also signed it, did they? A. They did.

Q. Now, you say you bought that in the Fall of '29. A. I did.

Q. Do you remember testifying in the Bronx? A. I do.

Q. I ask you if this was your testimony: "Question: How long have you lived on that farm?"

Mr. Wilentz: What page is it, Mr. Fisher?

Mr. Fisher: Page 197.

Q. (Continuing.) "Answer: From the Fall of 1930." Now which time were you correct, now or in the Bronx? A. I am correct on 1929.

Q. You were mistaken? A. Because I have looked it up.

Q. You were mistaken in the Bronx, then? A. I was mistaken on one year, if that is true there.

Q. Well, do you know whether you testified to that in the Bronx or not? A. I testified in the Bronx, yes.

Q. And do you know whether you said that you went on your farm in the fall of 1930? A. I wouldn't recall that.

Q. Well, if you did say that in the Bronx then you were mistaken, weren't you? A. I were.

Q. Yes. And you were testifying there in this same cause, weren't you? A. Yes.

Q. Now, how far do you say now it was from the Lindbergh gate the second time you say the man whom you identify as Mr. Hauptmann? How far away from the gate? A. The first time?

Q. Yes—the second time. A. The second time, about a half a mile.

Q. Do you remember testifying in the Bronx that it was three-quarters of a mile? A. No.

Q. Well, if you testified in the Bronx that it was three-quarters of a mile, were you mistaken at that time? A. To the best of my knowledge I didn't testify to that, that it was three-quarters.

Q. All right.

Mr. Fisher: If your Honor will give me just a second to find that.

Q. "Question: How far from the Lindbergh estate?" In reference now to the second time. "Answer:—"

Mr. Wilentz: What page?

Mr. Fisher: Page 201.

Q. (Continuing.) "Not over three-quarters of a mile." Now, were you mistaken on that occasion or are you mistaken now?

Mr. Wilentz: He says not over three-quarters of a mile.

Mr. Fisher: All right.

A. I didn't check it or have never checked it. It could be checked with a speedometer if somebody took time to do it.

Q. Now, is it a half mile or three-quarters of a mile? A. That I wouldn't be positive whether it was just a half mile or maybe over a half mile.

Q. Well, you are testifying under oath here now, you realize that, don't you? A. To the best of my knowledge I said.

Q. That is right. Then you want to change your present answer, it might be a half or might be three-quarters, is that correct? A. To the best of my knowledge.

Q. Yes. A. Not more than three-quarters or a half.

Q. So that when you said a half mile, you might be mistaken at least a quarter of a mile in the distance? A. It may be.

Q. Yes. Now, how far do you say he was the first time you saw him up there? A. To the best of my knowledge I would say about a mile.

Q. Well, could it have been any farther than a mile? A. It could be, if you checked it, maybe with a speedometer.

Q. Well, what you are doing here today is giving the shortest possible distance that your mind can contemplate, that is true, isn't it? A. No, to the best of my knowledge.

Q. Well, did you say in the Bronx that; your knowledge is the same now as it was in the Bronx, isn't it? A. I hope so.

Q. Yes. And did you say in the Bronx a mile and a quarter? A. I might.

Q. Yes. Well, today you brought him a quarter of a mile nearer, haven't you? A. No.

Q. Well, if you say a mile today and you said a mile and a quarter then— A. To the best of my knowledge I said a mile.

Q. Well now, do I understand today then that to the best of your knowledge it is a mile and a quarter away from the Lindbergh place, possibly—I will withdraw that. Is he the same distance away in your

mind now from the Lindbergh gate that he was when you testified in the Bronx? A. Just what do you mean?

Q. I mean just this: He hasn't gotten any closer, has he, to the Lindbergh gate since you testified in the Bronx—if he was a mile and a quarter away then, he is still a mile and a quarter away, isn't he? A. I imagine the road is in the same place.

Q. Yes, I think so, too. Now, who worked for you at that time? A. My brothers.

Q. What brother? A. Howard.

Q. How about a brother Edward, did he work for you? A. Sometimes.

Q. Well, did he work for you steadily? A. Not steady, no.

Q. Was he one of the brothers in the house the night of the kidnaping? A. No.

Q. He wasn't there? A. No.

Q. Which brothers were in the house? A. Howard and Ollie.

Q. Howard and Ollie. What is your father's name? A. Peter.

Q. Where did William Edward work—where did he live? A. William Edward?

Q. Where did Edward live? A. To the best of my knowledge he may have lived at the Craft place, that I couldn't answer that question pretty correct.

Q. Very close to you? A. To be correct, to the best of my knowledge, I believe he lived on the Craft place.

Q. Very close to you, wasn't it? A. Yes.

Q. And was he working for you during the month of February? A. Sometimes.

Q. Were you working independent for yourself at that time? A. I was.

Q. How long had it been since you stopped being employed by Ten Eyck Brothers? A. More or less the last of 1932.

Q. Yes. Well, this was in the early part of 1932, wasn't it? A. Yes, but I did that—privilege with my work with Ten Eyck; I did other work besides.

Q. Right along during this period you were also working for Ten Eyck Brothers? A. Whenever he had something to do I put in a team with him.

Q. That was quite often during 1932? A. Not much, during 1932.

Q. Will you say you did no work for Ten Eyck Brothers during February, 1932? A. I said I was doing some work.

Q. During February, 1932? A. I couldn't say it was February, 1932, but during that year I worked more or less for Ten Eyck.

Q. Will you say you weren't doing any work for Ten Eyck Brothers in February, 1932? A. I wouldn't say I weren't. I wouldn't say I was.

Q. You aren't sure about it, are you? A. No.

Q. Now, where were you working on the 18th of February? A. Where was I working?

Q. Yes. A. That I couldn't answer, whether I was working or not.

Q. What day is it that you say you saw Mr. Hauptmann up there the first time? A. I said around the 18th.

Q. Well, will you fix the date definitely for me? A. No, I wouldn't know.

Q. Was it the 19th? A. I wouldn't say.

Q. Was it the 20th? A. I wouldn't say.

Q. Was it the 21st? A. I wouldn't say.

Q. Was it the 16th? A. I wouldn't say.

Q. Was it the 8th? A. I wouldn't say.

Q. So it might have been as far back as February 8th? A. No, it wasn't back that far.

Q. I though you said— A. You are trying to make me say—I answered that question correctly, to the best of my knowledge. I answered it correctly to you.

Q. I ask you now again will you say it wasn't the 17th of February that you saw him there? A. I couldn't say that. I said around the 18th.

Q. Will you say it wasn't the 16th or that it was the 16th? A. To the best of my knowledge I answered that question.

Q. Will you say definitely? A. No, I won't say definitely.

Q. Then it might have been as far back as February 10th? A. No, not as far back as that.

Q. Where will you fix it definitely? Was it as far back as the 12th? A. No.

Q. Was it as far back as the 13th? A. No it wasn't back that far.

Q. Was it back as far as the 14th? A. No, it wasn't the 14th.

Q. Was it back as far as the 15th, could it have been as far back as the 15th of February? A. To the best of my knowledge it wouldn't be no later than the 17th.

Q. How do you fix that time in there? A. Simply because I lost my sister on the 12th of February.

Q. On the 12th. And how many days was it after that? A. It was just a few days afterwards.

Q. How many? A. That I couldn't answer right to give you the correct answer.

Q. But you will say now that it was as late as the 17th? A. It might have been as late as the 17th.

Q. Then how far the other way might it be, the 21st? A. The first time?

Q. Yes, the first time. A. That I couldn't say because I had too much on my mind to remember dates and I kept no record.

Q. Your mind was very much occupied during that period, wasn't it? A. It was.

Q. You were thinking about things that had happened in your family. A. I was.

Q. And you went about your business with your mind occupied? A. Yes.

Q. That is right. And you didn't pay any special attention to things about you because you were occupied, is that correct? A. Not as to dates, I weren't paying no attention to dates.

Q. Well, your mind was preoccupied by the grief you had suffered, is that correct? A. That is right.

Q. It didn't impress you at the time you saw this man that there was anything unusual about it did it? A. Only him being a stranger in that community.

Q. Well, did you know Ollie Whateley? A. Whateley?

Q. Yes. A. No.

Q. You didn't know him, did you? A. No, sir.

Q. He was up at the Lindbergh home at the time was he not? A. I couldn't answer that question.

Q. You have heard the testimony since the case started. A. I didn't hear it all. Yesterday is the first I have been in here except a half a day.

Q. Did you know Colonel Lindbergh by sight at that time? A. No, I didn't know Colonel Lindbergh by sight.

Q. In the Bronx you testified there was nobody in that territory you couldn't recognize, didn't you? Didn't you say up in the Bronx you knew every person there? A. Yes.

Q. There are two people— A. I knew where he lived and who belonged there.

Q. That is right, there are two people you couldn't identify if you met them face to face in the highway. A. Yes, I could if I met him face to face in the highway because I saw his picture enough times to know.

Q. Mr. Whateley? A. Mr. Lindbergh.

Q. You couldn't identify Mr. Whateley. A. No.

Q So at least there was one person you couldn't identify in that very neighborhood A. He was not

a resident there. He was merely a laborer there, if I understand it right.

Q. He was there on the Lindbergh place. A. Yes, but I never saw him on the road.

Q. But to that extent there was one man in that neighborhood that you didn't know by sight, wasn't there? What is the answer to that? In the Bronx you were asked the question: "And did you know everybody that lived in that vicinity? Answer: I did." A. I do still say so, everybody that owned a place through there.

Q. Now, you are going to limit it to owners of property, are you? A. Yes.

Q. Well, is there anybody up in there, Mr. Whited, that doesn't own their property that lives in that neighborhood? A. Only those who rent, rents and owns.

Q. Those brothers there with you, they don't own any property, do they? A. Well, I knew them, too.

Q. That is right, but you want to say now you know everybody that owned property up there. A. I do.

Q. But you don't want to say to this jury that you knew everybody who was staying in the hills, that lived in the hills up there, like for instance, Mr. Whateley. A. I knew everybody through that vicinity that owned and belonged there.

Q. Well, Mr. Whateley was there, wasn't he, on the Lindbergh place? A. I am not supposed to go in a man's house to see who is in there.

Q. And you are not supposed to make general statements that you are not prepared to prove, are you? A. I made that so I was able to prove it.

Q. You say now you don't know Mr. Whateley. A. I don't know Mr. Whateley.

Q. And you say now that he was employed in the Lindbergh house? A. I didn't say he was employed

in the Lindbergh house; only that is what you are telling me.

Q. Well, you said that you heard it here in testimony, didn't you? A. No, I didn't say I heard it here,—you just asked me that question.

Q. Do you say now that you haven't heard or you don't know, through this case, that Ollie Whateley was employed in the Lindbergh house the night of the Lindbergh kidnaping? A. I say I didn't, no.

Q. Well, do you know it now? A. Since you have said it, yes.

Q. Yes. You are ready to believe it, that is true, are you? A. (No answer.)

Q. Very good, sir. And you say you don't know Whateley? A. I said that, yes.

Q. So that then there is one person, at least one, living in the immediate neighborhood of your house whom you couldn't identify by sight at that time. Now, is that so or not? A. I didn't go on Mr. Lindbergh's place to see who Mr. Lindbergh had on his property.

Mr. Fisher: May I have an answer to my question, sir?

A. I answered to the best I could.

Mr. Wilentz: Just a minute. I think he has answered it fourteen times.

The Court: I think he has.

Q. Now, how about Mrs. Whateley? Did you know her by sight? A. I answered that question, regardless to both of them, man and wife.

Q. That is the first time you have been asked that question, sir. A. I know. I have answered it regardless; I said I didn't know who Mr. Lindbergh had in his house.

Q. Did you know Miss Gow by sight? A. I never saw the lady.

Q. Did you know all the carpenters that were working up in there through the time the house was being completed, by sight? A. I only knew one.

Q. That is right. Well, was there more than one at work there? A. That is more than I could answer, because I weren't home at that time, only nights.

Q. Well, do you think the Lindbergh house was built by one carpenter? A. I hope not. (Laughter.)

Q. So that there was a number of workmen up there through that Winter that you didn't know? A. Practically all that was laborers there I knew.

Q. Well, you say you knew only one carpenter? A. I did, that one carpenter that was there working on the house and which he told me he was working there.

Q. Well now, who called you out of bed the night or the early morning of March the 2nd? A. No one called me out of bed.

Q. Who came to your house? A. Mr. Wolfe.

Q. Hopewell Mr. Wolfe or State Police man? A. State Police Mr. Wolfe.

Q. Who else? A. Colonel Lindbergh.

Q. Yes, who else? A. And Mr. Keaten.

Q. Mr. Keaten. Who else? A. I couldn't tell you who the other two gentlemens were.

Q. Have you ever found out who the other two were? A. No.

Q. You haven't found out yet who the other two gentlemen were? A. No.

Q. I see. Who did you tell about seeing this man on the mountain first? A. Mr. Keaten.

Q. Mr. Keaten. Are you quite sure of that? A. I am.

Q. Do you remember testifying in the Bronx— A. Yes—and I wish to rectify that because I got

the two men mixed in my knowledge.

Q. Yes, and you gave another name over there that you told the story to first? A. I did, because the name—

Q. Well, —

Mr. Wilentz: Just a minute. Let him answer the question, please.

A. I wish to rectify that by the two men's faces that is here. I would like to rectify that mistake.

Q. Yes. Well, I will give you plenty of chance to rectify it, sir. You told over there under oath that you gave the information to Captain Wallace, didn't you? A. Yes.

Q. And that he was one of the crowd in the house? A. Yes.

Q. Now, you went to some considerable number of questions explaining how you knew that was Captain Wallace, didn't you? A. No, I didn't go to that actual questions.

Q. Didn't you? A. No.

Q. May I incorporate in a question your answers, questions and answers over there.

Mr. Wilentz: What page?

Mr. Fisher: Page 204.

Q. Wait until I am finished with the question. (Reading):

"Q. Now, Mr. Whited, would you describe the officer to whom you told your knowledge about this relator? A. That would be, I think, Captain Wallace, was one of them in the crowd.

"Q. What leads you to think it was Captain Wallace? A. Because I saw his face several times since, but at that time I recognized no one.

"Q. Well, when you saw his face since, how did you know his name was Wallace? A. How did I know?

"Q. How did you know it, yes? A. Because I traveled the roads up and down there. I saw the gentleman there and I asked who Wallace was, who this man was.

"Q. Whom did you ask? A. I asked one of the troopers.

"Q. What trooper did you ask? A. I could not answer the question.

"Q. What day was that that you asked him? A. That I would not answer.

"Q. Where was he when you asked him about the Captain Wallace? A. I met him along the highway.

"Q. What part of the highway? A. Well, I would say a mile and a half from Hopewell.

"Q. In which direction? A. Well, you could call it south, south of where I live or north or east of Hopewell.

"Q. You are sure it is not north of where you live? A. North of where I live?

"Q. Yes. A. No.

"Q. You are positive about that? A. No, it is not north of where I live.

"Q. No, but where you asked this trooper was north of where you lived, was it not? A. No, it was south of where I live.

"Q. And at what point of the road did you ask him, in front of some house? A. No, sir.

"Q. Well, whereabouts? A. Oh, a crossroad.

"Q. And what is the name of the crossroad? A. That would be more than I could tell you.

"Q. And how would you describe the man you asked about Captain Wallace? A. He was a short, stout, heavy-set young lad, weighing about as near as I could tell you, about 165 pounds.

"Q. Was he in uniform? A. He was.

"Q. And you did not ask him his name? A. I did not.

"Q. How did you come to ask about Captain Wallace anyhow? A. Simply I asked the question. I will answer the question to the best of my knowledge why I asked that."

Q. Now, did you have considerable questioning back and forth about who this man was you talked to? A. Not all of that.

Q. You didn't have all of that? A. No.

Q. What? A. Not all of that you read off.

Q. Then if everything I read off appears in the testimony in the Bronx, you were mistaken about some of it; is that right? A. To the best of my knowledge, that what you are reading there, some of it I don't remember of saying, that what you are reading off there, because the questions, I can practically answer the same questions were asked me in the Bronx, I can answer them now.

Q. Well, do you say now that what I have read you did not say in The Bronx? A. I said Wallace was the man that I told it to.

Q. Just a minute. I should like my question answered. A. I answered to the best of my knowledge.

Q. I ask you again— A. And I was talking to the Troopers—

Q. Just a minute, please. I ask you again do you say that you did not testify as I have just read, in The Bronx; yes or no? A. What do you mean, testified; explain that?

Q. Exactly what you are doing now on the witness stand. A. Yes.

Q. You were asked questions and you gave answers? A. Yes.

Q. Now, do you say you were not asked the ques-

tions and did not give the answers in The Bronx as I have read them to you just now? A. I was not asked in that manner, no.

Q. I see, you say you weren't? A. Not in that manner, the manner you are asking them, reading out of the book. The man asked them without reading them out of the book.

Q. Well, except for the reading of them to you out of the book, were they the same questions and were they the same answers? A. I answered that question, if I—whatever I said in The Bronx was true, excepting Mr. Wallace—Mr. Wallace, I wish to rectify that mistake of Mr. Wallace.

Q. Have you seen this Bronx testimony since you were a witness over there? A. No.

Q. You have never read this— A. No.

Q. —book that I have in my hand? Has it been read to you by anybody? A. Just read some of it Sunday night to me.

Q. Yes. Who read some of it to you Sunday night? A. I can't tell you, but if I can see the man's face I can show him to you.

Q. Well, was it a State policeman? A. I don't know whether he was a State Police or not.

Q. Well, who did he say he was when he arrived? A. He didn't say who he was.

Q. He just said to you "I want to read a book to you," and you sat down and listened; is that right? A. No.

Q. Well, tell me how you happened to get in a conversation with this man who you say read a book to you? A. The Colonel happened to tell this man to take me.

Q. The Colonel happened to? A. Yes.

Q. Which Colonel? A. This gentleman here, whether you call him a Colonel or—

Q. The General? A. Excuse me. Maybe—

Q. Oh, you mean the General? A. Maybe I misspoke.

Q. You mean the Attorney General? A. That is right.

Q. And he told some man to come to you and read you this book, is that right? A. That is right.

Q. And the man carried out his instructions? A. Yes.

Q. And he read the book to you? A. Yes.

Q. That was on Sunday of this week? A. That is right.

Q. Whereabouts? At your home? A. No.

Q. Where? A. Trenton.

Q. In the Hotel Hildebrecht? A. Yes.

Q. And did they read the same things that I have just read to you now? A. No.

Q. They didn't read that part to you? A. No.

Q. Now Mr. Whited, when the officers arrived there that night, whether it was Captain Wallace or whether it was Lieutenant Keaten, when the officers arrived, did they tell you what they were there for? A. Not exact.

Q. Now, as a matter of fact, didn't you think they were there in connection with a robbery that occurred in the Village of Blomburg on the evening, Sunday evening, before the kidnaping? A. I did.

Q. Yes. And you thought they were there looking you up as a suspect in that robbery, didn't you.

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

Mr. Fisher: Now it seems to me, your Honor, that is the very crux of this cross examination. It will show the motive for anything the man said to the officers. If he was aroused from his bed at 4:30 in the morning, or at some

such time, and a group of five people walked in, four of them officers, and they said certain things to him, without relating that there was a kidnaping, and he in his own mind felt that he knew the reason they were there, and that he said something, I want to show that he said it as a matter of self-preservation, that it was the thing that was on his mind that led him to say this thing that he said. Now it seems to me that that is the very crux of this cross-examination.

The Witness: Judge, your Honor—

The Court: One minute. He may answer the question.

Mr. Fisher: Yes sir.

Mr. Wilentz: Answer it.

A. I will explain why I thought of that; simply because when I was going down the road I got stuck fast with the truck and trailer. I had to send the brother back home after a team of horses to pull me out, and while I was there the boss on the road was telling me about this robbery.

Q. Which robbery? A. About this robbery at Blawemburg.

Q. And how far is Blawemburg from your home? A. I would say about seven or eight miles.

Q. All right. Go ahead. A. And I laughed about it. I said to him, "Well, why didn't you save me a couple of tires?"—like that. He said, "I have no time. I am seriously," I said, "I didn't think you were seriously about the robbery at first." He said, "I am." Then when I come home that night my wife

told me about a Trooper and three other men being in my place, looking for a man by the name of Earle Cox, and all I said to my wife—

Mr. Wilentz: Never mind what you said to your wife.

Mr. Fisher: I am satisfied to have him say what he said to his wife.

Mr. Wilentz: I know you are satisfied, but I am not concerned about your satisfaction. I say that is not permissible here.

The Court: I sustain the objection.

By Mr. Fisher:

Q. Well, your wife told you that the police officers had been there on Sunday before the kidnaping? A. Not on Sunday, no.

Q. Well, what day was it? A. To the best of my knowledge, I think it was on a Tuesday.

Q. What day was the robbery down in Blawemburg? A. That was on a Sunday night.

Q. Was it the Sunday immediately ahead of the kidnaping? A. That I couldn't answer right offhand.

Q. You don't know which Sunday night it was? A. But to the best of my knowledge it was the Sunday night before the kidnaping.

Q. Yes. Well, then, the officers came there on Sunday evening. When you came home Sunday night your wife said the officers had been there? A. No, I didn't say on Sunday night.

Q. Well, it was following the Blawemburg robbery, wasn't it, that the officers were there? A. Yes.

Q. And if the robbery was on Sunday, the next day was Monday and the following day was the kidnap day; is that correct? A. That is correct.

Q. All right. Then the officers must have been there either Sunday or Monday; is that correct? A. I said they was there Tuesday.

Q. They were there on Tuesday? A. On Tuesday.

Q. Now, I am speaking about the officers looking for Earle Cox. A. That is what I am speaking of.

Q. They were there Tuesday? A. On Tuesday.

Q. So that when you came home Tuesday evening you had this conversation with your wife. A. That is correct.

Q. Is that correct? A. Correct.

Q. The same evening as the officers disturbed you in the early morning? A. Right.

Q. That is correct. So that it was within ten hours of the advent of the officers accompanied by Colonel Lindbergh that police officers had been on your place looking for a man whom they said was Earle Cox; is that right? A. I—To the best of my knowledge, I weren't home, only what I was told. I was not at home myself.

Q. That is your best information? A. Yes.

Q. Yes. And you thought when they were looking for Earle Cox they were looking for you; is that correct?

Mr. Wilentz: Just a minute now. If your Honor please, I object to what he had in his mind, as calling for a conclusion, which is not evidential or admissible.

Mr. Fisher: Your Honor, I don't understand the objection. This man is a vital witness in this cause. He is here now on cross-examination and it seems to me that we ought to

be permitted to show the purpose and the intent of this man in his conversation with the officers who came in there at 4:30 in the morning, and I can only do that by leading up to it through this series of events and cycle of things and I am trying to do that. I submit, your Honor, under the law of New Jersey, as I apprehend the law to be—

Mr. Wilentz: If your Honor please—

Mr. Fisher: There is no intention to get anything in here which is improper, I assure you, your Honor. I am trying to conduct this trial in accordance with the law of New Jersey and in the rights of this defendant.

Mr. Wilentz: If your Honor, please, the difficulty as I see it, with counsel's question, is that he seems to have the notion that this witness testified to a conversation between himself and officers and Colonel Lindbergh on the early morning of March 2nd. My recollection is that no conversation was given. It may have been that he stated that he reported seeing a stranger. I am not so certain about that. But my recollection is that there is no testimony, in the first place, with reference to whether or not he said what he said or what he didn't say early on the morning of March 2nd. But if he did, and if that were said, it was inadmissible and now, if your Honor, please, when the question is asked what did he think, which is altogether different, which is foreign and under no stretch of the imagination does that come under the laws of this State, regardless of my adversary's notions about it, when we get to the point that

we can ask witnesses what they thought, at the time, if your Honor, please, we open the gates so wide that we can never stop.

The Court: Well, this is cross-examination and, sometimes within reasonable limits, the cross-examiner is justified in making inquiry as to the state of mind and, so far as the examination is limited to that purpose, I think I will allow it.

Mr. Fisher: That is the sole purpose.

The Court: Answer the question.

Mr. Fisher: Can you refer to the question?

Mr. Wilentz: Can't you restate it?

Mr. Fisher: I will ask the question again: When the officers arrived there—strike.

By Mr. Fisher:

Q. When your wife explained to you about the officers being there, you expressed to her the thought in words that "When they were looking for Earle Cox they were hunting for me," is that right? A. No, not that manner.

Q. Did you say to your wife this, "When they found Earl Cox they were hunting me, when they found me they were hunting Earl Cox"?

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

The Court: The objection is sustained.

By Mr. Fisher:

Q. Did you express to your wife the thought that you were of the impression the police were looking for you when they came up there?

Mr. Wilentz: Just a minute. I object to the question. It is just the same.

The Court: The objection is sustained.

Mr. Fisher: May I go back to my original question and have that answered?

The Court: Yes.

Mr. Fisher: The question is: "Did you think the officers were looking for you"?

A. Not exactly.

Q. Did you testify in the Bronx that you thought the officers were looking for you? A. I said when they were looking for Earl Cox, I said they was out trying to find whoever did it. What was in my mind, I am not ashamed to tell you what was in my mind if it is not against the State. I am not ashamed to tell my mind.

Q. As long as it is not against the State you will tell it, is that right? A. That is right. All right, if you will let me go back I will explain it—

Mr. Wilentz: Just a minute. There is no question.

The Court: You had better confine yourself to answering the question.

Mr. Wilentz: He has answered the question.

By Mr. Fisher:

Q. In the Bronx did you testify as follows: "My answer to my wife was—" This is on page 206.

Mr. Wilentz: I understand, your Honor, please, that that was ruled out.

Mr. Fisher: I am asking him if he didn't testify to certain facts under oath in another proceeding, an utterly different question.

The Court: That is an indirect way of proving the conversation with his wife.

Mr. Fisher: Very good, sir. I will withdraw it.

Q. I will ask you did you testify in the Bronx in reference to this visit of the police and Colonel Lindbergh, at from three to four o'clock in the morning: "Naturally, what was in my mind was that they came there thinking I was a thief." Did you so testify? A. I think I did.

Q. And that is what you thought, wasn't it, when you came in there? A. To a certain extent.

Q. Yes. And while you were there, at three o'clock in the morning, with four or five policemen, thinking they were there because you thought you were a thief, it was then that you made mention of seeing a stranger in the hills, wasn't it? A. It were not at three o'clock in the morning when they was to my place.

Q. All right, it was at four o'clock, or whatever time it was; when they were in there, thinking you were a thief, as you thought, wasn't it then that you first mentioned this man that you had seen up there in February, 1932? A. Not until I was asked.

Q. But when you were asked? A. When I was asked, I was asked if I saw automobiles, I was asked if I saw cars.

Q. Yes. A. And I answered I only saw the one man.

Q. But right then and there, while you thought those men were there to talk to you about a robbery, you mentioned for the first time seeing somebody in the hills? A. Yes.

Q. Did you do that as a matter of self-protection to yourself? A. No.

Q. Whether it was you or somebody else? A. No.

Q. Did you do it because you thought you might throw the police off the track of this alleged robbery? A. No.

Q. Whether it was you or somebody else? No.

Q. That wasn't your motive at all? A. No.

Q. You weren't thinking at all about Whited at that stage of the game? A. No.

Q. Now, do you know what these officers were there for? A. No, and I didn't care.

Q. Had they mentioned kidnapping to you? A. No.

Q. You thought they were there about the Blomburg robbery didn't you? A. I didn't care what they were there about.

Q. You might have thought that, didn't you? A. I might have thought it, but I didn't care.

Q. Now, when were you called on to identify the prisoner, Hauptmann, the first time? A. The 6th of October.

Q. The 6th of October? A. Yes.

Q. Do you know what day he was arrested? A. I don't.

Q. Do you know that he was arrested on the 19th day of September? A. That I couldn't say.

Q. But you say that the first time you were called was the 6th of October? A. Right.

Q. During all that period of time you lived in Lambertville, didn't you? A. I did.

Q. From the 19th of September till the 6th of October? A. From when?

Q. From the 19th of September to the 6th of October, 1934? A. I lived there before that.

Q. But, you lived there during that period? A. Yes.

Q. Didn't you? A. Yes, sir.

Q. How far is Lambertville from your home in the Sourland Mountains? A. About twelve miles.

Q. You made no effort to hide yourself in Lambertville, did you? A. No.

Q. You were available there every day and every night, weren't you? A. I was.

Q. You had given this statement to the State Police the night of the kidnapping, hadn't you? A. Only just that I saw a stranger.

Q. Were you called on from the 19th of September to the 6th of October to identify anybody? A. I was called on, the first was a newspaper, on the 1st of October.

Q. Were you called on— A. With a picture out of a newspaper, by the State Police.

Q. Were you called on by the State of New Jersey to identify this man Hauptmann until the 6th day of October, 1934? A. Just explain just what you mean by that.

Q. I mean, were you taken to see the prisoner, Hauptmann? A. I—

Q. Prior to October 6th, 1934? A. The 6th was the first.

Q. That is the first time you were taken? A. That is right.

Q. In the interim you had seen some pictures of Hauptmann, hadn't you? A. I saw two.

Q. Who brought those to you? A. Mr. Wolfe, Trooper Wolfe.

Q. He brought you first a picture out of a newspaper, didn't he? A. Right.

Q. And did you look at that? A. I did.

Q. And then he came back with a regular photograph? A. Right.

Q. Photographer's picture? A. Yes.

Q. And you took a look at that, didn't you? A. Yes.

Q. So that you had two perfectly good looks at a likeness of Hauptmann, didn't you, prior to going to New York City? A. My estimation as to that question, when those papers were brought to me, my answer was that I wouldn't identify no one by a paper or by a picture.

Q. But you took a look at the pictures, didn't you? A. A glance look.

Q. Yes, just a glance? A. Yes.

Q. Now, when the officer, the police officer came over to your home in Lambertville with a picture, and said, "Here is a picture, look at it," you simply glanced at it, is that right? A. That is right.

Q. And knowing that you only glanced at the first one, he brought back another one so you could take another glance? A. Right.

Q. I suppose. A. Right.

Q. Yes, he came back with a second picture when you refused to do more than glance at the first one? A. Yes.

Q. Yes. A. Because I was in Pennsylvania when he delivered that one to me, working.

Q. Well, you saw it, didn't you? A. I saw it, yes.

Q. You took this glance at it? A. Yes.

Q. And the officer was satisfied and went on home? That is all he could be, couldn't he?

Q. Yes. Now he came back with another picture? A. No.

Q. Didn't he come twice? A. Twice. I said he was there that night and requested a better picture.

Q. The next day he brought you a better picture. If you remember now, what did you do with that picture, glance at it? A. I glanced at it, because I was getting in the truck. I just glanced at it.

Q. You took another glance at that one? A. Yes.

Q. So that you must consider that you had two glances of two separate pictures, is that right? A. Right.

Q. Before you went to New York? A. Right. Just those two glance pictures.

Q. All right. Now what about in New York, did you see any newspapers? A. No, sir.

Q. You say you didn't see any newspapers? A. I saw them laying around, but not—

Q. Well, did you see any pictures of Mr. Hauptmann in the newspapers? A. No, sir.

Q. What? A. No, sir.

Q. Did you know that his picture was on the front page of the newspapers at that time? A. Might have been in the front; might have been in the back. I didn't pick it out to read it.

Q. Did you know it? Did you know it? A. No.

Q. You didn't pay any attention to it? A. I didn't pay any attention to the paper, because I didn't have none in my hands.

Q. You didn't know a thing about that, did you? A. I answered that question, I didn't have no papers in my hands.

Q. I am asking you now whether or not you knew that during that period the picture of Hauptmann was on the front page of the New York newspaper.

Mr. Wilentz: He has already answered it;

it might have been on the front and might have been on the back.

The Court: I think so. He said he didn't look at the newspapers.

Mr. Fisher: The question now is, did he know, regardless of how he got his information.

The Court: What difference does that make?

Mr. Fisher: To contradict his testimony in the Bronx.

Mr. Wilentz: There is no contradiction between that at the Bronx—

Mr. Fisher: Let's see if there is. Let him answer.

The Court: Well, in order to get through this matter, suppose the witness answers the question which, as I recall is, "Did you know Hauptmann's picture was in a newspaper?"

The Witness: I answered it no.

The Court: He says no, he didn't know it.

By Mr. Fisher:

Q. In the Bronx did you testify as follows: "Q. Did you not know his picture was on the front page of the newspapers almost every day for the last three weeks"? Page 210. "A. Why would that interest me? Q. Did you know that? A. Why

would that interest me"? Then there was a question by the Court and then his answer, "So they said. I have not saw it. Q. Who told you it was on the front page of the newspapers for the last three weeks? A. Just hearing other people talk."

Q. So you did know it was on the front pages, didn't you?

Mr. Wilentz: Just a minute. That is just exactly what the witness has testified here and I object to counsel trying to give his testimony through his lips.

Mr. Fisher: Exactly contrary to what he said here.

The Court: Well, there seems to be nothing now pending, does there?

Mr. Fisher: That is right.

The Court: So you may proceed if you have any further cross-examination.

Q. How much money were you paid for testifying in the Bronx? A. None.

Q. No expense money paid? A. Expense, yes.

Q. How much expense money? A. I was took over there and my dinner.

Q. Yes. Nothing for your day's work? A. No.

Q. No newspaper money from no newspapers over there?

Mr. Wilentz: I object to that.

A. No.

Q. Were you told by anyone that you would be compensated for the time you are losing in this case? A. No, sir.

Q. You are simply here in answer to a subpœna? A. That is right.

Q. Did you get your subpœna fee? A. No.

Q. You haven't even had that? A. No.

Q. So you are here without any fee whatever of any kind, or any promise of any kind. A. I supposed that you always got paid for your subpœna when you answered to your subpœna.

Q. I see. Well, you haven't been paid yet and you have been here quite a few days.

Mr. Wilentz: Well, he has answered that he hasn't.

Q. Now, tell me about the car you were riding in at the time you first saw the man you identify as Hauptmann. What kind of a car was it? A. 1931 Chevrolet sedan with a wheel on each side.

Q. Anybody riding with you? A. Wine color. Nobody but myself.

Q. Where had you been working that day? A. I answered that question. I didn't know whether I was working or not.

Q. You didn't know whether you were working or not? A. No.

Q. You are sure of that now? A. I am sure of that.

Q. I see. Well, what were you doing, driving along there, just at that time? A. A man has a right to go home at any time, I would think.

Q. I am asking you what you were doing there just at that time. A. I answered that. I was going home for my dinner.

Q. For your dinner. But you don't know whether you were working or not? A. I don't.

Q. And if you were working you don't know where? A. That is just it.

Q. Is that right? What kind of weather was it? A. That I just can't recall, too. It was March weather.

Q. March weather? A. Or, I mean, February weather.

Q. Oh. A. I beg your pardon. I misspoke myself.

Q. Yes. Did you have your windows down in your car, any of your windows? A. One window, one window down.

Q. Which window? A. On the driver's side.

Q. Did you have an overcoat on? A. Who?

Q. You. A. It is very seldom I ever wear an overcoat when I am out.

Q. Well, was it a chilly day or a warm day? A. That is something I couldn't answer.

Q. Don't you know whether it was hot or cold? A. That is going back pretty well, to ask a man whether it is hot or cold at a certain day or not.

Q. That's right. I think it is going back quite aways. Was it snowing? A. It wasn't snowing, no.

Q. Was it raining? A. I couldn't say whether it was raining or not, but I don't think it was raining.

Q. Was the condition of the road muddy or was it dry? A. It happened to be right where I was there was a little bit of stone throwed up.

Q. Stony? A. On top of the road. Just a few fresh stone the county had spread there.

Q. Well, just a little in the other direction or a little before you got to that point, was the road muddy or perfectly dry? A. It was naturally dry, but slippery, up there; it is always slippery up there.

Q. Well, was it cold enough that the ground was frozen? A. At the night the ground would freeze. During the day it would thaw.

Q. But you say the man you saw stepped out of the woods didn't have an overcoat—or rather, he

had an overcoat, but he was carrying it over his arm; is that right? A. That is right.

Q. How far was he from your car on that first occasion? A. I said about eight feet.

Mr. Wilentz: If your Honor, please, may I inquire how much longer counsel will require?

Mr. Fisher: Several more questions.

The Court: Yes. I think we had better take a recess. Let the people remain where they are until the jury have retired. The jury may retire and come back at 1:45.

(The jury retired.)

The Court: The prisoner is now remanded to the custody of the Sheriff and he may retire.

(The prisoner retired.)

The Court: The Court will now take a recess until 1:45.

(At 12:32 P. M. a recess was taken until 1:45 o'clock P. M.)

AFTER RECESS.

(1:45 p. m.)

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

MILLARD WHITED resumed the witness stand.

Cross-Examination (continued) by Mr. Fisher:

Q. Now, Mr. Whited, I understood you to say that five men came to your house the kidnap night. A. Right.

Q. Is that right? And you have identified three of them by name? A. Right.

Q. And do you know who the other two were? A. I don't.

Q. Were they in uniform? A. No, sir.

Q. And have you ever found out since who they were? A. No, sir.

Q. Have you ever seen them since? A. I saw the one gentleman.

Q. Where did you see him? A. I saw him in Trenton.

Q. In Trenton? A. Yes.

Q. But the other one you don't think has ever come under your observation since that night in your house? A. I don't think so.

Q. Do you know who the one was that you saw in Trenton? A. I couldn't call him by name.

Q. Will you describe him for me, please? A. He is a man would weigh, I would say, around 180, 190 pounds.

Q. 180 or 190 pounds? A. Grayish hair.

Q. Yes. A. Wears a brown suit of clothes.

Q. The description of that man is that he weighs 180 or 190 pounds, grayish hair and wears brown clothes? A. I said mixed hair.

Q. Mixed gray hair and wears brown clothes. What about his complexion? A. Fair.

Q. Fair. What about the color of his eyes? A. Well, that I didn't take notice of what colored eyes he had.

Q. What about his height? A. He is a man, I would say around 5 foot 11, to six foot.

Q. Any distinguishing marks about his face, scars or marks of any kind? A. No.

Q. No. Now, what about the other man, the fifth man, describe him for me. A. That I couldn't.

Q. You couldn't describe him at all? A. (No answer, but nodding of head.)

Q. How long was he in the house? A. I imagine they was there fifteen minutes.

Q. A man was in your house with lights for fifteen minutes and you can't even attempt to describe him. A. The man sat there and didn't say anything and I didn't pay no attention to him. I was paying attention to the one who was talking to me.

Q. He was within your presence for fifteen minutes and you can't even attempt to describe him. A. I wouldn't.

Q. How long was the man on the road under your observation in point of time? A. About two minutes.

Q. And you were traveling in an automobile at the rate of 15 or 20 miles an hour in one direction. A. That is right.

Q. And he was walking at you diagonally. A. I didn't say he was walking at all.

Q. Did you say he stepped out of the woods? A. I said he stepped out of the woods.

Q. From the side of your automobile? A. Not from the side; ahead of me, before I got to him.

Q. Ahead of you? A. Yes.

Q. And you kept moving? A. Certainly.

Q. And he was in your view for two minutes? A. That is right.

Q. Part of which time was while you were looking at him through a mirror in the front of your car; is that correct? A. I don't know how a man would look through the windshield.

Q. Didn't you do that? A. He would have to look through the winshield.

Q. Well, how about when you passed the man? A. Then I looked through my mirror.

Q. All right. That is what I am talking about. A. No. You said when I was facing him.

Q. All right. A. I beg your pardon.

Q. I mean when you passed him, after you had gone by him. A. Yes.

Q. You looked up in the mirror? A. That is right.

Q. And you saw him then through the mirror or something? A. That is right.

Q. Is that correct? So that part of your two minutes of observation was through a mirror as you were going away from the object which you were viewing; is that correct? A. Not two minutes, no.

Q. Well, you said you saw him altogether two minutes? A. Yes.

Q. And part of that time was looking in a mirror as you are going this way and the man stands back here, is that correct? A. I passed the man.

Q. That is right, and then you continued to observe him in the mirror? A. Yes.

Q. Of your car? A. Yes.

Q. Where was your mirror, inside your car? A. Inside.

Q. Yes, and that is the look you had at him? A. The first time, yes.

Q. Yes. Well now, the second time how long did you have him under your observation that time? A. I was not travelling over ten miles an hour, I imagine, I was going upgrade in second speed.

Q. Yes. How long did you have him in view? A. For about four minutes.

Q. The road curves there, doesn't it? A. No, not exactly; after you pass you can see quite a little piece up the road.

Q. But how far can you see up the road? A. 500 yards.

Q. 500 yards. All right. Now, how near the turn is the intersecting road where you say you saw this man? A. How near the turn?

Q. Yes. How near were you coming in view, how far away were you when you first viewed him in the direction in which you were traveling? A. I was coming straight down.

Q. How far? A. I was just coming over a hill, starting down over it.

Q. Yes, and there is the intersecting road to Bloomburg, is that right? A. No to Skillman.

Q. Now, when you first turned the corner, when you got your first vision in the direction in which you were travelling— A. I didn't turn no corner there, I was coming direct straight.

Q. Well, is the road straight for endless miles on down there? A. Did you ever see one straight for endless miles? I said I was coming straight up the main road.

Q. All right. How far was it that you had a vision from the main road where you say you saw the man? A. I told you about 500 feet each way.

Q. Each way? A. Yes.

Q. Feet? A. About 500 feet as you—

Q. That is a thousand feet then altogether? A. Yes.

Q. And you were traveling at what rate of speed? A. About ten miles.

Q. So that all you could possibly have seen, looking at this man out ahead was for a distance of 500 feet ahead of you, is that correct? A. Yes, that is right.

Q. And you say that it took you four minutes to travel 500 feet? A. Yes, about that.

Q. I see. At ten miles an hour how many feet a second are you traveling, do you know? A. I was never educated enough to figure that out.

Q. Never figured that out, but you still think it

took four minutes to travel 500 feet? A. I said about four minutes.

Q. It might have been longer? A. It might have been longer or shorter. I had a truck and trailer, understand, not a pleasure car.

Q. Were there any mirrors in that car so you could see in back of you? A. Yes.

Q. Did you again look up and watch in the back? A. I did.

Q. And did he stand still for the entire time you were watching him? A. As far as I could see.

Q. Like a statue? A. No.

Q. Perfectly still? A. He was looking up and down the highway.

Q. But not moving up and down? A. No.

Q. That is right. And did you speak to him as you went by? A. I didn't.

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

Q. What time of day? A. About— from four to five o'clock in the afternoon.

Q. Did you mention to any person in the world until you talked to the policeman in your home, the early morning of March the 2nd, the fact that you had met this strange man two separate times in the hills? A. No, sir.

Q. Never mentioned it to a soul? A. No, sir.

Q. Two brothers living with you at the time? A. Yes.

Mr. Wilentz: He has already said that about four times.

Q. Father living with you at the time? A. Yes.

Q. Wife living with you at the time? A. I hope so.

Q. How many children? A. I have five; four at that time.

Q. Four living with you at that time. And on

neither occasion did you mention to any of these people that you had met this man. A. No. For the reason I thought that was my business and not theirs.

Q. Now, did you see the man stepping out of—whose land? A. Off of my property.

Q. Off of your property? A. Yes.

Q. Well, I understood you to say this morning that it was at the line of your property and somebody else's. A. It is, right on the line; it is practically right on the line of the two properties.

Q. So that you can't tell definitely whether it was your property or the next neighbor's property?

Mr. Wilentz: He did tell definitely.

A. I can tell definitely. If I go up there I can show you definitely, yes.

Q. Tell me now whose property it was. A. I did to the best of my knowledge. I told you it was my property he stepped off of.

Q. What is the neighbor's name? A. At that time I think Ten Eyck owned that ground, at that time.

Q. Ten Eyck? A. He had possession of that ground, at least a contract off of it, to get the timber off for a certain length of time.

Q. Now, did you sign any statement that early morning? A. I didn't.

Q. Have you signed any statement yet about this man that you say you saw along the— A. Yes.

Q. When did you sign that? A. That I couldn't answer that question, simply because it has been too long for me to bring that back.

Q. Well— A. But it was during— I think it was the latter part of March or perhaps the middle of April.

Q. You signed a statement about seeing this man? A. I signed a statement of all I knew.

Q. Well, did you include in the statement the fact that you saw this man along the road on two occasions? A. I won't say whether I did or not.

Q. That was the most important thing you knew about it, wasn't it? A. Not at that time. What I signed my statement for was for Ten Eyck's men cutting timber in the mountain.

Q. At that time you said nothing about this man you saw on the road? A. I wasn't asked no questions and I didn't answer nothing.

Q. That is right.

Mr. Wilentz: Never mind. I want the witness to answer.

Mr. Fisher: Are we ready to proceed now, Mr. Attorney General?

Q. At that time you made no mention whatever of seeing a strange man twice in the Sourland Hills in the month of February, 1932, did you? A. No, because that was a different gang of men was there.

Q. But you knew this man had been there those two days? A. I had already told it once.

Q. But you didn't put it in this statement, that is correct? A. The statement I answered was where we were working, where Ten Eyck's men was working and all about that, not who I saw or where I were in that statement.

Q. Nothing was said about seeing this man in that statement? A. No.

Q. That is right. Now I want you to tell me about the officers coming to your home in the early morning of March 2nd, what time they got there, just the whole story. A. If I am not mistaken, I answered that question once.

Q. We are waiting for you to answer, Mr. Whited. A. I answered it once.

Mr. Wilentz: He answered it several times.

The Court: Well, Mr. Fisher, I think the witness has answered the question more than once, and now my suggestion is if you want to proceed with the cross-examination along that line you get down to details.

Mr. Fisher: Yes, sir; I will do it.

By Mr. Fisher:

Q. Now, will you describe for me what time the officers arrived there on the morning of March 2nd, 1932? A. To the best of my knowledge, I would say between three-thirty and ten minutes to four in the morning.

Q. Were you asleep when they got there? A. No.

Q. What were you doing? A. I went to the barn to see what was going on, because my dogs carried on and woke me up.

Q. Then you were up when the officers arrived there? A. I was up, yes.

Q. Awake? A. I was.

Q. Were you fully dressed? A. No.

Q. Now, besides seeing them, what else did they ask you about? A. I told you they asked me about automobiles and if I saw any strange people around there, and that is the question I answered.

Q. What did you tell them about seeing automobiles? A. I told them I saw one; it backed in my lane, but I was too far off to tell who he was, what it was, or anything of the kind. I saw it was a sedan car of some direction.

Q. When was it that you saw that car? A. That I haven't got no record of. But it was before, it was during the early part of February.

Q. It was the early part of February? A. Yes.

Q. And what did you see the early part of February? A. I told you I saw that sedan car back in my driveway and turn around.

Q. What time of day? A. I didn't take my watch out to look.

Q. Well, did you take your watch out this day you saw this man? A. I know what time it was when I got home.

Q. Yes, what time was it when you got home the day you saw the automobile? A. I was at home.

Q. All right. You can tell what time you saw the man on the road, but you can't tell what time you saw the automobile, is that correct? A. I was working and paid no attention to what time it was.

Q. Working which day? A. The day that I saw the sedan back into my lane and turn around.

Q. Well, was it the morning or the afternoon? A. That I couldn't answer that question.

Q. Now, just another question about who was working with you during the month of February: Who was working with you during the month of February? A. Russell Survey, for one.

Q. Yes, who else? A. And Howard Whited.

Q. Howard Whited? A. Right.

Q. How about Edward Whited? A. I don't think he was working for me during that time.

Q. Well, was he working for you during 1932? A. Well, some, some.

Q. Did he live with you when he was working for you? A. Not all the time.

Q. Some of the time? A. Some of the time.

Q. As a matter of fact, didn't Edward Whited work for you during the entire month of February 1932? A. No, sir.

Q. How many days a week did you work? A. That all depended.

Q. Well, during February, 1932? A. I told you I had no record of how many days we worked.

Q. Well, did you work six days a week? A. If we had work we worked six days; if we had one day we worked one day.

Q. Did you have work during February? A. I had work, yes, during February.

Q. Do you remember whether you had steady work during February? A. That is something I couldn't answer.

Q. Well, will you say definitely whether or not your Brother Edward Whited was working for you during that time?

Mr. Wilentz: He has already answered that at least five times.

Mr. Fisher: Definitely, I said, at this time.

The Court: I think so, I think so, Mr. Fisher.

Mr. Fisher: A new word there, "definitely," your Honor. He has been very indefinite about it.

Mr. Wilentz: I object to that and move that be stricken out.

The Court: Yes; I think that observation is apparently justified. The witness said he sometimes had work and sometimes he hadn't work; sometimes he worked six days a week and other times he may not have worked more than one day a week.

Mr. Fisher: Very good.

Q. Did you ever see Ollie Whateley in his lifetime?

Mr. Wilentz: He has already answered that at least four or five times that I can remember.

A. I don't think I did.

Q. And do you know whether or not he looked like the defendant Hauptmann? A. Who.

Q. Whether or not in his life time he looked like the defendant Hauptmann from pictures that you have seen of him published since?

Mr. Wilentz: Well, now, just a minute. It doesn't appear that he has ever seen a picture of Whateley.

Mr. Fisher: Well, if he hasn't he can very easily say so, your Honor.

Mr. Wilentz: All right. Answer the question.

A. Who was this man Whateley that you are mentioning.

Q. That is one of your neighbors up in the hills.

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

The Court: Strike that out.

Q. Did you ever see a picture of Ollie Whateley, the butler, or the employee of Colonel Lindbergh? A. I can't say that I did.

Q. Did you ever work for a man named Bedroe or Budroe at Lebanon, New Jersey? A. No.

Q. Or Bodroe? A. No.
Q. At no time? A. No.

Mr. Fisher: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. Mr. Whited, I think I asked you before; you said you couldn't read very much, didn't you? A. That's right.

Q. You can't write very much either, can you? A. No, sir.

Q. Did you go to school at all? A. I went until I was eleven years old.

Q. I see. And from that time on, I take it— A. I have worked.

Q. You have worked. Did you say you had five children now? A. I have.

Q. Mr. Whited, your father is still living? A. Yes.

Q. Mother? A. Yes.

Q. This Blawenburg, is that the place where that robbery— A. Blawenburg.

Q. Do you know of your own knowledge whether or not a man admitted and was convicted of that robbery? A. He was.

Mr. Fisher: Objected to.

The Court: You object to that?

Mr. Fisher: Yes. I don't see that it is relevant what happened after. My question was directed to the 28th of February, the 29th of February and the 1st of March.

Mr. Wilentz: Well, it seems to me a rather strange situation where counsel brings in a mat-

ter of another robbery with an effort to reflect upon this witness and doesn't want to permit him an opportunity to show the disposition of that very case.

Mr. Fisher: I didn't bring it in to reflect. I brought it in to show his reaction to it.

The Court: You brought it in—

Mr. Fisher: —to show his reaction.

The Court: Yes, and if the Attorney General sees fit to press his question, it may be answered.

Mr. Wilentz: He has already answered.

By Mr. Wilentz:

Q. Your answer was yes? A. Yes.

By Mr. Wilentz:

Q. Now, Whited, you didn't know Colonel Lindbergh, did you? A. No, sir.

Q. And you didn't know the Attorney General, did you? A. No, sir.

Q. And you didn't know Prosecutor Anthony Hauck, did you? A. No, sir.

Q. And you didn't know the police very well, did you, the troopers? A. No.

Q. On the very morning after this kidnaping and this crime, you did give a statement verbally, that is, you spoke to the police officers and told them the story you are telling now. A. Yes, sir.

Mr. Fisher: I suggest that is leading, and object to it on that ground.

The Court: Well, think I will allow it to stand.

Q. You didn't have a camera with you, did you? A. No, sir.

Q. And you didn't take a picture of anybody on the road that day?

Mr. Fisher: It is objected to for the same reason. Let the witness tell what he did.

The Court: I think the questions are perhaps objectionable in being leading.

Q. Were you awake that day when you were riding down in your car on both those occasions? A. Yes, sir.

Q. Were your eyes open? A. Yes, sir.

Q. Your eye sight was fair at that time, was it? A. Yes, sir.

Q. Were you able to see as you came along that highway those things and objects that were within your view? A. Yes.

Q. Within the roadway? A. Yes.

Q. Did you see Hauptmann, the defendant in this case on those occasions that you have testified to? A. I did.

Q. Are you in any way at all interested in this case except as a resident of this county? A. No, sir.

Mr. Wilentz: That is all.

Mr. Fisher: That is all.

CHARLES B. ROSSITER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Rossiter, R-o-s-s-i-t-e-r, is that it? A. Yes, sir.

Q. Charles? A. Charles.

Q. Mr. Rossiter, in February and March, 1932, where did you reside? A. 26 Berkley Street, Maplewood, New Jersey.

Q. Where do you live now? A. 510 Essex Street, Gloucester, New Jersey.

Q. How long have you lived in the State of New Jersey? A. All but three years of my life.

Q. All but three years of your life? A. Yes, sir.

Q. In the year of 1932 what did you do for a livelihood? A. Salesman.

Q. Salesman for whom? A. Perfect Foods, Incorporated, Lansdale, Pennsylvania.

Q. In connection with you duties as salesman for that company did you travel about the State? A. I traveled all over the State.

Q. How far south? A. Well, as far as it goes, Cape May.

Q. Did you cover the entire State? A. The entire State.

Q. In the month of February, 1932, did your duties take you to different parts of the State? A. No. Principally the northern part of the State at that time.

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. What were you doing there? A. On my way to Philadelphia.

Q. On business? A. No.

Q. What was the purpose? A. I was— the next day I had planned to go on business, but the purpose of going there that evening was to stay at the home of my wife's people in Philadelphia that Saturday evening.

Q. You were on your way to your wife's people at Philadelphia? A. That is right.

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. A car? A. A car.

Q. You say he was in the rear of it? A. He was standing at the rear of it.

Q. What did you do as you drove along? A. As I drove up I pulled to the rear of the car.

Q. Why? A. For the simple reason that I could be to the rear of it and not pull up around the front of it.

Q. Well why did you stop? That is what I mean. A. For the simple reason to see if I could render any assistance, thinking it was a motorist in distress.

Q. Was it a section that is not thickly populated? A. Yes. There is only one house there, to my knowledge.

Q. How far away from this point? A. Well directly across from where his car was.

Q. I see. And did you get out of your car then? A. I did.

Q. And what did you do? A. I walked to the rear of his car.

Q. Did you speak to him? A. I did.

Q. What did you say to him? A. I wouldn't say verbatim what I said to him—

Q. Substantially— A. To the effect of whether I could help him any.

Q. What did he say? A. He said he was all right; he didn't need any help.

Q. Did you then proceed on your way? A. No, I stood there and looked the man over pretty well.

Q. Why?— Never mind that "why." At any rate, you stayed there for a while? A. I did.

Q. What sort of a hat was he wearing? A. A slouch hat.

Q. And then you proceeded on your way, did you? A. After looking him over, yes.

Q. Did you then proceed on your way? A. No, not right away, no.

Q. Well, within how soon? A. Well, a period of anywheres from five to eight minutes, I would say.

Q. Then where did you go? A. To Philadelphia.

Q. And you stayed there that night? A. That is right.

Q. That was Saturday night? A. That is right.

Q. When did you return to work? A. I returned to my home the next afternoon, which was Sunday.

Q. The next afternoon? A. That is right.

Q. Now, when was the next time that you saw this man or a picture of him? A. The next time I saw a picture of him was the day after his arrest, September 20th.

Q. And when you saw that picture did you call it to the attention of the authorities? A. I did not, at once.

Q. What did you do? A. I felt at the time when I saw his picture—

Mr. Reilly: I object to how he felt.

Q. Never mind how you felt. When did you call it to their attention? A. On the 22nd of September.

Q. And as a result of that did you go over to see him in The Bronx? A. I did.

Q. Did you see him there? A. Yes.

Q. Now, you have been subpoenaed by the State, have you not, to this trial? A. That is right.

Q. And in that connection and capacity you have been the guest of the State at its headquarters in the Hildebrecht Hotel in Trenton, have you not? A. That is right.

Q. Awaiting your call to be a witness, isn't that so? A. That is right.

Q. And you are here today in answer to a subpoena? A. That is right.

Q. I understood you to say on occasions you returned to your wife—you are married, are you? A. Yes.

Q. Are you employed at this time? A. I am.

Q. Have you any interest in this case in behalf of either the complaining witness in this case, Colonel Lindbergh, or the State, or the State Police, or anybody else? A. No, only interested in justice.

Mr. Reilly: In what?

Mr. Fisher: Interested in justice.

Q. I recall that you stated you lived in the State of New Jersey for how long? A. All but three years of my life.

Q. Are you employed now anywhere? A. Yes.

Q. Where? A. American Automobile Association.

Mr. Wilentz: Take the witness.

Cross-Examination by Mr. Reilly:

Q. Now, will you turn around and face me, please? A. Sure thing.

Q. Did you ever make a mistake in identity in your life? A. Did I ever make a mistake in identity?

Q. That is the question. A. Yes.

Q. How many times? A. Why, possibly two or three times.

Q. And those mistakes of identity, were they occasions where you thought you saw some person you knew and attracted the attention of that person, that you stopped, and then it turned out that you were in error? A. That is right.

Q. Such as touching on the shoulder? A. That is right.

Q. Or addressing him by name? A. That is right.

Q. And there were certain characteristics about the person that you looked at that you associated with some person that you knew and that you found out you were in error? A. That is right.

Q. Correct. Now, the man on the road you had never seen before, had you? A. No, sir.

Q. And this was a well travelled highway, one of the main highways, isn't it? A. Yes.

Q. Super-highway, is that what they call it? A. Oh, no.

Q. Well, it is one of the main arteries between what cities? A. Why, it runs between Somerville and Princeton. It is not one of the main highways.

Q. It is a busy road? A. Well, I would say it is fairly busy, not too busy.

Q. Were you ever a private detective? A. No.

Q. Did you ever study law? A. No.

Q. Ever been a witness in any case before?

Mr. Wilentz: Oh, I object to that as not being material, if your Honor please.

Mr. Reilly: It is material on cross-examination.

Mr. Wilentz: Well, now, just a minute, please. I object to the question because it is not material whether he has been a witness before.

The Court: Well, sometimes such questions are allowed to test the intelligence of a witness.

Mr. Wilentz: To test the intelligence of a witness.

Mr. Reilly: And familiarity with the court room.

The Court: Sir?

Mr. Reilly: And the familiarity with a court room in a procedure.

The Court: Well, I will allow the question to be answered.

A. Yes.

Q. How many times have you been a witness?

Mr. Wilentz: I object to the question, if your Honor please, for the same reason. I understood that in order to attack the credibility of a witness there was only one question that could be asked and that was with reference to whether or not the person had been convicted of crime. My understanding evidently has not been extensive enough, but may I very respectfully—

Mr. Reilly: I assume you would bring that kind of a witness in here.

Mr. Wilentz: May I very respectfully submit, if your Honor please, that the number of times a person has been a witness in a case is not material, nor does it attack his credibility.

The Court: It is very difficult to see the materiality, but if it will give counsel for the defendant any satisfaction, he may answer the question.

Mr. Wilentz: All right.

A. Did you ask me whether—?

The Court: How many times—

Q. How many times?

The Court: —have you been a witness?

A. Once.
Q. Where was that?

Mr. Wilentz: I object to the question for the same reason.

The Court: I will sustain the objection.

Mr. Reilly: I ask for an exception.

The Court: Take your exception.

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

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

Q. Have you ever been convicted of any crime? A. Not that I know of.

Q. Now, on this particular evening, you say it was a Saturday evening? A. That is right.

Q. I suppose you wrote that down in a diary, didn't you? A. No, sir.

Q. You are now depending upon your recollection in 1935 of something that happened in 1932, is that correct? A. (No answer.)

Q. Yes or No. A. I am basing it on the fact that I know what I am talking about.

Q. You are relying on your recollection of something that happened in 1932, testifying in 1935, is that correct? A. That is right, yes.

Q. And you made no memorandum in writing, did you? A. No memorandum.

Q. And you pride yourself on your memory, is that it? A. Well, I wouldn't exactly say that, but I can remember faces.

Q. And remember dates? A. Well, not all dates, some dates.

Q. This particular Saturday night, was there anything about that Saturday night that you remember, a wedding anniversary or something like that? A. Nothing particularly that Saturday evening, no.

Q. Just a Saturday evening? A. Just a Saturday evening.

Q. And where had you started from? A. 26 Berkley Street, Maplewood.

Q. To ride to Philadelphia? A. That is right.

Q. Were you driving with anybody? A. No, I was driving by myself.

Q. What time did you leave this Maplewood

address? A. Well, I would say it was around 7 o'clock, 7 p. m.

Q. Dark? A. Yes.

Q. Dark all along the road? A. Yes.

Q. Where had you been that afternoon? A. Well, now, of course, that is an easy question for me to answer for the simple reason I always had—

Mr. Wilentz: Answer the question, please.

A. I was in my warehouse, which I was manager of at that time, checking stock.

Q. Is that your usual Saturday afternoon job? A. That is right.

Q. And Saturday morning where had you been? A. Working on my ledgers.

Q. When had you come in from the road? A. I didn't come in from the road. I was—

Q. Where were you on Friday? A. On Friday, I had no definite procedure to follow, and at that time I wouldn't say that I was at any particular place, other than you might say running in all directions.

Q. Do you recall any direction you ran in? A. Well, offhand I couldn't say definitely, no.

Q. Can you recall anybody you met on Friday? A. Can I recall anyone I met?

Q. On Friday. A. Yes, my wife.

Q. You meet her every day, don't you? A. That is right.

Q. Let's have somebody else besides the members of your family. A. My neighbors.

Q. Anybody in business on Friday? A. Well, not at the present, for the simple reason I don't remember just where I was on that particular day.

Q. Do you recall any strangers you met on Friday? A. Any strangers? Possibly I met a lot but I haven't met them since.

Q. Can you recall any of them now? A. I wouldn't say I could, because I haven't seen them since.

Q. The day before, Thursday, where were you? A. Well, one of many places; I couldn't say offhand where I was.

Q. Did you meet any strangers on Thursday? A. No doubt I did.

Q. Can you describe any of the strangers you met on Thursday? A. Describe any of the strangers?

Q. Yes. A. No, I wouldn't attempt that.

Q. Now where did you spend the 22nd of February, 1932, Washington's Birthday? A. 22nd of February—at my home to my best recollection.

Q. Did you meet anybody there that day? A. That day?

Q. Outside of the members of your family? A. Not that I remember now.

Q. February the 12th. A. February 12th?

Q. Was Lincoln's Birthday. You recall that, do you? A. Oh, yes.

Q. Did you work on that day? A. No, sir.

Q. Where were you that day? A. Home, to my best recollection.

Q. Did you meet any strangers that day? A. Not that I remember.

Q. Where were you on the Sunday after this Saturday night? A. The Sunday after this Saturday night?

Q. Yes. A. At the home of my wife's people in the Frankfort section of Philadelphia until late that afternoon.

Q. And you started back with your wife? A. No, by myself.

Q. Covering this same route? A. Same Route.

Q. How many automobiles did you see on the road between Philadelphia and your home that was stand-

ing either in front of you or at the side of the road? A. How many did I see standing in front of me or to the side?

Q. Yes. On Sunday. A. Well, possibly a lot in the cities.

Q. On the road? A. Not any to my knowledge.

Q. Do you recall any automobile on Sunday—did you come back in the afternoon or evening? A. Afternoon.

Q. Daylight? A. Well—

Q. Dusk? A. Towards dusk, yes.

Q. Towards dusk? Did you see any automobile there that you can recall where anyone was changing a tire? A. No.

Q. You say no, or that you don't remember, which? A. That was not to my knowledge, I didn't take any notice.

Q. You didn't take any notice of? A. No.

Q. There might have been some but you don't recall? A. I say I didn't see any.

Q. You say you didn't see any. Now, you can remember definitely that on Sunday—what date in February was this visit to Philadelphia? A. What date?

Q. Yes. A. Well, I would say, I am not saying positively, but I believe it was the 27th of February.

Q. You think it was? A. Well, I would say, I believe so.

Q. You believe so? A. Yes.

Q. And would that be Sunday, the 28th? A. No, that would be—

Q. Sunday, the 27th? A. The 27th yes.

Q. Saturday was the 26th? A. That is what I believe, yes; I haven't checked the dates.

Q. You haven't checked the dates? A. No.

Q. Could it have been the 19th? A. No.

Q. It couldn't have been February 19th? A. Pardon me. May I ask what you are driving at?

Q. The Saturday. A. The Saturday that I saw Hauptmann?

Q. Yes. A Well, the date to my best knowledge, of course, in close relation to the kidnaping, and to my mind I am aware of that date, I would say it was around the 26th.

Q. But you are not positive of that? A. Why, I wouldn't be positive of that date, no.

Q. It could have been the week before? A. Oh, no; it couldn't.

Q. You have absolutely got that date set in your mind: is that it? A. Oh, yes; that evening.

Q. That evening. Well, now, was there anybody else around the road? A. Anyone else around what road?

Q. Yes, around the road where you say you met Hauptmann. A. No.

Q. And was the car standing out in the center of the road or towards the side? A. Two wheels off the highway.

Q. Two wheels off the highway,—was he jacking up a tire? A. No, sir.

Q. Did you see any blow-out? A. No, I didn't look for any.

Q. Did you see the rear light out? A. The rear light was on.

Q. The rear light was on. This man didn't signal to you to stop? A. No.

Q. He didn't indicate that he wanted any assistance? A. No.

Q. Was he near any house? A. Yes, directly opposite a house.

Q. What is the number of the house? A. I didn't go to the house to look for a number.

Q. What kind of a house was it? A. Well, it is a very, very large house, I would say that to the best of my knowledge it is a three-story house.

Q. People in it? A. Well, now, I don't know about that.

Q. Was it lighted up? A. That I didn't look to see at that time.

Q. What light was there on the road? A. What light?

Q. Yes. A. Well now, let's see. There was a light, I believe the beacon light was operating at that time at the airport.

Q. The beacon light at the airport? A. Yes, sir.

Q. Are you interested in aviation? A. Me? No, sir, I have never been up in my life.

Q. The beacon light of the field is how high? It is only tower, is it not? A. Yes, sir, I guess it is.

Q. It is a revolving light? A. Yes, sir.

Q. It shows white and shows red? A. To the best of my knowledge, I never looked at it to pay much attention to it.

Q. Were you there? A. Yes, but I didn't look up at the beacon light.

Q. Is it a stationary light or swinging light? A. I believe it is a swinging light.

Q. Don't you know whether it is or not? A. I have passed there on several occasions and I have noticed it takes a wide swing around there.

Q. Does it take a swing? A. Yes.

Q. Always white? A. I wouldn't say the color, because I never paid any attention.

Q. But you have passed there many times? A. That is right.

Q. This is a beacon that stands out at this field, correct? A. That is right.

Q. And a person driving within say a half a mile of the field either way is attracted by this light, is he not? A. That is right.

Q. While it doesn't play on the road, it sweeps the heavens, doesn't it? A. That is right.

Q. It is a signal to the aviators in the heavens, is that correct? A. That is right.

Q. It doesn't light up the road? A. Oh, no.

Q. Now, what other light was there? A. No other lights except mine.

Q. Your headlights? A. That is right.

Q. How close did you come to the car in front of you? A. Well, within ten to fifteen feet.

Q. And you got out of your car? A. That is right.

Q. You walked up to this man, is that correct? A. That is right.

Q. How was he dressed? A. Well, at that time he had on an overcoat, I would say, I did say was black, and a light suit which I described as being gray.

Q. What kind of a shirt? A. What kind of a shirt? Couldn't see, because he had the collar pulled up covering the shirt.

Q. He had his collar up around his neck? A. No, he didn't have the collar up, but it was pulled so close that you couldn't distinguish the color of the shirt.

Q. A fedora hat? A. A slouch hat, if that is what you call a fedora.

Q. Pulled down over his eyes? A. No, he didn't—

Q. Pushed back off his forehead? A. No.

Q. Even— A. Even, I would say, right across the top of his forehead.

Q. You came up to this man and what did you say? A. I asked him if I could help him— Those are not words verbatim; they were words along that line.

Q. And he said no, he didn't need any help? A. That is right.

Q. And then did you get in your car and drive away? A. Not immediately, no.

Q. Stand there looking at the beacon light? A. No, sir.

Q. Standing there looking at the man, I suppose? A. That is right.

Q. No further conversation? A. No further conversation.

Q. From either one of you? A. No.

Q. When did you drive away? A. When did I drive away?

Q. How many minutes after this? A. Five to eight minutes.

Q. Are you related to anybody in the State Police? A. In the State Police?

Q. Yes. A. Not to my knowledge.

Q. Or any other police? A. Not to my knowledge.

Q. That is what I am talking about—your knowledge— Is there any member of your family connected with any police force or detective force? A. No.

Q. Do you know any of the State Police? A. A few of them.

Q. How many? A. Well now, it would be hard for me offhand to number them.

Q. Well, about how many? A. Well, a conservative estimate, at least ten.

Q. They are all under Colonel Schwarzkopf of the State—of the New Jersey State Police? A. I am speaking collectively of the men that I have come in contact with, whether they were State Police or New York police or Department of Justice, I wouldn't distinguish because unless I actually was told I wouldn't know.

Q. Well, how many State Police do you think you know? A. Just a minute. I will figure them for you. I can name five, at least.

Q. State policemen? A. Yes.

Q. Will you name them, please? A. Well, there is Wallace.

Q. How long have you known Mr. Wallace? A. How long?

Q. Yes. A. Oh, at least since September 22d, that is, known him to see him.

Mr. Wilentz: Give us the date, please.

The Witness: You mean the length of time?

Mr. Wilentz: That is what you wanted, isn't it?

Mr. Reilly: Yes.

The Witness: How long do I know him?

Q. Yes. A. Since September 22nd.

Q. Last year? A. 1934, yes.

Q. Did you know any State Police before that date? A. No.

Q. Do you know any police in your local town? A. In the local town? Know them to speak to, yes.

Q. Did you know any New York police before September, 1934? A. No, I didn't.

Q. Now, what is your business? A. District Manager, Cumberland County, American Automobile Association.

Q. How long has that been your business? A. Oh approximately three months.

Q. Before that what were you doing? A. With the Universal Producing Company in New York City.

Q. What do they do? A. Why they book amateur theatricals.

Q. Have you been an actor? A. Actor? No.

Q. Never took part in any amateur dramatics of any kind? A. Not that I can recall.

Q. Ever written any articles for any newspaper or magazine? A. No.

Q. How long were you connected with this organization that furnishes amateur— A. Theatricals.

Q. —actors—is that what it is? A. No, no.

Q. Just what do they do? A. They put on shows for civic organizations with their own talent, that is, the community's home talent.

Q. They go around to a community and they— A. Book shows.

Q. They gather the local talent, is that it, put on a show and divide the profits, if there are any? Is that it? A. With the organization, that is right.

Q. And how long have you been doing that? A. About two weeks.

Q. Well, now, before that what did you do? A. I was with Perfect Foods, Incorporated, Lansdale, Pennsylvania.

Q. Perfect Foods? A. Incorporated, Lansdale, Pennsylvania.

Q. Did you live there? A. Did I live there? Yes. For about a year.

Q. And how long were you employed by them? A. Close on to six years.

Q. Before that what did you do? A. Before that I was with the Jacob Horning Brewing Company in Philadelphia.

Q. And lived in Philadelphia? A. Yes.

Q. For how long? A. About three years; about three years.

Q. I suppose before that you were at school, is that right? A. No.

Q. What was your occupation before that? A. Before that? With the Ward Baking Company in Philadelphia.

Q. In New York or Philadelphia? A. Philadelphia.

Q. Now, when did you first see a picture of Mr.

Hauptmann? A. The afternoon of September 20th.

Q. In the daily papers? A. That is right.

Q. And how many days did it take you to make up your mind that you had seen that person before? A. A day and a half.

Q. And during the day and a half you saw him, other pictures of him in the newspapers? A. That is right.

Q. Every edition—? A. That is right.

Q. —you bought had his picture in? A. That is right.

Q. And then you—what did you do, go some place? A. Did I go some place?

Q. Communicate with the State Police? A. That is right.

Q. How did you do that, call them on the telephone? A. That is right.

Q. Where? A. At the training school in Trenton.

Q. And who did you ask for? A. Colonel Schwarzkopf.

Q. Did the newspapers say that Colonel Schwarzkopf could be found at the training station or school in Trenton? A. No.

Q. You just picked up the receiver and asked for Colonel Schwarzkopf or for the training school? A. Colonel Schwarzkopf.

Q. He invited you to come over and see him, is that correct? A. No.

Q. Did he come to see you? A. He didn't.

Q. Sent one of his men? A. That is right.

Q. Did he have some pictures of Hauptmann? A. Not then.

Q. Later on did he have some pictures of Hauptmann? A. Later on that day.

Q. Yes. How many pictures did he bring you? A. Three.

Q. And did you see any more pictures of Haupt-

mann in the press or from the State Troopers before you went to the Bronx? A. Yes, on a Sunday I saw some pictures.

Q. I would like to know if you can tell me how many pictures of Hauptmann you saw between the day you saw this picture for the first time in the paper and your visit to the Bronx. A. Collectively, you mean, all of them?

Q. Yes. A. Well, I wouldn't number them, they were plenty.

Q. Fifty? A. Oh, no, not that many, I didn't buy that many newspapers.

Q. Twenty-five? A. Oh, I would say offhand about ten or twelve.

Q. Ten or twelve, some newspapers and some pictures brought by the State Police? A. That is right. They weren't brought. They weren't brought.

Q. You saw them anyhow. A. Yes.

Q. The State Police had them? A. That is right.

Q. Whether they came to you or you went to them is of no consequence, you saw the pictures, didn't you? A. That is right.

Q. So that you had a view of at least ten or fifteen pictures. A. That is right.

Q. Covering a period of how many days before you saw the defendant in the Bronx? A. Three days.

Q. Three days. And of course when you went to the Bronx, you saw the man that you saw in the pictures? A. That is right.

Mr. Reilly: That is all.

Mr. Wilentz: That is all.

Mr. Reilly: Just a moment, please.

By Mr. Reilly:

Q. I have been asked by my brothers of the defense to ask you to give us a better description if you will of this house on the side of the road. A. A better description?

Q. Yes, if you can. A. Well, as far as I can remember, I never took any special note of that house, and never went back to the point to distinguish the house or place that house in my mind.

Q. Have you ever passed along that road since? A. Have I passed along that road since? Yes.

Q. Have you ever seen the house? A. Not to take any particular note of it.

Q. You say there was a house there that night? A. That is right.

Q. Will you describe the airport? Is it an open space? A. An open space?

Q. Has it gates? A. It is all open, no gates there.

Q. All right. Is it all an open field? A. Yes.

Q. How do you get into the airport, can you walk off the road into the airport? A. Why yes, you can drive in from the road into the airport.

Q. There is a driveway? A. Oh, yes.

Q. A person walking along could walk right over the road in on the airport grounds, is that correct? A. I would say so. I have never been in there, but that is—

Q. Have you ever seen any fence? A. No, I never noticed any fence.

Q. Now is this road you were traveling on macadam? A. At that time, yes, sir.

Q. At that time? A. Well, it is a combination of stone. I suppose you would call it tar or something along that line.

Q. Now in relation to this driveway in the airport, which you now have firmly fixed in your mind, have you? A. The driveway in the airport?

Q. Yes. A. Well, now, I am not—

Q. Can you recall now in your mind a driveway leading into the airport as you have testified to? A. I wouldn't try to place the driveway into that airport, no.

Q. Well, would you try and place this particular car you say you saw in relation to some monument, driveway or something else in connection with the airport? A. Place it in relation to something?

Q. Yes. A. At that spot?

Q. Yes. A. The only thing I could place it in relation to is the fact that it is you might say directly opposite that house.

Q. Directly opposite the house? A. That is right.

Q. And how near to the driveway of the airport do you say this house is? A. How near to the driveway?

Q. Or was at that time, in 1933, yes. A. I would say that is at least 200 yards.

Q. 600 feet? A. Close to that, yes. That is my—

Q. As you drive toward Philadelphia, is the house before you get to the entrance of the airport or beyond? A. It is north of the airport.

Q. Beyond—you are driving toward Philadelphia, correct? A. Towards Princeton, towards Princeton.

Q. You have not yet arrived at the road that leads into the airport? A. No.

Q. It is the house before you get to the driveway or beyond? A. Before you get—

Q. Before? A. That is right.

Q. Now, in relation to this man's car, was it in front of the house? A. Not in front of the house, no.

Q. How near to the house? A. Directly across from the house, on the opposite side of the house, that is, on the side going south towards Princeton.

Q. Was the car facing Princeton? A. That is right.

Q. Describe the car. A. The car at that time that I noticed it, I didn't distinguish the make of the car; the car that I saw had on the rear of it a three-pronged tire holder, and it had a license plate on the left rear fender with, of course, a stop light on top of it, and any more than that I didn't go into any more detail as far as taking any mental notes of the car.

Q. You are in the automobile business now? A. That is right.

Q. You don't know the make of the car? A. No, sir, it wasn't distinguishable on the back.

Q. You didn't take the license number? A. No, sir, I did not.

Q. Was there a tire on the rear? A. There was.

Q. On a three-prong holder? A. That is right.

Q. What kind of a rear light was there? A. What kind of a rear light?

Q. Did it have any name indicating the make? A. No, it didn't.

Q. Did it have one or two rear lights? A. One.

Q. Did it have one or two rear tires? A. One.

Q. What color were the wheels? A. What color were the wheels?

Q. Yes. A. Very dark; I couldn't determine the color.

Q. What color was the body? A. A very dark color.

Q. What type of car was it? A. Well, that I wouldn't—

Q. Sedan—landaulet, limousine, or roadster? A. It was a sedan.

Q. A sedan? A. Yes.

Q. Did you come around the front of it? A. Did I go around the front of it? No.

Q. Only at the back of it? A. Just to the rear.

Q. Was there anybody in the car? A. I didn't look for that.

Mr. Reilly: Anything else?

Mr. Fisher: No.

Mr. Reilly: We are through.

Mr. Wilentz: That is all, sir.

Mr. Peacock: Max Rauch.

MAX RAUCH, sworn as a witness in behalf of the State:

Direct Examination by Mr. Peacock:

Q. Where do you live, Mr. Rauch? A. Bronxville, New York, Hotel Gramatan.

Q. Do you know where Richard Hauptmann lived? A. Yes, sir.

Q. In New York in 1932? A. Yes, sir.

Q. Where? A. 1279 East 222nd Street.

Q. And do you own that house? A. Yes, sir.

Q. When did you rent the house? A. October—well, we rented him about, probably about the 5th or 6th of October; he moved in the 15th.

Q. What year? A. 1931.

Q. Now, prior to October 15th, 1931, were you in the attic of that house? A. Yes, sir.

Q. What date? A. Around October 5th.

Q. And was the attic floor complete on October 5th, 1931? A. Yes, sir.

Q. When did you next go into the attic of that house? A. Around two weeks after his arrest.

Q. Was the attic floor complete at that time? A. No.

Q. What part of it was missing? A. I missed a strip of a board—rather, I would say, nine feet in length; not the entire board, but a part of it.

Q. Who constructed your house? A. Well, I was the contractor myself, but the carpenter work was done by Oscar Koski.

Q. By Oscar Koski? A. Koski.

Q. When he constructed your house, did he complete the entire attic floor or part of it? A. Well, he completed the center of it, the rear end was not necessary to complete, because it wasn't high enough to walk on.

Q. There was slant in the roof? A. Yes, on each side.

Q. Then it was completed in the middle? A. Yes, sir.

Q. And no boards were missing from it? A. No.

Q. Now, do you remember when Hauptmann was arrested, September, 1934? A. Yes.

Q. How soon after that did you go into the attic? A. I didn't go up there two weeks after.

Q. I show you a picture of your attic and I ask—will you come down here—is this the board, referring to this section between the end of this board and that end that was missing when you went into the attic after Hauptmann was arrested? A. Yes, sir. This is on the southerly side as I walk up to my right side.

Q. At the time you went into it in October, 1934, was that board there? A. It was complete.

Q. It was complete? A. Yes.

Mr. Peacock: Cross-examine.

I would like to offer that photograph in evidence, your Honor.

Mr. Pope: When was it taken?

Mr. Peacock: It was taken right after his arrest.

Mr. Pope: All right.

Mr. Hauck: No objection.

The Court: No objection?

Mr. Pope: No objection.

The Court: It will be admitted.

(Photograph of attic received in evidence and marked State's Exhibit S-215.)

Mr. Peacock: Cross-examine.

Cross-Examination by Mr. Pope:

Q. When was this building built? A. It was built in 1936.

Q. 1926? A. No, I mean 1926.

Q. 1926? A. Yes.

Q. And where the piece of flooring seems to be missing from the end of this piece to the wall, was there ever a board there to your knowledge? A. The entire strip that belonged to it.

Q. Well, wasn't that left off so that the electric light cable could be carried down there? A. Yes, but not on that side. The electric cable goes in down there, that is, through that board.

Q. Here is where the electric cable goes down, isn't it? A. Yes.

Q. And wasn't that left loose there? A. Well, this is what they call the preliminary work from the electrician down there. It was down there before, the boards came afterwards.

Q. And was not the board left out at that place because of the cable going down? A. No, sir.

Q. So you wouldn't have to notch the cable or beams? A. I will explain to you; the beams on there

were drilled in circles, when that BX cable was pulled through down there and the electrician was completely finished when those boards came in afterwards.

Q. Do you know anything about lumber? A. A little bit.

Q. That is just plain— A. Yellow Pine.

Q. North Carolina Pine flooring, isn't it? A. Yes.

Q. And there are millions and millions of feet of that sold every year. A. Yes. I bought quite a bit of it and I got stung with some of it.

Mr. Pope: That is all.

Mr. Peacock: That is all.

Mr. J. J. Dorn.

JOSEPH JENNINGS DORN, sworn as a witness on behalf of the State:

Direct Examination by Mr. Peacock:

Q. Mr. Dorn, where do you live? A. In McCormick, South Carolina.

Q. What is your business? A. In the lumber business.

Q. How long have you been in the lumber business? A. Since 1906.

Q. Have you a mill at that place? A. Yes, sir.

Q. You buy and sell lumber? A. Yes, sir.

Q. And you shipped lumber to Halligan & McClelland at New York? A. I shipped them some, yes, sir, quite a lot.

Q. In November, 1931, did you make a shipment to Halligan & McClelland in New York? A. Yes.

Q. Do you know the size of that lumber that you

shipped to them, Mr. Dorn? A. We shipped all sizes.

Q. Did you ship any one by four? A. Yes, sir.

Q. What date did you make that shipment? A. We made a good many shipments.

Q. I show you a bill of lading of a shipment of one by four to Halligan & McClelland, November 24, 1931; do you recognize that bill of lading? A. Yes.

Q. Do you recognize the bill also attached to that bill of lading? A. Yes, sir.

Q. Do you know where that lumber was prepared before it was shipped to Halligan & McClelland? A. Where it was prepared?

Mr. Fisher: If he knows.

Q. Where it was cut and dressed. A. It was dressed in McCormick.

Mr. Pope: Where?

Q. McCormick, South Carolina. Was it dressed on machines owned by you in your plant? A. Yes, sir.

Q. In what kind of machines? A. It is a Woods machine.

Q. I show you a photograph and ask you if that correctly portrays the mill and machines in your plant (handing witness a photograph)? A. Yes, sir.

Mr. Peacock: I offer it in evidence.

Mr. Pope: We object to that. We object to this, we can't see how this can be relevant; it is merely a picture of the inside of a sawmill or planing mill down in South Carolina.

Mr. Peacock: It is the picture of the inside of a planing mill. We are preparing by this witness for another witness to show, what the character of that planer was and the kind of knives that were used in that planer in order to connect this shipment of lumber, to bring down that shipment of lumber to the defendant Hauptmann and to a piece of that lumber that is in this ladder. For that purpose I offer this testimony.

The Court: Well, the photograph may be marked for identification. Perhaps, after all, it will appear that it may be admitted as an exhibit, I don't know.

(The photograph was marked State's Exhibit S-216 for Identification.)

Q. Mr. Dorn, referring to photograph S-216 for identification, what is the character of those machines as shown in that photograph? A. That is the planer.

The Court: I do not seem to be able to get this testimony from the witness.

Mr. Peacock: I beg your pardon?

The Court: I do not seem to be able to understand the witness' testimony. He is speaking very low.

Won't you speak out loudly so we can all hear?

The Witness: Yes, sir.

The Court: Yes.

Mr. Peacock: Well, he is a Senator from the South. Suppose I call him Senator, then he will talk loud.

The Court: That would be a good idea.

Q. Now, Senator, in that machine are there certain pulleys and knives which you use to cut lumber? A. Yes, sir.

Q. And what was the character of those pulleys or knives? A. Well, they are inch and three-quarters by fifteen, the knives.

Q. And where did you buy that machine? A. I bought it from the S. A. Wood Machine Company, Boston, Massachusetts.

Q. At the time you bought it did it take Standard pulleys? A. No, sir, it did not.

Q. Was it necessary to have special pulleys put on it? A. Yes, sir.

Q. And where did you obtain those pulleys? A. I got the extra pulley from the Lombard Iron Works, Lombard Iron Works & Supply Company, Augusta, Georgia.

Q. Now, do you know how many car loads of lumber you shipped to Halligan & McClelland under this bill of lading dated November 24, 1931? A. Only one under that one.

Q. How many feet of lumber that were cut by that machine were contained in this shipment to Halligan & McClelland? A. What days are those?

Q. I mean, the ones on November 24, 1931. A. From my recollection, 2,263 feet. The bill there will show it, the invoice right there at the bottom.

Q. Calling your attention—

Mr. Reilly: Now, I object to any invoices or records that this witness is looking at unless he made the records himself.

The Witness: I made it.

Mr. Reilly: And made the invoice himself.

The Witness: I have got the invoice right down here. If you want me to I will get it.

Mr. Reilly: Senator, just a moment, please. I do press the objection.

The Court: Well, he says that he made the record himself.

Mr. Reilly: Made the invoice?

The Witness: Yes. Pardon me, I have got the other down here, I have got the copy of it. This is the original.

Q. I show you the invoice. Is that your original invoice in your handwriting, made under your supervision? A. My bookkeeper made it.

Mr. Reilly: I object.

Q. Made under your supervision? A. Yes, sir.

The Court: One moment.

Mr. Reilly: I object to it, made under his supervision or not. I am pressing it now that he did not make it.

The Court: Made by your bookkeeper under your supervision?

The Witness: Yes, sir.

The Court: Did you see him make it?

The Witness: I can't say that I saw him when he made it.

I generally see every bill he makes out and I check them over after—

The Court: Well, I think we better find out about that, Mr. Peacock.

By Mr. Peacock:

Q. What do you mean, it was made under your supervision, Senator? A. Well, I go and get the bill of lading, come back there and tells him to make out this invoice. He makes a draft for it, he signs it, puts it over there, files it right next to my desk where I can see it each day.

Q. And that invoice is made from this bill of lading which you obtained personally? A. Yes, sir.

Mr. Peacock: I offer this bill of lading, your Honor.

The Witness: I'd—

Mr. Reilly: Just a minute, Senator, please. I object to this upon the ground that this witness did not make out this bill of lading. It is not in his handwriting. In fact, the only thing that is on here is the rubber stamp. I submit it to the Court for your observation, sir, before you make your ruling.

Mr. Peacock: The witness has testified that that lumber was shipped to Halligan & McClelland and that bill of lading is offered for that reason and no other.

Mr. Reilly: It is quite evident the Senator made no shipments himself. He delegated that work to other people in his plant. All he knows is he picked up the record from people in whom he has confidence and he says he looks them over and finds them on his desk.

The Court: Has the witness been asked whether he knows of his own knowledge whether this lumber has been shipped? Has he he been asked about that?

Mr. Peacock: He has been asked that. I will ask it again.

By Mr. Peacock:

Q. Do you know of your own knowledge that this lumber was shipped from Halligan & McClelland, New York, in November, 1931? A. Yes, sir.

The Court: Now, you offer this bill of lading, is that the idea?

Mr. Peacock: Yes.

The Court: What objection is there to it now?

Mr. Reilly: May I ask him as to his knowledge?

The Court: Yes.

By Mr. Reilly:

Q. Did you see the lumber cut, yes or no? A. No.

Q. Did you see the lumber gathered up after it was cut, yes or no? A. No.

Q. Did you see it placed in the railway car, yes or no? A. No.

Q. Did you see it leave your town in South Carolina, yes or no? A. I can't tell you that. I did see them when they took the car out of the yard, I see it when they take them out of the yard.

Q. You didn't see the car loaded, did you? A. Yes, sir, I saw the car when it was taken out of the yard.

Q. Did you see them actually load the car? A. No, I didn't.

Q. You saw some cars move out of a yard, is that right? A. Out of our yards, yes, sir.

Q. Out of your yard, yes.

Mr. Reilly: I contend that that is not sufficient.

By Mr. Peacock:

Q. You know it was delivered after, you were paid for it, don't you? A. Yes, sir.

Mr. Reilly: I object, just a minute.

The Court: One moment. Before I am going to rule on this, I have got to know what this witness can testify to. Now then, you may put your question.

Q. You know that you sold this to Halligan & McClelland?

Mr. Reilly: Now, I object to that as calling for a conclusion.

Q. Which you have already testified to—

Mr. Reilly: Well, even if he has, I object to it.

Mr. Peacock: Let me finish my question. Don't get nervous.

Mr. Reilly: I am sorry, I never get nervous.

Q. —and that you saw the cars leave and you know you were paid for it by Halligan & McClelland, don't you?

Mr. Reilly: I object to that as leading and not based on the evidence heretofore given.

The Court: Well, you saw the cars leaving?

The Witness: Yes, sir.

The Court: And were you paid for this lumber that was on this car that you saw leaving?

The Witness: Yes, sir.

The Court: Any objection to that?

Mr. Reilly: I say it is based on a conclusion. He saw a car pull out of the yard.

The Court: You may cross-examine him with respect to that.

By Mr. Reilly:

Q. Isn't that right, you saw a car leaving the yard?
A. I saw the car leave our yard, yes.

Q. Yes, "our yard"—how many cars? A. Well, we work about three and four cars a day.

Q. Let's talk about this particular shipment and nothing else, Senator. Now, don't look at those, please, I want your personal knowledge. A. Three cars.

Q. Three cars? A. Yes, sir.

Q. Of your own knowledge? A. Yes, sir.

Q. In which car was this lumber, if you know? A. I know that we—

Q. Never mind that. A. —we got the C. & W. C. bill of lading for three cars shipped that day.

Q. Never mind that. I want to know your personal knowledge,—in which one of the three cars was the lumber, do you know? A. It was in the C. & W. C. car, I don't look at everything.

Mr. Wilentz: Just a minute. I think the witness has a right to look at it if it will help to refresh his recollection.

The Court: I think so. He says these papers were made out by a bookkeeper under his supervision and I suppose the witness is permitted to refresh his memory from these papers.

Mr. Reilly: Of course, he didn't make the memoranda, and if they are going to trace a piece of Georgia pine—is that what it is, Senator, Georgia pine?

The Witness: South Carolina.

Mr. Reilly: South Carolina pine down into the Bronx yard and then pick a board out here, I think we should be just as particular and insist on our rights from the planing mill right down to this courtroom, and if this Senator, no mat-

ter how much confidence he has in his bookkeeper or help, doesn't know of his own knowledge, then we ought to object and he be prohibited from testifying.

The Court: Now what is the pending question?

Mr. Wilentz: I don't think there is any.

Mr. Peacock: The objection was on the question concerning the offering of the bill of lading. The Senator said the car had been shipped and he started to refer to his notes there, which were made under his supervision, when the objection was made by Mr. Reilly, I think.

Mr. Reilly: The Senator says he saw three cars go out of the yard; he assumes they were loaded with lumber because they left his lumber yard, but he can't tell which one of the three cars contained this lumber unless he looks at something made by somebody else.

Mr. Peacock: The witness has a right, your Honor, to look at this paper made under his supervision for the purpose of refreshing his memory, in order to answer the question of counsel.

Mr. Reilly: I contend that he can't refresh his recollection because he didn't make it.

By the Court:

Q. Well, did you oversee this memorandum that was made by your bookkeeper? A. Yes, sir.

Q. That was made under your direction, was it? A. Yes, sir.

Q. And in your presence? A. I might be out right at the time when it was made.

Q. Well, after this bookkeeper had done this writing was there a bill of lading made out? A. No, sir; I get the bill of lading first and carry them to him and tell him to make it out.

Q. You get the bill of lading? A. Yes, sir.

Q. Is this the bill of lading? A. Yes, sir. I get the bill of lading and the checking of the car. Our planer is about one mile below the town of McCormick.

Q. You say that you got this bill of lading made out? A. Yes, sir.

Q. Who did the writing on it? A. The billing clerk.

Q. Under your observation? A. Yes, sir.

The Court: Well, if the Attorney General insists upon offering that bill of lading I think I will have to admit it.

Mr. Reilly: May I ask your Honor—

Mr. Peacock: I insist upon offering it.

Mr. Reilly: May I ask another question?

The Court: Yes.

By Mr. Reilly:

Q. Isn't this bill of lading made out by the Charleston & Western Carolina Railway Company? A. Yes, sir.

Q. Made out by them, isn't it? A. Yes.

Q. Where? A. Made out by their agent— not their agent, either, billing clerk.

Q. Where? A. At McCormick, South Carolina.

Q. And that is not connected with your concern, is it? A. Not at all.

Q. No. So you did not see this bill of lading made out, did you? A. Yes, sir; sitting just across the desk from the billing clerk.

Q. You watched? A. I give him the car number—

Q. You watched him write it? A. Yes, sir.

Q. This particular one? A. Yes, sir, that particular one.

Q. What is the name of this billing clerk, do you know? A. Mr. Reangums—L. E. Reangums.

Q. And when was it made out, Senator? A. Made out the morning of December the 3rd.

Q. Where? A. McCormick, in the depot.

Q. Now, I don't know much about the lumber business so you will pardon some of my questions. A. That is all right.

Q. Did you go down to the railroad station yourself? A. I went to the lower mill, got the checking, the car numbers and come back to the depot and got the bill of lading.

Q. Now, let's see. Did you go down to the planing mill? A. Yes, sir.

Q. That is a mile from town? A. Yes, sir.

Q. You didn't not see the lumber planed, did you? A. No, I did not see it planed. I knew they was dressing it.

Q. And I believe you testified you did not see the car loaded; that is correct, isn't it? A. Sometimes I notice them loading car after car.

Q. Just a minute. This particular car. A. Yes. I see them loading every car.

Q. Did you see this particular car loaded? Yes or no. A. I see the planks going in the car. I didn't go down there.

Q. You didn't go down there? A. No, I didn't go down there. I stayed at the office.

Q. Now, how many cars a day of the same kind of lumber do you load? A. About 50,000 feet, about three cars.

Q. Three cars a day? A. Yes, sir.

Q. You saw them loading some cars? A. I saw them loading these three cars that went out on the 3rd.

Q. You saw three cars; and then after the cars were loaded you went somewheres, did you? A. Why, I go back to the office at McCormick.

Q. And what did you take back with you? A. Why, I come back down the next morning.

Q. What date was that? A. Come back down and get the car numbers.

Q. What date was that? What date? A. That was on the morning of the 3rd.

Q. The next morning was what date? A. The morning of the 3rd, when I come and get the bill, get the bill of ladings.

Q. You got the bill of lading on December 3rd? A. Yes, sir.

Q. 1932? A. I gave him instructions on the 29th.

Q. Never mind the instructions, please, Senator. We have to be very technical, just as though you were— Are you a State Senator, sir? A. Yes, sir.

Q. December 3rd you went down to the billing clerk of a railroad company: is that correct? A. Yes, sir.

Q. With certain memoranda that had been prepared by somebody else: is that correct? A. Yes, sir.

Q. And then you asked a billing clerk to make you out a bill of lading: is that correct? A. That is right.

Q. The car had passed away long ago, hadn't it? A. No, sir.

Q. Where was it; on a siding? A. On our siding. It stayed there until about 11 o'clock that day.

Q. On December 3rd? A. Yes, sir.

Q. And then the billing clerk gave you a bill of lading? A. About eight o'clock that morning.

Q. At night? That morning.

Q. That morning. What did you do with the bill of lading? A. Carried it to the office.

Q. Took it to the office. And who did you give it to? A. I give it to my bookkeeper.

Q. Only one bookkeeper? A. That is all.

Q. And that bookkeeper, some time after that, out of your presence and sight, made up a bill: is that right? A. No, sir. I go back at twelve o'clock, during the day then, and get the checking of the car.

Q. When is the bill made up? A. Made up about two o'clock in the afternoon.

Q. You don't make up the bill? A. Not unless he is away.

Q. You didn't make up this bill, did you? A. No, sir; I did not.

Q. You didn't mail it, did you? A. No, he mailed it.

Q. Did you receive the check personally? A. Received our credit.

Q. Did you receive the check personally? A. We make a draft on them.

Q. You made a draft on them? A. Yes.

Q. And the draft was paid to your bank? A. Yes, sir.

Q. So that transaction you had nothing to do with; it went through the bank, didn't it? A. Yes, sir.

Mr. Reilly: Now, I object to this bill of lading upon the ground that the Senator's testimony is that the bill of lading was prepared on

December 3rd, 1932, and this is a bill of lading for November 24th, 1931.

The Witness: That is '31.

Mr. Peacock: 1931, he said on direct examination.

Mr. Reilly: Well, he said December 3rd, 1932.

The Witness: '31 is what I intended, if I said '32 it is a mistake.

By Mr. Peacock:

Q. You say—

Mr. Reilly: Now, I object to that.

Mr. Peacock: The witness on direct examination said November 24th, 1931, and he identified this bill of lading as being a bill of lading for the shipment to Halligan & McClelland, and I submit—

Mr. Reilly: Under cross-examination he said a different date.

Q. Senator, did you mean 1932 or 1931?
A. 1931, December 3rd.
Q. You corrected that date?

Mr. Reilly: Wait a minute; that is his testimony, Mr. Peacock, and he is under oath.

Mr. Peacock: He has a right to correct his testimony.

Mr. Reilly: He testified he didn't see the lumber planed or loaded. He looked out a window and they were loading three cars and he assumed that was one of the shipments. They come up and get some car numbers from somebody else, and a bill of lading from somebody else with a different date, and he gives it to the bookkeeper, who mails a bill and then a draft; the person sends a draft to New York and the banks work the transaction, and he finally finds himself paid—somebody else paid it.

Mr. Pope: Somebody else checked it and he got the check from somebody else. He didn't check it.

Mr. Peacock: That is not all a statement of fact. The witness said he made a sale of lumber to Halligan & McClelland. He said he saw some of the lumber going into the car, he saw the car at the station, he personally saw the bill of lading made out for that car for Halligan & McClellan and it was paid for by Halligan & McClelland, that car of lumber.

Mr. Reilly: He doesn't say that—

Mr. Peacock: Pardon me a moment. I submit that that is certainly proper testimony upon which this bill of lading should be offered.

Mr. Reilly: I will ask Mr. Pope who is familiar with the law of the State to go forward with the law on this matter as I don't want to intrude myself into the legal question.

Mr. Pope: I think, your Honor please, that Mr. Reilly has handled the matter most admir-

ably. This witness, manifestly, is not qualified to testify to any single stick of lumber that went into that car. It was planed by his men, it was loaded by his men, it was checked by his men, the checking of the car was given to him. He took the checking of the car to his bookkeeper and he gave it to the bookkeeper. The bookkeeper made out the bill. Then he took this checking which somebody else had made down to the railroad station and the railroad station made out and issued and gave to him the bill of lading, he didn't make it out, it was made out by the agent of the railroad company. So that the only thing that this witness knows is that he shipped a car load of lumber of some kind to this firm in New York or wherever it was, in the Bronx, and that it was shipped with a draft attached to the bill of lading, that the draft was paid and he got the money for it.

Manifestly this witness hasn't any knowledge at all from which he can testify as to the kind of lumber that was in that car, whether it was one by fours, dressed on one side, two sides, three sides or four sides, or whether it was two by fours. The only thing that he can tell is by looking at a bill and a checking of the shipment that was made by someone else who is not produced here as a witness; and he can't look at somebody else's memorandum, made by somebody else, even for the purpose of refreshing his own recollection, if he had any, because my recollection cannot be refreshed by what somebody else wrote down.

We submit that the evidence is not admissible.

Mr. Peacock: In reply, your Honor, I don't think Mr. Pope has added any more than Mr. Reilly said, except to us: The fact that proves

to us that a car of lumber was shipped to Halligan & McClelland— that is exactly what I want to prove.

The Court: Well, I suppose the question is whether or no this witness has given testimony tending to show that this lumber, planed in his mill, that some of it, let us say, was one by fours; that that lumber was placed in a car; that it left his yard billed to McClelland; and that he had made out under his supervision this bill of lading to which I have been referring. I suppose the question is whether or no he has testified to matters tending to show that state of facts. Now, isn't that the question?

Mr. Peacock: He has testified to those facts, your Honor.

The Court: Well, I have the impression that he has.

Mr. Peacock: Yes.

The Court: But I think I would like to have him further examined upon that matter. I have indicated what I think to be the pinch of this thing.

By Mr. Peacock:

Q. Senator, you have testified that certain lumber was planed or cut in your mills at McCormick, South Carolina, that shipment, that it was shipped to Halligan & McClellan? A. Yes, sir.

Q. And did that contain 1 x 4's? A. Yes, sir.

Q. And that you checked it, you checked the

shipment? A. Yes, sir. I didn't check the lumber in the car now.

Q. Yes. And that car was taken to the station near your plant and you obtained a bill of lading for that car? A. Yes, sir.

Q. And that bill of lading was made out under your supervision and that this is a bill of lading that was made out for that car. A. Yes, sir.

Q. That was shipped to Halligan & McClellan, is that correct? A. That is correct.

Q. And after shipping that lumber you were paid for it by Halligan & McClellan, is that correct? A. Yes, sir.

The Court: Did you see this lumber or do you know that this lumber went in this car that left your plant?

The Witness: If it hadn't went in there, they wouldn't have paid me for it.

Q. Well, Senator, further, do you know the number of that car that went to Halligan & McClellan?

Mr. Reilly: I object to him reading from anything, if he knows from his own knowledge.

A. 8671,

Q. And I show you the car number on this bill of lading, what is it? A. 8671.

Mr. Peacock: Now, I offer it, your Honor.

Mr. Pope: We still persist in our objections here, because he has now testified that he didn't check the lumber.

Mr. Peacock: He said he did check it.

Mr. Pope: He says he didn't check it, he didn't see it checked, didn't see it loaded, and when the Court asked him the question if he knew that that lumber went into the car, his only answer was that if it hadn't gone in there they wouldn't have paid me for it. Well, that doesn't mean whether it was 1 x 4's, 2 x 4's or 3 x 4's, he was paid for so many thousand feet of lumber.

The Court: Are you able to state that this lumber that was planed in your mill went into this car and that it finally left your plant, it was billed to Halligan & McClellan?

The Witness: Yes, sir.

The Court: Well, the Attorney General—

Mr. Wilentz: Will your Honor give us a moment?

The Court: Yes.

Mr. Peacock: I withdraw the offer temporarily.

The Court: What is that?

Mr. Peacock: I withdraw the offer of the bill of lading temporarily.

Mr. Wilentz: Mark it for identification.

The Reporter: S-217 for identification.

(Bill of lading referred to was marked State Exhibit S-217 for identification.)

Mr. Peacock: That is all, Senator.

Cross-Examination by Mr. Pope:

Q. How long have you owned this planing mill? Where is the picture of it? A. The planer was put in in 1929.

Q. May I have the photograph, please. A. We built it in '23.

Q. He was asked about the photograph. You had a photograph that showed some of the machinery in the mill. This is a combination saw mill and planing mill. A. No, sir.

Q. Well, you have a saw here, haven't you? A. That is a trim saw, where it goes to the trim saw.

Q. That is merely a trimming saw? A. That is all.

Q. What kind of a planer is it? A. It is a Woods.

Q. Oh, yes, what make? A. It is a Woods, that is the make.

Q. Made by the Woods Company? A. Yes, sir.

Q. What is the size of the driving pulley. A. That drives the feed? 13 inches.

Q. The driving pulley? A. What drives your feed?

Q. Yes, the driving pulley that drives the pulley on the planer knife, not the driven pulley, but the driving pulley? A. You want the size of the pulley on the cylinder, or do you want it on the feed pulley?

Q. I mean, you have a belt, I suppose? A. Yes, sir.

Q. That runs from a pulley on a drive shaft to the small pulley, on the knife pulley, haven't you? A. I think it is 40 inches, I am not sure about the driving pulley on the main line.

Q. The driving pulley is 40 inches? A. I think that is right.

Q. How many revolutions per minutes does it turn? A. I do not know.

Q. About how many? A. I couldn't tell you.

Q. What is the size of the driven pulley on the planer? A. I think it is 14 inches.

Q. Then it is a 40 inch pulley driving a 14 inch pulley? A. I think that is right, but I couldn't say it for sure, because I haven't measured it.

Q. And what is the size of the cylinder, the knife cylinder that holds the knives? A. It is about seven inches.

Q. Seven inches in diameter? A. I think that is about right; I am not sure.

Q. How many knives on the cylinder? A. Eight knives.

Q. That is, there are eight knives spaced evenly around a seven inch pulley? A. I think it is a seven inch.

Q. And what size knives are they? A. It is about one and three-quarters by fifteen.

Q. And about how thick? A. About a quarter, three-sixteenths.

Q. How often do you dress them? A. About every 180,000 feet. Sometimes 150,000.

Q. That is, you will run 180,000, 150,000 feet of South Carolina pine through before you dress the edge of your knives? A. Yes, sir; sometimes. Sometimes you only run one or two plank through if you break a knife.

Q. Oh, of course. I am talking about the ordinary run of the mill, sir. A. Well, the maximum is about 180,000 feet.

Q. About 180,000 feet. And how many thousand feet do you turn out in a day: board feet, I mean? A. Anywhere from 40,000 to 80,000.

Q. And do you run five or six days a week? A. Run six days.

Q. Yes. A. Right now we are only running five days.

Q. I am talking about back in 1931, sir, when you

made this shipment. Did you make any shipment to the same company that you know of after 1931 of the same kind of lumber, that is, South Carolina pine? A. Yes, sir.

Q. And you shipped to them frequently, did you? A. Yes, sir.

Q. You have been shipping to them for a number of years? A. Yes, sir.

Q. Now, this is ordinary South Carolina pine, isn't it? A. Yes, sir.

Q. And how many mills are there in South Carolina turning out and dressing South Carolina pine? A. I don't know, sir.

Q. Well, can you give us a general idea? A. No, sir.

Q. There are a great many, aren't there? A. Yes.

Q. A couple of thousand, at any rate? A. I don't know, sir.

Q. Well, you are a Senator of your State, aren't you? A. Yes, sir.

Q. Can you give us an idea of the out put of South Carolina pine of the State of South Carolina per year. A. No, I could not.

Q. Can't tell us how many millions of feet are turn out in your State a year? A. No, sir.

Q. Well, it is shipped all over the world, isn't it? A. Yes, sir.

Mr. Pope: That is all.

Re-Direct Examination by Mr. Peacock:

Q. Senator, Mr. Pope has asked you about the size of pulleys that were used in the cutting of this timber. Does that picture portray the five pulleys that were used on this planer? A. Yes, sir.

Q. And was there a special pulley used on the planer? A. Yes, sir.

Q. Does that picture show the special pulley that was used on this planer (showing photograph to the witness?) A. Yes, sir.

Q. Which one is it? A. The one I have my hand on.

Q. The pulley that you have your hand on in this picture? A. Yes, sir.

Q. Is the special pulley that was used in the planer to cut these one by fours? A. Yes, sir.

Mr. Peacock: I want to offer that picture inevidence, your Honor.

You asked him about it, so I thought you would like to see it.

Mr. Pope: What is the purpose of it?

Mr. Peacock: The purpose of it, your Honor, is to show in this picture the special feed pulley that was used on these one by fours, to cut the lumber, showing certain marks on the lumber in question. That is the reason of offering this picture in evidence, which will be connected up to other witnesses and by an engineer.

Mr. Pope: Well, this picture apparently is merely a picture of the driving or driven pulley, the driving pulley. That has no knives on it. It wouldn't show any knife cuts or anything like that.

Mr. Peacock: That is the feed pulley that Mr. Pope asked the witness about; and I have shown him the picture to further illustrate the feed pulley that was used in cutting this one by four upon which the special marks were made by the knives on that lumber.

Mr. Pope: Well, I can't see any materiality of it. I don't specially object to it.

The Court: Well, if it is not objected to, it will be admitted in evidence.

Mr. Peacock: I want it in evidence, yes.

Mr. Pope: All right.

The Reporter: S-218.

(Photograph received in evidence and marked State's Exhibit S-218.)

Mr. Pope: Wait a minute.

Re-Cross Examination by Mr. Pope:

Q. How many revolutions a minute does the driving pulley make? A. I don't know, sir.
Q. This is your mill, isn't it? A. Yes, sir.
Q. Don't you know? A. My foreman does it.
Q. He figures out the speed? Now, I see a picture of a very good looking gentleman with this pulley. Is that you? A. Yes, sir.
Q. Do you have your hand on a pulley there? A. A special pulley.
Q. Was that picture taken with your hand resting on that pulley for any special purpose? A. Yes.
Q. To show which particular pulley it was? A. Yes, sir.
Q. That was used to cut South Carolina lumber or dress South Carolina lumber? A. What dressed this particular car.
Q. You say that is a special pulley. What is there special about that? A. We got three pulleys with the planer. One a 13 inch pulley which runs the speed

up to 250 feet a minute, and this 10 inch runs it up to 200, the 8 inch runs the feed up to 150. The 250 feet was too fast to handle the lumber in the car and that was a little bit too slow. Therefore, we had this pulley there, eleven and seven-sixteenths, made by Lombard.

Q. You mean that pulley is eleven and seven-sixteenths in diameter? A. In diameter.

Q. Now let me ask you, is that the pulley attached to the planing machine? A. We take these off different feeds.

Q. No, I want to know is that the pulley that you attach to the planing machine, the planer knife? A. Yes, sir.

Q. And that is— A. That is the feed pulley, that the belt runs over.

Q. Yes. The belt runs over this pulley and then the belt running over this pulley turns the knife around, doesn't it? A. Yes, sir.

Q. Or the knives around? A. Yes, sir, but that is not the pulley on the cylinder, though.

Q. Well, isn't this the pulley that the belt runs on? A. Yes.

Q. Well then, of course the speed of the knives is regulated by the size of the driving pulley over this particular pulley? A. Yes, sir.

Q. Which is known in the mill as the driven pulley, isn't it? A. On the planer, yes.

Yes. It is the driven pulley? A. The feed pulley.

Q. The feed pulley is the pulley which feeds the lumber or carries it through the planing machine, isn't it? A. That is right.

Q. Yes. Now this is, is it not, the pulley that carries it through the machine? A. Yes, sir.

Q. This is the pulley that the belt goes on and that is fastened to the knife and causes the knives to revolve around it, isn't it? A. And regulates the feed, yes.

Q. And regulates the feed speed. And regulates its speed. Now that is the driving pulley, isn't it? A. That is on the planer, yes, sir.

Q. Yes. Now you also have another pulley or while that goes around on your machine on the top, that pulls the lumber through, doesn't it, as it goes around? A. Yes.

Q. And that is the feed pulley, isn't it? A. No, sir.

Q. What do you call that pulley? A. That is the rollers.

Q. That is the what? A. The rollers.

Q. The roller? A. Yes.

Q. Well, what causes the board to go through the planing machine, the roller? A. Yes.

Q. Or the— A. The belt that drives it, they are in cogs, the rollers are on cogs.

Q. Yes, they are fastened to the driven shaft, aren't they? A. In a way, yes.

Q. Yes, and they revolve at a certain proportionate speed to the knives? A. That is right.

Q. So that as they go around running on the top of the board, they pull the board through and the knives cut from the bottom, don't they? A. Top, too.

Q. Oh, it is a top— A. Top and bottom.

Q. Top and bottom both. Then you have double knives so that you dress two sides of the board at once, is that what you mean? A. Yes, sir, you can dress two sides or four sides or one side.

Q. Now, there are no knives on this pulley shown in this photograph, are there? A. No, sir.

Q. No. And that has nothing to do with the knife cut except to cause the knife to turn around? A. And regulate the speed of the plane, going through the planer.

Q. Well, sir, the speed of the planer is regulated by the size of the pulley on the drive shaft running

against the pulley on the driven shaft: isn't that true? A. No, sir.

Q. It isn't. Well, what causes the lumber to go through the machine? Does the man stand behind the board and push it through or— A. He puts it in the runway and the rollers pull it through.

Q. The rollers pull it through, certainly; but this is not the roller that pulls it through is it? A. No. That is, it will go through there without that cog on there, without either one of those, except one on there, you have got to have one of them on there.

Q. Now, does the roller work on the top of the board? A. Top and bottom.

Q. Or does it work on the side, or does it work on the top and bottom, both? A. Top and bottom.

Q. Then there are two rollers, one on the top and one the bottom: is that right? A. Yes, sir.

Q. And they are geared to the drive shaft on the machine, are they not? A. Yes, sir.

Q. And the speed of the rollers is regulated by the speed of the driven pulley? A. Yes, sir; by the feed pulley.

Q. That is what I mean, by the driven pulley.

Mr. Peacock: Are you through, Mr. Pope?

Mr. Pope: Yes.

Re-Direct Examination by Mr. Peacock:

Q. Was Mr. Koehler down to your plant? A. Yes, sir.

Q. Did you exhibit to him that pulley? A. Yes, sir.

Q. Did you show him also the knives and the machine which cut this 1 x 4? A. Yes, sir.

Q. Did you give him also a sample of lumber that was cut? A. Yes, sir.

Q. By those same knives? A. Yes, sir.

Mr. Peacock: That is all.

Mr. Wilentz: That is all, sir.

Mr. Peacock: May we have a five minute recess, your Honor?

The Court: Take a five minute recess.

(At 3:30 p. m. a short recess was taken.)

(At 3:20 p. m. the jury was polled, all answering Present, and the trial was resumed as follows:)

Mr. Peacock: William M. Schluter.

WILLIAM M. SCHLUTER, sworn as a witness on behalf of the State:

Direct Examination by Peacock:

Q. Where do you live, Mr. Schluter? A. 77 Katherine Street, Valley Stream, Long Island.

Q. And do you know the firm of Halligan & McClellan? A. I do.

Q. Are you connected with that firm? A. I am.

Q. What position do you hold with them? A. Bookkeeper.

Q. How long have you been bookkeeper? A. With Halligan & McClellan five years.

Q. Did you receive a shipment of lumber containing 1 x 4's from Halligan & McClellan in November, 1931? A. May I have that question again?

Q. (Pending question read.) A. I believe there is an error in names there.

Q. Did you receive a shipment of lumber from J. J. Dorn & Company? A. Oh, from Dorn.

Q. —assigned to Halligan & McClellan of one by fours November 24, 1931? A. Yes, sir.

Q. I show you the Exhibit S-217 and ask you if that is the original bill of lading that you received from Halligan & McClellan for that shipment? A. It is the bill of lading Halligan & McClellan received from Dorn.

Q. And what car number is it? A. C. C. & W. C. 8671.

Q. Did you receive an invoice from M. G. and J. J. Dorn Company for that shipment? A. We did.

Q. I show you the invoice dated 11/24/1931, and ask you if that is the invoice that you received from Dorn & Company? A. It is.

Q. What was done with that car of lumber that you received under this invoice and this bill of lading? A. That shipment had been sold to the National Lumber & Millwork Company of the Bronx.

Q. I show you a car receipt, Halligan & McClellan consignee, National Lumber & Millwright Company, dated November 30th, 1931. Does that cover the same shipment?

Mr. Reilly: I object to it unless he made it.

Q. — of which I have shown you the bill of lading and the same car which you state was consigned to the National Lumber & Millwork Company.

Mr. Reilly: I object to it unless he made it personally.

The Court: Did he make it personally?

Mr. Peacock: It is a car receipt from the

railroad company which was delivered to him for the consignment. I withdraw that question for a moment.

Q. From whom did you receive that car receipt, Mr. Schluter? A. From the National Lumber & Millwork Company.

Q. And did that cover the same car that you have just described that you received from J. J. Dorn & Company? A. Yes, sir; car CWC8671.

Q. I show you an invoice, Halligan & McClellan, to the National Lumber Company, National Lumber & Millwork Company, and ask you if that is your invoice to the National Millwork Company for the same shipment? A. Yes, it is.

Q. And was that car sold to the National Millwork Company? A. Beg pardon?

Q. Was that car sold to the National Millwork Company? A. Yes, sir, it was.

Mr. Peacock: I offer in evidence, your Honor, the car receipt and the two invoices.

Mr. Pope: We object to that without having an opportunity to examine the witness, sir, before the Court's action upon the admittance of this document.

The Court: Well, you may examine him.

By Mr. Pope:

Q. Did you ever see this car load of lumber? A. No, sir.

Q. Your only knowledge of the transaction is what you see upon the records which have been produced here today? A. Yes, sir.

Q. Now, back in 1931 you have no independent

knowledge of having received the car load of lumber this South Carolina mill, have you? A. Only from records.

Q. Yes. And you have no independent recollection of having sold a car load of lumber in 1931 to the National Lumber & Millwork Company? A. We sold several to them.

Q. But I say you have no independent recollection of it? A. No, sir.

Q. And all you know is that among the files of your company you find a bill of lading from the mill in South Carolina to your company and a copy of a bill of lading from your company to the National Lumber & Mill Works and a copy of an invoice? A. Yes, sir.

Q. Now by whom were the invoices made out? A. (No answer.)

Q. If you know. A. That I can't recall.

Q. That you can't tell? A. There are four in the office making up invoices.

Q. Yes. And it might have been any one of those four that made out this particular invoice? A. Yes, sir.

Q. And who makes the charges on your books? The same persons that make out the invoices, do they make out the charge slip at the same time? A. The carbon copy of the invoice is our charge slip.

Q. And that is your original entry? A. Yes, sir.

Q. That is made out by one of the four employees in the office whose duty it is to make out the invoices? A. Yes, sir.

Q. And after being made out by one of these employees, it was filed, I presume, in a loose leaf ledger binder, or binder? A. More or less, yes.

Q. More or less, so that your testimony is based upon records which you find in your office made out by someone else? A. Yes, sir.

Q. In your office.

Mr. Pope: That is all. We object.

By Mr. Peacock:

Q. Those records are made under your supervision as a bookkeeper? A. Yes, sir.

Q. And you are in charge of those records? A. Yes, sir.

Q. And these records that have been produced were made under your supervision in your offce? A. Yes sir.

Mr. Peacock: It is admissible, your Honor.

By Mr. Pope:

Q. But you say they were made under your supervision. Are these persons who make out invoices under your supervision or under the supervision of someone else? A. It is more or less one family there.

Q. Yes. A. We have no bosses excepting the immediate superiors, the principals of the company. We work hand in hand; the work is passed out and we do it.

Q. Now, I suppose what happens: this particular car of lumber was sold running on the rails, was it not? A. It was sold prior to loading.

Q. Sold what? A. Prior to loading on the car.

Q. So then it was never unloaded in your yard? A. Never delivered to our yard; we have no yard.

By Mr. Pope:

Q. You merely acted as a broker in this transaction? A. Yes, sir.

Q. What happened was this, the invoice for the lumber in the car came to your office? A. Yes, sir.

Q. And some member of your happy family received the invoice from the manufacturer. A. Yes, sir.

Q. And you don't know who that member was, do you, this particular invoice, I mean. A. If I could see it, I may be able to tell. (The witness was handed the paper referred to.) No, there are two somewhat similar handwritings and I could not distinguish between the two.

Q. At any rate, after it was received by some member of the family, it was turned over by that member of your family to one of the four invoice makers, one of the four persons who make out invoices? A. Yes, sir.

Q. And then one of those four persons made out the invoices to the National Lumber & Millworks from the invoice which you had received from the mill, and you don't know which one of the four made it out. A. No, sir.

Q. Nor was the lumber in the car checked by any member of your happy family, was it? A. No, sir.

Q. So that all you know about the lumber in the car, if you knew anything at all, was the information which you would gather from receiving and looking at and making out a bill. A. That is correct.

Q. And then after that invoice was made out in your office it was mailed with a draft attached to the bill of lading? A. Yes, sir.

Q. Well, it was mailed by your firm to the purchaser? A. That is correct.

Q. The National Lumber & Supply Company.

Mr. Pope: We submit, if your Honor please, that the witness is not qualified to testify or identify any of these records; that no one but the person who made them out or who had some direct supervision over them and who

knew that they were correct can testify to the correctness of these records. They are not properly proven, sir, and they are not admissible in evidence.

The Court: What particular document is it that is now offered in evidence?

Mr. Peacock: An invoice from Halligan & McClellan to the National Mill Work Company for this particular car of lumber which he said he sold to them, and the car receipt for the same. And he is in charge of the records, the invoice having been made up under his supervision and the car receipt having been received by them from the company when the car was received and delivered to the National Millwork Company all in the course of his business and under his supervision as bookkeeper of the company.

The Court: Will you let me see those documents, Mr. Peacock?

Mr. Peacock: I withdraw the offer of offering them in evidence and ask that they be marked for identification for the time being.

The Court: Mark them for identification.

The Reporter: The car receipt, S-219 for Identification; invoices S-220 and S-221 for Identification.

Mr. Peacock: Cross examine.

Mr. Pope: No further questions.

(Car receipt marked State Exhibit S-219 for Identification.)

(Invoices marked State Exhibits S-220 and S-221 for Identification.)

By Mr. Peacock:

Q. Was that shipment that you received from the Dorn Company sold to the National Millwork & Lumber Company? A. Was it sold to them?

Q. Yes. A. Yes, sir.

Q. And delivered to them? A. Yes, sir.

By Mr. Pope:

Q. Well, you don't know that except what you see from these records, do you? A. No, sir.

Q. You have no independent recollection of this particular transaction at all? A. No, sir; just from records.

Q. Yes. And you are depending upon records that you found in your office, and you are assuming that they are correct? A. Yes, sir.

By Mr. Peacock:

Q. You were paid for it by the National Millwork & Lumber Company, weren't you? A. Yes, sir.

Mr. Peacock: That is all.

Mr. Peacock: Mr. Hirsch.

DAVID HIRSCH, sworn as a witness on behalf of the State.

Direct Examination By Mr. Peacock:

Q. Mr. Hirsch, are you connected with the National Lumber & Millwork Company of New York? A. Part owner, sir.

Q. Beg pardon? A. Part owner.

Q. Part owner. A. Part owner.

Q. And do you know the Halligan & McClellan Lumber Company of New York? A. Yes, sir.

Q. And in November, 1931 did you purchase a car load of lumber from the Halligan & McClellan Lumber Company, car number 8671? A. May I see the bill please?

Mr. Pope: I object to the question unless the witness is qualified and has knowledge of it and can speak—

The Court: Well, he says he knows about it, does he?

Mr. Pope: Well, I—

The Court: Do you want to cross examine him about it?

Mr. Pope: I would like to.

The Court: Very well.

Mr. Pope: I would like to see if he really does know.

The Court: All right.

By Mr. Pope:

Q. What is your particular connection with the company? A. Secretary of that corporation now.

Q. And have you any independent recollection of

this particular car load of lumber as distinguished from any of the other thousands of car loads of lumber that you purchased around that period? A. No, sir.

Q. No? You don't remember this car load of lumber coming into your yard, do you, this particular one? A. Unless I see the bill for it.

Q. What is that? A. If I see the bill for it I can identifiy it.

Q. If you see the bill. Now, then the bill is one made out by— A. Halligan & McClellan.

Q. Made out by Halligan & McClellan? A. Yes.

Q. Well, did you buy it direct from Halligan & McClellan? A. That is right, sir.

Q. They are the brokers or wholesalers? A. They are wholesalers, as we call them in the lumber business.

Q. Wholesalers and when the bills are made out and come to your company by whom are they received? A. I receive them, sir.

Q. Always? A. As a rule.

Q. As a rule. And then what do you do with them? A. Well, first of all we have to pay the freight for it.

Q. Yes, of course. A. And then we pay the freight, railroad, whatever railroad it comes in to, they will allow us to take the lumber.

Mr. Wilentz: A little louder, please. Talk up.

Q. And you have a yard man? A. Yes, sir, we do.

Q. And does your yard man receive the shipments of lumber as they come in the yard? A. He does, sir.

Q. And do you have a side track of your own? A. Will you explain that, please.

Q. Do you have a side track? A. No, we have no side track, no.

Q. Well, then, is the car placed on a railroad siding or carted by truck from the car to your lumber yard? A. That is correct, sir.

By Mr. Pope:

Q. Who unloads the lumber out of the car? A. If we are not too busy, our own trucks do it, if we are, we hire trucks to do it for us.

Q. You use your own trucks? A. If we are not too busy.

Q. Did you use your own trucks in unloading this car? A. I can't recollect.

Q. Or did you hire somebody else? A. I can't remember.

Q. Well, when it is unloaded by your own trucks does your yardman go to the car and check the lumber as it comes out or do you check it when it comes into the yard? A. We check it in the yard when it comes in.

Q. So it is taken out of the car either by your own trucks or by somebody that you hire? A. That is correct, sir.

Q. And brought to your yard? A. That is correct, sir.

Q. There it is unloaded in the presence of your yardman? A. Yes, sir.

Q. Your yardman checks it? A. That is correct, and makes a tally of it.

Q. Makes a tally of it, as you call it? A. Yes, sir.

Q. Then when he makes the tally, does he check it with the invoice? A. No, he gives me the tally and I check it with the invoice.

Q. Oh, he gives you the tally and then you check it with the invoice? A. That is correct.

Q. So that the man who receives it is the yardman anyway in your place? A. He is the one that checks it, sir.

Q. He is the one that tallies? A. Yes, sir.

Q. And of course your knowledge of the transaction is depended entirely upon the tally? A. The tally.

Q. Made by the yardman which he hands over to you? A. That is correct, sir.

Q. And when you receive that tally you check his tally with the invoice? A. Yes, I compare that with the invoice.

Q. And if they both agree— A. Then we file them and pay the bill.

Q. Then you file the invoice away in your files? A. Pardon me?

Q. Then you file the invoice away in your files? A. That is correct, sir.

Q. And four or five years afterwards, if you want to find out anything about a car you go to your files and pick out that invoice? A. Yes.

Q. And that is what you did in this case? A. Yes, that is right.

Q. And you don't know a thing about it except what you see on that invoice, do you? A. Oh, I can't recall that car specifically.

Mr. Pope: Of course not. That is all.

By Mr. Peacock:

Q. Mr. Hirsch, you are part owner of this company are you not? A. That is right.

Q. And you know the shipment that you receive and what you pay for? A. Well, if I will see the bill I will identify it.

Q. I show you the invoice of Halligan & McClellan to the National Millwork & Lumber Company covering car 8671 and ask you now to state whether you received that carload of lumber from Halligan & McClellan?

Mr. Pope: Well, I object to that question, sir. This witness is not qualified to testify to that. The man who received the carload of lumber was the yardman, who checked it, and he is the only one that can testify to it. All that this witness knows now is this: He says "I find in the files in my office an invoice," which he presents here, "which we paid." He doesn't know another thing about it. He merely assumes that "We wouldn't have paid it unless it had been checked and gone through the regular order of routine of our office."

The Court: The witness may answer the question.

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.

A. We received this lumber.
Q. You received that lumber? A. Yes, sir.
Q. As set forth on that invoice? A. That is correct.

Mr. Pope: That I object to. He can't say whether he received it or not.

The Court: Well, he has said so, he has said so. You may cross-examine him when the proper time for cross-examination comes.

Mr. Pope: All right.

David Hirsch—Direct, continued

The Court: As to the value and effect of his testimony.

Mr. Pope: All right.

Q. And did you pay Halligan & McClellan for that lumber under that invoice? A. Yes, sir, we paid for it.

Mr. Peacock: Exhibit S-220 for identification I offer in evidence.

Mr. Pope: Will the Court reserve ruling on that, sir, until I have further interrogated the witness?

The Court: The bill is offered in evidence?

Mr. Peacock: Yes, sir.

Mr. Pope: We object to it until at least we have had an opportunity to further interrogate the witness.

Mr. Peacock: He has had an opportunity I submit to the Court, and has exhausted it.

Mr. Pope: I want to cross-examine the witness on the questions you asked.

The Court: The bill will be admitted in evidence.

Mr. Pope: May I have an exception?

David Hirsch—Direct, continued

The Court: Take your exception.

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

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

The Reporter: Exhibit S-222.

(Bill received in evidence and marked State's Exhibit S-222.)

Q. Mr. Hirsch, do you know the defendant, Richard Bruno Hauptmann? A. Yes, sir, I know Mr. Hauptmann.

Q. And how long have you known him? A. Practically two or three years.

Q. Did he work for your company at any time? A. Once in a while.

Q. In what year did he work for your company? A. May I have my records or the books, please?

Mr. Peacock: May we have the books?

Q. Where are your two books, Mr. Hirsch? A. Mr. Bornmann is supposed to have them.

Q. Mr. Bornmann? A. Yes.

Q. Well, can you tell me approximately when it was, without your books? A. I believe it was in the latest part of 1931, and also early part of 1932.

Q. In 1931 and 1932 did Hauptmann buy lumber from you at different times? A. Yes, a number of times.

Q. And from December 1931 until March 1932, did he buy lumber from you? A. Yes, he did.

Q. Do you know the last purchase he made from you? A. I recollect he bought some but I don't remember what he bought.

Q. Do you know whether he purchased lumber between December 1931 and March 1st, 1932? A. He did.

Q. And how much did he pay for it? A. I would have to get my records to answer that question.

Q. What? A. I would like to have my records.

Q. Do your records show the last purchase he made from you? A. Yes, sir.

Q. Will you look at them (handing ledger to witness,) and give me the date and amount he paid for lumber.

A. I have an entry here in the ledger as of December 29th.

Mr. Pope: Did you make that entry?

The Witness: That is my handwriting.

By Mr. Peacock:

Q. He purchased lumber December 29th and how much did he pay for it? A. Nine dollars and thirty-two cents.

Q. The Court: Purchased when, December 29th?

The Witness: 1931.

Q. 1931. A. That is right.

Mr. Peacock: Cross-examine.

Cross-Examination by Mr. Pope:

Q. Mr. Hauptmann was a carpenter, wasn't he? A. Yes, sir.

Q. And sometimes he worked for your company as a carpenter, didn't he? A. That is correct, sir.

Q. Did some odd jobs and whatever you wanted him to do as a carpenter? A. Yes, sir.

Q. I suppose you have a great many hundred carpenters up in the Bronx that buy lumber from you? A. Not in the hundreds, sir.

Q. What? A. Not in the hundreds.

Q. Not in the hundreds. Well, you have enough. A. Yes.

Q. That is your business, to sell lumber, isn't it? A. That is correct, sir.

Q. And contractors and builders and carpenters are your customers, your principal customers. A. That is correct, sir.

Q. So that there was nothing unusual about Hauptmann the carpenter purchasing lumber from you in December, 1932? A. Not at all, it is nothing unusual.

Q. Now, I wanted to ask you another question about this invoice. I understood you to say that aside from seeing among your records an invoice describing this particular car of lumber, that you have no individual recollection, no specific recollection of this car? A. No, sir.

Q. You have no recollection of it at all, have you? A. No, sir.

Q. Then if you did not see this invoice in your files you wouldn't know that there was any such carload of lumber purchased for your company at that time, would you? A. No.

Q. Because you can't begin to remember all the— A. Well, we bought several cars of lumber since then, yes.

Q. Now, this was what has been spoken of here as South Carolina pine? A. Yes.

Q. And that is a very common type of lumber, isn't it, flooring, as they call it? A. Under-flooring.

Q. Flooring or roofing, which? A. Under-flooring.

Q. What? A. Under-flooring.

Q. Under-flooring. South Carolina under-flooring; and how many millions or thousands of feet of that under-flooring does your company handle in a year, in ordinary times? A. Probably ten, fifteen thousand.

Q. About ten or fifteen thousand? A. At that time.

Q. About ten or fifteen thousand feet a year? A. Yes.

Q. Now, when this carload of lumber is supposed to have been received from Halligan & McClellan, did you have any South Carolina pine on hand or in stock? A. I don't remember, sir.

Q. Do you remember how many feet of South Carolina pine there were in that car? A. According to the book, there were—

Q. You only know according to the invoice? A. That is all.

Q. And the yard man is the man who checked the invoice? A. That is correct, sir.

Q. And he would be the only man that could testify regarding the lumber, wouldn't he, I mean, regarding the receipt of the lumber and the kind of lumber it is? A. Yes, sir.

Q. You know nothing about it. Would he also know how much was in stock at that time before the shipment was received or approximately how much? A. You will have to ask him that question, sir.

Q. I see. What kind of lumber was it that Richard Hauptmann bought in December, 1931, December 29th, 1931. A. I cannot tell. I have the record there of that purchase of nine ninety one, but I don't recollect what it was.

Q. Wasn't it some shingles? A. I can't recollect what it was.

Q. You can't tell? Doesn't your record show whether it was shingles? A. No, it just shows the name and alongside of the name a certain amount of money he had paid for it.

Q. For aught you know about it and for aught your records show about it it may well have been shingles?

Mr. Wilentz: I object to the question. He says he doesn't know.

The Court: He seems to have so answered.

Q. I will change the question: Then for all your record shows about it, and I assume that this is the only record of the transaction you have. A. Yes.

Q. And you have no sales slip showing the individual sale. A. No, sir.

Q. Then for all your records show about it, you can't say whether it was shingles or not. A. I cannot say what is was.

Mr. Pope: That is all.

Your Honor please, we now move to strike out the witness' testimony because he very frankly and very honestly and very fairly comes here and tells us that he really doesn't know what it is all about. The only thing that he knows is that at the request of perhaps the State or the New York police or someone else, he made a search of his files, and in his files he finds an invoice which his company paid and beyond that he can't say anything. Besides that there is no connection between the mill and the time and the origin and the outlet and we submit that the witness' testimony should be stricken out and that particularly now after this

cross-examination, the exhibit, the invoice should be stricken out as not having been properly proved.

The Court: What do you say about it?

Mr. Wilentz: If your Honor please, the proof in this case from this witness is that upon seeing this invoice he knows that he received lumber from Halligan & McClelland Company and that this is the invoice for it and it was paid for. Now it may very well be that he didn't go down and inspect personally, and the law contemplates that in the course of business, if your Honor please, the custom and the trade practices may be shown. He was sufficiently close to know that it was paid for, if your Honor please, and it was paid for because he checked against records at the time of those things that were coming it. I think under business practices, if your Honor please, which the Courts recognize that that is sufficient to prove that he paid for the lumber which Halligan & McClelland say they shipped to him and which they received. To that extent it is certainly admissable.

Mr. Pope: I don's wish to prolong the argument, sir. May I further suggest that there isn't a particle of proof here, that even if this man or his company did receive this lumber, that any part of it was sold to Richard Hauptmann. He made a sale to Richard Hauptman in December of 1931, which he says might well have been shavings.

The Court: We are not dealing with that phase of the matter now. We are dealing with your motion to strike out this testimony.

Mr. Pope: That is right.

The Court: That motion is denied.

Mr. Pope: May I have an exception?

The Court: Yes, certainly.

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

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

Mr. Wilentz: Mr. Miller, will you take the stand, please?

Where is this gentleman? Will you come up, please?

LAWRENCE MILLER, sworn as a witness in behalf of the State:

Direct Examination by Mr. Wilentz:

Q. Were you connected with the National Lumber & Millwork Company of the Bronx in 1932? A. Yes, sir.

Q. In what capacity? A. Yard man.

Q. Yard man. Do you remember the shipment of one by fours, a receipt of a shipment of one by fours in 1931 or '32? A. Yes; we had a one by four come in in 1931.

Q. Yes. Now, did you in November, 1933, November, 1933, that is about ten months before September, 1934, in November, 1933, did a government agent by the name of Koehler (pronounced Kaler) come to your place of business? A. The date was September, 1933, that he came to the place?

Q. Was it September or was it November? A. That is what I am asking you, to make certain.

Q. Well, I am asking you. A. Well, on the date that he came to the place—

Q. Well, did he come in 1933?

Mr. Peacock: He was there twice. A. Yes, he came in 1933.

Q. In the year 1933? A. Yes.

Q. Do you remember his name? A. Yes.

Q. Is his name Koehler (Kaler)? A. Mr. Koehler, yes. I pronounce it Koehler (Koler). I don't know whether I am correct.

Q. All right.

Mr. Wilentz: Stand up, Mr. Koehler. What is the correct pronunciation?

(The person addressed announces the pronunciation of his name to be Kaler.)

Mr. Wilentz: Koehler (Kaler.)

Q. It is K-o-e-h-l-er, isn't it? A. That is right.

Q. Now, Mr. Koehler came to investigate as to lumber matters, did he not? A. That is right.

Q. In the Lindbergh case? A. The information I gathered at the time after he was identified, why it was the Lindbergh case, what they were after.

Q. That was how long before Bruno Richard Hauptmann was arrested, if you know? A. About, I would say a little over a year.

Q. A little over a year before the defendant Hauptmann was arrested? A. Yes, sir.

Q. And did he inquire about 1x4's which you had in your possession? A. Yes, he inquired about it.

Q. Did you give him a sample of 1x4's that you had in your possession? A. Yes, I did.

Q. In the yard? A. I did.

Q. Again in December, 1934, did he come again, the same Mr. Koehler? A. Yes, he came again.

Q. Did you give him another sample of 1x4's that you had there?

Mr. Fisher: I object, your Honor, that is very leading.

Mr. Wilentz: All right. I will withdraw the question.

Q. What kind of a—what sample did you give him then? A. I gave him a sample of the same lumber, the same bin as the previous sample.

Q. When you say the same bins, how did you have the lumber about that time, was it a part of a structure or did you have some in stock for sale? A. No, part of a structure, it was nailed down.

Q. Do you mean that you had used part of that lumber to make up a little structure which you call a bin? A. That is right.

Mr. Pope: Let him tell what he means.

Mr. Wilentz: I think counsel's advice is timely, to say the least, and I will try to follow it.

Q. I want to show you a piece of lumber and ask you whether or not this is the piece which you gave him in December, 1934? A. (Witness examines board.) That is the piece.

Q. Do you see your name on there? A. I see it.

Q. Did you put it on there at the time? A. That is my writing on there.

Q. Is that the piece you took from some bin? A. That is the piece I took from the bottom of a bin.

Q. Tell me, is this what you call 1x4? A. This is what we call 1x4 underflooring—that is what I call it.

Q. Underflooring. What kind of wood is it? A. Well, I call it North Carolina pine.

Mr. Pope What?

Mr. Wilentz: North Carolina pine. I will offer this in evidence, if your Honor please.

Mr. Pope: Well, I object until we have had an opportunity to cross-examine, then we may not object then.

Mr. Wilentz: All right. I will refrain from from other questioning at this moment, or continue it, whichever the Court feels is better, and permit the examination later.

The Court: Well, I suppose they may just as well examine about this now.

Mr. Pope: Yes. I want to see this North Carolina pine.

By Mr. Pope:

Q. Is this North or South Carolina pine? A. Well, I wouldn't be so technical as to say it was North or South, but that is what I call it, is N. C. pine for short.

Q. What you call in your mill North Carolina pine? A. That is what I call it, yes.

Q. And used generally for underflooring purposes? A. That is the usual use of it.

Q. Now, is this piece of wood in the same condition it was in when it was received by you from the mill, the manufacturer? A. Yes, except that it was in a longer board.

Q. And was it dressed on all four sides when you received it? A. Dressed on all four sides when I received it.

Q. I see. I understood you to say that this was taken out of a bin. Do you mean by a bin a section in your lumber yard where you store and pile North Carolina one by four underflooring? A. No.

Q. It had been built into something in your plant there? A. It had been built in, that is right.

Q. Built into what? A. A bin for one by two white pine. It was the lining out. The beams come along here one after the other and so as they wouldn't drop in between the short pieces I lined it out with those one by four underflooring on the bottom, to make a regular—like a floor.

Q. Then you made a large receptacle which you call a bin, where you could store your pine: is that it, and used this to make it? A. That is the idea.

Q. And when Mr. Koehler came to your yard he asked you to cut out for him this piece of lumber out of the lining of that bin? A. No.

Q. Well, did he ask you for a sample of North Carolina pine? A. He asked me for a sample of NC pine, yes.

Q. NC pine. A. Just a minute. I would like to correct myself. I wouldn't say he asked me for NC pine, he asked me for a sample of one by four. He didn't say NC pine, as I remember.

Q. He asked you for a sample of one by four. All right. Now, of course, you don't know how long this had been in your lumber yard, do you? A. well, I can't put it within two weeks.

By Mr. Pope:

Q. Put it within what? A. Two weeks.

Q. How much of N. C. pine underflooring do you handle there in the course of a year? A. In the course of a year?

Q. Yes. A. Do you mean the current year or in 1931 or 1932?

Q. No, I mean at any time, any normal time; 1931, we will say. A. In 1931?

Q. That was a fairly normal year. A. In 1931 there was very little of it handled.

Q. Very little doing. Well, in normal times how much do you handle in the course of a year of N. C. underflooring? A. I would say from twelve to fifteen thousand.

Q. What is that? A. From twelve to fifteen thousand.

Q. Twelve to fifteen thousand; you mean by that twelve to fifteen thousand board feet? A. That is the idea.

Q. Now from how many different companies do you purchase N. C. underflooring? A. Aren't you going a little bit over my head?

Q. I don't know. A. Because I don't do the buying.

Q. You don't do the buying? A. I am the yardman.

Q. Well, do you do the unloading? A. I do the unloading when it comes to the siding.

Q. And the checking? A. And the checking, yes.

Q. Well then, I suppose you have some knowledge of the different lumber. Do you usually buy from brokers, your firm?

Mr. Wilentz: He said he wasn't the buyer. I guess he doesn't know.

Q. Well if you don't know I won't press it, sir. You have no specific recollection of when this particular board was unloaded in your yard, have you? A. Yes, I do.

Q. This particular board? A. That particular—

Q. I mean the board. A. Yes.

Q. The long board? A. The long board.

Q. From which this piece was taken? A. From which that piece was taken.

Q. You didn't mark it, did you? A. No, I didn't mark it, but I—

Q. What—

Mr. Wilentz: What is the answer?

Mr. Pope: He said no.

The Court: Just a minute.

Mr. Wilentz: He said no *but.*

The Court: Let's have the answer.

Mr. Wilentz: He said I didn't mark it but.

Mr. Pope: May I address the Court?

The Court: Surely you may.

Mr. Pope: I asked the witness if he remembered when this particular board came in the yard and he said no. Now that is an answer to this question.

Mr. Wilentz: He said yes to that.

The Court: Then he proceeded to qualify that, did he not?

Mr. Pope: Well, he started to volunteer something. I wouldn't say that he started to qualify it.

The Court: Well, let us have his answer and then if you don't like it, Mr. Pope, you may move to strike it out.

Mr. Pope: It is not a question of whether I like it or not. It would be a question of whether it is responsive.

The Court: If you think that it is not responsive, you may move to strike it out.

Let the reporter read the question and then the witness may finish his answer.

(Question and answer repeated by the reporter as follows: "You didn't mark it, did you? A. No, I didn't mark it, but I—")

Mr. Pope: All I asked was if he marked it.

The Court: Answer the question.

Mr. Wilentz: But I what?

A. I know when it came into the yard, about.

Mr. Pope: Now I ask that that be stricken out as not responsive.

Mr. Wilentz: I object to that.

The Court: I decline to strike it out.

Mr. Pope: Of course that is discretionary with the Court. I suppose I am not entitled to an exception, so I won't bother to take one.

Q. You say you know about when it came into the yard. About when did it come into the yard? A. Between the 5th and the 20th of December, 1931.

Q. And how much did you have on hand at the time this came in? A. Just a few scraps.

Q. Just a few scraps. A. Of fir, not N. C. pine.

Q. This is not fir, is it? A. No. Well, we had the scraps, what was left was fir only.

Q. Well, I am referring, of course, to N. C. pine. A. Well, we had no N. C. pine.

Q. No N. C. pine? A. No.

Q. Was that the first shipment of N. C. pine 1x4's that came into your yard while you were there? A. No. If I remember right that was the second shipment.

Q. The second shipment. And there is quite a good deal of this kind of lumber used in construction work, is there not? A. I wouldn't say there is so much of it used, 1x4.

Q. Not much of it for underflooring? A. For underflooring.

Q. And when it came in was it unloaded in a section of your yard or shed by itself? A. No. Another man and I hauled it in from a railroad siding.

By Mr. Pope:

Q. When you hauled it in, I suppose when you got it into your yard you put it in your lumber shed, didn't you? A. No, we left that on the outside. We have a shed but we don't put the rough lumber under the shed, the one by four.

Q. This is not rough lumber, this is finished lumber? A. That is what we call rough lumber in our trade talk.

Q. You piled it outside? A. That is the idea.

Q. Then you continued to use, out of that pile, as often as you wanted? A. Yes, sure.

Q. To use lumber of this size and you continued to sell out of that pile, I suppose, as long as customers wanted any lumber from that pile? A. That is correct.

Q. Was that the only place where you had one by four NC in the yard? A. That is the only pile of one by four NC that I had in the yard that was for sale.

Q. I think your intention is all right, but I didn't quite ask you that. I asked you if that was the only place in the yard where you had one by four NC, whether it was for sale or for your own use, or what. A. I wish you would explain it a little bit further, whether you want me to tell whether some was nailed down, or whether they had some pieces somewhere else.

Mr. Wilentz: I wish the counsel and the witness would take us into their confidence and let us hear what they say to each other, they are treating each other so nicely, if your Honor please, I am becoming suspicious.

The Court: You seem to have about reached the recess time.

Mr. Wilentz: If your Honor please, may I just suggest that in a few minutes we can save this man another day's trip down here unless Mr. Pope thinks he is going to be very long.

Mr. Pope: Well, just a moment. Pardon me. Perhaps that is a good suggestion. I think that is all with the witness. I wouldn't want to bring him back here tomorrow for just half a dozen questions.

Mr. Wilentz: Well, we will mark this in evi-

dence. It is offered in evidence, that was according to your inquiry.

The Reporter: State Exhibit S-223.

(Board referred to was received in evidence and marked State's Exhibit S-223.)

Mr. Pope: We object to it, of course, because it has been in no way connected with the defendant. It is incompetent, irrelevant and immaterial, and the—

The Court: Well, I take it that we have the promise of the Attorney General to connect it up.

Mr. Pope: Well, that may be.

Mr. Wilentz: Yes.

Mr. Pope: That is true, sir.

The Court: So it will be marked in evidence and if it isn't connected up, why, it will have to go out.

Mr. Pope. Without prejudice.

The Court: Surely.

Mr. Wilentz: Now, just another question or two, if your Honor please, in this connection. I was interrupted.

Mr. Pope: All right.

By Mr. Wilentz:

Q. I understand then, sir, that this 1x4 and another piece 1x4 you gave to Koehler, is that so? A. That is right.

Q. About how long before you gave this last exhibit did you give the first piece of lumber to Koehler? A. There is about a year in between the two.

Q. About a year in between the two. Now, Mr. Pope asked you what Mr. Koehler asked for.

Mr. Pope: No. No, I didn't—oh, no.

Mr. Wilentz: My recollection, and his answer was he asked for a sample of 1x4.

Q. Did Mr. Pope ask you that question before? A. I believe he asked me if Mr. Koehler didn't ask me for a sample of 1x4.

Q. A little louder, please. A. If he didn't ask me for a sample of 1x4 North Carolina pine.

Mr. Pope: North Carolina, that is what I want, he asked for North Carolina.

Q. All right. Is that what he asked for? A. No, he didn't ask for that.

By Mr. Wilentz:

Q. What did Koehler ask for? A. A piece of—

Mr. Pope: I object to that. All I asked was did he ask for North Carolina pine. The witness says no, he did not.

The Court: Well, the Attorney General, if he wants to, may inquire what he did ask for.

Mr. Pope: That is hearsay.

Q. Will you answer the question, please.

Mr. Pope: That is hearsay.

Mr. Wilentz: Counsel brought it out.

Mr. Pope: Oh, no, I didn't. I confined my inquiry to North Carolina pine and nothing else.

Mr. Wilentz: I will withdraw the question rather than take up the time.

Q. Do you remember the defendant Bruno Richard Hauptmann? A. Yes I remember him.
Q. You remember he worked for your company? A. I never saw him working there.
Q. Do you remember whether or not he bought lumber there? A. Yes he—

Mr. Pope: I object to the question. It is not re-direct.

Mr. Wilentz: I didn't finish my direct at all.

Mr. Pope: I beg your pardon.

Mr. Wilentz: Do you withdraw the objection?

Mr. Pope: Yes, sir.

By Mr. Wilentz:

Q. Do you know whether or not—don't answer this question until the Court rules on this, if there is an objection—do you know of your own knowledge

whether or not any Lindbergh ransom bills were presented at your lumber yard for the purchase of lumber? Answer the question.

Mr. Pope: Do you know?

A. No, I don't know.

Q. You don't know.

Mr. Wilentz: All right. That is all I have with this witness.

Mr. Pope: That is all.

The Court: We will proceed now to take a recess until tomorrow morning at ten o'clock.

The jury may retire. The people will remain seated where they are and let them pass.

(The jury retired at 4:32 o'clock p. m.)

The Court: The prisoner is 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 4:34 o'clock p. m., an adjournment was taken until Wednesday, January 23, 1935, at 10:00 o'clock a. m.)

Opening of Sixteenth Day

STATE vs. HAUPTMANN

Flemington, N. J., January 23, 1935.

SIXTEENTH 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.

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

Mr. Wilentz: My recollection, if your Honor please, is that there is another reserve witness for cross examination with reference to fingerprint work; I think it was reserved by Mr. Reilly and, if Mr. Kelly is here, I suggest that we proceed now with that phase of the case.

Mr. Reilly: That is agreeable.

Frank A. Kelly—Recalled—Cross

Mr. Wilentz: Mr. Kelly.

FRANK A. KELLY, recalled for cross examination, testified as follows:

Cross Examination by Mr. Reilly:

Q. I think when you left the stand you were to go and get some paraphernalia for taking fingerprints; is that right? A. That is correct, yes.

Q. Now, this piece of paper has been handled by counsel for the defense, two or three of them, and has been in the possession of the Clerk ever since you took this witness stand and left the witness stand. Will you take this and show the jury how you attempt to locate fingerprints. A. Yes, sir. Would you mind placing it there, Mr. Reilly?

Q. Sure; I will place it any place. A. (The witness leaves the stand.)

Q. Couldn't you do it up there, Mr. Kelly, in front of the Judge and jury? A. I believe so.

Q. Yes. A. Just set it there.

Mr. Wilentz: As I understand it, a statement has been made by counsel that this paper has been in the possession of the Clerk.

Mr. Reilly: The Clerk here (Mr. Fell).

Mr. Wilentz: And not in the possession of anybody else?

Mr. Reilly: No.

Mr. Wilentz: No identification mark on it at all.

Mr. Reilly: No.

Clerk Fell: There is no identification by the Clerk.

Mr. Wilentz: I had hoped and had been under the impression that it was marked for identification but we will make no point of it.

You may proceed, Mr. Kelly.

May I suggest too, while we are at it, that my understanding of Mr. Kelly's testimony was that prior to the date of this kidnaping and crime there was one form of test that he made and thereafter some new process came along.

I take it that counsel wants the old process.

Mr. Reilly: The old process.

Mr. Wilentz: All right; we want the old process.

(The witness proceeded with his demonstration.)

By Mr. Reilly:

Q. Mr. Kelly, on the half that you brushed over have you found some prints? A. On the half I have brushed over I have found some ridge formations from the finger, but I would say that they are prints of no value.

Q. All right. Will you sift the others. A. (The witness demonstrated.)

Q. You don't have to do any more, Mr. Kelly.

May I have the paper. A. (Paper handed to counsel.)

Q. Mr. Kelly, this is the paper that you brushed over; is that correct? A. Yes, sir.

Mr. Reilly: I ask to have it marked for identification.

(The paper referred to was marked Defendant's Exhibit D-37 for Identification.)

Q. Now, Mr. Kelly, as I indicate to you on this paper, this mark here indicates where a finger held this paper? A. Yes, sir.

Q. That is the upper right hand corner. Now, these two marks here at the bottom of the paper indicate where it was held by a finger? A. Where a finger came in contact with it.

Q. That is right. And that shows certain ridges, does it not? A. Yes, sir; but they are of no value.

Mr. Reilly: Well, I move that that be stricken out, as voluntary, that they are of no value. We will find out if they are of any value in our examination.

The Court: Yes. It does not seem to be responsive. It will be stricken out, "they are of no value."

By Mr. Reilly:

Q. Now, assuming, Mr. Kelly, that this paper, Defendant's Exhibit D-37 for Identification, was handled by at least four of defense counsel without gloves the day that you were last on the witness stand and placed in the possession of the

Clerk of this court until this morning: you say that this is all of the fingerprints or indications that you can obtain from it, is that right? A. Yes, sir.

Q. Now, Mr. Kelly, is it not a fact that the human hand is constantly throwing off a secretion or grease? Is that correct? A. That is right.

Q. And it is that secretion or grease which clings to anything the hand touches? A. That is right.

Q. Such as paper, wood, glass, metal: correct? A. Correct.

Q. And is it not true that each individual—Put it this way: there are no two individuals in the world that have the same fingerprints; is that correct? A. Correct.

Q. We are each individually marked? A. That is right.

Q. Now, am I correct in saying that on the evening that you were called to Colonel Lindbergh's home this ransom note was shown to you in an envelope? A. That is right.

Q. It had not yet been taken out of the envelope? A. No, sir.

Q. And you dusted it the same as you did here? A. Yes, sir.

Q. And you found no fingerprints on it? A. Yes, sir.

Q. Correct? A. Right.

Q. Now, did you dust the window sill? A. Yes, sir.

Q. Did you dust it completely? A. Yes, sir.

Q. Mr. Kelly, what would remove fingerprints, a handkerchief, cloth, or what kind of a piece of material would remove fingerprints in your opinion? A. Any foreign object that touched it, rubbed it, would remove the fingerprint.

Q. Well now, if that window sill had been gone

over with a cloth or a wash rag or a Turkish towel, it would remove any fingerprints that were on it, is that right? A. Yes, sir.

Q. So that if the window was opened from the outside and lifted up and finger prints were on it which were rubbed over with a towel before you arrived in your opinion they would be removed, is that correct? A. Yes, sir.

Q. Now I understood you to say that you found no finger prints on the window. A. No finger prints of value on the window.

Q. Did you find any? A. I found marks.

Q. Well, now, what do you mean "of value?" A. I mean that where there is complete ridge formation enough to make identification of value.

Q. How much ridge formation do you require to make an identification? A. About five points of identification.

Q. What does that mean? A. Various parts of the finger print, the core, the delta, ridge terminations, bifurcations.

Q. Well now, we will start with the thumb, the center of the thumb, you have what, the core? A. The core.

Q. From which all the ridges radiate? A. Yes, sir.

Q. You mean to tell me you cannot compare my finger print if taken from the edge of my thumb with my finger print as a standard? A. I didn't say that, Mr. Reilly. I said five points of identification.

Q. Isn't it a fact that you can compare my finger print taken from the ridge or any portion of my thumb if you had at least two ridges? A. It would be hard to do.

Q. Did you ever try it? A. Yes, sir.

Q. Where did you study fingerprinting? A.

I studied while I was in the Department. I have already answered that question.

Q. Now, did you find more than two ridges in the fingerprints? A. No, sir; I did not.

Q. Did you find any whorls? A. No, sir; I did not.

Q. It has been testified here by both Mrs. Lindbergh and Betty Gow that they both attempted to close the shutters of the nursery window but, due to a warping of the shutters, they were unable to close them; that after pulling the shutters in as far as they would go on this nursery window, then either one of them or both of them closed that window. Now, did you find on that window that night the fingerprints of either Mrs. Lindbergh or Betty Gow? A. No, I did not.

Q. It has been testified to here that Betty Gow was at the crib, she put the child to bed, she pinned the child in, she leaned over the crib and went through the usual custom of putting the child to bed. Did you find any fingerprints of Betty Gow on the crib? A. I found hand marks on the crib.

Q. Did you compare them with the Betty Gow fingerprints? A. They couldn't be compared, they were of no value.

Q. There weren't enough rings? A. They were of no value. The greasy formation on the side of the crib was constantly handled.

Q. How many did you take from it? A. I didn't take any from it.

Q. Didn't take any. Then you found no fingerprints of value, as you claim? A. On examination of the crib I noticed that there was a grease formation there; in processing it, I smelled it and it smelled like Vick's. I attributed that to either Betty Gow's or Mrs. Lindbergh's hand from rubbing the baby's chest with Vick's.

Q. You would hardly find that in the fingerprint. That might have been a smudge from the hand. A. I don't understand you, Mr. Reilly.

Q. What you found on the crib was a greasy area? A. Yes.

Q. It might have been a smudge from a greasy hand, palm of the hand? A. It could have been the palm of the hand or it could have been fingers.

Q. What comparison of the ridges did you make? A. When you have no ridges you can't make a comparison. I have told you that.

Q. Did you have a standard of Mrs. Lindbergh's fingerprint? A. I have took Mrs. Lindbergh's fingerprints.

Q. And you had Betty Gow's? A. That is right; yes, sir.

Q. Where did you make your examination? A. There was no examination to make, because the prints on the crib were of no value.

Q. Did you photograph them? A. No.

Q. In your opinion they were of no value? A. That is right.

Q. Did you call anybody in to look at them? A. It wasn't necessary.

Q. Did you call anybody in to look at them? A. It wasn't necessary.

Q. Well now, when did you first go to Dr. Hudson? A. I first met Dr. Hudson at Colonel Lindbergh's. I don't know when I first went there.

Q. Did you go to Colonel—to Dr. Hudson's office and laboratory in New York before he came to Colonel Lindbergh's? A. No, I did not.

Q. Well, you had been there many times since? A. Oh, yes.

Q. And where—when did you meet Dr. Hudson at Colonel Lindbergh's? A. Around the 12th or 14th of March, 1932, I think.

Q. And he came there in relation to the ladder? A. He came there in relation to fingerprints.

Q. Fingerprints. Now, did you see Dr. Hudson fingerprint the ladder? A. I saw him demonstrate on a rail of the ladder.

Q. Well, did you see him demonstrate with a piece of board? A. I don't recall that, Mr. Reilly, no, sir.

Q. Well now, what in your opinion—withdrawn. A man handling a piece of board, does the secretion of his hand remain on the board? A. Yes.

Q. And it soaks into the board, doesn't it? A. That is right.

Q. So that although you may take this piece that you have given here on the board and show no fingerprints, there is another process, is there not, which will bring out the fingerprints if they are there? A. If the board has not been constantly handled, yes, sir.

Q. Well, this ladder had been constantly handled, hadn't it? A. Yes, sir.

Q. And did you dust the ladder for fingerprints? A. On—?

Q. At any time, before Mr. Hudson had it, or Dr. Hudson had it. A. Did I dust it?

Q. Yes. A. Oh, yes, I dusted it.

Q. Did you get any fingerprints from it? A. No, sir, I did not.

Q. No. Did you see Dr. Hudson make a test on the ladder? A. I saw him demonstrate the use of a process on the rail of the ladder.

Q. All right. Tell us about it. A. I just did.

Q. Well, what was the process? A. He used a silver nitrate, sprayed it on the rail of the ladder.

Q. He sprayed the ladder with silver nitrate? A. Not the ladder; a rail of the ladder.

Q. A rail; all right. A rail. Which rail? A. I don't recall.

Q. Will you point it out on the ladder? A. I don't recall; one of the side rails.

Q. One of the side rails. There are only two. A. Oh, no; there are six there.

Q. Well, there are two on each section. A. That is right.

Q. Do you know which section he sprayed? A. No, sir, I do not.

Q. You can't tell by looking at it from the color of the wood? A. No, sir.

Q. Didn't the silver nitrate discolor the wood? A. I believe it did.

Q. Didn't it discolor it more or less like this piece of wood I show you here? A. Similar to that.

Mr. Reilly: I offer this piece of wood in evidence.

Mr. Wilentz: No objection.

Mr. Reilly: Or, rather, for identification.

Mr. Wilentz: No objection.

The Court: It may be marked.

The Reporter: D-38 for Identification.

(Piece of wood marked D-38 for Identification.)

Q. Now, is it a fact that you can take a piece of wood that has been handled by a person and you can dust it with your powder and find no finger prints? Is that correct? A. Yes, sir.

Q. And then you can even rub the wood with cloth to clean it, and then apply silver nitrate and

bring out the finger prints? A. In some cases.

Q. How many times have you tried it? A. Oh, I don't know. I have experimented with silver nitrate ever since I first learned about it.

Q. Yes. Did you see Dr. Hudson take from this side rail of the ladder and from the ladder itself between 800 and a thousand finger prints? A. On one rail, Mr. Reilly?

Q. No. On the whole ladder. A. No. Dr. Hudson had nothing to do with the whole ladder.

Q. Well, how many finger prints did Dr. Hudson take from the rail of the ladder that he tested? A. I do not know. I saw some markings come out on there but I don't know how many prints came out.

Q. Well, look at this board I have offered for identification. Are those finger prints? A. Yes, sir.

Q. Have you any silver nitrate here? A. Yes, sir.

Q. Will you take my finger print off this board in front of the jury, please? A. If it is on there I will try to.

Q. All right. I will put it on there now for you. I am handing a board—I am handing the board to you. Now, will you please take it out with silver nitrate? A. It has been found, Mr. Reilly, with the silver nitrate method on a piece of wood—

Q. I ask you to take it out, please, not how it has been found.

The Witness: Will the Court allow me to explain?

The Court: Yes.

A. It has been found that with the silver nitrate

method on wood, better results are obtained after the prints are on there for a while.

Q. How long do you want my prints to stay on there? A. Why, I could try your print on here with powder and possibly bring it out.

Q. I want it with silver nitrate. Twenty-four hours, forty-eight hours? A. Oh, I should say overnight would be all right.

Q. All right. How many days after the ladder was found did Dr. Hudson bring out with silver nitrate these fingerprints? A. Dr. Hudson first demonstrated somewhere around the 12th or the 14th of March, I believe.

Q. All right. That would be 12 or 14 days afterward, wouldn't it? A. Yes, sir.

Q. Now suppose I put the board away. A. By the edges, please.

Q. And don't touch it again for two or three days and call you during the defense, will you bring it out then with silver nitrate? A. I will try to bring out what is on there.

Mr. Wilentz: Suppose you leave it with the witness. Then there won't be any question about it.

Mr. Reilly: No, I am going to leave it with the Clerk, if you don't mind.

Mr. Wilentz: I take it that the clerk will have to apply his fingers to it.

Mr. Reilly: Is it all right to wrap it in paper?

The Witness: I would suggest leaving it as it is and handling it by the edges.

Mr. Reilly: All right.

By Mr. Reilly:

Q. Now, the silver nitrate that was applied to the ladder—were you ever asked to wash those stains off? A. I was detailed to take the stains off, yes, sir.

Q. Did you take them off? A. No, sir, I didn't.

Q. They were taken off, weren't they? A. I believe they were.

Q. And they were taken off with a solution of bichloride of mercury? A. I believe so.

Q. Yes.

Mr. Wilentz: I expect to use that, Mr. Reilly, if you don't mind.

Mr. Reilly: All right.

Mr. Wilentz: I just want you to know that.

Q. How many times would you say after this ladder was first shown to you did you talk to Dr. Hudson about the fingerprints either found or not found on the ladder? A. I don't believe at any time I ever discussed fingerprints on that particular ladder with Dr. Hudson. I had discussed the silver nitrate method of obtaining fingerprints and experimenting purposes on wood with Dr. Hudson.

Q. Where? A. At his office in New York.

Q. Where is it? A. Dr. Hudson, I believe, lived on—he had moved—I don't recall his address.

Q. East 80's, isn't he? A. Pardon me?

Q. East 80's, somewhere in a Doctor's building, isn't that where you went to his office? A. I

went to his home when he lived over on—near Seventh Avenue, I think it was, somewhere around there.

Q. That was after he had been down here to Hopewell? A. Yes, sir.

Q. Did you see photographs of Dr. Hudson's experiments on the ladder taken? A. No, sir; I did not.

Q. Do you know if there are any photographs of Dr. Hudson's experiments on that ladder in existence? A. No, I do not.

Q. Well, who was there, if you know, when Dr. Hudson was experimenting on the ladder? A. Dr. Hudson demonstrated the use of the silver nitrate on the one rail of the ladder and the rest of the ladder was completed by Sergeant Kubler.

Q. I asked you who was present? A. I am telling you Sergeant Kubler.

Q. And you were not present? A. I was there; yes, sir.

Q. Were there any photographs taken in your presence? A. No, sir.

Q. Have you ever seen any photographs that were taken from it? A. No, sir.

Mr. Reilly: I think that is all.

Re-Direct Examination by Mr. Wilentz:

Q. As I understand it, Mr. Kelly, you are going to make a test of this board which is D-something for identification, D-38, for counsel; is that correct? A. Yes, sir.

Mr. Wilentz: Is that our understanding?

Mr. Reilly: Yes.

Q. While you are making that test, will you also make a test of D-37 for identification, this paper, on the opposite side? A. Yes, sir.

Q. You have made it on only one side? A. Yes, sir.

Q. Is it possible or probable that there may be fingerprints on the other side? A. Yes, sir.

Q. I notice that this board is discolored? A. Yes, sir.

Q. Am I correct in assuming that it is discolored because of the efforts to take fingerprints? A. Yes, sir.

Q. So did the efforts to take fingerprints on the ladder which is in evidence as S-211, the processing, cause a discoloration? A. Yes, sir.

Q. Of some parts of the ladder? A. Yes, sir.

Q. Would the efforts to take these fingerprints, the tests that are made, would they discolor it and make it blacker, darker? A. Yes, sir.

Q. Counsel has asked you about some Dr. Hudson who came on the 12th, I think you said, or a little later and took some test fingerprints of this ladder? A. Yes, sir.

Q. Tell me whether or not between the 1st of March and the 12th or the 14th of March, a new process had not been discovered? A. It had.

Q. What was the new process? A. The silver nitrate process.

Q. So that when you first took the test of this ladder, the silver nitrate process, as I understand it, had not yet been discovered? A. It was not known, no, sir.

Q. And between the time of the discovery of the silver nitrate process and the time you took the test on this ladder, that is to say on the 1st or early in the morning of the 2nd of March, had there been many hands touching and handling that ladder? A. Oh, yes, very many.

Q. As a matter of fact, a great number of police officers from all over the country and others had handled the ladder at that time? A. Yes, sir, that is correct.

Q. And when Dr. Hudson made his test, do you know how many hands did handle that ladder? A. No, sir, I do not.

Q. How many touched it? A. No, sir.

Q. You don't know whether a great number or just a few? A. A very great number.

Q. A very great number. I suppose that if I took this ladder, each section, and attempted to examine it and handle it all by myself for ten or fifteen minutes, I suppose I might leave a great number of fingerprints, isn't that so? A. Yes, sir.

Q. That is, one person might leave different sets? A. That is right.

By Mr. Wilentz:

Q. If a man carried this ladder to the Lindbergh home and he carried it with gloves and he didn't take the gloves off, would he leave his fingerprints on it? A. Absolutely not.

Q. If a man walked into the Lindbergh nursery and took that child and he had gloves on—

Mr. Reilly: I object.

Q. —would he leave fingerprints?

Mr. Reilly: Wait a minute. I object to this. It is a hypothetical question not based on the evidence. There is no evidence anybody carried a ladder to the Lindbergh home without gloves.

Mr. Wilentz: We disagree with that, if your Honor please.

Mr. Reilly: Of with gloves; either with or without.

Mr. Wilentz: Mr. Reilly's questions have been based as hypothetical questions all morning.

The Court: I think that I will allow the question, Mr. Reilly.

Mr. Reilly: It is argumentative, whether the man had gloves or didn't have gloves.

The Court: Yes. I will allow it.

By Mr. Wilentz:

Q. So that it is only where a person does not use some instrument to hide his fingerprints that the fingerprints may show: is that it? A. Yes, sir.

Q. Now, that is one instance where fingerprints won't show. Supposing he did use his fingerprints on the window sill, some person, and then with a child in a bundle, a cloth, rubbed along the window sill: would that remove the fingerprints? A. All trace of them.

Q. All trace of them. On the other hand—I withdraw that.

Q. In addition to that, sir, do all impressions by fingers leave finger prints? A. Not of value, Mr. Wilentz.

Q. Well, when we talk about finger prints, Mr. Reilly and myself, we mean finger prints which can be traced or identified if the opportunity later presents itself. A. Not all of them, no, sir.

Q. In other words, were I to take this paper, and, in the manner that I do now, and then attempt to stretch it like that (Mr. Wilentz takes piece of paper in his hands and jerks on both ends of it) would that have any effect on the prints? A. Very much.

Q. It might affect it? A. Yes, sir.

Q. If it touched it and just rubbed over it or handled it and moved my finger while I was doing it, would that leave a finger print or would it interfere with it? A. It would interfere with it.

Q. Now, when you made these tests on these various instruments, ladder, note, parts of the Lindbergh home, did you do the very best that you could with the instruments that you had at your command? A. Yes, sir, I did.

Q. Did you make any effort to conceal anything? A. No, sir.

Q. You have given us the best that was in you at that time? A. Absolutely.

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

Re-Cross Examination by Mr. Reilly:

Q. Well, now, if Mrs. Lindbergh or Betty Gow, in closing the window, pressed their hands down on top of the window, just the same as these windows here to close it, and they had no gloves on, that would leave an impression of their hands and fingers, wouldn't it A. I have no information that they did.

Q. I am asking you if they did. A. I don't know.

Q. I still appreciate you are a State Trooper, but I am asking you this question: if they pressed the window down to close it with their hands, and

had no gloves, it would leave an impression of their hands, wouldn't it? A. It would leave a mark.

Q. And if the baby was kidnaped from that crib and taken down the back stairs, and nobody ever went near the window, the window would not show any finger prints, would it? A. It might from previous handling.

Q. Yes. But not of the person that took the child out of the crib and went down the back stairs, would it? A. No.

Q. If the man never went near the window. A. No, sir.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. Now, just one more question. If nobody went into the room that night after eight o'clock, and the baby had been put in that room at 7:30, of course the baby wouldn't have been missing, would it? A. No, sir.

Mr. Wilentz: That is all.

Re-Cross Examination by Mr. Reilly:

Q. Now, just a moment, please. You haven't any gloves on, have you? A. No, sir.

Q. With the Court's permission will you open that window up from the bottom and show me how you would do it? You haven't any gloves on.

Mr. Wilentz: Well, I think, if your Honor please, how he would open that window—

Mr. Reilly: I want to see how his hands work, how he touches the railing and how he touches the edge.

Mr. Wilentz: I appreciate—

The Court: Do you think that is important here, Mr. Reilly?

Mr. Reilly: I want to see how he would grip it with his bare hands.

The Court: Well, let him go.

Mr. Wilentz: All right. How many windows, one?

Mr. Reilly: Just one.

Mr. Wilentz: Any particular window?

Mr. Reilly: That window there.

Mr. Wilentz: The first one?

Mr. Reilly: The one he is going to raise up.

Mr. Wilentz: All right.

A. (The witness stepped to a window back of the Court, unlocked it and raised it slightly by grasping the top.)

Q. Now, about the bottom. A. (The witness raised the window still more by taking hold of it from the bottom.)

Q. Now, your hands have touched that window in how many places? A. Oh, one, two, three.

The Court: Now, I think he may put that window down. (Laughter.)

Q. Close the window, yes. A. (The witness closed the window.)

Q. Do you think it left any impression of your hands or fingers on it? A. I have left some marks on there, Mr. Reilly.

Q. What? A. I have left some marks on there.

Mr. Reilly: That is all.

Re-Direct Examination by Mr. Wilentz:

Q. You didn't have gloves on when you did that, did you? A. No, sir, I did not.

Q. And you weren't standing on a ladder, were you? A. No, sir.

Q. That is all. By the way, incidentally, I notice that there is some steam on that window. A. Yes, sir.

Q. There is, isn't there? A. Yes, sir.

Mr. Wilentz: That is all, Trooper. Inspector Lyons.

JOHN A. LYONS, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

The Witness: New York City Police Department, 18th Division, Main Office.

Q. As I understand it, Inspector, you are connected with the main office of the New York City Police Department in the capacity of inspector. A. Yes, sir, I am.

Q. That is to say, Inspector of Police. A. Yes, sir.

Q. You have in that capacity under your command, I take it, a number of men? A. Yes, sir.

Q. After Mr. Hauptmann's arrest, Mr. Inspector, did you have occasion to go to his home? A. Yes, sir.

Q. I show you a piece of paper and ask you whether or not—I withdraw that. I show you a piece of paper and ask you where you obtained it. A. (Examined paper carefully.) In a small desk in the defendant's home.

Q. These ink marks indicating Exhibit N were made in The Bronx extradition proceedings, were they not? A. Yes, sir.

Q. And is this paper which has upon it "Exhibit N" with something else "M.S." underneath it, the very piece of paper you found in the defendant's home? A. Yes, sir; it is.

Q. What date was it, Inspector, if you remember? A. September 19th, 1934.

Q. Was it in the presence of the defendant? A. Yes, sir.

Mr. Wilentz: I offer the paper in evidence.

Mr. Reilly: I object to it. There is no proof he owned it.

The Court: What date was that, Inspector?

The Witness: That was the date of his arrest, your Honor.

The Court: And that was September what?

Mr. Wilentz: 19th.

The Witness: 19th.

Mr. Wilentz: 1934.

The Court: 19th.

Mr. Wilentz: If your Honor wants counsel to reply, I shall be glad to.

Mr. Reilly: May I question first about the paper?

The Court: Yes.

By Mr. Reilly:

Q. I assume, Inspector, that it is an ordinary piece of writing paper, isn't it?

Mr. Wilentz: Well, I object to it—well, I have no objection to it. I withdraw the objection.

Q. Is that right? A. It is an ordinary piece of writing paper, yes, sir, Mr. Reilly.

Q. Have you purchased writing paper around New York City? A. Yes, sir.

Q. This paper that I hold in my hand is of very cheap material, isn't it? A. Yes, sir.

Q. Have you ever purchased any paper in Woolworth's Five and Ten Cent Stores? A. No, sir.

Q. Writing paper? A. No.

Q. Have you ever seen the paper they sell? A. No, sir.

Q. They do sell paper? A. I believe they do, yes, sir.

Q. Have you ever gone into any of those cheap stores— A. No, sir.

Q. —to purchase writing paper? A. No, sir.

Q. Then you do not know whether this writing paper that has been offered in evidence here can be purchased in Woolworth's stores or any cheap stores in New York, do you? A. No, sir.

Q. You made no effort to find out? A. Only that, not from my own personal knowledge.

By Mr. Reilly (voir dire):

Q. Your own personal knowledge?

Mr. Wilentz: The question is whether he made any effort to find out.

Mr. Reilly: Personally.

Mr. Wilentz: Well, if you add "personally," all right.

The Witness: No personal investigation, but I have had investigators out.

Q. But you haven't personally? A. No, sir.

Q. How many people were there when you found this sheet of paper? A. Probably six.

Q. Who were they? A. Lieutenant Keaten—

Q. Was Mrs. Hauptmann there? A. No, she was in another room.

Q. But she was in the apartment? A. She was in the apartment, yes. Lieutenant Keaten, Trooper Wallace, Detective Wallace, Agent Seery, Agent Sisk and myself.

Q. Where was it found? A. In the small writing desk in the living room.

Q. There was in the living room a writing desk? And just where in the writing desk do you say you found it? A. The upper drawer.

Q. You pulled out the drawer and there was the paper? A. Among several other letters and miscellaneous cards, receipts, and so forth.

Q. Private papers.

Mr. Reilly: I now press my objection, your Honor, because it doesn't show that it was the exclusive property of the defendant. It was found in his apartment.

The Court: In his writing desk?

Mr. Reilly: In a writing desk. Mrs. Hauptmann was there, lived there, it could have belonged to her or to him, or to anybody. It may have been brought into the place and he might never have known anything about it. Until they show a personal connection of the defendant with this piece of paper, I say it is objectionable.

The Court: Well, it is offered in evidence?

Mr. Wilentz: Yes, if your Honor please.

The Court: That is the pending question?

Mr. Wilentz: That is right.

The Court: It will be admitted.

Mr. Reilly: May we have an exception?

The Court: Yes.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

(The paper referred to was received in evidence and marked State's Exhibit S-224.)

Mr. Wilentz: Take the witness.

Mr. Reilly: I think I have finished temporarily with the Inspector.

Mr. Wilentz: That is all, Inspector.

LEWIS J. BORNMANN, recalled.

The Court: I want to interrupt you just a moment.

I have a note here from one of the officers in which he complains that he is unable to keep the aisle open which leads to that department where the secretaries have to go to, to come in and out. Of course everybody ought to understand that it is essential to keep that aisle as well as other aisles open, and that aisle must be cleared through the center.

Just how it shall be cleared, I don't know. I don't know whether those people can find other places or not. If they cannot find

other places in the courtroom they will have to retire.

Mr. Wilentz: I think, if you Honor please, it is cleared now.

The Court: Is it cleared now? Very well, you may proceed.

Direct Examination by Mr. Peacock:

Q. Mr. Bornmann, do you know where the defendant Hauptmann lives in New York or did live? A. Yes, sir.

Q. Where was it? A. 1279 East 222nd Street, Bronx.

Q. On September 26th, 1934, were you at his home? A. Yes, sir, I was.

Q. And for what purpose? A. For the purpose of searching for evidence.

Q. Did you make a search for evidence? A. Yes, sir.

Q. Did you make a search of the attic of the defendant's home at that time? A. I did.

Q. How did you get in? A. Why—

Q. Pardon me. Were you going to say something?

The Court: Will you let me have your name, please, I missed that?

The Witness: Lewis J. Bornmann.

The Court: Now you may proceed, Mr. Peacock.

Q. How did you gain entrance to the attic? A. Entrance is gained by going to the small linen

closet leading off the hall. It is necessary to climb through this linen closet to the attic.

Q. What was the size of that closet? A. It is 28 inches deep, 22½ inches wide, and has a small door 15½ inches wide with a lock.

Q. And where was the closet located in the house? A. It is located between two bedrooms, rear bedroom and what is known as the nursery bedroom.

Q. And how did you get from the closet up into the attic? A. It was necessary to remove the shelves and climb up.

Q. And where were the shelves located in the closet? A. As you open the door there are three shelves spaced apart.

Q. And how wide were those shelves? A. They are made of 1 x 12, what is known as shelving, 22 and a half inches wide,—

Q. Who was with you— A. Long.

Q. —this day? A. On the 26th, I was accompanied by Police Carpenter Cramer, Enkler and Detective Tobin of the Bronx.

Q. Now, did the three of you remove those shelves to get into the attic? A. Yes, sir, we did.

Q. Now, when you got into the attic what did you find? A. We first made a search for money, we didn't find any money and during this search I found that all the floor boards were not of the same length, that is the one in the south west corner, a portion of it had been removed.

Mr. Reilly: I move to strike that out as calling for a conclusion, there was one board, he can describe the boards that were there, but the conclusion one had been removed, was missing, I say is objectionable, he can't testify to that.

The Court: Well, Mr. Reilly, he may have seen evidence that it had been removed. I do not know about that.

Mr. Reilly: And may he say what he saw, Judge?

The Court: Yes, he may say what he saw, that is the best way, I think.

By Mr. Peacock:

Q. Now, Mr. Bornmann, referring to Exhibit S-215, will you show to the jury where that board was missing that you—

Mr. Reilly: Now, I object to that word "missing." Let him tell us what he saw.

Mr. Peacock: I withdraw that question.

Q. Referring to Exhibit S-215, show the jury the condition that you found in that attic. A. Well, this is the south west corner, this is the south side, and this is the west side (indicating) and the end board, approximately 8 foot if it had been removed—

Mr. Reilly: Now, I object to that as calling for a conclusion; he can say there was no board there.

Q. Well, there was no board there, was there? A. There was no board, and upon examining it further, I found that there were nail holes still in the beams, and between the 7th and 8th beam here there was a small quantity of saw dust.

Q. Now, where was that saw dust? A. That

was between the 7th and 8th beam, right down in here, laying on the plaster.

Q. Referring to the end of the piece of rail that still was on the floor, is that what you mean? A. Yes.

Q. In between the two beams at the end of this rail? A. In between this 7th and 8th beam; it was also on this adjoining board there, a small indentation made by a saw where, when this board had been sawed off, the saw went into it.

Mr. Reilly: I object to that, where the board had been sawed off.

The Court: Well, there seems to be some little justification for that sort of an inference, doesn't there, Mr. Reilly?

Mr. Reilly: There might be an inference, Judge, but it is not such an inference that a guilty conclusion can be drawn from it. This board might have been well nailed down with that saw cut in it, and I take it that we are only concerned in—

Mr. Wilentz: Well, he doesn't say anything to the contrary. Mr. Reilly's statement may be so, that it may have been nailed down with the saw mark in it, but the fact remains that there is a saw mark.

Mr. Reilly: Yes.

Mr. Wilentz: That is all the witness has testified to.

Mr. Reilly: Yes, the fact there is a saw mark, yes, sir.

Mr. Wilentz: That is all that he is testifying to.

Q. Now, with regard to the saw mark, show the jury on the picture just where the saw mark was. A. The saw mark—

Mr. Peacock: The jury can't see, Mr. Reilly.

A. The saw mark is about a quarter of an inch into the other board (indicating).

Q. How deep was that saw mark, Mr. Bornmann? A. Approximately a quarter of an inch.

Q. Now, did Mr. Enkler and Mr. Cramer do anything to the remaining board in the attic when they were there with you? A. No, sir. After examining that board I then removed about nine foot of this (indicating).

Q. Referring to the board at the end of the pointer on the Exhibit S-215? A. Yes, sir.

Mr. Wilentz: The southwest board.

Q. That is the southwest board? A. Yes, sir; coming east here (indicating).

Q. And what did you do with that board? A. I had Police Carpenter Cramer remove the cut nails from it.

Q. And what— A. And I then took that board down to the second floor and locked it in a bedroom.

Q. Did you have the key to that closet? A. It was in the custody of a policeman, a uniformed man on duty.

Q. Then what further was done with that board? A. I made a report to Captain Lamb as to—

Mr. Reilly: I object.

Q. Well, you made a report with reference to what you had done that day? A. Yes, sir.

Q. Now, were you at the same building on October 9th with Mr. Koehler? A. Yes, sir. In compliance with instructions from Captain Lamb I took Mr. Koehler—

Mr. Reilly: I object to this as all voluntary.

Q. Well, you went to the building with Mr. Koehler. What did you do when you and Mr. Koehler arrived there? A. We checked the nail holes in the beams with nail holes, in what we know as Rail 16 in the ladder.

Q. Show me rail 16? A. (The witness indicated one of the rails of the ladder Exhibit S-211.)

Q. Where are the nail holes in rail 16? A. Rail 16, you notice there are two here and one here (indicating).

Q. Referring to what part of the ladder? A. Two nails here.

Q. Referring to the bottom of the ladder? A. Referring to the bottom of the ladder. There is another one here coming toward the top and another one here coming almost to the top.

Q. You had this railing and you checked it with the flooring of Exhibit S-215, is that correct? A. That is correct.

Q. I show you a photograph with rail 16 on the floor, is that correct? A. Yes, sir, it is.

Q. Now show the jury where those nail holes of rail 16 check with the joist? A. There is one of the nail holes right here and the other one is down here, you see the shadow of it and down here are the other two.

Q. They are the same nail holes that you have just shown the jury in rail 16, is that correct? A. They are.

Q. Now, did you check the nails? A. Yes, sir.

Q. In the holes through rail 16 to the holes that were in the joists? A. We placed four cut nails in this rail 16 and placed it upon the beams. Those nails fitted perfectly into the holes that were still in the beams here.

Q. What was the slant of those nails? A. They were on a slight angle, sort of toed in.

Q. Necessary to pound the nails in or could you push them in with your finger? A. We pushed them in with our finger.

Q. And who was present when you did that? A. Police carpenters Cramer, Enkler and Detective Tobin.

Q. Did you make any comparisons of rail 16 with the board that was still attached to the floor? A. Yes, sir, we did.

Q. What do you say as to the grain in rail 16 and the grain that was still attached to the floor? A. It appeared to match perfectly.

Q. Did Mr. Koehler match them? A. Yes, sir, he did.

Q. Now, did you obtain any lumber from the garage which you gave to Mr. Koehler for examination? A. Yes, sir. After continuing the search of the attic on September 26th we then went to the garage.

Q. I show you a triangular piece of wood and ask you where you obtained that? A. We obtained that—it was a bracket used to support a shelf on the north side of the garage.

Q. Was that afterwards delivered by you to Mr. Koehler? A. Yes, sir, it was.

Mr. Wilentz: May we have this marked for identification?

(The triangular piece of wood was marked State's Exhibit S-225 for Identification.)

Q. I show you a package of nails and ask you whether you obtained them? A. These are ten cut nails which police carpenter Cramer removed at my request from this board here.

Q. Referring to what board? A. Part of the flooring on the south side of the building.

Q. Referring to the board on the south side of the picture, is that what you mean? A. Yes, sir.

Q. Now I show you a board and ask you whether or not you took this from the attic of the Hauptmann home? A. Yes, sir, I did. That is part of this section—that board runs from here, six foot eight and a half of it.

Q. And that was removed by whom? A. It was removed by me.

Q. Was it the same color that it now is? A. Yes, sir.

Q. Now, when you first compared the rail 16 of the ladder, as it is compared in the photograph, what was the color of the rail 16? A. It appeared to be the same color.

Mr. Peacock: I offer this board in evidence, your Honor.

The Court: Are there any objections?

Mr. Pope: Well, yes, we object to the introduction of this board. It is in no way connected with this defendant and we cannot see its materiality. It is merely to

testify that it was a piece of board that was up in the attic. This man went up there and they removed it. There doesn't seem to be any intimation that this particular board or any part of it was used for the manufacture of the ladder. It was merely an adjoining board found in the attic.

So we think that it isn't material.

The Court: Is there any purpose to further connect this board with the ladder?

Mr. Peacock: Yes.

Mr. Peacock: I will prove, your Honor, that Rail 16, attached to the ladder, is from the other end of that board.

Mr. Pope: That it was cut from it, you mean?

Mr. Peacock: Yes, sir.

The Court: It will be admitted.

The Reporter: Exhibit S-226.

(Piece of board received in evidence and marked State Exhibit S-226.)

Mr. Peacock: Now I offer in evidence, your Honor, this bracket, which will be connected by the State, which came from the defendant's garage.

The Court: The bracket?

Mr. Peacock: Yes; which has already been offered for identification.

The Court: Any objection to that being admitted in evidence?

Mr. Reilly: No; no objection.

The Court: There seems to be none. It will be admitted.

The Reporter: S-227.

(Bracket received in evidence and marked State Exhibit S-227.)

Cross Examination by Mr. Pope:

Q. What kind of nails did you say they were that were in the boards up in the attic? A. They are known as cut nails.

Q. And a cut nail is the old-fashioned square nail: is that what you mean? A. Yes, sir.

Q. Not the round nail— A. Old style.

Q. Not the round nail like there is in this piece (indicating)? A. Old style roofing nails.

Q. Now—

Mr. Peacock: Mr. Pope, pardon me one moment. I want to offer this photograph in evidence, your Honor, which has been referred to by the witness.

Mr. Wilentz: It is in evidence.

Mr. Peacock: Not this one.

Mr. Wilentz: Isn't that the one that was used yesterday in court?

Mr. Peacock: No. That one had the rail attached. In the other the rail is absent.

The Court: Any objection to it, Mr. Pope?

Mr. Pope: No.

The Court: If there is no objection it will be admitted.

The Reporter: S-228.

(Photograph marked S-228.)

Mr. Pope: I thought it was in yesterday.

Mr. Peacock: No. The one that was in yesterday didn't have this rail attached.

Mr. Pope: Oh, just a minute, Mr. Peacock.
May we have just a minute?

The Court: Yes.

Mr. Pope: You mean this piece was not in the one yesterday (indicating)?

Mr. Peacock: No, just this piece.

Mr. Pope: Well, yes; we object to this photograph because it is a photograph that was manufactured by the police to show

certain conditions and positions of a board, which they wanted to show, and it was not a natural condition.

Mr. Pope: It does not represent the true condition of the house at the time the police went there, and inspected it, but in order to make it show what it shows there now, they had to do a little maneuvering with a piece of board and some other things. Of course that is not representative of a true condition which would be binding upon this defendant. We object to it.

Mr. Peacock: Your Honor, for demonstration purposes, the board that was shown in the picture was placed there by the witness as he said, it showed that the nail holes fitted through this board to the joist and being connected as the other end of that board. It is rail 16 from the ladder.

Mr. Pope: It was never a part of the floor, only argumentatively they want to make it appear as though it might have been. I have never known photographs to be admitted that were manufactured, that were manipulated, and then admitted for the purpose of showing the true condition. Photographs are admitted for the purpose of showing the true condition of the ground work or whatever it is that they pretend to describe, not for the purpose of showing a manufactured or manipulated condition that may be used by somebody in argument of the case. In other words, this is a false photograph and not a true one.

Mr. Wilentz: Of course, your Honor please, we object to the word "manipulated." This witness has testified that he took rail 16 of this ladder, and he applied it just as the picture indicates, and in so doing, if your Honor please, he fit the cut nails in the holes that appear in Section 16 as he showed it to the jury, and that those nail holes he has testified fit exactly —I think it is in the joist, they call it,—fit exactly there by pressing the nail in; he didn't need to have to hammer it; he put it down to see if it fit, and sees it does fit and now we have before the jury a picture of that experiment and demonstration for the purpose of helping everybody. It can do no harm at all and it can help. Now, his testimony shows what it is, there is no manipulation; there is nothing of these things that our delightful adversary suggests; it is merely for the purpose of being helpful and, if it is helpful, in the first place, may I suggest there shouldn't be any objection to it. But whether there is or not, we submit very respectfully to your Honor it is evidential and proper under the rules of evidence.

Mr. Pope: We don't infer that there is anything untrue.

Mr. Wilentz: It isn't untrue, of course; it is his attic.

The Court: I don't see how you can convey it is untrue.

Mr. Pope: Well, it is an untruthful por-

trayal of a condition that existed; they manipulated it.

The Court: You don't suggest for a moment it is an untruthful portrayal of an experiment that was made?

Mr. Pope: Oh, no, certainly not.

The Court: No.

Mr. Pope: But it is an untruthful portrayal of a condition, of a nail condition.

Mr. Wilentz: Well, that is not correct either, may I respectfully suggest.

The Court: This photograph has already been admitted in evidence. This motion in effect is to strike it out. I don't see that I would be justified in striking it out. I will allow it to stand.

Mr. Pope: But, sir, I made no objections to the photograph, because I was assuming that it was merely a truthful and correct portrayal of conditions that existed; I didn't know until the witness began to explain to us that a part of the rail of this ladder had been removed from the ladder and taken up there and put down on the floor for what they call experimental purposes, and we ought not to be prejudiced by having faith in it.

The Court: I have not undertaken to prejudice you by that, I am merely reciting the facts, and I turn your motion now into a

motion to strike out the exhibit,—and I deny your motion.

Mr. Pope: May we have an exception?

The Court: You may have your exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Mr. Peacock: That is all.

Mr. Wilentz: Your witness.

Cross Examination by Mr. Pope:

Q. Well, referring to this, so that we may have it in the record, this photograph, Exhibit S-228, before this photograph was taken, there was an empty space from the end of the floorboard extending toward the top of the photograph and to the side of the attic, wasn't there? A. There was a space there of about an inch and a quarter.

Q. Well, I would say—What are those beams, 18 inches on center? A. About 16.

Q. One, two, three, four, five, six—well, there are seven spaces there, 16 inches on center, that is more than an inch, isn't it? A. You are referring to this small space here, are you not?

Q. Oh, no. A. Well, where are you referring to?

Q. There was nothing there between the end of this floor board and the end of the building, was there, until you put the piece of board in there?

A. No, sir; it was about eight foot, there was about eight foot of that missing.

Q. In other words, calling your attention to State's Exhibit 215—. A. Yes.

Q.—the attic was in the condition as it is shown there, wasn't it? A. Yes, sir; there was approximately eight foot of it missing.

Q. And then what you did was to take one of the runners, one of the sections of the ladder— A. Rails.

Q. Well, rails then. I call it runner, whichever you call it. We will call it rails. Take it up into the attic and lay it down on the joists; then have it photographed? A. That is correct.

Q. Now, even then, the rail which you took from the ladder did not reach from the end of the floor board to the end of the building, did it? A. No, sir. There you can see a space of about an inch and a quarter, and down to the end—

Q. Well, it is a space of about 16, 32—a space of about 36 inches, isn't it? A. Well, about eight foot of it had been taken out of that and the rail is six foot eight and a half inches.

Q. Now, is this rail that I am pointing to the one, is that the one? A. That is the one.

Q. And what do you call that, number what on the rail? A. 16.

Q. No. 16 on the rail. You don't know anything about wood, I don't suppose? A. Not the technical end of it, no, sir.

Q. Do you know what kind of wood that is? A. That is N. C. pine.

Mr. Wilentz: A little louder, please.

Mr. Peacock: Talk so the jury can hear you.

Q. Calling your attention to the other rail on this same ladder, what wood is that? A. That is fir wood.

Mr. Peacock: Mr. Pope, we can't hear you.

Mr. Pope: What is that?

Mr. Wilentz: We can't hear a word you are saying.

Mr. Pope: I asked him what kind of wood it was and he said N. C. pine.

Mr. Peacock: Referring to rail 16.

Mr. Pope: Yes. Then I asked him what kind of wood the other rail was, on the other side of the ladder, and he said it was fir.

Q. So the holes in the ladder were so loose that you could easily put the cut nails in with your fingers, is that right? A. With thumb pressure you could push them in.

Q. With thumb pressure? A. Yes, sir, thumb pressure.

Q. Did anybody experiment with those nail holes before you attempted to put it down on the floor—that you know of? A. No, sir. I had turned the cut nails over taken from that section of board here, and turned them over to Mr. Koehler, and he had tried them into the rail sixteen holes.

Q. You don't know how many times they had been put in and out? A. Once.

Q. Before you attempted to put in there—

A. Once to my knowledge.

Q. Once to your knowledge? A. Yes, sir.

Q. When was the first time you were up in the attic, Officer? A. September 26th.

Q. And how many times were you up there after that before Mr. Koehler came—Koehler or Kahler, which is it?

Mr. Hauck: Koehler.

A. Once more I believe.

Q. And during that interval how many local policemen were up there? A. To my knowledge there has never been a local policeman in that attic.

Q. How many troopers were up there? A. Myself only and Sergeant Schultz, the photographer.

Q. How many Department of Justice Agents up there? A. None to my knowledge.

Q. None to your knowledge? A. No, sir.

Q. They all had access to the house, did they not? A. They did to a certain extent but the New York Police Department took it over, they acted as custodians of it.

Q. After the arrest of Hauptmann, the State Police took possession of his apartment, did they not? A. No, sir.

Q. You rented it for a couple of months, did you not, you yourself? A. After Hauptmann had moved out, yes, sir.

Q. Well, that was after his arrest, he didn't move out before his arrest, did he? A. After he had vacated the premises, I rented it.

Q. Well, you rented it for a couple of months, didn't you? A. That is correct.

Q. And locked it up? A. Yes, sir.

Q. And refused admission to the defense or their representatives?

Mr. Wilentz: I object to that, if your Honor please. In the first place, he doesn't know anything about that. However, I withdraw the objection.

The Court: He either did or he didn't.

Mr. Wilentz: I withdraw the objection.

Q. You are the tenant, aren't you? A. I am what?

Q. The tenant, the one that rented it? A. Yes, sir.

Q. And paid for it, and you locked it up? A. I rented it anyhow.

Q. You rented it, and you have refused to permit the defense to enter the premises, haven't you? A. I have never had any request from the defense for permission to enter.

Q. Well, you left those instructions at the house, didn't you? A. No, sir.

Q. With the person in charge. May we inspect those premises that are in your charge and possession? A. You have my permission, yes, sir.

Q. When may we do that? A. When ever we can get together on it. I guess we can go up there and look it over.

Q. Before this trial is over? A. Yes, sir, if you care to.

Q. Now, referring to this closet you have been telling us about how large was this closet? A. It is 28 inches deep, 22 and a half inches wide, and access is gained to it through a door 15 and a half inches wide.

Q. Well, that is a standard door,—no slightly smaller than a standard door. A. Yes, sir. I don't know the dimensions for a small closet door.

Q. And the shelves were where? Overhead,

on the sides, or where? A. No, your closet—facing into your closet you have three shelves. They are made out of 1 x 12.

Q. Now, was there a trap door leading from that closet to the attic? A. Well, as you went up to the top there was the covering over the closet.

Q. Well, was it a trap door? You know what a trap door is. A. Well, you wouldn't call it a trap door. It wasn't on hinges; it was just loose.

Q. Just a loose trap door? A. Yes.

Q. Set in a frame? A. It was part of the flooring that had been cut out to allow access to the attic.

Q. Now, that was the only method of access to the attic, wasn't it? A. Yes, sir, it was.

Q. And it was apparently constructed that way when the building was built? A. That is correct.

Q. There was no other entrance to the attic except the one that you have just described? A. No, sir.

Q. Were you in this closet before the Hauptmanns moved out? A. I had to go into it, to go to the attic.

Q. Well, were the Hauptmanns living there at the time you were in the attic? A. Their furniture was still there.

Q. Was Mrs. Hauptmann there? A. No, sir, she was not. She came in a couple of times while I was there.

Q. And she had not been there for several days, had she? A. Not living there, no, sir.

Q. Well, the property was infested with police, wasn't it? A. Well, there were a few policemen around there.

Q. Yes. How many do you call a few? A. Detective Tobin, myself, two police carpenters and two police guards, I believe.

Q. About 7 or 8? A. I call it 6.

Q. Now, how many times were the police carpenters up in the attic before Mr. Koehler arrived on the scene? A. They were there with me, that was all.

Q. How many times? A. Once.

Q. Just once? A. Yes.

Q. To your knowledge? A. Yes.

Q. And when was that, what date, if you know? A. September 26th, 1934, about 10:30 a. m.

Q. Now, so far as you know was that the first time that any policeman went up to the attic? As far as you know yourself? A. As far as I know, yes.

Q. And then after that you don't know how many policemen were there, do you? A. I don't know how many were there.

Q. Yes. A. No, sir. There were none there to my knowledge.

Q. None to your knowledge, no. When did Mr. Taylor arrive at the scene after September the 26th? A. First took him over there on October the 9th.

Q. That was about 14 or 15 days later? A. Approximately.

Q. And at that time this other piece of board had been removed from the flooring, hadn't it? A. It had been removed from the attic and was still in the house, in the bedroom of the second floor, under lock and key.

Q. That is, the board was under lock and key? A. Yes, sir.

Q. In your possession? A. Yes, sir.

Q. The key was in your possession? A. No, sir, the key was in the possession of the Police Department.

Q. Of the New York Police Department? A. New York Police Department.

Mr. Pope: That is all, Chief.

Mr. Peacock: That is all. Mr. Enkler.

Mr. Fisher: May we take a five-minute recess? The air is terribly bad, unusually bad.

The Court: I think it is. You may have a recess for five minutes.

(Whereupon at 11:25 a. m. a short recess was taken.)

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

CHARLES F. W. ENKLER, recalled.

Direct Examination by Mr. Peacock:

Q. Mr. Enkler, you have testified that you are connected with the New York Police Department? A. Yes.

Q. And you are also a carpenter of that department? A. Yes.

Q. How long have you been a carpenter in that department? A. About 12 years.

Q. Now, did you go to the Hauptmann home with Detective Bornmann, Mr. Cramer and Mr. Koehler? A. Yes.

Q. And when did you first go there? A. September 25th.

Q. And did you go into the attic of the home? A. September 26th we went into the attic.

Q. Who was present that day? A. Detective Tobin, Bornmann, I and Cramer.

Q. Will you tell the jury how you got into the

attic? A. From the hole there is a door and there was a closet, and you had to climb up through this closet; there was cleats holding up shelves and you had to step on these cleats to get up in the attic.

Q. You had difficulty getting into the attic? A. Yes.

Q. Could you get into the attic while the shelves were in the closet? A. You might have got in but it would be in your way. You had to stand them up so you could keep going up.

Q. When you gained entrance to the attic, tell the jury what you did. A. Well, we were looking around and then Detective Bornmann drew our attention to the boards, the floor boards on the south side of the building. These boards, they run from the east to the west side. And on the first board, row of boards, there was about 8 foot missing, leading to—that would be on the south west side, end.

Q. I call your attention to Exhibit S-215 to the remaining boards. Are those boards that still remain in the attic, each one a complete board? A. With the exception of this first board.

Q. The day that you entered there, they were all complete boards, except the one on the south side? A. Yes.

Q. Now, were you with Mr. Bornmann and Mr. Koehler when they took rail 16 and compared it with the board that still existed in the attic floor? A. Yes, sir.

Q. Will you tell us what you did that day? A. Mr. Koehler, or Bornmann, I don't know which, had placed this on the beams, this board on the beams and there were four nail holes and he asked us to go and take nails and place them in to see if they would fit with the holes on the floor beams, with those floor beams.

Q. I call your attention to rail 16 and will you show the jury how you placed those nails through this rail into the joists of the attic floor? Will you come down here, Mr. Enkler? A. Yes, sir (stepping down from witness stand). This board was placed like this here (placing board on railing of the jury box).

Q. Place it along here. A. The board was laying like this and we had nails, cut nails, and we placed them this way, that way, that way, and you could push them in at—oh, the point of it would go pretty well into the beam without any forcing.

Q. Now, referring you to Exhibit 228, I think it is, S-228, can you point to the places where you placed the nails through rail 16 and the places on the joists where they fit? A. Here is the nail there now.

Q. And does this photograph S-228 show the nails placed in rail 16 into the joist? A. Yes, sir.

Q. Now, you come here and point out those nails to the jury. A. There is one there, that is one of them (indicating to jury).

Mr. Peacock: Can all the jurors see?

Q. Get back a little bit, Mr. Enkler. Point out that nail that you just— A. This one right here; you can't see the others very plain, but they gibe. One goes in this way and so forth.

Q. And what was the slant of those nails? A. Well, they were face nailed and they were pretty well slanted, I should say, well, at a pitch something like that (indicating).

Q. I call your attention to a package of nails and ask you if they are the nails that you used that day. Look at those, Mister. A. (Witness removes nail from envelope.) Well, they are the

type of nail but I wouldn't say that they are the same, because I had nothing to do with them.

Q. Well, all right. Now, Mr. Enkler, will you tell the jury, referring to this board on the end (indicating on S-228), what was on the end of that board. A. There was a knot on the end of that board.

Q. Did that knot— Go ahead. A. It was sawed, it was sawed through, a knot about here; there was a slight saw mark on this board here, showing that there was a saw used.

Q. I call your attention to— What is this exhibit number?

The Reporter: S-226.

Q. —S-226, and ask you if this is the same board that you are referring to in photograph S-228. A. Yes, sir. I think my name, I have initialed that.

Q. I was just going to ask you that; did you place your name on this board? A. Yes, sir.

Q. Show the jury where your name is. A. There (indicating), my name and shield plate.

Q. Will you refer to this exhibit and show where the knot is that you just referred to? A. This is the knot.

Q. Referring to—which end is that, on the north end as it laid on the floor, wasn't it? A. The west end.

Q. Referring to Exhibit S-226, on the west end. I now show you a space between Exhibit S-226 and the rail 16. Will you tell me how big a space that is? A. I should judge it was about an inch difference, at the end of this board to the beginning of this here rail what it is known as.

Q. And would the knot that is in exhibit S-226

extend over into that other piece? A. No, sir. That was cut off.

Q. That was cut off?

Mr. Pope: I move to strike that out. He doesn't know whether it was cut off or not. All he can say is that it did not extend over in there. That is a conclusion of the witness.

The Court: Well—

Mr. Pope: We are going to argue that it was never there, don't you see.

The Court: Let him tell what he saw.

Mr. Pope: And may that be stricken out?

The Court: Yes, that may be stricken out.

Mr. Pope: Thank you.

Q. Mr. Enkler, referring to the west end of the Exhibit S-226, which has just been shown to you, will you tell the jury what you found in the board adjoining that? A. A small saw mark.

Q. A little louder, please. A. A saw mark.

Q. How deep was that saw mark? A. Why, if I remember rightly, it probably was about three-quarters of an inch.

Q. And was there any evidence of sawdust under that saw mark? A. Yes, sir, on top of the plaster, the ceiling.

Mr. Peacock: Cross-examine.

Cross Examination by Mr. Pope:

Q. How long have you been a carpenter? A. In the Police Department 12 years and before that—

Q. That is long enough for the Police Department. How long have you been a carpenter altogether, I mean? A. Probably 16, 16 years.

Q. Sixteen years? A. About, all told.

Q. Did you examine what you refer to as the saw mark in the board further back toward the center of the floor? A. Yes, sir.

Q. Was it a cross cut saw or a rip saw? A. It was a fine saw, I would say—

Q. I didn't ask you that. A. It was a cross cut.

Q. You think it was a cross cut saw mark? A. A cross cut saw, yes.

Q. Now referring to Exhibit S-228, you said that you were there and that you were able to put the cut nails through the piece of the ladder which has been referred to here as the rail of the ladder, and match them up with the holes in the beams? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. How far could you push those cut nails through the rail of the ladder? A. I should judge about—after it passed about a half an inch, maybe it was only a quarter of an inch, it was just enough there that you would bind, that it wouldn't move.

Q. You didn't have to force them through with any tool? A. With the thumb.

Q. I see. Now these floor beams are laid what, 16 inches on centers? A. Well, they should be, about.

Q. Were they? A. That I don't know.

Q. You didn't measure that? A. No, sir.

Q. Well, from your observation would you say

they were about 16 inches on center? A. About.

Q. And were they carefully laid, I mean spaced evenly? A. Yes, sir.

Q. So that this photograph, S-228, shows a distortion between the first floor beam, showing at the bottom of the photograph, and the second one from the bottom, isn't that right? A. Yes, sir.

Q. And then there is still a greater distortion from the second beam to the third beam? A. That may be due to the photograph. That is—

Q. Well, there is a distortion, isn't there? A. According to that picture, yes, sir.

Q. Yes. Are you familiar with what is known as wide angle lenses? A. Yes.

Q. Were you there when this photograph was taken? A. Yes, sir.

Q. And was a wide angle lens used for the purpose of the photograph, if you know? A. You mean the—

Q. Do you know what I mean by a wide angle lens on a photograph? A. No, sir; I don't know.

Q. Well, if you don't know— A. I thought you meant—

Q. That is all right. Now, then, there is less distortion between the third and fourth beam, isn't there? A. According to the picture, yes.

Q. I am only talking about the photograph. A. O. K.

Q. Than between the fourth and fifth. So that when you get to the sixth beam it looks as if the top of the fifth beam was almost on the bottom of the sixth beam, doesn't it? A. Yes, sir.

Q. So that the photograph is incorrect, isn't it, and deceptive. A. I don't know. According to the picture, yes.

Q. That photograph is deceptive, isn't it? A. Yes.

Q. So that if this jury were to attempt to as-

sume that the distance between beam Number 1 and beam Number 2 was smaller than between beam Number 2 and beam Number 3, which appears to be twice as wide, that would be a deception, wouldn't it? A. Yes, sir.

Q. And would give a false impression. Now did you examine any of the other boards in the floor? A. We did.

Q. Did you find any wire nails used in any of the other boards? A. Well, I didn't look close enough for that. I was looking to see if they were disturbed, that is all I was interested in.

Q. You were there looking to see what you could find of interest, weren't you? A. Yes.

Q. Come down here and look at the nail sticking up in the beam, that is a wire nail, isn't it (indicating on the photograph)? A. Yes, it could be.

Q. Well, it is, isn't it? A. I say it could be; I don't know.

Q. Well, there isn't any question about it in your mind, is there? A. No, because it looks like a head on there.

Q. Yes. And it isn't a cut nail? A. No, sir.

Q. Now, cut nails are very rare nowadays, aren't they? They are not used very much? A. Used on flooring.

Q. Well, not very much, are they? A. Well, wherever there is floors laid they are used.

Q. Always use cut nails to lay flooring, do they? A. Yes. That is tongue and grooved stuff.

Q. This was tongue and grooved North Carolina pine, wasn't it? A. I know, but that is known as a sheathing board. We don't class that—

Q. I know it is a sheathing or roofer's— A. Roofer's—

Q. Not flooring? A. No, sir.

Q. But it is tongue and grooved, isn't it? A. Yes, sir.

Q. And it is North Carolina pine? A. Yes.

Q. That is what it is graded and known as, NC pine? A. NC pine.

Q. Now, were these, were the boards not nailed in? A. They may have been toed in on there, but when you start laying a floor or anything like that, the first board you generally face nail.

Q. Well, you don't know whether they started from the right hand side of the attic or the left hand side of the attic to lay the boards, do you? A. I don't remember, no; but I can tell how the tongue and grooved was laid, then I could tell you how they started.

Q. Well, you can very readily see just how the tongue and groove is laying; the tongue is on this side, on the right side of the board, and the groove on this side? A. This would be the first board that you would start laying in there.

Q. That is, if you started on this side and not on the other side? A. Well, you couldn't otherwise, on account of you would be working against yourself with a tongue and groove; you would lay this here and this here groove matches the tongue.

Q. What you mean is that high grade carpenters laying tongue and grooved flooring will lay the groove toward the outside of the building, and the tongue toward the next board that they wish to insert? A. Yes, sir.

Q. And that they will then insert the next board against the tongue inside of the tongue against the groove: that is what you mean? A. Yes.

Q. Now, in order to make the socalled cut nail holes fit in the floor joists, I am going to call this

the southerly end: is that right? What end is this? A. This is the southern end.

Q. Oh, this is south? A. This is south.

Q. That is north? A. North.

Q. And this one east? A. This is east.

Q. And that would be west towards the top? A. That is west.

Q. Very well, now. Let's see if I have the points of the compass right. This is east. A. That is east.

Q. In order to make the cut nail holes that you say were through the rail on the ladder coincide with the nail holes in the beams— A. Yes, sir.

Q. —it was necessary to move the rail of the ladder away from the end of this board, wasn't it, the east end of the board? A. I don't think so, no.

Q. Well, come down here. I see a light streak there, which looks to me as though that were the end of this rail, lying up on the top of this board: is that right; is that what it is? A. No, sir.

Q. Well, what is it? A. There is a difference of about an inch.

Q. Well, then there is a space there? A. There is a space there.

Q. All right, then; in order to make the nail holes fit you had to put that space there, didn't you? A. No, sir.

Q. Well, if you had butted the rail up against this board, would the nail holes coincide? A. No, sir.

Q. Then you did have to move it away, didn't you? A. Yes, leave a space; yes, sir.

Q. Certainly.

Q. Are you able to tell us whether any of the other boards were toe-nailed in? Do you know what I mean by "toe-nailing?" A. Yes, sir. I

believe the rest of them was all toed in. This is what we call "face nail."

Q. I know what you mean by "face nail" and you think that that board was face nailed because they began to lay the floor from that side of the attic? A. Yes, sir.

Q. Now, in order to place that rail, as you call it, of the ladder in the place where it is shown on the photograph it was necessary to dismantle this ladder, wasn't it? A. Yes, sir.

Q. Now, you were not present when the ladder was dismantled, were you? A. No, sir.

Q. You don't know who took it apart? A. No, sir.

Q. Nor where it was taken apart. A. No, sir.

Q. Nor where it had been. A. No, sir.

Q. And you don't know whether that piece of railing, so-called, was ever a part of the original ladder, do you? A. Well, only, being a mechanic, I know—

Q. No. I say—

Mr. Wilentz: Let him answer.

Q. I say you don't know, do you? A. No, I don't.

Q. At the time of this demonstration or experiment—strike out the word "demonstration"—at the time this experiment was made shown on this photograph, the only part of the ladder that was there was the rail? A. Yes, sir.

Q. You don't know where the rest of the ladder was? A. No, sir.

Q. When this was brought there for experimental purposes, you were informed that this was one of the rails from the ladder, were you not? A. Not right away, no, sir.

Q. You didn't know where it came from? A. No, sir.

Q. Somebody brought it there and said "Here is a piece of wood, a piece of stock—" A. No, they laid it down.

Q. "We will see what we will do with it?" A. They laid it on the beams.

Q. They laid it on the beams. After that somebody told you it was a part of the ladder? A. No, when they laid it on the beams, Mr. Koehler asked me to insert these here nails—

Q. I didn't ask you that. All I asked you was did later on somebody tell you or did you hear somebody say it was part of the ladder? A. After they were taking the photographs.

Q. Do you remember what day this was? A. The day of the pictures?

Q. The day you were there? A. October 10th.

Q. And what year? A. '34.

Q. Is that the day that Mr. Koehler was there? A. Yes, sir.

Q. Who else was there with you? A. Sergeant Schultz from the New Jersey State Police, he was the photographer, Tobin, Detective Tobin from New York, Bornmann from New Jersey and Cramer from New Jersey.

Q. Now, after making the experiment, I suppose the rail, so-called, was taken away again, wasn't it? A. Yes, sir.

Q. And you don't know what became of it? A. No, sir.

Q. Where it was taken? A. No, sir.

Q. Now, after that was all done there was nothing left there in the attic which would in any way prejudice the Police Department if it were seen by the defendants, was there? A. No—

Mr. Wilentz: Just a minute. I object to that as calling for a conclusion.

The Court: Yes.

Mr. Pope: Well, we were just wondering why we have never been permitted to see this place.

The Court: Well, you inquired of the tenant, you know, and he said he didn't know but what you had been there when you wanted to.

Mr. Wilentz: We may further add, however, that the defense know more about this attic than the prosecution, because they lived in it.

The Court: Yes.

Mr. Wilentz: But if they did want to visit it, a witness prior to this has already answered that.

Mr. Reilly: I object to that statement. We never lived in the attic at all. The attic belonged to the man that built the house, and there were two families in the house.

Mr. Wilentz: We disagree with them and counsel. That was Mr. Hauptmann's attic. You can only go to it through the closet that Mr. Hauptmann had as a linen closet.

The Court: Well, we seem to be wasting a lot of time.

Mr. Pope: We certainly are.

The Court: On an immaterial fact, so far as I can judge.

Mr. Pope: And I object strenuously to that testimony on the part of the Attorney General, and I ask that it be stricken out.

The Court: Well, the Attorney General hasn't undertaken to testify. He is replying to the argument that has been made.

Mr. Pope: No, he is stating what he understands to be facts, and that is, of course, testimony.

The Court: What fact is it that he has stated?

Mr. Pope: Well, the record will show that he says that the Hauptmanns did live in this attic and so forth.

The Court: Well, I will strike that out.

Mr. Pope: If you want to argue that, that is one thing.

The Court: I will strike that out.

Mr. Pope: Yes. That is all, your Honor.

Re-Direct Examination by Mr. Peacock:

Q. Counsel asked you about the photograph. What you mean to say is the beams on this end are closer to the person taking the picture?

A. Yes, sir, I believe that is what is known as prospective—something like that.

Mr. Pope: Perspective.

Q. But the beams in that picture are just the same as they were that day? A. Yes, sir, they have to be on account of the lath for the ceilings, or the plaster.

Q. Now he asked you about this base and the nitch between the board on the east and the board on the west. Calling your attention to Exhibit S-226 you see a knot on the end of that board, do you not? A. Yes, sir.

Q. I call your attention to rail 16, the other end of that board. Do you see a knot in the end of that? A. No, sir.

Q. Do you see a knot in the end of this board? A. No, sir.

Q. You account then for the spacing of this inch by the fact that this piece was cut off of this piece?

Mr. Pope: I beg your pardon, may I have that question read? I didn't hear it.

(The pending question was read.)

Mr. Pope: I object to that question. How can he account for that? That is a surmise on his part at most. It is argumentative.

The Court: He is a mechanic. He has been all over the situation with you and with Mr. Peacock and he has testified at great length. I don't see anything wrong about that question.

Mr. Pope: I think it is very prejudicial to have this man express his surmise or his guess as to what became of a knot in the end of a piece of board that is not put in evidence.

The Court: Won't you repeat the question to me?

(The pending question was re-read.)

The Court: Well, now, in my view the only possible objection to that, as this matter now stands, is that it seems to be leading.

Mr. Pope: Well, it is leading.

The Court: And of course the witness being Mr. Peacock's witness, ought not to be led. If he can get at this matter in some other way, I think he ought to do it, although I might even allow him to lead. I am not sure but what I will. Now, Mr. Peacock, suppose you make this inquiry in a fashion that is not objectionable.

Mr. Peacock: Did your Honor strike that question and answer out?

The Court: Was the answer given?

Mr. Peacock: The answer was given, yes.

Mr. Pope: I didn't hear the answer. It may have been given but my objection was certainly timely.

Mr. Peacock: Call for the record.

The Court: Well, I think I will strike it out.

Mr. Peacock: That is all.

The Court: You may pursue the examination, if you wish, Mr. Peacock.

Mr. Peacock: I will withdraw it, your Honor.

Mr. Cramer.

ANSELM CRAMER recalled.

Direct Examination by Mr. Peacock:

Q. Mr. Cramer, you have testified before you are a member of the Police Department of New York? A. Yes, sir.

Q. And you are also a carpenter of that Department? A. Yes, sir.

Q. How long have you been a carpenter? A. Well, off and on for about six years. I have been a carpenter for twenty years before I went on the Police Department.

Q. Were you present with Mr. Enkler and Bornmann and Koehler, when they made the examination of the attic of the defendant's home? A. Yes, sir.

Q. Will you tell the jury what you saw and found the day you made your examination. A. Well, we searched the place upstairs in the attic, and we found a piece of board missing from the floor of the attic. We found another where it had been cut off.

Q. Louder. A. Where this piece of board had been cut off, it sawed into the board that was

laying next to it. That was the first board of the flooring across the attic, from one side of the house to the other. Then I saw a piece of lumber supposed to be from the ladder brought there and laid down by Mr. Bornmann and the nails pushed into the nail holes that fitted into holes in the beam, and I afterwards saw a photograph taken of it.

Q. Now, are these nails that were used that day the nails that are in front of you? A. Yes, cut nails, like that.

Q. Now, Mr. Cramer, did you make an examination of that attic, referring to S-228, this board? A. Yes.

Q. Did you make an examination of the beams? A. I did.

Q. Yes. Is that the board you used the cut nails through into the beams? A. Here it is right here (indicating), there are four nails, I think, in it, 1, 2, 3, 4, yes, four nails in it.

Q. I call your attention to Exhibit 226 and ask you if that was a piece that came from the east end that was removed that day? A. Yes, that is this piece here.

Q. Yes. A. This piece right here.

Q. Did you initial that exhibit that day? A. That is my signature on it.

Q. I call your attention to the rail 16 on the ladder. A. Yes, this is the piece that—there it is right there, that fits in there.

Q. It is on the west end of east end, which is that? A. Well, which way does the house face?

Mr. Wilentz: West.

Q. West end then. A. The west end.

Q. Now, I ask, referring to Exhibit—take the

stand—Exhibit S-226, what character of lumber that is. A. That is one by six NC roofer.

Q. And what is the character of lumber on rail 16? A. The same thing.

Q. Now, the rail 216 that you had in the attic that day, was that the same color as this rail that you took from the floor? A. Yes, that is it there.

Q. That is the same rail? A. That is the same rail.

Mr. Peacock: Cross examine.

Cross Examination by Mr. Pope:

Q. But when you say that this is the same rail— A. Yes.

Q. —that you had there, you mean that this is the same piece of wood that you had there, on the floor there? A. Yes, that is there on the floor there now; that is the same piece.

Q. Shown in the photograph? A. Yes, sir.

Q. Shown in the photograph? A. Yes, sir.

Q. But it is not the same color that it was that day, is it? A. Yes, that is the same piece of stuff. It ain't painted.

Q. Has it not been stained since and washed and cleaned? A. I don't know whether they washed it.

Q. You don't know? A. Cleaned it or anything else. But I do know it is the same piece of stuff. I can tell it by the nail holes.

Q. All right.

Mr. Reilly: Is that it (indicating)?

The Witness: That is it, right there.

Q. Well, look at it. Look at the rail that you are talking about; compare it with the board that is produced here, which is marked—what, do you know what that number is? I can't see it.

Mr. Peacock: 226, I think.

Q. 226. They are not alike in color, are they? A. This one seems to be handled a little more than that one.

Q. They are not alike in color, are they? A. No.

Q. That is the answer. Now, looking at the attic floor up here, where this piece of rail is laid on the beams, you notice that it looks in the photograph as though the abutting end of the rail was raised up and was lying on the end of the board nailed down and running from the east to the west, isn't that right? A. No.

Q. I say it looks that way on the photograph? A. Now, wait until I see. (Witness steps to the photograph.) No, it don't. It looks as if there is a space in between.

Q. That is what I wanted you to say.

Mr. Wilentz: What is the answer?

A. (Answer read by the reporter.)

Q. Now, there was a space in between the two boards, wasn't there? A. There was, yes.

Q. About how wide was that space, if you remember? A. Well, it was about at one end, we will say, three-quarters of an inch, and about a half an inch, and it run to about seven-eighths or an inch.

Q. In other words, you mean that the abutting end of the rail, or what would be the abutting end of the rail if it did abut up against the other board— A. Yes.

Q. —was not sawed off evenly? A. This was sawed off even—

Q. Yes. A. —but the piece that cut out of there was not sawed off even.

Q. Well now, never mind any piece that was cut out. You mean then that the other end of the board that is permanently on the floor was not sawed even. A. No, that was not sawed even, it was crooked.

Q. That was sawed crooked? A. Yes.

Q. Just come down here now, Mr. Carpenter, just look at that alignment across there. It is just about as perfect and straight as it can be, isn't it? A. Yes, sir.

Q. And so is this, which is the end of the beam lying on the floor, is it? A. End of the board, right—not straight.

Q. It is not straight, I see.

The Court: Did the stenographer get it?

The Reporter: Yes, sir.

Mr. Peacock: I think that should be read to the jury. I don't think the jury heard it, your Honor, the last two or three questions. We couldn't hear it at the table.

The Court: Suppose it be read.

(The reporter read as follows: "Q. Just come down here now, Mr. Carpenter, just look at that alignment across there. It is just about as perfect and straight as it can be, isn't it? A. Yes, sir. Q. And so is this, which is the end of the beam lying on the floor, is it? A. End of the board,

right—not straight. Q. It is not straight, I see.")

Q. Just come down here, will you, Mr. Carpenter? Do you think that is pretty straight (placing a blotter on the photograph)? A. Yes.

Q. The space in between the lower edge of the rail—wait a minute—the space between the lower edge of the rail and the top edge of the rail is equal, is it? A. What do you mean?

Q. On both sides? A. I don't think so.

Q. Now you show me what is the matter with it if I am not holding the blotter all right. A. The blotter is all right. This lays on the top of the edge of this (indicating).

Q. That is what I thought all along.

Mr. Pope: That is all.

Mr. Wilentz: As long as you understand it, it is all right.

The Witness: Just like this (indicating). There is one board and this is laying on top of it like that.

Mr. Pope: That is what I have been thinking about all day long.

Mr. Wilentz: Which board are you talking about?

The Witness: The board is here and this piece here is laid down (indicating). This piece here and this piece down and the edge is laid on top of the edge of this.

Mr. Pope: That is what I thought.

The Witness: There is the board on the floor. It is laid on top of it just like that. (Indicating.)

Mr. Pope: Stand back and let the jury see it.

Mr. Reilly: Now, will you put a description of that on your minutes?

The Witness: That is the way it shows on the picture. That don't show up on top of that.

The Court: Are we supposed to be taking testimony?

Mr. Reilly: We are taking a record of this board on the stenographic minutes.

The Court: Just be careful and get it on the record.

Mr. Reilly: I asked if they would look at it and designate it for the minutes.

Mr. Pope: Are we ready?

The Court: Yes.

By Mr. Pope:

Q. Will you look at those cut nails which have been produced there and will you tell me if they are the nails that were used for the purpose of pushing through the hole in the so-called rail? A. Well, they are nails just like those; they are cut nails.

Q. You do not know then whether those are the identical nails or not. A. I have no means of knowing. There is no mark on them.

Q. They are known as what is known as iron cut nails, aren't they? A. Cut floor nail.

Q. All right. And they are 6 penny? A. No, they are 8's.

Q. Eight penny? A. Yes, they are 8's.

Q. Were there any 10 penny nails there? A. Well, I didn't see any, there might have been some, I didn't see them.

Q. An 8 penny nail would slip into a hole made by a 10 penny cut nail, wouldn't it? A. Yes,—

Mr. Pope: That is all.

A. —there.

Mr. Peacock: Is that all, Mr. Pope?

Mr. Pope: Yes.

Re-Direct Examination by Mr. Peacock:

Q. The day you compared the nail holes in the piece that is now on the floor, the rail was flat on the beam, was it not? A. Yes, sir.

Q. And when you had the board flat on the beams you testified there was an inch and a half distance between the two? A. Yes, I will show you that.

Q. Well, is that correct? Now, show it to the jury, when you had this rail 16 flat with the nails through the holes in the rail on the beams, what distance was between the other board? A. (Witness fits the board up against a section of the ladder.)

Mr. Wilentz: Let him give us his judgment.

Q. What was the distance? A. Now, you just wait a minute, and I will lay it as I seen it. Let go of that. There it is.

Q. How much is that? A. That is a half an inch. (Referring to space between section of ladder and board.)

Mr. Wilentz: Half an inch, the witness indicates what he considered to be a half an inch between the two rails.

The Witness: Right here, there.

Q. Now, this board, referring to S-226, was nailed to the beams, is that correct, as shown in the bottom photograph? A. Yes.

Q. Between this board, then, when you laid the rail 16 and put the nails through these holes, there was that distance between the two boards. A. Yes.

Mr. Wilentz: That is all.

The Witness: And these nails went right in the beam.

Mr. Peacock: Yes. That is all.

Re-Cross Examination by Mr. Pope:

Q. No, I just wanted to get the distance. A. I will get it for you.

Q. About a half an inch. This board then was permanently fastened to the floor? A. Yes.

Q. At that time. This was loose? A. Yes.

Q. I see. So in order to make the nail holes match— A. Yes, sir.

Q. —it was necessary to manipulate the ladder rail a half an inch away from the edge of the permanently fastened board. A. To make them fit all the holes.

Q. Yes. A. Just like that.

Mr. Pope: That is all.

Mr. Peacock: That is all.

Mr. Wilentz: Mr. Koehler, will you please take the stand?

Mr. Reilly: Just a moment before he leaves. When was this board taken downstairs and locked in the closet?

Mr. Wilentz: It is in the record. October 10th, he says.

ARTHUR KOEHLER, sworn as a witness on behalf of the State.

Direct Examination by Mr. Wilentz:

Q. Mr. Koehler, will you please tell us where you live and what your business is? A. I live at Madison, Wisconsin, and I am employed there at the United States Forest Products Laboratory.

Q. Do you mean that you are employed by the United States Government? A. I am.

Q. And what does the Forest Products Laboratory work consist of? A. The work of the Forest Products Laboratory consists of making tests and investigations on wood.

Q. Tell me whether or not you are the wood

expert of the United States Government? A. I am the expert on the identification of wood for the Government.

Q. Are you in charge of the Department? A. I am.

Q. With officers in Madison, Wisconsin? A. Yes.

Q. Now, in that connection, for how many years have you done this work? A. 21 years.

Q. How many pieces of wood do you examine a year for the Government? A. Each year there are submitted from 2,000 to 3,000 samples of wood for identification which I handle.

Q. In your capacity with the United States Government and in your particular field, has it become necessary for you to testify in court? A. Yes, I have at various times testified in court.

Q. Will you tell us some of the cases you have testified in. A. May I refer to some notes; I can't remember the names.

Q. Yes. A. And dates.

Q. Pick out the best known. I don't want to limit you, however. You give whatever you think is proper. A. In 1923, I testified as an expert witness in the case of State of Wisconsin vs. one John Magnuson.

Q. Is that a murder case? A. That is a murder case.

Q. Yes, sir. A. In 1925, I testified in some hearings before the Federal Trade Commission vs. The Indiana Quartered Oak Company relative to the proper names to use for so-called Philippine Mahogany. In 1929, I testified before the Federal Trade Commission vs. The California White & Sugar Pine Manufacturers relative to the proper names to use for so-called California White Pine.

Q. You mean by proper names the proper

identification and classification of lumber? A. Well, it is simply a matter of what name to use, what is the correct name for it.

Q. Well, do you determine that by knowing the classification and identification of lumber? A. Yes.

Q. All right, sir. A. In 1932, I testified in Lake Charles, Louisiana, in the case of Olivier & Son vs. The Board of Commissioners of the Lake Charles Harbor and terminal distict relative to the quality of some piling which had failed shortly after they were driven. In 1933, I testified in Toledo, Ohio, in the case of Vienhage vs. The Consolidated Pump & Ladder Company. In that case two painters were injured as a result of the fracture of a rung in a ladder, and I testified as to the quality of that rung which broke.

Q. Now, the first case you gave, as long as you have given us an indication of what the cases are about, what was that, the name of the first one? A. State of Wisconsin vs. Magnuson.

Q. Did that involve the make-up of a bomb? A. Yes.

Q. And particularly did it involve the history of a piece of wood that was a part of that bomb? A. Yes.

Q. Did you testify as to the history of that wood in that case? A. I did.

Q. All right. In addition to your experience in the manner you have just indicated, have you had experience as a carpenter? A. Why, I have worked on a number of carpenter jobs. My father was a carpenter by trade, had a large assortment of tools, and I have worked on the construction and repair of buildings and on cabinet work.

Q. All right, sir. Now, in the capacity in which you have been employed, will you tell me

whether or not you came into the Lindbergh case at the request of the Government and the State of New Jersey. A. I did.

Q. And in that connection you have, have you not, inspected and examined this ladder, S-211, on many occasions? A. I have.

Q. I want to call your attention first particularly to what has been referred to as rail 16—what is it, 16 or 19? A. 16.

Q. Did you take off this rail 16, a part of Exhibit S-211, for the purpose of investigation in the attic of the Hauptmann home? A. I did.

Q. When did you do that? A. I made that investigation on October 9th, 1933, the first time.

Q. Having taken off this section rail 19, what did you find. A. I found that the nail holes in it corresponded exactly with four nail holes in the joists in that attic and the grain of the wood in that rail corresponded exactly with the grain of wood of the board next to it.

Q. Now, let me ask you, before you get to that—you have also seen this exhibit, have you not? A. I have.

Q. And did you see that in the attic? A. Yes.

Q. Tell me whether or not there is any relationship, in your opinion, between rail 19 and exhibit S—what is the number—226?

Mr. Pope: I object to the question. I object to the expression "in your opinion" by the witness.

Mr. Wilentz: Will you tell me what the number is?

The Reporter: 226.

Mr. Wilentz: How is it marked, by ink?

The Reporter: No. With lead pencil. It wouldn't take ink. 226.

Mr. Wilentz: Will you repeat the question.

The Court: The witness will not answer until I hear Mr. Pope's objection.

Mr. Wilentz: I will withdraw the question.

By Mr. Wilentz:

Q. Tell me whether there is or whether there is not a relationship between S-226, this piece of lumber here, and Rail 19.

Mr. Pope: Object to the question. That isn't any different from the last one. The only difference is he leaves out the word "opinion," and the witness cannot say whether there is any relationship except by expressing his opinion, and we say that this witness is not qualified to express an opinion regarding wood.

The Court: Do you say that he is not qualified as an expert on wood?

Mr. Pope: We say that there is no such animal known among men as an expert on wood; that it is not a science that has been recognized by the courts; that it is not in a class with handwriting experts, with fingerprint experts or with ballistic experts. That has been reduced to a science and is known and recognized by the courts. The

witness probably may testify as an experienced carpenter or something like that, but when he attempts to qualify and express opinions as a wood expert, that is quite different.

The Court: Well, of course, the term "wood expert" is a broad term. It might very well be limited so far as this case is concerned. What I am trying to find out is the basis of your objection. Do you object to his qualifying as an examiner of wood and to finding out the history of that wood? Do you object to that?

Mr. Pope: Yes, certainly we do, and that he is not qualified to express an opinion. For instance a physician examines a patient and he finds certain symptoms, he expresses an opinion. He is qualified because he represents a science. A fingerprint expert examines finger prints, he makes measurements and comparisons. He expresses and opinion because that has been reduced to a science and has been recognized by the courts, but this is no science, this is just merely a man who has had a lot of experience in examining trees, who knows the barks on trees and a few things like that. He may come into court and he may tell what he did and what he saw, but when it comes to expressing an opinion as an expert or as a scientist, why that is quite different indeed. We say that the opinion of the jurors is just as good as his opinion, that they are just as qualified to judge whether there is any relationship

between those two pieces of board as this man of experience as he terms himself.

The Court: I think the witness is qualified as an expert upon the subject matter.

Mr. Pope: May we cross examine him on that subject and see?

The Court: You surely may.

Mr. Pope: And see what his qualifications are.

The Court: You surely may.

Mr. Wilentz: If your Honor please, may I suggest now, of course I have no objections to cross examination as to qualifications at this time, but it seems to me that properly comes before the witness starts his testimony as to the matters before the Court. Now, we have qualified him and there was no objection to it. However, I will withdraw. I only want to—

The Court: I don't want to stand on form, Mr. Attorney General, and I don't think you do.

Mr. Wilentz: No, sir.

The Court: You may cross-examine him, Mr. Pope.

Mr. Wilentz: Before he does, may I ask that the counsel's observation about there

being no such animal as a wood expert, be stricken out; I am sure he didn't intend it.

Mr. Pope: I will withdraw it. It is just a homely expression, not meant with any reflection at all.

The Court: Now, Mr. Pope, suppose—you want to ask this gentleman some questions to ascertain whether or not he is an expert?

Mr. Pope: Yes, sir, I would like to go into it quite thoroughly. May we do that after recess?

The Court: Well I suppose—

Mr. Pope: We couldn't possibly finish it in five minutes.

The Court: I suppose you may. The Court will take a recess now until 1:45. The jury may retire. The people will remain where they are. Do you people that are rushing for the doors hear what I am saying to you? I tell you to stay where you are until this jury has retired.

(The jury retire at 12:27 P. M.)

The Court: The Court will now take a recess until 1:45.

(Whereupon at 12:29 P. M. a recess was taken until 1:45 P. M.)

AFTER RECESS

(1:46 p. m.)

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

ARTHUR KOEHLER resumed the witness stand:

Direct Examination (continued) by Mr. Wilentz:

Mr. Wilentz: Mr. Pope, I will make an effort to qualify Mr. Koehler, if there is any question about it.

Q. Mr. Koehler, are you a graduate of any university? A. Yes.

Q. Will you tell us what university, when you graduated, and the course you pursued there. A. I graduated from the University of Michigan in 1911, where I pursued the course in forestry. Later on I took some post-graduate work at the University of Wisconsin in forest products and received the degree of Master of Science at the University of Wisconsin in 1928.

Q. Have you devoted your entire adult life to this work? A. I have.

Q. Are you the author of any papers on the subject, and books? A. Yes, I have written a number of government bulletins and a book.

Q. Have you some of these bulletins and books here? A. I have.

Q. Will you please get them for us? A. Yes. I have here a number of bulletins, reprints, a book and a list of publications other than these.

Q. You are giving to me then a book published by the McGraw, Hill Book Company entitled "The Properties and Uses of Wood" and this Koehler referred to here is yourself, is that so? A. Yes.

Mr. Wilentz: I offer the book.

Q. Can you read for us the list of publications of which you are the author so as to avoid the necessity of presenting all the papers except for the defense? A. There are a large number here, 52 altogether.

Q. All right. Tell us all of them. A. "An Improved Method of Infiltrating Wood with Celloidin," "Our National Forests," "How Taste of Wood Affects its Use," "How the Odor of Wood Affects its Use," "What Makes Wood Float," "The Burning of Wood," "How a Tree Grows," "Forest Trees as Sources of Food," "What Wood is made of," "A Visual Method of Distinguishing Long Leaf Pine," "Identification of Oak Woods," "Woods Older than the Hills," "Native Woods as a Passable Substitute for Boxwood," "Guide Book for the Identification of Woods used for Ties and Timbers," "A Plea for a Closer Discrimination in the use of the words 'Grain' and 'Texture' with Respect to Wood," "How to Distinguish Douglas Fir from Sitka Spruce," "Information for Inspectors of Air Plane Wood." "The Grain of Wood, With Special Reference to Direction of its Fibres." Also part of the "Inspection Manual of the Bureau of Aircraft Production." "American Substitutes for Boxwood." "Relation of Moisture Content and Drying Rate of Wood to the Humidity of the Atmosphere." "Factors Affecting the Strength of Wooden Members." "Selecting Wood for Airplanes." "How to Tell Birch, Beech and Maple Apart." "Shrinking and Swelling of Wood." "Identification of Mahogany." "Defects Found in Lumber." "Handbook of Box and Crate Construction," of which I wrote the part on "Identification." "Lumber

used in Motor Vehicle Manufacture." "Distinguishing Characteristics of Mahogany." "The Identification of True Mahogany and Certain So-Called Mahoganies." "Identification of Pulp Woods." "Identification of Douglas Fir Wood." "What Makes Lumber Sell."

The Court: Let me interrupt for a moment. Mr. Pope, do you still want to question this witness as to his expert qualities?

Mr. Pope: Just a second, sir. Will you allow us to confer?

The Court: Sir?

Mr. Pope: Will you allow us to confer?

The Court: Yes.

Mr. Reilly: May we preserve our rights to this extent, and have the Court pass upon the witness's qualifications, as to whether the Court thinks he is qualified or not.

The Court: Yes. I would say to counsel now that I deem this witness to be qualified as an expert.

Mr. Reilly: And then in order to protect the rights of the defendant, may we have an exception?

The Court: You may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Wilentz:

Q. And some other publications that you haven't mentioned? A. Yes.

Q. Will you tell us, please, what your duties are at the Forest Products Laboratory? A. One of my duties is to take charge of the identification of wood sent to the Federal Government for identification, whether they are sent to Washington or San Francisco or Madison; if they are sent to a Government office, they are supposed to be referred to Madison where I have charge of their indentification.

Q. Am I to understand then that if there is some dispute with reference to wood that is sent to the United States Government, whether it is sent to Washington or some other point, it comes to you for disposition? A. Yes.

Q. All right, sir, is that the situation with reference to 2,000 or 3,000 samples you testified to this morning? A. Yes.

Q. What ordinarily causes the submission to you of these pieces of wood? A. Why, we receive samples from the public for a great variety of reasons. There may be a dispute between buyer and seller as to the identity of a car load of lumber.

Q. When you say "the identity" I take it you mean whether or not it is one type of wood. A. Yes.

Q. Or another. A. Yes.

Q. One quality of wood or another. A. Yes.

Q. What else? A. A manufacturer gets hold of a piece of wood which he likes particularly, but he doesn't know what kind it is, and he sends it in to the laboratory at Madison to have it identified. Once in a while a piece of wood goes wrong in services, gives trouble, and they want to know what kind of wood it is. That is one of the first requirements. In the case of old surveys it has been customary to mark witness trees and those witness trees have died and even decayed partly, but maybe part of the stump or root is left and they want to know whether that is the same tree as was originally marked as a witness tree.

Q. You mean by that, sir, that in the old surveys where lime proceeds to a tree at a certain point— A. That the neighboring trees to that point are usually marked as witness trees to establish the location of that point.

Q. And you identify the stump or whatever is left of it as the point for the survey? A. Yes.

Q. What else? A. Well, occasionally law suits arise as to where the identity of wood comes in or the quality of wood and such questions are referred to me to pass upon.

Q. Do your duties also include the identification of wood in connection with crimes committed? A. Yes.

Q. All right, sir. Now, let me ask you again, sir,—I show you State's Exhibit S-226 and I show you rail 16 of State's Exhibit S-211, and I ask you what, if any, is the relationship between that rail and the exhibit just referred to. A. As a result of a careful study of the two, I have come to the conclusion that those two pieces at one time were one piece. They have been cut in two.

Q. Now, will you please come down here and show the jury just about where it is your opinion they were cut. Take all the time you want to,

Mr. Koehler, that is necessary. A. Hold that up there, please.

Q. Is this the right end? A. Yes. These two pieces of wood at one time were one piece. A little gap has been cut out. That was about their relative position in the original piece (illustrating).

Q. Why do you say that they are the same piece, they were originally the same piece, and have been separated? A. Well, there are a number of points of similarity between the two that make me believe that they were one, were one piece.

Q. Just take the stand for a minute now. (The witness resumed the stand.) Can you better show them with some photographs taken by yourself? A. Yes.

Q. Have you got one here? A. (A large photograph is exhibited on the easel.) To begin with, this photograph—

Q. That is, referring to S-228? A. I personally took this rail, 16, from this ladder, which is the lefthand rail of the top section, and inserted cut nails into the nail holes that are in this rail.

Q. Will you show the jury the nail holes in that section of the ladder, Section 16? A. I will put the nails in them; then they can see them better.

Mr. Pope: Just a moment. I understand nobody yet has testified that these were the nails that were originally in those holes, and unless there is some proof that they are the nails that were originally in those holes we object to it.

Mr. Wilentz: I have no—if counsel objects to it we will do without the nails then.

By Mr. Wilentz:

Q. Show the jury the section of the ladder where the nail holes are, without using the nails, if there is some objection to it. A. This rail here, you can see one nail hole there (indicating).

Q. Indicating one nail hole near the first rung of the ladder, as you are holding it up: is that it? A. Yes, sir; near the top rung, yes. Another one there, and two of them over here.

Q. You are indicating four nail holes then: is that it? A. Yes.

Q. On rail known as Rail 16? A. Yes.

Q. All right. Now, what about them? A. I took—those are cut nail holes—I took some cut nails, the cut nails which were removed from this board in the attic that has already been referred to.

Q. That is S-226? A. Yes; yes, and placed them into the nail holes in this rail, and those nails fit perfectly.

Q. Let me understand. You mean you took nails out of a part of the floor— A. Yes.

Q. —which is here in evidence, S-226— A. Yes.

Q. —those very nails— A. Yes.

Q. —and you then put them into those holes in this rail here, known as 16? A. Yes.

Q. Tell us about that then. A. Well, they fit in there perfectly. Then with those nails in those holes and projecting from the lower side, I took that rail and laid it over the joist in this portion of the picture shown in this Exhibit S-215.

Q. Let me ask you something: when you say "joists" do you mean those—

Mr. Pope: Joists.

Mr. Wilentz: I take it he means joists.

Q. What are these parts as distinguished from the flooring? A. Joists.

Q. When you say laid them on the joists, you mean just as they were there as a part of the floor? A. Yes.

Q. Go ahead. A. There were nail holes in these joists along the south side of the floor and the west half of the floor and I found that these protruding nails stuck into this rail fit exactly in the four nail holes which were in those joists. Now that indicated to me without any doubt—

Mr. Pope: I object to what is indicated to the gentleman. He may testify as to what he found, what he saw, and the jury will determine what it indicated.

The Court: He may testify as to his opinion, he may be asked as to his opinion.

By Mr. Wilentz:

Q. All right. Tell us what your opinion is?

Mr. Pope: May we have an exception?

The Court: Take your exception, yes.

Mr. Pope: Thank you.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

A. In my opinion that rail had at one time been nailed down there on those joists, because it would be inconceivable to think—

Mr. Pope: That is argumentative. We object to it.

The Court: Well—

By Mr. Wilentz:

Q. Well, what is your reason for the opinion? Give us your reason for the opinion.

The Court: He has a right to.

Q. All right, let's have it. A. There are four nail holes a certain distance apart and a certain direction from each other and in my opinion it wouldn't be possible that there would have been another board somewheres with cut nail holes in them, spaced exactly like these nail holes are in the joists, the same distance apart, the same direction from each other.

Q. Now, let me ask you, Mr. Koehler, the distance between the nail holes on rail 16, between hole No. 1, as you have indicated it, and hole No. 2, is it the same distance between 1 and 2, and 2 and 3, and 3 and 4, or are they different distances? A. They are different.

Q. Are they in different directions? A. Yes.

Q. That is, as my finger goes from No. 1 to 2, across there? A. Yes.

Q. And then down here to No. 3, and across to No. 4, as you call it? A. Yes.

Q. And is that the same way that the holes were in the joist that you have talked about? A. Exactly.

Q. Did it require any manipulation at all, or did they fit perfectly? A. They fit perfectly.

Q. All right, now— A. Not only as to the direction and spacing, but slant. One of these nail holes in here particularly is slanting, and the nail hole in the joist had the same slant.

Q. Now, is that the only reason that you determine and you give as your opinion the fact that rail 16 and S-226 were at one time the same piece of lumber, before it was separated? A. No.

Q. What other reason? A. Because these nails were inserted in the joist, with that rail, the edge was perfectly parallel to the adjoining board. Now, if that had been an accident, that those four nail holes were the same distance apart and the same direction, it would not be expected that that board would necessarily be parallel to the boards in that floor.

Q. How do you explain the fact that when you put S-226— No, when you put rail No. 16 on the joist, as you have indicated, while S-226 was still a part of that floor, before it was removed, how do you explain the fact that there is a little distance, one witness said a half an inch, between the two? A. That piece had been cut off—

Mr. Pope: Now, I object to that.

Q. What is your opinion?

Mr. Pope: He can't tell whether that has been cut off or not.

The Court: He may tell if he knows.

Mr. Pope: If he knows, yes.

The Court: Let him ask him if he knows.

A. In matching up the grain between those—

Q. Was it cut off? A. Yes.

Q. All right. Now, tell us why you say so—This photographic reproduction, is it a correct photographic reproduction of one part of S-226, that is, this piece here? A. Yes, that is one end of it.

Q. And is this piece opposite it with some space between, is that a correct photographic reproduction of section, of rail 16 of the ladder? A. Yes, it is this end.

Q. Yes, sir. A. Where you can see the running recess corresponding with that one there and that nail hole right there.

Q. That is one of them and does this picture correctly portray the position of those pieces as they were upon that floor when you made your test? A. Yes.

Q. Distances and all? A. Yes.

Q. Are these the very same pieces of wood? A. Yes.

Q. And are the other pieces that adjoin them there on that floor a part of that attic and adjoined in that very same manner? A. They were.

Q. Therefore, does this correctly portray that part of the attic where the two boards that I just referred to were placed and where the others were there before you got there? A. Yes.

Q. Will that better help explain your reasons and opinion? A. Yes.

Mr. Wilentz: I offer it in evidence.

Mr. Pope: Just a moment. I may not have any objection to it. May I ask a question or two?

The Court: Certainly.

By Mr. Pope:

Q. Referring to the board shown at the top of the portrait and to the left, I see some lead pencil marks on there. Were they on there at the time you took the photograph? A. Yes.

Q. And had that board been removed from the flooring before you took the photograph? A. Yes.

Q. And then put back? A. Yes.

Q. So that before you took the photograph and before you arranged these two boards with the opening between, this particular board to the top and to the left had been removed from the floor? A. Yes.

Q. And put back? A. Yes.

Q. And this one to the right which you have referred to as one of the rails of the ladder had been removed from the ladder when it was disassembled? Yes, and taken to this house in the Bronx and put down on the floor.

Mr. Pope: We object to the photograph.

By Mr. Wilentz:

Q. Just one other. The name that you see on there is a correct reproduction of the name as it is on there, isn't it? A. Yes.

Mr. Pope: That isn't the point I am making.

Q. And the nail taken off the ladder, Mr. Pope refers to, I think he said in assembling—did you take that rail off yourself, off the ladder? A. I did.

Mr. Pope: I object to the photograph, not because of the pencil markings on it, your Honor. I object to the photograph because it does not depict a true, natural condition. It depicts a condition that was made up, may I say, maneuvered, or experimentally, or whatever phrase you want to attach to it. It was a condition that was really made up by this witness and others and then, having been made up, it was photographed. It does not attempt to pretend to depict a natural condition which he saw there when he went to the house. Before he could take the photograph he had to place these boards in the position in which they are.

The Court: Does the photograph purport to be a correct picture of certain boards and flooring and the like? I haven't seen it.

Mr. Pope: After they have been placed in a position which the witness wanted to place them in, yes.

The Court: Yes. And his placing of them in that position has been explained, has it not, and you have cross examined him on that.

Mr. Pope: Yes, sir.

The Court: Well, now, the fundamental question would seem to be as to whether or no, for the purpose of exhibiting these boards and flooring and the like, this picture, which the witness says is a correct

picture of that flooring and boarding and the like—boards and flooring and the like —whether or no that is incompetent evidence.

Mr. Pope: No, I think not, because, first, we have the flooring here,—the flooring itself; second, we have the—I think they call it the rails, of the ladder here. This is a part of the ladder. The jury can certainly take the two and they can make any comparison with the two original objects themselves that they wish to make in the jury room.

Our objection to this photograph is, and we distinguish, if your Honor please, between a photograph of a natural condition, which of course is always admissible evidence, if it is testified that it truly represents the condition as the witness found it or as it existed at the time.

And a photograph of a maneuvered or a manipulated condition, which has been manufactured, so to speak by a witness for showing certain things which he wants to show. One is a natural photograph of a natural condition and one is a photograph of an unnatural condition. The latter, we think, is not admissible in evidence.

The Court: The photographs are not admissible in evidence, you think?

Mr. Pope: Yes, sir; for that reason.

The Court: Has it been marked for identification?

Mr. Wilentz: No, if your Honor please. We want to not only mark it for identification but we propose to use it now if it is admissible.

By Mr. Wilentz:

Q. Who took the picture? May I just interrupt a minute? Did you take that picture? A. I didn't take the picture. I was present when it was taken.

Q. Did you supervise its being taken? A. Yes.

Q. Is it a picture of the same scene that is shown by Exhibit S-228? A. Yes.

Q. With the same boards in there, exactly as that is shown there? A. Exactly.

Q. Does it, except that it magnifies the few pieces of lumber that are there— A. Yes.

Q. Is it exactly the same as you see it on S-228? A. Exactly.

Q. Except that it shows the distance between the rails and those other things in greater proportion, is that so? A. Yes.

Q. For the purpose of clarity? A. Yes.

The Court: Now you offer it, do you, Mr. Attorney General?

Mr. Wilentz: Yes, sir, if your Honor please, we offer it in evidence.

The Court: It may be admitted.

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.)

The Reporter: S-229.

(Large photograph received in evidence and marked State's Exhibit S-229.)

Mr. Wilentz: S-229.

The Reporter: S-229.

Q. Now, I think—will you explain to us further now as you see it there, why you have stated that the two upper boards representing S-226 to my left and the latter rail referred to in here as rail 16, were at one time together in one board?

Mr. Pope: Well, I object to that because manifestly that is a matter of speculation and a pure guess on the part of the witness. It can't be otherwise. I don't know that his guess is any better than the guess of the jury.

The Court: What is the question?

(The pending question was repeated.)

The Court: He may answer the question.

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. Answer the question, please. A. For one thing, this picture shows it to be found in the attic, that a sawcut had been made at the end of this board.

Q. Will you indicate where the mark of the saw on the board is. A. Yes; in the adjoining board is a little cut right in line with the end of this board.

Q. Have you a photograph that will show that cut later on in better proportion? A. No.

Q. All right. Proceed. A. Furthermore, there was sawdust on the lath and plaster of the ceiling below, right underneath the end of this board. Furthermore, this board projects over the joist. Now, a carpenter wouldn't let the end of a board lap over like that and hang free, he would put the joint right on the joists there, which also indicates that that was not the original condition.

Furthermore, by matching up the grain in this board in the floor and this rail from the ladder—

Q. Ladder rail? A. —I find that the grain matches practically perfectly, considering the gap that is between the two.

Q. Have you got a picture here which shows the grain and what you call the matching of the grain? A. Yes.

Q. Is this the one (enlarged photograph)? A. Yes.

Mr. Wilentz: Will you please mark this for identification, telling me the number?

(Photograph marked State's Exhibit S-230 for Identification.)

Q. S-230. I want you to look at Exhibit S-230 for Identification and I ask you whether or not this correctly shows the grain of the ladder rail No. 16, and the board from the attic floor referred to as S-226. A. It does.

Q. That is the two lower pieces? A. Yes, sir.

Q. What does this indicate? A. Other pieces of lumber for comparison.

Q. Not connected with the ladder or the ladder rail? A. No.

Q. But for the purpose of comparison with the grain of the ladder rail and the floor? A. Yes.

Q. Is it necessary to have these comparisons in order to intelligently explain the connection between the ladder rail and the board from the attic floor? A. It is in my opinion.

Q. Will it serve you best to have it that way? A. Yes, it would.

Mr. Wilentz: We offer that as S-230 in evidence.

Mr. Pope: 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 kidnapping or anything else, and introducing some-

thing entirely foreign to this case, in this case, even though it is only done for the sake of comparison; because we submit that there can be no such thing as a comparison of a piece of lumber that was taken from that attic floor or from that ladder, with a piece of lumber that was found out in Michigan or some other place in the United States until it is identified as a part of the same board.

The Court: What do you say about that?

Mr. Wilentz: If your Honor please, the purpose of this exhibit has already been indicated and I think nearly every exhibit has some identity because of a comparison —a man is shorter than another man, or he is taller, or he is heavier or he is lighter; a shoe is larger or it is smaller, it is wider or otherwise; one piece of wood is darker or lighter—and everything, it seems to me, is identified only because there may be a comparison.

Now, it is not very essential, we probably can make this exhibit without it, but it occurs to me, if your Honor please, that after all we are not limited in a court of law, which is after all a court of justice, by being limited to one piece of wood, if bringing another piece for comparison will help.

It cannot at all prejudice the defendant or defense counsel. As a matter of fact, it will help them. Now if your Honor should conclude that this is more helpful as we very respectfully submit to you, since it

is explained it has no other purpose except for comparison, so that this witness may be able to tell the real significance of the grains in the ladder rail and the attic floor, just as the handwriting expert can come down and say "This is the 'e' on the note and this is a different 'e' " for comparison —since it can only serve a helpful and useful purpose, if your Honor please, we submit it is admissible.

The Court: Well, my present impression is that the photograph might well be marked for identification. It may be that in your examination of the witness you will show conditions which will render it evidence; that a piece of wood, let us say, was grown in California, might be helpful in determining the question of the identity of certain woods that are factors in this case. I do not know where that will lead you to, but for the moment I do not see that I ought to admit the entire photograph. It will be marked for identification and you may proceed with your examination.

Mr. Wilentz: Yes, sir.

The Court: And then we can determine later as to what we will do about it.

(Photograph referred to was previously marked S-230 for Identification.)

Mr. Wilentz: Counsel thanks the Court for the suggestion.

By Mr. Wilentz:

Q. Now, have you the two bottom pieces to which counsel says he has no objection, separate from this photograph? A. Yes, I have a separate photograph.

Q. Now we will take down S-230 for the moment and will you get those two pieces?

Mr. Wilentz: Excuse me. Will you mark this S-231 for Identification, is that it?

The Reporter: Yes, it is.

Mr. Pope: Mark it in evidence.

Mr. Wilentz: We offer it in evidence and if there is no objection, will you permit it?

(Photograph received in evidence and marked State's Exhibit S-231.)

Mr. Pope: That is a photograph, as we understand it, of two ends?

Mr. Wilentz: We will explain it in a moment.

Q. S-231 is a photograph of the grain of the ladder and of the two pieces that we have been talking about, is that so? A. Yes.

Q. Tell us the relationship between the two. A. That lower picture is a photograph of this end of the floor board and you can see this big streak that is on the board on the picture, and you can see, I think, that the grain curves with the convex side up. And we have the same thing there.

Q. Let me ask you just before you proceed, Mr. Koehler, that picture—

Mr. Pope: May I, just a moment, may I place on the record, sir, "there" doesn't mean anything. May we place on the record exactly what that means, the convex referring to the bottom picture on the board.

Q. The bottom of the board?

Mr. Pope: Yes.

Q. As the jury looks at the board from the attic floor, which is indicated by those words on there, they are looking at this part of S-226, are they not? A. Yes.

Q. In exactly the same position as I am indicating to the jury now? A. Yes.

Q. And that is—what do you call this? A. The pitch streak.

Q. A pitched streak? A. Yes.

Q. And the pitched streak you refer to as indicated on S-226 right at the bottom where I have my finger, is that so? A. Yes.

Q. That is connected with a—what do you call that, a knot? A. That is a knot.

Q. So that the pitched streak, since the knot does not show, leads from the knot on S-226 to this portion of the board from the attic floor. A. Yes.

Q. All right. Now, you started to tell us about the grain and the convex what? A. The convex side of the annual rings is up here.

Q. All right. Now proceed with your description. A. In order to get a picture of the two

adjoining ends it was necessary to tip the rail back and over.

Q. Which rail? A. Rail 16.

Q. The ladder rail? A. Yes.

Q. Just refer to it as the ladder rail. A. The ladder rail, to turn it back over on top of the floor board so that they could take a picture of the two at the same time, and that accounts for the fact that the rings seem to curve in the other direction in this ladder rail, but that is just because it has been turned over on its back.

Q. Yes, sir. A. Now, I want to point out the similarity between those two photographs, that is the photograph of the ladder rail, the end of the ladder rail, and the end of the floor board. You will notice that in general, these curved lines here, those are the annual rings.

Q. Annual, do you call them? A. Annual rings,—a tree each year produces a layer of wood under the bark and those are known as the annual rings, and it is by means of those rings that the rate of growth and the age of the tree can be determined, and that is, naturally they have to be curved because they go around the tree. There are the same number of annual rings in the floor board, counting it across it the most direct manner, as there are in the rail.

Q. Does that indicate that the two boards are of the same age? A. That indicates that it took the same number of years to produce that much growth. Furthermore than that, the variation in the width of the rings is the same. You will notice that there are three narrow rings right from in here where I point with my pencil—I will mark them (Witness marks exhibit) and toward the lower side, the next two are heavier and on the upper side the next two are heavier. Now, in this other picture of the end of the rail

we also have three narrow annual rings following each other and the next two rings on the convex side in the bottom in this case, and is in the top on the floor board are wider. And the two rings on the other side or concave side of the narrow ones are wider again, just as we have in this floor board.

There is one apparent inconsistency. In this portion of the floor board to the right the wings are wider and distorted than they are in this piece, this end of the ladder rail; but that is due to a knot.

Q. Just wait a minute now. That knot isn't in evidence. Is that best shown on the next—

Mr. Wilentz: S-231, we will say, for Identification?

The Reporter: It is in evidence.

Mr. Wilentz: I know, but I am offering another one. What number will you give it?

The Reporter: S-232 for Identification.

Q. Can you show it on S-232 for Identification? A. Yes. This is the knot right here, at that end of the floor boards.

(Photograph marked State Exhibit S-232 for Identification.)

Q. And that is the knot you are talking about? A. Yes, sir.

Q. Proceed from there, please. A. Knots distort the grain and the closer you get to the knot, the more the grain is distorted, hence the grain

is greatly distorted in this corner of the floor board. You will notice, however, that the annual rings on this corresponding corner of the rail are also wider, showing that there was some factor influencing their growth right there. Now that in my opinion is the influence of this knot extended over into the end of the rail, but the grain is not distorted so much in the rail, because it was farther away from the knot there.

By Mr. Wilentz:

Q. Now, will you show us how the grain joins there, how in your opinion that grain was joined: have you got an exhibit for that purpose? A. I will use this right here.

Mr. Wilentz: Counsel consents to S-232 for Identification being in evidence.

(Photograph of knot in board, heretofore marked State Exhibit S-232 for Identification, now received in evidence and marked State Exhibit S-232.)

A. (continued.) I can make this a little clearer if you want me to.

Q. I want you to. Please don't let me hurry you. If I miss something I want you to tell me about it. A. To bring out more clearly the similarity between these growth rings in the rail and in the floor board I will take another photograph, which is a duplicate of that, made of the same negative and to the same scale and show you that that can be matched up with this one perfectly.

Mr. Wilentz: We offer it. You say it is—

Mr. Pope: No different?

The Witness: No different. Made of the same negative and the same scale.

By Mr. Wilentz:

Q. Why do you need two? A. I want to superimpose part of one over the other.

Q. What is the difference between S-231 and what I am offering now? A. The same thing.

Q. Well, one seems to be a little larger. I mean— Are they the same? Oh, they are the same thing.

Mr. Wilentz: Well then, we offer it, it being the same as S-231.

(Photograph of board received in evidence and marked State Exhibit S-233.)

The Court: There being no objection, it is admitted in evidence.

Mr. Pope: No; none.

By Mr. Wilentz:

Q. Now, Mr. Koehler, will you explain the purpose of this last exhibit.

Mr. Pope: You are not going to destroy the exhibit, are you, by cutting it?

The Witness: I have to do that for this purpose—

Q. When you start operating on this you must

tell us what it is all about. You are cutting off no part of the ladder, are you, or no part of the wood? A. Yes. I want to cut off a piece of this picture and superimpose it on that.

Q. All right. Now, in order to make this explanation, is it necessary for you to cut Exhibit S-233, of which we have S-231, an identical copy? A. There is—

Mr. Wilentz: Is there any objection?

Mr. Pope: Let him go ahead until I see what he is going to do. Then if I want to object, I will do so.

(Witness proceeds to demonstrate by cutting exhibit.)

A. I will take this picture of the end of the rail and cut it through the middle. Now I will take a portion of this picture and superimpose it upon the floor board.

Q. Take your time. What do you want? A. Thumbtacks.

Court Crier Hann: Here are some.

A. Now by taking these three narrow rings on this picture of the rail, and superimposing them over the three narrow rings of the picture of the floor board, you will see there is a practically perfect match.

Mr. Wilentz: Can your Honor see this?

The Court: Yes, I see it.

Mr. Wilentz: All right, sir.

A. (continuing.) Now that to my mind in itself proves conclusively that these two pieces of wood were at one time one piece, on account of the practically perfect match you can get between the two.

Q. Will you just come over here a little bit please? Right there, I think, will be all right. Now will you follow the grain from the board from the attic floor on S-231, and show us what you consider to be the perfect match as the grain proceeds into S-233, the one being the board from the attic floor, the other being the board from the ladder rail; follow it with a pointer for the jury. A. Here are the three narrow annual rings in the floor board that I referred to. These are the corresponding annual rings that I have marked over here. (Indicating.) Now you can see how not only the curvature but the width of the rings follow right through from one to the other. You can see how these two wider rings below these three narrow ones are also found in the ladder rail.

Q. How do you explain the difference in color? There seems to be a difference in the color. A. This ladder rail had been processed for finger prints and some of the liquid ran into the end grain of the wood.

Mr. Pope: Do you know that?

The Witness: I saw the material on it, that is the silver nitrate stained on it.

By Mr. Wilentz:

Q. Just a minute. Do you know the effect of silver nitrate upon wood, this type of wood? A. Yes.

Q. Does it discolor it somewhat? A. Yes.
Q. To a darker hue or lighter hue? A. Darker.
Q. Would that explain the difference between the two? A. Yes.
Q. All right. Have you completed your comparison of the grain, the following of the grain of one into the other or do you want to proceed further? A. I now will show you how that same grain connects up on the top surface of these two boards. As I said before, there was a piece missing between the two, about an inch and a quarter wide, but I can connect up the corresponding grain.

Mr. Pope: I object to this unless the gentleman saw the missing piece that was about an inch and a quarter wide or can account for it. I object to his testifying that there is any matching of the grain between these two boards. It seems quite obvious that you could take almost any piece of North Carolina pine showing that general grain and draw them far enough apart and together and manipulate them so you might get a comparative continuity of grain. It is that missing piece, sir, that we object to.

The Court: Well, perhaps the witness is going to testify about that. I don't know what he is going to testify to.

Mr. Pope: Then I think he should testify to that first.

By Mr. Wilentz:

Q. Tell us how you connect those two pieces,

how you explain— I withdraw that. You have testified that in your opinion that was, at one time, one and the same piece of lumber. A. Yes.

Q. Now, you indicate to us just about the relative positions with a piece missing. A. Yes.

Q. Can you explain to us how those pieces were connected? Do these boards indicate it to you?

Mr. Pope: Well, I object to that.

Q. Does your experience tell you how they were connected? A. Yes.

Mr. Pope: I object to any expression of opinion as to whether or not these two boards were at one time a part of one board, unless the gentleman will tell us what he knows about the missing piece an inch and a quarter wide.

Mr. Wilentz: Well, we will, if you will let us.

Mr. Pope: Let him tell us.

Q. Do you know how they were connected? A. Yes.

Q. All right, tell us. A. That is obvious.

Mr. Pope: No, first off, I want to know about the missing piece, your Honor.

Mr. Wilentz: Oh, now, just a minute.

The Court: He is telling you that they were connected originally and I suppose he is probably going to be interrogated as to

the sort of missing link there is between the two boards.

Q. Do you know how they were connected?
A. Yes.

Q. All right; tell us.

Mr. Pope: May I ask him just one question?

The Court: Yes, you may ask him.

By Mr. Pope:

Q. Did you ever see the missing piece that is unaccounted for?

Mr. Wilentz: Well, of course—

A. No.
Q. You never saw it? A. No.

Mr. Pope: Then I object to it.

The Court: My suggestion is that the witness may be interrogated as to whether or no he knows that there was a missing link there originally.

By Mr. Wilentz:

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?

Mr. Pope: I object to the form of the question. It is not from his experience or from his investigation. It is from his knowledge.

Mr. Wilentz: Well, does he gain the knowledge from that? That is the question.

Mr. Pope: Well, he can't gain the knowledge from that.

Mr. Wilentz: I disagree with you.

The Court: I will overrule the objection.

Mr. Pope: Exception.

The Court: Take your exception.

(Exception allowed and same is signed and sealed accordingly.

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. Will you answer the question. A. Yes.

Q. All right. Now tell us about it, please, just how they were connected then, since you say you know it. A. These three narrow annual rings in the two end views of these two boards—

Q. Referring to S-231 and S-233. A. Yes.

Q. Go ahead. A. In my mind are a means of showing which rings were originally connected, because there is a series of three narrow rings in both of them.

Q. Yes. A. Now, those rings do not run out

to the surface. Therefore, I cannot connect them up on the surface. So I will count out from there to the fifth ring beyond. It is one, two, three, four, five. That one runs out to the surface. And I will do the same on the other ones; I will do that on this one; one, two, three, four, five. That is the one there.

Q. When you are talking about the surface you are talking about that portion of the lumber— A. Yes.

Q. —which is shown on S-232? A. Yes.

Q. Aren't you? A. The broad surface.

Q. Yes, sir.

Mr. Pope: The face.

Mr. Wilentz: The face, that is right.

A. Now, I will mark those same rings on here. This ring right here is the fifth one out from this rail.

Q. On this one here? A. Yes.

Q. That is the fifth ring then on S-233? A. That is the fifth one.

Q. Yes, sir. A. And on this board, this ring right here is the fifth one out from those three narrow ones.

Q. You are showing now on the added board, S-226, the fifth—shown on 231—the fifth of that shown on 231, is that it? A. Yes.

Q. All right. A. I will connect those up. Now they are the corresponding rings. Now that same ring goes around here on the other side, over here, and on the floor board, that fifth ring out is over there. I connect them up. Now I connect up the rest of the rings because they must follow. This ring makes no connection over here. It just

makes a loop there. And the others have to follow in sequence.

Now that in my opinion shows a perfectly logical connection, looks perfectly natural. There is nothing inconsistent about that between those two boards.

Q. I notice that the ladder rail is not as wide as the attic boards. Will you explain that, if you can tell from an examination of the two? A. In examining this ladder rail I noticed that both edges were planed with a hand plane. The plane was not in very good condition and left little ridges, and also these ridges were wabbly over the end, showing that both edges were planed with a hand plane.

Q. I want to show you an exhibit in this case, S-177. Can you tell whether or not S-177 is the plane that was used in planing the ladder rail? A. It was.

Q. Is there any question in your mind about it? A. Not the least.

Q. Now, let me ask you this: why do you say it, will you explain it. A. Because on the ladder rail there are a number of ridges of different size and when I plane a piece of wood with that plane it makes similar ridges of the same size and same spacing apart as is found on the ladder rail.

Q. Would any other plane in your opinion make those ridges and marks? A. No, that would be out of the question.

Mr. Pope: Without— Well, I submit, —well, he has answered it.

Q. Why, will you take a piece of wood—have you got an extra piece of wood here not connected with this case at all? A. Yes.

Q. And take this plane, plane that piece of

wood and show this jury the marks that it shows on that piece. A. Yes.

Q. And then show them the marks that you say correspond with the piece of the ladder. A. Yes, sir, I also have photographs of those marks.

Mr. Pope: Well, I object to the question, sir, and object to the demonstration, because there is no evidence in this case that the bit of that plane has not been used since it was found in the Hauptmann house and that the bit is in the same condition that it was when it was taken from the house, it has been here, there, and everywhere in the meantime.

Mr. Wilentz: Well, if counsel—

The Court: If counsel,—the witness has already said that he found certain marks indicated when a certain plane was operated on the ladder.

Mr. Pope: Then I think that is sufficient.

The Court: Well, it may be so, but I am not sure that they haven't a right to demonstrate that.

Mr. Pope: We think they have not, sir, under the circumstances—

The Court: You think they have not?

Mr. Pope: —and under the state of the evidence as it stands now at the present time.

The Court: Well, I won't deny them that right.

Mr. Pope: May we have an exception?

The Court: You may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

By Mr. Wilentz:

Q. Will you please take this plane, S-177, and demonstrate to the jury what you mean by plane marks. A. I will take a piece of wood which has previously been planed by a machine planer and is practically smooth. Now I will plane that with this hand plane and then make an impression of the marks made by that plane and also an impression of similar marks on the rail or some of the rungs of this ladder and show their similarity.

Mr. Pope: May I ask the witness a question at this point, sir?

The Court: Certainly.

By Mr. Pope:

Q. What kind of wood is that you are going to plane? A. This is Ponderosa Pine.

Q. That is different and much softer than North Carolina pine, different in grain and texture? A. It is different from North Carolina pine.

Mr. Pope: I submit if we are going to have any demonstrations at all, we ought to have a piece of North Carolina pine brought into court and a piece of North Carolina pine planed, not a piece of nice soft pine, or nice soft poplar or something like that.

By Mr. Wilentz:

Q. Have you a piece of North Carolina pine here that you might use? A. I haven't got a piece that I could clamp down very well, but if I may offer the suggestion—

Mr. Pope: We don't want any suggestions from the witness.

Mr. Wilentz: Just a minute, now.

The Court: Let the Attorney General examine him. He may find out something from him which may be of value.

Mr. Wilentz: What suggestion did you say you have?

Mr. Pope: I object to the question.

Mr. Wilentz: Counsel wants North Carolina pine. I am trying to meet his objection, your Honor, and that is the only purpose. Have you something in the courtroom here, N. C. pine instead of what you proposed to use a minute ago?

The Witness: No, that was not what I was going to suggest.

Q. What could you use? A. The same plane marks, hand plane marks occur on the rungs of this ladder and they are made of Ponderosa pine.

Q. That is fine. You mean then that the rungs of this ladder, you mean those little pieces that connect are made of Ponderosa pine? A. Yes.

Q. And that is exactly the same type of wood as you have here? A. Yes.

Q. Were there plane marks and are there plane marks upon this Ponderosa pine? A. Yes.

Q. Are the plane marks made by the plane that is in evidence? A. Yes.

Q. Now, will you show us the plane marks on this?

Mr. Pope: Wait a minute.

Q. On this Ponderosa pine?

Mr. Pope: May I—

Mr. Wilentz: Just a minute, please.

The Court: Well, it seems rather irregular. Why interrogate him every minute?

Mr. Pope: I want to find out about this Ponderosa pine, where it came from.

Mr. Wilentz: Suppose counsel waits until the State is through with its investigation, rather than continuously interrupt?

Mr. Pope: I may not object to his demonstration—

Mr. Wilentz: I am not interested in whether he objects to the demonstration.

Mr. Pope: Then I object until it has been established that this piece of Ponderosa pine came from the same pine forest or the same general locality as the alleged Ponderosa pine in the ladder came from.

The Court: He has already testified that he is now proposing to demonstrate with the same quality of wood—I don't know—

Mr. Pope: He hasn't said that.

The Court: No? Suppose you find out about it. I don't know what kind of wood it is.

Q. Is the piece of wood upon which you propose to make the demonstration the same type, the same quality of wood that makes up these rungs of the ladder? A. Yes.

Q. No different? A. No.

Q. No trick about this, is there? A. No.

Q. The same type of wood. A. Yes.

Q. The same type of grain? A. Yes.

Q. The same strength? A. Approximately.

Q. Approximately the same? A. Yes.

Q. Of course you don't know whether it came as a part of the same tree, do you? A. No, not of the same tree.

Q. Ponderosa pine, it is, isn't it? A. Yes.

Q. The rungs in the ladder are part of Ponderosa pine. A. Yes.

Q. Will a demonstration of the plane upon the piece which you propose to use have the same

force and effect as if you used it upon the very rungs of the ladder? A. It will.

Mr. Wilentz: Now may we proceed?

The Court: You may proceed, Mr. Attorney General.

Mr. Wilentz: All right, sir.

Q. Now will you show the jury what you mean?

Mr. Pope: Well, I object to the question because it hasn't been shown yet as to where this Ponderosa pine came from, whether it came from the same section of the world as the other did or not. There is a difference in Ponderosa pine.

The Court: I will overrule the objection.

Mr. Pope: May I 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. Have you the plane and will you give us a demonstration? A. Yes. In order to make an impression of these plane marks, I employ a very simple method that I learned when I was a youngster. I used to put a piece of paper over a coin and rub a pencil back and forth over the

paper and get an impression of the coin on the paper. I can do that same thing by putting a piece of paper over the plane surface, rubbing a pencil back and forth, and getting an impression of these marks made by the hand plane. Before I do that, however, I will take this piece of wood before I plane it and see what we get, so as to have something for comparison.

Now I will mark this piece of paper before planing in court.

Q. You have marked it you say? A. I will mark it before planing in court.

Q. Wait a minute, let me give it to the stenographer and let him mark it, will that be all right, sir, serve the same purpose? A. Certainly.

Mr. Wilentz: Right about he is writing here. Will you just put your stamp for identification on that. Will that interfere with your demonstration?

The Witness: Not at all.

Mr. Wilentz: All right, will you mark it there?

The Reporter: S-234 for Identification.

(Paper referred to was marked State Exhibit S-234 for Identification.)

The Witness: If it is all right, your Honor, I would like to make the demonstration here, because this seems to be a substantial thing to work on (indicating the Judge's bench).

The Court: All right, so far as I am concerned.

Q. All right, sir. Mr. Koehler, if you want a little time now, we might ask for a recess, if it will take you a few minutes to get these pieces together instead of asking for it a little later.

10 A. It won't take long if it works all right the first time. This plane is in such bad condition, I might have to try it a couple of times to get a satisfactory mark.

Q. Would you rather have a recess now if the Court will permit it for five or ten minutes now? A. I would rather have it a few minutes later.

Q. All right, go ahead, sir. A. I take it you wouldn't want me to do this planing during the recess time.

20 Q. No, I want you to do it right here in the room. A. Now, before planing the top edge of this piece of wood, I will make some marks on there with a pencil to be sure that we can see that the plane takes something off. (The witness proceeded with his demonstration.) On this one end you can see that all the blue marks have been removed. That means that the planer took off a complete shaving all the way across the piece of wood. I will now proceed to make an im-

30 pression of the marks made at that point. (Demonstrates.)

Mr. Wilentz: Will you let me mark that for identification. I offer this paper for identification.

(Paper marked State Exhibit S-235 for Identification.)

40 Q. Is the paper S-235 for Identification the pa-

per that was applied after the planing? A. Yes, sir.

Q. To the object that was planed? A. Yes.

Q. Let me ask you, Mr. Koehler, before you proceed any further: is there a difference in the impression that comes before the planing as shown on S-234 and the planing as shown on S-235? A. There certainly is.

Q. Take them and show them to the jury, please. You have to get close so that they can see it. A. This sample which is an impression of the piece of wood I just planed, you can notice distinct lines running across there. You can see it better by looking at it slanting over the paper. See those lines there. This here we have a few curved lines in the grain of the wood.

Q. One has curved lines you say due to the grain? A. Yes.

Q. That is the one, 234, before the planing you mean? A. Yes.

Q. And what does the other show as distinguished between— A. It shows a different series of lines.

Q. Different series of lines? Now, will you explain the marks of the plane? A. Now I will next proceed to make a similar impression of the hand plane marks on one of the rungs of the ladder.

Q. What is that again, Mr. Koehler? A. I will proceed to make an impression of the hand plane marks on one of the rungs of the ladder.

Mr. Wilentz: I appreciate that each one of the jurors has not had an opportunity to see this but I take it that it will be given to them when they retire to the jury room. Suppose we pass it around. We have the time anyway so we might as well pass it around.

A. That was rung No. 10. Do you want to mark this as an impression taken from rung No. 10?

Q. Rung No. 10 on Section 3? A. Yes.

Q. Of Exhibit S-211.

Mr. Pope: Will you have it marked just that way, rung No. 10?

Mr. Wilentz: Rung No. 10 of Section 3 of Exhibit 211, I think it is.

The Reporter: S-237 for identification.

(Paper marked State Exhibit S-237 for Identification.)

Mr. Wilentz: S-237 for identification. Do you want to put at the bottom "Rung 10, Section 3"?

No objection, your Honor?

The Court: No.

Mr. Wilentz: "Rung 10, Section 3." That is all right.

(The Reporter marked the exhibits requested.)

The Witness: I might say, Mr. Attorney General that it will be necessary to trim the ends off of this. Will that be satisfactory?

Q. Well, trim them; whatever is necessary, do.

A. Can you make that mark on the other side of this? I want to cut it off.

Q. Yes, cut off whatever you want to cut off and we will have the mark made over again. A. (The witness cuts the paper.)

Q. Now is this the exhibit? A. Yes.

Q. If we put that on there it will be all right? A. Yes.

Q. If we put it on the back, will it interfere with you? A. Not over the blue part.

Mr. Wilentz: Well, supposing you put it alongside. Supposing you just mark it without a stamp, at the bottom.

Mr. Pope: Mark it in evidence.

Mr. Wilentz: Exhibit S-237 in evidence.

(Paper marked S-237 for Identification was received in evidence as Exhibit S-237.)

Mr. Wilentz: All right, Exhibit S-237 in evidence. Now just put underneath that, "Rung 10, Section 3".

(The reporter marked the exhibit as requested.)

Mr. Wilentz: All right.

Mr. Pope: When you get through with it I want to see it.

A. I will match them end to end.

Mr. Wilentz: Let me mark them in evidence; I understand counsel is satisfied to

have them marked in evidence instead of for identification?

Mr. Pope: That is all right.

Mr. Wilentz: 234?

The Reporter: Exhibit S-234.

(State Exhibit S-234 for Identification is now received in evidence and so marked.)

Mr. Wilentz: And the other one, S-235?

The Reporter: Exhibit S-235.

(State Exhibit S-235 for Identification is now received in evidence and so marked.)

By Mr. Wilentz:

Q. Now, as I understand it, then, you have these three pieces; one is S-234, that is the impression of the piece of wood you use for demonstration purposes; the next is S-235, the impression from the same piece of wood after it had been planed by the plane in evidence? A. Yes.

Q. Now, S-237, the impression from the rung of the ladder, known as Rung 10, Section 3. A. Yes.

Q. Now, will you please proceed with your explanation and demonstration? A. Now I have those three impressions fastened to one card. This white portion here was made on the block of wood before planing. This piece in the middle was made on the piece of wood after I planed it here and this impression was taken off from one of the rungs of the ladder, rung Number 10. Now

if you will look along there, sight along there, you can see a number of lines on this impression from the ladder rung which coincide exactly with similar lines of these impressions made on the wood which I have planed. Look along it in a diagonal manner that way (indicating).

Q. How far do they correspond? A. All the way.

Q. Well, do they proceed up to the part before it is planed? A. No. Up to that portion.

Q. That is what I mean. You have three portions here. Pardon me a minute. When you say these lines run, do they run all the way up or stop right there (indicating)? A. They stop right there.

Q. As I understand it, your testimony is that the lines and marks made by the planer correspond on the Exhibit 235 and 236, one being the ladder rung and the other being the part that was planed in court by you. A. Yes, sir.

Q. Does that correspond as it proceeds into the piece of wood before it was planed? A. No. There is no similarity at all.

Q. So then I understand the two bottom exhibits correspond and the top one doesn't? A. Yes.

Q. Let me ask you: can you show it better by a larger photographic reproduction? A. Yes, if I can—

Q. Of a similar test made by you? A. Yes.

Q. Under photographs made by you? A. Yes.

Mr. Wilentz: If there is no objection, for the benefit of everybody, I would like to offer this exhibit.

Q. Is this the exhibit that you made for the purposes of better demonstrating this test? A. This

exhibit demonstrates marks made by the plane, various planes found in the Bruno Hauptmann's premises.

Q. Does it show particularly this plane? A. Yes.

Q. Which is in evidence? A. Yes.

Q. Which boards on here—

Mr. Wilentz: Will you mark this for Identification first?

(Photograph marked State Exhibit S-238 for Identification.)

Q. The pieces of wood that are shown here, what kind of wood are they? A. All Ponderosa pine.

Q. Ponderosa pine. Did you use those pieces of wood and make a test with the plane that is in evidence? A. Yes. The top two pieces—

Q. The top two pieces. Limit yourself for the time being to the two top pieces.

Mr. Wilentz: Can I offer that portion in evidence without objection?

A. I have the same ones on a different picture.

Q. All right. Let's have that then.

Are these pieces of wood Ponderosa pine? A. These two pieces are Ponderosa pine that I planed with this plane that is in evidence.

Q. Now, the top, you have got Rung No. 10, does that mean rung No. 10 of the ladder? A. Yes.

Q. Rung No. 8, is that a part of the ladder? A. Yes.

Q. Rung No. 16, is that a part of the ladder? A. That is the rail.

Q. Bracket from the garage, is that the bracket which is in evidence? A. Yes.
Q. All right.

Mr. Wilentz: Now let's give this a number.

The Reporter: Is that to be substituted for the lower one?

Mr. Wilentz: Yes, please.

The Reporter: That will be S-238 for Identification.

Mr. Wilentz: S. 238 for Identification.

(Exhibit referred to was marked State Exhibit S-238 for Identification.)

Q. Referring to S-238 for—

Mr. Pope: Well, just a moment, I object to the exhibit.

Mr. Pope: I object to the exhibit unless it be shown that the Ponderosa pine used in the demonstration came from the same forest or the same section of the country that the Ponderosa pine which is in the ladder.

The Witness: Well, it undoubtedly—Shall I answer that?

By Mr. Wilentz:

Q. Did they come from the same section? A.

It undoubtedly came from the section where Ponderosa pine grows.

Q. Where does Ponderosa pine grow? A. It grows in the Western States.

Q. None in the Eastern States? A. No.

Q. None in the Southern States? A. No.

Q. What States do you call the Western States? A. From the Great Plains westward.

Q. Tell us something about Ponderosa pine. A. Ponderosa pine is one of the most common species of pine—in fact, it is the most common species of pine in this country. It grows throughout the forested area from the Great Plains westward to the Pacific Ocean. It is a relatively soft grade of pine and is used extensively in the East and all through the country for a great many purposes.

Q. But it comes from the West? A. Yes.

Q. I see. And would a test upon any piece of Ponderosa pine from the west correctly demonstrate markings that would be used on the rungs of this ladder? A. Yes.

Q. Which rungs are Ponderosa pine. A. Yes.

Q. Would it be accurate? A. Yes.

Q. Would the impressions of the plane in evidence upon Ponderosa pine, any Ponderosa pine from the West be the same as they would be upon the rungs of this ladder? A. Yes.

Q. The exhibit you have, except for the piece at the bottom, or are there two pieces? A. Two pieces.

Q. Represent correct photographic reproductions of the rails in evidence and the bracket in evidence? A. Yes.

Q. All right.

The Court: Now, Mr. Attorney General, perhaps it would be better to dispose of Mr. Pope's objection.

Mr. Wilentz: Yes, sir.

The Court: Do you desire to press it any further, Mr. Pope?

Mr. Pope: Yes, sir.

The Court: I will overrule it.

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.)

Mr. Wilentz: We offer it in evidence.

The Reporter: 238 in evidence.

(Photograph received in evidence and marked State's Exhibit S-238.)

By Mr. Wilentz:

Q. Now please show us the plane marks upon the bracket from the garage, if there are any there, on rail 16, rung 8 and rung 10, if there are any impressions from the plane which is in evidence and I think is marked S-177? A. Beginning with the two bottom pieces which are Ponderosa pine, which I planed with this plane which is in evidence, because the plane is so wide and in such poor condition, it is not possible to get a complete

cut across the full width of the plane on one board.

Q. You are referring to this plane S-177? A. Yes, sir. I took two different boards and got different portions of the knife to cut over parts of the boards at least. So these lines that you see along here are ridges which were left by that Plane No. 177 on account of the nicks or little breaks in the knife of the plane.

Q. Just a minute. Are you talking about the knife which protrudes and which is shown through here? A. Yes.

Q. You say there are nicks? A. Yes.

Q. All right. A. These photographs of rail 16, rung No. 8 and rung No. 10 show edges on those various pieces respectively and they also show ridges and the way they do not run parallel with the edge, they were made by hand plane and not due to a machine.

Now, it is possible by careful study to compare the marks on these pieces which I planed with this plane in evidence, with the marks on these rungs and rail, but a simpler method is to cut out portions of these pictures and match them end to end, and that is what I have done as shown in the next picture.

This picture is a portion, or portions of a duplicate of this photograph, cut out, and those portions are pasted on here end to end. Here is one of these Ponderosa pine pieces, which I planed.

Q. Shown on S-238? A. That is the upper one in Exhibit S-238 and here is the other one at this end, that is the lower one in S-238. In between we have portions of these photographs of rung 8, rung 10, and rail 16.

Now if you take that and look along it in a—

Mr. Wilentz: Give me a number for it.

The Reporter: S-239 for identification.

A. (Continued.) In a brief manner you will see that those lines run through in perfect alignment.

Mr. Wilentz: Exhibiting to the jury S-239 for identification.

We will offer it in evidence. It is a correct reproduction of other parts.

(The jury examined the photograph.)

Mr. Wilentz: If your Honor please, when the jury is finished inspecting this exhibit may we ask for a few minutes until we get some air in the court room and a little rest?

Mr. Pope: I second the motion.

(The photograph was received in evidence and marked State Exhibit S-239.)

The Court: Are you ready now for your recess?

Mr. Wilentz: Yes, if your Honor please.

The Court: We will take a recess now for five minutes.

(Whereupon at 3:14 o'clock a five minute recess was taken.)

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

The Court: Counsel may proceed.

By Mr. Wilentz:

Q. My recollection is that there was exhibited to the jury just before our recess, Exhibit S-239 with your explanation that the grain coincided on each piece as you exhibited it, is that so? A. Not the grain, the marks made by the plane.

Q. The marks; are those the marks as they join together as you exhibited it? A. Yes.

Q. And you have connected, as I understand it, one piece of Ponderosa pine upon which you claim the marks are shown, then next you put a piece of rung No. 8 of the ladder, which is in evidence, next a piece of rung No. 10. A. Yes.

Q. Then you have a piece in here labeled Rail No. 16. Is that the rail of the ladder? A. Yes.

Q. And then another piece of Ponderosa pine, which is not a part of the ladder? A. Yes.

Q. So that this exhibit is intended by you to show the plane marks on each one of those pieces as they are connected by you? A. Yes.

Q. And is it your understanding that they are connected and show those plane marks identically on each piece? A. Yes, sir.

Q. Now let me ask you something. These plane marks which you show on this exhibit, S-239, are they plane marks made from the plane which is in evidence as S-177? A. Yes, sir.

Q. Do they correctly show the plane marks on these rungs that you have here, and on the rail? A. Yes.

Mr. Pope: Won't you let the witness testify?

Mr. Wilentz: Yes.

Q. Tell me, please, what plane it was that was used to plane the rungs 8 and 10 and rail number 16. A. This plane here (indicating), S-172.

Q. 177 I think it is. A. Yes, 177.

Q. We have in evidence here, sir— Just for the moment, I notice here too that rung number 10 shown on here, that there is a little difference in color of the various pieces. Is there any significance to it that you know of? A. No particular significance. The lighter parts had been stained with finger print solution, and then you get differences in density or darkness of a picture sometimes just in printing, the photographic variation.

Q. I want to show you Exhibit S-227, which is in evidence and regarding which there was testimony that this was a piece of wood which was found in Hauptmann's garage, a part of the garage, as I remember it, some support—tell me whether or not that has any evidence as of a plane, being hand planed? A. Yes, the back edge of this shows marks identical with those on the rungs and rail 16 and on the samples which I planed with this plane.

Q. Tell me what plane was used on this piece of lumber known as S-227?

Mr. Pope: I object to that. He can't do that. He can only guess at it.

Mr. Wilentz: He can't guess at it. He gives us his expert knowledge.

Mr. Pope: He has already described what marks look like on the plane. Now he is asked what plane was used to plane this piece of wood. Unless he was there and saw or knew he can't do anything but guess at it. He may give an opinion, that is all.

The Court: That is what he is giving.

Mr. Pope: No, he isn't—

The Court: Well, he is asked to tell if he knows.

Mr. Pope: Yes. I don't object to that.

The Court: He may tell if he knows.

A. Yes, I know.

Q. Then tell us if you know what plane was used to plane that piece of wood, S-233, is it? A. This plane—

Q. S-227? A. This plane marked S-177 was used to plane the back edge of this bracket.

Mr. Wilentz: Now let me have the chisel, please.

Q. I want to show you State's Exhibit S-210, a chisel. Have you seen that chisel before? A. Yes.

Q. Can you tell whether or not that chisel was used in the construction of the ladder, which is in evidence as S-211, and, if you can, will you tell us about it. A. I can tell whether that size was used.

Q. Whether that size? A. Yes.

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. A. The re—

Mr. Pope: Well, I think we ought to object to that. Of course, if he wants to express his opinion as to whether this identical chisel was used, why, perhaps his

opinion may be expressed; but to say that an ordinary three-quarter inch chisel was used to make the ladder doesn't connect it with this chisel in any way.

The Court: Well, it may be a circumstance for the consideration of the jury.

Mr. Pope: Well, if this chisel were found in Hauptmann's garage it might be a circumstance, but it was found some forty miles away from there.

The Court: Yes. And it was found, was it not, under the southwest window of this nursery?

Mr. Pope: Somewhere on the Lindbergh property, I don't remember where. It is an ordinary three-quarter inch chisel.

The Court: Where the ransom note was left, which has been traced to this defendant.

Mr. Pope: We don't agree to that.

The Court: I know you don't, but I am telling you what the evidence tends to show. Therefore I think that these pieces of circumstances must be given over to the jury to consider. That is my ruling in the matter.

Mr. Pope: May we have an exception?

The Court: Yes, you may have an exception.

chisel, one inch, and one and a half, and possibly two inch chisel.

Q. Tell me, please, if anyone knows, the number of this exhibit, the tool chest.

The Reporter: It is on the tag.

Mr. Wilentz: Is it on the tag?

Mr. Peacock: S-196.

Q. How many altogether did you say, sizes? A. Five or six.

Q. What sizes did you give us again now? A. Quarter inch, half inch, three-quarter inch, inch, inch and a half, and two inch.

Q. Take a look at the chisels found in the Hauptmann place and tell me whether there is a three-quarter inch chisel there or whether there is one missing.

Mr. Pope: Well, I object to that part of the question as to whether one is missing.

Mr. Wilentz: I think that is objectionable. I will withdraw that.

Q. Tell us what size chisels there are there. Take your time, Mr. Koehler. Can I help you here? A. There is a quarter inch chisel, a half inch chisel, and an inch and a half chisel.

Q. Is there any three-quarter inch chisel in the chest that was found in Hauptmann's home?

Mr. Pope: Is there any three-quarter inch chisel in the lot displayed there, not found in Hauptmann's home?

chisel, one inch, and one and a half, and possibly two inch chisel.

Q. Tell me, please, if anyone knows, the number of this exhibit, the tool chest.

The Reporter: It is on the tag.

Mr. Wilentz: Is it on the tag?

Mr. Peacock: S-196.

Q. How many altogether did you say, sizes? A. Five or six.

Q. What sizes did you give us again now? A. Quarter inch, half inch, three-quarter inch, inch, inch and a half, and two inch.

Q. Take a look at the chisels found in the Hauptmann place and tell me whether there is a three-quarter inch chisel there or whether there is one missing.

Mr. Pope: Well, I object to that part of the question as to whether one is missing.

Mr. Wilentz: I think that is objectionable. I will withdraw that.

Q. Tell us what size chisels there are there. Take your time, Mr. Koehler. Can I help you here? A. There is a quarter inch chisel, a half inch chisel, and an inch and a half chisel.

Q. Is there any three-quarter inch chisel in the chest that was found in Hauptmann's home?

Mr. Pope: Is there any three-quarter inch chisel in the lot displayed there, not found in Hauptmann's home?

Q. In the exhibit. A. No.

Q. All right, sir. Now you told us, I think, that a three-quarter inch chisel was used to construct this ladder? A. Yes, sir.

Q. Would you mind telling us why you say that, the basis for your opinion? A. May I show you some photographs?

Q. Yes, if you have photographs that will better show it. Before you do that, will you just answer one question for me: Will you take a look at the quarter inch chisel which is a part of the exhibit heretofore entered, and take a look at the three-quarter inch and let me know whether or not they are the same make, same type of chisels? A. Yes, they are.

Q. What kind of chisels are they? A. They are Buck chisels, so-called Buck chisels made by Buck Brothers and the pattern is the same on the two. The milling on the ferrule is identical on the two, the general pattern is the same.

Q. Between the quarter-inch chisel and the three-quarter inch chisel? A. Yes.

Q. They are unlike the other chisels that I have shown? A. Unlike, yes.

Q. Unlike. Now, you were going to show us just a moment ago how you have determined that the three-quarter inch chisel was used in the construction of this ladder. A. Yes.

Q. And you want to show it by this exhibit: is that it? A. Yes.

Q. Does this exhibit show pieces of wood that are a part of this ladder? A. Yes.

Mr. Pope: Just let him tell what it shows.

Mr. Wilentz: I want to know before I offer it.

Q. I notice you have Rail No. 16—what does that mean? A. That means that this is a picture of a portion of Rail 16.

Q. I notice too that there apparently is on this board a picture of some sort of a rule. A. Yes.

Mr. Pope: Square.

Mr. Wilentz: One inch, two inch—

Mr. Pope: Square.

Mr. Wilentz: Square, is it?

Q. Except for that and the words "Rail No. 16" does that show parts of Rail No. 16? A. Yes.

Mr. Wilentz: May I offer it in evidence, please? What number? Mr.—

Mr. Pope: No objection.

The Reporter: Exhibit Number S-240.

(Chart referred to was received in evidence and marked State's Exhibit S-240.)

The Court: No objection. It will be admitted.

Q. All right. Now, give us the demonstration and explanation. A. This is the picture of one of the recesses for the rungs in this rail 16. These recesses were chiseled out and this shows a mark made by the chisel, one side of the chisel went down there and then there is a right angle turn here. Here is a parallel line on this side. This is the corner of the recess right here, so the line

extends, or the mark made by the chisel extends from almost the middle of the rung, not quite the middle of the recess, I mean, over to the very edge of the recess. Now, I superimposed a chisel on there of approximately, that seemed to be approximately that size, I took a three-quarter inch chisel, by superimposing that over that mark—
10 and this picture shows it better than the other one (referring to another chart) and this mark right here, one side you see of the chisel lines up with this edge of the cut and this other side lines up with the edge of it or the corner of the recess. It couldn't have been a wider chisel. Now, this corner of the recess would have prevented that. That three-quarter of an inch chisel, in other words, fits perfectly into that mark made by that chisel.

20 Q. Of course you don't know what three-quarter inch chisel made the mark. A. No.

Q. Your testimony is that a three-quarter inch chisel did it. A. Yes.

Q. Is there a groove there that is shown, I mean, on the ladder that is shown which you say the chisel fits into? A. Yes.

Mr. Wilentz: Will you please mark the exhibit, if there is no objection, in evidence,
30 the one used for illustration?

The Reporter: S-241.

(Exhibit, chart, referred to was received in evidence and marked State Exhibit S-241.)

Mr. Pope: It is understood this chisel used in the demonstration is a chisel be-
40

longing to the witness, but a three-quarter inch chisel.

Mr. Large: No.

Q. The chisel used for demonstration is what? A. A three-quarter inch chisel.

Q. Was it this chisel or some other chisel? A. That chisel.

Q. Was the chisel number S-210 that you used for the purpose of demonstration? A. Yes.

Q. All right, sir. That picture of the chisel shown there on this exhibit, which is number 241, is exhibit S-210, is that it? A. Yes.

Q. Will you take that ladder and show us the impression that was made by the chisel and which you say, into which you say the chisel fits? A. I think it can be shown by this light, it takes a one-sided light—pardon me—yes. Bring that end around and work it on the other side. (Taking ladder before the jury.)

Mr. Wilentz: I want you to walk along nice and slowly and indicate to each juror, I will hold it, now one at a time, and I wish you jurors in back would please lean forward. We need a little more light. Is that the ridge you are talking about right in there (indicating on S-211)?

The Witness: (Indicating.) Yes.

By Mr. Wilentz:

Q. Show the ridge; is that the ridge right here? A. Yes.

Q. Show how the chisel fits in here. A. Indicating.)

Q. Look right over, please, jurors, if you don't mind. The ridge you are talking about is right there, this indentation here? A. Yes.

Q. Show how the chisel fits right in. A. Yes. (Indicating.)

Mr. Pope: Not too much conversation over there. Let him show it.

Mr. Wilentz: I think maybe you are right. If it is objected to, I will desist. That is not really conversation, if your Honor please; that is just youthful enthusiasm.

I should like to present to the jury the two chisels which the witness testified to as being the same make, one found on the Lindbergh premises and one, the testimony is, found in the garage. Just for the purpose of your examination, you can pass them along while we are proceeding to the next course. (Handing exhibits to the jury.)

By Mr. Wilentz:

Q. Mr. Koehler, when did you first come into this case? A. I made my first examination of parts of the ladder in 1932.

Mr. Wilentz: What date was that, please?

The Reporter: May 1932.

Q. May 1932? A. Yes.

Q. So far as salary is concerned, the State of

New Jersey doesn't pay you any money for your work, does it? A. No.

Q. So that since May 1932 you have conducted an investigation with reference to the identity of the wood that makes up this ladder? A. Yes.

Q. The kidnap ladder, we call it. A. Yes.

Q. You know, of course, from the testimony in this case, that the defendant Hauptmann was arrested in September 1934? A. Yes.

Q. Prior to September 1934 and before the day that Hauptmann was arrested had you ascertained where some of the lumber came from? A. Yes.

Q. What date was it? A. November 29th, 1933.

Q. Now in November, 1933, did you determine where some of the lumber that made up this ladder came from? A. Yes.

Q. Where did it come from? A. From the National Lumber & Millwork Company in the Bronx.

Q. Did you go to the National Lumber and Millwork Company in the Bronx in 1933? A. Yes.

Q. Why did you go to this company in 1933? A. I traced some of the lumber in the ladder to the planing mill that dressed it and from the planing mill to the National Lumber & Millwork Company.

Q. All right. Now will you tell us how you traced it? A. I traced it by means of the planer marks made on the lumber when it was planed at the planing mill.

Q. You mean the machine planer marks? A. Yes.

Q. That is, distinguished from the plane in this case? A. Yes.

Q. Where did you go? A. I went to the M. G. & J. J. Dorn Company, McCormick, South Carolina.

Q. How many companies are there that manufacture these planing machines? How many were there in 1932, we will say, and 1931? A. Two in the eastern part of the United States.

Q. Did you make an investigation of the machinery that is built by these planer companies? A. Yes.

Q. And as the result of that investigation, did you find the machine which imposed these planer marks on this ladder? A. I did.

Q. Where did you find the machine? A. At the mill of the M. G. & J. J. Dorn Company, McCormick, South Carolina.

Q. Having found the planer machiner that made these planer marks, did you then follow the lumber that came from that mill, made in the shipment when that planer was used? A. Yes.

Q. How many loads of lumber did you follow, how many shipments? A. About 42.

Q. To various lumber companies in the country? A. Yes.

Q. And finally did you get to this lumber company in the Bronx? A. Yes.

Q. Did you or did you not find lumber there upon which was made planer marks?

Mr. Pope: Why not ask him what he found there?

Q. Yes. Tell us what you found there. I think that is better. A. At the National Lumber & Millwork Company in The Bronx I found one by four North Carolina pine, in which the knife cuts made by the planer were exactly the same width as those on the ladder rail and also there was a defect in the planing on one edge and one side of the rail, which I found on the one by four North Carolina pine in The Bronx yard.

Q. How did you know, how could you know, and how did you know that the defect which was shown on the ladder and which defect you say you also found in lumber in The Bronx lumber yard, the Bronx Lumber & Millwork Company, how did you know that those planer marks were made by the planer you found in the Dorn Company mill? A. That is a long story.

Q. We want the long story. Let's have it. A. I think I had better explain to the jury first what I mean by planer marks.

Q. Yes, sir. A. I have some drawings here which illustrate how a planer makes marks as it dresses lumber. I believe the jury is not familiar with the way these machine planers work, so I have a diagrammatic drawing here of certain essential features of a machine planer. (Diagram placed on wall.) This shows a piece of lumber in here which is being planed. Above this board there is a socalled cutter head, which has knives set into it. There are eight knives shown in this cutter head. Some have six, some four, ten, even twelve. That cutter head revolves as the lumber goes through it, and those knives come around and cut a shaving off the surface of the lumber. There is another cutter head on the lower side with knives set in it, and as that cutter head revolves those knives plane the bottom side of the lumber.

Q. How many knives in that? A. There are eight knives in that one, but that is not necessary in every case. There may be more or less. These two rollers are called the feed rollers. The lumber goes through between those rollers, and is shoved through the machine by them, and the speed at which those feed rollers revolve determines the speed at which the lumber goes through the planer. Now on most planers the speed of the feed rollers can be changed, to a

high speed or medium or low speed, to different rates of speed; but the speed of these cutter heads is always the same.

Now the next picture shows—

Mr. Wilentz: Let us mark that for identification.

Mr. Pope: Mark it in evidence.

Mr. Wilentz: All right.

Mr. Pope: I want to use it.

Mr. Wilentz: We will mark it in evidence.

The Reporter: S-242.

(Diagram received in evidence and marked State's Exhibit S-242.)

Q. All right. Proceed, sir. A. Since these knives go around in a circle, each knife makes a circular cut out of the board. Those cutters are so small we don't ordinarily notice that, but yet that is the case, and as a result, a board which is planed by a machine planer has a wavy appearance. Now if those knives are all in good condition and functioning properly, each one, all of those waves are of the same size.

Suppose one of the knives has a defect in it, like is shown here in knife No. 7, a nick every time that knife comes around it makes a mark there where that nick is. The other knives don't have such a nick in them, so we can tell how often that knife comes around and below this cutter head I have a diagrammatic drawing of a piece of

lumber which shows the circular cuts on the surface and also shows a mark in every cut, marked No. 7; that is, each time this defect comes around. There are eight cuts from one to the other. Here is one, two, three, four, five, six, seven, eight—in other words, every eighth cut like that shows that defect. Once in a while a knife may not be lined up properly with the rest of them, as is shown here for knife No. 5. As a consequence, when it comes around it doesn't make as heavy a cut as the other knives, it makes a narrower cut, and I have shown that here with cut No. 5. You will see cut No. 5 is narrower in each case. And there are eight cuts from one to the other, one, two, three, four, five, six, seven, eight. In other words, every eighth cut is a narrowed cut in that case. Therefore, by examining the surface of a piece of lumber, it usually is possible to tell how many knives there were in the cutter head that dressed the lumber, because as a rule there is something wrong with a knife somewheres, maybe a little nick in it or the knife may be out of line, and so it is possible by examining the surface of a piece of planed lumber in most cases to determine how many knives there were in the cutter head that dressed the lumber. In addition to these knives being in the top and bottom—

Q. Excuse me just one minute. A. Yes.

Mr. Wilentz: The exhibit you have just referred to I offer in evidence. I take it there is no objection.

The Reporter: S-243.

(Chart referred to was received in evidence and marked State's Exhibit S-243.)

Q. I am sorry to interrupt you, Mr. Koehler. Go ahead. A. In addition to these cutter heads planing the top and bottom of a board as it goes through the planer, there are similar cutter heads standing vertically on the two sides of the board and plane the edges of the board as it goes through the planer, so that all four sides of a board are planed as it goes through the planer.

Q. Pardon me just a minute. Do you mean there is a planer operates on the side here? A. Yes, on each side. That is not shown in the photograph.

Q. As well as above and below? A. Yes.

Q. All right. A. Now, the number of knives in those cutter heads that plane the edges may be the same as in the top and bottom cutter heads, but usually they are less. Very often if there are eight knives in the top and bottom cutter heads, there will be six in the side heads, as they are called or, if there are six knives in the top and bottom cutter heads, there will be four in the side heads. Now here I show a photograph of rail number 13 of this ladder, that is one of the rails of the bottom section of the ladder. This is a photograph of a portion of the side of one of these rails. You will notice that there is a periodic mark occurring at regular intervals. That is due to one of the knives not protruding as far as it ought to and every time it came around it didn't make as wide a cut as it should. Consequently I can tell how far that lumber moved through the planer per revolution of these cutter heads. The cutter head dressed the surface. I find in measuring that distance on the lumber itself that that distance is regularly 93 hundredths of an inch.

Q. What does that represent, 93 hundredths of an inch, what does that represent, that distance?

A. We call that revolution marks, it is a mark made every time a certain knife comes around.

Q. All right, sir. A. So this lumber passed through the planer at the rate of 93 hundredths of an inch for every revolution of the cutter head that dressed this surface.

I can also count that there are eight individual knife cuts between those revolution marks, in each case. That means there were eight knives in the cutter head that dressed that surface; and the same is true on the other side of the board. Now, on the edge of the board it is different. The edge of the board shows that the cutter head made one revolution in every eighty-six hundredths of an inch that the lumber went through the planer; eighty-six hundredths of an inch on the edge, and ninety-three hundredths of an inch on the side; and that there were six knives in the cutter heads that dressed the edges.

Q. Could you tell that from the examination of the kidnap ladder rail that you are talking about? A. Yes. I am talking about the examination of this ladder rail.

Q. These revolutions, these marks that you talk about, you are talking about marks and revolutions that were made in machine planing of the lumber that you find in the rail side, as I understand it? A. Yes.

Q. Of the ladder? A. Yes.

Q. All right. A. Therefore, having determined that this lumber passed through the planer at ninety-three hundredths of an inch per revolution of the top and bottom cutter heads, and eighty-six hundredths of an inch per revolution of the side heads, which meant that the side heads were going faster, because the lumber went all at the same rate of speed, and that there were eight knives in the top and bottom heads, and six knives

in the side heads,— now, from an investigation of planers used in this section of the country on North Carolina pine, which is the lumber used in the bottom rails of this ladder, from an investigation of planers used there, I found that comparatively few planers are used in that section of the country having eight knives in the top and bottom heads and six in the side heads. The fact is I made a thorough canvass of all planing mills from New York City to Alabama. There are 1598 altogether, and I found only 25 firms that had a planer with eight knives in the top and bottom cutter heads, and six in side heads. Two of those I could rule out because they did not dress one by four stock, that size. I got samples from the other 23 firms, and I found that only one of those firms made revolution marks of the same spacing as on the ladder rail. All the others made wider or narrower revolution marks.

Q. What firm was that? A. That was the M. G. and J. J. Dorn Company in McCormick, South Carolina.

Q. Were you there personally? A. Yes. I next visited their mill to see if I could definitely determine whether they had dressed this lumber.

And I found that when they ran lumber through their planer with a certain sized feed pulley on that planer it made revolution marks exactly like on that ladder rail.

Q. Was that a standard utensil there? A. No. That feed pulley was not standard.

Q. It was not a standard pulley? A. No.

Q. What kind of a pulley was it and how do you distinguish that particular pulley from the standard pulley? A. That pulley had a diameter of 11 7-16 inch and that is not a standard size pulley for that machine.

Q. Did it as the result of that pulley which is

not standard make a distinctly individualistic mark? A. Yes.

Q. All right, sir. By the way, this picture that is in evidence, S-218, which also shows the Senator in there, Senator Dorn, does that show these cutter heads on it? A. No, that shows the feed pulleys.

Q. Feed pulleys? A. Used on that machine.

Q. In that particular machine, and that particular mill. A. Yes.

Q. All right. Is that the special pulley you are talking about? A. Yes.

Q. The one that the Senator has his hands on. A. Yes.

Q. All right. Now, having found that special pulley, that particular pulley, what next? A. I found that that pulley was purchased in September, 1929; therefore that stock in these two ladder rails must have been dressed between October 1st, 1929, and the time of the kidnaping. I found that they had shipped in all 45 car loads of lumber, consisting in whole or in part of 1 x 4 North Carolina pine during that period, to 25 different firms, some firms receiving more than one car load. Accompanied by Detective Bornmann I visited the various firms who received lumber from the M. G. & J. J. Dorn Company during that period. Now, this lumber in the bottom rails of the ladder showed some peculiar defects, due to an irregularity in the cutting edge of some of the knives in the machine.

Knowing that these knives have to be resharpened periodically, I knew that defect would not be found in all the lumber that was shipped out from that mill.

Q. In other words, you talked about 45 carloads, as I understand it? A. Yes.

Q. Then you found that because it had to be

sharpened from time to time, all those 45 carloads would not show that distinguishing mark? A. That is it.

Q. Some of them would, is that it? A. Yes, sir.

Q. Knowing that you started to trace it further? Tell us about it. A. I would like to show what that distinguishing mark looks like. Here is an edge of the bottom rail of the ladder and here is the edge of a board which I obtained from the National Lumber & Millwork Company. You will notice these waves in there, periodic waves, they are spaced exactly the same distance apart in the two. The thing I have in mind particularly is a little shallow groove, a little difficult to see perhaps, but you can see it in some places, here (indicating), which occurs ever so often. In fact, they are 86-hundredths of an inch apart. That was due to some irregularity in the edge of one knife, and I knew if I could find a shipment in which that irregularity showed up, I could locate the shipment from which these ladder rails were made.

Mr. Wilentz: Just one minute. Will you please give this a number and also the one we had a moment ago. Come over and mark it.

(The two enlarged photographs referred to were received in evidence and marked State's Exhibits S-244 and S-245, respectively.)

Q. As I understand it, the top piece is a piece from rail No. 13 of the ladder? A. Yes.

Q. The bottom is a piece of lumber which you

obtained from the National Lumber & Millwork Company, is that it? A. Yes.

Q. When did you get that piece? A. That piece shown in the picture I got in November, 1933.

Mr. Wilentz: All right. Let's have the last sentence of the gentleman before I interrupted him, before I offered it.

The Reporter: Yes, sir. (The reporter then read the last sentence of the witness' testimony as follows: "That was due to some irregularity in the edge of one knife and I knew if I could find a shipment in which that irregularity showed up I could locate the shipment from which these ladder rails was made.")

Q. All right. A. After visiting a large number of the firms who had received shipments of 1 x 4 North Carolina pine from the M. G. & J. J. Dorn Company over that period, I found a sample of lumber at the yard of the National Lumber & Millwork Company which showed exactly the same defect in the planing on one edge as occurred on the ladder rail; and I also found that there was a defect on the face of the board. In this picture—the top picture is a photograph of one of the ladder rails in the bottom section and the bottom piece is a photograph of a sample from the National Lumber & Millwork Company. There is a periodic defect in the knife that shows up near one edge in both pieces, also due to a defect in the knife that dressed that lumber.

Therefore, having a defect in the planing on one edge and also on one face of this lumber from the National Lumber & Millwork Company, which corresponds exactly with that similar defect in

the ladder rail, I was convinced that I had found the yard from which this ladder, these ladder rails, were obtained.

Q. And that was— You were brought to that conclusion and opinion in November, 1933? A. Yes.

Q. Yes, sir. Now, did you then— These marks that you have indicated, these defects that you have talked about with reference to knife and planer, did they come from the planer in the mill of M. G. & J. J. Dorn Company, down South? A. Yes; because the revolution marks on the face and edge of this lumber from the National Lumber & Millwork Company are exactly like those made by the Dorn Company, and that is the only mill I found that makes that kind of revolution mark.

Q. Yes. Now, in November 1933, did you then direct that an investigation be made of the purchases, purchasers of lumber from that company? A. I— yes.

Q. You say that you were then convinced that the ladder was made from lumber which came from that company? A. Yes.

Q. Now, later in December, 1934, did you search for another piece of lumber there? A. Yes.

Q. I want to show you Exhibit S-233, and ask whether in December 1934, after Hauptmann's arrest, whether you didn't get another sample of lumber from that mill company? A. Yes, sir.

Q. Is that it? A. Yes.

Q. What was the purpose of that? A. To get additional samples.

Mr. Wilentz: I think we have not marked this exhibit, so please will you give us a number?

Mr. Hauck: There is no objection.

The Reporter: S-246.

(Diagram received in evidence and marked State's Exhibit S-246.)

Q. Is there anything else on here? A. No, nothing further.

Q. Nothing further? A. No.

Q. Now will you tell us what next there is in this investigation that you made? Will you tell us what the exhibit before you now is intended to represent?

Mr. Wilentz: Will you mark it, please, Mr. Reporter?

The Reporter: In evidence?

Mr. Wilentz: Yes, I offer it.

The Reporter: S-247.

(Diagram received in evidence and marked State's Exhibit S-247.)

A. This exhibit is a photograph of a portion of one edge of rail 14, which is one of the rails of the middle section of the ladder, and the other is a photograph of a portion of rail 15, which is the other rail of the middle section of the ladder. I noticed, when I had the ladder taken apart, that if I put those rails alongside of each other and matched up one of the saw cuts made for these recesses for the rungs, the others all matched up. It was just a perfect match for all of these saw cuts; they matched up right straight across, one from the other; which showed that those two pieces were clamped together when the saw cut

was made; showing that a clamp was used in making those cuts.

Q. What do you mean by a clamp? A. Why, a clamp something like this clamp, Exhibit No. 196.

Q. Can you tell whether or not those were the clamps, or were they similar clamps? A. I can't tell. The clamp did not leave any mark on the wood, but neither would that clamp.

Q. When you say clamps were used for that purpose, are you referring to instruments identical to this instrument, which is Exhibit S-196—anything else? A. Any one of those could have been used.

Q. Well, you are referring to clamps of this description that are in evidence? A. Yes.

Q. S-196? A. Yes.

Q. They are all marked the same number? A. Yes.

Q. Is that the purpose of this exhibit? A. Yes.

Q. 247? A. Yes.

Q. I will hold this out for a minute.

Mr. Wilentz: Now will you give us a number for this so that we can refer to it more easily? I think it is 248.

(Photograph received in evidence and marked State's Exhibit S-248.)

Q. What is the purpose and usefulness of 248, Mr. Koehler? A. This picture shows the recesses in rail 17 and rail 16 and it shows the saw cuts that were made in cutting these recesses.

Q. Show us the rails, will you, please, the actual rails that you are talking about, if you can. A. Rail 17, which is on top, is the right hand rail of the top section of the ladder, and rail 16, which

is at the bottom of the picture, is the left hand rail of the top section of the ladder.

Q. Show us the recesses that you are talking about. A. These are the recesses for rungs (indicating on photograph), they are magnified, of course.

Q. Show us where they are on the ladder. A. This recess is this one here (indicating); it is taken from the other side, but that is the same one as you see here, only going in the opposite direction.

Q. Show us where the saw you say continued beyond the recess. A. It can be seen on close inspection of this rail, the saw cut went in deeper than necessary.

Q. All right, sir. Go back to the picture, please. A. Because portions of these saw cuts showed.

Q. Just a minute. Show us the others, please. Mr. Pope wants to see. A. That this recess here, you can see the saw cut there made deeper than necessary.

Mr. Pope: What is that?

The Witness: It is rail 17.

Q. And the other one is rail 16? A. Yes, sir.

Q. Both of them sections of the ladder? A. Yes, sir.

Q. All right. A. Now, because the saw cuts show, it is possible to determine the width of the saw cuts that were made in cutting out these recesses and I determined that the width of these saw cuts, not only in these four, but in other places, ranged from 35 to 37 thousandths of an inch.

Q. What does that represent again, the 35— A. Well, the saw that was used in making these

saw cuts made a cut 35 to 37 thousandths of an inch wide.

Q. Was there a saw in Hauptmann's tool chest that is in evidence that made a similar size cut? A. Yes. I tried out all the saws and found two saws in that tool chest that will make cuts of that width.

Q. All right, now. That is the purpose of this exhibit, I take it. A. Yes.

Q. Just for the moment, Exhibit 242 and also Exhibit 243 show some cutter head knives and show a piece of wood being planed by a machine? A. Yes.

Q. The drawings there are of the cutter heads upper and lower, feed rolls and so forth? A. Yes.

Q. Is that a correct reproduction of those cutter head and feed rolls of the Dorn Company or is it just for illustration? A. No, it is a diagrammatic drawing with a lot of details left out.

Q. For the purpose of illustration? A. Yes.

Q. All right, sir. Does it correctly show the number of knives that were used in the Dorn machine? A. Yes, the top and bottom.

Q. The top and bottom and the specific position. Can you tell us what this exhibit is intended to portray and explain it? A. In examining this ladder, I tried to find out as far as I could what sized lumber was used in its construction. Now these Ponderosa pine rungs are two and three-quarter inches wide and they were planed on one edge as I said. That means that they originally were wider. Now, the only way I could determine how wide the board was from which those rungs were made was to see if they would match together in any way, and I found that the four rungs of the bottom section of the ladder, and the four rungs of the middle section of the ladder—

Q. That is, section 1 and 2? A. Yes.

Q. Yes. A. —could be matched together, end to end and side to side, by means of their grain, so as to show without any doubt that those eight rungs were cut from one board, so-called one by six Ponderosa pine. The board was first stripped lengthwise, and then the edges were planed, because the hand plane marks run consecutively from one rung to the next one on those edges; and after they were planed, then the strips were cut into four pieces of the proper length.

Q. Now, just one minute.

Mr. Wilentz: Will you please mark this, if there is no objection.

The Reporter: S-249.

(Diagram received in evidence and marked State Exhibit S-249.)

Q. Let me ask you then, Mr. Koehler, is it your opinion and is it your testimony that the rungs of Section 1 and 2 were at one time all a part of one continuous piece of lumber? A. Yes.

Q. And that they were cut up, you mean? A. Yes.

Q. In the manner that you have indicated? A. Yes.

Q. This is a drawing that you have made of the floor plan of the attic. A. Yes.

Q. Hasn't it already been explained in photographs? A. Except the photographs don't show a full view of the floor. I made this drawing to show the entire floor plan, so the parts of it could be better determined.

Q. Is this drawn to scale? A. Yes, sir.

Q. Correctly and accurately to scale? A. Yes.

Q. Is this a correct and accurate floor plan of the attic at 1279 East 222nd Street, New York City. A. Yes.

Q. You say that this shows the entire floor as distinguished from parts of the floor shown by photographs? A. Yes.

Q. Did you draw this yourself? A. Yes.

Q. It is mathematically correct? A. Yes.

Q. The distances and dimensions between joists and pieces of wood are correct? A. Yes.

Q. As it was before the S-226 was removed? A. Yes.

Q. When you say lath and plaster, I take it you mean lath and plaster between each one of those? A. Yes.

Mr. Wilentz: I don't know what purpose it serves, but probably it will be helpful. I offer it.

The Witness: I could explain it some more in detail if you want me to.

The Court: Any objection, Mr. Pope?

Mr. Pope: No, sir.

The Court: It will be marked in evidence.

The Reporter: Exhibit S-250.

(The chart referred to was received in evidence and marked State's Exhibit S-250.)

Mr. Pope: I would like to know what scale it is drawn to, that is all.

The Court: Ask him that.

The Witness: One inch equals one foot.

Q. One inch equals one foot, is that the scale? A. Yes.

Q. Now will you please explain it then?

Mr. Pope: One inch to a foot.

A. When I got into the attic I noticed that only the middle portion of the attic had a floor in it and that floor is made of one by six matched North Carolina pine. I also noticed that nearly all of the pieces of lumber used on that floor extended clear from one end, from the east wall to the west wall.

Q. Were there any exceptions? A. There were a few exceptions. Here this hole in the floor which goes into the closet, you know, through which access is obtained to the attic necessarily had to—it was necessary to cut out, cut through three of those boards. There was one board which did not go all the way through as a continuous piece, but another piece was spliced in there.

Q. Is that indicated by the mark that you have just pointed to? A. Yes.

Q. All right. A. And here is another one, and all the rest went continuously from one end to the other, except this board, along the south side of the floor, which extended only a little over halfway across.

Q. Is that the board that we have in court, which is indicated as S-226? A. Yes, that is this one here.

Q. Yes, sir. 226. A. Yes, sir.

Q. All right.

Q. I notice some dots on these joists immediate-

ly following S-226. What were those dots intended to indicate? A. Those are nail holes I found in the joists as we made an inspection of the attic.

Q. Did or did not the nail holes, the cut nails that you put in 16, rung 16, or rail 16 of the ladder, fit those nail holes, the four that you refer to? Point out the four. A. 1, 2, 3, 4. (Indicating.) This hole does not show in the ladder because of a recess—

Mr. Pope: Never mind because.

A. —for the rung which is located right there.

Q. A recess for the rung? A. Yes.

Q. Show me the recess of the rung. A. This hole corresponds with that hole (indicating first on ladder, then on diagram); this hole corresponds to that one; these two correspond to those two, and this one—I am mistaken there about the recess on the rung. It was past the edge of this rail, it didn't come on the rail.

Q. Past the edge? A. Not at a recess; at another place.

Q. Past the edge? A. Yes.

Q. Now let me ask you this— A. You will notice that that nail hole is indicated close to this board here. It is nearer to this board than the other.

Q. Is it nearer to the edge than any of the other nails? A. Yes.

Q. I noticed by the photographic exhibits that when you placed the rail of the ladder along these joists so as to have the nails fit, that there was some room between the last floor board and the rung of the ladder—not the rung of the ladder, the rail of the ladder. A. Yes.

Q. That is to say, the rail of the ladder didn't seem to be as wide as S-226. A. No.

Q. Possibly I can have it here. Will you explain, please, the reason for that? A. Well, as I say—

Q. Please look at S-228 and then tell us why it is if the rail of the ladder was a piece of S-226, why it is that one is wider than the other. A. All the other rails of the ladder are so-called one by four stock, and this one was dressed down the same width which is also indicated by the fact that both edges are hand-planed; in other words, it is ripped down from a wider board so as to be the same width as the other rails in the ladder.

Q. By hand plane you say? A. Yes.

Q. Are we to understand then that it originally had the same width?

Mr. Pope: Please let him testify.

Mr. Wilentz: I thought I was doing it. I take it that we are saving time. I don't want to offend counsel, but if that is offensive we will stop there with that question anyway.

Q. What I want you to do, please, is to put it in as simple language as possible, your explanation for the difference in width between the rail of the ladder 16 and S-226. The other part of the attic floor? A. That the floor—

Q. Had the rail ladder been planed? A. Yes, on both edges.

Q. Hand planed? A. Hand planed.

Q. Was the other, S-226, hand planed? A. No, sir; it was tongued and grooved on both edges.

Q. Did you go up to this—of course, you went up to the attic, didn't you? A. Yes.

Q. Just get back for one moment and we will

see if we can describe this trip that you took up to the attic. Will you just sit down, Mr. Koehler? I think there will probably be enough till four-thirty.

Q. How do you gain entrance and how did you gain entrance to this attic? A. I went on the second floor of the house at 1279 East 222nd Street, and there is a closet opening off the hall in the second story of the house, and the ceiling of the closet is open, and it is through that hall in the ceiling that access is gained to the attic by means of a ladder.

Q. Are there steps up there? A. No.

Q. How do you get up? Do you— A. You have got to have a ladder or else climb, step on the cleats for the shelves which are in the closet.

Q. Or, I suppose, put a chair or something in there? A. Pretty hard to do it with a chair. It wouldn't be high enough.

Q. So that, as I understand it, you climb on the cleats of the shelves,—is that what you call it? A. That is one way, yes.

Q. Or you put a ladder in? A. Yes.

Q. Now, having done that, put the ladder in, when you get up to this opening, do you have to lift yourself on it—? A. Yes.

Q. That is, is there any way of walking up there from—or do you have to lift yourself up even after you get up there? A. Well, if you had a long enough ladder you wouldn't have to.

Q. In other words, if the ladder protruded into the attic— A. Yes.

Q. Then you could walk off? A. Yes.

Q. But it was right up to the edge or below the edge? A. No, an ordinary stepladder doesn't go high enough.

Q. An ordinary stepladder, after you got to

that, you would have to lift yourself up: is that it? A. Yes.

Q. Did you see the door that was there, to close that entrance? A. Yes.

Q. What sort of a door was it? A. Why, just a few pieces of board which were the same kind of material as the rest of the floor, with a couple of cleats nailed on, and that fit right in the opening.

Mr. Wilentz: Now, if your Honor please, I take it that with the extent of this examination on direct, that counsel has surely overlooked one or two things, and since it is so close to the recess hour for the day, may we recess now and we will examine our testimony to see if there aren't a few questions that we have probably omitted, and except for that and subject to that, we will be through with the witness.

The Court: The people will remain seated in the courtroom where they are now until the jury has retired. The jury may retire now and return tomorrow morning at ten o'clock.

Mr. Wilentz: If your Honor please, if your Honor has any other announcement, may we ask your Honor to ask the audience to keep away from this part of the room until we have removed these exhibits safely together. We don't want to lose an exhibit; whereas, if they come up here we might not be able to do it.

The Court: Yes, perhaps the officers better look after that.

(The jury retired.)

The Court: I am requested by counsel to request that the audience will refrain from coming up here where the exhibits are, because the lawyers are going to try to collect their exhibits and they do not want to be interfered with by people who are crowding in, so the people will please observe that suggestion.

Now the prisoner is 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 and we will adjourn until tomorrow morning at ten o'clock.

(Whereupon at 4.29 p. m. an adjournment was taken until 10:00 a. m. January 24th, 1935.)

Opening of Seventeenth Day

STATE vs. HAUPTMANN

Flemington, N. J., January 24, 1935.

SEVENTEENTH DAY

Present:

Hon. Thomas W. Trenchard

Appearances:

Mr. Wilentz,
Mr. Lanigan,
Mr. Peacock,
Mr. Large
For the State.

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

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

(10:27 a. m.)

ARTHUR KOEHLER resumed the witness stand:

Direct Examination (continued) by Mr. Wilentz:

Mr. Wilentz: If your Honor please, may we first inform the Court that Prosecutor Hauck is absent because of illness today.

The Court: I am sorry about that.

Q. Now, Mr. Koehler, yesterday you spent some time with us about these pieces of lumber and your exhibits; particularly you explained the relationship, as I remember it, between Rail 16 and the board in the attic floor, which is known as S-226, and then you were telling us about the lumber which you traced from South Carolina to The Bronx lumber yard. The rail 16, was that a part of the lumber that came from South Carolina in this shipment that you talked about? A. No.

Q. That is not a part? A. No.

Q. The rungs of the ladder—I think you called it Ponderosa pine? A. Yes, sir.

Q. Was that a part of that shipment? A. No.

Q. That was different, was it? A. Yes.

Q. What was it that was a part of the shipment that you traced to the Bronx lumber yard? A. Just the two bottom rails of the ladder.

Q. I see. Now there are other parts of this ladder, lumber, that are not a part of the shipment? A. Yes.

Q. Or not a part of the attic? A. Yes.

Q. So far as you know? A. Yes.

Q. What kind of wood, for instance? A. There are three Douglas fir rails in the ladder.

Q. Three Douglas fir rails? A. Yes.

Q. Yes. A. And the Ponderosa pine rungs are not a part of that shipment.

Q. All right, sir. So that it wasn't your intention at any time, was it, to indicate that rail 16 was a part of the wood, the one by fours that came from the south? A. No.

Q. In that shipment? A. Not in that shipment.

Q. Not in that shipment. When it came, why, of course, you don't know? A. No.

Q. I think I have just one more question and

that will be all with me: You told us, I think, that you were in charge of the Laboratory at Madison, Wisconsin. A. I am in charge of a division in this Laboratory, Forest Products Laboratory at Madison, Wisconsin.

Q. That is the correct name, Forest Products Laboratory? A. Yes.

Q. And that Laboratory is specifically for the purpose of identification of woods, is it not? A. No. It covers more than that. That is my division.

Q. That is your division? A. But it covers all kinds of research on wood.

Q. How many laboratories of that kind are there in the United States of America? A. Just the one at Madison.

Q. Just that one? A. Yes.

Mr. Wilentz: At this time, your Honor please, I want to offer in evidence the automobile in which Mr. Hauptmann was riding on the day of his arrest for the purpose of identifying it as his automobile on that day, bearing the same license number as it did the day of the arrest and we have it here within the court square so that if the weather permits it before the case is concluded, the jury may be able to examine it.

Mr. Reilly: I don't think it is material or competent, the automobile he was arrested in, two and a half years after this alleged murder.

Mr. Wilentz: Well, is there any objection to the formality of the proof first?

Mr. Reilly: No.

Mr. Wilentz: So that we may discuss it from the material point of view.

Mr. Reilly: The fact remains he has an automobile and it is true he was arrested in his automobile.

The Court: I suppose that it is competent to establish, if you can, the identity of the automobile in which some of the witnesses have testified the defendant was driving. Is that the point?

Mr. Wilentz: I think that it may or may not be a circumstance for the jury to consider when they see and if they see the car. The purpose of the exhibit at this time is to show that this car was operated and owned by him and in his possession at the time of his arrest, just as we show a picture of his home, if our Honor please, as a circumstance connected with his possession of various things.

And it may or may not, depending upon the jury's point of view.

Mr. Reilly: You mean the question of wealth?

Mr. Wilentz: No, not on the question of wealth, the size of the car, the description that has been given by witnesses, the type of car itself.

The Court: Have you the photograph of the car?

Mr. Wilentz: Yes. Will there be an objection to the photograph?

Mr. Reilly: I think not, if it is of the car.

Mr. Wilentz: Here is a photograph (handing photograph to Mr. Reilly). (Counsel confer.)

We offer this picture as being a picture of the car which Mr. Hauptmann owned and operated on the day of his arrest, with the exception that there was a trunk on the back of the car which isn't revealed here, which trunk was flush against the back; is that it, Mr. Fisher?

Mr. Fisher: That trunk would go flush with the back, that is right.

Mr. Wilentz: Flush to the back.

The Court: Well, I suppose—

Mr. Wilentz: There is no objection to it.

The Court: No objection?

Mr. Reilly: No.

The Court: It is admitted then that that is a correct likeness of this car, with the exception of this trunk which was attached, and in all the circumstances it will be admitted in evidence.

The Reporter: S-251.

(The photograph of the car was received

in evidence and marked State's Exhibit S-251.)

Q. Now, Mr. Koehler, have you seen this automobile, the automobile shown by this picture? A. Yes.

Q. Showing you exhibit S-251. When you saw the automobile do you remember whether you observed whether it had the New York license on it? A. It had a New York license plate on it.

Q. Yes. I take it that you don't remember the number. A. I made a note at the time. I could refer to it.

Q. Have you got the note with you? A. Yes.

Q. All right. A. (After referring to memorandum book.) 4U13-41 1934.

Q. All right. Now, did you take this ladder, Exhibit S-211, and attempt to fit it into that car? A. I did.

Q. Did it fit in the car? A. Yes. When I took the three sections assembled and nested together, they fit in on top of the front and rear seats, and there were several inches to spare.

Q. Do you mean that when you put them together like this, put the three sections together (illustrating)— A. Yes.

Q. That is, one within the other? A. Yes.

Mr. Wilentz: Take the witness.

Cross Examination by Mr. Pope.

Q. Mr. Koehler, when you fitted the ladder in the car did you lay it on the top of the seats? A. Yes.

Q. And did one end of the ladder fit on top of the rear seat, on top of the rear seat? A. You could lay it down on the top of the rear seat, yes.

Q. You could lay it down on the top of the rear seat. How near did the other end of the ladder come to the windshield? A. About four inches, four or five inches.

Q. So that when you laid it in the car with one end against the rear of the car, on the top of the seats, the front end of the ladder was in the neighborhood of four or five inches from the windshield on the inside? A. Yes.

Q. And lying in that position in the car could be readily seen by anyone on the outside who cared to look in the car, I suppose? A. Yes, unless it was covered up.

Q. Unless it was covered up. Now, you have told us that you have testified in numerous cases, among them you mentioned one, a murder case, that you testified in in Wisconsin. What was the point involved in that case, Mr. Koehler, in your testimony? A. A home made bomb was sent through the mails to a drainage Commissioner and when the Commissioner opened the package it exploded and his wife, who was standing nearby, was killed.

Q. Now, what portion of the bomb did you examine and deal with? A. The wood portion.

Q. Well, the box that it was contained in? A. No, the hollow cylinder or cartridge you might call it, forming part of the bomb.

Q. I see. Now the other cases that you have testified in were cases brought by divisions of the United States Government against parties charged with misbranding? A. Not exactly. They were hearings before the Federal Trade Commission.

Q. Yes. A. To decide what proper name should be used for certain kinds of lumber.

Q. Then the purpose of the hearings was to determine what would be approved as the proper

designation of particular kinds of lumber? A. Yes.

Q. And under what particular names it should be marketed? A. Yes.

Q. And there were how many instances of that kind, roughly, that you testified in? A. Two.

Q. And one of those was a mahogany case? A. Yes.

Q. And the other was a native wood? A. Yes, Ponderosa pine.

Q. Ponderosa pine. Now we have the two cases, we have the one murder case and then we have the instances in which you were before the Federal Trade Commission. Now the other cases in which you testified, they were what kind of cases, mis-branding? A. No, they were cases where wood failed in service.

Q. That is the wood failed because it wasn't strong enough or because it wasn't fresh enough, or what? A. That was the question, whether it was strong enough or whether it was overloaded.

Q. I see. Then in those cases your function was, I suppose, to testify to the tensile strength or carrying load of the wood involved. A. Not entirely. My function was to testify as to the kind of wood and its quality, as to whether it was abnormal or not.

Q. And was that before the Federal Trade Commission? A. No.

Q. That was what: before some court? A. Yes.

Q. That was a civil suit? A. There were two of them.

Q. Two civil suits? A. Yes.

Q. Now, were there any others? A. I testified in a case in Cincinnati, a civil suit.

Q. And is that the case in which there was a dispute between the buyer and seller? A. Yes.

Q. As to whether the lumber received by the buyer conformed to the specifications? A. Yes.

Q. So you in that case undertook to identifiy and to classify the lumber that had been the subject of the sale? A. Yes.

Q. And do you recall what kind of lumber was involved in that case? A. Long leaf pine.

Q. Long leaf? A. Yes.

Q. North Carolina pine? A. Well—

Q. Or long leaf fir pine? A. It comes from the Gulf States.

Q. From where? A. From the Gulf States.

Q. And that was a dispute as to whether it was long leaf or short leaf pine? A. Yes, yes.

Q. Now, have I covered practically your experience in that respect? A. There is only one other case I was called on. I don't remember whether I actually took the stand or not, and I don't remember the case. I can't remember whether I took the stand, although I know I went to the court.

Q. I rather think you told us—if so, I have forgotten—how many years you have been connected with the Department. A. Yes; 21 years.

Q. 21 years. And did you go direct to the Department from school? A. Yes.

Q. Now, you have never undertaken to identify chisel marks or plane marks upon lumber in court before, have you? A. In court? No.

Q. This is the first time you have been called upon to testify to that? A. (Nodding head.)

Q. You are shaking your head. Would you mind saying yes or no? A. Will you read the question, please?

Q. I want it on the record, that is reason. A. Yes.

(The pending question was read as fol-

lows: "This is the first time you have been called upon to testify to that?")

A. Yes.

Q. Now you demonstrated to the jury yesterday that one of the notches in the rail, notch recessed for the purpose of allowing the rung to be put in there, after being sawed down on the side had been cut out with a three-quarter inch chisel? A. Yes.

Q. Please, so we get it on the record. The notch referred to on the rail of the ladder could well have been made by any standard three-quarter inch chisel, couldn't it? A. Yes.

Q. In other words, a three-quarter inch chisel is not only a common chisel, but it is one of the standard sizes, is it not? A. Yes.

Q. And whether it be a chisel made by the Stanley Company, by the Goodell, Pratt Company, or one of the common cheap cast steel chisels, it is the same size and functions in the same manner? A. Yes.

Q. You were shown by the Prosecutor three chisels, one, I believe you said was a quarter inch chisel, the other was a half inch chisel and the third one an inch or a little larger, at any rate it was not a three-quarter inch chisel. A. No.

Q. Were you shown the set of Stanley chisels belonging to Mr. Hauptmann and which were in his garage at the time of his arrest? A. A set of Stanley chisels?

Q. Yes. A. No.

Q. It was Stanley, wasn't it? So you don't know then whether among the set of Stanley chisels there was a three-quarter inch chisel? A. No, I don't.

Q. And if there was, you did not try to match it in this chisel mark? A. No.

Q. You came into this case first in the month of May, 1932, did you not? A. Yes.

Q. Do you remember what date? A. It was the 25th or 26th.

Q. Well, that is the latter part of May? A. Yes.

Q. That was nearly three months after the ladder was found? A. Yes.

Q. And of course you are depending entirely on what somebody else told you as to the conditions of the ladder at the time it was found? A. Yes.

Q. And its condition at the time it was first shown to you? A. That I observed myself.

Q. Well, now, let's see. You have those rails numbered, I suppose, but take the section of the ladder that has the piece of North Carolina pine railing in it. Can you tell me what kind of wood is in the other section, the other railing? A. You mean—

Q. Of the same section? A. Do you mean the top section? There are three North Carolina pine rails in the ladder.

Q. Well, I am referring to the one that you recognized as a part of this attic floor. That is the section that I had reference to. A. The other rail in this ladder is Douglas fir.

Q. Douglas fir? A. Yes.

Q. And you don't know whether the right hand rail of the ladder was originally Douglas fir or not, do you? A. That is—

Q. All you know is— A. That is the Douglas fir.

Q. The what? A. The left hand rail is not Douglas fir.

Q. Beg pardon? A. The right hand rail is Douglas fir: the left hand is North Carolina pine.

Q. Well then, I will just change my question and reverse it. I thought just the opposite. You

are probably right. I suppose you call the front part of the ladder would be the rungs facing you, nearest to you, would it not? A. Yes.

Q. I will reframe the question. Referring to the section that has a piece of flooring which you thought might have come from the attic, which I understand is the lefthand rail of the section? A. Of the top section of the ladder.

Q. Of the top section? A. Yes.

Q. You do not know whether the ladder, when it was originally found, contained a piece of Douglas fir or not, in the place of the North Carolina pine? A. I didn't see it when it was originally found.

Q. No. Now do I understand that there are two other rails in the sections of the ladder made of North Carolina Pine? A. Yes, the two bottom rails of the ladder are North Carolina pine.

Q. And when you speak of rails do you mean what I refer to as the runners, running up and down? A. Side pieces, yes.

Q. That is the brace? A. Yes.

Q. And then the cross sections are the rungs? A. They are the rungs.

Q. Well, would you mind showing me the rails that are made up of North Carolina pine, outside of the one that you have already been discussing? A. (Stepping to the ladder) This is the bottom section of the ladder, and both of those rails are North Carolina pine.

Q. But it is a different quality, is it not, from the board that was found in the attic floor? A. It is a common grade of lumber, they are all three of them a common grade of lumber.

Q. I didn't mean that, Mr. Koehler. I just asked you if it isn't a different quality or a better quality. A. What do you mean by quality then, if you don't mean the grade?

Q. I think you lumber men do call it "grade" that is the term you use. It is a better grade, isn't it? A. It has no knots in it, if that is what you mean, or just a small knot, whereas the other piece has several knots in it.

Q. Mr. Koehler, I suppose that when a man accustomed to dealing with lumber speaks of the grade or quality of the lumber that he usually has reference to its quality and its grade the same as you would if you were speaking of silk or plush or wool or anything else. Now I am asking you, is not the railing that you have just shown me of a better grade of North Carolina lumber than the grade of lumber that was found on the attic floor? A. I will have to explain that because—

Q. Can't you answer yes or no? A. No, I can't, because I don't know what you mean by quality.

Mr. Wilentz: Take your seat, please, and explain it.

Mr. Pope: Wait a minute, Mr. Wilentz. If you want to object you may object to the Court.

Q. Do you want me to explain what I mean by the quality? A. Yes.

Mr. Wilentz: Just one moment.

Mr. Pope: Do you object to the question?

Mr. Wilentz: No. I object to you interrupting the witness until he has a chance to answer the question with an explanation.

Mr. Pope: Thanks. This is cross ex-

amination and whenever I ask a question that may be properly answered yes or no, as the cross examining counsel, I am entitled to a categorical answer, yes or no.

The Court: Well, the witness said that he could not answer your question yes or no. He said "I will have to explain."

Mr. Pope: And I am glad to let him do it.

Mr. Wilentz: All right.

Mr. Pope: Now he asks me what I mean by quality.

Mr. Wilentz: I submit that the witness ought to be permitted to answer the question.

Mr. Pope: Well, I am the witness: he is asking me.

The Court: Oh, no, Mr. Pope; you are not the witness.

Mr. Wilentz: I ask the Court—

The Court: Mr. Koehler is the witness. He said he couldn't answer yes or no. He said, "I want to explain." You agree that he ought to explain.

Mr. Pope: Yes.

The Court: Then he may explain.

Mr. Pope: Now he asks me what I mean by quality.

The Court: Ignore that.

By Mr. Pope:

Q. All right. Go ahead, Mr. Koehler. Go ahead, in your own way. A. That word "quality" covers a number of things. It might cover the appearance, so far as being beautiful or not is concerned, it might cover the strength of the wood, it might cover its ability to keep from warping, and a number of other things. Now, the word "grade" usually refers to the presence or absence of defects in the lumber, such as knots and cracks and pitch-streaks and such.

Q. Well— A. The word "grain"—

Q. Well, I will divide the question then. A. Yes.

Q. Now, speaking as a man, for instance, who was engaged in the carpenter business, and the building trade,—if he went to a lumber yard and he found the two grades of lumber which you have produced here from the lumber yard, the one, the North Carolina pine flooring, underflooring, or whatever—roofers, and the North Carolina pine railing in there. Would the lumber dealer charge him more for the one grade than the other? A. In that case not.

Q. In that case not? A. Because they would be classified the same, although there is a variation in a grade.

Q. So that you think that the grade of North Carolina pine that you have referred to in the other rails of ladder equals to the grade of North Carolina pine that was found on the attic floor? A. Yes, speaking commercially.

Q. Now I will ask you as to the quality of the pine that was found in the attic floor as compared with the North Carolina pine used in the rails of the ladder; excepting of course the one that we have already been referring to. A. Now what quality do you refer to?

Q. I just simply want you to tell the jury the difference in the quality. A. I can't answer that question unless it is specific.

Q. Is there no difference in your judgment in the quality of the two pieces of lumber? A. In some respects there is and in some there isn't.

Q. In any respect. A. Yes.

Q. Then tell us what those differences are, in the respects that you have in mind. A. The two bottom rails of the ladder do not contain as large knots as the rail cut—as the North Carolina pine rail in the top section of the ladder.

Q. And in that respect it is better quality? A. For certain purposes it would be considered better when it is free from knots.

Q. Well, it is better for any purpose, isn't it, if it is free from knots? A. I will have to explain again, to answer that question.

Q. You may. A. This North Carolina pine is lumped in one large grade, which includes lumber with considerable knots in, and some with very few, and occasionally a piece without a knot in. For some purposes it all goes in for the same use and no discrimination is made. Now if a person wanted to be very choice and pick out a piece of lumber, he could pick one out with fewer knots in it than some of the other lumber has, in that classification. So for some purposes it makes some difference in that for other purposes it would not make any difference.

Q. But the fact still remains that a piece of North Carolina pine that is free from knots is of

a better quality of board than a piece of North Carolina pine that has one, two, three, four, five, six or seven knots in it like that? A. It would be considered so for some purposes and for others it wouldn't make any difference.

Q. Of course it wouldn't make any difference on a rough attic floor, would it? A. No.

Q. Where there would be no wear on the knots and they wouldn't be so apt to break out? A. No.

Q. It probably wouldn't make much difference for sheathing the outside of a building? A. No.

Q. But for other purposes, where the wood was to be exposed or seen, or where it was to be used where strength was needed, it would make some difference, wouldn't it? A. Yes; if the knots were large enough to affect the strength, it would.

Q. Well, except small knots, the presence of knots in a board does not affect the strength of the board, does it? A. Yes, sir.

Q. They are weaker where the knots are? A. Yes.

Q. More likely to break? A. Yes.

Q. Is there any difference between North Carolina pine, South Carolina pine and Georgia pine? A. Socalled North Carolina pine comes from all three of those States and from Virginia; so North Carolina pine coming from those States does not show any particular difference. There is some long leaf pine that grows in Georgia, but that is a different matter.

Q. I am not referring to long leaf pine. This is not long leaf pine, is it? A. No.

Q. May I ask you to step here just a moment.

Q. Has this rail a number (indicating)? A. Yes, that is No. 17.

Q. And was numbered 17? A. Douglas fir.

Q. That is Douglas fir, and where did that

come from? A. West Coast, or rather west of the Rocky Mountains.

Q. That is between the Rocky Mountains and the High Sea area in that section? A. It might have come anywhere up to the Pacific Coast.

Q. And did you trace that rail? A. I found one mill and only one mill that could have dressed that rail.

Q. Now, that is Douglas fir? A. Yes.

Q. Now, has this rail a number? A. Yes, that is 14.

Q. Then what is that? A. That is Douglas fir.

Q. And has this one a number? A. Yes, that is 15.

Q. What is that—and that is Douglas fir, too? A. That is Douglas fir, too.

Q. Here we come to the yellow pine, is that what it is? A. North Carolina pine.

Q. North Carolina pine. And what is that number? A. 12.

Q. And this one? A. 13.

Q. Did you trace those? A. Yes.

Q. Where? A. Traced them to the M. G. & J. J. Dorn Lumber Company, McCormick, South Carolina. From there I traced to the National Millwork & Lumber Company in the Bronx.

Q. You mean that you believe they are a part of the same shipment? A. Yes.

Q. That you have been referring to? A. Yes.

Q. Now, are those 1 x 4's in their natural condition? A. Yes.

Q. Now, coming back to the piece of yellow pine number 15. Is that it? A. 16.

Q. Number 16—. Do you think that is as it was shipped from the mill or has that been ripped and planed? A. It has been ripped and planed.

Q. Well, at any rate I suppose about as far as you can go is to say that it has been planed. A.

No. There are saw marks on a few places which were not—

Q. Rip saw marks? A. I can't tell whether it was done by rip saw or cross cut saw. It could be done by either.

Q. Taking the structure of this ladder as a whole would you say that that was built by a mechanic or by an amateur or even less? A. Do you mean by "mechanic" a carpenter or a machinist?

Q. Well, I didn't know that machinists built ladders, sir, so of course I am referring to a man who attempted to build a piece of, a structure out of wood and I don't refer to a jeweler or machinist as a mechanic who would attempt to use wood. What I want to know is do you think it was built by a mechanic? A. No.

Q. It is a rather poor job, isn't it? A. Yes.

Q. Of construction? A. Yes.

Q. Even the sawing of the notches is poorly done, isn't it? A. Yes.

Q. I didn't mean to be unkind when I spoke about the mechanics; I didn't mean that. Now may I ask you what this cross rung No. 11 is up there? A. That is Douglas fir.

Q. And that comes from the West Coast? A. Yes.

Q. Was the lower piece of No. 11 in its position or was it broken out at the time this section of the ladder was first shown to you? A. When I first saw that ladder that was missing. I never saw that piece.

Q. In other words, No. 11 was in the same condition that it is today? A. Yes.

Q. When you first saw it? A. Yes.

Q. You spoke of the two pieces having been held together, and I think you told us yesterday that they might have been held together while they

were being planed by a pair of clamps, such as was produced in court yesterday? A. Yes.

Q. That you were not able to discover any prints of those clamps on the rails, were you? A. No.

Q. And they might also have been held together in a vice, might they not? A. Yes.

Q. And you discovered no vice marks? A. No.

Q. It has been testified that two sections of this ladder, namely, this one here which is broken, and the next section that fits into it could be used and was not used but was actually put together and put up against the side wall of the Lindbergh home, the two sections together, and the officer told us that when so placed against the side wall that the top round was 30 inches below the window sill. From your knowledge of wood, would you think that a ladder constructed as this one is, or referring specifically to this particular ladder, would hold the weight of a man 175 to 180 pounds under those conditions? A. Yes, I think it would.

Q. And could he go up and down readily without the ladder breaking? A. He might.

Q. He might.

Q. The nearer the rounds are together, the stronger the ladder and the less likely to break under use, is that correct? A. No. I wouldn't say that the distance between the rungs affects the ladder except possibly that when a man makes a long step it gives more of a jerk.

Q. Yes. Well, I was coming to that. Now, Mr. Koehler, if we have two rounds, if we have one there and another one there and another one there (indicating on the Exhibit S-211) placed closer together and they are nailed each one at four points, while that doesn't strengthen the tensile strength of the ladder, it does steady it and make it more firm, doesn't it? A. Yes.

Q. Now, a ladder usually breaks because of vibration, doesn't it? In other words you have vibration before the rail of the ladder breaks. A. You have bending.

Q. That is what I mean by vibration. A. Yes.

Q. I will use the term bending then, so that with the rounds spaced closer together and nailed at four points, there is less likelihood of bending, isn't there? A. Bending in which direction do you mean, toward the wall or sideways?

Q. I mean vibration. You may call bending just one gradual slack bend. What I call vibration is the—as the ladder is being used, the rails of the ladder bending in and out, springing. A. In that direction it wouldn't make any difference how many rungs you had on it.

Q. Well, wherever they are nailed at four points you have a strengthening of the ladder, the entire railing at that point, haven't you? A. Just sideways, but not in the direction toward the wall.

Q. The nails don't slip in the rails of the ladder, do they? A. No, but they do not have any effect on the bending toward the wall.

Q. With the rail of the ladder like this (illustrating) the spring in toward the wall under strain or under stress would not be very much, would it? A. No.

Q. The principal bending is sideways, isn't it? A. Yes.

Q. Now having explained to you what I mean, may I ask you is it not the swinging or the swaying motion, whatever you call that in technical language, that a ladder undergoes under use, with a person going up or coming down, the swinging backward and forward motion that causes it to break? A. It might be a swinging motion sideways.

Q. Yes, certainly. In any way? A. No, there may be other factors.

Q. But it is the swinging motion that causes the fibers to let loose of each other, to let go of each other, isn't it? A. In some cases, yes.

Q. Well, will fibers let go of each other and release their support on each other under any other circumstance than in the swaying motion of the piece of timber? A. Yes, yes.

Q. And what else will cause the fibers to release? A. I will have to explain there. For instance—

Q. Just tell me what else will cause them to release. A. They might be overloaded and without any swaying taking place.

Q. Then if they were overloaded there would simply be one sway or one motion of the board and the fibers would release and break, wouldn't they? A. Well, there may be vibration or there may be one motion.

Q. That is what I am talking about, vibration. A. There are so many possibilities.

Q. Now whether it be one motion or whether it be a series of motions, it is after all the bending or the motion of the timber that causes the fibers to release, isn't it? A. Bending always must take place before breaking takes place.

Q. That is it. And, of course, then when the fibers release that weakens the structure? A. Yes.

Q. Of that particular piece of wood, doesn't it? A. Yes.

Q. And that is what permits it to break. So that after all— A. Beg pardon; not necessarily. The nails might pull loose.

Q. Yes, the nails might pull loose, but even if the nails pull loose the rail won't break unless the fibers released, would it? A. Oh, the fiber has got

to be severed whenever a break takes place.

Q. That is it. Now, after all, the strength of a piece of wood depends to a very large degree upon the severance of fibers, a great number of fibers built one on top of the other and closely knit together and sort of held together with the sap of the wood, or the chemical contents of the wood, isn't it, isn't that the strength? A. Well, popularly speaking, that probably would be a conception. It is not entirely correct technically.

Q. Well, it doesn't apply to all woods alike—I don't mean that, but I mean that is the normal structure of a piece of wood, isn't it, when we speak of the fiber structure of the wood? A. Yes —well, as fibers it is.

Q. And so long as the fibers remain in contact then you have the normal strength of the wood? A. Well, there are so many factors come in there— The strength might be reduced by—

Q. Burning? A. —other agencies.

Q. Yes, certainly. But I mean normally speaking. A. Yes, I would say so.

Q. But when the fibers have been disturbed in large quantity then, of course, you have a weakened condition in that piece of wood where the disturbance has taken place? A. Correct.

Q. That is right. Now, referring to rail Number— A. 17.

Q. —17 and particularly between round numbers 96 and 97 I see that there is apparently a piece missing there. Was that piece missing when you first saw the ladder? A. Yes.

Q. And you never saw the piece that fit in there? A. No.

Q. These rounds on all the sections of this ladder are spaced in a rather wide distance apart, are they not? A. Unusually wide.

Q. Unusually wide. A. Yes.

Q. A carpenter building a ladder of that kind would generally space the rounds about a foot apart, wouldn't he, about twelve inches apart? A. That is the standard distance.

Q. That is the standard distance? Now the spacing of the rounds wide apart like they are spaced on this ladder, whether it detracts or takes away any strength from the railing or not, it does have a tendency to weaken its resisting power when a man is coming down, doesn't it? A. You mean wide spacing as compared with narrow spacing?

Q. Yes. A. Yes. Sideways, not toward the wall.

Q. Yes. Either. So that a man stepping from this round up here, which is numbered 11, down to number 10, because of the distance there would be naturally a heavier jar upon round Number 10 when he strikes it with his weight? A. Yes. Unless he took precautions not to let that happen.

Q. I am speaking now normally, in going down a ladder normally. A. Yes, that—

Q. That would be the normal effect of it, wouldn't it? A. Correct.

Q. And of course an ordinary carpenter would know, understand, and appreciate those things, wouldn't he? A. I think so.

Q. Now, you told us yesterday that you had examined the saw cuts. I think I have it here. I understood you to tell the Prosecutor or the State's Attorney that you measured the saw cuts that you found in the rails. A. Yes.

Q. And that they were 35,000ths to 37,000ths of an inch in width? A. Yes.

Q. Am I to understand from that that you meant that one saw cut was 35,000 of an inch and that another was 37,000ths or that they ranged

between those two figures? A. I measured a number of them and they ranged between those two figures.

Q. There were some of them 35,000ths? A. Yes, sir.

Q. And some 37,000ths? A. Yes.

Q. Did the texture and hardness of the wood have anything to do with that difference in width? A. Apparently not, because I tried out saws—

Q. Well, that is your answer, you said not? A. Yes.

Q. It did not in your judgment? A. No.

Q. The normal width of an ordinary cross-cut saw, before there is any set in the teeth, is what? A. I don't know.

Q. You never measured it? A. No, I never saw a saw like that.

Q. What is that? A. I never saw a saw like that.

Q. Well, how thick is the saw blade? A. I don't know, it varies, of course, with different saws and it varies from front to back.

Q. I see. Now, how did you measure these 35-thousandths? A. I took a mechanic's thickness gauge which has leaves graduated in thousandths of an inch and placed them in the saw cut.

Q. And that is how you determined the thickness of it? A. Yes.

Q. But you did not compare that with the thickness of any saw blade, did you? A. No.

Q. Well, are you unable to tell us the standard thickness of a standard crosscut saw blade? A. Well, there is no such thing as a standard thickness or a standard crosscut saw.

Q. There are two kinds of saw blades, are there not; one, the perfectly flat blade on the cheaper saw, and the other one what is called the hollow ground or tapered saw blade? A. Yes, yes.

Q. Now, take the Diston saws, for instance; are they not all built to a standard thickness? A. No. The bigger the saw is the heavier it is, the thicker the blade is.

Q. Of course. Can you tell whether it was an eight-tooth or a ten-tooth saw that was used to make these saw cuts? A. Not from those saw cuts.

Q. I see. A. There are other markings on the ladder from which I determined that the ladder came in contact with an 11-point saw.

Q. With an 11-point saw? A. Yes.

Q. Now, take a standard 11-point Diston saw: do you know what the thickness of the blade is? A. Not of the blade.

Q. Not of the blade? A. No.

Q. Well, the width of a saw cut depends upon the set in the saw, doesn't it? A. Yes.

Q. Now, when you speak of 35,000ths of an inch you are speaking of a width slightly less than a thirty-second of an inch? A. A great deal less.

Q. Well, a thirty-second of an inch is between 25,000ths and 26,000ths, isn't it? A. I will have to figure that out first.

Q. I see. And this is 10,000ths more then, 10,000ths thicker? A. (No answer.)

Q. Well, you say you don't know. A. Did you say—

Q. Never mind; never mind. But it is slightly thicker than a thirty-second of an inch, 35,000ths, isn't it? A. I will have to figure that out.

Q. Well, you know a thin dime is a 30,000th of an inch in thickness, isn't it? A. I don't know.

Q. You don't know about that.

Q. Well now, the 37-thousandths of an inch which you found, do you remember where you found that? A. I couldn't point to the specific cut now without referring to my notes.

Q. Did you find it on one of the rails or on one of the rounds, if you can tell? If you can't, don't bother, it is not very important. A. The cuts show only on the rails, they don't show on the rounds.

Q. Then it must have been on one of the rails? A. Yes.

Q. Was it on the Douglas fir or on the pine? A. I can't say offhand.

Q. You don't remember that. Did you trace this Douglas fir or believe that you traced it to the upper Vancouver district? A. You mean in British Columbia.

Q. I am not sure, I think the upper Vancouver district is in the Washington territory, but you may be right about it. A. You see there is one Vancouver in British Columbia and one in the United States.

Q. Yes, there is. A. While I traced it to a mill in the Puget Sound region—

Q. Puget Sound region, that would be the upper Vancouver district of the State of Washington? A. I don't know that it is referred to by that name.

Q. Well, you know there is a Vancouver in Washington. A. Yes.

Q. And that north of that Vancouver is called the Upper Vancouver District. A. I didn't know that.

Q. You didn't know that, all right. I had reference to the Barnett Mill. A. That is in British Columbia.

Q. And did you obtain samples from the Barnett Mill? A. I did.

Q. Of Douglas fir, did you call it? A. Yes.

Q. Douglas fir, and having obtained that sample, did you believe that that sample conforms to

the sample of Douglas fir that was used in the construction of the ladder? A. No.

Q. That was not your conclusion? A. No.

Q. Well, did you finally locate and to your satisfaction, the point of origin of the Douglas fir? A. You mean the part of the country or the mill?

Q. Well, both, both the mill and the part of the country. A. There were three Douglas fir rails in the ladder and each of them was dressed on a different planer.

Q. So that each of them came from different mills? A. Unless one mill had two planers—

Q. Yes, certainly. A. —In operation.

Q. Well, did you locate their point of origin to your own satisfaction? A. For two of the rails.

Q. And where did you locate the point of origin? A. One of them is Longview, Washington, and the other Bellingham, Washington.

Q. Is that the plant of the Longview Lumber Company? A. Yes.

Q. And the other one was where? A. The plant of the Bloeddell, B-l-o-e-d-d-e-l-l, Donovan Lumber Mills.

Q. Have you any conception of the output in millions of feet of the Longview Lumber Company plant per annum? A. No.

Q. In the year 1931 or '32? A. No definite conception. They have a big output.

Q. But it runs into many, many millions, doesn't it? A. I would think so.

Q. Did you ever visit that mill? A. Yes, I was there.

Q. Did you see a log go in one end and come out in shingles, the other end of it? A. Yes.

Q. May I ask you if, in your experience, North Carolina pine lumber, such as you discovered in the three sections of this ladder, is commonly used for crating and boxing purposes in ship-

ment? A. Such as is found in the bottom section of the ladder, the one by four, is commonly used for that purpose.

Q. Now, the Douglas fir—Is not Douglas fir also used in crating, boxing and shipping, more particularly in boxing? A. The one by fours is used considerably.

Q. Yes. A. For that purpose.

Q. In your examination of the rails of this ladder did you discover any marks of red lead or red paint or red pigment? A. I did on one of them.

Q. And can you tell us which rail you discovered that on? A. I'd have to look at the ladder.

Q. I wish you would, if you can. A. (Examining ladder.) Yes, on rail 14.

Q. Did you give us the number of it? A. Rail 14.

Q. Rail 14. Now, of course, that was much plainer when you first saw it than it is today, wasn't it? A. No. It had—The rail was stained with fingerprint stain and wasn't quite as plain.

Q. Oh, it had been stained when you first saw it? A. Yes.

Q. Oh, I see. And that is on the section of the ladder or the rail of the ladder that is split? A. Yes.

Q. Just for the purpose of further identification. That is all. You may put that back.

And is that the only evidence of red paint or red lead that you found on the ladder anywhere? A. Yes.

Q. Wasn't there some on one of the rounds, rungs? A. No.

Q. You didn't notice any? A. No.

Q. If there was on any of the rounds? A. I didn't notice any.

Q. Red lead is commonly used on plumbing fixtures, isn't it? A. So I understand.

Q. Speaking of the construction of the ladder, did you observe any difference in the workmanship, the construction of Sections 1, 2 and 3? A. No.

Q. Well, No. 2 and 3 seem to be a little better constructed than the other, maybe I am wrong, maybe I mean 1 and 2. Which is 1 and 2? Is the wide section called 1? A. The wide section is called 1, the next one (indicating) is 2 and that is 3 in your hand.

Q. Did you think that 1 and 2 were a little better constructed than No. 3 from a mechanical point of view? A. No difference except that a more knotty grade of lumber is used in this pine rail than in the others.

Q. A poorer and weaker piece of lumber, isn't it? A. Yes.

Q. Well, the general workmanship is a little better on Number 1 and Number 2 than it is on that one? A. No, I wouldn't say so.

Q. Were you able to determine one of the rails had been sawn with a rip saw? A. No, I couldn't say whether it was a rip saw or not.

Q. Or a crosscut saw? A. No.

Q. In your search for the identification of this lumber, did you find lumber of the same character, kind and quality in a lumber yard at Hopewell? A. No.

Q. And if there was lumber of this same type character and quality found in the lumber yard at Hopewell by the State Police, it was not presented to you for inspection? A. No.

Q. Did you find lumber of the same type and character at the epileptic village near Skillman? A. No.

Q. And if it was so found it was not presented to you? A. No.

Q. Painting of fir or pine with nitrate of silver

will raise the grain, will it not? A. That depends on how much of the solution is put on. If just a slight amount is, it would; and I don't know how much of a moisture is really added to the wood by that process.

Q. Well, isn't the diluting agency of nitrate of silver alcohol? A. I don't know.

Q. Well, alcohol in very small quantities will raise the grain of wood, will it not? A. Not as much as water.

Q. Well, I suppose that you have in your lifetime used shellac on wood, haven't you? A. Yes.

Q. And I suppose you have used a very thin, adulterated shellac, have you? A. I don't recall.

Q. When I say adulterated, I mean cut with alcohol? A. Oh, well, that is commonly done, sir.

Q. Yes. A. Yes.

Q. And that will raise the wood right up almost as soon as it strikes it, won't it, the grain? A. I haven't noticed that.

Q. You haven't noticed that? A. No.

Q. Well, were you ever able to apply alcohol to North Carolina pine, to Georgia pine, or Douglas fir, or to Ponderosa pine without experiencing a raising, a pronounced raising of the grain of the wood? A. I don't remember having applied alcohol to those kinds of wood.

Q. All right. Now, the washing of North Carolina pine, Ponderosa pine and Douglas fir, or either one of them with a solution of bichloride of mercury, following a treatment of nitrate of soda, would raise the grain, wouldn't it? A. I understand that is a water solution of bichloride of mercury.

Q. Yes. A. It would raise the grain, depending upon how long that is allowed to remain on there and how much is applied.

Q. Well, is it after all the length of time that

Q. Well, it is after all the length of time that moisture remains on a piece of porous wood that determines the raising of the grain, or does the moisture immediately go right into the pores and under the grain and raise it? A. Moisture never goes in immediately, it takes time.

Q. Well, but it doesn't take very many seconds for it to go in porous wood, does it? A. Enough to raise the grain completely would require, I would say, half an hour maybe.

Q. Mr. Koehler, I really didn't mean raise the grain completely. What I meant it would raise the grain substantially. A. Yes, I would think so.

Q. Why, Mr. Koehler, to take a piece of Douglas fir or a piece of North Carolina pine that has been kiln dried and take it out and stand it and expose it to a damp atmosphere, foggy, such as it was a day or two ago, will raise the grain, won't it? A. In the course of time, yes.

Q. Well, how long a time? A. That would take twenty-four hours or so.

Q. Something like that. Did you find any hammer marks on the ladder over the nails, did you notice any? A. There were a few on the rungs.

Q. Just a few on the rungs. A. Yes.

Q. From your experience, a good carpenter doesn't leave hammer marks on his work, does he? A. No.

Q. He drives the nail down practically flush with the work and then he uses his nail set to set it in. A. He wouldn't use a nail set on 8 penny nails, as a rule, he would drive them flush and leave them there.

Q. He would drive them flush and leave them there? A. He might occasionally.

Q. Well, were they eight penny nails? A. Yes.

Q. Common, ordinary wire nails? A. Yes.

Q. An eight penny nail? A. Yes.

Q. And were they finishing nails or were they nails with the flat top? A. They were what they call common nails.

Q. Common nails. A. Not finishing nails.

Q. Not finishing nails. The rafters up in the attic, this is rather jumping, sir, from one subject to another—you did measure the rafters, did you not, when you drew your plan of the attic? A. Not the rafters, the joists. The rafters hold up the roof, you know.

Q. I know what the rafters are. I meant—you did not measure those, the rafters? A. No.

Q. The rafters nor the uprights on the side? A. No.

Q. Merely the floor joists? A. Yes.

Q. Well, were the floor joists set 16 inches on centers? A. They were right around 16, except in one place, there was a wider place, and the next one was narrower.

Q. Was that where the opening was? A. No.

Q. The little trap door? A. No.

Q. But generally speaking they were set 16 inches on center? A. Yes.

Q. Now, how about that particular portion of the attic floor where you were experimenting with the floor board? Were they set 16 inches on center there? A. Well, not exactly, but quite close to it.

Q. When you say not exactly—when I ask you if they were set 16 inches on center I mean as they are and as closely as they usually are in that kind of construction. A. I would say so.

Q. They are never set exactly 16 inches on center, are they? A. No.

Q. Now that is the common width for that character of construction, 16 inches on center, isn't it? A. Yes.

Q. And cut nails are nails usually used in nail-

ing flooring of that character, are they not? A. Yes, in this section of the country they are.

Q. Yes, rather than the wire nails? A. Yes.

Q. Or finishing nails? A. Yes.

Q. Were you shown a piece of a dowel pin made out of three-quarter inch maple? A. As part of the ladder?

Q. Yes. A. You mean—

Q. Yes. A. There is a dowel pin three-quarter inch, but it isn't maple.

Q. Well, where is it? Is it here somewhere? A. There is one attached to the rail. I think the other has been admitted separately as evidence.

Q. The No. 18, is it, it has a little ticket on there, 18—. A. Yes.

Q. And is that your marking? A. No.

Q. That No. 18? A. No.

Q. Well, in your examination of this, did you use that No. 18? A. Yes.

Q. As your guide? A. Yes.

Q. As your identification mark? A. Yes.

Q. So that when I speak of No. 18 you know what I have in mind, do you? A. I do.

Q. And did you cut a little notch out of the end of this dowel pin? A. I did.

Q. For what purpose? A. So that I could see the grain better.

Q. And what kind of wood it was? A. Yes, and what kind of wood it is.

Q. And what kind of wood is the dowel pin? A. Birch.

Q. Was there another dowel pin or part of a dowel pin shown you three-quarter inch? A. In connection with this ladder?

Q. Yes. I believe it had been broken. It was here the other day. I don't know where it is.

Mr. Wilentz: Here it is right here.

Mr. Pope: This is it.

The Witness: Yes.

Q. I show you State's Exhibit number—

Mr. Wilentz: S-212.

Q. Number S-212, was that shown to you? A. Yes.

Q. Is that Maple? A. No.

Q. What kind of wood is that? A. Birch.

Q. That is birch too? A. Yes.

Q. Now, were you also shown a piece of dowel pin that same size by the State Police found in the Lindbergh house, a small piece? A. They had several dowel pins three-quarter inches in diameter, but I don't know where they originated.

Q. I see. Well, I am speaking now of a small piece of a dowel pin three-quarters of an inch in diameter said to have been found in the Lindbergh house. Did you see that? A. I don't remember a small piece at all.

Q. You don't remember seeing it? A. What I saw was some length.

Q. All right. You don't remember seeing it. Now, a three-quarter inch dowel pin is not a usual size, is it? A. Yes.

Q. It is sort of unusual, isn't it, in size? A. No, you can buy them in most lumber yards and in some hardware stores.

Q. Well, you can buy them, certainly, but a three-quarter inch is not a size that is frequently used, is it?

Mr. Wilentz: I object to the question. He has already answered it three times that it is unusual.

Mr. Pope: No, he hasn't answered it at all.

Mr. Wilentz: Well, I submit he has, that is why I make the objection.

Mr. Pope: We will let the Court decide that.

Mr. Wilentz: The first question was whether it was unusual and he said Yes, and then the next question counsel asked was whether it was unusual, and he said it was not, now he is asking it backwards.

The Court: What is the present question?

Mr. Wilentz: I withdraw the objection.

The Reporter: (Reading.) "All right. You don't remember seeing it. Now a three-quarter inch dowel pin is not a usual size, is it? A. Yes. Q. It is sort of unusual, isn't it, in size? A. No, you can buy them in most lumber yards and in some hardware stores. Q. Well, you can buy them, certainly, but a three-quarter inch is not a size that is frequently used, is it?"

The Court: He may answer the question. I think he has answered it, but if not he may answer it again.

The Witness: Yes; it is frequently used for mop handles.

By Mr. Pope:

Q. You mean short mop handles for little sink mops? A. No; regular long mop handles.

Q. I understood you to refer in your direct examination to the annular rings in the photographs that you had demonstrating North Carolina pine. Those annular rings are caused by the natural growth of the tree making a ring every year, isn't it? A. Yes.

Q. Their prominence depends to a large extent upon the natural conditions, growing conditions, do they not? A. Well, they depend upon a number of factors.

Q. Well, one of the principal factors, of course, is the weather conditions, the amount of moisture that the tree receives, whether it is a wet season or a dry season? A. Yes.

Q. And another factor would be, for instance, a forest fire near the tree? A. Yes.

Q. That would stunt rather than stimulate the growth of the tree, wouldn't it? A. Yes.

Q. So that the more natural and the more healthy the growing season is, the larger and more prominent ring the tree develops? A. Yes, for a particular tree.

Q. Well, I am speaking now, of course, of North Carolina pine. A. The space that the tree has to grow in is the most important factor.

Q. Yes. Well, supposing that we confine our inquiries to this particular tree from which these boards, we believe, came. Now regardless of the space, my inquiry is this: that the width and prominence of the annular ring depends to a certain extent, at any rate, upon the season, the moisture that the tree receives and the other chemical products of the earth which enhances its growth. Isn't that so? A. Yes.

Q. Yes. So that in a season where there is plenty of moisture, a tree usually develops a

more prominent annular ring than it does in a very dry season? A. Yes; if other factors are favorable.

Q. Of course. So that when you referred to the prominent markings or annular rings in the board and, after all, the grain is really a part of the annular rings, isn't it? A. The annual rings constitute the grain.

Q. The grain, merely cut off in the circle? A. (Nods head.)

Q. That would indicate that the season was favorable to the growth of the tree, wouldn't it? A. You mean if you had a wide ring?

Q. Season and growing conditions? A. You mean if you had a wide ring?

Q. Yes. A. Yes.

Q. And where you have very small fine rings, very close together, as they are shown on the right hand side of this board, which is State's Exhibit—something—

Mr. Wilentz: 226.

Q. Yes, 226. —that would indicate dry seasons? A. Well, it might.

Q. And unfavorable growing conditions? A. It might indicate that the tree was crowded, becoming more crowded by neighboring trees.

Q. That would also be covered by unfavorable growing conditions, wouldn't it? A. Yes.

Q. So if we found those in one section of the board and then we find that they disappear and we have wide rings we may readily conclude that the growing conditions were much more favorable? A. Yes.

Q. Now, the character and type of grain which you discovered and have pointed out in these pieces of North Carolina pine is very common to

that type of lumber, is it not? A. Well, you have annual rings in North Carolina pine, but I can't say that any specific type or width is characteristic of North Carolina pine.

Q. Well, I will put my question another way: As we look at this piece of North Carolina pine, the first thing that strikes us is that the grain into it is prominent and stands out? A. Yes.

Q. And is easily discernible? A. Yes.

Q. Now, what I meant to ask was this: is that not characteristic of North Carolina pine? A. Yes, that is a general characteristic of North Carolina pine.

Q. And wherever you have a knot formation in North Carolina pine, when the tree is sawed through the middle and across the annular rings, you then get that whirling effect near the knot, don't you? A. Yes.

Q. That you have there? A. Yes.

Q. Just one or two questions about the machine. You showed us a diagram yesterday of the cutter head of a planing mill. I understood that that was merely diagrammic? A. It was.

Q. That it was not intended to depict or represent the cutter head on the mill down South? A. No, it wasn't.

Q. Did you determine at what speed the cutter head was running on the planing mill in the McCormick—the Dorn mill in South Carolina? A. Yes.

Q. How many revolutions per minute? A. 2700.

Q. 2700 revolutions per minute carrying eight knives? A. Yes.

Q. That would mean that there were eight times 2700 cuts on the underside or the upper side of the board per minute, wouldn't it? A. Yes. Wait a minute. Yes, that is right.

Q. In other words, practically 24,000 cuts per

minute? A. Let's see. I got mixed up on the previous calculations. Will you please read the previous answer?

(The reporter read the previous questions and answers as follows: "Q. 2700 revolutions per minute carrying eight knives? A. Yes.

"Q. That would mean that there were eight times 2700 cuts on the underside or upper side of the board per minute, wouldn't it? A. Yes. Wait a minute. Yes, that is right.

"Q. In other words, practically 24,000 cuts per minute? A. Let's see.")

Q. Approximately not quite 24,000? A. I figure 21,600.

Q. Well, 2700 revolutions per minute, it will be eight times 2700 revolutions, wouldn't it? A. Yes.

Q. And that is about 22,000. A. Yes.

Q. —knife cuts on the board every minute. A. Yes.

Q. Now, the markings of a knife cut on the under side of a board going over a jointing machine or a planing machine, depends whether or not there is any overlapping of the following knives, doesn't it, overlapping cuts? A. Will you please repeat that question?

(The Reporter repeats the pending question.)

Q. —overlapping cuts. A. You mean the presence of a knife cut depends upon overlapping cuts—I don't get that.

Q. The character of a knife cut depends upon

the overlapping cut. Well, I will change the question, I will put it this way to you. If a board is run across a planer head moving with eight knives at approximately 21 to 22,000 revolutions per minute—. A. No, not revolutions per minute, cuts per minute.

Q. —cuts per minute—I stand corrected. Thank you. —21 or 22,000 cuts per minute if it is moved at a fairly rapid rate of speed, the result will be a perfectly smooth finish on the board, won't it? A. Not perfectly smooth, because all of those cuts—

Q. Well, if it is run across the knives fast enough it will be absolutely smooth, won't it? A. No. The faster it is run, the rougher the work it does.

Q. The faster, the rougher? A. Yes.

Q. Well, in order to be rougher, the speed of the board running across the knives would have to be a little faster than the whirl of the knives and the cut, wouldn't it? A. Oh, it never is that fast.

Q. Isn't it the slow motion of a board across the planer head that causes the ridges or ripples to show on the bottom of the board? A. No. The slow motion brings them close together and makes them inconspicuous.

Mr. Pope: Thank you very much, sir.

Re-Direct Examination by Mr. Wilentz:

Q. Just a few questions, Mr. Koehler. You were asked a while ago whether or not you found lumber, I take it that the inquiry was with reference to the lumber in the ladder, whether you found any such lumber, first in Hopewell, and you said no, and the next question was as to the

epileptic village, and I think you said no. A. I did.

Q. You didn't find any at any orphanages, did you? A. No.

Q. Did you find any in the Bronx? A. Yes.

Q. In Hauptmann's home? A. Yes.

Q. Some time ago the inquiry was directed to you with reference to whether or not a mechanic built this ladder, and I think your answer was no. Let me ask you, does this ladder look like the work of a $100 a month carpenter? A. Well, I don't know just what kind of carpenter work that would be.

Q. Well, let's see. You have examined this ladder, have you not? A. Yes.

Q. It is a home-made ladder, isn't it? A. Yes.

Q. It is not a stock ladder? A. No.

Q. You see the place for the dowel pins, don't you? A. Yes.

Q. That had to be cut out? A. Yes.

Q. And you see these rungs? A. Yes.

Mr. Pope: Now I object to the question as leading.

Q. Do you see the rungs? A. Yes.

Mr. Pope: And not re-direct examination, not based upon any cross examination of mine.

Mr. Wilentz: Well, I differ with counsel, if your Honor please.

Mr. Pope: All right. Ask your question and I will see.

Mr. Wilentz: I thought I had done that.

The Court: I will overrule the present objection. Proceed.

Mr. Wilentz: All right.

Q. Do you see the rungs? A. Yes.
Q. In order to get those rungs in, what had to be done to these rails? A. They had to be notched.
Q. When you say notched, what do you mean by that? A. Two saw cuts made and the wood between them chiseled out.
Q. So that there had to be this excavation so-called? A. Yes.
Q. You call it a notch? A. Yes, or a recess.
Q. A recess, that is right. What do you make these recesses with? A. A saw and chisel.
Q. Saw and chisel. That is, they are not made in lawyer's offices, are they? A. No.
Q. How many of those were made?

Mr. Pope: He has never been in my office.

The Witness: There are ten in that section of the ladder.

Q. Ten. The dowel pins fit in these holes, did they not, in the various sections? A. Yes.
Q. The purpose of the dowel pins is to connect one section with another, I take it? A. Yes.
Q. Is this the work of a carpenter of some sort or other? A. It might be a very rough carpenter.
Q. Well, a jeweler wouldn't make this ladder, would he? A. No.
Q. It would have to be somebody that knew

something about carpentry, isn't that it? A. Well, something about it, yes.

Q. You see all of these other recesses? A. Yes.

Q. They have been cut out, haven't they? A. Yes.

Q. With carpenter's tools? A. Yes.

Q. And the other dowel pin holes have also been made by carpenter's tools? A. Yes.

Q. Is that the work of a carpenter, good or bad? A. Yes; used carpenter's tools.

Q. Never mind whether he used carpenters' tools; does it appear like the work of a carpenter? A. I would say that anybody working with wood would be a carpenter in a sense.

Q. I am not arguing with you about it? I just want to know. My recollection is that you stated that a man weighing about 175 or 180 pounds could, in your opinion, go up that ladder without it breaking. A. Without a break in the wood forming first.

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?

Mr. Pope: I object to the question as not based on any cross examination at all. There isn't any evidence in the case that anyone came down the ladder with any additional weight on it.

Mr. Wilentz: The case is loaded with that kind of evidence, your Honor.

The Court: I overrule the objection. He may answer the question.

Mr. Pope: May I have an exception?

The Court: You may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

Q. If you know, what is your opinion? A. I couldn't say.

Q. You can't tell. Now, let me ask you this, section 1 and section 2 connected would be connected by this dowel pin, would they? A. Yes.

Q. And if there were weight on the upper section, being Section 2, the force of that weight would go where? Would it go at the intersection where the dowel pin was? A. Yes, where the stress would be greatest.

Q. That is where the stress would be greatest. And if there was sufficient stress there to break it, where would the break most likely occur? A. It might occur in several places. It might force the top rung off because of the pressure of the upper section of the ladder against that, or there is tension across the grain of the lower part of the rails of the second section in that case, and they might split.

Q. Yes. All right. Now, just one minute. Tension against the lower part of the second section: is that what you say? A. Pressure against the back of the rung—

Mr. Pope: The rail.

Q. Yes. Now, this one is section 1, isn't it? A. Yes.

Q. Now, this is section 2? A. Yes.

Q. I take it; fit right in together, don't they? A. Yes.

Q. The dowel pins—

Mr. Pope: Don't they go the other way?

Mr. Wilentz: Maybe they do. I don't know.

Q. Have I got it right? A. Correct.

Q. Now, all right. This is section 1 where I am now, and I am climbing up this ladder, up to Section 2. Now, I am coming down.

Mr. Pope: Let's see you do it.

Mr. Wilentz: I am going to do it.

Q. Coming down Section 2, with the dowel pin in there. The pressure you have just talked about and the tension you are talking about is here at the intersection, is that it? A. Yes, where it is greatest.

Q. And being greatest there, if there is sufficient to cause a break, the break is likely to be there, isn't it? A. Yes.

Q. Take a look and see if there is a break in this ladder at that point. A. Yes. The two rails are split, from the end up to the first rung.

Q. That is from the end of the second—That is at the bottom of the second section where it connects with the top of the first section, isn't that it? A. Yes.

Q. All right. Now, will you just take the stand again. Of course, you didn't see—

Mr. Pope: Please don't put that away, the one section that is split. Just leave it there for a few minutes, will you, please.

Mr. Wilentz: All right. We will put it back.

By Mr. Wilentz:

Q. Of course, you weren't down on the Lindbergh Estate on the night of March 1st, and you didn't see this ladder that night, did you? A. No, I did not.

Q. And the first time you saw it, of course, was when you came there in May? A. I saw parts of it then.

Q. Yes. And not having been there you don't know just what happened with the ladder except from your observation later? A. Yes.

Q. You were asked about Stanley chisels. Did you find any Stanley chisels in Exhibit—

Mr. Wilentz: Can I have a little help with this chisel chest.

Q. Did you look through the chest that is marked 196, or will you look through it now and see if there are any Stanley chisels? A. (Witness examines chest.) No, there are no Stanley chisels in this set.

Q. Will you take a look at the rest of these tools, go through them carefully. A. (Witness looks through tool chest) Those are the only three chisels in the set and none of them is a Stanley chisel.

Q. What is this? A. A screw driver.

Q. A screw driver. Will you take a look and see if there is any other chisel in there?

Mr. Wilentz: I don't know as much about this lumber as Mr. Pope does.

Mr. Pope: You see I am an expert carpenter.

Mr. Wilentz: That is why you don't take very much time.

Q. Well, you don't find them, do you? A. There is one other place to look here (witness examines box further), no.

Q. All right, you can leave them just about as they are for the moment.

Q. So that you found no Stanley chisels in the State's exhibit, this chest of tools, or any other exhibits that have been shown to you? A. No.

Q. Now, with reference to the distance between the rungs of the ladder, a little fellow like me would have a hard time climbing a ladder with rungs so widely separately, wouldn't he? A. Yes.

Q. A man about 5 foot 9 or 10 inches would have an easier time, wouldn't he?

Mr. Pope: Won't you let the witness testify, General, please?

The Court: Well, it is perhaps a little leading, but you may answer the question.

A. Somewhat easier, yes.

Q. Somewhat easier. You were telling Mr. Pope, discussing with him and theorizing with reference to the raising of grain; that is, the grain being raised. Now a piece of wood that came from an attic and had not been exposed to the weather, if it were left on the Lindbergh estate from about somewhere around eight o'clock

until midnight or a few hours thereafter, would the grain raise as the result of that exposure? A. It depends upon the atmospheric conditions, whether it is damp or not.

Q. Well, did the grain in this rail 16 raise? A. In wood of that kind the grain is always raised somewhat.

Q. Always raised somewhat? A. Yes.

Q. Did the grain in that piece of wood raise at all or was it the same as the attic floor? A. Practically the same as the attic floor. It showed no difference in that respect.

Q. Would it have shown any difference exposed for those few hours that I spoke to you about? A. No, not if it was dry, not raining.

Q. Now supposing it was exposed to the ordinary moisture there is during this March weather for those few hours, would that have made any difference? A. If it rained on it, that would make some difference.

Q. Suppose it was exposed to the weather without rain for a few hours, would it have changed the appearance of it so far as the grain is concerned? A. No.

Q. Would it have raised the grain? A. No.

Q. Of course, if you poured water on it and kept it soaked in water, the grain would be raised, wouldn't it? A. Yes.

Q. You said the ladder wasn't a good carpenter's job. It was some sort—are the tools a good carpenter's set of tools? A. I wouldn't say so, I don't think they are.

Q. You don't think they are? A. No.

Q. Is the plane a good carpenter's plane? A. No.

Q. Is the ladder a good carpenter's ladder? A. No.

Q. The plane marks that you testified to yes-

terday upon this ladder, is it still your testimony that those plane marks were made by this plane? A. Yes.

Mr. Pope: I object to the question on the ground that it is leading and not re-direct and I ask that the answer be stricken out, because the objection was certainly timely, but the witness answered it.

The Court: I decline to strike it out.

Q. Now, having been—you appreciate, Mr. Koehler, do you not, that this defendant in this case is charged with murder? A. Yes.

Q. And appreciate—

Mr. Pope: Well, I object to that and ask that that be stricken out.

The Court: Well, I don't know the purpose of it, perhaps—

Mr. Pope: I don't either.

The Court: Perhaps there is a purpose.

Mr. Pope: Just to make a speech.

The Court: I don't see that it is objectionable at all; everybody knows that the defendant is charged with murder. What is the purpose of it, Mr. Attorney General.

Mr. Pope: Oh, we will let it pass if it is satisfactory.

Mr. Wilentz. 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?

Mr. Pope: Don't answer, please, don't answer. Now, I object to that question.

The Court: Why?

Mr. Pope: Well, there are so many reasons that I hardly know just where to begin. The first one is that it is not redirect examination based upon any part of the cross examination. It is not an omitted question because the witness has testified several times during the course of his examination as to just what he believed, just what his opinions were, just what he found and what his deductions and conclusions were from those opinions, and there was nothing in my cross examination which in any way questioned the conclusions which he uttered in that respect, and now I submit that it is quite improper for the Attorney General to come and ask the witness this morning, "Well, are you still of the same opinion that you expressed yesterday"? when there is no evidence that the witness has changed his opinion and it is only done for the purpose of repetition and effect, that is all, not to serve any useful purpose.

The Court: I will overrule the objection.

Mr. Pope: May I 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. Are you still of the opinion, Mr. Koehler that this S-226 and Rail 16 of the ladder were at one time one and the same piece of wood?

Mr. Pope: I object to it because it is very leading.

Q. Please answer. A. I am.

The Court: Do you object?

Mr. Pope: Well, he has already answered it. Now the damage is done.

Mr. Wilentz: That is all I have with the witness, you may take the witness.

Re-Cross Examination by Mr. Pope:

Q. And in answering that last question of the Attorney General you are expressing your opinion, aren't you? A. Yes.

Q. And that is all? A. Yes.

Q. Now will you bring the section down here that was split. You know them better than I do. Just lay it down on the floor; that will be all right; anywhere. I want it so the jury can see it, though.

Mr. Wilentz: I was going to lay it on the floor.

Mr. Pope: All right, I will hold it.

Q. Now, from your observation of those two rails that are split there, the split occurs where the dowel pin goes in, in each instance, doesn't it? A. Yes.

Q. So that the reason those rails broke or split at that point was because they were weakened by the hole bored to receive the dowel pin: isn't that right? A. No, I wouldn't say that was the reason.

Q. Well, it was weaker at that spot than at any other spot in the rail, wasn't it, because of the hole bored through it? A. Well, I don't know just what you mean. Weakened in what respect?

Q. All right. I mean this: whenever you put—what is that, a three-quarter inch hole? A. Yes.

Q. Or seven-eighths, or inch? A. Three-quarter inch.

Q. Three-quarter inch hole. Whenever you put a three-quarter inch hole in a one by four, you weaken the one by four at the spot where the hole goes through, don't you? A. You might weaken it in some respects, yes.

Q. Well, you weaken it as a rail for a ladder? A. Slightly, yes.

Q. Yes. And it is more apt to split when there is a hole bored through it than it would be if there had been no hole through there, isn't it? A. Yes.

Q. Yes. A. Naturally.

Q. So that the principal reason why it split where it did was because of its weakened condition where the holes were bored through? A. No, not necessarily.

Q. Plus the weight on the ladder? A. The stress

may have been greatest there. It may have been weaker somewhere else, but the stress was greater here and it broke there.

Q. Well, Professor, the stress, when you speak of the stress then you refer again, of course, to the fibers, don't you, the holding power— A. No, the affect of the load put on.

Q. On the holding powers of the fibers? A. Yes.

Q. Now of course there was less holding power on the part of the fibers where the holes were bored through the wood? A. That is true.

Q. Consequently it was weakened? A. Yes.

Q. And the stress then had a greater effect upon that weakened portion of the wood? A. That is correct.

Q. And that is what caused it to break at that spot rather than in some other spot, isn't it? A. Well, in my opinion, the fact that caused it to break there was because the stress was greatest there and that the slight weakening due to that hole—

Q. If there hadn't been any stress there it wouldn't have broken at all, would it?

Mr. Wilentz: Let him answer, please.

Q. It was the stress plus the weakened condition of the wood at that particular point that caused the break to occur at that point? A. That is correct.

Q. Now we understand each other. One other question: This type of ladder, speaking of its general construction work, referring to the general characteristics of the mechanical work on this ladder, a boy with a letter experience in a manual training school would do a much better job, wouldn't he? A. Yes, if he had some experience.

Q. A carpenter in building a ladder or any

other structure of this type, lays out his work with a square and a pencil, doesn't he? A. Yes.

Q. And particularly where he recesses the rails to let them in, that is laid out with a square and pencil marks? A. Yes.

Q. And you can most generally find pencil marks extending beyond the depth required? A. Yes.

Q. And did you find such markings on this ladder? A. Yes, there were some on there.

Q. There were some on there, but not very many. A. No.

Q. You don't find very many? A. I think most of the recesses show some.

Q. Some pencil marks? A. On one or two of the rails I should say.

Q. This type of ladder, I mean this general—shall I call it plan of construction of ladder—is a general plan and type of ladder that is used quite extensively in the South in the fruit industry, is it not? A. Not to my knowledge. I never saw a ladder like that before.

Q. You never saw one like that before? A. No.

Q. Have you ever paid any attention to the type of extension ladder or sectional ladders that are used in the fruit picking areas of the South, of southern United States? A. I didn't know they used sectional ladders.

Q. You never noticed that? A. No.

Mr. Pope: That is all. Thank you.

By Mr. Wilentz:

Q. The distance between the rungs, between one rung and the other, right through the sections, the distances are almost identical, are they not? A. Yes, although when the sections are assembled

it brings two rungs closer together near the middle.

Q. And the pencil marks which Mr. Pope spoke to you about as being, I think he referred to them as being the—

Mr. Pope: The recess.

Q. —the manner in which a carpenter would do it, you found such pencil marks, you told us?

Q. If this ladder were connected so that two sections were together and those two sections placed against this wall or any other wall, you stated that the break, if it came at the intersection, would be due in part to the stress? A. Yes.

Q. Do you mean the stress that would come from above that part, from the intersection? A. From above or right at the intersection or below the intersection, the stress—

Q. Where, more likely? A. The stress would be greatest when the load is at the intersection.

Q. At the intersection? A. Yes.

Q. So that if the feet were right there about, right at the intersection, that would be where the stress would be the greatest. A. Yes.

Q. And that, in your opinion, is the likely way in which the damage was done to these rails. A. Yes.

Mr. Wilentz: That is all, Mr. Pope.

Re-Cross Examination by Mr. Pope:

Q. Well, of course they could have been split in several other ways, couldn't they? A. You mean split with a tool?

Q. No, I didn't mean with a tool. I mean it

is evident that the split came from stress, from an over-strain. A. Yes.

Q. Yes. Now that over-strain might have been applied in other ways, besides coming up and down the ladder. A. Yes.

Q. Certainly. A. Yes.

Q. I understood you to tell Mr. Wilentz a few minutes ago that a part of this ladder came into your possession in the month of May, 1932. Would you mind telling us what part or parts of the ladder came into your possession at that time? A. Pieces split from the rungs and the split portions of the rails.

Q. So you did not cut those out yourself? A. No.

Q. Those samples? A. Those diagonal splits, I mean.

Q. Yes. A. On the rungs.

Q. I see. And you took them to your laboratory for some purpose? A. They were taken to the laboratory.

Q. And studied. A. And studied, yes, sir.

Q. Now that is all the parts of the ladder which came into your possession in May? A. Yes.

Q. When did you next see or have in your possession any part of the ladder? A. The first part of March, 1933.

Q. That was about a year afterwards? A. Yes.

Q. And what part or parts of the ladder were in your possession at that time? A. All of it.

Q. The entire ladder? A. Yes.

Q. And had it been disassembled, or did you disassemble it— A. No.

Q. —at that time? A. I took it apart.

Q. Well, did you take it apart before it was shipped? A. Shipped where?

Q. To your laboratory. A. Yes, it never was all shipped to the laboratory.

Q. It never was all taken to it? A. No.
Q. Only parts of it? A. Yes.

Mr. Reilly: Where did he get it: from Washington or where?

Q. Now, in March 1933 from whom did you obtain the ladder? A. From Captain Lamb.
Q. At the barracks? A. Yes.
Q. That was referred to? A. Yes.
Q. Then what part did you send to Washington? A. I didn't send any to Washington.
Q. Well, was any part of it sent to Washington? A. I understand the whole ladder was taken to Washington.
Q. Was that before or after you had it in March? A. Before.
Q. Before, and do you know to what Department it was sent to Washington? A. No, I am not certain.
Q. Well, at any rate you did not handle it yourself in Washington— A. No.
Q. —while it was there? A. I had nothing to do with it in Washington.
Q. Nothing to do with it in Washington? A. No.

Mr. Pope: That is all.

Mr. Wilentz: Mr. Koehler, that is all.

Will your Honor give us a moment?

(Counsel confer.)

Mr. Wilentz: The State rests.

(Confusion in the courtroom.)

The Court: The officers will see to it that this confusion is stopped at once. The people who are making it will be brought up here and we will have to deal with them.

Now, Mr. Attorney General, you rest your case, as I understand it?

The defendant may proceed.

Mr. Reilly: Before he rests, I would like to continue my cross examination of Sisk.

I would like to have that young lady from The Bronx recalled here for cross examination.

The Court: Let that be done.

Mr. Wilentz: We have no objection, if your Honor please, to counsel calling anybody he pleases, but the State rests its case at this time.

It was my understanding the other day, after Mr. Sisk had been recalled here for the benefit of the defense, that he was to get some records from Washington or some place, and I stated then, if your Honor please, in open court, that I contemplated that the State would rest within a day or so and that those things might not be available at that time.

And my understanding was that it was agreed that the defense would go on and that Mr. Sisk when he did come, when he did have the records would be available.

So far as the lady from the Bronx is concerned, she is subject to subpoena for the defense just as she is and as she was for the prosecution. I am not going to undertake to haul back here every witness

that counsel may have a fancy to have back here. If I had had notice at the time, I probably would have made arrangements. I don't say we won't get her back here, but to hold up the defense until this is done, if your Honor please, of course I think is unreasonable.

Mr. Reilly: We have no desire to hold up anybody. This is the situation, your Honor:

I asked Agent Sisk about some Victrola records. He said he would bring them here providing he received word from his superior. I then telegraphed his superior, that day. The next day I received a telegram that he might testify. I didn't want to break into this.

Now the young lady in the Bronx was a surprise witness. We never heard of her. We were unable to test her credibility. We have come into possession of certain evidence now which we think seriously affects her credibility. We ask the privilege of having her recalled, no matter when she comes during the defense case, but that it be considered for the purpose of cross-examination, not making her our own witness, so that she will say no, and we will be bound by the answer.

Mr. Wilentz: Your Honor please, with reference to this lady, I object to the statement that they are in possession of any evidence or any facts which would in any wise contradict this lady's testimony, but I have no objection to making an effort to get her back if counsel wants her. The

only point I make, if your Honor please, is that we are not to sit here and wait.

Mr. Reilly: Oh, no, we have no desire to hold up this trial. Your Honor knows that and I think the General does.

Mr. Wilentz: With Mr. Sisk we will do the same thing. We will see that these witnesses are produced if possible, Sisk certainly and the young lady probably.

The Court: There is one of these witnesses that you will agree I am quite sure should be available here for the defendant to make his own witness.

Mr. Wilentz: That is Mr. Sisk.

The Court: That is Mr. Sisk. That, I think is the situation so far as Sisk is concerned.

Mr. Wilentz: He will be available, I am sure.

The Court: And we have the assurance of the Attorney General that he will be available.

Mr. Reilly: Yes.

The Court: Now so far as this woman is concerned, I have no recollection that she was to be called by the defense as the defense's own witness.

Mr. Reilly: No. I don't think she ap-

peared in the Attorney General's opening even.

Mr. Wilentz: Oh, yes, she did, if your Honor please.

Mr. Reilly: She may have, but I don't recall that she was indicated by name. However, she came in subsequently.

The Court: Now then, it seems to be agreed between counsel that this woman shall be made available at some future time, and it had better be as early as possible in order to get rid of this stage of the case, and be submitted to cross-examination.

Mr. Reilly: Yes, sir.

The Court: So that seems to clarify that situation.

Mr. Wilentz: I might suggest that I think that counsel may have a subpoena served for that purpose.

Mr. Reilly: I think she will come back much quicker at the request of the Attorney General than she will under our subpoena in the State of New York. She is not under any obligation to answer.

Mr. Wilentz: I am not so sure of that, if your Honor please. Having seen Mr. Reilly in court, I wouldn't be a bit surprised that she would come sooner at his invitation. (Laughter.)

The Court: Perhaps it might help some if the Attorney General would request this woman to come back.

Mr. Wilentz: I will, sir, I will.

The Court: And Mr. Reilly can use his own judgment about the use of a subpoena.

Mr. Reilly: May I at this point—we haven't had a recess—request the recess now until a quarter of two, the State having rested; and I think the Attorney General and myself would like to speak with your Honor at the side Bar here.

The Court: Very well.

Mr. Wilentz: We are at adjournment hour anyway.

The Court: Yes. We will take a recess now presently until 1:45. The people will remain standing or remain where they are in the court room. The jury may retire and come back at 1:45.

(The jury retired.)

The Court: The prisoner is now remanded to the custody of the sheriff.

The Court will now take a recess until 1:45. The people may go.

(Whereupon at 12:29 the Court took a recess until 1:45 p. m.)

AFTER RECESS

(1:45 p. m.)

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

The Court: Counsel may proceed.

Mr. Rosecrans: If the Court please, I desire to make a motion for a verdict of acquittal. Before I do that, it has been brought to my attention that two documents were offered in evidence by the defense, which I take it is according to the New York practice, and I desire now to move first to withdraw those two documents which were offered in evidence.

If, for any reason, the Court does not desire those two documents withdrawn, I would like to reserve my right to proceed with the defense in the event this motion is denied and produce evidence, witnesses, and continue with the defense in that event.

In other words, my motion is, first, to withdraw from evidence the two documents that were introduced in evidence for the purpose of making a motion for a direction of a verdict of acquittal.

The Court: There has been no suggestion made that the presence of those two documents impinge upon your right to make a motion for the direction of an acquittal.

Mr. Rosecrans: No, sir.

Mr. Wilentz: May I say, if your Honor please, that the State desires to take no technical advantage of that situation at all, and we make no objection and, if counsel feels that is in his way, we say now that we take no advantage of it and will make no objection.

Mr. Rosecrans: Thank you.

My motion, first, is based on this ground, that there is no evidence that the crime alleged was committed in Hunterdon County and, therefore, under the evidence as presented, this Court is now without jurisdiction as the venue has been improperly laid in Hunterdon County instead of the County of Mercer, the corpus delecti having been found in Mercer County. The legal presumption is that both the felonious blow was struck and the death occurred in Mercer County, as the evidence does not disclose any felonious striking in Hunterdon County, to bring the case under Section 59 of the Criminal Procedure Act—Section 59, of course, being the one that provides that indictment may be found in either one.

I am mindful of the fact that a legal presumption such as the presumption of death occurring in Mercer County is a rebuttable presumption. But my contention is that there is no evidence here introduced by the State or on behalf of the State to overcome the presumption that death occurred in Mercer County.

Next, that there is no evidence of a wilful, deliberate and premeditated mur-

der having been committed in Hunterdon County.

That is, nothing in the evidence to show that murder in these three essentials was committed in Hunterdon County.

That there is no evidence of a completed crime of murder or manslaughter in any degree having been committed in Hunterdon County.

That of course comes back to the proposition that there was no proof of a felonious striking in Hunterdon County, that the presumption being, the body found in Mercer County, that the felonious blow must have been stricken in Mercer County.

Next, under the State's theory that death ensued from the committing or attempting to commit the crime of burglary, that there must be recourse to the common law for a definition of burglary, for the reason that we have no statute defining the crime of burglary as such, and there is no proof in this case to show that the defendant committed the common law crime of burglary.

Now the argument as to that is, if the Court please, that we have a statute which some think defines burglary. According to my notion, that crime of burglary, that statutory crime, which some think defines burglary, is merely so defining burglary because of a caption in the statutes which has crept in through the compilation of the statutes.

In looking back to the old statute, for instance, Nixon's Digest, we find no caption "Burglary." The common law definition of Burglary was that shortly entering by night into a mansion house with the intent

to commit a felony. Under this statute, which bears the caption "Burglary," we have many other things than the common law prescribed as defining the crime of burglary.

Now, this crime of burglary, of course, is one of intention. At common law there was a breaking and entering with an intent to commit a felony. What felony in this case, if we go to the common law, as I contend we must? Stealing clothes of the child, the sleeping garment? That hasn't been proven here to be a common law felony, because a common law felony of stealing was to steal garments over the value of, I think, twelvepence; no proof of the value of those garments, so there is no proof of a felony as to the stealing.

Now as to the kidnaping, the only other theory I think that the State has produced or can rely upon, is that someone entered this house with intent to kidnap this child. Well, that again at common law was not a felony and the crime of kidnaping at common law, if it may be designated as such, was the taking of a person out of the country, out of the kingdom. If the State of New Jersey be considered the kingdom or the country, certainly the body was not taken out or there is no proof to show that the child was taken out of the country, out of this sovereign State of New Jersey; and if it be the United States as the country intended, of course there is no proof that it was taken out of the United States.

So that on any consideration of the testimony of the State, I find no intent to commit a common law felony.

I am mindful of, I think, one case which refers to robbery, the statutory crime of robbery, and intimates that we have a statutory crime of robbery. An examination of that case I don't think bears out the proposition that the Court of Errors & Appeals decided that we had a common law statute defining robbery. We have, for instance, a crime, defining arson as such; doing certain things is arson under our statute, changing in some particulars the common law. We have a crime of murder, defined as murder. The next general proposition is that there is no evidence in this case from which a jury could infer that the crime of burglary was either committed or attempted to be committed in that certain essential elements of burglary are lacking, as there is no evidence of a breaking, no evidence of an entry, and no evidence from which the jury could infer an intent to commit any felony, no evidence of an offensive battery or touching even if it is presumed for the purpose of this argument that we have a statutory definition of burglary.

The window was closed before and after the child was taken from the nursery according to the state's case.

That, of course, at common law I don't conceive to be evidence of a breaking of that window. The window was in the same position before and after.

And there is no evidence that there was an intent to commit a felony, as I have referred to before.

Next, that the evidence conclusively shows that the burglary, if any, was com-

mitted, was complete in Hunterdon County, before any alleged blow or striking, which must be presumed to have been committed in Mercer County where the body was found, as burglary is a crime of intention, and therefore death did not ensue from the burglary but was a separate crime.

Now, I am again mindful of the cases of State against Carlino and Turko, which I argued in the Court of Errors and Appeals. Those were robbery cases. That was a taking by force of property from a person; and the Court of Errors and Appeals held that during the time that the property is taken to a safe place, during the time that the robbers are effecting their escape, that may be considered part of the res gestae; and that anything done in that, attempting to commit escape, would be part of the crime of robbery. But in this case burglary is a crime of intention. A person breaks and enters a house with intent to commit a felony. When that intention is in the mind of the defendant, when he breaks and enters the mansion house with the intent to commit this felony, he certainly has completed the crime there.

We can go a step further, of course. If he had intent to steal goods of the value of over twelve pence, he takes those goods out, and if he were apprehended at that point and followed, that would, of course, be part of the res gestae, that is, of course, if he turned around and shot someone at that point.

But, in this case, the case is barren of any evidence of flight, there is no evidence that this defendant was, or any person

entering that house was apprehended in entering or leaving the house. That body might well have been taken over to New York State, or anywhere else, and brought back a month or so later to the point where it was found.

So, I contend that since this crime is one of intention and the Court of Errors and Appeals never having passed upon when that crime is complete, only having passed upon the question of robbery, that the death did not ensue from the burglary, because it was complete under the evidence here.

If, for instance, by breaking and entering a window be broken and a part of the glass should fall over and sever an artery of a person or of this child that I would say would be ensuing from the burglary or the breaking and entering.

Next as to the Section 59 of the Criminal Procedure Act, I contend that that does not apply to a murder based upon Section 106 or 107 of the Crimes Act, that is the Section 59 being the one that an indictment may be found in either county, does not apply to Section 106 or 107 of the Crimes Act defining murder and first degree murder, because Section 59 specifically applies to a death resulting from a poisoning or a felonious striking in one county and not to a death ensuing from the commission of a felony such as burglary.

In that connection, at common law, we all know that there was a time that a person could strike another in one county and if death ensued in another county an indictment would not lie in either one, but

under this English statute of Henry the 6th, it was provided that an indictment would lie in either county and we have followed that by our Section 59 providing that if a felonious blow be stricken in one county and death result in another, an indictment may be found in either one.

But that, I understand, must be limited to death by poisoning or a death by felonious striking. Now, the case is barren, the State's case is barren of any evidence indicating a felonious striking and, certainly, there is no proof of death by poisoning.

So I contend that that Section 59 has no application to a death ensuing from a burglary when there is no proof of a felonious striking or a death by poisoning—and that, as I understand, is the State's theory.

Next, upon the State's theory that death ensued from the committing or attempting to commit burglary: Such crime of burglary as the necessary basic element of the crime of murder, and since the record and evidence conclusively show that the burglary, if any, was committed more than two years before the finding of this defendant, the defendant cannot be put to a trial to rebut a burglary barred by Section 152 of the Criminal Procedure Act, setting forth the limitation of prosecution.

Now I mean by that that unless the State proves a burglary, they can't convict the defendant of murder; because burglary is the basic crime upon which they rely, upon their theory to prove that the defendant is guilty of murder. If there is no burglary, he is not guilty of murder, unless of course

they show that it was a murder springing from something else. But I understand the State's theory is that the murder was the result of the commission of a burglary.

Next, that there is no sufficient proof that the defendant was at the scene of the crime upon the night in question, as the evidence of identification is too remote in point of time and distance from the situs. That the evidence as to the defendant's handwriting being used in the original ransom note left in the nursery is not sufficient upon which a jury could predicate the fact that the defendant was actually present in the room. And that the defendant's possession of a part of the ransom money, the building of the ladder, the writing of the ransom notes and the other alleged acts in the State of New York is not sufficient from which a jury can infer the presence of the defendant in Hunterdon County upon the night in question.

Now, of course, in a case of circumstantial evidence only those matters from which the jury is entitled to draw reasonable inferences are to be submitted. I think that under the evidence that is presented here, the State has not brought this defendant near enough to the night in question when, as they say, there was a breaking and entering of this house.

The nearest that I can remember is an elderly gentleman who testified he saw the defendant upon the morning of the crime in question; others placed him still more remotely in point of time.

And as to the distance that was cited I think the old gentleman was the one who

placed him on that morning somewhere within a mile or two of the mansion house of Colonel Lindbergh.

The Court: Near the gate house; near the gate house, I think it was.

Mr. Rosecrans: Near the gate house. Now, as to this last proposition that all of the proof of the ransom money, the building of the ladder, the writing of the note, and other matters which took place in New York State, I contend that in order to prove their case the State, of course, must on their theory that this defendant is the only one engaged in this crime, place him at that house on that night; they must prove an actual presence, no constructive presence enters into the thing.

I understand very well that a man may be over in New York and send an accomplice over to New Jersey, and if he did send that accomplice over to New Jersey with a guilty knowledge, with knowledge that he was going to do something, supplied him with ransom notes or a ransom note, supplied him with a ladder, even, in that event the man in New York wouldn't be guilty, couldn't be guilty of the crime charged here.

I do understand that if the man in New York sends an innocent person over into New Jersey, innocent entirely of the purpose in coming over to New Jersey, why, the man in New York is guilty under the theory of a constructive presence; but that I don't think concerns us here, because of the fact that the State alleges that this

man, this defendant, was the only one engaged in this crime.

I think there is nothing to add to that, if the Court please.

The Court: Does the Attorney General care to be heard?

Mr. Wilentz: If your Honor please, as your Honor well knows, the State in this case has charged this defendant Hauptmann with the murder of the Lindbergh child on the night of March 1st, 1932.

In connection with that charge, of course, and the indictment, the State came into court with a theory, a theory which we thought at the time and which we believe now sound in law, and that theory then and that theory now is that this defendant Hauptmann was guilty of this murder because he broke and entered into the Lindbergh home at night with intent to steal and committed a burglary in that respect, as well as the fact that he committed a battery upon the child, and that this death emanated and resulted from this burglary.

We proved those facts, and if we have, he is guilty of murder.

This talk about circumstantial evidence, may I say, if your Honor please, that this case we respectfully submit to your Honor has not only circumstantial evidence but a great wealth and abundance of direct, positive and absolute testimony. Dealing immediately with the points as made by counsel as nearly as I have been able to follow them, the first was with reference to whether or not there was evidence that the

crime alleged was committed in Hunterdon County.

Quoting his language, "the corpus delecti having been found in Mercer County, the legal presumption is that both the felonious blow was struck and the death occurred in Mercer County, as the evidence does not disclose," etc.

The presumption, of course, counsel has already stated is a rebuttable one. The presumption isn't evidence. It is a legal excuse for the failure to produce evidence.

If it is rebutted at all it ceases to be a factor, and there are too many cases, they are too numerous to mention. Normandin vs. Parentean, 150 Atlantic 460, Smith vs. Tompkins, 161 Atlantic 221, New London Water vs. Robins, 82 Conn. 623. Dunn vs. Goldman, 111 N. J. L. 249. If it were necessary, however, to prove the place of the offense by circumstantial evidence, that is also supported by law, if your Honor please. In 30 Corpus Juris at 290: "The place of the offense may be proved by circumstantial evidence. It need not be established by one who witnesses the infliction of the wounds."

If the defense thinks that we are required to have somebody sitting in that room watching this man commit this burglary, or if they feel that it is the responsibility of the State to have somebody sitting at the bottom of that ladder to see this man climb it before we are entitled to a conviction, it is my judgment, if your Honor please, respectfully submitted, that they are in error about it.

With reference to the venue: "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 transactions. The venue may be proved by circumstantial evidence." Why, we have a wealth of that type of evidence, if your Honor please.

Why, we have a wealth of that type of evidence, if your Honor please. In the first place, here is this child safe in its bed, in its home in Hunterdon County; the windows closed, the shutters drawn. We have proof positive that that window was opened and we have the mud trail right from that window and the window sill right up to the baby's crib.

We have the ladder, the ladder marks right on the wall. We have got the evidence of the very wood in the stone wall where that ladder, when it broke or slipped, left those splinters in the wood.

That is the testimony of Lieutenant Sweeny, I think it was. So we have the ladder marks and, not only the ladder marks, but actually the evidence of this ladder breaking, in addition to having the ladder there.

Now, we wouldn't have to have the ladder there to prove our case. It so happens that it is there.

Supposing Hauptmann took his ladder home with him. Would that mean that we couldn't prove the case, if we showed by the ladder marks and other evidence from a jury would have a right to infer that there was a ladder, but we actually have the ladder there, and we have the chisel.

So that we have a wealth of evidence, if your Honor please, of the crime having been committed, the burglary having been committed in Hunterdon County.

What else? What is the proof as to the blow? The proof is positive, if your Honor please, that this child died of a fractured skull; that that fracture was due to external violence, and that death was instantaneous.

What else do we have, then? We have got this breaking of this ladder; we have got—as this man walks along you can see in your mind's eye, if your Honor please, along this highway up to the point we are, realizing and knowing that the child is dead; there is the child's thumb guard: further proof that at that point where he yanked off the sleeping suit, which sleeping suit was returned, not with the body, if your Honor please, and still in Hunterdon County. We have there the mute evidence of his knowledge that the child was dead there on that lone night when he took that garment off.

So that we have all those, the burglary there, the proof, the reasonable inference that can be drawn that the child must have received its blow there, and then finding this thumb guard and then finding the body decomposed, mutilated, from which a jury has the right to draw the reasonable inference that it must have been there for some time—it was only two months or more, if your Honor please. Death was instantaneous, that is the proof, from a fractured skull.

That presents the situation that the proof

showed that the homicide was committed in the attempt to perpetrate a robbery, a burglary. Now counsel talks about the common law definition, that there is no common law definition, but there is a statutory definition of burglary. In the case of the State vs. Compo, they dealt with the very statute involved, not with burglary in that case, but with robbery, but our Court indicated its line of reasoning and its thoughts upon the subject. It said:

"The statutory definition of murder is as follows: 'Murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in perpetrating or attempting to perpetrate any arson, burglary, rape, robbery or sodomy, shall be murder in the first degree.' "

Now in the Compo case they were dealing with robbery, the common law definition and the statutory definition and here is the way the Court dealt with it: the word "robbery" as used in this 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. It includes both.

It is respectfully submitted, if your Honor please, that the reasoning of the Court in the Compo case is easily applicable to the crime of burglary. The common law definition of robbery has been uniformly approved and followed in cases where homicide has been committed in the perpetration of robbery.

The next point that is made is that there is no evidence in this case on which the jury could infer that the crime of burglary was either committed or attempted to be committed in that certain essential elements are lacking as there is no evidence of a breaking.

I have already dealt with that, if your Honor please. We have shown the ladder and the opening of the window and the walking from the window to the crib and the mud in the baby's room.

I think counsel also says that the evidence conclusively shows that the burglary, if any were committed, was completed in Hunterdon County before the alleged blow or striking which must be presumed to have been committed in Mercer County where the body was found.

Similar situations have been dealt with by the courts and they have uniformly held that the crime was not a separate crime. The defendants, when they are apprehended as the result of death of their victim, which death emanated from burglary or robbery, always say, "Why, it is a separate crime."

It was burglary there and it stopped. Now, the killing is a different crime, and the burglary is a different crime; but the Courts have been able to deal with those contentions.

In the case of State vs. Turko, that Mr. Rosecrans referred to—that was a robbery where, incident to a robbery, one of the robbers kills a third party, after the goods have been taken out of the possession of the owner or his agents, while the robbery

is complete, so as to render the perpetrators liable to conviction for it, yet the killing being done in an attempt to conceal the crime, protect the robbers in the possession of the loot and facilitate their flight, is so closely connected with the robbery as to be a part of the res gestae thereof.

A man in the commission of a burglary or robbery may go a hundred miles and still, if death ensues somewhere, and the act is not completed, if your Honor please, he may be guilty of the murder, notwithstanding the fact that there is this distance.

The State vs. Gimbel is a similar case, if your Honor please, in 107 New Jersey law; and while I am citing these cases, if your Honor please, let me say I do it very respectfully, because I know your Honor has read them time and time again, and is familiar with them, to the point probably of pain.

Now, finally, counsel for the defense says there is no sufficient proof that the defendant was at the scene of the crime upon the night in question, as the evidence of identification is too remote in point of time and distance. It is our contention, if your Honor please, that if we didn't have a living soul that said he saw this man coming up Lindy's Lane, as it was expressed by one of the witnesses, it is our feeling that if we proved, as we have proved, that he left that note, that it was his handwriting in the note in that room, that he returned the sleeping garment, that it was his ladder and that he built it—if your Honor please, those things alone we feel

would be sufficient to call upon this defendant to answer. But we have got not only that. A note is found in the baby's room in his handwriting, and two days afterwards, or three days afterwards, just as he had promised, he says, "Why don't you follow the instructions?" or something to that effect,—"Why don't you follow the instructions in the note which we left in the baby's room?" And we follow the instructions and we pay the money;—and we pay it to whom? To the man whose handwriting is in the baby's room, who said he left it there. And we get from him the sleeping garment, if your Honor please, the sleeping garment of the child when it was last seen alive, from him.

That is the state of the proof. And we find his ladder right there on the premises, and his chisel, if your Honor please, or a chisel which we contend the testimony indicates and the jury may draw a reasonable inference that it was missing, because he had the other three sizes of chisels, but not the three-quarter inch chisel—we have got the ladder right out of his home, if your Honor please, and throughout all the communication and the dealing and the contact that he has with us, he represents all the time "We have got the child; the child is well. Give me the money. We are the right parties."

What a strange situation it would be—if a man coud do that and, for the purpose of this motion, the State's case, the evidence, must be taken at its present value—what a fine situation we would be confronted with if we would have to come

into a courtroom and say, "Yes, we have proved all those facts".

But we didn't have a watchman standing there while this man climbed the ladder, and therefore he doesn't have to answer.

In every note that is in evidence, he says, "We have planned this thing for a year, or for weeks," or whatever it is, for a time, and it shows it in the evidence. We have proved that he trailed Condon. We proved by the ladder that he had planned it, it took him time to build it. He didn't buy one, it was a home-made ladder; he had to saw a part of the attic away, he had to go to a lumber company to buy the lumber, he had to pick out the places where he was going to meet the gentleman that was going to give him the money; he had to plot and scheme all that out—we proved that.

He did; he came there. We proved he came there before the crime. We proved that, and his statement in the notes that he had planned it. The proof is there that that is just what he did, he was in and about that vicinity, becoming acquainted with it, familiar with it.

He was there the Saturday before and he was there a time before and he was there by positive proof in Lindy's Lane on March 1st, 1932. May I respectfully submit, if your Honor please, that if the testimony of Koehler is to be believed alone, this man must answer, separate and apart from everything else; if the testimony of Dr. Condon alone is to be believed, may I respectfully submit this man must answer; if the testimony of the handwriting wit-

nesses alone are to be believed, may I submit this man must answer. But we have got that and I don't want to take up too much time, your Honor please, or go through a summation, but let me just say in conclusion that is our view, very respectfully submitted to your Honor that there is not only sufficient evidence but overwhelming evidence, if your Honor please, which requires this defendant to answer.

Mr. Rosecrans: May I be heard for one moment, your Honor?

The Court: Yes.

Mr. Rosecrans: Without taking up too much time, if the Court please, the learned Attorney General has said that there was proof that the sleeping suit was yanked off, or words to that effect. I know of no such proof. The thumb guard was found some distance from the house. If that be proof of the fact that the child was killed on the Lindbergh property, I contend that it is no proof to go to a jury on, that that is not such a circumstance from which a jury can infer that the death resulted in Hunterdon County.

As to the Compo case, in reading the Compo case which I know your Honor is familiar with—I have also read it—the common law definition of robbery has been uniformly charged in this State, not the statutory definition of robbery, where death results from a robbery.

As the Attorney General said I don't

intend to go over the evidence. I just want to place those matters on record.

The Court: The motion for direction of acquittal will be denied.

Mr. Rosecrans: May I pray an exception?

The Court: You may have an exception.

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

THOMAS W. TRENCHARD (L. S.)
Judge.)

OPENING STATEMENT ON BEHALF OF DEFENSE.

Mr. Fisher: If it please your Honor and ladies and gentlemen of the jury: I am fully cognizant of the grave importance of the trial of this indictment. I appreciate truly how keen a responsibility is mine. I shall humbly and in language as simple as I can command give you briefly the facts and the circumstances upon which we rely to gain for the defendant, Bruno Richard Hauptmann, an acquittal at your hands. That is now our responsibility: The fair presentation of all the facts and circumstances attendant to the trial of this indictment which we shall contend will preserve the life and the liberty of this defendant.

Mr. Fisher: Until these facts and circumstances are fully proven, that responsibility continues to be his and ours. When we have fully and completely presented all those facts and circumstances which we feel are material to the proper presentation of this defense, then that responsibility shifts, it is no longer mine, or that of my associates.

The responsibility for the life and liberty of Hauptmann then becomes yours.

Now, let's see what we are here to defend. May I at this time read to you the indictment that we are called upon to defend: "The grand inquest for the State of New Jersey in and for the body of the County of Hunterdon upon their respective oaths present 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, Junior, contrary to the form of the statute in such case made and provided and against the peace of the State, the Government and the dignity of the same."

Now, still having some doubt in our minds as to what we were called upon to defend, under the phraseology of that indictment, which, as a matter of fact follows the old common law form of murder indictment, we caused to be served upon the State of New Jersey, through their proper respresentative, the Attorney General, or

the Prosecutor of Hunterdon County, a demand that we be furnished with some particulars specifying with more particularity just what the defendant Hauptmann was accused of, and in response to that a motion was argued before his Honor in this court room, answered on behalf of the State of New Jersey by Mr. Lanigan, who sits at the State's table, and I want to read for you now out of the official record the questions and answers as submitted by Mr. Lanigan:

"Question Number 1: Is it the intent of the indictment to allege that murder was committed with premeditation and with malice aforethought? Answer: The indictment is complete and sufficient answer in that it states that Bruno Richard Hauptmann did wilfully, feloniously and of his malice aforethought kill and murder Charles A. Lindbergh, Junior. Question Number 2: Is it the intent of the indictment to allege that murder was committed while the indicted subject was engaged in the commission of a felony? Question Number 3:—"

Mr. Wilentz: Pardon me. If your Honor please, I didn't want to interrupt counsel, but the bill of particulars, if your Honor please, I take it, is not a proper part of the opening.

The Court: Well, I believe—

Mr. Wilentz: It is evidence.

The Court: The answer to the bill of particulars—

Mr. Fisher: Yes.

The Court: —would be proper for consideration, but such bill, such demands as are not answered and not required by the Court to be answered, I cannot see that they have any relevancy at all.

Mr. Fisher: I am attempting to read, sir, the answers made by the Attorney General in his argument to the Court in response, which became part of the official record, and I now have it in my hand, sir.

The Court: Now, if that is objected to, that will have to be excluded. My recollection is that it required the State to make an answer, and I assume that the State made an answer. I have never seen it, but I assume that I did. Now, if you want to read that, Mr. Fisher, you may do so. If you want to read that into the record, you may do so.

Mr. Wilentz: The Prosecutor of the Pleas, not Mr. Lanigan.

Mr. Fisher: I submit ladies and gentlemen, that as the result of certain information we received in the argument of the Assistant Attorney General in response to our demand for particulars, we were apprised of certain salient facts in reference to the indictment against our client Mr. Hauptmann. Among other things, it came

to our knowledge that the State relied and we are here now to answer the indictment and the things they rely on in connection thereto, they relied upon the fact that this defendant committed the crime of murder while engaged in the commission of a felony in the County of Hunterdon and the State of New Jersey. Now upon that state of facts we are here to answer. We submit that in our defense we will attempt and we believe successfully to prove to you a complete alibi for the defendant Hauptmann on each and every occasion that he has been named as being present at a given point in the evidence thus far produced, and I refer now particularly to March 1st, 1932, to April 2nd, 1932, and to November 26th, 1932.

We believe that we will be able to prove to you, to your satisfaction, that on the day, March the 1st, 1932, the defendant Hauptmann, who stands accused of going into the silent home of Colonel Lindbergh, and stealing and murdering the child of Lindbergh, in the early morning of that day, took his kit of tools, as was his morning custom, and went down into the City of New York for the purpose of procuring employment.

And we shall ask you ladies and gentlemen whether or not that is the action of a man who is to engage that very night in such a nefarious crime as was committed.

We will follow him downtown for you, to the agency; and from there to the job to which he was assigned. We will account, by competent testimony, we will account by the testimony of the defendant

himself for his entire day and we will show that at the close of the day he returned to his Bronx home—up, I believe, on 222nd or 223rd Street.

His wife, a frugal, hardworking housewife, was employed in a baker shop or delicatessen store, lunchroom, or whatever you desire to term it, of people named Frederickson; that the defendant Hauptmann was obliged to call for her at least two nights a week every week, for the reason that Mrs. Hauptmann didn't keep her regular and usual hours on those days. She was obliged to work late because of certain facts which the evidence will disclose. And we will show that the defendant Hauptmann did go to the baker shop of Frederickson, and at the very hour the State charges he was climbing the ladder, which has been before you, he was in the baker shop of Frederickson, sipping coffee, chatting with his wife; and we will show that not only by Hauptmann and his wife, but by entirely disinterested people who happened to drop in the shop.

Now, that is as to the night of March 1st.

On the night of April 2nd, a very easy night for Mr. Hauptmann to recall, because he is a German, from a part of Germany where they are much given to parties and to music and to jollification among themselves; they carry their foreign customs into this country with them. It is true, you jurors know it is true if you have in your community people of foreign extraction, you know that they cling tenaciously to their old-world customs; and so do the

Germans in The Bronx, New York. And it has been their custom since they have been in there, the Hauptmanns, and a few of their German neighbors, to gather in a home of one or the other on the first Saturday of each and every month, and to have a little party, a little music, a little singing, a little chat or talk of the Homeland, talk of the Fatherland. And they were, and we will show you by evidence other than the evidence of Hauptmann, they were on the night of April 2nd in the home of Hauptmann in the Bronx—

The Court: April 2nd?

Mr. Fisher: April 2nd, 1932, sir.

—in the home of Hauptmann in The Bronx, together with a friend or perhaps more than one friend—I don't recall at the moment—as you or I might be with our friends on any given night; and that the entire evening was spent there in that house, never once leaving the house.

Now, as to November 26th, 1934, it is a significant thing that the witness Barr picked on one night about which there can't be a scintilla of doubt as to the whereabouts of the defendant Hauptmann. It was an event in his life, that day; it was his birthday; it was Hauptmann's birthday,— November 26th was his birthday; and he gathered into his home in The Bronx friends. Why, it is the custom—I don't know how many of you know Germany; if I may, for a moment, put in a personal word, I have traveled through the country,

I have walked through it, I have lived with the peasants and people there. They are the greatest people in the world to observe birthdays and national holidays. There is no nation like them for that sort of thing. And in Hauptmann's house in The Bronx on the 26th of November, at the very hour Cecile Barr said from this witness stand he bought a ticket in a theatre down in Greenwich Village, some 15 or 20 miles from his home,—he was at home, the host of some friends present there, at his invitation, to honor his birthday.

That is as to our alibi.

They are the three days, I believe, on which the State has charged certain things occurred in the life of Hauptmann which hook him up to this crime.

That is as to our alibi.

Now, as to handwriting: We shall attempt to prove to you—not by sheer force of numbers as the State did, for a very, very good reason; we are totally unable to procure, through financial reasons, any such array of testimony as the State could produce here.

We will show you and show you clearly that the funds of this man Hauptmann are completely and totally exhausted. He is before you here in the court without one dollar that he can call his own, without a penny in the world. And his defense has been almost entirely financed through the members of his counsel.

And I say to you that we cannot bring you here eight or nine or ten or twelve outstanding experts from the far parts of the world. That cannot be done. We have

no money to go down in Los Angeles and bring Clark Sellers here.

Mr. Wilentz: Just a minute—

The Court: The defense is going a good way. There is no doubt about that, Mr. Attorney General.

Mr. Fisher: I have California on my mind, your Honor. I want to go down there.

The Court: I suppose it is competent for him to state that he is without funds, that is, to have his man say on the witness stand that he is without funds, if he can say so truthfully and subject to cross-examination, but I think you are going too far.

Mr. Fisher: Very good.

Mr. Wilentz: We except to this, of course. We expect counsel to prove what he says in this regard.

The Court: Of course. The very purpose of an opening is to state the facts which counsel expects to prove.

Mr. Wilentz: That is the reason they haven't got more handwriting experts, as I understand, is because of a lack of funds—we expect them to prove that.

Mr. Fisher: We will go a step further than that, ladies and gentlemen, we will

prove that with what little money we did have in the banks of New York City out of the funds of Mrs. Anna Hauptmann put in there from 1924 to 1932, has been tied up by the State of New Jersey, funds that couldn't possibly have to do with this kidnaping and that is another very cogent reason why we are here without funds, now that we are here on the question of funds. I will say to you that we will prove that we are without funds and for that reason necessarily limited and very severely limited in the extent of testimony that we can produce before you, ladies and gentlemen, but we will produce competent handwriting experts, who will take the very exhibits put in evidence by the experts of the State of New Jersey and show you clearly, and I am convinced, to a point where there can't be a doubt in any of your minds that that is not the handwriting of Bruno Richard Hauptmann. It is not our business to prove whose it is; it is our business and we will prove to you that it is not the writing of Bruno Richard Hauptmann.

We will prove it by witnesses competent, I am sure you will agree with me when you have heard them testify. I will say as to them that they will not be in such numbers as were presented by the State, but competent witnesses whose testimony you can't refuse to believe.

Now as to finances, as to finances of the defendant Hauptmann, we will show you and we believe show you clearly that the State of New Jersey has far over-estimated the amount of money they claim to have

traced through the accounts of Bruno Richard Hauptmann, in his name or in the names of some persons holding for him. It is our contention and we believe it is borne out by the testimony thus far adduced, and we will further it by testimony of our own, that as a matter of fact they have traced something like ten to twelve thousand dollars from 1932 through to the fall of 1934. What they attempted to do ladies and gentlemen, and the records which you will take to the jury room will show you, is that they have attempted to add repeat money. To make that perfectly clear, I want to say this, we will show you and show you clearly that the defendant Hauptmann would go into the bank and he would draw from the bank a hundred dollars or five hundred dollars for a purpose which he might then have in mind, just as any one of us if we were fortunate enough in these hard times to have that much money, we might go to the bank and draw it out. It is human and a human frailty to change your mind. He might change his mind the next day on the thing he intended to use his money for, and we will prove this to be true, and he would go back to the bank and put that same five hundred dollars in the bank, and perhaps he would do that several times.

The great State of New Jersey has attempted to prove to you by evidence that that is all fresh money coming out of his pocket. We will prove to you, ladies and gentlemen, that such is not the case. We will prove to you and we believe we have already proven it by the State's witnesses,

that if you add the losses in his accounts and the remainder of his accounts and add to that the mortgage that he took after 1932, you have got all the money that Bruno Richard Hauptmann had except his bare living expenses from the time April 1st, 1932, down to the present minute. Certainly you will have to be convinced, if we prove to you what his total loss was, what his total remainder was, what his outstanding investments now are, that you must concede that to be the amount of money he has had. We will show you further than that as to Hauptmann's account, we will show you that he did deal and we will conclusively prove this to you, that he did deal as partners with a man named Isidor Fisch.

They were partners in two different ways, two different lines of business, which is not unusual. They engaged in two different enterprises. One was a business of buying and selling and trading in the market, a very common practice, I assure you, as you probably will know. The other was the buying and selling and trading in furs and pelts. One business was handled by Hauptmann, the other business was handled by Fisch. The fur end of the business we will prove to you was handled by Fisch and he went out into this very country and we will show you into this very country, and bought up furs of all sorts of fur bearing animals that are used in the fur market. Hauptmann operated and maintained the brokerage business, the brokerage account. He attended down at Steiner Rouse and the customers' rooms.

From time to time they put in money or they took out money from their account, if the fur business showed a profit, and it did show a very fine profit, and we will prove it to you,—from time to time they would draw out dividends from the fur business in cash, for instance, if there would be a balance at the end of a month of perhaps $3,000, they would divide two thousand of that and hold a thousand dollars for surplus and capital.

This is all subject to proof, and we will prove it to you. They would each of them take a thousand dollars dividend.

Now, in the market, if they reached a point where Fisch's account was overdrawn in the market, Fisch would hand the help, on presentation of records, such money as was needed to balance the account of Fisch with Hauptmann in the brokerage.

We will prove to you beyond a shadow of a doubt that on numerous occasions Fisch would go into his clothes and hand Hauptmann sufficient money to balance his, Fisch's holding in the market. Now, there is nothing unusual about that. We will prove to you beyond a doubt that it is very common practice for one man to deal for another.

I do it every day. A number of you people unquestionably have done it. It is not an unusual situation when you have men who rely on each other and who trust each other and who believe in each other.

Now, we will show you another very significant thing. We will trace the family fortunes of the Hauptmanns from the time they arrived in America. They are Ger-

man people. They are a very frugal people. Nationally the Germans are a very frugal people and the Hauptmanns were especially saving and especially frugal, and that proof rests in the bank book of the woman, Anna Hauptmann, showing deposits running from $20 up to $80 out of her earnings during her early days in America.

Now, were they poverty-stricken people? Were they to be a charge on the town? We will prove to you that that is not true. We will show you that as far back as 1927 these people had amassed sufficient money to take a $3750 mortgage—and they had it. They had it in 1927. We will show you that all through that period of time they had substantial bank accounts.

We will show you that they saved money that didn't find its way to the banks, as so many foreign people do.

We will show you that they take currency as currency and tuck it away in the house, saving against the day when they wouldn't be able to work and earn any further.

Now, we will prove to you, ladies and gentlemen, that these people were not poverty stricken people, without a dollar in the world. They were substantial citizens. They were working people, who had the ability and the desire to accumulate their means against the day when they could accumulate no more.

If we show you these facts, if we prove to you that they were people of means prior to April 1932, if we prove to you that they were saving, frugal people and show you their accounts, then we will say to you,

"We can see nothing unusual in the situation of the accounts."

Why, the proof is, and we will further it, that this man dealt in margin.

Now, margin means you put up ten per cent, perhaps, or 15 per cent of the amount you want to buy, and Hauptmann could buy $1,000 worth of stock with $150 deposit.

And he could sell the same stock the next day and buy it again. So that $150 deposit with a broker might show bookkeeping moneys to the tune of, oh, any number of thousands of dollars, that one little item.

And we think that has been pretty clearly demonstrated to you, and we will further it with our own proof.

Now, we go down a way from the money angle of the things, to come to the facts of the case in relation to the placing of the defendant Hauptmann anywhere near the scene of the crime.

We will show you, and show you clearly, that the witness Hockmuth is unreliable.

We believe, we will demonstrate to you, that several years ago, when he was younger than he is now, he was discharged from a position in New York because he suffered from hallucinations, said hallucinations taking the form of people being after him, of seeing people when there was nobody to see. We intend to make every effort to bring the man here who will testify to that. He is in New York, not subject to our subpoena, but we will do our utmost, and we anticipate we will have him here. That we apprehend will dispose conclusively and decisively of the witness Hochmuth; if we show you that

that witness was discharged from a position because he was crazy on the subject of seeing people chasing him, then we won't expect that you will put much reliance on his identification of Hauptmann when he says he saw him at the time he said he saw him there.

Now, to Whited: We will bring you, ladies and gentlemen, witnesses who will testify that this man's reputation for veracity and truth never has been good. We believe we have shown you a motive for his identification. We believe we showed it in his own examination, why he put a man on the highway up there.

We intend further to show you, and we believe we will be able to, that Whited never saw a single living soul, such as he described, in the mountains in that February; and we will show it to you by a man who worked side by side with him, every hour of every day, except Sundays, in the month of February.

Now if we show you that, we shall expect you to disregard Whited and disregard him completely.

As to the witness Rossiter, we may show several interesting things about Rossiter, but we shall rely principally on the fact that the physical evidence itself will disprove the statements Rossiter made, and we will produce that evidence here. He described a certain place that he saw the car, and the surrounding country; and we say to you, ladies and gentlemen, and we will prove to you, that there is no such physical surroundings as he has described.

Now there are the three witnesses who

have placed Hauptmann in New Jersey at any time in the world, and we say to you if we do submit to you the facts as we relate them, proving them to you, as I am now telling you we will, we shall expect you to disregard entirely the testimony of these three witnesses.

As to the Alexander girl, we will show you in regard to her that she testified from this stand that it was in the middle of March she saw Dr. Condon in the station and saw Hauptmann looking at him and she was interested because she knew Condon was the contact man in the Lindbergh case.

We will prove to you beyond a shadow of doubt that except for this particular matter, the fact that Jafsie, who was Dr. Condon, was not known until the night of April, 1934, days and days and days after she says she was watching these men, because she knew Condon was the contact man in this case. We will prove to you that Hauptmann never was in that station.

We think we may be able to prove to you that Condon was never there.

Now if we do that, we certainly shan't expect you to place any credence in the testimony of that girl.

Now I want to come down for a minute, if I may, to the manner of the conduct of the police in this case. I want to show you what we will prove about it. We believe we will be able to show you that no case in all history was as badly handled or as badly mangled as this case, and we refer specifically to the witness Kelly and his testimony about the ladder.

Now, after Kelly had played around with that ladder—and we will prove this—for days and days and days and couldn't find a print of any kind or description, after he had gone over the entire inside of the house and couldn't find a print, even of the people who put the baby to bed, they called in an expert, Dr. Hudson of New York City and in the sight of Kelly, we will prove to you Hudson took off some 800 fingerprints. Now, we will say to you and prove to you that the whole investigation was conducted just about as thoroughly as that.

The ladder, we will prove to you has been torn apart, put together and replaced and torn down again. The nails have been drawn and were drawn and put back again. That ladder, we believe we will show clearly, is in no more the condition than it was the day it was found on the Lindbergh estate than that chair is in the condition the ladder is now.

Now, if we prove those facts, ladies and gentlemen, they are essential facts in this case. If we show you that that ladder has been so handled that it would be impossible now to identify it accurately as the one which was found in the hills, then we shall expect you to disregard all this testimony about the ladder.

We will also prove to you this thing, that I consider vitally essential and vitally important in this case. We will produce before you, we believe, the man who has always been considered by the State Police of New Jersey to have been the last man and the only man to actually see the man who did the kidnaping.

Now, that is a broad statement, but we intend to prove it. We will produce before you a man who has been used by the State continuously as a witness in this case to show the man who was about a mile from the Lindbergh house at six o'clock at night on March 1st with a ladder on his way to the Lindbergh house.

We will show you further that man has been in this very courtroom all through the State's case and he hasn't been called. Now, if we produce a witness here, if we produce a witness here who will swear under oath on that stand that he was along Lindbergh's road on the night of March 1st at six o'clock and he saw a man driving down in an automobile with a ladder which he identifies as this ladder, and that man wasn't Bruno Richard Hauptmann, we expect you to consider that and consider it well in arriving at your verdict.

Now, ladies and gentlemen, we will submit this case to you as honestly and fairly as we know how.

Again may I say we will be terribly handicapped by a total lack of funds. We are in no such position as is the State in this case with the combined resources of the United States, the State of New Jersey and the State of New York at their fingers' tips.

We are here battling along with our back to the wall, so far as financing goes, and we will prove that on this witness stand, and we will do the very best we can. We will give you everything we have got, everything we can get in this courtroom, by way of testimony. We will hide nothing and

produce everything and, when you have heard all the testimony, we trust that if you are not already satisfied that the State of New Jersey has utterly failed to make out a case against Bruno Richard Hauptmann, we are quite sure you will be convinced, after you have heard such testimony related as we will present.

Now, we will rely on you fully to consider all the facts and circumstances and, having considered all the facts and circumstances well, in conformity with your oath, we shall expect you to retire to the jury room and to return and return promptly with a verdict acquitting this man of the crime with which he is charged.

Thank you.

Mr. Wilentz: Now if your Honor please, I did not desire to interrupt counsel any more than was necessary, but there is one statement I feel at this time was important; that was his oral statement that the responsibility for the life and liberty of this defendant now passes from the defense counsel to the jury. It is our notion that the responsibility for his life and liberty is the defendant's; and I don't want the jury intimated, I don't mean intentionally, but I don't want them to feel any heavy burden of responsibility for the life and liberty of this man. That is his responsibility and not theirs.

Mr. Fisher: I said his and ours.

Mr. Wilentz: What I want to ask the Court is, and I want counsel to consent,

that the Court shall state that the responsibility for the life and liberty of this defendant is not the jury's. The responsibility of the jury is to determine whether or not at the end of the case the State has proved beyond a reasonable doubt that this man is guilty of murder.

The Court: Well, that I expect to tell the jury—

Mr. Fisher: Yes, in the charge.

The Court: During the charge.

Mr. Wilentz: I see. If your Honor feels it is unnecessary—

The Court: I think it is unnecessary.

Mr. Wilentz: All right.

Mr. Reilly: I wonder if before beginning the presentation of evidence by witnesses, we could have five minutes recess while the General and I talk to you?

The Court: I suppose so. Did you gentlemen wish to confer with me?

Mr. Reilly: Yes.

The Court: Suppose we confer and then we will talk about the recess.

(Court and counsel confer at side Bar.)

The Court: We will take a five minute recess.

(At 2:55 p. m. a short recess was taken.)

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

3:07 p. m.

The Court: I have had occasion from time to time during the trial to warn the people to keep quiet in the courtroom to avoid all confusion. I repeat that I desire that to be done. It must be done and the officers will circulate amongst and take their stations along the corridors and see to it that that order is obeyed.

Now, Mr. Reilly, you may proceed.

Mr. Wilentz: If your Honor please, Mr. Reilly is going to call the defendant as his first witness. We have agreed and want the jury to know it is by agreement that the Sheriff's guard will be in back of the witness.

Mr. Reilly: Not a uniformed officer, the Sheriff's guard.

Mr. Wilentz: I want it to appear it is my agreement of counsel.

Mr. Reilly: We don't want the Court to be disturbed; it is only for that reason.

The Court: All right; proceed.

Mr. Reilly: Bruno Richard Hauptmann, take the stand.

BRUNO RICHARD HAUPTMANN, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination by Mr. Reilly:

Mr. Wilentz: If your Honor please, may it appear on the record with the consent of the defense that the guard standing in back of the witness is there by consent of both parties?

The Court: Yes.

Q. You are the defendant in this action, is that correct? A. It is.

Q. Where and when were you born? A. 26th of November, 1999,—1899, Germany.

Q. What part? A. Saxony.

Q. Did you go to school in Germany? A. Yes.

Q. For how many years? A. Well, eight years public school, and two years, two to three years, like a trading school.

Q. And in the public school did you learn to write German? A. I did.

Q. In the regular German script, is that correct? A. Yes.

Q. Did you learn to write any English in Germany? A. No.

Q. And after you left school you say you attended a trade school, is that correct? A. Yes.

Q. And what trade did you study? A. Carpenter trade.

Q. Any other trade? A. Yes, machinery, machinery.

Q. Machinery? A. Yes.
Q. Were you apprenticed at any age? A. No.
Q. At what age did you begin to work? A. Fourteen.
Q. Where did you work? A. In mine home town, Kamenz.
Q. As a carpenter's helper? A. Yes.
Q. And for that service you received a salary of how much a week? A. Well, approximately three marks, three or four marks, beginning.
Q. Of course, I take it that you lived with your people at that time? A. Yes.
Q. Did you continue to work as a carpenter until the War broke out? A. Yes.
Q. And how old were you when you went to War? A. Seventeen and a half years.
Q. And how many years did you serve in the Army? A. One and three-quarter.
Q. During your service were you wounded? A. Slightly wounded, gassed.
Q. You were gassed? A. (Nodding head.)

Mr. Wilentz: Did he say "Yes"?

The Witness: Yes.

Q. When did you come out of the Army? A. It was around Christmas time, '18.
Q. 1918? A. Yes.
Q. About a month after the Armistice, is that correct? A. Yes.
Q. And then did you come home to your home town? A. Yes.
Q. Were you able to get any work at that time? A. No.
Q. Germany was in a very poor condition, wasn't it? A. It was.
Q. Now, during the period of reconstruction

in Germany, about 1919 and 1920, you were convicted of some offense there, is that correct? A. I was.

Q. And when was it? A. The spring time, 1919.

Q. Beg pardon? A. Spring time, 1919.

Q. You will have to keep your voice up because this last gentleman, both of them, want to hear you—in the spring time of 1919, is that correct? A. Yes.

Q. And as a result of that did you serve any sentence? A. Yes.

Q. Where? A. Beuthen, B-e-u-t-t-h-e-n.

Q. And afterwards were you paroled? A. Yes.

Q. By the Parole Board? A. Yes.

Q. About when? Was it about March the 26th, 1933? A. Yes, I guess that is right.

Q. And were you admitted to parole on March the 30th, 1923? A. Yes.

Q. When did you first attempt to enter the United States? A. Summer time, 1930— 23.

Q. You boarded a steamer did you not, as a stowaway? A. I did.

Q. Came to America and you were discovered on board the ship, were you? A. Yes.

Q. Taken to Ellis Island, is that correct? A. Yes.

Q. And returned to Germany? A. Yes.

Q. When did you next attempt to enter the United States? A. I guess it was August, the same year.

Q. Same year. And did you successfully enter the United States then? A. No.

Q. You were caught again, were you? A. Yes.

Q. And returned to Germany? A. Yes.

Q. When was the third time? A. In November, the same year.

Q. Were you successful that year? A. Yes.

Q. And you entered the United States? A. Yes.

Q. After entering the United States did you obtain any employment? A. Yes.

Q. About when and where? A. About approximate one week after my landing.

Q. About a day after your landing? A. No, a week.

Q. A week. And in what city? A. New York.

Q. And what was the occupation? A. I started as a dishwasher.

Q. Where, down near the South Ferry in New York somewhere? A. Yes, that is right.

Q. How long were you a dish washer? A. About a month and a half.

Q. How much were you paid a week? A. Sixteen dollars.

Q. And with what family did you live during that period? A. With Mrs. Aldinker.

Q. Where? A. I can't remember exactly.

Q. What portion of New York? A. Out 96th and Amsterdam Avenue, around this neighborhood.

Q. In a German neighborhood, wasn't it? A. Oh, no, I don't say that.

Q. Isn't that a part of Yorkville? A. No.

Q. It is above Yorkville? A. It is on the west side of New York.

Q. On the west side. Yorkville is on the east side, is that it? A. Yes.

Q. Well then, where did you get a position after you left the restaurant where you were a dish-washer? A. A position as a mechanic.

Q. That was with Washburn & Wild? A. Washburn & Wild.

Q. As a mechanic. Do you remember how long you worked there? A. No, I can't.

Q. Did you take a position after that as a dyer in the dyeing business? A. Yes.

Q. And after that you worked as a machinist, did you? A. Yes, in Brooklyn.

Q. And each time you would try to improve your position: is that correct? A. Yes.

Q. Then did you finally obtain a position as a carpenter? A. Yes.

Q. And was that at Sixth Avenue and 40th Street, New York? A. Yes.

Q. And did you receive a salary of approximately a dollar an hour? A. Yes.

Q. That would be how much a day? A. Eight dollars a day.

Q. And do you recall how long you worked as a carpenter in the first place, the place you were getting a dollar a day, eight dollars—a dollar an hour, rather—eight dollars a day? A. In the first place, approximate two months.

Q. Now, you were a professional carpenter, weren't you? You studied in Germany? A. Yes.

Q. You got, you say, as much as eight dollars a day for your services? A. Yes.

Q. Now, when did you first meet the lady that afterwards became your wife? A. In 1924; 1924.

Q. 1924? A. Yes.

Q. And was that while you lived with the Aldingers? A. That is the time I lived with Aldingers.

Q. And her name, your wife's maiden name, was what? Anna— A. Anna Schoeffler.

Q. Anna Schoeffler? A. Yes.

Q. And Anna Schoeffler at that time, who did she work for? A. Mr. and Mrs. Rosenbaum, Riverside Park.

Q. Now, after meeting Miss Schoeffler did you move to Yorkville? A. No, I moved first on 156th Street, before Yorkville.

Q. Well, did you finally live in some house in

the neighborhood of 88th Street? A. 88th Street, yes.

Q. Between Park and Lexington Avenue, is that it? A. Yes.

Q. Now, that is Yorkville? A. That is Yorkville.

Q. And Yorkville is a German colony, isn't it? A. Yes.

Q. How long did you live there? A. Oh, about two or three months; 88th Street.

Q. Now, one of the men, when you came over on the different ships that you tried to enter this country on, was his name Albert Diebig? A. Yes.

Q. How do you pronounce that, Dee-big? A. I pronounce it Die-big.

Q. Die-big. And did Diebig finally get into America? A. Yes; he came over when I went to this colony on this second trip, when I was successful.

Q. Well then, you and he lived together for a while, didn't you, at 154th Street? A. Yes.

Q. Between Parkway and Amsterdam Avenue, is that right? A. That is right.

Q. Then did you and Diebig move to an apartment on 97th Street on the East Side? A. Yes.

Q. Well now, while you were living on 97th Street on the East Side, what were you working at? A. I was working as carpenter.

Q. Carpenter? A. Yes.

Q. Now do you remember obtaining a position as a carpenter in Lakewood, New Jersey? A. Well, I get this position through the newspaper.

Q. Yes. And was that in October, 1924? A. That is right—October.

Q. And did the position end the day before Christmas, 1924? A. This position ended on Christmas Day.

Q. Christmas Day? A. (Nodding head.)

Q. How much did you make a week on that job? A. Around fifty dollar a week.

Q. Well, now, were you spending all the money you made or were you saving it? A. Well, I spent very little I say.

Q. About how much a week would you spend out of fifty dollars? A. I say around twelve dollars.

Q. Did you open a bank account at any time or did you keep the cash with you? A. I opened right in the beginning a bank account, United States Bank.

Q. When? A. Must be around the end of '20 or '23.

Q. By the United States Bank, do you mean the Bank of the United States? A. Yes, Bank of United States.

Q. Was it a savings bank account? A. savings bank, yes.

Q. Do you recall the branch in which you opened that account, where it was? A. Well, this was downtown district, right under the bridge, I can't remember the street any more.

Q. Downtown Manhattan, New York? A. Yes, downtown Manhattan.

Q. When you were working as a carpenter in 1925 do you remember what your average wages per day were? A. '25? Well, I always get my union wages, this time I guess it was a ten and a half dollar day.

Q. Had you joined a union? A. Yes, I joined it.

Q. After that did you work for some man near Bronx Park as a carpenter? A. Yes.

Q. Did you get the union wage for that? A. No, not from this man; I got one dollar, near Bronx Park.

Q. How many hours a week did you work? A. Forty-four.

Q. Did you save some of that money every week? A. I did.

Q. Then did you work for Heinzelmann on East 9th Street, between First and Second Avenue? A. Yes.

Q. Did you work for him until you were married? A. Yes.

Q. When did you and Anna Schoeffler marry? A. The 10th of October, 1925.

Q. October 10th, 1925? A. Yes.

Mr. Reilly: Now, General, thanks to your courtesy, may I call that witness and have this witness suspend for a moment? Is that agreeable to your Honor?

Mr. Wilentz: May it appear that by agreement at the request of Mr. Reilly, in order to take care of two witnesses from New York, this witness steps down and will be recalled immediately after the next two witnesses. Is that correct?

Mr. Reilly: Thank you.

CHRISTIAN FREDERICKSEN, sworn as a witness in behalf of the Defendant:

Direct Examination by Mr. Reilly:

Q. Now, Mr. Fredericksen, you can put your hand down and sit back in your chair and be comfortable. Where do you live now, Mr. Fredericksen? A. I live at 905 Clarence Avenue, Bronx.

Q. And your occupation is that of a baker, is that correct? A. Yes, sir.

Q. You are not a German or German descent, are you? A. No.

Q. Are you Danish? A. Yes, sir.

Q. And how long have you been a baker? A. Since I was fourteen years.

Q. How many years have you been a baker in the United States? A. I am here 21 years, always work as baker.

Q. Now in 1932, did you have a bakery? A. Yes, sir.

Q. Where? A. 3815 Dyer Avenue.

Q. 3815 Ryder Avenue? A. Dyer, Dyer.

Q. How do you spell it? A. D-y-r-e.

Q. And how long had you had that bakery before March, 1932? A. We started 1929.

Q. By "we" I suppose you mean you and Mrs. Fredericksen? A. Absolutely.

Q. And is this bakery also a lunch room? A. Yes, sir.

Q. And did Anna Hauptmann work for you? A. She do.

Q. And when did Anna Hauptmann come to work for you, what year? A. Anna Hauptmann started work with us in 1929.

Q. And she worked steadily, did she? A. Yes.

Q. And what were Anna Hauptmann's duties in your store? A. She was counter girl and waitress.

Q. Mr. Fredericksen, in 1932, how many tables, if you can recall, did you have in your store? A. Oh, we have about five or six.

Q. And you were the boss baker, weren't you? A. Yes, sir.

Q. Most of your job was down at the bake oven, near the bake oven, is that right? A. Yes, sir.

Q. Now did your wife attend the store? A. Yes.

Q. Wait on the store? A. (The witness nods affirmatively.)

Q. Now did your wife in March, 1932, have one

night a week off for herself? A. Yes, she usually had Tuesday.

Q. Tuesday was the wife's night out, was it? A. Tuesday and Friday, usually.

Q. And when the wife took her night out did Anna Hauptmann stay later? A. Yes, sir.

Q. Than she would the other nights? A. Yes, sir.

Q. Now who was in the habit in February and March, 1932, of bringing Anna Hauptmann to work? A. Her husband would usually bring her to work.

Q. In the morning? A. Yes.

Q. About what time? A. Well, she would start in around seven o'clock, he usually take her up.

Q. And on Tuesdays and Fridays would Anna come to work at seven o'clock in the morning? A. Yes.

Q. And on Tuesdays and Fridays during February and March, 1932, what time would Anna be through her work? On Tuesdays and Fridays. A. Oh, I would say usually around nine o'clock.

Q. And who would come and take her home? A. Well, her husband usually always come; as a rule he always come.

Q. How far away would you say Anna Hauptmann lived from your bakery in March of 1932? A. I should imagine a mile or a mile and a half.

Q. A mile or a mile and a half? A. Something like that; something like that.

Q. And when the husband brought her to work, did he drive her there in his car? A. Yes.

Q. And when he came to take her home he would come with the car and take her home? A. Yes.

Q. Is that right? A. Yes. He usually came in and have supper there.

Q. He would come in and sit down? A. And have his supper.

Q. And what would he do? A. He would wait until his wife was finished.

Q. He had supper there? A. He had his supper usually.

Q. Then when Anna was finished he took her home, is that correct? A. Yes, so far as I know.

Q. Well, now, do you know that March the 1st, 1932, was a Tuesday night? Do you know that? A. I know it.

Q. You know it now? A. Yes.

Q. And of course this is two and a half years ago, isn't it? A. It is about three years.

Q. Right? A. Yes.

Q. Now, is it the best of your recollection, Mr. Fredericksen, that Tuesday, March the 1st, 1932, being a night that Anna Hauptmann was in the habit of staying late—do you say to the best of your recollection that Bruno Richard Hauptmann, her husband, called for her that night?

Mr. Wilentz: Just a minute. If your Honor please, I object to the question as being offensively leading, because he doesn't say that.

The Court: Well, he may be asked as to what his best recollection is.

Mr. Wilentz: That is right.

Mr. Reilly: That is what I am asking. I will put in the word "best".

Mr. Wilentz: No. I think what your Honor suggested is accurate: what his recollection is as to that night.

The Court: Yes. What his best recollection is. Of course, he may be cross examined with respect to this matter. I think the examination may proceed.

Q. What is your best recollection, Mister? A. My best recollection is that Bruno usually called for her, he must have been there that night too, but I can't swear to it.

Mr. Wilentz: I move that be stricken out.

The Court: I didn't get it. Will the stenographer repeat it.

(Answer read by the reporter.)

Mr. Wilentz: I move it be stricken out.

Mr. Reilly: Now, the preceding question was whether or not, to the effect that this was two and a half years ago, and we asked the man—

Mr. Wilentz: I withdraw the motion.

Mr. Reilly: —what his best recollection was.

Mr. Wilentz: I withdraw the motion; I am satisfied with the answer.

The Court: Yes.

Mr. Reilly: I think it is a fair question and I think he has given—

The Court: The Attorney General withdraws his objection.

Mr. Reilly: Yes.

The Court: The answer may stand.

By Mr. Reilly:

Q. Of course, Mr. Fredericksen, there was nothing that night that made you write down that Bruno Hauptmann— A. No.

Q. —was there; was there? A. No.

Q. It was just a Tuesday night to you? A. That is all.

Q. Now you remember March 2nd, do you, Wednesday, hearing of the Lindbergh kidnaping? A. Yes, I remember hearing that.

Q. How long did Mrs. Hauptmann work for you? A. She works there from '29 until I guess the 22nd of June, 1932.

Q. 22nd of June, 1932? A. Yes. Just shortly before she left for Europe.

Q. And of course she worked every day, didn't she, during the week? A. No, she had her day off.

Q. What was her day off? A. To my best recollection, it was Sunday. It was Sunday.

Q. Sunday? A. Yes, the last time she was working she was off every Sunday.

Q. You stay open on Sunday? A. Yes.

Q. Seven days a week? A. Yes.

Q. It was a restaurant, was it? A. It was, yes.

Q. And you made a specialty there, did you not, of Danish Pastry? A. I make Danish pastry, yes.

Q. When Bruno came there in the morning, was he in the habit of having his coffee there? A. Yes. Sometimes he just came in when she went to work and I didn't see him at all.

Q. Have you any independent recollection now as to what time on March 1st, 1932, your wife returned home? A. I should imagine she come when she usually come, she usually come around ten or eleven o'clock.

Q. At the present time, Mr. Fredericksen, are you working in Mount Vernon? A. Yes, sir.

Q. In a bakery? A. Yes.

Q. On First Street and Seventh Avenue? A. Daylight Bakery.

Q. Daylight Bakery? A. Fisher & Mofskin, is the name.

Q. How late would your restaurant be open? A. Well, I was working all night, so I keep the store open as long as I expect customers, sometimes it was open until one o'clock.

Q. Then it wasn't anything unusual for your store to be open at nine, half past nine or ten o'clock at night? A. Oh, no; oh, no. That was every night, I worked every night.

Mr. Reilly: You may take the witness gentlemen.

Cross Examination by Mr. Wilentz:

Q. You told the police in New York that you close your bakery at eight o'clock every night didn't you? A. That is the closing time, but I work at nights and I keep the store open, so if somebody come in they can get something.

Q. But your closing hour was eight o'clock, wasn't it. A. That is right. But I didn't close the store just the same.

Q. Well, you lived there, didn't you? A. No, No.

Q. Upstairs? A. I worked there.

Q. Didn't you live upstairs? A. No, no, I didn't live there; I worked there.

Q. Now, you remember reading about the Lindbergh kidnaping, didn't you? A. Yes, I do.

Q. Well, at that time you remember you read it, didn't you? A. Well, I don't have much time to read.

Q. What is that? A. I didn't have much time to write, because I was working—

Q. I want to know whether you read it at that time when it happened. Did you read about the Lindbergh kidnaping? A. Yes, sir.

Q. You remember then you read it? A. Yes.

Q. The next day? A. Yes.

Q. And when you read that the next day— A. Yes.

Q. —that fixes in your mind, doesn't it, that the night before was the kidnaping, the night before you read it: isn't that so? A. It must have been.

Q. Must have been. You don't remember whether your wife was there that night or whether she had the night off, do you? A. On Tuesday she was off.

Q. Well, the only reason you say that is because you know now it was a Tuesday? A. I beg your pardon. She was out every Tuesday.

Q. Yes. Let me ask you: when you were asked when Mr. Hauptmann was arrested you came to the Bronx District Attorney's Office, didn't you? A. I was called for.

Q. And you came there? A. Yes, sir.

Q. And you were asked questions? A. Yes.

Q. And they told you, the detective told you coming down that March 1st was a Tuesday, didn't he? A. Right.

Q. You knew that when you walked in to talk to Mr. Breslin? A. Yes.

Q. So you came in and you sat down talking to the District Attorney? A. Yes.

Q. And you knew all the time that March the 1st was a Tuesday? A. Yes.

Q. When he was talking to you? A. Yes.

Q. You knew the whole question was about the Lindbergh case, didn't you? A. Yes.

Q. Yes. And you were asked this question: "You have no definite recollection that your wife was off that Tuesday night?"— you were asked that question, weren't you? A. I don't recollect.

Q. And didn't you answer, "No," you have no definite recollection that your wife was off that Tuesday night? A. But, we think it is, we speak of things over after and my wife make my sure. She was always off on Tuesday.

Q. Oh, I see. After you came back from the police you and your wife talked things over and your wife made you sure, is that right? A. Yes, because my wife—

Q. Well, never mind because. A. Okay.

Q. So, after talking it over with your wife you remember now that since that she, your wife was there. A. Yes.

Q. She was there or she wasn't there? A. She was off.

Q. She was off. And so you think that Mrs. Hauptmann must have been there because your wife was off? A. Absolutely.

Q. Absolutely. A. We had nobody else to work in the store, Mr.—

Q. But Hauptmann was not there night, was he? A. I can't swear to it.

Q. Well, you didn't see him there that night, did you? A. To my best recollection that is what I told you.

Q. You didn't see him there that night, did you? A. I can't swear to it.

Q. I am not asking you whether you can swear to it, answer the question: you didn't see him that night, did you? A. What can I say, can I say Yes or No?

Q. Did you see him there? A. Well, I can't say I didn't see him.

Q. You didn't see him, did you? A. Well, I can't remember so many years ago.

Q. You can't remember; you don't know whether you saw him there or not? A. No.

Q. Now, Hauptmann's wife has been trying to get you to say that you saw him there, didn't she? A. I didn't speak with Mrs. Hauptmann.

Q. Who did you speak to? A. I didn't speak to anybody, because I came off from the train here today.

Q. I don't mean today. A. I never see anybody.

Q. All right. When you were talking to Mr. Breslin and you knew that Mr. Hauptmann was arrested— A. Yes.

Q. —and you knew that Tuesday, March 1st, was the night of the kidnaping— A. Yes.

Q. —and you were asked about him, because you knew he was there in jail charged with this serious crime, weren't you asked this question: "Do you know whether her husband," meaning Hauptmann— A. Yes.

Q. "—was there that Tuesday night?" And your answer was "No." A. Yes.

Q. Isn't that what you said? A. Yes.

Q. So you don't know whether he was there at all? A. No, not positive sure; I can't swear to it.

Mr. Wilentz: That is all.

(Laughter.)

Re-Direct Examination by Mr. Reilly:

Q. Well, wait a minute. You are giving us your best recollection, is that right? A. That is it, yes, sir.

Q. You can't swear whether he was there or you can't swear whether he was not there: is that correct? A. Yes.

Q. But he was in the habit of coming there Tuesday nights for his wife, wasn't he?

Mr. Wilentz: Well, I object.

A. Yes, sir.

Mr. Wilentz: All right.

Q. And you think when you talked to your wife that that is a pretty good person to talk to, don't you?

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

Mr. Reilly: Well, if he didn't think so, I don't know just where we would stop.

The Court: I will strike that out.

Mr. Reilly: That will save a lot of us around here; that is the only purpose of it.

Re-Cross Examination by Mr. Wilentz:

Q. Just one minute, Mr. Fredericksen. You remember that some Tuesday nights Mrs. Hauptmann complained that her husband didn't come? You remember that, don't you? A. Yes, but that

is long before that time; that time we had two girls.

Q. But you do remember there were some Tuesday nights he didn't come? A. Yes.

Mr. Wilentz: Yes, that is all.

By Mr. Reilly:

Q. What year? A. Oh, that was maybe a year before.

Q. A year before? A. Yes.

Mr. Reilly: That is all.

Mrs. Fredericksen.

MRS. KATY FREDERICKSEN, sworn as a witness on behalf of the Defense.

Direct Examination by Mr. Reilly:

Q. Mrs. Fredericksen, you are the wife of the last witness? A. Yes, sir.

Q. And you were engaged in the bakery business in March, 1932? A. Yes, sir.

Q. At the address your husband told us about? A. Yes, sir.

Q. Mrs. Hauptmann worked for you? A. Yes.

Q. And worked during the periods that your husband told us about? A. Yes.

Q. Is that right? A. Yes.

Q. Now, did you have Tuesday nights out? A. Every Tuesday. It never failed.

Q. And when you would take that night off, who would stay in the store until closing time? A. Anna.

Q. Anna Hauptmann? A. Yes.

Q. And about what time would Anna leave on Tuesday night? A. When she was finished.

Q. About what time would that be? A. Oh, sometimes she told me nine, and half past nine.

Q. Now, was Mr. Hauptmann in the habit of bringing her there in the morning? A. Every morning.

Q. And would he drive there in his car? A. Well, so she told me. I were not in the business so early.

Mr. Wilentz: Just a minute. I move that be stricken out.

Mr. Reilly: I consent.

Mr. Wilentz: It is consented to.

The Court: Strike it out.

By Mr. Reilly:

Q. I want just what you saw yourself. What time would you come downstairs to the shop or come into the shop? A. Oh, about half past 8 or 9 or 10 o'clock.

Q. Would you find her there? A. I would.

Q. What were her hours on nights that you did not go out? A. 7 to 5.

Q. 7 in the morning until 5 at night? A. Yes.

Q. Now, do you remember Tuesday, March 1st, 1932. A. Vell, I remember I were out.

Q. That is the night of the Lindbergh kidnaping. A. Yes.

Q. And that was a Tuesday night. A. Yes, sir.

Q. And you were out, were you? A. Yes, sir.

Q. Do you remember the next day or some time

during late at night hearing about the kidnaping? A. Yes, we spoke about it the next day.

Q. And the next day was a Wednesday, wasn't it? A. Yes, sir.

Q. Had you been out the Tuesday night before that? A. Yes, sir.

Q. What time did you leave the store? A. Oh, around one o'clock.

Q. In the afternoon? A. Yes, sir.

Q. Was Anna there? A. Yes, sir.

Cross Examination by Mr. Wilentz:

Q. Of course you didn't see Mr. Hauptmann bring Mrs. Hauptmann to work in the morning? A. Because I wasn't there so early.

Q. Whatever the reason, you testified a minute ago he used to bring here there in the morning. A. That is what she said.

Q. You never saw him bring her there in the morning, did you, madam? A. I couldn't say, I wasn't there.

Q. You were not there? A. No.

Q. So you didn't see him bring her there in the morning, did you? A. No.

Q. And you weren't there Tuesday night March 1st, were you? A. No, I come in later on.

Q. And that is all you know about it. A. Well, we always speak about it the next day.

Q. Well, you weren't there that night, were you, you don't know who was in the store the night before, do you? A. Well, I can always depend upon her.

Q. You depended upon her being there? A. Yes, and I know she was there.

Q. You weren't there? A. If she wasn't there I would know it.

Q. You weren't there, were you, madam? A. No.

Q. So what you know is that on Tuesday night, that night you were off, is that right? A. Absolutely.

Q. You were off and you believe because you were off that she must have been there, Mrs. Hauptmann. A. Well, if she wasn't there I would be there.

Q. But you didn't see her in that building that night? A. No.

Mr. Wilentz: No. Thank you, Mrs. Fredericksen, that is all.

Mr. Reilly: Just a moment, please.

Re-Direct Examination by Mr. Reilly:

Q. You say you would talk about it the next day? A. Yes, sir.

Q. As to whether he had called for her or not, is that it? A. Yes, sir.

Mr. Wilentz: There is no question about calling for her, in either direct or indirect.

The Witness: I always asked my husband.

Mr. Reilly: You asked the question and she answered, we always talk about it the next day.

The Court: Well, what is the pending question?

Mr. Reilly: The question is as to whether they talked about it the next day.

Q. Now, do you recall going to Mr. Hauptmann's home one evening when somebody was about to leave for Europe? A. Yes, sir; that was about 28th of November, 1933.

Q. Where did Mr. Hauptmann live then? A. 222nd Street.

Q. And who was going to Europe? A. Fisch.

Q. Isidor Fisch? A. Yes, sir.

Q. And did you meet him in Mr. Hauptmann's house? A. Yes, sir.

Q. You say the 28th of November? A. Yes, it was about the 28th; it was a Monday night.

Q. A Monday night? A. Yes.

Q. About the 28th of November, 1933? A. Yes; it must have been the 27th or 28th.

Q. And how long were you there at that gathering? A. There was no gathering, I went up to see Anna's baby.

Q. Well, how long were you there? A. Oh, couple hours.

Q. Was Fisch there when you arrived? A. Yes, sir.

Q. Was he there when you left? A. We went together.

Q. Who went together? A. Fisch and I.

Q. Where did you meet Fisch that night? A. He went in my car.

Q. Where did you meet him? A. In Anna's house.

Q. He met you in your house or the store? A. No, Anna Hauptmann's house; he was there when I came up.

Q. Was he there when you arrived? A. Yes, sir.

Q. Was he there when you left? A. We left together.

Q. Oh, you mean you left together? A. Yes.

Q. Did you drive him some place? A. I drove him down to Pelham Station.

Q. Where? A. Pelham Park, Pelham Station.

Q. Subway? A. Yes, sir.

Q. About what time of night? A. Oh, that was about between ten and half past ten.

Q. And how long— A. I had to meet my husband at 11 in Mt. Vernon.

Q. How long had you been in his company that night, in Mrs. Hauptmann's house? A. Oh, about two or three hours.

Q. I show you this picture marked Defendant's Exhibit 10 for Identification and ask you whose picture it is? A. That is Fisch.

Q. Isidor Fisch? A. Yes.

Mr. Reilly: I offer it in evidence.

Mr. Wilentz: No objection.

The Court: If there is no objection, it will be admitted.

The Reporter: D-39 in evidence.

(The photograph referred to was received in evidence and marked Defendant's Exhibit D-39.)

Q. Now did you see Fisch have any money the night of the party?

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

Mr. Reilly: Well I don't know how—

Mr. Wilentz: And not being material to this cause.

Mr. Reilly: I don't know how I can direct her attention to money. If I say "Did you see him have anything that night?" she could say handkerchiefs or a penknife or anything else.

Mr. Wilentz: Well, I submit it is not material.

The Court: Not material?

Mr. Reilly: We consider it material to our defense. We will connect it up. But this witness is only going to be here now and is going back to New York. I am laying the foundation. I will connect it.

Mr. Wilentz: We submit the presence of money as money in the possession of some person other than this defendant is not material to this cause.

Mr. Reilly: A particular and peculiar kind of money might be.

The Court. At Hauptmann's house?

Mr. Reilly: Yes.

By Mr. Reilly:

Q. In 1933, was it, Mrs. Fredericksen? A. Yes, '33.

Q. November, 1933? A. Yes.

The Court: It might be material if you can connect it up.

The Witness: This was just a few days—

The Court: Answer the question. Did you see Fisch have any money?

Q. Did you see Fisch have any money? A. Yes.

By Mr. Reilly:

Q. Are you familiar with money? A. Oh, yes.
Q. Greenbacks or paper money? A. Well, I were driving so—
Q. What? A. I were driving, so I couldn't tell the color of the bills.
Q. Well, did he have— How did he come to show the money? What did he do? A. Well, if you want me to tell you—

Mr. Wilentz: I object to that as not being material, if your Honor please. She said he had some money and she saw it and she can't tell what kind of money it is.

Mr. Reilly: Can't we ask what she saw?

Mr. Wilentz: Well, she said she can't tell.

Mr. Reilly: She may have meant she didn't know the denominations.

Mr. Wilentz: No. She said she can't tell the color.

By Mr. Reilly:

Q. Did you see the color? A. No, I didn't, because I were driving and it was impossible.

The Court: Well, then, it was in the wagon that she saw this?

Mr. Reilly: In the automobile, yes.

By Mr. Reilly:

Q. You didn't see it in the house? A. No.

Mr. Reilly: That is all.

Mr. Wilentz: That is all, Mrs. Fredericksen.

Mr. Reilly: Sheriff, will you bring Hauptmann to the stand.

BRUNO RICHARD HAUPTMANN, resumed the stand:

Direct Examination (continued) by Mr. Reilly:

Q. Now, I think we were at the point where you had come over to Lakewood, New Jersey, as a carpenter. Do you recall when that was? You saw an ad in the paper, you said? A. Yes.

Q. Is that right? A. Yes.

Q. And in the answer to the ad you came over to Lakewood, New Jersey: is that right? A. No, I went to New York. It was given an address in the paper, in New York. I forgot the address.

Q. All right. A. And this gentleman he sent

me over to Lakewood to construct a one-family house.

Q. And how many carpenters worked on that job? A. Well, that was only Mr. Diebig and myself.

Q. Was Diebig a carpenter? A. No, he was not a carpenter.

Q. What did he do for a living? A. I took him along as a helper.

Q. As a helper, carpenter's helper? A. Yes.

Q. And you say it was only a bungalow? A. Yes.

Q. And that job was finished Christmas, 1924, is that right? A. Yes.

Q. Now, in October, 1925, I think you testified that you were married, is that correct? A. It is.

Q. After you were married, where did you and your wife go to live? A. Well, first I live for about one week or two weeks on 154th Street between 4th and Amsterdam Avenue. After that I moved to, I guess, 122nd Street, Park Avenue.

Q. Well then, did you about that time go to work for a man named Olson? A. Yes.

Q. How many years did you work for Olson? A. On, this is around three or four years, sometimes they got to stop for month or two months, if there wasn't much work to do.

Q. Well, when you stopped working for Mr. Olson, would you work for somebody else? A. Yes.

Q. If you could get the work? A. Yes.

Q. And in 1929, did you work in Mount Vernon for an Italian? A. Yes.

Q. As a carpenter? A. Yes.

Q. Were you out of work very often during 1925 to 1929? A. Not very often.

Q. Well, now, do you remember during 1928

and 1929 that you worked for someone Saturdays and Sundays, some friends of yours? A. Oh, yes. We build three houses after working time; that means after the usual working hours—Saturday afternoon and Sundays.

Q. Now these three houses were being built by friends of yours were they? A. Yes.

Q. What was the name of the friend? A. Mr. Haberland.

Q. And how much did you make on the job at working overtime in your odd hours on that job of three houses? A. Oh, it was approximate one thousand dollars.

Q. And how much of that did you save? A. Well, I took some to the bank, and some of the money I always keep in the house.

Q. Did you keep some of the money in the house? A. Yes, always. That is a habit I have.

Q. Now, do you remember about how much you had in your house at the end of 1929? A. In 1929 I would say three thousand.

Q. Three thousand? A. Three thousand, three thousand five hundred.

Q. In cash? A. In cash.

Q. And that was money you had made as a carpenter? A. Yes.

Q. And saved? A. Yes.

Q. Was Anna working all the time until practically the birth of the baby? A. Well, she worked all the time with the exception of two times she went to Jurope.

Q. When did she first go—

Mr. Wilentz: Just a minute. He said Jurope, didn't he?

Mr. Reilly: Europe.

Mr. Wilentz: But I mean with a "J." All right.

Q. Where did she go? A. To her home town.

Q. Did she go to visit some relatives of hers in Europe? A. Her parents.

Q. When was her first trip to Europe? A. Summertime, '28.

Q. 1928? A. Yes.

Q. Had she worked steadily since she came to America up to the time she made the first trip to Europe? A. With the exception of one month, one or two months, when we get married.

Q. You were married in 1925, in October? A. Yes.

Q. You say for about two months she didn't work? A. I say one or two months.

Q. One or two months. Then she went back to work; she worked and you worked? A. Yes.

Q. How much did Anna make a week? A. She makes about $20 or $25, I guess, and about five to eight dollars tips.

Q. About $30 or $33 a week? A. Yes.

Q. Did she save most of it? A. Well, we kept our household from the money from my wife.

Q. The running expenses of the house? A. The running expenses—

Q. The running expenses came from the money Anna made? A. That is it. I used to save my wages.

Q. You used to save your wages. Now, when she went over to Europe in 1928 how much did she pay for her ticket? A. I can't recall.

Q. Did she go second class, tourist class— A. No, she went third class.

Q. —or third class? I suppose she went on a German boat? A. Yes.

Q. And third class. Did she buy a round-trip ticket? A. Yes, round-trip ticket.

Q. Third class round-trip ticket to Germany didn't cost any more than maybe three or four hundred dollars, if it cost that much, did it? A. You mean the ticket alone?

Q. Yes, the ticket alone, round-trip? A. No, the ticket alone cost around two hundred dollar, I guess.

Q. Around $200, third class round trip? A. (Nodding head affirmatively.)

Q. Do you remember the line she sailed on? A. North German Line.

Q. North German Lloyd? A. North German Lloyd.

Q. And how long did she stay over there the first trip? A. Approximate four months.

Q. And when did she make her second trip to Europe? A. Summer time, 1932.

Q. Four years after her first trip? A. Yes.

Q. She went back to see her mother and father again, her parents, or whoever was over there? A. Yes.

Q. Did she go the same way, third class? A. No. I guess she went tourist class.

Q. Tourist class? A. Tourist class.

Q. Was that the year she took over Mrs. Altschuler's child? A. No, she took the child from Mrs. Achenbach.

Q. Achenbach? A. In 1928.

Q. In 1928? A. Yes.

Q. Did she go over with anybody in 1932? A. No, she went alone.

Q. Do you know how much she paid for her accommodations in 1932? A. I really don't remember.

Q. How long was she over there? A. Three or four months.

Q. Had she worked between 1928 and 1932? A. Yes.

Q. And you had worked? A. Yes.

Q. And the household ran just about the same? A. Yes.

Q. The expenses from Anna's money and the savings from yours, is that correct? A. (Witness nods head.)

Q. Well, now, do you remember where you worked after you left Mr. Henselman? A. From Henselman?

Q. Yes. A. I guess I went right to Olsen, Mr. Olsen.

Q. And after Olsen, who did you work for? A. Well, in the time I worked for Mr. Olsen, sometimes there wasn't much to do and I was working on another place, I really can't recall all these places were I was working.

Q. Well, you have always worked more or less as a carpenter, is that right? A. Always as a carpenter, yes.

Q. Sometimes you worked nights, didn't you? Do you remember working nights for a couple of weeks? A. Yes, I did.

Q. Fixing some offices at Lexington Avenue and 42nd Street? A. 42nd and 41st, yes.

Q. And would you be paid there by the hour or by the job? A. Well, that was a job; you got to work day and night. I guess I worked 30 or 36 hours at one stretch.

Q. 30 or 36 hours? A. Yes.

Q. And how much would you get for that? How much did you get? A. It was around $40 or $50. I really can't recall.

Q. Did you work for a carpenter named Gliester in 1930? A. Yes; it was in Yonkers.

Q. In Yonkers? A. Yes, in Yonkers.

Q. How long did you work for him? A. About a quarter of a year.

Q. Were your wages the same, the union rate? A. No. I guess it was in the Winter time, and he only paid me nine dollars a day.

Q. Did you save your money? A. Yes.

Q. Now, in the early part of July 1931, do you recall that period? A. Yes.

Q. You decided to go and take a trip to California: is that right? A. Well, it was decided eight years ago already.

Q. Well, did you decide to go then in 1931? A. Yes.

Q. Can you tell us now about how much you had in cash, just before you started for California in 1931? A. You mean by cash all the money in my possession?

Q. In the house; in the house, yes. A. Oh, in the house. It was approximate a little bit over $4,000.

Q. Can you remember now without referring to your bank account how much you had in the bank at that time? A. Around five—five hundred or seven hundred; I really don't know exactly how much there was.

Q. Altogether you had about $5,000, didn't you? A. I think there was more.

Q. In the bank and the house? A. Yes.

Q. Now, when in July 1931 did you start for California? A. The 5th; the 5th July.

Q. The 5th of July? A. Yes.

Q. Now had you started some years before that to go to California with Diebig? A. Yes, it was 1925.

Q. Did you buy a car, the two of you? A. Yes.

Q. How far did you get in that car toward California? A. Half a block.

Q. What happened to the car, it broke down? A. It broke down.

Q. Did anyone go to California with you and your wife in '31? A. Mr. Kloeppenburg.

Q. And how long had you known Kloeppenburg? A. I know Kloeppenburg since I guess the winter time of 1929. I met him then at the firm of Lazherbacher.

Q. And where was Lazherbacher place? A. Located on 72nd Street, East River, not far from East River.

Q. What kind of a place was it? A. Cabinet maker.

Q. Cabinet maker? A. (Nodding affirmatively.)

Q. Was he working there? A. Yes, he was.

Q. And then after meeting him— of course he was a German, wasn't he? A. Yes.

Q. And did you two become friends? A. Yes.

Q. Was he in the habit of visiting your home? A. Yes.

Q. Did he have a home of his own? A. Well he was living mit two friends together, 175th Street.

Q. Was he single? A. He is single.

Q. Still single? A. Still single, for all I know.

Q. Who were the friends if you know? A. Mr. Lambert—

Q. Lambert? A. Lambert and Mr. Driesigazker, D-r-i-e-s-i-g-a-z-k-e-r.

Q. Anybody else in the car besides Kloppenburg, you and your wife? A. No.

Q. On the California trip? A. No.

Q. Now, how long were you three away on that trip? A. I guess three months.

Q. And that brought you back about the end of September, early October? A. Yes.

Q. Now, when you came back did you bring back some souvenirs of the trip? A. A whole lot.

Q. Among the souvenirs did you bring back some baby alligators? A. No.

Q. Did you bring back some small bales of cotton? A. Yes.

Q. Now, you remember this woman that was on the stand here the other day, don't you? A. Yes.

Q. What is the correct pronunciation of her name? A. Ah-hen-boch.

Q. Okkenbock? A. Yes.

Q. Now, do you recall after coming back from the trip to the South and California, you came back by way of the South, didn't you? A. Yes, over Florida.

Q. Calling at her house? A. Yes.

Q. And did you show her some of these souvenirs? A. I guess I showed her all of them souvenirs.

Q. Where did she live then? A. She lived two houses farder vest of our house.

Q. On what street? A. 222nd Street.

Q. Did you go back to work then after coming back from California? A. I got a couple small jobs.

Q. Now, in the following year, or rather, in March 1931, did you buy a Dodge four-door sedan? A. Which year you mean?

Q. 1931. When did you buy your Dodge four-door sedan? A. March '31.

Q. How much did you pay for it? A. $725 in cash.

Q. Was it a brand new car? A. Brand new.

Q. But it was a 1930 model, wasn't it? A. It was.

Q. And you bought it in '31? A. Yes.

Q. And is that the car that you had when you were arrested? A. That is the car.

Q. So you had it when you were arrested about three and a half years, is that correct? A. Yes.

Q. When was it that you first began to go to Hunters Island? A. That was '28, twenty—I guess '28.

Q. Now will you describe the portion of Hunters Island that you German people used to use up there? A. It is the southern shore of the island.

Q. Well, did you have houses there, or huts or shacks or what did you have? A. Oh, no, not that. Everybody got his particular place. Some of them builded a little bit like a shack up, some put up a tent, and some got nothing at all, only got a certain space cleaned with stones; that is all. There is no regular place.

Q. And were you and the other German friends of yours in the habit of visiting that portion of Hunters Island in the spring and summer time? A. Oh, there were lots of us.

Q. When would you go up there, on week ends? A. Usually week ends, Saturday evening or afternoon.

Q. Stay all night or would you come home? A. Came home usually.

Q. Sometimes you would go back on Sundays, would you? A. Yes, sir.

Q. Tell us what they would do up there, Saturdays and Sundays? A. Well, we usually went out to the island early in the morning, take a bath, cook some coffee, like the camping life and we played soccer, cooked our meals, whatever it was and sometimes playing cards, making music. We would keep going until eight o'clock in the evening and then went home.

Q. It was just camping? A. Yes.

Q. Roughing it? A. Yes.

Q. Would Mrs. Hauptmann go along with you on those parties after you were married? A. Well, sometimes—this time she got the work on

Sunday and she couldn't come and I usually went just when she got work on Sunday, I usually went home around about five o'clock. When she was quitting work, and then I was home.

Q. Now, was the reason for your wife's second visit to Germany the fact that her mother was celebrating her seventieth birthday? A. It was the only reason.

Q. Now, did you meet in Fredericksen's bakery one of their customers who worked in an employment agency on Sixth Avenue, New York? A. Yes; it was in the early part '32.

Q. Early part of 1932? A. Yes.

Q. Can you tell us what month? A. February.

Q. After meeting that man did you go to the agency? A. Yes.

Q. Have I the name correct: Reliable Employment Agency, or Reliance? A. Yes, that is—

Mr. Reilly: I have Reliance. Have you a different name?

Mr. Wilentz: That is all right.

Q. Did you pay the ten dollar fee there? A. Yes.

Q. Now, that was the customary thing to do, wasn't it, to go and register and pay a ten dollar registration fee? A. No, I went personally down to the agency.

Q. Yes. You went there. A. And I get a job, and I got to pay them ten dollars for it.

Q. Where was the first job you got through that agency? A. That first job was Majestic Apartments.

Q. Majestic Apartments? A. Yes.

Q. Now, do you remember what date it was in

1932 that you went to this agency? A. It was 27th of February.

The Court: The 27th of what?

Mr. Reilly: February.

The Witness: February.

Q. Now on the 28th,— what day of the week was the 27th, do you remember? A. Well, I remember 27th was a Saturday.

Q. Yes. Well then, on the 29th, Monday, did you go any place looking for work as a result of being at the agency? A. No, I, on the 29th, on a Monday, in the morning, I sharpened the tools and put the tools in the car and went down to the Majestic and put the tools in the carpenter shop and I left.

Q. Of the Majestic Apartment? A. Yes.

Q. Where was the— you say carpenter shop? A. Yes.

Q. Where was the carpenter shop of the Majestic Apartment? A. Down in the cellar.

Q. Down in the cellar? A. Yes.

Q. Now, how long a building was that Majestic Apartment? A. I guess it is twenty-one story.

Q. Twenty-one story. Where was the Majestic Apartment? A. Location on 72nd and Central Park West.

Q. No. 1, either No. 1 or No. 2 West 72nd Street, isn't it, on the corner of Central Park West? A. Yes.

Q. Right? A. Yes.

Q. Now did you go back there any time after the 29th of February, to the Majestic? A. I went back on the 1st of March. I was down eight o'clock in the morning.

Q. 1932? A. Yes.

Q. And when you got down there to the place did you go to work? A. I got to see the superintendent first.

Q. Did you see him? A. I saw him. I got to wait a little while, about a half hour. Then he said he couldn't put me to work and I got to come back on the 15th of February, because he said he only hires men on the first and on the fifteenth.

Q. Now do you mean the 15th of February or the 15th of March? A. The 15th of March, I mean. Excuse me.

Q. Now, in the meantime were you trying to obtain a position as carpenter at Radio City, 5th Avenue, New York? A. I was— a couple of times I was over there for work.

Q. Did you ever get any work? A. No.

Q. At Radio City. A. No, I didn't get any.

Q. When do you say now that you first went to work at the Majestic Apartment? A. It was the 15th.

Q. Of March? A. March.

Q. And how long did you work at the Majestic Apartment? A. I quitted on 2nd of April.

Mr. Reilly: General, may I have the book that was offered in evidence?

Mr. Wilentz: What book was that?

Mr. Reilly: Of Sweeny.

Mr. Wilentz: Will you give us the time book please? Can you get it right away?

Captain Snook: Yes.

By Mr. Reilly:

Q. We will just pass that for a minute until we get the book. Now, April 2nd 1932 was a Saturday, wasn't it? A. It was.

Q. And what time did you go to work on April 2nd? A. The usual time.

Q. What was the usual time in New York? A. I left the house at seven o'clock in the morning.

Q. Seven? A. Seven o'clock in the morning.

Q. And you worked until what time for lunch? A. Lunch hour was twelve o'clock.

Q. And came back at one, is that right? A. Yes.

Q. And then you worked until what hour in the afternoon? A. We worked until five o'clock.

Q. Five o'clock. And the Majestic Apartment is how many miles away from your home in The Bronx approximately? A great distance, isn't it? A. Pretty near eight miles, I figure.

Q. Eight miles.

Q. Now, you heard the timekeeper from the Majestic Apartment job testify here, did you? A. I did.

Q. And did you hear him testify that you did not work on April the 2nd? A. I heard it, yes.

Q. Do you say positively that you did work on April 2nd? A. Positively.

Q. And you were paid for it? A. Paid for it.

Q. And it is a fact, isn't it, as testified to by the timekeeper that the following day was a Sunday? A. Yes.

Q. And the next day was a Monday? A. Yes.

Q. And that you did not do any work after Monday, you resigned on Monday? A. I originally resigned on Saturday; on Monday I went down to try to get my pay check, but I get answer I got to wait till the 15th.

Q. Now you were supposed to get a hundred

dollars a month, weren't you? A. Supposed to get it.

Q. Yes. As a matter of fact all they gave you was eighty, isn't that right? A. Yes.

Q. And that is why you threw up the job, isn't it? A. Yes.

Q. Did you get your pay check on the 15th? A. I did.

Q. Of April? A. Yes.

Q. So that on April 2nd, 1932, you worked for the Majestic Apartments the entire day until five o'clock at night? A. Five o'clock, yes.

Q. And you took what train home? How would you go home, or did you have your car? A. No, I never take the car when I go downtown of New York. I used Bronx Park subway. That brings me on the west side, 72nd Street express station.

Q. That would be about two or three blocks west— A. Yes.

Q. —of number 1 West 72nd Street where you were working? A. Yes.

Q. You'd walk up 72nd Street to the express station and take a Bronx Park subway, correct? A. Correct.

Q. And that subway would take you how near to your house? A. This takes me to 177th Street, that is near Bronx Park. There I have to change for White Plains.

Q. And the White Plains subway takes you how near to your house? A. 225th Street.

Q. Three blocks away? A. Yes. Well, I got to walk nine minutes to my house.

Q. Two or three blocks, nine minutes to walk? A. Nine minutes. It is about seven blocks.

Q. And about what time, do you recollect now, if you can, did you arrive home that Saturday night, April the 2nd, 1932? A. Around six o'clock.

Q. Now, do you recall the evening of April the

2nd, 1932, after supper? A. Well, when I came home, my wife was home already and around seven o'clock Mr. Kloeppenburg came in the house.

Q. Mr. Who? A. Mr. Kloeppenburg.

Q. Yes. A. Came in the house because this is usual our music evening is the first Saturday in every month.

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

The Court: What is that?

Mr. Wilentz: He said Mr. Kloeppenburg came to his house on that Saturday because it was his usual Saturday music day or something like that. They have the—

Mr. Reilly: I think that is competent.

Mr. Wilentz: I withdraw the objection.

Q. Now, did anybody else come there that night? A. No, I don't think so.

Q. Do you recall a fellow— Did you know a fellow named Jimmie?

Mr. Wilentz: Oh, now, I—

A. I only know him by name, Jimmie; but I don't know his regular name.

Q. Well, he is a German, isn't he? A. Yes, he is, yes.

Q. He is a German? A. Yes.

Q. Now, do you recall whether or not Jimmie was there that night? A. I really can't.

Q. You have no independent recollection, now, have you, whether he was there or not? A. No, I really can't.

Mr. Reilly: Now, before going into that party, may we adjourn?

Mr. Reilly: Now, before going into that part, may we adjourn?

Mr. Wilentz: May we have the rest of the testimony as to who was there that night?

Mr. Reilly: All right, surely.

Mr. Wilentz: Before we adjourn.

By Mr. Reilly:

Q. Now, who was there that you recall? A. My wife, Mr. Kloeppenburg, myself of course, and about Jimmy I am not quite sure if he was there or not.

Q. This is two and a half years ago, almost three years ago, is that right? A. Yes.

Q. Now, I want you to explain to the jury before you leave the witness stand, if you will, what you mean by the first Saturday of the month, music evenings; what did you do and what happened in your home? A. Well, he was playing the guitar and I was playing the mandolin and we used to play together and enjoy ourselves for about hour, hour and a half, to keep in practice.

Q. Any singing? A. Of course singing, too.

Q. What were you playing German tunes? A. German and American.

Q. And how late was this monthly gathering,

when would it wind up, what time? A. Not before eleven o'clock, eleven, twelve o'clock altogether.

Q. Now, on April 2nd, 1932, after you came home from work in the neighborhood of six o'clock, did you ever leave your home that night? A. No, sir.

Q. You were in your house all the time? A. All the time.

Mr. Reilly: Now, may we suspend?

The Court: The people will remain seated. Remain just where they are; we haven't adjourned yet.

The jury may retire and will come in tomorrow morning at ten o'clock. The people will remain seated as they are until the jury has retired.

(The jury retired at 4:31 o'clock p. m.)

The Court: The prisoner is now remanded to the custody of the Sheriff.

(The prisoner retired in the custody of the Sheriff.)

The Court: The Court will now adjourn until ten o'clock tomorrow morning. The people may retire.

(At 4:33 p. m. an adjournment was taken until Friday, January 25th, 1935, at 10:00 a. m.)

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., January 25, 1935.

EIGHTEENTH DAY.

Present:
Hon. Thomas W. Trenchard.

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

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

The jury was polled and all jurors answered present.)

(10:05 A. M.)

The Court: Again this morning I would like the officers to be careful to take places in the aisles for the purpose of keeping quiet in the courtroom and avoiding all confusion. Counsel may proceed.

Mr. Reilly: Mr. Hauptmann, take the stand.

BRUNO RICHARD HAUPTMANN resumed the witness stand.

Direct Examination (continued) By Mr. Reilly:

Q. The apartment from which you were arrested, what street was that? A. 222nd Street.

Q. You will have to speak just a little bit louder. A. 222nd Street.

Q. And how long had you lived in that apartment? A. Two years.

Q. You had nothing to do with building that house, did you? A. Nothing at all.

Q. Now, the time you married your wife, did she have a bank account? A. Yes.

Q. In what bank? A. Central Savings Bank.

Q. And did she continue to deposit money in that bank? A. Yes.

Q. Do you remember the winter after you were married? A. Yes.

Q. Did you buy a lunchroom at 223rd Street and Lexington Avenue? A. I did.

Q. From Albert Diebig? A. I did.

Q. How much did you pay for that lunchroom? A. Nine hundred dollar in cash.

Q. How long were you in business there with Diebig? A. Only four, six weeks.

Q. Then did you sell it? A. I sold it, yes.

Q. For how much? A. Thirteen hundred.

Q. Made a profit of $400 on it, is that right? A. That is right.

Q. Now in 1929, including the mortgage of $3,750, how much do you say you were worth in cash and bank accounts? A. You mean on the end of '29?

Q. The end of '29. A. That includes the mortgage, the money we have in the bank and my money still kept home, approximately $9,000.

Q. What year did you enter the Wall Street market? A. I guess it was the end of '29.

Q. And you bought and sold stocks right up to the time of your arrest? A. Yes.

Q. Now when did you first meet Isidor Fisch? A. Suppose the early part of March or the early part of April, 1932.

Q. Where did you meet him? A. Hunter's Island.

Q. Who introduced you to him? A. Well, nobody, he was just on our place, where we used to be always, he was a German and we got in conversation.

Q. After meeting Isidor Fisch, how soon after that did he suggest or you suggest that he participate in the market deal? A. That was in May.

Q. Nineteen— A. Same year.

Q. 1929 or '30 or '31? A. '32.

Q. '32. Did he go anywhere with you in relation to Wall Street? A. Well, used to go to Steiner-Rouse & Company.

Q. S-t-e-i-n-e-r R-o-u-s-e and Company? A. And to regulate this— I didn't have any account with Steiner-Rouse & Company this time; my account was by Charleton Mott & Company, Broadway. I watched the board at Steiner-Rouse & Company.

Q. Where was Steiner-Rouse's office, where you watched the board? A. 86th Street, between Third and Lexington Avenue, New York.

Q. They had a branch, is that it, of the Wall Street house up at 86th Street? A. That is a branch office.

Q. Near the Yorkville district, is that correct? A. Yes.

Q. And that is where you watched the board? A. Yes.

Q. Although you say you were not trading with them, you watched their board, is that right? A. That is right.

Q. And by the board you mean the board in the office that shows the various changes in the quotations on the Stock Exchange? A. That is correct.

Q. The board that is there, that is, the changes during the day as the stock advances or declines in value, is that correct? A. Correct.

Q. Did Fisch give you any money to buy stock? A. Yes, he did.

Q. When was the first transaction that you recall Fisch giving you money? A. It was, I guess it was around in August that year.

Q. '32? A. Yes.

Q. Now, did Fisch visit your home? A. Yes.

Q. What business was Fisch in? A. Fur trading.

Q. Did you afterwards become his partner? A. Well, we kept it this way, he kept care of his line of business and I kept care of the stock.

Q. And what interest did you have in the fur business, what percentage, if any? A. I make it half and half.

Q. And when did you go into the fur business with Fisch? A. The first transaction was in middle of May, '32.

Q. Did you advance him any money? A. I give him $600, the first transaction.

Q. How much did the fur business— What profit did the fur business make in the first year? A. I didn't check it up yet.

Q. Well, did you ever receive any money from the fur business? A. Oh, yes.

Q. Large sums? A. Small sums and large sums.

Q. What was the largest sum you say you received as your share in any one year from the fur business? A. I guess the largest sums, over a thousand dollars.

Q. How much? A. Over a thousand.

Q. Over a thousand dollars. Now, was the fur business carried on under any particular name, trade name or partnership name? A. No, it is only under Isidor Fisch.

Q. Well, did he make out any invoices or did he

have any invoices made out by a young woman who lived in his neighborhood? A. Well, I find it out after he is, he died.

Q. Did you ever meet a Miss Haufert? A. Yes.

Q. In connection with Fisch's fur business? A. Yes.

Q. When did you first meet her? A. Well, I saw her the first time in later part of '32.

Q. Where did you see her? A. Mr. and Mrs. Henkel's house.

Q. Where did they live then? A. 127th Street, East side.

Q. Was Henkel a friend of Fisch's? A. I guess he was.

Q. How did you come to meet Henkel? A. I met Henkel in Hunter's Island.

Q. Did Fisch ever live with Henkel, as far as you know? A. He lived in the same house.

Q. Did you visit the Henkels? A. Yes.

Q. Do you remember when Fisch went to Europe? A. I do.

Q. When was that? A. December, '32.

Q. December, 1932? A. '33.

Q. He never returned, did he? A. No.

Q. Now, before Fisch went to Europe, did he call at your house? A. He called several times at the house.

Q. When was the last time he was at your house before he sailed for Europe? A. The night before he sailed.

Q. Who was at your house, as you recall it now? A. Mrs. Fredericksen, my wife and I.

Q. Anyone else? A. No.

Q. Did anybody come in during the evening, any of your friends, that you remember? A. Can't remember.

Q. Did Fisch have anything with him, any bun-

dles, or anything with him the night before he sailed? A. No, sir.

Q. Well, before he sailed did he leave anything with you for you to take care of while he was in Europe? A. Well, he left two suitcases.

Q. What else? A. Four hundred skins, Hudson seal.

Q. What else? A. And a little box.

Q. Now the 400 skins, or what kind of skins were they? A. Hudson seal.

Q. Hudson seal. And they were skins that were purchased in your partnership between Fisch and yourself? A. Yes.

Q. And did you have those skins in your possession when you were arrested? A. Yes.

Q. And are they now as far as you know in the possession of the New York City police? A. I guess they are.

Q. Now this little box that you described, what kind of a box was it, paper, cardboard or wood? A. Well, I find it later out it was a shoe box.

The Court: What was that?

Mr. Reilly: A shoe box.

The Witness: Shoe box.

Q. What was it made of? A. Well, cardon.

Q. Carton, cardboard? A. Yes.

Q. Now, will you describe to the jury under what circumstances it was that he left this shoe box with you, what he said and what you said? A. Well, of Mr. Fisch request it was he was throwing a party when he left for Chermany, it was at his request in our house; we invited a couple of friends and about nine o'clock or a short while before nine o'clock, Fisch came out and got a little bundle under his arm.

I answered the doorbell, my wife was in the baby's room. He came out and we went in the kitchen and he said, "I leave it, I leave it something, if you don't mind, keep care of it and put it in a tight place." I didn't ask what is in it, he only said that is paper in it. I thought maybe they are—

Mr. Wilentz: Just a minute.

A. —they are bills.

Mr. Wilentz: Just a minute. Now, I object to what he thought.

The Court: Never mind.

Mr. Wilentz: I object to what you thought.

Q. Tell us what you did, not what you thought. A. I put it in a broom closet.

Q. And where was the broom closet in your apartment? A. The broom closet was in the kitchen.

Q. In what part of the broom closet did you put it? A. Please?

Q. In what part of the broom closet? A. On the upper shelf.

Q. And how long did that shoe box remain there before you disturbed it? A. The middle of August, '34.

Q. '34? A. Yes.

Q. And what caused you to disturb it? A. I was looking for— it was Sunday, it was nasty weather outside— was looking for a broom. I took the broom. The broom is on the left side in the closet. And when I took the broom I must hit the box with the broom handle, and I looked up, and that way I saw that it is money. I damaged the box.

Q. And you saw money? A. Yes.

Q. In the box? A. Yes.

Q. Well, now, had there been any moisture or wet or anything in that closet? A. All soaking wet.

Q. Were there some pipes that ran through the broom closet? A. Yes.

Q. What kind of pipes? Were they water pipes or gas pipes? A. No, no water or gas pipes. That is, I guess that is ventilation pipe, I guess, for toilets.

Q. Radiator pipes, is that what you mean? A. No.

Q. For the heating system? A. No, not for heating system.

Q. Ventilation? A. That is for ventilation.

Q. Did you take the box down, the paper box down then, and you disturbed it? A. I put it in the boiler and took it down to the garage.

Q. What money did you see in that box? A. Only gold certificates.

Q. About how much? A. I didn't count it from the beginning.

Q. Is that the money that you afterwards started to spend? A. That is the money.

Q. Is that the money that was found in your garage? A. It is.

Q. And was Fisch dead at that time? A. Yes.

Q. How many satchels did he leave with you when he went to Europe? A. Two.

Q. What did you do with those satchels after his death? A. After his death, I opened the big satchel and searched it for bills. I couldn't find anything in there and I closed it again and left it in the garage. That means the big satchel.

Q. While Fisch was in Germany, did he write to you? A. Yes.

Mr. Reilly: May I have the exhibit known as S-1, the two-mile radius map?

Mr. Wilentz: I think maybe we will have to start carrying some of these down (indicating exhibits tacked to the wall).

Mr. Reilly: I think we may have to have the assistance of the State troopers. General, look out for that nail.

Q. I am pointing now to State's Exhibit 1, which shows the estate of Colonel Lindbergh as of March 1st, 1932. Hauptmann, were you ever in Hopewell in your life? A. I never was.

Q. On the night of March 1st, 1932, were you on the grounds of Colonel Lindbergh at Hopewell, New Jersey? A. I was not.

Q. On the night of March 1st, 1932, did you enter the nursery of Colonel Lindbergh—? A. I did not.

Q. —and take from that nursery Charles Lindbergh, Jr.? A. I did not.

Q. On the night of March 1st, 1932, did you leave on the window seat of Colonel Lindbergh's nursery a note? A. Well, I wasn't there at all.

Q. You never saw baby Lindbergh in your life, did you? A. Never saw it.

Q. Now, I want you to look at State's Exhibit 18 and the envelope in which it was contained, Exhibit 17. Did you ever see that note before? A. Why, I saw it in Bronx courtroom.

Q. That was the first time you saw it? A. It was.

Q. You never saw it except in the courtroom? A. No.

Q. Did you write it? A. I did not.

Q. Did you leave it in the Lindbergh nursery? A. I did not.

Q. March 1st, 1932, you referred to here yesterday in a general way. Will you again tell the jury

where you were from the time you got out of bed on the morning of March 21st, 1932, until you went to bed that night, your movements that entire day? A. Well, I wake up about six o'clock, took the wife down to the bakery.

Q. About what time did you take your wife to the bakery? A. Between half past six and a quarter to seven.

Q. How did you take her down? A. In automobile; in car.

Q. And again I ask you how many miles would you say it was from your home to the bakery? A. A good mile.

Q. She had to be there about seven o'clock, didn't she? A. Yes.

Q. How long did you remain at the bakery that morning? A. I didn't enter the bakery at all.

Q. Well, after Anna entered the bakery, where did you go? A. I went right home, put the car in the garage, and went to White Plains Avenue subway station.

Q. Well, you testified yesterday you were nine or ten minutes' walk from there. A. Six or nine minutes.

Q. And you took the subway, as you described yesterday, the White Plains, to some intersection? A. White Plains to 177th Street, and there I changed for Broadway subway.

Q. And where did you ride to? A. To 72nd Street, Broadway.

Q. And then where did you go? A. I went to the Majestic Hotel.

Q. And when you arrived there did you see anybody? A. Well, I went to the carpenter shop. Of course, my tools was down there already. I took the tools down the day before and was going to start to work. The foreman said, I got to see the superintendent first.

Q. Now, do you recall the name of the foreman? A. I can't.

Q. All right. Continue now your movements. A. When I saw the superintendent he said I can't start. Well, I showed him the letter from the agency. He said, "I am sorry, it is filled up." So I left the tools right in the Majestic and took the letter and went down to the employment agency where I get the job trying to get them ten dollars back what I paid for it. I couldn't get it them ten dollars and he said, "Come around next day, maybe something else coming in." And after that I went to another agencies and I went over to Radio City which was under construction, trying to get a job over there, but I couldn't. And I went home around five o'clock, maybe a little bit later or earlier, I don't know.

Q. Now when you arrived home, who was there, if anybody? A. There was nobody at home when I arrived.

Q. What time did you go back and call for Anna? A. I was there around seven o'clock.

Q. When you arrived at the bakery, who was there? A. My wife alone, my wife was alone there, but there were customers in there always.

Q. People come in and go out and buy things, is that right? A. Yes.

Q. Did the Fredericksens at that time have a police dog? A. Yes, they did.

Q. Did you do anything with that dog during the evening while waiting for Anna to finish her duties? A. Oh, yes; I usually let the dog out for a walk.

Q. Did you take the dog out that night? A. I did.

Mr. Wilentz: Just a minute, your Honor please. I didn't want to object to the leading

suggestion about the dog, but as long as the question was asked, specifically that night, the answer was, "I usually took him out." I think the next one is very leading and offensively leading, "Did you take him out that night?"

The Court: Yes, that is leading.

Mr. Reilly: I don't see how I could otherwise direct his attention to that night.

The Court: You might try.

Mr. Wilentz: He did specifically before and he refused to say anything but he usually took the dog out.

The Court: For the moment I have excluded this question.

Q. Well, tell us what you did there that night? A. When I came down I usually got my supper first. I took the police dog out and took it out on the street, sometimes for a quarter hour, sometimes for a half hour.

Q. On this particular night— that is what we are interested in, did you— A. I did.

Q. —take it out that night? A. I did, yes.

Q. Do you remember where you walked the dog? A. I went to the corner of the Boston Road, Boston Post Road, went a little farder up, came back again to the gasoline station; it is just the corner.

Q. Did you meet anybody? A. As far I can't remember. I met a gentleman, I guess he was put gas, gassing in the gasoline station, and he was talking about the— about this dog, und he was asking me where I get him. I told he doesn't belong to me. I don't know whether he was asking about

interest from the owner, that is what I can't remember.

Q. But you remember meeting a man that talked to you about that dog? A. I do.

Q. On March 1st? A. Yes.

Q. At about what time of the night? A. I would say it would be between eight and half past eight.

Q. What did you do? Did you bring the dog back to the restaurant? A. Oh, yes.

Q. What time did you and your wife leave there? A. Came before nine o'clock; it was after nine o'clock. I can't remember exact the time.

Q. Well, it would be fair to say it was in the neighborhood of nine o'clock, is that right? A. Yes, that is about right.

Q. Did you drive your wife home? A. Yes.

Q. And after arriving at the house, did you again leave your house?

Mr. Wilentz: Just a minute. Now if your Honor please, I don't want to be objecting, but I don't think counsel ought to be testifying.

The Court: Well—

Mr. Reilly: All through the examination of his witnesses, if the Court please, we never thought of interrupting the gentleman's continuity of thought; we allowed him to testify fully and freely. I don't want to do it, but I want to simply direct this witness's thought in the channel of March 1st, that night.

The Court: Well, suppose you ask him what he did.

Mr. Reilly: All right.

By Mr. Reilly:

Q. What did you do? A. I went home. We went home, took the car—

Q. Did you stay there? A. Took the car in the garage, went right away to bed.

Q. So that on March the 1st, 1932, I ask you again, were you in Hopewell, New Jersey? A. I was not.

Q. And on March the 2nd, 1932, do you remember what time it was that you got up? A. The same time again, six o'clock, a little bit later.

Q. And did you and your wife go any place? A. I took the wife down to the bakery. After that I took the car down home in the garage again and went down to Sixth Avenue. In entering the subway station one, 225th Street, I read the paper and is the first time I read about the Lindbergh case.

Q. Then you read for the first time of the Lindbergh kidnaping, is that what you say? A. Yes.

Mr. Reilly: The second letter, please.

Q. I now refer you to State's Exhibits S-21 and 20. Were you— Withdrawn. Did you mail a letter in this envelope addressed to Mr. Colonel Lindbergh, Hopewell, New Jersey, on March the 4th, 1932? A. No, sir.

Q. Did you write that envelope? A. I did not.

Q. Now, I show you the letter which was contained in that envelope, S-20. A. I did not write any letter like that.

Q. You did not write that letter? A. Did not write it.

Q. When was the first time you saw that letter, if you ever saw it before? A. Well, I saw some of them letters in Bronx courtroom.

Q. You didn't put any marks on any in The Bronx? A. No.

Q. You saw some letters like this? A. Yes.

Q. You may have seen this in The Bronx and you may not have seen it, is that correct? A. Yes.

Q. When do you say for the first time you knew or learned that Colonel Lindbergh lived at Hopewell? A. Well, I— I heard it in the paper.

Q. The morning after the kidnaping; is that it? A. Yes.

Mr. Wilentz: That is what I object to, if your Honor please.

Mr. Reilly: He has testified already he read it.

Mr. Wilentz: He hasn't testified to that. The witness was waiting to determine his answer as to the time, if he was going to answer it at all.

The Court: I think the question was leading, but it has been answered.

Mr. Wilentz: I understood counsel answered it. Counsel suggested the day after the kidnaping.

By Mr. Reilly:

Q. When did you read in the paper of the Lindbergh kidnaping? A. March 2nd.

Q. Did it say in the paper that the baby was taken from Hopewell, New Jersey? A. It did.

Q. You didn't know Colonel Lindbergh, did you? A. I did not.

Q. You had never been in Hopewell, had you? A. No, sir.

Q. Now, when for the first time did you read that he lived in Hopewell, New Jersey, or did you know he lived in Hopewell, New Jersey? A. When I read from the kidnaping.

Q. Now, do I understand you, and I don't want to lead you, I think you have answered it, though, that every day between March 1st and March 15th you went through the usual routine of looking for work, except Sundays, of course? A. On, on March the 2nd I went down to the Majestic and took my tools up again.

Q. And what were these tools in? A. In a tool chest.

Q. This tool chest that we have here? A. Yes, that was—

Q. Is that your tool chest, referring to State's Exhibit 191? A. Well, I suppose it is. It looks like it.

Q. Well, you better look at it. A. I will have to see the inside of it. (Witness examines tool chest) That is my tool box.

Mr. Reilly: "That is my tool box."

Mr. Wilentz: The answer is "That is my tool box."

Q. All right, close it, please.

Mr. Wilentz: Well, that is all right. We can have it closed afterwards.

Mr. Reilly: I don't want somebody stepping on it and hurting themselves.

(The witness closed the tool box.)

Q. Now, when you took your tool box up, where did you take it? A. Took it home to the garage.

Q. And how long did you keep it there? A. Well, at this time I was working for National Lumber yard, sometimes in the week one day, sometimes three days, sometimes four—it depends just how the work was coming in.

Q. Was that in your neighborhood? A. Yes, it is White Plains Avenue.

Q. How much do they pay you a day? A. It was mostly on contract; mostly on contract.

Q. Contract. Well, then, finally on the 15th of March you did go back to Majestic Apartments, is that correct? A. Yes—

Q. And started to work? A. In the meantime I went a couple of times down to the agency where I get a job, and I called up the Majestic before I went down, and they said it is okay. So I went down the 15th of March. In saying so, I went down the 15th of March, there is one thing I am not quite sure about, if I did have my tools down on the 15th of March; so it is a possibility I started 15th or the 16th, either one of them days.

Q. Well, if the time book shows— May I have that, Captain.— Well, the best of your recollection is that you went to work on the 15th and if your tools were not there, were not there on the 15th, then you went to work on the 16th: is that what you said? A. Either one of them two days.

Q. And you testified yesterday that you worked right through? A. The 2nd of April.

Mr. Reilly: The next letter, Captain.

Q. I show you a letter, S-29, or S-22, S-23, and an evelope S-21, and I ask you whether or not you mailed this envelope with these two letters inside to Colonel Henry L. Breckinridge. A. I did not.

Q. Is that your handwriting? A. It is not.

Q. I show you S-23, a letter, and ask you whether or not that is your handwriting. A. It is not.

Q. I show you this exhibit, S-22, and ask you if that is your handwriting. A. (Examines carefully.) It is not.

Q. Did you ever know of a Colonel Henry L. Breckinridge in March, 1927? A. I did not.

Q. Now, I refer to Exhibit S-42, an envelope addressed to Dr. John Condon, 2974 Decatur Avenue, and ask you whether or not on March 9th you mailed that letter to him? A. I did not.

Q. Did you have anybody mail the letter for you? A. No, sir.

Q. Is that your handwriting? A. It is not.

Q. I show you a letter which was contained in this envelope and which is known as State's Exhibit 444 and ask you whether or not you wrote that letter (handing letter to witness)? A. I did never.

Q. Did you know a Dr. Condon? A. I did not.

Q. Did you know anybody named Jafsie? A. No.

Q. When for the first time did you see Dr. Condon who took the witness stand here? A. New York Police Station.

Q. Where? A. Police Station, New York.

Q. What part of New York? A. Downtown district.

Q. And that was after your arrest here in September, October, last year? A. After my arrest, yes, sir.

Q. I show you State's Exhibit 43 and 45 and ask you whether that is in your handwriting? A. It is not.

Q. I show you the letter, is that in your handwriting? A. No.

Q. I show you State's Exhibit 47 and 48, an envelope addressed to Mr. John Condon, 2974 De-

catur Avenue, and ask you whether that is your handwriting? A. It is not.

Q. I show you the letter that was enclosed therein and ask you is that in your handwriting? A. It is not.

Q. I show you State's Exhibit 51 and State's Exhibit 50 and ask you whether or not the envelope addressed to Dr., Mr. Dr. John Condon, 2974 Decatur Avenue, New York is in your hand writing? A. It is not.

Q. I show you the note that was enclosed therein and ask you is that your handwriting? A. No.

Q. I show you a piece of wrapping paper, State's Exhibit 53, addressed to Dr. John E. Condon, 2974 Decatur Avenue, New York, and on the sides "Mr. Condon," same address, and ask you if any part of that paper, either one or the second address, was written by you? A. It is not written by me.

Q. Was it ever mailed by you? A. No.

Mr. Reilly: May I have, General, please, the article that was in this?

Mr. Wilentz: Captain will you please get that for Mr. Reilly.

(Exhibit S-15 produced.)

Q. I am referring now to State's Exhibit 15, a sleeping suit. Did you take this sleeping suit off Baby Lindbergh at any time? A. I never saw the Lindbergh baby, alive or dead.

Q. When for the first time did you see this suit? A. Right here in this courtroom.

Q. Did you ever have it in your possession? A. I never have.

Q. Did you ever mail it to Dr. Condon? A. I did not.

Mr. Reilly: Captain, let me have the thumbguard, S-16.

(Exhibit S-16 produced.)

Q. You saw the thumb guard here in court on the witness stand? A. Well, I saw it, but I really didn't know what it is.

Q. I show you State's Exhibit 16, thumb guard, and ask you if you ever saw this before you saw it in the court room? A. No, I never saw it. I really didn't know what it is for.

Q. I show you State's Exhibit 52, a letter, and I ask you to look at it, both sides. A. (Witness looked at letter.)

Q. Did you write that letter? A. I did not.

Q. I show you State's Exhibit 55, 56, and envelope, addressed to Dr. Condon, March the 19th, 1932, and ask you first whether you wrote this envelope? A. No, I did not.

Q. I show you the letter which was contained in the envelope and ask you whether you wrote that? A. I did not.

Q. And I show you State's Exhibit 60, State's Exhibit 61, the envelope addressed to Dr. John Condon, the 29th of March, 1932, and ask you whether you wrote that envelope? A. I did not.

Q. I show you the letter that was contained in the envelope and ask you whether you wrote that letter (presenting same to witness)? A. No.

Q. I show you State's Exhibit 64 an envelope, and State's Exhibit 65, the letter contained in the envelope, and ask you first if you wrote the envelope (presenting the exhibits to the witness)? A. I did not.

Q. Or did you mail it to Dr. Condon? A. No.

Q. I show you the letter and ask you whether

you wrote that (presenting the exhibit to the witness)? A. No.

Q. I show you State's Exhibit 67 and State's Exhibit 66, and ask you first whether you wrote the envelope (presenting exhibit to the witness)? A. No, I did not.

Q. I show you the letter and ask you whether you wrote the letter (presenting the exhibit to the witness)? A. No, I did not.

Q. And I show you State's Exhibits 68 and 69, an envelope addressed to Dr. Condon containing a note and ask you first whether you addressed that envelope, (presenting the exhibit to the witness)? A. No.

Q. I show you State's Exhibit 70 and ask you whether you wrote that note (presenting the exhibit to the witness)? A. Did not.

Mr. Reilly: Captain, may I have the photograph of Woodlawn Cemetery? Your Honor, while we are looking for some photographs, in order to continue the orderly examination of this witness, may we have a five minute recess and we will have them all out?

The Court: Yes. We will take a five minute recess.

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

(After a short recess, at 11:23 a. m. the jury was polled and all answered Present.)

BRUNO RICHARD HAUPTMANN, Resumed.

Direct Examination continued by Mr. Reilly:

The Court: Now, Mr. Reilly, you may proceed when you are ready.

Mr. Reilly: If you Honor please, I have been very graciously supplied by the State with a copy of a photograph of the entrance to Woodlawn Cemetery, and I am going to offer it in evidence.

Mr. Wilentz: No objection, sir.

The Court: No objection? It will be admitted.

(Photograph received in evidence and marked Defendant's Exhibit D-40.)

Q. How far away from your house—

Mr. Reilly: May we have the map of the Bronx put back showing different distances?

Q. (Continuing.) How far away from your house would you say the main entrance of Woodlawn Cemetery was? A. Well, I don't know where the main entrance are of Woodlawn Cemetery.

Q. You are not familiar with the cemetery at all, is that right? A. No.

Q. Pointing to the map in evidence, S-174, map of The Bronx, on the left Woodlawn Cemetery: do you see that? A. I see it.

Q. The main gate—

Mr. Reilly: I will have to call on the General and ask the General where is the gate.

Mr. Wilentz: The gate in question?

Mr. Reilly: The gate in question.

Mr. Wilentz: Right here (indicating). Jerome Avenue and East 233rd Street.

Q. Now I show you Defense Exhibit 40 in evidence, picture of a gate of Woodlawn Cemetery, which is at 233rd Street,—

Mr. Wilentz: Jerome Avenue.

Q. —Jerome Avenue, where I am pointing here — A. I see it.

Q. —Were you at that gate or inside that gate March the 12th? A. I was not.

Q. 1932? A. I was not.

Q. I am pointing now to 222nd Street in The Bronx and I stop on the same exhibit where someone has indicated your home, marked with an "H;" do you see that? A. I see 'em.

Q. Now, having the position of your house in mind and Jerome Avenue and 233rd Street—the gate as indicated—how far would you say that was from your house in miles or blocks? A. Well, I really don't know.

Q. Well, have you any idea how far your house is in miles or blocks from Webster Avenue? A. From Webster Avenue—

The Court: If you have some idea about it, you might give us your best judgment.

Mr. Reilly: Yes.

The Witness: To Webster Avenue I figure around 40 to 50.

The Court: 40 to 50?

The Witness: Blocks.

The Court: Oh, yes.

By Mr. Reilly:

Q. And then there would be the width of the cemetery or else you would have to go up Webster Avenue, come down 233rd Street to this gate, is that correct? A. No. When I mean Webster Avenue, I mean around this point—excuse me—around this way.

Q. This point? A. Yes.

Q. Webster and Gun Hill Road? A. Yes.

Q. Right. So that you say you were not in and around or near this gate house of Woodlawn Cemetery on March 12th? A. Well, I can't remember I ever was around this point.

Q. But on that particular night were you there and did you meet Dr. Condon? A. No.

Q. Have you any independent recollection now where you were March the 12th, 1932? A. Which date?

Q. March the 12th? A. March the 12th—what day in the week was it?

Q. Well, if March the 1st was on— A. Was it a Monday or Friday or something?

Q. Tuesday—March 1st was Tuesday, the 8th would be on Tuesday, the 9th would be Wednesday, the 10th would be Thursday, the 11th would be Friday—on a Saturday night, March the 12th? A. March the 12th Saturday night—I really don't know. I guess we was playing cards, but I can't hardly remember.

Q. But were you on the Saturday night of March 12th in Woodlawn Cemetery? A. I was not.

Q. Did you, on March 12th, speak to Dr. Condon through the bars of any gate in Woodlawn Cemetery and particularly through the gate as indicated on Defendant's Exhibit 40? A. Was not.

Q. Or did you climb over any gate and run away from Dr. Condon? A. Certainly not.

Q. Now, I show you a frankfurter stand, which photograph the State offered as their Exhibit 49 (presenting the exhibit to the witness). Were you ever at this frankfurter stand? A. No, I was not.

Q. Did you ever sit in the recess or doorway of that frankfurter stand and talk to Dr. Condon? A. No, I did not.

Q. I show you now what appears to be a small shack with a bench outside, the State's Exhibit 41, in the neighborhood of Woodlawn Cemetery and ask you whether you recognize that as any place that you had ever visited in your life (presenting the exhibit to the witness)? A. Never was there. Really didn't know it.

Q. Did you ever sit on a bench outside of this shack? A. No, I did not.

Q. Did you ever sit there talking to Dr. Condon? A. No.

Q. Did you ever sit there coughing at Dr. Condon? A. No.

Q. I show you the State's Exhibit 32 for Identification which afterwards became—

Mr. Reilly: What did that become in evidence, the ladder? We have it here for identification as 32.

The Reporter: In evidence 211.

Mr. Reilly: S-211. Bring out the ladder, Marshall, please.

Court Crier Hann: The ladder is right here. Do you want it stood up?

Mr. Reilly: If you will, please.

(Three sections of ladder placed against wall to the right of the jury.)

Q. Now, how many years, Bruno, have you been a carpenter? A. About ten years.
Q. You have seen this ladder here in court, haven't you? A. Yes.
Q. Did you build that ladder? A. I am a carpenter. (Laughter.)
Q. Did you build the ladder? A. Certainly not.
Q. You notice how it is constructed, do you? A. Yes, I notice it.
Q. Well, come down and look at it, please.

(Witness leaves witness stand and examines ladder.)

A. Looks like a music instrument.

Mr. Wilentz: What is it?

Mr. Reilly: He says in his opinion it looks like a music instrument.

Q. In your opinion does it look like a well made ladder? A. To me it looks like a ladder at all, I don't know how a man can step up.
Q. Now, did you take this ladder in your automobile or any automobile from the Bronx and convey it to Hopewell, New Jersey? A. I never transported a ladder in my car.
Q. Did you take that ladder that I am talking about— A. No.

Q. —and did you at any time have this ladder on Colonel Lindbergh's estate? A. No.

Q. Did you at any time place two or more sections of that ladder against the side wall of Colonel Lindbergh's home? A. No.

Q. And climb that ladder? A. No.

Q. Or did you come down the ladder? A. No.

Q. And did you take the ladder and convey it 75 feet away from Colonel Lindbergh's house and leave it in the bushes? A. No.

Q. Did you assemble at least four kinds of wood and make this ladder? A. No, I did not.

Q. Your house had an attic, didn't it? A. Yes.

Q. How many families lived in the house? A. Three families.

Q. And who were they? A. The landlord, Mr. and Mrs. Rauch, myself—

Q. What was the first name, Dengler? A. Yes. Well, Schuessler, a family of Schuessler.

Q. When did the Schuesslers live there? A. They moved in in summer time, 1932.

Q. How long did they live there? A. Well, they was still living in the house when I got arrested.

Q. And what part of the house did they occupy? A. The first floor.

Q. And how many rooms did you have on the second floor? A. Four rooms.

Q. Where did the other party live? A. Downstairs in the rear. They got only three rooms. And the landlord he got two rooms and he lived most in the cellar.

Q. What was the landlord's name? A. Mr. Rauch.

Q. So there was the landlord and two tenants in the house, is that right? A. That is right.

Q. Now, there has been exhibited here a board, S-226, which a witness has testified to come out of the attic of your house. Did you take any board

from the attic of your house? A. I did not.

Q. Did you take any board from the attic of your house and carve or cut or manipulate or manufacture a side of this ladder from that board? A. I did not.

Q. There was nothing in the attic of yours, was there? A. You mean when we moved in?

Q. Yes. A. No, it was empty.

Q. What part of the cellar did this landlord use to live in? Is it a cellar or a basement? A. It is a regular cellar, the real part of the cellar has a partition between.

Q. I am showing you now Exhibit S-210 of the State's evidence and ask you whether or not on March 1st, 1932, you left this chisel on Colonel Lindbergh's Estate at Hopewell (presenting exhibit to the witness). A. Dis chisel was never in my possession.

Q. By that you mean you never owned it? A. Never owned it.

Q. Carpenters can buy chisels, can they not, in supply houses? A. It is at every, at every hardware store.

Q. Anybody can buy a chisel, can't they? A. Yes.

Q. You don't have to be a carpenter to buy a chisel? A. No.

Q. You can buy a hammer or a chisel or anything you want in a hardware store, can't you? A. As long as you can pay for it, that's all right (laughter).

Q. Now I direct your attention to another portion of the Bronx, a place known as St. Raymond's Cemetery; over here on the right hand lower corner we find St. Raymond's Cemetery, of Exhibit S-174; and here is your house up here. A. I see.

Q. How many miles would you say in your judgment your house is from St. Raymond's Cemetery? A. Well, I can only figure on the scale on the wall here.

Q. Quite a distance, isn't it? A. What is the scale on it?

Q. One inch, 480 feet. A. (No answer.)

Q. Well, you can see the different blocks here, indentations; those are blocks.

Mr. Wilentz: 132 inches to the mile.

Q. Quite a number of blocks, isn't it, as you go along here and pass all these blocks and come down? A. (The witness nods affirmatively.)

Q. Were you ever there in your life? A. Yes, I was there, but not on the cemetery. I only can remember I passed the cemetery about six years ago.

Q. And do you remember where you were going? A. I was visiting a friend's house, he lives in Throggs Neck.

Q. Throggs Neck? A. Yes.

Q. That is over on the Long Island Sound, isn't it? A. Yes.

Q. Anywhere near City Island? A. No, that is not City Island.

Q. Well, it is on the Sound, isn't it, City Island?— A. Yes.

Q. —is on the Sound? A. Yes.

Q. Were you in St. Raymond's Cemetery April the 1st or April the 2nd? A. No, I was not.

Q. 1932. A. No.

Q. In order to go to your house—are you familiar with this portion of the Bronx, this Baychester Avenue— A. Not familiar with this portion, but familiar with this one.

Mr. Wilentz: Let's indicate, Mr. Reilly, on the record.

Q. You are not familiar with this lower right hand portion, but you say you are with what other

portion? A. I was there from here myself (witness indicates by drawing both hands down over map a distance apart).

Mr. Wilentz: Just a minute now indicating?

Mr. Reilly: Yes.

The Witness: Like that (indicating).

Mr. Wilentz: Indicating from the White Plains Road on the north and going straight down the map, and that is from the northwest, and directly in line with that opposite on the map west along— Is that west down here, or you make a line, you had better not let me do it.

The Witness: No, that is not what I, I will explain it.

Mr. Wilentz: Indicating a parallel line on the other side of the map somewhere in the neighborhood of Westchester Avenue.

The Witness: There is around Pelham Bay (indicating).

Q. What is out here, Pelham Bay? A. Pelham Bay, it must be around here, yes, that is around here.

Q. Well, of course, there is a great deal of The Bronx that isn't shown on that map: isn't that right? A. That is right.

Q. Now, on April the 2nd, Saturday night, were you in St. Raymond's Cemetery and did you receive fifty thousand dollars from Dr. Condon? A. I did not.

Q. Is that the night you have testified to concerning the musicale? A. That is right.

Q. The first Saturday of the month? A. Yeah.

Q. What time did this musicale or gathering in your house start on April 2nd? A. Between seven and eight.

Q. Did you go out at any time that night? A. I did not. Oh, well, I went out, around half past eleven to bring—

Q. Where did you go? A. To bring Mr. Kloppenberg to the station.

Q. Took Kloppenberg to the station? A. Yes.

Q. That was the only time you went out that night? A. Yes. That means not to the station. That is to the street car line.

Q. How near to your house? A. White Plains Avenue, around nine blocks away from the house.

Q. Now you have told us that you were in business with Fisch and—can you give me your best recollection of whether you did any dealing with Fisch in the market through the firm of Mott & Company

Mr. Wilentz: Carleton-Mott.

Q. Charles Mott, no Carleton-Mott. Do you remember whether you did or not? A. No, not by Charles Mott.

Q. Now it has been testified to and these exhibits have been offered in evidence that concern your wife's account under the name of Anna Schoeffler. You have heard that testimony? A. Yes.

Q. It has been testified to that January 16th, 1928, when she had a balance of $411.16, that was transferred to a joint account of Anna and Richard, you have heard that? A. Yes.

Q. And that is correct, isn't it? A. That is correct.

Q. There is a withdrawal here after it became Anna and Richard, June 25th, 1928, $452.63 (handing the exhibit to the witness). Can you recall the

reason for the withdrawal or what you did with the money? A. Why, yes, it must have been my wife went to Germany the first time. I am not quite sure but I guess it is.

Q. Did your wife go to Germany about the end of June, 1928? A. That is the time, about.

Q. Now I notice in 1928, September the 17th, a deposit of $720 (showing exhibit to the witness). Can you give the jury any idea how that $720 deposit was made up, where you got it, what it was from? A. Well, I guess I can. This time I was working very hard, mostly evenings, Sundays, Saturdays, and I open an account, I open an account on White Plains Avenue, I open an account in the summer time, I think, I am not quite sure; and after a couple of months, I closed this account and forward the money to the bank of my wife. That was $720, something like that.

Q. Was that an account in the Bronxboro Bank, 230th Street and White Plains Avenue, Bank of Manhattan Company? A. What is the street?

Q. 230th Street and White Plains Avenue. A. Yes, that is right. I can't remember the name of the bank any more.

Q. I show you a photostatic copy of that account, which shows that it was open in September, September the 12th, 1927, with $250, and closed January the 16th, 1928 with $782. Is that the account you refer to? A. That is the account I refer to.

(Witness examines papers and returns to Mr. Reilly.)

Q. Now, there were withdrawals here from the Anna and Richard account in 1928, last— rather, the 30th of November, 29th of December and the 31st of December; you withdrew three deposits—or rather, three withdrawals, and they total $485 in

all. Can you explain those withdrawals, the three there (handing papers to witness)? A. I really can't explain them withdrawals; sometimes it was lent money to friends if they need it and give it back after a couple of months in small lots; just how I got them—

Q. Well, now, here is a withdrawal of $2800, the 1st of November, 1929. Can you recall anything about that withdrawal? A. Yes. That is—that is the money I put in the stock market.

Q. And in 1929 you were doing business with Steiner-Rouse, weren't you? A. No.

Q. Or was it with the— A. Charleton, Mott.

Q. Charleton-Mott?

Q. Now here is a withdrawal in 1930, on the 14th of June, $500, on the 25th of June, $950. Can you recall why you withdrew that? A. I guess I put this money in the stock market, as far I can remember.

Q. And then after these two withdrawals there is a deposit the next month, the 14th of July, is there not, of $302.50? A. It is, yes.

Q. Now here is a withdrawal on March the 9th, 1931, of $640. A. March 31st?

Q. March the 9th, 1931? A. Yeah.

Q. Can you explain where that money went? A. I guess that is the time I bought my car.

Q. How much did you pay for the car? A. Seven, seven hundred and twenty-five dollar.

Q. And here is a withdrawal of July 3rd, 1931, $450? A. Yes.

Q. Can you explain where that money went? A. Trip to California, I guess.

Q. When did you go to California? A. July, 1931.

Q. You came back, I think you said, in October? A. Yeah.

Q. Right? A. In October.

Q. Right. Now here we have a withdrawal of $430, May 9th, 1932. A. I guess this was one of the first money I put in Fisch's account on the fur business.

Q. In the fur business? A. (Nodding affirmatively.)

Q. And I notice that seven days afterwards, the 16th, you deposited $200: is that correct? A. Yes.

Q. And on the 23rd, $116: is that correct? A. Correct.

Q. So that you were constantly depositing and constantly withdrawing: is that correct? A. That is right.

Q. Now, come down to August 3rd, 1932. Here is a withdrawal of $837 and on the 25th of the same month a deposit of $817.35. Can you explain those two cross amounts (presenting exhibit to the witness)? A. I got one of them slips. I marked it out. I can't really remember it if you go over it like that.

Mr. Wilentz: Let's have the answer.

The Court: You will have to speak up.

A. I got one of them slips and marked it, with our deposit. I can hardly read it from this one.

Q. You mean you made a slip or a memorandum? A. Yes.

Q. Where is it? A. I guess Mr. Fisher can get it.

Q. All right.

Mr. Reilly: We will suspend with this until after the luncheon recess, your Honor. I don't want the recess now, but I say I will suspend this line until after lunch.

The Court: Very well.

Q. Now, do you recall when it was that you started your account with Steiner Rouse? A. It was August, I guess, '32.

Q. August '32? A. (The witness nods affirmatively.)

Q. Do you recall what your initial transaction with them was? A. I got to have my slip I marked down. I can't explain it either.

Q. So we will understand about the slip, after these— A. Of course them accounts, some belongs to Fisch and some belongs to me.

Q. After these photostatic copies had been offered in evidence— A. Yes.

Q. At one of the hearings— A. Yes.

Q. —you were permitted to take, over the last week end, were you not, a copy of them into the jail? A. (Witness nods affirmatively.)

Q. And you went over them? A. Yes.

Q. And you made certain memorandums from which you believe you can testify, is that correct? A. That is correct.

Q. And you wish to testify from those memorandums, is that correct? A. Yes.

Mr. Reilly: I will hold that up until after recess.

Mr. Wilentz: We will have no objection to that procedure, if your Honor please.

Q. Now getting back to—suspending this until after lunch—getting back to Fisch's trip to Europe. You said he left certain satchels and a shoe box with you; and when was it to the best of your recollection that you discovered any money in that shoe box? A. Middle of August, '34.

Q. And I think you testified that you took it some

place, to the garage or some place? A. Took it down to the garage.

Q. Now, what did you do with the money when you got it to the garage? A. Put all the money in a—squeezed the water out first.

Q. Well, now, what water are you referring to that was in the money? A. That is the waters coming through the roof.

Q. Well now, you will have to describe that to the jury, and I don't want to lead you. What do you mean by the water coming through the roof; explain it to the jury? A. There is a leak in the closet since we moved in; I complained a couple times to the landlord, but it never get fixed, I guess it ain't fixed now, and the water was running mostly right on the pipe. On them shelves it was standing most of the time and sometimes in the shelves was water standing as deep as that (indicating with thumb and finger).

Mr. Wilentz: Indicating about an inch?

Mr. Reilly: Yes.

The Witness: Three-quarters inch.

Q. Now, the closet you refer to, was that the closet you call the broom closet? A. That was the broom closet, that was the broom closet in the kitchen.

Q. Now, just where in your apartment is this broom closet? A. In the kitchen.

Q. In the kitchen? A. Yes.

Q. You will have to tell us what part of the kitchen it is in. A. What part of the kitchen—well, it is right side the ice box, and I have to explain where the ice box are, do I?

Q. Well, let's begin this way: you were on the

top floor of the house, as far as people living in the house is concerned, is that right? A. Yes.

Q. And over your head was this peaked roof? A. Yes.

Q. Now, as you come up the stairs to your apartment, where was the entrance to the kitchen from the head of the stairs? We will start there; maybe that will give us some idea. A. I could go along the hall, the end of the hall, you enter the kitchen.

Q. I see. Now, as you enter the kitchen—how large a room was the kitchen, approximately? You don't have to have it correctly. A. Approximate 12 by — 12 by 6 or 7.

Q. 12 by 6. The rear of the house or the front of the house? A. Rear of the house.

Q. Rear of the house. Now, let us assume that that doorway in which the Crier is sitting, on the right of the courtroom, for purposes of the record, that is the entrance to your kitchen as you come along the hallway? A. That is right.

Q. And that is the rear of the house? A. Yes.

Q. Where was the ice box, right or left? A. The ice box is right left to the door.

Q. On the left? A. Yes.

Q. It was an ice box that held ice, was it, and not a Kelvinator or a Frigidaire or one of the electrics. A. No, ice.

Q. Now, in connection with that ice box, where was the broom closet? A. On the left side of the ice box.

Q. And about how wide would you say the broom closet was? A. Broom closet (indicating a measurement with his hands).

Q. General, two and a half or three feet. A. About two feet or a little more, and deep—that is about sixteen inches (indicating the measurement with his hands).

Q. I suppose you kept other things besides brooms

in there? A. Well, there were three shelves in there, many things on the shelves.

Q. Now these pipes that ran through the broom closet, tell us where the pipes were. A. The pipes was on the rear wall of the closet more on the left side.

Q. And where did these pipes start, if you know, and where did they end? A. I don't know where they start but they end out of the roof.

Q. Out through the roof. A. Yes.

Q. Did they pass through any bathroom, as far as you know, downstairs? A. Not as I know.

Q. Now this water that you complain of, will you explain to the jury how it got into the broom closet? A. It comes through the roof, the water.

Q. The water—you will have to explain to them how it comes down from the room, if you can. A. There must be a leak around the pipe.

Q. You mean in their exit to the roof? A. Yes. It isn't, I guess them shingles doesn't cover close to the pipe so there was a space between them. I was never up to the roof and didn't see it.

Q. Well, did you get more water after a rainstorm than you did before? A. This depends. Sometimes when it was rain we didn't get any water in at all. I guess it depends from which side the rain came.

Q. But sometimes after a rainstorm you did get water? A. And plenty of it.

Q. And it rolled down the side of these pipes? A. Yes.

Q. There was no break in the pipes, was there? A. No, there was no break in the pipe.

Q. The water came on the outside of the pipe, is that it? A. Yes, yes.

Q. And flowed down into your broom closet, is that correct? A. Yes; and some of it flowed up on the ceiling and dropped down.

Q. Now did any of that water, did you see any of that water, or did you see the effects of any of that water on the paper shoe box or cardboard shoe box that Fisch had left in your apartment and which you had placed in the broom closet? A. I will explain it this way. When I put the shoe box on the upper shelf, there was laying them—them—how you call them? I don't know them.

Mr. Wilentz: Curtains?

Q. Curtains, shades? A. Them shades, and them rods from the curtains was laying up there, crossway; so I put a box over there, and them rods and them shades I put on top and laid against the back, so the water coming down the pipe was catched by them rods and running it down the rods on top of the box.

Q. And how many months had this paper or cardboard shoe box been in that closet before you disturbed it? A. Since I get it.

Q. Yes. And you got it in December, 1933? A. Well, it was the last Sunday before he left.

Q. When did he leave? A. I can't remember exactly the day.

Q. What month? I don't ask you exactly. A. In December.

Q. In December. And it was, you say, in August, 1934? A. Yes.

Q. Before you disturbed the box? A. Yes.

Q. Now, what was the condition of the box, what was the change in the box from the time you put it up there and the time you took it down? A. She was practical falling apart.

Q. Now, describe to the jury without any leading from me, please, the condition of the money in the box as you saw it for the first time. A. Well, I—when I saw the money I took the box down and took

it in a pail, because the water was running round my, down my arm in the sleeves, took it in the pail and carry it down to the garage.

Q. Well, was the money flat, rolled up, divided, or tell us more about the condition of it. A. It was, it was bundle.

Q. You will have to tell us. A. My recollection—

Q. Describe the bundle. A. I guess it was four bundles in there.

Q. Four bundles? A. Dem, dem bundles was mostly mesh up, but must be wrapped in paper, not in thick paper, in thin wrapping paper, brown paper, and there was newspaper in the box too, I guess they wasn't filled up at all; it was empty space, there was some newspaper; I didn't look on the newspaper at all. I took the money out, squeezed the water out, put it in the basket, loosened it a little bit, put it in the basket, and the rest, I mean the empty box and the paper I put in the garbage.

Q. Now, when you took the money down into the garage—is this the— Well, what did you take it down in? A. In the bail (pail).

Q. A barrel? A. No, not a barrel, a pail.

Q. A pail? A. Yes.

Q. What kind of a pail, tin pail, wooden pail? A. Tin—no tin pail.

Q. Now, you got down into the garage—this was in August, 1934, wasn't it? A. That is right.

Q. This garage was a one or two car garage? A. One car.

Q. And it was across a short road, wasn't it, from your house? A. It is around about sixty, seventy feet from the house.

Q. Well, your house was like this desk, (referring to stenographer's desk) is that correct? And then there was a short dirt road, wasn't there, over to the garage, like an alley or a street, was it? A.

Yes, there is around the house, there is a cement road, about—excuse me—about only a foot and a half, I say, maybe a little bit more, going around the house, on the east side, and on the south side from the house—when I step out the house, the front door, that is the only way to get in and out is the front door. Then there was—

Q. The garage is not attached to the house? A. No, it was not attached to the house.

Q. It is on the side of the house? A. On the other side from the street.

Q. Yes. And there is a dirt road between? A. It is.

Q. That runs through to the next street? A. It is.

Q. Is that right? A. That is right.

Q. All right. You took the money into the garage. What did you do with the money? A. Put it in a basket and covered it up. And then laid the basket up on the ceiling so nobody could see it—not exact lay it on the ceiling, I put it on the upper shelf which reached the ceiling and put a nail and two strips in front of it and put another basket on top of the basket where the money was laying in.

Q. What was the condition of your account with Fisch when he sailed for Europe? How did you two stand on the accounts, on the fur business? A. Well, when he sailed we made what you say clean table because we didn't know where we are and so on and my account on the market was $12,000 and there was five thousand five hundred in Fisch's mar— Fisch's account.

Q. You say your account was $12,000? A. Yes.

Q. Explain, please, just what you mean by that. A. The stock I got in possession was worth twelve thousand dollar. That was on 25th or 26th of October, 1934.

Q. Well, did you owe anything on that $12,000 worth of stock or was that a margin? A. No, that

was actual money. The stock was worth more, but the rest was margin.

Q. And how much of that $12,000 belonged to Fisch? A. Only $2,500.

Q. The rest was yours? A. The rest was my money.

Q. Now on the fur angle, the fur end of it, how did you and Fisch stand on that? A. Fisch said he got $21,000 of furs and there was a fur part of it I didn't take from Fisch and there was some of the money from the stock market, I kept up for my money, them two together made $5,500, but I didn't take the money from it, because Fisch said he hasn't got any and I left it in his account.

Q. Now did Fisch owe you money when he went to Europe? A. Well, when he went to Europe, he said if I am willing to sell some of them furs.

Q. Furs, yes. A. Yeah. I said "Why should you, you just bought a couple of weeks before,—" he bought it, I didn't buy it—and better him leave it. He said "Well, can you give me $2,000?" I said, "All right, I take $2,000 from my account and give it to you."

Q. Which account? A. From the stock account,

Q. Did you give it to him? A. I took a check out for $2,000, cashed a check and give it to him in cash.

Q. How long before he sailed? A. It was about two or three weeks before he sailed.

Q. Well now, have you in your memoranda that you made up in the prison the other night a record of how you and Fisch stood when he sailed? Or can you tell us that now? Did he owe you or did you owe him? A. Well, this was made out. He is interested in the stock market, in the lose or in the win. If I win he gets half and I get half; if I lose, he has to carry the half of the lose and I carry 'nother half. And the fur account is just the same way.

Q. Fifty-fifty in both, is that it? A. Fifty-fifty in both. And each account goes of one name. For instance, the fur account goes of his account, and the stock account goes of my name.

Q. Now, when you struck your balance, before he sailed, what you call a clean table— A. Yes.

Q. Did you owe him anything or did he owe you something? A. Well, there was only the difference I got in his account, $5,500. But take $2,500 off, you got in mein account. That's $3,000. That's the difference.

Q. Then you cashed a check for $2,000? A. Yes.

Q. And gave him the money: right? A. Yes.

Q. Now, you knew, did you, that Fisch was dead when you found this money? A. I knew it, yes.

Q. Now, after drying it, what did you do with it then? A. Well, when I took it down, I took a few of them, I guess two or three I took out, and put in circulation.

Q. Now you remember the 26th of November, every year after you were two years of age, don't you? A. Because it is my birthday.

Q. Yes. And you remember, do you, November 26th, 1932, your birthday? A. Trying to, yes, I remember this birthday, too.

Q. That was a Sunday. Were you down at the Sheridan Square theater at half past nine at night alone with one of these ransom bills folded up in eight folds, and did you throw it in to the cashier, the lady that was here the other day and ask her for a ticket? A. I just—

Q. Yes or No. A. You referred for 1932?

Mr. Wilentz: Just a minute, now, you wanted an answer, and I understand—

Mr. Reilly: Yes, I will get an answer.

Mr. Wilentz: I think the witness is trying to correct you on the year, maybe 1933.

Mr. Reilly: '32 or '33, am I wrong in the years, General?

Mr. Wilentz: He says you are wrong. He is trying to tell you.

A. I never was down in this theater.

Q. That is what I want to know, the Sheridan Square Theater, do you know where Sheridan Square is? Have you any idea where it is? A. I have idea about where it is.

Q. Well, about where do you think it is? A. I hear this is Greenwich Village and I know about where Greenwich Village is.

Q. Greenwich Village is somewhere, is it not, near the New York side of the Holland Tunnel. A. It is on the east side of New York downtown district.

Q. And you lived how many miles would you say away from Greenwich Village to the Bronx up here? (Indicating S-174). A. I would say it was around 12, 15 miles.

Q. Were you ever in that territory in your life? A. No, sir.

Q. No matter what the date is? A. Makes no difference, I never was there.

Q. So you couldn't, could you, have handed a bill to this woman? A. No, sir.

Mr. Reilly: Now, may we suspend for lunch?

The Court: Yes, we will take a recess. The people will remain where they are until the jury has retired. You may come in at 1:45.

(The jury retired at 12:28.)

The Court: The prisoner is now remanded in the custody of the Sheriff and may retire.

The Court will now take a recess until 1:45. The people may retire.

(Whereupon at 12:31 p. m., a recess was taken until 1:45 p. m.)

AFTER RECESS.

(1:42 p. m.)

The Court: Let the officers remove these people who cannot keep quiet. Let the officers take those people who cannot keep quiet and escort them to the front door. This aisle that leads to the room where the secretaries work must be kept open. The people who are impinging upon that aisle will have to clear it. The Court is very sorry if everybody who wishes to come here cannot come and find a seat. That seems to be the fact. Now, the aisles have to be kept open and, if in order to keep the aisles open, we have to escort those people to the outside, it will have to be done.

You may poll the jury.

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

Court Crier Hann: The jury is in the box.

The Court: The defendant may resume the stand.

Direct Examination (Continued) by Mr. Reilly:

Q. In checking my notes during the noon recess I found that the date I wanted to inquire about was November the 26th, 1933, the date that Mrs. Barr, I think her name is, says you passed in a five dollar Federal Reserve Lindy bill to her window. I understand that you testified November the 26th is your birthday. Is that correct? A. That is right.

Q. Now, have you a recollection as to where you were on the evening of November 26th, 1933? A. November 26th, 1933, I was home, have a little birthday party at home there, a couple of friends present.

Q. Do you recall who was present? A. Mrs. Miller, his little daughter, my wife and a friend of my wife from her home town in Germany and I.

Q. And what was her name, the name of the friend? A. I really only know her by Paul.

Q. Now, I have these different memoranda. A. Do you want to give me all of them inside too?

Q. Yes. Do you wish to look at these too? A. Yes.

(Examining counsel opened envelope of photostats and handed envelope and contents to the witness.)

Mr. Reilly: I wonder if I might borrow, General, one of your copies from one of your assistants.

Mr. Wilentz: Yes, certainly.

Q. Bruno, it is suggested and agreed by the General and myself that as you indicate the sheet that you are testifying from in the photostats that you

tell us what number of the account of what date it starts so we may check from here.

Mr. Reilly: Is that all right, General?

Mr. Wilentz: Go ahead, Mr. Reilly.

Q. Now, what sheet— Let's start with August 8th. Have you that sheet there? A. Yes, I got it in my hand.

Q. Yes. The entry of August 8th indicates a deposit, does it not, of Warner Brothers Pictures? A. Yes.

Q. Do you recall when you purchased that? A. That was 51 of Warner Pictures I bought long ago, I guess about three quarter of a year ago. I didn't mark it all down here on the sheet when I bought it.

Q. By three quarter of a year ago— A. Yes.

Q. —you mean three quarters of a year before August 8th? A. I will tell you in a second. (The witness examined photostats.)

Q. Well, I will ask you this question: did you buy it when you had your account with the other firm? A. There was 51 of Warner Pictures left. In the same firm I bought in April '32 another 51 of Warner Pictures and 500 Curtiss-Wright.

Q. Now, you traded in the market, didn't you, back and forth, different stocks: is that right? A. Well, that is with Steiner-Rouse & Company—

Q. I know that, but while you were dealing with Steiner-Rouse, you dealt in various kinds of stock, different companies: is that right? A. Right.

Q. And did you know the customers' man in Steiner-Rouse? A. Yes, I do.

Q. Did you ask him for advice at different times as to what stock he thought was a good stock to buy or to sell? A. Oh, yes, I did; that is the usual way you ask.

Q. Now, if you will look down the sheet you are looking at, Steiner-Rouse, beginning August 8th, there is an item of cash that you put into the business or into the account on September 15th of $170: right? A. That is right.

Q. Where did you get that cash from? A. $170 came from the $4,300 I got in my home.

Q. Now, Bruno, on the question of cash that was deposited by you at any time in Steiner-Rouse & Company, was one dollar of that cash, was there one dollar of that cash Lindy ransom money? A. There was no Lindy ransom money at all.

Q. We will pass to the next item of $582.50 of cash put into the account by you on the 19th of September. When did you get that? Where did you get it? A. That is the first money Mr. Fisch put in the market.

Q. May I have it? (Taking a paper from the witness.)

Mr. Reilly: And this is my copy, General, that I am—

(Mr. Reilly hands witness a paper.)

Q. Now I notice the next month of September, after the trading balance, Steiner, Rouse & Company and yourself was struck off, that the balance was $1,004.50, correct? A. That is correct.

Q. Then I notice that on October 7th a cash deposit by you to Steiner-Rouse of $860, correct? A. I put it in my name, dis money came from Mr. Fisch to buy a hundred New York Central Railroad.

Q. When was that purchased? A. Purchase was the 6th of October.

Q. So that on the purchase of New York Central on October 6th, a credit, or rather a debit to you against the firm of $2412.50, you say Fisch gave

you $860 to cover that transaction? A. That is right.

Q. Which you deposited there. Will you take my pencil, please, and put on that photostatic copy opposite that item the capital F? A. (Witness marks paper.)

Q. Now we go to October, and there was no cash put in, is that correct? A. That is correct.

Q. But there was trading, there was buying, wasn't there? A. There was only buying, no selling.

Q. Yes. Well then, December, there was another purchase of New York Central and no cash placed in the account, correct? A. Yes.

Q. Now, will you turn to the next sheet? It is a short sheet, December the 31st. You have it? A. Yes.

Q. So that December the 31st you had on hand in your account stock with the company, Warner Brothers, Allegheny, Curtiss-Wright and New York Central, correct? A. That is right.

Q. Now, during January, 1933, there was in the early part of the month— you bought and sold, didn't you? A. Yes.

Q. And your balance at the end of the month, your credit was $274,33, is that correct? A. Of which month, of January '33.

Q. January, yes, where it says "To balance, $274.33." A. I haven't got it on the sheet here.

Q. (Indicating.) Here. A. December, 1st of January—

Q. January. A. That is right, yes, $274.33.

Q. And during that month you had sold, had you not, stock amounting to about $2380 on the 3rd and on the 6th? A. About, yes.

Q. That money you allowed to remain in Steiner-Rouse & Company? A. Yes.

Q. Now, on February 27th—that is withdrawn.

Q. During the early part of February I notice

several purchases, Radio, and a purchase on the 27th of Curtiss-Wright, 200 shares; correct? And later on that day, Curtiss-Wright 100 shares, Curtiss-Wright 200 shares, and 100 Radio; is that correct? A. That is correct.

Q. And then I notice on the other side that the same day it indicates a cash deposit in to Steiner-Rouse & Company of $700. A. Yes.

Q. Where did that money come from? A. This money I took from my bank. Just a minute.

The Court: "This money I took from my bank;" that is what he said.

The Witness: I am not quite sure. I will have to look it over.

Q. All right; look it over. A. (After examining photostats at length.) Yes, this $700 I put in was—I took $500 from my bank and there was $200 was profit from furs. I put $500 from the bank and $200 from fur account, makes $700.

Q. Now will you indicate the bank account you took the $500 from? A. Yes, it is marked in bank book—I made a mistake there. Yes, it is marked in the bank book $500 out on February 7, '33—February 27, '33.

Q. Yes. So that your answer as I understood the stenographer to get it was $700 deposited in Steiner-Rouse & Company on the 27th of February, of which $200 was profit from the fur business and a $500 withdrawal from the Anna and Richard Hauptmann account in the Central Savings Bank of the City of New York as indicated on their photostatic copy February 27th, 1933, draft $500, correct? Now, it appears by the same sheet before you that in March, 1933, there was $850 placed in

Steiner, Rouse & Company, is that right? A. Will you repeat it again, please?

Q. On your sheet before you, March 1st, you deposited with Steiner-Rouse, $850 in cash, is that correct? That is this sheet here. A. No, that is not it. $850—October—oh, this one, yes.

Q. March 1st, right? A. March.

Q. Now, tell us, please, where that $850 came from? A. $850 came from Mr. Fisch and he bought in January 100 New York Central.

Q. What date? A. January 13th.

Q. 100 New York Central, 20-3/4, $2,087.50, right? A. That is right.

Q. You must keep your head up when you are testifying. After you look down on the paper and want to give your answer, look up so the last juror can hear you. A. All right.

Q. You said that Fisch had bought in January some New York Central. What date? A. January 13th.

Q. For how much? A. $2087.50.

Q. And this $850 on March 1st you say came from Fisch? A. It came from Fisch, yes.

Q. Will you mark that with an "F" please? A. (Witness marks paper.)

Q. Now we come into April, the large sheet, April (Mr. Reilly hands witness a sheet) and you will notice on this sheet of April an item of March 27th, a check for $1500, right? A. Yes.

Q. Where did that check come from? A. This check I took a couple days before from the Steiner, Rouse Company, I guess it was (witness examines paper), dats, I took a check out on March 24th, $1673.90, I can't remember for which purpose, and I took part of them back, that means $1,500, on the 27th, 27th of March.

Q. Is that— A. That is the check for thousand seven hundred dollars.

Q. Now let me see the withdrawal, please, from your bank account. A. I took it from the stock account.

Q. The stock account? A. (Nods affirmatively.)

Q. You drew that March the 27th? A. Yes, I drew it here. Here is the check.

Mr. Reilly: May I have that last sheet, the one before.

Q. So then, referring to the Steiner-Rouse account for March the 24th, you drew from them $1673.80: is that correct? A. That is correct.

Q. And $1500 of that $1600 check you redeposited with Steiner-Rouse & Company March the 27th? A. Yes.

Q. So it was practically a cross entry in bookkeeping, wasn't it? A. Yes.

Q. There was a great deal of trading during April, wasn't there? A. There was, yes.

Q. The purchases in April were about $10,000, weren't they? A. Yes, a little bit over.

Q. And the sales were about $7500? A. It is about, yes.

Q. And the check that was redeposited was $1500. That made your deposits and sales that month as against the $8,000 or $10,000, purchase and sales and deposit, was approximately $9,000, wasn't it? A. I couldn't follow you so quick.

Q. Well, it has been totalled up here. Maybe you can testify from this better (showing a paper to the witness). Is it a fact that April your purchases were in the neighborhood of $10,000? A. Yes, that is right

Q. Or $11,621. I thought that was a credit. $11,621.32, right? A. Yes.

Q. And including the $1500 check, which you

redeposited, up to the 26th of April, your sales and deposits amounted to $9120.90, right? A. Yes.

Q. Now on the 28th of April you deposited in cash, did you, $2500? A. Yes.

Q. Where did that come from? A. In this month I bought from Mr. Fisch a hundred New York Central.

Q. When? A. April the 3rd and—

Q. And that purchase amounted to $1537.50, didn't it? A. Yes, that is right; and on the 19th of the same month, 100 Southern Pacific, amounts to $1,462.50; and on April the 25th a hundred Republic Steel, amounts to $1,062.50. And that is the reason he puts $2,500.

Q. Did he give you that in cash? A. Always in cash.

Q. Now, May was a very active month, wasn't it? A. Yes.

Q. On May the 3rd there was a cash deposit of $2575; right? A. Yes.

Q. Where did that money come from? A. Mr. Fisch got a debit balance this time, he bought too strong in April and didn't sell much, and then he bought on the 2nd of May another additional—not additional, another 100 Canadian Pacific Railroad share for $1,237.50, and he put this money of $2,575.

Q. In cash? A. In cash.

Q. Continuing on to the next sheet, May 24th, 1933, no cash was placed in the account, is that correct? A. You mean May?

Q. May. A. No. No cash put in, but in the same month I bought for Fisch hundred shares of American Rolling Mills for a thousand five hundred eighty-seven dollars fifty cents, and— I will have to look it over— and 300 Radio shares for $2,197.50.

Q. And your account ran along in trading, with yourself and Fisch buying and selling during May down to June 7th, is that correct? A. June 2nd.

Q. For cash. A. Oh, for cash? Yes, June 7th. Q. When $2,225 was put into the account? A. Yes.

Q. Where did you get that from? A. That Mr. Fisch bought in June 500 Continental Motors, hundred Pittsburgh Screw & Bolt, hundred Alaska Juneau and hundred shares New York, Ontario & Western Railroad, and another hundred shares Interborough.

Q. Now, the trading was very heavy in May, wasn't it, and June, buying and selling almost every day. A. There was buying and selling every day, practically every day.

Q. Now, take the next sheet. You bought on the 21st, you bought on the 22nd, you bought on the 23rd, 26th, 27th, 28th, 29th and 30th, didn't you? A. Yes.

Q. You sold on the 23rd, 26th and 29th? A. That is right; that is right.

Q. At the end of the month you had a balance of $7,973.72? A. Debit balance, yes.

Q. Debit. That is what you owed the firm as against the stocks they were holding; correct? A. That is correct.

Q. Now, on— A. I—

Q. —on July 3rd, you sold, did you not, 1,300 shares of stock of twelve different descriptions? A. More as that.

Q. On the 3rd, July 3rd— A. Oh, only dis, yes.

Mr. Wilentz: How much, Mr. Reilly?

The Witness: Twelve.

Mr. Reilly: 1,300 shares in twelve independant stocks.

Q. They are all 100 sales, except one 200; is that right? A. Except 200 Kelvinator.

Q. And that was a sale which amounted to $16,041.46; is that correct? A. Yes, that is correct.

Q. And there were no purchases on July the 3rd, were there? A. No, purchases start on July the 5th.

Q. Purchases start on the 5th. The sales on the 3rd for 16,000 and you left that money in Steiner-Rouse? A. Yes.

Q. Then on the 5th you began to buy, didn't you; right? A. That is right.

Q. And you bought on the 6th and you bought on the 7th and you bought on the 10th and you bought on the 11th, didn't you? A. Yes. Now excuse me Mr. Reilly, you want to go back to month of June?

Q. Yes, I will go back with you. A. I want to—

Q. Want to explain something? A. I want to explain what Mr. Fisch bought.

Q. Yes. A. He bought hundred Kelvinator for $1,100, and he bought fifty shares National Dairy Products, and I bought fifty shares this time.

Q. What date, the 23rd? A. June 23rd. And he bought fifty shares Lorillard and I bought fifty shares to make up a full lot.

Q. And that was on the 23rd? A. On the 23rd, yes; and on the 26th Mr. Fisch bought another additional hundred shares Kelvinator, a thousand and fifty shares, and his buy in July was 500 shares of Budd Wheel.

Q. That was the 6th, July 6th? A. July 6.

Q. Who bought that? A. Well, I bought, for Fisch's account.

Q. On the 6th? A. Yes, sir. And on the 11th, 500 shares Commonwealth Southern.

Q. Now your trading from the sheet you are

reading, beginning June the 21st— the account was very active, wasn't it? A. Yes.

Q. And your trading down through the month of June and down through the month of July to the bottom of the sheet required no cash investment, did it? A. No, it didn't inquire any more cash. The account was strong enough to carry it over on margin.

Q. How many points margin were you dealing on? A. It depends; sometimes I was on limit, which was about fifty per cent.

Q. Whenever the house thought it required more margin to cover the strength of your purchases, did they ask you for some more money? A. Well, I usually didn't let it come so far; I sought something out.

Q. Now your purchases in June had been heavy, and your purchases in July had been heavy, had they not? A. Yes.

Q. July 12th you bought a hundred shares? A. Yes.

Q. On the 17th, 500; on the 18th 300; 19th 1,000, another hundred in another block on the 19th; on the 20th a hundred, another block of 300, another one of 100. Now did you deposit on the 24th of July $4,500? A. This date, $4,500; it was the last money Mr. Fisch put in.

Q. The last money he put in? A. Yes.

Q. And that was July, 1933? A. 24th of July, 1933.

Q. Will you mark that with an "F" please? A. Because he put this money in, I bought very heavy in this month for him; I bought 500 U. S. Molasses—

Q. A little louder, please. A. Three hundred U. S. Leather, 100 Bethlehem Steel, another 500 Molasses, 100 St. Paul preferred, 25 shares Byers, and another hundred additional shares of U. S. Mo-

lasses. That is what he bought in July, from the 17th on to the 25th.

Q. Now, during July, is it a fact that you had purchased— go back to the last sheet, the sheet before this, please— about 4,350 shares of different stocks? A. How many hundred, you say?

Q. 4,350. A. That's about right.

Q. And you sold, did you not, about 3,150 shares? A. Yes, around 3,000.

Q. And Fisch put in $4,500 in cash to cover the overlapping margin; is that correct? A. Yes, because I bought very lightly this month for myself.

Q. And you did in that month about $49,300 worth of business on the books of Steiner-Rouse; is that right? A. Yes.

Q. Where you had done the month before $50,000? A. Yes.

Q. Your balance the month before, the debit balance that you owed Steiner-Rouse & Company was $7,973.72? A. Correct.

Q. And it had been reduced by profits and deposits at the end of July to $4,038 debit? A. That is right.

Q. You had quite a block of stock at the end of July, didn't you, on deposit with Steiner-Rouse? There are several blocks of individual concerns and corporations? A. Yes.

Q. Covering about fifteen different corporations? A. That is right, fifteen.

Q. And you had bought that on margin. Correct? A. Well, the margin acount was $4,038.04.

Q. Now you began to trade quite extensively, did you not, beginning August 1st? A. Yes.

Q. And trading means buying and selling, doesn't it? A. Buying and selling.

Q. Now coming down into August, I see a deposit of $7.50. What is that, a dividend? A. Oh, I really don't know where dis comes from, $7.50.

Q. Then I find on the 10th a check for $112.50? A. Yes, dis was a dividend check from our mortgage.

Q. And I find no more cash deposited for the balance of that sheet, am I correct? A. Correct.

Q. Now I refer you to the next sheet, which has at the top August 18th. A. Will you mark out what I bought for Mr. Fisch, dis—

Q. Yes, please tell us what you bought for Mr. Fisch. A. On August 1st, 100 Bethlehem Steel.

Q. Mark them with an "F", please. A. And August 11th was 500 Warner Brother Pictures and August 14th and 15th, 500 Eitingon-Schild.

Q. Now we will pass to the next one. Now the top of the sheet shows, does it not, trading on the 18th, 21st, 23rd and 28th as to purchases? A. Yes.

Q. And no sales? A. That is right, there was no sale.

Q. So from the purchases which amounted to between the 15th of August to the 28th of August, the purchases were about $35,000, weren't they? A. For which date you mean?

Q. The top of the sheet, the 18th down— A. Yes.

Q. And you did in that month with Steiner-Rouse & Company $75,000 worth of business, didn't you? A. Yes.

Q. And through sales and profits, with no cash placed into the account at all, except $7.50 and a dividend check of $112.50— A. Yes.

Q. The balance stood as you and Fisch indebted to Steiner Rouse on August 31st, $11,735.90. A. Debit, yes.

Q. That you owed them, right? A. Yes.

Q. Then they were carrying quite an extensive block of stocks, weren't they on August the 31st? A. Yes, quite a lot.

Q. They were carrying, were they not, 1, 2, 3, 4,

5, 6, 7; 8, 9, 10, 11, 12, 13, 14— 14 different corporations? A. You mean in August 31st?

Q. Yes. A. Yes.

Mr. Wilentz: May I inquire who was carrying this stock?

Mr. Reilly: Steiner Rouse.

Mr. Wilentz: I understood it was the defendant and his partner, Fisch.

Q. The house was carrying this stock, was it not? A. The house.

Q. As against your deficiency or debit balance? A. The house was carrying everything against me.

Q. Now, so there will be no mistake, were they carrying 15 different kinds of stock? A. Fourteen, that is right.

Q. Fourteen? A. Yes. And going back to the month of August. I bought for Mr. Fisch 300 Alaska Juneau and 300 shares cost $9,045.

Q. Now, I again refer you to— Are you through with Mr. Fisch's purchases for that month? A. I am through, yes.

Q. Now, the 14 different blocks of stocks they were holding as against your debit balance on August 31st, were they holding 5,900 shares of stock in those 14 corporations? A. I count 5,700.

Q. Well, I will take your word for it. The air in this room is making my glasses dizzy anyhow. Now, on September 14th, did you start trading again? A. Yes.

Q. And you bought on the 14th, the 18th, 22nd, 26th and 29th, didn't you? A. Yes.

Q. You sold on the 14th, 25th, 26th, 28th— 27th and 28th; right? A. Yes; yes.

Q. Now, is it a fact, reading from the sheet you have before you now, that at the end of September, when the house struck a balance with you and Fisch, or with you as the party on the books buying for Anna Schoeffler, the balance, the debit balance had grown to $22,172.96? A. That's correct.

Q. A jump of over $10,000 on the debit side in a month? A. Yes.

Q. Correct? A. Yes.

Q. But no cash was placed in the account up to the 29th of September, from the 18th of August; is that correct? A. That's correct. To explain the paying in the month of September, in this month I didn't for my person— I didn't pay anything at all; the paying in the month of September was the account of Mr. Fisch.

Q. Well, it doesn't appear from my sheet that any cash was deposited with Steiner-Rouse— A. Yes, but Mr. Fisch— it wasn't necessary for Mr. Fisch to put any cash up.

Q. The stock was carrying itself? A. Yes.

Q. The point I make is that there was no cash deposited. A. No.

Q. Although they allowed your balance to jump $10,000; is that right? A. Yes. That means we was heavy on margin.

Q. Now we will turn to the next sheet, please, and on October 9th you began to trade; correct? Rather, on the 9th you began to buy? A. Yes.

Q. But on the 2nd you began to sell, is that right? A. October 9th I bought.

Q. Now, on October 2nd you began to sell, is that right? A. That is right.

Q. Is that what they call selling off? A. Oh, I don't say that is selling off.

Q. But you were selling, anyhow? A. I was selling.

Q. You sold on the 2nd, 3rd and on the 10th, right? A. Yes.

Q. 17th, 19th, 23rd, 25th, 27th and 31st, is that right? A. That is right.

Q. And your operations in buying and selling during that month? A. It was $46,500— $46,-592.93.

Q. And your balance due the firm dropped from 22,000 to 6,000, right? A. No. Balance dropped to $1,380.

Q. What is that? A. To $1,380.

Q. Where is that? A. (Indicating on the exhibit.)

Q. That was a dividend. The balance then you say dropped to $1,380.16? A. Yes.

Q. From 22,000 the month before? A. Yes.

Q. Because of your excessive sales, right? A. That is right.

Q. Now, I notice in here on October 19th an item which says "From commodity account $1,615.35." Do you see it? A. Yes, I do.

Q. What does that mean? A. I guess at this time I bought cotton or wheat, I am not quite sure.

Q. Does that mean that you were dealing in foodstuffs and grain? A. Yes.

Q. Through some other house or through a different branch of this house? A. That is through the same house. They handled, I am not quite sure if it is silver, cotton or wheat.

Q. It was a sell-off anyhow, wasn't it; it was a sale? A. Wait a minute. No, it is only a transfer. You handle commodities, you handle that separate from stock account.

Q. Now looking at the sheet you have before you, which begins on the purchase side, September 30th, and on the sales side October 2nd, 1933, running down the column of sales, down to the end of the month of October when your balance was

$1,380.16, there was no cash placed in the account that month, was there? A. Except $27.22. That is a dividend.

Q. That wouldn't be considered cash in Wall Street, would it? A. No, I don't think so.

Q. Now, we begin the latter half of the sheet, which begins October 31st, 1933, and we find trading on November 1st, both purchases and sales, correct? A. November 1st?

Q. November 1st. A. You wouldn't mind to go back to October?

Q. We will go back to October, we will go back to any date at all. A. To the 24th, that is the date I bought another additional 500 shares Eitingon-Schild for Mr. Fisch.

Q. For Fisch? A. Yes.

Q. Was that Eitingon-Schild stock machine? A. No, that is a trading house in furs, Mr. Fisch was very interested in it.

Q. Do you find anything else for Fisch the upper part of the sheet there, you want to refer to? A. No, that was only—

Mr. Wilentz: Don't lead him.

A. —only 500 shares.

Q. So now we pass to the latter half and bottom half of the sheet, don't we? A. Yes.

Q. And the trading begins on November 1st, buying and selling, or rather, November the 1st you received a dividend, did you not, on 200 A. J., $57? A. Yes; means Alaska-Juneau.

Q. And you began to buy on November the 1st? A. Yes.

Q. Began to sell on the 6th; correct? A. Yes.

Q. And the trading was quite active that month, was it not? A. Well, I don't say so, quite active, compared with the last couple months this was.

Q. Only did about $21,000 that month? A. Yes.

Q. Now, I notice that your purchase and sales and your balance struck the end of November, the balance is $5,167.78— was it credit or debit? A. That is debit balance.

Q. Debit? A. Uh-huh.

Q. And reverting back now to the sheet before used on October the 31st and which began September the 30th and ends with an item at the bottom of the page, November the 24th, I ask you to examine that sheet and tell me whether or not the only cash that was required in the account during that period was that $27.22, which was a dividend. A. That means in month of October?

Q. That whole sheet right down to the bottom. A. Yes; there is another dividend check for fifty-seven dollars from Alaska Juneau, November the 1st.

Q. Yes. Well, outside of those two dividend checks there was no actual cash? A. No; no cash.

Q. Now we come into December, the next sheet, November and December. You began to trade, did you, December 1st? A. Yes, I did.

Q. Purchased on the 1st, sold on the 4th, back and forth, down to the end of the month; and no cash was placed in the account, was it? A. No cash was placed. Would you mind to go back to the last sheet you got in your hands?

Q. Yes, you may go back to the last sheet. A. There you find a check I took out for Mr. Fisch on November the 14th, $2,057.

Q. You drew that out of the account? A. I drew it out from this account. There was a drawing on November the 2nd. That was for living.

Q. And what did you do with that check? A. The big check, for $2,057, I cashed in the bank— I forgot the name of the bank, the bank on 86th Street.

Q. Who did you give the money to? A. $2,000 I give to Mr. Fisch for his voyage to Germany; the rest I keep for myself, $57. There was a drawing on November 21st. That is the usual drawing I took out every month since then, a hundred or $150 a month.

Q. How much did you drawn then on the 21st, $100? A. $100 check.

Q. Now, we will take this December account, 1933. You did about $9,000 worth of transactions; correct? A. That's correct.

Q. And you sold on the 4th, the 7th, the 12th, the 13th, the 14th, the 18th and the 29th? A. Yes.

Q. And your balance, debit balance jumped to, or rather, it was only $1,195.64, is that right? A. That is right.

Q. And you used no cash that month, put no cash in the account? A. No.

Q. But you did— A. I took some.

Q. But you did take out some. Now, is there any stock on that sheet that you want to explain or talk about? A. No, from dis time on every stock you will find on the sheet belongs to me, there is no more paying for Mr. Fisch. From November 1st, 1933, Mr. Fisch was only interested in the loss or in the win. That is when we split.

Q. You mean November 1st, 1933, whatever stock was in the possession of Steiner Rouse & Company, Fisch was interested in the profit and losses fifty per cent? A. Yes.

Q. But bought no more? A. Bought no more. That is the date I said before I made a clean table.

Q. A clean table? A. That is what I called it.

Q. Now, we come to December 31st, 1933, and Fisch had already sailed for Europe, right? A. Yes.

Q. And we find the January, 1934, account very active, don't we? A. Yes.

Q. Buying the second, third, fourth, fifth, ninth, eleventh, twelfth, fifteenth, sixteenth, nineteenth and and twenty-fourth? A. Yes.

Q. Selling the third, fourth, fifth, tenth, seventeenth and eighteenth? A. Yes, sir.

Q. And with all the trading necessary that month you did not deposit any cash with Steiner Rouse & Company? A. (Continuing.) Yah; to correct my saying from the first, from the—

Q. Give us that again? A. There was, I said every stock was belonging to me and nothing to Fisch there, excepting Fisch he got $2,500 left, but I can't make out without my big book which stock it was, so I left this one out.

Q. You mean he had an interest in some stock? A. Yes, it was two thousand—

Q. $2,500? A. Yes, it was $2,500. I can't make out which one it was.

Q. Now, in January, when you were dealing for yourself, no cash was placed in the account, was there? A. No, there is only a little bit of eighty dollars.

Q. That was one check for $30, one for $50, that you got on the 2nd? A. Yes.

Q. Now we come to February. The trading was quite active, wasn't it? A. No, it wasn't active, very active.

Q. Well, on the 1st of February you sold a thousand shares, didn't you? A. The selling was more as the buying.

Q. The selling was more than the buying? A. Yes.

Q. The end of February your balance, debit balance, had dropped from $9,641.60 in January to $1,313.03; is that right? A. How much did you say?

Q. $1,313. A. $1,313.03.

Q. Now I notice on the 26th of February, cash

was deposited with Steiner, Rouse & Company of $1,350? A. Yes.

Q. Where did that come from? A. This cash is deposited on 26th of February and ten days before I took out a check from my account for $1,500. This money I lend to a friend of mine for paying a business, but he couldn't agree, so he was giving back the money and I put it back in the market again.

Q. So the $1,350 which you deposited with Steiner, Rouse & Company on the 26th of February, am I correct in saying that that represents a portion of the $1,500 check you drew from Steiner, Rouse & Company on the 16th of February? A. Yeah, that is right.

Q. And if you will examine your sheets that you have looked at heretofore from the last $4,500 deposited by Fisch in July, 1933, this item of $1,350 is the first cash deposited in the account with the exception of a couple of dividend checks since July 24th, the year before; is that correct? A. That is correct.

Q. So the account was carrying itself August, September, October, November, December, January and February without the inclusion of a dollar of your money except the dividends I have referred to? A. That is correct.

Q. And then this item which you now explain, you say, as a matter practically of cross-bookkeeping, taking money out and putting it in again within a few days? A. Yes.

Q. And your balance I think you have testified to. Now we come to March, 1934; and you traded beginning the first by collecting some dividends, $50, another one of 18 cents; correct? A. Excuse me, don't go too fast; I can't follow.

Q. Take all the time you want. If I am going

too fast just refer to anything you want. A. There was on March the 1st—

Q. I said March the 1st you collected a couple of dividends, is that correct? A. Yes, $50 and 18 cents.

Q. $50 on one and 18 cents on another, right? A. Yes.

Q. And you began to buy on the 5th, didn't you? A. Yes.

Q. You began to sell on the 6th? A. Yes.

Q. And your balance at the end of the month, the 31st of March, the debit balance, was how much? A. It was $12,746.08.

Q. So that independent and irrespective of the fact that your balance which you owed Steiner Rouse in February was only $1,300, you bought stocks in March which brought your debit balance to $12,000; no cash was placed in the account; correct? A. That's right.

Q. Taking the bottom of the sheet we find a sale on April the 3rd of 100 General Motors for $3,780.50; correct? A. That's correct.

Q. Now, is there anything on that sheet, before we pass it, you would like to explain? A. Yes, on the two checks I took out; that is for my living, the monthly checks I took out. I say as I explained, since Mr. Fisch left for Germany there wasn't any more profit from the fur account coming in.

Q. From the fur account? A. Yes. Before, I used always the money coming in for fur account for my living and for expenses; and if you follow the sheet, since he left for Europe, I drawed the living out from my stock account.

Q. That explains the drawing of the check on April 2nd for $150? A. Yes.

Q. Is there anything else on that sheet that you would like to explain? A. No; really not.

Q. Now, we will pass to the April 9th sheet,

keeping in mind that your debit balance was $12,-746. You traded during the month of April, buying and selling; correct? A. That is correct.

Q. And at the end of April your balance had decreased to $11,144.94; correct? A. That is correct.

Q. And during the month you did close on to $30,000 worth of trading, $27,000 some odd? A. Yes, that is right.

Q. And no cash placed in the account? A. No. I only took out a check of $50.

Q. Now we come to May, we find that you took a check for $350 May 4th. A. Yes.

Q. And you traded on the 10th, 14th and 21st and also on the 31st— No, you didn't; those are balances struck—May 10th, 14th and 21st were your purchases; is that correct? A. That is right.

Q. Your sales ran along the 3rd, 4th, 8th, 9th and 14th? A. That is correct.

Q. You reduced your balance from $11,000 to $9,000, didn't you? A. That is correct.

Q. And you put no cash into the account? A. No, I did not.

Q. Then on June 1st you sold, rather you obtained a dividend of $25? A. Yes.

Q. And on the 7th sold off 400 Universal Pipe, was it? A. Universal Pipe & Rad., radiator.

Q. And you reduced your balance, or rather you reduced your balance for the month of June to $6,511.57? A. Yes.

Q. And put no cash in your account? A. No.

Q. Now we come to the middle of that sheet, which brings us to the end of July, 1934, and you traded on the 18th by selling off and on the 26th by purchase? A. Yes.

Q. 27th by a purchase? A. Yes.

Q. 30th by a purchase? A. Yes.

Q. 26th, 31st, by a sale? A. Yes.

Q. The balance of $6,500 as of June, 1934, was reduced to $3,800 at the end of July? A. That is correct.

Q. And no cash put in to take up the slack? A. No cash— took out two checks, one seven-five and one check $25.

Q. You took out $175 during July, right? A. Yes.

Q. In two checks? A. Two.

Q. Now we come to August, 1934, and we have you selling off on the 1st, the 6th, the 14th, the 15th and the 31st. A. Yes.

Q. We have your balance reduced from $3,800 to $2,200. A. That is right.

Q. And no cash deposited as a set off. A. No, there is only a liquidated dividend from National Bellas-Hess— That is liquidated dividend of $350.

Q. That was a dividend from the National what? A. National Bellas-Hess.

Q. National Bellas— A. Hess preferred.

Q. Preferred. So you left the dividend stay there? A. Yes.

Q. But you didn't go out anywhere and get any Lindbergh money and put $350 in the account, did you? A. Certainly not.

Q. Now we come to August the 31st, which is a small sheet, white. A. Yes.

Q. We find you, in September, selling off on the 13th and the 14th, right? It is rather hard to read it. A. I hardly can read it.

Q. Well, if you need any help we will give you a couple of these other ones. Maybe they are a little bit better. Look at that one, please? A. It is a little bit better.

Q. All right. You can use that one and give me the bad one. Now, looking at that month, the balance of $2,233 at the end of July had been reduced

to $1,242.41, hadn't it? A. No, that is not a debit, that is a—

Q. Credit? A. A credit balance.

Q. Well, then, the old balance, the old debit, had been wiped out, you were out of the red and you were in the black for $1,242.41; is that right? You were to the good? A. Yes.

Q. And no cash used by you that month, was there? A. No; only a $25 dividend from Purity Bakery.

Q. Well, of course, that was merely a bookkeeping item, wasn't it, the $25 dividend? You left it there? A. Yes, I left it there.

Q. So now we are at the end of this account? A. That is the end of it.

Q. And I will swap with you again, because this belongs to somebody else (handing another photostatic copy to the witness). Now, let me ask you this question: From the day that Fisch put the $4,500 in, in July, 1933, until September the 14th, 1934, when this account was totaled and closed, as a matter of bookkeeping, so far as we are concerned on the sheet, isn't it a fact that the only cash that you put into this account was small dividend checks and a cross item of $1,350 of the $1,500 check that you drew? A. That's correct.

Q. Now, I want to go back, if you will, please, to your bank account. You will need your pencil. I want you to look at the deposits made in your bank account from March the 1st, 1932—A. March the 1st, 1932?

Q. 1932. That is the date of the kidnaping, down to date; tell the jury what those deposits are, what they represent.

Q. You have one of those there, one of these (indicating file of photostatic copies)? A. Yes, I have.

Q. Have you the set? A. Yes, just a second, please.

Q. Is that it? A. Central?

Q. Central Savings Bank. I am just going to direct your attention to a few of these deposits, I want you to go down the list with me and see if I am right. We will begin with the 11th day of January, 1932, 1/11/32. Have you got it there? A. I have it.

Q. All right, deposit of $125, right? A. Yes.

Q. April 5th, $87? A. Yes.

Q. The 8th, $27? A. Yes.

Q. 16th, $166? A. Yes.

Q. 25th, $41? A. Yes.

Q. May 4th, $55? A. Yes.

Q. 9th of May, withdrawal, $430? A. Yes.

Q. What was that for? A. $430, I was giving to Mr. Fisch to buy fur and another additional $170 came from the $4,300 I left home. I got home, I mean.

Q. On the 16th a deposit of $200? A. Yes.

Q. And on the 23rd, $116? A. Yes.

Q. And several small deposits running all under $200 down to August, 1932, when you drew out $837? A. Yes.

Q. What was that for? A. $837 I put in fur to Mr. Fisch.

Q. Now on the 25th you put back $817.35. A. Them $817.35 comes from the stock account.

Q. From the stock account? A. Yes, if you look the stock account over you will find one check.

Q. Whose check? A. Check deposits was over $700.

Q. On September 12th, 1932, you drew out $350, on the 19th you put back $250. Will you explain that? A. Will you go over again?

Q. At the bottom of the page? A. Yes.

Q. 350 out and 250 in. A. Yes, that was $350 I

put in to Mr. Fisch, to pay certain furs, and he sold that a week later, I took out the profit $250, I put the profit in the bank and left the additional $350, give to Mr. Fisch.

Q. So you drew out $350 on the 12th and you put $250 back on the 19th, one week later? A. Yes.

Q. On the next page, on the 19th of September, you drew out $500? A. Them $500 went to the stock account.

Q. And on the 26th you put back $150? A. On the 5th that was profit on fur for Mr. Fisch, all them three.

Q. All three, 150, 147 and 140, is that right? A. Yes, that is right.

Q. All those three items in less than a month you say were profits from fur? A. Yes.

Q. December 7th, 1932, you draw out $800? A. Yes.

Q. What was that for? A. Them $800 from the $4,300 I got in my house, I took $1,750 and $800 I took out from the bank and $1,200 was from fur account, and with this money I paid a mortgage on first January on 1933.

Q. You paid a mortgage or bought a mortgage? A. I bought a mortgage.

Q. That mortgage of $3,750— A. That is the mortgage.

Q.—which is offered in evidence here? A. Yes.

Q. All right. Now figure that up again and show us where you got the $3,750 from. A. It was thousand seven hundred fifty from the $4,300 I got home.

Q. Cash in the house? A. Cash in the house, eight hundred dollar I took from the bank and $1,200 was from fur account.

Q. From the fur account? A. Yes. Made up them $3,750.

Q. And that is the money you took to the lawyer

at the end of December, 1932, and bought that mortgage with? A. That is the money I brought to Mr. Burkard.

Q. The lawyer that was on the stand? A. The lawyer that was on the stand.

Q. Now you put $1,400 in bank on the 10th of January, 1933? A. I put in the bank $1,400 in January, '33, 10th.

Q. Where did you get it? A. Yes. This money Isidor Fisch said I should put it in the bank, in the stock account. But my account was strong enough to carry his buying. So I didn't put it in the stock account; I put it in my bank. That's just the same as mine, because I got money left; there was not much buying from my side on, it wasn't necessary. So I only made out a slip and deposited it.

Q. Now on March the 13th, 1933, you deposited $1,250? A. March 15th, 1933, $1,250. That's the money when President Roosevelt called in all the gold certificates and the gold coin. I put in $750 in gold certificates and $500 in gold coin.

Q. And the gold certificates were not Lindy gold notes, were they? A. Them gold certificates—that's the rest from the money, from the $4,300. I didn't put them gold certificates in the bank before, or not in the stock market either. My intention was to keep them gold certificates and them gold coin.

Q. Why? A. Please?

Q. Why? A. I thought I would play safe on account of inflation, but according to President Roosevelt's declaration, I put it in the bank.

Q. And when you put the $750 in gold notes in, you made out a deposit slip? A. I did.

Q. And you handed it in the window? A. I did.

Q. In a bank that you had been trading with for years and years, is that correct? A. Trading for eight years.

Q. Eight years. And you made out the slip in your name, did you, Anna Hauptmann or Richard Hauptmann, when you deposited it, a deposit slip? A. I don't know if I made out Anna Hauptmann or Richard Hauptmann. I really don't know.

Q. Well, you made it out either one, didn't you? A. Either one.

Q. And the date? A. And the date, yes.

A. And the date, and handed it in? A. Yes.

Q. And nobody came around the next day and said, "Mr. Hauptmann, you have deposited $750 gold Lindy notes," did they? A. Nobody came around, because there was $50 gold notes and I guess two or three hundred dollar gold notes, too.

Q. Now I notice that on the 25th of March, 1933, you had a balance in bank of $2,528.35. That money was transferred then to Anna Schoeffler's account, wasn't it? A. Yes.

Q. March 25th, 1933. Now, why did you transfer your account, your joint account, to Anna Schoeffler's account in March, 1933? A. The reason was I got in an automobile accident in New York and I run over a man, but it was entirely not my fault. This man was standing behind the elevated post, the road was very slippy and in the same moment I was going to pass the elevated post and he was stepping right in front of me and he slipped and I went over his leg, and on account of that I was afraid. This gentleman happened to be a lawyer, the gentleman I run over, his name is— I just can't get it just now— and that is the reason I transferred the account to my wife's name, the stock account and the bank account. That is the reason for it. I thought he was going to sue me. It was not my fault. I settled with the lawyer. I guess he know it himself I was right. We was going to settle for $250; well, finally we settled for $350, made an agreement and I agreed to pay him weekly accord-

ing to my wages and I paid him so far I guess it is close to $300.

Q. When was the account? A. It was a couple day before the transfer from the accounts from my name to my wife's maiden name.

Q. Now, here is a deposit July 20th, 1933, $2,-112.50. A. From dis deposit was $2,000 I should put in in the stock account, the same transaction as before. I didn't put it in an account; I got enough money in the stock account, because I did not much trading after the July, 1933, I got idle money and that is the money I didn't put it in.

Q. Who gave you the money? A. From Mr. Fisch— So I put it in my bank account $2,000— $112.50 was a check, a dividend check from our mortgage.

Q. You drew out on the 18th of January, 1934, $2,500.04. A. This money I drawed out and put it in the stock account to Pierce.

Q. Who? A. Pierce.

Q. What is their name, Pierce? A. Pierce & Company, Wall Street, No. 40. That is the account I have over here.

Q. So that $2,500 matches your initial deposit to— A. Pierce & Company.

Q. Pierce & Company? A. That is right.

Q. They don't put any names on these. Oh, here it is. E. A. Pierce & Company, right? A. Right.

Q. What is their address? A. That is 40 Wall Street.

Q. Then that is the last large withdrawal until after you were arrested? A. Yes, that is right.

Q. And then the next one went to a lawyer, is that right? A. The next one went to the lawyer.

Q. And he is not here? A. He is not here.

Q. Now that explains your bank accounts, correct? A. Explains—

Q. Is there anything else? A. Bank account.

Q. (Continuing.) You would like to point out there? A. No, I am finished.

Q. I am calling your attention now to the young lady, Miss Alexander, who says some time in March, 1932— am I correct, General, March?

(Mr. Wilentz nodded affirmatively.)

Q. (Continued.) She saw standing in a railroad station, in the upper part of the Bronx, I think she described it as the Pelham New York Central Railroad station, that Dr. Condon was in front of you, he was very much excited, he was talking to a telegrapher, and you were standing at one side of the room looking at him. Were you ever in that station? A. I never was in this railroad station. I just happened— I know the railroad station, but I never was in there, had nothing to do in any railroad station.

Q. And you were never there when Dr. Condon was there? A. Didn't know Dr. Condon.

Q. Did you ever see that girl before she took the witness stand? A. Never saw her.

Q. Now just one more— A. That is your pencil.

Q. Thank you. I want you to explain, please, to the jury about whether or not you had any money in this tin can? A. That is about $12,000 in gold certificates in that can.

Q. Gold certificates? A. In gold certificates.

Q. When? A. It is about one week or two weeks before I got arrested.

Q. And did you have some money in this board that was offered in evidence? A. I did.

Q. Rolled up? A. I did.

Q. How much did you have there? A. I can't remember how much it was.

Q. You said if you had a big book here you could figure your stock transactions better, is that right? A. The accounts only on our settlement on the 1st of November, 1933.

Q. Where is that big book? A. I guess it is in the possession of the police.

Q. Did you see them take it away? A. No, I did not, but I suppose so.

Q. Now, when you were taken to the New York City police station were you beaten by the police?

Mr. Wilentz: I object to it.

A. I was.

Mr. Wilentz: Just a minute, now. I object to it as not being material to this cause.

Mr. Reilly: I will connect it. I will connect it.

Mr. Wilentz: Well, now just wait a minute. There is no confession or any statement in this case, if your Honor please, and the State of New Jersey does not want to be impeded or handicapped by any matters that do not concern this State. If we were presenting some document or confession that was obtained, or it was claimed was obtained in New York as the result of something that is now inferred, why, I take it that there might be some basis; but the only purpose of this question is one that is not material to this cause.

Mr. Reilly: I can connect it.

Mr. Wilentz: And it cannot be connected with any instrument that is in evidence by the State of New Jersey.

Mr. Reilly: Oh, yes, it can.

Mr. Wilentz: Your Honor, so far as I can recall, the only things that came in were admitted handwritings, and your Honor gave defense the opportunity then to present such testimony as they saw fit, or such testimony as they could, to indicate that those statements were not given voluntarily. If there was some duress or some alleged force or something like that, that was the time; and I take it that there is no effort made now, so far as those statements are concerned, to indicate that this was done.

Mr. Reilly: The statements—

The Court: Well, I do not know what the purpose is now, except as indicated by the question. You will recall that when certain documents were being introduced by the police for the State, the inquiry was made by the State whether or not those papers were executed voluntarily. Now if it be competent for the State to show that they were executed voluntarily, I would think, by the same token, it would be competent for the defendant to say what he had to say with respect to their voluntary character.

Mr. Wilentz: Up to that time, with reference to those statements.

The Court: Yes.

Mr. Wilentz: I have no objection to that if your Honor please.

The Court: All right. Now you may proceed.

Mr. Wilentz: If it is limited to that extent, up to the date of the taking of those papers, or any other things that we did.

The Court: Yes.

By Mr. Reilly:

Q. Well, what date were you arrested? A. September 19th, 1934.

Q. 1934? A. 1934.

Q. And in time you landed in the Greenwich Station House, didn't you? A. Yes.

Q. How long were you there before anybody asked you to write anything? A. My recollection, my best recollection is it was night time.

Q. What time were you brought in, in the day time? A. Yes.

Q. Now, during the period between the time you were brought in and the time you were asked to write and give certain exhibitions of your handwriting and samples, were you beaten in that station house? A. Not in this time.

Q. Well now, when were you beaten?

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

Mr. Reilly: We have in evidence here a certain transcript of a statement he is sup-

posed to have made to an Assistant District Attorney in The Bronx. Read by some stenographer.

Mr. Wilentz: If the question is as to any beating made in The Bronx at that time, I will withdraw that objection.

Mr. Reilly: He might have been beaten downtown and taken to The Bronx.

Mr. Wilentz: I am talking about statements made in The Bronx.

Mr. Reilly: Beatings, not statements.

Mr. Wilentz: If statements were made in The Bronx and they were the result of beatings in The Bronx or the result of beatings downtown preceding the statement, I will withdraw the objection.

Mr. Reilly: Let's find out when he got the beating. (Laughter.)

Mr. Wilentz: No, I object to that question: if he had any.

The Court: It is the business of the officers to take those folks that are interrupting this trial out of the room. Where are the officers? I want the officers to be diligent. If I were down there on the floor I could identify these people that are making this confusion and are laughing at times when I don't think there is any occasion for laughing at all. I want the officers to take those people out of the courtroom and, in flagrant cases, I want

them brought up here in front of the desk and I am going to deal with them and I may mark them up quite some considerable, before I get through with them. I won't have this ribald stuff in this courtroom.

The Court: Now, Mr. Attorney General.

Mr. Wilentz: Now, if your Honor, please, particularly with reference to the statements in the Bronx. Now, we are away from the statements that are in evidence as admitted writings. Now counsel is up to a statement made in The Bronx, and my recollection is that the statement with reference to The Bronx was given by a stenographer here, an official stenographer.

Let me refresh counsel's recollection about that. Specifically in that statement were the questions and answers with reference to his treatment by District Attorney Foley.

The Court: Yes.

Mr. Wilentz: "Hauptmann, have you been treated all right? Have you gotten everything you wanted? Have you had your lawyer here? Have you had your wife here? Have you had all the freedom that you wanted?" All of which was, "Yes."

Now, if it is contended that in making that very statement, and that is the statement we were talking about, that is the statement, apparently counsel refers to, that that statement was brought about by duress, by intimidation, improperly, in any way, then certainly I wouldn't object and wouldn't want to use the statement, but if this is just an effort to talk

about some alleged beating at some other time, merely for the purpose of attempting to attract some sympathy to this defendant, that has absolutely nothing to do with this case.

Mr. Reilly: No, that has nothing to do with that at all.

Mr. Wilentz: Under those circumstances, I object. I do not object to any statement that we produce here or proving whether we got it through intimidation, beating, force or anything else.

The Court: Well that I understand to be Mr. Reilly's proposition, to prove that these statements were not voluntarily made, because they were made through some sort of threat or intimidation.

Mr. Wilentz: I don't understand that to be the fact.

The Court: I don't know. I rather suppose—

Mr. Reilly: I have to find out—

The Court: I rather suppose that is so.

Mr. Reilly: I have to find out what hour it was.

The Court: Now, Mr. Reilly, suppose that you limit your present examination to finding out at what point of time it is that you think your man was under duress.

Mr. Reilly: That is what I asked him; at what time you were beaten if you were beaten.

The Court: Yes. Well, now, let him tell.

Mr. Reilly: It is a simple question.

By Mr. Reilly:

Q. Were you beaten— Yes or No. A. Yes, sir.
Q. When did it start? A. The second night when I got arrested.
Q. Where were you? A. New York police station.
Q. After that were you taken to The Bronx? A. After that I was taken to The Bronx.
Q. How long were you in the station house and how long did they beat you?

Mr. Wilentz: I object to that, if your Honor please, until it is connected.

Mr. Reilly: Withdrawn.

Q. What did they do with you?

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

Mr. Reilly: He says it was before he went to The Bronx.

Mr. Wilentz: All right. He is up in The Bronx—

Mr. Reilly: He is not up in The Bronx. I want to know what they did to him.

Mr. Wilentz: You had him up in The Bronx—

Mr. Reilly: I asked him how long after he went to The Bronx. Don't let's quibble.

Mr. Wilentz: I am not quibbling. I object to the question unless it is connected to the statements in this case.

Mr. Reilly: He certainly was down in New York and he went to The Bronx after he was beaten.

The Court: The proposition as I understand it is to prove duress preliminary to some of these statements.

Mr. Wilentz: All right. May I reserve my right to strike out the answers if they are not connected in that way?

The Court: Surely you may.

Mr. Wilentz: All right, then I won't interfere.

By Mr. Reilly:

Q. Tell us what they did to you in the Greenwich Street station, if that is the station in which you were beaten?

Mr. Wilentz: I submit the matter of time is the thing.

The Court: The matter of time is important, Mr. Reilly.

Mr. Wilentz: Yes.

Q. You were arrested— I will go back now, I tried to take a short cut, but apparently it won't do— you were arrested on the street, weren't you? A. I was.

Q. And you were held for some hours in your car, is that right? A. Yes.

Q. Then they put handcuffs on your hands, didn't they? A. Right away.

Q. Then you were searched, were you? A. Yes.

Q. And in your wallet what did they find? A. Twenty dollar bill.

Q. Then where did they take you? A. Took me Gun Hill Road and White Plains Avenue.

Q. Then did they take you back to your house? A. Yes.

Q. Then did they search the house? A. Yes.

Q. Then were you told it was Lindbergh money? A. It was told me in the house. That is the first time I hear it, I got Lindbergh money in my possession.

Q. Never knew it before? A. Never know it.

Q. Then where did they take you from your house? A. To the Central Savings Bank.

Q. They searched your safe deposit box, didn't they? A. Yes.

Q. No money was there? A. No money.

Q. Then where was the next place they took you? A. The next place was, it was a police station, Greenwich Street.

Q. That was that night, the first night? A. It was the first night.

Q. You hadn't been to The Bronx yet? A. No, sir.

Q. Now, in the station the first night what did they do to you, if anything? A. The first night they required the request writing.

Q. Yes. Now, in writing did you spell the words of your own free will or did they tell you how to spell the words? A. Some of them words they spell it to me.

Q. How do you spell "not"? A. N-o-t.

Q. Did they ask you to spell it n-o-t-e? A. I remember very well they put a "e" on it.

Q. How do you spell "signature"? A. S-i-g-n-u-t-u-r-e.

Q. Did they tell you to spell it s-i-n-g? A. They did.

Q. —n-a-t-u-r-e? A. They did.

Q. "Singnature"? A. They did.

Q. So when they were dictating the spelling, that was not your own free will in spelling, was it? A. It was not.

Mr. Wilentz: That is Mr. Reilly's witness and his testimony, and I object to it.

The Court: Well, Mr. Reilly, that is rather leading.

Mr. Wilentz: Yes.

The Court: You see, this man is your witness.

Mr. Reilly: Yes.

The Court: I will request you to refrain from leading.

By Mr. Reilly:

Q. Well, when you wrote s-i-n-g, "signature," it was not the way you usually spelled it, or ever spelled it; is that correct?

Mr. Wilentz: I object to the question as being leading, and offensively leading.

Mr. Reilly: That isn't leading. He has already spelled "signature."

Mr. Wilentz: That is not the fact.

The Court: You may ask him whether or not the writing that he did was his voluntary act.

By Mr. Reilly:

Q. As far as the spelling of these words that I have indicated, and other words that are misspelled in these request writings of yours, was that your voluntary spelling or your voluntary act, or was it the act and spelling dictated to you by policemen and officials who wanted you to write it that way? A. It was because of the dictation.

Q. Now, some written that night, were they? A. Yes.

Q. And in that writing, they kept on for how many hours? A. I can't remember exactly the time of the request writing, but I know real well it was late, it was really late in night time, probably after 12 o'clock. I refused to write.

Q. What did they do to you? A. They forced me. They said, "You won't get any sleep, you got to write."

Q. Did they do anything to you physically? A. Not exactly, but they didn't give me any chance to sleep.

Q. Did they give you any chance to eat?

The Court: Sleep, as I understood.

The Witness: Sleep:

Mr. Reilly: I am asking now about any chance to eat.

Q. Did you get anything to eat? A. I can't remember if I was asked for anything to eat at all or not.

Q. Over what period did the so-called request writings, how long a period was it in all before they finished with you as far as the writings were concerned? A. From the hour of my arrest to I'd say around two o'clock in the morning the next day.

Q. And how many times did he request you to write? A. I don't recall how many times.

Q. Many times? A. Many times. I fell alseep on a chair when they poked me in the ribs and said, "You write."

Q. Who poked you in the ribs? A. I can't recall.

Q. What with? A. With the hand.

Q. While you were in that room or in that station house, were you hit with anything else besides the hand?

Mr. Wilentz: Before the writing or after the writing, may we know?

The Court: Yes, this is before the writing.

Mr. Wilentz: Before the writing.

Q. Were you hit with anything before the writing? A. No.

Q. Were you hit during the writing during the different periods that you wrote? A. I got a couple knocks in the— in the ribs, when I refused to write.

Q. After the writing, before you went to The

Bronx, did you get any knocks of any kind? A. Well, that is— I got the treatment, it wasn't home at all.

Q. Well, tell us about it and when was it? A. It was in the evening, the next day.

Q. Where? A. The 20th.

Q. What station house? A. New York police station— at the Greenwich Street—

Q. Greenwich Street? A. Greenwich Street.

Q. Before you went to The Bronx? A. Yes.

Q. Now, what was the treatment?

Mr. Wilentz: Just wait one minute. If your Honor please, I just want to say to your Honor unless counsel feels and knows that this is going to connect up with the statements that were made by him in The Bronx, I don't think that the question should be permitted and the answer should be permitted, and I think counsel knows that they are not connected with the statements in The Bronx. If he doesn't, that is different.

Mr. Reilly: I think that any man who is taken into custody as he was, who was subjected to the treatment that he is about to testify to, in the belief that he also falsely confessed to some things that he is not guilty of and then he is taken before a District Attorney in another county with a mind that remembers his treatment below and his physical condition, that any statement, no matter what he made in The Bronx, should be excluded after he got the treatment that he received in Greenwich Street.

The Court: You are now proposing to move for the exclusion of these statements?

Mr. Reilly: Well, I will leave that to Mr. Pope, who knows the law of this State much better than me, when we get to that, sir.

The Court: Well, is there any such motion as that pending?

Mr. Pope: No, your Honor. Our contention will be that it will be for the jury to consider the treatment that this man received at the hands of the police, and then it will be for them to say how much credit they will give to the treatment, after he receives that treatment.

The Court: What statements are you referring to now?

Mr. Pope: The statements which were made in The Bronx and which were read here, question and answer, in evidence.

Mr. Wilentz: That particular statement is the statement, if your Honor please, in which the specific questions were read to him, "Have you been treated all right here? Did you make this as your voluntary statement? Haven't you been permitted all these various liberties," and so forth and so on. That is the statement.

Mr. Reilly: Now, to my mind that it—pardon me, General.

The Witness: I—

Mr. Wilentz: Just a moment now.

The Court: No.

Mr. Reilly: To my mind that indicates nothing, because a man who has undergone one set of those treatments might be asked those questions and in fear he would say "Yes," not wanting a second treatment, still in the custody of the police.

The Court: I think that anything that has a reasonable relation to these statements and made prior thereto in the nature of showing duress is admissible, and that will be admitted. But I am asking counsel to confine themselves to the limitation that I have made.

Mr. Reilly: I accept.

Q. Now, I ask you what you say the treatment was that you received before you went to The Bronx and made any statement to any District Attorney or anyone in The Bronx.

Mr. Wilentz: I object to the question, if your Honor please, and may I suggest rather than continue this controversy that I should have no objection to a question as to whether or not any statement he made in The Bronx was the result of duress or improper treatment. I have no means of controlling counsel's questions, of course, but I make the suggestion very respectfully.

Mr. Reilly: They are delightful and will always be accepted in line with the good taste in which they are offered.

Q. I will ask you, Bruno, was the statement in The Bronx that you made, were you mindful and fearful of the treatment that you had received

downtown in New York when you made the statement in The Bronx? A. To explain this: When Mr. District Attorney Foley was asking me how did they treat me, the coppers in the Bronx, only the treatment in The Bronx jail and in The Bronx courthouse, but that did not cover the treatment in the New York police station. I said the treatment in The Bronx jail and in the courthouse to Mr. District Attorney Foley was fair, but it covers only The Bronx, but the treatment in the police station in New York, it was entirely different, it was just the opposite that way. I got the effect from this treatment for two months, that is the reason I lost over thirty pounds.

Q. Well, did you have that in mind when you made the statement in the District Attorney's office in the Bronx?

Mr. Wilentz: I object to it.

A. I only got in my mind the treatment from The Bronx, not the treatment from the police station.

Mr. Reilly: I think that is his answer. Now, Mr. Pope, is there anything else?

Mr. Pope: May we have a recess at this time, a five-minute recess?

The Court: Well, it is nearly four o'clock now. What time were you expecting to adjourn?

Mr. Pope: Oh, well, never mind.

Mr. Peacock: The jury wanted a recess.

Court Crier Hann: They said not to mind it now. They first asked for a recess, then they said they didn't want to bother about it.

The Court: Does the jury want a recess?

Court Crier Hann: That is what they asked for first. Then they said to never mind it.

The Court: Would you like a recess?

Members of the Jury: No, no.

The Court: I think they are willing to go on until half past four or five o'clock.

Let the people keep quiet in the courtroom. Anything further, Mr. Reilly?

Mr. Reilly: Now, in turning this witness over to the prosecution for cross-examination—of course, I reserve the right to examine him in rebuttal, if I don't other counsel will— I want to ask the Court's indulgence, it being almost the end of Friday afternoon. I haven't complained at all the past ten days about my illness, and I have kept on my feet, first with tonsilitis, the last three days with a mild attack of flu. I have been under the treatment of one of the local doctors here, Dr. Thomas; two days ago I was obliged to send to the city for Dr. Bernstein; today I was obliged to call Dr. Bellows, who is also here.

In view of the fact that we are now entering the defense, and most of the witnesses in this case must come from The Bronx and from the upper part of New York City and handwriting experts to the number of eight, that I

hope to be able to reduce to the number of four, if the Court will indulge with me and allow me to have tomorrow and Sunday for conferences with my witnesses and to try to get myself back into good physical shape, I can assure this jury and your Honor and my adversary that I think I will be able to shorten this case from fifty witnesses or more that we have now under observation and practically under subpoena by at least one-third.

Your Honor was very kind in the last two weeks in allowing the handwriting experts to go over and we cut down the number of handwriting experts. The General and I got together twice, and on the money and on other angles I think he will agree with me that we disposed of at least thirty witnesses that technically we could have brought to the stand who would have used up two or three days.

It is unfortunate that Prosecutor Anthony Hauck has been stricken. I don't want to be stricken. I am asking for your indulgence.

The Court: Your proposition is that when we adjourn tonight we adjourn until Monday morning?

Mr. Reilly: That is it.

The Court: Is there any objection, Mr. Attorney General?

Mr. Wilentz: There are many things we don't want to happen. One of them is that we don't want Mr. Reilly to get ill. Frankly, I think all of us have been going at rather a fast pace, so far as this trial is concerned, and we have actually avoided the calling of at least

fifty witnesses because of the coöperation of defense counsel, and particularly Mr. Reilly; twenty-five with reference to the accounting and assortment of money; fifteen or twenty men in connection with the brokers and the banks and at least ten more; so that while both of us have been very reluctant to talk to your Honor at all about it, because we know the jury will be so greatly inconvenienced with nothing to do all day Saturday, still where there is some danger of this sort, of illness, I think, if your Honor please, I should be the last one to object to the proposition; so we do not object.

The Court: Well, of course, there are very many things to be considered in relation to this matter, but I think it quite apparent that there has been a rather unusual coöperation between the State and the defense in speeding up this trial. I am inclined to think myself that if we take an adjournment over Saturday it will result in no delay and probably a more speedy determination of the matter, more especially in view of the fact that Mr. Reilly is physically disturbed. In fact, I think that I ought to take an adjournment over Saturday.

So when we adjourned tonight, and there has been some indication that we might work a little later tonight,—4:45 or 5:00, or something like that,—we will take an adjournment until Monday morning at ten o'clock.

Mr. Wilentz: Now, if your Honor please, may we, when your Honor has disposed of that, have a five-minute recess and then sit until about a quarter to five.

The Court: I think that may be done. The jury may have an opportunity to retire for about five minutes.

(At 4:01 the jury retired and a short recess was taken.)

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

The Court: Counsel may proceed.

Cross-Examination by Mr. Wilentz:

Mr. Wilentz: May we proceed, if your Honor please?

The Witness: Mr. General, may I go back to my financial, on my financial transaction?

Mr. Wilentz: Yes.

The Witness: All I said about my financial transaction, that is to be how I remember, because there is no exact bookkeeping to keep Mr. Fisch and myself apart, that is the way I remember.

Mr. Wilentz: Yes.

The Witness: And it may be some difference in one way or another way.

Q. Yes. What you mean is that everything that you have said about your financial transactions, all that testimony you mean that that is your best recollection; there may be a difference here or a difference there, is that what you mean? A. The

difference isn't very big, but that is the best recollection I have.

Q. Yes, all right, we will get to that.

Q. (Continuing.) 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. You have enjoyed the privilege and opportunity of earning a livelihood, haven't you? A. Yes.

Q. You have received police protection during those years. A. Not quite; not quite.

Q. Not quite? A. No, sir.

Q. You married in this country. A. Yes.

Q. You saved money. A. Yes.

Q. You bought stocks. A. Yes.

Q. The State of New York and the State of New Jersey and the United States of America have been working on your case as you know; you know that, don't you? A. I suppose so.

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. And the statements that you made to District Attorney Foley, where you say you were treated properly do you stand on those statements? A. I was properly treated in The Bronx.

Q. Do you stand on the statements you made to District Attorney Foley or do you want to change those—

Mr. Pope: Object to the question. That is not a proper question.

The Court: I will overrule the objection.

Q. Answer the question, please. A. You have to—

Q. Did you lie to District Attorney Foley or did you tell him the truth?

Mr. Pope: Object to that question.

The Court: Well, perhaps you—

A. I—

The Court: Perhaps you had better call his attention to the things that you think—

Q. You say you told the truth today? A. I told the true to District Attorney Foley about my treatment in The Bronx; that is correct.

By Mr. Wilentz:

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. And to a certain extent you didn't tell him the truth, is that it? A. I was—

Q. Did you tell him the truth only to a certain extent and lie to another extent?

Mr. Pope: I object to this question and I object to this method of examination and I submit to the Court that the proper question is to direct the witness's attention to any question or answer or statement which he made to the District Attorney and interrogate the witness as to whether that statement was correct or not, not to say broadly, "Do you stand on this or do you stand on that or what?" The witness will have some explanation of some of the statements.

Mr. Wilentz: Well, he may not have an explanation and I don't want counsel to give it for him. If the question is objectionable, I will withdraw it.

The Court: I think it is.

By Mr. Wilentz:

Q. But there is no question in your mind but that the story you told today is the truth, is there? A. There is no question.

Q. Today and yesterday? A. Today and yesterday.

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. 1923. What month? A. Can't remember.

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 3rd, 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. I stayed only a couple 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. When you left jail you had on a prisoner's uniform, didn't you? A. No, sir.

Q. When you were in jail you had a prisoner's uniform, didn't you? A. No, sir.

Q. What sort of clothing did you wear? A. My civil clothes.

Q. Civilian clothes? A. Yes.

Q. In jail? A. It wasn't in jail, it was—

Q. Whatever it was, a lock-up. A. I was for questioning there. I wasn't convicted.

Q. Well, you didn't give them a chance to convict you, did you? You ran away? A. That is right, I ran away.

Q. Sure. And after you ran away didn't you take the clothes that you wore in the jail, pack them up in a bundle, come back to the jail and leave them in a package marked "Best wishes to the police"? A. From where you got this story?

Q. Didn't you do that? A. No, sir.

Q. Oh, you didn't? A. No, sir.

Q. So you mean you were only convicted of one crime, is that it? A. Yes, sir.

Q. Only convicted once? A. Convicted once.

Q. Only once? A. Only once.

Q. Is it not a fact that on March the—that you were convicted of breaking and entering—

Mr. Pope: What year?

Q. On March the 14th and 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.

Mr. Pope: I object to that question. He may ask him if he was charged with the crime and convicted. He may not go into the detail.

The Court: There is a limitation there.

A. I was present but I can't remember I went through the window.

Q. You don't remember that? A. No.

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?

Mr. Pope: We object to the question.

Mr. Wilentz: He has answered the question.

The Court: He has answered the question. He says he was convicted. That is enough of that matter.

By Mr. Wilentz:

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.

Q. Weren't you convicted of stealing some driving belts which you then later tried to sell to a policeman? A. I will say what you are reading is something new to me.

Q. Then you weren't, were you? A. No, sir.

Q. Now, when you escaped from jail you at that time had lived in your country, up to that time you had lived there all your life, hadn't you? A. Yes.

Q. Everybody that was near and dear to you in the world lived in that land, didn't they? A. (No answer.)

Q. Did you know anybody in the United States of America? A. Yes.

Q. You did? Did you have any relatives here then? A. Yes.

Q. Who? A. My sister.

Q. Out in California? A. Yes.

Q. Where is she now? A. I don't know.

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.

Q. And you have been here ever since? A. Yes, sir.

Q. You didn't take any trips back to Germany, did you? A. No, sir.

Q. And when you told Mr. Reilly that you were in this country under parole, you knew very well then, didn't you, that Germany wanted you for years, didn't they? A. No, sir, because when I entered the United States the first time I did, I was writing my mother a letter I am safe over here and if the German Government have any interest to convict me or have me back they always got my address on hand, they only have to go to my mother.

Q. Yes. All they have got to do to get you is to go to your mother in Germany; that's right? A. It was, it was—

Q. You have been planning to go back to Germany, haven't you, for the last few years? A. I was planning to go back to Germany this year.

Q. Yes. And you were trying to make arrangements through your mother with the police so that you could go back, isn't that so? A. It was what they call over-quota, so I could enter Germany without fear, wouldn't be arrested.

Q. Yes, that's right. And you were communicating with your mother so that she would make arrangements with the government of Germany so you wouldn't be arrested when you got there, isn't that right? A. It was not necessary to communicate with my mother in this case. I could go over to Germany as it was cut out automatically.

Q. Well, whether it was your mother or who it was, you were making arrangements to return to Germany, weren't you? A. Yes.

Q. And just about then you were arrested, isn't

that right? A. Just about— my arrangements covered about this year, some of this year.

Q. Yes. Now I want to show you a little book and ask you if it is yours. Is that your handwriting? Take your time about it. Look at it. A. Yes, that's my handwriting.

Q. That is your handwriting? A. Yes.

Q. Take a look at this word particularly. Tell me if that is your handwriting, that one word there. A. (No answer.)

Q. Or did some policeman write it? A. I—I can't remember every word I put in here.

Q. Just the one word, that's all. There are only a few words on the whole page. That one word; tell me if that is in your handwriting? A. It looks like my handwriting, but I can't remember I ever put it in.

Q. You can't remember what? A. No, no.

Q. Don't mix it up now. Just stay with that word there for a minute; two dollars and fifty cents. You see that word? A. Yes.

Q. Alongside of it? A. Yes.

Q. Are they your figures? A. They must be my figures.

Q. They must be your figures. Now let's get to this word that you use. A. Yes.

Q. Yes. That is your word then, isn't it? A. I can't remember if I ever put it in.

Q. Well now, this isn't a joke. You know either it is your handwriting or it isn't. Is it your handwriting? A. It looks like my handwriting.

Q. It looks like your handwriting? A. Yes.

Q. Now, tell me, how do you spell "boat"? A. B-o-a-t.

Q. Yes. Why did you spell it b-o-a-d? A. You wouldn't mind to tell me how old this book is?

Q. I don't know how old it is. You know; I don't know. A. Let me see it.

Q. Why did you spell "boat" b-o-a-d? A. This book is probably eight years old.

Q. All right. Why did you spell b-o-a-d? A. Well, after you make improvement in your writing.

Q. All right. So that at one time you used to spell "boat" b-o-a-d? A. Probably eight or ten years ago, and I am not quite sure if I put it in.

Q. All right. At one time you used to spell "boat" b-o-a-d, didn't you? Isn't that right? A. No, I don't think so.

Q. Eight years ago, six years ago, ten years ago, whenever it was, you used to spell "boat" b-o-a-d, isn't that right? A. I don't know.

Q. You spelled it in there, didn't you? A. I—

Q. You tell the truth now. Didn't you spell it in there? A. Now, listen. I can't remember whether I put it in there.

Mr. Fisher: That is objected to.

Mr. Pope: That is objectionable.

Mr. Wilentz: Well, it isn't twice objectionable.

Mr. Fisher: Yes, it is twice objectionable.

The Court: One moment. I don't think it is necessary for the Attorney General to ask him to tell the truth. I will sustain the objection.

Mr. Fisher: That is all we objected to, sir.

The Court: I understand, sir.

By Mr. Wilentz:

Q. Will you please look at this one word (presenting a small note book to the witness). We will come to the rest of the book— A. I looked at it already.

Q. You said yes and maybe and yes and maybe. Now will you tell us what you really mean? A. I told you I can't remember putting this one in the book.

Q. Is the whole page in your handwriting? A. I don't know.

Q. Look at it? A. No.

Q. What isn't in your handwriting? A. Some handwriting I can't even make out.

Q. But the word "boad" in there you won't say that is not in your handwriting, will you? A. I wouldn't say yes either.

Q. You don't say yes or no? A. I don't say yes or no because I can't remember ever putting it in.

Mr. Wilentz: Mark this for identification for a minute.

(The book was marked State's Exhibit S-252 for Identification.)

(Two signature slips S-253 and S-254 for Identification.)

Q. The reason you don't say yes or no is because you know you wrote "boad" when you got the fifty thousand from Condon, isn't that right? A. No, sir.

Q. Boad Nelly. Look at it (handing the exhibit to the witness). A. No.

Q. Do you see the word "boad Nelly"? A. I see it, certainly.

Q. Look at it again right underneath there, again "boad", do you see that? A. I see it.

Q. B-o-a-d? A. I see it.

Q. Let me see this exhibit for identification (referring to S-252 for identification, and handing same to witness). Do you see that? A. I see that.

Q. Same spelling? A. Same spelling.

Q. All right, let me have it for a minute.

Take a look at the "o" will you in the book, your book, exhibit 252 for identification? Do you see it is open on top? You see it isn't closed on top, don't you, the "o"?

A. What makes a difference? I don't know if I put in—

Q. We are going to find out. Just tell me if you find the "o" not closed on top. A. It is a little bit open.

Q. Take a look at the "o" here. Is it a little bit open? A. Well, there is one "o" not open at all, another quite a bit open.

Q. Quite a bit open. A. Yes.

Q. One is a little bit open in the book and one "o" here is quite a bit open. A. It is quite a bit open.

Q. Now, take a look at the "b". Is it separated from the "o", doesn't touch it at all? A. It is separated.

Q. Take a look at these b's, are they separated from the "o"? A. That is separated.

Q. Separated. Take a look at the "d". Do you see where that curve comes on this "d" and the "d" on the ransom note? A. I see it.

Q. Take a look at the "d" here. Does it curve again? A. Oh, Gee, that is entirely different what you told me.

Q. Entirely different? A. Sure.

Q. You come from Saxony in Germany, don't you? A. Yes.

Q. In Saxony they use the "d" instead of the "t", don't they? All the words are "boad" instead of "boat" and things like that, isn't that a fact? A. Some of them, yes.

Q. Yes. A. That is a fact.

Q. And you use the word, you spelled the word "boat" b-o-a-d, because that is the way they would spell it in Saxony, isn't that it? A. Oh, no—

Q. That isn't? A. They spell it maybe mit "d" but they write it in "t".

Q. Now, will you take a look at these copies of these checks to the brokers—just two of them for tonight. Is that your handwriting, the word "Bronx?" A. Yes.

Q. Do you see those x's? A. Yes.

Q. Did you see them on the ransom notes? A. I didn't notice—

Q. You didn't see them on the ransom notes? A. No, I didn't look for it.

Q. Take a look at the other "x". A. I see it.

Q. See that "x"? A. Yes.

Mr. Wilentz: Give me the motor vehicle license, please.

Q. You see the "x" on exhibit— I don't seem to have the number—

The Reporter: It is down in the corner—S-88.

Q. Take a look at that Exhibit S-88 and tell me if it isn't the same kind of an "x." A. That is the same "x" as on the two brokerage slips.

Q. Did you see the same "x" when the handwriting experts had it up in the ransom notes—

Mr. Pope: Well now, we object to that.

A. Well, now I really can't remember it—

Mr. Pope: This witness is not a handwriting expert. We don't object to the Attorney General showing him any two of his own handwritings and asking him if they look alike.

The Court: I think it is proper cross-examination and I will allow it.

Mr. Pope: Not to make him examine—

Q. Well, now,—

Mr. Pope: Wait a minute.

Mr. Wilentz: The court has already ruled on the question. I don't have to wait for other argument.

Mr. Pope: (Continuing.) With something that a handwriting expert made himself and put on the board.

The Court: I overruled the present objection. Counsel may proceed.

Mr. Wilentz: Question or objection?

The Court: The present objection.

Mr. Wilentz: Yes, sir.

The Court: Counsel may proceed.

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. So you are a carpenter? A. I am.

Q. When was the last time you did carpenter work?

Mr. Wilentz: Where is that board, please? Oh, yes.

Q. When is the last time you did carpenter work? A. Last time?

Q. Yes. A. About four or six weeks before I get arrested.

Q. But you didn't do any work regularly as a carpenter since April, 1932, did you? A. That is correct.

Q. You have been a stock market trader, haven't you? That has been your business? A. Trading in in stock market, trading in furs, and through some mortgages coming in.

Q. Well, you were a partner in the fur business, but you didn't buy and sell furs? A. No.

Q. But your business really was trading in the stock market? A. Yes.

Q. That is what you really did? A. Yes.

Q. That is where you spent your days, isn't that a fact? A. Yes.

Q. And every dollar of money that went into those brokerage accounts that you have talked about today, every dollar that went in there you took yourself and gave to the brokers, didn't you? You delivered it to the brokers, didn't you? A. Yes, I delivered to the broker.

Q. Every dollar that you said that Fisch gave you or anybody else gave you, so far as delivering it to the broker, you are the one that gave it to him, aren't you? A. Yes, sir.

Q. And the only man that knows about any moneys between you and Fisch, so far as the stocks are concerned, is the man that is dead, Fisch: isn't that right? A. I don't know; I guess, he said to me he is keeping book.

Q. He is the only man, though? A. As far as I know.

Q. Just between the two of you? A. As far as I know, yes.

Q. Yes. And he is dead? A. Unfortunate.

Q. He was your best friend, wasn't he? A. Well, I don't say best friend, but—

Q. You don't say so? A. He was very good friend.

Q. Did he help you kidnap this Lindbergh child and murder it? A. I never saw—

Q. You never saw? A. —Mr. Lindbergh's child.

Q. But Fisch didn't help you, did he?

Mr. Fisher: Objected to, your Honor. He has a right to finish his answer.

Mr. Wilentz: Yes, I suppose he has. I thought he had finished it.

Mr. Fisher: You knew he hadn't.

The Court: Mr. Fisher, you need not shout in that fashion. Make your objections in a quiet and orderly fashion and we will deal with them in a quiet and orderly fashion.

Now then, what is the question?

Mr. Wilentz: The objection was that I hadn't permitted the witness to finish his answer.

Mr. Fisher: That is right.

Mr. Wilentz: That was the objection.

Mr. Fisher: That is correct.

Mr. Wilentz: He said he never saw the Lindbergh child, I think.

Q. You have seen this board before, haven't you (showing the witness)? A. I saw it.

Q. Did you take a look at the symbols on the ransom notes, the round circles? Did you see that when it was up here? A. I saw it.

Q. Circles like these, that you put the money in, weren't they? A. Well, when you drill a hole, it has got to be round.

Q. Yes, I know that. But you don't need a round hole to put money in, do you? A. Well, it wasn't prepared for money.

Q. Didn't you tell District Attorney Foley that you drilled five holes to hide money in? A. I told him I drilled five holes in for to put small bits in; and later I used it for money.

Q. Didn't you tell District Attorney Foley in the Bronx and the other officers, when they presented you with this exhibit, 197, that you drilled those holes to put money in it, this money? A. I drilled holes in for bits.

Q. What I want to know is whether you told District Attorney Foley that you drilled it for money. A. That can be impossible to say.

Q. Can be impossible? A. Is impossible.

Q. What did you have this other hole for?

Mr. Reilly: I object to that.

Mr. Wilentz: Just wait a minute now.

Mr. Reilly: I think that has been ruled on by the Court.

Mr. Wilentz: Oh, no, it hasn't. On my case there was a suggestion and I complied with it.

Mr. Reilly: I object to it now upon the ground that it might be under the Mollineau case objectionable, and the cases that are being followed in this State.

The Court: What is the precise question?

Mr. Wilentz: He says he drilled these five holes and I am asking what he drilled the other hole for. It is a part of this very transaction, if your Honor please. This isn't our board.

Mr. Reilly: You offered it.

The Court: I will admit that question.

Mr. Reilly: May I have an exception?

The Court: You may have an exception.

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

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

By Mr. Wilentz:

Q. What did you drill the other hole for? A. To put something in.

Q. What did you put in? A. It wasn't money.

Mr. Reilly: If it wasn't money I say it is objectionable.

Mr. Wilentz: If your Honor please, I can't see why this jury has to take this piece of lumber out and guess, why they should be permitted or required to guess about the rest of this structure. It is not the Court's act, it was not the prosecution's act that bored this hole. Why do we have to protect any information that came as the result of the work in the hand of this defendant and conceal it from the jury?

Mr. Reilly: May I say to your Honor that we are bound, I take it, by the law of the State of New Jersey and I feel, under your Honor's supervision of this trial, that will be the rule, by the laws of evidence of the country.

It might well be that this man now charged with murder in the first degree might have had in that receptacle drugs,—which he didn't; he might have had counterfeit money of a foreign country; he might have had letters of information that might charge him with separate and distinct crimes that this jury have nothing to weigh in this particular case, and yet in their minds there might grow a prejudice subconsciously, which would react in this particular murder case.

I say that unless ransom money was in that particular hole of which he speaks, the admis-

sion of what he made it for or what he did is incompetent, immaterial and dangerous.

The Court: What is the present question?

Mr. Wilentz: I will ask the question again. I think the last question I asked him was what did he bore this larger hole for and he said not for money. My next question is "What did you bore it for?"

The Court: He may answer that question.

Mr. Reilly: 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.

The Witness: I put something in there.

Q. Answer the question. A. I put something in there.

Q. What did you put in it?

Mr. Reilly: Now again I object to it for the same reason. There isn't any doubt but that the Attorney General knows better than anyone in this court room what was in that hole has no more to do with the kidnaping of the Lindbergh baby than anything that is foreign in Africa and because of his knowledge as the investigating officer of this State, since he has come into this case, I say he is deliberately asking this question because he expects an answer

which will prejudice this defendant before this jury on an object that has nothing to do with this case and is improper, and when we move then to strike it out, the effect is registered on their minds and their memory, and I press the objection that I made before.

Mr. Wilentz: May I respond to it if your Honor please?

The Court: Yes.

Mr. Wilentz: I am not asking this question because I don't expect to use the answer, if it is permitted. I think it is material. I think that the things that this man did at the very time and in connection with the hiding of this ransom money cannot be separated in one part and another. I want to show the nature of the man by his own act, not mine, and it is material, and I do expect to use it to his prejudice, yes, but only because of his own act.

Now, if your Honor please, if he did something when he was hiding this board, we may contend and we believe the jury would have a right to infer that when he was getting this money, whatever was in here was with him, that when he was down there at the Lindbergh estate he was there with whatever was in it. I think it is very material.

Mr. Reilly: It is not a—

Mr. Wilentz: Further than that, if it isn't, why should the defense worry about showing what this man did, if he was innocent, why should they worry about what was in this garage?

Mr. Reilly: Ah—

Mr. Wilentz: Now, just a minute. How can anything be prejudicial of a nature like this, hidden with this money, if there is nothing to conceal from the jury and the Court?

Mr. Reilly: That isn't the question.

Mr. Wilentz: Well, the other question, I don't think he answered.

Mr. Reilly: We are not hiding anything, Mr. Attorney General.

Mr. Wilentz: No.

Mr. Reilly: Nor are you going to put me on the spot by saying we are hiding anything, but I do say this, that I am in a court of law presided over by a Justice of your Court in your State, and I still maintain that you will be bound by the rules of evidence of this State, and every other state of the United States.

Mr. Wilentz: We submit the question is proper, if your Honor please.

Mr. Reilly: I cannot see, sir, how anything that he did in nineteen hundred—when this money was found on him— in '34 can connect him circumstantially with an act which they charge March the 1st, 1932, in Hopewell, when there isn't a living soul so far that ever saw him on the grounds or ever had such an object presented to them either through fear, force or favor.

The Court: Well now, the question is what?

Mr. Wilentz: The question is: What did you bore this hole for? He was asked for—

Mr. Reilly: No, what did he put in it.

The Reporter: "What did you put in it?"

Mr. Wilentz: That was preceded by the question what other—

The Court: He may answer that.

Q. What did you put in it?

Mr. Reilly: 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.

By Mr. Wilentz:

Q. Answer the question. A. I put a small pistol in it.

Q. Small pistol? A. Yes.

Q. So that you had the pistol hidden in here? A. Yes.

Q. And you had the five rolls of bills there? A. Yes.

Q. And when you fixed this board up you fixed this pistol part with different depths, didn't you, so that the handle would go way in and so that the

other part would be flush along here, didn't you? Isn't that the truth? A. Will you repeat it again, please?

Q. When you built the larger hole, the one for the pistol, you built it specifically for the pistol, that is, you made the depths in the various parts of the wood different so that the pistol would fit in, isn't that so? A. You will have to repeat it again.

The Court: Well, I think we will have the question repeated Monday morning.

Have you something that you wish particularly?

Mr. Wilentz: I just wanted to ask him three more questions.

The Court: Very well.

Q. Let me ask you this: You gave your name when you were sworn in as a witness as Bruno Richard Hauptmann. That is true, isn't it? A. Bruno Richard Hauptmann.

Q. Is that the only name you use? A. It is the only name I use.

Q. Haven't you used other names? A. I used another name on the boat when I came over first.

Q. What was the name you used on the boat? A. I guess it was Perlmeyer.

Q. What was the first name—John? A. Well, I really don't know the first name.

Q. Was it John? A. I can't remember.

Q. You can't remember? A. No, I really can't remember.

Q. Didn't you use another name later on? A. No, sir.

Q. When you bought the field glasses did you use a different name? A. No, sir.

Q. When you bought the new field glasses did you use a different name? A. No, sir.

Q. You are sure about that? A. Positively.

Q. Are you the Cemetery John that was up in Woodlawn Cemetery? A. Positively not.

Q. Are you the Cemetery John that was in the other cemetery? A. No, I never was in the cemetery.

Q. Never were? A. No, sir.

Q. You live a few miles from either, don't you? A. Well, it just happened.

Q. Just happened. But you never knew where Woodlawn Cemetery was? A. Oh, I know where Woodlawn Cemetery is located.

Q. You told Mr. Reilly, I think, you didn't. Am I mistaken about that? A. Well, I guess everybody that lives in The Bronx knows where Woodlawn Cemetery is.

Q. Sure. That's what I thought. Didn't you tell Mr. Reilly in your examination, no, you didn't know where Woodlawn Cemetery was?

Mr. Reilly: I think, Attorney General, you are mistaken. I think he said he didn't know its exact location.

Mr. Wilentz: If I am mistaken the record will show it.

With that, if your Honor please, if there is no objection, may we adjourn?

The Court: Yes. The people will remain where they are, quietly, until the jury has retired.

(The jury retired at 4:49 p. m.)

The Court: The prisoner is remanded to the custody of the Sheriff and he may retire.

(Prisoner retired in custody of the Sheriff.)

The Court: The Court will take a recess until Monday morning at ten o'clock.

(At 4:52 p. m. an adjournment was taken until Monday morning next, January 27, 1935, at ten o'clock.)

STATE vs. HAUPTMANN.

FLEMINGTON, N. J., January 28, 1935.

NINETEENTH DAY.

Present:
Hon. Thomas W. Trenchard.

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

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

(10:01 A. M.)

The Court: The people who would like to talk now had better go outside and talk outside. We cannot hold this court with the people talking among themselves.

Have you polled the jury as yet?

The Clerk: I have not. They couldn't hear me.

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