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UNITED STATES DEPARTMENT OF JUSTICE

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To: COMMUNICATIONS SECTION.

December 14, 1950

Transmit the following message to:

SAC, NEW YORK

URGENT

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ABRAHAM BROTHMAN, ESP-R

IMMEDIATELY FORWARD BUREAU TRANSCRIPT GOLD'S TESTIMONY AT
BROTHMAN-MOSKOWITZ TRIAL.

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- Mr. Rosen
- Mr. Tracy
- Mr. Harbo
- Mr. Mohr
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Per *hc*

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: December 18, 1950

FROM : SAC, New York

SUBJECT: ABRAHAM BROTHMAN, Was
ESPIONAGE - R

ALL INFORMATION CONTAINED
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There is enclosed a photostatic copy of the Government's affidavit in opposition to defendants' application for release on bail pending appeal.

There is also enclosed a photostatic copy of Judge Irving R. Kaufman's charge to the jury together with his ruling on certain motions made by the defense.

All of the foregoing were submitted by USA Irving H. Saypol to the U.S. Circuit Court of Appeals opposing defendants' release on bail pending appeal.

As the Bureau already knows, this application on behalf of defendants was denied by the Circuit Court on 12/13/50.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

-vs-

AFFIDAVIT

ABRAHAM BROTHMAN and MIRIAM
KOPPELITZ,

Defendants

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:
SOUTHERN DISTRICT OF NEW YORK)

IRVING R. SAYPOL, United States Attorney for the
Southern District of New York, being duly sworn, deposes
and says:

I was present and personally directed the prosec-
ution herein which terminated in a conviction of the
above named defendants. I am fully familiar with the
facts and law applicable to this case.

On December 6, 1950, I was telephonically advised
by defendants' counsel that an application would be made
before this court on December 7, 1950, to admit the de-
fendants to bail pending an appeal from the judgments of
conviction herein. I was advised by defendants' counsel
that this application would be predicated upon the following:

- A. Upon the face of the indictment and upon the
proof in the case the conspiracy alleged in
Count One of the indictment was such as could
only have been performed and committed by the
combined act of the defendant Brothman and
Harry Gold, and since the substantive act was
allegedly committed the defendant Brothman may
not be convicted of a conspiracy to commit the
substantive act.
- B. As to the defendant Brothman the 1st and 2nd
Counts of the indictment are repugnant to each
other and mutually exclusive.
- C. The sentence as to the defendant Brothman was
cumulative.

ENCLOSURE BEHIND FILE
100-365040-405

- D. The United States Attorney committed a reversible error in repeatedly referring to the failure of the defendant to testify.
- E. The trial judge committed a reversible error in his refusal to charge that the defendant Miriam Moskowitz must be acquitted if the jury could infer a hypothesis of innocence from the substantive case against her as well as a hypothesis of guilt.
- F. The trial judge committed a reversible error in his refusal to charge that the defendant Brothman must be acquitted of the Second Count of the indictment unless the jury found that the defendant Brothman influenced Harry Gold on July 31, 1947, and at no other time.
- G. The trial judge committed a reversible error in his refusal to charge as requested that if Gold's testimony on July 31, 1947 was pursuant to an agreement with the defendant Brothman made prior to July 31, 1947, they must acquit the defendant Brothman of the Second Count of the indictment.
- H. The evidence as against the defendant Miriam Moskowitz was insufficient as a matter of law to establish the guilt of the said defendant beyond a reasonable doubt.

Jury could reasonably infer that Gold was influenced by Brothman on July 31, 1947.

3/7 re-released

Count I of the indictment under which the defendants were found guilty charged that from May 28, 1947 and continuing up to and including the 13th day of June, 1950, the defendants, Abraham Brothman and Miriam Moskowitz and Harry Gold, a co-conspirator, did unlawfully, wilfully, knowingly and corruptly combine, conspire, confederate and agree together and with each other to defraud the United States of America in the exercise of its governmental function of administering and enforcing the criminal laws of the United States of America and to influence, obstruct and impede the due administration of justice. Title 18, United States Code, Section 241, (1946 ed.), all in violation of Section 88, Title 18, United States Code, 1946 edition.

Count II of the indictment charged in part that on or about the 31st day of July, 1947 Abraham Brothman knowingly, wilfully and corruptly endeavored to influence, intimidate and impede Harry Gold a witness before a Grand Jury that was at the time conducting an investigation

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pertain to possible violations of the Espionage Laws, all in violation of Section 241, Title 18, United States Code (1976 ed.).

Rule 46 of the Federal Rules of Criminal Procedure upon which the instant application is predicated provides in part that bail may be allowed pending appeal only if it appears that the case involves a substantial question which should be determined on appeal. To paraphrase this rule bail may be allowed pending appeal when the question or questions presented would result in a reversal of the judgment of conviction. Where, however, the issues presented to the Appellate Court by a defendant in a criminal case can accomplish at most a modification of the sentence imposed bail pending appeal should be denied. A case which presents issues which will result only in a modification of the sentence imposed does not present a substantial question within the purview of Rule 46.

Five of the eight points urged on this application by the defendant Abraham Brothman, Points A, B, C, F and G, fall into this category and as to these points this application must fail.

An examination of these five points reveals that they have no basis in fact or in law. This is a second ground for denying the instant application with respect to these issues.

Points A and E were treated by the Trial Court extensively. The Court reaffirmed an established principle of law that the conspiracy does not merge in the substantive offense. This is a well settled and well recognized rule of federal jurisprudence with few exceptions. The law on this subject is clearly and fully set forth in Winterich v. U.S., 378 F.2d 600. A copy of Judge L.P. Trufant's decision on Defendants' motion to dismiss on the grounds set forth in Points A and E is appended hereto.

The defendant Brothman next objects to the cumulative sentence imposed on the defendant Brothman as a basis for this application for bail pending appeal. The sentence imposed in a criminal case is discretionary with the Trial Court and depends upon the facts and circumstances of the particular case. It is appropriate to note in this connection that immediately prior to the imposition of sentence the trial judge said:

"see In this particular case I must say that I have deliberated, I have spent a great deal of time giving a great deal of thought to the matter of sentence and I have come to but one conclusion, and that is that I regret that the law under which these defendants are to be sentenced is so limited and so restricted that I can only pass the sentence which I am going to pass, for I consider their offenses in this case to be of such gross magnitude. I have no sympathy or mercy for these defendants in my heart, none whatsoever."

The next contention urged by the defendants is that I committed reversible error in "repeatedly referring to the failure of the defendants to testify" in my summation. This is not the fact. Nowhere during the course of the trial nor in my summation did I ever make mention or refer to directly or indirectly to the failure of the defendants to testify. Cf. Lefkowitz vs. United States (9 C.A.) 273 Fed. 464, cert. den. 257 U.S. 637.

The defendant Moskowitz urges in point K that the Trial Court committed error in that it did not charge that she must be acquitted "if the jury could infer a hypothesis of evidence from the substantive case against her as well as a hypothesis of guilt." While the Trial Court did not so charge in the phraseology above quoted, this subject was amply covered in the court's charge, a copy of which is annexed hereto.

The defendant Brothman next urges that the Trial Court committed reversible error in that the court refused to charge that the defendant Brothman must be acquitted

J.P. 1116

of the second court of the district unless the jury found that the defendant Brothman influenced Harry Gold on July 31, 1947 and at no other time. Section 41, Title 18, (1840 (c.)) provides that anyone who corruptly will influence or intimidate or Harp's witnesses before a Grand Jury shall be guilty of the crime of obstruction of justice. The defendant's Request No. 10 merely requests that on finding of the jury in the affirmative in this case a conviction be entered. The court in its charge referred to the express language of the statute and did not intimate as the defendant would have it in Request No. 10. His subject matter was fully covered in the court's charge to the jury.

The next point urged by the defendant Brothman related to defendant's Request to Charge No. 17, which the court declined to so charge in the jury's charge on the ground that the subject matter of the instant request was fully covered in the court's charge in other language.

Lastly an examination of the record clearly demonstrates that there was sufficient evidence to establish the guilt of the defendant Brothman beyond a reasonable doubt. The jury's verdict substantiates this contention. It need only be pointed out that there was testimony adduced which proved that Brothman actually influenced, intimidated and Harped the testimony given before the Grand Jury by the defendant Brothman. Brothman was not only guilty of conspiring to obstruct justice for which she was convicted but was guilty of the substantive offense of obstructing justice.

In summary I would respectfully refer this Honorable Court to the statement made by the Trial Court subsequent to rendition by the jury of its verdict. The Trial Court said:

Ladies and gentlemen, I want to thank you for thorough and patient deliberations. I think your verdict was an intelligent one and I think it was a proper verdict in accordance with the evidence in this case.

"I think that your verdict was a complete vindication, as far as I am concerned, of the jury system.

"What I do not understand and I simply cannot fathom is why people who seek to undermine the very backbone of our country, why people seek to undermine that which gave them every opportunity - opportunity for education, opportunity for livelihood, yes, and an opportunity for a fair trial - such as they have received here. I simply cannot comprehend it. Perhaps the explanation can be found some place else but it is far beyond me."

It is respectfully submitted that the defendants' application be in all respects denied.

IRVING H. SAYPOL,
United States Attorney.

Sworn to before me this
day of December, 1950.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

ABRAHAM BROTHMAN and
MIRIAM MUSKOWITZ

C.133-106

ATTENDEE SESSION

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury! At the outset I want to extend to you my appreciation for your attentiveness during the course of this trial and particularly express my gratitude for the sacrifice you have made in neglecting your businesses and personal affairs so that justice could be meted out in this case.

Your service as jurors here is the best recognition by each and every one of you of your duties as citizens.

I think you have been duly impressed with the fact that you perform a very important function in the administration of justice; but while you sit as jurors you are not just the average laymen or the average man or woman who is taking part in some business discussion. You are under oath as jurors. You are sworn officials in that respect, charged with certain duties and obligations in the administration of justice. You have taken an oath to render a true verdict on the evidence, and in your selection I endeavored, by the questions that were presented to you, to be certain of the fact that the litigants before the Court would receive a fair and impartial trial.

Now as you approach the performance of one of the most sacred duties of citizenship, the meting out of justice,

I must remind you that it is your duty to weigh the evidence in this case calmly and dispassionately, without sympathy or prejudice, for or against either the Government or the defendants. The rich and the poor, the persons of every race, creed and condition stand alike before the bar of justice.

The first thing I want to make plain to you is the way in which our American system of jurisprudence defines the duties of the judge on the one hand, and those of the jury on the other. It is exclusively my function clearly to set forth the rules of law which govern the case, with instructions as to the application. On these legal matters you must take the law as I give it to you; you are not at liberty to do otherwise. Thus I shall read the indictment and the statute applicable to the case. You are not supposed to be lawyers; you are not supposed to be informed on the provisions of the statute or the principles of law that may apply to the proper consideration of the evidence in the case; but you are the sole triers of the facts. It is not what counsel may say a witness testified to or what counsel may say a document contained or showed, nor what the Court might say. It is what you, the jurors, remember and decide.

There are twelve of you. If there is any question in your mind, if you have any division as to what a witness may have testified to concerning some particular incident, you have the right to have your recollection refreshed by requesting that that part of the witness's testimony be read to you here in the courtroom, and the stenographer will do so.

As you deliberate, please be careful to listen to the opinions of other jurors as well as to ask for an opportunity to express your own views. Remember that no one juror holds the center of the stage in the juryroom and controls or monopolizes the deliberations. You all have a chance to express your views; exchange views; and don't

be afraid to change your view because of pride of opinion if you are convinced that your original view is wrong. That is what deliberation means. Of course you will go about your work, your deliberations, quietly, coolly. I believe that the more heat of argument in the juryroom, the less light. You will endeavor to arrive at a verdict. You understand, of course, that under our system of law in a criminal case, any verdict of a jury must be a unanimous verdict. A 10 to 2 verdict, or a 9 to 3 verdict, is not any good in this court. The verdict of the jury is the verdict of the jury as a collective body and of every member of the jury. So much for what your functions are and how you are to go about your work in the juryroom.

As I told you while you were being selected, an indictment is only a charge. There is no presumption of guilt against the defendants from the filing of the indictment. It is merely to inform you and to inform the court of the nature of the charge and also to inform the defendants so that they may prepare for trial.

Let me say to you right now that every defendant in a criminal case, under our system of law, starts the trial with a presumption of innocence in his favor and that presumption continues throughout the trial down to the time in the juryroom, if the time does arrive, when the jurors are satisfied beyond a reasonable doubt that the defendant is guilty. I shall tell you a little more later on about the law on reasonable doubt.

What are the charges contained in this indictment? We call them counts and I may say to you now that your verdict will have to be a separate verdict on each count, that is guilty or not guilty on each count as to each defendant. In other words, you can find defendant Brothman not guilty on counts 1 and 2, or guilty on both counts, or not

guilty on one and guilty on the other. The defendant Moskowitz can be found guilty or not guilty on only count 1.

Here is what the indictment says:

*The grand jury charges:

"1. That from on or about the 28th day of May, 1947, and continuing up to and including the 12th day of June, 1950, in the Southern District of New York, Abraham Brothman and Miriam Moskowitz, the defendants herein, and Harry Gold, a co-conspirator but not a defendant herein, and divers other persons to the grand jurors unknown, did unlawfully, wilfully, knowingly and corruptly combine, conspire, confederate and agree together, and with each other, to defraud the United States of America in the exercise of its governmental function of administering and enforcing the criminal laws of the United States of America, and to influence, obstruct and impede the due administration of justice therein, in violation of Title 18, United States Code, Section 241 (1946 ed.).

"2. That, as the said defendants well knew, during this conspiracy, a grand jury of the United States, duly impaneled in and for the United States District Court for the Southern District of New York, was conducting an investigation of possible violations of the espionage and other federal criminal statutes.

"3. That it was a part of said conspiracy that the defendant, Abraham Brothman, and Harry Gold, a co-conspirator, would agree upon fictitious explanations of their associations with each other and divers other persons.

*4. That it was further a part of said conspiracy that when the defendant, Abraham Brothman, appeared before the aforesaid grand jury, he would give false, fictitious, fraudulent and manufactured information concerning the aforementioned associations.

*5. That it was further a part of said conspiracy that the defendant, Abraham Brothman, would inform Harry Gold, a co-conspirator, of the substance of his testimony before said grand jury, for the purpose of enabling the said Harry Gold to conform his testimony thereto.

*6. That it was further a part of said conspiracy that when Harry Gold appeared before the aforesaid grand jury, he would give false, fictitious, fraudulent and manufactured information concerning the aforementioned associations, which would conform with the information theretofore given to said grand jury by the defendant, Abraham Brothman.

COVERT ACTS

*1. In pursuance of said conspiracy and to effect the objects thereof, at the Southern District of New York, the defendant, Abraham Brothman, testified before the aforesaid grand jury, on or about the 22nd day of July, 1947.

*2. And further in pursuance of said conspiracy, and to effect the objects thereof, at the Southern District of New York, Harry Gold testified before the aforesaid grand jury, on or about the 31st day of July, 1947.

*3. And further in pursuance of said conspiracy, and to effect the objects thereof, at the Southern District of New York, in or about the month of July,

1947, Harry Gold had a conversation with Thomas Kiernan, at No. 52 Wall Street, New York, N.Y.

"4. And further in pursuance of said conspiracy, and to effect the objects thereof, at the Southern District of New York, on or about the 29th day of May, 1947, the defendant, Abraham Brothman, and Harry Gold met at the Pennsylvania Station, in the Borough of Manhattan, City of New York. (Title 18, United States Code, Section 88, (1946 Edition.)

"SECOND COUNT

The grand jury further charges:

"1. That on or about the 31st day of July, 1947, at the Southern District of New York, Abraham Brothman, the defendant herein, knowingly, wilfully and corruptly endeavored to influence, intimidate and impede Harry Gold, a witness before a grand jury sitting in and for the Southern District of New York, and did knowingly, wilfully and corruptly influence, obstruct, impede and endeavor to influence, obstruct and impede, the due administration of justice therein, that is to say:

"2. That the said grand jury was at that time and place aforesaid, conducting an investigation entitled, "United States v. John Doe, pertaining to possible violation of espionage laws of the United States and any other federal criminal statutes.

"3. That the defendant, Abraham Brothman, at the time and place aforesaid, knew that the said Harry Gold had received a subpoena requiring the said Harry Gold to appear before the said grand jury on July 31, 1947, to testify as a witness.

"4. That the defendant, Abraham Brothman, at the time and place aforesaid, wilfully, knowingly

and corruptly influenced, intimidated and impeded the said Harry Gold by urging, advising and persuading him to give false testimony before the said grand jury under the section just cited.

That is the indictment.

You will note that both defendants, that is both Abraham Brothman and Miriam Moskowitz, are named in the first count of the indictment and you must bring in separate verdicts as to each of these defendants on that count, which is known as the conspiracy count of the indictment. Only the defendant Abraham Brothman is named in the second count of the indictment and your verdict will be only as to him on the second count.

The statute that the defendants are accused of violating in the first count is Section 88 of Title 18, United States Code, 1946 Edition, which states in part that:

"If two or more persons conspire either to commit any offense against the United States Government or to defraud the United States in any manner or for any purpose and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy is guilty of a crime.

Count 2 of the indictment alleges a violation of Section 241 of the United States Code, Title 18, 1946 Edition, which states in part that:

"Whoever corruptly . . . shall endeavor to influence, intimidate or impede any party or witness in any court of the United States . . . or who corruptly shall influence, obstruct or impede or endeavor to influence, obstruct or impede the

due administration of justice therein shall be guilty of a crime."

This statute is known as the "Obstruction of Justice Statute." Any corrupt endeavor whatsoever to "influence, or intimidate or impede any party or witness", whether successful or not, is proscribed by the obstruction of justice statute. The obstruction of justice statute is one of the most important laws ever adopted. It is designed to protect witnesses in federal courts and also to prevent a miscarriage of justice by corrupt methods.

We will consider count 1 of the indictment first. This count alleges that Abraham Brothman and Miriam Moskowitz, the defendants herein, and Harry Gold, and divers other persons did unlawfully conspire and agree to defraud the United States in the exercise of its governmental function of administering and enforcing the criminal laws of the United States and to influence, obstruct and impede the due administration of justice therein.

A conspiracy may be defined as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself unlawful or criminal, by criminal or unlawful means. The gist of the offense is the unlawful combination or agreement to violate the law. As Justice Holmes, now deceased but formerly a member of the United States Supreme Court, said many years ago: "A conspiracy is a partnership in criminal purposes."

However, it is not necessary in order to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the

details of the plan or means by which the unlawful scheme was to be made effective.

It is sufficient if two or more persons, in any manner, or through any contrivance, impliedly or tacitly, come to a mutual understanding to accomplish a common and unlawful design, knowing its object. In other words, where an unlawful end is sought to be effected and two or more persons, actuated by the common purpose of accomplishing that end, knowingly work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although his or her part might be a subordinate one.

All the conspirators need not have originally conceived the conspiracy, or participated in its conception. Those who come in later, with knowledge of the aims and purposes of the conspiracy, and cooperate in the common effort to attain the unlawful results, become parties thereto. A conspiracy is not ended as long as the evidence shows an intention to continue it. Each alleged conspirator who was the agent of the others at some time during the life of the conspiracy remains an agent during all of its existence.

Persons may be guilty of being parties to a conspiracy though the objects of the conspiracy were never accomplished. On the other hand, proof concerning the accomplishment of the objects of a conspiracy is the most persuasive evidence of the existence of the conspiracy itself. The agreement is generally a matter of inference deduced from acts of the persons accused done in pursuance of an apparent criminal purpose.

You are further instructed that where several persons are proved to have combined together for the same illegal purpose, any act or declaration made by one of

them during the pendency of the illegal enterprise, and in furtherance of the common objects, is not only evidence against himself but is evidence against the other conspirators who, when the combination is proved, are as much responsible for such declarations and acts as if made and committed by themselves, because each is deemed to assent to or command what is done by any other in furtherance of the common objects.

It is not incumbent upon the prosecution to prove that all of the means set out in the indictment were, in fact, agreed upon to carry out the conspiracy, or that all of them were actually used or put into operation. It is sufficient if it be established to your satisfaction, and beyond a reasonable doubt, that one or more of the means described in the indictment was agreed upon to be used to effect the conspiracy.

With these general principles as a guide you will approach the important question of whether the prosecution has proved beyond a reasonable doubt the existence of the conspiracy alleged in the indictment, and if such a conspiracy did exist, whether the defendants or either of them were parties to it and whether the defendants or either one of them entered it with knowledge of its nature and purposes.

You must first determine from all the evidence in the case whether or not a conspiracy existed. If you decide that a conspiracy did exist, you must next determine, as to each defendant, whether or not he or she was a member of the conspiracy. In considering whether or not a particular defendant was a member of the conspiracy, you must do so without regard to and independently of the statements and declarations of others. In other words, you must determine the membership of the particular defendant from the evidence

concerning his or her own actions, his or her own conduct, his or her own declarations, and his or her own connection with the actions and conduct of others. However, once you have determined that a defendant was a member of the conspiracy, using this test, you may then consider as if made by him or her the statements and declarations of other co-conspirators, made in furtherance of the conspiracy and during the existence thereof as alleged.

Testimony adduced by the Government is to the effect that the grand jury of the United States, duly impaneled in and for the United States District Court, for the Southern District of New York, was in 1947 investigating possible violations of the espionage and other federal criminal statutes; that the defendant Abraham Brothman and Harry Gold were subpoenaed to appear as witnesses before that grand jury; that they and Miriam Moskowitz agreed that Abraham Brothman would tell a fictitious story as to his associations with Harry Gold and with other persons, such as "Helen" or actually known by the name of Elizabeth Bentley, and "John" or Jacob Solos; that they also agreed that Abraham Brothman would inform Harry Gold of the substance of his testimony before the grand jury and that Harry Gold would tell the same or relatively the same fictitious story before the grand jury.

Now, you will recall that there were four overt acts set forth in the indictment:

(1) That Abraham Brothman testified before the grand jury on July 22, 1947;

(2) That Harry Gold testified on July 31, 1947;

(3) That Harry Gold had a conversation in July

1947 with the attorney Thomas Kiernan as to his testimony;

(4) That on or about May 29, 1947, Brothman met Gold at Pennsylvania Station.

The overt act done to effect the object of a conspiracy need not be a criminal act, and it is not necessary that each defendant or co-conspirator join in each overt act. Furthermore, the Government has to prove only one of the aforementioned four alleged overt acts beyond a reasonable doubt, in addition to proving the existence of the conspiracy and the membership of each defendant in the conspiracy beyond a reasonable doubt.

Now let me review briefly the prosecution's proof:

The statements given by Brothman and Gold to the FBI on May 29, 1947, and their testimony before the grand jury on July 22nd and 31st respectively were read to you. It is alleged and charged by the Government that these statements and testimony represented a false story as to the associations of Brothman, Gold, Elizabeth Bentley, Jacob Golos and others.

The prosecution then presented the testimony of Elizabeth Bentley and Harry Gold to show what the prosecution believes the true relationship of the named persons to have been, that is, that Elizabeth Bentley and Harry Gold were couriers for the Soviet Government, rather than business representatives of Jacob Golos, and that Brothman knew them to be such, and that he was transmitting industrial information to them.

You have heard the testimony of Elizabeth Bentley that she acted as a courier between Brothman and Jacob Golos; that Brothman transmitted blueprints and data to Golos through her; that Brothman had met Golos on several occasions; that Brothman complained because of

her lack of technical knowledge and that therefore it was arranged that a new courier with technical knowledge would make contact with Brothman. You then heard the testimony of Harry Gold that he, a chemist, was the new courier. There is in evidence Government's Exhibit 10, on which is recorded the license number of the car into which Gold entered on September 29, 1941; that Brothman was in the car; that Gold said the words found on the card; and that Brothman accepted Gold as his new courier. Gold then testified that thereafter and up until 1944 he transmitted chemical engineering and other information from Brothman to Gold's Soviet superior Sam; that on an occasion at the Hotel Lincoln Brothman met Sam as George-- I believe that was the name he said he was introduced as, and he represented him to be a high ranking Soviet official who had just come over from Russia. Gold further testified -- I want you to remember that this is Gold's testimony -- that Brothman was so impressed with George that he said it was one of the finest evenings he had ever spent and that he was going back to his office to work all night; that George told Brothman his help to Russia had been of much assistance.

On the other hand Brothman and Gold testified before the grand jury that there was a business relationship; that Golos designated Gold to check on some work Brothman was doing for Golos; that thereafter Golos dropped out of the picture and Gold did some work for Brothman; and that eventually Gold was employed by Brothman. Brothman, I believe, also testified before the grand jury that he knew 'Helen' as Golos's secretary.

It will be up to you, the jury, to determine what the true relationship was between Gold, Bentley, Golos and Brothman, and whether false information was given to the grand jury and whether there was a conspiracy or agreement to give such false information.

Let me caution you as to several things. Please pay strict attention since this is very important:

(1) Testimony by both Elizabeth Bentley and Gold to the effect that Abraham Brothman was a member of the Communist Party was allowed here. "Abraham Brothman" is not on trial for any alleged membership in the Communist Party and this testimony is not submitted to prejudice you in any way against him nor must you allow it to prejudice you against him. The purpose of such testimony is to show a possible motive for the commission of the acts charged in the indictment and also as evidence of what the Government alleges the true relationship or bond between Brothman, Bentley, Golos, Gold, actually is, that is, that it was more than a business relationship.

The next point I want you to listen to very carefully is that there has been such testimony as to the espionage activities of Harry Gold and Elizabeth Bentley, and as to the transmittal of chemical engineering plans by Abraham Brothman to Harry Gold and Elizabeth Bentley.

There is no claim made in this indictment that Abraham Brothman engaged in espionage. It is not charged here that the material transmitted was of an illegal

nature or that it was secret or that it could not have been found in textbooks or magazines on engineering or chemistry. The testimony as to the transmission of blueprints and technical reports was admitted to show that the prosecution alleges the true relationship of the parties to be, that is, that the relationship was for purposes other than business purposes; or to put it another way that Brothman knew that Bentley and Gold were couriers for Russia, anxious to get industrial information of any kind. You are not to concern yourselves with any reason as to the prosecution of the defendants for this offense instead of espionage or any other offense — that is none of your concern. Your only concern is the particular indictment before you. The charge is, in effect, that the defendants and Gold agreed on a fictitious story to throw the grand jury off the track.

The grand jury was investigating espionage and subversion in 1947. They had the right to know the true facts. It is not alleged nor does the Government have to prove that had the grand jury known the facts, that is, what the Government claims to be the facts as related by Harry Gold and by Elizabeth Bentley, that they would have indicted Abraham Brothman for any original violation. But if Harry Gold's present story is true, that grand jury might have uncovered the espionage activities of Harry Gold and others at that time, in 1947, and the grand jury had a right to know the true facts.

Returning to the testimony: As to the existence of the conspiracy itself, here was presented the testimony of Harry Gold that he stopped at Brothman's office at about 7 p.m. on May 29, 1947, and that Brothman told him the FBI had visited and interrogated him, and that Brothman told him to go back to the laboratory and tell

JEF:fac c

the same story; that Brothman described Jacob Golos to him so that he could identify him to the FBI; that he did tell the same fictitious story to the FBI; that Brothman and Moskowitz came over after his interrogation and congratulated him and Miss Moskowitz hugged him; that Miriam Moskowitz said she had visited Gibby Needleman and conveyed some advice on the matter; that Brothman asked him in Moskowitz's presence as to the details of his espionage activities but he, Gold, did not reveal the details; that about six weeks later Brothman said he received a subpoena to appear before the grand jury and that Brothman said he would tell his attorney Tiernan the same fictitious story; that Miriam Moskowitz told Gold that she was concerned since Brothman was considering changing his story before going before the grand jury and that she was going to tell Brothman to stick to his original story; that several days later they sat in a restaurant and Brothman said he would stick to his original story and Moskowitz said, "That's good"; that Brothman aroused himself for a minute and Miriam Moskowitz told him -- now, I want you to remember this is all Gold's testimony -- that she and Gibby Needleman had persuaded Abe to stick to his original story; that Brothman said he testified falsely before the grand jury and that he said that Moskowitz was pleased; that the night before Gold testified she said she was leaving early so that the two men could on direct examination match the story on cross-examination; and that they did speak conforming their stories; that he, Gold, had testified falsely and told the false story to Tiernan; an attorney employed by Brothman, and that Gold told Brothman and Moskowitz of his testimony and they approved; that Gold and Brothman almost came to blows at the Pennsylvania Station over Brothman's charge that

Gold's bringing one Tom Black to Gold's laboratory had caused the predicament they were in, and that Moskowitz prevented a fight and said they should stick together because the federal people would like nothing better at this time than to split them up; that in June of 1948 when he left Brothman's employ Brothman admonished Gold to keep the story clearly in mind.

This was all Gold's testimony, and as you can see much of the Government's case depends on Harry Gold's testimony. I shall instruct you as to the credibility of witnesses later on.

As I have said, the grand jury had a right to get the true and unadulterated story. In considering the guilt or innocence of the defendants on count 1 of the indictment you must first consider whether a false story as to their relationships was told by Brothman and Gold to the grand jury in 1947. If you find that a false story was told you must determine whether the false story was the result of an agreement or an understanding. If so, who were the parties to this agreement or understanding, that is, who were the members of the conspiracy? You need not concern yourselves with the so-called "divers other persons" mentioned in the indictment and alleged to be members of the conspiracy. Don't devote any time to that. The only questions here are whether Brothman was a member of a conspiracy and whether Moskowitz was a member of the conspiracy with Gold.

To find Moskowitz guilty on Count 1, you must find beyond a reasonable doubt that the relationship between Gold and Brothman was other than that testified to before the grand jury; that Moskowitz knew the relationship between Gold and Brothman to be other than that testified to before

the grand jury, and that she was a member of the agreement to give false testimony before the grand jury, that is, that she cooperated in the mutual understanding or agreement.

The testimony of Gold and Bentley as to the alleged true relationship between Brothman, Gold, Bentley and Golos is not binding upon Moskowitz, except where statements concerning such relationship, if any, were made, were made by Gold in her presence. The Government must prove that Miriam Moskowitz knew that Brothman's relationship with Gold and the others was not that testified to before the grand jury. The Government's proof as to her knowledge with respect to the true relationship is to a large extent circumstantial and it is the Government's contention that her conduct indicated that she knew the true or actual relationship, that is, her conduct concerning Brothman's and Gold's statements to the FBI and the grand jury indicated her knowledge of what had actually transpired between Gold and Brothman.

Circumstantial evidence consists of facts proved from which the jury may infer by process of reasoning other facts sought to be established as true. Circumstantial evidence may be received and is entitled to such consideration as you may find it deserves depending upon the inference you think it necessary and reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the jury must be convinced beyond a reasonable doubt of the guilt of the defendants.

Mere association, suspicious circumstance, or even opportunity to commit a crime are not of themselves sufficient grounds upon which to base criminal responsibility, and you may not convict the defendant Miriam Moskowitz if you come to the conclusion that the evidence

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against her accounts to mere association, suspicious circumstances or opportunity, without knowledge on her part as to the alleged true relationship between Gold and Brothman.

I want you to note that there has been some testimony here that Gold consulted an attorney and that Brothman consulted an attorney before their respective appearances before the grand jury. There is nothing wrong in consulting an attorney before appearing before a grand jury, and the defendants had a right to consult Mr. Kiernan, but the Government charges that this visit to Mr. Kiernan was in furtherance of the conspiracy since they lied to Mr. Kiernan and did not tell him of the prearrangement between Brothman and Gold to falsify the facts.

So much for the conspiracy.

The second count of the indictment charges that Abraham Brothman knowingly endeavored and did influence Harry Gold to give false testimony before the grand jury in 1947. Now, as I told you before, only Brothman is mentioned in the second count. Here the gist of the offense is the endeavor to influence a person to give false testimony before a court of the United States. The grand jury is a court of the United States.

The statute uses the word "endeavor." By endeavor is meant any effort or essay to do or accomplish the evil purpose that the section was enacted to prevent. The statute is not directed at success in corrupting a witness or juror, but at the endeavor to do so. However, the best proof of the endeavor is the success of the effort.

In this count the prosecution must prove beyond a reasonable doubt that Abraham Brothman knew Harry Gold was to appear before the grand jury as a witness and that he knowingly, wilfully and corruptly endeavored to

influence Harry Gold to give false testimony before the grand jury. The prosecution has offered proof that Harry Gold did give false testimony before the grand jury.

As I have said before, the best proof of an endeavor is the success of the effort. You can only find Abraham Brothman guilty on this count of the indictment if you believe Harry Gold's testimony to the effect that Brothman knew that Gold was subpoenaed to testify before the grand jury and that Brothman endeavored to influence Gold to tell the story he did tell before the grand jury, and that the story was false.

While the indictment charges that Brothman "knowingly, wilfully and corruptly endeavored to influence, intimidate and impede Harry Gold, a witness before a grand jury sitting in and for the Southern District of New York, and did knowingly, wilfully and corruptly influence, obstruct, impede and endeavor to influence, obstruct and impede the due administration of justice therein", it is sufficient if the Government establishes beyond a reasonable doubt that Brothman wilfully endeavored to influence Harry Gold to give false testimony before the grand jury. The Government does not have to prove that Brothman intimidated Harry Gold, or that he impeded Harry Gold - an endeavor to influence is sufficient. Neither does the Government have to prove the success of the endeavor. The success aggravates the offense but is not a condition of the offense.

No matter how careful a judge may be to avoid it, there is always the possibility that the jury or some particular juror may get an impression that the judge has some opinion with reference to the guilt or innocence of a defendant, or that he thinks that some particular phase of the case is more important than another, or that some

particular witness is more credible than another, or that a certain inference of fact should or should not be made and so on. If you have formed any such impression you must put it out of your mind and utterly disregard it. Nothing I have said during the trial nor in these instructions was intended to give any such impression; nor were any remarks or questions addressed to any of the witnesses or to counsel so intended. On the contrary, I have been scrupulously careful to avoid any comment which might even remotely suggest that I considered the subjects of the weight of testimony, the credibility of witnesses, the inferences to be drawn or the relative importance of one segment of the evidence as against another, or the determination of the guilt or innocence of the defendants, as coming within the orbit of any functions as the presiding judge in this trial.

And so I tell you again, you are the sole and exclusive judges of the facts of this case; you, and you alone, will pass upon the credibility of all the witnesses, all in accordance with instructions on that subject which I am about to give you. Despite anything said by me or by counsel, your recollection of the testimony must prevail. Whenever your recollection differs from what I have said or what counsel on either side has said it is yours which will govern; it is for you to determine what the proofs adduced by both sides disclose, regardless of anything said by me in this necessarily incomplete summary; and it is for you and you alone to weigh the proofs, draw such inferences of fact therefrom as you determine should be drawn and to decide each and every one of the issues of fact in this case.

And so we come to one of the crucial questions in the case. By what yardstick and in accordance with

what rules of law are you to judge the credibility of the witnesses?

Each one of you has given careful attention to the testimony as it came from the witnesses themselves. You have had a full opportunity to observe the witnesses and you have heard the testimony discussed in great detail by able counsel who have prepared and presented their cases well. You are the exclusive judges of the relative importance and credibility of the witnesses.

That I may refer to some portion of the evidence and not to another should not be taken by you as any indication as to my opinion of the comparative importance or weight of that particular evidence. If I, or either counsel, have referred to testimony, and if either my reference or that of counsel differs from your recollection, as I have said before and I repeat, it is your recollection which will govern.

Now, sharp issues of fact are presented for determination, and to a great extent the decisions depend upon the veracity of certain witnesses and the support or lack of support that they receive from other evidence and circumstances. The procedure established by our courts of law and a fair method is to submit the issues of fact to a jury of sensible, conscientious and impartial men and women experienced in life's affairs; let them hear and see the witnesses, and then decide the issues. That is the duty you are called upon to perform. It is an honorable service and an important one for all concerned. Each juror must form his or her judgment solely upon the evidence presented in the court, uninfluenced by anything read in the newspapers or heard on the radio or in private conversation. In other words, the juror sits up the witness.

To reconcile all the testimony is impossible, and it is for you members of the jury, upon careful consideration of all the proven facts and incidental circumstances, to determine what the truth is.

You should consider - and naturally would, I think - a witness's demeanor, his background, his or her candor, or lack of candor, possible bias, means of information, and accuracy of recollection. You should consider whether the witness's testimony is supported or whether it is contradicted by other credible testimony or circumstances.

You should particularly consider whether a witness has an interest in the case, for when a witness has an interest in the result, the temptation is strong to color his or her testimony, or possibly withhold certain facts. Do you believe that testimony has been affected by a personal interest of the witness? And if so, to what extent? You should weigh all these factors in considering how and to what extent such testimony is worthy of credit. This does not mean that every witness will falsify because he has an interest.

As to the testimony of Harry Gold, you must consider it carefully and act upon it with caution, for Gold is accused of being an accomplice. However, a defendant can be convicted upon the uncorroborated testimony of an accomplice whose testimony satisfies the jury of the defendant's guilt beyond a reasonable doubt.

If you find that any witness has made a material misstatement with the intention of misleading you, you may disregard that part of the witness's testimony; you may disregard all of it if you do not believe it, or you may accept part of it if you find part of it is reliable and

disregard the rest of it.

Now just what is the burden placed upon the prosecution in this case? Under our system of law, the defendant is required to offer any testimony in his or her own defense. He or she may just sit at the counsel table and say nothing; offer no evidence at all in his or her defense, and the burden is on the Government. In other words, he or she is not called upon to prove his or her innocence. That is our system of law. You may not infer guilt nor even draw a single unfavorable inference against the defendants because they did not take the stand. While the defendants did not take the stand, they offered testimony in their own defense. They have offered testimony to the effect that the blueprints and data given to Helen or Gold by Abraham Brothman were ordinary industrial and chemical processes for which Brothman, and the various companies he worked for, were soliciting customers; that there was nothing secret, as they contend, about these processes and that the essential parts of the processes could be found in articles published by Brothman or any textbooks or similar places. The defense's contention based on this evidence is that the relationship between Brothman, Helen, Gold and Golas was a regular business relationship testified to before the grand jury.

The burden is on the Government in a criminal trial to prove that the defendants are guilty. What is the extent of that burden? The Government must prove the guilt of the defendants beyond a reasonable doubt. You may well ask what is meant by the expression "beyond reasonable doubt." I believe the words themselves give the answer. It is such a doubt as is based on reason, that

is, a doubt which a reasonable man might entertain. It is not a fanciful doubt; it is not an imagined doubt; it is not a doubt that a juror might conjure up in order to avoid performing an unpleasant duty. Let me repeat, it is a reasonable doubt, that is a doubt which arises in a juror's mind because of something in the evidence in the case, or the absence of evidence in the case. The burden, therefore, is on the Government to establish the guilt of the defendants beyond a reasonable doubt.

It is not necessary for the Government to prove the guilt of the defendants beyond a possible doubt. If that were the rule, few men or women, however guilty they might be, would be convicted. The reason would be that in this world of ours it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, which by its nature is not susceptible of mathematical precision or certainty.

In consequence, the law is such that in a criminal case it is enough if proof that the defendants are guilty be established beyond a reasonable doubt, not beyond all possible doubt.

I have already pointed out that the defendants have no burden to sustain. They are presumed to be innocent and this presumption continues throughout the trial and during the deliberations of the jury, and is overcome when, and only when, their guilt is established beyond a reasonable doubt. I have told you before that the indictment is not evidence and has no probative force whatever. It is merely a pleading prepared to acquaint the defendants with the charge against them.

If you find that the evidence respecting the defendants or either of them is reasonably consistent

with innocence as with guilt, each defendant or defendants should be acquitted. If you find that the law has not been violated, you should not hesitate for any reason to render a verdict of not guilty. But, on the other hand, if you find, in accordance with these instructions, that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Rulings made by me in the course of the trial are rulings purely on matter of law. They reflect no views of mine on the facts of the case. You should reach your verdict without fear or favor, without sympathy for or against either the defendants or the Government.

You are instructed that the question of possible punishment of the defendants in the event of conviction is no concern of yours, and should not in any sense enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court.

You cannot allow a consideration of the punishment which may be inflicted upon the defendants to influence your verdict in any way; the desire to avoid the performance of an unpleasant task cannot influence your verdict, as I have said before.

You can see, ladies and gentlemen, that the case ultimately resolves itself into a simple issue. Intelligent men and women such as you are should have no difficulty in arriving at a verdict, and it is important that you make every effort to arrive at a just verdict.

Your verdict will be guilty or not guilty as to Brothman on Count 1 of the indictment; guilty or not guilty as to Moskowitz on Count 1 of the indictment, and guilty or not guilty as to Brothman on Count 2 of the indictment.

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I think, ladies and gentlemen of the jury, that I have covered all that I intended to cover in this charge, and unless counsel have some additional requests to make I shall discharge the alternate jurors and ask the jury to retire.

THE COURT: I am prepared to rule on the motions of the defendant to dismiss the indictment and addressed to the issue of the indictment.

Count 1 of the indictment charges that Abraham Brothman, Miriam Moskowitz, Harry Gold and diverse other persons did unlawfully, wilfully, knowingly and corruptly conspire, conspire, confederate and agree together, and with each other, to defraud the United States of America in the exercise of its governmental functions of administering and enforcing the criminal laws of the United States of America, and to influence, obstruct and impede the due administration of justice therein, in violation of Title 18, United States Code, Section 241 (1946 ed.).

The defense alleges that the charge against the defendant Brothman in count 2 of the indictment is of the type which will not permit of an additional and

separate conspiracy count. The case which is decisive of this issue is *Finkerton v. United States*, 328 U.S. 640, decided by the Supreme Court in 1946. In that case the Supreme Court said that the common law rule that substantive offenses merged in the conspiracy has little vitality in this country except in certain notable instances.

It is apparent that the defense seeks to bring this case within the first of those notable exceptions. That is, that the conspiracy count will not lie where the agreement of two persons is necessary for the completion of the substantive crime and there is no ingredient in the conspiracy which is not present in the completed crime.

This doctrine was previously applied in *Blade v. United States*, 86 Fed. (2d) 786, decided in the Tenth Circuit in 1936, wherein the Court said:

"Where concert is necessary to an offense such as bribery, conspiracy to commit the substantive offense will not lie."²

This doctrine is not applicable in the present case. To begin with, count 1 charges that several persons conspired, including the defendant Moskowitz. He is not named or charged in count 2 of the indictment. Thus there is an ingredient in the conspiracy which is not present in the crime charged in count 2.

Furthermore, concert of action is not necessary for the substantive offense charged in count 2 of the indictment. The gist of the charge in count 2 is that the defendant Abraham Brothman endeavored to influence a witness before the grand jury in violation of Section 241.

As has been stated in several cases, namely, *United States v. Russell*, 245 U. S. 138, decided in 1917, and as reiterated in footnote 5 of *Glade v. United States*, 85 Fed. (2d) at page 789, in which footnote the following language found in *United States v. Russell* was quoted,

"Section" (that is, Section 241) "is not directed at success in corrupting a juror but at the endeavor to do so. Experimental approaches to the corruption of a juror are the endeavor of the section. Guilt is incurred by the trial - success may aggravate; it is not a condition of it."

This count 2 charges unilateral action on the part of Brothman in endeavoring to influence a juror. No concert of action was required to violate Section 241. The violation of the statute was complete if there was an endeavor. *Castro v. United States*, 178 Fed. (2d) 884, decided in the Ninth Circuit, 1949.

The success of the endeavor, that is, the actual subverting and impeding of justice was not necessary to complete the crime. Moreover, Section 241 of Title 18,

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which was in effect at the time of the alleged conspiracy. The inclusion of the price charged in the indictment, made it a crime for two or more persons to conspire to violate Section 241.

The enactment of a special conspiracy section to go with Section 241 indicated that it is not the type of substantive crime that would preclude a conspiracy count. At any event, it would not prevent an attack on such a count merely on the face of the indictment.

The motion by the defendants addressed to count 1 of the indictment is at best premature, and is denied at this time.

The defendants also moved to dismiss for duplicity count 2 of the indictment. That motion must be denied on the principle that where a statute denounces several acts as a crime, they may be charged in one indictment, or in a single count if they are connected in the conjunctive. An indictment drawn in that manner is not duplicious and it suffices to prove any one or more of the charges. *Frontmen v. United States*, 100 Fed. (2d), 228, Tenth Circuit, 1939; *Volpe v. United States*, 85 Fed. (2d), 35, Eighth Circuit, 1936; and *Price v. United States*, 180 Fed. (2d), 283, Fifth Circuit, 1945.

The motion of the defendants to dismiss the indictment is denied in its entirety.

Height:

Hair:

Eyes:

Distinguishing marks:

(Signature of applicant)

ADDRESS OF IDENTIFYING ADDRESS

At the address written below my
I declare to be a citizen of the
I know and believe; further,

[Signature]
(Name of witness)

No.

19

1000K-2000

SECRET AIR COURIER

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Date: December 12, 1950

Legal Attache
London, England

John Edgar Hoover, Director
Federal Bureau of Investigation

Subject: ABRAHAM BROTHMAN
ESPIONAGE - R

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HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE.

Classified by 3042 PWT/IMW
Declassify on: OADR 4/1/87

Pursuant to your oral request, there is being furnished hereinafter information concerning the indictment and prosecutive action with respect to Abraham Brothman and Miriam Moskowitz. It is noted that you desire this information for transmittal to the [redacted] who have made specific inquiry relative thereto.

The Federal Grand Jury in the Southern District of New York returned an indictment against Abraham Brothman and Miriam Moskowitz on July 29, 1950. This indictment charged them with conspiracy to defraud the government and to obstruct and impede the administration of justice, by reason of certain testimony which was given in 1947 before a Federal Grand Jury which was considering possible violations of Federal criminal statutes. (u)

The trial in this case commenced on November 10, 1950, and both Brothman and Moskowitz were found guilty by the jury on November 22, 1950. Brothman was thereupon sentenced on November 28, 1950, to serve two years in the penitentiary and pay a fine of \$10,000 on Count No. 1 of the indictment, and to serve five years and pay a fine of \$5,000 on Count No. 2. These sentences were to run consecutively and Brothman was ordered to stand committed until his fine was paid. Moskowitz was sentenced on the same date to serve two years in the penitentiary and pay a fine of \$10,000. She likewise was ordered to stand committed until her fine was paid. (u)

DEC 19 1950
COMM-FBI

- Mr. Tolson
- Mr. Ladd
- Mr. Clegg
- Mr. Glavin
- Mr. Nichols
- Mr. Rosen
- Mr. Tracy
- Mr. Harbo
- Mr. Belmont
- Mr. Mohr
- Miss Gandy

cc - Foreign Service Desk
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Exempt from GDS, Category 2
Date of Declassification Indefinite

ASSISTANT ATTORNEY GENERAL JAMES M. McINERNEY

December 19, 1950

DIRECTOR, FBI

ABRAHAM BROTHMAN
ESPIONAGE - R

3355 10/17/75 WAB/nc
CONFIDENTIAL

For the completion of your file there are being furnished herewith copies of the following reports which have been submitted in the above-entitled matter:

Report of Special Agent Joseph J. Falgouta, dated December 4, 1950, at New York City;

Report of Special Agent Robert G. Jensen, dated December 4, 1950, at Philadelphia;

Report of Special Agent Willis W. Bowers, dated December 6, 1950, at Washington, D.C.

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DATE 4/8/87 BY 3042PWT/

Enclosures
EVE:mpa/hc

APPROVED FOR RELEASE
AUTHORITY NND 880017
DATE 10/27/87

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FBI

- Mr. Tolson
- Mr. E. A. Tamm
- Mr. Clegg
- Mr. Glavin
- Mr. Ladd
- Mr. Nichols
- Mr. Rosen
- Mr. Tracy
- Mr. Harbo
- Mr. Belmont
- Mr. Mohr
- Tele. Room
- Miss Gandy

59 JAN 17 1951

REC 50 DEC 20 1950
COMM. FILE

Handwritten initials

Loyd A. Davis, Co 4 VA C^o nter Bath NY
December 7 1950

Mr Edgar Hoover,
Chief F. B. I.
Washington D. C.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/7/87 BY 3042 PWT/lmw

2-1

Dear Sir:

I am referring to the picture in the Daily Mirror, New York City, dated November 29, 1950, of Miriam Moskowitz, 34, and Chemical Engineer Abraham Brothman, 2 36, convicted and sentenced in Federal Court.

I am asking you to inform me if there be any way for me to claim an award. I was the first person who reported their activities as spies.

I was working in Depew at National Battery Company before entering the army, 1943. One day I was trying to get a ride from Depew, NY, and this above couple picked me up in their car. I knew at once they questioned that they were spies. My Company was making batteries for the submarines. The driver, Brothman, began asking me about these batteries.

Later on I became stationed as mess sergeant at Mattidale Bomber Base, Syracuse, N. Y. I met them often for they were snooping around close to camp. I fibbed and told them I was a bomber, and they asked all sorts of questions about the explosives. I reported them to Captain Baily and Captain Smythe and Lieutenant Pfiffer at the Base. I also reported these two to the F.B.I. and to the American Red Cross in Syracuse. I had a fight with Brothman and I was compelled to pay him 40.00 for damages done. This happened while I was stationed at this Base.

Please tell me if there be any chance of claiming a reward for being the first person reporting these spies. My story sounds fantastic, but I can furnish witnesses.

Respectfully yours,

Loyd A. Davis *Emrich a*

*Let Albany
cc Byg & H. of
enclosing copy Davis ltr
12-18-50
EZE*

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DEC 11 1950

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INDEXED - 37

EX-4

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55 JAN 6 1951

[Handwritten signature]

SERVICE UNIT
SEARCH SLIP

4-22a

Supervisor Emrick Room 2244

Subj: Loyal A. Davis

Exact Spelling Searchers
 All References Initial DL
 Subversive Ref. Date 12-17-50
 Main File
 Restricted to Locality of _____

FILE NUMBER

SERIALS

MR [REDACTED]
MR [REDACTED]

MR Loyal

MR [REDACTED]

MR [REDACTED]

MR [REDACTED] b2 b7c

MR 100-3-77-75

MR 100-150235-5

MR [REDACTED]

MR 62-0-16014

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 4/7/87 BY 3045PWT/1MN

Initialed

December 18, 1950

SAC, ARMY

DIRECTOR, FBI

BRANSON BROTHMAN

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INDEXED - 7

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/6/87 BY 3042PWT/H

The Bureau is in receipt of a letter dated 12/7/50 from one
Lloyd A. Davis, copies of which are being forwarded your office and
offices receiving copies of this communication. It is noted that Davis
alleged that he furnished information relative to Branson Brothman and
Miriam Moskowitz to the FBI at Syracuse, New York.

A complete check has been made of the Bufiles concerning this
individual, but no record was located indicating that any information
was furnished to the Bureau by Davis concerning instant matter, nor
could any identifiable record as to Davis be located in the Bufiles.
It is therefore requested that your office make an immediate check of
your files and advise the Bureau as to any information which you may
have either received from or concerning this individual.

Inasmuch as Davis gave his address as the Veterans Administr-
Center, Bath, New York, it was not considered advisable to acknowledge
the communication. However, based on information furnished by the
Buffalo Division as the result of a check of its files, and a determination by
Buffalo Division as to the status of Davis at the Veterans Administr-
Center, the Buffalo Division should consider the advisability of di-
rectly contacting Davis and personally acknowledging his letter.

In the event this letter action is taken by the Buffalo Di-
vision, complete information should be obtained from him as to his knowledge
of the activities of Brothman and Moskowitz. It is suggested further
at the time of this interview he be advised that the Bureau has no
knowledge as to any records having been offered in connection with
Brothman matter.

100-365040

cc: Buffalo (100-365040)
New York (100-365040)

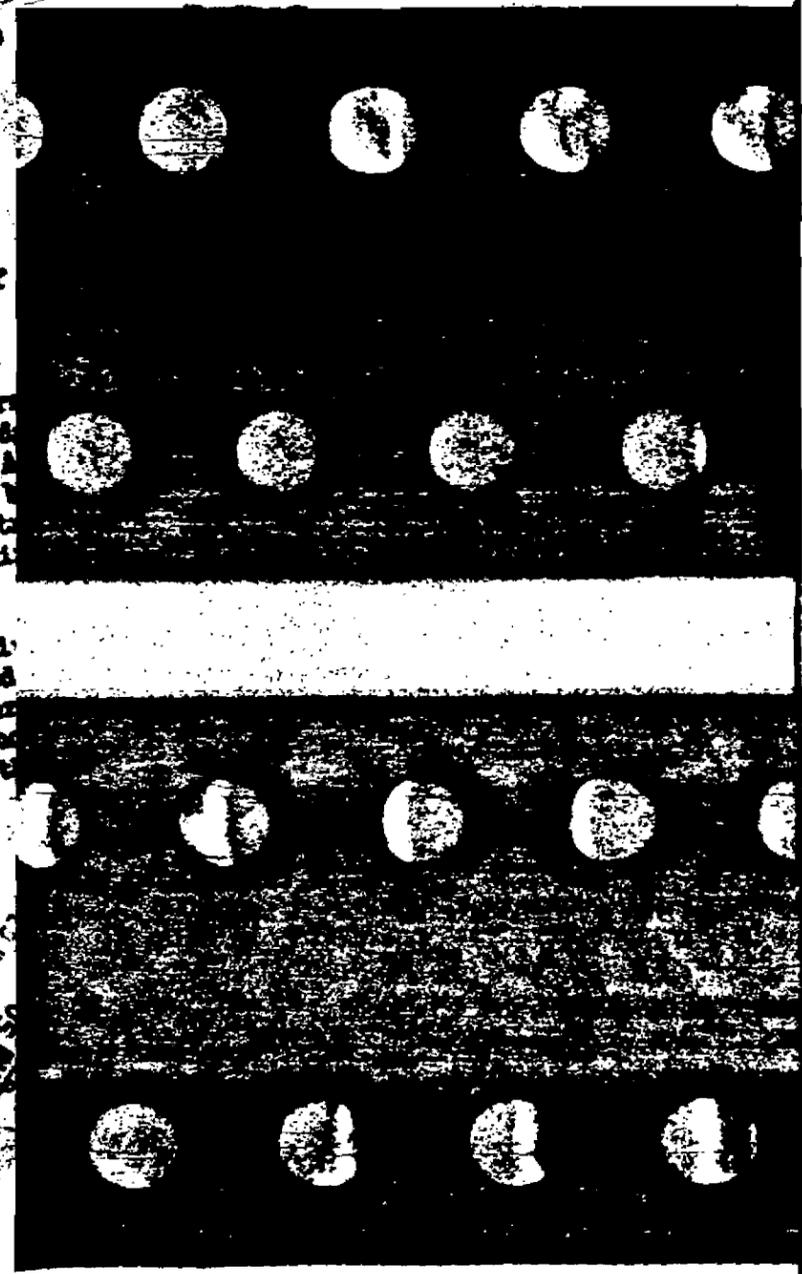
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DEC 19 1950



SERVICE UNIT 4-22a
SEARCH SLIP

Supervisor _____ Room _____

Subj: Floyd A. Davis

Exact Spelling on/initial Searchers
All References _____ Initial P.C.
Subversive Ref. _____ Date 12-22-50
Main File _____
Restricted to Locality of _____

FILE NUMBER SERIALS

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[REDACTED] b7c
NR 100-111649-13
Floyd Allen
NR 100-111649-22
[REDACTED]
NR Floyd Augustus
[REDACTED]
NR Floyd Avery
NR 100-111649-23

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DATE 4/6/87 BY 3042PWT/mw

Initialed _____

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI
 FROM : *RWW* SAC, Albany
 SUBJECT: ABRAHAM BROTHMAN
 ESPIONAGE - R

DATE: December 22, 1950

pg 2

Rebulet December 18, 1950. The indices of the Albany Office reflect no record of LOYD A. DAVIS. A review of the BROTHMAN file fails to indicate that DAVIS furnished any information to this office.

- RU ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 4/7/87 BY 3042PWT/lmw

65-1640
 cc: Buffalo
 PRB:jmk

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EX-35

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Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

DATE: December 15, 1950

FROM : SAC, New York

SUBJECT: ABRAHAM BROTHMAN, Was
ESPIONAGE - R

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/8/87 BY BBO/2PWT/lmw

Rebutal 12/14/50.

Enclosed is photostatic copy of GOLD'S testimony given at subject's trial recently held in New York City.

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JMC:IM
100-95068

*let see memo sent to Mr. Quinn
ENCLOSURE ON BUCKY RAMPT 4/29/59 GA*

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lunch this morning it will be a recess for the day.

(Discussion off the record, at the bench, among Court and counsel, not in the hearing of the jury.)

(The following in the hearing of the jury):

THE COURT: Now, the discussion at the bench here concerned the recalling of Miss Bentley as a witness. The Government will proceed with the witness it had contemplated putting on the stand and the testimony of that witness will be interrupted when Miss Bentley becomes available.

MR. SAYPOL: I have sent out to see that she is brought down as quickly as possible.

THE CLERK: The Government calls Harry Gold.

H A R R Y G O L D, called as a witness on behalf of the Government, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SAYPOL:

Q Mr. Gold, will you be completely at ease, and if you address yourself to me the jury and the Court will hear you without difficulty. You realize that is important.

A (Witness nods.)

Q What is your residence address? A I live at 472 Kindred Street, in Philadelphia, Pennsylvania.

Q What is your profession? A I am a biochemist.

Q Do you stand at this time convicted of any crime?

A Yes.

Q Of what crime? A I have pleaded guilty to the crime of espionage.

Q What sort of espionage? A I was instrumental in turning over information on atomic energy to the Soviet Union.

Q Where does that conviction stand of record, in what court? A I entered a plea of guilty on July 20th in Philadelphia, the federal court there, before James P. McGranery.

Q That is July 20th of this year? A July 20th of 1950.

Q What is the situation in respect to the imposition of sentence? A Sentence is due to be imposed on December 7th of this year.

Q Do you stand charged with any other crime?

A Yes, I am charged with conspiracy to commit espionage with a David Greenglass and certain other persons.

Q Where is that charge pending? A In New York City.

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Q You mean in this court?

A In this court.

Q Have you interposed a plea in that case yet?

A I have not been to court to plead in that case.

Q Do you know of any other charges which are pending against you as a matter of record in any court?

A I do not.

Q In connection with the plea of guilty which you have told us about, and likewise in connection with any other charges pending or unknown to you, has any offer or promise of any kind, directly or indirectly, been made to you in connection with your appearance here as a witness?

A No.

MR. KLEINMAN: You saw me raise my hand--

THE WITNESS: I am sorry.

MR. KLEINMAN: Please don't answer. I have an objection to enter to that. It is not proper direct examination.

THE COURT: Overruled.

MR. KLEINMAN: Exception.

Q Your answer is No? A My answer is No.

Q Where were you born? A I was born in Bern, Switzerland, on December 12, 1910.

Q Has Gold always been your name? A No, I was born Heinrich Golodnitsky.

Q In connection with your arrival in this country will you tell us the details, and, as far as you know, what the evolution of the name Gold was.

A Some years after we arrived in the United States my parents told me that when we had arrived at Ellis Island in July of 1914, the name Golodnitsky had been misspelled

on separate sets of the immigration papers. As a result, in the confusion we were almost denied entry into the United States. When the matter was finally straightened out, one of the Immigration officers made the suggestion to my father that to save any future difficulty of a like nature the name be changed from Golodnitsky to Gold. He stated that such a procedure was legal at that time.

Q Did you know in what year you arrived in this country? A We came to the United States about July of 1914.

Q What is the record of the family's residences in this country after arrival?

A We arrived in New York and then went directly to Little Rock, Arkansas. We stayed there only very briefly and went on to Chicago and resided in Chicago for about nine or ten months until the spring of 1915.

THE COURT: How old did you say you were, Mr. Gold?

THE WITNESS: I am 39 years old.

Q From Chicago where did the family go?

A From Chicago we moved to Philadelphia.

Q When? A In the spring of 1915, and we lived there continuously up until the present.

Q Are you a citizen of the United States?

A Yes, I am.

Q In what circumstances did you acquire naturalization? A I was naturalized on my father's papers in 1922.

Q I take it your father is alive?

A My father is now alive.

Q How about your mother? A My mother died in September of 1947.

Q Do you have any other family? A Yes. My brother and father live together at the address I have given in Philadelphia.

Q What is your status in so far as marriage is concerned? A I am single and I have never been married.

Q What was your father's occupation?

A My father is a carpenter and a cabinet maker.

Q Does he still work at his trade?

A Up until a very recent illness --

MR. KLEINMAN: I submit that is not relative to our issue and perhaps a definite answer Yes or No might suffice.

THE COURT: I don't think anybody is injured by it. Let us have a little background of the witness.

MR. SAYPOL: Does your Honor desire it or not desire it?

THE COURT: I said I would like it.

MR. SAYPOL: I thought it was appropriate.

THE COURT: I think it is appropriate and when I think you are going too far afield, I will so advise you, Mr. Saypol.

THE WITNESS: My father is still employed at his trade of cabinet maker.

Q How old a man is he? A 74.

Q Will you tell us what your education has been?

A I went to the Sharswood Grammar School in Philadelphia up until 1925. Then I entered South Philadelphia High School, graduated from there in the summer of 1928. In October of 1930 I entered the course in chemistry at the University of Pennsylvania's Town Scientific School. I left in March of 1932. The next schooling that I had was at the Drexel Institute of Technology's evening school in the course in chemical engineering. I went to Drexel from February of 1934 until June of 1936, and I received my diploma in June of 1936, diploma in chemical engineering.

Q Did you have any further education?

A In September of 1938 I went to Cincinnati, Ohio, and entered Xavier University in the course in chemistry. I attended Xavier for two years and graduated in June of 1940.

Q Did you take a degree? A Yes, I did. I received the degree of Bachelor of Science in Chemistry.

Q With honors? A I graduated summa cum laude.

Q At various times since 1936 have you taken any other courses? A In 1936 I took a scholarship course given by Drexel in psychology, and at various times after that, beginning around 1943, I took a number of advanced courses in chemistry, distillery practice, fermentation chemistry, physiological chemistry, pharmacology, and a number of others. These continued right up until the end of 1949. Whenever I needed further study, I took it.

Q What degree or degrees do you hold?

A I hold the degree of Bachelor of Science in Chemistry from Xavier University.

Q In the same way will you tell us what has been the record of your employment since graduation from high school? A The first job that I held I obtained immediately after my graduation from South Philadelphia High. This was in September, 1928, and was with a woodworking firm called Gift Crafters in Philadelphia. I held this job from September of 1928 until December of that year. In January of 1929 I began to work for the Pennsylvania Sugar Company and its subsidiaries, and continued my employment with that firm for a period of 18 years, interrupted by several leaves of absence to go to school, and one occasion on which I was released.

Q I take it that that was in February 1933?

A In December of 1932 there was a general lay-off in the company's distillery division and I was one of the people whose job was terminated.

Q When did you leave the Pennsylvania Sugar Company finally? A With the closing down of the company's distillery division in February of 1946, I was laid off permanently.

Q What happened thereafter? A In late May of 1946 I began to work for the firm of Abe Rothman & Associates in New York City.

Q How long did you continue there?

THE COURT: When did you say, May?

THE WITNESS: In late May of 1946.

A (Continuing) I stayed with the Brothman organization from May of 1946 until June of 1948.

Q Now, in those approximately two years, what was the nature of your employment with the Brothman firm?

A I was the chief chemist in charge of the laboratory.

Q What was your salary? A I was paid a salary of \$100 a week.

Q What was your employment from September of 1948 up until the present time? A In September of 1948 I began to work at the Philadelphia General Hospital in their heart station as part of a team of doctors, chemists

and technicians, carrying out a research program on cardiac disease.

Q I take you back now, Mr. Gold, to sometime in 1933. At that time I think you told us you were employed by Holbrook Manufacturing Company? A Yes. I don't think that I have mentioned the Holbrook firm yet.

Q Well, as I recall it, I asked you about a lapse in 1933 in employment. Will you tell us about that.

A Yes. When I was laid off at the Pennsylvania Sugar Company in the distillery division in 1932 - in December of 1932 - in January of that year I heard of a job in Jersey City, and in February I went to the Holbrook Company, a soap manufacturing firm, was introduced to the owner by the man who was at that time their chemist and replaced him. This man was going on to a better job.

I stayed with the Holbrook firm from February of 1929 to just before the bank holiday - I am sorry, February of 1933 up until September of 1933.

Q During this time was there an occasion when you began to evince an interest in Communist affairs?

A It began in this fashion --

THE COURT: About when was this?

MR. SAYPOL: 1933, at the time that he was employed at Holbrook.

MR. KLEINMAN: I object to the manner in which he

started to answer the question. The question was put to him. did he evince an interest in 1933, and the witness started to say "It began in this fashion." I object to any detailing --

THE COURT: The objection is sustained.
Did you evince an interest in 1933 in Communism?

THE WITNESS: Yes, I did, your Honor.

THE COURT: All right.

Q Will you explain what your activities were?

MR. KLEINMAN: I object to that as incompetent, irrelevant and immaterial, and not within the issues of this indictment.

MR. SAYPOL: If nothing else, it will be connected.

THE COURT: It will be connected?

MR. SAYPOL: Indeed.

THE COURT: Overruled.

MR. KLEINMAN: May I have an exception to this entire line of examination, which I understand is subject to connection?

THE COURT: I am not going to rule on an exception to the entire line. I just do not know what the line is going to be. If you are referring to any past activities of the witness with the Communist Party - is that what you are referring to by this whole line?

MR. KLEINMAN: Yes, sir.

THE COURT: Very well, you may have that exception.

Q Do you recall the last question, Mr. Gold?

A Yes, I do.

Q Will you answer it, please. A Beginning shortly after I started to work - shortly after I started to work for the Holbrook Company, the man who had obtained this job for me and I attended three meetings of the Communist Party in Jersey City. Sometime later I went to New York and in the area around Union Square I made inquiries at a Communist workers' school about the courses which were given there in the evening. This was the sum and total of my Communist activities while I was at the Holbrook firm.

Q Have you ever been a member of the Communist Party? A I have not.

THE COURT: Did you actually attend that school?

THE WITNESS: I never attended the school. I merely made the inquiries.

Q You told us a little while ago concerning your plea of guilty to a charge of espionage --

THE COURT: Did I understand you to say that you have never been a member of the Communist Party?

THE WITNESS: I have never been a member of the Communist Party.

Q I said a moment ago before the Court's question, if you recall, that you told us that you entered a plea of guilty to a charge of espionage in Philadelphia. When and under what circumstances did you enter upon espionage activities?

MR. KLEINMAN: I object to that, sir.

MR. SAYPOL: My position in that regard is identical with that which I voiced before, that is, it shall and will be connected.

THE COURT: You will definitely connect that up with the charges alleged in the indictment?

MR. SAYPOL: Yes, your Honor.

THE COURT: Objection overruled.

MR. KLEINMAN: May I have an exception again to this line of examination concerning his espionage activities?

THE COURT: Very well.

A In --

THE COURT: I want to call the attention of the ladies and gentlemen of the jury to the fact that the defendants in this case are not charged in this indictment with espionage. They are charged with obstruction of justice and endeavoring to influence a witness, and the witness testifying, Gold, is named with the defendants, although not a defendant in the indictment but he is named

together with them as a co-conspirator to impede the investigations of the grand jury.

Proceed.

MR. KLEINMAN: May I ask your Honor, in view of your Honor's instructions to the jury, I believe your Honor used the language that they are not charged in the instant indictment, will your Honor tell the jury that there are no other indictments against these defendants?

THE COURT: I know of no other indictments.

Q Do you recall my question, Mr. Gold? A I do, Mr. Saypol.

Q Proceed, please. A As a result of the series of conversations through 1934 and up to the spring of 1935 - these conversations were with the man who had obtained the job for me at the Holbrook Company - he and I entered into espionage for the Soviet Union. This was industrial espionage and began in the spring of 1935. We stumbled very amateurishly around for several months.

MR. KLEINMAN: I move to strike out these conclusions and speeches.

THE COURT: Strike that out.

A (Continuing) In November of 1935 --

Q Just wait a moment. Do you understand what the nature of the objection is? A I understand the nature.

Q You are not permitted to characterize here.

A I see.

THE COURT: Mr. Kleinman characterized it as a speech but we will let that go.

Q Tell us what you did. A I was merely describing what happens --

Q Tell us what you did. A As I said, we entered into espionage in the spring of 1935. In November of 1935, as a result of a conversation I had had with the man who had obtained for me the work at the Holbrook Company. I came to New York and was introduced by this man to a person who said he was Paul Smith. Paul Smith identified himself to me as a representative of the Amtorg Company in New York, but he said that his principal function --

MR. KLEINMAN: I object to these conversations with someone not here.

THE COURT: Sustained.

Q What happened --

THE COURT: You cannot tell us what you said to Mr. Smith or what he said to you, but you can tell us what you did as a result of any conversations you may have had.

THE WITNESS: I see.

A As a result of this first conversation with Smith and a series of others which took place at very regular intervals thereafter, I began to feed to Smith for transmission to the Soviet Union a large amount of data relat-

ing to certain industrial processes. These were processes which were held and operated by subsidiaries of the Pennsylvania Sugar Company, and they related principally to industrial solvents of the type used in formulating varnishes and lacquer.

Q For how many years did your activities in espionage continue? A I was engaged steadily in espionage for the Soviet Union from November of 1935 up until February of 1946.

Q What was the general nature of the material which you were transmitting? A Up until 1940 it was I who supplied material which I had myself obtained and it related principally to industrial chemical processes as carried on here in the United States. From 1940 on I began to function as a courier in that I was introduced to various people in the United States, obtained from them data, and in turn gave it to my Soviet superior at the moment.

Q What sort of data was it in 1940? A This data concerned not only industrial chemical processes but also a large amount of material relating directly to military matters.

Q Generally, what was the procedure for obtaining this material and conveying it?

MR. KLEINMAN: I object to this question, if your

Honor please. I assume this is the beginning of a new line of examination and I object to the line, as to any pattern of procedure.

MR. SAYPOL: It is merely an extension of the witness's immediately preceding testimony.

THE COURT: Are you going to connect this up with the defendants?

MR. SAYPOL: Yes, sir.

THE COURT: You are going to prove that the same procedure was followed?

MR. SAYPOL: Yes, your Honor. Everything that I ask here will ultimately be connected. I have borne that in mind in framing my questions.

THE COURT: Overruled.

MR. KLEINMAN: May I have an exception, if your Honor please.

MR. SAYPOL: I will withdraw the last question.

Q Will you tell us generally what the modus operandi was for maintaining contact with intermediaries and for transmission of information, and usually in what form this information was? A I would be introduced by my Soviet superior to an American who would furnish me with information. These introductions were of two kinds. Either I was given a precise set of instructions as to how to get in contact with the American who would give the informa-

tion, or it was a personal introduction.

After that I was the sole contact for the greater part of the time with the Americans who were feeding me the data for transmission to the Soviet Union.

I would meet him. I would give him very exact instructions as to what sort of information was desired. If there had been a previous courier in contact with him, I would first endeavor to clean up everything that had gone before.

We had a very set technique. I would meet him. During this meeting I would discuss with the man what he had available. He would make definite commitments on certain dates to transfer information to me. I would come on those dates. The meetings were for an exact minute, and receive from him the information; take it with me, and by prearrangement, would meet with my Soviet superior and would turn the information over to whoever the man was who was my Soviet superior at that particular time.

My Soviet superior and I, or rather, the series of men who were Soviet agents with whom I worked, had very complete and complicated, but nevertheless sensible sort of arrangements. It took in everything. At one particular meeting with my Soviet contact, we would arrange the time and place. The time was to the minute, and the place for the meeting. We would also arrange for a second

meeting should the first one not come off; and we would also arrange for emergency meetings should any be desired in the interim. We would make - we would plan the full details of how we would be enabled to get in touch with each other should something happen if contacts were broken off. We would have a complete set of instructions between the two of us as to what steps or actions to take just in case we thought there was any possibility of us being watched, observed or followed in any manner. We went into full details when it was expected that I would receive information from an American source and would consequently be ready to turn it over to my Soviet superior.

THE COURT: Were these instructions or these details that you speak of, the subject of communication or discussion between you and Mr. Brothman or Miss Moskowitz?

THE WITNESS: They were the subject of communication at a later date.

THE COURT: All right.

THE WITNESS: Between Abe Brothman and myself.

THE COURT: Proceed.

MR. SAYPOL: May this be marked for identification, please.

X (Marked Government's Exhibit 9 for identification.)

BY MR. SAYPOL:

Q Mr. Gold, I show you Government's Exhibit 9 for iden-

tification, and ask you merely to say whether you recognize the likeness (handing)?

A I do.

Q Can you tell us who it is?

MR. KLEINMAN: I object to that as incompetent, irrelevant and immaterial, not with'n the issues of this indictment.

THE COURT: I can't tell.

MR. KLEINMAN: Well, I have seen the photograph, your Honor.

THE COURT: I know, but I don't know what it is.

MR. KLEINMAN: It is not one of these defendants.

THE COURT: I do not know how it is connected up and I must at this time overrule the objection.

MR. KLEINMAN: Exception.

THE COURT: But if it is proved that it is not connected just as all this other testimony is, I would then ask you to be specific in a motion to strike and I will give proper instructions to the jury.

Q Who was this man? A This man was my Soviet superior beginning about July of 1940. I knew him as Sam and I worked very steadily with him up until February of 1944.

MR. SAYPOL: I offer it in evidence.

MR. KLEINMAN: I object to it, sir.

THE COURT: Objection overruled.

X

(Government's Exhibit 9 for identification
received in evidence.)

(Mr. Cohn hands photograph to jury.)

Q When did you first meet Sam? A I met Sam
in July of 1940.

Q Do you know whether he had any association with a firm or any business, what his activities were, aside from acting as your Soviet superior?

MR. KLEINMAN: I object to that. It is not binding on these defendants and not within the issues of this indictment.

THE COURT: At this particular moment I will sustain that objection.

MR. SAYPOL: Very well.

Q Can you identify Abraham Brothman, a defendant in this case? A Yes, I can.

Q Will you point him out in the courtroom, please.

A That man is Abe Brothman (indicating).

MR. KLEINMAN: Indicating the defendant, your Honor.

Q When did you first meet Abraham Brothman?

A I met Abe Brothman on the night of September 29, 1941, in New York City.

Q Will you tell us the circumstances under which you met him. A As a result of a conversation I had with Sam in August of 1941, I came to New York in early September of that year to be introduced to a man who had been described to me --

MR. KLEINMAN: I object to this.

THE COURT: You came to New York to meet a man

who had been previously described to you. Don't tell us how he had been described.

THE WITNESS: I see. Thank you, your Honor. I met Sam but this meeting did not take place.

Q Just a moment. I understand that you came to New York as a result of a conversation with Sam.

A That is correct.

Q Did you meet a man? A I met a man.

Q That meeting at that time did not take place?

A The man did not show up. I met Sam, but the man was not there. The only one with whom I met was Sam.

Q Thereafter did you meet this man?

A Yes, I did.

MR. KLEINMAN: I object to this. This is the conclusion that the district attorney calls for which indicates the nature of the conversation which your Honor has excluded.

THE COURT: Objection overruled.

MR. KLEINMAN: Exception.

Q Did you meet the man thereafter?

A Yes, I did meet the man.

Q Was that man Abraham Brothman? A Yes, he was.

Q Now, come back and tell us about the details of finally meeting him. A As a result of a conversation that we had at the first scheduled meeting in September--

Q Conversation with whom? A Conversation with Sam.

MR. KLEINMAN: I object to this, if your Honor please.

THE COURT: He is not going to give us the conversation.

MR. KLEINMAN: I object to his beginning the answer which the district attorney has asked for as a result of a conversation with Sam.

THE COURT: Objection overruled.

THE WITNESS: As a result of a conversation I had with Sam at the first scheduled meeting early in September, 1941, I came to New York on September 22, again under instructions that I was to be personally introduced to the man I was scheduled to meet. Again this introduction did not take place, but instead I received from Sam a set of very precise and detailed instructions--

MR. KLEINMAN: I object to this. This is getting in some roundabout fashion conversations with somebody else which are hearsay and objectionable.

THE COURT: He is not telling us what those instructions are.

MR. KLEINMAN: He is characterizing the instructions to such an extent that it does not take much

to infer what they are.

THE COURT: Mr. Kleinman, the jury infers and we all infer many things from the facts that come in. That is our function. That is the purpose of the introduction of a lot of this evidence.

MR. KLEINMAN: I understand, sir.

THE COURT: But he is not giving us the details of his conversations. He is merely telling us what he did as a result of having received certain instructions.

MR. KLEINMAN: No, he is paraphrasing the conversations by saying "detailed instructions."

THE COURT: Leave out "detailed." He received additional instructions.

Q Do you remember now independently what the instructions were? A I remember many of the details of the instructions, many of the salient points.

Q Did you come to New York on the evening of September 29, 1941? A Yes, I did.

Q Where did you come from? A I came from Philadelphia came up by Pennsylvania Railroad.

MR. SAYPOL: May this be marked for identification, please?

(Marked Government's Exhibit 10 for identification.)

xxx

Q I show you this card, Government's Exhibit 10 for

identification, and ask you to examine it and tell me whether you recognize what it is (handing).

A I recognize this card.

Q Is it in your handwriting? A Yes, it is.

Q When was it made? A It was made on the night of September 22, 1941, upon receipt of instructions from Sam.

MR. KLEINMAN: I object to the latter part of the answer.

THE COURT: Objection overruled.

MR. KLEINMAN: Exception.

Q Is it a contemporaneous memorandum --

MR. KLEINMAN: I object to that.

MR. SAYPOL: I have not finished.

Q -- of the instructions which you made at the time of which you now have no present independent recollection?

MR. KLEINMAN: I object to that. That seems to be a circumvention of your Honor's ruling.

THE COURT: I believe he is trying to lay a foundation for the introduction of the exhibit itself.

MR. KLEINMAN: Wouldn't it be easier to ask if he had any present recollection of it?

THE COURT: I believe he has got to be very technical. This is undoubtedly one of those very technical pieces of evidence that might be -- I don't know -- an exception to the hearsay rule.

MR. SAYPOL: From law school days, past recollection recorded. Mr. Kleinman will remember that.

MR. KLEINMAN: I am afraid my law school days were too long ago.

I don't think he said he had no present recollection.

THE COURT: I don't think he answered the question.

MR. KLEINMAN: The question presupposes he has no present independent recollection.

THE COURT: Do I understand that he said that?

MR. SAYPOL: That is my recollection.

MR. KLEINMAN: May we clarify it by asking if he has any present recollection of it?

THE COURT: Have you any present independent recollection of it?

THE WITNESS: I have a present recollection of many of the details before I ever saw this card.

Q Do you have a recollection of all the details?

A No, I don't.

MR. SAYPOL: I offer it in evidence.

MR. KLEINMAN: I object to it.

THE COURT: Objection sustained.

MR. SAYPOL: Will your Honor hear me on that?

THE COURT: Yes.

(The following proceedings were had at the bench, outside of the hearing of the jury):

MR. COHN: This card is offered in evidence for this purpose through ensuing questions that will be developed that this card contains a detailed record of what Gold did on the night he actually met Brothman, on September 29th, and what he said to Brothman on the occasion of that meeting, of which --

THE COURT: I know that.

MR. COHN: But at this moment, the testimony is about September 22, 1941, and the only testimony now is that this card contains a statement of what Sam said to Gold on that night. As I understand it, your Honor has sustained that objection on the ground that what Sam said to Gold on that night would not be admissible, in the first place --

THE COURT: That is right.

MR. COHN: And therefore a memorandum containing that would not be admissible.

THE COURT: That is right.

MR. COHN: I am very well aware of that rule of law. I now state to your Honor that through additional questions which Mr. Saypol is going to ask, this thing will now be projected into not September 22nd but September 29th.

MR. SAYPOL: Indeed so.

THE COURT: At this point I am going to sustain the objection. I would like to have a short memorandum from you on that subject, but I am sustaining the objection on the ground that it is a recording of what Sam told him.

MR. COHN: As a matter of law, I think your Honor is right.

MR. SAYPOL: Please. As a matter of exception to the hearsay rule, in the State of New York, the law by which we are bound is this: where the witness has not a clear recollection or he has a recollection that is not refreshed by the memorandum --

THE COURT: It goes further, Mr. Saypol. You are right, but you don't go far enough. It must be a memorandum that he personally recorded or was recorded under his instructions, but it cannot be a memorandum of what somebody else told him. In other words, you cannot get in hearsay evidence by merely saying that it comes under the recollection-refreshed-rule. You can't.

You may proceed.

(The proceedings were resumed in open court as follows):

MR. SAYPOL: I will withhold my offer for the time being. I withdraw the last question.

BY MR. SAYPOL:

Q As a result of your conversation with Sam, did you

finally effect the meeting with Brothman on the night of September 29th? A I did.

Q Tell us what you did that night.

A That night I left work probably about 6.30 or so, went to the Pennsylvania Railroad station in Philadelphia, and from there went to New York.

THE COURT: This is what night?

THE WITNESS: The night of September 29, 1941, a Monday night.

Q Continue. A When I arrived in New York, I went to the area below 30th Street in the high 20s, and between Sixth and Seventh Avenues. On one of those side streets, after a wait of about 15 minutes, a car came along. This was exactly pursuant to the instructions I had been given.

MR. KLEINMAN: If your Honor please, I move to strike that out and I ask your Honor to instruct the jury to disregard that portion of his answer.

THE COURT: Overruled.

MR. KLEINMAN: Exception.

Q Go ahead. A I was following instructions.

MR. KLEINMAN: Again I move to strike that out.

THE COURT: Overruled.

THE WITNESS: After a wait of about fifteen minutes a car came along. I withdrew the card on which

I had written the instructions from my wallet --

MR. KLEINMAN: I object to that, sir.

THE COURT: Overruled.

MR. KLEINMAN: Exception.

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THE WITNESS: -- and checked the license number upon the card against that of the car. They agreed. I opened the door of the car. The man inside seemed startled, but he became reassured when I gave him the rest of the recognition signal as it was written upon the card.

MR. KLEINMAN: I object to this. We are getting in again what your Honor has already ruled out.

THE COURT: Overruled.

MR. KLEINMAN: Exception.

Q What did you say to him? A I said, "I bring regards from Helen."

MR. SAYPOL: Just a moment, I will withdraw that.

Q Was that man Abraham Brothman?

A That man was Abraham Brothman.

Q Tell us what you said. A I said, "I bring regards from Helen," and then I asked how was his wife.

Q What happened after that? A I introduced myself as Frank Kessler, and the man said that he was Abe Brothman.

We sat in the car awhile listening to the radio.

Q I show you Government's Exhibit 10 for identification again and ask you whether that exhibit is the card to which you have just referred as the card containing the memoranda you had made (handing).

MR. KLEINMAN: I object to that.

THE COURT: You mean you object to the question being asked? He is not offering it.

MR. KLEINMAN: I understand, sir, but I submit that the question is improper in view of your Honor's ruling.

THE COURT: I overrule your objection. I will permit him to ask the question.

A This is the card I removed from my wallet and upon which I had written the instructions --

MR. KLEINMAN: I object.

THE COURT: Just say yes.

THE WITNESS: Yes, this is the card.

Q Do you now have an independent recollection of the facts recorded on that card as you examined it on the night of September 29, 1941?

MR. KLEINMAN: I object to that as having been asked and answered before.

THE COURT: It has been asked and answered before.

MR. SAYPOL: I think his answer was he didn't

recall all of it. He recalls most of the details. I now renew my offer.

MR. KLEINMAN: I object to it.

THE COURT: I sustain it.

MR. SAYPOL: I reserve my offer.

Q What happened after you got in the car and you introduced yourself and Brothman introduced himself to you? A We sat for a while listening to the radio in the car, and it is possible that during this time I may have mentioned that I was a chemist. I am not sure of this. After we had sat in the car for a while, we drove to a Bickford's Restaurant somewhere on either Sixth or Seventh Avenue and between 33rd and 42nd Streets. I can't place it any closer than that except that I recall definitely that it was a Bickford's, and within the area I have given. In the Bickford's Restaurant, conversation ensued and according to the instructions I had been given by Sam --

MR. KLEINMAN: I object to this prefacing his testimony now by "according to the instructions." I ask your Honor to instruct him to desist from that practice.

THE COURT: Unless it is absolutely necessary. You just tell us what transpired between you and Brothman.

THE WITNESS: I will try to, your Honor.

THE COURT: As a matter of fact, we will take

our morning recess at this point. Ladies and gentlemen of the jury, you may retire.

(Short recess.)

MR. SAYPOL: May counsel approach the bench?

THE COURT: Yes.

(Discussion at the bench between Court and counsel not within the hearing of the jury, off the record.)

(Discussion resumed at the bench out of the hearing of the jury, as follows:)

THE COURT: On the record.

MR. COHN: I have gone into the law - I realized this problem here and I have gone into the law in some detail on this question. First of all, on Mr. Saypol's suggestion, I do not think it is a completely closed question --

MR. KLEINMAN: I am sorry, but I cannot hear Mr. Cohn.

THE COURT: The jury is not here and you can speak up.

MR. COHN: I do not know whether it is a closed question as to whether the conversation, when Sam told Gold concerning instructions, is admissible or not in the light of the prior testimony of Miss Bentley that Gold had agreed to accept those instructions.

THE COURT: You mean that Brothman had agreed.

MR. COHN: That Brothman, the defendant, had agreed to accept those instructions in the manner outlined and that he had eventually so accepted them, but passing that for one moment. I have gone into the particular ques-

tion --

THE COURT: Let me interrupt you. I agree with you that that is not a closed question.

MR. COHN: That is right.

THE COURT: We are just being careful, Mr. Cohn.

MR. SAYPOL: I think it is well settled.

THE COURT: If you have a good case, I have frequently heard the Court of Appeals say, in the days when I was an assistant, and I was chastised time and time again for it, why did I insist upon ruining a good case by putting in more evidence than I needed.

MR. SAYPOL: Ultimately all of these people will be brought right together.

THE COURT: I think you are doing a pretty good job of knitting this whole thing together right now. It just seems to fit right in, but we are still going to be shown because you will admit that this is not the usual or the ordinary case.

MR. COHN: If we could pass that for one minute, we can show you some authorities on past recollections recorded, and that is what I would like to be heard on.

THE COURT: Go ahead.

MR. SAYPOL: Do you have the view that I am trying to use this exhibit to try to recall his conversation with Sam, or to recall the incidents as they transpired at

the time he effected the meeting with Brothman?

THE COURT: That is correct.

MR. SAYPOL: I am doing the latter, not the former.

THE COURT: That is right, but you are introducing a separate document, a separate exhibit, to corroborate his oral testimony.

MR. KLEINMAN: That is it, to bolster it.

MR. SAYPOL: No, to establish the missing facts.

THE COURT: But it is corroborative also.

MR. KLEINMAN: In some respects.

MR. COHN: A very important piece of evidence in this case is that meeting with Brothman on that night because Brothman told the grand jury a completely different story as to how and under what circumstances he had met Gold, and I think that that becomes a very important part of our case, that Brothman met Gold --

THE COURT: There is no doubt that it is important.

MR. COHN: Gold has testified that on this card he had written down a license plate number, that when a car came along he looked at the license plate number that he had recorded on that card. He looked at the license plate number on the automobile and he got into the automobile and Mr. Brothman was in the automobile. Mr. Gold has also stated on his direct examination that he does not

have a present recollection as to what he had written on that card, the license plate number or the automobile license plate number on the car which he entered that night.

THE COURT: All right.

MR. COHN: If one more question is asked him, namely, -- I think he has already said that the two compared exactly, that the license plate number he had written down on that card and which he looked at at the hour at which that car pulled up that night, and the actual license plate on that car were one and the same, and he says he has no present recollection as to what that license plate was, that he remembers that it was accurately recorded.

THE COURT: Very well.

MR. COHN: Now, as to that one thing in particular I think the law is very clear and Mr. Foley has a little memorandum to that effect.

MR. SAYPOL: I would like to supplement what Mr. Cohn has said in a quotation from a case --

THE COURT: Incidentally, may I ask why it is necessary to press this question at this time. We are going to take an adjournment at one o'clock. Why can't I have a chance to mull this thing over this afternoon? Is it not better that we be careful and that we be pre-

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pared to rule on this thing tomorrow morning. You may submit anything you want to submit to me this afternoon.

MR. SAYPOL: We will hold this now. We have Miss Bentley here for further cross-examination. Is that right?

MR. KLEINMAN: Yes.

THE COURT: Very well, bring the jury in.

THE COURT: I don't want any conclusions of yours. Tell us what he said to you on that score.

A On one or two occasions Mr. Brothman asked me if officials in the Amtorg, if engineers in the Amtorg, appreciated the blueprints that were being sent through to them.

MR. SAYPOL: That is all.

MR. KLEINMAN: That is all.

(Witness excused.)

H A R R Y G O L D, resumed the stand and testified further as follows:

DIRECT EXAMINATION BY MR. SAYPOL: (Continued)

Q As I remember it, at the time of the recess we were talking about the first meeting with the defendant Brothman. Do you now have an independent recollection of the license number of the automobile?

A I remember only the fact that there was an N in the license number.

Q Do you remember now the street where the meeting was to be had and where it was had?

A All I can recall is that it was in the high 20's, between Sixth and Seventh Avenue.

Q Do you recall now all the details of the oral statement or message that you were to give to him as a signal of recognition? A I remember only certain of the

details.

Q You told us before that all of those matters were recorded on Government's Exhibit 10 for identification.

A Yes, I did.

Q Were the specific details of those matters I have just asked you about recorded on that card?

A Every single one of the details was noted on that card by me.

Q When you say all those details were recorded on that card by you, were they recorded subsequent to the meeting on September 29th or prior to the meeting?

A They were recorded prior to the meeting on September 29th.

Q How much time did you spend in Brothman's automobile that night after making the meeting?

A Possibly 20 or 30 minutes.

Q I think you told us you introduced yourself to him as Frank Kessler? A That was the name that I used, Frank Kessler.

Q What happened then after the session in the car?

A Brothman drove to a Bickford Restaurant, which is somewhere in the area between 33rd Street and 42nd Street and on either Sixth Avenue or Seventh Avenue, and we had a conversation inside the Bickford Restaurant.

Q What was the conversation? A Brothman made

inquiries of me. Abe asked me about the Soviet agent who had preceded me and whom he identified as a woman called Helen. He also asked about the welfare of the Soviet agent who had come before Helen. This person he identified as a man named John. Abe told me that he had had some difficulty with Helen principally due to the fact that she had no technical background and it had been technical information that he had been giving to her. Abe said that he had gotten along better with John because John seemed to have much more of an understanding of the nature of the data being furnished. I then asked about -- I am sorry -- Abe told me that he was very glad that I had come on the scene since I had identified myself as a chemist, and he felt that he could now much more adequately begin to again funnel information through me to the Soviet Union.

Q When he mentioned Helen and John, had you ever met either of them? A I never met Helen or John.

Q Either up to this day? A Up to this date.

Q Was there any conversation between you about Abe's employment? A At my request, Abe went into some detail about his background, said that he was a graduate of Columbia University, and he said that he was at that time employed as a chemical engineer by the Hendrick Manufacturing Co. of Carbondale, Pennsylvania, and New York City. Abe

gave me the telephone number of the Hendrick Company in New York. All that I can remember is that the exchange was Barclay 7.

Q Did he tell you where the office was?

A Abe told me that the office was in downtown New York, somewhere in the area of Church Street.

Q How much time was consumed in that fashion at Bickford's Restaurant? A We were together from approximately quarter to eleven up to about one a.m.

Q Did you say anything at that time to Abe about your personal, your marital status?

A I told Abe that I was married and had a wife and two children, twins.

Q Was that true? A That was a lie.

Q Did you tell him where you lived or where you were employed? A I told Abe that I was working as a chemist. I didn't identify the company, and I told him that I did not live in New York, but I did not identify the city where I did live.

Q Just digressing for a moment, in the conversation was anything said by Abe regarding the circumstances pursuant to which this meeting between you and him had been effected?

MR. KLEINMAN: I object to the form of that question, sir.

THE COURT: Will you read the question, please?

(Question read.)

THE COURT: You are objecting because it is leading

MR. KLEINMAN: It is leading, and I think it is so vague and wide that he might give any sort of answer.

MR. SAYPOL: I will withdraw it.

Q Did Abe say he was surprised at this meeting with you? A Abe gave no indication whatever that he was surprised.

Q Did he say anything indicating that this meeting was expected on his part?

MR. KLEINMAN: I object to this leading.

THE COURT: Overruled.

A The only indication that I had was the statement by Abe that he was happy to meet me because of my technical background and because of the fact that I was a chemist, he could again begin to furnish information to the Soviet Union.

MR. SAYPOL: I submit for your Honor's consideration at this time-- and I shall submit a suitable memorandum -- the admissibility of conversations with the witness's Soviet superior at the time conveying instructions to effect this meeting with the defendant Brothman. I shall reserve the point at this time.

THE COURT: Very well. You are referring to conversations with Golos?

MR. SAYPOL: No, not with Golos, but with his Soviet superior whom he has identified as Sam.

THE COURT: Very well.

Q Coming back for a moment to your conversation with Abe concerning the place where you lived --

THE COURT: May I have that memorandum in the early afternoon?

MR. SAYPOL: Yes, sir.

Q Coming back to the conversation in Bickford's with Abe regarding the place where you lived, what did you tell him? A I told Abe that I did not live in New York City, but I did not identify the town in which I had my residence.

Q Did you tell him where you were employed?

A I did not tell him where I was employed except that I was a chemist and working in that field.

Q These two matters and the statement you made to him about your marital status, were those made on the basis of instructions which you had received from Sam?

A No.

MR. KLEINMAN: I object to this. Just a moment, Mr. Gold.

MR. SAYPOL: May the ruling be reserved pending the submission of the memorandum?

THE COURT: You will withdraw the question then.

MR. SAYPOL: I want the question on the record for the basis of establishing the ruling.

THE COURT: You will not press for the answer then.

MR. SAYPOL: I will not press for an answer.

Q What happened finally between you and Abe on the night of your meeting?

A There were two concluding events. First, Abe told me that he was married and had a wife and a small girl. Finally I gave him a set of specific instructions regarding the next meeting between the two of us.

Q Do you remember the details?

A Yes, I do.

Q What were they? A The meeting was to take place in the Child's Restaurant on the west side of Columbus Circle. The time was about 8 p.m. but an exact minute was specified, and this meeting was to take place about ten days after the one which we were at that time having on the 29th of September.

Q Did you keep the appointment for the second meeting? A At the exact time I entered the Child's Restaurant on the west side of Columbus Circle and sat there at a table.

Q Before you got into the details of that meeting, in the interval between your second meeting and the prior one, did you meet your Soviet superior, Sam?

MR. KLEINMAN: I object to that.

THE COURT: Overruled. He can answer that question. Did you meet him?

THE WITNESS: Yes, a few days after my meeting with Abe on the 29th of September, I met Sam and gave him a complete --

MR. KLEINMAN: I submit anything after that--

THE COURT: Yes. Don't tell us anything after that. On your meetings with Abe, did you ever say anything to Abe about your Soviet superior?

THE WITNESS: I indicated to Abe --

THE COURT: Did you say anything to him about it?

THE WITNESS: I told Abe I had a Soviet superior. I did not identify him by name. I only indicated I acted under orders from this Soviet agent.

THE COURT: Did you tell Abe what these orders were?

THE WITNESS: I transmitted to Abe whatever orders were given to me by Sam.

THE COURT: I asked you whether you told Abe you were transmitting the orders you had received? Did you tell that to Abe?

THE WITNESS: Yes, I did.

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BY MR. SAYPOL:

Q Just digressing again, did there come a time when

Sam and Abe met with you? A Yes, there did. There was such a meeting.

THE COURT: You say there was a meeting where Abe met your Soviet superior, Sam?

THE WITNESS: There was a meeting between the three of us, Abe, Sam and myself.

MR. SAYPOL: I shall go into the details of that later, if your Honor pleases, but I am supplying it at this time in order to clear whatever doubts your Honor may have.

THE COURT: Very well.

Q Coming back to your meeting with Sam, in the intervals of the first and second meetings with Brothman, when you met Sam what did you do?

A I reported to Sam in detail the events of my meeting with Abe -- this was a verbal report--

MR. KLEINMAN: Mr. Gold, won't you please wait?

THE WITNESS: I am sorry.

MR. KLEINMAN: I object to the manner in which he gets in these conversations with Sam not in the presence of the defendants Brothman or Moskowitz.

THE COURT: I am going to sustain your objection unless you connect it up, Mr. Saypol, with Mr. Brothman. In other words, when they subsequently met, as there is an indication they did meet --

MR. SAYPOL: I assure your Honor I will, but I

don't want to disturb the continuity.

THE COURT: I will permit you to ask the question and I will permit the answer if you assure me it is definitely connected up with Brothman. In other words, there is a discussion with Brothman in which Brothman is supposed to know what is going on --

MR. SAYPOL: I do assure you, your Honor.

THE COURT: Then I will permit you to ask him.

Q You delivered a report to Sam?

A Yes, I delivered both a verbal and a written report to Sam covering all the details of that meeting with Abe of September 29, 1941.

Q We have it so far that you had a meeting with Abe, an intermediate meeting with Sam, another meeting with Abe? A That is correct.

Q Did those meetings with those parties continue over a period of time?

A Those meetings continued over a period of years.

Q Will you give us generally the details in making the arrangements for those meetings? Was there a definite procedure? A A very definite procedure was followed. I would have a meeting with Abe. The details of this meeting I would report either that night of the meeting with Abe, if it was convenient and not too late, or else at a subsequent date, a few days later. I would

report these both verbally and in a written form.

Q To whom? A To Sam. I would like to make this clear--

MR. KLEINMAN: If it is not responsive, I object to it.

THE COURT: I don't know.

MR. KLEINMAN: Well, he has been asked the question and he has answered. I don't see that he should be permitted to make any kind of answer he wants.

THE COURT: If he hadn't added the words "I would like to make this clear" you probably would have gone right on.

MR. KLEINMAN: It put me on guard, yes, sir.

THE COURT: I think we ought to hear it and if it isn't responsive, we will strike it.

THE WITNESS: If I met Sam on the same night when I had had a prior meeting with Abe, then the report would be verbal; but at my next meeting with Sam, say a few days later, I would still submit a written report covering the material I had previously given by word of mouth. If the meeting with Sam occurred a few days after my meeting with Abe, then at that time I would submit first a verbal report and then I would hand him on our parting the written report covering the same material.

Q Will you come now to the second meeting at Child's

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Restaurant that you told us about, and tell us what happened and what was said between you.

A I entered the Child's Restaurant at about 8 p.m. according to the instructions I had given Abe. He did not show up for at least an hour and a half, and in the course of that time I made three phone calls to the Barclay 7 number in the Hendrick Company, which Abe had furnished me on my first meeting. On each occasion Abe answered and said that he was just on the point of leaving. After about an hour and a half he did come to the Child's Restaurant.

Q What did you do, have dinner there?

A We had dinner and a talk.

Q What did you talk about? A First, I told Abe that the first matter on the agenda was to clear up any previous work in which he might have engaged with Helen, work involving the transfer of information to the Soviet Union.

Q Did you tell him this as a result of instructions from Sam? A These were on direct orders.

THE COURT: Did you tell him that?

THE WITNESS: I told him that these were my orders.

Q Continue. A Then I gave Abe a verbal list of processes and material upon which the Soviet Union desired

information.

Q Do you remember what they were?

A I recall the items which I detailed to Abe.

Q What were they? A The first one related to any processes involving the manufacture of aviation gasoline. The second one was a dual one and had to do first with any of the techniques used for the manufacture of articles from natural rubber, and, secondly, with any process could be used for the manufacture of synthetic rubber. The third item related to the manufacture of petroleum lubricants. The fourth item related to any processes for the manufacture of colloidal graphite.

Q What is colloidal graphite? A Colloidal graphite is an extremely fine carbon dispersion which is used as a lubricant, particularly under high-temperature conditions as in steel mill operations, say.

Q I interrupted you. Were there any other items?

A There were two more items. The first of these concerned any processes for the manufacture of strategic organic chemicals.

Q Can you tell us what kind? A Yes.

MR. KLEINMAN: I object to that.

MR. SAYPOL: I withdraw that.

Q Can you tell us what kinds you told Abe about?

MR. KLEINMAN: If he told it.

Q Did you tell Abe about those?

A I mentioned at least two that I can recall.

Q Just to clear this up, I expect that you will tell us only those things which you said to Abe.

A That is exactly what I am going to do.

Q Go ahead. A The first concerned any processes for the manufacture of acetone. The second, any processes for the manufacture of synthetic butyl alcohol. Acetone is used as a solvent for smokeless powder. Butyl alcohol is a basic organic chemical used to prepare many other substances.

Q What do you mean by smokeless powder?

A Smokeless powder is cordite.

Q What is cordite? A Cordite is a military explosive.

Q What else was talked about?

A The final item was a shot-gun question and involved any and all information which Abe might find available to him regarding matters of military interest.

THE COURT: Is this a convenient place to recess?

MR. SAYPOL: It is entirely convenient for me.

THE COURT: I am not breaking off the subject,

am I?

MR. SAYPOL: No.

THE COURT: Very well, we will recess, ladies

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and gentlemen, until 10.30 tomorrow morning, and I shall not repeat what I have been telling you right along, it stands just the same.

(Adjourned to Thursday, November 16, 1950,
at 10.30 o'clock a.m.)

UNITED STATES OF AMERICA

vs.

ABRAHAM BROTHMAN and MIRIAM MOSKOWITZ.

New York, November 16 1950, 10:30 a.m.

Trial resumed.

Present:

Mr. Saypol, Mr. Cohn, Mr. Foley, Mr. Donegan,
Mr. Kleinman, Mr. Messing, Mr. Sattler.

(Defendants in Court. Jury in box.)

MR. SAYPOL: May the record show the presence of
the jury, the defendants, their counsel, and Government
counsel. May the witness be recalled?

THE COURT: Yes.

H A R R Y G O L D , resumed the stand.

THE COURT: Proceed, Mr. Saypol.

MR. SAYPOL: I am prepared to renew my offer
with respect to Government's Exhibit 10 for identification
at this time.

THE COURT: May I see it, please?

MR. SAYPOL: Yes (handing to Court).

THE COURT: You are only offering one side of
this, aren't you?

MR. SAYPOL: No, I believe both sides. May I
examine it for a moment?

THE COURT: Yes (handing to Mr. Saypol).

MR. KLEINMAN: Before your Honor rules, I

should like to be heard on that again to press the objection I previously made, and one other thought that came to my mind, your Honor.

THE COURT: Yes.

MR. SAYPOL: I am offering only the one side, as your Honor suggests.

THE COURT: What is the other objection?

MR. KLEJNMAN: I should like to call your Honor's attention to the fact that these matters relate to something which occurred in 1940, 1941, and that our indictment of course begins as of the period 1947.

THE COURT: That is true, but the very matter that they inquired about before the grand jury concerned matter back in 1940 and 1941.

MR. KLEINMAN: I should like to call your Honor's attention to the fact that these matters might have concerned the activities of the witness and the persons whom he speaks of in his testimony, it is not germane to the issue in this indictment as to the conspiracy as alleged in the indictment. These are matters that relate to other matters entirely.

MR. SAYPOL: I am prepared to answer that if the Court desires it.

THE COURT: I will hear you, yes.

MR. SAYPOL: It applies directly to the very essence

of the charge --

THE COURT: I would think so.

MR. SAYPOL: The circumstances of the meeting.

THE COURT: I would so think. There was a general inquiry before the grand jury in 1947 concerning the activities of these people together with others, and the indictment charges that Gold and Brothman and Moskowitz conspired to impede the administration of justice in that Gold and Brothman would go before the grand jury, that they would testify and tell a story which was false on certain matters. Now the Government is attempting to show that some of these matters were false.

MR. KLEINMAN: We appreciate, your Honor, that these are things that the witness claims that he wrote which would simply bolster up his testimony.

THE COURT: It is not being offered on that basis.

MR. SAYPOL: It is offered on a basis of refreshing recollection.

THE COURT: And I will instruct the jury that they are not to receive it on the basis that it is corroborative of anything he says. Indirectly it might have that effect but it is not being offered or received for that purpose. It is being offered on the theory of, as I understand the Government, and I have not yet received it,

past recollection recorded.

MR. KLEJNMAN: Yes, but he has given his testimony with respect to the past recollection.

THE COURT: I am going to see. If he gives his recollection, present recollection, with respect to any of those items, then as to those particular items it is not admissible. It is only admissible under the rule, as I understand it, if he has no present recollection as to any of those items, and he can yet certify, as he sits here today, that it is a true record of what he made of it at that time but yet has no present recollection.

MR. KLEINMAN: He said that was a record of what he made at that time.

THE COURT: We will see. As a matter of fact I will not admit this card or any item on it until I am satisfied that it meets the test.

MR. SAYPOL: Let me supplement what your Honor has said. The Court has put its finger on the crux of the indictment. Bear in mind my opening, my caution, my admonition to the jury not to be diverted from the actual charge. The indictment says that the conspirators did agree upon fictitious explanations of their associations with each other.

Wigmore says in respect to past recollection

recorded that to reject such a record - and mind you, there has been testimony that this was made at or about the time that this meeting was effected - would be to reject the best and frequently the only means of arriving at the truth.

THE COURT: I did a little refreshing of recollection myself.

MR. SAYPOL: Then your Honor is familiar with the authorities. The state of the record is such that Mr. Gold testified yesterday that he had only a fragmentary recollection.

THE COURT: All right, I do not think I need any more argument. Let me have that. I am not admitting it as yet. I want to ask the witness some questions.

(Mr. Saypol hands card to the Court.)

BY THE COURT:

Q Mr. Gold, as you sit here today, do you remember the exact day of the week, not the date - you gave us the date, September 29, 1941 - the exact day of the week and the exact time that you were to meet Mr. Brothman?

A I do not, your Honor.

Q Now, I want you to look at Government's Exhibit 10 for identification and see if it refreshes your recollection as to the day of the week and the time?

A (Examining) It does not, your Honor.

Q Well, keep that record in your hand and tell me whether as to that particular item it represents a record of the day and time when you met Brothman, and whether at the time or at or about the time that you met Brothman you looked at that card or record and you knew at that time that the card was a correct record of the day and the time when you met Brothman.

MR. KLEINMAN: Your Honor, with deference to the Court, in so far as the position I have taken, I take an objection to your Honor's question.

THE COURT: Upon what ground?

MR. KLEINMAN: I submit that it is immaterial.

THE COURT: It is material for laying a foundation for past recollection recorded.

MR. KLEINMAN: The witness has stated that he knew the time -- rather, he knew the date but he did not know the time.

THE COURT: He knew the date, September 29th.

MR. KLEINMAN: Yes.

THE COURT: Did you look at the card?

MR. KLEINMAN: No, I have not seen it.

THE COURT: He did not know the day.

MR. KLEINMAN: I have not been shown the card.

MR. SAYPOL: Yes, I did show the card to Mr. Kleinman the first day and asked him whether he would object to it.

MR. KLEINMAN: I have not seen the card.

MR. SAYPOL: Oh, yes.

THE COURT: He did not know the day and the time, the hour. He knew the date. So, therefore, we have a situation where he can refresh his recollection from the card. He does not remember the day or the time or the hour -- put it that way -- but he does know that at or about the occurrence of the events recorded on the card that he did look at it and that he knew that at that time it was a correct record of the day and the time when he

met Brothman.

MR. KLEINMAN: Yes. My recollection is, your Honor, that whatever record was made by him, presumably on this card, was made perhaps a week before or sometime before.

THE COURT: It makes no difference.

MR. KLEINMAN: Well,--

THE COURT: I am putting it at or about the time of the events of the meeting with Brothman.

MR. KLEINMAN: Your Honor, I intend no disrespect for the Court's asking the question. May I have an objection?

THE COURT: Very well.

MR. KLEINMAN: And take my exception to it.

THE COURT: Now, will you read my question.

(Question read as follows: "Q Well, keep that record in your hand and tell me whether as to that particular item it represents a record of the day and time when you met Brothman, and whether at the time or at or about the time that you met Brothman you looked at that card or record and you knew at that time that the card was a correct record of the day and the time when you met Brothman.")

A At the time in 1941 when I met Abe Brothman I looked at this card and at that time I knew that the card represented a correct record.

Q Now, look at the next item there. Do you remember

the exact place, independent of that record, the exact place where you met Brothman on September 29, 1941?

A No, I do not, your Honor. All that I remember all through the years from 1941 on is that it was up in the high 20's and somewhere between Sixth and Seventh Avenues.

Q Very well. After looking at that record has it refreshed your recollection as to the exact place where you met him?

A No, it doesn't, not even now -- not even now.

Q At or about the time that you met Brothman did you look at the card, at or about that time, and did you know at that time that the card represented accurately the place where you did meet Brothman?

A Your Honor, I was aware of the fact that the card had upon it accurately the spot where I was to meet Abe.

Q And where you did meet Abe?

A And I did go to that spot and meet Abe.

Q Look at the next item on that card.

A (Witness examines card.)

Q May I see it a minute. A Yes (handing card to the Court.)

Q Do you have an independent recollection as you sit here today as the type car that Brothman drove that day or the license number of that car? A Your Honor, I am total

unfamiliar with automobiles and I could never identify a card of any particular type. All I recall was that it had seats in the front and the back. All that I remember about the license number -- I knew this all through the years -- was that there was a capital N there.

Q So that we might follow that with the statement, and if I am correct, please so advise me, that the record on Government's Exhibit 10 for identification with respect to the car does not refresh your recollection today either as to the type car and the license number on it?

A No, it does not, Your Honor.

Q Now, does the writing on this card represent a record of the type car and the color of the car and the license plate of the car in which you were to meet and did meet Brothman, and did you at or about the time that you met Brothman have occasion to look at the card with respect to that particular item, and did you know then that it was an accurate record of the type car, the color of the car and the license number of the car in which you met Brothman?

A Your Honor, when the car came along the appointed street, I took the card out of my wallet and checked the number on it against the number on the license plate of the car. I knew the two agreed. As regards the make of the car and the type of car that it was, I would have been unable to distinguish at any time whatever. I just

don't know about these things.

Q So that the only thing that you can say now that you knew was accurate with respect to that particular item was the license number? A Was the license number.

Q How about the color? A It was hard to tell; it was very dark on that street.

Q How about the type; was it a sedan or don't you know what a sedan is? A I don't know what a sedan is.

Q Very well. Then the only thing that you certify today was accurate at that time, as far as you now know, was the license number of the car, is that right?

A That is correct, your Honor.

THE COURT: Very well. May I see it again?

(Witness hands card to the Court.)

Q Now, look at the next item (handing card to the witness). A (Examining card.) I have.

Q Did you address the man in that car by name? What is your independent recollection of that?

A I think not, as far as I recall.

Q Did you give that man regards from Helen?

A I did, your Honor.

Q Did you ask him anything about his wife Naomi?

A I recall that I asked him about his wife, but I don't recall using the name Naomi. All through the years I could not remember the name Naomi being on the card.

Q Did you ask him anything about his child?

A I don't remember, your Honor.

Q Now, after having looked at that card has it refreshed your recollection as to the conversation?

A I still cannot say with certainty that I asked 'Abe--

Q Did you refer to him by name?

A No, I didn't refer to him -- he introduced himself to me after I introduced myself. I said I was Frank Kessler and he said he was Abe Brothman.

Q After looking at this card can you say that you did look at the card at or about the time when you met Brothman, and that with respect to this particular item that I have just addressed your attention to, that it contains an accurate record of the statements which you made to Brothman at the time of the meeting?

A Will you repeat that, please? I did not quite understand it.

(Question read.)

A This card contains an accurate record of the -- well, I can't say that I made all of these statements, your Honor.

Q All I want to know is whether at that time, whether you can say now, whether at that time what you have in that record is an accurate record of what you said or whether there is some variance with anything you have on

that card that is now set in your mind.

A Your Honor, this is exactly the way I recall it:
On the train up from Philadelphia --

Q We have your present recollection. This is very technical and I know it is hard for a layman to understand it. What I want to know now is, at the time of this first meeting with Brothman on September 29, 1941, did you look at Government's Exhibit 10 for identification, and did you then know that it set forth an accurate record of the statements which you made to Brothman at the moment of the meeting? A In 1941 I knew that this card set forth an accurate record of the statements which I made to Brothman when I met him.

Q May I have it? A (Witness returns card to the Court.)

Q The only thing you did remember, as you said here yesterday and today, was that you did definitely state to Brothman, "I bring you regards from Helen"?

A And that I asked about his wife, but not by name.

Q And you don't remember having asked about his baby girl? A I do not recall, your Honor.

THE COURT: Very well. I will admit this card with certain deletions or exceptions. For example, he cannot certify that the statement here with respect to the type of car was accurate at that time because he had no way of knowing. That is the only thing I will delete. With respect to that, I will also delete that portion which says, "Give regards from Helen," because he presently remembers it. That will come out, and he did remember asking about his wife, but in view of the fact that he did not remember the name, I think that is all one continuous statement, and I will permit that portion to go in.

The mechanics of calling it to the attention of the jury, I will leave entirely to you.

MR. KLEINMAN: May I call your Honor's attention to the fact that the witness said he can't say that he made all the statements contained in the card and he also said, in answer to your Honor's last question, that it was in 1941 that he knew this card contained an accurate statement of those matters that he said and did at that

time - 1941.

MR. SAYPOL: His statement is that he can't recall now, but he still certifies that that is an accurate record.

THE COURT: Yes, he did.

MR. SAYPOL: I would suggest that those portions which your Honor has allowed be read to the jury. I would suggest further, in line with your Honor's ruling, if I may, I should like to make an appropriate enlargement, deleting those portions as to which your Honor has ruled, and substitute that as the exhibit.

THE COURT: I think that will be satisfactory.

MR. KLEINMAN: May I see the card? I haven't seen it yet.

THE COURT: Yes, just a minute:

Q This entire Government's Exhibit 10 for identification is in your handwriting? A Yes, it is, your Honor.

THE COURT: All right, show this to Mr. Kleinman (handing to clerk).

MR. KLEINMAN: I believe I have already made my objection to the offer.

THE COURT: It may be received.

(Government's Exhibit 10 for identification received in evidence.)

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MR. KLEINMAN: Will your Honor direct the jury

that these matters do not --

THE COURT: I will give them a proper instruction in a moment.

MR. KLEINMAN: All right, sir.

MR. SAYPOL: May I read this with the witness?

THE COURT: Yes.

MR. KLEINMAN: Do we know now exactly what portion your Honor has allowed in?

THE COURT: As a matter of fact, I think before he begins to read it, it would be best if I told the jury, in as simple language as I can put it, what force and effect this particular record has. This record that I have just admitted into evidence is a record which the witness has just said he has no present recollection on, but he did say that it represents an accurate record as of September 29, 1941, of events that occurred on that evening, and I am giving it to you in general language, particularly with reference to those items I have admitted. It is not admitted therefore as an independent piece of corroborative evidence, as some of these documents are that come in, to corroborate something the witness has said because this witness can't say anything about it at this time; he hasn't a recollection about those items that have just been admitted.

These items, therefore, in the scheme of things,

are really to fill in missing links in the witness's story that he cannot remember, but is one of those exceptions in the rules of evidence that permits this type of record which comes under a rule known as past recollection recorded, to come into evidence. So on that basis, and as I say not to corroborate something which the witness is saying or has said, but to fill in a portion of the witness's statement that he has no recollection on, the document is admitted. It is not admitted, further, for the purpose of verifying that he had received instructions from anyone. That is not the purpose of the admission here.

MR. KLEINMAN: And with respect to the defendant Moskowitz, will your Honor instruct the jury that they cannot use the evidence that you just allowed in in any wise against her or to be considered against her.

THE COURT: At this particular point in the trial, I would say that you are correct, but I can't say whether I will agree with you subsequently.

MR. KLEINMAN: Of course, as of the present time only.

THE COURT: Very well.

MR. SAYPOL: For the record, that is my position.

I shall ask the witness to read as I indicate and ask him by my own indication to delete that which your

Honor has rejected.

THE WITNESS: The first word is written "Mon" for Monday. The next is "10 P.M.", the "M" almost obscured. The next line is "N" and is "North," "27 bet." for between, "5 and 7 Av." It stands for 27th Street between Sixth and Seventh Avenues.

MR. KLEINMAN: Your Honor, should we have this explanation or reading of what is actually there?

THE COURT: Well, he is reading. It says 27th Street?

THE WITNESS: It says 27th bet. 6 and 7.

THE COURT: We will let the jury determine --

MR. KLEINMAN: There might be some confusion as to what is there. For example, "bet" he might say is between, but he reads b-e-t.

THE COURT: You do want him to point out what he is explaining?

MR. KLEINMAN: Yes.

MR. SAYPOL: Don't read the next line. That is the line which your Honor questioned concerning the vehicle.

THE WITNESS: The following line has on it "2 N 9088

MR. SAYPOL: Read the first word, if you will.

THE WITNESS: "Abe."

MR. SAYPOL: The following of course is the mention

of the name "Helen." Delete that. Continue.

THE COURT: Would you have any objection?

MR. KLEINMAN: No.

MR. SAYPOL: Then may I read the whole thing except for the description of the vehicle?

THE COURT: Do you object to that?

MR. KLEINMAN: Not for that reason.

THE COURT: You do want deleted, however, the type of vehicle?

MR. KLEINMAN: It doesn't matter either. I have made my objection to the entry of the evidence --

THE COURT: You won't stand on that technicality, that he couldn't certify that that particular portion was accurate or that he had actually said today as he sat here--

MR. KLEINMAN: No.

THE COURT: Very well. The entire card can go in.

MR. SAYPOL: Then may I read the whole card?

THE COURT: Yes.

(Mr. Saypol reads Government's Exhibit 10 to the jury.)

MR. SAYPOL: I may substitute then an enlargement of the whole card. May the jury be requested in examining the card to hold it by the tab of the identification mark?

THE COURT: Yes, and only to look at the face of that.

(Government's Exhibit 10 shown to jury.)

BY MR. SAYPOL:

Q I believe yesterday that when we parted, Mr. Gold, you had described a series of matters to Mr. Brothman at your second meeting which your Soviet superior would be interested in receiving from him through you. Having enumerated these matters, what did Mr. Brothman say, if anything?

A Abe told me that he could obtain information on some of these items.

Q Was anything else said? Did you go through, by this time, customary routine of establishing the next meeting? A The only thing that happened that I can recall is that at Abe's request, I set the place for the next meeting at the corner of Dey and Church Streets.

Q Do you recall how far off that was to take place?

A I cannot recall exactly. All I can say is maybe a week or ten days or two weeks.

Q Do you recall what time of the day or night it was to be? A It was sometime around 8 p.m.

Q Did the meeting take place? A I came to New York and I went to the southeast corner of Dey and Church.

Q Can you describe, if you recall, the location with respect to lightness or darkness, traffic, and so on?

A I recall the location because continuing in an east direction there was a small cafeteria which was

closing or closed for the night.

Q Was there any traffic, any pedestrian or vehicular traffic? A There was a fair amount of pedestrian traffic but most of the - it wasn't very heavy.

Q Was Brothman there at the appointed time?

A No, he was not.

Q What time did he arrive? A He came fully two hours late.

Q What time was it by that time, do you remember?

A It was about ten o'clock.

Q What did you do while you waited for him?

Did you just remain standing there or did you try to communicate with him? A I made several calls. I am very sorry - I actually cannot recall definitely whether I did make calls or not.

Q When he got there finally, did you say anything to him about the reason for his late appearance? A When Abe met me, he told me that he had been unable to get away because there were many people in the Hendrick offices working late that night. Abe said that because of the number of persons around the engineering office that he had been unable to obtain any information but that he would have it the next time.

Q Do you recall what was the total time which elapsed at that meeting? A The total time could not have been

much more than say five minutes.

Q Was another meeting arranged then? A I set the place for another meeting. It was to be in that general area around Dey and Church Street, and the Hudson Terminal, but it wasn't on that exact corner. It was somewhere in that area, say two or three blocks away.

Q How about the interval? Was it to be about the same interval as previously with respect to the prior meetings? That is, a week or ten days in between?

A It was an interval of that order.

Q Was the meeting held?

A The meeting did take place.

Q When, daytime or nighttime? A No, it was in the evening.

Q What happened at that meeting? A This time Abe came on time, and he gave me a blueprint of a piece of chemical equipment known as an esterifier.

THE COURT: Where was this meeting?

THE WITNESS: It was somewhere in the area of Dey and Church, anywhere from two or three blocks away. I have a hazy recollection that it was in the easterly direction. It was very close to the waterfront. It is very hard to recall these things.

Q You told us that he gave you a blueprint of an esterifier? A An esterifier.

Q Is that e-s-t-e-r-i-f-i-e-r? A That is correct. It is a piece of material used to prepare esters for alcohols and acids. It is used in lacquers and varnishes.

THE COURT: What was that a blueprint of?

THE WITNESS: An esterifier.

Q Do you recall anything else about the conversation that was held that night? A I do not.

Q Can you remember what the time was that you had that meeting? A It was about 8 p.m.

Q What was the reason why these meetings were held at night that way, if any?

MR. SAYPOL: All right. Counsel wanted the time fixed and I wanted to give it to him.

I will withdraw the question.

MR. KLEINMAN: All right, but don't be impatient with me. My only objection was as to any reason he may have had unless it was discussed.

Q Did you have any conversation then about effecting another meeting? A Yes. I arranged another meeting.

Q In respect to arranging the other meeting, you told us about a series of three now. Was that the general pattern that was followed with Brothman from that time on?

A That was the general pattern that was followed.

Q That is, you would have a meeting--

A Have a meeting and we would set a date. I would usually set the time for the following meeting.

Q That is, the date, the time and place?

A That is correct. I had to get away from work.

Q Returning to the blueprint which he gave to you, what did you do with it?

A I put it in a manila envelope I had ready. It is sort of a plain manila envelope. It is the sort that is used to contain 8-1/2 x 11 sheets, and I gave it to Sam in New York City that very night at another place, and say two hours later. I can't recall. I had a prearrange

meeting with Sam for that very night.

Q Before the time of the next meeting with Brothman, did you see Sam again? A Yes, I did.

Q Did anything occur with respect to this blueprint that you told us about?

MR. KLEINMAN: I object to that as not binding upon us and not within the issues of this indictment.

MR. SAYPOL: I am not asking for conversations. I am asking what happened.

MR. KLEINMAN: My objection goes to the substance of what took place or happened not in the presence of the defendant.

MR. SAYPOL: I will withdraw that.

Q You say you saw Sam prior to meeting Brothman again? A Yes.

Q Having seen Sam for the second time subsequent to the meeting you have described, did you then see Brothman by prearrangement? A Yes, I did. What happened here is a blur. There are possibly six meetings from the time of the fourth one up until the middle of December of 1941. I can't even give the intervals between the meetings. It might be that there were sometimes two in one week. All I know is that there were six meetings from the time of the fourth meeting, in between the time of the fourth meeting until the middle of December, 1941.

THE COURT: I don't understand that. There were six meetings between you?

THE WITNESS: Approximately six.

THE COURT: Six meetings between when?

THE WITNESS: Between the time of the meeting I have just told about, the fourth meeting at which I received this blueprint.

THE COURT: There were six meetings after the fourth meeting?

THE WITNESS: Six meetings after the fourth meeting and up until the middle of December, 1941. That number is subject to maybe 75 per cent error.

MR. SAYPOL: May I have this marked for identification, please?

(Marked Government's Exhibit 11 for identification.)

Q Mr. Gold, I show you Government's Exhibit 11 for identification and ask you to examine it and tell me whether you recognize what it is (handing paper to witness).

A It's salient features --

MR. KLEINMAN: Before you answer--

Q I asked you whether you recognize it.

A Yes, I do.

MR. SAYPOL: I asked him whether he recognized it and remembered what it was.

MR. KLEINMAN: I suppose the answer should be

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Yes or No first, so that we know whether to make an objection to it.

THE WITNESS: I see.

Q Do you recognize it? A Yes, I do.

Q Is Government's Exhibit 11 for identification the blueprint which you have testified Brothman gave you of an esterifier and which you have testified you gave to Sam immediately thereafter? A That's right.

MR. SAYPOL: I offer it in evidence.

MR. KLEINMAN: May we see it, please?

MR. SAYPOL: (Handing blueprint to Mr. Kelnman).

MR. KLEINMAN: We have no special objection to the paper. Our objection was to this entire line of offering in evidence here these matters which I claimed to be at the beginning not germane to this issue.

THE COURT: I do not know whether I understand you.

MR. KLEINMAN: I was about to say, I would like to make myself clear, I assume from time to time certain papers and documents will be offered and I may have some special reasons for objecting to those papers and documents, but my main objection now is that all these matters that occurred in 1941 are irrelevant to this issue and the charge in this indictment. That is the only ground of my objection at this time.

MR. SAYPOL: May I answer Mr. Kleinman?

THE COURT: If you care to.

MR. SAYPOL: I am now embarked on proving what the real associations of the co-conspirators were, as distinguished from the alleged concocted story that was told in 1947.

MR. KLEINMAN: I understand Mr. Saypol's contention.

THE COURT: Very well. That is the basis upon which I have been admitting this testimony.

MR. KLEINMAN: I understand that, too.

THE COURT: Objection overruled.

Q Now, you told us that immediately after receiving Government's Exhibit 11 from the defendant Brothman you saw Sam and you gave this to him, is that correct?

A Yes, I did.

Q As I recall it, sometime thereafter and before you met Brothman again, Sam returned this to you, this Exhibit 11, is that correct? A Yes, he did.

Q Now, at the following meeting with Brothman tell us what happened, particularly with respect to this Government's Exhibit 11? A I told Abe that the

drawing of the esterifier --

MR. SAYPOL: Just a minute. I have to interrupt you again. I have been neglectful, with all the excitement, that I forgot to ask that it be marked in evidence, having

been admitted. I am not quite sure whether the record is clear that the Court has admitted it; if not, I ask that it be admitted.

THE COURT: It is admitted.

(Government's Exhibit 11 for identification received in evidence.)

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Q Now, will you continue with your conversation --

THE COURT: What is an esterifier, did you say?

THE WITNESS: An esterifier is a piece of chemical equipment used for the manufacture of esters, which are technically combinations of alcohol and acids. These esters are industrial solvents or chemical intermediates used to prepare other chemicals.

MR. SAYPOL: May I just digress for a moment? Would the Court allow me, in the course of the witness's testimony regarding this exhibit, to call the attention of the jury to the fact that the legend in the lower righthand corner of the exhibit bears, amongst other things, the name Hendrick Company and the date October 19, 1941.

Q Go ahead, Mr. Gold. A I told Abe that the drawing of the esterifier was excellent, but that it was not complete, and it required a certain amount of written or descriptive material before such a piece of equipment could be useful. I told him that it was necessary to know

what was being esterified. There were literally hundreds of thousands of possible esters, and possibly 100 or so commercial ones; and also that the conditions should be specified-- the conditions for the esterification should be specified, the temperature and the time allowed for the reaction to go on, any materials added to promote the reaction and so on; and Abe told me that he would furnish at a later date this descriptive material.

MR. SAYPOL: May this group of nine blueprints be marked as a single exhibit for identification?

(Marked Government's Exhibit 12 for identification.)

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Q Mr. Gold, I ask you to look at Government's Exhibit 12 for identification, looking particularly at the legend and the date, and ask you to examine them.

MR. SAYPOL: Your Honor, in order to save time, if your Honor is so disposed, we might as well take our morning recess now and the witness can examine the exhibit in the interval.

THE COURT: Very well, we will take our morning recess now, ladies and gentlemen.

(Short recess.)

THE COURT: Call the witness.

H A R R Y G O L D Resumed.

MR. SAYPOL: The jury, defendants and counsel on both sides are here.

THE COURT: Instead of doing that, let us do it the other way: In the event that you do not say anything we will assume for the record that all the defendants are present, the lawyers are present and the jurors are present.

MR. SAYPOL: The only reason I am doing it is because I am trying to save the Court from doing it. I would rather have the Court do it.

THE COURT: I think we will assume for the record, and Mr. Kleinman will agree, that unless the record so indicates, that all the parties required to be present at this trial, including the jurors and the judge, are all present.

MR. KLEINMAN: I will agree to that, your Honor.

MR. SAYPOL: That will save me a very heavy burden.

BY MR. SAYPOL:

Q Mr. Gold, did you examine those papers?

A Yes, I have.

Q Do you recognize them? A Yes, I do.

Q Are those similarly blueprints that you received from Mr. Brothman in the course of this series of meetings which you described between September and December, 1941?

A I received these blueprints from Mr. Brothman sometime around the middle of December, 1941. I received quite a few other blueprints relating to other items, blueprints of a fragmentary nature, but I can't recall what

the subjects were or anything about them.

Q For the moment confining yourself to these, you say these are the same? A Yes.

Q Did these go to Sam, too?

A No, I never submitted these to Sam.

MR. SAYPOL: I offer these in evidence.

MR. KLEINMAN: May I see them, please.

MR. SAYPOL: Oh, I am sorry.

(Mr. Saypol hands blueprints to Mr. Kleinman.)

MR. SAYPOL: Is there any objection, Mr. Kleinman?

MR. KLEINMAN: None other than I stated at the very outset, and I shall not make any other specific objection to them.

THE COURT: The objection is overruled and they are received.

(Government's Exhibit 12 for identification received in evidence.)

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THE COURT: How many blueprints are there to that exhibit?

MR. SAYPOL: I counted nine, if the Court please. I will count them again -- there are nine papers.

THE COURT: Mr. Cohn, you have not forgotten about the introduction of the transcript of the grand jury minutes?

MR. COHN: We have not forgotten that, your Honor.

We have had considerable discussion about it and I might state, since your Honor brings it up, that we were not quite clear as to the manner in which you want that submitted. We assumed that the stenographic minutes of the trial would contain those portions of the grand jury testimony which your Honor received in evidence and would be the best evidence of just what your Honor did allow in evidence and would, of course, omit those questions and answers which your Honor excluded.

THE COURT: What I had in mind was, I thought the jury might want to have that portion of the grand jury testimony --

MR. COHN: You mean as a physical exhibit rather than requesting that it be read from the stenographic minutes of the trial?

THE COURT: When they deliberate on their verdict.

MR. SAYPOL: Perhaps I can make a suggestion. Why do we not make suitable copies from the transcript? That is an exact record of the grand jury testimony that was read.

THE COURT: In the event that the jury so requires it.

MR. SAYPOL: For whatever purposes the Court may direct.

THE COURT: I think that will serve the purpose.

MR. SAYPOL: I would again call to the attention of the jury, in respect to Government's Exhibit 12, the legend Hendricks Manufacturing Company and the dates December 8, 1941, and I believe some of them were December 9, 1941.

Q With respect to these last two exhibits, Mr. Gold, subsequent to conversations with Sam, at a meeting with Brothman in December, you had a conversation with him?

A I had a talk with Abe sometime around the middle of December of 1941.

Q What did you say and what did he say?

A I told Abe that in order to facilitate and expedite the transfer of information to the Soviet Union, that I had effected arrangements through my Soviet superior whereby a large number-- a large amount of material or a large number of blueprints could be copied at Amtorg in a matter of a few hours--

Q Let me interrupt for just a moment. You have used that phrase "Soviet superior". At that time were you mentioning the name Sam to him or were you referring to him as your Soviet superior? A I never mentioned the name Sam to Abe.

Q Excuse the interruption. Now go ahead.

A I said that the material, no matter how extensive, could be copied in a matter of a few hours and could be

returned to him just as rapidly, the same night, that is.

Q Did you have anything to say --

THE COURT: Just a moment. There was a breaking off here when Mr. Saypol put a question. Did I understand you to say that you had told Abe that in order to facilitate the transportation of the documents to the Soviet Union you had arranged to have them copied at Amtorg; is that what you said?

THE WITNESS: That was what I told Abe.

THE COURT: All right.

Q Now, breaking off again for a moment, did you have anything to say with respect to matters like these two exhibits I have shown you, as to their form, their character, their adequacy?

A I told Abe that he would have to mend his ways regarding two matters: the first was the submission to me of fragmentary bits of information, such as these blueprints, without any accompanying descriptive matter; and, secondly, I said that he would have to start keeping appointments on time. Abe said that he was irritated; that apparently the Soviet Union didn't appreciate the value of the material he had submitted in the past.

Q Prior to his association with you? A Yes. That

is, during his association with John and Helen. He said that he had given the complete plans for a Houdry cracking plant test --

Q What is that? A Houdry -- H-ou-d-r-y -- that is a process used for the manufacture of high-octane gasoline. And he also said that he had given to John the plans for a turbine type aircraft engine, and that at a later date he had given to Helen the plans for one of the first Jeep models which had been designed and built by the Hendricks Company.

Abe told me that if it was matters of military importance that were desired, and if it were complete plans and complete descriptions of processes, that at that very minute there was on his desk at Hendricks the complete plans plus all of the descriptive material, for the operation of a military explosive plant in Tennessee; that all of the blueprints, all of the descriptive material was there, and that he could turn it over to me the next time we met.

I set the date for December 22nd of 1941 --

THE COURT: December what?

THE WITNESS: December 22nd.

A (Continuing) And I came to New York on that night. I had set the time also, and I recall it as being 10 p.m. --

Q Where? A I had set a place --

Q Where? A It was 51st Street and Lexington Avenue, and it was on the northwest corner.

Q Do you remember anything about the scene, that is, about the locale, the type of buildings there?

A I know that scene very well. On the corner where I waited, the northwest corner, there is a Bickford's followed by a cafeteria called either the Lane or the Park Lane, and then there is a Translux Theatre. On the southwest corner there is a bank with a clock on the face of the building --

Q When were you there last?

A When was I there last? Gee, it must be three years, I guess.

Q Now, continue. A More than that, maybe.!

Q All right, continue with the narrative if you will.

A On the southeast corner there is a cigar store and just below it there is a Loew's Theatre.

Q All right, we have enough of the details, I think. Will you continue with your arrangements with Brothman and any other arrangements that you made.

A I waited for Abe on that corner. I told him to be exactly on time, because I told him that I was going to make split-second arrangements with my Soviet superior, so that I could transfer the information to him, so that he could get it copied, and so that I could return it that same

night.

Q Did you make such arrangemengs with your Soviet superior? A I made such arrangements and I made arrangements at home so that they wouldn't expect me home that night.

Q Tell us what transpired? A I went to the northwest corner of 51st Street and Lexington Avenue and I waited there for about twenty-five minutes. Abe did not show up.

Q What did you do?? A I took a cab and I went to the West Fourth Street Washington Square station of the Independent Subway.

Q Was that the agreed rendezvous arrangements with Sam? A The agreed rendezvous start was on one of the uptown express platforms of the West Fourth Street Washington Square station.

THE COURT: I thought the rendezvous was at 51st Street.

THE WITNESS: The rendezvous with Abe was at 51st Street and Lexington Avenue. The rendezvous with Sam was --

THE COURT: I see.

THE WITNESS: That was the reason for the split second arrangements.

MR. SAYPOL: Your Honor, you see, he was to meet Abe at 51st and Lexington and Sam at the West Fourth Street Washington Square station.

Q Is that correct? A Yes.

Q The plans were to meet with Abe at 51st Street and then go downtown? A Yes. As I got to the express

platform, I thought I saw Sam on one of the --

MR. KLEINMAN: I object to that and to what happened at that point.

MR. SAYPOL: The witness is describing what he did, not what he said.

THE COURT: It may affect Brothman. It may affect him adversely and it is outside of his presence.

MR. SAYPOL: Whether it affects him adversely or not, it is part of the conspiracy.

MR. KLEINMAN: On that score, I must then object to this line of examination pursued by the District Attorney upon the ground that the Government has already established what it set out to do in its statement to your Honor as to the purpose of this examination. That is to show --

THE COURT: Who is going to judge that they established it?

MR. KLEINMAN: I want your Honor to rule whether they have not gone far enough on the basis they gave here to establish the alleged falsity of the testimony given to the grand jury as we have it alleged in the indictment.

THE COURT: I am not going to pass upon that. The jury is going to rule upon it.

MR. KLEINMAN: I should like to have a ruling from your Honor. I object to any further testimony now as to what took place between the witness and Brothman,

the witness and Sam, and perhaps others in 1941.

THE COURT: I thought I had heard everything, but that is a new one. I have never heard that kind of an objection.

MR. KLEINMAN: I am making my objection seriously your Honor.

THE COURT: You mean when there comes a point in the trial where you think sufficient has been established on the surface to make out a Government's prima facie case, that they should not be permitted to go further?

MR. KLEINMAN: No, that is not what I said. The sole purpose of allowing this testimony was, according to Mr. Saypol's contention, one of motive to show --

THE COURT: He did not say that was the sole purpose. He said it was also to show the falsity and therefore prove the allegations in the indictment.

MR. KLEINMAN: Your Honor, I have not completed what I was about to say.

THE COURT: You said enough. You said the sole purpose and I interrupted to tell you it was not the sole purpose.

MR. KLEINMAN: Judge, I would like to make my objection. As I have done it this morning, your Honor has taken me to task that I have made some either spurious or

some of ridiculous --

THE COURT: Let us not engage in any personalities, and I don't think we ought to start on that score.

MR. KLEINMAN: I don't want to.

THE COURT: I think so far the trial has been conducted with fine decorum and let us see that it continues that way.

MR. KLEINMAN: I wanted to state the grounds of my --

MR. SAYPOL: Mr. Kleinman, please. May I have the observation on the record that I have not seen anybody taken to task and I don't think that that is a fair statement.

THE COURT: Perhaps Mr. Kleinman is a bit sensitive this morning. Perhaps he is more sensitive than on other mornings. I think I have used probably on other mornings stronger language than I have now and he did not feel as sensitive as he does today, but I know how trial lawyers are on occasion, so we will let the statement stand.

MR. KLEINMAN: It was my intention to state to your Honor, and I state it now, that this additional proof and the details now offered as to the meetings and the purposes of the meetings with Brothman, and of the meetings with Sam, serves but one purpose and that is to prejudice the defendants on matters that are not within the purview

and not germane to this indictment.

THE COURT: Your objection is overruled.

MR. KLEINMAN: Exception.

THE COURT: What gives me more concern, however, is that portion of the testimony that deals with his actions with Sam, and I must confess I am not quite clear on that as yet. So I must ask you, Mr. Saypol, at this point to address your questions to the witness in such a way that he does not testify to what Sam said to him or what he said to Sam until I am convinced that there has been a meeting between Sam and the defendant Brothman and either a ratification of the acts that occurred, or there is something in the discussion to indicate a ratification --

MR. SAYPOL: I do not understand that to apply to any actions of the witness, a co-conspirator, in respect to his rendezvous with Sam. So far I understand your Honor is limiting me to exclude conversations with Sam.

THE COURT: He can say "I went to Sam. I saw him at such a time."

MR. SAYPOL: That is exactly what I am going to do now.

THE COURT: And after he saw Sam, he saw Brothman. I don't want details.

MR. SAYPOL: That is my position. While I feel that as a result of subsequent testimony, even conversations

with Sam will become admissible, still I shall adhere to your Honor's ruling and proceed as your Honor has indicated.

BY MR. SAYPOL:

Q You say you got to the station where you were to meet Sam. What happened there? A I thought I saw him on an uptown express train just pulling out of the station.

Q Do I understand that you got there late for the 10:30 appointment? A Yes, I waited so long at 51st Street and Lexington Avenue that I was late for the meeting with Sam.

Q What happened then? A I took the next uptown train and got off at 14th Street and met Sam there.

Q Did you have a conversation with him? Yes or no.

A Yes.

Q What happened as a result of that conversation?

A Sam left me for about ten minutes.

Q What happened then? A He came back to the express platform.

Q What happened then? A We went upstairs and we took a cab to the Ferris Wheel Bar at 57th Street and Ninth Avenue. It is in the Henry Hudson Hotel.

Q Did you have a conversation with him there?

A I had a long talk with Sam.

Q How long did it take? A Possibly an hour and a

half, two hours.

Q Thereafter when did you see Brothman next?

A I saw Abe again sometime between Christmas and New Year's of 1941.

Q What was the conversation? A Abe told me that he had been unable to keep the meeting on the night of the 22nd because he was not in New York. He said that he was in Akron, Ohio, and he told me that at last he had been able to obtain information on one of the items which I had specified during our second meeting at the Childs Restaurant on Columbus Circle. These were the complete plans for a Buna-S synthetic rubber plant plus all of the descriptive material, plus all of the operating data. Abe said that he would have this complete report ready for me on the 1st of January, 1942. I made arrangements with him to come to New York on that day. We were to meet at the corner of Dey and Church Streets, except that I don't recall what corner it was.

Q Did you come to New York on New Year's Day?

A Before I came to New York --

MR. KLEINMAN: I object to that as not responsive.

MR. SAYPOL: I will withdraw the question and I will ask this question:

Q Having had that talk with Abe about Buna-S, did you thereafter meet Sam? A I met Sam and I told Sam --

Q Just a minute. A I am very sorry.

Q You met Sam and you had a conversation with Sam?

A I met Sam and I had a conversation with him.

Q Thereafter did you then meet Abe on New Year's Day in 1942? A I came to New York on New Year's Day.

It was in the morning and I waited at Day and Church Streets for somewhere between an hour and two hours, possibly an hour and a half.

Q Did Abe arrive finally? A Abe came down but he had none of the material with him. He told me that he had been working all night on the Buna-S report and that he would have it in about a week or so complete. I set a definite date. I don't recall what the date was. Abe then drove me up the West Side Highway in his car and dropped me off somewhere in the area of Penn Station. I can't recall whether he dropped me off on the highway or off the highway or just where, I do remember that after I left Abe I went to see Sam.

Q Following that New Year's Day meeting, did you continue to have further meetings with Abe?

A From New Year's Day up until early on April of 1942. January 1, 1942, up until early April 1942 I had about twelve or fifteen meetings with Abe, that is, scheduled meetings. I would say at about three or four of them he never showed up. The whole thing again is not a very

clear picture except that there were about twelve or fifteen meetings. The only thing that stands out is that there were three meetings that I can recall, or three times that I was to meet Abe that I can recall. The first one was in either late January or early February of 1942.

Q Let me interrupt you for a moment. In this series of meetings which you are now describing, what was the paramount subject of discussion? A There was only one matter which I kept pressing Abe about and that was the complete Buna-S report.

Q That was the matter which he had volunteered about in the first instance? A Yes, he had told me he would have it ready on the 1st of January.

Q Will you then describe the three incidents which you now recall? A The first one was either late January or early February, 1942. It was at LaGuardia Field late at night. I don't know, it may be ten or eleven. I met Abe there, but the plane from Washington was late, and it must have been early in the morning when I met him. I remember it was a very cold night, possibly even snowing.

Q Was anybody with him? A His wife, Naomi Brothman, was with him, and Abe introduced me to Naomi. This was the first time I ever met her.

Q What conversation did you have with him about the

Buna-S report? A We went into what I recall was a downstairs lounge and Abe turned over to me some blueprints.

Q Did he say anything to you about where he had been? A Abe told me he had been to Washington to see some officials of the Rubber Reserve Commission.

Q Continue. A That was all that happened at that meeting except that either in Abe's car or in the cab - I think we got a cab there and drove Abe home to Sunnyside and I took the cab on to Pennsylvania Station and went back to Philadelphia.

Q Preceding LaGuardia Field, had there been an incident in relation to the Prince George Hotel in New York? A I recall an incident involving the Prince George Hotel, but it occurred subsequent to the LaGuardia Field. It occurred sometime late in February on a rainy Saturday night. I told Abe that to expedite matters I could meet with him on a weekend at a hotel in New York and we could work together in trying to finish up the Buna-S report. Abe told me it was in practically complete form and that it just needed a matter of assembling and a few hours' work, so on my own hook I volunteered.

Q Who rented the room, you? A I came to New York on this Saturday about three or four p.m. I rented a room and I started to call Abe at the Hendrick offices. I never got him there. Then I called at Abe's home. I don't

recall how many times - this is all not very clear, except that I did talk to Naomi and she did not know how whereabouts. The only thing that I remember about the rest of that projected meeting at the Prince George Hotel is that it was on about 29th or 30th Street somewhere around Fifth Avenue, that later that night it was still raining and I went over to Sunnyside and I waited at the Lowery Street station and eventually Abe came along. How I knew he was going to come there I can't recall. Abe told me that he had been very busy and that he was very sorry but he was unable to make the meeting that night.

The third meeting that I can remember, in between the 1st of January and the beginning of April of 1942, was one which Abe and I had arranged. Abe had told me one of the best places to get work done was some camp or hotel or place he knew up-State New York, and that we could drive up there and spend the week-end there. He said he would take a typewriter along, take all the material, and we could even play some handball.

Q Were you ever a handball player? A No, I am no good at it.

Q You don't know whether Abe was, do you? A At that time I did not.

Q Go ahead. Continue. A I had set the meeting

place at the northwest corner of 33rd Street and Eighth Avenue. I had picked this because it is convenient to the Lincoln Tunnel. It was on a Saturday night, this much I recall. I waited at the appointed place and Abe came along somewhat late, maybe half or three-quarters of an hour, and he told me that he could not make the proposed trip to up-State New York, that his wife had some guests over for the evening, and he would get in trouble at home if he did. So the completion of the Buna-S report was once more postponed.

Q What happened finally with respect to that?

A In possibly late March or early --

Q Let me see if I can help you. Do you remember an occasion when a question came up about your status in Selective Service? A This is exactly what I was going to mention now. In very late March or early April, 1942, I was notified by my draft board that I would be inducted on the 20th of April 1942. I told Sam about this and as a result of that conversation I told Abe that I was scheduled to be transferred to California by my company, that I was moving out of the East. I told him that before I left for California, I wanted to complete the Buna-S report and I made an arrangement with him to meet him in New York somewhere around the first week or so of April, on a weekday, of 1942. I selected

the Hotel New Yorker and I picked a time around eight or nine in the evening and I picked the day. I recall it was a Wednesday night.

Q Was the meeting kept? A Abe showed up for the meeting on time.

Q Will you tell us what happened then?

A I had engaged a two-room suite in the New Yorker and Abe and I worked on the Buna-S report from eight or nine on this Wednesday evening early in April up until about 6 a.m. the following morning, Thursday morning.

Q Had Abe brought any material with him? A Yes.

Q What did he bring? A Abe brought a small suitcase full of papers, typewritten papers, handwritten papers, and blueprints. He brought a portable typewriter with him.

Q Who did the typing? A Abe did the typing. I can't type.

Q You say you can't type? A I can't type.

Q Will you continue? Will you describe what happened? A We spent those hours from eight or nine in the evening up until six the following morning in annotating the Buna-S report, cutting out data from other sources and pasting it into its proper place in the Buna-S report, and in the general job of reviewing the material to see that it was correct. The job was finished at six o'clock

in the morning except for small minor items of assembling.

Q What did you do then? A We went to sleep.

Q Do you remember what time you got up? A We got up somewhere around nine o'clock, and about ten Abe left. He told me he had to go into the Hendrick offices that day.

Q While you were in the New Yorker that night and that morning, do you remember having had a conversation with Abe in which he mentioned one Shura Swan?

A Yes, I do.

Q Will you tell us what he said in regard to Swan?

A When we had finished our work at about six a.m. on Thursday, Abe and I relaxed awhile and had a talk. In the course of this conversation Abe told me that he had a friend called Shura Swan who had until recently worked for Amtorg. Abe said that the man had worked either as a translator or a stenographer or bookkeeper. He specified one of those three occupations, except that I don't know which one of them it was.

Q Do you recall what he told you about his citizenship? A Abe told me that Shura Swan was a naturalized American of Russian origin.

Q Continue. What did he say to you or ask you regarding Swan? A Abe asked me whether I could inquire of my Soviet superior as to what could be done about seeing that Swan was rehired at Amtorg.

Q Had he told you about his having been fired?

A Abe told me he had been recently laid off. Abe also told me that it was Swan who had originally introduced him to espionage work.

Q Did he tell you with whom he had conducted that espionage work originally? A Abe told me that Swan had introduced him to someone at Amtorg. This is not very clear.

Q Still digressing, did you talk to Sam about that, as you have said, at Abe's request? Did you try to get Sam to intercede to get Swan his job back at Amtorg?

A I did. I spoke to Sam about it.

Q What did Sam say?

MR. KLEINMAN: I object to this, if your Honor please.

MR. SAYPOL: I think we are coming right into a connection.

THE COURT: Now we are getting down to the point where Mr. Brothman, the conversation alleges, makes this man an agent for a particular purpose and that is to go and talk to somebody and get a job back for Swan. Under that rule, don't you agree that the conversation is admissible?

MR. KLEINMAN: No, I do not, sir. I submit this whole thing --

THE COURT: I will take it for that limited purpose, dealing with the job. I don't want any other conversations with Sam. I believe he has made this man his agent for that particular purpose, and he may tell us of his conversation with Sam.

MR. SAYPOL: I am willing to adhere to your ruling for the time being, but with great respect I submit that this described series of meetings, conversations regarding his Soviet superior, the actions of both parties predicated on the announced meetings with the superior in the interval of the meetings with Brothman, brings this --

THE COURT: Your contention, Mr. Saypol, is not wholly without merit except that I would rather adhere to my previous ruling.

MR. SAYPOL: I am satisfied with that. I am merely urging at the moment this as an element in my ultimate effort to impress the Court.

THE COURT: I am very cognizant of the entire problem.

MR. KLEINMAN: May I have an exception to that portion of your Honor's ruling which allows in the conversation limited as your Honor has indicated.

THE COURT: That is right.

Q What did Sam say when you asked him to get Abe's friend back to work for Amtorg? A He said, "Tell him

to mind his own damn business."

Q Did you tell that to Abe? A No, I did not.

Q About ten a.m., what happened? A Abe left and said he was going to the Hendrick offices.

Q What did you do? A I went out and had something to eat. I recall it was pouring.

Q Did you remain at the hotel all day? A Then I went back and dozed a while. About six, possibly a little after that, that evening, Abe returned and we completed the job of assembling the buna-s report.

Q Did Abe deliver the report to you? A Abe did, he gave me the report and I wrapped it up in brown paper, plain brown paper.

Q What did he do? Did he remain there or did he leave? A Abe left.

Q What did the report consist of? A The report consisted of about at least two hundred typewritten pages. These were not originals but were copies on onionskin paper for the most part, except for the material which we had typed that night. There were also about --

Q Let me interrupt you. I understand then that the complete report consisted of material which had been prepared before and brought there by Abe, together with material which was typed originally that night on the portable typewriter by Abe?

A The bulk of the material -- the far greater bulk of the material, had all been prepared in advance. All that we did that night was a certain amount of annotating and amending and so on.

Q And that material, you say, was carbon copy or onionskin paper? A Carbon copy or onionskin paper.

Q Go ahead. A It may have been single spaced.

Q What else was there in addition to that?

A There were about 25 or 50 blueprints covering the entire Buna-S process. These included flow sheets, the design of specialized pieces of equipment, such as the polymerizer, the system for the recovery of the two principal components of Buna-S, butadiene and styrene. It was a complete process.

The report itself contained a complete description of the process and contained a good deal of operating and theoretical material, and also many of the calculations involved in the design of particular pieces of equipment.

I wrapped this up in brown paper--

Q Did you check out of the hotel? A I checked out

of the hotel a little before seven.

Q By pre-arrangement did you then meet Sam?

A I met Sam --

Q Where? A According to a previous arrangement. It was in the doorway of a Horn & Hardart's restaurant, which is on 23rd Street -- it is on 23rd Street, on either Sixth Avenue or most likely Seventh Avenue. It is not right on the corner. This Horn & Hardart has a very large window or windows and a very small doorway. I met Sam there and I turned the material over to him, the complete report.

Q You have told us something here, Mr. Gold, about prior experiences with Mr. Brothman in respect to turning over incomplete and fragmentary material. Did he ever turn over to you material which was incomplete material relating to buna-S prior to the time he gave you the full report? A Yes. In the course of the meetings between -- in the 12 or 15 meetings between the first of January and the beginning of April, 1942, I received a considerable amount of fragmentary material on buna-S. I know I received some during the meeting at LaGuardia Field. That is about the only specific instance that I can recall.

Q Were those fragments in suitable fashion to be turned over to Sam or did you retain them?

A I retained all of those fragments. I did not risk turning them over to Sam.

Q What was the reason for not turning them over to Sam?

MR. KLEINMAN: I object to that, if your Honor please.

THE COURT: Sustained.

MR. SAYPOL: Has that been sustained?

THE COURT: Yes.

MR. SAYPOL: Will you please mark this for identification.

(Marked Government's Exhibit 13 for identification.)

Q I ask you to examine Government's Exhibit 13 for identification, and having examined it, will you tell us whether you recognize it as the kind of fragmentary material that you have described relating to buna-S which you did not turn over and which you received originally from the defendant Brothman.

A This is going to take a little time.

THE COURT: Take your time.

(Witness examines papers.)

Q Can you answer, Mr. Gold? A Just one moment, please, Mr. Saypol. This is definitely part of the fragmentary material that was turned over to me by Abe.

MR. SAYPOL: I offer it in evidence.

THE COURT: It may be received.

THE WITNESS: Mr. Saypol--

MR. SAYPOL: I will ask you a question.

MR. KLEINMAN: May we see it for a moment?

MR. SAYPOL: This consists, if the Court pleases, of three blueprints.

(Mr. Saypol hands blueprints to Mr. Kleinman.)

THE COURT: Did you fix the date when you completed that buna-S report which you turned over to Sam?

THE WITNESS: I fixed the date.

THE COURT: What was the date?

THE WITNESS: I don't know except that it was a Wednesday night that we met. It was somewhere around the first week in April.

THE COURT: Of 1942?

THE WITNESS: 1942.

THE COURT: Do you remember whether on any of the documents that you wrapped in that brown paper and turned over, you said, to Sam, was there a man or an inscription of the Hendrick Company appearing on there?

THE WITNESS: All of the blueprints, as far as I can recall, had the Hendrick Company legend box.

THE COURT: What type of paper was the report itself typed on?

THE WITNESS: It was typed for the most part on

onionskin paper copy, it was a copy.

THE COURT: No legend appearing on the paper at all?

THE WITNESS: No legend appearing on the paper; it was copy paper.

MR. SAYPOL: Is there any objection, Mr. Kleinman?

MR. KLEINMAN: Just my general objection.

MR. SAYPOL: I offer it in evidence.

(Government's Exhibit 13 for identification received in evidence.)

MR. SAYPOL: I said that Exhibit 13 consisted of three sheets. I find that there is a fourth sheet. May the record show that?

THE COURT: Yes.

Q Mr. Gold, I show you the four sheets comprising Government's Exhibit 13 in evidence. I direct your attention to the legend appearing at the foot of each of the large blueprints comprising that exhibit, and I direct your attention to two portions in that legend which apparently have been covered over. Do you have any knowledge with respect to those matters?

A I recall that when I received these blueprints from Abe he told me that he had placed pieces of masking tape over the name of the firm for whom this work was intended and that these pieces of masking tape were to indicate that before

I submitted the material to the Soviet Union I should cut out the section covered by the masking tape.

Q Actually you never did cut them out?

A I never did.

Q Now, in Exhibit 13, does one of those blueprints consist of a so-called flow sheet?

A The blueprint marked H-200A consists of a flow sheet.

Q Will you describe that to us and tell us what it is. A This blueprint is an unusually -- well, first, a flow sheet is a diagram of a process, giving each of the steps that the material or materials goes through before the final product is obtained. That is all it is, just a diagram.

Q You mean a diagrammatic illustration of the process from beginning to end?

A The steps of the process are given in their logical sequence as they occur.

Q In other words, rather than chronological they are in logical sequence; is that the idea?

A That is correct. This is an unusually complete flow sheet, because while most of them just indicate the steps or give you a box where they indicate the size of the piece of the equipment, this one contains all the conditions, or pretty nearly all the conditions. It

gives the temperature. It gives the capacities of the particular vessel, the H.C. vessel. It gives you the temperatures and the size. It describes particular pieces of equipment, such as the Treet-O-Units, which are pieces of equipment for proportioning or injecting the exact amount of material into a system.

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Q What is the sequence of the process as indicated on this flow sheet? A It is going to be difficult to answer because I am --

Q Will it take very long?

A I will give it generally. It will be inaccurate but it will be general, anyhow. What it contains -- you have the storage of the two principal materials, butadiene and styrene. You have the storage conditions for the soap solution which is used to emulsify the two of them, and you have the storage conditions for the so-called chain modifier, which determines what sort of a carbon product you get, or where the polymerization ends.

You have the storage conditions for other things such as distilled water. Then you have the flow to the Treet-O-Unit, which injects definite amounts of each of these materials into the reaction system.

You see, here is your butadiene. Here is the styrene. Here is the soap solution. Here is the chain modifier. Each of those go into Treet-O-Units, and they are

injected into these two vessels, both of which are polymerizers, which are really the heart of the system. It is where the butadiene and styrene combine and form low molecular weight and high molecular weight material, which is synthetic rubber.

The rest are the finish of the process. Apparently aging is necessary. That is right. I can't figure out why there isn't an emulsifier there. And then the rest of the system -- all these over here on the righthand side is the equipment for the recovery of the unused butadiene and styrene. Butadiene is a very explosive material. You can't let it out into the air like that, and styrene vapors themselves are poisonous.

Q In any event, when you get all through you have synthetic rubber? A When you get all through you have what is called rubber latex. What has to be done to it after that I don't know.

Q What else did you have on the other sheets, can you tell us, comprising Government's Exhibit 13?

A The sheet labeled "Butadiene and Styrene Recovery System," and marked drawing H-207-Ar-

Q By the way, what are the dates of those?

A The one which has the flow sheet, and it is called a preliminary study for 1500 gallons per day buna-S synthetic rubber latex plant --

Q Just give me the date, Mr. Gold.

A The date on it is 1/4/41.

Q How about the other dates? A The butadiene and styrene recovery system -- that is the drawing marked H-207A -- has the date on it of 2/8/42.

Q You have told us, nevertheless, that this material you have just described was fragmentary in respect to the depiction of the process, is that correct?

A That is correct.

Q Was there other material that you obtained prior to this meeting in the Hotel New Yorker where the complete report was prepared, at which meetings you received fragmentary material?

A There were other meetings at which I received fragmentary material.

MR. SAYPOL: May these four sheets be stapled together and marked as a single exhibit for identification?

(Marked Government's Exhibit 14 for identification.)

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Q Will you examine these four sheets comprising Government's Exhibit 14 for identification and tell me if they are in your handwriting and if you recognize what they are. I think you can do that quickly, Mr. Gold, can you not? A It is in my handwriting all right.

Q What subjects do they relate to, can you see, can you tell? A They relate to the buna-S process. They are

notes.

Q Do you recognize them as notes that you took in the course of your conversations with Mr. Brothman regarding the buna-S process?

MR. KLEINMAN: Now, that characterizes the statement and it is also very leading.

MR. SAYPOL: He may say No, and that will end it.

MR. KLEINMAN: I do not know what he will say.

THE COURT: I will overrule the objection.

A I recognize these as notes which I took in the presence of Mr. Brothman. They relate to the buna-S process.

MR. SAYPOL: I offer them in evidence.

MR. KLEINMAN: May we have a little while to look at them, your Honor?

THE COURT: You say that those notes were made in the presence of Mr. Brothman?

THE WITNESS: They were made in his presence.

THE COURT: Well, you need some time to look at them and we will recess for lunch at this point.

I have received some word from some of the ladies and gentlemen of the jury that are engaged in this trial that it is very difficult to be served in this neighborhood and get back in the time that has been allotted by the Court so we will try and extend the time a bit today so that

none of the ladies and gentlemen of the jury at the conclusion of this trial will suffer from any peptic ulcers. We will recess at this point until 2.10, and, again, with the usual admonition of the Court.

(Recess to 2.10 p.m.)

AFTERNOON SESSION.

H A R R Y G O L D , resumed the stand.

DIRECT EXAMINATION CONTINUED BY MR. SAYPOL:

Q Mr. Gold, prior to the luncheon recess, you told me that you recognized these pages comprising Government's Exhibit 14 for identification, as notes in your handwriting which were made in the course of your meetings with Mr. Brothman. Is that correct? A That is right.

Q Generally, what do those notes relate to?

A I would have to look at them again, Mr. Saypol.

Q I want the general subject. I don't want the details (handing). A The general subject is the Buna-S report.

Q What phase of it, some formulas? A I would have to look --

Q Mathematical computations? A I would have to look at it carefully.

Q Do it quickly, will you, please. I don't want too detailed a description. A There are notes and calculations relating to the body of the report.

Q Do they comprise what you have described as fragmentary material? A That is correct.

MR. SAYPOL: I offer these in evidence.

MR. KLEINMAN: I make the same general objection, your Honor.

THE COURT: Overruled.

X (Government's Exhibit 14 for identification received in evidence.)

Q Digressing for a moment and returning to Government's Exhibit 13, Mr. Gold, do you recall my mentioning the taped portion in the lower righthand margin of the blueprints? A Yes.

Q Will you hold those to the light and see if you can tell what appeared originally under that tape?

MR. KLEINMAN: May I suggest that if Mr. Saypol wants to remove the tape, I have no objection to it.

MR. SAYPOL: They are not mine. I don't know whether I have the right to.

MR. KLEINMAN: I have no objection if you want to try it.

Q Can you see what is under that? A Yes, it says B. F. Goodrich Company, Akron, Ohio.

Q And what does it say on the other one? A On the flow sheet it says Dewey & Almy Chemical Company.

Q Can you tell me something about Dewey & Almy Chemical Company?

MR. KLEINMAN: I object to that.

Q Do you know who Dewey & Almy Chemical Company was? A Yes.

MR. KLEINMAN: I object.

THE COURT: Objection overruled.

Who was it? Without giving us the details, who was it?

THE WITNESS: Dewey & Almy Chemical Company are a firm operated by Colonel Bradley Dewey, who was during the war the head of the Rubber Reserve Commission. They are a chemical firm.

Q That legend appears on that blueprint which contains the full flow sheet? A That is correct.

2wh

MR. SAYPOL: May this folder, with the pages contained in it, be marked as a single exhibit for identification.

X

(Marked Government's Exhibit 15 for identification.)

Q Mr. Gold, I show you Government's Exhibit 15 for identification and ask that you examine it and tell us what the various pages therein relate to, what they are?

A (Witness examines exhibit.)

MR. SAYPOL: I desire to consult with Mr. Kleinman while the witness is examining the exhibit, for the purpose of expedition.

THE COURT: Very well.

(Mr. Saypol confers with Mr. Kleinman.)

Q While you are examining that material, Mr. Gold, are you familiar with the defendant Brothman's handwriting?

A Yes, I am.

Q Would you recognize it if you saw it? A Yes.

Q If you find contained in that material that you are examining any of the defendant's - any in Brothman's handwriting, will you segregate it? A Yes.

(Witness continues to examine exhibit.)

Q Do you have a general idea by this time of what is in that folder, Mr. Gold? A Yes, I do, except that I have not gone through it all.

Q I do not think that you have to go through the rest. Tell us generally what is in that folder?

A The pages that I have examined so far, the first four, are typewritten pages. Actually it looks like a copy and a duplicate; that is, an original and a duplicate. This is identical with this (indicating).

Q What are they? A They are notes - they look very much like the notes we made on the night and the morning that Abe and I worked on the Bona-S report, called "Notes on continuous method report," and refers to various items of the report, such as the polymerization, the conditions for storage and so on.

Q Now, continue with some of the other pages and tell us what some of the others are.

A The pages that I have looked at so far, about fourteen of them, are in Abe's handwriting, and they refer, first of all, to the general process conditions on which the flow sheet drawing H-207 A is based. It gives the

percentages of these various components.

3f1

Q I notice that some of those pages you hold apparently have had portions cut out. A Yes.

Q For instance, take the one you hold. A Yes.

Q Do you know the circumstances under which that portion was cut out of that page? A The portions that were cut out were part of the annotating that we did at the Hotel New Yorker. We pasted them in the proper place in the report. They were charts and it would have been difficult to type them.

Q In other words, that material was cut out of that page and incorporated in the full report which you ultimately delivered to Sam? A That is correct.

Q Your Soviet superior, I should say. A That is correct.

Q Let me have those portions which you say are in Mr. Brothman's handwriting.

THE COURT: Mr. Gold, do all the papers you are examining there, Exhibit 15 for identification, represent notes which you made that evening?

THE WITNESS: No, these are in Brothman's handwriting. They are not in my handwriting.

THE COURT: Were they notes made by Brothman that evening?

THE WITNESS: No, he brought them along with him.

There was much too much work here to do in an evening.

Q Does that generally describe the different material there in that folder? A Yes. Well, I haven't looked at the rest of it.

Q Suppose you look at the rest of the pages and see if there is any other category there other than those described by you? A This all looks like material that was part of the typewritten Buna-S report. There is a lot of probability mathematics in here, I notice.

Q Which is the material that is in Brothman's handwriting? A All of this is in Abe's handwriting.

Q May I have it, please? A Yes (handing).

MR. SAYPOL: I offer it in evidence.

MR. KLEINMAN: We make our general objection to the offer, your Honor.

THE COURT: Overruled.

(Government's Exhibit 15 for identification received in evidence.)

X

THE COURT: You say all of the handwritten notes contained in this folder are in Brothman's own handwriting?

THE WITNESS: All the handwritten notes are in Abe's handwriting.

MR. SAYPOL: I take it from the lack of objection by Mr. Kleinman that there is no dispute as to that.

THE COURT: His only objection is his so-called

general objection and that I understand goes to the fact that this testimony is not relevant to the particular charge which is on trial.

MR. SAYPOL: That is what I understand.

THE COURT: I want to understand that general objection.

MR. KLEINMAN: That is substantially so, sir.

THE COURT: Would you hand that down, please.

(Folder returned to Mr. Saypol.)

THE COURT: How many sheets are there in that exhibit, Mr. Saypol?

MR. SAYPOL: I have not counted them. I think perhaps we had better.

THE COURT: I think so.

MR. SAYPOL: May I take a moment to do that?

THE COURT: Yes, and I suggest that the count be made, so many typewritten sheets and so many sheets of handwriting.

MR. SAYPOL: Mr. Cohn will announce the score.

MR. COHN: Your Honor, there appear to be four typewritten pages, twelve full pages of handwritten notes on white paper, 18 full pages of handwritten notes on yellow paper, and two pages of handwritten notes on white paper from which portions of the paper have been deleted.

MR. SAYPOL: Cut out.

Q Now, before you told us about the preparation and the delivery of this full report on Buns-S, you said something about your anticipated entry into the military service, that you were going to be drafted. What happened in regard to that? A I went to the Armory in Philadelphia on the 20th of April, 1942, and I was rejected because of hypertension.

Q Were you classified? A Yes, I was placed in Class 4F.

Q Thereupon did you resume your activities with your Soviet superior? A Yes, I did. I met Sam again.

Q Did you receive instructions from him with regard to Brothman, yes or no? A Yes, I did.

Q What did you do in respect to Brothman? A I called Abe and I told him that the plans for transferring me and my family to California had been cancelled by the firm for which I worked, but that I was going to remain here in the East.

Q As I recall it, that was a fictitious story that you had told him originally when you first received notice that you were about to be drafted? A That was the story I had been instructed to tell and I told him.

Q Now you told him that those plans had been cancelled and you were going to remain in the East? A That's right.

Q When did you have your next meeting with him?

A The next meeting with Abe occurred sometime in late May.

Q 1942? A 1942. I made three or four efforts to get in touch with him and eventually I called at Abe's home, and Naomi told me he was at his other office, but finally I did get in touch with him one night at the Hendrick offices late in May of 1942. We took a walk up Church Street, as I remember, leading into Sixth Avenue, and in the course of that walk Abe told me that he was having difficulties with the management at the Hendrick Company.

Q What happened thereafter? A The next meeting with Abe took place in Grand Central Station and it was at a small drug store in that building.

Q When did that take place, do you remember?

A Sometime in June, possibly the middle or late June of 1942.

Q Was he employed by Hendrick at that time?

A He was - he told me during this meeting that he had severed his connection with the Hendrick firm and that he had entered into a partnership arrangement and formed a firm called the Chemurgy Design Corporation. The other members of the partnership were a man called Henry Colwynne and Artie Weber.

Q Did he tell you where he could be reached?

A Abe told me that the offices of the Chemurgy firm were in the Graybar Building.

Q Now about that time that he told you about this new association, this Chemurgy Corporation, do you recall whether you had any further conversation with him regarding the Buna-S report?

A When I saw him in June in this small drug store in the Grand Central Station, I told Abe that a very laudatory report had been received from the Soviet Union regarding the Buna-S work.

Q In the interval between the saying of that, had you met Sam or your superior? A I had met Sam several times.

Q Was that the basis upon which you had this conversation?

MR. KLEINMAN: I object to that, sir.

THE COURT: Sustained.

BY THE COURT:

Q After you met Sam, what did you tell Mr. Brothman?

A At this meeting at the Grand Central Station I told Abe that a report giving great praise to the Buna-S work had been received.

Q Did you tell Mr. Brothman who gave you that report?

A Yes, I did.

Q And who did you say gave it to you? A I said it

a chemical reaction but takes no part in it.

THE COURT: I understand he does take part in it.

MR. SAYPOL: I don't know.

Q Will you look at Exhibit 16 for identification and examine it and tell me, if you know, what it is.

That is a series of five prints (handing).

MR. KLEINMAN: I might say I was lost a long time ago.

THE COURT: I thought this was probably the proper time to bring us back, but I don't think we have been brought back.

Q What are those? A Your Honor, the whole point is that you could pass the gas hydrogen into a vegetable oil for about ten years and nothing would happen. If you put in a nickel catalyst and pass in hydrogen, in a short time the oil gets converted from an oil to a fat or vegetable shortening.

THE COURT: An edible fat?

THE WITNESS: An edible fat.

Q Come to these blueprints. Can you tell us what they are? A The blueprints represent a good deal of material on the preparation of the nickel catalyst. It reads here: Chemurgy Diagrammatic Flow Sheet for Nickel Catalyst Pellets and Vehicle Protected Nickel Catalyst." That is what I was referring to before.

Q Did you receive those from Brothman at one of these meetings? A Yes.

Q Are these what you would characterize also as fragmentary material? A Yes, I would.

Q Not indicative of a complete process?

A You need a lot of descriptive material before you can go ahead with this.

MR. SAYPOL: I offer these in evidence.

MR. KLEINMAN: Just our general objection.

THE COURT: Same ruling.

MR. KLEINMAN: I am more and more convinced it is fortunate I took up law rather than an exact science when I look at these blueprints.

(Government's Exhibit 16 for identification received in evidence.)

Q Did you tell us what application the devices shown by these blueprints would have in industry?

MR. KLEINMAN: I believe I must object to that question. I think it must take us into such far fields so far removed from our issues here.

THE COURT: I am going to overrule it. He can tell us, but I want it in simple language, if you can give it to us and in as short a way as possible. If it is going to be a long detailed explanation, it won't do any of us any good.

Q Colloquially, what could that stuff be used for?

A First, for the preparation of shortening materials from vegetable oils; secondly, for the preparation of aviation-type gasoline; and thirdly, for the preparation of various organic chemicals by hydrogenation of other chemicals.

Q Using the term of the receipt of the papers which constitute Government's Exhibit 10 in evidence as a focal point, do you remember the occasion of a meeting with Brothman at which you received a report on mixers?

A Yes, I do.

Q When did it take place? A Sometime in November of 1942.

Q Where did it take place? A Somewhere in the area of the Graybar Building, that is area surrounding the Graybar Building.

Q Did you receive that report on the basis of a conversation which you had previously had with your Soviet superior?

MR. KLEINMAN: I object to that.

MR. SAYPOL: I withdraw it.

Q Did you receive that report from Brothman subsequent to a conversation which you had had with your Soviet superior? A Yes, I did.

Q Will you describe that report and tell us the

circumstances under which you received it from Brothman.

A I received the report sometime on an evening in November of 1942. The report itself consisted of about 300 typewritten pages containing simple calculations for various types of mixers, plus a vast amount of theory backing up the methods for design of certain of these mixers --

THE COURT: Will you hold that thought for a moment? We will declare a short recess at this point.

(Short recess.)

16 1wt Q I think you told us that there were 300 typewritten pages in this report. Was there some other material with it? A Yes, there were about 50 to 100 nomographs.

Q What is a nomograph? A It is a chart used as an aid in calculation.

Q Was there any other material?

A There was a large amount of printed material bearing the name of the Hendrick Company, technical information for the use of prospective purchasers or for actual users of Hendrick's mixing equipment.

Q What did you do with that material?

A I turned it all over to Sam that night. Well, first, I went to a little stationery shop which is in the Grand Central area, on the south side of 42nd Street near Lexington Avenue, just east of Lexington Avenue, a very

small store. I often used to buy supplies there. I purchased some wrapping paper there and I wrapped up the material into one large package.

Q Then you delivered it to Sam?

A Then I delivered it to Sam.

Q Do you remember where you gave it to him?

A The material was in a ringed notebook. It had -- oh, about, I guess, the rings were at least 3 inches in diameter.

Q Do you recall where you delivered it to Sam?

Excuse me, I must keep referring to him as the Soviet superior. You haven't described him yet as Sam.

A I gave the material to Sam.

THE COURT: I think the witness has described him as Sam.

MR. SAYPOL: Yes, all right.

A (Continuing) I gave the material to Sam in the Ferris Wheel Bar.

Q I show you a series of papers comprising Government's Exhibit 17 for identification. Will you go through those quickly and look particularly at the last two pages and tell me if you know what they are.

BY THE COURT:

Q Before you do that, Mr. Gold, when was the conversation had with Brothman at which you told him ^{that} your Soviet superior desired to have him go back to work for

Hendrick or another large company, when did that take place?

A That took place about July or so, 1942. It was in the summer -- it followed June.

Q When you met him in November, 1942, he was still engaged in his own business, was he?

A That is correct.

Q Was there any further discussion about your previous conversations? A I received a continual barrage of orders from Sam.

Q Did you have any discussions with Mr. Brothman about why he would not go back to Hendrick or to some other large company? A I had a couple but I gave it up after a while.

Q What were Mr. Brothman's replies?

A He said he thought he could function a lot better and obtain much more information for the Soviet Union by continuing at Chemurgy. On one occasion -- on the occasion of this walk in Sunnyside, he told me that he would try to arrange some sort of a consulting arrangement with the Hendrick firm whereby he could go down there a day or so a week and thus still have access to their files.

BY MR. SAYPOL:

Q In your conversations with Brothman about going back to a large industrial concern, did you say to him at any time what the purpose was for going with a large

concern? A Yes. The primary purpose that I emphasized to Abe was that the Soviet Union wanted more information on synthetic rubber and that they wanted it from the horse's mouth, so to speak; that is, from a firm or a plant which was actually in operation and producing the material.

Q All right. Now will you direct your attention to the exhibit for identification which I have handed to you, and look at it quickly, particularly the last two pages and tell us whether you recognize those.

A (Examining) The first 13 pages are in my handwriting.

Q How about the last two pages?

A The last two are in Abe's handwriting.

Q What does the material consist of? A It consists mostly of theoretical material relating to the design of certain types of mixers.

Q Was that material prepared in conjunction with Brothman and these meetings that you had with him?

A That is correct.

MR. SAYPOL: I offer them in evidence.

MR. KLEINMAN: Same objection.

MR. SAYPOL: Do you want to see them?

MR. KLEINMAN: Let me take a glance at them.

(Mr. Saypol hands exhibit to Mr. Kleinman.)

MR. KLEINMAN: Same general objection, your Honor.

THE COURT: Same ruling.

(Government's Exhibit 17 for identification received in evidence.)

XXXX

Q I take it now that we are toward the end of 1942?

A Yes, we are, Mr. Saypol.

Q Recall, if you will, the night that you delivered this report, this 300-page report, to Sam at the Ferris Wheel Bar. As the result of the conversation which you had with Sam and following the conversation with Sam did you then have a meeting or a conversation with Brothman?

A I had a meeting with Abe following my talk with Sam and I told Abe that a very important Soviet dignitary a Russian official, was soon coming to this country, that he was making a special trip here for the explicit purpose of meeting with Abe and talking to him.

I told Abe that there were open and actually legitimate reasons, ostensible reasons, why this man was coming to the United States, but the primary purpose of his visit was to meet with Abe.

Abe said that he would be very glad to meet with this man.

Q Did you tell him then what the primary purpose was?

A The primary purpose was to meet with Abe and to talk with him about further work that he might do for the Soviet Union and to talk over work that he had already done for the

Soviet Union.

Q You mean work of the type that you have described here? A Information of the type which Abe had previously submitted.

Q Subsequent to that talk with Abe did you arrange a meeting? A I did.

Q Where did the meeting take place?

A It took place in the Lincoln Hotel, 45th Street and Eighth Avenue. The time was sometime in December of 1942.

Q Did you first fix the time with Brothman?

A I first fixed the time with Abe and then I told Sam about it.

Q Was the meeting held? A The meeting took place. I met Abe in the lobby of the Lincoln Hotel. First I had engaged two rooms.

THE COURT: When was that, did you say?

THE WITNESS: About December of 1942.

Q What time of the day or night was it?

A It was in the evening, around 8 o'clock.

Q Now, you say you met Abe in the lobby?

A I met Abe in the lobby by prearrangement.

Q What did you do? A We went upstairs to the suite of two rooms that I had engaged in the Lincoln Hotel.

Q What happened in respect to the Soviet dignitary; was he there when he got there? A No, he wasn't.

Q What time did he arrive? A Well, after we had been in the room for about 20 minutes there came a knock on the door and I opened it to admit Sam.

Q Did you recognize him as Sam?

A Yes.

Q Did Abe recognize him --

MR. KLEINMAN: I object to that, sir.

Q Did Abe say anything to him or did he say anything to Abe before you introduced them?

A Well, I introduced them. I don't recall anything between the two of them before I effected the introduction.

Q I show you again Government's Exhibit 9 which you have identified as being Sam, your Soviet superior. Was that the man who came in?

A This is the man who knocked on the door and whom I admitted to our rooms at the Lincoln Hotel.

Q Under what name did you introduce him to Abe?

A I told Abe that this man was George -- just George, that's all.

Q Was that in accordance with usual procedure --

MR. KLEINMAN: I object to that.

Q -- that you have described here?

THE COURT: I will sustain it.

MR. SAYPOL: I will withdraw it.

Q You introduced him as George? A I introduced

him as George.

Q How long did the three of you remain in that suite? A Until about 2 o'clock in the morning.

Q What took place?

MR. KLEINMAN: I object to this, if your Honor please, upon the grounds previously advanced, that these transactions were prior to the time alleged in the indictment; upon the further ground that this testimony, although I do not know what it is, may tend to prove the commission of some other and independent crime not within the purview of this indictment.

THE COURT: It might very well be not within the purview of the indictment, but I say once again that they are charged with conspiring to obstruct justice in that they gave false testimony before a grand jury and they are attempting to show the relationship of the parties and to show the falsity of the testimony, and I therefore overrule the objection.

MR. KLEINMAN: Exception.

Q What did Sam, who was called George, say to Abe and what did he say to both of you? What did you all say to each other? What did you talk about?

A The first thing was that George gave Abe a very praiseworthy report about the buna-S process. He stated that it was equivalent in value to two or three brigades

of men to Russia. The next thing --

THE COURT: Let me ask you something: Was George introduced as your Soviet superior or as the man that was coming from Russia that you had told Abe was coming from Russia?

THE WITNESS: I introduced George as a Soviet dignatary who had come over especially from Russia, but in effecting the introduction I indicated to Abe that I knew George previously but that he was not my present Soviet superior.

Q He told Abe that he had done a fine job in connection with the Puna-S report, is that right? A That is correct.

Q Then what else transpired? A The next thing that followed was a long discussion by Abe and George on the subject of mathematics. Sam was a mathematician himself.

Q You mean in relation to these processes you talked about? A It was a generalized discussion. They lost me, I know that.

Q You mean one was outflowing the other, is that the idea? A No, not exactly. They were just discussing a matter in which they were mutually interested. The next thing that happened was that Abe showed George a piece of equipment of a special design in connection with the nickel catalyst process. As I remember it, it was a device for taking drums of the spent nickel catalyst, the sludge, and inverting them over a tank and washing them out with the hot solvent, which if it had to be done manually would be a very hazardous and tricky procedure. There was some sort of a vapor-type self-locking device, I think it is called, and George approved of this. Then George got in sort of the thin edge of the wedge about --

MR. KLEINMAN: I move to strike out the characterization.

THE COURT: Strike it out.

THE WITNESS: Then George mentioned to Abe that it would be a very good idea if he would again try to locate himself with a large industrial firm, one which was conducting processes, and proven operation in the United States.

Q Did he mention the type of firms he might connect with? A He again mentioned either firms manufacturing synthetic rubber or firms in the petroleum field.

Q For instance? Do you remember?

A Yes, he said B. F. Goodrich, Goodyear, United States Rubber, Sun Oil, Atlantic Refining and so on.

Q What other conversation took place? A The final item that I can recall was that George offered Abe stenographic help in connection with the preparation of any further material that he might have for the Soviet Union. He said that he would provide a stenographer who could work with both Abe and me.

Q What happened then? A The meeting broke up about two a.m. The three of us went downstairs to the lobby. Sam left --

Q What did Brothman say to all this? A I am sorry, I don't understand your question.

Q What did Brothman say to all of this, that is, the suggestions of George. A I am not sure about the suggestion of George regarding going to another firm. It is

possible --

MR. KLEINMAN: I object to it.

THE COURT: Don't tell us what is possible.

THE WITNESS: I have a very vague memory that Abe may have told George that he thought he could obtain much more material by continuing to stay with the Chemurgy firm. As regards the offering of stenographic help, Abe was enthusiastic.

MR. KLEINMAN: I move to strike out that characterization. May we have the conversation?

THE COURT: Yes, tell us what he said or did that led you to that conclusion.

Q What did he say indicative of his enthusiasm?

A I can't recall anything that he said. The only thing that remains with me is a memory that he liked the idea.

Q Then you went downstairs, the three of you, did you not? A Yes.

Q How did you break up? A Sam left and I stood there a while talking with Abe. Abe told me that I had provided one of the most wonderful experiences of his life and --

Q Did he say in what way? A In respect to meeting this official from the Soviet Union in that I had given him a thrill that he could never forget. He told me that he

was so elated that he was going back at that hour, two a.m., to the Chemurgy offices to work the rest of the night. He said he couldn't sleep. He took a taxi and left.

Q Do you remember that night having some conversation with him about his Communist Party dues? A That night?

Q That night or that morning, around that time?

A No, I do not. There was a conversation regarding his Communist Party dues but that was sometime early in 1942 when we were working on the Buna-S report.

Q What time was it, can you tell us? A Under instructions, I asked Abe to pay his Communist Party dues in which he was in arrears to me, and Abe said that he was short at the time but he would try to arrange it.

Q Coming back to this incident after the meeting with George or Sam and Brothman, what did you do that night after he left you? A I went upstairs again to the hotel and went to sleep. I got up the next morning and went back to Philadelphia.

Q Coming now into February 1943. Did there come a time when you actually obtained stenographic help for Abe in connection with his work as you have described it?

A Yes, I did.

Q Will you tell us about that, please?

A Through the man whom I have mentioned before, whom I met in Jersey City, who obtained for me the job at the Holbrook Company, and together with whom in the spring of 1935 I entered into espionage work for the Soviet Union, I obtained the services of a young girl about seventeen to act as a stenographer.

MR. SAYPOL: I ask to have this marked for identification.

X (Marked Government's Exhibit 18 for identification.)

Q Will you look at Government's Exhibit 18 for identification and tell me if you recognize the likeness that appears thereon (handing)? A Yes, I do.

Q Who is that? A That is Jennie Zawrucka.

Q Who is Jennie? A Jennie was a girl of about seventeen in February of 1943, and she came from somewhere in New Jersey around Newark, possibly Hackensack.

Q Is she the girl you hired? A She is the girl whom I hired.

Q As a stenographer? A As a stenographer one day a week.

MR. SAYPOL: I offer it in evidence.

MR. KLEINMAN: I object to it.

THE COURT: Overruled.

(Government's Exhibit 18 for identification received in evidence.)

THE COURT: She went to work for Brothman?

THE WITNESS: She went to work at meetings held between myself and Abe. She acted as stenographer.

Q Digressing for a moment, this night you have told us about, this three-party meeting with George or Sam, was there anything said in that conversation regarding Shura Swan? A Yes. Abe asked Sam whether he could do something about Abe's friend, Shura Swan --

Q You mean he asked George. He was then George?

A He was then George. Sam slipped once during the course of our meeting and called me Harry instead of Frank--

MR. KLEINMAN: I move to strike it out. It is not responsive. I don't know what he means by "slipped."

THE COURT: Eliminate the word "slipped."

Q Tell us what happened? A Sam once referred to me as Harry instead of Frank.

Q What did he say about Shura Swan? A He told Abe that he would see what he could do about getting Shura Swan back Swan's job in the Amtorg Corporation.

Q Coming back to the time when you brought in this stenographer, would you tell us generally concerning the meetings, the time and the place, and what transpired with Brothman? A The meetings were held during the week. They started sometime around seven or eight p.m. I would come to New York and I would meet Jennie in the waiting

room of the Pennsylvania Station. For the first few meetings, because she was very young and the man who had introduced me to her had instructed me to take good care of her, I met her at the Pennsylvania Station at Newark. I would come from Philadelphia to Newark, would get off there, would meet Jennie, buy tickets to New York, and we would go on to New York. When we got into New York, we would go over to the Grand Central Station and into the Graybar Building, and after calling Abe to notify him we were coming, we would go up to the offices and go to work.

Q What particular device or devices or processes were under consideration between you at the time?

A The one matter that we were working on at that time was the so-called Aerosol insecticide bomb.

Q That was not an explosive? A No, it is called a bomb. It is an insecticide dispenser.

Q What would transpire at these meetings? What would you do? A Abe would sit there and he would dictate material regarding the background, the uses, and the design of the insecticide dispenser. Jennie would take the material down in shorthand, and I would sit alongside of her and when she indicated to me that she had trouble with some of the technical terms, I would write them out in longhand and in other ways assist her, in little ways. Jennie would then take the material back with her to her home in New

Jersey, would type it up, and would submit it to Abe and I at the next tri-part meeting that we had.

Q In these meetings, under what name did Jennie know you? A Jennie knew me as Harry Gold.

Q Under what name did Brothman know you? A Brothman at that time knew me by two names. One, Frank Kessler, which I had told him was my true name. The other, Harry Gold, I had given him as a name of a friend of mine which he could use as a telegraph drop in case he ever had to get in touch with me.

Q Were there any occasions when there was any confusion as the result of the dual names in these meetings with Jennie? A I don't recall any confusion in regard to Jennie. I kept the record straight there.

Q How about Brothman? A I don't think Brothman ever slipped either.

Q What happened with the notes that Jennie took? Were they ultimately returned to you or Brothman in the form of typewritten material? A We ultimately received all the notes in the form of typewritten material.

Q Then what happened to the notes? A I had intended to give --

MR. KLEINMAN: No, no, I object.

THE WITNESS: I retained the notes in my possession.

Q Were they ever delivered to your superior?

A No, they were not.

Q Do you know what Brothman's connection with the Aerosol bomb was? In other words, in what circumstances was he working on it?

MR. KLEINMAN: I wonder if the district attorney would favor me by calling it the Aerosol insecticide? Although I know he has stated fairly the bomb was not an explosive bomb, there might be some confusion if we talk about bomb right along here.

THE COURT: You have heard the request, Mr. Saypol.

MR. SAYPOL: I have no objection of course. I am trying to think of what we call those things around the house.

MR. KLEINMAN: In the Army we called it the Aerosol bomb.

MR. SAYPOL: We will call it the insecticide eliminator. All right?

MR. KLEINMAN: That is fine.

MR. SAYPOL: Or we can call it the cockroach eliminator.

Q Do you know what his relation was to the development or production of this insecticide material?

A Abe at that time told me he was working for a firm called the Regal Chemical Company in Brooklyn. The owner of this firm was a man by the name of Heilig.

Q When did these meetings with Jennie terminate?

A They began in February 1943, and they ended sometime in June of that year. There were about ten altogether.

Q Who paid Jean? A I did, I paid her in cash.

Q How much did you pay her? A It was either ten dollars or fifteen dollars a week for the one day a week. The day might have been a Wednesday. It was somewhere in the middle of the week. She would work in the evening from seven or eight o'clock up until about ten or so, sometimes past that, and then would take her stenographic notes home with her and type them up on the typewriter.

Q After that time, when you finished with Jean --

THE COURT: I thought her name was Jennie.

THE WITNESS: I always called her Jennie.

MR. SAYPOL: My notes said Jean.

Q Around the time you terminated the services of Jennie, did you begin in your meetings with Brothman to work on some other processes? A I began to work with Brothman mostly on Sunday mornings and afternoons on the preparation of material for the Soviet Union involving a method for the production of magnesium powder of the type used in tracer bullets and flares.

Q I understand up to this point in most cases these conversations, these activities that you had with Brothman

in respect to various processes, emanated in the first instance as the result of conversations with your superior?

A That is correct.

Q Does that apply or did that apply to this subject you have just told us about? A The Aerosol bomb?

Q No. A The dispenser?

Q No, I am talking about the material for the tracer bullets, the magnesium powder. A I told my superior about this material or the process --

Q Did he suggest it in the first place or did Brothman suggest it? A Brothman suggested it to me.

Q What did Brothman say? A Brothman told me that the basic idea of the process was Henry Golwynne's. It was a unique process. The basic idea was Henry Golwynne's. He said that the plant for the production of the magnesium powder was being designed for use by the Australian Government.

Q Will you describe the process as he gave it to you, generally and briefly, if you will, and will you try to give it to us in lay language if you can.

A The process consisted in taking an ingot of magnesium, melting it. Then the molten magnesium is forced through a spraying nozzle into a chamber. In this chamber is the inert gas helium. A fine mist of magnesium particles forms. These particles solidify and they fall to

Q Did you tell him whether or not it was under contract with the Government?

A The insecticide dispensers were being purchased for use of the United States Armed Forces.

Q Where, do you know? A In the South Pacific principally.

MR. SAYPOL: Will you mark these, please.

(Marked Government's Exhibit 19 for identification.)

Q Would you examine the sheets contained in Government's Exhibit 19 for identification and tell me whether you recognize them -- consisting of three white sheets and two yellow sheets?

THE COURT: What was your question?

MR. SAYPOL: I have asked the witness to examine the sheets and tell us whether he recognizes them. I take it that it is all right for me to wait until he examines them.

THE COURT: Can you do that with some dispatch?

THE WITNESS: I will try to. It will just take a minute or so, your Honor.

THE COURT: All right.

THE WITNESS: I just want to be certain.

(Witness examines exhibit.)

A I recognize these.

Q Tell us what they are, will you please. A The

first three are in my handwriting and consist of notes made in Abe's presence on one of these Sunday morning meetings starting from July or so of 1943 up until about the end of that year. They refer to the design of the magnesium powder plant.

The fourth sheet, which is a yellow one, is in my handwriting and refers to notes again on the design of the magnesium powder plant. It seems to be particularly -- well, I will have to read it more carefully to detail it.

Q All right, pass on to the next sheet, will you, please? A The last page is in Abe's handwriting and again refers to the design of the magnesium powder plant.

Q When you say "Abe" you refer to the defendant Abraham Brothman? A Yes, I do.

MR. SAYPOL: I offer those in evidence.

MR. KLEINMAN: I object to it, if your Honor please, as not relevant to the issues; further on the ground that these are some documents that the witness said he wrote which tend to bolster up the testimony which he gave here.

THE COURT: The notes were made in the presence of your client, Brothman.

MR. KLEINMAN: That is what he says.

THE COURT: You are objecting on the ground that they bolster up the Government's case.

MR. KLEINMAN: Yes, but basically, of course, my objection is that the entire thing is immaterial.

THE COURT: That objection is overruled.

I have just re-examined the first count of the indictment and I want to at this time -- this is as good a time as any -- tell the jury once again that the first count of the indictment charges, the general conspiracy count, "to influence, obstruct and impede the due administration of justice." And then it goes on and says that "the defendants well knew that in July of 1947 there was an investigation being made by the grand jury of possible violation of the espionage and other federal criminal statutes, and that thereafter Gold and Brothman had gotten together and had arranged what their testimony would be before the grand jury concerning their activities."

You are not to take this evidence which you are receiving now and consider it on the basis that if the defendants were guilty of any independent offense they must be guilty of the offense charged, but it is to be considered by you only in connection with the Government's charge that they obstructed the administration of justice when the grand jury was investigating this subject matter, and when, as the Government charges, they did not give the accurate and true facts concerning that subject matter. Is that clear?

MR. KLEINMAN: Your Honor, I would like to say something in the nature of my position, but perhaps you would rather have me do it at the bench.

THE COURT: Very well.

(Discussion at the bench among Court and counsel, not in the hearing of the jury, off the record.)

(Discussion resumed at the bench, not in the hearing of the jury as follows):

MR. KLEINMAN: My objection is based upon the following grounds: that your Honor has instructed the jury from time to time, and against just before I came to the bench, to consider the testimony offered by this witness in the light of the indictment as your Honor has defined it to them, that this testimony is not being offered for proof of any other or independent crime, if I understand your Honor correctly.

THE COURT: That is right.

MR. KLEIN: My objection is based upon this fact, Judge: that these incidents, detailed by the witness here in relation to the mixing device and aerosol device, gasoline -- I am not so sure about that. Now we come down to magnesium -- magnesium flares and powders, none of which would have tended to violate our laws as of that time in connection with espionage or any other federal acts that might have been prohibited, and, therefore, I

say there is no connection between that testimony of those things and the present charge in this indictment. That is putting it as briefly and as succinctly as I can, Judge.

THE COURT: Does the Government wish to say anything?

MR. SAYPOL: No, I do not think there is anything I have to say; I think it is clear.

THE COURT: All right. You have my ruling on it.

(The proceedings were resumed within the hearing of the jury as follows):

MR. SAYPOL: I take it that Exhibit 19 will be received?

THE COURT: Yes.

(Government's Exhibit 19 for identification received in evidence.)

BY MR. SAYPOL:

Q What were your contacts with the defendant Brothman subsequent to the end of 1943, were they frequent?

A No, they were sporadic all through 1944 and 1945.

Q Do you remember meeting Brothman in September of 1945? A I do.

Q Do you remember meeting him in the vicinity of 32nd Street near Broadway? A No; I met Abe in a bar which