

TESTIMONY OF SA DANIEL F. GARDE
WASHINGTON TRIAL, JUDITH COPLON

VOLUME #II

1182

P R O C E E D I N G S

THE COURT: Good morning, gentlemen.

MR. KELLEY: Good morning.

MR. WHEARTY: Good morning, sir.

THE COURT: Good morning, ladies and gentlemen of the jury.

Gentlemen, are you ready to proceed?

MR. PALMER: Yes.

THE COURT: Very well.

Thereupon --

DANIEL F. GARDE,

resumed the witness stand and testified further as follows:

CROSS-EXAMINATION (Cont'd)

BY MR. PALMER:

Q. I call your attention to Exhibit No. 23, and ask you, did you ever see this house -- here is another picture of the same house, looking at Exhibit 24, Government's exhibits.

A. It looks like a building that I passed on one occasion very briefly. I couldn't positively state whether I had ever seen that house before or not.

Q. Referring to Exhibit 24, is the building that you passed very briefly at 108th Street near Amsterdam Avenue?

A. I have been through 108th Street, yes, sir.

Q. When were you at 108th Street between Amsterdam Avenue at or near Columbus Avenue; when?

A. I don't recall.

Q. Was it since this case started?

A. I have been through there since this case started.

Q. When you went through that street, is that an east-bound street or a westbound street?

A. I don't recall.

Q. Who drove the car?

A. As I recall, I was driving the car.

Q. Is West 108th Street, to your knowledge -- you said you lived in New York how long?

A. I have lived in New York many years.

Q. During that time, you were an FBI agent during those many years, most of the time?

A. Not most of the time.

Q. You were an agent for the Personal Finance and other companies you worked for?

A. I worked for a number of companies, yes.

Q. I ask you, since January 1, 1949 -- is this light very bad here?

A. I can see clearly.

Q. Since January 1, 1949, at any time, do you recall having passed this house or stopped or being shown the house which appears in the picture that I just showed you?

A. I never stopped in front of that house but I recall.

Q. Did you ever pass the house since January 1, the

house that appears in those pictures?

A. I think I passed that house.

Q. Did anyone tell you Gubitchev lived there?

A. That is my recollection.

Q. Who told you that?

A. I don't recall.

Q. What time was it on the 4th of March, 1949 that you last saw Mr. Gubitchev?

A. It was sometime before nine o'clock in the evening.

Q. Is that as near as you can get to it?

A. I can get nearer to it than that, yes.

Q. I wish you would. It was in the afternoon, wasn't it, when it was light?

A. On March 4?

Q. Yes.

A. No.

Q. You didn't see Gubitchev on March 4 when it was light?

A. The last time I saw Gubitchev on March 4 was at 12 midnight.

Q. You mean down in the FBI building?

A. That is right.

Q. In the afternoon, where did you see him?

A. In the afternoon I saw him on 42nd Street.

Q. Yes, what time?

A. I first saw him about ten minutes to five.

THE COURT: That was all covered yesterday.

MR. PALMER: I know that, if Your Honor please. I have a witness in front of me who, so far as I am concerned, is hostile.

THE COURT: No, sir, he is not hostile. At least, he hasn't betrayed any hostility.

MR. PALMER: Will Your Honor forgive me from this end of it?

THE COURT: Yes, you may think; but I am saying he isn't hostile.

MR. PALMER: Your Honor has given me that.

BY MR. PALMER:

Q. As you testified yesterday, was it five minutes past five on the northwest corner of 42nd Street and Lexington Avenue?

A. That is correct, approximately five minutes after five.

Q. Give me your best recollection when you passed by Gubitchev's house, Exhibits 23 and 24, and whom you were with.

MR. WHEARTY: Object to that as immaterial, Your Honor.

THE COURT: Objection sustained.

MR. PALMER: Immaterial when he passed by?

THE COURT: Yes, immaterial.

MR. PALMER: All right.

BY MR. PALMER:

Q. Will you tell me, whether or not, on the morning of January 15, when you got instructions from Mr. Miller to go somewhere -- and remember you said what you said regarding him; and His Honor sustained the objection -- on that date, January 15, did you pass by the house where Gubitchev lived, depicted in Exhibit 24 and Exhibit 23? Did you pass by on that day?

A. I did not.

Q. Then it was on another occasion?

A. That is correct.

Q. And it had something to do with this case?

A. It had nothing to do with this case.

Q. When you passed by Gubitchev's house?

A. Correct.

Q. And when someone pointed it out to you?

A. That is right.

Q. You don't know who it was that pointed it out to you?

A. I don't recall.

MR. PALMER: May I have the notes of January 14?

MR. WHEARTY: May we ask the witness a couple of questions with respect to these notes first, Your Honor?

THE COURT: Yes.

MR. PALMER: Your Honor, at this point, with all due

deference to the Court, I object to any cross-examination or any examination of the witness upon the stand while I am conducting cross-examination. The witness was on direct yesterday.

THE COURT: That is right, we understand that.

MR. WHEARTY: I merely want to know if these are the notes that he referred to in his testimony yesterday.

MR. PALMER: I am going to show them to him and ask him myself. I ask that they be marked for identification.

MR. WHEARTY: Mark them for identification.

THE COURT: Is there any question about them being the notes?

MR. WHEARTY: We haven't talked to the witness since yesterday; so we have had no opportunity to confer and find out.

THE COURT: Let counsel ask him the question.

MR. PALMER: I will ask him the question.

(Thereupon the said document was marked as Government's Exhibit No. 79 for identification.)

MR. WHEARTY: As part of my statement, I might also say, Mr. Miller advises these are the only other notes which he received from Mr. Garde.

MR. PALMER: That is what I thought. Mr. Miller said he had them yesterday. He got them from Mr. Miller. He didn't

have to ask this witness anything about them.

MR. WHEARTY: Would you show them to the witness before you read them, Mr. Palmer, and find out whether those are the notes?

MR. PALMER: I haven't even thought of looking at them yet.

MR. WHEARTY: I don't know what you were doing.

THE COURT: Show them to the witness, if you are going to identify them. I am sure you understand the rule.

MR. PALMER: I want to know the number that they have been marked.

THE COURT: Then you have a right to look at them.

BY MR. PALMER:

Q. I ask you to look at Government's Exhibit 79 for identification and ask you, were these the notes that you turned over to Mr. Miller, the notes that you referred to yesterday when you came back from recess, having seen me downstairs and then having seen His Honor, this Judge --

THE COURT: I don't think you ought to cover that.

MR. PALMER: I want to be sure.

THE COURT: He understands.

MR. PALMER: There may be other notes, if Your Honor please.

THE COURT: No, sir; get through with these notes and find out if there are any others.

MR. PALMER: Very good.

THE WITNESS: These are the notes I was referring to.

MR. PALMER: I offer them in evidence.

MR. WHEARTY: Except as to materiality, we have no objection whatever. The same objection we made previously, and Your Honor overruled.

THE COURT: Yes, that is right.

MR. PALMER: Will they be marked Government's exhibits then?

THE COURT: They are already marked.

MR. WHEARTY: Marked Government's Exhibit 79.

(Thereupon the said document, Government's Exhibit No. 79, was received in evidence.)

BY MR. PALMER:

Q. Do you carry a fountain pen with you?

A. I do.

Q. The same fountain pen you used in connection with Exhibit 78?

A. It is.

Q. Will you kind write, "Bus 89"?

MR. WHEARTY: We object to that as wholly immaterial to this case, Your Honor.

MR. PALMER: I desire, if Your Honor please, to test the witness with regard to the manner in which he wrote Exhibit No. 78; and this witness is the one who said he wrote it in

the car.

THE COURT: I think it is immaterial; so the objection may be sustained.

MR. PALMER: Then, if Your Honor please, I desire to ask the questions and Your Honor will rule.

THE COURT: You may ask the questions.

MR. PALMER: Very good. May he, Your Honor, please, so there will be no question about my questions afterward in the record, mark at the present moment in the presence of the Court, page 1, 2, 3, so when we refer to it afterwards, we won't be making speeches regarding the balance of what is on the page? May he, in the presence of the Court and jury put down 1, 2, and 3, over here?

THE COURT: There are three pages?

MR. PALMER: Yes, Your Honor.

MR. WHEARTY: It is certainly all right, with the understanding that it is not necessarily to be taken as an indication that the cards were written in the same order that night.

MR. PALMER: They couldn't have been written in the same order.

THE WITNESS: Will you tell me where you want me to number them?

MR. PALMER: At the bottom. So there will be no question, can he put his initials after each number?

THE COURT: There will be no question. Of course, he is

doing it under the Court's order.

MR. PALMER: Can he put his initials? It would make it much simpler.

THE COURT: I don't know that it would.

BY MR. PALMER:

Q. Put your initials, 1 here and your initials.

(Thereupon the witness did as directed.)

Now, then, this one, 2 with your initials.

(Thereupon the witness did as directed.)

And this one, 3 with your initials.

(Thereupon the witness did as directed.)

Now, in connection with His Honor's ruling, I just want to ask you the questions first in this manner: As to page 1, and your initials, will you kindly tell me where was that written, in a car or anywhere else?

MR. WHEARTY: He testified to that yesterday.

THE COURT: He testified yesterday it was.

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MR. PALMER: He said it was written -- I went over the thing in my mind, with regard to when and where. It will take a minute or two for the exact place of each page.

THE COURT: You asked him where it was written; he said it was written in the car.

MR. PALMER: I don't know whether it was written in the car.

MR. WHEARTY: He said that several times yesterday, Your

Honor.

THE COURT: Let him answer, or we will waste more time.

BY MR. PALMER:

Q. Page 1, where was that written?

A. That, as I recall, was written in an automobile.

Q. The automobile that you talked about on March 4?

A. That is correct.

Q. Was that written before or after you got to the northwest corner of Lexington Avenue and 42nd Street on the afternoon of March 4?

A. These notes reflect information that brought me up to that corner, so, obviously, they were written after that.

Q. Was it written before you got instructions from Mr. Kennedy, or someone else, to stay cross-town?

A. As I recall it, they were written after I phoned Mr. Kennedy.

Q. Now, then, page 2, where was that written?

A. That was written in a Bureau automobile.

Q. The same automobile, wasn't it?

A. Same automobile.

Q. Where was this automobile at the time you wrote this?

MR. WHEARTY: We have been all over this yesterday; I object to that as repetitious.

MR. PALMER: I haven't. Your Honor said I could do it.

THE COURT: It is taking more than a second.

BY MR. PALMER:

Q. Where was this written?

A. Which notation?

Q. Page 2, I just spoke about it.

A. Various places, depending where I was at a particular time of the evening.

Q. Was this while the car was moving, page 2?

A. Part of it.

Q. Page 3, where was that written?

A. That was written on 42nd Street after I left Gubitchev, part of it was, the top part.

Q. And the balance?

A. The balance of it was written in a Bureau automobile.

THE COURT: Now, then, can we pass along to something else?

MR. PALMER: Yes, I have that.

BY MR. PALMER:

Q. Now, will you kindly tell me, with regard to your statement yesterday -- and look at these particular pages, 1, 2 and 3, of Exhibit No. 78 -- we had a talk yesterday concerning the tunnel that leads from 43rd Street up the ramp in a sort of a rise around Vanderbilt Avenue and then curves and then goes straight alongside, parallel with Park Avenue, and comes out at the other end; do you remember that?

A. I remember something about it, yes.

Q. There is a tunnel at the end of this ramp, is there

not?

A. Which end?

Q. Both ends. The end going south, if you please, a tunnel leading towards 33rd Street; used to be the New York Central Railroad; there is a tunnel there?

... A. There are more than one tunnels connected with this particular ramp. Do you mean a tunnel underneath it or the tunnel through which the ramp goes at the upper end of the ramp? I would like to understand which tunnel you are referring to.

Q. You will. At 33rd Street --

MR. WHEARTY: Pardon me, 33rd?

BY MR. PALMER:

Q. 33rd and Park Avenue, there is an entrance to a tunnel which leads up to the ramp which goes around, on one side the Commodore Hotel, and on the other side, Vanderbilt Avenue; is that right?

A. Comes up at 40th Street.

Q. That is right, there is such a tunnel?

A. There is.

Q. You are traveling south on March 4, is that correct, before you get the number 89 over the radio?

A. That is right, correct.

Q. Will you kindly tell me, this same tunnel that you are talking about now, that exits at 40th Street, also has an

entrance at 40th Street, just one tunnel north and south passage, is that correct?

A. That is right.

Q. On the night in question, March 4, did you go into this tunnel?

A. I did not.

Q. Did you go to the side of the tunnel, on the right-hand side?

A. Went to the right-hand side of the tunnel.

Q. Before you get to the tunnel, while you are still on ramp, is there a portion of the building there made of concrete, the ramp and all, as you go up from 43rd Street on the west side; is there a portion of it which is a tunnel until it emerges near 42nd Street, above 42nd Street in front of the Terminal Building?

A. I am not familiar with the masonry with which that structure --

Q. I ask you, is there a tunnel?

MR. WHEARTY: We would be glad to stipulate that Park Avenue comes out, goes around the Grand Central Building, and comes together.

MR. PALMER: I don't want any stipulation. May I get the information from the witness?

MR. WHEARTY: Otherwise, it seems to me this line of examination is immaterial; and I object.

THE COURT: It is immaterial up to this time.

MR. PALMER: It is going to be very material.

THE COURT: If it isn't, I will have to take some action later on.

MR. PALMER: Then you will strike it out.

THE COURT: I will probably do more than that. I want you to make it material.

MR. PALMER: I can't help it; I have to do the best I know how.

BY MR. PALMER:

Q. Will you kindly tell me, is there any portion of that tunnel leading from 43rd Street, you testified to yesterday, wherein no radio beam can be heard? In other words, as you come up 43rd Street, up that ramp --

A. Just a minute, Mr. Palmer. I never testified I came up a ramp from 43rd Street or there was a tunnel at 43rd Street.

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Q. Didn't you testify at 43rd Street, in the ordinary course of things, you rode up in your car -- you rode up in a car through this tunnel -- was this on the side going over Vanderbilt Avenue --

MR. WHEARTY: Will you kindly indicate north and south, so we can follow your questions?

BY MR. PALMER:

Q. When you got the radio message about 89, where were you? Didn't you say you were going up the ramp?

A. The ramp goes up at approximately 45th Street, to the best of my recollection; and I believe that is what I stated.

Q. Where does it come out?

A. Goes up through a tunnel in the neighborhood of 45th Street.

Q. And where does it go before it turns around when it becomes parallel with the Commodore entrance; where does it exit, this tunnel?

A. To my recollection, the southbound ramp does not go near the Commodore entrance. That is the uptown ramp.

Q. I know it does. But when you go up in the air, you said you are parallel with Vanderbilt Avenue?

A. I didn't say I was parallel to Vanderbilt Avenue; you said I was.

Q. When you go up that particular ramp and tunnel, don't you, to the right of you, face west going south?

MR. WHEARTY: Face west going south?

THE WITNESS: If I am going south, I am facing south.

BY MR. PALMER:

Q. When you are south, don't you go on top of this ramp over 42nd Street; don't you?

A. I am on top of a ramp going over 42nd Street, yes.

Q. Before you reach 42nd Street, downstairs, is there not a Whelan's Drug Store on the northwest corner?

MR. WHEARTY: Object to that as immaterial in this case.

MR. PALMER: -- of 42nd Street?

THE COURT: It is immaterial up to this time, but you say you will make it material.

MR. PALMER: I am trying to make it material. I am having difficulty.

THE COURT: No, you are not.

MR. PALMER: I am not having difficulty?

THE COURT: No.

MR. PALMER: Very good, sir.

BY MR. PALMER:

Q. Will you kindly tell me, before you get in the open up there, going up the ramp through the tunnel, is there, on the right hand side going south, down on 42nd Street, on the northwest corner, is there a Whelan's Drug Store?

A. I have been on 42nd Street many times, and I have been in a drug store on 42nd Street in the vicinity of underneath that ramp many times. Whether it is a Whelan's Drug Store or not, I cannot testify.

Q. As you turn south on 42nd Street, in front of you is the Air Terminal Building there on the northeast corner of Park Avenue and 42nd Street? Is the Air Terminal Building there?

A. The Air Terminal Building is not on the northeast corner.

Q. What corner is it?

A. Southwest corner.

Q. Southwest corner? All right, it is there.

A. Correct.

Q. Now, I ask you, at anytime between the time you got in this tunnel and went up the ramp, was there any time when your radio on your car could not catch or get any sound at all, while it went through the ramp and through the tunnel; was there any time at all when you couldn't get any sound of the radio?

A. I could not testify to that because I was not testing the radio all during that period.

Q. Then I ask you the question, with regard to the time -- look at your paper here -- what time was it you got information about car No. 89; what time was it?

A. 8:56.

Q. 8:56. What time was it you got in this particular ramp and then the tunnel at 45th Street; what time was it?

A. Somewhere in the neighborhood of 8:56 p. m.

Q. In the neighborhood; was 8:52?

A. I didn't look at my watch at that time.

Q. You weren't driving the car, were you?

A. At the time we received this message, I was not driving the car.

Q. Will you kindly tell me, how long did it take to

arrive from the 45th Street place you spoke about, going into the ramp through the tunnel; how long did it take you to arrive in that car?

A. Just a minute. I didn't say anything about a tunnel, Mr. Palmer. You did. I haven't testified about a tunnel.

Q. Didn't you tell the jury a few minutes ago, first there is a ramp and then it goes into a tunnel?

A. I did not.

Q. You tell me, please, what you did say.

MR. PALMER: Your Honor, I can only test my own memory.

THE COURT: Your memory is at fault in this case.

MR. PALMER: Shall we, later on, when the minutes --

THE COURT: No, sir, we will not go back.

MR. PALMER: Very good.

BY MR. PALMER:

Q. Give me your description of how you got into 45th Street until you got out in the open air above 42nd Street.

A. Very well. My recollection of the beginning of the ramp is that as you come down Park Avenue, going south, from 46th Street or 47th Street, you enter through a tunnel and go up a ramp.

Q. You enter through a tunnel?

A. You go through an arch --

Q. Did you just use the word "tunnel"?

A. I used the word "tunnel," now and previously.

Q. Oh, you did use it previously?

A. But I did not refer to it as being at the other end of the ramp, as you just did when you questioned me.

Q. Anyway, you used the word "tunnel," is that right? Will you kindly tell me how long did it take this car you are in to go from 45th Street, in the fashion you described, until it came in the open air above 42nd Street?

MR. WHEARTY: I object to that, because you get to the open air long before 42nd Street.

MR. PALMER: May I say something, Your Honor?

THE COURT: Ask your question; let him answer.

MR. PALMER: Can I take exception to the statement made upon the record?

THE COURT: The jury disregards what he said. They have been instructed over and over again. Ask your question and let's get on.

MR. PALMER: I am trying to ask.

BY MR. PALMER:

Q. Will you kindly tell me at what particular point you get out into -- at what particular point did you, on March 4, get out in the air after you started at 45th Street and went in the way you have just described? Where did you get out in the air? What part?

A. I never made a survey of the length of that tunnel, but it is a relatively small portion of the distance from

45th Street to 40th Street where the exit ramp lets out on to Park Avenue.

Q. I am talking about 42nd Street, where the Air Terminal Building is; and I am talking about --

A. Mr Palmer, as I stated, there is no tunnel down there at all, as I recall.

Q. All right. Anyway, can you tell me the time it took when you got into this particular place at 45th Street, as you have described it, until you got out in the open air, up there in the air on the ramp? How long did it take?

A. I didn't clock it. I don't know. It took a few moments.

Q. A few moments? How many blocks did you go until you got to 42nd Street?

A. From where to 42nd Street?

Q. You said you got in there at 45th Street, didn't you?

A. I want to know just where you want to know I got to when you want this time.

Q. Will you kindly tell me, in connection with this item -- what is it, "8:56" -- was that written there before you got in the position to go in the ramp or was it written when you got out of the ramp?

A. As I recall it, that was written on the ramp.

Q. On the ramp. Were you in the open air there or were

you enclosed at the particular point you wrote that?

A. That is a detail that I do not recall.

Q. I ask you this last question, which we started from, do you know whether on the night in question, or the afternoon of March 4, between the time you got in 45th Street to go south, until you got on the ramp out in the open air, there was any sound heard on that radio, whether they received anything? Whether anything was received?

A. I wish you would repeat the question.

MR. PALMER: May the stenographer read it?

THE COURT: Yes, she may.

(Thereupon the question was read by the reporter.)

THE WITNESS: I don't understand the question.

MR. PALMER: We will leave it that way.

BY MR. PALMER:

Q. Can you tell me whether or not, on the day in question -- you have 8:51, is that correct?

A. That is correct.

Q. It says, "Penn Station, 8:51"?

A. (Witness nodded assent.)

Q. Now, anytime before 8:51 -- I am referring now to page 3 -- it says, "491 Seventh Avenue." You notice the handwriting of "491 Seventh Avenue," is larger at least than the handwriting above that?

A. I would say that is probably correct.

Q. Now, a moment ago -- and if I am misunderstanding it, it is not intentional -- you said that the items on page 3, or certain of the items on page 3 were written about the time when you last saw Gubitchev on 42nd Street and Lexington Avenue, northwest corner, which was about around five minutes past five, or something like that; am I correct?

A. Correct.

Q. Now, the next item, "491 Seventh Avenue," has no time attached to it; is that correct? There is no time in front of that, is there?

A. I don't see any, no.

Q. Well, there is none?

A. There is none, that is correct.

Q. Will you kindly tell me, this particular "491 Seventh Avenue," -- you told us yesterday that referred to a restaurant on Seventh Avenue; correct?

A. I told you that it was my recollection that I thought that referred to a restaurant.

Q. Now, before you got that "491 Seventh Avenue," did anything come over the radio to the effect that the girl had landed or come into Pennsylvania Station? Anything come over the radio?

MR. WHEARTY: Object; we were over all this yesterday, Your Honor.

MR. PALMER: I did not. I have been trying to study the

situation. May I show you this, Your Honor?

THE COURT: No, I thought you covered it.

MR. PALMER: I am sorry, I did not.

THE COURT: Proceed.

MR. PALMER: I am doing the best I can.

THE COURT: Very well, proceed.

BY MR. PALMER:

Q. Did the information come over the radio concerning the girl arriving at Pennsylvania Station before that?

A. I knew from information I had received over the radio that the girl had arrived in New York City.

Q. At what time?

A. I don't recall.

Q. Did any information come over the radio to you as to what movements the girl made, or what movements the agents made after the girl got to New York City?

A. This was one of the movements that I understood she had made.

Q. Now, before you put that movement down, will you kindly tell me -- and I am trying to go back, and I will try to talk slower; that is one of my difficulties -- will you kindly tell me, did any information come over the radio as to the girl actually reaching Pennsylvania Station, coming to New York City on that afternoon?

MR. WHEARTY: The witness has just answered that question.

I object to it, Your Honor.

MR. PALMER: He just said -- he goes back to 491 Seventh Avenue. Can't I have a direct answer?

THE COURT: I thought he gave you a direct answer.

MR. PALMER: I haven't got it yet.

THE COURT: He can answer it in one word.

BY MR. PALMER:

Q. Was anything said over the radio that the girl had gotten into Pennsylvania Station and what time she got in?

A. I don't remember.

Q. Was anything said over the radio concerning what movements the girl made after she got in the Pennsylvania Station?

THE COURT: I regard that as wholly immaterial, as to what he heard over the radio.

BY MR. PALMER:

Q. Will you kindly tell me, was there anything over the radio that the girl had gotten on to Seventh Avenue at any time?

MR. WHEARTY: Seventh Avenue Subway, did you refer to?

MR. PALMER: I said nothing about subway. I said nothing about subway, did I, Your Honor?

THE COURT: You said Seventh Avenue.

BY MR. PALMER:

Q. Seventh Avenue, anything said about that?

A. I just stated I did receive such a message.

Q. Anything said about the fact the girl had walked either on the west or east side of Seventh Avenue, going north or south?

A. I don't recall what exact statements were made over the radio, Mr. Palmer.

Q. Anything said over the radio concerning the fact that certain of the agents, including a lady -- I think Miss Condon - was following the girl, Miss Coplon; anything said over the radio about that?

A. I am sure if there were any statements made, Miss Condon's name was not mentioned over the radio.

Q. I didn't ask that question. Was anything said over the radio that you heard, while you were there in the car, concerning the movements of the girl, that she was being followed by agents of the FBI up either the east or west side of Seventh Avenue, either uptown or downtown; anything said about that?

A. There were comments made over the radio to my recollection from time to time during the early part of that evening, describing, in part, some of Miss Coplon's activities and whereabouts.

Q. Anything you recall regarding what was said over the radio? Do you recall anything?

A. The thing I recall specifically is the one I jotted

a note down about here.

Q. Outside of that, do you recall anything at all about her movements?

A. At this moment, I do not, no.

Q. Was anything said over the radio as to whether the girl reached a certain street, to wit, 37th Street, on the west side; and that she retraced her movements? Anything said about that over the radio, as you recall it?

A. That may well have been said; I do not recall.

Q. You studied in your school --

MR. WHEARTY: We object to this, Your Honor.

THE COURT: He said he did not recall.

BY MR. PALMER:

Q. Will you kindly tell me whether or not, answering my question directly if you can, anything was said over the radio before you heard the number 491 Seventh Avenue, about the girl reaching a certain street, west or east side, then walking back and retracing her steps? Anything said about that; do you recall?

A. I do not recall.

Q. Where were you at the time you heard the "491 Seventh Avenue"? Where were you? Just place yourself in the car when you wrote that.

A. I don't recall exactly where I was.

Q. Don't recall, all right. Then, you said you went

over in your car with the two gentlemen who I think were in it -- if I am in error, you will correct me --

A. That is correct.

Q. -- to 491 Seventh Avenue?

A. I didn't say I went to 491 Seventh Avenue.

Q. Didn't you say you went --

A. I said I went to the vicinity of 491 Seventh Avenue.

Q. Where did you go?

A. I went across a side street.

Q. What street?

A. To Seventh Avenue.

Q. What street?

THE COURT: We went over that yesterday.

MR. PALMER: I didn't ask. He told us yesterday in direct examination where he went. I have a reason. I didn't follow the streets.

THE COURT: I insist on you showing later on what the reason is, and let it develop.

MR. PALMER: You won't let me go on?

THE COURT: You can go on, but I want to know that you will make it material in some way.

MR. PALMER: I will try to make it material in many ways. In many ways.

THE COURT: You haven't done it thus far.

BY MR. PALMER:

9 7

Q. Will you kindly tell me, where did you part in the vicinity of 491 Seventh Avenue, and what time?

A. I parked momentarily in that vicinity.

Q. Where?

A. And then moved on.

Q. Where?

A. I don't recall.

Q. Did you go into the store 491 Seventh Avenue?

A. I did not go in or near 491 Seventh Avenue.

Q. Where is 491 Seventh Avenue, between what streets?

A. I don't know.

Q. All right. From there, from 491 Seventh Avenue, where did you go?

A. I went west.

Q. West. Now, then, in connection with yesterday's testimony, you said there came a time when you got to the point of arrest; am I correct?

A. That is correct.

MR. PALMER: May I have that picture?

BY MR. PALMER:

Q. Did you come there before or after the arrest?

A. I came there after the arrest of Miss Coplon and during the process of arresting Mr. Gubitchev. I am not familiar with the legality of just what constitutes the arrest; but Mr. Gubitchev was still on the street when I arrived.

Q. I see. I am just asking you a matter based upon your own statement to me: If a person is in the street -- withdraw it, please.

At the time you got over there, was Miss Coplon in the car?

A. Miss Coplon was in the car.

Q. And were agents with her?

A. There was one agent that I saw.

Q. What agent was that with her in the car?

A. To the best of my recollection, it was Agent McCarthy.

Q. All right. Now, then, you say Mr. Gubitchev was still on the street?

A. That is correct.

Q. Any agents around him?

A. Yes, there were.

Q. What agents were around him?

A. Mr. Robert Granville, Mr. Scheidt.

Q. Mr. Scheidt is the head of your New York office?

A. That is correct.

Q. Go ahead.

A. Those are the only agents that I recall at this moment.

Q. When you asked me about the legality -- I think you said something -

THE COURT: He said he was not familiar with it.

MR. PALMER: Very good, that is what I thought.

BY MR. PALMER:

Q. Do you consider the fact if a person is on the street and there are two agents, to wit, Mr. Granville and Mr. Scheidt with him, that doesn't --

THE COURT: It is immaterial what he would think. What we want to know is what he observed.

MR. PALMER: He brought the question up; I didn't.

THE COURT: You should not pursue it.

THE WITNESS: I want to answer you directly, Mr. Palmer, as to whether I was there before or after the arrest. It would be a question as to whether, while they were still discussing the arrest with Mr. Gubitchev - as to whether that was after the arrest or during the arrest.

BY MR. PALMER:

Q. You used the words "discussing the arrest with Mr. Gubitchev." Who was discussing the arrest with Mr. Gubitchev?

A. They were discussing matters in connection with the arrest with Mr. Gubitchev.

Q. What was said by anybody there, Mr. Gubitchev, Mr. Granville, or Mr. Scheidt, at the time you came over about the arrest?

A. Mr. Granville was making a search of Gubitchev.

Q. Mr. Granville was?

A. That is my recollection.

Q. I see, go ahead. You mean he was frisking him?

A. He was making a search.

Q. Is that frisking?

A. You might use that term.

Q. You use the term, don't you, when you make a search?

THE COURT: He didn't. He said "search."

MR. PALMER: I have a reason; you know the reason, Your Honor.

THE COURT: I don't know the reason.

MR. PALMER: If Your Honor goes back in your memory --

THE COURT: Let him tell exactly what was done.

BY MR. PALMER:

Q. Is the term used in connection --

THE COURT: Let him tell exactly what he observed.

MR. PALMER: Could he possibly give the definition --

THE COURT: We don't want to go into the definition of "frisking."

MR. PALMER: Someone may say it isn't the same thing.

THE COURT: Let him tell what was done.

BY MR. PALMER:

Q. What did Mr. Granville do, please?

A. Mr. Granville made a search of the articles in Mr. Gubitchev's clothing.

Q. How did he do that? How did he do it?

A. He placed his hand in his pockets and removed what he found therein.

Q. I see. Did he take it away with him, Mr. Granville; take it out?

A. I can't testify as to what he did with them.

Q. Did anybody else assist in that particular search, as you described it; anybody else there?

A. To the best of my recollection, somebody else was there.

Q. Who was it?

A. I don't recall.

Q. Did that other person do any searching?

A. That, I don't recall.

Q. I see. What did Mr. Scheidt do?

A. Mr. Scheidt, as I recall, stood in the immediate area with Mr. Granville while this was going on, facing Gubitchev.

Q. You say Mr. Granville was searching the man?

A. That is right.

Q. What did Mr. Scheidt do?

A. I just stated what Mr. Scheidt was doing.

Q. Watching Mr. Granville?

A. I said facing Gubitchev.

Q. I call your attention to this picture, Exhibit 51, and tell me if you can point out where Mr. Gubitchev was at

the time when this search took place?

A. I can't point it out on that picture.

Q. Just a moment, please. Well, here is another picture; this is Exhibit 51 I just had you look at; here is Exhibit 52. Can you point it out on this Picture 52?

A. If you can identify where that picture was taken, I can.

Q. Pardon me, please. You were there, weren't you?

A. I don't know, where is this picture taken?

Q. I beg your pardon; can you tell me where it was the search took place?

A. Yes, I can.

Q. Where did you say it took place?

A. The search took place on Third Avenue near the intersection of 16th Street.

Q. Can you tell me whether, on the southeast corner of 15th Street and Third Avenue, there is an empty lot?

MR. WHEARTY: Object to that as immaterial.

THE COURT: Objection sustained; it is immaterial.

MR. PALMER: Very well.

BY MR. PALMER:

Q. Will you kindly tell me, as you got out of your car, where did you park your car before you got to the sidewalk to see what you told us about?

A. I parked my car, double-parked, alongside of some

other cars that were parked along the east side of Third Avenue between 15th Street and 16th Street.

Q. Now, when you say other cars were parked there, were there FBI cars parked there?

A. To my knowledge, there were no FBI cars parked at the curb.

Q. I didn't ask you that.

A. I stated that I parked my car, double-parked, along some cars that were parked along the curb.

Q. Can you tell me, as you parked your car, what street was it, what curb -- what street was it that you parked your car, 15th or 16th Street?

A. Third Avenue between 15th Street and 16th Street.

Q. Well, then, did you park it in between the two streets on the east side?

A. I parked it on Third Avenue.

Q. Yes.

A. Between 15th and 16th Streets.

Q. All right. I asked you, did you park it below the place where Gubitchev was standing with Mr. Scheidt and Mr. Granville?

A. I parked it downtown of where Mr. Gubitchev was standing with Mr. Granville and Mr. Scheidt.

Q. All right. Now, as you did that, did you notice in this parking, in this double-parking, any FBI cars?

A. I did.

Q. How many cars of the FBI did you notice there double-parked?

A. I noticed two cars.

Q. Only two?

A. Only two.

Q. How many agents of the FBI did you notice in that vicinity or around Mr. Gubitchev?

A. I did not count them.

Q. Were there as many as ten?

A. I didn't count them.

Q. Have you any idea how many there were?

A. To the best of my recollection, there may have been, in addition to those that were in my car --

Q. With you there were three altogether, is that so?

A. No, that is not right.

Q. How many were in your car?

A. I think there were five in my car.

Q. Where did you get the other two?

A. I picked them up.

Q. There was nothing said in yesterday's testimony -- I want to be sure that His Honor knows I am trying to follow my own recollection -- there was nothing said from the time yesterday until now about the fact there were two more people in your car whom you picked up; was there?

A. There was not.

Q. Now, I ask you, where did you pick up the two people; and who were they?

A. I picked the other two people -- three people, I picked up.

Q. Then there were six?

A. No, there were five.

Q. Didn't you say when you got in this car of yours originally, there were three people altogether, you and two others?

A. I did, correct.

Q. Did you lose one?

A. No, I didn't lose one.

Q. Then, you had three?

A. No, I didn't have three.

Q. What happened to the third person?

A. Mr. Ward got out of the car.

Q. Where?

A. At Ninth Avenue and 14th Street.

Q. Did he ever come back into the car?

A. Not that I recall.

Q. Now, you said then there were five altogether. Where did you pick up the other three; they were agents, Special Agents, weren't they?

A. They were all Special Agents of the Federal Bureau

of Investigation.

Q. Where did you pick them up?

A. I picked them up in the vicinity of Ninth Avenue and 14th Street.

Q. Who were they?

A. Special Agent T. Scott Miller.

Q. Oh, Mr. Miller sitting here? Yes, go on.

A. To the best of my recollection, there was Special Agent Brewer Wilson.

Q. Yes?

A. And John Malley.

Q. Under 491 Seventh Avenue, on page 3, you have the initials, "JFM," and "BW," and then, "JC," correct?

A. Correct.

Q. Will you kindly tell me, is there anything upon that page about picking up any agents at 14th Street and Ninth Avenue?

A. No, sir, there is not.

Q. One of the gentlemen you picked up was Mr. Wilson?

A. That is my recollection.

Q. What is his first initial?

A. "B".

Q. And what are Mr. Malley's initials?

A. "JM".

Q. Is it "JF"?

A. "JF"; yes.

Q. "JF" -- this particular initialing on page 3 comes after "491 Seventh Avenue," is that right?

A. Correct.

Q. All right. Now, in connection with picking up these three agents, did the three agents tell you anything at all about the fact they had seen the girl pass anything to the man, Gubitchev, when they got in your car or thereafter?

A. They did not.

Q. Now, the five of you came around to where you are telling about. Now, outside of the five in your car -- that is where the trouble started, because I thought it was three -- how many more agents were around in that particular place where you just described that this man was being searched by Mr. Granville?

A. When I arrived, I recall four agents specifically.

Q. Who were they?

A. Agent Scheidt, Agent Granville, Agent McCarthy -

Q. Any other?

A. And another agent whom I stated a few moments ago I recall standing in the neighborhood of Mr. Granville, while he was making the search.

Q. You mean his name --

A. I don't recall exactly who it was.

Q. You said those were the agents you saw when you

arrived there. Did any more agents come up during the time when Mr. Granville was searching or frisking Mr. Gubitchev?

Any other agents that you recall?

A. Yes.

Q. Who?

A. To the best of my recollection, Agent Carey came into the neighborhood while I was standing there.

Q. Anybody else?

MR. PALMER: May I have that list, please?

BY MR. PALMER:

Q. Will you kindly look at Exhibit No. 8 and tell me if this refreshes your recollection as to what other agents, if any, came up during the period?

A. I couldn't testify positively as to any of the others.

Q. You mean by name?

A. By name.

Q. Did other agents come up?

A. As I said, I couldn't testify to that positively.

Q. All right. Now, then, will you kindly look at this picture, Exhibit No. 52, and Exhibit No. 51, and tell me, do you recall at all whether this picture represents the place at which you saw Mr. Gubitchev being frisked or being searched by Mr. Granville on the night of March 4?

A. To my recollection, this is the corner at 16th --

I should say, this appears to me to be the corner of 16th Street and Third Avenue.

Q. I beg your pardon. In connection with that, I put the picture in front of you. You can see there on the corner it says, "East 16th Street," isn't that right?

A. That is correct.

Q. You just looked at the picture, didn't you?

A. That is what I did.

Q. Now, that you looked at the picture, and you have seen "East 16th Street," Exhibit No. 51, does this refresh your recollection as being a correct picture of the place which you saw Mr. Gubitchev and Mr. Granville and Mr. Scheidt on the night in question; or are you in doubt about it yet?

A. No, I am not in doubt at all. That does not show where I saw them being searched.

Q. Here is a picture --

A. That picture does not show where I saw Mr. Gubitchev being searched.

Q. And that is true about 52, is that correct?

A. No, not necessarily.

Q. Then look at 52.

MR. PALMER: May I hand it to him, Your Honor?

THE COURT: Yes.

BY MR. PALMER:

Q. Look at 52 nearer than that. Does that show you a

picture where they were searched?

A. I can't identify from this picture whether it is a picture of Third Avenue between 15th and 16th Street; can you?

Q. In other words -- you mustn't ask me questions.

THE COURT: He said he couldn't identify it.

MR. PALMER: He asked me, "can you"; and I told him I can't answer that.

THE COURT: Did you say that?

THE WITNESS: I did, yes. That looks like --

BY MR. PALMER:

Q. Sit down, please. All right. How long did the searching take place; how long?

A. How long did the searching take place?

Q. Yes.

A. A matter of several minutes -- a matter of several moments.

Q. Which is it, minutes or moments?

A. I wouldn't make a positive assertion, because I didn't clock it.

Q. All right. Now, you testified yesterday, when you were sent on this surveillance -- and I think you used the word "discreet," or "discretion," with regard to Gubitchev -- what word did you use yesterday?

A. In what particular place?

Q. With regard to following him.

A. I was instructed to make a discreet surveillance.

Q. In connection with "discreet surveillance," is there anything in a book printed by the FBI or brought into existence under the FBI rules and regulations, or the like -- and I don't want any top secrets -- wherein a definition is given of a "discreet surveillance"?

MR. WHEARTY: We object to that.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. In connection with your surveillance of Miss Coplon, was anything said to you regarding what kind of a surveillance you were to make of her movements?

A. I believe there were.

Q. What were those instructions?

A. I don't recall specifically what they were.

Q. Were the words "discreet surveillance," used in connection with her?

A. It could very well have been.

Q. And it could very well not been?

A. I don't recall.

Q. In connection with the night in question that you told us about, remember you said I think it was on January 14 -- if I am in error, you will correct me -- that you went over, of your own free will and accord, to watch Miss Coplon's

home?

A. Correct.

Q. Now, how many exits and entrances has Miss Coplon's home?

A. I know of two.

Q. Did you cover both on the night in question?

A. I did.

Q. How would you cover both?

A. By standing in any number of positions where both are observable.

Q. I see. Look at your notes of January 14 --

MR. PALMER: May I have them now, please?

MR. WHEARTY: They are up there, Mr. Palmer.

MR. PALMER: I haven't seen them yet.

BY MR. PALMER:

Q. Will you kindly read that portion of your notes which affects that portion of the surveillance concerning the end, all of it, I mean, watching to see if she is coming home or if she came home? I beg your pardon. I should have asked you this question: I have never seen them until handed up in court.

THE COURT: That is understood.

MR. PALMER: May I ask the question whether or not -- he is looking up and back.

BY MR. PALMER:

Q. Is this all the pages that you wrote or are there some other pages?

A. I don't know; I am looking to see.

Q. That is what I want to know.

A. My notes as of that date do not include a comment as to my activities in Brooklyn.

Q. Will you kindly read to the jury the last note you have here concerning your surveillance on the night of January 14?

A. I will.

"8:15 p. m..."

Q. I beg your pardon.

MR. PALMER: May he read it a little louder, if Your Honor please?

THE COURT: Read it louder, so we all can hear you.

THE WITNESS: "Subject and unidentified man left DeLuxe Restaurant, walked west on Dyckman Street to Sherman Avenue. Left on Sherman Avenue to Broadway, then south on Broadway. During this walk, the subject was engaged in animated conversation with the unidentified man, stopping several times to gesticulate vehemently, and on several occasions striking at him with her hand or folded newspaper."

BY MR. PALMER:

Q. Did you say "striking at him"?

THE COURT: That is what he said.

See two
pages
over

THE WITNESS: "...striking at him with her hand or folded newspaper."

BY MR. PALMER:

Q. Did you say "or"? All right, go on.

A. "After crossing to the west side of Broadway, they walked along the park edge to the south end of Fort Tryon Park on Broadway where they stood on the corner for several minutes. The two then walked to and entered the tunneled foot-walk entrance to the 191st Street subway station of the Independent Subway System."

Q. Will you just hold your thoughts for a moment? You remember yesterday -- and if I am in error, please correct me now -- I asked you -- and bear in mind, I have never seen your notes at all.

THE COURT: We understand.

MR. PALMER: I want the jury to.

MR. KELLEY: He has told them three times.

BY MR. PALMER:

Q. Yesterday, I asked you whether or not you saw them walk up Bennett Avenue and saw them go to the tunnel; and I think you said the taxicab, you gave directions to go across at Bennett Avenue and then went down south and came around north, and when you came back north to the place you were talking about at that particular time, you didn't see them any more. Do you remember saying that?

A. I did.

Q. When was the last time you read these notes of January 14?

A. Several weeks ago.

Q. Where?

A. In New York City.

Q. Did you read them on April 22nd, or before that time, when Mr. Whearty and Mr. Kelley came there to talk to you about this case? Did you read them?

A. I don't think I did. It is possible that I did. I don't recall.

Q. When Mr. Gauthier, on April 14 --

MR. KELLEY: Keep your hand out of my face.

MR. PALMER: I am not in your face.

Your Honor, may I ask this? If I do this (indicating), does that mean I am putting my hand in his face?

MR. KELLEY: You are standing a little different now than what you were. I don't like his hand in front of my face.

MR. PALMER: I can't be right, so what's the use.

THE COURT: There are lots of opportunities for all of us to be right.

MR. PALMER: I am trying to be right. Your Honor knows a lawyer unconsciously points when he talks.

THE COURT: We ought not to be unconscious of what we do.

MR. PALMER: All right.

See
two pages

BY MR. PALMER:

Q. Will you kindly tell me, yesterday did you say anything at all about the fact, when I asked you if you saw them go up Bennett Avenue, you said you didn't recall them going up Bennett Avenue?

A. That is correct.

Q. I asked if you saw them going into the tunnel, and you said you didn't recall them going into the tunnel?

A. I did.

Q. Read that statement that I interrupted you on.

A. Very good.

"The two then walked to and entered the tunneled footwalk entrance to the 191st Street subway station of the Independent Subway System."

Q. What is after that?

A. "The following is a description of the man who met Judith Coplon at 7:12 p. m., January 14."

Q. Supposing you read it, will you, please? Was that description any portion of the record here?

A. These are notes that I made on the following day along with some other agents who were on the surveillance along with me on the preceding evening.

Q. Does that mean that the notes with regard to the surveillance itself stopped at the point where they entered the tunnel?

W. H. C.

A. I would have to look here and see.

Q. That is what I am asking you about.

A. These next notes are not in my handwriting.

Q. Then you didn't write the next notes?

A. I did not, no.

Q. Who did?

A. Richard Hradsky wrote them.

Q. I see. Then your notes that you wrote in your own handwriting end as the people go into the tunnel?

A. Correct.

MR. PALMER: Now, may I look at these papers? They are in evidence, Your Honor.

THE COURT: Yes.

Ladies and gentlemen of the jury, you may pass out.

The recess will be for ten minutes.

(Thereupon a short recess was taken.)

BOW/m
am

BY MR. PALMER:

Q During part of the recess I went over your notes. I call attention to the fact at the end of your notes appear various signatures, and I ask if the persons whose names appear on Exhibit 79 signed those notes, written by you in your presence -- you are Daniel F. Garde. That is your writing, isn't it?

A Correct.

Q Roger W. Robinson; that is his writing?

A It is.

Q Richard E. Brennan; that is his writing?

A It is.

Q John F. Malley; that is his writing?

A It is.

THE COURT: Let him state generally.

MR. PALMER: One moment.

BY MR. PALMER:

Q Richard F. Hradsky; that is his signature?

A That is his writing.

Q You say these notes were prepared on the following day?

A To the best of my recollection, yes.

Q Was it the following day, January 15, to the best of your recollection, that you went out, on instructions given by Mr. Miller, to a place I will not go into now, because

His Honor will not let me go into that; is that right?

A That is right.

Q Will you tell me what time of day it was that you wrote these notes in the presence of these other men; what time was it?

A I did not say that I wrote these notes in the presence of the other men.

Q What time of day was it that you wrote these notes?

A I do not recall.

Q Was it in the morning, afternoon or night?

A It was probably in the afternoon.

Q I do not want "probably." Do you know?

A I stated that I do not recall.

Q Now I call your attention to the fact, in connection with Exhibit No. 79, that alongside the various items appear upon the page various initials.

A I see them.

Q Now, in order that the jury and His Honor and the record understand what that means, does it mean when, for instance, at 4:15 p. m., on Exhibit 79 -- it states after the words, "New York file 65 14,932, January 14, 1949, New York, New York, Physical Surveillance Judith Coplon, 4:15 p. m. agents on duty at Pennsylvania Station, New York City."

Then there are initials. What does that mean?

A That means they have read the notation and to the

best of their knowledge that is correct.

3 Q In other words, when you get through and you prepare a report, then the agents who are on the same surveillance then read it with you, and if it is correct they initial it?

A That is sometimes done.

Q What happens if it is not correct, of their opinion?

A Well, I do not recall any such case ever occurring.

Q At 7:45, on the same Exhibit 79, there is other handwriting below yours; is that right?

A That is right.

Q Whose writing is that; do you know?

A Offhand I do not know. If you would let me examine it, I could probably tell you.

Q Let me read this to you:

"7:45. Special Agent T. Scott Miller entered De Luxe Restaurant and took seat at table facing the unidentified man located on the opposite side of the dining room." Then there are some initials. Then in the other handwriting, of which writing I have just questioned you, it says, "The two were observed talking in a booth. Coplon was putting nickels in a music box. Upon leaving Restaurant at 8:15 p. m. he paid the check."

Then there are a lot of initials. Do you recall that, and the name? Whose writing is that?

A T. Scott Miller.

Q Did Mr. Miller write that after your note? Did he write that in your presence?

4 A He did.

Q And did you put your initials -- are your initials there?

A I do not know. May I examine it?

Q Yes.

A My initials do not appear there.

Q Whose initials are there?

A Well, there is "R. T. H."

Q Who is that?

A Richard T. Hradsky.

Q Go ahead.

A And there appears to be what looks like "J. M."

Q That is Malley?

A It could be.

Q Any other initials there?

A "T. S. M."

Q Who is he?

A T. Scott Miller.

Q It was a cold day, wasn't it, January 14?

A As I recall, it was quite cold.

Q And the restaurant door was closed, wasn't it?

A There were times when it was closed, yes.

Q "Coplon was putting nickels in Music Box." And then

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you have got the initials of these other gentlemen. Where were these other gentlemen, and you, who were watching the restaurant so they could see her putting nickels in that box? Where were these gentlemen who saw her putting nickels in the box? I am not talking about Mr. Miller.

MR. WHEARTY: I object.

THE COURT: Sustained.

BY MR. PALMER:

Q We are talking about this place where you saw Mr. Gubitchev being frisked. Did Mr. Miller and Mr. Wilson get out of the car that you were in at any time?

A Yes.

Q You said you got out of the car at some distance towards 15th Street on the east side of the street below where Mr. Gubitchev was being frisked.

A Correct.

Q Did they get out before or after you?

A I do not recall.

Q Where did Mr. Miller and Mr. Wilson go at the time you went over and watched, in the fashion you described, the frisking of Mr. Gubitchev?

A I could not state positively where they went.

Q You have no idea?

2/
A I have some idea they went in that vicinity, in the area, where both of the persons were arrested, were located.

Wray

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Q Being there that night, of your own knowledge do you know where they went?

A I cannot account for their activities at the time.

Q Now, then, in connection with FBI activities, will you kindly tell me does the FBI use informers?

MR. WHEARTY: I object.

THE COURT: Objection sustained.

MR. PALMER: I was trying to follow some cases up.

THE COURT: It is immaterial here.

BY MR. PALMER:

Q Do FBI agents, in connection with their work, ever set traps of any kind or character to catch people whom they believe to be guilty?

MR. WHEARTY: Object.

THE COURT: He may answer that question. You may answer that.

BY MR. PALMER:

Q Do they?

A I would like for you to define what you mean by "trap."

Q You are not facetious, are you?

A Certainly not.

Q In connection with the work of the FBI, and endeavoring to follow crime to its lair, do the FBI agents or the FBI ever set any traps of any kind or character, not bear

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traps, not mouse traps, but traps devised by human ingenuity in an attempt to catch those who they believe to be guilty?

MR. WHEARTY: We renew the objection.

THE COURT: In view of some of the statements made before, I think it is competent.

THE WITNESS: The FBI does not use on any occasion, to my knowledge, any form of entrapment.

BY MR. PALMER:

Q Now, this question I am asking, do not answer it before His Honor has passed upon it. Does the FBI use what is commonly known as stool pigeons by placing such persons inside of suspected places where people who they are suspicious of congregate, yes or no?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q Does the FBI, to your knowledge, ever receive information over the telephone concerning persons suspected of crime, yes or no, of your knowledge?

MR. WHEARTY: Object to that as immaterial.

THE COURT: Sustained. It is not material here.

BY MR. PALMER:

Q Does the FBI, to your knowledge, have anything to do at all with the service regarding what is known as FARS? Do you know what that means, FARS?

A Offhand, I do not know.

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Q It means foreign agents. Do you know what foreign agents are?

A I think I do.

Q Do you know anything at all regarding foreign agents registration?

A I know something of it.

Q Will you kindly tell me, in connection with the Foreign Registration Section of our Government, where the FBI does its work in connection with endeavoring to find out whether people who register under the Foreign Registration Act have actually given their real activities -- do you know whether the FBI does any work in connection with that?

A The Foreign Registration Section of the Department of Justice is not a branch of the FBI. I therefore am not qualified to speak upon its activities or functions.

Q So far as you know, the FBI have nothing at all to do with obtaining information for the Foreign Registration Section?

A I did not state that.

Q What did you state?

A I stated that the Foreign Registration Branch of the Department of Justice is not a part of the Federal Bureau of Investigation.

Q I heard that. I agree with you. I am asking you,

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does the FBI do nay work in connection with its services on behalf of that particular branch of the Government known as the FARS, that follow through with the tenets of the FARA, the Foreign Registration Act? Does it do any work in that connection?

A I have never worked --

Q Do you know whether they do or not?

A I do not know.

Q Now, when you went over to wherever the place was, and I ask you to look at this place again, and you notice there is an X there --

MR. WHEARTY (interposing): Will you identify the fact that you are referring to Third Avenue and 16th Street?

MR. PALMER: I am referring to Exhibit 52, referring to the east side between 15th and 16th Street.

THE WITNESS: East side of what?

BY MR. PALMER:

Q Of Third Avenue. Do you recognize that store at all?

A I do not, no.

Q Do you know whether there was a drug store on the corner of 16th Street on the night in question when the arrest took place?

A I think there was.

Q Is that a picture of the drug store?

A My recollection of that drug store that was on that

corner is not clear enough that I can positively identify that drug store.

Q Were there any Neon lights on that drug store?

A I do not know.

Q Were any of the stores on that street open on the night this frisking took place?

A I did not attempt to enter them; I do not know.

Q Was the street lighted?

A It was lighted, as you would expect Third Avenue to be lighted at that time of the evening.

Q What hour was that?

A It was shortly after 9:30 in the evening.

Q I am asking you whether it was well-lighted, dimly lighted or brightly lighted, or describe it.

A I described it to the best of my ability.

Q What was the light, dimly or what?

A I had no instrument to measure it. It is a relative term, dimly, brightly or otherwise. I can tell you how it was lighted with respect to some other areas I am familiar with.

Q As you got out of the car, and you double parked it, who remained in your car?

A I do not recall anyone remained in it.

Q You left it double parked without anyone in there?

A I do not know whether anybody was in it or not.

MR. PALMER: I ask that each of these pictures be marked for identification. May I show them to the gentlemen first?

MR. WHEARTY: Let us look at them and maybe they can be marked in evidence.

MR. PALMER: The gentlemen wanted to know why I appeared in the picture. They wanted to know if there was anything significant about it. The answer was that I had them taken last Sunday and I wanted them to be identified by last Sunday, day before yesterday. The significance was not that I wanted my picture taken but I wanted to identify the time and the day they were taken. That was the subject matter of this conversation.

MR. WHEARTY: No objection to the pictures being marked in evidence.

(The pictures referred to were marked Defendant's Exhibits 44 through 81 for identification and received in evidence.)

BY MR. PALMER:

Q Did you see Miss Coplon put any nickels in any slot in that restaurant?

A I did not.

Q Anyway, it is a fact that after 8:15 p. m. you made no further record of any kind as to what you did that night?

A I did.

Q Where is it?

A It is on that paper that I just read.

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Q Show it to me, please.

A Starting from the top of the page, which reflects the time that they left the restaurant, I described, as I read before, the activities that took place immediately after 8:15.

Q Mr. Garde, I can shorten this time. You read something to the jury before recess?

A I did.

Q The last thing on here was, "The two then walked up to and entered the tunneled footwalk entrance to the 191st Street subway station of the Independent Subway System."

A That was considerably after 8:15 p. m.

Q I mean after this particular episode there was nothing else you wrote?

A Not that I recall.

MR. PALMER: Will you kindly give me Exhibit No. 73, the one of the Bennett Avenue station?

BY MR. PALMER:

Q Then the reference that you made beginning with 8:15 is the fact that you saw these two people go into this tunnel entrance, which is represented on picture No. 22, which represents a portion of Bennett Avenue as it curves around and up there to the tunnel entrance; correct?

A Not correct.

Q Then you tell me in which way it is incorrect. Where did you see them enter the tunnel entrance?

A I did not see them enter the tunnel entrance.

Q "The two then walked up to and entered the tunneled footwalk entrance to the 191st Street subway station of the Independent Subway System."

A This is the entrance to it here (indicating).

Q Show it to me, please. You mean that little walk in front?

A There is a long tunnel that goes through --

Q Were you ever through that tunnel?

A Yes, I was.

Q I am asking you to follow through and show the jury what you meant by these words "crossing to the west side of Broadway they walked along the park edge to the south end of Fort Tryon Park on Broadway where they stood on the corner." Show me where they stood on the corner.

A They walked on the west side of Broadway and stood on this corner (indicating).

Q Did you say anything in your examination yesterday -- and I want Your Honor from your notes and from your memory to follow this -- did you say anything at all about the fact that when they got to this corner somebody glanced around to see, and it looked as though they were looking to see if a bus was coming?

A Yes.

14 Q Is there anything in your notes about stood there and glancing around looking for a bus?

A I do not think there is.

Q When is the last time you read these notes?

A A couple of weeks ago, several weeks ago.

Q And at that time no other notes would refresh your recollection regarding the standing there on this corner, which you have described to the jury, which is Bennett Avenue on the west side, and looking around; there is nothing at all about that in your notes, is there?

A There is not.

Q There was nothing in your notes at the time you read them?

A You mean this morning?

Q You read the notes a couple of weeks ago?

A Correct.

Q And there was nothing in there then?

A Correct.

Q Go ahead. What is the next thing?

A Where do you want me to go?

Q I will read to you now: "The two then walked up to and entered the tunneled footwalk entrance to the 191st Street subway station of the Independent Subway System." Show me how they walked.

A I could not testify correctly because I was not there.

Q You wrote this?

A Yes.

Q When you wrote it, did you see them do it?

A I did not.

Q I asked you the question before whether you wrote this in the presence of the other men and you said, to the best of your recollection, you wrote it yourself and afterwards these other men came there and read it over, and you told us about that, because prior to that time I asked you the question what time did you come back from the surveillance, which His Honor said I had no right to ask about, and I am through asking about it since His Honor has so ruled --

A (interposing) Just a minute. I did not state specifically who was present with me when I wrote those notes.

Q I asked you that question and you said you did not remember?

A Correct.

Q Then we are right again.

A No, we are not.

Q Do you remember now who was present?

A I do not recall who was present. I did not state that I wrote those notes by myself.

Q In other words, did anybody dictate your handwritten

notes?

A Nobody dictated my handwritten notes.

Q Did you write them yourself?

A I wrote them myself.

Q If you wrote them yourself, you wrote in here,

"The two then walked up to and entered the tunneled footwalk entrance to the 191st Street subway station of the Independent Subway System --". Did you see them do that?

A I did not see them do that.

THE COURT: He answered that.

BY MR. PALMER:

Q Why did you write it?

A Because Mr. Hradsky told me they had. I was making a notation to reflect the activities of Miss Coplon and Gubitchev on the night of that evening that we are discussing and this was a record that we made for our own purposes and recollection.

Q Then, as I understand it now, a portion of these notes, as you wrote them, do not, in fact, reflect what you saw but what someone else told you he saw?

A That is correct.

Q Then, when you studied testifying in court --

THE COURT: Do not go into that. You brought this all out. You asked for these notes.

MR. PALMER: I am satisfied with them.

BY MR. PALMER:

Q Did anyone ever instruct you to write notes which began as follows: "Physical Surveillance, Judith Coplon," and signed by you? Anyone ever tell you to put in those notes things that you did not see?

MR. WHEARTY: We object to that.

THE COURT: Objection sustained.

MR. PALMER: This is cross examination.

THE COURT: You asked him if anybody told him that.

MR. PALMER: You say the objection is sustained?

THE COURT: Yes.

BY MR. PALMER:

Q I ask you to read all the notes to this jury, beginning with 4:15 p. m., and as you read please tell the jury which of these notes you wrote because someone else requested you to write it, even though it is in your handwriting and which are things you did not see?

A Nobody requested me to write any of these notes, Mr. Palmer.

Q Again I am off the subject. What did you just say about Mr. Hradsky telling you to put in those notes?

A Mr. Hradsky did not tell me to put anything in the notes.

Q Why did you put them in the notes if you did not see it?

A Mr. Hradsky informed me of their activities and I included them in our notes for our future recollection.

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MR. PALMER: Your Honor, you may object to this.

BY MR. PALMER:

Q If Mr. Hradsky was dead --

THE COURT (interposing): No.

BY MR. PALMER:

Q If Mr. Hradsky died in the course of duty of the FBI, will you kindly tell me whose recollection then would you consider was being served in front of a jury by your writing something in there of someone who is dead?

A If Mr. Hradsky --

MR. WHEARTY (interposing): Object.

THE COURT: Objection sustained.

BY MR. PALMER:

Q Kindly read, without me interrupting you, telling me just what someone else told you about that that you did not see yourself? Begin and read it aloud.

MR. WHEARTY: I want to object to that. It seems to me this witness has testified what he observed.

MR. PALMER: I have a right, if Your Honor please, to read any exhibits to the jury.

THE COURT: You have.

MR. PALMER: I want it read now.

THE COURT: You read it.

MR. PALMER: As I go along may I ask Your Honor to tell the witness if there comes a time that he did not himself see it, that he should stop me?

THE COURT: You just read it.

MR. PALMER: All right. May I stand here while I read it?

THE COURT: Yes.

MR. PALMER (reading): "New York File 65 14932, January 14, 1949, New York, N. Y.

"Physical Surveillance

Judith Coplon

- "4:15 p. m. Agents on duty at Pennsylvania R. R. Station, New York City.
- "4:50 p. m. Subject Judith Coplon arrived Pennsylvania Station on train No. 176, coach 3911; surveillance taken over from special agents Dudley Payne and Thomas Mindenhall of the Washington Field Office.
- "4:57 p. m. Judith Coplon proceeded to ladies dressing room in main station waiting room, carrying tan airplane type overnight bag. Remained in dressing room over half hour.
- "5:40 p. m. Subject Coplon left waiting room without tan overnight bag; proceeded on foot through station.
- "5:44 p. m. Entered Doubleday Book Store in lower level arcade.

"5:50 p. m. Subject left Book Shop entered --"

20 On the top of the page it says "Physical Surveillance of Judith Coplon, 65 14932, January 14, 1949, New York, N. Y. --

"entered Station Drug Store directly across arcade from book shop, where she waited for about five minutes at the lunch counter for a seat. After ordering something at the counter she was observed reading the New York Star newspaper.

"6:02 p. m. Coplon left drug store, entered I.R.T. subway after looking for several minutes at a toy train display in Penna. station. She boarded northbound Seventh Avenue Broadway express.

"6:40 p. m. Subject left I.R.T. subway train at 191st Street, N. Y. C. station, took elevator to street level. Subject then walked north on St. Nicholas Avenue to Wadsworth Avenue, turned left and followed Wadsworth Avenue around in a curve to the intersection of 192nd Street, then east on 192nd Street and back to St. Nicholas Avenue, thereby circling the irregular shaped block between these streets. She then walked south on St. Nicholas Avenue to West 190th Street where she crossed

the Avenue and entered the drug store on the northeast corner of that intersection. After apparently only making a small purchase, she left the store, walked west on 190th Street to Wadsworth Terrace, turned right and walked North to Fairview Ave. Subject then turned left (or west) and walked down the dimly lighted winding hill on Fairview Avenue to Broadway."

THE WITNESS: There is one place where I was not present.

BY MR. PALMER:

Q Now, you tell me who told you what happened there.

MR. KELLEY: Just a moment, please.

MR. PALMER: This is an exhibit.

MR. KELLEY: Just a moment.

MR. WHEARTY: Mr. Kelley has suggested, and I suggest, that at the end of each paragraph, if Mr. Palmer would indicate the initials which appear --

THE COURT: He can tell.

THE WITNESS: I think I can tell.

BY MR. PALMER:

Q You just stopped me. Will you please tell me who told you about this?

A To the best of my recollection, Agent Hradsky, Agent Robinson, and Agent Brennan told me.

Q You did not participate at all in this part of the

surveillance?

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A I testified yesterday as to what I did during that part of the surveillance.

Q What I am reading now, you took no part in it and did not see her doing the things which it is said were done here?

A I did not go down Fairview Avenue within view of Miss Coplon.

Q You said "in view of Miss Coplon." Did you see Miss Coplon going down Fairview Avenue, whether she saw you or whether she did not see you? Did you go down Fairview Avenue here?

A Miss Coplon was not in my view going down Fairview Avenue.

Q (reading)

"Subject then turned left (or west) and walked down the dimly lighted winding hill on Fairview Avenue to Broadway. She then turned right (or north) on Broadway and proceeded one block to 193rd Road, stopping on the northeast corner of this intersection where she stood for approximately ten minutes."

A Again I did not see her make the turn or go to the intersection of Broadway and 193rd Street.

Q And you did not see her stop there for ten minutes?

I think
you

A I saw her standing on that corner for several minutes.

23 Q You did not know how many minutes she stood there before the several minutes?

A She was there approximately ten minutes within my view.

Q If she was there approximately ten minutes within your view, and these gentlemen told you the things you are talking about, will you kindly tell me how many minutes these men told you they saw her standing there?

A They told me they had seen her standing there for approximately ten minutes.

Q So, the approximately ten minutes they saw her and the approximately ten minutes you saw her made over twenty minutes between the two?

A Correct.

THE COURT: You cannot multiply like that. We cannot play on words like that.

MR. PALMER: I am not trying to play on words.

THE COURT: I say you are.

MR. PALMER: May I go ahead?

THE COURT: You ought to improve yourself.

MR. PALMER: Very good.

BY MR. PALMER:

Q Will you tell me how long did you see her stand there?

MR. WHEARTY: He just testified that.

THE COURT: He said ten minutes. You are not going to ask him any more.

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BY MR. PALMER:

Q Will you tell me whether the other agents -- what are their names?

A Hradsky -- are you referring to the other agents that had preceded me down the hill to Broadway? To the best of my recollection, they were Agents Hradsky, Robinson, and Brennan.

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Q Now, when you came down the hill and you saw the girl, was she standing at 193rd Street?

A She was.

MR. PALMER: May I have the picture of 193rd Street, please?

BY MR. PALMER:

Q Look at picture No. 19 and tell me if this is a true and correct representation of the corner where she was standing on the night of January 14, and here is a pointer; will you point it out?

A May I have the other one, please?

Q This may be a clearer one.

A That looks like the intersection there (indicating).

Q Does this picture represent it better? This is No. 18.

TMP

A Yes, I think it does.

25 Q Now, when you came down, and you say you did not follow the girl, where did you first see the girl?

A I first saw her standing on this corner (indicating).

Q That is the northeast corner?

A That is the northeast corner of Broadway and 193rd Street.

Q Will you kindly tell me how long before you had the other agents, whose names you have just given us, preceded you?

MR. WHEARTY: Object.

THE WITNESS: Several moments.

THE COURT: You want to know whether she stood there more than ten minutes?

MR. PALMER: That is right.

THE COURT: I see your point.

BY MR. PALMER:

Q How long had the other agents, whose names you gave us, preceded you, several moments?

A That is correct.

Q When you came down and saw the girl standing at 193rd Street and Broadway, how long did you personally see her standing there?

A I did.

Q How long?

A How long what?

Q -- did you see her standing there?

26 A I saw her standing there for approximately ten minutes.

Q Will you kindly tell me, did these other agents, whom you saw follow her, did they tell you at any time how many minutes they saw the girl standing there before they came in view? Do you understand me?

A I do not think I do.

Q You told me and the jury that the other agents preceded you?

A That is correct.

Q You just stopped me and you said a portion of this you did not see; am I correct? You did not follow the girl?

A I did not follow the girl down Fairview Avenue.

Q Did any of these agents tell you how long the girl had been standing there before you came into view?

MR. WHEARTY: I object to that question on the ground it assumes a state of facts on which there is no evidence. Counsel is saying, how long did they tell you the girl had been standing there before.

THE COURT: The witness ought to now be able to answer.

BY MR. PALMER:

Q Did these agents tell you, in any wise, how long they had been standing there watching the girl?

A They did not.

Q Did the other agents get there before you?

A I only saw one agent when I arrived.

Q Who was that?

A T. Scott Miller.

Q Will you kindly tell me as I read this part of it --

"After apparently only making a small purchase, she left the store, walked west on 190th Street to Wadsworth Terrace, turned right and walked north to Fairview Avenue. Subject then turned left (or west) and walked down the dimly lighted winding hill on Fairview Avenue to Broadway. She then turned right (or north) on Broadway and proceeded one block to 193rd Road, stopping on the northeast corner of this intersection where she stood for approximately ten minutes."

You say you saw Mr. Miller before you came down?

A That is my recollection. I am not positive of that.

Q Do you how long prior to the time that you started to go down the hill, and you say this part of the record does not cover you -- what agents does it cover, does it refer to? Who followed her?

A I stated that a few moments ago, Mr. Palmer.

Q Was Mr. Miller one of them?

A Not that I recall.

Q What agents went after the girl, who spoke to you about this matter when you wrote the report; what agents?

A The agents that I recall were Hradsky, Brennan and Robinson.

Q Did you see any of these three gentlemen when you came down and saw the girl at 193rd Street and Broadway; did you see them?

A I did not.

Q Did you see them any time thereafter on the same night?

A Yes, I did.

Q Did you see them at the time or about the time this report was written?

A Yes.

Q Was this report intended, the particular part I am now reading, to cover their activities also?

A You might say that, yes. It was intended to cover the activities or reflect the activities of Miss Coplon, not our activities.

Q Wasn't it the activities of the gentlemen who were following her?

A This is a record of the activities of Miss Coplon.

Q I ask you, at any time did any of these three men, who you spoke to, who preceded you along the line in question

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ever tell you how long they had been watching Miss Coplon?

A They did not.

Q Then, when you came there and saw the girl, you never at or about the time the girl was there saw any of these three men anywhere; am I correct?

A That is not correct.

Q When did you see them?

A I saw one of the agents as I was approaching that corner.

Q Of 193rd Street?

A That is correct.

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Q Which agent did you see?

A To the best of my recollection, it was Agent Miller.

Q Was he one of those three agents we are talking about?

A No, he was not.

Q I am only asking you about the three agents whose names you have just given us who you saw follow the girl. You say Mr. Miller was not one?

A That is right.

Q Did you see any of the three agents, who did follow her at any time that night around this corner?

A Not that I recall, no.

Q Anyway, when you came there the girl was standing there on the corner and you saw her personally standing there

for ten minutes?

A Approximately ten minutes.

Q And you do not know how long she stood there before you got there?

A I could not testify how long she stood there before I got there. I could give a good approximation.

Q I only want your knowledge; that is all. Of your own knowledge, do you know?

A Ten minutes is the approximate time. I could tell you approximately how long she stood there before I got there.

Q You did not see her standing there before you got there, did you?

A I did not.

Q You know from your studies you are not supposed --
THE COURT (interposing): He said not.

MR. PALMER: Very good.

BY MR. PALMER:

Q (reading)

"Very few pedestrians were observed along the route of the subjects walk from the subway station to Broadway."

That is plural, isn't it? Is that "s-u-b-j-e-c-t-s"? Will you pardon me? I am always getting into trouble because of the fact I cannot get you to answer directly. Is that your writing?

A That is my writing. It says, "Very few pedestrians were observed along the route of the subject --".

Pardon me, it is singular.

Q Will you please spell it as you have it there?

A It is spelled as you just spelled it, singularly, possessive.

Q The next page at the top of it says: "Physical Surveillance of Judith Coplon." What is that "P. G. 4"?

A Page 4.

Q "65-14932, January 14, 1949, New York, N. Y.

It goes on:

"7:12 p. m. Subject Coplon was met by an unidentified man, described hereafter, who came from south on Broadway. After a brief greeting they walked together in northerly direction along Broadway to Nagle Ave., along Nagle Ave. to Dyckman Street, then left, or west, on Dyckman Street."

Now I ask you, did you see all of that at 7:12 p. m.?

A I did.

Q From the time that you saw the girl on the corner of 193rd Street and Broadway, as of 6:40 p. m. up to 7:12 p. m., did you see any of the three agents, whom you have just told us about, preceding you, follow the girl on Fairview Avenue?

MR. WHEARTY: I object to that as being immaterial.

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MR. PALMER: I am asking him if he saw them during that period of time.

THE COURT: I did not understand the question.

BY MR. PALMER:

Q From the time that you saw the girl at 193rd Street to the time she met this unidentified man, which is labeled 7:12 p. m., up to the time she got to Dyckman Street, did you see any of the three agents, whom you say preceded you down and followed her down Fairview Avenue -- did you see any of the three of them?

A I did.

Q Where did you see them?

A I saw them along Nagle Avenue going north.

Q At that time or thereafter, did they tell you as to how long they had seen the girl stand in front of 193rd Street and Broadway; did they tell you?

MR. WHEARTY: He was not asked that.

THE COURT: Did they tell him that at any time?

THE WITNESS: They did, yes.

BY MR. PALMER:

Q Did you write it down?

A I did.

Q Where is it they told you how long they stood watching the girl?

A How long they stood?

Q Yes.

A You did not ask me that.

Q I just asked you.

A I misunderstood your question.

Q I am sorry you misunderstood me. Did they tell you how long they stood watching the girl?

A They told me how long they had been observing Miss Coplon.

Q At 193rd Street and Broadway?

A Correct.

Q How long did they say?

A They stated approximately ten minutes.

Q And when you came to 193rd Street and Broadway -- I want to be sure about this -- you did not see either of these three men at all?

A I did not.

THE COURT: He said that.

BY MR. PALMER:

Q Now, then, --

"7:25 p. m." -- that goes up to 7:25 p. m., will you kindly read the description?

MR. PALMER: I will read it, with Your Honor's permission.

MR. WHEARTY: Read the whole thing, as long as you are reading.

MR. PALMER: He speaks about the fact that the description is at the back. I want to read it in order.

MR. WHEARTY: Why can't it be read in order as it appears?

MR. PALMER: It says the description at the back. Why can't that be read in consistency?

THE COURT: What description do you mean?

MR. PALMER: I will read it.

MR. WHEARTY: It appears on the later page.

BY MR. PALMER:

Q (reading):

"7:12 p. m. Subject Coplon was met by an unidentified man, described hereafter, who --".

I want the description right now.

THE COURT: All right.

MR. WHEARTY: I object to that. It seems to me it ought to be read in order.

THE COURT: Let him read the description.

MR. PALMER (reading):

"65-14932 January 14, 1949, New York, N. Y.

"Special Surveillance of Judith Coplon

"The following is a description of the

unidentified man who met Judith Coplon at 7:12 p. m. January 14, 1949:

"Race - white.

"Age - in the 30's.

"Height - approximately 5 foot 5 inches.

"Weight - approximately 140 to 150 pounds.

"Complexion - fair.

"Hair - thin, light brown, receding hairline at temples, parted on left side with part curving around at the rear with the shape of the head, hair on left side combed straight down from the part, hair on other side of part combed across head from left to right in front, then to the rear along right side.

"Facial features - Slavic appearance, regular features, slightly concave nose.

"Build - medium.

"Posture - erect.

"Clothing: Brown narrow brim snap brim hat with black band; midnight blue overcoat, single breasted blue suit, white shirt, reddish brown woolen scarf with white thread lines separating large brown blocks, small black shoes; general appearance of clothing neat, well dressed."

BY MR. PALMER:

Q Now, I ask you the question -- when I asked you yesterday whether this man looked Russian to you and could you tell his nationality, you said you could not tell. At that

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time, do you remember writing in these notes on January 15 or thereabouts, writing the word "Slavic"?

A At that time I could not recall what I wrote in those notes.

Q You read it two weeks ago?

A Several weeks ago.

Q How many times have you read the notes since you wrote them?

A I do not know, several times.

Q On January 15, when you wrote these notes, you told us you do not know what time of day you wrote them?

A That is right.

Q I ask you to look at Exhibit No. 50 in evidence. Do you recognize this building?

MR. WHEARTY: We object to identification of these photographs by this witness.

MR. PALMER: I am asking --

MR. WHEARTY (interposing): Wait just a second until I have finished. We agreed they might go in evidence. If Mr. Palmer wants to identify them, all right.

THE COURT: Just ask the question you want.

BY MR. PALMER:

Q Look at Exhibit No. 50 and tell me if you recognize this building in the picture.

A I cannot positively identify that building.

THE COURT: Pass to something else.

MR. PALMER: One other question and I am through on that point.

BY MR. PALMER:

Q Did you ever see a building on the northwest corner of 68th Street and Park Avenue?

A I have been up and down Park Avenue many times. I have probably seen most of the buildings on that street.

Q Do you know whether or not this particular building, which is depicted in No. 50 in evidence, with the flagpole in front, is the picture of the building of the Soviet delegation of the United Nations, yes or no?

A I cannot positively identify that building.

Q Were you ever in front of or passed by, to your knowledge --

THE COURT: That is immaterial.

MR. PALMER: You said I should not ask it.

MR. KELLEY: If counsel will say that is what it is, we will agree. We will accept counsel's word as to what it is.

MR. PALMER: I say that Exhibit No. 50 is the picture of the building of the Soviet delegation of the United Nations on the corner of 68th Street and Park Avenue.

BY MR. PALMER:

Q Will you look at this building and tell me whether or not you recognize that particular place as being the

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building occupied by the Soviet delegation of the United Nations?

9/ A If you state that is the building. I do not question your identification.

THE COURT: It is agreed that it is.

BY MR. PALMER:

Q Will you please tell me whether or not you ever stopped in front or went by this particular building, which has now been designated as the Soviet building of the United Nations?

THE COURT: That is immaterial. I think the picture is immaterial.

MR. PALMER: May I go ahead?

THE COURT: Yes.

BY MR. PALMER:

Q Whenever it was that you wrote the notes now in evidence as Exhibit No. 79, did you know at that particular time that Mr. Gubitchev had been followed by several FBI agents to a house that he occupied, which is shown --

MR. PALMER: May I have the picture?

MR. WHEARTY: I think you still have it.

BY MR. PALMER:

Q -- to the house which appears on Exhibit No. 23, which, as I recall it, you said you passed by on some occasion or another? Did you know that by that time?

A Please clarify what time it was.

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Q I was not present. You were when you wrote those notes on January 15.

A That is right.

Q It was in the Federal Building where the FBI has its headquarters?

A That is correct, United States Court House.

Q In order to identify it, you told us at 8:00 o'clock that morning, or before 8:00 o'clock that morning you had been told by Mr. Miller to go somewhere, and His Honor sustained the objection to where you went. Will you kindly tell me was it after the time which we have just referred to that these notes were written in the Federal Building?

A That is correct.

Q When you wrote these notes -- Mr. Miller's writing is in there?

THE COURT: Yes, it is there.

BY MR. PALMER:

Q Will you kindly tell me at that time, when you wrote "Slavic", had Mr. Miller or anyone else told you that on the particular day in question that agents had gone, at Mr. Miller's request, and discovered the address of the building which is depicted in Exhibit No. 23 and that Mr. Gubitchev was the person who was followed on January 14?

MR. WHEARTY: What Mr. Miller told him is immaterial.

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THE COURT: It is on the question why he put the word "Slavic" in there.

MR. PALMER: That is it.

THE WITNESS: If you want to be clear why I put the word "Slavic" in there, I can explain it very readily.

BY MR. PALMER:

Q Will you tell me, had Mr. Miller told you prior to writing these notes out, about Mr. Gubitchev and his house and that the name of the man had been uncovered; yes or no?

A I do not recall the sequence or the relative times as to when I wrote that or when I was advised of Mr. Gubitchev's address.

Q I am not interested in sequence.

THE COURT: He says he does not remember.

BY MR. PALMER:

Q Do you know now, and you are under oath, whether or not --

THE COURT: Strike that. You are not to use that any more.

BY MR. PALMER:

Q Will you tell me now, if you recall, that at the time when these notes were written, and as Mr. Whearty points out, and the initials of the separate agents were put on there, and Mr. Miller's handwriting appears there with the notation about the music box, whether at that time you had been told

by anybody that the man whom you had followed out, at least, of the De Luxe Restaurant, whom you had seen on Sherman Avenue, whom you had seen on Broadway --

MR. WHEARTY (interposing): I object to the form of the question.

THE COURT: The form of the question is objectionable. You will have to reframe it. You will have to eliminate the extraneous matters. What you want to know is why he put the name "Slavic" in. He offered to tell you a while ago.

BY MR. PALMER:

Q Will you kindly tell me, do you recall whether or not, prior to the time of writing the word "Slavic", if you had been informed by anybody concerning the fact that the man who had been followed the night before, the unidentified man referred to in your notes, was Mr. Gubitchev and that he was a Russian and that he lived at 108th Street?

A I do not recall.

Q Now, you said a moment ago -- and I will follow Your Honor's thought through -- that you can give a ready explanation as to why you wrote the word "Slavic" in the description.

A That description is a composite description of Mr. Gubitchev as he was observed by Mr. Miller and some of the other agents whose initials appear at the bottom of that description.

Q What do you mean by "composite description"? I can

understand composite photographs. Does each man write out a description?

MR. WHEARTY: We object to the form of the question.

THE COURT: He said "composite." Let him explain.

BY MR. PALMER:

Q Will you explain to this Court and to the jury what you mean by "composite description" of Mr. Gubitchev? What does that mean?

A A composite description, as I mean it, is a description of an individual that reflects the recollection of the person as he had been observed by the various agents who had seen him on the night of January 14, as reflected in that memo.

10/ Q Now, in connection with the composite description, do you know of your own knowledge whether there were any agents who joined that composite description had ever seen this man before January 14?

MR. WHEARTY: We object.

THE COURT: Sustained.

BY MR. PALMER:

Q Will you kindly tell me, in connection with this composite description -- follow Mr. Whearty's suggestion and look at the initials and tell me who created the composite description given in these particular notes?

MR. WHEARTY: I object to the form of the question. Can't it be asked whose initials appear?

MR. PALMER: I asked who created it. What is wrong about it?

THE COURT: If he understands it, he can answer.

THE WITNESS: Well, the signatures "Daniel F. Garde" --

BY MR. PALMER:

Q That is you?

A "Roger W. Robinson, Richard E. Brennan, John F.

Malley and Richard Hradsky."

Q Mr. Miller had nothing to do with that description?

MR. KELLEY: There are additional initials there.

MR. PALMER: I beg your pardon.

THE COURT: If there are any others --

MR. PALMER: Did I stop him?

THE COURT: No.

MR. PALMER: Why should Mr. Kelley make an intimation?

BY MR. PALMER:

Q Any other initials?

A "T. S. M.," T. Scott Miller.

Q That means there were six people that agreed on that description?

A I do not know if there was a general agreement. I asked each of them what their description was and placed the composite description, incorporating some of the aspects of Mr. Gubitchev's appearance that was observed by Mr. Miller when he was in the restaurant, such as when his hat was off, and disclosing characteristics that were not visible to myself

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and some of the other agents who saw him only in the street.

Q You never saw him with a hat off, did you, that night?

A Not that I recall. Yes, I did. I saw him on the night of March 4.

Q I beg your pardon. We are talking about January 14.

A You asked if I ever saw him with his hat off and I said I did.

Q We are referring to January 14?

A Correct. You asked me if I had ever seen him with his hat off and I said I had.

Q On the night of January 14, did you see him with his overcoat off?

A I do not recall seeing him with his overcoat off.

Q On the night of the 14th, with regard to the facial features, Slavic appearance, to the best of your recollection, was that your description of him or was it someone else's?

THE COURT: He said it was a composite description.

MR. PALMER: He said the various people built it.

THE COURT: We understood it.

BY MR. PALMER:

Q Did you, in any wise, of your own knowledge, remembering the testimony yesterday -- was it your construction of his appearance that it was a Slavic appearance that appears here in Exhibit No. 79?

A I discussed the man's appearance with the agents whose names appear there. It was my opinion, with at least one other agent, that the man had a Slavic appearance.

THE COURT: He has answered.

MR. PALMER: I am through.

BY MR. PALMER:

Q When you said yesterday -- when I asked you if he looked Russian, like a Russian, you remember you said he did not.

A No, I did not.

Q What did you state?

A I said I could not positively identify a person as a Russian or Mr. Gubitchev as a Russian from his appearance.

Q Did I ask you whether or not he looked like an American?

A There are many Slavic people who are Americans.

MR. WHEARTY: I object. He is just cluttering up the record.

THE COURT: Objection sustained.

MR. PALMER: I ask that Mr. Whearty's remark be made a part of the record. I asked the stenographer this morning and he said he only put down what he heard.

THE COURT: He undoubtedly heard that.

Let's proceed.

BY MR. PALMER:

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Q (reading)

"7:25 p. m. Subject and the unidentified man enter the De Luxe Restaurant, an Italian foods restaurant, at 143 Dyckman Street."

And then there are some initials.

"7:45. Special Agent T. Scott Miller entered De Luxe Restaurant and took seat at table facing the unidentified man located on the opposite side of the dining room."

Then appears in the handwriting of Mr. Scott Miller the following:

"The two were observed talking in a booth. Coplon was putting nickels in music box. Upon leaving restaurant at 8:15 p. m. he paid the check."

Did you see her put any nickels in the music box?

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A I did not.

Q Did you see her lips moving while she was sitting with Mr. Gubitchev?

A In the restaurant?

Q Yes.

A I did not.

Q (reading):

"8:15 p. m. Subject and unidentified man left De Luxe Restaurant, walked west on Dyckman Street to

Sherman Avenue, left on Sherman Avenue to Broadway, then south on Broadway. During this walk the subject was engaged in animated conversation with the unidentified man, stopping several times to gesticulate vehemently, and on several occasions striking at him with her hand or folded newspaper. After crossing to the west side of Broadway they walked along the park edge to the south end of Fort Tryon Park on Broadway, where they stood on the corner for several minutes. The two then walked up to and entered the tunneled footwalk entrance to the 191st Street subway station of the Independent Subway System."

Then there are initials, and then there comes description; and then comes the writing of somebody else; correct?

A Correct.

Q Now, I ask you the question, is there anything in this report or anywhere else in notes you made of the trip you told us you took in the taxicab along Sherman Avenue; is there anything about that?

A There is no mention of the taxicab in those notes.

Q Any mention of the taxicab going to the south?

THE COURT: You just read the notes. The jury understands.

BY MR. PALMER:

Q You wrote nothing at all about the trip to Brooklyn?

A Correct.

Q And nothing about watching the two entrances?

A Correct.

Q One last question. Is it true, as you said yesterday before this Court and jury, that from the time you saw the two on January 14 up to and including the time that you saw the girl in the car of the FBI off the sidewalk on Third Avenue between 15th and 16th Streets and Gubitchev being frisked on the sidewalk that you never saw the girl pass anything to the man or the man pass anything to the girl?

A Excuse me, Mr. Palmer. I did not testify that I had seen Mr. Gubitchev being frisked. That was your word.

THE COURT: You ought not to put in those preliminaries or those extraneous matters.

BY MR. PALMER:

Q Didn't you use the word "searched"?

A I did.

Q Didn't I ask you whether the words "searched" and "frisked" were the same?

A You did not.

Q At any time from the time that you saw the girl --

THE COURT (interposing): Why don't you simply ask him if he ever saw anything passed.

MR. PALMER: I am going to paraphrase, with your Honor's

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permission, your question.

BY MR. PALMER:

Q At any time from the time you went on surveillance of either the man or the girl, Gubitchev or Coplon, up to the time you saw both of them on Third Avenue and 15th Street, the girl in the car and the man on the street, did you ever see this man Gubitchev give anything to the girl, pass anything from him to her, or anything passed from her to him?

A I did not.

MR. PALMER: That is all.

MR. WHEARTY: No further questions.

One further question.

REDIRECT EXAMINATION

BY MR. WHEARTY:

Q In respect to Exhibit 79, is that referred to in the Bureau as a log?

MR. PALMER: I am going to object to it, Your Honor.

THE COURT: Let it speak for itself. It is wholly unimportant. We need not get excited over those matters.

MR. WHEARTY: A previous one was referred to as a log.

MR. PALMER: We have notes and log.

At this particular point, Your Honor -- yesterday again I asked the question to let me have in Court, so Your Honor can pass upon it, and be marked for identification, and then whatever rule you make on it will then be apparent so the

record can disclose it, all of the reports, only the reports made by each of the agents who have testified heretofore, and in which case -- you remember, several times I asked for the notes to be brought in here, and they said they were going to consider it, etc., etc. I ask that those particular names which I have given on the record, that those notes of those agents be produced.

THE COURT: It will be a simple matter for you to ask counsel.

MR. KELLEY: There appears one further aspect for Your Honor to consider.

THE COURT: Suppose I let the jury go and give them a little longer lunch. You may retire, and you understand the instructions I have given you.

(Thereupon, the jury retired from the court room and the following proceedings were held out of the hearing of the jury:)

MR. KELLEY: There does seem one other element present in connection with this request. As I understand Your Honor's ruling, we are to produce notes made by witnesses as they come on the stand and counsel has used them in cross examination. I do suggest that there is another element now that enters into the request. Certain of the witnesses have come to the stand and testified and gone without any question being raised as to those notes. Is it your Honor's ruling

that as to those witnesses that we should also produce those notes?

THE COURT: No, sir; it is not.

I am going to make this statement. We have gone over and spent hours and hours with respect to these notes and we have gotten nowhere. The agents testified precisely what they had written in their notes in every case. I regard it as a waste of time. If the Government had used these notes or if there had been time to present it, I think counsel would have a right to cross examine the witnesses. Now that it has all passed, it is a different matter.

MR. PALMER: May I say something?

THE COURT: Yes.

MR. PALMER: In the first place, I take exception to Your Honor's statement.

THE COURT: There is no time to take exceptions now. There is no jury here.

MR. PALMER: May I take it anyway?

THE COURT: In a conference, where I undertake to confer with counsel, you then do the things you do do. As I have said here before, I cannot make a ruling, I cannot do anything, unless I have to have an argument with you. Somewhere along the line I want you to discontinue it, so we may confer as gentlemen ought to confer and not have you, in that radical way, in which you always indulge --

MR. PALMER (interposing): In the first place, I am not a radical. I am a Democrat.

THE COURT: I do not want any more talk.

MR. PALMER: May I finish?

THE COURT: You cannot finish unless you talk about this conference.

MR. PALMER: I consider this at the present moment a motion before the Court not to permit these notes, and I am answering in the form of a motion.

I say we have before this Court room more than a jury. We have the whole world.

THE COURT: You can speak moderately.

MR. PALMER: I say to Your Honor this: I have no right at the present moment to have this girl or her case in any wise brought into a situation where reporters write that Your Honor has castigated me or otherwise when I believe I am doing what the law requires me to do for the client.

THE COURT: May I say this out of the presence of the jury? You are doing a bad job for your client.

MR. PALMER: That is unfortunate.

THE COURT: It is unfortunate for your client.

MR. PALMER: I consider I am doing a good job for my client.

THE COURT: You are not.

MR. PALMER: That remains to be seen.

THE COURT: I have had an opportunity to observe the conduct of lawyers for a long time and your conduct is bad.

MR. PALMER: Your Honor has said many things which do not do any good for the client in connection with the press. Whatever Your Honor says, since it is part of this record, I stand by the fact that I am appearing before you in a most respectful manner, respecting the Court and everything connected with it.

THE COURT: You have not always done that.

MR. PALMER: I have always done that.

THE COURT: We are not going to have any argument. We are clear off the subject, as you generally do. I cannot sit here and listen to you until you confine yourself to the subject matter we are now discussing.

MR. PALMER: If Your Honor had not made these remarks, I would not have made mine, because you said --

THE COURT (interposing): That is enough.

MR. PALMER: There is no witness, so far as I am concerned -- if you remember, in the record I began in the very beginning to ask for these things. At that time you never made a ruling. Finally you did make a ruling. So far as the witnesses are concerned, I have a perfect right, in the interest of justice, to do one of two things -- that these reports which Your Honor says do not in any wise show the agent to have stated different things than on the witness

stand -- I say the agents have in no way measured up to what appears in the report. There is nothing about glances or nothing about turning the head, or the balance. All done for the purpose of atmosphere.

I ask that under these circumstances for these reports, that they brought here and marked for identification. I have tried to get them after hours. So far as they are concerned, I am willing to have them marked in evidence, in view of Your Honor's ruling, without in any wise calling the agents back, although I have a right to call them in our defense. I ask you, based upon the decisions you have made, to have these reports brought here and marked for identification, and without in any wise calling the agents, so I will be in position to use them in connection with my portion of the case if it comes to a necessity of defense in this case. I say to Your Honor --

THE COURT: I understand that.

MR. PALMER: I ask that they be brought here instead of having trouble --

THE COURT (interposing): I suggest that counsel have them and I will pass on them.

MR. WHEARTY: We have them in court.

MR. PALMER: May I ask that they be marked for identification?

THE COURT: Not now. When we reach that point I will tell

There was no further testimony from SA Daniel F. Garde

TESTIMONY OF SA DANIEL F. GARDE
WASHINGTON TRIAL, JUDITH COPLON

VOLUME #1

Part I

ENCLOSURE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WATSON
bd

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 :
 UNITED STATES OF AMERICA, :
 :
 v. :
 :
 JUDITH COPLON, :
 :
 Defendant. :
 :
 ----- ↓

Criminal
No. 381-49

Washington, D. C.,
Monday, May 23, 1949.

The above-entitled cause came on for further hearing
before the HONORABLE ALBERT L. REEVES, District Judge, at
10:00 a. m.

APPEARANCES:

(As heretofore noted.)

Daniel F. Garde

EXHIBITS

MARKED FOR
IDENTIFICATION IN EVIDENCE

Government's 78

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P R O C E E D I N G S

THE COURT: Good morning, gentlemen.

MR. KELLEY: Good morning, sir.

MR. WHEARTY: Good morning.

MR. PALMER: Good morning, Your Honor.

THE COURT: Good morning, ladies and gentlemen of the jury. Good morning to you all. I trust that you had a good vacation.

Are you ready to proceed, gentlemen?

MR. WHEARTY: Yes, sir. Will you call Mr. Garde? This is a new witness, Your Honor, Daniel F. Garde, G-a-r-d-e.

Thereupon --

DANIEL F. GARDE,

was called as a witness by and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WHEARTY:

Q. Will you give us your full name, sir?

A. Daniel F. Garde.

Q. And where do you reside, Mr. Garde?

A. I reside in New York City.

Q. By whom are you employed?

A. I am employed by the Federal Bureau of Investigation.

Q. In what capacity?

A. I am employed as a Special Agent.

Q. How long have you been with the FBI?

A. I have been with the FBI for eight years.

Q. Do you know the defendant in this case?

(Thereupon the defendant rose to her feet.)

THE WITNESS: I do, yes, sir.

BY MR. WHEARTY:

Q. Will you state whether or not on January 14 of 1949, you participated in any surveillance in which you observed her?

A. I did.

THE COURT: What date?

MR. WHEARTY: On January 14. I am merely asking one question.

THE WITNESS: Yes, sir, I did participate on that day.

BY MR. WHEARTY:

Q. Were you engaged in any surveillance on the 4th of March of 1949?

A. Yes, sir, I was.

Q. What time of day did you first start on such surveillance?

A. I first started on the afternoon of March 4 at approximately 4:15 p. m.

Q. Where were you at that time and what were you doing?

A. At that time, I took up a position on First Avenue south of 42nd Street, commanding a view of the main entrance

to the building at 405 East 42nd Street.

Q. For what purpose did you take up that position?

A. To observe if Mr. Gubitchev were to leave the building at 405 East 42nd Street that afternoon.

Q. Whereabouts is that building, 405 -- where is it located?

A. The building is located on the north side of 42nd Street, just east of First Avenue.

Q. Were any other agents with you?

A. There were, yes.

Q. Who were they?

A. They were Agents Martin McGuinn and John Ward.

Q. Were all three of you together at all times on that afternoon?

A. No, we were not.

Q. Did you know Gubitchev?

A. I did, yes, sir.

Q. Where and when had you first seen Gubitchev?

A. I saw Gubitchev first on the night of January 14, shortly after 7:30 p. m., at 191st Street and Broadway.

Q. All right, now, on the afternoon of March 4, did you see Gubitchev?

A. I did, yes.

Q. Where and when?

A. I saw Mr. Gubitchev at approximately ten minutes to

five.

Q. What was he doing when you saw him?

A. He was walking west on 42nd Street, a short distance from the corner or intersection at First Avenue and 42nd Street, away from the building at 405 East 42nd Street.

Q. Had you seen him come out of that building at 405?

A. No, sir, I did not see him come out of the building.

Q. You saw him a short distance away from the building?

A. I saw him walking away from the building.

Q. What did you do after that, when you saw him? And what did he do?

A. He was accompanied by a man whose identity I did not know. I saw him cross the intersection walking west on the north side of 42nd Street; and he and this other man, whom he was with, proceeded with, down 42nd Street to the corner of Lexington Avenue.

Q. Now, let's see. You say he crossed the intersection. What was that first intersection that he crossed?

A. The first intersection was First Avenue and 42nd Street.

Q. What would be the next intersection he crossed?

A. Second Avenue and 42nd Street.

Q. Then Third Avenue?

A. Then Third Avenue.

Q. What would be the next intersection?

A. The next would be Lexington Avenue.

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Q. You say you followed him -- or did you follow him over to Lexington Avenue?

A. I did, yes.

Q. Tell us what you observed from then on with respect to the movements of Gubitchev.

A. Gubitchev and the man with whom he was at the time crossed to the northwest corner of 42nd Street and Lexington Avenue; and they stood on that corner for a brief period of time together.

Q. About how long?

A. It would be difficult to say exactly, but several moments.

Q. You say they were talking?

A. They were apparently engaged in some sort of conversation.

Q. Well, what did you next observe with respect to Gubitchev's movements?

A. That was all I saw of Mr. Gubitchev on that date. ✓

Q. Did you discontinue your surveillance?

MR. PALMER: I didn't hear the last words.

MR. WHEARTY: He said, that was all he saw of Mr. Gubitchev --

BY MR. WHEARTY:

Q. Will you repeat that answer?

A. That was all I saw of Mr. Gubitchev on that date.

Q. On that date?

A. At that particular time on that date.

Q. All right. You discontinued your surveillance?

A. I discontinued the surveillance.

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Q. Now, just answer the next question yes or no. Did you have any reason for discontinuing your surveillance; just yes or no?

MR. PALMER: I object to that as immaterial.

THE COURT: He can't give the reason.

MR. WHEARTY: I didn't ask for the reason. I just asked, did he have any reason; yes or no.

THE COURT: Very well.

THE WITNESS: Yes, sir.

BY MR. WHEARTY:

Q. What was your next observation on the 4th of March, 1949?

A. My next observation was shortly after 9 p. m., while driving a Bureau automobile on Ninth Avenue.

Q. Let me stop you there. What were you doing between 5 and 9?

A. I was cruising in the midtown area of New York City.

Q. In a Bureau car?

A. In a Bureau car.

Q. You say your next observation was around 9 o'clock?

A. That is correct.

Q. Where?

A. I was on Ninth Avenue going south.

Q. In a Bureau car?

A. In a Bureau car.

Q. Who was with you, if anyone?

A. There were two agents with me, Special Agents Martin McGuinn and John Ward.

Q. Now, tell us what observations you made at that time.

A. As we approached approximately 22nd Street --

Q. Let me stop you. Who was driving the car?

A. I was driving the car.

Q. All right, now you are approaching 22nd Street approximately, and what happened then?

A. I overtook a bus, No. 89, which was proceeding south on Ninth Avenue.

Q. Were you following that bus?

A. I had not been following it up to that point, sir.

Q. Were you proceeding to that area under any instruction?

A. Yes, sir, I was.

Q. Tell us what you observed when you got to 22nd Street and Ninth Avenue.

A. Well, shortly after coming upon the bus, by driving to the left side of the bus, I observed Gubitchev seated to the rear on the right-hand side of the bus, just to the rear

of the rear exit door.

Q. Did you observe the Defendant Coplon?

A. I did.

Q. Where did you observe her?

A. The Defendant Coplon was seated on the opposite side of the aisle in a seat alone, forward of Gubitchev, about midway in the length of the bus.

Q. Was anyone sitting with Gubitchev?

A. There was no one sitting with Gubitchev.

Q. Well, what did you next do and observe?

A. I observed the bus proceed to the intersection of 14th Street and Ninth Avenue.

Q. Well, sir, continue.

A. Just before the bus arrived at the intersection of 14th Street and Ninth Avenue, I observed Gubitchev get up from his seat and go over to the rear exit door, which is on the right-hand side of the bus.

Q. Could you tell us about how many people there were on the bus, all told?

A. As I recall, there were not very many people on the bus. I would say approximately six.

Q. This is at 14th Street and Ninth Avenue?

A. That is correct.

Q. Now, did you make any observations at 14th Street and Ninth Avenue?

A. I did, yes.

Q. What observations did you make?

A. Well, I observed that Miss Coplon also got up and went to the rear exit door; and I observed the two get off at the northwest corner of that intersection.

Q. Well, now, will you go ahead and just continue in your own words and tell us what else you observed in that vicinity of Ninth Avenue and 14th Street?

A. After they had alighted to the corner, I observed this bus, 89, proceed southward across 14th Street and continue off at a diagonal down Hudson Street. I then observed Gubitchev and Miss Coplon standing on the northwest corner of 14th Street and Ninth Avenue for a period of several moments.

Q. Let me interrupt you. Were you still in the car?

A. I was, yes.

Q. Where was the car at that time?

A. I had moved the car across 14th Street in a southerly direction into the extension of Ninth Avenue below 14th Street.

Q. And was the car facing south or north or what?

A. The car was facing south.

Q. Go ahead. You saw them standing on the northwest corner. What did you next observe?

A. I observed them looking about in various directions from that corner.

Q. Were there many people in the vicinity?

A. There were not.

Q. There were not?

A. There were not many people in the vicinity.

Q. All right, now, you go ahead? What did you next see?

A. I next observed the two cross south across 14th Street to the southwest corner, where they again stood for several moments looking about.

Q. What do you mean by "several moments"?

A. Well, a period of time that would be difficult to define, but more than a momentary period of time.

Q. All right. Now, what did you next observe?

A. After standing on that corner for several moments, I observed them walking east on 14th Street to the southeast corner of the intersection, where they again stood together and looked about in all directions for another several moments.

Q. Now, were you still in the Bureau car at that time?

A. I was.

Q. Well, now, tell us what next happened, that you saw.

A. Miss Coplon and Gubitchev then proceeded eastward on 14th Street, on the south side of the street for a number of paces.

Q. What do you mean by that? How many paces?

A. I didn't count them, sir, and I wouldn't --

Q. Can you estimate the distance?

A. Well, a short distance from the corner, possibly anywhere from 10 to 15 paces.

Q. Go ahead. What did you see at that time?

A. I observed them hesitate momentarily and look back in the direction from which they had come.

MR. PALMER: I beg your pardon. I ask that the words "hesitate momentarily" be stricken.

3 THE COURT: I don't know how better he could describe it. When he said "hesitate," that is a word with which we are familiar.

MR. WHEARTY: I would think so, Your Honor.

THE COURT: Objection overruled.

BY MR. WHEARTY:

Q. You saw them stop momentarily and look around, you say?

A. That is correct.

Q. Then what?

A. Then they proceeded on down 14th Street in an easterly direction beyond my line of view.

Q. How far had they gone when they passed out of your sight?

A. Perhaps a fourth of the block.

Q. I just want to refer for a moment to Exhibit 66. Will you hold this this way so the jury and all can see the photograph? Do you recognize this photograph?

A. Yes, sir.

THE COURT: If the witness would rise, he could see it better.

BY MR. WHEARTY:

Q. You turn around, Mr. Garde. You say you recognize the photograph. That depicts what?

A. That photograph depicts the intersection of Ninth Avenue and 14th Street.

Q. Just very briefly point to the places where you saw these two people standing, as you testified.

A. This (indicating) is the northwest corner of the intersection.

Q. Just with your pointer, trace the route that you saw them take.

A. That (indicating) is the corner at which the bus stopped, and at which the two got off the bus, and where they stood first, after alighting from the bus. Then they crossed south to the southwest corner and stood on that corner for several moments (indicating).

Q. Now, referring to Exhibit 65, does that exhibit show the southwest corner of Ninth Avenue and 14th Street?

A. That is correct.

Q. All right, can you continue to trace their movements on that photograph?

A. Yes, sir. From the southwest corner they crossed

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easterly to this intersection(indicating), and across this one over to another one which is directly east of that.

Q. Will you refer to Exhibit 64 and continue to show the course of the observation?

A. Yes. Coming eastward from that southwest corner, they crossed to the intersection here (indicating) of Ninth Avenue and Hudson Avenue, and then over to the intersection here of Hudson and 14th Street, where they stood here (indicating) for several moments.

Q. Now, referring to Exhibit 67 for a moment, do you recognize the picture shown there?

A. Yes, sir. I do.

Q. What is that?

A. That is a picture looking down 14th Street from west to east.

Q. Does Eighth Avenue appear anywhere in that picture that you can tell?

A. Yes, sir. Eighth Avenue is down at this corner (indicating), where the tall building appears in the center of the picture in the background.

Q. All right, now, how far down Eighth Avenue were they when you last saw them and by that, I mean indicate on this photograph if you can?

A. It would be difficult from this photograph to indicate how far they were, because I don't know from the corner

how far this photograph was taken.

Q. All right, sir. Mr. Garde, now will you resume your seat for a moment? When these two people passed out of your sight, did you again see them that night?

A. I did, yes, sir.

Q. Where and when?

A. I saw them on Third Avenue near 16th Street shortly after 9:30 that evening.

Q. Did you also see them in the United States Court House that night?

A. Yes, sir, I did.

MR. WHEARTY: All right, you may examine, Mr. Palmer.

CROSS-EXAMINATION

BY MR. PALMER:

Q. Mr. Garde, what particular part of New York do you live in?

A. I live in Brooklyn.

Q. That is where I came from. Now, the first question that was asked of you -- and His Honor at that time looked up and said something -- was, were you engaged in a surveillance on January 14. Do you remember that question?

A. I think I do, yes.

Q. You were asked that by Mr. Whearty; I mean, he asked you that question, isn't that so?

A. That is right.

Q. Now, other than January 14 and March 4 -- and just

answer the question as His Honor has directed me to ask once before, and just answer as far as you can definitely -- what other dates, if any, were you engaged in any surveillance of either Gubitchev or Miss Coplon, other than January 14 and March 4; what other dates?

A. January 19, January 20, January 21, January 22, January 23.

Q. Those are the only other dates?

A. Do you mean dates on which I was assigned to a surveillance or dates on which I observed these people?

Q. Dates, first, upon which you were assigned to a surveillance, and then dates upon which you observed these people; both sets of dates, but give me the dates you were assigned and then the dates you saw the people.

A. Well, add February 18.

Q. Yes. Is that all?

A. That is all.

Q. Now, prior to coming here this morning, you have been here on other occasions, have you not, since this trial started on April 25?

A. Yes, sir.

Q. And you live in New York. Here, where have you been living since April 25 or thereafter when you came here?

A. I have been living here in Washington and in New York.

Q. Yes, but I mean, where were you living in Washington while you were in Washington?

A. I was living on the north side of the Capitol.

Q. What is the address?

A. 124 B Street, Northeast.

Q. Is this a boarding house?

A. You might refer to it as a boarding house.

Q. Or a hotel, I don't care which. Any other agents engaged in the surveillance who came from New York living in this building at 124 B Street?

A. There have been, yes, sir.

Q. Which ones?

A. It would vary depending upon the times referred to.

Q. You just give me the names of all of them, irrespective of the time, since this case started.

A. I wouldn't know. I haven't been here since this case started.

Q. I beg your pardon. All I am asking you, sir, is to give me the names of such people who were engaged in surveillance, who came on from New York, who, at any time, lived in this building that you live in, at any time since April 25 -- at any time you saw them there and they were living there.

MR. PALMER: May I have that list, please?

BY MR. PALMER:

Q. For the purpose of refreshing your recollection, and

bringing this case on a little faster, look at this list furnished by the Government, Exhibit 8, and if there are any others than are on the list, you mention those others; otherwise, see if this list refreshes your recollection.

A. Do you have any particular period in mind, Mr. Palmer, that you want?

Q. No, all I am asking --

A. You want to know how many were there yesterday?

Q. I don't care what day they were there. Just give me the names of the people there at any time engaged in the surveillance since the time you got there, at any time.

A. To my knowledge, Mr. Kolar, Mr. T. J. McAndrews, Edward McCarthy, Martin McGuinn, John Murphy, Roger Robinson, John Ward.

Q. Is that all?

A. That is all that I know of, sir.

Q. Now, since the time that this case started, have you reported from time to time in any room in the Department of Justice Building here in Washington?

A. I have.

Q. What room?

A. Room 1526 on some occasions.

Q. Yes?

A. Room 1513 on others.

Q. What others, if any?

A. I have been in Room 1511.

Q. Yes, any others?

A. And some of the adjoining rooms to each of those rooms.

Q. Were you in any of the rooms occupied by any of the attorneys trying this case?

A. Yes, sir.

Q. Whose rooms?

A. I was in Mr. Kelley's room and Mr. Whearty's room.

Q. What floor is Mr. Kelley's room? What is his number, if you recall?

A. I don't recall his number; it is on the second floor.

Q. Mr. Whearty, what floor is he on?

A. Mr. Whearty is also on the second floor.

Q. Mr. Whearty and Mr. Kelley have separate and distinct rooms?

A. That is right.

Q. Did you meet Mr. Campbell over there?

A. No, sir, I have not.

Q. Since you came to this court on various occasions, have you had occasion to be present in the so-called witness room, behind His Honor's dais while other agents were in there?

A. Yes, sir, I have.

Q. Will you kindly tell me about how often have you been there since this case started?

A. I don't recall how often it was. At the outset of this case, I was there on several occasions.

Q. Yes?

A. And then I was sent back to New York; and I was there again Friday.

Q. Well, the first week of this case began April 25. Were you in that room in the week beginning April 25; it was on a Monday?

A. I believe I was, yes.

Q. Now, you say you went back to New York. Did you go back before the second week's trial began? We are now in the fifth.

A. It was during the second week, I believe.

Q. When you went back during the second week, how long did you stay in New York before you came back?

A. I stayed in New York until last Wednesday.

Q. Then you have been here since last Wednesday?

A. That is correct.

Q. Have you been in that room since last Wednesday?

A. I was in that room last Friday afternoon.

Q. I see. Since this case started, in either the hotel in which you occupy a room, in the Department of Justice Building in the various places you described, including Mr. Whearty's and Mr. Kelley's rooms, and also in the witness room that we have just described to you, did you ever at any time discuss

any feature of this case with any of the agents?

A. Yes, sir, certainly.

Q. And did you discuss it also with Mr. Whearty and Mr. Kelley?

A. Certainly, I discussed it with them.

Q. In the room back there?

A. Yes, sir.

Q. And also in their offices?

A. Yes, sir.

Q. Now, in connection with this case, and prior to the time the case started, was there an occasion, to wit -- I am going to bring the date down so we can get there quicker -- on April 22nd, when you joined in a general conclave with Mr. Whearty and Mr. Kelley who came on from Washington to have a discussion with all the agents concerning the proposed beginning of the case on April 25? Were you there?

A. I wonder if you would repeat that question? I don't follow you.

Q. Suppose I make it less arduous. I withdraw the question.

MR. PALMER: May I?

THE COURT: Yes.

MR. PALMER: Very good.

BY MR. PALMER:

Q. On April 22, 1949, testimony has been given here

that a meeting of the agents took place in a room, I think, on the 29th floor of the Federal Building in New York, at which meeting Mr. Kelley and Mr. Whearty were present. Were you there?

A. I was there, yes, sir.

Q. What time of day did you come there?

A. I don't recall what time of day.

Q. Was it in the afternoon?

A. To the best of my recollection, it was late in the afternoon.

Q. And how late did you stay that night; do you recall that?

A. I don't recall that.

Q. While you were there, did the separate agents, under questioning by Mr. Whearty and Mr. Kelley, discuss or tell or repeat their portions of the surveillance, as they took it up? Was that done in your presence and within your hearing while you were there?

A. My part in the surveillance was discussed with one of the attorneys while I was there.

Q. But did you go away immediately after you discussed your part, or did you hear any other agents discuss their part of the surveillance or asked questions about it by either Mr. Whearty or Mr. Kelley?

A. I don't recall having heard --

Q. Anybody else?

A. --any questions asked of any of the others.

Q. I don't ask you the particular questions. Did you hear Mr. Whearty and Mr. Kelley asking the others questions?

A. I think I did, yes.

Q. Were there any pictures there, any photographs there at the time that these talks took place? You had photographs here this morning. Were any photographs --

A. To the best of my recollection, there were some photographs.

Q. Were there any topographical maps of vicinities covered by the surveillances?

A. I think there were, yes.

Q. Were any ladies present at this conference? When I "ladies," I am trying to refresh your recollection. For instance, Miss Condon, Miss Manos, or any other lady?

A. I don't recall.

Q. Now, in connection with Mr. Gauthier, did there come a time about April 14th, prior to April 22nd, when you had a talk in the presence of other agents with Mr. Gauthier about your part of the surveillance?

A. That is correct.

Q. And can you tell us about when that talk took place?

A. To the best of my recollection, it was in the middle of April, possibly on the 15th of April; I believe it was a Friday.

Q. Do you recall what agents were present at that time or when the conference began and when it ended, so far as you are concerned?

A. As far as I am concerned, to the best of my recollection, I talked to Mr. Gauthier in one of the smaller rooms on the 29th floor.

Q. Was anybody else present while you were talking to him?

A. There may have been, I don't recall.

Q. All right, that is an answer. Now, in connection with these talks with either Mr. Gauthier or Mr. Kelley or Mr. Whearty, did there come a time when you refreshed your recollection as to the happenings on the particular times when you were on surveillance from any reports that you had made on the spot or right after the spot, when you were taking part in these surveillances? Did you make any notes of any kind?

A. I did.

Q. And prior to coming on the stand today, did you look at those notes?

A. I didn't see them today.

Q. When was the last time you saw them before today?

A. I saw them several days ago.

Q. Well, this is Monday; and you said you were here Friday.

A. Correct.

Q. Did you expect to become a witness, or was the suggestion made that you might be a witness last Friday?

A. That is correct.

Q. And before that occurred, you looked at the notes?

A. Yes, sir, I did.

Q. In whose possession were the notes that you looked at at that time?

A. I don't know that they were in anybody's possession.

Q. Where did you find them; where did you see them?

A. I found them in an office in the Department of Justice Building.

Q. And who is in charge of that office?

A. Mr. Hottel, --

Q. Will you spell it?

A. --is in charge of the office. I believe the spelling of his name is H-o-t-t-e-l.

Q. As far as these notes were concerned, were they in pencil or in ink?

A. They were in ink.

Q. And how soon after the happening of the separate events that you have narrated here did you write?

A. As soon as it was possible for me to do so.

Q. Well, you have told us about what occurred on the night of March 4. How soon after March 4 did you write?

A. Those notes were written on that evening, while I

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was in the automobile.

Q. You mean in the Federal Building?

MR. WHEARTY: He said while he was in the automobile.

THE WITNESS: While I was in an automobile.

MR. PALMER: I beg your pardon, I didn't hear the last.

BY MR. PALMER:

Q. In the automobile?

A. That is correct.

Q. What sort of an automobile is this?

A. Ford automobile, sedan.

Q. Four-passenger?

A. It would seat more than four, if necessary.

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Q. Before we go back to the notes again, let's get back to where we started from. Remember my initial question was the dates that you were assigned to observe either the Defendant Coplon or Mr. Gubitchev; and you gave us certain dates.

Now, will you kindly tell me, other than on January 14, February 18 and March 4 -- which I will come to in a moment -- did you ever observe Gubitchev on any of the other nights you have mentioned, to wit, the 19th of January, the 20th, the 21st, the 22nd, the 23rd of January? Did you observe him on any of those occasions? In other words, were you observing him?

A. I did not observe him on any of those other occasions.

Q. In other words, your observations were directed by order to Miss Coplon; am I correct? You said you were given an assignment, something like that?

A. That is right.

Q. Then your assignment on the other days was to observe Miss Coplon; am I correct?

A. Not entirely.

Q. When you say "not entirely," what was the balance of the assignment?

A. There was one occasion when I was assigned to observe Mr. Gubitchev.

Q. What date was that?

A. To the best of my recollection, it was on January --

Q. Was it January 15?

A. January 15.

Q. I thought so. That assignment on January 15 followed your seeing the two together on the night of January 14; am I correct?

A. That is correct.

Q. Now, on any of the occasions that you have mentioned -- I am just asking the general, broad question -- did you say on the night of March 4, you finally reached the building, the Federal Building at sometime or another?

A. That is right.

Q. About what time?

A. Shortly before 10 o'clock.

Q. Now, can you tell me, on any of the occasions that you have mentioned, to wit, January 14, 15, 19, 20, 21, 22, 23rd of January, February 18 and March 4 -- and I think I have covered all you mentioned -- did you ever see this girl, Miss Coplon, give anything, pass anything, or deliver anything to Mr. Gubitchev?

A. No, I did not.

Q. At any of the occasions, the dates I don't have to repeat again, did you ever see Mr. Gubitchev give this girl anything, Miss Coplon?

A. No, I did not.

Q. Now, once more we go back to the building. You said something about 415 on March 4. You remember you said you began to take up your surveillance of this man Gubitchev? I beg your pardon?

A. That is correct.

Q. Now, other than January 14 and January 15, you had never pursued any inquiry as to surveilling Mr. Gubitchev until March 4, am I correct; that is, between January 15 and March 4, you didn't surveil him at all?

A. To my recollection at the moment, that is correct.

Q. All right. Now, in connection with that recollection at the moment, when you examined your notes on Friday last, you had already spoken to Mr. Whearty and Mr. Kelley concerning

the fact you were going to be a witness in this case; am I correct?

A. I don't know if I understand your question.

Q. I will withdraw it. Prior to taking the witness stand this morning, and being here on Friday, you had been made aware by either Mr. Kelley or Mr. Whearty that they intended to call you as a witness in this case?

A. I was made aware by my superiors in New York.

Q. Yes; who are they?

A. At that time, I believe Mr. Kennedy advised me that I was to come down here to Washington to appear as a witness.

Q. Was Mr. Kennedy in Washington at all during any of the times that you have been here?

A. No, he was not.

Q. What is Mr. Kennedy's special functions, if any? I have heard his name mentioned time and again in connection with the radio room. What does Mr. Kennedy do in the FBI?

A. Mr. Kennedy is a Special Agent.

Q. Did you ever get any instructions from Mr. Granville in this matter?

A. Yes, sir.

Q. When did you get instructions from Mr. Granville?

A. On numerous occasions.

Q. Did you ever get any instructions from Mr. Miller, the gentleman here?

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A. Yes, I have received instructions from Mr. Miller.

Q. In connection with January 15, concerning Gubitchev, did you get instructions from or through Mr. Miller on January 15 to take up surveillance of Mr. Gubitchev?

A. That is correct.

Q. You say you live in Brooklyn?

A. That is right.

Q. Where were you at the time you got these instructions on January 15?

A. I don't recall.

Q. Were you home?

A. It is quite possible.

Q. Well, about what time of day did you take up the surveillance of Gubitchev on January 15?

A. As I recall, it was approximately 8 o'clock in the morning.

Q. I lived in Brooklyn, Ocean Avenue, corner Ditles; I lived there for years. What part of Brooklyn do you live in?

A. I live in Flatbush.

Q. That is Flatbush where I lived. What part of Flatbush?

A. What do you mean by "what part"?

Q. What is the street you live on?

A. I live on East 28th Street.

Q. That is some distance beyond where I lived. That is

is towards the Sheepshead Bay section?

A. Yes, down on the Kingshighway section.

Q. Yes, Kingshighway. Now, did you go to New York after getting these instructions on January 15 by car or by BMT Subway?

A. I used the IRT Subway.

7 Q. Where were you told to go on the morning, to be at 8 a. m.? Where were you told to go?

A. That is a matter that I don't think I am in a position to disclose in this court room.

Q. Just a moment. You went to a definite place, didn't you?

A. I did, yes.

THE COURT: If not in connection with this case, it doesn't have to be disclosed.

MR. PALMER: It is in connection. Pardon me, I will ask the question.

BY MR. PALMER:

Q. Were you told to go to a certain place in connection with Mr. Gubitchev whom you had seen the night before?

A. I was.

Q. The night before, January 14, what time did you quit your surveillance of Gubitchev and the girl, Miss Coplon?

A. Somewhere in the neighborhood of midnight.

Q. Midnight? And where did you end your surveillance?

A. At 178 Ocean Parkway. Will you give me a moment to reflect on that?

Q. Of course.

A. This is January 14?

Q. Yes, sir.

A. Yes, I ended my surveillance at 178 Ocean Parkway.

Q. That is where Miss Coplon lives?

A. That is correct.

Q. And you got there at midnight?

A. I got there before midnight.

Q. What time?

A. Possibly two hours before midnight.

Q. When it was about 10 o'clock?

A. In the neighborhood of 10 o'clock.

Q. Does your report show that at 10 o'clock you ended the surveillance, the report you read on Friday?

A. What was that?

Q. The report which you read, which you said was in ink, does that show you ended your surveillance on January 14 on Ocean Parkway about 10 p. m.?

A. The report I was referring to was notes I wrote on March 4.

Q. January 14, you went on a surveillance? I beg your pardon?

A. That is correct.

Q. When you go on a surveillance, your directions are to write notes of what you see and do?

A. Correct.

Q. Then you made notes as to January 14, didn't you?

A. I didn't make notes during the course of that surveillance.

Q. Well, at any time after January 14, in connection with the surveillance of January 14 of Gubitchev and the girl, did you ever make any notes of it?

A. Yes, I did.

Q. What happened to the notes?

A. I turned them over to Mr. Miller.

Q. Mr. Miller. Have you seen the notes since?

A. I have, yes.

Q. When was the last time you saw those notes?

A. Several weeks ago.

Q. Since this case started?

A. Yes, since this case started.

Q. And where did Mr. Miller have them, here in Washington?

A. Yes, they were here in Washington.

Q. Now, when you read the notes, in connection with January 14, did the notes disclose the fact that it was at 10 p. m. on the night of January 14 that you ended your surveillance of Miss Coplon at her home, at or in front of her home on Ocean Parkway, Brooklyn?

A. As I recall, my notes will reflect that, yes, sir.

Q. How did you get to Ocean Parkway that day, following Miss Coplon that night?

A. I was not following Miss Coplon when I got to her house.

Q. Were you at the house before she got there?

A. I don't know.

Q. Well, you have heard the agents, have you not, at one time or another, before you took the witness stand today, testify on the night of January 14 that after going to the restaurant on Dyckman Street --

MR. WHEARTY: Just a minute. This witness hasn't heard any other agent testify.

THE WITNESS: I haven't heard any agents testify.

MR. PALMER: Pardon me, I don't mean testify.

BY MR. PALMER:

Q. In your talks with agents concerning the surveillance of January 14, or with Mr. Whearty or Mr. Kelley, were you apprised of the fact there came a time on that night when the girl walked on the west side of Broadway, walked up Bennett Avenue, got in the tunnel there, and then got in the subway and rode as far as 125 Street, while Mr. Gubitchev got off and got on a local?

MR. WHEARTY: We object to that question on the ground it calls for hearsay.

THE COURT: It does. He didn't see it; it calls for hearsay.

THE WITNESS: I saw part of that.

BY MR. PALMER:

Q. What part did you see?

A. I saw her walk down Broadway to Bennett Avenue and stand on the corner with Gubitchev.

Q. Well, did you see her at any time on that night -- was that on the night of January 14?

A. January 14.

Q. Did you see her on that night, as she walked down Broadway from Sherman Avenue; wasn't it?

A. I saw her walk down Sherman Avenue to Broadway.

Q. Between Broadway and Bennett Avenue, did you see the girl at any time use in any way, shape, manner or form a newspaper?

A. I did, yes.

Q. What did you see her do with that newspaper?

A. I saw her wave the newspaper in the direction of Mr. Gubitchev.

Q. About how often?

A. Several times.

Q. And where were you at the time that she was waving the newspaper?

A. I was somewhat to the rear on Sherman Avenue, walking

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south toward Broadway.

Q. This was a pretty cold night in January?

A. I don't recall exactly; it was fairly cold.

Q. I don't want to be facetious, but in other words, the waving of the newspaper had nothing to do with the weather?

A. I should think not.

Q. You left her at Bennett Avenue and Broadway; you left the surveillance there?

A. That is correct.

Q. When you left the surveillance there on that night, were you there with a radio car?

A. No, sir, I was not.

Q. Where did you go from there?

A. I was in a taxicab.

Q. Taxicab? Any other agent with you in the taxicab?

A. There were times during that evening when there were agents with me who departed and came back.

Q. To the same taxicab?

A. Same taxicab.

Q. Where did you get in the taxicab?

A. I got into the taxicab on Dyckman Street in front of the DeLuxe Restaurant, 143 Dyckman Street.

Q. In other words, as they walked along -- did you see them go into the DeLuxe Restaurant?

A. I did, yes, sir.

Q. Did you see Mr. Miller go into the DeLuxe Restaurant after them?

A. I did.

Q. Did you see Mr. Malley in the vicinity?

A. That is correct.

Q. What other agent did you see in the vicinity?

A. Agent Robinson.

Q. Any other agents?

A. I think I saw Agent Brennan.

Q. To the best of your recollection, were any radio cars there?

THE COURT: That has all been covered.

MR. PALMER: Your Honor, haven't I got the right in connection with another witness to go over the same matter?

THE COURT: No, you haven't; it is all cumulative.

MR. PALMER: He may dispute what the other people said.

THE COURT: Very well.

BY MR. PALMER:

Q. All right, now in this particular car, were you in this taxicab following Gubitchev and the young lady, Miss Coplon, along Broadway when you saw this gesticulation in question?

A. That is correct.

Q. Do you speak Russian?

A. No, I don't.

Q. Do you understand Russian?

A. No, sir.

Q. At any time while you were following these people, Gubitchev and Coplon, on the night of January 14, did you hear anything that she said to him or he said to her?

A. I did not hear anything that either of them said.

Q. The windows of the taxicab were closed?

A. They were open, as I recall.

Q. And you still couldn't hear anything?

A. That is correct.

Q. Now, at Bennett Avenue, did you see the girl with the man go up Bennett Avenue toward the subway station there?

A. No, I didn't see that.

Q. Where did you go from there?

A. I was parked down in this taxicab facing south so that I could get a view of the corner on which they were standing when they came to a standstill at Broadway and Bennett Avenue on the west side of Broadway; and Mr. Gubitchev stepped to the curb, looking in a northerly direction, as though looking for a bus or some means of a conveyance; and I felt that I was not in a particularly good or discreet position, parked double in a taxicab, only a section of the block away from them. I directed the cab to proceed down across the intersection on which they were standing, in order that we could put ourselves into a more advantageous position to observe

their movements.

Q. Did you do that?

A. I did that.

Q. What movements did you observe of theirs?

A. I observed them standing on the corner together for several moments before the cab proceeded south, in order to take up the new position.

Q. And then?

A. However, we went down possibly two blocks, made a U-turn and when we arrived back at the scene of the intersection, where I had last seen them, they were no longer in view.

Q. I see. Did you know at that time there were other agents in the vicinity?

A. I did.

Q. What agents were in the vicinity?

MR. WHEARTY: Object to it as repetitious.

THE COURT: Objection sustained; all that information has been given us; we know who they were.

MR. PALMER: Not through Mr. Garde, Your Honor.

THE COURT: It is all right; we know; the jury knows.

MR. PALMER: All I can do is take an exception. Your Honor can make the ruling.

THE COURT: You may proceed.

BY MR. PALMER:

Q. Will you kindly tell me when you came back there, as you came up north, were any agents there within your purview or your knowledge?

A. I don't recall seeing any agents when I came back, after making the turn in the taxicab. Is that what you are referring to, Mr. Palmer?

Q. Yes, that is right. Where did you go to? You finally got to Ocean Parkway, Brooklyn; how did you get there, and did you get any instructions to go there?

A. No, I finally ran into Agent Roger Robinson.

Q. Where did you meet him?

A. It is possible that he was in the cab with me. I don't recall that very trailing.

Q. Your best recollection is all right.

A. I recall that after Miss Coplon and Gubitchev went out of my view on that intersection of Bennett Avenue and Broadway, that thereafter Agent Robinson was with me in the taxicab.

Q. Now, then, did you or Mr. Robinson get any directions of any kind about going to Brooklyn?

A. No, we did not.

Q. Did you go to Brooklyn?

A. I went to Brooklyn.

Q. Did you go to Brooklyn in this taxicab?

A. I went to Brooklyn in the taxicab.

Q. Without any directions of anykind, without any orders of any kind?

A. That is correct.

Q. All right. This taxicab had no radio in it?

A. It did not, not that I recall, not to my knowledge.

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Q. Now, had you ever been -- we are talking about January 14 -- had you ever, prior to that time, been at the girl's house? Had you ever been at the house of the girl before that?

A. Not to my recollection, no.

Q. How did you get the address of this girl's house; who gave it to you?

A. I don't recall.

Q. Well, these are your notes that you read; do they refresh your recollection as to where you got it?

A. No, they don't.

Q. It is not on there?

A. I don't think it would be on there, as to who gave me the address.

Q. Have you any recollection now -- we are talking about January 14 -- as to who told you to go to Ocean Parkway, Brooklyn, her home; and who gave you the address?

MR. WHEARTY: Object as immaterial.

THE COURT: Objection sustained.

MR. PALMER: Very good, exception.

THE COURT: You don't have to take exceptions.

MR. PALMER: The new rules make me unconscious yet of the fact we don't have to do it.

THE COURT: Very well.

BY MR. PALMER:

Q. When you got to Brooklyn and you saw the girl, was she accompanied by anybody?

A. I didn't see the girl that I know of.

Q. Miss Coplon, I am talking about.

A. Yes.

Q. You said that she came to Ocean --

A. No, I didn't say that.

MR. WHEARTY: Object; that is not the testimony given.

MR. PALMER: Pardon me, please.

BY MR. PALMER:

Q. Let me understand this. You went to Ocean Parkway?

A. I did.

Q. Did you see the girl at Ocean Parkway, at all?

A. No, I did not.

Q. You stayed there until when?

A. Sometime in the neighborhood of midnight.

Q. During that time, she wasn't there at all?

A. I did not see her.

Q. Did you know whether she got home before that?

A. I don't know.

Q. All right. Now, at any time that night did you

get any instructions from Mr. Miller or anyone else concerning the next morning -- I am talking about before midnight? In other words, did you call up on the telephone to your office and get any instructions of any kind before you went home to your home in Flatbush on 28th Street?

A. I called my office before going home.

Q. That was before 12 o'clock or thereabouts?

A. It was in the neighborhood of midnight.

Q. Who did you speak to, Mr. Kennedy?

A. I couldn't recall who I spoke to.

MR. WHEARTY: Object to this line as immaterial to this case, Your Honor.

THE COURT: It is immaterial.

MR. PALMER: I am taking an exception.

BY MR. PALMER:

Q. Did you get any instructions of any kind concerning the following morning that night?

MR. WHEARTY: Object as immaterial.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. When did you get any instructions for the first time from Mr. Miller concerning going some place in New York, whose address you haven't given us yet?

A. I didn't say it was in New York.

Q. Did you go to New York?

A. I did, yes.

Q. Did you go to 68th Street and Park Avenue?

A. I did not.

Q. Where did you go?

MR. WHEARTY: Object as immaterial to this case.

THE COURT: Objection sustained.

MR. PALMER: All right.

BY MR. PALMER:

Q. Were you given instructions to go to any address concerning Gubitchev, the man you had seen the night before in the company of Miss Coplon; did the instructions cover that?

A. I am not clear as to just what you mean by the question, Mr. Palmer.

Q. The last person that you saw, apparently, together with Miss Coplon, was Mr. Gubitchev?

A. That is correct.

Q. At Bennett Avenue and Broadway?

A. Correct.

Q. The next morning, you say you got instructions to be at 8 o'clock at a certain place?

A. That is right.

Q. Was it in connection with Mr. Gubitchev and Miss Coplon?

A. Do you mean was I instructed to be at that place in connection with this case of Gubitchev and Miss Coplon?

Q. Anything connected with the case?

A. Correct, yes.

Q. Where were you told to go?

MR. WHEARTY: Object.

THE COURT: Objection sustained.

MR. PALMER: Your Honor, pardon me --

THE COURT: Objection sustained.

MR. PALMER: May I say a word?

THE COURT: Not on that, because I sustained the objection.

MR. PALMER: Not on that?

THE COURT: That is right; there is nothing to be argued.

BY MR. PALMER:

Q. Did you know Mr. Gubitchev's name on the night of January 14 when you left?

A. No, I did not.

Q. Did you know Miss Coplon's name at the time you last saw her?

A. Yes.

Q. Who had given you that name?

A. I had heard her state her name.

Q. To whom?

A. To Judge Rifkind.

Q. You only heard her state her name on the morning of March 5. I am talking about January 14.

A. I beg your pardon. I thought you said the last time

I saw her.

Q. Pardon me, it is my fault. To make it plainer, on the night of January 14, when you were engaged in the surveillance, did you know the name of Judith Coplon as Judith Coplon?

A. Yes, I did.

Q. Who gave you the name?

A. I believe it was Mr. Miller.

Q. What time of day did he give you that name?

A. It was sometime in the midafternoon.

Q. Did you meet the train out of which this girl came from Washington on that afternoon or evening?

A. I did, yes, sir.

Q. Where?

A. At Pennsylvania Station.

Q. Who was there at the time? We are talking about January 14.

A. January 14.

Q. Mr. Kelley wanted to know that. Who was there?

A. Agent Hradsky was there.

Q. Anybody else?

A. Agent Robinson was there.

Q. Was Mr. Miller there?

A. I don't recall.

Q. All right. Were there other agents there?

A. There were.

Q. Did you follow the girl into the subway?

A. I did.

Q. What subway did she get into?

A. She got into an IRT Subway Broadway Uptown Express.

Q. Were you in the same car with her?

A. I was in the next car.

Q. Did you see any agent in the same car with her?

A. I did.

Q. What agent?

A. To the best of my recollection, I saw Agent Robinson.

Q. I see. Did you see her get off at any station?

A. I did.

MR. WHEARTY: I object to this line; it is repetitious.

MR. PALMER: I beg Your Honor's pardon.

THE COURT: Objection sustained on two grounds: First, it is repetitious; second, not covered in the direct examination.

MR. PALMER: Pardon me, please. Your Honor said -- and I can show you the minutes -- in view of the method by which the examination has taken place, January 14, February 18 and March 4, that when the agents come up, that I have a right to examine them regarding any of the particular dates in question; and then you made a certain ruling regarding the other dates.

BY MR. PALMER:

Q. Have you been on the witness stand before, Mr. Garde,

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in this case?

A. No, I have not.

MR. PALMER: Here is a witness who has never been on the witness stand. I want to examine about the events of January 14. They asked him the question on direct examination, was he on surveillance on January 14. Have I no right to ask about January 14?

THE COURT: If that is the ruling at the time, you may proceed. I had forgotten you hadn't cross-examined him. However, the matters you asked before have all been covered heretofore. It is cumulative testimony; but you may go on, although it is not giving us any information.

MR. PALMER: Thank you, sir.

BY MR. PALMER:

Q. Now, what station did the girl get off at?

A. Miss Coplon got off at 191st Street on the IRT Subway.

THE COURT: This is January 14?

MR. PALMER: That is what I am talking about, January 14.

BY MR. PALMER:

Q. Where did she go from there?

A. She took an elevator upstairs.

Q. Upstairs?

A. Correct.

Q. Any agents in the elevator with her?

A. Yes.

Q. Who?

A. Myself.

Q. Anybody else in the elevator?

A. There may have been other agents in the elevator;
I think there were.

Q. Was Mr. Miller in the elevator?

A. I don't recall that he was.

Q. Was Mr. Andrews in the elevator or Miss Manos?

A. Neither Mr. McAndrews nor Miss Manos were in the
elevator, as I recall.

Q. What other agents, other than you, were in the
elevator?

A. As I stated, Mr. Palmer, I don't recall who the
other agents were; but it is possible Mr. Robinson was in the
elevator with me.

Q. I see. Now, the girl got off at what street?

A. 191st Street.

Q. And what avenue?

A. She got off at the 191st Street station of the IRT
Broadway Seventh Avenue line.

Q. Do you know the name of the street that it empties
out on?

A. When you come upstairs on the elevator, and go through
an arcade, you walk out on to St. Nicholas Avenue.

Q. Did she walk on St. Nicholas Avenue?

A. She did, yes.

Q. Will you give us the movements on St. Nicholas Avenue of this girl, as you followed her?

A. Certainly.

Q. Let me have them, please.

A. After arriving at the St. Nicholas Avenue level via elevator, she walked through the arcade to St. Nicholas Avenue, made a left-hand turn, and walked north on St. Nicholas Avenue until she arrived at the intersection of Wadsworth Avenue.

Q. Yes?

A. She then turned left again and followed around the curve of this irregular-shaped block, which is bounded by St. Nicholas Avenue, Wadsworth Avenue, and 192nd Street. The block is shaped somewhat like a segment of a pie, with a curve on one side and two straight sides. She followed around on Wadsworth Avenue until arriving at 192nd Street; made another left-hand turn, and proceeded down 192nd Street in a direction back toward St. Nicholas Avenue.

Q. And then?

A. And then she arrived back on St. Nicholas Avenue. In the meantime, I had retraced my steps around Wadsworth Avenue instead of following through.

Q. Who was with you?

A. I was by myself at this point. There were other

agents in the vicinity, however.

Q. What other agents were in that vicinity that you know?

A. Offhand, I wouldn't want to state positively; but to the best of my recollection, Agent Robinson and Agent Hradsky and Agent Brennan were all in the vicinity.

Q. Now, did she finally get around Fairview Avenue?

A. She did, yes. Just a moment now. We are still at --

Q. Go ahead.

A. --at 192nd Street and St. Nicholas Avenue. Now, if you want further details, or do you want to go right down to Fairview Avenue?

Q. You go right down until you get to the place where she got to.

A. Do you want a detailed account of all her movements until she got to Fairview Avenue?

Q. Yes, I want a detailed accounting; go ahead.

A. Miss Coplon, after arriving back to St. Nicholas Avenue, turned down St. Nicholas Avenue and went back in the direction from which she had come, until she got down as far as 190th Street. She then crossed the street and went over into a drug store, the Asbell drug store. After remaining in the store for several minutes --

Q. I beg your pardon. Do you know whether she went in there for directions, to find out how to get down to Broadway?

A. I haven't any idea why she went into the drug store.

Q. Go ahead.

11 A. After remaining in the drug store for several minutes, she came out, crossed St. Nicholas Avenue and walked on 192nd Street until coming to a dead end, which is Wadsworth Terrace.

She then turned right and walked down Wadsworth Terrace in the direction of Fairview Avenue. At this point, I discontinued the surveillance temporarily.

Q. When did you take it up again?

A. I took it up again on Broadway at the end of Fairview Avenue, where it enters into Broadway.

Q. Any other agent follow you, follow the girl?

A. I believe I was the last agent to go down.

Q. What made you know that the girl was going to go down to the end of Fairview Avenue?

A. I didn't know it.

Q. You just took a chance?

A. Took a chance.

THE COURT: Are you at a point where we might suspend now, Mr. Palmer?

MR. PALMER: All right.

THE COURT: Very well, the jury may pass out.

(Thereupon a short recess was taken.)

BY MR. PALMER:

BOW/m
am

Q Just before recess you said that you discontinued your surveillance somewhere along Fairview Avenue. I asked you the question whether or not any other agent was watching the girl or following the girl. You remember that?

A Yes, I do recall that, Mr. Palmer.

Q What agent, if any, was following the girl?

A There were several agents surveilling Miss Coplon at that time, and because the area was rather a deserted area, and the streets were not particularly brilliantly lighted, I thought it would not be wise for me to go down in any sort of a body with those other agents down into the streets which were off the main beaten path.

Q What time of day was this?

A It was shortly before or in the neighborhood of 7:00 o'clock in the evening.

Q In this neighborhood that you have described, just now, in the answer to the question, there are a great number of apartment houses, are there not?

A Yes.

Q There came a time when you finally got down to Broadway, didn't you? You said you took a chance?

A That is correct, I took a chance.

Q When you took a chance, will you please tell me where did you land?

A I landed down at the end of Fairview Avenue at Broadway.

Q Will you kindly tell me, prior to this particular occasion, on January 14, had you ever got off 191st Street subway station before, the Seventh Avenue subway?

A I may have.

Q Do you know of any time that you did?

A I do not recall any specific time.

Q Were you familiar with the nature of the station?

A No, I was not.

Q Were you familiar with the fact that there was a tunnel leading in that station down straight through the underground, the streets until they reached Broadway?

A No, I was not familiar with that.

Q Now, at Broadway did there come a time when you saw this girl?

A That is correct.

Q Where?

A I saw her one block north of where I came out onto Broadway standing at a corner.

Q What corner?

A 191st Street and Broadway.

Q Outside of the candy store?

A Might be a candy store. I think the word "Cigars" appeared on the store.

Q Will you kindly tell me if you have any idea about it at all -- what is the drop from St. Nicholas Avenue, up there, winding around, as you have given us the directions, down to Broadway; about how many feet is that drop going down; have you any idea?

A I have never measured it. It would be pretty difficult for me to estimate it, because I am not in a position to say just how many feet that would be.

Q Have you ever seen it in the daylight?

A Yes, I have.

Q If you stand on Broadway and look up towards St. Nicholas Avenue, it is quite precipitous?

A That is correct.

Q As you stand on Broadway, and going in the other direction, looking towards the Fort Tryon subway -- have you ever been there?

A Yes.

Q Have you ever been there in the daytime?

A Yes.

Q It is quite precipitous from the bottom of Broadway up to the top of the subway at Fort Tryon Park; that is precipitous?

A It is precipitous in places, yes.

Q Therefore, at 193rd and Broadway it would not be out of order for me to say if you consider Broadway being the

Preytons

area, which I am now walking in front of this jury, as being on a sort of a level, that in both directions, facing east, St. Nicholas Avenue is precipitous going to the Heights up there and to the left on the west side is precipitous up at the top of Fort Tryon Park and Washington Heights?

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A Your question has got to the point I do not know what it is.

Q I will withdraw it. If you consider the place I am walking in front of the jury as Broadway and look to the east on Broadway, you are up to the Heights where St. Nicholas Avenue is, either in the night time or daytime, it is quite a precipitous rise, isn't it, from Broadway to the top of St. Nicholas Avenue?

A Would you explain what you mean by "precipitous"?

Q What do you think I mean?

A I do not know.

Q I withdraw the question. You became an FBI agent in what year?

A 1941.

Q Was there before Pearl Harbor?

A Yes, June 2, 1941.

Q What did you do before you became an FBI agent?

A I was engaged in several different positions.

Q What was the one before that?

A The one before I was a representative of the Galther

Brothers Sand and Gravel Corporation.

Q Where are they located?

A They are located in New York City.

Q What did you do for them?

A I was field representative.

Q What does a field representative do?

A He has a number of functions.

Q Give me some of the functions.

A I kept track of scows, tug boats, measured and took samples of sand and gravel material that was being sold by this company.

Q How long were you with that company?

A I was with the company approximately two years.

Q And prior to that what was your job?

A Prior to that I had worked for the General Motors Acceptance Corporation.

Q They lend money on automobiles, do they not?

A They finance automobiles.

Q What did you do for them?

A I was outside representative for the General Motors Acceptance Corporation.

Q What did you do on the outside, collect?

A I conducted credit investigations and made collections.

Q How long were you with them?

A I was with them a period of several months.

Q What did you do before that?

A With Personal Finance Company.

Q What did you do for them?

A Assistant manager.

Q What branch?

A First at Fort Hamilton out at Bayridge and later on
Caton Avenue and the Flatbush section of Brooklyn.

Q They lend up to \$300?

THE COURT: Objection sustained.

THE WITNESS: That is correct.

BY MR. PALMER:

Q What did you do before that?

A I was in school.

Q What school?

A Fordham University.

Q Which particular branch?

A The Uptown College Branch.

Q Did you go to college in the daytime?

A I did.

Q Did you graduate?

A Yes, I did.

Q What degree did you get?

A I graduated with BS degree.

Q What is BS?

A Bachelor of Sciene.

Q What year was that?

A That was in the year 1935.

Q You have given us between 1935 and 1940 your gainful employments?

A That is correct.

Q Are you married?

A Yes, I am.

Q When did you get married?

A I got married in 1939.

Q Before you went with the FBI?

A Yes.

Q When you went with the FBI, how many months training did you get before you became an FBI agent?

A Well, I had had training in investigative experience before I came with the FBI.

Q You mean by that in connection with these finance companies?

A That is correct.

Q That is quite different. There you found out --

MR. WHEARTY: Object.

THE COURT: Sustained.

MR. PALMER: Very well.

BY MR. PALMER:

Q That is your investigative experience with finance

companies?

A Correct.

Q Where did you get your education with the FBI, here and in Virginia?

A Part of it.

Q Where else?

A In the different field offices that I have attended since the time that I joined the organization.

Q Ever attend lectures in connection with how to testify in a court room?

A Yes.

Q Now, in connection with this case, and we will drop your past, were you present on the afternoon of March 4, 1949, on the 29th floor or any part of that building when directions were given to the various agents as to what to do on this particular case, the particular day and night; were you there?

A Yes, I was.

Q And of the agents mentioned on this list, Exhibit No. 8, what agents were not present?

A I could not attempt to recall the agents that were not present.

Q Can you tell me the agents that were present?

A I do not know if I can. I will try to recall those that I can remember.

THE COURT: Is it April 22nd?

MR. PALMER: This is March 4.

THE WITNESS: March 4.

MR. PALMER: We are talking about March 4.

THE COURT: I thought it was when they were in the building.

MR. PALMER: We have asked that, April 22nd.

BY MR. PALMER:

Q March 4, how many agents -- will you look at me?

A I thought you wanted me to look at this list.

Q On March 4, about what time of day was it that this particular meeting took place? You said you went uptown about 4:15 to 42nd Street?

A That is correct.

Q What time did the meeting take place?

A I attended a meeting with several agents present sometime in the mid-afternoon, probably between 2:30 or 3:00 o'clock, along in there somewhere.

Q Who were present?

A To my recollection, Mr. McGuinn was present.

Q Anybody else?

A I cannot recall positively who else was there.

Q This is April 22nd.

A No.

Q I beg pardon. This is March 4?

A Yes.

Q Was Mr. Miller present?

A I think he was, yes.

Q Mr. Granville there?

A I believe he was present that afternoon in the office, yes.

Q Was Mr. Scheidt there?

A I did not see him.

Q Anyway, what directions did you get where to go?

A I was instructed to go to the vicinity of 405 East 42nd Street.

Q Had you ever been there before?

A I had seen the building on a number of occasions.

Q Had you ever been directed to go there before?

MR. WHEARTY: In connection with this case, you mean, counsel?

MR. PALMER: I accept Mr. Whearty's addition, in connection with this case.

THE WITNESS: Had I ever been directed to go to that building before in connection with this case?

BY MR. PALMER:

Q In the vicinity of that building, in the direction of this building?

A I do not recall that I ever was so instructed.

Q Before recess I began to ask you about the 15th day of January?

A That is right.

Q Were you directed to go in that vicinity by Mr.

Miller in connection with this case on the morning of the 15th of January?

A That is a question, Mr. Palmer, which I do not feel I am in a position to answer.

MR. WHEARTY: I did not think it was necessary to object.

MR. PALMER: May I say a word?

THE COURT: Yes.

MR. PALMER: At the time you sustained the objection you said something, as I understood it, if it had anything at all to do with this case, and then I proceeded to go on with my line and now I find it has something to do with this case. I am asking.

THE COURT (interposing): You are asking if he went in connection with this case?

MR. PALMER: That is correct.

THE COURT: He may answer that question.

MR. WHEARTY: He stated that he did not see either the Defendant or Gubitchev.

THE COURT: The question is did he go in connection with this case.

BY MR. PALMER:

Q Did you go there in connection with this case?

A Go where in connection with this case?

Q What street are we talking about now; do you know?

A That is what I want to find out.

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Q Weren't we just talking about 42nd Street, the place that you went to on March 4 in the afternoon?

A That is right.

Q Didn't I ask you before this interruption took place whether on any other occasion you were directed to go to this place, and you said, "this place," and I said anywhere around this place or at this place? You remember I just asked you about that?

A That is correct.

THE COURT: In connection with this case.

BY MR. PALMER:

Q Did you go there on the morning of January 14th?

A No, I did not.

MR. PALMER: At this point, if Your Honor please, in view of the fact that this witness has testified about his notes, I ask for the production of this gentleman's notes, made in connection with the surveillances in this case by him, in writing.

THE COURT: Very well, if they have them.

MR. PALMER: Your Honor, in the record it is the Government that offered them as their exhibit and they are so marked.

THE COURT: We understand.

MR. WHEARTY: They are subject to the same objection.

The notes are right here. We will be glad to have them marked.

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THE COURT: You are marking them as your exhibit?

MR. WHEARTY: Yes, Your Honor.

(The notes referred to were marked Government's Exhibit No. 73 for identification.)

MR. PALMER: Mark them in evidence.

MR. WHEARTY: All right.

(Government's Exhibit No. 73 was received in evidence.)

MR. PALMER: Make it appear on the record that at no time until Your Honor gave this authorization have I ever seen these cards in my life.

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THE COURT: We understand that.

BY MR. PALMER:

Q Now, on all of the surveillances you have given us, the various dates -- and I do not want to repeat those dates. You remember you added one finally, February 18?

THE COURT: That is correct.

BY MR. PALMER:

Q You took notes of whatever you saw or whatever you did; am I correct?

THE COURT: He said he did part of it only.

MR. PALMER: No, I beg Your Honor's pardon.

THE COURT: Let the witness answer.

BY MR. PALMER:

Q Did you take notes on every occasion?

A That is not what I said. I said I took notes on the occasion of my surveillance of Miss Coplon on March 4.

Q Now I call your attention to Exhibit No. 78. Look at that and tell me if that is in your handwriting.

A These notes are in my handwriting, yes.

Q I ask you, did you at any time -- and if I misunderstand you again the Judge will understand I am trying to remember what you said. Your surveillance of January 14, which you have described in part in connection with your direct and cross examination, did you take notes of that, and didn't you say you had?

A I did not say I had.

Q Did you take any notes of it?

A I did not.

Q No notes taken at all?

A That is correct.

Q So, whatever you testified about January 14, you are testifying from your recollection as of the date January 14?

A That is correct.

Q Not from anybody else's notes?

A Not from anybody else's notes.

Q Not from what you heard in the various sessions you have told us about?

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A I am testifying from my knowledge of what I saw on January 14.

Q On January 14, at any time that night, did Mr. Gubitchev on any street, in Washington Heights or anywhere else, turn his head and look around as though he were watching to see if anyone followed him; do you remember that?

A Mr. Gubitchev may have turned his head on any of those streets.

Q Pardon me. You have been taught how to testify.

THE COURT: The question is, did you see him do that?

BY MR. PALMER:

Q Do you recall now whether you ever saw him turn his head on any street whatsoever from the time you first saw him up until the last time you saw him on January 14; do you recall that positively?

A Yes, I saw him turn his head.

Q Will you kindly tell me what particular street did he turn his head?

A He turned his head on the intersection of Broadway and Bennett Avenue.

Q Is that the time he was looking for a bus, you thought?

A He could have been looking for a bus.

Q And he could not be looking for a bus?

A That is correct.

Q Did he turn his head from right to left or left to right?

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A I would not want to state positively. It is my recollection that he turned his head from right to left.

Q As he turned his head from right to left, was the girl on his right side or left side?

A Again, I would not want to state positively.

Q On the night of January 14, the last time you saw the girl and man on Bennett Avenue, when you went in the taxicab going south, was the girl on the left side of the man or was the man on the left side of the girl?

MR. WHEARTY: Objected to as immaterial.

MR. PALMER: It is credibility.

THE COURT: You can test it some other way. Objection sustained. He did not testify on this on direct examination.

MR. PALMER: Then I make him my witness.

THE COURT: No, sir. We have covered these matters. The understanding was that where or when they examined him directly on any of those dates, that then if you did not cross examine, the right was accorded to you to cross examine later. This witness did not testify concerning the January 14 episode. I have accorded you the right to examine him.

MR. PALMER: Your Honor has sustained the objection?

THE COURT: Yes. I just wanted a clear understanding of what the rule is.

MR. PALMER: You understand that I do not agree with Your Honor's idea about this cross examination?

THE COURT: There can be no doubt about what the understanding was between us.

MR. PALMER: If Your Honor wishes, I will show you the minutes.

THE COURT: We will not go into that.

BY MR. PALMER:

Q On January 14, having no notes of any kind, making no notes, can you tell me from the time you saw the girl first meet Gubitchev through going up wherever she went with him on Dyckman Street, down Sherman Avenue, and to the point they got on Bennett Avenue, did you see the girl glance around at any time; and give us the name of the street?

A Just a minute. I do not understand your question.

Q I withdraw the question. You saw the girl that night begin to walk with the man from what street to what street?

A I saw Miss Coplon begin to walk with the man, Gubitchev, from the corner of 193rd Street and Broadway.

Q Where did she walk to?

A She walked down Broadway.

Q You mean up Broadway?

A Up Broadway, correct.

Q Go ahead.

A To Nagle Avenue.

Q Then up Nagle Avenue?

A Up Nagle Avenue to Dyckman Street.

Q As they were walking along Nagle Avenue, there are a lot of bars and grills along Nagle Avenue?

A There could be.

Q On the night in question, do you recall whether there were any policemen in front of the grill because of the bartenders' strike?

MR. WHEARTY: Object.

MR. PALMER: I am trying to refresh his recollection.

THE COURT: Did you make an objection?

MR. WHEARTY: Yes.

THE COURT: Objection sustained.

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BY MR. PALMER:

Q Did you see any policemen -- do not mind about bars and grills -- standing in front of any stores between Nagle Avenue, where it crossed Broadway, up to Dyckman Street; did you see any policemen on either side of the street?

MR. WHEARTY: Objected to as being immaterial.

THE COURT: Sustained.

BY MR. PALMER:

Q Now, then, as the two of them walked along together -- had you seen Mr. Gubitchev's face before that?

A I had not seen Mr. Gubitchev's face before that.

Q Did you see his face at any time from the time that

he reached Nagle Avenue up to the time he got to Dyckman Street?

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A Yes, I got a very good look at Mr. Gubitchev's face.

Q Did he look like a Russian? Do you recall?

A I could not tell whether he looked like a Russian.

Q Did he look like a Communist?

MR. WHEARTY: We object.

THE WITNESS: What does a Communist look like?

THE COURT: Sustained.

BY MR. PALMER:

Q Did he look like a Scandinavian?

A I would not say that I could tell he did look like a Scandinavian.

Q Did he look like an American; could you tell?

A What does an American look like?

Q Don't you know?

MR. WHEARTY: We object.

THE COURT: Sustained.

BY MR. PALMER:

Q In so far as the man is concerned, was there anything about his walk, his features, which in any wise made you feel that this man was distinguishable in any way, shape, manner or form from other men?

A Yes.

Q In what way?

A His stature.

Q You mean his height?

A His height.

Q His lack of height?

A That is correct.

Q I would be distinguishable, too, because I have no height?

THE COURT: Objection sustained.

BY MR. PALMER:

Q What about his weight?

MR. WHEARTY: What do you mean?

THE WITNESS: What do you mean about his weight?

BY MR. PALMER:

Q Was his weight out of proportion to his height?

A I would not say it was.

Q What kind of clothes did he have on; do you remember?

A Yes, I do.

Q What kind of clothes?

A He was wearing a dark blue overcoat.

Q Did he wear the same overcoat on the night of the arrest on March 4?

A I believe he did.

Q Do you know whether he did or did not?

A There was an overcoat that looked very similar to the one he had on January 14.

Q What kind of hat did he have on, a derby?

A He had on a brown felt hat, snap brim type of hat, with a narrow brim.

Q Was that the same kind of hat on him on the night of March 4?

A That is correct.

Q The hat, was it the kind of hat you see in stores like Young's?

MR. WHEARTY: Object.

THE COURT: Sustained.

MR. PALMER: I have a reason for asking that question.

THE COURT: It could not be a very good reason.

MR. PALMER: I could give you a very good reason.

THE COURT: Objection sustained.

MR. PALMER: I think I could make Your Honor laugh.

THE COURT: I do not want to be made to laugh.

BY MR. PALMER:

Q Was there anything distinguishable about this man's hat that he was wearing from any other kind of hat you see on the street day after day; anything different about it?

A The hat was somewhat different from the average run of hats because of its color.

Q Only on account of its color?

A Because of the size of the brim, the width of the brim.

Q Did you ever see the hat that La Guardia wore?

MR. WHEARTY: We object.

THE COURT: Sustained.

BY MR. PALMER:

Q Did you ever see hats of the same color and of the same brim at any time in all of your career with the FBI?

MR. WHEARTY: Object.

THE COURT: Ask him about it, but do not try to compare it with anything.

BY MR. PALMER:

Q Did you ever see any hats similar to this one before?

A I may have. I never took particular notice.

Q When the man and girl were walking along Nagle Avenue, were they walking along slowly talking to each other; did they seem to be interested in each other's company?

A At what time are you referring to now?

Q From the time they reached Nagle Avenue walking, block after block, until they reached Dyckman Street, as they walked together, and you surveyed them?

A They were walking together, yes.

Q I know that. Were they talking to each other?

A I was not in a position to hear whether they were or not.

Q Were their mouths moving?

A I was not in a position to see whether their mouths

were moving. .

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Q Were you in front of them?

A I was behind them.

Q Did the man look towards the girl and the girl look towards the man from time to time? Was the girl looking up at the man or the man looking down at the girl?

A I think their height was rather similar so that would not have been necessary had they been talking.

Q Is that true? You have seen the FBI report on the height of the man?

A Yes.

Q That says 5 foot 3 inches; correct?

A That is correct.

Q Her height is 5 feet?

A It may say 5 feet 4 inches.

Q And her height is 5 feet?

A That is correct.

Q With her heels on?

A I do not know.

Q As they walked together, was he walking on the inside away from the curb or was he walking on the outside?

A They were walking on two different sides of Dyckman Street.

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Q I am talking about Nagle Avenue. We are on Nagle Avenue.

A pardon me. I thought you were talking about Dyckman Street.

Q When His Honor sustained the objection about the policemen and the bartenders' strike, we were on Nagle Street walking up toward Dyckman Street.

A We were on Nagle Avenue.

Q As they walked together, was he on the outside towards the curb or was she on the outside?

A That is a detail that I could not positively state at this time.

Q But you can positively state that later on that evening, on the corner of Bennett Avenue and Broadway, that the man turned around, and you do not know which shoulder he turned?

A I stated that I was not positive but I thought he had turned from his right to his left shoulder.

Q You are positive that he did turn?

A Yes, sir.

Q I am asking you the question, as they walked together, was there a disproportion between their heights, she being 5 feet and he 5 foot 4, as you stated?

A I said they were approximately the same height.

Q Four inches makes no difference?

A It makes some difference.

Q Was she wearing a hat?

A At what particular point or time are you talking about now?

A From Nagle Avenue up to Dyckman Street, that is the only time we are talking about. Was she wearing a hat? You were watching her?

A I do not recall whether she was wearing a hat at that particular time or not.

Q At any time between the time that they began to walk on Nagle Avenue north to Dyckman Street, did they glance at each other, you behind them, she looking up at him or him looking down at her?

A I could not say whether they did or did not.

Q It was too dark on Nagle Avenue for you to see?

A Nagle Avenue was not dark particularly.

Q How many feet behind them were you walking?

A Varying distances at different times.

Q What was the least to the most?

A I was within possibly two feet of both of them at one time.

Q In so far as you are concerned, when you were within two feet you could not hear them talking to each other?

A I probably could have had they been talking.

Q Now we are on Dyckman Street. How many blocks did they walk down Dyckman Street until they came to this Italian what?

A Restaurant.

Q Was it the Italian De Luxe?

A The name of the restaurant was De Luxe.

Q No "Italian" in front of it at all?

A There could have been.

Q Was there? You observed it. Was there "Italian" in front of it?

A I do not recall. The word "Italian" appeared somewhere on the sign of the restaurant.

Q You saw Mr. Miller go in there?

A I did.

Q Were you on the other side of the street?

A I was.

Q Now they came out. About how long were they inside?

A I would somewhat over a half hour.

Q When they came out did they walk along a brightly lighted street?

A They walked down in a westerly fashion on Dyckman Street.

Q Did they walk along leisurely until they got to Sherman Avenue?

A They walked along at what I would recall a normal pace.

Q When they got to Sherman Avenue, walking to Broadway, did they walk along at a normal pace?

A I would say you might describe it as a normal pace.

Q Is Sherman Avenue a brightly lighted street? We are off Dyckman Street.

A By comparison with Dyckman Street, Sherman Avenue is not a brightly lighted street.

Q You mean as brightly lighted or a brightly lighted street?

A It is not as brightly lighted as Dyckman Street.

Q Now, when they were walking along Sherman Avenue, were you walking behind them?

A I was in a taxicab.

Q Could you see their faces?

A Occasionally I could see part of their faces.

Q Was the taxicab going in first, second, or third speed?

A At what particular point?

Q You were there. I was not. Let's start at Dyckman and Sherman Avenue. Was he going along in first speed?

A When the taxicab started from a standstill it was in first speed.

Q And then he goes to second and third. I did not ask you that question. When he was going along Sherman Avenue, outside of first and second to get to third, was he going along at first speed?

A On several occasions the taxi was in first speed.

Q Because it got too near them; is that right?

A The taxi stopped at my direction and went forward at my direction.

Q At any time while they were walking along Sherman Avenue, did you see the girl glance at the man or the man glance at the girl?

A I did, yes.

Q Could you see their faces?

A As I stated a moment ago, I could occasionally see part of their faces.

Q Did this girl look aggravated at all? You know what I mean by "aggravated", don't you, or should I give you the definition?

A You might.

Q She might have looked --

A You asked me if you should give me a definition.

Q Could you tell me if the girl looked aggravated, emotionally upset?

A I could not see her face well enough to see whether she was aggravated.

Q What about the man?

A I could not distinguish from either their facial features. I did see Miss Coplon waving a newspaper.

Q We have not reached that. That is Broadway --

A I beg your pardon. That is Sherman Avenue.

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Q Between what streets?

A Between Dyckman Street and the entrance of Sherman Avenue onto Broadway.

Q About how many times on that particular street did she wave a newspaper at him?

A Several times.

Q Were any agents of your FBI on Sherman Avenue street during the time when you saw her waving newspapers several times on that Sherman Avenue street, if you know? Any agents following her?

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A Yes, there were.

Q What agents were following?

A To the best of my recollection, Agent Robinson, Agent Hradsky and Agent Brennan.

Q Now, then, there came a time, did there not, when the waving stopped on Sherman Avenue, between the streets you mentioned?

A That is correct.

Q Then did the agents in question walk on the east side of Broadway or on the west side of Broadway?

A I do not know where the agents in question walked.

Q Any agent -- did you see any agent on the east side of Broadway, as you, in your taxicab, came down the south side of Broadway?

A Wait a minute. I just spoke about being on Sherman

Avenue. I have not arrived at Broadway yet.

Q You tell me the balance of Sherman Avenue.

A You tell me what you want me to tell you.

Q All I want you to tell me is what else you observed between these two people; you tell me what else you observed. You have no notes. We are taking your recollection.

Q Do you want me to start from the beginning again at Dyckman Street on Sherman Avenue?

Q You do this, please. Whatever you left out before in telling the Court and jury what you saw on Sherman Avenue you tell us now and add in the balance.

A Very good. After going off Dyckman Street out to Sherman Avenue the two, Miss Coplon and Mr. Gubitchev, walked south on Sherman Avenue, along the east side of the street, and after they had proceeded a block or so Miss Coplong, who had a rolled up or folded newspaper in her hand, waved the newspaper at Gubitchev.

Q Vigorously?

A I would say it was vigorously.

Q You know what you do when you brandish a sword or brandish a broom? You know what the word "brandish" means?

MR. WHEARTY: Object.

THE COURT: Sustained.

THE WITNESS: She was making gestures with this newspaper. They continued on down Sherman Avenue until it arrived to

Broadway on a diagonal. They continued along Broadway.

Q Have you finished Sherman Avenue?

A Yes.

Q About how many blocks on Sherman Avenue, along which you tell us these other agents were deployed -- about how many blocks, to the best of your recollection, did this lady, Miss Coplon, wave or gesticulate at Gubitchev with the newspaper?

A I could not say positively how many blocks there were, Mr. Palmer. I would say approximately between Dyckman Street and Sherman Avenue entrance on Broadway might be four or five blocks. For a period of possibly a block or two during that walk I observed Miss Coplon making these gestures.

Q As you were in a taxicab looking at Miss Coplon, did you see whether there were any tears in her eyes?

A No, sir, I did not.

Q Was her back to you?

A At what point?

Q Any point at all.

A Her back was to me on very many occasions, yes.

Q Now we have reached Broadway. On what side of the street on Broadway did she and Gubitchev enter Broadway?

A They entered into Broadway on the east side.

Q On the east side?

A Correct.

MR. WHEARTY: East side of what?

THE WITNESS: On the east side of Broadway.

BY MR. PALMER:

Q We are talking about Broadway.

A Yes.

Q Did they continue to walk along the east side of Broadway for any distance?

A A short distance.

Q What did they do then?

A They crossed over to the west side of Broadway.

Q Your taxicab was on the west side of Broadway going south?

A That is right.

Q East side would take you north?

A Correct.

Q Now, on the east side of Broadway, from Sherman Avenue on to Bennett Avenue, there is quite a long distance along the park there, is there not?

A The park is on the west side.

Q There is a long unbroken distance all the way from Dyckman Street, all the way down to Bennett Avenue?

A Mr. Palmer, I was paying attention to the west side of Broadway.

Q So am I. Was there any break at all by the streets between Sherman Avenue, at least, and Bennett Avenue that you finally arrived at?

A You mean on the west side?

Q That is all we are talking about.

A I understood you to say east side.

Q You remember, you left the east side. You had them cross over to the west side?

A Correct.

Q You are in the taxicab on the west side?

A That is correct.

Q I ask you, to the best of your knowledge, was there any break at all in the continuity of the park wall, from at least Sherman Avenue up to Bennett Avenue?

A I do not recall there were any street intersections there whatsoever.

Q You recall on the east side there are intersections?

A I do not recall. I was not particularly concerned with the east side of the street.

Q Along Broadway, where they crossed over, where it was, the west side of Broadway and Bennett Avenue, did this girl gesticulate at all again and again with the newspaper?

A If she did, I did not see her.

Q In other words, all the gesticulations -- that is what I want to be sure about -- all the gesticulations that you saw, with these other agents in the vicinity, whose names you have given us, was along Sherman Avenue, where it starts from Dyckman Street until it reaches Broadway?

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A That is correct.

Q Although you followed her on the west side of the street in the taxicab, you never saw her gesticulate at all or don't you remember?

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A I could not see her gesticulating, if she did.

Q They were in front of you?

A Yes.

Q And to the right of you?

A To the right.

Q In connection with the next day, you gave me January 19. Did you keep any notes, write any notes?

A Not that I recall.

Q If you recall, you would have to give them --

A I do not recall making any notes on that day. If I did, I gave them to Mr. Miller.

Q Did you ever see them?

A I have not seen them.

Q Do you recall making any notes on January 19?

A I do not.

Q January 20, did you make any notes on your surveillance?

A I do not think I did.

Q About how many hours did you surveil her on January 19, altogether, about how many?

A Just a minute and I will add them up. Approximately

seven to eight hours.

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Q January 20, how many hours did you surveil her?

A Approximately -- you mean how long I was assigned to the surveillance or how long was she under my observation?

Q How long were you assigned to the surveillance and how long was she under your observation?

A The answer to your first question, I was assigned to the surveillance from 4:00 o'clock in the afternoon until midnight, and on that occasion she was under my observation from approximately 4:30 until about 10:00 o'clock.

Q Did you make any notes at all of that date, January 20, of what she did, where she went, and who she saw?

A Again, I do not recall. I do not recall if I did on the spot.

Q Have you ever written any notes out as to your surveillance on January 20?

A Have I ever written any notes?

Q Yes.

A Yes, I have.

Q Any reports?

A Yes, I have.

MR. WHEARTY: Wait a minute. What are you talking about, notes or reports?

MR. PALMER: Either notes or reports.

BY MR. PALMER:

Q Did you write any notes up as to what occurred on January 20 in your surveillance, any notes, like you did on March 4?

A I did not write any notes like these; no, sir.

Q Any notes at all?

A I have written notes, yes.

Q What happened to them?

A I destroyed them.

Q Did you destroy the notes of January 19?

A I did not make any notes on January 19.

Q You destroyed January 20?

A I did not make any notes on January 20.

Q Didn't you say you just destroyed --

A (interposing) I said I made some notes of my activities that evening but I did not make them at the time I was on the surveillance.

Q I never asked you that question.

A You asked me if I had ever made any notes.

Q As to January 20?

A I said I had made notes as to January 20.

Q And you said you destroyed them?

A Correct.

Q When did you destroy them?

A I do not recall.

Q January 21, did you ever make any notes of any of

the surveillance on January 21?

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A I did not make any notes on January 21.

Q I am not quibbling with words. I did not say on January 21.

A Apparently you do not understand, Mr. Palmer, the distinction I am trying to make here. I made these notes while on the surveillance of Miss Coplon on March 4. However, on these other occasions I did not make any notes while I was on the job, but I have since that time made notes in order that I could refresh my recollection of these things and have since destroyed them.

Q In other words, you made notes after January 20 some time or another to refresh your recollection and then you destroyed them?

A Correct.

Q When did you make notes after January 20 to refresh your recollection, and when did you destroy them? When did you make the notes of January 20; when?

A Probably on the following day.

Q And when did you destroy them?

A After I had furnished the information to Mr. Miller.

Q Did Mr. Miller tell you to destroy the notes?

MR. WHEARTY: We have not objected at all to this line of examination. The Court has ruled that counsel could go into certain aspects only of dates other than January 14, February

18 and March 4. This examination goes to dates that there is no claim made.

THE COURT: I understand that. The objection is sustained.

MR. PALMER: When an agent destroys notes, notes that were made to refresh his recollection, I have no right to follow it up on question of bias?

THE COURT: Not in this You have an exception.

BY MR. PALMER:

Q Did you ever make any notes of any kind regarding the events that you saw on January 22?

MR. WHEARTY: Object.

THE COURT: Sustained. It is immaterial here.

BY MR. PALMER:

Q Did you make any notes as to January 23?

MR. WHEARTY: Same objection.

THE COURT: Sustained.

BY MR. PALMER:

Q Are there any notes in existence to your knowledge -- do not answer this question until His Honor rules on it. I am trying to find a key. Are there any notes, to your knowledge, in existence anywhere as of your surveillance of this girl on January 20, 21, 22, and 23; are they in existence?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q Now, then, February 18, did you make any notes of February 18?

A I made notes on February 18.

Q Where are the notes?

A My notes on February 18 were not pertinent.

MR. PALMER: I ask that the answer "not pertinent" be stricken.

THE COURT: That may be stricken.

MR. WHEARTY: The witness has testified on direct that he saw neither Gubitchev nor the Defendant on that date.

MR. PALMER: It does not make any difference.

THE COURT: The exact --

MR. PALMER (interposing): One of the dates involved in this situation before this Court and jury is February 18.

BY MR. PALMER:

Q When did you go on your surveillance of February 18?

A During the afternoon.

Q Who assigned you to it?

A If I recall correctly, it was Mr. Miller.

Q Did you go to the Pennsylvania Station?

A I did.

Q Did you see the girl?

A No, I did not.

Q At any time that day or night, did you see the girl?

A No, I did not.

Q Did you see Gubitchev that day or night?

A No, I did not.

Q Did you make a report in writing to the effect that you had been assigned on February 18 to surveil Miss Coplon and/or Mr. Gubitchev and give the reasons in that report as to why you were unsuccessful in meeting up with them?

MR. WHEARTY: Object.

THE COURT: Sustained.

THE WITNESS: I did not.

MR. PALMER: "I did not" is no danger.

THE COURT: No. You may proceed.

BY MR. PALMER:

Q I am looking at Government's Exhibit No. 78 This is March 4. Please look at it. In connection with the testimony concerning that day, you told us you picked up a bus, Ninth Avenue bus, at 22nd Street and Ninth Avenue, No. 89; is that correct?

A Correct.

Q Had you ever been on Ninth Avenue before in your life?

A Many times.

Q It is a southbound street, isn't it?

A It is now.

Q It has been so since January 21?

A I am not sure of the date.

Q It was a southbound bus on March 4?

A Correct.

Q Before you picked up No. 89, you said you had been cruising around midtown?

A That is correct.

Q Again before I come to midtown I want a ruling from His Honor on this situation again. You testified -- and if I am in error you correct me, or His Honor will correct me -- on January 15, 1949, or when you were assigned by Mr. Miller to go to a definite place in connection with this case -- were you assigned in connection with this case concerning that place, as it involved Gubitchev or as it involved Miss Coplon?

MR. WHEARTY: Objection.

THE COURT: Sustained. January 15 you asked about?

MR. PALMER: Yes.

THE COURT: Objection sustained. We have been over all of that.

MR. PALMER: I do not have an answer.

THE COURT: Counsel objected and I sustained the objection.

MR. PALMER: May I have the grounds of Your Honor's ruling?

THE COURT: No. I have already told you what they were and it is not necessary.

MR. PALMER: With all due deference, I do not understand it yet.

THE COURT: It is unfortunate.

MR. PALMER: Maybe it is.

May I, Your Honor, ask this last question point blank so I will have Your Honor's ruling?

THE COURT: Yes.

BY MR. PALMER:

Q When I asked you whether or not on January 15, when Mr. Miller called you, did he tell you or did the person talking to you tell you that other agents had been assigned to follow this man or go to a definite place regarding Gubitchev on the morning of January 15; yes or no?

MR. WHEARTY: I object.

THE COURT: Sustained.

MR. PALMER: Very good. When I say "very good," I mean I bow to Your Honor's ruling.

BY MR. PALMER:

Q On January 15, 1949, did you get -- I am not asking the name of the place -- did you get a definite place on or about 3:00 o'clock, after the assignment by Mr. Miller, concerning Mr. Gubitchev and Miss Coplon; did you get to a definite place; yes or no?

MR. WHEARTY: I object.

THE COURT: Sustained.

BY MR. PALMER:

Q Will you please tell me at any time that day when you got to this place, whose address I do not have, did you see Mr. Gubitchev there on January 15?

MR. WHEARTY: He testified he saw neither one on the 15th of January.

THE COURT: That will be enough along that line. I will have no more questions along that line.

BY MR. PALMER:

Q Do you know the Amtorg Trading Corporation?
Yes or no?

MR. WHEARTY: Object.

THE COURT: Sustained.

MR. PALMER: I cannot ask whether he knows them?

THE COURT: No, sir. It is immaterial here. It is immaterial in the light of his examination.

MR. PALMER: May I say something to Your Honor?

THE COURT: No, sir.

MR. PALMER: About the Amtorg Trading Corporation material-
ity?

THE COURT: No, sir.

BY MR. PALMER:

Q Did you ever make a report, and this is the last question on that point, because I know what Your Honor is going to rule and I want to have it on the record -- did you

ever make a report of any kind concerning your activities in connection with the case involving Gabitchev and Coplou, concerning the date January 15, yes or no?

MR. WHEARTY: Object.

THE COURT: Sustained. It is immaterial.

BY MR. PALMER:

Q Now, on the night of March 4, where did you get the number 89 from? You said you passed a bus or came near a bus at 22nd Street and Ninth Avenue?

A Correct.

Q And the number was 89?

A Yes.

Q Who gave you the number 89?

A I received that by a radio message.

Q From whom?

A I do not know. I heard this voice that I recognized.

Q. What voice did you recognize?

A I do not recall right now whose it was.

Q Look on these notes.

A I do not think my notes --

Q (interposing) I never saw these notes. You saw them as late as Friday. Will you kindly look at these notes and tell me what is the first entry on those notes concerning your activities on the afternoon or evening of March 4 concerning Ninth Avenue? Read it.

MR. WHEARTY: The notes are in evidence. Can't we have them read?

MR. PALMER: Can't I ask the question?

THE COURT: You can ask the question.

MR. WHEARTY: The notes are the best evidence. They might be read.

MR. PALMER: I am interested in asking a question.

THE COURT: Counsel may ask that question.

BY MR. PALMER:

Q What is the first entry?

A My first entry, "Procd. Penn Station, 8:51."

Q I beg your pardon. If I do not make myself clear, it is my own fault. I ask you what the first entry in those notes concerning car 89 and Ninth Avenue and 22nd Street.

Read the first entry about that.

A "Bus 89, 9th Avenue S."

Q What does "S" stand for?

A Going south. Right here, Mr. Palmer (indicating).

Q I see it. The date on top is March 4, 1949; correct?

A Correct.

Q First you have there "proceed" reduced to "Procd. Pn." That is how you abbreviate Pennsylvania?

A That is how I abbreviated it.

Q 'Stn 8:51.'

A That is correct.

Q That is the station?

A Correct.

Q The next thing says, "Bus 89 --". What is that word?

A "Ave.", abbreviation for avenue. There is "9" before it, which means Ninth Avenue.

Q Is there anything on those notes to indicate where you got the information from about 89?

A I received the information --

Q (interposing) I beg your pardon.

A There is nothing on the notes. I see nothing on the notes.

Q That is what I am talking about, the notes. You had a radio in this car, did you not?

A That is right.

Q You say you had been cruising midtown?

A That is correct.

Q The last you saw Mr. Gubitchev, with some unknown person, was about what time?

A The last time I saw him was approximately five minutes past 5:00.

Q Did you know at that particular time, at five minutes past 5:00, where Gubitchev was going?

A I had not the slightest notion.

Q Did you know at that time that Miss Coplon was coming in town from Washington?

A I did.

Q Who told you she was coming into town?

A To the best of my recollection, Mr. Miller told me.

Q What time did Mr. Miller tell you that?

A Approximately 3:00 o'clock in the afternoon.

Q Have you learned that the train that she was on left Washington at 1:00 o'clock; did he tell you that?

A He may have; I don't recall.

Q Will you kindly tell me, did you know or did Mr. Miller tell you that this girl was going to go directly to the Pennsylvania Station, would not stop off anywhere in New Jersey and go somewhere else?

A Mr. Miller never made any such statement.

Q You did not know of your own knowledge if the girl would actually come to the Pennsylvania Station?

A I did not; no, sir.

Q Now, Gubitchev you left at what time, five minutes past 5:00?

A It would be about as near as I could state it.

Q Did anybody tell you that there was going to be a raid that night, that there was going to be an arrest?

A Absolutely not.

Q Now, at any time that you saw the girl upon the bus

and the man upon the bus sitting apart up to the time you got to the building -- did you know there was going to be an arrest made?

A Up to the time I got to what building?

Q The Federal Building.

A An arrest had been made.

Q Did you know before that time that an arrest was going to be made?

A I did not.

Q You heard the arrest was made on the radio, over the radio; right?

A I did. I was there during part of the arrest.

Q You were there?

A I observed part of it.

Q Perhaps my memory again fails me. Was there anything said about it?

MR. WHEARTY: He was asked on direct examination where he had seen the Defendant and Gubitchev and he stated on Third Avenue between 15th and 16th.

BY MR. PALMER:

Q You saw the arrest?

A Yes.

MR. PALMER: I do not have the advantages you have.

MR. WHEARTY: You have a very good memory.

MR. PALMER: You have a book.

BY MR. PALMER:

Q Will you kindly tell me up to the time of the arrest had Mr. Granville ever told you or Mr. Miller ever told you that they saw this girl ever pass anything to the man, yes or no?

A No.

Q Now, then, with regard to how you got the number 69. You tell us how you got it over the radio.

A That is correct.

Q Was anything said over the radio about a Mr. Murphy trailing them?

A The name Mr. Murphy was not mentioned over the radio.

Q You know Mr. Murphy?

A I do.

Q Do you know of your own knowledge or in any other way how it came about that if 20 agents or more surveilled the girl up around the Washington Heights section that when it came to following Gubitchev and the girl across town from 42nd Street and Seventh Avenue to Ninth Avenue only one person followed her and him, Mr. Murphy; do you know anything at all about that?

A I was not there.

Q Were you ever told about the fact that no other agent, other than Murphy, had followed west from Seventh Avenue

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outside the cigar store, when the two of them met at about that corner, all the way across to Ninth Avenue; did anyone tell you why only one person followed them, whereas over 20 people were up there in Washington Heights; anybody ever tell you?

A No one told me why.

Q Do you know whether or not in all of these meetings with the various agents, in the places you have mentioned, all the way from Gauthier to Mr. Kelley and Mr. Whearty, through the various meetings here or the talks had here in the witness room, outside the witness room, and on the afternoon of March 4, did anyone ever get instructions in your hearing and presence from Mr. Granville and Mr. Miller to follow Mr. Gubitchev and Miss Coplon wherever they went; anyone get instructions within your hearing to follow them?

A Your question is rather involved and lengthy. I wish you would boil it down a little bit for me.

Q You heard the instructions given by Mr. Miller and Mr. Granville on the afternoon of March 4 concerning the movements of all the other people involved in the FBI in this watching of Mr. Gubitchev?

A I think you are going beyond what I stated, Mr. Palmer.

Q Let's go where you stated. Anybody else assigned to watch Mr. Gubitchev other than you and the two gentlemen,

Answer

top of page

McGuinn and Warde.

A Their names are Mr. McGuinn and Mr. Warde.

Q Any other agents instructed to follow Mr. Gubitchev from 42nd Street up to where they went?

A No, there were not.

Q Just the three?

A Just the three.

Q Will you kindly tell me, am I correct in saying in the radio car that you were in on 22nd Street the same two gentlemen were there?

A That is correct, Mr. McGuinn and Mr. Ward were with me.

Q The surveillance was to follow Mr. Gubitchev, and Mr. Gubitchev you left on the corner of Lexington Avenue; am I correct?

A That is right.

Q At about five minutes past 5:00?

A Yes.

Q Then you were told to cruise around in that section?

A That is correct.

Q Were you cruising around in that 42nd Street section only in the matter of Gubitchev and Coplon or in some other case?

A We were cruising in connection with the Gubitchev and Coplon case, awaiting further instructions.

Q Then, as I understand it, and I want to be sure I am right, to the best of your knowledge the only three people that were assigned to follow Gubitchev, beginning at the building on 42nd Street, were you three people, and you dropped him at Lexington Avenue and 42nd Street and started in cruising around that section?

A That is correct.

Q Did anyone tell you that Gubitchev, after you stopped watching him at 42nd Street -- I think you said Lexington Avenue?

A That is right.

Q That Gubitchev would or would not meet the girl?

A No, sir; nobody did tell me that.

Q So far as you are concerned, who gave you the instructions to stop your surveillance at 42nd Street and Lexington Avenue and cruise around?

A Nobody gave me those instructions.

Q Why did you stop at 42nd Street and Lexington Avenue when you knew that Mr. Gubitchev had not gone any particular place beyond that at the time; why did you stop?

A Because I did not think it was discreet to continue with a close surveillance at that particular time of the evening of Mr. Gubitchev.

Q What time of evening was it?

A Five minutes past 5:00.

Q Did you call up on the telephone, any of the three of you?

A I did.

Q Who did you call up?

A I don't recall. It might have been Mr. Kennedy.

Q Did Mr. Kennedy tell you that you were right about being so discreet, that you should not follow Mr. Gubitchev?

A Mr. Kennedy made no comment. I had information to furnish to Mr. Kennedy. He did not make any comment whether I was wrong or right.

Q At five minutes past 5:00, Gubitchev is on the corner of Lexington Avenue --

A Correct.

Q Northeast or northwest?

A Northwest corner.

Q That is outside the Chrysler Building?

A It is on the corner opposite the Chrysler Building.

Q What is where Nedick's is?

A That is correct.

Q Where did you telephone from Kennedy, from that particular corner?

A I don't recall, because after I last saw Mr. Gubitchev I walked toward Fifth Avenue and then back and made a telephone call, -- if I remember correctly, it was in the phone booth in Nedick's down near the rear of the store.

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Q Look at your notes. I have not looked at them. Read the beginning of this. I am following Mr. Whearty's suggestion. What is your first note concerning Mr. Gubitchev? Read it. What does it say?

A The note that I read before? "Proceed Penn Station" --

Q No, no. That is concerning --

A (interposing) That is concerning Gubitchev's surveillance.

Q Let me read with you.

A I beg your pardon. You are talking about earlier in the day.

Q You do not have to beg my pardon. Read the first note on that page of that Exhibit No. 78. Read the first note on the first page. What does it say?

A "4:50 p. m., Gubitchev out of 405 East 42nd Street with man six foot, thin, brown lightweight coat, tan hat, walk N, side 42nd Street to Lexington, stand on NW corner."

Q Northwest corner?

A "Forty-Second Street and Lexington Avenue. Moment separate" -- meaning after a moment they separated -- "unident. man walked west, subject disappeared in mob."

Q Subject disappeared in mob. The subject is Mr. Gubitchev?

A The subject in this instance is Gubitchev.

Q The next note is about the Pennsylvania Station and the bus 89?

A Right.

Q Now, you had been told, as I understand it, that afternoon before 4:00 o'clock, you and the two gentlemen with you, to follow Mr. Gubitchev?

A Correct, with discretion.

Q Look at these notes and tell me if there is anything about discretion or without discretion.

A There is nothing in here about discretion.

Q Who told you with discretion? You used the word "discretion". Who told you?

A Mr. Miller told me.

Q Was Mr. Granville present?

A He may have been; I don't recall.

Q Now, then, in connection with Mr. Gubitchev, you knew that he was a member of the United Nations, an engineer, working for them; you knew that, didn't you, or didn't you get that information yet?

A Just a minute. I did, yes.

Q And this building in which he was working --

A (interposing) I did not know what position he was.

Q Nobody told you he was an engineer?

A I knew he was connected with the United Nations.

Q The United Nations is supposed to be non-political?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q The building in which you were told to follow Mr. Gubitchev from, do you know what offices are occupied by the United Nations, Russian delegation?

A I know that there are offices of the United Nations in that building. What specific delegations are there I do not know.

Q You did not know there was a Russian delegation?

A I did not know whether there was or not.

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Q Did you know before March 4 that Mr. Gubitchev was working for the United Nations, Russian delegation; did anyone tell you that?

A Yes, I did.

Q Who told you that?

A Mr. Miller, I believe.

Q Now, you told us up to the present moment that when you saw Mr. Gubitchev you could not tell that he was a Russian or his nationality?

A That is correct.

Q You know, do you not, that Americans work for the United Nations, Russian delegation?

A Yes, I do.

Q Now, when you use the words "with discretion," did

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Mr. Miller tell you that since that man worked for the United Nations that you should use discretion in trying to follow him because there might be some trouble with the United Nations about it?

A My interpretation of my instructions was that I was to use discretion in the earlier part of the evening in my surveillance before Gubitchev, if he did meet with Miss Coplon, should meet with her, in order that I do nothing that would jeopardize my participation in this surveillance at that early hour of the day.

Q Was that told you by Mr. Miller?

A I would not say Mr. Miller instructed me in those words. That is my interpretation of the instructions I received.

Q That was the interpretation by the other two gentlemen with you?

A I could not answer what interpretation they had of the instructions.

Q You were driving the car. Were you in charge of the expedition or each one work on his own?

A We are all three special agents of the FBI.

Q No one is ahead of anybody else?

A No, sir.

Q Now, up to the moment when you were following in this radio car, to your knowledge -- you were in the radio car?

A At what point, what time?

Q We are starting in front of this number on 42nd Street.

A Yes.

Q Mr. Gubitchev came out and you did not see him come out; you saw him on the street?

A I saw him on the street.

Q Were you in a radio car?

A I was not.

Q Where were you?

A I was on 42nd Street.

Q Where was the radio car?

A The radio car was on First Avenue.

Q Where is this building? Isn't it near the Rockefeller site where they are putting up the United Nations?

A Correct.

Q Were the other two men in the radio car?

A One of them, I believe.

MR. PALMER: Have you a picture of the building, Mr. Whearty?

MR. WHEARTY: No.

MR. PALMER: Have you a picture of 42nd Street on the northwest corner where they left Mr. Gubitchev go?

MR. KELLEY: No.

THE WITNESS: I would like to make a correction for the

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record here. It is my recollection that at the moment I saw Mr. Gubitchev one of the agents was with me. Whether the other one was in the car, I could not testify to.

BY MR. PALMER:

Q To your knowledge, of your knowledge, did any of these agents know Mr. Gubitchev personally?

A To my knowledge, neither of the other two agents knew Gubitchev personally.

Q And you did not know him?

A I had seen Mr. Gubitchev before and I knew who he was.

Q He had not seen you, to the best of your knowledge?

A He had not seen me, to the best of my knowledge.

Q Was it dark at 5:00 o'clock in front of Nedick's?

A No, it was not dark.

Q When was this, March 4?

A Yes.

THE COURT: We might suspend now. You may take the jury out.

(Thereupon, at 12:30 p. m., the Court recessed until 2:00 o'clock p.m. this day.)

AFTER RECESSWATSON
bd

(Thereupon the trial was resumed at 2:00 p. m.)

Thereupon --

DANIEL F. GARDE

resumed the witness stand and testified further as follows:

CROSS-EXAMINATION (Cont.'d)

BY MR. PALMER:

Q. At recess, when I was going out and walking with Miss Coplon, you came over to me voluntarily; am I correct?

A. That is correct, yes, sir.

Q. And you told me, in her presence, that you had made some mistake this morning?

A. No, I didn't say I made a mistake, Mr. Palmer.

Q. Whatever you did say, I said you can't talk to me about it; you must tell it to the Judge in the presence of the jury?

A. I stated I would tell it to the Judge also.

Q. Have you told it to the Judge yet?

A. I have, yes.

Q. When did you do that?

A. Right after I saw you, Mr. Palmer.

Q. What did you tell the Judge that you told me downstairs?

A. I told the Judge exactly what I had told you.

Q. What is it that you told me?

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A. I saw Mr. Palmer in the hall downstairs, after leaving the court room here; and just before Mr. Palmer came into my presence, I recalled something in addition to what I had testified to this morning about the notes that I had taken.

Q. Pardon me. Did Mr. Palmer come to you or did you come to Mr. Palmer?

THE COURT: No, sir, he didn't say that.

THE WITNESS: I came to you, Mr. Palmer. You came toward me.

BY MR. PALMER:

Q. I was walking to go to lunch?

A. Correct.

Q. Did you tell what you told the Judge to Mr. Whearty and Mr. Kelley?

A. Yes.

Q. Before you told it to me?

A. No.

Q. Before you told it to the Judge?

A. I spoke to you first, Mr. Palmer.

Q. Then the Judge?

A. Then the Judge.

Q. Then to them?

A. That is correct.

Q. Before you came back here?

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A. Yes.

Q. What did you tell me?

A. I told you, then the Judge, then Mr. Kelley and Mr. Whearty that it was my recollection, after leaving this court room, that in addition to the notes that I spoke about this morning, that I wrote from my own recollection concerning some of the other dates -- you will have to go back to your questions for me to recall what dates they were.

Q. You gave me the dates this morning in front of this jury?

A. Correct.

Q. You had never given me the dates before that, had you?

A. No, that is right.

Q. In connection with the dates that you recalled, when you went out, before you saw me and saw His Honor, the Judge, and these gentlemen, Mr. Kelley and Mr. Whearty, what dates are you talking about?

A. I recalled or thought that I had recalled when I left this court room that you had asked me about notes that I wrote on January 14; and it was also my recollection, when I got down in the hall downstairs, that I had written, in addition to the notes I told you and the Court and the jury about that I had torn up subsequent to writing them, because they were for my own recollection, some other notes concerning

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the same matter that I had turned over to Mr. Miller.

Q. What date was it that you tore up the notes?

A. January 14.

Q. Anything else?

A. I think that is what we were discussing this morning, Mr. Palmer.

Q. We discussed all the dates. Will you kindly tell me, were there any other notes that you recalled downstairs?

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A. At this moment, I don't recall what particular dates we were discussing notes about.

Q. Weren't we discussing notes on each of the occasions, January 14, 15, 19, 20, 21, 22, February 4, February 18 and March 4?

A. I recall discussing notes about February 18.

Q. Did you tear those notes up?

A. I think I recall stating I didn't make any notes on that date.

Q. Did you --

A. Concerning this case, I did not make any notes.

Q. Then you didn't tear them up?

A. That is correct.

Q. Will you kindly tell me what notes did you come over to tell me about that you remembered that you gave to Mr. Miller; and what did you tell His Honor about?

A. Mr. Palmer, as I stated just a moment ago, it was

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my recollection that there had been some discussion this morning about notes for the date January 14.

Q. Yes.

A. And it was also my recollection, and I could be mistaken in this, that I had stated that those notes were the notes which I had made from my recollection and which I had torn up subsequent to making them; and I thought, in fairness to you and to the Court, that I should bring it to your attention that I had written some other notes on this particular date, or regarding that particular date.

Q. I will leave January 14 alone for a moment.

A. Yes.

Q. Is it your recollection now, after meeting me in the hall and meeting His Honor --

THE COURT: We understand about him meeting all of us. Now ask him the question.

BY MR. PALMER:

Q. Will you kindly tell me whether or not there were any notes written on any other date, other than January 14, outside of March 4?

MR. WHEARTY: That is the very question I objected to this morning.

THE COURT: If the witness will tell what notes he had in mind --

MR. PALMER: I would like him to tell me.

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THE COURT: I wish he would do that.

MR. PALMER: He stopped me and went to His Honor --

THE COURT: Exactly; let's get at it. Will you tell what notes you had in mind that you were talking about?

THE WITNESS: Yes, Your Honor. I was talking about the notes on January 14.

THE COURT: Very well.

BY MR. PALMER:

Q. Any other notes?

A. That is the notes I was referring to.

Q. Did you write notes of any other date of surveillance?

MR. WHEARTY: That I object to.

THE COURT: Objection sustained. We have been over all of that.

MR. PALMER: I didn't stop this gentleman. You won't let me go into the question of what he tore up?

THE COURT: No, we all understand that. Objection sustained.

BY MR. PALMER:

Q. Where are the notes of January 14?

A. I don't know.

Q. Did you turn them over to Mr. Miller?

A. That is correct.

MR. PALMER: I ask that the notes turned over to Mr. Miller, what he told Your Honor about, be produced.

THE COURT: Under our arrangement, counsel didn't go into January 14. If he had, I would make the order; but I am not going into this case, because you are cross-examining him on matters that he did not testify in chief about, except he said he did make a surveillance.

MR. PALMER: I beg Your Honor's pardon, and you can refresh your recollection from your notes. The gentleman was asked --

THE COURT: Tell me in quiet language.

MR. PALMER: The gentleman was asked whether he was on a surveillance of January 14; he said he was. In connection with the entire order made by this Court concerning the three dates, which I objected to originally --

THE COURT: Yes.

MR. PALMER: They said I have a right to go ahead and cross-examine on anything I please regarding those dates.

THE COURT: If that was the agreement --

MR. PALMER: That is in the record?

THE COURT: What do you gentlemen say? Was that the arrangement? If so, then proceed. I will not wait. Just proceed and cross-examine about that.

MR. PALMER: May I have the notes of January 14?

MR. KELLEY: I was just conferring to find out what notes he was talking about. We have not seen any notes, Your Honor.

THE COURT: Can they be produced? You have some notes

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here; you can use these notes now, that he made of March 4. Go on and use those; and if they have these, they will be produced for you.

MR. PALMER: Will Your Honor be kind enough to have Mr. Miller directed to produce them?

THE COURT: I think they are conferring. I will.

MR. PALMER: Shall I go ahead?

THE COURT: If you have those, will you produce them?

MR. KELLEY: May we be permitted to put a question or two to this witness to identify these notes? To identify the notes, so we will know which notes you want.

MR. PALMER: With all due deference to the Court, I am in cross-examination. Mr. Miller has been in court all the time. Mr. Miller is an officer of the court. He is a lawyer. I ask Your Honor to find out from Mr. Miller directly whether he has the notes.

THE COURT: Counsel courteously asked if he might identify the notes by asking the witness a question or two.

MR. KELLEY: I would like to ask the witness if he is referring to a surveillance log.

MR. PALMER: The witness has spoken about notes, and he speaks about a log.

MR. KELLEY: I am trying to find out what it is, Your Honor.

THE COURT: Notes he made on January 14.

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MR. KELLEY: No one but the witness can actually identify these, as far as I am concerned.

THE COURT: Proceed with your examination. If you find those notes, present them.

BY MR. PALMER:

Q. When did you give these notes you made on the surveillance of January 14 to Mr. Miller, sitting here? When?

A. I don't recall exactly when it was that I gave it to him.

Q. About when?

A. To the best of my recollection, it was probably on January 15.

Q. Was it in pencil or, like these notes, Exhibit 78, in ink?

THE COURT: I have ordered those notes produced.

MR. PALMER: I just want to be sure.

THE COURT: Let's find out when they are produced.

MR. PALMER: Can I ask if they were in pencil or ink?

THE COURT: Were they in pencil or ink? Let's get that and pass on.

THE WITNESS: They were in ink.

THE COURT: Very well, pass on. If you have those notes, I wish you would present them.

MR. WHEARTY: We will be glad to.

BY MR. PALMER:

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Q. In connection with what His Honor directed my attention to, now, March 4, you testified before lunch that in connection with dropping Mr. Gubitchev at 42nd Street -- I think it was the northwest side of Lexington Avenue and 42nd Street, that you used your discretion --

THE COURT: That is what he said.

BY MR. PALMER:

Q. Now, will you kindly tell me who was it who told the other two men in the car that they should not follow Mr. Gubitchev wherever he was going to go to? Who told them not to?

MR. WHEARTY: Object to that; there is no such testimony.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. Did you talk with the other two men in the car before you left about not following Mr. Gubitchev wherever he was going?

A. I did not.

Q. Did they talk to you about it?

A. They did not.

Q. You said you left the two men in the car; am I correct?

A. No, I did not state that.

Q. Did all three of you go out and look for a telephone?

A. Just what point are you talking about, Mr. Palmer?

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Q. Didn't you say before lunch -- and I have to trust to my own memory -- that you went to a telephone, you think it was Nedick's?

A. You are talking now about after I left Mr. Gubitchev or after I had seen him last on the corner of Lexington Avenue?

Q. You saw him, you told us before lunch, at the northwest corner of Lexington Avenue and 42nd Street.

A. Correct.

Q. At that time, he was with this tall man who is unidentified in your notes?

A. That is right.

Q. Now, will you kindly tell me, did you at that particular moment, before you went to the telephone, make up your mind that it wasn't discreet to follow Mr. Gubitchev?

A. I did not make up my mind to that particular moment, as you state, no.

Q. Then, will you kindly tell me the time that you last saw Mr. Gubitchev before he got swallowed up in the mob -- I think that was your expression?

A. No, that was not my expression.

Q. Before he was lost, whatever it was?

A. Very well.

Q. Were the other two men with you?

A. They were not.

Q. Where were they?

A. I don't know.

Q. Had they gone away? Were you in a car at that particular time?

A. I was not.

Q. Were you on foot?

A. I was.

Q. Will you kindly tell me --

THE COURT: Omit the word "kindly." Just ask the question.

Omit that word "kindly."

MR. PALMER: I will try, Your Honor. Habits of a lifetime are not eradicated in a moment. The last thing in the world I should use is "kindly," because I am never kindly.

THE COURT: I wouldn't say that about you; but you should not use the word "kindly."

BY MR. PALMER:

Q. What are the names of these other two agents?

A. Mr. Ward and Mr. McGuinn were with me before we saw Mr. Gubitchev on First Avenue.

Q. Before you saw him?

A. They were with me before I saw Gubitchev on First Avenue.

Q. Well, now, you said you didn't see Mr. Gubitchev come out of the building; correct?

A. I did not.

Q. And you saw him when he got out of the building?

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A. I saw him shortly after he had probably left the building.

Q. Before you saw Mr. Gubitchev anywhere at all on 42nd Street -- I think you said it was?

A. That is correct.

Q. --what happened to the other two agents, Special Agents?

A. Mr. Ward, Mr. McGuinn and myself all left a position that we had taken up on First Avenue which commanded a view of the entrance and exit to the building at 405 East 42nd Street, because I had observed a man that I thought possibly could be Mr. Gubitchev; and as Mr. Ward and Mr. McGuinn had never seen Gubitchev before, I took them up to the corner with the automobile, in order to find out if this person were Gubitchev.

Q. In other words, as I understand it now, of the three of you who went to keep a surveillance of Mr. Gubitchev, according to Mr. Miller's instructions before four o'clock that afternoon, March 4, two of the men had never seen Gubitchev at all?

A. That is correct.

Q. And you had seen him only through a taxicab on the night of January 14?

A. That is not correct.

Q. When had you seen him again?

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A. I had seen him on foot within two feet of Mr. Gubitchev on Nagle Avenue between Broadway and Dyckman Street on the evening of January 14.

Q. Two feet? Walking behind him?

A. No, walking in front of him.

Q. In front of him?

A. Correct.

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Q. If you were walking in front of the man -- was he walking behind you with the girl?

A. He was walking north on Nagle Avenue; and I crossed in front of him.

Q. You crossed in front of him. When you crossed in front of him, did you place yourself in a position where he could become suspicious of you, as you walked in front of him, or did you try to keep away in your surveillance?

A. I took the chance of crossing in front of him, because I felt satisfied he didn't know me, had never seen me, and would not recognize me if I did that.

Q. When you crossed in front of him, did you continue to walk in front of him?

A. Certainly not. I continued to walk away from him then.

Q. Away from him. Out side of this particular spot that you told me about now, and the surveillance by means of the taxicab, had you ever seen Gubitchev in all your life?

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A. Yes, I had.

Q. When before that? When else?

A. I had seen him on one evening -- I don't recall the date -- when I was on my way home. He was in the vicinity of 42nd Street and First Avenue.

Q. Was this before you began your surveillance?

A. This was after my surveillance on January 14.

Q. Well, the evening that you saw him after January 14, have you got a note of that anywhere?

A. No, I don't, because I was not assigned to the surveillance on that date.

Q. You saw him accidentally that night?

A. Correct.

Q. Outside of this accidental meeting in question, did you ever see Gubitchev other than the times you have just told us?

A. Yes, I have.

Q. When else?

A. I saw him in the Federal Building, or the United States Court House, I should say.

Q. You mean March 4?

A. On March 4.

Q. In the nighttime?

A. Correct, and on the morning of March 5.

Q. I am talking about a time before that; I am talking

about the afternoon of March 4. Are the occasions you just named to us, the accidental meeting on 42nd Street, and the night of January 14, the only times you ever saw him?

A. Prior to March 4, those were the only times that I recall I had ever seen Gubitchev.

Q. And the other two men had never seen him at all?

A. That is right.

Q. You thought you saw a man that looked like Gubitchev, and all three of you moved in the car where?

A. I would like to go back to my answer on the last question. When I say they had never seen him before, that is my understanding they had never seen him.

Q. You don't know whether they had or not?

A. I could hardly testify whether they had or not. It is my understanding they had not.

Q. Did they tell you they had never seen him before?

A. That is correct.

Q. As I understand it, Mr. Miller directed three people to follow Gubitchev, one being you with the experience you have just given us, and the other two, to the best of your knowledge, people who had never seen him at all?

A. That is my understanding of it, yes, sir.

Q. Did you ever tell Mr. Miller about the accidental meeting with Gubitchev?

A. I did.

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Q. Now, you moved where to see if another man was Gubitchev or looked like him? Where did you go to?

A. We went to the corner of 42nd Street and First Avenue and then west under the tunnel that goes over 42nd Street down near the east end of 42nd Street near First Avenue.

Q. To do all that, you had to leave the point of observation in front of this building?

A. That is what we did.

Q. And you were told to stay in front of this building and observe Mr. Gubitchev coming out?

A. I was not told to stay in front of any building.

Q. Were you told to observe Mr. Gubitchev commencing at a certain point on the afternoon of March 4?

A. I was told to conduct a surveillance in the vicinity of 405 East 42nd Street.

Q. Were you told you could go away from there in case Mr. Gubitchev was not coming out before you got instructions from headquarters?

A. I was instructed to surveil Mr. Gubitchev if I saw him come out of that building.

Q. As I understand it -- see if I am correct now -- you thought a man looking like Gubitchev came out of that building and went along the lines you just told us?

A. I thought a man who looked somewhat like and possibly might have been Mr. Gubitchev came out of the building; and I

went up to 42nd Street in order to determine whether that was Gubitchev or not.

Q. You told us how you got there. Did you go there in the car?

A. We went part-way in the car.

Q. And the balance?

A. Mr. McGuinn -- I think it was Mr. Ward and I went on foot part of the way.

Q. Will you tell me how far did you go before you determined the man you were pursuing was not Mr. Gubitchev?

A. Part-way through the tunnel.

Q. Is that the tunnel that goes toward Tudor City?

A. I believe that Tudor City rests partly on top of this tunnel, but I am not sure. It is a tunnel that goes over 42nd Street, where the bus stop is at the end of 42nd.

Q. Where does it come out on the other end toward the river; where does it come out?

A. The tunnel is over 42nd Street, as I say, and the east end of the tunnel is near the intersection of First Avenue.

Q. I see. Now, then, did you go as far as First Avenue, leaving the car with one of the gentlemen, and walking with the other gentleman whose name you have given us?

A. Mr. Palmer, I was on First Avenue when I started to find out if this man was Gubitchev; and I went up to the

intersection of 42nd Street and turned westward through the tunnel.

Q. And how long did it take you in following the man until you determined he was not the man? About how many minutes? Look on your notes, please.

A. They are not reflected there.

Q. Not reflected in the notes, all right. How long did it take you?

A. I didn't clock it, Mr. Palmer; I don't know.

Q. The best --

A. A few minutes, probably.

Q. Five minutes?

A. Oh, no, I wouldn't say five minutes.

Q. During the period of time you were following this man and you found he wasn't Gubitchev, the front of the building you were supposed to keep under observation for Gubitchev to come out of was without surveillance; is that correct?

A. No, as a matter of fact, when I was determined this man was not Gubitchev, I then spotted Gubitchev walking east on 42nd Street while I was under the tunnel.

Q. The question I asked you -- and I will come to that in a minute -- was, as you went away from the place you were observing to see whether Gubitchev came out of this building, the place was no longer under surveillance; is that correct?

A. I wouldn't say that that was correct, no, Mr. Palmer.

Q. Didn't all three of you go away together?

A. Mr. Ward accompanied me into the tunnel.

Q. From the point of observation -- supposing I was watching the door right over here in front of the jury; and I walked away from that particular place, going to another direction, and everybody with me at the time goes away; isn't that door no longer under observation?

MR. WHEARTY: Object to this as argumentative.

THE COURT: Objection sustained.

MR. PALMER: Very good, argumentative.

BY MR. PALMER:

Q. It was accidental that you spotted Mr. Gubitchev as you came back, correct?

A. It wasn't accidental. It was a chance occurrence that he happened to be there when I also was there by direction.

Q. You were there by direction?

A. Correct.

Q. Do you know whether Gubitchev was there by direction?

A. I have no idea.

Q. Do you know anything at all about counter-espionage?

MR. WHEARTY: We object to that.

THE COURT: Objection sustained. That is not material.

MR. PALMER: I think it is very material; that is all I can say.

THE COURT: It isn't.

BY MR. PALMER:

Q. Just await His Honor's ruling on this question. Do you know whether or not any members of the FBI or anyone connected with the FBI or the Department of Justice have, from time to time, since January 1 of this year, kept any portion of the Soviet Delegation to the United Nations under surveillance, or any person connected with it?

MR. WHEARTY: Object to that.

THE COURT: Objection sustained.

MR. PALMER: Very good, exception.

BY MR. PALMER:

Q. Now, then, you said you determined to stay in the midtown section after you determined that Mr. Gubitchev or that it wouldn't be discreet to follow Mr. Gubitchev; correct?

A. I don't think that is correct, Mr. Palmer.

Q. What did you say about that?

A. I said I remained in the midtown area under instructions.

Q. Instructions from whom?

A. From Mr. Kennedy.

Q. And you told me Mr. Kennedy has never been -- was Mr. Kennedy present at any of these meetings that took place with Mr. Kelley or Mr. Whearty present, or Mr. Gauthier; was he ever present?

A. I don't know.

Q. You know Mr. Kennedy, don't you?

A. Certainly.

Q. Has he been in Washington since this case started, to your knowledge?

A. I haven't seen him.

Q. Mr. Kennedy gave you instructions to do what?

A. To remain in the midtown area.

Q. When did he give you those instructions?

A. He gave me those instructions after I phoned in.

Q. Did you get any instructions of any kind from Mr. Miller at the time your surveillance started?

A. Of what kind, to remain in the midtown area?

Q. To remain in the midtown area.

A. No, sir, I did not.

Q. What were the instructions of Mr. Miller? Was Mr. Granville present when the instructions were given?

A. I don't recall if he was or not.

Q. Was it on the 29th floor of that building that you got the instructions?

A. Yes.

Q. What were the instructions concerning you and the other two men concerning Mr. Gubitchev, before you left the building; what were you supposed to do?

MR. WHEARTY: This witness has testified to this twice; it is repetitious.

THE COURT: Proceed.

MR. PALMER: I have a right to ask the question.

THE COURT: Proceed.

THE WITNESS: I was instructed to surveil Mr. Gubitchev discreetly.

BY MR. PALMER:

Q. Who used the word "discreetly"?

A. Mr. Miller, as I recall it.

Q. When you surveil anybody, woman or man, don't you surveil them discreetly, so you shouldn't be found out?

A. Correct.

Q. Did you consider "discreetly," on the night you told us before, on January 14, when you crossed in front of Mr. Gubitchev and the girl, and took a chance they wouldn't know you; was that discreet?

A. In my opinion, at that time, it was discreet.

Q. I see. Now, on the afternoon of March 4, when you determined not to follow the man that you were instructed to follow, do you consider that discreet?

A. Yes, I do.

Q. At the time you decided that, will you kindly tell me if you believed at that particular time that Mr. Gubitchev had seen your face, had known that you were following him, and that is the reason why you used this particular discretion?

MR. WHEARTY: I object to that; his belief is immaterial in this case.

THE COURT: Objection sustained.

MR. PALMER: This is cross-examination.

THE COURT: Yes, I know it is.

MR. PALMER: There is nothing I can say.

THE COURT: There isn't anything you can say; and you shouldn't have said what you have said.

BY MR. PALMER:

Q. Will you kindly tell me, at the time you decided it would be discreet not to follow Mr. Gubitchev, did you believe or did you know that by any action on your part prior to that time, going from 42nd Street and First Avenue section to Lexington Avenue, the distance of a few blocks, that Mr. Gubitchev had perceived you, seen you, or saw you observing him?

A. I did not know.

Q. You did not know. Now, the other two men -- and I am getting away from that section in a moment -- the other two men that were with you, had they seen Mr. Gubitchev at the time when you followed him and saw him on the east side of 42nd Street -- I think you said east side; had they seen him; or did you point him out to them?

A. I did.

Q. You did?

A. To one of them.

Q. I beg your pardon?

A. To one of them.

Q. Not to the other?

A. Not to the other.

Q. Look on this particular paper of yours, and tell me, is there anything about this incident concerning 42nd Street and First Avenue, going through the tunnel and then coming back? Anything in that paper about it, Exhibit 78?

A. "At 4:50 p. m., Gubitchev was out of 405 East 42nd Street, with a man," described as I described him this morning.

Q. Go ahead. I am asking you the question not when Mr. Gubitchev was out, because you said you came back and saw him out on the east side of the street.

A. Do I understand your question to be, is there any comment in here about a tunnel?

Q. Is there anything in that paper which you wrote at the time, Exhibit 78, concerning the things you told the jury that occurred before you saw Mr. Gubitchev on that date?

MR. WHEARTY: Object to that; the paper speaks for itself.

MR. PALMER: I have a right to ask him, haven't I, if Your Honor please?

THE COURT: The paper is in evidence.

MR. PALMER: Can I send it to the jury, then?

THE COURT: No, sir. Somebody can read it to the jury.

MR. PALMER: I will read it to the jury.

THE COURT: If you can. It is cryptic, I understand.
Maybe the witness had better read it.

MR. PALMER: Will Your Honor tell the witness to read it to the jury, then?

THE COURT: Very well.

BY MR. PALMER:

Q. Read this, please, to the jury; and read it slowly, please.

A. "3/4/49..."

Q. That is March 4, '49?

A. Yes. "DFG," those are my initials.

Q. Go ahead.

A. "4:50 p. m. Gubitchev out of 405 East 42nd. With man, six foot zero, think, brown lightweight coat, tan hat; walk inside 42..." meaning 42nd Street -- "...to Lex Avenue..." meaning Lexington Avenue. "Stand on northwest corner 42 Street and Lexington Avenue, moment, separate. Unidentified man walk west. Subject disappeared in mob."

Q. That is all that you have in there regarding that incident; correct?

A. That is not correct. If I am not mistaken, there are some other notes here on that.

Q. I am talking about this incident. Have you got

something on the back?

A. Right here, on the reverse side.

Q. Forgive me.

A. You asked me where they were; and I was pointing them out to you.

Q. Exhibit 78, you wrote that, you said, that night?

A. Correct.

Q. So this is the first page; correct?

A. If you care to call it that.

Q. That is the top of it?

A. That isn't the first time I wrote notes on this particular incident.

MR. PALMER: I ask that be stricken out as not responsive. Never mind.

BY MR. PALMER:

Q. You tacked these together yourself, didn't you?

A. Yes, I did.

Q. What you just read to the jury appears on the outside of the first page?

A. You might call it the first page; I would call it the last page.

Q. Let's see then. If this is the last page --

THE COURT: That is wholly unimportant, whether it is the last page or front page.

MR. PALMER: It is very important.

THE COURT: No, it is not.

MR. PALMER: I want to ask him a question, if I may.

THE COURT: Ask him a question and I will see.

BY MR. PALMER:

7 Q. Did you come to 42nd Street and pick up Mr. Gubitchev the last thing you did that day, or the first thing you did that day?

A. I did a lot of things before I went up there that day, Mr. Palmer.

Q. In connection with getting there for the surveillance of Mr. Gubitchev, did you find Mr. Gubitchev at 42nd Street in the fashion described?

A. I did.

Q. "4:50 p. m., Gubitchev out of 405 East 42nd Street"?

A. Correct.

Q. Now, you turn to the last page and read that to me, please. What does that say?

A. "Ten to five, out with man. Six foot, brown topcoat, tan hat, thin, brown shoes. Two to Lex and 42 Street. 5:05 discontinued."

Q. Will you kindly tell me, what is the difference between the last page and the first page, with regard to this incident on 42nd Street? Anything at all about what occurred before that you told us about, the tunnel, and following another man?

A. Nothing very different at all. The notes are almost identical.

Q. Wait a moment, please. Now, you said that you got instructions from Mr. Kennedy to cruise or to stay in the midtown section. Is that on the notes?

A. It is not.

Q. It is not. What time did you get the instructions from Mr. Kennedy to stay in the midtown section?

A. Shortly after I phoned in after I had last seen Gubitchev at 5:05 p. m.

Q. On the page that you have just read, which you call the first or last -- I don't care which -- there are the initials, "JFM, WB" -- what is the last one?

A. "JC."

Q. Who is "JFM"?

A. JFM is John F. Malley.

Q. Malley. What did Mr. Malley have to do with this transaction?

A. Malley had nothing to do with this transaction.

Q. Why did you put his initials on there?

A. Those were initials that I heard announced over the radio at a later time in the evening.

Q. The next inside page says -- you read it before -- "March 4, '49." What is that top, "Pennsylvania Station, 8:51"?

A. Correct.

Q. Then it says, "Bus 89"?

A. Correct.

Q. "8:56," correct?

A. Right.

Q. Then it says, "9:01" -- what is this?

A. "On bus."

Q. "9:04 off," is that right?

A. That is right.

Q. What does it say, "To office"?

A. "To office," that is right.

Q. "9:52"?

A. Correct.

Q. Will you please tell me when did you hear over the radio anything about Mr. Malley, before or after 5:05 in the afternoon?

A. After 5:05.

Q. Did you hear anything about Mr. Malley before or after Pennsylvania Station?

A. I might make a modification of that. I didn't hear anything about Mr. Malley. I heard his initials over the air, as I put them down there. Mr. Malley's name was not mentioned.

Q. Do you know what time it was you heard the initials, "JFM"?

A. Pardon me?

Q. What time was it?

A. I don't recall. It was sometime after 5:05 p. m.

Q. Was it after seven?

A. I wouldn't want to state positively, but -- because I don't recall; it was in the neighborhood between six and seven.

Q. What are the next initials?

A. "BW."

Q. Who is "BW"?

A. Brewer Wilson.

Q. What did Brewer Wilson have to do with the surveillance of yours?

A. He had nothing to do with that surveillance.

Q. Why did you put those initials down on here?

A. They were announced to me over the air; and I made a notation of it. I thought I might go to where they were.

Q. Did they say on the air where they were?

A. They did.

Q. What?

A. They did.

Q. Did you put it down?

A. I did.

Q. Where is it, show me?

A. Right here (indicating).

Q. "491 Seventh Avenue"?

A. Correct.

Q. What is 491 Seventh Avenue?

A. I have never been there.

Q. What was said over the air about 491 Seventh Avenue?

A. To the best of my recollection, that was the address of a restaurant in which Miss Coplon had been seen entering.

Q. When?

A. Sometime after 5:05 p. m. that evening.

Q. What is the next initial?

A. "JC."

Q. Who is "JC"?

A. Judith Coplon.

Q. Why did you put those initials down? You knew you were surveilling her. What does that remind you of?

MR. WHEARTY: We object to that.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. What did you put those initials down for? What are those initials doing there, do you know?

A. I put them down so I would have some recollection of who was over there when I arrived, if I should go there.

Q. All right. I asked you the last question whether or not, after this talk over the radio -- was it over the telephone, with Mr. Kennedy giving you the instructions?

A. What time are you talking about now?

Q. When did you get the instructions from Mr. Kennedy to stay in the midtown section?

A. Sometime after 5:05 p. m.

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Q. At that time, did you know a portion of the groups involved in this affair of March 4 were going to go up, with five or six radio cars, and some --

MR. WHEARTY: Object to the form of the question.

THE COURT: Objection sustained.

MR. PALMER: I haven't finished it yet.

THE COURT: Obviously it is a wrong question. You need not put all these preliminaries and those extraneous matters in. Just ask the question. Counsel very properly objected to it.

BY MR. PALMER:

Q. Will you kindly tell me, did you know in connection with this afternoon talk down in the Federal Building on the 29th floor that any agents in cars were going up to the Washington Heights section around 193rd Street, the section in which you were present on the night of January 14; did you know that?

MR. WHEARTY: Just a minute.

THE WITNESS: There is no date there. I don't know what date you are talking about in the first place.

BY MR. PALMER:

Q. Weren't you in that 193rd Street section on the

evening of January 14?

A. Yes, I was.

Q. Now, on March 4, when you were told where to go for surveillance by Mr. Miller, were you informed of the fact that other agents were going to go in the 193rd Street section?

A. I was.

Q. Did you know that radio cars were going to go up there?

MR. WHEARTY: Well, now, we object to this as immaterial, what he knew.

THE COURT: Exactly. Objection sustained.

BY MR. PALMER:

Q. I will try something else. I am trying to get inside Your Honor's objection. I am trying to understand it; that is why I am going from one place to another.

On the night in question, you said you cruised in the midtown section. Were you cruising for any definite purpose? You said it was in connection with the Judith Coplon-Gubitchev case?

A. Correct. I was cruising for the purpose of awaiting further instructions.

Q. Further instructions from who?

A. From anybody that was in position to give them to me.

Q. Given you about what?

A. About whatever might occur later on.

Q. Supposing nothing occurred?

A. I had no idea whether it would or not.

Q. Did you get any instructions while you were cruising in the midtown section from four o'clock on on March 4 -- did you get any instructions from anybody?

A. The first instructions I received was to proceed toward Pennsylvania Station.

Q. Who gave you that instruction?

A. I don't know, because I only heard a voice over the air.

Q. Before that particular time, the last time I have you in this section, you are at 42nd Street and Lexington Avenue, or in that vicinity?

MR. WHEARTY: Excuse me. That is a picture of Seventh Avenue you are pointing to.

MR. PALMER: I don't know whether he is trying to deflect me --

MR. WHEARTY: I think it is proper to indicate that fact.

THE COURT: You are pointing at a picture.

MR. PALMER: I am pointing. The witness didn't turn around, Your Honor.

THE COURT: You shouldn't have been over here. You can step back there and ask him the question.

MR. PALMER: Very good.

BY MR. PALMER:

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Q. The last time you told us anything about your whereabouts, it was somewhere in the neighborhood of 42nd Street and Lexington Avenue; correct?

A. Correct.

Q. That was about five minutes past five?

A. That is right.

Q. When was the first time you got instructions about the Pennsylvania Station; what time? You can refer to your notes.

A. May I refer to my notes?

Q. Certainly. I think it says 8-something or other.

A. "8:51 p. m."

Q. That is what I thought. For three hours and fifty minutes, or thereabouts, where were you?

A. Various parts of the midtown section.

Q. I am talking about March 4, the night of the arrest. Will you please tell me, until 8:51, where did you and the other two gentlemen in the car go?

MR. WHEARTY: Object to that as immaterial.

THE WITNESS: We were in numerous midtown places.

MR. PALMER: That is immaterial?

THE COURT: I think it is, but he has answered it.

BY MR. PALMER:

Q. Where did you go?

A. Numerous places of the midtown area.

Q. Describe the extent of the midtown area as you went that night, how far up, how far down, how far across.

THE COURT: I think that is immaterial about the midtown area. You can ask him where he went, if you want to.

MR. PALMER: All right, I will follow His Honor's suggestion.

BY MR. PALMER:

Q. Where did you and the other men in the car, you driving, go from 5:05 or thereabouts to 8:51; where did you go until you were told to go to the Pennsylvania Station?

A. I went first to within a block of 491 Seventh Avenue.

Q. What time did you get there?

A. Sometime after 505 p. m.

Q. Do you know how soon after?

A. I don't recall.

Q. Did you see anybody there, any agents?

A. I saw John Ward and Martin McGuinn, who were with me in the car.

Q. Did they say the girl was in a restaurant on the east side of the street eating?

A. I don't know whether she was or not. I had heard some such announcement made over the radio.

Q. An announcement made the girl was eating; correct?

A. I don't know.

Q. Then you went to 491 Seventh Avenue?

A. No, I didn't go.

Q. Where did you go?

A. I said I went to within a block of 491 Seventh Avenue.

Q. Where did you go from there?

A. Went across town to the west side of New York City.

Q. What part?

A. I don't recall exactly.

Q. Were you ever there before?

A. I have been there many times.

Q. Why did you go to the west side?

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MR. WHEARTY: I again renew my objection; this is immaterial.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. Any time that night, did you reach the corner of 42nd Street -- turn around, please -- and Seventh Avenue? Do you know the section?

A. I do.

Q. Depicted by Exhibit 75?

A. I do. No, not on that night.

THE COURT: What is the answer?

THE WITNESS: Not that night, no, sir.

BY MR. PALMER:

look at
me

Q. Not that night. That night, in going west, did you reach or come across on 42nd Street near Ninth Avenue?

A. No, I did not.

Q. Did you get any instructions from anyone that Mr. Gubitchev, who had started at 42nd Street, in the neighborhood of Lexington Avenue, was coming back and at sometime or other would be at 42nd Street and Seventh Avenue and would then go west to Ninth Avenue? Did you get such instructions?

A. Your question is rather involved, Mr. Palmer. I don't know. Will you break it up for me a little, please?

Q. You can't understand it unless I break it up?

A. Correct.

Q. All right, we will break it up for you. Did you get any information of any kind that Mr. Gubitchev, who had started at 42nd Street and Lexington Avenue, before you gave up your surveillance, you and your associates, was coming back to 42nd Street and Seventh Avenue?

A. I still don't understand your question.

Q. We will try it again, sir.

A. Thank you.

Q. Will you kindly look at me, please?

A. Certainly, I am looking at you.

Q. Thank you. Are there any observers from the FBI in the court room, or don't you know?

MR. WHEARTY: If there is anyone connected with the FBI,

might they be asked to rise? That will save a lot of time.

THE COURT: The question is whether he knows whether there are any observers here. Do you know that?

THE WITNESS: I wouldn't know that, Your Honor.

BY MR. PALMER:

Q. Do you get marks for efficiency, excellent, in connection with testifying, and other attributes of your service, as an FBI man?

MR. WHEARTY: We object to that as immaterial.

THE COURT: On the question of credibility, he may answer that question.

BY MR. PALMER:

Q. Do you understand what is being asked of you now?

A. I think I do. We have a rating system, yes.

Q. In that rating system, is efficiency in connection with testifying in the court room a part of that rating?

A. That could be included.

Q. What is your last rating?

A. My last rating is excellent.

Q. Have you ever testified in court before?

A. This is the first time I have ever testified in any court.

Q. Have you ever been in a moot court?

MR. WHEARTY: Object to that.

THE COURT: Objection sustained.

MR. PALMER: Very good.

BY MR. PALMER:

Q. Now, then, in connection with what you are saying now, will you kindly tell me, at any time that night, did you get any word that Mr. Gubitchev was going to the vicinity of 42nd Street and Seventh Avenue?

A. No, I did not.

Q. Did you get any word that he was in the vicinity of 42nd Street and Seventh Avenue over the radio?

A. No, I didn't.

Q. Did you get any word about Gubitchev over your radio from the time he left your sight at the northwest corner of Lexington Avenue and 42nd Street up to the time you saw him in the bus?

A. Yes, I did.

Q. When, for the first time, did you get any word about him?

A. At, if I recall correctly -- and I will refresh my memory from the notes after I state this --

Q. I would rather have you first do what the law requires, the law of evidence; first tell us what you know and then after, if you need any refreshment --

MR. WHEARTY: Just a minute. That is what the witness offered to do.

THE WITNESS: That is what I offered to do.

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at me

MR. PALMER: Your Honor, I don't think it is necessary for Mr. Whearty to do any talking to help the witness out.

THE COURT: I understand you.

MR. PALMER: That is not a proper objection.

THE COURT: You had a right to ask the question.

MR. PALMER: And I am asking the question.

THE WITNESS: At 8:56, as I recall it, I received a message.

BY MR. PALMER:

Q. Yes, what message?

A. Isn't that what you wanted to know?

Q. In the radio car?

A. Yes.

Q. Where was the radio car at the time?

A. The radio car was on Park Avenue.

Q. And where?

A. Just north of the Commodore Hotel on the ramp coming south along Park Avenue.

Q. What was the message?

A. The message was that --

Q. Will you kindly look at me?

A. Why, certainly.

Q. Thank you.

A. The message was that Gubitchev -- I correct myself on that. I don't think Gubitchev's name was mentioned; but

that the subjects had been seen boarding a bus going south on Ninth Avenue at the corner of 42nd Street.

Q. Will you kindly refer to your notes -- here they are -- March 4, and tell me if that is in your notes? You saw them last Friday?

A. That is right.

Q. Is it in your notes?

A. "Bus 89-Ninth Avenue S ..." meaning south -- "...8:56."

Q. I beg your pardon. I asked you was there anything in your notes to the effect that while you were on the ramp, going around on the side of the Grand Central Building, outside of the Commodore Hotel, that word came over the radio that Mr. Gubitchev was observed boarding a bus -- is that in those notes? Is that in the notes?

A. These notes reflect --

Q. I beg your pardon.

A. --a summary of the message that I received regarding their position at that time.

MR. PALMER: If Your Honor pardons me --

THE COURT: The question was, whether it is in the notes.

MR. PALMER: I am going to ask that the answer be stricken out as not responsive.

THE COURT: Very well.

MR. WHEARTY: It is perfectly responsive, Your Honor.

MR. PALMER: You just said it wasn't; and he has the

nerve to get up and say it was. I asked the question. You said it could be stricken out as not responsive.

THE COURT: Very well; let the witness answer the question.

BY MR. PALMER:

Q. I ask you, is what you just told us about the ramp in the notes?

A. It is not.

Q. Is that the first time that you heard about Mr. Gubitchev's whereabouts when you were on the ramp coming up Park Avenue, going around the west side of the Grand Central Building; was that the first time?

A. No, I was not on the west side of the Grand Central Building; I was north of the Grand Central Building.

Q. You were going towards what street, either going north or south; which were you going, north or south?

A. I was going south.

Q. If you were going south, then you come out on the west side of the building, don't you?

A. The ramp goes over Grand Central Station.

Q. It goes on both sides, in front of the Commodore Hotel, that is the east side?

A. That is correct.

Q. If you are going south, you are on the west side of the ramp?

Substantivo

MR. WHEARTY: We object to this shouting, Your Honor.
I don't think it is necessary.

THE COURT: Sustained. It is not necessary; we can hear you without shouting.

MR. PALMER: Mr. Whearty's solicitude for the witness is really --

MR. WHEARTY: I object to that.

THE COURT: It is not solicitude for the witness by Mr. Whearty.

BY MR. PALMER:

Q. Will you kindly tell me, am I right, as you go out on the ramp, you are on the west side of the building; and if you go south --

A. That ramp turns as it comes down to 46th Street to 42nd Street.

Q. I know all about it; I have lived there a million years.

A. I am familiar with it, too, Mr. Palmer.

Q. I am asking you, isn't the ramp on the side nearest Vanderbilt Avenue?

A. What part of the ramp?

MR. WHEARTY: I object, unless he specifies which side of the ramp.

BY MR. PALMER:

Q. All right, you are coming down Park Avenue, and the

first thing you do is, you go up into the ramp; then you turn in a slight swing around toward the Vanderbilt Avenue side?

A. Correct.

Q. Then you swing a short distance around in front of the building; then you go right down straight toward Fourth Avenue; is that correct?

A. You go east along 42nd Street, then you turn right; and you go down into Park Avenue.

Q. You turn east -- isn't that the west side of Fourth Avenue, when you come off the ramp, and the east side is on the side when you go north?

A. As I recall, there isn't any Fourth Avenue up in that vicinity at all.

Q. It starts at 34th Street as Park Avenue, doesn't it?

A. That is right.

Q. And below that it is Fourth Avenue; correct?

A. That is correct.

Q. Now, you are at 42nd Street; we will call it Park Avenue.

A. Right.

Q. As you go over the ramp, facing the Vanderbilt Avenue side, and you come off the ramp, aren't you on the west side of Park Avenue? Aren't you?

A. You are on the west side of Park Avenue, yes.

Q. All right. Anyway, that is where you were?

A. Yes.

Q. Now, will you kindly tell me, up to that particular moment, when you are on the ramp, did you hear anything over the radio concerning this girl Coplon, from the time that you went into this car on or about four o'clock that afternoon?

A. I did, yes.

Q. When did you hear about her?

A. I heard numerous statements as to her presence and whereabouts, and Mr. Gubitchev's whereabouts.

Q. On this particular paper, you wrote the initials, "JFM," and "491 Seventh Avenue." Did you write anything more about what they said over the radio other than, "491 Seventh Avenue," on your notes?

A. No, I did not.

Q. Now, I ask you the question, did you know, when you left Mr. Gubitchev at 42nd Street on the northwest side of Lexington Avenue, that Mr. Gubitchev would return that night at all in the midtown section?

A. I did not.

Q. Now, when Mr. Kennedy told you to patrol, or whatever he told you about the midtown section, did he say anything at all to you about the fact that Gubitchev would come back and he would be around 42nd Street and Seventh Avenue?

A. He did not.

Q. Did he say anything at all about 42nd Street and Ninth Avenue?

A. He did not.

Q. When he told you to patrol the midtown section, did he give you any reason why you and the other two should stay there?

A. He did not.

Q. In connection with your words that you heard over the radio on the ramp --

A. I might amend my statement there as to Mr. Kennedy's comment. If I recall correctly, I think I asked him if I should not go uptown, on the possibility that I might be of some assistance; and he asked me to stay downtown.

Q. Did he give any reason why you should stay downtown?

A. He said he thought there were sufficient people uptown to adequately take care of the situation.

Q. Did you tell him from the time you left the surveillance -- did you ask him from the time you left the surveillance of Gubitchev at 42nd Street, the northwest corner Lexington Avenue, as to whether anybody else was following Gubitchev?

A. Did I ask him?

Q. Yes.

A. No, I did not.

Q. He has the same rank as you have, hasn't he?

A. Correct.

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MR. WHEARTY: I object to that.

BY MR. PALMER:

Q. Now, I ask you the question, did anyone ever tell you, when you, using your discretion -- you and the other two men with you -- gave up the surveillance of Mr. Gubitchev at 5:05, or thereabouts, at 42nd Street and Lexington Avenue -- did you know or were you told that anybody else was going to take up that surveillance; yes or no?

A. I did not testify I was with two other men at the corner of 42nd Street and Lexington Avenue, when I gave up that surveillance.

Q. We will go back to the same thing. You told us you were there alone, and the other two men were in the vicinity?

A. You asked me the question, I and the other two men with me, when we gave it up.

Q. After you had the talk with Mr. Kennedy, didn't you join the other two men?

A. Yes, I did.

Q. And weren't the two men we talked about, Mr. McGuinn and Mr. Ward, in the vicinity where you were talking to Mr. Kennedy?

A. No, they weren't.

Q. Where were they?

A. I don't know.

Q. You don't know if they were not in the vicinity, do

you?

A. I have reason to believe that they were in the vicinity, because I met them later on.

Q. That is what I asked you. What time did you all get together and get in that car to make this midtown cruise?

A. It must have been approximately 5:30, somewhere in that neighborhood.

Q. Is there anything in the notes about meeting these other two men and going on this cruise?

A. I don't think there is.

Q. You read the notes just now; is it there or isn't it?

THE COURT: He said he didn't believe it was; and we heard it read; and it is not.

MR. WHEARTY: The notes will speak for themselves; they are in evidence.

THE COURT: The notes were read.

BY MR. PALMER:

Q. Now, then, when you heard this news about 42nd Street -- I thought I heard you say that you heard the news to the effect at 42nd Street and Ninth Avenue that Mr. Gubitchev was boarding a bus; is that what you heard?

A. I don't believe I heard Mr. Gubitchev's name mentioned; but I heard that the subjects had boarded a bus.

Q. Let's see. According to your testimony here before, the only subject that you were on that night was Mr. Gubitchev;

you were sent to surveil him; weren't you?

A. I was interested that evening, as were all the agents assigned to the case, in both Miss Coplon and Mr. Gubitchev.

Q. Did you know Miss Coplon was going to meet Mr. Gubitchev that night, before you left the building?

A. I had no idea whatsoever.

Q. You were interested in the two of them; is that correct?

A. Correct.

Q. You had never heard, until March 4, according to your testimony, that Miss Coplon had ever given a single thing in her life to Gubitchev?

MR. WHEARTY: Object, argumentative.

THE COURT: He never heard that. I thought he covered that already.

MR. PALMER: All right.

BY MR. PALMER:

Q. Anyway, when you heard this information while you were going on the ramp -- I will start with that ramp again with you -- toward the Vanderbilt Avenue side, what else was said about 42nd Street and Ninth Avenue, about the subjects getting on the bus? Was it plural or singular?

A. As I recall, it was plural.

Q. Is there anything at all about plural or singular

in your notes?

A. I don't think there is.

Q. In so far as this night is concerned, the important part of the night was to see whether Gubitchev and Coplon got together, is that right; that was the important part of the surveillance, to see if they got together?

A. The importance of the surveillance was to find out what each of those two subjects did on that night.

Q. You mean would do that night? Would do, is that right? Would do?

A. Well, if you care to word it that way, that is your privilege, I suppose.

Q. You didn't know whether they were going to do anything that night?

MR. WHEARTY: We object to that.

BY MR. PALMER:

Q. You didn't know they were going to do anything that night, did you?

A. Certainly not.

Q. You didn't know whether or not they were even going to meet that night, you told us a little while ago?

THE COURT: I think he answered that a little while ago.

BY MR. PALMER:

Q. Now, I ask you the question, when you heard the two people involved, as subjects, had gotten on a bus at 42nd

Street and Ninth Avenue, why didn't you write it down in your notes when you found the both of them were together? Why didn't you write that down, the two had met?

A. I was driving an automobile.

Q. Yes?

A. And I was passing a bus at that time.

Q. You told us you wrote those notes later on in the evening, as I understand, in the Federal Building; is that so?

A. I wrote those notes in the automobile, and that is what I was testifying to.

Q. While you were driving?

A. When I got an opportunity in that automobile.

Q. Didn't there come an opportunity to make a memorandum regarding 42nd Street and Ninth Avenue, the same way you made a memorandum about "JFM," and "WB"? Didn't there come an opportunity like that?

A. There wasn't much opportunity that night when they were on the bus to do any writing, Mr. Palmer.

THE COURT: We will suspend at this point.

(Thereupon a short recess was taken.)

BOW/m
pm

BY MR. PALMER:

Q Just hold these notes for a minute. Did you know that Mr. Murphy testified in this case, that he preceded you?

A I believe I did, yes.

Q Did you talk to Mr. Murphy since last Friday?

A I have not seen him.

Q Did you see him last Friday, Friday of last week?

A I think I did. Wait until I reflect upon that a moment.

Q Go ahead and reflect. Do you know today's date?

A I am not sure that I do.

Q Go ahead. Didn't you say you were here in the witness room on last Friday?

A Oh, yes, I did see Mr. Murphy last Friday.

Q Didn't you see him in the witness room last Friday?

A I am not sure that I did. I do not think I did.

Q Do you know whether you did or not?

A No, I do not. I am trying to refresh my recollection as to that, Mr. Palmer.

Q Did you ever see the corner of 42nd Street and Ninth Avenue as depicted in that Exhibit No. 76?

A Did I ever see that intersection or this picture; which did you ask me?

Q I said, did you ever see the corner of 42nd Street and Ninth Avenue?

A Yes.

Q When is the last time you saw it?

A A month or two ago.

Q Did you go over the scenes of this situation with anybody?

A No, I did not.

Q Did you ever see the Holland Hotel on the north side of the street?

A I probably have seen it.

Q Don't you remember?

A Not particularly.

Q You know there is a very fine Catholic Church on the other side of the Holland --

MR. WHEARTY: We object.

THE COURT: Sustained.

BY MR. PALMER:

Q What time was it on the ramp up there -- it is not in your paper -- that you heard that the two subjects had got on a Ninth Avenue bus at 42nd Street and Ninth Avenue?

A Your statement is not correct. It is in these notes.

Q It is in the notes?

A Yes. I have read it, I think, twice or three times.

Q Read it again, about the ramp.

A I made these notes on the ramp at the time I received that message. These are a very brief notation of the

message I received.

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Q Then you wrote that note on the ramp?

A Correct.

Q The ramp is just below 42nd Street?

A Where I wrote these notes was above 42nd Street.

Q That is what I said.

A No, you said below.

Q Above 42nd Street?

A Correct.

Q Nearer 45th Street?

A Yes.

Q And you stopped on the ramp to write the notes?

A No, I did not.

Q Do you write left-handed?

A I write right-handed.

Q Did you write while driving?

A No, I did not.

Q You stopped the car?

A No, I did not.

Q When you wrote it, what time did you write?

A I wrote first, "8:51 proceed Pennsylvania Station.

Q I asked you what time did you put it in the notes.

A I wrote it just as I received it, 8:56.

Q What time was it on the ramp when you got the word

3599
over the radio that the subjects were seen board a bus at Ninth Avenue?

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A 8:56.

Q I call your attention, for the purpose of refreshing your recollection only, to the testimony given by Mr. Murphy before this jury on May 20, 1949.

MR. WHEARTY: Page, please.

MR. PALMER: 3424.

BY MR. PALMER:

Q By the way, you never read these minutes, did you?

A I did not.

"Q Now, will you kindly tell me what time was it that Mr. Gubitchev and this young lady got on the bus? The number you gave us was 89; am I right?"

"A Yes.

"Q What time was it they got on?"

"A It was about 8:54, 8:55. It could be one minute either way, or two minutes either way."

What time was it, 8:54?

A I do not know what time they got on. I know what time I received the message.

Q If you got the message later, there is no quarrel about it. Will you kindly tell me when was the next message you got after you found the two people had got on the bus? Was that to go to the Pennsylvania Station?

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A No, it was not. After I found them on the bus I was giving messages then.

Q It says, "8:51, proceed Pennsylvania Station." At 8:56 you got this message. At the time you got this message were you proceeding towards the Pennsylvania Station?

A I got the message to proceed toward Pennsylvania Station at 8:51, as the note indicates.

Q Who gave you the message?

A I heard a voice over the air.

Q From the central station?

A I have reason to believe that it was my central station.

Q All your radio cars from 191st Street, all the way down to the central station, can hear and they can send if they are in good order; isn't that so?

A I think that is correct.

Q You have a special wave, have you not?

A I do not think that is a matter that I should discuss in this court room.

Q Very good. Anyway, you heard the message. Any instructions given to you at 8:51 before you got this information on the ramp at 8:56 as to what you should do in the Pennsylvania Station?

A No, sir.

Q Did you go to the Pennsylvania Station?

A No, I did not. I was on the ramp when I received the next message.

Q The next message was that the people were going on the bus?

A Correct.

Q Did you at that time know anything at all about the fact that any of the agents had missed the bus or did not try to take the bus; did you know that?

A There was some such indication, yes.

Q Now, in connection with the surveillance, when a surveillance breaks, that is important, and the subjects are lost?

A Not particularly.

Q Well, isn't the subject of a surveillance the following through of the subjects from the point of contact wherever they are going to go to?

A Mr. Palmer, it depends upon which you mean by "important." Important in what sense?

Q In this particular sense, when you were told to surveil Mr. Gubitchev, was it important to drop off at 42nd Street on the northwest corner; was that important?

A Again, it would depend on what you mean by "important."

Q Don't you know what important is?

A Certainly.

MR. WHEARTY: We object.

THE COURT: Sustained.

BY MR. PALMER:

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Q Now, when, when did you get the message that there was no agent, if you got such a message, on the bus with Gubitchev and with Miss Coplon; when did you get that message?

A At 8:56.

Q Now, read the 8:56 message as you got it down here in Exhibit 78.

MR. WHEARTY: He has read it four times.

MR. PALMER: I have a right to follow through.

THE COURT: It has been read.

MR. PALMER: People cannot follow a thing through that way.

THE COURT: Yes, they can. I know and you know what you are referring to.

BY MR. PALMER:

Q This particular page says, "Bus 89, Ninth Avenue, south, 8:56." That is what it says?

A Correct.

Q Anything on that paper about the fact that there were no agents on that bus?

A There is not.

Q Did you know at the time you made this memorandum that the agent had not gone on the bus?

A I did.

Q And you did not write it down?

A I did not write it down.

Q What did you do then, you and the other two men, when you found out, and did not write down the facts about the agent not being on the bus -- what did you do about the bus?

A I made an agreement with Mr. McGuinn --

Q You made an agreement?

A I did.

Q In writing?

A Not in writing.

MR. WHEARTY: Let him answer.

THE COURT: Objection sustained. Let him say what it is.

BY MR. PALMER:

Q What is an agreement?

A I was going to tell you what the agreement was.

I made an unwritten agreement with Agent McGuinn whereby I took over the wheel of the automobile that we were driving in, on the ramp, after I had written down these two notations that you have referred to, and I then proceeded down Park Avenue to 34th Street.

BY MR. PALMER:

Q Pardon me. You say you made an unwritten agreement. What was the agreement about?

MR. WHEARTY: You just heard that.

THE COURT: He just testified.

MR. PALMER: I did not hear it. May I have it read to me?

THE COURT: No, sir.

MR. PALMER: I did not hear what he said.

THE COURT: If you did not hear it -- you did hear it.

MR. PALMER: I am sorry you said that. I tell you that

I did not hear it.

May it be read to me?

THE COURT: It is unimportant. I am not going to take the time to read it.

BY MR. PALMER:

Q Go ahead. You made an unwritten agreement, and then what happened? You took the wheel?

A I took the wheel.

Q Who had the wheel before then?

A Agent McGuinn.

Q And when you took the wheel to 34th Street, what did Mr. McGuinn do, go out of the car?

A I did not take the wheel at 34th Street.

Q I said when you took the wheel, after making this unwritten agreement on the ramp?

A Yes.

Q Did Mr. McGuinn get out of the car on the ramp?

A Mr. McGuinn moved over on his seat and I got out

of the car, as I recall.

Q Got out of the car?

A Yes.

Q Where, what street?

A On the ramp, north of 40th Street, somewhere between 43rd and 40th.

Q Didn't you say something about 34th Street, about the wheel? What did you say about 34th Street?

A I did not say anything about 34th Street except I had driven the car down Park Avenue to 34th Street.

Q From the ramp?

A From the ramp.

Q Why couldn't Mr. McGuinn drive the car down to 34th Street?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q Was there anything said why you should drive the car to 34th Street?

MR. WHEARTY: Object.

THE COURT: It is immaterial. He may answer. Let him finish.

THE WITNESS: There was nothing said other than my request to Mr. McGuinn.

BY MR. PALMER:

Q That you take the wheel?

A Correct.

Q Then you took the wheel?

A I did.

Q And you drove down where?

A I drove down Park Avenue.

Q To where?

A To 34th Street.

Q Didn't you just say something about 40th Street and
Park Avenue?

A I did.

Q What did you say?

A I said that is where I took the wheel.

Q At 40th Street?

A I said north of 40th Street.

Q You took the wheel. When you got to 34th Street,
what did you do there?

A I turned right.

Q On 34th Street?

A On 34th Street.

Q Couldn't he turn right too, if he had the wheel?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q One question on this point. Was Mr. Guinn a beginner driver?

MR. WHEARTY: I object to that.

THE COURT: Sustained.

BY MR. PALMER:

Q So, you turned at 34th Street in front of the Vanderbilt Hotel; you turned right; correct; you turned west, that is, right, coming down south on Park Avenue?

A My recollection of the Vanderbilt Hotel is that it is not at 34th Street.

Q Is there an armory on the other side, on the southeast corner; isn't there an armory there?

A I think so.

Q Is the Vanderbilt Hotel right opposite the armory, and isn't there a bric-a-brac store selling --

MR. WHEARTY: Object.

THE COURT: Sustained.

MR. PALMER: I have a right to refresh his recollection.

THE COURT: Not on that.

BY MR. PALMER:

Q Now that I remind you of the armory, isn't there a drug store on the northeast corner?

A I don't know.

Q Isn't there an apartment house -- never mind. When you got to 34th Street, you have the wheel. What did you do?

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A I drove west on 34th Street.

Q That is what I asked you before. Did you pass Fifth Avenue?

A I passed Fifth Avenue.

Q And then did you pass Sixth Avenue?

A I passed Sixth Avenue.

Q Did you go down past Macy's?

A If it is on 34th Street, I went past it.

Q Don't you know where Macy's is?

A I do.

Q Where is it?

A On 34th Street.

Q That is what I just asked you.

A That is what I just answered.

Q Isn't there a Nedick's, frankfurter store, on the corner of 34th Street and Broadway?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q Did you go down past Macy's?

A I went down west on 34th Street.

Q It is a very long block, isn't it?

A Which block?

Q The block of Macy's, from Sixth Avenue over to Seventh, the whole block is all the way down?

A It could be a long block.

Q Isn't it a long block, over 600 feet long?

A I never measured it.

Q Now, we are past Macy's. On the other side a client of mine built a building, the Nelson Building. Do you know where that is?

A I do not think I do.

Q Nelson Towers?

A I do not.

Q Forty-two stories high?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q Did you pass by between Seventh and Eighth Avenue?

A I did.

Q When you got to Eighth Avenue, did you continue west?

A I continued west.

Q Now, you are at Ninth Avenue.

A If you say so.

Q You know that after Eighth Avenue comes Ninth, don't you?

A I have not stated that I am at Ninth Avenue. You are asking me there.

Q Where did you go?

A Why don't you ask me where I went and I will tell

of
Gustav

you?

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Q You tell me where you went from 34th Street when you turned west.

A I went west on 34th Street from Park Avenue to Ninth Avenue.

Q Then you did pass Macy's?

MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q You did pass between Eighth and Ninth Avenue, didn't you?

A I did.

Q On the corner of 34th Street is the Hotel New Yorker, isn't there? On the northwest side.

A I did not observe the Hotel New Yorker during this particular trip.

Q Were you going so fast?

A I was going at a rapid pace.

Q Will you tell me what speed?

MR. WHEARTY: Object.

THE COURT: Sustained.

THE WITNESS: I could not tell you.

BY MR. PALMER:

Q When you got to 34th Street and Ninth Avenue, where did you go from there?

A I made a left-hand turn and went south on Ninth Avenue.

Q How did you know that the bus No. 89 had passed by 34th Street by that time?

A I did not know.

Q How do you know it was not above 34th Street?

A I did not know.

Q You got no radio message?

A No.

Q You said you took over sending on the ramp. Did you send a message to central headquarters that you people were going to look for the bus?

MR. PALMER: I am not complaining about their conference, Mr. Kelley and Mr. Whearty. I do wish you would talk a little lower so I would not get the information in advance.

BY MR. PALMER:

Q You took a chance. You got no message of any kind?

A Correct.

Q Did you send any message to central headquarters or anywhere else, to some other cars, what you were doing, as you were coming down on Park Avenue, getting around 34th Street, going west on 34th Street, in the fashion you have described, at a rapid rate of speed?

A I gave no blow-by-blow description of my activities.

Q In the knockout blow there is only one blow --