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THE COURT: Let's not get into that.

BY MR. PALMER:

Q Will you kindly tell me when for the first time did you do any sending between the time you got this message on the ramp and the time you first said -- where were you when you first sent a message?

A I was on Ninth Avenue in the vicinity of 22nd Street.

Q Now, on these buses, they run along Ninth Avenue, on the side of the bus, back and front, is the number of the bus; isn't that so?

A That is correct.

Q In other words, you see here is a bus in this picture, No. 76. Will you turn around. On the outside near the corner of a bus and towards the end of the bus is its number; is that correct?

A It might be on that particular bus.

Q Now, I asked you the question before -- didn't you see it on this bus, the number 89?

A I did not see the number.

Q In other words, even though you finally came to a bus on 22nd Street, you did not see the number on it?

A I did not see it.

Q Who did?

A Agent Ward and Agent McGuinn.

Q They were assisting you, weren't they?

A Yes.

Q They told you they saw it?

A They did.

Q It made no difference who saw it as long as it was seen?

A If you say it. I did not see the number.

Q In the bus itself -- prior to that time had you received any information that there was no agent of the Department of Justice or the FBI on that bus going south, No. 89; had you received such a message, yes or no?

A I stated previously that I had received such a message. At the time I received the original message that the bus was going south on Ninth Avenue, I received a message in which there was an indication that there were no agents on the bus.

Q Up to that particular time, when you received that indication, while on the ramp, did you know or had you been told that no agent -- I am using the words "no agent." Had you been told that no agent was following Cubitchev and the girl from the time they got together; were you told that over the air?

MR. WHEARTY: I object to the form of the question. What time do you mean?

MR. PALMER: You see, the trouble with Mr. Whearty is he is always -- when he makes an objection he tries to tell

the witness what he wants the witness to know.

THE COURT: Are you going to reframe your question?

MR. PALMER: I will. These lawyers from the Government are no better than I am. They should not help a witness by trying to put an objection in the form of an answer.

THE COURT: He did not do that. It was not his purpose to do that.

MR. PALMER: I did not say anything about his purpose.

THE COURT: It is improper for you to accuse him of anything.

MR. PALMER: I did not accuse him of anything.

THE COURT: You did. You may proceed.

MR. PALMER: I am sorry.

BY MR. PALMER:

Q Will you kindly tell me, did you at any time ever get a message before you got this message on the ramp that the girl, Gubitchev, and the man Coplon, had been seen together anywhere at 190th Street?

MR. WHEARTY: He has it mixed up. He said the girl Gubitchev and the man Coplon.

MR. PALMER: I will be glad to get it straightened in this case.

THE COURSE: Straighten it up.

BY MR. PALMER:

Q At any time before you got on this ramp, or while you

were on the ramp, did any message come over the radio to you or your associates to the effect that up there in the 193rd Street section that Gubitchev had been seen in the company or near the girl Coplon?

A Do you want me to answer the first part of the question or the second part?

Q Any part at all, or both; use your own discretion.

A Before I got on the ramp I did hear messages that indicated that Miss Coplon and Gubitchev were in the same area, in the uptown part of Manhattan.

Q What area was that? Did it say anything about a street?

A I recall that the name Broadway was mentioned.

Q Anything said about the fact that the girl Coplon was going into the tunnel at 190th Street and Broadway toward the entrance of 191st Street, Seventh Avenue subway; anything about that being said?

A I do not recall.

Q Anything said over the radio about the fact that Mr. Gubitchev was taking a bus going down --

A (Interposing) I do not recall specifically.

Q And there is nothing in your notes?

A Correct.

Q Now, then, in connection with this 42nd and Ninth Avenue incident, did you know at any time before you got the

message, about 8:56, I think you said it was, that the two subjects were entering the bus at Ninth Avenue and 42nd Street, that Mr. Murphy, or that any agent, was trailing them; did you get such a message?

A I had heard many messages during the course of the evening that indicated that there were agents trailing them.

Q Agents in the plural trailing them?

A Correct.

Q In the 42nd Street area?

A No, sir.

Q In what area?

A Uptown Manhattan.

Q Do you know whether or not, to the best of your knowledge, from the information you got on the afternoon of March 4, while this conference took place, on the 29th floor of the Federal Building, that over 24 agents or thereabouts had been assigned to the surveillance in the Washington Heights section?

MR. WHEARTY: Object to that as immaterial.

THE COURT: Sustained.

BY MR. PALMER:

Q Now, at any time before you heard the two subjects got on the bus at 42nd Street and Ninth Avenue, did you hear how many agents were trailing the two of them after they got together?

MR. WHEARTY: We object.

THE COURT: Sustained.

BY MR. PALMER:

Q Did you know or did you hear over the radio that the only agent who trailed them from 42nd Street and Seventh Avenue was Mr. Murphy; did that come over the radio; did it?

A I don't recall.

Q Was anything said over the radio that Mr. Gubitchev and Miss Coplon were seen in the vicinity of 42nd Street and Seventh Avenue?

A Not that I recall.

Q You were listening to the radio all the time and you did not get out of the car?

A That is correct.

Q Was anything said over the radio that Gubitchev and Miss Coplon were walking between 42nd Street and Seventh Avenue toward the direction of Eighth Avenue, over the radio?

A Not that I recall.

Q Anything said over the radio about the fact that the two subjects, Gubitchev and the girl Coplon, were walking separately, apart from each other, between 42nd Street and Eighth Avenue and 42nd Street and Ninth Avenue?

A Not that I recall.

Q Was anything said -- and now we will be at Ninth Avenue in a moment -- at all from the time you got on the ramp

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or before that time up to the time that you began this case down to 34th Street and across that an agent, Mr. Murphy, did not attempt to board the bus No. 89; anything said like that?

A Not that I recall.

Q When you made up your mind, and had this agreement, not in writing, with your associate, Mr. McGuinn, on the ramp up there, above 45th Street, did you know, of your own knowledge, that Mr. Murphy and no agent of any kind was in that bus?

A I did not know of my own knowledge.

Q Then, so far as you knew, there could have been three agents in that bus, so far as you knew?

A I think I have stated previously in my testimony that I had received an indication that there were no agents on the bus.

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Q Is there anything in your notes to that effect?

A I do not think there is.

Q When did you first find out that no agent was on the bus; when did you find that out, of your knowledge? Will you look at me, please?

A I am trying to recall whether I ever did find that out.

Q You do not know it yet?

A I could not testify there was not an agent on that

bus.

Q Anyway, we are now at 22nd Street and Ninth Avenue, and your fellow agents see 89 on the bus. You are driving?

A I am driving.

Q You ever went to Pennsylvania Station, according to the instructions you got?

A I did not.

Q You do not know why you were to go to Pennsylvania Station, do you?

A No, I did not.

Q Now, you got the bus. Did the bus stop at 22nd Street?

A I cannot testify whether it stopped at 22nd Street or not. I do not recall.

Q You had taken, you said, your hunch, whatever it was, and you took a chance to go south, and you found the bus 89 with the aid of your friends?

A Correct.

Q What kind of a car were you driving?

A Ford sedan.

Q Here is this long bus (indicating). Did you go to the left of the bus or the right of the bus? It is a one-way street going south, isn't it?

A That is right.

Q Which way did you go, to the right or the left of

the bus?

A Left of the bus.

Q That is the ordinary way. Is that the way you pass ordinarily?

A You usually pass on the left if you stay within the law.

Q Did the bus stop at 23rd Street?

A I was below 23rd Street when I first saw the bus.

Q Below 23rd Street?

A Yes; 22nd Street.

Q If Mr. Gubitchev -- you say Mr. Gubitchev and the girl were in the bus. You told us where they were sitting?

A I did.

Q One was sitting nearest the side where you were on the left?

A That is right.

Q And the girl was on the other side away from that side?

MR. WHEARTY: Counsel is just reversing the evidence and I object to it.

MR. PALMER: He just said "yes." We will get it back the other way.

BY MR. PALMER:

Q You heard Mr. Whearty say I was reversing the

evidence. Will you tell me now on which side of the bus, the side nearest you or the side furthest away from you, was Miss Coplon sitting?

A Miss Coplon was sitting on the side nearest me.

Q Which side was Mr. Gubitchev sitting on?

A Mr. Gubitchev was sitting on the right-hand side of the bus as it was going down Ninth Avenue south.

Q About how many rows of seats were between the two of them?

A I did not count them but there were approximately six or seven or eight.

Q You said something -- you know that this kind of buses that we have in New York, that about the middle of the bus there is an exit, in addition to the one in the front where the motorman was?

A I did not see any such exit on this particular bus.

Q You mean they did not have an exit in the middle?

A I did not see it if they had one. They had a rear exist.

Q Was Miss Coplon nearest the front of the bus or nearest the end of the bus, as she sat on the side nearest you?

A She was approximately in the middle of the bus.

Q Was Mr. Gubitchev back of her on the other side?

A He was.

Q In other words, as you looked in the bus, could you see the faces of the people in the bus, as you were driving in the Ford car?

A I observed Mr. Gubitchev and identified him because I could see his face. I later identified Miss Coplon the same way.

Q Before they got off the bus?

A Correct.

Q When you saw Miss Coplin in the bus, the bus was above your car, wasn't it? You are in a Ford car down?

A That is right.

Q Could you see whether or not Mr. Gubitchev had in his hands a lady's pocket book?

A I could not see that.

Q Could you see whether Miss Coplon had in her hands a lady's pocketbook?

A I could not see that.

Q Let's drive down a bit further. You said something about the fact that both of them got off at 42nd Street and Ninth Avenue?

A Pardon me; I did not say that.

Q What did you say?

A I said they got off at 14th Street and Ninth Avenue.

Q Fourteenth Street and Ninth Avenue?

A Correct.

Q When she got off who got off first, Gubitchev in the rear?

A I could not testify to that.

Q Were you there?

A I was there driving an automobile.

Q The automobile was south of the car? In other words, the bus was in front and your automobile was back of that?

A At the time they were alighting from the bus my car was alongside the bus and proceeding to a position south of the intersection on the extension of Ninth Avenue.

Q Then, you got out of your car -- when you were in your car, could you see the two people alight?

A I saw them at the rear exit door as the bus come to a standstill.

Q Who got off first?

A They were standing side by side, beside one another, when I saw them.

Q When you saw them together, did you see anything pass between the two of them?

A I did not.

Q Did you hear her talk to him in any fashion?

A I did not.

Q When you saw the two of them together, were they on the sidewalk?

A They were on the sidewalk.

Q When they were on the sidewalk, was Mr. Gubitchev in possession of the lady's purse?

A I do not know.

Q Was she in possession of her purse?

6/ A I do not know.

Q Do you know if she had anything in her purse that would be of interest to the United States Government?

A I did not.

Q Do you know anything at all what she had in her purse?

A I had not the slightest notion.

Q Now, they are off the bus together and they are walking towards Eighth Avenue; correct?

A Eventually, yes.

Q Before they walked in that direction, did you see the old Holmsted Restaurant over there and the other restaurant? You know the old Homested?

A I am not particularly familiar with it. I may have seen it.

Q You heard someone talk about it?

A I say I may have seen it. I have been in the neighborhood many times.

Q Here is a picture given to us by the Government of 14th Street and Ninth Avenue. Now, I would say, and I hope you will agree with me, that this certainly is not a fair

picture, that all this traffic was around this vicinity, this meat section, at the time that this bus, No. 89, stopped there; there was not such traffic there, was there?

A That is correct. That picture was taken in the daytime.

Q You would not say that I am unfair to say that none of this terrific traffic that appears in picture No. 66 was apparent at Ninth Avenue and 14th Street when they got off?

A I do not know whether that is a matter of fairness or otherwise. This picture was obviously taken in the daytime.

Q I was not there.

A I have been there in the daytime and night time.

Q Didn't you know that pictures taken in the night time can be so prepared by the people who use the camera, like they do in Hollywood, so you cannot tell them apart?

THE COURT: That is argumentative.

MR. WHEARTY: Is counsel suggesting that this one, was done with these photographs?

MR. PALMER: Wasn't that a silly remark?

MR. WHEARTY: No.

BY MR. PALMER:

Q When this bus landed at 14th Street, it landed at a bus stop?

A Correct.

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Q Were these white lines in front, or don't you remember the white lines?

A They were probably there.

Q You do not remember them?

A I do not remember them.

Q It is a fact that none of this traffic that appears here was there that night?

A Some of it may have been; I do not know.

Q Were any of the restaurants around there open?

A I think some of them were.

Q When these people got off, did you follow them to 14th Street and Eighth Avenue?

A No, I did not.

Q Did you stop your surveillance there?

A No, I did not.

Q What did you do?

A I circled the block in my automobile in order to take up surveillance at Eighth Avenue.

Q Was that in order to prevent them from seeing the face of you and the faces of the people in the car?

A I do not think they had an opportunity to see our faces in the car.

Q We are now past Ninth Avenue. When did you take it up again?

A I did not take it up again that evening.

Q No more?

A Correct.

Q That means all three of you were through, is that correct?

A No, that is not correct. You asked me what I did and I told you.

Q Weren't you in the car with the other two gentlemen?

A I was for a while.

Q What happened with the other two gentlemen and what happened with you after a while; what happened? Do you want another picture?

A It does not show on that picture.

Q Suppose we give you one that is may show on. Does it show on this one, or this one, or this one (indicating)?

A I think we can show it partly on each of these two.

Q Suppose we do it that way. Let's take this one first (indicating). Now, referring to Exhibit No. 64, show me what you did. Let's get away from the block. I am asking about following the people.

A The car in which myself and Agents McGuinn and Ward was in Ninth Avenue here with Miss Coplon and Gubitchev crossed in an easterly fashion on the south side of Ninth Avenue over to the intersection of 14th Street and Hudson Street.

Q You said something about the fact that when these

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folks were on the corner, where the bus stopped, and when they crossed over, they looked around momentarily. I think I had a discussion with the court about it momentarily. They looked over --

A (interposing) I think, if I recall correctly, I said for several moments.

Q Here are your notes. Anything about the several moments in there?

A I do not think there is. May I review them to make sure?

Q Review them and make sure.

A There is nothing in the notes to that effect.

Q Now, you crossed over. Didn't you say something when they crossed over to Hudson Street that they looked around again?

A That is right.

Q Is that in your notes?

A That is not in my notes.

Q Go ahead.

A After crossing to this corner, where they again stood for several moments, looking about in all directions, they proceeded down --

Q (interposing) Pardon me. When they stood over here looking around in all directions, that is the southeast corner,

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isn't it?

A Southeast corner.

Q Will you kindly look at your notes? Anything at all about looking around in any direction; anything at all about looking around in your notes?

A There is nothing in those notes about looking around.

Q This is what date?

A This is March 4.

Q Where were you on April 7 at 3:00 o'clock in the afternoon?

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MR. WHEARTY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q You are over here (indicating). What happened after that? You are over here (indicating). They are on the corner looking all around, and it is not in your notes. Where did they go?

A They went eastward on 14th Street on the south side of the street.

Q Walking towards Eighth Avenue; is that correct?

A Correct.

Q Now, as they did that, how many times did they look around, each of them look around over their shoulders, between the northwest corner of 14th Street and Ninth Avenue until they got to Eighth Avenue?

A I do not know.

Q Did they look over their shoulder?

A I saw them look over their shoulder once.

Q You saw them -- you mean each one looked over their shoulder?

A I saw Miss Coplon and Gubitchev stopped after they had left the corner and had walked partly down along 14th Street towards Eighth Avenue.

Q Is that in your notes?

A It is not.

Q We have finally got them to 14th Street and Eighth Avenue. What did they do there? Did you see them do anything?

A I did not.

Q You people are in your car at that time?

A No.

Q You are on foot?

A I was not on foot.

Q Where were you?

A I was in the automobile.

Q You were driving the car?

A Yes.

Q And the other two gentlemen, where were they?

A Mr. McGuinn was with me during a portion of that time.

Q In the car?

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A In the car.

Q When you got to 14th Street and Eighth Avenue did you see any other agents there?

A I did not.

Q Did you see Mr. Miller or anybody else?

A I did not.

Q Did you finally, all three, get in the car?

A No.

Q What happened?

A I cannot testify to that, because I was not there. I let Mr. Ward out of the car back on Ninth Avenue and 14th Street.

Q I am only interested in you. Did you get anything over the radio at that particular time, any message?

A What particular time?

Q When you were at 14th Street and Eighth Avenue.

A No, I did not.

Q Where did you proceed from there? Were you waiting for directions?

A No.

Q What were you waiting for?

A I was not waiting for anything.

Q What were you doing?

A I was looking for Miss Coplon and Mr. Gubitchev.

Q The last time you saw them, as I understood it, they

were at 14th Street and Eighth Avenue?

A No; I did not see them at 14th Street and Eighth Avenue.

Q Where did you last see them?

A The last time I saw them was when they left Hudson Avenue and proceeded towards Eighth Avenue.

Q Hudson Avenue is part of Ninth Avenue?

A It is an intersection where Hudson comes into Ninth.

Q It bisects it, doesn't it?

A I do not think so.

Q You saw them there. When was the next time you saw them?

A The next time I saw them was on Third Avenue and 16th Street

Q Between the time that you looked for them and the time that you saw them, did you get any directions of any kind; did you hear anything over the radio; did you?

A Yes, I did.

Q What did you hear?

A I had that they had been taken to the Third Avenue exit of the Canarsie line, BMT.

Q They had been taken. Say that again.

A I mean they had been under surveillance and had been observed going to that subway station.

Q I do not understand. Going to Third Avenue and where?

A Third Avenue subway station of the BMT Canarsie line.

Q Where were you at the time you heard this message?

A As I recall, I was at Ninth Avenue and 14th Street, or in the vicinity.

Q Did you go back from 14th Street near Eighth Avenue in your car to Ninth Avenue?

A Yes.

Q What did you go back for? Did you think they might have gone that way?

A I went there first because I thought they would be somewhere in that block.

Q You did not find them?

A I did not find them.

Q You turned around at Eighth Avenue and you came back to Ninth Avenue?

A That is right.

Q Your car is facing west again?

A My car at that point was not facing west.

Q Is there anything in your notes about your turning your car around at Eighth Avenue and going back to Ninth Avenue?

A No, sir.

Q When you were over there at Ninth Avenue, what did you hear about Third Avenue exit of the Canarsie line; what

did you hear? Will you look at me?

MR. WHEARTY: The witness is looking directly at the lawyer.

MR. PALMER: Do you think I would have asked him to look at me if I thought he was?

THE COURT: You stop telling him that. You ask me about it.

MR. PALMER: Will Your Honor ask the gentleman to look at the jury instead of me? It may be more satisfactory.

BY MR. PALMER:

Q Will you kindly tell me what was the first message that you heard when you were at Ninth Avenue and 14th Street concerning Third Avenue of the Canarsie line? You just said something. I could not understand it.

A The first message that I received, as I recall it, was that the subjects had been brought to the Third Avenue station of the Canarsie line, BMT.

Q What do you mean, the subjects having been brought to? I do not understand that.

THE COURT: I thought he explained it.

BY MR. PALMER:

Q What do you mean by "brought to"? You mean someone took them there?

A They were under surveillance.

Q From where?

A I do not know from where.

Q After you heard that they were brought to the Third Avenue station of the Canarsie line at 14th Street, were they underground or above the ground at the time that this message came to you concerning their whereabouts; were they underground or above ground?

A I don't know.

Q What is the next message after that concerning the subjects that you heard, at 14th Street and Ninth Avenue?

A The next message I heard was a message from another car.

Q What was that message?

A That message was one that followed one of my own.

Q What was your message?

A My message was that I would cruise 14th Street going west.

Q Going west?

A Excuse me; going east.

Q You had gone west, did you turn around again?

A Certainly. I went east in the direction of Third Avenue after I received the message.

Q The last thing you said when you got near Eighth Avenue, you turned around and went back to Ninth Avenue?

A That is right.

Q Then you said in your sending message to the people in the vicinity you would cruise around what?

A That I would cruise 14th Street going east in the vicinity of Third Avenue.

Q Was that after you got the message that the subjects had been brought to Third Avenue station and 14th Street?

A That is right.

Q If they had been brought there, according to the language of the FBI, that means they are under surveillance; isn't that so?

MR. WHEARTY: That has been answered.

MR. PALMER: I do not have it.

THE COURT: He said that.

BY MR. PALMER:

Q Does that mean they were under surveillance?

THE COURT: Just a moment. He said under surveillance.

BY MR. PALMER:

Q If they were under surveillance, why did you have to cruise to look for them?

MR. WHEARTY: Object to that as immaterial.

THE COURT: Sustained.

MR. PALMER: There is nothing I can say.

THE COURT: You should not look either.

BY MR. PALMER:

Q Will you kindly tell me did you know at any time that night before you started cruising in the vicinity of 14th Street, did you know anything at all about the fact that the subjects had been lost to those who kept them under surveillance around the 14th and Third Avenue section; did you know that; did that come over the radio; did it?

A I am trying to recall whether it did or not.

Q Is it on your notes?

A It is not on my notes.

Q Do you recall it?

THE COURT: He said he did not.

MR. PALMER: He said he was trying to recall.

THE WITNESS: I am trying to recall it.

MR. PALMER: He said it was not on his notes.

THE COURT: You are right.

BY MR. PALMER:

Q Do you recall?

A I think I do recall now that there was a message. I do not recall the exact words of the message, however.

Q To what effect?

A To the effect that the subject Gubitchev and the Defendant, Miss Coplon, had been observed in the subway station that I mentioned a moment ago.

Q Was anything said about the fact that they lost

surveillance over them?

A I do not think those words were used.

Q What words were used?

A I do not recall the words that were used.

Q Was anything said about the fact that they had lost sight of them, in any language whatsoever?

A There was indication to that effect.

Q Then, after that, did you get any word about the fact that they were under arrest?

A I did.

THE COURT: We will suspend here.

Ladies and gentlemen of the jury, remember the admonitions I have heretofore given you.

MR. PALMER: May I ask, Your Honor, to tell the gentleman not to talk to anybody, including the lawyers?

THE COURT: I cannot say anything about talking to the lawyers.

MR. PALMER: If he can talk to the lawyers, what difference does it make?

MR. WHEARTY: We will not talk to him.

MR. PALMER: He should not talk to any lawyers.

THE COURT: Very well. Do not talk to anybody about the case.

Ladies and gentlemen, thank you again for your

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patience today. Remember the admonitions I have heretofore given you. You will be excused, and I will thank you for going to your homes or places of business. You are at liberty to retire now.

(Thereupon, at 4:00 p. m., the Court recessed until 10:00 a. m., Tuesday, May 24, 1949.)

TESTIMONY OF SA ROBERT J. WIRTH
WASHINGTON TRIAL, JUDITH COPLON

Part 2

ENCLOSURE

65-58365-1182

MR. WHEARTY: Will you call Mr. Wirth, Robert J. Wirth?

Thereupon --

ROBERT J. WIRTH,

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. KELLEY:

Q. Will you please state your full name?

A. Robert J. Wirth, W-i-r-t-h.

Q. Where do you reside, Mr. Wirth?

A. 1651 Metropolitan Avenue, Park Chester, New York.

Q. What is your occupation?

MR. PALMER: I didn't hear the last.

MR. KELLEY: Park Chester.

BY MR. KELLEY:

Q. What is your occupation?

A. Special Agent of the Bureau of Investigation.

Q. How long have you been such?

A. Approximately seven and a half years.

Q. Do you recognize the defendant in this case, Judith
Coplon?

(Thereupon the defendant rose to her feet.)

THE WITNESS: Yes, I do.

BY MR. KELLEY:

Q. State whether or not you participated in a surveillance of the defendant on February 18, 1949?

A. I did participate in that surveillance.

MR. PALMER: What date?

MR. KELLEY: February 18. Again, Your Honor, the Government is not going into detail of the February 18 surveillance, but counsel is free to go into it as much as he sees fit.

THE COURT: Very well.

BY MR. KELLEY:

Q. Over what period of time did you surveil the defendant on February 18, approximately?

A. Approximately ten minutes.

Q. Where?

A. The first occasion was when she arrived in New York at the Pennsylvania Station.

Q. Did you surveil her beyond the limits of the station on that occasion?

A. No, I did not.

Q. Did you see her later again and surveil her that same date, February 18?

A. Yes, I did.

Q. When and where?

A. She returned to the Pennsylvania Station at approximately 9 p. m. on that evening, at which --

Q. And you surveilled her to what point?

A. She reclaimed her bag and she went via the Eighth Avenue Subway heading toward Brooklyn. I dropped the surveillance at Fulton Street stop.

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Q. I now direct your attention to events which occurred on the 4th day of March of this year. State whether or not you surveilled the defendant on that date.

A. I did surveil her on that date.

Q. When and where did you first see her on that occasion?

A. I saw the defendant at approximately 7 p. m. on that date walking south on the east side of Broadway near the intersection of 192nd Street.

MR. PALMER: And what?

THE WITNESS: And Broadway.

BY MR. KELLEY:

Q. What direction was she walking?

A. Correction; she was walking north.

Q. Where were you?

A. I was parked in an automobile in the parking lot directly across from 193rd Street.

Q. Now, from the moment you first saw her on that occasion, tell us what you observed concerning her movements and activities?

A. She continued walking north till she reached 193rd Street, where she stopped in front of the Terrace Drug Store.

Q. And then what did you next observe concerning her movements?

A. She stayed there for approximately six minutes, glancing up and down the street, and then started walking south on the east side of Broadway.

Q. How long did you continue to observe her walking south?

A. She continued walking south until she attained a point about 50 feet south of 192nd Street, where she passed out of my sight.

Q. Did you see her later on?

A. Yes, I did.

Q. About how much later?

A. Approximately eight minutes later, she again came into my view.

Q. And what did you observe concerning her movements at that time?

A. She was then walking north on the east side of Broadway, near the intersection of 192nd Street.

Q. What did you continue to observe, if anything?

A. She walked, continued walking north past 193rd Street --

MR. PALMER: 190-what?

THE WITNESS: -- 193rd for approximately 50 feet. She then retraced her steps and entered the cigar and candy store

at the southeast corner of -- northeast corner of 193rd Street and Broadway.

BY MR. KELLEY:

Q. Can you state how long she remained in that store?

A. She stayed in the store for approximately ten minutes.

Q. Can you approximate the time that she entered the store?

A. She entered at approximately 7:18 p. m.

Q. Now, did you observe Gubitchev that night?

A. Yes, I did.

Q. When and where?

A. I saw him near the vicinity of 192nd Street and Broadway at approximately 7:23 p. m.

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Q. At that moment, what is the fact as to the whereabouts of the defendant?

A. Defendant Coplon was then in the cigar and candy store:

Q. All right. From the moment you first observed Gubitchev, as you have just described it, what did you observe thereafter concerning his movements and activities?

A. He proceeded north on the east side of Broadway to the drug store, Terrace Drug Store, and entered that drug store. He was in there for approximately one minute.

Q. What is the fact as to whether or not while he was in that drug store -- strike that.

What is the fact concerning the whereabouts of the defendant while Gubitchev was in the drug store on the southeast corner of that intersection; where was the defendant?

A. The defendant was at that time in the cigar and candy store.

Q. What did you next observe concerning the movements of Gubitchev?

A. Gubitchev came out of the store approximately one minute later, unwrapping what appeared to be a package of life savers. He glanced up and down Broadway and then started to walk south on the east side of Broadway. He walked south on the east side of Broadway until he attained a point approximately opposite 192nd Street, at which time he crossed Broadway and stood in a bus stop which is located on the northwest corner of 192nd Street and Broadway.

Q. What did you next observe, if anything, concerning the movements of the Defendant Coplon?

A. Defendant Coplon came out of the cigar and candy store at approximately 9 --

MR. PALMER: Did you say nine?

THE WITNESS: I am sorry. At approximately 7:28 p. m.

BY MR. KELLEY:

Q. What did you observe concerning her movements when she emerged?

A. She crossed 193rd Street and Broadway and walked

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south on the east side of Broadway."

Q. For how long a period of time did you continue to watch her?

A. Until she passed out of my sight, which I would approximate about a half minute, as she was walking slowly.

Q. And about where was she when you lost sight of her?

A. Again about 50 feet south of the intersection of 192nd Street and Broadway.

Q. After you had observed those movements on the part of the defendant, did you again see Gubitchev; and if so, where?

A. I saw him later, at approximately 8 p. m. He was at that time walking north on the east side of Broadway in the vicinity of 192nd Street.

Q. How long did you continue to observe Gubitchev on the northwest corner of 192nd Street and Broadway?

A. Well, he stood in that bus stop until approximately 7:45 p. m.

Q. Did you have him within your sight at all times --

MR. PALMER: I beg your pardon. Your Honor, I am kind of confused for a minute, I think. I thought the gentleman said something about 8 p. m. Was anything said about 8 p. m. up to the present moment?

MR. KELLEY: He said he again saw him at that time. I am going back to the time he saw him at the bus stop.

MR. PALMER: Going back from 8 p. m. to 7:45?

MR. KELLEY: It is not unusual for us to go back, Counsel.

MR. PALMER: I was going to say only crabs go back. He has him at 8 o'clock somewhere, and now going back to 7:45.

MR. KELLEY: Precisely.

MR. PALMER: Was that left out on purpose?

MR. KELLEY: Of course, not.

THE COURT: Counsel may proceed.

BY MR. KELLEY:

Q. I redirect your attention, Witness, to the period of time you have stated you observed Gubitchev at a bus stop at the northwest corner of 192nd Street and Broadway. My question was, how long did you continue to observe here and did you observe him constantly?

A. From time to time, he passed out of my sight, as he was walking back and forth at the bus stop.

Q. When and under what circumstances did you see him at that place?

A. At approximately 7:45 p. m., a bus stopped at that bus stop. Thereafter, I did not see Mr. Gubitchev.

Q. Did you or did you not see him board the bus?

A. I did not see him board the bus.

Q. Now, subsequent to that observation, did you later see Gubitchev?

A. Yes, I did.

Q. When and where?

A. At approximately 8 p. m., I saw Gubitchev walking north on the east side of Broadway near 192nd Street.

Q. What did you continue to observe, if anything, concerning his subsequent movements?

A. He continued to walk north on the east side of Broadway; crossed 193rd Street; continued walking north until he reached the corner of Nagle and Broadway; he turned up Nagle and again passed out of my sight.

Q. Now, did you thereafter see Gubitchev later that evening, that night?

A. Yes, I did.

Q. When and where?

A. I saw him in the office of the Federal Bureau of Investigation in New York City, which is in the U. S. Court House, at approximately 10:10 p. m.

Q. Whereabouts in the court house?

A. In an interview room located on the sixth floor.

Q. State whether or not you questioned him at that time.

A. I did question him at that time.

Q. Who was with you?

A. Special Agent Thomas McAndrews and Special Agent Daniel Garde.

MR. KELLEY: You may cross-examine.

CROSS-EXAMINATION

BY MR. PALMER:

Q. Mr. Wirth --

MR. PALMER: Please let me have the picture of 192nd Street and Broadway, and the one with the subway in it, the close-up of the store and the close-up of the other side above the subway station.

BY MR. PALMER:

Q. Mr. Wirth, so we get this thing started in a manner I can understand, you spoke about Mr. Gubitchev walking on the east side of Broadway; correct?

A. That is right.

Q. On the east side of Broadway -- here is a picture of it; will you turn around, please, and look?

A. Certainly.

Q. Is there an intersection on the east side of Broadway, of 192nd Street and Broadway, or is that a dead end?

A. It is a dead end -- intersection.

Q. Pardon me, 192nd Street appears on the West side of Broadway; correct?

A. That is right.

Q. And on the east side of Broadway, you have 193rd Street -- that is where the stationery store is; correct?

A. Cigar and candy store.

Q. And they also sell stationery, don't they?

A. I imagine so.

Q. And they sell greeting cards, too; don't they?

A. I don't know.

Q. On the other side, in this dark picture (indicating) is the Terrace Drug Store; correct?

A. Yes, sir.

Q. On the east side of Broadway, it runs from 193rd Street, which is the intersection with Broadway, and it runs all the way down -- as seen in the picture marked in evidence as Exhibit No. 16 -- in other words, on the east side of Broadway you have one block running from the stationery store, or whatever you call it, the intersection of 193rd Street, all the way down to Fairview Avenue, am I correct, one block?

A. I have never been on Fairview Avenue.

Q. Just a moment. You said you saw the girl walk south on the east side of Broadway, and you lost her to sight; is that correct?

A. She went out of my view.

Q. All right. You said that Mr. Gubitchev came up on the east side of Broadway and he walked to the Terrace Drug Store; is that correct?

A. That is right.

Q. Well, if he walked on the east side of Broadway, the street he had to walk past would be Fairview Avenue on the east side; is that correct? Look at it, please. I am not trying in anywise to trip you. Here is 193rd Street (indicating); there is the block we are talking about. These pictures were prepared by the Government, not by me; and here is Fairview

Avenue at the end of the block (indicating); am I correct?

A. I couldn't see up that far, sir.

Q. You mean to say that you never went that one block from the time the case started until now?

A. That is right, sir.

MR. KELLEY: The map will show that, Counsel.

MR. PALMER: I am not interested in maps. This is much more interesting.

BY MR. PALMER:

Q. Did you ever go as far down as that one block and cross over and see there was an Interborough Seventh Avenue Subway entrance in the middle of the next block between Fairview Avenue and the block below; did you ever see that?

A. No, sir.

Q. Do you know Mr. Malley?

A. Yes, sir.

Q. Did you know at the time that you were stationed -- by the way --

MR. PALMER: Let me have a picture of the lot where they were stationed. I am trying to place where you were.

BY MR. PALMER:

Q. You know where the subway station is of the Eighth Avenue Subway?

A. Yes, sir.

Q. What is the name of this avenue (indicating); do you

know?

A. Bennett Avenue.

Q. Bennett Avenue. And Bennett Avenue is to the right or to the west of Broadway; am I correct?

A. When you are facing downtown, that is correct.

Q. Or when -- well, it is to the west toward the river?

A. That is right.

Q. All right. And over here -- this is Nagle Avenue (indicating), isn't it, running in here?

A. Yes, sir.

Q. So Nagle Avenue runs all the way from here to 193rd Street on the northeast corner of which is the cigar and stationery store that you and I have been talking about; correct? Don't you know that?

A. Nagle Avenue doesn't, sir; it is Broadway.

Q. Pardon me. This is Broadway that we are looking at (indicating); isn't that right?

A. That is right.

Q. Over here there is a gasoline station (indicating); is there not?

A. Yes, sir.

Q. You either go up Broadway, or if you want to go up to the right of Broadway, you can go up Nagle Avenue, can't you, toward Dyckman Street; isn't that true, or don't you know?

A. Which way are we heading now, sir?

Q. You are heading either north or south; you can't change the position of Nagle Avenue. Nagle Avenue is on the east side of the street, isn't it, because on the other side of the street you have the park running all the way down?

A. That is right.

Q. Nagle Avenue is on the side where the park is not on; the park runs for about eight blocks; and this (indicating), if you please, is Bennett Avenue?

A. Yes, sir.

Q. And it runs around in a semi-circle, as pointed out by Mr. Whearty, until it hits the subway station, 190th Street, the entrance to it; and it continues right along way beyond?

A. I don't know where it goes to.

Q. You never found out? When you spoke to the topographer in this particular case -- you did speak to Mr. Gauthier, did you not?

A. Yes, sir.

Q. Didn't he show you the map of the location?

A. Yes, sir.

Q. Were you ever in all your life in this vicinity, other than in this particular case; were you ever there before?

A. Yes, sir.

Q. Well, now, let's see. Anyway, we have agreed, have we not, that over here in this particular place in front of the park, on the east side of the street, is a stationery store

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on 193rd Street, which has been referred to in this picture over here, am I correct, Picture No. 17 (indicating)? That is where it is, isn't it?

A. That is right, sir.

Q. And you are in this parking lot over here on the other side (indicating)?

A. Yes, sir.

Q. Therefore, we take picture No. 22, and you have another view of the same parking lot; and you are at the extreme end, opposite 193rd Street entrance; am I right?

A. Directly opposite 193rd Street.

Q. That is the stationery store (indicating)? All right, now, while you are in this particular car -- you have a radio, haven't you, in there?

A. Yes, sir.

Q. And you came there for the purpose of surveilling Gubitchev and the girl?

A. Yes, sir.

Q. Do you know Mr. Malley?

A. Yes, sir, I do.

Q. Have you ever spoken to Mr. Malley about this case, since the case started; have you?

A. Since this case started?

Q. Yes. When did your surveillance start?

MR. KELLEY: Let's get the answer.

MR. PALMER: I want to get a date. I will withdraw it.

BY MR. PALMER:

Q. When did you first start on the surveillance in this case?

A. January 19.

Q. And after January 19, when is the next time you made any surveillance in this case?

A. January 20.

Q. And after January 20, when did you make a surveillance?

A. January 22nd.

Q. After that, when did you make a surveillance?

A. January 23rd.

Q. After that, when did you make a surveillance?

A. February 18.

Q. And after February 18, when did you make a surveillance?

A. March 4.

Q. All right. Now, then, in connection with this particular night, did you, from time to time, or did anyone in the car with you in this parking lot, opposite 193rd Street, where the stationery store is -- did you people do any sending of messages to cars below?

A. What people are you talking about?

Q. Naturally, the only people in this case that I want

to talk about are the FBI. Did you send to them from your car?

A. Excuse me, is the question did I send?

Q. Pardon me, Mr. Wirth. What was your occupation before you became an FBI agent?

THE COURT: Let him answer the question.

MR. PALMER: It will take but a moment. I have withdrawn the question.

BY MR. PALMER:

Q. What was your occupation before you became an FBI man?

A. I had none.

Q. You had none? How old are you?

A. Thirty.

Q. Are you a lawyer?

A. Yes, sir.

Q. When did you graduate?

A. 1941.

Q. Did you go in the FBI during the war or before the war?

A. During the war.

Q. What were you doing before you went in the FBI?

A. Student.

Q. What?

A. Student in law school.

Q. What law school?

A. Ohio State University Law School.

Q. How old were you when you went out of that law school?

A. Twenty-three.

Q. How many years was it before you went out of that law school that the war started? What year -- when was Pearl Harbor?

A. 1941.

MR. KELLEY: I object to this.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. Now, I ask you the question, do you know that those people that went in the FBI were excluded from the Armed Service of the United States; do you know that, yes or no?

MR. KELLEY: I object to this.

THE COURT: Objection sustained.

We will suspend now, Mr. Palmer.

MR. PALMER: Very good. May I ask one question before the suspension?

BY MR. PALMER:

Q. Were you ever in the Armed Services of the United States; yes or no, were you?

A. No.

MR. PALMER: Now, let's go.

THE COURT: The jury will pass out.

(Thereupon a short recess was taken.)

BOW/m
am

BY MR. PALMER:

Q Before the recess, Mr. Wirth, we were talking about you were in the parking lot with this car of yours and the gentlemen, Mr. Whearty and Mr. Kelley, have given me a better picture of it. It is No. 18. The store you are talking about -- The Terrace Drug Store at 193rd Street and Broadway on the east side of the street -- correct?

A Yes, sir.

Q And the candy store is on the other side of the corner, northwest corner of Broadway?

A Northeast corner.

Q Northeast corner?

A Yes.

Q Now, turn with me for a moment to picture No. 22. The lot you are talking about is on this picture practically where you had your radio car, right opposite this store, the Terrace Drug Store, and the candy store at 193rd Street; correct?

A That is right.

Q Now, the nose of your car was inside the building line; correct?

A Yes, sir.

Q You were parked with the nose of your car towards Broadway?

A Yes, sir, we were.

Q As you were parked in there, could you see from your car or did you see from your car where your fellow agent was stationed a block below on the east side of the street, or a little over a block below, just below the tunnel entrance?

A No, sir.

Q Did you know at that time how many cars were in the vicinity that you were sending to?

A Approximately.

Q Now, had anyone told you or give you directions to get in this parking lot that you have described at 190th Street and park there?

A 193rd Street?

Q Opposite 193rd Street; did anyone tell you to park there?

A Yes, sir.

Q Who?

A Mr. Granville.

Q And when he laid out this strategy, will you kindly tell me did he give directions, in your hearing or presence, where cars should be?

A No, sir.

Q Did you at that time, before you got up to 193rd Street, in this parking lot, know there was to be a car below the subway tunnel on the east side just below Fairview Avenue?

A Generally, I knew a car would be there.

Q Now, I asked you the question before recess, and you told me you had never been in the armed services of the United States. I ask you what year you went in the FBI?

A 1941.

Q What month?

A December.

Q -How old were you then?

A 23.

Q And you had never been in gainful employment before that time?

A No, sir, not full time.

Q In other words, like myself, I sold ladies' wear in the daytime and went to college at night. You went to college in what way?

A I was in the night law library.

Q When you went in the FBI, did you get any training?

A Yes, sir.

Q Where did your training start?

A Washington, D. C.

Q Where else?

A Quantico.

Q Part of your training, did it consist of being taught how to testify in the court room?

A No, sir.

Q You never attended any classes on testifying in a court

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room, what was proper to be admitted in evidence and the like;
you never went to any school; you never heard any lectures?

A Heard lectures.

Q When you went to law school you heard lectures from
a professor?

A Yes, sir.

Q In the same way -- did you go to college before you
went to law school?

A Yes, sir.

Q In college they teach you by means of professor giving
lectures?

A They do.

Q They teach you to be FBI men by hearing lectures on
various topics?

A Yes, sir.

Q And one of the series of lectures is on how to testify
in a court room; isn't that so?

A Not exactly how to testify in court rooms.

Q You knew you are supposed to tell the truth in the
court room?

A We were told to tell the truth impartially.

Q But you were told to tell the truth as you saw it?

A To our own knowledge, impartially.

Q In connection with telling the truth, you know
that to forgive is divine --

MR. KELLEY: I object.

MR. PALMER: Very good. To make mistakes is human.

BY MR. PALMER:

Q Had you ever been in court before this particular case and testified?

A Yes, sir.

Q What is your grade?

A What do you mean by grade?

Q What grade are you as an FBI man, 11, 12, 8 or 15?

A CAF-12.

Q You are a lawyer. Do you know that in part of our Government a gentleman like Mr. Whearty and a gentleman like Mr. Kelley are P's? They are lawyers?

A Yes, sir.

Q They are P's?

A I do not know that.

Q You do not know Mr. Kelley is a P?

A No, sir.

Q Will you kindly tell me what does CAF stand for?

A Clerical, administrative, fiscal.

Q You are not a lawyer in connection with the FBI?

A No, sir..

Q What is your grade?

THE COURT: He just answered. He said CAF-12.

BY MR. PALMER:

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Q Are there any higher grades than yourself in connection with promotion?

A Yes, sir.

Q What is the highest grade you know of?

A The highest grade I know of definitely is 16.

Q You do know there are grades beyond that, too?

A I think so.

Q What grade did you start at?

A CAF-9.

Q Now, in connection with being in a court room, did you know that in connection with your efficiency rating that from time to time observers of the FBI come to court rooms to hear the agents testify and then grade them in connection with the manner in which they testify; do you know that?

A Which part shall I answer?

Q Any part you like. Do you know there are observers in the court room of the FBI? I do not say in this court room. You know that agents testify. In order to give them efficiency ratings, did you know that observers of the FBI go into court?

A No, sir.

Q You never heard that before?

A No, sir.

Q Have you an efficiency rating?

A Yes, sir.

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Q What is yours?

A Excellent.

Q Did you ever have anything besides excellent?

A Yes, sir.

Q When did you have less than that?

A Three years ago.

Q For how long a period of time?

A One year.

Q Before that did you have excellent as your efficiency rating?

A Yes, sir.

Q Now I ask you the question, did you ever know until now that FBI ratings also include the manner in which a witness of the FBI testifies; did you ever know that?

MR. KELLEY: I object to that. He has testified to that and there is no evidence that is a fact.

MR. PALMER: Bear in mind, I am the one that gets the brunt. Mr. Kelley should not have said, "not so testified," because I say it was so testified, and the jurors are the sole arbiters, and for him to say something is untrue is beyond me.

THE COURT: Let the witness answer the question.

THE WITNESS: Will you kindly restate the question?

MR. PALMER: Read the question.

(Question read by reporter.)

BY MR. PALMER:

Q Did you ever know it?

A My answer to that, sir, is no.

Q So, therefore, so far as your efficiency is concerned, you did not know efficiency ratings also -- you did not know part of it consists of the manner in which an agent upon the witness stand testifies; you never knew that?

A As far as mine goes, no.

Q I am not talking about yours. I am talking about the agents of the FBI. You did not know efficiency ratings included the manner in which they testify in a court room, of course, as to the truth, and the manner in which they present it; you did not know that, did you?

A No, I did not.

Q I am talking about any agent of the FBI. You did not know that?

A We do not discuss our ratings. We do not know.

Q I am not interested in --

THE COURT (interposing): I think he has answered the question.

BY MR. PALMER:

Q I am only interested in knowing whether or not, in connection with efficiency ratings, you knew whether any portion of the efficiency rating, like excellent, good, poor, is in any wise made up from observers' information given as to the

manner in which an agent testifies in a court room in connection with a case.

A I do not know.

Q By the way, you have been living out here with Mr. Murphy and Mr. Daley?

A At the same address.

Q When I say "living" it means at the same address. I do not mean sleeping in the same room. When did you first begin to live at the same address, "with John R. Murphy and with Mr. Daley;" when?

A On April 26.

Q And between April 26 and the present date -- are these two gentlemen still living there?

A No, sir.

Q When did Mr. Murphy go away?

A Mr. Murphy is here.

Q And when Mr. Daley go away?

A Last evening.

Q Now, other than those two gentlemen, what other agents of the FBI lived at the same address?

A Special Agent Brewer Wilson, Special Agent Daniel Garde, Special Agent Martin McGuinn, Special Agent Edwin McCarthy, and there might be others.

Q Don't you know them?

A I would know them, but I do not know whether they

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live there right now.

Q I do not say right now. I am talking about since April 26.

A I understand that. That is what I recall right now. There were probably others.

Q Will you tell me just what time on March 4 that you first observed Miss Coplon, and where; what time?

A On March 4?

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Q Yes, March 4.

A Approximately 7:00 p. m.

Q Was it exactly 7:00 p. m.?

A I say I recall approximately 7:00 p. m.

Q What time on February 18 did you first see Miss Coplon in the Pennsylvania Station?

A Approximately 6:35 p. m.

Q And using your word, approximately what time on February 18 did you see her come there and go and take a bag out of the locker which she rented for ten cents in the Pennsylvania Station?

A Approximately 9:00 p. m.

Q And what time that night, if you know, on February 18, did she put this particular bag in that locker?

A I would say approximately 6:40 p. m.

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Q And did you watch to see whether between 6:40 p. m. and the time you have given us, when she took it out, whether

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this girl came back or anyone else came back with a key and opened that particular lock and took anything out or put anything in?

A No, I did not.

Q Were you watching the locker?

A Not throughout all that time.

Q Most of the time?

A After she left I had dinner. I came back there after talking to the office.

Q You came back?

A That is right; in that vicinity.

Q In so far as you are concerned, as you left watching the locker to go to eat dinner, did anybody else of the agents watch the locker?

A No, sir.

Q In other words, for a period of time the locker was without surveillance?

A That is right.

Q So, anybody could come in that locker, open it and put something in it and take something out and gone away?

A I do not know.

Q She could have done it?

THE COURT: It is argumentative.

BY MR. PALMER:

Q Were you told to watch the locker continuously?

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A No, sir.

Q Did you do that of your own free will and accord?

A I did not watch the locker continuously.

Q I did not say that. Were you told to watch it continuously?

MR. KELLEY: He answered it.

BY MR. PALMER:

Q Who told you to watch the locker at all?

A Mr. Granville.

Q What instructions did Mr. Granville give you concerning watching the locker in which she put her bag?

A Mr. Granville told me if she returned to the locker we should watch her to see whether she headed for Brooklyn.

Q How long did you take for dinner?

A About thirty minutes.

Q If the girl came in during those thirty minutes in which you were at dinner and took the bag out, then you could not surveil her, could you?

A No, we could not.

Q Now, when you saw the girl on the days you have mentioned -- you remember, you gave us a list of days that you watched her?

A Yes, sir.

Q But, I did not know at that time whether you watched Gubitchev or the girl. Will you kindly tell me if you watched

both or only one?

13 A On the dates of January 19, 20, 22, and 23 I was on the surveillance of the Defendant Coplon.

Q And during the period of time -- I do not want to go through all that internally -- did you ever see on those particular dates you just mentioned, from the time you began the surveillance -- that was over in Ocean Parkway, Brooklyn?

A Not necessarily on all the dates.

Q Wherever you began the surveillance from on those particular dates, and on those dates I am talking about now, did you ever see the Defendant Coplon meet Gubitchev?

A Other than March 4?

Q I beg your pardon.

A No.

Q You see, I have not asked all the dates. You just gave me some dates. If you would be good enough to just let me try to shorten this thing, just quickly give me those dates.

A January 19, 20, 22, 23 and February 18, and March 4.

Q Now, on the dates January 19, 20, 22 and 23, from the time you began your surveillance up to the time you concluded your surveillance, did you ever see the girl at any time meet Mr. Gubitchev?

A No, I did not.

Q On those particular dates did you see her give any paper of any kind, anything of any kind to anybody at all?

A I did not.

Q One last question on that score. On these particular dates your surveillance approximated about how many hours a day for each of those days?

A Different dates, but approximately five hours.

Q During those days you also were in the company of other agents?

A Yes, I was.

Q During those particular dates, 19th, 20th, 22nd, and 23rd, did you ever see the girl in the company of her mother?

MR. PALMER: Will you stand up, Mrs. Coplon?

(Thereupon, Mrs. Coplon stood up.)

THE WITNESS: No, I did not.

BY MR. PALMER:

Q On one of those dates did you ever follow them into the home or to the home of a relative of theirs in Jersey?

A No, I did not.

Q Now, on February 18 did you ever see this girl give anything to anybody, including Gubitchev?

A No, I did not.

Q Now, we go back for a moment to where we were before. Now, did you know while you were up there in the parking lot at 192nd Street, opposite 193rd Street, did you know that Mr. Malley was in a car below, opposite the subway station?

MR. KELLEY: You are using March 4?

MR. PALMER: I am using March 4.

BY MR. PALMER:

Q You know that?

A I do now.

Q Did you know Mr. Malley and Mr. Miller were in a car stationed below the subway station on the east side?

A I knew generally they were in that location.

Q Did they in any wise send you any message or did any agent send you any message that Mr. Gubitchev had come out of the tunnel at some time approximating 7:30 that night, tunnel leading from St. Nicholas Avenue to Broadway? One agent said it was about one thousand feet long. Did you know that?

A No, I do not.

Q You have been with these agents who have testified. Did Mr. Malley live in the same house with you at all?

A No, sir.

Q From the time this case started to now, did you ever see Mr. Malley?

A Yes, I have.

Q Have you spoken to Mr. Malley?

A Yes.

Q Have you spoken to Mr. Miller?

A Yes, I have.

Q Did you know Mr. Miller was in this car on that night

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while you were sending messages from 192nd Street on the west side of Broadway, from the parking lot, that Mr. Miller was in this car?

A I knew Mr. Miller was in a car in that general location.

Q On that particular night, before the night was over, did you get any message of any kind that Mr. Gubitchev had been seen by Agent Malley, who was going towards St. Nicholas Avenue, that he saw Gubitchev coming out of the tunnel on the east side of Broadway; did you know that?

MR. KELLEY: I object to that. It is contrary to the record. There is no such testimony, that he saw him come out of that tunnel.

MR. PALMER: I have nothing to say except the jury is going to do the deciding.

THE COURT: Yes.

BY MR. PALMER:

Q Did you know Mr. Malley had passed Mr. Gubitchev about 50 yards from the exit into Broadway and as he passed him by Mr. Malley said he got a side view and indicated to the jury how it was done? Did you know anything about Mr. Gubitchev being seen in the tunnel on March 4 at about 7:30 by Mr. Malley?

A No.

Q Did you know whether or not any other agents were on the other end of the tunnel, on the St. Nicholas

Avenue --

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A At any time of the evening?

Q Yes.

A Yes.

Q What time did you hear the other agents were on the other end?

A It was not on March 4 that I heard an agent was there.

Q I am only talking about March 4.

A No, sir.

Q Were you present at a conference in the office of Mr. Granville or anyone in the Federal Building on the night of April 22, 1949 before this case started on April 25; were you there at a conference?

A Yes, sir.

Q Were Mr. Kelley and Mr. Whearty there?

A They were.

Q Do you know of your own knowledge whether Mr. Kelley or Mr. Whearty were taking notes of what the various agents were saying?

A No, I do not.

Q About how many agents were present at this conference prior to the trial?

A I would say approximately 10, 14.

Q Maybe more?

A They were not there all the time. They came in and

went out.

Q What time did you get there?

A I was there from approximately 10:00 o'clock until 12:00.

Q You were not there before 10:00 o'clock?

A I was but I was not at the conference.

Q You mean you were in the building?

A Yes.

Q When did you join the conference?

A At approximately 10:00 p. m.

Q Before this particular date, or about April 15, were you present at a conference when Mr. Gauthier and other agents were present going over topography and the manner in which this thing was brought about, this arrest?

A Yes, I was there.

Q How long did the conference with Mr. Gauthier last?

A On that evening, approximately five hours.

Q With Mr. Gauthier?

A That is right.

Q About how many agents were present?

A Again, approximately ten.

Q You told your direct story here in about 15 minutes or 20 or 30 minutes, this morning?

A Yes.

Q What were you there five hours for? What were you

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telling them during the other 4½ hours?

A What was going on at the conference?

Q No, what were you telling them that made you stay 4½ hours?

MR. KELLEY: What do you mean by "them"?

MR. PALMER: I beg your pardon.

BY MR. PALMER:

Q You were there five hours. You told your story in less than 30 minutes this morning. Was anything asked of you concerning any other dates excepting February 18 and March 4?

A No, there was not.

Q Did you ever tell Mr. Whearty or Mr. Kelley or did they ask you about whether you had Miss Coplon under surveillance on any other date; did you ever tell them that?

A Personally? I can't recall of ever having told either one personally.

Q Who did you tell personally?

A I was assigned by Mr. Granville.

Q Did you make reports to Mr. Granville of what occurred on the 19th, 20th, 22nd and 23rd?

A Yes, I did.

Q On the night when you were with Mr. Gauthier, did you hear the other agents testify?

A Not all of what they said.

Q You heard part of it?

A Yes, I did.

Q Was Mr. Malley there?

A Yes, he was.

Q And during the time that you were with Mr. Kelley and Mr. Whearty, on the night of April 22nd, was Mr. Malley there?

A I can't recall whether he was there or not.

Q Did you make any notes of who was there in any report?

A No, I did not.

Q In other words, did you or any agent, to your knowledge, make any report at all of the time you spent with Mr. Gauthier on April 15 or about April 15?

A Not to my knowledge.

Q Did you ever make a report or having a report made of the time you spent with Mr. Kelley and Mr. Whearty going over this case on April 22nd?

A No, I did not.

Q Don't you have to account for all the time that you work for the FBI? Don't you have to make a report of all hours? Don't you have to make a report?

A You mean of the daily activities?

Q Yes. Did you?

A Yes.

Q Did you make a daily report of the activities with Mr. Gauthier or of activities with Mr. Whearty or Mr. Kelley?

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A I just put a notation.

Q What was the notation?

A . Attending conference with Mr. Whearty and Mr. Kelley from approximately 10:00 p. m. to 12:00 midnight.

Q During that period of time or any period of time you were with Mr. Gauthier, did you hear any agent make any mention of the fact that on the night of March 4 that they saw Mr. Gubitchev walking towards the entrance, to the exit, of the tunnel on 193rd Street and Broadway while that agent was walking in the direction of St. Nicholas Avenue?

MR. KELLEY: You mean 190th Street, don't you? You said 193rd Street.

MR. PALMER: Thank you very kindly.

BY MR. PALMER:

Q At any of the times you mentioned, these conferences, did you ever hear any agents mention the fact that while Gubitchev was walking toward the entrance at 190th Street and Broadway, the Seventh Avenue tunnel, that an agent was walking in the other direction towards St. Nicholas Avenue direction?

A No.

Q From the time this case started up to the present moment, while you were talking to these agents -- I am talking now about since you have been in Washington, April 26 -- did you ever hear from the lips of any agent or from Mr.

Whearty or Mr. Kelley that on the night in question at about the hour of 7:30 p. m. that Mr. Malley had gone into this particular exit or entrance of the Seventh Avenue subway on the night of March 4 and that while walking in there towards the east, towards St. Nicholas Avenue, that he saw Gubitchev walking towards the exit or entrance at 190th Street and Broadway; did you ever hear that mentioned?

A I cannot recall it.

Q And during the period of time you have been here in Washington, at no time, to the best of your knowledge, has that ever been mentioned in your presence?

A No, it has not.

Q You did say you saw Mr. Gubitchev in the Terrace Drug Store; correct?

A I said I saw him enter the Terrace Drug Store.

Q Again we point to picture No. 18. There is the Terrace Drug Store opposite the candy store (indicating). Have you read your reports before you took the witness stand, the reports you made in connection with this matter?

A Before I took the witness stand?

Q Isn't that what I said?

A Yes, I did.

Q When did you read them last?

A After I dictated them.

Q When was that?

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A That was around March 8.

Q This happens to be the month of May. Will you kindly tell me the last time you read the report before you came on the witness stand today?

A Definitely, as I recall it, it was on April 22nd.

Q April 22nd was the night when Mr. Whearty and Mr. Kelley were there. How did you get the reports; who gave them to you?

A They were charged out to me.

Q What do you mean by charged out to you? Maybe the jury knows, but I do not. What do you mean by that?

A We have a file system and if there is any information in that file that you are entitled to, you can have it charged out to you. You can review it at your own convenience. That is what I did.

Q That means that you take it out to read to refresh your recollection?

A You take it out.

Q Did you take it away with you?

A I did not.

Q You can if you want to refresh your recollection take it home with you, as long as it is charged out to you?

A Not this report.

Q Why was it so vital? Were the affairs of the nation at stake with this report?

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A I think so.

Q Who told you that? You never saw the woman do anything, you said so. Who told you this was vital to the nation's welfare?

MR. KELLEY: I object to him saying he never saw the woman do anything.

MR. PALMER: Just a moment.

BY MR. PALMER:

Q You knew that someone told you that this girl was going to pass papers involving the national defense to Mr. Gubitchev, who worked for the U N; you were told that, weren't you, by somebody?

A She was going to pass?

Q Did they say she had passed --

MR. KELLEY: We have a question under fire.

BY MR. PALMER:

Q You answered me by saying "she was going to pass." I asked you the question, did anyone ever tell you before you went on this case, that they had seen this girl pass any papers of any kind?

MR. KELLEY: That is not the question.

MR. PALMER: I withdraw it. We will get there. I want to do what Grant did before Richmond.

BY MR. PALMER:

Q Will you kindly tell me, before you went on this case,

who did you talk to, that is, before January 19; who did you talk to?

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A Special Agent Miller and Mr. Granville.

Q Were they together?

A No, they were not.

Q Who did you talk to first to get instructions; who?

A On that night I talked to Mr. Granville first.

Q I did not say on what night. I do not know what night. I am asking you, before you started on surveillance on January 19, who gave you instructions or directions to go on surveillance?

A On January 19 Mr. Granville did.

Q Up to that time had you ever heard the name of this girl, Coplon, in all your life, Judith Coplon; up to the time you got instructions regarding it, had you ever heard her name?

A No, sir.

Q Up to that particular time, had you ever seen any Russians in the city of New York or elsewhere?

A Yes, sir.

Q Up to that time had you seen Russian nationals?

A Yes, sir.

Q Have you ever surveilled any Russians in this country?

MR. KELLEY: I object.

MR. PALMER: I want to finish.

THE COURT: Very well.

BY MR. PALMER:

Q Have you ever surveilled Russians prior to January 19?

MR. KELLEY: Object.

MR. PALMER: What is your anxiety?

BY MR. PALMER:

Q Do not answer my question until Mr. Whearty or Mr. Kelley have a chance to object and His Honor has a chance to make a ruling. Will you do that, please?

A Yes, sir.

Q Fine. Prior to January 19, 1949, were you ever on a surveillance of any Russian ambassador, any Russian consul, or the UN delegation of the Russians to the United Nations, at any time prior to that time, on official business; yes or not?

MR. KELLEY: Are you finished with your question? I object to it.

THE COURT: Objection sustained.

BY MR. PALMER:

Q Did you know the characteristics of Russian faces as distinguished from American faces?

A Generally.

Q When you saw Mr. Gubitchev for the first time, where was that?

A On March 4?

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Q I said when you saw him for the first time where did you see him?

A On March 4 at approximately 7:24.

Q And you were on the other side of the street inside of a car, a Pontiac car belonging to the FBI?

A That is right, I was.

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Q Up to that particular time had he been pointed out to you?

A No, he had not.

Q And who in the car that you were in said, "There goes Gubitchev", or words to that effect?

A Special Agent Roger W. Robinson.

Q Did Robinson tell you how he first came across Gubitchev?

A He was on previous surveillance. He said he had been identified as Gubitchev.

Q Did he tell where this surveillance took place?

A Yes.

Q Where did he say it took place?

A Generally, in the vicinity starting at 193rd Street and Broadway on the evening of January 14.

Q Did he tell you on that particular night that he had given up the pursuit at 116th Street and Broadway, where the Seventh Avenue subway is?

A He did not tell me.

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Q Did he tell you that on the following morning he had surveilled this gentleman, Mr. Gubitchev, as he came out of the UN headquarters of the Russian delegation at 68th Street and Park Avenue; did he tell you that?

A I can't recall.

Q Then, when you saw Mr. Gubitchev he was on the east side of the street going in the drug store?

A That is right.

Q What time was it when you saw Mr. Gubitchev going in the drug store?

A Approximately 7:24 p. m.

Q And approximately from what direction was he coming?

A He was walking north on the east side of Broadway.

Q Then, if he was walking north, he was coming, was he not, from the direction of Fairview Avenue, which is one block on the east side, walking north in the direction of Fairview Avenue; am I correct?

A Yes.

Q When you saw him, did you know he was going to come -- did anybody send you any radio message that he was on the way up? Please remember what I am asking. You people had five or six cars in the vicinity sending; is that right?

A Right.

Q And receiving?

A That is right.

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Q And Mr. Granville had given orders where these particular cars were to be placed?

A Generally.

Q And Mr. Granville had told you that they had begun a surveillance of Mr. Gubitchev's movements from wherever he started on 42nd Street going north?

A No, he did not tell me.

Q Where did he tell you Gubitchev was coming from?

A The first time I knew Mr. Gubitchev was in that vicinity was when Special Agent Robinson pointed him out to me about 7:24.

Q Before 7:24 did you get any radio message in the car that you were in to the effect that Gubitchev had been under surveillance, where he was, anything about his movements?

A I can't recall.

Q Just a moment. I am trying my best to have you recall. You got to this particular spot you are talking about, which appears in this picture No. 22 -- you got to this particular spot in the parking lot at what time?

A Approximately 6:45.

Q At 6:45 there was no girl in sight, Miss Coplon, and there was no Gubitchev in sight, anything at all about him; correct?

A Right.

Q Where was Mr. Granville then, if you know?

A I understand Mr. Granville was in a radio car.

Q In a radio car?

A That is right.

Q Who told you that? Who told you that?

A He told me that before I left the office.

Q That he was going to go in a radio car?

A Perhaps he would be in a radio car.

Q And perhaps he might not?

A I don't know.

Q Anyway, you are here at 6:45 in this parking lot opposite 193rd Street. Did you get any word over the radio at any time, as you say, before you saw Gubitchev go in this drug store? Did you get any news about him at all?

A As I stated before, I cannot recall.

Q You cannot recall. Well, on the night of April 22, and April 15, when you saw Mr. Gauthier and later on, the Attorneys General who came up from Washington, you said you took your report out, you borrowed it, it was charged against you, just like I buy something on credit and I have got to pay for it--

MR. KELLEY: I object.

THE COURT: Sustained.

BY MR. PALMER:

Q You told us what you mean by charge. You took it away to refresh your recollection?

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A I said I charged it out to me.

Q Did any other agents, to your knowledge, that night or before that night charge out against themselves their reports before Mr. Kelley and Mr. Whearty came over there to question them instead of catechising them?

A I do not know.

Q Now, you are in the room that night with Mr. Whearty and Mr. Kelley. Is there any chair in that room or any desk which is higher than the balance of the chairs in the room that this investigation took place in?

A No.

Q Did you ever go to a moot court?

A Yes.

Q Well, now, in connection with this particular investigation of facts by Mr. Kelley and Mr. Whearty, picture for a moment that you are in the room in question, on the night of April 22. Is there a long table there?

A No, there is not.

Q Where did Mr. Kelley and Mr. Whearty sit and where did the others sit? Did they face each other?

A No, not as I recall.

Q But, it was April 22. You do recall that night, don't you?

A Very distinctly.

Q And, distinctly, as you can recall it, will you please

tell me --

MR. PALMER: May I have that list of 24?

BY MR. PALMER:

Q Here is the list that was furnished by the Government of the agents on the job in this case. It is Exhibit No. 8. Will you please tell me -- you came in about 10:00 p. m., correct?

A That is correct.

Q Was anybody being questioned by anybody at the time that you came in?

A No, not as I recall. It was a general discussion.

Q You mean everybody, like in a Chinese school or Hebrew school, was talking at one time?

MR. KELLEY: I object.

MR. PALMER: I withdraw it.

BY MR. PALMER:

Q You say a general discussion. Did one person talk at a time or did everybody shoot their fireworks with regard to this case at one another?

A One person spoke at a time.

Q Please tell me, in connection with when one spoke at a time, did Mr. Kelley or Mr. Whearty ask one person at a time questions regarding what they had done or had seen in connection with their surveillances?

A They asked what the agents had seen on that night.

Q Will you kindly tell me -- and I am drawing it out as little as possible -- pardon me. In connection with your studying how to testify, is it part of your study to say as little as possible?

MR. KELLEY: I object to that. The witness has been responsive.

THE COURT: The witness answered the question. You may proceed.

BY MR. PALMER:

Q Let's take you, for instance, How soon after you got in was it your time to be asked questions? How many people preceded you?

A I could not say definitely.

Q You were there for hours; correct?

A Two hours.

Q I am asking you, as you came in, did you know Mr. Whearty and Mr. Kelley?

A Yes.

Q When had you seen them before that time?

A Previously in the evening I met them.

Q You came in at 10:00 o'clock. What time did you meet them?

A They came in the office at about 6:00 p. m.

Q Now, on the night of March 4, did you meet Mr. Whearty down in the Federal Building?

A Yes.

Q What time?

A Approximately 12:00 midnight, I think.

Q Do you know what time he got there?

A No, I do not.

MR. PALMER: May I at this particular point, so as to save questioning, ask Mr. Whearty, not under oath, to tell me what time he came to that building that night?

MR. KELLEY: I do not know if this is the proper place to take that up.

THE COURT: He could say what time he came there.

MR. WHEARTY: I would say I got there around 10:15 in the FBI building, maybe a little later.

MR. PALMER: What time did you come to New York.

MR. WHEARTY: I came on the Congressional. I reached New York at about 7:35 p. m.

MR. PALMER: Where were you until 10:15?

MR. WHEARTY: I went by my wife's and took my mother home. When I got there I telephoned the FBI office, which was a little before 10:00 o'clock. Then I went in a radio car. They picked me up and I was told this was after the arrest. I was informed that these people had been arrested, and I was then asked if I would come down to the FBI office. I was asked where I was. I gave the location. Mr. Belmont, who is the assistant special agent in charge, told me that he had a car in the vicinity and

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that he would have one come over and pick me up and where would I be.

MR. PALMER: What time was that?

MR. WHEARTY: I would say I got out on the street around five or ten minutes after 10:00 and it took about twenty minutes or so going down.

MR. PALMER: Then, Mr. Whearty, it means that you did not give the order for the arrest that night of those people.

MR. WHEARTY: I am perfectly willing to answer the question. No, I did not.

MR. PALMER: Did you know who gave the order for the arrest to Mr. Granville; do you know?

MR. WHEARTY: No, I do not. No order was given to Mr. Granville that I know of.

MR. KELLEY: Just a moment. He has stated that he plans to put my associate on the witness stand.

MR. PALMER: I am going to save him a lot of bother. I do not know what the excitement is about. After all, they are Government men. They could not do anything that is wrong and they have no ambition.

MR. KELLEY: I object to this. It is highly irregular.

MR. PALMER: There is no such thing as regularity in a court room.

THE COURT: Now, you understand. You proceed.

MR. PALMER: Isn't it a fact that the United States Supreme

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Court said when it comes to justice that you could through all forms in order to get justice?

THE COURT: That is what I am going to do always.

MR. PALMER: I know you will. That is what I wanted to know, who it was gave the orders to have them arrested.

THE COURT: It has been answered. It is an irregular proceeding to ask counsel questions. If you want him to testify --

MR. PALMER: I want him to testify. In a case of this kind I am a neophyte in criminal law. I have not tried a case in so many years of that kind that I have barnacles. It never pays to try criminal cases because the criminals are always poor. You know that.

THE COURT: Proceed.

MR. PALMER: I will goback to him.

BY MR. PALMER:

Q Now, in connection with this Terrace Drug Store, it is a fact, then, as you told us, that from the time that you got there at a quarter of 7:00 that night -- it was a quarter of 7:00?

A That is right.

Q And parked yourself, and from the time that Gubitchev started from wherever he started until he got in front of this Terrace Drug Store you had no knowledge of any kind given over the radio or by telephone or otherwise of the whereabouts or

the movements of Gubitchev?

A That is right; I do not recall.

Q Did you ever leave your radio car from the time you got up there at this station at 192nd Street in the parking lot up to the time you saw Gubitchev; did you ever leave the car for a minute?

A Yes.

Q When did you leave it?

A I left it a few minutes before 7:00 o'clock.

Q And where did you go?

A To help push a lady out who was stuck in the snow directly opposite us.

Q There was snow there?

A There was.

Q That was a laudable thing to do. When you came back to the radio car, who was in it?

A Special Agent Robinson.

Q Anybody else?

A That is all.

Q Did Mr. Robinson tell you anything at all about the fact, while you were pushing the lady's car out of the snow, that word had come as to any of the movements of Gubitchev?

A I do not recall.

Q Does that mean that it did not come or that you do not remember?

A I stated that I could not recall and I do not remember.

Q Before you left that night on this surveillance, did Mr. Granville say to you or did Mr. Miller say to you that they were going to watch and surveil Mr. Gubitchev; was that said to you?

A At what time?

Q Before you started on the surveillance.

A If he appeared in the vicinity we were to surveil him.

Q I did not ask you that. What I am asking you, were you told by either Mr. Miller or Mr. Granville that this was going to be surveillance of Mr. Gubitchev's movements that night to see where he was going?

A Your Honor, I would like to have him state what time, what time we were to surveil him.

Q I have never said anything about your surveilling him. I want to be as calm as you are. I will put it another way. It is as simple as I can make it. Were you informed of the fact, before you started on the surveillance, that Mr. Gubitchev and the girl might meet around 193rd Street and Broadway?

A Yes.

Q In order that the two should meet, following Kipling's language, never the two shall meet, will you kindly tell me was anything said to you about the fact that the movements of Gubitchev, where he started from, would be put under surveillance?

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A No.

Q Was anything said about the fact that the girl's movements were going to be put under surveillance?

A Yes.

Q Do you know the expression "cherchez la femme"?

A I have heard of it.

Q It means find the woman and you will get the man.

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MR. KELLEY: I object to this. In the first place, I am not satisfied that is what it means.

MR. PALMER: Have you studied French?

MR. KELLEY: Yes, I have.

MR. PALMER: I did not know Mr. Kelley was a Frenchman, too.

BY MR. PALMER:

Q In connection with the instructions, was anything said to you about the fact that the movements of this girl would begin at the Pennsylvania Station?

A Yes.

Q And who told you that?

A Mr. Granville.

Q Did Mr. Granville tell you how he knew that the girl was leaving Washington to go to New York?

A No, he did not.

Q Did you know?

A No, I did not.

Q Did you know at the time the girl left Washington that she had any papers of any kind with her?

A No, I did not.

Q Did Mr. Granville tell you he knew she had any papers with her?

A No, he did not.

Q Did he tell you at what time the girl was going to leave Washington?

A No, I don't think he did.

Q You came to a certain definite train. What train did you go to?

A I did not go to the train.

Q Where did you go?

A On March 4th I went up to the parking lot.

Q You did not go to the station at all?

A No, I did not.

Q When you went to the parking lot, did anyone tell you that the girl after she came from Washington and got into New York, instead of going uptown to a rendezvous would go home and stay; anybody tell you that?

A No.

Q Well, if the girl changed her mind that night between Washington and New York, and instead of going uptown she went home to her mother and father, the father living then, in Ocean Parkway, Brooklyn, how were you going to be informed of

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the fact that the girl was not going uptown?

MR. KELLEY: I object to the question. It is argumentative.

THE COURT: Sustained.

BY MR. PALMER:

Q Were any instructions given to you concerning when you should discontinue your operations in this parking lot if the girl did not go uptown?

A No, there were no instructions.

Q Then, so far as you are concerned, if the girl did not go uptown, how late were you to stay in the parking lot?

A That would depend upon what else had taken place.

Q How were you going to be informed of that?

A I always call the office.

Q Did you ever call the office from the time, 6:45, until the time the girl got into sight?

A Yes, I did.

Q I did not know that. When did you call the office? The last time we had you pushing a lady out of the snow.

MR. KELLEY: Object.

THE COURT: Sustained.

BY MR. PALMER:

Q Will you kindly tell me when, for the first time, you called up the office, when?

A The first time on that evening between --

Q I did not say between. I asked you the first time

that evening you called the office.

A Called the office the first time about 6:30.

Q Where were you then?

A I had just eaten in a restaurant.

Q This girl is always eating, too. What restaurant were you eating in?

A I cannot recall the name of it.

Q Where was it, what street?

A As I recall, it was near the intersection of Broadway and, I think, Dyckman.

Q Are you sure about that?

A As I say, that is what I recall.

Q Who was eating with you?

A Special Agent Robinson.

Q How long did it take you to eat?

A Approximately 40 minutes.

Q When did you start?

A About 6:00 o'clock.

Q When did you start from lower New York to go up there?

A As I recall, I think it was about 5:00.

Q Could you get uptown in an hour?

A I think so.

Q Did you know at the particular time when you spoke to Mr. Granville what train he said the girl was coming in on?

A No, I don't recall.

Q Did you know what time the train was going to get into New York?

A It might have been mentioned, but I do not recall.

Q Anyway, where was Mr. Granville before he gave you the instructions to go uptown?

A In the office.

Q And Mr. Miller was there, too?

A Not in the same office.

Q But in his office?

A Yes.

Q You said you spoke to Mr. Miller also?

A That is right, I did.

Q Did Mr. Miller tell you he was going to go uptown also?

A Yes, he did.

Q Did he tell you where he would be?

A He said, generally, he would be in the vicinity that you outlined to me previously. I think he mentioned to me he would be near 189th Street and Broadway.

Q Had you ever been up there before in your life?

A Driving by, yes.

Q No, no. What do you mean, driving by?

A I have gone straight through on Broadway from top to bottom.

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Q If you did all of that, did you know there was a tunnel entrance or exit at 189th Street, opposite 190th Street on Broadway; did you know that, of your own knowledge, before that night?

A No.

MR. PALMER: May I have the picture on top of the hill, St. Nicholas Avenue?

MR. KELLEY: You tell us what picture you want.

MR. PALMER: Your Honor, I am asking for a picture of St. Nicholas Avenue, the subway entrance, the arcade; or I will take the drug store at 193rd Street.

MR. WHEARTY: You are referring to Exhibit 57.

MR. PALMER: Give me the big one.

MR. WHEARTY: You are talking now about Asbell Pharmacy?

MR. PALMER: Certainly.

MR. WHEARTY: That is the first time you have mentioned it.

MR. PALMER: Thank you, Mr. Whearty, and thank you, Mr. Kelley.

MR. KELLEY: Delighted.

BY MR. PALMER:

Q Since this case started, I mean since you became connected with it on January 19, were you ever up on St. Nicholas Avenue at the subway station, which is on the west side of the street, just sort of diagonally across from this

Asbell Pharmacy; were you ever there?

A I drove past it.

Q With whom?

A Special Agent Robinson.

Q When?

A On the evening of March 4, previous to 7:00 o'clock.

Q In other words, on the night in question you got instructions to go to 192nd Street and park there; correct?

A 193rd Street.

Q And park there?

A That is right.

Q And in doing that Agent Robinson -- who was driving, Robinson or you?

A Special Agent Robinson.

Q Who was receiving or sending?

A At that time neither one of us.

Q Who does it? Who did it in that car?

A Both of us.

Q Then he passed by the Asbell Pharmacy at 193rd Street, on the other side of which is the entrance to the subway, the Seventh Avenue subway; is that correct?

A I don't know. I stated I had passed that general location.

MR. PALMER: Let me have the picture on the other side, the big picture.

MR. KELLEY: We have no big picture.

MR. PALMER: You have a picture of the arcade.

MR. KELLEY: Small picture.

MR. PALMER: Thank you.

MR. WHEARTY: When you refer to it, I call your attention to the small letters.

MR. PALMER: I will have a better picture. This is a darkened picture of it.

BY MR. PALMER:

Q Look at this picture and tell me whether this darkened picture in any wise shows any exit of the subway, which is at 191st Street and Seventh Avenue. Do you see any exit or entrance in that darkened picture?

MR. KELLEY: May I object to this remark? Is counsel trying to indicate it is taken wrong?

THE COURT: The jury has seen the picture; at least, I assume they have.

MR. PALMER: Look how dark it is. You cannot see anything in it.

We will withdraw this one. Here is another one, 57-F.

BY MR. PALMER:

Q Here is an exit to the street. Did you know on the night of March 4 or before that time that just below the Asbell Pharmacy, which is at 190th Street and St. Nicholas Avenue, and that drug store is on the northeast corner, and

right across the street on the east side of the street, in the middle of the block, there was an entrance and exit to the Seventh Avenue subway; did you know that?

A I probably noticed it when we drove by.

Q That is all I am trying to find out. As you drove by that particular place did Robinson tell you anything at all about the fact that he had ever seen anybody walk in or out of that particular entrance?

A As I recall, no.

Q You are now in St. Nicholas Avenue. About what time of night is it? That is before you began eating. Because Dyckman is far beyond 193rd Street.

A Probably 5:50.

Q Was it light?

A That evening, yes.

Q Here you are up on St. Nicholas Avenue and 190th Street; and then you came to Broadway later on; is that right?

A Yes.

Q Is Broadway down in the valley?

12/

A At that place you might call it between or in a valley.

Q As you were there, do you know where the Eighth Avenue subway is at 190th Street and Tryon Avenue station; do you know anything about that?

A Yes, I have seen it.

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MR. PALMER: Let me have a picture of that particular place.

BY MR. PALMER:

Q You are up here on St. Nicholas Avenue, and you look across. You say the day was clear. Could you see from St. Nicholas Avenue up there across to Fort Washington Avenue, just at the corner where this subway station is, the 190th Street station on Eighth Avenue; could you see across up there in the air?

MR. KELLEY: Just a moment. I object to this question and to this line of questioning, because it is beyond the scope of direct examination.

MR. PALMER: I am making him my witness.

MR. KELLEY: The method or means or route as to how he got up to the point is not material. We are way off the reservation and we object.

MR. PALMER: I claim that the pictures that have been shown to this jury unfairly depict the fact that these particular propositions are on an even scale. I want to show Your Honor and the jury that St. Nicholas Avenue up there in the air and Fort Tryon is hundreds of feet up in the air, and a mountainside, and the Broadway subway is a thousand feet, or thereabouts, below.

THE COURT: We have been informed of that.

MR. PALMER: The pictures have never shown it.

THE COURT: You are using the pictures. You ought not to use pictures that you think are not right. The objection is sustained.

MR. PALMER: I only show the pictures so far as what the pictures depict. The other things they do not depict I can not show from pictures they have brought here. I want to know the reason why they brought that kind of pictures.

THE COURT: The objection is sustained.

BY MR. PALMER:

Q Now I ask you this one question, and wait for His Honor to rule on it. If Mr. Kelley and Mr. Whearty have an objection, give them a chance.

Do you know whether or not up there on St. Nicholas Avenue, as you look down, about how far below St. Nicholas Avenue is Broadway?

MR. KELLEY: I object for the same reason stated. It has nothing to do with this man's direct testimony.

BY MR. PALMER:

Q Didn't you go up there on St. Nicholas Avenue with Mr. Robinson and go down about Dyckman Street and go to the restaurant?

MR. WHEARTY: We object to it. It is immaterial.

THE COURT: Let him tell.

BY MR. PALMER:

Q Isn't it down below Dyckman and Broadway?

A Dyckman Street -- we have traveled St. Nicholas until we turned off on Dyckman and there is where we had dinner.

BY MR. PALMER:

Q We have you at dinner. When you left dinner we have you on Broadway riding down to the parking lot. You are in the lot now. Will you kindly tell me whether there is a height of over 500 feet between St. Nicholas Avenue, where the subway station you just told us about is, and the spot you were stopping at, 193rd Street and Broadway, on the west side; is it over 500 feet higher to go to St. Nicholas Avenue subway?

MR. WHEARTY: We object. It is immaterial.

MR. PALMER: It is very important.

THE COURT: Let him answer.

THE WITNESS: Would you rephrase your question?

MR. WHEARTY: There is no showing this witness is qualified.

MR. PALMER: Anybody who has ears and a mouth --

MR. KELLEY: I object to the bombast. He can keep his voice down.

MR. PALMER: Mr. Kelley has the loudest voice in Washington and he talks about bombast.

MR. KELLEY: Counsel can keep his voice down.

THE COURT: We must pass it. Let him answer that and we

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will pass it.

BY MR. PALMER:

Q Will you kindly me, as you sat there at 192nd Street or 193rd Street, in this lot, about how high above that, as you look to the east, is the St. Nicholas Avenue subway station? Will you look at me?

A I did not look at the St. Nicholas Avenue.

Q Is there a mountainside --

MR. PALMER: Let me have the Fairview Station.

THE COURT: Let him answer whether he has observed it.

BY MR. PALMER:

Q Did you, in any wise, notice the fact as to whether on the east side, going towards Nicholas Avenue, which you came down, whether St. Nicholas Avenue is above Broadway?

A Yes.

Q About how high above Broadway?

A I did not pay any attention.

Q Is it over 1,000 feet?

MR. KELLEY: Objection.

THE COURT: Sustained.

BY MR. PALMER:

Q Now, as you got to park this particular car of yours, and you told us about the Bennett Avenue station of the subway being behind you -- this is Bennett Avenue station, isn't it (indicating)?

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A Yes, sir.

Q And up there where the apartment houses are, that is where the 190th Street station of the Eighth Avenue subway is; isn't that so?

A I think so.

Q Now, I ask you the question, to the best of your recollection, these buildings on top of the Fort Washington Avenue are alongside the Eighth Avenue subway station there; isn't that so?

A I think so.

Q In so far as that is concerned, these buildings up there, about how high are they above Broadway, down where you are parked, about how high?

A I would say approximately 250 feet.

Q 250 feet?

MR. KELLEY: Do not argue. He said so.

BY MR. PALMER:

Q Did you ever measure it?

A No, sir.

Q Now, then, in connection with the St. Nicholas Avenue, this drug store we spoke about a moment ago in this other picture on St. Nicholas Avenue -- are the buildings, to the best of your knowledge, from your sight, on St. Nicholas Avenue, as high as the buildings on Fort Washington Avenue, which appear in the picture which we just looked at, picture

No. 22; are they as high?

MR. KELLEY: If he knows. There has been no qualification of this witness.

MR. PALMER: I object to this interruption. What right has he to tell a lawyer if he knows?

THE COURT: I cannot put up with this.

MR. PALMER: Why he should he do anything like this?

THE COURT: You may answer the question.

BY MR. PALMER:

Q Will you kindly --

THE COURT (interposing): You have asked the question.

THE WITNESS: I do not know.

THE COURT: I knew that would be the answer.

Ladies and gentlemen of the jury, have you been comfortable during the days you have been confined? It is not confinement, except I am keeping you together. Are you well taken care of at your lunches?

(The jurors nodded in the affirmative.)

THE COURT: Thank you very much. You will be excused until 2:00 o'clock. You can retire with an officer of the Court.

(Thereupon, at 12:30 p. m., the Court recessed until 2:00 p. m. this day.)

WATSON
bd

AFTER RECESS

(Thereupon the trial was resumed at 2:05 p. m.)

Thereupon --

ROBERT J. WIRTH,

resumed the witness stand and testified further as follows:

MR. PALMER: Your Honor, pursuant to your permission, I took with me at lunch the two papers which have been offered for identification. The numbers are 70 and 71. There were offered in evidence. With the understanding, Your Honor -- and I am not trying to make a bargain with the Court -- that will have the right to cross-examine with regard to what isn't here --

THE COURT: What is in there; yes, you will.

MR. PALMER: - I have no objection to both of them being marked in evidence, so as to save all the time and trouble.

THE COURT: Very well.

MR. PALMER: The only thought I had in my mind, Your Honor, is this: May I be pardoned? If Your Honor will look at this particular photostatic copy, it is a very poor one; so if they make a better one, you don't have to lose your eyesight trying to find it.

MR. WHEARTY: We will try to do that.

MR. KELLEY: We can try.

MR. PALMER: There is only one other gift I want. In order to save time and trouble, if I could have a copy of the

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log which is now in evidence, and a copy of the photostatic paper, which is supposed to answer certain questions regarding her background, so I could take it with me instead of taking it away from the Clerk.

THE COURT: Yes. I wonder if we could have some copies made? .

MR. KELLEY: We could take it home tonight and have them both rephotostated.

MR. PALMER: Fine. I have no objection to their going into evidence.

Your Honor understands I am not trying to make a bargain; I am simply trying to save time.

THE COURT: I understand. They are admitted in evidence and it is without objection.

(Thereupon the said documents,
Government's Exhibits 70 and
71, were received in evidence.)

MR. PALMER: The funny thing is, when I am left alone at lunch, I can see through 25 pages in less time than I can do it in the court room in asking two questions. It shows there is something wrong with me.

CROSS-EXAMINATION (Cont'd)

BY MR. PALMER:

Q. Now, Counsellor, before lunch we had Mr. Gubitchev in front of this store on the southeast corner of 193rd Street and Broadway (indicating); that is the Terrace Drug Store; we

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have you across the street; we don't have to go over that again, in a radio car with the other agent, Mr. Robinson; and then you said you didn't know Mr. Gubitchev; but then he hove into sight; and the question I asked you, and I want to know whether you refreshed your recollection, was this: I asked you the question whether or not you were instructed to keep this girl Coplon under surveillance before you started off before five o'clock that night by Mr. Granville down at the FBI building or Federal Building in Lower Manhattan; and you said you were told to keep her under surveillance; correct?

A. That is right, when she reached that vicinity.

Q. I asked you the question, at the time you spoke to Mr. Granville and then Mr. Miller, if you weren't told that they were going to keep Mr. Gubitchev under surveillance because they expected the two of them to meet; and I think you said, what, they were going to keep them under surveillance or not?

A. I stated that I did not know.

Q. I see. And then you told me -- if I am in error, please correct me now, that from the time you got up here (indicating), going around past this drug store at St. Nicholas Avenue -- you remember that -- and 190th Street -- I won't ask you how you got up there -- you told me that from the time you got from Lower New York -- that is, you started from the FBI building before five o'clock; correct?

A. That is right.

Q. It took about an hour to get up here?

A. That is correct.

Q. From there, it took some more time to get to Dyckman Street and Broadway, where you went to eat?

A. That is right.

Q. Dyckman Street is a pretty wide street, isn't it, a pretty active street?

A. Yes.

Q. You told me you took about 40 minutes to eat; correct?

A. That is right.

Q. You and Mr. Robinson to eat?

A. That is right.

Q. You told us while you were there, you made a telephone call to your office; correct?

A. That is right.

Q. Then you said you went on to Broadway off of Dyckman Street; you came down to Broadway across the park which, on the right-hand side, is unbroken for at least eight blocks, and on the other side broken up, because it has the side streets, the east side. Then you told us you finally reached 192nd Street in this parking lot and you parked about what time, 6:45?

A. That is right.

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Q. Then when you parked there, you said it took until about sometime after 7 o'clock until you saw Gubitchev; correct?

A. That is right.

Q. What time was that?

A. I first saw Mr. Gubitchev about 7:24.

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Q. All right. Now, I ask you the question, from the time that you left Lower New York, throughout the time of the journey to the upper part of New York, to Washington Heights, to the restaurant, in the restaurant, out of the restaurant, down to 192nd Street, and there at 192nd Street in the parking lot, 193rd Street, waiting until you saw Mr. Gubitchev at the time you just mentioned, 7:24, did you ever hear a single word over the radio concerning anybody else's surveillance of Gubitchev or where Gubitchev was or what he was doing, to the best of your recollection? Did you hear a single word?

A. I did not.

Q. All right. You had been told before you started, you started knowing about the fact that they were going to surveil Mr. Gubitchev; is that right? That is your best recollection?

A. Yes, I understand they were to surveil Mr. Gubitchev.

Q. You didn't know at what time the surveillance was to begin, did you?

A. That is right.

Q. Now, I ask you the question, sir, if a person, let's say a person in this court room, Mr. Kelley, Mr. Whearty, or myself, is not under suspicion, and let's say Miss Coplon or her mother is under suspicion, do the FBI, so far as you know, surveil the person who is not under suspicion, or do they only surveil the person who is under suspicion?

MR. KELLEY: I object to that, speculative, hypothetical.

THE COURT: It is argumentative.

MR. PALMER: I am only asking him a question.

THE COURT: You can ask him what he did.

MR. PALMER: He had nothing to do with it.

THE COURT: You are asking about the practice. We are not concerned with that. We want to know what was done that night.

MR. PALMER: I will get there in a moment, Your Honor, because after all is said and done, Your Honor is not an FBI, nor is anybody of the jury; and here we have an intelligent witness; and all I want to know is what their custom is; because after all, the FBI are in a groove; they do what they are told to do, testify and the balance; and I believe, Your Honor, in order to be able to understand how to get out of that groove, I have a right to ask that question.

THE COURT: It is wholly immaterial. Objection sustained.

MR. PALMER: Very well.

BY MR. PALMER:

Q. Do you know what counter-espionage is?

A. Yes.

Q. Can you tell me, to your knowledge of the FBI, in connection with the FARS -- you know what that is, don't you? Do you know what FARS stands for?

A. Would you state to me what you understand it means?

Q. Do you know what FARA stands for?

A. No.

Q. Don't you know the work of the FBI, amongst other things, is to follow the foreign agents registration? Do you know that?

A. Yes.

Q. Do you know that amongst the duties of the FBI, in accordance with "Crimes and Criminal Procedure, Title 18, United States Code," that part of the work of the FBI is to follow through on foreign agents registration statements?

A. That is right.

Q. To see whether or not, amongst other things, if foreign agents who do not register, should register, and if they do register, find out whether they are guilty of espionage against our country; isn't that so?

A. That is right.

Q. Then you do know what FARS stands for, now that I reminded you of it; don't you?

A. That is right.

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Q. Now, I ask you the question, in connection with Mr. Gubitchev, before you started on this surveillance, did you know or have you been told that our country, to protect itself against foreign countries and their agents, have counter-espionage agents in various places, in embassies, consuls -- will you please look at me? Your eyes shouldn't roam over there.

MR. PALMER: I am talking to the Court. Your Honor didn't see it. I am going to ask the gentleman, through the Court, to look at me and not in that direction to the right.

THE COURT: Very well.

BY MR. PALMER:

Q. Do you know whether or not -- just answer yes or no -- our country, through the FBI, or in any other fashion, attempts to protect itself against foreign interference, foreign countries' espionage, by having counter-espionage; yes or no?

A. Yes.

Q. And does that espionage -- will you please look at me?

MR. PALMER: I beg Your Honor's pardon. I can see his eyes rove; and you couldn't.

THE COURT: No, I don't say I could.

MR. PALMER: Counsellor, will you please look at me?

THE WITNESS: Yes.

BY MR. PALMER:

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Q. That espionage, so far as you know and that you have heard, that includes -- I am not going beyond that for any state secrets -- does that include having foreigners or Americans in consulates, ambassadorships or in the United Nations of other nations, including Russia; do they have such agents, either foreign or Americans stationed there so we can help our country through counter-espionage?

MR. KELLEY: I object to that question.

MR. PALMER: I only want a yes or no.

MR. KELLEY: Just a moment. I would like to state my grounds.

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THE COURT: Very well.

MR. KELLEY: Unless counsel points out wherein that is material here, I think it is obvious to require an answer to that question may, in some measure, affect the counter-espionage this country may maintain.

THE COURT: He is not going into that.

MR. KELLEY: He is asking him, to his knowledge, if we have counter-espionage agents in the Russian Embassy. I object to it on security grounds.

THE COURT: He can answer the question yes or no; and that will end the matter.

MR. KELLEY: May I ask, Your Honor, did you hear the entire question?

THE COURT: Yes, I did.

MR. PALMER: What do you think, Your Honor doesn't hear things in this court room?

THE COURT: There is no revelation.

MR. PALMER: Drew Pearson has it every day.

MR. KELLEY: May I have the question read? He specified particular embassies and places; that is why I would like to have it read.

MR. PALMER: I didn't say particular places; I said any embassy.

THE COURT: If it is a matter of common knowledge, you should not need to ask about it.

MR. PALMER: All of a sudden he must make a mystery out of it.

MR. KELLEY: May I have the question read, Your Honor?

THE COURT: Yes, you may. Will you read the question for counsel?

(Thereupon the question was read by the reporter.)

MR. KELLEY: We object to the question on security grounds.

MR. PALMER: Your Honor has already ruled on the objection.

THE COURT: Let him answer if he knows.

BY MR. PALMER:

Q. Yes or no?

A. Yes.

THE COURT: That ends it.

BY MR. PALMER:

Q. Do you know this man Gubitchev?

A. Yes, I do.

Q. Did you ever know him before the night of March 4?

A. No, I did not.

Q. Since that time, have you ever seen any records of his at the FBI, his words, his fingerprints, his face, his description, excepting as of the night of March 4? Did you ever see any prior record of any kind?

A. At the office?

Q. Yes, outside of March 4, pictures taken that night; did you ever see any other pictures of him, or any history of him regarding crime or anything to do with crime prior to that time?

A. No, I did not.

Q. Did anyone ever tell you that prior to March 4, 1949, this man, Gubitchev, was in any way engaged in any criminal pursuits of any kind or character, forgetting March 4? Did anyone ever tell you that?

A. Yes.

Q. Who did?

A. Special Agents who were on the surveillance.

Q. I am not talking about March 4. I am excepting March 4. Outside of that, did they ever tell you that this man was engaged in any wrongdoing, to the knowledge of any agent, other than the matter of March 4 or anything connected

with Coplon? Anything else; yes or no?

A. No.

Q All right. Now, you said you saw Mr. Gubitchev --

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

BY MR. PALMER:

Q. When you saw him that night, March 4, as you sat in the car, about how many feet away from --

MR. WHEARTY: I don't believe that one is in evidence. If we can have it marked, I think you will have no objection to it.

MR. PALMER: Anytime you want any picture marked, you can mark them. I am trying to get one in evidence.

MR. WHEARTY: Take the one you had, because that gives both sides of Broadway.

MR. PALMER: Just a moment. Mark that afterwards because that won't make much difference. We were working with this one. Let's work with it for a minute, with Your Honor's permission. Let's see if I have the right one.

BY MR. PALMER:

Q. Talking about Exhibit 17 now, here is where you are stationed, right, right over here (indicating)?

A. That is right.

Q. And the drug store is over here on the corner (indicating); correct?

A. Yes, it is.

Q. All right. How many feet away were you from the man at the time you first saw him, Gubitchev?

A. I would say approximately 150 feet.

Q. Now, at the time that you saw Gubitchev -- fix that in your mind; have you got it in your mind now?

A. Yes.

Q. If there was no report of surveillance as to the man Gubitchev from the time that you saw Mr. Granville and Mr. Miller before five o'clock down there, was there anything of any kind from the standpoint of surveillance to indicate that that man Gubitchev was under suspicion? Do I make myself clear?

A. No, you don't.

Q. I will try it again. You knew that this girl had been under surveillance by you and others from at least January 14 on; is that right?

A. Yes, sir.

Q. Did you know whether the girl had been under surveillance, or had you been told, in Washington prior to January 14; yes or no?

A. That she was under surveillance?

Q. In Washington.

A. I understand she was.

Q. Who told you that?

A. Mr. Miller or Mr. Granville; I don't know which.

Q. Did they tell you when the surveillance began in Washington of the girl?

A. No, they did not.

Q. Do you know whether it began two years before?

MR. KELLEY: Object.

MR. PALMER: I beg your pardon.

THE WITNESS: I stated I do not know.

BY MR. PALMER:

Q. Now, then, in connection with Gubitchev, you had never been on surveillance with him, had you?

A. I had not, prior to that night.

Q. Now, I ask you the question, if Mr. Gubitchev was a counter-espionage agent, and the Government knew his name, and the Government knew where he lived, and the FBI -- when I say the Government -- knew it also, would there be any necessity of surveilling him at all; yes or no?

MR. KELLEY: I object to this question.

THE COURT: Objection sustained; it is argumentative.

MR. PALMER: Exception.

BY MR. PALMER:

Q. Anyway, the man Gubitchev, from the time you heard about him, before five o'clock that night, so far as you know, and you were in the radio car, outside of the time you went out to push the lady's car in the snow on that lot, you have no report of any kind of surveillance?

A. On that night, no.

Q. This was the night of the arrest?

A. Yes, sir.

Q. Now, then, you also told us that you did not know and no one told you over the radio or otherwise -- and if there is any error about it, please correct it now -- you had a recess -- neither Mr. Miller nor anyone in that car, Mr. Malley, who radioed to you a message from in front of this tunnel entrance to the subway, Exhibit 16, that Gubitchev had been seen going out of this particular subway in the neighborhood of 7:30 that night?

MR. KELLEY: I object to this. We went over all this this morning. I objected, there was no testimony he was seen coming out.

MR. PALMER: There again is the danger of my asking any questions. Mr. Kelley, for some mysterious reason, always insists upon putting an answer in the witness' mouth in advance of the witness.

THE COURT: You did go over that matter this morning.

MR. PALMER: I only began it. Irrespective; I may be at fault; but I want Your Honor please to remember this much; that no one in anywise in this court room should know better than Mr. Kelley that in connection with an objection, he has no right to give an explanation to the witness, so a lawyer on the witness stand can catch on to what he wants him to say.

THE COURT: Let's pass on.

MR. PALMER: All right. I don't want Your Honor to admonish anybody; but I am going to ask Your Honor to tell Mr. Kelley hereafter, in the form of alleged objection, he has no right to give testimony as to what anyone else said or didn't say, out of the presence of the witness.

THE COURT: Let's get on.

MR. KELLEY: I made an objection this morning and I make the self-same one now. Counsel has stated there was testimony Gubitchev was seen coming out of that tunnel. I made the objection this morning and you sustained me; I make it again; and I expect to be sustained again as I was this morning.

THE COURT: We are not getting anywhere except to annoy the jury and take up their time. Their time is precious.

MR. PALMER: And so is mine; and so is Your Honor's; and so should be Mr. Kelley's. Your Honor, remember only one thing. When I used the words "going out," or "going out of the tunnel," he insisted on being English with the Court by saying he didn't see him going out of the tunnel.

THE COURT: We have passed that. Go on and ask him.

BY MR. PALMER:

Q. You didn't hear at all that Mr. Gubitchev had been seen going out in the direction of the exit of the tunnel on 190th Street and Broadway, and that Mr. Malley had seen him some 50 yards distant from the entrance, looking out, and

walking in the direction of the exit?

MR. KELLEY: Object on the same grounds stated this morning.

THE COURT: Let him answer.

MR. PALMER: I beg your pardon. I am quoting him now; and you can't misquote anything for me.

THE COURT: Let the witness answer.

BY MR. PALMER:

Q. Go on. You didn't hear that at all?

A. I don't recall of having heard it.

THE COURT: That same answer was returned this morning.

MR. PALMER: I understand that.

BY MR. PALMER:

Q. In connection with the conference that you had with --

MR. KELLEY: Please keep your hands out from in front of my face.

MR. PALMER: What's the matter? I am trying --

MR. KELLEY: I object to his saliva in my face and having his hands pointed in front of me. I resent it and object to it.

MR. PALMER: Your Honor, I am going to ask you to tell this gentleman to remain a gentleman.

THE COURT: Proceed.

MR. PALMER: I am standing over here now. Your Honor wanted me to go back here; and I am back here.

BY MR. PALMER:

Q. Do you know Mr. Gauthier?

A. Yes, I do.

Q. You know Mr. Kelley and Mr. Whearty. I ask you the question, in any of the conferences that you attended, five hours or more with Mr. Gauthier, two hours or less with Mr. Whearty and Mr. Kelley, the 15th of April, or thereabouts, and the 22nd of April, did you ever hear anyone say that they saw this man Gubitchev walk out in the direction of Broadway on the night of March 4 about 7:30, out towards that tall entrance or exit?

A. As I stated, I do not recall of having heard it.

THE COURT: He has answered that all along.

MR. PALMER: That is all I asked for. Very good.

BY MR. PALMER:

Q. Now, then, let's go back for a moment to this drug store, the Terrace Drug Store in Exhibit 18. Now, I ask you how many feet away from the man were you in the car at the time you first saw him?

A. I said approximately 150 feet.

Q. Well, now, we are in a room at the present moment approximately how many feet in length?

A. Sixty-five.

Q. So you were at least two and one-half times further away?

A. That is right.

Q. And you were inside the car; inside the car?

A. That is right.

Q. And it was winter; there was snow on the ground?

A. That is right.

Q. People were wearing overcoats?

A. That is right.

Q. You wore an overcoat, is that right?

A. Yes.

THE COURT: All of that has been covered.

BY MR. PALMER:

Q. When you saw Gubitchev, did you see his full face?

Did you see his full face as you saw Gubitchev walking in the drug store, or did you see his back at first?

A. First I saw his face, before he turned into the drug store.

Q. Full face?

A. Then he was approximately 60 feet --

Q. Pardon me, full face?

A. Side view, as he was coming across.

Q. You only saw a profile? When I walk by you, you only see a profile?

THE COURT: We understand that. There is no need to demonstrate.

MR. KELLEY: What did the witness say about 60 feet?

THE COURT: He was 150 feet. .

MR. KELLEY: Just now he said something about 60 feet;
I heard it.

THE COURT: It is wholly immaterial, wholly inconsequential; but tell him.

THE WITNESS: Your Honor, I stated I first saw Mr. Gubitchev when he was pointed out to me approximately 150 feet away.

MR. PALMER: That is all I asked for.

MR. KELLEY: I want the rest of the answer. Your Honor, he made a further answer. I should like to hear it. I deem it of some importance.

THE COURT: We will have to go back to the record and read it. Can you read that, please?

MR. PALMER: I will withdraw the question entirely and start again.

THE COURT: Just a moment. No, I want to settle this matter. Did you say anything about 60 feet a while ago?

THE WITNESS: Yes, I did, Your Honor.

THE COURT: What was it?

THE WITNESS: I said when I saw him go into the drug store, he was then approximately 60 feet away from me.

THE COURT: All right, that answers the question.

BY MR. PALMER:

Q. I asked you, when you first saw him go in the drug

store, he was how many feet away from you?

A. My answer is, approximately 60 feet.

Q. Is that when you first saw him, when you were in the car, 60 feet?

A. No, I saw him --

Q. The question I asked you, I am asking you again, when you first saw Gubitchev, I ask you how far away from him you were; and you said 150 feet; am I right?

A. That is correct.

Q. Then I asked you, were you in the car; and you said, yes?

A. That is right.

Q. I didn't ask about a second time; I asked you did you see his full face or profile; and you said profile; am I correct?

A. When he was coming down the street, I couldn't even hardly see his face.

Q. Did you see his full face? Was he coming down the street from 193rd Street or was he coming up from down at 190th Street in that direction?

A. He was coming uptown from 192nd Street.

Q. Then you said -- never mind what you say. All right. All right, now, then, did you expect him? Did you expect him?

A. That evening, yes.

Q. Did you expect him at the time you first saw him?

A. Right at that moment?

Q. Yes.

A. We were expecting him momentarily.

Q. Momentarily. What time was it?

A. It was then approximately 7:24.

THE COURT: That has been answered many times.

BY MR. PALMER:

Q. Now, will you kindly tell us why you expected him momentarily at 7:24? You had received no word about his whereabouts. Why did you expect him at 7:24 momentarily; why?

A. Because he had arrived at that scene on January 14, again on February 18, at about that time.

Q. Let's see. Were you there on January 14 when he arrived?

A. No, I was not.

Q. Did you go out on surveillance January 14 of this man?

A. No, I did not.

Q. Well, then, so far as you are concerned, and you are a lawyer, you are now telling us about the fact what someone else told you about the night of January 14; am I right?

A. That is correct.

Q. You know that is hearsay; don't you?

MR. KELLEY: I object to this. He has been asking for

it all during this trial.

THE COURT: We understand.

BY MR. PALMER:

Q. Did you see this man Gubitchev on February 18?

A. I did not.

Q. Did anybody tell you what time he arrived at this particular place on that night?

A. Generally, yes.

Q. I am asking you, did anyone tell you?

A. Yes.

Q. Then you don't know it of your own knowledge?

A. No.

Q. Was there any particular reason why he had to arrive on the night of March 4, momentarily -- I beg your pardon -- momentarily at 7:24? Any reason given by anybody to you; and if so, who gave you the reason?

A. No.

Q. Who gave you the reason? What is the answer?

A. No.

Q. Now, then, you didn't expect him at 7 o'clock, did you, to arrive there?

A. In that general time period, yes.

Q. Now, I asked you the question, do you know of your own knowledge whether Gubitchev was a counter-espionage agent; yes or no?

A. Of my own knowledge, now?

Q. Yes; did you know at that time of your own knowledge, or do you know now of your own knowledge whether he was a counter-espionage agent; yes or no; you are under oath.

A. Yes.

Q. Who told you he was not a counter-espionage agent? I am asking you about your own knowledge. Who told you he was not? I will take my answer from you. Who told you?

MR. KELLEY: Just a moment. I object to these statements made between his questions.

THE COURT: I beg your pardon?

MR. KELLEY: I object to the statements about he will take his answer, or won't take.

THE COURT: That is improper.

BY MR. PALMER:

Q. Who told you he was not a counter-espionage agent?

A. No one told me he was not a counter-espionage agent.

Q. Now, I ask you the question, when you said momentarily, 7:24, had Mr. Gubitchev, to your knowledge, ever told anybody that he was going to arrive there at 7:24 momentarily?

A. Not to my knowledge.

Q. All right. Now, then, he walked up and you said you didn't see him in the beginning, see his face. Now, next door to the drug store, you see the word "Frankway"?

A. Yes.

Q. You are across the street. What is the balance of the sign where it says, "Frankway"? What is on the balance of that sign?

MR. WHEARTY: Object to it as immaterial.

THE COURT: Sustained.

MR. PALMER: I want to test his credibility.

THE COURT: You have tested it.

MR. PALMER: Can I ask that one question?

THE COURT: No, sir.

MR. PALMER: All I can do is take an exception.

BY MR. PALMER:

Q. Did you see the man that night pass by the Frankway?

A. Yes.

Q. Now, as he passed by the Frankway, will you kindly tell me, did you see what was in that store?

MR. WHEARTY: In the Frankway, Counsel?

BY MR. PALMER:

Q. Did you see what was inside that Frankway store?

A. I did not.

Q. On the night of February 18, you told us -- and my friend Mr. Kelley said that when it comes to my chance, I can go into any part of February 18 that I want to -- on the night of February 18, did you follow the girl?

A. Yes.

Q. Now, when you followed the girl, you followed from

Pennsylvania Station, did you say?

A. Just in Pennsylvania station.

Q. At the time you saw her in Pennsylvania Station, did you see her come off the train?

A. Yes, I did.

Q. Was she accompanied or was she surveilled by a Washington agent?

A. I understand she was.

Q. What is the name of that agent?

A. I didn't see any Washington field agents.

Q. Who told you that a Washington field agent accompanied her or surveilled her on the trip down from Washington; who told you that?

A. Mr. Granville told us she was under surveillance when she was coming enroute to New York.

Q. When he told you that, did you see her come off the train or go up the escalator?

A. I saw her come off the train.

Q. When you saw her come off the train, nothing was asked about that, was there anything different about her walk than it was on the nights of January 18, 19, and the other days you surveilled her? Anything different about her walk?

A. Yes.

Q. What was the difference?

A. I observed that she had a shoe that had the strap

broken.

Q. Now, then, in that connection, will you kindly tell me when you surveilled her, did you get down to the point of reaching a repair shop right below the drug store at 193rd Street in the direction of Fairview Avenue?

A. On February 18?

Q. Yes, sir.

A. No, sir.

Q. How far did you get that night?

THE COURT: He is not out there.

MR. PALMER: I want to be sure of it.

BY MR. PALMER:

Q. How far did you get?

A. Pennsylvania Station.

Q. And you remained there?

A. That is right.

Q. I am going to get out of the station. Now, we will go back to March 4. Now, was the Frankway store closed and the lights out at the time that this man passed by the Frankway store on the night, at approximately when you expected him, about 7:24; were the lights out?

A. I do not recall.

Q. The store next to that on the way up, on the same side of the street, what kind of a store is that; do you know?

A. No, I don't.

Q. Now, you stayed across the street in this lot with nothing to do from 6:45 until after 7:24; am I right?

A. No, sir.

Q. What did you do between 6:45 and 7:24, outside of helping the lady push her car out of the snow?

A. I saw Defendant Coplon arrive; observed her actions throughout that time.

Q. Just a moment. You saw the Defendant Coplon arrive on this corner (indicating); correct?

A. That is right.

Q. And how long did she stay on the corner?

A. Approximately six minutes.

Q. Did you mark it down on a piece of paper?

A. No, not right at that time.

Q. How soon after did you write it down?

A. When I arrived at the office that night.

Q. You told us that you looked at your report on April 22nd, when you borrowed it, before you talked to Mr. Whearty and Mr. Kelley. That is what you said before lunch; correct?

A. That is correct.

Q. Have you ever looked at it since that night?

A. No, I have not.

Q. And your recollection is now distinct as to what happened, as to what you read on the night of April 22nd;

correct?

A. Yes.

Q. What time of night was it that you read it?

A. Well, it was between 6 and 10 p. m.

Q. That was April 22nd?

A. That is right.

Q. Where were you on April 25th at 3 o'clock in the afternoon; where were you?

A. In our office in New York.

Q. What were you doing, anything particular?

MR. WHEARTY: We object to this as immaterial.

THE COURT: Objection sustained.

MR. PALMER: Credibility, if Your Honor please. Another question along the same line.

BY MR. PALMER:

Q. Where were you on April 30, 1949, at 4 o'clock in the afternoon?

MR. WHEARTY: Object as immaterial.

THE COURT: Objection sustained.

BY MR. PALMER:

Q. Anyway, you remember it from there. Now, did you know at that time you were going to be a witness in this case?

A. I was told I would probably be.

Q. Who told you that?

A. Mr. Kelley and Mr. Whearty.

Q. And did they tell you to remember the times of the surveillance; did they tell you to do that?

A. I don't recall of them mentioning it.

Q. Now, on April 22nd, did Mr. Whearty and Mr. Kelley go over with you the times that the various things you have told us about today happened on the night of March 4; did they go over it with you, time and place?

A. I told them generally what time things had happened.

Q. Did you tell them specifically, as you are telling it to the jury now?

A. Approximate times, yes.

Q. The way you told it to the jury, you told it to them?

A. I said approximately such-and-such a time.

Q. At the time you told them that, you had looked at your report?

A. That is right.

Q. You haven't looked at it since?

A. That is right.

Q. Is the report with you?

A. No, it is not.

Q. Have you taken excerpts from the report?

A. No, I have not.

Q. You never saw it since that time?

A. I have not.

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Q. The store below the Frankway store, was that lighted at the time?

A. I stated I don't know.

Q. And the store below that, was that lighted?

A. I don't know.

Q. Do you know if there is an entrance to an apartment house in the building where the word "Terrace Drugs" appear? Is there an apartment house entrance there, or exit?

A. I imagine there is.

Q. I don't want imagination. Do you know whether there is one?

A. No, I don't.

Q. And all the time while Coplon was there, and the times you have told us about, you were sitting in the car looking in the direction of the east side of Broadway; correct?

A. That is right.

Q. Now, when Coplon came there, you say she spent six minutes on the outside; correct?

A. Approximately.

Q. And then she went inside; correct? She went in the stationery store; correct?

A. Would you repeat that whole question, please?

Q. Don't you know what I am asking about?

A. I didn't follow you there on those two questions.

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Q. We will go back again with you. She arrived there what time?

A. She arrived in front of the drug store approximately 7 p. m.

Q. She came in front of the drug store?

A. I say she arrived at the drug store.

Q. Before she arrived at the drug store, from what direction was she coming?

A. She was walking north on the east side of Broadway.

Q. You didn't see where she came from?

A. No, I don't know where she came from.

Q. Now, when she got to the drug store, did she go in the drug store?

A. No, she did not.

Q. Did she stop in front of the drug store?

A. Yes, she did.

Q. Did she go back along the same road?

A. She turned back and walked south.

Q. Do you know how far she went?

A. She went out of my sight.

Q. Did you know that agents who preceded you yesterday said she came within 50 feet of the corner of Fairview Avenue?

MR. KELLEY: I object to that.

MR. PALMER: Pardon me.

BY MR. PALMER:

Q. Did any of the agents who testified here yesterday or before yesterday ever tell you, in the presence of Mr. Whearty or Mr. Kelley or Mr. Gauthier as to how far down the block she went, and when and where they saw her?

A. Yes.

Q. Did Mr. Miller tell you about it?

A. I don't think Mr. Miller did. I think Mr. Wilson did.

Q. Mr. Wilson did. Did Mr. Wilson say he was parked in a car below the subway entrance at 190th Street, together with Mr. Malley and Mr. Miller; did he tell you that?

A. I don't recall he stated.

Q. Did Mr. Wilson tell you about the fact he was sitting in the back seat at the time the girl passed by?

MR. KELLEY: I object to this whole line, asking this witness what he was told by Mr. Miller.

THE COURT: Objection sustained.

MR. PALMER: Haven't I got a right to get hearsay on these?

THE COURT: Not on these; we have been over and over this same matter.

MR. PALMER: That is another story. No two witnesses ever tell the same story, except here.

THE COURT: Objection sustained.

MR. PALMER: Very well.

BY MR. PALMER:

Q. Now, then, the girl walked from the drug store down south; did she come back?

A. Yes, she did.

Q. What time was it she got out of your sight?

A. She left my sight about about 7:08.

Q. What time did she come back to your sight?

A. I would say approximately 7:15.

Q. That is about seven minutes that she was out of your sight?

A. That is right.

Q. When she got back to your sight at 7:15, how far did she walk within your sight?

A. She crossed 193rd Street.

Q. And then went where?

A. She continued north for approximately 50 feet.

Q. Beyond the corner store?

A. That is right.

Q. And then did she walk back?

A. That is right.

Q. And after she walked back, where did she walk to?

A. She walked into the candy store.

Q. When she walked in the candy store, you were parked on the other side, 150 feet away or less; correct?

A. Less.

Q. When she walked in the candy store, did you see her get something to drink and something to eat?

A. I did not see her in the store.

Q. You say you saw her go into the store?

A. I saw her go into the store, but not when she was in the store.

Q. In this particular store, there are telephone booths?

A. I don't know; I haven't been in the store.

Q. I have been there. You were across the street. How long did you stay across the street altogether?

A. Approximately an hour.

Q. How long was she in the candy store?

A. I would judge approximately 10 minutes, 13 minutes.

Q. Is that what you wrote down in your report?

A. Yes, sir.

Q. Now, while the girl went into the store, or walked past you and went back towards Fairview Avenue, did you or your associates send by radio to the car at 190th Street information about the girl's whereabouts?

A. We told them that she had arrived in that vicinity.

Q. Did you tell them that she was moving south in their direction?

A. As I recall, we did.

Q. Did they send back and say she was moving back in your direction?

A. I think they did.

Q. In other words, then, before she came back into view, you knew from what they said that she was walking back in your direction; correct?

A. The second time.

Q. When she came back past 193rd Street and walked 50 feet beyond that, did you send that message on?

A. As I recall, we did.

Q. When she went into the store and stayed there for ten minutes, did you send that message on to 190th Street where they were in the car, your fellow-FBI men?

A. I think we did.

Q. Don't you know that you did? That was your job; didn't you?

A. Yes.

Q. Fine. Now, after she got out of the store, will you please tell me, did the girl stand on the corner again?

A. She halted only momentarily.

Q. Momentarily? What is momentarily to you? How long?

A. She glanced up and down the street and then started across the intersection.

Q. Now, then, when she crossed the intersection, did she go past the drug store?

A. Yes, she did.

Q. And did she continue to walk south?

A. Yes.

Q. I didn't ask you this morning if you are married?

A. I am.

Q. I hope you have children; have you?

A. I do not.

Q. I am sorry. Will you kindly tell me, have you ever seen a man and a girl, or a boy and a girl make an appointment to meet on a corner or in front of a place in the winter or summertime, before you were married and since that time --

MR. KELLEY: I object.

THE COURT: Sustained.

BY MR. PALMER:

Q. Did you?

THE COURT: Objection sustained.

MR. PALMER: Very good.

BY MR. PALMER:

Q. The fact that the girl walked up and down, as you spoke about, was suspicious to you, wasn't it; was suspicious because she walked up and down?

A. Yes.

Q. Now, if anybody else on that street walked up and down, waiting for someone to come, who may have missed the appointment, that wouldn't have been suspicious to you, would it, if it was anybody but Coplon; would it?

A. Not necessarily.

Q. Well, aren't you suspicious, of the FBI, of anyone they tell you to be suspicious of; isn't that part of your job?

A. As long as there are facts to substantiate it.

Q. Of your own knowledge, did you know of any facts of any kind to substantiate your suspicion? Did you know any facts of your own knowledge? You are under oath; and remember you are a lawyer. One thing I am asking you of your own knowledge, did you know of any facts to substantiate your suspicion?

MR. KELLEY: I object to the form. Counsel has systematically asked him for information he derived from other sources.

MR. PALMER: And systematically he has objected to it; and counsel said it was hearsay. If I can't ask him about hearsay, and I can't ask him his own knowledge, what can I ask him about?

BY MR. PALMER:

Q. I ask you, of your own knowledge, not anyone else's knowledge, not hearsay, not what someone else told you --

THE COURT: Let him answer.

BY MR. PALMER:

Q. Will you kindly tell me whether or not you knew of any fact to substantiate any suspicion of this girl on the

night of March 4, of your own knowledge?

A. I do not.

Q. Now, if anybody else walked up and down the street, as you have narrated here, anybody of the jury, Mr. Whearty, or Mr. Kelley, in the days before they were married, would the fact that they were walking up and down the street on a cold night in anywise be suspicious to you, even though you belong to the FBI?

MR. KELLEY: I object to the question.

THE COURT: Objection sustained.

MR. PALMER: Very well.

BY MR. PALMER:

Q. Now, then, the girl walks back; and what time was it that she again stopped in front of this drug store; I mean, passed in front of the drug store, what time?

A. After she came out of the candy store?

Q. Yes, and stopped momentarily in front of the candy store. What time was it?

A. At about 7:28.

Q. 7:28. And did she continue to pass the drug store walking south?

A. Yes, she did.

Q. And did you send that?

A. Yes, we did.

Q. Now, before that time, and bear in mind other

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witnesses have testified before you, did you send on the information before 7:28 that at 7:24 Gubitchev was in the drug store; did you send that to the people down below?

A. Yes, we did.

Q. Who did you send it to?

A. All the agents in radio cars.

Q. I see. In other words, you and Robinson, at about 7:24, when momentarily you expected this man, who walked into the drug store and came out with a package, as you say, you had sent on word to the people below that you had seen Gubitchev walk into the drug store; is that right?

A. That is correct.

Q. And about how many minutes later did you see the girl pass by the drug store?

A. About four.

Q. Now, as you watched her pass by the drug store -- and bear in mind I am taking everything in my hands in talking to you, because you said the FBI always tell the truth --

MR. KELLEY: I object to that.

THE COURT: Objection sustained.

MR. PALMER: I withdraw it.

MR. KELLEY: Withdrawal won't serve either.

BY MR. PALMER:

Q. As the girl passed by the drug store, and you are sitting on the other side with Mr. Robinson, did you see her

eyes? You couldn't see her eyes, could you, because she was walking south?

A. I could not see her eyes.

Q. At that time, did you know the color of her eyes?

A. No.

Q. At that time, did you know the contour of her nose?

A. No.

Q. At that time, did you know whether she had full lips or thin lips?

A. No.

Q. Did you know the color of her hair?

A. Yes.

Q. How did you know it?

A. Because I was told by Special Agent Robinson.

Q. Outside of what he told you, did you know it of your own knowledge?

A. I had seen her previously on that night.

Q. On the night when you saw her previously, did she have a hat on?

A. No, she did not.

Q. Now, then, I won't ask you -- did she have any glasses on?

A. As I recall, she didn't.

Q. Now, as she passed by, crossing the curb from 193rd Street across to the southeast side, and she passed by the

drug store, you remember there was a pump in front of the drug store; see that pump, or don't you remember it (indicating)?

A. I see that.

Q. Did you see it that night or do you see it because it is in the picture?

A. I saw it that night.

Q. Did she pass the pump?

A. She must have if she walked south.

Q. Did you see her pass the pump?

A. Yes.

Q. Were there neon lights in this drug store? Were there neon lights that night?

A. I do not recall.

Q. You don't recall. As she passed by the drug store, you are to the north of her on the other side; correct?

A. Directly across from her.

Q. Directly across. Now, listen to what I am going to ask you. Isn't it a fact that you saw this girl, as she passed the drug store, wave a signal to Mr. Gubitchev inside and then continue south?

A. Didn't you see her wave a signal to him?

A. In the first place, he was not in the drug store; and in the second place, I saw no signal.

Q. Wait a moment. I don't understand that. At 7:24, you saw him go in the drug store?

A. That is right.

Q. At 7:28, you saw her walk south?

A. That is correct.

Q. What time did he go out of the drug store?

A. 7:25.

Q. To the exact minute?

A. Approximately.

Q. And when he got out of the drug store, was the girl in the stationery store, the candy store on the corner?

A. She was.

Q. And when he got out of the drug store, where did he walk?

A. He walked south.

Q. South?

A. On the east side of Broadway.

Q. How far south did he walk?

A. About opposite 192nd Street.

Q. And did you notify the people down below?

A. As I recall, we did.

Q. I see. And then a few moments later, about four minutes later, to be exact, she kept on walking on the same side of the street?

A. He had crossed the street.

Q. I didn't hear that.

A. You didn't ask me.

Q. Well, you see, the trouble with you is, I don't --

MR. KELLEY: I object to this "the trouble with you."

It is a question of who the trouble is with.

THE COURT: Now, proceed.

BY MR. PALMER:

Q. You said I didn't ask you; is that right?

A. That is correct.

Q. Did I ever speak to you in all my life?

THE COURT: No need to go into that.

MR. PALMER: I want him to say yes or no.

THE COURT: He doesn't have to answer.

MR. PALMER: I don't want the jury to get the impression the witness told me something. Will you have the record show I never spoke to the man in my life and he never spoke to me?

THE COURT: There is no question of that.

MR. PALMER: This question is going to be objected to, if Your Honor please.

THE COURT: You ought not to ask it unless you think it is proper.

BY MR. PALMER:

Q. Is that part and parcel of the training for examinations in a court room not to answer any question, by an FBI agent asked of him, unless it is asked of him?

MR. KELLEY: I object to that; it is very unfair to this witness.

THE COURT: Yes. Objection sustained. Now, let's pass on.

MR. PALMER: All right.

BY MR. PALMER:

Q. Now, we have the girl for a moment -- and bear with me -- she is in the stationery store. You have him going in the drug store at exactly 7:24?

A. I said approximately 7:24.

Q. You said that is when you expected him, at 7:24 momentarily?

A. About that time.

Q. How soon after he got in the drug store did he go out?

A. Approximately a minute.

Q. That is 7:25?

THE COURT: He said that a while ago.

BY MR. PALMER:

Q. After he got out of the drug store, and we have the girl still in the stationery store, will you kindly tell me when he went out, where did he go?

A. He walked south until he was directly opposite 192nd Street; then he crossed Broadway and he stood in the bus stop on Broadway.

Q. In the bus stop, all right. Now, when he stood in the bus stop, did you people -- where is the bus stop?

A. It is on the northwest corner of Broadway and 192nd Street.

MR. PALMER: Let me have the picture, will you, please, gentlemen, of that particular spot? Thank you.

BY MR. PALMER:

Q. That is 192nd Street, is that right (indicating)?

A. That is right.

Q. Now, you are in the parking lot at 193rd Street?

A. Across from 193rd Street.

Q. Across, that is on the northwest side. Could you, from your parking lot, where you were stationed in that car, see 192nd Street? Could you?

A. Yes, but not the complete entrance to it.

Q. Well, if you could do that, will you please tell me, could you see down as far as Fairview Avenue, which is just one block between 193rd Street? Could you see on the other side -- bear in mind you are on the west side -- this is the east side (indicating); could you see as far down as that? Could you?

A. As I recall, I couldn't.

Q. You couldn't?

THE COURT: Could not?

THE WITNESS: Could not.

MR. PALMER: Could not.

BY MR. PALMER:

Q. Now, then, as Mr. Gubitchev passed you by in the direction of 192nd Street, you didn't know he was going to stop at the bus stop; did you?

A. No.

Q. And at that time, you didn't know when the girl was going to come out of the stationery store; did you?

A. No, I did not.

Q. Did you send word by radio to the FBI gentlemen at 190th Street, at the subway station, to tell them that Gubitchev had passed by on the east side of the street? Did you tell them that?

A. We stated on the air that he had crossed Broadway and was in the bus stop.

Q. At 192nd Street?

A. That is right.

Q. Did you say anything to them about the fact as to which particular bus he was going to be on; did you tell him that?

A. At that time, we didn't know.

Q. Well, let the girl remain in the stationery store for a moment. It won't do her any harm. And come back with me to the bus stop at 192nd Street. When he stopped at 192nd Street, you say you saw him stop there?

A. That is right.

Q. Where were you at that time in the lot?

A. In the car.

Q. Did you get out of the car at all?

A. No, I did not.

Q. You say you didn't?

A. No.

Q. Did Robinson?

A. Yes, he did.

Q. And did Robinson follow down to 192nd Street to see what the man was doing?

A. No, he did not.

Q. Where did Robinson go?

A. He walked a few steps behind the car; saw him standing there; came back and got into the car.

Q. When he got in the car, with you, did the car start to go down in the direction of Gubitchev?

A. Our car?

Q. Yes.

A. No, it did not.

Q. Then did you people send to the people down below, the Miller entourage, did you send them word of the fact that this man had got on a bus going south?

A. We did not send that message.

Q. Was there any other car in the vicinity between you at 192nd Street or between you at 193rd Street and them at 190th Street? Any other radio car with FBI men in it?

A. Not between us, there were not.

Q. Well, you were nearer to 192nd Street; weren't you?

A. Yes, we were.

Q. So, therefore, if they got a message that he was getting on the particular bus at 192nd Street, it came from a car beyond you; is that correct?

A. It would be beyond us.

Q. And that particular part of Broadway sort of curves; doesn't it?

A. Yes, it does.

Q. Curves in toward the park?

A. Yes.

Q. So if it is difficult to see 192nd Street from where you were at 193rd Street, it should be more difficult further up; isn't that so?

A. It should be.

Q. Now, you tell me, where was the next car located?

A. The other car was --

Q. Where was it?

A. Approximately 40 feet from the intersection of 193rd Street and Broadway on the right-hand side facing north.

Q. Let's see. Will you do me a personal favor? Here is the drug store (indicating); and there is the candy store (indicating); and you are over here (indicating); right?

A. That is right.

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Q. Point where the other car was.

A. If you had a continuation of the picture, it would be about right here (indicating).

Q. Right here. Was it on the east side of the street or the west side?

A. East side of the street.

Q. Well, on the east side of the street, the car would have to be pointing north; wouldn't it?

A. It was pointing north.

Q. Then it was pointing toward Nagle Avenue?

A. That is right.

Q. And Mr. Gubitchev was going south, away from Nagle Avenue?

A. That is right.

Q. Will you kindly tell me, do you know the name of the gentleman in the other car, the one that was facing north and could see south?

A. I didn't say he was facing north and could see south.

Q. He had to face north, because -- look here, please. Here is Broadway; the east side faces north; the west side faces south; isn't that so? In other words, if you are in a car riding uptown, you have to be on the east side of the street; isn't that so?

A. That is right.

Q. And if you are in a car going downtown, you have to

be on the west side of the street?

A. That is right.

Q. Well, then, if these gentlemen were in a car facing north on the east side of the street, they would have to look through the car backwards to see what was happening down towards 192nd Street; isn't that so?

A. Exactly what they did, look through the rear mirror.

Q. Fine. Now, you tell me how these gentlemen, if you know, look backwards to see Mr. Gubitchev at 192nd Street. How did they do that? Did they have reflecting glasses?

A. Turned around in the car and looked out the rear mirror.

Q. The rear mirror?

A. I mean, the rear glass.

Q. Whatever it was, something in the rear. Who was it that looked around? Who told you they looked around and saw him?

A. Agent Kolar and Agent Hradsky.

Q. Did you see Kolar around these parts since this case started?

A. Yes, sir.

Q. Is he in the same boarding house with you?

A. No, he is not.

Q. Where does he board?

A. I don't know.

Q. All right. Did you ever see him in that witness room there since this case started?

A. Yes, I have.

Q. And was Mr. Whearty and Mr. Kelley in the witness room at the time you saw Mr. Kolar?

A. I think they were.

Q. And since this case started, you have been in the witness room, too, haven't you?

A. Yes, I have.

Q. And I suppose you said at least, "Hellow," to Mr. Whearty, and at least, "Hello," to Mr. Kelley?

THE COURT: Objection sustained to that.

BY MR. PALMER:

Q. You spoke, I suppose, to Mr. Whearty and Mr. Kelley since this case started while in the witness room; didn't you?

A. Yes, I have.

Q. And some of the witnesses who got through testifying have spoken to you after they got through testifying; haven't they; after they got through testifying they spoke to you; didn't they?

A. Yes, but not about the case.

THE COURT: Of course not.

MR. PALMER: Have I asked you?

THE COURT: Then why ask the other question.

MR. PALMER: He volunteered the answer.

THE COURT: He did exactly right in volunteering that answer.

MR. PALMER: Have I asked to have it stricken from the record?

THE COURT: Your questions were provocative.

MR. PALMER: I am satisfied with the answer, if Your Honor please; I am not complaining.

THE COURT: Now proceed.

MR. PALMER: I am not complaining, Your Honor. Can I say more than that?

THE COURT: Very well, we all understand each other.

MR. PALMER: That is all I am saying; I am not complaining.

BY MR. PALMER:

Q. Now, was the car on the other side of the street north of the candy store that sent the message on that Mr. Gubitchev was at the bus stop?

A. No, we sent the message that he was at the bus stop.

Q. You didn't see him at the bus stop, did you, because it curves there; doesn't it?

A. Not that amount; we could see him standing from time to time in the bus stop.

THE COURT: At this point we will suspend for a few minutes.

MR. PALMER: Very good.

THE COURT: The jury may pass out. Let the court stand recessed for ten minutes.

(Thereupon a short recess was taken.)

BOW/m
pm

BY MR. PALMER:

Q Just before recess we were up here in a radio car on the east side of the street and looking out of the back window; correct?

A That is right.

Q And do they send the message or do you send the message or do they tell you about it and you send through them?

A As I recall, they sent a message he had been there at 7:45. A bus came up and stopped and after the bus passed on he was no longer in the bus stop.

Q You just used the word "7:45," is that correct? Was that a mistake?

A No, I do not think so.

MR. PALMER: Let's read it. May I have the last question and answer read?

THE COURT: Yes.

(The question and answer referred to were read by the reporter.)

BY MR. PALMER:

Q You told us before that he came out of this drug store at 7:25, walked down to the corner, and crossed at 192nd Street, and then waited for a bus. You told us before, and I will put the girl back in the stationery store, that she came out at 7:28. Did you say that?

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A That is right.

Q Why did it take 17 minutes for this man to go from 193rd Street to one block down on the other side of the street? Why did it take him twenty minutes?

A I said he stood in a bus stop and then a bus came along --

Q (interposing) I beg your pardon. I am interested in that 7:45. We have the bus stop at 192nd.

THE COURT: He understands that. He was explaining.

BY MR. PALMER:

Q Will you kindly tell me where does the 7:45 come in?

A He walked south on Broadway, on the east side.

Q He crossed over and stood in the bus stop?

A Yes.

Q This particular crossing to the bus stop from the drug store, how long did that take?

A Possibly a couple of minutes.

Q Would it take that many minutes before the bus came down?

A He did not take the first bus.

Q Weren't the two buses together?

MR. KELLEY: Let him answer the question.

THE WITNESS: As I recall, two buses passed. He was still left standing in the bus stop.

BY MR. PALMER:

Q Then what bus did he take?

A Then two more buses came along. As I recall, they were together. The first one stopped at 192nd Street and then there was another following that a short distance. I myself did not see him after those two buses cleared that vicinity.

Q Well, you are in 193rd Street, on the other side of the street, and the buses must have passed you by because you are facing Broadway, aren't you?

A That is right.

Q And you saw four buses pass by; is that right?

A I cannot state definitely. I say I recall about that many.

Q You do recall -- you said 7:45. Did he get in the bus at 7:45?

A I said I did not see him get in the bus but he was not left standing after that bus left.

Q You said you could see the bus from where you were?

A I said I could see it.

Q What time did the bus leave that corner?

A The bus left at approximately 7:45.

Q We have the bus at 192nd Street, one block down from this street we have the girl in the stationery store at 7:28 -- is that when she came out?

A That is right.

Q And she walked on the east side of the street?

A That is correct.

Q And you sent a message to the effect that she was on the way down?

A That is correct.

Q Then the girl walks down; right?

A That is correct. She continued walking south.

Q South one block is Fairview Avenue from 193rd Street; correct?

A I understand that is right.

Q Here is where your agents are, right below that (indicating). They said they were about 50 feet from the corner, just below the subway entrance.

A Generally, I knew they were in that vicinity.

Q And the bus stop is one block above this, 192nd Street?

A That is correct.

Q Well, then, the girl left at 7:28 from in front of that stationery store, and the man got on the bus at 7:45; then as the girl came by -- it takes a couple of minutes to go to the corner. Mr. Gubitchev was on the other side of the street, wasn't he?

A That is correct.

Q And therefore she should have seen him?

MR. KELLEY: That is argumentative.

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MR. PALMER: Will you forgive me for a moment?

MR. WHEARTY: Could we use the picture that shows 192nd Street?

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MR. PALMER: May I say something. When the two gentlemen start arguing with one another, who should have precedence? I would like to have each one make their objection. I want to hear what they say.

THE COURT: Your question is argumentative. I will have to rule on that.

MR. PALMER: Very good.

BY MR. PALMER:

Q You knew that the other people, Malley and the others, were right below here (indicating)?

A I said I knew they were in that general location.

Q Did Mr. Malley tell you he got out of this particular radio car and walked just across the street to the Kasbec station and looked north and then went back to the car and then came out again and went back, and then went in the subway, and went in the entrance at about 7:15, leaving Mr. Miller and the others in the car; did he tell you that?

A No.

Q You never heard it until you hear it now?

A Not to my knowledge.

Q And you do not know whether it is true, what I am saying?

THE COURT: Objection sustained to that.

BY MR. PALMER:

6 Q Now, at any time before you got to court today, did you ever tell this story regarding the two of them, one being in the stationery store, one in the Terrace Pharmacy, at or about the same time; did you ever tell that to anybody before you came to court today?

A Certainly.

Q Who did you tell it to?

A I told it to the other agents who were on the surveillance.

Q Did you tell it to Mr. Miller?

A Certainly.

Q Did you tell it to Mr. Granville?

A Certainly.

Q You have told it, of course, to Mr. Whearty and Mr. Kelley; you told it to them, too?

A That is right.

Q Now, we leave you with that picture. Now you are still at 192nd Street. Where did you go from there, on the night of March 4; where did you go?

A We were in the car parked in the parking lot at 193rd Street.

Q Gubitchev had passed by; the girl had passed on. How long did you stay there?

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A We stayed there until approximately 9:00 o'clock.

Q What were you waiting for?

A Waiting to see whether they would come back and have another meeting.

Q Have nother meeting; is that what you said?

THE COURT: That is what he said.

BY MR. PALMER:

Q At any time before you got through waiting, did you ever see them meet anywhere?

A I did not.

Q On that day did you ever see them meet at all?

A I did not.

Q On that night you did not see them pass anything?

A No, I did not.

THE COURT: He said he did not see them meet.

MR. PALMER: I have to ask the questions. Your Honor knows the reasons. You have been a practicing lawyer before you became a judge.

THE COURT: Undoubtedly that ought to give me some experience and judgment about these matters.

MR. PALMER: I do not want to forget you have been a trial lawyer in addition to being a judge.

BY MR. PALMER:

Q Will you kindly tell me, sir, at 9:00 o'clock did

you get any instructions?

A No, I did not.

Q Did you hear at 9:00 o'clock anything about an arrest?

A No, I did not.

Q At 9:00 o'clock where did you go with that radio car?

A Went downtown.

Q On your own?

A Yes, sir.

Q Without any instructions?

A That we did.

Q Before 9:00 o'clock, before you started, did you go to a telephone anywhere around there to telephone to headquarters; did you telephone?

A No, we did not.

Q Then, you started downtown. Where did you go downtown? Were you in on the arrest?

A No, I was not.

Q Where did you go?

A I went downtown via the Parkway to 14th Street, crossed on 14th Street.

Q Fourteenth Street. What time did you get to 14th Street? You mean on the Parkway?

A That is right.

Q East side or west side? There are two, you know?

A Hudson.

Q That is the west side.

A That is right.

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Q What did you go down to 14th Street for? If you wanted to go to your office, you go all the way down to Canal Street, don't you?

A That is right.

Q In other words, I have driven along there, too. You go down to Canal Street and from there you go to Chambers Street --

THE COURT (interposing): Let's do not go into that.

BY MR. PALMER:

Q Why did you get on 14th Street?

A We were told that Defendant Coplon and Gubitchev were in that vicinity.

Q Who told you that?

A It was announced on the radio car.

Q Where were you when you got that message?

A We were still in that parking lot at 193rd Street.

Q In the parking lot what did you hear over the radio?

A We heard that Defendant Coplon and Gubitchev were seen downtown.

Q Where downtown?

A I think at approximately 9:00 o'clock they were around 42nd Street.

Q Did you hear over the radio about the fact that one

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of the operatives did not get in the same bus with them and the bus door had been slammed in his face by the bus driver?

A I did not hear anything about a bus door slamming in his face.

Q Did you hear anything at all about they were not under surveillance from 42nd Street to a point below 22nd Street; did you hear that over the radio?

A No.

Q Did you ever find it out from any source?

A It is my belief they were under surveillance.

Q You believe they were under surveillance from 42nd Street all the way down to 14th Street?

A Not all the way.

Q Not all the way?

A As I recall, they were picked up somewhere in between.

Q If they are under surveillance, why are they picked up?

A The surveillance was again picked up somewhere in between 42nd Street and 14th Street.

Q They got on the bus, you said, at 42nd Street and Ninth Avenue; am I correct.

A That is correct.

Q If they got on the bus at 42nd Street and Ninth Avenue, did anybody say they were not under surveillance?

A I understand they were not under surveillance.

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Q That is what I asked you. How did you get that information?

A Over the radio.

Q Then, did you hear over the radio that they again were put under surveillance at a particular street, 22nd Street?

A As I recall, it was somewhere in between 42nd Street and 14th Street.

Q Did you get instructions of any kind over the radio to go to 14th Street and Ninth Avenue?

A We did not.

Q Well, then, you went to 14th Street on your own?

A That is correct.

Q And on the way down did you get any further instructions that they had been picked up again at 22nd Street?

A As I recall, we heard that they had been placed under surveillance.

Q On the way down, you are riding along Hudson Parkway; you were not riding along very speedily?

A We were going at a fair rate of speed.

Q Did you know that night before you got to 14th Street that Mr. Granville or Mr. Scheidt or anyone else was going to arrest the two of them whenever they got together?

A No, I did not.

Q When for the first time did you find out they were

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arrested or to be arrested; when did you find it out?

MR. KELLEY: I object.

MR. PALMER: I withdraw it. There is nothing the matter with it, however. I will withdraw it anyway.

BY MR. PALMER:

Q Will you kindly tell me, did you find out that night before they were arrested that they were to be arrested; when?

A No, I did not.

Q Now, you are down at 14th Street. Fourteenth Street and where?

A Fourteenth Street and Ninth Avenue.

Q And when you got there, were any radio cars there of the FBI?

A Yes.

Q What cars were there?

A There was a car there that had Special Agent Dan Garde in it. I understand Martin McGuinn was also in the car.

Q Any other radio cars there?

A At that time, no.

Q Later on?

A There was one car, I understand, that went out of commission, which was ahead of us.

Q Who was in that car, the one that went out of commission?

A I understand Mr. Miller was in it and Mr. Daley.

Q Any other cars around there?

A As I recall, that was all at that time.

Q Now, you are at 14th Street and Ninth Avenue with these cars around. What instructions, if any, did you get then, about 9:00 o'clock?

A We received no instructions. However, we were told that Defendant Coplon and Gubitchev had gotten on the BMT subway.

Q At where?

A I understand it was at 14th Street and Eighth Avenue.

Q And in that connection did you get that over the radio?

A Yes, we did.

Q Did you at any time before getting that information stop off to use the telephone?

A No, we did not.

Q When you say "we" you are talking about you and Mr. Robinson?

A That is correct.

Q Where did you proceed from there?

A We cruised around in that general vicinity.

Q Of Ninth Avenue?

A We started at Eighth Avenue and 14th Street and headed east on 14th Street.

Q Why didn't you head south?

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A Because the BMT Canarsie subway happens to run east.

Q That is why you did it?

A That is correct.

Q Did you go to the end of the subway line?

A No, we did not.

Q On the way across town, crossing all the streets,
and I will not mention them again, where did you get your next
news about Gubitchev and the girl?

A The last news we had she was on the subway, Canarsie
line, and had gotten off at Second Avenue.

Q Second Avenue?

A Third Avenue.

Q What is it?

A I think it is Third Avenue.

Q Are you sure?

A As I recall, that is what was stated.

Q When you said Second Avenue, that was a slip of the
tongue?

THE COURT: That is wholly unimportant.

BY MR. PALMER:

Q Now, when, when they got off there, where were you
people?

A We were then on 14th Street.

Q And where?

A As I recall, we were in the vicinity of Union Square.

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Q Is that where Klein's is on the square?

A That is right.

Q Where Auerbach's is on 14th Street side?

A Yes.

Q Now, you are over on Union Square. There is a park there, isn't there?

A That is correct.

Q Did you get any further news there when you were at the park, Union Square, Klein's, Auerbach's; did you get any further news then?

A No.

Q What did you do then?

A We had a flat tire.

Q Another flat tire? What did you do with the flat tire?

A We parked the car and went into the office.

Q Went into what office?

A In our office.

Q You are at Union Square?

A That is correct.

Q Where did you get the flat tire?

A As I recall, I think it was on Fourth Avenue.

Q And where?

A Fourteenth Street.

Q You are at 14th Street and Fourth Avenue. That is

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a very busy thoroughfare; is that correct?

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A That is correct.

Q The heart of New York, the East Side?

A That is correct.

Q Which side of the street did you get the flat tire on?

A As I recall, it was on the west side.

Q There is a Nedick's store --

THE COURT: Let's pass that.

BY MR. PALMER:

Q What did you do with the car; you have a flat tire;
what did you do with it?

A We turned the radio off. We parked the car along the
street and we called the office and we were advised that the
arrest had been made, and we then proceeded into the office.

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Q In other words, with the flat tire, you call up the
office and they say the arrest was made. What time did you
get word that the arrest had been made?

A I think when we called the office it was 9:40 p. m.

Q Did they say who made the arrest?

A No.

Q Then you went to the office?

A That is correct.

Q You did not bother about 15th Street or anywhere
else; you did not see the arrest?

A No.

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Q You went to the office. I hope to have you off the witness stand shortly. I suppose you will be glad to get rid of me in a few minutes. You got down to the building. What time did you get down to the building?

A Approximately 10:00 p. m.

Q When you got down to the building, was Gubitchev there?

A Yes, he was.

Q Was the girl there?

A Yes, she was.

Q Where did you see Gubitchev and where did you see the girl?

A They were both on the sixth floor.

Q Were they both in your examination rooms?

A As I recall, they were both in an interview room, different interview rooms.

Q Had they been photographed, etc.?

A No, they had not.

Q Had they been searched yet?

A I do not know as to Defendant Coplon. Gubitchev had not been searched.

Q At any time during the interviews that took place that night, were you present?

A Yes, I was.

Q Who did you interview?

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A Gubitchev.

Q Who was present when you interviewed Gubitchev?

A Present were Thomas McAndrews and myself. We were the ones who did the interviewing. The other person present throughout the interview was Special Agent Dan Garde.

Q McAndrews is the gentleman who had previously been on a surveillance together with Miss Manos?

A I understand that is correct.

Q Did you see Miss Manos that night?

A Yes, I did.

Q When you interviewed Mr. Gubitchev that night, you had never spoken to him in your life?

A No, I had not.

Q When you interviewed him, did Mr. Gubitchev tell you that he had gotten anything from this girl?

A He did not.

Q Did he say he got nothing from the girl?

THE COURT: He has answered that. He said he did not.

BY MR. PALMER:

Q Did Gubitchev say he gave the girl anything?

A He did not.

Q Did he say he gave her money for betraying our country?

THE COURT: Do not shout.

BY MR. PALMER:

Q Did he say he gave this girl any money for betraying

our country?

MR. KELLEY: My objection is he is going beyond direct examination. If he wants to make him his own witness, all right.

THE COURT: You know what the answer will be.

BY MR. PALMER:

Q You never spoke to me in your life, did you?

THE COURT: No, sir; he did not.

BY MR. PALMER:

Q I am asking you did Mr. Gubitchev say he gave this girl any money to betray our country; yes or no?

A He did not say he gave her any money.

Q Did you warn him of his rights, even though he was an alien?

A Yes, we did.

Q What did you say to him?

A We told him he had the right to legal counsel and he did not have to tell us anything concerning the incident.

Q Did you take notes?

A Yes, I did.

Q Did you keep the notes?

A I kept the notes until I dictated my report.

Q And then you destroyed the notes?

A That is correct.

Q In other words, you had a log in which you gave the

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results of what you thought the man said?

A That is correct.

Q Who told you to destroy the notes?

A No one told me to destroy my notes.

Q You always destroy notes when you ask people and they do not give you the answers; do you destroy the notes of the questions you asked?

A Not always.

Q In this particular case you did, didn't you?

A That is correct.

Q Was that because you were afraid of complications with a foreign power?

A No, it was not.

Q Who told you to destroy the notes?

A I stated no one told me.

Q Mr. Whearty was there that night. He said that before.

He was there, wasn't he?

A That is correct.

Q You know he was the general counsel who was going to conduct this situation before the grand jury and the trial; you knew that?

A I knew he was there handling it that night.

Q You know he was the lawyer sent from Washington with Mr. Kelley to give you people a preliminary talk before you went on the witness stand; you knew that?

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A He was up there talking to the agents.

Q Did you ask Mr. Whearty that night when you saw him whether you should destroy your notes of the kind of questions you asked Gubitchev?

A I did not.

Q What time of night did you destroy the notes?

A I did not destroy them at night.

Q What happened to the notes?

A After I dictated my report, I destroyed the notes.

Q Did you destroy them that night?

A No, sir.

Q When?

A As I recall, it was on March 9.

Q You knew these people were arraigned before Judge Rifkind at about 4:15 in the morning?

A Yes, that is correct.

Q That is Saturday morning. When they were arraigned before Judge Rifkind on Saturday morning, did you know that a press release had been issued out of the FBI office here in Washington on March 5 saying that he had been arrested and things about him; did you know that?

A I did not.

MR. PALMER: I would like to have the paper which has been marked for identification.

MR. KELLEY: I am going to object to this. We have been

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through it before.

MR. PALMER: I am going to ask him a question and, of course, I am going to wait for Your Honor's answer.

MR. KELLEY: I object to any use of any newspaper in examining this witness.

MR. PALMER: I am asking for a release given by the FBI under the supervision of these gentlemen.

THE COURT: Gentlemen, quit talking.

MR. PALMER: I will quit talking.

THE COURT: Thank you for that.

MR. PALMER: In order to save time, I won't bother about it.

BY MR. PALMER:

Q Did you know before you came here today that the FBI, through its press information bureau here in Washington issues releases from time to time?

MR. KELLEY: I object to that. There is no evidence at all in this case of that kind.

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THE COURT: Objection sustained. That is not important.

MR. PALMER: I understand what you say about non-importance. I object to what counsel says. I was over there and got the releases.

THE COURT: I have ruled on it.

MR. PALMER: You have ruled; very good.

BY MR. PALMER:

Q Were you before Judge Rifkind at 4:15 in the morning or thereabouts of March 5?

A Yes, I was.

Q Were you there when the girl asked the judge for the right to have counsel?

A I think that was touched on at that hearing.

Q At any time before that, 4:15 in the morning -- you say when you got there about 10:00 o'clock at night the girl was there?

A She was there, yes.

Q Were you told that the girl had been informed by Mr. Miller of her constitutional rights, the same as you gave to Gubitchev?

A No. Mr. Miller and I did not discuss it.

Q You never heard about it since then, that he told her about her constitutional rights?

A I heard that he had; but he has not told me.

Q But you heard he had?

A That is right.

Q Will you kindly tell me, did Mr. Miller ever tell you or anyone else ever tell you that before she came before Judge Rifkind, after being told she had a right to have a lawyer at 10:00 o'clock at night on March 4, that this girl had asked to get a lawyer and said she would not talk until a lawyer would come?

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MR. KELLEY: I object to that. This has been before the Court and jury. I object to his qualifying this witness as to what Mr. Miller may have said he told this Defendant.

MR. PALMER: Very well.

I would like to have Exhibits 70 and 71.

BY MR. PALMER:

Q I desire to read from Exhibit 70, now in evidence, to the jury:

"11:36 p. m. Miller advised Coplon" --

MR. WHEARTY: Will you read the first one, 9:53?

MR. KELLEY: Let it all be read.

MR. PALMER: I will read what I desire and you can read what you desire.

BY MR. PALMER:

Q "9:53 p. m. Miss Coplon, nurse Genevieve Chara, Sappho Manos, Special Agent Miller, Robinson and McCarthy enter nurses' office on the sixth floor, U. S. Court House, Foley Square. Agents identified themselves. Miller advised Coplon she did not have to make any statements, and if she did they could be used against her in a court of law. He also advised her she was entitled to the services of an attorney."

Then going to "11:36 p. m. Miller advised Coplon that she did not need to answer any questions if she did not want to, and any statements made by her could be used against

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her in a court of law. She was also advised she was entitled to the services of an attorney."

Now, I ask you the question, at any time before this girl came before Judge Rifkind -- what time was that?

MR. WHEARTY: The log says four forty something.

MR. PALMER: "4:40 a. m. Belmont and Robinson entered room, at which time, Belmont advised Coplon she would be taken before a judge in a few minutes and she could advise the judge anything she desired, as well as make any request that she desired.

"4:45 a. m. Coplon, accompanied by Miller, Robinson, Manos and Chara, walked from corridor of sixth floor. Subpena was served on Coplon to appear before the United States Grand Jury on March 7, 1949.

"4:46 a. m. Corps elevated to 19th floor. Went to Judge Rifkind's chambers, where complaint filed. Coplon advised Judge Rifkind she requested counsel. Hearing suspended until Coplon obtained counsel."

BY MR. PALMER:

Q Now, I ask you, before 4:40 a. m., in the morning, and after 10:00 o'clock at night, were you advised of the fact that this girl said, after Mr. Miller had given twice advice that she did not have to answer questions without obtaining a lawyer's services, that agents had examined this girl and questioned her --

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MR. KELLEY: I object to this. There is no point asking this witness if he was so advised. That is not the way to establish the fact.

THE COURT: That is true.

MR. PALMER: Wigmore says if a man is fool enough to open the door by asking hearsay questions, he should be punished by taking the answers.

THE COURT: I want to protect you against that sort of thing.

MR. PALMER: We do not need any protection. Emerson is our protection.

THE COURT: I have ruled on that.

MR. PALMER: You will concede the fact I would have a right to open hearsay if you did not want to protect me?

THE COURT: No, sir.

MR. PALMER: The Wigmore I am talking about was a professor in Harvard.

THE COURT: I knew him very well. He was not a professor in Harvard, though.

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BY MR. PALMER:

Q Now, I ask you the question, were you present when this girl asked Judge Rifkind's permission to get a lawyer.

A I understand that was discussed.

Q Then, did the judge adjourn the matter so she could try to get a lawyer?

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A I understand it was.

Q Up to that time had you heard Mr. Whearty say she was not to get a lawyer until she asked Judge Rifkind about it?

MR. KELLEY: I object.

MR. PALMER: Mr. Whearty told us that in open court.

THE COURT: It is immaterial whether he heard it or not.

BY MR. PALMER:

Q When this girl was being questioned, was she on the sixth floor?

A I understand she was.

Q And when you questioned Gubitchev, you and the others, you did it in a very mild way, didn't you?

A We interviewed him.

Q In a very mild way? I mean you did not holler at him in any fashion?

A No, sir.

Q You did not browbeat him?

A We did not.

Q After Mr. Gubitchev had been informed that he did not have to answer any questions, for how long a time did you ask him questions, how long a time?

A Approximately 3½ hours.

Q You are a lawyer?

A Yes, sir.

Q You know the Constitution and amendments regarding --

you know the Fourth and Fifth Amendments, don't you?

A I have read them.

Q And you believe in them, I take it?

A Yes, I do.

Q Will you kindly tell me why, after you informed Mr. Gubitchev of his rights not to answer any questions because they could be used against him, why did you and the other gentlemen continue to question him for three and one-half hours?

MR. KELLEY: I object. Mr. Gubitchev's constitutional rights are not before this jury.

MR. PALMER: Mr. Gubitchev's rights affect us. We are the by-laws.

THE COURT: Objection sustained.

BY MR. PALMER:

Q Did you ask Gubitchev during that period of time
about how he became acquainted with this girl?

A I did.

Q Did you ask him when he became acquainted with her?

A I did.

Q Did you ask him whether he had ever met her before
January 1, 1949?

A I did.

Q Did you ask him whether or not she had ever given him any papers of any kind in her life?

A I did.

Q Did Mr. Robinson alternate with you in asking him questions?

A No, Mr. Robinson did not.

Q You say you do not have these notes any more?

A I say we do not have the notes taken of the background. We have a similar log to the one you are reading right there.

Q Will you kindly tell me, in connection with the log, that log was a summary of what you people considered had transpired over the 3½ hour period; is that right?

A Summary; that is correct.

Q In the log, in connection with that summary, the summary itself, as you call your log, did that mention the name of Miss Coplon in it?

A As I recall, it did.

MR. PALMER: Now, Your Honor, I ask, in view of the fact that Miss Coplon's name is in there -- he has stated the log is similar to log No. 70 -- be produced.

THE COURT: I will sustain the objection if it is made. If they want to bring it, all right.

MR. KELLEY: We will bring it.

MR. PALMER: I would like to have him around when the log comes.

MR. WHEARTY: All right.

BY MR. PALMER:

Q What time of day was it, if you know, bearing in mind --

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I withdraw it.

Bearing in mind the judge came in about 4:15 in the morning, what time of day, if you know, did the judge leave?

A I do not think he left the building until after 11:00 a. m. He might have. I do not know.

Q But between 4:15 a. m. and 11:00, where did the judge sleep, if you know?

A I do not know.

Q Between 4:15 a. m. and 11:00 o'clock in the morning, did you see any newspaper reporters there?

MR. WHEARTY: I object.

THE COURT: Suppose there are. It is unimportant.

MR. PALMER: I contend the Government --

MR. KELLEY (interposing): I object to this other speech.

THE COURT: Objection sustained. Now, pass to something else.

BY MR. PALMER:

Q What time did you leave the building?

A That afternoon at 5:00 o'clock.

Q You mean you were up all night and all day?

A Yes, sir.

Q What time was the girl taken to jail?

A I think it was after ^{the} 11:00 o'clock hearing.

Q The bond was fixed at what amount?

A As I recall, the bond at that time was fixed at

\$20,000.

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Q Were you before the Court when Mr. Whearty made a statement to the Court regarding what kind of a bond he wanted?

A Yes, I was.

Q Didn't he say he wanted \$50,000?

MR. KELLEY: I object.

THE COURT: Sustained.

MR. PALMER: All right.

BY MR. PALMER:

Q Will you kindly tell me if it is not a fact, to your knowledge, that because of the nature of the alleged crime charged against her, that no bonding company would go on her bond and it took about a week before her friends could get together the cash to substitute for her bond?

MR. KELLEY: I object.

THE COURT: Sustained.

MR. PALMER: I ask at this particular point whether the Government will not concede -- otherwise I will bring it out in another fashion -- that this girl, through her parents and brother, finally put up a cash bail with the clerk of the court instead of the usual bond? Is that so, Mr. Whearty?

THE COURT: I will say I do not know what counsel wants to concede. If they object, I will sustain it.

MR. KELLEY: I object to it on the ground it has nothing to do with the issues.

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THE COURT: Sustained.

MR. PALMER: May I ask this question? There are two counsel here. Mr. Whearty handled it.

THE COURT: You have a witness on the stand.

MR. PALMER: If Mr. Whearty wants to concede it, isn't that all right?

MR. KELLEY: I ask that the jury be instructed not to consider that at all.

THE COURT: The jury will not consider anything that counsel says or the Court says. They will consider only what comes from the lips of the witnesses.

MR. PALMER: If you allow the testimony to go in, they can consider it then, not now --

THE COURT (interposing): I am telling you that what you say and what I say and what Government counsel says in these colloquies, the jury is not to consider.

MR. PALMER: This is the last question I am going to ask outside of that log business.

BY MR. PALMER:

Q Will you kindly tell me if either on February 18, March 4, or any other date you knew the law regarding the right on the part of FBI agents, under Section 3052, to arrest?

A Generally, yes.

Q At any time, of your own knowledge, prior to the arrest

on March 4, 1949, did you see this girl do anything, or the man do anything, Gubitchev, which, in your opinion, warranted their arrest by you; yes or no?

A No, I did not.

MR. PALMER: That is all.

MR. KELLEY: I have one or two questions on redirect.

REDIRECT EXAMINATION

BY MR. KELLEY:

Q Witness, you were asked a few moments ago by Mr. Palmer concerning questions that you put to Gubitchev the night of March 4. Particularly he asked you whether or not you put the question how he became acquainted with this Defendant, when he became acquainted with the Defendant, and how long he had known her, and you stated you did so question her.

Tell us now what he said.

A Mr. Gubitchev stated that he did not know Judith Coplon. He stated that he had never been previous to the night of March 4. He further stated that he did not know her name.

Q Did you have any conversation with Gubitchev in the presence of the judge with respect to the identify of this Defendant?

A I did not have any conversation.

Q Did you ever overhear any conversation at that time?

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A Yes, I did.

Q What was it?

A Mr. Gubitchev stated words to the effect, "Who is this girl? I don't know her."

MR. KELLEY: That is all.

RECROSS EXAMINATION

BY MR. PALMER:

Q When he said all of that, you told us a little while ago when you saw him originally that he looked like a gentleman, dressed that way, too; is that right?

A That is correct; he looked like a gentleman.

Q And at no time did he look disreputable to you; is that right?

A I would say he did not.

Q If a gentleman is arrested in the company of a lady and he wants to protect her by saying what you said he said -- did you have him under oath?

MR. KELLEY: Object.

THE COURT: It is argumentative.

BY MR. PALMER:

Q Was Mr. Gubitchev under oath at the time that you said he said these things; was he under oath?

A No.

MR. KELLEY: I object. It is a question of admission. Whether he is under oath makes no difference.

THE COURT: He said no. Proceed with something else.

Is that all?

MR. PALMER: That is all.

By the way, one more question.

BY MR. PALMER:

Q In connection with this last answer, did you ever tell Mr. Kelley the things you have just told us, that Mr. Gubitchev said that which you overheard when he was before Judge Rifkind; did you ever tell that to Mr. Kelley before you got on the witness stand today; did you ever tell it to him?

THE COURT: Let him answer.

MR. KELLEY: Do not ask him five times.

THE COURT: Let him answer.

MR. PALMER: You have a chance to answer.

BY MR. PALMER:

Q Did you ever tell that to Mr. Kelley?

A In our general discussion I may have mentioned it.

Q You may have mentioned it?

A I may have mentioned it.

Q You may not have mentioned it?

A I cannot recall.

MR. PALMER: That is all.

MR. KELLEY: That is all.

MR. WHEARTY: Do you want this witness for further examina-

TESTIMONY OF
SPECIAL AGENT ARTHUR AVIGNONE,
COPLON - GUBITCHEV TRIAL, 1/12/50

Part 3

ENCLOSURE

65-58315-1182

AFTERNOON SESSION (2:30 p.m.)

A R T H U R A V I G N O N E , called as a witness,
being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PALMER:

Q You are a member of the FBI? A I am.

Q Were you present in court when this lady and Mr.
Ware, the gentleman that preceded you on the witness stand,
were you in the courtroom? A I was present.

Q You were here when Mr. Kelley announced the fact
that you participated, as I understand it, in the destruc-
tion of records? A Yes, I was present.

Q Before you took the witness stand today, when
for the first time become aware of the fact that you were
going to be a witness in this case?

MR. KELLEY: I object to that. There is no predi-
cate for this examination.

THE COURT: Why don't you ask him? Do you want
me to ask the witness? All right. Objection sus-
tained at this time. .

Q Did you have anything to do with the destruction
of disc recordings in the FBI? A Yes, I did.

Q Will you just tell us what your part in that task
was?

MR. PALMER: Could he kindly fix the date, if
possible?

THE COURT: Please, please. Now I am asking the witness that which you would not.

MR. PALMER: I will ask him eventually.

THE COURT: I want to do it now.

MR. PALMER: All right, you are first.

A The only manner in which I participated in the destruction of the records or the discs was in this fashion: upon completion - upon completing the use of the discs by listening to them, I was finally instructed on November 10, 1949, to destroy these discs and the records that I had pertaining to them. I did not actually do the destruction of the discs but I set in motion the machinery that resulted, I believe, to the best of my knowledge, in the destruction of the discs.

BY MR. PALMER:

Q In connection with setting in motion these destructive orders, will you kindly tell me if you knew --

MR. PALMER: And if I am in error, please, your Honor, I haven't got the paper with me, I want to be corrected.

Q -- on November 14, 1949, as I recall it now by memory, that a motion was made and an order to show cause signed by Judge Ryan, authorizing an investigation or authorizing the Government to show cause of any - concerning the microphonic records and intercepting of telephones;

if you knew about that?

MR. KELLEY: Just a moment. I object. I would like to have the date fixed somewhat more definitely.

MR. PALMER: You have a copy of the order to show cause.

THE COURT: The order to show cause is upstairs.

MR. POMERANTZ: I may have a copy of it.

THE COURT: Mr. Schaefer, will you telephone up to my chambers and get it?

MR. PALMER: Can I go on in the meantime?

THE COURT: Yes.

Q By the way, you know Mr. Granville, do you?

A Yes, I do.

Q You knew there was a preliminary motion, motion preliminary to this motion concerning wiretapping heard before his Honor, Judge Ryan, in connection with arrests without a warrant and seizure of papers without a warrant - you know that, don't you? A Yes, I had general knowledge concerning that.

Q Did you know that Mr. Granville had testified in the early part of this case, long before November, that he knew that there was wiretapping and he knew there was microphoning in this particular Coplon-Gubitchev situation - do you know that? A I don't specifically recall that.

Q I am not interested in specifically. A No, I

don't know that.

Q Didn't you hear it at all, to that effect, that Mr. Granville had testified in this case before his Honor, and other FBI agents had testified? A I knew that he had testified.

Q And you knew that Mr. Miller testified?

A Yes, I knew.

Q You know Mr. Miller testified in Washington?

A Yes, I do.

Q You did not testify in Washington? A I did not.

Q You knew that various other agents of the Department had testified in Washington? A Yes, I knew that.

Q When for the first time did you know --

THE COURT: Mr. Palmer, I have a copy of the order to show cause that you referred to. It was returnable on December 5th.

MR. PALMER: When was the date on it, sir?

THE COURT: It was signed on November 28, 1949.

MR. PALMER: I am talking, if your Honor please, - pardon me - I am talking about the order to show cause with regard to the question about arrest without a warrant, inspection of the grand jury minutes, because that is the time this thing started.

THE COURT: Oh, that is not the order to show cause on the wiretapping. That was a prior --

MR. PALMER: I was going to say --

THE COURT: I have sent for it.

THE CLERK: I just asked for the wiretap order to show cause.

MR. PALMER: I want the other one.

THE COURT: The clerk has that. That is in the papers in the Clerk's office. That motion was disposed of. We will send for it.

MR. PALMER: Very good.

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Q In connection with the matter of Coplon and Gubitchev, will you kindly tell me, when for the first time did you know or did you hear, directly or indirectly, from other members of the FBI about the fact that there was microphoning or interception of telephones in this particular case? A The only specific date that I can fix is July 12th of this year, when I first became associated in any way with this particular case.

Q Now, before July 12th, 1949, you were connected with the FBI in this very building? A I was.

Q You knew of the fact, did you not, directly or indirectly, that on March 4, 1949, an arrest had taken place, and that the persons arrested were Mr. Gubitchev and Miss Coplon, and they were brought to this building at night, and the papers carried the story the next day; you knew that, did you not? A I knew that they were

arrested.

Q Between March 4, 1949, and July 12th, you had occasion to keep on with your work in the FBI? A Yes, my own work.

Q During that period of time did you ever do any work or have any connection of any kind, social or otherwise, with Mr. Miller? A In connection with my work, I have seen Mr. Miller quite frequently.

Q That is, prior to and after March 4th? A Yes.

Q And also do you see in connection with your work, Mr. Granville? A Yes, I do.

Q Do you see Mr. Scheidt occasionally? A I have seen him occasionally.

Q And Mr. Belmont? A Yes.

Q And Agent Gard? A Yes.

Q Now I ask you, at any time prior to the date, July 12th, before you became associated with this particular matter, did you ever hear at all in the form of gossip or otherwise, from agents of the FBI that there had been interceptions of telephones of the girl Coplon and the man Gubitchev?

MR. KELLEY: I object to "gossip or otherwise."

MR. PALMER: I asked him --

THE COURT: Objection overruled.

MR. PALMER: Thank you, sir.

Q Had you heard about it? A Now, I hadn't -
I had no knowledge --

Q I am not interested in -- A I had not heard
of it.

Q Are you a lawyer? A Yes, I am.

MR. PALMER: I thought so.

THE COURT: You what?

MR. PALMER: I thought so, I said, because we
lawyers always get technical, and I think I am the worst
offender of it.

THE COURT: I think that you should speak for
yourself.

Q Now I ask you the question - I am not asking for
the bare face to face knowledge, and I will come back in
this way with you: on April 25, 1949, did you know that
there was a case tried in Washington, of United States vs.
Judith Coplon?

MR. KELLEY: I object to this question.

Q Yes or no.

MR. KELLEY: The witness has answered that he
did not know and he wasn't told --

MR. PALMER: He did not say anything about that.
That is a brand new question.

THE COURT: I did not ask for any argument, Mr.
Palmer. The objection is overruled. He may answer.

A Yes, I had heard of it.

Q And did you know after April 25th, week in and week out, that there poured out of this building into Washington various agents of the FBI?

THE COURT: I do not see how that is material.

MR. PALMER: All right.

Q May I ask you this question: Did you know that agents of the FBI had come to and from Washington in connection with this case? A Yes, I did.

Q Did you know that before April 25th, that Mr. Kelley and Mr. Whearty had conducted conferences in this building where 25 or 20 FBI agents had reported and appeared in rooms, and he went over the facts of the case --

THE COURT: Objection sustained.

MR. PALMER: Exception.

Q Now I ask you the question: At any time before July 10, 1949, and after January 1, 1949, did you ever hear, directly or indirectly, that there had been wire-tapping, interception of wires, telephones, or microphones and/or in this case? A No, I had not.

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Q When did you find out for the first time?

A As I said before on July 12th.

Q And who told you about it on July 12th?

A I received instructions from Mr. Belmont to handle a certain phase of this particular case.

Q And what was that phase? A I was to review whatever discs that were made in connection with this particular case.

Q Did you know at the time when you saw Mr. Belmont -- you don't know me, do you? A I do know you now, yes.

Q I mean before this? A No.

Q Anyway, did you know that in Washington as recorded in the papers and as it also appeared during the course of that trial that when Archibald Palmer from time to time had demanded from the Court and from Mr. Whearty and from Mr. Kelley and from agents upon the witness stand knowledge on their part as to whether microphoning or interception of telephones had taken place in this particular case, the Judith Coplon trial, whether it had taken place either in Washington or in Brooklyn, when he asked about that? Do you know about that?

THE COURT: Objection sustained.

MR. PALMER: Exception.

Q Did Mr. Belmont --

THE COURT: Mr. Palmer.

Q Did Mr. Belmont --

THE COURT: Mr. Palmer, Mr. Palmer.

MR. PALMER: Yes, sir.

THE COURT: You have asked a similar question at least twenty times, no less than twenty times have I ruled that it was an improper question.

MR. PALMER: Very good. Then I will ask --

THE COURT: It is not very good at all. It is very bad that you persistently defy the rulings of the Court. Proceed now with your question.

Q Prior to July 12, 1949, can you tell me what Mr. Belmont told you in connection with the reviewing of the discs in this case? A I was told by Mr. Belmont that I was to review the discs in connection with this case and as a result of my review --

Q Pardon me. We have that. Who told you --

THE COURT: No, do not say "Pardon me." at all. Let the witness finish.

MR. PALMER: But he says as the result of --

THE COURT: You will let him finish. Then when the answer is finished you may move to strike out any part of the witness's answer that you think should be stricken.

MR. PALMER: I want him to finish.

THE COURT: And I want him to finish, too. Now,

I do not want any witnesses here interrupted in the middle of their answers. We have no jury here.

MR. PALMER: All right.

THE COURT: Continue.

THE WITNESS: As a result of that review, that is, of the discs, I was to summarize them, summarize the information contained therein with regard to Miss Coplon's whereabouts and to furnish that information to Washington. That was all.

Q Let me understand that there about Miss Coplon's whereabouts. That is what you said, isn't it?

A Yes, which was the purpose on July 12th. That is the time that I received my instructions.

Q But you said as to her whereabouts.

A Yes.

Q Didn't you know at that time that she was living in Brooklyn and that she was out on \$30,000 bail?

A The purpose of that installation was to be aware of her whereabouts at all times.

Q Wait a minute. You used the word "installation." Are you talking about intercepts? A No, I am saying -- I am speaking of the installation on that particular wiretap.

Q I see. Well, then, in so far as the wiretap is concerned, are you aware of the fact or had the wiretap

on her house so far as you are concerned, are you in a position to state whether or not the wiretap had been discontinued prior to July 12th? A I conducted no investigation with regard to that date.

THE COURT: I think we will save a lot of time here, Mr. Palmer, if you will look at the exhibit which I granted you access to; that is, at the card, the photostat of the card, which shows the date of the authorization of the installation and the disconnection of the telephone taps. Now, why don't you get that card and look at it? It is an exhibit.

MR. PALMER: Well, your Honor, --

THE COURT: Wait a minute. We will get it for you because we may save some time in that way.

MR. PALMER: That is not what I am looking for.

THE COURT: All right. Wait a minute now until we get the card.

MR. PALMER: I will look at it with pleasure.

MR. POMERANTZ: I would like to see that, too, your Honor.

THE COURT: Yes. It has been in evidence here for a number of days. Let Mr. Palmer look at it first and after he is through with it you may examine it.

(Clerk hands card to Mr. Palmer.)

Q I show you Court's Exhibit 63-A and ask you if you

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ever saw it either in that form or in its original form?
Did you ever see it? A I have never seen either this
photostat nor the original represented by it.

Q Now, then, in connection with your statement about--

THE COURT: Wait now. Let us have a little system
here. State from that exhibit what number it is.

MR. PALMER: Its number, your Honor, is 63-A.

THE COURT: 63-A.

MR. PALMER: Yes, sir.

THE COURT: And there is a card that relates to
the telephone tap of the Coplon residence in Brooklyn.

MR. POMERANTZ: That is not it.

MR. PALMER: I know. Just a minute. I want to
see what all these are, as I might skip something. All
right.

THE COURT: Did you locate it, Mr. Palmer?

MR. PALMER: Yes, sir.

THE COURT: Does that show a disconnection and a
re-installation?

MR. PALMER: Yes. It says --

THE COURT: What date does it show that it was
discontinued?

MR. PALMER: Discontinued May 2nd.

THE COURT: And what date does it show that it
was re-installed?

MR. PALMER: Re-installed July 12th, and that is what I am asking him.

THE COURT: All right. And that is what he told you.

Q Didn't you just say that you had nothing to do with this re-installation? A I had nothing to do with this re-installation.

Q Did you know whether it was re-installed on July 12th?

A No, I did not.

Q Did you ever know when it was stopped?

A Prior to that date?

Q Before July 12th did you know when it was stopped?

A No, I did not.

Q I thought not from what you had just said.

A That is why I said No.

Q I ask you the question do you know when it was stopped altogether? A I know that it was discontinued on November 10th.

Q November 10th, all right. Now, prior to July 12th you were told by Mr. Belmont to make a review of the discs?

A That is correct.

Q And at that time did you make a review of the discs immediately by playing them back, or what did you do?

A I reviewed the discs that came to me subsequently to July 12th.

Q Have you a record when they came to you?

THE COURT: Did you review the recordings or did you review the discs which had been recorded prior to July 12th?

THE WITNESS: The ones that I reviewed were subsequent to July 12th.

THE COURT: All right.

Q You used the word "summarized", is that right?

A I made a summary.

Q If you started on July 12th -- A Yes.

Q -- and you just told his Honor you began looking at the discs after July 12th, then you did not summarize the discs that came into existence after January 1, 1949, and up to July 12th? A No, because I had nothing to do with them.

Q You never looked at those at all? A No, I did not.

Q Beginning with July 12th, that is when they told you to summarize them, did they mention that you would summarize them or were to summarize them as they were created at the end of a day or thereabouts?

A I reviewed those discs on a daily basis.

Q On a daily basis?

THE COURT: Let him tell us what he did. What did you do?

THE WITNESS: I reviewed the discs on a daily

basis.

THE COURT: What do you mean by saying that you reviewed the discs?

THE WITNESS: I listened to them.

THE COURT: Yes.

THE WITNESS: On a daily basis.

THE COURT: Yes.

THE WITNESS: And at the end of perhaps a week or a week and a half I wrote a summary of the information contained in those discs.

THE COURT: And was that reduced to typewritten form?

THE WITNESS: Yes, it was.

THE COURT: Have you that exhibit, Mr. Schaefer? We have an exhibit here that contains the typewritten results of telephone interceptions at the Coplon residence from July 12th.

MR. PALMER: Should I wait or go on?

THE COURT: Wait. We might as well locate that exhibit now while we are at it.

MR. PALMER: All right. If you will allow me I want to ask a question before I look at that, I want to ask him a question.

THE COURT: No.

MR. PALMER: If you say it is No, then it is No.

THE COURT: Go ahead, Mr. Palmer, while we are looking for it.

MR. PALMER: Thank you.

Q Now, his Honor -- I want to just bring the subject to your focus -- his Honor received a few weeks ago a summarized record of telephone taps on the Coplon residence among other things. Did you cause those particular summaries to be created? A Not having seen the summaries that are in the possession of the Court I do not know, but I do know that I prepared summaries.

Q Now, before July 12th and after July 12th, when you looked at the discs that you got as you say daily, where did you see them?

MR. KELLEY: I object to the form of the question. The witness did not say that he looked at any discs prior to July 12th.

Q Where did you look at the discs? A First of all, I did not see any discs prior to July 12th.

MR. PALMER: It is unfortunate.

Q The discs that you saw after July 12th.

MR. KELLEY: I object to counsel's remarks.

THE COURT: Well, I think your objection is well founded, but go ahead.

Q Where did you see them? A In this building.

THE COURT: He appears to be incorrigible in

that respect.

Q Where did you see them? A In this building.

Q I see. In what room? A Up on the 27th floor.

Q Is there a file room there? A Yes, it is a
3 file room.

Q And is that where you saw them, in the file room?

A That is where I saw those discs.

Q And did you take them out of the file?

A I should say this: it is not a file; it is a rack.

Q A rack? A Where they are maintained.

Q Now, when you saw the rack up on the 27th floor
were there any numbers on those discs? A Yes, there were.

Q Was that in the regular course of business of the
FBI in connection with discs that numbers were put on both
sides? A Certainly, to identify them.

Q And who, if you know -- pardon me -- did you know
the agents who were microphoning or intercepting the
telephone discs which you saw after July 12th? Did you
know the agents? A No, I did not.

Q Did you hear --

THE COURT: Excuse me for interrupting you, Mr.
Palmer.

MR. PALMER: Yes, sir.

THE COURT: I show you Court's Exhibit 1-D,
which was disclosed to the defendants on December 23rd.

MR. PALMER: Yes, your Honor.

THE COURT: -- can I ask you whether this is the resume of the results from the playing of these disc recordings to which you have referred in your testimony?

THE WITNESS: This I believe is a summary of the letters which I submitted. They are not the copies of the letters that I submitted.

Q Let us see about that. In response to his Honor's question -- I beg your pardon -- referring to Exhibit --

THE COURT: 1-D.

Q -- 1-D, did you prior to the time that this particular paper was handed to you, this one, Exhibit 1-D, did you prepare as you say any letters or in letter form a summary at the end of a week of the discs you read, or that you heard played during the week?

A Yes, I did.

Q And can you tell me between July 12th - beginning with July 12th and up to the time of the discontinuance of the interceptions on the Coplon home, about how many different letters were written by you or typewritten by you in connection with those summaries?

A This is only an approximation --

Q That is good enough. A I would say approximately 12 to 15 letters, it may be one or two more.

Q These particular letters that you speak about, containing a summarized edition of what you read or what you heard played on the discs obtained during the course of a week at a time, you left where? A Where I left the letters?

Q Yes, where did you leave the letters? A The material was given to a stenographer who wrote the letters.

Q And after she wrote the letters did you check back to see whether they were correct? A Some I did and some I did not.

Q As to those particular letters that you created in the fashion described, have you seen them since the time, July 12th, when you began to prepare them, up to the time in November when you ended your summarizations?

A I did see one or two, but that is all.

Q When did you see them? A Subsequent to July 12th.

Q How much subsequent? A It may have been a

matter of a few weeks.

Q Do you know now by looking at Exhibit 1-D whether the summarization, from your summarization, the summarization which was given to his Honor, Judge Ryan, is correct in every way, shape, form and particular?

A To be absolutely certain I will have to compare the copies of the letters that I wrote with this summary.

Q You had nothing to do with that? A I had nothing to do with this summary.

Q Then you don't know who prepared 1-D to give to his Honor, Judge Ryan? A I do not.

Q Do you know why it was necessary, since you prepared weekly a summary of the discs that you heard played, and you speak of some 12 or more in number, do you know why it was necessary, if those were in existence, to give his Honor, this judge, a summary supposedly created from your summary?

MR. KELLEY: I object to that. The documents marked as Court's Exhibit 1 were prepared at the explicit instructions of this Court --

MR. PALMER: May I be heard --

MR. KELLEY: There is no question as to why it was done and he is not competent to answer --

MR. PALMER: May I be heard, your Honor?

THE COURT: The witness may answer. The objection

is overruled.

MR. PALMER: Thank you.

Q Do you know why? A No, I do not.

Q And the summarizations that you created week by week from reading the discs, you read the entire disc, didn't you, on both sides? A The cuts appearing on the discs pertaining to this particular case which was so designated.

Q And you did that work properly and slowly?

A I performed that work to the best of my ability.

Q Now, I ask you the question: Do you know why if those particular summaries that you created on Mr. Belmont's - was it Mr. Belmont? A I created the summaries for Mr. Belmont.

Q On Mr. Belmont's instructions, why they were not handed to the Court in place of a summarization supposedly coming from your summarization? A I don't know the answer to that.

Q You have been in the employ of the FBI continuously and you haven't been away since the last month or so, have you? A No, I have not; I have been on leave for three weeks.

Q When was that leave up? A I returned to New York City on January 3rd.

Q And since that time you have been here continuously?

A Yes.

Q Did anyone ever tell you about the fact that his Honor, Judge Ryan, had directed that the records concerning what appeared upon the discs should be given to him? Did anyone ever tell you that? A No, I had no knowledge of that.

Q And then I take it for granted that you haven't the slightest knowledge as to who prepared 1-D?

A I don't know who prepared that.

Q Now, in connection with the instructions you received: These discs that you read, were they clear and distinct and bell-like in tone? A I wouldn't describe that as bell-like in tone, but they were distinct.

Q In other words, you could read them, you could write down what was on them, and you could understand them?

A Yes.

Q And when you played them from week to week you did it in this building, didn't you? A Yes, I did.

Q Were any agents around or near you at the time you played them? A Not that I recall; there may have been.

Q Mr. Miller is in this building --

THE COURT: We have had that.

Q Can you tell me whether Mr. Miller was ever present to the best of your knowledge during the time you played these discs and prepared these summaries? A No, he

wasn't --

Q He wasn't? A I don't recall seeing Mr. Miller at those particular times.

Q Did you turn them over to Mr. Belmont?

A Turn what over?

Q The summaries you prepared? A No, they were in letter form. They were given to the stenographer and it was handled during the normal course of business thereafter.

Q Will you kindly tell me in connection with the discs you saw week in and week out during the 12 or more weeks that you performed your function, did each and every one of these discs contain a number on it?

A Each disc that I examined contained a number.

Q On both sides? A I believe they all did.

Q When you took them from the rack, were they in an envelope? A Yes.

Q And did the envelope contain the same number as appeared on the discs? A In all these instances the envelope did.

Q During the period of time that you speak about, did there come a time when you learned -- pardon me, strike that out -- what happened with the discs that you were summarizing? After you got through with them what did you do with them? A After I finished listening

to those discs I replaced them, that is, put them in
the paper envelope back in the rack.

Q That is on the 27th floor in this building?

A That is on the 27th floor of this building.

Q Do you know at all if they have ever left the 27th floor of this building and, if so, when?

A I do know that some discs did leave the 27th floor of that building - of this building.

Q Do you know which particular discs? A The discs that I had noted on some notes - among some notes that I had.

Q Who got those discs, the ones that you made the notes of, who were they turned over to? A Well, I should say this: all those notes were recorded among notes that I had maintained from the time I had taken over the assignment of reviewing the discs.

Q When you say recorded, you mean they were re-recorded? A No, I mean a record or a list for my own use of all the discs that had - that were involved in this particular case.

Q Since July 12th? A Since July 12th.

Q The numbers? A And the numbers. The numbers were recorded on my list.

Q Did the numbers on your list also indicate who was doing the talking, whether it was an incoming or an outgoing call? A No, the numbers on my list did not indicate that.

Q What happened to that particular list?

A That list was destroyed.

Q Destroyed? When was that list destroyed?

A That list was destroyed on or - I am quite certain it was November 10th.

Q What makes you so certain about November 10th? Have you got a record of that? A No, but I remember for a very specific reason.

Q Let's have it. A It was the first time I had ever received any such instructions to destroy such records.

Q Who gave you the instructions to destroy records for the first time in your career? A Mr. Belmont.

Q Where was Mr. Belmont when he gave you instructions to destroy records? A I believe we were both in his office.

Q At that time did you know Mr. Granville? A Yes, I did.

Q At that time did you know that Mr. Granville had testified before his Honor, this Judge, that there had been interceptions of telephones and microphoning? Did you know that? A I don't recall that, no.

Q Will you say you didn't hear of it? A My work did not - was not in connection with the --

Q I am talking about what you heard. Did anyone tell you about such a thing having taken place, that is, before Judge Ryan, that the facts had come out of intercep-

tions on a telephone? A No, I had no knowledge of it.

Q By the way, have you ever heard of a Nardone case, Nardone decision? A Yes.

MR. KELLEY: I object.

MR. PALMER: He says yes.

THE COURT: Overruled.

Q In connection with your work, do you say this is the first time in your career that such instructions were given - will you kindly tell me how long have you had a career with the FBI? A Ten years.

Q During that time have you had occasion to summarize discs and microphone records? A Prior to this time?

Q Yes. A I don't believe I have ever received any such instructions.

Q What, to summarize them? A To summarize discs.

Q In other words, this is the first time you ever got instructions to summarize discs and the first time you were ever told to destroy discs? A Quite correct.

Q Now, kindly tell me, in connection with your statement about the fact that it was the first time it ever happened to you, why does the date, November 10th, stick out like a sore thumb? Why couldn't it have been on November 14th that you got instructions for the first time?

A Because this has been my only association with this particular case and the only time I ever received any

such instructions to destroy some records, that stays in my mind.

Q I concede that, that would stay in your mind, the fact that you were told for the first time to destroy records and that Mr. Belmont told you to do that; in the ten years' career you had never done that before. Now I am asking you the question, what makes you know that it was on November 10th that that happened and not November 15th or November 14th? A Because the instructions to destroy records were unusual.

Q I concede that. A And I recall it for that reason, I recall the date on which I received those instructions.

Q What day of the week was it? A That was on a Thursday.

Q About what time of the night or day? A As best I can recall, that was in the afternoon.

Q Who was present, if anybody, when Mr. Belmont gave you the instructions? A Just Mr. Belmont and myself.

Q What did he tell you to destroy?

A He told me to destroy all the records that I had used in connection with this case.

Q And up to that time, November 10th, you told us that you had used records for a period beginning July 12th continually, correct? A I had reviewed discs since

July 12th.

Q The discs were daily made? A Yes.

Q Twenty-four hours a day? A I don't know whether it was 24 hours a day or not.

Q In connection with the discs you destroyed pursuant to Mr. Belmont's instructions, can you tell me whether or not the discs you destroyed contained upon either side any records of any kind other than the Coplon intercepts?

A First, I stated that I had set in motion the machinery that destroyed the discs. I did not destroy them personally.

Q No, I don't mean that. A Secondly, the discs that I had destroyed I know contained information pertaining to this case.

Q You see, the point I asked you was -- A I only reviewed the cuts pertaining to this particular case, none other.

Q If you did that, if you did that, that is what I am trying to understand, if you only reviewed the cuts pertaining to this case and there were other cuts upon those discs, as we see in connection with various exhibits, then you would have destroyed, if there were other cuts upon those records, cuts that had nothing to do with this case? A That is true.

Q Did Mr. Belmont tell you to destroy all the

discs upon which the Coplon intercepts had taken place from and after July 12th? A My instructions were to destroy all the records including the discs.

Q You told us in connection with that there came a time when you set in motion the method by which that was accomplished. Will you tell us in your own way what you set in motion, how it was brought about? A Very well. I maintained a list of all the discs that I had reviewed, by number and by cut. When I received my instructions to destroy the records I proceeded to remove those records which - whose numbers appeared on my list and were still in the rack on the 27th floor. After I had removed those records, I asked Mrs. Saliba where she maintained the records that had been earmarked for destruction. She told me where they were and I placed the records that I had removed from the rack in that drawer with the group earmarked for destruction.

Q Did you tell Mrs. Saliba anything at all about the instructions you had received? A No, I saw no reason to.

Q You didn't. In the particular place marked for destruction of records were there any other records there at that time there other than the ones you put there?

A Yes, there were.

Q Do you know whether those records also pertained

to the Coplon case? A I do not.

THE COURT: This record that you kept of the recordings, the writing that you kept of the record numbers and cut numbers of the discs you reviewed, what did you do with that writing or those writings?

THE WITNESS: That was destroyed with other notes that I had after I had removed the records and had placed them in a drawer with the others for destruction.

THE COURT: So that you have no memorandum now of the number of the record or the cut number of the records that you reviewed?

THE WITNESS: No, I do not.

THE COURT: You did have such a writing in existence prior to November 10th?

THE WITNESS: Yes, I did. That list was maintained for my own use.

THE COURT: Tell me some more about this order that you received. Is there anything you can tell us further concerning the order that you received with respect to the destruction of these records on November 10th?

THE WITNESS: The instructions I received referred to the records or the discs, I should say, and the notes and slips that I had pertaining to those discs. I was ordered to destroy them. Those were the only instructions I received.

THE COURT: Did you receive that order in writing or orally?

THE WITNESS: That was an oral order, or an oral instruction.

Q You just told his Honor, in connection with the question his Honor asked of you, notes and slips. Do you know that in the regular course and conduct of interception of telephones, incoming or outgoing, of a suspect, and of microphoning, that the agent who does the microphoning or does the interception has earphones and at the same time makes notes? A I have heard that he does, yes.

Q When you used the word "notes," and I want to be fair, I want to get knowledge about this, when you told his Honor about notes and slips, are you talking about notes and slips that you made or notes that accompanied the discs? A I am speaking of both.

Q Of Both. Let us separate them. The notes that you destroyed, they were the notes of the agents who had created the discs, am I right? A No, I referred to notes as my own notes. Those were the ones I had made from our disc.

Q Let me see. In order to be in a position to do what you were doing, the cuts - to play the cuts, you had to have some notes of some kind or another from somebody?

A Correct.

Q You saw those notes, didn't you? A Yes, I did.

Q Were they --

THE COURT: Excuse me, Mr. Palmer, for interrupting. Heretofore the Court has denied defendants access to portions of the Court's Exhibit 63. The Court now releases two letters which are extracted from Court's Exhibit 63, and marked Court's Exhibit 63-B.

MR. PALMER: May I look at them?

THE COURT: Yes. Access is granted to the defendants.

(Marked Court's Exhibit 63-B.)

MR. PALMER: Could I wait a moment until I see those letters?

THE COURT: Yes.

Q I call your attention in connection with your statement about being called in on November 10th - pardon me, you were called on on that date by Mr. Belmont?

A I was told on November 10th. I remember that date for the reasons stated.

Q I call your attention to this paper which his Honor has permitted us to have marked as 63-B, and to have access to, which reads as follows:

"November 7, 1949. Memorandum for Mr. D. M. Ladd" --

MR. KELLEY: Just a moment. If it is to be read --

THE COURT: I do not see there is any necessity for

reading it out. Show the witness the paper.

MR. KELLEY: May I see it if it is to be read or alluded to?

THE COURT: Yes.

MR. PALMER: May I wait until he get through looking at it?

THE COURT: Yes.

MR. PALMER: While he does that I can ask him a different question.

MR. KELLEY: No, if you please.

THE COURT: No, wait.

(A pause.)

Q I ask you to look at these exhibits 63-B, and I ask you whether these papers refresh your recollection as to an informant by the name of Tiger?

MR. KELLEY: Just a moment. I object to this. First, I think it should be established if the witness has ever seen the documents or has had any connection with the documents.

MR. PALMER: One doesn't have to see a document to have his recollection refreshed.

THE COURT: Mr. Palmer.

MR. KELLEY: No predicate laid. I object to it.

THE COURT: Objection sustained. He hasn't indicated that his recollection needed refreshment.

Do you know of an informant or means of information designated as Tiger?

THE WITNESS: I do.

THE COURT: To what source of information was that designation or name given?

THE WITNESS: That represented the wiretap in this particular case.

THE COURT: What particular wiretap, any particular tap?

THE WITNESS: No, the only one that I know of was this particular wiretap.

THE COURT: That is the one on the Coplon residence in Brooklyn?

THE WITNESS: Yes, the one on the Coplon residence in Brooklyn.

Q Can you tell me --

THE COURT: That was --

MR. POMERANTZ: Wait a minute.

THE COURT: That was referred to as Tiger?

THE WITNESS: That is correct, sir.

Q So the name Tigeb does not represent an individual, it represents the man of the FBI who did the wiretap?

THE COURT: No.

A No, that doesn't.

THE COURT: Wait a moment, that --

MR. PALMER: I will withdraw the question.

THE COURT: -- represents information, the witness tells us, which was secured by means of the interception of the Coplon residence telephone.

Is that correct?

THE WITNESS: That is correct, that was the designation given.

MR. POMERANTZ: May I inquire whether or not that became true only as of July 12th?

MR. PALMER: Just a moment, please.

THE COURT: Yes, you may, at the appropriate time.

MR. PALMER: Go ahead and inquire. Could I hold up? I would like to have him ask him now that question.

MR. POMERANTZ: No, I would rather have the examination proceed.

THE COURT: I will ask him that.

MR. PALMER: Because I wanted the door to be open.

THE COURT: When did that designation become effective, if you know?

THE WITNESS: That designation became effective as of the date that I received my instructions to review the disc.

THE COURT: What date was that?

THE WITNESS: That was July 12th.

THE COURT: All right.

BY MR. PALMER:

Q Do you know whether or not prior to that particular date and after Christmas of 1948 if wiretap interceptions were designated by any other code than the name "Tiger"?

A I know of no designations at all. I do know of that "Tiger."

Q Is that the custom in the Department that wiretap interceptions are given a designation by name, number or something like that? A I know that it was in this particular case. I do not know whether that is a definite general policy.

Q But you do know that they do intercept and they do microphone out of the FBI? A Very obviously, as indicated.

Q And you have known that for years?

MR. KELLEY: I object to the question.

THE COURT: Objection sustained.

MR. PALMER: Very good.

Q Now, I call your attention again to this date --

MR. PALMER: Your Honor, may I in that connection, since he knows about "Tiger," may I now read and ask him some questions about definite statements in there?

THE COURT: Yes.

MR. PALMER: Thank you.

Q In connection with this November 7th memorandum for D. M. Ladd -- who is D. M. Ladd? A Assistant director.

Q Where, in New York? A In Washington, D. C.

Q In Washington? A Washington, D. C.

Q From H. B. Fletcher -- he is in Washington, D. C.?

A Yes, he is.

Q And the subject is "Tiger" --

A I have still not read that memorandum.

Q Well, all right, but the subject is "Tiger"?

A The subject is "Tiger."

MR. PALMER: May he read this, if your Honor please?

THE COURT: Yes.

MR. KELLEY: Just a moment, I should like it first established by way of a predicate whether he has ever seen it or had anything to do with it.

THE COURT: He may read it first. It may

assist him in giving an answer to the present question.

Read both of the exhibits.

(Exhibits are handed to the witness.)

MR. PALMER: May I at this time, if your Honor please, in view of your taking this out of a particular record which your Honor has marked 63-B, could I have for the record what is said upon the envelope and where it came from, so that we can have in connection with this situation the alpha and omega --

THE COURT: The what?

MR. PALMER: You spoke Latin the other day so I am trying to.

THE COURT: I try not to speak Latin. I try to speak English. You may read it to yourself. It is typewritten on there.

MR. PALMER: Can I put it in the record?

THE COURT: It is in the record.

MR. PALMER: I want to refer to it that it comes out of this particular one.

THE COURT: I have already indicated that I have taken these two sheets from the envelope, Court's Exhibit 63.

MR. PALMER: Yes, but you see, Judge, I do not know from this whether this comes from Washington or where it comes from. That is what I mean, whether it is

Washington taps or New York taps.

THE COURT: If you kept a record of the exhibits, Mr. Palmer, you would know that that was produced by Mr. Kelley --

MR. PALMER: But Mr. Kelley produced New York records as well as Washington and I want to know whether this is a Washington record or whether it is a New York record.

THE COURT: I do not see that that is material.

MR. PALMER: I will tell you why and you will see in a moment --

THE COURT: Is there a stamp on there?

MR. PALMER: Yes. The stamp says, "Exhibit 63, U. S. District Court."

THE COURT: My recollection is that Mr. Fletcher testified that it was part of the Washington records.

MR. PALMER: Yes.

THE COURT: But your own recollection should control your actions.

2 MR. PALMER: It says: "Records reflecting dates of installation and discontinuance of telephone taps on Coplon apartment residence, Washington, D. C.; Coplon office, Washington, D. C.; Coplon residence, Brooklyn, N.Y.; Gubitchev residence, New York City, and microphone coverage, Coplon office, Washington, D.C. These records

contain information, other than the dates of installation and discontinuance, which affects the national security and it is included because physical separation is impossible."

But then, if your Honor please, since it includes everything, there is nothing yet to indicate the fact that this particular paper did not come from the New York files or from the Washington files and that is the reason I press the objection.

THE COURT: Press what objection? What are you objecting to?

MR. PALMER: I am objecting to the fact that I have no means of knowing, unless your Honor would be good enough to look in the inside of that, to know whether this comes from a part of the Washington correspondence.

THE COURT: That is according to the testimony of the witness Fletcher --

Q Do you know Mr. Fletcher personally?

A In connection with my work, I do.

Q Now, in connection with the word "Tiger," when for the first time and where did you see the word "Tiger" in writing in connection with intercepts?

A The first time I heard the word "Tiger" was in connection with the instructions I received on July 12th.

Q From whom? A From Mr. Belmont.

Q Was that in writing? A No, that was oral.

Q What did Mr. Belmont tell you on July 12th concerning "Tiger"? A That this particular wiretap would be designated as "Tiger."

Q That is, the wiretap in Brooklyn would be designated as "Tiger"? A That is correct.

Q Did you at that time know from anything he said that the intercept in Washington was also known as "Tiger"?

A No, I did not; I didn't know of the Washington intercept that you speak of.

Q Now, in Exhibit 63-B it says:

"The technical surveillance on the residence of Judith Coplon in Brooklyn, New York, was reestablished at 10:40 a.m. today under symbol No. NYT-512. Information will be furnished to the Bureau in paraphrase form by letter attributed to the informant 'Tiger'. Respectfully, H. B. Fletcher."

The other one says:

"Memorandum for D. M. Ladd." -- whom you say is in Washington -- "From H. B. Fletcher," and it says:

"The above named informant has been furnishing information concerning the activities of Coplon since her conviction. In view of the imminency of her trial, it is recommended that this informant be discontinued immediately and that all administrative records in the

New York office covering the operations of this informant be destroyed. Pertinent data furnished by the informant has already been furnished in letter form, and having in mind security, now in the future, it is believed desirable that the indicated records be destroyed.

Tuohy advised 12:10 p.m., November 8, 1949."

3 Q Who is Tuohy? A Mr. Tuohy is one of the supervisors in this office.

Q Did you ever speak to Mr. Tuohy about this matter?

A No, I had not.

Q Did you know until today that there was a notation to the effect that Tuohy in the New York office was advised at 12:10, November 8, 1949, of the reasons for destroying records in this case? A Today is the first time I have seen those two memoranda.

Q All right. Now, I ask you, sir: Did you ever talk to Tuohy in connection with the work you were doing after Mr. Belmont gave you instructions to destroy records?

A In connection with this case?

Q Yes, sir. A I merely obtained some material from him but I never discussed the case with him.

Q What material did you get from Mr. Tuohy in this case? A Slips that I mentioned heretofore.

Q What kind of slips were those? A The slips were small pieces of paper which had on them a summary of the

information contained in the particular disc and made reference to that disc by numbers.

Q And so far as that is concerned, these slips that you received from Mr. Tuohy were not prepared by you?

A These particular slips I am speaking of now were not prepared by me.

Q Now then, when ^{did} you received these slips from Mr. Tuohy? A On a daily basis.

Q On a daily basis? A Yes, they were in sealed envelopes and I obtained them.

Q When you obtained these slips from Mr. Tuohy you did not know who prepared them, did you? A No, I did not.

Q You told us a moment ago, and I want to go back to that -- that the records you obtained in connection with the intercepts or the cuts on the discs were given to you by whom? A Now, wait. Are you speaking of the discs which were given to me?

Q No, no, I asked the question before, when it came to the cuts on the discs, you had to find out about it from notes made by the agents? A By the persons who made that cut.

Q Did those particular notes carry the name of the person who made the cuts? A I believe that they had the initials.

Q Did you recognize the initials? A I don't think

I ever paid any particular attention to them because the slips had the number and the cut which I was interested in.

Q Now, I ask you to search your memory for a moment. In connection with the destruction of these particular discs that took place some time after November 10th -- correct? A No.

Q You set in motion the destruction of these discs some time after November 10th? A No, I acted on those instructions to destroy the discs immediately.

Q Was that on November 10th? A On November 10th.

Q When you acted on the instructions to destroy the notes from which you obtained the information about the cuts, when was that? A At the same time.

Q Who gave you the notes, they weren't on the rack?

A Now, wait. I used the word "slip" and I used the word "notes." "Notes" refer to my own notations made from the discs. The slips were the summaries prepared by somebody else, a summary of the information in a particular cut.

Q That is the ones Mr. Tuohy gave you? A Those were in Mr. Tuohy's possession and I obtained them from him on several occasions.

Q Will you kindly tell me what was done with those slips? A Those slips were retained until the time I

received instructions to destroy the records. After

I had removed the discs from the racks I destroyed those slips along with my notes.

Q When you destroyed the slips along with your notes, tell us in what way and how you destroyed them. Was it by fire, or was it by flood, or how?

A No, they were torn.

Q Torn? A I destroyed them by tearing them.

Q You know that amongst other accomplishments of the FBI that they have a trash basket coverage. You know that, don't you?

THE COURT: What is the purpose of this?

MR. PALMER: All right.

Q What did you do with the slips after you tore them up? A Placed them in the waste basket.

Q And did you make any effort to see that that waste basket would finally be retained or contained in a receptacle where no one could get at those slips?

A Those waste baskets are retained on our floor.

Q What happens with them at night? A They are collected at night and destroyed.

Q And destroyed? A The contents destroyed, I believe.

Q And when you got back to your desk in the morning were the baskets empty? A I did not come back until I believe the following Monday at which time the baskets were on the floor again.

Q Now, in connection with the discs that you destroyed

in the fashion that you described, the notes and the slips, will you kindly tell me, did you ever tell the story about the destruction of those slips, these discs, and the notes to anybody before you took the witness stand today?

A Yes, I did.

Q Who did you tell it to? A I discussed that with Mr. Kelley. On January 3rd he asked me if I had destroyed them and I said I had.

Q On January 3rd, after the records had been -- after the motion had been made for the wiretapping inquiry, you discussed with Mr. Kelley the fact that you had destroyed discs, and that you had destroyed your notes and destroyed these records, am I right? A The destruction took place on November 10th.

Q Yes, but you discussed it with him on July 12th?

MR. KELLEY: Now, just a moment here.

A I said January 3rd.

Q January 3rd.

MR. KELLEY: Your Honor, I do not think that was intended, but I am not sure.

THE COURT: Well, I do not think it was, Mr. Palmer.

MR. PALMER: Your Honor, I am going to look at your Honor and maybe I would just as well have said that it would be the 4th of July. It was not intended.

THE COURT: You should have known that the date was

January 3rd.

MR. PALMER: Yes, I knew it, and, as your Honor knows, of course I did not intend it. It is ridiculous to think that I intended it.

THE COURT: I don't believe you did.

MR. PALMER: And I am awfully apologetic to you, Mr. Kelley.

THE COURT: You are entitled to make such a statement apologetically. However, I believe it was unintentional.

MR. PALMER: Yes, sir, if the Court please, I assure you that it was, and I hope Mr. Kelley knows that it was unintentional by this time.

THE COURT: All right. Now, go ahead.

Q On January 3rd where was Mr. Kelley and who was with him at the time you informed him of the fact, the Assistant Attorney General of the United States, of the fact that you had destroyed these records, destroyed the discs, the notes and slips at the direction of Mr. Belmont? Where was he? A He was in Mr. Belmont's office the morning that I was there.

Q And was Mr. Whearty there, too? A I believe he was.

Q I see. Anybody else there? A Yes, Mr. Fletcher was there at that particular time.

MR. PALMER: Your Honor, may I at this very time ask your Honor if you will look at the records before you, what was handed to you, and will you please tell me what was the date that Mr. Kelley handed up to the Court the affidavits concerning the discs and microphone records, and the facts as set forth in those affidavits as to their whereabouts?

THE COURT: Mr. Palmer, you are again asking me to act as your law clerk.

MR. PALMER: I do not propose to have you act as such, your Honor, but may I say --

THE COURT: I have supplied you with the minutes.

MR. PALMER: Then may I supply the date?

THE COURT: You may supply the dates, or the minutes will supply the date.

MR. KELLEY: Your Honor, may I state for the record that prior to the time I ever saw this witness that this Court instructed me to determine personally who had destroyed the records and to produce them here for that information.

THE COURT: Yes, that is right, Mr. Kelley.

MR. PALMER: I am not interested in that.

MR. KELLEY: Well, I am.

THE COURT: And I feel that you have done that, Mr. Kelley, and that you have obeyed every order of the

Court promptly and with dispatch.

Q Now, in connection with the destruction of records, were these records, the ones that you destroyed, ones which had been instituted under the name Tiger? A Will you please repeat that question, Mr. Palmer?

Q You said that all references to intercepts concerning Coplon after the date in question when you heard about it were to be placed under the name of Tiger?

A All of the information was to be placed under the name Tiger, that is right.

Q And, therefore, all the information that was destroyed was the information that had theretofore been gathered under the name Tiger? A That is correct.

Q Now, I ask you if you know whether or not after November 12th and up to November 24th that intercepts continued on the telephone of Miss Coplon and her family from her home in Brooklyn, did you know that?

A Not to my knowledge, no, I don't know that.

Q Then you don't know what happened with any records, if any were created, after November 12, 1949? A My assignment was to review all the discs that were obtained. I did that and when the -- when the wiretap was discontinued on November 10th I received no more slips and I received no more discs.

MR. PALMER: May I see that last card now, your

Honor?

THE COURT: Yes, you may see it at any time.

MR. POMERANTZ: Your Honor, --

MR. PALMER: Just the last card.

THE COURT: Mr. Pomerantz has it.

MR. PALMER: May I have that small card?

MR. POMERANTZ: I returned them to your Honor just a few minutes ago.

THE COURT: I believe they are here on my desk.

MR. PALMER: I would like to have the one for Brooklyn.

THE COURT: This is the one that shows the discontinuance on November 10th. Here, take them all, Mr. Palmer, and keep them all together (handing to Mr. Palmer).

MR. PALMER: Thank you.

Q Now, then, as far as you know and as his Honor has pointed out in connection with Exhibit 63-A, the tap in Brooklyn ended on November 10th? A Yes.

Q Now, I ask you if during that period of time while you were reviewing the records of Brooklyn, and I am asking that question because of the fact that I asked you if you ever heard my name before in reading those summaries and preparing or reading the discs and preparing the summaries, did you from time to time come across the fact that there were telephone calls intercepted from the office

of the lawyer, Archibald Palmer, and Judith Coplon in Brooklyn, or from Judith Coplon in Brooklyn to the office of Archibald Palmer, in New York? A Yes, I did.

Q And that was on many occasions, correct?

A I would say on numerous occasions.

Q Yes. And you also on that occasion or in that connection on numerous occasions heard Judith Coplon's brother, Bertram, who was at her home in Brooklyn, and Mr. Palmer talk to that home when Mr. Bertram Coplon's phone was intercepted? A I recall conversations between Palmer and Bert Coplon.

Q You mean you read them? A I heard them on the discs.

Q And also from time to time you heard that Miss Coplon in Mr. Palmer's office called up her home and spoke to her brother and others, and that was intercepted, too?

A I don't know where some of the individuals were at the time, but I did hear conversations between them.

Q And did you know that Archibald Palmer was the lawyer for Judith Coplon when you read these summaries?

A Yes, I did.

Q Did you inquire from Mr. Belmont or anyone else as to whether the FBI under the Constitution -- you are a lawyer -- had a right to intercept messages between a lawyer and his client?

THE COURT: Objection sustained.

MR. PALMER: Exception.

Q Now, in connection with the destruction of these records, after you put them in the basket or the place that Mrs. Saliba kept them, did you ever see them again?

A I did not.

Q Did you count the number? A At the time that I placed them in the drawer?

Q Yes. A No, I did not.

Q Do you know how many there were? A I would be guessing, Mr. Palmer.

Q You would be guessing. Thankyou. A I would say perhaps--

Q No, I would rather have you not guess.

A All right.

3 Q Now, in connection with - and I will be through in a minute - with the slips that were destroyed, the ones that Tuohy gave you, the ones that Mr. Tuohy gave you, prepared by the agents, when you examined the discs and played them -- I am talking now about the cuts, the cuts were in various places on the discs, is that right?

A That is right.

Q And the discs were about what diameter? A I would say 12 -- approximately 12 inches.

Q 12 inches across? A Perhaps a little less. I am

not sure.

Q That would be 12 by 12?

THE COURT: No.

A It would be 12 inches diameter.

THE COURT: They are round.

MR. PALMER: I know they are round.

THE COURT: Then they would not be 12 by 12.

MR. PALMER: They were on both sides, correct.

Q The cuts were on both sides, is that correct?

A Yes.

Q Now, in connection with the cuts--

THE COURT: 12 by 12 by 5. Next question.

MR. PALMER: All right. I always like you when you make me feel good by smiling.

THE COURT: Go ahead, Mr. Palmer.

Q In connection with these particular discs when you looked at the notes or these slips, containing the opening of the resume as to where you should look on the discs, you played each disc only where the cut took place?

A That is correct, as represented by the slips.

Q Yes. And you counted it from the center toward the outside, is that correct? A Correct.

Q Can you tell me now from your recollection whether it is not a fact that very often with those discs you would have to go to the third, fourth, eighth, seventh cut, and

only take part of the cuts on either side of the disc in order to be able to obtain the information regarding Coplon with the list that Mr. Tucky gave you which indicated they were Coplon intercepts? A I am not certain that I understand you correctly.

THE COURT: Sometimes the discs contained as many as eight cuts?

THE WITNESS: Sometimes one or two, sometimes six or seven or more.

Q And depending upon --

THE COURT: Just a moment. Were there times when the Coplon cuts were not recorded on the first, second, or third cut, and even ran onto the fifth, sixth and seventh cut?

THE WITNESS: Yes, that was possible.

Q Well, now, that happened --

THE COURT: Are you going to be long with this witness?

MR. PALMER: No, I just looked at the clock and I will be through in less than four minutes.

THE COURT: All right. Take your time.

MR. PALMER: Thank you, but then I want Mr.

Pomerantz to go on.

MR. POMERANTZ: To take the remaining two minutes.

MR. PALMER: No, I think --

THE COURT: Now, Mr. Palmer.

MR. PALMER: -- I think Mr. Pomerantz's two minutes may be more than my two hours.

THE COURT: Next question.

MR. PALMER: Very good.

Q Will you kindly tell me isn't it a fact that you did not know what the other cuts contained?

A I did not pay any attention to the other cuts, because of the fact that the cuts in which I was interested were listed on the slips by number.

Q Now, when you got those instructions -- you are an intelligent man and I am not trying to flatter you -- didn't you go up to Mr. Belmont and say, "Here, national security, and there are certain of the cuts which are not Coplon's and should be dubbed off on some other record"? Did you say that to him?

A No, I did not, Mr. Palmer.

Q You know what dubbing off a record is?

A Yes.

Q That is, you can't from the standpoint of reproducing --

THE COURT: All right. Next question. He said that he knows what it is.

MR. PALMER: I never knew before this until your Honor brought it out.

THE COURT: Next question.

Q Will you kindly tell me is it a fact then -- this is my last question -- that in connection with the destruction of all the records that you surveyed, created after the 12th of July, 1949, and up to November 10th daily, on whatever basis it was, and they testified 24 hours a day, that you went ~~ahad~~ pursuant to these instructions and caused all the records, cuts which had nothing to do with Coplon, cuts which apparently were not mentioned on the list, or were destroyed at one time?

A No, that is not the situation that existed.

Q Well, let me know. A As I heard testified to previously, the policy was to permit those records--

Q Will you forgive me, please.

MR. PALMER: May he answer the question directly, your Honor?

THE COURT: He is answering the question. If you don't like his answer, you may move to strike it out at the completion of it, but let him answer it.

MR. PALMER: Can the question be read to him?

THE COURT: This is your last question?

MR. PALMER: I won't ask another.

THE COURT: Let him answer it.

MR. PALMER: Can he re-read the question back?

THE COURT: Go ahead and answer it.

A (Continuing) Those discs were permitted to remain for a period of approximately 30 to 60 days, and during the normal course of the examination of those discs some were destroyed. The ones that I destroyed were the ones that remained as I checked them off from my list, and as to those discs containing cuts pertaining to cases other than the Coplon case, had those discs been of importance such as you pointed out, there would probably have been a notation on there to hold them. The discs that I removed from the rack did not have such notations and I destroyed them.

Q You heard Mrs. Saliba's testimony when you were back there in the room, in the courtroom, along these lines?

A I knew them before Mrs. Saliba.

Q Anyway, so far as you are concerned you don't know now of your own knowledge whether the cuts that you did not play, other than the Coplon cuts, were not important? You knew nothing at all about it, isn't that so?

A No, I did not.

Q But the instructions were to destroy the entire records which had been listed under the title "Tiger"?

A Pertaining to this case.

MR. PALMER: Yes. That is all.

THE COURT: Are you going to be long, Mr. Pomerantz?

MR. POMERANTZ: I will probably need an hour with this witness, your Honor.

THE COURT: Then we will take a recess for five minutes or maybe we will make it ten minutes, a ten-minute recess, and during those ten minutes perhaps you can shorten your cross-examination and eliminate some matters.

MR. POMERANTZ: I think that time will help me crystallize my cross-examination.

THE COURT: All right. We will give you ten minutes.

(Short recess.)

MR. PALMER: Your Honor, may I at this time deliver to your Honor the memorandum in connection with the investigative reports?

THE COURT: Give a copy of Mr. Kelley too.

MR. PALMER: I don't have to give it to Mr. Kelley because they got it in Washington, and the Judge decided in my favor in Washington.

Judge, I might ask your Honor this, I think it would be very helpful, I haven't got any copy of it, if the Government's memorandum, which was given in opposition to that, to Judge Reeves - they have plenty of copies because they made them by the thousands, and they were distributed all over the country - were given to you.

THE COURT: Let me see it.

MR. PALMER: He has got it.

A R T H U R A V I G N O N E , resumed the stand.

THE COURT: The Court will adjourn at twenty after four, Mr. Pomerantz.

MR. POMERANTZ: I will go as quickly as I can.

THE COURT: If you are not completed with this witness, why, then, you may continue with him tomorrow morning, but I simply want you to know that because I have an appointment upstairs in chambers at half past four on another matters.

MR. KELLEY: I have one question, your Honor, I

would like to put to this witness.

THE COURT: You will have an opportunity to examine when Mr. Pomerantz is finished.

MR. POMERANTZ: I will yield to Mr. Kelley now.

THE COURT: No, I think it is best that the defendants' examination be conducted now.

MR. POMERANTZ: I hope your Honor will indulge me for this rather --

THE COURT: You have plenty of time.

MR. POMERANTZ: I just want to say, I hope you will indulge me for this unusual statement. I want to say I have never heard a more forthright and honest declaration by a witness in all my years at the bar as I have heard from the witness, Mr. Avignone, and I want the record to show that I feel what he has done here in giving his testimony has been a credit to him.

THE COURT: I think the same observation could be made of all the witnesses. We will go ahead now with the examination. Sit down, Mr. Palmer.

MR. PALMER: I just wanted to hear what you said.

THE COURT: Sit down, Mr. Palmer.

MR. PALMER: All right, I am down again as usual.

THE COURT: All right, Mr. Pomerantz, you may examine.

CROSS EXAMINATION BY MR. POMERANTZ:

Q Mr. Avignone, I would like to have your best memory of what Mr. Belmont said to you and what you said to him on November 10th, that being the occasion when he approached you and asked you to do what you referred to as the unusual thing of destroying these records. Will you give me your best memory on that?

A I cannot quote him but the instructions that I received from Mr. Belmont were to destroy all the records pertaining to this case, and by records was meant the discs, the slips and the notes. I don't believe I made any comments about that. I simply carried out my instruction.

Q You made no remonstrance at all or you made no suggestion of possible impropriety in doing this?

A I may have said "It seems a bit unusual," and I may not. I don't recall that.

Q All right, sir. Now I would like to have from you as nearly as you can give it to me a category or a catalogue of the several things you destroyed. So far you have told us, if I understand correctly, that you destroyed all discs, is that right? A I caused the discs to be destroyed.

Q That is what I meant. Did that include any discs existing prior to your coming into the matter, that is, prior to July 12th? A No, I only handled the discs from July 12th until November 10th.

Q I so understood you.

BY THE COURT:

Q Do you know how many discs you caused to be destroyed, how many in number? A The total I would judge to be about 70 or 75, but they weren't destroyed all at one time. That was over that period of time.

Q No, what I would like to know is this: You say you received this order for destruction on November 10th?

A Yes.

Q How many discs were in existence at that time, concerning this interception, which you caused to be destroyed as a result of these instructions on November 10th?

A As I said before, I would just be guessing.

Q Your best approximation? A I would say perhaps eight or nine or ten, perhaps a dozen, but I am quite certain not more than that.

BY MR. POMERANTZ:

Q Those were Coplon discs, is that right?

A Those were discs containing cuts pertaining to this case and they might have contained some other cuts. I have no way of knowing that now.

Q May have contained some what? I did not catch the word. A I say they may have contained cuts not pertinent to the Coplon case. I cannot recall that now.

Q Were any discs destroyed at that time with respect

to the Gubitchev tap too? A I had nothing to do with any such tap.

Q Your supervision then was solely over the Colon tap in Brooklyn, is that right? A Between the dates that I mentioned, that is correct.

Q You had no supervision or jurisdiction whatever over the Gubitchev New York tap, is that right?

A I had nothing to do with the Gubitchev case.

Q By the way, do you know whether the code name, Tiger, for the informant was also the code name for the entire case, meaning Coplon and Gubitchev? A The word Tiger was designated as the name for this particular wiretap, and that is the wiretap having to do with the Coplon case alone.

Q Do you know whether the same or a different or any name was used to describe the Gubitchev tap?

A I do not know of the existence of any Gubitchev tap. I had nothing to do with that case.

Q I began asking you before what you destroyed. So far we have talked about discs. In addition, you say you destroyed your own notes, is that right?

A That is correct.

Q Those notes were summarizations of the discs which you had played back, is that right? A That is correct.

Q And in the course of hearing it played back,

you would condense or summarize whatever material you felt was worthy of summary? A Resulting in my notes.

Q You referred to that document as a letter, is that right? A No. Let us distinguish between my handwritten notes which I made at the time that I listened to the discs. Those were my pencil notations. From those pencil notations I dictated the letter.

Q To whom? A A stenographer.

Q Was the letter addressed to anyone?

A The letter was merely addressed to the Bureau, as are all other letters.

Q And did you actually transmit that letter to anyone? A Personally, no. It went through the office routine of being sent out.

Q Was it transmitted to the Washington or the New York Bureau? A That was transmitted to the Bureau itself, the headquarters in Washington, D. C.

Q Do you have a carbon copy of that letter?

A I believe the carbon copies are now in the possession of the Court. I am not certain of that.

THE COURT: I will see whether or not they are.

Mr. Schaefer, let me see that list of exhibits you have there. It may be in one of these exhibits of which I have ruled that there is no contradiction and that it contains the same notations as have already been disclosed.

Was the letter mimeographed?

THE WITNESS: No, they were typewritten.

MR. KELLEY: If your Honor please, I cannot at the moment give the number of the exhibit, but I am satisfied and it was represented to me that at the time the Court called for all records in the possession of the FBI from which the original and summaries furnished to this Court were obtained, that among those documents all of the Avignone letters were included.

MR. POMERANTZ: There is no need to pause now,

if your Honor please. May I continue?

THE COURT: I always like to follow these things through while we are at them. It may be here. Wait a minute. It may be in Court's Exhibit 46. We do not want to leave these matters hanging in the air.

I think they are part of Court's Exhibit 46.

MR. POMERANTZ: Suppose I leave that at this time, your Honor, since I have no chance to read it tonight anyway.

THE COURT: It will be preferable if the Court did this during the night recess.

MR. POMERANTZ: I do hope that you can do it tomorrow, your Honor.

THE COURT: No, I will do it tonight.

MR. PALMER: Would that mean, your Honor, that you will then decide whether we can look at them?

THE COURT: If amongst these papers in Court's Exhibit 46, these typewritten letters are contained, although I feel that the same information has already been divulged to the defendants, I will permit access to them.

MR. PALMER: Thank you.

THE COURT: That is, such portions as are pertinent to the testimony of this witness.

Now, in these letters, the so-called letters, many of them contain other matters, other than interceptions,

and it may be necessary to have them deleted, and if so, we will have that done, but I will go through that tonight.

MR. KELLEY: Am I not correct, your Honor, in understanding that when you considered Exhibit 46, that after you had examined it you made the finding that any matter therein pertaining to wiretaps had already been furnished to the defendants, and that you are going to do the same operation as a point of certainty?

THE COURT: No, I am going to do it now with another purpose in mind as well, and that is, this witness being on the stand, counsel is entitled to any note or memorandum made by him which may add to or contradict his testimony on the stand as a witness.

MR. KELLEY: In the interests of establishing the bona fides of the production from time to time made by the Government, may it not be determined as well as to whether or not that information was orally furnished by the Court to counsel?

THE COURT: My notation on Exhibit 46, which I made on the evening or early morning of January 4, 1950, reads: "It appears to the Court upon examination of these records that they present no substantial or material variations in the testimony given in court by the witnesses who have testified, or from the contents of records of interceptions already made available to the defendants.

Some of the contents of this exhibit are of a confidential nature, some affect national security. To permit an examination would constitute an unwarranted search of official records and access is denied."

MR. PALMER: That is what I thought, you denied it.

THE COURT: I did deny it.

MR. PALMER: He didn't think so.

THE COURT: Mr. Kelley is not questioning that. His recollection is in accord with the facts. However, I will re-examine the contents of this exhibit, paying particular attention to those letters which this witness dictated, dated from July 12, 1949, to the end of November, November 10th. I will release such portions of those letters as are pertinent to this inquiry that affects this witness's testimony and do not affect national security. I will release them notwithstanding the fact that these letters might contain only material which has already been disclosed.

MR. PALMER: Thank you, and, your Honor, in that connection also, will your Honor be good enough to direct Mr. Belmont to be a witness tomorrow?

THE COURT: We will take each thing up at a time.

MR. PALMER: I want you to know in view of what he said that we need Mr. Belmont.

THE COURT: We will take one thing up at a time.

You may make an application to that effect and I will rule on it.

MR. POMERANTZ: Your Honor, are the contents of Exhibit 46 more than the copies of letters of Mr. Avignone, or is it confined just to those letters?

THE COURT: It contains more than that.

MR. POMERANTZ: More than that?

THE COURT: Considerably more.

MR. POMERANTZ: Thank you.

THE COURT: It contains a batch of papers, and a good many of them are on onion skin paper, and I would say that it contains perhaps 200 or 250 pages. From that I have already taken out one telegram that is marked 46-A.

I will re-examine 46 again in the light of this witness's testimony and I will do that tonight.

MR. POMERANTZ: Thank you.

BY MR. POMERANTZ:

Q Now, we have so far covered the discs that were destroyed on and after November 10th -- and, by the way, as a parenthesis, let me ask you: How long after November 10th did the destruction of discs continue?

A Well, I followed my instructions as given to me on November 10th. The date of the actual destruction, I don't know.

Q Well, so far as you know, what is the final act you

did looking to the ultimate destruction of these records?

A It was the placing of the discs which remained in the racks with a group that had already been earmarked for destruction. That was my first action. Secondly, I destroyed the slips --

Q If you do not mind I just want to keep with the discs for the moment. I want to get a little more detail on the leaving of those discs in a rack. Was that in Mrs. Saliba's room or department? A It was in Mrs. Saliba's room --

MR. KELLEY: I beg your pardon. I did not understand the witness to say that he left them in a rack.

Q Well, you correct me, Mr. Avignone. What was your last act with regard to these records that were destined for destruction? A In checking against the list that I had maintained for my own personal information, I removed the remaining discs from the rack in which they were maintained and placed them in a drawer in which there were other discs that had already been earmarked for destruction.

Q And where was that drawer situated exactly?

A In Mrs. Saliba's room.

Q And from that point on you do not know when or for that matter whether those discs were destroyed, do you?

A I don't know when they were destroyed.

Q And you did this operation on November 10th, did you? A Yes.

Q Now, I have some confusion in my mind. I heard you before testify to 70 or 80 discs which I thought you said were destroyed, and then later on you gave a number of some 8 or 10 discs. Would you straighten me out on that? A Very well. The list that I maintained for my own information contained approximately 70 to 75 discs. Those during the normal course of events, some of them, were destroyed, and when I received my instructions on November 10th I removed the remaining discs which I said amounted to approximately 8 or 9 or 10 and caused those to be destroyed. There is the difference in numbers.

Q I get it clearly now. In other words, during your tenure altogether some 75 or 80 discs which you had listened to and of which you had made summarizations were destroyed between July and November? A Yes; that is an approximation.

Q I understand. In addition to the discs and your summarizations -- exclude summarizations -- in addition to the discs and your handwritten memoranda, summary memoranda of the discs and the slips, those being the memoranda of monitors, is that right? A That is correct.

Q Had there also been a log kept during the period

of your operation, that is, between July and November?

A I had not kept any log. The only log that I kept was the list that I mentioned before, which was for my own use.

Q And that list, you said, was likewise destroyed?

A That was destroyed at the time I destroyed the slips.

Q Were your instructions by Mr. Belmont in effect to bury all traces of the operation? A No, my instructions were to destroy all the records.

Q And by records now we mean not only discs but all memoranda? A Memoranda and those slips -- my penciled memoranda, that is.

Q Do you know, in fact, whether a log was kept or ever had been kept of the Coplon telephone?

A I did not maintain a log and I don't know of the existence of any.

Q You have never heard of any? A No, I have not.

Q Have I exhausted the catalog of things that were destroyed or were there additional kinds of papers or things that were destroyed during your tenure?

A We covered the discs, we covered the slips, my penciled notations -- all those were destroyed. That is all that I had -- and the lists reflecting the numbers of those records.

BY THE COURT:

Q On November 10th you had your penciled notations dating back to the time you were placed on duty on this case, dating back to July 12th? A No, I did not. Those penciled notations were destroyed as I finished them because the same material was contained in the letters.

Q Over what period of time did your penciled notations extend when you destroyed them on November 10th?

A They dated back to the preparation of the last letter; in other words, I kept penciled notations --

Q Can you tell us approximately the date of the last letter prior to November 10th? A I am afraid I can not. I would judge it would be approximately the 1st, 2nd or 3rd of November.

Q Would it be October 31st? A It might be and it might be after that date, sir.

Q In the penciled notations of the record numbers and the cut numbers over what period of time did that extend that you destroyed on November 10th?

A The list of the record numbers covered the entire period from July 12th to November 10th.

Q And were they all in existence on November 10th?

A That list was.

Q And you destroyed that list? A Yes, I did.

Q Prior to destroying it did you carry or did you

give a copy of those record numbers and cut numbers to anybody? A No, I did not.

Q Were you asked to? A No, I was not.

Q Do you know whether there is now in existence any other list or any other paper which has recorded upon it the record numbers and the cut numbers of the interceptions made on this Coplon telephone in Brooklyn? A No, I do not. I believe I have the only record pertaining to them.

Q Did you ever at any time during your contact with this case or since see any such list on which there was recorded the record numbers and cut numbers of the interceptions on the Coplon telephone in Brooklyn? A No, I have not.

MR. PALMER: Your Honor, would you --

MR. POMERANTZ: Now, I was --

MR. PALMER: Pardon me, Mr. Pomerantz. In view of what you asked this witness, if your Honor please, would you be good enough, if it is within your ability --

THE COURT: Mr. Palmer, I think it is best not to interrupt Mr. Pomerantz.

MR. PALMER: It is going to be just two minutes more and I will forget about it.

THE COURT: That is the reason why you have a pencil and a paper. It is not right to interrupt counsel.

MR. PALMER: It won't make any difference, sir.

THE COURT: I only do it where I think I am expediting matters.

MR. PALMER: Yes, sir.

THE COURT: And bringing out matters that should be brought out.

MR. PALMER: But I think that your Honor, if you will just listen to me for half a minute, you will find that you can finish up your job very beautifully.

THE COURT: All right, go ahead.

MR. POMERANTZ: It will probably be faster.

MR. PALMER: If your Honor will send for the books that you marked at my request, the books that the girl brought in, that the lady brought in, I would like to have your Honor find the dates after November 10th, the date he spoke about, when records were destroyed.

THE COURT: I do not have the book. I gave the book back.

MR. PALMER: Yes, but if they bring that to you --

THE COURT: We will get it after they are through with it. They are working on it now preparing the schedule that Mr. Pomerantz asked for.

MR. PALMER: Once in a while you say to me that I have a good idea and I thought this might be a good idea.

THE COURT: All right.

MR. POMERANTZ: Just one more question for this

evening and I may or may not have some more tomorrow morning.

BY MR. POMERANTZ:

Q The letters which are now before his Honor as Exhibit 46, the ones that you dictated after hearing the discs played, did those letters contain any material other than the summarization of the discs which you heard played?

A No, they did not.

MR. POMERANTZ: I would refer that to your Honor's attention.

THE COURT: I have read these letters once and my recollection was when I read them, as I noted on the envelope, that they recorded no substantial variations between the exhibits which have already been shown to counsel and what is recorded on here. However, I will check it up again, as I indicated, during the night recess.

I think it will be appropriate, in view of the fact that I have a hearing on upstairs and I have a little work to do tonight and in the early hours of the morning that we will take a recess now.

MR. PALMER: I don't need any.

MR. POMERANTZ: Before leaving, may I just save some time tomorrow morning and ask the Government to produce the stenographer whose initials are T.L.C., who apparently dictated the memorandum of November 7, 1949?

THE COURT: What memorandum do you refer to?

MR. POMERANTZ: That is the memorandum which is Exhibit 63-B in evidence.

THE COURT: We will take that up tomorrow after we are through with the witness with the schedule. Just make a penciled notation of what you have in mind.

MR. POMERANTZ: All right, I will do that.

THE COURT: May I have those two exhibits.

(Exhibits handed to the Court.)

MR. POMERANTZ: Your Honor, may I ask that this exhibit be made available to a handwriting expert tomorrow morning in court?

THE COURT: Yes, if you desire to have it examined by a handwriting expert.

MR. POMERANTZ: It is quite palpable that the date November 7th has been erased and changed and appears to have been November 21st, and I would like to verify that.

THE COURT: All right.

We will adjourn, gentlemen, until ten-thirty tomorrow morning.

(Adjourned to January 13, 1950, at 10:30 a.m.)

that the initial date was October 31st, that that date was erased, that thereafter the present date appearing on the exhibit, November 7th, appears. Now, if we agree on that --

THE COURT: The Court desires to accept no concessions of the circumstances under which the erasure was made.

MR. POMERANTZ: All right.

A R T H U R A V I G N O N E, recalled, testified further as follows:

MR. POMERANTZ: May I proceed, your Honor?

THE COURT: Yes.

CROSS EXAMINATION CONTINUED BY MR. POMERANTZ:

Q Just two or three questions and I am through with you, Mr. Avignone.

You testified that after you had received your instructions from Mr. Belmont on November 10th to destroy all records of the Coplon taps you found on investigation that many had already been destroyed between July 12th and November 10th, but I think you said that some eight or seven records had not yet been destroyed, meaning discs now, and so you proceeded to destroy them. Is that substantially correct, Mr. Avignone? A That is correct.

Q Now, I would like to know from you, how did you get possession of those seven or eight records which were the

final residue of the discs that had been taken?

A You mean how I had obtained actual physical possession?

THE COURT: How was it that they were in your possession?

THE WITNESS: Well, the records or the discs were not in my possession at that particular moment. When I received my instructions I went to the room where those records were maintained, and comparing, or rather examining my records, I took the numbers that appeared on my list and searched for those particular records. I found those eight or ten - I don't recall the specific number - which remained and which numbers appeared on my list. I removed them from the rack and placed them in a file drawer containing other records which had been earmarked for destruction.

BY MR. POMERANTZ:

Q Now, the rack you refer to from which you took those eight or ten records or thereabouts, was that in Mrs. Saliba's department? A It was.

Q And was Mrs. Saliba -- do I pronounce the name correctly, by the way? A Yes.

Q Was Mrs. Saliba aware of the fact that you were taking those records out of her department?

A I can't say that she was present each time that I was in her room. I do know that she did see me in that

room. Whether or not she actually saw me remove those records from the racks, I cannot state.

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Q Mrs. Saliba has already testified that she kept a record of all discs that were destroyed, and I was curious to know whether the eight or ten records which you destroyed on November 10th were reflected on Mrs. Saliba's destruction records; do you have any information on that?

A I could not answer that.

MR. PALMER: Pardon me, your Honor. I think that I must make an objection because the gentleman did not say that the records were destroyed on November 10th. He said they were put in a rack in another room with other records for the purpose of being destroyed.

THE COURT: Do you object to Mr. Pomerantz's question?

MR. PALMER: Only to the form of it and the misinformation contained therein.

THE COURT: Mr. Pomerantz will withdraw the question and reframe it.

Q The eight or ten records which we are speaking about, which you earmarked for destruction on November 10th, I am trying to find out whether those records, if you know, or the numbers of those records appear in Mrs. Saliba's record of destroyed material? A I don't know whether they do or not.

Q As far as your recollection is concerned, you went into the rack and just helped yourself to those discs without the aid of Mrs. Saliba? A That is correct. I removed the records and placed them with a group of records which had been earmarked for destruction.

BY THE COURT:

Q I understand that you did more than that. When you went down to the room where these records were kept you took with you your penciled notes on which you had put the record numbers and the cut numbers of various discs you had played beginning on July 12th, is that correct?

A That is correct.

Q And then you went to that rack to ascertain whether there was still available all the records from your penciled list? A I went there and I compared the list with the rack of records to see which ones remained.

Q And as a result of that comparison of your list with the discs or records that remained you gathered about eight or ten records? A That is correct.

Q You were unable to find the other records listed on your penciled notes in the rack? A That is correct.

Q Those records that you did find you then put aside and you gave to Mrs. Saliba for destruction? A No, sir, I didn't give them to Mrs. Saliba. I placed them in a drawer that contained other records that had already been

earmarked for destruction.

Q Did you call her attention to the fact that you had placed these eight or ten records in that drawer?

A No, sir, I did not specifically direct her attention to that action that I took. I do recall that on one occasion I had asked her where she maintained the records that were earmarked for destruction, and I knew then that it was a particular file drawer, and I merely placed the records in that drawer.

Q And is that the drawer that was called the inactive file? A It would be, yes, sir.

THE COURT: All right.

BY MR. POMERANTZ:

Q Now, after you received your order to destroy all this material, I believe you testified that you destroyed certain material that related to the period prior to your taking over this operation, that is, prior to July 12th, is that correct? A No, sir, I don't believe I said anything to that effect.

THE COURT: Let me interrupt you, Mr. Pomerantz, at this time. This witness has not yet identified those various exhibits that I released this morning --

MR. PALMER: I am going to ask him about it.

THE COURT: Mr. Pomerantz, give them to me and the Court will ask the questions in order to save time.

We might as well have them identified now.

MR. PALMER: The reason that I preferred that I ask about them is because they only refer to Judith Coplon and Archibald Palmer.

THE COURT: I prefer that I do it, since I marked them in evidence.

Now, I show you Court's Exhibits 46-B1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and I ask you to look at them and tell me whether these are the letters or resumes concerning which you testified yesterday that you dictated after playing the records?

MR. POMERANTZ: May I ask if the witness has before him the entire documents or only those parts which your Honor has released to us.

THE COURT: He has only those parts which I have released to you. I have gone through Court's Exhibit 46 and I think these were all I released. I went through them very carefully last night. You will note the dates on them and you will see that there is no period missing; each week is covered.

THE WITNESS: Yes, they are copies of the letters and they are carbon copies of letters which I dictated, and there are also photostatic copies or what appears to be photostatic copies of four letters that I dictated.

THE COURT: All right.

MR. POMERANTZ: Does the record show the identification of the exhibit numbers?

THE COURT: Yes, I identified the numbers.

MR. POMERANTZ: All right.

BY MR. POMERANTZ:

Q Is it correct, therefore, to say that you destroyed no material relating to this tap which refers to taps prior to July 12th of 1949? A I had nothing to do with the Coplon case prior to that date.

THE COURT: He did not ask you that. He asked you whether you destroyed any papers or records which referred to activities prior to July 12th.

THE WITNESS: No, I did not.

Q Now, Mr. Avignone, I believe you testified that you know about the Nardone cases? A I know generally what it holds, I believe.

Q And did you know that the cases permit counsel for defendant or defendants to inspect discs in the case of the discovery of wiretapping on the telephone of a particular defendant?

MR. KELLEY: I object to the question.

THE COURT: I do not know that there is such a holding --

MR. POMERANTZ: I think your Honor will find it in the second Nardone case.

THE COURT: I have ruled that that should be done to accomplish the intent --

MR. POMERANTZ: I would like to get the witness's knowledge or lack of knowledge.

THE COURT: Yes, you may ask him whether he believes that to be the law.

Do you believe that to be the law?

THE WITNESS: The only acquaintance I have with the Nardone case is the general holding of it. I am not really thoroughly familiar with it.

BY MR. POMERANTZ:

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Q Well, do you recall that one of the holdings, Mr. Avignone, was that where there is wiretapping defense counsel has the right to discover whatever evidence the prosecution has obtained that might have flowed from or derived from the illegal interception?

A No, I am not specifically acquainted with that phase of it.

Q Were you aware of the fact that on November 10th when you destroyed and earmarked for destruction the wiretap records of the Coplon telephone that this case was already on trial before Judge Ryan? A Yes, I would have known that.

MR. POMERANTZ: That is all.

REDIRECT EXAMINATION BY MR. PALMER:

Q I call your attention, Mr. Avignone, to Exhibit 63-B, which has been referred to, after his Honor permitted its inspection and to be introduced in evidence, as a memorandum from Mr. D. M. Ladd from H. B. Fletcher, subject "Tiger."

Now, I ask you whether or not the initials on the bottom of this particular exhibit, the date on top of which is November 7, 1949, and which now by reason of the statement made by Mr. Kelley is of a different date, if that "O.K. H" on there is not to your knowledge the handwriting of Mr. Hoover himself? A I wouldn't know that, Mr. Palmer.

Q Have you ever seen in all your years with the FBI the handwriting of Mr. Hoover?

THE COURT: Objection sustained.

MR. PALMER: Exception. I ask, if your Honor please, that you examine the "O.K. H" on the bottom of this particular "Subject: Tiger", on the date of the letter which has been changed to November 7th, and permit such inquiries to be made as to whether or not this "O.K. H" is not the handwriting of Mr. Hoover, who is the head of the FBI --

MR. KELLEY: Just a moment --

THE COURT: Mr. Palmer, I suggest that you proceed

in the orthodox way and ask the witness questions.

MR. KELLEY: If the Court please --

THE COURT: It seems to me to be entirely immaterial whether it bears Mr. Hoover's signature or not.

MR. PALMER: Well, I think it does. May I say why?

THE COURT: No.

MR. PALMER: All right.

MR. KELLEY: Your Honor, in the interests of clarity, not having copies, the exhibits consists of two letters, but it has but one mark or identification, 63-B. May I not ask that they be given the numbers 63-B1 and 63-B2?

THE COURT: Yes.

MR. PALMER: Then, if your Honor please, the one with the changed date --

THE COURT: Please.

MR. PALMER: Very good.

THE COURT: The one dated July 12th is marked 63-B-1.
The one dated November 7th is marked 63-B-2.

Incidentally, Mr. Palmer, what you feel is an H appears to me to be an F.

MR. PALMER: To me it appears to be an H.

THE COURT; I think you will find it was made by Mr. Fletcher, but it is immaterial whom it was made by.

MR. PALMER: All right, immaterial whether the top --

THE COURT: Immaterial whom it was made by.

MR. PALMER: Well, your Honor so ruled.

THE COURT: Yes. Next question.

MR. PALMER: I would like to have the exhibit.

THE COURT: Yes.

Q I call your attention again now to the new exhibit number, 63-B-2, and I show you that on the top the top man on there of the list of people who appear above the name of Ladd is Tolson, E. A. Tam, Clegg, Glavin and Ladd. Ladd, you told us yesterday, was the assistant director in Washington? A I believe I said he was an assistant director.

Q I call your attention to the name Tolson, which is also checked off, and I ask you whether he is not the first assistant to Mr. Hoover?

MR. KELLEY: Just a moment. May the record show

as to whether or not the names just enumerated are printed or typewritten?

MR. PALMER: Yes, but pardon me --

THE COURT: The exhibit speaks for itself.

MR. PALMER: I would say this much--

THE COURT: Please, please. I didn't ask you for anything, Mr. Palmer. The exhibit speaks for itself. The objection is sustained. Next question.

Q I ask you whether or not alongside the particular name that appears on -- the name Tolson, if there is not a checkmark in pencil? A There is.

Q Alongside the name Ladd is there a checkmark in pencil? A It may be ink instead of pencil, but there is a checkmark.

Q That is the only two checkmarks against the names that appear on Exhibit 63-B-2, is that correct?

A No, there is another checkmark, but I don't know what it applies to, right there (indicating).

Q But the checkmark, isn't that alongside the two names? A The two checkmarks that you referred to.

Q The other one is not alongside of the names?

A It is in front of the names.

Q Who is Mr. Tolson? A Mr. Tolson is Mr. Hoover's assistant.

Q Is he the first assistant to Mr. Hoover? A Yes.

Q I see. This particular letter that is before us now, received apparently from -- from its marking on there, it was addressed to - a memorandum for Mr. D. M. Ladd, and received the attention, according to the checkmark, of Mr. Tolson, first assistant to Mr. Hoover, is that right?

THE COURT: I don't see how this is material. Objection sustained.

MR. PALMER: Very good.

Q In connection with the particular papers -- may I have them, please? A (Witness hands papers to Mr. Palmer).

Q (Continuing) Which you have identified as your summaries, were you in New York on the date when affidavits were presented to his Honor, to wit, about December 10, 1949, in connection with a motion which I had instituted for wiretapping and microphoning? Were you in New York? A I believe I was, Mr. Palmer.

Q I call your attention to these envelopes. These envelopes have been marked in evidence by his Honor as Court's Exhibits running from 5 to 34 inclusive, and they contain affidavits of the various agents --

THE COURT: They contain statements.

Q (Continuing) -- statements of various agents who, according to these statements --

MR. PALMER: Thank you, your Honor.

Q (Continuing) -- worked on the taps on the telephone of the Coplon residence. Did you ever see these particular papers before, these statements? A I have never seen them until you referred to them at this particular moment.

Q When you came to make the summaries weekly, in accordance with Mr. Belmont's instructions, of what the discs played, did you thereafter prepare the summaries in duplicate form? A I don't think there is any indication on there.

Q How many different duplications did you make of these summaries? A I believe there were three copies, the original and two copies.

Q In accordance with the custom of your office, do you know whether or not either the original of the various summaries of what the disc displayed or disclosed, whether that particular -- one of those particular letters or summaries was sent out to Washington, the field office or to the head office? A The original would have gone to the head office.

Q One of them would remain in the office in this building? A The carbon copy which you have there.

Q In so far as you are concerned, is it a fact that Exhibits 46-B-1 to 46-B-11, which embrace the following dates: July 20, 1949, July 29, 1949, August 3rd--

MR. PALMER: I am sorry, I just pulled it off.
Can I have it tacked together.

THE COURT: I do not see the necessity for it--

MR. PALMER: I just want -- I have a reason--

THE COURT: (Continuing) -- reading all these
dates. You are just wasting time.

MR. PALMER: I am sorry, your Honor, just give
me the opportunity to --

THE COURT: To waste time?

MR. PALMER: I don't think so. That is the
unfortunate part, that you say so.

Q (Continuing) -- August 3, 1949, August 12, 1949,
August 22, 1949, September -- August 30, 1949 --

THE COURT: If you are going to waste time --

MR. PALMER: It will take but a moment.

THE COURT: If you are going to do it, even though
I don't want you to do it, do it correctly. Go ahead, next
one.

Q (Continuing) -- September 12, 1949, October 10,
1949, September 28, 1949, and October 31, 1949, and the
last, October 5, 1949.

MR. PALMER: They were all in order before.

THE COURT: I guess they were, when they were handed
to you.

MR. PALMER: No, your Honor, -- all right. When

I gave them to the witness, your Honor looked at it.

THE COURT: All right, finish your question.

MR. PALMER: All right.

Q (Continuing) -- do these contain, to the best of your knowledge, as you picked out the information over the discs and from the notes made by the agents weekly, what transpired in connection with these intercepts week by week?

A That is the information that appeared in the records over that period of time.

Q And in connection with this information contained in these particular exhibits you had, as I understand, upon the disc or upon the memorandum made by the agents, who had given you the information so you could pick out the portion of the disc which indicated his intercept of the Coplor information, you had the initials of the agent who did the intercept, correct? A Some initial or some identification

Q Some identification, an identification that would be familiar to this particular Bureau?

A Would -- yes, that would identify the slip.

Q In connection with the letter_s which contain the summaries, to the best of your knowledge, do these summaries completely describe the information obtained over those intercepts during the period beginning July 12th and the period ending November 10th? A Yes, with this

exception, Mr. Palmer, --

Q Yes. A (Continuing) Anything that appeared absolutely not pertinent to the case, such as a statement, "I am going to the grocer," or something of that nature, is not contained in those letters, obviously not having any pertinency to it.

Q With that addition, as you put it, if any agent was going to make a statement, the statement not being under oath, to be delivered to his Honor, the memory of the particular agent covering that tap in question could be refreshed from the summaries which were in the office of the FBI here and in Washington, and which were -- which now have been turned over to the Court and by the Court opened to us for inspection?

MR. KELLEY: I object to the question as incompetent. This witness cannot state how another man's memory could or could not be refreshed.

MR. PALMER: I beg your pardon.

THE COURT: It is argumentative in form, but the point has been observed. The Court has taken notice of the point you desire to make.

Q Now then, if the agents before his Honor, who went on the stand one by one, being brought from Hawaii, being brought from Porto Rico, and the other places, if the agents desired to have their memories refreshed, instead of

having Mr. Belmont have them make a set form of affidavit -- a statement, rather, they could have obtained from this building, in the summaries which you had prepared and which were turned -- not turned over to the Court until a few days ago -- they could have obtained the information from that source, could they not?

MR. KELLEY: Just a moment. I object to the question as highly incompetent and it also misrepresents a fact to the detriment of the Government.

MR. PALMER: There is no detriment.

MR. KELLEY: If the Court please,--

THE COURT: Objection sustained.

MR. PALMER: Very good.

Q Anyway, so far as that is concerned, before you were put on the stand did you talk to Mr. Kelley?

THE COURT: We have had all that.

MR. PALMER: Pardon me.

Q Did you talk to Mr. Kelley about the fact, I think you said on January 2nd -- did you tell Mr. Kelley on January 2nd that you had prepared these summaries week by week and that three of them had been prepared, one sent to Washington, and one copy kept in the office; did you tell Mr. Kelley? A Tell him when?

Q On January 2nd, when you say you saw him? A I saw Mr. Kelley on January 3rd, at which time I had told him

what I had done.

Q You told us yesterday you told Mr. Kelley about the fact that the discs had been destroyed and the lists had been destroyed and the logs or the notes had been destroyed. Did you tell Mr. Kelley on January 3rd of this year, or Mr. Whearty, or both of them, that there were notes, summary notes, or letters, in the possession of the Department, prepared by you from your weekly study of the discs and from the notes of the agents, did you tell him that? A I told Mr. Kelley what I had done, namely, the destruction of the records, the slips and my pencil notations. I had no other logs that you referred to. I also told Mr. Kelley that I had included that information in summary form and had furnished it to Washington.

Q Did you tell him you had furnished it to Mr. Belmont in this very building? A No, not to my knowledge. I told him that I prepared the summaries.

THE COURT: The Court's recollection, Mr. Palmer, is that these papers, which you have in your hand, Court's Exhibits 46-B-1 to 11 inclusive, were turned over to the Court on January 3rd.

MR. PALMER: January 3rd?

THE COURT: Yes.

MR. PALMER: Were they turned over to the Court, if your Honor please, --

THE COURT: Because I ruled on them on January 4th; announced my ruling.

MR. PALMER: Your Honor, that is the point I am making.

THE COURT: It seems immaterial.

MR. PALMER: May I ask one question? At the time--

THE COURT: Might have been submitted even before that date.

MR. PALMER: At the time these were turned over to you in that fashion did you have in your possession the statements which were marked in evidence of the various agents?

THE COURT: It is improper for counsel to interrogate the Court?

MR. PALMER: No, no. I am asking your Honor.

THE COURT: Next question of the witness.

3 MR. KELLEY: Your Honor, may I make a statement for the record?

THE COURT: Yes.

MR. KELLEY: I will state for the record that the documents in question were made available to the Court on January 3rd, at which time the Court made a finding after examining it. The same material was included in earlier material furnished to the Court at the very outset of this case, which was marked Court's Exhibit 1 and turned

over to counsel for the defense.

MR. PALMER: Pardon me. Court's Exhibit 1 does not contain this information, when you look at it as I have looked at it during the recess.

THE COURT: Next question.

MR. PALMER: Very good.

Q I ask you to refresh your recollection by looking at these exhibits 46-B-1 to 46-B-11 and tell me, in connection with the taps, weekly taps, whether or not the summary given on the separate dates referred to more than one conversation that took place during the week in which the summary was built up, more than one conversation?

A Yes, they do.

Q In connection with that answer -- A Each letter-- pardon me.

Q I beg your pardon. A Each letter contains conversations on several days.

Q Now then, in connection with that answer, where it appears weekly that Mr. Palmer and Miss Coplon talked to each other to and fro and you made a summary of it in your weekly reports, then so far as that is concerned, that particularly weekly report contained the result of many conversations between the client, Miss Coplon, and Archibald Palmer, the attorney, in one particular action, am I right? A No.

Q Let me know about that. A This letter is broken down into various dates. Under those dates appear the specific conversations. In other words, the letter does not include or contain a summary of one week's conversations in toto. They are broken down under each date, under each conversation.

Q So therefore, what conversation was intercepted between the attorney and client during a period of a week or broken down to the day or days upon which that conversation took place?

THE COURT: He says all conversations were broken down.

MR. PALMER: I am only interested in the attorney at present.

THE COURT: Interested in who?

MR. PALMER: I am only interested in the attorney at present.

THE COURT: That should be your lease concern.

MR. PALMER: It is. Upon this it is no concern of mine at all. I am trying to indicate the fact, how the law was broken.

THE COURT: I am not concerned with that. Next question.

Q Now I ask the question, in the first week called for by those letters, how many intercepts were there of conversations between Archibald Palmer and his client, Miss

Coplon? A How many intercepts?

Q Yes, how many conversations?

THE COURT: The exhibit speaks for itself.

MR. PALMER: Your Honor, there will be nothing in the record.

THE COURT: The exhibit is in the record.

MR. PALMER: But, Judge, you don't put it in the record that way. In Washington they put it in word for word.

THE COURT: We are in New York.

MR. PALMER: You don't let us see them outside of the courtroom.

THE COURT: Don't let you see them?

MR. PALMER: You won't let me take copies of these away with me.

THE COURT: I have allowed you access to them --

MR. PALMER: In the courtroom.

THE COURT: (Continuing) -- in the courtroom and in the clerk's office, at hours of court and outside of hours of court.

MR. PALMER: But, I believe, if your Honor please, and I am making that request, I believe when there are exhibits that I have got a right to take copies of them, photostat them or otherwise, outside of the courtroom.

THE COURT: In ordinary circumstances you would,

but because of the peculiar law applicable to these interceptions, the Court rules that you are not.

MR. PALMER: I take an exception, but your Honor will admit the fact there is nothing about national security involved in talks between me and my client.

THE COURT: Don't ask me to say anything or deny anything. I have told you twice, it is improper for you to make such a request of the Court. You as a lawyer of years of experience know it is improper.

MR. PALMER: I am not asking a request; I am only making a statement.

THE COURT: Go on.

Q Will you kindly tell me, during the period between July 12th and November 10th, the last intercept that you read in connection with the weekly reports, wasn't there intercepts of over thirty different conversations between Mr. Archibald Palmer and his client, Judith Coplon, over thirty?

THE COURT: Objected to as being -- the exhibit speaks for itself.

Let me ask you a question.

MR. PALMER: Exception.

THE COURT: Did you record on these weekly reports all the conversations that were intercepted between Archibald Palmer, Esq., attorney, and his client, Judith

Coplon?

THE WITNESS: Whether or not all of those conversations are recorded herein?

THE COURT: Yes.

THE WITNESS: If the conversation had nothing to do -- nothing that appeared pertained to the case, it is not recorded in there.

Q Bearing your last answer in mind, on this exhibit it says that Miss Coplon called Mr. Palmer a fool, and he said she was cantankerous, was that important to this case? A It may have been her opinion.

Q I don't mind the opinion. Many other people share in it also. I am asking you, in connection with your answer to his Honor, did you believe it was important to have the Washington -- Belmont, Mr. Belmont downstairs, or Washington, to know about the fact that Miss Coplon, in connection with an argument Mr. Palmer had with her over the telephone called him a fool and that he said she was cantankerous? Was that important so far as this case is concerned, in your opinion?

THE COURT: Objection sustained.

Q Now, in connection with the importance of these communications, or part of them, so far as conversations with Mr. Palmer are concerned, is that information contained therein, to the effect that Judge Reeves because of some letters sent to him without Mr. Palmer's knowledge by Mr. Whearty, had refused to sign the order in forma pauperis despite the fact that there was an affidavit, and thereby prevented her from taking an appeal in forma pauperis? Was that important so far as this case is concerned?

THE COURT: Objection sustained.

MR. PALMER: Exception.

THE COURT: Will you please come down to material matters, Mr. Palmer?

MR. PALMER: Pardon?

THE COURT: I say will you please come down to material matters?

MR. PALMER: Judge, I wish I could see eye-to-eye with you.

THE COURT: I am sorry that you can't.

Q Was it important in your estimation in connection with this conversation to write down the fact that Mr. Whearty wanted to know where Mr. Bertram Coplon, the brother, had borrowed the moneys necessary to put up for bail for his sister there in Washington? Was that important?

MR. KELLEY: I object to that. The document speaks for itself. What he did he did.

THE COURT: Yes. Mr. Palmer, we have had enough on that.

MR. PALMER: All right.

Q Now, in connection with --

MR. PALMER: Well, your Honor, so I won't ask each on the record, each one of these, may I take it for granted that since I want to pursue this line of inquiry, that I can't because your Honor considers it a waste of time and incompetent and immaterial?

THE COURT: To pursue the line you have been following is a waste of time from my observation, Mr. Palmer, and I wish that you would please proceed along the line of asking only such questions as are relevant and material.

MR. PALMER: Yes.

Q In connection with the prior time, prior to July 12, 1949, that you say you know nothing at all about, you tell us from this exhibit that the word Tiger and a number appears, the exhibit which we have just referred to that had the name of Mr. Ladd on it, do you know what I am talking about? A I do.

Q Will you kindly tell me when it came to the discs, the discs referring to Coplon, did each of those discs contain a number, a number which is set forth in the letter

containing the word or referring to "Tiger"?

A I stated yesterday that I believed that the discs --

Q Yes. A -- each contained an identifying number.

Q Now when you said that yesterday and you had before you this particular letter which is marked, and which has been referred to by the Court, and with the number as it is in there, that was an identification which the New York office was to give in all matters affecting "Tiger" in connection with the wiretapping, and now I am asking the question upon each of these discs which were destroyed, whenever they were destroyed, didn't these discs as distinguished from any other person, didn't they bear the number as set forth in that letter?

A What was the number that was set forth in that letter, Mr. Palmer?

Q I will give it to you in a moment.

MR. POMERANTZ: 63-B, Mr. Palmer.

MR. PALMER: Yes, I know it is 63-B, but I have got to find it first.

THE COURT: There are two pink sheets.

MR. PALMER: Pardon?

THE COURT: Please give Mr. Palmer the two pink sheets, and I ask you to be careful.

MR. KELLEY: Here they are (indicating).

MR. PALMER: Thank you, Mr. Kelley.

THE COURT: I ask you to be careful and not mix those letters up with your papers there, Mr. Palmer.

MR. PALMER: No, sir, I am thanking Mr. Kelley for his help as I know it comes from the heart.

Q I call your attention to Exhibit 63-B-2, and I ask you whether this does not contain the following:

"The technical surveillance on the residence of Judith Coplon was reestablished at 10:40 a.m. today, July 12th, under symbol number NYT-512."

A Yes, this memorandum does contain that statement.

Q Now I ask you to distinguish the discs in the Coplon taps from the discs in any other taps, and didn't they to your knowledge bear from July 12th the symbol upon the letter of instructions? A The discs did not.

Q What did they bear? A Another serial number totally different from this number that appears in this memorandum.

Q What was that serial number? A I could not recall any individual serial number, but the numbers on the discs were broken down into a letter and a number. That is the only way they were identified.

Q Now in connection with the breaking down into a letter and a number, did each and every disc that you read to the best of your knowledge or heard played, contain this breakdown you mentioned, this serial number and this

letter itself? A There may have been some discs that bore the same letter but different numbers.

Q Yes. You see, Mr. Pomerantz asked you how did you distinguish the discs on the rack on the 27th floor from other ones, and you said you went over and took it down, and I m asking you weren't they distinguished by some mark which indicated that this particular disc, these particular discs that you were taking were Coplon discs as distinguished from anybody else's discs, Tom Jones or Bill Smith's? A Yes, they were identified.

Q Now tell me how you identified them? That is what I am trying to find out.

THE COURT: I think he told us all about that already. He told us that as he played the discs, as the discs came in he kept a record of the numbers of the discs.

MR. PALMER: I don't mean that, your Honor. I am sorry.

THE COURT: That then he went downstairs and he picked out those records or discs bearing those numbers.

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

THE COURT: Now, Mr. Palmer --

MR. PALMER: I am sorry, your Honor, but I did not understand it that way.

THE COURT: Mr. Pomerantz was very plain and brought that out very carefully. However, if you can improve on it,

go ahead.

MR. PALMER: I do not want to improve on Mr. Pomerantz, your Honor, because that is impossible.

MR. POMERANTZ: I hope that is in the record, your Honor.

THE COURT: Now, Mr. Palmer, no more colloquy.

MR. PALMER: Yes, sir.

Q Will you kindly tell me when you went to the rack on the 27th floor did you have with you any particular distinguishing features in a book or record to go and look for a particular disc after getting those instructions from Mr. Belmont? A Yes, I did. I stated that I maintained - I am going to work backwards, now - that I maintained a list of all the records that I had listened to. All of those discs were identified by numbers as I described it just a moment ago, and when I wanted to withdraw a record or to listen to it, or to destroy it if I did later, I had a number to go by, and I could go to that particular disc and withdraw it from the rack.

The list I made up was made from the slips that I described yesterday which had a number similar to the one appearing on that particular record it represented, thereby connecting that slip with that record, which was restricted to the Coplon case.

Q Now, insofar as that part of it is concerned, I