

Fred W. Albert—Direct

(400a) A. Yes, he did.

Q. What answer did he make?

A. Yes, he answered yes to a question "Under those circumstances, are you willing to answer my questions" and his answer was yes.

10 Q. At the conclusion of his confession, were the questions and answers read back to the defendant, Sylvester Johnson?

A. They were.

Q. By whom?

A. I read them back to the defendant.

Q. Did Sylvester Johnson, or did he not, acknowledge the correctness of the questions asked of him and the answers given by him in response to those questions?

A. He did.

20 Q. Were any threats made to the defendant, Sylvester Johnson?

A. No, sir.

Q. Were any promises made to him?

A. No, sir.

Q. Were any physical acts of violence or assault used?

A. No, sir.

Q. Was he intimidated in any manner at all?

A. No, sir.

Q. How long did the interrogation last?

30 A. The interrogation lasted—I notice on the record that I did not put the conclusion time. My notes show 6:20 A. M.

MR. HEINE: You may cross-examine.

Fred W. Albert—Cross

(401a) CROSS-EXAMINATION.

BY MR. BERTMAN:

Q. Mr. Albert, 6:20 A. M., that would be an hour and three-quarters then, would it not? 10

A. Whatever the computation is.

Q. During that hour and three-quarters —

MR. HEINE: It is an hour and thirty-five minutes.

THE COURT: Mr. Albert says “Whatever the computation is.”

Q. 4:45 to—what was it?

A. 6:20. 20

MR. BERTMAN: That would be twenty-five minutes less than two hours. Yes, that’s right.

Q. Were there any breaks during the questions and answers, Mr. Albert?

A. Not that I recall.

Q. Mr. Albert, you are the Official Court Stenographer, are you not, for Camden County?

A. That’s right. 30

Q. As part of your duties, you take these statements, or confessions, or whatever they might be called?

A. That is right.

Q. And you have taken hundreds of them, have you not?

A. Yes, indeed.

Q. Isn’t the common practice and procedure that in taking these confessions, even in attorneys’ offices, that breaks are taken during the course of the questions and answers?

Fred W. Albert—Cross

(402a) MR. HEINE: Objected to, if the Court please. We are not engaged or concerned with the common practice.

MR. BERTMAN: I wanted to know if that was followed here, assuming that it is common practice.

10

THE COURT: I will sustain the objection to that question.

Q. Was everything that was said between Chief Dube and Johnson recorded?

A. Yes, sir.

Q. Do you mean to say that there were no off the record conversations whatsoever?

20 A. There were no off the record conversations whatsoever.

MR. BERTMAN: I have nothing further.

MR. HEINE: The State moves that it be determined by the Court that the confession of Sylvester Johnson was voluntary.

MR. BERTMAN: May I confer with my client for a moment?

30

THE COURT: Yes.

(Mr. Bertman and the defendant, Sylvester Johnson confer.)

MR. BERTMAN: If Your Honor please, there would be no useful purpose served in putting the defendant on the stand.

Discussion

(403a) THE COURT: The prosecutor has moved that I declare that the confession of Sylvester Johnson was voluntary. Do you have any motion to make?

MR. BERTMAN: I renew the same motion that I made before, that this confession, too, will have hearsay and so on. I will renew the motion at the time the offers are made to have the confessions read. 10

THE COURT: As to the voluntariness. Do you say that it be withheld because it was involuntary?

MR. BERTMAN: For the purpose of the record, I merely would want to show that some time elapsed between the arrest of the defendant and the actual taking of the confession and that there was no facilities provided for the defendant to rest or sleep, and for those reasons I ask that the confession be held to be involuntary. 20

THE COURT: Upon the evidence presented I find that the confession of Sylvester Johnson was voluntary.

I suppose now would be a good time to recess.

MR. HEINE: Yes. I have nothing further to offer at this time. I assume that tomorrow we will reintroduce all of this testimony again and proceed with the reading of the confessions 30

MR. BERTMAN: I thought it was our agreement that if it was going to be held that it was voluntary, that we were not going to go through this whole thing again. We are satisfied not to go through it again.

Discussion

(404a) THE COURT: Do you mean that tomorrow we may start with the actual confessions, without any testimony as to whether it was voluntary or not?

MR. CAGGIANO: We are in accord, Your Honor.

10

THE COURT: Do I understand, Mr. Fluharty, you are in accord with that procedure?

MR. FLUHARTY: Yes, I am, Your Honor.

MR. HEINE: All I would ask, Your Honor, is that this is the understanding of all defendants' counsel?

MR. BERTMAN: Yes.

20

MR. HEINE: All I would ask on behalf of Fred W. Albert, the Court give sympathetic consideration, so that he would have plenty of opportunity to rest in-between the reading of these lengthy confessions.

THE COURT: We will take our recess now until tomorrow morning at ten o'clock.

(Whereupon, the trial adjourned to Thursday, January 30 22, 1959, to commence at 10:00 A. M.)

* * * * *

Sylvester Johnson—Direct

SYLVESTER JOHNSON, sworn.

DIRECT EXAMINATION.

BY MR. KENT:

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* * * * *

THE COURT: There was an objection made to a question which you asked. I will allow you to ask the question and continue if you see fit to do so.

Q. After you were arrested in Newark, did you tell this story to the Newark police officers?

A. Yes, I did.

20

I told it to the Newark police officers and three detectives from Camden.

Q. What happened then?

A. I was interrogated in Newark by three Camden detectives, two Newark detectives, and first they told me they wanted me for a murder.

I told them that I did not know of any murder, and they kept questioning me and everything, and they said, "We know of the murder and we know you are involved. There was a robbery" and at the time I did continue to deny it.

30

So they told me, they said, "Cassidy and Godfrey and Noah Hamilton are in custody in Camden" and they said that they had statements saying that I committed a robbery.

At the time I told them, I said, "Well, I know of the murder, but there was no robbery."

(75a) I said that I did not commit a robbery, and then I went on and told them exactly what had happened.

Sylvester Johnson—Direct

- Q. Then you were transported to Camden?
A. Later the next morning, yes.
Q. Did you sleep?
A. No, I did not.
Q. Then what did happen in Camden?
10 A. In Camden I was taken to the prosecutor's office.
Q. Were you interrogated?
A. I was interrogated by three officers.
Q. You gave a statement?
A. Yes, I did.
Q. Was that statement a continuous statement, or was it interrupted during the giving of that statement?
A. Interrupted several times.
Q. What was done during those interruptions?
A. During the interruptions I was fed certain statements
20 or information that they wanted me to put in the statements.
Q. Did you tell those officers in Camden that you were "high"?
A. I told them that when I first came there and they said that they did not want to hear that, that they were not interested in it, in anything concerning narcotics; only interested in armed robbery.
Q. During your trial, did you request that you be permitted to take the stand?
30 A. Yes.
Q. Who did you request this of, without mentioning names?
A. My lawyer.

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Sylvester Johnson—Cross

CROSS-EXAMINATION.

BY MR. HEINE:

* * * * *

(82a) A. I know how they got the statement, how they
got what is down in the statement.

10

Q. How did they get it?

A. The information that is in that statement was fed to
me from Newark, from the time I was interrogated in
Newark, until the time I was in Camden. Throughout the
both interrogations, the whole idea of murder, armed rob-
bery, was fed to me bit by bit. It was, "Do you remember
such and such a thing happening? Do you remember doing
this? Do you remember doing this"? I kept on telling them
I don't know what happened because I was intoxicated off
narcotics.

20

Q. On the next day you were not fed any narcotics, the
next day after you were apprehended?

A. No.

Q. How long after the murder were you apprehended?

A. Four or five days.

Q. And you had not been fed any narcotics in those four
or five days, had you?

A. I had used narcotics between that time.

30

Q. When you were in Newark, did you get any narcotics
while you were in the Newark Police Headquarters?

A. No, I did not.

Q. Did you have any on you?

A. No.

Q. How long does it take to wear off when you get high?

A. From six to twelve hours.

Sylvester Johnson—Cross

- Q. When is the last time that you had narcotics before you were arrested?
- A. I'd say the same day, the same morning, that morning.
- Q. The morning of the day you were arrested?
- A. The morning I was picked up.
- 10 Q. What time were you picked up?
(83a) A. Around five in the afternoon, I think.
- Q. So you last used narcotics, you say, on that morning?
- A. That morning.
- Q. Is that right?
- A. Yes.
- Q. And you were brought down to Camden the early morning of the next day?
- A. Yes.
- Q. Is that right?
- 20 A. Yes.
- Q. So there was almost twenty-four hours since you had any narcotics; is that right?
- A. That's right.
- Q. Where did you get narcotics in Newark?
- A. I didn't get them in Newark.
- Q. Where did you get the narcotics that you used in Newark?
- A. I got them on the way coming to Newark from Hamilton.
- 30 Q. What did he give you?
- A. He gave me five reefers.
- Q. Five what?
- A. Reefers.
- Q. Where did you learn the use of the word "narcotics"?
- A. Where did I learn?
- Q. Yes.
- A. That's a word that—well, you hear it.

Sylvester Johnson—Cross

Q. Where do you hear it? Do you use it in the trade? Does the trade use the word “narcotics”?

A. No.

Q. Where did you hear the use of the word narcotics?

A. I heard of, like I have used that word before I ever messed with that narcotics. 10

(84a) Q. You have referred to marijuana as reefers, haven't you?

A. Yes.

Q. You say Noah gave you five reefers on the way up to Newark?

A. Yes.

Q. He took you up there that Saturday, right?

A. Yes.

Q. How many did you smoke on the way up?

A. We smoked, we smoked all the way up, the three of us. 20

Q. How many did you smoke on Sunday?

A. Must have smoked one, maybe.

Q. How many did you smoke on Monday?

A. I?

Q. I beg your pardon?

A. I don't remember exactly how many I smoked each day. I know the morning I got picked up I still had, I still had one that morning, I smoked, the morning I was picked up, I think it was Wednesday morning or Wednesday afternoon. 30

Q. Do you remember who took the interrogation from you in the Prosecutor's office?

A. Prosecutor's office?

Q. Yes.

A. Yes.

Q. Who?

Sylvester Johnson—Cross

- A. Chief Dube and Vincent ———
- Q. Do you know Chief Dube?
- A. No.
- Q. Before?
- A. No.
- 10 Q. When did you learn it was Chief Dube that took the interrogation?
- (85a) A. After they took me up in the Prosecutor's office.
- Q. He introduced himself as Chief Dube?
- A. He told me he was Chief Dube.
- Q. Beg your pardon?
- A. He told me that.
- Q. That is the gentleman sitting next to me now?
- A. That's right.
- 20 Q. Right?
- A. That's right.
- Q. He told you he was Chief Dube. You remember that, don't you? You remember the court stenographer being there?
- A. Yes, I remember the court stenographer being there later.
- Q. What's that?
- A. He was in the there when I first went into the room.
- Q. Do you remember who else was in there?
- 30 A. Vincent Conley.
- Q. Who else?
- A. One of the Large brothers.
- Q. Who else?
- A. I think that was all.
- Q. Do you remember Lieutenant Neale, Bill Neale, being there, City Police?
- A. Might have been; I don't remember.

Sylvester Johnson—Cross

Q. Now, do you remember—I am now referring to Page 578-A, Line 30. Do you remember Chief Dube asking you this question:

“Is this you have told me here the truth, Sylvester,” and you answered, “The best I can remember.”

Remember being asked that question and giving that answer? 10

A. No, I do not remember that.

(86a) Q. Do you remember being asked the question, “It is the truth as you can remember, is that right,” and the answer, “Yes, because after the shooting I don’t remember everything exactly how it happened after the shooting.”

Do you remember being asked that question and giving that answer?

A. Not that exact question and answer, no.

Q. What question do you remember being asked? 20

A. All through the interrogation, I kept telling him I didn’t remember what happened before or after the shooting until the following day, that is what I told him, I didn’t remember.

Q. Do you remember being asked the question I just asked you and giving the answer; you remember that?

A. No, I do not.

Q. Remember being asked this question, “But you up until the time of the shooting remember and what you have told me is the truth,” and the answer was, “Yes”? 30

MR. KENT: I would like to object to that question, Your Honor, because these questions in the statement were asked before the statement was read back to the defendant by the stenographer. In other statements that were taken the form was to ask him whether all statements were true after the stenographer read back the statement. This particular

Sylvester Johnson—Cross

statement given by Johnson, this was not asked, and it was not answered.

THE COURT: I will allow the question to be asked. He was already asked anyhow.

10

MR. HEINE: At the same time I would like to point out Mr. Kent is in error as I will point out in just a minute.

(87a) BY MR. HEINE:

Q. I will ask you again, do you remember being asked the question, "But you up until the time of the shooting remember what you have told me is the truth," and your answer was "Yes."

20

Remember that question being asked and that answer being given?

A. No, I don't remember it.

Q. Remember the question being asked, "And the best you can remember after the shooting what you have told me is the truth" and your answer is "yes."

A. No.

Q. You remember being asked the question, "And everything you have told me has been of your own free will," and your answer was "Yes."

30

A. No.

Q. And you remember the question, do you remember the question, "Nobody has promised you anything or threatened you in any way," and your answer was "No."

A. I don't remember that question.

Q. What's that?

A. I don't remember that question.

Q. Now, do you remember anybody else being brought into the room while you were being questioned?

Sylvester Johnson—Cross

A. Yes.

Q. Outside of the police officers?

A. Yes.

Q. Who?

A. Stanley Cassidy and Wayne Godfrey.

Q. Do you remember being asked this question: 10

“And this is the man that went into the store with you when you held up the man that shot him? Is he the man that was with you,” indicating Stanley Cassidy?

(88a) A. No.

Q. And your answer was “Yes.”

A. No, I do not.

Q. You don’t remember that?

A. I remember what was asked me.

Q. What was that? You remember this wasn’t asked but you remember what was asked. You tell us now what was asked. 20

A. Cassidy came in and was asked, Cassidy was asked if he knew who I was. He said yes. Afterwards, asked if I was the man that shot Davis.

Q. What’s that?

A. He was asked if I was the man that shot Davis.

Q. Yes?

A. He said yes.

Q. Do you remember that everybody left the room except the court stenographer? 30

Do you remember that Chief Dube, Sergeant Conley, Detective Large, and everybody left the room including Cassidy and Godfrey?

A. No.

Q. Do you remember them all leaving?

A. No, I don’t.

Q. Do you remember the court stenographer reading back the entire interrogation and all of your answers?

Sylvester Johnson—Cross

Do you remember that?

A. I remember him reading back.

Q. And after he read everything back to you, do you remember Chief Dube came back into the room and asked you this question:

10 “Sylvester, you heard the court stenographer read back to you the questions I asked you and the answers you gave in answer to my questions.

(89a) “Do you now acknowledge that the questions that he read to you and the answers you made are as I asked the questions and as you answered them”?

Your answer to that was, “Yes.”

Do you remember that?

A. No.

Q. You don’t remember it?

20 A. Chief Dube and Vince Conley and the other detectives were in the room with me the whole time.

Q. Did you ever tell Chief Dube about your using narcotics?

A. When I first came in I told him. When I first came into the interrogation room.

Q. What did you say to Chief Dube?

A. When I first came in, he set me in the chair and he said, “Look, Johnson, we have been on this case a week. We are tired. We ain’t going to waste a whole lot of time with you.”

30 He said, “We have statements saying it was armed robbery. We know exactly what it is.

“We want you to sit down and tell us just it is.”

So, Vince Conley says, “Johnson knows what the score is. We have been over it several times.”

Q. Chief Dube told you tell exactly what it was and to tell the truth? Is that right?

Sylvester Johnson—Cross

A. He told me, he said, "We are not going to waste any time.

"We want you to tell things exactly how they are."

Q. Then he proceeded to question you?

A. Afterwards I told him, I said, "I don't know anything about armed robbery."

10

Then I told him about narcotics.

Q. What did you say about narcotics?

(90a) A. I told him that I was using narcotics at the time, and that I was high.

I told him that I don't know what happened before and after. I told him that I was working for Hamilton and Davis.

Q. You told Chief Dube that you were working for Hamilton and Davis?

A. Right there in front of Chief Dube and Vince Conley and Detective Phil Large. It was one of the Large brothers. I don't know which one it was.

20

Well, he told me the same thing, that he did not want to hear anything concerning narcotics. He was not going to waste any time with me.

He said that he wanted to know exactly what happened concerning the robbery.

Q. What did you tell him concerning the robbery?

A. I told him that I did not know anything about the robbery.

30

Q. What is that?

A. I told him that I did not know anything about the robbery, a robbery.

Q. Do you remember being asked this question.

This is on Page 559-A.

"After he," and I insert that, the "he," meant Godfrey, "After he, Godfrey, got to the house, there was you and Wayne Godfrey and Stanley there. Right?"

Sylvester Johnson—Cross

“Answer: Yes.

“Q. Was there any discussion had about anything going on in the house?

“A. Yes. We were talking about we were broke and wanted to have some money and discussion came up about
10 robbing somebody.

“Q. Did you decide who you were going to rob?

(91a) “A. Yes.

“Q. Who did you decide you would rob?

“A. A fellow up on Broadway.

“Q. Whereabouts on Broadway?

“A. Broadway and Ferry Avenue, I think it is.”

Q. Do you remember being asked those series of questions and giving those answers?

A. Everything in the statement was said to me by Vince
20 Conley.

He said that that was the statements that he had, and that is what had happened.

He told me over and over again that these things happened.

Q. Mr. Johnson, I want to know first of all whether or not these were the questions that were asked you and whether these were the statements that you gave.

Do you remember that?

A. I don't remember the statement. I don't remember
30 the statement at all. He might have asked those.

Q. If you do not remember the statement, how did you remember that it was fed to you?

A. I know he fed me the whole statement. He fed it to me from the time he picked me up.

Q. Who fed it to you?

A. Vince Conley.

Q. What did he feed to you?

Sylvester Johnson—Cross

A. The words in the statement.

Q. Tell us what he fed to you.

A. When I was picked up in Newark, Vince Conley asked me about the murder. I told him that I did not know about it, and after I admitted I knew about the murder but not about the armed robbery.

10

He told me that he had statements saying that that there was an armed robbery and exactly what had happened in it.

(92a) As the interrogation went on he kept on asking me, "You know certain things that happened. You know this happened."

He said, "You know you went to the store, and you robbed the man."

He told me exactly how it happened.

He told me that when I went to Stanley's house, exactly what we talked about.

20

These things he told me that were all in the statement and he asked me the questions.

I don't remember what was asked, but every question he asked me, that is what he told to me.

Q. In other words, you remember everything that Conley told you?

A. I don't remember. I just said I don't remember everything he told me.

Q. However, you do remember that you told Chief Dube everything that Conley told you.

30

Is that right?

A. I told him only what had really happened.

Q. Did Conley tell you to tell Chief Dube and to confess on your part that you were talking about robbing a store on Broadway, when you were down to Cassidy's house?

A. He told me to tell him exactly what we talked about up in Newark.

Sylvester Johnson—Cross

Q. Did you tell Conley in Newark that you were talking about robbing a store while you were still at Cassidy's house?

10 A. I didn't tell him anything about a robbery. I didn't know anything about a robbery. I merely told him about the drugs.

Q. Do you remember having a gun that day?

(93a) A. No.

Q. How do you know about murder?

A. I was told that the next day.

Q. Didn't I just understand you to say that you told Conley that you knew about murder, but you didn't know about armed robbery?

A. That's right.

20 Q. What did you know about murder?

MR. KENT: May it please the court, I object. The defendant has testified that the next day he was told about this murder.

THE COURT: I will allow these questions.

Q. What did you know about murder?

A. Like I told you, I was told the next day.

Q. Who told you the next day?

30 A. Cassidy and Godfrey.

Q. Did they also tell you how it happened?

A. Yes.

Q. How did they tell you it happened?

A. Told me that Stanley and I went to Davis' store and I asked for my money.

Q. No, I am asking you to tell us what Cassidy and Godfrey told you, how it happened.

Sylvester Johnson—Cross

A. That's what I am telling you.

Q. What is it?

A. That's what I am telling you now.

Q. What is that?

A. He came on the corner and told me that Stanley and

I —

10

Q. Who told you? Who is "he"?

(94a) A. Stanley.

Q. Stanley told you what?

A. That him and I went into Davis' store.

Q. Yes?

A. And I asked him for the money that I had coming for delivering the package for him. And, he said that Noah Hamilton had the money, and Davis and I had an argument.

Q. Yes? Cassidy told you that?

A. Yes.

20

Q. Did Cassidy tell you that you were in the Davis store before you shot him, and that you left your fingerprints on the truck?

A. He told me that Davis threw me out of the store the first time.

Q. He threw you out of the store the first time?

A. Yes, after he told me Hamilton owed me the money.

Q. Who was in the store with you the first time?

A. Cassidy said him and I went in the store.

Q. The first time?

30

A. Yes.

Q. Don't you remember?

A. No, I don't.

Q. After he threw you out, what happened then?

A. He said I went back in the store again.

Q. Who said?

A. Stanley.

Sylvester Johnson—Cross

Q. Cassidy said that you went back in the store?

A. Yes.

Q. What did you go back in the store the second time for?

A. He said I went there to ask him for my money again, the same as the first time.

10 Q. Why did Davis throw you out the first time?

A. I imagine I was abusive. I was intoxicated. I wanted (95a) my money. I thought he was beating me out of my money, either him or Hamilton. Either him or Hamilton was suppose to pay me.

Q. Do you remember leaving your fingerprints on this truck?

A. No, I don't.

Q. You do not deny that the fingerprints were on the truck, do you?

20 A. I don't deny that.

Q. What is that?

A. I don't deny it.

Q. You never got money from Davis before, did you?

A. No, I didn't.

Q. Why did you go to Davis' store for money?

A. Because Hamilton had told me to go to Davis' store for the money.

Q. Up until then you say that Hamilton paid you the money?

30 A. That's right.

Q. Did you ever see the packages that Hamilton made up for you to deliver?

A. Inside of them?

Q. Yes.

A. No.

Q. How did you know what they were?

Sylvester Johnson—Cross

(No response.)

Q. Are you guessing?

A. No, I am not.

Q. How do you know what was inside the package if you never saw it? 10

A. Hamilton told me what they was.

(96a) Q. What is that?

A. Hamilton told me.

Q. He told you?

A. Yes.

Q. But you never saw what was inside?

A. No.

Q. When did he tell you what was inside?

A. When he came and asked me if I would deliver the packages. 20

Q. Did you ever collect any money for Hamilton?

A. No, I didn't.

Q. How many nembutols did you take the morning of the murder?

A. That afternoon?

Q. Yes.

A. Three.

Q. Three?

A. Yes.

Q. You say you took them in the afternoon? 30

A. Yes.

Q. About what time in the afternoon?

A. Somewheres between the time of twelve-thirty and four-thirty or five.

Q. Did you take three at one time, or did you take one at a time?

A. I took one at a time.

Sylvester Johnson—Cross

Q. How long between pills?

A. I couldn't say exactly how long between.

Q. What was that?

A. I couldn't say exactly how long between.

10 Q. Did you take any that morning? Did you take any nembutols in the morning?

A. No, I didn't.

(97a) Q. When did you tell your attorney this story about delivering for Hamilton and going down to Davis' store for money?

A. I told my attorney as soon as he came in to see me.

Q. When was that?

A. About a couple of days or a week after I was arrested.

20 Q. How many times did you tell it to him?

A. Well, I only had to tell it to him one time. We discussed it since then.

Q. You discussed it since then, with whom?

A. My lawyer.

Q. Which lawyer?

A. Mr. Bertman.

Q. When did you discuss it since then?

A. He came up to the County to see me.

Q. What was that?

30 A. He had come to the County to see me.

Q. When is the last time you saw Mr. Berman?

A. I seen Mr. Bertman in the death house two or three weeks after I had been there.

Q. Have you seen him since?

A. I haven't seen him since.

Q. Before that, when was the last time you saw him?

A. The last time I saw him before that was in the jury room.

Sylvester Johnson—Cross

Q. At the trial?

A. Yes, at the trial.

Q. Did you sign any papers for your lawyer concerning your testifying at your trial?

A. Yes.

Q. How did that come about?

10

A. I think it was the day before you rested your case. (98a) He asked me if I still wanted to take the stand. I told him yes.

So, he told me if I took the stand that, first he told me if I took the stand, that he would walk out on me, that he wouldn't represent me anymore.

I said, well, I said, "I want to take the stand because I feel that's the only way I can keep from getting the death penalty, by taking the stand myself," and he said he didn't want to take the responsibility of putting me on there.

20

He asked me what I would say. I said I would tell them exactly what happened. I told him also I wanted to tell him about the statements and how they was gotten.

Q. Go on and tell us. When he said that, you said that you wanted to take the stand, he was going to stop representing you—is that what you say?

A. That's what he said at first.

Q. Then what?

A. Afterwards I told him why I wanted to take the stand, what I wanted to do. He gave me a slip of paper that said he would not accept the responsibility if I took the stand, and I signed the paper. I still wasn't permitted to take the stand.

30

Q. Was your mother present at the time?

A. At the time I signed?

Q. The paper, yes.

Sylvester Johnson—Cross

A. She was in the courtroom. I signed the papers right at the table, counsel table.

Q. Did any officer beat you up?

A. Yes, I was hit in Newark.

Q. Hit in Newark?

10 A. Yes, several times.

Q. You were not asked to give a statement when you were in Newark, were you?

(99a) A. I was merely asked in Newark to admit that I committed armed robbery.

Q. Did Chief Dube beat you up?

A. Chief Dube?

Q. Yes.

A. No.

20 Q. Did any other detective beat you up while you were in Chief Dube's office?

A. Not in his office.

Q. What is that?

A. Not in his office.

BY MR. HEINE:

Q. Where, did anybody beat you up in any other place?

A. In Newark, and on the way coming to Camden.

30 Q. While you were up in Newark you deny, however, that you were involved in a murder, is that right?

A. That's right.

Q. Is that right?

* * * * *

Stanley Cassidy—Direct

STANLEY CASSIDY, sworn.

DIRECT EXAMINATION.

* * * * * 10

BY MR. KENT:

Q. Where did you obtain your drugs?

(305a) A. Well, I obtained my drugs from Noah Hamilton and another fellow that I knew, I met over in Philly, and I used to get some from him, also.

Q. Now, in a statement that you made to the police, the subject of a gun came up. Did you have a gun with you that day in your possession?

20

A. No, I didn't.

Q. Why did you make this statement; why did you give this to the police in your statement?

A. I was questioned when I was picked up about armed robbery, and I tried to tell them that it was no armed robbery, and the officers, they kept saying that it was an armed robbery, because they knew that we went there to rob the man, because Hamilton had told them that. And, I said, "Well, I don't know anything about any robbery."

30

So, when I first got picked up, I was picked up by Officer Jones, Officer Sunkett and Large's brother, Phil Large, and a couple of other officers; so, they took me upstairs into the interrogating room and first thing they started, asked me where I had been all day and I told them that I had been around, and they asked me the things that I had done.

So, they asked me did I use drugs, so at first I denied that I used drugs, so they kept on questioning me and question-

Stanley Cassidy—Direct

ing me, and everything, and so I finally admitted that I do use drugs.

10 So, they, during this time, there was an officer sitting at the desk. I was sitting between two desks, and he was taking all these things down on a yellow piece of paper, everything that I said, and he asked me who did I get my
 10 drugs from. I told him from a fellow over town. And, so they kept on asking me different things about what did I, how did I come about using drugs, and things, and how often did I use it; what I had done today and the day before, and a lot of other questions.

(306a) So, I was sitting there, so Phil Large, he jumped up, he said, "I don't want to hear that there."

He said, "You know what I want from you."

20 He said, "I want to know about this robbery."
 20 I said, I tried to explain to him that I knew nothing about no robbery. So, he kept on, got riled out and everything, threw a telephone book at me, and I blocked it with my hand. He was angry because he said I wasn't cooperating with him the way he wanted me to. He said, because I knew what he wanted, because he already had a statement saying that I went to rob Mr. Davis.

So I kept on tell him I didn't go to rob Mr. Davis out of anything. I went to the store with Sylvester to see about collecting a debt.

30 Q. You gave three statements to the police. Is that correct?

A. I don't—I tell you, when I was locked up, I had been using drugs ever since the incident happened, and I had been using them pretty heavy. I kept on using it.

Q. Do you remember giving these statements to the police?

A. I remember a lot of questions being asked of me.

Stanley Cassidy—Direct

Q. Do you remember if when you gave these statements to the police this was a continuing statement? I am going to define the words “continuing statement”.

The way I am using it in this question: They start the statement, question, answer, question and answer, without any interruption.

10

Do you remember if the statement you gave to the police was a continuous statement?

A. When I first was locked up there was questions being asked of me from everyone in the room.

Q. I am talking about the statement that was taken down by the stenographer.

(307a) Do you remember?

A. Yes, I remember.

Chief Dube asked me, was asking me questions. So at the time I wasn't in too shape to talk too good.

20

So he said, “All you got to do is say yes or no to what I am saying,” and I told him I would do the best that I can.

So he asked me a few questions about robbery, and I told him, I said, “Well, I don't know anything about robbery.”

So he say, “There's no use of you trying to get away from it, kid. We know that you went there to rob him. All you got to do is just go ahead and cooperate with me.”

He was asking me questions and the stenographer would interrupt, and Chief Dube got angry with him a couple of times and said, “Well, let me ask these questions, will you?”

30

So he kept on asking me questions and things, and lot of times I told him that that wasn't right.

So he say, “Well, that's the way that I figured how it is. All you got to do is answer because you can't talk now.”

He said, “In the state of mind that you are in.”

Stanley Cassidy—Direct

THE COURT: May we have answers to these questions without this long rambling, Mr. Kent? He has answered the question three times, if he has answered it at all. Just answer the questions and do not keep repeating.

Ask the next question.

10

Q. Have you ever been convicted of crime?

A. No, I haven't.

Q. Have you ever been questioned by the police before?

A. No, I haven't.

Q. This was strange and new to you?

A. That's right.

(308a) Q. Did you tell your lawyer, after you had retained one, about this narcotic use?

A. Yes, I did.

20

Q. Did you plan to rob this place when you entered it that day?

A. No.

Q. Do you, of your own knowledge know whether Johnson went in there with you to rob this place?

A. He went in there to collect the debt, not to rob the man.

Q. Do you, of your own knowledge, know whether Godfrey drove you to this place for the purpose of having you to go in there and rob?

30

A. He drove us there. We asked him to take us up there because Sylvester wasn't in condition to walk.

Q. When you were in the store the first time did Johnson finger a truck?

A. Yes.

At first when they was talking, he was standing by this shelf. They was talking and he was looking at the truck. He mentioned to me, he said, "How would you think Mark

Stanley Cassidy—Direct

would like this," speaking of his little boy. I said he would really like that. It was a cement mixing truck he was looking at.

Q. This was the first time you went into the place?

A. That's right.

Q. One last question:

10

What did Johnson tell you after you had told him of his activities during the robbery on Saturday? What did Johnson ask you?

MR. HEINE: I object to what was asked of this witness.

(309a) THE COURT: I will sustain the objection to that question.

MR. KENT: That is all.

20

MR. HEINE: If Your Honor please, I have a brief rebuttal witness who is scheduled to enter a hospital this afternoon at 2:30 to undergo some examination. I at this time would like the Court's permission to defer the cross-examination so that I can accommodate this witness and get him out as quickly as possible.

MR. KENT: I have no objection.

30

THE COURT: There is no objection. The witness will step down.

(The witness is excused.)

* * * * *

Stanley Cassidy—Cross

(Commencing 315a-5.)

STANLEY CASSIDY, recalled.

10 CROSS-EXAMINATION.

BY MR. HEINE:

Q. Cassidy, on your direct examination you stated that you didn't have the gun when you went into Davis' store?

A. That's right.

Q. You remember in your confession that you did state you did have a gun?

20 A. I remember when I made my first confession I told Chief Dube that I didn't have the gun and the Prosecutor came and got me and asked me did I have a gun at home at all.

I said no at first because the gun did not belong to me.

He said, "Well, look, if you have a gun home, all we want to do is check it, see if it has been fired."

He said, "We won't use this as evidence against you if it hasn't been fired."

Q. Who said this?

A. The Prosecutor.

30 Q. The Prosecutor?

A. That's right.

Q. You mean Prosecutor Cohen?

A. Yes.

Q. What did Prosecutor Cohen say?

A. He said that, "We know that you had a gun."

I said I didn't have a gun with me at all.

Q. At first you denied that you had a gun?

Stanley Cassidy—Cross

A. That's right.

Q. And it was only after the Prosecutor's office learned (316a) that you had a gun that you finally admitted that you did have a gun?

A. First they asked me did I have a gun with me.

Q. You got this gun from Brimm, didn't you? 10

A. Yes.

Q. Why did you get the gun from Brimm?

A. Because Brimm asked me before if I would hold the gun for him.

Q. When did you get the gun from Brimm?

A. I don't know. Maybe about earlier in the week.

Q. Wasn't it a day before or two days before the robbery?

A. I don't believe so.

Q. Well, the murder took place on Friday. What day of the week do you say you got the gun? 20

A. Early in the week some time.

Q. Now, you say that you went down to the Davis store with Johnson in order to assist Johnson to collect a debt?

A. I went down.

Q. Is that what you say?

A. I went down with Johnson and Godfrey, not Noah.

Q. I didn't mention Noah.

To assist Johnson to collect a debt?

A. That's right. 30

Q. Did you know Davis?

A. No, I didn't.

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Excerpts from Opening Statements

EXCERPTS FROM OPENING STATEMENTS.

10

January 16, 1959.
Camden, New Jersey.

* * * * *

MR. BERTMAN: * * *

20

* * * * *

(Commencing 794-12.)

30

I have made up my mind to one thing, I am not going to try to fool you, members of the jury. I am not going to put forth any sham defense. Because if I do, I feel I am going to harm my client. Because I feel that you members of the jury would be able to see through it at once. I intend to listen to these facts as presented by the State as to how this alleged crime took place. At the close of the State's case it is my intention to present the defense to this case as I would, naturally, in any other case, but certainly in a case which is a capital (795) case, with the truth, and I feel confident that, members of the jury, when you have heard all the evidence in this case, whatever your verdict may be, whatever your verdict may be, that the verdict that you give will be given after you consider all the facts and after

Excerpts from Opening Statements

you consider all the mitigating and extenuating circumstances and I feel certain that that verdict will be given without any partiality or bias.

That is what I ask of you members of the jury, to give a true and honest verdict in accordance with the facts of this case.

10

* * * * *

MR. CAGGIANO: * * *

* * * * *

(Commencing 797-8.)

As carefully as you listen, that is how carefully I shall listen. For I too am concerned with the facts and with the truth, as you are. You too will listen to all the facts and will consider and determine that they all be true. If something is not true, we do not want it. If something is not factual, we do not want it, whether it be for the good of the defendants, whether it be bad for the defendants, in favor or against the State. All we do want are the truthful facts, that which happened. For then, in that manner, we can determine how to close our case to you and you in turn deliberate and determine a fair verdict.

20

30

* * * * *

Summation of Mr. Heine

SUMMATION OF MR. HEINE.

10 MR. HEINE: May it please the Court, and with your permission, ladies and gentlemen of the jury, the case, as was indicated to you by the Court, has now concluded. All the evidence is in. There will be no further testimony or proofs. The only part of the trial that remains is the argument, the summation by the attorneys and the charge of the Court. Then the matter will be left to you.

20 This trial has, from our side of the table (1686) and from the side of your box, for most of you, has consumed just about two weeks. The actual trial, commencing with the introduction of testimony, began just a week ago today, last Friday, I believe.

I think that you are entitled to the thanks, not only of myself on behalf of the State, but on behalf of all attorneys involved in this case, attorneys for the defendants, including the Court. I offer to you our deepest thanks and appreciation. You have been most attentive and this has necessitated a sacrifice on your part.

30 I think that I indicated last week in my opening remarks that we appreciate and are fully aware of the fact that you have been taken away from your businesses and your occupations, your families and your homes. This is not easy. The sacrifice that you have made was made not only on your own behalf, but on behalf of the entire community, the entire State. You have made a real contribution to the administration of justice.

(1687) The jury system, under our system of law, plays an extremely important part, as you will hear during the course of the summations and from the charge of the Court.

Summation of Mr. Heine

You will learn that you are the sole judges of the fact and the facts are extremely important in this case. You may, from time to time, have learned, or have heard of arguments and the like, but these arguments are on the law, are based upon facts, and these facts have to be established, or they have to be agreed upon.

10

I don't know whether any of you are engineers, or architects, or scientific men, professional men. If you are, you must know the facts upon which to base your later conclusions, from which you may draw inferences, and these facts are established by you. You find them. You make the determinations. You make those determinations in the form of your verdict.

For your services, for your sacrifice, we are extremely grateful. I hope that other good citizens of the community will draw a lesson from your efforts and will make them- (1688) selves ready and available to serve this community, not only in this field, but in other fields that good citizenship calls upon the citizens to play. It is only by this spirit of willingness to participate that makes an American community the live and thriving community that it really is.

20

Perhaps this is not the way it is handled in other countries, in other lands, or in other civilizations. There are places where they don't have juries, that the Judges decide the law and the facts. This system may be argued for good or for bad, but our system, drawn from the common law, drawn from the mother country, England, has recognized that the jury system is, after all these years, the best system.

30

(1689) We don't look for any change. At least not in this State, not in this country.

Now, the purpose of the opening I explained to you a week ago was to outline, preliminarily sketch for you, if you will, what the expected theories of the State and the

Summation of Mr. Heine

defendants might be. I on behalf of the State was outlining to you what our theory was of the case, what facts we intended to prove, only the outline. So that when the witnesses themselves spoke and the silent pieces of evidence were introduced indicates, you would be able to follow it.

10 This was the pattern, so to speak.

The purpose of this opening that I am making now is to outline the facts which I now say most respectfully we have proven, to aid, to assist you in reaching your own determinations.

At the very outset, so there will be no question about it from here on in, and this will undoubtedly be said time and time again, and this is true, and should never be overlooked, and if it is repeated it is only done for the purpose of emphasis, not for any other purpose, that you are (1690)
20 the sole judges of the facts. I don't want you to take my word for the fact, or what I say we proved, or what any other lawyers say they proved or didn't prove, or even, I say this most respectfully to the Court, what the Court said was the fact, if that statement, if my statement or the Court's statement, should differ from your own recollection. Do I make myself clear? If I say a fact was established and you do not recollect it was established and your recollection is not refreshed or you have a different idea about it, or even this is said to you by the Court, your recollection pre-
30 vails. What you believe and what you remember shall guide you in your determination.

I say this most respectfully to the Court and I am sure the Court is aware of the fact that he is the sole judge of the law, we will take his word for the law, but we take your word for the facts.

Let me refresh your recollection to a week ago, if you will. Last Friday I stood about in the same position in out-

Summation of Mr. Heine

lining the State's case to tell you that the State had three points, there were three points to the State's theory and facts of the (1691) case.

What were those facts?

I am sure that you heard it time and time again, your recollection must be very clear, but only as an aid to refresh your recollection I said that we would prove that these three defendants, Wayne Godfrey, Stanley Cassidy and Sylvester Johnson, conspired to commit a robbery at the Davis store, at Edward Davis' store, the toy store, at 1731 Broadway, near Broadway and Ferry Avenue; that they entered into a conspiracy to commit a robbery; that they embarked on that conspiracy or pursuant to that agreement, and attempted to commit a robbery, and during the course—the third point was—that during the course of this attempted robbery, a death ensued. 10 20

These three elements I said to you and I will say again and again and again, make up a clear case of murder in the first degree. These were the three points that I said we would prove.

Let me take them up, if you will, in the inverse order, because I think proving the last point first can be quickly disposed of and leave us (1692) a little more time to discuss the other two points, although I say to you I haven't the slightest hesitation that the proof on the other two points, namely, the conspiracy and the attempted robbery, are just as clear as the fact that Edward Davis died as a result of the gunshot wounds. 30

However, let me refresh your recollection, it's been so long ago, a couple days ago, and there has been much testimony; testimony was developed so fast and so rapidly that sometimes it scared me that it was going in so fast and so clearly.

Summation of Mr. Heine

Is there any doubt that Edward J. Davis was discovered on the pavement in front of his store at 1731 Broadway bleeding profusely from the groin, from the face, and from the mouth? At first there seemed to be some question about it, there seemed to be some resistance as to whether the
10 blood, and I don't say this, I don't say this to arouse any passion, I say these are the facts and I can't escape these facts and you dare not escape these facts.

(1693) You will have ample opportunity to examine these photographs yourselves when you retire to your room to deliberate, but the red stains that appear on these pavements, in the photographs like these, and in the photographs like these in front of his store, were established to be blood stains.

Do we need to say anymore?
20 Here we have the clothing of Edward Davis. The shirt that he wore. I shudder to hold them myself. They send a cold chill up my back and my spine, but you will have the opportunity to examine these dead, non-living pieces of evidence that speak so loudly for themselves, as to whether Edward Davis was bleeding profusely or not.

He was found, or, at least, the police were notified at 6:10 P. M., almost immediately, when his nextdoor neighbor, Kolsun, if you remember, discovered him first, dashed and called the police.

30 The police received the 'phone call at 6:10 P. M. Within minutes the ambulance ar- (1694) rived and Davis was rushed to the hospital.

When he arrived at the hospital, and, I believe, the hospital records say that he arrived at 6:18 P. M., so that that would be within eight minutes, at least, from the time that the police received the first call on the 'phone and sent out their broadcast, their radio broadcast. That would have

Summation of Mr. Heine

been eight minutes. The police arrived and had taken Edward Davis to the hospital because the hospital records indicate that he arrived there at 6:18, within eight minutes.

He was rushed into the emergency treatment room. He was found to have had seven wounds.

They were wounds either of entrance or exit, and that was explained to you, if you will recall, by Dr. Riegert, that the wound of entrance is where a bullet enters and the wound of exit is where a bullet leaves. 10

This is so clear it speaks for itself. The language is quite simple.

One bullet, Dr. Riegert said, entered around the left groin and exited underneath (1695) the back, opposite, I think, the fourth rib, or in that vicinity.

In entering his body and leaving his body it had pierced the abdominal wall. 20

It had pierced the liver, and this is what caused Edward Davis to bleed from the groin.

In addition to that, he was horribly shot about his face, as you will recall, and you will see these pictures themselves. You will have the opportunity to examine the pictures that were taken at the time the autopsy was performed, while the coroner was there, and they will show you how he still splashed with blood, where these bullets entered his face and his nose and his mouth, and even the bullet that was shot into his neck and that was extricated 30 by the coroner.

Edward Davis ceased, passed way, at 6:55 P. M. Cause of death, loss of blood, caused by gunshot wounds.

Edward Davis lost his life as a result of gunshot wounds. More about that later.

(1696) But I think this at least concludes that the State proved that a death occurred, an unlawful death occurred.

Summation of Mr. Heine

Up until this point I make no mention at what time or who was there to have caused the death. But let me get back to that and see whether this isn't clearly tied together.

Let me talk about the first point now: The conspiracy. Do you remember that I said to you last week, and I think
10 I mentioned it a few minutes ago, a conspiracy is an agreement between two or more persons to commit an unlawful act or to do a lawful act in an unlawful manner. I submit that I told you last week, and I say again today, that the conspiracy in this case was to commit an unlawful act.

What are the facts about a conspiracy? I think I also defined for you a conspiracy last week to be sort of a partnership in crime. Now, in an agreement between two or more persons or articles of partnership in crime are never reduced to writing. You (1697) know, when you and I talk
20 about drawing an agreement and entering into an agreement, we may go to an attorney's office and tell him what our problem is and he prepares an agreement for you or you prepare it yourself, and if you have a partnership and you want a partnership agreement, you, likewise, either go to an attorney and have him prepare it for you or you prepare it for yourself and you file it some place, file it in the County Clerk's office and everyone gets a copy of it.

When we talk about an agreement to commit a crime, I don't know of the rare case that this would be reduced to
30 writing. This they have too much sense for. Their subconscious mind says never to put it in writing. So we cannot produce the agreement. We cannot produce the written agreement. What we will produce for you is the oral agreement and a clear understanding and, this, I think, makes simple sense.

What did they do? The Court will charge you that to establish this conspiracy you not only have a right to con-

Summation of Mr. Heine

sider the facts and what the people did, but you also have a right to infer (1698) certain things and draw inferences from them. But let us see what the admitted facts are. Godfrey planned this hold-up at least six to eight weeks before it actually took place. How do we know that? His buddy told us, his friend of at least 12 years standing. Noah Hamilton, by name, testified, without contradiction, that Godfrey told him or asked him whether he wanted to make some easy money or make some money six to eight weeks ago. How were you to make the money? Holdup. Where? Broadway and Ferry Avenue. 10

How does Godfrey know about Broadway and Ferry Avenue? He was doing business with a TV store across the street. There he had bought this TV set on time and had gone down there to make his payments. So he had plenty of opportunity to see the Davis store across the street. And at this point, this point, because I think I failed to tell you earlier, there may have been pieces of evidence introduced out of routine, out of date, but this is one of the things that occurs in a trial. But I think you will agree with me that when we got through, all of these pieces of (1699) the jigsaw puzzle fell so clearly into its own place, so that when we were through we had a clear picture of what transpired just as clear as that picture is of Broadway and Ferry Avenue. 20

Godfrey, six to eight weeks before January 24, tried to get Noah Hamilton to join him to hold up the store at Broadway and Ferry Avenue. Noah, his friend, rejected the idea, wouldn't have any part of it. 30

Godfrey did not give up, this slippery ring leader, this finger man and trigger man, in the parlance of the underworld. And I learned most of these parlances, I think, from the TV and the radio, the finger man is the man that says,

Summation of Mr. Heine

“This is the place.” He puts the finger on it. That is how he gets his name. He becomes the finger man. He puts the finger on Edward Davis’ toy store.

10 He was not successful at getting Noah. So he went out to look for other accomplices. Apparently he obtained the consent of Cassidy to join this illicit crime. Is there any question about this? Let us see. Cassidy—and this must (1700) have happened several days before Friday, because Cassidy went out to his friend, Brimm, and borrowed the automatic. This he borrowed from Brimm and keeps it home. The night before—because in a robbery, in an armed robbery, you need guns. The night before Godfrey goes to his friend, Walker, and borrows this gun. There is no question about that, the night before, on Thursday, several days before they had this gun. Both guns wind up in
20 Cassidy’s possession. He keeps them. He keeps the arsenal. Godfrey gave him this gun on Thursday night to keep.

Now, there is one very significant thing about this: When Godfrey borrows the gun from Walker, he tells Walker already on Thursday night, “I will return it to you Friday night.” And this is an important fact. Because it establishes that Walker already knew that the job was to be pulled off on Friday night—or, Godfrey already knew that the job was to be pulled off that Friday night.

30 (1701) It is a matter of fact that Godfrey returned the gun to Walker Friday night after the job.

Once more, pursuant to their understanding, they met at Cassidy’s house on Friday afternoon around five o’clock. Who meets there? Cassidy and Johnson arrive first. Do you believe that Johnson just dropped in by chance on Cassidy? I don’t. He had been there some time. What were they talking about? I don’t know. You don’t know, we didn’t hear. I can guess what they talked about, be-

Summation of Mr. Heine

cause as soon as Godfrey arrived with the car, they started to talk about a hold-up.

Now, nobody says, "I didn't know anything about it, what is this all about?" Later Cassidy says, "What are you talking to me about a hold-up, I don't know what you are talking about, boy, go away." 10

Johnson doesn't disclaim any interest in this thing. He is part of this thing, he joins.

(1702) Is this the first time they talked about it? I don't believe so. I don't believe you believe so, because they decide then to hold-up the store at Broadway and Ferry Avenue.

Now, they need an arsenal and Cassidy produces both guns, the gun that Godfrey gave him and the gun he borrowed from Brimm, and they agree to proceed to hold-up the toy store. 20

Godfrey, the slick one, he's got the car, the 1957 two-tone Buick, he is going to drive the car and stay on the outside and operate the get-away car, because, mind you, ladies and gentlemen, that the get-away is an important part of the whole crime, because you haven't done a thing until you get away. This is how an important part that Godfrey is in this.

Johnson and Cassidy, they agree to be the strongarm men, they are going to be the men that are going to enter the store, they are going to be the killers, and they (1703) proceed, according to plans. 30

They get in the car, they drive down Broadway, they passed the store, they looked in, this was to be an easy job, Davis was supposed to be an old man, he was always supposed to be alone, they look in, Davis is alone, they pull around the corner and park the car by the garages in back of the church on Jasper Street. Johnson and Cassidy then

Summation of Mr. Heine

go into the Davis store to look around. What do the gunmen say, they were going to case the joint.

I hope you will forgive me for using the parlance of the underworld.

10 They go in, they appear to be innocent shoppers, they look over the store and then they withdraw. They walk out of the store and come back to the car.

Now, no one can deny, no one can deny that the three of them were in Godfrey's car after Johnson and Cassidy left the Davis store, they went back to the car. What did they talk about there? I don't remember (1704) who said it, but Johnson was concerned that he left his fingerprint on this toy truck. Why should that bother him? If he didn't have robbery in his mind, what difference did it make to you if you left your fingerprint on the truck? You and I have
20 shopped in many stores and handled many articles, and not having robbery in our heart, we never worried about going back to kill the man in order to remove our fingerprint. This is normal.

No, they decided whether it was Cassidy, or whether it was Johnson, or both of them, including Godfrey, to go back and knock off the joint as they said. So, if they didn't have a conspiracy in Cassidy's house, then they had a conspiracy in Godfrey's car on Jasper Street. There they agreed to rob the Davis store. So, they further conspired
30 to go in, as they originally agreed.

What were they supposed to do the second time? Cassidy was to go in first, (1705) draw Davis to the rear of this store, distract his attention, and after he got Davis toward the center of the store, Johnson was to enter and hold him up.

(1706) Well, Cassidy takes his part. He enters the store and draws Davis toward the rear.

Summation of Mr. Heine

Johnson follows him in. Now they have Davis in between the two of them.

Johnson says to him, "This is a stick-up."

He must have had this gun in his hand to do something with it when he said, "This is a stick-up," because he immediately starts to fire at Davis, starts to shoot at him. 10

Did he shoot at him one time? Once?

Was he panicked once?

No, he could not have been, because this is not an automatic. It is not an automatic as you may have heard.

This is a revolver. There is not an automatic manufactured that will shoot five bullets at one time, let alone a revolver.

There is no such thing as a revolver that shoots five bullets at once.

This requires a pulling of the trigger each time in order to shoot, let the chamber revolve and press it again. 20

You will have this gun with you and I (1707) dare anyone, I challenge anyone to shoot five bullets at one time, and you will see this for yourself. You will see what effort you have to exert in order to release one bullet.

Was it loaded? Of course, it was loaded.

Walker said when he gave it to Godfrey it was loaded.

They went down armed with a gun, a revolver and an automatic, and even this automatic cannot shoot five bullets at one time. This requires a separate pulling of the trigger each time. That is so for even what we call an automatic. 30

The word "automatic" does not mean fires all the bullets at one pull of the trigger.

It merely means that it reloads itself. You will notice when you bump this gun the hammer releases and it clicks back into place. On this one it does it automatically.

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You will have the opportunity to do this yourself.

They fired five bullets into Edward Davis' body. I say five bullets. It may be four.

10 (1708) Dr. Riegert said he believed that the seven wounds were the result of four bullets, but whether there were four bullets in him or five bullets, I don't know. It does not make any difference. I know there were at least four and I do know that when Johnson gave the gun back to Godfrey, all of the five bullets were gone because Godfrey, you will recall, gives the gun back to Walker with five bullets.

What happened to the fifth, I don't know. Whether they were lost in the clothing or whether they were lost in this toy store, I don't know.

20 We did find two bullets. One in Davis' neck and one on the floor, and these two bullets, ladies and gentlemen of the jury, were fired out of this gun, this revolver, that was carried by Johnson.

These two bullets were fired by Johnson out of this revolver.

It is not often, it is not often, ladies and gentlemen, that the State finds itself in the position where one of the bullets is still in the (1709) body of the dead man.

So that there can be no question, no question that this is the gun that fired the bullets.

30 When we were about to prove this by the ballistic expert from the State Police, this was admitted by the defendants themselves.

There is no question that this is the blood of Edward Davis on his clothing, and the bullet holes went through his body because, I think, you will recall the testimony of that learned gentleman, who was the chemist and the toxicologist from the State Police, with so much background and training, and all that was finally admitted as well.

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Well, after they killed Davis, Johnson then escaped or tried to escape by bolting through the rear door.

The rear door, you will remember, was locked. How do I know it was locked? Johnson tells us that he observed it in walking from the car, around the front. He walks across in front of the church and observes the rear door of the (1710) Davis store because he already was planning his escape. 10

He was trying to find out in case anything happened, "How do I get out of this place?"

Did he hurt his finger there? Could be, but what difference does it make whether he hurt his finger pulling the door open or not.

I say to you and I concede that he was in a terrible and awful hurry to get out of the Davis store after Davis frustrated both of them by not dropping dead but staggered out to the pavement crying, "Help, I have been shot." (1711) after Johnson—and mind you, Johnson passed Cassidy on the way out and he bolts down Ferry Avenue. Cassidy runs back to the Godfrey car. And I suppose this was even part of their scheme too: Separate yourself right away, so that if anything happens, we don't all get caught together. 20

Johnson runs down Ferry Avenue and they must have agreed upon it, because, what happens? Godfrey gets Cassidy in the car, makes a righthand turn and a righthand turn, and makes a lefthand turn and picks up Johnson a block-and-a-half away. There was no one in the store. No one had seen them and they might have been successful, they might have been successful in making their escape and making the job much more difficult to detect—you can't but help to have an ironic view of this whole thing. 30

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Was it poetic justice that a murder should have been solved because of a stupid violation of a simple traffic law?

When Godfrey came by Fourth and (1712) Ferry Avenue, where the lights were located, had his light been green, he would have made his left turn and nobody would have noticed it. The light, however, was red. He, mind you, was in a hurry. He had himself and another killer, another killer, in his car, and they were to pick up a third killer. They were on their way to get away. So, he passes a red light. He never knew it, he probably never observed that in making his left turn he passed a car that was standing there waiting for the red light to turn.

Some law-abiding citizen, some decent operator of a car was abiding the traffic light and waiting for the red light to change. This violation of the traffic law, as simple as it was, caused this citizen who was waiting for the traffic light to say to himself, I bet, "Well, why can this guy get away with passing a red light and I'm standing here, observing the law? Is it any wonder there are so many accidents on the highway?" and notices the license number: (1713) 4472, 4472. He thought it was a General Motors car, I think he said, and saw him pick up Johnson, or saw him pick up somebody. He didn't know it was Johnson. He didn't know that two killers were there, two robbers, killers.

Then when he hears that there was some excitement up on Broadway and Ferry Avenue, he starts to think, "Well, maybe this was them", so he calls 4472 into the police, which sets the police on the trail of Godfrey's car.

This gave them the scent. Now, the police are looking for Godfrey's car; and where do you look for a criminal? There is one fundamental law that these criminals never learn. That is, to stay away from where they did the crime.

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Because, as old as crime itself, it seems there is some lure that makes the criminal return to the scene of the crime.

Now, they pick up the scent of the car. Do you remember Detective Large looked (1714) around, found it, trailed it for a while. The County Detectives and the City Police and the City Detectives finally tracked down Godfrey and his car, and they arrested Godfrey on Tuesday afternoon. 10

The next day, the next day, say Friday night, to take you back to Godfrey, Godfrey thinks he is in the clear. He doesn't know that he passed this red light, or doesn't recollect it. So, he goes down to the Click. This is apparently the "Club". This is where all of them apparently congregate.

He goes down to drink and he hangs around there in this taproom. He hears the police come in and they go down there, because they figure this is where the hoods may be. He makes no mention, he doesn't squirm. He is there drinking or playing records, or amusing himself. He finally meets up with his buddy, his friend of long standing, his confidante: Noah Hamilton. No mention of this at that time. And, he (1715) finally prevails on Noah to accompany him up to Campbell Soup, where he goes around eleven, eleven-thirty or so, to pick up his wife, who is getting out of work at twelve o'clock. 20

At the same time they are dropping off Noah's girl uptown at Broadway and Federal, so she can get a bus. 30

After they drop the girl off, they go down to Campbell Soup, and you remember this story from Hamilton, this is not my story. This is their confidante's story, their buddy's story. And I say this was a lucky evening for Hamilton. I am quite sympathetic with Noah Hamilton, because I think this took a lot of courage on his part to come in here

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and testify against all of his buddies and friends. It took a lot of patience.

I think you sensed the reluctance on Noah's part to actually identify and put his finger on these people and expose them. But, to his credit, he did it, he did it. (1716)
 10 Reluctantly, or otherwise, he did it.

What does he say when he waited with Godfrey at Campbell Soup? Godfrey's curiosity burns in him. He sends Noah across the street to get a paper to find out whether there was any report of this hold-up. He inquires about a shooting. Noah says, "Yes, there was a shooting down on Broadway." "Where was it?" "Broadway and Ferry Avenue. The man was shot with a shotgun." Why did the paper report that he was shot by a shotgun? Because, when you look at these pictures and you see how many holes peppered Davis, you will think that he was shot by a shotgun yourselves. Noah says, "That couldn't have been me. We use guns. It was a shotgun."
 20

(1717) He tells him about it. He said that was it, place at Broadway and Ferry Avenue.

Who else was in it? I think he tells him or doesn't tell him, I don't care, it is not important at this time to say.

The next day Godfrey arranges to pick up Johnson, to drive him to Newark. How does this happen? How does he come to pick up Johnson? How does this communication get to him? Word must have been passed around some place, because Godfrey arranges to pick up Cassidy and Noah who already knows about it to pick up Johnson at his house and drive to Newark.
 30

I say, they arrested Godfrey on Tuesday afternoon.

Let's take Cassidy, what was Cassidy's part? Cassidy borrows the automatic from his fellow friend, he doesn't tell him what he is going to use it for, some sort of lame ex-

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cuses, he's going to keep it for Brimm, he is worrying about Brimm having trouble with his mother about that gun that has been around the house for three years, all of a sudden Cassidy gets concerned about (1718) Brimm holding, keeping this automatic. He said, "I will keep it for you."

The thing that amuses me, while he was going to keep it for him, he got rid of it Friday night. However, he borrowed this gun several days before. He meets with Johnson at his home that Friday and then accompanies him on. He also tells Noah about it. 10

Now, when they drove to Newark, when they drove to Newark, the four of them, the three hoodlums and Noah, and they all, I believe, knew that Noah knew about it already, what do you think they were talking about on the way up to Newark? When he said, "My finger was hurt" or something like that, "How do you feel?" 20

"I don't want to talk about it any more, let's forget it." Yes, let's forget it, but why was he going there? To escape from Camden, to go into hiding, into seclusion.

Well, after Noah gives his statement and after we hear something from Godfrey, Cassidy is arrested that night, Tuesday night.

Now, we start, we haven't solved the (1719) crime, the police haven't solved this crime at all, and this is important for all of us to keep in mind. You remember there were three interrogations of Cassidy and there were two interrogations of Godfrey and there was one interrogation of Johnson. 30

Cassidy was the first one interrogated, starting Wednesday morning.

Now, when these interrogations take place, this is important for you to keep it, because the timing of it speaks for itself, and you will be able to follow it.

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When Cassidy speaks first, the interrogation starts at nine o'clock, does he confess? No, he doesn't give himself the worse of it, he admits as much as he thinks he has to admit. Wise, withholds information, and at this time the crime hasn't been solved. This interrogation lasts until
10 10:20, in an hour and twenty minutes.

Now, they start interrogating Godfrey. When do they start? At 10:25, five minutes after they get through with Cassidy they start with Godfrey. Now, they start to pick up some information from Godfrey that Cassidy had left out. So (1720) they bring Cassidy back at 12:15, because the first interrogation of Godfrey lasts just about that time, I think it was twelve o'clock.

At this time this interrogation isn't all together for the purpose of a confession, the police are still looking for
20 information.

You remember when Cassidy first talked about it, he didn't mention guns at all. Godfrey starts to talk about guns. Now we bring Cassidy back. When Godfrey talks about guns he doesn't say that he had any guns, oh, no, he puts it on the other men, and this is typical through all of these interrogations and confessions, that each one of them said the other two were to blame, "Not me, the other two."

They bring Cassidy back and they pick up some more information, and finally they take Walker late that night
30 and they get some more information from him.

True, when we picked Johnson up on Wednesday, now they had a pretty complete story. This was the confirmation, this was a confession on his part. Now the thing starts to make sense (1721) and we find that every one of them had played their part in the conspiracy, in the attempted robbery.

This is why there were so many interrogations, because

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each one said what the other one had previously said and added a little more, and you recall this was the sequence of it.

Johnson, what was his part in this? We start off, yes, he was at the house, he agrees to go in the hold-up, he takes the revolver, he takes the revolver, he agrees that he went into Davis' store, he came out, he went back to Davis' store, and it was finally agreed that this was the gun that shot the bullets that killed Edward Davis. 10

(1722) Now, have we proven the three points?

Have we proven one, there was a conspiracy and agreement to rob the place; two, have we proven that there was an attempt to rob the place; three did we prove that Edward Davis died as a result of gunshot wounds received during the course of this attempted robbery? 20

This, I submit to you, ladies and gentlemen of the jury, and I am confident that the Court will charge you is murder in the first degree. 20

At this point, at this point in my summation, in these opening remarks, I would devote my next few moments to discuss the evidence that might have been presented by the defense, but I am not going to do that.

I am sure you follow me in my reasoning. It is very simple reasoning.

The reason I am not going to discuss the defense is because there was no (1723) defense to the State's case. 30

I say to you, most respectfully, that the State proved its case beyond, beyond any reasonable doubt.

The State proved its case beyond any doubt.

The defendants chose not to take the stand in their own defense.

That was their right. They have a right under the law not to take the stand. However, the Court will charge you

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as the law that where the defendants refuse to take the stand in their own defense, that from their failure to testify in their own behalf, you, the jury, may infer that they could not truthfully deny the incriminating facts that were proved against them.

10 I will leave that to you and perhaps comment upon it later.

Before I sit down, ladies and gentlemen of the jury, the State challenges each of these defendants to satisfy you that the State did not prove its case beyond (1724) a reasonable doubt.

The State further challenges each of these defendants to satisfy you that there was no conspiracy to commit robbery.

20 Further, the State challenges each of these defendants to satisfy you that this was not an attempted robbery in which they all participated.

The State further challenges each of these defendants to satisfy you that the State did not prove that Edward Davis was killed during the course of this attempted robbery.

I think you, ladies and gentlemen, as I have said on many occasions before, and you have heard this, that all three of these defendants were present throughout the conspiracy in the attempted robbery, during which the killing ensued. This, I am confident the Court will charge you, makes each
30 of them guilty of murder in the first degree.

I challenge, on behalf of the State, each of these defendants in their argument to (1725) you to offer more than just idle words.

I challenge them to offer any facts that would warrant you in making a recommendation for life imprisonment.

Now, reasonable doubt. Yes, each defendant is entitled to the benefit of every reasonable doubt. (1726) Yes, this

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is the law, and the Court will charge you it is the law, and the Court will define to you what is meant by reasonable doubt. The defendants are not entitled to every doubt. They are only entitled to every reasonable doubt. When I say this to you, ladies and gentlemen of the jury, this makes no difference, because to my way of thinking, and I trust 10
to yours, there is no doubt about the State's case. And, for this reason, since there can't be anything less than a verdict of guilty of murder in the first degree, that this verdict should be without any recommendation at all.

I will have an opportunity to again speak to you after the defendants have advanced their arguments. I will close. This is the procedure. The man who opens, he closes the argument. I leave you with the thought that we suggest that you return a verdict of guilty of murder in the first 20
degree against each of these defendants, without any recommendation.

(1727) Thank you.

THE COURT: Suppose we take a ten minute recess. The jury will leave the court room first.

(A recess is taken.)

30

SUMMATION OF MR. FLUHARTY.

(1728) MR. FLUHARTY: If the Court please, ladies and gentlemen of the jury, I too would like to join with the Prosecutor in thanking each and every one of you for sitting in this jury, for the patience that you have displayed. I know that this has been a hardship for each of you who had

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to give up many of the comforts that you are used to enjoying. And I thank you for this. And my client, Wayne Godfrey, appreciates what you have done, coming into this court room without any bias or prejudice, with open minds, and not permitting yourselves to be overcome by passion
10 and hate.

Now, you may recall last Friday when the Prosecutor spoke with you at the conclusion of his opening remarks, he said that he didn't know what the defendants would offer, he couldn't imagine what would be said and I recall that he even said that we might take that stand and might lie. But we haven't. We haven't taken the witness stand in this case, we haven't lied to you.

I told you last week why we were here. We are in this court room, we have been in this (1729) court room for the
20 last two weeks for one reason, and one reason alone, and that is because the law of New Jersey in its wisdom saw fit that where a man is charged with murder, he shall be tried by a jury, that is where his life is at stake the jury shall make the determination as to whether he should live or die, and that is why we didn't come before you and offer any false defense, we didn't tell you anything that wasn't true.

What could Wayne Godfrey? Could he deny that he was involved in this conspiracy to commit robbery? As the
30 Prosecutor has described it, could he deny those facts? There is no doubt, no doubt that he was involved, he was connected with it. No, he doesn't deny that.

Could he come into this court room and deny that Edward Davis lost his life? Could he tell you that Edward Davis didn't die as a result of gunshot wounds? He couldn't say that. I didn't even want to say it.

During the course of the trial I offered to admit that

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Edward Davis died as a result of gunshot wounds. I offered to admit many things. (1730) Why? Because they are true. What could Wayne Godfrey say if he came into this court room, if he took this witness stand, all he could say he is sorry, he didn't mean to do it. What good would that do him? Would that bring Edward Davis back to life? 10
Would that restore the life of this man? It certainly wouldn't, it couldn't.

And is there any doubt in anyone's mind that he is sorry? Look at the man, he sits there right now, his very life is at stake. Your verdict could send that man to his death. He spent a year in jail already, he sat in this court room for two weeks, he has listened to the facts, he has listened to the testimony, he looked at the horrible evidence, certainly he suffered. No doubt about it, none at all.

(1731) My position here before you, ladies and gentlemen, is one that is highly unusual. 20

Generally, defense counsel appear before the jury at the close of the case and place before the jury all the facts that will show that his client was innocent, that his client did not commit the crime which he is charged with.

I would normally point out to you the purpose of an indictment, the fact that it carries with it no evidence of guilt, but this case is not that way.

We offered no defense.

I gave no facts that I can come before you and place before you in behalf of Mr. Godfrey. It would do me no good to comment on the indictment, the purpose of the indictment or to dwell on reasonable doubt. 30

That is not in this case.

The thing that is involved in this case is the life and death of my client, Wayne Godfrey. That is all. That is

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the (1732) only thing involved, and I say that that is serious, very serious.

Ladies and gentlemen, as the Court told you, you will so deliberate in connection with your verdict.

10 You will so deliberate as to whether your verdict should carry with it a recommendation for life imprisonment, or whether it shall not, in which event my client will be sentenced to death. He will die in the electric chair.

Why? Why is this necessary?

Why should he die?

There is one thing I know, I know that when you ladies and gentlemen deliberate on your verdict you will take with you the facts to which you have so patiently listened.

20 You will take with you the law as charged by the Court, but above all, more important than anything, you will take with you a feeling of mercy, a feeling of pity and understanding.

(1733) You will not permit all of this blood to blot out the feeling of mercy that we should all have for our fellow human beings.

Now, the State has asked that you return a verdict that will impose the death penalty upon my client.

Why?

The State has told you that this was a shocking, a bold, a brazen and unnecessary taking of human life.

30 The State has said that for those reasons Wayne Godfrey should suffer the death penalty.

All death is shocking. All death is unnecessary.

The natural instinct of the human being is to draw back from death. So, then, I say to you, if the reason you should sentence Wayne Godfrey today to the electric chair is because it was shocking and because it was unnecessary, then, why, why, should the legislature in its wisdom see fit to

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give you the right if after examining the (1734) evidence you feel that you should recommend mercy, that you should recommend my client be sentenced to prison for life.

The legislature never gave you an empty right. They knew that death was shocking. They knew that death was unnecessary.

10

So, if that is the reason he should die, it would never, never, have seen fit to pass such a statute.

However, let us see if there may not be some reason why they gave you this right as they did.

Why did they give you this duty to make a recommendation or not, as you see fit, and as only you see fit? It is not because the Prosecutor has asked, or because anyone else has asked, but it is as you have seen from the evidence.

They did this for obvious reasons.

They knew that wherever a death occurred, even though it might be murder in the first degree, that the death penalty (1735) should not always be imposed.

20

Our law sets up what is murder in the first degree. It discusses the crime which is the result of premeditation, of deliberation, of intending to take a life.

The Prosecutor told you last week:

(1736) You should forget premeditation, deliberation, intention to take a life. That has no part in this case.

Now, it may be true that premeditation, deliberation and intention to take life are not necessary for this crime to be murder in the first degree. But why forget those facts? Because the statute that sets forth that murder in the first degree requiring premeditation, deliberation and intention to take life is the very same statute that goes on and makes those homicides that occur during the course of a robbery or an attempted robbery, likewise, murder in the first degree. The very same statute discusses both types of murder.

30

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I say that is why the legislature saw fit to give you this right. Because they knew a case such as this very case, would come into a court room, a case where the defendant such as Wayne Godfrey had no intention to take anyone's life—there was no premeditation, there was no deliberation.
10 He had one thing in mind and only one thing, and all of these three defendants had (1737) one thing in mind, and that was to commit a robbery.

Now, that is wrong. I do not condone it. I do not expect you to condone it. But that is all they intended. They did not intend to take anyone's life.

You can recall from the confessions the shock exhibited by Wayne Godfrey when he learned that someone's life had been taken. That was no part of the plan. That was no part of the conspiracy. It wasn't a conspiracy to take life,
20 a conspiracy to kill. Wayne Godfrey is not a killer. He is a robber. That is all. Not a killer. He did not kill anyone. He never intended to kill anyone. And this is why you were given this right, and this is why I say that you should exercise this right, that you should recommend life imprisonment for my client, Wayne Godfrey.

I say, further, that the State has assigned to you these reasons, this death that was shocking, that was bold and brazen and unnecessary, they told you because of that, that the (1738) death penalty should be imposed. But I say that
30 the Prosecutor realizes this is not enough. Why do I say that? Because I was willing to admit that Edward Davis died as a result of gunshot wounds. I was willing to admit he bled. But, no, the State wanted to go on. The State wanted to prove he bled. The State wanted to show you the blood. They showed you pieces of cotton with blood on. They showed you pieces of cardboard with blood on them. They show you pictures with blood on the pave-

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ment. Everywhere blood. Every witness that testified spoke of blood, blood, always blood. Why? I'll tell you why: So that you would learn to hate Wayne Godfrey, so that you would develop a feeling in your hearts of hatred, because unless you hate him, you cannot return a verdict that would impose the death penalty upon him. 10

That is the reason for all this blood. But I say to you again those same legislators that I spoke about before, the same men that gave you this right, they knew that every killing, every death involves blood. They knew that. Every- (1739) one knows that. But they still gave you the right.

If they had intended that every killing that occurred where blood was shown, where there was blood in the case, that there you should sentence the defendant to death, they would never have given you such a right. Because blood cannot be the answer. 20

How do we know? Sure he bled a lot. Did he bleed a lot? Did he bleed a little? What difference did it make? The man bled and it is horrible and it is shocking. That is not the reason that Godfrey should go to the electric chair because Edward Davis bled.

Again I say that this is the case where your rights should be exercised. This is the case where the defendant, Wayne Godfrey, sits in this court room only because of this robbery. He was involved in the robbery. That is all. He had nothing to do with the killing of Davis. I think the testimony has clearly shown that he was on Jasper Street. I don't know how far away it is. Is it a block? Is it two blocks? Does it (1740) matter? He wasn't even in the store. 30

What could he have done? He couldn't have prevented it any more than he could have brought it about. It hap-

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pened. Maybe if he were there, it would not have happened. We don't know. But we do know that he never intended it to happen.

10 I say to you, ladies and gentlemen of the jury, if you should return a verdict that would impose the death penalty upon my client, you will be no more sure of the righteousness of your verdict than a mob that would hang or burn its victim. Just because Wayne Godfrey would die in the name of justice. That is no answer. The fact that the Prosecutor would ask you to return a verdict that would impose the death penalty upon my client is no answer. Justice? We speak of justice. I believe in justice. I know you ladies and gentlemen of the jury believe in justice. But what is justice? Who knows what justice is? Who knows what Wayne Godfrey deserves? Do you truly know what
20 he deserves? Can you look in his mind? Can you look into his heart? Can you look into his background and really know what (1741) Wayne Godfrey deserves, what justice he deserves, what punishment he deserves? I know I can't do that. I don't think the Prosecutor can do that.

(1742) Only God Almighty, who is the Judge of us all, in His infinite wisdom, knows what punishment Wayne Godfrey deserves. Is there any question in the mind of anyone of us what His judgment would be? His judgment would carry with it mercy and understanding, it would be
30 blasphemy for me to stand here and say that it would be anything different. We all know that.

Then, why does man, why does the State say that they have the right, in the name of justice, to take the life of Wayne Godfrey.

They have the legal right, but they don't have the moral right. It would be wrong.

Now, there may be those who would argue that if Wayne

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Godfrey's life were taken, if he suffered the death penalty, this would benefit society, it would benefit the community. Would it? That is a death has a demoralizing effect on everyone, whether it be the death of Davis, or death of Wayne Godfrey, (1743) it makes no difference, it makes no difference at all. So that it won't benefit the community, or won't benefit society, not one bit. 10

Now, I say to you, ladies and gentlemen of the jury, and I stand before you asking for mercy for my client. I ask that you spare his life. It is your verdict that can return a recommendation for life imprisonment, mercy.

Let's think for a minute. Is it mercy that I want? How little can I ask? Think for a minute, if you will.

Wayne Godfrey, twenty-eight years of age, life imprisonment. Is this mercy? Day after day, week after week, month after month, with nothing to look forward to but prison walls, iron bars, hostile guards, nothing. Is that too much to ask? Too much to ask for a man who had nothing to do with the death of Edward Davis, who couldn't have done a thing to prevent it, that couldn't bring it about, that wasn't even there. Isn't that (1744) enough punishment? What man or woman wouldn't be satisfied with that? What member of society wouldn't be satisfied with that? That should be sufficient punishment. We can't ask for more. To ask for more is to ask you ladies and gentlemen of the jury to do that which is contrary to mankind. To do that which ignores any hope we may have for the future, because if there is going to be any future at all in this world, if there is any future for any of us, it is only through mercy and understanding, that is the only way. If it is going to be hatred and revenge in the hearts of everyone, we will have no future at all, this world is a pretty bad place right now. And, if there was some mercy and understanding in 20 30

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everyone's heart, I am sure it would be a better place to live.

10 That's all I am asking. And I say to you, I know there will be a future, there will be a time when attorneys such as myself will not have to stand before a jury (1745) and beg for the life of their client, and this day is going to come. I don't know when. Seven States have already seen the wisdom in abolishing capital punishment. We have more to go. The time will come when it will be fully abolished, everywhere.

20 I say to you, Delaware has just recently abolished it. New Jersey, is New Jersey any less civilized than Delaware? Some of you ladies and gentlemen of the jury probably have friends in Delaware. Are you any different than your friends? Do you have any less mercy in your hearts than your friends from Delaware? Of course not. We are all the same, all of us. Just because we have certain geometrical boundaries between one State and another makes no difference. We all have a feeling of mercy and understanding.

Now, let's review for a moment, if you will, this sphere of punishment, this capital punishment, the death sentence, if you will.

30 (1746) You all know there was a time, from your history, in England, some two hundred crimes were punishable by death. In this country, in Salem, Massachusetts, there were burnings of people accused of witchcraft. People were not put to death by gas chambers, by the electric chair, but by some of the most horrible tortures known to man. People were boiled in oil. What was the effect of all this killing? Did it blot out crime, did it stop killing? It had no effect at all. In fact, statistics show us that as we become more merciful and more understanding of crime

Summation of Mr. Fluharty

and criminals, that crimes decrease. As these horrible tortures and these gruesome deaths were done away with, crimes decreased, and yet I have to stand here and ask and beg and plead for mercy for my client, that his life will not be taken. Why should it be? If it is not going to deter crime, what purpose will it serve? It will serve none. No valid purpose will be served by (1747) taking the life of Wayne Godfrey, none at all. 10

The only reason the life of Wayne Godfrey could be taken, or would be taken, is that of revenge, hatred, and that is the only reason. The only reason the State kills anyone, the only reason the State takes a life is because the defendant, they say, took someone's life. So, if he killed, let him be killed. Think of that for a moment. The State kills because he killed, without purpose or without reason, just because he killed somebody. 20

How does this apply to Wayne Godfrey? Who did he kill? He didn't kill anyone. He wasn't even there. He took no life. He had nothing to do with it. He was involved in an attempted robbery, that's all, for which he should be punished, for which I don't condone myself, and I don't expect you to, but he didn't kill anyone, he never intended anyone to be killed. He never deliberated and con- (1748) spired to kill someone, it happened. It is horrible, it is unfortunate, it is a shame, but to take his life will not bring Edward Davis back to life. The only thing that will be accomplished if they were to take his life is we will satisfy certain hatreds that might exist against this man because he was involved. That is all, just hatred, hatred. 30

But I say hatred is not what we should look to. Mercy, that is what we should have. Mercy for my client. And, I say to you, ladies and gentlemen of the jury, I beg and

Summation of Mr. Caggiano

I plead with you, when you deliberate the verdict, for my client, Wayne Godfrey, I ask you to bear in mind the words of the great Teacher when He said "Blessed are the merciful, for they shall obtain mercy." He taught mercy, He taught love, He taught understanding, not hatred, and I
 10 ask you, ladies and gentlemen of the jury, to return a verdict with mercy, return a verdict recommending life imprisonment for (1748a) my client, Wayne Godfrey.

Thank you.

SUMMATION OF MR. CAGGIANO.

(1749) MR. CAGGIANO: With the permission of the
 20 Court, members of the jury, in some fashion I too must display my gratitude to each of you for your endurance for serving on this jury.

I do remember that last weekend some of you were not quite well. I am sorry for it.

I hope, however, we are well and healthy so that we can properly conclude this case as we planned to do when we started.

Definitely, definitely this is quite an experience for you, and I venture to say that, perhaps, you will never have
 30 such an experience again.

It does not happen every day that we sit on a jury to deliberate a murder cause and for that too I extend my sympathy. Definitely your job is going to be extremely difficult.

It will be one that will take all the courage you possess. It is one job that must have your full and complete understanding and your sympathy and your mercy.

Summation of Mr. Caggiano

At the opening of the case, it was mentioned by the Prosecutor, something to the (1750) effect that these defendants had the audacity to enter pleas of not guilty.

Members of the jury, by law they are dutybound. They have no other alternative. There is no other course open to them. 10

The State requires you to enter a plea of not guilty, and you will be tried by a jury, and not only shall they determine the innocence or guilt but too they shall determine what penalty shall you suffer.

What is penalty?

Penalty is punishment.

Someone commits a wrongdoing and they must be punished.

How do we punish them?

When you committed a wrong, how were you punished? 20
Perhaps your father would not let you use the family car that Saturday night, or maybe your allowance was cut off for a week or two. That was punishment, and it taught you that in the future you should not again make that same mistake. By that we learn.

What can one learn from death? What cure (1751) can that serve?

To kill these boys, who will benefit? Sincerely, does the State benefit?

Do you, as individuals, benefit? 30

As members of our society, do you benefit? Definitely not.

Who suffers? Then, the truth be this:

Stanley Cassidy will not be the one who suffers the most if he should die in the electric chair. Believe me, he does not suffer the most. It is this fast. The suffering is over, but those that remain behind, it is the living that suffer.

Summation of Mr. Caggiano

A dead man can suffer nothing at all. He can feel no pain. He is dead.

Nonetheless, as I say, we did enter a plea of not guilty as proscribed by our law.

10 Great mention was made, and undoubtedly will be further made by the Prosecutor to the fact that the defendant failed to take the stand, and because he did not take the stand, the witness stand, we may all assume that he did not (1752) do so because he could not deny that which is charged.

That is an honest statement. The action of the defendant was an honest act.

He has not taken the stand to conjure up stories and lies.

The facts are as they are presented.

20 Was not the testimony or the statement made by Stanley Cassidy at the interrogation of Chief Dube presented?

The questions were read to you and the answers were read to you.

(1753) There is nothing more you can say. That which he said is true, that which he has said has been introduced as testimony in this case by the State and therefore the State is bound by the evidence they introduce.

30 Our Prosecutor cannot say that Stanley Cassidy lied. Whatever is in this statement made by Stanley Cassidy is true. I know it is true. Of course, again, my opinions are not binding upon you, and my reason for knowing that it is true is because of the meetings and consultations I have had with Stanley. We have been over this many, many times.

I know it is true because I know Chief Dube, and Chief Dube is a fine interrogator. If you do not answer truthfully, believe me, he will question you until he does get the truth, and Chief Dube got the truth.

Summation of Mr. Caggiano

Some mention was also made to the effect that a statement was taken first, one in the morning at 9:00 o'clock and then later on at 10:20, another one, or concluded at 10:20, a little after that another statement made.

(1754) The reason for the subsequent statements was not because of the fact that there was falsehood, not because what he said, the questions that were asked and answered, the answers given were not true. It was only because of the fact that the interrogator decided, after further investigating and questioning others, that there were other questions he wanted to ask. Every question he asked Stanley, he answered. And we could not expect Stanley Cassidy to answer a question that was not asked of him. No one could do that. If we are not asked the question, we cannot answer the question, and we could not expect Stanley Cassidy to anticipate questions that the Chief of County detectives should ask. 10 20

Whatever question was asked, he answered it, answered it as best he was able. In his first statement, that taken January 29 at 9:00 A. M., Chief Dube asked of Stanley Cassidy: "Tell me in proper sequence what happened?" And Stanley started his answer this way: "I walked in the store and I walked in the back like I was looking for something, and Sylvester was supposed to come (1755) in back of me. And as I was walking toward the back, Sylvester came in and he said 'This is it.' And the man turned and I heard a shot and I turned around and the man was reaching for Sylvester, and I heard another shot and he shot the man and ran past me." Paused there and continued on. 30

Is that not true? Aren't we convinced that that is just what did happen at 1731 Broadway? Is there a question in anyone's mind that it didn't happen that way? We must

Summation of Mr. Caggiano

be possessors of terrific imagination if in our mind we can develop anything else. For that is just what happened. Stanley Cassidy, without dishonesty, when asked the question, tried to give the answer as best he was able; not because of the fact that perhaps he might say something to help himself in an answer like that. Does that help him? Is he trying to hide? Could anyone give an answer which would implicate them in a greater crime? Could he become more involved? He just could not.

Now, ladies and gentlemen of the jury, I guess we are all tired. I know I am tired too, but we still have our jobs to do. We are going (1756) to do them. We all have the courage to do them.

There is going to be one test for you members of the jury that is going to be exceedingly difficult, in fact, bordering the impossible. You were read the confession of Stanley Cassidy. The only defendant bound by that confession is Stanley Cassidy. After we followed with the confession of Wayne Godfrey. The only one bound by that confession is Wayne Godfrey, and whatever Wayne said about Stanley or any reference to Stanley or to Sylvester, you must set that aside.

That is why I say it is going to be a very, very difficult job. How will you be able, after having heard the three individual confessions of these defendants, to disseminate and to remember exactly who it was that said this? He is only bound by that, not the others. It is going to be very difficult.

Please, during the stages of your deliberation, try as hard as you possibly can to remember each of their individual confessions. Try to remember, not what I tell you, not what the Judge tells you, not what the Prosecutor tells (1757) you, but what you remember that which Stanley

Summation of Mr. Caggiano

Cassidy said. And through the course of your deliberations be guided and be concerned only with what he said. This is the law.

Let us get back to the happening of this tragic affair. Beyond all doubt no one likes killings. We are sorry to hear of them. However, it is done, and that which is done cannot be undone. And when I say that to you, please do not misunderstand. I am not trying to talk it over, pass it by, or overlook. The death of Edward Davis was shocking. Edward Davis was shot and killed during the commission of a hold-up. They did not conclude it but there was the attempt. There was no question about that, no question about the fact that this gun was used, this little revolver. 10

This is the gun that exploded, and whether it had been four or five shots, three shots, regardless of the number, they were bullets that did kill Edward Davis. 20

But how did that happen? Did they go in there to kill? I am certain at this moment that (1758) each of you in your minds have definitely been convinced that they did not intend to kill. I do not say that because they did not intend to kill that the crime was not committed. For our law says that during a holdup, a robbery or an attempted robbery when a homicide ensues, that that is murder in the first degree. But can't you rationalize and realize that there are lots of kinds of murder too? There are lots of kinds of first degree murder? 30

Definitely, if we think back to the celebrated case of Loeb and Leopold, you may be familiar with it, that was murder. But can you compare that type of murder with the type that exists here?

Someone disliked someone else. So they sit down cold bloodedly, calculating, trying to determine how they are

Summation of Mr. Caggiano

going to get even and they dream up a plan whereby they can take their knife or their gun and lay in wait for their enemy, and as he goes by, kill.

10 Isn't that a different type killing that exists in this case? Of course, the net result (1759) for the victim definitely is the same. But the killing itself is different and should not the punishment therefore be different?

20 Why should it be that you, as jurors, be permitted in rendering a verdict of guilty of murder in the first degree to further have the responsibility and the duty to determine the extent of the punishment if it were not because of the fact that there are killings and there are killings? There are differences. Then we could well say the law should be this: If you are guilty of murder in the first degree, there should be no recommendation. You should be punished, you should be sentenced to death, you should die in the electric chair. But it is not that; and again, the reason being because we must consider everything that surrounds this particular case to determine just what degree of first degree murder could it be.

30 If driving my automobile with wanton disregard of the rights of others and perhaps, going so far as to say at the time I am intoxicated, is that too not a killing if someone is hit and dies? Even there compare it with the type of (1760) killing that exists in this case. If a man kills his brother, is that too not a different type killing? And isn't it so that, again, because of the variances, we must have a variance of punishment? I am certain we could all understand that.

What happened to Sylvester Johnson when he went into that store? Again, please let me say this: What I may say about Sylvester Johnson, you should not take as fact. These are just thoughts of mine, inferences that I have

Summation of Mr. Caggiano

drawn from hearing and listening to the testimony in this case. But they walked into the store, and I'll bet you they thought they were going to have an easy job stealing this man's money, robbing him.

If they didn't think it was going to be an easy job, they wouldn't have done it. Stanley walked in first, walked off to the rear of the store. He was going to attract the attention of the proprietor, and as he does this, Sylvester Johnson comes into the store. They now have the proprietor between them, Stanley to the rear, the proprietor somewhere in the center and Sylvester (1760A) Johnson. 10

(1761) And Johnson says something to the effect "This is it" and then Edward Davis turned around. Edward Davis, as you remember from the testimony, was a robust individual, he is a pretty big man, former boxer and wrestler, and he grabbed for Sylvester Johnson again, and I do not blame him for trying to protect himself, I cannot blame him for trying to protect the property that he owns, but that is what happened. And, when it happened, Sylvester didn't concede, no question about that at all, and there was a tussle and in some of these photographs you will see boxes strewn, overturned articles, and that is because of the scuffle between Edward Davis and Sylvester Johnson. And in the tussle this gun was fired, three times, four times, five times, and as it was fired, some of the bullets did hit Mr. Davis. The doctor testified he believed four hit him, and how was the gun fired? It was not the question of looking and taking aim. It was fired rapidly, and even after Edward (1762) Davis was hit, at the first instance, Sylvester Johnson didn't realize that he had hit him, because, if you remember, he said he still kept coming for me, coming at me, and then in his panic he ran. That is a natural instinct. Panic, and you run. Being extremely 20 30

Summation of Mr. Caggiano

frightened and you will run. So, he runs. And definitely, if thinking, he could have run out that front door without difficulty, but the State says no, he runs out the back door and has to break a piece of wood, or something that is holding the door, or the door is closed, or what, or both, he
10 takes the hard way, again, because of panic.

The Prosecutor has challenged defense counsel for us to explain what our defenses might be. Explain why these boys should not receive the extreme penalty, explain why they shouldn't die in the electric chair. For the defense, what can we explain? The facts are as they exist.

At the start of the case we decided (1763) that we agreed that we wanted to propose that they brought out into this Court room all the facts, we wanted all the truth, for then we could assemble the facts, all the truth, and come to a
20 fair and just conclusion. We are coming close to that point. You have all the facts, the facts remain undenied. They are true. There is no question about the facts, that they are true. We cannot deny them, so we do not deny them. That is the only way I am able to answer that challenge of the Prosecutor.

As for the challenge as to why we believe there should be mercy, why we believe they should not die, I say this. If you are to condemn, you must hate. Hate will breed nothing but hate. Cruelty will breed nothing but more
30 cruelty, and that is not our purpose, that is not our desire. We wish to be fair, we want to be just.

For their wrongful acts, they will be punished, beyond doubt, they will be punished.

(1764) What should that punishment be? Can we imagine, can we perhaps say life imprisonment is insufficient punishment?

You remember when we opened our case we discussed

Summation of Mr. Caggiano

reasonable doubt, and if I remember correctly, I made some mention of the fact that reasonable doubt shall remain with these defendants throughout the entire case, throughout the entire deliberation, and that it will not adhere just to the facts of the case, but every phase of this case, and a very important phase being the punishment, the penalty that they shall receive. 10

Reasonable doubt should help also and should remain with you in your deliberation.

Many times people may argue that it is quite simple and maybe following the line of reasoning is this, the easy thing would be to say, well, guilty of murder in the first degree, and that be it, realizing that that verdict would carry the penalty of (1765) death for these defendants, and believe me, I believe that to be the line of least resistance. It will take courage for each of you in determining the fate of Stanley Cassidy to somehow try, although I believe it is not too difficult, but even though it may be difficult, to try to go through the entire case, pick out whatever there is, as small as it may be, something that you might say, well, because of this I have cause for mercy, and look a little further and find something else, and again concede because of this, "I must extend a little mercy." To do that as a juror is a courageous act. To do that as a juror is a difficult act. I am certain that there is no member of this jury that lacks courage. 20 30

(1766) If I am taking too much of your time, I am sorry; believe me, I am, but minutes now, as compared to life imprisonment is definitely an inconsequential thing now.

Is it not so that they sit there now and these may be the limiting minutes of their lives, depending upon your verdict.

I have not known Stanley Cassidy for a long time.

Summation of Mr. Caggiano

I did know his father. I always knew Stanley to be a good boy, however, no one could have been more amazed than myself when I found out what happened here.

He has made a mistake, a terrible mistake.

10 The truth of it is that I have thoughts too, as well as we all do, and one of the severest of crimes, one of the worst crimes is armed robbery, and that was the crime that they had intended to commit.

The reason why it is such a bad crime, an evil crime, is not because of the (1767) deprivation of the property of the individual victim, that is not important, but because of what happens.

Someone becomes panicked; someone gets excited; there is a struggle, and now we are in the Court room.

20 That is the reason why I do not like it, but as much as I dislike the particular crime of armed robbery, I could not punish anyone to such an extreme that we should annihilate them completely, take them from society, and there is only one way to do that, and that is to kill them. I do not think you should do it.

I think there is still a lot of good in Stanley Cassidy, and were this a wilful murder, I would not have any regard for him, but it was not a wilful killing.

It was not a planned killing, but definitely it was a killing, and because of his wrong, he must be punished.

30 I sincerely hope, and I will pray, that after your deliberations, that you will (1768) return a verdict, and that that verdict will be coupled with mercy.

Thank you.

THE COURT: We will take a ten minute recess and cool the room off a little.

The jury will leave the room first.

Summation of Mr. Bertman

(Recess taken.)

(1769) (After recess.)

SUMMATION OF MR. BERTMAN.

10

MR. BERTMAN: With the permission of the Court, ladies and gentlemen of the jury, I too want to join with the others in expressing my thanks and appreciation for the patience that you have demonstrated during the course of this trial. I want to express my appreciation and thanks for the attention that you have given to the evidence. I could not help but observe that during the reading of one or two of the confessions that some of you members of the jury could not hear certain portions of it and you asked the Court Stenographer to raise his voice so that you could hear it, and I appreciated that because there is no question in my mind but that you members of the jury have paid attention and are considering every phase of this case.

20

I am going to ask you to be a little patient with me. I am going to refer from time to time to some notes that I have typed here, and I may refer to some of the (1770) testimony. If I hesitate, I am going to ask you, as I say, to be patient with me, because I want to try to bring out everything that I possibly can.

30

As you know, His Honor has already informed you, we are going to finish up today, and tomorrow the Court, His Honor, will charge you as to the law in this case. That will be Saturday, and that date is January 24 of 1959. It is rather singular that on the very day that this offense took

Summation of Mr. Bertman

place, that you members of the jury will begin your deliberation of the fate of these three men.

One life has already been taken, that of Edward Davis, and the State is seeking the lives of three more people.

10 As the Prosecutor has said to you, under our rules of procedure, it was incumbent, or his duty, to open to you first when this case first started sometime last week, and then we presented our defense to you.

Now, as you have observed, the procedure is more or less reversed. The Prose- (1771) cutor did open on this occasion when we finished the whole case, and then it was our turn, Mr. Fluharty, Mr. Caggiano, and myself. After I finished, the Prosecutor will have an opportunity to answer what defense counsel has stated to you.

20 I bring this out to you for the reason that I cannot anticipate everything that the Prosecutor will say to you in answer to what I may state, or what other counsel have stated. I must, of necessity, at this time more or less try to anticipate what he will say, in an effort, or in an endeavor to more or less try to cover those points. It may be that I will not be able to anticipate everything the Prosecutor will say, and I ask you members of the jury to take that into consideration. Because there may be some things that you will hear from the Prosecutor that under our rules of procedure I am not able to reply to, and I ask you
30 to examine that and if there is anything that I have been unable to reply to, I ask you to more or less (1772) stand in my place and examine the evidence to see if there was or may be some reply to something that I could not anticipate.

There are going to be some things that I may say to you that my other two colleagues have already stated. I don't want to be repetitious, but I don't want to run the risk of

Summation of Mr. Bertman

not covering everything that I have in mind. So, I ask you again, if I am repetitious, please bear with me.

One of the things that I think I can explain in this case, and my two colleagues I think have done so, but I am going to go through it again, is to explain to you why we entered a plea of not guilty. 10

I think the Prosecutor in his opening said to you—and I do not know whether I am using the right word or not—but I think he said that we had the effrontery to enter a plea of not guilty.

Let me read to you what our statute provides. I am reading Section 2A:113-3 from the New Jersey Statutes that says:

(1773) “In no case shall the plea of guilty be received upon any indictment for murder and if upon arraignment such plea is offered, it shall be disregarded, the plea of not guilty entered and a jury duly impaneled shall try the case.” 20

(1774) That is why, members of the jury, we are here today. So let us have it clearly understood that by law it was utterly impossible for us to plead not guilty to the charges in this case.

I also think that I can anticipate that the Prosecutor will have much to say to you in regard to the fact that the defendant did not take the stand. And I believe that the Prosecutor will charge you—rather, have the Court charge you that the failure of the defendant to take the stand from that fact, that you may infer or believe that the defendant could not successfully answer the evidence or charges against him. 30

Now, members of the jury, I think the Prosecutor will dwell upon that I believe he has already earlier this afternoon.

I told you members of the jury at the beginning of this

Summation of Mr. Bertman

case that I had made up my mind that we were not going to present any trick defense, that we were not going to try to fool you, and that we were going to ask the State to prove their case according to law, and I think that we (1775) have done that.

10 I told you that the defendants were entitled to have the charges against them proven against them according to law.

And, members of the jury, the reason that Sylvester Johnson did not take the stand was because I don't believe and I know that he could not successfully deny these particular charges against him. His confession certainly implicates himself.

20 Now, members of the jury, many times juries may get the idea that this is a personal contest between members seated at counsel table, that this is a contest between the Prosecutor and myself and other members of the defense. We have no contest here. The Prosecutor has presented his case, in accordance with the law, and in accordance with what he feels is his duty.

30 Members of the jury, this case was lost a year ago by the defense. This case was lost when a citizen had the alertness of mind to take down a license number and reported it to the police. This case was lost from that day on. (1776) There is no contest here as to who wins or loses the case. No matter what happens, the State wins this case. The evidence as you have heard it shows, and that you can draw from that naturally, that a robbery was attempted and that during the course of that robbery a killing took place. But, members of the jury, you are not compelled by law because you find that a robbery took place or attempted to take place, and that there was a killing in the course of that robbery, to bring in the death penalty.

Summation of Mr. Bertman

It is not mandatory. And I think that you know that from the questions that we asked you during the time that we questioned you as prospective jurors.

You members of the jury are obligated to consider all the evidence. I cringed last week when I asked some jurors, prospective jurors, whether if they found Sylvester Johnson guilty of first degree murder that they would automatically give him the death penalty without considering any other evidence or any other extenuating circumstances. 10

Some of them answered, "Oh, well, he was (1777) the one that did the shooting, and that is the one we would give the chair to" or "That is the one we would give the death penalty."

You members of the jury that are on this case now, in answer to my question whether or not you would consider all the evidence in assessing the penalty in this case stated that you would, and I have no doubt in my mind that you members will faithfully carry out that duty. 20

I tried in getting the jury in this case to dismiss or eject those jurors who I felt might have a little partiality or bias, and I feel that there are fourteen members here, and when this matter is over, there will be twelve of you, and I feel confident that whatever verdict you give will be a verdict that you yourself give after considering all the evidence, that each one of us gives, after considering all the evidence. 30

(1778) Members of the jury, you heard me speak of mitigating and extenuating circumstances, and you heard me speak of it in connection with my client, Sylvester Johnson.

You heard me ask that question, as I stated just before, would you, if you found Sylvester Johnson guilty of murder in the first degree, sentence him to death by virtue of

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the fact that he was the one who did the actual shooting, and then I went on to ask you, or would you consider all the evidence, and would you consider whether or not there were any extenuating or mitigating circumstances, and everyone of you answered in the affirmative.

10 Now, members of the jury, what do we find when we consider the evidence?

Just briefly, what does this case consist of?

The case consists of the following facts, as adduced by the State.

That three men attempted to commit (1779) a hold-up.

20 Three men, ages twenty-seven, twenty-five and Johnson, twenty-one, and you find that there is some sort of a scattering of testimony that a Noah Hamilton had given that, perhaps, Godfrey had planned this thing some weeks before. I don't know the truth of that, but that is for you members of the jury to consider.

You find further that two days before January 24th, Cassidy in his statement said that he got a gun from someone by the name of Brimm and that Godfrey got a gun, I think, the day before January 24th, from someone by the name of Walker.

Further, that Cassidy kept his gun at home and that Godfrey then gave his gun to Cassidy to hold.

30 Then you find that on the morning of the 24th, according to the confession given by Johnson, that he went out to look for a job.

He went to an employment office (1780) and registered his name, came home at about ten o'clock or so, stayed home and played some records, listened to some records, and then about four-thirty he went around to Cassidy's home. (1781) And that when he got to Cassidy's home he sat there for a while and then Godfrey came in.

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I want to point this out, and I think it is important, because the man that I represent is the man that did the actual shooting, and that is that up until there was a conversation just before these three men embarked on this particular situation, that there is no evidence in this case whatsoever that Johnson conspired or planned or had in his mind to commit a robbery, let alone commit a murder. 10

Now, the Prosecutor did say to you before that, he said, "Maybe these men did talk it over at some date before." But the evidence produced by the State, and this is the evidence produced by the State, not by the defense, and any evidence that they produce is binding upon them—that Sylvester Johnson did not know Noah Hamilton, did not know Brimm and didn't even know Walker; but that the other two, Cassidy and Godfrey, did get guns from those two men. 20

Now, members of the jury, as I say, you have these three men: Johnson, age 21 and the (1782) other some years older, not too much older, I think maybe one, three or four years older and the other, a couple years older than that. Then they embarked upon this trip and they went to commit a robbery.

Johnson said that when he got to Cassidy's they had some discussion that they were all broke and that they needed some money, and then they said, "Well, let's rob the place." 30

Now, I am going to read to you from Page 8 of Sylvester Johnson's confession, a question put to Sylvester Johnson by Chief Dube:

"Q. After he got to the house there was you and Wayne Godfrey and Stanley there. Right?

"A. Yes.

"Q. Was there any discussion then about anything going on in the house?

Summation of Mr. Bertman

“A. Yes, we were talking about we were broke and wanted to have some money and the discussion came up about robbing somebody.”

10 Now, according to their own testimony—and they are bringing up the testimony of this confession, this is Johnson’s confession. They took this one confession. There were no alterations (1783) to it, no additions, no corrections. This is the testimony that said the first time that Johnson said or knew anything about a robbery was when they discussed it just before they left the house.

Now, Noah Hamilton didn’t say anything about Johnson. Walker didn’t; Brimm didn’t. So that the evidence is entirely barren of anything that might lead any person here to believe that Johnson knew beforehand what was going to take place.

20 Now, then, I am giving you some of my recollection of the facts, and as the Prosecutor told you, my recollection is not binding upon you. Naturally, whatever you believe the facts to be, that is what will control. Now, did Johnson have any intention to commit a robbery or, rather, did Johnson have the intention to commit a killing? Let me take it in that order first. Did Johnson have the intention to commit a killing?

30 Up until the time they had discussed this situation just prior to leaving Cassidy’s home, there was no intention for Johnson to do anything unlawful. As soon as he left Cassidy’s (1784) house and they got in the car, his intention then was to commit a robbery.

The Prosecutor will most likely tell you that if you place a gun in someone’s hand, that it is a dangerous weapon. If you are going to hold up somebody with that gun, whether you intend to kill them or not, that the worst is liable to happen. And members of the jury, it did happen

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in this case. The worst did happen. There was a killing. But I say to you members of the jury that that killing was absolutely unintentional.

What happened in this particular case? Was there any premeditation? Was there any deliberation? Was there any cunning? Was there any tricks to take a person's life? 10

As I say, Johnson's idea in this situation with the two others was to commit this robbery, not a killing. Now, how and under what circumstances did this killing take place? I think and feel, as you members will do, that the evidence completely explains that. This killing was more or less accidental. It took place during a struggle or a tussle. Some of the (1785) members of the jury may not have been called yet as prospective jurors, but I recall in the early questioning of some of the prospective jurors, the Prosecutor, in informing you of what the law may be, informed you that this may be an accidental killing, but that it is still first degree murder. 20

Later on, during the course of the questioning, he changed that word "accidental" and omitted it in his future questions. But there were a number of jurors who did have that question asked of them in explaining the law.

(1786) Now, I am going to refer you to this very same confession which Johnson made. This confession which is binding upon the State and is the only evidence which the State has against Sylvester Johnson. 30

I am going to read from Page 18. The question was put by Chief Dube, starting about the middle of the page:

"Q. That he meant he was there and you were toward the front of the store, is that right?"

"A. Yes.

"Q. You say you pulled a gun out and told him it was a stick-up?"

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"A. Yes.

"Q. Then what happened?

"A. We started tussling."

And this is the question put by Chief Dube:

"Q. Did he grab you?

10 "A. Yes.

"Q. What happened then?

"A. When he grabbed me, we tussled and everything, and the gun went off, and when the (1787) gun went off, I didn't know what happened, I was scared, and I was just shooting. I don't know what happened.

"Q. Do you remember how many times you shot?

"A. No.

"Q. While you were tussling with the man and shooting, where was Stanley?

20 "A. I don't know, I guess Stanley was in back of him.

"Q. And this was toward the middle of the store this took place?

"A. Yes.

"Q. Did you know you had hit the man or shot him?

"A. No, because he was still coming after me. I didn't know what was happening. I was panicky. I don't remember what happened.

"Q. You say you were shooting, but you don't remember how many times you shot; is that what you say?

30 "A. Yes.

"Q. But it was more than once?

(1788) "A. I don't know. I guess it was.

"Q. And you say you don't know whether you hit the man or not, because he was coming at you?

"A. Yes.

"Q. Were you shooting at him to stop him from coming at you?

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“A. I guess so, I was trying to scare him.”

Now, members of the jury, I even think that Chief Dube was convinced that this was a tussle and struggle, because even throughout his questioning, throughout his questions, without any prodding or leading from Johnson, Chief Dube referred to these questions as the matter having taken place during a struggle or tussle. 10

Now, members of the jury, let me give you my feeling about this. I don't say that what Johnson did was excusable. I don't say that it was justifiable. Edward Davis had a right to protect his property. Edward Davis had a right to grab Johnson, or to lunge at him. The law gives him that (1789) right.

Now, Davis, and I think you heard that from the testimony, was sort of a robust and courageous sort of a man. He was a boxer, and probably, and undoubtedly, proud of his physical prowess. As I say, I don't excuse what Johnson did, I don't excuse him for becoming panicky, I don't excuse him for coming in with a gun, but I am bringing out to you members of the jury a lack of intention, a lack of premeditation. 20

There is one inescapable fact in this case, and that is that it is unfortunate that Davis was a robust and courageous sort of a man, because if he wasn't, he would probably be alive today, and I don't blame Davis, as I have said to you, he had a right to do what he did. But, we don't know, members of the jury, how we would react when confronted with a situation like this. Some of us would faint, probably, at the sight of a gun; some of us would say, “Here, take my money” and feel that discretion was the (1790) better part of valor. Others may feel, “This is my property and by law I have a right to protect it.” 30

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But I say that to you, that there is one inescapable fact, that had Davis said, "Here is my money," the only thing he would have lost would have been probably \$290.00 he had in his pocket, and not his life.

10 I want to emphasize on you what Davis did was right, but had he been a man with a little less courage, had he been a man, the type of a person like most of us are, not that we lack courage, but when we recognize danger we act accordingly, and I bring this out, members of the jury, to show that there was no intention, no premeditation, on the part of Johnson, that he came there, and got scared and when he saw Davis lunging at him, that these shots were fired.

20 And I noticed the Prosecutor in his opening, took this gun, and I don't think he did it intentionally, but he pulled (1791) it like that (Mr. Bertman exhibits) and you had to release the gun, and I think he did it in slow motion, and as I said, I don't think he did it intentionally, but I could do it a lot faster (Mr. Bertman exhibits) and I think the reason the Prosecutor showed you it was being slow, was to show that Johnson deliberately stood away and aimed each time.

30 I want to ask you something else. The evidence showed that Davis lunged toward Johnson and that he did not fall down. There was a struggle between them. The evidence as produced by the State in the confession of Johnson binds the State. There was a struggle.

I will ask you something else. One shot was up here, another here, and another down at the groin. Isn't that evident that there was a struggle with a gun back and forth. Why would the shots have been so widely separated. And, as I pointed (1791A) out to you, this gun could go pretty fast. (Mr. Bertman exhibits.)

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(1792) As I pointed out before, Johnson had no intention before coming to Cassidy's house to even commit a robbery.

I am going to refer you to Page 8 of Johnson's confession.

The question that was put to him by Chief Dube was, "Was there any discussion then about anything going on in the house?" 10

Answer: "Yes. We were talking about we were broke and we wanted to have some money and the discussion came up about robbing somebody."

Now, on Page 10:

"Did you make preparation or get armed or anything before you left to go down there?"

That was a question asked by Chief Dube.

The answer was, "I went out in the car and I was given a pistol." 20

"Who gave you the pistol?"

Answer: "Singy."

Question: "Did he give you a pistol when you got out in the car?"

Answer: "Yes."

Question: "Did Stanley have a pistol?"

(1793) Answer: "Yes."

Is there any evidence in this case, any evidence in the case whatsoever that Johnson contacted anyone before the discussion on January 24 just prior to the time that they left? 30

Did he contact anyone for a gun or talk to anyone about a gun in this case?

Is it not evidence that he came around to Cassidy's house to kill some time?

What happened then?

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This 21-year old came there, plans were made and he was given the gun. Then this unfortunate affair took place.

Members of the jury, let me quote to you also on Page 53 of Godfrey's statement.

Page 52, if you please.

10 This is the question put to him by Chief Dube, Chief Dube to Godfrey.

"Will you tell me just what happened there, bearing in mind everything you tell me must be the truth, and of your own free will without any threats or promises having been made to you, knowing whatever you say can be used against you or any (1794) other person in court?"

Answer: "I went to James Walker and asked him if he had a gun."

Question: "When did you go?"

20 Answer: "I think Thursday."

Then you know the statement of Cassidy when he went to get the gun from Brimm.

There is something else here, which, I think, is important.

The last statement taken, the last confession was that of Sylvester Johnson, and that confession was taken on January 30th, 1958, at 4:45 A. M. in Camden.

30 That was after Johnson had been in Newark the day before, and was seated in a living room there at his uncle's home watching television. He probably was there for some hours. The police arrested him, took him to Newark, took him to police court there and then took him to jail and then finally brought him to Camden.

I thought, and I may be mistaken, that what the Prosecutor was attempting to show was that because Johnson gave his statement last, that (1795) he had the benefit of knowing what the others had said, and that for that reason

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his statement was honest and truthful, because he knew that he had been trapped or had heard what the others said.

Members of the jury, those people that arrested Johnson were with him the preceding day from five o'clock, all through the night up until 4:45 A. M. when he was taken directly to the Prosecutor's office and Chief Dube testified that he was questioned immediately. 10

I want to point out that there were two statements taken by Cassidy, or from Cassidy.

One was on January 29 and began at nine o'clock in the morning. That one concluded at 12:45 P. M.

Another statement began at 11:40 P. M. that same evening and concluded at 11:50 P. M.

There were three statements taken of Godfrey. The first one on the 29th of January began at 10:25 A. M. and, I think, it concluded at 12:00. 20

Another, the last statement began at (1796) 11:15 P. M. and concluded at 11:35 P. M.

There is one in between there, and I have searched through and I cannot find the time, but there were three statements of Godfrey.

These statements were taken of Godfrey and Cassidy while Johnson was away, and had no means or opportunity of reaching Cassidy or Godfrey to know what they had said, or to know whether they might have changed or corrected or amended their statements. 30

The reason I bring that out to you is this:

The statement of Johnson was truthful and honest, because when that was finished, that was the end of it.

They have no testimony whatsoever to change that, and that is the only testimony you have concerning what Johnson did when he went to the Davis store in so far as

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whether there was a tussle or not, and that testimony as presented by the State is binding on them.

Members of the jury, I have taken upon myself, as counsel for Johnson, to control and take (1797) over his case and prepare and defend it.

10 Johnson has followed my advice.

He has stated that he will abide by my judgment. It was my judgment that he would not take the stand and, I think, that I have pointed out to you why he did not take the stand.

Naturally, I am very much concerned about Johnson. He is my client and he is the one, as I said, who did the actual shooting.

20 I point out these various extenuating and mitigating circumstances to you because I want you to consider and understand why this defendant, Johnson, did the shooting, how it came about and what happened.

I want you to take into consideration also his age. He had just reached the age of 21, maybe a few months over, which, according to law, is the age of reason.

In so far as the law is concerned, that is the age when persons are responsible for their contracts and can make legal obligations.

30 Some people may develop slower than others. Some people may develop faster intellectu- (1798) ally than others. I think that that is a point for you members of the jury to consider.

I think it is a point for you members of the jury to consider that here is a youth of 21, and as to whether or not his mind was such that it would be pliable and perhaps influenced by the maneuverings of others. (1799) This man Johnson came to the Prosecutor's office. Chief Dube asked him some questions. He was mere putty in the hands of

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Chief Dube. There were no threats. There was no attempt to evade. There was no trickery. Anything that Chief Dube asked him he answered honestly and truthfully. I bring out to you that he hadn't reached that age or state that if he had the mind to evade this sort of thing that he would be tricky in his answers and evasive in his answers. I think 10 that the age of this defendant, Johnson, is an important thing to take into consideration for this particular act, and I say to you members again, that you cannot close your eyes and just merely consider the fact that Johnson did the actual shooting, and not take all these other circumstances into consideration.

Members of the jury, I think that we have had something like 43 exhibits brought in here by the State, and when this thing happened, when the license number was reported to the police by the witness that was (1800) here, 20 I don't recall his name, the State, County Police, rather, the County Police and the City Police went into motion, as the Prosecutor stated, and they were efficient, and they got their men and I am glad of it. Because the State, the County Prosecutor's office, the detectives there, and the City Police Department are efficient. There is no question about that.

The Prosecutor here has presented a case in continuity and given you the benefit of all the facts. I say to you people that if you came in this case with the thought that 30 perhaps you were going to see legal wrangles and much cross-examination after witnesses had taken the stand, if that is what you had in mind, I am sorry that you are disappointed. As I said to you, this was not a contest. We had nothing to cross-examine. What good would it be for me to cross-examine the ballistic expert, or the people that took the samples of the blood, or the gun, or the bullets,

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and so on? It (1801) would only be taking up your time and would only be clouding the issue.

The issue in this case, members of the jury, is whether or not you people should find it in your hearts to give mercy to these defendants. Let me put it even stronger: Whether
10 you people should find it in your hearts to be able to give mercy to these defendants, which defendants did not give mercy to Davis.

What will the State have you do? The State will have you take away from your mind and your conscience the right to extend that very mercy which they come in here and say was not extended to Edward Davis.

Members of the jury, as I said, there are something like forty-three exhibits here. You are going to have these exhibits in the back. Here you have clothes that are splattered and strewn with blood. Here you have three pictures
20 of the deceased showing him with the bullet holes and blood on him. Here you have other pictures showing blood (1802) all over the pavement and store, various parts of the store, and so on.

Members of the jury, killing is horrible. It makes no difference what form it takes, whether it is with blood or without blood. The State knows that. I assume that in every case that is ever presented by any Prosecutor in any County, in any State, that they will always bring in these
30 exhibits. They feel that it is customary and it is part of their duty.

But, truthfully, what is the purpose of these exhibits, to show you this blood and to have these things back with you in the jury room? Isn't it to inflame your minds, to feel that this offense was horrible? Some people may shrink away at the mere cut of a finger when they see the blood. As I say to you, killing is horrible in any form.

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I want to ask you something else. There are many kinds of killings. This killing falls within the category of murder (1803) in the first degree.

There is also a killing, not committed in the perpetration of a felony, and that is a killing where, perhaps, someone cunningly, slyly, deliberately, with premeditation and intention over an extended period of time may kill another person by giving them, perhaps, a dose of poison or, perhaps, an overdose of sleeping pills. 10

Now, let us assume that person, as is the case in many instances, dies peacefully in their sleep. Ask yourself this: They are both murder in the first degree. Yet, why will juries of rational, composed of rational men and women, still extend mercy and give mercy to a killing that is premeditated and cold-blooded, such as a deliberate and intentional planning of the death of someone else? Is it because that person died peacefully in their sleep? Is it because you didn't see exhibits full of blood? Is that the reason? 20

I ask you, which kind of killing (1804) is more horrible, which is more cold-blooded? This type of killing that took place in this case, where some shots were fired during the course of a tussle or struggle and the man bled, and you have before you these various exhibits filled with blood, or the killing where someone plots to put someone to their death? And yet I have seen juries, as I have stated, extend mercy to killings of that type. I can't understand it. Why they would do that in that instance and not in a situation like this. 30

This isn't the type of a killing where a child, some little boy, or some little girl, or woman, was mutilated, dismembered or abused. It is not that type of a killing. I do not excuse it.

I say to you, members of the jury, the law provides a

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penalty for these defendants. I say to you, members of the jury, that you are not compelled, it is not mandatory for you to bring in a verdict of first degree murder and stop right there. His (1805) Honor will charge you that. It is not mandatory for you to do that. The law, in its wisdom,
10 saw fit to provide you with the right to give mercy.

Members of the jury, I guess that the Prosecutor will say to you that this was a horrible killing. And he has attempted to give you a picture that this was a horrible killing. I think that I can visualize or picture another killing, a legal killing, which, by law, would be horrible.

I am going to speak for my own client. I can see Johnson in prison garb. I can see him with his head, his hair clipped, his head shaven. I can see a little room with an awesome looking chair. I can see his hands shackled to
20 the arms of that chair. I can see his legs shackled to the arms of the chair, and then I can see and hear thousands of volts passing through, and then I can see this man convulsed and distorted by pain and shock, and then I can see death.

I think that is even more horrible (1806) than the killing that took place in this case.

Members of the jury, I guess that the Prosecutor feels that this life should be taken. I want to know why it should be taken. Why do they want his life? What will
30 happen if this horrible scene at the State Prison in the death house is enacted? What will happen? Will crime cease in Camden County? Will we declare a holiday and say now that Johnson has been electrocuted and sent to his death, there will be no more crime, no more killing in Camden County?

Members of the jury, let us be realistic. Killing has gone on and murders have gone on from time immemorial, and

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they will continue to go on and on, and on, no matter what you people do here today.

I say to you members of the jury that electrocuting this defendant will no more cause a stopping, or no more be a deterrent for future killings, or hangings, or death by gas, gas chamber, or whatever way you want (1807) to have it, 10
than thousands of other killings, electrocutions or hangings and other forms of barbaric legal killings have been a deterrent.

Does the State want the life of Sylvester Johnson because by law you are required to render the death penalty? I have covered that, and I want you to know that you are not compelled to give the death penalty. You have a right to give mercy and, as I said before, you have a right to give that very mercy which, perhaps, this defendant did not extend to Edward Davis. And I say to you again that 20
his failure to give mercy was not intentional.

Members of the jury, I have probably taken up quite a bit of your time. If I have, I am sorry. As I said to you before, at the beginning of this case, I have lived with this case now close to a year.

(1808) And I say to you that this man is a human being just as you and I or anyone else in this court room. And I say to you that during the last few weeks I have spent many sleepless nights because of any concern in this case. It has given me great concern. 30

Have I done something in this case that I should not have done?

Did I fail to do something that I should have done?

Would my failure to put him on the stand or would my failure to produce this witness or that witness or say something to you be the cause of this man's death?

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I mean that sincerely and honestly, it has caused me great concern.

10 You are going to take this case to the jury tomorrow. His Honor will charge you. Tomorrow is Saturday, and I don't know whether you will reach a verdict by Sunday or not. But Sunday is the day of the Sabbath, and I know that many of you in this case have been torn away from your homes, have been required to stay away (1809) from your places of worship.

As I say, Sunday will be the Sabbath. That day more than any day or the day before rapidly approaching the Sabbath is the day that you should be more merciful than ever.

20 I told you, members of the jury, when I opened this case that I was happy that you people were members of what we term a blue ribbon jury. We told you that we consented to having a blue ribbon jury because we wanted this case heard by people of more than average intelligence and intellect.

30 I sometimes wonder whether it wouldn't be best when you have a case of this type to have members of the jury who are older than you members of the jury. I remember one man during the course of the interrogation as a prospective juror said that well, he had gotten up pretty far in life, and he didn't have too many years left, and that he couldn't send anyone to his death. I wonder whether if I could have gotten a jury composed of the twelve who will eventually hear this matter, of older people, whether perhaps that (1810) mercy, that compassion, that the older person would give would be extended to this defendant.

But when I questioned you members of the jury, and you assured me that you would not permit bias or partiality to enter into this picture, and that you would try this

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case according to the evidence, I felt assured that if people do have the benefit of experience, do have the benefit of maybe a little more intellect or intelligence than the average person, that with that experience, intelligence and intellect comes wisdom and with wisdom comes understanding.

10

I think, members of the jury, because you members of the jury are persons who have little more than the average experience in intellect, that you are wise, that you do have understanding and I ask you members of the jury in closing, "Would God in His wisdom extend mercy to these men"?

Thank you.

THE COURT: We better take about a 10-minute recess to get some air in the court room. The jury will be removed first.

20

(1811) (Jury leaves the court room.)

(Brief recess.)

SUMMATION OF MR. HEINE.

30

(1812) MR. HEINE: With the permission of the Court, ladies and gentlemen of the jury:

This has been a long, hard day for all of us.

It has taxed the most of our patience, our indulgence, and I am afraid to say that it has even taxed our sensitivity of intelligence.

I will talk about this in a few minutes.