

o'clock in the evening when you had the talk with Mary Krinitaky and the time you sent the article, did you speak to any one else in the world about this matter ?

MR. SMITH: I object as incompetent, immaterial and irrelevant, and not binding upon the defendants.

THE COURT: Objection overruled.

MR. SMITH: I except.

A I did not send it the same day. I did not say so.

Q Well, when did you send it, now, when ? A I think it was the 12th, in the night time, that I put it in the letter box.

Q When did you have the talk with Mary Krinitaky ?

A About the 16th of June, 1908.

Q Then, it was the next day. Well, never mind. Now, between the time that you talked with Mary Krinitaky on the 16th of June, and the time that you mailed this communication on the 12th of June, did you have any communication about this matter with any other person on earth ?

MR. SMITH: I object on the ground first, that it is incompetent, that it is immaterial and irrelevant, and that it is not binding upon the defendants, and on the further ground that the question has already been answered.

THE COURT: The objection is overruled.

MR. SMITH: I take an exception.

Q Yes or no, now. A Outside of these people that were in Milneszenko's, I have not spoken to any one, because there was no one.

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Q Why didn't you go and see Mendelson ?

MR. SMITH: I object to the question, on the ground that it is incompetent on its face, that it is immaterial and irrelevant, that it is not binding upon the defendants, the operation of this witness' mind.

Objection overruled. Exception.

A I don't understand the question.

Q Then, you need not answer it. Why didn't you go and see Father Areny ?

THE COURT: Well, let the stenographer repeat that last question. He says he did not understand it.

(Last question repeated by the stenographer as follows: "Why didn't you go and see Mendelson?")

A I don't understand the question.

BY THE COURT:

Q Well, what part of it do you not understand ? A I am asked whether I did not go to see Mendelson. Was I obliged to go to see him ?

MR. CARVAN: That is an answer. That is enough.

BY THE COURT:

Q Then, you do understand the question ? A The form of the question is not exactly clear to me.

Q Well, what part ? What is obscure about it ? A I am asked why didn't I go to see Mendelson ?

Q Yes, and you do not understand that, is that so ?

A The question is not clear to me, just as if somebody would have to drive me to go there.

BY MR. GARVAN:

Q Why didn't you go to see Father Arseny?

MR. SMITKIN: I object to that on the ground that it is incompetent, immaterial and irrelevant, not binding upon the defendants, and upon the further ground that this witness is not accused of libel, therefore, these questions are improper.

THE COURT: The objection is overruled. The jury is asked to believe this witness, and anything that may affect his credibility may be shown.

MR. SMITKIN: Well, that would not be material, so far as this case is concerned.

THE COURT: It may be very material as to whether they will believe him or not. If the District Attorney can discredit this witness, he certainly has a right to do it on cross examination by proper questions. The People are not obliged to take his story, and then refrain from any questions about the transaction.

MR. SMITKIN: I except.

Q Why didn't you go to see Father Arseny? A I don't understand, how am I to go to see him, for what purpose? It would be impertinent on my part.

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Q Do you think it would be more impertinent to publish this article before you went to see him than after ?

MR. SMITKIN: I object as incompetent, immaterial and irrelevant, not binding upon the defendants, calling for the operation of the witness' mind.

THE COURT: Objection overruled. You need only state that you object upon the same ground.

MR. SMITKIN: Exception.

A I do not understand.

Q Do you know what date the Simpson cemetery celebration was ? A I don't know. I was in Russia at the time.

Q Did you look it up before you wrote the article ? A I did not look.

Q You know now that it was July 29th, don't you ? A I don't know.

Q You do not know now ? A I don't know now.

Q Do you know the date the baby was born ? A I don't know it either.

Q Did you look up the birth certificate of the baby the next day ? A I don't understand.

Q Did you look up the record of the baby's birth the next day ? A Those records were in Mayfield and I don't know who had them in charge. I was at the time in Olyphant.

BY THE COURT:

Q Were you in Olyphant when you heard Mary Krinitzky's

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BY MR. GARVAN:

Q Did you know Andrew Pretash? A I have not heard it.

Q Did you ever hear of him? A I did not hear anything.

Q Did not Mary tell you that day that she had sworn out a warrant before Squire Mendelson in March, before her baby was born, accusing Andrew of being the father of her child?

A She did not say anything about this, and nothing was known about that.

Q Do you mean to say that she did not say at this meeting at Biluszenko's house, that she did not tell you about the warrant and about complaining to Mendelson? A I don't quite understand.

Q (Question repeated) A I don't quite understand the question.

Q At this meeting at Mary Krinitzky's house, on the 18th of June, 1900, didn't she tell you about having sworn out a warrant for Andrew Pretash in March, 1900, three months before her baby was born, accusing him of being the father -- I mean in Biluszenko's house? A I said before that Mary Krinitzky did not mention anything about any complaints. That it was not known at all, even to Biluszenko.

Q Now, you say you wrote this -- where is the "Evid" published? A First in Philadelphia. At present in New York.

Q Now, when did you see the "Evid", the day it was pub-

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lished, or the day after, as a rule?

MR. SMITKIN: Objected to as incompetent, immaterial and irrelevant, and as too remote.

THE COURT: The objection is overruled.

MR. SMITKIN: I take an exception.

MR. GARVAN: I think it is apparent from the first line of the article.

A After.

BY THE COURT:

Q How long after, is the question. A Three, four, and sometimes even five days.

By Mr. Garvan:

Q Then, can you tell me how it was that you were able to write on the 19th of June, the first line of that article, "in the last number of the "Evid" of the 16th of this month, it is printed", &c.

MR. SMITKIN: I object to the question as incompetent, immaterial and irrelevant, and on the ground that it misstates the evidence. This letter was written in 1903. The dedication or consecration took place in 1903.

MR. GARVAN: I was not talking about the consecration. It has nothing to do with the consecration.

Objection overruled. Exception.

A The paper "Evid" always has the date of the following day when it comes out.

Q How much did you get paid for this article?

MR. SMITKIN: Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A Nothing.

Q Didn't you ever get paid anything for the articles you wrote for "Dvohoda" ?

MR. SMITKIN: Objected to as incompetent, immaterial and irrelevant.

THE COURT: Objection overruled. It is a proper circumstance to go to the jury, as affecting the credibility of the witness.

MR. SMITKIN: Exception.

A Nothing at all.

Q Now, you say there are a great many witnesses to this, even among the "Czar-worshipping clergy". Name them.

MR. SMITKIN: I object on the ground that that is incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A In which article ?

Q In your letter here of this article, the Army article. You write "There are a great many witnesses to this, even among the Czar-worshipping clergy." Now, I want you to name them, name the clergy ? A I don't remember in what letter it was. Kindly let me see it ?

THE COURT: It is in the article itself you wrote, isn't it ?

MR. CARVAN: In the accompanying letter.

A This what you say about the priests who worship the Czar is not contained in this letter.

THE COURT: Let the stenographer repeat the question.
(Question repeated by the stenographer).

A In reference to this, everybody --

MR. CARVAN: No, I object to that. I only want the names.

MR. SMITH: I submit the witness ought to be permitted to answer, then we can tell whether it is responsive or not.

THE COURT: Let him answer.

A (continuing) In reference to that, I want to say that everybody knows it, everybody around Mayfield knows it.

MR. CARVAN: I ask to strike that out.

THE COURT: Strike it out.

Q Name the clergy who are witnesses? A I did not say there about the clergy.

Q (Reading) "There are a great many witnesses to this, even among the Czar-worshipping clergy". Name them. Name them.

A I recollect now.

Q Name them, just give their names? A I had occasion to hear about this.

Q Name them. A As they were talking there.

Q Name them, name them.

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BY THE COURT:

Q Name the witnesses that you had in mind when you wrote that to the paper?

BY MR. GARVANI:

Q Name them, name them. A Their priests cannot be witnesses.

Q Name them. A It is not necessary to name them. They would not go as witnesses.

THE COURT (To the Interpreter) Tell him the Court directs him to answer, to name the witnesses that he had in mind, or that he claimed to have in mind, when he wrote that paper.

A Znosko, Vladislavsky and Bogoslovsky.

BY THE COURT:

Q Is that two or one? A Three, your Honor.

BY MR. GARVANI:

Q Did you talk to them?

MR. SMITH: I object to it as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A I spoke to them.

Q Did they say they would be witnesses, or were witnesses?

MR. SMITH: Objected to as absolutely hearsay and as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

THE COURT: This is all an attack on the credibility

of your witness. That is all.

A They did not state that they will be witnesses, but they know all about this.

Q Did they tell you they knew anything about it?

MR. SMITH: I object as incompetent, immaterial and irrelevant, and as hearsay and not binding upon the defendants.

Objection overruled. Exception.

A Yes.

Q When, before you saw Mary, or after?

MR. SMITH: I object to the question, and it may be stated now, your Honor, to save time, that I shall object and except, if my objection is overruled, to any question relating to any conversation had by this witness with any other person not in the presence of these defendants.

THE COURT: The objection is overruled.

MR. SMITH: And may that apply to all questions?

THE COURT: Yes, we will consider that Mr. Smith objects to all such questions to this witness, and the objection is overruled to all questions which are put by the District Attorney as affecting the credibility of the witness.

MR. SMITH: No, your Honor, I said I will object to any question asked by the District Attorney of conversations not in the presence of these defendants, on the

ground that it is incompetent, immaterial and irrelevant.

THE COURT: Well, you had better make your objection to each question as it is put, and state that it is on the ground as stated before. There may be some questions you would like to have answered.

MR. WHITKIN: All right, your Honor, I will take your suggestion.

A Before and after.

BY THE COURT:

Q Well, before what time? A I don't remember the time.

Q Don't you remember the day when you first saw Mary?

A The 18th of June, 1908.

Q Well, now, was it before that day or after that day that these people told you about her story? A I heard it before that day and after that date.

THE COURT: Strike that answer out.

Q Which of them told you before?

BY MR. GARNAN:

Q Which of these priests ^{three} told you how they were laughing among themselves?

THE COURT: Strike that answer out.

BY MR. GARNAN:

Q No, no. Which one of these priests told you that before that time, which one? A All of them.

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BY THE COURT:

Q Now, how long after this talk with Mary did they talk about it again with you ? A After this, one of them spoke.

BY MR. GARVANI:

Q Which one ? A Znosko.

BY THE COURT:

Q Well, how long after ? A I don't remember the time.

Q Was it before the publication or after the publication?

A What was ? I don't understand ?

Q Well, was the talk with Znosko about Mary which you claim to have had before the publication in "Swoboda" or after the alleged libel ? A I spoke to him before and after.

BY MR. GARVANI:

Q Now, are you married ? A No.

Q You say in this article "On one of these days on my return from work I found in my house a woman about 23 or 25 years old, who was sitting with my wife." Is that true ?

A Not with my wife.

Q Didn't you say that in the article ? A I said so.

Q And it was not true ? A That was true. I was giving it just exactly as it happened there.

Q Was it true ? A In a different form.

Q Well, was it true that it was in your house in the presence of your wife ? A I was writing --

Q Was that true or not ?

MR. SWITKIN: I submit under your Honor's ruling we are entitled to an answer.

THE COURT: All right. Let us have everything he said, and then we will rule on it.

A (continuing) I was writing this for Biluszenenko.

BY MR. CARVAN:

Q Did Biluszenenko ask you to write it, just yes or no?

A He did not ask me. He did not ask me, but I only wrote it in the form as it happened there. It was all true, not to change a word.

BY THE COURT:

Q That is, it was true that your wife was present?

MR. SWITKIN: I object to the form of the Court's question.

THE COURT: I ask if that was true.

MR. SWITKIN: The article is in evidence, and it is signed, I think, "Parishioner of Mayfield".

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BY MR. CARVAN:

Q Now, at the
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BY THE COURT:

Q Well, were

MR. SWITKIN

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BY MR. CARVAN:

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THE COURT: Well, he said he wrote it, and mailed it and posted it.

MR. SMITH: Yes, and he said he wrote it for Biluszenko.

THE COURT: I will withdraw the question if you object to it. I wanted to give him a chance to explain.

MR. SMITH: No, I object to that question as improper. There is no explanation necessary. The article speaks for itself. The jury are intelligent men and they are going to read it.

BY MR. CARVANI:

Q Now, at the time you wrote this article, were you a Russian orthodox? A I am Russian orthodox at present.

BY THE COURT:

Q Well, were you then, in the question?

MR. SMITH: Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A I was also then.

BY MR. CARVANI:

Q And you believed in the Russian orthodox church?

MR. SMITH: I object as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

THE COURT: It is merely to affect the credibility.

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He has a right to believe what he likes.

MR. CARVAM: Oh yes, I do not care what he believes.

THE COURT: We are not questioning what he believed at all.

A I believed then and I believe at present.

Q But you are a member of the Greek Catholic Church now, aren't you?

MR. SMITH: I object on the ground that it is incompetent, immaterial and irrelevant, and being new matter, the District Attorney is bound by the witness's answers.

Objection overruled. Exception.

Q Yes or no. A I remained a Russian orthodox, and I am doing just what I am told.

Q Now, listen to this, I ask you if you wrote this part of the article (reading) "So this is how the Czar worshiping workers appear in daylight, without masks, on the paper, to hoodwink the people, they appear so holy and Godlike, that you could send them alive with their shoes on to Heaven, but in reality they are rotten, dirty and lousiness to the last degree, and it is not surprising, for those people, the majority are without education and enlightenment, ordained without selection, just as that the business may go on".

MR. SMITH: I object on the ground that the article speaks for itself, and the witness having stated

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Q (Continuing)

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A Yes, sir, I wrote

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MR. SMITH

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he wrote the entire article.

Objection overruled. Exception.

Q (Continuing) Were you a member of the Russian orthodox faith when you wrote that?

MR. SMITKIN: Objected to on the ground that the witness has already answered, and that being new matter the District Attorney is bound by it, and further that it is incompetent, immaterial and irrelevant, and not binding upon the defendants.

Objection overruled. Exception.

A Yes, sir, I wrote that. I belonged then and I belong still.

Q And you were receiving money, you were being supported by the church?

MR. SMITKIN: I object to that as incompetent, immaterial and irrelevant.

THE COURT: I sustain the objection.

MR. GARVAN: Well, all right. I think that is all, with the exception of until I get those two articles translated.

THE COURT: Will you have this witness here to-morrow, Mr. Smitkin?

MR. SMITKIN: Yes, sir.

THE COURT: I will allow the District Attorney to produce those translations to-morrow. Then we can rule

on them at that time.

RE-DIRECT EXAMINATION BY MR. SHITKIN:

Q Now, Chaly, you wrote that article in the third person, didn't you? A Yes.

THE COURT: Well, how is the article itself, in the first person? Was it changed afterwards?

MR. SHITKIN: I will get the translation.

MR. GARVAN: You had better have him change that answer.

MR. SHITKIN: Wait a minute. I will take care of that.

Q When you wrote this article, Chaly, you say that you wrote that as it occurred in Biluszenko's house? A I wrote just exactly as everybody was speaking in the house. Just as everybody said, I put it down, with the exception of this which I added when I came home, so as to make it complete.

Q And in that article you gave the name of the woman with whom this conversation took place and where she worked and lived? A I don't remember. I don't understand, what woman?

Q Mary Krinitaky?

MR. GARVAN: Well, the article shows that.

MR. SHITKIN: All right. I am ^{not} through with the witness yet.

THE COURT: He says he added something to make it

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complete.

BY THE COURT:

Q What did you mean by that, what you added to make it complete? A I did not add only to write just exactly how everything happened there.

Q Well, what did you mean by saying you added something to make it complete? A I only took as an object the man of the house, in his name. I only said just exactly what was there, not taking anything off and not adding anything.

BY MR. SWITKIN:

Q Well, you put it in language as a writer writes to a newspaper? A Yes, sir.

Q Now, Chely, it was common remark, wasn't it, that Arseny was the father of that child?

MR. DARVAN: That is objected to.

MR. SWITKIN: You brought it out.

THE COURT: Objection sustained.

MR. SWITKIN: I except.

Q You have been asked by the District Attorney as to whether you had any conversation with any person or persons prior to the publication of this article. I now ask you to state whether it was not common talk in Mayfield and elsewhere that Arseny was the father of that child?

MR. DARVAN: That is objected to.

Objection sustained. Exception.

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Q At the time that you wrote that article, did you believe the contents of that article to be true?

MR. DARVAN: Objected to.

Objection sustained. Exception.

Q In writing that article, did you believe that, as a member of that church, it was your duty to expose priests who were unfaithful to their faith, and who -- that is the end of the question.

Objected to. Objection sustained. Exception.

Q Did you believe, in writing that article, did you believe it was your duty to expose men who wore the cloth and desecrated it?

Objected to. Objection sustained. Exception.

Q When Mary Krinitzky told you that Arseny was the father of the child, and that she had gone through the monastery and asked its adoption, and that he had refused to take it, stating if he did it would be called a baby factory, did you believe that to be true?

Objected to. Objection sustained. Exception.

THE COURT: This is not the defendant in the case.

MR. CRITIKIN: But your Honor allowed questions to be asked the witness as though he were the defendant, and I am following it up.

THE COURT: No, we allowed questions to affect his credibility.

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MR. SWITKIN: Yes, now I am trying to show that he can be believed.

THE COURT: No, those questions affect criminality, if they are permissible at all.

Q Now, Chely, you never made any denial of the fact that you had written this article, did you?

MR. DARVAN: I object to that.

THE COURT: I will allow that question. I do not know that any one has said he denied it.

A I did not deny it and I do not deny it yet.

Q But you were not sued for damages, were you, by the priest, for writing that article?

Objected to. Objection sustained. Exception.

Q You were not arrested by the priest for having written that article, were you?

Objected to. Objection sustained. Exception.

MR. SWITKIN: That is all.

THE COURT: This witness will appear to-morrow for further cross examination.

Gentlemen of the jury, the Court will now take a recess until 2 o'clock p.m. to-morrow, and meanwhile, be very careful not to discuss this case among yourselves, nor with any one whatever, and do not come to any conclusion concerning it until it is finally submitted to you for your consideration by the Court, 2 o'clock to-morrow, because we will be busy all morning.

(The Court thereupon adjourned the further trial of the case until Wednesday, January 13th, 1909, at 2 o'clock p.m.)

New York, January 14th, 1909.

TRIAL RESUMED.

THE COURT: Gentlemen of the jury, you are now excused until 11:30 o'clock tomorrow, and meanwhile be useful not to discuss this case among yourselves nor with any one else, and do not come to any conclusion concerning it until it is finally submitted to you by the Court for your consideration.

(The Court thereupon adjourned the further trial of the case until Thursday, January 14th, 1909, at 11:30 o'clock a.m.)

New York, January 14th, 1909.

TRIAL RESUMED.

MR. QUINN: If your Honor please, the defendant respectfully moves that all testimony given by the witness Hyckel Chely, appearing on pages 285, 286, 287 and 288, relative to any other publication than that alleged in the indictment, be stricken from the record, on the ground that that testimony is incompetent, that it is immaterial and irrelevant.

Upon that point, your Honor --

THE COURT: Well, that testimony was merely allowed on the theory that the District Attorney had a right to test the credibility of the witness. The Court will in-

struct the jury that it is not binding on these defendants, so far as any criminal intent is to be shown.

MR. QUINN: Oh no, that was not my object in offering it. It was merely to show the credibility of the witness under examination.

MR. QUINN: Well, my motion is, your Honor, that even as to the credibility of the witness, the witness not being the defendant himself, that those questions may not be asked of him, and that they are incompetent.

I have here a half dozen or more authorities to cite to the Court, if the Court desires to read them itself, or have me read them, showing that that evidence is absolutely incompetent.

THE COURT: I do not take that view of it, Mr. Quinn. I will take the matter under advisement, if you like. Go on with the trial now.

MR. QUINN: Then I will reserve my motion for the close of the entire case.

THE COURT: Yes, and give me a list of those decisions.

MR. QUINN: E. L. A. N. Y., being duly sworn, testified through Interpreter Landlich, as follows:

MR. QUINN: If your Honor please, the defendant moves that all testimony given by the witness Landlich

relative to any statement made by the witness Kristleby, in the month of March, 1907 --

THE COURT: On what page of the minutes is that?

MR. MITCHELL: I will give your Honor the pages in just a moment. It starts in at page 137 -- (continuing) and upon which statement the witness Mendelson issued a certain paper or warrant, be stricken from the record, on the ground that the evidence is incompetent, that it is immaterial and irrelevant.

Your Honor will pardon me for calling your attention to page 207 of the minutes, your Honor will observe that Mr. Garvan asked the witness Wanylanbo as follows: "Did he tell you -- this appears on page 207 -- (reading) 'Did he tell you that Mary had sworn out a warrant before him swearing that Andrew Protash was her husband, or was the father of the child?'"

MR. MITCHELL: I object to the form of the question on the ground that it calls for the contents of a written instrument which is not in evidence.

THE COURT: Objection overruled. You brought it out yourself that she had sworn out a warrant, and that when the warrant was attempted to be served he had disappeared.

MR. MITCHELL: The District Attorney did, your

Honor.

THE COURT: You brought it out on cross examination.

Now, this question is asking whether Mendelson told him that also."

Your Honor will observe on reading page 137 that that testimony was brought out by Mr. Garvan.

MR. GARVAN: No, no.

MR. MITCHELL: Just read that (reading). MR. GARVAN, interesting, my only theory of the admission of this testimony is this, the defendant's counsel has chosen to show upon cross examination of the complaining witness that subsequent to the date of the libel, that is,

subsequent to June 25, 1907 -- then I interrupted him and he proceeded -- "1908, made statements contrary to the statements made by her on the stand, to the effect that Arseny was not the father of her child, but that Andrew Protash was. Now, they have shown that prior to that time she made a statement that Arseny was the father. Now, the law allows me to go back of that, showing" --

MR. GARVAN: Now, go on and see the Court's decision.

THE COURT: Well, I do not think you can do that.

I sustain the objection. I have allowed you to prove that she made a statement. I have allowed you to go as far as to say that there was a statement made and the person named."

THE COURT ruled in your favor.

THE COURT: On page 138, I sustained your

objection.

MR. CHITKIN: Your Honor will observe on page 1801

BY MR. GARYAN: Q. Do you know where Andrew Protash
lives? And that was objected to.

THE COURT: On page 1807

MR. CHITKIN: 149, and Mr. Garyan says "barely to
explain his absence."

THE COURT: I will allow you to explain that, on the
ground that the District Attorney wished to explain the
absence of the person.

MR. CHITKIN: I respectfully except.

"A. When the constable went there to this house where
he was boarding, he was not home, and he told him about it
and as soon as he found out he was to be arrested he went to
Cleveland, Ohio."

That was stricken out by the Court. Now then,

Q. Have you been able to find him yourself? A. No, sir.

BY THE COURT: Q. Did you try to find him? A. I have,
yes, sir."

Now, I submit, your Honor, that that evidence is
incompetent, immaterial and irrelevant.

THE COURT: Which evidence is incompetent, the

two questions?

MR. CHITKIN: Yes, sir.

THE COURT: Well, you did not object to that.

MR. CHITKIN: Well, I am more to strike out any time
before the close of the People's case.

MR. GARYAN: Well, your Honor can see they are abso-
lutely relevant to show my failure to call Protash as a
witness, she having testified on the direct case
that Protash was the father of her child. I have a right
to show the jury why I did not call Protash if he was
not within my control.

THE COURT: I will direct the jury to disregard the
statement made by the Court on page 287 that Mr. Mittin
had brought out the statement that when the warrant was
attempted to be served, he disappeared, but you did bring
out the statement where Wendelstein, as I recall it --

MR. GARYAN: Well, the evidence will speak for what
he brought out.

THE COURT: Yes, an cross examination there were
some statements, I understand. I cannot find them here
now.

MR. CHITKIN: Well, of course, I was compelled to cross
examine on that line of testimony, because the evidence
had been allowed.

THE COURT: Now, it had all been stricken out
except that statement that he did not find him, and I al-
lowed Mr. Garyan to show why he did not call Protash.

MR. MITKIN: And your Honor directs the jury ---
 TIM COUNTY (Interposing) I direct the jury to disregard my statement that it was brought out by you on cross examination, except so far as it is borne out by the evidence, I was under a misconception at that time as to who had brought out the fact of the absence of Andrew Prefash. I thought it was all part of the one answer of this man.

MR. MITKIN: Yes, sir.

DIRECT EXAMINATION BY MR. MITKIN:

Q Where do you live? A Alden Station, Pennsylvania.

Q What is your business? A I am a teacher and

center in the church there.

Q What kind of teacher are you, and center in what

church? A The Greek Russian Catholic Church.

TIM COUNTY: (Addressing the interpreter) Now, before you go on, give just whatever he says, without having any conversation with him. I would do that and if the answer is not proper the Court or counsel will see that proper action is taken, but the jury and the defendants and the State are entitled to have every word he says transcribed by you exactly as he says it.

TIM INTERPRETER: Yes, sir.

Q Now, what do you teach and where? A I learned to sing,

and the relation in the Russian language.

Q What do you teach? A Children.

Q That is a parochial school, is it? A Yes, sir.

Q Do you know Mary Krinitzky? A Yes, sir.

Q When and where did you first see her? A I saw her the first time in Oliphant, in July, by Mr. Beala.

Q Where did you next see her?

TIM COUNTY: You had better bring out what year, Mr. Mitkin.

MR. GARYAN: There is no question about it. It is 1900.

MR. MITKIN: All right, 1900.

Q When, after, or rather when next did you see her again? A I saw her then again when I was coming from New York to Portanton, and I met her on the train.

MR. GARYAN: Fix that time, will you?

Q When was that? A I think it was the third of October.

Q Did you see her in the month of July in Mr. Needie's office? A Yes, sir.

Q Who was there besides yourself and Mary Krinitzky?

A Who?

Q Yes, what other persons besides you and Mary were there? A Where, in what place?

Q Needie's office? A Kosolowsky, Wasylenko, Chaly

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and Deala, and Needle.

Q Did you see Kiriaew there? A Yes, sir.

Q Did you see the co-defendant Gurykovsky there?

A No, sir.

Q What did you see Mary do in Needle's office? A She was giving a statement there.

Q Now, just state exactly what she said in Needle's office while you were there? A She was telling us a story that had happened to her when she was coming back from the cemetery, from Simpson.

Q In what language was she speaking?

THE INTERPRETER: The witness said no, if your Honor please, that when she was at the cemetery, Arseny told her to go home with him.

Q What language was she speaking in Needle's office?

A Russian.

Q Did you see her sign any paper? A Yes, sir.

Q Did you witness that paper? A Yes, sir.

Q Did you speak to her in Needle's office at the time that you saw her sign her name to the paper? A I did not speak to her, I only saw listening what she had to say.

THE INTERPRETER: Your witness.

CHIEF EXAMINATION BY MR. DANYAN:

Q When do you work for? A I am working by the

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school there, by the church.

Q Didn't you ever work for Vangelenko? A No, sir.

Q Are you sure? A Sure.

Q How much did you get from the church? A Sixty dollars.

Q Per month? A Per month.

Q Is that the Russian Orthodox Church or the Greek Orthodox church? A The Greek Catholic Church.

Q Well, what were you doing at Needle's office? A Because Kiriaew asked me to show him where he lived.

THE INTERPRETER: That's all.

THE INTERPRETER: Just a moment, pardon me. Just go back there a moment.

RE-DIRECT EXAMINATION BY MR. CHITTY:

Q Do you know Mendelson? A Yes, sir.

Q Do you remember when the article concerning Arseny and Krinitzky was published? A Yes, sir.

Q Did you see Mendelson after the publication of that article? A Yes, sir.

Q Where? A In Mayfield, in his home.

Q Did you have any talk with him?

THE INTERPRETER: Just yes or no.

A Yes, sir.

Q Did you speak with him concerning the article

published in "Evening"

MR. OAKMAN: Yes or no.

A Yes, I have been there with Kirtsov, when Kirtsov was talking about it.

Q Well, just tell precisely what Kirtsov said to Wendelson in your presence, and what Wendelson said to him?

MR. OAKMAN: That is objected to, if your Honor please. Wendelson was asked nothing about it.

MR. SMITH: I asked the witness Wendelson--

MR. OAKMAN: Well, point out the page.

MR. SMITH: On page 172 --- at page 171 I asked the witness if he had ever seen Kirtsov.

MR. OAKMAN: Yes, go on. It is my mistake. I withdraw my objection. That is the time referred to, isn't it?

Q Now, proceed and tell the Court and jury just precisely what Wendelson said to Kirtsov and Kirtsov said to Wendelson? A When we came to Hayfield, in Wendelson's store, he was in the store behind the counter and Kirtsov asked for a cigar. After Kirtsov asked "Are you Mr. Wendelson?" and Mr. Wendelson said Yes. Mr. Kirtsov said "I want to talk to you". Then Mr. Wendelson asked us to come up stairs to his office. Then Mr. Kirtsov asked Mr. Wendelson "Does Mary Krinsky live with you?" And Mr. Wendelson said Yes, and Kirtsov said, "I would like to see her". Mr. Wendelson told him "She is not here now, she just went out somewhere".

Mr. Kirtsov then told Mr. Wendelson "I came here from 'Evening', and we have written an article, and some kind of a lawyer came to me and has scared me and frightened me, and I want to know what about it", and Mr. Wendelson says or Mr. Kirtsov says to Mr. Wendelson "I came here to find out if this is true, if it is not true then I would call it back in the papers".

Then Wendelson asked Mr. Kirtsov "Do you know what is written in the papers? Mr. Kirtsov says "Yes", and then Mr. Wendelson says "What about the third part of it yet, written in the paper, what I know about this case. Mary is not the first one. One is in New York and one is in Brooklyn". Then Mr. Kirtsov asked "Did they sign any affidavit by you?" Mr. Wendelson said, "Yes, they signed". Then Mr. Kirtsov asked Mr. Wendelson, "Why did you sign any affidavit if you say yourself that it is the truth?" Then Mr. Wendelson "Admitted to me, Yatsko and Brown, and they asked me to do it for them, and they have paid me five dollars for drawing the paper. They were nothing me about it, and they would have paid me \$100. If I would have asked them for it, and I had to do it because I have got business with them. I live amongst them."

Q Anything else? A And he said, Mr. Wendelson said to Mr. Kirtsov "If they make any trouble to you, you call me a witness". Then Mr. Wendelson asked me if he would not like to

have a drink with him, a glass of beer, and Mr. Kirtsov says, "Yes, I just had a glass of beer down stairs." Then Mr. Mendelson took us outside and showed us which car to take home.

Q Now, is that all that you heard Mendelson say to Kirtsov and Kirtsov say to Mendelson? A Yes.

THE EXHIBIT: Your witness, Mr. Garman.

RE-CROSS EXAMINATION BY MR. GARMAN:

Q How long have you known Kirtsov? A I first became acquainted with Kirtsov about the 26th of June.

Q The 26th? A The 26th.

Q The 26th of June of this year? A 1908.

Q Who introduced you to him? A Kalabula introduced me to him.

Q Well, how did he come to introduce you to him?

A I was in Beranton, in Kalabula's house, and Mr. Kirtsov had been there, he had been a friend of Kalabula's, so he introduced me to him.

Q Then you went with him to those different places in Mayfield and Olyphant? A I went over night to Olyphant, and Mr. Kirtsov was in Olyphant, and next day we went to Mayfield.

Q To you knew Chaly? A Yes.

Q How long have you known Chaly? A I know Chaly from Harold of last year.

Q Did Chaly get you to go around with Kirtsov? A Yes,

sir.

Q Did you take Kirtsov to Mendle's office when he first went there? A I showed him the first time where Mendle lived.

Q Did you go in the house with him, you or not? A No, I didn't go to the house right away. I turned back after showing him.

Q Well, why didn't you go in the house with him?

A Well, I showed him where it is and Kirtsov went in there, and then he told me to come back and get Mary.

Q Now, you know Mendle, didn't you? A Yes, sir.

Q Why didn't you go in and introduce this man to Mendle? A I only showed him where it is.

Q Well, why didn't you go in and introduce him to Mendle?

A Well, I believed it was not necessary for me to go.

Q Did Kirtsov have any affidavit with him when he went to Mendle's house? A I did not go in there with him and I did not see any paper.

Q Was any paper drawn up in Mendle's house? A No, sir.

Q To you did not see any affidavit that Kirtsov had at any time before he went to Mendle's house? A I had seen only a newspaper he had.

Q Yes, that is all.

WITTED BY K E B L O W E R, being duly sworn, testified through interpreter Zandlish, as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q Keenlawe, where do you live? A Olyphant,

Q What is your business? A Carpenter.

Q Do you know Mary Krinitzky? A I saw her the first time in Needle's.

Q In Needle's? A Yes, sir.

Q Did you see her sign any paper in Needle's office in your presence? A Yes, sir.

Q Prior to her signing any paper in Needle's office in your presence, what language did she speak in, if she spoke at all? A She spoke in Russian.

Q Now, state exactly as near as you can recall what you heard Mary, say in Needle's office? A The first thing I heard her say, that the child which she had was from Arseny.

Then Mr. Needle told her "Mary, I want you to tell the truth because you have to swear to that", and Mary says, "That I am going to say to you I will swear to it". And then she was telling a story how she was to the convent in Simpson, how she came there, and what had happened to her.

Q And after telling the story as you have stated, did you see her sign her name to a paper? A Yes, she signed a paper with her own hand.

Q Look at Defendant's Exhibit B ---

MR. SMITH: Oh, it is conceded he is the man that

put his name on there.

Q Were you one of the subscribing witnesses or subscribed witness to her signature? A Yes, sir.

Q Did she at that time state that Andrew Pretash was the father of her child? A No, sir.

Q Was anything said concerning a person by the name of Andrew Pretash? A I did not hear anything.

Q What language did you hear Needle address to Mary Krinitzky? A Russian.

Q Was the defendant Carowakys there at that time? A No, sir.

Q Was the defendant Kirtow there? A Yes, sir.

Q Was anything said by any person at that time, that that paper which she was signing was for the purpose of receiving \$10,000, and one of the party was to marry her? A I did not hear it.

Q Did you hear what she said relative to a prior affidavit that she had made for Arseny? A I did not.

MR. SMITH: Your witness, Mr. Carrow.

CROSS EXAMINATION BY MR. CARROW:

Q What is your business? A Carpenter.

Q When do you work for? A Peck Lumber Mfg. Co.

Q Did you ever work for Banglendo? A No, sir.

Q How did you get interested in this affair? A I saw

going home from work and Diolenak met me in the street and he told me "There is going to be an affidavit taken in some case and I would like to have you to come there as a witness".

BY THE COURT: That is all.

Y H O D O R M J A W O R K Y, being duly called and sworn as a witness on behalf of the defense, testified through interpreter Yandilich as follows:

DIRECT EXAMINATION BY MR. SWETIN:

Q Javorak, what is your business? A I work for the "Deoboda".

Q Do you know the defendant Curkewskys? A Yes, sir.

Q Can you tell the Court and the jury where the defendant Curkewskys was on or about the 1st day of July, 1908?

A He was home.

Q Where? A In "Deoboda" in the office.

Q Where is that located? A 204 Hudson street.

Q Did you see him before the 1st of July in "Deoboda" at 104 Hudson street? A Yes, sir.

Q Did you see him the day following the 1st of July, 1908, at either "Deoboda" or any other place? A I saw him in the office of "Deoboda".

Q What time do you go to work? A I come at eight o'clock.

Q What time do you leave? A At half past five.

Q So that, from the hour of eight in the morning until five in the afternoon on the 1st of July, you saw the defendant Curkewskys in the office of "Deoboda"? A Yes, I came there at eight o'clock and Mr. Curkewskys came there about nine or half past nine in the morning.

CROSS EXAMINATION BY MR. GARYANI:

Q What is his position there? A Addressing papers.

Q Is not he the editor? A No, sir.

Q Does not his name appear on the paper? A The editor's name is on the paper.

Q Anton Curkewskys, editor? A Yes, sir.

Q He is the editor then? A Yes.

THE COURT: Well, not this witness?

MR. GARYANI: Oh, he is the one addressing papers? Because, that is my mistake. Well, he has testified that this defendant was the editor.

Q What day of the week was the first of July? A That I don't remember.

A B D N W G A W K A, being duly sworn as a witness on behalf of the defendant, testified as follows:

BY THE COURT:

Q Do you speak English? A Yes, sir, I understand a little. It is better to give me an interpreter.

MR. PUTTIN: I think we can get along.
THE COURT: He said he would rather have an inter-

preter.

Q What language do you speak? A Russian.

DIRECT EXAMINATION BY MR. PUTTIN:

Q (Through interpreter Tandlich) Your business?

A Printer.

Q Where? A In the "Doboda".

Q Do you know the defendant Curtakowsky? A Yes, sir.

Q Are you at present employed by this publication called

"Doboda"? A Yes, sir.

Q How long have you been so employed? A Five and a half years.

Q Was that before the defendant Kirmov and Curtakowsky had any interest in that paper? A Yes, sir.

Q Where is the office of "Doboda"? A 104 Hudson street.

Q Did you work there in the month of June, 1906, at the office of "Doboda", 104 Hudson street? A Yes, sir.

Q When I say June, I mean 1906? A Yes, sir.

Q Did you work there in the month of July, 1906?

A Yes, sir.

Q Did you see Curtakowsky there either in the month of June or July, 1906? A Yes, sir.

Q What time do you go to work? A At eight in the

morning.

Q What time do you quit work? A At half past five.

Q And did you work those hours in the month of June,

1906? A Yes, sir.

Q And July, 1906? A Yes, sir.

Q During the month of July, 1906, was Curtakowsky ever absent from the office, with the exception of Sundays?

A No.

MR. PUTTIN: Your witness, Mr. Garryan.

MR. GARRYAN: No questions.

A T T O R N E Y C U R K O W S K Y Z, one of the defendants being called and duly sworn as a witness on behalf of the defense, testified through interpreter Tandlich as follows:

DIRECT EXAMINATION BY MR. PUTTIN:

Q What is your business? A Editor of the "Doboda".

Q How long have you been connected with the publication known as "Doboda"? A From August, 1907.

Q Speak loud, because there is one juror that understands the language. What is your salary with this publication?

A \$100. a month.

Q Now, Mr. Curtakowsky, prior to the 25th day of June, 1906 did you receive ---

MR. PUTTIN: That question is withdrawn for the

present.

Q On or about the 28th day of June, 1935, did you insert or cause to be inserted in the publication known as "People's" the following article, turning to page 3 of People's Exhibit 1 in evidence (indicating)? A Yes.

Q Upon what did you predicate the insertion or upon what did you predicate or cause to be inserted that article?

A I received a letter from a correspondent from our paper, who long before that was corresponding, and giving us articles to write in our paper.

Q I show you Defendant's Exhibit M and P, and ask you if this is the article that you refer to?

MR. CATTIN: Prior to making that question, that question is withdrawn for the present.

Q At the time that you received that article that you speak of, was there any letter accompanying that article?

A By that article I received also a letter which stated that the correspondent is responsible for the article written, and if necessary he will produce witnesses.

Q I show you Defendant's Exhibit M and P in evidence, and ask you if that is the letter and article respectively that you refer to? A Yes, sir.

Q At the time that you received that article, did you believe the contents of that article and the letter to be true?

MR. CATTIN: That is objected to.

THE COURT: On that ground?

MR. CATTIN: On the ground that there is no evidence of its truth, and as far as belief is concerned, that is a matter to appeal to your Honor on the question of punishment, not on the question of defense.

THE COURT: Well, there has been some testimony --

MR. CATTIN: (Interposing) I will withdraw the objection. I think there is some evidence upon that before the jury.

THE COURT: I would be inclined before that is answered to hear argument on the question of the application of the section to a case of this kind, as to whether the person alleged to have been libeled or whether a libel could be justified of this kind. Now, there has been some evidence introduced in various ways to justify the libel, and this is attempting to excuse it.

MR. CATTIN: Exactly. Under the Code you have the right, the same as in civil pleading, you can plead a matter of defense.

THE COURT: I understand that and if it were a proper case, if it were criticism of a matter concerning public affairs, there is not any doubt about your right to introduce the evidence, but that is the point.

MR. CATTIN: I submit this, your Honor, the Code

reads as follows, that a publication having the tendency or effect --- that is one section, and then it reads as follows: The publication is justified when the matter charged as libelous is true.

THE COURT: That is all right. We are not speaking of justification now ---

MR. BRITTON: One moment, Your Honor? And was published with good motives and with justifiable ends.

THE COURT: There is no dispute about that. Come to the other.

MR. BRITTON: So that, under that subdivision, we have the right to ask that question.

THE COURT: Not as to his belief. The belief has nothing to do with that.

MR. BRITTON: If your Honor please, in this case of Stark, decided by the General Term in the 8th department in 1901, the very question that I have asked now ---

MR. QUINN: I will cut out all argument now and I will withdraw my objection. I am quite willing he should testify.

THE COURT: Well, I know, but I am not willing that anything should go before the jury that is not proper. However, I will allow you to ask the question, but as

the question of excusable libel, before my charge, I would like to have anything you think brings this case within the scope of the section.

MR. QUINN: I want the question answered, as a matter of fact.

THE COURT: Yes, go on.

Q (Question repeated)? A Yes sir.

Q Did you have any malice in the publication of that article?

MR. QUINN: I object to that.

THE COURT: That is a conclusion.

MR. BRITTON: Well now, in the case of the People against Stark, your Honor, that I have referred to, the defendant in an indictment for libel, the Court says, may be asked as a witness in his own behalf whether he had any malice or malicious intent in doing the act alleged to constitute libel.

THE COURT: Well, the statute defines what is malicious intent. He hasn't anything to do with that.

MR. BRITTON: Your Honor, you have a right to ask a man in all criminal cases "Did you intend to use your weapon to assault a man?" Or "Did you intend to steal it?" when the question of larceny comes up, or "Did you intend to assault a man" in a case of assault.

THE COURT: I know, but the statute says here that

shall be considered malicious.

MR. SMITH: Well, the statute says perhaps prima facie "malicious", but that can be rebutted.

MR. GARY: Well, I will withdraw my objection, rather than have any question at all. Objection of the People withdrawn.

THE COURT: Yes, well, I will allow it.

Q (Question repeated)? A No, sir.

Q And in inserting that publication, did you honestly insert it as an original article, as the original article called for? A Yes, sir.

Q Now, you stated that you believed in the truth of the communication sent you by your correspondent. Upon what did you base your belief that that article was true?

MR. GARY: That is objected to. He stated he received this article from a regular correspondent and he based it on that.

THE COURT: Well, if any part of this examination is proper, that is. It says here that publication is misused when it is honestly made upon reasonable grounds for its belief, but I would have said that all out, the whole question. I do not think the action of a priest can properly be called public affairs.

MR. GARY: Well there is no use discussing it now.

THE COURT: We will discuss that later. On on.

Q (Question repeated)? A Well, this correspondent was always willing for this paper. There was never a complaint against him before.

Q Were you ever in the State of Pennsylvania, or any of the counties, on or about the 1st of July, 1908 or prior to that time or subsequent thereto? A No, sir.

Q Where were you? A In "Doboda".

MR. SMITH: Your witness, Mr. Garvey.

CROSS EXAMINATION BY MR. GARY:

Q How long have you been in this country? A A little more than two years.

Q Can't you talk English? A No, sir.

Q Not at all? A Very little.

Q Now, you were editor of "Doboda" at the time of the issue of June 28th of last year, were you not? A Yes, sir.

Q And what was Mr. Kirtow's position with that paper? A He was the cashier.

Q Wasn't he the manager? A No, sir.

Q Who was manager? A Well, that was an association, and there were stockholders in it, and there were two other men.

Q Who was the manager of the paper? MR. SMITH: That I object to, on the ground that it is incompetent, immaterial and irrelevant.

Objection overruled. Recross.

A They both, when there was something necessary, might go and decide upon it.

Q What? A Banks and Kirtow.

Q How many days before the date of the issuance of your paper do you go to print? A I can't remember, but I think about three or four days.

Q Now, where is the envelope in which this letter came? A I did not keep the envelope, I threw that away.

Q Now, where is the stamp (indicating)? A I don't know. That is a rubber stamp that nobody has put on there at any time.

Q Now, where is the stamp, your honor, that is an improper remark.

THE COURT: Well, the jury will disregard any remark by any one unless borne out by the evidence. They are the judges of that.

Q Did you know Chas? A Yes.

Q How long did you know him? A About a year.

Q How often had you seen him in that year? A Well, when he came from Europe, he was about a week in the "Postage" and then he came several times, and after that I didn't see him again.

Q How many articles did he write for you in about the year before that?

THE COURT: I object to that as incompetent, immaterial and irrelevant.

THE COURT: It is proper on cross-examination.

THE COURT: Why, he stated he relied upon Chas.

BY THE COURT:
Q Now, and who? A Kirtsov.

Q This defendant? A Yes, sir.

BY MR. CANNON:

Q And Kirtsov was there all the time, was he? A Yes.

Q And was he in charge of the paper while he was there?

A He had under the charge of Reeks sometimes.

Q Did you consult Kirtsov before you put this article in the paper? A No, sir.

Q Did you consult Reeks? A I gave it to Reeks, the article.

Q Who is Reeks? A He is foreman, manager in the printing place.

Q That is, he has to do with the printing party? A Yes, sir.

Q You gave it to him to print in the paper? A Yes, sir.

Q Now, you say Kirtsov was master at the desk at that time? A Yes, sir.

Q Kirtsov received all the money that came in, and paid out all the money that went out, didn't he? A Yes, sir.

Q Now, did you consult Kirtsov before you gave this article to the printer to be printed? A No, sir.

Q When was the first time you showed the article to Kirtsov? A The first time when that lawyer came there.

Q Now, did you consult anybody before you decided to print that article? A Yes, sir.

he was a center in the Russian orthodox church

MR. BELTINI: Do not answer yet until I get my objection. I object on the ground first, that no date is fixed; on the further ground that under this indictment it is incompetent, immaterial and irrelevant, there being no proof that these articles were written all concerning the same person libelled, on which the alleged libel in this indictment forms part.

THE COURT: All this becomes relevant as the defendant's motive in publishing this article, and so pointing to his relying on this man Stoly as sending him an honest and truthful article.

THE COURT: I overrule the objection. The time is definite enough. He refers to the time in the year before.

MR. BELTINI: I except, and I ask your Honor then to have him state when these alleged articles were written, whether it was before the publication which is the subject matter of the indictment, or after.

MR. STOLY: He has confirmed it to that. He said it was the year after he left "Swabade".

MR. BELTINI: Exception.

Q (Question repeated). A Well, he was not writing them all, because afterwards he gave up the job as a center.

Q I know he did, after the publication of that article,

I have a right to know what right he had to rely upon him, THE COURT: The objection is overruled.

MR. BELTINI: I except.

A Well, often. Maybe possibly I can say for every number.

Q And were any of his articles attacks on the Russian orthodox church and its members?

MR. BELTINI: I object as incompetent, immaterial and irrelevant.

MR. STOLY: I desire to be heard on that, if your Honor wishes.

THE COURT: I will overrule the objection.

MR. BELTINI: I except.

A No, sir.

Q Were not a great number of them?

MR. BELTINI: I object as incompetent, immaterial and irrelevant, under this indictment.

Objection overruled, Exception.

A Several was.

MR. BELTINI:

Q Seven articles? A Several.

MR. STOLY:

Q Now, you know that he was a singer in the Russian orthodox church, didn't you? A Yes, sir.

Q And during the time that he wrote these several articles, attacking the Russian Orthodox church, you knew that