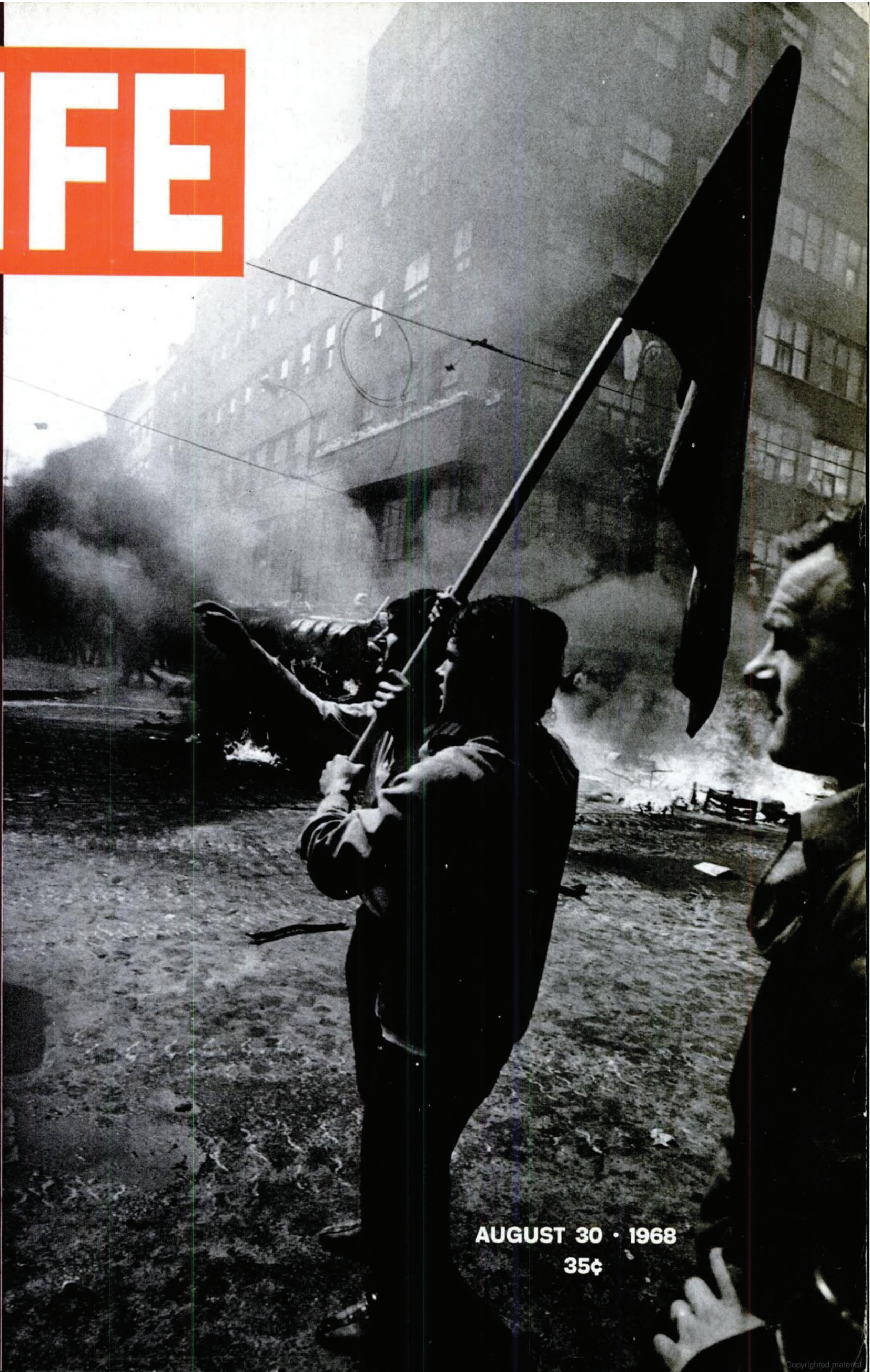


LIFE

CZECHOSLOVAKIA

Death of the Bright Young Freedom



AUGUST 30 • 1968

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COVER—HILMAR PABEL for DER STERN 1—JOHN LOENGARD 14, 15—BILL RAY 16 through 21—HILMAR PABEL for DER STERN 26D, 26E—It GERARD KLIJN (2), DOMINIQUE BERRETTY 26F—cartoon by LURIE 33—It. N.Y. DAILY NEWS 38A—bot. ALEXANDER RAIJA for NEWSDAY 46—BRUNO OF HOLLYWOOD 64—JUDITH GEFTER

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About the special section on a murder

Not far from the homicide bureau, Queens County, New York is a small and friendly restaurant called Luigi's, which has become a sort of club for those who have been working on the case of the murder of Ernie "The Hawk" Rupolo. There you can find, when they have a break in their day, Assistant District Attorney James Mosley, who prosecuted the case, and assorted assistants like Detective John Kelly, Detective Walter Anderson, Policewoman Margaret Powers. The members are apt to sit in certain chairs, and over the bar is a toy tiger in memory of LIFE Associate Editor James Mills and the day they all discovered that he was a Princeton man.

In the past year or so they have seen more of him than we have; Mills lives in Paris, but in the course of gathering notes for his article *The People vs.* in this issue, he spent nine months with Mosley and his team, almost around the clock. That's the way he works; for his article on two sad young drug addicts (LIFE, Feb. 26, 1965) he spent two months drifting with the couple in Needle Park, and for his story *The Detective* (Dec. 3, 1965) he spent four months with Detective George Barrett prowling the worst streets of New York.



James Mills

We pulled up a chair at Luigi's and listened to the talk about Jim and Photographer Bob Peterson, whose pictures illustrate the three-chapter article. Detective Kelly started it off. "I really miss Jim and Bob," he said. "It's like being together for 40 years and suddenly they take off." "That's right," said Mosley, who is the protagonist of Jim's story. "He came in March '67 and left in December, right after the trial. After a couple of days, I never realized he was around—he just became part of the team. We could understand each other. Some other writer could have talked to me for a week before the case and then gone to the trial and written a long story. But Jim was willing to devote nine months' work to get it right."

"At first I wondered if he'd make the distance," said Anderson. "But he'd go home at 2 or 3 a.m. and get back up at 9, the way we do, because he lived the entire case. The only time I saw him relax was when we were down at Miami Beach and he fell asleep on the sand. And that's no place to fall asleep, with all those broads in bikinis." "He has a fantastic ear and memory," someone said. "You talk and feed him Scotches until you think he's shot down, and next day you find he can quote you verbatim." "Remember the time he got us to let Peterson into the D.A.'s meeting?" asked Mosley. "Said we'd never notice him? And Bob came in with a yellow shirt and an orange tie and about nine cameras around his neck?" "I think Jim has class," said Policewoman Powers. "Once in the middle of the case I went out and brought back some baloney and coffee and Jim thanked me as though I'd given him a \$20 plate of hors d'oeuvres. He was easy to get along with. I honestly think he could have shared dried figs with Lawrence of Arabia, or chicken with Fidel Castro. Some of our well-known adventurers would have loved him, especially Hemingway." "That's right," said Mosley. "You could depend on him. That's why in this case he had access to information that no outsider has ever had."

George P. Hunt
GEORGE P. HUNT,
Managing Editor

This One



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A SPECIAL **LIFE** SECTION

THE MOB

Murder—done as a stroke of minor business by the Mob. He was a cheap hoodlum, a hit man, used by the **Mafia** and discarded in the **Mafia** way. His body—shot, stabbed, weighted—surfaced on a Long Island beach Aug. 24, 1964. Then followed the pursuit to identify his executioners. At last—with the victim three years dead—came the trial, laden with cynicism and professional agony, until a jury delivered the verdict—in justice or the mocking of it. Here, on the next 26 pages, set out as never before, is a rare document, probing the world of professional crime and the afflictions besetting our courts.

THE PEOPLE VS.

Sonny **Franzese**
Red Crabbe
Whitey Florio
Tommy Matteo

by James Mills

LIFE Photographs by BOB PETERSON

Chapter 1



The HIT

Two concrete blocks were chained to the murdered hit man, and now those who knew him talk about his life.

Chapter 2



The TRIAL

A prosecutor goes to court against the killers—but his witnesses, thugs themselves, have been threatened with death.

Chapter 3



The VERDICT

A suspicious voice speaks out suddenly from Death Row, and in the final moments turns the course of the trial.



Chapter 1

THE HIT

The body is that of a middle-aged white man, 5' 9" tall, scale weight not yet determined. There is a heavy rope ligature looped around the neck. The wrists are tied together with an intricate series of turns of a yellow woven plastic cord which also encircles the abdomen. [In the New York City morgue, the medical examiner stands over the body of a man found floating in shallow water at a Queens County beach in the summer of 1964. As he examines the body, he dictates his findings to a stenographer.] There is also a rope around the abdomen tied with several knots, and this yellow cord passes through it. The rope projecting from the abdom-



inal ligature is a heavy triple-stranded one, and to one end of this was tied two concrete blocks, which are also tied together with similar heavy rope and yellow cord and chain. . . .

“I identified him in the morgue. Identified him! I couldn’t even identify him. It was just—like a skeleton with some stuff on it. [Willie Rupoli, a bookie, talks about his brother Ernie, who had been a Mafia gunman and professional killer before his body was found on the beach.] I told them, ‘To tell you it’s my brother, I can’t. Not the way he looks. Not what you’re showing me.’ When I saw him he had the cinder blocks on him. And the

rope around. That’s an awful thing. That’s what I can’t see, why they had to do it like that. It’s not even a clean knock-off. It’s, I don’t know, savages. Shot him, stabbed him, I can’t understand it. To kill him, that’s one thing. But not like that. Not only me, but even the others in the underworld, his own friends, they can’t figure it. If you live by the gun, you die by the gun. But do it right. Wait outside his home or something and hit him when he comes out, but not like they did it. If you want to get rid of him, hit him clean. Like get him in a car, hit him, and throw him out of the car. What’s all this here rigamajig? I don’t know if they saw television, or what.”

. . . The iron chain, fairly heavy, is at present rusted and covered with sand, as is the body. This chain is also attached to the ankles. There is a considerable amount of mud and sand, still moist, on the body and in the clothes, and also some broken mollusk shells. . . .

“He was brought up by his mother to be another Al Capone. He’d come home and give his mother money, and she knew it had to be from something bad, and that pleased her. Because she was always after him to be another Al Capone. [Harold Fox, a retired detective, knew the dead man well and calls him by his underworld nickname, The Hawk.] I said to

CONTINUED

him, 'Hawk, you come from good people, how'd you ever get mixed up in this?' And he said his mother, she told him he could be another Al Capone. The Capones had lots of money. He'd come back here from Chicago, and he had lots of money. The mother knew people he gave money to, and he'd say how he left Brooklyn and became a big shot in Chicago. She figured if Al Capone could do it, why couldn't her son do it?'"

//Ernie had dreams, you know, that someday he was gonna be the head of the Mafia. And I says, 'You couldn't! You can't tell me what to do. How're you going to tell anyone else what to do?' That was my answer. [*Eleanor Rupo, the dead man's common-law wife for the six and a half years before his murder, talks to friends.*] And he'd say to me, 'You don't know what you're talking about. If it wasn't for me, they'd kill you.' Because like I hated his friends. They were ready to shoot me on sight any time they ever saw me because I couldn't stand any one of them. I told Ernie, 'The only reason they hang around is because you're a good-time Charlie, and if you weren't buying them drinks and dinner and everything else, you wouldn't even see them. They haven't got two dimes to rub together so they're kissing your ass. Roy Roy and Butch and all those other bastards.'

Ernie used to tell me, 'But they're my friends. They'd lay down their lives for me.'

And I said, 'The only thing they'd do for you is kill you.'"

. . . The yellow cord is tied around the right shoe and ankle. There are also several loops of heavy chain. . .

//So I couldn't even identify my brother. I explained to them that for me to make a positive identification would be hard, that there was a doubt, because what I really saw was—well, you couldn't tell if it was a human being or what. So I gave them information about a mesh in his stomach, that he had an operation for a hernia and there was a mesh screen in his stomach. And I told them, you'll find a bullet in him because he's been walking around with a bullet in him for years and years, and they could never take a chance of trying to take that bullet out.

And I identified the shoes he wore, and the pants. I can't miss them, those were my pants. That day he was wearing my clothes. The zipper was broken on his pants. He was in my store, a real hot muggy day. He went to the bathroom and he must have pulled the zipper and he came out and he says, 'I broke the zipper, now how can I walk around?'

And I says, 'Sit down, my wife'll be here in a minute. She'll fix it. Or take a pair of my pants, a pair of my slacks.' And I says, 'Don't worry about it.' Because every time he had a fight with his wife Eleanor and he needed to sleep someplace he used to ring my bell 3 and 4 in the morning, and he'd say, 'I want to sleep here.'

And I'd say, 'Go ahead, brother.' Because he wouldn't go to no other brother, but he'd come to me. Then when he made up he'd go back. So a lot of times, he'd be wearing my socks or my shoes.

That day he's there in my store, and he's got Roy Roy with him, and he says to Roy Roy, 'I gotta go to my brother's house and

THE PEOPLE vs.

CONTINUED

change my pants.' And Roy Roy drove him to my house, with me following in the Caddy. They come upstairs and I gave him a pair of my slacks and a sports shirt. He was broke so I gave him \$20. I'll never forget it. I took \$20 out of my register in the store. I says, 'Here, put this in your pocket.' And then when he got found in the river, he had \$50 on him.

So when they were leaving, Roy Roy invited me to come with them for a drink at the Coco Poodle, and I says no I was too tired and that I'd have to make it some other night.

That's when he left with Roy Roy, and I never saw him again. That's the last I saw my brother. The next day I waited for my brother. I don't see him. I don't see the kid no more."

. . . There is evidence of an old hernia operation with the presence of a small fragment of recognizable tantalum mesh and some black silk sutures. There is a pair of trousers, extensively torn, with a leather belt now pulled down to the left knee and leg. The zipper is partly open. On removing the shoes and socks, the epidermis of the feet, which is macerated, comes away with the socks. . .

//When I was about 10, in school in Brooklyn, I liked the teacher, I was her pet, and I schemed up something that I could annoy her, to make her pay attention more to me. [*Some years before his murder, The Hawk sat with Detective Fox and talked into a tape recorder about his past crimes.*] And what I did scheme was I looked up her name in the phone book and I started to call her up at night. I called her up night after night, and every time a different story about what had happened to a pupil in school, where he got run over or he's sick. And she would get grief over it and say, 'Who is this calling?' Well, I never told her who was calling, but one day the call was traced and I was caught in the phone booth by two detectives, and they took me to the station house where they made me face the teacher. And she was shocked to know it was me. And I couldn't face her. I was ashamed. I was brought to court, she had signed a complaint, and I was given six weeks in the New York Catholic Proctory in the Bronx.

And then I went back to school and the teacher told me that she was sorry she had signed the complaint, that she didn't know then it was gonna be me. And I said I was sorry for what I did, I was punished for it, and that's all.

And I stood in school a while and then when I was 12 I had in mind to get out of school. I schemed for my birth certificate to be forged. I erased my date of birth, I made myself 15 years old, and I brought it to the school, brought it to the Board of Health, and the school fell for it, and I got my working papers and got out of school. I got out of school and I started what I always wanted to do, a career of crime.

I started by burglarizing. We called it the

bucket racket, myself and one other boy about 18. What we used to do is ring a bell and if a woman came out we'd have a car outside and we'd say, 'Can we have a bucket of water? The car's steaming.' And if nobody answered the bell, we'd break in. We'd ransack the house, go for the bedrooms, jewelry, money. The jewelry, we'd get rid of it, take it to a pawnshop or sell it to people out on the street that we knew. I was 12. We did about 75 or 100 burglaries. Then I was arrested, me and this other fella. Then I was 13, but I told them I was 16 and they believed me. I got a suspended sentence of three years.

So I kept on burglarizing. There were three of us now. I was arrested again, coming out of a home. We were all shot at by detectives, caught red-handed. I was sentenced to one day to three years in the New York City reformatory. I was still 13. I did 10 months. Then I went out and this time I went on with crime, but no burglaries. I did robberies with three other fellas, older than me. I bought a gun off another hoodlum. I was 14.

One day we were given chase by two cops in a radio car. While they were chasing us, we threw the guns out of the car. They got up to us, stopped us, searched us and took us in. I was held for violation of parole and went back for another eight months.

Then I went back to the neighborhood. I was out a couple of weeks, and I got a letter from my brother, that he was in trouble, to go and see him at Raymond Street jail. He was in trouble for robbery. He asked me to help him out, to go to New York [Manhattan] and get in touch with these fellas that he associated with, to join them, to join their outfit, to help my brother, join them in what they were doing, committing robberies. I went to New York, I joined them, and any robbery we did I put my share on the side for my brother, to help him with his lawyer. So what happened was that my brother received five to 10 years in state prison and I was shot, which I almost died.

When I used to go out with these fellas, one of the fellas was taking a share out for a girl he was living with at this apartment. There were four of us. He wanted to put the girl in for a share. And he did put her in a few times. So I had an argument with him. I told him I wouldn't take it from him. I called him names. So I was going on and on and he told me to shut up, 'or I'll shoot you right in the head.' And I told him, foolishly, that he hadn't got the guts enough to shoot me in the head.

Well, the first thing you knew, I was shot. As I'm falling down, the girl started screaming. The other two fellas scrambled out and this fella told the girl, 'Let's throw him out the window.' So she hollered, 'No,' and that's all I could remember."

//So I hated Ernie's friends. I told him all they'd do was hurt him. Like when his eye was shot out. His version to me about how he lost his eye, they were in a hotel, and he was with some people, and somebody was bothering somebody else's girl, and he told the guy not to bother her. And the guy says to him, 'Shut up. Mind your own business or I'll let you have it.' And Ernie says, 'You punk, I wouldn't care what you did.' And the guy turned around and he opened a drawer

and he took a .45 out and shot him. And he falls over the table, and the last thing he remembered the radio was playing *My Blue Heaven* and they said, 'Let's throw him out the window.' Ernie told me, 'I wasn't even dead and I hear these guys saying, "Let's throw him out the window." They didn't kill me by shooting me so they're gonna throw me out the window.'"

"After my brother lost his eye, and his face was disfigured, he didn't care for his life any more. That's what really turned the kid. When he looked at himself in the mirror—and before he was a real good-looking kid—he just went berserk. He went berserk. And the smart guys who was coming up, they knew that this kid is going to be a good kid for us to use. In other words, that's what I call it, to use him, so we'll put him on the payroll, and give him this, and make him stop this here stealing or anything like that, and he became under their wing. Because when he had both his eyes he was doing a lot of robberies, and that's how he got the name, 'The Hawk.' He never missed anything. He had eyes like a hawk. So they made him stop the stealing and they gave him contracts. And that's all he did after that. He was just a hit man, since he was 16."

. . . Examination of the head discloses considerable maceration and separation and loss of the skin of the nose, with fracture of the nasal bones. The right eyeball is absent, and the socket is scarred. . . .

"Ernie used to call me 'My Heaven.' He'd call me on the phone, 'What are you doing, My Heaven?'"

'Nothing.'

'All right,' he'd say, and he'd call and call. He'd leave to go to Brooklyn and he'd call up from the station, he'd call up when he got to Brooklyn, he'd call up when he reached the bar he was at, he'd call up at least 10 times a day.

On Sundays he'd be home and he'd babysit and I'd go antique hunting all day with my niece. You know, we'd go driving around. He would give me the world if he had it. If he went to the moon, he'd come back and say, 'What are you doing?' I would throw him out and say, 'This is it, this is the end!' I would move away from him, right? And two days later, there he'd be. I would move, I would disgrace him, embarrass him. He'd be having dinner with people and I'd walk in, 'Give me money and get out of my life!' You know—insult him, degrade him. And he would always be there."

. . . When the scalp is examined there are two entrance bullet wounds found on the right posterior parietal region. More posteriorly there is a third bullet perforation, an exit wound. The brain tissue, which is liquefied and pultaceous and green in color, oozes through this large exit wound, and during the manipulation of the head a tarnished, 380 metal-jacketed bullet emerged from this hole with liquefied brain. . . .

The Hawk put on weight between a 1945 picture and another taken shortly before his death in 1964.

"I was shot right in the eye, when I gain consciousness in the hospital I seen this fella that shot me and a girl brought in front of me with a squad of detectives, and they told me, 'Here's the fella that shot you. We know he did it, now tell us yourself.'"

I said, 'I don't know him and I don't know the girl. Leave me alone.' I didn't want to get revenge on him that way. I figured if I recuperate, I'll take care of him myself.

So when I got out I looked for him, but I couldn't catch up with him, and later every time I was out of jail, he was in jail. Every time I was in jail, he was out.

Then after a while I had an opportunity to meet one of the two fellas that was in the room and ran out and left me when I was shot. And they was supposed to be friends of mine. I never forgot that. I met him in a hangout, playing dice. I got alongside of him, and I started gambling against him. He told me, he says, 'Don't bet the way you're betting. It's foolish. I'm going to take your money.'

I says, 'There's no friendship in gambling. If you take my money, you take it.' Which he did.

So when I lost my money, I went downstairs from the hangout. I went down in the cellar where I used to have guns hid down there. I took one gun, went back to the hangout where the dice game was, and I stuck up the game. I told the fellas in there that it's not meant for them, that it's meant for that fella in the corner. Well, they were satisfied to hear that. So I asked him, I said, 'I want all your money and make sure you produce it.' Well, at first he didn't give it to me, he says no. I says, 'I'll count three. If you don't give it to me by three I'm going to shoot you in the leg, and the second shot you ain't gonna feel it.'

So I count three, and he didn't produce his money, so I shot him between the legs. But I didn't hit his legs, I grazed them. When I did that, he took his money out of his pockets, put it with the money he had in his hands, and he give it to me and he pleaded with me, 'Don't shoot me, don't shoot me no more.' And that was that. I went downstairs, put the gun away and went across the street in the poolroom and stood around."

"People used to tell me, 'Eleanor, I don't know how you get away with it. I've seen that guy kill people for less than that, the way you

talk to him.' And I'd say, 'Why that son of a bitch couldn't fight his way out of a paper bag.' Because this was the way he treated me, but he could terrify anyone else. And I could never believe that he could terrify anybody else, because I'd walk in and give him a smack and that would be the end of it. I mean scenes like that were like commonplace. We'd fight, I'd kick him out, and then he'd call with stories, you know, and I used to feel sorry for him and I'd say, 'All right, come on home,' and I'd go and I'd get him wherever he was and bring him back home."

"After I stuck up the guy in the dice game, I joined this outlaw outfit, fellas that were against the racketeers, that knew that the big shots and racketeers had everything sewed up, that would take money off different people. So we figured we'd take it off them, off the racketeers. We'd stick them up.

We got called on the carpet many a time. We were warned by the top men. They'd tell us to lay off what we were doing. But we'd deny it, and we always told them, 'You don't know what you're talking about.' Because we all—five of us—used masks, and they weren't so sure it was us. We felt very bitter towards them, because anything you tried to do, they would come over and say, 'That's my spot. This is my store. Don't touch that fella. Don't touch this bookmaker.' You couldn't do nothin'."

"My brother was a hit man for them. And they were afraid of him. They figured if they were gonna hit him, they'd better do a good job. You know, that's the reputation the kid had. That's why the kid kept walking around. And then the kid was good. I mean the only time he went bad was goin' to people he shouldn't of gone to, grabbin' people by the throat, takin' money off them. Like he walked in behind a bar, Dino's Bar, and he asked for money and got refused. He went behind the bar, he took the money out of the register, gave everybody drinks. That's the type of guy he was. 'If you don't wanna give me no money, I'll take it.'

In the later years he was not a thief, he'd just grab you for your money. In other words, he didn't go out on stickups, he didn't go out on burglaries, he just, 'I'll get my money, I'll walk into this guy and I'll get my money.' He'd go to a bookmaker, put a pistol to his

CONTINUED



head. 'I want a thousand.' He'd go into a shy, he knew the guy was shying, that he had money, and 'I want \$5,000.' That's the type of kid he was, 'I want \$5,000 or you don't operate.' So he'd bring a couple of hoods with him, and he'd make sure he got the \$5,000. So he always got the money.

But he knew it couldn't go on like that forever. He knew he was gonna get hit sooner or later. He used to tell me when he got drunk. He'd say, 'You know, Willie, I'm living on borrowed time. How much more do you think I can go around takin' people, takin' people, takin' people?'

. . . There is also a bullet perforation with macerated edges on the anterior surface of the neck. This bullet is a 380 deformed missile and drops out of a segment of the spinal canal. . . .

//It sounds ridiculous, but it really was like this, back and forth, six, seven times a year Ernie'd move in and out. One time I put all his clothes down the incinerator. I said, 'I quit, I don't care if you walk around with your ass hanging out. Don't come back.'

And he would come back. His brother Willie said one time, 'Eleanor, if he knew that you were going to hit him over the head with an ax when he walked through that door, he'd walk through the door anyway, as long as it was you hit him over the head with the ax.'

One time he's not living with me again and he runs into some guy who says he had a couple of drinks with me. And now he comes home, he's going to murder me! This is it. He's killing me now. And a friend came home with him. So his friend told me later they had gone into the kitchen, he got a big kitchen knife, and he was gonna cut me up to ribbons.

So anyway I went to bed. You know, like he's telling me he's going to kill me, he's going to murder me, and I says, 'Oh yeah? Go frig you, too.' And I'm getting undressed and I'm going to bed because he's telling me this all the time. So I'm lying in bed and I'm going to sleep. I'm tired, right?

I hear something going on outside, but I don't know what. I don't even care. I'm just going to sleep. But he comes in and says he's gonna give me a beating. For some reason he forgot about the knife. He picks up the coffee table and he comes charging into the bedroom and—CRASH!

I says, 'Now you've had it.' I says, 'I've been waiting five years for you to put a finger on me. That's it.'

I pick up the phone next to the bed, dial operator. 'I'M GETTING MURDERED!' I scream at the operator. So I get connected with the police, the 66th Precinct. I say, 'THIS SON OF A BITCH IS KILLING ME!' I says, 'HURRY UP!' I says, 'I'LL BE DEAD BEFORE YOU GET HERE!'

Now they come charging over, up the fire escape and everything else, and now they've got him, right? And I says, 'I don't care what you do.' I says, 'Look at this, look what he did to my leg, look at this.' I says, 'He's gonna die for this. That did it. Get him out. I don't care where he goes, just get him out of here.'

They took him down in the elevator and off he went. They let him go. So Ernie took it on the lam for a couple of days. And now

THE PEOPLE vs.

CONTINUED

I have him. He hit me, right? And, oh, how the presents start coming, and, oh, I really had it made then. He came with hundred-dollar bills, 'Honey, buy yourself something.' Nothing was too good for me.//

. . . The entrance of the bullet which popped out of the scalp is the mouth. The bullet penetrating the mouth grazes the tongue and produces a rather deep furrow. . . .

//So we were very bitter about the big shots and we kept on taking money from them, and this went on several months.

Then I got a contract by an organization to kill two fellas, two hoodlums [Willie Gallo and Ferdinand "The Shadow" Boccia]. And there was another fella with me in on the contract. It was well planned. Nothing could go wrong. There was plenty of time and plenty of money involved. I had one of the fellas that was going to die most of the time, sometimes I had the two of them. And lots of times they were lucky, that they missed by inches. Something would go wrong. You know how that is.

Well, the time finally came that everything was clear. I had one of the fellas [Willie Gallo] that was gonna die with me, and the other fella that was gonna do the killing with me. We gave this fella a dinner, we drank, a woman—in other words we gave him a good time. When the party was all over we knew what we were gonna do. We walked out, we drove to a certain block, I took a gun out of my pocket, I put it to this fella's head, and I keep firing and it don't go off.

So the fella told me, 'What are you doin'?' I says, 'Well, I'm only kidding you.'

'Kidding!' he says.

'That's all I was doin',' I told him. Well, he was a little drunk, he thought that probably I was kidding. He says, 'The way you're marked? You carrying a gun with you? Put it away.'

I was going to ask to go and put the gun away anyway, and I'd be right back, but not really to put it away, to put some oil on the gun. Which I did. And I tried out the gun, and it went off. And I went back to where my partner and him were waiting for me, and I says, 'Okay, I put the gun away.' I told him, 'Let's go a few blocks. We're going to meet a certain party.' He okayed it. He says all right. He was wobbling a little bit from the liquor.

So when we got to this certain spot, I let it go off. So between I and my partner, we gave him seven shots. We thought he was dead. The only thing he said was, 'Oh, Mom,' and that's all. We figured we left him for dead.

Well, we went to sleep for a couple of hours and the next day we went down to see this organization where they were at. Well, they didn't like the idea, that the fella had lived. They knew the other thing was taken care of, the other fella [Boccia] was killed, a few hours before this one was shot. Well, they did a little yelling because it was done wrong, but we just listened.

Then they sent us to some of their people in another state. We were there awhile, and my friend that was with me was afraid. He figured that we didn't do it right, that we were gonna get killed in that state. I told him, 'No, they wouldn't kill us. What do you think that for?' Well, the next day I was taken to a doctor, to be operated on for my eye, to get a glass eye put in. And after the operation, which didn't work anyway, I went back to where we were hiding, and that night my friend told me, 'I'm sorry, I have to leave you alone.' He says, 'I'm going home, back to the neighborhood.' He says, 'I don't trust these people.'

I says, 'Wait till I get better. I'll come with you. Don't leave me this way.' What really had got him scared is when we were alone in the hideout he happened to open a closet and he seen machine guns, shotguns and pistols layin' around there like nothin', and that made him scared.

So he really did what I didn't expect him to do. He really left me alone, so if there was anybody to be killed there, I would have been killed alone. So I was there after that two weeks. All I did was ate, drank and had a good time up in the hideout. And then I was sent back to New York. I was given information that the fella I shot talked on me and my partner, told everything he knew, that we shot him. And that he's living yet, that he's still in the Kings County Hospital, still in serious condition. They told me that they'll take care of it, to come back, that they'll take care of things.

But before I went to New York, I went to Brooklyn. And when I got there I met a fella, the same fella that was in the room when I got shot. The same fella that I shot in the dice game.

He came over to me, he shook hands with me, and he says, 'I'm sorry for what happened, let's be friends.' I said, 'It's all right with me.' He says, 'Where are you going now?' I says, 'I'm going to New York.' He was the only person that knew I was going to New York, beside the organization. Well, I took the train and I went to New York. I got off at Canal Street. When I got upstairs, it was no coincidence, there was a squad of detectives waiting for me, just turning the corner. And they grabbed me and threw me right in the car.

I was brought in front of the man I shot in Kings County Hospital. He identified me. The detectives told me he had made a deathbed statement, and 'You're just lucky he's living yet. We don't know if he'll still live.'

He wanted to talk to me. He asked me, 'Why did you shoot me?' I told him, I said, 'Why did you talk on me?' He said, 'But that ain't the question I'm asking.' I says, 'What's the difference what I shot you for? You could of got revenge later on, instead of talking, saying that I shot you.' Now the reason for that was this, that he was no lily himself. He was a gunman himself. He held a gun in his hand many a times.//

//Ernie would get up in the morning—I never got up one day in six and a half years before 12 o'clock—Ernie would get up in the morning, shut the bedroom door, change the baby, wash the baby, get Ellen's lunch, then he'd get Ellen's breakfast ready, do everything, wash the floors, clean the house, make my coffee and knock on the door.

'It's 12 o'clock, Honey. Do you want to get up?' He'd come in, stroke my hair and say, 'Do you want to get up?'

And I'd get up and I'd drag myself to the kitchen table, and I'd say, 'Ohhhhhh, I'm so tired.' Because I would've been up all night waiting for him to come home. He never really told me too much about what he was doing. I mean he wouldn't tell me anything to make me nervous or worried or anything like that. He'd come home, he'd say, 'There was trouble tonight' or this happened or that happened, and I'd listen with one ear.//

//This guy that was a gunman himself, that was supposed to be a tough guy, well, he says that he's not going to identify me in court. But he lied. He did identify me in magistrate court, and I was held for the grand jury.

While I was waiting trial in Raymond Street jail, I had a lawyer, hired by the organization. He came over to see me in jail, and he told me not to worry about nothin', that everything would be fixed up, just to take it easy. Well, I was there about two months. And then I was brought to trial, and before my trial started the judge talked to me in his chambers with my lawyer and with my partner, and he told me, 'If I was you, I wouldn't gamble on this case. If you take a plea of assault in the second unarmed, I will give you two and a half to five years.'

Well, I just listened and then my lawyer grabbed me on the side, and he says, 'Don't take no plea. Everything is fixed up. You're going out this afternoon.'

So I told the judge, 'No, your honor. I want to stand trial. I'm innocent.' Well, he says to me, he says, 'Once that trial starts there's nobody gonna stop it. Remember that.'

Well, he kept his word. The trial started, the man I shot got on the stand and he buried me. He told the truth, and how I shot him and everything. So I was found guilty of assault in the first degree. I was found guilty in five minutes by the jury. The judge gave me and my partner 10 to 20 years in state prison.

So I was sent to state prison, and the same baloney used to go on. We used to get word not to worry, that when a different governor comes in we'll be out. All that, you know. Years go by and by and you still live on hope. And live on their baloney stories that they give you.

And many a night I would stay up, and think what really went on and how foolish I was. Sometimes I would look in the mirror and look at myself, that that was part of my crime career, by looking in the mirror and seeing the way I was. I seen that I was a different person. And plenty of times I used to spit at the mirror. I used to hate myself.//

//Ernie knew, he knew. I'd say he knew it for about six months, that he was gonna get killed. I didn't believe him. Would you believe it if somebody just came out and told you, 'Honey, they're gonna kill me?'

He wouldn't get in the car with me for six months before he got killed. He was always with these bums Jerry and Roy Roy, and he'd always get some jerk to drive him around. And I'd say, 'Hey, what's the matter with this guy? I've been driving him around for years and now all of a sudden he'll never get in the car with me any more.'

And Willie, my brother-in-law, said to me,

'He never gets in the car with you because he's afraid they're going to kill him and they're going to kill you, too, if you're with him. So he won't drive with you.'

And here's another funny thing. Ernie had a lot of papers that this woman was holding, and he always told me, 'They'll never do anything to me because I've got these papers that this woman is holding in her safe.' He goes there about, I'd say, two weeks before he gets killed to get this stuff from her, and now all of a sudden all this stuff she's holding for Ernie like for about seven or eight years is gone. And two weeks later, so was Ernie.//

. . . An old bullet is found just to the left of the midline, encapsulated in fibrous tissue. There are six bullet tracks in all. . . .

//I did eight years and six months of the sentence, and I went home. Everything was strange. I hung around awhile, felt around awhile. They contacted me and they told me things had been tough, that they had been doublecrossed. Well, I couldn't get so fresh with them. I was alone, and just out. A lot of things happen while you're away so long. I just yessed them, and they told me things are tough, that I've got to be careful now that I'm on parole.

Well, one day I got myself into another swindle. This fella here, he was doublecrossing everybody, doublecrossing his own organization. He would give tips to certain card games and dice games, and get in with these people, and then he would turn on them and rob them.

And he was trying to set me up, and a couple of other fellas, and I turned around and I went to certain people and I told them about it and they said the next time he comes in just hit him right in the head. If he comes in with another proposition.

Well, it just happens that one night he pulls his brand-new car in front of my place, sits me down and tells me he's got a good thing. Well, I was waiting for him to come. I says, 'All right, what's the good thing?' And he explained it to me. He says, 'We'll make a good buck on it.' Well, I turned around, I says excuse me a minute. And I went in back of my store, put a gun in my pocket and came out and just kept talking to him. And I says, 'Well, okay. We do it.'

And in the meantime there was a fella come in I knew, drunk like a pig. Well, I had an idea to get in the guy's car with the drunken fella. I told the guy, I says, 'Look, let's get this drunken fella out of here. We'll take him home. We'll talk in the car.' He says all right.

Well, when we get outside, the drunken fella gets in the center. And I get by the door. So I'm directing him where to go. 'Go up this block, turn right, turn left.' Well, when we get to a certain spot, the car is going slow, and I says, 'Take it easy here.'

So I take out the gun, and I told him in Italian, I says, 'I'm sorry this is gonna happen. It was gonna be either you or me.'

Well, he started hollerin' and sayin', 'Please, what are you doin' to me?' I says, 'Well, I'm gonna shoot you right in the head.'

So the car was going slow. He couldn't even step on the motor almost, his legs were shakin'. Instead he turns the wheel on the sidewalk a little. And I shot him twice, right in the face.

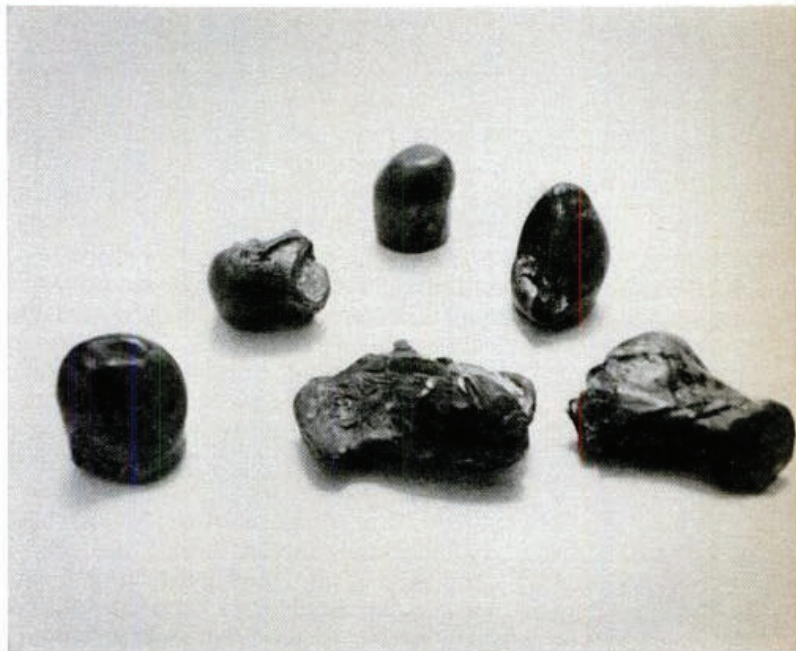
And the drunken fella is what saved the guy's life. When I fired the two shots, this drunken fella opened the door and run like a rabbit. He's hollerin', 'Don't shoot at me! Don't shoot at me!' So that threw me off. And I had to go back and shoot the guy two more times.

And then I took a handkerchief out of my pocket, took all the fingerprints I could off, closed the door and went back to my business.

Well, it wasn't long. The next day I was arrested. The man was dying. He identified me in the hospital, told them everything what I did. And here's another fella that's supposed to be a tough guy, a big racketeer, a man that was known as a killer in the mob. He couldn't meet his maker either.

So I did seven years more. It was another one of them cases where everything is 'fixed up.' And it was all a lot of hooley.//

//You know how other people, they lie in bed and tell each other how much they love each other? Well, Ernie used to lie there and tell me all these murder stories. This guy he shot.



Of the bullets taken from The Hawk's body, one (front center) had been in him since he was 16.

And it was his friend, he told me. And he said the guy was good-looking. He said, 'Honey,' he said, 'he was the best-looking guy. He was really a good-looking guy.' And he says, 'He was my best friend.'

So they call Ernie down—Vito, I guess—and they say he's gotta hit this big shot.

'But he's my best friend.'

'Hey, it's you or him. Get rid of him.'

So now they're out, and they're wining. And he tells me, 'We're out having a good time, big dinner, drinking and everything else, and who comes along but this guy Kip.' He couldn't get rid of this fellow Kip. And Kip is drunk out of his mind. So Ernie tells me, 'I can't get rid of Kip, and I don't know what I'm gonna do.' He says, 'I can't go home. I gotta kill this guy.'

I said, 'How could you do such a thing?' So he said, well, what happened, they're in a car, they're all drunk out of their minds,

CONTINUED

right? Kip is in the front seat, but he had passed out, he was so drunk. And Ernie tells me, he says, 'We drive up this block, and I take out the piece and I empty the gun at the guy.' He says Kip wakes up—he sobered up in a minute—and says to Ernie, 'Ernie, what did you do?'

'Shut up!' Ernie says. 'Don't say a word.' And they take the guy and they threw the guy out of the car. And Kip is petrified, so Ernie drove him home, and he went in, and Ernie went home.

He tells me the guy didn't die. I say, 'Didn't die! With all those bullets in him?'

'Yeah,' he says. 'He crawled all the way to 60th Street, to the bar,' he says. 'And he lasted till 7 in the morning. And I don't know if it was the milkman, or the guy came to open the bar, but he sees him laying right in the door. The guy crawled all the way there.'

Now they pick up Ernie, and the guy says Ernie did it. They take Ernie to the hospital. Ernie tells me, 'I run to the bed, I get down on my knees,' and he tells the guy, 'Who did this to you? I'll get him if it's the last thing I do.' And the guy says, 'You did it!'

Ernie told me, 'I almost came down with a heart attack.' Ernie says to the guy, 'What's the matter with you? I'm your friend. I wouldn't do such a thing.'

And Ernie's telling me the whole scene. How he raced into the hospital room, he's kneeling next to the bed, and he's telling the guy, 'Who did this to you?' And he's the one who did it, right?//

//And then there was the other one my brother muffed. Where he shot the guy, that there big shot, what's his name? That's when my brother blew his top against the whole organization, because the big shot opened up on him. So they picked my brother up at home and went to the hospital and the big shot fingered him from his bed, and the kid says to him, 'I'm your friend. I didn't hurt you.' And they locked the kid up.

So then what happened, the big shot's own brother went to see him, and he says, 'Look, what are you going to do? You gonna rat?' And the big shot says, 'What, are you crazy? No, I'm gonna change my story.'

So all the big shots sit down. They went to my mother's house, and they told my mother, 'Look, don't worry. He will be saved. He'll walk out of the courtroom. The guy's taking the stand and he's just gonna say he had it in for the kid, that's why he said he did it.'

So now my brother's wife, my mother, my father, they went up to the court. So this guy takes the stand. Now, the night before they had all met at my mother's house, all the big shots, Genovese's men, and all of them says, 'Don't worry about it. The kid'll walk out.'

So, now this is a big boss, and he takes the stand, and the first thing he says, 'That's the hired killer.'

So that's why my brother blew his top on the organization.//

THE HAWK POINTS CLAW AT GENOVESE

The Hawk, a one-eyed perpetually sneering trigger man, leaned from the witness box in Kings County Court today, pointed his finger at Vito Genovese, Manhattan racketeer, and identified him as one of the men who hired him to help murder (The Shadow) Boccia in September, 1934.

THE PEOPLE vs.

CONTINUED

Genovese shifted slightly in his chair and stared at the Hawk. Perspiration glistened on the faces of both men and the Hawk, who wears a patch of adhesive tape over his right eye socket, yanked at the knot in his tie and unbuttoned the collar of his shirt.

"What was your occupation at that time?" Judge Samuel S. Leibowitz asked the Hawk.

"I was a gambler," he replied.

"And a killer?" queried the judge.

"Oh, sure," the Hawk declared.

The Hawk, questioned by Julius A. Helfand, Assistant District Attorney, revealed that he met Genovese in a Brooklyn restaurant in March, 1934.

There he was introduced to Genovese by Michael Mirandi, who described Genovese as the "*don vin done*," which in the Italian underworld lingo means "the big man—the great man."

—World-Telegram, June 7, 1946

... In addition to the bullet tracks, there are multiple stab wounds, seven on the left anterior surface of the chest and four on the right. ...

//That Friday, the last time I ever saw him, he was in the kitchen, leaning up against the refrigerator, and he tells me, 'Honey, they're gonna kill your daddy.'

He wasn't living home then, but he was coming home every day. You know, all that same garbage, back and forth. And I says, 'Oh, another crazy story to get back in the house.' I says, 'Don't worry,' I says, 'if they kill you, I'll make sure that whoever did it goes to jail.' He says, 'Yeah. Don't say that,' and on and on.

Now, the next day, Saturday, he's supposed to bring me money. So he calls up Saturday morning, and he's in a bar on Fort Hamilton Parkway somewhere and he tells me about a fire. He says, 'I almost died last night in a fire. Two guys came to the door and I wouldn't let them in and they were screaming and I was cursing.' He says, 'Your daddy was out in the street in his underwear.' He was telling me all what was going on.

I says, 'Ernie, why do you think up these fantastic tales? Anything to get back in the house.' Then he says, 'I'm meeting the guys. I'm gonna have the money for you.' And I says, 'All right.'

Now it's Sunday and he's calling, and the last time he calls is Sunday night because I'm moving and they shut the phone off Sunday night. He calls Sunday night and, 'I'll be there, I'll be there with the money,' and on and on. Now I don't hear from him Monday, right? Because I have no phone, and he obviously didn't get the money because he didn't come. Tuesday I don't hear from him. Wednesday morning I move. Now I figured, 'Oh, this dope is gonna show up.' By Thursday when he doesn't show up, I call my sister. 'Did you hear from Ernie?' She says, 'No.' I says, 'Gee, that's funny. I was so sure he was coming with the money.' So Thursday

passes by. Now Friday comes and I says, 'Something happened.' This has never happened in six and a half years, because this man never stayed away a week no matter what happened.

All right. Now it's Friday, I don't see him. What's going on? I haven't heard from him since Sunday. By this time he would have had my sister on the cross—'Where is she, what's going on?' So now I start calling. And calling. And calling. Calling Roy Roy's mother. 'He went away, he went away for a few days,' she says.

'He went away for a few days? What do you mean he went away for a few days? Where did he go?' Roy Roy's mother says, 'I don't know. He's coming home, he's coming home, he's coming home.'

I called everybody. Everybody Ernie ever knew, I have on the phone. Nobody saw him. Now I call Frances back, Roy Roy's mother. I says, 'Look, I'm telling you now,' I says, 'you better get Roy Roy to the phone. I'm telling you Ernie is dead.!!'

... Of the seven stab wounds on the left anterior surface of the chest, four penetrate backward at various points, cutting through the costal cartilages and also through the interspaces. ...

SINGING 'HAWK' NEAR LIBERTY

Ernest (The Hawk) Rupolo, killer-for-hire of the gangster decade '30s, was on his way to liberty from Dannemora Prison yesterday in proceedings before Judge Samuel Leibowitz. This was in accordance with a 1946 promise made by the Brooklyn District Attorney's office in return for his evidence against his alleged underworld paymaster, Vito Genovese, of Murder, Inc. fame.

All concerned in the release, including "The Hawk" himself, agreed he is now marked for murder himself and cannot expect to survive long. He had been serving a nine-to-20-year sentence.

With the promised aid of Brooklyn authorities and the expected collaboration of State Parole Board members, Rupolo will make a desperate effort to disappear completely.

—New York Daily Mirror, Sept. 24, 1949

//So my brother blew his top on the organization. He exposed the big bosses. 'I was hired killer for Genovese. I was hired killer for Mike Miranda. I was hired killer for this here.' So he's supposed to get killed by this mob, because there is no forgiving. According to the code of the greaseballs he was supposed to be killed.

But the kid made some of the bosses. Because they used him a lot when he was young, and they always depended on him to do the jobs that he was told to do. So they sat down on this—should he walk the streets or not? And they forgave him. They said, 'Well, this kid did 12 years, solid years, for us.' So for that he got a reprieve. In fact, Mike Miranda says to him, 'Take care of yourself, kid. Don't worry about nothin'. If you need anything come to me.'

That's why he ran wild the way he did. He didn't join the combination. He had to be a free-lancer. A guy like him, what he did, if he wasn't so well liked by them—and if it wasn't for the work he done for them so

some became top bosses today—he wouldn't of lived two minutes.

They never tried to hit the kid. They were scared because, believe me, if someone went after him and he had an idea where it come from, he'd go right up to their doorstep, right to the boss. He didn't care who it was, he'd go right to the boss and wait on his doorstep to kill him. He wouldn't give them a second chance. That's the way the kid was. Let's face it. He didn't care for nothin'!!

//I don't think Genovese had a thing in the world to do with killing my husband. You see, Ernie knew Sonny [John "Sonny" **Frantzese**, a Long Island mobster] from when they were kids. And he hated him. Because he said, 'While I was doing 16 years that bastard was out making money.' Sonny never did a day, so Ernie figured Sonny was reaping the harvest while he was away doing time. They hated each other. They really, really did.

Now I think Ernie was stepping on Sonny's feet. Ernie couldn't make money in Brooklyn any more and he needed money and he figured he'd go out to Queens and start in in Queens in whatever Sonny was doing—book-making, muscling in on bars, whatever. And Sonny didn't want that.

What I think happened, I think Ernie was drinking all day, right? And now he's pretty—he's not with it any more. He's like in a fog. They go to Willie's house, Ernie and Willie and Roy Roy. My personal feeling is that Roy Roy had an appointment to meet somebody and that he stalled at Willie's house. And then Roy Roy told Ernie he'd drop him off somewhere, or something like that. And then he was killed on the way. Roy Roy met some people and they told Ernie they would drive him, and they killed him in the car.!!

. . . On the left lateral surface of the chest there are seven more stab wounds. These are up to six inches in depth. . . .

//When they finally did hit my brother, Roy Roy had to be the one to set him up. He



drove for him. He was the only one he'd of gone with. That's what they do. They take your best friend and he has to do what they say, even if he is your best friend. And they make him walk you into something, take you out, wine you and dine you and then walk you into it. Roy Roy had to be the one.

But the stab wounds. I don't know. That's what I'm sick over. I seen this here before. Like Joe Jelly. They say, 'Oh, they threw him in the river. They ripped his stomach and threw him in the river so he won't come up.'

That's the only way I can see it. Like that's why they slit a guy's belly. They figure the water won't bring him up. This is just one chance in a million that my brother did come up. Because people who've been hit in the last 10 or 12 years, their bodies were never found. Nobody knew, just rumors, talking, 'He must be in the river somewhere.' Because if a body is either buried or in the river, they figure it won't come up and you won't see it no more.!!

//'I'm telling you Ernie is dead!' I says to Frances.

'What makes you say that?' she yells.

'I know he's dead. I know he's dead, because if he wasn't dead he would have been breaking my door down by now.'

'Don't say that!' she yells at me. 'I'm lighting candles for you. He'll be all right,' and this and that.

I says, 'All right.' So she gives me a time to call to get Roy Roy on the phone. And sure enough, I call and I get Roy Roy on the phone. So I says, 'Roy Roy, where's Ernie?' He says, 'He's on the lam in New Jersey.' I says, 'Don't give me that garbage. You're talking to me!' I says, 'You know if he was on the lam in New Jersey, he's not going to New Jersey without me, if he had to take me there in chains.' I says, 'Just tell me where he is.'

'What are you worried about?' he says. 'You're always throwing him out anyway.' And I says, 'That's none of your damned business. I live my life. I want to do what I want to do. But don't tell me this guy isn't going to call me for a week,' I says, 'because you know better than that.'

So he says, 'I don't know where he is.' I says, 'Roy Roy, you're the last one that saw him alive.'

'DON'T SAY THAT!' He got hysterical when I said that. So I says, 'I am saying it. And where is he?' He says, 'I don't know, I don't know where he is.' I says, 'I'm going to call you up tomorrow morning and if you don't come up with Ernie by then I'm coming to Brooklyn. And that's it. That's gonna be it.'

So I called back the next day, and Roy Roy's not around. And I went right to Willie's store, you know, the luncheonette. 'Where's Ernie?'

Nobody saw him. So I says, 'Willie, don't give me any of that garbage.' I says, 'Where is he?' He says, 'I don't know. He moved out of his room. Roy Roy moved him out.' And I says, 'I don't want to hear that garbage! Who saw him and where did he go?'

'All I know is he left the house that night.'

Willie Rupoli examines the clothes that were on his brother's body when it floated up in Jamaica Bay.

My wife told him don't leave, it's raining. He says, no, he had to go, he had to go.'

I says, 'All right.' So then I see Ernie's jacket hanging in the store. 'What's his jacket doing here?' So he says, 'Oh,' he says, 'it was hot. He left his jacket here.' I says, 'Was he drunk?' He says, 'No.'

Now Ernie had reached the point where he couldn't drink any more. He'd have four drinks and he was stoned. I said, 'Did he have his teeth in his mouth?' He says, 'No.' I says, 'He was drunk. Where did he go?' He says, 'I don't know. They dropped me off. Roy Roy said he was going to take him to the train.' He says, 'That's all I know.' I says, 'Okay. That's all you know?'

'Right.'

'Willie, you don't know anything else?'

'No.'

So I says I'm going right to the police station. Now by this time I'm crying. I says, 'He's dead. I'm telling you he's dead.'

All right. I walked into the 66th. I'm crying like a maniac by now, and I said, 'Ernie's dead.'

And the cops laughed at me. They said, 'You're just looking for him because you want some money, right, Eleanor?' I says, 'No, I'm telling you now, he's dead.' Because I had called them a million times before. 'Get that bum out of my house!' So now they figure I'm just looking for him. I says, 'No, I'm serious.' So they said they had to report it to Missing Persons. So I says, 'But look for him. Look for him all over. Because I know he's dead. If he's not dead, they've got him tied up somewhere. I didn't hear from him for a week.'

So they said all right. And I said, 'I'll call you later.'

From there, now, I go to his apartment on Berkeley Place. Now Willie told me he had moved out of Berkeley Place, that he's not there. But I look through the window and I see his jewelry box on the dresser.

Now I'm wild. I says, 'Oh, my God,' and I'm banging on doors and I'm kicking. I go up and I start ringing all the doorbells in the building. Who saw him? One guy was telling me about the fire, and I says, 'Well, it was true about the fire.'

But nobody saw him after that day. 'We didn't see him. We didn't see him. We didn't see him.'

And I'm calling. I call everybody and anybody. Nobody saw Ernie. I'm calling two or three times a day to the 66th, to Missing Persons. I don't hear anything, and I'm bothering everybody.

Until the day that detective rang the doorbell. I opened the door, and his first words to me, he says, 'You're right.'

I said, 'Where is he?' I figured they found him in some empty lot somewhere.

He says, 'We have him in the 100th Precinct.' I says, 'I don't know where that is.' He says, 'Rockaway. Come with me.'

And that was it.!!

. . . On the anterior abdominal wall there are six large incised stab wounds, all above the navel and from four to six inches in length.

Cause of death: Bullet wounds of head, brain, neck and spine. Multiple stab wounds of the chest, lungs, heart and abdomen.

Homicidal.



He speaks for murdered men, represents the dead against the living. He is The People, a mild man, quiet, honest, innocent as the law, and as brutal. "My name is James Mosley," he says to a killer. "I am an assistant district attorney. What is your name?" He has asked the question a hundred times, and always it comes the same—gentle, innocuous, invisibly burdened with the ancient battle between "Thou shalt not kill" and "No man shall be compelled to be a witness against himself." In the interrogation this question begins, the

solemn weight of constitutional protection for the accused contends against the right of society to be sheltered from crime. All agree the contest is uneven, though with whom the advantage rests is everywhere in bitter, broad dispute.

James Mosley, at 39, is one of a score of assistant district attorneys who prosecute New York's killers. Born in the Bronx to a vaudeville booking agent, he was graduated from a high school so demanding that it only considers applicants who are in the top 10% of their class. In high school and college he concentrated on math and Latin, liked the logic of the law and decided to study for the bar. He is married to a pretty redhead bright enough to belong to Mensa, the super-I.Q. club. He earns \$16,000 a year and lives in a simple house in a less-than-elegant neighborhood.

His special preserve today is Queens County, a 119-square-mile tract of modest homes and businesses sandwiched between Brooklyn and Long Island. This year more than 60 of its residents will be disposed of by bullets, bombs, bludgeons, bare hands, knives, poison and various other means. Mosley's job is to see to it that the killers are prosecuted,



Chapter 2

THE TRIAL

James Mosley gestures with his finger while making a point to one of the trial witnesses in his office.

locked up and left locked up. In his 11 years as a homicide specialist—first in Manhattan, then in Queens—he has prosecuted some 50 killers, about 30 of whom saw the light along the way and pleaded guilty to something less than the original charge. Of 20 who went the distance, 15 were convicted.

Mosley lacks the brash, blustering force of his fictional counterparts in films and television. He is square in precisely the serious, no-nonsense sort of way you would want your doctor to be square, or a teacher or a judge. His most apparent characteristic—the one which most highly recommends him for his job—is integrity. His only loyalty is to the law, and he has an uncommon quantity of conscience.

His reverence for the law is fortunate, for the law lends him enormous power. Before a man is tried in the formal hoopla of open court, he has already in a sense been tested and convicted in at least three hidden trials, each with the full power to free him:

When he is first suspected, the criminal is carefully scrutinized by detectives. They hold their own “court,” considering the facts of the case and the likelihood of his guilt. Found innocent by them, he is released.

Found guilty, he proceeds to an assistant district attorney, who must then hold court with the detectives and perhaps with the suspect and his attorney, and with his own experience and knowledge of the law.

If he finds the suspect guilty, the case proceeds to a grand jury where 23 lay citizens hear testimony, consider evidence and themselves vote to indict or not to indict. If the accused is indicted and pleads not guilty, he then goes finally to the court we all know from movies, mystery stories and television: the visible, judge-on-the-bench, jury-in-the-box court.

This filtering process has advantages. All suspects cascade into the large end of the judicial funnel and only the most apparently guilty trickle from the spout. But the sheer luck involved distresses Mosley.

“I’m disturbed,” he says, “by the haphazard nature of criminal justice. One guy sticks up a store, and the detective on the case is sharp and a good talker and he gets the storekeeper to go to court and tell the story convincingly, and it comes out 15 to 30 years. Another detective happens to be a boob and the complainant either says forget it, or he botches up his testimony and the guy walks. Or maybe one A.D.A. is alert and cares about his job and pushes the case, and another one just lets it go down the drain. There ought to be a way where it always comes out the same.”

Thirty-nine months after the body washed up on the beach, the case of the murder of Ernie The Hawk will finally come to trial. In every other murder case Mosley has tried the problem has always been the same: to convince 12 jurors of what he himself is already

certain, that the defendant on trial is guilty. But in this case the issue is far more fundamental. The defendants are all Mafia men, with the wealth and power of the Mafia behind them. With money, treachery and deception they will try to cajole and muscle their way past the law. If they succeed, their very subversion of the law will be to Mosley a greater crime than murder.

Mosley’s chief target in the trial will be the No. 1 defendant, Sonny Franzese, 48, a bull-necked, stocky, curly-haired man with an engaging smile and a mind the U.S. Army described (in tossing him out) as “psychoneurotic with pronounced homicidal tendencies.” Born in Naples, he was brought to New York by his parents, grew up in Brooklyn and fought and murdered his way into the Mafia’s front rank. He married a slim, miniskirted blonde and bought a colonial-style home on a suburban street named Shrub Hollow Road. He is as dedicated to violence and treachery as Mosley is to law. He has never been in prison.

Sonny Franzese would no doubt have continued his steady climb through the Mafia hierarchy had not four of his underlings been arrested for bank robbery 14 months after The Hawk’s murder. One of them, John Cordero, a skinny young hoodlum and heroin addict who had married The Hawk’s widow Eleanor a year after the murder, decided to save himself years in prison by testifying for the government against Franzese. Before long, the other three came over too: Charles Zaher, also an addict, and “wheel man” (driver of the getaway car) in two bank robberies; Jimmy Smith, a “vault man,” who leaps bank counters and scoops up the bills; Richard Parks, a gunman wily as he is vicious. First, in

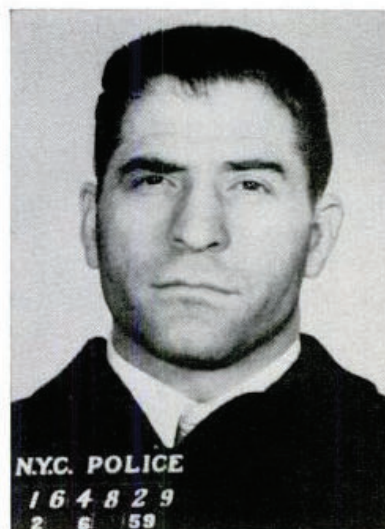
a federal trial, all four told how Franzese had planned the bank robberies, and for that crime Sonny drew a 50-year sentence. Then, for good measure, they agreed to tell how he and his lieutenants had murdered The Hawk.

Once it became known in the underworld that Cordero, Parks, Zaher and Smith were going to testify against Sonny Franzese, their safety became a problem. Witnesses in Mafia cases had been murdered before, even while locked in jail. Franzese got his message through: “You don’t have to be on the street to be hit.”

For more than a year before the bank robbery trial these four witnesses had been shunted about from one prison to another, always amidst great secrecy, always locked in high-security solitary-confinement areas, away from other prisoners who might murder them on contract from the Mafia or simply to win a reputation for having “done Sonny a favor.” To prevent poisoning, their meals were specially prepared and delivered. If food was brought by a stranger they threw it into the toilet and went hungry.

Despite precautions they never lost their
CONTINUED

A 1959 mug shot shows Franzese as a low-echelon thug, but today he struts on his suburban lawn.



NOTE: QUOTATIONS FROM TRIAL TESTIMONY, AS FROM AUTOPSY REPORT IN CHAPTER ONE, WERE EXCERPTED WITHOUT INDICATIONS OF OMISSIONS.

fear, and they soon decided that testifying against Franzese was too high a price to pay for the years it might cut off their sentences. Zaher tried to avoid the witness chair by getting Cordero to slash his arm for him (it didn't work—he was sewed up and back in his cell within hours). Parks resorted to a more subtle and less painful device. He knew that every word he wrote to any prosecutor's office must, by law, be handed over during the trial to defense attorneys. So he wrote letters containing lies and conflicting statements that would discredit himself, hoping the prosecutor might feel he would do his case more harm than good and not call him to the stand. Parks's letters—as well as some from Cordero and Smith—eventually wound up with Mosley, who knew that someday he would have to cut his own throat and hand them over to the defense.

During Franzese's trial for bank robbery these four witnesses begged to be taken to court in a helicopter or armored car. Guards who drove them to the trial each day said they cringed on the floor of the back seat. By the time that trial ended they had been in virtual solitary confinement for a year and a half, and the "hard time" had begun to show. "Through this whole thing," Parks said with more truth than he knew, "I think I've lost about half my mind."

The witnesses had no doubts about the Mafia's determination to kill them. One day Smith was brought in from jail to talk to Mosley, and he explained what methods he thought Sonny's men could use to find him. "Say the trial's over," he said. "I do a little time and then I'm out, right? I'm not going to stay around here. So I go away. They can still find me. They can hire legitimate private investigators to look for me. Or they can tell a probation officer, 'Look, it's nothing, all we want is his address for something.' So he takes a couple of grand and if he reads in the paper I'm dead, he can think, well, all I did was give his address. Or through my mother. They could send a guy to her house dressed like a priest and he says someone has left him some money for me and he's trying to find me, and she might figure it's legitimate and tell him. There's all kinds of ways. If they want to find you and want it bad enough, they're gonna find you."

Some weeks before the murder trial is to start, Mosley and a detective named Joe Price go to talk to the witnesses at the Nassau County jail. Price, bright and painstaking, entered the case the day after The Hawk's body was discovered, and for many months laboriously traced every possible lead. His break came in October, 1965 when Cordero first decided to tell what he knew about Sonny Franzese. In all, he has been on the case full time for almost three years. He knows the witnesses well.

Mosley and Price walk into a cell, and Cordero and Smith, in blue uniforms, get up from bunks and step forward to shake hands. Mosley asks them what they think about trying to get Franzese, who is out on bail, remanded when the trial starts. Cordero says he would rather have him on the street. "Like that way he won't want to do nothing. You know what I mean? Like if he's out, he'll figure if he does something the judge will lock him up. But if he's in, he might get mad and figure what the hell, he's already in, he's got nothing

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to lose, and have someone do something."

"Well, let's see what the others think," Mosley says, and knocks on the door. A guard opens it and leads Price and Mosley to another cell holding Zaher and Parks.

Parks is the one Mosley has really come to see. He is the strongest, the leader. He is sharp and clever and he has had nothing to do day and night for months on end but think up schemes against his two great enemies: the government and Sonny Franzese.

Mosley has a complicated problem, and how he solves it will depend on the reaction of Richie Parks. The witnesses have already testified at three federal trials. Before testifying, all four had pleaded guilty to their part in a number of bank robberies, with the understanding that after cooperating with the government they would be sentenced to terms considerably lighter than they might otherwise have received. If Mosley can delay their sentencing until after they have given testimony at his trial, he will have a club to hold over their heads: if they sabotage his trial, he can go to their sentencing judge, point out the doublecross and ask that they be given stiffer sentences. But he also knows that if he has this club hanging over them, the defense lawyers will use it to argue that the four are lying to insure light sentences.

There is no question that a club is needed. Men like Parks, Cordero, Smith and Zaher do nothing for nothing. If they see that they will not gain by helping Mosley, they will not help. To be sure, they already have testified about the murder under oath to a grand jury and told part of their stories at the robbery trials: to recant that testimony now could bring perjury charges against them. But there are ways they can sabotage Mosley's case without risking perjury, and they know them well.

For example, the law requires that a jury hear an entire case without knowing that the defendants have ever been charged with other crimes. One hint from a witness, one slip that a defendant has committed a crime other than the one before the court, one suggestion that he has a reputation as a criminal, and the judge will declare a mistrial. That would mean starting the trial all over, with delays that could be fatal to the prosecution. So Mosley needs to be sure Parks and the others will behave.

The witnesses were difficult from the start, making clearly unacceptable demands on the authorities. Parks had been the worst. He alone could actually say he saw one of Sonny's men stab The Hawk, and he knows the value of that. He is willing to get on the stand and give an eyewitness, blow-by-blow account of the stabbing, but he wants something in return. At first he said he wanted \$5,000 for his testimony. Convinced of the absurdity of that request, he quickly came up with others. Police eventually uncovered evidence of his part in a motel robbery, and with that held over him he agreed to cooperate.

But now Parks has been talking to the government for 19 months, and he has had about

enough. He wants to collect the reward for his cooperation, and he is convinced that that reward should be not merely a light sentence but a suspended sentence, an SS. He wants to do no more time at all.

Mosley starts to feel Parks out. "What would happen," he asks, "if you were sentenced and got a little time, say a couple of years? What would happen?"

Parks sneers. "I've done 19 months of real hard time, Mr. Mosley. I've testified in three trials. I've done my part. What's anyone done for me? Sonny's on bail, he's on the street, and I'm here. I don't want no time. I want an SS. And I don't want to be here. I want to be in a hotel."

"What if your sentence were adjourned for awhile?"

"No good. Mr. Mosley, I've done everything I was supposed to do, and I want to be sentenced now." The words are respectful, but the tone is contemptuous. He leans against a wall of the cell and watches Mosley. Then he says, "You know, I have to sell myself to the jury."

Mosley knows what that means. Parks could tell the truth in court but speak his words flatly, as if memorized, with a tone and manner no one would believe.

"And I don't have to perjure myself," Parks says. "All I have to say is, 'Sonny, the bank robber,' and it's a mistrial. I can talk to Edelbaum [Sonny's lawyer], and there are ways without perjury where I can cut Sonny loose. And I'll do it." Mosley knows he could. And he knows what Sonny would pay for it.

"I want to be sentenced now," Parks goes on. "And I'd better get an SS. I'm not like them." He nods contemptuously toward the cells that hold Smith and Cordero. "You've got a couple of fall guys there. They'll testify for you. They're not even looking for an SS." This is true, but they did not see The Hawk killed. Only Parks can testify to that.

Mosley stands up and walks to the door. "In other words," he says slowly, "if you don't get an SS right now you're not going to testify. You're going to tell me to go to hell."

"That's right," Parks says.

Mosley's face tightens. He knocks on the door for the guard. "Richie," he says, "you're making me very angry."

On the way back in the car, Mosley tells Price he is going to try to get the sentencing of the witnesses adjourned. Later he talks to the federal prosecutor who handled the last trial, and discovers that the witnesses were promised they would be sentenced immediately. There is no going back on it. But there is an ace in the hole. If the judge wants to, he can give the four witnesses an "A" type of federal sentence, which allows for resentencing at a later date. He can give them a few years, with the tacit understanding that if they continue to cooperate they will later be resentenced to a lighter term, possibly even an SS. That way, if they sabotage Mosley, they also sabotage any chance of getting another, lighter term.

In court Mosley and Price hear the witnesses' attorneys argue for leniency. Then the federal prosecutor gets up and delivers the most impassioned plea of all. He urges the judge to give the witnesses light or suspended sentences, pointing out that they have already virtually condemned themselves to death by testifying against their Mafia bosses. No prison in the country, he

says, can hold them in complete security.

The judge listens. When the pleas are over he gives Parks, Smith and Cordero an "A" sentence of five years. Zaher, because he had only driven the getaway car and has a cleaner record, gets an SS and five years' probation (but ends up in jail anyway as a material witness in the murder trial).

To block the certain defense contention that Parks, Cordero, Smith and Zaher made up their stories to win light sentences for themselves, Mosley badly needs a fifth witness. "The big problem is credibility," he says. "How do I keep the jury from thinking that these four guys cooked this whole story up in jail to buy time? If I had one legitimate citizen who could corroborate their story—but how many legitimate people would know anything about a murder like this?"

A legitimate citizen he does not have, but there is a thin, nervous gunman named John Rapacki. A few weeks after the murder, one of the defendants, Red Crabbe, had told Rapacki that he had helped to kill The Hawk. He had pointed to a picture of The Hawk in a newspaper and said, "We had to take care of him for the boss."

Now, three years later, Rapacki is in prison serving nine to 10 years for assault and robbery. An intensely serious, suspicious man, he has studied law in prison and without assistance won reduction of his sentence on a technical point. He has come forward and agreed to repeat on the witness stand what Crabbe told him.



"There really isn't that much I can do to help Rapacki," Mosley says. "He's already doing time, and his cooperation can't get his sentence reduced. About all I can do is write a letter to his parole board and tell them he cooperated, and maybe they'll parole him a little earlier than they would have otherwise."

The actual words of Crabbe's admission to Rapacki are not important—they add little to the case—but the man who heard them is vital to Mosley's strategy. For John Rapacki does not know any of the other witnesses and could not possibly have contrived with any of them to invent a case against the defendants. Mosley intends to put Cordero, Parks, Zaher and Smith on the stand and let the defense scream that their entire stories are lies, concocted jointly to gain leniency. He will then—as his last witness—offer Rapacki, who will repeat Crabbe's admission and then go on to reveal that the other witnesses are total strangers to him.

In the months preceding the trial Mosley's witnesses have been full of demands for better treatment. They have never stopped making trouble for prison authorities. Zaher had brought on a crisis that topped all the others. He escaped from jail. With a companion he filed through a light lock on a prison door, lifted \$71 from the jail commissary and fled down a fire escape.

For five days police searched quietly for Zaher, hoping to avoid news stories that would alert the Mafia to his freedom. When it finally became necessary to issue an alarm, the papers quickly picked it up and headlined, "Police Racing Mafia for Escaped Informer."

Zaher hove back into view the following month when he and his escape companion were spotted hanging around a Queens bank. Two radio car patrolmen grabbed them. They found a gun in Zaher's waistband, a stocking mask in his pocket, and a car rented in his name idling up the block.

Before Zaher could be returned to one of the high-security cells at the Nassau County jail, he lived a brief life of terror in the Queens House of Detention. Some Mafia hoods were locked up with him, and one of them was Red Crabbe. Zaher is brought to Mosley's office two days before the trial and says there were rumors among the prisoners that Franzese had offered an open contract of \$50,000 to anyone who would murder him.

"I'm in there," Zaher says, trembling, "and I hear them yelling from the cells, 'If you can't make bail, hit Zaher and get fifty grand!' Even if it's not true, they don't know that. They'll kill me anyway."

The next day Zaher is again brought to the office and there meets—for the first time since his escape—the other three witnesses. When he comes through the door, Parks smiles and says, "Hi, Charlie. I hear I can get fifty big ones if I kill you."

Zaher smiles, a little proud to have that price on his head, but still very frightened. He tells the others that in the same jail a prisoner represented by Franzese's lawyer had told him that there was in fact a \$50,000

price on his head, but that he could collect \$250,000 himself if he would agree to sabotage the case.

"Did he say how long they'd give you to spend it?" Cordero asks.

"Crabbe found me in there," Zaher goes on, "and told me I'd get the \$250,000 and everything would be all right."

"So you just told him you'd think it over, right?" Parks says.

"Right," Zaher says. "And then he sees me going out with all my belongings and it's like he's thinking, 'Hey, where are you taking him? He's with us!'"

"What else did he tell you?" Parks asks.

"He told me, 'Do the right thing and we'll get you so-and-so for a lawyer. Remember, you've got a wife and two kids, and if you have to do time, Sonny'll take care of them.' He said, 'How long do you think you'll last on the street anyway? The others will all be dead within a year.' He said if I agreed to go along with them, they'd give me \$50,000 right away, before I testified, but like if I reneged on them they'd get my wife and kids. He said he didn't blame me, that I had to go along with the others, but now I should stop."

All four sit silent, thinking.

Cordero leans forward and suddenly shakes his head in anger. "I'll let Sonny know," he says, "that if he hurts my family, I'll get him. He has a family, too. He can bleed like everyone else."

"He says we're all dead," Zaher says, not trying to cover his fear. "He says they'll get each one of us."

"They may be surprised when it doesn't happen," Cordero says.

Zaher shakes his head doubtfully. "I can't go along with that. I'm pessimistic. They'll spend any amount of money. They'll hunt for us. They'll hunt, and they'll hunt, and they'll hunt."

There are a few moments' silence, and then Mosley looks at Price and stands up.

"Well," he says, "they've had it easy. Comes tomorrow, the honeymoon's over."

The trial begins, and the first two weeks are spent picking a jury. The judicial net is cast into a sea of prospective jurors and returns what Clarence Darrow once described as "12 men of average ignorance." None of the jurors has any more than the tiniest idea of what the case is about. They have heard Mosley read the indictment—four men charged with first-degree murder—and have heard a list of prosecution witnesses. They have learned from questions asked during the jury selection process that the witnesses are themselves criminals.

"You will hear," the defense lawyers have said, "testimony from men—hardened, evil, vicious men—who went into banks with loaded guns, robbed those banks, took what wasn't theirs, and when they were caught made a deal with the authorities for a light sentence if they testified. Will you take a good, hard look at that kind of testimony before you decide whether or not to believe it?" The question has been shouted more than a hundred times, less for the answer it might draw than for its conditioning effect on the jurors.

The jurors also have been reminded, loudly and often, that the defendants are presumed to be innocent. They are told that the defense is not required to prove their in-

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Whitey Florio (left) and Tommy Matteo lounge in the courtroom hallway during a trial recess.

nocence. The defendants need not speak. Their lawyers need not speak. The burden of proof is totally upon the prosecutor. The defendant is innocent, until and unless the prosecutor can prove him guilty beyond a reasonable doubt. A reasonable doubt means any doubt—any doubt at all—for which you can give a reason. Not a capricious doubt, a whimsical doubt—but one doubt with a reason, and the defendant remains innocent.

Since the law requires that the criminal background of the defendants be kept from jurors, the defense lawyers are free to castigate Mosley's witnesses as bank robbers, but Mosley will never be allowed to retaliate by pointing out that the man who masterminded the robberies is the principal defendant, the same Sonny Franzese.

Over and over as the jurors are selected the judge has warned them to avoid outside knowledge of the case: read nothing, listen to nothing, talk to no one, seek no knowledge, accept no knowledge. They will be men groping in the dark. The trial will be a process not of discovery and enlightenment but of deception and concealment. Of the 30 or so people directly involved in the trial, the 12 men with the greatest responsibility—the jurors—will end up knowing the least about the case.

The judge is Albert Bosch, a tall, heavy-set, red-faced man with eyeglasses, graying hair and a reputation for being defense-oriented. Many judges today bend over backwards to favor the defense, reasoning that if the trial ends in conviction, there will be little or no grounds for appeal. By doing so, however, they may greatly handicap the prosecution and reduce the chances of conviction. And often it may appear that the judge is working with an awareness of the embarrassment that can come with reversal in the appellate courts. Acquittals can never be reversed. If during the trial some error damages the defense, a multitude of legal remedies lie ready to reverse the wrong. But should some error in-

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jure the prosecution, it will stand without correction. Appeal is for the defendant. For the people there is no remedy.

For the defense, the Mafia has hired four of the top criminal lawyers in the East, at a fee well into six figures. They are augmented by two more attorneys paid by the state to defend Red Crabbe, who claimed he was too poor to afford counsel. The defense task force is led by 61-year-old Maurice Edelbaum, a short, fat man in rumpled suit and horn-rimmed glasses. In 38 years of trial work he has represented whole dynasties of top Mafia executives, and he played a major role in defending the Mafia hierarchy corralled in the 1957 Apalachin raid. In 1960 he himself took a guilty plea—to income tax evasion—and the New York State Supreme Court suspended him from practice six months for failing to "observe and advise his client to observe the statute law" and for neglecting "to strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

Mosley calls as his first witness a police photographer who took pictures of The Hawk's body. Then he puts on the stand a patrolman who fished the body from the water.

"Will you describe what was with the body?" Mosley asks the cop.

"The body—what was with it was a nylon cord, yellow nylon cord tied around his wrists. These chains and ropes were attached to the two concrete blocks."

Mosley is standing in front of the prosecution table. Now he stoops, reaches under the table, and pulls out a pair of concrete blocks. As he drags them from under the

table the scraping noise fills the courtroom. Jurors stand and crane their necks to look.

The patrolman comes off the witness stand and bends over the blocks. He nods his head. "Those are the blocks," he says.

Mr. Rupoli!" The clerk calls the words loudly enough to carry to the back of the courtroom. A short, jowly man in his 50s walks slowly to the front of the courtroom. All his life he has been a petty criminal on the outskirts of the mob, and he is now a bookie. The men on trial are the bosses, and they have murdered his brother. He wants everyone to know that he is not frightened, not of the defendants, and not of the court.

He walks through the gap in the waist-high wooden railing at the front of the court and approaches the witness chair. He settles himself into the chair with great deliberation, taking his time. He might be in a hurry, but he is not hurrying.

Mosley waits until the witness is settled, and after a few formal preliminaries, asks:

"Mr. Rupoli, are you the brother of the deceased in this case, Ernest Rupolo?"

"I am." The defendants stare at him, and he keeps his eyes fixed on Mosley.

"Now, on August the 4th, 1964, did you have occasion to see your brother?"

"I did."

"Tell us about that."

"Well, he was with his friend. Someone by the name of Roy Roy. He came to my house about 11:30, after I closed my place of business. He changed his clothes. I gave him a pair of my pants and a shirt. It was a warm night, and he left with his friend on his way, and that was the last I saw of my brother."

"Did your brother have any injuries that you know of?"

"Yes. He was shot in 1932."

"Where was he shot?"

"He was shot somewhere in New York and—"

Spectators chuckle. The judge smiles.



"What part of his body?" Mosley says.
"His head."
"And what about the bullet?"
"The bullet was still in his head."
"And what about his eyes?"
"His eye was out."
"Was that as a result of the shooting?"
"That's right."

Mosley reaches into a cardboard box by his table and raises from it a pair of torn, crumpled and faded pants. Keeping them at arm's length, and slightly averting his face to avoid the odor, he carries them to the witness chair.

"I show you a pair of pants, and ask you if you have seen those pants before."

The witness stiffens. "Yes. I saw them before." His voice is strong. He still has not looked at the defendants.

"Are they your pants?"

"Yes. They are my pants."

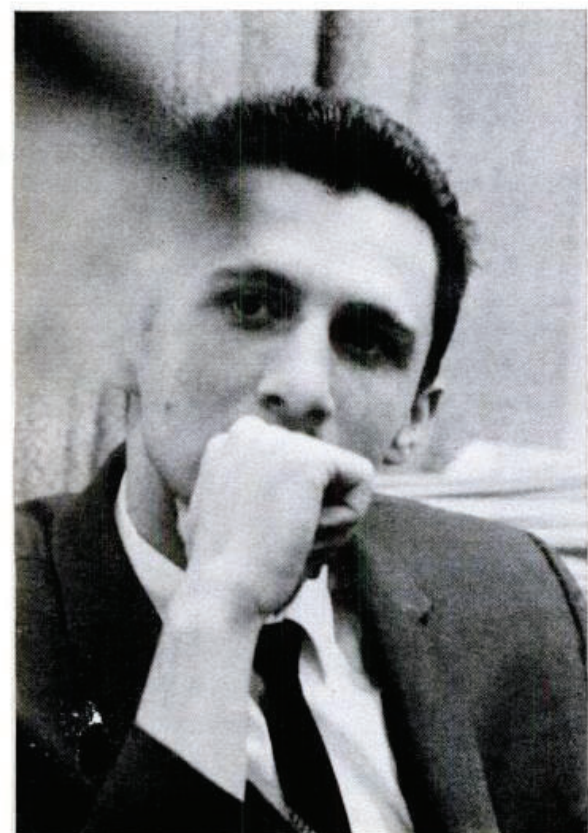
Mosley drops the pants back into the box. He nods toward the defense tables. "You may inquire," he says and sits down.

While defense lawyers cross-examine Willie Rupoli, Zaher waits with his bodyguards in a lounge above the courtroom. He paces anxiously. Then suddenly a loudspeaker blares: "Zaher! Down!" Zaher hastily stubs out a cigarette. Two guards rise and walk with him down the iron staircase leading to a side door into the courtroom. Zaher opens the door and finds himself all at once in court, directly in front of Sonny **Franzese**. He hesitates an instant, then strides quickly and defiantly past the defendants—**Franzese**, Tommy Matteo, Red Crabbe, Whitey Florio. He climbs into the witness chair and crosses his legs.

The defendants are to his right. He looks to the left, at the jury.

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Charlie Zaher (below) was one of five witnesses threatened with death if they testified. Minutes before taking the stand (right), he waits nervously with a police bodyguard on stairway to court.



"How old are you, Mr. Zaher?" Mosley begins.

"Twenty-five."

"And are you presently awaiting sentence after having pleaded guilty to the felony possession of a pistol?"

"Yes, sir."

The defense would make known all Zaher's crimes anyway, and Mosley hopes to soften the effect by doing it himself. He brings out Zaher's record, also that Zaher had pleaded guilty to bank robbery and received a suspended sentence. Then, with questions pushed through an avalanche of defense objections, he draws from Zaher a story that started on a Sunday in August, 1964.

Zaher tells the jurors that he had loaned his car to Richie Parks. Parks returned his car three days later, he says, and the day after that he had a visit from Tommy Matteo. He says Matteo told him that his car had been involved in "a hit," and that "if I was you, I would get rid of it."

"What did you understand him to mean by the word 'hit'?" Mosley asks.

"A murder."

"A what?" Mosley wants to make sure every juror got it.

"A murder."

"Now, do you recall a day sometime in July, 1965, when you were at the Kew Motor Inn?"

"Yes, sir."

"And whom did you see there, if anyone?"

"When I pulled into the parking lot, Mr. Cordero and Mrs. Cordero were in the parking lot, and I pulled up alongside of them and they were arguing . . ."

Mr. Cordero and Mrs. Cordero. The names mean nothing to the jurors. Zaher is about to tell of a shooting incident involving John Cordero, his wife Eleanor and one of the defendants, Whitey Florio. The shooting is critical to the case, but rules of evidence force Mosley to let Zaher tell the story in a way that at this point will make no sense to the jurors. Zaher's story will come in fragments and confusion, and defense lawyers will fight to avoid clarification.

". . . they were arguing, and just before I turned off the motor of the car, I heard Mrs. Cordero yell, 'Here comes—'"

"I object to what he heard," Edelbaum shouts. What he heard Eleanor say is hearsay and inadmissible.

"What happened after she yelled?" Mosley asks.

"Mr. Cordero took out his gun and started firing at Mr. Florio. I went out of my car, and I grabbed John. I tried to get the gun from him. But it was no good, and he went back into the Kew after Mr. Florio."

Zaher says he drove Cordero and his wife home and spent the night with them. The next night he and Cordero were ordered to a "sit-down," a Mafia "court," presided over by Franzese, who wanted to know what had caused the gunplay. The meeting, on the second floor of a Mafia motel, was attended by Red Crabbe, Whitey Florio and John Matera (a Franzese henchman since imprisoned in Florida and hence unavailable for trial).

"You spoke with Franzese?"

"Yes, sir."

"Will you give us that conversation?"

"Mr. Franzese said he ordered The Hawk's hit."

That is it. The answer comes quickly, tacked

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right on to the end of Mosley's question. It is the answer Zaher has been waiting almost two years to give—the answer he might be killed for, the answer that could save him 14 years in prison.

Through a heavy fire of defense objections, arguments, demands for mistrial, Zaher continues with his story.

"I told them what happened when I pulled into the Kew."

"Who spoke then?"

"Then Mr. Cordero says, 'What's this all about anyway? Isn't my word any good?' He says, 'Who cares about The Hawk? He was nothing but a rat. This whole thing is ridiculous.'"

Zaher's nervousness has caught up with him. He is very excited, talking very fast.

"Then what happened?" Mosley asks.

"Then Mr. Franzese jumped up. He says, 'This is ridiculous? Do you think I'd be wasting my time here if I thought it was ridiculous? I ordered The Hawk's hit and every man in this room had a hand in it. How do I know she didn't put him up to it? How do I know you won't be coming after me next? Did she ever ask any questions about it?'"

The jurors look bewildered. What are these people talking about? Who is this woman who might have put someone up to something? What caused the shooting in the first place?

Zaher continues. "Mr. Crabbe says, 'I say we kill her.' Mr. Matera says, 'Sonny, take it easy.' Then Mr. Cordero says, 'No, she never asked any questions about you or anybody else, not even Whitey. She never liked

Whitey, and behind a few drinks she got carried away.' Then Mr. Crabbe says, 'Well, I'm for killing her.' He says, 'We got to put protection on ourselves.' Mr. Cordero says, 'No, you're not.' Then Mr. Crabbe says, 'I have more to say about this than you and a lot more to worry about. I killed The Hawk and dropped him in the drink, so don't tell me what's best for me,' and then Mr. Florio, he says—"

The moment Zaher begins to quote Florio, Florio's attorney is on his feet with an objection. Having failed to block Zaher's testimony by any other means, the defense is now about to try a dodge that will bring great amusement to Zaher and the other witnesses. Zaher, who in his brief life has been accused of everything from drug addiction to rape and robbery, is now to be accused of being a cop. If the defense can prove that Zaher was a cop, then his testimony will be excluded by a rule requiring prosecutors to advise the defense in advance when a police agent is going to reveal admissions.

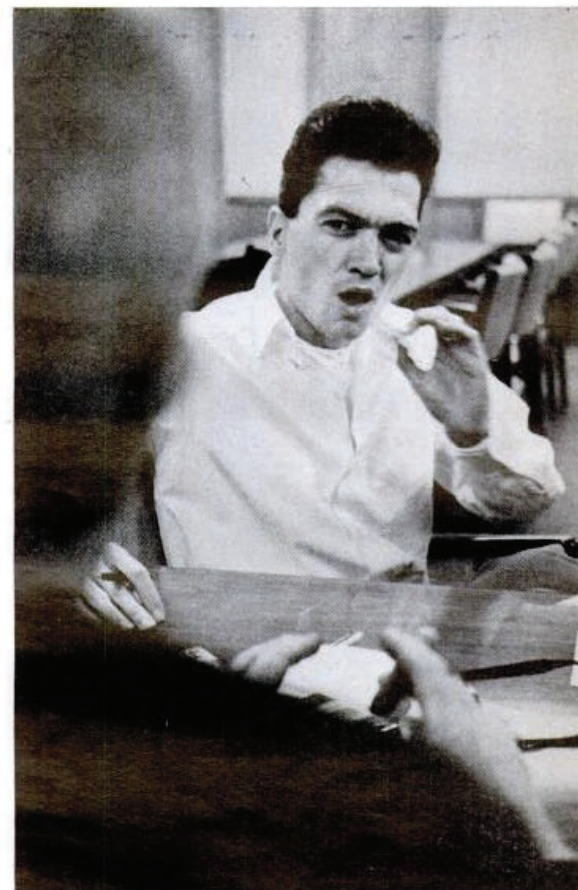
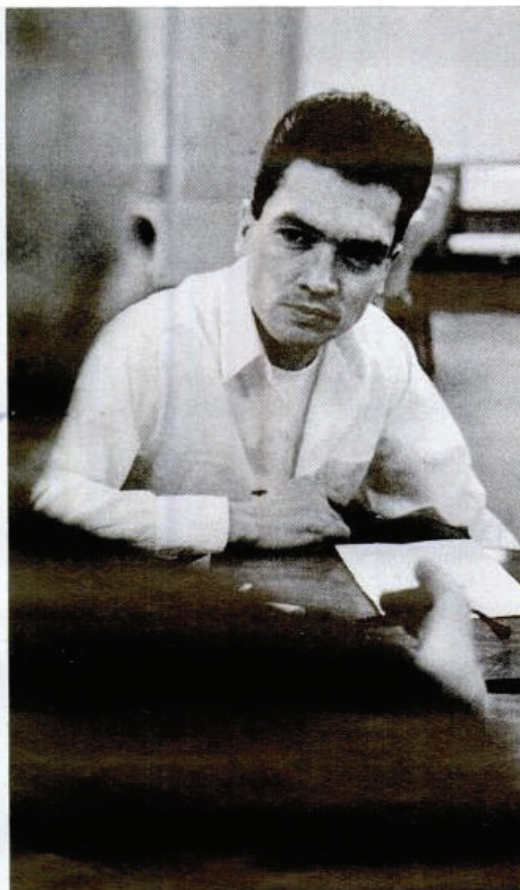
The jury is taken from the courtroom for 30 minutes while Zaher is questioned about his police affiliations. The judge then rules that in his opinion Zaher is not an officer of the law and orders the jury brought back in.

"Will you tell us what the defendant Florio said to you?" Mosley asks.

"Well, Mr. Florio walked over to Mr. Cordero and extended his arm for a handshake and told Mr. Cordero that 'I know how you feel about this, but I had to go to Sonny about it. It seemed very serious. You see, I set The Hawk up for the kill and I had to go to Sonny about it.'"

That is the end of it. Zaher has said all he had to say. Now it is time for the defense to go to work on him.

The law requires Mosley himself to furnish ammunition that the defense lawyers will fire back at his witnesses. When he has finished



with Zaher, he gives to the opposing attorneys copies of every scrap of paper—every police report, every letter, every note—that concerns Zaher. The defense lawyers are given time to pore through these documents in search of material damaging to the witness. Any slight variation in a witness's story over a period of years can be hauled out and made to sound like a total turnaround. And in this trial the defense lawyers will be allowed to read from the documents out of context—to read aloud every sentence damaging to the witnesses and skip over every sentence damaging to the defendants. The jurors cannot see the documents; they will hear only what is read to them.

Mosley is counting on a little luck, hoping the witnesses will find a few chances to land blows of their own. On cross-examination, the witnesses are allowed to answer responsibly to any question put to them by the defense. If the defense slips up and asks an imprudent question, the witness can fire back the answer without fear of causing a mistrial.

The witnesses are eager to slip in clues about their fear, the threats against them and the background of the defendants. And sometimes defense lawyers make mistakes, as Philip Vitello, Florio's attorney, is about to do now.

Vitello, in his cross-examination, touches on Zaher's role as a wheel man in two bank robberies—and comes within an inch of letting the cat out of the bag. He has managed to place Zaher behind the wheel of a stolen car used in one of the robberies, and now pretends a look of shock. "You mean that car was used in a bank robbery?"

"It certainly was," Zaher answers.

"What bank robbery?"

"I believe it was the Queens Central Savings."

"You helped rob that bank?"

"Yes, sir."

"Who helped you?"

The words "Sonny Franzese" are forming on Zaher's lips when Edelbaum leaps into the breach.

"I object to all questions like this, your honor," he shouts.

Vitello looks stunned, objected to by one of his confederates.

"Objection sustained," the judge says.

When the trial recesses for the night, someone mentions to Mosley Vitello and his reckless questions.

"He's an idiot," Zaher says.

Mosley laughs. "Don't knock him. He's my secret weapon."

Next morning in the courtroom, Mosley looks very lonely. Not only is he by himself at the prosecution table, with the defense arrayed in a broad phalanx stretching almost the width of the courtroom, but the spectators, too, are almost to a man on the side of the defense. Members of the defendants' families and hoods who work for Franzese whisper insults and ridicule and hoot laughter at Mosley's objections. And the judge, by his manner and rulings, makes it clear that he intends to give every benefit of every doubt to the defense.

Again and again, Mosley is overruled when he objects to the "I told him . . ." sort of hearsay the defense successfully objected to earlier. Finally, when a defense lawyer asks Zaher, "Didn't Cordero tell you that he told the police . . ." Mosley becomes angry.

"I object to this, your honor. This is the rankest hearsay!"

"No," says the judge.

Mosley looks incredulous. "Did somebody tell him that he told someone else?"

"Overruled," the judge says and then, smiling, adds, "You have an exception." An exception is granted to the defense—for the purposes of later appeal—when they feel they have been incorrectly ruled against. Since prosecutors can never appeal a verdict, they

are never granted exceptions. The judge is having a joke.

"And you know one of the conditions that your lawyer made was that if you cooperated, when your sentence came up in the federal court the district attorney's office would send a representative to talk to the judge on the day of sentence to appeal for leniency for you, is that right?" Edelbaum is cross-examining Zaher, screaming at him nose to nose.

"Yes, sir." Zaher appears unrattled.

"And on the day that you were sentenced Mr. Mosley was there, was he not?"

"Yes, sir."

"And Mr. Mackell, the district attorney himself, was there, ISN'T THAT RIGHT?" Edelbaum's voice is loud and piercing.

"Yes, sir."

"Well, you got a suspended sentence, didn't you?"

"Yes, sir."

"For two bank robberies! RIGHT?"

The sound of shock in Edelbaum's voice, the look of outrage on his face. There is no way Mosley can tell the jurors that the man Edelbaum so righteously defends bossed the very bank robberies Zaher has been talking about.

"Yes, sir."

"For two bank robberies, where your companions walked in with LOADED GUNS, into two banks! RIHHHHHIGHT?"

"Yes, sir."

When it is over, guards handcuff Zaher and drive him back to jail. Mosley goes down to his office. He is exhausted and discouraged.

The next day John Cordero is brought to Mosley's office. He will take the stand next.

"All right, John," Mosley says to him, "remember—just tell everything just the way it was."

Cordero nods. He is terribly nervous.

"Did you talk to Zaher last night?" Mosley asks. "They may ask you that, what he said to you."

"I've got a good answer for that, they'll be sorry to hear. I asked Charlie how he felt and he says he's scared to death he's gonna get killed."

I pled about three different times for different banks." Cordero is on the stand.

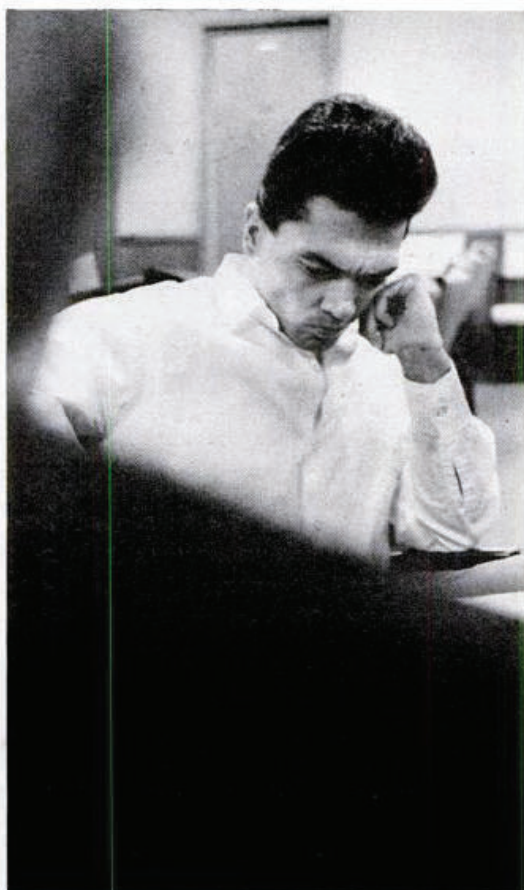
"How many banks did you stick up altogether?" Mosley asks.

"Seven banks." Spectators gasp and whisper, less for the number of banks than for the casual, matter-of-fact way Cordero drops the number. He says the banks were in New York, Massachusetts, Colorado, Salt Lake City. "I think that's about it." Then he tells about the shooting in the parking lot of the Kew Motor Inn, and the next day's sit-down. His version adds a few facts to Zaher's, but still not enough to give the bewildered jurors a clear picture of what happened.

Franzese's wife has been in court every day of the trial. Now, as Cordero testifies, she puts her right hand to the side of her head, extending her forefinger along her temple. When Cordero glances toward her, she moves her palm out slightly as though a gun

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John Cordero, a young gunman, testified he heard Franzese admit to ordering The Hawk's murder.



were pointing at her head. Cordero gets the message. He takes a sip of water.

When Mosley finishes his questions, the judge recesses the trial to give defense lawyers time to search through Mosley's file on Cordero. Mosley and Cordero go back up to the witness room. Cordero's wife, Eleanor, is waiting for him.

"You should have heard them in the court when I said seven bank robberies," Cordero tells her.

"Seven bank robberies!" Eleanor says. "My baby!" She throws her arms around him. "But they must think we're millionaires!"

Back in court, Vitello introduces a letter from Cordero to the D.A.'s office outlining demands—financial help for his wife, visits with his wife—which he said would have to be met before he would testify. Then Herb Lyon, one of Crabbe's lawyers, puts a question which, though it seems mild and offhand, will resurface with explosive force at the trial's end. He asks Cordero if he knew who Eleanor had gone out with after The Hawk was killed.

"Yes," Cordero answers readily, "a fellow that lived in Long Island, a Polish fellow." He says he does not remember the man's name but can find out if Lyon wishes.

Through all the questioning, Cordero ignores the sarcasm and abuse of the defense lawyers, answers their questions and tries to give the impression of a man who, though he has been a liar, a drug addict, a bank robber, is telling the truth when he says he heard Franzese admit to murder.

When FBI agents first arrested Cordero for bank robbery, they found \$10,000 in the house he and Eleanor had rented. Cordero now says The Hawk had given Eleanor the money for their child. At this, Lyon stops shouting and the courtroom falls silent. Lyon walks up close to Cordero, face to face, and, letting the whispered words echo through the silence, he says, "Isn't it a fact that this \$10,000 that was found in her house came to your wife Eleanor as the result of the murder of her husband, Ernest Rupolo?"

Cordero smiles. "Are you kidding?"

"Isn't it a fact, sir, that your friends Parks and Zaher, who wanted a promise that they wouldn't be prosecuted for the Rupolo murder, are the men who committed the murder for your wife?"

"How do I know?" Cordero says sarcastically.

Lyon sits down. "I have no further questions."

Now Mosley knows. From the start it has been clear that the defense will have to come up with its own version of the murder of The Hawk. It would not be enough merely to yell that the prosecution witnesses are unbelievable. An alternative solution must be offered. This is it: Eleanor paid Zaher and Richie Parks to kill The Hawk. That will be the defense story—or so it appears.

Edelbaum returns to the attack and Cordero responds with astonishing and sometimes humorous honesty. Edelbaum points out that when FBI agents found the \$10,000, Cordero lied to them and said it was not his wife's money.

"RIGHT?" yells Edelbaum.

"Right!"

"There was no reason to lie to the FBI—"

"Plenty of reason. I always lie to the FBI."

Edelbaum has not expected to see such candor in a liar. And he would

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not have wanted the jury to see it.

"I mean . . . you always . . . you always lie to the FBI?"

"Oh, yes," says Cordero breezily. "I have a lot to hide."

"You have a lot to hide?" Edelbaum is floundering.

"I had a lot to hide from the FBI."

Because Mosley badly needs one legitimate citizen who can corroborate his crime-stained witnesses, he calls a man who has no direct knowledge of the case but has at least heard of the shooting at the Kew Motor Inn. Bob Greene, a crime reporter for a Long Island paper, *Newsday*, interviewed Florio in 1966—and Florio foolishly admitted to him that the shooting took place.

"Tell us the conversation you had with the defendant Florio relative to Ernest 'The Hawk' Rupolo," Mosley tells Greene when he takes the stand.

"I asked Mr. Florio about reports that we had received that he was present at the John Doe Room of the Kew Motor Inn at a time when Mr. Cordero had taken a shot at him. He said that he had been in the John Doe Room, which is a bar, that Mr. Cordero had come in with the wife of Ernie 'The Hawk' Rupolo, that the wife of Ernie 'The Hawk' Rupolo had started to make disparaging comments across the bar to Mr. Florio, that she had accused him of having some part in the murder of her husband, that she used—this is his reply—that she used very bad language, that she was pretty much obnoxious and that he said he felt that Mr. Cordero was embarrassed by her behavior, and Mr. Cordero eventually talked her into leaving the premises, that after Mr. Cordero and she had left the premises that he then went out to get into his car, that Mr. Cordero had turned around and fired a shot at him."

Now, at last, the jurors have a comprehensible account of why John Cordero threw shots at Florio in the parking lot and why Franzese had ordered the sit-down.

Mosley moves on to the next step. He has Medical Examiner Milton Helpert describe the damage done to The Hawk by six bullets, 25 stab wounds and three weeks' submersion in Jamaica Bay.

Then it is time for Parks. He tells the jury that three nights before the murder Whitey Florio ordered him to steal a car from a parking lot in Manhattan. But instead of stealing one, he borrowed Zaher's car and gave it to Florio, saying that it was stolen. He later helped Florio change the license plates on the car and in doing so noticed that some chains and concrete blocks had been put in the trunk. Parks says Florio told him to wait in a bar for a phone call telling him what to do with the car. He says he did not know what the car would be used for.

"So I waited and about approximately 2 a.m. I did get a call. Florio, he called me and he says, 'I want you to take the car out to the Skyway Hotel.' He says, 'You know where it is.'"

"I says all right. He says, 'Look,' he says, 'I want you to put the car in the rear parking lot.' He says, 'Leave the keys under the floor mat.' And he says, 'Try and back the car in the rear parking lot.' So I says all right. He says, 'Well, come down right now. Right now I want you.' I said, 'All right, I'm coming.'"

"So I took the car and I went down there and I parked it in the rear and I went around to the front of the building, to go inside there to call a cab. And I didn't see anybody inside. I didn't see none of the defendants. Nobody I knew.

"So I went back outside to the parking lot, and as I got to the back I seen a car pull up right next to the car I brought there, Zaher's car, and in the car was four men. So they got out of the car. They had backed in right next to the car that I had and they got out and it was John Matera, Tommy Matteo, Whitey Florio and Red Crabbe.

"So Florio, he was driving. Florio was driving that car. He got out and he went over to the car, Zaher's car, and went into the car and he opened the door and he got the keys from under the floor mat and he went back to the trunk of the car and he opened up the trunk of Zaher's car.

"And Matera, he opened up the trunk of the car that they had came in. And when Matera opened it up, Matteo was standing right next to him and Crabbe was standing next to him, and Crabbe reached in the trunk and he grabbed out a blanket, and he handed it over to Florio, and Florio started spreading it out on the trunk of the car. And Matera reached in the trunk of the car, the car they came in, along with Matteo, and they pulled a body out of the trunk of the car. And it was The Hawk."

"Who is The Hawk?" Mosley asks.

"Ernie The Hawk. But at that view there I didn't know it was The Hawk, at that view. So the body had a blanket half draped around him."

The judge looks over and catches Edelbaum's eye. Edelbaum comes to life.

"I move to strike out that it was The Hawk."

"Strike it. The jury will disregard it," the judge says.

The jurors are disregarding exactly nothing. They are forward in their chairs, spellbound with Parks's narrative. Parks, on the other hand, appears bored. He tells the story with a supreme lack of emotion, monotonously, as if he has told it many, many times before, as indeed he has. Franzese listens impassively and expressionless, his fingertips joined in front of him.

"The body had a blanket half draped around it. It was hanging over the body. And Matteo had the feet, the legs, and Matera had him under the arms. And as they took him out of the trunk—they hadn't even started to move him yet, they just took it out—the man's arms went out to the side."

Parks throws his arms out.

"They were carrying him. He made an outburst. He said—he screamed the words—'No! No!' And then he started to say something else like—it sounded like—'What . . . What the . . . !' But I couldn't make that out. Just sounded like the word, 'What.' But I heard him scream out, 'No! No!'"

"And when he did that, immediately Matera pushed him to the ground, dropped him right to the ground and got right on his shoul-

ders, put his hand right over his face. And Matteo went down and grabbed the legs and held him to the ground.

"And Crabbe, he was standing next to Florio at the trunk of Zaher's car when that happened and he pulled out a gun. And he rushed over to him and Whitey said, when he pulled out the gun, he said, 'He's still alive!'"

"And Crabbe pulled out the gun and then he went to go over to the body and he took a few steps and Florio grabbed him by the arm and he says, 'Not with the gun.' And he had a knife, and he had his knife in his hand, and Crabbe grabbed the gun—grabbed the knife—out of Florio's hand. And he bent down like on one knee, and he stabbed the body about three or four times in the chest.

"And then all four of them each grabbed a limb. They all grabbed the body, put the blanket more or less on top of it, folded it over, the sides of the blanket on him, and then they all picked him up and they put him in the trunk of Zaher's car. And at that time, when they picked him up, his head went back and at that time really for the first time his face was visible to me and I recognized it to be Ernie The Hawk.

"And they all put him in the trunk of Zaher's car. And Florio, he got in the car that they came in. He drove off by himself. And Matera, Matteo and Crabbe got in the car that—Zaher's car with the body in it, and they drove off."

Parks says that the next night he ran into Franzese, who had learned that the car was not stolen. "I heard about the car," Parks says Franzese told him. "You took that from the neighborhood." He says, "You were supposed to get that from Manhattan."

"I says, 'I know.' So he says, 'Look, you do what you're told from now on. If you're told to take a car from Manhattan, you take the car from Manhattan. If you're told to shoot somebody, you shoot them. If you're told to pipe somebody, you pipe them, you don't shoot them. You do what you're told.'

"So I says all right. I says, 'I made a mistake.' He says, 'Don't let it happen again.'"

Mosley asks Parks about the shooting at the Kew Motor Inn and the sit-down the next night. Then he asks him about a conversation at a bar called the Tiki.

"I was at the Tiki with Cordero, James Smith and Red Crabbe, and we had a conversation, and during that conversation Crabbe said that he wanted to kill someone just like he killed The Hawk. He said he wanted to drop him in the drink. He said he wanted the pleasure and satisfaction of doing it himself."

The cross-examination starts, and it is not long before defense lawyers are into the meat of a disastrous letter Parks wrote from jail to a federal prosecutor when threats and fear gave him second thoughts about testifying. He had packed the letter with damaging lies and accusations in the hope that he would never be called to the stand.

"Did you ever complain that Cordero was making up lies and getting you and the others to swear to it?" Lyon asks. That is in the letter. "Didn't you say about Cordero

that 'he is insane but like a fox?'" That too.

"You said Cordero got pills to weaken Zaher's mind, didn't you?" "Did you say that you took Cordero's wife to a motel and slept with her?" "Did you say you had your friend sleep with her?" "Did you say that's why Cordero hates you?" Everything is in the letter.

Through it all Parks sits sullenly, answers matter-of-factly and looks terribly bored. "Yes," he says. "I told a lot of lies in that letter."

Lyon wants to suggest again that Eleanor Cordero had hired Parks to kill The Hawk. He brings out that a couple of weeks after the murder, Parks put down \$2,000 on a new Buick, and that he had refused to testify until he received immunity from prosecution for the murder (Parks and Zaher both had been granted immunity, to assure them that any information they gave would not be used against them). Then, winding up his cross-examination, Lyon screams at Parks: "Isn't it a fact, Mr. Parks, that you made up this whole story about this switch in the Skyway Motel?"

"No."

"Isn't it a fact, sir, that you got \$2,000 from Mrs. Cordero after Ernie The Hawk was killed?"

"No."

Edelbaum takes over. He faces Parks squarely and screams at him. Parks is cool. He answers in bored, quiet monosyllables and lets his eyes wander absently over the defendants, the jurors and the spectators. But as Edelbaum hammers away at him, Parks grows more and more annoyed. He wants desperately to hit back—not so much to help Mosley, but to destroy the fat, screaming little

man who is playing with him, ridiculing him, tormenting him. He waits patiently. Then Edelbaum slips. He asks if one of Parks's reasons for writing the letter had been "to gain an advantage" from the U.S. attorney.

Parks leaps. "I wanted to discredit myself as a witness. That's why I wrote that letter!"

It is a weak blow, an underdog's blow, but it helps to stir the rumblings of the silent issue—the Mafia, the threats of vengeance, the witnesses' fear.

But Mosley wants to make the most of Parks's weak hint. *I wanted to discredit myself as a witness.* He wants to focus on the words, blow them up, underline them, make the jurors know something is hidden there, something crucial, something they should try to find.

"When you wrote this letter," Mosley now asks Parks, "you knew, did you not, that the letter would fall into the hands of defense attorneys?"

Edelbaum objects. Sustained.

"Well, was it your purpose in writing that letter—"

Objection. Sustained.

Evidently it will not be possible to do this the nice way. "You stated you did not wish to be a witness when you wrote that letter, is that correct?"

"That's right."

"Were you afraid of being a witness?"

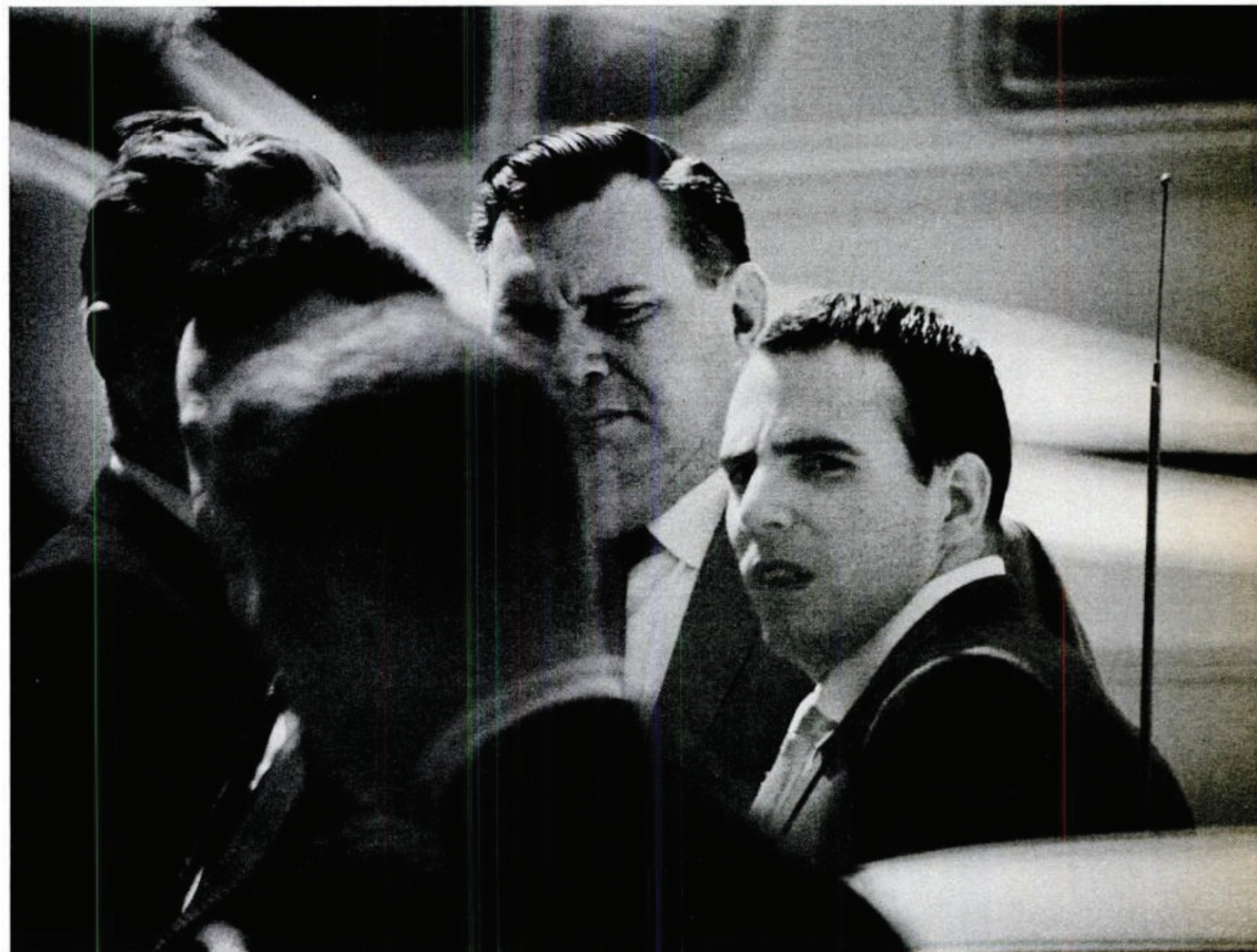
Explosion. Edelbaum on his feet, screaming. "I object to that, your honor."

"Yes. Objection sustained."

Fears, threats, Mafia vengeance—the rumblings are getting audible. Mosley has another clue to throw to the jurors, and Edelbaum is poised to knock it down.

"Since you first cooperated with the gov-

CONTINUED



In courthouse parking lot, detectives guard Richie Parks (right), who keeps eye out for trouble.

ernment," Mosley asks, "have you for the most part been kept out of prison population?"

"I object to this, your honor!" Edelbaum shouts.

"The objection is sustained. There is no need to yell at me."

Now one of Matteo's lawyers, William Kleinman, drops a hint as to whom the defense might call later as a key witness. He rises from his chair and suddenly turns on Parks sharply: "Parks! Look at me! Do you know a man by the name of Frank Breen?" Parks does. Breen is a friend of Matteo's. A few minutes later the trial breaks for lunch.

Mosley sits in his office with Parks and Joe Price. "So there's gonna be a story," Parks says. "They're gonna come up with a story."

Rapacki sits down in the witness chair and Mosley asks him about his criminal record. Then the questions get down to pay dirt, Edelbaum objects, Mosley digs in, and the judge moves the battle to his chambers, out of the jury's hearing.

Mosley tells the judge and defense lawyers that Rapacki will testify that Crabbe, speaking of The Hawk, once admitted, "We took care of him. The boss ordered it."

Edelbaum, for the millionth time, demands a mistrial. He says it will be obvious to the jurors who "the boss" was and that "we could not possibly get a fair and impartial trial if this evidence comes out against my client."

Vitello suggests a compromise. Why not let Rapacki tell the jury that Crabbe said, "We took care of him," but leave out the part

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about "the boss" ordering it? Mosley argues that standing alone and fragmented, Crabbe's admission will sound made up and phony. "It just doesn't sound like it's conversation, your honor."

The judge sides with the defense and instructs Mosley to tell Rapacki not to say anything about "the boss" ordering the hit.

Back in court, Mosley asks Rapacki about a meeting he had with Crabbe after the murder.

"I seen him at a diner called the Target Diner. He drove up in his car and, instead of parking like he would usually do, he pulled over to the side and told me to get in. I got in the car and he had a newspaper there and he says, 'They found The Hawk.' So I looked at it. I didn't know at first what he was talking about. Then I seen it said something about 'Body Found,' something to that effect.

"He said, 'From now on, whenever you meet me or whenever I'm with you, I want you to have a story why we're meeting together, that I'm helping you get a job. Because I expect the bulls to pick me up.'

"I asked him why. He said, 'Because we had to take care of him.' He pointed to the picture."

"In the paper?"

"In the paper."

Mosley now rapidly drives home the point behind Rapacki's entire testimony. "Do you know a person by the name of John Cordero?"

"No. I don't know him."

"Do you know a person by the name of James Smith?"

"No."

"Do you know a person by the name of Richard Parks?"

"No."

"Do you know a person by the name of Charles Zaher?"

"No."

Rapacki has come over better than any of the other witnesses. He is nervous and intense, and his face and tone reflect the desperate, you-must-believe-me eagerness of a man who is telling the truth. When it is over, he is relieved but still very nervous. He is angry with Mosley for giving the defense his file. He thinks Mosley should have "lost" the file.

"That Mosley is too damned honest," Rapacki says hotly to Price. "Someday one of these guys will get him in an alley someplace and he'll find out how honest and decent they'll be with him."

After Rapacki, the prosecution rests its case. At the last minute, Mosley has decided not to call Smith. He adds little to the case and would only give the defense another chance to yell that the prosecution witnesses are all robbers.

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The rows of benches stretching across the court like chapel pews filled up with spectators daily.



Mosley spends the weekend reading through 1,015 pages of trial transcript, studying the testimony so far and guessing what is to come. He knows for certain that the defendants will not take the stand themselves; if they did, he would be permitted on cross-examination to lay open their criminal history. What will the defense come up with?

For their first witness, the defense calls the warden of the Nassau County jail. The warden says that although Rapacki had been in the jail at the same time as the others, he never had contact with them. On one occasion, however, Cordero and Rapacki had been visited at the same time by their wives. But even then the prisoners had been isolated in separate cubicles.

The defense calls Breen. A dark, heavy-set young man, he testifies that he is the manager of a Manhattan restaurant, has been convicted of petty larceny and was tossed out of the Army with a bad conduct discharge. He says he knew Parks and once had seen him with a new Buick Riviera.

"I asked him where he got the money for the automobile. He said he had done a favor for a girl and she advanced him the money, gave him the money."

"Now, in November of 1964," Lyon asks, "did you go out with Richard Parks and two girls?"

"Yes, I did. We went for a few drinks and then went up to their apartment. A little later on, two other fellows came over and we left. We left the apartment and went for a cup of coffee and Richie called the apartment back. He was looking to go back up again. He talked to the girls and they told him not to bother coming back and hung up.

"We went back to the apartment house and he tried to get into the downstairs vestibule door, which was locked. He rang the bell, which they didn't answer. At that time I had a vehicle for the laundry I was working for. I stepped into the vehicle to leave, and he had taken out a pistol and shot the windows out of their apartment house."

Mosley is taking quick notes on a pad of lined yellow paper.

"Did you have any conversation with Richard Parks about this incident?" Lyon asks.

"Yes. The following evening we were discussing the events of the night before and he said to me that they didn't—the girls didn't—know who they were messing around with. They would go the same way The Hawk went. A month later we got into an argument and he took out a pistol on me and told me if I didn't stop pushing him around I would wind up in the river like The Hawk."

"Did you have any other conversations about the \$2,000?" That was a slip. In his questioning of Breen, Lyon had not mentioned the amount Parks put down for the car. But Breen knew what to say.

"Well, around January or the first part of 1965, he asked me if I wanted to go with him to visit a girl friend of his, and the girl that advanced him the money for the car, and at the time I refused."

"Did he ever tell you who the girl was?"

"I know her name was Eleanor, that's all."

"Did he ever talk to you about a John from Brooklyn?" This is a change. Earlier Lyon had accused Parks and Zaher of killing The Hawk. Now it appears he will make it Parks and John Rapacki. Why the switch?

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"At the time of the November conversation in the bar, when he mentioned the fact about the girls not knowing who they messed around with, he had said at that time that it was—this fellow John from Brooklyn and he had taken care of The Hawk. That was the conversation."

Mosley does not want any juror thinking that Breen is a disinterested citizen. He wants it clear that Breen knows the defendants. Parks had said Breen and Matteo pulled stick-ups together.

"Do you know the defendant Thomas Matteo?" Mosley asks when his turn comes to cross-examine.

"Yes, I do."

This is a defense witness now, and Mosley's manner is sharp. His questions come fast and laced with contempt. He asks Breen about Parks shooting out the windows of the girls' apartment. "You went to the police about that, didn't you?"

"No, I didn't."

Mosley pretends shock. "You didn't report that?"

"No, sir."

Mosley asks about the second incident with the gun. "Did you go to the police about that?"

"No, I didn't."

"Did you tell them that a man had threatened you with a gun?"

"No, I didn't."

"Did you tell anyone else about this?"

"No."

"Was he still a friend of yours?"

"I just passed it off."

Mosley looks astonished. "You passed that off?"

"Yes, I did."

Mr. foreman and gentlemen of the jury—the judge is speaking—"both sides have now rested. With both sides resting, we come to that part of the trial known as the summations. For intents and purposes, the evidence is in."

Kleinman sums up for 65 minutes, Vitello for an hour. When it is Lyon's turn, he again accuses Parks of conspiring with Eleanor and John Rapacki to kill The Hawk. He says that Rapacki's wife and Eleanor helped Rapacki communicate with the other witnesses. "Do you remember, I asked Cordero who Eleanor went out with before she went out with Cordero, and do you remember what he said? He said she went out with a Polish fellow who lived on Long Island. Was that John Rapacki? We found a witness and that witness told you that Parks was boasting he got \$2,000 from a woman and he wouldn't mention the name, and six months later he said that woman's name was Eleanor. He says, 'I invited him into the bathroom when we had an argument and he pulled a gun on me,' and he said something to the effect that, 'Don't fool with me, John and I killed The Hawk,' or whatever language, I don't remember exactly. There is your case."

Edelbaum begins. He has kept the jurors' ignorance—so carefully assured when they were

selected—almost totally intact. Yet he knows that the concrete blocks, the bullets, the stabs, Parks's brief outburst about his letter suggest Mafia. He must force the jurors not to react to that suggestion.

"Each one of you," he says now, leaning close to the jurors, "made me a promise under oath. I am confident you are going to keep that promise. You promised me that when you decide this case, you will decide this case only on the evidence in this courtroom. If you do that, there can be only one verdict in this case—and that is not guilty. I say to you the only other verdict would come from something in your mind—not adduced in this courtroom."

He returns to his attack on the witnesses—and on Mosley, whom he now casts as hardly less sinister. "What is the evidence against my client, John Franzese? Two bank robbers, who made a bargain, who made my sense of justice CRINGE, that a district attorney, an elected public official—appointed public official—would bargain with the likes of a Cordero. And with all of that—all of that—what do they claim? That my client, in July of 1965, at the Aqueduct Motel, said, 'I ordered the hit of The Hawk.'"

He speaks of Cordero and Zaher. "Motive to lie—those two men! Just picture this. Men who go into banks with loaded guns, prepared to kill if necessary. Otherwise, why are the guns loaded? If those men would do that to get a paltry sum of money, ask yourselves what would they do to save themselves 25 years in jail—men who have already been in prison and know what it's like. What would they do? Would they lie? Would they perjure themselves? Of course they would!"

He mentions Zaher, who as a material witness is receiving the customary \$3-a-day fee. "The district attorney requested that he get a suspended sentence so they could hold him as a material witness so he could be paid!" In every word and gesture Edelbaum oozes righteous outrage. He condemns "the deal" made with the witnesses for their cooperation and suggests to the jurors that if they return a guilty verdict they themselves will be as evil. "You're going to endorse the contract made—the deal—by a verdict of guilty—and let these gunmen walk out? Have the parole board parole these gunmen on the people of Queens County?"

He pauses. Silence. He sips from a glass. His performance officially is for the jurors, but he cherishes, too, the other audience: the rapt judge, the young attorneys who have come to study his technique.

For a finish, Edelbaum puts the jurors themselves on trial. "You know, the symbol of justice is blind with the scales. I say all during this trial—since the inception of this prosecution—the symbol of justice has been hanging her head, that in an American courtroom such a trial could take place. All I ask you, gentlemen of the jury, is by your verdict of not guilty to have the symbol of justice raise her head again. Don't give these would-be murderers a license to go out—and make a beeline for the next bank with a loaded gun. I'm positive you will do justice in this case by finding the defendants not guilty. Thank you."

The trial is recessed for lunch. Young lawyers and leather-jacketed friends of the defendants surround Edelbaum on his way from the courtroom. They smother him in handshakes, back slaps, congratulations.

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At 1:20 the court reconvenes and Mosley faces the jury. He begins softly. "You have heard over five hours of excellent summation by attorneys for the defense. I do not intend to take anywhere near the length of time that their combined summations have taken. I am not possessed of the oratory, or the experience, that they are. As a matter of fact, after hearing these four eminent defense attorneys, I feel somewhat the way Carl Hubbell must have that day when he faced Ruth, Gehrig, Foxx and Cronin."

He backs off from the jury box and stands with his hands clasped tightly behind him. His voice goes up. "Now, what kind of a crime are we dealing with here?" He holds up a picture of The Hawk's trussed and weighted body lying on the beach. "This is the kind of crime that we are dealing with here. A crime committed in secret, a crime that was never intended to be discovered. But it was bungled. It was bungled by the perpetrators. And it was discovered. And it was solved."

"Mr. Edelbaum made a point: 'Will you let these bank robbers walk the streets by convicting the defendants?' You are not asked to do that. You know what the deal was—the deal in quotes—between the United States attorney and these witnesses, and between the district attorney and these witnesses. Whether they go free or not, or when they go free, in no way—in no way—will be determined by your verdict. It would be *immoral* to make such a deal with people. 'Unless the defendants are convicted, you won't receive any consideration.' That would be *immoral*!"

"What is the issue here? The issue is really, *did* these witnesses lie? *Not*, are they capable of lying. *Not*, did they lie in the past. *Not*, did they lie under oath in the past, as Mr. Cordero admits having done. *Not*, whether they have motives to lie. Of course they have motives to lie. The issue is—*did they lie*?"

"You have heard—oh, really, two trials here. The trial by the people of the State of New York, and the trial of these witnesses as to whether or not they have lied in the past, as to whether or not what they wrote in certain letters to a United States attorney and to a district attorney was true or not. We are interested in the *first* trial—the trial of the people of the State of New York against these defendants."

Once again Mosley tries to reveal the witnesses' fear of **Mafia** vengeance. "It was brought out that Mr. Zaher faked a suicide attempt—another attempt at delusion, another attempt to con the authorities, as the defense would say. *Why* did Mr. Zaher attempt suicide? He told you. He didn't want to be a witness!"

Mosley again holds up the picture of The Hawk's bloated body. "There is evidence in *this* record as to what happens to squealers!"

Kleinman stands up. "I object to that in connection with the context of Mr. Mosley's argument to the jury. I submit it is improper. It brings in an element in this case of which there is no evidence, and I move for a mistrial."

Albert Bosch, a New York State Supreme Court justice for six years, presided over **Franzese's** trial.

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"Denied. You have an exception."

Mosley moves on to Cordero.

"You heard the letter that he wrote, in which he makes demands, some of which were acquiesced to. Well, who do people who commit crimes like this crime talk to? I submit they talk to people like Mr. Cordero. So how do we get Mr. Cordero to tell us—by 'us' I mean the law enforcement agencies—what he knows about a crime? It *has* to be a *quid pro quo*. I don't like it. I think it's terrible. But what are we going to do? How are we going to solve these kinds of crimes? Does it mean that because of this he is lying?"

"Mr. Parks was cross-examined at length about a letter, a very, very vituperative letter, which Mr. Edelbaum would suggest to you destroys his credibility and his believability as a witness here. Mr. Parks stated that he wrote that letter full of lies *just for that purpose*, that he didn't want to be a witness for the government. That doesn't make him a liar. There is no testimony he ever lied under oath at any of the government trials."

"If these witnesses were to have taken that stand and if they were to have said, 'We don't expect anything in return for our testimony, we don't expect a thing,' would you believe them? Would you really believe that people like this will testify without expecting some reward? Of course not!"

Rounding out his assessment of Zaher's version of the sit-down, Mosley says, "Now, this testimony, is there anything implausible in it? A problem arises, a shooting, a drunken woman making an accusation. You've got to keep the thing quiet. Let's sit down. Let's talk about it. 'What's the big deal?' It's a big deal because the accusation happens to be true. These people were involved in the death of The Hawk. So it is a big thing, and they sit down and they do discuss it."

The defense has claimed that the whole case, a fantastic plot to frame Sonny, was initiated by Cordero. "Was Cordero the boss in

this case?" Mosley shouts suddenly. And as he shouts he spins around, away from the jurors, toward the defense tables. His arm goes straight and stiffens toward **Franzese**, sitting calmly at the other side of the room. "There is the boss! Right down *there* at the end of the table!"

Mosley turns back to the jurors. The hoods in the audience exchange worried glances.

"Now, you heard it said, 'Where is the corroboration here? All you heard testimony from was convicted criminals that are bargaining, that are looking for a break.' I submit that Mr. Rapacki, Mr. John Rapacki, is corroboration to this whole picture. Mr. Rapacki testified that he spoke to Detective Joseph Price in 1965, was brought down to a grand jury in Queens in September of 1966. Then, in a futile attempt to show collusion, the argument is advanced to you that because of the fact that the Nassau County jail has visiting hours at a certain time, the wives of Cordero and Rapacki somehow got together and concocted Rapacki's story. I submit to you—doesn't that abuse your common sense? They weren't together until *after* the grand jury, number one. They were never together in the jail, number two. They weren't even physically in the same institution until *after* the grand jury!"

Mosley begins his windup. "Now, where do you get the answer? How do you solve this kind of crime? How many times is this kind of crime ever solved? Eyewitnesses? Even now we don't even know where the man was shot. We don't know where he was dumped into Jamaica Bay. How do you ask about it? Do you just bury Ernie and shake it off as another statistic? No one is going to talk about it to any legitimate witnesses that I could produce here."

"This case comes right out of the sewer, right out of the gutter. Where do the police have to go? Where does the district attorney have to go—whether we want to or not? Right down into the sewer, right down into the gutter."

"I don't vouch for the character of these witnesses. I certainly have no truck with them. I think that's quite obvious. But the whole point is—did they lie *here* or not? I submit to you they have *not* lied here. There is *no* evidence that they have lied here."

Edelbaum is up. "I object to the opinion of the district attorney. He knows that's improper. He says, 'I submit that they did not lie.' That's an opinion of his. That's for the jury to determine."

Mosley turns to the judge. "He has been yelling that they are lying, your honor. What is this?"

"Now, let *me* rule on the situation," the judge says. "Please don't make statements. The objection is overruled, with an exception."

Mosley is finished anyway. "I submit, gentlemen of the jury, that this case has been proved beyond a reasonable doubt by witnesses who told the truth here in this courtroom. And I submit in the name of the people of the State of New York that the people have proven the guilt of the defendants of the crime of murder in the first degree."

He sits down. There is no jubilation now. The defendants' friends and relatives file out slowly, silent and unsmiling.



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Chapter 3

THE VERDICT

When Mafia men are in trouble, help has a mysterious way of arriving in the nick of time. Now it will come with only 31 minutes to spare, from a killer imprisoned in Sing Sing's Death Row. The judge has said that at 10 a.m. he will instruct the jury and lock it up to deliberate. At exactly 9:29—the time is stamped on the envelope—a letter arrives for the judge. He summons Mosley and defense lawyers to his chambers. After several minutes, Mosley comes out angry and shaken. He grabs Price by the arm and heads for his office.

"Some guy named Sher up in the death house," Mosley tells Price, "wrote a letter to the judge that he was locked up with Rapacki and Rapacki told him he had dealings with The Hawk, had trouble with The Hawk and killed him. There's enough in the letter so you know he really knew Rapacki."

Price is stunned. "They had to come up with something, didn't they, Jimmy. So now we know. This is it."

Rapacki is in Mosley's office talking to his guards. His fear has driven him to the edge of sanity, and he says he has dreams that when the trial ends the warden leads him back not to his cell but to a coffin.

Price and Mosley debate how much, if anything, they should tell Rapacki about Sher. The trick is to find out everything Rapacki knows about Sher without telling him anything about the letter. Mosley wants to know exactly what Rapacki told Sher in prison. He does not want Rapacki to panic and start trying to shift facts around to make things sound better.

"If this guy Sher takes the stand, I'm dead," Mosley says.

A detective comes down from court and says the judge is on the bench. Before he leaves to go to court, Mosley makes up his mind about Rapacki. "All right," he tells Price. "Talk to him."

Price goes into Mosley's office, sends the guards out and sits down and stares at Rapacki. Rapacki knows something is wrong. After 10 seconds of hard, silent staring, Price gives up the one fact he must give up to get things started. He says simply, "Walter Sher."

"What?"

"Walter Sher."

"What about him?"

"What do you know about him?"

"Murder."

"What kind?"

"Jewelry store holdup. He was in the death house. They brought him down to the Nassau County jail for something. Why?"

"I'm trying to find out. Were you friends?"

"No. I just talked to him. You talk to anyone in there."

"You didn't tell him anything?"

"What would I have to tell him? I just talked to him. Anyway, you know me, Joe. I don't tell nobody nothing. I'm not an idiot. What is it?"

"I don't know." Price leaves the room and the guards go back in.

Mosley comes down from court, where the judge has told the jury he is delaying his charge for a day, and Price tells him Rapacki admits knowing Sher. Mosley decides to read Rapacki the letter. He walks into his office and sits down behind his desk.

"I want to read you something, John," Mosley says calmly, and begins:

"Honorable Judge Bosch: my name is Walter Sher, prison number 132-921, and I am currently confined in the death house of this prison under sentence of death. I feel that I must write to you in order to make you aware of a gross miscarriage of justice. I will be as brief as possible in this letter, but I am also quite willing to testify to the following information. In 1965, on October 1st, I was taken from this prison and transferred to the Nassau County jail. During this period of time I met and became friendly with another inmate named John Rapacki. Mr. Rapacki was extremely nervous and worried about his wife and about his case, and he used to ask me frequently for my opinion on various aspects of his case—"

Rapacki breaks in, angry and excited. "There's a frame coming up, right?"

Mosley reads on. "He attempted to find out the details of my case, and when I discouraged all his attempts at this he then attempted to enlist my aid in an escape plan to which I also paid no attention. He told me he had cut his veins in an attempt at suicide so he would be sent to the hospital where he might perfect his escape—"

Rapacki yanks up his sleeve to show the scar where 17 stitches had closed a slash on his arm. "That was a real attempt," he shouts.

"My wife wasn't visiting me and I tried to kill myself!"

"John," Price says gently, "we know. Just listen."

"... However, this failed and they even shackled his ankles in chains when they brought him to the court. Mr. Rapacki says that all his money had gone to his lawyers in Suffolk and Nassau counties and that he would never have had to stick up that restaurant except for the fact that his partner, whom he called Hawk, had swindled him out of his share of the proceeds of a job that they had pulled together. He told me that he and Hawk stuck up a bank and got about \$13,000. He let Hawk hold the cash because he, Rapacki, was being harassed by the Suffolk County police at the time.

"Later he needed some cash in order to pay his lawyer in Suffolk County and he asked Hawk. He was told that Hawk shylocked the money out in loans to some businessmen, and Hawk also told him that their money was lent out at 25% interest. Mr. Rapacki continued to ask for his share of this money over a period of time, but to no avail. Finally, Hawk told him that the businessmen refused to pay and also that if Hawk continued to bother him he would notify the police.

"Mr. Rapacki told me that he knew all along that his crime partner was beating him out of his share of the cash but that he wanted to let him hang himself. He said he went along with all of it so that he could catch Hawk off his guard. He told me that he succeeded in doing this and that he, Rapacki, killed Hawk. I did not question him on this as I could not even understand why he told me this story. Later I concluded that he was just trying to impress me and I forgot the entire incident."

Rapacki cannot control himself. He is almost hysterical. "Give me a lie detector test! Give us both one! Let me alone with that punk for a minute! What a jerk I am! I'm getting nothing out of this, and now I'm being framed for murder!"

Price and Mosley calm Rapacki, and a guard comes in and leads him out of the office.

A detective comes in. "Price and I are going to Sing Sing," Mosley says quickly. "Call CIB and see if this guy is in the family Franzese's gangl."

"It's being done," the detective says.

In the car with Price, Mosley says, "Maybe I shouldn't see Sher at all. If I do, the defense will say I was up here trying to get him to change his story." He thinks for a moment. "We'll have to check if he wrote any other letters like this on any other cases."

"When we get there," Price says, "we'll go over his whole package."

After an hour's drive, Price and Mosley pull up to the high gray prison walls. Mosley goes to an office to check Sher's file, while a guard takes Price to the death house.

After more than an hour, Price comes back to Mosley. "Sher says just what he said in the letter," Price tells Mosley. "He doesn't budge. He's a very careful, cunning guy. Before I went in, the guard said to me, 'Look out for this one, he's very, very sharp. Watch yourself.' He's made up his mind what he's gonna do, and he's gonna do it."

They get back in the car and head for New York.

"Nothing's ever final," Mosley says after a few minutes' silence. "I thought I had a shot

at it. I thought I had it. And now this 11th hour—the only thing that was ever final was the electric chair, and they took that away.

"Probably Rapacki did tell him everything that's in that letter—except 'I killed The Hawk.' All Sher has to do is just add those four little words. So they'll just put Rapacki back on the stand, and they'll ask him if he knows Sher, and he'll say yes, and they'll ask him if he made the admission to Sher, and he'll say no, and then they'll put Sher on the stand. And I'm dead."

"Did you find anything in Sher's file?" Price asks.

"He's a nut. He said before his trial that he heard voices, and people were trying to poison his food. His mother committed suicide. He was in Mattawan [State Hospital for the Criminally Insane] for seven months before his trial. But if I ask him about that he'll say he said those things because he didn't want to stand trial. You could put the psychiatrist on who said he was insane, but then they'd put on the guy who later said he was sane. He was officially certified sane, and that's more than you or I can say."

"This is a very vicious guy, Jim."

"But how do I show the jury that—the things going on in this guy's head? When he takes the stand, he's going to kill me. I know that. Last night I thought that at this time today it'd be over and I'd be either laughing or crying. And here I am in the same spot I was in yesterday—only worse."

"Jimmy, won't the jury figure it out? Won't they know that if Rapacki had done it, he'd have asked for immunity from prosecution before he cooperated?"

Mosley ignores the question. "How could they set someone up in Death Row? It's from left field. Completely from out in left field."

"You heard Cordero and Parks right from the beginning, Jim. 'They've got to come up with something.' And then Parks, when they called Breen, and Parks says, 'That's all? That's all they're gonna do? Just Breen? There's got to be more than that.' And there was."

The next morning the judge grants defense demands to reopen the case for Sher's testimony. At 10 a.m. Mosley signs the necessary affidavit to withdraw Sher from Sing Sing. Price and two other detectives leave for the prison to get him.

Rapacki is in Mosley's office, more than ever on the edge of hysteria. "Give me a sodium test!" he begs. "Ask me if I ever murdered The Hawk! I thought they'd kill me. But I never thought they'd do this. If Sonny hits the street he'll kill my wife. I know they'll kill her. They know I cut myself over her once, so they know they can hurt me by killing her."

Mosley takes one of the detectives guarding Rapacki aside. "Don't leave him alone in there," Mosley says. "Not even for a second. He tried to kill himself once, and I'm afraid he might try it again."

Rapacki goes on. His voice shakes. He is near tears. "They're going to kill me. They're going to poison me. They're going to poison me in prison. You don't know how powerful they are. They're more powerful than you"—he points—"and you and you! If Sonny beats this he's gonna figure no one can touch him."

Mosley tries to quiet him. He comes out of the office and says to Audrey, his secretary,



"I don't know if I even ought to let him shave before he takes the stand."

Lunchtime comes and Price has not returned with Sher. Mosley has heard enough. He paces in the hall outside his office and does not eat. From a window, he keeps an eye on the parking lot. At 2 p.m. he sees Price's car pull in. Sher gets out, handcuffed and in leg irons. He is a good-looking young man, wearing a brown suit, white shirt and striped tie. His face is solemn. Surrounded by the three detectives, taking the short steps forced by leg irons, he walks to a back door of the courthouse.

Five minutes later the judge is on the bench, and the defense attorneys and Mosley are at their tables. The defendants file in. Fran-

zese spots his wife in the third row, smiles and winks. The jury enters. Herb Lyon stands.

"At this time, your honor," Lyon says, "the defendant Crabbe respectfully requests permission to reopen the case for some short testimony, newly discovered."

"Application is granted."

"Thank you. At this time I will call John Rapacki to the stand."

Rapacki walks in. He sits in the witness chair, crosses his legs, clasps his hands around his knee. A court officer whispers to him that he is still sworn. Rapacki nods.

Lyon stands in front of the witness chair. "Mr. Rapacki, since the last time you testified, has anybody from law enforcement spoken to you about the trial of this case?"

"Yes."

Handcuffed and in leg irons, Walter Sher is led to courthouse after a drive from Sing Sing with Detective Price (right) and Walter Anderson, an investigator for Mosley.

"And do you know what you're being called back for?"

"Yes, I do."

Lyon looks at the judge. "And may I have Walter Sher brought into the courtroom?"

Then to Rapacki, "While we're waiting, will you tell us, please, who spoke to you?"

"Mr. James C. Mosley and Detective Price."

"And they were the ones who told you why you're being brought back?"

"They related something that was in a letter, to me. They told me—they read this letter to me." His voice rises sharply and he lets go of his knee. "They asked me about it. I told them it was an outright lie and I could prove it!"

"Now, now," the judge says, "don't volunteer anything."

Rapacki looks apologetically at the judge, settles back in his chair and takes another grip on his knee.

Walter Sher walks in from a side door and strides confidently to the judge's bench. Lyon says to Rapacki, "Do you know this man?"

Rapacki's eyes burn holes through Sher. "Yes. I do. I know this man."

"What is his name?"

"His name is Sher."

"What is his first name?"

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"Walter Sher."
 "Thank you." He turns to the judge. "May we have him identified to the court?"
 "Give your name," the judge says.
 "My name is Walter Sher."
 "Where are you now?"
 "Sing Sing prison."
 Lyon asks, "May we have where in the Sing Sing—"
 "Where in Sing Sing prison are you?"
 "Condemned cells in Sing Sing prison."
 Spectators gasp.
 "Okay, take him out," the judge says.
 "Now, Mr. Rapacki," Lyon resumes in a low, icy voice that is supercalm, "isn't it a fact that you and Walter Sher were on the same tier in the Nassau County jail between October 1 and October 26, 19—"
 "I don't believe it is. I was in the hospital from September 22, approximately 10 days..."

There is some quibbling over precise dates, then Lyon asks, "So it is a fact that during the month of October, you and Walter Sher were in cells on the same tier?"

"That's right."
 Lyon is walking up and down in front of Rapacki. "And during the time that you were on the same tier, did you have conversations with Walter Sher?"

"Yes, yes. I had conversations with everyone on that tier."

"Now, isn't it a fact that somewhere between October 2 and two or three weeks after that, you told Walter Sher that The Hawk in 1964 held \$13,000 that belonged to you and him—"

Rapacki shoots forward in the chair and opens his mouth to speak.

"Let me finish the question," Lyon says, and continues calmly, "—for safekeeping, because the police were harassing you at that time?"

"That's an outright lie!" Rapacki shouts. "And I can prove it!"

"May I—" Edelbaum speaks and is inter-



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rupted by Vitello: "Move to strike out the second part."

"Yes," the judge says, "strike out the latter part. The jury will disregard it."

"Will you please answer yes or no to these questions," Lyon says. "If it is a fact, say it is a fact. If you contend it isn't, say it isn't. If you admit it is, say it is."

Instructions to the witness should be given by the judge, not the questioning attorney. Mosley objects. "Yes," says the judge, turning to Rapacki. "Just yes or no. That's all."

"Isn't it a fact," says Lyon, "that sometime between those same dates, you told Walter Sher that The Hawk would not give you your share of the \$13,000 when you asked?"

"No! That's a lie!"

"Isn't it a fact that you told Walter Sher that The Hawk explained to you that the money was out on the street because he was shylocking?"

"That's a complete lie! No!"

"Isn't it a fact that you told Walter Sher that The Hawk finally told you that he couldn't get the vig, or the money, because he had loaned it to businessmen and they would beef to the police if he pressed it, so he told you the money was gone?"

"That's a lie! I never said any such thing!"

"And isn't it a fact that you then told Walter Sher that when The Hawk told you that you couldn't get your money back, you killed The Hawk?"

Rapacki screams his answer. "That's a lie! And I can prove that if you will give him a truth serum test, and give me one, too!"

"Mr. Rapacki," the judge says, "just take it easy. Strike the latter part. The jury disregard it."

Lyon hands Rapacki a letter. Rapacki glances at it.

"This is a letter that was read to me already in Mr. Mosley's office," Rapacki says.

"This was read to you?"

"And I was asked about the truth or falsity of it. I told him I would take a truth serum test and he'd find it's a complete fabrication!"

Vitello objects.

"Strike it out," the judge says. "The jury will disregard the latter remark."

"Did anybody tell you what to say in this court?" Lyon asks.

"Nobody told me a thing. I'm up here on my own. I have no lawyer, nobody."

Lyon finishes. Mosley gets up. He wants to be able to argue on summation that Sher just took everything Rapacki told him and added to it, "I killed The Hawk." His first questions to Rapacki show the jurors that prisoners often discuss personal affairs with each other. Then he takes a slow step toward the witness chair and, standing very calmly, trying with his own composure to give Rapacki confidence, he says, "All right. Now, do you know whether or not you ever discussed

Price reads Sher's letter while Mosley, considering countermoves, waits for his reaction and ideas.

your connection with The Hawk with Mr. Sher at all?"

"No, I don't believe I ever did."

"At all?"

"I don't believe I did."

"Are you positive about that, or not?"

"Well, I am not positive, but I don't believe I did."

Mosley takes a couple of steps back, then in a stern, come-across-with-it-now voice he hopes will make the answer more impressive to the jurors, asks, "Mr. Rapacki, did you have anything to do with the death of The Hawk?"

"No! I did not!"

"Do you have immunity for that crime?"

"No. I have no immunity for any type of crime."

"Did you ever ask for immunity in the death of The Hawk?"

"No! I never did!"

"Did you ever tell anyone that you were involved in the death of The Hawk?"

"No, I did not."

It was in August 1965, two months before he ever met Sher, that Rapacki had sent word out of jail that he had knowledge of The Hawk murder. When Price visited him, he had told Price the same story he repeated at this trial. Now Mosley wants to point out that Rapacki would not have been so stupid as to tell a detective that Crabbe admitted killing The Hawk and then turn right around later and tell another prisoner that he himself had done it.

To make this argument to the jurors, Mosley needs to reveal to them that what Rapacki has said in court is precisely what he told Price in August 1965—before he met Sher. But rules of evidence forbid buttressing a witness's testimony by revealing previous consistent statements. A witness's statements prior to his testimony can be used only if they are inconsistent with his testimony and tend to show that he is lying. They cannot be used when they are consistent and tend to show that he is telling the truth. But Mosley must try anyway. "Do you recall talking with Detective Price in August of 1965?" he asks Rapacki.

"Yes I did. I talked to him."

"He came out to Nassau County and talked to you, is that correct?"

"That's right."

"And that's before you ever met Mr. Sher, is it not?"

"That's right."

"And didn't you tell—"

Edelbaum sees what is coming. "I object to—" he shouts.

"—Detective Price just what you testified to?" Mosley is shouting over Edelbaum.

"Yes!"

"Wait a minute!" Edelbaum screams.

"Just what you testified to?" Mosley is screaming too.

"Yes! I told Detective Price exactly what I said here!" Rapacki is yelling louder than anyone.

"Mr. Rapacki," the judge says, "just take it easy."

"Your honor," Edelbaum yells, "I rose to make an objection. Mr. Mosley—"

Mosley has had about enough of Edelbaum. "We don't need the speech," he says sarcastically.

"He cut out the whole objection!" Edelbaum screams back.

CONTINUED

"We don't need the speech!" Mosley repeats.

The judge comes to life. "Will you please stop it!"

"May we have the question and the answer stricken," Edelbaum says. "What he told Detective Price."

If what Rapacki told Price is stricken, Mosley will not be allowed to refer to it on summation. "I submit it's proper," Mosley pleads.

"Your honor, I submit it's *not* proper," Edelbaum yells.

The judge interrupts. He is inclined to side with Mosley. "Well, it has to do with the question of the credibility of this witness, and that's what's at issue here. And if there are circumstances which would tend to verify, substantiate the statements of the witness, they can be admitted."

Edelbaum is not going to stand for that. "May we have a discussion on this, your honor? And I didn't hear the question. I'd like to hear the question." The battle has shaken Edelbaum's poise.

"Why did you object if you didn't hear the question?" the judge asks.

"Because of the way—I'll tell you why, your honor, because he started to ask a question of what Detective Price told him, which I believe was improper."

"He's a mind-reader, your honor," Mosley says dryly.

Edelbaum turns on Mosley, his stubby body trembling with rage. "You kept talking, you tried to get it before this jury before I objected. That's what I'm objecting to!"

"Are you finished?" the judge asks.

"I have to—" Mosley starts.

"Are you *finished*, gentlemen?"

"Yes, I am," Mosley says.

"May we have a discussion about this, your honor?" Edelbaum insists. He wants a chance to get offstage, into the judge's robing room, where he hopes the combined force and numbers of the defense attorneys can prevail.

"All right," the judge says, and he retires with Mosley and the defense lawyers to the robing room.

Edelbaum argues, Mosley argues, Vitello, Lyon and the other lawyers argue. The discussion becomes a morass of legal technical-

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ities. In the end the judge rules in favor of the defense.

Back in front of the jury, Mosley asks a few more questions, then sits down totally discouraged.

Lyon stands up. "May we have Walter Sher?"

Sher, very businesslike, walks to the stand. He carries a folder of papers under his arm.

"Mr. Sher," Lyon says, "you said before that you are in the condemned cells in Sing Sing prison?"

"Yes, sir." His voice is quiet and controlled.

"Is that what is commonly known as the death house?"

"Yes, it is."

"And have you been convicted of the crime of murder in the first degree?"

"Yes, sir."

"And you are presently awaiting the execution—the sentence of execution?"

"Yes, sir."

Again the spectators stir. They are fascinated. They have never before looked at a man sentenced to die. He is so calm about it, so reserved.

"Now, sir, did you write a letter to the judge of this court on December 10, 1967?"

"Yes, sir, I did."

Lyon moves to show Sher the letter. The letter is a statement of Sher's made prior to this testimony. Mosley reasons that if Rapacki's prior consistent statement to Price was inadmissible, then Sher's prior consistent statement to the judge, in the letter, should be inadmissible also.

"I object to this, your honor," Mosley says. "This is immaterial. This is a prior statement. I object to it."

"I am not introducing it," Lyon explains. "Is that the letter that you wrote?" he asks Sher.

"Yes, sir."

"Now, did you see me yesterday?"

"Yes, I did."

"Where was that?"

"In Sing Sing state prison."

"Now, before yesterday in the Sing Sing state prison—"

"I object, your honor," Mosley says.

"How does he know what I am going to say?" Lyon asks.

"Go on, say it," Mosley says with irritation.

"—did you ever see me before?"

"I object, your honor. That's immaterial."

The judge considers. "Well, overruled. Go ahead."

"Did you ever see me before yesterday?"

"No, sir, I didn't."

Sher also says he has never seen the other attorneys. He testifies that on Oct. 1, 1965, he was transferred from the death house to the Nassau County jail, and that while there he was on the same tier with John Rapacki.

"And between August 1st—I'm sorry—between October 1st, October 2nd, and the pe-

riod about two weeks after October 2nd, did John Rapacki tell you"—Lyon looks at the letter—"in words and substance—"

At the start of the trial Mosley had been forced to thread his questions through defense objections—invariably sustained—that he was leading his witness. Now Lyon, constantly referring to the letter, leads *his* witness, and Mosley objects.

"Overruled."

"Your honor—" Mosley persists.

"Overruled. Go ahead."

Mosley cannot believe it. Not only is Lyon leading his witness, but he appears ready to read from a letter which is not in evidence and which constitutes a prior consistent statement.

Mosley stands up. "You're going to let him read from that, your honor?"

"Overruled."

Mosley sits down, his face covered with disbelief.

"Did John Rapacki tell you, in words or substance"—Lyon refers to the letter—"that The Hawk was holding \$13,000 that belonged to The Hawk and to John jointly?"

"Yes, sir, he did."

"During this same period, did John Rapacki tell you that he asked The Hawk for his share of the money?"

"Yes, sir, he did."

"And did John Rapacki tell you that The Hawk told him that the money was out on the street where The Hawk had shylocked it?"

"Yes, sir, he did."

"And did John tell you that The Hawk told John Rapacki that he would give him the money as it came in on the vig?"

"Yes, sir, he did."

"By the way, can you tell us what 'vig' means?"

"From what I understand, it's accumulated interest on money lent out, as it comes in."

"Now, did John Rapacki tell you that The Hawk finally said, 'I can't get the money, and if I press these men, who are businessmen, they'll call the police, so the money is gone'?"

"Yes, sir, he did."

"And did John Rapacki tell you, in words or substance, that he killed The Hawk?"

"Yes, sir, he did."

"You may inquire." Lyon sits down.

Mosley faces Sher, and with hatred hanging from every word he asks, "Mr. Sher, when is the last time you had a trip down to New York City?"

Sher pretends not to understand the question. "New York City, sir?"

"Right."

"Last time I was down in Nassau County jail. That was October 1, 1965."

"You get the papers up in Sing Sing, do you not?"

"Yes, sir, I do."

"And you've been reading these papers since you've been incarcerated up in Sing Sing, have you not?"

"Yes, sir, I have."

"As a matter of fact, you knew last September or October of 1966 that the defendant **Franzese**, together with the other defendants, were indicted for the crime of killing The Hawk, is that right?"

"I must have read it, sir."

"You *knew* that, didn't you?"

"Yes, sir."

"You didn't tell anyone *then* about this conversation you had with Rapacki, did you?"

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Defense Attorneys Edelbaum (right) and Kleinman discuss the case with Mosley outside court.

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"Did I tell anyone then?"

"Yes."

"I had told someone before that, sir."

Sher wants Mosley to ask him whom he told. Mosley follows the first rule of good cross-examination: when a witness asks to be asked a question, don't ask it. "No, no," he says. "When you read that the defendants were indicted, these defendants here, for the crime of killing The Hawk, did you get in touch with any of the defendants, or their attorneys?"

"No, sir."

"And you knew then that you had had a conversation with Rappacki relative—about The Hawk, is that right?"

"Yes, sir."

That point made, Mosley changes the subject. He wants to expose a half truth Sher has just told. "Did you state that you were presently awaiting execution? Didn't you state that in response to Mr. Lyon's question?"

"In response to his question, yes, sir, I did."

"Well, that's not a fact, is it?"

Sher knows what Mosley is driving at, and tries to dodge. "Is that the fact that I'm presently awaiting execution?"

"Awaiting execution."

"The way you phrase the question, sir, I'd have to answer yes again. Yes, sir."

"Well, you know that your sentence will be commuted, don't you?"

"Yes, sir, I do."

"So you know you're not awaiting execution."

"My sentence—I'm still under the sentence of death, sir."

"Yes, but you have a letter from the governor—"

Sher holds up his sheaf of papers. "Yes, sir, I have it right here."

"So you're not awaiting execution."

"No, sir."

Mosley must let the jurors know the rewards that could have inspired Sher to make up his story. He has already brought out that Sher's letter won him his first ride to New York in more than two years.

"Now, you were asked if you knew counsel, if you knew Mr. Vitello, Mr. Lyon, Mr. Kleinman and Mr. Edelbaum, and your answer was that you do not, is that correct?"

"That's correct, sir."

"Have you ever heard of any of them?"

Edelbaum objects. "How is that material, your honor?" He is ob-

jecting because he knows it is material. A man facing life in prison who reads in the paper that top-money attorneys are defending Mafia gangsters might try to come up with some plan to get help from them on his own case.

"I'm going to sustain the objection," the judge says.

"You say your case is still on appeal?"

"Yes, sir."

Mosley wants to discredit Sher by forcing him to take the Fifth Amendment. He asks about the murder that sent him to Sing Sing.

"On April 5th, 1962, in a jewelry store in Manhasset, N.Y., did you shoot and kill one Donald Hanson in the course of a robbery?"

"I respectfully refuse to answer on the grounds it may tend to incriminate me, sir."

Mosley asks three more questions about the murder, and each time Sher takes the Fifth. Mosley moves into Sher's psychiatric record, and Sher admits that he received psychiatric treatment in the Army, spent seven months in Mattawan and once accused prison authorities of trying to poison him.

When it is Lyon's turn again, he has Sher testify that he was discharged from Mattawan as sane. Then he asks Sher when he wrote the letter.

"I wrote the letter the 10th."

"I offer the letter in evidence,"

Lyon says.

Mosley looks as if someone has hit him over the head. If the letter is admitted into evidence, Lyon will be allowed to read it to the jurors, to use it to repeat and emphasize Sher's testimony. Rules of evidence clearly forbid this. Mosley is surprised that Lyon would attempt it.

"I object to it," Mosley cries. "I object to it."

The judge appears not to hear Mosley. "People's 83 for Identification," he says coldly, "now Defendant's 'L,' Crabbe, in evidence."

Mosley is astonished. "You are overruling my objection?" he demands.

"Yes, I am."

A court officer hands the letter to Lyon.

"You want to read it to the jury, read it," the judge says.

"Thank you," Lyon says, and reads it.

Mosley listens, his face red with rage.

When Lyon finishes, Mosley again cross-examines Sher. He ends with a question shouted in anger. "You have been told in the last few days that if you're respon-

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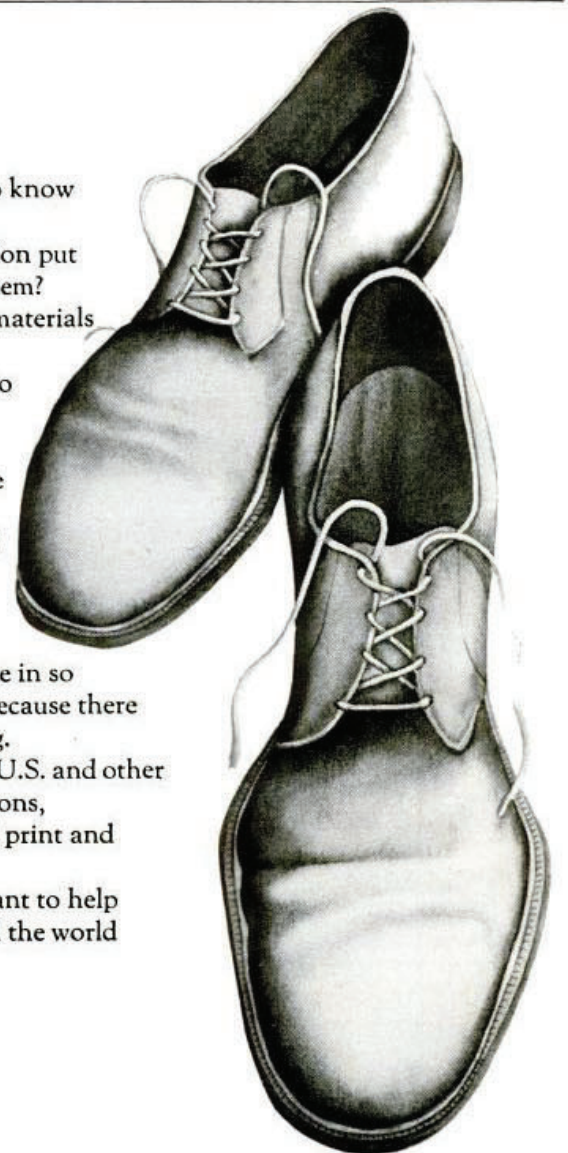
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sible for the acquittal of Mr. Franzese and these defendants that you will be a big man in the yard for the next 26 years—"

He can get no more out. Edelbaum jumps to his feet with the objection. The judge sustains him.

"Did anybody offer you anything to testify here?" Lyon asks.

"No, sir."

"Anything else?" the judge asks.

"No, your honor," Lyon answers.

Sher leaves the stand. Attorneys gather up their papers. Then Mosley makes a sudden decision.

"I have rebuttal!" he says. The defense attorneys' heads shoot up. The judge looks startled.

"The people call Detective Price," Mosley says.

Price is opening a door to let Sher out when he hears his name. Surprised, he turns and finds a courtroom full of eyes staring at him. He walks to the witness chair and sits down.

The judge has allowed a prior consistent statement of Sher's—the letter—into evidence. Now Mosley wants to see what he will do about a prior consistent statement of Rapacki's—the story Rapacki first told Price.

"Detective Price, in August of 1965 did you have a conversation with John Rapacki while Rapacki was in prison?"

"Yes or no," Edelbaum shouts.

"Yes," Price says.

"What was that conversation?"

"I object," Edelbaum shouts.

"Objection," Lyon shouts.

The judge squirms in his chair. After a few seconds he says, "The objection is sustained."

All of the trial's failures and frustrations, the insults and outrages, suddenly congeal and descend on Mosley in a lump of fury. Sher's letter is in evidence, but not the letters written by the prosecution witnesses, letters that could explain so much about why they had lied before, about their fear, their terror of testifying. In a final, futile gesture of

Franzese embraces his wife Tina in a lounge outside the courtroom. She has just heard the verdict.



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rebellion, Mosley now makes a desperate move he knows cannot succeed. If the judge wants to give the jury Sher's letter, let him give them all the letters—Parks's letters, Cordero's, Zaher's.

"Now," Mosley says, his voice tight with emotion, "I offer in evidence at this time all the letters that have been marked for identification to the United States attorney and to the district attorney." If the judge admits the letters into evidence, the jurors will be able to read them completely, including the parts prejudicial to the defendants.

Kleinman jumps out of his chair. "The district attorney seems to be abandoning the case, your honor! I object to it!"

"I am not abandoning the case!" Mosley shouts across the courtroom at Kleinman. "How dare you say that?"

"Just a minute," the judge says. "I am still in control here." He looks at Kleinman. "That was highly unnecessary."

"How can he make an offer of a great big file!" Kleinman says.

"Mr. Kleinman, I said that was highly unnecessary."

"I am sorry if I offended your honor"—he jerks his head toward Mosley—"but not him."

"Your offering is denied," the judge says curtly to Mosley. "Now, do you rest or don't you?"

"Yes," Mosley says. "People rest."

Lyon begins his summation. "I don't know whether I am going to be too coherent now," he says to the jurors. "As you probably guess by now, I am very tired. I will say this. I submit that a lot of evidence has now been brought before you that ties in everything that went before. You have heard now a man who had no motive. He is in the death house. You read his letter—you heard his letter—and this man says that Rapacki was the one who said to him he killed The Hawk. And Rapacki's first name is John, and if you remember, we had a witness here by the name of Breen who said that Parks told him that he, Parks, hit The Hawk with a John from Brooklyn. Does it hang together?"

He goes on for a few more minutes, then finishes with a plea to the jurors to "give us what you have sworn to give us, and that is a fair shake."

Mosley stands. He has been making notes with a yellow pencil. Now he throws the pencil angrily onto the table. "Gentlemen," he says, struggling to control his anger, "here we are faced with it. Here it comes. Out of I don't know how many prisoners in New York State prisons and federal prisons, a letter comes down from a man—an admitted psychopath, according to psychiatrists—stating—"

"That is objected to," Lyon says.

"It is in evidence, your honor," Mosley says. The judge sits silent. Mosley continues. "A psychopath comes down and says he had a conversation with a witness, and just at the tail end he decided to write a letter. And he is going to be in prison for the rest of his life. And you think about how he will be treat-

ed in prison by the other prisoners when he is the guy that got off John Franzese and the other defendants."

"Your honor, I object to that," Edelbaum says.

"And I submit that is his motive to lie!" Mosley has heard a lot from the defense attorneys about his witnesses' motives to lie. Now the shoe is on the other foot.

"Just a moment," the judge says, trying to avoid another shouting match.

"I submit that is a motive to lie, your honor!" Mosley insists.

"Objection sustained. The jury will disregard it. Confine yourself to the evidence produced here today."

"Well, it was introduced here today, your honor, that he is a life prisoner. He is a good Samaritan? Did he come down—did he write—immediately when these men were indicted that he had an admission from Rapacki? Did he write then? When was his recollection refreshed? When he hears that Rapacki is a witness?"

The fury confined so close beneath the surface begins to erupt. "I submit it's a tissue of lies, that man's testimony! Sure he was in prison with Rapacki! There's no doubt about that. But can you imagine John Rapacki talking to Detective Price in August of 1965 and two months later making an admission of a homicide to a psychopath? Can you imagine that? This Rapacki—who is a criminal, there's no question about it—he is going to make an idle admission to another criminal? I submit that abuses your common sense. It never happened. He mentioned to this man he was in some kind of illegal activity with The Hawk. That happened. But he never told this man that he killed The Hawk.

"Then we have this elaborate machination. What kind of a scheme can you call it that Mr. Lyon invented—that first Eleanor wants her husband killed, first it's Eleanor and Richie Parks, and then it's Richie Parks and John, and now we find out it's John, because of a bank robbery, some imaginary bank robbery where Ernie The Hawk wouldn't give him his share! What schemes will they give you next? Give them until Monday, and they will have another scheme!"

"I object to that," Edelbaum says. "Who is he referring to?"

"Just take it easy, gentlemen. Strike the latter part. The jury will disregard it."

Mosley leans in close on the jurors. The case is slipping away. There are so many things he wants them to know, things he is not allowed to tell them, things he can only hint at. His face is agonized. "Think about it, gentlemen! Just think about it—this tail-end, last-minute piece of evidence." He stops talking, sighs, returns to the prosecution table.

"That's all, your honor," he says.

It is 4:45. The judge calls a short recess.

"The judge nearly let Price testify," Mosley says, frustrated and discouraged. "He was going to, and then he turned chicken."

At 5:30 the judge begins his charge to the jury, going over the testimony, explaining the law, repeating to them the concepts of reasonable doubt and presumption of innocence.

At 7:15 the jury is taken to dinner. After dinner, they will begin deliberating. They have been three weeks in court, have watched a case projected before them like a movie run too fast, with a lamp too dim and half the frames chopped out. Now they are told that

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if they have a reasonable doubt about the film's success in proving four men guilty of murder they must acquit the men.

Mosley goes down to his office and calls his wife. He tells her the jury will be out well into the night and that it will be late when he gets home. Then he, Price and some friends go out to dinner and to wait for the verdict. Mosley orders a shrimp cocktail but does not eat it. He is distressed at having lost control of his temper in the second summation. "When I was screaming," he says, "I was stung. I was thinking, 'There's nothing I can do. I've got no way out.'"

Just as there are generally accepted ideas about what makes a good or bad juror, there are ideas about when it is good or bad to have a jury deliberating. A prosecutor does not want the jury out after a meal (full stomachs do not encourage guilty verdicts), before a holiday (nor do tidings of joy and good cheer), on a Friday (nor thoughts of happy weekends at home) or late at night ("All right, not guilty—let's go to bed").

Tonight everything seems stacked against Mosley. The jury has just finished dinner, it's Friday, and Christmas is only 10 days away. A detective sums it up: "Who could go out, eat a big dinner, think about a weekend of skiing, the Christmas season and then vote a man into prison for the rest of his natural life?"

The phone rings and Mosley jumps. It is not for him. Another A.D.A., who handles the office's press relations, says, "Take it easy, Jimmy. It's just another case."

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"It's not just another case," Mosley says. "No case is just another case. It's a war. Your job is to convict someone who's guilty."

One of the detectives who drove Sher back to Sing Sing comes in.

"How was he?" Price asks.

"He laughed all the way back," the detective says.

Mosley leaves the table and paces up and down in the empty restaurant.

At 12:30 the phone rings. Mosley grabs it.

"They have a verdict," he says.

Mosley walks back and takes his seat in the courtroom. The jury comes in. A clerk rises from his desk by the judge's bench and says, "Gentlemen of the jury, have you agreed upon a verdict?"

The foreman, a short, chubby man with glasses, stands. "Yes, we have," he says. He is shy and embarrassed.

The clerk speaks in a fast ritual monotone: "Jurors, please rise. Defendants, please rise. Jurors, look upon the defendants. Defendants, look upon the jurors. What say you? What is your verdict?"

The foreman reaches into his inside jacket pocket and comes out with a piece of paper. He reads from it:

"We, the jury, find the defendant Florio, not guilty—"

A man in a yellow suede jacket jumps to his feet and laughs and yells. Court officers shush him.

The foreman goes on, reading fast. "—Crabbe, not guilty. Matteo, not guilty. Franzese, not guilty."

More cries of delight, hushed by court officers.

The clerk says, "Hearken to your verdict as the court records it. You say you find Joseph Florio, William Red Crabbe, Thomas Matteo, John Franzese, not guilty. So say you all?"

"We do."

"Be seated, please."

The judge looks at Mosley. "You want the jury polled?"

"No." He is slouched in his chair. He waits for the judge's final words, words that end the trial, words he's heard a hundred times before.

" . . . I want to take the opportunity to thank both the district attorney and the attorneys for the defendants for the courtesy extended to the court. I realize it has been a tremendous burden that you have borne on your shoulders in espousing your particular case on behalf of the people, Mr. Mosley, and on behalf of the defendants, Mr. Vitello, Mr. Santoro, Mr. Lyon, Mr. Landsman, Mr. Kleinman and Mr. Edelbaum. Thank you very much."

Mosley and Price are crushed by the verdict, while a victorious Franzese puts on coat to go home.

