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## BOTH SIDES REST ON 12TH DAY OF MALINSKI TRIAL

### Blue Ribbon Jury Expected to Get Case This Afternoon

Both sides rested today in the re-trial of Morris Malinski in the murder of Patrolman Leon Fox during a payroll holdup on the night of Feb. 15, 1941, near the Coney Island branch of the Brooklyn Trust Company. The trial is in its 12th day before Judge Louis Goldstein and a blue ribbon jury in Brooklyn County Court.

The case was expected to go to the jury this afternoon.

David F. Price, who is serving with Joseph A. Solovei as defense counsel for Malinski, this morning read a notarized statement by Harry Levine, 21, of 1150 College Ave., the Bronx, who is out of town and was unable to testify today. The defense also called to the stand Robert J. Burt, a clerk in the Kings County District Attorney's office, who has been a clerk there since 1930.

#### Recall Witness

Assistant District Attorney William I. Siegel rested the prosecution's case after recalling to the stand one witness, Assistant District Attorney James McGough, who testified earlier in the trial.

In court yesterday Malinski tried on a hat found near the scene where Patrolman Fox was killed. Mr. Solovei had handed the hat to his client, who was testifying in his own defense.

Malinski put on the hat and the jury saw that it didn't fit well. The idea was to prove that this piece of evidence did not prove Malinski was at the murder.

Then, at the attorney's direction, Malinski put on his own new hat—and the jury could see that that was a much better fit.

#### Hat Sizes Alike

The effect of the contrast lasted only until Mr. Siegel asked the witness to read the size in each hat. In both cases it was—7.

Malinski told his story, insisting that he was completely innocent of the patrolman's murder and that he had been "framed" by police, after Nathan Spielfogel, Sing Sing convict who had testified against Malinski in a 1934 trial and for him in the present proceeding, attempted to commit suicide by cutting his wrist with a razor blade and stabbing himself in the chest with a paring knife.

Spielfogel's condition in Bellevue O. Hospital was said to be fair.

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