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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK - PART II.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

PHILIP GOLDBERG

Before:
HON. OTTO A. ROSALSKY, J.
and a Jury.

New York, July 19, 1912.

Indicted for Grand Larceny in the second degree.

Indictment filed May 23, 1912.

A p p e a r a n c e s :

ROBERT C. McCORMICK, ESQ., Asst. Dist. Attorney,

For the People.

F. O. LACEY, ESQ.,

For the Defendant.

Jury duly empanelled and sworn.

H A R R Y W I L K U S , called as a witness in behalf of the
People, being first duly sworn, testified as follows:

(The witness states that he resides at 287 Edgecombe Ave.)

DIRECT EXAMINATION BY MR. McCORMICK:

Q . You are a member of the firm of William Morris & Company?

A yes, sir.

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Q And the members of the firm are Harry Wilkus, that is yourself? A Yes, sir.

Q Max Wallstein and Henry Harris? A Yes, sir.

Q And you conduct business where? A 140 West 22nd Street.

Q What kind of a business is it? A Manufacturing silk petticoats.

Q The defendant was in your employ, wasn't he? A Yes, sir.

Q How long? A About a year.

Q How long prior to the 10th day of May this year, about?
A About nine month.

Q Well on that day did you have a talk with him? A On that day, yes, I told him --

Q Where was this? A In the factory.

Q Where is the factory? A 140 West 22nd Street.

Q What did you tell him? A I wrapped up three pieces of messaline and said to him to return them to Boessneck, Broesel & Company.

Q To deliver them to that company? A Yes.

Q Where was that company's office? A On Broome Street -- Broome and Green Street.

Q Who else was there when you packed this stuff up and gave it to him? A Mr. Stursberg and Mr. Stenz. Stursberg was the salesman for the house that these goods were bought from.

Q How many yards of material were there in that package that you gave to the defendant? A I guess they ran an average of

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about between 65 and 70 yards, something like that.

Q I supposed it was 247 yards -- A I guess that is what it was. They run about 70 yards, a piece.

Q How many pieces did you give him? A Three pieces.

MR. LACEY: If the witness does not know I object to his stating.

THE COURT: Do you concede that the property was of the value of more than \$25.?

MR. LACEY: Yes.

THE COURT: And less than \$500.?

MR. LACEY: Yes.

Q Well, you delivered this property to him? A Yes.

BY THE COURT:

Q Personally? A Yes, sir.

BY MR. McCORMACK:

Q Did you see him leave the building? A Yes, sir.

Q How large were these bundles? A Well, about this wide and about this high -- they are about 36 inches wide.

Q How was he to take them down to Broome Street -- carry them?

A Carry them down the elevator and as far as Grand Street.

MR. LACEY: I object to that.

MR. McCORMACK: I withdraw it.

Q When was the next time that you saw the defendant? A I think it was -- oh, possibly till late in the afternoon, or the first thing in the morning.

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Q Did you after that have any talk with him about those three pieces of goods? A Not at first. About five days after that.

Q Well, when you did, five days afterwards, where was it? A In the place there.

Q What did you say to him? A I asked him where the goods were. Mr. Stursberg came back and asked us if the --

Q Well, never mind what Mr. Stursberg said; I want the conversation you had with this defendant three or four days after you gave him the cloth. A I wanted to know what he done with the goods and he said he had delivered them to Boessneck, Broesel & Company.

Q He said he had delivered them? A Yes, sir.

Q What did you say? A I didn't have anything else to say.

Q Was there anybody else there who heard that? A I think Mr. Harris was there.

Objected to; objection sustained.

Q Was there anybody else there who heard that? A Mr. Harris

Q That is the first time you talked with him about the goods after you gave them to him, is that right? A yes, sir.

Q You gave him the goods on the 10th of June? A Yes, sir.

Q And then about the 13th or 14th you say you had this talk?

A Yes, sir.

Q When was the next time that you talked to him about the goods -- you never talked to him after? A Never talked to him since.

Q Did you ever hear him say anything about the matter? A No.

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Q Did you see him in the Magistrate's Court? A No.

Q That is all you know about the case? A That is all.

Q Your place is in the County of New York, your place of business? A Yes, sir.

CROSS EXAMINATION BY MR. LACEY:

Q This defendant was the shipping clerk in your place? A Shipping clerk? He was an all around errand boy.

Q He had been there nine months? A About that -- I don't exactly remember.

Q What particular branch of the business did you have charge of? A Well, I ran the entire business -- manufacturing, the selling and the buying.

Q Are you sure how many yards were in this lot of goods that you mentioned? A Well, I am not positive. There is no need of that --

MR. McCORMICK: I object to that, it is conceded.

MR. LACEY: Well, I am driving at something and I would like to have the question stand.

THE COURT: All right.

A (Witness continuing) They run from 60 to 70 yards to a piece.

Q Did you wrap these pieces up yourself? A Yes, sir.

Q You did? A Yes, sir.

Q How many pieces did you wrap up? A Three pieces.

Q And you told the District Attorney that there was about 70 yards altogether? A I told you they run on an average

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from 60 to 70 yards to a piece.

Q But you stated in answer to his question on direct examination that the defendant took about 70 yards. A I did nothing of the kind.

THE COURT: No, sir, you are mistaken, Mr. Lacey.

MR. LACEY: Yes, sir. I recall the District Attorney said he supposed there were 240 yards.

THE COURT: He said each piece ran from 65 to 70 yards.

Q These goods were goods which you were returning? A Yes, sir.

Q Wasn't it the duty of this defendant to send postal cards to these people to whom goods were to be returned? A Some times.

Q And if the people did not answer the postal cards wasn't it his custom to send these goods by express? A No, sir.

Q It was not? A No, sir. Pardon me just a minute. The Commission houses will not accept anything that is sent by express -- Wells Fargo or any of these other expresses, and that is the only express company we use.

Q Hadn't he authority to send goods by express? A Not without my consent or Mr. Wallstein's.

Q Did you ever consent to his sending goods by express? A Just once or twice with my OK on the slip.

BY THE COURT:

Q You say they refuse the goods by express? A The commission houses refuse to receive goods unless they are ordered

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from us and they give us a written order to deliver them.

BY MR. LACEY:

Q Wasn't it the custom of this firm to whom you sent these goods -- their name was what? A Broessneck, Broesel & Co.

Q Wasn't it their custom to come and get the goods? A Yes, some times.

Q And he was supposed -- A This particular time they wanted these goods very bad -- they had them sold.

Q Isn't it true that every time before when you had had dealings with them, the firm of Boessneck, Broesel & Co. that they had come for the goods and brought a receipt for them? A Some times, as I said before, and when they wanted goods particularly we sent them back and this time Mr. Stursberg came up for them himself so that we should send them back.

Q Well, he came for the goods? A No.

Q Did you see him leave the place -- did you see which salesman left the place? A Yes, and I saw Mr. Stursberg and Mr. Stenz leave the place, yes, sir.

Q Did they have the goods with them? A No, sir. I gave this boy the goods.

Q Did you see this boy leave the place? A They boy took them down the freight elevator.

Q You saw the boy go down the freight elevator? A Yes,

Q You didn't see him after that with the goods? A No.

Q What day of the week was that, do you remember? A I

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think that was on a Friday, if I am not mistaken.

Q May 10th, wasn't it? A Well, I don't remember exactly the date.

Q Well, all you saw was this boy going down the elevator shaft -- you saw him go down in the elevator? A With the package of silk, yes.

Q This boy continued in your employ for five days afterwards didn't he? A No, sir.

Q How many days -- three days? A Three or four days, something like that.

Q He came back to work after that, didn't he? After you saw him go down in the elevator he came back to work? A Yes, sir.

Q And he continued to work there until he was arrested; is that right? A Yes, sir. Three or four days after.

Q You laid this defendant off, didn't you? He was laid off? A No.

Q Do you mean to say you did not lay him off? A At first?

Q Yes. A After the robbery?

Q Well, I asked you if you laid him off. A Did I lay him off? Yes.

Q That was because of some goods that were mentioned in the other indictment? A The goods that he stole before, yes.

Q No, the goods that the jury found him not guilty of stealing. A Well, I don't know anything about that.

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Q Well, you know about it -- the jury found him not guilty last month? A He admitted himself that he stole the goods.

Q No, he did not --

MR. LACEY: May we concede on the record that this defendant was tried on the other indictment before Your Honor in the other term and found not guilty?

THE COURT: No, no, Counsellor. The remark made by the Counsel will be disregarded by you, gentlemen.

Q Isn't it true that you laid this defendant off because of that other package which was mentioned in that other trial? A What is that?

Q About that other piece of goods which he brought back -- do you know what I mean? A Yes.

Q Isn't it true that that is why you laid him off? A Yes, sir, that is the truth.

Q That is about three days after May 10th, wasn't it? About June 13th or May 13th, which? A (No answer).

Q It was May 13th, wasn't it? A What is that?

Q That you laid him off? A That was on a Tuesday, yes.

Q Well, about that? A Yes, sir.

Q I will ask you if you received any word from Boessneck, Broesel & Company up to that time about these goods in this trial?

A That was on a Wednesday, yes. Mr. Stursberg came up and asked me what became of the three pieces that I sent to them with the boy, and I told him "You have got them." He said "We haven't

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received them".

Q When did you receive these three pieces from Broesel & Company in the first place? A Well, about a week or ten days before this thing happened.

Q Did you receive a bill or memorandum with them? A We always get a memorandum bill, yes. These goods were on memorandum.

Q Have you got those bills? A I think I have them.

Q Cannot you produce them? A I don't know, I haven't got them with me.

Q Did you ever say to this defendant or to his sister or to his mother that you would spend \$5000. to convict him? A No, sir. I told him he was almost implicated in that \$5000. robbery -- the first one.

Q Did you ever say you would spend \$5000. to convict him? A No, sir, I did not. I told them I thought he was implicated in this \$5000. robbery.

Q Did you say you would give him 20 years? A I couldn't give him 20 years, how could I say it?

Q Well, did you say it? A How can I say it when I cannot give it to him?

Q Did you say it? A No, sir, I did not.

Q Did you accuse him of being in this other robbery? A Did I accuse?

Q Yes. A Well, I do not know. We cannot accuse anyone

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unless we have the right evidence for him. We have the robbery but we could not prove it. If that man had continued with me another six months he would have put me out of business.

Q Did you accuse this defendant of burglary? A I told you I didn't accuse him of anything that I was not sure of.

Q Well, answer the question -- did you accuse him of burglary?

A I didn't accuse him of burglary, no, sir.

Q Did your partner, Mr. Harris, tell you to accuse this defendant of burglary? A No, sir, he did not.

Q Well, it is true that there was a burglary in your premises, isn't it? A Yes, sir, there was.

Q And you lost about \$5000. worth of goods? A Yes, sir.

Q Didn't you tell this defendant you would give him 20 years in jail if he did not tell you? A No, sir, I did not.

MR. McCORMICK: He answered that three or four times.

THE COURT: He answered that.

MR. LACEY: All right.

Q You say you saw the defendant go down in the elevator and about some hours later you saw him again, is that right? You saw him after he came back? A I don't remember if I saw him or not that same day.

Q You don't know? A No, sir.

Q When was it he told you he delivered these goods? A That was about, as I told you, about the 13th.

Q He told you about the 13th? A Yes, sir.

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Q Didn't you ask him about the 10th? A About the 10th I didn't see him.

Q The 10th was the day he went out; didn't you ask him when he came back on the 10th? A As a rule we never asked him anything like that.

Q You never asked him whether he delivered the goods or not? A No, sir.

Q Well, you had charge of him, didn't you? A Yes -- my partner and I .

Q And in what particular way did you supervise his duties? A As any ordinary manufacturer supervises his help -- anything at all.

Q But after you told him to do a thing didn't you always ask him if he did it? A No, I haven't got time for that.

Q Well now on the 13th you discharged him because of this other matter? A Of the other robbery which took place on Monday

Q You didn't know until the 14th that Broesel & Company had not received the goods, did you? A Not until Mr. Stursberg came up again and wanted to know what became of the goods.

Q He did not come up until the 13th, did he? A I don't know whether the 13th or the 14th.

Q Well, he came up after the 13th? A Yes, sir.

Q Why did you ask the defendant on the 13th if he had delivered the goods to Broesel? A Because we caught him with

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the other goods.

Q You said you asked the defendant on the 13th if he delivered the goods to Broesel & Company? A Yes, sir.

Q And you didn't know then that he had not delivered them?

A He told me he had.

Q You didn't know through Broesel & Company that he did not, you had not heard from them? A No, not until the 14th -- the day after.

Q Well at that time, on the 13th, did you suspect him of having stolen these goods which he was supposed to have taken to Broesel & Company? A No, not until, I told you, the 14th, on which Mr. Stursberg came with him.

Q Why did you ask him then if he delivered the goods? A Because I have a right to, it was three pieces of goods. As a rule we do not send no goods with a boy, but this particular lot was sent with a boy. They wanted the merchandise, they told me they had it sold, so we gave it to him to deliver.

Q Have you finished the answer? A Yes, sir.

Q You told the Jury that you did not have time to ask this defendant if he had done what you told him to? A Not that same day or the following day. I don't think he came back that same night. We believe that everybody we have is honest and we do not have to go around and ask them if they did this or that.

Q If you had not yet heard from Broesel & Company that the goods had not yet been delivered, why did you ask the defendant

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if he had delivered the goods? A Why did I ask him?

Q Yes. A Because he stole a piece before on Monday and we caught him with it and of course it made me suspicious about it.

MR. LACEY: I move that that be stricken out.

THE COURT: You asked him for his reasons.

MR. LACEY: I think I am entitled to have the jury know the result of that other trial.

MR. McCORMICK: We are only trying one case.

MR. LACEY: You won't deny what occurred in the other case, will you?

MR. McCORMICK: I don't know what occurred.

THE COURT: So far as the action of the Jury in the other case is concerned, it is no evidence as to this particular case.

MR. LACEY: No, but the witness says that the defendant stole then other goods from them, if the man was tried on the other charge before Your Honor in Part I on the 1st of June --

MR. McCORMICK: There is no evidence of that here.

THE COURT: Strike out the answer.

BY THE SEVENTH JUROR:

Q When you send those goods to a house that way do you send them by an order from them? A Some times we do, but this particular time the gentleman came up for it. They were sending me other merchandise.

Q But this particular time did you have an order from the

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house -- the commission house? A No, we did not.

Q Well, upon making a delivery of a package do you have a form of receipt to be signed by the party receiving at the other end? A We have a receipt book.

Q You have a receipt book? A Yes.

Q That receipt book goes at the time? A Yes.

Q That receipt book would show the signature of the party receiving at the other end? A Yes.

Q Did you notice whether that receipt book was signed or not? A It was not.

Q It was not signed? A No, sir.

Q And he didn't say anything until a few days after that? A Until a few days after that.

Q Do you have someone to ascertain the delivery of the package? You have a receipt book showing delivery -- who looks after that? A Well, we are supposed to look after it.

Q And ⁱⁿ this case you did not? A Well, not only in this case but in all cases.

Q Didn't you say anything to this boy about this package before or after Mr. Stursberg called your attention to it? A That was on I think a Tuesday, a few days after.

Q Well had you said anything to this boy before Mr. Stursberg told you about not receiving the package, or after he told you?

A This was a day before Mr. Stursberg came up.

Q You spoke to this boy about a day before? A Yes, sir.

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Q So you really did not know then whether he delivered the package? A No, sir, I did not.

Q What was your reason for asking that question? A Because he stole a piece of goods before that.

MR. LACEY: I object to that.

THE COURT: Objection sustained, and I instruct the jury to disregard the evidence.

BY THE EIGHTH JUROR:

Q Why didn't you look in the book before you asked that question to see if it had not been signed? A Well, we have never done anything like that.

Q But you could have looked in that book without putting the question to the boy? A Well, we could have done that.

THE COURT: Proceed.

BY THE COURT:

Q How long have you been in business? A 12 years.

Q What is the name of your firm? A Wm. Morris & Company.

Q Engaged in what business? A Silk petticoat manufacture.

Q On the day that you personally gave this boy the three pieces of messaline did you give him a receipt book? A No, he was supposed to enter that up in the receipt book and get the receipt signed.

Q What were the boy's duties? A He was to help us around shipping and receiving the goods and sweeping up.

Q And did he have charge of the receipt book? A Yes, sir.

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Q Have you that book now? A I have got that down at the place.

Q At your place of business? A Yes, sir.

Q And who kept that book -- this receipt book? A This boy did.

Q Are you familiar with the defendant's handwriting? A Yes, sir.

Q You bring that book here Monday. A Yes, sir.

THE COURT: Have you exhausted this witness?

MR. McCORMICK: Yes, sir, I have.

Q Did you have any talk with this boy concerning this bundle at any time, that was shipped to Broesel & Company? A The Tuesday following.

Q With the defendant? A With the boy.

Q What did you say to him? A Why, I asked him what he done with the goods and he told me he delivered the messalines to Boessneck, Broesel & Company.

THE COURT: Gentlemen, you are admonished not to discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you.

(The Court now declares an adjournment to Monday, July 22, 1912, at ten-thirty a. m.)

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New York, July 22nd, 1912.

TRIAL RESUMED.

H A R R Y W I L K U S, resumes the stand and further testifies.

CROSS EXAMINATION BY MR. LACEY (Continued).

Q You stated Friday, that it was not until the salesman came from Roselle & Company on either the 14th or 15th that you learned that the goods that you had given this defendant to deliver to Broesell & Company had not been delivered; that is correct, isn't it? A It was on the 14th when he was in the office.

Q Now, this boy was discharged on the 13th as you have already stated? A He was discharged on the 13th, and he came up again on the 14th. We sent him to call his mother -- we wanted to see his mother.

Q Well, he was discharged on the 13th? A Discharged on the 13th or 14th --- I don't remember which.

Q Will you swear he was not discharged on the 13th? A Well, I told you I don't know whether it was the 13th or 14th, but we sent him on the day when he was up there, when he had not delivered the goods, we sent him for his mother -- we wanted to see his mother. He was in the office.

Q You said it was on the 10th of May you gave him the goods to deliver? A Yes, sir.

Q It was two or three days after that that you discharged

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him, wasn't it? A About two or three days after that. It was on a Tuesday.

Q Well, it was the day before you heard from Broesell & Company that you discharged him, wasn't it? A The day before.

Q The day before you received word from Broesell & Company that the goods had not been delivered you discharged the defendant, isn't that right? A I don't remember whether it was the day before or not.

Q Was it the same day? A I know it was on a Tuesday. We sent him back for his mother, we sent for her.

Q You sent him home on a Monday then, is that right? A I don't remember whether Monday or Tuesday.

Q Was it on a Tuesday or Wednesday that you received word from Broesell that the goods had not been received? A It must have been on a Tuesday or a Wednesday.

Q You said yesterday that it was the 14th, is that right?

THE COURT: He said the 13th or 14th.

MR. LACEY: I think he said he heard from Broesell & Company on the 14th.

THE WITNESS: I didn't tell him what date it was.

THE COURT: He was not sure as to the date.

MR. LACEY: All right, sir.

Q I want to fix this, if I can. The first time you discharged this boy you had not yet learned that the goods had not been delivered to Broesell & Company; that is right, isn't

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it? A That is right.

Q Now, that day that you had discharged him, didn't you send a boy over to his house to ask for the goods? A No, sir, I did not.

Q What? A I did not. I did not send him over to the house to ask for the goods.

Q Didn't you send a boy over to his house? A I sent him over to his house to have his mother come over; we wanted to see his mother.

Q Didn't you send over to ask about these goods? A No, sir, I did not. We sent him home to have his mother come on-- that we wanted to see her.

Q Now, you said that there was a burglary committed on the 3rd of May in that store and about five thousand dollars worth of goods was stolen? A About that, yes.

Q And some of those goods had been sent to you by manufacturers on memorandum, the same way that Broesell had sent them; that is right, isn't it? A Yes.

Q Now, Michael Freedman, he had sent some goods, hadn't he? You had some goods from Michael Freedman? A Yes, sir.

Q And Ullman & Company? A Well, we got them from all sources.

Q Buckley, Cortwright? A Yes, sir.

Q Fried, Mandelson? A Yes.

Q These goods had been sent to you by these manufacturers

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on memorandum, is that correct? A We had got goods on memorandum. We may have one or two pieces that come on memorandum, but the other goods are all bought outright.

Q Well, you bought them outright? A We bought them outright, excepting when we want to measure some merchandise we have them sent in on memorandum.

Q You received bills with these goods, didn't you? A Yes, sir.

Q Now, the day after the burglary --- the burglary was May 3rd --- the day afterwards, May 4th --- that was Saturday--- didn't you tell this boy ---

MR. LACEY: Question withdrawn.

Q The burglary was committed Friday on May 3rd. Monday, May 6th, didn't you tell this boy to go over the stock and tell you what goods were missing? A No, sir.

Q You did not? A No, sir.

Q Didn't he give you those bills which I mentioned and ask you to go over the stock? A No, sir, he did not. I don't remember.

Q Well, did you go over the stock for him? A Yes.

Q With bills to find out what goods were missing? A No, we went over the following Sunday.

Q Well, on that Friday, or May 3rd, Saturday, or the 4th --- do you mean Sunday the 5th? A It was on a Sunday, that is all I know.

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Q Which Sunday --- the Sunday right after the burglary, or one week from that? A Right after the burglary --- Sunday after.

Q That would be Sunday, May 5th, assuming Friday was the 3rd, wouldn't it? A Yes.

Q Did you have all the bills then when you went over the goods --- did you have all the bills? A We have got bills on Friday, yes.

Q Did you compare the bills with the goods.

MR. LACEY: Question withdrawn.

Q Did you determine what goods were missing by the bills?

A No.

MR. McCORMICK: I object to this because I do not see that it relates to the issue here after all. The indictment charges the larceny of three pieces of goods on the 10th of May, and it makes no difference whether they went over the goods on the 3rd or not.

Objection sustained. Exception.

Q You had a bill from Broesel & Company then, didn't you, on Sunday, May 5th, when going over the goods?

MR. McCORMICK: Objected to. That is the same matter.

MR. LACEY: Among the goods from Broesel & Company or the goods the defendant is supposed to have stolen.

THE COURT: How is the evidence material?

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MR. LACEY: I want to show that the goods which the defendant is supposed to have stolen came from Broesel & Company.

THE WITNESS: Yes, we had a memorandum bill.

Q Did you go over the goods on that memorandum bill on Saturday? A These goods we found on the roof, what he was supposed to deliver --- we found about forty or fifty pieces of goods on both roofs -- that is, on top of the loft building, on our loft building, and the building next to it, and these goods were in that stuff that we found among those packages.

BY THE COURT:

Q You mean the goods which you gave the defendant to deliver to Boessneck, Broesel & Company? A Yes, they were all on the roof, and they came back --- we brought them back on the 3rd, the day after they were stolen.

Q And that was prior to your having delivered the goods to the defendant? A Yes, sir.

THE COURT: Did you understand that?

MR. LACEY: Yes, sir.

BY MR. LACEY:

Q There is not any confusion about that --- you found them on the roof that Saturday, May 4th or Sunday, May 5th?

A That was on Saturday morning when we got the goods back.

Q May 4th, then? A I don't remember the date.

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Q It was the Saturday following the Friday on which the burglary was committed; conceding Friday was May 3rd, that would be May 4th? A Yes, sir.

Q He found those goods on the roof May 4th, is that not correct? A I don't remember whether he found them or not--- some of the boys found them.

Q Who found the goods? A I think it was our cutter.

Q You said the defendant found them? A I suppose he went up on the roof with him.

Q You didn't see either of the men find them -- you were not present when they found them? A No, sir.

Q So you don't know who found them? A No.

Q After these goods were found did you take a bill from Broesel & Company and go over the goods? A We had a memorandum bill for the goods.

MR. LACEY: I move to strike that out.

THE COURT: Motion granted.

Q Did you take a memorandum bill from Broesel & Company which you say you had and go over the goods to see if the goods from Broesel & Company were there? A They were there.

Q Did you take a bill from Broesel & Company? A We had this memorandum bill (indicating).

Q Well, is that the bill that you took? A That is the bill we took it from.

Q Which one of these bills did you take? A I don't re-

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member which one. Mr. Harris was doing that work. He was looking after that.

Q Well, then, you didn't take any bill at all, or go over the goods, did you? A Did I take any bill?

Q yes. A There was a bill there, and I saw the goods thereafter the burglary. A memorandum bill. We stick the memorandum bills on top of the package, under a box that we have that we wish to return.

Q Do you mean to say that that bill was stuck in the package when the package was found on the roof? A Yes, sir. From not only one but from three or four packages were that way -- Ullman ---

Q Isn't this a hole made by a file (indicating on bill)?

A I don't remember what that hole was made by.

Q Will you swear that bill was not on file down in your office? A I don't know which one it was, but there is one of those bills.

Q You don't know, do you? A I don't know which bill it was.

Q How is it you are able to state so positively that those particular goods from Broesel & Company were there? A Because I examined them up and examined them.

Q Did you wrap them up on Sunday, May 4th? A No, sir, I did not.

Q Well, then, do you know now whether they were there on

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May 4th or not? A I wrapped them up on May 10th.

Q I am asking about May 4th? A They were laying under the till.

Q How do you know? A Because they were there. I handled them May 10th.

Q Can you remember each package of goods you handled on May 4th --- Sunday, May 5th? A I cannot remember handling them all, but I know it was there.

Q How do you know it was there? A Because they were there. Some goods from Ullman to be returned ---

Q That is the best answer you can give. Now, was it your duty as a member in the firm to wrap these goods? A I do almost everything.

Q Has this firm, of which you are a member, ever been through bankruptcy? A No, sir.

Q Well, has your partner, Harris, ever been through Bankruptcy?

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

THE COURT: What is the object of this line of inquiry? The evidence might become relevant on the question of credibility. Counsel ought to be very careful in asking questions of that character, unless he has some definite purpose in doing it.

MR. LACEY: Well, I have, but not from this witness;

I can ask Harris that question.

THE COURT: I sustain the objection so far as this witness is concerned, as immaterial. You may ask the partner that question, or you may call him to prove that fact.

Q Did those two ladies (indicating in court room) come over to see you afterwards, -- the mother and sister --- after May 13th?

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

THE COURT: Objection overruled.

A Yes, sir.

Q Did you say to them that you would spend \$5,000 to convict this defendant? A No, sir.

Q Did you say to them you would put him behind the bars for twenty years? A I answered that question Friday.

Q Well, now ---

THE COURT: You questioned the witness on this subject Friday.

MR. LACEY: I ask the question for the last time.

THE COURT: No, you have it on the record. There is no use repeating it.

RE-DIRECT EXAMINATION BY MR. McCORMICK:

Q What is this book that I hand you? A That is a receipt book.

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Q For what concern? A For goods that we delivered to customers.

Q Whom do you mean by "we"? A The firm of William Morris & Company.

Q That is their receipt book? A Yes, sir.

Q How is that book used? A We put the name of the firm on, and our name -- we put the firm of William Morris & Company on, and the house we want to deliver the goods to, and the package.

Q Who fills in the entries in that book? A The boy. Sometimes I would.

Q Which boy? A Any one of the boys there.

Q Who was filling it in on the 10th of June -- who had charge of the books? A 10th of May, you mean?

Q 10th of May? A This boy, this defendant.

MR. McCORMICK: I offer the book in evidence. (Handing book to defendant's counsel.)

MR. LACEY: I object on the ground that according to the District Attorney's own statement he says there is no receipt for the goods. In other words, there is nothing in the book about the goods. It is a regular negative --- he is trying to prove a negative, you might say. If he is trying to prove some particular entry concerning these goods.

THE COURT: I believe this book was produced because

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of certain questions propounded by some of the jury.

MR. McCORMICK: A book kept by this defendant.

THE WITNESS: Any boy that worked for us kept it.

When we let this boy go out, we would get another boy.

Q Did this boy, (indicating Defendant) keep this book?

A Yes, sir; that boy was supposed to keep that receipt book.

Q Keep it exclusively? A yes, sir.

MR. LACEY: The witness said any boy kept it.

BY MR. McCORMICK:

Q During the month of May nobody kept the book but the defendant? A Nobody but the boy.

Q And that is a record, or supposed to be, of the deliveries from your firm to other firms? A Yes, sir.

BY MR. LACEY:

Q Didn't the girls in your employ too write in that book --- certain girls? A Not that of the boy?

Q Are you willing to swear that every entry in the book is in the handwriting of this defendant? A I wouldn't want to swear, no.

Q You don't know whether he exclusively kept the book or not?

MR. McCORMICK: Objected to.

THE COURT: I shall sustain the objection for the present.

BY MR. McCORMICK: Q Have you looked at the entries in that

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book for the month of May?

THE COURT: Examine all the entries up to the 21st of May.

MR. LACEY: Unless he saw the entries made I will object.

THE COURT: I overrule your objection on that ground.

BY THE COURT:

Q Did you ever see the defendant write? A Yes, sir.

Q On how many occasions? A Well, on all occasions that goods were to be delivered, and some goods to be entered in that entry book.

Q On how many occasions did you observe the defendant write in this book? A Oh, I guess four or five times or six times.

Q Are you familiar with his handwriting? A No, I am not.

BY MR. McCORMICK:

Q Those two bills that were handed to you a little while ago are duplicate bills, are they not --- they relate to the same goods? A Yes, sir.

Q The 247-2/8 yards of cloth, is that right? A Messaline.

Q Well, that is cloth, isn't it? A Yes, sir.

Q Of the value of 65 cents a yard, each? A Yes, sir.

Q And those are the goods that you delivered to the defendant on the 10th of May to be delivered to the firm of

Broessneck, Broesel & Company? A Yes, sir.

Q And the goods set forth on those two bills and the goods that you delivered to him in your store? A Yes, sir.

Q And those goods had been in your possession since the 29th of April? A Yes, sir.

Q On the 29th of April you received those goods from this other firm, Broessneck, Broesel & Company? A Yes, sir.

Q For what purpose? A On memorandum. We were to place an order on Messalines, and we wanted to see what quantity they had.

Q And you finally decided they were not the kind of goods you wanted? A Yes, sir.

Q In the meantime there had been a burglary of your store? A Yes.

Q And these goods among others were left on the roof by the burglars? A Yes, sir.

Q And later, about May 4th, brought back into the store? A Yes, sir.

Q Did they remain in that storeroom until the 10th of May?

MR. LACEY: Objected to.

Objection sustained. Question withdrawn.

Q Do you know where those goods were from the 4th of May until the day you delivered them, you say, to the defendant?

A They were in a till --- a kind of a box.

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Q Where was that box? A Under a table, - the cutting table.

Q And you saw them there every day? A Yes, sir.

RE-CROSS EXAMINATION BY MR. LACEY:

Q You say every day you examined the contents of this till? A I examined, I watched that till, yes, sir.

Q You watched it or examined it? A I examined it pretty near every day.

Q Pretty near? A Yes, sir.

Q There were some days you did not? A I was there every day; I examined that till.

Q You examined that till? A Yes.

Q You took out all the packages in that till every day?

A Every day there was a package to be returned on memorandum pretty near --- sometimes two a day.

Q Did you take out every package in that till every day?

A Now, and then I would have to pull out one package to get the package under it.

Q Did you examine every package in that till every day?

A Pretty near every day.

Q Well, now, I don't want "pretty near"? A I handled the packages pretty near every day.

MR. LACEY: I move to strike that out.

THE COURT: Motion denied.

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Q On what date did Broesel & Company send you the goods in the first place? A According to the bills ---

THE COURT: Is the bill in evidence?

MR. McCORMICK: I offer it in evidence.

MR. LACEY: I object to the bill as not binding.

THE COURT: Objection sustained. He asked if he had a bill from Broessneck & Broesel. What particular relevancy to this date the bill has I fail to see. You object to the admission of the bill?

MR. LACEY: I object to the bills being admitted in evidence on the ground that they are in no way binding on the defendant.

THE COURT: Objection sustained.

MR. LACEY: Will your Honor allow me to ask the witness the date on which he received the goods?

THE FOURTH JUROR: May I ask your Honor whether the testimony in reference to the receipt book was excluded, or only the handwriting?

THE COURT: The entire book is excluded on the ground that the complainant is unable to identify the handwriting therein, but the District Attorney states he will procure some other witness as to that.

THE FOURTH JUROR: And no questions can be asked in reference to it?

THE COURT: No.

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THE SEVENTH JUROR: Regardless of whose handwriting that receipt is filled out in, the main part of the thing being last Friday, in asking the question, was to find out the receiver of those goods at Broessneck & Broesel.

At times in business houses it is a rule to allow receipt books --- not a very important book -- and the filling out is allowed by anybody --- several boys or a lady in the office, but the important thing is the signature.

BY MR. McCORMICK:

Q When you sent the defendant on the 10th of May to deliver those goods mentioned in the indictment, did he have that book? A I gave him the book.

Q You handed this book to him? A Yes, sir.

Q Had you before that told him what to do with this book when he delivered goods? A Told him to make out a receipt and deliver the goods to Broessneck & Broesel.

Q And told him to have some one there sign it? A Yes, sir; that is understood.

MR. McCORMICK: I offer it in evidence.

MR. LACEY: I object to it.

THE COURT: Objection overruled. The book is admitted for the purpose of showing the condition of affairs prevailing in that business.

(Received in evidence and marked People's Exhibit 1.)

MR. McCORMICK: The firm to whom those goods were delivered by the defendant is not signed on the redeipt; I

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call attention to that.

BY MR. LACEY:

Q Did the defendant give you the book back when he came back? A I was not there when he came back; I went home.

Q You stated you had active charge of him --- you had control over him? A Mr. Wallstein and I.

Q Why didn't you look at the book when he came back?
A I was not there that night.

Q Why didn't you look in the book after that? A As a rule I do not.

Q What? A As a rule I do not.

Q As a rule you do not? A No, sir.

Q You did not ask about the receipt before the boy went away, did you? A No, sir, I did not.

Q And you are not in the habit of doing it -- you left it to the boy, is that your custom? A Yes, sir, -- boy or girl.

Q You leave it to a boy or girl? A In the office.

Q And you told the judge he had exclusive control over that book? A There is the book.

Q Now, you say either a boy or a girl had control over that book --- that's all.

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H E N R Y H A R R I S , called as a witness in behalf of the People,
being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCROMICK:

(The witness states that he resides at 62 East 94th Street)

Q What was your business on the 10th of May? A Manufacturer
of petticoats and dresses.

Q You are a member of what firm? A Wm. Morris & Company, at
140 West 22nd Street.

Q Was the defendant in the employ of that firm? A Yes, sir

Q How long? A He was there previous to my going together
with that concern.

Q What were his duties? A I don't know anything about his
duties.

Q Under whose charge did he work? A Mr. Wallstein and Mr.
Wilkus. I took care of the dress department.

Q Did you have a conversation with this boy on the 15th of May?
A On the 16th of May.

Q Where was it? A At the 30th Street Police Station.

Q Who else was there? A A Mr. Scanlon and another officer.

Q Do you know the name of the other officer? A I couldn't
mention it, but I know the name of the fellow.

Q What was that conversation? A Philip Goldberg told me on
that day, on that morning, that he had met a man on 19th Street between
7th Avenue and Broadway while he was carrying a package of merchan-
dise to be delivered to Boessneck, Brossel --

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MR. LACEY: I would like to have the language as nearly as the witness can give it to us of what Goldberg said.

A (Witness continuing) I am giving the conversation as I remember it.

THE COURT: Objection overruled.

A (Witness continuing) This man he identified -- he said had a scar on his right cheek, whom he had spoken to for one hour until he finally induced him to sell the merchandise for \$30., and he pulled a wallet from his pocket -- a little black wallet -- and said "Here is \$10. I have left from the \$30." He said he could meet this man on the Bowery and Delancey Street any evening after six o'clock, on a saloon; a white brick building he called it; and that is the conversation.

Q That is all you know about the case? A Yes, sir.

Q Did you know what these goods were he was talking about?

A Those three pieces of peau de sine, or mesaaline.

Objected to; objection sustained.

Q Had you seen the goods you were talking about? A yes, sir.

Q What were they? A Three pieces of messaline, white.

Q Can you tell us the number of yards?

MR. LACEY: I think the District Attorney ignores your Honor's ruling. Your Honor sustained the objection and he goes right on.

THE COURT: He said he had seen the goods.

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Q Do you know when your firm received the goods? A On April 29th.

Q From whom? A Boessneck, Broesel -- Stenz's department.

Q And they were in the possession of your firm until when?

A yes, sir. Until --

MR. LACEY: I object to that, calling for a conclusion.

THE COURT: Objection sustained. Strike out the answer, and disregard the evidence gentlemen.

Q Did you see those goods between the 29th of April and the 10th of May? A Yes, sir.

Q Where were they? A I saw them on the 6th day of May, on a Sunday.

Q Where were they? A When I got the inventory.

Q Is that the last time you saw them? A No, I saw them after that.

CROSS EXAMINATION BY MR. LACEY:

Q You know that a burglary was committed on May 3rd? A May 4th -- May 5th.

Q On Friday, wasn't it? A Yes, sir.

Q Positive it was not May 3rd? A I feel pretty positive that it was May 5th.

Q Suppose we call it Friday. A Then I am in error. I am pretty sure that I am right though.

Q Were you down to the store on the Sunday following -- a Sunday? A I was there on the 7th, yes.

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Q Call that the Sunday following? A Sunday, yes, sir.

Q Did you go up on the roof? A No, sir.

Q Did your partner, did you see Mr. Wilkus up on the roof?

A No, sir.

Q Do you know that some goods were found on the roof? A
Yes, sir.

Q After the goods were found did you and your partner check
bills that you had received from various people and go over the
goods and check them against the bills for the purpose of de-
termining what goods were missing? A No, sir. We took a
correct inventory of the place.

Q From what did you take the inventory? A For the
purpose of determining the loss.

Q From what? A From the piece goods.

Q How did you take an inventory of goods which were not ^{there} ~~there~~
goods? A I told you that we took an inventory of the mer-
chandise that was found on the roof and that merchandise which re-
mained on the premises which had not been taken.

Q Then you compared that inventory with what? A With
the bills, with the invoices.

Q Were all the goods there? A What all the goods here?
I don't understand you.

Q Were all the goods there that should have been there? A
No, sir.

Q About \$5000. worth missing? A \$7,200.

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Q What, \$7,200.? A Yes, sir.

Q You saw this boy in the Police Station? A Yes.

Q Didn't you tell him that if he would tell you where the goods were that you would let up on him? A No, sir, I told him this; I said to him that it was a duty that he owed to himself to advise us the man that induced him to sell him the merchandise, because that man was worse than him and that it was his duty to inform us who the receiver of the merchandise was.

Q Did you tell him that you would let him go if he would tell you who stole the \$5000. worth? A I didn't tell him anything about letting him go.

Q Didn't you accuse him of being mixed up in that burglary? A No, sir, I never accuse anybody unless I am sure.

Q Didn't you show him bills for goods which were missing? A I showed him a bill.

Q And didn't you ask him about those goods? A Yes, sir.

Q What did he say? A He told me he sold the goods to a man whom he met on 19th Street.

Q He told you he sold the eight bills -- A The goods that were represented by that invoice. I said "A" bill.

Q Is not the bill you showed him (Indicating)? A I don't know, I have got to look at it first. That is the invoice, -- yes that is the memorandum.

MR. McCORMICK: Now I offer that invoice in evidence.

MR. LACEY: I don't think it makes any difference but I

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will object to it because it is not binding on the defendant. That is all.

THE COURT: Objection sustained.

(Marked for identification People's Exhibit 2.)

Q Did you show him any other bills besides that one? A
No, sir.

Q Did you say to this boy at that time that you would spend \$5000. to send him to jail? A I said nothing of the kind.

Q Did you say that to his mother and sister at any time?
A No, sir.

Q Did you send a boy over to his home on May 13th? A
No. I sent a telegram to his house, to his mother.

Q Wasn't a boy sent to his mother on May 13th? A I don't know.

Q You didn't send any boy? A No, sir.

Q You accused this boy of stealing another package of goods and he was indicted and charged with it? A I charged him with stealing one piece of goods, yes, sir.

Q That was a trial in June. On May 13th? A The evening of May 13th and he returned it on May 14th.

Q You accused him of stealing those goods? A I did, yes, sir -- that goods.

Q He was tried and he was found not guilty, wasn't he? A
He was.

THE COURT: All of the facts have not been brought to

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the attention of this Jury. There may have been many reasons why the other jury acquitted, and it might not be unfair to the People to state that there was evidence in the case that the defendant had returned the package which he claimed he took by mistake before the arrest was made; is that correct, Mr. Harris?

THE WITNESS: Yes, sir.

THE COURT: That might have had some bearing on the question of criminal intent. I shall charge this jury that the fact that the defendant was acquitted on another charge is absolutely immaterial so far as this case is concerned. This jury is to concern itself with evidence in this case.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q Did you talk with the boy about that invoice? A About that invoice of April 29th, yes, sir.

Q Was the invoice there? A Yes, sir.

Q Did the defendant have the invoice? A In his hand, yes, sir.

Q What conversation did you have with him about it on the 29th or at any day? A The only conversation I ever had regarding that invoice was on May 16th, the morning of May 16th.

Q And what did he say about the invoice? A And he told me that he took the merchandise to be delivered and that he met a man off 19th Street --

Q You have gone over that.

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MR. McCORMICK: It seems to me that it is proper to admit this invoice in evidence.

THE COURT: What difference does it make?

MR. McCORMICK: Except it so plainly identifies the goods.

MR. LACEY: I will withdraw the objection.

THE COURT: Do you consent to its admission?

MR. LACEY: Yes, sir.

(Received in evidence and marked People's Exhibit 2).

RE CROSS EXAMINATION BY MR. LACEY:

Q Have you ever been through bankruptcy? A I have, yes.

Q Your partners have not though?

Objected to; question withdrawn.

Q Were you a member of the firm of Wm. Morris & Co. at the time of the arrest of the defendant? A Yes, sir.

WILLIAM R. BURKER, called to the stand but is not sworn and resumes his place in the body of the Court Room.

THE COURT: Can not you simplify the issue? Do you dispute that this firm received the goods from Boessneck, Broesel & Company?

MR. LACEY: No, I will concede that.

IT IS CONCEDED that the firm of Wm. Morris and Company on the 29th of April, 1912 received the goods mentioned in People's Exhibit 2, and that those goods were not delivered

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to the firm of Boessneck, Broesel & Company by the defendant on the 10th of May or any other time.

THE COURT: Is that conceded?

MR. LACEY: Yes, I will concede that. Now, I would like to ask that shipping clerk, (Mr. Barker) one question.

THE COURT: Yes..

W I L L I A M R . B U R K E R , called as a witness by the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LACEY:

(The witness states that he resides at 255 West 10th St.)

Q You are the shipping clerk for the firm of Boessneck, Broesel & Company, are you not? A Yes, sir.

Q Did you receive a postal card from William Morris & Company asking you to come and call for these goods? A No, sir, not I. The department receives those orders.

Q Did the department receive such a postal card? A I don't know.

Q Is it true that your firm was in a particular hurry for these goods? A That I do not know either.

Q Whenever your firm is in a particular hurry to get goods which they have sent out on memorandum, isn't it their custom to send somebody to get the goods? A They generally make out an order and send it down to me and I give it to the driver to go after --

Q Did you ever send any notice to Wm. Morris & Company that you wanted those goods? A No, sir.

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BY THE COURT:

Q Who has the exclusive charge of sending orders for the return of goods? A When they receive a postal card for an order to return goods they make out an order and bring it down to me. Now, I do not recollect of having an order, I was not asked to look that up and I have not got the book here. I don't know what date the goods were returned or anything about it.

Q But your records show that a postal card was sent to this firm for the return of these goods? A The record would not show that there was a postal card sent, no.

Q Except of the fact of the goods having been returned -- the record would show that? A Yes, the record would show that.

Q Well now do you always give an order to your driver for the return of merchandise? A Always give an order for the goods to be returned.

Q Did the concerns return merchandise through any of their own employees? A No. Just the order "Kindly deliver to bearer" the amount of goods -- one piece, two pieces or three, whatever it might be, "~~to bearer~~".

Q And in no instance does the intended purchaser return the package to you? A That is, if he has it there to be returned?

Q If A obtains property for inspection, for examination, or on memorandum and is dissatisfied with the goods, does A send the goods back to your concern? A Yes, sir.

Q Through one of his own employees? A Well, I don't

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know what custom they use in returning the stuff. If they
send a postal card we send after it. Occasionally they return
it themselves

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J O H N S C A N L O N, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

(The witness states that he resides at 312 West 21st street.)

Q Did you arrest the defendant? A I did.

Q Are you a member of the police force of New York? A I am.

Q On the 10th of May, and thereafter, for a few days, were you attached --- I mean, you have been in the Detective Bureau right along? A Yes, sir.

Q Where did you arrest the defendant? A 25th street and Seventh avenue --- at 24th street -- I don't know just which.

Q What date? A I think it was May 16th, about twelve o'clock midnight.

Q Where was it? A 25th street and Seventh avenue.

Q Was he alone there? A Yes, he was alone.

Q What did you say to him? A At that time I didn't say nothing. Officer Martin and myself walked with him up to 30th street police station.

Q Is Martin here? A No, sir.

Q I want you to tell us from the very beginning all that happened that you know about? A Why, that night Mr. Harris here had an arrangement that we would go over past ---

THE COURT: Strike that out.

THE WITNESS: (Continuing) Well, we had been

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looking for that boy that evening ---

THE COURT: Strike that out and the jury will disregard it.

Q Where did you find him? A 25th street and Seventh avenue about twelve o'clock midnight.

Q Tell us from there on all that happened? A We walked up to the 30th street police station.

Q Before you walked up you must have said something to him? A No. We told him we locked him up for the larceny of \$50 worth of silk.

Q You took him up to the station house? A Yes, sir.

Q At any time after that did you talk to him concerning three pieces of cloth that he was to have delivered to the firm of Broessneck Broesel & Company?

Objected to as leading. Objection overruled. Exception.

A I did.

Q What was that conversation? A He had a conversation with Mr. Harris, and Mr. Harris called me over and he said, "Say to the officer what you have told me." And he told me that he had met a man in 19th street, and the man stopped him on the street and had some conversation with him; that the man walked east with him to Fourth avenue and persuaded him to sell him the rolls of silk which he had then in his possession and for which he got \$30, stating that he had \$10 left out of the \$30. I asked him the description of the man, and he

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told me he was a medium built man, with a scar on either the right or left cheek, that this man told him he could meet him any evening down at Delancey street and the Bowery in a saloon there --- a white brick front building.

Q What cloth was he talking about when he said that?
Did he say?

Objected to. Question withdrawn.

Q Did you talk to him about any cloth? A I did.

Q Do you remember exactly what he said, and exactly what others who were talking about him said in regard to what cloth it was? A I do.

Q What was said? A The cloth mentioned was the rolls of cloth to be delivered to Broessneck and Broesel.

Q On what day? A I don't know what date it was to be delivered there.

Q Have you told us all you know about this case? A That is all I know about this particular case.

CROSS EXAMINATION BY MR. LACFY:

Q You wanted to be fair with this defendant, didn't you when you spoke to him? A I did.

Q Didn't you tell the defendant that there were two men in the Tombs who said that he was in that burglary of May 3rd? A I did not.

Q Didn't you tell him you had two men who could identify him? A I did not.

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Q Did you touch this defendant at all? A At the time I searched him.

Q Did you hit him? A Never.

Q Or kick him and knock him down? A No, sir.

Q You did not? A I did not.

Q But before you spoke to this defendant, did you tell him you were a police officer? A I did.

Q Did you warn him what he said would be used against him?

MR. McCORMICK: I object,

THE COURT: Excluded. What difference does it make?

Q You knew there had been a burglary committed on May 3rd? A I did.

Q Did you hear Mr. Wilkus, or Mr. Harris state to the defendant that they would give five thousand dollars to convict him? A I did not.

Q Did you hear either one of those say to the defendant they would give him twenty years in prison? A I did not.

Q Did you yourself tell him you would give him twenty years in prison unless he told you about that burglary? A I did not.

Q Were you assigned by the police department to work on that burglary? A I was.

Q You were working on it at this time, weren't you? A I am

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A L B E R T S T U R S B E R G, called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

(The witness states that he resides at 11 Reservoir avenue, Jersey City Heights.)

Q What is your business? A Silk business.

Q What firm are you connected with? A Broessneck, Broesel & Company; Department W. A. Stenz.

Q In what relation are you connected with that firm?

A I have the selling output of some mills. I bank through Broessneck, Broesel & Company.

Q You know Mr. Wilkus? A I do.

Q Who testified in this case? A I do.

Q Did you see him on the 10th of May pack any goods; up---

(Question withdrawn.)

Q Did you see him with the defendant on the 10th of May?

A yes, sir.

Q Where were they? A The first time I saw him was when I came in the place, and he came up and wanted to find out what I wanted, although Mr. Wilkus had seen me and told me to wait, and he wanted to know what my business was there, and saw me ---

Q Tell us what the defendant said? A He asked me about who I was, and I told him, and he wanted to know what I wished

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to see, and I said, "Mr. Wilkus". He said, "What do you wish to see him about?" I said, "I will tell him when I see him."

Q Give us all the talk? A Then after that I had sent up some goods on memorandum ---

Q Do you know what the goods were? A Yes. I believe we submitted the date there.

Q Are those the goods described in that exhibit? (People Exhibits 2)? A Yes.

Q When did you send those goods up to Morris & Company?

A Well, just according to the date on here, that is the only way I could remember it.

Q What is that date? A April 29th.

Q What day was it that you went up to get the goods back?

A Well, that was, I should judge, about a week after I had been up and gone over the wualities with Mr. Wilkus.

Q Can you fix the date approximately? A I should judge that would be around the 14th of May. It was the following week after this incident occurred that I mentioned here.

Q Well, I am talking about the day that you saw those goods the last time at Morris & Company's store? A Well, that was the 29th they were up there --- I think that was before the 10th, I believe.

Q What day was it that you saw the defendant there? A Well, that first week in May.

Q Did you see Mr. Wilkus do anything in regard to those

goods? A Yes. I called his attention to the fact that he made some remark that he had gone over those qualities and that they would not suit, and I told him he had better go over them with me again to be sure.

Q Was the defendant there? A Yes, sir, he was standing back there.

BY THE COURT:

Q Did the defendant participate in the conversation?

A Not that I remember. I know Mr. Wilkus went over to say something to him.

THE COURT: Well, the conversation that this witness had with Mr. Wilkus, in the absence on the defendant will be disregarded by the jury.

BY MR. McCORMICK:

Q Don't say anything else than what I ask for. Did you see Mr. Wilkus do anything in connection with those goods? A Yes. After we got through looking over it, and I mentioned to him ---

Q You cannot tell what he said or you said. Did you see him do anything with the goods? A Yes, he wrapped them up again, the three pieces.

Q Then what did he do with them? A He called the young man here and gave him the goods.

Q Now, you can tell us about conversations with the defendant. Did you hear him say anything to the defendant? A I

don't know exactly. I don't remember exactly the verbiage, but the sense of it was that they were to be returned at once.

Q That he was to return what, if anything was said on that subject? A That I could only presume as being that he wanted this young man ---

THE COURT: Strike that out.

Q Did you hear him say anything to the defendant? A To return the goods --- "these goods are to be returned at once"--- that is about the way I understood the conversation.

Q That is all you know about the case, isn't it? A That is all I know about the case, except that I afterwards when we did not receive the goods, I was very anxious to send them out --- in fact I had mentioned it to Mr. Wilkus shortly before this that I needed those goods right away, and that is the reason I wanted him to decide one way or the other on them. Meantime, in order to explain that to you, I have to tell you the system. As soon as I got back I made out an order for those same goods to be sent to another concern. Naturally it was one or two days after that. I inquired again, called up this concern thinking the goods were there -- naturally coming back by the usual procedure. When I found they had not the goods I came back and made inquiry of our clerk there to find out why those goods were not back, so the following day when I heard that they said they had not, I went up there again to find out about them.

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Q Did you see the defendant that day? A No, I did not; he was not present, but Mr. Wilkus and I went over --- they have a system there of filing memorandum bills, and when the goods were returned they put ---

MR. LACEY: That is objected to. This man stating what he did in the absence of the defendant.

THE COURT: Well, why do you permit the witness to give testimony and then suddenly make an objection? There is a lot of incompetent testimony that has been given by this witness.

MR. LACEY: I object to the system -- "but Mr. Wilkus" and following remarks by this witness.

THE COURT: Objection sustained. The jury will disregard the evidence.

Q What system has your firm in regard to the delivery of goods to your firm by other firms?

Objected to. Objection overruled.

A All goods are sent down into the receiving and shipping department. The shipping clerk sends out the goods. He also received any goods that are to be returned. When they are returned there is a slip made out giving the number of the pieces to be returned and that is entered in a memorandum book. If those goods that are sent out on memorandum, if they are kept by the concern, that memorandum book --- the entry of the

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entry book is marked either "returned", or "to be billed up." When we did not receive those goods after I had gone through the matter with Mr. Wilkus, and he found himself he had no receipt --

MR. LACEY: I object to the statement as to what Mr. Wilkus found.

THE COURT: Objection sustained. Strike it out.

A (Witness continuing) At any rate, when the goods were not returned, Mr. Wilkus asked me to bill up, because we did not get the goods back.

THE COURT: Strike it out and the jury will disregard it.

Q Did your concern always send for goods that you desired or were they sometimes delivered by the other concerns to your concern? A Sometimes they are. As a general rule the concern sends in a postal or something like that to call for the goods. In a majority of cases I asked for them.

Q But in this case you were not requested to send for the goods? A No. I didn't say anything further about the matter at all.

CROSS EXAMINATION BY MR. LACEY:

Q You said you made out an order that these goods be delivered to some other firm? A Yes, in the office. That is natural when the goods came in to be returned.

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RE-DIRECT EXAMINATION BY MR. McCORMICK:

Q What is the value of those goods? They were worth over twenty-five dollars were they not? A I have got these right here; there is 182 yards in one case and in the other 64 and 65 cents --- it is simply a matter of arithmetic.

IT IS CONCEDED that the goods were worth more than \$25, and less than \$500.

RE-CROSS EXAMINATION BY MR. LACEY:

Q When you went in there you say you spoke to the defendant and he asked you whom you wanted to see? A Yes, sir.

Q And you told him that you wanted to see Mr. Wilkus?
A yes. No, that was not the way. He asked me who I wanted to see, and I said, "Mr. Wilkus." Then he said, "What do you want of him?" I said "I have seen Mr. Wilkus."

Q Then the defendant walked away, didn't he? He didn't stand by you all the time? A He started to ask other people around there, and they laughed at him --- the manner in which he was trying to find out what their business was.

MR. LACEY: I object to that and move to strike it out.

THE COURT: Objection sustained, and motion granted.

Q When you were all through the conversation with Mr. Wilkus did this defendant come back to where Wilkus and you were together? A He was around back of the workshop there.

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Q He was not right you and Mr. Wilkus when you finished your conversation --- he was not close to you? A Well, the room back there where they had the goods is not a great distance away. I naturally did not pay much attention to him at all.

Q He was not with Mr. Wilkus when you finished your conversation? A Let me hear that again.

Q Was he standing close to you when you finished your conversation? A This man here? (Indicating defendant)

Q Yes. A I didn't pay any attention to him then. It was only that my attention was drawn to him when Mr. Wilkus finished wrapping up the goods.

Q Did you see Mr. Wilkus hand him those goods? A I am pretty sure about that.

Q Well, did you see him hand him the goods? A Well, I wouldn't swear positively to that.

Q Now, you went down in the elevator, I suppose, did you? A Oh, we went outside. There was a kind of an entry there --- you know, there is a partition all around the entry and we were in the back, in the workroom where they have this stock.

Q But you went downstairs? A I went down the passenger elevator, yes.

Q Did this defendant go down with you? A That I don't recall. I was very busy conversing with some one.

Q You were in a particular hurry to get these goods be-

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cause you wanted to send them to another place? A There is no question about that.

Q Did you tell Mr. Wilkus that? A Yes, I did.

Q Did you mention the name of the other firm? A I did not, that I remember.

Q I suppose you are quite positive you did not take those goods yourself, aren't you? A Without question.

Q And you are equally positive that in no way some one in the employ of your company received orders to go up and get those goods? A Later on when they did not come back, or had not been returned, I naturally told my shipping clerk to find out, "I want to get those goods back", and I naturally presumed that he had the intelligence to send for them, but there was never any returned, and I had to go up there afterwards and find out what became of the goods.

BY MR. McCORMICK:

Q What did you find out when you went up there? A I found that they had not been returned, they had no receipt for them.

Q They were still there? A They must have been there,--- we couldn't find the goods.

Q Well, I did not understand whether or not you meant ---

THE COURT: Strike out "they must have been there."

Q Was that the day you saw the defendant? A That is the first time.

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Q What receipt did you speak of a minute ago? A Well, that Mr. Wilkus could show me anything at all that those goods had been sent back to my firm.

BY THE FOURTH JUROR:

Q The day that you went up to that place, and having heard Mr. Wilkus tell the defendant to see that the goods went back, was that the last time that you went there, or did you go there again to inquire why the goods were not sent back? A I went up there afterwards to inquire why the goods did not come back, yes.

BY MR. McCORMICK:

Q Did your firm ever send a man up there to get the goods? A That might be possibly on account of my having asked my clerk to find out why those goods were not back, or whether they had come back.

Q But that was after the 10th of May? A Oh, yes, that is after that. That is part of the procedure.

BY THE SEVENTH JUROR:

Q I presume that you heard of the robbery that occurred at this place? A When I heard of that robbery I believe was the time --- I believe it was the second time I had come up regarding those goods.

Q When you were up to their place and saw these goods, was that after the robbery or before? A That I could not tell because I don't think I knew of the robbery then. I believe I

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heard some remark made about it at the time, at either the first or second time I had been there regarding the goods.

Q That is very important; I want to know whether you saw those goods the first time or the second time, because I want to know when this robbery had occurred, either before you had been there and seen these goods or afterwards? A Well, I heard of it afterwards I am quite sure. I might not say positive.

Q What was the date you were there the first time? A Well, it was the first week after the shipment there, I think it was. You see this was on April 29th, which might have been about Thursday, wasn't it, the 29th? But it was about a week after that --- I guess it must be around the 10th of May.

BY THE SECOND JUROR:

Q On what date did you see the goods last? A That very day I had come up to see Mr. Wilkus about the goods and go over them. I couldn't tell you exactly whether the 7th, 8th or 9th.

Q Would you say approximately what date? A Why, yes, because there would not have been that time --- very many days could not have passed before I would be up there.

BY THE SEVENTH JUROR:

Q You had not heard of the robbery at all? A Not at that date, no.

Q At the day you were there to see the goods? A No.

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Q The 29th was on a Monday, and you say about a week afterwards --- that would be about on May 5th, or 6th --- May 6th --- now, this robbery, as I understand, occurred on Friday, the 3rd. Now, according to you, you were there after this former robbery had occurred? A That might be.

Q While I fully realize that we are not concerned in that case then, but I considered it very important in my mind to know whether you have seen these goods after this robbery had occurred, or before? A Afterwards when they mentioned to me about the time when the robbery had occurred, then I knew the goods were there after the robbery.

MR. LACEY: I object to his answer when he says ---
I move to strike out his answer as hearsay. The defendant was not present when that was said.

THE COURT: Motion granted.

Q I would like to learn whether Mr. Stursberg had seen those goods in the place after the robbery had occurred?

THE COURT: Well, put that question.

BY THE COURT:

Q Of your own knowledge do you know whether the goods were in Mr. Harris's place of business on the day that you requested him to return the goods to Broessneck, Broesel & Company? A Most assuredly, as I went over the goods with him to determine what quality he wanted.

Q On that occasion had you know whether or not that firm's

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place of business had been burglarized? A Not then. I am pretty sure, but the week following that when I had come up there, either the first or the second time he mentioned to me that before this case where I had ---

THE COURT: No, strike that out. The jury must weigh the evidence from facts and not from hearsay matters.

Q The day on which you requested the firm to return the property, you did not know of the premises having been burglarized? A Not then, no, sir.

Q At that time you did not know it? A No, sir.

Q Are you sure about that? A Positive.

BY MR. McCORMICK:

Q Did you afterwards find out the date of the burglary?

THE COURT: That involves hearsay.

MR. McCORMICK: Question withdrawn. People rest.

MR. LACEY: I will put the defendant on the stand.

(The Court here declares a recess for five minutes first duly admonishing the jury not to discuss the case until it is finally submitted to them.)

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PHILIP GOLDBERG, the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LACEY:

(The defendant states that he resides at 1821 Pitkin Avenue, Brooklyn.)

Q How long have you been in the employ of this Wm. Morris & Company? A About a year.

Q Where had you worked before that? A Before that I worked out of town as a butler, at Englewood, N. J.

Q Did you live at home? A Yes, sir.

Q Where is your home? A 1821 Pitkin Avenue, Brooklyn.

Q Did you live with your father and mother and sister? A Yes, sir.

Q You were employed by this firm in the first part of May of this year? A Yes, sir.

Q And do you remember coming to work any day and finding that any burglary had been committed? A Yes, sir?

MR. McCORMICK: I object to that as immaterial.

Q Well, finding that the store was in confusion. A Yes, sir.

THE COURT: Of course, it is leading, but I shall allow it.

Q What date was it? A On Saturday, May 4th, Saturday morning.

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Q Describe the condition of the store. A Well, I was there a little early that day and I saw --

(Question withdrawn).

Q Did Mr. Wilkus have a conversation with you about certain goods which he stated belonged to Boessneck, Broesel & Company? A Well, he didn't have no conversation with me. We received those goods with other goods and he put goods on the side that was not to be used and he told me to drop the firms postal cards -- they should call for the goods.

Q Did you drop such postal cards? A Yes, sir.

Q And did he wrap up the goods and hand them to you and tell you to --

MR. McCORMICK: I object to the leading questions.

THE COURT: Objection overruled.

Q Did Mr. Wilkus wrap up the goods and hand them to you and tell you to deliver them? A No, sir, he didn't wrap them up. He unwrapped them and looked at the goods and told me to wrap them up and drop a postal card, they should call for the goods.

Q He didn't tell you to deliver them? A No, sir, not at all.

Q Did you leave the building with the goods in your possession? A No, sir.

Q With any goods whatsoever? A No, sir.

Q Did you have a conversation in the 30th Street Police Station? A Yes, sir.

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Q With whom? A With Mr. Harris.

Q What did he say and what did you say? A (No answer).

BY THE COURT:

Q Did you deliver any goods to Boessneck, Broesel & Company on that day? A No, sir.

Q Did Mr. Wilkus give you any goods consisting of messaline?
A No, sir.

Q You are positive about that? A Yes, sir.

Q Do you know Mr. Stursberg? A Yes, sir.

Q Did you see him at your firm's place of business? A I saw him there a few times.

Q Did you see him there on the day -- about the 10th of May? A No, sir.

Q Did you overhear any conversation between Mr. Stursberg and Mr. Wilkus? A No, sir.

Q Concerning the return of property? A No, sir.

Q Did you know that Mr. Stursberg called at your boss' place of business in order to request that the property should be returned? A No, sir.

Q How long prior to the time that you saw Mr. Stursberg did one of the firm tell you to send a postal card for the return of the merchandise? A Well, I sent a postal card before I saw Mr. Stursberg.

Q How long before? A Well, I saw Mr. Stursberg see it

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must have been about the 1st of the month, the 1st of May, and I sent this postal card -- the same day we received the goods I dropped the postal card to call for the goods. I told him we are unable to use the merchandise he had sent us on this date and kindly call for it.

Q Did you deliver the particular merchandise to Boessneck, Broesel & Company? A No, sir, I was not given the --

Q To any of its representatives? A No, sir.

Q Were you present at your place of business when any of Broesel's employees called for the goods? A Yes, sir.

Q When? A I can't recollect the date, but they have sent about eight or nine times.

Q But were you present when Boessneck, Broesel's representative took from your place the messaline? A This here messaline?

Q Yes. A They didn't send out for these goods at all. These goods were robbed during the burglary.

BY MR. LACEY:

Q You say you talked with Mr. Harris in the 30th Street Police Station? A Yes, sir.

Q State the conversation. A Well, Mr. Harris pulled out three bills out of his pocket and he asked me what became of these goods, so I told Mr. Harris "If you mean to accuse me of the goods," I told him "you know well enough yourself this goods was robberd in the burglary". So he says "All right,

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never mind," and he started to talk to me about the burglary.
He told about me being a good boy and I got good parents, and he
said "I want you to tell me" -- he told me I fell in bad company,
and I told him I never went with any bad company, I just got one
friend. And then he told me "You know you were in a burglary.
Just tell me who was in it, I leave you go". I told Mr. Harris "I
never was in a burglary, don't accuse me of it." So he was talking
to me and telling me "I leave you go" and everything. I told him
"I don't know anything about it." So he called an officer there
he says "Hey, Cap. the boy don't want to tell anything about the
burglary". So the detective gets hold of my coat and he gives me a
shove; I fell over and he says "Get up out of there" and he started
to curse me and to run me into the wall and started to knock my head
against the wall and he told me "If I had my way about it I would
kill you for not telling about the burglary." I said "What are
you trying to pick on me? I don't know nothing about it." So
he says "Well, we got two men in the Tombs, they said you were in
with them and if they identify you what are you going to do?"
I told him "I don't know nothing about it." And he told me "What
will you do behind the bars for twenty years?" I said "What
did I do for that?" He said "Oh, you know what you done." I
told him "I never done anything, you are only trying to pick on
me on the gurglary." That's all I told him.

Q That is all you told him? A Yes, sir .

Q You didn't tell him that you met a man with a scar on his

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face and talked to him for an hour and you sold the goods to him for \$30. and you had \$10. left? QA No, sir, I never said anything of the kind. He looked at my pocketbook -- I only had \$1.10, that is all.

Q You didn't have ten dollars? A No, sir, I only had one dollar and ten cents.

Q You were employed by this firm until what date? A Until May 13th.

Q And you were then discharged or laid off? A Laid off.

Q Did you go back there after May 13th? A No, sir, not a day after -- the same day I came back for my hat. I had a cap over there and a hat that I wore so I went out with a cap and I came back for it.

CROSS EXAMINATION BY MR. McCORMICK:

Q How long did you work for this concern? A About a year.

Q How old are you? A Nineteen.

Q Before you worked for them did you work for any other concern? A Yes, sir. Well, I worked for concerns before I worked for them. I worked for E. A. Brinckehoff, Englewood, N. J.

Q The night you were arrested, what night was that -- what date? A It was on a Wednesday evening, about ten o'clock.

Q Do you know what date? A The 15th.

Q The 15th of May? A Yes, sir, it was the 15th of May.

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Q During the last six months or a year that you have been working for this firm, how did you spend your evenings? A Well, I have got a friend here and then I worked for some firm three nights a week, and on Sundays which he give me \$2. for.

Q What firm? A B. Robbins, Brooklyn.

Q Where do you live? A 1821 Pitkin Avenue, Brooklyn.

Q What do you do for those people nights? A Well, there is only one man owns it in the bicycle business and I help him out repairing.

Q How late do you wrok nights? A Until half past ten or eleven o'clock.

Q What time do you begin to work in the evening? A About seve n or half past seven.

Q What time do you go to work for Morris & Company in the morning? A I leave the house around seven o'clock, I get the train around nine minutes after seven and I come up there aboutma quarter to eight.

Q Were you working for this concern, the time you were arrested, at night in Brooklyn? A That night I was arrested, no, sir, I wasn't there that night.

Q What were you doing out at 25th Street and 11th Ave. at twelve o'clock. A This was on 6th Ave. and 25th Street, I have been out that day looking for a job and I couldn't get it, and I happened to meet two of the employees of the place and they asked me to come along with them and they took me to some

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moving picture place and had me around with them the whole time until they put me in the hands of the detectives.

Q They turned you over to the detectives? A Well, they saw Mr. Harris and the detectives, and told me "Good night" and just as soon as they left me Mr. Harris comes over and says "I want you to come" and two detectives comes over.

Q Where did you meet these fellows? A I met these fellows on 21st Street and 6th Avenue.

Q What day did you lost your job? A I think on the 13th.

Q And this was two days later, was it? A No, sir. I think this was the 14th, in the morning, and I met them, that first Tuesday or Wednesday the night I met them.

Q Do you know who committed that burglary? A No, sir.

Q What night was it committed? A On a Friday night.

Q What date was that? A On the 3rd of May.

Q Did you see Mr. Stursberg in that office after that? A No, sir.

Q You did see him there before that, didn't you? A Before the burglary? Yes, sir.

Q Did you ever go up to him when he came in there and begin to talk to him about what he wanted? A Well, this Mr. Wilkus some times don't want to see any salesman, and has got so many goods in stock, so sometimes when I pass the office I just ask the man "Who you like to see" and "Tell me who you are from" and

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and then if I know that Mr. Wilkus don't want to see that man I tell him "No, sir, Mr. Wilkus will not see you today," or sometimes when Mr. Wilkus is not there I tell them Mr. Wilkus is out.

Q Did you get that receipt? A Yes, sir.

Q Who signed it? A It was the boy who signed it.

Q What firm signed that receipt? A Holmes.

Q At the time they signed it did you give them anything?

(Mr. McCormick referring to a page in the receipt book, People's Exhibit 1.)

A Yes, sir.

Q What? A The goods that this called for.

Q Who told you to take those goods out and deliver them to that firm? A Well, when we received the goods Mr. Wilkus looked at the goods and he tells me whether it is good or not and if it ain't good he tells me to wrap it up and drop these people a card that they should call for the goods, and I dropped the card and they call for the goods.

Q Didn't you deliver those goods and get that receipt? A No, sir. When I deliver the goods I write it in the receipt book and then they sign the receipt book.

Q But you do deliver goods, do you not? A Well, I don't deliver goods --

Q Well, did you ever deliver any goods? A I delivered goods from the manufacturers.

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Q Can't you answer no or yes, did you ever deliver any goods from Morris & Company? A Yes, sir, goods that were manufactured though.

Q When you delivered them did you have the people you gave them to sign in this book? A Yes, sir.

Q And you kept the book --

MR. LACEY: The form of the question was "Did you ever"?

Q Did you ever deliver any goods from Morris & Company to their customers or other people? A To customers I delivered.

Q And they signed that book? A Well, the customers I delivered --

Q On the tenth paragraph --

THE COURT: He said he delivered goods which were manufactured, now, these messalines were not manufactured -- they were unmanufactured.

Q Didn't you ever deliver any goods that were not manufactured? A No, sir, I never delivered them. They always called for them, and then sometimes we kept the goods as high as a month or a month and a half and they didn't call for them and I sent them by express and wrote a postal card "Your goods have been shipped by express and kindly accept them because we will not receive them back." And once in a while Mr. Wilkus told me to accept them because they wouldn't take them because we ordered them.

Q Did you deliver the goods described on this receipt? A I never delivered any goods to Michael Friedman.

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Q Whose handwriting is that (Indicating in book People's Exhibit 1) ? A I don't know.

Q Do you deny that that is your handwriting? A yes, sir.

Q Do you deny that you filed that in Morris & Company's office, do you? A Yes, sir.

Q Did you ever receive any goods for Friedman that you did not give to them? A From Friedman did I receive any?

Q Did you ever receive any goods from Morris & Company to be delivered to Friedman that you did not give to Friedman but that you stole? A That I should deliver to Friedman?

Q Yes. A No, sir, never gave me any goods.

Q When you met the officers at 25th Street, there were two of them, were there? A Yes, sir.

Q And they took you where? A They took me to the station house.

Q That was late at night on the 15th? A About ten o'clock.

Q And you were locked up there over night? A Yes, sir.

Q Did they talk to you on the way to the Station House? A No, sir.

Q Didn't they tell you why you were arrested? A Well, no, sir, not at all.

Q What was the first thing they said to you? A Mr. Harris come over and he says "I want you" and he tapped me on the shoulder and I said "What for?" He said "You know, about the burglary";

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and all he said.

Q Then they did not say anything to you about the three pieces of cloth that you are being tried for stealing now? A Up at the Station House, in the Station House he pulls out three bills out of his pocket and asked me to look them over. "Where are the goods?" I said "Mr. Harris, you mean to accuse me of the goods?"

Q You have told us all that. How long were you locked up there before you were taken to Court? A The next morning.

Q Did you deliver those goods on March 20th to Boessneck, Broesel & Company?

Objected to; objection overruled; exception.

A This here was delivered by some one girl that we had, this here goods were delivered.

Q That is in your handwriting? A Yes, sir, it is my handwriting.

BY THE COURT:

Q What girl delivered the goods? A Her name is Theresa, and Mr. Wallstein told me she hadn't anything to do.

Q Theresa is her name? A That is her first name.

Q Is she still employed by this concern? A No, sir, she was laid off, they got slack; that time we were very busy and I didn't go out at all, I was in the place all the time, and he told me I may as well send her down with those goods, she ain't got anything to do.

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Q So then your firm did deliver goods unmanufactured to persons from whom they either purchased or took goods on memorandum? A Well, this is the first time, and then on Monday, it was after the 10th I know, the next day I was laid off, on a Monday, one of the members of the firm was on the road, and I went out to Newark, N. J. and he directed me, he told me "Now, there is lots of goods that you sent postal cards to people, they won't call for it, and some received by express they refused to accept." Mr. Wilkus told me when the Express brings back I should take it back, so he told me "There is lots of goods," and then when I and the assistant cutter -- his name was Herman -- "Send out with the goods, and go out yourself" so I went out with three pieces of goods and the one I took out myself, the one that on the last trial was proven I did not steal -- that goods that I returned was supposed to be delivered too.

Q Do you remember that this merchandise was taken by a girl named Theresa? A That is the only time we ever sent out merchandise by anybody while I was in that employ, and she was laid off that same week.

BY MR. McCORMICK:

Q How long did you keep this book? A Well, I was not the only one who kept it. When I went out on an errand with manufactured merchandise anybody wrote in the book and went out with errands.

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Q How was it that your handwriting appears there if she delivered the goods? A Well, that girl could not write; she is an Italian girl.

Q So she asked you to write it? A Yes, sir.

Q Do you remember those goods? A Yes, sir. That is the only time that we sent out any goods.

Q You said a while ago that you never sent out any. A Not by me.

Q You had a further talk with the officers and Mr. Harris, didn't you? A When Mr. Harris said "Hey, Cap., he don't want to tell anything about the burglary " --

Q Did you have a further talk? A With who?

Q Didn't you tell them you sold the goods for \$30.? A No, sir, not at all.

Q Didn't you tell that to Harris? A No, sir.

Q And the officer? A No, sir, not at all.

RE DIRECT EXAMINATION BY MR. LACEY:

Q When you came to the store on Saturday May 4th, in what condition did you find it? A Well, Mr. Wallstein was the first one to walk in and then some girl by the name of Hannah, she walked in after me and then I walked in, and I took the bar off the door. This was the elevator. And Hannah saw the door broken and got frightened and she said to Mr. Wallstein "Look at the door!" and Mr. Wallstein knew what it was right away, and we walked in and saw goods all knocked around. And Herman, the Assistant Shipping

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Clerk, and myself went over to this broken door and we saw outside laying some petticoats, and going up stairs we saw some petticoats and bathing suits, and down stairs there were bathing suits too. So first we went down to the bottom, nine floors, and picked up what was there, and then I went up stairs and found petticoats and bathing suits all the way up to the roof, and I found the roof door open and I looked out and saw packages laying on the roof and I went over and looked at the goods and saw it was ours and I carried one piece down and the cutters came up with me and carried the rest down.

BY THE TWELFTH JUROR:

Q Did you call the cutters up to help you down? A Yes.

Q Of your own free will, without being told? A (No answer)

Q You found the goods on the roof and then did you call somebody up to help you take them down? A Yes, sir.

BY THE COURT:

Q How did you find the goods were on the roof? A Going up the stairs there were petticoats and bathing suits on the stairs, walking up to the 12th floor, all the way over the floor, and then I saw some outside on the roof and then when I looked around I saw those packages of goods laying on the roof.

Q Who opened the place of business of your firm? A Mr. Wallstein.

Q Was he the only member of the firm that saw the goods?

A No, sir, the cutter saw the goods and Mr. Harris saw the goods.

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Q What time did you arrive on the morning of the burglary was discovered? A Quarter of eight.

Q What were your hours of employment? A Eight to six.

Q You were the first one in front of the place of business?

A No, there was a girl, Hannah that saw the door broken; she lives right around near on 17th Street, she was there before me.

BY MR. LACEY:

Q After this did Mr. Wilkus go over the roof with an inventory or bills or anything? A Well, after the burglary -- the burglary was Friday, Friday night and we saw it Saturday morning and Saturday morning we did all the shipping, we go from the beginning of the week because we ship out the big orders on Saturday, and we left to go over the goods on Monday so Monday we went over the goods and I found the stock -- we didn't take no stock at all, I just found the goods which are supposed to be returned and some goods I received that Mr. Wilkus didn't look at yet, and found the bills and that they were missing. I kept the bills on a hook like and put the name on a package when I told him that that was missing, and I went over again and Mr. Wilkus told me to go over the stock that is needed with those. I went through the bills, I told him I cannot find them, and then he went over it himself and then he told me "Never mind. Hold the bills on your file".

Q You have already told about the conversation in the 30th Street Police Station? A Yes, sir.

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Q Was there any other conversation when you were threatened in any way by anyone? A Well, when Mr. Harris threatened, he told me he would spend \$5000. -- he told me Mr. Wilkus would spend \$5000. if I don't tell him about the burglary. And the day they laid me off Mr. Wilkus told me "If you don't come back and tell me about the burglary, who was in it, I will spend \$5000. to put you away in jail for twenty years." And the officer told me that day, the time I was arrested, I would be behind the bars 20 years.

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S A R A H G O L D B E R G, called as a witness in behalf
of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LACEY:

(The witness states that she resides at 1821 Pitkin avenue,
Brooklyn.)

Q You are the sister of this defendant? A Yes, sir.

Q Did you ever receive any communication from his em-
ployers after his arrest? A They were around to our house.

Q What did you do, did you go over to their place of
business? A Yes, sir, on a Saturday morning.

Q Whom did you see? A Mr. Wilkus and another man.

Q Did a messenger come to your house first, or did a
telegram come to your house? A A telegram came to our house
that Mr. Wilkus wanted to see my mother. No, at first they
sent the boy to our house and he came over and he says, "Mrs.
Goldberg, I was sent from Mr. Wilkus, and where is the bundle
of goods that Philip brought home?" So my mother said "What
bundle of goods?"

Q That was in your house? A Yes, sir.

Q Well, did you go over to the firm afterwards? A On a
Saturday morning I went. Mr. Wilkus came to our house and
at first they sent the boy and spoke about a bundle of goods
and my mother said she don't know anything about it. Then Mr.
Wilkus and another man came to our house and he asked if Philip

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brought a line to our house --- Philip stole a line in their place of business. My mother says no, and she said that the man --- Philip said that the man gave him a present, paper and twine, then came the line --- a present, and Philip said in the place that he brought the line home. Well, they came to our house and they said this way: "Did Philip bring the line home?" My mother says no, because my mother was not at that time in the house when he brought the line --- I was in the house. And I took that line and put it behind the trunk. Then when I came home from work my mother says, "They accuse" ---

MR. McCORMICK: She is testifying to conversations with her mother and other people not connected with the defendant.

THE COURT: Objection sustained.

BY MR. LACEY:

Q After you went over to the firm in New York, you had a conversation with whom? A Mr. Wilkus.

Q Tell that conversation between Mr. Wilkus and you? A I said at first that I was Philip's sister. He says --- well, he says, "We have the line that he stole, and I want him to tell about a burglary, whatever he knows." Then I says, "Philip" ---

MR. McCORMICK: I object. No foundation laid for any such testimony.

THE COURT: Objection overruled. On the authority.

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of people against Lustig.

A (Witness continuing) Well, he said he was going to send five thousand dollars and he will put my brother into twenty years prison if he don't ---

THE COURT: Defendant's counsel desires to prove by this witness hostility on the part of the complaining witness. Under the authorities it is not necessary to call the attention of the witness concerning whom the hostility is to be proved, to anything the witness said on some prior occasion. People against Lustig, unreported, Court of Appeals decisions.

A (Witness continuing) If he don't tell him about the burglary, because we have the same identical thing about the line that was used to the burglary."

Q Is that all that was said then? A And then he found out about the man, that this was not the line, because the line that was used to the burglary was quite as long as the line he gave him a present, so the man said "Now, they are trying to accuse my brother for something else." ---

THE COURT: Strike that out. Why don't you testify to what you said to Mr. Wilkus.

A (Witness continuing) Well, he wouldn't allow me to talk. He said, "Never mind. I will spend \$5,000. I feel sorry for your father and your mother, but for Philip I will spend \$5,000, and I will put him into twenty years prison."

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Q Is that all Mr. Wilkus said? A Yes, they left me stand in the show room by myself. All of a sudden I looked around and nobody was there and I went out.

Q What did Mr. Harris say to you, if anything? A I didn't see Mr. Harris? A I see Mr. Wilkus and another man.

Q Was there a lawyer there when you came over there?

Objected to. Objection overruled.

Q Was there a lawyer there, a man who represented himself to be a lawyer? A Well, my mother was there ---

Q When you were there? A When I was there there was another man in the room, I don't know who it was.

Q Was Mr. Harris in the room when you were there? A No, Mr. Wilkus.

Q Did Harris tell you then he was a working man and not a member of the firm? A Well, my mother was there ---

BY THE COURT:

Q Did Harris tell you that? A I have not seen Harris.

MR. McCORMICK: No cross examination.

(Samuel Feldman, Esq., is now sworn to act as interpreter.)

MINNIE GOLDBERG, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows: (Through Mr. Feldman as Interpreter)

DIRECT EXAMINATION BY MR. LACEY:

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(The witness states that she resides at 1821 Pitkin avenue, Brooklyn.)

Q You are the mother of this defendant? A Yes.

Q Did a boy bring you a message telling you that this defendant had been arrested? A Nobody sent me a message.

Q Didn't Morris & Company send a boy to your house with a message? A A boy came and asked me where are the bundles of goods --- the boss told me to ask you where are the bundles of goods that he brought to the house.

Q Did you also receive a telegram.

THE COURT: That is not disputed.

Q Did you then go over to New York, to the firm of William Morris & Company? A Yes.

Q And whom did you see when you went over there? A I saw Mr. Harris sitting there and another working man was sitting there and afterwards Mr. Wilkus came in, and there was a detective and he said "This man is a working man", and pointing his finger at Wilkus he said, "He is the boss."

Q Did they tell you any man there was a lawyer? A Nobody said that.

Q Did Harris tell you he was a member of the firm, or did he tell you he was a working man? A They didn't say anything. They said "This man is a working man, and this man is also a working man."

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BY THE COURT:

Q Did you say Mr. Harris was present? A Yes, Mr. Harris was sitting there.

Q Do you know Mr. Harris? A Yes, I know him. Before I didn't know him, when I came there I did.

BY MR. LACEY:

Q What did they say to you? A The first thing they asked about the bundle of goods that he brought to the house. The first thing that he asked me about the bundle of goods that Philip brought to the house.

Q What else did they say? A Petticoats -- did he bring any petticoats in.

Q What did you say? A I said, "I don't know anything, I saw nothing; he didn't bring anything; I didn't see anything."

Q What else did they say? A I said in reference to a piece of goods that he brought here, the piece of goods, and that is the reason they were looking for everything else on account of the piece of goods. Then Wilkus said, "All right, if he wouldn't tell the truth, I send him up for twenty years. I will spend \$400 on him -- \$500."

BY THE COURT:

Q He would spend \$500 or \$5,000? A \$5,000.

Q What did you mean when you said \$400, or \$500? A No, \$5,000; he says he is going to spend \$5,000.

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Q You testified that Mr. Wilkus said that he would spend in the neighborhood of \$400 or \$500? A No, I said \$5,000.

BY MR. LACEY:

Q Was anything else said? A They were talking and told me I should --- he should tell the truth. I should tell him to tell the truth. I said, "He doesn't know anything, what could he tell?" He took a piece of goods and he told us in the house in the morning, and he got up early in the morning, and he said, "Mamma, hurry up, I have to go back to the place"---

THE COURT: Strike out the evidence and the jury will disregard it.

Q Did they say to you that this boy took the goods home?

A Yes.

Q Afterwards did they say to you ---

MR. McCORMICK: No more leading questions.

THE COURT: Do not lead the witness.

Q What else did they say to you? A I can hardly remember the many things they were talking to me about.

MR. LACEY: That's all.

MR. McCORMICK: That's all.

J O S E P H H. G O L D B E R G, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LACEY:

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(The witness states that he resides at 1821 Pitkin avenue, Brooklyn.)

Q You are the brother of this defendant? A Yes, sir.

Q Were you in the habit of waiting for him?

Objected to. Question withdrawn.

Q Whereabouts do you work? A I work in 126 West 22nd street, on the same block as my brother does.

Q What time are you in the habit of going home in the evening? A I would quit about quarter to six.

MR. McCORMICK: I object to that.

A (Witness continuing) And he generally quit at six. I would always generally go up to his place and we would go home together.

Q Many times you went home with him? A Yes, sir, mostly every day.

Q You know a great many of his friends, don't you? A Well, I know the man he always paled with, a young fellow.

Q You have known him all his life and you know a great many of his friends? A yes, sir.

Q What is his general reputation among his friends?

A Well, they are a good bunch of boys that I know him to be.

BY THE COURT:

Q How old are you? A Twenty-two years and three months.

Q How old is the defendant? A Well, he is about nineteen-- a little over nineteen.

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MR. LACEY: That's all.

MR. McCORMICK: No cross examination.

IRVING SILVERMAN, called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. LACEY:

(The witness states that he resides at 28 Chester street, Brooklyn.)

Q Do you know this defendant? A Yes, sir.

Q How long have you known him? A About three years.

Q Do you know many people who know him? A Why, several friends.

Q What is his reputation? A The last place he was working, he told me he was working at Philip Morris & Company.

Q What is his general reputation? A I have known him three years.

Q Is it good or bad? A Very good.

Q His general reputation is good? A Yes, sir.

BY THE EIGHTH JUROR:

Q Do you travel with him? A Yes, sir, I was with him about three days during the week, because he was busy working.

Q How long have you been traveling with him? A Three years.

Q How old are you? A I will be nineteen in November.

BY MR. LACEY:

Q You mean you are a traveling salesman or what? A No,

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sir, a friend.

BY MR. McCORMICK:

Q Did you spend your evenings with him A Why two or three nights a week, because he was busy working.

Q What nights did you spend with him? A Every time he called at the house.

Q And he worked in the day time? A He worked about two or three nights a week, helping a man in a bicycle store.

Q Where? A On Stone avenue, Brooklyn.

Q What did you used to do with him evenings? A Take a walk.

Q Were you with him the night he was arrested? A No, sir. I have not heard of the arrest ---

Q Did you go to moveing picture shows with him in the evening? A Well, we sometimes did --- not in the evening. Sometimes on Sunday.

Q You only know two or three people who know him, don't you? A I know several.

Q What do you mean by "several"? A About seven.

Q And they are young men of your own age, are they not? A Well, their families, my friends' parents.

Q Well, you are a friend of his anyhow? A Yes, sir.

MR. LACEY: Defense rests.

MR. McCORMICK: I will call Mr. Harris in rebuttal.

HENRY HARRIS, recalled by the People, in rebuttal,
testifies as follows:

BY THE TWELFTH JUROR:

Q Did the defendant tell you voluntarily that he had taken \$30 for the goods? Did he tell that to you, or did you hear it? A He told me without hesitation.

Q In the presence of the police officer? A Yes, sir.

Q Did the police officer tell it to you? A No, sir.

Q Did the police officer ask him? A No, sir.

BY THE EIGHTH JUROR:

Q Did you tell the police officer he had told you that?

A No, sir.

BY THE SEVENTH JUROR:

Q On what date did he tell you this, that he stole these goods? A On the morning of the 16th day of May, on a Thursday morning at 1 o'clock in the 30th street police station, and I gave him -- I showed him a memorandum bill.

Q He told you this at the police station? A Yes, sir.

Q He was arrested before he made any such declaration?

A Not on this charge, not at that time.

Q On what charge was he arrested? A On the taking of the piece of merchandise for which he was tried two weeks ago.

Q He was arrested on that other charge? A Yes, sir, and I subsequently found that Broessneck, Broesel had sent a regular invoice for the merchandise which was on memorandum.

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Q He had committed another crime on which you had him arrested on the 16th, and your firm was cognizant of three pieces of goods stolen or supposed to be stolen on the 13th?

A No, sir, you have that in error.

Q You heard three piece of goods were not delivered on the 14th? A No, sir.

Q I want to get the date right? A I will get it right for you, if you go into it.

Q Well, I will ask you the questions. You had learned that this boy was discharged on the 13th? A 14th, Tuesday the 14th.

Q He was discharged on the 14th? A Yes, sir, on a Tuesday.

Q You had found out the loss of these particular three pieces of goods here? A On Wednesday morning.

Q What date? A On the 15th.

Q On the 15th you found out -- A Found out these three pieces of merchandise had not been delivered.

Q At that time did you have officers looking for him for a previous theft? A Yes, sir. I had taken a warrant out for the stealing of one piece of merchandise.

Q Not the three pieces? A Not the three pieces.

Q And then he told you voluntarily at the station house that he had stolen these three pieces of goods to a man? A Whom he had met on 19th street.

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Q Did you ask him anything about the goods at the time?

A I did. I showed him the memorandum bill of April 29th, of Boessneck, Broesel, and I said, "Philip, what did you do with these goods?" And he went on and told me that he had met a man on 15th street, between Fifth avenue and Broadway.

Q When was this boy discharged? A On the 14th, on Tuesday, at 11 o'clock.

Q He was discharged before or after you learned about the non-delivery of these three pieces of goods? A He was discharged before.

Q Before you learned of the non-delivery of the goods?

A Of the non-delivery of these three pieces of merchandise in question.

Q The account of his discharge was due to the prior robbery? A Yes, sir; one piece of merchandise which he brought back and I caught him with. He brought the goods back, and I caught it in his possession. He took it March the 13th, at 5 o'clock, between 5 and 6 o'clock, and on the morning of the 14th, Tuesday, he brought it back at about ten minutes past eight, and had it in his possession.

Q Brought it back to your place? A Yes, sir, and I caught him with the goods.

Q At your request or voluntarily? A By my request.

MR. LACEY: I object to the merits of this case unless the jury is told the result of it.

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THE COURT: You have that on the record.

THE SEVENTH JUROR: I understand that he has been acquitted on that charge.

BY THE COURT:

Q Mr. Harris, you stated in answer to a question put to you by the Seventh Juror, that you arrested this defendant on another charge? A Yes, sir.

Q Was there a warrant issued for his arrest on that charge? A Yes, sir.

Q When was the warrant procured, if you remember? A I think on the 15th, in Jefferson Market.

Q When the warrant was executed, you knew nothing about the property which the defendant was ordered to deliver to Broessneck, Broesel & Company? A No, sir.

Q When you arrested him how did you come to bring up the discussion with him concerning the property delivered to Broessneck, Broesel & Company? A On Wednesday morning Mr. Stursberg came in the place ---

THE COURT: That question might be objectionable but I felt that the jury want to get at the bottom of this transaction.

MR. LACEY: Yes, sir, I make no objection.

A (Witness continuing) On Wednesday, the 15th, in the afternoon, that is after I had taken the warrant out in Jefferson Market Court, and I had returned, Mr. Stursberg had

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had seen Mr. Wilkus regarding the three pieces of merchandise that they were anxious to get, and had also sent a regular invoice because the goods had not been returned. Then we found out naturally that the goods had not been returned, and was charged up to us. On the morning of the 16th he was arrested. I then asked him, "What did you do with those goods?" And on asking him that question he told me without hesitation, without coercion of any kind that he would be glad to tell me because I told him that he was a good boy, and he was a very good boy until I found that out --- I had every confidence in the world in him.

BY THE TWELFTH JUROR:

Q What time was he arrested? A About one o'clock in the morning on the 25th between six and seven o'clock.

Q Are you sure about that? A Positive.

Q The officer says 12 o'clock, the boy says 10, and you say 1 o'clock? A Between 12 and 1 o'clock.

BY THE SEVENTH JUROR:

Q The robbery occurred at your place on the 3rd of the month, wasn't it? A I think it was on Friday.

Q And the lapse of time between the 3rd and all these other happenings up to the 16th, you evidently had suspicion upon this boy, didn't you? A Not at all. Never had the slightest suspicion in the world, absolutely not.

Q Didn't connect him in any way with it? A Not the slight-

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est suspicion --- thought he was honest -- I knew his parents were good parents.

Q After this robbery you found out? A I found out these other different transactions; one receipt played against another, such as I have here, but I don't suppose you would admit them.

Q How long was he employed by you? A About a year.

Q About a year before this happened? A I could only speak of March.

Q Wasn't he employed in your place about a year before these things happened? A So I understand.

Q You never found any irregular actions on his part before that? A Not at all, not the slightest.

Q You found him pretty straight? A So far as I know absolutely straight.

Q Nothing happened about the loss of any merchandise until after the robbery? A Not until after the robbery --- no, there were questions that arose, such as the return of merchandise.

Q Well, had you missed any goods not being delivered?

A Yes, I have before that.

Q And your attention was not attracted to him at all? A Not to him, not the slightest. I have a bill here from the West End Woolen Company, I think --- a receipt for the delivery of merchandise which the West End Woolen Company claimed.

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was not returned. And here is a receipt to show for it, and he had this receipt in charge and we had to pay \$47 and some cents for this merchandise. Here is the invoice and here is the receipt supposed to represent ---

Q How is that connected any with this case? A Well, I don't know.

THE COURT: I shall exclude the evidence. It is not bearing on this case.

THE WITNESS: Well, I thought perhaps ---

BY MR. LACEY:

Q Did you go over the bills every week? A I had nothing to do with those bills in the petticoat department.

MR. McCORMICK: People rest.

C A S E C L O S E D.

THE COURT: Gentlemen, you are admonished not to discuss this case among yourselves, nor to permit any person to talk with you about it, nor form or express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. Be in your seats to-morrow at 10 o'clock.

(Adjourned to Tuesday, July 23, 1912, at 10: a. m.)

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New York, July 23rd, 1912.

TRIAL RESUMED.

MR. McCORMICK: Will your Honor permit me to call a witness in rebuttal, who was not here yesterday?

THE COURT: Yes.

M A X W A L L S T E I N, called by the People in rebuttal, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

(The witness states that he resides at 511 West 147th street.)

Q What is your business? A I am interested in the firm of William Morris & Company, manufacturers of silk petticoats and dresses.

Q In what way are you interested in that firm? Are you a partner? A I have a partner interest.

Q Do you remember some goods being delivered to this defendant? A Yes, sir.

Q In the month of May?

MR. LACEY: Objected to as to form.

THE COURT: Objection sustained. Strike out the answer.

Q Did you hear him talking to Mr. Wilkus along about the middle of May? A Yes, sir.

Q Do you remember what date it was? A The 10th.

Q What took place on that occasion? A It was on that

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Friday afternoon, I think it was between three and four o'clock, if I am not mistaken. My brother-in-law called him over to take ---

Q Who is your brother-in-law? A Mr. Wilkus --- to take three pieces of goods down to Broessneck & Broesel.

Q What did your brother-in-law say to him?

MR. LACEY: Where was this witness at that time?

MR. McCORMICK: He was right there.

MR. LACEY: Does he say so?

MR. McCORMICK: You can bring that out on cross examination.

Q Where were you? A I was standing right alongside of my brother-in-law.

Q Where were you --- up in the Bronx? A In the place of business, 140 West 22nd street.

Q Did you hear Mr. Wilkus talk to the defendant? A Yes, sir.

Q What did he say? A He told him to take those three pieces of goods right down to Broessneck and Broesel.

Q And what did the defendant say or do? A He took the three pieces of goods and went out the freight elevator.

Q How do you know that that was on the 10th of May?

A Because I remember it well, as I went on the road the following Monday, the 13th, and I had Philip Goldberg take my samples over to Newark, to the train.

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Q What day was the burglary? A On the Friday night, between the 5th and the 6th of May.

Q You just told us here the 10th of May was Friday?

A Well, that was the following week.

Q What day of the week was the burglary? A On the 5th.

Q What day of the week? A On Friday night.

Q Well, now, the next Friday was what --- the 10th?

A I think the 10th.

Q Just stop and think and tell us what day the burglary was? A On the 5th.

Q Well, there are seven days in the week, are there not?

A Yes, sir.

Q And you say these goods were given to him on Friday, the 10th? A I think it was on Friday afternoon; I don't exactly remember the date.

Q Well, now, you say that it was on the Friday before Mr. Wilkus gave him the goods that there was a burglary --- it was just a week after the burglary? A Exactly.

Q Well, that would be the 3rd, wouldn't it -- seven days in the week? A No, the burglary was on the 5th.

Q Well, the 5th was Sunday, or the 3rd? A Well, it was on a Friday night. I don't remember exactly the date.

Q Did you hear the defendant say anything? A I didn't hear. I only know he taken the goods and received them.

CROSS EXAMINATION BY MR. LACEY:

Q How large are the premises that your firm occupies

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at this address at 22nd street? A I think it is 65 by 90.

Q And where were you standing at this time that you have just mentioned? A Right alongside of my brother-in-law, where I bill out the goods. That is my place in the afternoon when I am in.

Q And Mr. Wilkus wrapped up the goods, didn't he? A I think so, yes, sir.

Q Now, are you sure about it? A Well, I cannot be sure about it. I was near there.

Q How near were you? A About three feet away.

Q When you are as far away as three feet cannot you be sure whether or not he wrapped up the goods? A Well, I can't remember that exactly.

Q Did you hear the conversation between Mr. Wilkus and the defendant? A I heard part of it.

Q Well, state the part you heard? A Mr. Wilkus told him to take those goods down immediately as they wanted them, to Broessneck & Broesel.

Q What did the defendant say? A He said "All right." He taken the goods and went down.

Q Is that all that was said? A That's all that I know.

Q That is all that you can remember, is that it? A Yes, sir.

Q But there was something else? A I don't know.

Q Well, all you can remember is just that, and that

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alone? A That is all I can remember.

Q Did not Broesel & Company send for these goods? A Did not they send for them?

Q Yes. A Yes, they came up for them.

Q Well, why didn't you give them up the goods, to Broesel & Company's man when he came for them? A Because the salesman come up and wanted the goods sent down right away.

Q Is that what you mean when you say that Broesel & Company sent for them --- the salesman came --- or did a messenger come? A Well, I know that the salesman was up there at the time, and that is all; I don't know whether he come for the goods, only I know that we sent the goods down, that I know.

Q All you know is that they sent the salesman; they didn't send any other messenger, is that right? A I don't know.

Q You said you were not sure of the date, and after the District Attorney had made suggestions to you, fixing the date as May 10th --- now, when you say you are not sure as to the date, do you mean that, or has the District Attorney made such suggestions to you that you are now positive as to the date? A Well, I am positive that it was Friday afternoon, three days before I went on the road; that I know.

Q Did you ever see Mrs. Goldberg, or Miss Goldberg, the mother and sister of this defendant? A I seen the mother, yes.

Q She came over to your place of business, didn't she?

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A Yes.

Q Did you say to her --- did you ask her to have the boy give up those three pieces of cloth? A I did.

Q Why was it that you asked the mother of this boy to have the boy give up the three pieces of cloth when you had been told the boy had sold the cloth to a man with a scar on his face? A I told her this, that she should have her son Philip tell us where he sold the goods. That is what I told her.

Q You said you told her to have her son give up the three pieces of cloth? A I told her to have him tell us about, or where he sold the goods before.

Q That is not what you said before? A That is what I told her.

Q Isn't it true you sent over to his house to get this piece of cloth? A I?

Q Yes. A No, sir.

Q Do you know whether your partner, Mr. Harris, went over there on the 17th of May, and said, "Give me the pieces of cloth"? A I was not in the City then.

Q When did you go away? A On the 13th or 14th --- I went away on the 13th, on the Monday morning.

Q Are you a member of the firm of Morris & Company? A Yes, sir.

Q Who are your partners? A Mr. Wilkus and Mr. Harris.

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Q How long has Mr. Harris been a partner? A Since about the first of --- I think about the first of March, somewhere along there.

Q He formerly worked for you, didn't he, before he became a partner.

Q He did not? A No, sir.

BY THE EIGHTH JUROR:

Q Was Mr. Stursberg there at the time these goods were wrapped up? A Yes, sir.

Q He was there at five o'clock in the evening --- he was there at five o'clock in the afternoon? A I don't know exactly the time.

Q You said they were wrapped up at five o'clock? A I did not.

Q You said this happened at five o'clock? A I said this happened Friday afternoon.

BY THE SEVENTH JUROR:

Q Was Stursberg there? A Yes.

Q When the order was given to the boy? A Yes, sir.

Q And he went down the elevator at the time? A Yes, sir.

Q Was Stursberg there at that time? A Well ---

Q You were there, you heard this conversation; Was Mr. Stursberg there then? A I cannot remember that.

Q You do not remember? A I cannot possibly remember that.

Q Do you know when this boy was discharged? A No, I was

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away at the time.

Q You don't know what date? A I think it was on -- I am not sure -- Monday or Tuesday. I was on the road during that week when this happened.

Q Did you learn in any manner the date of this boy's discharge? A I think it was on a Tuesday morning, if I ain't mistaken --- on Monday night. I am not positive.

Q That is, according to your information he was discharged Tuesday? A Tuesday or Monday night.

Q The day following your departure? A Exactly.

Q That would be the 14th? A That would be the 14th.

RE-DIRECT EXAMINATION BY MR. McCORMICK:

Q Had you seen Mr. Stursberg there other days? A Yes, sir.

Q And you knew him? A Yes, sir.

BY THE TWELFTH JUROR:

Q Have you talked this matter over with your partners since yesterday? A No, sir, I have not.

Q Last night? A No, sir.

Q Since they have been in court? A No, sir, I only come back last night. I was away yesterday.

Q This morning did you talk with them this morning?

A I came back late last night.

BY MR. LACEY:

Q You say you have not talked with your partners about this case at all? A Well, we had some discussion about it

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long ago. When I come back from the road they told me the situation.

Q You were out in the corridor this morning, weren't you, before you went on the stand? A No, sir.

Q Well, how long were you in the building before you took your place in the witness chair? A How long?

Q Yes. A About ten minutes I was sitting back there.

Q Weren't you talking with your partners before you went on the stand? A No, sir.

Q You were not? A No, I was not --- not about this case.

Q How did you come to come down here this morning? A I met Mr. Harris at the corner of Broadway and Franklin street, because I was out to see some customers this morning.

Q Didn't you talk with him then about the case? A I did not.

Q How did you come to come down here? A Because they told me I had to testify.

Q Who is they? A My brother-in-law.

Q You mean Harris? A No, Mr. Wilkus.

Q I thought you said you met Harris at the corner of Broadway and Franklin street? A I did.

Q What did he say when you met him? A He took me over to show me where the place was.

Q Didn't he tell you about the case then? A He did not.

BY THE EIGHTH JUROR:

Q Then you saw both of your partners to-day? A Yes, sir.

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MR. McCORMICK: People rest.

THE COURT: Recall Mr. Stursberg.

A L B E R T G . S T H R S B E R G, recalled in behalf of
the People, having been previously duly sworn, testifies
as follows:

EXAMINED BY THE COURT:

Q Did you expressly go to Harris & Company's place of
business for the purpose of having that concern return to
Broessneck, Broesel & Company the three pieces of Messaline?

A After that date when I had been up there first, regarding
the passing on the quality of the cloth. I was up there after-
wards when I did not get the goods.

BY THE SEVENTH JUROR:

Q You had first gone up there to see whether he liked
the goods, and whether he was going to place an order? A To see
which one he wanted to select.

Q Then you sent three pieces on memorandum? A I did
originally.

Q Were you up there to take the first order? A That
was the first time I saw that defendant.

Q You showed him your samples, and then on that you sent
up three pieces on memorandum, - is that right? A Yes. I
showed him the samples prior to April 29th, and he told me
about what he wanted, and on that I sent up these goods, but

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then several days had passed in between on account that he was very busy and there was several times that he was not in when I was up there, but this particular day when I saw this party, the defendant there, when he inquired of me about that, about what I wanted.

BY THE EIGHTH JUROR:

Q. What time in the day was it? A In the afternoon.

Q. Didn't you testify here that it was eleven o'clock in the morning? A No, sir, no.

Q. Sure you didn't? A Quite sure on that. If it is, it is a mistake.

Q. Didn't you say it is in the forenoon, about eleven o'clock? A No, it was in the afternoon.

BY THE COURT:

Q. Who were present at the time that you requested the return of the Messaline? A That was after the date on which we compared the goods?

Q. Yes. A Why, the one that I only took particular note of was Mr. Wilkus, because we went over the memorandum slips together, you know, to find out ---

Q. Did you notice whether any other members of the firm were there? A Well, on that very particular date I couldn't quite remember now, except it was the usual thing in the afternoon that either Mr. Harris or Mr. Wilkus or Mr. Wallstein was around there --- I mean usually when I came up, but I

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could not testify to that particular date. Mr. Wallstein was there, though, the day we were comparing the goods, that I remember, because his desk is right alongside where they have the goods, you know, when you came in.

BY THE EIGHTH JUROR:

Q How far was the defendant from this desk? A His desk was practically right alongside where we were examining.

Q How many feet away from this desk from where the boy was --- how many feet was Wallstein from this boy? A I should think it was a table about as long as that (indicating in court room). And Mr. Wallstein's desk is right there (pointing), right alongside, adjoining here, and we were looking at them here (indicating), and he was around the side there (indicating and pointing),--The boy at that time. At that time I did not particularly take notice. I believe Mr. Wilkus called him over once to pass on the quality too.

Q Called the boy over? A No, called Mr. Wallstein over. He was right at the other side of the desk, and he made some comment.

BY THE SEVENTH JUROR:

Q What I would like to know is were you present when that bundle was tied up and given to the boy to carry down on the freight elevator --- did you see that? A Not the carrying to the freight elevator.

Q That did not happen while you were there? A I did not take any notice of that, because that would be in the back of

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me, because I was still talking to Mr. Wilkus about the qualities.

Q I want to know whether you saw it or not? A Not his carrying away, but I remember the time the goods were packed up then, and the remark that Mr. Wilkus made, because I requested him to return these goods.

Q Who wrapped up these goods? A I believe it was Mr. Wilkus.

Q Mr. Wilkus tied up the bundle? A Yes. I believe when he tied them the boy was present there like as an attendant.

BY THE COURT:

Q Did you see Mr. Wilkus wrap them up? A Well, now, the impression that I have is that he did.

Q Is that your best recollection? A That is my best recollection.

CROSS EXAMINATION BY MR. LACEY:

Q At the time when Mr. Wilkus told the boy to take the goods and deliver them to Broesel & Company was Mr. Wallstein standing within three feet of him? A Well, I know he was present around there exactly when that remark was made. Listen, I was not paying attention what other people were doing.

Q You say you don't know. Is that it?

MR. McCORMICK: I object to that question.

A I don't know what?

Q Whether or not Mr. Wallstein was within three feet of

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this defendant when Mr. Wilkus told him to return the package to Broesel & Company? A Mr. Wallstein was right within a short distance. Just exactly which end of the table he was at at the time this remark was made, I couldn't tell you now.

Q How long a conversation was there between Mr. Wilkus and the defendant? A While I was present there it was only a very short thing. Meantime, after he had mentioned --- after I had made sure that the goods were to be packed up and sent back to me that was all that I paid any further attention to, because there was remarking on the goods.

Q Well, is that the only remark you heard made to the defendant, to bring the goods back to Broesel & Company? A The only remark I heard Mr. Wilkus make that I paid any attention to.

Q That is the only remark, that is all of that conversation that you can remember? A All I paid any attention to.

Q Why was it you paid such particular attention to that remark at that time? A Because I told you once before that I told him I was in a hurry for those goods. They had been such a long time delaying before he passed on those goods. They happened to be a sample, a one piece sample that came from a mill, and I wanted to get orders on that and continue that line.

BY THE SECOND JUROR:

Q Did you see this package that day --- the ones you wanted returned? A Oh, undoubtedly, because we passed upon

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them.

Q Do you know that day? A It was, I am pretty sure on a Friday. It was at least a week after that April 29th that it was sent up. I know there was quite a number of days.

BY THE SEVENTH JUROR:

Q Well, April 29th was on a Monday? A I can give you a better explanation than that, but I am not permitted to give hearsay.

Q April 29th was Monday, and you say you saw them on the Friday following that day? A No, I think it was into the next week --- it was considerably after because I was put off for quite a number of days, because Mr. Wilkus was very busy, and I was very anxious to obtain an order on this particular quality, because I thought it was good.

Q I asked you a question the other day about if you remembered seeing these goods after the robbery had occurred or previous, and I don't think --- A Well, it was after the robbery.

MR. LACEY: I object to that statement because the witness said the other day he did not know.

THE WITNESS: I did not say that.

THE COURT: Strike out the evidence adduced by the juror on the ground of the objection made by counsel for the defense.

MR. LACEY: I except.

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THE COURT: You asked to have it stricken out, did you not?

MR. LACEY: I misunderstood the ruling, your Honor. I withdraw the exception.

BY MR. LACEY:

Q I want to know if you saw Wilkus give these goods to the defendant?

THE COURT: He said no.

MR. LACEY: I want to see what he will say this time.

BY THE COURT:

Q Did you see Mr. Wilkus give the goods to the defendant?

A Yes.

BY MR. LACEY:

Q Now, you said the other day that you did not? A No, I did not --- I did nothing of the kind.

(By direction of the Court the stenographer now reads the direct examination of Mr. Stursberg's testimony of this morning.)

THE COURT: On page 51, I find: "Q Then what did he do with them? A He called the young man here and gave him the goods."

Is the testimony clear in your mind, Gentlemen?

MR. LACEY: I object to your Honor asking that question of the jury.

Objection overruled. Exception.

THE COURT: The Court was prompted to have the testimony read in view of the fact that some of the jurors expressed a doubt as to what the testimony was, and in order to clear up the situation the court requested the stenographer to read the testimony to the jury, which I assumed was desired by the jury; is that correct, Gentlemen?

THE SEVENTH JUROR: Positively.

OTHER JURORS: Yes, sir.

MR. LACEY: Will your Honor allow a part of the cross examination to be read --- not all of it? I have a recollection as to the question being asked this witness if he saw Mr. Wilkus give the bundle to the boy and he answered no.

BY MR. LACEY:

Q You have said that you were there on a number of occasions and one time you compared the quality of the goods, and another time was the time you say you think that Mr. Wilkus wrapped up the goods; now what time was it that Wallstein was there? You have said on one occasion he was there, and on another occasion you were not sure he was there or not. Now, I am talking about the occasion that you say you believe that Mr. Wilkus wrapped up the goods: was Mr. Wallstein there on that occasion? A Yes.

Q You are sure he was? A Yes, without question.

Q Did Mr. Wilkus make any other remarks? A As I told you, I didn't pay any particular attention.

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BY THE COURT:

Q How long have you been connected with Broessneck, Broesel & Company? A Since the December of last year.

Q And with what concern were you connected before that time? A L. Ullman & Company. I banked through L. Ullman -- H. A. Sweetser department.

Q How long have you been in business? A Since I have been about twenty-one years of age.

Q I don't know your age --- how many years? A Well, I am thirty-eight now.

Q And you have many customers, have you, which you personally solicited? A Oh, yes.

Q Did you in all your business experience recall any instance whereby you were present other than on this occasion when Mr. Wilkus delivered Messaline to this boy? A (No answer).

Q Do you understand the question? A Yes.

Q In other words, what the jury wants to know is whether you recall this precise occasion --- it matters not whether it was April 29th, or May 3rd or May 7th after all --- the question of great importance in this case is: did this boy receive Messaline during the month of May and at the time charged in the indictment? Do you remember any other occasion but the one concerning which you have given testimony? A No.

MR. LACEY: I would like to call one witness, an employer.

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BENJAMIN ROBBINS, called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

(The witness states that his address is 376 Stone avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. LACEY:

Q What is your business? A Bicycle business.

Q Do you have a store? A A store, yes, sir.

Q Where? A 376 Stone avenue.

Q Do you know this defendant? A Yes, sir.

Q How long have you known him? A About six years.

Q Was he ever in your employ? A Yes, sir, used to help me out.

Q Under what circumstances?

Objected to.

Q Well, where did he work for you?

THE COURT: He may state that.

A Two or three days in the week, sometimes on Sunday, and used to help me out nights.

Q Used to help you out three nights a week and sometimes on Sunday? A Yes, sir.

Q Was his work satisfactory or not? A Yes, sir.

Q Do you know many people that know him? A Oh, I know his friends that he used to go around with them.

Q What is his general reputation, if you know it, by word

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of mouth, for peace and quiet?

THE COURT: That is excluded.

Q Well, for honesty, what is his general reputation for honesty? A It was honest to me.

Q He was honest with you? A Yes, sir.

MR. LACEY: I would like to recall Mr. Harris. I would like to ask him one question. I will agree not to take any more time.

H E N R Y H A R R I S, recalled, for further cross examination, testifies as follows:

CROSS EXAMINATION BY MR. LACEY: (Continued)

Q Did you go to the house of this defendant in Pitkin avenue, Brooklyn, on the 17th of May? A Somewhere thereabouts.

Q Did you ask his mother for those goods? A No, sir; I asked his mother about a clothes line.

Q Well, did you accuse the defendant then of having in possession the clothes line with which that burglary was committed? A No, sir; I wanted to verify my own convictions.

MR. LACEY: I don't know whether your Honor will allow me to recall the mother or not.

THE COURT: Call her.

(Bernard Mittnick, Esq., is now sworn to act as interpreter.)

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M I N N I E G O L D B E R G, recalled, having been previously
duly sworn, testifies as follows: (Through Mr. Mittnick
as interpreter)

DIRECT EXAMINATION BY MR. LACEY:

Q Did Mr. Harris come and see you? A Mr. Harris and
another man and the detective were at my house, they were
there Friday.

Q What did Mr. Harris say? A Mr. Harris asked me to
see the boy and have him confess or tell about the robbery that
was committed. He bought rope and gave it to them.

BY THE COURT:

Q Who bought rope? A My boy bought rope and gave it to
them, he said so, and Mr. Harris said so.

BY MR. LACEY:

Q Did Mr. Harris ask for three pieces of goods while he
was there? A There was a line hanging at my home and he
looked at that line and said it was that line, a line like
this, and he cut a piece of the rope as a sample.

Q Did Mr. Harris ask for any pieces of dry goods, any
pieces of cloth while he was there? A No; Mr. Harris the first
time he came asked about bundles of goods that were wrapped up.

Q Did he ask you if you had those bundles of goods in
the house? A Yes. Philip said he brought it home.

MR. LACEY: The defense rests.

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C A S E C L O S E D.

THE COURT: Go to the jury.

MR. LACEY: Does the count of receiving stand?

THE COURT: There is no count of receiving.

MR. LACEY: All right.

THE COURT: The case will be submitted to the jury on the second count of the indictment, which charges the defendant with having in his possession as servant, clerk, agent and bailee certain property. The second count --- misappropriation of property.

MR. LACEY: If your Honor will respectfully allow me an exception for the purpose of the record, and I move that you direct an acquittal on the ground that the People have failed to prove facts sufficient to constitute the crime charged.

Motion denied. Exception.

Counsel now close to the jury.

The Court now charges the jury.

The jury now retires to deliberate upon a verdict and upon its return renders a verdict of not guilty.

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