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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York.

-----X
THE PEOPLE

vs.

THOMAS C. WALSH.
-----X

:
: Before
:

HON. JOHN W. GOFF, R.,
and a Jury.
:

Indictment filed the 14th day of October, 1902.

Indicted for Attempted Extortion.

Tried, April 21st, 1903 &c.

APPEARANCES.

For the People,

ASSISTANT DISTRICT ATTORNEY JAMES R. ELY,

For the Defendant,

HON. ALFRED STECKLER.

(A jury was duly empaneled and sworn.)

T. W. Osborne,
Official Stenographer.

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THE COURT: My tally shows that the prosecution exhausted three of its peremptory challenges and the defense exhausted four of its peremptory challenges.

Mr. Ely's Opening Address to the Jury in behalf of the People.

If your Honor please, and Gentlemen of the Jury:

The Grand Jury of the County of New York have indicted the defendant, Thomas C. Walsh, for attempted extortion in that, as alleged, said Thomas C. Walsh did wilfully and unlawfully violate the provisions of Section 552 of the Penal Code of the State of New York, in that he did, on the 26th day of June, 1902, obtain through one Frank Heitsner, with his consent, and induced by a wrongful use of force or fear, the sum of \$50, good and lawful money of the United States, under the following circumstances:

One Henry Nicholsburg is a contractor and a builder in the City and County of New York, and he resides at 138th street and Lenox avenue, in the City and County of New York; that on the 25th day of June, 1902,

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the said Henry Nicholsburg, being a contractor and builder was engaged in building a building in the City and County of New York at 138th street and Lenox avenue; that the said Nicholsburg, among those engaged in that building had one Frank Heitzner, who was the boss carpenter in charge of the carpentering work on that building; that this defendant was then the business agent or the walking delegate of the Carpenters and Joiners Union of America, in Manhattan; that on the 25th day of June, 1902, pursuant to a communication theretefore made to the said Nicholsburg by Heitzner, Nicholsburg was with this defendant in his office. There were present in this office, which I will describe to you in a moment, Nicholsburg, Heitzner and the defendant, and one Jerome Mcgarthy who was present in the room adjoining this office. The office I have referred to is one of these ordinary temporary offices that are erected for the purpose of the needs of the contractor, in front of the building which is in the process of construction. It was situated between 137th and 138th streets in the City of New York, facing easterly. There were two doors to this building, this office building, one of them the office proper, upon the door of which was the name of Nicholsburg; the other was a sort of a store room or tool room, and on that door was the name

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of McCarthy. These two rooms, the office proper and the store room were divided from each other by a partition which ran up to the edge of a sloping roof, and the space above the lowest part of the roof was open and simply slatted off. In other words the partition was not built up solidly to the roof, but from the lowest part of this slatted roof to the highest part, it was open between the office and the store room.

On the 25th day of June, 1902, as I have stated, this defendant came to the office of Nicholsburg and saw Nicholsburg there; that at that time there were present the witness Heitzner, and this defendant made a demand upon Nicholsburg, as the people contend-- and, gentlemen this is the People's contention I am now giving you-- the defendant made a demand upon Nicholsburg for \$50. Nicholsburg, the contractor, the builder, said that he owed him nothing and that he knew of no reason why any demand should be made upon him; that he was using Union materials and Union men and paid Union wages, and that there was no reason of any demand being made upon him whatsoever. In reply, the defendant said something about the use of non-Union trim. Trim is the inside wood work that is used in building. For example, the trim around the windows or the doors or the wainscoting.

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or the dados-- that is what is trim. This, however, the contractor Nicholsburg denies, saying he was using no non-Union material of any nature whatsoever. He said he did not understand why, at such a time, when the building was practically completed any such demand as this was made. The defendant stated in reply that that was the time, when the building was practically completed, to make a demand of this kind, and that unless the demand was paid, that he would call a strike. Nicholsburg said if that was the case he would give him a check for the amount, and the defendant replied that he would not take a check, that he must have the cash. Nicholsburg said he did not have any cash at that time. The defendant said he must have the cash the next day, and that this man Heitzner, or Nicholsburg, might give him the cash, but whichever one gave it, the other one must not be present.

Subsequently, the defendant made a suggestion that the cash should be paid him by Heitzner at 138th street and 8th avenue. You will recollect, gentlemen, that we allege this conversation occurred at the office between 137th and 138th streets and Lenox avenue, upon Lenox avenue.

After this conversation was had between Nicholsburg and the defendant, as I have stated, Nichols-

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burg procured \$50, and in the presence of McCarthy, and I think in the presence of Connolly, these bills were marked, and they were thereupon delivered by Nicholsburg to Heitzner, of whom, as you remember, I have spoken of as being the boss carpenter, engaged there on this work. Subsequently, on the morning of the 26th of June, 1902, the defendant saw Heitzner and asked Heitzner about the money. Heitzner said that the money would be forthcoming in the afternoon, and in the afternoon, accompanied by one officer Connolly, the witness Heitzner proceeded to 138th street and 8th avenue, and there he saw this defendant in a saloon. Heitzner walked into the saloon and was greeted by the defendant, who invited him to the bar to have a drink. Heitzner proceeded to the bar and Officer Connolly walked into the saloon, and took his position about the middle of the bar. Shortly after his advent into the bar room, Heitzner pulled out the money and offered it to the defendant. The defendant refused to take it then and there, and he said "I will take the money outside." Thereafter, the defendant and Heitzner walked out of the saloon together, and they turned and went up Eighth avenue, the defendant saying to Heitzner "I am going down to the 80th street district, and I will take the elevated at 140th street, and as I leave

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you, you can shake hands and pass the money to me as you shake hands." Accordingly, just there, by the elevated station, at 140th street and Eighth avenue, Heitzner shook hands with the defendant, having this money, these \$50 in marked bills in his hand, and the defendant got the marked bills and proceeded up this elevated station. Simultaneously with the shaking of hands and the delivery by Heitzner to this defendant of the \$50, Heitzner took his hat off and tipped it, whereupon the officer immediately came up and caught the defendant with the bills upon him, the marked bills upon him.

When we prove these facts, gentlemen of the jury, we shall ask for a verdict of attempt at extortion.

THE COURT: I think we will suspend here.

Gentlemen of the jury you will be careful not to speak about this case among yourselves, and allow no person whosoever to speak with you concerning it, and, if any person does approach you to speak with you concerning this case, it is your duty to warn that person that you are a juror, and that it will be a contempt of Court for any one to speak to you about this case. It is your duty to report to the Court any such attempt by any person to hold conversation with you about this case. I deem it proper also to caution you with regard to your coming to

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and going from this building. During recess be very careful as to people with whom you may fall into conversation, people whom you do not know. You must keep yourselves in such careful attitude that you will be above suspicion. We will take an adjournment until tomorrow morning at half past ten.

An adjournment is thereupon taken until April 22nd, 1903, at 10:30

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April 22, 1903.

HENRY NICHOLSBURG, called as a witness in
behalf of the People, being duly sworn and examined,
testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Real estate operator and
builder.

Q Please speak out loud and distinctly so the jury can
understand and hear you--- real estate operator and builder?

A Yes, sir.

Q Where do you reside? A Lenox avenue and 138th street.

Q Lenox avenue and 138th street in the City and County
of New York? A Yes, sir.

Q Whereabouts on Lenox avenue and 138th street?

A Southeast corner.

Q Do you know the defendant? A I do.

Q How long have you known the defendant about? A I have
known him now about four or five years.

Q Where did you first know him if you recollect? A On
a building operation of mine on 145th street near the Boule-
vard.

Q How long ago was that? A About four or five years
ago.

Q What was the defendant then doing, if you know?

Objected to as incompetent, irrelevant and

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immaterial.

Objection overruled. Exception.

A He was connected with the Building Department.

Q Inspector in the Building Department? A I don't know whether Inspector, but I know he was connected with the Building Department.

Q On or about the 25th day of June, 1902, what, if any, operation and building were you conducting? A I was erecting a seven story apartment house on the southeast corner of Lenox avenue and 138th street.

Q Southeast corner of 138th street and Lenox avenue in the City and County of New York? A Yes, sir.

Q Did you see the defendant there at 138th street and Lenox avenue, on the southeast corner, in the county of New York, prior to the 25th day of June, 1902? A Yes, sir.

Q Prior is before? A Yes, sir.

Q How long before did you see the defendant, if you know? A I saw him the latter part of April of that year.

Q Saw him in the latter part of April where? A Outside of the building.

Q Did you have any conversation with him? A Yes, sir.

Q What was the conversation?

Objected to as incompetent, irrelevant and immaterial and prior to the indictment.

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Objection overruled. Exception.

THE WITNESS: He introduced himself to me as being the walking delegate of the carpenters---

BY THE COURT:

Q What did he say-- give us his words as nearly as you possibly can recollect them? A He said "Have you given out the trim work yet". I said "Yes, why?" He said "I am the walking delegate of the Carpenter's Union, and he opened his coat and showed me his badge. I said "Why, what is the matter?" He said "Nothing, I only want to know who you have given the trim to", and I mentioned the name of the contractor.

BY MR. ELY:

Q What was it? A I said "Yes, I have given it to Frank Heitzner, is there anything wrong". He said "No, not that I know of, but I just want to know." I said "I want you to let me know if there is, because this job is strictly a Union job, and I do not wish to have any trouble, and if he don't employ Union men I want you to let me know." He said "There is no trouble so far", and he walked away. That is the last I had at that time.

Q When you say this job, you refer to the job at 138th street and Lenox avenue, on the southeast corner? A I do.

Q It was in reference to the job at the southeast corner

of 138th street and Lenox avenue in the County of New York, about which you had the conversation with the defendant which you have just testified to? A It was.

THE COURT: This was when?

MR. ELY: April, 1902.

THE WITNESS: The latter part of April.

BY MR. ELY:

Q You stated that you gave out the trim work to Frank Heitzner? A Yes, sir.

Q Who is Frank Heitzner? A A boss carpenter.

Q The boss carpenter? A Yes, sir.

Q Who was the boss carpenter on the 25th of June, 1902, on the job at the southeast corner of Lenox avenue and 138th street, New York county? A Frank Heitzner.

Q When I ask you this question, it calls for yes or no, and I do not want any conversation-- did you have any conversation with Frank Heitzner on the 25th day of June, 1902?

A Yes, sir.

Q And he made a communication to you? A He did.

Q After that communication that Frank Heitzner made to you on the 25th day of June, 1902, did you see the defendant?

A I did.

Q How long after the communication made to you by Frank Heitzner that you have spoken of did you see the defendant?

A Probably about 15 minutes.

Q Where did you see the defendant? A In my temporary office outside the building.

Q This building being of course the building in question at the southeast corner of 138th street and Lenox avenue in the city and county of New York? A Yes, sir.

Q I show you a paper and ask you if you have ever seen that before? A I have.

Q I ask you if you know who made the sketch that is thereon represented? A I did.

Q Who did it? A Myself.

Q What does that purport to be? A Purports to be a sketch of the office that I had, that was referred to, outside of the building.

Q The office you just referred to as being the place where you saw the defendant after the communication made to you by Heitzner on the 25th day of June, 1902? A Yes, sir.

Q Is that a correct representation of the exterior of the office and the building in which the office was located? A Yes, sir.

Q As to which you have referred? A Yes, sir.

Offered in evidence.

MR. STECKLER: I object to it on the ground that while the description may be correct, I object

to any paper going in that has the names of any of the parties upon that exhibit, if those names are removed, that is another matter. There are names of witnesses on that paper and I certainly oppose it. If they simply want to introduce it as showing the condition of affairs, there is no objection, but the names have no right to be on that paper.

THE COURT: What names do you refer to--- the names of the persons on the doors?

MR. STECKLER: Yes, sir. I don't know whether they are meant to be on the doors or some other place.

THE COURT: I understand.

BY MR. ELY:

Q There appear to be two names on what appear to be doors on that office building, or that temporary building that you have described; were any names upon the doors of that temporary office building on the 25th day of June, 1902?

A Yes, sir.

Q By whom were the two rooms occupied that make up that office building or that temporary building? A The door---

Q No, by whom, give me the names? A One by H. Nicholasburg.

Q That is, yourself? A Yes, sir, and one by Simon J. McCarty.

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Q Whose, if any, name, were on the doors of these two rooms which go to make up this temporary building? A The room I occupied has the name of H. Nicholsburg painted in large letters, and the room that Simon J. McCarty occupied, his name was painted in large letters on the door.

THE COURT: It appears it is not of sufficient importance to invoke a ruling. Judge Steckler says that he has no objection to this paper going in evidence as a description or diagram of the premises, without any names of persons upon it-- is that so?

MR. STECKLER: Yes, sir.

MR. ELY: Do you still object, after the proof?

MR. STECKLER: Yes.

THE COURT: Scratch these two names out, eliminate those two names.

MR. ELY: Very well, sir.

Paper is now offered in evidence. Received and marked People's Exhibit 1:

BY MR. ELY:

Q Describe those premises, holding the paper around so that the jury can understand the arrangement? A Where you see the doors was the front part of the office, facing the building on the east side of Lenox avenue.

Q How were the doors facing? A Facing east. There was

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a partition made right in the center of that.

Q Of what, of the building? A Of this office building. The part, where it is marked office, I kept as my office with desk and telephone. The other part where the door is, where it is marked store room, was kept for materials for the men and for McGarty's use, anything he might need it for.

Q Anything he might need it for? A Yes, sir. The length of this building was about eight feet--- about seven feet in depth, eight foot high, at the highest point, and about seven foot six at the lowest point, making a slope of about six inches.

Q Sloping roof? A Yes, sir. It was boarded up inside to about 15 inches from the top of the roof. At that opening there was nailed slats about three inches apart.

Q About what time on the 25th day of June, 1902, was it, that you saw the defendant at this office in this temporary office building that you speak of? A About two o'clock in the afternoon.

Q Who, if anybody, was present when the defendant came to your office in this temporary office building, on the day in question in the place located as before stated? A I, Frank Heitner, Mr. Walsh.

Q The defendant? A Yes, sir.

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Q Call him the defendant-- then we will know? A The defendant, and Simon J. McCarty on the other side of the office.

Q Except for the partition which ran within 15 inches of the top of the roof at its highest point in this office building, there was no obstruction between the storeroom where the tools were kept, which McCarty had, and your office?

A Except the slats.

Q The slats -- there were spaces between? A Spaces between, yes.

Q Simon McCarty was on the other side of this partition to your knowledge? A Yes, sir.

Q Now, when the defendant went into your office, you say Frank Heitzner was there? A He came in with him.

Q Did you have any conversation with the defendant? A Yes, sir.

Q Frank Heitzner was with him, as you have stated, your boss carpenter-- boss carpenter on the job there at 138th street, southeast corner of Lenox avenue, New York county? A Yes, sir.

Q State what, if any, conversation you had with the defendant at this time? A When the defendant came into the office I said "What is the trouble". He said "Didn't Frank Heitzner tell you."

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Q Who said that? A The defendant.

Q "Didn't Frank Heitsner tell you?" A I said "Yes, he told me something but I want you to tell me yourself."

"The whole thing is this", he says, "there is going to be trouble here unless I get \$50". I said "Why, why should you demand of me \$50. Are not all the men Union men. Are they not getting their full wages?" He said "Yes, but that has nothing to do with the question at all." I said "What is the trouble?" He said "I found out that the trim you are getting is coming from a non-Union shop, and if I call a strike why it will tie up your entire operations". I said "This is no time to come around and tell me now the trim is non Union when the building is almost on the point of completion, and furthermore the trim is Union". He said "I found out differently; we have got ways of finding these things out, and I give the driver 50 cents and took him in and treated him and he told me where the trim comes from, and that is a non-Union shop". I said "Nothing of the kind, still, as you say, you can put me to a good deal of trouble and expense, I suppose I will have to concede to you; now, the whole fact of the matter is this, you mean to state that if I give you \$50, notwithstanding the trim is Union or not, you will accept the \$50 and not give me any further trouble". He said "That is the fact." He said "Either give me that, or call it off, no use

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prevaricating about the matter. If I don't get that I will tie up your job indefinitely, and you know what that will cost you." I said "Of course, it is a small amount you are asking against the amount of damage you will do me". He said "Yes, the easiest way is the best, and I am letting you off very lightly; I could ask a bigger amount of money and you would be glad to pay it at that, to save expense". I said "Well as you state the case it is so, I would rather give you that \$50 than be put to all that expense and trouble", and I made an attempt---

Q What did you do-- don't say I made an attempt--- what did you do? A I took my check book out of my pocket and was ready to write him out a check.

Q Write who? A Walsh.

Q The defendant? A Yes, sir, and he smiled and he said "No check for me, I must have the cash. I said "I haven't got the cash with me now, and by the time I get down to the bank it will be closed; if you want the cash, get to come around and get it tomorrow". He said "I want that cash tomorrow, but I want you to understand that if I get it from you, Heitner must not be there, and if I get it from Heitner, you must not be there". I said "You better make your arrangements with Heitner, and I will give it to him."

BY MR. BLY:

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Q Give what to him? A \$50 to Heitzner.

Q Then what else? A Well, Heitzner and---
or say,

Q What did the defendant do, if anything? A He did not say anything more after that, but went out of the office with Heitzner; made his arrangement with Heitzner.

MR. STECKLER: I object to the last part of the answer and move to strike it out.

THE COURT: Strike out the words "made his arrangement with Heitzner."

BY MR. ELY:

Q What next, if anything, did you do after you had had this conversation with the defendant? A I rang up the District Attorney's office.

BY THE COURT:

Q What time in the day was this? A It was about two o'clock.

BY MR. ELY:

Q What time of the day was it? A Around the neighborhood of two o'clock.

BY THE COURT:

Q In the afternoon? A Yes, sir.

BY MR. ELY:

Q Of the 25th day of June, 1902? A Yes, sir.

Q What, if anything, did you do, relative to getting

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any money? A I went to the bank the next morning.

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Q Go on. A And draw out the money.

Q Drew out what money? A Fifty dollars.

Q In what shape, if you recollect, did you draw that \$50? A Two twenties and one ten dollar bill.

Q What if anything did you do with that two twenties and that ten dollar bill? A I marked them in the presence of three witnesses.

THE COURT: Strike out the words "in the presence of three witnesses".

BY MR. ELY:

Q You marked them? A Yes, sir.

Q Who, if anybody, was there at the time that you marked these three bills? A Officer Connolly, Frank Heitzner, Simon J. McCarty.

THE COURT: Where did he mark them?

BY MR. ELY:

Q Where was it that you marked these three bills?

A In the center of the bill.

THE COURT: No.

BY MR. ELY:

Q Where were you? A I was in the office as described on that sketch.

Q You were in your office, in the temporary office building at 137 and 138th street in the City and County of New

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York on the easterly side of Lenox avenue? A Yes, sir.

Q When did you mark these? A About noon of that day, the 26th of June.

Q About noon, the 26th of June, 1902? A Yes, sir.

Q This officer who has just come in, is he the officer whom you designate as Officer Connolly, who was present when you say these bills were marked? A Yes, sir.

Q Is this the man (Heitzner just brought into the room) who has just come in the room the person whom you say was present on the day these bills were marked, and named Frank Heitzner? A Yes, sir.

Q Is this person just called in as McCarty, Simon J. McCarty, the Simon J. McCarty who was present on the 26th day of June, 1902, at the office building on Lenox avenue, easterly side between 137 and 138th streets, in your office when these bills were marked? A Yes, sir.

Q I show you these three articles and ask you if you have ever seen them before, look at them and see? A Yes, sir.

Q I ask you what these are? A One is a twenty dollar gold certificate.

Q What do you mean by a twenty dollar gold certificate?
A It is marked gold, redeemable in gold.

Q What is it? A Twenty dollars United States gold bill.

Q Lawful money of the United States? A Yes, sir, and

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the other is a twenty dollar bill, United States National currency, the other is a ten dollar bill.

Q They are all lawful money of the United States?

A Yes, sir.

Q Is that the \$50 you referred to as having drawn from the bank on the 26th of June, 1902? A Yes, sir.

Q Is that the \$50 you referred to as having marked in the presence of McCarty, Heitzner and Connolly in the office building, at 137th and 136th street, the easterly side of Lenox avenue, in the county of New York? A Yes, sir..

Q Do you see where you marked them--- point out where you marked them? A On the ten dollar bill you will find each---

THE COURT: No, just point out the place..

THE WITNESS: There is one there (pointing underneath the bill).

BY MR. KLY:

Q On the twenty dollar bill? A There.

(Witness points to a place on the twenty dollar certificate No. 1017, between the numbers 10 and 17.)

BY MR. KLY:

Q On the twenty dollar gold certificate, where is it?

A There, between the eagle and the twenty.

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MR. ELY: I offer these bills in evidence.

Received and marked People's Exhibit 2.

BY MR. ELY:

Q After you marked these bills, what if anything did you do with reference to them? A I wrote down the numbers of them on a piece of paper and handed the money to Heitzner and took a receipt for them showing what it was handed to him for.

Q Wait a minute-- you handed the money to Heitzner--- I do not know what you talk about-- what money? A The money referred to this exhibit.

Q These two twenties and this ten dollar bill you have testified that you marked? A Yes, sir.

Q And it was of those that you took a description? A Yes, sir.

Q And then you handed to Heitzner? A Yes, sir.

Q In the presence of anybody did you hand those three bills to Heitzner? A In the presence of Officer Connolly and Simon J. McGarty.

Q After you handed those bills to Heitzner, what, if any thing did Heitzner hand to you? A He handed back that receipt.

Q A paper? A Yes, sir.

Q Was that paper signed by anybody? A Signed by Heitzner.

Q I show you this paper and ask you if you have ever seen that before, yes or no? A Yes, sir.

Q I ask you if that is the paper that you referred to? A Yes, sir.

The paper is marked for identification

People's Exhibit 3.

BY MR. ELY:

Q About what time on the 26th day of June, 1902, did this occurrence take place? A About noon.

Q After the bills were handed to Heitzner in the presence of the parties that you have mentioned, namely, yourself, Connolly and McCarty, what happened? A We all dispersed and went away to our business at that time.

Q Have these bills ever been returned to you? A No, sir.

CROSS EXAMINATION BY MR. STECKLER:

Q Simon McCarty is your partner? A He is not.

Q Was he your partner on the 25th and 26th of June, 1902? A He was.

Q You say you called in these witnesses Connolly, Heitzner and McCarty, when you marked those bills? A Yes, sir.

Q And that was done on the 26th of June, was it? A Yes, sir.

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Q At noon? A About that time, I won't swear to the time exactly.

Q About? A About.

Q And you got Officer Connolly to come there on the 26th of June?

Objected to. Objection overruled.

BY MR. STECKLER:

Q Did you? A Yes, sir.

Q And you sent for McGarty, did you? A Yes, sir.

Q You sent for Heitzner? A Yes, sir.

Q Present on this occasion, the 26th of June? A Yes, sir.

Q And also present on the 25th of June? A Yes, sir.

Q You did not see anyone give the \$50, those two twenties and ten dollar bills to the defendant? A No, sir.

Q You were not present at any such transaction?

A No, sir.

Q How often had you seen Heitzner around that job before the 25th of June, your job on 138th street--- I mean how often had you seen Walsh around there? A On several occasions-- I couldn't tell you how many times--- he has been there on several occasions.

Q A half a dozen times? A Probably.

Q Upon those occasions, those five or six times, did you

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notice Walsh and Heitzner together? A Yes, sir.

Q Were you present or near enough to hear what each of them said? A No, sir.

Q Were you in the station house at the time the defendant was brought there? A No, sir.

Q Were you there at any time before he was sent downstairs into the cell? A I was there after he was searched.

Q Was Heitzner there at any time while you were present in the station house? A Not to my knowledge.

Q Did not see Heitzner there at all? A No, sir.

Q On the last trial you did not see that paper, that Exhibit, prepared, did you?

THE COURT: Which exhibit?

MR. STECKLER: The location of the office.

MR. ELY: I object.

Objection sustained.

Exception.

Q Was Exhibit 1 prepared since you were in this Court?

Objected to as immaterial.

Objection sustained. Exception.

THE COURT: You can ask him when it was prepared, Mr. Steckler.

Q When did you prepare that Exhibit 1? A Yesterday

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morning.

Q Yesterday morning? A Yes, sir.

Q Have you talked with Heitzner about this case since the 26th of June or the 25th of June?

Objected to as immaterial.

THE COURT: Answer yes or no.

THE WITNESS: Yes, sir.

BY MR. STECKLER:

Q What? A Yes, sir.

Q How often have you talked with him about this case?

Objected to.

THE COURT: I will let him state the number of times. I overrule the objection.

THE WITNESS: I believe twice.

BY MR. STECKLER:

Q How often have you talked with McCarty about this case since the 25th of June? A About the same number of times.

Q Have you talked with the officer about the case since the 26th of June? A Yes, sir.

Q Have you talked ~~with Heitzner~~ with Heitzner since you last testified in this Court in this case? A No, sir.

Q What? A No, sir.

Q You have not spoken to him about this case? A No, sir.

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Q Her with any other witness? A Yes, sir.

Q With whom? A McCarty.

Q Have you talked with the officer? A Yes, sir.

Q Was there any talk at those times between you and Heintzner as to what he was to testify to in this case?

MR. ELY: I object and desire to have the question limited.

BY MR. STECKLER:

Q Did you tell Heintzner what he should say in this case? A Not at any time.

Q Did you know at the time that Walsh visited your building there and had a talk with Mr. Heintzner that he was there about getting money from Heintzner for wages due by Heintzner to the members of his Union?

Objected to.

THE COURT: The question is somewhat involved.

BY MR. STECKLER:

Q Did Heintzner ever tell you before the 25th of June, that Walsh had asked from him money which he owed members of the Union, the Carpenter's Union for work which they had performed at the Kempner's 83rd street job?

Objected to; sustained; exception.

BY MR. ELY:

Q At whose instance did you prepare People's Exhibit

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1 yesterday morning?

Objected to as incompetent and irrelevant.

THE COURT: I do not think it necessary.

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New York, April 22, 1903.

FRANK H H I T Z N E R, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Carpenter and contractor.

Q Where, if anywhere, were you employed on the 25th day of June, 1902? A By Mr. Henry Nicholsburg.

Q Where, on what job? A 138th street and Lenox avenue.

Q What corner? A Southeast corner.

Q Southeast corner? A Of 138th street and Lenox avenue.

Q New York County? A New York County.

Q When did you go to work on that job; about when did you go to work on that job, that job being the job at the southeast corner of 138th street and Lenox avenue, in the City and County of New York? A I started to work there about the same time last year as it is now.

Q Do you know the defendant Thomas C. Walsh? A I do.

Q How long before the 25th day of June, 1902, did you know the defendant Thomas C. Walsh? A I know him about nearly a year.

Q What do you mean, you have known him nearly a year

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er that you have known him before the 25th day of June?

A About six months-- six or seven months.

Q Wait, you knew him six or seven months before the 25th day of June? A Yes, sir.

Q 1902? A 1902.

Q Is that right? A Yes, sir, that is right.

Q On the 25th day of June, 1902, did you see this defendant, Thomas C. Walsh? A Yes, sir.

Q Where? A 138th street and Lenox avenue.

Q About what time on the 25th of June, 1902, did you see the defendant Thomas C. Walsh at 138th street and Lenox avenue? A About 11 o'clock.

Q In the morning? A In the morning.

Q Did you have any conversation with him? A Yes, sir.

Q Subsequent to a conversation with the defendant, did you go to the office of Henry Nicholzburg? A Yes, sir.

Q On the 25th day of June, 1902? A Yes, sir.

Q Did you have any conversation with Mr. Nicholzburg? A Yes, sir.

Q After the conversation that you had with Mr. Henry Nicholzburg at his office on the 25th of June, 1902, did you again see the defendant Thomas C. Walsh? A Yes, sir.

Q Did you again see Mr. Nicholzburg on the 25th day of June, 1902? A Yes, sir.

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and I can give you some money. He said "Well, it wouldn't do me no good, a few dollars. I need \$50." I said "Walsh, I cannot give you \$50, you know I am a poor man", and he said "What is the matter with Nicholsburg?" I said "If Nicholsburg wants to give you \$50, I have no objection to it, go and see him; Nicholsburg is not here now; as soon as he comes I will speak to him." So Mr. Walsh went away and Nicholsburg is coming a half an hour or an hour later and I came to the office and I said---

Q I did not ask you about that.

THE COURT: Do not say what you said to Mr. Nicholsburg.

THE WITNESS: I saw Nicholsburg.

BY MR. ELY:

Q You saw Walsh afterwards? A Yes, sir.

BY THE COURT:

Q When you saw Nicholsburg, you had a talk with him?

A Yes, sir.

BY MR. ELY:

Q After you had talked with Nicholsburg, where did you go? A To Walsh.

Q What conversation did you have with Walsh? A I came to Walsh and say "Nicholsburg wants to see you", and I bring him over to the office, and in the office Mr. Nicholsburg asked

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him what is the trouble.

Q Asked who? A Mr. Walsh.

Q The defendant? A Yes, sir. He asked what is the trouble and he said "Well, it is no trouble now and I like to have \$50", and Nicholsburg asked him for what he wants \$50. "Of course, I need \$50; if you don't give me \$50, I take out the men on a strike". He said "On account of what?"

Q He, is Nicholsburg? A Yes, sir, and Mr. Walsh.

Q The defendant? A The defendant-- and the defendant said "Not Union trim." "How do you know it." He said "There is Union trim and Union men and the carpenter boss pays Union wages." He said he has nothing against the carpenter boss, he has Union men and paid Union wages, and when the truck is coming with the trim, he runs after the driver---

Q Who ran after the driver? A Walsh, and gave him 50 cents and he find out it is not Union trim, and Nicholsburg said "It is no time to take out the men on strike, it is nearly finished the job"; and he said, "Well, the time is now to take, the job is nearly finished-- to take them out on strike; if you give me the \$50, I wouldn't come near the building." Nicholsburg offered him a check for \$50, and he refused it.

By the court;

Q Before you come to that, what did Nicholsburg say about

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the check? A Nicholsburg said "Well, I will give you a check for \$50", and he said "I wouldn't take a check.

Q Who said that? A Mr. Walsh.

BY MR. ELY:

Q The defendant said that? A Yes, sir, and Nicholsburg said "I haven't got the money with me, I got to go to---- there is late to the bank to go, it was about two o'clock, and I will give you the \$50 tomorrow, and he says "All right, if you give me the \$50 or Heitzner gives me \$50, one or the other, I don't want the two to be in, if you give me the \$50 Heitzner won't be present, and if Heitzner gives me the \$50, I don't want you should be in present", and we make an appointment, I with Mr. Walsh make an appointment next day at four o'clock to meet him on 138th street and 8th avenue, on the corner, and I will bring him the \$50.

Q Where, on the corner? A In 8th avenue.

Q Where on the corner, there are four corners?

A There is a liquor store.

Q What appointment was made for meeting at 138th street and Eighth avenue? A To bring him the \$50.

Q Bring it where? A 138th street and Eighth avenue, there is only one saloon.

Q Where were you to deliver this \$50? A In 138th street and Eighth avenue, in the corner of the saloon.

Q In the saloon, who named the saloon? A I don't know

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about the name-- Mr. Walsh told me "There is only one corner there and you cannot miss it."

Q Walsh told you to meet him, the defendant, in a saloon?

A Yes, sir, and the next morning Mr. Walsh was, about nine o'clock in the morning---

Q The defendant? A Yes, sir.

Q Call him the defendant? A Was on 138th street and Lenox avenue about nine o'clock and asked me if I had the money. I said "No, Nicholsburg"---

THE COURT: Find out, Mr. District Attorney, if this defendant went to the place of meeting, and when he saw there and so forth.

MR. ELY: We have not got to that yet.

THE COURT: He is going beyond it.

MR. ELY: He said the next morning at nine o'clock in the morning, the defendant saw him. This is not the meeting in the saloon, the meeting in the saloon was at four o'clock in the afternoon of the 26th, and this is on the morning of the 26th, at nine o'clock.

THE COURT: Very well, proceed.

THE WITNESS: The next morning, this defendant came to 138th street and Lenox avenue on the job, and asked me if I had the \$50 for him. I said "No, Mr. Nicholsburg did not give it to me yet." He went away, and he told me "Don't forget

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to be at four o'clock." I said "I will be in the time".

At two o'clock or half past two, Mr. Nicholsburg called me down in the office---

BY MR. ELY:

Q Do not give any conversation that was had in the office at this time; when you went in the office of Mr. Nicholsburg on the 26th of June, 1902, when he called you there, as you state, did you see anything? A Well, I seen Mr.---

Q Yes or no, did you see anything? A Yes, sir.

Q What did you see? A Mr. Nicholsburg took out the money.

Q What did you see? A It was there, the officer---

Q I didn't ask you who were there. I asked you what you saw there? A I seen Mr. Nicholsburg put on his name on the money.

Q You saw money there? A Yes, sir.

Q Who were there when you saw money at Nicholsburg's office on the 26th of June, 1902? A Was the officer.

Q The officer? A Yes, sir.

Q And yourself? A Myself and Mr. Nielsen.

Q Who else? A Nobody.

Q McCarty? A McCarty was in the other room-- no, Mr. Carty was in this room.

Q McCarty was present too? A Yes, sir, was present

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too.

Q I show you People's Exhibit 2 and ask you if you ever saw that money before-- those articles before? A Yes, sir.

Q I ask you when you saw those articles before? A In the time when Mr. Nicholsburg called me down in the office and handed them to me.

Q That is on the 26th of June, 1902? A Yes, sir.

Q In the office when McCarty and the officer were present there with you? A Yes, sir.

Q What, if anything, did you see done to these articles, People's Exhibit 2? A Mr. Nicholsburg put on his initial on the bills and handed them to me and say "Go and"---

BY MR. ELY:

Q Do not say what he said.

THE COURT: Strike out what he said.

BY MR. ELY:

Q After these articles were given to you, did you give anything to Mr. Nicholsburg? A Yes, sir.

Q I show you People's Exhibit 3 for identification, and I ask you if you have ever seen that paper before? A Yes, sir, I signed it.

Q Wait a minute now. I ask you if that is the paper that you gave to Mr. Nicholsburg after Nicholsburg marked People's Exhibit 2? A Yes, sir.

Q This is Peoples Exhibit 2? A Yes, sir.

THE COURT: People's Exhibit 2, referring to the bills, so that the record will show.

MR. ELY: All right, sir, referring to the bills.

BY MR. ELY:

Q And is your signature on that paper? A Yes, sir.

Objected to. Objection sustained.

Q And this People's Exhibit 2 are the bills that Mr. Nicholsburg handed to you? A Yes, sir.

Q And what are they, describe them-- two twenties and one ten dollar bill? A Two twenties and a ten.

Q Lawful money of the United States? A Yes, sir.

Q After you received those bills, People's Exhibit 2, what did you do? A I went up to the building, it was not four o'clock, and saw what the people doing, and after it was quarter or half an hour to four, I went down to 138th street and Eighth avenue.

Q To the saloon at 138th street and Eighth avenue?

A Yes, sir.

Q Who if anybody went with you at that time? A The officer.

Q Who is the officer, what is his name, Connolly?

A Connolly.

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Q Have you seen the officer who now enters the room and standing by the rail, before? A No, he was in citizens clothes, he is the same man.

Q Have you seen him before? A Yes.

Q Is that the officer you referred to as Officer Cognolly who accompanied you to the saloon at 138th street and Eighth avenue, on the 26th day of June, 1902? A Yes, sir.

Q When you arrived at the saloon at 138th street and Eighth avenue in the County of New York on the 26th day of June, 1902, who, if anybody, did you see there? A Mr. Walsh.

Q The defendant? A The defendant.

Q Where was the defendant when you saw him in the saloon at 138th street and Eighth avenue? A He was standing on the front of the bar.

Q What happened? A When I came in he said "Hello, Frank, what will you have". He asked me what I am going to have. I said "I will have a glass of beer," and I take a glass of beer and I take out the money from my pocket and wanted to hand it to him, and he refused me, he said to me "Don't give me it there, there is a man, I do not know the man, and we will go out, and you give it to me outside."

Q Go on. A And so I drink out my beer and we went out.

Q Who went out with you, who went out? A I and the defendant.

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Q Did you see Connolly? A Connolly was behind me.

Q That is when you went out? A Yes, sir.

Q Did you see Connolly as you were standing there at the bar? A Yes, sir.

Q Where was Connolly standing? A In front of the bar a little further.

Q About the middle of the bar? A Yes, sir.

Q And you and the defendant were at one end? A Yes, sir, right in the corner.

Q And as you and the defendant went out you saw Connolly follow after? A Yes, sir.

Q Well, when you got out of the saloon, where if anywhere did you and the defendant go? A 140th street to the elevated station.

Q What, if any, conversation did you have with the defendant at the time that you left the bar until you got to 140th street and Eighth avenue to the elevated station? A He said to me---

Q Who is he? A The defendant said "I have got to come down in Eightieth to the district", and before we came to the elevated station he said "Well, Frank, I will go up on the elevated, shake hands and say good bye and give me the \$50" and so I done it.

Q Immediately after shaking hands with the defendant---

THE COURT: Find out what he did, the defendant.

BY MR. ELY:

Q At the time that you shook hands with the defendant, what hand did you shake hands with him? A With the right hand.

Q What, if anything, did you have in your right hand?

A I had the fifty dollars.

Q When you say you had the fifty dollars, do you mean you had the People's Exhibit 1? A People's Exhibit 2 (referring to the bills).

Q After shaking the defendant with your right hand, in which you had the fifty dollars bills, Exhibit 2, what, if anything, did you have in your hand? A The fifty dollars.

Q After you had shaken hands with him, what did you have in your hand? A Nothing.

THE COURT: Ask him what he did-- what did he do with the fifty dollars that he had in his hand.

BY MR. ELY:

Q What did you do with the fifty dollars that you had in your hand? A I?

Q Yes. A I gave it to Mr. Walsh.

Q And he took it when you shook hands? A Yes, sir.

Q And immediately after shaking hands with the defendant, what did you do? A I turned right away back and tipped my

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Q What do you mean you tipped your hat, show me what you mean by tipping your hat? A Like that and put it on again (indicating).

Q At the time you gave the \$50 that you have stated, did the defendant give anything to you? A No.

Q What did the defendant do after he had taken the \$50 from you as you have stated? A Going up on the elevated station.

Q On the elevated station where? A 140th street and Eighth avenue.

Q Did you ever get that \$50 back? A No, sir.

Q After tipping your hat, did you see anybody? A I seen the officer.

Q What if anything did you see the officer do? A I don't see-- I went away and the officer went on the elevated station.

Q Went up on the elevated station? A Yes, sir.

Q How in point of time did he go up the elevated steps compared with the time when the defendant went up? A About five-- one minute.

Q One minute after the defendant had gone up? A Yes, sir.

CROSS EXAMINATION BY MR. STECKLER:

Q You got acquainted with Mr. Walsh, the defendant,

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while you were working on the Kempner Building in 81st street? A Yes, sir.

Q You were the boss carpenter for Mr. Kempner at that job?

Objected to as immaterial. Objection overruled.

A Yes, sir.

Q The men that you had working on the Kempner job were members connected with the Carpenter's Union, Union men, were they?

Objected to.

Objection overruled.

BY MR. STECKLER:

Q Were they on Kempner's job on 83rd street? A Yes, sir.

Q The men who were working upon that job are named as follows: M. Mendelsohn, I. Effen, Adler, L. Ohler, A. Gruskin, M. Cohen, A. Rogen, M. Gubits, Bermond, Kiesel, Westron, S. Schrager, H. Raskin, H. Fried, M. Bagdanoff, M. Leis, C. Shonberg, M. Masloff, L. Cohen and I. Cohen.

Objected to as immaterial, irrelevant and incompetent.

Objection sustained. Exception.

MR. STECKLER: I would not ask the question unless there was some need for it.

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THE COURT: I understand that.

MR. STECKLER: You may not appreciate the force of this testimony at the present time. It may look immaterial now.

THE COURT: I can only rule from my light.

MR. STECKLER: I would like to make a statement of what I expect to prove, and not be permitted to make that statement, your Honor will see it is difficult for me to make it appear to your Honor how material it is now, and how the ruling will prejudice the defendant's case by not getting in the proper evidence.

THE COURT: I can only rule upon the questions as they are presented.

MR. STECKLER: I except.

BY MR. STECKLER:

Q Did you owe these men \$293 in February and April, 1902, for work they did on this job of Kempner's in 83rd street of which you were the boss carpenter?

Objected to.

THE COURT: If you ask him did he owe them money for wages which they had worked for, I will permit the question. Do you insert the word "wages"?

MR. STECKLER: Yes.

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MR. ELY: I object as immaterial, irrelevant and incompetent. It does not appear that the workmen in question were working on the job at 138th street and Lenox avenue and whether or not he owed persons on another job than the one on which he was connected at the time of the indictment, is immaterial and irrelevant and beyond the issues involved in this case.

Objection overruled.

BY MR. STECKLER:

Q Did you owe these men that amount of money for wages?

Objected to.

THE COURT: You may ask him if he owed men that worked upon that building.

BY MR. STECKLER:

Q Did you owe men who worked upon that building?

A Yes, sir.

MR. ELY: The Kempner building?

THE COURT: Yes, the Kempner building.

MR. STECKLER: The Kempner building at 83rd street.

THE COURT: What is the amount?

MR. STECKLER: \$293.-- I asked him if it was \$293.

THE WITNESS: I think about \$75 or \$80. I can't

remember.

BY MR. STECKLER:

Q Can't you remember whether it was \$75 or \$50? A Yes.

Q Did you owe Abe Mendelsohn six dollars?

Objected to.

THE COURT: Objection overruled.

THE COURT: Can you tell the amount of money that you owed each individual man?

A No.

BY MR. STECKLER:

Q You cannot tell? A No.

Q Now, it may have been two or three hundred dollars?

Objected to.

THE COURT: I will allow it.

BY MR. STECKLER:

Q You are not sure, you cannot tell exactly; is that right? A That is right.

THE COURT: His answer is fifty or seventy-five dollars.

MR. ELY: Yes.

MR. STECKLER: May it have been \$275 or \$293?

A No, sir.

Q Didn't you testify upon the last trial that it was \$293?

Objected to.

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A Mr. Kempner gave \$100.

Q That left \$193? A No, sir.

Q Mr. Kempner paid \$100? A Yes, sir.

Q On account of work that you owed for? A Yes.

Q That left how much?

Objected to.

THE COURT: You must question him as to his knowledge of what he owed at the time.

BY MR. STECKLER:

Q Besides what Mr. Kempner paid, the \$100-- the owner of that job, to Walsh how much more did you owe the men for wages? A I can't tell.

Q How is it you cannot tell? A Some workmen don't take four dollars a day.

MR. ELY: Don't get four dollars a day.

A Don't get four dollars a day.

BY MR. STECKLER:

Q Was not the Union rate of wages at that time four dollars a day?

Objected to.

Objection overruled.

A Yes, the wages is four dollars a day, but the workman is not able to make four dollars a day work and he comes and asks for two dollars and I give him two dollars and after he

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goes and asks the delegate to come and collect from me four dollars a day.

BY THE COURT:

Q You gave some men work at two dollars a day? A Yes, sir.

Q They were willing to work for two dollars? A Yes, sir.

Q After they worked the delegate came and demanded the difference between two dollars a day and four dollars a day, the Union rate? A Yes, sir.

BY MR. STECKLER:

Q Did you make that statement upon the last trial?
A Yes, sir.

Q Is it not a fact that you never made such a statement until just now?

Objected to.

Objection overruled.

BY THE COURT:

Q Did you ever make that statement until now?
A Yes.

BY MR. STECKLER:

Q Is it not a fact that you told the Court and jury at the last trial that you could not tell how much you owed those men, that your brother kept the books and you could not tell how much the men were to get?

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MR. ELY: I object.

THE COURT I sustain the objection to that
form of question.

Exception.

BY MR. STECKLER:

Q Did you upon the last trial say that you could not
tell how much you owed these men because you did not keep the
books, that your brother kept the books, and that you had not
the books?

Objected to.

THE COURT: Does the "last time" refer to a
trial in this Court?

MR. STECKLER: yes.

THE COURT: Then I must assume there is a written
record of that testimony.

MR. STECKLER: I can ask any question I think
proper without the record, if my recollection serves
me.

THE COURT: You must ask him a specific ques-
tion tending to show a contrary statement to that
which he has made on the witness stand now.

MR. STECKLER: You sustain the objection?

THE COURT: No.

MR. STECKLER: I ask him then if he made that

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statement upon the last trial?

THE COURT: What statement was it?

Q (Question repeated).

THE COURT: I will allow the question.

BY THE COURT:

Q Did you state that at the last trial? A Yes, sir.

BY MR. STECKLER:

Q Have you got the books since the last trial.

Objected to as immaterial.

Objection overruled.

A No.

BY MR. STECKLER:

Q Now, at the time that these men worked for you on the 83rd job, did Mendelsohn work for you and you owe him six dollars upon which you paid him two leaving four?

Objected to. Objection sustained. Exception.

Q The next man that worked for you at that time is a man named I. Efen, to whom you owed two dollars?

Objected to; sustained; exception.

Q Now, how often did Walsh come to you upon this job which you were working at for Mr. Nicholsburg, 138th street and Lenox avenue, before the 26th or 25th of June? A I will say three or four times a week.

Q Three or four times a week? A Yes, sir.

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Q How many weeks were you working there before the 26th of June; how many weeks were you there? A I started at this time and I finished about down in August.

Q You began about this time last year? A Yes, sir.

Q And he came there three or four times? A Yes, sir.

Q And everytime he came there to you for money?

Objected to. Objection sustained. Exception.

Q What did he say to you?

Objected to. Objection overruled.

MR. STECKLER: I withdraw that question.

BY MR. STECKLER:

Q Did he at any of those times ask you for money which you owed the men on the Kempner job?

Objected to. Objection sustained. Exception.

Q Did he ask you for money which you owed the men for wages on the Kempner job when he called to see you on this job in 138th street?

Objected to. Objection sustained. Exception.

Q Is it a fact that every time he came to you upon that job at 138th street, he demanded of you the money which you owed the men for wages upon the Kempner 83rd street job?

Objected to. Objection sustained. Exception.

Q Now, you say he came to you on the 25th of June and told you he must have \$50? A Yes, sir.

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Q Did he at that tell you that he wanted that money for the men that you owed the money to on the Kempner 83rd street job? A No, sir.

Q There was not a word said about the Kempner job at that time? A No, sir.

Q Not a word? A Not a word.

Q You did owe the men \$75 or \$100 at that time, didn't you?

Objected to. Objection sustained. Exception.

THE COURT: I sustain the objection because it is already answered.

MR. STECKLER: I except.

THE COURT: He has already stated that he did.

BY MR. STECKLER:

Q Did he then and there say to you that the Union to which these men belonged had pressed him to come to you for the money that you owed those men? A No, sir.

MR. ELY: I presume the question refers to the 25th of June, 1902?

MR. STECKLER: Yes, the 25th of June.

BY MR. STECKLER:

Q You told him you did not have any money, you say?
A Yes, sir.

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Q And Walsh said "How about Nicholsburg"? A Yes, sir.

Q You testified to that before? A Yes, sir.

Q Did Walsh say to you at that time that the Union wanted the men to get the money? A No.

Q Do not answer until I am through-- and, that the Union were pressing him-- and why couldn't you go to Nicholsburg and get him to advance you--- A No, sir.

Q Why don't you wait-- the same as Kempner did on the 83rd street job, Kempner advancing you \$100; didn't Walsh tell you that at the time? A No, sir.

Q Kempner did advance \$100 on the job, didn't he?

Objected to.

THE COURT: I sustain the objection as having been already answered.

Exception.

BY MR. STECKLER:

Q Did you ever see this paper before?

A Yes, sir.

Q When did Walsh first show you that paper?

Objected to. Objection sustained.

Q Where did you see that paper first?

Objected to as immaterial.

The paper is marked for identification Defendant's Exhibit A.

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BY THE COURT:

Q When did you see that paper first?

MR. STECKLER: I ask him where.

BY THE COURT:

Q Where did you see that paper first? A On 138th street and Lenox avenue a couple of weeks before he came up for the \$50.

BY MR. STECKLER:

Q You mean Walsh? A Yes, sir.

Q Who showed you the paper? A Walsh.

Q Did he tell you at that time what this paper was?

Objected to. Objection sustained. Exception.

THE COURT: Ask him what he said to him about the paper.

MR. STECKLER: I offer the paper in evidence.

MR. ELY: I object as incompetent, immaterial and irrelevant, and furthermore that it does not appear that this witness can read or write English, or any other language and therefore that he should not be bound by any paper that is produced-- furthermore that the paper it self is not competent.

THE COURT: I sustain the objection for the present.

Exception.

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BY MR. STECKLER:

Q When he presented this paper to you, did you read it, or did he read it for you? A Yes.

Q He read it for you?

MR. ELY: I object as a conclusion. He may have read anything. He may have recited something.

BY MR. STECKLER:

Q He read something to you. Please tell us what he said, when he read from that paper?

Objected to. Objection sustained. Exception.

Q You say he read the paper to you? A Yes, sir.

Q Tell us what he read?

Objected to as a conclusion.

Objection sustained. Exception.

Q What did he say to you?

Objected to.

Q At the time he handed you the paper?

Objected to. Objection sustained. Exception.

MR. STECKLER: This is our defense.

THE COURT: This is three or four weeks, or some time before the 25th of June?

MR. STECKLER: You allowed the District Attorney to go into what happened in April.

THE COURT: As between the defendant and Nichols-

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burg.

MR. STECKLER: certainly, but this is the party we had our claim against. We had no claim against Nicholsburg.

THE COURT: I have ruled.

MR. STECKLER: I except.

BY MR. STECKLER:

Q At the time this paper was read to you, as you say, by Walsh, did he tell you that this was a paper from the carpenter's International Union directing him to collect the money for three men, Schrager, Rosen and Cohen?

Objected to. Objection sustained. Exception.

Q On the 9th of June, 1902, did you owe Mr. Schrager four and one half day's pay amounting to \$18, Abe Rosen two and three quarter days pay \$11, and Joe Cohen five and a half day's pay \$22.

Objected to. Objection sustained. Exception.

Q Did you owe these men for wages for work they had performed for you on the Kempner 83rd street job?

Objected to. Objection overruled.

BY MR. STECKLER:

Q Did you, on the 9th of June?

BY THE COURT:

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Q Did you owe those three men whose names counsel read, that amount of money?

A I paid Rosen and Schrager-- this Schrager took two dollars and after he goes and asks me for four dollars.

BY THE COURT:

Q Did you owe him? A Yes.

BY MR. STECKLER:

Q You say you paid Rosen before the 9th of June? A I can remember when I paid him.

Q That is my question,-- did you on the 9th of June, the day he presented that paper to you owe Mr. Schrager \$18?

MR. ELY: I object to the form of the question.

BY MR. STECKLER:

Q For wages on this 83rd street job?

Objected to. Objection overruled.

BY MR. STECKLER:

Q Did you owe Mr. Schrager \$18? A No, sir.

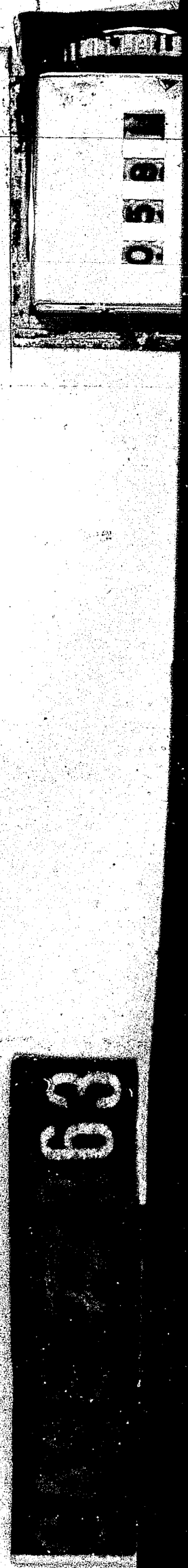
Q How much did you owe him? A Nothing.

Q Did you owe, on the 9th of June, 1902, \$11 to Joe Cohen? A Yes, sir.

Q Abe Rosen \$11? A It is paid.

Q And Joe Cohen five and a half days \$22? A \$11.

Q \$11 to Rosen, and how much to Cohen? A I paid to



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Cohen? A I paid to Cohen \$8.

Q How much? A I paid to Cohen \$8.

Q I ask you-- mark the date-- the 9th of June---
what you owed? A I can't remember.

Q Can't remember? A No, sir.

Q You don't remember whether you owed Rogen \$11 or
not and you don't recollect whether or not you owed Joe Cohen
\$22. on the 9th of June? A I know Nicholsburg has the re-
ceipt for men that he has paid.

(Answer stricken out.)

Q I ask you on the 9th of June did you owe those men
that money? A I don't remember.

Q Did you after the 26th of June, the day after this
man was arrested pay Walsh the money for the wages due the men
on the 83rd Street job?

Objected to as immaterial, irrelevant and in-
competent.

Objection sustained. Exception.

Q I show you this paper and ask you whether your sig-
nature is attached to that paper? A That is my signature.

Paper offered in evidence.

Objected to as immaterial, irrelevant and incom-
petent, and not within the issues involved in this
case.

Sustained. Exception.

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The paper is marked Defendant's Exhibit B for identification.

BY MR. STECKLER:

Q Is it not a fact that after the 26th of June that you paid the defendant other monies, \$24. to pay other workmen and you gave him \$24. for the workmen that you owed on wages due on the 83rd Street job, after this man's arrest?

Sustained and exception.

THE COURT: After this man was arrested on the charge now being tried?

MR. STECKLER: Yes, after that time.

BY MR. STECKLER:

Q How often did you see Walsh after the 26th of June, on that building, where you were working?

Objected to as incompetent, irrelevant and immaterial.

Overruled.

BY MR. STECKLER:

Q How many times? A Two or three times a week.

Q Did he come then to ask you for money which you owed the men for wages on the 83rd Street job?

Objected to. Sustained. Exception.

Q As a matter of fact you did pay him after the 26th of June more money which you owed the men on the 83rd Street

job for wages?

Objected to. Sustained and exception.

Q How often have you and Nicholsburg gone over the facts of this case?

THE COURT: Do you understand the question.

THE WITNESS: No.

THE COURT: He says he does not understand the question.

BY MR. STECKLER:

Q Have you and Nicholsburg ever talked about this case since Walsh's arrest? A No.

Q You have an ill feeling against this man Walsh?

A Nothing.

Q You are a friend of his to-day? A Yes, sir.

Q You were discharged from the Kempner 83rd Street job after Walsh complained to Mr. Kempner that you did not pay the men?

Objected to. Sustained and exception.

MR. STECKLER: I want to show the animus.

THE COURT: No.

MR. STECKLER: I except.

BY MR. STECKLER:

Q Is it not a fact that you and Walsh had an argument where in you blamed him for having you discharged from the Kempner job because he complained that you did not pay the

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men the wages? A No, sir.

Q Were you discharged by Mr. Kempner?

Objected to. Sustained and exception.

Q Haven't you a feeling against Walsh because you were discharged by Kempner? A No, sir.

Q Do you know a man named Davis Cohen?

Objected to as immaterial. Objection overruled.

Q A journeyman carpenter-- do you know him? A No, sir.

MR. STECKLER: Will you have Davis brought into Court to have him identified.

BY MR. STACKLER:

Q Was there not a man named Davis Cohen brought into court at the last trial?

Objected to.

A man is now brought into court.

BY MR. STECKLER:

Q Do you know that man? A No.

Q You never saw him before to-day? A Maybe I seen him-- the last time I saw him.

Q When was the last time that you saw him? A When we had the trial here.

Q Did that man ever speak to you and ask you for a job?

Objected to as immaterial. Sustained and

exception.

Q Did you tell that man that you would not give him a job because Walsh was after you to pay the workmens' wages and that if Walsh would not stop coming after you for the wages you would put him into prison and get even with him?

Objected to.

Q Did you tell that man so?

Objected to, sustained and exception.

BY THE COURT: I sustain the objection to the last question upon the ground that it does not appear to me upon the cross examination that the conversation referred to indicates or imports an act of moral turpitude on the part of this witness, and that even if he did say to the person named that he would do what the question intimates that he would, that that of itself is insufficient under the rules of evidence to form a basis for attacking the credibility of this witness. In other words that it is not calculated to impeach either his incredibility or veracity.

MR. STOCKLER: I except to your Honor's ruling.

BY MR. ELY:

Q To your knowledge, under the union with which this defendant is connected, did the defendant on the 25th and 26th days of June, 1902, have authority to order a strike?

MR. STECKLER: I object as incompetent, irrelevant and immaterial. The witness is not competent to testify to anything. He is not a member of the union and not in a position to know.

MR. ELY: It may be that the defendant has ordered strikes on this witness and he may know. I ask him if he knows.

THE COURT: It is not claimed that the defendant threatened to injure the business of this witness or to injure his property. The indictment is that he threatened to injure the business or the property of Nicholsburg, not of this witness, and therefore this witness's knowledge upon that point I think would be incompetent and immaterial, unless it were shown that he was acting for Mr. Nicholsburg and that has not been shown in the case. I sustain the objection.

MR. ELY: If your Honor please, it has been shown that he was the boss carpenter on this job.

THE COURT: I have sustained the objection.

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J O S E P H C O N N E L L Y, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are an officer connected with the municipal police force of the City of New York? A Yes, sir.

Q And were so connected on the 25th of June, 1902 and on the 26th of June, 1902? A Yes, sir.

Q On tthe 26th of June, 1902, you were attached to what precinct? A 31st Precinct.

Q On the 26th of June, 1902, did you go to a temporary office on Lenox Avenue between 137th and 138th Streets? A Yes, sir.

Q Who if anybody did you see at this temporary office between 137th and 138th Streets, on Lenox Avenue, in the County of New York, on the 26th of June, 1902? A Mr. Nicholsburg, Mr. Heitzner and Mr. McCarthy.

Q Is the Mr. Heitzner, the Frank Heitzner that you have just succeeded on the stand? A Yes, sir.

Q You saw the person who has just come into the court room (McCarty) who has come in in response to the call for McCarty; I ask you if you have ever seen this gentleman before? A Yes, sir.

Q Is that the gentleman you referred to as being present

in the office on Lenox Avenue, between 137th and 138th Streets on the 26th of June, 1902? A Yes, sir.

Q When Heitsner and Nicholsburg were present? A Yes, sir; that is him.

Q You remember about what time of the day this was that you went to this office? A About 2 o'clock in the afternoon.

Q I show you People's Exhibit 2, the money and ask you whether you ever saw these bills before? A Yes, sir.

Q Where did you see these bills for the first time? A At the office of Mr. Nicholsburg on the east side of Lenox Avenue, between 137th and 138th Streets.

Q What date? A On the 26th of June, about 2 o'clock in the afternoon.

Q In the presence of the people you have just referred to here? A Yes, sir.

Q What if anything did you see anybody do to People's Exhibit 2, being the bills, United States bills?

MR. STECKLER: I object to anything that was done in the absence of the defendant. It cannot bind him.

Objection overruled. Exception.

THE COURT: The question tends to the identity of the bills.

THE WITNESS: Mr. Nicholsburg marked his initials

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on the bills.

Q Look at the bills and see? A Here is one (the witness points to a mark on the ten dollar bill under the bull.)

THE WITNESS: There is the other one. (The witness points to the mark on the twenty dollar bill between the figures 10 and 17 on the back thereof.)

THE WITNESS: There is the other.

(The witness points to the mark on the twenty dollar gold certificate between the twenty and the eagle.)

BY MR. ELY:

Q After the bills, People's Exhibit 2 were marked as you have stated, what, if anything, was done with them, if you know? A Mr. Nicholsburg and myself copied the numbers off of the bills.

Q What if anything was done with the bills? A Mr. Nicholsburg gave them to Heitzner and got a receipt for the bills.

THE COURT: Strikeout the words "got a receipt for the bills."

BY MR. ELY:

Q Mr. Nicholsburg gave the People's Exhibit 2, being the bills in question, to Mr. Heitzner? A Yes, sir.

Q And then, what if anything happened after that?

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A We all left the office then. I told Mr. Heitzner--

Q Do not give any conversation that occurred outside the presence of the defendant-- After the bills were given to Mr. Heitzner and you had all dispersed, did you see Heitzner again on that day? A Yes, sir.

Q That day being the 26th of June, 1902? A Yes, sir.

Q Where, if anywhere, did you accompany Heitzner on that day after having seen him in the office of Mr. Nicholsburg?

A I met him about 4 P. M. at 138th Street and Lenox Avenue.. Went over 138th Street to 8th Avenue and Mr. Heitzner walked into the saloon and I followed.

Q When you got into the saloon did you find any one in there whom you knew before? A No, sir, I didn't know them before.

The defendant---

Q Didn't know who before? A I didn't know him nor I didn't know the saloon keeper.

Q Did you see the defendant in the saloon at 138th Street and 8th Avenue when you went in there with Heitzner on the 26th day of June, 1902? A Yes, sir.

Q What if anything did you see? A Heitz do when you went in the saloon? A I didn't see Heitzner do anything only walk ~~in the~~ right in the saloon and I walked in after him.

Q Did you see where Heitzner walked to? A Yes,

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sir.

Q Where did he walk to? A Right to the end of the bar.

Q Who was right at the end of the bar? A Thomas C. Walsh.

Q The defendant? A Yes, sir.

Q Did you hear my conversation between Heitzner and the defendant at that time? A Walsh asked him to have a drink.

Q And where were you standing? A In the centre of the bar.

Q How were you standing, facing the bar? A I was standing facing the bar looking in the glass.

Q There was a mirror then at the back of the bar?
A Yes, sir.

Q Behind the bar? A Yes, sir.

Q ~~Yes~~ ~~xxxx~~ Standing there looking in the mirror, ~~xxx~~ did you see the defendant and Heitzner? A Yes, sir.

Q Just state, what if anything you saw as you stood there looking into the glass at the defendant and Heitzner?

A All I saw they had a drink and Walsh paid for it, and then they walked outside and then I followed and they stood right outside in front and I stepped off a little from them and they walked up 8th Avenue to 140th Street--

Q Wait-- As they walked up 8th Avenue to 140th Street,

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what if anything did you do? A I followed them up.

Q And what, if anything, did you see? A Heitzner shook hands with Mr. Walsh.

Q Heitzner shook hands with the defendant? A Yes, sir, and then Heitzner turned around and tipped his hat, that was the signal that he got the money--

Q No--- Heitzner turned around after shaking hands with the defendant and tipped his hat? A Yes, sir.

Q Show me how he tipped his hat? A Had it on like that (indicating), and he tipped it and put it on and walked about his business.

Q Did you have Heitzner and the defendant in full view from the time they left the saloon up to the time that the defendant and Heitzner shook hands at the elevated station there, at 140th Street and 8th Avenue? A Yes, sir.

Q Did you at any time see the defendant give anything to Heitzner? A No, sir.

Q And immediately after the shaking of the hands between the defendant and Heitzner as you have testified, and Heitzner tipping his hat and going about his business, as you have said, what did you do? A Walsh walked on the north side and went up on the elevated station.

Q You speak about the defendant? A Yes, sir, the defendant.

Q Walked up on the north side? A Of 140th Street,

and went up on the elevated station and I went up on the south side. I met him up on the station and told him I was an officer and I wanted him. He said, "You don't want me," and he put his left hand down in his pocket like that, and he says, "Here is what you want", and he out and handed me the money.

Q You say "out" and he handed you the money"-- I ask you what money you refer to? A The \$50., this money here, Exhibit 2.

Q Two twenties and a ten dollar bill, being Peoples' Exhibit 2? A Yes, sir.

Q He handed you? A Yes, sir.

Q Saying, "This is what you want"? A Yes, sir.

Q What if anything did you do? A I told him I wanted him and then we walked off a little ways and going downstairs I asked him "Did he know this money was marked", and he hesitated a while, and then he said, "I don't give a damn whether it was or not, it belongs to the organization."

Q When was it that he made that statement to you?

A Coming down the elevated stairs.

Q He made no further communication to you then from that time until he got to the station house? A He was talking to me, and at about 128th Street he said Heitzner owed some of the carpenters money for some other job.

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Q He made no such statement until he got to 128th Street---

CROSS EXAMINATION BY MR. STECKLER:

Q You did not see Heitzner nor the prisoner give each other anything? A No, sir.

Q All you say, there was a shake of the hand? A That was all.

Q When on the steps of the elevated station he said the money belonged to the organization, he told you that?

A Yes, sir.

Q He also told you at 128th Street that Heitzner owed the men money, wages for another job they worked on?

A Yes, sir.

SIMON J. McCARTY, called as a witness in behalf of the people,
being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Plumber.

Q What if any business were you engaged in on the 25th
and 26th day of June, 1902? A Construction of the plumbing
work on 138th street and Lenox Avenue, on the southeast cor-
ner.

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

Q How long have you known him? A About seven years.

Q Seven years? A Yes.

Q Where were you on the 25th of June, 1902? A South-
east corner of Lenox avenue and 138th street.

Q About what time in the day did you see this defendant,
if at all? A Around 2 o'clock.

Q And prior to seeing this defendant at 2 o'clock, where
had you been if anywhere? A On the outside of the building,
standing on the street. I came up from the cellar and was
standing on the street, and I met Nicholsburg and he said--

Q Don't give any conversation unless the defendant was
there--was the defendant there at that time? A Not at that
time.

Q Now, in consequence of a communication that Nicholsburg
made to you when you saw him, having come up from the cellar

there, at about 2 o'clock, in front of the building, what did you do? A I went into the office erected between 137th and 138th street and Lenox avenue, middle of the block.

Q Look at People's Exhibit 1 and show me--tell me if that is the office building that you refer to? A That is the office building, yes.

Q Which room did you go in? A The one marked the store room.

Q You went into the one marked store room? A Yes, sir.

Q Now, just after you went in the one marked the store room, did you hear anybody go into the office proper? A Yes, sir.

Q Do you know who did go into the office proper?

A Thomas T. Walsh and Frank Heitsner.

Q Do you know who was in the office proper when they went in there? A Yes, sir, Henry Nicholasburg.

Q Did you hear any conversation between Henry Nicholasburg and Thomas C. Walsh, the defendant? A Yes, sir.

Q What was that conversation?

MR. STECKLER: I ask leave to cross examine this witness as to his knowledge as to who was in the room.

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THE COURT: I deny your motion at this time.

MR. STECKLER: I have a reason for doing that.

THE COURT: You will have an opportunity for cross examination.

MR. STECKLER: If I can show--

THE COURT: No. This witness assumes the responsibility for what he says under oath, and if the question is plain to him he must assume the responsibility of answering it.

MR. STECKLER: You refuse to permit me to examine the witness as to whether he saw Walsh in there and whether he recognized his voice.

THE COURT: You will have opportunity to cross examine.

MR. STECKLER: I desire to say that your Honor should give the defendant the opportunity--

THE COURT: I will not hear you any further on that question.

MR. STECKLER: I except.

BY MR. ELY:

Q What was that conversation?

THE COURT: Conversation with whom.

MR. ELY: I asked if he had heard any conversation between Nicholsburg and this defendant, and I am

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asking now for the conversation between Nicholsburg and this defendant--that is what I ask.

THE COURT: Who was present.

MR. ELY: I have already laid that.

THE COURT: Lay it again.

BY MR. ELY:

Q Who was present there? A Henry Nicholsburg, Thomas C. Walsh, Frank Heitzner.

BY THE COURT:

Q Were you there? A I was in the adjoining office.

Q Could you hear? A I heard Henry Nicholsburg, Thomas C. Walsh and Frank Heitzner.

THE COURT: Proceed Mr. District Attorney.

BY MR. ELY:

Q Give the conversation you heard? A Nicholsburg said--

BY THE COURT: This ~~room~~ adjoining office, was there a partition between? A Yes, sir.

Q Did the partition go up to the ceiling? A No, sir.

Q How high did it go? A The partition went up about eight foot.

Q And what distance between that and the ceiling?

A Then there was a distance of about nine inches.

Q Was there a door in that partition? A There was a door in this adjoining--in this storeroom that led into the

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street on the sidewalk.

Q Was there a door between where you were and the office where Nicholsburg and this defendant were? A No, sir.

Q What was the partition made of? A Out of fine wood, about seven eighths of an inch thick.

Q Did you see the individuals in there? A No, sir, I did not see them in there.

Q Can you swear that the persons whom you mention were in there? A Yes, sir.

Q How do you know? A I heard their voices. I recognized all their voices.

Q Did you see them go in there? A I seen Henry Nicholsburg in there as I passed his office door to go into the store room.

Q Did you see anybody else enter? A No, sir.

Q Did you see anybody leave there? A As I came out I seen Walsh and Heitzner on the sidewalk.

Q Had you ever heard the voices of these men before?

A Yes, sir.

Q All of them? A Yes, sir.

Q Had you ever talked with them? A Yes, sir.

Q All of them and each of them? A Yes, sir.

Q You swear positively now that you can identify the men from their voices? A Yes, sir.

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THE COURT: I will allow the question.

MR. STECKLER: I except.

MR. STECKLER: Your Honor will not allow me to ask one question to find out--

THE COURT: Yes, I will, on that line.

MR. STECKLER: That is all I want.

BY MR. STECKLER:

Q You did not see Walsh go in that room?

THE COURT: He has stated he did not.

BY MR. STECKLER: Q Now, you testified upon the last trial--

MR. ELY: I object.

THE COURT: I will not permit that.

BY MR. STECKLER:

Q Were you able upon that day to recognize Walsh's voice? A Yes, sir.

Q You were? A Yes, sir.

THE COURT: I will not permit the examination to go any further.

BY MR. ELY:

Q What did you hear? A Nichols^{burg} said to Walsh, "What is the trouble", and Walsh said, "Has not the boss carpenter told you", and Nicholsburg said "I want you to tell me". Well, he said, Nicholsburg said, "This is a Union shop; I am paying

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union wages and the trim is coming from a union mill, and there should be no trouble here," Walsh said, "I found out from the truck drivers that was hauling the trim to this job-- I blowed them off and gave them half a dollar and found out the trim was coming from a non-union mill, and you know what that means", and Nicholsburg said, "My job is finished now, there should not be any trouble now; the trim is nearly all up," and he said, "That is the time to catch you, when the job is finished", and he said "I will put you to a lot of expense; you have either got to get it finished-- I will put you to a lot of expense," and Nicholsburg said, "What do you want?" and he said, "I want fifty dollars", and Nicholsburg said, "That is a small matter, fifty dollars", and he said "I will let you have fifty dollars". So Nicholsburg said, "Will you take it in a check?" Walsh said "No, I will have to have it in cash", and he said, "when I take the money I will either take it off Heitzner or take it off you, and neither one or the other is not to be present". Well, Nicholsburg said, "That is all right, you can make the arrangement with Heitzner". So that ended the conversation, and I waited until they went out of the adjoining office and then I went out.

BY MR. ELY:

Q Now, was it then you saw Walsh and Heitzner together

on the sidewalk ? A Yes, sir.

Q Did you see this defendant about a week after the 25th day of June, 1902? A About that time.

Q Did you have any conversation with him? A Yes, sir.

Q Where did you see this defendant? A Saloon 137th street and Lenox avenue.

Q In what? A In a saloon.

Q What did Walsh say to you then?

MR. STECKLER: I object as incompetent, irrelevant and immaterial, and after the matter set forth in the indictment.

THE COURT: It may be in the nature of an admission. I overrule the objection.

Exception.

BY MR. ELY:

Q What did he say to you?

MR. STECKLER: It occurred after the date upon which this indictment is found.

THE COURT: I receive it, subject to the proviso that it be in the nature of an admission against the defendant, otherwise it will be stricken out.

BY MR. ELY:

Q What did he say to you? A I was standing up against the bar having a glass of soda and Walsh came in and he seen me and he looked at me and he said, "You are a fine none of a bitch."

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to go behind that partition and spy on me." I said "I am no son of a bitch, Walsh, don't you call me one, you are a guilty man, and caught with the goods, and then go round crying."

MR. STECKLER: I move to strike it out as an improper and prejudicial statement.

THE COURT: If it is incompetent it is improper. I grant the motion to strike out and I now direct the jury to disregard it.

CROSS EXAMINATION BY MR. STECKLER:

Q You were a partner of Nicholsburg on the 25th and 26th of June, were you? A I was a member of the firm of Nicholsburg & Company.

Q Were you his partner, yes or no?

MR. ELY: I object; he has already testified he was a member of the firm of Nicholsburg & Company.

THE COURT: I think that implies that he was a partner.

MR. STECKLER: You rule that I may not ask the question?

THE COURT: No, ask him the question.

BY THE COURT:

Q Were you a partner? A No, sir.

BY MR. STECKLER:

Q You were not at all interested with Nicholsburg in business on the 26th of June? A Yes, sir.

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Q In this house that was being put up at 138th street and Lenox avenue? A Not in the house.

Q Not in the house--in the plumbing work? A Yes, sir.

Q That was being put in that house? A Yes, sir.

Q You did not testify to this upon the last trial?

Objected to as immaterial.

Objection sustained.

Q Did you testify upon the last trial what you heard or alleged to have heard while in that office of Nicholsburg, yes or no? A No.

Q Did you upon the last trial in answer to Judge Newburger's question--I read now from the minutes, "By the Court: Had you ever heard the defendant's voice, Walsh's?" A No, sir, not until that time"-- did you make that statement? A I made a statement--

Q Yes or no, did you make that statement? A No, sir.

Q You did not? A Yes-- read that question again please.

Q "By the Court: Had you ever heard the defendant's voice, Walsh's? A No, sir, not until that time." A Yes, sir.

Q You swore to that? A Yes, sir.

Q Referring to page 102 of the stenographer's minutes, preliminary examination by Mr. Steckler, did you testify as

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follows upon that trial, "You say you had never heard Walsh's voice before that day? A No, sir"-- did you swear to that?

A Yes, sir.

Q "You don't know whether it was Walsh or not that upoke that day in that place, do you? A No, sir;" did you swear to that? A Yes, sir.

Q "You did not see him go in there? A No, I did not see him go in there". Did you swear to that? A Yes, sir.

Q "You did not see him in the place? A No, sir"-- did you swear to that? A Yes, sir.

Q You did not see him go into that room on this day, did you, Walsh?

Objected to as having been already answered.

MR. STECKLER: I think I have a right to ask it if it has been asked fifty times by them.

THE COURT: I sustain the objection upon the ground that he has answered it several times.

MR. STECKLER: I am going to found other questions upon it.

BY MR. STECKLER:

Q You had never heard Walsh's voice before that day?

A Yes, sir.

Q How did you come to swear to what I have just read, that you never heard his voice before that day, having

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testified to that on the 11th day of March, 1903, in this court?

A That was a mistake and I came down afterwards, came down to the District Attorney's office and had it rectified.

Q What you swore then was not true? A Part of what I swore then.

Q Have you and Nicholsburg talked about this case since you were here last as a witness, which was on the 11th of March, 1903? A Yes, sir.

Q And gone over the facts in this case? A Well, not over all the facts.

Q Did he tell you what you were to swear to today?

A No, sir.

Q Not a word? A No.

The Court admonished the jury in accordance with section 415 of the Code of Civil Procedure and takes a recess until 2 o'clock.

AFTER RECESS.

SILTON J. McCARTY, resumes the stand.

REDIRECT EXAMINATION BY MR. ELY:

Q Are you a member of any union?

Objected to as immaterial, irrelevant and incompetent.

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testified to that on the 11th day of March, 1903, in this court?

A That was a mistake and I came down afterwards, came down to the District Attorney's office and had it rectified.

Q What you swore then was not true? A Part of what I swore then.

Q Have you and Nicholsburg talked about this case since you were here last as a witness, which was on the 11th of March, 1903? A Yes, sir.

Q And gone over the facts in this case? A Well, not over all the facts.

Q Did he tell you what you were to swear to today?

A No, sir.

Q Not a word? A No.

The Court admonished the jury in accordance with section 415 of the Code of Civil Procedure and takes a recess until 2 o'clock.

AFTER RECESS.

SIMON J. McCARTY, resumes the stand.

REDIRECT EXAMINATION BY MR. ELY:

Q Are you a member of any union?

Objected to as immaterial, irrelevant and incompetent.

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MR. ELY: I did not say public.

MR. STECKLER: I except to the remark.

THE COURT: Mr. District Attorney, you had better confine yourself to the charge in the indictment.

MR. ELY: (Continuing) If the acts of this defendant as alleged by the People are true, this defendant is one of those upon whom these ignorant people, these laboring men, rely for succor, who are in business on and their own account only to betray their trust. That is what he did if the evidence of the People is true, and on his own testimony, gentlemen, I have no doubt what you will say as regards his guilt.

Some evidence here has been introduced as to the character of the defendant. It has been introduced through people who are in his own trade, and you will recollect that this is a walking delegate, and if the evidence of the People is true, this defendant, the walking delegate, has used his position to extort money and blackmail. Do you suppose these gentlemen do not know his power as a walking delegate? They are all carpenters and contractors. They have to do with the walking delegate, and you have heard their testimony. You will give it such weight under the circumstances and evidence in this case, as you may deem it worth.

Gentlemen, I ask for a verdict of Guilty at of an attempt at extortion.

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THE RECORDER'S CHARGE.

Gentlemen of the Jury: Because of matters that have been disclosed in the testimony of the various witnesses both for the prosecution and for the Defense, and because of numerous expressions indulged in by both the learned counsel for the People and the learned counsel for the Defense, in their addresses to you, I deem it proper to administer to you a caution at the outset of this case, that will, I trust, have for its effect, a concentration of your attention exclusively upon the evidence in this case and upon the question of the guilt or innocence of this defendant.

There is no question here, presented for decision by either Court or jury, involving the right or wrong of labor organizations. There is no question of an industrial problem to be determined by you, nor is there any question of the economic relations that may exist between labor and capital, to be determined by you.

You are not called upon to pass upon any questions involving the regularity or the irregularity, or the propriety or impropriety of anything done by labor organizations, and, it follows, that you are not called upon to pass upon any questions touching the regularity

or irregularity or propriety or the impropriety of any act or acts that may be done, or have been done by employers of labor.

The right of the laborer to sell his labor in the best market possible and to get as much for that commodity as he can obtain for it, is too well established by the laws of our country to admit of any question, and the corresponding right of an employer to obtain labor at the cheapest figure possible for that commodity, consistent with a due performance of the work is equally unquestioned, and, the right of labor to organize for its protection is also so well settled that there can be no question here concerning it. The right of working men to strike and to quit their work for causes satisfactory to them is settled, and beyond question, and is not to be considered by you.

Therefore, you will, at the outset of this case, dispel from your mind, if that be necessary, all impressions or prejudices or opinions upon any question involved, popularly understood, between capital and labor. You have nothing at all to do with that. Whether or not labor organizations have taken proper or improper means to effect their purposes or carry out their policy is

not to be considered by you.

The question to be considered by you is did the defendant, the individual man at this bar, violate the laws of this State, and, if you confine yourself to that question, you will find your inquiries facilitated and your conclusions will be more likely to approach the truth than if you become enmeshed or embroiled in any questions touching these matters relating to labor and capital.

Thomas C. Walsh, the defendant at the bar, is accused of having committed a crime. If he committed that crime, he should meet with the result that the law prescribes for the commission of crime. If he did not commit the crime, of course, it does not require any word from me to say that he has a right to a verdict of acquittal. If he did commit the crime charged against him, the mere fact that he is what is called, or was what is called a walk delegate must, and cannot save him from the consequences of a criminal act. If he did not commit the crime charged against him, the mere fact that he was a walking delegate must not in the slightest degree operate to his prejudice. So that in neither one case or the other must his character in a representative capacity operate in your minds except insofar as it may appear to you whether or not he made use of the representative character, as a walking delegate, to extort from Mr.

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Nicholsburg the money charged to have been extorted by the prosecution. Upon that question his representative character as a walking delegate becomes material and important.

I am sure that I need not say anything further to you regarding the importance of confining yourselves to the issue in this case, and your duty to determine this question upon the evidence, between the People of the State of New York and the defendant Thomas C. Walsh.

The indictment charges in substance that on the 25th day of June, 1902, this defendant feloniously attempted to obtain from Henry Nicholsburg, a builder, the sum of \$50 under the influence of fear produced by means of a threat made by the defendant to do an unlawful injury to Mr. Nicholsburg's property and to prevent him from carrying on his business.

There are two divisions of the subject to be considered here and to be acted upon. These two are: The division of the case as far as the law is concerned and the division of the case as far as the facts are concerned.

So far as the law is concerned you must accept the instructions which I give to you without question and

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with implicit obedience, for, the law is for the guidance of all men, as well as for all citizens and for the jurymen in the box. A jurymen has no more right to dissent from the law or to dispute it than a citizen on the street has.

On the question of fact involved in the case, you are the exclusive judges. Indeed upon all questions of fact the law confers upon you the power, the exclusive power, to determine all questions of fact in the case. You are also constituted the judges of the credibility of every witness that has testified before you. It is for you to say how far you believe any one witness or how far you may disbelieve -- or, any one set of witnesses as against another. The credence that you will give to each witness is to be determined by you from the judgment which you form of him, his manner of testifying, the matter of his testimony, his appearance before you, and whether or not there are any motives which would prompt him or induce him to testify falsely, whether those motives be motives of revenge or antipathy on the one hand or of friendship or self interest on the other. You are to judge.

The law applicable to the crime charged against the defendant I will read to you, and I invite your care-

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ful attention.

Section 552 of the Penal Codes provides as follows: "Extortion is the obtaining of property from another with his consent, induced by a wrongful use of force or fear". That is very simple. There is no charge here that there was force used. The charge rests upon the use of fear, having been induced by the defendant, and the statute applicable to that will therefore read, that, extortion is the obtaining of property from another with his consent induced by a wrongful use of fear.

The statute further provides as to what may constitute fear. One section defines what extortion is and the next section, which I will read to you, defines what constitutes fear. In order to comply with the requirements of the preceding section as to the completion of an act of extortion. Section 553 says, "Fear, such as will constitute extortion, may be induced by a threat to do an unlawful injury to the person or property of the individual threatened". There is no charge here that the defendant made a threat to do an unlawful injury to the person of Mr. Nicholsburg, so, the section will read, as applicable to the evidence here, "Fear, such as will constitute extortion, may be induced by a threat to do an unlawful injury to the

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property of the individual threatened."

An inquiry may arise here upon the statute which I have read to you as to what constitutes property. That is one of the essential elements in the case which must be proven by the prosecution, that an injury to property was threatened. I cannot better define property than by reading from the opinion of Mr. Justice Daniels in the case of *The People vs. Barendse*, reported in the 61st of Hun, and which case was afterwards affirmed by the Court of Appeals upon this opinion.

Mr. Justice Daniels says: "The statute has not been, either by its language or reasonable import, confined to the case of an actual injury to some specific article of property, but it has been made to include the threat to do any unlawful injury to property, and business is property, as much so as the articles themselves which are included in its transactions. Besides that, this term, 'property' has been so defined by subdivisions 9, 14 and 15 of section 718 of the Penal Code as to include the business itself, and the loss resulting from its interruption. By the first of these subdivisions it has been declared that: "The term 'property' includes both real and personal property, things in action, money, bank bills, and all articles of value." And it has been fur-

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ther declared by subdivision 15 of the same section, that the term 'personal property' includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right or title to property, real or personal, is created, acknowledged, transferred, increased, defeated, discharged or diminished, and every right and interest therein. And this is conformable to the significance given to the same term by legal writers. For it has been said by Blackstone that property consists in the free use, enjoyment and disposal of all the owner's acquisitions, without any control or diminution save only by the laws of the land. (1 Blackstone's Com. (Sharswood ed.), 138.)

And in Springfield Fire and Marine Insurance Company v. Allen (43 N. Y., 389), it was stated in the opinion of the court that 'property is a thing owned, that to which a person has or may have a legal right.' (Id., 395) And in all its attributes it has been brought within the protection of the Constitution of both the nation and the State by the declaration that no person shall be deprived of property without due process of law. And that includes within this term a business which may be

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built up for the manufacture and sale of property, as well as the tangible articles themselves employed or used in the course of such business."

Upon that authority I charge you as matter of law that insofar as the term property is concerned, that that term property may consist in the ownership, the erection, the construction and the completion of buildings that were then alleged to have been in course of construction, and the property of Mr. Nicholsburg and, that the business of erecting and constructing and completing the buildings for sale or for rent is a business, and if that business be injured under the law which I have read to you, it is an injury to property, and if the owner of that business be prevented, unlawfully prevented from carrying on that business in an orderly and legal manner, any one who does that, and unlawfully prevents him from carrying on that business, inflicts an injury upon his property.

I will instruct you as to the essential elements of the two sections of the law which I have read to you. To find extortion, it is necessary that you should find that the defendant obtained money from Nicholsburg with his consent, induced by a wrongful use of fear, and, the elements essential to the finding under the second

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section which I have read to you, are, fear induced by a threat to do an unlawful injury to the property of Mr. Nicholsburg.

The prosecution claims that these essential elements required by the statute have been proven by the testimony introduced, and it is a rule of law that the prosecution must prove its case to the satisfaction of a jury and beyond a reasonable doubt before the defendant can be convicted of the crime charged against him.

As to the facts of the case, or the testimony adduced to support the facts of the case on either side, I have no expression of opinion whatever to make. I shall not attempt, even by suggestion, to interfere in the slightest degree with your exclusive prerogative. I shall endeavor to point out to you the salient points as presented by each side, for the purpose of aiding you to arrive at a just conclusion, and the points that I may point out to you must not preclude you from regarding all questions in the case as well as those that I call your attention to.

The prosecution claims that the defendant obtained from Mr. Nicholsburg the sum of \$50 by threatening to call a strike on the building then in the course of

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construction, and that, in order to avoid the threatened injury to his property, Nicholsburg consented to pay him the \$50, and he did so pay, and the defendant did so receive that sum of money.

The defendant claims that he did not demand the sum of \$80 or any sum from Mr. Nicholsburg, and that he did not threaten to call a strike on the building of Mr. Nicholsburg, if Mr. Nicholsburg failed to comply with any such demand; but, that he did make a demand upon one Heitzner who seems to have been working on the buildings then in the course of construction, for the sum of \$50 back wages, which Heitzner owed to certain workmen who had been employed by him on other buildings than this one in question, and that he made such demand upon Heitzner as a representative of the Labor Union to which these men belonged and of which Union the defendant was a walking delegate or business agent, as he has been characterized.

The defendant admits that he received \$50 for that purpose only.

That is, in substance, as near as I can condense the conflicting claims of the prosecution and defense. As I have been observed to you I do not wish

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to preclude you from considering other questions or other phases of questions than those to which I call your attention. If I am correct in stating the case made by the defendant and in presenting to you in substance his contention, I charge you that if that contention be true, he should be acquitted of the charge against him.

Upon that contention I will read to you the testimony which he gave referring to the meeting with Nicholsburg, and with Heitzner and with the third person whose name escapes me now, "Tell us what happened when you got in there, who spoke first, what was said and everything that happened in there? A. Nicholsburg said why should I pay any money I do not owe any money. I said you don't owe any money we are not asking you for any money. Heitzner owes the money. It is from Heitzner I want it from, and Heitzner said he hadn't it, and Nicholsburg said I don't care a damn for you or your union and I said you have got along here fairly well. He said how is that. I said you were using non-union trim and he said what about it. I said the union made a kick about that, they fight against it and it has been stopped somewhat. I said I want this money from Heitzner to turn it in to the District Council to-morrow night and Nicholsburg said I suppose I will have to give it, how

much is it. Well, here is the paper. I exhibited this paper calling for \$51. At that time the sum was not mentioned. Q You showed the paper? A Yes. Q To whom? A To the two gentlemen, Heitzner and Nicholsburg. Q Did Nicholsburg take it in his hand? A I don't remember. Q Go on. A He said well I suppose if I have to pay it I will have to pay it. I will give you a check for \$50. I said you will give me nothing, you owe me nothing. Why not give the check to Heitzner, the man that owes me money, and let him pay it. Well he said the bank is closed now and I haven't the money, I will meet you to-morrow. I said tomorrow night the District Council meets, and that is the time I want the money to turn it in so he said where will you be. I said anywhere you say. Well, what about this place. I cannot recall whether it was Heitzner or I or Nicholsburg said that. Now gentlemen, if you believe that testimony -- it is for you to say whether or not that testimony is true -- but, if you believe it, the defendant is entitled to a verdict of acquittal at your hands, because, if the defendant acting for his organization made a demand upon Heitzner for payment of wages due to certain members of that organization, and Mr. Nicholsburg saw fit to advance the money for Heitzner, or to avoid any trouble upon his

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building, it cannot be said that the defendant threatened Nicholsburg with an injury to his property, or, that he induced him to consent to the payment of that money by the use of fear, and such an act would not constitute the crime of extortion, and therefore he would have to be acquitted, if you find upon this evidence that that is true. I present the defendant's statement to you first, in the order of its being given, for the reason that if you in consideration of the facts in the case should come to the conclusion that this statement of the defendant is the truth then it would relieve you from any further consideration in the case and you would be bound to give him a verdict of acquittal. But if you are not satisfied of the truth of the defendant's statement regarding the occurrence; if you disbelieve it. If you come to the conclusion it is not the truth, then you will address yourselves to the testimony given by the prosecution. As I say I have presented it to you in this form for the purpose of convenience, in order to enable you to reach the crucial point with as little difficulty as possible.

Mr. Nicholsburg testified as follows, "Q state what, if any, conversations you had with the defendant at this time? A When the defendant came into the office

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I said what is the trouble. He said Did not Frank Heitzner tell you. I said Yes, he told me something, but I want you to tell me yourself. 'The whole thing is this,' he said, 'there is going to be trouble here unless I get \$50.'. I said 'Why, why should you demand of me \$50. Are not all the men Union men, are not they all getting their full wages?' He said 'Yes, but that has nothing to do with the question at all'. I said 'What is the trouble?' He said 'I found out that the trim you are getting is coming from a non-union shop and if I call a strike why it will tie up your entire operations'. I said 'This is no time to come around and tell me now that the trim is non-union, when the building is almost on the point of completion and furthermore the trim is union.' He said 'I found out differently. We have got ways of finding these things out, and I give the driver fifty cents and took him in and treated him and he told me where the trim comes from, and that is a non-union shop'. I said 'Nothing of the kind, still, as you say, you can put me to a good deal of trouble and expense. I suppose I will have to concede to you. Now, the whole fact of the matter is this, you mean to say that if I give you \$50, notwithstanding the trim is union or not, you will accept the \$50 and not give me any further

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trouble.' He said 'That is the fact.' He said, 'Either give me that or call it off. He use prevaricating about the matter. If I don't get that I will tie up your job indefinitely and you know what that will cost you.' I said, 'Of course it is a small amount you ask against the amount of damage you will do me'. He said 'Yes, the easiest way is the best and I am letting you off very lightly. I could ask a bigger amount of money and you would be glad to pay it at that, to save expense.' I said 'Well, as you state the case, it is so; I would rather give you that \$50 than be put to all that expense and trouble'. Q What did you do? A I took my check book out of my pocket and was ready to write him out a check. Q Write who? A Walsh. Q The defendant? A Yes, sir, and he smiled and he said 'No check for me, I must have the cash'. I said 'I haven't got the cash with me now and by the time I get down to the bank it will be closed. If you want the cash, get to come around and get it to-morrow'. He said 'I want that cash to-morrow, but I want you to understand that if I get it from you Heitzner must not be there and if I get it from Heitzner you must not be there'. I said 'You better make your arrangements with Heitzner and I

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will give it to him'."

I will not take your time by reading the testimony of Heitzner regarding the same transaction, nor the testimony of McCarty regarding the same transaction. In substance the testimony of these two witnesses go upon the same line as the testimony that I have read to you.

I call your attention in substance to the testimony of Heitzner as to the appointment which he said was made between the defendant and himself for the place to meet next day -- that the defendant named this liquor store at the northwest corner of 138th Street and Eighth Avenue. The building in question that was being constructed by Nicholsburg was at the corner of 138th Street and Lenox Avenue, on the southeast corner. If you believe that testimony and conclude therefrom that the defendant made this demand upon Mr. Nicholsburg without regard to any question whatever as to any back wages being due by Heitzner, and that the defendant made the demand under a threat of tying up Mr. Nicholsburg's building by the strike, on the ground that non-union trim had been used, and that the defendant made that threat with intent to extort from Mr. Nicholsburg that sum of \$50, under a threat to injure his property,

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then I charge you the defendant committed the crime of extortion as defined by the statute which I have read to you.

In considering whether the defendant committed the crime charged against him you have a right to take into consideration all the surrounding facts and circumstances; the place where the conversation is alleged to have occurred -- all the conversation as testified to by the witnesses. If you believe Mr. Nicholsburg, as to the refusal by the defendant to accept this check -- and, upon that point I instruct you that if the defendant was acting for his organization or its members, for the purpose of collecting wages due to them, he was justified in refusing to accept a check, because no person who is a creditor, or no person acting for a creditor need accept the check of a person who is a debtor. That is a matter of convenience, but legally speaking he need not accept it and if the defendant was acting in the capacity of agent for his Union or as walking delegate, for the purpose of the wages, he was justified in refusing to accept the proffered check and insisting that he should receive the cash money, but, if he was not acting for his Union and for the men belonging to it, for the purpose of collecting their wages, and if he was simply

acting for himself and for his own interest, with an intent to procure this money for his own interest, his refusal to accept the check may be taken by you into consideration as a circumstance which may show that he had in his mind not to be caught in the transaction by the evidence which a check might furnish against him. That is, if his purpose was to extort this money for himself, then, his refusal to accept the check may be considered by you as evidence on his part of carefulness to avoid being detected in the transaction by means of a written check. In arriving at the truth of the case you have a right to take into consideration the claim of the prosecution that the defendant made the appointment for the money to be paid in some other place than the building where Heitzner was employed, and upon that you have a right to take into consideration also that if the defendant was acting for the members of his Union in the collection of these unpaid wages of Heitzner, that he might have considered it proper and right for him to receive the money on the premises where Heitzner was employed, and, on the claim of the prosecution you have a right to consider that his refusal to receive the money there on his assigning another place to receive it than upon the premises where Heitzner

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was employed, was an indication upon his part that he was procuring this money by means of a threat for his own use and benefit and not for the use and benefit of the members of his Union, and, after he went to the liquor store, that his refusal to accept the money on his own statement as tendered to him in the manner described by him, in the liquor store was an indication of a purpose on his part to avoid detection in the transaction, and, his insistence that the money should be paid on the street may be taken into the same category of thought and consideration. In other words the prosecution claims that if the defendant was receiving this money, was demanding and receiving this money for the purpose and for the use of his Labor Union or the members connected with it, for back wages due to them, that he would have received it openly and unhesitatingly, either from Nicholsburg or Heitner upon the building where Heitner who owed the money was employed, but that his refusal to receive it there, or his expression of preference to receive it in some other place, and his refusal to accept it in the other place because there was a stranger present, and his insistence that he should receive the money on the street, are indications that his claim here that

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he was collecting this money as back wages due to members of his Union is not true or consistent upon the facts in evidence, but that, on the contrary these things show and indicate a purpose and a desire on his part to receive this money in such a way and under such circumstances which would not lead to his detection, it being money for his own use.

It is not necessary for you to find here that if the defendant received this money for himself, that he intended to use it for himself. That is not necessary. The line of distinction I have drawn for you, I repeat again, that if you believe that the defendant demanded and received this money as back wages or wages in arrears due to members of his Union, then he committed no crime as charged against him here but, if he did not receive the money for such purpose, but, he made a demand for that money from Mr. Nicholasburg, accompanied with a threat to call a strike and tie up his building operations, thereby injuring his property, then he committed the crime of extortion as defined by the statute. So, you will understand, I think, without further explanation from me, the crucial point in this case.

Testimony of good character has been introduced by the defendant. The law is that testimony of

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good character may of itself sometimes create a reasonable doubt where otherwise none would exist, no matter how strong or conclusive the evidence may be against the accused. But, in every case testimony of good character is like all other testimony and subject for a jury's consideration. It is for the jury to say how much it is worth, what value they will attach to it, and in passing upon the quality and the value of testimony of good character you have a right to take into consideration the person who gives the testimony of good character, their interest or their relations or their connections with the accused. All these things have a right to be considered by you upon the question of how much value you will attach to such testimony. If after considering such testimony of good character in connection with all the other evidence in the case, you come to the conclusion that the defendant committed the act charged against him, then I charge you that mere good character of itself is no defense to crime and cannot excuse a person for a criminal act committed by him.

The defendant is entitled to the benefit of a reasonable doubt on all the evidence in the case or the lack of evidence. I deem it wholly unnecessary to define to you the term reasonable doubt. You have heard me in-

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instruct jurors, I am sure, during this term, upon the doctrine of reasonable doubt. The terms express their own meaning probably very much better than any definition I can give, for, sometimes definitions tend to confuse the mind more than to enlighten it. The term simply means what the law contemplates it should mean to men of ordinary sense and intelligence, a reasonable doubt is a reasonable doubt, and such a doubt must be based upon the evidence in the case and upon no other cause. It does not mean a guess or a conjecture or a speculation. If you entertain such a reasonable doubt upon this evidence as the law contemplates, the defendant is entitled to the benefit of that doubt. But, if on the whole case you entertain no reasonable doubt that the defendant committed the act charged against him, then you should unhesitatingly declare your verdict of guilty against the defendant.

Now gentlemen, nothing occurs to me that is necessary to further instruct you upon. I have endeavored to present the question to be determined by you here in as brief and comprehensive a manner as the fact and the testimony permitted, and the due and proper understanding of the law on your part. I am sure that from your own answer to the questions propounded to you when you were being selected as jurors, and also from my knowledge

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of you as jurors serving this term of court, that you will be guided in your considerations of this case solely by a conscientious desire to reach the truth, and that you will reach what you believe to be the truth in the form of your verdict without regard to bias on the one hand or prejudice on the other; without regard to interest or sympathy with the class of employers, or without regard to interest or sympathy with the class of the workers. As I have before observed, no phase of that question must enter in your consideration. If this defendant committed the crime charged against him, organized labor has nothing at all to do with it. If the defendant did the act charged against him he did it as an individual and organized labor is in no sense responsible for that act, because, if you find upon the fact as claimed by the prosecution that the defendant did the act in the manner described, then he did the act in his individual capacity and labor organizations or any question relating to the right of laborers to organize, cannot be considered, and they cannot be held responsible. The defendant alone is responsible for his act. I should say to you that no prejudice should enter your minds against him because of his being described or holding himself out as a walking delegate.

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You will not consider that except to this extent: Did he make use of his position as a walking delegate or business agent of a Labor Union to make this threat that he would call a strike on this building and prevent Mr. Nicholsburg from completing it? If he made use of his character or his position as such walking delegate for that purpose, then it must be considered by you as an element in the case.

The complete crime of extortion is not charged against this defendant. He is charged with an attempt to commit the crime of extortion and the reason the prosecution prefers that charge is that it is their position that the thing was not successful. It was attempted but it was not successful, in that Mr. Nicholsburg was not induced by threat, and that he did not pay over this money through fear, and that the defendant therefore did not and could not injure his property, but, it is claimed that the defendant did everything in his power to do the act, and that is called in law an attempt to commit the crime. The definition of the law upon that point is as follows, "An act done with intent to commit a crime and tending but failing to effect

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