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COURT OF GENERAL SESSIONS OF THE PEACE.

IN AND FOR THE COUNTY OF NEW YORK.

PART V. CONTINUED.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK : Before:-

-against- : HON. EDWARD SWANN, J.

MORRIS LITTMAN, alias, : and a Jury.

JOSEPH GREENBERG, and

ISIDORE KAPLAN.  
-----X

New York, Monday, December 5th, 1910.

THE DEFENDANTS ARE INDICTED FOR GRAND LARCENY IN THE SECOND  
DEGREE AND RECEIVING, AS SECOND OFFENSES.

INDICTMENT FILED OCTOBER 17TH, 1910.

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

JAMES O'NEALEY, Esq., Assistant District Attorney,

For the People.

SAMUEL HOFFMAN, Esq.,

For the Defendant, Morris Littman.

A. S. ROSENTHAL, Esq.,

For the defendant Isidore Kaplan.  
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MR. ROSENTHAL: I was assigned by the Court to  
defend Morris Littman, but, in as much as Mr. Hoffman

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was retained by the co-defendant, and he desires to try the two defendants, I ask your Honor's permission to withdraw from the case, and that Mr. Hoffman be the attorney of record in both cases.

THE COURT: All right; motion granted.

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(A Jury was duly empanelled and sworn)

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By order of the Court, all witnesses in this case are excluded from the Court room.

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( Mr. O'Malley opens the case to the Jury on behalf of the People)

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MR. O'MALLEY: It is conceded by counsel for the defendants, that the People have duly proved all of the material allegations of the first count of the indictment, in respect to the former conviction of a felony of each of the defendants on trial.

THE COURT: What is the allegation of the first count of the indictment?

MR. O'MALLEY: The allegation is that the defendant Isidore Kaplan, was, convicted of the crime of an attempt at grand larceny, in the second degree, on the 22nd day of October, 1908, before Honorable James T. Malone,

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Judge of the Court of General Sessions of the Peace in and for the County of New York, and was thereafter sentenced, pursuant to that conviction.

THE COURT: And in regard to the other one?

MR. O'MALLEY: The allegations of the indictment are that the defendant, Morris Littman, otherwise called Joseph Greenberg, was, in due form of law, convicted of a felony, to-wit, the crime of an attempt to commit the crime of grand larceny in the second degree, before Hon. Joseph F. Mulqueen, Judge of the Court of General Sessions of the Peace, in and for the County of New York, on the 2nd day of March, in the year 1909, and was thereafter duly sentenced, pursuant to that judgment of conviction. I should add, I think, <sup>to</sup> that last paragraph, that the said defendant, Morris Littman, was convicted under the name of Joseph Greenberg.

MAX STERN, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. O'MALLEY:

- Q What is your name? A Max Stern.
- Q Where do you live? A 194 East Third Street.
- Q Where do you work? A I work for L. J. Barron,
- Q What is his address? A 137 Greene Street.
- Q In the City and County of New York? A Yes, sir.

Q And were you so employed on the 17th of September, 1910? A Yes, sir.

Q Were you at the place of business of L. I. Baron & Company on that day? A Yes, sir.

Q In the afternoon? A Yes, sir.

Q Did, you, at some time in the afternoon, leave that place of business with certain paper boxes?

MR. HOWLAND: Objected to as leading.

THE COURT: Objection sustained.

Q What were you doing that afternoon? A I was picking up shirts, and we had a lot of shipments to ship out.

Q Did you take out any goods out of there that afternoon? A (No answer)

BY THE COURT:

Q What did you do in reference to the matter here in question? A I had a lot of packages; we had six packages for the American, and two packages for the United States Express Company; so it was about a quarter to five, and I told the elevator man, at five o'clock, before he goes, would he come up and take the packages down, so we should be able to take them to the office. He brought eight packages; and the American Express Company wagon was standing on the corner; so I took the six packages for the American, and brought them over, and I left the two United States Packages near the elevator, and when I returned I found only one.

BY MR. O'MALLEY:

Q What were in those packages? A Skirts.

Q Women's skirts? A Women's skirts.

Q Did you see those put up in those boxes?

A Yes, sir, I did.

MR. HOFFMAN: Objected to.

Q Were you up the stairs when something was put into those boxes? A Yes, sir, I was.

Q What was put in there? A There was put in skirts.

Q Did you see the boxes -- what kind of skirts were they? A Women's skirts.

Q What color? A Black ones.

Q Black in all the boxes? A Well, I don't exactly remember. I think they were in all the boxes. I don't remember exactly.

Q And, when you came back, you say two boxes that you left near the elevator were gone? A I found only one.

MR. HOFFMAN: Objected to. The witness has not made any such statement.

Q You found only one? A One, I found.

THE COURT: I understand the witness to say that six boxes were delivered to the American Express Company?

THE WITNESS: Yes, sir.

BY THE COURT:

Q How about the other two boxes? A I left them near

the elevator.

Q Near the elevator, in your building? A Yes, and when I returned for these boxes, it took me only about two minutes, and when I returned I found only one box.

Q One of those two? A Yes, sir.

BY MR. O'MALLEY:

Q Describe to the jury the appearance of those boxes that you left at the elevator? A Well, it was about an inch box.

Q Six inches wide, of how, or what?

A High.

Q And how long? Give your best judgment? A About eighteen or twenty inches.

Q Did they have any writing on them? A Yes, sir. The paper was marked-- on them two was marked, "Wheeler, Mother, St. Josephs, Mo."

BY THE COURT:

Q Could you spell that, or write it? A No, sir.

Q Can't you spell it, or write it? A I am not positive how it is spelled.

Q Well, do the best you can with it. A (The witness writes, "Wheeler, Mother, St. Josephs, Mo".)

BY MR. O'MALLEY:

Q That name was on both boxes, was it? A Yes, sir.

Q Do you know whether these are the boxes (Exhibiting

same to witness) A These are the boxes , but it aint  
the paper. There was a different paper on it.

Q Where was the writing? A On the other paper.

MR. HOFFMAN: I object to the statement that there  
was another paper on it.

Q These are the boxes in which they were? A Yes, sir.

Q And what was on the box, if anything?

A On the box, it was wrapped up in paper, and on the  
paper was marked the names

Q When did you next see any of the boxes?

A I saw them Monday morning, in the detective Bureau, in  
Allen Street.

Q What day of the week was it that you missed these  
boxes? A On Saturday night.

Q September 17th? A September 17th,

Q And the next Monday morning you were at police head-  
quarters, were you? A Yes, sir.

Q And there did you see certain goods? A Yes, sir.

Q I show you these boxes, and ask you if these are the  
goods you saw at the police headquarters the following morn-  
ing? A Yes, sir.

Q Now, I show you a paper, and ask you if you have seen  
that before? A Yes, sir.

Q Where did you see it? A I saw it before I took them  
down, and then I saw them at the detective bureau, Monday.

Q Where was this paper? A This paper was wrapped up on the box.

BY THE COURT:

Q You mean, the box was wrapped up in that paper?

A Yes, sir.

BY MR. O'MALLEY:

Q And it contained an endorsement on it, did it?

A Yes, sir.

BY THE COURT:

Q Just as it is there? A Just as it is.

Q Do you know whose handwriting that is?

A Yes, sir.

Q Whose is it? A The shipping clerk's.

Q What is his name? A Leo Kaplan.

BY MR. O'MALLEY:

Q K-a-p-l-a-n? A K-a-p-l-i-n.

Q The shipping clerk? A Yes, sir.

Q Is he now in the employ of Baron & Company?

A No, sir.

Q Do you know where he is? A He is on the road. He aint in town.

BY THE COURT:

Q What does that mean? Selling goods? A He is selling goods.

BY MR. O'MALLEY:

Q Did you examine these goods when you were at police

headquarters? A Yes, sir.

Q Is there anything on those skirts which would enable you to identify them as the property of L. I. Baron & Company? A Yes, sir; I have got it in the book, every number of skirts, and how many skirts of each style.

Q Can you say now, of your own knowledge, whether this is the property that was in those boxes?

A Yes, sir.

Q And you saw those at police headquarters?

A Yes, sir.

THE COURT: Are those skirts tagged?

MR. O'MALLEY: They are, your Honor.

BY THE COURT:

Q Do you recognize those tags? A Yes, sir, I do.

Q Are they the firm's tags? A Yes, sir.

Q And the goods you put in the box, and labeled that way-- that were afterwards labeled that way, all had tags on them like that? A Every one of them.

Q The firm's tags? A Yes, sir.

MR. O'MALLEY: I offer these for identification, together with the paper.

(Received in evidence and marked, "People's Exhibit No. 1, for Identification", of this date)

MR. O'MALLEY: Your witness.

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## CROSS EXAMINATION BY MR. O'MALLEY:

Q Mr. Stern, on the 17th day of September, previous to that day, how long were you working for Baron & Company?

A Well, I was working only about three or four weeks.

Q What were your duties in that place of business?

A I was taking-- receiving skirts from the contractors.

Q You were receiving the skirts as they were coming from the contractors? A Yes, sir.

Q Did you have any other work prescribed to you?

A Used to do errands, and pack. I used to pack.

Q On this day, how many packages did you take down stairs? A Eight.

Q In those eight packages, were there contained all of the same skirts, of the same style? A No, sir.

Q How many styles were contained in those eight packages, if you know? A No, sir, I couldn't exactly tell you how many styles.

Q Do you know anything about the style of a skirt?

A Yes, sir.

Q Can you explain in what respect the skirts now here are different to the skirts that you shipped on that day?

A Well, for the same party

Q How many styles were contained in those eight packages, if you know? A No, sir, I could not exactly tell you how many styles.

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Q Do you know anything about the style of a skirt?

A Yes, sir.

Q Can you explain in what respect the skirts now here are different to the skirts that you shipped on that day?

A Well, for the same party we had the same skirts shipped, the same as we got over here.

Q Do you want the jury to understand that there was more than one bundle shipped to this party in Missouri on this day? A Yes, on this day was only one package shipped and one ~~am~~ was taken away from us. We had two packages ready.

Q You say, two packages were made up? A Yes, sir.

Q You testified in the police Court, didn't you?

A Yes, sir.

Q Do you remember the question asked of you as follows: "You did not wrap them up? A No, sir." Was that statement correct?

THE COURT: Referring to what? Read a little ahead, so he can get the connection.

Q "Cross Examination and so forth." "You did not see the skirts wrapped up. You did not wrap up the skirts. You did not wrap them up? A No, sir." Did you make that answer in the police Court? A I did.

Q Now, then, is it not a fact that, on this day, you did not wrap up these goods? A I did not wrap up those

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skirts, but I wrapped up different skirts, that went out to different firms.

Q Now, then, you want this jury to understand that on the day in question you wrapped up skirts, but that you did not wrap up these skirts? A No, sir.

Q Is it right, that you did not wrap up these skirts?

A Yes, sir.

THE COURT: The one that has just been exhibited to you, you did not wrap those up?

THE WITNESS: No, sir.

Q You want the jury to understand that Kaplan wrapped up, also, bundles on that day? A Kaplan wrapped up them skirts.

Q You did not wrap up those skirts? A No, sir.

MR. O'MALLEY: He has so testified.

Q Now, then, if you did not wrap up the skirts, can you explain to the jury how it is that you testified before that you knew what were in these skirts?

THE COURT: In the boxes.

MR. O'MALLEY: In the boxes, yes, sir.

A Because I was standing at the time near him, when he packed them up. He said, "Wait, and I will take them right down." It was pretty near five o'clock, and I had to get them down for the express; it should not be too late for the elevator to go down.

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Q Now, Mr. Baron makes thousands of these skirts, doesn't he? A Yes, sir.

Q There is no way of your telling whether the skirts which are now here are ~~of~~ the skirts which have been shipped somewhere else and brought back into this City?

A (No answer)

Q I will ask the question again. You can't tell whether the skirts now here are skirts which had been sold and brought back into the City? A (No answer)

Q You won't swear that these skirts were not sold and afterwards brought back into the City? A Yes, sir.

Q You will swear that they were? A They went out from our place that Saturday night.

Q You want the jury to understand that these skirts are manufactured by Baron & Company? A Yes, sir.

Q And you also want the jury to understand that Baron & Company manufacture thousands of those particular kind of skirts? A Not that style.

Q How many of this style are manufactured by Baron & Company? A Well, I could not exactly tell.

Q About how many? You claim to have been a packing clerk. You know something about how many skirts go out?

A Five or six hundred.

Q Five or six hundred? A Yes, sir.

Q Is there anything on these skirts which lead you to

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believe that they are not part of the five or six hundred that have been sold? A Yes, sir.

Q What is there on the skirts? A I have got the same numbers, because we have their numbers.

Q You have numbers? A Yes, sir.

BY THE COURT:

Q Is every skirt numbered? A Yes, sir.

BY MR. HOPKIN:

Q Did you put any numbers on these skirts? A No, I didn't put the numbers on.

Q Now, then, if you did not put any numbers on these skirts, you can't tell which skirts they are; is that right?

A I don't understand the question.

Q If you did not put the numbers on these skirts, you are not able to tell which of the five hundred these skirts are? A Well, that day, I didn't have any marks of that number; we had just fifty-seven skirts, and we sent out thirty-three, and twenty-four were taken away.

Q (Question repeated)

A Well, that day, we did not have any mark of that number. We had just fifty-seven skirts, and we sent out thirty-three, and twenty-four were taken away.

Q (Question repeated)

A Well, we did not add that fifteen hundred.

Q Mr. Witness, you claim that your firm manufactured

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in the neighborhood of five hundred skirts of that style.

Now, that is right? A Yes, sir.

Q Now, then, is there any way of your telling which part of these five hundred skirts these are? A Well, we don't manufacture them all at one time. We get an order, and we make them separate; but, on that day, we had only fifty-seven.

Q Did you see the numbers as they were put on the fifty-seven? A Yes, sir.

Q Did you put them on? A No, sir, I didn't.

Q What numbers were put on these skirts? A Well, I can't remember. I got ~~all~~ them all marked in the book, the time they were put down.

Q (Handing book to witness) Do you write in this book? A No; the shipping clerk wrote.

Q Now, then, if the shipping clerk wrote in that book, you don't know what numbers he assigned to these skirts?

A I was there when he wrote; he wrote the same number on the book that was on the skirt.

Q Did you see him write in the book? A Yes, sir.

Q Did you do any calling off? A I used to do it.

Q What did you call off? A Not them skirts. I called off for a Chicago house, Sears & Roebuck.

Q What were the numbers called off on that day?

A I could not remember what numbers, because we send

thousands of skirts to Sears & Roebuck.

Q You don't remember any numbers that were called off? A No, sir.

Q What were the numbers assigned to St. Josephs Missouri? Do you know the numbers that were assigned to them? A No, sir.

BY THE COURT:

Q Have you got a book that will show that? A Yes, sir.

Q Have you got it with you? A Yes, sir.

THE COURT: Do you want him to refer to the book?

MR. HOFFMAN: No, sir.

BY MR. HOFFMAN:

Q The five hundred skirts that your firm manufactured, did they all carry the same number? A No, sir.

Q It was one style, wasn't it? A Yes, sir.

Q How did your firm know the style that was sold, if you did not carry one style number? A They have different numbers for different customers; each one might get the same style.

Q The records in your business, didn't that have one number for the same style? A Well, no, sir. Every customer, his number is different.

THE COURT: The style number is what counsel wants.

Q The style number, for the protection of your firm, so it will know what skirt a company is ordering, didn't you have one number? A Yes, sir.

Q Now, isn't it a fact that one number was put on all skirts which would go out? A We don't put the numbers on the skirts. We just put their own number.

BY THE COURT:

Q You don't put the style number on the skirt?

A No, sir; just the customer's number.

BY MR. HOFFMAN:

Q On the day of this arrest, about what time was it when these bundles were carried down stairs? A It was about ten minutes of five; about five o'clock.

Q Did you carry the bundles down alone? A No, another boy carried them down with me.

Q This bundle which is now here, did you carry this bundle down? A Yes, sir.

Q When you carried it down, where did you put it? A Right near the elevator of our building.

Q That is in the hallway? A It aint in the hallway; it is right outside near the elevator. There is no hallway there. It is on the sidewalk.

Q On the sidewalk? A Yes, sir.

Q Did you instruct anybody to stand there? A No, sir.

Q And the eight bundles that you took down, how many of them had already been across the street, or disposed of?

A Well, I took always six.

BY THE COURT:

Q To the American? A To the American.

BY MR. HOFFMAN:

Q And you left two-- A I left two for the United States Express.

Q You say you left two bundles? A Yes, sir.

Q When you returned, were the two bundles missing?

A No, only one was missing.

Q That was, you say, at five o'clock? A Yes, sir.

Q Did you see these boys on that street at that time?

A No, sir.

Q Previous to your seeing them in the Police Court, did you ever in your life see these boys? A No, sir.

Q Were they up in your building? Did you see them there that day, at any time? A No, sir.

Q Now, then, it was five o'clock -- it took you about a few minutes to cross the street? A Yes, sir.

Q Were you talking to some one when you crossed the street? A No, sir.

Q While delivering the bundles to the express wagon, did you look across the street, to see that your bundles were still there? A No; I had two packages; it took me two

minutes until he signed the receipt.

Q During those two minutes, did you at any time turn around to look at those bundles? A No, sir, I did not.

Q You say it took you two minutes? A About that time.

Q Do you know how long it would take you to cross the street, about how long it took you to cross the street?

A It didn't take me more than five minutes.

Q It took you five minutes? A To cross, and wait, to sign the receipt.

Q Five minutes? A Five minutes.

Q For how long a time did you keep your eyes on these two bundles? A Until I took them away.

Q You say it took you five minutes to deliver the bundles? A About that.

Q During that time, did you look across the street at any time? A No, sir, I didn't.

Q Were you right opposite the wagon? A Yes, sir.  
BY THE COURT:

Q By the way, what wagon was it? The American Express Company wagon? A Yes, sir.

Q How about the United States Express Company wagon? Was it there? A No, sir.

BY MR. HOFFMAN:

Q You say it was an American Express Company wagon?

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A Yes, sir.

THE COURT: That took the six.

MR. HOFFMAN: Yes.

THE COURT: And the other two were put near the doorway, on the sidewalk?

THE WITNESS: Yes, sir.

THE COURT: At the foot of the elevator?

THE WITNESS: Yes, sir.

THE COURT: Waiting for the United Express wagon to come?

THE WITNESS: Yes, sir.

Q As I understand you, before you carried the six bundles across the street, because you could not carry any more than that, you carried one or two at a time?

A I took three, and the other boy took three.

Q You had another boy with you? A Yes, sir.

Q He took three, and you took three? A Yes, sir.

BY THE COURT:

Q What is the other boy's name? A J. Green.

Q J. Green? A Yes, sir.

Q Where is he? A He is working.

Q Where? A For L. I. Baron.

BY MR. HOFFMAN:

Q While you two boys were crossing the street, in the act of delivering these bundles to the Express company wagon,

I ask you again, did you turn around? A No, sir.

Q When you returned, one of these bundles was missing?

A Yes, sir.

BY THE COURT:

Q Do I understand that while you were returning from the American Express Company wagon one of the two parcels was missing? A Yes, sir.

Q Or was it when you went up on the elevator?

A No; when I returned from the American Express wagon.

Q You mean, merely going across the street?

A Yes, sir.

Q And while you were depositing your three parcels, and T. Green was depositing his three parcels--

A I deposited them all six; he just brought them over, and went up-stairs.

BY MR. HOFFMAN:

Q As soon as he brought the bundles over, he crossed the street? A He went over, and found only one bundle.

Q When he crossed the street, he found one bundle?

A Yes, sir.

Q What did he do then? A He called me, and asked me if I did not make a mistake, and give it to the American.

Q During the time you found one bundle was missing, what did you do? A I went to the American-- the wagon went with our packages, and I went to the American office,

to find out if we had made a mistake, if we ~~had~~ gave them more than one bundle.

Q You now agree that you were not sure as to the number of bundles you took over? A I was sure.

Q Why did you go to the American Express Company?

A I said I am not sure, and Louis Kaplan says, perhaps I did make a mistake. I told him I was sure I took over only six.

Q Was Kaplan with you at the time? A No, he was upstairs. I ~~was~~ made him know that we lost one of the bundles.

Q It took you but a few minutes to cross the street?

A Yes, sir.

Q And this wagon was directly in front of your place of business? A Yes, sir.

Q On the street? A On the street.

Q When you went back, or your partner went back, he found a bundle missing? A Yes, sir.

Q Did you hear anybody cry out that somebody was stealing a bundle? Did you hear any exclamation of anybody? A No, sir.

Q Did you hear any exclamation of anybody? A No, sir.

Q Did you see any people around your door at that time? A No, sir.

Q You saw nobody there? A There was an expressman

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which brought some of our goods from the contractors.

Q Five o'clock, on Saturday, on Green street, there were many people on the street? A Well, there was quite a few.

THE COURT: What street was that? Greene Street?

MR. HOFFMAN: Greene Street.

THE WITNESS: Grene Street.

Q Were you careful in looking, at any time, after you withdrew your six bundles? A I don't understand.

THE COURT: Yes, be a little more definite than that.

Q Did you make any attempt to watch all the bundles while you crossed the street? A No, sir.

Q And you are sure the time was five o'clock?

A Yes, sir.

Q When you found one bundle there, did you make any report to your boss? A Yes, sir; I started to look around, and I sent up, to tell Leo Kaplan that one of our bundles was missing.

Q After you did that, did you go for a policeman, or did you telephone the police? A No, sir.

Q You did not telephone the police? A I did not, but one of our book-keepers went up-town, because he said the wagon went uptown with ten bundles.

Q Even after you found a bundle was missing, you were

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not sure whether the bundle could not have been taken by the express wagon? A I was sure, but the book-keeper and the shipping clerk says perhaps I made a mistake, but I was sure that I did not.

Q Then, when, for the next time, did you see any of these bundles? A Monday morning.

Q In Court? A No; in the detective bureau, Allen Street.

Q Did you talk to any one about this case?

THE COURT: That is rather vague and indefinite.

Q Did you talk to the District Attorney about this case? A Yes, sir.

Q When? A In what Court?

Q I mean with this District Attorney? A Yes, sir, I did.

Q When did you talk with him? A I don't exactly remember when. A few weeks ago.

Q Is there any statement which you made to him which you did not make here to-day? A No, sir.

Q And what you told him was precisely what you testified here to to-day? A Yes, sir.

THE COURT: That is all.

RE DIRECT EXAMINATION BY MR. O'DALLEY:

Q (Handing articles to witness) Just look at these shirts, and tell us if each one of them bears a certain

number? A Yes, sir.

Q What is that number? A That is their own number, and this is the style.

Q What do you mean by "Their own number"?

A The firm's number, the customer which we got, the person which buys, in St. Josephs, Missouri.

Q And what is that number? Call it off? A 202.

Q Is that on all these skirts? A No; not on all.

Q Look and see how many? A 214.

Q Whose number is that? A Also their number, but it is a different style.

Q Go ahead? A There is 226.

Q Is that their number also? A Yes, sir. There is 202.

Q You had that already. Now, was any other shipment made to this concern, in St. Josephs Missouri, on that day?

A Yes, sir, two boxes.

Q I mean, besides these? A No, sir.

Q There were two boxes all together, and this was one of them? A Yes, sir.

Q And you are positive that the boxes-- one of the boxes that you deposited on the sidewalk near the elevator bore this address? A Yes, sir.

Q And you say this paper, next Monday morning, in Police Headquarters? A Yes, sir.

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Q Look at the books, and turn to the entries of September 17th?

MR. HOFFMAN: I object to the District Attorney looking at the books. He is pointing out the page.

MR. O'MALLEY: I did not point out anything to him.

MR. HOFFMAN: I object to the introduction at this time of the book, in the manner the District Attorney showed it to the witness. He opened it at a certain place, and handed it to the witness. I ask that the witness close the book.

MR. O'MALLEY: I have not seen it before. I don't know what page he opened it at. I have not offered it yet.

THE COURT: Close the book.

Q What have you in your hand? A The shipping book.

Q Of L. I. Baron & Company? A Yes, sir.

Q Have you the entries of September 17th, of this year?

A Yes, sir.

Q Will you please turn to them? A Yes, sir.

Q Do you find any entries there showing a shipment to St. Joseph, Missouri?

MR. HOFFMAN: I object, unless this witness made the entries.

MR. O'MALLEY: He has already testified that he

saw them made.

MR. HOFFMAN: That is not sufficient.

MR. O'MALLEY: That he saw them made; it is sufficient, I submit.

THE COURT: Yes, if he saw them made by the man whose regular duty it was, in the regular course of business in that firm, to make the entries, he may testify to that fact, because he has testified that that man is not now in the City or in the State of New York, but somewhere in the west, selling goods.

MR. HOFFMAN: I object, on the ground the District Attorney has failed to prove by evidence that he had attempted to bring this witness, and that, by reason of his inability to bring him, he wants this evidence.

THE COURT: He need not make any proof of an attempt. The witness is not within reach of the court, and he cannot subpoena him; we cannot subpoena anybody outside of the State of New York. Our subpoena has no validity outside of the State of New York. This witness testifies--

BY THE COURT:

Q Who did you say made those? A Leo Kaplan.

Q He was the shipping clerk? A Yes, sir.

Q And you say he is now on the road, selling goods?

A Yes, sir.

BY MR. O'MALLEY:

Q And did you see him make certain entries in that book on September 17th? A Yes, sir.

BY THE COURT:

Q Did you see him make the entries in question?

A Yes, sir.

Q And you were present? A Yes, sir.

Q Did you say you were present when the goods were wrapped up, these goods now shown to you, these skirts?

A Yes, sir.

THE COURT: Have you any other objection? If you have, you can spread it on the record.

MR. HOFFMAN: That is my only objection.

THE COURT: Objection overruled.

MR. HOFFMAN: Exception.

BY MR. O'MALLEY:

Q Now, please tell what entries were made on that date respecting a shipment of goods to St. Joseph, Missouri?

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

MR. O'MALLEY: Wait until I finish.

Q (Continuing) To the customer, Wheeler and  
another? A Yes, sir.

MR. HOFFMAN: Objected to as leading.

THE COURT: We must not go all over the books.

There may have been a hundred entries on that day.

He can direct his attention to some particular entry.

MR. O'MALLEY: That is what I have done.

Q Have you found it? A Wheeler, Mother & Company, St. Joseph Missouri, United States, we had sent him fifty-seven skirts, so we marked on the books that day, twenty-four lots shipped.

Q Do those show any numbers, or anything of that kind? A Well, I have got a bill here with the numbers.

BY THE COURT:

Q Does the book show the numbers? A No, the book shows only how many skirts, and it shows the number of the box.

BY MR. O'MALLEY:

Q What was the number of the box?

A The number of the box was ten thousand, nine hundred and thirty-nine, and forty, on two boxes, they were marked.

Q Which box was shipped afterwards, do you know, which box went? A I could not tell you exactly.

Q Can you find the box number on this box?

A It was on the paper marked.

Q On the paper? A Yes, sir, on the same paper.

Q Is that the only place where the number was on the paper? A Yes, sir.

Q There is a piece of this paper gone. Do you know which number went to the parties in Missouri that day?

A No, I don't know exactly.

Q One of the boxes went? A Yes, sir.

Q What have you there, a bill? A Yes, sir.

Q Did you see it made out? Have you seen it before?

A Yes, sir.

Q Who made that out? A The book-keeper.

BY THE COURT:

Q What is his name? A Abe. Hertsberg.

Q H-c-r-t-s-b-c-r-g? A Yes, sir.

BY MR. O'MALLEY:

Q This covered the shipment to St. Josephs, Missouri?

A Yes, sir.

Q To Wheeler Mother & Company? A Yes, sir.

MR. O'MALLEY: I offer that in evidence.

MR. HOFFMAN: Objected to.

THE COURT: Objection sustained. You can get Baron's book showing the entry showing from which that bill was made up.

MR. O'MALLEY: Well, I won't go into that unless it becomes necessary. That is all.

RE CROSS EXAMINATION BY MR. HOFFMAN:

Q You said the skirts that were shipped on that day were all of one style? A No, sir, not all of one style.

Q How many styles were not shipped? A Four or five.

Q Don't you remember, when I examined you as to the number of skirts of this particular style, you said there were five hundred, and of these five hundred a certain number were shipped on that day?

MR. O'MALLEY: I think he is mis-stating the fact. He said they had manufactured about five hundred skirts, as I recall it, of a certain style.

Q How many skirts of one style were shipped to Missouri on this day? A Well, I could not remember exactly how many skirts of each style, because we had about five or six styles.

Q Was there five or six styles shipped on that day?

A Yes, sir.

Q To Missouri? A Yes, sir.

Q And were five or six styles contained in the bundle which is now before you? A I am not sure how much was in the other one, and how much in this one.

Q Did you take these skirts from out of the general lots, and put them into this one bundle? A Well, there was one pile of fifty-seven skirts; we put them in a box, a small box and a big box.

Q The fifty-seven skirts, are they now here?

A No, sir.

Q How many are here? A Thirty-three were taken away.

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Q The twenty-four we have here, did you put these twenty-five in that box? A No, sir, Leo Kaplan did.

Q If Leo Kaplan put these skirts in the box, you can't testify to what was contained in the box? A I WAS standing near him when he packed them up. Of course, he did it quick, and he wanted to get ready right away to go down in the elevator.

Q Isn't it a fact the first time you saw these skirts was when they were in the bundle, packed? A No, sir, I saw them when they came in from the contractors, and when we had them all, putting on tickets, and packed them up.

Q Saturday is a pretty busy day?

MR. O'MALLEY: Haven't we gone all over this, your honor?

THE COURT: Yes, I think so. I don't see the materiality of it.

MR. HOFFMAN: That is all.

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LOUIS I. BARON, called as a witness on behalf of the People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your name? A Louis I. Baron.

Q Where do you live? A 405 LaFayette Street, New York City.

Q What is your business? A Skirt manufacturer.

Q With what concern are you connected?

A L. I. Baron & Company.

Q That is a corporation? A Yes, sir.

Q And doing business where? A In New York City, 137  
Greene Street.

Q City and County of New York? A Yes, sir.

Q Is there a boy named Max Stern in your employ?

A Yes, sir.

Q Do you see him now in Court? A Yes, sir.

Q And he was in your employ on the 17th of September,  
1910? A Yes, sir.

Q And your business is what? A Manufacturing of  
skirts.

Q And on Monday, September 19th, were you at police  
headquarters? Did you go there? A No, sir.

Q Did you at any time see any skirts at any place?

A I did.

Q Where? A In Essex Market Court.

Q When was that? A I couldn't remember the date  
exactly.

Q It was after a certain package disappeared from  
your place of business? A Yes, sir.

THE COURT: Well, he can say after the loss of  
the skirts in question.

Q That was after the loss of certain skirts?

A Yes, sir.

Q Did you see certain skirts there? A I did, yes, sir.

Q In whose possession were they? The officer?

A The officer, yes, sir.

Q I show you certain skirts. Will you look at them, please?

(Witness examines skirts)

A Yes, sir.

Q And those <sup>are the</sup> skirts you saw? A Yes, sir.

Q Do you know whose property they are? A They belong to L. I. Baron & Company.

MR. O'HARTY: That is all.

BY THE COURT:

Q Mr. Baron, how about Leo Kaplan? Where is he?

A He left our employ.

Q Do you know where he is? A I believe he is -- from what I understand, he is in Nashville, Tennessee.

Q In Tennessee? A Yes, sir.

Q Was he a shipping clerk? A Yes, sir.

Q And do you know his hand writing? A I do.

THE COURT: Show him that book, and ask him if that is in the handwriting of Leo Kaplan, the shipping clerk.

Q Turn to entries made on September 17th, of the present

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year. Do you see any of Kaplan's handwriting there?

A They are all his handwriting.

Q Do you see any entry there of a shipment to Wheeler, Mother, St. Josephs, Missouri? A I do.

Q And do you know that is in Kaplan's handwriting?

A Yes, it looks that way to me.

BY THE COURT:

Q Are the entries made in that book made in the regular course of your business? A Yes, sir.

Q And that is one of your regular books?

A The shipping clerk has got to show whatever he ships out during the day.

Q And that book is for that purpose? A Yes, sir.

Q In your business? A Yes, sir.

CROSS EXAMINATION BY MR. HOFFMAN:

Q Mr. Baron, the last witness, who was in your employ, Mr. Stern, claimed Mr. Kaplan was out on the road for you. That statement was incorrect.

MR. O'MALLEY: I beg your pardon. I don't think the witness said that. He said he was out on the road.

Q Is he working for you, this Kaplan? A He was.

Q How long ago did he leave your employ? A Several weeks.

Q Mr. Baron, these skirts are not made by you, are they, or your employes? A They are.

Q These skirts which are on this table? A Are made by our employes.

Q On your premises? A No, sir.

Q Isn't it a fact they are made by contractors?

A Some are made by contractors.

Q These skirts, are they made by you, or are they made by contractors? A I don't understand the question.

Q You know what a contractor is, don't you? A Yes, sir.

Q You know what an employe is. Are these skirts made by your employes, or are they made by contractors?

A I could not exactly say that, but I believe this lot was made by our own employes.

BY THE COURT:

Q Do you pay by the piece, or do you pay them so much a day, or week, or hour? A We have different kinds.

Q You have some of your goods made one way and some another? A Yes, sir.

BY MR. HOFFMAN:

Q These skirts which are now on this table, have you any idea how many hundreds of them you made during the month of September? A No, sir.

Q About how many? A I have no idea at all.

Q Did you make more than eight thousand?

A Of these here?

Q Yes. A I could not tell, because we make so many different styles, and I don't know exactly the quantities of each style.

Q So that, you could not identify these skirts as in any way telling you when they were brought into your place, or when they were shipped, you personally? A I have not been in that afternoon at all.

Q So that, you know nothing about this shipment?

A Personally, I do not.

Q When were you informed, Mr. Baron, that there was skirts belonging to you that were missing? A I believe on a Monday morning, when I came to business.

Q Were you in your place of business on Saturday afternoon, between five and six? A No, sir.

Q When did you leave your place of business on that day?

A I left early in the afternoon. I don't remember the exact time.

Q When were you first notified of the loss of these skirts? A Monday morning.

Q No word was brought to you on Saturday by any of your employees? A No, sir, not as far as I remember.

Q Have you a manager? A Yes, sir.

Q Does this manager know where you live? A He does.

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Q Did you see him after Saturday, the 17th of September, after five o'clock? A No, sir.

Q The first time you saw him was on Monday? A Monday.

Q Do you know whether any of your employees made an attempt to get in touch with the Police after they found the bundle was missing?

MR. O'MALLEY: Objected to as immaterial.

MR. HOFFMAN: I ask him if he knows.

THE COURT: He can state if he knows. It is not very material.

BY THE COURT:

Q Do you know whether any of your employees reported the loss of the package to the police, and, if so, when?

A I do not know.

Q Did any of them ever speak to you on the subject of making a report to the police? A I don't remember.

BY MR. HOFFMAN:

Q Who notified you on Monday of the loss?

A I came over to the place of business, and they spoke about it in the office.

Q On Monday morning, you were notified by one of your employees? A At the office, they spoke about it.

Q After you were notified, did you get in touch with the police? A I have been called over there, to Essex Market Court.

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Q What time were you notified of the loss, what hour in the morning, by your employees? A I don't remember the exact time.

Q This is a very serious matter, the loss of goods? A When I come into the place, I don't remember the exact time; it must have been about nine o'clock.

Q As soon as this information was conveyed to you by your employees, did you communicate with the police?

A I did not, because they informed ~~by~~ me that they found--

Q I ask you did you communicate with the police?

A I did not.

Q Did you instruct any of your employees to communicate with the police? A I did not.

MR. HOFFMAN: That is all.

MR. O'MALLEY: I offer in evidence the entry in this book, under date of September 17th, 1910, being the entry made by the shipping clerk, Leo Kaplan, in the employ of L. I. Baron, & Company, in regard to a certain shipment to Wheeler & Mother, St. Josephs Missouri.

MR. HOFFMAN: Objected to, on the ground the District Attorney has failed to show that he had made any diligent effort to get this witness in any way, shape or manner. This case has been marked ready for at least ten days.

THE COURT: This witness says that the witness in

question, Kaplan, formerly his shipping Clerk, is in Tennessee. Do you know how long he has been in Tennessee?

THE WITNESS: I guess a couple of weeks, because, before he left, he came up and asked for a recommendation, and I know it was given to him.

MR. HOFFMAN: I press my objection, upon the further ground there has been no attempt made to locate this man in any way, shape or manner.

MR. O'MALLEY: Why is that material, when we have the direct evidence that this entry was made by him?

THE COURT: We would have to get him, if he were within the jurisdiction. The witness himself, or the person who made those entries, would, of course, be the best evidence. Now, if he is not within the jurisdiction, of course, you can't produce him, and you would have to do the next best thing.

MR. O'MALLEY: With the Court's permission, I will proceed to prove the value.

THE COURT: Yes, while I am looking this matter up, you may.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q How long have you been in this business, of manufacturing suits? A About nine or ten years.

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Q And during that time, you have bought and sold skirts, I assume? A Yes, sir.

Q And do you know the reasonable market value of skirts? Did you, on September 17th, know the reasonable market value of skirts which you were manufacturing? A Yes, sir.

Q Look at these skirts, and tell the jury what the reasonable market value was of that quality of skirt on the 17th of September, 1910; that is, referring to People's Exhibit 1 for Identification? A About two dollars, or two and a quarter apiece.

Q How many are there? A About twenty-four.

Q That would be how much? A Fifty to sixty dollars.

MR. HOFFMAN: If your Honor please, I don't want the  
to take up time of the Court. I have no objection to  
the entry being offered.

MR. O'MALLEY: I will just read the entries.  
Book entitled Record of shipments from September, 1909,  
to -- that is, the book that was in use on September 17th  
1910?

THE WITNESS: Yes, sir.

MR. O'MALLEY: Under date of September 17th, 1910,  
under heading, "Record of shipments", entry, "Wheeler  
& Motter Mercantile Company, St. Joseph Missouri, U. S. A.  
United States Express, fifty-seven skirts, two packages,  
10, 939 and 40". That is all.

S A M U E L      L E I T N E R, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. O'MALLEY:

Q    What is your name?    A    Samuel Leitner.

Q    Where do you live?    A    No. 2 Rector Street.

Q    What is your business?    A    Private detective.

Q    And in whose employ?    A    Special agent for the United States Express Company.

Q    Here, in New York City?    A    Yes, sir.

Q    Were you so employed on September 17th, of the present year?    A    Yes, sir.

Q    On that day, did you at any time see either of the defendants?    A    Yes, sir.

Q    When and where?    A    It was around half past two, or a quarter to three, on Broome and Greene Streets.

Q    And were they both together?    A    Yes, sir.

Q    And when you refer to the defendants, you mean these men here, sitting here?    A    Yes, sir.

Q    Do you know the names of either?    A    No, sir, I don't remember.

Q    But these were the two men that you saw together?  
A    Yes, sir.

Q    Now, then, what did you see them do?    I think you had better receive, briefly, to the jury, what you saw the defendants do at that time?    A    There was one of our

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wagons, United States Express Company wagons, standing on the corner, when these two boys came along, and they kind of stopped; they walked up and down the wagon, and then one of them went into a hall.

Q Which one? A This dark one (Indicating defendant Lippman) went alongside of the wagon, in the hall, which the other man went right in back of the wagon, towards the gutter side of the wheel, and he was watching the driver and he seen there was nothing doing and he walked up and down--

MR. HOFFMAN: I move to strike that out.

THE COURT: Strike out, "He saw there was nothing doing".

THE WITNESS: He saw there was nothing doing.

MR. HOFFMAN: I move to strike that out.

THE COURT: Strike it out.

MR. HOFFMAN: Did the witness say it was about three o'clock?

THE COURT: About two thirty.

Q Go ahead. A Then they walked away, towards uptown, through Greene Street, as far as Eighth Street, but they stopped two or three places, where they seen the wagon, on the corner of Bleeker Street, and they done the same thing. One went in a door way, and the other walked up and down.

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Q What do you mean by a wagon? A An Express Company wagon.

BY THE COURT:

Q A United Express Company wagon? A No, sir, that was a New York & Boston Express Wagon.

BY MR. O'MALLEY:

Q Go ahead. A And they walked up and down, and then away, they walked ~~my~~ the two of them together, and walked up again, when the driver got on his wagon, and they walked up through University Place, went into Tenth Street; from Tenth Street, over to Broadway; from Broadway, over to Eleventh Street; from Eleventh Street, back to University Place; from University Place, into Twelfth Street, and then back towards Broadway, looking in all directions for wagons; and then they walked all the way from Twelfth Street and Broadway to Thirtieth Street, and at Thirtieth Street into University Place again. Then they went up as far as Sixteenth Street, and then they seen another New York & Boston Dispatch wagon.

Q Please don't say that they saw it. Simply say what they saw. A I saw a New York and Boston Dispatch wagon. Then, which they stopped, and they seen nobody was there.

Q You don't mean they stopped the wagon? A No, they stopped alongside the wagon.

Q Was the wagon already stopped? A Yes, sir.

Q The wagon was backed up against the curb?

A Yes, sir.

Q When they got up to that wagon, what did they do?

A This dark fellow went up on the side, which the other man--

Q Don't say "which the other man," "And the other man". A And the other man.

MR. O'MALLEY: Is the other man conceded to be the defendant Kaplan?

MR. HOFFMAN: Yes, sir.

THE WITNESS Kaplan went in the saloon; it was right alongside the saloon, the wagon was. I don't know, but it didn't take two minutes, which Kaplan came out again, and he lifted his hat, and as he lifted his hat this other fellow came towards him.

BY MR. O'MALLEY:

Q Can you refer to the defendant by name? A Littman came towards him, when Kaplan lifted his hat. So some man came along, who had a package, and didn't see the driver, and he put the package alongside of the wagon, and sat on the package, and waited for the driver to come. When they seen that, they walked right away. They went towards Fifth Avenue, all the way over to Eighteenth Street, Eighteenth Street, as far as Sixth Avenue. Then they come back on Eighteenth Street. There is a building which runs

into Nineteenth Street, and they went through that building.

Q To what street? A Into Nineteenth Street, walked up and down the street, and then walked through that building back again into Eighteenth Street, which I done the same thing. Then we went as far as Fifth Avenue, back again towards Eighth Street, into Greene, all the ways over to Houston, and there was one of our wagons, a United States Express wagon there, and I believe there was another wagon there, an American Express wagon, across the way at 137 Greene Street, which I was ahead of them.

Q Where are you now? In Greene Street?

A Yes, sir.

Q Near what place? A Near Houston.

Q Near what street was that? A It was between Houston and Prince.

Q Do you know where 137 Greene Street is? A Yes, sir.

Q Between what two streets is that? A Between Houston and Prince Streets.

Q Now, what did you see when you got there?

A When I got there, they stopped like, and I didn't want to stop, and I walked on ahead and got in front of them. Then they crossed over, which they seen a little boy--

Q Tell what you saw? A I saw a little boy carrying packages over towards our express wagon, and then these two

defendants here, Kaplan and Lippman, went over and took a package off the walk, in front of 137 Greene Street, walked towards the corner, and turned the corner.

Q You saw both defendants go up to where these packages were? A Yes, sir.

Q And that was in front of what premises?

A In front of 137 Greene Street.

Q Tell the jury specifically what you saw each one of the defendants do at that time, if anything?

A Yes, sir, Littman took --

THE COURT: Point out Lippman.

THE WITNESS: Kaplan was the one that took the package, and Littman was quite a little distance in back of him, to see that everything is all right.

MR. HOFFMAN: I move to strike out, "To see that everything is all right"

THE COURT: Motion granted.

THE WITNESS: He walked towards the corner.

Q Which way did he go on Prince Street?

A He went west, turned around the corner.

Q When he left 137 Greene Street, which way did he go? North, or south? A He went south.

Q Towards Prince Street? A Towards Prince Street.

Q Both together? A Both together.

Q What did you see them do? A Then they turned the

corner, with the package.

Q Which way, east or west? A West.

Q On Greene Street? A On Prince, and a car happened to pass, which the two of them jumped on.

Q Which way was the car going? A East, and I jumped on the same car, and they rode through Stanton Street, as far as Ludlow Street, when these two, Littman and Kaplan, got off the car with this package, and walked towards a store on the southwest corner, and went in there with the package.

Q Southwest corner of what streets? A Of Stanton and Ludlow Streets.

Q Did you notice what sort of a building that was?  
A A tenement house.

Q Was there a store there? A A store, yes, sir.

Q What sort of a store? A Embroidery.

Q You saw them go into the store? A Yes, sir.

Q At that time, did they have the same package that you saw them pick up in front of 137 Greene Street?

A Yes, sir.

Q Then what did you do? A I walked right across the way, on the east -- north corner. There is a drug store there which I went to work and telephoned to 17 Allen Street, a branch of police headquarters. I telephoned for two men, Norton and FitzPatrick, which they have been doing

work for the United States Express Company, thinking I would get them in. They said they was not in, and they sent two other officers to Stanton and Ludlow Street, and when the officers came to me, I said, "There is two boys there that has stolen a package on Greene Street".

Q You cant tell what you said to officer coming there? A Yes, sir.

Q Who were the officers? A Sullivan and I don't remember the other one.

Q Was it Girovani? A Yes, sir.

Q Those two officers came? A Yes, sir.

Q When they came there, what did they do? A They met me on the corner.

Q And, then, after that what did they do? A They went right into the store.

Q What store do you mean? A Into the same store where the two defendiant were.

Q And did you go in? A No, sir, I stood in front of the door.

Q Afterwards did you see the officers come out?

A Yes, sir.

Q And who was with them? A These two defendants.

Q Then what was done? A They were taken over to 17 Allen Street, a branch of headquarters.

Q And what did the officers, or either of the defen-

dants have at that time with them? A A package.

Q Had you seen the package before? A Yes.

Q And what was it? A It was a long package.

Q Where had you seen the package before?

A I seen the package in Green Street, and I seen the package in the car, and I seen the package in headquarters.

Q It was the same package you saw the defendants have when they went into the store? A Yes, sir.

Q And you went to 17 Allen Street? A Yes, sir.

BY THE COURT:

Q That is a branch office of the detective bureau, 17 Allen Street? A Yes, sir.

BY MR. O'MALLEY:

Q And after that what did you do? A I went right home. They told me to come the next morning.

Q You went to the Magistrates Court? A The next morning.

Q When the defendants were arraigned? A Yes, sir.

Q And they were held for the grand Jury? A No, sir; it was put off.

Q Adjourned? A Adjourned, yes, sir.

Q And you were there again the next time?

A Yes, sir.

Q And they were held that time for the Grand Jury?

A I believe so.

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Q Now, at any time, did you examine the box, the contents of the box they carried? A No, I just only looked at the box, to see if U. S. is on.

Q Will you please step here and examine this. Is there anything about this paper or pasteboard that enables you to identify it as having seen that before?

(Witness examines bundle)

Q The box that you saw the defendant take from 137 Greene Street, and enter the store on the southwest corner of Stanton and Ludlow with was the same box that you saw the officer take ~~from~~ to 17 Allen Street; is that right?

A Yes, sir.

Q And did you see that box at headquarters afterwards?

A Yes, sir.

BY THE COURT:

Q Did it have that paper on it, with that endorsement?

A Yes, sir.

Q With that endorsement? A Yes, sir.

MR. O'BALLANCE: I might offer that in evidence now, but I won't, until after I call the other officer.

Your witness.

CROSS EXAMINATION BY MR. HOWLAND:

Q What is your business? A Private detective.

Q Private detective? A Yes, sir.

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Q You are licensed as a private detective?

A What?

Q Are you licensed as a private detective? A No, sir.

Q Do you know that it is necessary, in order to hold yourself out as a private detective, that you hold a license? A Well, I do special work; only watch our wagons, and see that nobody steals anything.

Q In answer to the District Attorney's question, you said you were a private detective? A Well, I am doing private work.

Q I now ask you whether you know, that in order to hold yourself out as a private detective, you must, under our law, be licensed by the Comptroller of the State of New York? A I know it now, yes, sir.

Q When you say you know it now, do you want me to understand that you did not know it up to now? A No, sir.

Q That, in order to do private detective work, you had to carry a license, or to be licensed? A No, sir.

Q How long have you been doing private detective work? A Two years.

Q During those two years, who were you working for? A Mr. Mayo, Special Agent.

Q Who is that? A United States Express Company's special agent.

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Q Before you entered the express company work, what were you doing? A What?

Q Before you entered the Express company work, the kind that you say you were doing, what were you employed at?

A I was driving a wagon, a fruit wagon.

Q Were you ever convicted of a crime? A No, sir.

Q Sure about that? A Married man, with three children. No, sir.

Q I am not asking you about three children?

A No, sir.

Q You are not on trial? A I know that.

Q I ask you whether you were ever convicted of a crime?

A No, sir.

Q In this state, or any other state?

A No, sir.

Q Mr. Leitner, you testified in the Magistrates' Court, didn't you? A Yes, sir.

Q The District Attorney assigned by this Court is at that Court, you know-- you know there is a District Attorney in Essex Market? A Yes, sir.

Q And you know that the trial in Essex Market was conducted by a District Attorney? A Yes, sir.

Q You were called as a witness in this case in Essex Market? A Yes, sir.

Q Do you admit now that you testified there precisely

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as you testified here? A No, sir.

Do

Q You want the Jury to understand that you are not now  
testifying in the same way in which you have been testifying  
in Essex Market? A Yes, sir.

MR. O'MALLEY: I object to that, unless he  
specifies in what respect.

MR. HOFFMAN: I don't have to tell the witness in  
what respect.

MR. O'MALLEY: All right, proceed.

Q (Question and answer read by stenographer as follows)

"Q Do you want the jury to understand that you  
are not now testifying in the same way in which you  
have been testifying in Essex Market? A Yes, sir".

MR. O'MALLEY: If that means that he did not tell  
the same story there--

THE COURT: You can bring that out, on re-direct.

Q Have you any malice against these two boys?

A No, sir.

Q Do you ever have any hatred? A No, sir.

Q If you don't have them any hatred, will you kindly  
why it is that you have changed your testimony?

MR. O'MALLEY: I object to that, unless it appears  
that he has changed it. I object to it as improper.  
He has not stated that he has changed his testimony.

THE COURT: Well, let him state whether he has or  
not.

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Q Have you changed your testimony? A No, sir, I have not.

Q Will you tell this jury whether you have added any testimony here which you did not bring out in Essex Market Police Court? A I was not asked.

Q I didn't ask you that.

(Question read by stenographer, as follows)

"Q Will you tell this jury whether you have added any testimony here which you did not bring out in Essex Market police Court?"

MR. O'MALLEY: If you know.

A No, sir.

Q You now claim, and your memory is good, that you have not added any testimony that you did not testify to in the Police Court? A The only thing in the Police Court they did not ask me about--

Q Answer my question.

MR. O'MALLEY: Let him answer.

THE COURT: Yes, he ought to be permitted to answer. Your question implies that the witness gave certain testimony in the City Magistrates' Court, and he deliberated, and so it were.

MR. HOWEY: That is correct.

THE COURT: Now, the witness can only answer questions. If the question is not put to him, he

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can't say. That is absolutely good law.

MR. HOFFMAN: Yes.

THE COURT: The witness says he answered all the questions put to him then, but practically more questions were put to him here. That is practically what he says.

MR. HOFFMAN: I want to ask him this question:

Q Have you added testimony in this Court which you did not testify to in the Police Court?

MR. O'MALLEY: Objected to.

THE COURT: Well, I will sustain that. The witness does not add anything. Questions may be put to a witness, and he may testify to certain things that he did not testify to there. If you ask him, have you testified to certain things in this Court that you did not testify to in the City Magistrates' Court, that will be allowed.

MR. HOFFMAN: That is the question I want.

Q Did you testify to anything in this Court, in regard to facts, in this Court, which you did not testify to in the police Court? A Yes, sir.

Q Did you fail to give that testimony in the Police Court for any particular reason? A They did not ask me. Every question they asked, I answered.

Q In the Police Court you testified as follows--

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MR. O'MALLEY: What are you reading from?

MR. HOFFMAN: From the minutes.

MR. O'MALLEY: Refer to the page.

MR. HOFFMAN: Page six.

MR. O'MALLEY: Of the minutes in the Police Court?

MR. HOFFMAN: Yes, sir.

Q "What is your name? A Samuel Leitner. Q Where do you live? A 324 East Ninety-first Street. A What is your business? A Private detective in the Express Company. Direct Examination by Mr. Mitchell." That is the District Attorney. Q Were you in front of premises 137 Greene Street last Saturday? A Yes, sir. Q At what time? A Between five and a quarter past five. Q Are you employed by the United States Express Company as a private detective? A Yes, sir. Q And you were in front of premises 137 Greene Street? A Yes, sir. Q And while you were in front of these premises, did you see these defendants? A Yes, sir. In the Police Court, you testified that between five and a quarter past five you were in front of Greene Street, on this day? A Yes, sir, that is the time they took the package.

Q Now, is there any reason that you can give that justified your withdrawing from the Magistrate the testimony which you have just given, that you had seen these people

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on Greene Street on this day, at two thirty?

MR. O'MALLEY: Objected to, on the ground it has already been answered. He has given his reason.

THE COURT: Well, he can answer it again.

BY THE COURT:

Q Why didn't you testify to that before the City Magistrate? A They asked me at what time the package was taken and I answered from five o'clock to a quarter past.

BY MR. HOFFMAN:

Q You have volunteered testimony a few minutes ago which the Court excluded, when you said, "I saw him go there, and there was nothing doing." You are a pretty bright witness. You know--

THE COURT: That is not a question, counsellor. You are arguing now.

MR. HOFFMAN: I withdraw that.

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

Q You added it was a proper element in your testimony, that it was proper that you should have testified to all these acts which you claim these men did on that day prior to their taking this package?

MR. O'MALLEY: I don't believe I understand the question.

THE COURT: Neither do I. What is the proposi-

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tion? That this witness should have instructed the City Magistrate?

MR. HOFFMAN: The purpose is that this witness has changed his entire testimony.

MR. O'MALLEY: I object to that.

THE COURT: The Jury is instructed to disregard that statement of counsel. The verdict is to be rendered upon the evidence, and not upon statements of counsel. Of course, if counsel can prove that to you, that is a different proposition. This witness says that he made certain testimony-- gave certain testimony before the City Magistrate. That he answered all the questions put to him, but he did not give all that testimony there that he has given here because the questions were not asked him. Now, a committing Magistrate, of course, only hears sufficient evidence to justify him in holding a defendant, and no more. He does not go into it in detail as we do here. That is good law. He only hears just enough to satisfy him in his mind, and he holds him or discharges him, as the case may be. But he does not go into it as elaborately as we do here.

Q You did not, in the Police Court, testify to things which you saw the defendant do on the 17th of December between the hours of two and five. You offered no testimony of the various things which you claim you saw them do

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on that day; is that right? A I testified that I seen these boys take the package in front of 137 Greene Street.

Q That is not my question. A That is all I know. All the questions I was asked, I answered.

THE COURT: I think you had better be a little more specific. The witness says he answered every question put to him there, but he did not go into certain details. Now, if you want to know what those details are, you will ask him if he testified thus and so before the City Magistrate. For instance, you want to know, I presume, whether he told the City Magistrate of having trailed the defendants?

MR. HOFFMAN: Yes, sir.

BY THE COURT:

Q Did you tell the City Magistrate that you trailed the defendants that day? A No, sir.

BY MR. HOFFMAN:

Q Did you tell the District Attorney?

A Yes, sir.

Q You told the District Attorney that you trailed these defendants between the hours of two and five? A Yes, sir. That was when they made out the affidavit.

Q In the Police Court? A Yes, sir.

Q And, as you testified, you followed these boys for

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three hours? A Yes, sir.

Q Did you lose sight of them at any time? A No, sir.

Q When you claim the package was taken from Greene Street, what time was it? A It was about around five; perhaps a little after five; I didn't exactly look at the time; I don't remember.

Q Did you see these packages brought down stairs in front of the premises? A I seen them laying right in front of the door.

Q Did you see them brought down stairs? A I saw the boy take packages across the way from there.

Q Before you saw him take these packages across the way, did you see anybody else with this boy?

THE COURT: Which boy?

MR. HOFFMAN: With the boy whom you saw?

A No, sir.

Q He was alone? A He was alone.

Q There was no one with him? A I didn't see any one with him.

Q You saw nobody assisting him in carrying the bundles?

A No, sir.

Q Your testimony is correct on that point?

A Yes, sir.

Q You were very careful, weren't you? A Yes, sir.

Q You watched that place for how long? A For a second

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Q For a second? A Yes, sir.

Q And did that second bring about the loss of this article? A Yes, sir.

Q It all happened in a second? A In a second, yes, sir.

Q Now, then, before you got to these premises, where were you? Where were you before you got to these premises?

A On Greene Street.

Q How long were you on Greene Street? A Well, about fifteen or twenty minutes.

Q You were on Greene Street about fifteen minutes?

A Yes, walking through Greene, from Eighth, all the ways over to Houston.

Q Were you close to these defendants? A Well, I was about a hundred feet away.

Q Now, then, before you got to 137 Greene Street, where were you, and where were these defendants, how far apart? A They were together.

Q Where were you? A I was across the way.

Q Directly across the way? A Yes, sir.

Q Were you in front of your wagon? A In back of my wagon.

Q And you looked across the street, or where did you look? A I looked right across the street.

BY THE COURT:

Q Were you on a wagon? A No, sir.

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Q What do you mean when counsel asked you were you by your wagon? What do you mean by that? A That means one of our wagons, United States Express Company wagons.

BY MR. HOFFMAN:

Q What attracted your attention across the street?

A I watched for these two boys, to see what they were going to do.

Q Before you watched to see what they were going to do, was your attention attracted to these bundles?

A No, sir; I was watching them boys. When they walked along, they picked up the bundle, and walked right ahead.

Q When they picked up the bundle, where was this boy who was bringing these bundles across the street?

A On my side of the street, where I was.

Q Right near him? You were right near him?

A No, sir, he went over towards the American Express Company wagon.

Q How many feet away was he from you? A Twenty feet.

Q You distinctly saw this other boy? A Sir?

Q You distinctly saw the boy that was carrying the bundle? A Carrying the packages towards another wagon, not my wagon.

Q Was he in your sight? A Well, he was not much of a distance away from me.

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Q How many feet? A I don't know. Maybe thirty or forty feet.

Q You said before twenty? A I couldn't just exactly measure the feet.

Q When you saw the bundles picked up, by one of these defendants, did you make a rush for this boy who had been in charge of these bundles, or who had been carrying them over? A He was too much of a distance away from me.

Q Did these boys pick the bundle up and run away with it? A They walked kind of fast.  
not

Q Did you have an opportunity to call this boy?

A Yes, sir, but they walked so fast I had to walk off after them. I couldn't call this boy.

Q Did you make an attempt to call this boy?

A Because it is too near to the corner. When they got to the corner, and turned around, there was a car there, and they jumped on the car, and I had to get right after them on the car.

Q Before this bundle was picked up by the defendant, how many bundles were there in front of those premises?

A Two bundles.

Q Two bundles? A Yes, sir.

Q Did you see any more than two? A No, sir.

Q Sure you didn't see any more than two? A Well, I may be mistaken.

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Q The question was asked of you in the Police Court, "How many bundles did you see on the walk the first time you saw it?" A About five or six packages."

A That was alongside of these two. That was a little distance from each other.

Q That is what I am asking you? A Another man had his pile, and this boy had his pile. I didn't know the other man.

Q How do you know how these piles were divided?

A The only thing I ~~xx~~ know was these two boys. That one that took the package, there was only two packages there at the time he took that package. That is all. I can remember, because I can't remember when the boy carried over a few packages, but I thought you asked me the question how many packages was at the time they took that package. There was only two, but before that there was quite a few.

Q But, in the Police Court you said five or six?

A Something like that, yes, before they stole the package.

MR. HOFFMAN: I move, "Before they stole the package" be stricken out.

BY THE COURT:

Q Before they took the package? A Yes, sir, before they took the package.

BY MR. HOFFMAN:

Q Before the package was taken, did you see any boys

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standing in front of these packages? A No, sir.

Q Nobody there? A Nobody.

Q Do you know the boy that carried the bundle across the street? A Yes, sir.

Q Is he in Court? A Yes, sir.

Q Point him out. A That boy with the light coat. (Indicating)

Q That is Mr. Stern? A Yes, sir.

Q And he was the only boy that was carrying bundles from premises 127 Greene Street on that day?

A That is the only one I seen.

Q You saw nobody else? A No, sir.

Q You saw no one with him? A No, sir.

Q Now, then, when you got on the car, were there people on the car? A Yes, sir.

Q Did you get the name of any person on the car?

A No, sir, I just took the car number.

Q You asked nobody for their name? A No, sir.

Q Were there people on the car? A Yes, sir.

Q Before these boys got on the car, did you attract the attention of any citizen? A I tried to look around for an officer.

Q I ask you, did you attract the attention of any citizen? A Well, I couldn't see anybody. It was around five o'clock. They got on the car too fast.

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Q They got on the car too fast? A Yes, sir.

Q Didn't they walk down Greene Street? A Yes, sir.

Q About how much distance is it from the premises where they took the bundle to the place where they got on the car? A Center of the block.

Q Did they get on the car on that corner? A Around the corner of Prince Street.

Q On what corner did they get on the car?

A On the corner of Grene and Prince.

Q Corner of Greene and Prince? A Yes, sir.

BY THE COURT:

Q How far was that from where they took the goods?

A It was about one hundred feet.

BY MR. HOFFMAN:

Q Didn't you testify in the Police Court that they got on the car at West Broadway? A Well, that is near West Broadway. They asked me, and I says it is near West Broadway, where they got on the car.

Q Now, what was it? West Broadway, or Greene Street?

A Right around the corner, when they got on the car.

Q What do you mean by that? You are a smart witness. Tell us what you mean. Was it on GreenenStreet they got on the car? A No, on Prince Street.

Q Prince and what corner? A Between Greene and Wooster, something like that. I didn't take notice.

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I was so excited, I was looking around for an officer, to try and get these boys, so I didn't recollect what it was.

Q In the Police Court, you testified --

A I said it was near West Broadway.

BY THE COURT:

Q Why didn't you arrest them yourself, when you saw them take these goods? A I cannot arrest them myself.

Q You can't? A No, sir.

Q Any citizen can arrest for a felony? A I could hold them, but there is two against me.

Q Any citizen can arrest, or for a misdemeanor committed in their immediate presence.

BY MR. HOFFMAN:

Q You say you were excited. What do you mean? You were excited? A I was excited to make the arrest.

Q You were excited to make the arrest? A Yes, sir.

Q Now, then, when they took the bundles, do you say they walked fast? A Yes.

Q Did you come across no citizen between--

A Nobody.

Q There was nobody on the street? A No, sir.

Q The street was deserted? A Yes, sir.

Q How long did they wait for this car? A They didn't wait at all. The car just came along, and they run over with the package and jumped on.

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Q Kindly tell me how many people were in this car at that time? A There was about four or five people.

Q Were you standing outside, or inside? A Outside.

Q Where were they? A Inside.

Q Was anybody else outside? A No, sir.

Q Wasn't the conductor outside? A Well, yes.

Q Did you pay your fare? A Yes, sir.

Q You paid your fare on the outside of the car?

A On the outside of the car.

Q Didn't you talk to the conductor, and ask him to identify these two boys, so you could use him as a witness?

A No, sir.

Q You didn't think it was necessary? A No, sir.

Q You didn't think it was necessary? A No, sir.

Q When you got to Stanton and Ludlow Streets, you claim they got off the car, and so did you? A Yes, sir.

Q You say you telephoned to Police headquarters?

A To a branch of the Police headquarters, 18 Allen Street.

Q No mistake about it? A No mistake.

Q When you rang up, did you recognize the party who spoke to you over the wire? A No, sir.

Q You say that, when you got to police headquarters, at Allen Street, you asked for Horton and FitzPatrick?

A Yes, sir.

Q You also said that you had formerly done business

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with Horton and FitzPatrick? A They have done business for the United States Express Company.

Q Where you were instrumental in bringing about an arrest? A Yes, sir.

Q Where was the last case that you, and Horton and FitzPatrick had. Give me the name of it? A Well, there is one here, about two weeks ago, with Horton.

Q Give me that name? A I don't remember the name. It was in Special Sessions Court. They pleaded guilty.

Q You don't remember the name? A No, I don't take the name. When the officer is there to see the crime committed, I don't need to go to Court at all.

Q Give me the case where you did business with Horton and FitzPatrick? A Well, not me, but Mr. Mayo, the Special Agent.

Q I am talking to you, Mr. Witness? A No, sir.

Q Did you ever do any business with Horton and FitzPatrick in any case? A No, sir.

Q Did you ever have them with you in a case?

A No, sir.

Q Then, why, when you telephoned to 17 Allen Street, did you ask for Horton and FitzPatrick? A Because they have been up in our office. They come up there occasionally.

Q They come up to your office occasionally? A Yes, sir.

Q Is that the best answer you can give? A Well, I

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know they had a couple of prisoners there, and they had business with my boss, and I don't know anything, so Horton and FitzPartick, they gave me a card, and they says, "Any time--"

Q "You want us, call us--"

A "Anytime you see anything, and you can't get anybody, try to call us up".

Q You know it is not necessary to call up any particular detective, when a crime is committed, don't you?

A It is, when there is no officer around.

Q Don't you know you can telephone to headquarters at any time, and in every instance they will send you a detective? A Well, being that I knew these two men, I telephoned to them.

Q They were your friends? A Not my friends, no, sir.

Q When you say you knew them, what do you mean?

A I know them from coming up to our office.

Q Will you swear that you were not in any case with them, outside of the case in Special Sessions, before the 17th of September, with Horton and FitzPatrick? A Yes, sir.

Q You had no case with them? A No, sir.

Q Will you give me the name of any detective at 17 Allen Street, who was associated with you in one of your cases? A In one of my cases?

Q Yes, where you were the creation of the arrest?

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A Hooker and Rainsberg.

Q Were they at No. 17 Allen Street? A Yes, sir.

Q What was the name of the case? A Horse and Wagon, the Hildebrand Bakery Company.

Q You have nothing to do with bakery wagons?

A I was standing on Fulton Street, and I was watching one of my wagons. They were walking up and down. I thought they were going to take a package off the wagon, so I followed them, and I seen them jump on a bakery wagon and go over Brooklyn Bridge.

Q This was a larceny of a bakery wagon? A Yes, sir.

MR. O'MALLEY: I think this is immaterial.

THE COURT: Absolutely.

MR. HOFFMAN: That is my defense.

THE COURT: What is your defense?

MR. HOFFMAN: A conspiracy on the part of this witness.

THE COURT: To do what?

MR. HOFFMAN: To bring about a false arrest, and I will prove it.

THE COURT: Well, I assume, from what this witness and the other witness testified to, that these two men were found with the goods on them.

MR. HOFFMAN: Which is no doubt correct.

THE COURT: I assume that is correct? At a parti-

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cular place. Now, where is the conspiracy in that, in the first place. I may be very dull, but I can't see any conspiracy there.

MR. HOFFMAN: Well, your Honor will be able to see it--

THE COURT: I may be obtuse, but I can't see any conspiracy; but all these questions you have been latterly asking the witness are wholly irrelevant, as far as the guilt or innocence of the defendant is concerned. Suppose he did trail two young men, who afterwards, instead of robbing an express wagon, robbed a baker's wagon. Now, that has nothing to do with this case.

MR. HOFFMAN: Very well, I don't want to be unfair. I don't want to take up the time of the Court.

THE COURT: I don't think it is material. It does not discredit the witness in any respect, nor is it a discredit to him in his occupation, if that is what you want to bring out. But, at the same time, if the jury think that, they are entitled to form any opinion that they think, as honest men, they should.

MR. HOFFMAN: I will withdraw that theory, and proceed to one which I think is more important.

Q Now, Mr. Leitner, you say you telephoned to Police headquarters? A Yes, sir.

Q While you were telephoning, do you know what these

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defendants were doing? A No, sir.

Q You couldn't say what they had been doing in this store, could you?

MR. O'MALLEY: What store?

MR. HOFFMAN: In the store in which they were arrested?

A No, sir.

Q You telephoned to police headquarters, as you claim you did, to get a detective, detective Sullivan, I believe, to make this arrest? A I went right to the store, and watched these two boys.

Q When Sullivan came, he arrested these two defendants?

A Yes, sir.

Q Did he arrest the owner of this store? A No, sir.

Q Did you go with him into the store? A No, sir.

Q Why did you stay outside? A Why did I stay outside?

Q Yes. A Because I don't have to go inside.

Q I ask you why you stayed outside? A There is some cases in which I don't have to be used in Court.

Q You had an idea that in this case it might not be necessary that your testimony would be used; that is correct?

A Yes, sir.

Q But you were the only one who saw this alleged larceny? A Yes, sir.

Q Now, being the only one, you knew that a conviction

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could never be had unless you would go inside -- you would join the detective?

MR. O'MALLEY      Objected to.

THE COURT:      Let him express what he thought.

Q      Why didn't you go inside with the detective?

A      Well, I waited outside; I was watching these boys, what they were doing.

BY THE COURT:

Q      The question was, why didn't you go in with the officer when the officer went in to make the arrest?

A      The officers didn't call me inside; I didn't go in.

Q      Is that the only reason that you had?    A      Well, that is all I know.

BY MR. HOFFMAN:

Q      Did you go to Police headquarters with these defendants?    A      Yes, sir.

Q      That evening?    A      Yes, sir.

Q      Did you give your name to the man behind the desk?

A      No, sir, I gave the officers that came, and they says I should come down to Court next morning.

Q      When you got to Police headquarters, did you make your statement to the man behind the desk?

A      No, sir.

Q      You made no statement to him?    A      I don't remember.

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Q Did you give your name and address? A To the officer.

Q Were you in Police headquarters? A Yes, sir.

Q Then, you went along with these defendants?

A No, sir.

Q When you got to Police headquarters, was the man who was the owner of this store arrested? A No, sir.

Q Did the detective take the owner of the store with these defendants? A The detective told me--

Q Didn't he arrest him? A No, he did not arrest him.

Q You saw the owner of this store in the Police Court, didn't you? A Yes, sir, the following morning.

Q You knew that he was arrested? A I didn't know until I reached the Court.

Q But, when you reached the Court, you knew that the store keeper was arrested? A Yes, when the officers told me.

Q Do you know what happened with this man's case, the store-keeper? A He was discharged.

MR. O'MALLEY: I don't see how that is material.

THE COURT: That has nothing to do with this case. He had never received the goods.

Q The only answer, and the best answer you can give, for not going in this store with the detective is because detective did not call you; is that right? A Yes, sir.

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MR. HOFFMAN: That is all.

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THE COURT: Now, Gentlemen, we will suspend here until to-morrow, at Two o'clock. I have to draw Grand Jurors at the Commissioner of Jurors, with some of the other Judges and won't be able to reach this Court House until Two o'clock. So, gentlemen of the Jury, in the meantime, you will not make up your minds as to the guilt or innocence of the defendant, or discuss any of the matters among yourselves concerning this case, until the matter is submitted to you for your verdict.

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The Court accordingly took a recess until to-morrow, Tuesday, December 6th, 1910, at Two P. M.

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New York, Tuesday, December 6th, 1910.

TRIAL RESUMED.

Present :-

Hon. Edward Swann, J.

and a Jury.

Appearances :-

Same as Before.

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The Defendants are arraigned at the Bar.  
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MICHAEL SULLIVAN, called as a witness on behalf of the People, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your full name? A Michael Sullivan.

Q You are a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q How long have you been such member? A Four years and a half.

Q Attached where? A Detective Bureau.

Q And were assigned to what branch? A First branch of the detective Bureau, on September 17th.

Q On the 17th of September, of the present year, did you see either of these defendants? A Yes, sir.

Q Where? A At Ludlow and Stanton Streets.

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Q Did you see a man named Leitner there?

MR. HOFFMAN: I submit the District Attorney should not lead this witness.

THE COURT: Let him state what he did see there.

Q Who did you see there? A I got a telephone message at the detective Bureau, and was told--

BY THE COURT:

Q As a result of that telephone communication, what did you do? A I went to Stanton and Ludlow Streets.

BY MR. O'MALLEY:

Q Who was with you? A Detective Gorevan.

Q Who did you see at Stanton and Ludlow?

A On Ludlow Street, about one hundred and fifty feet from Stanton, I met Leitner,-- Sam Leitner.

Q He was a previous witness here, was he?

A Yes, sir.

Q After you saw Leitner, what did you do?

A I went to a store. Leitner informed me there were two boys there who stole a package from Greene Street.

Q Who was with you? A Detective Gorevan.

Q You went in the store, did you? A Yes, sir.

Q And who did you see there? A The defendants Littman and Kaplan.

Q What were they doing at the time? A Defendant Littman was standing over the package which is here, on the desk,

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and he had a skirt in his hand, and his coat off.

Q What was the other defendant doing? A Kaplan was sitting alongside of the counter, about two feet from the package.

Q Who else was there, if anybody? A There was a man who owned the store, by the name of Saffer, his daughter and his wife.

BY THE COURT:

Q Saffer was his name, S-a-f-f-e-r?

A S-a-f-f-e-r.

Q Saffer? A Yes, sir.

BY MR. O'MALLEY:

Q Did you have a conversation with either of the defendants? A No, sir, Detective Gorevan had the conversation.

Q Did you overhear any conversation Detective Gorevan had with the defendants? A Yes, sir.

Q State what it was? A Detective Gorevan asked the defendant Littman where he had got that package. He said he had got it on Greene Street, off his father, 132 Greene Street.

Q What else? A And we placed them under arrest.

Q Do you recall any other conversation had?

A (No answer)

BY THE COURT:

Q Did Littman say he got the package from his,

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Littman's father? A He said he got it from his father.

Q And did he say where his father was? A 132  
Greene Street.

BY MR. O'MALLEY:

Q You spoke about a package? A Yes, sir.

Q Describe that package a little more fully to the  
jury? A A pasteboard box, containing a lot of skirts,  
twenty-four skirts.

Q Was there-- did you find any paper there, any  
wrapping paper? A Yes, sir.

Q I show you that wrapping paper and ask you if you  
saw that (handing same to witness)? A Yes, sir.

Q And is the box that you saw? A Yes, sir.

Q That is the pasteboard box? A Yes, sir.

Q With its contents? A Yes, sir.

Q Twenty-four skirts? A Yes, sir.

Q And what did you do with that box, if anything?

A We got the defendant Littman to wrap them up, and there  
was five or six skirts behind the counter, and Saffer's  
daughter gave them back to Littman, to put in the box.  
We wrapped them up, and placed them under arrest.

Q Then, what did you do? Where did you go?

A First Branch Detective Bureau, at 17 Allen Street.

Q What did you do with the box? A We opened it up,  
and seen what was in it.

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Q Did you leave it in the store, or take it away?

A I took it with the defendants.

Q To the detective Bureau? A Yes, sir.

Q At any time after you took the box to the detective bureau, did you see either L. I. Baron, or a boy named Max Stern? A Yes, sir.

Q Where? A In the Police Court.

Q And were you present at any time when they examined the contents of this box? A Baron identified one of the skirts.

MR. HOFFMAN: Objected to.

Q Where was this? A In the Police Court.

BY THE COURT:

Q Were the defendants present? A No, sir, they were not.

BY MR. O'MALLEY:

Q Do you recall any time that Baron came to the detective bureau, or Stern came to the detective bureau?

A A shipping clerk came there, to the detective bureau.

Q You had this package in Court, did you, when the defendants were arraigned? A Yes, sir.

Q And did either Baron or Stern identify the clothes there? A Baron identified them.

BY THE COURT:

Q Do you remember what the name of that shipping clerk

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was whom you say appeared before the City Magistrate?

A No, sir, I do not remember his name.

MR. O'MALLEY: I offer the box, with the contents, in evidence, including the paper wrapper, referring to People's Exhibit No. 1 for Identification.

(Same is received in evidence and marked "People's Exhibit No. 1", of this date)

BY MR. O'MALLEY:

Q Did you afterwards go to 132 Greene Street?

A No, sir.

MR. O'MALLEY: Your witness.

CROSS EXAMINATION BY MR. HOFFMAN:

Q Officer, what were you doing on the 17th day of September, about four o'clock in the afternoon?

A I was in the detective bureau, the first branch detective bureau, at 17 Allen Street, on day duty.

Q You were on day duty there? A Yes, sir.

Q What do you mean by day duty? A In the office, from half past eight until six P. M.; eight thirty in the morning, until six P. M.

Q On that day, did you leave the office at any hour of the day? A Yes, I may have went out a couple of times, to investigate complaints.

Q How many times were you out on that day?

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A Well, I should judge about twice.

Q Between the hours of four and five, did you leave police headquarters? A No, sir.

Q When the telephone call that you testified to reached 17 Allen Street, did you answer the telephone?

A Well, there were two telephones, two telephone messages.

Q Well, now, let us see. When the first telephone message reached 17 Allen Street, did you answer the telephone call? A I did.

Q Was that telephone call with reference to this particular transaction? A I could not tell you that.

Q Well, when you referred to a telephone call, what are you talking about? A Well, Leitner called the first branch detective bureau up, and asked if detective Horton, or detective FitzPatrick was there, and I answered no, and I hung up the receiver.

Q When Leitner called up police headquarters, you got on the wire, you say? A He did not call up police headquarters.

Q I mean Allen Street. I don't mean Mulberry Street, or Center Street? A He did not call up police headquarters. He did not call on the police wire at all.

Q He did not call on the police wire? A No, sir, he did not.

Q Do you people have a different wire? A We certainly

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do.

Q What was that wire for? A That was for outside people, anybody who wanted to ring up for a detective.

Q When you say an outside wire, you mean that it belonged to the police department? They paid for the telephone services? A Oh, yes.

BY THE COURT:

Q But has not the police department what is known as a police system of telephoning? A Yes, sir.

Q They have a sort of interior system between the various branches and departments? Then they have one for public use? A Yes, sir.

BY MR. HOFFMAN:

Q What telephone did this party call up on? Was it the police telephone, or the other telephone, which you referred to? A It was the other telephone, the private telephone.

Q When you say "Private telephone", do you mean that it is the telephone of the police department? A No, sir, an outside wire.

BY THE COURT:

Q What telephone is it? A The number is 1271 Orchard.

Q Is it in the telephone book? A It was, yes, sir.

Q Under what head? A Under the City.

Q Under the City of New York? A Yes, sir.

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Q Then, it is a public telephone? A Yes, sir.

Q It is one of the City telephones? A Yes, sir.

Q In the Police department, detective bureau?

A Yes, sir, 1271 Orchard.

Q And there is another telephone which you can only reach through Police headquarters? A Yes, sir.

Q And they will switch you to one of the branch detective bureaus? A Yes, sir.

Q Right away, if they think the public service demands it; otherwise, they won't? A Yes, sir.

Q But this other is a telephone that any citizen may ring up the detective bureau on? A Yes, sir.

BY MR. HOFFMAN:

Q The telephone number is 1271 ? A Yes, sir.

Q Isn't it customary in police headquarters at Allen Street that the telephone should be answered by the person in charge?

MR. O'MALLEY: I don't see how this is material. I object to it.

THE COURT: I don't see anything material about it, Mr. O'Malley, but, at the same time, I am in hopes that I will see the light before a while.

MR. HOFFMAN: I except to that statement of your Honor's.

THE COURT: What connection has it with the guilt

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or innocence of the defendant?

MR. HOFFMAN: I want to see whether this man was doing a private business at headquarters.

THE COURT: Supposing he was.

MR. HOFFMAN: That is for the jury to say, whether he had a right to do that.

THE COURT: We are trying one case. Now, you are trying to switch it off to the trial of this policeman. Now, the jury have their minds centered upon these two men. This policeman is not indicted. He is not called upon to defend himself. You are trying to make it appear he was doing something outside of the police duty. He has nothing to do with the guilt or innocence of the defendants, except that he arrested them.

MR. HOFFMAN: I again insist on taking an exception

THE COURT: Assuming that the--

MR. HOFFMAN: I do not care to argue the case with your Honor.

THE COURT: Unless you show me something that is bordering upon the issues, something that actually approaches the issue, I shall not rule against you, because we are not trying the officer.

MR. HOFFMAN: I take an exception to your Honor's remark. I want your Honor to understand that I believe this is proper cross examination.

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THE COURT: I call upon you to show me, by some statement, wherein this is relevant, and, if you do, you can go right ahead, and, if you do not, you cannot.

MR. HOFFMAN: Very well. I will except to the statement made by the court.

BY MR. HOFFMAN:

Q Whose duty, Mr. Sullivan, was it to answer telephone calls at 17 Allen Street?

MR. O'MALLEY: I object to this, your Honor.

THE COURT: It has nothing to do with the case, but he may answer it.

A There was a clerical man there who answers the outside wire, and, if he was not there, and the lieutenant was busy there at the desk, any man in the office could answer it.

Q Isn't it a rule of the department that when a call is sent in, at 17 Allen Street, that a record of that call be made upon the books of the department? A Not on the outside wire.

Q Will you say, under oath, that it was not the duty of the officer in charge of No. 17 Allen Street to record this telephone communication? A Well, I don't know nothing about that.

MR. O'MALLEY: Objected to. How does this man know that the duty of an officer was on the telephone.

MR. HOFFMAN: I ask for the production of the tele-

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phone book that I subpoenaed.

(Books are produced)

Q Mr. Sullivan, I ask you whether there was kept, at 17 Allen Street, a book in which were reported all of the incoming telephone communications. What is your answer?

MR. O'MALLEY: If the Court please, I have already objected to this.

THE COURT: Yes, I don't see its relevancy, but I will allow the question.

MR. O'MALLEY: I object to it upon another ground. It should appear whether or not this witness knows.

MR. HOFFMAN: I am asking him if he knows.

BY THE COURT:

Q Do you know if a book was kept wherein all telephone communications were put down? A Over the police wire, that is all, as far as I know.

BY MR. HOFFMAN:

Q What is that? A Over the police wire, as far as I know, a record was kept.

Q So, you now make the statement that, as far as you know, the only records of telephone communications are those which are sent across the police wire? A Yes, sir.

Q Don't you know that that record is kept in police headquarters? A I don't know.

Q You don't know that? A No.

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Q Who brought these books which were brought here?

A I brought them here.

Q I will ask you to look at this book, and I will ask you whether this is not the book kept at 17 Allen Street, and it contains all of the telephone communications incoming from the wire not the police wire. Look at the books

A (Witness examines books)

BY THE COURT:

Q Did you ever see that book before? A Yes, sir. This book contains larcenies and burglaries, received from different precincts in the district, first branch of the detective bureau.

BY MR. HOFFMAN:

Q Will you swear that there is not contained in that book telephone communications received on the wire other than the police wire which you refer to? A (No answer)

BY THE COURT:

Q In other words, from one police department to another? Is there anything in that book which would record a call made by a private citizen to the police department over the public wire that you speak of?

MR. HOFFMAN: That is the point, your Honor.

MR. O'MALLEY: If the Court please, I submit this witness should not be required to answer that question, unless it is shown it was his duty to keep that record,

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and that he knows.

Q Do you know of such a book? A No, sir.

BY MR. O'MALLEY:

Q Do you make entries in that book yourself?

A No, sir, I do not.

Q Do you know whose duty it is to make entries?

A The lieutenant behind the desk.

Q He is your superior officer? A Yes, sir.

Q You never made an entry in that book?

A No, sir.

Q You have no knowledge of what entries are made there, except what you might see yourself; is that right?

A That is about all.

BY THE COURT:

Q Do you sometimes receive the incoming calls, when you happen to be present, on that telephone which you say is a sort of public telephone, for the use of any citizen?

A All they use that for is to call a detective, or a man who is assigned to the case by the bureau, if he is in the office or not.

Q Who answers that telephone? A The clerical man, and, if he is busy, any man in the office.

Q Anybody in the office? A Yes, sir, any officer in the office.

Q When you answer it, do you make a record, in writing,

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of that call? A No, sir.

BY MR. HOFFMAN:

Q Won't you swear now, that it is your duty to enter telephone calls which you receive on the private wire?

A (No answer)

BY THE COURT:

Q Do you ever receive calls on the private wire, what is known as the private wire, between the various departments of police? A No, sir, not that I know of.

THE COURT: He has not stated, as I recall it, that he ever received any message coming over the police wire, but he said, any time he happens to be present, or any other officer was present, or any person present, they answered the telephone.

MR. HOFFMAN: That is correct. He tells the truth. Now, the next question I want to ask is this:  
BY MR. HOFFMAN:

Q Is it the duty of the officer, or persons in the department, when answering a telephone call, to make an entry of it, or cause an entry to be made?

THE COURT: Over this public wire?

MR. HOFFMAN: That is right.

A Not that I know of.

Q You swear, as a detective, that you don't know of any such rule? A I don't know of any such rule.

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Q Now, please look at the book which you brought, in pursuance to my subpoena, on the date of September 17th, and tell this Court and jury whether there is contained any entry of the telephone communication from Leitner to the police headquarters, on that day?

THE COURT: He says that it came over the public telephone; it was not--

MR. HOFFMAN: Judge, I am asking him to look at the record.

THE COURT: All right; September 17th.

A There is no record of it.

Q There is no record? A No, sir.

Q Now, officer, where did you bring that book from?

A The day I sent it from Police headquarters?

Q Who gave it to you? A Lieutenant Dunn.

Q Is he an authorized officer? Is he an officer of the Department? A He is a lieutenant, attached to ~~the~~ Inspector Russell's Staff.

Q Look at the book, and tell the Court and jury whether that was the telephone book which was kept at 17 Allen Street in the month of September?

MR. O'MALLEY: Objected to, unless he shows he knows whether it was, or not.

THE COURT: he is asked to tell whether he knows.

BY THE COURT:

Q Did you ever see that book before? A Yes, sir.

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Q In what precinct was that kept? A First branch detective bureau, 17 Allen Street.

BY MR. HOFFMAN:

Q That is where you were stationed? A Yes, sir.

MR. HOFFMAN: I offer that book in evidence.

MR. O'MALLEY: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

MR. HOFFMAN: If your Honor pleases, I served a subpoena upon the Police Department to produce the books containing the telephone calls that were sent to 17 Allen Street. In pursuance to the subpoena, this officer brings it. He now testifies, in the regular way, that he got it from one of the officers; that he looked at the book; that he recognizes it, as the book kept in that office and as a record.

THE COURT: There is the trouble. He says that is a book which only records communications made between one police precinct and another, and there is, in addition to that interior system of telephones which the police have, a public telephone, in each precinct, that any citizen may use, and that it is the only way of communicating with the detective bureau by a citizen. If you go to a telephone instrument and ring up 17 Allen Street, you ring it up on the public telephone. Now,

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he says that is a public telephone, and there is no record made by anybody of any incoming or outgoing communication over that public telephone; but the book that he ~~has~~ is presented with, and the only one that is kept is the private wires between the various departments of police headquarters. Now, he says that Leitner rang up over the public telephone, as that is the only means any citizen has of communicating with 17 Allen Street; that no record is made of any incoming communications there. Did you receive that communication?

THE WITNESS: I received it, yes, sir.

THE COURT: That he received it; that he made no record of; that he was not in the habit, nor is it the habit of the Department, to make any record, make any record of the incoming calls over that telephone.

MR. HOFFMAN: I don't believe this man will stand by the latter part of your Honor's statement?

THE COURT: That is the way he testified.

MR. HOFFMAN: I want to be honest with your Honor, and honest with the witness. The information I received from Police headquarters -- and, if your Honor wants it, I will bring the third Deputy here, who will corroborate the statement, that it is the duty of each precinct to make a record of every incoming call, where detectives are requested to go out and do work. If your

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Honor wants that evidence, I will bring the third deputy Commissioner here.

THE COURT: If you think it is necessary, bring him, but I do not see what relevancy it has to the guilt or innocence of the defendants, unless your contention is that the defendants were not arrested by officers from 17 Allen Street, because the testimony is that these officers went from 17 Allen Street; but, let us assume they did not. They arrested the defendants, and that is all they are testifying to. They testified they arrested the defendants, and on the defendants found these goods. Now, that, from your argument yesterday, I assume is not contradicted. I assume, in all fairness, you will state that is so, because the testimony seems to be overwhelming to that effect, and I think you said so yesterday.

MR. HOFFMAN: I take an exception to your Honor's statement.

THE COURT: If you did not say so yesterday then I withdraw that, but I understood you did say so yesterday.

MR. HOFFMAN: But your Honor wanted to know what I will prove. I will attempt to prove, by this man's own testimony, that he was never at 17 Allen Street, and that no telephone communication reached 17 Allen Street.

THE COURT: That who was not there?

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MR. HOFFMAN: That this man was not at 17 Allen Street, and that that arrest was had by arrangement.

THE COURT: All this witness testified to is that he arrested the defendants. He does not say they are guilty.

MR. HOFFMAN: He says he got a call at 17 Allen Street. I want to prove that he did not get it. That record shows he did not get it.

THE COURT: No. Objection sustained. And if you want to produce the third deputy police commissioner, you may do so, but I don't see what relevancy it has to the guilt or innocence of the accused. In every case of this kind, counsel endeavors to try the police department, and we are not going to try the police department.

MR. HOFFMAN: In view of your Honor's statement, I think it is proper to ask that a juror should be withdrawn. I am not trying the police department. I have a right to examine that man. I have a right to find out whether he is telling the truth in any single detail, and, if the witness lies in any respect, the jury has a right to disregard his entire testimony, and I am attempting to show he is not telling the truth, <sup>and</sup> by reason of your honor's remarks, I respectfully request that a juror be withdrawn.

THE COURT: Well, your request is respectfully overruled. We are going to try two defendants, and we

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are not going to try the Police Department. If any one has a complaint against the police department, there is a way to do that, but we won't shunt off, or side-track, the case of any particular defendant, in order to try the police department.

MR. HOFFMAN: I respectfully submit that I am not in a position to proceed with this case, in view of your Honor's statements. Your Honor knows I have a right to shake this witnesses testimony, if I can. I realize I am not trying him now, but I may try him later on.

THE COURT: If you desire to, I shall aid you in, every way I can, and when you bring him here on trial, I will promise you that nobody else will be tried but him.

MR. HOFFMAN: Now, will your Honor admit that book in evidence?

THE COURT: No. That is overruled. Take an exception, and you have your remedy, if I am wrong.

MR. HOFFMAN: Your Honor will give me the benefit of an exception? I ask your Honor to instruct the jury not to pay any attention to any remarks about trying the Police Department?

THE COURT: Gentlemen of the Jury, we are not trying the police department, and you will, therefore, direct your attention to the guilt or innocence of the defendants on trial only.

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MR. HOFFMAN: That is right.

BY MR. HOFFMAN:

Q Now, officer, you don't know much about the telephone book, and I will ask you to place that aside.

THE COURT: Now, gentlemen of the jury, any colloquies that pass between Court and Counsel, should not be considered by you in your deliberations as to the guilt or innocence of the defendants. You should not be influenced either one way or the other, either for or against the defendants. Your verdict must be based upon the evidence given on the stand.

Q Mr. Sullivan, this other book which you brought, you brought it in pursuance to the subpoena which was served is that right? A Yes, sir.

Q Is the book which is now here the police blotter?

A Known as the police arrest blotter.

Q Police arrest blotter? A Yes, sir.

Q This arrest was made on the 17th of September, at what time? A About five thirty, or five forty.

Q About five thirty of what? A Between five thirty and five forty, I arrested the defendants.

Q Now, then, the distance between 17 Allen Street and Stanton and Ludlow, would take you how much time?

A I should judge about fifteen minutes.

Q Fifteen minutes? A Yes, sir.

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Q What time did the call reach Allen Street?

A About twenty minutes past five; something around that.

Q What time did you get back to Police headquarters with these defendants? A First branch detective bureau?

Q Allen Street? A I should judge about twenty minutes of six.

Q Twenty minutes of six? A About that.

Q Is it the custom that when these defendants are brought into the station house, as you may call it, that a record be made of the arrest? A Not always.

Q In this case, was there a record made of the arrest? A No, sir, not as soon as they were fetched in.

Q How soon after they were brought in was a record made?

A Well, perhaps about an hour, or an hour and a quarter, maybe.

Q The police blotter says six thirty-five; so that is correct? A About that.

Q Who made the entries in this book on that day, if you remember? What was the Lieutenant's name?

THE COURT: He might tell by looking at the handwriting.

THE WITNESS: Your Honor, we have nothing to do with those books. We are not allowed to see those books at all.

BY THE COURT:

Q Do you happen to know the handwriting of the lieu-

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tenant who made it? State, if you can, If you can't, say so. We don't want any guess, officer.

A No, sir, I could not tell you.

BY MR. HOFFMAN:

Q Do you know the name of the man who was in charge that night?

THE COURT: Is there any objection to his reading off the record?

MR. O'MALLEY: It is not material.

THE COURT: It is not at all material. Do you object to it?

MR. O'MALLEY: I object.

THE COURT: Mr. Hoffman, I would not ask an officer who hadn't anything to do with the book, and says he seldom sees it, because there is a way to do it right. You can get the officer who made the entries.

BY MR. HOFFMAN:

Q Have you the subpoena that I served? A No, sir, I have not got it with me.

MR. HOFFMAN: I ask for the man who made the entries and the man who kept these books.

THE COURT: If you would send there and inquire--

MR. HOFFMAN: I served a subpoena requesting that the officer who made the entries on the 17th of September appear here.

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THE COURT: It is an official record, and you can read it, without producing the person who made it.

MR. O'MALLEY: I want to have it noted on the record that this examination is collateral; it is not proper cross examination, and he is making him his own witness.

THE COURT: Yes.

MR. HOFFMAN: Very well.

Q Officer, who furnishes the information to the lieutenant regarding the entries of names? Who furnishes the gentleman that writes in this book with the information?

A The officers in the case.

Q In this case, did you furnish the officer with the information? A No, sir, I did not.

Q Who did? A It was one of the officers whose names are on that blotter. Which one, I really could not tell you.

THE COURT: Read it.

MR. HOFFMAN: The officer's names are Michael Sullivan, Gorevan, F. Horton, FitzPatrick, and J. Cuniss.

THE WITNESS: Yes, sir.

Q Which one of these officers, if you know, furnished the information to be placed in the police blotter?

A I could not tell you.

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Q That is right. Who went to make the arrest, how many of the five officers? A Detective Gorevan and I.

Q Why have you the names of three additional detectives here? Why were there given three additional names other than Gorevan and yourself? A They were asked for by Leitner when he called on the telephone. Leitner asked if Horton or FitzPatrick was in the office.

Q And because he asked --

A And they were in the office when we got back, and when we got back there, we left the two defendants in the office, in charge of Gorevan FitzPatrick and Cunniss, while went out and got the receiver, who was Sam Saffer.

Q Now, then, you say Leitner-- I won't say you said, because you did not say so. Did Leitner go from Stanton Street and Ludlow to Police headquarters together with these detectives that night?

MR. O'MALLEY You mean the defendnats?

MR. HOFFMAN: Yes, with the defendants?

A Did he follow us?

Q Yes. A He waited outside until we got the defendants.

Q Do you know what I am asking you. You are smart. I am asking you did Leitner go with these defendants to 17 Allen Street, together with you, when the arrest was made? A Accompany me there?

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Q Yes. A Not that I can remember.

Q Not that you can remember? A Yes, sir.

Q And that is the best answer you can give this jury?

A Yes; he may have followed us there; I don't know.

Q Did he go with you up stairs, in the clerk's office?

A (No answer)

BY THE COURT:

Q Have you any memorandum of it? A I have no memorandum of Leitner's coming.

Q Have you any memorandum of this arrest in your book, September 17th? A (No answer)

Q Don't you have it in regular order, according to dates? A I have burglaries and everything, your Honor.

Q I mean, don't you have it according to the date?

A Yes. It is all mixed up, though. There it is.

BY MR. HOFFMAN:

Q Look at the book, for the purpose of refreshing your memory, and tell me whether Leitner was at Police headquarters that evening, together with these defendants, when the arrest was made? Have you any record of it?

A I have no record of Leitner being at police headquarters with these defendants.

Q Isn't it a fact that Leitner was not at police headquarters that night? A Yes, sir, he was there that night.

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Q Did he go with these defendants when the arrest was made? A I don't think he did.

MR. O'MALLEY: He says he does not remember.

THE WITNESS: I don't remember. I don't think he did.

Q Officer, in order to have made this arrest, didn't you deem it necessary to have a complainant? A No, not necessarily; it was on information and belief that we arrested those defendants.

Q On whose information and belief? A Leitner's information.

Q That is right. Didn't you think that it was proper that he should go with you to the police station, together with the defendants? A No.

MR. O'MALLEY: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I don't see the relevancy, but, go ahead.

Q Didn't you consider him the complainant?

A No, sir.

Q Who did you consider the complainant?

A The man who owned the stuff.

Q On the evening of September 17th, did you know who the owner of this stuff was? A Yes, sir, being it was marked on the wrapper. It was marked right on the wrapper

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of the goods.

Q If Leitner had been at Police headquarters that night, would his name appear on that blotter?

A I don't think it would.

Q Don't you know it is customary that the name of an important complaining witness appear upon the blotter?

MR. O'MALLEY: Objected to. It does not appear Leitner was the complaining witness. He simply pointed these defendants out to the officer who arrested them.

THE COURT Let him answer the question if he can?

A Not that I know of, not a complaining witness.

Q What part did you think Leitner had in this transaction? A That he seen these men take the package; that is about all; and telephoned to the office that they had taken it.

Q That was an important witness, wasn't he? He was an important witness? A Yes, sir.

Q I will again ask you, considering the man, as you say, an important witness, didn't you think it was right that he should go with you to 17 Allen Street?

A Not necessarily.

Q Did you have an arrangement with him, where to meet him? A No, sir, I did not.

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Q What was the understanding between you and Leitner?

A There was no understanding at all between Leitner and I.

Q How was he to get to you, and how were you to get to him? A I have seen Leitner dozens of times in the first branch detective bureau.

Q Was he a friend of yours? A Yes, sir, by seeing him there, that is all.

Q In answer to Mr. O'Malley's question, you claimed you met Leitner about one hundred and fifty feet from Stanton Street? A I met him on Ludlow, about one hundred and fifty feet from Stanton.

Q How did you go from Ludlow Street from headquarters? What route did you take? A From the office, first branch detective bureau?

Q Yes, wherever you went? A Went up to the corner of Canal and Allen, rode on the L. from Canal and Allen to Rivington, got off at Rivington, walked over to ~~Allen~~, Ludlow, and rightdown Ludlow Street to Stanton.

Q You met Leitner one hundred and fifty feet from the corner of Stanton, on Ludlow? A About.

Q Won't you swear it was two hundred feet?

A No.

Q Swear it was one hundred and seventy-five feet?

A No.

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Q You are pretty sure it was about one hundred and fifty feet? A About one hundred and fifty feet.

Q Tell us accurately the number of feet?

A About from this end of the room to the other end of the room.

Q And you consider this distance one hundred and fifty feet? A About that.

Q Was it light, or dark, at that time? A Well, it was light.

Q Light? A Yes, coming on evening.

Q Was Leitner alone, or with somebody else?

A He was alone alone when he met detectives Gorevan and I.

Q He was alone? A Yes, sir.

Q Was he standing, or walking towards Rivington Street? A He was standing on Ludlow Street until he seen Detective Gorevan and myself.

Q Standing on the sidewalk, or in the gutter?

A Standing in the gutter.

Q In the gutter? A Yes, sir.

Q Where is the entrance to this store, where these defendants were found? Is it on Ludlow Street, or Stanton Street? A Well, there is an entrance on Stanton Street, and there is an entrance, a little door, on Ludlow Street.

Q What entrance did you take that night? A Stanton Street.

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Q That is right. You took the entrance around the corner. As you were coming down Ludlow street, you took the entrance around the corner, namely, on Stanton Street?

A Yes, sir.

Q You are positive in your testimony that you met Leitner one hundred and fifty feet from the corner of Stanton and Ludlow Streets? A I said about one hundred and fifty feet.

Q If Leitner testified that he was standing on the corner of Stanton and Ludlow, he was mistaken? A He was.

Q -- Don't you know that -- I withdraw that question.

MR. HOFFMAN: At this point, I will accept your Honor's suggestion and read into the record the entry of the blotter. "Arrest Number --"

MR. O'MALLEY: What is the purpose of it?

THE COURT: It doesn't make any difference?

MR. HOFFMAN: "Arrest No. 516. Ninth month, 9, 17, 10. 635 P. M. Grand Larceny, Morris Littman, residence 206 Delancey Street, Manhattan, age 21, Nationality, United States, Russia, business, clerk, read and write, yes. The officers names are the officers which you had, Sullivan, Gorevan, Horton, FitzPatrick and Cuniss. Name of complainant, Louis I. Baron, 137 Greene Street, Manhattan. Arrest No. 517, 9-17-10, 635 P. M. grand larceny, Isidore Kaplan, 242 East Fourth Street,

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Manhattan, age 17, color white, nationality, United States, clerk, Officers, Horton, Fitzpatrick and Cuniss.

Q Do you know who furnished the name of that complainant on the night of that arrest? A No, sir.

Q Did you furnish the name of Bron & Company?

A I did not, sir.

MR. HOFFMAN: That is all.

BY THE COURT:

Q Have you anything in your note book there of this arrest that has not been brought out? A No, your Honor, that is about all; just about the same.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q Have you an entry in there at all?

A Yes, sir.

MR. O'MALLEY: I think we ought to have what is entered in the regular course, following the arrest.

THE COURT: Do you object, Mr. Hoffman?

MR. HOFFMAN: I certainly do.

THE COURT: Objection sustained.

MR. HOFFMAN: Just one question.

BY MR. HOFFMAN:

Q You know nothing of this larceny on Greene Street?

A No, sir.

THE COURT: No, he has never intimated that he

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knows a thing about it.

BY MR. O'MALLEY:

Q You, as a police officer, frequently become a complaining witness yourself in the Magistrates Court?

A Yes, sir.

Q Look at that paper. Were you made the complaining witness in this case? Didn't you swear to this affidavit? A Yes, sir. Do you want to know how I came to do that?

MR. O'MALLEY: No.

THE COURT: Would any member of the jury like to ask the witness a question, but let it bear on the issue in the case, which is, did, or did not, the defendants steal the box of goods; that is the question we are trying.

BY MR. O'MALLEY:

Q You made no entry in this last book at all?

A No, sir.

THE COURT: He said that. He knows nothing about the book.

M I C H A E L J. G O R E V A N, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your full name? A Michael J. Gorevan.

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Q You are a member of the Municipal Police Force of the City of New York? A I am.

Q Attached where? A Detective Bureau.

Q How long have you been such member? A Going on seven years.

Q On the 17th of September this year, were you attached to the Allen Street Detective Bureau? A Yes, sir.

Q Did you go, with officer Sullivan, to Ludlow Street? A (No answer)

BY THE COURT:

Q Did you have anything to do with the arrest of these defendants? A I did.

Q Tell us all about it? A On the date mentioned, I was out on what they call day duty in the office, and a telephone message, on the outside wire, what we had in the office, came over the wire, and he asked for officer Fitzpatrick or Horton.

BY MR. HORTON:

Q Were you talking? A Was I talking?

Q Over the wire? A No, sir; officer Sullivan was talking.

MR. HOFFMAN: I move to strike out the conversation.

THE COURT: Strike it out.

THE WITNESS: Officer Sullivan was talking over the wire, and he says to me, "Come on Mike, around to

Ludlow Street, "so I went around --

MR. HOFFMAN: I move to strike out, "Come around to Ludlow Street".

THE COURT: It is harmless. Those little things take up time, but hurt no one.

MR. HOFFMAN: Yes, but I want to get a record.

THE COURT: It takes up such an immense amount of time for nothing.

THE WITNESS: Officer Sullivan and I proceeded to this place. We saw a young man there, and we went inside. When we went inside, I saw Littman, with his coat and hat off.

BY THE COURT:

Q Which is Littman? A The one on that side  
(Indicating)

Q The further one? A Yes, sir, and Kaplan was sitting alongside of him. I says to Littman, "where did you get that stuff?" He says, "Why, what is it to you?" I says, "I am a policeman, and I have got information that you stole it". He says, "I didn't steal it". I says, "Where did you get it?" He said, "My father sent me around here with it". I said, "Where is your father's place of business?" He said, "132 Greene Street". I said, "Are you sure your father sent that around here?" He said, "Yes". I said, "Now, you are telling me a lie".

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He says, " I will tell you; a red headed fellow gave it to me. I will go out and see if the red headed fellow is out there". I said, "You will do nothing of the kind. You will stay here". I went out and looked around for the red headed fellow, and I couldn't see anybody, so we brought them to 17 Allen Street, the detective Bureau.

BY MR. O'MALLEY:

Q Did you see this bundle there at the time? A I saw two dozen skirts.

Q And this was brought along to the detective bureau?

A Yes, sir.

Q And when you got to Ludlow and Stanton Streets, did you see any one before you went in the store? A I did.

MR. HOFFMAN: Objected to as leading.

THE COURT: Objection overruled.

MR. HOFFMAN: Exception.

Q Did you see anybody? A I did.

Q Who? A A young man named Samuel Leitner.

Q After you came out with the defendants, you went to Allen Street, you say? A I did.

Q Do you recall whether or not Leitner went with you? A He followed right behind me.

Q And went up to the detective bureau? A And went up to the detective bureau.

Q And is that the only conversation that you had with the defendants that you recall?

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A I asked Littman was he ever arrested before. He said, "no". I says, "You better tell the truth, where you got this stuff". He says, "A red headed fellow gave it to me". We brought him to Police headquarters, and up to the Photograph gallery, and up there we had his finger prints taken, and his picture was brought forth from the cabinet, but he denied that it was his picture.

Q And then you afterwards arraigned the defendants in Essex Market? A Yes, sir.

Q And they were held for the Grand Jury? A Yes, sir.  
BY THE COURT:

Q How about his finger prints? A His finger prints showed his picture was there.

Q What did he say when confronted with that?

A He denied his picture. He said, "That is a wop; that aint me".

Q How about the thumb print? Did he say those were not his thumb prints? A He did not deny that, because we were sure they were.

Q Did he say anything in regard to that? A He simply denied that his picture was there.

MR. HORNMAN: Objected to as incompetent, irrelevant and immaterial, and not binding in this case.

THE COURT: Objection overruled.

MR. HORNMAN: Exception.

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Q What did he say, if anything? Didn't he say anything in regard to the thumb prints? A No, he didn't say anything in regard to the thumb prints, but he denied that was his picture.

Q Are the thumb prints on the picture?

A No, it is on a separate piece of paper.

Q You know nothing about the guilt or innocence of these defendants in this case, do you? A No, sir, only I saw them with the goods.

Q Only you know they had these goods?

A That is all.

Q You don't pretend to state where they got them?

A No, sir, I do not.

CROSS EXAMINATION BY MR. HOFFMAN:

Q Officer, where did you and Sullivan meet Leitner that evening? A On the corner of Stanton and Ludlow, right outside the store.

Q Right outside the store? A On the corner. The store is on the corner.

Q If Sullivan testified that he met Leitner one hundred and fifty feet from the corner, he did not tell the truth, or he was mistaken? A I can't say that. I know I saw Leitner on the corner.

Q Were you and Sullivan together? A We were, yes, sir.

Q Did you both meet Leitner together? A Yes, sir.

Q So that, if Sullivan said that he met Leitner on the corner, he was mistaken? A Well, he might have been a very poor judge of distance.

BY THE COURT:

Q How far was this man, Sam Safford--

A He was behind the counter.

Q How far is his shop from the corner?

A It is right on the corner, but the entrance is about fifty feet from the corner.

BY MR. HOFFMAN:

Q You took the entrance on Ludlow Street?

A On Ludlow Street?

Q Yes. A On Stanton Street.

Q Why didn't you take the entrance on Ludlow Street? A Stanton runs the same as Houston.

Q You were walking on Stanton? A Yes, sir, walked east from Allen, on Stanton.

Q You are not mistaken about it? A That is the street, Stanton Street.

Q You walked down Allen Street? A Walked north on Allen Street to Stanton.

Q That is right. When you got out of police headquarters, you walked north on Allen Street? A North on Allen Street.

Q Until you got to Stanton Street? A Yes, sir.

Q When you got to Stanton Street, you walked over to the corner of Ludlow? A Yes, sir.

Q That is right. That is all. You did not ride on the Elevator? A No, sir.

Q You and Sullivan were together? A Yes, sir.

Q You did not ride on an elevator? A Rode as far as Stanton Street on the elevator.

Q You rode on the elevator as far as where?

THE COURT: You mean an elevated train?

MR. HOFFMAN: Yes, sir.

A Yes, Second Avenue elevated train.

Q Please look at me. Don't look at anybody else?

A I am looking at you.

THE COURT: What was the object of the remark?

MR. HOFFMAN: I thought he was looking towards the back of the room.

Q How did you and Sullivan leave Allen Street? What way did you travel to Ludlow Street? A We got out at 17 Allen Street, and got on a Second Avenue ~~xxx~~ L. Train at Canal and Allen, and went as far as Rivington Street, and we proceeded then to Stanton Street, on Allen.

Q On Allen Street? A Yes, sir.

Q In other words, you walked down Allen Street from Rivington to Stanton? A Well, I couldn't say

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whether Rivington is ahead of Stanton, or not.

Q You are in that precinct? A I was only there a short while.

BY THE COURT:

Q Are you there now? A No, sir, I am in Brooklyn now.

BY MR. HOFFMAN:

Q Allen Street is the street where the Elevated road runs? A Yes, sir.

Q When you got to Stanton, you walked east?  
A Yes, sir.

Q And you say you met Leitner directly in front of the door? A On the corner. The entrance aint at the corner.

Q You met him at the corner? A I met him at the corner.

Q And you and Sullivan were together? A Yes, sir.

MR. HOFFMAN: That is all.

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THE PEOPLE REST.  
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THE DEFENDANT'S CASE.

(Mr. Hoffman opens the case to the Jury on behalf of the defendants)  
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L O U I S        N A D E L, called as a witness on behalf of  
the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOFFMAN:

Q    What is your name?    A    Louis Nadel.

Q    Where do you live?    A    623 East Ninth Street.

Q    What is your business?    A    I am a fruit dealer.

Q    Have you a horse and wagon?    A    Yes, sir.

Q    Do you know this defendant, Kaplan?

A    Yes, sir.

Q    On the 17th day of September, was he with you on  
that day?    A    Yes, sir.

Q    What was he doing for you?    A    He was working for me  
that day.

THE COURT:    Which one of the defendants was that?

MR. HOFFMAN:    Kaplan.

Q    What was his work?    A    Well, he helped me load up,  
and I sent him to customers, to deliver some goods.

Q    How long was he working for you?    A    He was work-  
ing the last time from May 23rd.

Q    Until the day of his arrest?    A    Until the day of  
the 17th of September, I believe.

Q    What time did he quit work on the 17th day of  
September, about what time?    A    Four o'clock.

Q    Where did he quit working?    A    We unloaded the  
wagon, and I live, of course, in the same house there, and

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I have a cellar down below, and where we stopped, it was that same house.

Q What hour of the morning did he go to work on that day? What hour did he meet you, to go to work?

A About six o'clock; between six and seven.

Q In the morning? A Yes, sir.

Q And did he stay with you all day, up to four o'clock?

A Yes, sir.

Q And at four o'clock he went away? A Yes, sir.

MR. ROFFMAN: That is all.

BY THE COURT:

Q Where is your place of business? A I live in 628 East Ninth.

Q And is that your place of business? A Well, I run a route of customers.

Q What sort of route is it? Milk route?

A No, fruit.

Q Fruit? A Fruit and vegetables.

CROSS EXAMINATION BY MR. O'MALLEY:

Q What did you say your business was? A Fruit dealer.

Q How long have you been in that business?

A For the last fifteen years or more.

Q At the same address? A No, I have been living in

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Attorney Street; I can't recollect the number; but I can tell you whereabouts it is, the house.

Q When was the first time you talked with anybody about this case? When was the first time? A The first time?

Q Yes. A Well, the lawyer asked me the same questions, what he is asking me now.

Q When did he ask you that? Two or three days ago, or a week ago, or when? A About two or three days ago.  
first

Q Now, was that the time that you had talked with anybody about this case? A The first time.

Q That was the first time that you ever talked with anybody about Kaplan? A Yes, sir.

Q This case? A Yes, sir.

Q Now, you say he began to work for you May 23rd?

A Yes, sir.

Q How do you fix that date? A How I fix that day?

Q Yes? A Well, his mother came up and asked me if I would take him to work, and he was coming home from Elmira, and I just needed a boy, and I took him back to work, because he worked once before for me.

Q How did you know it was the 23rd of May?

A I made that day he started to work.

Q How do you mean you made the day? A I simply looked when he started to work.

Q When did you look? A I didn't look at all, but

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I just know.

Q How do you recall it was May 23rd? A Well, I know it.

Q How? Did you make an entry of it in a book? or anything? A Well, I didn't make any entry in a book.

Q Do you keep books? A I keep books, yes, sir.

Q Did you make an entry there on the day he began working for you? A No, because I only employ one man.

Q Did you make an entry that day he quit working for you? A No.

Q How do you know it was September 17th?

A Well, I know it.

Q How do you know it? A I know what day the boy left, and I know I looked for another man.

Q How do you fix that day? How do you know it was not the 16th of September? A Because this was on Saturday, and I paid him off that day.

Q How do you know it was not the Saturday preceding the 17th? A Well, I know how long that boy was working for me.

Q Is that the best way you can fix the 17th of September? A Yes, sir.

Q You say you did not talk with anybody about this case until three days ago? A The mother came up, and asked me if I would not like to come in Court and show

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that he was working for me.

BY THE COURT:

Q When did the mother say that? A A couple of days ago.

BY MR. O'MALLEY:

Q Then it was <sup>for</sup> the first time you talked with anybody it was two or three days ago, when you talked with the mother, or the attorney; is that right? A I talked with the attorney?

Q Yes. A Yes.

Q Was that the first time you talked with anybody about this case? A The first time, yes, two or three days ago.

Q When it was brought to your attention, what did you have to fix in your mind that the defendant Kaplan, left your employ on the 17th of September, which would be about three months ago?

THE COURT: Two and one half months ago.

Q Now, tell this jury now, when this matter was called to your attention for the first time, two or three days ago, were you able to tell this jury that this boy Kaplan left your employ on the 17th of September. How do you fix that date? That is what we are after? A I could not say anything then, only I know this day the boy stopped working and I have been looking for another fellow, and

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I offered the job to another fellow, and he wouldn't start until Monday.

Q How do you know it was Saturday the 17th of September

A Because I remember it.

Q Do you remember what took place on Saturday, the preceding week, the 10th of September? A Yes, sir.

Q What took place in your business on Saturday, September 10th? A What I was doing?

Q Yes. A Well, I had been doing the same trade as I have been doing every day.

Q Did you hire anybody that day? A On the 10th?

Q Yes. A No, sir.

Q Did you discharge anybody that day? A No, sir.

Q Did anybody leave your employ? A What?

Q Did anybody leave off working for you? A No, not on the 10th.

Q Now do you know Captain did not leave you on September 10th, or September 24th, rather than September 17th?

A Well, I remember that. I remember when he was here, and when he leaves.

Q Now just now you fix that date, except

that you remember it? A Well, I can remember that very well.

Q Now just now you say it was when she

was here, and she was here when she

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about it? A Yes, sir.

Q That was two months and a half ago, was it?

A Yes, sir.

Q What were you doing on September 17th? A I was serving my route.

Q What route did you serve that day?

A I served the same route each day.

Q What did you deliver? A Fruits and vegetables.

Q What was that route?

THE COURT: I would not go into that.

MR. O'MALLEY: I was just leading up to something else, your Honor.

Q What time do you quit work every day? A I have no hour.

Q You have no hour? A No, sir.

Q What time did you quit on September 17th?

A We came home about half past three.

Q When the defendant, Kaplan left?

A He left at four, because it takes me half an hour to load off from the wagon.

Q What time did Kaplan quit the day before?

A The day before?

Q Yes, Friday, September 16th? A Well, I guess a little later.

Q What time did he quit on the 16th? A I could not

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remember that.

Q What time did he quit on the preceding Saturday, September 10th? A Well, I would not like to say, because I can't remember exactly the hour.

Q If you can't tell us the hour upon which this defendant quit work on any other day, how are you able to fix it that he quit work at four o'clock on Saturday, September 17th; how do you fix that? A Because I was going to get another load of stuff from the market, and I figured when I got done it would be too late, because the market closed at five.

Q Is that the best way you have of fixing four o'clock, Saturday, September 17th? A Yes, it takes me over three quarters of an hour before I get down to the market.

Q When is the first time that you looked at the clock on Saturday, September 17th? A The day Kaplan left.

Q From that time, up until the time you talked with the attorney, and the mother of the defendant, you had not thought about that day? A I did.

Q When did you think about it? A Well, I always knew it, the day the boy left.

Q How did you know it? A I simply knew it. I knew what time I quit yesterday.

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Q But it had not been called to your attention by anybody until you were asked about this case, is that so?

A Well, nobody asked me that.

Q No one asked you about it, until the attorney or his mother, talked about it; is that right? A Well, yes.

Q That was the first time that you had occasion to call to your own mind what time the edefendant left work on the afternoon, wasn't it? A No, sir.

Q When did you ever think about it before that time?

A Well, I always did know what time the bky left.

Q Did you ever think about it, I say, until this attorney spoke to you about it? A I thought about it, yes, sir.

Q How many times? A Well, always. Anybody could ask me what time the boy left, and I could tell them.

Q That is the best answer you can make, is it?

A Yes, sir.

Q What time did you say the defendant started to work that morning? A Between six and seven.

Q What time did he start work the morning before that?

A The morning before?

Q Yes. A I guess about the same time.

Q What time did he start work the morning before that?

A I would not like to answer that; I don't remember; I

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remember one or two days.

Q Isn't it a fact the only day you tell us anything about is September 17th? A Well, sometimes the work begins at six, and I don't start until half past six.

Q This man was in your employ from May 23rd until September 17th. Can you pick out any day during that time that he was working for you that you can tell this jury what he did? A He was doing all kinds of work.

Q Well, pick out some particular day and tell this jury what he did on any particular day? What time he came to work, what he did, and what time he left off work?

A Pick out any day during that whole five months?

A Well, the boy simply-- there ~~was~~ was no time he should come because sometimes I started late, and when he went home I always would tell him what time to come.

Q What sort of a day was September 17th?

A I am never busy, only Tuesday, Thursday and Friday.

MR. O'MALLEY: I move to strike that out.

THE COURT: Motion granted.

Q What kind of day was Saturday, September 17th?  
Did it rain? A What day?

Q Saturday, September 17th? A It was not raining.

Q Sure of that? A Yes, sir. I guess so.

Q What? A I kind of think so.

Q Do you remember anything about it? A I think it

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was a nice day.

Q Don't think. Do you remember what sort of a day it was? A No, sir, I don't remember.

MR. O'MALLEY: That is all.

RE DIRECT EXAMINATION BY MR. HOFFMAN:

Q You remember the day, you claim, because that was the day he quit; is that right? A Yes, sir.

Q And that is the reason why it is clear in your mind? A Yes, sir.

MR. HOFFMAN: That is all.

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A B R A H A M B E R M A N, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HOFFMAN:

Q What is your full name? A Abraham Berman.

Q Where do you live? A 168-1/2 Delancey Street.

Q What is your business? A Delicatessen store.

Q How long have you had a delicatessen store?  
How long a time? A It is about two years.

Q During those two years, are you on Delancey Street?

A Yes, sir.

Q Do you remember the month of September? A Yes, sir.

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Q Do you remember the 17th day of September?

A Yes, sir.

Q Do you know what day of the week that was?

A That was on a Saturday?

Q Do you know these boys? A Yes, sir.

Q How do you know them? Are they customers of yours? A Yes, they come in some Saturday evenings, and they bought sandwiches; they come in my place often; one fellow lives next to the house.

Q Which fellow? A Littman.

Q He lives next door? A No, he works for his father. He has a shoemaker store. He worked there.

BY THE COURT:

Q Who does? The father? A His father.

Q Works as a shoemaker? A Yes, sir.

Q Journeyman shoemaker? A Yes, sir.

MR. HOFFMAN: He does not know what journeyman means.

BY MR. HOFFMAN:

Q On the 17th of September, which you claim was a Saturday, can you recollect at what hour you saw these boys in your store? A Well, it was before five.

Q How long before five? A About a quarter to five.

Q How do you remember the time? A I know they came in before five o'clock in the store.

Q Did you talk to any one about this case? Did you

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talk to me about this case? A No.

Q Are you related to any of these boys? A No, sir.

Q And what time was it, you say, that you remember these boys were in your store on that Saturday? A It was about five, or a quarter to five, something like that.

Q Who asked you to come here as a witness?

A Who?

Q Yes. A I was sent a subpoena.

MR. HOFFMAN: That is all.

CROSS EXAMINATION BY MR. H'MALLEY:

Q With whom have you talked about this case?

A With whom?

A Yes.

THE COURT: Please don't repeat the question. Just answer it. The question is, who spoke to you about this case.

THE WITNESS: The lawyer.

THE COURT: What lawyer?

THE WITNESS: This here. (Indicating Mr. Hoffman)

Q When did he talk to you, how long ago?

A The time I got the subpoena.

Q How long ago was that? A A couple of weeks.

Q Was that the first time you knew anything about

this case? A That is all.

Q You say the defendant Kaplan was in your place what time that day? A A quarter to five.

THE COURT: Speak loud.

THE WITNESS: It was before five o'clock.

Q And how often was he in the habit of coming in your place? A Sometimes he used to come in three times during the week; I cannot tell exactly.

Q Do you know whether he was in there before on that week? A Probably he was.

Q Do you know? A Yes, I think he was.

Q What day? A He was on Monday once.

Q That week? A Yes.

Q That would be the preceding Monday? A Yes.

Q What time was he there that day? A The same time, before evening.

Q About what time? A Four o'clock.

Q Will you fix it at four? A Four o'clock, it was.

Q When was the next time he was in there? A The next time, I believe it was Saturday, that Saturday.

Q How many times had he been in prior to those two times?

THE COURT: Before those two times?

A Well, about two or three times.

Q Two or three times a week, would you say?

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A Two or three times a week.

Q Was he in on Saturday, September 17th? A Yes, sir.

Q Saturday, September 10th? A The 10th?

Q Yes. A No, not as I know.

Q Was he in on Friday, September 9th?

A I don't know.

Q Was he in on September 8th? A Yes.

Q What time did he come in that day? A Probably it was five o'clock.

THE COURT: Have you any independent recollection of it, witness, or are you guessing?

Q Do you know whether he was in there on that day?

A I know he was there on that day.

Q On the 8th of September? A Yes, sir.

Q What time? A Four o'clock.

Q Was he in on the 6th of September? A No, sir.

Q Was he in on the 5th? A I can't answer.

Q Was he in on the 1st of September? A Probably, yes.

Q How long has he been coming to your store two or three times a week? A How long?

Q All summer? A Not all summer.

Q Two or three months? A About two months.

Q Two or three times a week? A Yes, sir.

Q And would he usually come in in the afternoon, about

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five? A Yes, around this time.

Q Now, during that time, you think he came in about two or three times a week? A Yes, sir.

Q And you think he was in there on the 5th of September? A Yes.

Q About what time? A Four o'clock.

Q And on the 8th of September? A No, he was not.

Q What was the next time? A

THE COURT: I think you just said he was there.

(Testimony read by the stenographer)

BY THE COURT:

Q State again if he was there on the 8th, and 7th, because I think you stated two different ways. Now, tell us, if you know, whether he was there on the 8th. If you don't know, just say so? A I believe he was there on the 8th.

BY MR. O'MALLEY:

Q How do you fix that date? A Because I know he used to work with his father in the cellar, and he always used to come in the store and get a sandwich.

Q What day of the week was that? A I cannot say. I guess it was on the 8th.

Q What day of the week? A Monday--

BY THE COURT:

Q Are you guessing, witness? A Monday, I believe.

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BY MR. O'MALLEY:

Q Sure it was Monday? A Yes, sir.

Q What day of the week was the 5th? A Friday, I think.

Q Do you know what day of the week the 8th was on?

A I can't tell exactly. I never kept track of it.

THE COURT: I am asking you not to guess. You are giving testimony under oath, and I am merely calling your attention to the fact. Do not guess. If you do not know, say so. Now, was he there on the 8th?

THE WITNESS: He was, around four or five o'clock, four o'clock.

Q How do you fix that hour? A Because he used to be there at this time.

Q Why would he be there at that time? A I don't know why.

Q Now do you fix the time as five o'clock on September 8th? You say, because he was there at that time. You give that as a reason. Now, what is the reason you give for fixing that date? A I cannot answer that.

BY THE COURT:

Q Do you keep any books that would indicate the hour or the date that this defendant called, or either of them?

A No, I don't keep any books.

Q And do you keep a record of the hour when a customer

buys anything? A No, sir.

Q You say the first time any one spoke to you about this case was about two weeks ago; is that right?

A Yes, it was about two weeks.

Q Do I understand then, that you then, for the first time, caused your mind to run back two months before that, to remember the day that this defendant was in your shop? Is that the way you located it? Is that the way you fixed the hour? Or do you let your mind go back two months, merely through memory, and fix it that way? Have you any writing that would fix it certainly? A No, I haven't got any writing.

Q None whatever? A No.

BY MR. O'MALLEY:

Q Now, isn't it a fact you are guessing as to what day he was in there? A Of course I am. I can't say exactly. I aint got no books.

MR. O'MALLEY: That is all.

RE DIRECT EXAMINATION BY MR. HOFFMAN:

Q Are you guessing as to the 17th, the day the boys were arrested? A Yes, that day I remember.

Q How do you know they were arrested on that day?

A Because I guess his mother was in the store, and said the boy was arrested.

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BY THE COURT:

Q When was his mother in the store and said that the boy was arrested? A I guess it was a Sunday morning she came in and bought something.

BY MR. O'MALLEY:

Q What morning? A Sunday morning.

Q What Sunday? A I couldn't tell what Sunday it was.

BY MR. HOFFMAN:

Q The day you claim the mother was in the store?

A That was on a Sunday morning, yes. She came in and bought something.

BY THE COURT:

Q About how long ago was that? A About three weeks or four weeks.

Q Three weeks or four weeks ago? A Yes, sir.

BY MR. HOFFMAN:

Q Do you know these boys were arrested on the 17th of September? A Yes, sir; yes, I know.

Q How do you know it? A Because his mother told me that-- their mother--

BY THE COURT:

Q Did she tell you he was arrested on the 17th of September? A Yes, she told me that, I believe.

BY MR. O'MALLEY:

Q When did she tell you that?

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A Sunday morning, when she came in the store.

Q Three or four weeks ago? A Yes, sir.

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R O S E K A P L A N, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HOFFMAN:

Q What is your name? A Rose Kaplan.

Q Where do you live? A 1575 Madison Avenue.

Q How old are you, Rose? A Twelve.

Q Do you go to school? A Yes, sir.

Q Do you remember the day --

MR. O'MALLEY: Now, I think we ought to know whether this child is capable of understanding the nature of an oath.

MR. HOFFMAN: Sir?

MR. O'MALLEY: I say, it ought to appear here--

THE COURT: He says, on account of the child's tender years, he wanted to know whether the child understood the nature of an oath.

MR. HOFFMAN: He can examine her as to that.

That is his privilege.

BY MR. O'MALLEY:

Q How old are you? A Twelve.

Q Have you ever testified before in Court?

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A No, sir.

Q Do you know what proceedings are on here?

A I know about my brother, when I went home.

BY MR. HOFFMAN:

Q Do you know what you have been brought here for?

A Yes, sir.

Q Well, do you know what is going on here in Court?

A No, sir.

Q Have you ever heard of an oath? A No, sir.

Q Do you know what the word "Oath" means?

A Yes, sir.

Q What does it mean? A To swear the truth.

Q To swear the truth? A Yes, sir.

Q And do you know what the result will be if you don't tell the truth? A Get locked up.

Q What? A I will get put away, if I don't tell the truth.

Q And what do you mean by "Put away"? A Put me over the water.

THE COURT: You ask her, Mr. Hoffman, in regard to the religious meaning of an oath. Ask her what instructions she has received in that, what corresponds in the Synagogue, to the Sunday school in the Christian churches.

Q Do you know if you tell here what is not true, that

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God will punish you? A Yes, sir.

Q Do you realize that? A Yes, sir.

Q And, realizing that, and knowing that you are going to tell the truth-- A Yes, sir.

Q And, if you don't tell the truth, God will punish you? A Yes, sir.

BY THE COURT:

Q Have you ever studied the Commandments?

A (No answer)

THE COURT: Ask her, Mr. Juror, what religious instruction she has had.

BY THE SECOND JUROR:

Q Did you ever go to the Synagogue, Sunday School?

A No, sir.

Q No Rabbi ever instructed you? A No, sir.

BY MR. O'MALLEY:

Q Do your father and mother go to Schule, the Synagogue? A I have no father.

BY THE NINTH JUROR:

Q Can you spell oath? A Yes, sir.

Q Spell it? A O-a-t-h.

Q What is the meaning of it? A To tell the truth.

Q Where did you learn that? A School.

Q What school do you go to? A Public school, No. 72.

Q What is the address? A One hundred and Sixty Street

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Q One Hundred and Sixth Street? A And Lexington Avenue.

BY MR. HOFFMAN:

Q Do you remember the day that your brother was arrested? Do you remember on what day it was, on what day of the week? A I don't know.

Q You don't know on what day of the week he ~~xx~~ was arrested? A No.

Q Do you remember when you last saw your brother home? A I think on a Saturday.

Q How long ago was that? A I think it is September

Q In the month of September. Now, do you know it was in the month of September, because your school started in the month of September? A No.

Q When did you start going to school? A September.

MR. O'MALLEY: Don't lead.

THE COURT: Let her testify.

Q You say it was in the month of September?

A Yes, sir.

Q Can't you remember what day of the week it was when your brother was arrested?

THE COURT: In the first place, did the brother live in the same house with her?

Q Did your brother live home with your mama?

A Yes, sir.

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Q How many are there in your family outside of your brother? A Five.

Q How many boys, and how many girls? A There is one boy besides me, and four girls.

BY THE COURT:

Q By the way, now, where did you live on September 17th? A 242 East Fourth Street.

Q And where do you live now? A 1575 Madison Avenue.

Q How long have you lived there? A About three weeks.

BY MR. HOFFMAN:

Q In the month of September, when you lived on East Fourth Street, do you remember seeing your brother, on a Saturday, home? A Yes, sir.

Q Do you remember that day? If you don't, say so; if you do, say so. Do you remember that day, Saturday? Do you remember a Saturday in the month of September? A Yes, sir.

Q How do you know it was a Saturday? A I know it was a Saturday, because I was home on a Saturday, and I was reading a book; and I saw him.

BY THE COURT:

Q What book were you reading? A Fairy tales.

BY MR. HOFFMAN:

Q And do you know what hour it was, what time it was, when you saw your brother? A After four, he came from work.

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Q After four, and he came from work. How long did he stay home on that Saturday? A He went to work, and he came home after four, because I was reading the book, and my mother asked ~~me~~ him what time it was, and I heard him say "after four".

Q What did he do? A He was washing himself.

Q What did he do after he washed himself?

A He was eating.

Q Did he go away? A Yes, sir.

Q Did he come home that night, to sleep?

A I think on Saturday they took him away.

Q You think on a Saturday they took him away, and that was the last time you saw him? A Yes, sir.

Q After that day, for how long a time didn't you see your brother? For how long a time was he in jail, or prison, how many days, or how many weeks? A I think three months.

Q He was away when? A Three months.

Q Since September, do you mean? Didn't you see your brother since September? A No, sir.

Q Is this the first time you saw him since that day?

A Yes, sir.

Q And what time was it on that day when you saw him?

A After four.

Q And that was the last time you saw your brother up

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to that day? A Yes, sir.

MR. HOFFMAN: That is all.

CROSS EXAMINATION BY MR. O'MALLEY:

Q Hasn't your brother been home since he was arrested on that day? A No, sir.

Q Didn't you know that your brother was bailed out?

A I knew that he was bailed out.

Q Didn't he come home? A Yes, sir.

Q When did he come home? A I know they took him away Saturday and they bailed him out.

Q When did they bail him out, do you know? Don't you remember? A (No answer)

Q When did you next see him? A I don't know when I saw him after Saturday.

Q Do you know when he came home to you?

A (No answer)

BY THE COURT:

Q Did he come home? A He came home, after they bailed him out.

BY MR. O'MALLEY:

Q When was that? A I don't remember.

Q Do you know when he left? A He left Saturday.

Q Do you know when he went away again, after being bailed out? Do you know when he went away again?

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A (No answer)

Q Do you know why he went away again? A I don't know.

Q When you answered the first question, you said, "I think it is on a Saturday". Now, how do you fix that Saturday.

Q Didn't you see him every Saturday? A The last Saturday I saw him -- that was the last Saturday I saw him.

Q That was the last Saturday that you saw him?

A Yes,

Q Did you see him the Saturday before that? A Yes, sir.

Q What was he doing on that Saturday, before that?

A Before that, he was working.

Q Where was he working? A By my brother-in-law.

Q Who is your brother-in-law? A Louis Nadal.

Q The witness who was on the stand is your brother-in-law? A Yes, sir.

Q He married your sister, did he? A Yes, sir.

Q He married your sister? A Yes, sir.

Q When was the first time you talked with your lawyer about this case? A I don't know nothing about that.

Q When was the first time you talked to Mr. Hoffman about the case? A To-day, he asked me the same questions, and I answered him as I told you.

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Q Was that the first time that you ever talked to anybody about your brother being arrested on Saturday?

A Yes, sir.

Q Is that the first time you tried to recall what day it was your brother was arrested? A Yes, sir.

Q You don't mean to say you can recall from now until away back in September just exactly what your brother did on that day, do you? A No, but the day was the trial, so they called me.

Q If I should ask you to-day something about something that happened three weeks ago to-day, could you tell the jury anything that happened three weeks ago to-day? Could you tell the jury anything that happened four or five weeks ago? A (No answer)

Q What I want to know is how you are able to come here and tell this jury that in month of December, how you are able to tell this jury what happened in your home on September 17th? A I don't know what you mean?

Q Who told you this was a Saturday your brother disappeared? A I saw him on a Saturday.

THE COURT: I wouldn't go any further on that.

MR. O'MALLEY: That is all.

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I S I D O R E            K A P L A N, one of the Defendants herein,  
called as a witness in his own behalf, being first duly  
sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOFFMAN.

Q    What is your name ?    A    Isidore Kaplin.

Q    Where do you reside ?    A    1575 Madison Avenue.  
Formerly, 242 East Fourth Street.

Q    What were you employed at ?    A    I was working  
with a fruit dealer, as helper.

Q    Your brother-in-law, Mr. Nadal ?    A    Yes, sir.

Q    Before you went to work for him, were you in the  
House of Refuge ?    A    No, sir.

Q    Where were you ?    A    Elmira Reformatory.

Q    How long a time were you in Elmira ?    A    About  
eighteen or nineteen months.

Q    Before you were sent to Elmira, were you in trouble  
previous to that time ?    A    That case I was sent up for.

Q    Were you in trouble in any other case ?    A    No,  
sir.

Q    You were paroled from Elmira ?    A    Yes, sir.

Q    And on the 17th of September, on that day, was your  
parole up already ?    A    No, sir.

Q    During the month of September, were you reporting to  
the parole board ?    A    Yes, sir.

Q    To whom were you reporting ?    A    Mr. Rogers.

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Q Is he a gentleman appointed by the Elmira people ?

A Yes, sir.

Q How often did you report ? A Every month, from the 25th to the 30th day of the month.

Q On the 17th of September, were you working on that day ? A Yes, sir.

Q What time did you go to work on that day ? A About six or seven o'clock. I can't tell the exact time.

Q And what time did you quit on that day ? A Four o'clock.

Q When you quit, at four o'clock, what did you do ? A I went straight home.

Q When you got home, what did you do ? A I washed up and dressed, and ate something.

Q Then where did you go to ? A I went around to Delancey Street, where I usually go, every Saturday, to talk to some of the fellows. I used to live around that neighborhood, and I am acquainted there.

Q When you got on Delancey Street, did you then meet Littman ? A Yes, sir, he was standing in front of the delicatessen store, and I joined him and a few other fellows.

Q Did you go in the Delicatessen store ? A Yes, sir.

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Q What did you do there ? A Littman bought a couple of sandwiches, and we stood there talking, and we went outside again.

Q About what time of the day was that when you were in the delicatessen store ? A About five, or five-twenty.

Q After five ? A Yes, sir.

Q And after you left the delicatessen store, where did you go to ? A Standing in front of the delicatessen store, me and Littman and another fellow went across the street; there was about two or three fellows, and they signalled to the two of us to come over. We walked across the way, and he made us a proposition to carry the package. He had a large package, about that high (illustrating).

Q Is this the package (People's Exhibit No. 1) ?

A Yes, sir.

Q What did the fellow say to you ? A He made me the proposition, if I wanted to carry it for him. It was heavy, and he was well dressed, too.

Q What did he say ? Tell us his exact words ?

A He says, "Will you please help me to carry this ? This is quite a burden. I have to take some orders. I am a salesman, and, of course, this will be too heavy for me, and I wish you to carry it".

Q What did you do ? A I refused, at first. Then

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he said, "I will give you twenty-five cents." I said, "No, sir." Then he offered me fifty cents; and I asked Littman whether we should do it, because we didn't make much money; and we took it around, and he gave us an address, and we walked straight down Delancey Street.

Q Did this man walk with you ? A Yes, sir.

Q How did you walk from Delancey and Clinton ?

Was this restaurant at Delancey and Clinton ? A Yes, sir.

Q Facing the Williamsburg bridge ? A Yes, sir.

Q How did you walk to Stanton and Ludlow ? A We walked straight down Delancey Street, and up to Ludlow, and straight down Ludlow, and we turned down Delancey towards Allen Street, the block before Ludlow, and we looked for the number which he gave us on the paper, and we couldn't find it, and we turned back to the next block, where we seen on the corner the name Saffer.

Q Was this man walking with you ? A No; he stopped a block before. He said he was going to a druggist, across the street, I believe.

Q What did he tell you ? Where was he going ?

A He said, "I am going to make a telephone call across the way. Step inside and wait for me. I will be right back. I am going to take an order on the way."

Q When you left this man, you went into this store

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where you were told to go. What was the name? A Saffer.

Q What was the address? A 103 Stanton Street.

Q When you got in the store, what did you tell the proprietor? A We asked for the proprietor, and we told him all about our story, that the salesman had sent us in there to wait for the package until he came back. He says, "I am Mr. Saffer", and he said "all right", too.

Q Were there other people in that store when you got in there? A Yes, sir, there was a man there conversing with him, and we waited.

Q When you went in the store, did you go into a back room? A No, sir.

Q You stayed right in the store? A Yes, sir.

Q In view of the street? Anybody on the street could look straight in? A Yes, sir.

Q Then did Mr. Saffer take this package? A No, sir.

Q Who took the package? A As soon as we came in, we sat down by the bench, and the package was on the table, waiting for the salesman to come back.

Q Then what happened? A We stayed there about two or three minutes, when two men came in, and they looked all around the place, and they looked at the floor, and they seen us sitting there. They says to Littman, "What have you got in the package?" He says, "I don't

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know what is in there." He says, "Where did you get it?" He says, "It aint my package, and he told us to bring it in and wait for him". He says, "You come along", so we put up a fight; we wouldn't go without - So he says, "Let me go out and look for the salesman".

Q Who said ? A Littman. And the detective refused him. He said, "You stay right here". Then I begged him to go, and he also refused me. They stood in the place, and then they said to the proprietor, "Come along, the whole bunch of you, and you too". Of course, they took us two, and left them there.

Q The detectives took you and Littman ? A Yes, sir.

Q But they didn't take any of the proprietor of the store ? A No, sir.

Q Was Leitner, the man who testified, in this store ? A No, sir.

Q Did he walk with you and Littman and the detectives to 17 Allen Street ? A No, sir.

Q Was he up in 17 Allen Street the evening you were brought there ? A No, sir.

Q You saw him in Court ? A Yes; that was Tuesday morning, we were held for examination.

Q You saw Leitner in Court here ? A Yes, sir.

Q When was the first time you were confronted by

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Leitner after the day of this arrest ? A I think he was one of those men who was on Delancey Street with the salesman, but they kept away. He gave us the package.

BY MR. O'MALLEY.

Q What was that ? A I believe he looked something like Leitner, that fellow did.

BY MR. HOFFMAN.

Q You say one of the men in this group of men looked to you to be Leitner ? A Yes, sir, something like him.

Q When, for the first time, after you saw that group of men, and after that picture was in your mind, and after your arrest, did you again meet Leitner ? A Yes, sir, Tuesday morning I seen him, on examination-day.

Q Tuesday morning, when you were brought before a Police Magistrate ? A Yes, sir.

Q Didn't he appear in Police ~~Room~~ Headquarters ? A No, sir.

Q Now, Kaplin, this Leitner says that he met you and the co-defendant on the 17th day of September, in the neighborhood of Greene Street, about two o'clock. You heard him testify. He claims you and Littman had been going up town, in the neighborhood of Eighteenth Street, and walking down town. Were you in any of those places on that day, with Littman ? A How could I be in that neighborhood, when I was working ?

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Q Don't argue with me. Were you there ?

A No, sir.

Q On the 17th of September, were you on Greene Street ?

A No, sir.

Q Were you there at any hour of the day ? A No, sir.

Q Will you positively swear that on the 17th of September, you were on a route with your brother-in-law ?

A Yes, sir.

Q From the early hours of the morning until four o'clock that afternoon ? A Yes, sir.

Q Did you steal this package, on Greene Street ?

A No, sir, I have no idea of the package, except that it was given to us, and taking it to that store.

Q When the package was delivered to you by this man, did you mark anything on the package ? A No, sir.

Q Was that package brought to Stanton Street in the same condition as it was delivered to you ? A It was.

Q Sullivan and Gorevan claim that when they put you and Littman under arrest that Littman stated it belonged to his father. Did he make any such statement ? A I don't believe he did.

Q Did you hear him make any such statement ?

A No, sir.

Q What statement did you make to the detectives when

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they put you under arrest, about a salesman ? Did you tell them about a salesman ? A Certainly; we wanted to go out, and he stopped us.

BY THE COURT.

Q Did you describe the man, tell him what he looked like ? A Yes, he was well dressed; didn't look to be a thief; and he refused us.

BY MR. HOFFMAN.

Q When you say he did not look to be a thief, you want the Jury to understand that he was a well dressed, decent-looking man ? A Yes, sir.

BY THE COURT.

Q Describe him to us ? A He had a panama hat, tan shoes, and a light suit.

BY THE FOREMAN OF THE JURY.

Q What kind of hair did he have ? A I don't know; ~~what~~ kind of dark, like mine - dark brown.

BY THE COURT.

Q Was he clean shaven ? A Yes, sir, and, from all appearances, looked to be a gentleman.

Q Did he have a moustache ? A No, sir; he was a young fellow.

Q How old was he ? A I judge him to be about twenty-five or twenty-six.

BY MR. HOFFMAN.

Q Did either of you boys tell the detectives that

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that fellow was a red head ? A No, sir.

Q Was the fellow a red head ? A No, sir; dark brown hair, he had.

Q Now, Kaplin, when you got into this store, and please be careful, and try and remember as best you can, within how many minutes after you entered this store on Stanton Street, did Officers Sullivan and Gorevan enter the premises ? A About two or three minutes; three minutes, I believe it was.

Q And you are positive - A We hardly was sitting in the store when he came in.

Q You hardly got in the store when the detectives entered ? A Yes, sir.

Q About a minute or two ? A About a minute or two.

MR. HOFFMAN: That is all.

THE COURT: Let us suspend now for the day.

Now, gentlemen of the Jury, we will suspend until ten-thirty tomorrow morning. In the meantime, you will not make up your minds as to the guilt or innocence of the defendant, nor discuss the matter amongst yourself, until it is submitted to you for your verdict.

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The Court then took a recess until tomorrow,

Wednesday, december 7th, 1910, at 10:30 A. M.

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New York, Wednesday, December 7th, 1910.

TRIAL CONTINUED.

Present :-

Hon. Edward Swann, J.

Appearances :-

Same as Before.

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The defendants are arraigned at the bar.  
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TSIDORE KAPLAN, resumes the stand.

CROSS EXAMINATION BY MR. O'MALLEY:

Q Where did you say you lived? A I live now at  
1575 Madison Avenue.

Q But, on the day of your arrest, where did you live?

A 242 East Fourth Street.

Q And between what streets is that? Between what  
Avenues? A Right on the corner of Avenue B.

Q How far away is that from the corner of Delancey  
and Clinton Streets? A About five blocks.

Q You go south, do you, from Fourth Street?

A (No answer)

Q When you go to the corner of Clinton and Delancey  
Streets, which way do you go, north, or south? A North.

Q Go north? A Yes, sir.

Q Well, how many blocks do you go? A Five blocks.

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Q What streets do <sup>you</sup> pass? A Delancey, Rivington, Stanton, Houston, First, Second, Third, and Fourth Streets; about five or six blocks.

Q Are you going south, or north? A North.

Q What is the first street north of Fourth Street?

A Fourth Street is north, isn't it?

Q What is the first street north of Fourth Street?

MR. HOFFMAN: Pardon me a minute. Do you understand the question?

MR. O'MALLEY: I have the witness.

THE COURT: He may not understand the directions of the compass.

MR. HOFFMAN: That is what I am getting at.

Q Which way is north? A Up-town.

Q What is the first street north of Fourth Street?

A Avenue A.

Q If you start up-town from Fourth Street, what is the first street you come to? A - If I start up-town from Fourth Street, what streets do I come to?

Q Yes. A I don't know. I don't understand the question.

Q If you start towards East River, on Fourth Street, from your house, what street do you come to first?

A I go down towards Avenue C.

Q Supposing you go north on Avenue C, what streets

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is the first street you come to?

A (No answer)

Q What is the first street north of Fourth Street?

A Fifth Street.

Q Did you go towards Fifth Street that day? A No, sir.

Q Which way did you go? A I went down towards Delancey

Q Then, you went south, didn't you? A Yes, sir.

Q The first street south of Fourth Street is Third Street; is that right? A Yes, sir.

Q The next is Second Street? A Yes, sir.

Q And the next is Houston? A Houston.

Q And the next is what? A Stanton.

Q And the next is what? A Rivington.

Q And the next is what? A Delancey.

Q That is six blocks? A Yes, sir.

Q Now, you say you quit work at four o'clock that day, did you? A Yes, sir.

Q And what time did you get home? A I got home about twenty-five after four.

Q And what did you do then? A I went up-stairs, and I washed up, and then I put this suit on; I had it for Saturdays and Sundays; then I ate something and left the house.

Q What did you eat? A I had some fish and meat and some soup.

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Q That was what time? About five o'clock?

A Yes, sir.

Q Were you in the habit of eating at five o'clock in the afternoon? A No; I used to go home -- it is according to when I get through work.

Q How long had you lived on Fourth Street?

A About two or three years.

Q How did you come to go down to the corner of Delancey Street and Clinton Street on that day?

A I have some friends down there, and Saturdays and Sundays I spend my time down there.

Q Did you have an appointment with anybody?

A No, sir.

Q Were you in the habit of hanging around that corner? A No, sir. When I get through, I go around for a few minutes, and go home.

Q Where do you usually hang out at nights?

A I have no hang outs.

Q How did you come to go down there on this afternoon? A I used to live in that neighborhood, Attorney Street and Broome.

Q Did you have any appointment with the other defendant down there? A No, sir.

Q Now, when you got to this delicatessen store, you say you went in, did you? A Yes, sir.

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Q And you said something about sandwiches; you had some sandwiches? A No, he bought some, the other fellow; he bought some sandwiches; and then stepped outside, with a few other fellows.

Q Did you see any sandwiches there? A No, sir; I had my supper home.

Q What time was it when you got down there?

A I think it was about a quarter to five.

Q Did you walk down from Fourth Street? A Yes, sir.

Q Now, then, what was the first thing you saw?

A When I came from the house, towards Delancey Street?

Q No, after you got in front of this delicatessen store? A We talked a while, and then somebody beckoned to the two of us, to come over.

Q Was that the man whom you say gave you the package?

A Yes, sir.

Q Where was he standing at the time? A On the New York side of the Williamsburgh Bridge, towards the wall there.

Q On Delancey, or on Clinton? A On Delancey Street.

Q Delancey runs east and west, doesn't it?

A Yes, sir.

BY THE COURT:

Q How far was that from Sam Saffer's place?

A About six or seven blocks.

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BY MR. O'MALLEY:

Q You had a talk with him there, did you?

A Yes, sir.

Q Did he tell you what his business was? A Yes, sir.

Q What did he say his business was? A Salesman.

Q Did he say for whom he worked? A No, sir; he did not tell me that. He said he was a salesman for a skirt house.

Q Had you ever seen him before? A No, sir.

Q And, so far as you know, you were entire strangers to him? A Yes, sir.

Q And he offered you something, did he, for carrying this package? A Yes, sir.

Q How much did he offer you? A Twenty-five cents.

Q What did he finally agree to give you? A Fifty cents. I refused twice.

Q At that time -- when did he tell you where he wanted you to take it? A What was that?

When

Q Did he tell you he wanted you to take the package?

A Right there. He made a proposition. He said, "I have to take a few orders for my house, where I work, and I want you to take this for me".

Q When did he tell you where he wanted you to take it?

A On Saturday, September 17th.

Q When was the time he mentioned the address where he

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wanted you to take it? — A On that day.

Q Was it before, or after, he fixed the price?

A It was after he fixed the price.

Q So, at the time he offered you fifty cents, you didn't know where you were going with the package?

A No, sir.

Q Now, then, what course did you take, after you started with the package? A We went straight through Delancey Street.

Q East, or west? A West, down to Ludlow, and through Ludlow down to Stanton, where he left us.

Q Where did he leave you? A On Stanton Street.

Q At what street? A Corner of Ludlow.

Q He left you there? A Yes, sir.

Q And did he walk with you all along? A Yes, sir.

Q Walked right beside you? A Yes, sir.

Q Didn't you testify yesterday that he followed you about a block? A Followed me? No, sir.

BY THE COURT:

Q Well, how far did he go with you? Tell the jury how far this unknown person went with you? A He went as far as Stanton Street, and he said, "I am going to telephone, and you wait in the store for me until I come back"?

BY MR. O'MALLEY:

Q He went to the corner of Stanton and Ludlow with you?

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A Yes, sir.

Q And then what? A He gave us an address, before we went with him; he wrote it on a paper, and he said, "You wait in the store until I go and telephone".

Q Where did he go to telephone? A On Stanton Street.

Q Did you see him go in the store? A No, sir.

Q Yesterday, you were asked this question: "Q Was this man walking with you? A No; he stopped a block before. He said he was going to a druggist, across the street, I believe." Now, did he stop a block before, or didn't he? A No, sir, I made that mistake.

Q That was a mistake? A Yes, sir.

BY THE COURT:

Q How far was the drug store that you say he went into to telephone, and to wait for you, how far was that away from Sam Saffer's place? A Across the street, I believe.

BY MR. O'MALLEY:

Q Do you know whose drug store it was? A No, sir.

Q Did you see him go into the drug store?

A No, sir.

Q Did you see a drug store there? A Yes, sir.

Q Then, he left you, and told you to go into this store? A Yes, sir.

Q Now, when you went in there, what did you do?

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A We explained to the proprietor of the store, and he said we can wait. We left the package on the table, and we sat near the counter.

Q Who was there at that time? A The daughter, and the husband, and the woman.

Q What were their names? A I don't know. I never was in there before, and I never had any business with him.

Q Are you sure of that? A Yes, sir.

Q There were three persons there, were there?

A There was another person, a young man; he was talking with the proprietor.

Q Four, all together? A Yes, sir.

Q And had you ever seen any of those people before?

A No, sir.

Q Have you seen them since? A Yes, I have seen them in Court.

Q Have you seen them since that time? A No, sir.

Q Are any of them here as witnesses, do you know?

A No, sir.

Q Now, what did you do after you got in there?

A I sat near the counter, and the package was on the table.

Q Then what happened? A I was in there about two or three minutes when these two men came in.

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Q Who opened the package? A The package was not open.

Q The package was not opened? A No, sir.

Q You heard the officers testify, did you not, that the package was open? A Yes, sir.

Q And that one of you was sitting down, and the other was standing up, by the package? A Yes, sir.

Q And that one of you had your coat off? A No, sir.

Q You did not hear him testify to that? A Yes, I heard that.

Q And you say that is not so? A No, sir.

Q Do you say it is not so, or it is so?

A No, sir, it is not.

Q What did you say to these people when you went in there? A We told him about the salesman, and he told us to wait for him; he would be back soon; and he went to make a call, and then he asked who he was. We didn't know, we told him, he was a salesman, and he told us to wait here with the package, and he said, "All right, wait until he comes back".

Q Did you tell him who the salesman was? A Who the salesman was?

Q Yes. A I didn't know who he was.

Q Did you describe him at all? A Yes, sir.

Q Did they say they knew who he was? A No, sir.

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Q Had you ever seen Leitner before that day?

A No, sir.

Q Had you ever seen either officer Sullivan of  
Gorevan ? A No, sir.

Q You never had any trouble with any of them?

A No, sir.

Q And do you know whether or not the other defendant  
here, Littman, had any trouble with them? A I do not,  
no, sir.

Q Now, when this package was handed to you, didn't you  
look at it? A No, sir.

Q Wasn't there writing on it? A I didn't see-- I  
didn't look at it.

Q It had a paper around it, did it not? A Yes, sir.

Q And can you say whether that was, or was not the  
paper (Handing witness People's Exhibit No. 1)?

A It looks the same as was on that package.

Q Couldn't you see that writing on that package?

A No, I didn't look at it.

Q Did the store keeper, or the man who had this dry-  
goods store, Saffer, did he look at it? A No, sir.

Q You see it, can't you? A Yes, sir.

Q This fellow was an entire stranger to you?

A Yes, sir.

Q You say he gave you the address of Saffer?

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A Yes, sir.

Q Where was that written? A Pardon me.

Q I say, did he write that address down for you?

A Yes, sir.

Q On what? A On a piece of paper.

Q Have you got that piece of paper now? A No, sir, I threw it right away. I had it in my memory.

Q You say you didn't need it? A No, sir.

BY THE COURT:

Q When did you throw it away? A That same day.

Q Before, or after, you saw Saffer? A Before; while I was going towards the store.

Q Why did you throw it away before you got to Saffer?

A Because I remembered -- I never expected any trouble to come out of it.

BY MR. O'MALLEY:

Q When did you expect to see this stranger again?

A The salesman? A

Q Yes. A Just as soon as we was in the store. He says he was going to make a call.

Q Did he give you any reason why you should go into the store with the package? A Yes, sir.

Q What was it? A He said he was going to make a call, and be right back again. I don't know what he was going to do with the package.

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Q Did he give you any reason why you should have gone into the store, or why you should not have remained on the street? A No, sir.

Q You don't know of any reason why you should not have gone with him to the telephone booth? Do you?

A No, sir.

Q Now, let us see. You have been convicted before, have you? A Yes, sir.

Q When? A On October 28th

Q What year? A 1908.

Q For what crime? A Attempted Grand larceny, second degree.

Q What were you charged with doing? A A package.  
It is not a case like this.

Q Were you ever arrested before? A Yes, sir.

Q When? A That was for ringing a door bell; I don't remember the time; about five years ago.

Q What were you charged with then? A Disorderly conduct, I think; I don't know.

Q Were you sent any place then? A To the Protectory.

Q What protectory? A Catholic Protectory.

Q For how long? A Five days.

Q Were you ever arrested for malicious mischief?

A For what?

Q Malicious mischief? A No, sir.

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Q Sure of that? A Yes, sir. Maybe that is the case. I didn't know what they charged me with.

BY THE COURT:

Q What was your defense in the action wherein you were convicted of attempted grand larceny?

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

THE COURT: Very well, I will withdraw it.

BY MR. O'LEARY:

Q Where did you say you lived before you lived at East Fourth Street. Cannon Street, did you say? A No, sir.

Q You said you lived at Broome and Cannon?

A No, sir.

Q Where did you live? A 242 East Fourth Street.

Q What was the reason you gave for going down in the neighborhood of Clinton and Delancey Streets, on the 17th of September? A What was the reason?

A Yes. A From the house, I always go.

Q You said you had some reason why you went down there on Saturday?

MR. HOFFMAN: The witness didn't say that.

A I didn't say I had a reason.

Q What did you say about Cannon and Broome Streets?

MR. HOFFMAN: He didn't say Cannon and Broome.

He said Broome and Attorney, if my memory serves me.

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Q What did you say about Broome and Attorney?

A I said I used to live around there, and I went down to talk to some fellows, Saturdays and Sundays.

Q Didn't you mention Cannon Street at all?

A No, sir.

Q You were arraigned in the Magistrates Court?

A Yes, sir.

Q And you made a statement, didn't you? A Yes, sir.

Q Did you at that time say you were given this package by a stranger? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q Didn't you at that time say that this package was given to you by Detective Leitner? A I did not.

Q Will you swear to that? A Yes, sir.

Q Did you, in the Magistrates Court, mention that the man who appeared to be with this stranger on the street might be Leitner? Did you say anything like that?

A Yes, sir.

Q What? A I didn't say it there, but I said it here.

Q You didn't say anything like that in the magistrates Court, did you? A No, sir.

BY THE COURT:

Q Was Leitner in the Magistrates Court?

A Yes, sir.

Q How soon after your arrest was that? The day after?

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A Three days after.

Q Three days after? A Saturday, Sunday, Monday and Tuesday. Tuesday was the first time I seen him down there.

BY MR. O'MALLEY:

Q Weren't you arraigned in the Magistrates Court on Monday? A I was.

Q Wasn't Leitner there that day? A I don't believe he was.

Q Will you swear he was not? A He was arraigned Monday or Tuesday.

Q What is that? A I believe I saw him Tuesday morning.

Q Will you swear you did not see him there on Monday morning? A No, sir, I would not swear.

Q So, if Leitner was there on Tuesday, and may have been there on Monday, so far as you know, you said nothing to the Court about either Leitner having given you this package, or having seen a man that looked like him with this stranger, did you? A No, sir.

BY THE COURT:

Q Do you say now it was Leitner who gave you the package? A Yes, sir. I did not notice him standing by the wall.

Q What is your testimony now? Was it Leitner that

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gave you the package? A I don't say he was standing there.

Q I am not asking you who was standing there. Do you now testify it was Leitner who gave you the package and told you to deliver it to Saffer? A No, sir.

Q What? A No, sir.

Q What do you mean to say, then, in regard to it? Do you say he was -- <sup>What</sup> is your testimony on that point?

A I say he was standing there; this stranger was standing there, with a few other fellows, and one looked to be like Leitner. I didn't say Leitner handed me that package.

BY MR. O'MALLEY:

Q When is the first time you testified to that? Is this the first time? A That Leitner was standing there?

Q That you said there was a man who looked like Leitner there? A Yesterday.

Q When was the first time that you told it to anybody? A Yesterday was the first time.

Q When you came on the stand? A Yes, sir.

Q The first time you ever mentioned it? A Yes, sir? I recalled it.

BY THE COURT:

Q Did you ever see Leitner before that day?

A No, sir.

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Q 17th of September, was it? A Yes, sir.

Q Never saw him before? A No, sir.

Q Do you know any reason why Leitner would try to implicate you in the commission of a crime? A Yes, sir.

Q Why? A He does that for money.

Q You think for money he would try to implicate you?

A Yes, sir.

Q Do you know why he would pick you out, instead of somebody else? A I aint the only one. He picked others out, and they got convicted, just because he got a few dollars off the detectives.

Q Is it your view that the detectives paid him?

A Yes, sir.

Q You mean the City detectives? A Yes, sir.

Q What evidence have you of that? Have you any evidence of it, or is that merely your suspicion?

A That is my evidence.

Q Have you any evidence of that, or is that merely your suspicion, that that may be so? A Well, I have heard lots of people say that he sent their friends away, upstairs, in my room.

Q You mean, in the City prison? A Yes, sir.

Q They told you in the City prison that that is so?

A Yes, sir.

Q Did they give you any instances? A Yes, sir, they

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told me one fellow got two years, from him.

BY MR. O'MALLEY:

Q Who was it? A I don't know. Nobody wants to testify. They are afraid.

BY THE COURT:

Q Is Leitner a man of great influence in the neighborhood, or great power, or of great pull? Did they say that about him? A I don't know.

Q What are they afraid of? Why can't they go on the stand and tell the truth? A They are afraid of Court. They don't like to be seen testifying. They have their own troubles.

MR. CUMMINGS: That is all.

RE DIRECT EXAMINATION BY MR. HOFFMAN:

Q In answer to the court's question, as to what Leitner had against you --

THE COURT: If you know.

Q (Continuing) If you know, do you want the jury to understand that Leitner was after you, or was <sup>he</sup> after the Receiver? A He was after the receiver.

THE COURT: What makes you say that?

Q Tell the Court and Jury what makes you think he was after the receiver, after this man Saffer? A To my knowledge, there was a robbery, the night before, and I

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heard of it up in Allen street; some goods were stole, and they brought in two bags, after they took us to the station house, with the receiver, together; I believe that this Leitner trailed this receiver, and sent word to the detectives, Sullivan and Gorevan, to come down for him, and trap him, just for the sake of a few dollars. They knew a receiver will give money to get out of trouble. By luck, we was in that store. The stranger gave us this package, and we was arrested, and they had an excuse.

Q When detectives Sullivan and Gorevan arrested you that night, on Stanton Street, did he arrest the store-keeper? A No, sir.

Q Did the officers take you and Littman to police head quarters, at 17 Allen Street? A Yes, sir.

Q After you were at 17 Allen Street, did they bring Saffer in? A Yes, sir, they sent three other men down; they brought us, and they remained there.

Q After you and Littman were brought to 17 Allen Street, detectives were again sent out, and Saffer was arrested? A Yes, sir.

Q Now, when Saffer was brought to the station house, was there goods brought with the officers? Did they bring some property? A Yes, sir.

MR. O'BRYEN: How is this material?

THE COURT: Some other goods?

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MR. HOFFMAN: Yes, sir.

MR. O'MALLEY: I object to it.

MR. HOFFMAN: I am simply following up the Judge's suggestion.

THE COURT: All right.

MR. O'MALLEY: Go ahead.

MR. HOFFMAN: That is all.

BY THE COURT:

Q You say the unknown man beckoned to you across the street? A Yes, sir.

Q And told you he had a parcel he wanted you to carry?

A Yes, sir; it was a hot day, and he said it was too much trouble; he was dressed well, and the package was heavy.

Q It was a hot day, and he was dressed well and the package was heavy? A Yes, sir.

Q He offered you twenty-five cents? A Yes, sir.

Q And you refused it? A Yes, sir.

Q And then he offered you fifty cents?

A Yes, sir.

Q I understood you to say that you accepted the fifty cents? A Yes, sir.

Q But you didn't know where he wanted you to take it?

A Yes, sir.

Q Did you accept an offer of fifty cents, without

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knowing where you were to take that parcel?

A I then asked him where we were to take it, and he explained.

Q You had already been in the protectory?

A Yes, sir, only for five days.

Q And you had already been in the State Reformatory? at Elmira? A Yes, sir.

Q And, did it occur to you, right then, for a young man who had been already convicted, to accept a parcel from an unknown person upon the street, and to carry that away with you, might put in trouble. Did you reflect that way at all? A No, sir.

Q It never occurred to you? A No, sir, because I carried parcels before for salesmen, and never had any trouble.

Q Did you consider, at that time, that fifty cents was a reasonable price to carry a parcel six blocks?

A It was heavy, and she both of us was there.

Q Did both of you take it? A Yes, sir, I carried it about two blocks, and he took it, and I took it again.

Q Did you know the other defendant in the State Reformatory? A I have heard of him, but I never had any conversation.

Q He was there? A Yes, sir.

Q Did you meet him there? A No.

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Q This other defendant? A No, sir.

Q You did not meet him there? A No, sir.

Q Did you know at that time that he had been in the State Reformatory? A Yes, sir.

Q I think you said you consulted him before you took the parcel; is that right? A He was standing there, listening to the proposition. He called the two of us over.

Q Do you know any reason why he should call you two young men over to take that parcel? A I don't know, unless they had some reason for doing so.

Q But what was it, do you think, if you know? Have you any theory of that? A I suppose they thought of this Receiver, and they made something up, just to get some two boys in it, so they can blame them, and get the receiver out.

Q Did you suspect at any time that the parcel might have been stolen? A No, sir.

Q When you were in Gaffer's store, and these two detectives came in, what is the first thing they said to you? What did they finally say to you? Did they tell you finally that they were detectives? A Yes, sir; they wanted to hit us because we told them that story, and they did not believe us. They said, "Don't tell that, come on, under arrest".

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Q Why did you put up a fight, as you express it?

A We never expected any trouble; we were surprised to be placed under arrest.

Q You were perfectly innocent, and these detectives came in there and arrested you, and was that the reason you put up a fight, as you express it? A Yes, sir.

Q On account of your innocence? A Yes, sir.

RE CROSS EXAMINATION:

BY MR. O'MALLEY:

Q Did you have anything to fear in being taken, if you had not done anything? A Yes, sir.

Q What did you have to fear? A To be in trouble.

Q How would you be in trouble, if you had not done anything wrong? A The Parol officer from Elmira, any misdemeanor, they take you back.

Q Did you think you had committed a misdemeanor.

A No, sir.

Q Did you think you had committed any crime?

A No, sir, but they consider it so.

Q They consider what so? A They are experienced people, and they don't take no bluffs.

Q What bluff would they have to take? A I thought they would not believe my testimony.

Q Brought what? A That they would not believe the testimony, and would send me right back.

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Q So, you were afraid of that? A Yes, sir.

Q You were convicted before of stealing a package?

MR. HOFFMAN: Objected to. The witness has answered that in answer to your Honor, and in answer to me.

THE COURT: Yes, he said, "Yes". Objection sustained.

MR. O'MALLEY: That is all.

BY MR. HOFFMAN:

Q When you speak about the parole, you naturally feared that any suspicion brought to the parole would result in your being taken back to Elmira? A Yes, sir.

Q And that is what you were afraid of? A Yes, sir.

Q That is why you did not even want to be arrested?

A Yes, sir.

MR. HOFFMAN: That is all.

BY THE COURT:

Q Do you read English? A Yes, sir.

Q What did you think about the address on that package, which is addressed to a firm in St. Joseph, Missouri?

A Your honor, I didn't notice what was written on it.

my  
It was not business. He went along with us.

Q What did you think about the man, after he told you he was busy, and had some other work to do, going with you, and sending you over into Gaffer's place, and then he going

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across the street, into a drug store, and telling you something about waiting; I don't remember just what you said about that; and with a package addressed to a firm in St. Joseph, Missouri?

MR. HOFFMAN: Objected to, because this witness did not know it was addressed to Missouri.

Q You say you did not notice that at all? A No, sir.

Q Didn't look on the package at all, to see where it was addressed? A No, sir, and even then--

Q What occurred to you about the man, after he agreed to pay you fifty cents, to take this six blocks, followed you, and separated from you, going across the street, from Saffer's place, in a drug store, didn't that occur to you as unusual? A No, sir.

Q Did it cause any suspicion on your part?

A No, sir, if it had, I would have dropped the package, right there.

BY MR. HOFFMAN:

Q When did he pay you this money? A He didn't pay me anything, he didn't come back.

Q Didn't pay you at all? A No, sir.

Q This man was an entire stranger to you? A Yes, sir.

Q And left the package without paying you?

A Yes, sir.

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THE COURT: Gentlemen, I have a map of the City here, and I find from it that where the officer says 17 Allen Street is, is seven blocks from Stanton Street, six blocks up and one block over; so I wish you would look at it, and see if you can agree on it. I have marked it, for your convenience.-- six blocks up and one block over.

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 BERNARD L. MITTICK, is duly sworn as interpreter in this case.

HARRIS LITTMAN, called as a witness on behalf of the defendants, being first duly sworn, and examined through Bernard L. Mittenick, interpreter, testified as follows:-

DIRECT EXAMINATION BY MR. HOFFMAN:

- Q What is your name? A Harris Littman.
- Q Where do you live? A 206 Delancey Street.
- Q Mr. Littman, what is your business? A Shoemaker.
- Q Does your son work for you? A Yes, sir.
- Q Do you remember the 17th day of September, which was the day that he was arrested? A Yes, sir.
- Q On that day, was your son in charge of your store?
- A Yes, sir.
- Q Do you know up to what hour he was in charge of your store on that day? A He brought the key up to me, at

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half past three.

Q Do you work in this store yourself on Saturdays?

A No, sir.

Q But your son works in your store on Saturdays?

A Yes, sir.

Q How do you know it was after three o'clock when your son brought the key to you? A I know it, because I had seen it.

Q Did you talk to him about the time? A Well, he finished the work on a Saturday, and he stopped.

Q Mr. Littman, your son was in trouble before, wasn't he? A Yes, sir.

Q Did you appear as a witness for him at a trial?

A No, sir.

Q And this is the first time you have appeared as a witness in behalf of your son? A Yes, sir.

MR. HOFFMAN: That is all.

BY THE COURT:

Q Why didn't you appear as a witness for your son on the first trial?

MR. HOFFMAN: Objected to.

THE COURT: Objection overruled.

MR. HOFFMAN: Exception.

A Because I did not know of his first trouble, and I am taken up with the work that I have to do.

Q Did you know he was being tried, at the first trial?

A I found that out later.

CROSS EXAMINATION BY MR. O'MALLEY:

Q Do you know how many times your son has been tried?

A That I do not know.

Q Would you be surprised to know it was five or six times?

MR. HOFFMAN: Objected to as immaterial.

THE COURT: Objection sustained.

Q How long has your son been working for you there?

A Three months.

Q When did he begin? A Three months before the 17th day of September.

Q What month was that in? A About July, or June.

Q Where had he been prior to that time? A I believe he was arrested.

Q Do you know where he was serving time?

MR. HOFFMAN: Objected to as incompetent, irrelevant and immaterial, whether he knows.

THE COURT: Ask him if he knows. He says that the boy was employed by him, and he knew of his actions, and so forth, on Saturday. Now, the District Attorney is entitled to test that by asking him as to his actions at other times.

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MR. HOFFMAN: He is asking him if he knew where he was detained.

THE COURT: The witness says he knows about his movements on the 17th. He is entitled to that.

A He was arrested, but I don't know where; I don't remember where.

Q On Saturday, the 17th, you did not go to the store did you? A No.

Q You don't know whether your son was in the store, or not, do you? A Yes, I do know, because he finished the work, and I therefore know.

Q You didn't see him in the store on Saturday, September 17th? A I don't live far from there; it is near; the second block.

Q You were not in the store on that day? A No.

Q Where was your son on Saturday, September 10th?

A He was in the cellar, in the shop.

Q What time did he leave the store that day?

A About five, or half past five.

Q Where was he on Saturday, September 3rd?

A Also in the shop.

Q What time did he leave on that day? A About five.

Q How do you fix that time? A Saturday, he does not work later than four or five.

Q Do you know where he was on Friday, September 16th?

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A He worked in the shop.

Q What time did he quit work that day? A About six o'clock.

Q What time did he quit on Thursday? A Also six.

Q What time did he quit on Wednesday? A He doesn't work later than six at any time.

Q When was the first time you talked to anybody in regard to your son's whereabouts, on Saturday, September 17th? A I didn't talk with any one.

Q Haven't you spoken to any one about it before you went on the stand? A Yes, I spoke with the lawyer.

Q When did you talk with the lawyer? A Monday.

Q This Monday? A Yes, sir.

Q Is that the first time you talked about it?

A Yes.

Q So, that is the first time that you had occasion to talk to anybody in regard to what your son did on Saturday, September 17th? A Yes.

Q And you were able to recall distinctly that upon that day your son came to you, about three thirty in the afternoon, and gave you the keys? A Yes, sir.

MR. O'MALLEY: That is all.

RE DIRECT EXAMINATION BY MR. HOFFMAN:

Q Mr. Littman, you remember it very clearly--

MR. O'MALLEY: I object to his putting the words

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in the witness's mouth.

THE COURT: Objection sustained.

Q Do you remember it because that was the last day you saw your son?

MR. O'MALLEY: Objected to.

THE COURT: Objection sustained.

Q Did you see your son after he delivered to you the keys, on the 17th day of September, up to your meeting him in Court? A No, sir.

Q Did you go to see him in Tombs Prison?

A Yes, sir.

Q How many times did you see him in the Tombs?

MR. O'MALLEY: Objected to as immaterial.

THE COURT: It is, but let him state.

A Once or twice. My wife goes there.

MR. HOFFMAN: That is all.

MORRIS LITTMAN, one of the defendants, herein, called as a witness on behalf of the defense, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HOFFMAN:

Q What is your name? A Morris Littman.

Q Where do you live? A 206 Delancey Street.

Q How old are you, Littman? A Eighteen.

Q What were you employed at in the month of September,

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and for whom were you working? A Working for my father.

Q Did you go to public school, City of New York?

A Yes, sir.

Q Up until what age? A Well, fourteen years, about.

Q You were in trouble before, weren't you? A Yes, sir.

Q When was the first time you ever got into trouble? Try and recall as best as you can? A Well, I got in trouble when I was a young fellow, a little boy.

Q Was that the first time? A Yes, sir.

Q Now, then, after that time, when did you get into trouble? A Then I got in trouble about a year and a half after, I think.

Q What happened with you the second time? Where were you sent, I mean? A I was sent to the House of Refuge.

Q By what Judge? A Judge Mayo, Children's Court.

Q After you were sent to the House of Refuge, by Judge Mayo, when next did you get into trouble? A About a year and a half or so after, or a year.

Q Before what judge? A I can't recollect the name.

Q Where did the Judge send you to? A New York City Reformatory.

Q And, after that time, did you get into trouble?

A Yes, sir, I did.

Q What Judge? A Judge Mulqueen.

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Q Where did Judge Mulquen send you to? A New York City Reformatory -- I mean New York State Reformatory.

Q Was that the last time you got into trouble?

A Yes, sir.

Q When were you released from the reformatory?

A In the month of June.

Q The various times when you got into trouble, did you fight the case, or did you take a plea?

A I always says, "I am guilty", whenever I was arrested.

Q All those times, you pleaded that you were guilty?

A Yes, sir.

Q Since the month of June, and up to the 17th day of September, were you working for your father? A Well, about a day or two after the first day, I came home.

Q A day or two after you got out of the reformatory?

A Yes, sir.

Q You were paroled from the Reformatory, you were permitted to be released on parole, is that right?

A Yes, sir.

Q And you were reporting to the parole officer?

A Yes, sir.

Q To whom? A To Mr. Rogers, in Fifteenth Street.

Q Now, then, let us come to the 17th day of September. This was on a Saturday? Did you work on that day?

A I did.

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Q What hour of the morning did you go to your father's place of business? A Well, I went there late that morning, about eight o'clock, or half past eight.

Q Up to what hour that afternoon did you remain in your father's business? A I think it was about half past three.

Q What did you do after you left your father's business? Did you go home? A Went home.

Q And what did you do when you got home? A First I took a bath; then I ate -- I didn't eat; I didn't eat that day.

Q Was your mother home? A Yes.

Q And how long did you stay home? A Well, I was home more than an hour.

Q Then, what did you do, after you left the house? Where did you go? A Then, I went right down to the delicatessen store.

Q Where is this delicatessen store? A 168-1/2 Delancey, two doors away from my father's.

Q And is this delicatessen store run by the man who appeared here on the stand yesterday, Mr. Berman?

A Yes, sir.

Q Can you recall what hour it was when you were in that store? A I know it was in the evening.

Q What time? A Well, it was after half past four or

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five o'clock.

Q Between half past four and five o'clock?

A Something like that.

Q Did you then meet Kaplan? A I was waiting there.

It was about five minutes before Kaplan came along.

Q You were on Delancey Street, in front of this store, before Kaplan came along? A Yes, sir.

Q Did you know Kaplan? A I knew him to say "Hello".

Q How often did you meet him? A Very often; two or three times a week.

Q And ~~as~~ was this place at Delancey Street in front of the Williamsburgh Bridge, where you met? A Yes, sir, right opposite.

Q Did you meet other boys there? A Yes, sir, about two or three other boys.

Q Did you meet Kaplan on that day by appointment?

A No; no, sir; not by appointment.

Q Did you have any appointment to meet Kaplan that afternoon? A No, sir.

Q Before the 17th day of September, did you ever meet Leitner, the private detective? A No, sir.

Q You say that you and Kaplan went into this delicatessen store, or did Kaplan go with you in the delicatessen store? A During that time.

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Q When you got out, did you stand on the sidewalk, when you left the delicatessen store? A No, not on the sidewalk; about three feet from the door; about three feet from the door.

Q Within the street line? A Within the sidewalk.

Q Now, tell us what happened while you boys were together with regard to this package? A Well, we were talking; we happened to be talking about-- I seen some sketch and he was not there, I was talking about another fellow, and he asked me what was it, and I told him. Anyway we was talking and laughing about some song, some comical song, and two fellows across the way, on the opposite side, right opposite the store-- there was a package standing by the wall, leaning against the wall.

Q Do you mean the wall of the bridge? A The wall of the bridge; and the writing was facing towards the wall, the writing on the package, and the fellow spoke to Kaplan first, and said --

Q Did you hear what the fellow said to Kaplan, this man? A I did.

Q Tell us what he said? A I didn't hear the whole conversation, but I heard this much: Just when I came over, Kaplan was saying to him-- we came almost together -- he was in front of me-- Kaplan said, "No". Then he said, "I will give you fifty cents", and Kaplan said, "No". Then he

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said to me "Do you want to do it", and I says, "No", also; but the fellow insisted-- he didn't exactly insist, but I seen it was quite a burden for him, and I says, "Go on, do him a favor", and Kaplan took the package, and I walked with him. Kaplan took it a couple of blocks, and I took it off of Kaplan, and we got right near the door, and this fellow, who was with Kaplan, was walking ~~x~~ alongside of Kaplan also.

Q How did you walk from Delancey Street to Ludlow?  
What route did you take? A We walked straight up Delancey Street, and turned into Ludlow.

Q When you got to the corner of Stanton and Ludlow, what happened? A The fellow says -- he walked away. He didn't say nothing. He said, "Wait, I am going to telephone." "Where are you going" He said, "Right across the way". He went to the opposite corner, to the drug store.

Q Did he tell you where to go with the package?  
A We had the address.

Q What was the address? A It was right on the corner; I think it was 181, something like that, Stanton Street.

Q What corner was it? A Ludlow.

Q Stanton and Ludlow? A Stanton and Ludlow.

Q You and Kaplan went into this store? A Yes, sir.

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Q When you got into the store, did you meet the proprietor? A Yes, sir.

Q Mr. Saffer? A Yes, sir.

Q What did you tell him? A I told him -- he said, "What have you got there?" No. First, I says, "Who is the proprietor". He says, "I am". I says, "What is your name?" he says, "Mr. Saffer". He said, "What have you got there?" I told him, "We were sent in here, the man will be here right away", and he says, "All right". He says, "What have you got there?" I says, "Wait a minute; he will be here"; and I sat down. It was a warm day. And in about a minute or two minutes, I couldn't help, even twenty, I don't think, it seemed that way to me, two detectives came in, excited, and said, "What have you got there". I told him it is none of their business, first off. I seen they were well dressed people, and perhaps they made a mistake. I looked at them, and I seen it was not the fellows that sent me in. I said, what is their business and when they insisted, and told me they were detectives, I told them what the thing was, and I actually begged them to let me go out.

Q Tell us what you said to the detectives? A That is what I said.

Q What was the conversation? A First I said -- when we were arguing, he says, "What have you got here". I said

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none of his business. He says, "Who are you talking to?" I will give you a bust in the eye, I will give you a bust in the mouth?" I says, for what are you going to bust me in the month? He says something, I can't remember what he said; I was excited. Then he said, "Come on down to the station house". I says, "What do you mean?" I was arrested once before, and I knew things like that happen, and I says to him, I says, "Let me go outside and call this fellow", and he wouldn't let me go. He held me by the hand. He says, "Never mind, come on with me. We will get the fellow after"; and we had to go with him. We went down to head quarters.

Q Before you went with him, was that package opened in the store; before you went with him? A What package?

Q This package you brought there? A No, sir.

Q That package was closed? A Yes, sir.

Q Was there a package on the table or counter of the store? A First it was on the side of the counter, and then before we sat down, I give it a chuck on the counter. I threw it on the counter.

Q Were there people in the store? A Yes, sir, there was. There was Mr. Saffer and his wife and his daughter, I think.

Q Now, then, let me ask you; When you went into that store, did you go into a back room? A No, sir.

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Q A man standing on the street could look directly into the store, couldn't he? A Yes, sir.

MR. O'MALLEY: Objected to as leading.

THE COURT: Objection sustained.

Q Now, Littman, on the 17th of September, were you walking with Kaplan for a period of about three hours on Greene Street, up-town, towards Eighteenth Street, or in those localities? A No, sir. When I got arrested, it was about half past five, and when I stopped work it was after three, and that alone --

Q You heard Leitner say that he saw you and Kaplan together at two thirty, and kept trailing ~~up~~ you up to about five o'clock? A Yes, sir, I heard him say that.

Q Is that statement true? A It is impossible.

Q Is it true? A No, sir.

Q Leitner testified that you and Kaplan for on a Prince Street Bar at Greene Street; is that statement true? A No, sir.

Q Did you make any statement to officers Sullivan and Gorevan to the effect that the parcel belonged to your father? A No, sir.

Q And do you want the jury to understand that the statement you made to them at the time of your arrest is identically the statement which you make here regarding the salesman? A Exactly.

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Q When you and Kaplan were placed under arrest by officers Sullivan and Gorevan, did they place the proprietor of the store under arrest? A No, sir.

Q Did Leitner, this private detective, go into the store while you and Kaplan were held by the detectives?

A No, sir.

Q Did Leitner walk with the detectives, or with the defendants, over to 17 Allen Street? A No, sir.

Q When the detectives brought you to 17 Allen Street, was Leitner there? A No, sir.

Q How long were you detained at 17 Allen Street before the proprietor of this store was brought there?

A It was more than half an hour.

Q During that time, and up to the arrival of Saffer, did Leitner, the private detective, make his appearance at police headquarters? A No, sir.

Q When was the first time you saw Leitner? A In the Magistrates Court, in Essex Street.

Q Now, then, you said that when you went over on Delancey Street, there were several men standing together?

A Yes, sir.

Q Do you recognize-- do you recall that Leitner was one of those men? A Well, I could not say positively, but one of them looked almost the same, like him, but I would not swear to it.

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Q And did you make that statement to the Police Magistrate? A I did. I told him exactly the same as I do now.

MR. HOFFMAN: That is all.

CROSS EXAMINATION BY MR. O'MALLEY:

Q When you joined Kaplan, at Delancey Street, who was there besides you and he? ~~if~~ anybody? A Yes, sir.

Q Who were they? A Two other fellows.

Q What are their names? A Sam.

Q What is his last name? A I couldn't tell you his last name.

Q What is the name of the other fellow? A Harry.

Q What is his last name? A I couldn't tell you his name.

Q Do you know where they live? A One lives on Henry Street.

Q What number? A I couldn't tell you the number.

Q How long had you known those fellows? A About three or four months.

Q Had seen them quite frequently? A Yes, sir.

Q And still you are unable to give the jury their last names? A Yes, sir.

Q Or where they live? A Yes, sir.

Q And how long had they been standing with you before

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this stranger came up? A Not long.

Q They were there when he called you over? A Yes, sir.

Q And they saw you go? A Yes, sir.

Q You had never seen this stranger before?

A No, sir.

Q And you say you went over, and you said something about seeing a package? A Yes, sir.

Q Where was that package? A On the other side, leaning up against the wall.

Q And there was writing on it, was there?

A There was, as I found out afterwards, when I seen the wrapper.

Q You saw the wrapper? A Yes, sir, afterwards.

Q And you saw the address on it, did you? A Yes, sir.

Q The name of Wheeler & Mother, St. Joseph Missouri?

A I didn't read it.

Q You didn't read it? A No, sir.

Q How did you know there was writing there?

A I got a gaze on it.

Q You testified, on your direct examination, that this thing was standing up against the wall, with the writing turned toward the wall? A Yes, sir.

Q How did you see that? A Because I saw there was no writing on it.

Q How did you know that the writing was turned toward

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the wall when you first saw it? A I found out afterwards.

Q But you didn't know there was no writing on it at that time? A No, sir.

Q You say you had been working that day, had you?

A Yes, sir.

Q How long had you been working for your father?

A What do you mean? That day only?

Q Any time? A I don't know what you mean.

Q How long had you been working for your father?

A Months, weeks, days?

Q Yes. A As soon as I got out of the reformatory.

Q How much a day did you get? A I got what I needed.

Q How much a day did you earn? How much did he pay you? A He didn't pay me no exact-- what I needed, he gives me.

Q How much did he ever give you at any time?

A He gave me two dollars, three dollars, a dollar, and a half, and a quarter.

Q How frequently did he give you ~~a~~ that?

A Whenever I asked him for it.

Q Did you have any money with you that day? A Yes.

Q How much? A I had a few cents.

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Q When did you get that from him?

A I got that the night before.

Q How much did he give you at that time? A He give me about sixty cents.

Q What sort of work did you do? A I used to write letters to his customers .

Q What is your father's business? A He is a whole-sale dealer in new and second hand shoes.

Q In what? A Second hand shoes.

Q How many people worked for him? A He used to have two. He has one now.

Q One, since you left? A Yes, sir.

Q And who was working with you on that day? A On that day, none of them.

Q You were alone in the store? A Only myself.

Q Are you a shoe maker? A Yes, sir, I can sew.

Q Were you making shoes that day? A I learned that at Elmira.

Q Were you making shoes on that day? A No, sir.

Q What were you doing? A I was sewing vamps.

Q What? A Sewing pickets on shoes.

Q Working all day, were you? A Yes, sir.

Q How long had you been working at that?

A Since I am working there.

Q For the three months? A Did everything.

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Q Let us see your hands? A (Witness exhibits the palms of his hands)

Q Were you there when the stranger offered to give you some money for carrying this package? A Yes, sir.

Q What did you hear him say? A When he made a proposition for fifty cents?

Q Yes. A We says, "No", first. I actually didn't take pity on him, but I said, "Do him a favor anyway", because it was a heavy bundle, and it was a very warm day.

Q You wanted to do him a favor? A Yes, sir.

Q Why should the money enter into it, then?

A I wouldn't do it for nothing.

Q You wouldn't do it for nothing? A No, sir.

Q Notwithstanding you wanted to do him a favor?

A Yes, sir.

Q And he finally offered you fifty cents?

A Yes, sir.

Q Did he tell you where he wanted you to take it?

A He wrote on a piece of paper.

Q So, at the time you agreed to take it for fifty cents, you didn't know where you were going to take it?

A No, sir.

Q So, you might be going to the Bronx with it?

A If he told me it was going so far, I could change my

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mind.

Q But you agreed to take it for fifty cents, wherever he wanted it to go? A Yes, sir.

Q He followed you over to the store? A Yes, sir.

Q And you had never met him before; he was an entire stranger to you? A Yes, sir.

Q And when he got to the corner of Ludlow and Stanton Streets, he told you -- what did he tell you? A He says, "Now, listen" -- he made a motion; he said, "I am going to the drug store, and I want to telephone to a party".

Q That is all he said? A Yes.

Q Did anything occur to you about it being peculiar that he should send you into a store? A Not at that moment.

Q You had never seen him before, and he had never seen you before? A No, sir.

Q Didn't you think it was rather a careless thing for a stranger to do? A No.

Q You did not? A No.

Q Would you do that? A I did it many times before. Every day I was working, I would do that.

Q You have been arrested and convicted several times? A Yes, sir.

Q And what were you convicted for in May, 1904, what crime? A I could not remember the crime.

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Q Wasn't it burglary? A No, sir.

Q Will you swear to that? A May, 1904?

BY THE COURT:

Q Were, you, at, or about that time, convicted of burglary? A Yes, sir.

BY MR. O'MALLEY:

Q And you were sent to the house of Refuge?

A Yes, sir.

Q When was the next time you were convicted?

A If you call my attention to it.

Q On May 3rd, 1906, did you violate your parole?

A Yes, sir.

Q And were re-arrested? A Yes, sir.

Q And sent back? A Yes, sir.

Q On January 10th, 1908, were you arrested and convicted? A I was never convicted. I always said I am guilty, right away.

Q January, 1910? A (No answer)

BY THE COURT:

Q Did you always say you were guilty of the crime you were charged with, or did you take a lesser plea in each case? A Whatever they offered me.

Q Weren't you indicted for one thing, and the Judge allowed you to plead to a lesser thing, and you pleaded to that? A Only once, your Honor.

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BY MR. O'MALLEY:

Q What did you plead to in 1908, do you know? Was it petty larceny? A No, sir.

Q Didn't you plead to petty larceny? A When I was sent to the Reformatory?

Q On January 10th, 1908? A I can't say for sure.

Q In December, 1908, weren't you convicted, or plead guilty? A I don't remember my record, because I let those things go out of my head.

Q Isn't it a fact on that day you were arrested and charged with having stolen a package-- convicted of having stolen a package?

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

BY THE COURT:

Q Weren't you, on or about that time, indicted for, and pleaded guilty-- weren't you indicted for stealing a package from an express company's wagon, and didn't you plead guilty to an attempt to steal the package from the express company's wagon?

MR. HOFFMAN: Objected to, on the ground there is nothing in this indictment charging this defendant with anything ~~with~~ except a second offender.

THE COURT: Objection overruled.

MR. HOFFMAN: Exception.

A I was indicted for attempting to steal a package.

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Q From an express company's wagon? A For a plain, ordinary wagon.

BY MR. O'MALLEY:

Q And you plead guilty on that occasion?

A I did.

Q And where were you sent then? A New York City Reformatory.

Q Now, on March 25th, 1909 --

A That is the time I was sent to the Reformatory.

See, I don't remember them things.

Q What were you charged with stealing at that time?

A That is what I am talking about now.

Q What were you charged with stealing, in December, 1908? A You will have to tell me what I was arrested for, and I will tell you if it was true.

Q December 23rd, 1908, New York City, wagon thief, forfeited bond, January 21st, 1909? A I didn't forfeit my bond.

Q Officers Kennedy and Zimmerman, Fifteenth Precinct. Now, do you recall it? A Yes, but I didn't forfeit my bond.

Q Were you arrested? A Yes, sir. They got it all mixed up. They said I forfeited my bond. I couldn't come here, when I was in the house of Refuge.

Q What were you charged with at that time?

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A That is the time I was sent to the New York State Reformatory.

BY THE COURT:

Q What age did you give then, in 1908?

A I give twenty years old.

Q What was the first answer you made to counsel here affecting your age? Now? A That is my right age, your Honor, eighteen years old.

Q In December, 1908, you said you were twenty?

A Yes, sir. The reason I did that was my lawyer told me, If I wanted to go to Elmira, instead of going back to the House of Refuge, I would have to give the higher age.

Q Supposing you gave you real age, eighteen?

A It wouldn't help me so much.

Q Is that your real reason? A Yes, that is the truth, also.

BY MR. O'MALLEY:

Q How old do you say you are now? A My right age is eighteen.

Q What was your age when you were first convicted?

A I can't remember.

Q That was in 1904. What was it?

THE COURT: Let me finish with him on that point.

BY THE COURT:

Q When you were arrested this time, why did you give

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your age as twenty-one? A I wanted to go to a man's prison.

Q You always have a reason for those things?

A Yes, sir.

Q You did give your age as twenty-one in December, 1910? A Yes, sir.

Q In December 1910, you gave your age as twenty? A Yes, sir.

Q And now, you give your age, under oath, on the stand, as eighteen? A Yes, sir.

Q What is your real name? A Morris Littman.

Q Is that your real name? A Yes, sir.

Q Didn't you make a statement to Judge Mulqueen, giving another name? A No, sir.

Q Didn't you tell Judge Mulqueen your name was Littmanowitz? A No.

Q You did not? A No.

Q I will read to you from the stenographer's minutes, and ask you if they are correct.- "That is right, your Honor. You don't have to bother with that. My right name was Littmanowitz, and they all go by the name of Littman"

Q Why did you give the name of Joseph Greenberg?

A I was not an honest fellow at that time, and I admit I was doing wrong things right along.

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BY MR. O'MALLEY:

Q When you entered the store, who was there? A The proprietor.

Q And who else? A His wife and his daughter.

Q Anybody else? Customers? A Just when we come in, there was another man there.

Q What did you say when you got in there? A Asked for the proprietor, and he says, -- I said, "Are you Mr. Saffer"? And he said, "Yes". I told him what it was;; I was sent by a man, and he was kind of surprised, and I said, "Wait a minute, you will see"; I was expecting him in any second. I laid it down, and just before that I put it back on the counter.

Q Didn't you open that package? A No, sir.

Q Didn't you offer the stuff in that package for sale to those people in that store? A No, sir.

Q Didn't you have your coat off, as the officer says?  
A No, sir.

Q Isn't it a fact you were in that store at least ten minutes? A No, sir.

Q And people in that store were waiting on customers, and you had to wait until they got through with them?

A No, sir.

Q Do you swear to that? A Yes, sir.

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BY THE COURT:

Q Has the defendant any other name known to you?

A No, sir.

Q Did you ever know him by the name of Feldman?

A Do you Mean Kaplan? A

Q Yes. A No, sir.

BY MR. O'MALLEY:

Q Where were you before you went to work for your father this last time? Were you in Elmira? A Yes, sir.

Q What time did you leave Elmira? A The month of June.

Q This year? A Yes, sir.

Q Was that before, or after, Kaplan left there?

A I could not remember that.

Q Don't you know whether he left before you did?

A I don't exactly remember that.

Q Didn't you know Kaplan up there? A By sight, I suppose I knew him, but you can't talk to anybody up there.

Q What Department were you in? A In the shoe department.

Q Where was he? A I don't remember that.

Q You had never met him until you got back here to New York? A I have seen him, but I have never conversed with him?

Q You had never conversed with him until after you got

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back to New York? A Yes, sir.

Q When was the first time you met him after you got back here to the City? A About three months ago.

Q That would be along in September? A About three months; while I was out. While I was out, about three months.

THE COURT: Mr. O'Malley, I don't think I would go any further.

MR. O'MALLEY: That is all.

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THE DEFENDANT RESTS.

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REBUTTAL TESTIMONY.  
Q

KATIE SAFFER, called as a witness on behalf of the people, in rebuttal, being first duly sworn, and examined through Bernard L. Mitnick, previously sworn as Interpreter, testified as follows:-

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your name? A Katie Saffer.

Q Where do you live? A 101 Stanton Street.

Q Do you keep a store there? A Yes, sir.

Q Do you remember having seen these two boys in your store at one time in September? A Yes, it was on a Saturday that they came in.

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Q Will you tell the jury what they did when they came in, what they said, and what they had?

A They came in with a bundle; I had customers in the store, and I was attending to them at the time. Then they said to me, "Will you buy some goods", and I said, "No". Then they said, "We will open the bundle, and see what we have got". As soon as they took the cissors from the counter, and cut open the bundle, the two detectives then came into the store. Then the detectives asked them where they got the bundle from, and they said from their father.

BY THE COURT:

Q How do you know that? A That is what they defendants said, and I heard it.

Q In what language? A In English.

Q Let us hear you say that in English? A I understand, but I can't speak English.

BY MR. O'MALLEY:

Q Try to say it, do the best you can. A (In English) He said, "Where you took the goods". He said, "By my father".

Q The package was open? A They cut it open, yes, and immediately the detectives came in.

Q How long were they in the place, about, the defendants? A About ten or twelve minutes; about that

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time.

Q Before the detectives came in? A Yes, sir, they sat there.

Q Why were they there, that long, do you know?

A THE COURT: She may not know what they were thinking about.

Q What were you doing at the time they were there?

A I had customers in the store, and I was attending to them, and then the customers went out.

Q And when you went to the defendants, did you?

A Then I asked the defendants what they wanted, and they told me they had goods.

MR. O'HANLEY: Your witness.

CROSS EXAMINATION BY MR. HOFFMAN:

Q Mrs. Saffer, were you a witness in the Police Court?

A No, sir.

Q Who told you to come here this morning?

A The detective came with a paper, and told me that I must come, and I came.

Q What detective was it? A The one that came to-day.

Q Yes? A I don't know where he is.

Q Do you see him in Court? A There he is. (Indicating Officer Gorevan)

Q When did he serve you with this subpoena?

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A Just then, when he came.

Q Where, in your store? A Yes.

Q When? A Before I came down here, he came there, and we got on the car, and all came down together.

Q Officer Gorevan went to your store this morning, and brought you here? A Yes.

Q Did officer Gorevan speak to you? A No, sir.

Q He is one of the officers that made the arrest on the 17th of September? A Yes, sir.

Q When you got on the car to come down here, did he have anything to say to you? A He said nothing to me, nothing. - The only thing he did was that they sent me a subpoena, and I must come to the trial.

Q Didn't he tell you what you must testify to?

MR. O'MALLEY: Objected to.

THE COURT: Let her answer.

A No, nothing at all. He said nothing.

Q Were you arrested on the night of the 17th of September? A When the boys were arrested?

Q That night? A No, not me; my husband.

Q Didn't the officers want to take you, and you pled with them that you had many children at home, and that they should take your husband? A No, they came immediately and took my husband.

Q When they took your husband, were the premises

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searched? A Yes, they did.

Q Did they find property which they have taken?

A That I don't know.

Q Won't you swear that the officers, when they made the arrest, and while you were there, took property from the rear room of your store? A I was not there at the time, because I went away.

Q When your husband was arrested, were you in the store?

A No, I was not there at the time the officer arrested him, but when they took him away from the store, I was upstairs with my children, and when they took my husband from the store, I came down.

Q Didn't you plead with the officers not to arrest you that night? A Why should I ask them not to arrest me? I didn't do anything. My husband is the boss.

Q Will you swear, that when your husband was arrested, that the officers did not take property which they found in the rear room? A I don't know. I was not there. When I came down, my husband was already taken in custody.

Q How many times were you arrested?

MR. O'MALLEY: Objected to.

THE COURT: I will allow it.

A Only once.

Q How long ago? A A few weeks ago.

Q After the 17th of September? A Yes, sir, after the 17th.

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Q How many times was your husband arrested?

MR. O'MALLEY: I object to that. It is highly improper.

THE COURT: It has nothing to do with this case. She may answer it, though.

A Ask my husband. I don't know. Ask my boss.

Q Don't you know how many times your husband has been arrested? A That I have nothing to do with.

Q Do you remember weeing me in your store? A Yes, he was in my store.

Q Do you remember telling me that it costed you six hundred dollars to get out of this case?

A No, I did not tell the lawyer anything. No, no.

Q You now swear that you did not tell me that it cost you six hundred dollars to get out of this case?

THE COURT: Which case?

MR. HOFFMAN: This case. The arrest which arose out of this transaction?

A No, only that he asked me I shall come down and testify for the boys, and do something for them as witness.

Q What happened with your husband's case in the Police Court?

MR. O'MALLEY: Objected to as immaterial.

THE COURT: Objection sustained.

Q Was your husband discharged?

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MR. O'MALLEY: Objected to.

THE COURT: Objection sustained.

MR. HOFFMAN: That is all.

RE DIRECT EXAMINATION BY MR. O'MALLEY:

Q This Counsel asked you to come down and testify, did he? A Yes, he come and told me to come here and say something for the boys.

Q And what did you tell him? A I said, "What have I to do with it? I have got nothing to do with it."

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TESTIMONY CLOSED.  
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