

START

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CASE

I N D E X

<u>NAMES OF WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
ORVILLE H. TOBEY	1	53	
CHARLES HANN, JR.	95	100	108
JOSEPH RUSSO, Officer,	109		
JOHN CUNNIFF, Officer	128	134	
ALFRED J. TALLEY.	137	160	169
JOHN F. CLEARY, (DEFENSE)	171	176	
SAM DREYFUS	190	246	308
(REBUTTAL)			
WILLIAM E. PEPPER	313	314	
ANTHONY J. BRAUNWORTH	316	318	

Peter P. McLoughlin,
Official Stenographer.

(M.A.G.)

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COURT OF GENERAL SESSIONS OF THE PEACE,
IN AND FOR THE COUNTY OF NEW YORK.
PART II.

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

--against-- :

SAM DREYFUS, Otherwise known as JOE BROWN, :

impleaded with :

NATHAN ROSENSCHWEIG, Otherwise known as :

NAT ROSS. :

B e f o r e

HON. T. C. T. CRAIN, J.,

And a Jury.

-----X
New York, June 23, 1921.

INDICTED FOR ATTEMPTED EXTORTION.

INDICTMENT FILED DECEMBER 20, 1920.

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

ASSISTANT DISTRICT ATTORNEY JAMES M. DONAHUE, for the People;

MYRON KRIEGER and JACOB STUTSKY, ESQs., Attorneys for the

Defendant, Sam Dreyfus.

(A jury was duly impaneled and sworn).

Mr. Donahue opened the case to the jury on behalf of the
People.

O R V I L L E H. T O B E Y, called as a witness, on behalf of
the People, being first duly sworn, testified as follows:

(201 West 57th Street, New York City).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Tobey, may I ask what business you are in? A Banking
business.

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Q Talk up so that we can all hear you. A The banking business.

Q And how long have you been in the banking business? A For Twenty years.

Q And what is the name of your firm now? A Lawrence Turnere & Company.

Q Are they engaged in the general banking business? A yes, sir

Q What is your connection with the firm? A Junior partner.

Q How many partners in that concern? A Four partners.

Q And how long have you been with that firm? A Twenty years.

Q And where is that firm located? A 64 Wall Street.

Q And where were you engaged in the banking business, Mr.

Tobey before you engaged with that firm? A I was not in the banking business.

Q May I ask how old you are, Mr. Tobey? A I will be forty-three next November 2nd.

Q And you were twenty-three, were you not, when you joined this firm? A Yes, sir.

Q What did you do before that? A I was with the National Machine Company.

Q As what? A As a clerk.

Q And you have been continuously engaged with this particular firm for the last twenty years? A Yes, sir.

Q And about what business does that firm do --

MR. KRIEGER: I object to that.

THE COURT: What is the general nature of the business?

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THE WITNESS: It is commercial; commercial banking business.

THE COURT: I will allow that.

MR. DONAHUE: May I be permitted to show the volume of business that they do?

THE COURT: No.

Q What is the general nature of your business? A Commercial banking, largely with foreign countries.

Q By that what do you mean? A I mean that we have had banking relations with Cuba for a great many years; we finance sugar planters, to an extent; we have relations with various parts of South America and with Spain, and other countries in Europe.

Q How long has your firm been in business? A Since 1832, successors to Moses Taylor & Company.

Q During the War where did you live? A I lived at my apartment No. 201 West 57th Street.

Q And who did you live there with? A My mother, her sister, and my ~~older~~ sister.

Q You were not married at that time? A I had been divorced.

Q Now, Mr. Tobey, do you remember some time meeting a man who gave the name of Nat Ross? A I do, sir.

Q Can you tell us approximately the first time you met him? I should say early in October 1918, in fact, I know it was.

Q Early in October 1918? A Yes, sir.

Q And under what circumstances did you meet him, Mr. Tobey?

A At that time I was on crutches; I had water on the left knee, as

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the result of two months of rheumatic fever. It forced me to take a taxi cab down to the office and back again every day. I had two crutches and I had to do that. On the way uptown one afternoon I saw Ross, Nat Ross, as I subsequently learned that was his name, walking up Lafayette Street, very near to this building, trudging on uptown. I had the taxi cab driver stop him and asked him whether he wished me to give him a lift uptown as far as he was going.

Q At that time how was Mr. Ross dressed? A He was dressed in a sailor's uniform.

Q Did he get into the taxi cab? A Yes, sir.

Q Anybody else in the taxi cab? A No, just us two.

Q Did you talk to him on the way up? A Entirely.

Q Generally, what was the talk about? A I asked him about his Navy service, and he very shortly after told me that he had been in Hayti.

Q You discussed Hayti with him? A Yes, sir, because we had business relations there.

Q You were familiar with that? A Yes, sir.

Q At that time where did you leave Ross? A At 46th Street, and I proceeded up to 57th Street.

Q Did he give you his name at that time? A He voluntarily wrote his name on a card, and asked me for my name, and said when he went away he would like to send me a post card; he seemed to appreciate it.

Q And did you see him again after that? A Yes, sir; although I never asked him to come up to the house --

MR. KRIEGER: I move to strike that out.

THE COURT: Yes. Just answer the question.

Q Did you see him again after you gave him this ride? A Yes.

Q When next did you see him? A I should say about two weeks after.

Q And where? A At our apartment.

Q And who was present at that time? A Another man by the name of Rollins.

Q Brought there by Ross? A Brought there by Ross; a sailor in the Navy, and Rollins was introduced by Ross.

Q And who else was there, Mr. Tobey? A Nobody else was there on that occasion.

Q Where your folks there at that time? A My folks were in the apartment.

Q Who were in the apartment? A My mother, my aunt and my sister; my mother has been an invalid and she has been forced to remain in.

Q And did you introduce Ross and Rollins at that time to the women folks of your family?

MR. KRIEGER: Objected to as leading.

MR. DONAHUE: All right.

Q Who did you introduce them to?

MR. KRIEGER: I object to that.

Q What did you do? A Well, on the first occasion we spent about half an hour in conversation. I suggested that the two men go to the theatre. I gave them money to go to the theatre.

Q Did you go with them? A No.

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Q Did they meet your mother and sister on that occasion?

A No; the next occasion.

Q How long were they in the apartment at this time?

A About half an hour, between half past seven and eight o'clock.

Q When was the next time you saw them? A About two weeks after that.

Q Who did you see at that time? A I don't remember whether Ross came alone or came accompanied by the other man.

Q However, you saw Ross? A Yes, sir.

Q Where was that? A Atour apartment.

Q And about what time did he arrive that day, if you can recall? A I think he may have -- yes, sir, I think he did arrive after dinner.

Q And at that time did he meet your mother and sister? A Yes, sir.

Q Introduced to them by you? A Yes, sir.

Q Was he in a sailor's uniform at that time? A Yes, sir.

Q How long did he stay at the apartment? A Well, he usually stayed; he was there several times; he usually stayed until half past nine --

MR. KRIEGER: I object. The question is how long he stayed at the apartment at that time.

A (continued) I should say for about an hour or an hour and a half.

Q And after that Mr. Tobey, did you see him a good many times?

A Yes, he came frequently.

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Q About how many times would you say, Mr. Tobey, you saw him in the year 1919?

THE COURT: 1918.

MR. DONAHUE: We are through with 1918, your Honor.

Q You say you met him in 1918? A Yes, sir.

Q And you saw him three different times in 1918? A He may have been at the apartment three or four times before the beginning of 1919; it was around that.

Q How many times would you say he was at your apartment from the first time you met him until January, 1919? A I should guess about six times.

Q During that time were you there with him? A I was and my family.

Q And your family? A Yes, sir.

Q Now, Mr. Tobey, during January 1919, did you see him?

A Yes, sir.

Q Was he still in the uniform of a sailor at that time?

A He got out of the service; I don't know whether it was at the end of 1918, or at the beginning of 1919; just about that time he was discharged.

Q It was about January 1st? A Yes, sir.

Q He was out of the Navy at that time? A Yes, sir.

Q When did you see him, if you remember, the first time in January, of that year? A I don't remember, sir; he came, not by appointment, once or twice after he got out of the service;

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he wrote a letter asking me for an appointment to discuss the chance of his getting in business, but it was some time during the month; I probably saw him two or three times.

Q Did he dine at your house? A He did.

Q With your sister and mother? A With our family,

Q Dined at the same table with all of you? A Yes, sir.

Q You say that he asked you to get him a position? A Yes, sir.

Q Did you endeavor to get him one? A Yes, sir.

Q Did you see him during 1919 very much? A I saw him up until about the middle of February, 1919.

Q And did you see him, do you say, at your house during this time? A Yes, sir.

Q After that did you see him in March and April? A I did not.

Q When was the next time you saw him, Mr. Tobey, after you saw him in February, 1919? A In the early part of May.

Q And where was that? A At our apartment, outside of the front door.

Q And was he alone at that time? A No, he was not.

Q Who was with him? A A man whom I subsequently learned to be Sam Dreyfus.

Q Do you see Sam Dreyfus in the court room now? A I do, sir.

Q Will you point him out? A The third man sitting at the table there (pointing to the defendant).

Q Do you mean this defendant here? A I do.

Q About what time of the day was that, Mr. Tobey? A It was

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at six o'clock in the evening.

Q And were they there before you or after you? A Before me.

Q And who was in the apartment when you arrived? A When I arrived the door was opened about a foot by the servant, who was standing about a foot away, and back of her was my sister.

Q Did you invite them in at that time? A No.

Q What did you say? A Ross asked me for some help, said he was hard up. He introduced his friend as Joe Brown.

Q You mean this defendant? A Yes, sir.

Q Ross introduced him as Joe Brown? A Yes, sir.

Q Up until this time, Mr. Tobey, had you been asked for any money by Ross?

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

THE COURT: I will allow it.

MR. KRIEGER: Exception.

A Yes, sir, I had.

Q When, for the first time? A Just towards the last visit-

MR. KRIEGER: Your Honor, up to this time Dreyfus was not on the scene, and any demand made by Ross in this case cannot be considered as a factor against this defendant.

MR. DONAHUE: We are going to lay a foundation for a conspiracy.

MR. DONAHUE: We are not been tried for conspiracy. We are being tried on the specific charge of an attempted extortion.

THE COURT: I think, for the present, I will exclude it.

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Q Well, did you have any talk with Ross before you met Dreyfus with reference to money; yes or no? A Yes, sir.

Q And did you have any talk before you met Dreyfus with reference to Ross charging you with the commission of any crime?

MR. KRIEGER: I object to that, your Honor.

THE COURT: I will allow that, yes or no.

MR. KRIEGER: I object to the form of the question with reference to specific things, thereby in effect putting in a conversation not yet in evidence.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q So up until the time Dreyfus appeared at your house, you had never been accused of a crime by Ross, had you?

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

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

A I had not.

Q Now can you fix the date, a little more specifically, Mr. Tobey, with reference to the first time you saw Dreyfus? A I should say it was around the 9th of May, 1919.

Q Around the 9th of May, 1919? A Around then.

Q That was where? A At the apartment, No. 201 West 57th St.

Q That is 57th Street and Park Avenue? A 57th Street and 7th Avenue.

Q Now what was said at that time? A The first time I saw

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them they said nothing; Ross asked for some financial assistance --

Q Just tell us what Ross said? A Ross asked for some help.

THE COURT: What did he say?

THE WITNESS: He made no threat of any kind.

THE COURT: Will you kindly tell us, as nearly as you can, what Ross said to you at that time?

THE WITNESS: He asked me if I had succeeded in getting him a position. He said he was very hard up financially; that he had no money to get his food, and no place to go that night, and he introduced me to the other man, and I gave him \$5.00. He asked for more, and I refused it, and they left.

Q Now when did you see them after that, Mr. Tobey? A The following day.

Q The same two persons? A The same two, yes, sir.

Q And where? A At the corner of Wall Street and William.

Q And did you meet them there by appointment or by accident?

MR. KRIEGER: I object to the form of the question. I think it is leading.

THE COURT: Overruled.

MR. KRIEGER: Exception.

A By appointment.

Q By appointment? A Yes, sir.

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Q And when was the appointment made? A About ten minutes before as the result of a telephone message.

Q In other words, you talked with some voice on the phone?

A Yes, sir.

Q And as a result of that telephone message you met these two defendants? A Yes, sir.

Q At Wall Street and William? A Yes, sir.

Q About what time of the day was that? A About eleven o'clock in the morning or eleven-thirty.

Q Were they together? A Yes, sir.

Q You mean this defendant Dreyfus and Ross? A Yes, sir.

Q Still knowing Dreyfus by the name of Joe Brown? A Yes, sir.

Q What was said at that time? A They made a demand on me for \$1,000.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike it out.

MR. DONAHUE: You cannot give us your conclusions.

Give us your best recollection of what you said to them and what they said to you.

THE COURT: Repeat as nearly ^{as you} can what was said.

Now you have arrived at the corner of Wall and William Streets, and these two men are there already; is that so?

THE WITNESS: Yes, sir.

THE COURT: Suppose you tell us how the talk began, and what was said?

THE WITNESS: Dreyfus asked me for a thousand

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dollars. He told me that he would go to our office and expose me before my associates in the office as a degenerate. He told me that he would go to my home and expose me before my family as such. He said that he wanted a thousand dollars. Ross backed him up. Ross said that he was going away; he was going down to Texas; they were both going together. I walked with them for two or three blocks, as a result of which I agreed to give them \$500.00 that afternoon.

Q Was that the first time you had heard from either one of these men that they were accusing you of a crime? A Yes, sir. I had a telephone message asking for an appointment the night before at the apartment.

Q What crime did they say you had committed. Tell us of that conversation?

THE COURT: Now pardon me, Mr. Donahue. I would rather have you go back to the beginning of the talk on the corner of Wall and William Streets. Now you approached these men; what corner were they on?

THE WITNESS: They were on the north-west corner of Wall and William Streets.

THE COURT: And when you approached them who spoke first?

THE WITNESS: I don't remember, sir.

THE COURT: What was the first thing that was said?

THE WITNESS: A demand for a thousand dollars.

Q No, no. Tell us what they said? A They said they wished

a thousand dollars; they wanted to get away. They said they intended to go up to my home and denounce me as a degenerate, and also they said they would go to my office and denounce me as such.

Q When they first approached you, did they say you had done something to anybody, or anything of that kind?

MR. KRIEGER: I object to that.

THE COURT: Mr. Tobey, nobody wants to lead you, but we do want you to give this jury as near as you can a repetition of that talk; just what took place? Now you were approached, and one of these men speaks to you. Now what was the first thing which was said? Repeat the talk as nearly as you can?

THE WITNESS: As nearly as I can remember, I was asked promptly for a thousand dollars. The little man, Dreyfus, said, "We know what you are. You know what you are." Ross backed him up.

Q What did Ross say? A He said he wanted it to get away.

Q What did they say you had done, anything? A They said "You know what you have done to Ross."

Q Did you know what they meant at that time?

MR. KRIEGER: I object to that.

THE COURT: Sustained.

MR. KRIEGER: I withdraw my objection.

Q Had you ever been accused, Mr. Tobey, before that morning?

THE COURT: I am going to hear the question. Go

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ahead, Mr. Donahue.

MR. KRIEGER: I object to it.

THE COURT: I will allow it.

MR. KRIEGER: Exception.

A What is that?

Q Had you ever been accused by either of these men before that morning when you first met them at Wall and William Streets?

A No, sir, but --

MR. KRIEGER: I object and move to strike out the answer.

THE COURT: I will leave the answer in.

MR. KRIEGER: Exception.

Q You see we were not there, Mr. Tobey. We want to find out just what happened when you approached them, or they approached you, on Wall and William Streets? Will you try and give us your best recollection of everything that was said by either of those men to you and what you said to them? A Well, they threatened me immediately --

THE COURT: No, no.

Q Just use their words, for instance, Dreyfus's, if he said anything. "I said this" or, "I said that"; something like that?

A They said, the first demand was a demand for money, sir, and --

THE COURT: Who spoke?

THE WITNESS: I think the little man spoke. He seemed to be the business manager the night before over the telephone, and when I met him that day --

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MR. KRIEGER: I move to strike that out. Objected to.

THE COURT: Objection sustained. Strike out the answer.

MR. KRIEGER: Your Honor, even though you have stricken it out, the matter has gone before the jury in a way it should not appear before them, if it is not proper evidence.

THE COURT: I sustained your objection, Counsel.

Q Mr. Tobey, will you try and just give us your recollection of the exact words that were used by these two men, if you can? Do you understand what I mean? A Yes, sir.

Q Just imagine that you are describing what happened there. Tell us all about it? A He said, "I know what took place up at the apartment; that Ross had accused me of misbehavior with him; that they wanted money; they wanted money to get away.

Q Go ahead. A (continued) And the conversation was all on that line. It was simply a repetition of that. We walked down William Street to Pearl Streets and stayed there perhaps ten minutes; the whole interview didn't last more than --

Q What did they say they would do if they didn't get this money?

MR. KRIEGER: I object to that.

THE COURT: Sustained. I want this witness, if he can, to give us the talk. There are twelve men here willing to hear you. They want to hear what each one of these men said to you, and what you said to each one of those men?

MR. KRIEGER: I object to any question with respect to what was said, on the ground that the witness has been asked for it

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three or four times and that it has been answered by this witness:

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

THE WITNESS: As I remember it, the first one who spoke to him was the smaller one of the two, Dreyfus. Dreyfus told me that Ross accused me of misbehavior. He said they intended to call at the office and denounce me before the entire office, they also intended to call up uptown and denounce me before my family. That came as the result of two telephone messages the night before, at eleven o'clock.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike it out.

THE WITNESS (continuing) I told these men at first I didn't care, and then the little man started towards our office.

Q That is Dreyfus? A Yes, sir. Then we walked down Pearl Street. I tried to bargain with them --

MR. KRIEGER: I move to strike that out as not responsive to the question.

THE COURT: No. I will leave it in.

MR. KRIEGER: Exception.

A (continued) Then it was I asked them what they wanted. They said they were going away to Texas; they both spoke. Finally I bargained with them to give them \$500.00 that afternoon. This whole conversation didn't take more than five minutes.

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Q Did you give them \$500.00? A Yes, sir, that afternoon.

Q Who did you give it to? A I gave it to Dreyfus.

Q Ross is a much taller fellow, is he not, than Dreyfus?

A Yes, sir.

Q And bigger and stronger looking? A Yes, sir.

Q Now did you see them again after that? A I saw them again about six weeks after that; they called at the office.

Q Did you hear from them in the meantime; just yes or no?

A No.

Q And they went away with your \$500.00? A Yes, sir.

Q When did you hear from them again? A Six weeks afterwards.

Q Where were you at that time? A At our office.

Q How did you hear from them? A They walked right into the office.

Q Who walked in? A Both of them.

Q When you say both of the men, whom do you mean? A Ross and Dreyfus.

Q You still knew Dreyfus by the name of Brown? A Yes, sir.

Q What did they say at that time? A They said they needed more money; they wanted to go to Bridgeport. I said to them, "The two of you are going to get". Then they renewed their threats.

MR. KRIEGER: I move to strike that out.

MR. DONAHUE: Mr. Tobey, you are drawing a conclusion again.

Q They said something to you? A Yes, sir.

Q Tell us what they said to you? A They said they wanted \$100.00.

Q And if they did not get the \$100? A They would expose me.

MR. KRIEGER: I object to the question and move that the answer be stricken out.

THE COURT: Objection overruled. I will leave the answer in.

MR. KRIEGER: Exception.

Q Did they say how they were going to expose you? A They repeated that they would denounce me before the entire office; they had come into the office that afternoon, and they said they would also go up to my apartment and tell my family.

Q Now, Mr. Tobey, what was the condition of the health of your family?

MR. KRIEGER: I object to that.

THE COURT: Sustained.

MR. DONAHUE: May I not show the actuating motive, the reason?

THE COURT: Well, I will allow it.

MR. KRIEGER: Well, I think before the District Attorney is permitted to go into that, the mere statement is not sufficient to permit his testimony.

THE COURT: I will allow it.

MR. KRIEGER: Exception.

A My mother had had her second stroke of apoplexy. She had been under the almost constant care of a trained nurse.

Q And what was the health of the rest of the family?

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MR. KRIEGER: I object to that on the same ground.

THE COURT: I will allow it.

MR. KRIEGER: Exception.

A My mother's sister was in almost the same condition. She has been an invalid for the last five years.

Q And they were living in the same apartment as you? A Yes, sir.

Q During this time you had talked with the physician who attended these two ladies? A I knew their condition very well.

Q I mean you had talked to the nurse? A Yes, sir.

Q You say you saw them, with reference to the last conversation you were telling us about. When was that? A That was six weeks after their first visit.

Q The first visit was when? A About the middle of May, 1919.

Q And when was the second visit? A I think that was in July.

Q And they were both together at that time, A Yes, sir.

Q And it was in your office? A Yes, sir.

Q You have already told us what happened in there in detail?

A Yes, in as much detail as I can.

Q Did you give them ^{any} money at that time? A \$50.00.

Q Who did you give the money to? A I think I gave each of them \$25.00.

Q And you still knew Ross under the name of Ross? A Yes, sir.

Q And Dreyfus was still Brown? A Yes, sir.

Q When did you meet them after that? A I didn't meet them together for over a year.

Q When was the next time you met them together? A I met them

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together in November 1920.

Q Where was that? A That was at Battery Park.

Q By appointment? A By appointment.

Q During the time you say you didn't meet them together, did you meet Dreyfus alone? A Practically every two weeks.

Q Where did you meet him? A By appointment, usually at the corner of Beekman and Pearl Streets.

Q And when, for the first time, after this last occasion, which you have already described, did you meet Dreyfus? A I should say about three weeks.

Q You say that would make it sometime in July of 1919? A Well, I should say around August; no, it was pretty nearly the first of September.

Q Pretty nearly the first of September? A Yes, sir.

Q Was that the first time, Mr. Tobey, that Dreyfus came to your office alone? A Yes, sir.

Q Now, by this time, Mr. Tobey, you knew Dreyfus's voice; did you not? A Yes, sir.

Q You had got familiar with it? A Yes, sir.

Q You had had various talks over the phone, a number of talks, and you recognized the voice? A Yes, sir.

Q Now, did you have a talk on the telephone between July and September with that voice you recognized -- Brown's voice, we will call it -- up to this time? A I had a telephone message about the end of August from a voice I recognized.

Q And you recognized that voice? A As Joe Brown's, as then given

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Q We will call him Brown. What did that voice say? A He wanted to see me at once.

Q What did he say? A "I want to see you at once."

Q Did he say where? A He said, "I am coming to your office."

Q Where were you at that time? A I was in the office.

Q Did Brown arrive at your office after that? A No. I made an appointment to meet him downstairs at five o'clock, in front of our building.

Q Did you meet him there? A Yes, sir.

Q Will you tell us, Mr. Tobey, what you said to him and what he said to you at that time? A I had meanwhile spoken to a friend in our building, who was with me on that occasion.

Q Mr. Charles Hann? A Yes, sir.

Q Before you received this telephone message you had talked with Hann? A Yes, sir.

Q Let us hear what Brown said to you, and what you said to Brown, when you got down there? A I asked Brown what he wanted; what he meant by coming there? The rest of the conversation was carried on by Mr. Hann.

Q Were you there? A Yes, sir.

Q Did you hear what Hann said to Brown? A I heard Hann ask Brown what he meant by coming down there and annoying me. This man said "he is a soldier of youth."

Q Brown said that to Hann? A Pointing to me, and "I am down here -- he knows why I am down here."

Q Who said this, Brown? A Brown. He said, "I want \$500.00."

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Hann said, "You ought to be kicked, tarred and feathered", etc. He, Brown, said, "I don't care." Hann said, "How would you like me to take you up to the District Attorney?" He said, "I don't care if you do." We stood at the corner of Nassau and Wall Streets, and Hann said, "The best thing to do with this man is to have him arrested." Dreyfus said, "There is a police officer over on the other corner; have me arrested." So I weakened again; made an appointment to meet him uptown at the Murray Hill Hotel after ten that night.

Q When was this? A At the beginning of September, 1919.

Q And did you meet him that night at the Murray Hill Hotel?

A Yes, sir.

Q Who was with you at that time? A No one.

Q Were you alone? A Yes, sir.

Q About what time did you meet Brown? A I met him at eight o'clock or half past seven.

Q Did you have a talk with him at that time? A Yes, sir, he said he was not going to put up with my nonsense, that I should fix things up. Finally, after I had talked with him a long while -- fifteen minutes, because I had an eight o'clock train to make --

THE COURT: A little louder. We all want to hear you. A (continued), I talked with him, and I bargained with him, and arranged to give him \$100. the following day.

MR. KRIEGER: I move to strike that out.

THE COURT: Do you want the details of that conversation?

MR. KRIEGER: I would just like to get the conversation.

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A (continued) The talk was all about the same thing; he threatened to expose me before my office and before my family if I didn't come up with what they demanded.

Q And you did give him \$100? A Yes, sir.

Q When? A The following day.

Q Where? Downtown, in the neighborhood of Pearl Street, either at Maiden Lane or Beekman.

Q Now did you meet him after that? A I met him after that practically every two weeks for a year.

Q And the same general conversation took place between you all the time? A The same general conversation, and implied threat.

Q And how long did this go on? A This went on --

MR. KRIEGER: I move to strike out the words "implied threat".

MR. DONAHUE: All right.

A (continued) On several occasions I left him and started to go to my office and he followed me up to the office. Meanwhile he telephoned our office.

Q Meanwhile -- I was coming to that. You say generally for a year you had conversations with him? A Yes, sir.

Q In which he threatened to expose you? A Yes, sir.

Q As he called it? A Yes, sir.

Q Now during all this time your mother was sick?

MR. KRIEGER: I object to the question.

THE COURT: I will allow it.

MR. KRIEGER: What materiality has it?

MR. DONAHUE: Well, I will show its materiality.

THE COURT: It is leading. Go ahead.

MR. KRIEGER: Exception.

A Yes, sir.

Q Did he call at your office? A Yes, sir, and to my house.

Q And while in the office did you attempt to stop these payments?

MR. KRIEGER: I object to it as leading.

THE COURT: Yes. The witness may say what he did.

Q What did you do? A I ordered him out of the office once or twice.

Q What did he say? A He came back shortly and said, "You will find me here." Once he got out, and then came in again a few hours after. I was incessantly annoyed by telephone messages.

Q You recognized the voice? A Yes, sir.

Q His conversations were that he wanted more money? Of course he didn't use the word "expose".

MR. KRIEGER: I object to that.

A That was the whole basis of his visit.

MR. KRIEGER: I object to his leading.

THE COURT: You want the witness to detail every part?

MR. KRIEGER: No I don't. I do object to what the witness is saying, as to what he did say and what he didn't say. The District Attorney knows that is improper.

Q Now, Mr. Tobey, did you receive these telephone calls at your house? A Occasionally, but very rarely.

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Q About how many times in this period that you are now describing in 1919, did you receive these telephone calls at your house? A Why I should say seven or eight times; they usually came to the office.

Q Did you find him at your house during any of that year when you arrived home? A No, sir.

Q Did you find him in your house? A No.

Q Now how much money did you give him, would you say, for this period of the year that you say he had been at your office?

MR. KRIEGER: I object to that as incompetent, irrelevant and immaterial; not in any way connected.

THE COURT: Objection sustained.

Q But you did give him money?

MR. KRIEGER: I object to that.

THE COURT: He has testified to that already.

Q Now there came a time when you went to the District Attorney after that, did you not? A Yes, sir.

Q Was that before or after, Mr. Tobey, that you met Ross and Brown together? A Yes, sir.

Q I mean was it before or after? A It was after I met them together, of course three weeks --

THE COURT: Now, Mr. Donahue, in your examination, you have only taken the witness through the period when these two men were together.

MR. DONAHUE: I did not quite hear, your Honor?

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THE COURT: I say in your examination you have taken the witness through the balance of 1918 to a part of 1919, namely, periods when the two defendants were together. Then you have taken him along into a period when the defendant, Dreyfus, was coming alone. You have not brought him to the period where they resumed coming together.

MR. DONAHUE: Very well, your Honor.

Q When was it, Mr. Tobey, after these many visits of Brown to your office that you again met Ross? A I met them together again for the first time in November 1920.

Q November 1920? A Yes, sir.

Q Can you give us an idea, Mr. Tobey, about what part of November that year it was? A It was the end of the week in which Election Day occurred.

Q Around Election Day? A Yes, sir, right after Election Day.

Q And did you still know Dreyfus under the name of Brown? A No, sir.

Q When did you first learn his name was Dreyfus? A I learned that his name was Dreyfus in November, 1919.

Q Under what circumstances did you learn that fact? A I was visited by Ross, who said that he had learned that Dreyfus had double-crossed him; that he was tired of this business --

MR. KRIEGER: I object and move to strike out the answer. Not what the defendant said in 1919. I thought in the beginning the witness was asked about 1920.

THE COURT: Objection sustained. Strike out the answer.

Q You did meet Ross in between that time? A Yes, sir.

Q You had a talk with him? A Yes, sir.

Q Did Ross demand any money at that time?

MR. KRIEGER: I object to that.

THE COURT: Sustained.

Q When did you meet them together? A I met them together
✓ in 1920.

Q Where at? A Battery Park.

Q And can you fix the time, you say it was at the end of Elec-
tion week of that year? A Yes, sir, it was either Thursday or
Friday of Election Day week.

Q Did you meet them by appointment? A Yes, sir.

Q The appointment was made how? A By Dreyfus.

Q How? A He had visited me the previous day.

Q What did he say in reference to the appointment? A He
said he wanted to get away from New York; he wanted to get Ross away
from New York; he had learned that other men were coming down to the
✓ office as a result of Ross's general information.

Q As a matter of fact other men were coming down? A Yes, sir.

Q On this same subject? A Yes, sir.

Q Detailing practically the same conversation? A Yes, sir.

Q About how many other men would you say?

MR. KRIEGER: I object to that.

THE COURT: Sustained.

Q You made this appointment to meet him in Battery Park? A
Yes, sir.

Q Did you meet them together? A Yes, sir.

Q Tell us the talk you had at that time? Tell us what each of the men said and what you said? A Dreyfus said it would be better for me if I got Ross away, out of New York, to keep other men from coming to the office. He said he could not afford to leave New York and receive only \$50. a week, which he had got from me. He said he would want \$150.00, and that he would take Ross to Cleveland, and start him in business. He wished me to send out to wherever they might advise me, the night before they would be located, by telegraph, the sum of \$300., to divide between them.

Q Yes, go ahead. Tell us it all. Tell us all of that conversation? A I agreed to that.

Q You said you would do that? A Yes, sir.

Q Did you see them after that? A No, I did not, until about three or four weeks after.

Q Did you receive communications? A I did, sir; I received a telegram as to where they were.

Q And where did they say they were going? A They said they were going to Cleveland first, and subsequently further West.

Q And did you receive any telegrams from Cleveland? A I received a telegram from the Hotel Statler.

Q And do you remember about what time you received that telegram? A What time of the day?

Q What time of the month of November? A I think the first telegram was received around the 7th or 8th, a day or two after they arrived there.

Q Now, Mr. Tobey, you say that after you had this talk in the early part of November, 1920, you received a telegram?

A Yes, sir.

MR. DONAHUE: I ask to have these four telegrams marked for identification.

(The four telegrams referred to were received and marked People's Exhibits Nos. 1, 2, 3 and 4, for identification, respectively).

Q Do I understand you to say, Mr. Tobey, that Dreyfus told you that he was going to Cleveland? A Yes, sir.

Q Did you receive People's Exhibit No. 1 for identification after you had had that talk with him; just yes or no? A Yes, sir.

Q And did you receive People's Exhibit No. 2 for identification after that? A Yes, sir.

Q And did you receive People's Exhibit No. 3 for identification after that? A Yes, sir.

Q And did you receive People's Exhibit No. 4 for identification after that? A Yes, sir.

MR. DONAHUE: I now offer these telegrams in evidence.

MR. KRIEGER: The telegrams, with the exception of the last one, People's Exhibit No. 4, are signed by Nat Ross, but I have no objection to their going into evidence.

(People's Exhibits Nos. 1, 2, 3 and 4, for identification, now received in evidence).

Q Now, after this interview in Battery Park, Mr. Tobey --

MR. KRIEGER: Will you ask him about that --

MR. DONAHUE: One minute, please.

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Q (continued) did you receive this People's Exhibit No.1?

A Yes, sir.

MR. DONAHUE: May I read it to the jury?

THE COURT: Yes.

MR. DONAHUE: Does your Honor want to read it, first?

THE COURT: No.

(Mr. Donahue read People's Exhibit No.1 to the jury).

Q And then did you receive People's Exhibit No.2 shortly after that? A I did, sir.

Q At your office? A Yes, sir.

(Mr. Donahue read same to the jury).

MR. DONAHUE: I ask to have this telegram marked for identification.

(The telegram referred to received and marked People's Exhibit No.5 for identification).

Q Did you after you received People's Exhibit No.2 send that one? A Yes, sir.

MR. DONAHUE: I offer that in evidence.

MR. KRIEGER: No objection.

(People's Exhibit No.5 for identification now received in evidence).

Q This was sent by you to Nathaniel Ross, Hotel Statler, Cleveland, Ohio, "Telegraph promptly if still at Statler. If not received, expect wire. O. K. Tobey," and did you subsequently on the next day receive People's Exhibit No.3? A Yes, sir.

(Mr. Donahue read same to the jury).

Q And did you afterwards receive People's Exhibit No.4?

A Yes, sir.

(Mr. Donahue read same to the jury).

Q From the time they left Battery Park, after that meeting of yours, when was the next time you saw them? A Within the month of November at about the end of it, that or the first day or two of December, three or four weeks after.

Q During this time, Mr. Tobey, you were receiving mail, were you not? A Oh, yes, sir.

MR. DONAHUE: May I have these marked for identification.

(Four letters, above referred to, were received and marked, respectively, People's Exhibits Nos. 6, 7, 8 and 9, for identification).

Q Mr. Tobey, did you receive in the mail, People's Exhibit 6 for identification; just yes or no? A Yes, sir.

Q And did you receive in the mail, People's Exhibit No.7 for identification? A Yes, sir.

Q And did you receive in the mail, People's Exhibit No.8 for identification? A Yes, sir.

Q And also People's Exhibit No.9 for identification? A Yes.

Q Now, Mr. Tobey, when did you see them, when they got back from Cleveland? A Yes, sir, I saw them about the end of November, 1920.

Q And where did you see them? A By appointment at 44th Street and First Avenue.

Q In the meantime, Mr. Tobey, had you gone to the District

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Attorney's office? A I had, sir.

Q Can you fix that date? A Why I think I had gone there about the third week of November.

Q And who did you see in the District Attorney's office?

A Mr. Talley, the Acting District Attorney.

Q He was then Acting District Attorney of New York County?

A Yes, sir.

Q And you spoke to him, did you not? A I did, sir.

Q And did you see Mr. Talley again after that? A Yes, sir.

Q Now how many times did you see Mr. Talley altogether before December 16th, 1920? A Two or three times I should say.

Q Do you remember the last time you saw him before December 16th? A Yes, sir.

Q When was that? A Well, December 16th was --

Q That is the day you went to 44th Street and First Avenue?

A The day before that or the day itself; I don't remember which one.

Q Did you see Mr. Talley mark any money that day? A Yes, sir.

Q How much money did he mark? A \$40.

Q And did you give him the \$40? A Yes, sir.

MR. DONAHUE: Now I ask to have this envelope, and the money contained therein, marked for identification.

(The envelope above referred to and the money contained therein, six five dollar bills, and one ten dollar bill, received and marked for identification as People's Exhibit No. 10, 10-A, 10-B, 10-C, 10-D, 10-E, 10-F and 10-G respectively).

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Q Did you see Mr. Talley mark the money you had given him?

A Yes, sir.

Q How much money did you give him? A \$40.

Q Do you know in what denominations they were? A Either two tens and four fives -- I think there were two tens and four fives.

Q Is that the money (showing witness same)? A Yes, sir.

Q Which was turned over to you by Mr. Talley? A I cannot identify the actual bills.

Q You turned over to Mr. Talley some money? A Yes, sir, the sum of \$40.

Q Did you see him mark it? A Yes, sir, and I heard him -- he dictated --

Q Did you see him mark the bills? A I did, sir.

Q And who was present at that time besides Mr. Talley?

A I think --

Q What is your best recollection? A I am not at all clear about that. Mr. Markoe --

Q There were some other people present? A Yes, sir.

Q And this was in Mr. Talley's room on the third floor of this building? A Yes, sir; I remember that in his dictation he referred to putting a mark on the "suspender".

Q What did he do with the money after marking it? A He gave it back to me.

Q Did you keep it together? A Yes, sir.

Q And put it in your pocket? A Yes, sir.

Q And you had some talk with Mr. Talley after that? A Yes.

Q And did you leave the office of Mr. Talley? A Yes, sir.

Q Alone or with some one else? A I left the office when I went up to keep the appointment; you mean to keep the appointment that had been made by these men? I left the office followed by two detectives.

Q Do you know who those two detectives are? A Yes, sir, detectives Russo and Cunniff.

Q Did you have a talk with them before you went to keep the appointment? A Yes, sir.

Q And you went with them, or did you go alone? Did they walk with you? A No.

Q They were some distance behind you? A Yes, sir.

Q You had an appointment with whom? A Dreyfus and Ross, at 44th Street and First Avenue.

Q How was that appointment made? A By telephone with Dreyfus.

Q What was that conversation? A He wanted me to meet him to discuss finances.

Q Just tell us what he said? A He said, "We have had to come back and we want to see you. It was necessary to come back; they are disagreeable people out there", or something like that. He said they both wanted to see me.

Q Did they say what they wanted to see you for?

MR. KRIEGER: I object to that.

THE COURT: Mr. Tobey, I wish you would have the kindness

to give the whole talk?

THE WITNESS: I had been rung up by Dreyfus, who said he wanted to see me downtown; they had gotten back; he wanted to have a talk. I told him I could not see him downtown. I made the appointment with him for 44th Street and First Avenue. That was about all that transpired over the telephone.

Q In plain words, Mr. Tobey, will you tell us what these defendants charged you with? What they said, in plain words?

MR. KRIEGER: I object to that, because there is no statement by Mr. Tobey, that these defendants charged him with --

MR. DONAHUE: There is.

MR. KRIEGER: Up to this point, there is not a word which show that these defendants did. Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. KRIEGER: Exception.

A Dreyfus had charged me with degeneracy in the presence of --

MR. KRIEGER: I move to strike that out.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q He did not say he charged you with degeneracy, did he? A No, sir, but that was the basis of the whole thing.

Q We want you to give us, Mr. Tobey, his exact words, if you can, or if you cannot give us that, give us your best recollection of his exact words, and what he charged you with?

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MR. KRIEGER: I object to the form of the question and also on the ground that it is incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q Don't be bashful or backward, Mr. Tobey? A He told me that I had misbehaved with Ross.

Q He did not use the word "misbehave", did he?

MR. KRIEGER: I object to the characterization by the District Attorney.

THE COURT: Sustained. Why won't you tell us what he said?

THE WITNESS: He said, I had been guilty of Sodomy with Ross.

Q And did he say the particular form of Sodomy that you had been charged with doing? A No, sir.

Q Did he say you had put your private parts any place or anywhere? A No, sir.

Q Or that Ross had put his private parts any place or anywhere? A He did not particularize; no.

Q When did he first charge you with Sodomy?

MR. KRIEGER: I object to that as too general.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Do you know what Sodomy means?

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

THE COURT: Overruled.

MR. KRIEGER: Exception.

A Yes, sir.

Q You knew that Sodomy is a crime? A Yes, sir.

Q And you knew it meant some degenerate act?

MR. KRIEGER: I object to the form of the question as leading and on the ground that it is immaterial.

THE COURT: Overruled.

MR. KRIEGER: Exception.

A Yes, sir.

Q Now I want you to tell us, Mr. Tobey, when he first charged you with that? A He charged me with that in 1919; the first time I met him.

Q Did he say who you had committed this act of Sodomy with or not? A Yes, sir, he did.

Q Who did he say? A Ross.

Q Did he charge you with that same charge right along?

MR. KRIEGER: I object to that.

THE COURT: Sustained. I think you have his evidence on that subject.

Q And was it because of that charge and a fear that you would incur, because you had passed this money at various times --

MR. KRIEGER: I object to that.

THE COURT: Sustained. Why did you pay him the money?

THE WITNESS: I expected --

MR. KRIEGER: I object to that question your Honor as call--

ing for the operation of the witness's mind.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

THE WITNESS: (continuing) I expected they would go to

my home and make the statement that I had committed improper acts with Ross.

Q And that was the reason for your paying them money? A Yes, sir.

Q Now you say that you went to 44th Street and First Avenue, that was on December 16th, 1920? A Yes, sir.

Q And that you went alone, and that detectives Russo and Cunniff were behind you some distance? A They were somewhere in the neighborhood.

Q You had had a talk with Cunniff and Russo? A Yes, sir.

Q You had arranged a signal with them? A Yes, sir.

Q You had a handkerchief in an outside pocket --

MR. KRIEGER: I object to that.

THE COURT: Yes. Do not lead him, Mr. Donahue.

Q Tell us what happened at 44th Street and First Avenue, who was there, what was said, and by whom? A I met Dreyfus and Ross, and they told me that they could not get along on \$300. a week; they demanded \$700 a week. I told them I could not pay such a sum. Meanwhile, I walked down First Avenue. They said they had to leave Cleveland because there were some people they had known in New York that they didn't like. I told them I could not afford to pay \$700, and after walking down several blocks, I asked them if they would be willing to take \$300, that I had been giving them right along, and

as a temporary measure, they did agree to take it. Then I handed over the \$40.00 in marked bills.

Q Call it \$40.? A Yes, sir, to Dreyfus.

Q Before you handed over the \$40 had they told you what they were going to do if you didn't pay the \$700?

MR. KRIEGER: I object to that as leading.

THE COURT: Objection sustained.

Q Have you now given us the whole conversation? A Practically the entire conversation.

Q Did they say anything about how much money they wanted; you say \$700?

MR. KRIEGER: I object to that.

THE COURT: Overruled.

MR. KRIEGER: Exception.

A They wanted \$700?.

MR. KRIEGER: Is this the conversation upon which he is being tried? Mr. Donahue asked for this conversation clearly and distinctly, so that Mr. Tobey can understand it, and he ought to be able to repeat it. I suggest that the District Attorney ought not to put the words in the witness's mouth.

THE COURT: The general rule is that when a witness's recollection is exhausted, and he has told all he can remember, he may be asked a leading question. That is the general rule. This witness has practically told us all he can remember. Have you told us all you can remember of that talk?

THE WITNESS: Yes, sir.

Q You have exhausted your recollection on that? A I have.

Q Now, see if I can refresh your recollection. Did they say anything to you about what would happen if they didn't get the \$700?

MR. KRIEGER: I object to that as incompetent, irrelevant and immaterial. The witness has not indicated that he needs any refreshing of his recollection.

A Everytime?

Q I am only referring now to 44th Street and First Avenue, or when you walked down First Avenue? A They didn't say they intended to expose me next day, but that was the basis of everything.

MR. KRIEGER: I move to strike out the last part of the answer.

THE COURT: Yes.

Q Just confine yourself to the conversation at 44th Street and First Avenue, or while you were walking down with them a couple of blocks on First Avenue; did they say what they would do, or wouldn't do, if they didn't get the \$700?

MR. KRIEGER: I object to that.

THE COURT: Overruled.

MR. KRIEGER: Exception.

A They demanded it.

MR. KRIEGER: I move to strike out the answer.

THE COURT: Yes, strike it out.

Q What did they say when they demanded it, Mr. Tobey? A They said they would get after me again if I didn't give it.

Q And you gave them the \$40? A I gave the money.

Q You gave the money that Mr. Talley had given to you? A Yes.

Q Who to? A Dreyfus.

Q That is this defendant here? A Yes, sir.

Q And when you gave it to Dreyfus did you see it actually in his hand? A Yes, sir.

Q Did you see what happened while giving -- A (Interrupting) I think he --

Q Did you see anybody come up? A Not until I pulled out my handkerchief.

Q What happened then? A Detectives Russo was first on the scene and he grabbed one of the men, and detective Gunniff immediately afterwards, or vice versa, grabbed the other.

Q Grabbed the other man? A Yes, sir.

Q And the money you gave to them was the money you got from Mr. Talley? A Yes, sir.

Q Did you see Mr. Russo search or obtain the money from one of the defendants? A I left immediately.

Q You didn't wait at all? A No.

Q Where did you go? A I went to the District Attorney's office.

BY JUROR NO. 8:

Q Will you please tell us the conversation you had with the two defendants when they demanded \$700? Can you tell me what happened when they noticed the amount of money? A They didn't look

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at the amount of dollars; they thought I was handing them \$300.

THE COURT: The jurors will disregard that.
BY MR. DONAHUE:

Q When you handed this money over, was it folded. Show the jury how it was? A It was folded so (illustrating).

Q Just show us how. Don't tell us anything. Did you fold it yourself? A Yes, sir. (Witness illustrates, folds the money). In a general way like that; I don't remember.

Q You just handed the money to them? A Yes, sir.

Q What did Dreyfus do with it; put it in his pocket? A Yes.

Q And almost immediately -- A (Interrupting) Immediately afterwards I pulled out my handkerchief and they were seized. It was all over in a second.

Q About what time elapsed between you handing the money over to Dreyfus and the grabbing by detective Russo? A Half a minute.

Q You left immediately? A Yes, sir.

Q You went to the District Attorney's office? A Yes, sir.

Q Were you present when these two men were brought to the District Attorney's office? A No, sir, I was in an adjoining room.

Q Did you see them brought in? A No.

Q Did you see them after that? A Yes, sir.

Q When did you see them after that? A I saw Dreyfus perhaps two or three weeks after that.

Q Where did you see him at that time? A He came to the office to demand money.

Q Did you have a conversation with him? A He came to the office to demand money.

THE COURT: Strike that out.

Q Did you have a conversation with him?

THE COURT: Yes or no, now?

A Yes, sir.

Q What was that conversation?

MR. KRIEGER: I object to that.

Q Mr. Tobey, will you just tell us what they said to you and what you said to them?

MR. KRIEGER: Just a moment. I object to that.

THE COURT: I will allow it, if admission against interest.

MR. KRIEGER: Exception.

A Dreyfus came down to the office alone about three weeks after.

THE COURT: I may say this, Mr. Donahue. If it is an admission against interest on the part of Dreyfus, I will receive it.

(Mr. Donahue spoke to the Court).

Q Keep in mind, Mr. Tobey, if I may just suggest this, that you keep your mind on just what they said to the District Attorney and to the Police Department, not any admissions they made?

MR. KRIEGER: I object to the form of the question, and to the characterization, with reference to admissions not in evidence.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q Mr. Tobey, will you please, in the limitation I have given you, answer my question, please? A I came, on my way up to the

District Attorney's office to report the visit of Dreyfus --

THE COURT: No, no.

THE WITNESS: I did not get the point of it?

Q Just a moment, Mr. Tobey. I will reframe the question.

After you had seen them at 44th Street and First Avenue, you said you didn't see them again until you saw them at your office? A Yes, sir.

THE COURT: What did Dreyfus come in for?

THE WITNESS: He came in to demand some money.

THE COURT: Strike that out. The jury will disregard it.

Q What did he say? A I don't think he had a chance to say anything before I got him out of the office.

Q What did he say with reference to previous occurrences?

A He said he was not afraid of those detectives; they were fake detectives.

Q What did he say? A He said he didn't care what I was going to do; he was going to settle, or something equivalent to that.

MR. KRIEGER: I move to strike that out; no connection.

THE COURT: I will leave it in.

MR. KRIEGER: Exception.

THE COURT: We will now take an adjournment. Gentlemen of the jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express an opinion thereon, until the same is submitted to you.

(At this point, Mr. Donahue spoke to the Court).

THE COURT: Now, gentlemen, I want your attention. Do not allow any person to talk to you about this case; do not talk

about this case with any one. You have been admonished,
and you are now excused until Monday at half past ten o'clock.

The Court stands adjourned until Monday morning next
at half past ten o'clock.

(Whereupon an adjournment was taken until Monday, June 27,
1921, at 10:30 A. M.).

Peter P. McLoughlin,
Official Stenographer.

(M. A. G.).

THE PEOPLE OF THE STATE OF NEW YORK

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--against--

SAM DREYFUS, otherwise known as
JOE BROWN.

New York, June 27, 1921.

(TRIAL CONTINUED).

COURT and COUNSEL as before.

THE COURT: Mr. Third juror will you come around
here?

(A conversation then ensued between the Court and
the Third juror).

THE COURT: (addressing Mr. Krieger) You consent
to a mistrial in this case?

MR. KRIEGER: I do, if your Honor please.

(A mistrial was then declared, a new juror was substituted
for the third juror, and the jury was then duly sworn).

MR. DONAHUE: It is stipulated by the Attorney for the
defendant and the District Attorney that the testimony that was
taken last Thursday be read at this trial and is to be considered
as if it was taken at this trial and to have the same force and
effect.

(The the testimony above referred to was then read
by Counsel, each alternating during the reading).

MR. KRIEGER: If your Honor please, it might be well to
make plain to the new third juror that this action is against
Sam Dreyfus, nothing so far having been mentioned to him as
to the relationship between Dreyfus and Ross.

It was also conceded by Counsel for the defendant that

on page 33 of the minutes, the date "December 16th," as appears thereon, should be "December 6th".

O R V I L L E H. T O B E Y, resumed the stand, and testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. DONAHUE:

Q Mr. Tobey, will you just show us how that money was folded, for the benefit of Juror No. 3? (The witness does so).

Q Is that correct? A Yes, sir.

Q Without the denominations being shown? A Yes, sir.

Q Now, Mr. Tobey, how long up until December 6th, when you went to 44th Street and First Avenue, after you talked to Mr. Talley, had you known Dreyfus? Do you understand my question?
A Not quite.

Q How long before December 6th did you know Dreyfus? A From about May 9, 1919; that would be about a year and six months or seven months.

Q And during that time you had seen him quite a good deal after May? A Yes, sir.

THE COURT: Now, I want you, Mr. Tobey, to repeat the talk that you had on First Avenue with Dreyfus when you say you handed to him \$40.00.

THE WITNESS. Dreyfus told me that they had come on from Cleveland because they could not get along there; there was some men at the hotel at Cleveland with whom they were familiar and it was not comfortable to remain there; that they were not satisfied with \$300; Dreyfus said he wanted \$700.

Q Pardon me. It was \$300 a week? A Yes, sir, which I had been sending them for --

MR. KRIEGER: I object to that. You asked for the conversation.

THE COURT: I want you to tell these twelve men the talk you had on First Avenue at the time you gave Dreyfus the \$40?

THE WITNESS: He said he wanted \$700, that they could not get along with \$300; they had to come back from Cleveland; it was very uncomfortable out there. I asked what they would do if I ended the whole thing promptly; go to the office and expose me or go immediately to the house. I gave them money. I told them I had only \$300 with me. I asked whether I could meet and give them subsequently the amount. They said I could. I handed over a roll of bills to Dreyfus, and he immediately put it in his pocket. Just then I pulled out my handkerchief and in one second, almost, the detectives were up to seize the men, and then immediately left.

THE COURT: Now it is plain, I gather from the testimony of this witness, that you will have no other witness except this present witness, to the talk that took place on First Avenue.

MR. DONAHUE: Except that we will have admissions made to various people, and which were taken down by the typewriter, admissions made to Mr. Talley and Judge Rosalsky, and to two other men, while the two defendants were on their way back from

from 44th Street, when in custody.

You must bear in mind that we are not charging them at the present time with extortion; we are charging them with attempted extortion.

THE COURT: You are charging them with an attempted extortion on a certain day. This witness purports to give us the talk, as a result of which he handed over the money?

MR. DONAHUE: Yes, sir.

THE COURT: That talk as given by this witness does not contain the element of a threat.

MR. DONAHUE: Your Honor must have in mind the several transactions that took place. What was in these men's mind; what caused the meeting at 44th Street and First Avenue. He said they told him at that time they were going down to his office and to his home and to tell all about this case. Of course, we have to go back to meetings in the past, to get what they meant by that, which we are entitled to do.

THE COURT: I understand your position. I am not, however, satisfied you are right about it; I will not say you are wrong, but I do say I am not entirely satisfied that you are right. In other words, I am not satisfied, for the purpose of sustaining this particular charge that is contained in the indictment that we can go back to anything antecedent to the day of the alleged occurrence.

MR. DONAHUE: We are only going back for the purpose of explaining some of the details of this transaction. For instance,

your Honor will bear in mind that they told him sometime before, told him repeatedly --

THE COURT: I know that you rely --

MR. DONAHUE: The Gardiner case.

THE COURT: You rely upon certain things that were said prior to the day when the money was taken over.

MR. DONAHUE: Yes, sir.

THE COURT: In other words, you say that the language they used on the particular day is to be enlarged, interpreted by things they said before. Now you have an authority on that point?

MR. DONAHUE: The Gardiner case, your Honor, does not hold that I have to show that he was paying over this money because of any things said at that time --

THE COURT: You do not seem to quite understand me. I am not holding at this time one way or the other. I am calling your attention to the fact that in the talk on the day on which these defendants are charged with the attempted commission of this crime, words of threat were lacking, unless you can import a special meaning into what they said by reason of things they said at other times. Now it may be that under the authorities you can do that. I am not holding you can not, but I am calling your attention to the fact that in the particular talk on December 6th, as given by the witness the element of a threat is lacking. That is why I had this witness repeat it. Apparently there was no threat.

MR. DONAHUE: Of course, there was, even by that bare thing they said there, that they were going to expose him; going down to his office and tell them there. They said that at 44th Street and First Avenue.

THE COURT: Now I am giving you what is in my mind.

Q Well, did they, in so many words, Mr. Tobey, accuse you of Sodomy?

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

THE COURT: Sustained. I have given this witness a fair chance. I have had him repeat the talk. I urged him to us to give it/just as it was given, and I had him repeat it to day.

MR. KRIEGER: Two or three times.

THE COURT: Now that ends that with this witness.

Q Have you told us all the conversation that happened there, Mr. Tobey? A I was distinctly threatened --

MR. KRIEGER: I object to that and move to strike out the answer.

THE COURT: Strike it out.

Q Yes or no? A Yes, sir.

Q Have you told us, Mr. Tobey, everything that you can recall of what they said to you and what you said to them at 44th Street and First Avenue? A Yes, sir.

MR. KRIEGER: If your Honor please, Mr. Fallon promised me that he would cross-examine Mr. Tobey.

THE COURT: We will have to proceed with cross-examination now.

CROSS-EXAMINATION BY MR. KRIEGER:

Q Now, Mr. Tobey, the first time you met Ross was on Broadway? A No, sir, on Lafayette Street.

Q On Lafayette Street? A Yes, sir.

Q You hailed him from your cab? A I did.

Q At that time did you give him your address, yes or no?

A Yes, sir.

Q Did you give him your business card? A I did not. I don't think I did; I gave him my house address card, to my recollection.

Q Did you ask him to come up to your house that night? A I did not.

Q Did you give him your telephone number? A I did not.

Q Is your name listed in the book, your private home; yes or no? A The apartment house is listed.

Q I am not asking you that, Mr. Tobey. Do you understand my question? A I think not.

Q You didn't give him your telephone number? A I did not.

Q Did you give him your telephone number at the office; yes or no? A I don't think I did.

Q Did you tell him what firm you were connected with? A Not at that time.

Q Did you tell him where your place of business was? A Not at that time, if ever.

Q You say all you did was to give him your apartment house number? A Yes, sir.

Q Did you write it out on your card? A I don't remember.

Q That is your best recollection? A Yes, sir.

Q When after the first day you met Ross did you see him again? A I should say about two weeks after.

Q Did you write to him to come to see you? A No, I did not.

Q Did you ever write to him? A Yes, sir.

Q How many times? A I suppose two or three times.

Q Write for an appointment? A Wrote in answer to a request for an appointment.

Q Did you ever write for an appointment; yes or no? A I think not.

Q Could you be certain about it? A Yes, sir, I am certain.

Q Where did you address your mail to Ross? A On the card that he gave me, army barracks, Brooklyn Navy Yard.

Q Where is that card? A I don't know; I think probably it was destroyed.

Q How long after you met Ross, to your own knowledge, did he get out of the Navy? A I should say about two months.

Q And after he got out of the Navy, did you write to him? A He wrote me.

Q Did you write to him? A I think so; I know I did.

Q And where did you address him then? A I don't remember; probably care of the Postmaster, New York; I don't remember.

Q Nat Ross, care of the Postmaster, New York? A Well, the Arm. Barracks; I don't remember.

Q Mr. Tobey, after he got out of the Navy you wrote to Mr. Ross,

didn't you? A I think I did.

Q Now cannot you tell us where you addressed that letter or post card? A I don't remember where I addressed that.

Q Well, after two or three weeks when you first met Ross, he called you up, didn't he? A No, he came to see me before calling up.

Q Didn't he ever call you up? A Not until that first visit.

Q Did you give him your telephone number then? A No, I don't think so.

Q When did you give him your telephone number? A I don't remember.

Q You did give it to him? A I don't remember.

Q You did, didn't you? A I don't remember giving it to him.

Q You remember everything else? A I don't know; I don't remember that.

Q Is your memory pretty good? A I hope so, sir; I think so.

Q Do you remember the details between Ross and yourself?

A Perfectly.

Q Everything that was enacted between you and him? A Yes, sir; everything.

Q And you don't remember anything about this telephone number; do you? A No, I do not.

Q How often did you see Ross in 1918? A Why I should say six or seven times.

Q Did you entertain any other sailor boys in your home in 1918? A Yes, sir, we did.

Q "We did" -- you mean by Ross and yourself? You mean Ross and yourself entertained other sailor boys? A No; I mean my family.

Q You live in an apartment with your mother and sister? A I do, sir.

Q You are not married? A I have been married; I am not married now.

Q Divorced? A Yes, sir.

Q When were you divorced? A October, 1918; in Connecticut

Q In Connecticut? A Yes, sir.

Q That was about the same time you met Ross? A It was before the end of the War, yes, sir.

Q How long were you married? A March five years; I was married November 6th, 1907; we were separated at the end of August 1912.

Q Any children? A No.

Q Was the divorce procured against you or by you against your wife? A It was procured against me in a case which --

Q Just answer my question, Mr. Tobey. (No answer).

Q How long have you lived in New York? A I have lived in New York on and off for practically all my life.

Q At the time this divorce was procured were you a resident of New York or Connecticut? A Of the State of Connecticut.

Q Where did you live? A New Canaan, Conn.

Q And out of which court was this divorce procured? A
The court in Bridgeport.

Q Now at that time, or about that time, you met Ross? A I
did, sir.

Q Did you ever see a show called "Sometime"?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. KRIEGER: I promise to connect this, if
your Honor please.

Q For which you got three seats?

MR. KRIEGER: I promise to connect it.

THE COURT: I will allow it.

A I don't remember any such show.

Q Do you know where the Casino Theatre is? A Yes, sir.

Q Ever been there? A Many times.

Q Did you ever see Ed. Wynn in a show there, "Sometime"?

A I don't think I did; I have seen him; I don't remember the
title.

Q Didn't you go with Ross to see that show at the Casino?

A I have never been with Ross to any play in my life.

Q Didn't you buy two seats and you and Ross went to
the Casino? A I have never taken Ross to the theatre with me
at all, sir.

Q No when was it you gave Ross money to go see a show?

A I gave Ross money the first time he came to the house.

Q The first time he came to the house? A Yes, sir.

Q That was about two or three weeks after you met him?

A Yes, sir.

Q He came of his own accord? A Yes, sir.

Q You didn't know he was coming up that day? A I did not.

Q He had not called you up? A He hadn't.

Q And you had not written to him? A No, I had not written to him.

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

Q What time of the day was it he came up there? A At about half past seven in the evening.

Q Was it after or before your dinner? A Immediately after our dinner.

Q And that is the time you gave Ross money to see the show? I gave him money and the man with him.

Q Do you know what show they saw? A No.

Q Did they ever tell you? A I don't think so.

Q Did you ever see this man Rollins after that? A I think they came up to the house, in fact they came to the house a second time, in fact they both had dinner with the family.

Q You mean Ross and Rollins? A Yes, sir.

Q How long after this first visit? A Did they come together?

Q Yes. A I don't know; probably in the course of two or three weeks.

Q That would still be in 1918? A Yes, sir.

Q When was the first time you met Dreyfus? A In May 1919.

Q Positive? A Positive.

Q You were as positive of that on Thursday as you are today?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q You are positive now that it was May 1919? A I certainly am, sir.

Q And when you said in February 1919 you were mistaken? A I didn't say in February 1919.

Q And if you did say it, you were mistaken, were you not?

MR. DONAHUE: There is only one way to show that. Point it out in the minutes.

Q When you say you saw him at your house in February 1919, who did you refer to, Mr. Dreyfus or Mr. Ross? A Ross.

Q You are sure of that? A Yes, sir.

Q Now was this question asked you on Thursday by Assistant District Attorney Donahue?

MR. DONAHUE: What page?

MR. KRIEGER: Page 8.

Q (continued) And did you give these answers:

"Q Did you see him during 1919 very much? A I saw him up until about the middle of February, 1919.

Q And did you see him, do you say, at your house during this time? A Yes, sir.

Q After that did you see him in March and April? A I did not.

Q When was the next time you saw him, Mr. Tobey, after you saw him in February, 1919? A In the early part of May.

"Q And where was that? A At our apartment, outside of the front door.

Q And was he alone at that time? A No, he was not.

Q Who was with him? A A man whom I subsequently learned to be Sam Dreyfus."

Q (continued) Do you mean by that -- I just want to know when was the first time you met Dreyfus at this apartment?

MR. DONAHUE: Counsel is attempting to incorporate something that is incorrect.

THE COURT: The witness had testified respecting Ross, in so far as testimony relating to meetings before the month of May. That testimony you read on page 8, down to the very last question, related to Ross. You may go ahead.

Q Do I understand you to say correctly that the first time you met Mr. Dreyfus was at your apartment? A Yes, sir.

Q What time of the day was that? A About six o'clock in the afternoon.

Q Were they in your apartment? A No, outside the front door..

Q And while you were there -- you happened to be up there?
A I came back from the office.

Q Did you take them into your apartment? A I did not.

Q Did you have lunch, or any sort of refreshment, or food, in a restaurant at William and Wall Street at about that time, that day or the next day, with Ross and Dreyfus? A The day I passed

over the money.

Q When you say the money, what money do you mean? A \$500.

Q You hesitated for half a minute when you were asked to whom you gave this \$500., did you not?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q Are you quite sure to whom you gave this \$500.? A I am positive.

Q Did you get a paper at the time that this money was passed by you? A I got an admission.

Q Did you get a paper? A Yes, sir.

Q Have you got it? A I think it is the first Exhibit.

Q Have you got it? A I have not got it.

THE COURT: Have you it in your possession now?

THE WITNESS: No, sir.

Q Now what did they say they were going to do with the \$500., Mr. Tobey? A They were going to Texas.

Q You wanted Ross to go away from New York? A No, I didn't know what to do at that time.

Q Didn't you ever ask Ross to go out of New York City? A Not until he had started the demand business --

MR. KRIEGER: I move to strike that out.

THE COURT: Yes.

Q You must answer my question. Did you ever ask Ross to go out of New York? A I did.

Q Was that before or after you met Dreyfus? A That was after I met Dreyfus.

Q Was it at about the same time? A No.

Q How long after you met Dreyfus? A Well, on one of Ross's subsequent visits.

Q How long after you met Dreyfus? A I should say six months.

Q That was the first time you mentioned to Ross to go out of New York? A Yes, sir.

Q Did you tell Ross to go out of New York to establish himself in business somewhere? A No.

Q Did you tell Ross that you would give him money for the purpose of going into business? A I did not.

Q Did you tell Ross that you wanted to make an appointment with him if he went out of New York? A I did not.

Q You lived in the same apartment with your mother and sister? A I did, sir.

Q Your library, Mr. Tobey, can be separated from the balance of your house, can it not? A Yes, sir.

Q So that when you lock the door you have perfect privacy? A Yes, sir.

Q How often did you take Mr. Ross into your library? A Mr. Ross was in my library, perhaps -- I guess every time he was there.

Q And you and he alone; isn't that so? A No, except on that one occasion.

Q Except on what occasion? A On the occasion when he came

there with Rollins; I mean so far as my family was concerned; otherwise, my family were present.

Q What? A The only time I remember that my family was not present was the first visit, when they arrived unexpectedly — Rollins and Ross.

Q Is Mr. Rollins in Court? A I don't know; I don't see him.

Q Have you ever seen Mr. Rollins since? A No.

Q Do you know where he is? A I do not.

Q So that you say you were never in the library with Ross alone? A I do.

Q Altogether how many times did Ross come to your house?

A I should say about eleven times.

Q Did you ever threaten Ross? A Threaten him?

Q Yes. A Never.

Q Did you ever say that you would shoot him? A No, never.

Q How long after you met Dreyfus did they go to Cleveland?

A About a year and six months.

Q Before they went to Cleveland you had a talk with Mr. Ross, did you not? A Yes, sir.

Q And with Mr. Dreyfus? A Yes, sir.

Q At that time did you tell Ross that you wanted him to go out of New York? A Yes, sir, I did.

Q And what did Ross say? A He said he would go; he wanted to go.

Q Did he say he would go alone? A No, he didn't.

Q Did you ask him if he were going alone? A It had been previously arranged.

Q I am just asking you, did you ask him if he would go alone?
A No.

Q Before this time that Ross said he wanted to go to Cleveland, had you talked with Ross about him taking some one with him?
A No.

Q You started out to say that it had been previously arranged; direct your attention to that, Mr. Tobey. Did you ever talk with Ross before that incident relative to him taking some one else with him to Cleveland? A Never.

Q So that when Ross said that he was going to Cleveland, you had no idea he was going to take any one with him; is that correct? A On the day we walked up West Street, that I met them at Battery Park, it was clearly arranged they were both to go to Cleveland.

Q Before that time had you talked with Ross about going away?
A I had not.

Q Now what day was this, Mr. Tobey, do you recall? A This was in the week of Election Day, as I stated.

Q In November? A In November.

Q When did they go to Cleveland? A I had a telegram purporting to come from Cleveland a few days after they arrived, or were supposed to arrive.

Q When was that? A That was either Saturday or Monday after they left me.

Q Was that in December? A That was in November.

Q When did you pass the money, the \$500? A The first \$500 in May, 1909.

Q You don't mean 1909? A I mean May, 1919.

Q Did you give them any money when they went to Cleveland?
A I did.

Q How much? A I gave them \$100 on the day they left, and when they notified me as to their residence there, I was to send a further \$200, which I did send.

Q You told them as long as they would settle in Cleveland, you would send them \$300. a week? A They said they were going West.

Q Yes or no? A Yes, sir, I did.

Q You told Dreyfus, did you not, that you wanted him to set Ross up in business, or get him a job and keep him in Cleveland?
A No.

Q Nothing about that was mentioned? A No.

Q Did you urge on Dreyfus that he should keep Ross away?
A When these men were --

Q Yes or no?

MR. DONAHUF: He cannot confine certain answers to yes or no.

THE COURT: I will allow him to proceed with his answer.

A (continued) At that time there were two other men came down to the office, men to whom Ross had spoken.

Read the question. (Question read by the stenographer).

MR. DONAHUF: Hasn't he got a right to say what he told

Dreyfus. That is what he started out to do.

THE COURT: You may tell us what you said, if anything, to Dreyfus in that connection.

THE WITNESS: I told Dreyfus to keep Ross away for three or four weeks. Dreyfus had made a demand on me for an additional sum of money.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike out the last part of the answer.

Q Are you through? A Yes, sir.

Q You told Dreyfus to keep Ross away for three or four weeks?

A Yes, sir.

Q You also told him that Ross had sent some other men to you; is that so? A I did.

Q And you also told him that you wanted Dreyfus to keep Ross away, so that he would not do that? A Yes, sir.

Q Up to that time you had no idea that Ross said that you had committed an act of Sodomy? A I had a very clear idea from May, 1919.

Q I say up to that time? A Up to what time?

Q Up to May, 1919? A Yes, sir.

Q You had no idea? A No.

Q And before that time Ross had sent these men up to you, had he not? A No, those men did not appear on the scene until this last Fall.

Q The Fall of what? A The Fall of 1920.

Q When did they go to Cleveland? A They went in the Fall of 1920, November.

Q Up to the Fall of 1920, had you any idea that Ross was accusing you of having committed an act of Sodomy? A Yes, sir.

Q When was the first time that you obtained that knowledge?
A May, 1919.

Q When? May, 1919.

Q In November, 1919, do I understand you had to tell Dreyfus that you wanted him to keep Ross out of sight for three or four weeks, that Ross had sent up other men to you, and that you wanted it stopped?

THE COURT: That was November, 1920.

A November, 1920.

Q Do I understand you to say that it was a revelation to you that you were accused of having committed this act --

MR. DONAHUE: When?

MR. KRIEGER: At any time.

A Decidedly.

Q You had not the slightest suspicion of it before? A No.

Q You didn't feel yourself guilty? A No.

Q Nothing hard to answer about that?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q You had nothing to fear? A I had not.

Q And you had no fear? A Not in that connection.

Q Dreyfus told you he was working in November, didn't he?

A He did not.

Q Did you ask him? A I did not.

Q Did you ever ask him his business? A I never asked him his business.

Q Did you ever asked him where he lived? A No; I had been told where he lived by Ross.

Q Did you ever have a talk with Dreyfus about his family or his antecedents? A Nothing whatever.

Q Did you ask him how he became acquainted with Ross? A No.

Q Did you ever try to learn anything about Dreyfus? A No.

Q Did you ask him if he had parents? A No.

Q You did not know what business he was engaged in? A Didn't know anything about it.

Q Did you ever ask him about how much money he was earning? A No.

Q Did he ever tell you he was earning a certain sum of money a week? A No.

Q Did you ever tell him that if he would keep Ross away that you would pay him more than he was earning? A I did not.

Q Did you ever tell him if he would keep Ross away, you would give him \$150. a week? A He demanded it.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike that out.

Q Mr. Tobey, you understand me? A Yes, sir.

Q Then you paid it. You sent Ross \$300. a week while they were in Cleveland? A Yes, sir.

Q You gave it to Dreyfus or Ross? A I sent it in Ross's name.

Q You sent it to Ross, didn't you? A I did.

Q And you told Ross to give Dreyfus \$150. out of the money?
A Well, that was the previous arrangement that they had made themselves, to which I had agreed.

Q Well, did they talk about it in your presence? A Oh, yes, sir.

Q And this money that you sent to Cleveland was all sent to Ross? A Yes, sir.

Q How many three hundred bills did you send to Cleveland?

A I telegraphed \$300 on three occasions or on four occasions.

Q When I say "bills" you know what I mean? A I do.

Q Then they came back from Cleveland, did they? A They did.

Q Were you anxious to know whether they were at Cleveland or not, Mr. Tobey? A I took it for granted they were there. I don't quite know how to answer that.

Q Were you ever curious to know?

MR. DONAHUE: What difference does it make whether they were in Cleveland or Hoboken?

THE COURT: Sustained.

Q Were you anxious to know whether or not they were in Cleveland?

MR. DONAHUE: I object to that. What difference does it make.

THE COURT: I will let his answer stand.

MR. KETTER: Exception.

Q Were you interested to know?

MR. DONAHUE: I object to that. What difference does that make?

THE COURT: I have sustained the objection. Now another question.

Q While they were in Cleveland did you ever communicate with them? A I did.

Q By what means? By the telegraphing of money and by the sending of one telegram, in evidence here.

Q And that was a telegram you refer to, People's Exhibit No. 5 in evidence; this telegram is dated November 15th; your recollection is that the date you sent the telegram -- A (Interrupting) About that date.

Q And in this telegram you wanted to know if these boys were at the Statler Hotel? A Yes, sir.

Q You hadn't heard from them at the time you sent this telegram? A Our telegrams crossed. No I had not.

Q You hadn't heard from them at the time you sent this telegram? A I had not.

Q So at the time you sent it, you did not know whether they had communicated with you or not? A I did not know.

Q And this telegram is an inquiry if they were at the Hotel Statler, you wanted to hear from them; isn't that true? A Yes.

Q Did you receive a wire or a communication from Dreyfus while he was in Cleveland? A I did.

Q And that is the telegram marked in evidence? A Yes, sir.

Q And that is dated December 3rd? A Yes, sir.

Q And that is the first telegram or communication, or writing, signed by Dreyfus; is it not? A It is.

Q And this telegram is merely an advice to you that they were leaving for New York?

MR. KRIEGER: Do you want me to read it?

MR. DONAHUE: It has been read. The telegram speaks for itself.

THE COURT: Yes, the telegram speaks for itself.

Q And after receiving that telegram you saw Dreyfus? A Yes.

Q And Ross together in New York? A I did.

Q When did you see them; what day? A It was around the 6th of December.

Q Do you remember what day of the week it was? A No, I don't

Q It was not the 16th? A No, it was not as late as that.

Q You went over the minutes of your testimony that you gave last Thursday, did you not? A I heard them read.

Q Did you go over the minutes of your testimony since last Friday and this morning? A I did not.

Q If these minutes state that you saw these boys on the 16th; is that an error -- question withdrawn.

Q Do you remember what day of the week was that? A I don't remember the day of the week.

Q Was it a Saturday? A No.

Q On a Monday? A I don't remember the day.

Q Before you saw these boys together, after they came back from Cleveland, did you hear from them other than by this telegram from Dreyfus? A I had letters from Ross, which are in evidence.

Q They are not in evidence? A They have been presented here.

Q Between the time of receiving the last telegram, which I called to your attention, signed by Dreyfus, and the time you met them on the 6th of December, as you said, did you hear from either of those two boys? A Yes, sir, from Dreyfus by telephone.

Q And when was that? A On a Saturday morning.

Q It was on a Saturday that you heard by telephone? A That I heard by telephone.

Q Your recollection is refreshed? A My recollection is perfectly clear; he telephoned the office Saturday morning.

Q And he told you he was back in New York? A Yes, sir.

Q Did you ask him -- A (Interrupting) He said he wanted to see me. I didn't ask him why he came back to New York; I knew why.

Q Did you see him on that day? A I did not.

Q You told him you were busy on that day, did you not? A I did.

Q And you told him you would see him on Monday? A Yes, sir.

Q Now, as a matter of fact, didn't you ask to see Dreyfus right away? A I didn't.

Q And didn't Dreyfus tell you that he thought it better to see you on Monday instead? A He didn't; he wanted to see me on Monday, right away.

Q Well, you met him on Monday? A I did; I met him the following week; I think it was Monday.

Q Wasn't it on Monday? A I think so; I am sure.

Q And in the meantime, you had your talk with your attorney, had you not? A I had a talk with the District Attorney.

Q With your attorney, Mr. Hann? A I don't think so.

Q You didn't talk with Mr. Hann about this matter up to this time? A No,--I had discussed this case with him sometime previously.

Q Now where did you meet Dreyfus and Ross on December 6th?

A 44th Street and First Avenue.

Q Who appointed the place? A I did.

Q You never met them at your office, did you? A I never passed any money in the office.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike it out.

THE WITNESS: They were at our office. I didn't quite get your question.

(Question read by the stenographer)

A Yes, sir, I did meet them at the office.

Q Who was present at the time you met them? A The entire office force as near as I can remember.

Q Are they in Court? A They are not.

Q Do you know when they were at your office?

THE COURT: You mean together?

MR. KRIEGER: Yes, sir, together.

A They were at our office together about July, 1919.

Q And who was there at the time? A Well, I don't remember; the business was going on; I suppose practically everybody was there.

Q Did you talk with any of your office associates about it?

A I did not, -- I had not up to that.

Q Well, at the time they were in your office? A No.

Q Did you know Mr. Ross to be a merchant from Cuba? A Did I know him to be a merchant from Cuba?

Q Yes. A No.

Q Did you ever introduce him to any of your associates as a merchant from Cuba? A I did not; I never introduced him to anybody.

Q They never talked to anybody in the office that you know of?

A No, they never did.

Q They never said anything to the members of your family so far as you know? A So far as I know, no.

Q Is that correct? A Yes, sir.

Q Now how many times was Dreyfus to your office? A Well, I should say about twenty times altogether.

Q Upstairs in your office? A Yes, sir.

Q And all during that time you never introduced him to anybody in your office? A No.

Q Now on the 6th of December at Broadway and 44th Street -- is it 41st or 44th? A On the 6th of December at First Avenue and 44th Street.

Q You met Ross and Dreyfus together? A I did.

Q About what time of day? A About four o'clock in the afternoon.

Q And you had heard from Dreyfus before that, when? A I had heard from him the previous Saturday and again that Monday morning.

Q And on this Saturday Mr. Dreyfus telephoned you, you say?

A Yes, sir.

Q Said he wanted to see you right away? A Yes, sir.

Q Anything else? Said he demanded to see me right away; nothing else.

Q And what did you say to him? A I told him I was busy.

Q What did he say? A He said, all right; he would see me Monday.

Q What did you say? A Very well, call up Monday morning and make an appointment.

Q Wait a minute. On Saturday did he say anything else when you said "all right"? A No, I don't remember that he said anything.

Q Positive of that? A Yes, sir.

Q Did you ask him to call Monday morning? A He said he would call me up.

Q I asked you if he said anything else and you said "no". I want to get everything that was said over the telephone on the Saturday? Have you given us everything you said on the telephone on the Saturday? A Let me ask you a question?

Q Just answer my question? A No.

Q What else was said on the telephone? A He said he would call me up Monday morning when he found out I could not see him Saturday.

Q Now your memory is refreshed? A Yes, sir.

Q How many times have you talked over this case with the District Attorney's office? A I should say three times prior to the middle of December.

Q I mean since the indictment of these boys? A I should say two or three times.

Q You have gone over every detail, all the things that took place between Dreyfus and you, didn't you? A Yes, sir.

Q So your memory was constantly in touch, or your mind was constantly in touch, with the office? A They were not constantly in touch after last Fall, because the papers in the case were in the possession of the District Attorney's office.

MR. KRIEGER: I move to strike out the answer.

THE COURT: I will leave it in.

MR. KRIEGER: I withdraw my motion.

Q Anything else of the conversation on the Saturday? A Nothing else.

Q You have covered everything? A I have.

Q When next did you hear from him? A On Monday morning.

Q What time? A I should say ten o'clock or half past ten, maybe eleven, in the forenoon of Monday.

Q Did you give him your telephone number? A No, he had it

for a year and a half.

Q Did you first give it to him? A No, I gave him nothing.

Q And who answered the wire when the call first came in, do you know? A Our telephone boy always answers the wire.

Q Had you told anybody that you expected a telephone message that day from Dreyfus? A Yes, sir.

Q Did you tell anybody to listen in? A Yes, sir, I did.

Q Who? A One of my partners.

Q Your partner? A Yes, sir.

Q Which one? A E. T. McManus.

Q Is he in Court? A No.

Q Do you know whether or not he was subpoenaed as a witness here?

MR. DONAHUE: I object to that.

Q Did you tell him you had seen the District Attorney? A Yes, sir, he knew it.

Q Did you tell the District Attorney that you were expecting a telephone call on Monday morning? A I did.

Q Do you know if anybody from the District Attorney's office was at your office at the time? A When?

Q At the time the telephone call was expected to come in? A Nobody was present.

Q Did you get a record of the telephone conversation? A I did at the time; I haven't it with me; I think I may have turned it over to the District Attorney's office.

Q Do you know whether or not you did? A I don't know.

Q Your memory is not quite clear as to that? A No, it is⁷⁸
not.

Q What was said by him, by Dreyfus? A That he would meet,
that they would meet me that afternoon. We had quite --

Q Just as the conversation opened up --

THE COURT: The words that passed over the phone?

THE WITNESS: "I want to see you right away, Mr. Robey."
I said I could not see him right away. I told him I was busy
all day, but I could see him late in the afternoon. He balked
after hesitating, he said, "All right". We then arranged as
to where we would meet.

Q Please tell us the conversations? A I don't remember the
exact words, but he said, "Where will we meet?" I suggested 44th
Street and First Avenue, to which he finally agreed. There was
not anything remarkable about the conversations; simply an ap-
pointment.

Q Did you talk with Ross at the time? A No.

Q Did he tell you Ross was with him? A Yes, sir.

Q Did he tell you he would have Ross with him? A Yes, sir.

Q You didn't mention that in the conversation, did you?

MR. DONAHUE: I object. What conversation?

MR. KRIEGER: I am asking for the whole conversation.

MR. DONAHUE: This is the first time he was asked about the
telephone conversation.

THE COURT: I will allow it.

A He told me Ross was with him and would be with him.

Q Did you ask him whether Ross would be with him? A I think he volunteered that.

Q You don't know whether you asked him about that? A No.

Q Do you remember? A I remember it was distinctly stated Ross was with him.

Q But it was so distinct you could not remember that when you were asked to give the conversation?

MR. DONAHUE: I object.

THE COURT: Sustained.

Q Did you ask him to bring Ross with him? A I didn't.

Q Were you interested whether he would or not? A Yes, sir.

Q Were you anxious to have Ross accompany Dreyfus to keep the appointment? A I was.

Q You didn't suggest that? A To Dreyfus?

Q Yes. A No.

Q To bring Ross with him? A No.

Q Now the \$40. about which you were asked, what denominations were those bills? A Why I saw them the other day; that refreshed my memory.

Q What is your recollection as to what denominations they were? A I think there was one ten and six five dollar bills.

Q You think different now from what you thought on Thursday last?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q You said on Thursday last you thought those bills were two

tens and four fives, did you not? A I guess I did.

Q Since that time you have altered your opinion? A No, I saw the bills that day -- they were shown to me.

Q Did you ask Dreyfus if he had any money with him before you gave him this \$40.? A I did not.

Q Well, now, when you met Dreyfus and Ross, who was the first man that talked to you? Dreyfus was the first man that talked to me.

Q You had known Ross longer, had you not? A Yes, sir.

Q Didn't he say a single word to you? A Yes, sir.

Q Before Dreyfus opened up the conversation? A No.

Q Well, did you say anything to them before Dreyfus opened up the conversation? A I did not.

Q Didn't you ask them why they came back to New York? A No.

Q At any time during the conversation did you ask them that?
A No, they volunteered that.

Q Did you ask them that at any time during the conversation?
A I did not.

Q Dreyfus opened up the conversation and said what? A He opened the conversation and said they had left Cleveland because it was uncomfortable to remain there, that they had met some men at the Hotel Statler in Cleveland that they knew in New York; that they could not stay there, they were going further West, but they could not get along with the \$300. a week I had been giving them.

Q And then you asked them how much they thought they could get along with? A Yes, sir.

Q And they said \$700? A Yes, sir.

Q You said you could not afford to pay it? A I did.

Q And you asked them to keep on taking \$300? A Before that happened I threatened to end it --

MR. DONAHUE: He cannot be restricted to certain portions of it.

MR. KRIEGER: Question withdrawn.

Q Then you asked Dreyfus if he had any money with him? A I did not.

Q Dreyfus told you that Ross didn't want to stay in Cleveland? A He said they both --

Q Didn't Dreyfus tell you that Ross wanted to come back to New York; that he didn't want to be driven out of New York? A No.

Q Did Dreyfus tell you that Ross said his mother was sick and he wanted to come back to New York? A No.

Q Did you ever go up to Ross's house? A No.

Q Were you interested to know where he lived? A No.

Q Were you interested to know his family? A No.

Q Have you ever met a member of his family, up to this time? A Up to this date?

Q No, up to the time they came back from Cleveland? A No.

Q You met a sister of Ross's later on, did you not? A I did; I met two sisters.

Q Did you ever meet a Mrs. Freedman? A Yes, sir.

Q Did you ever tell her that you were guilty of acts of indiscretion with Ross? A I did not.

Q How many other boys were you sending money to during this time? A I don't believe I sent money to anybody during that time.

Q You were entertaining other boys there, too? A We were during the War.

Q Not "We". Were you? A Yes, sir, I as a member of the family.

Q Any other boys that you sent out of town? A No.

Q Any other boys you helped out with money? A No.

Q Any other boys you got a job for?

MR. DONAHUE: I object to that.

THE COURT: I will allow it.

MR. DONAHUE: There is no evidence here that he got a job for Dreyfus.

A yes, sir, I have got jobs for two men.

Q Sailor boys? A Soldiers.

Q Soldier boys? A Soldiers.

Q Did you tell Ross you would set him up in business?

A I did not.

Q Did you tell Ross that you would give him \$5,000. if he went to San Francisco? A I did not.

Q You are sure about that? A Very sure about that.

Q Did you send Ross to Buffalo? A Yes, sir, Ross told me--

Q Just answer my question, please? A Yes, sir.

Q Did you go down to the train with him? A No.

Q Did you go down to the railroad depot with him? A No.

Q Did you and he go to the railroad station to buy the

ticket to Buffalo? A Never.

Q Did Ross go to Buffalo? A I don't know.

Q Did you ever go to Cook's Tours with Ross; at the time you sent Ross to Buffalo you hadn't known Dreyfus? A Never.

Q Well had you -- A (Interrupting) I didn't send Ross to Buffalo.

Q I thought you said you did? A I said he was going.

Q At the time Ross told you he was going to Buffalo had you known Dreyfus? A No.

Q How much money did you give Ross when he said he was going to Buffalo? A I loaned him \$15.00; \$10 or \$15.

MR. DONAHUE: How much was that, Mr. Tobey?

THE WITNESS: \$15.

Q What is the name of your domestic servant in your house, Bridget, or was it at the time you knew Ross? A Very likely.

Q Don't you know? A Yes, sir, there is one.

Q No question about it? A She is the cook. I don't think she would come in the front room of the apartment.

Q Did you ever leave any money with Bridget to give to Ross? A No; never.

Q Do you know whether or not Bridget ever gave any money to Ross? A I don't know; I certainly don't think she did.

Q Did Bridget ever tell you she did? A Never.

Q Now after you lent this \$50. or \$15. was it? A \$15.

Q To Ross, to go to Buffalo, when next did you see Ross?

A I saw Ross in May, about three months afterwards.

Q Didn't you see him between the time you lent him the \$15. and three months afterwards? A No.

Q What time was it you lent him the \$15? A About February, 1919.

Q You of course expected the return of this \$15? A I did not.

Q Then you gave it to him? A Yes, sir; he expressed it the other way, though.

Q Was that the first time you had given him any money? A No; I think I probably had given him a \$5. bill; I gave it to the two sailors the first time they were there.

Q In 1919? A In the Fall of 1918.

Q Between the Fall of 1918 and the Fall of 1919? A As I said, in the Fall of 1918.

Q When you lent him this \$15 to go to Buffalo, had you given Ross any money or lent him any money? A I don't think so; I might have given him two or three dollars, because when he got out of the Navy he was short of clothes.

Q You are sure you didn't give him any money between those two dates? A What dates?

Q Between the Fall of 1918 and the Fall of 1919? A I gave him money in May, 1919.

Q Was that before or after he went to Buffalo? A It was three months after he was supposed to go to Buffalo.

Q When was he supposed to go to Buffalo? A In February 1919.

Q Now after February 1919, you again saw him for the first time, when? A In May, 1919.

Q And who was he with? A Dreyfus.

Q Went down to your office? A He was at the 57th Street apartment.

Q That was the time they came up to the apartment? A It was.

Q Did he ask you for any money then? A Yes, sir.

Q Who did? A Ross.

Q What did he ask you for? A No definite sum.

Q What did he say he wanted to do with it? A He said he hadn't anything to get his food with; didn't have any place to go to sleep, etc.

Q In whose presence was that conversation carried on? A Dreyfus's.

Q Anybody else's? A No.

Q Was it in or outside of your apartment? A It was outside.

Q How long from the moment you came to the place until the conversation stopped had it taken; for what space of time? A About two minutes.

Q During that time the door of your apartment was closed?

A The door had been closed.

Q Who closed it? A The maid closed it.

Q So your sister and the servant did not hear this conversation? A They didn't.

Q Did you give him any money? A I gave him \$5.

Q Did they say they would see you again? A No.

Q Where next did you see them? A I saw them next the following morning.

Q Where? A Wall and William.

Q Met them accidentally? A No, by appointment.

Q When had you heard from them with reference to this appointment? A I had heard from them at 11:30 the previous night, and again at 12:00 the previous night, and the following morning at my office.

Q So that same night that you met them at your apartment, at 11:30 you heard from them? A I didn't meet them at my apartment at 11:30.

Q On the same day you had left them at your apartment, that is on the night of that same day, at 11:30, you heard from these men; is that correct? A By telephone.

Q Where did the telephone message come into? A To our apartment.

Q Who talked to you? A Dreyfus.

Q Did you recognize his voice? A I certainly did; I certainly remember it distinctly.

THE COURT: I think we will take a recess now.

Gentlemen of the jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, form or express any opinion thereon until the same is submitted to you.

The Court will take a recess until two o'clock.

New York, June 27, 1921. 2:00 P.M.

(A F T E R R E C E S S).

O R V I L L E H. T O B E Y, resumes the stand, testifies
as follows:

CROSS-EXAMINATION CONTINUED BY MR. KRIEGER:

Q Now what was there about the voice that made you remember it so distinctly? I would know Dreyfus's voice wherever I heard it, sir.

Q MR. KRIEGER: I move to strike out the answer as not responsive.

THE COURT: I will leave it in.

MR. KRIEGER: Exception.

Q I am speaking, now, Mr. Tobey, of the conversation you are relating over the telephone the same day that you had first met Dreyfus at your apartment. I am asking you what was there that so impressed you, that would make you remember this voice so distinctly, or recognize this voice so distinctly? A Rather a rapid conversation, in a rather low voice.

Q Well, how had you talked with Dreyfus before then? A No, sir, except to be introduced to him by Ross.

Q So that up to the time of this conversation that you are trying to relate, you had not talked to Dreyfus? A No, except that I had heard him say one or two words at the apartment on the first afternoon.

Q Do you know what were these one or two words that he had spoken? A Just to say, "How do you do?" or something of that kind.

Q Beyond that you had never talked or had a conversation with Mr. Dreyfus, up to that time? A Never.

Q The next day you met Dreyfus? A I did.

Q Where? A Wall and William.

Q What time? A About eleven in the morning.

Q It was not six o'clock in the evening, was it? A It was about eleven in the morning.

Q And you had received a telephone message that morning? A I had.

Q To fix the appointment? A Yes, sir.

Q You didn't have a telephone conversation making an appointment the night before? A No.

Q So that your earlier statement that you had made the appointment at 11:30, or the night before -- A (Interrupting) A I didn't make such a statement.

Q Who called you up, or who do you surmise called you up, on the next morning? A I know Dreyfus called me up.

Q Up to that time you hadn't talked with Mr. Dreyfus? A Except at the apartment that afternoon.

Q And except what you have related up to now? A Yes, sir.

Q And that was something like "How do you do?" A Yes, sir.

Q And beyond that you never heard his voice? A True.

Q As a matter of fact you don't know, or didn't know at the

time that it was Dreyfus who was talking to you on the telephone, did you? A Yes, sir, I think he said so.

Q You can conscientiously say that at that time you knew it was Dreyfus talking? A Yes, sir.

Q Although you had never heard his voice before then? A Yes, sir.

THE COURT: That is argumentative.

MR. KRIEGER: Now at this time, I move to strike from the record all of the testimony relating to any conversations had between Mr. Tobey and this alleged voice on the telephone, on December 6th and December 9th.?

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Now on May 9th, was it the day that you say you passed the \$500.? A yes, sir.

Q And you passed that money while you were in a restaurant, did you not? A I did.

Q Or did you pass that money while at Wall and William Sts., on the street? A I passed that money in a restaurant.

Q Did you pass it at Wall and William Street? A I did not.

Q Where did you first meet the two boys? A Wall and William Street in the morning.

Q About 11:30? A Around eleven o'clock.

Q Where did you go with them? A We walked down William to Pearl and continued down Pearl.

Q And where did you go into? A Went nowhere that morning.

Q What day was this? A This was the 9th of May, 1919.

Q Did you go into any restaurant with him? A Not in the morning.

Q That day? A I did.

Q What time? A In the afternoon.

Q Had you been with them from eleven-thirty until the afternoon? A I had not.

Q Well, you left them some time in the morning? A I did.

Q What time? A I suppose about ten minutes or fifteen minutes after I met them, fifteen minutes, possibly twenty.

Q Where were they at the time you left them? A About the corner of Pearl and Broad, about opposite a restaurant known as Bachrach's.

Q What did you tell them to do, wait for you? A No.

Q Did you tell them you would see them that afternoon?

A They said --

Q Did you tell them you would be ready to see them that afternoon? A I did.

Q Did you ask them to come up and see you? A No.

Q Did they come up to your office? A No; they told me where I should meet them.

Q Where did they say? A Pearl and Broad.

Q What time did you meet them again? A In the afternoon, probably between four and five.

Q This is the first time that you are relating this second meeting on that day; is it not? A You referred to it this

morning.

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Q I mean in this case? A Yes, sir.

Q In other words, you didn't mention in your direct examination anything of any adjourned meeting on May 9th, did you? A No.

MR. DONAHUE: Your Honor he was not asked that.

MR. KRIEGER: He was asked to state the story.

MR. DONAHUE: I did not go into that

THE COURT: I will allow his answer to stand.

Q And you met him on the 9th of May at what time? A I met them in the morning first and in the afternoon.

Q What time in the afternoon? A Between four and five.

Q Where? Corner of Pearl and Broad Streets.

Q Where they there when you first got there yourself? A Yes.

Q You walked over there to them? A Yes, sir.

Q Who did you talk to first? A I don't remember.

Q Who talked to you first? A I don't remember.

Q And did you ask them to go to a restaurant with you? A I did.

Q What restaurant did you ask them to go into? A A small restaurant in the neighborhood, the name of it -- I had never been in it before and never since.

Q You went in there to have something to eat with them? A No.

Q Well, what did you do when you got into the restaurant?

A Passed them \$500.

Q Did you do it surreptitiously, that is, under cover, or was it an open transaction? A Under cover.

Q Just tell us what you did and how you went about it? A We sat down there. Ross wrote me out a confession that he had lied thro-

ugh the whole business. This is one of the things that happened.

MR. KRIEGER: I move to strike out the answer as not responsive. I asked what he did.

THE COURT: No, I think it is fairly responsive.

MR. KRIEGER: I do not think it is fair for him to state what Ross wrote out and give the contents.

THE COURT: When you say "Tell us what you did", and there were three people together, it is a fair construction of your question. You asked for what he did. We will strike out the characterization.

MR. KRIEGER: That is the point.

Q You may continue? A And then I passed them the \$500, I passed it to Dreyfus.

Q You say you passed it to them? A To Dreyfus.

Q What else happened? Tell us? A While we were there, we got a table, in order to avoid attention, and we had a glass of something to drink, ginger ale, or beer, I don't remember which, in order to avoid attention. That is the whole transaction.

Q Have you told us everything that happened at the table? A Yes, sir.

Q And everything that was said and done? A Yes, sir.

Q You are quite certain of that? A I am positive.

Q Nothing more either way? A Nothing more either way.

Q Ross told you he wanted to go to Texas? A Yes, sir.

Q At the table? A He had told me that in the morning.

Q He told you in the morning he was going to Texas? A They said it.

Q Did Ross say it? A Both said it.

Q Who was the first one that said it? A I don't remember.

Q And they said they would like to have you give them some money to go to Texas with? A They demanded the money.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike it out.

A They did.

Q And you don't recall now who said it first? A No, I do not.

Q It may have been Ross? A I don't recall who said it first.

Q And you were willing that they should go to Texas, weren't you?

A Yes, sir.

Q And you were willing to give Ross \$500 that he go to Texas with? A I was willing to give them \$500.

Q yes or no? A Yes, sir.

Q And that afternoon that you met these boys, you gave Ross the money for the purpose of going to Texas? A I gave Dreyfus the money.

Q For the purpose that Ross and he should go to Texas? A That they should go to Texas.

Q Before Dreyfus and Ross went to Cleveland, you talked with Dreyfus, did you not about that intended trip? A Yes, sir.

Q And you kind of agreed that the best thing would be for Ross to go out of New York, didn't you? A Yes, sir.

Q And you were rather glad that Dreyfus was willing to take Ross out of New York, weren't you?

MR. DONAHUE: Your Honor, what difference does that make whether he was glad or not?

MR. KRIEGER: This is cross-examination.

THE COURT: I will allow the question.

A Yes, sir.

Q And for that you told Dreyfus you would send him or them \$300 a week? A They demanded that --

MR. KRIEGER: I move to strike that out.

THE COURT: Strike it out.

A (continued) Yes, sir, I told them.

Q And when they came back from Cleveland, Dreyfus told you that Ross wanted to go to Texas again, didn't he? A No, it was not mentioned.

Q Or go out further West somewhere? A No.

Q You say it was not mentioned? A I don't think it was mentioned where they were going.

Q You are not sure as to that? A I don't think so; I don't remember where they were going.

Q Dreyfus told you that Ross didn't want to stay in Cleveland, you said? A Yes, sir.

Q And that they were going to go out further West, didn't you say that on your direct examination? A I don't remember whether they were going West, I think it possible; they were not going to stay in New York.

Q He said they wanted to go somewhere? A Yes, sir.

Q And that they could not get along on \$300 a week? A Yes, sir.

Q Is that right? A Yes, sir.

Q And then you said you could not pay more than \$300 a week?

A Yes, sir.

Q And then you suggested to them that they continue to keep on with the \$300 a week? A I did not.

Q Or receive the \$300. a week? A I didn't.

Q When you gave them this \$40. you lead them to believe that was the \$300. coming to them for that week? A Yes, sir, for that week.

MR. KRIEGER: That is all.

MR. DONAHUE: That is all.

C H A R L E S H A N N, JR., called as a witness, on behalf of the People, being first duly sworn, testified as follows:
(3 Washington Square, North).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Hann, you are an attorney and counselor at law, in practice in the State of New York? A Yes, sir.

Q How long have you been such? A Six years.

Q And where is your office? A 64 Wall Street.

Q And who are you associated with? A Harrington, Bigham and Englar.

Q Are you a member of that firm? A No, sir.

Q Do you know the complaining witness in this case, Mr. Tobey?
A Yes, sir.

Q How long do you know him? Talk up loud, if you please? A I have known him for five or six years, at least.

Q And during that time where did he have his place of business, do you know? A 64 Wall Street.

Q Where did you have yours? A 64 Wall Street.

Q And did you see him quite often during that time? A Yes.

Q Very frequently? A Yes, sir very frequently.

Q Do you recall him talking to you sometime in 1919 or 1920 about some men who were coming to see him? A Yes, sir.

Q Did you have a talk with him when a man was standing in front of his place of business one day -- I will put it shorter than that. Did you ever see this defendant here, Dreyfus? A Yes, sir.

Q Where did you see him for the first time? A In front of 64 Wall Street.

Q Can you fix the date and time of day? A About five o'clock in the first part of September, 1919.

Q And had you talked prior to that time with Mr. Tobey?
A Yes, sir.

Q And had he discussed with you a man by the name of Brown, just yes or no?

MR. KRIEGER: I object to that.

THE COURT: I will allow it.

A Yes, sir.

Q Were you introduced to this defendant, Dreyfus at that time, or did you speak to him without being introduced? A In front of 64?

Q The first time you met him? A Yes, sir.

Q Did you speak to him? A Mr. Tobey, said, "That is the man," and I spoke to him.

Q Did you go over and talk to this man? A Yes, sir.

Q What did you say to him at that time and what did he say to you?

MR. KRIEGER: Objected to as incompetent, irrelevant and immaterial, calling for a conversation antedating the date of this alleged act or crime by months; not in any way shown to be connected with this particular crime or act, with which this defendant is charged; something that took place months and months before.

THE COURT: Well, you have allowed in the case evidence of conversations as far back as that. I think in the light of the methods adopted by the defense on the trial, that is, allowing in the conversations, I will receive it.

MR. KRIEGER: I take an exception to that, your Honor, and call attention to what the complainant himself wanted to lay the foundation for certain acts on his part, and in that respect it might have been competent, but here is a third party coming in, with an unrelated conversation, so far as know, trying to do something, on which to fasten the crime on this defendant, not even alleged to have commenced months after this talk. It is quite a different situation in the proceedings prior to this indictment on the part of the complaining witness himself.

THE COURT: The complaining witness has been interrogated regarding this very matter. I think I will receive it.

MR. KRIEGER: Exception.

Q Tell us what the conversation was, Mr. Hann, what you said to this defendant and what he said to you? A I said to the defendant, What is the idea? And he said, I will make things pretty disagreeable for this man unless he pays me \$500. That is the idea. I said to him, Well, don't you think you are apt to get into trouble, doing something like this? He said, Well, it is a pretty soft way to shake down a little sugar. I said, Well, have you got anything against Mr. Tobey? Have you really got anything against Mr. Tobey? He said, No, I have not. Then we proceeded to walk up to 64 Wall Street, up to the corner of Nassau and Wall Street.

Q When you say "we", who do you mean? A Mr. Tobey, Mr. Dreyfus and myself, and there we suggested -- it had been suggested before -- I said to the two men, Well, I guess we had better go up to the District Attorney's office, and as we strolled up towards Broadway, the thought occurred to me that the District Attorney's office would probably be closed--

MR. KRIEGER: I move to strike that out.

THE COURT: Strike that out.

Q You said something about going to the District Attorney's office? A Yes, sir.

Q What did he say after that? A All right; let us go up to the District Attorney's office.

Q What time was it then? A A little after five o'clock.

Q What did you do or say, after that? A What time?

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Q At this particular time. Wasn't there something else said after you said you were going to the District Attorney's office, and he said, Let us go? A Yes, sir; he said, I don't care; let us go up to the District Attorney's office.

Q Yes; what else was said, Mr. Hann? A I continued to-- I was trying to dissuade him--

MR. KRIEGER: Now, Mr. Attorney --

MR. DONAHUE: We all make the same mistake, Mr. Hann, but try as well as you can to give us your recollection of his exact words, not your conclusions or suggestions.

THE WITNESS: I told him it would be very disagreeable for him, if he didn't lay off this game that he was playing, that it was nothing but a dirty blackmail game, and he might just as well stop it, or get into trouble. He said, I am not afraid of getting into trouble. I had never seen such a brazen person before.

MR. KRIEGER: I move to strike that out.

THE COURT: Strike it out. The jury will disregard it.

Q Now, Mr. Hann, did you notice at that time a police officer in the vicinity, just yes or no? A Yes, sir.

Q And was there anything said by either you or Dreyfus in reference to that police officer? A Dreyfus said, Well, there is a policeman, speak to him about it.

Q Yes, and what happened after that? Did you still continue your conversation? A Mr. Tobey spoke to him.

Q What did Mr. Tobey say in your presence and hearing?

A I turned aside on the corner, he turned and spoke to Dreyfus, not in my hearing.

Q Up to this time, Mr. Hann, had you told Mr. Dreyfus who you were? A No, he didn't have the remotest idea.

THE COURT: Strike out "he didn't have the remotest idea."

Q Anybody tell him in your presence? A No.

Q Now, Mr. Hann, did you have any further talk with Dreyfus at that particular time? A I believe not.

Q And did you see him after that? A No.

Q And did you ever see him at all after that? A No, sir.

Q Did you ever see him in and around the neighborhood of your office at any time at all? A No, sir.

Q That was all the conversation you ever had with him? A Yes, sir.

MR. DONAHUE: That is all.

CROSS EXAMINATION BY MR. KRIEGER:

Q Mr. Hann, you told us very fully everything that happened between you and Dreyfus, as far as you know? A Yes.

Q You are a practicing attorney? A Yes, sir.

Q Admitted in this state? A Yes, sir.

Q Do you try cases? A Yes, sir.

Q Have you ever tried any criminal cases?

MR. DONAHUE: What difference does that make? I object to that.

THE COURT: Sustained.

Q Were you in court when Mr. Tobey gave his testimony?

A Yes, sir.

Q You heard Mr. Tobey testify as to what you said to Dreyfus, and what Dreyfus said to you? A I may have heard part of it.

Q Were you in court at the time that Mr. Tobey gave all his testimony? A I have been in and out of the room.

Q Did you hear part of the testimony in which he referred to you as being present? A I think I did hear part of it.

Q Do you recall what he said, you said and what Dreyfus said to you at the time? A I think so.

Q Are you being paid by Mr. Tobey?

MR. DONAHUE: I object to that, if your Honor please.

MR. KRIEGER: I think it is very important --

MR. DONAHUE: You don't mean to insinuate he is being paid for giving his testimony?

MR. KRIEGER: I didn't say that.

THE COURT: I think they have the right to know whether this witness is now the counsel for Mr. Tobey. You can ask him if he is the attorney for Mr. Tobey, in simple language.

MR. KRIEGER: I don't know what the district attorney is going to anticipate.

THE COURT: You may inquire whether or not this gentleman, who is now the witness, is the attorney acting in legal matters for Mr. Tobey.

Q Mr. Hann, are you personally representing Mr. Tobey as attorney? A That would be difficult to say.

Q Have you ever represented him at all in any transaction? A Yes, sir.

Q Do you represent him now in any transaction? A No.

Q What is the difficulty about my previous question, Mr. Hann? A Well, the matter is being prosecuted by the District Attorney. I don't see where I play any part in it.

Q Have you any interest in this case on behalf of Mr. Tobey?

MR. DONAHUE: What do you mean by interest? I ask to have "interest" put in so many words. He may be interested in the case as a good citizen.

THE COURT: This witness is capable of answering the question. You may answer.

A I am interested in it so far as it is up to me to state what happened at 64 Wall Street about the first of September, 1919.

Q Were you subpoenaed as a witness by the People? A I have no subpoena, no, sir.

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Q So you came as a voluntary witness? A Yes, sir.

Q Were you promised by Mr. Tobey to be paid for the time that you were taking in testifying in this case? A No, sir.

Q Mr. Dreyfus said he had nothing on Mr. Tobey? A He did.

Q There was nothing for Mr. Tobey to fear, so far as you could see? A There was a good deal, I should think.

Q Well, after Dreyfus said he had nothing on Mr. Tobey, wasn't that -- I will withdraw the question. Did you feel that a crime was being committed at the time?

MR. DONAHUE: I object to that. We do not care how he felt about it.

MR. KRIEGER: This man has testified, if your Honor please, that he was there, that he wanted to go to the District Attorney's office, and I want to find out why he didn't go there. He was an attorney-at-law, and a crime is alleged to have been committed.

THE COURT: I will allow the question.

A I advised Mr. Tobey when he first spoke to me about the matter to take it up with the District Attorney.

MR. KRIEGER: I move to strike out the answer as not responsive.

THE COURT: I will leave it in. You may ask another question.

Q At the time when you talked with Dreyfus, did you feel that Dreyfus was committing a crime? A Yes, sir.

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Q And you told Dreyfus that you would go to the District Attorney's office? A Yes, sir.

Q Dreyfus told you that he would go with you? A Yes.

Q And he started to walk with you to the District Attorney's office, did he not? A Yes, sir.

Q Now, why didn't you go up there? A Well, it was too late to go to the District Attorney's office at that time.

Q What time was it? A Between five and five-thirty, I should say.

Q Well, you saw an officer, did you not? A Yes, sir.

Q You know that in case of a felony, an officer may arrest a defendant without a warrant?

MR. DONAHUE: What difference does that make, your Honor?

THE COURT: I will allow it.

Q You know? A I am not certain, no, sir.

Q Well, Mr. Dreyfus called your attention to the fact that there was an officer, a police officer, on the street, didn't he? A Yes, sir.

Q And he told you that if you thought he was committing a crime to have him arrested? A Yes, sir.

Q Why didn't you get the police officer to arrest him?

MR. DONAHUE: I object to it. This man was not concerned in that situation. Mr. Tobey was the one to make the charge. There was no felony committed in this

witness's presence.

THE COURT: I will allow it.

A Mr. Tobey, as I said previously, turned and spoke to Mr. Dreyfus, and I didn't know what arrangements they had made, what they were planning to do. As suggested by the Assistant District Attorney it was their matter more than mine.

Q Had the District Attorney charge of the matter at that time?

MR. DONAHUE: I object to that.

THE COURT: I will allow it.

Q Why did you mention the District Attorney? A We had been mentioning him right along.

Q You mean that day? A Yes, sir.

Q And when he took you up on your proposition you didn't go with him?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q You didn't answer my question, why you didn't have him arrested by the police officer?

MR. DONAHUE: I object to that.

THE COURT: Sustained. The question has already been answered.

Q Did you hear Mr. Tobey testify in relation to the conversation that was carried on between you and Mr. Dreyfus in his presence, as follows:

"Q Did you hear what Hann said to Brown? A I heard Hann ask Brown what he meant by coming down there and annoying me. This man said 'he is a soiler of youth.'" Did you hear Mr. Tobey so testify as having come from the lips of Dreyfus? A I didn't hear that.

Q Did you hear Mr. Dreyfus say, "Pointing to Mr. Tobey, that he was a "soiler of youth?" A Yes, sir.

Q Did you state that on your direct examination? A At least I thought I stated it.

Q You thought you stated it? Is there anything else that you didn't state in your direct examination with relation to that conversation that you would like to state now, Mr. Hann?

A Mr. Dreyfus said that Mr. Tobey was a regular Harry Thaw, and that he would show him up in his home and in his office, and wherever he could.

Q And that was--

MR. DONAHUE: Let him finish his answer. Go ahead.

A (Continued) And unless this \$500 was given by Mr. Tobey to Mr. Dreyfus, he would do that.

Q Are those the exact words, as near as you can remember?

A Yes, sir.

Q That were used by Dreyfus? A Yes, sir.

Q And he wanted five hundred? A Yes, sir.

Q Did you hear Mr. Tobey testify:

"Q Brown said that to Hann? A Pointing to me, and 'I am down here -- he knows why I am down here.'" 5702

Did you hear Dreyfus say that? A No.

Q Did you hear Mr. Tobey, or did you say, "You ought to be tarred and feathered," to Dreyfus? A I did make some statement along those lines. I wanted to have him stopped, and I thought perhaps by talking to him reasonably and sensibly that I could persuade him to stop these approaches to Mr. Tobey. That was my idea in coming down.

Q You didn't hear Mr. Dreyfus say anything beyond what he said to you that day; isn't that true? A Mr. Tobey?

Q Dreyfus, I am speaking of. A I never saw him before that time -- no, sir.

Q Did you hear Mr. Tobey make an appointment at that time with Mr. Dreyfus at the Murray Hill Hotel, for that night?

A I am not certain whether I heard him make the appointment; I know he did make one.

Q Did you go there with Mr. Tobey at the time? A I did not.

Q Had you been told by Mr. Tobey of the particular crime with which he was supposed to have been charged by Dreyfus?

A I am not certain about that. He said these men were annoying him.

Q Didn't you ask him the particular basis of the annoyance, or the particulars of the annoyance? A I am not certain about that; I have heard so much about that.

Q Your memory is a little bit poor? A Possibly.

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REDIRECT EXAMINATION BY MR. DONAHUE:

Q Don't you remember what Mr. Tobey told you?

MR. KRIEGER: I object to that.

MR. DONAHUE: You brought it out.

THE COURT: I will allow it.

MR. KRIEGER: This is not cross examination. I brought it out on cross examination. I asked that he try and remember what he said, and as long as he didn't remember it, that is the end of it.

Q Mr. Hann, you had talks, had you not, with Mr. Tobey, before you ever met this Brown? A Yes, sir.

Q And after Mr. Tobey told you why these men were coming to the office; just yes or no?

MR. KRIEGER: I object to that as not proper redirect examination on the part of the district attorney.

THE COURT: I will allow it.

MR. KRIEGER: Exception.

Q You said before, Mr. Hann, you didn't know exactly what was said. As a matter of fact, do you know what Mr. Tobey is being accused of by these people?

MR. KRIEGER: I object to that as calling for the witness's conclusion.

Q What particular form of crime did Mr. Tobey say he was being accused of?

MR. KRIEGER: I object to that as not proper redirect

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examination.

THE COURT: Yes or no.

A Yes, sir.

Q What did he say on that subject to you?

MR. KRIEGER: I object to that on the same ground.

THE COURT: I do not think I will allow that.

MR. DONAHUE: Your Honor, the defendant's attorney put these questions in a peculiar way.

Q Did he say what the crime was?

MR. KRIEGER: I object to that; that is calling for the effect of a conversation, in an indirect way.

THE COURT: I won't receive the evidence.

MR. DONAHUE: Your Honor will recall the defendant's attorney opened the door on this and I did not go into it on the direct at all. Am I to be bound by counsel's peculiar --

THE COURT: The objection to this question is sustained, Mr. Donahue.

MR. DONAHUE: That is all.

J O S E P H H U S S O , called and sworn as a witness for the People, testified as follows:

(Detective Bureau, District Attorney's office.)

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Russo, you are a member of the Police Department of the City of New York? A I am.

Q Attached to the Detective Bureau, and assigned to the District Attorney's office in New York County? A Yes, sir.

Q And how long have you been a member of the Police Department? A 19 years.

Q How long have you been attached to the District Attorney's office as a detective? A Over 17 years.

Q On December 6th, 1920, were you so attached? A I was.

Q Do you remember having a talk with the Acting District Attorney/^{who}at that time was Mr. Talley? A Yes, sir, I do.

Q Did you see Mr. Tobey in or around the office at that time? A I did.

Q Mr. Tobey, will you stand up please? (Mr. Tobey stood up.) Is that the man you mean? A That is the man.

Q And where did you see him for the first time that day? A In Mr. Talley's office.

Q In Mr. Talley's office on the third floor? A Yes, sir.

Q Who else was there when you first saw him? A Detective Cunniff and John Markey.

Q Mr. Cunniff is a detective? A Yes, sir.

Q And Mr. Markey, he is a process server? A Yes, sir.

Q Attached to Mr. Talley's office? A Yes, sir.

Q About what time did you first see Tobey that day? A About three p.m.

Q Now, did you hear him talking to Mr. Talley, just yes or no? A Yes, sir.

Q Did you see him hand any money to Mr. Talley? A Yes.

Q And did you see Mr. Talley take that money?

MR. KRIEGER: I think that the District Attorney ought not to lead this witness. He ought to ask him what he saw.

Q Did you see what Mr. Talley did with the money? A Yes.

Q What did he do with it? A Marked it.

Q Did you see him mark it? A He indicated where he marked it.

Q Did he show it to you? A He did.

THE COURT: Do you know whereabouts the money was marked?

THE WITNESS: I well remember, under the "five", in the lefthand corner, he made a dot.

Q On what particular part of the "5" was it, so there will be no doubt about it, do you remember? Do you remember whether it was the top, bottom or side, or where it was? A It was on the "5", on the lefthand corner of the five dollar bill.

Q And on the ten dollar bill, where was the mark put?

A On the suspender of the driver of the plow.

Q Will you look at People's Exhibit 10-a, 10-b, 10-c, 10-d, 10-e, 10-f, and 10-g, and see if you recognize those bills as the bills you saw Mr. Talley marking? just yes or no to that, Mr. Russo? A (After examining) Yes, sir.

Q And after Mr. Talley marked those bills, what did he

do with them, if you know? A He gave them to Mr. Tobey.

Q That was after they were marked? A Yes, sir.

Q You had talked, had you not, with Mr. Talley at that time? A I did.

Q And did you hear Mr. Tobey have a talk with him in your presence; just yes or no? A Yes, sir.

Q And did you have talks yourself with Mr. Talley, you and Cunniff? A Yes, sir.

Q You subsequently after these talks left Mr. Talley's office, did you not? A Yes, sir.

Q And who left with you, if you know? A Detective Cunniff and Mr. Tobey.

Q Detective Cunniff, Mr. Tobey and yourself? A Yes.

Q About what time did you leave? A Around 3:30.

Q And did you continue to be together until you arrived at 44th Street and First Avenue; or that neighborhood? A No, sir, until we arrived at 42nd Street and Second Avenue.

Q And who was with you up until the time you arrived at 42nd Street and Second Avenue? A Mr. Tobey and Mr. Cunniff.

Q Did you separate? A We separated.

Q Who went with whom? A I went my way and Mr. Tobey and Detective Cunniff went in a different direction.

Q When you say you went, where did you go? A 42nd Street and First Avenue.

Q How did you get to 42nd Street and First Avenue? What

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street did you walk through? A I walked through 44th Street and went across.

Q You walked up to 44th Street and Second Avenue, did you? A Yes, sir.

Q Where did you go from there? A I went down to 42nd Street, through 44th Street, then down to 42nd Street.

Q You say you walked north on Second Avenue to 44th Street; is that right? A Yes, sir.

Q Where did you go? Then you were on 44th Street and Second Avenue. A I went to First Avenue.

Q You crossed over on what street? A 44th Street, my recollection.

Q And you arrived at 44th Street and First Avenue?
A I didn't go to 44th Street and First Avenue; I went further down.

Q Did you pass 44th Street and First Avenue? A Yes.

Q Up to the time you reached 44th Street and First Avenue, did you see Mr. Cunniff or Mr. Tobey? A Yes, sir.

Q At 42nd Street? A Yes, sir.

Q Where were they? A I was about at 43rd Street when I saw Mr. Tobey on the southwest corner of 44th Street and First Avenue.

Q Where was Cunniff at that time? A He was about at 43rd Street, on the east side of First Avenue.

Q Did you see Mr. Tobey approach anybody? A I saw--

THE COURT: What did you see Mr. Tobey do?

THE WITNESS: He stood on the corner.

THE COURT: What happened?

THE WITNESS: Two men approached him.

Q What corner did he stand on? A The southwest corner of 44th Street and First Avenue.

Q Go ahead and tell us what happened. A Two men approached him and engaged him in conversation.

Q Do you see either one of those two men in court now?
A Yes, sir.

Q Where is he? A The defendant Dreyfus (indicating defendant).

Q Now, at the time you saw those two men approach Mr. Tobey, where were you, how far away from them? A About a block.

Q Did you see what they did after they approached Mr. Tobey, or what Mr. Tobey did? A They turned south on First Avenue, and walked on down.

Q Walked down? A Yes, sir.

Q Did you follow them?

A Yes, sir.

Q And how near did you get to them? A I was about at times a block, and at times half a block away.

Q And who was with you at that time? A No one.

Q Where was Cunniff, do you know? A Occasionally I

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would look on the opposite side of the street and I would see him walking down on the east side.

Q How far did you walk down following Mr. Tobey and these two men? A To between 26th and 27th Street and First Avenue.

Q Between 26th and 27th Street on First Avenue? A Yes.

Q And what happened then? A Mr. Tobey drew his handkerchief.

Q Mr. Tobey did what? A Drew a handkerchief.

Q What did you do? A That was the signal that was pre-arranged --

MR. DONAHUE: We do not care about that.

THE COURT: Strike it out.

Q You say Mr. Tobey drew a handkerchief from his pocket?

A Yes, sir.

Q Where were you at that time? A About half a block north of where they were.

Q And where was Cunniff, if you know, at that time?

A He was about a block south, on the opposite side of the street.

Q As soon as you saw Mr. Tobey take this handkerchief out of his pocket, what did you do? A I ran and seized the two men?

Q What two men did you seize? A The defendant Dreyfus and another man, who later gave his name as Nathan Rosenschweig.

Q Now, did Cunniff come up at that time? A He came up

at about the time the defendant Dreyfus drew his hand from his pocket.

Q What were you doing when Cunniff came up? A I was holding on to Rosenschweig, and the other defendant Dreyfus.

Q And when Cunniff came up, what did you do? A Still holding on to the defendant Dreyfus and Rosenschweig. The defendant Dreyfus drew his hand from his pocket and held some money, held a roll of bills. I said, "What is this?" He said, "Why don't you arrest that man?" I said, "What is this?" He said, "Money. You can use this money." "How much is here? How much do you think is here," I said to the defendant Dreyfus, and Rosenschweig. He said, "About three hundred dollars."

Q Yes. A Well, I said, "You would be disappointed, if I count it, and see there is only \$40," and I showed them the forty dollars.

Q And what did he say? A He wanted to know then where we were going to take him to, and why we didn't take the other man.

Q Who did he point to as the other man? A The man who had left him.

Q Who was that? A Mr. Tobey.

Q Go ahead. What did you do after that? By the way, what did you do with the money, first? A I placed it in my pocket.

Q Then where did you go after that? A We brought him

to the District Attorney's office.

Q Now, when you say "we", whom do you mean? A Brought the defendants Dreyfus and Nathan Rosenschweig to the District Attorney's office.

Q When you say "we", you mean you and Cunniff? A Detective Cunniff and myself.

Q Did you have any talk with Dreyfus on the way down to the District Attorney's office?

MR. KRIEGER: I object to that.

THE COURT: I will allow it.

MR. KRIEGER: Exception. The defendant was in the custody of the officers at the time, charged with the commission of a crime. I think before any such testimony goes in, we ought to have the circumstances under which the conversation was given.

THE COURT: You contend that anything the defendants may have said, he said because of threats, fear produced by threats, or under a promise of the District Attorney that he might receive immunity? If that is your contention, you may examine this witness preliminarily.

MR. KRIEGER: I intend to examine him later in the proceedings, your Honor, but I do think that if the District Attorney wants to bring out more than this conversation, as carried on, unless important, I would like the District Attorney to refrain from examining this witness unless something material can be shown.

THE COURT: You have a right to examine the witness for the purpose of ascertaining whether the things which may have been said by the defendant were said under circumstances which would preclude their admission as evidence. You have a right to do that. You may conduct your examination now just for that purpose.

MR. DONOHUE: Just for the purpose of showing if a promise was made.

MR. KRIEGER: This testimony that he wants to elicit now is a conversation while being taken to the District Attorney's office only, while under arrest.

BY MR. KRIEGER:

Q Mr. Russo, you told Greyfus that he was under arrest?

A I did not.

Q Did he ask you who you were? A Yes, sir.

Q Did you tell him? A Yes, sir.

Q Did you tell him you were a detective? A Yes, sir.

Q Didn't you tell him he was under arrest? A I did not.

Q Did you tell him that he was being charged with a crime? A I did not, - I withdraw that answer.

Q Withdraw it to the jury. A I told him if he cared to tell his story about the transaction, about how the money came into his possession, he could do so to the District Attorney, tell it to the District Attorney. He evidently seemed to know --

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

Q You have testified before in criminal proceedings, officer? A Yes, sir.

Q Often? A In other cases, yes, sir.

Q Now you told him it would be better for him to tell you this? A I did not.

Q Or words to that effect? A No.

Q You told him you would be glad to hear from him, his story?

MR. DONAHUE: I object to that.

MR. KRIEGER: It is cross examination. I will withdraw the question. You may ask him it.

MR. DONAHUE: You have the privilege to inquire

on a certain subject, why not.

THE COURT: You may proceed.

BY MR. DONAHUE:

Q After you say you took him down to the District Attorney's office? A Yes, sir.

Q How did you take him down? A In a taxicab.

Q Did you talk to him on the way down? A I asked him some questions.

Q Just tell us what you said to him, Mr. Russo, and what he said to you? A I asked him how he came to get this money. He said, Why he would tell the District Attorney, as long as he was going to be taken to the District Attorney, he would talk the District Attorney. He wanted to know who the District Attorney was, and I told him Mr. Talley.

Q Yes, is that all that was said? A And he did considerable talking about the other man, Nathan Rosenzweig, the defendant.

MR. KRIEGER: I move to strike that out.

THE COURT: Yes, I will strike out the comment. You are asked to tell the talk. Now give it, officer.

THE WITNESS: That is about as much talk as I recall.

Q You were asked to tell us everything that he said.

THE COURT: Why won't you tell us?

Q Everything he said, Mr. Russo, from the time he got in that taxicab, until he arrived down in the District Attorney's

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office? A He told about the complainant.

Q Won't you tell us what he said? A He said the complainant had ruined this man who was with him, and when he told all the story it would be very interesting, and he told it to the District Attorney --

THE COURT: Strike that out.

THE WITNESS: He stated that, the defendant Dreyfus did.

THE COURT: The jury wants to hear that talk. If you are able to give it, give it; if you can not, say so.

Q Now, Mr. Russo, will you keep in mind what we want. We want you to tell us what Dreyfus said to you and what you said to Dreyfus, his exact words, if you can give them, and if you cannot give them, give us your best recollection of the exact words.

MR. KRIEGER: I object, your Honor, on the ground that he has been asked that, and answered it, and he has given us what he said was the conversation carried on between him and the defendant.

THE COURT: Objection overruled.

Q Keep that in mind, Mr. Russo. Go ahead now. A He said this man, the complainant, Mr. Tobey, had ruined this young man by committing degenerate acts upon him. I am using these words as near as I can recall, that the complainant had got down on the --

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Q These men want to hear you, Mr. Russo. A He stated that the complainant had got down on this man who was with him, who was with the defendant, Dreyfus, and that he was going to fix him, and as near as I can recall now, he said he would tell the whole story to the District Attorney. I don't recall any other conversation.

Q Is that all you can recall? A Yes, sir.

Q Now you arrived at the District Attorney's office?

A Yes, sir.

Q You got up in the District Attorney's office on the third floor? A Yes, sir.

Q Who was with you at that time? A Detective Cunniff and Dreyfus and Nathan Rosenzweig.

Q And you still had this money with you? A Yes, sir.

Q The identical, same money you took from Dreyfus?

A Yes, sir.

Q What did you do with that money? A I turned that money over to Mr. Talley.

Q And did you hear any further talk that this defendant had with Mr. Talley, or with anybody else there? A No.

Q Did you hear Mr. Talley talk to him at all?

MR. KRIEGER: I object to that.

THE COURT: I will allow him to answer yes or no.

MR. KRIEGER: Exception.

A Yes, sir.

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Q Did you hear Mr. Talley talk to him? A Yes, sir.

Q What did this boy say to Mr. Talley?

MR. KRIEGER: I object to that and ask to be permitted at this time to examine him as to what --

THE COURT: Your right to examine a witness is dependent upon a claim on your part that that which the defendant may have said, he said by reason of a stipulation that he would not be prosecuted, or because of threats which induced fear.

MR. KRIEGER: I so contend.

MR. DONAHUE: Is it your contention that Mr. Talley made some promise?

MR. KRIEGER: The contention is that any statement made by this defendant at the time, to be related by this witness before Mr. Talley, was made under fear and compulsion, and was made under either fear and compulsion, or the belief that any statement he would make would render him immune from prosecution.

MR. DONAHUE: That is not the law. If he was warned of his rights by Mr. Talley, anything he said there can be used against him.

MR. KRIEGER: There is nothing to indicate that.

THE COURT: I am going to allow you to examine the witness.

BY MR. KRIEGER:

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Q Mr. Russo, when you brought this defendant to Mr. Talley, you say you had not then told him he was under arrest?

A I do say that, yes, sir.

Q Was he free to walk away from you?

MR. DONAHUE: Now, your Honor, that is not a question.

THE COURT: Sustained.

MR. KHEEGER: Do you sustain that, your Honor?

THE COURT: Yes.

MR. KRIEGER: Exception.

Q Did you have him handcuffed? A Yes, sir, he was handcuffed.

Q And when he was brought into the presence of Mr. Talley he was handcuffed to you? A No, he had been handcuffed by Detective Cunniff.

Q Where? A On First Avenue.

Q And he was brought handcuffed into Mr. Talley's presence? A The handcuffs were removed in the corridor of the District Attorney's office, and Detective Cunniff brought the defendant into Mr. Talley's office.

Q Did you go in with the defendant and Mr. Cunniff?

A I waited outside.

Q Well then did you hear what was said by this defendant to Mr. Talley inside? A Just in answer to a question or two. My recollection is that later, when he came out, he was brought

out of Mr. Talley's office on one occasion --

Q Did you hear the defendant talk with Mr. Talley inside? A Not the entire conversation. He was brought in by Detective Cunniff; later when Detective Cunniff brought him out and Rosenzweig was examined by Mr. Talley, I then was requested to bring the defendant Dreyfus back into Mr. Talley's office, and I heard a question or two asked; that is all?

Q You mean you heard him a second time? A A second time.

Q When he was brought in to Mr. Talley the second time? A Yes, sir.

Q Are you sure of that, Mr. Russo? A Positive.

Q And were you present when Mr. Rosenzweig was being examined by Mr. Talley? A I was not, I was outside with Dreyfus.

Q Was the conversation between the defendant and Mr. Talley recorded, to your knowledge? A I cannot say.

Q Was there a stenographer present in the room? A I do not know.

Q Did you see any? A I did when I brought in the defendant Dreyfus.

THE COURT: I think that is general cross examination. I think you are going beyond the limit. You have a right to cross examine the witness generally, but as this right does not accrue until examination-in-chief

is concluded by the District Attorney, you are now examining for a special purpose. That purpose is to ascertain whether or not what the defendant may have said, which was overheard by this witness, was said by the defendant, either because of a stipulation on the part of the District Attorney that he should not be prosecuted on the basis of that which he said, or because threats were made and fear engendered in the mind of the defendant by reason of those threats. Now that is the limit.

MR. KRIEGER: I understand now that the witness says he was not present at the time the alleged statement was made.

THE COURT: This witness purports to describe what took place. He says the defendant was taken by another officer into Mr. Talley's room, and he said that then the defendant was brought out of Mr. Talley's room, as I understand it.

MR. KRIEGER: I understand that to be so.

Q You don't know what took place between the District Attorney and this defendant until after he was allowed out of the room; is that correct? A That is right.

MR. KRIEGER: That is all I have to ask.

BY MR. DONAHUE:

Q Now you say you brought him down in this taxicab, and you got him in the corridor, is that correct? A Yes, sir.

Q You brought Dreyfus upstairs? A Yes, sir.

Q Did you bring him in before Mr. Talley? A To bring him in before Mr. Talley.

Q Did you hear Mr. Talley say anything to him?

MR. KRIEGER: I object to that because this witness didn't say he went in.

THE COURT: I am going to allow the witness to answer yes or no.

A No.

THE COURT: I don't care where,--did you hear Mr. Talley say anything to this defendant, who is being tried?

THE WITNESS: Not on the first occasion.

Q I don't care when; did you ever hear him say anything to Mr. Talley? A Yes, sir.

Q When? A On the second trip to Mr. Talley's office, that same evening.

Q What did he say on the second or fifteenth time? A Mr. Talley asked him how much money he expected to get from Mr. Tobey --

MR. KRIEGER: I object to that and move to strike it out on the ground that what transpired between Mr. Talley and this defendant, when first taken into the room -- I think before any statement is permitted, for any statement in the District Attorney's office, some foundation should be laid, so that the Court may be in a posi-

tion to observe whether the rules relative to admissions were carried out strictly and fairly.

THE COURT: I will tell you, Mr. Donahue; you may suspend your examination on this particular point, and call him again, after you have called the other officer.

MR. DONAHUE: The other officer is not able to clear it up; he can clear it.

Q What did you hear Mr. Talley say to this man, and what did you hear the defendant say to Mr. Talley?

THE COURT: I will allow that.

MR. KRIEGER: I will take exception to that. I do not want to be capricious at all; but I think before a defendant's confession can be put into evidence it should be disclosed to the Court that every rule relative to confessions was strictly and fairly observed. I do not think it would be fair to this defendant to ask for a second conversation with the District Attorney, who is then examining him perhaps concerning this very crime, the alleged crime, unless something was shown to transpire.

MR. DONAHUE: I am through with this witness. You may cross examine.

MR. KRIEGER: No cross examination.

OFFICER JOHN CUNNIFF, was called and sworn as a witness for the People, and testified as follows:

(Detective Bureau, District Attorney's Office).

DIRECT EXAMINATION BY MR. DONAHUE:

Q Are you a detective assigned to the District Attorney's office? A Yes, sir.

Q From the Police Department of the City of New York? A Yes, sir.

Q How long have you been so assigned? A I have been here about seven years.

Q Did you ever see Mr. Tobey at the District Attorney's office? A Yes, sir.

Q In Mr. Talley's office? A Yes, sir.

Q What date was it you saw him there, do you know? A I believe it was the sixth of the month.

Q And did you hear him and Mr. Talley have talks? A Yes.

Q You talked to Mr. Tobey at that time? A No, I just listened to what the conversation was.

Q Did you see Mr. Talley have any money at that time? A Yes, sir.

Q Did you see where Mr. Talley got the money from? A He received it from Mr. Tobey.

Q You saw Mr. Talley mark it? A I did.

Q And do you know what particular mark he put on that money? A I think on the suspender of the two ten-dollar bills he put a dot, and on the fives he put a dot on the V - the figure 5.

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Q Will you look at People's Exhibit Nos. 10-A, 10-B, 10-C, 10-D, 10-E, 10-F and 10-G for identification, and tell me if you recognize those bills? A It is pretty hard to see here (referring to the position in which the witness was at the time).

Q If you cannot see, Mr. Cunniff, tell me. A On the 5, he put it on the right, in there on the 5 - I can see the 5.

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MR. KRIEGER: I really do not think this witness can testify. I am not making any dispute about it, though.

MR. DONAHUE: Why make a noise about it, then?

MR. KRIEGER: I don't think he knows anything about it, that is the reason.

Q Can you find those marks, that you saw Mr. Talley put them on? A Yes, sir, it is right on that number "5" there, right at the curve.

Q Show me which one you mean, whichever one it is. A Here it is here (indicating).

MR. KRIEGER: I was not there, and I can point out the marks.

THE WITNESS: The mark was put on with a pen.

Q In the lower lefthand corner of the "5"? A Yes, sir, and the mark on the ten was on the suspender, on the buckle of the suspender.

Q Did you see Mr. Talley do that? A Yes, sir, I did.

Q Did you see what Mr. Talley did with the money after he marked it? A He gave it to Mr. Tobey.

Q And did you go out with Mr. Tobey at that time? A I did.

Q Who else went out with you? A Detective Russo and I went out behind Mr. Tobey, we followed Mr. Tobey, telling him to go ahead, not to notice us from the time he left the building, from then on not to notice us.

Q Did you finally locate Mr. Tobey in the neighborhood of

44th Street? A We were on the same train with him; we got off at 42nd Street.

Q You got to 44th Street and First Avenue? A I left them at 42nd Street and Second Avenue, and they went over towards 41st Street, and I followed on the other side of the street, and separated from them.

Q Did you see Mr. Tobey when he was on 44th Street?
A I did.

Q Did you see what happened there? A Why two men that I didn't know at that time --

Q What happened? A He conversed with them a few moments, and then started south on First Avenue, on the west side of the street. I walked on the opposite side, ahead of them, all the time. I noticed Russo was on the same side of the street as they were, walking south.

Q When you say "them," you mean who? A The two men and Tobey.

Q Just a minute. Do you see either one of these men in court now? A I see Dreyfus.

Q Which is Dreyfus? A The end man there at the table.

Q You saw him walking with Tobey and another man, walking down First Avenue? A Yes, sir.

Q Go ahead. A When they arrived about 30th Street there was a small dinky car came along, and I got on that car, and asked the motorman --

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Q Do not tell us what you said. A The motorman then kept right in front of the three men, walking down all the time, and they stopped in the middle of the block between 26th and 27th Street, and I got off at 26th Street. As I got off Tobey then took out his handkerchief, and as he did I walked up quick, but Russo was there ahead of me. He grabbed the two men, and I immediately, when I got up there, I got hold of one of them, and Dreyfus said, he pulled something out of his pocket, and he handed it to Russo.

Q Did you see the money then? A Yes, sir.

Q How? A Dreyfus said, "What is this? Who are you?" I took out my shield. I said, I am a policeman from the District Attorney's office, and I showed it to both of them. He said, All right. Why don't you look that man up, too?

Q Who said that? A Dreyfus.

Q Pointing to whom? A Tobey, as he walked up the avenue.

Q Tobey, before you got up there, had started to walk away? A Yes, sir.

Q Go ahead? A We walked down. I said, That will be all right. He will be down at the District Attorney's office when we get there. I said, We are going to the District Attorney's office. We walked down, went west on 23rd Street, and at 23rd Street and Second Avenue, he asked us to go in a taxicab, so we too, a taxicab at 23rd Street and Second Avenue,

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and rode down to the office here.

Q Did you see the money that Mr. Russo had in his hand, as you approached? A It was rolled up; I seen money.

Q Did you afterwards examine it? A I saw him take it out and give it to Mr. Talley, when he arrived.

Q Did you take it in your hands and examine it? A No.

Q You saw him turn it over to Mr. Talley? A Yes, sir.

Q Did you see the two defendants at that time in the District Attorney's office? A Yes, sir.

Q That is in Mr. Talley's private office? A It was in Judge Swan's office.

Q Now, who did you take charge of at that time? A Why, there was no one in particular; I walked alongside of Dreyfus.

Q I mean after you arrived in the building? A When we arrived in the building, why Russo stood outside; I believe it was Dreyfus we brought in first.

Q You brought in Dreyfus first? A Yes, sir.

Q When you went in Mr. Talley's office, or Judge Swan's, did you notice who was in there? A There was no one but Mr. Talley in there when I arrived.

Q Did you hear Mr. Talley talk to Dreyfus? A Yes, sir.

Q Did you see anybody come in while Mr. Dreyfus and Mr. Talley were talking? A Why, the stenographer.

Q Do you know who that stenographer was? A I don't know his name, but he is a young boy -- Cleary, I believe his name is.

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Q A little blond hair young man? A Blond man.

Q Did you see him taking down notes while Mr. Talley was talking to Dreyfus? A Yes, sir.

Q Who did the questioning at that time, do you know, Mr. Cunniff? A Mr. Talley did all the questioning.

Q You heard the answers given and the questions being asked, did you not? A Yes, sir.

MR. DONAHUE: That is all.

CROSS EXAMINATION BY MR. KRIEGER:

Q You told these boys that they were under arrest, did you not? A I did not. I told them they were going to the District Attorney's office.

Q You showed them your shield? A They asked me who was I. I told them I was a member of the Detective Bureau.

Q And you clapped the handcuffs on their wrists? A Yes.

Q Told them you were taking them to the District Attorney's office? A Yes, sir.

Q Do you know of any reason why you should not have told them that they were under arrest? A No reason why any more than I told them I was taking them to the District Attorney's office.

Q Isn't it a custom among detectives and police officers when they take somebody into custody to tell them they are placed under arrest? No, sir.

Q Never done that? A Not always.

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Q Most always? A No, sir.

Q Most always you do not? A No, sir.

Q They were under arrest, weren't they? A No, sir.

Q Didn't you arrest these boys? A No, sir.

Q You mean to tell us when you picked those boys up and put handcuffs on them, you didn't arrest them? A No, sir.

Q Were you told to arrest them? A No, sir.

Q Were you told to bring them to the District Attorney's office? A Yes, sir.

Q By whom? A District Attorney Talley, the Acting District Attorney at the time.

Q Did you have a warrant with you? A No, sir.

Q Do you know of any warrants that were out for these boys? A No, sir.

Q Was there an indictment found against these boys at the time? A Not as I know of.

Q And you didn't charge them with any crime? A No, sir.

Q You didn't tell them that they were being accused of a crime? A Didn't tell them anything.

Q You didn't hear Mr. Russo say that? A No, I was taking care of myself -- I always take care of myself.

Q You were in Mr. Russo's company? A You would not say present when you are three or four feet apart, I wouldn't say it was present.

Q When you were three or four feet you could hear what

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was said? A I have no doubt if I paid attention to it, but the only attention I had to pay was to arrest one and Russo the other.

Q That was your intention? A I mean to take them into custody.

THE COURT: I think we will suspend the examination now.

Gentlemen of the jury, you are admonished not to converse on any subject connected with this trial, form or express any opinion thereon, until the same is submitted to you.

The court stands adjourned until tomorrow morning at 10:30.

Adjourned to Tuesday, June 28th, 1921, at 10:30 a.m.

THE PEOPLE OF THE STATE OF NEW YORK
--against--

SAM DREYFUS, otherwise known as
JOE BROWN.

New York, June 28th, 1921.

(TRIAL CONTINUED).

COURT and COUNSEL as before.

A L F R E D J. T A L L E Y, called as a witness,
on behalf of the People, being first duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. DONAHUE:

Q Judge, on December 6th, 1920, what position did
you occupy? A Assistant District Attorney.

Q That is, you were Chief Assistant District Attorney and
Acting District Attorney of New York County? A Yes, sir.

Q And shortly after that, Judge, you were elevated to
the Bench, were you not? A Yes, sir.

Q And made a Judge of the Court of General Sessions?
A I became a Judge in this Court, yes, sir.

Q Judge, how long were you attached to the District
Attorney's office? A Four years, I think.

Q About December 6th, 1920, was your attention attracted
to one Orville H. Tobey? A It was.

Q About what time in that month, would you say?
A Well, my recollection is that it was either on or shortly

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before the 6th of December.

Q And do you recall being in your office when money was passed between you? A Yes, sir.

Q Did you receive a certain amount of money from Mr. Tobey for the purpose of marking? A I did.

Q And did you mark that money? A I did.

Q Will you look at People's Exhibits 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G for identification, and tell me whether you recognize that money as the money Mr. Tobey handed to you on December 6th? A (After examining same) I do recognize it.

Q Judge, did you at that time, when you marked the money, make a memorandum of the markings on the bills?

A I did, -- I don't need the memorandum -- I recognize the marks on the bills now.

Q Now, what did you do with that money after you marked it, do you recall? A My recollection is I handed it back to Mr. Tobey.

Q And then, did you have any talk at that time with Mr. Tobey in the presence of Detectives Cunniff and Russo?

A I did.

Q And did you see them leave your office at that time?

A I did.

Q And when they came back to your office, was anyone with them at all? A My recollection is that the two officers came

back later that afternoon or in the early evening with the defendant.

Q When you say with the defendant, whom do you mean?

A Dreyfus.

Q Will you point him out in court? A The third man there (indicating).

Q This man here(indicating)? A Yes, sir.

Q Who came back with him, do you recall? A Detectives Cunniff and Russo.

Q And at the time these detectives came back, did they give you anything back at that time, do you recall? A Russo handed me these bills.

Q And they were the same bills that were given to Mr. Tobey earlier in the day? A Precisely.

Q You recognize the marks on them? A Yes, sir.

Q Did you have at that time a talk with Dreyfus?

A I did.

Q Please tell us who was present at that talk? A I think Detective Cunniff was present and after I had had a talk with him, a stenographer.

Q And did you talk to him first without a stenographer?

A Yes, sir.

Q Now, will you tell us your best recollection of what Mr. Dreyfus said to you and what you said to him at that time?

MR. KRIEGER: I object, if your Honor please, on the

ground that no foundation has been laid, now, for the testimony of any admission from this defendant, while in the custody of the detectives and under arrest, as the evidence now discloses, and before the Acting District Attorney, this defendant then been apparently charged with this self same crime and until the District Attorney shows that rules and safeguards were present at the time in connection with the obtaining of this statement of confession, I think that any evidence of that is objectionable now.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q Now, will you tell us, Judge, please, what this defendant said to you and what you said to him, when the stenographer was not present? A I can only give you the substance of it, Mr. Donahue.

Q Will you give us your best recollection, Judge Talley, please? A Substantially this defendant told me that he had received about \$400 from Mr. Tobey, that he had not had any steady employment for about eight months preceding this particular date; that he had received ~~the~~ amounts at various times, ranging from fifty to seventy-five dollars; that he received the amounts of money from Mr. Tobey for the purpose of having him, the defendant, keep quiet about Mr. Tobey, and not to tell what he knew about him. I said:

"What did you mean by saying what you knew about him?" He said: "I was told by Ross that Mr. Tobey was a degenerate." I said: "Did you have any information on that score other than from Ross?" He said: "No," he was the only one that had told him. He said: "Ross told me that he had gotten a couple of hundred dollars out of Tobey, and I could get some, if I went down to see him." He said; on that particular occasion, which, I recall, was December 6th, that he had already arranged to strike Mr. Tobey for \$750, and to tell him that they would go to California, Los Angeles is the city he mentioned, and that they would not bother him again, and he made it very plain and stated precisely that he took the money in order to refrain from disclosing what he knew about Mr. Tobey.

MR. KRIEGER: I move to strike out that latter part in the alleged conversation between the Judge and this defendant as being merely a conclusion of the witness.

THE COURT: I will strike out the words "He made it very plain," and the balance stays in.

THE WITNESS: May I amend that by stating that he said that precise thing.

THE COURT: Yes.

Q Now, you were discussing, at that time, what had happened right before they came into your office, that is, on December 6th, were you not, at this time, when you spoke of

this \$750 transaction? A No; I am speaking of the general transaction, but with regard to the \$750 transaction --

Q Exactly. A That was, he stated, on a particular day, and that the arrangement that he made --

MR. KRIEGER: I object to any further testimony on that point --

Q What else did he say on that same subject? A I have already stated what he said occurred.

Q Did you speak to him at that time with reference to these bills you had in your possession? A I did.

Q Tell us what was said on that subject, please? A As I recall, I asked him if these were the bills that Detective Russo took from him, and he said they were, and he had gotten them from Tobey.

Q Did he say anything else to you at that time, if you recall? A Well, he probably did, but I don't recall it.

Q Judge, did he say how long he had known Tobey?

MR. KRIEGER: I object to the District Attorney leading the witness.

THE COURT: I will allow it. The witness' recollection has been exhausted.

Q Did he, Judge, say how long he had known Tobey, or where he first met him? A My recollection is that he said he had first met him in Wall Street, that the first money he got from him was at the foot of Wall Street, that he was brought

down, or sent down, by Mr. Ross, and that was, as I recollect, maybe I think four, or possibly five months before December 6th; it may have been longer.

Q Did you question him where he had been at that time, from the time he met Tobey, when he first met Tobey, up until December 6th? A I did.

Q Did he say where he had been? A The only place I recollect that he had been out of New York, was at the Hotel Statler, in Cleveland; that he had received some money there from Mr. Tobey, and he identified his signature on a letter that I think he had sent from Cleveland, and stated that he had sent a telegram to Tobey from Cleveland, which I showed him.

Q Did you, subsequent to that conversation, send for a stenographer? A Yes, sir.

Q And do you recall who that stenographer was? A I think Mr. Cleary, young Cleary, of the District Attorney's Office.

Q Is that the young man you mean (pointing to a young man who stood at the bar)? A Yes, sir, that is Mr. Cleary.

Q And when you saw him at that time he had a pencil and notebook? A Yes, sir.

Q And he took down what was said, as far as you know? A Yes, sir.

Q He knew at that time -- see People's Exhibit 9 for identification -- you will recall there was a mark, "A";

up in the corner, that may refresh your memory -- A That is a mark made by me(indicating).

Q By you? A Yes, sir.

Q And you had it in your hand at that time and showed it to Dreyfus, and during the time Mr. Cleary was taking down the notes, did you refer to it in any way at all? A I showed it to the defendant and asked him if the name "Sam Dreyfus" was his signature, and he said it was. May I look at this for a minute? I have not seen it for some time.

MR. KRIEGER: I object to the witness looking at it.

THE WITNESS: I have not seen it since the 6th of December.

Q Will you look at the signature. Did you call it to his attention? A I asked him if the words, "Sam Dreyfus," were in his handwriting, and was his signature.

Q Will you look at that paper and see if it is in the same condition now as it was then as to the signature at the bottom? A Yes, sir; with the exception of the mark, indicating it is an exhibit, it is precisely the same.

Q You mean the writing at the top of it? A Yes, sir.

Q Will you read it and see if it is in the same condition as it was then?

MR. KRIEGER: I object to the witness reading it.

THE COURT: He said it is.

THE WITNESS: It is in precisely the same condition with the exception of the stenographer's mark thereon.

MR. DONAHUE: I offer it in evidence.

MR. KRIEGER: May I see it.

MR. DONAHUE: Surely.

MR. KRIEGER: (after examining same) I object to the admission of this letter into evidence, because it is incompetent; there is nothing in this letter that would indicate that it has any relation to the crime charged against this defendant.

MR. DONAHUE: Then why worry.

MR. KRIEGER: I am not worrying at all. The letter purports to have been written by Nathaniel Ross; it is purely his letter; but signed also by Dreyfus. In other words, both of them signed this letter, but the letter is merely a statement made by Ross of something which has nothing to do with the issues in this action.

THE COURT: Let me look at it (examines same).

Objection overruled. I will receive the letter.

MR. KRIEGER: Exception.

(The letter above referred ^{to} People's Exhibit 9 for identification, now received in evidence).

Q Now, Judge, after you talked to him and the stenographer was not present, you say Mr. Cleary, the stenographer from the District Attorney's Office was brought in, and then

did you ask him question s and did he give answers?

A Yes, sir.

Q Was that practically the same answers and questions that were given before?

MR. KRIEGER: I object to that.

THE COURT: Sustained.

Q What were those questions and answers?

MR. KRIEGER: I object to that as not being the best proof, and as also subject to the same objection raised to the testimony given by Judge Talley at an earlier moment.

THE COURT: I will allow the witness to answer.

MR. KRIEGER: I take an exception.

Q Do you recall, Judge?

MR. KRIEGER: Now, may I examine Judge Talley, first, in connection with the methods by which these statements were made, or the circumstances under which these statements were made?

THE COURT: If you contend that there was a stipulation on the part of the District Attorney that this defendant should not be prosecuted for this crime and that the statement was made by the defendant because of such stipulation, or if you contend that the defendant was influenced in what he said by fear, induced by threats, on the basis of that contention you have the

right to examine the witness in order that I may determine, in the light of that examination, whether your contention is well founded, and secondly, whether the evidence should be received. If that is not your contention, then you have no right to make that examination.

MR. KRIEGER: I do not contend, your Honor, that there was a stipulation made by the District Attorney, but I do contend that the statement made by the defendant at the time was not a voluntary statement. I do contend that he was induced to make this statement, under either the promise that no prosecution would be made against him, or under the fear that if he didn't do it, some harm would come to him.

THE COURT: Fear produced by threats.

MR. KRIEGER: By threats and circumstances.

THE COURT: Well, you may examine.

BY MR. KRIEGER:

Q THE COURT: I will limit your examination to just this proposition.

Q Judge, who was present in your room at the time that you asked Mr. Dreyfus to make a statement? A Detective Cunniff and myself and Dreyfus.

Q Was Mr. Markey there? A I don't think so; he may

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in and out during the course of the examination, but I
am quite sure he was not there at the beginning.

Q Was he there for any length of time? A No.

Q Did Detective Cunniff, in your presence, display a
blackjack? A I don't recollect that; he may have; I
don't recollect.

Q Do you know whether or not, or did you hear, or do
you recall, whether or not Detective Cunniff called Mr.
Dreyfus' attention to the fact that there was a blackjack
lying at or near the table? A I don't recollect that.

Q Would you say that he did not? A Oh, I think it
is very improbable; I have no recollection on it; I was
conducting the examination, not Detective Cunniff.

Q Did you hear Detective Cunniff state to Dreyfus that
he had better tell everything he knew, or something to that
effect? A I think he did tell him he had better tell the
truth.

Q And he also added, did he not, Judge, "If you know
what is good for you," or something to that effect? A He
may have, counsel; I don't recollect. I do recollect he
told him he had better tell the truth; I think I told him
that, too, counsel.

Q Did you also add that if he knew what was good for
him -- A I didn't add that.

Q Or something to that effect? A No; nothing to that

effect.

Q You were anxious, of course, to obtain this statement from Dreyfus? A Oh, yes, sir. That was my official duty at that time.

Q And had any indictment then been found against the defendant?

MR. DONAHUE: I object to this. This is not any part of that examination.

THE COURT: The objection to that last question is sustained.

MR. KRIEGER: Exception.

Q Dreyfus had been brought into your room handcuffed, had he not? A That I don't remember; I don't think he was brought into my room handcuffed; I am pretty sure he was not.

Q Who brought him in the room? A Detective Cunniff.

Q Was any statement made, in your hearing or presence, by either you or Detective Cunniff, at any time while Dreyfus was in your room, that if he didn't tell the truth he would be beaten up and sent to Bellvue Hospital? A No, not at all; nothing like that.

Q You didn't hear that? A It was not said.

Q Do you know whether or not Detective Cunniff said that to Mr. Dreyfus or not? A Not in my hearing.

Q And Dreyfus was not represented by counsel, was he?

A No.

MR. DONAHUE: I object to that. What difference does that make?

THE COURT: I will let the answer stand.

Q Did you advise Dreyfus of the fact that he was being charged with a crime? A Why, Dreyfus told me that when he got the money from Tobey he knew he was committing a crime --

MR. KRIEGER: I move to strike out the answer as not responsive, purely a voluntary statement on the part of this witness; not at all called for, not testified to on direct examination.

THE COURT: Strike out that answer.

MR. DONAHUE: If your Honor please, the direct examination of this witness had not been finished when he was interrupted.

Q Judge, you are anxious to see this boy convicted, aren't you? A Yes, sir. I am anxious to see him convicted of a crime that he told me he was guilty of.

MR. KRIEGER: I move to strike that out.

MR. DONAHUE: You asked for it.

MR. KRIEGER: I think your Honor is ruling on these questions now.

THE COURT: I will let the answer stand.

MR. KRIEGER: I take an exception, then. It is purely the conclusion of this witness as to what he told

him he was guilty of. I didn't ask him ^{that.} I asked him if he was anxious to see the boy convicted, and the answer is either yes or no. Does your Honor permit him to --

THE COURT: I will strike out all but "Yes".

Q Judge, did you tell this boy that he was then charged with the crime of extortion before you asked him to make a statement? A I don't know that I told him in that manner. I told him what he was there for; why I had ordered that he be brought down, because he was charged with extorting money from a man named Tobey -- yes, sir, I did tell him that.

Q So that at the time he made the statement he was then apprised of the fact that he was being charged with a crime? A I told him why I had sent to have him brought down to me.

Q You sent to have him arrested? A No.

Q Was he under arrest? A Well, I don't know whether that is for me to say; I don't think he was; no, he was not under arrest at the time I was talking to him.

Q After he gave the statement to you, you stated that you thought he was guilty of a crime? A There was no doubt in my mind on that score at all.

Q Judge, did you have him locked up?

MR. DONAHUE: Now, if your Honor please, we are

going far afield here.

THE COURT: Yes.

MR. KRIEGER: I withdraw that question. I am getting a little ahead of my story.

Q Judge, did you advise him that anything he might say at the time to you would be used against him on this trial?

MR. DONAHUE: There was no occasion for the Judge to do so; he could not impart advice to him.

THE COURT: Sustained.

MR. KRIEGER: Exception. That is all.

BY MR. DONAHUE:

Q Now, Judge, did he, at that time, complain of any ill treatment or abuse that he had received at the hands of anybody?

MR. KRIEGER: I object to that.

THE COURT: I will allow it.

MR. KRIEGER: Exception.

A He didn't.

Q And did he appear to be excited at the time he was talking to you, Judge?

MR. KRIEGER: I object to the question on the ground it is incompetent, irrelevant and immaterial, and also improper in form; no foundation laid for such an examination.

THE COURT: Objection sustained.

Q Did he show any evidence, Judge, of having been beaten by anybody?

MR. KRIEGER: I object to that; that is not the claim. I claim the circumstances of the examination would be sufficient to induce that fear. The point is -- your Honor overruled it -- is not for the witness to show.

THE COURT: I sustain your objection to that question and will allow the last one.

A Not the slightest.

Q And did he answer your questions in a comprehensive manner?

MR. KRIEGER: I object to that.

MR. DONAHUE: Withdrawn.

Q Now, Judge, you said before ~~that~~ -- you were asked were you anxious to see this man convicted and your answer was "Yes". Now, will you tell us why you were anxious to see him convicted?

MR. KRIEGER: I object to that, as to why he is anxious -- the Judge is a witness in the case.

THE COURT: I think you have opened the door. I will allow him to state, otherwise, his answer might be misconstrued. I think the jury are entitled to know.

MR. KRIEGER: I take an exception.

Q Judge, will you tell us fully why you believed this man should be convicted? You were asked that question.

A Why, Mr. Donahue, it is rather difficult to answer that question.

THE COURT: I suggest you do not press that, Mr. Donahue.

THE WITNESS: I would like to answer it; as you say, I think the jury are entitled to know, your Honor, because I believed this defendant was guilty of a very atrocious crime, a crime that has become very prevalent in this city at this time, and in last December.

MR. KRIEGER: Now, if your Honor please, I really feel this is entirely prejudicial to this defendant. The witness occupies a very exalted position, a position which we always respect, and we respect the Judge, but, in this particular case, he appears here merely as a witness, and we know from human conduct, that any expression of opinion, a mere opinion, by a witness of the calibre of this witness, is weighty and will probably be construed by the jury in the light of his official position, and I regret that this statement was made by the Judge, particularly when he refers to conditions outside of this case, as entirely prejudicial to the

interests of my client, and I think should not be given. I believe his answer should be stricken out.

THE COURT: You put a question to the Judge for the purpose of ascertaining whether he was^a biased or interested witness. That was the only motive of your question, and the Judge answered it, answered it very briefly, but his answer required, it appeared to me, an explanation. The District Attorney was allowed to interrogate him. I think, Mr. Donahue, we won't go any further along that line.

MR. KRIEGER: Exception. I do not want to have the jury labor under any delusions as to what Mr. Talley's reasons were.

Q Now, Judge, you said you told us everything up to the time the stenographer came in? A Yes, sir.

Q And after the stenographer came, I understand you to say he had a notebook and a pencil and you ~~asked~~^{asked} the defendant questions and he made answers and the stenographer took them down? A Yes, sir.

Q Do you recall, Judge, what was said by you at that time, and what replies Dreyfus made?

MR. KRIEGER: I object to that.

THE COURT: Read the question.

(Question read by the stenographer).

THE COURT: I will allow the answer; yes or no.

MR. KRIEGER: I withdraw my objection to that question.

A Well, I will have to repeat what I said to you, Mr. Donahue.

Q What was said before? A Yes, sir.

Q Only more in detail? A I don't think it was as much in detail. I merely wanted a memorandum for my own use as Acting District Attorney.

Q Do you recall, Judge, how these men were brought into your room? Were they brought in together or separate?

THE COURT: Mr. Donahue, you will pardon an interruption. Upon reflection, I think I will strike out the witness' opinion as to the guilt of the defendant, and I will tell you gentlemen of the jury to disregard that expression.

MR. DONAHUE: That is the whole thing, the reply made to defendant's counsel, and the reply made to my question?

THE COURT: I think that we ought not to have on the record as conceivably influencing the jury the witness' expression of opinion as to the guilt of this defendant. I think that the witness was entitled to make an answer just to show he had no personal bias or animus against the defendant; I think he was entitled to that answer.

THE WITNESS: May I take the liberty of asking the jury that they may disregard my opinion? I do not wish to give any opinion respecting the guilt or anything against the defendant. I do not want to do anything to prejudice him.

Q Up to December 6th, you had never seen Dreyfus, Judge?

A No.

Q Never heard of him? A Never.

Q Never had any personal feeling against him or his relatives? A Never.

Q Never heard of him at all? A Never.

Q You had never heard of Tobey? A Never seen Tobey until he walked in to me when I was Acting District Attorney, with his complaint.

Q It was just an ordinary case, was it not, Judge?

MR. KRIEGER: I object to that.

Q What kind of a case was it?

MR. KRIEGER: I object to that.

THE COURT: I will allow it.

MR. KRIEGER: Exception.

A It was just --

MR. KRIEGER: (interrupting) I don't make any contention here that the Judge is in any way interested in Mr. Tobey or prejudiced against the defendant. You know that.

Q Do you recall whether these men were brought in together or separately into your office, Judge? A My recollection is that they were brought into my particular office, at my direction, one at a time.

Q Do you recall now, Judge, which one was brought in first? A Yes, sir; I am pretty sure Dreyfus was, and when I got through with him I examined Rosenschweig, who is known better by the name of Ross.

Q And did you examine Dreyfus after you examined Rosenschweig? A Yes, sir; I think I called him back in connection with the marked money.

MR. DONAHUE: I offer this money in evidence.

(People's Exhibits Nos. 10-A, 10-B, 10-C, 10-D, 10-E, 10-F and 10-G for identification now received in evidence).

Q I want you to point out to the jury, Judge; how you marked these bills, if you will? A On the ten dollar bill I marked a dot; on the back of the suspender of the driver of the plow; on each of the five dollar bills, six of them, I put a dot on the curl on the inside of the "5" in the lower left-hand corner of the bill.

(The jury at this time examined the exhibits above referred to).

Q Judge, will you look at People's Exhibit 4 in evidence

and tell me whether or not you had that in front of you when you were talking to Dreyfus in your office on December 6th?

A Yes, sir.

Q And did he say anything in reference to that particular exhibit at that time? A He said he had sent that telegram to Mr. Tobey.

Q Judge, was there any promise made at that time to either of these defendants that what they said at that time would not be used by the District Attorney against them?

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

THE COURT: I will allow it.

A There was no such promise made.

Q And Judge, about what time was this examination concluded, do you recall, approximately? A I think between six and even o'clock. It was somewhere around there.

Q And at that time there, before they left, did you talk to Dreyfus again? A Yes.

Q Will you tell us at that time what you said to him?

MR. KRIEGER: I object to that. I thought the witness was asked about a conversation.

MR. DONAHUE: This is another conversation, just before they left.

THE COURT: I will allow it.

A I think the second conversation was with regard to the bills, his acknowledging having received those bills from Mr. Tobey.

MR. DONAHUE: Your witness.

CROSS EXAMINATION BY MR. KRIEGER:

Q Did you give us all the conversation you had that day with Mr. Dreyfus, to your best recollection? A I have given you all I can recall; you may refresh my recollection.

Q Did you tell him to get out of New York? A I did. I asked him if he wouldn't get out of New York.

Q And you told him he could go out of New York if he wanted to, or something to that effect? A I told him if he would leave New York and agree to stay out of New York, he would not hear anything more about the matter.

Q You let him go out of your office that day? A Yes, sir.

Q A free man? A Yes, sir.

Q And did you at that time -- I understood you to say you thought they had committed a crime? A Yes, sir.

Q You were then Acting District Attorney of New York County? A Yes, sir.

Q It was your duty, was it not, Judge, if you thought these boys had committed a crime, to have seen that they were locked up? A Not necessarily, no. I thought it would be better for the City to get of him and his pal.

Q You substituted your own judgment in that regard for the law of the land?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. KRIEGER: Exception.

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Q How many times had you seen Mr. Tobey before then?

A I think that was the first day or the day before, that I arranged with Mr. Tobey and directed him to meet these defendants.

MR. KRIEGER: Just a moment. I move to strike that out.

THE WITNESS: I am trying to answer your question.

Q How many times, Judge, had you seen Mr. Tobey?

A My recollection is, I had never seen him before that day, unless it was on the preceding day; maybe the day before, when he came in and made his complaint.

Q And he made his complaint charging these boys with the commission of a crime, did he not? A He didn't charge them with anything; he told me the facts.

Q And from that you say you concluded, ^{it was true,} if/they were guilty of a crime?

MR. DONAHUE: I object to that.

THE COURT: I will allow it.

A From what Mr. Tobey told me they had done, I concluded that they were guilty of a crime.

Q So that when you got the boys at your office and after you examined them, you were still of the same mind? A Oh, very much so, yes, sir.

Q And, notwithstanding, you told them they were free to go out of your office? A I told them if they would get out

of town and stay out, I would not prosecute them; that is what I told them.

Q And they went out? A They went out.

Q They signed no agreement to go out of New York?

A Oh, I didn't ask them to sign any agreement; they begged to be allowed to go.

Q And at that time you say that the examination that you conducted of Dreyfus and of Ross was reduced to writing?

A No, not all of it. I asked some questions and made some notes, so that if it was necessary, I could recollect what it was all about, at some future date.

Q And at that time did you anticipate being called as a witness in a prosecution of this kind?

MR. DONAHUE: I object to that.

(No ruling).

A I did not.

Q Did you issue instructions to Detective Cunniff and to Detective Russo to apprehend these boys? A I instructed them if they were found approaching Tobey, or taking any money from him, that they were to bring them down to the District Attorney's Office.

Q You had been told, had you not, that an appointment had been previously made by Mr. Tobey with these boys? A I think so; I think he made it at my direction.

Q So you anticipated that Mr. Tobey would deliver this money to the boys at the appointed time? A I told him if they

demanded money, to give them those bills, which I marked precisely for such purposes

Q You anticipated, did you not, that he would deliver this money at the appointed time? A I thought he would do what I told him.

Q In fact, you told him to give them the money? A I certainly did.

Q And you waited that evening for them to return?

A Well, I never got out of the District Attorney's Office much before six or seven o'clock when I was Acting District Attorney, so I didn't have to wait.

Q You expected them to return that evening? A I was hoping they would return.

Q And you waited until you heard from one of the parties whether or not they would return? A I don't know whether I waited; I probably would be there, anyhow; I was there when they came.

Q Now, you urged upon this man, Dreyfus, did you not, to make this statement to you? A No, I didn't urge him at all.

Q Didn't you tell him it would be better for him, if he did? A I don't think I had to tell him that, counsel; he was a very voluble witness; he wanted to talk a lot.

Q Did you tell him that? A I don't recollect.

Q Have you seen the record of the stenographer's minutes

of the talk you had, or the questions you asked and the answers that were given by Dreyfus at that time? A Oh, yes, sir; I certainly have; I have to refresh my memory about it.

Q And did that tend to refresh your memory as to whether or not you made such a statement to Mr. Dreyfus, that it would be better for him, if he did tell you all he knew? A No, there is nothing in the stenographer's notes, or my memorandum, to that effect.

Q Did you tell him at that time, Judge, that any statement that he would make might be used against him?

MR. DONAHUE: I object.

THE COURT: I will allow the question.

A There was no legal obligation on my part as Acting District Attorney to tell him that; I did not.

Q Judge, I didn't ask you whether there was a legal obligation on your part. A I beg your pardon. The answer is no.

Q I respectfully ask, Judge, that you confine your answers to my questions.

THE COURT: Just ask questions, counsel. If you have any objections to make, make them to the Court.

Q Did you tell Mr. Dreyfus that he need not answer, if he did not want to? A No.

Q And the telegram that was mentioned by the learned District Attorney, is this it?

MR. DONAHUE: Yes, that is it.

Q Where did you get that from, Judge, first? A Why, I got it from Mr. Tobey.

Q Well, didn't you get a telegram from Mr. Dreyfus?

A You mean a paper from Mr. Dreyfus; you don't mean a message from him?

Q I mean a message, written on a telegram blank, purporting to be a telegram sent by Tobey to Dreyfus? Let me show you this, Judge. A (After examining paper) I don't recollect; I recollect he identified a telegram, I think that last telegram, which has a "B" written on it.

Q Look at this, Judge, and state if you ever saw that before? A (After examining) I may have, counsel, but I don't recollect it.

THE COURT: Now, you are referring to Exhibit What?

MR. KRIEGER: I am referring to People's Exhibit No. 5.

Q This telegram, People's Exhibit No. 5, don't you recall, Judge, whether or not you got that from Mr. Dreyfus?

A I don't recollect it, counsel.

Q Is there any way in which you can refresh your memory as to this piece of evidence? A None that I can now suggest.

Q Do you recall taking a paper from Mr. Dreyfus that he had in his possession? A Yes, sir; I think I took or examined two or three papers that he had in his possession; I don't re-

collect what they were.

Q After you took or examined them, Judge, did you keep them? A That I do not recollect.

Q Do you recollect having returned any to Mr. Dreyfus?

A I have no recollection on that subject at all.

Q And do you recollect as to Mr. Dreyfus whether or not he wanted the return of the papers that you examined or took from him? A I don't recall anything in connection with that phase of the matter, if it existed at all.

Q You recollected, or your thought after the examination of the papers, as you said, was that at the time the stenographer was present? A That I cannot differentiate, between the time that he was ^{not} there and the time that I called him in.

Q You looked over the stenographer's record of this talk, did you not? A I did.

Q And you recall now nearly all that was in that report?

A Substantially.

Q Now, there was nothing in there that you saw that refreshes your recollection as to these particular papers?

A Nothing.

Q Judge, did you make any investigation whether or not the complaining witness was guilty of the acts charged to him?

MR. DONAHUE: I object to that as entirely immaterial. The issue here is not that this man is a degenerate or is not. The issue is what was in those men's minds when

they asked him for this money. It goes to his credibility, and they asked the question and they are bound by it.

THE COURT: Objection sustained.

MR. KRIEGER: Exception.

MR. DONAHUE: If counsel is desirous of it, I have no objection to having Mr. Talley give his opinion. I only want to shorten this trial.

THE COURT: I have sustained the objection.

Q You said something in your testimony, Judge, before, that Dreyfus told you that the first time he met Tobey was in Wall Street; is that correct? A Yes, sir.

Q Did you ask Mr. Tobey where he met Dreyfus the first time? A I do not recall that.

Q Was Mr. Tobey in or near your room at the time when this examination was conducted? A I think he was in an adjoining room.

Q You asked him to remain there? A I did.

Q And after Dreyfus was let out, Ross was also let go, was he not? A Yes, sir; both of them.

Q Did you see Tobey? A Why, I think I must have seen him sometime again that evening; I would not be positive, though; I am not even sure he was down in the office; I don't recollect; I was not thinking of Tobey then.

Q Did you show Mr. Tobey at any time the statement, or the

stenographic report of the statement made by Dreyfus? A I never did.

Q Do you know whether or not he ever saw it? A So far as I am aware, he never did.

Q This was on what date? A December 6th?

Q And on what day was the indictment found against these men, do you know?

MR. DONAHUE: I object to that as entirely immaterial.

A I do not know.

Q Did you appear before the Grand Jury to testify?

A I don't know whether I did or not. If I could see the back of the indictment I could refresh my memory.

Q You have no independent recollection of that? A I have not.

Q This case has been in your mind pretty much, has it not?

A Oh, no, not at all. I had forgotten such a case existed until Mr. Donahue told me recently it was coming up for trial. This is only one of thousands of cases that I have to think about.

Q Well, your recollection as to what took place in this case is pretty good. A Well, that is a matter of opinion. I probably have forgotten a great many important things that took place; I am giving you my best recollection for what it is worth; it would be impossible for me to recall all the inter-

views I had while I was acting District Attorney.

Q Judge, you said that Dreyfus told you that those forty dollars that are in evidence, and which you say you marked, had been given to him by Ross; is that what you mean? A I didn't say that at all.

THE COURT: Well, immediately after wasn't it that the Judge corrected himself?

THE WITNESS: I was not aware, your Honor, that I said it. My recollection is that he said it had been given to him by Mr. Tobey, the man to whom I had given it.

Q Who gave you the money, Judge, on its return? A On its return?

Q Yes. A It was handed to me by Detective Russo, as I recollect.

Q And Russo said he got it from Dreyfus? A He took it from him, he took it from Dreyfus.

MR. KRIEGER: That is all, Judge.
RE DIRECT EXAMINATION BY MR. DONAHUE:

Q Judge, do you now recall what you said to Mr. Dreyfus before he left the office, or immediately before he left the office, with reference to the reason you had for allowing him to go?

MR. KRIEGER: I object to that as not proper re-direct examination.

THE COURT: I will allow it. It was brought out by

you on cross-examination.

A Yes, sir.

Q Will you tell us what you said to Dreyfus and what he said to you? A Dreyfus told me if we would not prosecute him for this offense he would leave town and never come back again; that he wanted to go to California; that that was the reason he was asking Tobey for money, and that if he was allowed to go that we would never be bothered with him again; that he would get out of town and stay out of town.

Q Did you allow him to leave your office a free man?

A Yes, sir; a free man on condition that he left this man alone --

MR. KRIEGER: I object to that.

THE COURT: Allowed.

MR. KRIEGER: Exception.

Q Did you have any further talk with him on that subject at that time? A Well, I think I warned him if he came back, if we heard from him again, that he would be prosecuted.

7 Q He then left your office a free man? A Yes, sir.

Q Did you ever again see him after that, Judge; just yes or no to that? A Why, yes, sir. I think he appeared as a defendant before me/in the month of January, when I was on the bench.

Q That is the last time you saw him? A I have not seen him from that day until this.

Q You never spoke to him since? A No.

BY MR. KRIEGER:

Q When you saw him on that occasion he was already charged with a crime? A You mean the second time?

Q In January? A Oh, yes; he was then under indictment.

Q Indicted, charged with this same crime he is now being tried for? A I presume it is the same crime for which he was indicted.

--oOo--

J O H N F. C L E A R Y, called as a witness on behalf of the People, being firstly duly sworn, testified as follows:
(32 Franklin Street, New York City)

DIRECT EXAMINATION BY MR. DONAHUE:

Q What is your business, Mr. Cleary? A I am a stenographer in the District Attorney's Office.

Q The gentlemen want to hear you? A I am a stenographer in the District Attorney's Office.

Q And how long have you been a stenographer in the District Attorney's Office? A Not quite two years.

Q And before that, Mr. Cleary, were you a stenographer at any other place? A I was a stenographer both in the Board of Health and the Board of Education.

Q For how long were you in those two departments?

A Well, for a period of about two years.

Q Four years in the City departments? A Yes, sir; since I graduated from school.

Q Before that, where did you work? A Before that I went to high school and then I took a stenographic course for two years.

Q Since then, for the last four years, you have been taking down notes? A I have, sir.

Q And you have taken down interviews? A I have.

Q You have taken interviews down where questions were asked and answers given? A I have, sir.

Q You have been doing that work for a period of four years? A For a period of two and a half years.

Q Do you recall being called into the Acting District Attorney's Office on December 6th, 1920? A I do.

Q And do you recall having with you at that time your pencil and notebook? A Yes, sir.

Q At about what time, do you know, did you arrive at Mr. Talley's office on that day, approximately? A About half past six.

Q About half past six? A Yes, sir.

Q And who was there at the time you arrived? A When I was there Judge Talley, he was then Acting District Attorney, Mr. Markey, and Detective Cunniff were in the room.

Q Was anybody questioning anybody in there? A When I

got in there, Judge Talley was asking Mr. Dreyfus some questions.

Q Is this Sam Dreyfus here, this man here, do you recall? A Yes, sir.

Q And did you hear Judge Talley ask questions and did you hear Mr. Dreyfus make answers? A I did, sir.

Q Did you take those questions down in shorthand? A I did.

Q Did you transcribe them correctly afterwards? A I did, sir.

Q You took everything down that was said by Mr. Talley and everything that was said by Mr. Dreyfus? A During the time I was in the room.

Q You made a correct transcript of that? A Yes, sir.

Q You have got your original notes with you? A I have, sir.

Q Now, did you afterwards reduce your shorthand notes to typewriting? A I did.

Q And will you look and tell me whether or not that is a correct transcript of the answers that were given by Mr. Dreyfus and the questions that were asked of him by Mr. Talley with reference to Mr. Dreyfus' interview? A Yes, sir.

Q You have gone over it before? A Yes, sir; I have compared it.

Q You have compared it with your original notes?

A Yes, sir; that is all correct, with the exception of on page 4 there is a typographical error, "Why did you 'got' within?"

Q Don't say what it is. There is a typographical error on page 4? A Yes, sir.

MR. DONAHUE: I offer in evidence a transcript of Mr. Dreyfus' testimony. I understand there will be no objection to the correctness of it.

MR. KRIEGER: I object on the ground as incompetent, irrelevant and immaterial, on the ground that this is not a transcript of the entire conversation that was conducted by Judge Talley, and ^{with} this defendant, but merely a part of it, and on the further ground that it has not been shown by the People that the statements were made by the defendant voluntarily, and without force or any influence, due to surrounding circumstances, and that he was not advised of his rights.

THE COURT: Objection overruled.

MR. KRIEGER: Exception. Your Honor realizes that it is only part of the conversation—that there is only a part of the conversation on record of which he said something at the time.

THE COURT: It does not purport to be the whole. The Assistant District Attorney is not offering it as the

whole; he is offering it as a part, the part reduced to writing.

MR. KRIEGER: I respectfully except.

(The paper above referred to was received and marked People's Exhibit No. 11).

MR. KRIEGER: Judge Talley did testify to the effect that this stenographer's report was made up to refresh his own recollection.

MR. DONAHUE: He said he took down notes himself.

THE COURT: No, Mr. Krieger; I think you are in error as to that.

MR. DONAHUE: May I read it now, sir?

THE COURT: Yes.

(Mr. Donahue read People's Exhibit No. 11 to the jury).

(Mr. Donahue, after reading to the jury People's Exhibit No. 11):

Q Is that the end of the interview, as far as you know, Mr. Cleary? A It is, sir.

MR. KRIEGER: Now, if your Honor please, I move to strike out this statement on the grounds urged when I made my objection to its admission.

THE COURT: Denied.

MR. KRIEGER: Exception.

CROSS EXAMINATION BY MR. KRIEGER:

Q You don't know, of course, Mr. Cleary, how long Dreyfus was in Mr. Talley's room before you got in there?

A Why, I know this much, that about six o'clock Judge Talley -- I happened to be late man up there that night; what we call the late man -- and about six o'clock Judge Talley sent up and told me to remain, and then, about half-past six I was called down. That is all I know about Sam Dreyfus.

Q What time do you usually get through with your duties? A Why, that depends; we have no set time for quitting.

Q When you have no special call, what time do you go home? A When we have no special call, we go home when we have finished our transcripts, that is, provided it is after five o'clock.

Q What time? A After five o'clock; if we have no transcripts to finish.

Q You mean about five o'clock? A About that.

Q You have a time ~~xxxxx~~ for leaving when there are no special things to do, have you not? A Yes, sir, between five and half-past five.

Q Between five and half-past five? A Yes, sir.

Q The reason you didn't go home that night was because you got a call from Judge Talley? A I was working up there on some work until six o'clock; we are assigned every tenth week for night work, until the District Attorney or the Acting Dis-

triot Attorney leaves.

Q Did you receive a call from Acting District Attorney Talley to remain? A I did.

Q What time did you get that call? A About six o'clock.

Q Was it before or after six? A I said about six; I had no watch in my hand.

Q Can you refresh your recollection as to whether it was before or after six? A I cannot say; I was busy working, and you know, when you are busy working, you are no judge of time.

Q Well, you remained, did you? A Yes, sir.

Q Subject to the call of Mr. Talley? A I did, sir, because it is customary to do so.

Q Did you, yes or no? A I did.

Q And where were you waiting for that call; where were you, in what room? A I was in the stenographer's room, up on the fourth floor, as far as I recollect.

Q Was anybody with you? A Not that I remember.

Q You were there alone? A As far as I recollect.

Q Did you tell anybody that you were waiting for Judge Talley's call and that you expected to be called down there?

A No.

Q And you got there at half-past six in Judge Talley's room? A I say, about half-past six.

Q Was it later? A It may have been later or before, I say, about.

Q How long did you stay in the room? A During the duration of taking these statements.

Q About half an hour? A Why, I just don't know. Perhaps half an hour; between half an hour and an hour.

Q It was after seven o'clock when you got out? A Why, I don't know.

Q You don't know that? A No.

Q Who was in the room at the time these statements were made, at the time you were taking this record? A Acting District Attorney Talley, Mr. Markey and Detective Cunniff.

Q And how long did Mr. Markey remain in the room?

A During the duration of the taking of the statement.

Q During the whole time? A Yes, sir.

Q No question about that? A Not as far as I can remember; he was there, in there, when I went in, and he was in there when I went out.

Q And he stayed in there during that time? A Yes, sir.

Q And did Mr. Markey speak to the defendant, Dreyfus?

A I didn't hear him speak to him, unless he spoke to him --

Q If Mr. Markey had spoken to the defendant, would you have taken down his statement? A Most assuredly.

Q Mr. Markey's statement? A I would have taken down the question and the answer that was given to the question.

Q If Mr. Markey spoke to him -- if he asked any question -- would you take it down? A I would.

Q Would you take down what Mr. Cunniff said? A I would.

Q Did you hear Mr. Cunniff say anything? A Nothing.

Q Did you hear Mr. Markey say anything? Ax No.

Q You were directed to take down the questions Mr. Talley propounded and the answers given to them? A I was directed to take down questions propounded by Judge Talley and all of the conversation that occurred in that room while I was in there; I didn't receive any direct word to do that -- that is the custom.

Q You take stenographer's reports in court? A Why, I have never taken them in court.

Q What? A Why, I have never taken them in court, no.

Q Have you ever seen it done? A I have, sir.

Q Is it customary for the court stenographer to take down conversations between the defendant and some third party not asked for by counsel?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

Q Did you see a blackjack lying in the room? A No, sir.

Q Did you see it lying on the table? A No, sir.

Q Do you know whether or not Dreyfus' attention was called to the fact that there was a blackjack present? A No, sir, not during, while I was in there, and I was in there dur-

ing the whole course of that statement.

MR. KRIEGER: That is all.

MR. DONAHUE: That is the People's case, if your Honor please.

MR. KRIEGER: If your Honor please, I move to dismiss the indictment and ask for the discharge of this defendant on the ground that the People have failed to make out a case. My contention is, if your Honor please, that the People have failed to prove the elements to constitute the crime of extortion; to constitute the crime of extortion, it is necessary for the People --

THE COURT: Pardon me. The indictment charges him with an attempt.

MR. KRIEGER: I meant to say attempted extortion, your Honor. To constitute the crime of an attempt at extortion, the people must prove acts which, if carried out, would constitute the crime of extortion, and in order to do that, they must show that the defendant obtained money from the complaining witness, with^{out} his consent, induced by the wrongful use of force or fear, and that it is induced by a specific threat, a something brought to bear upon the complaining witness, under the stress of which he parts with the money, that he gives, in relation to the transaction charged in the indictment.

In this case, if your Honor please, I contend that

the People have not proven any threat on the strength of which, or any circumstances, on the strength of which this man parted with the \$40, which is the transaction covered by this indictment, nothing in the whole case is an indication of the fact that Dreyfus either by the use of force or threat urged upon Mr. Tobey, the complaining witness, to part with this \$40.

Mr. Tobey, himself, testified that he made this appointment with him on Saturday, met him on Monday, spoke about the return from Cleveland, and then said to him, "Well, I cannot afford to pay \$700 for you to go to Texas or California," as the case may be. "I would ask you to continue with the three hundred, I have been sending you," and then said: "Here, take this," or something to that effect, a pure, voluntary payment on the part of Mr. Tobey, moving from himself, not induced by any threat, either then or before, and no fear brought to play on Mr. Tobey, because he himself said he had none. So, under all the circumstances, without going more elaborately into it, I contend, if your Honor please, the People have not made a case. I think this falls fairly within the law of the McLaughlin case, with which I believe your Honor is familiar, and there, as here, the Court held that there was no fear induced upon the complaining witness and at the time the money was

passed no threat was made with relation to that particular transaction.

THE COURT: The defendant here is not charged with the commission of the consummated crime, that is to say, he is not charged with the crime of extortion. He is charged with the crime of an attempt to commit the crime of extortion. It is only necessary that the People should show that the defendant did an act which tended to effect the commission of the crime of extortion, and which, at the same time, failed to effect a commission of that crime.

We have heard the testimony of the complaining witness regarding an alleged conversation between himself and the defendant at the time that the forty dollars were passed from the complaining witness to the defendant. While, the language, testified to by the complaining witness, taken in and of itself, taking the words in their ordinary and usual meaning, did not express a threat, it is language which may be interpreted in the light of the preceding transactions and deals, as detailed in the testimony of the defendant on the one hand and the complaining witness on the other, and as so interpreted, the jury would be permitted to find incredible testimony that it did impart a threat, and that there was, in the mind of the defendant at the time of the reception of the money,

the inducement of fear on the part of the complaining witness to base upon it a proposition that he, the defendant, would disclose the doing by the complainant of an alleged disgraceful act, expose him to disgrace, or charge him with the commission of a crime. The circumstance that the complaining witness was not put in fear, at the particular time, is immaterial, because the material consideration was the mind of the defendant rather than the mind of the complaining witness, the charge not being the charge of extortion but the charge of an attempt to commit the crime of extortion. So that I will overrule your motion, and you may take an exception, counsel.

MR. KRIEGER: If your Honor please, just one more statement. It is quite true that a statement of words might bear two constructions; it might bear an innocent construction; it might bear a guilty construction. I submit, if your Honor please, that in the People's case, that where a statement of words can bear one of two constructions, the construction which leads to innocence should be taken, and I say from all the testimony given by the complaining witness, if our mind is directed along the right path, then I say the innocent construction should be given to it, and from that it cannot be said that any threat was made, or any import of threat was suggested. Mr. Tobey said that he offered to pay Mr.

Dreyfus money for the purpose of taking Ross away.

It was an employment; it was in the nature of an employment; it was where a man had a right to pay money to somebody else, either as a companion, or for the purpose of taking someone away. I am not questioning or arguing what Ross may have done or said. I am merely pointing to the testimony given by Mr. Tobey with relation to this defendant only, and he said that he gave him money for the purpose of taking Ross away. I think your Honor will recall, in the last few moments of the cross examination of Mr. Tobey, he said that he paid him the original \$500, or was giving him \$500, so that Dreyfus would take Ross away to Texas.

THE COURT: As the case now stands, it is a question of fact for the jury, as it appears to me.

MR. KRIEGER: I respectfully except.

THE COURT: you may open your case.

MR. KRIEGER: Gentlemen of the Jury, I hope that your minds are still open, on the merits of this prosecution. The defense is now going on and we hope to prove to you that this man, Dreyfus, is not guilty, as charged. We hope to prove to you from the testimony, which, if permitted, will establish in your minds that this man, Tobey, accused not by Dreyfus, but by his own conscience, feared Ross; had a just right to fear Ross,

and it does not make any difference whether this man, Tobey, when he first became acquainted with Dreyfus, saw a means to have Dreyfus keep Ross away and out of New York, a thing which he could not accomplish through urging upon Ross himself.

You will recall, gentlemen, that before Tobey ever met Dreyfus he urged Ross to go to Buffalo and out of New York, and when Ross didn't go, Tobey then, afterwards, became acquainted with Dreyfus, and saw a means whereby he could keep Ross out of New York, and that, in fulfillment of that desire, wanted to keep Ross away, he proposed to Dreyfus that Dreyfus take him out of New York, take him west, take him to Cleveland or to Chicago, or to Texas, and for that he would pay Dreyfus a certain sum per week.

We are not going to deny for a moment that Tobey intended to pay Dreyfus, or that Dreyfus did get a certain sum per week from Mr. Tobey, but we do say, gentlemen, we hope to prove to you beyond any question, if that need be, that Dreyfus obtained that money only because of the agreement that he made with Tobey, or Tobey suggested to him; that he would pay him more than he earned outside. I don't care whether that amount was more or not -- referring to Dreyfus -- more than he could earn himself, by keeping Ross out of New York City, and,

gentlemen, if we prove this, and if we prove that Tobey paid Dreyfus a sum of money, not because he was threatened by Dreyfus, not because Dreyfus suggested that Mr. Tobey should be exposed, then the mere fact that Mr. Dreyfus obtained money, voluntarily paid by Mr. Tobey, his Honor will charge you does not constitute extortion nor an attempt at extortion.

The case is simple. I want your minds to be open upon it. I know it is a hard matter, perhaps, to overcome the expressions and opinions given by a judicial mind, by a man of the character, calibre, and standing and reputation of Judge Talley. Judge Talley's impression may not have been the correct impression. His opinion may not have been the correct opinion. Men differ; men's opinions are different; what one man believes to be so another man, from the same state of facts, does not think so. Judge Talley then occupied the position of Acting District Attorney. His mind was directed to the fact -- and a very neat question put, -- that this man didn't have a fair chance when he was questioned --

MR. DONAHUE: This, your Honor, would make a nice summation, but it is not part of an opening as to what Mr. Talley did.

THE COURT: I think you might reserve that for your summation, Mr. Krieger.

MR. KRIEGER: I bring to your attention, gentlemen, merely ~~the~~ to keep your minds open and uninfluenced one way or the other until all the testimony in the case is in, and then I know justice will be done.

Is Mr. Ross in court?

MR. DONAHUE: Mr. Ross is in jail.

MR. KRIEGER: May I ask to have Mr. Ross brought into court?

THE COURT: Yes; he is already being sent for.

MR. DONAHUE: He has been sent for, at your request.

MR. WOLF(The Clerk of the Court): I believe, your Honor, that it will take at least fifteen minutes to get him over here.

THE COURT: Suppose we take a recess now rather than at the customary hour and then resume again after recess. I think that is the better way. We will not lose so much time, then.

Gentlemen of the Jury: You are admonished not to converse amongst yourselves on any subject in connection with this trial, form or express any opinion thereon, until the same is submitted to you.

We will take a recess until half-past one.

(Whereupon a recess was taken).

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1:30.

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THE COURT: (Addressing a person who is brought to the witness stand - a person said to be Nathan Rosenschweig, or Nat Ross) What is your name?

MR. FALLON: May I interrupt just for a moment?

THE COURT: Mr. Fallon, I do not intend to swear the witness. I merely intend to put the preliminary questions to him.

THE WITNESS: Well, I have gone under the name of Nathaniel Rosenschweig; I was christened Nathaniel Rosenschweig; I changed my name, and my father had his name changed, about twelve years ago.

THE COURT: Now you need not be sworn and you need not give any testimony in this case, if you are disposed to decline to testify. You have a right to decline to be sworn and you have a right to say, if sworn, you will not answer any question which may tend to incriminate or degrade you. In other words, if you are sworn as a witness, and if, having been sworn, the question which should be put to you which, in your opinion, would tend to incriminate or degrade you, you have a right to decline to answer that question.

If you are sworn and do testify, what you say may be used against you.

MR. KRIEGER: Mr. Fallon, of course, is interested in Mr. Ross. Mr. Fallon, I understand, will not want me

to call Mr. Ross as a witness, and in deference to Mr. Fallon's wishes, whose opinion I respect, I ask to be allowed to withdraw him and not call him.

MR. FALLON: I might say, in justice to counsel for the defendant, that I had an arrangement with him, that if I had been able to be present I would have assisted in the cross-examination of the complainant here, with a view to the testimony that this witness might give. This, I think, ^{the Court} would be entirely willing to allow.

Having been actually engaged with Judge Rosalsky, until just this minute, I was unable to do that. While I would like counsel to avail himself of all this evidence, I do not think I can do justice to this man(referring to Ross). It is with much reluctance I decline to have the jury hear his story. This man, however, must go on trial, and he is entitled to that.

MR. DONAHUE: We have no objection to having the cross examination conducted by Mr. Fallon.

MR. FALLON: I have not heard his direct. If I had been here to assist in the cross-examination, I would have been glad to do so. Unfortunately I could not do it.

S A M D R E Y F U S, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

(518 East 139th Street, Bronx, New York City).

DIRECT EXAMINATION BY MR. KRIEGER:

Q How old are you? A 23, sir.

Q When were you 23? A January 1st. I was born on January 1st, 1899.

Q January 1st, past? A Yes, sir.

Q Where were you born? A New York.

Q Where do you live? A 518 East 139th Street.

Q With whom? A My parents.

Q Mother and father living? A Yes, sir.

Q Parents in court? A Yes, sir; my mother is.

Q Any other relatives in court? A --

MR. DONAHUE: What difference does that make, if your Honor please? I object to that.

THE COURT: Sustained.

Q Did you go to school? A Well, a little.

Q Speak up? A Just a little ways, a very poor education I had.

Q What age did you go to school? A Twelve years.

Q Did you ever testify in a court before?

MR. DONAHUE: I object to that. What difference does that make?

THE COURT: I will let him answer yes or no.

A Sir?

Q(repeated) A No, sir.

Q Did you graduate from school? A No, sir.

Q Did you work? A Yes, sir.

Q What age were you when you started to work? A Oh, thirteen.

Q What did you do? A Sell papers.

Q New York City? A Yes, sir.

Q And up to what age did you sell papers? A Until I was fifteen.

Q After that what did you do? A Worked for the New England Braid Company, 137 West 37th Street.

THE COURT: Will you have the kindness to keep your voice up, so that everybody can hear you distinctly. It will be very much better.

THE WITNESS: Yes, sir.

Q And what did you do in the New England Braid Company?

A I was an errand boy.

Q How long did you work there? A Two years.

Q And after you left the New England Braid Company, do you remember where you worked? A Yes, sir.

Q Where? A For Barney Jacobs & Company.

Q What business was that? A ~~Florist~~ Florist.

Q Where? A.35 West 18th Street.

Q What did you do there? A Deliver flowers.

Q And did you work there in 1917 -- in 1919? A Yes, sir.

Q How much were you earning? A \$3. a day -- \$18, a week.

Q Did you contribute any part of the money that you were earning to your home? A Yes, sir.

Q When did you first meet Ross? A I met Ross in the beginning of May, 1919.

Q Was that the first time you knew him? A Yes, sir.

Q Where did you meet him? A I met Ross on 28th Street and 6th Avenue, in the beginning of May, 1919.

Q Were you in the company of other men? A No, I was on an errand at the time.

Q You were working in this florist shop? A Yes, sir.

Q Did you get chummy with him? A Well, I knew him for years, and that was the first time, in fact, I had met him in five years.

Q That is what I wanted to know. You knew him before this time? A Oh, yes, sir, for years.

Q That is what I want you to tell us, the first time he ever came into your life. A Well, I met him quite a number of years ago.

Q How? Under what circumstances? A Well, through his sister or so.

Q Through your sister, through your family, is that correct? A Yes, sir; through my family.

Q He was not a stranger when you met him in May, 1919? A Oh, no, no, quite a friend.

Q You hadn't seen him during the five years preceding that? A Yes, sir -- I hadn't seen him for five years.

Q You knew where he was? A Well, I heard he was in the navy.

Q Have you ever been convicted of any crime? A No.

Q Have you ever been in any kind of trouble at all? A No.

Q Ever been arrested? A Well, under the Anti-Loafing Law, that is all I remember.

Q When was that? A That was a year and a half ago.

Q During the war or immediately after the war? A That was during the war.

Q And were you discharged? A Yes, sir; I didn't even come up for trial, they just gave me a card, that is all.

Q What? A They just sent me a card.

Q You were not arrested? A No, I was not arrested.

Q You were not brought before any magistrate? A No, no.

Q Now, when did you first meet Mr. Tobey? A About the middle of May, 1919.

Q And in whose company were you at the time you first met him? A With Ross.

Q That is, Nathaniel Ross, or Rosenschweig? A Rosenschweig, yes, sir.

Q Did you know him under the name of Ross? A Why, no.

Q At the time you first knew him, you knew him as what?

A Nathan Rosenschweig.

Q Were you ever known under the name of Joe Brown?

A No, sir.

Q Did you ever use the name of Joe Brown? A No, sir.

Q You understand my questions? A Sir?

Q I ask you, Sam, did you ever use the name of Joe Brown? A No.

Q Never? A Never.

Q Did you use it in connection with this thing that you are charged with now? A Well, yes.

Q When you say "never", what do you mean? A Well, I just used it at the time that Ross brought me -- I just gave the name of Joe Brown; it happened to come to my mind.

Q You mean before that you never used that name?

A No, sir.

Q Have you ever since used that name? A No, sir.

Q And you are prepared to state, are you not, just how you came to use the name, Joe Brown? A Why, yes, sir.

Q Now, where did you first meet Tobey? A I met Tobey at the foot of Wall Street.

Q In the middle of May? A In the middle of May, 1919.

Q In whose company? A With Ross.

Q Had you ever heard of or seen Mr. Tobey before then?

A No, sir.

Q Did you know, you were going down to meet Mr. Tobey?

A No, sir.

Q Had Ross told you anything about Mr. Tobey at that time, before you first met him? A No, sir.

Q Well, how comes it you met Mr. Tobey that day?

A Well, I met Ross on 28th Street, in the beginning of May, 1919, and he asked me, he wanted me to meet a friend of his; he asked me to come down with him if I had nothing to do; it happened to be lunch hour at the time, and I left him and I told him I would let him know; I would meet him if he waited half an hour. I went to deliver a package; I met him at one o'clock and we went down and he called Mr. Tobey up, and he met Mr. Tobey and Ross told me to wait about 30 feet away.

Q Now, wait a moment. When you had a talk with Ross did Ross tell you anything about Mr. Tobey? A No, not at these times.

Q And then you went with Ross to the foot of Wall Street; is that correct? A Yes, sir.

Q When did Ross telephone Tobey, before you got to Wall Street? A Yes, sir, before we got to Wall Street.

Q Then you walked down with him? A Yes, sir, I walked down as far as Wall Street.

Q And you met Mr. Tobey on that occasion? A Well, Ross told me to wait and Ross spoke to Mr. Tobey.

Q Now, Ross told you to wait about 20 feet away from him? A Yes, sir.

Q What did you see Ross do then? A Ross spoke to Mr. Tobey.

Q Wait a minute. Did Ross go to some man or some men, or did some men come to him? A Mr. Tobey came to Mr. Ross.

Q Did you know Mr. Tobey at the time? A No, never seen him before.

Q Would you recognize him as being the man you say you saw walk over to Mr. Ross -- (withdrawn).

Q Do you know now on your subsequent acquaintance with Mr. Tobey that it was Mr. Tobey who walked over and met Ross? Do you understand me? A Yes, sir, I know.

Q And you saw Mr. Tobey walk over to Ross? A Yes, sir.

Q What did they then do? A They spoke for about fifteen minutes.

Q Were you immediately present when they spoke?

A No, I waited for them.

Q Did you hear any of their conversation? A No.

Q Well, now, after you waited and they spoke, what happened then? A Then Ross called me over and introduced me

as Mr. Brown to Mr. Tobey.

Q He introduced you as Mr. Brown? A Yes, sir.

Q Now, did you, at that time, know that Mr. Ross was going to introduce you as Brown? A No, sir.

Q Had you told Ross anything about the name Brown?

A No, sir.

Q Had you asked Ross to introduce you as Mr. Brown?

A No, sir.

Q Is that the first time that the term or the name, Brown, was applied to yourself? A Yes, sir.

Q As far as you know? A Yes, sir.

Q Now you didn't deny that your name was Brown, or anything? A No.

Q Well, what did you do or what did you say to Mr. Tobey? A Well, we went in a restaurant.

Q Well, did you ~~say~~ say anything to Mr. Tobey when Ross introduced you to him? A Well, I was glad to meet him -- probably a friend.

Q Did you know anything about Mr. Tobey? A No, sir.

Q Ross hadn't said anything to you at all? A No, sir.

Q Now, who suggested that you go to the restaurant?

A Mr. Tobey suggested that.

Q He invited you into the restaurant? A Yes, sir, he invited me in with Ross.

Q With Ross? A Yes, sir.

Q What time of the day was that? A That was about 3:30, if I am correct.

Q And what restaurant did you go into, if you know?

A I don't know the name of the restaurant; it is at the foot of Wall Street, as I remember.

Q And how long were you in the restaurant? A Full 30 minutes.

Q Did you order anything to eat or drink? A Yes, we ordered something to drink.

Q Did Mr. Tobey order something? A Yes, sir; he ordered something.

Q To eat or drink? A To drink.

Q Did you carry on any conversation with Mr. Tobey?

A I didn't pay any attention to what was going on with Mr. Ross and Mr. Tobey.

Q Did you carry on any conversation? A No, sir.

Q What did you see then, if anything, between Mr. Ross and Mr. Tobey? A Well, they were talking about, -- that is, Mr. Tobey was talking to Mr. Ross, to go to Texas, and I didn't pay no attention, it was not my business, and I didn't know him. He said, "It would be a good thing for you to go to Texas." He said, he would give \$500. That is all I heard him say, and then he --

Q Just tell us as near as you can, just the conversa-

tion? A Then he asked Ross to sign his name on a certain paper. Well, after he was through signing --

Q Wait a moment. Did you hear anything else? Give us the talk first, as close as you can, as near as you can remember, what the words were? A He wanted ^{him} ~~me~~ to go to Texas, to get him away.

Q That was the gist of the conversation, that he wanted him to go to Texas? A Yes, sir.

Q He said he would give him \$500? A Yes, sir, to go away.

Q You don't know what Ross and Tobey were conversing about in the fifteen minutes before, in the street? A No, I didn't hear that.

Q After that talk, or during that talk, did Mr. Tobey write out anything? A Yes, sir, Mr. Tobey --

Q Did he write on something; did he write on a piece of paper; yes or no? A Yes, sir; he wrote on some piece of paper.

Q And who did he hand that paper to? A To Mr. Ross.

Q What did he ask Mr. Ross to do? A He asked Mr. Ross to sign his name and put down a few questions to which I took no interest.

Q What did you see Ross do? A All I seen Ross do was just to sign his name; I didn't pay no attention.

Q Did Mr. Tobey talk to you? A Yes, sir. He said:

"You can sign, just as a witness in the case."

Q Sign as a witness? A Yes, sir.

Q What did you say to Mr. Tobey? A I said: "What do you want me to sign for?" He says: "Just sign". And I didn't think anything of it and I put my name on it.

Q What name did you put down? A Joe Brown, just what he introduced me by.

Q Why did you put your name down as Joe Brown when your name was not Brown? A Because Ross introduced me as Brown and Ross said, "You can put down Joe Brown."

Q And did you ever use the name of Joe Brown after that? A No, sir.

Q What became of that paper? A Which Ross signed?

Q Yes. A I don't know, I think Mr. Tobey kept it.

Q Did you see any money passed over by Tobey in the restaurant? A Oh, no, not in the restaurant.

Q Did you get any money from Mr. Tobey in the restaurant that day? A No, sir.

Q Let me ask you, Sam, was that the first time you ever met Tobey? A Yes, sir.

Qx Mr. Tobey testified that the first time he met you was in his apartment, as the door of his house was open.

A No.

Q Did you meet him at his apartment? A No.

Q Did you ever go to his house? A No, sir.

Q Were you ever in his house? A No, sir.

Q At no time were you ever at his house? A No; no, sir.

Q You don't know what his house looks like? A Yes, sir; Ross once pointed it out to me as we were passing there.

Q What did he point out to you? A He said: "That is the house."

Q Were you ever upstairs? A No, sir.

Q Did Ross ever take you upstairs? A No, sir.

Q Did you ever go yourself? A No, sir.

Q Did you ever meet Mr. Tobey's sister? A No, sir.

Q Did you ever meet his servant? A No, sir.

Q Did you ever meet Mr. Tobey upstairs in house, or in front of his house? A No, sir.

Q Now, after you went out of the restaurant, did you go in a cafe with Mr. Tobey? A No, sir. Ross told me to wait a few feet away from him, told me to wait on the other side, and Ross spoke to Tobey for about ten minutes, and when Ross -- then I seen Mr. Tobey, when he shook hands with Ross, he gave him -- I don't know what he gave him -- he shook hands like that (illustrating).

Q Did you subsequently find out whether ^{Tobey gave} Ross any money?

A Well, later.

Q How did you find that out? A Ross gave me \$50. He told me he got \$500 from that man. He didn't tell me what he was.

Q I am not asking you what he didn't tell you. I am trying to find out what he did tell you. Ross told you he got \$500 from Mr. Tobey? A Yes, sir.

Q Did you ask why he got it from him? A Yes, I asked him why he got it. He said --

Q Wait a moment. When was this talk with Mr. Ross?

A You mean after?

Q Yes, about getting \$500; when did you have this talk with Ross? A Do you mean at the time he got \$500?

Q Let me take you back again to the foot of Wall Street. After you came out of the restaurant you say you saw Mr. Ross and Mr. Tobey talking together? A Yes, sir.

Q And Mr. Tobey handed him something? A Yes, sir.

Q But at the time you didn't know what it was? A No.

Q Then they separated? A Yes, sir.

Q And then did Ross come over to you to meet you?

A Yes, sir.

Q And then you and Ross started to go where? A We went uptown.

Q Now, when did Ross tell you he got \$500 from Mr. Tobey? A When we reached uptown.

Q And up to that time had Ross said anything about Mr. Tobey to you? A No, he didn't tell me what he was.

Q Nor did he tell you anything about him? A Yes, sir; he told me about going to Texas, that he gave him \$500

to go to Texas, he asked me if I wanted to go with him.

THE COURT: Pardon me. Who asked you that?

THE WITNESS: Mr. Tobey told that to Ross and Ross asked me if I wanted to go to Texas.

Q Now, did you ask Ross why he wanted you to go to Texas? A Yes, sir.

Q And what did Ross say to you? A He asked me if I wanted to go to Texas. I said: "No, I am working him," at the time, and I didn't feel like going.

Q Did you ask why Ross wanted to go to Texas, why Tobey gave him \$500 to go to Texas with? A No. I didn't exactly ask him.

Q What did you say? What was said between you at the time respecting the \$500? A He gave me \$50 out of it.

Q And when he gave you the \$500, did you expect it? A No.

Q Did you expect any money out of Ross? A No.

Q Did you know you were going to get any? A No.

Q When he gave you the ~~some~~ \$50 what it was for?

A He said, "I got \$500 from that man."

Q Did you ask him how he got \$500 from that man?

A Yes, I asked him. He just said: "A friend of mine." He didn't exactly tell me; I don't remember.

Q And he didn't tell you anything at the time? A No, not as I remember.

Q All right. Now, did you get \$500 from Mr. Tobey at that time? A Did I get it?

Q Yes. A No.

Q Did Mr. Tobey give you any money then? A No.

Q Did you ever get \$500 from Mr. Tobey? A No, sir.

Q Mr. Tobey swore -- A Well, I will swear.

Q One moment. Mr. Tobey swore that on May 6th or thereabouts he handed you, he gave you, \$500; is that correct or not? A No, sir.

Q You mean to say that you didn't get it? A Positive-ly not.

Q And that statement is incorrect? A Incorrect; he gave it to Ross.

MR. DONAHUE: I object to what he said about Mr. Tobey's statement.

THE COURT: Go ahead.

Q Now, after meeting Mr. Tobey for the first time, when next did you see Tobey? A You mean after what -- I didn't get it.

Q This is the first time you met him, when you went with Ross? A Yes, sir.

Q When after that did you meet Tobey again? A About the beginning of September of 1930.

Q So that between May, 1919 and September, 1930, you didn't see Mr. Tobey? A No, sir.

Q That is true? A Positively.

Q Mr. Tobey said that he saw you ever two weeks for a year and a half. A No, sir.

Q Is that true? A No, sir.

Q Now, did you tell us all, Sam, about Ross said to you and you said to Ross, relative to this \$500 that Ross said he got from Mr. Tobey? A Well, I met Ross in September, 1920.

Q No, I mean have you told us everything about May, 1919.

THE COURT: Have you told us all the talk between yourself and Ross at the time that Ross, you say, gave you \$500 out of the \$500?

THE WITNESS: Yes, sir.

Q Did you know whether or not Ross went to Texas?

A I don't know, sir; I didn't see him.

Q You didn't see Ross between May, 1919 and September, 1920, nor did you see Tobey between the same time; is that right? A Yes, sir.

Q And you say you don't know whether or not Ross went to Texas? A I don't know, sir.

Q Now, when next did you meet Ross? A I met Ross in the beginning of September, 1920.

Q And when next did you see Tobey? A About the middle of September.

Q Where did you see Mr. Tobey that time? A I seen him with Ross at the foot of Wall Street.

Q You were in the company of Ross at that second meeting? A Yes, sir.

Q And how came you to go down there? A Well, Ross asked me if I remembered Mr. Tobey and said that Mr. Tobey wanted to see me, and I said: "What does he want to see me for?" He says: "I don't know; I met him, and he wanted you to come down with me."

Q Where was this talk had with Ross? A Somewhere on Wall Street.

Q Don't you understand my question?

THE COURT: Where were you and Ross at the time that Ross said, you say, that Tobey wanted to see you?

THE WITNESS: He was up at my house at the time.

Q Ross came to your house, is that right? A Yes, sir.

Q And then he told you that Tobey wanted to see you? A Yes, sir.

Q You had remembered Mr. Tobey, as having met him a year and a half before? A Yes, sir; I remembered his name.

Q Now, up to that time, did you hear from Ross or anyone else, anything concerning Tobey? A No, sir.

Q And what did you do after Ross told you this, told

you that Tobey wanted to see you? A Well, I asked him what did he want to see me for. He said: "I don't know; he just mentioned Brown; he wanted you to come down; he wanted me to bring you down; he wants to see you."

Q During those two periods of time, had you used the name of Brown before? A Ross mentioned Brown because Mr. Tobey told Ross to mention Brown. He just said: "Tell Brown I want to see him."

Q Did you go down with Ross? A Yes, sir. I went down the next day.

Q And where did you go to? A Ross called up and met him on Wall Street.

Q Were you present when Ross called up? A Yes, sir.

Q You went down again? A Yes, sir.

Q The foot of Wall Street, was it? A Yes, sir.

Q About the same place where you met Mr. Tobey before, about the same time? A Yes, sir; around that neighborhood.

Q Were you often in that neighborhood before then?

A No, sir.

Q Before you met Tobey had you occasion to go down in that section at all? A Well, possibly once or so -- I don't think so, no, sir.

Q And was Tobey there when you got there with Ross?

A Well, he made an appointment with him between Wall and William Street.

Q Wall and William? A Yes, sir.

Q And was Tobey there when you got there with Ross?

A Yes, sir; Tobey was there at the time.

Q Did you recognize Tobey as the man you had met?

A No, sir.

Q Well, did you walk over with Ross to him? A No, Ross walked over and Tobey called me over; Tobey asked Ross to call me over.

Q And then you went over? A I went over.

Q Now, what talk did you have with Mr. Tobey and what was said between you at that time? A We walked up towards the Battery. Mr. Tobey told me of all the trouble he had with Ross, admitted, and Tobey told me that he wanted me to go away -- Tobey asked me what I was doing now. He asked if I was working at the time. I said: "Yes." He asked me how much I was getting a week. I told him \$3 a day. He said: "I have got a proposition for you, which would make five times as much as you are getting now." I said: "What is the proposition?" He said: "Well," -- then he told me he had a lot of trouble with Ross and he said he would like to have me -- he said: "I will pay you a hundred dollars a week, if you take Ross out west." Well, the hundred dollars looked good to me.

Q What did you say? A Well, I said: "What do you want me to do with him?" He said: "Well, just keep him away so he is out of mischief in New York." I said: "What can I do with

him out of town?" "Well," he said, "just be with him and tell him not to tell no people what I am." So he made a proposition to give me a hundred dollars a week.

Q Now, did Tobey say anything about Ross costing too much? A Yes, sir.

Q Give us that. A Should I tell it plain what he said?

MR. DONAHUE: Yes, in plain English. Don't be afraid, please; go ahead.

Q I want you to tell me, as near as you can, what was said? Don't give me your conclusions. Don't tell me what you think he told you, but what he said to you.

THE COURT: You want the language repeated as near as you can?

MR. KRIEGER: Yes, your Honor.

THE COURT: Repeat the language, as nearly as you can.

THE WITNESS: ~~XX~~ He said to me: "I have a lot of trouble with Ross." He said: "I had a lot of people down here," and he said, "I cannot stand it any longer." He says: "I will give you a hundred dollars a week if you keep him away -- if you keep him away --" he said, "because I admit what I have done to Ross," and he said "but we all have our weakness." Then he admitted what he done -- Ross asked him --

MR. DONAHUE: Tell us all conversation, in words.

THE COURT: I wish you would have the kindness to tell us what the words were.

MR. DONAHUE: Don't be bashful.

THE WITNESS: He told me, -- he just admitted what he done to Ross. He told me practically, in English, that he went down on --

Q Don't whisper it. A That he went down on Ross. He says: "I know I am a coward. I don't know what to do, either jump into the river or commit suicide." He says: "I don't know what to do; it is driving me crazy." He said: "I think there is one think you can save me, Brown, if I give you a hundred dollars, -- please tell Ross to keep away, and I will give you a hundred dollars a week."

Q Now, did he tell you where he wanted you to take Ross? A He said: "Take him some place out west."

Q Did he tell you where? A Well, I mentioned Cleveland. He said: "Yes, that is all right."

Q Had you ever been in Cleveland? A No.

Q Had you ever been away from Home? A No, sir.

Q How is it you mentioned Cleveland? A Well, he said "west", so I thought Cleveland was a western town.

Q You thought Cleveland was west? A Yes, sir.

Q And when you mentioned Cleveland, what did Mr. Tobey say? A Tobey said: "All right, that will be fine."

Q Well, did you agree right then and there to go away with Ross? A Well, no, not exactly.

Q Well, when he made that first proposition to you on this day in September, what did you say to him? A At the time he sent us to Cleveland?

Q No, at the time of this first proposition, when he said to you: "Take Ross away; go out west, and I will pay you a hundred dollars a week. " What did you say to that? A I said I had never been out of town before; it will be hard for me to go away; I have always been with my folks, and I wouldn't want to leave my folks. He said: "Well, I will pay you five times as much. " He said: "Well, \$100 a week will, I think, be fine," he said.

Q What did you say to him about the proposition? A I told him the proposition looked good, and he said: "Well, any time --"

Q Dreyfus, just pay attention. Did you agree right then and there to go away and take up his proposition, or was it later on? A Well, no, I told him I would let him know by the next day.

Q Well, then, you didn't take up the proposition that same moment, did you? A No, sir; I spoke it over with my folks.

Q You went back and you said you would let him know? A Yes, sir; I would let him know the next day.

Q In the meantime did you talk with Ross? A Yes, sir.

Q Did you talk with Ross about what Tobey had said to you? A Yes, sir; about us going away.

Q Now, did you have a talk with Ross as to why Ross -- I will withdraw that. Then did you know what Ross was saying to Mr. Tobey? A Oh, Ross told me what he was at the time.

Q That is what I want to know. A He told me everything before.

Q You went down to meet Mr. Tobey the second time; is that correct? A Yes, sir.

Q So that when you went down to meet Mr. Tobey this second time, Ross had already told you things that had gone on between him and Tobey? A Yes, sir; he told me everything that was going on.

Q Ross told you that? A Yes, sir.

Q You believed Ross? A Yes, sir.

Q Now, after this second meeting with Tobey, when this proposition was made to you, when next did you see him?

A I seen Ross the next day, and I told him I would consider it; I would let him know, if I would go to Cleveland or not. I told Ross, "Well, a hundred dollars looks good to me."

Q And you finally decided to take up Mr. Tobey's proposition? A Yes, sir.

Q And when did you go down to meet Mr. Tobey again?

A The next day.

Q With Ross? A Yes, sir.

Q And where did you meet Mr. Tobey? A At Battery Park.

Q Did you call up Tobey? A No, sir; Ross called him up.

Q Sure about that? A Positive.

Q Ross told you he made an appointment with Mr. Tobey at the Battery? A At the Battery.

Q You met him? A Yes, sir.

Q What did you say to Mr. Tobey? What was that conversation, when you met him at Battery Park? A Well, he asked me if I had decided to go. I said: "Well, I spoke it over with my folks," and I was willing.

Q You said that you were willing to go? A Well, I hesitated and then --

Q I know, but you said you were willing to go -- I don't want every emotion. A Yes, sir; I was willing to go at the time.

Q Well, did Tobey ask you whether you were willing to start right away? A Yes, sir; I spoke it over with my folks at the time, that I was ready to start at the time.

Q Well, now, you didn't start until November? A Until the beginning of November.

Q And what happened between September and November? Why didn't you go right away? A Ross asked me to go down to take a walk with him, downtown; he didn't tell me who he was going to see, and he called Mr. Tobey up; he met Mr. Tobey and

Tobey came down with some man -- I don't know who he is, and this man --

Q Now, this man that you speak of, did you see him in court during this trial? A Now?

Q No. Did you see him in court during this trial?

A Yes, sir.

Q And was he a witness on the stand? A Yes, sir.

Q Was that the attorney for Mr. Tobey that you mean?

MR. DONAHUE: I object to that. How could he know?

THE COURT: He may point him out in the courtroom.

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

Q Point him out? A That man (pointing).

Q Which man? A Right there (indicating).

MR. DONAHUE: Stand up, Mr. Hann. He means you; no doubt about that.

Q And you met this man with Mr. Tobey while you were with Ross? A Yes, sir.

Q You remember when that was? A About September, 1920.

Q It was after you saw Tobey, after this proposition to take Ross away was made? A No. I didn't quite get that?

Q You met Tobey the second time. When he made this proposition to take Ross away? A Yes.

Q After that, and between the time you went to Cleveland, you met Mr. Hann? A Yes, sir; that is in September.

THE COURT: According to this witness the time that

Tobey made the proposition to take Boss away was the first time that the witness had seen Tobey?

MR. KRIEGER: I think the second time.

THE COURT: The first time was down at the Battery?

MR. KRIEGER: Wall and William.

THE COURT: That was in May of 1919?

MR. KRIEGER: That is right.

THE COURT: And then the second time, as I understand it, was at Wall and William?

MR. KRIEGER: Yes, your Honor.

THE COURT: In September of 1920.

MR. KRIEGER: Yes, your Honor.

THE COURT: And then there was a third time, the third time that he is talking about now.

MR. KRIEGER: When he met Tobey with Mr. Hannis the third time.

Q That is correct, is it? A The third time he sent me away to Cleveland.

Q The third time he sent you away to Cleveland?

A The second time I met him in September; September, 1920 was the second time I met him.

Q And was that the time he told you he wanted you to go to Cleveland? A That was the time.

Q Just get it clear. Take your time and figure it out

correctly. We want the correct time, if we can have it.

When Ross came up to your house and told you he wanted you to meet Tobey, that was in September? A Yes, sir.

Q The early part of September? A Yes, sir.

Q Then you went down to see Mr. Tobey, that was the second time? A Up at my house was the second time.

Q You didn't meet him at your house? A No, I met Ross.

Q And then you went with Ross down to meet Tobey, that was the second time you ever met Tobey; is that correct?

A Yes, sir.

Q And at that time Tobey, as I understand you, told you that he wanted you to take Ross away? A Yes, sir; take him away to Cleveland.

Q After that time you met Mr. Tobey with Mr. Hann, didn't you? A Yes, sir.

Q And that was the third time you met Tobey? A I met him with Ross.

Q And with Hann? A With Hann.

Q You and Ross met Tobey and Hann? A Yes, sir.

Q Now, where did you meet him? A I met him right on Wall Street.

Q Now, will you state what you did in this little company there, and what was said between the parties? A He asked me --

MR. DONAHUE: Who?

THE WITNESS: Hann. What I meant by coming down and bothering this man. I admitted -- he admitted to me --

MR. DONAHUE: I ask him to confine himself to the conversation.

Q Just tell me how you came to meet Mr. Hann in the first place?

MR. DONAHUE: He has already given us some of it.

THE COURT: Yes, continue.

Q Just tell us what he said, not what he admitted and you admitted. Tell us what he said. A What Hann said?

Q What Hann said, what you said and what Tobey said.

THE COURT: Repeat the talk to these twelve men.

A Hann told me that he was a detective --

MR. DONAHUE: I ask him to go on from where he started before. He said Hann said, "What do you mean?" and then he stopped.

THE WITNESS: I just can't remember the time.

THE COURT: Pardon me, Mr. Witness. Hann said what?

THE WITNESS: Hann told me he was a detective. He said he wants me and Ross arrested if I bother this man. Ross brought me down to him and finally I asked him to show me his badge, and he finally admitted he was a lawyer. I said: "Well, if you want to have me arrested, there is an officer, tell the officer." He says, "Well, we don't

want to bring it out; we don't want to bring it out. "

He says: "We will let you go." Then he left and Tobey spoke to me and Ross.

Q Wait a minute. Did you ask Hann why he wanted you arrested? A Yes, sir; I asked him: "What do you want me arrested for?" He said: "Why don't Ross keep away from him?" I said: "Why, I don't know the man." He said: "Well, why don't you keep away?" That is all I remember.

Q Did you tell Hann anything about the proposition that Tobey had made to you, yes or no? A I don't remember.

Q You don't remember whether you did or not? A No.

Q Now, was Hann talking to you or was he talking to Ross? A Well, he was talking to both of us.

Q And after this talk, what did Hann do? A Well, Hann just walked away, that is, I told him to tell the officer, and he didn't pay no attention and he walked away, and then Tobey was left with me and Ross.

Q What did you speak with Tobey about then? A About going away.

Q Well, did you ask him why he had Hann there and threatened you, or something? A He just told me he was a sort of a friend of his and had come down to the building at the time and he just told me that we should pay no attention to him; that is all.

Q What did you speak with Tobey about then? A I asked him

why that man came over to us.

Q You have stated that after Tobey told you to pay no attention to him. What did you do, where did you go?

A Well, he made an agreement to meet us again?

Q Where? A The next day at the Battery.

Q Did he give you any money? A I don't remember.

Q You don't remember whether you got any money at that time or not? A No, sir.

Q When next did you see Mr. Tobey? A He told Ross that, to meet us the next day, the following day.

Q Had you demanded, up to that time, any money from Mr. Tobey? A No, sir.

Q Did you, in any way, threaten him that you would expose him to disgrace, or as a degenerate? A No.

Q Did you say that if he didn't give you money you would expose him to his family and associates? A No, sir.

Q After this incident, did you meet Tobey again?

A You mean when we went to Cleveland?

Q You said that Tobey made an appointment to meet you the next day.

Q Did you meet him again? A Yes, sir.

Q When was it? A I met him with Ross the following day.

Q What took place between you then? A Well, he just wanted us to go away.

Q Well, you knew he expected you to go away? A Yes, sir; he asked me.

Q And you talked about going away? A Yes, sir.

Q And did he ask you when you expected to go away?

A I told him I am not ready at present. I told him I would be ready about the beginning of November, or so.

Q You told him two or three weeks, whatever it was, six weeks, that you would be ready? A I told him about a month later.

Q Now, between this time and November, 1920, how often did you see Mr. Tobey? A Well, only once -- when I happened to be with Ross and Hann.

Q I am talking now of between that time and before you went away to Cleveland, you saw Mr. Tobey, didn't you?

A Before I went to Cleveland?

Q Yes. A Once with Ross at the foot of the Battery, with Ross?

Q And with Hann? A Yes, sir.

Q Without Hann? A Yes, sir; Ross with Tobey.

Q At that time was any money given to you? A No, sir.

Q Did you get any money at all from Mr. Tobey, directly from him? A No, sir.

Q Did Mr. Ross get any money, that you know of, or saw?

A The \$500 I remember.

Q That was a year and a half previously. A Yes, sir.

Q But, in your presence, did Ross get any other money?

A I don't know.

Q Did Ross tell you he got any money? A I didn't see Ross in that year and a half.

Q I am not speaking of that year and a half; I am talking of between the time you saw him the second time, the time you went away in November; did Ross tell you he was getting any money from Tobey? A Oh, yes, sir; I think he did.

Q He did tell you? A I think he did.

Q When, before you went to Cleveland, did you see Tobey?

A (No answer).

Q The last time you saw Tobey, just before you went to Cleveland? A Oh, that was in the beginning of November.

THE COURT: How long before you left for Cleveland was it that you last saw Tobey? How much time passed between the time when you last saw Tobey and the day when you started for Cleveland?

THE WITNESS: A few days; that was the beginning of November; we went away on November the 8th, I believe.

Q Was it one or two days? A About two days.

Q And then did you talk about -- did you tell Mr. Tobey you were ready to go away? A He asked me if I was ready, and I said yes.

Q And what did he say to you? A He said: "I will give you a hundred dollars a week.

Q He had told you that before? A Yes, sir.

Q Now, tell us everything that happened when you told him you were ready to go away to Cleveland? A He said:

"Any time you don't feel just right out there, any time you feel like coming back, " he said, "just send me a telegram."

Q What did he say with respect to what you should do, what he expected you to do? A He wanted, in fact, Ross to go in business out there.

Q And what did he tell you that he wanted you to do, Sam? A Well, he just wanted me to be a sort of a companion to him.

Q For what purpose? A Just a sort of a companion to keep him away.

Q To keep him away? A Yes, sir.

Q Did he give you any money at the time? A Oh, yes; he made an agreement to give \$300 a week.

Q Now, what was said about that, that is what I am trying to get at? What was said about it? A Well, he gave a hundred dollars --

Q What was said about the \$300 a week? How did he come to say he would give you \$300 a week? A Well, he said: "I will give you \$300 a week, and I think that will start you off in business," to Ross, and he said: "If you are just a sort of a companion, out of that \$300, Ross will give you \$100 a

week."

Q That is what he said in your presence? A Yes, sir.

Q And then did he give over any money, either to you or Ross? A Yes, sir.

Q To whom did he give it? A He gave me \$100.

Q Did he give it to you? A Yes, sir.

Q Did he give any money to Ross? A No, sir.

Q What did he tell you to do with that \$100? A He said: "All I have got on me is \$100." He says: "Here is a hundred dollars and I will wire you \$200 the following week, if you will wire me where you are stopping at."

Q Did he give you any money for railroad fare? A That is the hundred dollars.

Q Did he say anything about it? A He told us to get our railroad fare and a few little articles.

Q Did you have any other money besides that hundred dollars? A No.

Q Did you buy your railroad tickets out of that money? A Yes, sir; for both of us.

Q Did you buy little odds and ends by way of personal comfort out of that hundred dollars? A Yes, sir.

Q How much money did you have left of that when you got to Cleveland -- I withdraw that question. Did you go to Cleveland? A Yes, sir.

Q Where did you go? Do you remember the date? A Yes,

sir, I remember.

Q What date was it? A November the 6th -- November 7th.

Q How much money did you have left out of that hundred when you got to Cleveland, approximately? A About \$30.

Q You had never been in Cleveland before? A No, sir.

Q Do you know whether Ross had been in Cleveland?

A No, sir.

Q You went to a hotel?-- A To the Statler.

Q Cleveland? A Yes, sir.

Q And you registered there? A Yes, sir.

Q Under what name did you register? A Mr. Dreyfus.

Q What name did your companion register under?

A Nathan Rosenschweig, his right name.

Q Rosenschweig, or Nat Ross? If you are not sure, please say so? A Well, he used to cut it short; he used to say, "Ross".

Q Do you know under what name he was known in the Navy?

A As Ross, he told me.

Q In other words, he used that, his correct name, not Ross, so far as you know? A Yes, sir.

Q You registered with Ross at the Hotel Statler? A Yes, sir.

Q What was the first thing you did when you got to the Hotel Statler, one of the first things? A The first thing we

done was to wire Mr. Tobey a telegram stating that we were at the Hotel Statler, as he told us to do.

Q Did Mr. Tobey ask you to wire him as soon as you got to Cleveland? A Yes, sir.

Q Who sent that wire? A The first wire?

Q Yes? A Ross did.

Q You knew that he sent it? A Yes, sir; I was with him.

Q And he sent the wire, this telegram, marked in Evidence People's Exhibit 1? Do you recall that as being the telegram sent to Mr. Tobey?

MR. DONAHUE: How could he tell. We admit it is.

Q Were you there with Ross when it was sent? A Yes, sir.

Q In the telegraph office? A Yes, sir; always with him.

Q That is the telegram in which you told Mr. Tobey that you had arrived O.K.? A Yes, sir.

Q Signed by Ross? A Yes, sir.

Q And after sending that telegram, did you hear from Tobey? A Yes, sir; he sent us a telegram.

Q What was the next thing, after you sent this telegram; how did you hear from him, in what form? A He didn't write anything at the first time we were there; he just sent \$300.

Q Was it \$300 he sent the first time? A \$200 the first week.

MR. DONAHUE: Mr. Krieger; you ought to take the stand. You would make a good witness.

MR. KRIEGER: Pardon me.

(Mr. Krieger calls for a Mr. Williams whom he said he thought was out in the corridor. No response to the call).

MR. KRIEGER: Will you concede, Mr. Donahue, --

MR. DONAHUE: I will concede any amount of money was sent to these fellows at that time.

MR. KRIEGER: I didn't ask that, Mr. Donahue. You ought to take the stand, yourself.

Q Do you remember what date you received your first remittance from Mr. Tobey?

MR. DONAHUE: There is no question about that. We admit they got it, whatever it was.

Q Do you remember the date? A The first time?

Q Yes. A About the 9th.

Q The 8th or 9th? A The 8th was on a Monday?

Q And you received how much from Mr. Tobey? A The first time?

Q Yes? A \$200.

Q I show you this money transfer (displaying same) and ask you if you recognize -- I will withdraw that question.

Q Now, after you received the \$200, that was the balance of the \$300 that Mr. Tobey said he would send you?

A Yes, sir.

Q When next did you hear from Mr. Tobey? A The following Monday.

Q These money transfers that you received, were they made out to you or to Ross? A To Ross.

Q Were any of these money transfers made out to you? A No, sir.

Q You are quite positive of that? A Positive.

Q And out of the \$200 which was received on this date, did you receive any part of it? A Yes, sir.

Q How much did you receive? A I think \$50.

Q Why didn't you ask him for the hundred dollars, that Mr. Tobey said Ross should give you? A He told me that he got \$200, and that is why he gave me fifty, but he said the following weeks he will give me a hundred a week.

Q And you paid your expenses in the hotel? A Yes, sir.

Q You paid your expenses in Cleveland, to eat and drink, et cetera? A Yes, sir.

Q Did you look for any work for Ross there, or did you and Ross look for anything to do while you were out there?

A Well, no. We at least -- we tried to.

Q What is that? A We tried to look for work.

MR. DONAHUE: What does that mean? What was the answer, Mr. Stenographer?

(Answer read by the stenographer). A (continuing) But Mr. Tobey told us before we went away: "I will give you a hundred dollars a week, and you will not have to do anything out there," so I didn't care to look for any.

Q How long were you in Cleveland, altogether? A About three and a half weeks.

Q During the second week did you hear from Mr. Tobey -- I withdraw that question for the moment. After you received the \$200, did you communicate with Mr. Tobey, or did he communicate with you in some way? A Well, Ross wrote him a letter, to let him know where he is.

Q Who wrote the letter? A Ross did.

Q This letter, People's Exhibit No. 9, is that the letter to which you refer? A Yes, sir.

Q And this letter, did you dictate this letter, or did Ross write this of his own accord? A Ross wrote it.

Q Did you sign your name to it? A Yes, sir.

Q Why did you sign your name to it? A Just to let him know I was with him.

Q After this letter was written, did you hear again from Tobey? A Well, he didn't answer the letter, but he sent us a postal telegram with the money, with the \$300.

Q Now, before you got the second telegram, and before this letter was -- just before this letter was written, did you receive any word from Mr. Tobey? A No.

Q You got a telegram from Mr. Tobey, didn't you -- I withdraw that question. Do you know whether Ross got a telegram from Mr. Tobey? A Yes, Ross did.

Q Before this letter was written?

MR. DONAHUE: How can it be before?

MR. KRIEGER: Yes, it was before.

A I don't remember.

Q Well, I show you this, People's Exhibit No. 5, and ask you if that will refresh your recollection as to whether or not you received this before that letter was written?

A Yes, sir; I remember (reading same). Mr. Tobey wants to know --

MR. DONAHUE: What letter is he referring to?

MR. KRIEGER: I am just showing him People's Exhibit 9. I withdraw that statement for the moment.

Q Now, did you hear from Mr. Tobey, at all, before this letter was written? A I don't remember that.

Q Well, did you receive a telegram? A Yes, sir.

Q Didn't Ross receive a telegram before this letter, People's Exhibit No. 9 was written?

MR. DONAHUE: We admit that, if it will hurry it.

We admit it.

MR. KRIEGER: All right.

Q And it was in response to a telegram that Ross received that the letter was written; isn't that so? A Yes, sir.

Q After that, when next did you hear from Mr. Tobey?

A He sent Ross \$300 the following --

Q That was the second week? A The second week; that was the 15th.

Q And after that? A Seven days later.

Q You received -- A (interrupting) \$300.

Q Another \$300? A To Ross.

Q Who got the money? A Ross did.

Q It was made to the order of Ross? A Yes.

Q And after that? A \$300.

Q To the order of Ross? A Yes, sir.

Q And that was the last \$300? A Yes, sir.

Q Now, after you received the last 300, of which you spoke, that was about November 29th, ~~and~~ would it not be about that time, towards the end of November? A Yes, sir.

Q What happened between you and Ross in Cleveland?

A Well, Ross disagreed -- he didn't care to be out there, and I didn't care to be out there; I was away from home and I never was away from home before.

Q Now, just tell us what happened up there in Cleveland between you and Ross, go ahead, Mr. Dreyfus? A He seen that it was no --

MR. DONAHUE: I have no objection to what happened, if he will only tell us it in a straightforward way. Was it a fight, or what? Tell us what it was?

MR. KRIEGER: All right, I will withdraw the question.

Q After this last remittance, did you again communicate with Mr. Tobey, or who communicated with Mr. Tobey?

A I didn't.

Q Didn't you send Mr. Tobey a telegram?

MR. DONAHUE: I object to that. He is leading, your Honor.

A He asked me before I went to Cleveland --

Q Mr. Dreyfus, just confine yourself to my question. I want to know from you, after you received this last remittance that was ~~sent by~~ sent by Tobey to Ross, what next did you do? A Well, I wanted to go back.

Q Well, what did you do? A I sent Tobey a telegram stating, -- to come back.

Q And this is the telegram you sent, People's Exhibit No. 4? A (After examining) Yes, sir.

Q This was the first time that you sent a telegram under your own name to Mr. Tobey? A Yes, sir.

Q Had you ever other than that letter to which you had signed your name communicated, in your name, with Tobey?

A You mean sent him any letters?

Q In a letter or a telegram or any other communication? A No, sir.

Q Now, after you had sent the telegram, what did you

do? A Well, we departed for New York.

Q You left Cleveland? A We left Cleveland.

Q When did you leave Cleveland? A The latter part of November.

Q Was it the same day or the day after you sent the telegram, do you know? A The same day -- on a Friday.

Q And you got to New York when? A Monday morning -- no, Saturday morning.

Q Saturday morning? A Yes, sir.

Q What did you do when you got to New York, were you with Ross? A Yes, sir.

Q What did you do when you got here? A We called him up at his office? A I believe Ross called him up.

Q Were you there? A Yes, sir.

Q What did he say on the telephone?

MR. DONAHUE: How can he tell?

THE COURT: He can say what Ross said.

Q What did Ross say on the telephone? A Ross told me that he would meet him, Ross wanted to meet him that same day, Saturday, but Tobey said --

THE COURT: He cannot testify to that.

Q Did you talk to Mr. Tobey on that day yourself?

A We met him on Monday.

Q Did you talk to Tobey, yes or no, on that day, yourself? A No, sir.

Q You didn't call him up, did you? A No, sir.

Q And on Monday where did you see Tobey? A He made an appointment to meet us on 44th Street and First Avenue.

Q Who told you that? A Ross told me; Ross told me that we are to meet him at 44th Street and First Avenue.

Q As a result of a talk you had with Ross, did you go with Ross to 44th Street and First Avenue? A Yes, sir.

Q What time of the day was it? A About four o'clock.

Q Did you ever call up Mr. Tobey at his home? A No, sir.

Q Now, at four o'clock you and Ross were at the corner of 44th Street and First Avenue? A Yes, sir.

Q Did you see Tobey there? A Yes, sir.

Q You recognized him, of course? A Yes, sir.

Q Did he shake hands with you? A Yes, sir; he was glad to see us.

Q Did you have a talk? A Yes, sir.

Q What did you say, what did Tobey say, and what did Ross say? A I told him -- he said: "What is the idea of your coming back?" He said: "Didn't you like it out there?" I said: "I was kind of lonesome; I was never away from New York," and "Ross ~~dis~~ disagreed, and we then come back, as you said; you told me before I went to Cleveland that I should send

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you a telegram if I didn't like the job," and therefore I sent him a telegram.

Q What did you say about continuing under that arrangement, or didn't you say anything about it?

THE COURT: Do not lead the witness. We want him to tell us the talk.

A Yes, sir; he said to me, "Why did youse come back?" I says: "I would rather be here in New York, and I would rather work for what I am getting; I am kind of lonesome out there; I didn't feel just right athome out there in Cleveland." He says: "All right, that satisfies me, that suits me, but why don't you two fellows go further west, to Chicago or California?" "Well, " I says, "no, I would rather not; it suits me where I am here," and I would not agree to have any more to do with him. Then he asked me -- first he asked Ross if he had some money. Then he turned to me and said: "Have you any money?" I said: "Yes, I have got a few dollars of the money you sent me out to Cleveland." He said: "Well, take this for spending money, and in case you want to go out west, let me know." I said: "All right. I have no objections."

Q Just what did he do? A He shook hands with me. He said: "Here, take these few dollars, spending money. In case you want to go away you can just let me know."

Q And did he hand over anything to you? A Yes, sir; he shook hands with me, and when I opened my hand, I seen some

money, and as I looked at it, two officers grabbed me.
That is all I know.

Q Now, at that time, Dreyfus, did you say anything to Tobey about accusing him of being a degenerate? A No, sir.

Q Or as being guilty of the crime of sodomy? A No, sir.

Q Did you ever hear the term "sodomy" before this trial? A Sir?

Q Did you ever hear the word "sodomy" before this trial? A Well, yes, sir; I have heard it. I know what it means.

Q Did you ever use the word, sodomy? A No, sir.

Q And did you tell him that you would accuse him or expose him as being guilty of the crime of sodomy? A No, sir.

Q Did you threaten him or did you tell him that?
A No, sir; I never did.

Q Did you make any threats to him at all? A No, sir.

Q Did you ever say that you would go to the banking institutions and expose him? A No, sir; I didn't even know how to say those words.

Q Did you ever say that you would go to his associates in his office and expose him? A No, sir.

Q Did you ever say you would go to his family, to his mother and sister? A I didn't even know his folks.

Q Did you ever demand money from him under threat that you would expose him ^{for} ~~in~~ some crime? A No, sir.

Q Now, when the detectives got hold of you, -- you mean Officers Russo and Cunniff? A Yes, sir.

Q Which one got hold of you? Who of the two got hold of you? A I believe Russo did.

Q Officer Russo? A Yes, sir.

Q And what was the first thing Officer Russo did?

A Well, he told us we were under arrest.

Q Yes? A I asked him what for? He said: "You tell that to the District Attorney." "Well," I said, "where are you bringing me? I have not done anything." He said: "Well, tell it to the District Attorney." I said: "Well, all right, I will go." I didn't know where I was going; he was going to take me to the subway, so I called a cab.

Q Well, did --

MR. DONAHUE: Don't lead him.

Q Did he put handcuffs on you?

MR. DONAHUE: I object to that.

THE COURT: Get him to tell you the whole story.

MR. KRIEGER: I submit that the detective testified that he handcuffed him and there cannot be possibly any error about that.

THE COURT: You want this witness to tell you of the transaction?

MR. KRIEGER: Your Honor recognizes that the witness is not of the higher --

THE COURT: you may ask him a leading question, the moment you have exhausted his recollection. First let him give the whole account, as far as he can give it.

Q After the officer took you, he told you you were under arrest, and ~~xxxx~~ what else did he do? A Well, at the time he arrested us, he put the handcuffs on us.

Q Before he put the handcuffs on you, did he do anything? A Well, he hit me.

Q With reference to the money, did he do anything? A Oh, he took the money away from me.

Q Where did you have the money? A In my hand.

Q Had you put the money in your pocket? A No, sir.

Q And he took it out of your hand? A Yes, sir, he did; he said: "Give me that money."

Q Did you know at that time how much money there was in that roll or bundle? A No; I didn't know what he gave me.

Q After he took the money out of your hand, what did he do? A He put the handcuffs on me and he just ^{told} me that we were under arrest.

Q And where did you go? A We went to the District Attorney's Office.

Q When you say "we", who do you mean? A Me and Ross.

Q Where was Tobey at that time? A Tobey ran away; I

know he started to run. When he grabbed me, Tobey ran.

I think I saw him stop a cab on the corner of 44th Street.

Q And did you say anything to Detective Russo with reference to Mr. Tobey? A Yes, sir.

Q What did you say? A I said: "What is he having me arrested for? He sent me to Cleveland." I said: "If you are going to arrest me, why don't you arrest that man?"

Q What detective was that? A He said: "We didn't want him; we want you fellows."

Q You were taken then to the District Attorney's Office?
A Yes.

Q Did you have a talk with Mr. Russo during the trip downtown? A Yes, sir.

Q What was said? A Russo asked me what it was all about. Russo said: "Who is that man?" I said: "Well," I said: "he is a degenerate." He said "He is?" "Yes." "Why," I said, "yes". Then Ross told him that. Shall I tell it?

THE COURT: Yes, go ahead.

THE WITNESS: "He went down on me; he went down on me for four months."

Q Ross told this to the detectives? A Yes.

MR. DONAHUE: These were not the words, were they?

THE WITNESS: Those were the words.

Q Go ahead. A For four months he says he has -- Eh? He say: "Well, you just tell all you know." That is all I

remember in the cab.

Q Where was Detective Cunniff at that time? A Cunniff was alongside of Ross.

Q He had Ross and Russo had you? A Yes, sir. Russo had me.

Q Now, when you got down to the District Attorney's Office, who brought you into Mr. Talley's room? A Russo did; I believe it was Russo.

Q And where was Cunniff? A Cunniff was out with Ross, outside.

Q During the time that you were in Mr. Talley's room, was Cunniff there? A No; never was outside with Ross; Russo brought me in.

Q Russo brought you in? A Yes, sir.

Q Who was in there at the time you were being questioned? A Markey, Mr. Markey, and that stenographer.

Q Were any of the officers present? A No, sir.

Q None? A No.

Q Do you know whether any officers were present when Ross was in? A I was not in with Ross.

Q You were there alone? A Alone.

Q When you were brought into Mr. Talley's room, please tell the Court and jury just what took place; who talked to you first? A Russo. Russo said: "We got a shake-down fellow" -- I know what he meant by that.

Q He said that to whom? A He said that to Talley.

Q To Judge Talley? A Yes, sir.

Q "We got a shake-down fellow". Do I understand that is what you said? A Yes, sir; that is what he said.

Q What did Judge Talley say? A Well, Talley said: "Where did this Mr. Tobey send you fellows?" I said --

Q Judge Talley began questioning you? A He asked me different questions. I don't remember what I told him.

Q What did he say to you before he began questioning you about your relationship with Mr. Tobey; anything?

A Before?

Q What was said to you before Judge Talley, then Assistant District Attorney Talley, began to question you about your relations with Tobey? A Oh, he asked me how long I knew him.

Q Now, before he began questioning you, did he --

MR. DONAHUE: Don't lead him.

Q Was there anything said to you?

THE COURT: What was the first thing that was said to you when you went into the room? A. Russo said to me: "You tell; you know all that was going on in Cleveland." He said: "If you don't, I will break your skull."

Q Now, where was this said? A In Judge Talley's office.

Q When he brought you in? A Yes, sir.

Q And did you see any instrument lying around there?

MR. DONAHUE: I object to this leading. We have had it all the afternoon. It is time to get down to real, legitimate proof.

Q Will you please tell us, Dreyfus, as near as you can, everything that took place, what was said from the moment that Russo brought you into Judge Talley's office until you got out? A Well, Judge Talley asked me, how old I was, and a few questions, and where I worked, and how long I had known Mr. Tobey.

Q He asked you a number of questions? A Yes, sir.

Q And did he call in a stenographer? A Yes, sir; he did.

Q Did he tell you -- were you told that anything you would say, in answer to his questions, might be used against you at your trial?

MR. DONAHUE: I object to that as incompetent, irrelevant and immaterial. He didn't have to make any statement of that kind.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q Were you told that you were then under arrest?

A Yes, sir.

Q Did you understand yourself as being arrested?

A Sure, when?

Q Wait a moment. Just answer my questions. Did you then believe yourself -- that you were to be arrested, charged with the crime for which you are now on trial? A No, sir.

Q Did you understand my question? A(No answer).

Q Wait until I get through, and then answer. Do you understand me? A I understand you.

Q Did you believe at that time that you were arrested and charged with the same crime that you are now being tried for? A No, I didn't know it, --

Q You don't know what? A I don't know -- I heard Judge Talley say: "Extortion charge".

Q Well, did you know you were under arrest? A Yes, sir; I knew I was under arrest.

Q Well, did you know you were under arrest, charged with extortion? A Why, yes, sir, after he told me; he told me at the time I was arrested; it was an extortion charge; yes, sir.

Q Why did you talk in Judge Talley's room?

MR. DONAHUE: I object to that.

THE COURT: I will allow it.

A(continued). He asked me some questions; I don't remember quite what they were.

THE COURT: Read the last few questions.

(The stenographer did so).

Q I didn't ask you that; why did you talk, why did you answer? A I asked them would they approach me in here for -- he said: "Your crime is notorious," and then Russo, why then Russo said he wanted me out of town in 24 hours. He said: "If I don't get you out of town in 24 hours, we will call the ambulance and send him away."

Q Well, did you take all your own -- no voluntary --

MR. DONAHUE: I object to these leading questions, before this case is completed.

THE COURT: Yes, sustained. I think that is a matter to be determined from the evidence.

MR. KRIEGER: Yes, your Honor.

Q Did you have any feeling of fear at the time you were asked --

MR. DONAHUE: I object to that before it comes.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q You were alone in the room other than at this door they were questioning someone, and those who were representing the District Attorney? A I was alone in that room.

Q And were you told that you had a right to a lawyer or counsel? A --

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q Did anybody tell you to get a lawyer? A No, sir.

MR. DONAHUE: I object and ask the counsel for the defendant, by admonishing, not asking questions.

THE COURT: Sustained.

Q Well, now, after this talk with District Attorney Talley, and from your questions and answers, what were you told to do and by whom? A I don't quite get that.

Q I will try to re-frame it differently. After you got through the questions and answers, what were you told to do? A I was told to get out of town.

Q Who told you that? A Detective Russo.

Q Did Judge Talley say anything to you about it? A I don't remember.

Q Speak up? A I don't remember.

Q You were let go? A Yes, sir.

MR. DONAHUE: I ask that this witness be allowed to answer questions.

THE COURT: Yes.

MR. KRIEGER: I think there is no particular objection to that. It is conceded.

MR. DONAHUE: He has been doing it all afternoon, your Honor. That is my only objection, so far. I am getting tired of it.

THE COURT: Go ahead, now.

Q Now, Sam, did you ever tell anybody -- I will withdraw that question. After this, after you got out of Judge Talley's office, how long after that were you arrested again? A I don't remember.

Q Have you any idea? A I should judge a few weeks.

Q A few weeks after that? A I think so.

MR. KRIEGER: Your witness.

THE COURT: You may cross examine him in the morning, Mr. Donahue.

Gentlemen of the Jury: You are admonished not to converse amongst yourselves on any subject connected with this trial, form or express any opinion thereon, until the same is submitted to you.

(The Court then adjourned until to-morrow morning at 10:30 o'clock).

(Whereupon an adjournment was taken until Wednesday, June 29th, 1921, at 10:30 a.m.)

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THE PEOPLE OF THE STATE OF NEW YORK
--against--
SAM DREYFUS, otherwise known as
JOE BROWN.

(TRIAL CONTINUED) New York, June 29, 1921.

COURT and COUNSEL as before.

S A M D R E Y F U S, resumes the stand, and testifies as follows:

CROSS-EXAMINATION BY MR. DONAHUE:

Q Dreyfus, you said yesterday that you were 22 years of age; is that right? A Yes, sir.

Q You said also that at the age of thirteen you started working, selling papers? A Yes, sir.

Q And you worked until you were fifteen; is that right? A Yes, sir.

Q And you said then you went to work at the New England Braid Company, at the age of fifteen years, and you worked there for two years; is that right? A Yes, sir.

Q You are sure of that? A Positive.

Q No question in your mind about that? A Sure.

Q You are positive you worked for the New England Braid Company for two years? A Yes, sir.

Q And what two years was that? (No answer, after some hesitation).

Q Cannot you tell us what two years you worked for the New England Braid Company? (No answer).

Q When did you work for them? Tell us that, when you

started and when you left? A I started when I was about fifteen.

Q When you were what? A When I was fifteen years old.

Q When was that? (No answer).

Q Well, we will say you started when you were fifteen and you are twenty-two now. How long did you work for them? A Two years.

Q Ever work for them since that time? A Just two years.

Q Are you sure of that? A Positive.

Q Do you remember telling Mr. Talley when he examined you that you worked for the New England Braid Company for the months of May, June and July, 1920?

MR. KRIEGER: I object to that, if your Honor please, reading from something, which was not permitted or allowed in evidence.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

(No answer).

Q Do you remember telling Mr. Talley that you worked for the New England Braid Company, May, June and July, of 1920? A I don't remember telling him that.

Q Is that the truth, did you work for them during that period?

A I don't remember.

Q I will show you a paper and see if that refreshes your recollection as to when you worked for the New England Braid Company?
A (After examining paper handed to him by Mr. Donahue) I don't remember that.

Q Does that refresh your recollection, Mr. Dreyfus, yes or no?

A I don't remember that.

Q You don't remember? A No.

MR. DONAHUE: Bring in Mr. Pepper?

(A gentleman came into the court room and stood at the bar)

Q Do you by any chance happen to know this gentleman (pointing to the person standing at the bar)? A Yes, sir.

Q Who is he? What is that gentleman's name? A Mr. Pepper.

Q Do you know what firm he is connected with -- the New England Braid Company? A Yes, sir.

Q Do you say now, after seeing Mr. Pepper, that you worked for the New England Braid Company for two years? Yes or No? A Yes, sir.

Q You do say that? A Around two years.

Q Now, what is it, two years? A Yes, sir, two years.

Q What two years was it? A Well, I don't remember.

Q It was not by any chance just the month of July, 1920? A No.

Q Did you work for them during the month of July, 1920? A No.

Q You are sure of that? A Positively.

Q You say now you worked for them around two years?

MR. KRIEGER: I think this witness has been examined as to that over and over again.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q Now, in view of seeing Mr. Pepper, and reading the paper I gave you, do you now say you worked for the New England Braid

Company two full years? A Yes, sir.

Q As what? A As an errand boy.

Q And when were these two years? A I don't remember, sir.

Q You can give us no idea? A I cannot remember.

Q You cannot remember? A No.

Q Well, we will take up the last three years, beginning 1919. Where did you work during 1919? A For Barney Jacobs.

Q For Barney Jacobs, doing what? A Delivering flowers.

Q Did you work for the whole year of 1919? A I worked five years for him.

Q For Barney Jacobs? A Yes, sir.

Q Every day? A Why, yes, sir.

Q Don't you know whether you did or not? A Yes, sir.

Q You worked every day for five years for Barney Jacobs?

A Yes, sir.

Q Is he a relative of yours or of any of your family? A No.

Q Isn't he a relative of your family? A I would not call him a relative?

Q Well, what is his connection with your family? (No answer).

Q Cannot you tell us what connection he is to --

A (Interrupting) I am trying to remember.

Q You worked for him for five full years, seeing him every day and you -- A (Interrupting) Just no relation to me whatsoever, but I am trying to think what connection it is -- my brother-in-law's sister's husband.

Q Your brother-in-law's sister's husband; is that right?

A Yes, sir.

Q You say now you worked for Barney Jacobs for five full years?

A Yes, sir.

Q You also said yesterday, if I remember correctly, that you were never convicted of a crime? A Yes, sir.

Q You are sure of that? A Positive.

Q Do you by any chance happen to know officer Braunsworth?

A No.

(Stand up officer? A person stood up in the court room).

Q Ever see him (pointing to the person stood up) in your life before now? A No.

Q Why didn't he arraign you in Special Sessions, and were you not convicted before Judges Murphy, Salmon and Herbert for a violation of the Anti-Loafing Law? A Why I told --

Q Yes or no? A I don't remember.

Q You don't remember what happened on September 26th, 1918? A I told --

Q Yes or no, do you remember what happened on September 26th -- (Witness, after some time, makes no answer)

THE COURT: You have got to answer.

Q Yes or no? A I don't remember.

Q You don't remember? A No.

Q Do you ever remember being in the Court of Special Sessions?

A I don't remember, sir.

Q Is that your signature (showing witness a signature on a paper)?

A (after looking at it) Yes, sir.

MR. DONAHUE: Can I have it marked for identification?

THE COURT: Yes.

(The signature on the paper referred to marked People's Exhibit No.12 for identification).

Q Did you answer the questions that are above your signature there, Mr. Dreyfus? A Yes, sir.

Q Does that refresh your recollection as to whether you were ever convicted of a crime or not? A I don't know, sir.

Q Does it, yes or no? A I didn't know this was a crime.

Q Does it refresh your recollection as to whether you were ever convicted in the Court of Special Sessions -- we will put it that way? A No, sir.

Q Weren't you convicted of a violation of the Anti-Loafing Law in front of Judges Murphy, Salmon and Herbert, and put on probation? A No, sir.

Q Let me have that? (referring to People's Exhibit No.12 for identification). You said yesterday, in reply to your attorney's question, that you were never in Court; is that true? A Sir --

MR. KRIEGER: I object to that. Possibly the question was did he ever testify in a Court before.

THE COURT: I think that was the question, but I think his answer went further than that. I think that when he came to make an answer, his answer was broader than the question. I may be wrong about that.

MR. KRIEGER: If I remember correctly he said --

MR. DONAHUE: No, he said he was never in Court in his life;

that all he got was a card.

MR. KRIEGER: Are you reading his answer, or giving your recollection of it. I submit the answer was did he ever testify in Court before, and he answered "No."

Q Do you know a man by the name of William Weintraub of 2112 Harrison Avenue, Bronx? A Yes, sir.

Q Now does that (showing witness a paper) refresh your recollection as to whether you were ever convicted or not? A No, sir, (after examining paper).

Q It does not? A No.

Q Don't you recall a William Weintraub on July 13, 19 -- I will withdraw that. I show you this certificate, look at that certificate and see if that refreshes your recollection? A (After looking at the certificate referred to) A Yes, sir, I remember.

Q Do you remember it now? A Yes, sir.

Q Then you were convicted, were you not, in Special Sessions, and put on probation? A Why, yes, sir, just the Anti-Loafing Law, that is all I remember.

Q You do remember of being convicted in the Court of Special Sessions? A I don't remember.

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

Q Do you remember appearing before three Judges on the first floor of this building and pleading guilty -- A (Interrupting) Of what offense?

Q I don't care what offense? A I don't remember.

Q You don't remember ever appearing in this building before

three Judges when officer Braunsworth was there, and you pleading guilty to the crime of violating the Anti-Loafing Law? A No, I don't remember.

Q Have you any recollection of it at all? A No, sir; I don't remember it at all.

Q During the month of July, 1918, where were you working, do you remember? A Yes, sir, for Barney Jacobs.

Q Don't you remember saying at some time you were working for the Kelly Trucking Company? A No, sir.

Q Didn't you tell Mr. Talley that? A I don't remember.

Q Oh, you don't remember? First you said you were, then you say, you don't remember; which it it? A I don't remember.

Q Do you ever remember working for the Kelly Trucking Company at 34th St. and Sixth Avenue.

Q You are sure of that? A Positive.

Q Well, now, during the War, didn't you leave the employ of Barney Jacobs? A No, sir; it was slow.

Q Now, didn't you leave, yes or no? A No, sir.

Q You worked there continuously? A Yes, sir.

Q Didn't you tell the probation officer in Special Sessions that you left that job, because it was a non-essential job? A I don't remember.

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

Q How long do you know Ross? A Practically all my life.

Q And you and he were pretty close, were you not, before he joined the Navy? A Why I had not seen him before he joined the Navy.

Q Didn't you see him before he joined the Navy? A Once or twice.

Q Weren't your family and his visiting each other all the while?

A Yes, sir.

Q Didn't you see much of him? A No.

Q After you came out of the Navy you met him? A Yes, sir.

Q You knew, after he came out of the Navy, he had been in the Navy? A Yes, sir.

Q And you went around with him a good deal at that time? A After he came out of the Navy?

Q Yes. A No.

Q When he brought you down to Mr. Tobey's office, you were pretty friendly? A That is the first time I met him.

Q You were very friendly? A Yes, sir.

Q He told you at that time he was in the Navy? A Yes, sir.

Q How long did he tell you he was in the Navy? A Five years.

Q Did you know at that time that you were going around with him that he had been convicted of a crime?

MR. KRIEGER: I object to that as improper; how can the fact, if it be a fact, that Ross was convicted of a crime, --

THE COURT: Well, people are known by their associates. People are sometimes judged by the companions they have.

MR. KRIEGER: Sometimes, perhaps, but as a discussion before the Court, when a man is being tried of an offense of this character, I think the question is improper. I take an exception to your Honor's ruling.

Q Did you know that he had been convicted of a crime? A I don't know, sir.

Q Did you ever hear of it?

MR. KRIEGER: Objected to.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Did he ever tell you that he had served time in the House of Refuge?

MR. KRIEGER: I object to that on the same grounds.

Q Did he? A I don't know.

Q Did he tell you that? A No, sir.

Q You never heard of it? A No, sir.

Q The first time you heard of it was this morning when I told you of it? A Oh, yes, sir.

Q This is the first you have heard of it; is that right? A Yes, sir; I never heard of it before.

Q Never heard of it before? A No, sir.

Q Now, when you went down to Mr. Tobey's office with Mr. Ross, so that was the first day you had met him after you say he served his five years in the Navy? A Yes, sir.

Q The first day you met him, and you didn't know him very well at that time? A I knew Ross.

Q Did you know him very well at that time? A Yes, sir, known him for years.

Q And when you went down to Mr. Tobey's office, you had no idea why you were going down there? A No, sir.

Q Didn't suspect anything at all? A No.

Q Ross knew your name was Dreyfus? A Oh, yes, sir.

Q And you knew his name was Rosenschweig? A Yes, sir.

Q Can you give any reason why you allowed Ross to introduce you under the name of Joe Brown? A As far as I can remember, just happened to pick that name out as Brown.

Q You were down there, as you thought, on a legal mission?

A I did not know where I was going.

Q You believed you were down there doing honest work, the work of an honest man? A Just to meet a friend.

Q You believed you were down there on an honest and legitimate mission? A Yes, sir.

Q Nothing wrong as far as you were concerned? A No.

Q You were not ashamed of being there? A No.

Q You did not know at that time that Ross had accused Tobey of being a degenerate, did you? A No.

Q You didn't even suspect it? A No.

Q Now can you tell us why you allowed Ross to introduce you by the name of Brown? A Well, he just happened to say to Mr. Tobey, "Meet Brown". I asked him why that name; tell him my name is Dreyfus; he said just Brown.

Q You didn't tell Mr. Tobey your name was Dreyfus? A Ross introduced me.

Q When Mr. Ross said, "Meet Mr. Brown," you did not tell Mr. Tobey that was a mistake, did you? A Ross introduced me.

Q Did you, yes or no? A No.

Q Why didn't you do it? A Well, he said Brown. I didn't mind.

Q You did not care under what name you were known by? A He just put that name to me. I don't know what it was for; he could just as well say "Kelly".

Q In other words, you did not care what he called you at all? A No, sir.

Q You were not a bit interested by what name you were known? A No, sir.

Q It was that very same day, was it not, that Mr. Tobey gave Ross that \$500 in the restaurant? A He gave him?

Q Yes or no? A In the street he gave it.

Q Wherever it was; it was that same day? A Yes, sir.

Q It was within a few minutes after you had been introduced under the name of Brown? A Yes, sir, about half an hour.

Q And you signed a receipt under the name of Brown? A He asked me to sign it.

Q You signed it yourself? A Yes, sir, he asked me to sign Joe Brown.

Q You did not sign Samuel Dreyfus? A He introduced me as Brown.

Q You did not sign Samuel Dreyfus? A No.

Q You believed that everything was honest between Mr. Tobey and Mr. Ross? A Yes, sir.

Q Nothing else was in your mind? A No, sir.

Q You got \$50 for that? A Yes, sir.

Q Why did you get \$50; what did you do for that \$50? A Nothing.

Q You did not think there was anything wrong in Mr. Ross bringing you to a strange man, and introducing you to him under the name of Brown and you getting \$50 for nothing? A Absolutely not.

Q That was regular as far as you were concerned? A Well, explain that a little plain?

Q I say that was perfectly all right, as far as you were concerned? A Yes, sir.

Q Nothing wrong in your mind? A No.

Q Didn't even suggest anything wrong? A No.

Q Did you ask Ross at that time why he got \$500 from Tobey? A Yes, sir.

Q What did he say? A He didn't tell me nothing. "Just a friend of mine," he said.

Q Didn't tell you a thing? A Not at that time.

Q Did you believe him at that time? A I asked him --

Q Did you believe him? A It was none of my business; I didn't care.

Q Did you suspect anything at that time? A I didn't know who the man was.

Q Did you ask him anything --

MR. KRIEGER: I object. That is an answer. He said he didn't know who the man was.

THE COURT: It is not an answer.

Q Did you, Mr. Dreyfus, suspect anything at all?

MR. KRIEGER: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q Did you suspect anything at all at that time? A No, sir.

Q Nothing came to your mind at all? A No.

Q By the way you were working at that time. How did you happen to get time to go down town? A I went down between twelve and one, I think.

Q You think so? A It was during lunch.

Q Did you say yesterday it was four o'clock?

MR. KRIEGER: I object to that. The witness did not say that.

THE COURT: Overruled.

MR. KRIEGER: Exception. I have not misquoted the testimony.

MR. DONAHUE: I object to any help being given to the witness.

MR. KRIEGER: The testimony is there before the Assistant District Attorney.

Q Did you say yesterday it was four o'clock? A I don't remember.

Q You don't remember what you said yesterday. You said four o'clock? A Yes, sir.

Q What do you mean when you say between twelve and one o'clock? A Between twelve and one I went to dinner, and met him a little later.

Q You took off a little time to oblige Ross? A I went to lunch and met him later, and the time I was down there was about four o'clock.

Q Did you go back to work after you left at twelve o'clock?

A After I left at twelve o'clock?

Q Yes. A I went for dinner at the time.

Q Did you go back to work after you left at twelve o'clock that day? A I don't remember.

Q You don't remember? A No.

Q But you do remember going down town and being with Mr. Tobey a considerable part of that day? A Yes, sir, I remember that.

Q Did you take time to go down town? A Yes, sir.

Q Did you tell Mr. Jacobs you were going down town? A No, sir.

Q You took a chance of losing your job? A I knew I would not lose it; it was a slow day.

Q It just happened to be a slow day when you met Mr. Ross? A During the Summer.

Q You did not know you were going to meet Mr. Ross? A I met Ross on 28th Street.

Q You met him by accident? A Yes, sir.

Q By accident? A Yes, sir.

Q And you did not expect to meet him? A Oh, no, sir.

Q When you took your lunch that day you did not say a word to Mr. Jacobs about coming back? A No, sir.

Q You just took leave and — A (Interrupting) I didn't come back.

Q And you never questioned Ross about why he gave you \$50?

A You mean when he gave me the \$50?

Q Yes. A Yes, sir.

Q What did you say to him? Tell us? A I asked him what he gave me the \$50 for. He said, "Just in case you want to go to Texas." They were talking about going to Texas I believe at the time.

Q Go ahead, and tell us about that? A "Well," he said, "just take the \$50; I have got \$500 out of it." He gave me \$50 just for my trouble.

Q Gave you \$50 to go to Texas? A No, if you want to go to Texas, as Mr. Tobey said so, at the time we were in the restaurant.

Q Did Mr. Tobey tell you, in the restaurant, he wanted you to go to Texas? A He wanted Ross to go and he asked me.

Q He didn't give you any money? A No.

Q You said yesterday you didn't see the money passed? A Ross told me later.

Q And the first time you knew how much money he got was when Ross told you? A Yes, sir.

Q You didn't go to Texas? A No.

Q You had no idea of going to Texas? A No.

Q You took the \$50 -- A (Interrupting) He gave me \$50. He just said, "Here --

Q You took it? A Yes, sir.

Q When was the next time you say you saw Mr. Tobey? A September; the beginning of September, 1920.

Q And the first time you saw him, as I understand it, was May, 1919? A Yes, sir.

Q The second time you saw him was September, 1920? A Yes, sir.

Q Do I understand you to say that you didn't see Ross between the first and second visit, except when he came to bring you down town the second time? A What?

Q You didn't see Ross between May, 1919 and September, 1920; is that right? A Yes, sir.

Q You didn't hear from him? A No.

Q You didn't go to Mr. Tobey's office? A No.

Q You did not hear from Mr. Tobey at all? A No.

Q How long were you talking to Mr. Tobey on the first visit?

A In May, 1919?

Q Yes, on the first visit? A Oh, I was not talking; just in the restaurant.

Q You had very little to say? A I didn't talk to him at all; just in the restaurant.

Q In fact he was not a bit interested in you on the first visit?

A No, sir.

Q Hardly noticed you? A He noticed me.

Q Is that correct? A Yes, sir.

Q Hardly talked to you? A Just noticed me.

Q On your second visit, you said some time in September, Ross came to you and said, Mr. Tobey wanted to see you? A Yes, sir.

Q And Mr. Ross came to your house? A Yes, sir.

Q Up to that time you had heard nothing about what you said Mr. Tobey was; a degenerate? A No.

Q Up to when? A Up until September.

Q Of 1920? A Yes, sir.

Q You had heard nothing at all about it? A No.

Q In the meantime you were not, by any chance, making your headquarters at the Walpern Restaurant at 46th Street and Seventh Avenue?

MR. KRIEGER: I object to that as incompetent, immaterial and irrelevant; not proper cross-examination.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Were you? A No, sir.

Q You didn't hear anything about the soft money that was to be made out of a man like Mr. Tobey? A No, sir.

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

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q You had never heard of this scheme of going to men and accusing them of crime, to get money out of them?

MR. KRIEGER: Objected to as improper.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Did you? A No.

Q It never occurred to you at all? A No, sir.

Q Now you say that in September, 1920, Ross came to you and said Mr. Tobey wanted to see you? A Yes, sir.

Q Is that right? A Yes, sir.

Q Those were the words used yesterday, were they not? A Yes, sir.

Q At that time you said you went down to Mr. Tobey? A With Ross.

Q With Ross? A Yes, sir.

Q That was your second visit? A Yes, sir.

Q You had never seen him before except in May of 1919. Now, yesterday you said Mr. Tobey told you at that time that he had gone down on Ross; he was sorry for it; didn't know what to do; felt like jumping in the East River? A Yes, sir.

Q It was on your second visit he told you that? A No, sir, that was before going to Cleveland.

Q Didn't you say yesterday that on your second visit to Mr. Tobey, he told you that he had gone down on Mr. Ross, and he was sorry for it; didn't know what to do, and felt like jumping in the East River? A Before going to Cleveland, I said.

Q Was it the first, second, third, or what visit? A The third visit, before going to Cleveland.

Q Wasn't the third visit the day after the second visit? A Yes, sir, it was the next day.

Q How much of that talk did you have with Mr. Tobey on the second day? A That was when Hann came over.

Q I am speaking now of about the second day. How much of a talk did you have with Mr. Tobey on that day? A Oh, very little.

Q Isn't that the day you said yesterday that he told you he wanted you to take Ross out of town and keep him out of mischief? A Yes, sir.

Q Do you know of any reason why Mr. Tobey should have such great confidence in you? A I don't know.

Q You hardly knew the man? A No, sir.

Q But still you said yesterday that he sent for you and told you

that he wanted you to take Ross out of town? A Yes, sir,
that is what Ross told me.

Q Did he tell you why he wanted you to take Ross out
of town? A No.

Q At that time you didn't suspect that Mr. Tobey was
a degenerate? A Yes, sir.

Q You did? A Ross told me.

Q When did Ross tell you? A The time he came up to
my house, in the beginning of September.

Q In September 1930, he told you that Tobey was a de-
generate? A Yes, sir.

Q Did he tell you what he had done to him at that time?

A Oh, yes, sir.

Q What did he tell you? A Ross told me everything.

Q Tell exactly what he said to you, please? A Ross
told me that Mr. -- (witness speaks in a low tone).

Q Don't be a bit bashful. Just talk as if you were up
on Broadway with the rest of your crowd.

MR. KRIEGER: I object to that, your Honor --

Q With the rest of the boys of your own age.

MR. KRIEGER: I think the witness is entitled to
fair consideration -- he is not the most intelligent of
men. I think he ought to be given a chance to answer the
questions, in a fair and gentlemanly like manner.

THE COURT: He is being given a fair chance.

MR. KRIEGER: I do not think it is fair, with all due respect, to talk to this witness the way Mr. Donahue talks to him.

THE COURT: I think the remark was only intended to induce the witness to give a repetition of Ross's talk. The witness is disposed, naturally, not to repeat the language that was used. That is natural. The witness is now requested to tell just what Ross said. You are now asked to tell the jury what was said to you in September, 1920, about Tobey. Now talk so that you can be heard.

THE WITNESS: Ross told me that Mr. Tobey had gone down on him, Ross, for four months.

Q Now did you understand what he meant?

THE COURT: I do not think I would interrupt him.

MR. DONAHUE: All right, your Honor.

THE WITNESS: And he made a wreck out of him. That is just what he told me.

Q Now did Ross use those very words? A Oh, yes, sir.

Q Didn't he call him by any other name besides that? You know the name that is applied to that? A I think he accused him of sodomy.

Q Did he use the word sodomy? A Yes, sir, he said sodomy.

Q Ross said to you that Tobey had been guilty of sodomy?

A He didn't say sodomy.

Q I want you to use the same language about it as you would on the street. Don't be a bit bashful or afraid. Use exactly the same language. Go ahead. A He said that he stuck it in his behind.

Q Did what? A He tried to stick it in his behind.

Q What else did he say? A That is all.

Q Did he, by any chance, call him any names? A Sir?

Q Did he call him any names? A Who, Ross?

Q Yes. A No.

Q Did he call him a fluter or a fairy? A No, he just said cocksucker.

Q Did he call him a cocksucker? A Yes, sir.

Q You believed that Tobey was one when you went down to see him? A Yes, sir.

Q You were fully convinced, when you went down to Tobey's office, on the second visit, that he was that type of a man? A I don't know.

Q Don't you know whether you were convinced or not?

A Not then, I don't remember.

Q Didn't you believe Ross? A No, I don't know.

Q Did you or did you not believe Ross before you went down there on the second visit? A No.

Q You didn't believe him? A No.

Q You believed Ross told you an untruth? A Well, he swore to me by --

Q Did you believe Ross told you an untruth? I don't care what he did. A I think I did believe.

Q You did believe this man was a degenerate? A Yes.

Q And you believed he had ruined Ross? A Yes, sir.

Q Ruined him physically? A Yes, sir.

Q You believed he had done this act to him every day for four months? A Ross told me --

MR. KRIEGER: Just a moment. The witness is trying to explain what he did believe.

THE COURT: A witness is permitted to answer the question. He was not, apparently, answering it.

MR. DONAHUE: I will reframe the question, sir.

Q Did you believe Ross when he told you that this man had ruined him physically? A Yes, sir, I believed Ross.

Q And did you believe that Mr. Tobey was a degenerate?

A Well --

Q Yes or no, did you believe he was a degenerate?

A Yes, sir.

Q And did you believe -- how often did Mr. Ross tell you that Mr. Tobey had performed this act? A Quite a number of times.

Q How many times did he say? A He told me when we went down there.

Q How many times? A About two or three times.

Q Two or three times in the course of four months?

A Why, yes, sir.

Q So when you went down to Mr. Tobey for the second time you believed, did you, that he was a degenerate? A Yes, sir.

Q Why did you go down to see him? A Ross told me that he wanted to see me at the time.

Q Why did you go to see him, if you knew he was a degenerate?

MR. KRIEGER: I object to that. It has already been asked and answered.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Is that the reason you went down? A Well, Tobey wanted to see me.

Q Is that the reason you went down, because Ross told you that Tobey wanted to see you? A Because Tobey wanted to see me.

Q Is that the reason you went down because Ross told you Tobey wanted to see you? A Why, yes, sir.

Q What was your idea of going down? A I wanted to know--

Q You knew at that time he was a degenerate? A He wanted to see me --

Q You didn't have any use for that kind of a man? A No.

Q For outcasts, for people not fit to associate with ordinary people? A No, sir.

Q Still you went down to see him in his office? A Ross

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called up, made an appointment with him, I remember, met him on Wall Street --

Q Did you know at that time that Ross had received five hundred dollars because he had threatened to expose Mr. Tobey?

A Oh, no.

Q That idea didn't occur to you at all? A No, sir.

Q Didn't you, after Ross told you what Tobey had done to him, remember the five hundred dollar incident of May 1919?

A I didn't think of it.

Q Didn't you remember of it at all? A No.

Q Didn't it occur to you? A No.

Q Didn't remember it at all at that time, it entirely escaped your memory? A I didn't remember.

Q And you didn't go down, by any chance, the second time, to get any money? A Oh, no, sir.

Q That was not in your mind at all? A No.

Q You didn't have any idea of it? A No, sir.

Q And what happened on the second visit, will you tell us, Mr. Dreyfus, when you went down? A September?

Q That was the second visit? A Yes, sir.

Q Go ahead and tell us. A Ross called up and met him on Wall Street.

Q What time of the day was this? A I don't remember.

Q Well, about what time? A I think towards the latter part of the afternoon, some time about four-thirty or five,

I don't remember.

Q Were you working at this time? A Yes, sir.

Q You took another day off? A I was through with my work about three o'clock that time.

Q You were through with your work? A Yes, sir, I was through delivering my orders.

Q Wasn't that an unexpected visit to you by Ross?

A Well, Ross came up to my house and told me to meet him.

Q It just happened that you got off very early? A I asked my boss.

Q You asked your boss at this time? A Yes, sir, Mr. Jacobs.

Q You asked him? A Yes, sir.

Q Then you went down to see Mr. Tobey? A Yes, sir, with Ross.

Q Tell us what happened at this visit, please? A He called Mr. Tobey up.

Q What was it you said to Mr. Tobey, or what did you hear Ross say to Mr. Tobey? A I beg your pardon?

Q I want you to tell us what you heard Mr. Ross say to Mr. Tobey, and what you said to Mr. Tobey, on the second visit, and what Mr. Tobey said to you? A Well, Hann came over at the time --

Q I am not asking about Hann. Hann was not there when you first saw Mr. Tobey. A The second time he was.

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Q Do you recall yesterday, Mr. Dreyfus, saying that it was not until the third visit that you knew anything or suspected anything about Mr. Tobey, do you remember that? Was it, Mr. Dreyfus, the second or third visit?

THE COURT: Read the question.

(Question read by the stenographer).

A I know he told me September, I know he told me when he came up to my house.

Q Didn't you say yesterday, Mr. Dreyfus, that it was not until after the second visit that Ross told you anything about this affair at all? A I don't remember.

Q Well, anyway, it was the second visit you met Mr. Hann?

A Yes, sir.

Q Sure about that? A Yes, sir.

Q It was the second visit, was it not, when Mr. Tobey appealed to you to protect him from Ross? A No, he wanted to see me.

Q Didn't he tell you he wanted you to protect him from Ross; he wanted you to take Ross away? A No, Ross told me that; Ross just told me that Mr. Tobey wanted to see me.

THE COURT: No; but when you got down to where Tobey was, what did Tobey say to you, on that second visit?

THE WITNESS: Tobey came down with Hann, and Hann asked Ross to keep away. Then he asked Hann - said, Hann said, Why don't you keep away? I said, Why, Mr. Ross

told me that Mr. Tobey wants to see me. He said, that he was going over to the District Attorney. I didn't know what he meant. I asked him, I said, If I am doing anything, there is an officer. Arrest me, if I am doing anything out of the way. Then Hann went away. Then Tobey said to me and Ross we should not mind that man, and that Tobey wants to meet him tomorrow, the following day.

Q Didn't you say yesterday, Mr. Dreyfus, on your second visit, you didn't suspect anything wrong about Mr. Tobey, yes or no?

MR. KRIEGER: If your Honor please, I don't think that was the testimony, and unless the District Attorney says it is, I object to the question.

THE COURT: Overruled.

MR. KRIEGER: Exception.

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Q Didn't you say yesterday, Mr. Dreyfus, that you did not suspect anything about Mr. Tobey on your second visit?

A I do not remember.

Q What is the truth of it? Did you or did you not suspect him? A Yes, sir, I did suspect him; Ross told me that in September.

Q He told you what? A He told me that in September.

Q Before the second visit? A Yes, sir.

Q So when you arrived there did you talk to Mr. Tobey, on this second visit? A No, sir.

Q You didn't have a word to say to him? A No, sir.

Q Instead of that you say now, Mr. Hann came out and wanted to know what you were doing there? A He turns to Ross.

Q Didn't he say to you, What are you doing here? A Yes, sir.

Q Didn't he talk to you? A Yes, sir, he spoke to me.

Q You knew he was talking to you when he said, "What are you doing here?" A I asked him what for. I said this man wants to see me.

Q Didn't Hann speak to you at that time, tell you to keep away, or he would have you brought to the District Attorney's office? A I don't remember whether he said that.

Q What did he say? What did Hann say at all? A I understood him to say something about going up to the District

Attorney, and I said, Mr. Tobey wants to see me. I said, If I was doing anything at all, there is the officer, and then he walked away. b

Q Didn't you say yesterday that Hann said to you, What do you mean by coming down here, and you said to him, This man is a second Harry Thaw; he is the soiler of youth."

MR. KRIEGER: I object to that, that is not this witness's testimony.

THE COURT: Overruled.

MR. KRIEGER: I take an exception. The question was, if your Honor will indulge me, didn't you say yesterday so and so. He didn't say "not did you say it."

MR. DONAHUE: I will put it your way.

MR. KRIEGER: I submit that is not a proper way to cross examine.

MR. DONAHUE: Anything to suit you.

MR. KRIEGER: Don't suit me. I am not here to be suited.

Q Did you say yesterday, Mr. Dreyfus that Hann said to you, What do you mean by coming down here? I thought he was a detective, and was going to have me arrested. He told me to keep away. Did you say that yesterday? A Repeat that.

Q (Question read by the reporter). A I don't remember.

Q You didn't say that? A I don't recall that.

Q But anyway before you talked to Hann that day, did you see Mr. Tobey? A What is that?

Q I said before you talked to Mr. Tobey had you seen Hann, or was it after you talked to Mr. Tobey? A Hann went away first.

Q Hann was the first one that you spoke to?

MR. KRIEGER: I would ask the Assistant District Attorney, at this time, to point out there in the session of yesterday, where it was said by the witness, what was said.

THE COURT: The examination is proceeding properly.

MR. KRIEGER: I respectfully except.

THE COURT: Go ahead.

Q When you went down on the second visit you were with Ross, were you not? A Yes, sir.

Q And you arrived at a certain point where you met Mr. Hann, did you? A We arrived at Wall Street.

Q You met Mr. Hann? A No, he waited for Mr. Tobey.

Q You saw Mr. Hann in Wall Street on your second visit?
A With Mr. Tobey.

Q Were they both together? A We waited for him.

Q Were they both together when you first saw them?
A Yes, sir.

Q Who spoke to you first, Mr. Hann or Mr. Tobey?
A Mr. Tobey.

Q That was the second time in your life you had ever seen Mr. Tobey? A Yes, sir.

Q The first time was in May, 1919? A Yes, sir.

Q You say now that Mr. Hann said to you, "Keep away from here," or "What are you doing down here?", or something of that kind? A Yes, sir.

Q What did Mr. Hann say to you? Tell us that in your own way. A Just told us to keep away.

Q Mr. Hann told you to keep away? A He didn't tell me to keep away. I asked him --

Q You said "Why should I keep away?" A Yes, sir.

Q You believed Mr. Hann was addressing you? A He looked at me.

Q Did you suspect at that time, Mr. Dreyfus, that Mr. Ross was down there trying to get some money out of Mr. Tobey? A No, sir.

Q Never had the least suspicion of it? A No, sir.

Q When Mr. Hann told you to keep away, you had no idea what he meant? A No.

Q You were surprised? A Yes, sir.

Q And when he said he was going to have you arrested, you were indignant? A Yes, sir.

Q And when he said he was going to bring you to the District Attorney's office you wanted to come up right away? A Yes, sir.

Q You didn't by any means try to bluff Mr. Hann?

MR. KRIEGER: I object to the form of the question, as argumentative, incompetent, irrelevant and immaterial.

A I told him to get the officer if he thought I was doing anything.

Q And you didn't ask Mr. Ross, after you left, on that second visit, what was this all about? A He said Mr. Tobey wanted to see me when he went away --

Q You didn't suspect a thing after the second visit as to what Ross was doing down there? A Talk a little plainer than that.

Q Did you know Ross was down there, or did you suspect Ross was down there trying to get any money? A No, sir.

Q That was not in your mind at all? A No, sir.

Q It was on the second visit that Mr. Tobey called you aside and told you he was sorry for what he had done to Mr. Ross? A It was before going to Cleveland.

Q You said yesterday it was the second visit, or was it the third visit? A I believe I said the third visit.

Q The third visit was the day after the second visit? A The day after.

Q After the second visit, of course you were very indignant against Mr. Hann and Mr. Tobey for accusing you of going down there for any purpose? A Yes, sir.

Q You were sore, were you not? A Yes, sir.

Q Why did you meet him the third time, the next day?

A When Hann went away Tobey told me we should not mind that man, he said, I want to see you, because I wanted Ross to go away, I remember, and then he said, "You come down tomorrow and meet me, with Ross."

Q You were still satisfied to meet this man? A I was not satisfied.

Q Why did you meet him? A He wanted to see me.

Q You didn't have to go? A I didn't want to.

Q You went down the next day? A Yes, sir. He asked me to go down with Ross.

Q What time the next day? A I do not just remember.

Q Well, about what time, before you had your lunch, or afterwards? A I think it was after I had my lunch.

Q About what time? A I don't remember, sir.

Q Was it about two or three or four o'clock? A I do not remember.

Q It was during working hours? A Yes, sir.

Q How did you get away from your work at that time to go down, this next day? A I was through with my orders in the afternoon.

Q Another coincidence? A I usually got through between three and four o'clock.

Q What time did you go to work in the morning? A Seven-thirty.

Q And you were through at three o'clock? A Delivering orders.

Q What kind of orders? A Flowers.

Q You were an errand boy in a florist? A Yes, sir.

Q And you got three dollars a day? A Yes, sir.

Q And you were through at three o'clock in the afternoon?

A Yes, sir.

Q And you found time after three o'clock to go down and see Mr. Tobey? A Around that.

Q You made time to go down? A Yes, sir, with Ross.

Q And all this time you felt he was a degenerate?

A Yes, sir.

Q And a man not fit to be associated with anyone at all?

THE COURT: We have got that.

Q Were you alone when Mr. Tobey told you what he had done to Ross? A Tobey admitted to me --

Q Were you alone when he told you that, or was there a crowd around? A There was no crowd around.

Q You and Tobey were alone? A Yes, sir.

Q Where was this? A By the Battery, walking up the Battery.

Q Walking up? A Battery park, walking up towards 14th Street.

Q Did you walk up to 14th Street? A No, sir.

Q How far did you walk? A I don't remember.

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Q You do not remember how far you walked? A No, sir.

Q Anyway you were down at the Battery? A Yes, sir.

Q Tell us what he said to you please? Don't be a bit bashful about the words. A He admitted to me.

Q Don't tell us he admitted; just tell us what he said to you, please, and use his words, too. A He said to me he did not know what to do, either to commit suicide or jump off the dock. He pointed to the dock at the Battery.

Q He was going to jump off the Battery dock? A Well, he pointed to it.

Q You got a dock right there? A He said he admitted what he had done, and he was sorry.

Q Won't you tell us the words he used, please, Mr. Dreyfus. He didn't say he admitted, did he? He said, "I did this or that?" A He didn't tell me what he had done to Ross.

THE COURT: Will you have the kindness to tell the jury what Tobey said to you at that time?

THE WITNESS: He admitted that he was a degenerate.

THE COURT: Strike that out. What did he say?

Q What did he say? A He told me he was sorry for what he had done.

Q Go ahead. A And he wanted Ross to go away and wanted to have a sort of a companion with him.

Q Anything else? A That is all I remember.

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Q Then you were convinced he was a degenerate? A Yes.

Q Every doubt was erased from your mind? A After he told me.

Q Every doubt was out of your mind at that time; you were absolutely convinced of what he was then? A Yes, sir.

Q How long were you with him that day? A With Mr. Tobey?

Q Yes. A About half an hour or an hour.

Q Did you see him again after that? A No, that was the time he sent us to Cleveland.

Q How many times did you see him altogether before you went to Cleveland? A Three times.

Q Just three times, and he sent you to Cleveland on the last day? A Yes, sir.

Q Did he give you any money? A Yes, sir.

Q How much did he give you? A He gave us a hundred dollars.

Q I am speaking of you, this third visit, before you went to Cleveland? A He told me to buy the tickets.

Q He gave you a hundred dollars? A A hundred dollars to buy the tickets.

Q Did you leave the job that you had with Mr. Jacobs?
A I already told my folks I was going.

Q Did you leave your position with Mr. Jacobs? A Yes.

Q Then you say you went to Cleveland is that right?

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A Yes, sir.

Q How long did you stay in Cleveland? A About three and a half weeks, sir.

Q It was agreed, was it not, that you were to get a certain amount of money while in Cleveland; is that right?

A A hundred dollars a week.

Q Did you say it was agreed yesterday -- A Yes, sir, the hundred dollars a week --

Q Didn't you say yesterday, Mr. Dreyfus, that all you got out of it was \$50? A You mean when he gave me fifty?

Q I mean while you were in Cleveland? A Of course, the first week he sent the balance \$200, and Ross gave me \$50.

Q On the second three hundred, did you only get \$50?

A I got a hundred dollars.

Q While you were in Cleveland you didn't work? A No.

Q Made no attempt to look for work? A He told me not --

Q You didn't make any attempt to look for work?

A No, sir, I did not.

Q There came a time, in Cleveland, when you became dissatisfied with your work? A I felt lonesome --

Q Didn't Ross tell you, in Cleveland, that he was sorry for the charges that he had made against Mr. Tobey, that they were all untrue? A No, sir.

Q Did you ever hear that Mr. Ross had said that, that the charges against Mr. Tobey were all a pack of lies, to

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use an expression?

MR. KRIEGER: I object to that, no part of the cross examination.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Did you, Mr. Dreyfus? A Sir?

Q Did you ever hear that Mr. Ross said that? A No, sir.

Q Mr. Ross never told you that? A No, he told me the truth, what he was.

Q Mr. Ross didn't tell you at some time or other that he had concocted that story, made it up? A He told me it was true.

Q Did he ever tell you he made this story up? A No.

Q Did you ever hear that he had written a letter to Mr. Tobey to that effect? A I don't know.

Q Did you ever hear it, I mean? A No, sir.

Q Are you familiar with Mr. Ross's handwriting? A Yes.

Q Will you look at that letter, People's Exhibit 6 for identification, and tell me whether or not you recognize the handwriting? Don't read it all. Do you recognize his handwriting? A I recognize his handwriting.

Q Whose handwriting is that, Mr. Dreyfus? A This is Ross's.

Q Ross's handwriting? A I remember now.

Q Yes or no, please, that is all I want. A I think so.

Q Do you recognize it? A Yes, I recognize it.

Q Will you just read that as far as you can?

MR. KRIEGER: I object to the witness being asked to read anything that has not been put in evidence.

THE COURT: You may read it to yourself. He may read it to himself, not out aloud.

MR. KRIEGER: I withdraw my objection.

Q Did you ever hear the contents of that letter before?

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

THE COURT: I will allow him to answer.

MR. KRIEGER: Exception.

A I don't know.

Q Don't you know whether you ever did or not? Or you don't remember? A No.

Q Didn't you and Ross have a falling out in Cleveland?

A No, sir.

Q Didn't you want more money than you were getting in Cleveland? A No, sir.

Q Wasn't that the reason for coming back, you thought you had something easy; you told Mr. Ross, and you wanted to come back and get some real money? A No, sir.

Q By the way, you have a sister in Los Angeles, California? A No, sir.

Q What part of California does she live in? A I have no sister there.

Q Ross has a sister living in California? A No, sir.

Q Did you ever hear that? A No.

Q He never told you that? A No.

Q You were not anxious to go to Los Angeles? A No.

Q Didn't you want to go? A No, sir.

Q Didn't you leave Cleveland because you wanted to get more money from Mr. Tobey? A No, sir.

Q Didn't you say to Ross in Cleveland, "I don't care whether he is a degenerate; I am going to go back and make him pay?" A No.

Q Why did you come back?

MR. KRIEGER: I object to the form of the question. It implies certain statements which the District Attorney may prove or not prove. Now I challenge the District Attorney to produce Ross's own statement, if it was ever made.

THE COURT: Objection overruled.

MR. KRIEGER: Exception.

Q Did you ever hear that before, Mr. Dreyfus? A No.

Q You didn't say that? A No, sir.

Q Why did you come back from Cleveland? A Mr. Tobey told me, before we left, that any time you don't care for the proposition, just let him know, and send him a telegram. I was lonesome for home. Ross didn't care to stay out there and I didn't care to have anything to do with it any more, and I sent a telegram.

Q It was not by any chance that Tobey didn't send a fourth instalment? It was not because Mr. Tobey didn't send the fourth instalment of three hundred dollars? A No, sir.

Q It was not for money reasons? A No, sir.

Q You got homesick? A Yes, sir.

Q You never had been away from home before? A No.

Q As a matter of fact, where have you been living for the last five years? A At home.

Q Didn't you have a room on 43rd street and Broadway?

A No, sir.

Q Didn't you sleep over Walpern's restaurant? A No, sir, never was around there -- probably once there; I never --

Q Don't you know where it is? A I have heard of it.

Q You didn't have a room in that neighborhood? A No.

Q You slept home every night? A Every night.

Q What time did you usually get home? A Twelve, eleven-- twelve at the latest, sometimes half past.

Q So anyway you left Cleveland because you were homesick?

A Yes, sir.

Q You were very homesick? A Yes, sir.

Q Very anxious to see your folks? A Yes, sir.

Q When you arrived in New York the first one you called up was Tobey? A Yes, sir.

Q Why didn't you call up your folks, you were so anxious to see them? Why didn't you go see them? A Ross wanted to call him up, first; wanted him to know that he came back.

Q Of course, you were anxious to get home, to see your folks? A Yes, sir.

Q Anxious to see your mother, or whoever you have at home?

A Yes, sir.

Q And the first one you called up was Tobey? A He told me to call him up.

Q That was just a friendly telephone call? A Mr. Tobey said before I went away to Cleveland, that if I ever intended to come back, to send him a telegram, or call him up right away;

let him know immediately.

Q And you did let him know immediately? A Yes, sir.

Q You didn't ask him for any money on the telephone?

A No.

Q That was entirely out of your mind? A (No answer).

Q What did you ask him for? A He said he was glad to hear from us, and he will meet us Monday.

Q He was glad to hear from you? A He said he got the telegram.

Q Glad you called him up, is that what he said? A Yes.

Q Didn't you ask to see him that day? A I don't remember.

Q Don't you remember what was said on the telephone at all? You didn't ask to see him? A No.

Q You just called him, to tell him you were well, and in New York? A Yes, sir.

Q Did you make an appointment? A He made an appointment?

Q To meet you Monday? A Yes, sir.

Q And he made an appointment to meet --

THE COURT: That was in the month of November?

THE WITNESS: In December.

Q That was December 6th, was it not? A Yes, sir.

Q No doubt about that at all?

THE COURT: I want to get one thing. You were in Cleveland?

THE WITNESS: The 6th of November, sir.

THE COURT: So between September 21st and December 6th, you did not see Tobey at all?

THE WITNESS: No.

THE COURT: I am right in saying that between ~~Sept~~ about September 21st, 1920, and December 6th, or along about that time, you didn't see Mr. Tobey at all; is that so?

THE WITNESS: Yes, sir.

Q And you made this appointment to go to 44th street and 1st avenue? A He made the appointment.

Q Did you have any idea why you were going to 44th street and 1st avenue? A No, he just wanted me to meet him.

Q You just went to 44th street and 1st avenue because Mr. Tobey wanted to see you? A Yes, sir.

Q That was the only reason you had? A Yes, sir.

Q When he handed you the money that day, you were very much surprised? A Well, he asked me.

Q Yes or no? A Yes, sir.

Q You didn't expect to get any money? A No.

Q That was entirely out of your mind? A Correct.

Q When you went to 44th street and 1st avenue, you did meet Mr. Tobey? A Yes, sir.

Q That was about what time? A Around four o'clock, I think.

Q And what did Mr. Tobey say to you when he approached

you? A He said he was glad to see us.

Q He was glad to see you once more? A Yes, sir, both of us, --

THE COURT: Let him finish his answer, Mr. Donahue.

Q Go ahead. A He asked us what was the trouble, why we came back. I told him I was homesick, and I didn't care for the proposition any more. He said, All right, but, he said, Why don't you go out further West? I said no, I would not care for it; I would rather be home. He said, Well, all right, any time you want to go away, just let me know. He says, Have you any money with you? I said, Yes, I have a few dollars with me. He said, Well, just take this for expenses, and I took it, and I opened my hand, and I wanted to look what was in it, and two officers grabbed me.

Q You said before you never expected to get any money from Mr. Tobey at that time, you were surprised? A Yes.

Q Did you know how much was in the roll? A No, sir.

Q Did you suspect how much was in it? A No.

Q Did you ask Mr. Tobey what it was for? A I don't remember.

Q Go ahead. A He said, Take it for little expenses; that is all.

Q Did you have any expenses? A I had a few dollars.

Q You didn't have any expenses? A He said just --

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Q Yes or no, did you have any expenses that Mr. Tobey should have paid for? A No.

Q When you arrived from Cleveland, you had all your expenses paid for by Mr. Tobey? A I had money in my pocket.

Q When you arrived from Cleveland did Mr. Tobey owe you any money? A He didn't owe me any money.

Q Did you expect to get any money from him? A No.

Q Did you have a bill you wanted to give him, so when he gave you this roll of bills, you didn't know what it was; were you satisfied to get it? A I didn't know what it was.

Q Were you satisfied to keep it? A Yes, sir.

Q You didn't ask Mr. Tobey orx didn't care? A I was just going to ask him when the detectives grabbed me.

Q You were just going to ask him? A Yes, sir.

Q During all this time when he gave you this money, you still believed he was a degenerate? A Oh, yes, sir.

Q Now then you were taken down, were you not, by these two police officers, to the district attorney's office?

A Yes, sir.

Q And you were put in a taxicab, at your own request?

A Yes, sir.

Q Treated kindly by those officers? A Yes, sir.

Q Nobody struck you on the way down? A No, not on the way down.

Q I am only asking you about on the way down. They

talked to you nicely and quietly? A Yes, sir.

Q Told you who they were and what they were? A Yes, told me I was under arrest.

Q Didn't you say to Mr. Russo you thought there were three hundred dollars in that roll? A No.

Q You didn't mention any amount at all? A No.

Q Did Mr. Russo ask you any questions on the way down?

A I don't remember.

Q Yesterday you said that you told him Tobey was a degenerate, a fairy and a fluter and all those kind of expressions?

A Oh, yes, sir.

Q You did tell him? A Well, he asked me who the man was.

Q Did you tell him? A Yes, sir, I told him he was a degenerate.

Q You were mistaken when you said a moment ago there was no talk on the way down? A Well, I didn't remember.

Q Well, was there any talk about the money? A Sir?

Q Was there any talk about the amount of money on the way down? A No.

Q Russo didn't ask you how much it was? A No.

Q He didn't say it was only forty dollars? you didn't know how much money was there? A No, sir.

Q When was the first time you knew how much money was there? A I think when Judge Talley counted the money.

Q That was the first time you knew the amount of money?

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A Yes, sir.

Q Now you arrived at the District Attorney's office, you say, with these two officers; is that right? A Yes.

Q You got out of the taxi at the door here? A Yes, sir.

Q And nothing happened up to that time; you were not hit or struck, up to that time? A In the street?

Q No, up to the time you got out of the taxicab, in front of this building? A No, sir.

Q You were brought up in the elevator? A Yes, sir?

Q About what time was that? A I think after five, about five o'clock.

Q After five? A Around there.

Q Were you brought to Mr. Talley's office in the elevator? A Yes, sir.

Q You were not hit or struck in the elevator? A No.

Q Nothing happened to you up to that time? A No, sir.

Q Then you were brought into Mr. Talley's office, were you not? A Yes, sir.

Q Well, when were you struck, in Mr. Talley's office? A Yes, sir.

Q Didn't you say yesterday you were not struck at all? A I am just trying to remember.

Q Well, were you struck or were you not struck? A I don't remember.

Q You don't remember? A I don't think so.

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Q Did you say yesterday you were or you were not hit?

A Sir?

Q Did you say yesterday you were hit or not hit? A I don't remember.

Q Well, then, as a matter of fact, you were not hit at all? A I don't know; I don't think so.

Q You don't think so? A I don't remember.

Q You were brought into Mr. Talley's office, were you not, and you were questioned by Mr. Talley? A Yes.

Q Mr. Talley asked you questions and you gave answers did you not? A (No answer).

Q Did you answer the questions, yes or no, Mr. Dreyfus? A I don't remember.

Q You don't remember. I have you now where you remember getting out of the taxicab, coming into the building, up the elevator and going into Mr. Talley's office; do you or you don't remember what happened in Mr. Talley's office? A He asked me--

Q Do you remember what happened in Mr. Talley's office, Mr. Dreyfus, yes or no? A Well, they just brought me inside.

Q You remember that? A Yes, sir.

Q There were other people in there at that time? A Yes.

Q You said yesterday that you recall Markey was there? A Yes, sir.

Q Did you know Markey before this day? A Yes, sir.

Q Do you remember looking at him? A Yes, sir.

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Q And you were asked questions by Mr. Talley, were you not? A Yes, sir.

Q And you made answers, did you not? A Yes, sir.

Q Did you answer his questions truthfully? A Well, I don't remember.

BY JUDGE NO. 6:

Q Did you know that that was District Attorney Talley when you were speaking to him? A No, sir, that I didn't know, who he was.

BY MR. DONAHUE:

Q Did you suspect who he was? A No.

Q Had no idea who he was? A No.

Q Did you have any idea where you were? A In the Criminal Courts Building.

Q Did you have any idea you were in the District Attorney's office? A Sir?

Q (Question read). A I seen the name on the door - district attorney.

Q Then you did know you were in the District Attorney's office?

MR. KRIEGER: I object to that.

THE COURT: What is the objection?

MR. KRIEGER: Your Honor, my objection is that the District Attorney is misquoting the evidence, and I object on the ground it is incompetent, irrelevant and immaterial?

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THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Is that right, Mr. Dreyfus? A Yes, sir, when I seen the name on the door.

Q You did know you were in the District Attorney's office?

A I was told so.

Q Did you see a sign there, "District Attorney's Office?"

A Yes, sir, but I didn't know --

Q You don't believe in signs? A I wouldn't say that.

MR. KRIEGER: I object to that.

THE COURT: Sustained.

Q Did you believe you were in the District Attorney's office when you saw the sign? A Yes, sir.

Q Then you knew where you were? A Yes, sir.

Q The police officers had told you on the way down where they were taking you to? A I don't remember.

Q Did you see Mr. Talley's name on the door as you walked in? A (No answer).

Q Did you see his name on the door after you were brought out and kept in the custody of Detective Cunniff? A No.

Q Did you see his name on the door after you were brought out and kept in the custody of Detective Cunniff outside? A No.

Q As a matter of fact didn't you sit down on a bench, right directly in front of Mr. Talley's office? A I only saw "District Attorney" on it.

Q Didn't you sit directly in front of Mr. Talley's office? A Yes, sir.

Q And didn't you see the name on the partition, Alfred J. Talley? A I didn't look at it.

Q As a matter of fact when you were talking to Mr. Talley, didn't you know you were talking to the Acting District Attorney? A No, sir.

Q Who did you think you were talking to? A I do not know.

Q You had no idea? A No.

Q Didn't you think you were talking to an assistant district attorney? A I don't know.

Q Whatever answers you gave to the man who asked you those questions, were the truth? A I wouldn't say that.

Q Pardon me? A I don't remember; I was excited at the time.

Q Go ahead, I thought you were through. A I am; I was excited.

Q You were excited? A Yes, sir.

Q If questions were asked by anybody at all there, did

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you answer them truthfully? A I do not know.

Q Do you usually answer questions truthfully when they are asked of you? A Yes, sir.

Q Always? A Yes, sir.

Q You pride yourself on being a law abiding, honest, truthful citizen? A Yes, sir.

Q You always tell the truth? A Yes, sir.

Q So if anybody at all -- I don't care who, whether Mr. Talley or not, asked you questions on that particular day, you told him the truth? A Yes, sir.

Q Did you see the stenographer there, Mr. Dreyfus?

A I do not remember.

Q Did you see anybody writing while you were in there?

A I didn't pay any attention to it.

Q You didn't pay any attention to it? A No.

Q Do you remember anything Mr. Talley said, anything he said to you -- I will withdraw it for the time being. Do you remember Judge Talley appearing on the stand here in this case? A Yes, sir.

Q Did you ever see that man before? A Yes, sir.

Q Where did you see him? A In the District Attorney's office.

Q Did you know, or would you say now that you didn't know who he was? A At the time I didn't know who he was.

Q Who he was? A Yes, sir.

Q That man told you, at the time, something to the effect he wanted you to stay out of town? A What man?

Q Mr. Talley? A I didn't think it was Talley; I think it was the detective.

Q The detective told you that? A Yes, sir.

Q You do not claim, Mr. Dreyfus, that anybody beat you at that time?

MR. KRIEGER: I object to that as not a proper question.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Do you? A Sir?

Q You do not claim anybody beat you at that time? A I don't remember.

THE COURT: Raise your voice.

THE WITNESS: I don't remember.

Q Do you mean to tell us, Mr. Dreyfus, that you don't remember whether anybody beat you or not? A I think Russo just pushed me back, that is all I remember.

Q Did that hurt you very much? A No.

Q It didn't have any effect on the story you told? A No.

Q It didn't hurt you? A No.

Q Well, as a matter of fact, not a person in that room or any place that day laid a hand on you? A No, sir.

Q And you were treated kindly by all of them? A I wouldn't say kindly.

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Q Well, in an ordinary gentlemanly way? A No.

Q In what way didn't it suit you? A The detective said, Detective Russo said, I want you out of town in 24 hours.

Q Didn't you say you were satisfied to go out? A No.

Q Didn't you say to Mr. Talley --

MR. KRIEGER: I respectfully ask that the witness be permitted to finish his answer.

THE COURT: Yes, I think so.

A Detective Russo threatened me, told me to go out of town within 24 hours, and if I was seen around New York he would split my skull and call an ambulance.

Q Didn't you say to Mr. Talley, If you let me go, I will go out of town, and you will never hear from me again?

A No, sir.

Q Did you hear Mr. Talley say that on the stand yesterday? A I think I did.

Q That does not refresh your recollection as to what happened, what Mr. Talley said to you in that room? A No.

Q You say now that he didn't say that? A I say he did not say it.

Q You say no mention was made by Mr. Talley about your leaving town? A I said that the detective said that.

Q I am asking you about Mr. Talley, Mr. Dreyfus. Do you say now, Mr. Talley didn't say to you to keep out of town, or get out of town? A I don't remember about Talley saying that.

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Q But yesterday you said that Mr. Talley said to the police officer when you were brought there, Where did you get these fellows? Is that right, did you hear Mr. Talley say that? A I believe I did.

Q "Where did you get these fellows?" Mr. Talley seemed surprised at the officers bringing you two men in? A I don't seem to get that.

THE COURT: I wish you would raise your voice.

Talk so you can be heard.

Q Now, Drefyus, tell us, didn't Mr. Talley say to you, "If you didn't stop this practice, that he was going to send you to jail?" A I do not remember, sir.

Q And didn't you say, "If you allow me to go now, Mr. Talley, you will never hear from me again; I will leave town?"

A No.

Q you didn't say that? A No.

Q There was something said about sodomy or extortion?

A I do not remember.

Q Didn't you say yesterday, in reply to counsel's question, that Mr. Talley said to you that you were charged with extortion?

MR. KRIEGER: I object to that, not the question.

THE COURT: Objection overruled.

MR. KRIEGER: I take an exception.

Q Did you say that yesterday, that Mr. Talley told you

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that you were charged with extortion? A I believe so.

Q You did say it, so I am right when I did say it? A I am pretty sure.

Q And didn't one of the officers say, "We have a couple of shake down fellows," do you remember that? A Yes, sir.

Q And you did not know what that meant? A No, sir.

Q Do you know what it means now? A As I heard it in the Tombs.

Q That is the first idea you had of what it meant; is that right? A Yes, sir.

Q Now, you were allowed to leave Mr. Talley's office, were you not? A Yes, sir, he let us go.

Q Mr. Talley told you to go and not do this any more, something to that effect? A I do not remember what Talley told me; I remember what Russo told me.

Q You were allowed to go, of your own accord? A Yes.

Q Nobody went with you? A No.

Q You had not been placed in a cell, up to this time? A No, sir.

Q Now, the very next day, didn't you go down to see Mr. Tobey?

MR. KRIEGER: I object to that, on the ground it is incompetent, irrelevant and immaterial, no connection shown with the crime charged in this case.

THE COURT: Overruled.

MR. KRIEGER: Exception.

Q Didn't you, Mr. Dreyfus? A Sir?

Q The very next day you went down to see Mr. Tobey?

A No, sir.

Q What day was it? A I didn't see him.

Q Did you see him after you saw Mr. Talley? A No, sir.

Q Positive of that? A Positive.

Q Absolutely positive, no doubt about it? A No doubt about it.

Q You didn't go down to see Mr. Tobey, and tell Mr. Tobey that you were not afraid of any fake district attorneys or fake cops; you didn't say that? A No, sir.

Q Do you remember being before Judge Rosalsky in the District Attorney's office? A Yes, sir.

Q And do you remember talking to him? A Yes, sir.

Q Where did you talk to Judge Rosalsky? A In an office.

Q That was at the time you were applying for a bail bond?

A That is the --

Q You were looking for a bail bond? A What?

Q Looking to have your bail bond signed by a judge?

A Yes, sir.

Q Judge Rosalsky at that time was in citizen's clothes?

A Yes, sir.

Q With his hat and clothing on, and about to leave the building? A Yes, sir.

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Q Did you talk to him at that time? A Ross did --

Q Did you talk to him, yes or no, you mean? A Yes, sir, I spoke to him.

Q Now, will you tell us what you said to him, please? A I believe I told him that I didn't know what I was arrested for, and that that man was a degenerate, and then Mr. Ross told the story to Judge Rosalsky.

Q Didn't you say anything else to him, outside of that? A I don't remember.

Q You do not remember? A No.

Q You didn't tell him you thought you had a perfect right to demand money? A No.

Q You didn't tell him you had been down there demanding money --

MR. KRIEGER: I object.

MR. DONAHUE: I will withdraw that.

Q Didn't you tell him, Mr. Dreyfus, that you had a right you thought to go down there and demand money? Did you tell him you were going to go on down there, because you figured you had a right to go down there? A No, sir.

Q Did you tell him Mr. Tobey was a degenerate? A Yes.

Q Did you tell him you knew him for some time? A I believe I told him I knew him from May, 1919.

Q And didn't you tell him that you had met him at various times between May, 1919, and the time you were before Judge

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Rosalsky to get a bail bond, A I do not think so.

Q Didn't Judge Rosalsky tell you he didn't want to talk to you? A I do not remember.

Q Didn't he say that anything you might say at that time might be used against you, and he warned you of your rights? A I do not remember.

Q Have you told us everything that you said to Judge Rosalsky, and everything he said to you? A Yes, sir, I have told you.

Q And as far as you can remember you have told us everything? A Yes, sir.

MR. DONAHUE: If your Honor please, I offer at this time the official copy of the papers on file in the Court of Special Sessions, in evidence.

MR. KRIEGER: No objection.

THE COURT: Suppose you read it right into the record.

MR. DONAHUE: (Reading) "Court of Special Sessions of the City of New York, County of New York, People against Samuel Dreyfus. Information filed July 30, 1918, Compulsory Employment Law. Edward Swan, District Attorney.

"Court of Special Sessions, City of New York.

"The People of the State of New York against Sam Dreyfus: Be it remembered that I, Edward Swan, the

District Attorney of the County of New York, by this information accuse the first named defendant of the crime of unlawfully failing to be regularly and lawfully employed, committed as follows: That the said defendant on the 29th day of July, 1918, at the City of New York, in the County of New York, being then and there an able bodied male citizen, resident of the City of New York, of the age of 19 years, lawfully did fail and refuse to be habitually and regularly engaged in the lawful, useful and recognized business profession, occupation and trade of employment."

And the endorsement on the back:

"pleaded July 13, 1918, and August 8th, 1918 defendant pleads not guilty. September 26, 1918, present: Judges: Murphy, Salmon and Herbert. The defendant pleaded guilty. The defendant placed on probation. Sentence suspended. Ordered to get a certificate." when

Q Is that what you said yesterday, that/you were arrested you had to do something, to file a card or something? A I was just sent a card.

Q You were put on probation, were you not? And that is your signature (showing witness)? A Yes, sir; they just gave me that and told me not to appear.

Q Wasn't there something mentioned about a certificate or a card? A I don't remember.

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Q Didn't you say yesterday, Mr. Dreyfus, there was something mentioned about your getting a card? A What?

Q Didn't you say something yesterday about a card?
(No answer).

Q Wasn't that card you had in mind the card the probation officer told you where to report? A He gave me a postal card.

Q You recognize this gentleman (indicating person)?
A I do not remember.

Q Don't you know him at all? A No.

MR. DONAHUE: (Addressing person referred to)
What is your name?

MR. BRAUNWORTH: Anthony J. Braunworth.

Q You never saw him before, as far as you can remember?
A No, sir.

MR. DONAHUE: That is all.

REDIRECT EXAMINATION BY MR. KRIEGER:

Q Dreyfus, did you have to report to the probation officer in 1918 in connection with this incident? A No, sir.

Q Did you ever go to report at any specific times to any officer as to what you were doing? A No, sir.

Q Is the matter clear in your mind as to just what happened in that connection, is it clear to you? Question withdrawn. Do you understand exactly what took place in connection with this charge? A Yes, sir, I know what that is; is that what you mean?

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Q You understand just what took place before the court and just what was said and done? A No.

Q Did you have a lawyer at the time? A No.

Q When you said you were convicted, did you feel as if you were not convicted?

MR. DONAHUE: I object to that.

MR. KRIEGER: I withdraw the question.

Q Were you conscious of the fact that you were convicted of a crime?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q Did you understand that you were convicted of a crime?

MR. DONAHUE: I object to that, if your Honor please.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q Now, the court asked you if you had not seen Tobey between September 21st and December 5th, and you said no. Now is that correct? A Yes, sir.

Q You saw him in September, I understand, for the second time? A Yes, sir.

THE COURT: Pardon me. This witness has testified that the first time that he met Mr. Tobey was in May of 1919; the second time was in September, 1920; that he

saw him again on the next day, after the second visit, which would be also in September, 1920, and then that he did not see him until the witness returned from Cleveland, namely, on some day in November, 1920.

MR. KRIEGER: I understand that to be his testimony.

Q In other words, we have four occasions, the last being the occasion on which the defendant was placed under arrest, as the times when he saw Tobey?

MR. KRIEGER: Correct, your Honor.

THE COURT: Very well; you ask him.

Q Now, Dreyfus, when did you go to Cleveland? A In the beginning of November.

Q Now, how long before then did you see Tobey?

MR. DONAHUE: This was all gone over in direct.

THE COURT: I will allow that.

Q Before you went to Cleveland, how long before, immediately how long before that did you see Mr. Tobey? A Why, the day before.

Q Before you went to Cleveland? (No answer).

Q Wasn't it the day before you went to Cleveland you saw Mr. Tobey? A Yes, sir.

Q That was in November, wasn't it? A Yes, sir.

Q And the first time Tobey asked you to take Ross away was in September, the first time you met him; is that correct? A Yes.

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Q And then, do I understand you testified yesterday that you said you would let him know?

MR. DONAHUE: We have gone all over that.

THE COURT: I am very glad that you did it, and it is entirely proper. This witness evidently omitted to mention, on his cross examination, an occasion in November, when on the direct examination, he also saw Tobey.

MR. DONAHUE: I had all this in mind, that he testified to this on direct examination; there is no question about that; it goes to his credibility.

THE COURT: On the cross examination he didn't mention having seen Tobey in the month of November before going to Cleveland, but it appears that on the direct examination he did mention having seen Tobey a day or two before he, the witness, went to Cleveland, namely, in November.

MR. DONAHUE: Why bring it out on direct all over again?

MR. KRIEGER: I want to dissipate any impression --

THE COURT: Ask him.

Q You told him you would let him know?

MR. DONAHUE: I object to that.

THE COURT: We have been all over that. No occasion for it now.

Q When you saw the money at the District Attorney's office that had been taken from you by Detective Russo, how much money did you see? A I don't remember, \$35 or \$40.

Q Your impression is that it was \$35?

MR. DONAHUE: I object to this. We don't care what his impression was.

Q You had never met Mr. Talley before you were brought to his office, had you? A No, sir.

Q And you have never seen Mr. Talley since, except once before, when you were before him in court? A Just once before I saw him seated here.

Q Were you before him while he was acting as a judge, while he was sitting as a justice of this part in this case, did you appear before him? A I did, yes, sir.

Q But other than these particular instances you have never seen or heard of Mr. Talley? A No, sir.

THE COURT: I think we will take a recess, counsel.

You are admonished not to converse amongst yourselves on any subject connected with this trial, or to form or express any opinion thereon, until the same is submitted to you.

(Recess to 2:00 p.m.)

AFTER RECESS.

MR. KRIEGER: The defendant rests, your Honor.

REBUTTAL.

W I L L I A M F . T E P P E R , called as a witness for the People in rebuttal, being duly sworn, testified as follows: (Irvington, N. J.)

DIRECT EXAMINATION BY MR. DONAHUE:

Q Mr. Tepper, what is your business? A Bookkeeper for the New England Braid Company.

Q Bookkeeper for whom? A The New England Braid Co.

Q And how long have you been a bookkeeper for that firm?

A Fourteen years.

Q And along with being bookkeeper, what other kind of work do you do? A Cashier, and I have charge of the payroll.

Q And you have been there for fourteen years? A Yes.

Q In the fourteen years you have been there, Mr. Pepper, what is the largest number of employees which have been employed by the New England Braid Company? A The largest amount would not be over thirty-five.

Q Pardon me? A Not over thirty-five.

Q Do you know this defendant, Samuel Dreyfus? A Yes.

Q In the fourteen years you worked for that company, did he ever work for it? A Yes, sir.

Q Will you tell us for what period? A Why, from the middle of July, 1915, until August 1915.

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Q That is a little over a month, altogether? A Yes.

Q Did he ever work for your firm for two years continuously? A He did not.

Q Did he work for your firm in July 1915? A No.

Q Did he work after August 27, 1915? A No, sir.

Q And you know him, do you not? A Yes, sir.

BY THE COURT:

Q Where was the place of business of your firm? A At that time, 7 Bond Street.

CROSS EXAMINATION BY MR. KRIEGLER:

Q Mr. Pepper, do you remember Dreyfus personally? A Yes.

Q You remember him having worked there, aside from whatever record you may have consulted with reference to the time he was employed? A Only the time I stated.

THE COURT: Raise your voice, please. There is noise in the room, and everybody wants to hear you.

THE WITNESS: He worked there for the time I stated.

Q Do you remember that from your personal knowledge, aside from any record that you might have consulted? A I could not tell you the exact year, without looking up.

Q Did you lookup any records as to the period of time Mr. Dreyfus worked for the New England Braid Company? A Yes.

Q Before you came here to testify? A Yes, sir.

Q Aside from the record you looked up, you have no personal recollection of it, have you? A Only as knowing him while he

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was there.

Q You have no personal recollection of the time? A What?

Q You have no personal recollection of the time? A That he worked there?

Q Aside from the record you looked up? A I know it was a very short time.

Q If you had not looked up and consulted your records, would you have been able to state the time he worked there?

A I would have said about two months.

Q What was he doing with the Braid Company during the time he worked there? A Part of the time as errand boy, and doing some work in the office on braid.

Q Did you come into contact with him daily? A Yes.

Q Was he a good boy?

MR. DONAHUE: Objected to.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q Did you find him faithful to his trust?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. KRIEGER: Exception. Your Honor, this is cross examination of a witness produced by the People.

THE COURT: I appreciate that.

Q In your contact with Dreyfus, did you find his reputa-

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tion to be good or bad?

MR. DONAHUE: I object to that.

THE COURT: Sustained.

MR. KRIEGER: Exception.

Q Do you know what he was earning during the time he worked for you? A Yes, sir.

Q How much? A A dollar and a quarter a day.

Q That was about six or seven dollars a week, or thereabouts. Was he paid by the day or the week? A The week.

Q And was he discharged or did he leave of his own accord? A He left of his own accord.

Q Did you, when your attention was first brought to the fact that you would be asked to be a witness here, did you remember the name of Sam Dreyfus? A Certainly.

Q Do you know Sam Dreyfus by any other name? A No, sir.

Q Have you got your records in court, records as to the time of the employment of this boy with the New England Braid Company? A I have a book here.

Q And that was the book you consulted with reference to the time in which he was employed by the New England Braid Company? A Yes, sir.

MR. KRIEGER: That is all.

A N T H O N Y J. B R A U N W O R T H , a witness called
for the People in rebuttal, being duly sworn, testified as

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follows: (Circle F Section, Main Division).

DIRECT EXAMINATION BY MR. DONAHUE:

Q You are a member of the Detective Department of the City of New York? A Yes, sir.

Q Were you in the Court of Special Sessions on September 26, 1918? A To the best of my recollection I was.

Q Did you some time prior to that know a man by the name of Samuel Dreyfus? A Yes, sir.

Q Can you see that man sitting in court now? A Yes, sir.

Q Which man? A The first man at the table (indicating the defendant).

Q Did you hear him in the Court of Special Sessions plead guilty to a charge of violating the Compulsory Employment Law? A He pleaded guilty and received a suspended sentence.

Q You are sure that this is the man? A Yes, sir.

Q You were the arresting officer in the case? A I was.

MR. DONAHUE: I offer this in evidence.

(Paper referred to, being the record of the Court of Special Sessions, in the case referred to, marked People's Exhibit 14 in evidence).

Q Do you recognize these papers, officer? A That is my signature (indicating).

Q And you were the arresting officer in that case?

A I was.

Q The charge in that case was a violation of the compulsory

employment law, was it not? A It was.

Q Commonly known as the anti-loafing law? A Yes, sir.

CROSS EXAMINATION BY MR. KRIEGER:

Q Did Dreyfus testify on this proceeding in the court of Special Sessions? A I think he pleaded guilty.

Q Did he testify? A I think he did.

Q You think he did; is that your recollection now?

A He made an explanation to the court of the reason why.

Q You have testified in cases before? A I have.

Q You know what it means to testify?

MR. DONAHUE: I object to that.

THE COURT: Allowed.

Q What does it mean?

MR. DONAGUE: I object to that.

THE COURT: Sustained.

Q Did Dreyfus testify?

THE COURT: Was he sworn, and did he make answers to questions, under oath?

THE WITNESS: I cannot remember that just now, your Honor.

MR. KRIEGER: That is all, officer.

MR. DONAHUE: That is the People's case, if your Honor please.

(Mr. Krieger started to sum up to the jury):

THE COURT: Counsel, I would suggest you renew your

motions that you made at the close of the People's case; they are denied, and you have an exception.

MR. KRIEGER: I would also like to move your Honor, if you please, for the dismissal of the indictment and for the discharge of the defendant at the end of the whole case, since it appears from the testimony that no threat was made by the defendant upon the complaining witness, and that no payment was made by the complaining witness under the force of any threat.

THE COURT: Motion denied.

MR. KRIEGER: Exception.

(Mr. Krieger summed up to the jury but had not finished his summation to the jury when court adjourned).

THE COURT: Counsel, I am going to interrupt you now, and you can resume your summation in the morning.

Gentlemen of the jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you.

The Court stands adjourned until tomorrow morning at half past ten.

(Whereupon an adjournment was taken to Thursday, June 30, 1921, at 10:30 A. M.)

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