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2379

CASE

CASE 2379

- : I N D E X : -

November 28th, 1917.

<u>WITNESSES:</u>	<u>DIRECT:</u>	<u>CROSS:</u>	<u>RE-DIR.:</u>	<u>RE-CRO.:</u>
Samuel Rappaport,	2			
Sol Rappaport,	6	9	9	9
Samuel Strongin,	11	18		
Barnet Lipman,	33	42	62	
Jacob C. Schultz,	64	66	73	74
Israel Danziger,	78			
Louis Pomeranz,	79			
<i>Barnet Schwartz</i>	<i>82</i>			

2874

CASE # 2379

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

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

vs. :

BARNET LIPMAN. :

2874

-----X
New York, November 28, 1917, etc.

Indicted for extortion (Section 552 of the Penal
Code).

Indictment filed August 2, 1917.

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

For the People:

ASSISTANT DISTRICT ATTORNEY MANCUSO.

For the Defendant:

JACOB M. ZINAMAN, ESQ.;

WILLIAM H. CHOROSH, ESQ., of Counsel.

Tried before HON. JOSEPH F. MULQUEEN, J., and a
Jury.

A jury was duly impaneled and sworn.

Mr. Mancuso opened the case on behalf of the People.

James E. Lynch,
Official Stenographer.

CASE # 2379

MR. MANCUSO: (Calling) Samuel Strongin!

(No answer).

MR. MANCUSO: The complaining witness, your Honor, has been called and he does not respond. I have seen him here every day when the case was on the calendar.

THE COURT: Well, have you any other witnesses?

MR. MANCUSO: I have Samuel Rappaport.

THE COURT: If there is any witness that you can put on without jeopardizing your case I wish you would put him on and see where the complainant is. Of course I do not want to interfere with your conduct of the case in any way.

SAMUEL RAPPAPORT, called and duly sworn as a witness on behalf of the People, testified through Official Interpreter Fischer, as follows:

(Residence, 242 Siegel street, Brooklyn).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What is your occupation or business? A Painter.

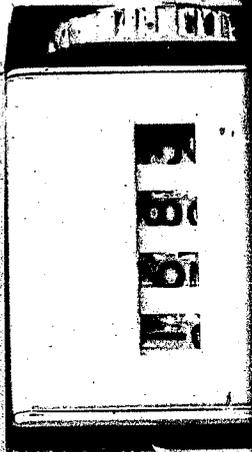
Q How long have you worked as a painter? A Twenty years.

Q Do you know the complaining witness, Samuel Strongin?

A Yes.

Q How long have you known him? A About five or six years.

Q And during this period of painting work done by you have you worked for him at any time? A I worked for him.



CASE # 2379

five years ago and that's why I know him.

Q Are you a member of any Local or Brotherhood of Painters? A Yes.

Q Which one? A 942.

Q Well, what is the full title of that? A Painters & Decorators' Union.

Q And 942, is that a local in Brooklyn or New York?

A In Brooklyn.

Q During the month of January, were you working for Samuel Strongin at 22nd street between Seventh and Eighth avenues? A Yes, that month.

BY THE COURT:

Q January of this year? A Of this year.

BY MR. MANCUSO:

Q What kind of work were you doing there? A Painting.

Q When did you start to work on that job? A I don't remember the date but I started to work on a Monday.

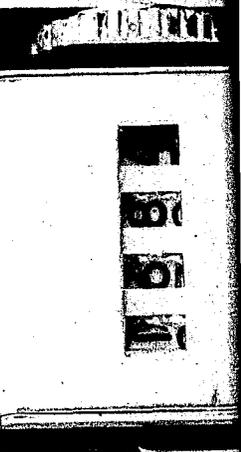
Q Well, was it in the month of January or the month of December? A In January.

Q Did Strongin have other workmen there besides you? A Yes.

Q And at that time were you a member of the Painters, Decorators & Paperhangers' Union in good standing? A Yes, in good standing.

Q And what wages were you receiving from Samuel Strongin? A Five dollars a day.

Q And is that the regular union wages? A Yes.



CASE # 2379

Q Do you remember the 8th day of January, 1917? A Yes.

Q Do you know Schultz and Louis Silver? A Yes.

Q Is Schultz a delegate of your union? A Yes.

Q And is Silver a delegate of your union? A Yes.

Q On the 8th day of January of this year did you see Schultz at the place where you were working? A I saw Schultz and Louis Silver. They came together.

Q And after Schultz and Louis Silver came there did you continue to work or did you stop? A We were working. They asked us are we union men. Then they told us we can't work, we must go to headquarters.

MR. MANCUSO: If you object to it we will have this conversation stricken out.

MR. CHOROSH: Well, so far I have no objection to it.

MR. MANCUSO: This is in the absence of the defendant, of course.

Q And after this talk with Louis Silver and Schultz did you stop working? A We went together with the boss to headquarters. We stopped work.

Q Who else went with you besides the boss and the two men you have mentioned and yourself? A Louis Silver and Schultz.

Q Did the other workmen go? A All went along.

Q Where did you go? A To the headquarters in 56th street.

CASE # 2379

Q Is that the District Council? A Yes.

Q What time of day did you get there? A About half past four in the afternoon.

Q And at the District Council did you talk with any officers of the union there? A Yes. We were asked whether the boss --

MR. CHOROSH: I object to that conversation.

Q Well, after the talk with this officer of the council where did you go, back to the job or did you go home? A We were told to stop.

MR. CHOROSH: I object to that. That is not responsive.

BY THE COURT:

Q Did you go home or did you go back to work? A No, we didn't go back to work.

BY MR. MANCUSO:

Q Did you go home then? A Yes.

THE COURT: Well, what difference does that make?

Q Well, later that day did you see this defendant at his home? A Not the same day.

Q When did you see him? A The following day.

Q At what time, morning or evening? A Nine o'clock in the morning.

Q And who was with you at the time you saw him? A We saw him at the job.

Q And at the job did you have any talk with him? A We

CASE # 2379

didn't talk to him at all. He told us to remain at the job and he went away with the boss to headquarters.

Q And did you continue to work after that? A No, we didn't continue working, but when the boss came back about eleven o'clock he says, "Everything is all right, you can continue working."

Q So that from the time this defendant left the job up to the time your boss came back you were not working? A No.

MR. MANCUSO: That is all, your witness.

MR. CHOROSH: I have no questions.

S O L R A P P A P O R T, called and duly sworn as a witness on behalf of the People, testified through Official Interpreter Fischer, as follows:

(Residence, 230 Moore street, Brooklyn).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What is your business or occupation? A Painter.

Q How long have you worked as a painter? A Ten years.

Q Are you a member of the Brotherhood of Painters, Decorators & Paperhangers of Greater New York, Local No. 943? A Yes.

Q Where is this local, in New York or Brooklyn? A Brooklyn.

Q On the 9th day of January were you a member in good standing? A Yes.

Q How long have you known Samuel Strongin? A Since last winter, since I started to work for him.

Q When did you start to work for him, before January or in January of this year? A Before January.

6287
CASE # 2379

Q And were you working for him at 22nd street at the new job between Seventh and Eighth avenues? A Yes.

Q Working there as a painter? A Yes.

Q And do you know this defendant, Barnet Lipman? A Yes.

Q Was he a delegate of your Union? A Yes.

Q Of your Local? A Yes.

Q And what salary or wages were you receiving there?

A Five dollars a day.

Q Is that the regular union wages? A Yes.

Q Do you remember the 8th day of January of this year?

A I don't remember exactly the day.

Q Well, on that day, January 8th, do you remember seeing Schultz and Louis Silver? A I don't remember the day, but I saw Schultz and Silver on the day when I started on this job.

Q And are they delegates of the locals of New York?

A Yes.

Q When Schultz and Silver came there did you stop working?

A They made us stop.

Q After you stopped working where did you go, if any place? A They took us, seven or eight workmen, including the boss, to the headquarters of their local.

Q Where is that? A 56th street and Third avenue, 55th or 56th street and Third avenue.

Q And this defendant wasnot there, was he? A No.

Q And when you and the other men together with your boss and Schultz and Silver went there did you have any talk with

CASE # 2379

the officers of that union or that council? A Yes, we were asked --

MR. CHOROSH: Now, just "Yes," is sufficient.

Q Well, was anything said as to the wages?

MR. CHOROSH: Well, I do not think that is material.

MR. MANCUSO: Well, I will withdraw that question.

Q Now, after a talk with these officers of the council, did you go back to work or did you go home? A No.

Q Did you see the defendant that day or next day? A The next day.

Q Where did you see him? A That very evening we went with the boss to the defendant's, because we were sent there by the council, and Barnet Lipman told us to go back to the job next morning, and the boss remained with Barnet Lipman in his house.

Q And then you went away and left the boss there, Mr. Strongin? A Yes.

Q And next morning did you see the defendant? A Yes.

Q Where did you see him? A At the building.

Q And before he came there were you working? A No.

Q And after he came there did you start to work? A The boss first came and started us to work. He said, "Work." So we asked the boss whether we could work and he said "It's all right, you can work."

was that

Q So that, after Lipman had been there or before? A After he had been there.

CASE # 2379

MR. MANCUSO: That is all, your witness.

CROSS-EXAMINATION BY MR. CHOROSH:

Q Just one question. On the day when you went to the union here in New York, was the day that you started this job, wasn't it? A A few days previous to that.

Q But in any event you started to work on the morning following the day that you went to the union here in New York, is that right? A Yes.

Q And you started to work on this following day on the morning of that day, did you? A After dinner.

Q Well, at what time? A About twelve o'clock.

Q Well, that is all.

RE-DIRECT EXAMINATION BY MR. MANCUSO:

Q Well, you were working there on the first day when Schultz and Silver came there? A I worked there even a few days before that, before they came.

Q So that you started to work a few days after January 1st on that job? A I can't tell you the date, but I worked there a few days previous before the delegates came.

RE-CROSS EXAMINATION BY MR. CHOROSH:

Q The point I want to make clear to you is this, you say you don't remember the date when this strike was called, then you were called to the office of the council, of the New York Union; now, assuming that date was the 8th of January, did you go back to work on the morning of the 9th? Is that clear in your mind? A Yes.

6
2
3
7
9
CASE 2379

Q That is all.

MR. MANCUSO: (Calling) Mr. Sambroff!

(No answer).

MR. MANCUSO: (Calling) Samuel Strongini!

(No answer).

MR. MANCUSO: Your Honor, I am afraid we will have to adjourn until two o'clock. The complaining witness has not appeared as yet, and between now and two o'clock I will send out for him. I assumed when he was here yesterday he took it for granted that the other case would not be completed.

THE COURT: Well, I do not see that there is anything else to do under the circumstances. I hope you will have him here at two o'clock.

Gentlemen of the Jury, the Court will excuse you until two o'clock, and in the meantime, remember the injunction that I have given you so often, that you must not talk about the case in which you are impaneled with any one. That means you must not talk about it with strangers nor discuss it among yourselves, and you must not form nor express any opinion as to the guilt or innocence of this defendant until you have heard all the evidence on both sides and until the Court has submitted the case to you. That is the time for you to decide and not before that.

MR. CHOROSH: May it please your Honor, may the bail be continued?

CASE # 2379

THE COURT: The bail, is continued, yes.

(After recess).

TRIAL RESUMED.

S A M U E L S T R O N G I N, called and duly sworn as a witness on behalf of the People, testified through Official Interpreter Rosenthal, as follows:

(Residence, 350 Keap street, Brooklyn).

DIRECT EXAMINATION BY MR. MANCUSO:

Q What is your business or occupation? A Painting contractor.

Q Are you a member of the Contractors' Union? A Yes.

Q What branch or local? A In Brooklyn, I don't know the name.

Q During the month of January, 1917, did you have a contract for the performance of certain work at 22nd street between Seventh and Eighth avenues? A Yes, sir.

Q And what kind of building was it? A An apartment house, six stories.

Q Was it a building in the course of construction? A It was being built, it was a new building.

Q And you had a contract for the general painting? A Yes, sir.

Q And did you employ any men in connection with that work? A Yes, sir.

Q How many men did you have during the month of January? A Eight or nine.

Q When did you start to work? A At the end of November,

6287
2379
CASE

1916, the last of November, 1916.

Q And you finished it when? A In March, 1917.

Q Now, the men that you had employed there working for you, were they union men or non-union men? A Union men.

Q And what wages did you pay them? A Five dollars a day.

Q Did you have an agreement with the Painters' Union as to the terms under which these men were to work for you, together with the wages to be paid?

MR. CHOROSH: One minute, I object to that question.

The agreement would be the best evidence.

THE COURT: I will sustain the objection. You can ask him if it was a union job if you want to:

Q Was that a union job? A Yes, sir.

BY THE COURT:

Q And you employed union men? A Yes, sir.

BY MR. MANCUSO:

Q Do you know Schultz and Silver? A Yes.

Q Are they delegates of the Brotherhood of Painters?

A Yes.

Q And do you know the defendant, Earnest Lipman? A Yes.

Q Do you know whether or not he is a delegate representing the Brooklyn Locals? A Yes, he is from Brooklyn.

Q At your job did you have all New York men or part from New York and part from Brooklyn? A Some from New York and some from Brooklyn. More Brooklyn men.

6287
CASE 2379

Q On the 8th day of January, 1917, did you see Schultz and Silver at your job? A Yes.

Q And did you have a talk with them? A No, I didn't talk to them at all. They came and took away the workmen.

Q And after the workmen were taken away did you go anywhere with them? A They told me to come with the workmen.

MR. CHOROSH: I object and ask to strike that out.

THE COURT: Objection sustained. Strike it out.

Q Do not tell us what was said. Did you go anywhere with them? A I went with them to headquarters.

Q Do you mean the district headquarters? A The district council.

Q Where was that? A 56th street and Third avenue.

Q And when you arrived there did you have a talk with some officer of the district board? A Yes.

Q And after the talk with this officer of the District board did you go back to the job or did you go home? A I went home.

Q And did your men go back to work or did they go home? if you know? A I was ordered to come back with the men the next morning.

Q Now, on the night of January 8, 1917, did you go to this defendant's home? A Yes.

Q And you had Brooklyn men working for you at that time? A Yes.

Q And what time did you go to his home? A About six

6287
CASE # 2379

or a little after six in the evening.

Q Did you have any talk with the defendant at the time you visited at his home? A Yes.

Q Will you tell us all the conversation that took place between you and the defendant at that time? A I told him, to defendant, that the Brooklyn men were taken off, that they were not permitted to work.

Q What did he say? A He said he would go the next day to the district council and find out all about it.

Q Anything else that was said? A He made an appointment for the next morning at nine o'clock to go there.

Q Next morning was Tuesday, January 9th, is that right? A Yes, Tuesday.

Q Did you meet him, and where? A At the Plaza where the cars are in Brooklyn.

Q What time was it that you met him? A About half past eight.

Q When you met him did you come over to New York with him? A Yes.

Q How did you come, by the car across the bridge or how? A By the car.

Q And where did you go when you reached the New York side? A Went to 56th street, to the Painters' headquarters.

Q From there did you and Lipman have a talk with any person at the council headquarters? A Yes.

Q Tell us what was said by the defendant, yourself and

62379
CASE #

the other person? A The secretary there informed me that I must have workmen, half from New York and half from Brooklyn, I had eight workmen, and one was from New York, and I couldn't lay off any and I couldn't use any more.

MR. CHOROSH: Just one minute.

A (Continuing) So they decided I should take on two more men from New York.

Q Now, did the defendant Lipman take part in this conversation? A Yes.

Q And after the conversation had at the District Council did you go out with Lipman? A Yes.

Q Where did you go to? A We went out to the street and he called me to a saloon.

Q Where? A The northeast corner of Third avenue and 55th street.

Q And when you went into the saloon did you have any drinks with him? A Yes.

Q Did you have any talk with him? A Yes.

Q What did he say to you? A We sat down and he said that the business will cost me fifty dollars, that the New York delegates want fifty dollars, if I don't want to have any more trouble on the job.

Q What else was said? A That's all he said.

Q Well, what did you say to him when he asked you for fifty dollars? A I said I couldn't pay fifty dollars because I paid union prices to my men, and he said he couldn't help it.

6287-2379
CASE #

Q Well, what else? A So I said if I shouldn't have any more trouble I am willing to give twenty-five dollars.

Q What did he say then? A He said he was satisfied. He said that he would try and arrange it so that they would take the twenty-five dollars.

Q Did you have any cash with you in your pocket? A I don't remember whether I had cash, but I gave him a check.

Q You gave him a check? Do you remember who wrote out the check? A He filled out the check in his own handwriting.

Q And did you sign it? A I signed it and I endorsed it.

Q And did you give it to him? A Yes.

Q I show you this slip of paper and ask you whether you saw that before? A Well, I saw this check after it went through the bank.

Q Well, is that the check that you gave to him on that day? A Yes.

MR. MANCUSO: I offer it in evidence.

MR. CHOROSH: No objection.

(It is marked People's Exhibit 1 in evidence and contents read to the jury by Mr. Mancuso).

Q After you gave him the check did you go back to your work? A Yes.

Q Did you see the defendant after that? A On the job I did not see him any more.

Q On the following day, the 10th, Wednesday, January 10,

6187
2379
CASE

Q did you see Silver and Schultz? A Yes.

Q And Tuesday, January 9th, after you paid the check to the defendant, did you continue with your work? A Yes, in the afternoon we started to work.

Q And on Wednesday, when Schultz or when Silver came there, did you stop working? A No.

Q Did you see the defendant after you paid this check, at his home or any other place? A He was once in my house.

Q Well, when was this, how long after January 9th? A It must have been in February, when they took off the men the last time.

Q Well, what did he say to you when he came over to your house at that time? A He asked me that I should not make any trouble on account of the check.

Q Did you see him after that any more? A No.

Q And do you remember speaking to some representative of the union sometime in August about this matter? A No.

Q Well, you know Robert Sembroff? A Yes.

Q Does he represent the local in New York? A Yes.

Q Did he come over to see you about this matter sometime during the year 1917? A A committee came to me.

Q From the union? A From Local 1011.

Q Did you have any talk with this committee? A Yes.

Q And after the talk with this committee did you go to the District Attorney's office? A Yes.

CASE # 2379

MR. MANCUSO:.. That is all. You may examine.

CROSS-EXAMINATION BY MR. CHOROSH:

Q Mr. Strongin, if I understood you correctly on your direct examination, you stated that the strike was called on Monday, January 8th, is that correct? A Yes.

Q What time of day was it? A Four o'clock in the afternoon.

Q And your men went back to work the next day, did they? A Yes.

Q At what time of the day did they go back to work the following day? A One o'clock, after dinner.

Q Right after dinner? A Yes.

Q And you remember testifying here in answer to the District Attorney's questions that they went back to work after the check was given to Mr. Lipman, the defendant, is that correct? A Yes.

Q You stated that you went to the union's office on the morning of Tuesday, January 9th, is that right? A Yes, Tuesday.

Q And then you went to a saloon on 55th street and Third avenue, is that correct? A Yes.

Q Was that the place where you received this check for \$35 from Lipman?

MR. MANCUSO: I object to that. There is no evidence that he received a check. The evidence is that he gave

6287
#2379
CASE

the check.

MR. CHOROSH: Or paid the check. Excuse me.

THE COURT: Well, put a new question.

Q Well, is that the place where you delivered this check in evidence to the defendant? A Yes.

Q Is that right? A Yes.

Q Where was this check made out? A There in the saloon.

Q Now, mention the place again of that saloon? A 55th street, north-east corner of Third avenue.

Q As near as you can state, what time of the day was it when you say you gave this check to the defendant? A It was between eleven and twelve, about that time.

Q And you didn't see him after that day at all, did you, until February, is that correct? A I may have met him, but I didn't have any talk with him.

Q But you have no recollection of seeing him again on that day, have you? A The same day I did not see him.

Q Why, didn't you see him in Schwartz's Cafe in Brooklyn, in the place where this check for \$25 was cashed? A No, I don't know where that cafe is.

Q You never heard of Schwartz's Cafe? A I heard about it, but I don't know where it is.

Q And you didn't see him on the same day, in the afternoon? A No.

Q Are you sure about that? A I am positive.

Q Mr. Strongin, you knew that the defendant Lipman had no

6127
CASE # 2379

jurisdiction on any job in New York City, didn't you? I mean in the Borough of Manhattan? Answer that question? A I don't know.

Q You don't know that? A I don't know the laws of the union.

Q You are a member of a union and you also employ union laborers, is that right? A I am not a member of the union. I have a contract with the union. I am a boss.

Q Yes, you knew that there were delegates also in New York City? I mean by that, in the Borough of Manhattan?

A Yes.

Q And you knew that the delegates in the Borough of Manhattan were Mr. Schultz and Mr. Silver? A Yes.

Q And you knew that it was Schuätz and Silver, or either one of those delegates in the Borough of Manhattan who were the only ones who could call a strike in this Borough, didn't you? A Yes.

Q And you knew also that Mr. Lipman was a delegate of the Brooklyn Local, did you not? A Yes.

Q Isn't it a fact that because you had some employees who lived in Brooklyn, that that was the reason why you went to Lipman, isn't that true? A Yes.

Q And you knew that Lipman had no jurisdiction in the Borough of Manhattan, didn't you? A Yes.

Q That is perfectly clear in your mind, isn't it? A Yes.

Q And you went over to Brooklyn to see Lipman, to help you

6187
2379
CASE #

out on this job, didn't you? A The workmen at the council were told they should come the next day and bring their delegate.

Q And that is how you went to Brooklyn, is that right? Well, you asked Lipman to help you out on this strike, didn't you? A I didn't ask him for anything.

Q Well, what did you say to Lipman when you first saw him on that Monday night, January 8th? A I told him that the people in New York did not believe me, that I was Strongin, because they didn't know me, that I had a contract with them.

Q Yes, you knew Lipman, didn't you? A Yes.

Q For how many years had you known Lipman before that night? A About six or seven years.

Q And you went over to Lipman on that night to ask him to help you out, didn't you? A I didn't ask him but I told him that they didn't believe me and that he should come with me and the workmen to New York.

Q And you had a conversation with Lipman at his home on that Monday night, didn't you? A Why, naturally; I was in the house and we talked.

Q And who were the men who were with you on that night? A Sam Rappaport and another man by the name of Mike, I don't know his family name.

Q Anybody else? A No.

Q And did these gentlemen hear everything that you said to Lipman and that Lipman said to you? A He told them to

6287
2379
CASE

leave the room and I remained in the room.

Q Lipman told your friends to leave the room and then he would have his conversation with you, is that right? A Yes.

Q Now, after Mr. Lipman went through that ceremony of asking you to have your friends leave the room, what did you say to him and what did Lipman say to you? A He said, "You know that New York is not Brooklyn. If trouble arises in New York they mean business. If you are willing to spend a few dollars then I will go."

Q And that is what Lipman said to you on the first night that you saw him on January 8th? A Yes.

Q Well, now, why didn't you tell that to the District Attorney when he asked you questions on your direct examination? A He didn't ask me that.

Q You mean to say the District Attorney did not ask you the here what conversation was between yourself and Lipman on the first night that you met him, on January 8, 1917? A He didn't ask me that question.

Q You answered the District Attorney what did take place that night here about fifteen minutes ago, didn't you? A But about that he didn't ask me.

Q You mean to tell this Court and jury that the District Attorney didn't ask you what was the conversation between you and Lipman on Monday night, January 8th, when you first saw him, is that what you mean to say? A Everything that was said at the time I am repeating here now.

6267 # 2379
CASE

Q Well, do you remember now that you did not say a word to the District Attorney, in answer to this question, asking for that conversation that night, that you did not say a word about Lipman asking these men to step out, and telling you that if you are going to do business with the New York delegate, it means business, it means money? Do you remember that now?

MR. MANCUSO: I object to the question. I do not believe I asked him if anybody was with him at the time he went to the defendant's home.

MR. CHOROSH: Well, this is cross-examination.

THE COURT: Objection overruled. He is inquiring as to the conversation and so on.

A No, I did not say that.

Q Now, Mr. Strongin, then you say you met the defendant the following morning? A Yes.

Q By the way, before I leave off that other point, what was your answer to Mr. Lipman, when he told you that? A I asked him, "We will see, what do you mean, business?"

Q What is that? A I said, "We will see. What do you mean, business?"

Q Then what did Lipman say to that? A He says, "We will go there, we will take a ride over there."

Q Well, did you say to him on that night that you were going to give Lipman money or you were going to give any New York delegate money? A He didn't ask any money for himself. He only asked for the New Yorkers.

EXHIBIT
CASE # 2379

Q Now, you tell the Court and jury that when you had the conversation with him on this first night, Lipman did not ask for any money for himself, is that right? A No, he did not.

Q Well, did Lipman on that night say to you, "If you don't give any money there is going to be a strike?" A No.

Q Did he use any kind of threat to you on that night with reference to a strike? A Yes, he threatened.

Q Who, Lipman did? A He said if I wouldn't give money I will have trouble all the time.

Q Well, is not that the very question that I asked you a moment ago, was there any threat made by Lipman on that Monday night? Now, please answer now for the third time which way it was? A He didn't exactly threaten me. He said to me, "You know the people in New York, they want money. If you don't want to have any trouble you will have to give them money."

Q But he did not say to you that you were going to have a strike if you didn't --

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

MR. CHOROSH: Well, I withdraw that question.

Q Was there any other conversation that you had with Lipman on that night? A No, sir.

Q Now, when you met him the following morning, you met him at the council, is that right, at the Labor Union headquarters, wherever that is? A No, I met him in Brooklyn and together we rode over to the council.

Q Well, on your way over to the council from Brooklyn

6287
CASE # 2379

at the Plaza, where you say you met him, was there any conversation between you and Lipman about giving money? A No, I don't remember.

Q Not a word, is that right? A I think so.

Q You think there was not, is that right? A I think there was no talk about it.

Q When you met in the office of the Labor Union, this council you spoke of at 56th street and Third avenue, did Mr. Lipman say anything to you about having a strike unless you paid any money? A No, there he didn't say anything.

Q There was some dispute between you and the laborers there as to the amount that you had to pay them for their services, was there not? A Yes.

Q And when that dispute arose in the Labor Union offices, then you settled up with your employees, is that right? A Yes.

Q Yes, and you gave some checks in settlement, is that so? A I was told to give checks and I gave checks.

Q Have you got those checks here? A No.

Q Where are those checks? A Maybe at home.

Q You never gave those checks to the District Attorney, did you? A He didn't ask me for them and I didn't give them.

Q And after you had made your settlement in the office of the Labor Union, by delivering those checks which you just spoke of, then your men were sent back to work, weren't they? A Yes.

Q Now, what time of the day was that? A About twelve

6127
CASE # 2379

o'clock.

Q Right from the office of the Labor Union? A It was between eleven and twelve.

Q And that ended the strike, didn't it? A Yes.

Q Now, then, tell the Court and jury how long after that did you speak to Mr. Lipman as you now say you did, about fifty dollars? A About fifteen minutes later while walking out.

Q After the strike was settled in the afternoon and you delivered up your checks in settlement, then you say about fifteen minutes thereafter you began to talk with Lipman about fifty dollars that you testified about on your direct examination, is that correct? A Walking out from that place he called me to the saloon.

Q Yes, now, who was around when he called you in the saloon? A Some of the workmen were there.

Q And on this occasion did Mr. Lipman also tell you to dismiss those employes, did he or not? A They remained standing on the street waiting for a car.

Q And was this conversation in the presence of these employes or without their hearing? A They couldn't hear it.

Q And did this conversation take place on the street?
A I was standing with the workmen waiting for a car, then he called me that I should go into the saloon and have a drink.

Q So that is the way you happened to have your conversation with him? He called you while you were waiting for a

6137
2379
CASE

car, is that right? A We were walking out. I walked over to the men who were waiting for the car, and he walked to the other corner and he called me over to him.

Q And then you went into the saloon, is that right?

A Yes.

Q And no one was present but you and he, is that correct? A Yes.

Q Now, tell the Court and jury what your conversation at that time was? A He said that the New Yorkers mean business. That I should give him fifty dollars, and then I would not have any more troubles on the job. I started to bargain with him and bargained him down to twenty-five dollars.

Q Now, what did you say, that is what I want to know? A I told him that I could not give him more than twenty-five dollars, and I gave him twenty-five dollars.

Q Did Mr. Lipman at that time use any threats of any kind?

A No.

Q Not a word, is that right? A No.

Q Did he threaten at that time to call a strike? A No.

Q Did he say at that time that if you did not pay the fifty dollars there is going to be a strike called - that if you didn't pay twenty-five dollars there is going to be a strike called? A No, he said that if I should not pay any money I would have trouble all the time.

Q I am asking whether he said to you, "If you don't pay fifty dollars now or twenty-five dollars now that you are

6127
CASE # 2379

going to have another strike." That is what I want to know.

MR. MANCUSO: I object to the question. The witness answered what was said.

THE COURT: I will allow the question.

A Yes, he did.

Q Why, didn't you just answer me a moment ago when I asked you was any threat of any kind made by him at the time you gave him the twenty-five dollars, and you said nothing of the kind, is that correct?

MR. MANCUSO: I object to the form of the question, the use of the word "threat."

THE COURT: I will allow the question. If he does not understand the question it may be repeated to him.

MR. MANCUSO: The witness may not know what is meant by the word "threat."

THE COURT: Well, he answered you when you made use of the word "threat."

MR. MANCUSO: I do not think I made use of that word, your Honor.

A He didn't threaten me in his own name, but he said that the New Yorkers would make a lot of trouble for me, not he.

Q In other words, he said to you, "If you don't pay this amount of money you are going to have trouble with the New York offices," is that right? A Yes.

Q Did he say to you that he will be instrumental in calling a strike at the New York office if you didn't pay this

6187
#2379
CASE

money? A No.

Q Now, this happened, you say, in the early part of January? When did you first make your complaint to the District Attorney? A I didn't make any complaint and I didn't care to make any complaint.

BY THE COURT:

Q Well, when did you first see the District Attorney about the case? A It was in the summer time, I believe it was in August.

BY MR. CHOROSH:

Q Why did you wait all this time, between January and August of 1917, before you made any complaint to the District Attorney? A I didn't care to make any complaint at all. The committee came to me from No. 1011, from the Union, and asked me that I should make an affidavit as to what had happened and how the money was taken from me, and they took me to the lawyers, Goldstein & Goldstein, and there I made an affidavit as to what had happened. Then I received a subpoena from the District Attorney's office.

Q Now, I want you to give this Court and jury the name of the man who asked you to do this? A I don't know the name, but the District Attorney ought to know the name.

Q Do you mean to tell this Court and jury that you did not want to make any complaint, and some man came around to you whose name you don't even know, and that man brought you into the office of Goldstein & Goldstein, and there an affidavit

CASE # 2379

was prepared by you and you made your complaint, is that right?

MR. MANCUSO: I object to the question. The witness stated that a committee from the Union called on him.

THE COURT: Well, I will allow the question.

A It was a committee with credentials from the Union.

Q Now, what Union, that is what I am trying to get at?

A From the Brotherhood of Painters, Local 1011.

Q Where is 1011, in Manhattan or Brooklyn? A In Manhattan.

Q And these men in 1011 of Manhattan wanted you to make a complaint against Mr. Lipman, is that right? A They asked me only that I should make an affidavit, that they themselves will make the complaint.

Q Now, did these labor gentlemen tell you why they wanted a complaint against Lipman?

MR. MANCUSO: I object to the question as incompetent, immaterial and irrelevant.

THE COURT: I think he has the right to inquire into that. You could not bring it out but he may.

A They said that they would like to weed out the grafters from the Union.

Q And you don't know these gentlemen's names, do you?

A I know them well but I don't know their names.

Q You had no idea whether they themselves were grafters, did you?

MR. MANCUSO: I object to the question, your Honor.

6237
CASE # 2379

THE COURT: I will allow it.

A That is possible.

Q And these were the people that came around to you on a pure public service of public sentiment, they wanted you to assist them in weeding out the grafters, is that right? A They said that they were working for the benefit of their organization.

Q And you don't know the names of these public spirited gentlemen, do you?

MR. MANCUSO: I object. This has been asked fifteen times. He said he doesn't know the names.

THE COURT: I will allow it.

A I knew the names but I don't remember them now.

Q Did you know or did they tell you that they had some kind of quarrel or strike in the Union among themselves?

A No.

Q Did you know whether they were seeking to get revenge of some kind against any one of their opponents in the Union?

A No.

Q But they brought you to their lawyers' office, is that right? A Not to their lawyers' office. I told them I would not go to their lawyers' office. I said I would like to go to my lawyers' office, and if they will advise me to make an affidavit I will make an affidavit.

Q And Goldstein & Goldstein are your lawyers or their lawyers? A My lawyers.

6287 # 2379
CASE #

Q And they came along with you, did they? A Yes.

Q And that is how the complaint happened to be made?

A Yes.

Q Did they mention Mr. Schultz's name at all? A Yes.

The \$25 Lipman took from me for Schultz, not for himself.

MR. CHOROSH: I ask that that be stricken out as not responsive, although it does not hurt me; if anything it does me good, but at the same time it is not responsive.

MR. MANCUSO: Well, it is cross-examination and you are bound by his answer.

MR. CHOROSH: Well, let it stand then.

Q So that Lipman said to you that he does not want any money for himself, is that right? A Yes, sir.

Q Lipman made no threats to you of any kind, did he?

MR. MANCUSO: I object. It is going all over it again.

MR. CHOROSH: Well, that is something new brought out.

THE COURT: Well, let him answer this one question.

A Not in his name.

MR. CHOROSH: That is all, then.

MR. MANCUSO: That is all. That is the People's case, your Honor.

MR. CHOROSH: Now, may it please your Honor, we move to dismiss on the ground that the Prosecution has failed to prove that the defendant has made any threats as alleged in the indictment, to call a strike in the event that this money is not paid over to him. On the contrary, the com-

6187
#2379
CASE

plaining witness swears specifically that Lipman made no demand for any money for himself. He made no threat to him of any kind, and hence the elements of the crime of extortion are totally lacking here, and there has been no kind of a case against the defendant made out of extortion. For that reason, I ask your Honor to dismiss the complaint.

THE COURT: The motion is denied.

MR. CHOROSH: I respectfully except.

Mr. Chorosh then opened the case for the defense.

THE DEFENSE.

BARNETT LIPMAN, the defendant, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence, 639 Park avenue, Brooklyn).

DIRECT EXAMINATION BY MR. CHOROSH:

Q Mr. Lipman, where do you live? A 639 Park avenue, Brooklyn.

Q And in the month of January of 1917, were you a delegate of any local union? A District Council 29 of Brooklyn.

Q Of Brooklyn? A Yes, sir.

Q How long had you been a delegate in that Brooklyn Union? A The second time?

Q Well, I don't know, all together? A I was a delegate ten or eleven years ago for two years. I was elected again in June, 1916, and served one year until 1917.

CASE # 2379

Q Until which part of 1917? A July 6th.

Q And since that time have you been acting in that capacity? A No, sir.

Q Your term of office expired? A Expired July 6th.

Q Now, as a delegate from a Brooklyn Local or Brooklyn Branch of your Union, did you have any power or any jurisdiction on any jobs in the Borough of Manhattan? A No, sir.

Q None whatever? A None whatever.

Q Is that right? A Yes, sir.

Q You could not declare a strike?

THE COURT: Well, what is the use of elaborating it? He said he had no jurisdiction.

Q Yes; who were the delegates here in the Borough of Manhattan, do you remember? A As far as I can remember there were five or six of them, I think.

Q Well, do you remember the main men here? A There was a man named Schultz, a man named Silver, a man named Horowitz. That's about all I can remember. There is three more but I don't remember the names.

Q When for the first time did you hear anything about this job on 22nd street in which Mr. Strongin, the complainant, here, was contractor? A On January 8th, Monday evening.

Q Did you know anything about this before that time? A No.

Q Who was the man that first brought that matter to your attention? A Mr. Strongin and three other men.

Q And he came to your home, did he? A Yes.

Q Will you please tell his Honor and the jury what your

CASE # 2379

your entire conversation was that night? A On Monday evening I was sitting in the house eating supper and a knock came on the door. I asked them to come in. There was a man by the name of Sol Rappaport, a man by the name of Hymie Rappaport, a man by the name of Hantman, and Mr. Strongin came into my house and said, "Godd evening," and sat down. I asked what was the trouble and they all started to talk at one time. I told them, "I can't listen to all of you, but I will listen to one." And I asked Mr. Strongin what was the trouble. He said to me, "Mr. Lipman, I got a job in New York on 22nd street near Eighth avenue." He said, "I got some trouble over there." I said, "What is the trouble?" He said, "Delegate Schultz and Delegate Silver come over and struck the job." I said, "What for?" He said, "They said I didn't pay the rate of wages. I had no agreement with the Brotherhood of Painters." I said, "You got an agreement, as far as I know, in Brooklyn, and that counts all over the United States and Canada." I said, "But about the wages, I don't know." I asked Mike Hantman, "What wages are you getting?" I said, "What did you tell the New York office?" He told them he worked three days and a halfam he got at the rate of fourteen dollars, which is four dollars a day, that he is paying under the rate of wages. I asked the next man and he said he was getting five dollars a day. I asked the third man and he said he was getting five dollars a day. I said, "I tell you, I can't do nothing in New York, you know that, boys, that I got no jurisdiction there." One

6187
2379
CASE #

of them said, "Can't you come over to-morrow morning with us to New York?" I said, I could call my office up first, and I said, "I will try to do the best I can for you."

With that the three men left and Strongin was left in the house. He started to ask me to come over with him and try to help him along as much as I can and he would pay me for my way, coming over here. I told him, "I will be over and do as much as I can but I have no jurisdiction there and you know that." He said, "I know that, but your influence might help along."

I said, "Where did the delegates tell you to go?" He said "They told me to go on the job on 28nd street." I said, "I tell you, "I will be there between half past eight and nine." He said, "No, come over there before eight o'clock, will you?" I said, "All right, but I got to call my office up first."

About a quarter past seven I met Mr. Strongin at the Bridge Plaza and from there we took a 14th street car and transferred at Eighth avenue to the 28nd street job. I waited there on the job until about a quarter past eight. I telephoned over to my office and I told the secretary of my office --

MR. MANCUSO: I object to any conversation he had over the telephone.

Q Leave out the conversation over the telephone? A I waited there until about a quarter to nine and I told Mr. Strongin I got to get an answer from the office first before I go anywhere. When I got an answer I was told to go over --

EXHIBIT
CASE # 2379

MR. MANGUSO: I object to the conversation, your Honor.

THE COURT: Oh, I will allow him to state it.

Q Well, after that conversation what happened? A I told Mr. Strongin that we will go down to the office, and after I got the telephone message we went down to the office.

BY THE COURT:

Q You met Strongin in the morning, you say? A Yes, sir.

Q What time was that? A About a quarter past seven.

Q How long had you known Strongin? A The first time I met him was about ten years ago on a job he had at Graham avenue and Ten Eyck street.

Q All right, what happened now, that morning? A So we went to the office at 56th street and Third avenue. We took an Eighth avenue car and transferred at 59th street and walked on 59th street to Third avenue and down to 56th street and Third avenue. We went upstairs and waited for the secretary. He wasn't in. We waited until about ten o'clock, when the secretary came in. The secretary says to me, "Barney, what are you doing over here?" I said, "These men asked me to come over here to see they got a square deal." He said, "They are getting a square deal." He asked Mr. Strongin, he says, "Did you hire this man Cohen?" A man by the name of Cohen was working on the job there.

BY THE COURT:

Q What did the secretary say, you say? A He asked Mr.

6187
#2379
CASE

Strongin if he had hired a man named Cohen.

Q Yes, go on? A "Mr. Cohen," he said, "says you paid him under the rate of wages." He said, "Yes, sir," he said, "Mr. Cohen has been working for me, but I have not paid him the rate of wages." This man Cohen was standing there and the secretary asked Cohen, he says, "How much did you get paid?" And he had an arrangement I think for three and a quarter or three and a half a day, I don't know exactly, but the difference in wages for the time he worked for him was fifteen dollars, and the difference in wages with Mike Hantman, - the rate of wages he got was three and a half. Strongin says, "I got no money to pay for it," he says, "I got a check." He made out two checks. He couldn't write, and it was made out by somebody else there and he paid off a fifteen dollar check and a three dollar and a half check and the men was ordered back to work.

BY MR. CHOROSH:

Q That was on the morning of January 9th? A That was that morning about twelve o'clock, Tuesday morning.

Q And that was the time when the strike was entirely settled? A Settled right in the room.

Q By the payment of those two checks? A Yes, that was the agreement.

Q What was said then and what was done? A Nothing else.

BY THE COURT:

Q Well, how about this twenty-five dollar check? A Going

CASE # 2379

downstairs Mr. Strongin says to me, "Barney, I thank you for what you have done for me," he says, "where can we meet?" I said, "You know I live over in Brooklyn and you live over there too." "I tell you," he says, "you hang out in Schwartz's"- Schwartz's is a saloon where all the painters stay there in the evening and they come there mostly every night and sometimes some comes Sundays, and if a boss painter needs any men he generally goes down there.

Q Never mind all that.

BY MR. CHOROSH:

Q But you made an appointment to meet in Schwartz's cafe? A Yes.

Q Now, tell what happened there? A He says, "Barney, how much do I owe you?" I says, "Whatever you want to give me." He says, "Make out a check for me, you know I can't write.", I said, "Certainly," I says, "how much will I make it out for?" He said, "How much do you want?" I said, "As much as you want to give me, it is up to you, it is not my money." He said, "I will give you twenty-five dollars, will that satisfy you, for the expense you had, and you can buy a nice suit of clothes." I said, "All right, that is satisfactory to me."

Q And you made out a check to his own order at that time?

A I asked him, "Who will I make it out to?" He said, "Make it to my order and I will endorse it and you can cash it right here." And it was cashed right there, in Schwartz's cafe.

RECEIVED
CASE # 2379

Q Where is that located? A Variok corner of Humboldt street.

Q And that is where that check marked People's Exhibit 1 was cashed? A Yes.

Q And to whom was the money given? A What do you mean?

Q I mean the cash, when the check was cashed? A It was given to me right over the bar.

Q In Schwartz's cafe? A Yes.

Q Who paid for the round of drinks? A I paid for one and he paid for another.

Q And you paid for it out of this \$25? A Yes.

Q Now, that night before at your home on January 8, 1917, did you say anything to him about the New York men meaning business? A No, not a bit.

Q Was there anything of that kind mentioned? A No.

Q Did you say anything about \$50 to him on that night?
A I didn't say a word about any money.

Q Well, did you say anything at any time about \$50 being paid to any other delegates? A No, sir.

Q This money or this check was given you on the evening after the noon that the strike was all settled? A It was the evening of January 9th.

Q The strike was settled at noon of that day? A Yes, sir.

Q Now, when your term of office expired did you con-

6237
#2379
CASE

tract any ailment as a painter? A I have had that for the last couple of years.

Q What is that ailment? A It is lead poisoning paralysis.

Q And when did you leave town? A July 9th.

Q That is when your term of office or after your term of office expired? A The term of office expired July 6th.

Q Where did you go at that time? A To Mount Clemens, Michigan.

Q Were you taking the cure over there? A Yes.

Q Had you ever heard anything from Strongin with respect to this matter from the time you got the \$25 on January 9th, until you went to Michigan for that cure? A No, sir, I haven't heard it until August 28th.

Q And what happened then? A I was in the bath tub getting my cure when a police officer came in. He says, "You are under arrest." I asked him the reason, so he says he doesn't know but the Chief of Police will tell me.

BY THE COURT:

Q Where was this? A In Michigan.

THE COURT: What is the use of going into that?

BY MR. CHOROSH:

Q Well, then, you came back to New York? A I was brought back.

Q Now, did you at my request go to the office of the District Attorney and give a statement of all these facts?

CASE # 2379

A Yes, sir.

Q Did you do that voluntarily? A Voluntarily.

Q Well, that is all.

CROSS-EXAMINATION BY MR. MANCUSO:

Q Now, you said that you knew that Strongin had an agreement with the Union? A Yes, sir.

Q And that the reason there was a strike there was because, the job was pulled off because he was not paying the regular rate of wages? A That's what they told me.

Q Well, did you know that? A No, sir, how could I know that? I wasnot in New York.

Q And did you say to Lipman, "Well, I know you have an agreement with the Brotherhood," - I mean to Strongin? A When he asked me, he says, "Barney, don't you know I got an agreement?" And I said, "Yes."

Q Now, he told you that the reason there was a strike or the job was pulled off was because he didn't pay the regular rate of wages? A According to what Hantman told me in my house.

Q Do you remember making this, or was this question put to you by Mr. Rorke on the 17th of October, when you and your attorney were there: "Q And was it a general strike that was called or local - did somebody -- A Just on that job." Do you remember that question and answer? A Well, the only strike was on that job.

Q Do you remember making that answer to that question

7-1-1951
FBI
6187 # 2379
CASE

put to you by Mr. Rorke: "Q And was it a general strike that was called or local - did somebody -- A Just on that job." Did you make that answer? A As well as I know of, yes.

Q "Q And why was it called? A Because the claim was that he had not lived up to an agreement made between the employees. A claim was made on behalf of the New York Council that Mr. Strongin did not have an agreement which was required under the rules of the Union before he could go ahead with the work." Did you make that answer? A I made that answer, yes, sir.

Q Now, you say the reason there was a strike or the job was pulled off was "Because of the fact that he was not paying them regular wages?" A Well, during the discussion --

Q Well, is that what you said now? A Well, that is as far as I could understand, yes.

Q Why didn't you say that at that time? A I did tell him that. That there was two checks being paid over to Cohen and Hatman.

"Q An agreement with whom? A With the Brotherhood of Painters." Did you make that answer? A Yes, District Council 29.

"Q The claim was that he had no agreement with them," - referring to the Brotherhood of Painters-- "A As he should have had." Did you make that answer? A No, sir, I told him he had an agreement.

Q Did you make that answer? A No, sir; how could I say

62379
CASE #

that?

BY THE COURT:

Q Well, do you remember making that answer? A No, sir.

Q If you do not remember, say "No," and if you do, say "Yes."

MR. CHOROSH: I do not know what paper you are reading from.

MR. MANCUSO: Page 2 I am reading from now.

BY MR. MANCUSO:

Q You have known Strongin for some time, have you? A I have known him for ten years, going on eleven years.

Q And on the night of January 8th you say that several men came up there with Strongin? A Three men.

Q And they all wanted to talk at one time and you said, "Listen, I can only hear one at a time?" A Yes.

Q When you said that, whom did you hear first, the men or Strongin? A Mr. Strongin.

Q And were the men outside of the room? A They were inside.

Q All in one room? A All in one room, the kitchen.

Q Didn't you tell us on your direct that you spoke to the men, and that a man first told you, that Hantman told you that he was not receiving regular wages, that he had received thirteen dollars? A Fourteen dollars.

Q Fourteen dollars for three days and a half? A Yes, that's what he told me.

CASE # 2379

Q Tell us what was said on Monday night about money?

A He promised me he would give me a nice present for going to New York and helping him out.

Q Did he tell you what the present would be? A No, sir.

Q Did you know what it was, whether it was to be in money or what? A No, he didn't say anything about it until Tuesday night.

Q And after he told you he would make a nice present to you, then you went out of your jurisdiction and came over to New York? A I asked permission first to come over here.

Q You knew you had no jurisdiction in New York? A Why, certainly.

Q Then in what way would you help Strongin? A I might see if everything is correct, just like a lawyer.

Q Well, in what way, influence with other delegates?

A No, sir, just act just like a lawyer.

Q Well, tell us what you did for him when you came to New York? A When the New Yorkers asked him to remove the Brooklyn men and I refused to do so, I told them plainly if they took off Brooklyn men that I would stop New York men over in Brooklyn.

Q You said you would call a strike and you would pull the men off the job at Strongin's? A No, sir, how could I?

Q Now, let's see: You went over to New York to the council with Strongin? A Yes.

Q And the men? A No, not the men.

CASE # 2379

Q Well, who was there? Hantman and Cohen were there?

A No, there was nobody there. These people were on the job at 32nd street.

Q None of the men were there at all? A At the council?

Q Yes? A No, sir.

Q On that Tuesday morning? A No, sir.

Q Rappaport was not there? A No.

Q When you went to the council weren't you told that the difference between Strongin and Hantman and Cohen had been settled, that Strongin was directed to pay \$13.75 to Cohen and \$4.00 to Hantman? A I was not told nothing of the kind. They were just having a discussion over it.

Q Well, did it need your help in the New York Council in order to decide this matter of the difference in the money?

A No, not the difference in money.

Q Then, what services did you render for this person and what did you do for Strongin? A I helped him along.

Q In what way? Helped him to ride from Queens to New York? A Well, he claimed he wanted Brooklyn men on the job, and if I go over and help him along I could keep the Brooklyn men on the job and I went over to do it.

Q Well, he is a Brooklyn man? A Mr. Strongin?

Q Yes? A Yes, he is.

Q Hasn't he a right to employ Brooklyn men in New York?

A When they work on agreement, yes.

Q And have not the Brooklyn contractors the right to em-

EX-117
CASE # 2379

ploy under agreement with the Union, men from New York on a Brooklyn job? A So we can.

Q Have not the Brooklyn contractors under an agreement with the Local the right to employ workmen from New York county? A I can't understand that.

Q Have Brooklyn contractors the right when they have an agreement with the Local, the District Council, to employ painters from New York County in Brooklyn? A They have.

Q Yes. There is nothing unusual about that? A The reason why --

Q Is there anything unusual about that? A At times, yes.

Q Well, if an employer has a contract with the Union, he can do it? A At times, I said, yes.

Q And did not Strongin have an agreement with the Union that he could employ men from Brooklyn on this New York job?

A Not when he has got --

Q Did he have an agreement with the Union that he could employ men from Brooklyn on the New York job, yes or no?

THE COURT: Well, let him answer.

A As I told you, he has the right to hire whoever he wants.

MR. MANCUSO: I move to strike out the answer as not responsive.

THE COURT: The motion is denied.

Q Did Strongin have --

CASE # 2379

THE COURT: Well, that answer covers it. He had a right to hire any one he wants. That includes Brooklyn men.

MR. MANCUSO: I want to know if he knew that Strongin had an agreement.

THE COURT: He said he had a right to hire any one he wanted. Now, that is a broad answer, not only Brooklyn men, but California men.

Q So that how was your help needed in the matter? You say that Strongin could keep his Brooklyn men there? A The reason why, they were caught paying under the wages.

Q Because he was paying them under the wages? A Yes.

Q Was Cohen a Brooklyn man? A No, sir.

Q Was Hantman a Brooklyn man? A Yes.

Q And he paid him the money? A He did not, he paid him \$14 for three days, as far as I can remember.

Q Well, that was all settled before you went to the Union? A It was not settled until I got there.

Q Well, you knew he was ordered to pay that money? A No.

Q He paid it in your presence? A Yes, in my presence.

Q Then you went there to help the men and not Strongin?

A And Strongin at the same time.

Q You were interested in the workmen and not in the contractors? A Certainly.

Q You were interested as a delegate to see that the men were paid their Union wages, isn't that right? A Yes.

62379
CASE # 2379

Q So that when you went there you were interested to see that Hantman and Cohen got their regular Union wages from Strongin? A They did get it.

Q And that was done through your efforts? A Certainly.

Q So that you helped the laborers and not Strongin, is that right? A I helped them both.

Q You helped them both, in what way? A By keeping Brooklyn men on the job.

Q Well, didn't he have an agreement to keep these Brooklyn men there? A No, there is a law in our Brotherhood, if you will allow me to explain, your Honor, if a boss has been found breaking his agreements that the jurisdiction that he comes under has the right to do whatever they please with him.

Q When you went into the Local, the secretary asked you, "Why did you come here?" Is that right? A Yes.

Q You said, "I came here to see that these men get a square deal?" A Yes, that the boss and the men get the square deal.

Q And didn't the secretary of the local tell you, "Well, they are getting a square deal, we don't need your help?" A No, he didn't say that.

Q He didn't say anything about a square deal? A No.

Q Didn't you say that on your direct examination, when your lawyer asked you that? A Not that I know of. I can't remember that at all.

Q Do you remember you said, "I came here to see these men

6287
#2379
CASE

get a square deal." And you said that the secretary answered, "Yes, they are getting a square deal?" A No, I didn't say that.

Q Do you know that the rules of your Union were that you could not receive any presents or gifts from the employers or from contractors? A There is no such law.

Q Do you mean to tell me that the Union permitted that? A There was never any occasion for it ever to come up that I know of.

Q This was the first time that the Union found out about it? A The Union has not found out about anything of the kind.

Q Well, do you think that by accepting favors or gifts or presents from employers that you could be square and fair to the men that work under those contractors? A Why, certainly.

Q That you could be just as square? A Why, of course.

Q There were no other services that you rendered for him? A That's all, and when we left --

BY THE COURT:

Q Oh, yes or no, were there any other services? A No, sir.

BY MR. MANCUSO:

Q After you left the District Board, these men went back to work? A As far as I know, yes.

Q Now, you know Silver and Schultz, don't you? A Silver I don't know. Schultz I do know. I don't think I ever met Silver unless I saw him here once.

Q Well, did you see him at the job? A No, sir.

6287
CASE # 2379

Q Did you know that --

BY THE COURT:

Q Well, did you go near the job? A Yes, I went that morning on the job.

Q Before you went to the local? A Yes, sir, before I went to the council.

Q Well, did you see Silver or Schultz on the job?

A No, sir.

Q You did not go back to the job after you left the council?

A No, sir.

Q Where did you go? A Went straight to Brooklyn.

Q Well, didn't you go and have a drink in the 56th street saloon? A I went to 56th street and Third avenue with a bunch of men from the council.

Q But not with Strongin? A No, sir.

BY MR. MANCUSO:

Q Did you say anything to Strongin about saving him from further trouble that he would have on the job? A Why, no, sir.

Q You never mentioned a word about that? A I haven't spoken to him all afternoon until I saw him that night.

Q Well, that night did you tell him, "Well, I will see that you don't get in any further trouble with the New York delegates?" A No, sir.

Q Do you know that the job was pulled sometime after January 9th? A Not as I know, because I wasn't there in New York.

6187
2379
CASE #

Q When you got through that morning did you say anything to Strongin after you left the council room, "What about the present?" A Not a bit. He says he will meet me that night.

Q Did he say anything about it? A He said, "Barney, you done me a great favor, I thank you for it." He says, "Where can I meet you?" He says, "Where do you hang out?" I said, "In Schwartz's, I generally go in in the evenings." He said, "I will meet you there." That's all. That was on the street, that was all the conversation.

Q Nothing was said at that time by him or by you as to a present or pay for your work? A No, he told me he would see me at night time.

Q When he saw you at night what did he say or do? A He thanked me for what I had done. He said, "What do you want?" I said, "It's up to you, it is not my money, you can give me whatever you please."

Q Well, the first words were said by him and he said, "How much do you want?" A No, no, after we had had a conversation about things that were going on.

Q Well, the first thing said about money was by him, he said, "How much do you want?" A Yes.

Q So that you knew before that that you were going to get some money? A Yes.

Q When did you know you were going to get some money? A At night time.

Q Didn't you tell us a minute ago that at night time you

6287
2379
CASE

said nothing about money or about presents? Now, which is it?

A I answered that before.

Q I asked you before was anything said on Monday night about money and you said "No," that he was going to give you a present? A Monday night, no. That was Tuesday night. I told you before on Monday night he promised to give me something but he never mentioned any amount of money.

Q Well, on Monday night did he speak about money, did he state then he was going to give you money? A That he would give me a nice present.

Q So that on Tuesday night he was the first one to speak and he said, "How much do you want?" A Yes, after we talked about different matters.

Q And you said, "Whatever you want to give me?" A Whatever he wants to give me, yes.

Q So that you knew you were going to get money? A After he told me, yes.

Q Well, he didn't say anything to you about money?

A Well, what does that mean?

Q Were you surprised when he said, "How much do you want?"

A Yes, I didn't know what it was going to be.

Q And you said to him, "Make it as much as you can?"

A No, I said, "It is up to you, it is your money, do whatever you please, give me as much as you want."

Q Well, did you think at that time when you received money from him that you were doing justice as a delegate to

6287
CASE # 2379

your Union? A I didn't think it was anything wrong.

Q You didn't think it was anything wrong to accept money from a contractor who had members of your Local working under him? A Why, certainly.

Q Do you think it would be just as fair to your men under those circumstances? A Why, certainly.

Q You said you were sick at that time and were not feeling well? A I was not feeling well, no.

Q Isn't it a fact that you asked him for money because you expected to go away and you were trying to get all the money you could? A Why, no, sir.

Q Were you discharged from the Union or did your term expire? A My term expired July 6th.

Q And you were not re-elected? A I didn't run for the office. I was not able to do it, I didn't take a nomination.

Q Now, I will ask you again, did you know why the strike or trouble was had at the job? A Not until I got there, when the men come on the job and to my house, I knew it then.

Q Did you know the night that Strongin came over with those men? A After they told me what it was, yes.

Q Was what? A Strongin told me they said he had no agreement, and Mike Hantman told me he worked under the wages.

BY THE COURT:

Q For less than Union wages, you mean? A Yes, sir.

Q They were working under wages? A Yes, sir.

6287
2379
CASE

BY MR. MANCUSO:

Q At the time these wages were paid, you saw the checks made out by Strongin in the council? A Not by Strongin. Strongin cannot write.

Q Well, he signed them, they were made out by the secretary and he signed them? A Yes.

Q And these checks were turned over to Cohen and Hantman? A Yes.

Q Now, you understand clearly now that on the night before he said he made a promise to you to give you a present? A Yes.

Q And on Tuesday night in the saloon he said, "How much do you want?" A Yes, after the conversation we had.

Q And that was what actually occurred, there is no mistake about that? A There is no mistake about it.

Q Do you remember making this answer to Mr. Rorke, on page 10: "Q How about the \$25 proposition that they charged you with getting? A Strongin told me that he would meet in Brooklyn right after the settlement of the strike. He met me in Brooklyn and he says to me, "Will you make out a check for me?" Did you say that to Mr. Rorke? A No, I said one thing there.

Q Did you say that, yes or no? A When he asked me to make out the check, --

Q Did you say that, yes or no?

THE COURT: Well, read it to him again.

CASE # 2379

BY THE COURT:

Q The question is, do you remember making this statement:

BY MR. MANCUSO:

"BY MR. RORKE: Q How about the twenty-five dollar proposition that they charge you with getting? A Strongin told me that he would meet in Brooklyn right after the settlement of the strike." A No, sir.

Q (Continuing) "He met me in Brooklyn and he says to me, 'Will you make out a check for me?'" Did you make that answer?, A No, sir. There are things omitted there.

BY THE COURT:

Q Did you make that answer? A No, sir, some part is true and some is not.

Q Which part is true? A The part that he told me to meet him in Schwartz's.

BY MR. MANCUSO:

Q About what you said to Mr. Rorke that he said "Will you make out a check?" A No, after he made the proposition what he would give me.

Q And further: (Reading) "I says, for who? He said, 'For you.'" Did you say that to Mr. Rorke? A No, no, for Mr. Strongin.

Q I will read the question and answer again. Will you please pay attention to the question and don't get excited?

"Q How about the twenty-five dollar proposition that they charge you with getting? A Strongin told me that he would

6267
CASE # 2379

meet in Brooklyn right after the settlement of the strike." Did you say that to Mr. Rorke? A No, sir, I told him the evening --

Q (Continuing) "He met me in Brooklyn and he says to me, 'Will you make out a check for me?'" Did you say that? A I told him after the proposition - there is something omitted there.

Q About the settlement or what? A No, there is something omitted there. He hasn't put it in there.

Q "I says, 'For who?' He said, 'For you.'" Did you say that to Mr. Rorke? A No, for Mr. Strongin, I told him.

Q "This was over in Varick street corner of Humboldt, in Schwartz's saloon. I said, 'Yes.' He said, 'Will you make it out for me, I can't write?' I made it out for him." Did you say that to Mr. Rorke? A Yes.

Q "It was for twenty-five dollars, and after he got through he said, 'Here is a little present for yourself. Buy whatever you like for it.'" Did you say that to Mr. Rorke? A He said it after he gave it to me.

Q "It is for the trouble you had.' I made out the check. This was in the saloon. That was hours after the strike was settled. I didn't ask for that money. That was the end." Did you say that? A I said that, yes.

Q Well, why didn't you tell us before that when he gave you the check he said, "Here is your present?" A I did say so.

6187
2379
CASE

Q So that Monday night was not the only night that you spoke about presents or that he spoke about presents? A No, after he gave me the money.

Q Did you ask him to make it out for fifty dollars?

A No, sir.

Q Who cashed the check? A I think it was Mr. Schwartz.

Q Mr. Schwartz? A I think so.

Q Did you give the check to Mr. Schwartz? A I gave the check back to Mr. Strongin.

Q And Strongin gave it to Schwartz? A He must have because I didn't give it to Schwartz.

Q Well, didn't you see him give it to him? A Yes, he put the check on the bar there.

Q And who received the money from Schwartz? A From Schwartz, he did, and he turned it over to me.

Q You didn't say anything to Mr. Rorke, about the talk Monday night, about a present being offered to you? A I certainly did tell him that.

Q You are sure about that? A I am sure of it. There are many things there omitted.

Q Well, "BY MR. RORKE: Q Were there any witnesses present when Strongin told you, 'I want to give you a present for yourself?' A There might have been but it was so long ago that I don't remember." A I told him I didn't know the names because there was plenty of people in the bar there.

Q So that in the bar was the only place that Strongin

CASE # 2379

spoke about a present? A Yes, right in front of the bartender, and everybody.

Q I mean at the bar was the only time? A No, that was the second time. One time in my own house, the night before.

Q Now, you don't know of any reason why -- Question withdrawn.

Q You were friendly with Strongin up to the time that you worked as a delegate, were you not? A I was always friendly to him, as far as I know of.

Q You don't know any reason why Strongin should come to court and testify and swear that you asked him for this money, in order that you would save him trouble on the job? A There was trouble in New York as far as I can understand. I was told that after, that there was trouble in New York between the delegates, and he is suing the organization for damages. And that would help him along if he makes up an affidavit that will help him along in his trial.

Q Was that the reason? A That is the reason as far as I can find out.

Q That is the only reason as far as you know? A As far as I know. I never done the man any harm and never said anything.

Q Do you remember this question being put to you by Mr. Rorke and you making this answer: "Q Do you know anybody that has forced Strongin to charge you with extortion, - you, his friend? Do you know anybody in the City of New York

61279
CASE # 2379

that has forced Strongin to come out and say that you extorted this twenty-five dollars from him? A I couldn't say that. Hyman Horowitz told me here about three or four weeks ago that if he knew it was this way he would not have done what he did." A That is what he did.

Q Still you now say that the reason why these charges were brought against you by Strongin was because of the trouble he had with the Union? A Well, that is what I was told here lately.

Q How long ago? A A couple of weeks ago, around this here court room.

RE-DIRECT EXAMINATION BY MR. CHOROSH:

Q Mr. Lipman, the District Attorney asked you about this question at page 3: "Q Why was it called? A Because the claim was that he had not lived up to an agreement made between the employees." That is as much as you knew about it? A Yes.

Q You don't know, as a matter of fact, whether he had or not? A No, sir.

Q That is just the claim that was made? A That's what he told me.

Q But didn't he also specifically put this question to you and didn't you give this answer, at the bottom of page 3: "Q Did Strongin have or did he not have an agreement?" And your answer was: "He did, but in the course of the investigation as to whether or not he had an agreement, in the office of the

6287
2379
CASE

New York Council, it appeared that another situation arose, namely, that some of the men who were working on the job had been underpaid." Now, that is what you told Mr. Rorke? A Yes.

Q "That developed, but the strike was called primarily because he did not have an agreement, it was alleged. Mr. Schultz may have been misinformed." Now, that was correct?

A That was correct.

Q In other words, the claim was first made to you, or Mr. Strongin came to you and told you that the strike was called because a claim was made that he had no agreement with the laborers? A That is what he explained to me.

Q And Strongin told you he did have an agreement with the laborers? A Yes.

Q And he wanted you to go over to the Union and explain that? A Yes.

Q And you went to the Union and explained that the following morning? A Yes.

Q And it was at the office of the Union that it developed that the real cause for the trouble was that he had not paid the employes Union wages, and at the time he made good by his checks aggregating eighteen dollars? A Yes, but Hantman told me the night before, that Monday night, that he got fourteen dollars for three days and a half, and over there it developed on cross-examination of Cohen and Hantman in headquarters, it came out that they were paid under the rate of wages.

Q And that matter was adjusted afterwards? A Yes, they

6287
2379
CASE

were paid the fifteen dollars and the three dollars and a half.

Q Well, that is all.

J A C O B C. S C H U L T Z, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 409 East 86th street).

DIRECT EXAMINATION BY MR. CHOROSH:

Q What is your occupation, Mr. Schultz? A Painter by trade.

Q Are you a delegate of any Labor Union? A Yes, sir.

Q Which one? A The Brotherhood of Painters, Decorators & Paperhangers, District No. 9.

Q Are you a delegate at present, or were you a delegate in January, 1917? A Yes.

Q Of the same Union? A Yes.

Q And as such delegate did you have charge and sole charge of calling strikes or returning men to work in the Borough of Manhattan, in January, 1917? A Yes, sir.

Q Under the rules of your Union, did a delegate from Brooklyn have any such jurisdiction in the Borough of Manhattan? A No, sir, absolutely not.

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

Q And you know that he was a delegate from the Borough of Brooklyn at that time?

THE COURT: Well, that is not disputed.

Q Very well. Now, you knew Mr. Strongin, didn't you?

CASE # 2379

A I knew him, meeting him on that building.

BY THE COURT:

Q Well, you knew him on the 8th or 9th of January? A Yes.

BY MR. CHOROSH:

Q And you knew the job he was on here on 22nd street, in the Borough of Manhattan? A Yes, sir.

Q Was there any trouble there in connection with his employes, as far as you can remember? A Yes.

Q What was that?

THE COURT: Well, it is conceded that there was trouble.

Q Well, you were the man who called the strike? A Yes.

Q On that day did Mr. Lipman say anything to you about that strike? A No, sir.

Q As far as you know, did he know anything about it?

A No, sir.

Q When for the first time did you meet Lipman in connection with that strike?

BY THE COURT:

Q Well, did you ever meet him in connection with the strike? A Not in connection with the strike.

BY MR. CHOROSH:

Q Was there anything said between you and Lipman about that strike? A No, sir.

Q That is all, Mr. Schultz.

6187
#2379
CASE

CROSS-EXAMINATION BY MR. MANCUSO:

Q You are a delegate of the same Brotherhood as the defendant? A Yes.

Q Only you are in New York and he is in Brooklyn, and this job of Strongin came within your jurisdiction, you had control of it? A Yes, sir.

Q And in disputes between employe and employer, they were to be settled by you, or you were the delegate to look after the rights of workmen? A No, sir, they were to be settled by the District Council.

Q So that you remember the 8th day of January, the job being called off, is that right? A I don't exactly remember the date.

BY THE COURT:

Q Well, you called it off yourself? A Yes, sir, but I don't remember the exact date.

Q The term you use is "pulled", is that it? A Yes, sir.

Q You "pulled" the job? A Yes, sir.

Q That is the expression you use? A Yes, sir.

BY MR. MANCUSO:

Q You and Silver pulled that job, is that right, or was it you alone? A I pulled that job myself.

Q Was Silver there? A No, sir, I don't believe he was there then.

Q Well, why did you pull that job? A Will I explain the entire thing?

CASE # 2379

BY THE COURT:

Q Well, give your reasons. You are asked for them? A We had complaint in the office that the men on that job did not get the prevailing scale of wages. The secretary, who is in power in the district, ordered me to investigate that complaint. I proceeded to the job in 22nd street between Seventh and Eighth avenues and seen Mr. Strongin. At first I asked him whether he had an agreement signed with the Brotherhood of Painters, as it is the rule of our organization that none of our members are allowed to work for anybody except they have an agreement signed with the Brotherhood or they are members of the building trades of the City of New York with which we are affiliated.

Mr. Strongin at that time, ^{told me} that at that time he did, and in that agreement he agreed to the prevailing scale of wages. At that time he told me that I notified our secretary that the boss, Strongin, had an agreement signed with Brooklyn. Our secretary telephoned to Brooklyn, to the District Council, to find out whether this firm has an agreement signed. Mr. McCall, the Secretary there, informed us back that he has not. I notified the secretary and the secretary then in turn notified me that Mr. McCall said there was no agreement signed in Brooklyn. Next day I went to the same job again and asked Mr. Strongin whether he had that agreement with them. Again he told me, in an offhand way, he had an agreement signed and he didn't care to give me any definite answer.

6187
CASE # 2379

MR. MANCUSO: I move to strike it out.

BY MR. MANCUSO:

Q Just tell us what he said?

THE COURT: You asked him for his reasons.

MR. MANCUSO: But he is giving his opinion as to why Strongin did not want to answer.

BY THE COURT:

Q Go on, finish your answer. A I then went back to the job again and the second time our secretary called up the Brooklyn District Council, and Mr. McCall said he had no agreement signed. I then notified Mr. Strongin that if he had an agreement signed to bring that agreement down to show to the secretary, and the secretary instructed me to bring the men and the boss to the office of the District Council, on the ground that he is not paying the prevailing scale of wages.

We did that night. That night I notified these men to appear at our office, and the case might be settled there. When Mr. Strongin and the men employed by him appeared at our secretary's office, they admitted that they were not getting the scale of wages. Mr. Strongin then in turn, it was agreed that he would pay those men back wages, what was coming to them, the difference between five dollars a day and the scale of wages which they got. I am not positive about the amount, but there was two men involved, one got fifteen, I believe, and one got four dollars and some cents back wages.

BY MR. MANCUSO:

Q Now, when was the job pulled, on Monday? A I couldn't

6137
2379
CASE

say positively what day of the week it was.

Q Well, the first time you went there on Monday you said you asked him for the contract and he told you he had it, and you inquired through your council and found out he didn't have any in Brooklyn, did you pull the job off then when you found out he didn't have the contract? A No, sir.

Q You did not? A No, sir.

Q So that Monday they worked all day? A I believe they did. I am not positive. It is so long ago that I don't know, I wouldn't say positively.

Q Well, when did Strongin with his men go to the District Council, on Monday or Tuesday, the first time you went there, or the second day? A I believe on the second day.

Q And were they there in the morning? A Yes.

Q Were you there? A Yes.

Q And was Strongin there? A I believe Mr. Strongin was there.

Q And the question then came up as to the regular scale of wages, whether or not he had paid that to his men? A Yes.

Q And it was settled that one man, Cohen, I believe, there was due him \$13.75, and Hantman, four dollars? A I am not positive about that.

Q Well, there were two men involved? A Yes.

Q That was all settled there? A Yes.

Q And Strongin paid the money? A Yes.

BY THE COURT:

Q Were you there when he paid the money? A I was in

61279
CASE # 2379

the office.

Q You saw him sign two checks and pay these men for the alleged difference? A No, that was in the office, but I seen that there was checks to be signed for back wages, but I didn't see how much the amount was or anything else.

BY MR. MANCUSO:

Q Now, on Monday was anything said about these men not receiving the regular scale of wages at the Local Council?

A What do you mean?

Q On Monday, the first day you went there, was the matter brought up before the Local Council about three or four o'clock in the afternoon? A With the secretary.

Q And was anything said then about wages due to these two men who had been unpaid? A That was the complaint to the secretary.

Q And that was on Monday in the afternoon, was it? A I am not positive whether it was on Monday or Tuesday. I don't remember the day of the week.

BY THE COURT:

Q It was the day before these checks were made out?

A The complaint went into the secretary before the men was ever brought to the District Council.

Q Yes, and they were brought there next day? A Yes, and on that complaint these men were brought there.

Q The next day? A I believe it was next day, your Honor.

6187
2379
CASE

BY MR. MANCUSO:

Q Now, on the first day when complaint was made to the secretary was anything said then to force or direct Strongin to pay the difference in wages to these men? A That was said in the office.

Q It was said in the office?, A Yes.

Q It was agreed upon on Monday, the first day, that Strongin would have to pay these two men the difference in wages? A Yes, sir.

Q Now, so that when the men came there on Tuesday morning the matter was already settled, as far as the District Council was concerned, that Strongin would have to pay these men the difference, is that right? A As far as the secretary was concerned, to send them back to work pending the council's meeting.

Q And on Tuesday morning when the men came there with Strongin, you say you were in the office? A Yes.

Q Was Lipman, the defendant there? A I am not sure whether he was there or not.

Q Well, he said he was there?

THE COURT: Well, strike that out.

BY THE COURT:

Q Did you see him there? A I can't remember whether I saw him there or not.

BY MR. MANCUSO:

Q Did Lipman have anything to do with the District

EXHIBIT
CASE # 2379

Council, or with the secretary on that morning, or on Tuesday afternoon, or on Monday afternoon, with reference to the payment of the difference in wages to these two men? A That I don't know.

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

BY THE COURT:

Q Well, do you know whether he had any official relation with the matter or not? A He had no official relation.

Q And whether he used his good offices or not you don't know? A No, sir, I don't, but he had no official jurisdiction there.

Q He had no jurisdiction? A He had no jurisdiction. He had no right to come to New York as official delegate. He is not recognized in New York.

Q But whether he was there to intercede for these men or not you do not know? A That I don't know.

Q Well, would that be consistent with his duties as a delegate of Brooklyn? A Well, if he wants to.

Q Did you ever go to Brooklyn to intercede on a Brooklyn job? A No, sir, never had occasion to do it.

Q Well, would it be considered good form to do that? A Well, I would not be recognized in Brooklyn as a delegate or as an official any more than he would be here in the Borough of Manhattan. He does not belong to the Manhattan Board at all. I have no power myself to go to Brooklyn.

BY MR. MANGUSO:

Q Mr. Schultz, does the Union favor the acceptance of

6287
CASE # 2379

gifts and moneys or otherwise by delegates from the boss contractors? A That I don't know, if he is a delegate.

BY THE COURT:

Q Well, do you not know the rules? Are not delegates prohibited by the rules from accepting any gratuities? A In doing their duty as business agent?

Q Yes? A I don't think they would allow it.

Q Well, do not the rules positively forbid it? A Yes, sir.

Q Well, that is the question you are asked.

BY MR. MANCUSO:

Q You as a delegate in your duties, as a representative of the Union, have to look out for the interests of the men, that they get their rights from a boss or contractor, is that right? A Yes, sir.

BY THE COURT:

Q And the delegates are paid by the Union for that purpose? A Yes, sir.

MR. MANCUSO: Well, that is all.

RE-DIRECT EXAMINATION BY MR. CHOROSH:

Q Of course, the rules do not permit a delegate to accept a gratuity for the purpose of doing something in the course of his duties which he otherwise would not do, is not that correct? A That is what I mean.

Q Well, show me any rule at all in your Union which says that under no circumstances has a delegate a right to accept

EXHIBIT
CASE # 2379

any gratuity for doing something which is not considered improper. Show me that? A Well, I mean that Mr. Lipman did not act in the capacity of a delegate, so we do not look to him as being a delegate in this matter. He acted as a private individual from Brooklyn.

Q Well, acting as a private individual and accepting a gratuity for whatever services he might have performed, would that be against the rules of the Union? A No.

Q You do not know of any rule on that point? A No, sir.

Q And it is not considered disreputable to do that, is it? A No, sir.

BY THE COURT:

Q Well, what services did he render in this matter, or could he render? A Well, I don't know.

Q Absolutely none, is not that so? A He could not render any officially.

Q I mean legitimately and lawfully, he could not do anything, could he? A No, sir.

RE-CROSS EXAMINATION BY MR. MANGUSO:

Q Either officially or privately?

THE COURT: Well, he said he could not render any.

BY THE COURT:

Q He had no relation to the matter whatever as an official? A No, sir.

BY MR. MANGUSO:

Q Did not Lipman tell you that he obtained the consent

CASE # 2379

of his District Board in Brooklyn to come over to New York to act in his official capacity? A I don't know.

Q Didn't he tell you that he telephoned from the job where Strongin was working at half past seven that morning and that he got the consent from his office to act as a delegate in New York, did he or not? A He did not. His Board cannot delegate him to act as a delegate in Manhattan, any more than the Manhattan Board would delegate me to act in Brooklyn, or in California.

BY MR. CHOROSH:

Q You believed at that time that Strongin did not have an agreement, after you had your telephone communications over in Brooklyn? A Yes.

Q Mr. Lipman came along with Mr. Strongin, didn't he? A I believe so.

Q And he claimed that he was the man who did have such agreement with the Union? A Yes, sir.

Q Was not that his claim? A Yes, sir.

THE COURT: In other words, you say he was there as a witness to that fact?

MR. CHOROSH: Yes, you might say that, your Honor.

BY MR. CHOROSH:

Q And he used whatever good offices he could with the Union on that day? A Yes.

Q Well, that is all. A Mr. Strongin told me that he would bring witnesses from Brooklyn that he has an agreement

EX-111
CASE # 2379

signed, so I told him to bring those witnesses and bring the agreement.

Q He told you that on Monday, January 8th? A I believe it was.

Q The day the strike was called or pulled, as you call it?
A The day before that, the same day.

BY THE COURT:

Q Well, he did not bring the agreement? A He brought the agreement then to the office.

Q He brought the agreement to the office? A Yes, sir.

Q Well, why did he need a witness then if he brought the agreement?, Cannot your secretary read? A He had the agreement.

Q The agreement is in writing, is it not? A Yes.

BY MR. CHOROSH:

Q But you have no way of identifying the man who brings it as Mr. Strongin or not, have you? A No, sir.

Q And Mr. Lipman was personally acquainted with Mr. Strongin? A Yes, sir.

BY THE COURT:

Q How long do you know Strongin? A I spoke to him about four times in my life.

Q But he has been doing work in New York for years? A I had never seen him in my life previous to that job.

BY MR. MANCUSO:

Q You never spoke to him before that day? A No, sir.

62379
CASE #

BY THE COURT:

Q Then according to your opinion, all he could possibly do was to identify Strongin as the man who was in that agreement, is that it? A Yes.

BY MR. MANCUSO:

Q Is the agreement signed by the secretary with the seal of the Brotherhood?

THE COURT: What is the use of going into that? He says, or his attorney claims, that there was no way of proving that Strongin was the man to whom that agreement refers.

BY MR. CHOROSH:

Q Yes, and in addition to that the Union, when it discovered he was paying wages below the Union rates, could have broken that agreement, couldn't they? A They could have broken the agreement and forced him to take in new men. Practically that is what he brought Mr. Lipman over to New York for, to use his influence, that he would not get all new men, that he could have his old men back again.

BY THE COURT:

Q Well, all these men were Union men, were they not?

A At times they did not, your Honor.

Q Well, on this job, these men ^{who} were paid less than the prevailing wages, they were Union men, were they not? A Yes, sir.

Q And that is why you made him take them back? A Yes,

CASE # 2379

and then they violated the agreement right after that.

Q Well, never mind that, we are not concerned with that.

MR. MANGUSO: Well, that is all, your Honor.

THE COURT: How many more witnesses have you?

MR. GHOROSH: Just one or two character witnesses, your Honor.

THE COURT: Very well, then, put them on.

I S R A E L D A N Z I G E R, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 370 Lefferts avenue, Brooklyn).

DIRECT EXAMINATION BY MR. GHOROSH:

Q What is your business, Mr. Danziger? A Painting and decorating.

Q How long are you in that business? A Twenty-eight years.

Q Are you in business for yourself at the present time?
A Yes.

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

Q How long have you known him? A Eighteen years.

Q Did he ever work for you? A Yes, sir.

Q For how long a time? A He worked for me for about seven or eight years.

Q In what capacity? A Foreman.

Q And did you live in the same neighborhood where he lived at one time? A In the same neighborhood.

Q Did you know a number of people who knew him? A Yes.

CASE # 2379

Q And do you know what his reputation in the locality was? A I do.

Q For character and veracity? A Yes, sir.

Q What was his reputation in the locality? A Very good.

Q That is all.

MR. MANCUSO: No cross-examination.

LOUIS POMERANZ, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 492 Kosciusko street, Brooklyn).

DIRECT EXAMINATION BY MR. CHOROSH:

Q What is your business, Mr. Pomeranz? A Building.

Q How long have you been a builder? A Four years.

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

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

Q Was he ever in your employ? A Yes, sir.

Q In what capacity? A Painting.

Q How long had he been working for you? A Well, he worked about four or five times for me, about three months and six months.

Q And you know him pretty well, do you? A Yes, sir.

Q Did you ever live in the same neighborhood where he lived? A Yes, sir.

Q Do you know a number of people living in the same neighborhood who knew him? A Yes, sir.

Q Do you know what his reputation was in the neighborhood for character, truth and veracity? A I know him as an

1769

CASE # 2379

honest man.

Q And was that his reputation in the locality? A Yes, sir.

Q That is all.

MR. MANCUSO: No cross-examination.

MR. CHOROSH: That is our case, your Honor.

MR. MANCUSO: The People rest, your Honor.

THE COURT: Well, it is too late for the summation to-day. We will have to take recess until Friday morning. How much time will you want to sum up?

(Both sides agree to half an hour apiece).

MR. CHOROSH: I move again to dismiss the indictment upon the same grounds set forth at the end of the People's case, your Honor.

THE COURT: Motion denied. The testimony raises an issue of fact which must be submitted to the jury.

Now, Gentlemen of the Jury, the Court will excuse you until Friday morning at half past ten, meanwhile, you will remember the admonition I have given you before, that you must not discuss this matter with any one. That means you must not talk about it with strangers and also you are prohibited by law to discuss it among yourselves. The time to discuss it is when the case is submitted to you, after you have heard all that has been said on both sides, and until that time you must keep open minds as to the guilt or innocence of the defendant.

6127
CASE # 2379

(The Court thereupon adjourned the further trial of
the case until Friday, November 30, 1917, at 10:30
o'clock A.M.)

CASE # 2379

THE PEOPLE v. LIPMAN.

New York, November 30, 1917.

-: TRIAL RESUMED: -

MR. CHOROSH: May it please your Honor, your Honor has been so kind and indulgent in this case that I hesitate very much to make this application, but I am very anxious to put one witness on the stand whom I expect here in about five or ten minutes, if that is not too much of an imposition on the Court.

THE COURT: What do you want to prove by him? Is it a character witness?

MR. CHOROSH: No, your Honor, I am attempting to get this Mr. Schwartz, the man who cashed the check over in Brooklyn. Neither side has attempted to call him as yet. BARNET SCHWARTZ, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence, 51 Humboldt street, Brooklyn).

DIRECT EXAMINATION BY MR. CHOROSH:

Q Mr. Schwartz, what is your business? A Saloon.

Q Is your saloon known as the Schwartz Cafe? A Yes.

Q I show you this check which is marked People's Exhibit 1 and I ask you whether the stamp on the back of that check is the one that is used by you in your bank account? Well, do you use a stamp in your account? A Yes, but I don't see that here.

Q Well, just look at it again? A Yes.

CASE # 2379

Q Now, just look at the check. Do you remember having cashed this check? A Well, if it is my stamp, sure.

Q And you know Mr. Lipman, do you (Indicating)? A Yes.

Q And you know Mr. Strongin, do you know the man whose name appears on the back of this check? A If I see him I will know him. I don't know.

Q Well, do you remember cashing this check, don't you?

A Yes.

Q Do you remember Mr. Lipman, the defendant, identifying for the man whom you cashed the check? A Yes.

Q Did you give him the money? A To who?

Q The man who put his name on the back of the check?

A I suppose so, sure.

Q Do you always ask a man to put his name on the back of a check when you cash it? A (No answer).

BY THE COURT:

Q Well, can you swear now from whom you got that check?

A No, your Honor, I can't swear.

Q Well, that is what he asked you. You cannot swear?

You cash a great many checks, do you not? A I do, yes.

Q Do you know how long ago that check was cashed? A I don't remember. I didn't see the date. It is an old check.

THE COURT: Well, it was last January, was it not?

MR. CHOROSH: Yes, sir.

Q It was ten or eleven months ago. Now, the question is do you remember the circumstances under which you cashed that

6287
#2379
CASE

check? Do you understand English? A I do, yes.

Q Do you remember how you came to cash that check?
That is the question? A Well, all I can remember when a man comes in and cashes checks, he has to sign his name. If I don't know the man somebody else has to identify him, then I cash it unless it is a big check, then I consider about it, but if it is ten or fifteen dollars --

Q Well, suppose a customer comes in with a check which has a name already on the back of it, would you cash it for the customer? A If I know him, yes.

Q So that you cannot really say how you came to cash that check, is not that the truth? A Yes.

BY MR. CHOROSH:

Q Now, is it your custom, Mr. Schwartz, to ask a man who presents a check, to endorse it on the back of the check?

MR. MANCUSO: I object to the question, your Honor.

THE COURT: I will sustain the objection to that. His custom has nothing to do with it. If he has any way of refreshing his recollection as to the circumstances of that, he may refresh his recollection.

MR. CHOROSH: I respectfully except, your Honor.

Q Now, please look at that check again and look at the endorsement on the back of it, and if you can refresh your recollection, tell the Court and jury for whom you cashed that check?

MR. MANCUSO: I object to the question as already

6287
CASE # 2379

answered.

THE COURT: I will allow him to answer if he can.

A If the check was endorsed by Mr. Strongin, I suppose I gave him the money, because I could not give anybody else the money, unless Mr. Barnet Lipman identified him.

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

THE COURT: Strike it out.

MR. CHOROSH: I respectfully except, your Honor.

Q Now, just look at that check again and give us your best recollection for whom you cashed that check, after looking at it. Now, listen to me, after looking at it, tell his Honor and the jury if you remember for whom you cashed that check? A Well, as I said before --

BY THE COURT:

Q Now, just tell us. He says "For whom?" That is the name of the person, if you can give it? A If that man endorsed the check I suppose I gave him the money, that's all I can say.

BY MR. CHOROSH:

Q Never mind what the check reads for a moment. You may look at it, look at the endorsement and refresh your recollection as best you can, and then tell his Honor and the jury from your own independent recollection, if you have any, for whom you cashed that check? Do you understand my question?

A I do.

Q Very well? A When a man comes in to cash a check by

6287
CASE # 2379

me, he has to endorse his name, and if I don't know him, then I tell him to bring another man to identify him, and if the other man identifies him, I give the money to the man who gives me the check.

MR. MANCUSO: I move to strike it out.

THE COURT: Strike it out.

MR. CHOROSH: I respectfully except, your Honor.

Q Can you state by looking at this check whether you gave this money to Mr. Lipman or to somebody else? Now, look at it again and tell that to his Honor and the jury? A I suppose I gave it to the other man.

THE COURT: Strike that answer out.

BY THE COURT:

Q Will you swear now that you did not give that money to Mr. Lipman, yes or no? A No, I can't swear, your Honor, if I gave it to him.

BY MR. CHOROSH:

Q Will you swear now that you did give it to Mr. Lipman?

A No.

Q You are only guided by what appears on the check, is not that true? A Yes, that is it.

Q Now, please look at it again, and this is going to be the last time I will ask you. Leave out any suppositions or imaginations. Look at that check, look at the endorsement on the back of it, then give us your best recollection as to whom you gave the money for that check? A If a man brings

97
CASE # 2379

me a check and he endorses the check --

BY THE COURT:

Q Now, do not repeat that again.

THE COURT: Strike that out.

A (Continuing) Well, I can't say anything else.

THE COURT: Well, he says he has no recollection.

BY THE COURT:

Q Why, you cash thousands of dollars worth of checks, do you not? A Yes, sir.

Q And a twenty-five dollar check does not excite you, does it? A No, sir.

Q You could not remember now what you did last January? A No, sir.

Q Well, that is all. They want you to tell the truth and you do not remember anything about it? A No, all I remember is that is my stamp.

Q Well, I mean, apart from that, you do not remember anything about it? A No, sir.

BY MR. CHOROSH:

Q Well, Mr. Schwartz, you remember an occasion --

THE COURT: Now, what is the use of going any further with him? There is no doubt he is an honest man. He testifies to the truth. He cannot remember.

Q Well, just let me ask this question: Did you ever cash a check for any soul that did not endorse it right in your presence?

6287 2379
CASE #

MR. MANCUSO: I object to the question as too general.

THE COURT: I will sustain the objection to that question.

MR. CHOROSH: I respectfully except, your Honor.

THE COURT: He has sworn that he does not remember anything about this check, and that is not surprising, it is so long ago, and the amount is not much.

Q You know Mr. Lipman very well, don't you? A Yes.

Q And you state positively that you do not remember cashing this check for him, don't you? A Yes.

BY THE COURT:

Q You do not remember whether he had anything to do with that or not? A No, as far as my memory goes.

Q There is nothing on that which calls to your mind the fact that Lipman ever saw the check? A No, sir.

Q And you do not know Strongin? A No, sir.

Q Strongin must have been identified by somebody? A By somebody, sure.

MR. CHOROSH: Well, that is all, your Honor.

MR. MANCUSO: I have no questions.

THE COURT: Now, do both sides rest?

MR. MANCUSO: Yes, your Honor.

MR. CHOROSH: Yes, sir, and we renew our motion on the same ground, and on the ground that there has been no corroboration.

6137
CASE # 2379

Motion denied. Exception.

MR. Chorosh then closed the case on behalf of the
defense and Mr. Mancuso closed the case on behalf of the
People.

CASE # 2379

EXHIBIT

THE COURT'S CHARGE.

THE COURT: Gentlemen of the Jury, the defendant is charged with the crime of extortion.

The indictment alleges that, on the 9th day of January, 1917, in the County of New York, the sum of twenty-five dollars in money, the personal property of one Samuel Strongin, who was then and there lawfully engaged and employed in carrying on the business of builder and contractor, this defendant feloniously and extorsively did obtain from Strongin, with his consent, such consent being then and there induced by a wrongful use of fear, to wit, fear on the part of the said Samuel Strongin, then and there by him, the said Barnet Lipman, induced by means of a threat by Lipman then and there made to the said Strongin to do an unlawful injury to the property of said Strongin, that is to say, to injure, annoy, harass and obstruct him in his business, and to prevent him from properly, freely and profitably carrying on the same unless he, the said Samuel Strongin, gave to the said Barnet Lipman, the said sum of money, against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity.

There is another count charging exactly the same crime in different form, but it is not necessary to put more than one count before you.

You understand, gentlemen, that the indictment is the

CASE # 2379

complaint. If you had a claim for money against another, or sought to obtain compensation for damages sustained by you, and if you wished to seek redress in the courts, why, you would have to begin an action; a complaint would be drawn up and signed and verified by you stating the grounds on which you based your claims; and so the People of the State of New York, having a complaint to make against Barnett Lipman, present the facts to the Grand Jury, who then return a complaint or indictment against the defendant.

It is no proof of guilt. That is the point that I want to impress upon you. The fact that Lipman has been arrested and indicted must not be considered by you as any evidence of guilt. The function of the indictment ceases when the defendant is informed by it what crime was charged against him; when he is brought here for trial the indictment serves to let you know exactly what the complaint is.

So that, that is the first question you must ask yourselves; What is the charge?

Although the language of the indictment is somewhat involved, the charge is a very simple one, namely, that Samuel Strongin was lawfully engaged in business, carrying on business as a builder or contractor in New York County on the 9th of January last. That is the first allegation. Secondly, that the defendant obtained twenty-five dollars from him on that day. That is the second allegation; and

CASE # 2379

third, that he got that money, by instilling fear into the mind of Strongin that unless he paid the money this defendant would interfere with him in the management and conduct of his business, and cause him loss in that way; that this defendant would do him unlawful injury, an injury to his property; that is to say, injure and annoy and harass and obstruct him in his business and prevent him properly, freely and profitably from carrying on the same; and that threat, having been made by the defendant to Strongin, caused Strongin to fear that he would suffer loss in his business through the action of this defendant, and therefore agreed to pay him twenty-five dollars, and did pay it to him.

The statute referred to in the indictment is a very clear law. Section 850 defines extortion as follows:

"Extortion is the obtaining of property from another, or obtaining the property of a corporation from an officer, agent or employe thereof, with his consent, induced by a wrongful use of force or fear, or under color of official right."

The threats which may constitute extortion are defined in section 851 as follows:

"Fear such as will constitute extortion may be induced by an oral or a written threat, first, to do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or to any member of his family, or to a corporation of

CASE # 2379

which he shall be an officer, stockholder, employe or agent."

There are other subdivisions, but that is the subdivision with which we are concerned in the present action.

It has been held by the courts that a threat to cause a strike on a man's job is a threat which will constitute extortion; a threat to do an unlawful injury by interfering with his business, or interfering with his workmen.

Every man has the right to pursue happiness in this country, to work out his own salvation, the right to enjoy his liberty, life and property, free from the unlawful molestation of others; and if a man, whether he be a union man or non-union man, a delegate or an ordinary workman, make a threat to an employer to interfere with the conduct of his business, unless he receives money - or interfere with its production or distribution, or the continuity of the business, interferes with him in properly carrying on his business unless he gets money, and if the employer be put in fear that the threat will be carried out, and by reason of that fear induced by that threat, should pay over any money, that is the crime of extortion.

You understand that in a criminal action there is a very clear line drawn between the powers of the Court and those of the jury. It is the duty of the Court to see

CASE # 2379

that the defendant receives a fair trial; that he is tried according to law. It is the duty of the Court to see that the law is properly explained to the jury, and then the Court has nothing further to do with the case. you take the case when it is submitted to you. You must receive the law without question, and there is no dispute about the law in this case. If there were a dispute, you would be obliged to take the law as the Court gives it to you. The law is very plain, I think; but you are the sole and exclusive judges of the facts. The Court has not formed any opinion as to the facts, and you know that I have expressed none on any fact involved in this case. That is your sole prerogative, and no one has any right to interfere with that.

There is only one way of proving facts, and that is by testimony of witnesses produced here before you for your consideration. You do not guess at facts. You do not infer facts unless from other facts established by direct evidence, which conclusively and clearly establish the fact to be inferred. So that you must confine your attention solely to the evidence in the case, and the law gives you the great power of passing on the credibility of witnesses. That is your sole power also. It is a necessary incident to your power to find the facts. It is immaterial to you what others may think of the credibility of any witness. You must be guided by your own reason and conscience

CASE # 2379

in determining that.

That word "credibility" means worthiness of belief. A thing is credible when it should be believed, when it appeals to your reason and your judgment. It gains the assent of your intelligence as a thing that is worthy of belief. If it is repugnant to your reason and your judgment, your common sense or your experience, why, you should disregard it and pay no attention to it.

Now, there are no fixed rules established to control your judgment. The law leaves you absolutely free. All that the law asks you to do is to be honest men, to give an honest verdict, to speak truly. That is what the word "verdict" means, a true expression of your opinion of the evidence, viewed in the light of the law as the Court gives it to you. You must not be influenced by any bias for or against any party to the action, or any witness. You must eliminate every thought from your minds but the desire to do your duty. That must be your firm purpose; and then, when you weigh the evidence in that way, determining what is worthy of belief, and rejecting what is unworthy of belief, why it will appear to you that certain facts have been proved, or that the evidence fails to prove the facts; and the law is that, if you are fully convinced, after you weigh the evidence in that way, to a moral certainty that the charge has been proved, then the defendant is guilty.

That is what is meant by proof beyond a reasonable

627
CASE # 2379

doubt. If the evidence fails to impress you to that extent, if it leaves you undecided, if you cannot say positively that you are convinced to a moral certainty that the charge is true, if the evidence merely creates the thought in your minds that the defendant is possibly or probably guilty, or the suspicion that he is guilty, however strong the suspicion may be, that is not enough. Your minds are in a state of reasonable doubt, and the defendant is entitled to the benefit of that doubt; for our criminal trials are based on a fundamental principle, known as the presumption of innocence. In other jurisdictions they have different ways, but America has got along very well under its own laws, and the basic principle of our criminal law is that when a man is brought into court he is presumed to be innocent until the jury by their verdict decide that he is not innocent, but that he is guilty; and the law says further that, to come to that conclusion, the jury must say, must feel that the evidence is strong enough to convict him beyond a reasonable doubt. If the evidence fails to convince them of his guilt beyond a reasonable doubt, they must acquit him.

Now, from what I have said, you may gather a good notion of what is a reasonable doubt. It is a doubt based on reason. It is not a doubt that is based on sympathy for a defendant or prejudice against the complainant, or on a whim or a caprice. It is not a doubt that is based on

CASE # 2379

a desire to avoid doing your duty if it should be disagreeable. As I told you, all such thoughts should be resolutely banished from your minds. You must do your duty, whether it is pleasant or unpleasant. You must be honest, You must give an honest verdict. That is the important thing. It is not so important whether the verdict be guilty or not guilty, if it be honest. It would be a great wrong to say that this man were guilty if the evidence failed to convince you that he was guilty beyond a reasonable doubt, and it would be equally a wrong for you to say that he was not guilty if in your hearts and minds you were convinced by the evidence beyond a reasonable doubt that he was guilty.

In passing on the credibility of the witnesses in a case like this, where there is a sharp contradiction in the testimony, you may consider the manner of the witness in giving his testimony, the opportunity that the witness had for knowledge of the subject on which he testified, the motive, if any, which may have existed and influenced the giving of the testimony, and the relationship, if any, to the cause of action and the circumstances of the case.

The material points in this case are the giving of the money in the first place. Secondly, the reason for which it was given. If it were given simply as a gift, the defendant is not guilty. If it were given as a bribe to induce him to come over here, he is not guilty. If it

THE NATIONAL
FBI
CASE # 2379

were given in Brooklyn, he is not guilty. If you have a reasonable doubt on any of those points you must acquit the defendant.

The District Attorney said in his summing up if it were given in Brooklyn, why, he would not have brought the action, but that does not mean that he knows anything about the facts, you understand that. If he knew that it was given in Brooklyn and brought the action here, then he should be removed; but if he believed it was given in New York and brought the action in New York, he is doing his duty; but he does not know anything more about the facts than I do. You are to find that fact, and I say that in all fairness, because in his summation he seemed to assume that the fact that he brought the action here in New York was proof that the money was given here in New York. He did his duty in bringing the action here in New York because the complainant says the money was given here in New York; but you must find that fact from the evidence in the case, because the law says you must give the facts only from the testimony of witnesses.

Do not think that I am trying to sway your judgment on the facts; but it is my duty to tell you the law, and the law is that statements of counsel on either side or the statements of the Court, are not evidence. They are not to be regarded by you unless they are supported by testimony given by witnesses. If statements of counsel on either

CASE # 2379

side are in your judgment proper deductions from the testimony, you must give them respectful consideration. If they are expressions of personal views, or of opinion, and they are not supported in your opinion by the evidence, why, you must disregard them. That is the law. I am only concerned in seeing that this defendant should have a fair trial.

If you are satisfied beyond a reasonable doubt that the defendant made a threat to Mr. Strongin that he would interfere with him in his business, cause him trouble, and that Strongin, acting on that, was afraid that he would carry it out, whether he had jurisdiction or not in this matter is immaterial, whether he was a walking delegate or not is immaterial -- that is merely one of the circumstances -- if any one made a threat to Strongin, whether he had power to carry it out or not, that he would interfere with him in his business or cause trouble among his workmen, or would cause strikes, and Strongin believed that and paid the money on the faith of that belief, and the defendant or any one else received it, that would be the crime of extortion.

Now, if all those elements have been established, as I told you, beyond a reasonable doubt, it is your duty to find the defendant guilty of the crime of extortion as charged in the indictment. If you have a reasonable doubt on any of the elements in the case, you must give the benefit of that doubt to the defendant.

The testimony has been carefully reviewed by the

6187
CASE # 2379

attorney for the defendant and by the People. They have reviewed the testimony so carefully that it is unnecessary for me to refer to it. The People claim that a threat was made to interfere -- that money was paid on account of fear induced in the mind of Strongin that that threat would be carried out by the defendant. The defendant maintains that he received the money as a voluntary gift, or bribe, if you choose, for using his good offices in a matter in which he had no official concern, with which he had no official relation or power. If he received it for any other purpose than that of extorting it from him by fear or by a threat, he is not guilty. If he did receive it as the result of the fear he caused in the mind of Strongin by his alleged threats, then he is guilty of extortion.

Take the case, therefore, gentlemen, and weigh it calmly, quietly and dispassionately. It is a very important case. Every case is important, but there are some in their nature that are of more importance than others. You should rid your minds of any prejudice or sympathy for one side or the other. Weigh the evidence honestly, remembering that you are not lawyers, you are not partisans, but you are judges, judges of the facts and the credibility of the witnesses. Do your duty faithfully and fearlessly, and then that will be a vindication of the law, and render an honest verdict, either of guilty or not guilty, just as you

6137
#2379
CASE

believe the evidence warrants.

Any requests, Mr. Chorosh?

MR. CHOROSH: None, your Honor.

THE COURT: Mr. Mancuso, any requests?

MR. MANCUSO: None, your Honor.

THE COURT: Gentlemen, you will pass out. One minute, if you wish to look at that check you may do so if the defendant consents. Just ask the defendant personally if he consents.

THE DEFENDANT: I have no objection, your Honor.

THE COURT: All right. You may pass out, gentlemen.

(The jury retired at 12:45 o'clock p.m. and returned to the court room at 1:30 o'clock p.m.).

THE CLERK: Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN: We would like to be instructed in reference to a matter.

THE COURT: I sent for the jury because I received the following communication signed by your foreman: "The jury respectfully requests his Honor to define the difference between bribery and extortion as regards this case."

Bribery is defined in sections 371 and 372 of the Penal Law, in so far as it concerns judicial officers and public officers. Section 380 refers to bribery of labor representatives. It says:

CASE # 2379

"A person who gives or offers to give any money or other things of value to any duly appointed representative of a labor organization, with intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor; and no person shall be excused from attending and testifying, or producing any books, papers or other documents before any Court or Magistrate, upon any investigation, proceeding or trial, for a violation of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding."

That is a special section without which it would be no crime to bribe a labor representative. It is a more serious crime to bribe a judicial officer.

Section 371 says that:

CASE # 2379

"A person who gives or offers, or causes to be given or offered, a bribe, or any money, property, or value of any kind, or any promise or agreement therefor, to a judicial officer, juror, referee, arbitrator, appraiser or assessor, or other person authorized by law to hear or determine any question, matter, case, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereupon, is punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars or both."

That is a felony. If a judge were to receive money for rendering a decision, or a juror were to receive money to influence his verdict, that would be a crime. There is no element of fear or force in that. Any representative in the Board of Aldermen or in the State Legislature, or any public official who receives any reward of money, property or value of any kind, on any promise or agreement therefor, to influence his vote or decision or his action as such official or officer, would be guilty of bribery; both the person who gives and the person who receives.

Do I make that clear? There is no element of force or threat in bribery. If this defendant had been officially connected with this transaction, if there was a controversy pending before the delegates on which he had the right to

FBI
CASE # 2379

vote and he took money to influence his vote, or decision, that would be bribery, not extortion; or if he took money to give to the official delegates to influence their vote or their treatment of the matter, that would be bribery and it would be a misdemeanor.

He is not indicted for bribery; so that he could not be convicted of bribery on this indictment. But if, whether he had any official relation to the matter or not, if, as he says, he was a Brooklyn delegate having no authority in New York, he made a threat to Mr. Strongin that if Strongin did not give him money, either for himself or for the labor officials who had power to declare a strike, - I say, if he demanded money and threatened that if he did not receive it a strike would be called, and thereby induced fear in the mind of Strongin, if Strongin feared that a strike would be called and that he would be prevented from carrying out his contract and carrying on his business profitably - I say, if he made that threat and induced that fear by means of that threat in the mind of Strongin, so that Strongin as a result of the threat and of the fear gave him twenty-five dollars, then that would be the crime of extortion.

Now, do I make that clear to you?

THE FOREMAN: It is clear to me, your Honor.

THE COURT: I mentioned the word "bribe" in my charge because the defendant testified, as I recall it, that he

6127
#2379
CASE

received this money, well, not only for his own services but in recognition of what had been done by the officials. He did not say that it was a bribe. If he had taken it to influence their vote on the matter, without any threat, if he had asked for the money to influence their vote so that they would settle that pending controversy, if there was a strike on, and the man said he could settle it for a certain amount of money to give to the labor officials who had authority to settle it, that would be a bribe. But if after that matter were settled - and the People claim here that the matter was settled and that it was after the settlement - he paid this money on account of a threat that there would be trouble, then it would be extortion.

Is there any request you wish to make, Mr. Chorosh?

MR. CHOROSH: None, your Honor.

THE COURT: Now, if that is satisfactory, the jurors will please retire, but you must understand that if you have a reasonable doubt in your minds as to whether this was a bribe or extortion by threat, you understand, if you have a reasonable doubt as to the way the money was paid, you must acquit the defendant. To convict him you must be convinced beyond a reasonable doubt that it was not a bribe but was extortion.

THE TWELFTH JUROR: Is it permissible, your Honor, to ask a question?

CASE # 2379

THE COURT: Well, I do not want you to disclose your deliberations, but if there is any information you would like the Court to give you -- please sit down, gentlemen.

THE TWELFTH JUROR: If the defendant simply should say that he will let things take their due course unless his services were employed, his good offices, is that bribery or is that extortion? If he simply stays out of the matter entirely, if he does not get this sum of money?

THE COURT: Why, I do not think that would be extortion; that would be bribery; if he made no threat, if the money were given to him to induce him to settle a pending dispute, for his good services in that, without any threat on his part.

If he were paid the money merely for his good offices, it would not be extortion. In extortion there must be a threat which leads to the payment of the money, do you understand? If the threat were made that "Unless you pay me, this strike will be continued," then it would be extortion. But if he said, "I will not have anything to do with it, unless you pay me," that would be bribery. Do I make myself clear?

THE TWELFTH JUROR: Yes, sir.

THE COURT: If there was a threat on his part to do any injury to this man Strongin, either by holding up the present strike or by causing another, and fear was instilled in the mind of the complaining witness by means of a threat,

CASE # 2379

and he gave up his money, then that would be extortion. If it were merely an effort on his part to secure the influence of this man, without any threat on his part, then it would be bribery, if it would be any crime. It would not be extortion, and the indictment here charges extortion.

THE TWELFTH JUROR: Even though he allowed things to take their due course, and without interfering, even though the complaining witness feared the consequences of allowing things to take their due course, that would be extortion?

THE COURT: No. To constitute a threat no particular form of words is needed. A threat may be conveyed by any language or indicated action; by gestures together with words. There are no express words needed. If in his dealings with Strongin, by his manner and words, even if they did not of themselves constitute an express threat, if all his relations to the matter were in the nature of a threat, his words and acts taken together were intended as a threat, and accepted as a threat by Strongin, and induced fear in Strongin's mind, thus leading him to pay the money, that would be extortion. But merely to pay him for his good offices to refrain from doing or for doing something, without any expression of a threat, that would not be extortion. If there were a pending strike and he said, "Well, I can settle it for so much money," that would not be a threat, if the money was paid; but if he said, "Unless you pay me money the strike will be continued," then that would be a

INDICTMENT
CASE # 2379

threat; or if he conveyed that idea to the mind of the complaining witness by his words and acts, even if there was no expressed language of a threat. There must be a threat to constitute extortion. Does that answer your question?

THE TWELFTH JUROR: Yes, sir, that is perfectly clear now.

THE COURT: Do any of the other jurors wish to ask any questions on the law? Of course, you are the sole judges of the facts. You must decide whether there was a threat or not. If you have a reasonable doubt on that you must give the benefit of it to the defendant. If there was a threat and the money was paid upon the fear caused by that threat, and the threat was of the kind described, namely, to interfere with his business or prevent him from carrying on his business profitably, that is all the law requires to constitute extortion. If you have a reasonable doubt on any of those elements you must acquit the defendant. If you have no reasonable doubt you must convict him.

Mr. Chorosh, is there anything you wish to say?

MR. CHOROSH: Nothing, your Honor.

MR. MANCUSO: Nothing, your Honor.

THE COURT: Then please pass out, gentlemen.

(The jury again retired at 1:45 p.m. and returned to the court room at 3:00 p.m. and rendered the following verdict:

EXHIBIT
CASE # 2379

We find the defendant guilty as charged in the indictment, with a recommendation to the mercy of the Court.)

THE COURT: Mr. Chorosh, do you wish to make your motions now or adjourn them?

MR. CHOROSH: I will reserve the making of any motions until some day you set.

THE COURT: I will remand him for a week, if you like, and give you permission at that time to make any motions that you deem advisable. You may reserve your rights.

2874

108
108
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210

CASE # 2379