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- : I N D E X : -

August 9, 1920.

<u>WITNESSES:</u>	<u>Direct:</u>	<u>Cross:</u>	<u>Re-Dir.:</u>	<u>Re-Cro.:</u>
Samuel Levin,	2	7	31	33
Harry H. Jacobs,	27	30		
Charles Harris,	39	40		
Stephen Love,	46	49		
Francis B. Lewis,	53			

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The People v. Lewis.

- : I N D E X : -

August 11th, 1930.

<u>WITNESSES:</u>	<u>Direct:</u>	<u>Cross:</u>	<u>Re-Dir.:</u>	<u>Re-Cro.:</u>
Francis L. Lewis,	64	68	86	
Fannie S. Laird,	89			

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

-----X
 THE PEOPLE OF THE STATE OF NEW YORK :
 vs. :
 FRANCIS L. LEWIS. :
 -----X

New York, August 9th, 1930, etc.

Indicted for attempted extortion.

Indictment filed July 15, 1930.

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

For the People:

ASST. DISTRICT ATTORNEY SAMUEL MARKEWICH.

For the Defendant:

MARTIN BOURKE, ESQ.

Tried before HON. CHARLES C. NOTT, JR., J., and a
jury.

A jury was duly impaneled and sworn.

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

James E. Lynch,
Official Stenographer.

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SAMUEL LEVIN, called and duly sworn as a witness on behalf of the People, testified as follows:

(Address:::3682 Broadway).

DIRECT EXAMINATION BY MR. MARKEWICH: *

Q What is your business? A Tailoring.

Q Custom tailor? A Yes, sir.

Q Where is your place of business? A 3682 Broadway.

Q Do you live at the same premises? A Do I live in the same premises? No, sir.

Q Where do you live? A 151 West 99th street.

Q How long have you been in business at 3682 Broadway?

A Five years, going on six.

Q Are you a married man? A Yes, sir.

Q Have you any children? A Yes, sir.

Q How many children have you? A Two.

Q Do you know the defendant Lewis? A I never saw him before.

Q Before what? A Before he entered my store.

Q When was that? A Last month.

Q On the 8th day of July, 1930? A Yes, sir.

Q What time of day was it? A About eleven o'clock, eleven or twelve o'clock.

Q You did not see him until that day? A No, sir.

Q What was the first thing he did when he entered your store? A Why, I had a conversation with Mr. Lewis before he entered my store, in my neighbor's store. That's the time I saw him there, about a quarter of an hour before.

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Q About fifteen minutes before the defendant came into your store? A Yes, I met Mr. Lewis in my neighbor's store, in a fur store.

Q What number on the avenue is that? A That is 3684 Broadway. There is two stores combined together.

Q Now, what happened when you got into your neighbor's store, between the defendant and yourself, what conversation took place? A I was very busy cleaning up my place, on the outside, on the window. I saw my neighbor and Mr. Lewis walking in and out, about the store. I didn't know who Mr. Lewis was. Then a little later I went in to buy some things of my friend, the furrier, and Mr. Lewis started to call me. He says, "You come over here; you come over here." I says, "What do you wish, sir?" He says, "Never mind, come over here, what is your name?" I says, "What do you wish to know?" "Why," he says, "I am a revenue agent and I want to know whether you paid your income tax or not," and at that time he pulled out a badge out of his pocket and he showed it to me. I says, "No, I have not paid it." He asked me why I didn't. I told him because I was a married man with two children and I am entitled to twenty-four hundred dollars a year and I am not making so much.

So then he says, "That has nothing to do with it, you should have made out one any way." I says, "I didn't know that." So he says, "It's no use for me talking to you in somebody else's place, as long as you know who I am you better come in next door and see me." I said, "All right."

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So about fifteen minutes later he came in and he sat down at my desk. He said to me, "So you did not make out any income tax?" I says, "No, sir, I did not." He said, "Well, why didn't you?" I told him again the reason why I didn't. He says, "Well, I will see what I can do for you." I says, "Well, what can you do?"

So in the meanwhile there was a couple of fellows around, a fellow by the name of Charlie Harris was around and another fellow was around, and he says to me, "Who are they?" I says "Oh, they are just friends of mine." He says, "Go ahead and get rid of them." I says, "All right, I will get rid of them."

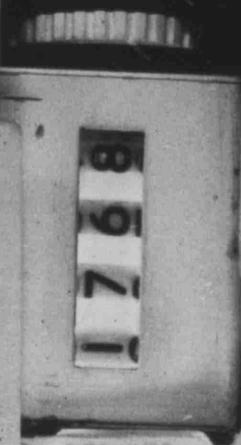
So Mr. Harris went on the side, I have like a little partition over here (Indicating), and he went on the side, and the other fellow walked out, and at the same time Mr. Lewis started in talking to me and he says, "Well, for twenty dollars I will fix you up, the whole thing, that you would not have to pay no income tax at all." I says, "Well, that's too much money, I can't afford twenty dollars." He says, "Well, it's worth twenty dollars," but, he says, "I will do it for you for ten dollars."

Then at the same time my neighbor, Mr. Jacobs was in too. I says, "By God, that man is demanding money in a peculiar way."

Q Well, never mind that. The defendant did not hear that?
 A No.

Q You said something to Jacobs? A Yes, I said to Jacobs, "That man looks to me like a peculiar fellow."

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Q Well, never mind that. A So I told Jacobs, "You better go in your store and call up the police station and find out if he is really the right man or not."

So Mr. Jacobs did that. I told him, "All right, Mr. Lewis, go ahead." He took out some kind of paper and started to write on it, all about the income tax, asking me about my expenses. He says, "All right, I will fix it all up for you," which he did. He made me sign my name to it and he signed his name to it, and by the time all these things were done, I decided I will give him the money, some marked money. I took out a ten dollar bill and I wrote my name in very small lettering on it. While he was busy fixing up the paper I went next door and I found a detective sergeant there and he asked me about it.

MR. BOURKE: I object to all this, your Honor.

BY THE COURT:

Q Yes, do not state what you said to others while the defendant was not there.

BY MR. MARKEWICH:

Q Well, then you went in next door? A Yes.

Q That was after you gave him the ten dollars? A Before I gave him the money, I found the detective in there.

Q Before you gave the defendant Lewis the money you went in to Jacobs' store and you found Detective Love there? A I found Detective Love there, I spoke a few minutes with him.

Q Do not tell us what you said to Love. You spoke to Love? A Yes, sir.

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Q Then you went back to your store? A Yes, and I handed Mr. Lewis the ten dollars in front of Mr. Jacobs and Mr. Harris, and I told him, "I am all through with the income tax?" He says, "Positively, that is all you will have to pay and you will not have any income tax." Then he walked into Mr. Jacobs' store to get money off him, and he got arrested.

Q Now, at the time the defendant demanded the money from you, were you in fear of trouble from the United States Government because you did not file a report? A Yes, sir, he says if I am not going to straighten it up he will make it very hot for me.

BY THE COURT:

Q Did he say what he would do? A No, sir.

Q He said he would make it hot for you? A He said he would make it very hot for me.

BY MR. MARKEWICH:

Q And did he tell you who he was? A Why, he said he was a Government man, a Federal agent, and he showed me the badge, which afterwards was discovered in the police station --

Q Did you see the badge later? A Later in the police station I saw the same badge.

Q What was marked on the badge? A It said, "Deputy Sheriff, Richmond County, 1915."

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

The badge itself is the best evidence.

THE COURT: Yes, the badge may be produced.

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MR. MARKEWICH: Well, that is all, you may cross-examine.

CROSS-EXAMINATION BY MR. BOURKE:

Q You say you were in business there for how long, Mr. Levin? A Five to six years.

Q Do you say you have never made a report to the United States Government of any income tax? A I did not.

Q Or any kind of report in regard to your business or the value or transactions therein? A I don't understand you, sir.

Q (Question repeated by the stenographer). A No, sir.

Q And you have never made any report in any respect at all to the United States Government, respecting your business or your personal income? A No, sir.

Q Did you sign any paper that you say was filled up by this defendant that day? A Yes, sir.

Q How many papers did you then sign? A One.

Q Did you read the paper over before you signed it? A I did not, sir.

Q You signed it without reading over any part of it? A I don't - I did, I would not recollect that, but I think I did look at something, I don't know what it was, but any way, he signed his name to it, so I thought I would be all right as long as he signed his name, that I will sign my name too.

Q Did he do the writing or filling in of the blanks? A Yes, he did it all himself.

Q Did he do such in your presence? A Yes, sir.

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Q Did he talk with you about making or filling any one of these entries? A Certainly he did.

Q And what he filled in was as you supposed the substance of what you had just before that informed him of? A Yes, sir.

Q But you did not take the pains or precaution to read the paper over at all? A No, sir, I did not.

BY THE COURT:

Q Well, what did he say while he was filling in this paper, what was the paper about? A The paper?

Q What questions did he ask you and what answers did you give him? A Mr. Lewis asked me how much business a month I am doing and how much was my expenses, how much merchandise I got. I told him all that, I gave him all the details about it.

BY MR. BOURKE:

Q Did he ask you anything about the income of your business for the preceding year? A He asked me what is my income, what business I am doing on the month. I told him, but he never asked me what income it is except by the income --

Q Now, let us see. He asked you what your business was by the month? A Yes, sir.

Q And for the month then immediately preceding? A I don't understand you. That is the question he asked me and that's what I answered him.

Q Did he ask you in regard to any one month, for instance, the month of June, just before? A He asked me that question.

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I told him I averaged about \$600 a month, every month, with summer and winter, and winter time it runs a little more.

Q For how many months? A In winter I am a little more busy than summer time, but the whole thing all the way round, it is about the same thing, \$600 a month.

Q For the five or six years, was it? A No, here lately it is better than it ever was before.

Q Well, about how long had it been? A About two years

Q At the rate of \$600 a month? A Yes, sir.

Q Do you mean that that was your net income or the gross sales? A The gross sales of all.

Q About how long a period of time was the defendant altogether in your store or place of business? A About two hours, sir.

Q Was there any one else there during that two hours besides yourself and himself? A Yes, sir.

Q And for how much of the two hours was there anybody else there? A Well, Mr. Harris was there quite a while. Mr. Harris was there for about half an hour and Mr. Jacobs, my neighbor, was right along with me most of the time.

Q Mr. Jacobs was there for most of the time and Mr. Harris was there for half an hour? A Yes, sir.

Q Out of the entire two hours? A Yes, sir.

Q Were there any customers coming in the store during that time? A Yes.

Q Did you serve customers during the time that they came in? A Yes, they came in and out.

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Q Did you not read any one of the answers that the defendant, as you say, wrote in upon that paper before you signed the paper? A No, sir.

Q And you told him that the income of your business for two years past was about \$600 net per month? A No, sir.

Q Gross per month? A Yes, sir, that the expenses ought to come off that, all the expenses.

Q Did the defendant ask you if you had made out an income tax report at any time? A Yes, sir.

Q And what did you say to him when he asked you that question? A I told him I did not make any report out.

Q Did he ask you if you had any books? A Any what, sir?

Q Books? A Any books, yes, sir.

Q And did you have books of account, respecting your business? A No, sir.

Q What did you say to him with respect to books of account? A I told him I haven't got no books of any kind.

Q Then what did you show to him, bills or statements or what? A Nothing, just plain talk.

Q You just simply told him out of your mind these figures? A Out of my mind what it is like, because I know what I am running. I ain't got nothing, no property of any kind, just making a living just like any ordinary man.

Q And the figures that you gave him out of your mind or memory, you say he wrote down in the paper? A Yes, sir.

Q Was the defendant alone or was anybody with him? A When

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he come in he was by himself at that time, but Mr. Harris was there with me.

Q No, I mean was the defendant alone or was he with anybody else all this time? A All by himself.

Q What did he say^{to you} with respect to his identity when he first spoke to you regarding the matter? A Regarding the matter, he says, why, I didn't make out any income tax.

Q No, respecting his identity, what did he say to you? Did he tell you who he was, and if so what did he say to identify himself? A He showed me, the first time he showed me that badge, and a card of his, that was at Mr. Jacobs' store, that's the first time when I met Mr. Lewis and he told me --

Q Just a moment. I show you that and ask you is that the card you say he showed to you? A That is the card he showed, and a badge with it too.

Q That is enough, that is an answer. I think, "Yes," is the answer?

MR. BOURKE: I ask to strike out the rest of it, and I offer the card in evidence.

MR. MARKEWICH: I have no objection.

(It is marked Defendant's Exhibit A in evidence).

Q Would you remember the paper that you signed or a similar paper if the same were now to be shown you? A Yes, sir, I certainly would.

Q I ask you if you remember that as being a paper or a similar paper to one which you signed and which he showed you?

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A I should think that is about the same paper.

Q And whereabouts thereon did you sign that paper? A I did.

Q I say where, just look at the paper? A I signed it right through here some place (Indicating). I don't remember exactly where I signed, but I tell you where it is. Detective Sergeant Love has a copy of it.

Q Never mind. Your answer is you do not just remember where you signed it, but it was a paper similar to that? A Similar to that, yes.

Q You are not mistaken about it? A I wouldn't say sure it is the same, I wouldn't say that, but it was similar to that, that's about all.

Q Did the defendant tell you when you told him you had neither books, bills or statements, but simply depended upon memory, that he was permitted by the United States Government to depend upon your recollection or estimation in regard to these figures? A I could not answer that question, because I am just running, as I told you, about six hundred dollars a month, and I couldn't swear, maybe there is a little less a month or a little over, but we were talking about a little over an average of \$600 a month. He asked me about books and I told him I had no books.

Q When the paper had been filled out, and it was filled out wholly and entirely, as I understand you, by the defendant, you signed the paper? A Yes, sir.

Q And he signed the paper? A Yes, sir.

Q Then what do you say took place with respect to giving

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him some money? A Because that was, he is supposed to figure everything up for me, to make it according, that I should not have any trouble.

Q Then you had no trouble in making out the paper, and because he had filled it up for you you gave to him this money?

A That is not, - I didn't give it to him for that. I gave him the money that he should not make any trouble for me.

Q How much money did you give him? A Ten dollars.

BY THE COURT:

Q Did you see the paper again? A I saw the paper again, yes, sir.

Q Has the officer got it? A The officer is right here, he has the paper too.

BY MR. BOURKE:

Q Did he ask you for ten dollars? A First he asked for twenty. I told him I couldn't afford it. He says, "It is worth twenty, I will take ten," and I gave him ten dollars.

Q Did he ask you for the money before the paper was filled out or after? A He asked before. I says I wouldn't give him anything until the paper was filled out, and he was to take the papers home and fill them out, and I said that wouldn't do, I says, "You fill out the papers here." He filled out the paper and that's just the time I went out to call the Police Department.

Q What was your reason for calling for the Police Department, and making the payment of money to him for his kindness

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on filling out your paper? A That was not kindness of him to fill out my paper at all. He was to make it easy for me, otherwise he warned me, he will make it very strong for me.

Q And that for the sum of ten dollars he was making it easy for you? A Yes, sir, he was supposed to fix me up.

Q What did you expect then would happen to you if he did not make it easy for you? A Well, that is supposed to cover me, to be free from all the income tax.

Q Then for the payment of ten dollars to this man you expected to be free of all income tax? A Yes, I didn't have any income tax, the way I figured it up, but I didn't want the man to make any trouble for me and I thought I might as well let it go the way it is, that's all.

Q Then, because you had no income tax, because you knew you had to pay no income tax, but for fear you might have some trouble over the income tax, that you did not owe and did not have to pay, you gave to him \$10? A That he should relieve me from all my troubles, and when I gave him the money he told me I am free from all income tax. Whatever he fixed up, that is his affair.

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Q It never occurred to you at the time that if you did give him \$10 to relieve you of all income tax, that you did not have to pay and which you did not owe, that you were paying money without any foundation or reason? A Yes sir. The way he says I was supposed to pay income tax, I was supposed to make out a report and I didn't make out any.

Q Oh, now, we are getting a little closer to it, I think. He said that you were forced to make out a report? A Whether I make any more money or less money I have to make out a report anyway, and I told him I didn't make out any and he says "Why didn't you?" I told him the reason I didn't, because I was a married man with two children and I am entitled to \$2400 each year, and I even didn't make that much. He says "I have to make it out anyway." He says that's why he wanted \$10, to fix me up, that I wouldn't have any trouble of any kind, and I am free from all income tax.

Q You remember that very clearly and distinctly, don't you? A Yes sir.

Q Every word of what he said? A Whatever I told you, every word is true.

Q Then you do not remember perhaps that he said to you that this report must be made up because it was a so-called general schedule in the Department of Commerce for the Census last year of manufacturers? A But I am not a manufacturer. I am not making anything new. I am just repairing and pressing.

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Q Oh, you are not a manufacturer? A No sir.

Q And yet you filled out this report? A Well, I am blind. I didn't know anything about his laws. The man come in and told me the law and I go with him, I figure that is the law, that's all.

Q Let me finish my question. A Yes sir.

BY THE COURT:

Q Did he say that your report was wanted for the census or by the Revenue Department? A No sir, he told me it must go to the Revenue Agent.

Q Did he say anything about the census? A No sir, nothing at all about the census.

BY MR. BOURKE:

Q Perhaps he told you that if you had filled out an income tax report heretofore, it would facilitate or make easy the preparation of this general schedule of the census of manufacturers of last year? A I told you I am not enough educated to understand these things. I never went to school in my life, I know how to read and write a little, but I don't know anything about this. I couldn't tell you what it is if he showed me anything. The man showed me a badge, and I took him as an agent too, I didn't know the difference.

Q You can remember as I understand it, word for word, what this man said to you on this occasion? Now, I am asking you if he did not explain to you that this was a schedule of the census of manufacturers of last year? A No sir.

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Q I thought you just said - A (Interrupting) He said this was just for my income tax, that's all.

Q It took him two hours then to prepare it? A You asked me for how long I saw Mr. Lewis all the time. I told you two hours. For two hours he was at my place and in my neighbor's too, in my place he was only three-quarters of an hour.

Q Well, you knew there was more in this paper, didn't you, than the simple statement that you had made, \$600 a month gross out of your business for the two years past? A I didn't know exactly, I couldn't swear to it; I didn't see anything because I didn't read anything and he signed it.

Q Are you in the habit of signing papers without reading them? A If I would be a big merchant or manufacturer I would be careful, but this was different. I have nothing so nobody can take anything from me.

Q Is it not a fact that this man said to you that this was a general schedule of the scope of operations in your business? A No sir.

Q And that the Government required that that be filled out, whether you ever had paid a penny of tax or not? A I couldn't answer that question. He asked me about income tax and he wrote out the paper.

Q Just a moment. If you cannot answer, do not answer, please. A All right.

Q Why can you not answer the question, have you not understood it, did you not hear? A I heard but I didn't understand

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Q Do you wish it read to you from the stenographer's minutes? A Yes, just some of it.

Q (Question repeated by the stenographer.) A He didn't ask me - the only thing after he sat down at my desk, ^{after} ~~as to~~ the agreement to pay him \$10, he sat down and signed this paper. What it was I don't know, when he got through he asked me to sign it and I did. I said "Why don't you sign it?" He said "I will sign my name too", and he did.

BY THE COURT:

Q Are you a manufacturer? A No sir, I am not.

Q How big is your store? A Just about 14 or 15 feet.

Q Do you employ any help? A One man.

Q Do you press and repair clothes? A I clean and repair clothes, I dry clean, and I do all kinds of patching but I don't make any new work at all.

BY MR. BOURKE:

Q Your line of business is what? A Cleaning, repairing and pressing.

Q In other words, the valet line is included in your business? A Sir?

Q The valet line? A The valet system, yes sir.

Q And while you claimed there was no report that you had to make for manufacturing, because you do not manufacture, yet you consented to fill out that paper? A Well, because I don't know the difference, what it was.

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Q So, having filled out this paper, though you did not have to fill it out - A (Interrupting) I didn't know it.

Q Let me finish, and though you knew that you did not have to pay any income tax, you then proceeded to give this man money and proceeded to have him arrested then? A No sir. I gave him the money for the fact that he should not trouble me and he should not annoy me, that's why I gave him the money.

Q Had you ever seen him before? A Sir?

Q Had you ever seen this man before? A Never saw him before. That's the first time I ever saw him in my life.

Q Your business is more largely that of a valet line, isn't it, than of the making or altering or repairing of garments? A No sir.

THE COURT: Well he has just said that.

THE WITNESS (continuing): We do everything. We do valet work, repairing work, pressing, cleaning work, but I do not manufacture anything. I am not building up new garments.

Q Have you kept any books in your business since that time? A No sir.

Q And you have never in the five or six years kept any kind of books? A No sir.

Q How long, or is it your practice to keep the bills of paid accounts? A The only thing I got is slips of paper. When a boy delivers a thing I have slips of paper and I enter in the book what people owe me, just the name and amount.

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Q Do you deposit money in a bank? A Have I got money in bank?

Q Yes. A Just about \$200.

Q And you have a bank account or have had in the past five or six years? A I got a bank account for about five years, four or five years.

Q Well, then you have a deposit bank book and a check bank book, haven't you? A Yes sir.

Q Did you show those to this man? A No sir.

Q You simply told him just out of your mind? A Yes sir. Mr. Lewis asked me how much money I got in the bank. I told him what I have in the bank, that is \$200 I keep circulating all the time from month to month until I get my customers paying my bills again.

Q Now, you say this man put you in fear? Will you tell us how he put you in fear? Did he try to strike you or what? A No sir, he said he would make it very hot for me if I was not going to settle with him, right in the store.

Q He said he would make it very hot for you? A That's the way he expressed himself.

Q Was that after the paper was written out or before the paper was written out? A Before the paper was ever signed, before the paper was even filled out, I promised him \$10. That's the time he started to make out the paper.

Q He did not touch the paper until after he had a promise of the \$10? A Yes sir.

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Q About what time did you give him the \$10? A Around 12 or half past 12 or quarter past 12, around that time, I couldn't say exactly.

Q Did you take a receipt from him for the money? A No sir, I did not. The reason why I didn't want to take any receipt

Q No, I just asked you the question. That is all.

RE-DIRECT EXAMINATION BY MR. MARKEWICH:

Q Where for the first time did you see this card marked Defendant's Exhibit A? A This card I saw, that Mr. Lewis presented to me at Mr. Jacobs' store, that he was a revenue agent.

Q Did you read it? A No sir.

Q You do not know what that card contains? A No sir.

Q Now, do you say - I show you this badge and ask you if that is the badge that he exhibited to you? A Yes sir, that's the badge.

Q How did he show it to you? A In his hand like this (indicating), holding it in his hand, taking it out of his trousers pocket and showing it to me this way, and I took his word for it, and he put it right back, and then afterwards he showed me this card.

Q When did you next see it? A The next I saw it in the station house when they searched him, they found it on him.

Q When he was under arrest? A When he was under arrest.

MR. MARKEWICH: I offer this in evidence, your Honor.

MR. BOURKE: No objection, your Honor.

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(It is marked People's Exhibit 1 in evidence.)

Q I show you this ten dollar bill and ask you if this is the bill that you gave to the defendant? A Yes sir, there is my signature right on it.

Q Your signature is on it? A Yes sir, right on the bottom (indicating).

Q When the defendant was searched was this bill found in his possession? A Yes sir.

MR. MARKEWICH: I offer that in evidence.

MR. BOURKE: Let me see that, please? No objection.

(It is marked People's Exhibit 2 in evidence.)

Q Now, Levin, at the time that the defendant told you that if you did not give him money he would make it hot for you, or words to that effect, were you afraid of trouble? A Well, I didn't want to go under all these here inconveniences, you see. I was afraid he can make trouble for me.

Q What trouble ^{were} you afraid he would make for you? A I didn't know, because he started to talk to me, he talked to me that way and I thought I would give him a couple of dollars.

Q What trouble were you afraid of having? A He was to call up the income tax people and tell them to come around here and have me probably locked up or something. I didn't know what was going to happen at the time.

Q And you gave him that money to avoid that trouble? A To avoid any of that trouble. That's what I gave it to him for.

Q All right, that is all.

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RE-CROSS-EXAMINATION BY MR. BOURKE:

Q Well, just a moment. You say you can read and write?

A Yes sir.

Q And you say this man showed you that badge, which was later found upon his person, a badge which reads "Deputy Sheriff Richmond Co., N. Y., 757", that because he showed you a Deputy Sheriff of Richmond County badge, though he was an officer of the United States Government, you ~~was~~^{were} immediately in fear? A Why, I didn't see that badge. He just simply flashed it at me, he didn't give me a look at it.

Q Oh, he could have shown it to you and you could have had half an hour to look at it, couldn't you?

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

A I didn't ask him for it. He flashed the badge to me and he put it right in his pocket and pulled out the card. He didn't let me read it.

Q You could have asked him to read it?

MR. MARKEWICH: I object to that as argumentative.

THE COURT: Yes, I suppose it will be conceded that there was nothing to prevent him from asking.

Q Yes or no, you could have read it? A Possibly I could.

Q You could have had in your hands just as now, couldn't you?

THE COURT: How can he tell whether he could or could not? He does not know what the defendant would have done.

A He flashed it at me and then he put it right in his

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pocket and I took it for granted.

Q You could have taken it from him and looked at it and read it, couldn't you?

MR. MARKEWICH: I object to that as argumentative also.

A How do I know he would give it to me?

Q You did not ask him for it? A I didn't ask him, no sir. He flashed it at me and he put it back in his pocket, that's all.

Q And that satisfied you? A No, that did not satisfy me. After he put that badge in his pocket he showed me that card with his picture on it. That satisfied me then, then I knew he was really a Government agent.

Q And then he imposed upon you by showing you a Deputy Sheriff's badge from Richmond County, New York? A I didn't know very much of Deputy Sheriff or any other thing. Once he showed me the badge I took it as granted that he is one, that's all.

Q Well, you want us to believe that you were simple enough to accept that badge as the badge of an officer of the United States Government? A If I had looked at it I certainly would know but I didn't look at it. I didn't have an opportunity to look at it.

Q Didn't he tell you it was your own duty to fill out that schedule and not his duty as any officer of the Government?

A That's what he told me, but he was to straighten it up for

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me, that's why he filled it out for me.

Q Then that ten dollar bill which later you gave to him was supposed to straighten out everything at Washington and New York, and with him and with everybody, was it? A That ten dollar bill I gave him was to square me up, free me from all income tax, and nobody bother me any more. He was supposed to mail that and square me and everything up, that's all I know about it.

Q Then after, or then the paper that you filled out or that he filled out in your presence was correct and honest and straight in regard to every statement contained therein, was it? A Supposed to be, yes.

Q And with that paper perhaps showing big money, taxes owing to the United States Government, that ten dollar was to squelch everything? A Well, I didn't know how big it would be or how small it would be. I got nothing to do with it. I gave it to him simply to square me up. I didn't know about anybody else's business.

Q But you told us a while ago you did not owe any taxes to the Government and that you never did owe any taxes, didn't you? A Yes sir, I did say that.

Q And therefore, ^{as} you did not owe any taxes, you gave that ten dollar bill to this man? A To avoid trouble.

Q Because you were in fear? A To avoid trouble, that's all.

Q Did he offer any violence to you? A He told me if

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was not going to give him that money he would make it very hot for me.

Q Did he offer to strike you or assault or beat you? A No sir, not strike me.

Q Then the fear came in your mind only by what was said by him to you? A Yes sir.

Q It was not because of a guilty conscience on your own part, was it, that you were afraid? A No sir, I am not guilty at all.

Q You are satisfied that you owe no income tax to the Government, are you? A I say so, I don't owe anything to the Government.

Q You are satisfied that you are not at fault in not having filled out these papers earlier, are you? A No sir, if I owe the Government I am willing to pay every nickel I owe, but once I find I don't have to pay, I don't know if I have to or not, but if I do I will pay every nickel I owe the Government.

Q You are an honest man then? A I certainly am.

Q And that is the reason you gave \$10 to bribe an officer of the Government because you are an honest man, is it? A That is not for that. That is not to make any trouble for me, to avoid all my trouble.

Q And that is the reason, being an honest man, you gave \$10, if you did not have to pay a cent into an officer of the Government, and you immediately proceeded to have him arrested?

A Do you think that I owe anything to the Government? Why

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don't the Government agent come and see me if I owe them money?

Q You are so honest that you could not even look at this badge when he showed it to you?

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

THE COURT: Objection sustained.

Q Do you know what happened to the report that was filled out by him for you in your presence that day? A What report was that?

Q That paper, do you know what happened to it? A I do not.

BY THE COURT:

Q Did the officer take that from him? A Yes sir, after he searched him the officer took it from him.

Q He took the paper? A Yes sir.

MR. MARKEVICH: I may say that the officer forgot to bring it along but it will be here within a short while.

MR. BOURKE: I think that is all with this witness.

H A R R Y H . J A C O B S , called and duly sworn as a witness on behalf of the People, testified as follows:

Residence 12 West 103rd Street.

DIRECT EXAMINATION BY MR. MARKEVICH:

Q What is your business, Mr. Jacobs? A Furrier.

Q Are you a dealer in furs? A No, just a furrier only.

Q Where is your place of business? A 2684 Broadway.

Q You are a next-door neighbor of Levin? A Yes sir.

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Q On the 8th day of July, 1920, were you in your place of business? A Yes sir.

Q You remember having seen the defendant Lewis on that day? A Yes sir.

Q Where? A At my store.

Q Will you tell us what the defendant said to you? A When he came in he said he was a Federal agent. I asked him whether he was from the Excise tax, which we have to pay 10 per cent. Excise tax. So he says no, he had nothing to do with them, but about an income tax. So I told him, or he asked me whether I filed one. So I says I did not. I told him I only started in business about September and I didn't keep any books, but I had books for the Excise tax, which I had to pay to the Government, 10 per cent. tax.

So at the time, the store was in a disorderly condition, they were fixing the floor, so he says to me "Take one of your letterheads and we will go outside and we will fix it up". So we went to a saloon and he sat down and after sitting awhile and talking, he says, he pulled out some other papers of different other furriers too, that he said he had straightened their work out too and he said for the sum of \$20 he would fix me up for not filing the income tax. So I said to him I didn't have any money at the time with me, that the business was not so good right now and I couldn't give him any money, because I kind of thought something was wrong with the man for asking money, that no man would ask point blank for money.

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So when we got through I told him then I couldn't give him any money at all there, so he says he would take a piece of fur instead for the work, instead of \$20. So I told him I have no fur here and no money here, and then we went back to the store.

I told him when I got back to the store, I told him I would not give him anything and he could do as he pleased about it, and call ^{up} at the Income Tax Office, and at that Mr. Levin came in and he tackled Mr. Levin.

Q What did he say to Mr. Levin? A What is that?

Q What did Lewis say to Mr. Levin? A Well, he said to him "Did you file an income tax?" So he told him no and he told him the reason why he didn't, and he says "Well, of course, you know you ought to file one", and that was all, then he went next door.

Q Then he went next door? A To his store.

Q The defendant went next door with Levin? A With Mr. Levin after that.

Q When did you next see Levin or Lewis? A Well, I went in the store, I kept going in the store, and seen him fill out this.

Q Whose store? A Mr. Levin's store, and saw him fill out this paper, and I called up for a detective at the time.

Q You called for what? A I called up the Police Station to get a detective here to find out.

Q At whose store did you call up the Police Station? A At

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my store.

Q Who arrived? A Detective Love.

Q Mr. Love? A Mr. Love, yes.

Q Now, how soon thereafter did you see Levin and Lewis?

A Well, the detective told me I had better go inside and be a witness to the fact that he is giving him money.

MR. BOURKE: I object to what the detective said to him.

THE COURT: Yes, strike that out.

Q Do not tell us what the detective told you, but you talked to Detective Love and then you went into Levin's store?

A Yes.

Q What did you see in Levin's store? A I seen them talking over this thing and fixing the paper up.

Q Then what followed? A Then I finally saw him take out the money and pay him, ^{and} Mr. Levin asked him whether this would relieve him of all obligations to the Government regarding the income tax. So he says "It positively does", see?

Q Then what happened? A Well, then he came into my store, because Mr. Levine told him he had better go back to me and try to fix me up too, and the detectives were there and they got him.

Q Yes, that is all.

CROSS-EXAMINATION BY MR. BOURKE:

Q Were you present, Mr. Harris, throughout all the period of time? A Mr. Jacobs I am.

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Q Mr. Jacobs, are you? A Jacobs, yes.

Q Throughout all the period of time that this defendant was filling out this paper for Levine, were you present? A No sir, not all the time.

Q You were there for about how much of the time? A Well, I should say, well, I was in and out because I had to take care of my store too, you see, and the boy had just gone for lunch, then it was about noontime.

Q Were you there for one minute or one hour? A Well, I should say I was there at least half an hour, at least, in that store.

Q While this defendant was filling out that paper and inquiring from Levin, you were present? A Yes, part of the questions, I heard him make, I heard a good many of the questions he asked him.

Q You did hear the questions? A Yes sir.

Q More than one of them? A Yes, more than one.

Q Questions in regard to the amount of income or the amount of sales, gross or net, whatever it was? A Yes sir.

Q You don't know that that is confidential information, at which an officer of the United States Government should not permit an outsider like yourself to be present, do you? A Well, I don't know, no, I did not know it.

Q He did not order you to step away or step aside or go out? A No sir.

Q And he permitted you to be there for half an hour's

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time? A Yes sir.

Q And you overheard about how many of these questions necessary to fillout the paper? A Well, I heard a good many. I don't know just how many, I heard some. I couldn't count them.

Q And you heard these answers, did you? A Yes sir.

Q Did you see Levin sign the paper? A Yes sir.

Q Were you there for all of that? A All of that, yes sir.

Q But what you missed you do not know, I suppose? A No sir.

Q Did you see the badge exhibited? A Yes sir, he showed it to me before he did to him.

Q He showed it to you before he showed it to Levine? A Yes sir.

Q What did he say to you when he showed you the badge? A He said to me "Here, look at that" and he held it in his hand that way (indicating). That was in the saloon, and he said "You don't have to worry, it's all right".

Q You don't have to what? A To worry, he said "it's all right".

Q Did he make any explanation about the badge at all other than that? A No sir.

Q Did he say to you that that badge had been found that day by him? A No sir.

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Q Just right near your place of business, that it had been picked up? A No, sir.

Q He did not say that? A No, sir.

Q He did not say anything like that at all? A No, sir.

Q He made no explanation as to how that Deputy Sheriff's badge came into his possession? A No, sir.

Q Did you not know it was a Deputy Sheriff's badge of Richmond County? A No, sir.

Q Can you read and write? A Yes, sir.

Q And you could read the figures and ^{the} words upon that badge if you looked at them? A Yes, sir, if I had a good view of it I would, yes, sir.

Q You did not ask him for a good view of it? A No, sir.

Q Did he show you his card of identification from the Government? A Yes, sir.

Q And did he show you one of these business schedules of the census of manufacturers? A No, sir.

Q Simply asked you about the income tax? A Yes, sir.

Q You did not know the man had nothing to do with the Income Tax Department, did you? A No, sir.

Q You never did know until now that he had nothing to do with the Income Tax Department, did you? A Well, I knew that he had after he was arrested, I did.

Q But not until after he had been arrested? A No, sir.

Q You never met the man before? A No, sir.

Q You never saw him since excepting under arrest? A No,

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sir.

Q You have your own place of business next door? A Yes.

Q How long have you been in that place of business next door?

A About nine months now.

Q You were there for a part of last year? A Last year from about the fifteenth of September.

Q Had you made any report? A Income Tax report?

Q Yes. A No, sir.

Q Had you made any report to the census of manufacturers? A No, sir.

Q And your line of business is that of furs? A Yes, manufacturing furs, yes.

Q The making of furs? A Yes, making of furs.

Q Have you sent or made up any report to the United States Government, that is, to the census of manufacturers? A No, sir.

MR. MARKEWICH: I object to that as immaterial.

THE COURT: I will allow it. He says no.

Q Did you join in and assist either or both of them in the filling out of this paper of Levin's? A No, sir.

Q And yet you sit beside them or you were within hearing distance, you say, for half an hour? A Yes, sir.

Q You were there when the ten dollars was given to this man? A Yes, sir.

Q Was it Levin's ten dollars? A Yes, sir.

Q And not your own? A No, sir.

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Q Had you and Levin talked over the question of ten dollars before? A Yes, sir.

Q Then you fixed it up between you that he should give ten dollars to this man? A Yes, sir.

Q You say he asked you for some money? A Yes, sir.

Q And he asked you for twenty dollars, you say? A Yes, sir.

Q It was going down now, wasn't it, the price? A Well, that was the price asked me. I don't know anything about it.

Q I suppose by the time another man would have been asked he would have got it gratis, would he?

Objected to. Objection sustained.

Q What did this man say when he was arrested? A He said that, he absolutely denied that he got the money. In the first place, he denied he got any money at all.

BY THE COURT:

Q Whom did he say that to? A To the detective and he said he had not taken any money at all, didn't have any money at all.

BY MR. BOURKE:

Q I thought you said you had seen the money handed over to him? A I did say I did, certainly I did.

Q And yet you say that in your hearing he denied he had received any money? A Yes, sir.

Q Yet you had seen it handed over? A Positively.

Q Where was the money extracted from his person? A At my place, in front of the detectives.

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Q In front of the detective in your store? A yes, sir.

Q How far away is your store from Levin's? A Right next door.

Q How long after he had come into your place was it before he, under arrest, had been removed therefrom? A Well, it wasn't very long, because the detective was right in the back room of my place ready to get him, so he came right out. Before he could start to do anything with me he had him.

Q So the detective proceeded then and there to search him?

A He questioned him. I don't know whether he searched him. I am not so sure of that.

Q I understood you to say that the ten dollars was extracted from his person in your place of business? A Well, I believe it was.

Q Well, a little while ago you were quite sure that it was, weren't you? A Well, I will not say for certain now, but I believe it was either there or in the station house, but he was questioned whether he got the money, and he denied that he got the money. That is a positive fact.

Q Was the badge taken from his person in your place of business? A Yes, it was shown - yes, I believe it was.

Q Then the badge was extracted from his person while he was about to be arrested, or under arrest in your place of business, and you say first the ten dollars was taken, and now you say that you are not quite sure whether it was or not, then? A What is that again?

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Q I say, while he was about to be arrested or actually under arrest, and in your place of business, you are sure that Deputy Sheriff's badge was actually taken from his person, and in respect to the ten dollars, first you thought it was taken from his person in your place of business, and now you are not quite sure? A Yes, but I know it was shown there. I don't know whether it was taken. I wouldn't say for sure, I don't know what way they do it, but I know it was shown in my place.

Q The ten dollars? A The ten dollars and the badge and the other things too, that identification card was shown to the detective right there, right in front of me and two other people too.

Q Do you feel very kindly toward this man, so kindly, that you would not do him injustice, don't you? A I do.

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

THE COURT: I will allow it.

Q Yes or no, please? A What is the question?

Q (Question repeated by the stenographer)? A No, I wouldn't do him any injustice.

Q You have no feeling against him whatever? A No, sir, absolutely.

Q You never saw him before this transaction? A No, sir.

Q And for aught that you know, he is an honorable officer of the government, aside from this incident here? A That is true.

Q Yes, that is all.

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CHARLES HARRIS, called and duly sworn as a witness on behalf of the People, testifies as follows:

(Residence: 1555 Fulton avenue, Bronx.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Harris, what is your occupation? A I am associated in business with my father, in the haberdashery business, Broadway and One hundred and third street.

Q Is that near the place of business of the complainant Levin? A Yes, sir, next door.

Q On the eighth of July, 1930, were you in Levin's place of business? A Yes, sir.

Q What time of day was it? A Along about twelve-thirty, I believe.

Q Did you see the defendant Lewis there? A Yes, sir.

Q Will you tell his Honor and the jury just what you have seen and what you have heard in that place of business? A Yes, sir. I walked in Mr. Levin's place about twelve-thirty to get some of my clothes that were being repaired there. I seen Mr. Lewis sitting at the desk. He was writing out some report of some kind, and Mr. Levin asked me to remain a while, that he thought there was something superstitious about this particular report.

Q You mean superstitious or suspicious? A Suspicious, I mean to say, about that report he was filling out, and Mr. Levin went out and I remained in the store with Mr. Lewis, he continued

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filling out this report. Eventually Mr. Levin called me one side and told me he was going to have the Police Department called and have a detective sent over, that he didn't like the character of this particular party and the way he went about asking him for information in connection with the report.

Q Yes. A First of all, Mr. Lewis, I believe, was under the influence of liquor at the time, hardly able to stand up. So presently Mr. Levin came back and he asked, or Mr. Lewis in my presence demanded a certain sum of money, I believe about twenty dollars, for which he promised to free Mr. Levin of all obligations in connection with the Federal and State Income Tax.

Finally Mr. Levin told him he could not afford to pay him twenty dollars and he agreed to accept ten dollars. Mr. Levin left the premises for a while and he come back presently with a ten dollar bill which I afterwards found he had marked. Before he handed him the ten dollar bill he asked Mr. Lewis the following question, he says "Now, if I give you this ten dollars will that relieve me of all obligation in connection with the Federal and State Income Tax?" He said "absolutely." and he ^{passed} ~~tossed~~ him the ten dollars.

Mr. Lewis left the premises and went next door to Mr. Jacobs' store. I followed him and Sargeant Detective Love had been summoned from the station house in the mean time and was awaiting him in the store.

Q By the way, when the money was passedover to Lewis, what part of the store were you? A There was a slight partition in

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the store, doorway between. I was behind the partition and standing up on a table there, overlooking Mr. Lewis' head.

Q Who asked you to get behind the partition? A Mr. Levin asked me to witness the passing of the money.

Q You were not in the front of the store while this transaction was going on? A No, I was directly behind when the transaction was going on. There is an elevation in the back of the store with a partition, with a doorway, I went directly behind and stood on a table and I could see everything going on.

Q When you entered the store you found Lewis in the front?

A Yes, sitting at the desk.

Q And you found Levin there? A Yes, sir.

Q Can you state in what direction Lewis was facing when you came in? A Well -

Q I mean, was he looking in your direction? A No, he was looking down on the desk, filling out this particular report in question.

Q Well, anyway you went behind the partition? A I stood out in the front for a while and then Mr. Levin left the store, I guess with the intention of getting the ten dollar bill marked. When he come back I stepped behind the partition because I understood he wanted to hand him this money secretly, so Mr. Lewis should not be alarmed, I suppose, ^{so} I stood behind the partition and witnessed the transaction.

CROSS EXAMINATION BY MR. BOURKE:

Q And this thing was all very secretly and surreptitiously

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performed, was it? A I don't quite understand you, sir.

Q You had arranged to hide yourself behind the partition and see just what was done in the matter of the money? A There was nothing prearranged at all.

Q Oh, you did not prearrange that thing with these people to go behind that partition but just thought of that yourself and sent there? A When he come in and ^{passed} ~~tossed~~ the money, Levin gave me the high sign. I suppose you call it that, to step behind there

Q What was the high sign he gave you? A Just motioned, it was an optical sort of motion.

Q Had you ever seen this man before? A No, sir.

Q Had you reason to believe he was other than an officer of the State Government? A Yes, sir.

Q Of the United States Government? A Yes, sir.

Q You had reason to believe he was other than an officer?

A Yes, sir.

Q What reason had you to believe he was not an officer of the United States Government? A For this reason, - well, I did not have reason to doubt he was an officer in the United States Government but I had reason to doubt --

Q Well, that answers my question. You mean you had no reason to doubt it, but believed he was an officer of the United States Government? A Why no, I did not.

Q Let us understand each other. Did you believe he was as he represented himself to be, a representative or officer of the United States Government? A Why, I don't know just how he repre-

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sented himself to be. But I come in and Mr. Levin told me that he represented himself to be an agent of the Income Tax Bureau, and when Mr. Levin went out I happened to glance over his shoulder and looked at that report he was filling out, and I knew immediately that it was not an income tax blank he was filling out.

Q Oh, then you knew that was not an income tax blank? A Yes.

Q And Mr. Levin is your friend? A Yes, sir.

Q You did not tell Mr. Levin immediately that that paper he was filling out was not a report of income tax? A I told Mr. Levin there was something very suspicious about the report he was filling out, that he had absolutely nothing to do with the income tax. I told Mr. Levin not to give him any information whatsoever in connection with his business.

Q Oh, you told Mr. Levin not to give him any information in connection with his business? A Yes.

Q Then Mr. Levin proceeded to give him all the information he could remember of? A Yes, that's the only thing you could do to get rid of him at the time.

Q The only thing he could do to give him information? A Yes.

Q Then he did not have to give him any ten dollars to get rid of him? A Well, Mr. Lewis demanded it.

Objected to. Objection sustained.

Q How long were you in the premises of Mr. Levin? A As ac-

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curately as I can remember I think it was about half an hour or three-quarters of an hour at the most.

Q You heard the questions answered? A Yes, sir.

Q More than one? A Yes, sir.

Q You did not know it was against the rules or regulations for information to be given in the preparation of a report, to an officer or representative of the Government, in the presence of a third party, did you? A No, sir.

Q Have you learned since that it is against the rules and regulations? A No, sir.

Q And you do not even know now that it is, I take it? A No, sir.

Q How did you come to enter into this transaction in the first place? A Why, I stepped in to get some clothes in Mr. Levin's shop that were being repaired for me.

Q Had you been in there earlier that day? A No, sir.

Q When had you been in the place before that? A Well, a couple of days previous, I guess.

Q But not for two days had you been in until this occasion? A Well, I wouldn't say definitely because I can't remember accurately whether it was a day previous or two days previous.

Q You are a very intimate friend of Levin's? A I have known him a great many years.

Q You are a very intimate friend of Mr. Jacobs; are you? A I am not very intimate, I have known him ^{ever} since he has been up in that location.

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Q Then all three of you have known each other for some little time, anyway before this transaction? A Yes, sir.

Q Had you seen the badge previous to this man's arrest, this gilt badge? A No, sir.

Q You did not see the gilt badge at all that day until the time of the arrest? A Until he was arrested and searched at the station house, that's the first time I saw the badge.

Q Oh, you saw it in the station house for the first time? A Yes, sir.

Q You did not see it in Jacobs' place of business? A No, sir. That occurred before I got there.

Q You say you saw the money passed over to him? A Yes, sir.

Q How was it passed over to him? A Why, just handed directly to him and he took it and crumpled it up and put it in his pocket.

Q What pocket did he put it in? A I don't remember, sir.

Q He did not look at the money, at all? A Did I?

Q Did he look at the money at all? A No, sir.

Q Then so far as that is concerned he could not have told whether it was a ten dollar bill or a hundred dollar bill?

MR. MARKEWICH: I object to that as incompetent, your Honor.

THE COURT: Yes, that calls for the operation of somebody else's mind.

Q When did you next see that money? A At the station house.

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BY THE COURT:

Q Did you hear the defendant say anything about it? A The defendant? Why, yes, after he left Mr. Levin's store he went in to the furriers shop, Mr. Jacobs' shop next door, and I went in after him and everybody else, and Sergeant Detective Love was in there waiting for him. So Sergeant-Detective Love asked him who he was, what he was doing. He said he was a special agent of the Government. Sergeant-Detective Love asked him if there was any identification he had on him so he showed him an identification card with his picture on. Sergeant-Detective Love asked him was he to collect any money in connection with these reports and he said no. He said "Did you collect any money?" He said, "No." Mr. Levin then jumped up and said "Why, I just gave him ten dollars." So Sergeant-Detective Love took him to the station house and then he found on him the shield and the identification card and the marked bill.

BY THE COURT:

Q Did he say anything about the shield at the time? A No, sir, not that I remember.

BY MR. BOURKE:

Between
Q Whom was this conversation? A Detective Love and Mr. Lewis.

Q Then the statement was made that this money was given for services in making out or filling out the report? A That is what Mr. Lewis contended, yes, sir.

Q Not for any fear or intimidation? but because of his ser-

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vices in filling out the report for this man, who should have filled out his own report? A That was Mr. Lewis' contention, yes, sir.

Q And he said that then and there, that same day? A yes, sir.

Q He said that in the station house? A Yes, sir.

Q Yes, that is all.

S T E P H E N L O V E , 32nd Precinct Detective Division, called and duly sworn as a witness on behalf of the People testified as follows:

DIRECT EXAMINATION BY MR. KARKEWICH:

Q Officer, how long are you connected with the Police Department of this City? A Going on fifteen years.

Q Connected with the Detective branch of the Department how long? A Six years.

Q On the eighth of July, 1920, did you receive a telephonic communication from someone? A I did.

Q Pursuant to that telephonic communication, did you go to the premises 2684 Broadway? A I did.

Q Whom did you see when you entered the premises? A I saw the man who occupies a fur shop there.

Q Mr. Jacobs? A Mr. Jacobs, yes, sir.

Q And after having had a conversation with Jacobs, what did you do? A Jacobs told me that -

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Q Never mind what he told you. Did you remain in the store after you had a conversation with Jacobs? A I did.

Q A short while thereafter did Levin come into the store? A The tailor?

Q Yes. A Yes, sir.

Q Did you have a talk with Levin? A I did.

Q After you had a talk with Levin what did Levin do? A Levin left the furrier's premises.

Q Did he a short time there after return to the furrier's store? A He did.

Q Did you see the defendant Lewis in the furrier's store? A I did.

Q Did he come in alone or did he come in accompanied by someone? A He came in alone, followed by Levin.

Q Anybody else? A And Harris.

Q What did you say to the defendant Lewis when he entered the furrier's shop? A I asked Lewis if he was an officer of the Government. He said he was. I asked if he had any identification on him. He said yes, and he showed me a card.

Q Is this the card (Indicating Defendant's Exhibit A)? A Yes, sir, that is the card.

Q Yes. A I asked him if he was an officer of the Internal Revenue and if he had anything to do with the collection of Revenue or taxes, income^{taxes.} He said he did not. I asked him what his duties were and he^{said he} was connected with the Census Bureau, Department of Commerce.

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Q Yes. A That he filled out an application blank, sort of a manufacturers census. I asked him if he collected any fees there.

Q By the way, did you see that application blank? A I did.

Q Where is that now? A I believe it was in the office. They have not succeeded in finding it up there.

Q Did you receive that blank from the defendant? A I did.

Q I show you this blank and ask you if it was a blank similar to this? A Yes, it was a blank similar to that.

Q Signed by the complainant Levin? A I think his name was there.

MR. MARKEWICH: If counsel has no objection, I will offer this in evidence instead.

MR. BOURKE: I have no objection.

(Marked People's Exhibit 3 in evidence.)

Q Now, what followed? A I asked the defendant if he collected any fees for making out this form and he said no.

BY THE COURT:

Q You asked whom? A The defendant, and he said no, he did not. I asked him ^{if} in this case he had received any money from Levin, the tailor and he said he did not. Levin spoke up then saying that he had given him ten dollars with his name signed to it.

BY MR. MARKEWICH:

Q Yes. A I placed the defendant under arrest then, and in company with Levin, Harris and Jacobs, went to the 32nd Precinct

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Station House. I searched the defendant there and found a ten dollar bill, which was identified by Levin.

Q Is this the ten dollar bill (indicating People's Exhibit 2.)? A Yes, sir. It was identified by Levin, and also a Deputy-Sheriff's shield of Richmond County.

Q Is this the shield (indicating People's Exhibit 1)? A Yes, found in his pocket.

Q Did you have any further conversation with the defendant that you recall? A Nothing that I can recall now.

CROSS EXAMINATION BY MR. BOURKE:

Q The money was not produced until the station house was reached, is that right? A That's right.

Q And did you actually fish into his clothing to get it or did he offer the money to you? A I searched him and took it out of his pocket.

Q You took the money out of his pocket, and that is the bill you took out of his pocket? A Yes, sir.

Q Do you remember what pocket you took it out of? A What is that?

Q Do you remember what pocket you took it out of? A Why, I believe it was the right trousers pocket.

Q Then there was no search, officer, of this defendant at Levin's or Jacobs' place of business? A No, sir.

Q And the search, searching if there was any, was in the station house alone? A He was searched in the station house.

Q Did the defendant from the time you first saw him and until

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and after you placed him under arrest, offer any resistance whatever to you? A No resistance, no, sir.

Q He went with you willingly? A Yes.

Q Did he make any statement or explanation to you then at the store or on the way to the station house or at the station house, in your hearing and in your presence? A He did say in the office, the detectives office at the station house, that he had received the money as a tip. He said he thought it was a tip when he received the money, the ten dollars.

Q Did he say he received ten dollars or did he say he received the money? I want the exact phrase according to your best recollection? A He said the tailor handed him ten dollars and he understood it was a tip for making out this form to the Department of Commerce.

Q You think that he said "Ten dollars"? A Yes.

Q That is your recollection, but you are sure that he did say it was given to him as a tip? A Yes.

Q Meaning a gift or award for services?

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

THE COURT: Yes, that is for the jury to say.

Q Had you ever seen the defendant before that day? A No, sir.

Q I think that is all.

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

MR. BOURKE: I ask for a dismissal of the indictment,

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may it please the Court, upon the ground that under Section 850 of the Penal Law of this State, which reads "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear^{OR}, under color of official right, " - because there has been no competent and sufficient evidence whereby it can be proven or demonstrated that this defendant, under color of official right, obtained this money, even conceding that this money was given, otherwise than as he is claimed to have asserted, a tip for ~~the~~ services performed.

In the first place, this badge, upon its very face, is sufficient that anyone who can read English at all can see it has nothing to do with the United States Government, it is a badge probably belonging to somebody who was a Deputy-Sheriff of Richmond County, New York, and not to an officer or representative of the United States Government.

There is, then, nothing to establish in the People's case that the badge, such as that, establishes color of official right or authority. There has been nothing, furthermore established, showing that the acceptance of money, which by the statement of the last witness upon the stand, was asserted by this defendant to have been given to him as a tip, was extorted under fear and under color of official right.

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It is manifest to the Court that this defendant had no authority to extort or to receive money from a party situated as complaining witness is in this case; that his duty, if it appears at all from the evidence, was simply to round up those, what I may be privileged to call tax slackers or tax dodgers or tax shirkers, and that if he prepared at the request of the complaining witness this paper, or assisted him in its preparation, there is in that respect no certainty and no proof sufficient to hold him, that that was extorted under the exercise or under the misuse of official right.

For that reason I do not believe that the gravamen of the charge as set forth in the indictment against this defendant has been sufficiently and competently proved by the witnesses presented and the testimony offered in their behalf, and I therefore ask for a dismissal of the indictment upon that ground.

THE COURT: Motion denied and you have an exception.

MR. BOURKE: Yes, your Honor grants me an exception.

Mr. Bourke then opened the case on behalf of the defense.

THE DEFENSE.

F R A N C I S L. L E W I S, the defendant, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 159 West 97th street).

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DIRECT EXAMINATION BY MR. BOURKE:

Q Mr. Lewis, do you remember on the 8th day of July of this year, entering the place of business of this man Levin, who was on the stand a little earlier to-day, and talking with him respecting the preparation of a general schedule of his business for the United States Census of Manufacturers last year? A I do.

Q Were you on that occasion and that day a representative or officer of the United States Government? A I was.

Q And as such officer did you have or did you ever have, or did you ever have the right to possess and have a badge of your authority? A No.

Q I show to you this gilt badge and ask you if you ever saw that before (Indicating People's Exhibit 1)? A On the 8th day of July.

Q Answer yes or no, did you see it before? A Yes, not before the 8th.

Q Under what circumstances did that badge which is an exhibit in the People's case, come into your possession? A I found it in the mud gutter on the corner of 102nd street and Broadway, and had not had it in my possession more than five minutes before I showed it to Mr. Jacobs in a sort of accidental way.

Q Mr. Jacobs was one of the witnesses, but not the complaining witness herein? A No, sir.

Q You showed that to Mr. Jacobs? Did you say anything to him in respect to your possession of it? A I had the badge

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in my coat pocket with my cigarettes, and in taking out my cigarettes I drew the badge out with them.

Q Talk loud so that these gentlemen can hear you? A I had it in my hand and I said, "I just picked this up a few minutes ago, I wonder who has been using that around here, or lost it." I believe those are the words I used, that was all.

Q Now, did you show that badge to Levin, the complaining witness herein that day, and in the course of your talk or conversation with him? A I did not.

Q Were you in conversation with him for a period of approximately two hours that day? A Well, during the time I was in his place of business and also in Mr. Jacobs' place of business, I presume it did take up about two hours of time, yes, sir.

Q, Now, what did you say when you went into Levin's place of business or first spoke to him respecting this matter, and what did he say to you? State, will you please, as best your recollection will serve, the conversation occurring between you and him, so that the Court and jury may all hear you? A He asked me who I was. I immediately showed him my identification card and a blank copy of the general schedule for the census of manufacturers. I asked him if he had ever filled out one of them or had one filled out for his business report, and he said "No." I said, "Did you make out an income tax report for the year 1919?" He says, "I did not." I said, "Well, you saved \$20 or \$35 by not doing so, didn't you?" I said that more in a joking way than any other way. He said, "Now, how do

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you mean I saved \$30 or \$35?" I said, "It would have cost you at least that amount to have an income tax report made out for you by an accountant, which I presume you would have had to employ." I presumed or I did not think the man would be able to make it out himself. That is all there was said or mentioned regarding money.

Then he glanced over this report, my report, or at least the Government report which I was supposed to see was filled out and he said "I don't understand this at all." "Well," I said, "you are supposed to notify, all manufacturers are supposed to fill this out, and either deliver to an agent when he calls for it upon you, or mail it to our office. In case that is not complete or it has not been filled out correctly, we call upon you to obtain the necessary information or missing information, or correct an incorrect schedule."

Then I asked him if he kept books and he said "No." I said "Have you any bills or statements or accounts of any kind which would show how much material you had bought and used during the year of 1919?" He said, "I have nothing whatsoever in the way of books or records." "Well," I said, "this is a very complicated schedule to make out, and if I leave it with you to fill it I feel sure that when I call for it again it will not be filled out correctly, so that if you will not take up too much of my time I will try and fill it out for you, and accept your estimated figures of your business" - which we are authorized by the Government to do. If we are satisfied in our

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minds that a man does not keep books or records, we are authorized to accept his estimated figures. So then I sat down with Mr. Levin and had quite a talk, and in obtaining information, even though they were only estimated figures, he would give me figures that, we might find did not jibe. For instance, he told me that he bought more material than he sold, or at least that he used in repairing, that he obtained income for in using for repair work or in manufacturing new garments. So I had quite a time with him in getting a half way report or a report I might say that looked half way reasonable to me.

However, I finally did complete the report, and while I was finishing it, making out his report, he got up from his chair and I presumed, as he says, went into Mr. Jacobs' store. I made up or finished making up my report and had him sign it, put the report in with the rest of mine in my envelope, and he handed me a bill which I accepted as a gratuity, for spending at least five times as much time in his place as we generally do. By staying so long at one place we were compelled to either work at night or on Sundays, or work overtime in order to turn in our specified amount of work which the Government required us to do.

Q Yes? A If I spend two hours in a man's place it would no doubt cause me to work either that night or the next night, or any way, in order to turn in my specified number of schedules that the Government required of us, which was four complete schedules a day. The general time of making out a sched-

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ule if a man had a complete set of books or had his statements or had a copy of his income tax report, would be about fifteen minutes. The reason for my asking for a copy of the income report was because that report contains about 75 per cent. of the information that is required on the Census of Manufacturers' report, and we merely have to copy on our report the figures from the income tax report. It saved the time it would probably take to go through the books again to ascertain the amount of material that he bought during the year, his total sales during the year, the amount of wages he paid during the year, bills of all kinds, his expenses of all kinds. That was my reason for asking or mentioning the income tax report in any way, my only reason.

Q Now, Mr. Lewis, while it is a fact that a man does not have to file an income tax report unless he has an income that is taxable, is it not a fact that that general schedule, so-called, for the Census of Manufacturers for the year 1919, of the Department of Commerce of the United States, must be filled out in any event? A That is right.

MR. MARKEWICH: I object to that as incompetent.

THE COURT: I will allow it.

BY THE COURT:

Q Filled out by whom? A By the manufacturer, the owner of the business.

Q If a man is a manufacturer? A Well, in the eyes of the Government he is one. There are a great many manufacturers in the eyes of the Government who would not be considered manu-

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facturers in the eyes of a layman. A man that uses any new material whatsoever, in either altering, repairing or making of garments, is considered for this purpose a manufacturer, provided he does five hundred dollars a year or more of business.

BY MR. BOURKE:

Q Now, Mr. Lewis, it is not part of your duty, or is it not, to actually fill out such a general schedule for a manufacturer? A No, sir, but I wish to amend that. We are not required by the Government to fill out a schedule unless we so desire.

Q That is answered? A Yes, sir.

Q Now, Mr. Lewis, did you or did you not threaten the complaining witness Levin with trouble if he did not fill out the so-called general schedule? A No, sir.

Q Did you or did you not ask him or ask any one for the payment of \$20 or \$10 or any money? A No, sir.

Q And the circumstances under which that money (Indicating), for I assume that this is the money that was handed to you by the complaining witness, under which that money came into your possession, were what? A I accepted the bill when I was finished making out his report, I accepted it in the way of a gratuity. I had spent two hours of my time there, whereas ordinarily fifteen minutes would have been sufficient time to have spent to make out the report. I was not compelled or required by the Government to do that. I was supposed, in case a manufacturer, or in this instance Mr. Levin did not receive one of

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these blank reports by mail to fill out, to leave one of them with him and call for it again.

Q Now, I ask you again, Mr. Lewis, and I direct your attention specifically to the question, because the complaining witness and one or two of the others stated that you did do it, whether or not you asked from the complainant for the payment of ten dollars, for the payment of twenty dollars, for the payment of any money, meaning that particular bill and the amount represented thereby? A No, sir, I did not.

Q When you were placed under arrest by Officer Love, it was where, in the complaining witness's place of business or elsewhere? A No, it was in Mr. Jacobs' store, next to the complaining witness's place of business, next door.

Q And what did you go into the next door place of business for? A I went in to get Mr. Jacobs' report.

Q And what happened in there with respect to your arrest? A When I entered Mr. Jacobs' store I met Detective Love, and an officer in uniform. Detective Love asked me who I was. I showed him my identification and he asked me what my business was. I showed him a schedule and said I was in the Department of Commerce, Bureau of Census, taking a census of all manufacturers. He said, "This man claims that you represent yourself as a revenue officer." So I laughed at him and I said, "Impossible, how could I represent myself as a revenue officer after showing him my identification which a child could read and also a blank schedule?" "Well," he said, "this man claims that you

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forced him to pay you money, \$20 - or \$10," - I have forgotten which he said, that I had demanded from him, and I said, "No such thing." He said, "Do you make any charge, are you entitled to any fee for making out these reports?" I said, "No, sir." "Well," then he said, "well, complaint has been made so I will have to take you to the station house," and I willingly accompanied him.

Q Were you searched at that place of business? A I was not.

Q Where were you searched, if searched you were? A At the station house.

Q Where was the bill which had been handed to you first produced or exhibited? A In my left hand trousers pocket.

Q No, I mean in the store of Levin or Jacobs or at the station house? A In the station house.

Q Where was the badge, meaning that badge there, (People's Exhibit 1) first produced or exhibited after you were arrested?

A In the station house.

Q Now, that money, meaning that bill, People's Exhibit, and that badge, meaning People's Exhibit, were both of them in your possession from the instant you were placed in the hands of the law until you were escorted into the station house?

A Yes, sir.

Q Were you handcuffed? A No, sir.

Q Your hands were free? A Entirely.

Q And you went willingly with your captor, the policeman?

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A Yes, sir.

Q Was there opportunity and could you have availed yourself thereof to lose either the badge or bill on the way between the store or place of business and the station house?

A Plenty of them.

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

THE COURT: Objection sustained. That calls for a conclusion. How can he tell that?

MR. BOURKE: Very well, your Honor.

Q Now, Mr. Lewis, what is the official designation by which you in your representative position or capacity were known on the 8th day of July of this year, in your connection with the United States Government and its Department of Census of Manufacturers? A Special Agent, Department of Commerce, Bureau of Census.

Q That is a little too fast, I did not understand it?

A Special Agent for the Department of Commerce, Bureau of Census. I would say Bureau of Census of Manufacturers.

Q Now, in preparing this report, do not the duties of your office require of you the necessity of preparing the same if you do prepare it, confidentially, and not publicly? A Yes, confidentially.

Q Now, in making the inquiries necessary to prepare the same, or to aid and assist in its preparation, did or did you not ask of this man Levin to be private with him and with none other about? A I did.

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Q And what did he then do or say with respect to your request? A He ordered the young man who testified here, Mr. Martin, is that the name?-to leave the store.

Q Was it one of those young men who was present at the time? A Yes.

Q Did that young man depart from the store? A He did.

Q Meaning Levin's place of business? A Yes, sir.

Q Do you know whether he returned thereafter to the place of business while you were still there? A If he did he came in the back way. I didn't see him.

Q Well, so far as you know did you comply with the requirements of your position in making these schedules, confidentially and privately with the party, meaning Levin? A I did.

THE COURT: I think we will take a recess now, Mr. Bourke.

Gentlemen, please do not form or express any opinion as to the defendant's guilt or innocence until the case is finally submitted to you, and during recess please do not discuss the case with anybody or allow anybody to speak to you about it.

(Mr. Bourke now confers with the Court and Mr. Markewich).

THE COURT: Well, gentlemen, counsel for the defendant has brought to my attention certain matters in which he is engaged, and upon consent of the District Attorney I will adjourn this case until Wednesday morning, instead of to-

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morrow morning. So you are excused until Wednesday morning until ten o'clock, and please keep in mind the admonition I have just given you.

(The Court thereupon adjourned the further trial of the case until Wednesday, August 11, 1930, at 10:00 o'clock A. M.).

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morrow morning. So you are excused until Wednesday morning until ten o'clock, and please keep in mind the admonition I have just given you.

(The Court thereupon adjourned the further trial of the case until Wednesday, August 11, 1930, at 10:00 o'clock A. M.).

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THE PEOPLE v. LEWIS.

New York, August 11th, 1920.

FRANCIS L. LEWIS, the defendant, resumes the witness-stand.

MR. BOURKE: May I ask the Court that the testimony of this witness be read over?

THE COURT: No, we cannot read all his testimony over, as the case has taken too long now. The stenographer may repeat the last few questions and answers.

(The stenographer repeats the testimony as directed).

DIRECT EXAMINATION BY MR. BOURKE (Continued):

Q Mr. Lewis, there was some talk about a piece of fur that you spoke concerning with one of the preceding witnesses, I think it was this man Levin. Will you state what was said by and between you, if anything, regarding that? A I spoke to Mr. Jacobs regarding the fur. Mr. Jacobs was the furrier. I asked him what he had on hand or already made up in the way of a small neckpiece. A friend of mine asked me that in case I ran across anything in the way of a bargain to pick it up for him or at least let him know about it, as he wished to make his wife a Christmas present and he wanted something in a very small neckpiece, in fur. I asked him what he had in stock, already made up or to be made up. He said at the time he had nothing made up, but he had some skins to be made up and would show them to me when I got back to his store.

BY THE COURT:

Q What did you ask him that for? A As I say, a friend

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of mine wished to make a present to his wife.

Q Well, what were you asking him about the fur for? Did you want to buy it of him or what? A I wanted to buy it, yes, I wanted to get an idea of the price it would cost, either made up or to be made up.

BY MR. BOURKE:

Q Was there any other motive in your asking him about such piece of fur than that which his Honor just inquired concerning? A Not at all.

Q Now, Mr. Lewis, you have told us how you came into possession that day of that strange badge of a Deputy Sheriff of Richmond County? A Yes.

Q I suppose you made no effort to find out, from the time you discovered it until this whole thing was over with, as to whom the badge belonged? A Well, I had not had the badge in my possession more than a few moments.

Q More than what? A Than a few moments, before I first met Mr. Jacobs. I picked it up on the corner before I reached his store, probably three or four minutes I had it in my possession.

Q Did you show, exhibit or offer that badge to Levin, the complaining witness, and if so, under what circumstances, and what if anything was said by you concerning your possession of that badge to him? A Well, as I said, I picked the badge up on the corner of 102nd street and Broadway, just as I was stepping from the street to the sidewalk, lying in the gutter, it

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was. I put it in my left hand coat pocket where I generally carried my package of cigarettes. During my conversation with Mr. Jacobs, at least as soon as I met him, you might say. I sat down with him and I immediately reached my hand in my pocket to get a cigarette and offered him one, and the badge came out with this package of cigarettes, and I think I threw it down on his desk or the little table that he used as a desk in his place of business. Then I put the badge back in my pocket, and as far as I can remember, I don't think that Mr. Levin ever saw that badge. I don't remember of him seeing it.

Q That is the complaining witness in this case? A Yes.

Q Did you show or exhibit the badge to any one of the witnesses for the Prosecution, with the intent or motive or purpose to intimidate, to frighten or to put him or any of them in fear? A No, hardly, no. After showing my identification and the blank schedule, which most any one could understand who could read and write, they would understand what I represented, and it would not do very well for me to show a badge or anything, or show a badge of that sort of any kind unless it was a badge of my office.

Q It was stated by one or more of the witnesses that you said something about money, in respect to either preparation or the preparation by Levin of a report for the census of the U. S. manufacturers. What was said if anything by you respecting money in that connection? A The only mention of money made or any expense attached to making out a report of any kind

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was when I asked him if he had made out an income tax report, and he said "No." Well, I said in more of a joking way than anything else, "You saved twenty or twenty-five dollars, didn't you?" He said, "How do you mean?" Or I think he said, "I didn't have to make out one," and I said, "Well, if you had made out a report you no doubt would have been unable to make that report yourself and would have had to engage an accountant," which a great many of those small manufacturing establishments had to do, especially those that did not employ a bookkeeper, and that was the only mention made of money or payment of money in any way, shape or form.

Q Having discovered an individual who had not made a report, which was then and there made up was it incumbent upon you and a necessary part of your official duties to prepare or even to assist him, unless you so desired, in the preparation of that report? A No, sir. We were not required to fill out or make out a complete report for any one.

Q Your duty thereafter, if strictly construed and lived up to, would have been only to report the name, address and identity of that party who had failed to report? A In a great many cases reports were made out by manufacturers and mailed in to our office, probably two or three months before the time --

BY THE COURT:

Q No, the question is this: If these two people, that is, the furrier and this tailor had not sent their reports in, it would have been only your duty to have reported them to your

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superiors that they had failed to do so? A No, sir, it would be my duty to leave them a blank or schedule and ask them to fill it out, or to have it filled out, and I would either call for it again the next day or in the next two or three days.

Q Well, if they did not fill it out then it was your duty to report them? A Yes, sir. They are required by law to fill it out.

MR. BOURKE: I think that is all at this time.

CROSS-EXAMINATION BY MR. MARKEWICH:

Q How old are you? A Forty-two.

Q How long have you been employed in the Census Department? A Since December, the 18th of December, 1919.

Q Is this just a special appointment? A A special appointment.

Q A temporary appointment? A Just temporary.

Q Well, while the census is being taken? A That's all.

Q Did you ever hold any other position? A By the Government?

Q Yes? A Except during the war I was in the Quartermaster's Department.

Q Well, outside of that did you hold any other position? A Not for the Government.

Q What was your occupation before you entered the Quartermaster's Department? A I was employed for a while doing war work by the American Can Company, at Edgewater, New Jersey.

Q What kind of work was that? A That was as inspector, inspecting what they called three-inch shells, shrapnel shells.

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Then I afterwards --

Q Well, what experience did you have in that? A Experience?

Q Yes, in the inspection of shells? A I was inspector. That was my title, to inspect shells, see if they were made up properly.

Q What experience did you have in that line, did you know anything about shells or powder? A Prior to my going in?

Q Yes, the manufacture of war implements? A I don't understand you, I don't quite understand you.

Q I say, what was the experience you had before you entered the Quartermaster's Department, or before you entered with that firm you were working for? A The American Can Company, experience in munitions?

Q Yes, with shells? A I had no experience. It was not required.

Q You were recommended to all those positions, weren't you? A No, we answered -- they advertised in the papers for inspectors. If you will allow me to finish, after that --

Q No, what position did you have before you became inspector? A I was in the employ of Joseph P. Day, in the real estate business. I was in the publicity department, general advertising for nine years.

Q What kind of work did you do there? A General advertising, assisting in the publicity work, outside work mostly.

Q What publicity work did you do? A Well, chiefly on his lot sales during the spring and summer and fall months. I

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was what they call outside publicity man, representing the firm at the property and seeing prospective buyers where different lots were situated, and so forth.

Q You were a solicitor, in other words, or a salesman for Day? A Not solicitor and not salesman. There is nothing sold until the day of the auction sales.

Q Just for suction sales or private sales as well? A No, I had very little to do with any private sales.

Q You were with him nine years? A Nine years.

Q What was the salary you were receiving? A Well, we were at times what they would call on turn-over sales. After an auction sale was held they would sometimes, not in all cases, would leave three or four of us on the property, on what they term turn-over re-sale of lots from the party who bought it at auction to an outside party. In that case commission was allowed us.

Q Did you leave the employ or were you discharged? A I left his employ to go into war work at the beginning of the war. I was not acceptable to the army in any branch on account of the defect --

Q Are you permitted to accept a gratuity in connection with your work as census taker? A There is nothing in the book of instructions stating that we are not allowed to receive anything in that way.

Q Have you received any other tips? A Yes, sir.

Q Quite a number? A Well, quite a few, I should say,

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yes, in cases where I would make an appointment to get the information from the man, say on Sunday or at night.

Q, You thought it was perfectly proper, did you? A Yes, I believe it is recognized.

Q For a public official to accept tips for official work done? A Well, I was doing work that I was not really required to do, and by doing that extra work it was really on my own hook, as you might say.

Q Well, it was special work that you did, was it? A Not altogether, no, sir.

Q Well, you were not doing anything for yourself there, were you? A Well, I was using my own time to do that. I was helping a man out in my leisure time, taking my own time to help him.

Q You were paid, weren't you, by the Government? A Well, we were paid according to the number of schedules we received of the schedules, and we were supposed, we each had a quota of schedules to turn in every day.

Q What was your quota? A Four a day. What they call acceptable schedules.

Q Four schedules a day? A Yes, sir. Some days we would not get one.

Q So that, what time ^{would} it take you to prepare one of these schedules? A That all depended upon the way the books were kept in the establishment we visited. In a large establishment where books were kept in proper condition, a schedule such as

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this was of his could be filled out in fifteen or twenty minutes, but in cases--

Q What were you paid per schedule by the Government? A We were paid a dollar and a half on some and a dollar on others.

Q And you were supposed to report for duty when? A At the office?

Q Yes? A There was no time, no stipulated time to report for duty except that we were to be at the office at one o'clock every Saturday. The balance of the week if we wished - we made a daily report by mail, a written report, but we were not required to report at the office unless we wished, for instance, to obtain some more supplies, or something like that, or get some information, until Saturdays. The balance of the week was in fact our own.

Q Isn't it a fact that it is forbidden for a public official, whether he is doing special work or regular official work, to accept any fee or gratuity?

MR. BOURKE: I object as incompetent, immaterial and irrelevant. This witness knows - it has not been shown that he knows whether there is or not.

THE COURT: Well, I understand he has already answered the question. If he knows he may say.

A Do you want me to answer that?

Q Yes? A Well, we are not allowed to charge, no, sir, but as I say, when I use my own time.

Q Don't you call that a charge, when you get a tip, isn't

that another way for saying that you are paid for it? What do you call that? A I would term it a gratuity.

Q A gratuity? A A gratuity.

Q Well, call it what you will. You considered it was perfectly proper for you to receive it? A I did, yes, if I used my own time.

Q But you were working at that time for the Government, you were being paid by the Government? A We were not paid according to time. We were paid according to the number of schedules we turned in.

Q You were supposed to go out and get schedules? A Yes.

Q You were allotted four a day? A Yes.

Q And you were supposed to bring in four a day? A Yes, in order to hold my position.

Q In other words, you were paid a dollar and a half, and if you brought in four a day it would be six dollars, and you worked six days a week? A Five days and a half a week.

Q Yet you say you were working on your own time? A Some of the time, yes, sir, I would work at nights. I would work Sundays and holidays or Saturday afternoons. That was my own time. If I did not succeed in getting my specified number of schedules, I would naturally have to put in that much more time, and being handicapped by this bad foot and leg, it was hard to get around and I had to be on the job all the time.

Q Well, that is all right, we have heard about your bad leg before? A There were no certain number of hours we were

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supposed to work.

Q How many people did you visit on the day in question before you went to Jacobs and Levin's store? A Well, I had been up, I believe, to three places that I had called at, I was to call later, because the bookkeeper or proprietor was not in, and naturally I could not get the information, and I would have to go back for them later in the afternoon.

Q Was that a district that was assigned to you? A Yes, sir.

Q And it took in what territory? A Well, during this clean up work I was doing at this time, it was what they call a clean up. The general work had been finished, we were merely cleaning up the districts, odds and ends you might say. I had two districts to attend to in the clean up work, from 72nd up to 116th street.

Q What was the extent of the district? A From 72nd up to 116th street, from Fifth avenue to Broadway, scattered district.

Q Your business was to visit manufacturers only? A Manufacturers only.

Q Did you consider a cleaning and dyeing establishment a factory? A If they did dyeing, yes, sir. In the eyes of the Government for this purpose they are manufacturers.

Q Did you see any dyeing machinery in his place? A No, I didn't take any report for his dyeing business. I took a report for his tailoring business only.

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Q He was just doing mending there, wasn't he? A No, he told me he made up new garments and used new material in that work.

Q Did you see any material there? A I had to take his word for it.

Q Well, it was only a small store? Did you look around? Did you see any material there? A That was not our business. We were not sent to investigate a man. In some cases we had cards, in case a man had given a report of his business five years ago we would have a card to show that. In other cases we had a card with his name and address on it and the nature of his business, which information was gained from either the city directory or telephone book, or different places, Bradstreet's or Dun's, or in the case of a cigar manufacturer, from the Internal Revenue office, and we were sent with these cards to visit the man whose name appeared upon it. In other cases we had no cards, but if we found what they call an unlisted manufacturer we were supposed to call in and obtain his report and fill out a blank card ourselves. We were supposed to fill out the blank card and return that with our report.

Q Jacobs was the first place you had visited that day?
A No, sir, I had been to three other places.

Q What places were they, do you recall? A A baker on the corner of 110th street and Broadway.

Q Did you prepare a schedule for him? A No, I had left a schedule and was to return later and get it.

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Q Did you prepare a schedule for any one that morning?

A Not that day, no, sir.

Q The day before how many did you visit? A It would be pretty hard for me to tell just right now.

Q Well, had you received any tips the day before? A Well, I couldn't answer that.

Q Did you receive any tips during that week?

MR. BOUKE: I object as incompetent, immaterial and irrelevant, and having no relevancy or materiality.

Objection overruled. Exception.

A I really couldn't answer that. I can't remember whether I did or not. Sometimes a tip would be merely a dollar or two dollars. In this case I thought it was not more than a dollar or two dollars.

Q You did not even look at the bill? A I didn't look at the bill. I just simply put it in my pocket and finished my report.

Q Can you tell the Gentlemen of the Jury what your idea was in telling this man that he had saved twenty or twenty-five dollars by not filing an income tax report? A As I said, when he stated that he had not made any income tax report for 1919, I said, "Well, you saved twenty or twenty-five dollars, didn't you?" more in a joking way than anything else. If I may be permitted to say it, my idea in asking if he made out an income tax report was to obtain information.

Q Well, that would facilitate matters? A It would to a great extent, yes.

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Q But he told you he did not file any income tax statement, and did not have to? Then what was your idea in telling him he saved money? A Well, as I say, that was my only idea, in a joking way, because I knew, I could tell from his conversation that he would not be able to make out an income tax report, that was all.

Q You knew that from the conversation you had with him?

A Why, yes. When he saw my report, when he looked at it he threw up both hands. He wouldn't know how to start to make that out, and the income tax report is much more complicated than this one.

Q Well, what was your idea in telling this man that you had this Sheriff's badge? A As I say, I took the badge out of my pocket with my cigarette, unconsciously. I threw it on the desk and I said, "I just picked that up on the corner just before I got here."

BY THE COURT:

Q Where was it you found this badge? A 102nd street and Broadway.

Q Whereabouts? A In the gutter, just as I was stepping from the street to the sidewalk.

Q At 102nd street and what? A And Broadway.

Q Lying in the gutter? A Lying in the gutter, yes, sir. There was a coal wagon passing at the time and I am sure the driver saw me pick it up but I wouldn't know who it was.

BY MR. MARKEWICH:

Q You are sure the driver saw you pick it up? A I am

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certain he did, yes.

Q And you put that badge in your pocket? A I put it in my coat pocket.

Q You found it that very morning --

BY THE COURT:

Q Why did you put it in your pocket? A I naturally put it in my pocket. I don't know any reason why I should have kept it, it was no use to me for anything.

BY MR. MARKEWICH:

Q You found it in the mud gutter? A Yes, sir.

Q Was it in the same condition as it is now? A Well, it was dirty, I presume, from the street. Yes, naturally there would be some dirt on it.

Q And it was just by accident that you happened to take it out of your pocket? A Just by accident, as I had it in my same pocket with the cigarettes.

Q It could not be separated from the cigarettes? You had the cigarettes in a paper box? A No, I had them in a paper package, "Camel's," they were.

Q This did not stick to the package, did it? A It came out with the cigarettes.

Q It was not in the package, was it? A No.

Q There was not any glue on the badge or on the package, was there? A Not that I know of.

BY THE COURT:

Q Do you know anybody in the Sheriff's office in Richmond

County? A I do not.

Q Did you ever live in Richmond County? A No, I did not.

Q Do you know anybody in that place? A No, sir, I do not.

BY MR. MARKEWICH:

Q Have you ever lived in Richmond County? A No, sir.

Q Where did you live at the time of this occurrence?

A Where was I living?

Q Yes? A 159 West 97th street, between Columbus and Amsterdam avenues.

Q How long have you lived there? A I was there about seven months.

Q Where did you live before that time? A I lived on 96th street between Columbus and Amsterdam avenues, well, over a year.

Q Where before that? A I lived at 1525 Amsterdam avenue, 135th street and Amsterdam avenue.

Q Have you lived in New York County all your life? A No, about twenty years, I guess.

Q I do not suppose you ever visited Staten Island at all?
A Oh, I visited it, yes.

Q What was the occasion of your going there? A My mother at one time lived there. She had a boarding house there.

Q How long ago was that? A That, well, I guess five years ago since she has been there.

Q When was the last time you visited her? A I used to go down for a day or so.

Q When was the last time you visited her? A At Staten

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Island?

Q Yes? A Just before she broke up her house and came to the city to live.

Q About five years ago? A I think it is five years ago, I am not sure.

Q That was about 1915? A Yes, it was during the war, I think she left there. During the beginning of the war that she left down there.

Q Do you know anybody out in Staten Island outside of your mother? A Really I can't say that I know a soul outside of the people that lived with her, boarded with her, at least in her house there.

BY THE COURT:

Q Did you go into Levin's place first or Jacobs' place first? A Jacobs' place first.

Q What did you do in Jacobs' place? A I was talking with him regarding his report.

Q Did you write out a report for him? A I had not started. I was just going to start to when Mr. Levin came in.

Q Then why did you leave Jacobs' and go into Levin's?
A Well, Mr. Jacobs I believe, in fact I am sure, said he would look up some of his bills. He had not been in business but a few months, during 1919.

Q Jacobs says you asked him for money and he refused to give it? A The only mention of money, your Honor, was when I said he had saved twenty or twenty-five dollars by not having

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an accountant to make out his income tax report. That's the only time money was mentioned, and it is either a misunderstanding on their part or some scheme to railroad me. I can't understand anything else.

Q What did you say to Jacobs about money? Not to Levin but to Jacobs? A When he said he did not make out an income tax report I said in a joking way --

Q I thought that was Levin, the complainant you said that to? A Oh, to Jacobs?

Q I am talking about the furrier now, Jacobs, he says that you asked him for money and he would not give it to you, and it was because of that that you left him and went into Levin's. Now, what did you do in Jacobs' place and how did you come to leave his place? A Well, when Levin came into Jacobs' store he asked me or he asked Jacobs --

Q No, what did you say to Jacobs? I am talking about what you said to Jacobs? A Regarding money, your Honor?

Q Everything you said to Jacobs when you went in there? A Nothing except about his income tax report, that he had saved on his income tax report.

Q Did you say that to Jacobs as well as to Levin? A To both of them. I said to Levin afterwards, "Why, you saved twenty or twenty-five dollars." I said that to him too.

Q You said it to both of them? A Yes, sir.

Q Did you ask Jacobs to make out one of these schedules?

A Yes, sir.

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Q Did you leave a schedule with him? A I was going to leave it when Mr. Levin came in.

Q Well, why did you drop Jacobs and take up Levin? A Because Mr. Jacobs was going to look up his bills. He had only started in business at the beginning of September, 1919, and to see if he couldn't give me the correct figures. We were supposed to get the correct figures off a man had books or bills or accounts of any kind. We were supposed to get them.

Q You did not say anything to Jacobs about his making out his income tax report, except to say that he had saved twenty or twenty-five dollars? A I asked him if he had made out an income tax report.

Q Jacobs says when he refused to give you money you asked him for some fur? A Yes, sir, I did not ask for any money. Now, the only mention of fur was that I asked him what he had in stock and on hand or made up or to be made up in the way of a small fur neckpiece, as a friend of mine asked me to see if I could get it for his wife for a Christmas present.

Q What is the name of that friend? A Now, his name - I can give you his address. I could produce it by sending for one.

Q Do you know his name? A Well, he is the head waiter in Shanley's restaurant, so I understand, he is uptown. I couldn't say - I have heard his name, but I couldn't remember, I wouldn't want to say for sure.

BY MR. MARKEWICH:

Q Did you go to a saloon with one of them? A Yes, with Jacobs.

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Q What was the idea of your going to a saloon? Did you go to discuss official business in a saloon? A No, to sit down for a few minutes, as his store was being cleaned up or repaired or something. There was no other idea than to get a glass of beer or ginger ale or something like that.

Q You do not really mean to say that you went into a saloon to get one-half per cent beer at the time? A Well, maybe we took a little drink of some sort.

Q As a matter of fact, didn't you sit down and talk about money there with him? A About money, no, sir, not at all. While we were in this place I brought up the subject of the fur business, yes, I will say that, yes, sir.

Q And it occurred to you then, you asked him as to whether he had a piece of fur finished? A Yes.

Q For a friend of yours who wanted to buy it? A Yes, I had inquired of other people regarding the same thing.

Q Who was that friend of yours you wanted to buy the piece of fur for? A As I say, I can't remember the name, but I am sure I could produce the man if I had time. I am not sure of his last name. If I thought that was necessary I could get it.

Q You did not intend to hint that you wanted a piece of fur for yourself? A No, sir, I told him, we understood clearly what I wanted the fur for. I said a friend of mine who couldn't afford to pay a big price would like a small piece of fur that is good, and he wanted it good.

Q Now, in following your line of duty you had occasion to

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meet clothing men and fur men, and I suppose jewelers, and men in different manufacturing enterprises? A Well, I had only a few furriers in my district, but I had no clothing or jewelry people. I was not fortunate enough to have a good district.

Q You were not fortunate enough to have a good district?

A No. In some districts a man could go in one building and get a dozen reports, but my district was scattered and required a great deal of walking.

Q Did you ask anybody else for any fur prior to that time?

A I had inquired the prices of fur of several different people, yes.

Q Whom did you visit? A If I gave you the address - I could give you the location now, on Broadway.

MR. BOURKE: I object to this as incompetent, immaterial and irrelevant. I do not see what pertinancy it has to the case.

Objection overruled. Exception.

A (Continuing) If I remember right, there is one man on Broadway, on the east side of Broadway, I think his name is Kupferman, (Spelling), K-u-p-f-e-r-m-a-n, between 81st and 82nd on the east side.

Q When was that? A That was not more than a week before this trouble happened.

Q During that entire week, you could not find a piece of fur for your friend? A Oh, I found several pieces, yes, but I was trying to get the cheapest piece I could. Nearly all of

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them had something made up or on hand, but I was looking around for the cheapest piece I could find in the way of a good piece, small piece.

Q Now, you told us that you wanted to speak to Levin alone when making up the schedule? A Yes, this schedule is confidential. We are under oath not to divulge any information given us by manufacturers.

Q Well, that binds you only? A Yes.

Q There is nothing in the law that binds the man making out the statement? A Well, while I am making out a report there is no one supposed to be present to overhear any information given me by a man about his business.

Q Well, if the man chooses to have a friend along with him, do you know of anything in the law which prohibits that? A Well, outside of the fact that we receive special instructions from our chief special agent that this is strictly confidential.

Q Well, you understood that to mean that it is confidential as far as the Government official is concerned, that the report you take from the man is confidential, that you are not allowed to divulge it, nor any other Government official, that is what you understood to be the law, isn't that so? A I understood it was confidential, that while I was taking that report --

Q Did you understand that it was confidential on the part of the manufacturer? A I didn't understand it in the way or in the sense that we could stop a manufacturer from telling about his business, no.

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Q What was your objection to having a friend of this man in the store at the time of making out the schedule? A Well, that was my only idea, it was a small store and I explained to Levin that it was strictly confidential and no one was supposed to be present at the time of making out the schedule unless it was a member of the firm or an employe.

Q You never met Levin or Jacobs until that day? A No, sir, though I passed the place of business a hundred times.

Q What did you mean by saying just a few minutes ago that perhaps they were trying to railroad you? What did you mean by that statement? Do you know any reason why they should try to do that? A Why, I know of no reason. That is what puzzles me, yes, sir. There is no reason that I know of.

Q All right, that is all. A No personal reason. I had never met either one of those men before.

RE-DIRECT EXAMINATION BY MR. BOURKE:

Q Mr. Lewis, coming right down to the actual fact in this case, or otherwise, with respect to that money, was anything said when that money was proffered to you, as to its amount?

A No, sir.

Q And when it was proffered to you, it was proffered to you by whom? A Mr. Levin.

Q And did he hand it to you, put it in your clothing or what? How did he hand it, and what did he say regarding it?

A He handed it to me, I took it, crumpled it up and put it in my pocket. I didn't look at it, I thought it was not more than

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a couple of dollars at the most and I was still folding up my report, to put it in my large envelope when he handed it to me. I put it in my pocket, I didn't look at it. I didn't know the amount until I reached the station house and when he said he gave me ten dollars I reached in my pocket and handed it out and I said, "Here it is." I was not searched for that money at the station house. I took it out myself and handed it to the sergeant at the desk. I said, "Here is the bill, if it is a ten dollar bill or anything else, here is the bill that man gave me." I took it out of my rousers pocket and put it on the desk in front of the sergeant.

BY THE COURT:

Q Did you tell the officer that you had not received any money from Levin? A No, sir. I told the officer that there was no charge connected with my duties in obtaining these reports, no charge. He asked me if I charged him.

Q How did you happen to speak about the charge? A He asked me if I charged him, if I demanded any money from Mr. Levin, or he said, "Is there any charge for you making out these reports?" I said, "No, sir."

Q He did not ask you if you had received any money? A No.

Q He never asked you that at all, whether you had gotten any money? A He asked me if I had made any charge.

Q Did he ask you if you had got any money? A Not that I recall, your Honor, no. He simply stated that Levin claimed that I demanded money from him. Then he asked me if I made any charge

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for making out the report.

Q But he never asked you if you got any money? A I can't recall that he did ask me.

Q You never denied getting any? A No, sir, not in the station house. No, certainly not, I immediately produced the money that he gave me.

Q No, when you were first arrested, I mean. He says that when the money was found, then you said you got it from Levin, but he says when he first arrested you or spoke to you in Jacobs' place, that then you said you had gotten no money at all? A No, sir, I beg to differ with him. I did not say anything like that, that I had received no money. I did not say that. I simply said that there was no charge connected with my duties in making these reports out for these different people, any fee, as you might term it.

Q Why didn't you tell the officer that you had gotten a gratuity? A Well, I don't know why I didn't say that. He immediately said, "Well, the man has made a charge against you and I will have to take you up to the station house." I very willingly accompanied him because I thought there would not be any difficulty in explaining my side of the story. I did not hesitate a moment in going with him.

Q All right. That is all.

BY MR. BURKE:

Q And with respect to either or both the badge and the bill, either or both could have been lost or thrown away by

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you? A Yes.

MR. MARKEWICH: Now, I object to that, your Honor.

THE COURT: Objection sustained. How can he tell whether the officer would have seen it or not? That is a conclusion on his part.

Q Now, Mr. Lewis, a final question: Were you ever convicted of crime in your life? A No, sir. This is my first trouble.

Q Yes, that is all, Mr. Lewis.

FANNIE S. LAIRD, called and duly sworn as a witness on behalf of the defense, testified as follows:

(Residence: 614 West 136th street).

DIRECT EXAMINATION BY MR. BOURKE:

Q Mrs. Laird, are you acquainted with the defendant, Francis L. Lewis? A I am.

Q Do you know others that know the defendant Francis L. Lewis? A Yes.

Q Have you heard his reputation for veracity, truth, character and integrity discussed by others? A Yes, I did, Mr. Bourke.

Q You have heard those discussed? A Yes.

Q And you know what that discussion was and what is said of him by others? A Yes.

Q With respect to those elements of character? A Yes.

Q What is his character for those, and his reputation, good or bad? A Always been good.

Q Are you related to Francis L. Lewis? A I am not.

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Q That is all, Mrs. Laird, thank you.

MR. MARKEWICH: That is all, I have no questions.

MR. BOURKE: The defense rests, if your Honor please.

MR. MARKEWICH: The People rest, if your Honor please.

THE COURT: Very well. Go to the jury.

Mr. Bourke then summed up the case for the defense and Mr. Markewich summed up the case for the People.

(The jury after several hours deliberation were unable to agree and were discharged from further consideration of the case).

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