

START

3080

CASE

CASE # 3080

David Gerstner

I N D E X.

Direct	Cross	Redirect	Recross
6	25	42	

324428

CASE #3080

INDEX.

	Direct	Cross	Redirect	Recross
David Gerstner	49			
Morris Gerstner	51	62	87	
Samuel Rosenberg	89	96		
John Seaman	108			
Rudolph Weiss	110	122	169	
David Greenblat	136	138		
Harry Altman	138	155	163	163

Julia Fushman 170

Wig Kessler 175

Harry Fushman 146

CASE #3080

COURT OF GENERAL SESSIONS OF THE PEACE.

CITY AND COUNTY OF NEW YORK. PART IV.

3641

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

Before:

-against-

: HON. CHARLES C. NOTT, J.

HARRY FISHMAN.

:

and a jury.

-----X

New York, January 5th, 1922.

Indictment filed August 17th, 1921.

Indicted for grand larceny in the first degree.

A P P E A R A N C E S.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY THOMAS H. WHALEN.

FOR THE DEFENDANT: MR. SAMUEL MARKEWICH and MR. H. SILVERMAN.

3641

Peter P. McLoughlin,
Official stenographer.

CASE #3080

(The jurors were examined in the box by counsel on both sides.)

During the examination Mr. Whalen, Assistant District Attorney, asked one of the jurors, "Would the fact that the money was paid back affect you".

Objected to. Objection overruled. Exception.

(The jury being declared satisfactory to both sides was sworn.)

THE COURT: I understand Mr. Silverman that you wish an adjournment until 2 o'clock in order to get defendant's counsel here. I shall grant that request with the distinct understanding that the case is going on at 2 o'clock. If counsel is not here you will have to go on with it. Gentlemen of the jury at the request of the defendant's attorney I have agreed to adjourn this case until 2 o'clock in order to get counsel present to assist him. I will therefore let you go until that time cautioning you as I have to under the law, that you are to form or express no opinion as to the guilt or innocence of the defendant until the case is finally submitted to you.

(The Court took a recess until 2 o'clock.)

AFTER RECESS. 2 p.m.

Mr. Whalen opens the case on behalf of the People.

MR. MARKEWICH: I object to the statement of the District Attorney, and I wish that the stenographer make

0806-#3080
CASE #3080

a note of the fact that the District Attorney refers now to a transaction that is foreign to the issue in this case. I ask your Honor to instruct the District Attorney to refrain from addressing the jury on any matters that are not pertinent or competent to the issue.

THE COURT: I understand the District Attorney in his remarks stated that the check that the defendant gave Gerstner in exchange for his check came back marked "no funds".

MR. WHALEN: It did later.

THE COURT: Is that what you refer to?

MR. MARKEWICH: Yes, sir.

THE COURT: I think that is perfectly correct. If he had given him a good check at that time there would not have been a larceny.

MR. MARKEWICH: But the District Attorney referred to the fact that the defendant exhibited to the complainant a deposit of five thousand dollars that he had made in the American Trust company.

MR. WHALEN: I think it is proper to show that two thousand dollars of that deposit was a check that the defendant had received from the complainant and three thousand dollars was a check of the defendant drawn on another bank.

THE COURT: Is that the account on which the check

CASE #3080

4
for two thousand dollars was given?

MR. WHALEN: No, sir. The defendant has an account in two different banks.

THE COURT: What bank was the account in on which he gave his exchange check?

MR. WHALEN: The American Trust company. On the 29th of April we will show that he deposited five thousand dollars, three thousand of which was his own check on another bank, drawn on his own account in another bank, and which was no good.

MR. MARKEWICH: To that I object.

THE COURT: I will allow that because it explains why the exchange check was not paid.

Exception.

MR. MARKEWICH: I object to the statement of the District Attorney, and I ask for the withdrawal of a juror. I ask your Honor to admonish the District Attorney to refrain from making such remarks. He says "I will offer a story to you that is akin to get rich quick Wallingford or other similar story. I am just stating the substance of his words as I recall them.

THE COURT: Is he characterizing this transaction?

MR. WHALEN: Yes, sir.

THE COURT: The District Attorney has some latitude in characterizing the transaction,-- whether he makes good on the characterization is another matter.

CASE #3080

Objection overruled. Exception.

MR. MARKEWICH: I think the District Attorney has gone far enough and is now going far afield in this case. If it is the District Attorney's intention to talk to the jury about other transactions, as I deem it is, or if it is his intention to show to the jury that the defendant is not a lawyer or is not all these other things, things which are immaterial to the issues in this case I shall object and ask your Honor to tell the District Attorney not to refer to such matters.

THE COURT: It has been held in a great many cases of larceny by trick and device that on the question of intent similar offenses may be shown if connected in point of time and if the method used was similar; they must be similar.

MR. WHALEN: I wish to state that I am prepared to show a similar transaction, in substance similar, during between a period of six months, December 28th, 1920 and May 27th, 1921 and another two months after this.

THE COURT: Subsequent transactions are not admissible.

MR. WHALEN: I think both prior and subsequent transactions can be introduced on the question of intent.

THE COURT: You will have to show me an authority on that. My impression is that only prior transactions

CASE #3080

are admissible. I do not see how subsequent transactions could illustrate the intent.

MR. WHALEN: I can, I think, show you an authority for such a transaction.

THE COURT: If you can very well. But at present refer only to the prior transaction.

MR. MARKEWICH: And the prior transactions must not be remote.

THE COURT: I say they must be reasonably connected in point of time.

MR. WHALEN: I am prepared to show a transaction December 28th, 1920.

THE COURT: What was the date of this transaction?

MR. WHALEN: April 29th. I think that is sufficiently close in point of time.

THE COURT: I will allow it.

Exception.

THE COURT: You need not go into the details of these other transactions; simply outline them generally.

(Upon motion of defendant's counsel the witnesses in the case were excluded from the court room.)

DAVID GERSTNER, a witness called on behalf of the People being duly sworn, testified as follows:

(The witness states he lives at 103 2 Second avenue.)

DIRECT EXAMINATION BY MR. WHALEN:

Q What is your business? A I am a dealer in new and

CASE #3080

second hand furniture.

Q Where? A 126 University Place.

Q In business alone? A Yes, sir.

Q Who is your partner there? A I have no partner;
my brother was a partner before.

Q You are in business under the name of Gerstner Brothers?
A Yes, sir.

Q How long in business there? A A little over six
years.

Q That is in the County of New York? A Yes, sir,
I am in business about twelve years in the County of New York,
but in University place about 6 years I am in business.

Q Do you know the Harry fishman, this defendant?
A yes, sir, I do.

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

Q Was he in your employ about six years ago? A Yes,
sir, he was about three months.

Q What was the nature of his employment? A He used to
keep our books, as an accountant, he used to come in about
once a month to look them over.

Q Did you see him in April, 1921? A Yes, sir, April
28th, 1921.

Q April 28th? A Yes, sir.

Q That is the first you had seen of him for some time?
A Yes, sir, I haven't seen him in five years.

Q Where did you see him that day? A In my place of

CASE #3080

business. He walked in on me.

Q He walked in there? A Yes, sir; at first he didn't announce who he was, "Don't you remember Fishman", oh, yes.

Q Please state all that you can recall of the conversation you had with Fishman on that day. A Well he walked into me and after I had recognized him I called my brother over, and asked my brother if he recognized him.

Q What is your brother's name? A Morris.
My brother looked at him, and he did remember him. He started in to telling us -- I asked him what he was doing all the time and he started in to tell us that "Oh, I have been doing pretty well, I am a lawyer since you saw me last."

Q Try and talk slowly and distinctly. A He told me that he had become a lawyer since I saw him last and also a C. P. A. He has been doing pretty well. He says, "I am having a house built on President street, Brooklyn, paying down \$25,000 cash. I just bought a car and I paid \$8500 for it and, "I have no kick coming" he said. "He asked me how I had been doing, and I said, "We just bought this building about two months.

Q You bought the building? A I invested about fifteen thousand dollars in the building, and we had been doing pretty fair ourselves. He says, "I suppose people owe you always money, and I said, "No, I always got a balance of five or ten thousand dollars in the check account! He was glad to hear of it. He also stated that the reason he came in

CASE #3080

9
14921
was that ever since he became a lawyer he has wealthy clients willing to sell out homes and estates and he could put me next to them. He will remember me and I will expect to hear from him. Shortly after that he left us.

Q Did you see him again? A The following day. The following day, April 29th, Friday, he called me up, it must have been around one or two o'clock. He says, "Gerstner", and I answered the wire myself and I said, "This is Gerstner talking." He said "This is Fishman. You remember I was telling you I could put things in your way once in awhile". He said, "I have something now I think would interest you. I will be over in fifteen minutes". I said, "I will wait for you". In about ten or fifteen minutes he came in. He came in and he says "Well, would you like to see my car outside." I said, "Yes." We walked outside and he showed us the car with a chauffeur in uniform. He told me this is his car.

Q What kind of a car was it. A It looked to me like a Pierce-Arrow. He stated to me it was a pierce-Arrow, I am not a judge of cars, and I took his word for it. He said, "Well, listen, I want you to come upstairs to the mezzanine floor and chase your help downstairs on the ground floor". I have a mezzanine floor, and I took him upstairs and he sat down with us and he says, "Listen, I have a client who wants to sell out his home, he is a very big man. He don't want to be bothered with pikers. He wants people who got the money and get

CASE #3080

it done quick". I said, "I will be interested with him if we can do business." He said, "I will tell you what I will do. You take along a check with you and I will take you in the car to see the man. We will go up there and I will show him the check." I said, "All right." He took us in the car, and on the way--

Q Who went with you? A My brother, myself and Mr. Fishman. He took us in the car. On the way from my place to the bank he suggested we go in the bank and write the check out there and have it certified. I said, "All right." I walked in the bank with him because I had the fullest confidence in him and he dictated to me that I should certify the check to his name, but I shall hold the check, I don't cash the check. "You hold it." I said, "I will certify the check" because he always impressed it on my mind he wants to show it to the man.

MR. MARKEWICH: I object to that.

Q Never mind what the impression was. What furniture did he say was there? A He told me that he had an eight room apartment full of it, about \$18,000 it is worth. I said how does he know he isn't in the business, and he says, "Why, I keep that man's books, I know his private transactions, I know what he paid for the furniture because I entered these bills in his private account for him."

Q Did he say what it was? A He said, "Eight expensive Oriental rugs, a baby grand piano and some suits of furniture

CASE #3080

some odd pieces, he couldn't name each individual piece, but he could remember an idea of it. I said, "Remember I will go over with you. I don't want to buy the furniture unless I see it." He said, "That is understood. He took me over to the Biltmore.

Q You stopped at the bank? A Yes, sir, and had the check certified at my bank, the Central Mercantile Bank, 14th street and 5th avenue.

Q Is that the check? A That is the check.

(Marked for identification People's Exhibit 1.)

Q What happened when you got to the bank? A When we stopped at the bank he suggested to me to have the check certified because he said, "Anybody could write out checks, the question is have you got the money." I went over and certified it. He also suggested two thousand dollars is not enough, I should take along five hundred in cash, if I want more money for myself. I got five hundred dollars more. I went over and drew out a check for five hundred dollars and cashed it. I have the check with me. That is on the same day and that is the check. (Producing a check.) I cashed it at the same time I certified this check.

MR. WHALEN: I offer the two checks in evidence.

(The second check is marked people's Exhibit 2 and people's Exhibit 1 is marked People's Exhibit 1 in evidence.)

Q Did you give Fishman the check and the cash did you

CASE #3080

keep? A Yes, sir, I kept it myself.

Q What happened? A We entered this car, and he took us to the Biltmore.

Q What happened there? A He walked us into the rear of the Biltmore, in the waiting room and said, "Sit down here", he is going to find out if the man is in. So we sat there and waited for fifteen minutes and he came along saying he would not be in for another half an hour or another fifteen minutes, "We will wait awhile". Meantime he said, "I will tell you what I will do. When he comes in you give me the check and I will show it to him" I said, "I can't give you a certified check without having a receipt for it. Suppose you go in the elevator and get killed". "Why, that check is made payable to you. How can I give you a check made payable to you and I have nothing in return." He said, "Are you afraid of me to hold a check of two thousand dollars. I am a lawyer, I am building a house in President, I own a car worth \$8500." He said, "Well, I will tell you, you write me out one of your checks for two thousand dollars, and I will return mine, and when you give me back mine I will give you yours." I hesitated and said "all right". He wrote out his check for two thousand dollars and I gave him my two thousand dollar check.

Q I show you a check and ask you if that is the check he gave you at that time? A That is the check. I saw him

CASE #3080

write it myself.

Q You saw him write it? A Yes, sir, I saw him write it myself. He then went away to look for the man again, the man was supposed to be stopping at the Biltmore. He came back ten minutes later and said the man would not be in until 8 o'clock, you can go home or to your place of business and you can expect a call from me at 8 o'clock". He says, "You leave me this other five hundred dollars cash in case he wants two thousand dollars, I can show him the five hundred. I gave it to him, and he gave me a check for five hundred dollars, and I returned his receipt to my lawyer. When I got back to my place of business around five or half past four, I waited until 8 o'clock. At 8 o'clock Fishman did not ring me, but I remember he told me he was connected with the Lorber's by marriage, and I said to my brother, "Let us go out and look for him".

Q Don't give us the conversation with your brother. A I then went out to look for him.

Q Where did you go? A The first place I went to was Lorber's.

Q Where? A Broadway around 38th street.

Q Lorber's restaurant? A Yes, sir, and sure enough we saw the same car standing outside. I sent my brother inside to inquire if Fishman was in, to inquire for him and if he was there to tell him I wanted to see him. He immediately came out with his wife.

1496
CASE # 3080

Q With his wife? A Yes, sir. I demanded my money. He said, "Why didn't you tell me-- I couldn't meet the man, I can meet him at 8.30, but I couldn't carry the money with me, I left it at the office, 299 Broadway, he left the money in the safe. "I didn't want to walk around with all that money, all the time." He also said to me that his wife was interested in buying a library suite off me. I said "You go over Fishman, and you can pick out a library suite." I went home.

Q When did you next see him? A Saturday night, 6 o'clock, the following day.

Q Well what happened the next morning, Saturday? A The next morning, at 8.30, when I expected him he did not show up. I went to my bank and waited until it opened, and I asked them--

Q Don't give the conversation with the bank. What did you do after that? A After that I did go to the bank, and I called up his bank.

Q I don't want you to give any conversation with the bank. You next saw him at 6 o'clock on Saturday afternoon? A Yes, sir.

Q At your place of business? A Yes, sir he walked into the place of business with a smile on his face, "Hello Gerstner". I closed, locked the door on him. I wanted to start to talk to him, "Now you have the check, now I got some -

CASE #3080

thing to say, I want my money and I want it darn quick." He said, "If you feel that way about it"-- he pulls out a check book, "look I deposited your money, five thousand dollars in the bank, my own money and your money. Monday morning I will be there with your money or take you out tonight and get it." I said, "You are on, I want my money tonight." He took me out and went and had supper first. He walked into the United Cigar store on 7th avenue and called up somebody, I don't know who, and he came out. He said, "Well, I am going to take you to an apartment at 155th street and Edgecombe avenue, a party named Lyon, I can get the money off him. I called him up, it will be all right." We grabbed a taxi, it was a rainy night, and went up there. When we got up there the elevator man informed us that Mr. Ryan was out of town, and would not be back for two or three days. I walked into the street and asked for my money. He said, "Listen Mr. Gerstner, you don't have to be afraid of me. I am a Mason", and he pulled out some kind of a penknife with some mark on it. "I am a lawyer, I am a C.P.A., I own property, I have an \$8500 car, you can go home and sleep well, Monday morning be back there and get your money, and we will call it off if you are nervous about it. " He kept on talking and convinced me it was O.K.

Q. What happened Monday? A. On Monday morning he got over to my place before the banks opened and he explained to me that the five thousand dollars he had shown me he deposited

CASE #3080

on Saturday was a check for three thousand dollars, "I don't think that would go through in a day or two", I shall hold the two checks for it. A little later in the day, I don't remember exactly, he said he deposited it a little later. I didn't see anything wrong with that, only depositing them the next day, and I said, all right. The five hundred dollar check was paid and the two thousand dollar check came back no good, insufficient funds. I called up his office; he wasn't in; ten minutes later he rings me, and I told him the check came back insufficient funds. He said "Put it right through again, put it through again", and it came back again insufficient funds. I tried to get in touch with him but I couldn't get near him. Finally he called me up later, and he says, "I will tell you the truth Gerstner, I had to get possession of that furniture through a Marshal who had some mortgage on it, and he stated some legal terms I did not understand, but it seemed all right to me. "I will tell you I am going away for the week end with my wife, but will be around to see you Monday morning, I will get you possession of the furniture. Then afterwards if you say you like ^{you} it, ~~Why~~ it, or if not I will give you back the money. Monday morning he was at my place, and he said, "Well, they are moving the furniture uptown. I called up the storage warehouse in 37th street and 7th avenue, you come over with me and you can inspect the things there." My brother, myself and Fishman

CASE #3080

went over there and we waited. While we were there there was nobody there, and he said, "I will call them up, and ask what was the matter". He walked out and called up and they told him that the Marshal's name was White. He kept us on the street until 5 o'clock, and he said, "I will tell you what I will do. I will call up." I said, "I don't want it, I don't know who owns the stuff, I haven't had it, I only gave you the money to show it and after I see the stuff if I like it I will buy it." He said, "What is the difference" I said, "If it comes to my place, it is with the understanding that the stuff is not the man's and unless I like it and you convince me it is O.K. and you are buying it off a legitimate man and you say I get it legitimately all right. We waited at the place of business until about 6 o'clock, and he said, "I will tell you what we will do. We will run up there and we will see what the trouble is". So we grabbed a taxi, and we rode up to 155th street and Broadway, and he says, "I will tell you I have a doubt as a lawyer, I think that it is against the law for us to break into an apartment after 6 o'clock, I better call up some Marshal." He walked into a telephone booth and he says, he called up the Marshal, he made me believe he did. He said, "I don't want to make myself liable for damages, he says, "I am going to call up the police station, and ask for the house detective and see if he can get him. He walked into a booth, and he

CASE # 3080

said, "It is O.K." He took me to 51st or 52nd street and Amsterdam avenue, the station house and he there asked for the house detective and they told him he was not in. He said, "We have nothing to do until tomorrow morning. You will hear from me tomorrow how things are". The next day he says he has got to go in court, busy with some clients, and if I don,t believe that the furniture is being moved "go up there for yourself, and see for yourself, the vans outside." I grabbed a subway with my brother and I went up there to 155th street and Edgecombe avenue. Sure enough the truck stood there, the vans were outside, the Broadway Storage I believe. We waited outside about an hour and saw the vans going away, an empty truck. We saw the driver and we asked him--

Q No conversation. What did you do after that? A Well after that I decided to --

Q Don,t tell what you thought yourself, but tell just what you did. A Well after that why he told me that I should meet him--

Q Where? A Over the telephone. He called me up and he told me to meet him in Court.

Q Do you remember when that was? A I don't remember exactly about when this was.

Q Do you remember the day when he met you in Court?
A May 12th.

Q This was just prior to that? A May 11th he called

CASE # 3080

me up, and he told me -- he told me he had the furniture, to convince me I should not be nervous, the money is safe and if there would not be any furniture there will be the money and if there would not be the money there will be the furniture, that I should come down to court, the Supreme Court at Chambers street and meet him in front of 51 Chambers street he will be there at 9.30 and he will convince me about the furniture, that he has to get some legal papers signed. I said, "I will meet you at 9.30." I went over and notified my lawyer to be there at 9.30 and find out what this is all about. The following morning at 9.30 I was there with my brother and Mr. Fishman met me there. As we were standing there along came Mr. Greenblat; he told me that was the Marshal getting me the furniture, he represented the man; he introduced him when he came along, that is the first time, "Mr. Greenblat, this is Gerstner's brother. Mr. Greenblat went away. He told me why that is the Marshal who is going to produce that furniture. I chased the other Marshal, he was not dependable. Come upstairs and I will show you, show you some legal papers."

Q Did he say what kind of a paper it was? A He said it was some kind of a mortgage or a replevin or something else, I am not a lawyer, I don't know legal terms.

Q Did he say where he was going to have that signed?

A Why I think Callahan or Cohalan, I don't remember which name it was; the name sounded like that; he told me it was

CASE #3080

Part 3. Then he walked my brother and myself into Part 3, and he sat us down there and he told me, "I am going over to the clerk to find out about it." He walked to the clerk, I don't know what he said to the clerk. He said "We will have to wait a little longer. Meanwhile the counsel came in and I introduced him to Fishman, Samuel Rosenberg of 309 Broadway.

Q Rosenberg? A Yes, sir. As soon as he saw my counsel he ran out. He was absent five or ten minutes and he came back and the lawyer demanded off him, "What kind of papers have you got, what kind of furniture have you got", and he couldn't show any papers or any furniture. My counsel lawyers have been broke for less than this." says to him, "Here, listen," -- and he said, "Don't worry about these things and the lawyer demanded from him by 4 o'clock to bring the money, and he called him a thief and everything else. At 4 o'clock that day he rings me at the office, the lawyer's office, I was in there waiting, and he demanded from my brother and myself to come to meet him and show us the furniture, but he did not want my lawyer to come along. We did not go. About a day or two later he rings me again -- the last I heard of him-- I don't know whether a day or two-- he rings me again stating he had the furniture at 43rd street, the Hudson storage, and he called that I should come down and he would show me the furniture, and if I don't like it he will give me back the money. Previous to that I was looking for

CASE #3080

Fishman and I couldn't get him. So I went around to 33 St. James Place, and I was watching his house.

Q You went to the Hudson storage? A Yes, sir, to the Hudson Storage, we came there to the Hudson and up there they would not give us any information at all, they didn't know anybody there.

Q Did you see Fishman? A No, sir.

Q How long did you wait there? A About an hour and a half or two hours.

Q Then you came back? A Yes, sir, to the place of business. I was in my place of business ten minutes. He came and he laughed and he said, "I saw you fellows standing there. Did you think I would come over when I seen that lawyer of yours, I don't like him, I don't want to have anything to do with him, any time I call you I want you to come alone. Your lawyer wants all the property, all the furniture, and I am not going to cheat you out of a penny, I will give you every nickel of your money. You are only small men, I am out for bigger game than you. He kept talking to me, that I was only helping him that he should get on to bigger game.

(Later part of the answer is stricken out.)

I said, "all right I want my money, and I would not rest until I get it." He says, "All right, I will give you some money in a couple of days. A couple of days goes along and he rings me again, "You can expect some money under your door from me", how much he did not tell me. He went away, two

CASE #3080

days more, I kept ringing his office every day. I went up to his office and he wasn't in. I could not get him and he finally mailed me a check of \$750.

Q When was that. Is that the envelope in which the check arrived? A Yes, sir, that is the envelope.

MR. WHALEN: I offer it in evidence.

Q Do you recognize the writing on that? A Yes, sir, I do.

Q Is that the defendant's handwriting? A That is, he mailed me the check in that envelope.

MR. MARKEWICH: I object to that as incompetent.

THE COURT: We cannot describe the check unless you lay a foundation to put in secondary evidence.

MR. WHALEN: Well, I can do that, your Honor.

Q What did you do with the check that came in that envelope? A I opened up the envelope and saw it was dated on Sunday.

Q What did you do with the check? A I took the check to his office girl and she brought me another check in return.

Q You exchanged that for another check? A Yes, sir, for the same amount \$750.

Q I show you another check and ask you if that is the check that you later received? A Yes, sir, that is the check.

Q Is that in the defendant's handwriting? A Yes, sir.

Q Is that check in his handwriting? A Yes, sir.

MR. WHALEN: I offer it in evidence.

CASE # 3080

MR. MARKEWICH: I object to that as immaterial and incompetent.

Objection overruled. Exception.

(Marked people's Exhibit 4.)

Q The first check you received in this envelope was similar to this check, people's Exhibit 4? A It was similar, \$750, but on the back of the other check was marked "On account of \$2,000, balance \$1250."

Q That was the only difference? A Yes, sir; that was dated for a Sunday.

Q What did the defendant say to you about those two checks? A He told me that the check you have dated Sunday is no good, I am sending the girl with another one, give her the check, this one will be all right on the date that is made in the check. "All right", I said, "you send the girl down, and I will do that for you."

Q The the first check was dated for a Sunday preceding the date of this check? A Yes, sir.

Q people's Exhibit 4? A Yes, sir. That is right. I exchanged the check for her, but I kept the envelope and on the date that the check was due I sent down to the bank.

Q What date was that? A I believe it was the 6th or 7th.

Q Refresh your recollection. You may look at the check and refresh your recollection if you wish, if you cannot remember? A I remember it was Tuesday the 7th.

Q June 7th? A Yes, sir.

1506
CASE #3080

Q You presented that check? A Yes, sir, I presented that check but the teller told me he didn't have anything to cover it.

MR. MARKEWICH: I object to that.

THE COURT: What he said may be stricken out.

Q Was the check paid? A Yes, sir.

Q What happened after that, after June 5th? A After June 7th-- on June 8th I went up to his office, the 9th I went to his office, I couldn't get near him, I went to his office on the 10th, on the 11th of June, the 11th, it was on a Saturday they left me there word in the morning he would be there about 11 o'clock.

Q Don't give us the conversation you had with anybody at all, except Mr. Fishman. A He rang me and told me to expect a call for Fishman at one o'clock. At one o'clock he rang me.

Q What date was that? A June 11th or 12th-- June 11th.

Q What day of the week was it? A On Saturday. He called me on the phone and he said, "Why I just got some notes cashed and I have some checks here I am going to deposit. Your money will be perfectly O.K., I will bring it into you the following week. I kept him in conversation for three-quarters of an hour, and in the meantime I sent my brother-in-law on another wire, and I told him to trace that call.

Q Only say what you did? A Yes, sir.

Q Did you see Fishman again after Saturday? A Yes, sir,

CASE #3080

I did.

Q Where and when? A In the Mercer street police station.

Q What time was that on that Saturday? A About half past one or two o'clock.

Q That was the Saturday following June 7th? A Yes, sir.

Q The date of that last check? A Yes, sir.

Q Did you have any conversation with him at that time?
A He wrapped and started to holler, "A civil case" and all that stuff, he defied me and everything else and I brought him down to the Magistrates' Court.

Q You had no conversation with him? A No, sir.

Q This check was given by you to Fishman, this two thousand dollar check at the Biltmore Hotel in the County of New York? A Yes, sir.

Q At the Biltmore Hotel, in the County of New York?
A Yes, sir.

Q Now you have stated all the conversations as far as you recall that you had with this defendant? A Yes, sir. It took such a long time I could not remember half of what he told me.

MR. WHALEN: I offer in evidence the envelope.

Objected to. Objection overruled. Exception.

(Marked People's Exhibit 5.)

CROSS EXAMINATION BY MR. MARKEWICH:

Q How long are you in the furniture business? A About

CASE #3080

six years.

Q Dealing in new and second hand furniture? A Yes, sir.

Q And antiques? A Yes, sir, antiques and so forth.

Q You hold auctions in your place occasionally, do you not? A Yes, sir, I do.

Q You are in the habit of buying furniture from apartments? A Yes, sir.

Q The entire furnishings? A I am.

Q Do you deal in practically everything or is that your specialty? A That is my specialty.

Q So that this transaction was by no means a new one to you? A Yes, sir, that is right.

Q Had you ever before purchased furniture before you had seen it? A Never did.

Q You want this jury to believe, I take it, that the reason that you had trusted this defendant with the money in advance was because you had known him? A Yes, sir.

Q You hadn't seen him for five years? A That is right.

Q You knew about him for he was a bookkeeper? A A C.P.A.

Q About five years back? A At the time he represented himself as a C.P.A.

Q Please answer my question. A That is right.

Q Now you have not rehearsed that story that you have told us on the stand? A No, sir, I have not. I have nothing to rehearse.

CASE #3080

Q Why is it that you are so slow in answering the questions of myself and you spoke so rapidly when you testified for the Prosecution? A I told the thing as it happened as I go along.

Q Now you had spoken to the defendant on or about the 28th or 27th of April? A April 28th.

Q 1921 for the first time in five years. You have not seen him during the entire time? A No, sir.

Q You had not heard of him during the entire time?
A I heard of him occasionally through my bookkeeper.

Q You heard, I assume that he was an accountant? A I will tel you what I heard.

Q (Question repeated) Did you? A Yes, sir, he gave us --

Q Never mind about the rest. Just answer the questions and do not valunteer. As a matter of fact you had seen the furniture in this case have you not? A I had not.

Q As a matter of fact didn't this defendant tell you that he was selling you his apartment fueniture? A No, sir, he did not.

Q As a matter of fact didn't you buy the furniture of this defendant? A I did not.

Q You read and write English don't you? A I do.

Q You say that this defendant told you that the furniture belonged to somebody else, a party, and that he was going to buy the furniture for you? A Not buy it for me, I did not

CASE #3080

say so.

Q Didn't you say that he said he would get the furniture for you? A He would show the money, that he had the money and he would get us together with the man; he was supposed to bring the money back.

Q In other words be an agent for you? A Yes, sir.

Q What were you to give him for it? A I never promised him anything unless I saw the furniture. I did not state any amount.

Q Any conversation had as to any compensation you were to give the man who told you he was a lawyer? A None at all.

Q And an accountant? A No, sir. He asked me and I said, "I can't promise you anything until I see the furniture."

Q Rather a curious transaction for a lawyer to be in, didn't it impress you that way? A It didn't seem so to me.

Q Did a lawyer on any other occasion ever agree to act as broker or agent for you or some one else in the sale of furniture? A Not that I can remember.

Q You have been in the furniture business six years quite extensively? A Yes, sir, that is right too.

Q You wrote this on the side as the check, did you not? A At Mr. Fishman's suggestion.

Q You wrote that, didn't you? A Yes, sir.

Q Read that please? (Witness reading) Bought from Harry fishman one lot of eight room apartment for \$2500, by

CASE #3080

cash \$500 check \$2,000.

Q Yet you want this jury to believe that he told you that furniture was somebody else's? A That is right.

Q Now as a matter of fact, you went over to Fishman's apartment, over in Brooklyn, did you not? A I did, looking for him.

Q You saw the furniture there, did you not? A No, sir, I did not.

Q When you saw the furniture you said you did not want it, you wanted your money back, did you not. Answer my question? A I went over there--

Q On the day when this check was given, in the evening, did you go over to his apartment? A No, sir.

Q You did not? A No, sir, I did not.

Q You did not see the furniture? A No, sir, I did not see the furniture.

Q You did not tell this defendant you did not want the furniture? A I could not say I did or did not because I did not see it. How could I tell him anything. He was only supposed to show the man I had the money to buy it. That is the whole transaction.

Q Now, as a matter of fact, didn't you demand your money then? A I did.

Q When for the first time did you demand the money?
A The following night on the same night, the same night that he took it.

CASE #3080

Q When this defendant gave you this check for \$500?

A That same night, but he dated it later and I called his attention to it, Saturday, and he said, "That's nothing, what is the difference, if it is dated Saturday or Friday."

Q This check was paid? A Yes, sir.

Q He told you he would pay the balance a short time later? A He told me to put the check through.

Q He told you he would pay the balance \$2,000, a short time later? A I should put the check through again.

Q Did he give you both checks at the same time? A Yes.

Q \$500 and \$2,000? A Yes, sir.

Q Didn't that appear to be a peculiar transaction?

A I am telling you why.

Q Didn't that appear to be a peculiar transaction.

Just answer my question? A Not at that time it did not; it did a day later.

Q You gave him the \$2500 at the same time? A No, sir. I gave him--

Q That you gave him the \$500? A I gave him \$2,000 first; he was supposed to go up and see the man, he wasn't there, he said he would not be back until 8 o'clock. He said you don't have to wait here I will ring you. You leave the \$500 here in case the \$2,000 is not enough. I will give him \$500 more and I will also tell him my client has plenty of money.

Q Did you get a receipt for the \$500? A I did.

CASE #3080

Q Where is it? A That check.

Q What check? A That check you have in your hand, the \$500 check.

Q What date did you give the defendant the \$2,000?

A On the 29th.

Q What date did you give him the \$500? A The same night or rather the same afternoon.

Q What date was that? A The 29th.

Q Now when did you deposit this check for \$500 in your bank? A I believe it was in the morning, the following week, or that would be later in the afternoon, Tuesday morning both checks at the same time.

Q When did you deposit this \$500 check, do you recall?

A Tuesday morning, the following Tuesday morning.

Q please look at the back of it and tell me if this refreshes your recollection as to when you deposited this check?

A As I said before Monday afternoon or Tuesday morning, I don't remember, it is so long ago.

Q Why not Saturday morning? A No, sir.

Q The date of this check? A Because they told me he didn't have enough money in his bank, over the telephone, from my bank I called his bank up and they informed me on the check he didn't have enough money there. My bank informed his bank.

Q You had telephoned to your bank first? A No, sir, my bank telephoned.

CASE #3080

Q Did you deposit the \$500 check in your bank? A I did

Q On Saturday morning? A I did not.

Q I am asking you did you send anybody over to the bank with this \$500 check? A No, sir, I did not.

Q Did you telephone? A To his bank my bank telephoned.

Q To inquire whether there was money in the bank?

A Yes, sir; that is right.

Q What day was that? A That was on Saturday morning.

Q You held this until Tuesday, is that it? A I think it was Monday afternoon or Tuesday morning, I don't remember exactly because he told me if the \$2,000 didn't go through to hold it awhile.

Q Answer the question, and do not volunteer. Don't show such great anxiety. You got your money in this case, did you not? A I did.

Q Well just answer the questions. As a matter of fact your entire idea here is to get your money back from this defendant? A I tried mighty hard to get it.

Q You tried hard to get it? A Yes, sir.

Q That is before any arrest? A Yes, sir, I did.

Q You had gotten \$500 off the \$2500 before you placed him under arrest, didn't you? A I did.

Q You had gotten \$900 after you had placed him under arrest? A I did not get it.

Q Who did? A I don't know anything about it.

Q Did you get the \$2,000 back? A Yes, the \$2,000.

CASE #3080

Q In how many installments did you receive the \$2,000?

A I received it in one lump.

Q From whom did you receive it? A From my counsellor.

Q Mr. Rosenberg? A Yes, sir.

BY THE COURT:

Q When did you say you got that? A I should judge a week ago Monday.

BY MR. MARKEWICH:

Q Did the defendant tell you "Whether you arrest me or do not arrest me I am going to give you the money back, I owe you the money and I will give it to you back"? A Yes, sir, he did.

Q As a matter of fact didn't the defendant go to your lawyer and pay \$900 on account and \$1100 later? A I don't know about that.

Q Now did you have any talk with your lawyer about it? A Yes, sir, I always kept telling my lawyer I wanted the \$2,000 exactly as I gave him and I will not take it in part payment.

Q Did your lawyer ever suggest to you or did it ever occur to you after this man was arrested that you were to inquire from the District Attorney whether you should get your money back or not? A I don't understand you.

Q (Question repeated) A I went to the District Attorney when they called us for trial the first time. I saw the District Attorney-- that was about a week or two

CASE #3080

weeks ago.

Q Didn't the District Attorney tell you that he had been informed that you had received your money? A No, sir, he did not.

Q Well after you got your money then you told the District Attorney about it? A Afterwards? Explain that to me.

Q You understand the question. It is simple. A It may be simple.

Q (Question repeated) A I did or my lawyer did.

Q How long after did you tell the District Attorney?

A Right the following day.

Q When did you get the money from your lawyer? A Last Monday.

Q From your lawyer? A Yes, sir.

Q You don't know when your lawyer got it? A No, sir, I don't know the exact time; I believe he told me Sunday night.

Q Did he give you a check? A He gave me a check and cash.

Q How much cash and check? A A thousand dollars check

Q Did he tell you when he got the money from the defendant? A I was so excited when I got it I did not want to listen to him.

Q So glad to get your money? A Yes, sir, I was so glad to get my money back.

Q As a matter of fact after you got your money you

1512
CASE #3080

didn't care what happened to the case? A That is right.

Q (Repeated) A I certainly did care.

Q What did you mean by saying before that you did not?

A I did not say so. I did not understand the question.

Q Did you think you had made a slip of the tongue perhaps? A No, sir, not exactly.

Q Not exactly. The truth of the matter is you don't care what happens to the case? A I certainly do. If I did not care -- I certainly do care what happens to the case.

Q Now you were in Court when you got your money from your lawyer a thousand dollars in cash and a thousand dollar check? A Yes, sir, a thousand dollar check I got.

Q You told your lawyer at that time to ask the District Attorney, first, whether it is proper for you to receive the money, did you not? A Well I am not a lawyer you know.

Q Did you ask your lawyer that? A I didn't ask him anything.

Q You knew that this Court was not a collection agency ^{for} you or anybody else? A I certainly did.

Q You knew that this Prosecution was ^{not} instituted by you for the purpose of getting your money out of this defendant? A That is right.

Q You did not start a civil suit against this defendant? A There was no civil suit there.

Q You did not start a civil suit? A No.

Q Is there any civil suit pending now? A None pending.

CASE #3080

Q Against this defendant? A No, none.

Q So after this defendant was arrested you got your money, ever penny of it? A Yes, I have.

Q Didn't the defendant tell you, from time to time, that he didn't have any money, he was trying hard to get money for you? A Yes, sir, he did.

Q You had a number of conversations with him at his office? A No, I never met him at his office.

Q Well around the Courts some place, on the telephone, around the streets, any place, at the Marshal's office or 51 Chambers street? A There was no Marshal's office there; that was on the street.

Q On the street? A Yes, sir.

Q How did you happen to meet on the street? A By appointment.

Q In front of what place? A I believe there is a bank.

Q What bank? A I don't remember the name of the bank.

Q Each time you met him was it at the bank? A No, sir.

Q Well at one time you met him at the bank? A Yes, sir.

Q Where did you meet him thereafter? A As I stated before in my place of business, once or twice.

Q Once or twice at your place of business? A Yes, sir.

Q Then where else? A Up to the time he was arrested you mean?

Q Yes. A Once in the storage house and once in Mercer street station.

CASE #3080

Q You went to lunch parties together, didn't you?

A I didn't call them lunch parties, I was trying to get my money back.

Q Parties together, you took him out to lunch? A Yes.

Q You went to lunch with him or he took you to lunch how many times was that? A Twice.

Q Other people around? A Well, my brother was once.

Q Who else at other times? A His lawyer was once and my lawyer was there.

Q The entire burden of the conversation from time to time was about getting your money, is that right? A Well, naturally that.

Q This prosecution was instituted by you largely because you wanted your money back? A No, sir, not that.

Q You have accomplished your result? A Both.

Q Call it both-- did you get your money back? A And for the crime that he has committed.

Q Well to send this defendant to jail, that is what you had in mind? A Yes, sir.

Q You want this Court to believe, do you, that this defendant gave you the money or rather the lawyer gave you the money received from this defendant under the belief that you would continue prosecuting him? A Unconditionally I got the money.

Q Unconditionally you got the money? A Yes, sir, as far as I am concerned.

CASE # 3080

1520

Q Did you talk to any lawyer before you had placed this defendant under arrest? A I talked to my lawyer.

Q Mr. Rosenberg? A Yes, sir.

Q He is a relative of yours? A Yes, sir, he is by marriage.

Q Did Mr. Rosenberg discuss this case with you? A Yes, sir, he did.

Q Mr. Rosenberg told you what would or what would not constitute a crime under circumstances such as these? A He told me it was a crime that is all.

Q How many times have you discussed the matter with him? A A number of times.

Q How many times was that? A Well, I can't say exactly, probably four or five or six times.

Q Before you had placed the defendant under arrest your lawyer went with you, sometime or other, to get the money back from the defendant? A He did not go with me.

Q Well didn't you meet him? A Well not to get the money, but to get hold of him and have him arrested.

Q Wasn't he arrested at the time you met him over at the Supreme Court? A No, sir, he was not under arrest then.

Q He was not arrested until sometime thereafter? A A month later.

Q At that time when Mr. Rosenberg saw him in the Supreme Court he said to him "Return the money to my client"?

A Yes, sir.

CASE #3080

Q If you don,t I believe have you arrested? A Yes.

Q Didn't he? A Yes, sir.

Q You knew that the defendant had his name in the telephone book? A Yes, sir.

Q You knew where his office was didn't you? A Yes, sir, I did.

Q You knew there was not any difficulty of having him placed under arrest? A There was difficulty.

Q You knew that the officer went there and got him, don,t you? A No, sir, he did not.

Q Don,t you know that the officer went to his office and brought him over to Court? A No, sir.

Q Don,t you know that? A No, sir, we arrested him ourselves.

Q Well where did you arrest him? A My brother, on Broadway.

Q Where? A In a restaurant; he was eating and he waited outside for him.

Q What restaurant? A 540 and something Broadway.

Q Who told you in what restaurant he was? A As he was talking to me my brother traced this call up-- thinking the car was outside -- I kept him on the wire while my brother got him.

Q He called you up time and again, didn't he? A Yes.

Q You saw him every now and then? A No, sir, I didn't see him.

CASE # 3080

Q You had a luncheon engagement with him? A Only after he was caught and he was out on bail.

Q After that? A Yes, sir.

Q Had you seen him a number of times before that?

A The only time as I stated before --

Q Didn't he introduce you to a Marshal named Greenblat?

A Yes, sir.

Q Where was that? A 51 Chambers street.

Q When? A May 12th.

Q That was before his arrest? A Yes, sir, before his arrest.

Q Didn't he introduce you to some other people? A Not that I remember.

Q Didn't he introduce you to his wife? A I saw his wife but he didn't introduce me.

Q Didn't he introduce you to friends of his? A No.

Q Didn't you as a matter of fact see him a dozen of times between the time he was supposed to have bought the furniture and the time of his arrest? A I saw him three or four times.

Q You don't mean to tell the jury certainly you had difficulty in finding this man? A Yes, I can prove it by detectives from Brooklyn.

Q As a matter of fact you knew where he lived, didn't you? A Yes, sir, I did but he was never home.

Q Answer my question. You knew where he lived, didn't

CASE #3080

you? A Yes, sir, I did.

Q You knew he was with his wife and children didn't you? A I knew his wife and children were there.

Q You knew also where his office was? A Yes, sir, I did

Q Where is it? A 299 Broadway.

Q It still is there? A As far as I know; the last time I inquired it was still there.

Q Did you ever try to get him on the wire? A I did; he is never in.

Q Did I ask you that? A Yes, sir, I tried to get him on the wire.

Q Do you remember the time he broke up his home and went to live with his mother-in-law? A I do not.

Q Do you know now that he lives with his mother-in-law? A I do not.

Q Haven't you been informed that he was? A No, sir, I was not.

Q Didn't the defendant tell you that the reason he wanted to sell the furniture was because he wanted to break up his home, he had heavy debts and obligations to meet? A He did not.

Q Didn't the defendant tell you, as a matter of fact, that he had been living riotously, too high, and was trying to dispose of a good deal of it? A No, sir.

Q Of his property? A No, sir, he did not.

MR. MARKEWICH: I want to offer this check that I

1524
CASE #3080

have referred to. That is your endorsement on the back?

THE WITNESS: yes, sir.

MR. MARKEWICH: I offer it in evidence.

(The check referred to is admitted in evidence

and marked Defendant's Exhibit A.)

RE DIRECT EXAMINATION BY MR. WHALEN:

Q This \$500 cash that you gave him was paid back? on April 30th, wasn't it, the next day? A No, sir, I had to put it through the bank.

Q Well, shortly after that, wasn't it? A Yes, sir the following week.

Q When was this \$2,000 paid, do you remember exactly? A I got the \$2,000 off my uncle last Monday.

Q Do you remember the day after Christmas or New Year's? A The day after Christmas.

Q The first Court day after Christmas? A Yes, sir.

Q Was it Tuesday morning your lawyer came in here with you and with the defendant's lawyer and your lawyer stated to Judge McIntyre who was then presiding here that this money had been paid back the day before or the Sunday before on December 25th? A I believe so, yes, sir.

Q So you never received anything except this \$500 between April 29th, 1921 and December 25th, 1921? A No, sir.

Q Did you ever see any furniture that was shown to you by the defendant? A No, sir, I did not.

CASE #3080

Q At any place? A No, sir, no place.

Q Did you tell the defendant fishman who your lawyer was, his name and so forth? A I did. I told him my lawyer was Mr. Samuel Rosenberg?, and he said, "Why, I know him."

Q Did you tel him he was an uncle of yours? A Yes, sir, I told him he was an uncle of mine.

Q You had given him the address? A Yes, sir; I told him he went to Atlantic City-- that is what I told him, and I don,t expect him back for afew days.

Q Did you ever go to Fishman's home? A Once only.

Q Did you find him there? A No, sir.

Q Between May 12th, the day you were in the Supreme Court and June 11th or 12th, the day he was placed under arrest do you remember whether you saw him at all during that period of about a month? A I saw him in my uncle's office, that is the lawyer.

Q At your uncle's office? A Yes, sir.

Q Did you make an attempt to find him during that period between May 12th and June 11th? A I meant to say between june 11th and up to the time now when I met him in my uncle's office-- between May 12th and June 11th I did not see him.

Q Between May 12th and June 11th you did not see him?

A No, sir, I could not get near him.

Q Looking for him? A I looked.

Q Able to find him? A No, sir.

Q Go to his office? A I did, never in.

1526
CASE #3080

Q Did you call him up on the telephone? A Yes, sir, I did; he was never in; I only saw him once between those dates.

Q He called you frequently on the telephone during that period, didn't he? A Yes, sir-- that he promises to pay--

Q Now on April 29th, 1921, when you got this certified check did you believe he was a lawyer -- didn't you? A I certainly did.

Q You relied on his statement to you?

MR. MARKEWICH: I object to that as being immaterial whether he is a lawyer or not a lawyer.

THE COURT: I will allow it.

MR. MARKEWICH: That cannot be the basis or cannot possibly form any part of the trick and device.

THE COURT: I will allow it as part of the alleged transaction.

Exception.

Q You relied on that statement? A I certainly did.

Q You believed it to be true? A Yes, sir, I believed it to be true.

Q You believed his statement that he was the owner of that automobile that he had with him? A Yes, sir.

Q You relied on that statement? A I did.

Q You believed his statement that he was a certified public accountant? A Yes, sir, I did.

Q And you relied on that statement? A Yes, sir.

1527
CASE #3080

Q That he owned a house on president street, Brooklyn?

A That he was building a house.

Q You relied on that statement? A Yes, sir.

Q You would not have delivered this check to him unless you believed those statements? A That is right.

Q As to the ownership of the automobile, the ownership of the house in Brooklyn, the fact that he was a lawyer, and the fact that he was a certified public accountant?

A Yes, sir.

MR. MARKEWICH: I move that all that be stricken out, on the ground that the defendant is not charged with larceny by fraudulent pretenses, but charged with common law larceny by trick and device.

THE COURT: Well, the People may show that a trick and device was used, and the defendant obtained the money by color and aid of it -- by the reliance of the complainant on it.

Objection overruled. Exception;

BY MR. WHALEN:

Q You have no personal interest in this case now apart from your desire to know that justice is done? A No, sir.

THE COURT: I wanted to ask him about the writing on that check in the margin there. Did you have any talk with the defendant there about that?

A Yes, sir, I did.

Q Tell us what he said and what you said? A Why he told

CASE #3080

me that I should fill in there for what I am giving him the check, to show the man I am able to buy the furniture of and eight room apartment, and being that I had confidence in him I wrote it out.

BY MR. MARKEWICH:

Q You have no personal interest in this case, have you?

A Outside of seeing justice done.

Q What is that? A Outside of seeing justice done.

Q And getting your money back? A Well, I got it.

Q That was the primary moving force, wasn't it? A What?

Q Getting your money back was the principal reason for instituting this prosecution? A No, sir.

Q Now be truthful? A Both.

Q Did one have any greater weight in your mind than the other? A Even.

Q Justice and money to you is the same thing? A Mostly justice.

Q Well, it is a fact after you got your money you asked the District Attorney to drop the case against the defendant? A No, sir, I did not ask him.

Q Talk to the District Attorney about it? A No, sir.

Q Talk to him today? A Mr. Whalen, yes, sir.

Q Did you talk to him yesterday? A No, sir.

Q Well a week ago after the money was turned over to you by Mr. Rosenberg, didn't you, your brother and your attorney

152
CASE #3080

go in to see the District Attorney and ask to withdraw this case? A I did not.

Q That is a fact? A Yes, sir.

Q Did your attorney ask that? A Not that I know of.

Q In your presence? A No, sir, not in my presence.

Q Were you in there with your attorney to see the District Attorney? A I was.

Q What did you go in there for? A I wanted to find out when the trial was -- I don't remember really what I said.

Q You remember what took place six months ago -- you got your money back-- you are interested in justice, and you were up to see the District Attorney about it? A I had some new evidence that I had to give the District Attorney about the Marshal.

Q New evidence as to what? A Pertaining to the case.

Q You mean after you got your money you came to give the District Attorney new evidence against the defendant or favorable to the defendant? A I believe it was before; that was before.

Q Well the truth of the matter is, isn't it, that you testified before the Grand Jury and you testified in the Magistrates' Court? A I did not testify in the Magistrates' Court. He waived examination.

Q You testified before the Grand Jury? A Yes, sir.

Q You had given your statement to the District Attorney?
A Yes, sir.

CASE #3080

Q Before this case came to trial? A Yes, sir, I did.

Q You know what perjury means, do you not? A Yes, sir.

Q Did you entertain any fear that if you changed your story on the witness stand that you would be prosecuted for perjury? A I did.

Q Isn't that so? A Yes, sir.

Q And for that reason you are on the stand here telling the story that you told before the grand Jury? A Yes, sir.

Q Isn't that so? A That is right.

Q Notwithstanding the fact that you got your money back?
A Yes, sir.

(The Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Friday morning, January 6th, 1922 at 10.30 o'clock.)

CASE #3080

New York, January 6, 1922.

TRIAL RESUMED.

MR. MARKEWICH: May I recall the last witness for one or two questions?

THE COURT: Yes.

DAVID GERSTNER, a witness for the People recalled.

BY MR. MARKEWICH:

Q Mr. Gerstner did you get a receipt for the \$500 cash? A I did not.

Q Did you get a bill of sale from the defendant? A I did not.

Q Who are the members of your firm? A Myself.

Q Is your brother a member of your firm? A He was at one time.

Q How long ago? A About four years ago.

Q Your brother is still with you? A He is in my employ.

Q In your absence your brother signs checks as attorney? A Sometimes.

Q When was it that your brother and you dissolved?
A That was about around 1916 or 1917, around that time.

Q Was it about the time when your brother had trouble with his wife? A I think so; around that time.

Q She sued him for separation?

MR. WHALEN: I object to that.

CASE #3080

THE COURT: How is that material?

MR. MARKEWICH: I want to show, if your Honor please, that this witness for the purpose of defrauding the Court in an action between his brother and his sister-in-law gave out that his brother left the business so that he should not have to pay her any alimony, that he is not earning any money, in other words he was guilty of an unworthy act.

THE COURT: Well that is going rather far afield. Of course, a witness may be asked, in cross examination, anything tending to affect his credibility. Do you say you intend to ask him whether he made a false affidavit to the Court?

MR. MARKEWICH: Yes, sir.

THE COURT: Well you can ask him as to that, but that does not involve any question of separation.

BY MR. MARKWICH:

Q At any rate your brother had trouble with his wife about four years ago? A Yes, sir, about that time I don't remember the exact date.

Q He does not live with her now? A No, sir.

Q When you were partners together what was your brother's drawing account? A I don't remember.

Q The same as yours, you were equal partners? A About that.

Q Now what does he get? A He gets about thirty dollars

CASE #3080

a week.

MR. WHALEN: I object to all these details. He may ask the witness any particular question as to any dishonorable act he may have done.

THE COURT: You may ask him if he made a false affidavit as to certain matters.

BY MR. MARKEWICH:

Q Were you asked at any time to make an affidavit as to what your brother was earning? A Not that I remember.

Q Wouldn't you know a thing of that kind? A Not that I know of.

MORRIS GERSTNER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WHALEN:

Q Where do you live? A 227 Waverly Place.

Q You are a brother of David Gerstner? A Yes, sir.

Q Do you know this defendant, Harry Fishman? A Yes.

Q How long have you known him? A For the last six years.

Q You first met him as a bookkeeper in your place of business? A Yes, sir.

Q Did you see him in April, 1921? A The 28th, yes, sir.

Q The 28th of April? A Yes, sir.

Q Were you there when he came in that day? A I was in the back. My brother called me out to tell me that he is in; he asked me did I recognize him and I said no.

CASE #3080

Q Did you take part in the conversation with Harry Fishman that day? A Yes, sir.

Q State what you recall. A Yes, my brother called me in, and he said to me, "Do you know this fellow", did I recognize him, and I said, "He looks familiar but I can't place him". He says, "Don't you remember Harry fishman", he used to keep books for us across the street." I looked at him, and I said "yes, that's right, I remember him now." He says, "You are looking fine, what are you doing with yourself, how are you getting along", and I said "pretty fair, I can't kick, how are you getting along." He says to me, "I am well off", he says, "I am a lawyer, I am a C.P. A., I own a beautiful car, I am building a home in President street, Brooklyn, putting down twenty thousand dollars cash." This conversation went on that way, and he said to my brother, "How much did you invest in the building." My brother said about fifteen thousand dollars cash". He said, "Well, I guess you haven't much funds left in the bank after investing so much money", and my brother said, "I always carry five to ten thousand dollars in the bank." He said that pretty nice. We kept on talking then Fishman told my brother, while I was there, he said, "I got some very big clients, I can put a lot of work in your way. You will hear from me, some day." That is all. The next day my brother tells me he got a call from him.

Q Don't give the conversation with your brother only

CASE #3080

with Fishman. Did you see Fishman the next day? A Yes, sir.

Q What time did you see him that day? A About one o'clock I should judge.

Q He came into your place? A He came in and he says, "Come outside, boys, I will show you some car." We went out and sure enough it was a beauty, a private chauffeur there, and anybody would like that car.

Q What kind of a car was it? A I don't know anything about cars; it looked very pretty.

Q What was the style? A It was a beautiful red stripped car.

Q It was not a Ford was it? A No, sir, I should say not.

Q What style of a car do you say it was? A It looked like a Pierce-Arrow to me.

Q Do you remember the color of the car? A It had a red stripe set in.

Q What was the machine's color?

THE COURT: That is not material.

Q What was the conversation you had with Fishman at that time? A He came in and he said to my brother and myself, "I would like to speak with you private business. Have you got a place where we can speak and nobody hear it". "Sure go upstairs." We went upstairs and told the workmen to go down. We sat down and he says to my brother, "Listen I have got a client who is a well to do man, and would like to

CASE #3080

dispose of his furniture including a baby grand Steinway piano, an upright piano, eight Oriental rugs, and the finest twin bedroom suites you ever set eyes on. I think I can put over that because it is one of my clients who wants to dispose of it, but he don't want to be mixed up in this matter. Of course we got interested. He said it was his client, he kept the books for him and he knows exactly what he paid for it, that cost him \$18,000. He thinks he can buy it for \$2500 or \$3000 if he knows it is a legitimate buyer. Have you got something to show this man, have you got any checks with your firm name on". My brother said, "Yes". He said that is what I want. Then he says, he told us to come out again and put us in the car -- "I will tell you what I will do", he says, "you can make out a check to me and I will show this check that I have a legitimate buyer and I am sure I can do business with him, but you cannot see that man". We asked him where is this man and he said, "I will not tell you but I will take you there." So we said, "All right". He stopped us over in the bank. My brother goes in to make out the check and he says, "You better certify it, that will be better", and of course my brother says, "all right". While certifying it I said to Fishman, "What is this all about, what kind of a man is this", and he said "this man is living with a fast woman, his wife is in Europe and she is coming back and he don't want to be connected with it, he don't want to be known." That is the conversation I had with him. while my

CASE #3080

brother had been away.

MR. MARKEWICH: I ask that that be stricken out.

Q Your brother was not there? A No, sir, he was certifying the check.

THE COURT: I will allow what the defendant said to this witnesses.

BY MR. WHALEN:

Q What else? A After he certified the check he came back and he says, "I will tell you what I will do, you better draw five hundred dollars cash more, if two thousand is not enough the five hundred I will show to him that I have five hundred cash more that may chose the deal. My brother drew the five hundred, and my brother kept this two thousand cash in his pocket and the five hundred cash and we went in the car and he drove us up to the Biltmore Hotel. He says the man has a private room here, and has an apartment somewhere else, but he lives here temporarily. He shook us in the lobby and he says, "I will go and ring this fellow, and see if I can get him." He was away five or ten minutes and he comes back all sweated up, and he says, "I can't get a connection with him now because he is away, when he comes back, he says, he is not in now but he will be back at 8 o'clock. He says, "I will tell you what you do, Gerstner, give me the two thousand dollar check, and when he comes in I will show it to him. My brother says "Why should I give you

CASE # 3080

the two thousand dollar check", he says, "I don't know what will happen to you", he says, "What security have I got if anything happens to you. You got my certified check". My brother says, "I will tell you what to do, give me one of your personal checks, and I will give you this check, and when you come back and return me my check, I will give you your check back". He hesitated a bit, and he said, "All right, I will do that". He goes away again for five minutes, and he comes and says "Give me the five hundred dollars and my brother says "all right, if you give me one of your personal checks for five hundred dollars". So he gave him another five hundred dollar check. He says, "Well, I will tell you what you boys can do. You go back to the place of business, and at 8.30 tomorrow I will be back, I will show the man I have the money, and a legitimate buyer, and I will return your two thousand dollars check and the five hundred dollars in bills, the same numbers, you can take the numbers off them, and you return me mine when the deal will be closed, and I will do business with this man. So we went back and he was supposed to ring us that same night, at 8 o'clock, and let us know whether he had seen this party. We waited until 8 o'clock and he never rang us and of course we got --

Q I don't want any of your thoughts, tell us what you did. A In the meantime that same day he told us he was married to one of the ~~Forster's~~ daughters, and when we saw he did

CASE #3080

net ring us we took a walk up Broadway and sure enough at Lerber's there was that same beautiful car standing outside. My brother says to me, "You go inside and inquire".

Q Don't give us the conversation with your brother. State what conversation you had with Fishman? A I went in there and inquired for Fishman from the man who was on the floor, and he says to me, "You mean Counsellor Fishman" and I said "yes," he is in the back with his wife, he will be right out." My brother and myself and Fishman came right out with wife. My brother said, "Listen Fishman, you never called me up. Give me the money back and here is your check". He says, "You damned fool", he says, "do you think I am going to carry so much money with me on Broadway. I put it in my safe. Tomorrow morning I will be right down at 8.30, and give you your check, and the five hundred dollars, and you return me mine, don't be afraid", he says, "I am not out to do anybody." So my brother, or he says to me, "Will you ride me down to your place of business, Gerstner, I want to show my wife a parlor suite I liked, and if she likes it-- I rode him down and showed her the parlor suite, and he says to me "Put that away", he says, "don't sell it, that is mine". I said, "All right". He went away. The next morning at 8.30 he did not show up. So my brother says "Let us go to the bank."

Q Don't give the conversation with your brother. A The

CASE #3080

next morning at 8.30 he did not show up.

Q When did you see him again? A Saturday night.

Q What time? A About 6 o'clock.

Q Where? A In our place of business.

Q He came there? A Yes, sir.

Q What conversation did you have with him at that time?

A My brother says, "I want my money that I gave you last night, and I will return you your check." He says, "I will tell you another thing," he says, "You see what I deposited this morning". He takes out a bank book and showed me he deposited five thousand dollars, and he takes out another bank book, the City National Bank, and he says, "You know that is one of the biggest banks, no small depositor can deposit money there. You don't have to worry, and another thing I will tell you what I will do with you, I will take you uptown to a friend, and he will return you the money if you are afraid." We took a taxi and rode to Edgecombe avenue and 1 55th street, and inquired of the elevator man at that house whether Mr. Ryan was up stairs. He told Mr. Fishman that Mr. Ryan is out of town, he won't be in. So we rode back downtown.

Q Then did you see Fishman on Monday? A Monday morning we went down and called up his bank, and he told my brother, "Listen over the telephone to let him hear how much balance he has in the bank. He told my brother "Don't put

CASE # 3080

the check through today, put it through tomorrow, on Tuesday, and my brother put the check through, the five hundred dollar check.

Q When did you see Fishman next? A I don't recollect what day it was.

Q Was it that week? A Yes, sir, that week.

Q Where? A I think he called up the H. Storage house to wait for the furniture to come.

Q That is where? A 37th street and 8th avenue.

Q You went there with whom? A With my brother.

Q Did you see Fishman there? A Yes, sir, he came after we were there.

Q What time did you see him again that day? A It was 10 o'clock, we had an appointment.

Q You spent the whole day? A Yes, sir, the whole day over on 8th avenue waiting for the trucks to come down. He also took my brother uptown to where the trucks were standing outside of a building, I was not there. I kept my place of business open until 8 o'clock in the evening, with my men waiting for that furniture.

Q When did you see him again after that? A After that that's right, he said he had some papers to get in the court and he must take us down to Chambers street. We had an appointment with him one morning at 51 Chambers street across the way from the courthouse.

Q Do you remember the day you were there? A I think

1542
CASE #3080

it was the 12th of May if I am not mistaken.

Q May 12th? A Yes, sir.

Q You had not seen Fishman in between the time you saw him at the storage house in West 37th street on May 12th?

A No, sir.

Q Now what did he say on May 12th when you met him?

A He says he has got to get some papers from an attachment on the furniture, he has got to get papers to move it. In the meantime the Marshal passed, and he came back with the Marshal, and he says, "Meet Mr. Greenblat, Gerstner Brothers." We shook hands and he says to the Marshal, "Don't forget, don't leave your office, I have got some work for you. The Marshal left. He said, "All right boys we will go to the courthouse." He took us inside the courthouse and it was Greenberg against Greenberg, and I said, "What is this, partners, what kind of a trial is this." He says, "It is nothing, I will tell you what you do." He took me over and he said, "You call up Orchard 5, and tell Greenblat not to leave his office." Meantime when I went out to call Greenblat Mr. Rosenberg happened to come into the court room, and he says "Where are you fellows sitting," and I said "In that part over there." So when I came back, after called Greenblat up, Fishman was gone, and when he came back, Rosenberg said to him, "What kind of a game are you up to, what are you, a counsellor", and he said he was and Mr. Rosenberg said, "Do you know there are less things than that a

1543
CASE # 3080

lawyer is broke for", I don't know what he answered. Mr. Rosenberg said "If you don't bring that money by 4 o'clock we will have you arrested." At 4 o'clock he rings up.

Q Where were you? A In Rosenberg's office. Mr. Rosenberg told us this fellow was a thief.

MR. MARKEWICH: I move that that be stricken out.

THE COURT: Strike it out.

BY MR. WHALEN:

Q Was the defendant there then? A It was on the telephone. He called up at 4 o'clock.

Q Now at 4 o'clock you and your brother were in Rosenberg's office? A Yes, sir.

Q Did Fishman talk to you? A No, sir.

Q Leave out that conversation. When did you talk with Fishman again? A Well, I have not seen him after that.

Q You never saw him again? A No, sir, until I caught him myself.

Q Now when was the day that you saw him again? A The day, that Saturday after I caught him, he was walking out of the building, and on that big same automobile, I took him off the running board of the automobile, and I says, "Now, I got you, come to the Judge." He says, "Come over to Brooklyn, and I will give you the money", and I said, "No you will tell it to the Judge."

CASE #3080

Q Do you know the date? A I know it was a very hot day; I know it was a Saturday afternoon.

Q That was the day he was arrested in this case?

A Yes, sir.

Q Where did you go with him after that? A I walked a block and a half with him and I met an officer, and I asked the officer will he assist me to bring this man down to the station house, and he did.

Q You took him to the Mercer street station? A Yes.

Q What did Fishman say to you at that time? A He said to me "come over to Brooklyn and I will give you your money." I says, "I don't want no money, tell that to the Judge, I don't want any money, I want you to come down to the station house."

Q After that you didn't see him any more -- you had no further conversation with him? A No, sir, no conversation with him whatever.

Q I show you People's Exhibit 1, Will you examine that and say if you ever saw it before? A Yes, sir.

Q When did you see it first? A That check saw in the bank after my brother certified it.

Q That was on April 29th? A Yes, sir.

Q Is that the check which your brother turned over to Fishman at the Biltmore Hotel? A Yes, sir.

CROSS EXAMINATION BY MR. MARKEWICH:

Q Do you remember the five hundred dollars cash you turned over to the defendant? A Yes, sir.

1545
CASE #3080

Q Did you get a receipt for that? A I didn't get any receipt; I didn't turn any money over.

Q Did you see your brother get a receipt for that?
A No, sir.

Q You were present when the check was turned over?
A Yes, sir.

Q I suppose Rosenberg came to the Court there by accident? A What court?

Q That court there in the Supreme Court? A That was no accident.

Q He came there by appointment with you? A My brother told him, surely.

Q He told him you would be in the Supreme Court there? A We didn't tell him anything; my brother just told him the story.

Q You told him before hand? A Yes, sir.

Q He was there pursuant to an appointment? A Yes, sir.

Q Did you talk to your brother about this case last night or this morning? A No, sir; he went home and I went home.

Q You don't mean to say you didn't ask your brother what he testified to on the stand? A No, sir, I didn't have to ask him; I know what he said.

Q I am asking you whether you had spoken to your brother about this case? A Yes, sir, I have we are brothers and we can talk.

Q About this case? A Well we passed a few words.

CASE #3080

Q Did he tell you what he testified to? A No, sir.

Q Did you ask him what he testified to? A No.

Q So as to check up the story? A No, sir.

Q That you would tell on the stand? A No, sir.

Q Now the very first time that you met Fishman you say was on the 28th of April, 1921? A Yes, sir.

Q You hadn't seen him before that for about five or six years? A Yes, sir.

Q Then you saw him the next day? A Yes, sir.

Q He spoke to you about furniture? A Yes, sir, he spoke to my brother and myself.

Q Did he tell you who the party was? A No, sir.

Q Did he tell you where he lived? A No, sir.

Q Did he tell you where his apartment was? A No, sir.

Q Did it ever occur to you to tell your brother when he went to see the furniture that the defendant had to have a check made out to your brother's order? A We didn't go to see no furniture.

Q You were supposed to go there and see the furniture?
A He was supposed to take us; all he wanted to do was to show the man he had a legitimate buyer.

Q You wanted the furniture? A We didn't see any.

Q He wanted the furniture? A We would have bought it if we saw it.

Q You wanted to see the furniture? A We want a lot of things.

CASE #3080

Q You would not buy it, would you? A If I had seen it.

Q If you had seen the furniture? A Yes, sir.

Q So up to that time, not having seen the furniture, you did not know what it was worth, did you? A How should I know if I don't see anything.

Q Please answer the question and don't argue with me, Mr. Witness.

THE COURT: If any rebuke is necessary I will do it. I am not going to have a witness insulted and bullied by counsel.

MR. MARKEWICH: I beg your Honor's pardon.

Q You wanted to buy the furniture? A Yes, sir, if I saw it.

Q Described to you by this defendant? A Yes, sir.

Q You had talks with your brother about the furniture? A I didn't talk about any furniture with my brother.

Q Your brother had talked with the defendant and you were present also and took part in the conversation? A Yes.

Q Then Fishman you say had told you to make out a check? A No, sir, he didn't tell me anything; I have no right to make out a check.

Q He told your brother? A Yes, sir.

Q You were present at the time that he did that? A Yes

Q Was it Fishman who suggested that the check be made out to his order? A Yes, sir.

CASE #3080

Q That was before you had seen any furniture. Did it occur to you at that time that it was rather strange that a check should be made out th the order of Fishman? A No, sir.

Q That did not occur to you at all? A No, sir, not after he told me he was a counsellor.

Q That did not occur to you at all? A No, sir.

Q You never had any business with a lawyer before in bying furniture? A With a lawyer-- I wasn,t afraid to do business with him.

Q You never did business before with a lawyer in purchasing furniture, did you? A I don,t recollect.

Q You never had a transaction of this kind having made out a check to a lawyer for furniture? A Not that I can remember.

Q This defendant, after the check was made out went to the bank with you and had the check certified? A The check was certified at the same time that the automobile stood outside the first day we went to the Biltmore.

Q Who went to the bank? A My brother, myself and Fishman.

Q After the check was certified there was five hundred dollars cash drawn? A Yes, sir.

Q That was done simultaneously, at the same time?
A After he certified the check he told him to draw five hundred dollars more cash.

Q What time was it you arrived at the bank? A It must

1549
CASE #3080

have been about 1.30 or 2 o'clock, I don't recollect exactly to the minute.

Q Was it three o'clock? A No, sir.

Q Now then you went with the defendant where?

A He took us in the park. I asked him where he was going and he said to the Biltmore Hotel.

Q Whom did you inquire for at the Biltmore Hotel?

A We had nobody to inquire for; he told us to sit down and so we sat down.

Q You were going to see the furniture? A He was going to see the man to show him he had a legitimate buyer -- no furniture at all.

Q Where were you going? A Where he was taking us, we were going and the car was taking us.

Q Did you inquire of him? A He went with us, and he says, "I can't tell you now, I can tell you after the man agrees.

Q Where did you go after you left the Biltmore?

A Back to our place of business. He said we should not leave the place of business until he rings us at 8 o'clock.

Q What did he say at the Biltmore? A He said, "I will see this man, and I will tell you whether I can pull this deal off after I show him I had a legitimate buyer.

Q Did he tell you where the man was? A He said he left the Biltmore Hotel temporarily.

Q Did he give you his name? A No, sir.

CASE #3080

Q You waited in your place until 8 o'clock that night?

A Yes, sir.

Q What was the usual closing time of your place of business? A 6 o'clock.

Q Didn't it occur to you that there was something strange about this transaction? A If you were in my place you would feel the same way.

Q Will you please answer my question. A It looked kind of strange.

Q You are intelligent. Please answer my question.

MR. MARKEWICH: I ask your Honor to admonish the witness to answer the question.

THE COURT: Yes. repeat the question.

Q (Question repeated as follows: Didn't it occur to you there was something strange about this transaction?) A Yes, sir; that he did not call up.

Q Now what did you do? A My brother said "Let us talk a walk up on Broadway; he told us something, he was married to a daughter or a niece, let us take a walk and inquire and sure enough --

Q A daughter or niece you didn't know which? A I don't recollect it; he said he was attached to the Lorber family, the restaurat man on Broadway. We rode up there and sure, as we got there, that big car stood there.

Q Now I assume you are telling the truth to the jury?

A Yes, sir.

0800-#3080
CASE #3080

Q Isn't it a fact that it was Mrs. Fishman who told you she had an appointment with her husband the following day at Lorber's Restaurant, at night? A I didn't know who his wife was; never saw her in my life.

Q Never saw her? A No, sir.

Q Did you ever see this lady (pointing to a woman in the court room) A One time.

Q Weren't you over at her home? A One time.

Q Weren't you over at her house? A I don't know what house you mean-- one time I was here.

Q 133, I think it is, St. James Place, Brooklyn?

A Yes, sir.

Q Were you there on the 29th day of April, 1921?

A When?

Q I said the 29th day of April, 1921? A No, sir.

Q Weren't you there to look at the furniture in her home? A No, sir.

Q Didn't she tell you on that day she had an appointment with her husband at Lorber's restaurant? A Tell me?

Q Yes, you? A No, sir.

Q Weren't you at her home after that about ten or twelve times alone or with your brother? A I was there one time with a summons, and a constable to assist me in serving the summons; that is the one time I was there.

Q Now did you on that night inquire at Lorber's restaurant whether Fishman was married to Lorber's sister or

CASE #3080

niece? A No, sir.

Q How long did you remain at Lorber's restaurant?

A We waited about five minutes outside, not inside, we waited outside.

Q How long were you there? A About a minute talking to the man on the floor and asking him whether he-- I saw his car and I figured sure he was there.

Q You saw Fishman and Mrs. Fishman? A Yes, sir, coming out; we were outside.

Q Mr. and Mrs. Fishman both? A Yes, sir.

Q So it was twice that you had seen Mrs. Fishman now. You saw her at one time at Lorber's restaurant? A You asked me if I was in her home.

Q What did the defendant tell you at Lorber's? A My brother said, why he didn't call him up, "You better give me the money. You return the check, give me what is coming to me and we will call it off." He said, "You damned fool do you think I carry all that money down with me on Broadway, I got it in the safe, I will be down tomorrow morning at 8.30, I will keep the check myself and when the man agrees to sell we will do business.

Q Was the man there that morning? A No, sir.

Q Did the defendant keep his word? A No, sir.

Q The matter became stranger to you? A A little bit.

Q You began to realize there was something wrong about the transaction? A Yes, sir.

CASE #3080

Q What did you do thereafter? A We called up his office and we couldn't get no connection.

Q Then what did you do? A Then Fishman rang up, and he said he would be over at 6 o'clock.

Q When was that? A The same Saturday.

Q What did you say to him over the wire? A I didn't speak to him. My brother spoke to him; I never spoke to him on the wire.

Q Then when did you see Fishman after that? A That Saturday night.

Q Where? A In our place of business.

Q What did he say to you? A He started to tell a lot of stories. He says, "If you are afraid of your money" to my brother, "come right uptown to a friend of mine, I will get you your money, and we will call it square or call it off." My brother says "all right."

Q The it occurred to you that the entire transaction did not look straight? A It didn't look straight to me just then, but he convinced us again with his sweet talk.

Q Do you mean to say that after all of this had taken place you were again convinced by fishman that it was straight? A Yes, sir.

Q Did you say to him, "Please take us to see the furniture. Never mind all this talk? Did you say that to him? A I said either give us the money or let us see where the furniture is", and he said, "I can't today."

CASE # 3080

Q Still you were convinced by him, by what you call his sweet talk, that it was all right, it was a straight transaction? A Yes, sir after he showed us the bank book, the City National Bank, and the other bank he deposited in.

Q He told you not to deposit the money until Monday?

A Yes, sir, he told my brother not to deposit the check until Tuesday.

Q You got the checks Saturday morning from the defendant? A Friday, before, Friday up in the Biltmore.

Q The Friday after you got the check from the defendant ?

A I got no check from him at all.

Q When did your brother get the check from him?

A The Friday after my brother turned his checks over he turned over the checks.

Q After your brother gave the defendant his checks and the cash the defendant gave to him two checks? A That is right.

Q That was Friday? A Yes, sir.

Q Saturday you did not deposit them? A No, sir; it was after twelve o'clock.

Q You got the checks Friday? A My brother did not deposit them I do not know why.

Q He did not deposit them? A He did not put them through.

Q Did you inquire at the bank if there was money enough to meet those checks? A My brother, yes, his bank called

CASE #3080

up his bank and he told him he had already put that check through and he drew on it; that we could not stop it. My brother wanted to stop that certified check when he did not show up.

Q Notwithstanding the fact that the defendant had used your check you still thought that the transaction was straight, is that right? A What was the use of thinking; we didn't get the money--

Q Is that what you mean to convey to the jury? A I thought it was straight after he told us the nice story.

Q You are in business how long? A Six years.

Q Your brother is a licensed auctioneer? A Yes, sir.

Q Are you too, by the way? A No, sir.

Q You are in partnership with your brother? A I was before I went to the Army.; before I left for France I had been.

Q You had been for how long? A About three years.

Q When did you become a partner of your brother?

A Started in business 11 years ago together.

Q As partners? A yes, sir, as partners.

Q You had invested in the business how much? A I don't recollect what I invested.

MR. WHALEN: I object to that. I don't see how that is material.

THE WITNESS: I don't remember. We started very small.

THE COURT: Are you leading up to that same matter?

1556
CASE #3080

MR. MARKEWICH: yes, sir.

BY MR. MARKEWICH:

Q How much did you invest in the business? A I don't recollect; we started in the grocery business.

Q How long were you together in the grocery business?

A About three and a half years; then we went into the furniture business.

Q About eight years before you went in the furniture business? A No, sir about six years ago.

Q After you left the grocery business how much money did you have? A About two thousand dollara piece.

Q Between you? A Yes, sir.

Q You went into the furniture business where? A On University place and 13th street.

Q Each of you as equal partners? A No, sir, there were three of us.

Q Three brothers? A No, sir, a stranger and three brothers.

Q Your brother and yourself and who else? A Another partner.

Q What is his name? A Fritzer.

Q When did he get out of it? A About 90 days.

Q 90 days after he got in? A Yes, sir.

Q You remained equal partners? A Yes, sir.

Q Your brother and yourself? A Yes, sir.

Q You remained in business until when? A About two

CASE #3080

years before I went into the Army.

Q Two years before you went into the Army? A Yes, sir.

Q So it was not because you went into the Army that you dissolved business with your brother? A No, sir; not just because of that.

Q Two years before that? A Yes, sir.

Q Did you dissolve your business? A No, sir.

Q The partnership? A No, sir. Just the partnership

Q Did you dissolve it? A Yes, sir.

Q Did you go to a lawyer? A Yes, sir.

Q Who is your lawyer? A Mr. Rosenberg.

Q Samuel Rosenberg? A Yes, sir.

Q An inventory taken there as to how much the business was worth?

THE COURT: I think you are going into too much detail.

Q How much money did you get out of that business when you dissolved? A I don't remember what I got out of it.

Q At that time were you living together with your wife? A No, sir.

Q When was it that you left your wife? A What has that got to do with this case. I would not answer those questions.

MR. WHALEN: I object to the question. I do not think it is proper or material.

THE COURT: You may put the same question to him

CASE #3080

as to whether he made any false affidavit in an action. That is the only point.

BY MR. MARKEWICH:

Q Did you abandon your wife? A No, sir.

Q Any children? A No, sir.

Q Are you paying your wife alimony? A No, sir. She deserted me five years ago.

Q Sued for separation? A No, sir.

MR. WHALEN: I object to that.

THE COURT: Objection sustained.

MR. WHALEN: I don't think that has anything to do with this case, and it is wasting time.

Q It was about the same time you dissolved with your brother that your wife left you or you left your wife?

A My wife left before;

Q How long before? A Well about six months.

Q Six months before? A Yes, sir.

Q That you remained in your brother's business? A I remained as a workman, yes, sir.

Q You were getting how much a week from your brother?

A \$35 a week.

Q Your brother says you are getting \$30. He is mistaken, I suppose? A Well I always make a dollar or so extra, about \$32, 35.

Q You have a power of attorney from him to sign checks?

A Yes, sir, small checks.

CASE #3080

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CASE #3080

Q Well, is there any limit on any checks that you sign? A Well, I never sign any big checks at all only in case freight comes in.

Q Your power of attorney is general to sign the checks? A Yes, sir, but I did not sign a big check.

Q Well, as a matter of fact when you saw as the dick-er went on with the defendant that the transaction was crooked did you go to the police court or to the District Attorney's office? A Not until after Mr. Rosenberg had spoken to him in the Court and after he had us in that divorce court.

Q When for the first time did it occur to you that the transaction was crooked? A After Rosenberg spoke to him when I was there.

Q On May 12th? A Yes, sir, May 12th.

Q So for about two weeks you had believed that the transaction was all right and that you would still get the furniture notwithstanding the fact -- A Not get it, we will see it.

Q That was notwithstanding the fact that the checks that you had received from the defendant? A I did not receive any check.

Q Your brother had received them? A He received them.

Q From the defendant were returned no good? A That is right.

CASE #3080

Q It was not until Mr. Rosenberg, your uncle --

A Not my uncle.

Q Your brother's uncle? A Yes, sir, through marriage.

Q Had spoken to the defendant at the court house that you, for the first time, believed that the transaction was crooked? A I realized it was real crooked then.

Q You realized that it was real crooked? A Yes, sir.

Q When you realized it was real crooked for the first time did you then go to a detective or a police officer? A I went down to the police station to get a summons.

Q When? A I don't remember the date, may be a day or two after.

Q What court? A On Second avenue and Second street somewheres.

Q Did you apply for a warrant? A We got a summons not a warrant.

Q Did you apply for a warrant? A No, I didn't apply for anything.

Q You didn't get a warrant? A No, sir, but a summons.

Q When for the first time did you place the defendant under arrest? A That Saturday when I caught him.

Q When was that? A I don't recollect the date.

Q What month was it? A I think it was the month of June.

Q The complaint in the Magistrates Court says it

CASE # 3080

1562

was the 16th day of June, 1921, when the complaint was made, would you say that was the date you placed the defendant under arrest? A It was on a Saturday; I don't remember the date.

Q About the middle of June, was it? A Around in June sometime.

Q So that from the 12th of May when you had discovered for the first time, that the transaction was crooked you waited until the 16th of June to place the defendant under arrest? A I did not see him; I could not catch him.

Q You were at the defendant's home a number of times? A One time.

Q You were at the defendant's office on Broadway? A A couple of times looking for him.

Q And the fact is the defendant had seen you from time to time? A He did not see me after the 12th.

Q You say for about six years or about five years this defendant had kept books for you and you had not seen him until the 28th of April, 1921? A Yes, sir.

Q That is true? A Yes, sir.

Q Isn't it a fact that you have consulted the defendant on a number of occasions about making out income tax returns? A Me? I had no occasion to consult him; I never knew where he was.

Q Isn't it a fact that you came to him a number of times and told him about the differences with your wife?

A Him?

CASE # 3080

Q Yes. A I never saw him; I did not recognize him when I did see him.

Q And you said you made some arrangements with your brother about drawing money and that you wanted him to open a set of books to cover up with the withdrawals?

MR. WHALEN: I object to that. This witness said he had never seen the man.

A No, sir.

Q And isn't it a fact that you told him on a number of occasions you were drawing large sums of money cash from the bank? A I was?

Q Yes, you were, from your place of business, your business? A I never drew any--

Q You wanted books to cover up those payments to you? A No, sir, you can look me up, and if you can prove that all right.

MR. WHALEN: I object to that as insinuations in the form of questions going before the jury.

Objection overruled.

A No, sir.

Q So that when the defendant said to you at the time you held on to him on the day you placed him under arrest, "Come with me to Brooklyn, I will give you the money" you said to him, "You will have to tell that to the Judge"? A Yes, sir; it was those words I used.

Q At that time the defendant was not in the custody

CASE #3080

of a police officer, was he? A No, sir, not yet.

Q You didn't want the money at that time? A I had no occasion to get any money; it wasn't mine; it was my brother's.

Q You were acting for your brother there? A I was actint to catch him.

Q You were acting not as a detective, but interested in your brother? A As a citizen that is all.

Q As a citizen? A Yes, sir.

Q And as a citizen you were interested in wanting this man punished? A Why, sure, yes, sir.

Q You didn't care about the money, did you? A It wasn't mine. but I care a whole lot for my brother's money, certainly.

Q You wanted to panish him because he had committed a wrong at that time? A Yes, sir.

Q And for that reason I assume you told him to tell it to the Judge? A Yes, sir. Q "I don,t want any money"
A Yes, sir; that is right.

Q Between the time when the defendant had taken that money from your brother until the time you placed him under arrest you were anxious to get the money, weren't you?
A Anxious but he won,t give it to us.

Q You were looking for the money? A How could we look for it.

Q You wanted the money? A Yes, sir, we asked him.

CASE #3080

Q You asked him on a number of occasions? A Yes, sir.

Q And you said if he didn't give you the money you would place him under arrest? A That is right.

Q Now after you placed him under arrest he was held in the Magistrates' Court, and you didn't care anything about the money you wanted him punished, is that right?

A My brother wanted the money and punishment.

Q How many times did you see the defendant after that? A I don't recall.

Q After that arrest? A I saw him in the Magistrates Court, and where I am going to ~~watch~~ ^{be at} ~~be at~~ ^{be at} Broadway in the restaurant.

THE COURT: Answer the questions. He asked you if you saw him in the Magistrates' Court.

THE WITNESS: yes, sir, and in the restaurant.

BY MR. MARKEWICH:

Q Where? A Right near the Magistrates' Court.

Q How soon after the arrest was that? A I think the second time he appeared in court.

Q Thereafter did you see the defendant at any place?
A A couple of times.

Q Did you talk to him? A He tried to talk to me; I would not speak to him.

Q Didn't you as a matter of fact talk to him about getting the money from him? A I had no occasion to talk to him about getting any money.

CASE # 3080

Q What did you talk to him about when you saw him?

A I didn't have anything to talk to him about.

BY THE COURT:

Q What was said between you when you saw him? A Absolutely nothing.

BY MR. MARKEWICH:

Q Did you see this man in the street? A I saw him in the court there.

Q I mean outside of the court? A I never spoke to him outside of court after that.

Q Did you see him outside of the court? A Yes, sir, he stood in front of the court house with his lawyer.

Q How long after? A After the first time, the time he was in the Magistrates' Court.

Q And after that? A After that I never saw him.

Q You never saw him? A No, sir.

Q At any time? A Only in court.

Q You never saw him anywhere? A I did, when he used to see my brother any myself-- he was up to my uncle's office.

Q Please don't look at your brother? A My brother and myself were in my uncle's office, and he happened to come in, and my uncle would not talk to him unless his lawyer was there with him; I don't know what he wanted.

Q Well what did you find out? A I don't know what he

CASE #3080

wanted.

Q Well what did you find out? A I don't know what he wanted.

Q Did your uncle tell you what he wanted? A No, sir, because he spoke to Mr. Silberman.

Q By Mr. Silberman you mean Mr. Fischman's attorney?

A Yes, sir.

Q You speak of your uncle and you mean Mr. Rosenberg?

A Yes, sir.

Q Well, did you thereafter talk to Mr. Rosenberg about the case? A No, sir, just had to go to court, we had one little call.

Q Did you know that Mr. Rosenberg had received an installment from this defendant the sum of \$900? A No, sir.

Q Weren't you told that at all? A No, sir.

Q Did your brother tell you that? A No, sir.

Q Rosenberg tell you that? A No, sir, ~~only~~ the only time I knew was --

Q You knew nothing about it? A No, sir the only time I knew was --

Q You did know when the balance of \$1100 was paid?

A The balance I don't know nothing about.

Q You knew when the \$2,000 was paid? A Turned over to my brother, yes, sir.

Q Turned over by whom? A By Mr. Rosenberg to my brother.

CASE #3080

Q Where? A After we came from the court house here we went over to his office.

Q Where? A In Rosenberg's office.

Q How was it turned over to your brother? A I don't know; I didn't look.

Q By cash or check? A One check I think.

Q How much? A \$1,000.

Q Whose check? A Rosenberg's check.

Q And the balance? A The balance was cash.

Q Wasn't it the cash that was received in this court room? A I did not see any money turned over anywhere; I didn't know nothing about that until Tuesday.

Q How many times had you been in the District Attorney's office before that? A We were up one time, with my brother.

Q How long before your brother had received the check from Rosenberg was that? A What is that?

Q How long before your brother had received the check and cash from Rosenberg were you up in the District Attorney's office? A I think it was after-- I think it was one time we were up after that to tell Mr. Whalen that Mr. Greenblat, the Marshal, was not subpoenaed; that is all we said to Mr. Whalen.

Q When was that? A That was Monday, I don't recollect what date it was.

Q Was it before or after you got your money? A I

CASE # 3080

didn't get any money.

Q I am talking about your brother? A I don't recollect whether it was the day before or the day after.

Q Were you up at the District Attorney's office before that time? A One time Mr. Whalen called our office and told us to come up he would like to see us.

Q You were up? A That is the first time.

Q You told him about the case? A He wanted to see what it was about.

Q Did you tell him at that time you wanted to get your money back? A I didn't tell him anything of the kind; we just told the case.

Q After you got your money back did you tell Whalen about it? A Rosenberg and Silberman went to Mr. Whalen and told him and told Judge McIntyre also that they got the money.

Q It was after you got the money? A I didn't get any money.

Q Your brother got it? A When Rosenberg had the money in his pocket they went to the Judge.

Q After Rosenberg got the money you went to Mr. Whalen? A No, sir that was the same morning, Rosenberg got the money, they went with Mr. Silberman to Mr. Whalen and then they went to the Judge to tell him they got the money.

Q Do you know what that money was for, why that money was given by the defendant to Mr. Rosenberg? A Why--

CASE #3080

1570

MR. WHALEN: I object to that question.

THE COURT: I will allow him to state if he knows.

A It was made restitution before he went to trial; that is what the money was given for.

Q That is it? A Yes, sir.

Q And for no other reason? A No, sir, no other reason that I know of.

RE DIRECT EXAMINATION BY MR. WHALEN:

Q You were asked Mr. Gerstner, whether you saw your brother receive or get any receipt for the five hundred dollars cash that was paid on April 29th. Did he get anything for the five hundred dollars cash? A He got a check.

Q He got a check? A Yes, sir.

Q Now you were asked if it did not appear strange to you on Saturday night, April 30th? A Sure it did.

Q And you were asked if this transaction did not appear strange to you at that time. Didn't it appear strange to you? A It did appear strange.

Q That is Saturday, April 30th? A Yes, sir.

Q What was it that gave you renewed confidence in the defendant at that time? A When he took his two bank books out, and showed us that he had a deposit in the National City Bank, and he says, "That is one of the biggest banks in New York, small men can't get in there", and another bank where he deposited five thousand dollars.

Q Did you see Mrs. Fishman, the defendant's wife in his

CASE # 3080

home in Brooklyn? A One time.

Q Once? A Yes, sir.

Q You had a summons with you at that time? A Yes, sir with an officer.

Q Did you go inside the house? A With the Officer and the detective they came up and grabbed my brother thinking he was Fishman.

Q Now you saw Mrs. Fishman at Lorber's restaurant? A Yes, sir.

Q Those are the only times you ever saw her? A Those are the only times.

Q Do you remember May 12th when you were in the Supreme Court that Fishman showed you the Law Journal? A Yes.

Q Will you state what he said about the Law Journal? A He said you see "that is where I get the papers." He knows more law than what I do. I don't know anything about law. He says Fishman against so and so, "I am going to get the papers right here." He walked over to the clerk and asked something, and he says, "I will have to wait awhile." That was in the divorce court.

Q There was a case marked in the Law Journal Fishman against somebody else? A That is right.

Q Did he say that was his case? A Yes, sir.

Q Did you ask Fishman at that time whether or not he was a lawyer? A After when?

MR. MARKEWICH: I object to that.

1572
CASE # 3080

A I never spoke to him after that.

SAMUEL ROSENBERG, a witness called on behalf of the People, being duly sworn, testified as follows:
(The witness states that he lives at 257 Hooper street, Brooklyn.)

DIRECT EXAMINATION BY MR. WHALEN:

Q You are an attorney at law, Mr. Rosenberg? A Yes,

Q Duly admitted to practice in New York State? A Yes.

Q How long have you been a lawyer? A 20 years, over 20 years.

Q You have practiced in New York County? A Yes, sir.

Q Do you know this defendant Harry Fishman? A I do, sir.

Q Have you known him for sometime, when did you first meet him? A I first met him on the 12th of May, 1921.

Q Never knew him before that time? A No, sir.

Q Where did you meet him that day? A In the County Court House, New York County.

Q Will you please state to the jury what the conversation with the defendant was? A Well, I came into the corridor of the Supreme Court, which is on the first floor where the various parts are situated, and I saw Morris Gerstner walking out from a part facing me. I cannot state what he said to me, of course.

Q Omit any conversation? A He directed me to a certain part where I could meet Fishman and David Gerstner. I go into

1573
CASE #3080

that part--

Q What was that? A Special term, Part 3 of the Supreme Court.

Q Did you see Fishman there? A When I entered there was sitting in the last seat at the entrance of the court house or room -- when I opened the door he immediately turned around and looked at me and passed me-- he passed me.

Q You mean Fishman? A Yes, sir.

Q You mean he walked out? A Yes, sir, and then I--

Q Did you see him later? A Yes, sir, then he came back. He came back and Mr. David Gerstner said "this is Fishman". I shook hands with him, and I said, "What is this all about." He said, "Well I am getting the furniture. I am just getting these papers out" or words to that effect, I can't remember exactly. I said, what papers, and he said I am getting an order vacated, some restraining order-- restraining order about some furniture that he wants to take out. I said who signed that order, and he said Judge Callaghan signed the order. I said you as a lawyer ought to know that there is no such Judge as Callaghan in New York County. Well, he said then it is Cohalan. I said, "It takes a Judge in Part 2, ex parte to sign a restraining order and Judge Cohalan is not sitting in Part 2, I think he is in trial term, I believe he was at that time in Part 18, I am not sure. Well, he said, "It is judge Callahan". I said "We

1574
CASE # 3080

have a Callahan in the City Court", and he says, "No, it is ^{doing} the Supreme Court." Well, I said what is the Marshal ^{here} Dave has been telling me about this -- all four of us were standing together "How can a Marshal replevin merchandise-- a marshal connected with the Municipal Court. You know that the Municipal Court has only jurisdiction of a thousand dollars, and the furniture in this case was worth more than three or four thousand dollars, I take it." Well, he says, what is the difference, I will get the furniture, I am giving a bond, I am going to get a bond, I am going to get a surety company bond, I am going to ^{give} ~~get~~ another bond to the person who is restrained to indemnify him so that I can release the furniture. I listened patiently and said, "what you did in this matter", I said, "For less things that what you did in this matter, much less lawyers have been disbarred. Now, you realize you are handling fire in this case, and these stories, I don't believe a word of them. My opinion of this transaction is this", he wanted to interrupt me but I said "Wait I will tell you my opinion. You needed money badly for some purpose, and you thought of the idea of getting that money from these boys and you went there and got their money. Now you are using it and you are unable to return it, and for that reason you are giving these various stories in order to get delay. Now, I will tell you right now I will wait until four o'clock to get that money back, and after

CASE #3080

that we will do what we think we ought to do". By that Mr. Fishman left me and Gerstner, David and Morris went to my office 309 Broadway. That must have been about a little after 12 o'clock. At 4 o'clock or a little after 4 o'clock while the Gerstners were still in my office Mr. Fishman called me up, and he said that he is in the National Surety Company's office preparing a bond so that he can indemnify and release the furniture. I said to him, "I got nothing to do with that, we want that money back." I said a great many things over the telephone that I don't care to say unless counsel wishes it.

Q When did you next see Fishman? A The next I saw Fishman was in the police precinct in Mercer street in June when he was arrested.

Q You never saw him between those two dates? A No.

Q Between May 12th? A No, sir, I did not see him; he would call up my office.

Q Did you talk to him over the phone between those two dates? A I believe I did, once or twice.

Q Did you call his office? A Call up his office? I never did. Now I want to correct that. There was a call from his office to my office, and I had here the date and the time. It was 711, I think it was Worth. I did not know what that 711 Worth was, there was no name and I then called up his office and he was not in.

Q Now did you receive some money on behalf of the Gerst-

CASE #3080

ners from Fishman or from Fishman's lawyer? A Yes, sir, I did from Mr. Rosenberg.

Q When did you receive that money? A I received it in three payments, I think it was three, and the last was, this case was set down for the 27th of December, which was Tuesday, and the last \$1100 I got Monday night the 26th of December. Mr. Silberman gave it to me.

Q Did you receive other payments from Mr. Silberman?
A Yes, sir.

Q In all you received how much? A \$2,000.
Do you remember

Q When you received those other payments, the \$900?
A I could not tell you exactly the month for this reason, Mr. Whalen, that there was so many promises made of certain dates that he was going to pay, but he did not pay it-- I know it was three payments.

Q Can you state in how many installments you received it? A I believe three.

Q Three altogether? A Yes, sir; I may be wrong.

Q When did you pay this money to David Gerstner?
A The case was on here the 27th and it was adjourned until the 5th-- that same day at my office.

Q Before turning it over you came in here and reported the matter to Judge McIntyre? A Before I turned the money over I came to see you and Mr. Silberman with you and told you that I had received full restitution. I then came to Judge McIntyre.

1577
CASE #3080

Q Did you make any promise to drop this case or anything of that kind? A No, sir. Mr. Silberman and I had the transaction all the time, and he never asked me for any promise, and I never made him any promise.

Q Can you recall any further conversation on May 12th with the defendant down at the Court House? A I said that he was a thief.

Q Did you speak to him about any case supposed to be pending there? A Yes, sir. Before that Gerstner told me something-- I can't tell you what he said as Mr. Fishman wasn't there, but then when they were together Fishman had a Law Journal, and Gerstner told me that Fishman had told him that he had just won a case on the 12th of May, in the Supreme Court which was a similar case as the one that he now got with this restraining order. So Gerstner said how did you win that case. It was a verdict for the defendant in that case and Fishman says,-- it was a case before Judge Wasservogel, and it stated a verdict for the defendant, how could you win a case when it was a verdict for the defendant, and he says, "That's all right to do it that way, that was for us. I have got here the Law Journal of the 12th of May."

Q Did you speak to him about that after that? A Yes, he would not discuss it.

Q Is this the Law Journal of May 12th you have?

A Yes, sir, that is not the Law Journal that Fishman had, but that is a Law Journal from my office of May 12th.

1578
CASE #3080

MR. WHALEN: I offer this in evidence.

THE COURT: There is no use offering the whole paper in evidence.

MR. MARKEWICH: I don't see the importance of this

THE COURT: I will allow that part of the paper in evidence that he says the defendant pointed out.

THE WITNESS: Before Wasservogel, J.; Part 18.

THE COURT: Read it into the record.

MR. WHALEN: This is an extract from the New York Law Journal dated Thursday, May 12th, 1921, Supreme Court, Trial term, Part 15, before Mr. Justice Wasservogel, Fischman vs. Schlechter, Strauss, Burger and S. and M. Schlack of counsel for the plaintiff and L. Schlechter for the defendant. Verdict for the defendant

Q Now you stated all the conversation that you recall that you had with the defendant Mr. Rosenberg?

A Well, there was some more conversation that I cannot relate because Mr. Fishman used to come to my office and I used to meet him at the office and he would come in and wait for me.

Q Who, Mr. Fishman? A He used to come to my house many times, but there were a great many conversations with him.

BY THE COURT:

Q That was after the arrest? A Yes, sir, after the

1579
CASE #3080

arrest.

BY MR. WHALEN:

Q But between May 12th and the date of his arrest you had no conversations at all with him? A Except as I said over the telephone.

CROSS EXAMINATION BY MR. MARKEWICH:

Q Mr. Rosenberg you are related to the complainant by marriage? A Yes, sir.

Q And are his attorney? A Yes, sir.

Q An attorney for how many years? A Prior to this occurrence about-- well they bought this house or building in January of 1920, and this is the first matter I had for them-- January, 1920 or perhaps December, 1919.

Q Primarily, I assume Mr. Rosenberg, you were interested in getting the money for your client? A Well I was interested both ways to get the money and at the same time to see that justice was done.

Q Prior to May 12th, 1921, did you have a conversation with your client about Fishman? A I left for Atlantic City on the 6th of May. I was not to return to New York until the Tuesday following. When I got back from Atlantic City David Gerstner called me up at his place of business, and there for the first time he told me of this transaction.

Q What date was that? A It may be -- I don't know what date it was.

Q How many days before you met Fishman in the Supreme

CASE #3080

Court Building? A A few days.

Q Did you ask your client why he didn't place the defendant under arrest? A He said he was trying to get him.

Q Just answer my question. A That is what he answered me.

Q Did you ask that question? A I did "He should be arrested long ago", I said.

Q You told him to make an appointment with the defendant that you wanted to speak to him? A No, sir, Fishman told David or rather David told Fishman that his uncle is a lawyer, mentioning me, that I was in Atlantic City. I received a call at my home on Hooper street when I got back from Atlantic City that Mr. Fishman called me up.

Q On the 12th of May were you in the Supreme Court pursuant to an arrangement made with your client? A Yes, sir, absolutely.

Q To meet Fishman? A Yes, sir;

Q You spoke to Fishman? A Yes, sir.

Q Did you know at that time that Fishman was not an attorney? A Well David said he was a lawyer, and I told him when I was up there, I said "This man is not a lawyer, a lawyer doesn't act that way."

Q Did you know of your own knowledge whether he was or was not a lawyer? A I then looked up Bender's Diary of
for and
registered attorneys, I found the name in the telephone book

CASE #3080

and I said if he is a lawyer he certainly would be registered as a lawyer.

Q He is listed as what in the telephone book? A An accountant, I am not sure.

Q Did you ascertain whether or not he had been a certified public accountant? A I never did.

Q You never did? A No, sir, Mr. Fishman once showed me a card that he was a certified public accountant, with his name on it, certified public accountant.

Q When the defendant spoke to you in the County Court House on the 12th of May, did you tell him that if he did not turn the money over to the complainant you would place him under arrest? A I said I gave him until 4 o'clock to do that.

Q So that to be honest about it you were primarily interested in getting the money? A Well, if you feel that way-- I had no animosity -- I did not know the man before, and I am not in the habit of arresting everybody, I wanted to get the money first.

Q You were not at that time interested in justice. At that time you were interested in getting the money for your client, isn't that the fact, Mr. Rosenberg? A That is a hard question to answer.

Q Now just answer that question. A If I had my way if it was my money I at that time-- I would have placed

CASE # 3080

him under arrest there and then, and I said that to David.

Q Well what was it that stopped you. You have studied law, you were an attorney and you are familiar with the Code of Ethics, aren't you? A I was very hot that day.

Q Familiar with the law pertaining to the proper conduct of attorneys? A Yes, sir, I believe I am.

Q You knew it was not proper to compound a felony, did you not? A I think that we had a right to take that money.

Q Just answer that question? A Yes, sir.

Q You were satisfied at that time from what your and client told you, what Fishman told you that Mr. Fishman had committed a crime? A Yes, sir.

Q Were you not? A Yes, sir.

Q You said to him, "If I don't have that money by 4 o'clock, I will have you arrested? A Yes, sir.

Q Is that right? A Yes, sir.

Q In other words if he brought the money by 4 o'clock you would not have him arrested? A No, sir.

Q Is that what you understood by saying that? A No.

Q Wasn't that what you intended to convey by saying that? A If he paid that \$2,000 by 4 o'clock.

Q Would you then turn him over to the authorities?

A That is a question for the Gerstners, as to what they would like to do.

CASE # 3080

Q You would take that matter under advisement after he turned that money over? A Yes, sir.

Q So that when he did not turn the money over to your client then you told your client to get a summons in the Magistrates' Court, is that right? A Yes, sir; we got a summons in the Magistrates' Court.

Q Thereafter you did ascertain that the defendant was arrested? A Yes, sir.

Q You were always satisfied in your mind that the defendant was a thief? A Absolutely.

Q And the defendant called at your home? A When?

Q After he was arrested? A Mr. Markewich--

Q Please answer the question? A I certainly did not invite him.

Q Well he called at your home? A Yes, sir.

Q How many times was he at your home Mr. Rosenberg?
A Well, it was-- when the case was on the calendar he was there four times a day.

Q In your home? A In my home.

Q You are not in the habit of allowing thieves to come to your house except on professional business I suppose? A I would say that once I had my full dress suit on and I said I am going to an affair, and he followed me to the affair at at Knapp Mansion, and I was surprised to meet him there at 10 o'clock at night. A man called me out from the affair,

CASE #3080

it was a bansuet.

Q You had taken money from this defendant as restitution? A I took this money from Mr. Silberman under the understanding, as I said before--

Q You knew Silberman was not advancing his own money but advancing the defendant's money to you? A At that time he was advancing the money that he took from my client, no more and no less.

Q Silberman didn't take any money from your client?
A He said I have no --

THE COURT: It was not Silberman's money.

Q You knew it was Fishman's money? A Well, yes, I presumed so, whether his or somebody else's.

Q You took that money in installments? A Yes.

Q How many installments did you take? A I think about three.

Q While this case was going on here in this court, while it was pending on the calendar in this court? A Yes.

Q You say you had taken it from Mr. Silberman without any understanding or any arrangement or agreement? A Yes.

Q In other words as far as you were concerned you had believed when you received the money in full that the defendant would still be prosecuted by the authorities?

A I believed this-- I can't answer that yes or no-- I told Silberman and told Fishman that we are taking this money and you are under an indictment for a crime. We are simply wit-

1595
CASE # 3080

nesses for the State and when we are called we will tell the truth-about the transaction. When the last installment was paid I told Silberman-- when the last installment was paid -- I will keep it in my pocket and we will go over to Mr. Whalen and tell him about it and go over to Judge McIntyre and tell him about it.

Q You received \$900 from time to time until the 26th of December? A Yes, sir.

Q In three or four installments? A Yes, I believe there was two installments before that, I am not sure.

Q And on the 26th that night in your office you received \$1100? A No, sir, I was followed to the Broadway Central, it was at a wedding there, and I met Silberman and Fishman both waiting for me.

Q Do you know who had informed you that you were going to a wedding? A Yes, sir, Fishman when he saw me the night before at the banquet he said, "You are a regular society man".

Q Did you inform him that you would attend a wedding the next day? A I said tomorrow night I shall have to be up at the Broadway Central.

Q You didn't invite him to the wedding there? A No, sir, I met him down there.

Q You told him you would be at the wedding? A Yes, sir.

Q You told him if he had money for you to come there and give it to you? A He was there and Silberman--

CASE #3080

Q Isn't that so? A No, sir, but he said that Silber-
man--

Q It was not a social appointment? A If you will
let me answer you.

Q Was it a social appointment? A No, sir, no ap-
pointment at all as far as I am concerned.

Q Why was it you told this defendant, this thief,
about your social appointments. What was the reason for it.
You were trying to convey the impression that he followed you
or tailed you until you got to the wedding? A I will answer
you.

Q The truth is that you had told this defendant you
would be at the wedding the next night? A No, sir, it
isn't that.

Q Isn't that the fact? A No, sir not that way.

Q Did you tell him? A I will not answer you in that
way.

Q Won't you just answer this question: Did you tell
him you would be at a wedding the next night? A He asked me
and I said I would be at the wedding the next night.

Q And he came there to the wedding? A No, he came
there with Silberstein.

Q You ~~gave~~ got that night \$1100 from Mr. Silberman?
A Yes, sir.

Q Up to that time you had received \$900? A Yes, sir.

Q When you got the \$900 you deposited it in your bank?

CASE #3080

A Yes, sir.

Q Your personal bank account? A Yes, sir.

Q Your business bank account? A Yes, sir, well I have two accounts.

Q You had not spoken to the District Attorney or to the Judge up to that time about the money having been paid to you by this defendant or his counsel? A No, sir, and for this reason.

Q You took that money and deposited it and waited until you got your balance, and when you got the full \$2,000 and the case was on the calendar for trial you stepped up and the Judge and you told the District Attorney, about it, is that right? A Yes, sir.

Q What did you want the District Attorney to do? A I wanted them to know about this, and I wanted them to feel that we are not in any way reluctant about this thing, that we are here prepared to report to the District Attorney as witnesses.

Q In other words you came here and spoke to the District Attorney, and said, "Now even though I got the money from this defendant I want to show you that I am interested in justice and I am here in Court as a witness? A Absolutely, those were the very words I used to Judge McIntyre.

Q You see I was not there? A Silberman was there too.

Q You didn't tell Fishman that if you got the money you would get your client to tell the truth to the District

CASE #3080

Attorney, the truth of this transaction? A Absolutely.

Q You did tell him that? A Yes, sir, and there will be no case if he tells something that Fishman said to me--

Q Mr. Fishman told you, did he not, -- didn't Fishman tell you, Mr. Rosenberg, that as a matter of fact he had bought, Mr. Gerstner had bought his, Fishman's furniture, and that was the truth? A No, sir.

Q Didn't he tell you that? A No, sir.

Q What is that? A No, sir. He said, I can see now if it goes to the Court that he bought my furniture -- and I said, "If he bought your furniture--" I said, "You are agsin handling fire."

Q Didn't you also tell him that you would get your client to tell that to the District Attorney and to the Judge, to tell the truth? A No, sir, not a word.

Q No. A If he said that he is --

Q Isn't that why the defendant gave you the money? A No, sir, I never spoke to Fishman about the money, not in the Court, or about this case. My conversation in that connection, Mr. Markewich, was with Mr. Silberman his attorney.

Q Now Mr. Rosenberg you want to be fair about this? A Absolutely.

Q You have no animus in this matter at all? A Not at all. I am sorry I have been dragged into this matter.

CASE #3080

Q You did your duty to your client? A Yes, sir, and I think by everybody in this case.

Q Mr. Rosenberg do you remember when I called at your office yesterday? A Yes, you did. First Fishman called me up on the phone and said I should meet you in a restaurant downstairs but I had no time, I was with a client and he came up to see me.

Q In your office? A Yes, sir.

Q Do you remember my asking you to let your client tell the truth to the District Attorney? A Mr. Markewich if you want me to tell you just what occurred, what you said to me, I am sorry that I will have to say it; I don't want to say it.

Q Please answer my question. A Yes, sir, if you force me I will.

Q All right. Just tell me, Mr. Rosenberg, do you remember my telling you to get your clients to tell the truth? A I said, "Why certainly, they will tell the truth."

Q Do you remember my telling you that they were not to take the money and have this man prosecuted? A You never told that word at all. Now Mr. Markewich--

Q Did I say anything to that effect? A Do you want me to say it?

Q Yes. First answer my question? A You did not mention that, the money at all.

1590
CASE #3080

Q First answer my question. Do you remember my saying to you, and do you remember your saying to me then if my client told any other story they would be prosecuted for perjury? A Yes, sir, in answer to your question.

Q Did you say, Mr. Rosenberg to me that they already told the story before the Grand Jury, and had given statements to the District Attorney? A In answer to the question--

Q And they have got to tell the same story? A Yes.

Q Otherwise they will be prosecuted for perjury?

A Yes, sir, in answer to your question.

Q In answer to my question. What was my question?

A Well David Gerstner to take the stand and say that the furniture was the furniture of the home of Mr. Fishman, and I said, "Sam, how can they say that, is it so? You know it isn't so. You know that your man is a gonniff--" I used that expression to you, and you said to me, "I know he is a gonniff, but that is not here or there. I want Dave to do that," and I said, "Here they are themselves," they were in my office at that time and you saw them there, "Here they are. They are going to go down and tell exactly the truth of this transaction, no more and no less. I did not want to say that Mr. Markewich. I am sorry; I thought it was confidential what you said to me.

Q I asked you to say that? We are trying a case here and I want you to state just exactly what took place there.

CASE #3080

Do you remember my saying to you, Mr. Rosenberg, that my client said that your client had bought his furniture?

A Yes, sir, you did say that.

Q Do you remember my saying to you Mr. Rosenberg, "If your client tells the truth the defendant will be discharged"?

A You said Gerstner should say the same thing.

Q If Gerstner says that the defendant will be discharged?

A That Gerstner should say he bought of him the furniture.

Q Do you remember my saying that? A Yes, sir.

Q Do you remember your saying to me he already made a statement before the Grand Jury and the District Attorney and if he would say that he would be prosecuted for perjury?

A I said to you, I said, "Sam, you have been an assistant there for a good many years. Do you think these two merchants should go on the stand and commit perjury for this man or any other man or any other money involved in this world-- no, sir, and the door was wide open when the Gerstners were there.

Q And I said to you, "No, I don't want them to commit perjury"? A Yes, I don't want them to commit perjury.

Q I said I wanted them to tell the truth? A Yes, sir, that is what you said.

JOHN SEAMAN, a witness called on behalf of the People, being duly sworn, testified as follows:
(The witness states he lives at 187 Lefferts avenue, Brooklyn.)

1592
CASE #3080

DIRECT EXAMINATION BY MR. WHALEN:

- Q What is your occupation? Assistant receiving teller.
- Q Where is Mr. Allison? A He is sick.
- Q Where are you employed? A The American Trust Co.
- Q Where is that? A 135 Broadway.
- Q 135 Broadway? A Yes, sir.
- Q Have you brought with you in response to a subpoena a transcript of the account of Harry Fishman? A Yes, sir.
- Q In your bank for 1921? A Yes, sir, April and May.
- Q What dates does that cover? A April 4th to May 14th.

MR. WHALEN: I offer it in evidence.

MR. MARKEWICH: I object to it on the ground that it is incompetent.

THE COURT: As I recall it there has been some decision recently in reference to the admissibility of statements from banks. I think there will have to be some proof as to the accuracy of it.

Q What is your employment in the bank? A Assistant receiving teller.

MR. MARKEWICH: I am just as anxious to get a correct statement from the bank as the District Attorney is. If this young man can testify what the balances were on certain dates I am perfectly satisfied to let him testify.

BY THE COURT:

Q Did you compare this transcript with the books?

CASE #3080

A No, sir.

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

Q Except that it has been handed to you to bring up here? A Yes, sir;

BY MR. WHALEN:

Q Mr. Allison, you say is sick? A Yes, sir.

THE COURT: You had better have it compared.

MR. MARKEWICH: I may say now that if a prima facie case will be proved, the defendant will take the stand, and he can look over this sheet and see if it is correct.

(The paper referred to is marked People's Exhibit 6 for identification.)

MR. MARKEWICH: We will concede that the defendant had drawn a check of three thousand dollars on the Atlantic National Bank, where he had an account, and had deposited the same to his account in the American Trust Co. on April 30th, and that he did not at the time he drew that check have sufficient funds to meet the three thousand dollar check.

THE COURT: Is that the concession?

MR. WHALEN: That is the concession I want, your Honor.

RUDOLPH WEISS, a witness called on behalf of the People, being duly sworn, testified as follows:

CASE #3080

(The witness states he lives at Monticello, N.Y.)

DIRECT EXAMINATION BY MR. WHALEN:

Q Mr. Weiss, do you know Harry Fishman, this defendant? A Yes, sir.

Q How long have you known him? A Well, I have known him since we were children, about 6 years old; I went to school with him.

Q Practically all your life? A Yes, sir.

Q Did you meet him in December, 1920? A Yes, sir.

Q Where were you living at that time? A 133 St. James place.

Q In the same house with the defendant? A Yes, sir.

Q Who was he living with at that time? A His wife was living there with her folks.

Q His wife and his wife's parents lived there? A Yes.

Q Did they own that house do you know? A His wife's parents own the house.

Q In other words you were a tenant of his wife's parents? A Yes, sir.

Q Where were you in business at that time? A I was in business in Bergen street.

Q What sort of business? A A garage.

Q You were the proprietor of that business? A Yes.

Q When did you meet Fishman during that month of December? A Well about the 15th of December, the day he came in, the garage; I hadn't seen him for years before that.

CASE #3080

Q For how many years? A Probably ten or twelve years.

Q He came into your garage about the 15th of December?

A Yes, sir.

Q Please state the conversation you had with him at that time?

MR. MARKEWICH: I object to that if your Honor please, on the ground that it is not in any way related to the transaction involved here.

THE COURT: On December 15th, 1920?

MR. WHALEN: This is the proof of a similar transaction.

THE COURT: Objection overruled for the present.
Exception.

Q Will you state that conversation Mr. Weiss. A The defendant came into the office of the garage-- I saw Mr. Fishman and he shook hands with me and he said, "How are you getting along". I says, "Pretty good". He said "I just happened to be in the storage Warehouse across the street and, he says, "My wife told me you own this garage and I dropped in." I was in overalls and dressed as a garage man will be dressed and he says, "I thought you would do better than being in the garage business when you are a bright fellow, like you, you go around dirty with overalls on. Look at me, I am dressed like a gentleman." He says, "I am getting good money." Well, I said I have been a chauffeur all my life practically, and I said I don't know anything else, I can't

CASE #3080

do anything else. Well, he says, "Listen", he said, "I have got a wonderful proposition for you, I just happened to think of it." He says, "I have got a client who has some vending machines to sell," that is, chewing gum and so forth he says he has them installed in all parts of Jersey in different theatres and factories. He says, "This man is an old man, and can't run the business any more", and he says, "I will tell him you can buy it". So, I said, "I haven't any money to lay out just now because all my money is tied up in the garage", but, I said, "I have got some people coming around to me to sell the garage and if I sell it probably I will think over your proposition." So he went away. And during that week --- the next following week, it was about the 25th of December that I did sell the garage, and on the 28th of December, he came in again and he says to me, "I heard that you sold your garage, is that true?" I said, "Yes." He asked me how much I got for it, and I told him. He said, to me, "Well you got the cash now, Rudy", he says, "You can still buy that business", he says, "because I want to tell you that somebody else is after it. If you want to go into this thing you got to do it quick." Just then my wife happened to walk into the garage and I was busy showing the new proprietors around the building there, what to do, and introducing them to the customers in the garage, and he was around in the office with my wife, and he started to tell her what a wonderful

CASE # 3080

business --

Q Don't give the conversation only when you were present with the defendant? A Well after awhile he called me into the office again, and my wife said to me, I think the proposition sounds pretty good, he says you can draw fifty dollars a week out of it and probably at the end of the year he says you will have three or four thousand dollars profit left, She says he is not asking much for the business, well, I said, "No, it sounds pretty good". So my wife says, "Do you know him?" Well, I said, I know him since we were kids, I know he is a lawyer, and I know that he has a big office at 299 Broadway, and I said, I don't think he would steer me wrong, and I said he owns a house on Eastern Parkway and I said, I don't think he would try to do me harm in any way. Well, she said if you know him so well why don't you go into it. I said, I would like to think the matter over before doing so. She he says then you can't do any thinking, if you want to go into this thing you got to close this thing tonight. Well, I said, you can't go to the bank it is too late. He said, just give me a check so that I can show the man the deal is closed. So I wrote out a check for \$2500 and gave it to him.

Q To whose order? A To Fishman's order.

Q \$2500? A Yes, sir.

Q Have you got the check here? A No, sir, my attorney

CASE #3080

has it over in Brooklyn.

Q Who is that? A Mr. Harry H. Altman. I said to him, "Harry, what have I got to show that I gave you this money". He says, "Don't you trust me", he says, "if you don't trust me there is no use going into this thing. I want to see you get up in the world. " He says "I am going to keep the books for you, I am going to see that the patent papers are O.K., I am going to do everything, and I won't charge you a dollar for it." "Well", that is very nice of you to do that for me out of pure friendship".? So he says, well, he said, "all the boys in the neighborhood have worked themselves up pretty good, and I would like to see you get up too." He took the check and he went away. The next morning I went to the bank to have my books balanced and the teller said to me, --

Q You can't give the conversation. When did you see Fishman again? A Well, I saw him a couple of days later. He came up to my house.

Q That is in St. James Place? A Yes, sir. One evening he came up to the house; I had tried to get him at the office, but I could not and I left word at his office that when he came in he would come up to my house I wanted to see him. So he came up to the house that night, and I asked him, I said, "Well, Harry, how is the business coming along", and he said, "You got to give me a couple of days time in order to make up the bill of sale and draw up all the papers." Then

CASE #3080

he said he was going to take a trip to Washington to verify the patent. Well, I said, "what kind of a machine is this, what does it look like." So he brought me up a little machine, a nickel plated machine. You put a penny in the slot and press a button, and a piece of gum comes out. So I said, "Is that the machine", and he said "yes." He says "There are 3500 machines including a lot of chewing gum and caramels and chocolates that go with it." Well, I said "Where are the machines now", and he said, "they are distributed at the theatres in Jersey and in factories." I said, "When will you take me over to see the machines?" And he said, "When I get everything straightened out." In that way he kept putting me off and putting me off from day to day. I used to try to get in touch with him at his office, but they always told me he was out, and then I spoke to his wife and his wife said, --

Q You can't give the conversation with his wife. When did you see Fishman again? A Well, I didn't see Fishman then again until about a week after that-- the last conversation that I had with him -- I came to his office one night it must have been about 6 o'clock.

Q When was that? A That was about a week after he was up to my house, I don't remember the date.

Q What month was this in? A It was in January, and I said, "Well, Harry, now I says it is already pretty near two weeks that you promised you would turn over this business to

CASE #3080

me. I haven't got the business yet. I said, what little money I have, that I got left, I am using up now, I have no business and I have no money. Well, he says, listen, "I am pretty busy", he says, "I don't waste all my time attending to this thing", he said, "I will do it when I have a chance", he says "the man who is supposed to sell the machine is out of town," and he gave me some excuses, but he says "You have the patents." I said, "Well, you told me I would be able to start in right away and draw fifty a week", "Well", he says, "you have got to give me two months time", to straighten this thing out but" he says, "in the meantime you will be able to go to work", he says, "and fill up these machines and take the money out and get busy on the job". After that conversation I went away again and I tried to get in touch with him dozens of times, I used to walk up into his office but I could never get him in; he didn't show up at his house any more at St. James Place.

MR. MARKEWICH: I object to that and ask that it be stricken out.

THE COURT: You did not see him any more?

A No, sir.

THE COURT: The answer may be stricken out.

THE WITNESS: I went up to my attorney and I explained the matter to him.

MR. MARKEWICH: I object to that.

CASE # 3080

Q Don,t state what you said. Don,t give the conversation with your attorney. When did you next see Fishman?

A I didn,t see him after that any more.

Q Never saw him? A No, sir, not until he was arrested and brought into court.

MR. MARKEWICH: I object to that and I ask that it be stricken out.

BY MR. WHALEN:

Q Until he was arrested in this case? A Yes, sir.

THE COURT: That may be stricken out.

MR. MARKEWICH: I ask that the jury be instructed to disregard it.

THE COURT: Yes.

BY THE COURT:

Q When was it that you saw him, what month was it?

A Well it was about in May sometime that I next saw him in the Court.

Q In May of 1921? A Yes, sir.

Q Did you have any talk with him then? A No, sir, I did not.

BY MR. WHALEN:

Q Did you have any further conversation with him after that? A No, sir.

Q Were you present at any conversation between Harry Fishman and anybody else? A No, sir.

BY THE COURT:

CASE #3080

Q Did you ever get any of these machines? A I only had the machine that he brought up to me.

Q You never got the others? A No, sir, my lawyer has that machine.

Q You never got the 3,499? A No, sir. He had them in his mind.

MR. MARKEWICH: I object to that.

THE COURT: Strike the latter part out.

MR. MARKEWICH: I ask that the jury be instructed to disregard that.

THE COURT: Yes.

MR. MARKEWICH: We will prove that this is a living concern.

THE COURT: I am asking him whether he got any of the life of it or not.

BY MR. WHALEN:

Q Did you get your money back? A I got \$1900 back from him.

Q When did you get the \$1900 back? A I can't tell you the date.

MR. MARKEWICH: That is really immaterial. I object to that. It does not make any difference whether he got any money back or did not.

MR. WHALEN: I think it makes a lot of difference.

THE WITNESS: About the 15th or 16th of November, 1921.

CASE # 3080

THE COURT: I will allow it as to whether it was abona fide transaction or not.

Exception.

MR. MARKEWICH: Would it make any difference whether it was bona fide or not.

THE COURT: It hink it might very likely. I will not argue the matter.

Exception.

BY MR. WHALEN:

Q I didn,t get that date? A About the 15th of November,1921.

Q 1921? A Yes, sir.

Q From whom did you receive the money? A From my attorney.

Q Mr. Altman? A Yes, sir.

Q You got it all at once? A Yes, sir, \$1900.

Q By Mr. Altman's check was it? A It was all cash.

Q That is all you have ever received? A Yes,sir.

Q Well, did you make any promise in return for this money?

MR. MARKEWICH: I object to that if your Honor please.

THE COURT: That is a matter for cross examination.

(At this point the Court admonished the jury and took a recess until 2o'clock.)

CASE #3080

2 p.m.

RUDOLPH WEISS, a witness for the People, resumes the stand.

MR. MARKEWICH: Before proceeding I want to move to strike out all the testimony of this witness upon the ground that it is foreign to the issues involved in this case and does not comewithin the rules laid down in the people vs. Molineaux, the people vs. Thompson and the People vs. Katz, in that it tends to confuse the issue, and does not tend to establish anything but rather tends to mislead the jury.

THE COURT: I will deny the motion and give you an exceptionAt this time, gentlemen, I may call this to your attention: Ordinarily in the law it is not competent to prove when a man is being tried for one crime that he committed anothercrime because the fact that he may have been charged with committing another crime does not tend to show that he committed the one for which he is on trial. But there is a certain class of case in which a larceny by trick and device or a larceny by false pretenses, forgery or passing counterfeit money or receiving stolen goods, where the intent is one of the ingredients the crime, and in cases of this nature where the charge is such that it is essential for the People to prove an intent to defraud the law says, that an exception is made in the^{at} class of case and similar instances, that is,

CASE #3080

a scheme carried out in the same manner and near the same time can be put in evidence,-- not on the theory that because of the fact that the prior offense was committed, that necessarily proves the second offense was committed, but simply on the question as to whether the defendant had an honest intent in dealing with the complaining witness in the case on trial or whether he had a fraudulent intent, intending to defraud. In other words in this case, if you should believe the testimony of this witness, if you believe that the transaction occurred you would not be authorized in saying, "Well, because of that, that of itself, proves the defendant guilty of the crime he is now charged with", but you would be authorized to take into consideration what the defendant did in the other case in making up your minds whether he has acted honestly and with good intent or dishonestly and with a fraudulent intent in the case now being tried. That is the only theory on which the evidence is admitted.

MR. MARKEWICH: I take an exception.

CROSS EXAMINATION BY MR. MR MARKEWICH:

Q Mr. Weiss how old are you? A 32.

Q You live now in Monticello? A Yes, sir.

Q What business are you engaged in? A I am hacking.

Q Before the year 1920, your father-in-law was in business there, was he not? A Yes, sir.

Q Now this place was burned down? A Yes, sir.

CASE #3080

Q What business is he in? A Boarding house.

Q Now did you re-build that place? A Yes, sir.

Q Did you aid your father-in-law financially in re-building it? A Yes, sir.

Q When you said you re-built the place what did you mean? A He was building it. I did not do any building.

Q Any interest in that business? A No, sir, I did, but not now.

Q You did have? A Yes, sir.

Q When did your interest cease? A In 1920.

Q When? A Right after the summer season.

Q That is before you went into the garage business in New York? A Yes, sir.

Q After you gave up the garage business you went up to Monticello? A Yes, sir.

Q You still maintain a residence in Brooklyn? A No.

Q For a long time you lived at 133 St. James Place, Brooklyn? A Yes, sir.

Q Where did the defendant and his wife lived? A Yes.

Q Where her father and mother lived? A Yes, sir.

Q How often had you seen the defendant before you had met him on the day that you testified to in the direct examination? A I did not see him at all, until he walked in to my garage.

Q When did you move out of 133 St. James Place?

A I moved out there in about, I think it was June.

CASE #3080

Q What year? A 1921.

Q 1921? A Yes, sir.

Q You had seen the defendant's wife there? A Yes, sir.

Q You have seen the defendant around there have you not? A No, sir.

Q Now the defendant came to you about a proposition of slot machines? A Yes, sir.

Q Is that right? A Yes, sir.

Q You asked him to produce a sample of the slot machines? A Yes, sir.

Q He did? A Yes, sir.

Q One of those ordinary automatic vending machines that you see about selling gum and chocolate? A No, sir, a very small machine; it only contains about 15 pieces of gum.

Q They use them in factories, shops and so forth? A Yes, sir; that is what he said.

Q But you have seen machines of that kind have you? A I have never seen such small machines, no, sir.

Q Now did you hear of anybody byt the name of Kessler? A Yes, sir.

Q Do you know whether or not Kessler was connected with the autmoatic machines? A That is what he told me; he says, "Mr. Kessler owns the machine. "

Q Did you ever see Kessler? A No, sir.

Q Do you know where he lives? A No, sir.

CASE #3080

Q Have you been informed? A No, sir.

Q You knew, didn't you that the defendant went through Law School or was studying law? A No, sir.

Q When you lived in that house weren't you told that the defendant was a student in a law school? A No, sir, when I met him he was supposed to be a lawyer, but I was under the impression --

Q You knew he was a certified public accountant, did you not? A I didn't know whether he was certified, I knew he was an accountant.

Q What was the name of that company in which you were supposed to get an interest? A I could not remember the name, some different men--

Q The name of it was the Peerless Automatic Machine Co.? A Yes, sir, the Peerless Automatic.

Q Did you ever hear of a man named Frank M. Hill, the president of that company? A No, sir.

Q A man by the name of Lee Terbook, the treasurer of that company? A No, sir.

Q Were these checks ever shown to you by the defendant? A No, sir.

MR. MARKEWICH: I offer for identification a bundle of seven checks.

(The seven checks referred to are marked defendant's Exhibit B for identification.)

CASE #3080

Q Did the defendant tell you that the business cost ten thousand dollars? A No, sir.

Q Did you ever see these before? (Referring to Defendant's Exhibit 7)

A No, sir, I never saw them.

. (Handing witness another paper)

Q Did you see that? A He spoke something to me about patent papers, but he never showed them to me.

Q Did you see this card? A No, sir.

Q Signed by Max Kessler? A No, sir.

Q Did the defendant show this to you "November 10, 1920, I the undersigned do hereby sell and so forth"

THE COURT: Never mind reading that .

MR. WHALEN: Objected to. Objection sustained.

Q Did the defendant tell you that he intended to look up the patent in the Washington Patent office to ascertain whether the patent was issued to this Peerless Automatic Vending Co.? A Yes, sir, he told me that.

Q Didn't he tell you subsequently that he had ascertained that there was such a patent? A No, sir.

Q Didn't the defendant tell you that he had agreed to purchase all the assets of that company for the sum of ten thousand dollars from the owner of that company, or the principal owner, Max. Kessler? A No, sir.

Q In that connection did he mention Kessler's name to you? A Well he said his client Mr. Kessler has the machine, owns the machine.

CASE # 3080

Q He told you there were 3500 machines? A Yes, sir.

Q Did he tell you that the business would cost ten thousand dollars? A No, sir.

Q Did he tell you how much it would cost? A He said he could buy it for twenty five hundred dollars.

Q You were supposed to buy the entire outfit for twenty five hundred dollars? A Yes, sir, to buy the whole outfit with the chewing gum and everything.

Q For twenty five hundred dollars you were supposed to buy thirty five hundred machines and all the property of the company including the gum? A And caramels and so forth.

Q Including the patent rights and the good will?

A Yes, sir.

Q Didn't the defendant tell you it was a business in the which a partners had been drawing at one time as high as a hundred dollars a week a piece? A He told me -- he said I could draw fifty dollars a week out of it very easily, and at the end of the year there would be probably three or four thousand dollars profit left; he didn't mention anything about partners to me.

Q Now, isn't it a fact that the defendant and you were supposed to purchase the business for ten thousand dollars, and you were to invest five and the defendant invest five thousand? A No, sir, he didn't say anything about himself in the business at all.

CASE #3080

Q In other words you were to buy the entire business for twenty five hundred dollars? A Yes, sir.

Q When did he have that conversation with you-- when was that? A About the first time he spoke about it was about the 15th of December.

Q 1920? A Yes, sir; then he came about the 28th of December and he spoke about it again; he told me about the proposition.

Q Then when did you turn over the twenty five hundred dollars to him? A On December 28th, that evening.

Q It was after you sold your garage? A Yes, sir, I sold the garage about the 25th or the 24th.

Q How much money did you have when you sold the garage? A How much I had? We made five thousand dollars profit on the garage.

Q How much did you have when you sold the garage? A I had about thirty three hundred dollars.

Q You gave this defendant twenty five hundred dollars check or cash? A Check.

Q To whose order? A To his order.

Q Did you get a receipt for it? A I asked him for a receipt, and he said "You don't need a receipt, the check is better than a receipt, and he says, "Furthermore don't you trust me."

Q Did you go with him to your lawyer? A No, sir. He said he is a lawyer and he will draw up the papers.

CASE #3080

Q Did you subsequently see your attorney about it?

A I saw my attorney a few weeks after that.

Q After that? A Yes, sir.

Q Did you ask your attorney to examine the records in the Patent office? A No, sir.

Q To ascertain whether there is such a company who have slot machines? A No, sir, I explained the whole transaction to my attorney.

Q You did not ask him to do that? A No, sir.

Q You wanted your money back? A No, sir, I said--

Q When for the first time did you tell this defendant you wanted your money back? A After about four or five weeks, I didn't see any business and I didn't see any money and I used to tell his wife --

Q When did you tell the defendant for the first time that you wanted your money back? A I didn't get a chance to tell him; I didn't see him for some weeks.

Q Did you ever speak to him about getting your money back? A No, sir, I only communicated to his wife.

Q Did you authorize your attorney to accept \$1900 from this defendant? A Did I authorize him?

Q Yes. A No, sir, he told me--

Q Did you authorize your attorney to accept \$1900 from this defendant? A Well I don't know what you mean by that question.

Q Did you give your attorney authority to accept

CASE #3080

\$1900 from this defendant? A I did not know anything about it -- that he had accepted it.

Q You did not know anything about your attorney getting the money at all? A No, sir.

Q Now were you in your attorney's office when Mr. Silberman, the attorney for Fishman was there? A Yes, sir.

Q When was that? A That was about four or five weeks, I don't exactly remember.

Q Anything said at that time by yourself or your attorney about getting money from the defendant? A No, sir; I remember telling my attorney --

Q Did you tell your attorney then to take any money from the defendant? A Well, I like to relate the conversation, and you can know better.

Q Will you tell me just that. What I am trying to find out is -- tell me whether you told your attorney to take \$1900 from the defendant? A My attorney asked me --

Q Can you answer that question? A Did I tell him?

Q Yes. A Yes, sir, I told him.

Q Now you did receive subsequently \$1900? A Yes, sir, \$1900.

Q You got it at one time? A Yes, sir.

Q When? A Here about four or five weeks ago, something like that.

Q So that you claim there is due \$600-- do you from this defendant? A Yes, sir.

CASE #3080

Q Do you know one by the name of Cohen, in Brooklyn, a friend of yours by the name of Cohen? A No, sir.

Q Do you know a certain telephone number 939 Williamsburg? A No, sir.

Q What was your telephone number in your garage in Williamsburg? A I can't think of it now.

Q Williamsburg, wasn't it? A No, sir.

Q What was the exchange? A I think it was Prospect. I am most certain.

Q Were you in this city last week, a week ago? A Yes. The District Attorney sent for me.

Q Do you mean the District Attorney, Mr. Whalen? A Yes, he sent me a letter to come down.

Q You came down? A Yes, sir.

Q Where did you stop when you came to the City? A In my mother's house.

Q Where is that? A 336 Throop avenue.

Q Is there a telephone in that house? A There is two telephones in the house.

Q Who has the telephone? A The landlady, Mrs. Grevin and the woman next door to my mother, Mr. Simon.

Q Do you know the telephone number of those people? A I know Mrs. Grevin's, Williamsburg 1885.

Q Do you know the telephone number of the woman next door? A No, sir.

CASE #3080

Q Did you ever telephone to Mrs. Fishman that you were in New York? A No, sir.

Q Did you telephone to the defendant's wife from Brooklyn? A No, sir.

Q Did you ask Mrs. Fishman to tell her husband that you got a subpoena from the District Attorney's office to be a witness in the case? A No, sir, I did not speak to Mrs. Fishman.

Q And that she should tell Mr. Fishman that unless you got \$600 you would come down here and testify as a witness and bury him? A No, sir, I did not speak to her at all.

Q Didn't you leave the number 939 Williamsburg with her? A No.

Q Tell you to ring you? A No, sir.

Q Ask for you? A No, sir.

Q As a matter of fact didn't you tell the defendant a short while after you had given him the twenty five hundred dollars that you were sorry you couldn't go into the deal with him because your father-in-law's place of business was burned down in Monticello, and you had got to help him out with all the available money in your possession to rebuild the building? A No, sir.

Q Did you tell him at any time that your father-in-law's business was burned down? A I don't remember that conversation with him.

CASE #3080

Q Did you tell it to anybody in connection with Fishman ? A I don't remember.

Q The fact is your father-in-law's place of business has burned down? A Yes, sir.

Q About when? A A year ago Christmas night.

Q In December? A Yes, sir.

Q When was it that you received word of the fire? A I received word about two days after, I think it was on Monday or Tuesday that I received word that the place was burned down.

Q What day of the month was that, do you recall? A I think it was the 28th or 29th december when we got the telegram.

Q On the 28th you gave him that money? A Yes, sir.

Q Didn't you on the 29th tell him you needed the money and wanted to get it back? A No, sir.

Q The 29th or the 30th? A No, sir.

Q Did you tell the defendant anything at all about your father-in-law's place of business having been burned down? A She made a remark my wife told his wife about it, but I did not mention anything to him.

Q Well were you present when your wife told his wife about it? A No, sir.

Q How do you know about it? A As soon as you mentioned it I recalled that my wife told his wife about it.

1917
CASE #3080

Q How do you know about it? A My wife told me.

Q How did you come to ask your wife whether she told Mr. Fishman's wife about it? A Because she said "I told Julia the place burned down and I am going up there for a couple of days to see what I can do to help them out."

Q Do you know the reason for your wife telling Mrs. Fishman about it? A The reason was that evening she called me at the garage and told me about the telegram and the fire, and his wife was hearing that conversation.

Q How did your wife come to tell you that she had told Mrs. Fishman about it? A She said because Mrs. Fishman started to ask her questions how it happened.

Q How did she come to tell you about it, your wife?
A She told me over the telephone.

Q What was the conversation that led up to her telling you that she had informed Mrs. Fishman about the fire?
A She could not help it. Mrs. Fishman could not help overhearing this conversation because she was in the same room.

THE COURT: He wants to know how did your wife come to tell you that Mr. Fishman was there. How did she come to mention it.

THE WITNESS: She said that Julia, his wife, was there and my wife was crying and she told Julia, his wife, and also was crying when she heard what hard luck they had, after working hard in the summer and making a little money now the fire happened and they

CASE #3080

have to use up all this money again to build up the house, that is, his wife sympathized with her.

BY MR. MARKEWICH:

Q You knew or rather your wife knew, and had told Mrs. Fishman that your father-in-law's place was very poorly insured? A That I don't know.

Q And it would require considerable money to re-build this, was that the substance of the conversation? A I don't know what the conversation was.

Q As a matter of fact how much money did it require to re-build this place? A It cost \$10,500 to re-build the place.

Q Did you lend your father-in-law any money? A I lent him \$500.

Q Is that all you lent him? A That is all.

Q When did you lend him the \$500? A I went up there to see him.

Q When was that? A About two weeks after the fire.

Q I assume if you had more money you would have lent him more? A If I had it.

Q You hadn't it because you gave \$2500 to fishman?
A yes, sir.

Q As a matter of fact your father-in-law did want more money? A Yes, sir; I didn't have any to give him; he said I should lend him as much as I could.

CASE #3080

Q You asked Fishman to let you have the money for that reason? A No, sir, I didn't ask him anything.

Q You don't mean to say that neither you or your wife asked Fishman or Mrs. Fishman for the money because your father-in-law needed it? A No, sir.

Q By the way two years ago you were convicted of rape were you not, in this Court? A I don't want to answer that question.

Q Why not? A Because it has nothing to do with this case.

THE COURT: It is a proper question on the question of credibility, whether you have ever been convicted.

Q Were you convicted of rape? A I was not convicted, I pleaded guilty.

Q You went to the Elmira Reformatory? A Yes, sir; it was not rape; it was abduction.

Q Abducting a girl, wasn't it, how old was the girl? A I guess she was about 18.

Q She was under 18 and that is why you pleaded guilty, is that so? A About 17 or 18.

DAVID GREENBLATT, a witness called on behalf of the People, being duly sworn, testified as follows:
(The witness states he lives at 41 Attorney street.)

DIRECT EXAMINATION BY MR. WHALEN:

Q You are a Marshal of the City of New York? A I am.

CASE #3080

Q How long have you been a Marshal? A Seven years.

Q Do you know this defendant Harry Fishman? A Yes.

Q Do you remember meeting him down in Chambers street with two men by the name of Gerstner, one morning? A I remember seeing him but I don't know the names of the other gentlemen.

Q Do you remember when that was? A No, sir.

Q Where was it that you met him? A I happened to walk through Chambers street, and I met him at 51 Chambers street.

Q Do you remember him stopping you and introducing you? A I spoke with him, but I don't know if he introduced me to anybody.

Q Did you ever serve any papers or do any work, official work as a Marshal for Fishman -- in the Supreme Court? A Never.

Q Did you ever do any work for Fishman at all as a Marshal? A I think we done some dispossess work for his father.

Q Not for him? A He brought it in the office for his father.

Q Where was that dispossess proceeding, do you know? A I can't recall.

Q Was it in the Municipal Court? A It must be in the Municipal Court.

Q How long ago was that? A I can't say.

CASE #3080

Q Was it more than one year? A I can't say.

Objected to. Objection sustained.

Q That was the only work you ever did for Fishman?

A As I know of, yes, sir.

CROSS EXAMINATION BY MR. MARKEWICH:

Q You met Fishman on a number of occasions? A Yes.

Q Hundreds of them?

HARRY ALTMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 200 Sullivan street, Brooklyn.)

DIRECT EXAMINATION BY MR. WHALEN:

Q You are an attorney at law? A Yes, sir.

Q Duly admitted to practice in New York state?

A Yes, sir.

Q How long have you been a lawyer? A 16 years.

Q You have an office at 44 Court street, Brooklyn?

A Yes, sir.

Q Do you know this defendant, Harry Fishman? A Yes.

Q How long have you known him? A Since about the early part of March.

Q Last year? A 1921.

Q Do you remember where you first saw him? A yes, sir.

Q Where? A He came up to my office.

Q That was in March, 1921? A It must have been in

CASE #3080

March, the middle of March last year.

Q Did you have any conversation with him pertaining to a matter in reference to Rudolph Weiss at that time?

A Yes, sir.

Q Will you state what the conversation was. A He introduced himself to me as Harry Fishman, and I said to him, "Did you receive my letter?"

MR. MARKEWICH: I object to this as wholly irrelevant and foreign to the issues in this case.

THE COURT: I don't know, of course, what is coming. Is there another so-called similar incident?

MR. WHALEN: This is the same transaction, the Weiss transaction.

MR. MARKEWICH: He brings an attorney, as I understand it, for the purpose of supporting the testimony of Weiss. He is practically trying another case with this case.

THE COURT: It may be proved to the same extent, and in the same manner as if it was the principal transaction.

THE WITNESS: He said, yes, I received your letter, and I want you to help me clear this thing with Rudolph.

THE COURT: You better bring out the facts. We don't know who this gentleman was acting for.

BY MR. WHALEN:

1623
CASE #3080

Q You were the attorney for Rudolph Weiss? A Yes.

Q The last witness? A Yes, sir. Mr. Weiss had engaged me to handle this transaction. I said you had better make good to Weiss, there will be no use in you and I getting into any lengthy discussion because judging from the nature of your actions towards this long life pal of yours you ought not to take up too much time in making good the theft. He said, "Don't call it a theft." I said, "Very well, let us call it an unfortunate occurrence." He says I want to make good to him because we had been pals, went to school together, I am sorry I broke up his life and all that, but I want you to help me, Altman, I am a brother attorney, I have done favors for other lawyers, I want you to help me out too. If you only keep Rudolph off my back for awhile and give me a chance I will make an arrangement to pay off this money that I took. So I said to him, "Fishman tell me why did you do that to a pal. You are a lawyer, a friend of his, why did you do it." "Well" he says, "I needed the money and I will make it good. Don't ask me any more questions, Altman, I will make it good." I said, "Well that sounds all right. You are getting to the point now. What do you want me to do with Mr. Weiss," and he said "Tell him that you are satisfied that I will pay this off in several weeks; I have some transactions now in Rector street in which I expect several thousands of dollars, in fact I have in my pocket now a check of

CASE #3080

\$5,000 certified and I will be able to make this good in a little while." He pulled out a check of some sort and showed it to me. I don't remember the details of it. I said, to him, "Now Fishman, I will do this for you because you are a lawyer and I am only doing what I imagine what every other lawyer would do for a brother attorney. I am sorry that you got yourself into this fix. I will take it on myself to get myself in dutch with my own clients for your sake. How much time do you want, please be specific and definite and don't fool me because I am going to tell Weiss that on a certain day I am quite convinced that the money, or a very substantial part of it will be paid." And he mentioned some day. it may have been a week or ten days or two weeks thereafter. And at the given time and given hour Mr. Fishman telephoned that the transaction on which he expected to derive this money^{he} was talking of was then brewing but not quite finished to please wait at the office until 8 o'clock that night and he would come right over to the office with a thousand dollars in cash and the balance in some form of security or check that would leave me without any doubt as to his desire to make good. I said "All right Fishman now that sounds reasonable. I have an engagement this evening but I will wait in until 8 o'clock. I will telephone home not to expect me for dinner, and I will wait. At about a half an hour before 8 o'clock Fishman

CASE # 3080

rings me and says, "Altman I am still over in New York, and I expect to be out of there in a few minutes, I got the money and everything is all right. Why not meet me in Childs restaurant. " I said "Do you mean the restaurant right on the corner about one hundred feet away from my office", and he says "yes." So I says to him, "Well, why in Childs restaurant, why not in my office. Let us be through. He said, "I don't want to go into the building I know so many people there they think it is funny I should come walking in there at this hour of the night. I will meet you in the lobby of the building. I said, "Very well, Fishman, if you have any fear that there might be any traps in my office or any speaking instrument or recording instruments I won't torture you with the delusion, I will meet you downstairs in the corridor of the building." I went downstairs immediately, and I waited and waited and waited. 9 o'clock came and I ran up into my office again, expecting perhaps that he called. I waited until the lights were turned out in the building, at 9 o'clock. Then I ran downstairs again in the corridor and I inquired of the watchman of the building and the elevator man and remained waiting in the corridor. About half past 9 or 10 o'clock Fishman comes into the corridor of the building. "I am very sorry, Altman, I kept you waiting, but that transaction did not run out as I expect." I said, "Fishman you told me over the phone that if I would

CASE #3080

1623

wait you would come over with at least a thousand dollars in cash. I don't mind telling you that is the only thing that kept me here tonight. I will cheerfully take the thousand dollars now, and show Weiss enough to make it worth while -- I would like to show Weiss some reason for the farce comedy of waiting. What am I going to tell Weiss. Weiss will begin to think I am in with you on this transaction. God Almighty you can do what you want but be fair to me, I am willing to act for you as a brother attorney, I gave you a chance, but what am I going to say to Weiss." "Well", he says, "no Altman you can tell him that you saw the transaction going on, that you are sure he is going to be taken care of. " I says, "How much time would you like now." He says, "a couple of days". I says, "No, Fishman, no, you are going to give me a check tonight or I am going to arrest you myself. I am going to take the chance of having you arrested because I am satisfied now that you not only perpetrated that swindle, but you are trying to carry it on and I won't stand for it. Now you have got to make good to me Fishman, I don't want to be angry with you, I want to treat you like a fellow lawyer, like I would treat any other one, but be fair to me." He says, "Have you got a blank check". I said, "No, I haven't got a blank check, but I can go right upstairs in the office, and get one. You better come along

CASE #3080

1627

with me, Fishman, I don't want to lose sight of you tonight." Fishman and I went up to the office; it was dark; he offered me some matches, we groped our way over to my desk, and he said to me, "Have you got a Corn Exchange Bank check and I said, "Yes, that's lucky, I deposit in that bank." "Well, " he said, "I don't want this branch here or any branch," I said, "No, but you just scratch out my branch and put your own branch down, and then tomorrow you can give me another check in return, let me get something, I want to show Weiss something. Weiss is waiting at his home tonight for my message, and I am going to show him something." So I tore off the blank, out of the rear of my check book, and we went downstairs, it was dark, you couldn't write up in my office. When we came down to the cigar stand in the corridor, I told him there was sufficient light, and I said, "Now here is a place where you can write. Now write me out the check." So I gave him one of the checks, and he scratches out the name of my bank and puts down the Terminal Branch, New York, and he wrote "Pay to the order of Harry H. Altman, Attorney of Rudolph Weiss," I don't remember now which-- \$2500. He began making that long line or scroll of his commencing with his "H" when he stopped. I said "What are you stopping for, Harry", and he says, "There is no use of your getting a check like that. It might not go through, it may be irregular, and if you put it in and it comes back they

CASE #3080

will say that I am a thief, and that I swindled you too, I would rather not, I will give you a better check tomorrow morning." I said, "This check will do, this check is all right. You give it to me so that I can at least show Weiss that I have done some work for him tonight, that I did not fail him, that at least I talked with you, saw you and that you did something, but Weiss would be positively entitled not to believe anything I say tonight if I come back empty handed." I took the check, but he says "I am going to give you a different check." He says, "Let me see Atman, I will go to my friend Stephen Baldwin." He is laughing at me now.

MR. MARKEWICH: I ask that the jury be instructed to disregard that.

THE COURT: Yes.

THE WITNESS: I said "Stephen Baldwin"?

MR. MARKEWICH: I ask that the witness be instructed not to be so dramatic.

THE COURT: Yes. Tell us what was said and done as briefly as possible.

THE WITNESS: Stephen Baldwin, you mean that famous lawyer over here? He said, "Yes, he is my friend." I said "What are you going to do with him?" "Well", he says, "he has a lot of money we had two or three transactions and if I just tell him to give me a check he will give it to me without question." I said,

CASE #3080

said "I am glad you know him as well as all that. What do you want to do?" He says "I am going to call him up." We went out of the building and into a cigar store next door. So he went into the booth, locked himself in and I heard a rumbling inside, I couldn't make out what it was. He came out and he said let us go over to Baldwin's house, and I said, "Where is Steve Baldwin's house, and he says right around there, somewhere in Remsen street. We walked over then within two or three blocks of this place, and he began looking around.

MR. MARKEWICH: If your Honor please I think we have gone far enough to prove the transaction with Weiss, and I object to any further testimony along these lines. This is going into a foreign transaction, and I think we have gone far enough.

THE COURT: I will allow him to finish his testimony.

Exception.

THE WITNESS: He said, "I am not sure whether it is No. 73 or 75." I said, "What difference does it make, step up to 73 and press the button, and they will tell you whether it is 75 or not." He said "no, I will go to the Hamilton Club over here of which I am a member, and I will inquire there." I said, "Are you a member of the Hamilton Club?" "that is a very magnificent club, are you a member of that club". He said "I certainly

CASE #3080

am". We walked up to this club or some club house on the corner of Remsen or Montague street and Clinton street, Brooklyn, and he called to the telephone boy, "Jimmy, give me the telephone book." He gets the telephone book, and he said to some man, "Look up Steve Baldwin for me", and he gave him this address 73 or 75 Remsen street. He said thank you. The two of us stepped out and walked across the street and up to the steps of this building, and he put his hand forward to press the button, and in a moment I saw a lady step out and he stepped in the doorway, and about five minutes he comes and says to me, "Steve is off on his usual bat. He must be over at the club." I said "What club?" And he said, "The Excelsior Club." I said "Where is that?" He said right around here some where, on Clinton street or another street and I said, very well let us go to the Excelsior club, let us walk over there. So we walked over to some building on one of the corners, and he looked up and he said, "I am not sure whether this is the place or not, I said why dont you go up and inquire. There was a policeman right across the street, let us go over and ask him surely he would know where the Excelsior Club where a man like Steve Baldwin goes is. Let us go and ask him. We walked

CASE #3080

over to the policeman or the officer and said that we were looking for the Excelsior Club, and that it was at 133 Clinton street or Henry street, and he said I never heard of such a club being around here. Fishman said, "I will go and find out." He came back. We walked in another block and he went into a large apartment house on the corner of another street, and he stepped out of ^{my} sight, and into some telephone booth, and there he stayed for eight or ten or fifteen minutes looking over the pages of the telephone directory and picking it up and I finally went over to the booth and I says, "Come on Fishman, it ought not to take you that long to look up the telephone of the Excelsior Club," and he said "I found it it is right around the corner, sure, it is the building I thought it was." We went back and by this time it was about half past ten or eleven o'clock, and I said --

THE COURT: Never mind the conversation.

THE WITNESS: We did not find Baldwin and I suggested we go back to his house. He came out of there and went into a building, this Excelsior Club and stayed there about half an hour and then he came out and told me that Steve Baldwin sent to his house for a check book and that Steve Baldwin was so drunk that he doubted very much whether he knew what he was doing any how. We wait -

1932
CASE # 3080

ed there for fifteen minutes and he said there is nobody coming now--

MR. MARKEWICH: I object to this. I do not think a reputable attorney should be besmirched in that way. And I think that counsel should be instructed not to proceed further.

THE COURT: He is telling what the defendant said.

MR. WHALEN: No reputable attorney can be smirched any more than he has been.

THE WITNESS: We went back at his suggestion, went back to the house on Remsen street and the lights were all out, and I said, "What is the use going up there now--" it was 12 o'clock -- the people might be asleep, why disturb them--I am not going to go up and pull them out of bed."

THE COURT: The result was what? Did you find him?
A No, sir, we didn't find Balwin. I said, "You come right back to that building and you make out another check. I want a check. I told him if he did not give me the check I would have him arrested that night. So I gave him the other blank check and we went to the cigar store again. Our building was closed now, it was midnight, we went into the cigar store, and he went along to the counter or a little shelf like near the telephone booth He brushed aside one or two telephone directories, and took

CASE #3080

out his pen and began writing, writing out the check. Just before he finished his name he said to me, "My pen doesn't work right." I didn't have a fountain pen but I says, "I will get you a pen and ink." I went over to the--

Q When was that? A His pen did not work.

Q What day was that? A This same night.

Q What date was it? A It must have been about March 10th or thereabouts, about that time. Well, I went over to the cigar counter and asked for a pen and ink. When I came back Fishman's name was written down, and he said it is all right now, I finished it. I took the check and saw "Pay to the order of Rudrolph Weiss or Harry Altman, Attorney \$2500" I turned it over and saw nothing on one side of it. I folded it up and put it in my pocket, and I said, "Well, Fishman you should have done this in the early part of the evening, and you would hve been though." He says, "Please don,t deposit this until tomottow at two o'clock, I will be around with a certified check or cash." I went back home that night, and I looked at the check again and I turned it over.

Q Have you the check with you? A It is in the grand Jury's hands in Brooklyn. The District Attorney of Kings County has it. And when I looked at the check this time-- whereas in front of Fishman I turned it over and looked up here (illustrating) as I was looking at it again I noticed

CASE #3080

the writing on this end on the reverse side of the check, this left hand of it, which escaped my notice there. Now when I turned it around and looked at it in his handwriting I had it this way. "In payment of promissory note of December 28th, 1920 or Rudolph Weiss." The next day when I got down to the office, I phoned Fishman, and I said, "Fishman, why did you do that. Do you know you wrote something on the other side." "Well", he said, "Altman don't be a child", he said, "I will be around, I told you I will be around at 2 o'clock and take that check up. Don't deposit it." So he did not show up at 2 o'clock. I said also to him, "Fishman, I called up Stephen Baldwin today and told him about the way you sought him last night, and also what you said about him.

MR. MARKEWICH: I object to that if your Honor please and ask that it be stricken out.

THE COURT: I will allow him to state what he said to the defendant.

THE WITNESS: And Steve Baldwin told me that he does not know you.

Exception.

THE WITNESS: Steve Baldwin tells me that he had heard recently --

MR. MARKEWICH: I object to that if your Honor please.

THE COURT: Never mind that.

THE WITNESS: Baldwin sai he does not know you.

CASE # 3080