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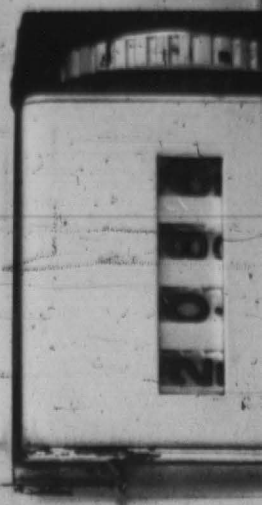
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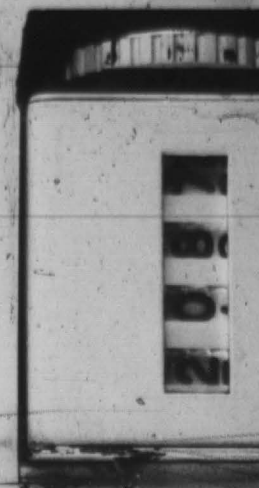
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COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York.

----- \*  
THE PEOPLE

against

MICHAEL J. WHELAN.  
----- \*

2232

Indictment filed 29th day of May, 1913.

Indicted for Bribery and Attempted Extortion.

A P P E A R A N C E S:

For the People,

ASSISTANT DISTRICT ATTORNEY O'MALLEY.

For the Defendant,

GEORGE R. SIMPSON, ESQ.

Tried before HON. EDWARD SWANN, Judge, and a  
Jury, on the 11th day of March, 1914.

Thomas W. Osborne,  
Official Stenographer.

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GUY W. CULGIN, called as a witness on behalf

of the People, being duly sworn and examined, testified  
as follows:

(Residence: 410 West 148th Street).

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your full name? A Guy W. Culgin.

Q Where are you employed? A Bureau of Buildings,  
Borough of Manhattan.

Q City of New York? A Yes.

Q How long have you been employed there? A Over three  
years.

Q What position do you hold? A Assistant to the Chief  
Inspector.

Q And how long have you held that position? A Three  
years last month.

Q In that position what are your duties? A General super-  
vision and full charge of all the inspectors of the borough.

Q How many inspectors have you in the Bureau? A I think  
there is something like 130 odd under my charge at present.

Q Do you know this defendant, Michael J. Whelan? A Yes.

Q How long have you known him? A Since the day he was  
appointed as an inspector.

Q When was that? A That was in August, 1912, I think.

Q What date was it, can you remember -- can you refer to  
your records? A He was appointed by Superintendent Miller

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August 26th, 1912, for a temporary period from August 26th, to September 30th.

Q What was the name of his position? A Inspector of Masonry and Carpentry.

Q When did his temporary appointment expire? A September 30th, 1912, the first one.

Q When was he reappointed, if at any time? A On October 7th he was reappointed.

Q 1912? A 1912. His appointment was extended to take effect until January 1st, 1913.

Q In the same position. A In the same position, yes.

Q In the month of December and during all the month of December, 1912, he was performing the duties of that position in the Building Department? A He was until the date he was suspended.

Q What date was that? A December 26th he was suspended.

BY THE COURT:

Q Was that the day after he was arrested? A He was arrested the 24th and 25th was Christmas and he was suspended on the 26th.

Q Two days after he was arrested? A Yes.

Q In this case? A Yes.

MR. SIMPSON: That was the first day they had any knowledge anything happened to him.

THE WITNESSS: We received word in the afternoon of

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his arrest but it was too late to take any action that day.

BY MR. O'MALLEY:

Q What were the defendant's duties in that position?

A He was under instruction from the time of his appointment, being instructed in the duties of a Building Inspector, until about December 3rd, 1912; from August 26th to December 3rd, he was with Inspector Thain and on December 4th he was out with Inspector O'Gorman who had obtained a transfer from the Borough of Manhattan to the Borough of the Bronx, and he was out with him for one day to get acquainted with the district, and beginning on the 5th, he was assigned to the district vacated by O'Gorman, which was known as the 5th Inspection District.

Q Give the boundaries of that district if you can.

A The southerly boundary was East Houston Street, westerly Fourth Avenue, up to 14th Street; then up Broadway to 20th Street; easterly to the East River, and on the easterly border was the East River.

Q Did the 5th Inspection District take in the southerly side of East 20th Street? A Yes, sir.

Q From Broadway to the East River? A Yes.

THE COURT: That includes the premises in question and referred to in the indictment?

MR. SIMPSON: That is conceded.

BY MR. O'MALLEY:

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Q Was there anybody else assigned to that district besides this defendant? A Not for district inspection work, no, sir.

Q What is that work? A It is defined by orders issued by Superintendent Rudolph B. Miller under date of March 1st, 1912. "District Inspectors shall patrol the respective districts to which they are assigned. They shall report all work going on in violation of law; investigate all complaints; examine all buildings for proposed alterations; inspect all minor alterations and repairs being made under Slip Applications; and report on all buildings damaged by fire and on all buildings in unsafe conditions, except so far as any of these duties may apply to any new building or alteration for which regular permits have been issued or which may have been placed under the supervision of other inspectors. They shall perform such other duties as may be assigned."

Q Assigned by whom? A Either directly by Mr. Miller, the Chief Inspector, or myself.

Q Was this order of which you speak in force in the Department during the month of December, 1912? A It has been continuously in effect from March 4th, 1912, until the present time.

BY THE COURT:

Q Without amendment? A Without amendment, yes.

BY MR. O'MALLEY:

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Q You say the defendant was under you? A He was, directly.

Q What were your duties? A My duties were general supervision of the work of all the inspectors, not only the district, but, construction men, elevator men, plasterers, steel and iron, covering the entire Borough.

Q Aside from that order did you issue any other orders to the defendant personally?

BY MR. SIMPSON:

Q Was that order you now hold in your hand read to this defendant at any time that you know of?

THE COURT: Or given to him?

MR. SIMPSON: Or given to him.

THE WITNESS: He was instructed in it. That is the reason the man was under instruction from other inspectors before being assigned to work independently; he also had access to the order book which is always open on my desk.

MR. SIMPSON: I move to strike out what he had access to --

BY MR. SIMPSON:

Q The only query is whether that particular order promulgated by your superior was read to this defendant at any time to your knowledge. A He was instructed in the contents of it.

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Q By whom? A By the inspectors by whom he was instructed, and also by myself.

Q The substance or contents? A The substance of it. I cannot testify this order as I have read it here was ever read to the defendant. I cannot testify to that.

BY THE COURT:

Q Were all of the inspectors instructed in regard to that order? A Yes. The defendant was not in the Department at the time this order was issued.

Q Did the defendant in his course of conduct act upon that order in any way? A Strictly.

BY MR. O'MALLEY:

Q You say you gave the defendant the substance of that order? A Yes.

Q Tell us what you told the defendant as to what his duties were? A To patrol his district, make observation as he went along the street and examination of all buildings where he thought there might be either an unsafe condition existing or might be possibly work going on without a permit. He was furnished information as to what permits were issued in that district. He was also furnished with information whenever plans were filed for alterations or new buildings which were proposed; a list of all the fire calls in the Bureau were read each morning and whatever ones were read in his district, he was to inspect those buildings. Also he had

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in his possession what we call the Inspector's Slip for each violation and unsafe order, which was pending or in action and he was to make periodical examinations of those buildings to see if the orders were complied with or work in progress, to see it was being done properly.

Q When alterations were being made on any building in the district, in the defendant's district, what were his duties with respect to that? A If there was a permit issued for either alteration or new building, he had nothing to do with alteration that building. If ~~an~~ permit was not issued by our Department, it was his duty to examine the building and find out what work was being done, and if necessary file a violation order against the premises, stating specifically what was being done and that it was being done without a permit.

Q Are you able to say what alterations required a permit? A Practically any alteration to a building which involved a structural change, to the walls, stairs or foundation -- involving the construction of a building, or fire exit, or such work as that.

MR. SIMPSON: The installation of a heating plant?

THE WITNESS: That is up to the Plumbing Division.

BY THE COURT:

Q Of your Department? A Yes. But it would be his duty to report such work was going on without a permit.

BY MR. O'MALLEY:

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Q It would be the defendant's duty to report such alterations were going on without a permit? A Yes.

Q Where a floor was being dug up and a foundation laid for a boiler, that would include such an alteration you have spoken of? A Simply to put a foundation under a boiler - we don't consider that an alteration. We consider the boiler a fixture.

BY THE COURT:

Q When you say fixture, you mean removable fixture?

A Yes, sir; what we call a trade fixture.

BY MR. O'MALLEY:

Q But where a floor is torn up, a cement floor and foundation laid for a boiler and a heating plant to be installed in the building, that would be such a repair as would require a report from him? A Not necessarily. If that was the only thing being done, no--- simply putting in a concrete foundation in support of a boiler, we have not considered --

BY THE COURT:

Q How about a steam heating plant for heating a garage, how about that? A The Plumbing Inspector of the Bureau would inspect the boiler, heating apparatus, the piping and all that, to see it was all properly installed. They simply notify the Department to make such an examination.

BY MR. O'MALLEY:

Q You recall premises 530 and 532 East 20th Street?

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A Yes.

Q These premises you have testified were in the district the defendant had charge of? A Yes.

Q Were you ever in those premises yourself personally before December 18th? A No.

Q Have you your records showing any violation filed by this defendant against that building? A I have.

Q Please produce it.

BY THE COURT:

Q Is it in his handwriting? A It is in the defendant's handwriting, yes.

MR. O'MALLEY: This is conceded to be a violation (showing paper).

THE COURT: Let us call it Notice of Violation.

MR. O'MALLEY: Notice of violation filed by the defendant with respect to premises 532 East 20th Street, December 18th, 1912.

(The paper is received in evidence and without objection and marked People's Exhibit 1).

BY THE COURT:

Q The phrase that is used there "stop work" -- does that have any significance among the inspectors in the Department?

A It would mean that the inspector himself considered the work was going on without a permit, such that is in his opinion the work should be stopped until a permit was

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obtained.

Q Is that what that phrase means in that paper? A Yes.

BY MR. SIMPSON:

Q But the fact that the words "stop work" appears on that violation as filed, this defendant had no power to stop that work, did he? A He had the power to order it stopped but if they refused ---

BY THE COURT:

Q You mean recommend? A Power to recommend it stopped; that amounts to a recommendation to the superintendent that in his opinion the work should be stopped.

Q Who stops it when the inspector recommends it to be stopped; who would issue the stop order? A The Chief Inspector or Superintendent personally.

Q You are the assistant Chief? A Yes, I might issue that order.

Q You or the Chief Inspector or the Commissioner? A Yes.

Q But one of those three? A Yes, sir; one of those three.

BY MR. SIMPSON:

Q When this defendant filed that violation, his work, the defendant's work ceased; he had no power to set aside that violation, did he? A He could not dismiss the violation unless the law had been complied with.

Q After a re-inspection, not by him, but by some other

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person connected with your Department? A If he made a re-inspection of the building and found that the building had been restored either to its original condition or permit obtained, he would recommend the case for dismissal.

BY MR. SIMPSON:

Q That permit would be numbered? A Yes.

Q And handed to this defendant? A It would have gone to the other inspector, what we call the instruction inspector and he would have dismissed the case.

Q This defendant could remove that violation until that number was handed to him, could he? A No.

BY MR. O'MALLEY:

Q Assuming he made another examination of the premises and found after the work had been stopped it had been begun without the permit, it was his duty then to report it to the Department? A It would be his duty to report it.

Q And the defendant in his capacity as an inspector, after finding that a building of this kind was undergoing an alteration without a permit, could tell the owner or the person in charge it must be stopped unless a permit was secured? A That would be his duty, to do that.

Q And then report it into the Department? A The filing of the violation would be his report.

Q Have you any knowledge whether in this case the work was stopped at the direction of the defendant, or whether any

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further action was taken by the department? A I know of no other action being taken by the department. I do not know what occurred on the job. There was nothing at that time to draw my attention particularly to this job.

Q Now, will you consult your records and see whether or not any permit was ever secured for making these alterations in this building and if so, when? A Alteration Application 3215 of 1912, was filed with the Bureau on December 20th, 1912; was disapproved on December 30th; it was amended by the Architect, by the filing of an amended application on January 2nd, 1913, and approved on January 6th, 1913.

Q That was the date of final approval of that application? A January 6th is the date of the final approval.

Q It was never filed until December 20th? A December 20th is the date upon which it was filed.

Q Is there any report on your record of any violation after December 20th on this building, made by this defendant?

A I know of none, but I have made no thorough search of the records personally.

Q Would it be included in this report I have offered in evidence here? A Any further violation would appear as a record of its own and would not appear in that. All you have there is the original violation (referring to People's Exhibit No. 1).

Q Between now and morning will you look to see if there

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is any further violation put on these premises by this defendant?

IT IS CONCEDED by the Defendant's counsel and by the defendant himself that no further violations were put on these particular premises by the defendant, after the one filed December 18th, 1912, being People's Exhibit No. 1 in evidence.

CROSS EXAMINATION BY MR. SIMPSON:

Q Was it necessary for this defendant to file another violation against those premises when one of these violations had already been filed? A I think the violation filed would cover all conditions existing so far as violations of the law were concerned.

Q Until they were wiped off? A Yes, unless something radically different had developed.

BY MR. O'MALLEY:

Q I think you have already testified, assuming work has been stopped on a building, after a violation had been filed, and begun again, before a permit was granted, it would be the defendant's duty to report the resumption of operations? A Yes.

BY MR. SIMPSON:

Q Where the job was a minor job, so to speak, and where the person having or doing that minor job would say: "I filed

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my plans; they will be approved; it is all right; let us go ahead" --- there will be no great crime in this defendant allowing these people to go ahead if he belived in their honesty that they had filed plans? A Not with a minor alteration such as occurred on this building. It was not what we considered a serious operation or one that would require drastic action.

BY MR. O'MALLEY:

Q Such operation as the defendant reported was a violation? A It was a violation of the law.

Q And after having once filed the violation, was it not his duty to report any resumption of operation on that building? A It would be, technically it would be.

BY THE COURT:

Q Until the violation was removed? A Yes, sir.

Q Was he about the only man that would report any continuation of work upon the premises? A He is the only man regularly assigned to that district for that purpose.

Q Did the Department look to him in regard to these particular premises, after he filed that notice of violation?

A Yes.

MR. O'MALLEY: I now offer in evidence, if your Honor please, Section 4 of the Building Code of the City of New York, in force and effect on and during the month of December, 1912.

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THE COURT: Section 4 may be considered in evidence and either side can read from the book.

(The Court admonishes the Jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, March 12th, 1914, at 10:30 o'clock.)

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New York, March 12th, 1914.

Trial resumed.

MR. O'MALLEY: If your Honor please, I think I shall read Section 4 of the Building Code to the jury.

THE COURT: very well. Each side may read it to the jury. It is already in evidence.

(Mr. O'Malley reads to the jury Section 4 of the Building Code.)

It is conceded for the purposes of the record that Rudolph P. Miller was the Superintendent of the Bureau of Buildings of the Borough of Manhattan, during the time this defendant was an inspector in the Department, and that the defendant was appointed by Mr. Miller to the position of inspector.

FREDERICK W. HAITZ called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence: 2028 Madison Avenue.)

DIRECT EXAMINATION BY MR. O'MALLEY:

(At the request of counsel all the witnesses on both sides of the case are directed to leave the room until called.)

Q Where do you live? A 2028 Madison Avenue.

Q What is your work or business? A Marble polisher.

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Q Where are you employed at the present time? A John H. Shipway Brothers, 136th Street and East River.

Q Were you at one time in the employ of the New York Mail Company? A Yes, sir.

Q When did you go to work for that company? A On or about October, 1912.

Q Where was the place of business of that company at that time? A 525 East 25th Street.

Q East 25th? A East 15th Street.

Q What was their business, if you know? A Handling Government mail.

Q When you went to work with them, what vehicles did they use? Were they using wagons or automobiles? A No, they started in the automobile system.

Q They had already started on the automobile system? A Yes.

Q Who was the president of the corporation? A Mr. B. F. Hardesty.

Q At any time after you began work for them, did you go to premises 530-532 East 20th Street? A Not until about November.

Q November of 1912? A 1912.

Q Tell the jury what those additional premises were that the corporation secured? A They were an empty building and had rented them to use them as a garage.

Q Which side of the street was that building? A South

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side of 20th Street.

Q Between what avenues? A Avenue A and B, or Avenue A and First Avenue; I am not sure any more, so long ago.

Q How high was the building? A One story.

Q Did you have charge of the alterations that were to be made there? A Yes.

Q You were put in charge of the men? A Yes.

Q When did you begin work there? A The excavation was started on December 10th.

Q 1912? A Yes.

Q The excavation? A Yes.

Q Describe to the jury what that excavation consisted of?

A It consisted of digging about two feet of the earth in a space of about 16 x 10, I think. I am not sure of it any more -- in order to set a steam boiler for heating, to keep the radiators in the automobiles from freezing while they were stalled in the garage.

Q What sort of a floor was it in the building? A At that time a cement floor in the building.

Q An excavation was made through the cement floor and down into the soil about two feet? A yes.

Q What else was done or to be done there? A After the excavation and the boiler was set, there was to be partition blocks, fireproof partition blocks, 12 x 12 inches square according to law -- the Building Department Law, and it rose up I guess

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about 10 feet -- not positively sure now -- about 10 feet, I think -- but I am not sure of that.

Q That is the structure over the boiler -- was there any drainage put in? A What?

Q Drainage? A No, sir.

Q That you remember of yourself? A I don't remember any drainage, only there was an opening left where the pipes could go through, through the brick wall in order to supply the heat.

Q There was a drainage from your boiler into the sewer?  
A Yes, for the return of the water.

Q Was there a chimney erected? A There was a chimney also erected.

Q Describe that chimney, how it was erected? A It was erected from the roof -- no, it was not from the roof -- from the floor up, up to above the roof was about four or five feet.

Q What was it built of? A Brick.

Q The foundation of the building lay on the floor and went up through the roof? A yes.

Q Five or six feet above the roof? A Yes, with a continuation of galvanized iron pipe, because the building next door was at least 30 feet higher, and in order to get a draught we had to build up the chimney higher.

Q What other alteration was made in the wall of the building? A Outside of that I do not know anything.

Q Any door or window made? A There was a door made out of

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a window, in the front.

Q You say work was begun on the 10th of December? A yes.

Q What do you mean by work, the excavation? A The excavation of the boiler room.

Q Tell us how the work proceeded -- during the following week what was done? A The laborers dug out the foundation and the brick was ordered. After they got through, we cemented the floor, after they got through with the excavation, and set the boiler and started to build a wall around it and cut the doors through the window which was in the front.

Q At any time after you began work there did you see this defendant? A After the 10th of December I did see Mr. Whelan.

Q When was the first time you saw him, if you remember?

A That I do not really recollect. It was between the 10th and the 17th that I saw him off and on, on different days, both him and another inspector.

Q Where did you see them? A In the building.

Q When was the first time you had talked with him that you remember? A That I do not remember any more. It was between the 10th and the 17th.

Q Do you recall the 17th of December? A It was on the 17th of December that the work was stopped.

Q Did you have a talk with the defendant on that day?

MR. SIMPSON: I move to strike out the latter part of the witness' statement as not being responsive and as call-

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ing for a conclusion, that the work was stopped.

THE COURT: Instead of saying the work was stopped, tell us what was done.

THE WITNESS: The inspector came around.

BY THE COURT:

Q What inspector? A Mr. Whalen.

Q This defendant? A Yes; came around, and between the 10th and the 17th, on several occasions, and asked did I have a permit. I referred him to the 15th Street office.

Q What did you say to him? A Told him I did not know if we had a permit or not because there was a change in the superintendents. At that particular time, and the new superintendent had been too busy to come around and see me, and I was too busy to see him, because I was in one place and he was on the other. It was on the 17th of December that he came again and he asked me again about the permit. I referred him to the 15th Street office, and about 10 or 15 minutes after he left I received a telephone call from the 15th Street office to stop the men from work.

MR. SIMPSON: I move to strike that out.

MR. O'MALLEY: I will consent that it be stricken out.

MR. SIMPSON: And that the jurors be instructed to disregard it.

THE COURT: We will strike that part of it out and the jury are directed to disregard it.

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THE COURT: You can state if you received a telephone communication from the 15th Street office; now, after you received that telephone communication, what did you do?

THE WITNESS: Told the men --

BY THE COURT:

Q Never mind what you told them.

BY MR. O'MALLEY:

Q What did you do with the men? A They had to stop work at twelve o'clock.

BY THE COURT:

Q You laid them off? A Yes.

MR. SIMPSON: I want to get the objection properly on the record. I object to the characterization of this witness that the men stopped at twelve o'clock, as calling for a conclusion as to the other portion of the question put to this witness, leaving an inference for this jury to draw from the conversations which he claimed he had over the phone.

Objection overruled. Exception.

BY MR. O'MALLEY:

Q You say you had talks with the defendant on that day? A Yes.

Q In which he asked you if you had a permit? A yes.

Q You told him you did not know and referred <sup>him</sup> to the 15th Street office? A Yes.

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Q That was where the office of the company was, and Mr. Hardesty's office? A Yes.

Q And after that conversation did the defendant leave you, yes or no? A I do not know what you mean.

BY THE COURT:

Q After the defendant saw you and had this conversation, did he leave you? A Yes, sir.

BY MR. O'MALLEY:

Q How long after was it that you received the telephone communication? A About 15 minutes after -- 10 or 15 minutes after.

Q It was after you received that telephonic message that the men on the job stopped work? A That day, 12 o'clock.

Q On that day at 12 o'clock.

BY THE COURT:

Q Did the defendant, when he left you that day, say where he was going? A Yes.

Q When you told him about 15th Street being the headquarters, did he say where he was going when he left you? A He said he was going around to 15th Street to find out about the permit.

Q That was the place you directed him to? A Yes.

Q And 10 or 15 minutes after that you received a communication from the 15th Street headquarters? A Yes.

Q After you received that communication from the 15th

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Street headquarters, you stopped the work, did you? A Yes.

MR. SIMPSON: I object to that upon the ground it is questions incompetent -- the/propounded by your Honor and the answer given -- incompetent, irrelevant and immaterial, and I except.

BY MR. O'MALLEY:

Q What men stopped work at that time? A One bricklayer and one mason.

Q Were there any other bricklayers or masons working on the wall at that time? A No, sir.

BY THE COURT:

Q Was that the work the defendant had objected to, this defendant? A Yes.

Q That was the only work he objected to? A Yes.

MR. SIMPSON: I object to your Honor's question and to the answer of the witness. There has been no testimony that the defendant objected to any work. He asked for a permit and this witness referred him to the 15th Street headquarters.

THE COURT: I thought he said this defendant asked him if he had a permit for doing that particular work, and he told him he did not know and that matter was attended to at the headquarters on 15th Street, and I thought that was what you said, is that right?

MR. SIMPSON: He did, but he did not say the defendant

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objected to his work.

THE COURT: I overrule the objection.

Exception.

BY THE COURT:

Q Did he tell you whether or not you could go on with or without the permit? A No.

Q He did not tell you? A No.

Q When he asked you about the permit, what did he say? A He asked me did I have a permit for this brick wall.

Q And you told him no? A Yes.

Q What did he say? A I told him he had to go to 15th Street office to find out about the permit, that I did not know if there was a permit granted.

Q Did he say nothing else -- just merely asked you have you got a permit and you said no, that is a matter attended to at the headquarters at 15th Street -- did he say anything else?

A He wanted to know what this work was for and what we intended to do, and I told him we were going to put up a steam boiler and build a wall around this boiler and so forth.

Q You gave him the details of it? A Yes.

Q What did he say to that, after that? A He said this work could not be done without a permit.

MR. SIMPSON: I object to that and take an exception.

BY MR. O'MALLEY:

Q This was on the 17th of December, was it? A Yes.

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Q Now, was any further work done there on that foundation on that day, December 17th? A The men worked up until 12 o'clock that day.

Q I say after they quit work was there any more work done on that foundation? A No more work of the brick wall or brick work being done until the 20th.

Q After the defendant left you on December 17th, and you received this telephone message, did you see him after that? A Between the 17th of December and the 20th I seen Mr. Whalen again.

Q Tell the jury, and take your time, when it was you saw him and where you saw him? A I couldn't very well place the dates any more. It was between the 17th and the 20th. I cannot say which date it was any more, but I seen him at the building again between those dates.

Q Go on and tell us what was said by him to you, if anything? A He wanted to know did we have a permit or file the plans and get a permit for the work to go on from the time he seen me last. Wanted to know how he could communicate with the boss of the -- with Mr. Hardesty, and I referred him to Mr. Daugherty, who was the assistant to Mr. Hardesty.

Q What else did he say at that time? A Outside of that I do not remember him saying anything else.

Q When was the next time you saw him? A Then I seen him on the 20th of December.

Q Now did you have any further talk with him from the time

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you saw him between the 17th and the 20th other than you have told us? A I don't remember of anything else only about the permit.

Q Did he say anything about letting the job go on at that time? A No, not at that time.

MR. SIMPSON: I object to it as a leading question.

MR. O'MALLEY: After I have exhausted his recollection I have a right to refresh it.

THE COURT: He may ask him whether he said anything about the subject of the job.

MR. SIMPSON: Will you pass upon my objection first?

THE COURT: I suggest that he change it so that it will not be leading.

MR. SIMPSON: Then let us have it changed, so that I can get a ruling. I withdraw my objection if the answer be yes or no to that question.

BY MR. O'MALLEY:

Q Between the 17th and the time you saw him on the 20th, did the defendant say anything to you upon the subject of letting the work go on?

MR. SIMPSON: Yes or no.

A No.

Q When was the next time you saw the defendant after the 20th of december? Where did you see him then? A In the garage.

Q What talk did you have with him at that time? A He says

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that he communicated with Daugherty and I believe he wanted to see -- said he would like to see Daugherty and would I call him up on the phone, and probably he would meet him at the garage, which I did.

BY THE COURT:

Q Who is Daugherty? A He was assistant to the president of the company.

BY MR. O'MALLEY:

Q What other talk did you have with him? A Outside of that I don't remember of any, except that he would like to see Mr. Daugherty.

Q I am going to call your attention again and I ask you, up until the time you had this talk with the defendant, do you recall of having had any talk with the defendant on the subject of letting this work go on?

THE COURT: On the subject of whether or not he would or would not let it go on.

MR. SIMPSON: Please do not interject the word "he"-- the question is whether this defendant would let the work go on -- and I ask that the answer be yes or no.

BY MR. O'MALLEY:

Q Do you recall any time in which the defendant mentioned the name of any other person? A yes. I don't remember about anything else outside of that.

Q Do you remember the defendant ever having mentioned the

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name of a man named Spellman? A yes, sir, Spellman had come around --

Q Do you remember that, yes or no? A Yes.

Q When did he, the defendant, at any time mention Spellman's name to you? A Between the 10th of December and the 20th.

Q What did he say to you in that conversation?

MR. SIMPSON: Unless the time is positively fixed, I object as being too remote.

THE COURT: Not if he cannot fix it, but, is it very material?

MR. SIMPSON: It is, because if this witness should say it was on the 13th, and this defendant here concludes that on the 13th he was in the Bronx or was in Jersey or in Hoboken -- what opportunity has he got of defending or denying a conversation alleged to have been had with this witness between the 10th and the 20th?

THE COURT: Suppose it was on the 14th, what difference would that make?

MR. SIMPSON: It is very material. Probably the records of the department show that this man was in Richmond or Brooklyn, and could not have had a conversation with him. What chance has he of disproving it, unless the date is fixed.

MR. O'MALLEY: We will fix it as nearly as we can.

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BY MR. O'MALLEY:

Q Do you remember about when it was? A I could not positively state the date.

Q Do you remember having made a statement to the District Attorney, do you remember that? A Yes.

Q Do you remember having told the District Attorney between the 17th and the 20th the defendant came around and had a talk with you about Spellman?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A Them dates are mixed up.

BY THE COURT:

Q Mixed up where? A It was between the 20th and the 24th.

BY MR. O'MALLEY:

Q You do not remember having made any statement like that to the District Attorney, between the 17th and 20th, of the defendant having come around and spoken to you about Spellman?

A I don't remember saying between the 17th and 20th.

BY THE COURT:

Q What do you say to your best recollection?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

MR. SIMPSON: I object to what he said to the District Attorney in the absence of the defendant.

Objection overruled. Exception.

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BY THE COURT:

Q What were the facts of the defendant coming around, if he came around at all? A He came around and stopped the work; at least told me -- asked me for a permit and the work was stopped on the 20th, and between the 20th and the 24th was when he came around and asked me about the money matters.

THE COURT: We are trying to get you to tell us what he said.

MR. O'MALLEY: Perhaps it was my fault. I was trying to bring out a conversation this witness had between the 17th and the 20th. I thought there was one.

MR. SIMPSON: This witness has just stated that when he came around and stopped the work, and his previous statement was that this witness did not stop any work between the 17th and the 20th, or on the 20th; that in consequence of some conversation over the telephone this witness did something with the bricklayers at 12 o'clock that day, but he has not testified as yet and it comes with that answer just given by this witness "when he stopped the work".

THE COURT: We will strike out the words "stopped work".

BY MR. O'MALLEY:

Q You have testified that you saw the defendant on the 20th, is that right? A Yes, the 20th of December.

Q Did he ask for Daugherty, Mr. Hardesty's assistant? A Yes.

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Q After that conversation took place what was done? A I phoned for Daugherty to come around to see Mr. Whalen.

Q Was the defendant present? A He was in the garage.

Q When you telephoned? A Yes.

Q Did Daugherty come around? A Yes.

Q After Mr. Daugherty came around, what did you observe?

A After Mr. Daugherty came around, Mr. Whalen called Daugherty out on the sidewalk and what was transacted there I could not hear.

Q You saw them engaged in conversation? A Yes.

Q After that conversation, after you saw Mr. Daugherty talking with the defendant on the sidewalk, did you have a conversation with Daugherty, yes or no? A No -- yes, I had a conversation.

Q Where did you have that talk with Daugherty? A In the garage.

Q Was the defendant present then? A No.

Q He had gone.

MR. SIMPSON: What date was that?

MR. O'MALLEY: The 20th.

BY MR. O'MALLEY:

Q After that conversation with Daugherty, what did you do?

A I started the men back to work.

Q What men did you start back to work? A The bricklayer and the mason.

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Q That was on the 20th? A On the 20th.

Q From the 17th to the 20th that bricklayer and mason had  
and  
not been at work on the foundation/brick wall? A No.

Q And nothing had been done? A Nothing on the brick wall,  
but there was other work being done.

Q That was the steamfitting, you mean?

MR. SIMPSON: I move to strike out Mr. O'Malley's  
characterization.

THE COURT: Yes.

BY MR. O'MALLEY:

Q What other work was going on? A Electric lights put in  
there, and steamfitting done.

BY THE COURT:

Q But the mason work you say was stopped? A Yes.

Q From the 17th to the 20th? A Yes.

BY MR. O'MALLEY:

Q After that did you again see the defendant? A Between  
the 20th and the 24th of December I seen the defendant off and on  
again.

Q Where did you see him? A In the garage.

Q What talk did you have with him? A He wanted to know --

Q Tell us what he said, use the language he used?

THE COURT: or the substance.

THE WITNESS: How can I see the boss.

BY MR. O'MALLEY:

Q Now what did you tell him? A I said, go around to 15th

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Street, that is where you can see him. Does he not ever come around here? I said, yes, once in awhile. Well, he said, you tell your boss when you see him next time, that it ought to be worth \$25.00 to let this job go on. You know what chances I am taking in this, and if it is impossible for me to see him, you tell him to leave the money with you.

Q What did you tell him? A Who?

BY THE COURT:

Q Who were you talking about? A That was what Whelan said to me.

THE COURT: That is what Mr. O'Malley refers to.

BY MR. O'MALLEY:

Q What did you say to the defendant, if anything, after he said that to you? A Outside of that I did not say nothing else. I told him I would see Mr. Daugherty and ask him about the money matters.

Q Did you see Mr. Daugherty? A I did.

Q Did you have a conversation with him, yes or no? A yes.

Q After that conversation did you see the defendant again?

THE COURT: After you saw Daugherty, did you see the defendant again; the defendant told you to see Daugherty about the money matters, and you saw him, and after that did you see the defendant again.

A yes, I saw the defendant again on the 24th of december.

Q Tell us what time on the 24th you saw the defendant?

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A About two o'clock in the afternoon.

Q Where did you see him? A In the garage.

Q Tell us what he said to you, if anything? A He said, I got an appointment with Daugherty to meet me around here, and I expect him around here in about ten minutes, and they phoned to me previous to that that Mr. Whelan was on his way to 20th Street, and if he came there to hold him there until Mr. Daugherty came, which I did.

Q What did you say to the defendant about staying there?

A I did not tell the defendant that I received the telephone call, because he told me that he expected Daugherty there, and I let him remain there until Mr. Daugherty came around.

THE COURT: That was the 20th?

THE WITNESS: The 24th of December.

MR. SIMPSON: The day before Christmas.

BY MR. O'MALLEY:

Q Did Daugherty come around? A Daugherty came around. He walked up to Mr. Whelan and myself, where we were standing.

Q Where were you standing at that time? A Near the telephone in the building, on the west side of the building, about in the centre of the building, and Mr. Daugherty said -- no, Whelan said to Daugherty, I see you are going along with your work all right, and Daugherty said yes, and he said to Whelan how much do you want, and Mr. Whelan said I told your foreman how much, \$25.00. So Mr. Daugherty pulled out a roll of bills

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which I could not see, only, five dollar bills they were, and he pulled one of the bills away from the bunch he took out and handed them to Mr. Whelan.

BY THE COURT:

Q Handed him one bill? A Handed him the bills.

Q He handed him -- he pulled out a roll of bills and he took away one bill, and did he give him that one bill? A No, he gave him several bills.

Q What about pulling out one bill? A He put this one bill from this package, and put it in his pocket and handed the balance to Mr. Whelan.

BY MR. O'MALLEY:

Q Handed the other to the defendant? A yes.

Q What did the defendant do with the bills, if anything?  
A put them in his pocket.

Q What pocket? A Right hand trousers pocket.

Q What did Daugherty do then, if anything? A Daugherty walked out of the building and two detectives walked in.

Q Before the detectives came in, what if anything, did the defendant say that you heard? A He stated to me that he -- he said, this will come in handy on Christmas eve, like it is today, but he says, "You know it is not all mine, I will have to give the other fellow half".

BY MR. O'MALLEY:

Q You say two officers walked in, what detectives were they?

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A Their names were Barber and Hannan. Hannan was a private detective.

Q What took place after they came in? A Barber walked up to where we were standing -- between the time Dau gherty walked out a steamfitter walked over with us -- came over to converse with us.

Q What is that man's name? A Mr. Powell. He was there at the time the two detectives came in, -- the three of us were together, Powell, Whelan and myself, and when the two detectives walked in, Barber said, are you a Building Inspector -- to Whelan, and he said yes. He said, show me your shield, which he did, and he said, I am a detective. I put the two of you under arrest -- thinking the steamfitter was also an inspector, and he searched him and pulled out the money out of his pocket.

Q Searched whom? A Mr. Whelan, and pulled the money out of his pocket, and he said, Do you see these initials on these bills, and he said, yes, and he said, them are the initials of the president of the company. You are under arrest. When I saw the other fellow was not implicated in this affair, I said to the detectives, this is not an inspector, it is a steamfitter.

Q You mean Powell? A Powell. He said, well, I don't want him then.

BY THE COURT:

Q What did the defendant say when the detective pulled the money out of his pocket?

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BY MR. O'MALLEY:

Q And placed him under arrest? A The defendant made a remark such as about, "Yes", he said, "this is a hell of a Christmas present".

Q Go on. A Outside of that I don't remember hearing anything until we walked out.

BY THE COURT:

Q Had you ever seen the defendant before we will say the 17th of December? A I seen Mr. Whelan between the 10th and the 17th on different occasions.

Q Was it in connection with this particular job? A Yes.

Q Did you ever see him in connection with this particular job? A Outside of that I never met Whelan before.

Q That was the first time in connection with that job that you ever saw him? A Yes.

Q Do you know whether or not he was ever in that establishment before that? A No. When he first came around the job I insisted on seeing his badge, because there was so many people coming around there and wanting to criticise the work going on and I made up my mind anybody that came around again I wanted to make sure he was somebody, some high official from the Building Department, and when I asked him to show his shield he did.

BY MR. O'MALLEY:

Q Well now, did you go to the police station or court

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with the officer when he took the defendant? A Yes.

Q You went along? A Yes, I was asked to come by Mr. Barber.

Q On the way did you hear any conversation in which this defendant took part? A About on 20th Street between First and Second Avenue on the south side of the street, about the middle of the block, he stopped and asked to speak to Mr. Daugherty.

Q The defendant? A The defendant. We stopped, and Whelan said to Daugherty, "I know youse got me right, but for God's sake have mercy on me. I have three little kids home. This is Christmas eve", and Mr. Daugherty said, I cannot do anything, this is the orders from the president, and outside of that you will have to go and see him about this.

BY MR. O'MALLEY:

Q Is that the last talk you had with the defendant, or anything you heard him say up to that time or up to the time he was taken to court? A No, nothing more.

Q You had no more? A No.

Q Have you recently seen this defendant? A He came up to my house on the 9th of February, with another man by the name of Peter J. Craig.

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Q Before that time, had you seen him at any time at any place? A I saw him here in the building.

Q Did he have any talk with you? A He came up to me, on the top floor I believe it is, where your office is and he said: "I tried to communicate with you, being I know that you are in the marble business, and a union man, I tried to get my delegate to communicate with your delegate, to reach you." He said: "What is your address, where do you live?" He said "somewheres in Madison Avenue, isn't it?" And I said yes. I told him then; I would not let him go further -- I said "It is 2028 Madison Avenue" and he marked it in his book.

Q After that you saw him at your house? A On the 9th of February he came to my house at about half past seven in the evening, accompanied by another man by the name of Peter J. Craig. I was ready to retire and I slipped on my slippers again --- it is a furnished room house and he was left in the parlor --- and I went downstairs and he introduced me to this man, Peter J. Craig, who offered me a cigar. I refused to take it, and handed me his card, Peter J. Craig's card. He said --

Q Who said this? A That was what Craig -- Craig handed me the card and Whelan started to ask me -- telling me about his family affairs such as he was in hard luck and all that and he said something -- now I am going to fix this up,

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he said, with my lawyer to ask you questions and if you see they are in my favor, you answer them. I interrupted him then and I said "I have made a statement to the Essex Market Court and I had to sign my name to it and I cannot very well go back on what I once said before." He said: "Did you really have to sign your name to that, that time we were taken down to Court?" And I said yes and he said: "I don't remember seeing that." So Mr. Craig said: "Well, that is right then; if he made a statement he cannot very well go back on what he once told in Court." So he said: "Where are you working now?"

Q Who said this? A Mr. Whelan.

MR. SIMPSON: May I object to this on the ground that it is incompetent, irrelevant and immaterial at this time and has nothing to do with this indictment.

THE COURT: It goes to the question of the intent of the receipt of the money.

MR. SIMPSON: This is something that happened recently.

THE COURT: I know that, but that comes from the drift of matters up to date and I think I can properly infer that the defense is going to be that it was a Christmas present. Now, therefore, bearing upon that would be the intent with which he received it.

MR. SIMPSON: You have no right to infer what the

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answer is going to be and secondly, this conversation alleged to have been had took place, according to this witness, on the 9th day of February, 1914, almost sixteen or seventeen months after the alleged commission of this crime. We are charged with bribery and extortion. If this defendant had intimidated the witness in any way, shape or form, that is a particular and distinct crime, for which we are not answerable at this time and I except to this testimony now being given by this witness as to what took place on Madison Avenue in a house on the 9th of February.

THE COURT: It is received on the question of guilty knowledge of intent in the receipt of the money.

MR. SIMPSON: I except.

BY MR. O'MALLEY:

Q Go on. A I told him I was working on the Bronx Court House job. "Who are you working for, what is the firm name?" I said: "McLaurie." He pulled out a book and marked it in a book and also asked me where McLaurie's place of business was and he marked that in his book. At the time he introduced me to Peter J. Craig, he told me -- I believe he introduced me about his being a brother in law and he worked twenty/six years for the Mutual Gas Light Company and he was pretty well up in politics, and Mr. Craig said to

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me: "I can show to you how much in politics I am, when I go to see Charlie Murphy, all I have to do is hand him my card and if I cannot -- if the servant don't let me in, all I have to do is hand my card in and I am admitted." He said: "I understand you have an application in for the Municipal Building."

BY THE COURT:

Q Who did you say this wonderful person was? A Peter J. Craig.

MR. SIMPSON: I object to all that matter.

BY MR. O'MALLEY:

Q Go on. A He said: "I understand you have an application in for the Municipal Building," which I told him on a previous occasion, up on the top floor when I met him that day. He said: "This is the man will probably be able to help you out, if you do the right thing by Mr. Whelan -- he will help you out to get this job on the Municipal Building."

Q Who said that? A Mr. Wheland said Mr. Craig is the man that would probably be able to help me out to get this job, if I done the right thing by him.

Q By the defendant? A By the defendant.

Q Were you at that time on the Civil Service list?

A Yes, sir; and I am still on the Civil Service list. I am seventh on the list.

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Q Now, did you have any talk with the defendant at that time that you remember? A Outside of that, I don't think there was anything else.

Q Who were you working for at that time? A For McLaurie -- D. J. McLaurie Marble and Tile Company.

Q You say the defendant took your name? A And address of the firm and marked it in a book.

Q Are you now working for McLaurie? A No, I lost my position the following Saturday.

MR. SIMPSON: I object to all this. The purpose of it is very evident.

THE COURT: I cannot guess at it, but if you object to it, we will stop.

MR. SIMPSON: I object to all this testimony in regard to what Mr. Craig said to this witness on the 9th day of February, 1914, in the City and County of New York, as being incompetent, irrelevant and immaterial and not binding upon this defendant.

THE COURT: See if I do not get this right. I understand that he says that Whelan called with Peter J. Craig and said to him, this is a man who can get you a job in the Municipal Building; is that right?

THE WITNESS: Yes. He didn't say he could get it but he can help me to get it, being he was so well acquainted with Charlie Murphy.

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## CROSS EXAMINATION BY MR. SIMPSON:

Q How old are you? A Thirty-seven.

Q Where were you born? A New York City.

Q How long have you been employed by Mr. Hardesty, for the New York Mail Company? A From October until January 1st.

Q 1913 or 1914? A January 1st, 1913.

Q In other words, six days after you were a witness against this defendant, you lost your job? A Yes, sir.

## BY THE COURT:

Q You were the foreman upon that job? A Yes.

Q Formerly the foreman of that job? A Yes.

## BY MR. SIMPSON:

Q Now, of course, you lost your job, this last job, didn't you? I am going to bring it all out -- you lost your last job? A I am working.

Q I say you lost your last job after you had talked with this defendant? A Yes.

Q You charged him with having lost your job? A No.

Q You mean to say you had not put it up to this defendant that because you were a witness against him, you, after the conversation with him on February 9th, 1914, did not lose your job and that he was the cause of your losing your job? A I never told him that.

## BY THE COURT:

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Q Did you ever tell anybody that? A No. Never did, that he was the cause of it.

BY MR. SIMPSON:

Q Never told anybody that? A No.

BY THE COURT:

Q Let us get what the job was that he lost -- What job did you have at that time, February 9th, 1914? A Bronx Court House. I was foreman of the polishers at that particular time.

Q For whom? A For D. H. McLaurie Marble & Tile Company.

BY MR. SIMPSON:

Q After you lost your job, did you have any conversation with the defendant Whelan in regard to the loss of your job, yes or no? A Yes.

Q Did you not tell Whelan that he, Whelan, was the cause of your losing your job out there? A No.

Q What did you say to Whelan? A I did not say anything. He came to me outside here yesterday and he said that I should not think he was the cause of it; that he had heard in the court room or court building, that I made a statement to Mr. O'Malley about him being the cause of it, which I never did.

BY THE COURT:

Q When did you lose that job, the one you had with

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McLaurie, February 9th, as head of the polishers? A February 9th was on Monday and the following Saturday I lost my job.

BY MR. SIMPSON:

Q Did you not say to this defendant in the Court House here the other day that Mr. O'Malley had asked you whether he, this defendant, was responsible for your losing your job and that you said to him that you felt that he, this defendant, was responsible for losing your job? A When he approached me I explained the circumstances and told him how it looked to me, but I told him that I did not accuse him or did not say that he was the cause of it but I said it looked very bad. That was what I did say.

Q Now, on the 17th day of December, 1912, in this County, on East 20th Street, where you were employed making an alteration, did this defendant direct you to stop your work? A He did not.

Q Did he, on the 18th, direct you to stop that work? A He didn't.

Q On the 19th? A No, sir.

Q On the 20th? A No.

Q At any time did he stop you from working? A No.

THE COURT: I thought you objected to the word "stop".

MR. SIMPSON: I object to the word "object" which your Honor used.

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THE COURT: The District Attorney can now ask him what he means by that, "stop".

MR. SIMPSON: Yes, any time that I fall into error, the District Attorney can take advantage of it.

BY MR. SIMPSON:

Q Did he at any time, from the 10th day of December, as you have described, 1912, until the time that you ceased to be in the employ of that corporation, tell you to stop, or object to your working, yes or no? A No.

Q Did this defendant advise you, at any time, to file plans or cause plans to be filed with the Building Department?

A No, he asked for a permit.

Q I ask, subsequent to the time that he asked for the permit, after that time, did he advise you that plans would have to be filed and where to go to file those plans? A No.

BY THE COURT:

Q What was the job that you say they referred to in the Municipal Building that was offered to you or --

MR. SIMPSON: Nothing was offered to him. He said he was on the eligible list or Civil Service list and Craig himself said he could help him.

MR. O'MALLEY: The defendant said that, that Craig would help him.

BY THE COURT:

Q What was the job? A Marble polishing.

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Q For the City? A For the City.

Q Marble polisher in the employ of the City? A In the employ of the City.

Q The City has marble polishers? A They have not got it. This was the first time they applied. They asked for six marble polishers.

Q For the Municipal Building? A Yes.

Q To work there regularly? A After the job was completed, to take care of the marble work in the building.

Q To keep it polished and clean? A Yes.

Q At what pay? A \$4.40 a day, the standard wages.

MR. SIMPSON: I object to these questions and take an exception.

THE COURT: To what?

MR. SIMPSON: The job in the City building, and I ask your Honor to direct the Jury to disregard your interrogations regarding this job which he is seeking.

THE COURT: It was not very material.

BY MR. SIMPSON:

Q Did the defendant advise about your brick work there, how you should do it, regarding some four inch of additional brick that was required on that job? A I don't remember that.

Q Did you not ask him and say to him that you were out on a strike and just got this position, that you did not know

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anything about this construction? A No, sir.

Q Never said anything about that at all?

BY THE COURT:

Q Was that a fact? A I could not say that because I was not on strike. The strikes was years before.

BY MR. SIMPSON:

Q Previously you had been on strike and just got this job? A No, I was working before that at the marble business and on the request of Hardesty I came to him. I left the job to go to him.

Q Hadn't you been out of work before you struck the Hardesty job? A No. I have a letter home/<sup>to show</sup>that Hardesty sent for me.

Q At no time did this defendant advise you regarding plans to be filed in the Building Department regarding this job? A No, sir. I was sent over by Mr. Dougherty with the plans to be filed.

Q When was that? A That was between the 17th and 20th.

Q Did you go over to the Building Department? A Yes.

Q When you got there you found what? A I had a letter which is in the possession of Mr. O'Malley and I went over to the Building Department with this plan and they advised me I had to turn in a plan in cloth.

Q A blue print? A Blue print in cloth. The other one I presented was in paper, and as soon as I would get this

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plan in cloth to come over and they referred me to a man upstairs--- I forget the name they mentioned-- and of course I never got the cloth plan to go over and so I paid no attention to it.

BY MR. SIMPSON:

Q Who drew up this paper plan? A Pierce, Butler and Pierce, the people who furnish the steam boilers.

Q I mean for the entire work, who drew up that paper plan you took over? A I don't know that.

Q Did you ever take a blue print over there? A Yes.

Q When? A Between the 17th and the 20th.

Q It was a blue print? A A piece of blue print, yes; in paper form.

Q They rejected that? A They read the letter and told me I should come over with -- that they would not accept that print in that form and it must be in a cloth form,

Q Should be cloth instead of paper? A Yes.

Q And everything then would be all right? A No, they did not say that. They said to come with that letter again and go upstairs, and they mentioned a man's name I forget, and to see him about it.

Q Did you have anything to do with drawing up that plan? A No, sir.

Q Were you present when it was drawn? A No.

Q What date was that handed to you to take over there?

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A Between the 17th and the 20th.

MR. O'MALLEY: Refresh your recollection from that paper (showing paper).

BY MR. SIMPSON:

Q What date is on the top there? A This was on the 18th of December, the day after the job was stopped.

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

Motion denied. Exception.

MR. SIMPSON: I except upon the further ground that there is no evidence the work was stopped by this defendant.

BY MR. SIMPSON:

Q That was the 18th? A On the 18th.

Q Did you not go over to the Building Department at the request of this defendant? A No.

(The paper is marked in evidence, People's Exhibit 3.)

Q Is it not a fact that you invited this defendant around to 20th Street and told him that there was a Christmas present there for him? A No, never.

Q Did you know this plant or frame-up against this defendant was going to take place?

THE COURT: I sustain the objection.

MR. SIMPSON: There is no objection before you.

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THE COURT: There is one. I make it myself. You need not answer that question.

MR. SIMPSON: I except.

BY MR. SIMPSON:

Q Did you know of your own knowledge that marked money was to be handed to this defendant on the 24th day of December, 1912, at about two o'clock? A No.

Q Did you at any time that day know that they were going to hand him marked money? A No.

Q You knew nothing about it at all? A All I knew was that the phone message came to me to hold Mr. Whelan there but what it was for I did not know.

Q You say Dougherty handed him this money? A Yes.

Q What did Dougherty say to him? A Dougherty walked in and Mr. Whelan said: "I see you are getting along with your work all right," and Dougherty said: "Well, how much do you want."

Q Those were the first words? A As far as I can recollect.

Q You were right there close by? A Yes, but it is so long ago. I remember that thoroughly, he said: "I told your foreman how much I want, it is \$25. It is worth that much to let it go on and I have to give the other Inspector half."

Q You had almost finished your work then at 30th Street,

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the work had almost been completed, on the 24th? A Yes, sir.  
Pretty near.

Q Just at the time he came in, this defendant? A It lasted another eight or ten days more.

Q The steam had been turned on, had it not? A The steam was not turned on until the week-- that Monday that Christmas Day was on, and the steam fitters worked overtime that Monday night, in order to have steam for Tuesday morning.

Q There was steam on before this defendant was arrested?

MR. O'MALLEY: That was the 24th.

BY MR. SIMPSON:

Q Yes, before the 24th? A Yes.

Q Of course, you were not there to be a witness to see the passing of this money, were you? A No.

Q When Dougherty came in talking to this defendant, of course you did not turn your back and walk away, did you?

A No, I stood right there.

Q Right close to see the whole job was done? A I did not know what was going to be transacted.

BY THE COURT:

Q Did you know money was to be passed? A No.

BY MR. SIMPSON:

Q Did this defendant refused to take that money? A No.

Q In your presence? A No.

Q Did you say to this defendant at that time, "Why don't

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you take it"? A No.

Q Didn't you say to him: "Take it, it is a Christmas present"? A No.

Q "You deserve it, you have been very good to me"?  
A No.

Q Did not say that at all? A No.

Q Where was Mr. Powell, the steamfitter? A He stood right alongside of us. I believe he was on one side of Mr. Whelan, and I was on the other side when the two detectives walked in.

Q Powell was there all the time? A Yes, sir; but he was not as close to it as what I was then, previous; when the money was handed to Whelan, Powell was on the other side of the building, and when Dougherty went out and the two detectives walked in, Powell was on his way over to speak to us and happened to be standing by when the detectives took the money out of Mr. Whelan's pocket.

Q The whole thing took place just like that, it was one - two - three and out. A Not exactly.

Q You approximate, with your hands, how long a time this whole transaction took place.

MR. O'MALLEY: You mean from the time Dougherty got there?

BY MR. SIMPSON:

Q From the time the money passed, from the time Dougherty

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got there and the money passed and Dougherty was out.

MR. O'MALLEY: And the officers came in?

MR. SIMPSON: No, leave the officers out now.

BY MR. SIMPSON:

Q Approximate it if you can, the time that elapsed.

BY THE COURT:

Q You may state approximately how many minutes you think elapsed-- you may tell us approximately by telling us how many minutes or hours or anything else. A Between the time the money was passed and the detectives walked in?

BY MR. SIMPSON:

Q No. Between the time Dougherty handed the money as you saw him hand it-- you saw this defendant take it?

A Yes.

Q And the time that Dougherty went out? A Between that time was about three or four minutes.

Q Sure about that? A Sure.

BY THE COURT:

Q See if I get this right. From the time Dougherty handed the money, as you say, to the defendant, and the time that Dougherty left the building?

MR. SIMPSON: Left this defendant's sight.

THE COURT: Left the defendant's sight-- you see,

I did not understand it because you said went out.

MR. SIMPSON: That is what he did.

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THE COURT: He may have thought that you meant went out of the building. I thought you meant that.

MR. SIMPSON: He did go out of the building.

MR. O'MALLEY: Is that what you mean when he went out?

THE COURT: From the time Dougherty handed the money?

MR. SIMPSON: I will withdraw all the questions and will try to get it right.

BY MR. SIMPSON:

Q You got a phone message to hold this defendant?

A Yes.

Q The defendant was there and Mr. Dougherty came in?

A Yes.

Q From the time Dougherty came in and the conversation between Dougherty that you have now narrated, and the time that Dougherty handed the money, and from that moment on, the handing of the money, how soon after the handing of that money did Dougherty leave?

THE COURT: That question is a little involved, Mr. Simpson.

MR. SIMPSON: I will try it again.

BY MR. SIMPSON:

Q You got a phone message? A Yes.

Q The defendant was there? A Yes, he was there.

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Q When did Dougherty come in? A Dougherty came in about ten or fifteen minutes after the phone message.

Q Did he go directly to this defendant? A He walked right up to where Mr. Whelan was standing.

Q What was the first word Dougherty said or the defendant said? A The defendant said: "I see you are getting along with your work all right."

Q What did Dougherty say to that, if anything? A Dougherty said: "Yes, how much do you want".

Q That was right away? A Yes, about right away; I think so.

Q Then what did the defendant say? A I told your foreman how much I want, it is \$25.

Q Then what did Dougherty say or do? A He said: "I told your foreman how much I want, it is \$25, you know I have to give the other fellow half," and Dougherty said: "All right", and he pulled out the money, and slipped one bill away from it and handed him the rest.

BY THE COURT:

Qz Handed the defendant the rest? A Yes, and Dougherty said: "I am very busy. You know this snow has caused us a lot of trouble with these trucks. I have to be on my way back to the office" and he left.

BY MR. SIMPSON:

Q How long did that conversation take place, and the

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giving of the money, from the time Dougherty first spoke to Whelan and Whelan first spoke to him until he had gone out?

A About five minutes.

BY THE COURT:

Q How much time elapsed between the time Mr. Dougherty came into the place and the time that Mr. Dougherty left?

A Five minutes.

BY MR. SIMPSON:

Q Would you say it was less than five minutes?

MR. O'MALLEY: I object. He has given his best judgment.

MR. SIMPSON: My proof that I am trying to lay a foundation for is to the contrary and time is the essence here and very important.

THE COURT: He said he only approximates about five minutes.

BY MR. SIMPSON:

Q Would you say it was less than five minutes?

BY THE COURT:

Q Could you say whether or not it might be a little less than five minutes? A Not for sure.

Q Might have been a few minutes more than five minutes?

A Yes, sir; exactly.

Q You do not pretend to be exact about its being five minutes? A No, it is so long ago I cannot remember.

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MR. SIMPSON: I am not pinning the witness down to exactness.

THE COURT: If you did, I would not believe him. If he said it was four and a half exactly, I would not believe him and nobody else would.

MR. SIMPSON: I object to that statement and take an exception.

BY MR. SIMPSON:

Q Have you met Mr. Dougherty since that time? A Until yesterday.

Q You met him here-- did you discuss with Mr. Dougherty what your testimony was going to be? A No.

Q Did not talk about this case at all with him? A Yes.

Q Yes or no? A Yes.

Q Dougherty told you, to remember what you had said?

A No, I had the dates in my pocket and I showed him the dates so he could refresh his recollection when this thing occurred.

Q You compared notes, did you? A Only the ones that I had.

Q Dougherty and you together, you went over that part of it? A Yes.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q This memorandum you made when, that you have in your pocket? A This memorandum I made about two days after the

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arrest of the defendant.

Q And this memorandum you still have? A Have in my possession.

BY THE COURT:

Q Was it correct when you made it? A Yes.

MR. SIMPSON: I object to it as incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

Objection overruled. Exception.

MR. O'MALLEY: I do not wish to offer the memorandum but I simply want to show when it was made.

BY THE SIXTH JUROR:

Q You have been foreman of various jobs for many years, you have done similar work before? A Not in that particular line.

Q You have been foreman on various jobs? A Yes.

Q Where there is a permit required before the work is to be done? A No. I am in the marble line. I have been working at it the last twenty years. We don't have no permits.

Q You have done work where permits were required?

A Not previous to that particular job.

Q At any rate, enough to know that the permit is required where there are alterations to be done, is not that right? You know that, that a permit is necessary from the

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Building Department? A I did not think it was necessary to have a permit for such a small job.

Q You did not know that, A No.

Q When you break through a floor and have to put brick walls up and chimneys, you did not know it was necessary to have a permit? A It was inside, it was not outside and I figured --

Q Had you ever done any work of that kind before? A No.

BY THE COURT:

Q Was the chimney entirely inside the building? A Yes.

Q When you started this job did you ask your superior officer, your superintendent, who was over you or assistant vice-president, if there was a permit for this job? A I did not ask any questions to that effect.

Q They never told you they applied for permits? A No, there was a change of superintendents at that time and the new superintendent was too busy to come to see me and I was around in 20th and he was in 15th Street.

BY MR. O'MALLEY :

Q You received orders from somebody to go to work there?

A From Mr. Dougherty.

RE CROSS EXAMINATION BY MR. SIMPSON:

Q Did you know at that time that this defendant had placed a violation on the 15th Street plant? A I did not know anything about it.

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Q Do you mean to say to the court and this jury that that chimney that you speak of did not protrude above the roof?

THE COURT: I did not mean to convey that, but it an was/inside chimney. A chimney must go through the roof somewhere. He did not mean it would stop in the middle of the house.

DRAPER M. DAUGHERTY, called as a witness on behalf of the People, being duly sworn and examined, testified as follows:

(Residence: Columbus, Ohio.)

DIRECT EXAMINATION BY MR. O'MALLEY:

Q Where do you live? A Columbus, Ohio.

Q What is your business at the present time? A Haberdasher.

Q In Columbus? A Yes.

Q In December, 1912, were you in New York City? A Yes.

Q Employed by the New York Mail Company? A Yes.

Q What was the correct name of that corporation? A The New York Mail Company.

Q What was your position with them? A Assistant to the President.

Q Who was the President at that time? A B. F. Hardesty.

Q Where was the main office of the Company? A At 515 East 15th Street.

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Q 525 to 531 East 15th? A Yes, sir; 525--

Q Do you recall the time that the company leased new premises in East 20th Street and began operations there to make repairs? A Not the the time they leased it -- they used it without any repairs for some time before I came there.

Q How long had they used it before they began making repairs? A I don't know.

Q You remember when repairs were begun? A Yes.

Q Did you visit those premises from time to time?

A Yes, sir; every day.

Q Do you know Mr. Haitz, who was just on the stand?

A Yes.

Q You put him in charge of that work? A I did.

Q After the work had begun at any time, did you see this defendant? A I did.

Q When did you first see him, that you remember--

(Question withdrawn).

Q Do you remember at any time seeing him at your office?

A On one occasion.

Q Do you remember what date that was? A If I am not mistaken I think it was about the 20th of the month, along in there.

Q May I show you this letter -- look at the date and see if that will refresh your recollection. A I never saw

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that letter before, but I understand it had been written--

MR. SIMPSON: I object to that and move to strike out the answer of the witness.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q Are those your initials as dictating it? A Yes, sir. It is -- I remember I did dictate that letter. Mr. Hardesty signed it.

Q What date was that letter dictated? A On the 18th.

Q Does that refresh your recollection as to the time you saw the defendant at your office? A Must have been on the 17th, because it was the day before that.

Q The 17th of December, 1912-- tell the jury what talk you had with the defendant at that time. A At that time Mr. Whelan spoke about the work at 20th Street; told me that we had no permit and that he would be forced to stop the work, which I -- I had been under the impression the permit had been granted--

MR. SIMPSON: I move to strike that out.

THE COURT: Strike it out.

BY MR. O'MALLEY:

Q Tell us what the defendant said to you when he came in there. A He spoke of the work on East 20th Street being done without a permit and told me that the work would have to stop until a permit was granted; that he was the inspector.

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in that district and he had seen this man around at 20th Street and had told him that, and that I would have to stop the work, which I did.

Q How did you communicate with Haitz? A By telephone.

Q That same day? A Yes.

Q And ordered him to stop work, did you? A Yes.

Q Is that the substance of the conversation you had with the defendant on that day? A On that day.

Q When did you next see him that you remember? A About three days later.

Q Where did you see him at that time? A At 20th Street.

Q Now do you recall how you happened to go there?

A I went around there to look at some new equipment that had been sent around there.

Q Did you receive a telephone message before you went there? A Before I went over to 20th Street on that day, as I remember it in the -- yes, Mr. Haitz telephoned me and told me that the defendant was there --

Objected to.

BY MR. O'MALLEY:

Q You did receive a telephone message before you left?

A Yes.

Q Then you went over to the premises on 20th Street?

A Yes.

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Q And there you saw the defendant? A Yes.

Q Where did you see him? A He was in the garage.

Q Tell us what occurred after you saw him? A He called me outside and told me that the work had been stopped and that he considered that it ought to be worth something to us to continue work, which I told him that, in the event the work was stopped indefinitely, it might freeze up some of our cars and in that event we would lose them.

Q You meant by your cars, the motors that you operated in transporting the mails? A Yes.

Q Proceed and tell us the rest of the conversation.

A So Mr. Whelan told me at that time that for a certain amount that he would be --

BY THE COURT: Do not say certain amount. State just what he said.

A At that time he said for some sort of an amount -- he did not mention any amount at that time -- but he would be able to let the work continue and if we could go ahead and finish our work and I told him at that time that I had no authority to do anything of that sort, that I would take the matter up with Mr. Hardesty, our President, at my earliest opportunity, and that I would see him some time the next day.

Q At that time, was anything said about letting the work go on? A At that time, I told him then, I said: "Well, what do you think we can do about it now?" He said: "What

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do you think Hardesty may do about it?" I said I was not in a position to say, because I did not know what he would do about it, but I thought some arrangement could be made through the Building Department or through him whereby we could continue the work. It was very necessary it be done. He said -- I said, "How about finishing this little job up here in the floor, while he took that matter up." He said, all right, it would be all right to go ahead with that.

Q After the defendant said that to you, did you see Haitz? A I did.

Q And told him to go on with the work? A After talking with Mr. Hardesty I did.

MR. SIMPSON: I object and move to strike out the whole of that portion after he saw Haitz -- what this witness has testified to.

MR. O'MALLEY: I will consent to it being stricken out.

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BY MR. O'MALLEY:

Q After the defendant told you the work could go on on that 20th of December, 1912, you went and talked with Haitz and had a conversation with him, yes or no? A Yes.

Q Did the work go on that afternoon? A As I remember it did that afternoon.

BY THE COURT:

Q After you had spoken to Haitz? A Yes.

BY MR. O'MALLEY:

Q After talking with the defendant on that day, did you talk with Hardesty? A I did that evening.

Q Now after that conversation did you again see the defendant -- when did you next see the defendant, if at any time? A I think it was next day I saw him.

Q Do you remember whether you saw him personally or telephoned him or how, or he telephoned you? A On one occasion, the next time I saw him -- there was two times after that I saw him up until the last time I saw him. One of them was by telephone and one of them was when I talked to him, which<sup>it</sup> was the next time I am not able to state.

Q You do not know if the next occasion you heard from him was the time you talked with him over the telephone or whether you saw him? A I am under the impression I talked with him over the telephone.

Q On the following day? A Yes.

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Q That would be the 21st? A Yes, sir.

Q Where were you at that time? A The 15th Street office.

Q And what, if anything, did the defendant say to you? A Asked me if I had been able to arrange the matter with Mr. Hardesty, and I told him I had not.

Q What did you tell him? A That I would be able to tell him something on that/on the day following.  
I thought

Q This was the 21st, on Saturday? A Yes.

Q The following day would be Sunday -- when did you next see the defendant? A I saw him on Monday.

Q Where did you see him? A Around in 20th Street.

Q Tell us what talk you had with him at that time? A Practically the same talk I had with him the day before in regard to this matter.

Q Tell us, repeat what that was? A He had in the meantime- I told Mr. Haitz --

Q Do not say anything told you in the absence of the defendant -- when you saw the defendant did you talk with him in regard to anything Haitz said, or you said to Haitz? A I talked to him about this matter the next day.

Q Tell us what you said to him on that Monday -- and what did he say to you? A He asked me whether or not I had been able to make this arrangement, and I told him at that time I had not, but I had talked to Mr. Hardesty, and I thought the thing could be arranged.

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Q Go on. A That was on Monday, and he told me then he would be back the next morning. There was nothing done about the matter then until the next morning.

Q Coming down to the 24th of December, do you recall having been to Hardesty's office that day? A yes.

Q Whom did you see there? A Mr. Hardesty telephoned me from the main office of the company which was in the Hartford Building, and asked me to come over there at once. I went over there, and entering his office found Mr. Hardesty, Mr. Walker, who was the Auditor of the company, Mr. Barber, and Mr. Hannan.

Q What was done there, do not state any conversation -- what was done in your presence? A Mr. Hardesty asked me to explain to these gentlemen what the affair had been up to that time --

MR. SIMPSON: I have no objection to that.

BY MR. O'MALLEY:

Q What was done after that -- do not state anything that was said -- what did you observe Mr. Hardesty do, if anything? A Mr. Hardesty took some money out of his pocket, took, as I remember, four five dollar bills and one ten dollar bill, and told me what they were going to do. Went down on the next floor in Mr. Walker's office, and Mr. Walker took the serial numbers of the bills, and Mr. Hardesty marked them with his initials.

Q Marked the bills with his initials? A In the corner, in red ink, with his initials, and gave them to me.

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Q How many bills did he give you? A He gave me four five and dollar bills, a ten dollar bill, making five bills altogether.

Q Go on. A And instructed me what to do with that, and I telephoned at once to 20th Street --

Q Whom did you get on the telephone, if you remember? A Mr. Haitz.

Q Did you talk with Haitz, yes or no? A Yes.

Q After you finished that telephone conversation what did you do? A I went back over to my office in 15th Street.

Q From there where did you go? A From there I went around to 20th Street.

Q About what time did you get to 20th Street, if you remember? A About two o'clock.

Q In the afternoon of December 24th? A Yes.

Q Whom did you see when you got there? A I saw Mr. Whelan in the garage in conversation with Mr. Haitz and my own men who were working on the job.

BY MR. SIMPSON:

Q And your own men who were working on the job? A Yes.

BY MR. O'MALLEY:

Q Do you recall --

THE WITNESS: There was another man there, a steam-fitter, who had been employed to do some work and I think his name was Powers or Powell.

Q Do you remember where Powell was standing when you went

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in, was he near this defendant, or was he in some other part of the building?

MR. SIMPSON: Let him describe. Do not lead the witness.

BY MR. O'MALLEY:

Q I want to know if you have a clear recollection who was near this defendant when you went in? A Mr. Haitz and Mr. Powell, I think, were right with him.

Q Tell us what took place? A At that time I called Mr. Whelan to one side and asked what he wanted. He told me what it was.

Q Tell us the first thing that was said when you got there, did he speak first or you speak first, if you remember? A As I remember it, I think Mr. Whelan asked me if I had the matter arranged. I told him yes. I asked him what he wanted, and he told me \$25.00, and I took the money out of my pocket and took one ten and three five dollar bills off this roll of bills I had in my pocket, and handed them to him.

Q What did he do with it? A Put it in his right hand trousers pocket, as I remember.

Q What else was said, or what else was done then, if you remember? A I walked to the door and opened the door and went outside. Mr. Barber and Mr. Hannan were out there.

Q After you got out there, with Mr. Barber and Mr. Hannan, what did they do -- did they stay there or go in? A Followed

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me back in the garage.

Q You went in with them? A Yes.

Q What took place after you got back in the garage? A At that time the steamfitter and Mr. Whelan were standing there together, and I walked up with Mr. Barber and Hannan to them, and Mr. Barber put them both under arrest at first, until he saw his mistake.

MR. SIMPSON: Never mind about his mistake.

BY MR. O'MALLEY:

Q All right -- in any event, he arrested only this defendant and took him away? A yes.

Q Did you go with him after he was placed under arrest?

A Yes.

Q To the court? A yes.

Q Do you remember any conversation you had with this defendant on the way to court?

THE COURT: How about the time of the arrest, start in there, if there was any -- we do not know anything about it -- we were not there -- what did the officer say to the defendant, and what did the defendant say, if anything, to the officers, in the building, and then afterwards, outside of the building, if anything.

A Mr. Barber asked the defendant if he was a building inspector. He said yes. He said, show me your badge, and he did. Then he told him he was under arrest, and searched him, and

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took \$25.00 away from him.

BY THE COURT:

Q Did you see him take the money from him? A Yes, I did.  
BY MR. O'MALLEY:

Q out of his right hand trousers pocket? A Yes.

MR. SIMPSON: I object to that.

THE COURT: Let us have the witness tell us exactly  
what took place.

BY MR. O'MALLEY:

Q Where did you see him take it from?

THE COURT: Tell us -- we were not there -- Mr.  
O'Malley has to drag this thing out of you as if with a  
pair of forceps -- tell us all about it -- we were not there.

THE WITNESS: Where do you want me to begin now?

THE COURT: When the officers came, and the officers  
said, are you an inspector, and he said yes, show your  
badge, and so forth, and he said, you are under arrest --  
and then he searched him -- tell us exactly -- do not make  
Mr. O'Malley drag it out of you, tell us what the officer  
did.

THE WITNESS: He took \$25.00 out of his pocket.

BY THE COURT:

Q Which pocket? A His right hand trousers packet.

BY MR. O'MALLEY:

Q Proceed now right along and tell us. A From that time--  
when he placed Whelan under arrest we, together with Mr. Haitz,

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Mr. Barber and Mr. Hannan, and the defendant and myself, went to the car line and rode down to the station house.

BY THE COURT:

Q Before you got out of the building did anybody look at the money? A Mr. Barber looked at the money.

Q What did he do with it -- did you look at the money?

A Not at that time.

Q What did Mr. Barber do with the money? A Put it in his pocket to the best of my knowledge.

BY MR. O'MALLEY:

Q And was that the money you had given to the defendant?

A It was. I saw it later. I did not see it at that time.

BY THE COURT:

Q How did you know it was? A Because they had the marks in the same place I had seen Mr. Hardesty put them.

Q Did you recognize Mr. Hardesty's marks? A Yes, I did.

Q What were the marks? A B. E. H.

Q What are those initials? A Mr. Hardesty's own initials.

Q When the defendant was arrested and this money had been taken out of his pocket, what did he say? A He said, this is a hell of a Christmas present.

Q What I want you to do is to tell us the whole thing. If I had not dragged that out of you you would not have told that.  
A I had not come to that yet.

Q You had taken him out -- where did he say that? A In

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the garage.

Q Tell us everything that occurred? A We walked out of the door and started to walk down 20th Street to the car line.

Q Have you given everything before you got out of the garage? A I think I have.

BY MR. O'MALLEY:

Q Go on? A And we went down 20th Street and Whelan called me to one side and Mr. Barber allowed him to talk to me, and asked me if I could not in some way not press this charge. I told him that I was acting under orders from my superior and doing only what I had been told to do, and as far as it lay in my ability I was going to carry that out.

Q Did he say anything else at that time? A Yes, as I remember he said he was only trying to get a little money together to have a little something for Christmas for himself and his family.

Q Did he say anything else? A Not at that time.

BY THE COURT:

Q Did he say this was for services rendered? A He did not, no, sir.

Q Did he say that it was for making suggestions as to fixing blue prints? A No, sir.

BY MR. O'MALLEY:

Q Did he say it was given to him as a Christmas present?

A No.

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BY THE COURT:

Q Is that the only thing he said in regard to the money?

A Yes.

Q You handed him the money? A Yes.

Q In handing him the money, at or about or immediately before handing him the money, what did he say to you about the reason, if any, for handing him the money? A Made no mention of it that day at all.

Q The only thing you can remember he said in regard to the money took place on the 20th and 21st? A Yes.

Q And the amount was mentioned for the first time that day that you handed it to him? A Yes, sir, it was, and except I think he had mentioned it to Mr. Haitz before.

MR. SIMPSON: I move to strike that out.

BY THE COURT:

Q Didn't you testify when you asked him what was the amount of money you were to pay him, he said I have already told your superintendent? A Yes.

MR. SIMPSON: I object to that and move to strike it out.

Motion denied. Exception.

BY MR. O'MALLEY:

Q What did he say on that point when you asked him how much money he wanted? A On the day of the 24th?

Q Yes. A \$25.00.

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Q Did he mention the foreman's name at that time? A Yes, sir, he said he had already told Mr. Haitz what he wanted. I asked him again and had him repeat it to me that he wanted \$25.

Q He said he already had told the foreman it was \$25.00?

A Yes.

Q I show you this money and I ask you if you can recognize the initials of Mr. Hardesty on there? A Those are Mr. Hardesty's initials.

MR. O'MALLEY: I ask to have them marked for identification.

MR. SIMPSON: You can put them in evidence, if you wish.

THE COURT: Then put them in evidence.

(The money received in evidence, consisting of three five dollar bills and of one ten dollar bill, and marked People's Exhibits 4, 5, 6 and 7.)

(The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until five minutes after two.)

AFTER RECESS.

Trial resumed.

DRAPER M. DAUGHERTY resumes the stand.

DIRECT EXAMINATION (Continued) BY MR. O'MALLEY:

Q Is there any other conversation that you had with the

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defendant that day, after you left the premises on the way to the court, that you have not told us, that you now recall? A The only conversation I had with him after that was on the street car, Second Avenue car going to the court.

Q What was that conversation? A The same nature as the one in the garage in regard to trying to drop the charges.

Q Tell us just what he said? A Whelan asked me if there was any way possible that I might stop this thing from going further. He told me that it was just before Christmas, and it was on account of his family. I told him it was impossible for me to do anything, that I had gone that far with it and had no authority.

Q When you first came into the premises December 20th, have you told us all the conversation you had with him at that time, so far as you recollect? A Yes.

Q Do you recall whether or not the defendant said anything about any other person besides himself in the matter? A There was another inspector, as I understood it, that was interested in it.

MR. SIMPSON: Not what you understood; I object to that.

BY MR. O'MALLEY:

Q Tell us what he said at that time? A I remember some remark made of dividing the money with somebody else. I remember that.

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## CROSS EXAMINATION BY MR. SIMPSON:

Q When was that he said to you about dividing some money?

A That was the day I gave it to him.

Q You just said in answer to the District Attorney's question that when you went in there on the 20th, he said to you about dividing the money with somebody.

MR. O'MALLEY: That was my mistake. I meant the 24th.

THE WITNESS: That was on the 24th.

BY MR. SIMPSON:

Q You do not mean it took place on the 20th? A No, I mean on the 24th.

Q Let us have the conversation on the 24th, what you said first to this defendant, or what he said to you at the time that you entered the garage on 20th Street December 24th at about 2:00 P. M., 1912. A The defendant first asked me if I had this matter fixed up.

Q That was the first question? A Yes.

Q And Mr. Haitz was alongside of him? A Yes, sir.

Q Mr. Powell was alongside of Mr. Haitz? A yes.

Q And then what reply, if any, did you make? A I told him I had.

Q Go right on? A That was all -- we stepped -- Mr. Whelan and myself, about three feet to one side of Mr. Powell, and I asked him again what it was he wanted. He told me \$25.00. I gave him the \$25.00.

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Q That was the only conversation and all of the conversation you had there with him at that time? A Yes.

Q As soon as you gave him the \$25.00, what, if anything, did you do? A I walked over to the door and opened the outer door of the garage.

Q Will you be good enough, if you can, approximately to give me the time that was consumed from the moment the first words were spoken by Whelan to you, until you gave him the \$25.00?

A Could not have been over ten minutes.

Q For that whole conversation that you have just narrated?

A Yes.

Q Took you about ten minutes?

Objected to.

MR. O'MALLEY: He said it could not have been over ten.

BY MR. SIMPSON:

Q Could not have been over ten minutes? A No.

Q Could it be less than five minutes? A No, sir.

Q It was over five minutes? A It was.

Q You came in and he said to you, "have you fixed it up" and you said, what? A I have.

Q And he said what? A I asked him the next question. I asked him how much he wanted.

Q What did he say? A \$25.00.

Q What did you say or do? A Took it out of my pocket and handed it to him.

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Q That took over five minutes to do that? A From the time I went in until I finished giving it to him.

Q I say from the time you first -- from the first words being uttered until the time you parted with the \$25.00, you say it took over five minutes? A Yes.

Q Powell and Haitz were right close by within three feet? A yes.

Q Cannot be mistaken about that? A No.

Q How long had you been employed by the New York Mail Company? A At that time I had been there about a month.

Q You came there after Thanksgiving or before Thanksgiving? A The day after Thanksgiving.

Q You had no knowledge as to whether there were other violations on the building on 15th Street pending at that time? A I have not.

Q And have you any knowledge that this defendant had placed violations on the 15th Street building, at that time? A No, sir.

Q Now you say that on the 17th of December you had a conversation with this defendant, is that right? A Yes.

Q And then on the 18th you say you had a conversation with Mr. Haitz over the wire and work was stopped, or was it the 17th work was stopped? A On the 17th the work was stopped.

Q The work was stopped on the 17th? A Yes.

Q At what time? A At noon.

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Q What time did you see this defendant? A On the 17th?

Q Yes. A It was in the afternoon of the 17th that I saw him, to the best of my knowledge.

Q The afternoon of the 17th was the first time you had seen him? A Yes.

Q And the work on the 20th Street job was stopped at noon?  
A yes.

Q On the 17th? A Yes.

Q Are you sure the first time you ever saw this defendant or spoke to him or had anything to do with him was on the 17th?  
A I am, yes.

Q Cannot be mistaken about that? A I might be mistaken about it. It has been quite some time.

Q I want your best recollection before we go any further.  
A That is my best recollection.

Q Did you see him on the 12th of December? A Not that I know of.

Q Did you see him on the 14th of December? A No, sir.

Q Did the defendant ever demand from you the sum of \$25.00 otherwise you could not go on and do that work? A Not the sum of \$25.00, no, sir.

Q Or any money? A He told me it ought to be worth something to us to continue the work.

Q Did he ever demand of you, make a demand upon you, that

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unless you paid him some money the work could not go on? A No.

Q You are sure about that? A I am.

Q I show you a paper and I ask you if that is your signature down there (indicating)? A It is.

MR. SIMPSON: I offer this paper, which is the complaint, in evidence.

MR. O'MALLEY: Any portion of it that contradicts the witness' testimony I have no objection to coming in.

THE COURT: What is that?

MR. SIMPSON: The police court complaint, to which this witness swore.

THE COURT: You offer it in evidence?

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MR. SIMPSON: Yes.

MR. O'MALLEY: I object except so far as it tends to contradict the witness as to any testimony he has given here.

THE COURT: Let him put it in evidence.

MR. O'MALLEY: The whole complaint?

THE COURT: Yes. Is there any objection to that?

MR. O'MALLEY: All right, sir.

(The paper is received in evidence and marked Defendant's Exhibit A).

BY MR. SIMPSON:

Q I ask you again whether on the 12th day of December, 1912, you saw this defendant and spoke to him regarding work on 20th Street? A Not to my knowledge. I don't believe I did.

Q Did you see him on December 14th? A No, sir; not to the best of my knowledge.

Q When was the first time that you saw this defendant — press your recollection. A The 17th is the best of my recollection.

Q The 17th? A As far as I am able to say.

Q Try and think, it is very important. Put your mind back to those dates and see if you saw this defendant before the 17th day of December, 1912 and spoke to him? A No, sir; I don't believe I ever did.

BY THE COURT:

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Q How many times did you see the defendant, can you recall?

MR. SIMPSON: That is to speak to.

THE COURT: To see him at all.

THE WITNESS: Three times, to the best of my knowledge.

MR. SIMPSON: Let us have the dates.

THE COURT: As nearly as you can recall, the first.

THE WITNESS: The first was on the day the work was stopped, which was the 17th. The next was on the 20th when they continued with it, and the next day was the 24th, when the arrest was made-- that was the last time.

BY THE COURT:

Q Had you ever seen him before the 20th, or whatever the first day was that you had this conversation with him about what it was worth to allow you to continue? A I never had, no, sir.

Q Did you ever know anybody that knew him? A No, sir.

Q To your knowledge? A No, sir.

Q You did not know him or anybody that knew him so far as you know? A No, that is right.

BY MR. SIMPSON:

Q Have you not testified here that between the 20th and the 24th you met this defendant almost every day and

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Michael J. Whelan, now here, did wilfully commit the crime of extortion, under the following circumstances to wit, that the defendant is an inspector in the Bureau of Buildings, Borough of Manhattan, and had charge of the Construction Work being done by the firm the New York Mail Company, by which said firm deponent (that means this witness) is employed as an assistant to the President, at No. 532 East 20th; that the plans for the construction work on said premises were not approved by the said Bureau of Buildings; that the said firm began work without such approval and without the proper permit from the said Bureau of Buildings; that on or about the 12th day of December the work was stopped by order of the Inspector in charge, the defendant herein, that on the day thereafter deponent was permitted to resume work by the defendant and deponent is informed by Frederick W. Haitz, a foreman for said firm, that thereafter and about the 14th day of December, 1912, the defendant visited the said building and had a conversation with the said informant, in which defendant said it ought to be worth about \$25 to let the work go on. Tell your boss. That thereafter the deponent obtained \$30 from the President, from various bills being marked with his initials D. F. H., and on said date in said premises, handed \$25 of said \$30 to the defendant, which

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arranged about the money. A That was over the telephone.

He called me up.

Q Every day? A Once he called me up and once Mr. Haitz called me up.

Q You do not know what day that was? A No, I don't remember. He called me up on the 20th and said Mr. Whelan was around there.

Q Was that after the work, as you say, was stopped?

A That was after it had commenced again.

Q Here is your affidavit, you have identified this signature and it is marked in evidence, in the Police Court.

THE COURT: What is the date of the affidavit?

MR. O'MALLEY: Sworn to on the 24th.

MR. SIMPSON: Sworn to on the 24th day of December, 1912.

THE COURT: That was the day the defendant was arrested?

MR. SIMPSON: Yes.

THE COURT: Proceed.

MR. SIMPSON: "City and County of New York, SS: City Magistrates' Court. Third District, First Division. Draper M. Daugherty of 525 East 15th Street, age 27 years, occupation, contracting, being duly sworn, deposes and says that on the 24th day of December, 1912, at the City of New York, in the County of New York, one

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said money deponent gave defendant upon demand, for his permission to continue said work without a proper permit; that thereupon defendant was arrested and said money found upon his person. Wherefore, deponent prays defendant be held to answer. Signed, D. M. Daugherty, Henry W. Herbert, City Magistrate."

BY MR. SIMPSON:

Q You have testified that this defendant made no demand upon you? A Until that day of the 24th.

Q Well, did he say: "I demand the money"? A He did not.

THE COURT: You know you are asking him for a conclusion and that conclusion is one of the questions for the Jury to decide, whether or not he demanded the money.

MR. SIMPSON: I want the exact language as he specifies in this complaint.

THE COURT: The complaint is a conclusion also. The complaint does not give the evidence. The complaint gives the conclusion from the evidence.

MR. SIMPSON: If this complaint was before your Honor as a Magistrate you would be guided largely by the verbiage which is used.

THE COURT: Certainly, just as I am by an indictment, but the indictment does not give the evidence. You have been asking this witness all along for him to draw a con-

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clusion and that very conclusion which you ask him to draw is for the Jury to draw.

MR. SIMPSON: I am asking this witness whether this defendant demanded of him, using the word "demand".

THE COURT: I know.

MR. O'MALLEY: I object to the form of the question.

THE COURT: I have been expecting that all along.

Mr. Simpson has been asking the witness to give a conclusion but you did not object to it. The conclusion is objectionable. The question is objectionable, because all we want this witness to do is to state what was said and then we will have the jury tell us whether the defendant meant a demand, and we want the jury to tell us that based on the evidence and on the facts as given by the witnesses. Mr. Simpson is asking the witness to give us a conclusion. You know a demand does not have to be made in haec verba or ipsa verba. A demand may be proven without using the word "demand" but it is for the Jury to say whether or not from the words used, and the actions and the conduct, it was a demand, and you may take an exception to that if you wish.

MR. SIMPSON: Your Honor has sustained the objection to my last question to this witness? And sustained the objection of the District Attorney and the defendant respectfully excepts.

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THE COURT: Very well.

BY MR. SIMPSON:

Q. Did you see this defendant on the 12th day of December, 1912, yes or no? A No.

Q Did you see him on the 14th day of December, 1912, yes or no? A No.

Q You identified your signature here? A I have.

Q That is the complaint you made? A It is.

Q You swore to that complaint, did you not? A I did.

Q Was the work on that building at 532 East 20th Street, stopped on the 24th day of December, 1912, by this Defendant? A Not on the 24th day, no sir.

Q Was it, yes or no? A No, sir.

Q That is the day you have testified this defendant demanded of you money, otherwise he would stop the work; is that right? A No, sir; I did not testify to that.

Q What did you testify to in that respect? A That on the 24th day of December he asked me if I had fixed it up and I said yes and asked him how much he wanted and he told me he wanted \$25, which I gave him.

Q Did you not know he wanted \$25 before you asked him? A I did.

Q You were prepared to give it to him? A I was.

Q You were prepared with these marked bills to give it to him? A Yes.

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Q And you knew all about that? A I did.

Q There was nothing to hide, when you went to see this defendant on the 24th? A Not on my part, no, sir.

Q But prior to the 24th, at the time that you lured this defendant there, to your place --

MR. O'MALLEY: I object.

THE COURT: You must not use the word "lured" -- that is a conclusion. You may ask him any question of fact you want to, but do not interject your own conclusion into the question. You may take an exception.

MR. SIMPSON: I respectfully except.

BY MR. SIMPSON:

Q Did you not arrange to have this defendant meet you at 532 East 20th Street on the 24th day of December, 1912?

A I did.

Q You wanted him there for a purpose, did you not?

A I did.

Q From the 20th day of December to the 24th of December, had this defendant stopped any of the work there? A No, sir.

Q Had any plans been filed by your company, either by you directly or indirectly for alterations on those premises, at the first time you met this defendant? A I was under the impression there had been.

Q I do not want your impression. I want to know if you did or not file plans? A I did not.

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Q Did you know of any ? A I did not.

Q Did you know of any on the 24th day of December, when you swore in this affidavit that plans had been filed?

A I did.

Q Were plans filed? A Yes.

Q Are you sure about that? A Yes.

Q Who filed those plans? A Mr. Hardesty.

Q How do you know? A Because I had the architect down there that drew the plans.

Q You had an architect draw plans -- how do you know they were filed? A I have Mr. Hardesty's word for that.

Q It is only hearsay? A I was over to the Building Inspector's office with him, one time, after they had been filed.

Q You now swear the plans were filed in the Building Department for that work, do you? A As far as Mr. Hardesty is concerned, yes.

Q I say you, of your own knowledge, I do not care what anybody else knows, but you of your own knowledge-- were plans filed? A I had nothing to do with them.

MR. O'MALLEY: It is already in evidence when they were filed.

THE COURT: Is it material?

MR. SIMPSON: It is material.

THE COURT: Then proceed.

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BY MR. SIMPSON:

Q Were plans filed on the 24th day of December, 1912?

A I think they were.

Q Do you know of your own knowledge? A No, I do not.

Q Why did you swear to it? A Because I have confidence  
—in my Chief and he told me that he had filed them.

Q Anything he told you you would believe? A I did.

Q Anything he told you you would swear to at the time?

Objected to.

A I am only --

THE COURT: That is an ordinary complaint in the  
City Magistrates' Court.

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MR. SIMPSON: I except to your Honor's remark.

THE COURT: There is nothing at all in it. Proceed and make all you can out of it. You may take an exception to that. The complaint is merely a conclusion, and the evidence is to be produced afterward. You can make anything out of that that you please.

MR. SIMPSON: I except to your Honor's remarks.

THE COURT: What we want are the facts -- what were the facts. I do not care what this man knows or did not know. All we want him to say is what he did. After he has lodged a complaint which states the conclusions, we are not interested. He had to do that in order to hold the defendant, and that is the ordinary procedure.

MR. SIMPSON: I take an exception to your Honor's remarks.

THE COURT: You may as well say that the Grand Jury who charged this man with an offence has done a wrong because they did not know the facts themselves. Of course, they did not, but they had information sufficient upon which they made the charge, and so did this man. He had sufficient information upon which to act and make the charge against the defendant in the Magistrate's Court, and that was what he did. That does not mean he saw everything there himself and was personally present at everything that occurred, but has witnesses there to prove it, or he believes he has.

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That is all there is to it.

MR. SIMPSON: I take issue with your Honor, and I except to your Honor's remarks, because my experience is contrary to your Honor's statement as to a complaint in the Magistrate's Court.

BY MR. SIMPSON:

Q Of course, you made no offer to this defendant to allow you to go ahead and do that work there? A No, I did not.

Q And no one in your presence? A No, sir.

Q You were not obligated to him at all, when you continued your work without a permit, were you? A Not that I know of.

Q You were not obligated to him at all? A I was acting under the orders from my chief, and I was not doing it on my own authority.

Q Your chief arranged it all, as you have testified here he marked those bills? A Yes.

Q Beyond that your chief took no part in any conversation with this defendant in your presence or hearing? A No.

Q Will you say that the work was stopped from the time you spoke to this defendant on the 17th day of December, to the 24th day of december? A No, it was started again on the 20th.

Q Do you want to tell the Court and jury there was no work done on the 18th or 19th in that place on that particular job? A There was not.

Q Sure about that? A I am.

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Q Cannot be mistaken? A No.

Q What day of the week was the 17th on? A It was on Wednesday.

BY THE COURT:

Q Do you know or are you guessing at it? A I am figuring it from Christmas being on Wednesday, the 24th.

Q That is the only way you remember it? A Yes.

BY MR. SIMPSON:

Q It was on Wednesday? A Yes.

Q The next day was the 18th, on Thursday, is that right?

THE COURT: Have you any independent recollection of it?

THE WITNESS: No, I have not.

THE COURT: Then why don't you say so. If you know, then say so, and if you do not know, say so.

THE WITNESS: I do not know.

THE COURT: That is very candid -- none of us know.

MR. SIMPSON: I object to your Honor's remark, that that is very candid.

THE COURT: Let the jury search their minds and tell us what the 18th of December fell on -- what day of the week.

MR. SIMPSON: It was my birthday, I might tell them.

BY MR. SIMPSON:

Q Is it not a fact that the first time that this defendant met you, that he met you at the 15th Street office -- do you

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understand my question? A I understand your question, but I am just trying to think. I believe he was around to the 15th Street office that day.

Q Is it not a fact also that the first thing he asked you for was whether you had a permit for that job? A I don't remember him asking me that.

Q Did not this defendant have to send upstairs for you at the 15th Street office and bring that to your mind when you came down, in the 15th Street office?

MR. O'MALLEY: This is on the 17th?

MR. SIMPSON: The first time they met.

MR. O'MALLEY: The evidence is it is the 17th.

MR. SIMPSON: At No. 525 East 15th Street.

MR. O'MALLEY: Yes.

THE WITNESS: I believe he was in the Despatcher's office downstairs and sent for me upstairs. I believe you are correct.

Q Does that refresh your recollection? A Yes.

Q Did you come down? A I came downstairs, yes.

Q Did he tell you who he was? A Yes.

Q Did he ask you for a permit? A Not to the best of my remembrance. I think he merely stated to me that he had stopped the work around there.

Q That he had stopped the work? A Yes.

Q When you saw him? A I think that was the statement he

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made.

Q Who did he tell you he had ordered to stop the work there? A Haitz.

Q He told Haitz he had to stop the work there? A yes.

Q That was what this defendant told you, that he, this defendant, had told Haitz that he had to stop the work on the 20th Street job, when he saw you? A To the best of my knowledge that was our conversation.

Q Did he ask you if you had a permit for that work? A I don't believe he did at that time.

Q After this defendant had been there and told you that he had ordered to stop this -- Mr. Haitz, to stop the work there, did you telephone Haitz, while this defendant was there? A If I am not mistaken I think Mr. Haitz told him he would have to see me before he would stop the work.

Q You were not there -- you believe Haitz told him he would have to see you first before he, Haitz, would stop the work? A I believe that is true.

Q You were not there and do not know what he said to Haitz? A No, I only had Mr. Haitz's word for it.

Q But after the defendant called to see you at the 15th Street place, when you came downstairs to see him in the Despatcher's office, did you telephone Mr. Haitz? A I did.

Q Did you tell Mr. Haitz to stop the work? A I did.

Q Although this defendant had told you that he had told

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Haitz to stop the work; is that right? A I might be mistaken in that. He might not have said just those words.

Q What did he say, I want to get your version of it. A You must remember this is a little over a year ago, and I have not thought of this matter until yesterday.

Q I realize it, and I do not want to take any advantage of you.

THE COURT: What we want is your best recollection and not guessing. When you cannot recollect, say so, but when you can recollect, give us the best of your recollection.

THE WITNESS: Now that I have an opportunity to think about it, I believe Mr. Whelan did ask me if I had a permit around there, and I think I told him some arrangement had been made about that through Mr. Hardesty, and then he either said he would have to stop the work until the permit was granted, or until I heard from Mr. Hardesty. Sufficient to say, I stopped the work on his order anyway.

BY MR. SIMPSON:

Q What time of the day or night was that? A About noon.

Q What time was it that you saw this defendant at your place? A At that time it must have been about noon.

Q You have testified a few minutes ago that it was in the afternoon of that day that you met this defendant? A That was when I first talked about this, and afterwards you refreshed my

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recollection as to his coming around to 15th Street and now, knowing the work was stopped at noon on the 17th, I venture to say it was noon I saw Mr. Whelan.

Q Had Haitz telephoned you that Whelan had been around to the 20th Street job and had stopped the work there, that he, Whelan, was coming around to see you? A I could not say. I believe he did, but I am not sure. I am not positive on that matter at all.

Q Is it not a fact the conversation on the 17th, after this defendant asked you whether you had a permit, you said, "Yes, we have one". A It is not a fact.

Q Did you not say the previous superintendent had taken care of the matter, that you were just a new man in the place there? A Might have --

Q (Continued) And not acquainted with the details? A (Continued) Might have made mention of the fact that I was new and not acquainted particularly with the details, but I remember emphatically that I did not make the statement that we had a permit or anyone had taken care of the matter, except that Mr. Hardesty would look after that.

Q Did you not say to this defendant that you did not have a permit and wanted to know what could be done? A I did not.

Q And did not this defendant say to you that you will have to have a plan filed and comply with the law? A I don't remember that. I might have said that.

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Q And this defendant said to you, "I am going to file a violation against that job"? A Not that I remember. That might have been said, and I will admit that, but I don't remember it.

Q did you not say to this defendant that if he filed a violation against that job, you would tell your boss and you would have him fired? A I did not.

Q Did you not on the 20th day of December see this defendant and have a conversation with him, wherein you told him that you had filed your plans and that you had hired a proper architect --

THE COURT: There will be two questions there. Let him answer the first one.

MR. SIMPSON: I will withdraw that, so that I will get the architect before the filing.

THE COURT: Withdraw the question and put another one.

MR. SIMPSON: Yes.

THE COURT: Then that question is withdrawn.

MR. SIMPSON: Yes.

BY MR. SIMPSON:

Q This is on the 20th of December, 1912, that there had been hired the services of a competent architect to draw the plans and they would be filed? A I had done that, but whether I made mention of the fact to Whelan or not, I am not able to say. Possibly I did. It would have been the natural thing for me to have said.

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MR. SIMPSON: I move to strike out the natural part of it.

THE COURT: Strike it out.

BY MR. SIMPSON:

Q You did not at that time, after that conversation, say to this defendant, "That being done, won't you have the violation removed"? A I did not.

Q And did the defendant say to you, "I could not remove the violation, as no inspector has power to remove a violation, that it was up to the superintendent". A No, sir.

Q No such thing like that took place and no conversation in relation to the removal of the violation took place? A I never asked him any such thing.

Q I mean no such answer made by this defendant to you? A No, sir, there would be no reason for the answer.

MR. SIMPSON: I move to strike out your reason.

THE COURT: very well.

BY MR. SIMPSON:

Q Is it not a fact you said to this defendant you are too officious and too technical, and you won't last long, you will be fired? A It is not a fact.

Q Isn't it a fact the defendant said to you, "Go ahead, all that I can do is to comply with the law"? A I don't remember any such remark.

Q At that time, on the 20th, was there any question of any

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money by this defendant to you? A Yes.

Q Give us that conversation, when and where and the hour, if you recollect? A I cannot give you the hour. I don't remember whether it was before lunch or after, but my impression of it is that it was after. The defendant called me outside and told me it ought to be worth something to us to continue that work. And I told him it would be worth to us the fact that we might lose a great deal of valuable machinery in the event that the steam plant was not in in time to protect them from the cold of that next few days, as it looked as if it was going to be very cold weather.

Q Did you ever stop any work on that steam plant? A I certainly did.

Q Were not the steamfitting men working there? A If they were putting their pipes inside I don't remember, but that has nothing to do with the construction of the building or the granting of a permit.

BY THE COURT:

Q Counsel is asking you if there was any work going on in that building from the 17th to the 20th? A I believe there was some electrical work going on.

Q How about steamfitting? A That might be the case -- might besome pipes being put up at that time.

BY MR. SIMPSON:

Q Wasnot the boiler set? A I don't remember. It was

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not during those three days, no, sir.

Q It was not? A No.

Q Wasn't it within those three days the steamfitters were working? A I am not able to say.

Q Will you swear that the steamfitters were not working there the 17th or 18th or 19th? A I would not. I would have to look over the time cards to find out if there was any interior work going on, but it would not be anything we would have to ask a permit for, that I know.

Q You say you would not require any permit to do that work?

A Not for any work I remember being done between the 17th and the 20th.

Q You are the judge as to whether you require a permit or not? A I don't pretend to be.

MR. O'MALLEY: I object.

THE COURT: I sustain the objection. You need not answer that.

Exception.

BY MR. SIMPSON:

Q On the 24th is it not a fact that the first thing you said to this defendant was, "You have been pretty good to us and I told Haitz to send you around and we are going to give you a Christmas present, here is a Christmas present, and you jabbed it into his pocket.

THE COURT: Do not put too many things in one question, Mr. Simpson.

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BY MR. SIMPSON:

Q On the 24th, is it not a fact the first thing you said to this defendant was: "You have been pretty good to us and I told Mr. Haitz to send you around and we are going to give you a Christmas present"? A No, sir.

Q Was there anything said about Christmas? A No, sir.

Q At no time? A Only the remark Whalen made when he was arrested.

Q What was that remark? A This is a hell of a Christmas.

Q This is a hell of a Christmas present? A No. Present was not used in it.

Q Sure about that? A I am -- I would not swear to it, the but I think it was/only three words he used.

Q Didn't you testify to that in this Court on your direct -- examination? Didn't you say "This is a hell of a Christmas present?" A I might have. If I did maybe he said that. I don't remember it now particularly. I remember the first three words -- four words, rather.

Q Is it not a fact that you then handed this to the defendant?

THE COURT: Jabbed it into his pocket.

MR. SIMPSON: Yes, jabbed it.

BY THE COURT:

Q Is it a fact that you jabbed \$25 into his pocket?

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A No, it is not a fact.

BY MR. SIMPSON:

Q And ran away from him at once? A It is not a fact.

BY THE COURT:

Q How did you give it to him, tell us how you gave it to him. A He asked me if I had fixed that matter up and I said yes.

Q I mean how did you hand it to him, counsel asks. He asked you if you rammed it into his pocket and you said no. How did you give it to him. How did he get it? A I took it off a roll of bills, took three fives and one ten off and handed it to him and he put it in his hand.

BY MR. SIMPSON:

Q How much was in that roll of bills which you took this \$25 from? A \$30.

Q You took \$25 of the roll, leaving \$5 in your possession? A yes.

Q That was the roll? A Yes.

Q You had \$30 marked there? A Yes.

Q When was the \$30 asked for by this defendant? A \$30 was not asked for.

Q Haitz told you he wanted \$25? A Yes.

Q You had \$30 in marked money with you? A Yes, I did.

Q Did this defendant tell you to file plans at any time, from the first hour you met him until the last, A Not

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to me, no, sir.

Q At no time? A No, sir.

THE COURT: Does it appear from the evidence up to date that that notice of violation had been ever removed or was removed? The evidence is the defendant filed a notice of violation.

MR. SIMPSON: The 18th of December.

THE COURT: The 18th-- does it appear in evidence whether or not it was ever removed or withdrawn or cancelled?

MR. O'MALLEY: Only to the extent that the plans were finally approved in January, the following January. The plans were filed on December 20th.

THE COURT: Was it removed in any way up to the 24th day of December, when this money was said to have been given to him?

MR. O'MALLEY: It was not, no.

THE COURT: When did they get their permit, if that is not objectionable, I would like to know that.

MR. O'MALLEY: It is already in the record.

THE COURT: Very well, but let us know when the permit was given.

(MR. O'Malley reads from Page 13 of the stenographic minutes.)

BY MR. SIMPSON:

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Q So that on the 20th day of December, 1912, plans were filed with the Building Department, were they not; is that so? A According to that testimony.

MR. O'MALLEY: I object. This witness says he does not know, and it is already in evidence.

BY MR. SIMPSON:

Q Did you direct or send or take yourself any plans to the Building Department relating to 532 East 20th Street?

A No, I did not.

Q Did you on the 20th day of December take or file or send any plans to the Building Department in relation to that job on 20th Street? A No, sir; I did not.

Q Did you at any time? A I was over there with Mr. Hardesty at one time.

THE COURT: I think that is enough. Do not waste time. Just proceed and get something the man knows. He has told you he was not there.

MR. SIMPSON: I will show you the relevancy in a few minutes.

THE COURT: How can you? He said he was not there and did not file them at any time.

MR. SIMPSON: And he did not direct the filing.

THE COURT: No, He has told you that.

BY MR. SIMPSON:

Q Did you direct any one to file them? A No, sir.

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Q Did you give any plans to any one to file?

THE COURT: Let us stop and get at something else. We have exhausted the subject. If you stayed until to-morrow morning and asked him those questions it would not do any good.

MR. SIMPSON: It is very important to me.

THE COURT: It is important that we should not take unnecessary time to try a case.

MR. SIMPSON: You do not know.

THE COURT: Yes, I do. We do not care if he filed or did not file, but he says he did not and does not know anything about it.

MR. SIMPSON: Does not know anything about it?

THE COURT: No, except what his employer told him. He does not know anything personally about it because he has said that all he has got is from his employer, but he has told you that two or three times.

BY MR. SIMPSON:

Q Did you say you got orders from your employer to file the plans? A No.

THE COURT: He did not say that. He says his employer told him in regard to the matter and he put faith in his employer and that is the reason he said that plans had been filed. I think he said that two or three times.

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BY MR. SIMPSON:

Q You reside in Columbus, Ohio? A Yes.

Q You have come to New York at the earnest request of whom? A Of the District Attorney.

Q Mr. Hardesty send for you? A No.

Q Have you seen Mr. Hardesty since you have been here?  
A Yes.

Q Have you conversed with Mr. Hardesty since you have been here? A Yes.

Q Are you stopping with Mr. Hardesty? A No, I am not.

REDIRECT EXAMINATION BY MR. O'MALLEY:

Q Now, you signed this complaint in the Magistrates' Court. Do you remember that day? A Yes.

Q Did you draw it yourself or was it drawn for you?  
A Drawn for me.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

Q You were asked to sign it? A I was.

Q The very day that you signed this affidavit-- December 24th, was the day upon which you had given this money to the defendant, was it not? A Yes.

Q And that affidavit is dated the 24th-- but apparently, in the affidavit, the date of giving the money is December 14th, is not that so-- look at the affidavit-- apparently the date in the affidavit --

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MR. SIMPSON: I object to all this. The affidavit is in evidence, and I say to your Honor now that I object to leading this witness and speaking regarding a copy affidavit, which he has not seen.

THE COURT: Show him the original.

MR. SIMPSON: Yes. You allow him to correct the original?

THE COURT: What is that?

MR. SIMPSON: You allow him to testify as to a correction of the original, the affidavit made by him?

THE COURT: I do not know what he is testifying to yet.

MR. SIMPSON: I object to the question as incompetent, irrelevant and immaterial and I take an exception.

THE COURT: I thought from the way you went on, that that affidavit was very material. You said so.

MR. SIMPSON: I object to the characterization, and the complaint and take an exception.

BY MR. O'MALLEY:

Q The very day on which this money was passed was the date you went to court? A Yes.

Q And the date you swore to this affidavit? A Yes.

Q And in the affidavit the date is given as the 14th, as the day upon which you had given the money to the defendant?

A It should be the 24th.

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Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

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

THE COURT: Ask him if he can explain that.

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

THE WITNESS: The only way I can explain it, by virtue of the fact that I was rather sympathetic with the defendant and rather excited at that time, and if I read it over, possibly I did not notice that 14th instead of the 24th.

BY MR. O'MALLEY:

Q Do you know, was it the Clerk of the Court who drew up this affidavit? A Yes, sir.

Objected to as incompetent, irrelevant and immaterial, and not binding upon the defendant.

Overruled. Exception.

BY MR. O'NALLEY:

Q From information given him by somebody in the party?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A Yes, sir.

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Q Either by yourself or Officer Barber or Mr. Hardesty who was somewhere at Court? A Mr. Hardesty was not there.

~~Objected to as incompetent, irrelevant and immat-~~  
erial.

Overruled. Exception.

THE COURT: Why not take a general objection to all this line of testimony?

MR. SIMPSON: Then I will make the arrangement that this whole line of questioning is taken under objection and an exception as to its competency, and you grant me an exception.

THE COURT: Yes. Why not ask the witness to explain to the Jury the circumstances under which this affidavit or complaint was signed?

BY THE COURT:

Q Can you remember? A Yes.

MR. O'MALLEY: That is a general question instead of the specific question I was asking.

MR. SIMPSON: This is all under the exception of the defendant.

THE COURT: Yes.

THE WITNESS: After we reached Essex Market Court, Mr. Barber and Mr. Hammond took Haitz and myself into the complaint room, where the complaint was made in front of some clerk who wrote it out.

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BY MR. O'MALLEY:

Q From whom did the Clerk get his information, from you or Barber or all of you? A All of us.

Q After the affidavit was filled in, you signed it and then what happened?

BY THE COURT:

Q In the first place, how long were you in there, in what is known as the clerk's room before the clerk? A Possibly about fifteen minutes.

Q He took all of this statement from you and made the affidavit and you signed it all within fifteen minutes? A I think that was just about the time.

BY MR. O'MALLEY:

Q He had to write it out in long hand? A Yes.

Q It was not done by typewriter? A No.

Q He wrote it as he went along, getting the information from someone present? A Yes, sir.

BY THE COURT:

Q And in regard to those dates there, are those dates correct -- did you give those dates to the Clerk/day? A No, those dates were given to the clerk in regard to the starting or stopping of the work by Mr. Haitz; time card that he had as I remember it. The only dates I have fixed in my mind are the 17th, the 20th and the 24th of December.

BY MR. O'MALLEY:

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Q So this information was not given by you? A A part of it was.

Q I mean in regard to the dates? A No, sir.

THE COURT: How about the dates in there, in that complaint, are they correct?

THE WITNESS: The date, the 14th, is not correct.

BY THE COURT:

Q What date should that be? A The 24th.

Q That is the very day you signed the affidavit?

A Yes, sir.

BY MR. O'MALLEY:

Q How about the date of December 12th, as work having been stopped? A That date is wrong, to my knowledge.

Q What date should it be? A The 17th.

B E N F. H A R D E S T Y, called as a witness on behalf of the People, being duly sworn and examined, testified as follows;

,(Residence: East Orange, New Jersey.)

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your business? A Consulting Engineer.

Q Are you in business for yourself now? A Yes.

Q Where is your place of business now? A 80 Maiden Lane.

Q On December 12th, were you president of the New York Mail

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Company, a corporation doing business in this State? A Yes, sir

Q And your main office at that time was where? A 531 to 535 East 15th.

Q Mr. Dougherty was in your employ as your assistant?  
A Yes.

Q And Mr. Haitz was foreman in charge of this new building you had over in East 20th Street? A Yes.

Q Did you ever see the defendant personally prior to his arrest? A No, sir.

Q Do you remember the 20th day of December or the 24th day of December, 1912, seeing Mr. Barber at your office?  
A Yes, sir.

Q And who else was with him? A Mr. Dougherty and Mr. Hannan.

Q What was done in the presence of those gentlemen by you? A I marked four five dollar bills and one ten dollar bill with my initials, in red ink, on the back of each bill, and gave the bill to Mr. Dougherty with instructions to --

MR. SIMPSON: No--

Q No, you told him something? A Yes.

Q Was there any other memorandum made at the time?

A Yes, a memorandum was made of the numbers of the bills, the bank, as to whether they were bank notes or U. S. notes and there is the original memorandum that was made at the time of the bills (showing paper).

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Q Who made the memorandum? A Mr. Walker who was in my employ.

Q In your presence? A Yes.

Q Did you see him make it? A Yes.

MR. SIMPSON: It is conceded that this money was taken from the possession of this defendant, unless you want to prove anything else.

MR. O'MALLEY: Very well. But here are the numbers of the bills, if there is no objection to it. We might as well offer this memorandum.

MR. SIMPSON: If that is all there is on that paper there is no objection.

(The paper is received in evidence and marked People's Exhibit 8).

BY MR. O'MALLEY:

Q One of the bills seems to be struck out. A That was a bill, as I understand, given --

Q Will you explain that blue mark across that memorandum?  
Objected to.

Q If you know what it means?

MR. SIMPSON: I object to what it means or anything.

BY THE COURT:

Q Who put it there? A I did.

BY MR. O'MALLEY:

Q This memorandum shows a record of --

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THE COURT: You might ask him if that will refresh his recollection as to anything.

MR. O'MALLEY: I will put this question.

BY MR. O'MALLEY:

Q This memorandum shows a record of how many bills?

A Shows a record of four five dollar bills and one ten dollar bill.

Q There appears to be a blue lead pencil <sup>mark</sup> across one line there, do you know what that indicates -- does that refresh your recollection, A Yes.

Q What is it?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A The blue pencil mark striking out of the bill that was not delivered by Mr. Dougherty at the time that the other three five dollar bills and ten dollar bill was delivered.

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

THE COURT: I understood you to say that there was no contest here that the bills were delivered by Dougherty to the defendant.

MR. SIMPSON: No. We concede that those four bills were obtained from his possession. But he is explaining a five dollar bill which we object to.

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THE COURT: Which was not delivered to him?

MR. SIMPSON: He has no knowledge whether it was or not and I object to it.

BY MR. O'MALLEY:

Q Were you ever to premises 532 East 20th Street while the building was in course of repairs? A Yes.

Q You never saw this defendant there? A No.

Q You never had any talk with this defendant? A No.

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Q In regard to the alterations you made there, was there a drainage connected with the boilers you put up? A Drainage from the boiler to the street?

Q Was there a drainage installed there? A The improvements or the work that was done there was digging up the ground floor for the purpose -- of about two feet, so as to give a drainage from the steam pipes back to the boiler. This was all encased, or to be encased in fireproofing material such as is used in partitions in large buildings, and, the roof, or a covering of the same was to go over the top, and the entrance was made from the street into this, what would be the boiler room, after it was completed, in order to keep any possible chance away of any fire originating by reason of having volatile material in these automobiles that were to be stored there. A chimney was built for the purpose of the fire under this boiler.

Q This boiler stood on a foundation down on the floor of the building? A Yes.

Q You say there was drainage from that boiler? A Yes.

Q Into what, the sewer? A No. The idea in lowering the boiler was to get drainage from the condensed steam from the pipes which were to be out into the building back into the boiler in order to get a fall and drain it back into this boiler.

Q This chimney went up through the roof? A Yes.

CROSS EXAMINATION BY MR. SIMPSON:

Q How long were you connected with the New York Mail

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Company? A I think about the 26th or 27th of December, 1912, until about the middle of April, 1913.

Q At the 15th Street place? A 15th Street and 20th Street place, yes.

Q And you were connected all the time with the New York Mail Company? A Yes, sir, and another company I was associated with, the Atlantic Express Company.

Q Had there ever been a violation filed against the 15th Street place by this defendant? A That I am unable to say, Mr. Simpson.

Q Don't you know? A No, I do not, as to whether he filed a violation or not. There were a number of violations --

Q Let us see if I cannot refresh your recollection, you are a Civil Engineer? A yes.

Q As such you know that it is necessary in order to build new buildings or make alterations to old buildings, that plans should be filed? A That is the custom, yes.

Q That is the custom in New York? A yes.

Q Is it not the same custom in New Jersey? A That I am not familiar with.

Q You live in East Orange, New Jersey? A Yes.

Q At the time, or on or about the 17th, 18th, 19th or 20th of December, 1912, had plans been filed to do the work at the 20th Street place? A I think not.

Q Do you know? A I don't think there were, Mr. Simpson.

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Q When the work was started there, were any plans filed?

A- I don't think so.

Q Don't you know there was a violation filed against those premises on the 18th day of December, 1912, by this defendant? A Well, I was told afterwards there was a violation filed, yes.

Q Of course, you had no feeling against this defendant and did not at that time? A No, sir, I never saw him until about 30 days ago, to my recollection.

Q But you had much of him? A I heard of him, yes.

Q You were one of the gentlemen who so to speak fixed up the bills, to put this man in trouble?

MR. O'MALLEY: I object to the form of the question.

Objection sustained. Exception.

Q Don't you know this defendant filed a violation for failure to file plans against premises 525 to 531 East 15th Street on October 25th, 1912? A No, sir, I did not. I knew there were violations filed, but I did not know that he was --

Q That Whelan was the man that did the thing? A No.

Q Who was the architect that was employed to file the plans in the 20th Street building, on the 20th day of December, 1912?

A I could not say who he was, I don't know.

Q When did you see the plans on the 20th day of December as to the hour, in 1912? A I never saw them.

Q Who received them if you know? A That I do not know.

Q Who filed them, if you know? A That I do not know.

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Q Do you know the name of the architect who drew the plans?

A No.

Q Do you know if this defendant --

THE COURT: Is not that all in evidence. That seems to be taking up time, but if you think otherwise, I will not stop you. Proceed.

BY MR. SIMPSON:

Q You do not know the architect's name? A No, sir.

Q You do not know if this defendant drew the plans and showed how the plans were to be drawn to Mr. Daugherty or not?

A No, sir.

Q You do not know if he advised, or whether this defendant advised Mr. Daugherty or Mr. Hartz what to do in the premises?

A No.

RE-DIRECT EXAMINATION BY MR. O'MALLEY:

Q Who had the contract for installing this boiler or this plant? A I think the firm's name is Pierce Brothers, and something.

Q Pierce, Butler & pierce? A Pierce, Butler & Pierce.

Q They furnished the boiler? A Yes.

Q Do you know who hired the architect to supervise the work? A No.

Q Was there not somebody -- A My arrangement was as I recall it, that Pierce Brothers, or Pierce, Butler & Pierce --

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MR. SIMPSON: I object to all this; I think it is immaterial and irrelevant.

THE COURT: I agree with you, but I thought that you thought it was. I cannot see it. The question is, did this man accept a bribe.

MR. SIMPSON: The question is the credibility of the testimony of the witnesses, as to whether he did accept a bribe. This jury is to pass upon the credibility of the witnesses, whether they are telling the truth.

THE COURT: If you think that affects the credibility of the witness, that he cannot remember the name of the architect, I do not see it.

MR. SIMPSON: I did not say that.

THE WITNESS: If you give me an opportunity, I can explain why I do not know.

THE COURT: It has nothing to do with the case.

MR. SIMPSON: I object to that remark.

J E R E M I A H M. B A R B E R called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. O'MALLEY:

Q How long have you been a member of the Municipal Police force? A 12 years.

Q What precinct were you attached to on the 24th day of

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December, 1912? A The 21st.

Q Did you arrest this defendant? A I did.

Q Where? A In the garage at 532 East 20th Street, I think.

Q Before going to the premises, did you see Mr. Hardesty and Mr. Daugherty over in the premises on 15th Street? A In 17th Street and Union Square.

Q Who went to the premises with you? A A Mr. Hannan, special agmt, Detective Agency.

Q When you got to the premises 532 East 20th Street, tell us what occurred? A I looked the situation over and found, for the purpose of secreting myself there -- and found out there was no place, so I stood at the corner of Avenue B and 20th Street. At about two o'clock -- and waited there until I received a signal which was that a door would be opened, and that would inform me that the money was passed. Then Mr. Hannan and I went to this garage, went to the defendant Whelan and asked him was he a building inspector. He said yes. I said, show me your chield. I am a police officer from Police Headquarters, and you are under arrest. I started to search him, and found the money in his possession.

Q Where was it, what part of his person? A Trousers pocket, right side.

Q You found one ten dollar bill and three fives? A yes.

Q Marked with Mr. Hardesty's initials? A Yes.

Q What did he say and what did you say? A I placed the

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two men under arrest, one man standing alongside of him, and as I did, both Mr. Daugherty and Mr. Haitz said no, that is the man, officer, pointing to Mr. Whelan, and they said, that is a steam-fitter. I was under the impression there were two, because they told me there were two men there. So on the way out to the street Whelan said this is a hell of a Christmas present to me, and walked west on East 20th Street to Second Avenue, and on the way to Second Avenue he pleaded with me to allow him to talk to Daugherty, which I did. He said to Daugherty, I know you have got me right, but what about my wife and three kids. Daugherty said, I don't know. He said it is up to the boss, up to the president of the company, and I went west to Second Avenue car, and took the defendant to Essex Market Court where the complaint was made against him.

Q That is all the conversation you had with him? A Yes.

CROSS EXAMINATION BY MR. SIMPSON:

Q When you first came into the place what did you say to the defendant? A I said, are you a building inspector, and he said yes. I said show me your shield. He put back his coat and had his shield with the letter B, and I said, I am a police officer from Police Headquarters and you are under arrest, and I showed him my shield. I then searched him.

Q Before you searched him what did you say to him? A I said, you are under arrest.

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Q And you immediately started to search the man? A Yes.

Q Without saying, where is that money? A I did not say anything about money.

Q Did not say it, and started to search him? A yes, sir.

Q What was the first thing you searched? A Searched his outside pockets, his vest, his two pockets or side pockets -- at least, his back pockets, and then his front pockets.

Q He said, this is a hell of a Christmas present for me?

A Yes, sir, after I had taken the money away from him.

J O H N J. H A N N A N called as a witness in behalf of the

People, being duly sworn and examined, testified as follows:

(Residence: 45 West 34th Street.)

DIRECT EXAMINATION BY MR. O'MALLEY:

Q What is your business? A I have a private detective agency.

Q Where is your place of business? A 45 West 34th.

Q Were you with Detective Barber the day he arrested this defendant, December 24th, 1912? A yes.

Q Will you tell the jury what occurred after you entered the premises where this defendant was? A After Detective Barber and I entered the premises we went straight to where the defendant stood inside of the building. Detective Barber asked him if he was an inspector, building inspector, and he said, yes, he was. He asked him to show his badge. The defendant showed the

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badge, that he was an inspector of buildings. Then Detective Barber searched him and found this money, \$25.00, in marked bills, in his right hand trousers pocket; took the money out and showed it. Mr. Haitz was there, a man named Powell, who was a steam-fitter was there, Detective Barber and myself.

Q Did you hear any conversation in which this defendant took part after he was arrested at any time? A Well, after we left the place, after Detective Barber placed him under arrest and we proceeded to the street, we passed along 20th Street west down Second Avenue, and on the way the defendant asked Detective Barber, told him he would like to speak to Mr. Daugherty, and he remarked to Daugherty that he had him right.

BY MR. SIMPSON:

Q What? A That he had him right, and he pleaded for mercy.

BY MR. O'MALLEY:

Q What did he say? A He said he had a wife and three children, and he would like him to be lenient and plead for mercy.

Q Did you hear the defendant say anything else before you got out on the street, or as you were going out on the street?

A Inside of the building?

Q Yes. A No, I do not recall that he said anything inside of the building.

Q Outside the building? A Outside I just mentioned that.

Q Did he say anything about Christmas that you remember?

A He said it was a damned poor Christmas present, or he under-

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stood it was a Christmas present, or something to that effect, but it was a poor Christmas present.

Q I want your recollection of the language. A I cannot remember exactly what he said except a Christmas present was mentioned -- whether he mentioned -- the words I do not know, I cannot recall.

CROSS EXAMINATION BY MR. SIMPSON:

Q Do you know Mr. Hardesty? A Yes.

Q You of course, do special work in your special line for Mr. Hardesty? A I have been working for him, yes.

Q And in consequence therefor you were there on that particular day and the day before or the day when these bills were fixed up? A Yes.

Q And beyond that you had no interest? A No interest whatever.

Q But you had some recollection of this defendant saying it was a damned poor Christmas present, or a hell of a Christmas present? A I say I cannot recall the exact words, but I know Christmas present was mentioned.

It is conceded that the premises 532 East 20th Street are in the County of New York.

MR. O'MALLEY: The People rest.

The Court admonishes the Jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, March 13th, 1914, at 11:00 A.M.

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New York, March 13th, 1914

Trial resumed.

MR. SIMPSON: If your Honor please, I ask your Honor to take away from the consideration of this jury the first count of the indictment which charges this defendant with the crime of bribery, for the reason that there is no evidence before this jury to justify a case being submitted to them on this count -- that on the 24th day of December, 1912, this defendant did agree to accept a bribe to do an unlawful act on said day, nor did he in anywise do anything that violated his oath of office on the said 24th day of December, 1912. To the contrary, it has been shown that on the 18th day of December, 1912, this defendant did place a violation against the premises, and said violation was in existence at the time of the alleged giving of the bribe by Daugherty to this defendant.

THE COURT: Motion denied. Exception.

MR. SIMPSON: The same application applies to the second and third count in the indictment, and your Honor rules the same?

THE COURT: The motion is denied, and you may have an exception.

MR. SIMPSON: As to the fourth count in the indictment which charges this defendant, that this defendant did extort from the complainant, while the complainant was in fear, the

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sum of \$25.00 there is no evidence before this jury--

THE COURT: That is the fifth count.

MR. SIMPSON: My former motion applies to that.

THE COURT: To the first, second, third and fourth and now your motion is denied and you may have an exception. You now make a motion in regard to the fifth count which charges upon the same state of facts the crime of extortion. Your motion in regard to that is what?

MR. SIMPSON: That you direct this jury and take away from its consideration the fifth count which charges this defendant that on the 24th day of December, 1912, he did extort from the complainant, while the complainant was in fear, the sum of \$25.00

THE COURT: That does not mean personal fear.

MR. SIMPSON: I just take the verbiage of the indictment. This is the first time I have ever seen the indictment to look it over and read it.

THE COURT: It is a public record and you can have it at any time you ask for it.

MR. SIMPSON: I recognize that fact, but I was assigned to this case and had no opportunity.

THE COURT: The motion is denied.

MR. SIMPSON: I except.

MR. SIMPSON: I ask your Honor to direct this jury that your Honor's denial of my several motions is no expression of opinion on the part of the Court as to the guilt or innocence

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of this defendant.

THE COURT: No, it is merely a ruling on a question of law. You gentlemen of the jury are the judges of the facts.

THE DEFENDANT'S CASE.

WILLIAM C. POWELL, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SIMPSON:

(Residence 474 West 146th street).

Q What is your business? A I am a salesman now for the Dimond Steam Specialty Company of Detroit.

Q In the State of Michigan? A Yes.

Q In the month of December, 1912, where were you working?  
A I was working at that time for the New York Mail Company and also in Jamaica, and on several other jobs.

Q From the 17th day of December, 1912, to the 24th day of December, 1912, where were you working, or were you working for the New York Mail Company? A Yes, sir, New York Mail Company.

Q And did you work every day there? A Well, nearly every day.

Q Was your work stopped by this defendant at any time? A No.

Q Were the other men working there? A Yes.

Q Now, on the 24th day of December, 1912, it has been tes-

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tified to here by Mr. Daugherty that you and a Mr. Haitz and this defendant were in conversation together when he, Mr. Daugherty, came in and called the defendant Whelan away from where you three were standing, and spoke to him and gave him something?

MR. O'MALLEY: I object to the form of the question, the incorporating of testimony alleged to have been given by the witness Daugherty, as an incorrect statement, and I ask that counsel be directed to ask this witness what took place there.

THE COURT: Why compare it with any other testimony. Why not ask him what took place?

MR. SIMPSON: Do you rule upon Mr. O'Malley's objection to my question, that is what I want to know?

THE COURT: You will have to read the question again.

Q (The question is repeated by the stenographer)?

THE COURT: There is so much in the question.

MR. O'MALLEY: It is contrary to the evidence.

THE COURT: It will not do. You will have to ask him some questions.

MR. SIMPSON: Will you be kind enough to rule, and I will take an exception.

THE COURT: You may take an exception. You may divide that question up, but you have three questions in one.

MR. SIMPSON: I respectfully except.

BY MR. SIMPSON:

Q Were you at 532 East 20th street on the 24th day of Decem-

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ber, 1912? A Yes.

Q Were you working there on that day? A Yes.

Q Were your men working there on that day? A Yes.

Q Were the bricklayers working there on that day? A I do not know. I do not recollect.

Q Would you say they were not working there on that day?

A No, I would not.

Q Were you working at 532 East 20th street on the 23rd day of December, 1912? A Yes.

Q Do you know whether the bricklayers were working there on that day?

MR. O'MALLEY: It is conceded that they were.

THE WITNESS: No, I do not know.

MR. SIMPSON: It is conceded -- never mind.

BY MR. SIMPSON:

Q Were you working there on the 22nd day of December, 1912?

A Yes.

Q Were the bricklayers working there on that day?

MR. O'MALLEY: It is conceded that they were.

MR. SIMPSON: Then do not answer it.

BY MR. SIMPSON:

Q Were you working there on the 21st day of December, 1912?

A Yes.

Q Were the bricklayers working there that day?

MR. O'MALLEY: That is also conceded.

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BY MR. SIMPSON:

Q Were you working there on the 20th day of December, 1912?

A Yes.

Q Were the bricklayers working there on that day? A I do not know, I don't recollect.

Q Were you working? A Yes.

Q Did the work that you were doing require the help of any bricklayers or masons? A No, not particularly my work, not at that time.

Q What? A Not at that time.

Q Shortly prior? A Yes.

Q Did it require the work of bricklayers on the 17th day of December, 1912, to help you in your work? A Well, I am not sure. I am not sure but I believe it did.

Q Did it on the 18th or do you know whether bricklayers were working there on the 18th? A I am not sure about it, from the 16th to the 20th.

Q You are not sure about that? A No.

Q You would not say yes or no? A No, I would not say either one, no.

THE COURT: Could not we shorten these matters -- why cannot that be agreed to.

MR. O'MALLEY: It can.

MR. SIMPSON: My astute friend conceded on three days and then he fell by the wayside.

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MR. O'MALLEY: Certainly I did.

THE COURT: Proceed then.

BY MR. SIMPSON:

Q At any time during your employment there, during your work, did you ever see this defendant direct any of the help on that job to stop work? A No, sir.

Q Have you met the District Attorney, Mr. O'Malley, in this case? A No, sir.

Q Never met him before? A No.

Q The first time you have seen him? A I never saw him before that I recollect.

MR. O'MALLEY: I was trying to find Mr. Powell at one time, but did not have his address.

BY THE COURT:

Q When you say "helped on the work", what do you mean by that -- you never saw him direct the help on the work?

BY MR. SIMPSON:

Q Direct any of the workmen on the work, did you ever see him direct the defendant -- this defendant direct any of the workmen, gasfitters or electricians or any other persons having immediate control of the work, to stop work? A I did not, no.

BY THE COURT:

Q How about the foreman or superintendent? A The superintendent of what part?

Q What? A The superintendent of what?

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MR. O'MALLEY: Mr. Haitz.

BY THE COURT:

Q Mr. Haitz? A No, I never saw him direct him either, because I did not --

BY THE COURT:

Q Did you hear him say anything to him -- do not use the word direct, but did you hear him say anything to him about stopping work? A No.

BY THE COURT:

Q Never heard anything said to him about stopping work? A No.

Q What position did you occupy there with reference to Mr. Haitz, were you above or under Mr. Haitz? A I was supposed to take orders from Mr. Haitz.

BY MR. SIMPSON:

Q You took orders from Mr. Haitz? A Yes.

Q Did Mr. Haitz ever tell you that this defendant ordered you to stop your work? A No.

BY THE COURT:

Q Did Mr. Haitz tell you to stop working? A No.

MR. O'MALLEY: This gentleman is the steam fitter.

THE COURT: There is no question about that?

MR. O'MALLEY: No.

MR. SIMPSON: There is some question for this jury to determine.

THE COURT: How can they determine it, when the District

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Attorney says there is no question about it -- he is not asking them to determine that.

MR. SIMPSON: That may hurt the District Attorney, but I will show its relevancy.

THE COURT: That is not the question. The District Attorney says there is no contention but that the steam fitting went on. What is the good of debating it any further. Do you want to show it was not going on.

MR. O'MALLEY: This witness says he does not know whether the bricklaying went on between those dates.

BY MR. SIMPSON:

Q A boiler was being laid there? A Yes.

BY THE COURT:

Q Had you anything to do with the mason work? A No, none whatever.

BY MR. SIMPSON:

Q But the mason work was contiguous to the plant you were putting in? A Yes, sir, exactly.

Q And was required there? A Exactly.

BY THE COURT:

Q Was that mason work continued all the time from the 17th to the 20th? A I am not sure.

Q Do you know whether in the days between the 17th and the 24th of December, 1912, the mason work was discontinued? A I do not know.

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Q How often did you see Whelan come in that place on 20th street? A I never saw him but once.

Q What date was that, A The 24th of December.

Q Were you there -- that was the day when he is said to have received \$25. -- were you there when he received the \$25.? A I don't know. I did not see him receive it so I do not know.

Q Did you see him arrested, A Yes.

Q Did you see the officers take anything out of his pocket?

A I saw them take -- saw them have some money in their hands, but whether they took it out of his pocket I could not say.

Q Did you hear any conversation at all between the officers and Whelan? A Yes.

Q What did you hear, tell the jury? A Shall I tell it from the start?

Q Tell everything you know? A When I was in the room and looking around there, Whelan and Haitz came in to the room.

BY THE COURT:

Q What does that room mean, we were not there? A The garage where this work was going on. I did not know Whelan at that time. Never had seen him up to that time and I was about thirty or forty feet away from them down in the back end of the room examining my own work, which was just being finished that day, and pretty quickly this man Daugherty came in -- to the best of my knowledge that was the first time I had ever seen Daugherty -- at least I had never spoken to him up to that time, and he came in

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and held some conversation with him.

Q With Whelan? A With Whelan and with Haitz, -- they were talking together. And Daugherty turned around after two or three minutes and went out and when he went out Haitz called me over and introduced me to Whelan. That was the first time I ever knew him. After that I stood there talking with him perhaps three or four feet away from Whelan and we were all together in a bunch, within that radius, three feet say, and in walked Daugherty with two men whom I never saw before and did not know. One of them made the remark "Who did you give that money to" and Daugherty said "To that man there".

BY THE COURT:

Q Referring to whom? A To Whelan. When he said "You are under arrest" then he turned to me and he said "You also." I was so surprised -- I thought somebody was playing a practical joke and I began to laugh, because I knew nothing about the transaction and had seen no money passed, and then the detectives simply went through his vest pockets and pants pockets, as nearly as I could see, and I began to get serious myself then, and wondered what was up, and finally, all of a sudden, he flashed out some money in front of him and asked him if he saw those marks and Whelan nodded his head saying that he saw them. To the best of my knowledge all he said to him was that -- when did he take it or how did he get it, and told him to come with him, and they went out.

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Q When he asked where he got it, what did Whelan reply?

A I don't think he replied. At least I don't remember. I cannot remember anything more than I have said.

Q You spoke about being thirty or forty feet away attending to your work which was steam fitting? A Yes.

Q During the time Haitz, Daugherty and the defendant Whelan were talking together? A Yes.

Q So you saw nothing or heard nothing of any transaction, is that about it? A That is about it.

BY MR. SIMPSON:

Q Did Haitz say to you that it was a clever trick that he pulled off on Whelan? A Why, he made a similar remark to that afterwards.

Q What was it he said?

BY THE COURT:

Q Tell us just exactly what he said and what the circumstances were? A I cannot remember word for word, what he said, but he gave me to understand that they played quite a trick on Whelan.

Q Tell us as nearly as you can what he said? A I could not word anything exactly. I asked him what this thing was and what he was trying to do and what he meant and all about it. I was looking for information.

THE COURT: So are we, you give it to us, you tell us all about it.

THE WITNESS: It seemed --

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MR. O'MALLEY: Do not say what it seemed, but tell us what the conversation was, what the words were?

BY THE COURT:

Q Or the substance of it? A I do not know just exactly the wording.

Q To whom did he say it? A To me; he was talking to me and in fact he told me that he and the other fellow Daugherty had played quite a trick on Whelan.

BY THE COURT:

Q When he told you he played quite a trick on Whelan, did you ask him to show you the point of the joke, or did you see the joke? A I did not see any joke about it. I told him I thought it was a pretty mean trick to play.

Q After telling you that he played that trick, did you ask him what his motive was, and why he should play a trick like that upon a man? A He did say something about Whelan being around there and I believe he said that he was -- he had some trouble with him about some fire or something in another building.

Q Some fire in another building? A Yes.

Q Is that all he told you? A That is all.

Q That does not mean very much to us -- we know nothing about this -- now, you tell us -- you see, we know nothing about any fire in any other building? A He did not say anything more than that, that Whelan had been around where there had been a fire and done something or other, I don't know what -- talked to them or told them they would have to --

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Q In what building was that? A I understood it to be the main building on 15th street.

Q Were you in the employ of the New York Mail Company? A I was not.

Q Were you merely putting in -- you were in the employ of somebody putting in a steam heating plant at that time? A Yes, sir. I was employed by John B. Elsey of the Pierce, Butler & Pierce --

Q You had really nothing to do, as I take it, with the New York Mail Company? A Nothing whatever.

Q Can you conceive any reason why Whelan should give you any instructions or directions about work for the New York Mail Company?

MR. SIMPSON: I object.

THE COURT: You have asked him several questions on that subject and he will have to answer that.

MR. SIMPSON: You have put a question and I object.

THE COURT: I overrule the objection. Exception.

BY THE COURT:

Q Now answer the question, can you explain or give any reason why Whelan should give any directions to you, you not being in the employ of the New York Mail Company as to stopping or not stopping the work that the New York Mail Company was doing on masonry? A Yes, sir, I think so.

Q Explain to us why should you think he would give you any directions whatever, let us know that? A Because naturally if he

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saw me putting in the plant wrong, against the laws of the State, that is, not conforming with the building laws, he would naturally, as all inspectors always do, tell me to stop it.

Q You had nothing to do with the masonry? A No.

Q There was no objection to your work at all by anybody, was there? A No, sir.

Q You never heard any objection from anybody, did you? A No.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You know this foundation for the boiler was dug down in the floor? A Yes.

Q And a brick wall built up? A Yes.

Q And a chimney run up through the roof? A Yes.

Q And a door made in the front part of the building through a window cut out? A Yes.

Q Those were structural changes in the building? A Yes.

Q With which you had nothing to do? A No.

Q You were simply putting in the pipes for the heating plant inside? A Exactly, except I had to connect with the chimney.

Q You connected with the chimney afterwards --

BY THE COURT:

Q When you discovered that Haitz and Daugherty were playing a trick upon the defendant as they expressed it to you, did you go and tell anybody about that, the authorities or the police or anything of that kind? A No.

Q Why not

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Objected to.

A Because I did not want to have anything to do with the case.

MR. SIMPSON: I except.

THE COURT: It goes to the credibility of the witness.

BY THE COURT:

Q This man Whelan had treated you all right, he had not done anything to you? A No, had not done anything to me.

Q You saw a man that you did not know had done anything, and you heard a confession by two men who had him arrested, that they did it to play or put up a scheme or trick upon him? A I did not look at it quite in that light.

Q You did not? A No.

BY MR. O'MALLEY:

Q Are you sure the word trick was used, would you swear to that, that the word trick was used by Mr. Haitz when you talked with him? A I think I would, yes.

Q Didn't Haitz tell you about what was done, the way the money was arranged to be given to him and marked and put in his pocket? A Afterwards yes, he did.

Q At the time he was talking to you? A Yes.

Q He told you how Daugherty came in and gave him the money, did he not, A Yes.

Q And Daugherty went out? A Yes.

Q And then two officers came in? A I saw that.

Q And placed him under arrest? A Exactly.

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Q You were talking with Haitz about this whole thing? A Yes.

BY THE 10TH JUROR:

Q Was your work completed on that day? A On the 24th?

Q Was the steam ready to be operated then? A I believe it was.

Q Was the brickwork completed also, was the mason work completed so that the place was ready to be heated? A I think so.

Q You do not know if the heat was turned on the day afterwards or within a day or two afterwards? A It is my belief that it was turned on on the 24th.

Q You say the job was completed on the 24th when the defendant took this money? A I would say it was, yes.

BY THE COURT:

Q What job, A The steam heating plant.

Q How about the chimney, &c.? A The chimney must have been done or we could not have turned the heat on.

Q You think you turned the heat on on the 24th? A I think I did -- pretty certain of that.

Q You think the masonry and all that was completed by that time? A As far as the chimney was concerned, it must have been done or could not have turned the heat on.

Q What makes you think it was turned on on that day? A That is the time it was finished in my time sheet, and it does not show the men worked after that day.

Q Where are the time sheets and when was the last time you saw them? A Mr. Simpson has them.

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Q Suppose you take a look at them and tell us now from actually looking at the time sheets, whether your men worked on that steam plant after the 24th? A They did not -- I know that -- I have looked at them already.

Q Look at them and let us see -- whose handwriting is that in? A This is the handwriting of the steamfitter that worked on the job for me.

BY MR. SIMPSON:

Q For you? A Yes.

Q You have a piece of paper in your hand there, and can you, from that piece of paper, tell the last day the work was done by you or your help at the New York Mail Company's place on 20th street? A This shows on December 24th the last day.

BY THE COURT:

Q Does it show the work was tested and the steam turned on on that day? A No, simply shows the last day any work was done there.

Q Suppose your work had been completed on the 24th and all that remained was to fire up and test, would that be on that paper? A Yes, because they did it -- I did not do it. The men that worked for me did it. I did not do it personally.

BY MR. SIMPSON:

Q The men working for you did it personally and you did not do it? A No.

BY THE COURT:

Q I understood you to say, but I might have been mistaken,

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that at the time this money was turned over, if it was turned over to the defendant, you were working on your job, steam fitting job, thirty or forty feet away, on December 24th?

MR. SIMPSON: I understood him to say he was thirty or forty feet away, but did not say he was working on the job.

THE COURT: He did say so very distinctly and if you want to be absolutely sure on that subject, we will refer to the record. He said "I was working on my job thirty or forty feet away, not paying any attention to the men, and I was called there by Mr. Haitz."

MR. SIMPSON: Let us assume that he was working on the job. I am not going to dispute it in your Honor's mind.

THE COURT: It is not my mind. It is what he testified to.

MR. SIMPSON: The jurors are the best judges as to what he testified to, and they have it in mind, and there is no need to dispute it.

(The direct examination of the witness on that point is read by the stenographer).

BY THE COURT:

Q Did you so testify? A I did testify that way, but what I call work was attending to my own work and own business, and not necessarily laborer's work or manual work, or anything of the kind, but I was there examining the plant and looking it over and incidentally did do some of the manual labor on the work.

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Q If the plant was all tested and finished, set up and tested, what were you working on? A It was not finished according to this, until night. It is eight hours here for December 24th and this thing happened before night. It happened along in the middle of the day some time.

Q I would like to ask you this. You heard this man admit or say to you that this was a trick that they had put up on this defendant, turning over marked money to him, didn't you? A Yes.

Q And they told you that and you say the man never did anything to you? A No.

Q You never saw him do anything to anybody? A No.

Q Why didn't you as a good citizen go and inform somebody, the Judge, when you saw the man arrested and took right out before your eyes, why didn't you follow the poor fellow out and tell the Judge that this was a scheme and these fellows had confessed to you that it was something put up upon him -- why didn't you do that as a good citizen? A I will tell you why, because I did not want anything to do with the case at all. I did not like to get mixed up in it. I do not like to get mixed up in anything of this sort. If I could have got away from coming here to-day I would have got away as sure as you are alive.

Q Do you mean to say to this jury you would see a man like this, honest in appearance, with a trick put upon him, so that he was arrested by two detectives, and that you would not go to his rescue and tell the Judge something of the real facts you knew,

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and you would let that man be oppressed? A I feel sorry for the man but I don't like to get mixed up in a thing like that.

Q You would see a man oppressed under the forms of law and you knew he was wrongfully oppressed, a man who never did you any harm and you would stay away and not go and tell what you knew and what you now state, is that what you tell the jury? A No, I do not say I would, if I thought I could do any good to the man, I would do what I could, but I would rather be left out of it just the same.

BY THE 8TH JUROR:

Q Will you please tell us how long that conversation took place between you and Mr. Haitz, after him explaining to you something about what you said? A Two or three minutes.

Q Do you mean to say that in five minutes' time you could only hear one word and that is, a trick played -- I can tell you that in a second? A What?

Q You said there was a trick played off by Mr. Haitz and Mr. Daugherty? A I said that was what Mr. Haitz told me.

Q Did he add anything to that besides this trick? A No.

Q Were there any other words exchanged between you?

BY THE COURT:

Q Did he say anything else? A We had some little conversation, I don't know just what it was. It was all in regard to this matter.

Q What else did he say? A I don't remember just what the words were.

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BY MR. O'MALLEY:

Q Give us some other words that were used, you have sworn on your oath that he used the word "trick"?

MR. SIMPSON: I object.

BY MR. O'MALLEY:

Q Tell us some other words he used? A As I said before, he used the words that Whelan had been over to the office and troubled them about some fire or something they had over there, and some repairs and something, and that they had determined to get rid of him.

Q What? A That they had determined to get rid of him, or something of that sort.

Q Give us the language? A That is all I know about it.

Q How had they determined to get rid of him? A Why, by playing this trick upon him.

Q Did he use the word "trick"? A That was the way I understood Haitz.

Q It is not how you understood Haitz -- we want you to tell this jury what Haitz said to you so that this jury will know what he said? A I cannot tell you word for word what he said to me because it is too long ago, and has gone out of my mind, and as matter of fact I had forgotten most of it.

Q You do remember what took place when the officers came and arrested the defendant? A Certainly I do. It came very vividly to my mind at that time.

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Q Was not this talk that Haitz had with you impressed vividly upon your mind also? A Yes.

Q Were you not given notice then by Mr. Haitz that a man had been unjustly accused and arrested? A No, he did not quite convey that impression.

Q He did not convey that impression -- what do you mean by telling this jury they played a trick upon him and wanted to get rid of him? A Well --

Q What else did it mean to you? A I don't know what else it can mean.

Q Tell us what it meant to you -- what else did it mean to you but that he had been falsely accused and arrested? A Well, I did not say he had been falsely accused and arrested or anything of the sort.

Q Did Haitz say he had been falsely accused and arrested?

A No, Haitz did not say that.

BY THE COURT:

Q Did he say anything about what the defendant Whelan had told him about the job on 20th street? A What was that?

Q Did Haitz tell you anything about what Whelan had said about the job on 20th street, the 20th street job? A I don't think so. I think all he said was that he made some trouble for them or was trying to make some trouble for them.

BY MR. O'MALLEY:

Q On the 20th street job? A Not the 20th street job but the 15th street job, not the 20th.

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BY THE COURT:

Q You did not know anything about the 15th street place? A No.

M I C H A E L J. W H E L A N, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

(Residence 1,255 East 8th Street, Flatbush.)

DIRECT EXAMINATION BY MR. SIMPSON:

Q How old are you? A Thirty-nine.

Q Where were you born? A New York City.

Q Married man? A Yes.

Q Family? A Yes.

Q Ever been convicted of any crime in your life? A No.

Q What is your occupation? A At present?

Q Yes? A Bricklayer.

Q On the 24th day of December, 1912, what was your occupation? A I was inspector in the Bureau of Buildings, inspector of carpentry and masonry.

Q When were you appointed? A I think it was August 26th of that year.

Q Were you appointed from the Civil Service list? A Yes.

Q You took a Civil Service examination for your appointment?

A Yes.

Q How long have you been in the bricklaying business? A About twenty-three years.

Q You heard Mr. Gulgin describe your district, is that cor-

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rectly described? A That is correct.

Q It is charged here that you did, on the 17th day of December, 1912, make a demand upon Mr. Haitz, a foreman in the employ of the complainant corporation, for money, is that true or false?

MR. O'MALLEY: Your date is wrong. I object to the question.

THE COURT: He can ask him even as to an erroneous date, if he wants to.

MR. O'MALLEY: I just wanted to call attention to it.

BY MR. SIMPSON:

Q We will say December 18th or any time prior to December 17th, did you ever make a demand for money? A I never asked him for any money and never had any conversation about any monetary consideration with that man or anybody connected with the New York Mail Company.

Q When was the first time you reached premises 532 East 20th street? A I am not positive whether it was the morning or the afternoon of December 17th, was the first time I ever entered those premises.

Q How was your attention attracted to the place? A It is a big oldfashioned stable, about 40 by 70 feet on the interior and I believe it was one of the old stables down on the east side there. It had been not occupied and the doors usually were closed and I occasionally went down through there and this day I seen

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some building material laying inside of the garage -- that is, what I mean by building material, there was some of those, what you call terra cotta blocks laying right near the door, and as I came down the street, and I entered the building and walked over to one of the men working there and I asked him who had charge of the job and he told me that it was a man named Haitz, and he pointed Mr. Haitz out to me. I went to Mr. Haitz and asked him if he was foreman of the job and he said yes. I then asked him if he had a permit to make this alteration and he told me no. He said "Are you a building inspector?" I said "Yes." He said "Show me your shield." I did. Then he said "You will have to go around to the 15th street office, see the boss around there." Then I asked him the name, if he knew the name of the owner of the building and asked him what his intention -- what the full intentions were of what they intended to do there on this building, and he explained to me as near as he could what he intended to do, and on leaving him he asked me why I gave him this information and I said I would have to file a violation in the Department against him for proceeding with this work without a permit. I went from there around to Mr. Daugherty and went in the office of the New York Mail Company on 15th street and asked for Mr. Daugherty, I think it was -- he had an office there, kind of dispatcher's office where they used to take the men's time and assign them to different work they had to do. There was a telephone there and I believe there were three men in that office at the time I went in

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there and one of them, I am pretty sure it was the young man that had charge of the telephone, I asked him, Mr. Haitz asked me to ask for Mr. Draper and I asked for Mr. Draper and Mr. Draper came down, as I thought -- afterwards found out his name was Daugherty-- and, I asked him if he had any permit for this building or if they intended to get one. He told me he had only just assumed charge of this work, and that he was acting in the capacity as assistant to the president of the concern, and he had understood the previous man, the man that had his position previously, had taken full charge of this case. I told him then they had no permit for the charge and I would have to file a violation against him for not having any permit. He said to me "Why is it necessary." I said "I have to do it." He says "What can we do about it?" I said "The only thing you can do about it is go up to the Department and file a proper plan for your building and see about getting a proper permit. He said he would do so, and then following that, I don't remember the exact date, but I came around there --

BY MR. SIMPSON:

Q Did you file a violation? A The next morning when I went in the office I filed a violation, which is our duty? I filed a violation--just covering what they were doing, and practically what he told me they were going to do, that is, install a steam plant-- that is the only action I could take on that job as far as I ever knew in my experience as an inspector -- the only thing I could

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do was file that violation against those premises, and that was all the law would allow me to do. I could not file any further violation against him.

MR. O'MALLEY: I object to this.

THE COURT: I will let him proceed.

BY MR. SIMPSON:

Q What were your duties? A I could not file any further violation against those premises after filing one, because if I had done so, my superintendent would simply call me downstairs and give me a good lecture, thinking I would be using the Department for some purpose for which it is not allowed to be used. The only opportunity an inspector has is to file one violation and if he sees anything extra or any other action taking place there which is not covered in the section under which he files the violation, he can take action and file another violation.

BY MR. SIMPSON:

Q Did you at any time stop the work on that job? A Never, no.

BY THE COURT:

Q Do you mean to say that an inspector could not notify the people doing the work not to do it without filing plans and getting a permit. A I don't understand your Honor's question.

Q I say, I thought you said to your counsel the only thing you could do was to file a violation?

MR. SIMPSON: He said it to the jury.

THE COURT: Yes, he said it to the jury -- that the only

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thing you could do as an inspector was to file a violation-- now, as an inspector seeing work going on, which you knew ought not to go on except a permit had been granted, was it not your duty to tell the persons attempting to do that work "You must not do this work without a permit and must not continue it until you get a permit"?

THE WITNESS: I had told Daugherty that already when he asked me what he would do about it, I said "The only thing he could do was to go up to the Department or have a proper plan and permit filed for the building."

BY THE COURT:

Q What I want to get at is this, did you tell him he could not continue until he did that? A No, sir, I did not, because we had just as much jurisdiction --

MR. SIMPSON: I do not hear a word you say -- you are talking to the Judge -- talk to the jury.

THE COURT: Proceed.

BY MR. SIMPSON:

Q Could you have removed that violation? A No, sir.

Q Did you ever have any power to remove that violation? A No.

Objected to as a conclusion. Objection overruled.

Q Under no circumstances could you remove that violation, could you? A No, sir, the only thing I could do --

Q After putting it on, A I could not remove it without the approval of the superintendent. It is up to the superintendent of the building, that is the law.

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Q When did you next see Haitz or Daugherty or either of them, both or either of them? A I don't remember the exact date I saw Mr. Daugherty, but I was coming up 20th street I remember one day and just as I got to the entrance of the garage I think Daugherty was at the door, and he told me that he had filed -- that he had got a proper architect and that he had filed a plan and that everything would be all right in the future and I said to him "I am very glad of that."

Q Was that all that was done? A That was all that was said.

Q Come down to the 24th of December, 1912, the day of your arrest; I want you to tell the Court and these gentlemen of the jury everything that took place on that day in relation to the job and in relation to any conversation you may have had with Haitz, Daugherty or any of the other witnesses who have testified here? A On the 24th in the morning I had -- I received what we call an examination blank for the building. That is, when a plan is filed, sometimes the engineering department finds some fault with the plan or some fault with some of the statements therein, and in order to be positive about what they are doing, they ask the district inspector to examine the building on just those points. This typewritten sheet and under different headings you are asked what to do and I was asked -- I think the size of the building -- I am not positive what the things were, but the size of the building and the general construction and the condition of the building, of the old building. I went in there that morning,

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BY MR. SIMPSON:

Q Into the garage? A To make this examination, and while making the examination Mr. Haitz was there, and he came over and he said to me "Good morning". I said "Good morning." I said "It is a miserable day." It was a very stormy day. He said "Yes, it is." So he said "What are you doing", and I told him what I was doing. He said to me "the boss would like to see you ." I said "Would he, what for." He said "I don't know." So he said "Wait a minute and I will get him on the telephone," and Mr. Powell, the steamfitter, was there at the time right alongside of us, and I walked over to the telephone -- he called up the 15th street office and I walked over to the telephone, and I don't know who it was was on the wire, but they said to me "I want to see you." I said "About what?" He said "I want to know exactly what the Department requires in order for us to be able to get our plant through in a hurry. Will you be kind enough to give me that information." I said "Yes." He said "Can I see you there at two o'clock." I said "Yes, I will get there as nearly as I can to 2 o'clock." So I went from there around to where there had been a bomb explosion in 18th street, and from there I think I went to dinner and then I think I went down 14th street and came up through Avenue B, as near as I can recollect, and got in the building there around 2 o'clock. I had not been there only a few minutes when Mr. Daugherty came in. I was speaking to Mr. Haitz. Mr. Daugherty came in and came over to me and he said "Well, we are

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pretty well finished up." I said "Yes, I see you are." He called me to one side. He said to me "Whelan, you have been pretty good to us, here is a present for you". We just stepped a few feet away from Haitz, and he slipped me something in my hand, and I stuck it in my pocket. What it was -- of course I knew it was money but the amount of it or anything I did not know until Mr. -- never took it out of my pocket until Mr. Barber came in there and examined me and placed me under arrest. Mr. Barber said some things to me but I don't remember answering him any more than -- yes, I think I answered one question. He asked me if I was a building inspector and I do not know if I answered him, but I think I did say yes. He said "You are under arrest." I said "All right"-- I did not say all right either, I don't think but, on going out of the door I said -- I did make use of the expression -- I was kind of upset -- I said "This is a hell of a Christmas present". Those words I did say, and came out on the street, and part way up the street I kind of recovered myself and turned to Mr. Daugherty-- I asked Mr. Barber if I could speak to Mr. Daugherty and he said yes. He gave me permission to speak to him. I said to Daugherty-- "Do you realize the position you are placing me in; you have <sup>got</sup> me in awful bad." I said "If you haven't any respect for me, why don't you have some respect for my family." He said "I ain't got nothing to do with it, I am merely an employee. I am doing as I am directed." That was all I know that happened that day.

Q Did you at any time demand, request or feloniously attempt to take or place in fear Mr. Daugherty? A I could not place

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them people in fear.

Q Did you, yes or no? A No.

Q Did you at any time tell Mr. Daugherty that he had to stop the work? A No.

Q Did you at any time prior to the 20th street job, ever file a violation against property controlled by the New York Mail Company? A I filed a violation --

Q Yes or no? A Yes.

Q Upon what property? A East 15th street, their head office.

Q You had filed a violation against that place? A Yes, I had filed one, and had control of one that was put on there by one of the engineering department during a fire -- after a fire, when the roll was called, the engineers take charge of that work and they make the first inspection. We do not make an inspection right after the fire but we are given a slip, after they make their report, and it is our duty to examine those places periodically, and we get what we call a little slip handed to us to make this examination, and we make reports on those slips about the condition of the work or whether they have done anything to protect the work or whether it is in the same condition that it was, after.

Q On the 24th day of December, 1912, at 532 East 20th street the subject matter of this indictment -- the place where this alleged crime is said to have been committed, was the heat turned on there when you got there? A Yes, sir. It was turned on when I

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got there in the morning and the mason work was all done at that time with the exception of the roof. They had the beams set but had not completed the fireproofing of the roof -- they had not what we call the cribbing -- they generally put cribbing along where they are going to put ashes or cinders, under the roof--between the iron beams.

BY THE COURT:

Q If the work was all complete and the plant in operation, what was there for you to report on -- you say you were there at 11 o'clock in the morning to report on a certain examination blank, what was that for? A For his plans, for the knowledge of the engineering department about his plans.

Q According to the testimony he did not file the plans until December 26th?

MR. SIMPSON: No, the 20th, and they were disapproved on the 30th, and finally accepted on January 6th.

BY THE COURT: His plans were not accepted until January 6th.

MR. SIMPSON: They were approved January 6th.

BY THE COURT:

Q Would that suggest anything to your mind or refresh your recollection as to whether or not the work was complete on December 24th? A The filing of the plans would not be necessary on the completion of the work -- it would merely mean whether the architect had complied with the law. They do not send from the Department their examiners down there to examine that work, but

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they trust -- I will have to get at it in a different way. An architect files plans in the Building Department and sometimes they are not what the Department Examiner requires on some small point -- not up to the law -- and then the Examiners notify the inspector, as I say, like this examination sheet I had, for further action regarding those things and as near as I can remember the only question about those plans on that building in that examination sheet, it is a matter of record and can be found very easily -- were, the location of the building, occupancy and the condition of the building.

BY THE COURT:

Q Could you tell us what you found there at 11 o'clock on December 24th, can you recall what you found there, that is, as to the completion of the work and steam being turned on? A I have already said that.

Q That being so, why did you go back at 2 o'clock? A At the request --

Q When the money was handed to you -- why did you go back if all that was done? A Mr. Haitz requested me to speak to his boss over the telephone, and I went to the telephone and then -- I don't know who it was came to the telephone. I did not recognize the voice, but they asked me if I would return there at 2 o'clock and I said, I asked him what for. He told me that he wanted to know or find out what the Department required exactly from him, so that he would be able to complete the work properly according to

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law, and as I understood him, to get his plans through -- whatever information I could give him.

BY THE 6TH JUROR:

Q Was there any work not completed at that time? A Only the roof.

BY THE COURT:

Q You said that morning at 11 o'clock Mr. Haitz asked you to step to the telephone, somebody was on the telephone and wanted to speak to you, and you stepped to the telephone, and the person at the other end of the telephone said "What does your Department require so that we can get through with this work in a hurry"?

A No, he asked me if I would be there and give him that information. Mr. Haitz called up the office himself. He said I was there.

Q You stepped to the telephone? A Yes.

Q And then you said "I went out" and you told us where you went at that time, "and I returned at 2 P.M." -- was that return at 2 P.M. by appointment? A By appointment over the telephone.

Q It was at the 2 o'clock appointment that you say that Daugherty called you aside as soon as he came in and said "You have been good to us" and then slipped you some money and you said "I did not know what the amount of the money was, but put it in my pocket"? A I never looked at it. He said "This is for your Christmas" when he handed it to me.

Q He said "This is for your Christmas"? A Yes.

Q I have it this way "He said you have been good to us and

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then he slipped me some money"; now you say that that was what he said "This is for your Christmas"? A Yes.

Q You had never seen Mr. Daugherty before that except in connection with this job? A No, not with the exception of that job.

Q That was a pretty good Christmas present from a man you never saw but once before, was it not?

MR. SIMPSON: I object and except to your Honor's statement as calling for an opinion and conclusion.

THE COURT: I ask him. I do not know.

BY MR. O'MALLEY:

Q What had you done for Daugherty or the New York Mail Company that they should give you a Christmas present? A The only thing I done there when I spoke to Mr. Haitz there one day, he told me that he had been -- told me he was a marble polisher by trade and a married man, and had been out of work quite awhile on account of the marble polishers being on strike and he told me that he was not thoroughly posted on construction, and if I would not be kind enough to do him a favor and tell him what he would do so he could comply with the law as he progressed with this work and I said "Yes, I would tell him anything I could to be any benefit to him and I never -- that was all I remember that I done for him. I directed him what to do as the work progressed so it was done according to law and I don't think there was any objection to the work that had been done under my direction from him.

Q That was all you ever did for him? A Yes.

Q You never had done anything for Daugherty? A No.

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Q You had filed a violation against these premises? A Yes.

Q Daugherty knew that? A Yes -- I don't know if he knew it.

Q Daugherty knew it, didn't he, you told him that you would have to file a violation? A I told him I was going to.

Q The fact is, you did file a violation on the 18th of December? A Yes.

Q That is the only violation you ever filed? A That is all.

Q You did not file any violation after December 20th? A No.

Q It is the fact, is it not, that these plans were filed for the purposes of securing a permit on the 20th of December?

A I am not positive of the date.

Q The record shows that and you do not dispute it? A I do not dispute the record.

Q The plans were not finally approved until away along in January? A We had nothing to do with the approval of the plans.

Q The record shows that and you do not dispute it? A I was not in the employ of the Department at that time. I was under suspension.

Q Do you dispute the final plans were approved January 6th?

A I cannot dispute something I know nothing about.

Q Notwithstanding that, this work went on from December 17th after you filed this violation, didn't it?

MR. SIMPSON: The 18th.

BY MR. O'MALLEY:

Q December 18th you filed the violation, is that right? A Yes.

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Q On December 24th it was practically completed as you say?

A With the exception of the roof.

Q With the exception of the roof over this enclosure for the boiler? A Yes, brickwork up and iron beams set and just this fireproof work to be put in -- I suppose about a day's work.

Q When you filed the violation I presume you deemed it your duty to do so because the work was being done there and the alterations made, required a permit to be secured? A Yes.

Q You were the inspector for the particular building?

A Yes, under those conditions.

Q Did you go around the following day to find out if they had resumed work, after you filed the violation, A To find out if they had resumed work?

Q Or whether they had continued work? A No, I did not go around on the following day I don't think.

Q In the violation you filed, the recommendation you made was that they should stop work? A That is a general recommendation all inspectors make, and it was the way I was instructed to when up there.

Q That was the 18th of December? A Yes.

Q When was the next day you went to these premises? A I am not positive as to the date.

Q Weren't you curious to know whether or not the law was being violated in your district? A I had taken all the action I could take in that matter.

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Q Wasn't it your duty to find out whether or not after a violation has been filed, the work is stopped? A No, we have no power to stop work.

Q Is it not your duty to see whether or not it was going on and to report it back? A Whether it was in progress,

Q Yes? A My duty to see -- no, not on a trifling operation like that.

Q Who else was to inspect those premises? A There was nothing to inspect.

Q You recommended that work should be stopped? A That is the usual form of recommendation we make to our boss.

Q You had told Haitz and Daugherty they would have to file a permit or stop the work? A No.

Q You told them they would have to get a permit? A I told them they had to file plans, I never told any man to stop work only where life was in danger.

Q Didn't you say they would have to get a permit? A Daugherty asked me what action they would have to take in the case and I said to file proper plans and get a permit, approval.

Q What did that mean except to tell them that they had to have a permit? A I did not tell them they would have to have it.

Q What else did it mean to your mind but notice to Daugherty that he had to get a permit to go on with this work? A He could have done the work without a permit if he wanted to pay a \$50. fine if he got sued.

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Q Could he have done that when you were inspector of the district and watching the work? A Yes.

Q Wouldn't you report it? A Report the work going on?

Q Wouldn't you report work was going on after you put on this violation, if you had seen it -- now be frank with this jury?

A I don't know exactly what you mean.

MR. SIMPSON: I ask your Honor that you direct the District Attorney not to use such terms to the witness, "to be frank with this jury".

MR. O'MALLEY: That is what I want him to be.

THE COURT: That is not such an offense.

MR. SIMPSON: Yes --

MR. O'MALLEY: I do not consider it is.

Q (The question is repeated)? A On a trifling thing like that, no.

BY THE COURT:

Q A trifling thing? A Yes.

BY MR. O'MALLEY:

Q You had filed a violation against the premises? A A violation covered all the action I could naturally take or ever sought to take on that job.

Q You considered it trifling? A Yes.

Q You had talked with Haitz about it? A Only on him asking me himself what he would do.

Q Did you talk with Haitz about it on the 20th when you

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went there and asked him if he had a permit? A The 20th?

Q Yes? A No, never spoke to Haitz about it.

Q On the 17th? A When I went in there.

Q You asked him if he had a permit? A Yes.

Q You saw the work was going on? A Yes.

Q You saw they were building up this wall, and had to carry a chimney up through the roof, didn't you? A To the best of my recollection at that time the chimney was up.

Q Here is the violation you filed in your own handwriting?

THE COURT: That is in evidence?

MR. O'MALLEY: Yes.

THE COURT: Hand it to him and let him refresh his recollection.

A I had an awful district there --

BY MR. O'MALLEY:

Q Read it, what you entered on that violation as to the work that was going on there at 530 ?

MR. SIMPSON: Read it all.

THE WITNESS (reading): " And find existing thereon a violation of Section 4 of the Building Code, as follows:  
In that of erecting a brick chimney 16 by 16 and 20 feet high -- 16 inches by 16 inches, that is -- and building fire-proof apparatus to form boiler room. No permit."

Q That is in your own handwriting? A Yes.

Q You did find that they were building or purposing to

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build a chimney 16 by 16 inches and 20 feet high, didn't you?

A They were erecting it at the time, working on it.

Q And it was such an alteration there that you considered it a violation of Section 4 of the Building Code? A Any alteration--

Q Answer my question? A Yes.

Q After talking with Haitz, you went to see Daugherty about it and talked with Daugherty about it on the 17th? A Yes.

Q Then you filed this violation? A Yes.

Q Do you consider that a trifling matter? A Well, if I did not report, no matter how small, it would mean probably my being brought up on the charge of incompetency.

Q Wasn't it your duty after filing that violation to keep watch of those premises to see whether or not the work was resumed there without a permit? A No, I would not consider it so.

Q Don't you do it regularly in your business -- didn't you do it regularly in your business as an inspector, to keep track of premises where you file a violation? A To keep track every ten days. We make a periodical examination every ten days.

BY THE COURT:

Q Could not that job be finished in ten days? A The job could be finished.

Q That is, from the time you filed it, on the 18th --there is some testimony here it was actually finished by the 24th -- could not that job be finished in ten days? A The job could be finished easily in ten days.

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Q By the time you got around the next time it would all be finished or might be finished? A Would be nothing for me to see-- the work they had done at this time -- as near as I can recollect-- was forming a little excavation for this wall and a small excavation for the chimney and the boiler and I believe the work-- the wall was at that time when I went in, about six feet high -- everything I had seen at that time -- I had seen what it was -- small affair and nothing any man could find any fault with, and if the work had been constructed wrong or in any way wrong afterwards, it would be a simple matter to see it, because it was all above or around, and everything was right under any one's eye that walked in there.

BY THE COURT:

Q I call your attention to the bottom of your notice of violation in which you say to the question that is put in the blank "What immediate action, if any, is necessary", then in your own handwriting you have got "Stop the work." That is your recommendation to the Department, is it not? A Stop work it is.

Q What does that mean; does that mean that you recommend that the Department stop that work? A Your Honor we make that as a usual form on nearly every violation which we file.

Q Does it mean nothing? A It means practically nothing to me. It is up to my superior to tell me what action to take afterwards if he deems that the matter is of sufficient importance for him to notify me to take action on it -- then he would tell me to take action on the matter himself. I am directed then

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to make a special examination, as we call it, upon the matter. That is, if it would be some job of some amount.

Q You recommend as you say, to stop work, that is, that this work be stopped -- then the Department in the regular course give you a blank which they ask you to ~~to~~ and fill out upon making an examination of the premises? A That had nothing whatever to do with the violation.

Q It had not? A No, sir, that was on the filing of the plans for the information of the engineering department about the structural parts of the building.

Q Do you or do you not in the course of your business, as an inspector, have anything else to do with the work after you have filed the notice of violation? A On a job of that kind?

Q Yes? A No, we would not.

Q I thought you just said that when you put the words "stop work" on it, that the Department would give you a printed blank to report further? A If my superior would deem the job of sufficient importance for him to direct me to take any action on it, he would do so. If he thought the job was not of enough importance for me to take any action, he would simply ignore it and wait for this man to file his plans and then have them approved, and on the filing of the plans, when they are approved, the inspector of the district usually, as soon as you get the number of the plan -- you get the number and you get a copy of the plan, and then you make out a little slip recommending or stating this

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order has been complied with; that this man has filed a plan and you number the plan and the date of approval and you turn that slip in with your violation, and then the superintendent will take one of the other men, one of the chief inspectors, or some of the men having charge of the division, and send him down there and it depends upon his report usually whether they remove the violation or not.

BY THE COURT:

Q The Department actually did on December 20th, hand you a notice to serve on these people, didn't they -- look at that and see, with your name on the back of it? A Where is that?

Q You have it in your hand, you see your name on the back of it "M. Whelan", directed to these people, that is, the New York Mail Company, referring them to your notice of violation.

MR. SIMPSON: Will you direct his attention to it.

THE COURT: This (indicating).

A That is copied from my original and then handed to a messenger of the Department to hand to the people that own this building. I never saw this.

Q In the regular course of business that was served upon these people, a notice of that kind; it is familiar to you, that form of notice? A That form is. I could not tell if it was served or not.

Q Look at it, -- it tells these people they have already incurred a penalty of \$50., and if they continue the work they

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will incur another penalty, does it not? A It says "Should you fail to comply with this notice within ten days after the service thereof, you will incur a further" --

Q If you do not get your permit you will incur another violation of \$250.? A No further violation -- we would not put no further violation on that. The usual rule with the superintendent --

Q That is notice to them that you would? A That is out of my hands.

MR. SIMPSON: I object to this whole inquiry regarding that particular piece of paper as incompetent, irrelevant and immaterial.

THE COURT: It is in evidence?

MR. SIMPSON: No.

THE COURT: We will ask him.

BY THE COURT:

Q You know the duties of your office? A Fairly well.

Q How long have you been there? A I was there about four months, but I was in one of the busiest districts in this city

Q In the regular course of business, after you file a notice of violation, what does the Department do, what is the natural and ordinary and every day procedure and routine in your department? A My supervising inspector reads the reports we turn in, and if he thinks we should take any further action upon that matter, he directs us to do so. After I filed that violation I cannot

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do anything further until I am directed to do so, with the exception that in inspecting and going around this district, I find the conditions of the job changed to such an extent that they would not be covered in that section of the code.

Q In the natural and ordinary course of the department, would they serve upon the person against whom you file a violation, a notice that that has been filed and directions what to do?

A They do not give you no directions, they serve notice upon you of the violation.

Q Can you tell us if that is or is not so? A That they serve you with a notice?

Q Yes, serve the person against whom you file the violation, with a notice that the violation is filed? A Yes, sir, they serve him.

Q And they are fined \$50. for having done work without a permit, and if they do not get a permit within ten days, \$250. more fine will be imposed, is that so? A I say --

Q Do they or do they not? A That is a peculiar question, because I am not the superintendent of buildings. It is up to our superintendent. He can revoke that.

Q You state that you do not know? A He can revoke that. It is a peculiar question.

Q You can state, if it is so, that you do not know? A You leave me in a position there that I am not thoroughly competent to answer you, for the reason the circumstances there on those

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violations, when a man -- my usual course in the department there, when a man would file a plan for a place like that, and it was accepted, that the violation would be removed and the penalty would be revoked at the pleasure of the superintendent. It would depend upon him whether he would take that action or not.

Q Upon whose report would the superintendent act? A He would act on the -- probably under my report and might send other inspectors.

Q There is no question about that in your mind, is there?

A There is a chief over me.

Q You filed the violation? A Yes.

Q In the ordinary course of business of the department whom does the department look to to report as to whether or not those conditions have been removed? A When that notice would be served upon the owner of the building, in about ten days I would get a slip, asking to make a report on the conditions. We have a printed form, printed blank form given to us, which is a small slip and we cover those slips with each violation in the district and at different times we receive an inspection order from downstairs to report upon that violation. Those orders are pinned to the violation for future reference for the department, in case they sue those people. That is the ordinary course of procedure. There may be some point in that in the law that I do not know because --

BY MR. O'MALLEY:

Q Let me ask you a question, after you filed your violation

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in this case, does your superior go out and make a personal investigation to see whether or not it is a proper case for getting a permit? A My superior -- I don't know what his action would be.

Q Upon whom does he rely to give him that information?

A He would rely upon my report.

Q Does not that report you put in there mean to him --

MR. SIMPSON: I object unless he allows the witness to complete his answer.

THE COURT: Finish the answer.

THE WITNESS: I have forgotten the question now.

Q (The last question is repeated) A He would rely upon my report and the size of the job and the conditions of the job. If he would deem it to be a condition of any kind that would endanger human life or something in the estimation of the department that would amount to something, then he would direct me to take immediate action.

BY MR. O'MALLEY:

Q Action was taken, notice was served upon these people?

A Notice was served.

Q According to that report? A According to the report, yes.

Q Notice was served upon the New York Mail Company they had already incurred a penalty of \$50., and if they pursued the work they would be subject to another penalty of \$250.? A Those things are never collected --

Q Answer my question? A I cannot answer it and be fair to

myself.

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BY MR. SIMPSON:

Q When was that notice served of a fine of \$50., what date?

THE COURT: On the 21st day of December, 1912, at 525 East 15th street in the Borough of Manhattan.

BY MR. O'MALLEY:

Q Those notices usually contain that provision and it does in this case? A When you bring that back to my memory I believe Mr. Haitz told me --

Q I just ask you about this notice that was served upon them, it does contain this language "You have already incurred a penalty of \$50. and further violation by you will subject you to a penalty of \$250.?"

MR. SIMPSON: Put it in evidence -- he is not responsible for what it contains.

THE COURT: Then put it in evidence.

(Paper is marked People's Exhibit 9).

BY MR. O'MALLEY:

Q Coming back to the 24th of December, you had never had any trouble with Mr. Haitz prior to that time, had you, yes or no? A No, sir.

Q Or with Daugherty? A No, sir.

Q Had either Mr. Daugherty or Mr. Haitz ever said anything to you about having filed a violation against the 15th street premises? A To me?

Q Yes? A No, they did not.

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Q Neither one of them had said a word? A No.

Q Those violations that you did file then were in your usual course of duty -- I think they had a fire over there? A I did not put the fire violation on. I had control to make periodical inspections of it every ten days but the --

Q Answer my question -- just listen to it and we will get along faster -- you never had any talk with anybody over there in regard to filing a violation against the 15th street premises?

A I had a talk with a man there but it is not any man that is here that I know.

Q It was not Mr. Hardesty? A I never saw him until I saw him outside here.

Q In fact Whelan, was there a man who has testified for the People, with whom you had any trouble at all personally? A Personally?

Q Yes? A No, sir, there is not.

Q Neither with Hardesty or Mr. Daugherty or Mr. Haits or Mr. Barber or Mr. Hannan, prior to this December 24th, you never had any trouble with them, had you? A No, I did not, not with them. May I ask you what you mean by trouble?

Q Well, any trouble, any words, any argument? A No.

Q Any difficulty at all? A No.

Q You say this was a cold day in December, was it not? A It was a very cold day.

Q Stormy day? A Very stormy.

Q You were wearing an overcoat? A Yes.

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Q And you say Daugherty had telephoned you he wanted you to come over and talk with you about the plant? A I don't know if it was Daugherty on the telephone or who it was, but Mr. Haitz--

Q Somebody from Daugherty's place of business? A Yes, I imagine so, because I think it was a local telephone.

Q And the person with whom you talked said he wanted you to come over and have a talk with you to see what the department required so they could hurry up the work? A That is right -- not hurry up the work.

Q I understood you to say to get the work done?

THE COURT: In a hurry.

BY MR. O'MALLEY:

Q To get the work done in a hurry? A If I made that statement, I erred.

Q Let us have it right.

THE COURT: Correct anything you want to correct.

THE WITNESS: The work was practically done at that time.

BY MR. O'MALLEY:

Q What did this person say that he wanted to see you for?

A Wanted to know what the department required from him in order, as near as I could get his words, in order to satisfy the department and have this violation removed. Whether he had been notified previous to that about some little technical points on the plans which had been objected to, or not, I do not know. That was my impression at the time that the man called me up on the telephone, I thought probably there had been some slight objection to the

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construction of the work which he wanted information on, in order to be able to remedy it.

Q As you came into that building in the morning you had seen the work was practically completed? A Yes.

Q At 11 o'clock when you came in there and saw Haitz? A Yes.

Q And did you ask Haitz then whether or not they had got a permit and had the violation removed which you had filed on December 18th? A I knew they had not got a permit.

Q You saw right then and there that the work had gone on?  
A Yes.

Q Did you report back to your department that this work had gone on? A On what day did you say?

Q On December 24th? A I did not get back to the department.

Q You were there in the morning at 11 o'clock? A Yes.

Q You saw this work had gone on? A Yes.

Q And you did not say a word to Mr. Haitz about whether or not they had secured a permit? A At that time?

Q Yes? A I knew they had not secured any permit. I had an examination blank there for the benefit of the engineering department.

Q You knew the work had gone on? A Yes.

Q You say Daugherty came over at 2 o'clock? A It was around 2 o'clock, the exact time I do not know.

Q And the first thing he said to you, he stepped up to you and he said "Whelan, you have been pretty good to us"? A No, I

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don't think he did say that.

Q What did he say -- that is what you testified to here on your direct-examination? A I cannot positively say all the words of the conversation Daugherty and I had that day.

Q What did he say to you? A As near as I can gather from what he said to me, he said "We are pretty well cleaned up", something of that sense -- in fact, he meant that he was practically finished. I said to him "Yes, I see you are, and I am glad of it." He said "Can I speak to you?" I said "Certainly." We stepped to one side, and as I turned, he came in from the left-hand side of the door -- the doorway was -- I will go back further -- Haitz was on the right hand side. We were talking right by the telephone and the steamfitter was across the building speaking or --

BY MR. SIMPSON:

Q What did he say to you when he came in, and what did you say to him? A He just said "Can I see you for a moment" and I said "Yes" and as I turned around, he just handed me -- he said "Here is a Christmas present for you" and his hand was close to me and I took it and stuck it in my pocket.

BY MR. O'MALLEY:

Q He did not say "You have been pretty good to us"? A He said that previous.

Q He did say then "You have been pretty good to us"? A Yes.

Q Did you ask him in what respect you had been good to him?

A No.

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Q And he immediately shoved this money right out? A Handed it to me.

Q Your hand was near his? A Yes.

Q You grabbed it or took it and slipped it in your pocket?

A Yes.

Q You slipped it into your right trousers pocket? A Yes.

Q Do you remember once being up in my office talking with me? A Yes.

Q Didn't I say -- I did not want to talk with you about the case unless you wanted to talk with me? A You did not.

Q You came in and asked if you could talk with me about the case? A You know exactly what went on there.

Q Did you come in and talk to me about the case? A I did.

Q And you asked to talk with me about it? A I asked my counsel as near as I remember about it.

Q Didn't you ask me if you could talk about the case when you came in? A Yes.

Q You came of your own volition, I did not send for you? A Not that I know of.

Q Do you remember what you told me? A I do exactly.

Q Do you remember what you told me about where this money was put ? A Yes, sir, I do.

Q What did you say to me?

Objected to. Objection overruled.

MR. SIMPSON: I object to this defendant now saying to this jury what he told Mr. O'Malley, upon the ground it is

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incompetent, irrelevant and immaterial and remote from the time alleged in this indictment.

THE COURT: The doctrine of remoteness has nothing to do with this.

MR. SIMPSON: Let Mr. O'Malley take the stand and testify, if he wishes.

THE COURT: He can ask him on cross-examination.

Exception.

BY MR. O'MALLEY:

Q What did you tell me about in which pocket this money went?

Objected to as incompetent, irrelevant and immaterial.

Overruled. Exception.

A What did I tell you?

Q Yes? A I know what I told you, but would like to ask you a question first.

THE COURT: Proceed.

THE WITNESS: I would like you to ask me what happened in that office when I first went in.

THE COURT: Tell the whole story, everything you want.

BY MR. O'MALLEY:

Q Tell it all? A From the time I first spoke to you, Mr. O'Malley?

Q Any talk you may have had with me I have no objection to your telling? A The first time I met Mr. O'Malley was the day I was arraigned here for trial and I did not have any attorney and I

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went up to the Information Bureau upstairs and asked the people up in the Information Bureau if they would tell me what action I could take and I had been notified about 10 o'clock the previous evening to appear here for trial the following morning and I went up and asked Mr. O'Malley about it and Mr. O'Malley said to me, why don't you plead guilty -- no, he did not say it that way. He said my advice to you would be to plead guilty and throw yourself upon the mercy of the Court. I said "No, sir, I will not". And he said "Why?" I said "Because I am innocent." He answered me and he said "Well, if you are innocent or if you feel you are innocent I do not blame you for not pleading guilty." My counsel and I had some conversation over the indictment after that, at the direction of my counsel I went to Mr. O'Malley's office upstairs with the intention, as I thought, to explain the case to Mr. O'Malley truthfully. I told Mr. O'Malley, as near as I can remember, when I entered the office, that I was innocent of the charge. I think that was my first words. He said to me "I have four or five men with a good straight story against you", and I said to him "Is that so" and he said "Yes." I said "Somebody must be telling an untruth." "Well", he said -- I am telling the story as near as I can -- I am not positive of every word that was uttered -- I know he said -- he said -- I am kind of mixed up -- where was I -- well, he said "From the facts here, from the facts that are shown to me here, I cannot see anything -- from the facts that are shown here I cannot see it." "Well", I said, "I would

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like to tell you my story" and he said "Well, if you wish, you can go ahead." I went up there with that intention and I meant to tell Mr. O'Malley the true story of the facts but from what Mr. O'Malley had told me about the case I did not think I would be justified in telling him the truth of the facts of the case because I thought that a man in his position would probably use it against me. I don't know the man nor I don't know anybody that does know him and I thought probably, for the sake of his oath of office and his belief, that he would probably use the words I told him against me, and I told him an untruth.

BY THE COURT:

Q What was it, tell us the untruth you told him? A I told him that the money was found in my right hand overcoat pocket, and that it was placed there by Daugherty, that was just what I said, wasn't it?

MR. O'MALLEY: You told me that.

BY THE COURT:

Q Did you say you did not know how it was put there? A That I am not positive of.

BY MR. O'MALLEY:

Q You did tell me that, Whelan, that you did not know that it was in your pocket until they took it out? A I may have said it... I am not denying it, but I am not positive.

Q I treated you very fairly in my office? A Yes.

Q And I advised you if you felt you were not guilty, not to plead guilty? A Yes.

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Q And if you were guilty I advised you it would be the best thing for you to do to plead guilty and throw yourself on the mercy of the Court? A Yes.

Q Was there any reason in the world for you to withhold the truth from me when I was talking to you in that manner, confidentially, giving you the best of my advice? A The only reason I had for withholding the truth from you was when I spoke to you at that time I felt thoroughly convinced that you believed that I was guilty, and I was not going to give you the material and facts in order to have you use them to your own advantage. I am not saying you would do it, I don't know if you would or not.

Q Did it not occur to you that it would be worse for you if you told me an untruth than to tell me the truth in the matter?

A I don't think so under the circumstances, because I did not think you would believe me.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2:15.

AFTER RECESS. TRIAL RESUMED.

MR. O'MALLEY: It is conceded upon the record that this defendant is not responsible for the sending out of People's Exhibit 9, the one your Honor questioned him concerning, the notice to the owners that they would be fined or were fined

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\$50., or would be fined \$250. -- that this defendant is not responsible for the sending out of that notice.

THE COURT: What does responsibility mean?

MR. O'MALLEY: Simply that that went out in the usual course of business.

THE COURT: There is no pretense that he sent it out?

MR. O'MALLEY: No.

J A M E S S M I T H, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

(Residence 1123 Avenue P, Brooklyn).

BY MR. SIMPSON:

Q What is your business? A I am in the sheet metal business, cornice metal.

Q Where is your place of business? A 1856 Coney Island Avenue, Brooklyn, New York.

Q Do you know the defendant, Michael J. Whelan? A I do.

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

Q Do you know other people who know him? A I do.

Q Do you know what his reputation is for truth and veracity in the community in which you live, and in which he, the defendant, lives, is it good or bad? A Very good.

CROSS EXAMINATION:

Q You do not know anything about his work in the Building Department? A No more than he did some work around our neighborhood

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there -- no, not in the --

Q. In the Borough of Manhattan? A No.

WILLIAM F. DORAN, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

(Residence 1,850 Coney Island Avenue).

DIRECT EXAMINATION BY MR. SIMPSON:

Q What is your business? A Real estate and builder.

Q How long have you been in that business? A Eight years.

Q Where is your place of business? A 1837 Coney Island Avenue.

Q Do you know the defendant? A Yes.

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

Q Do you know other people who know him? A Yes.

Q Do you know what his reputation in the community is for honesty and truth, is it good or bad? A Very good.

Q Has the defendant done work for you? A Yes.

Q Contracting work? A Yes.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You don't know anything about what this man did as an inspector, in regard to the work he did as an inspector of buildings in the Borough of Manhattan? A No.

Q During the time of his appointment you were never brought in touch with him over in Manhattan? A No.

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Q So you don't know what his dealings were with the owners of buildings in his district? A No.

MELBOURNE LUCAS called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

(Residence 2,022 Avenue M, Brooklyn).

DIRECT EXAMINATION BY MR. SIMPSON:

Q What business are you in? A Building business.

Q Where is your place of business? A 2,022 Avenue M.

Q How long have you been in that business? A About ten years

Q Do you know the defendant? A Yes.

Q Do you know other people who know him? A Yes.

Q Do you know what his reputation is in the community in which he lives for truth and honesty, is it good or bad? A Good.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You know nothing about this man while he was an inspector in the Bureau of Buildings, Borough of Manhattan? A No.

Q Did you ever have occasion to discuss this man's reputation prior to his arrest, as to what his reputation was as to truth and veracity or honesty? A-No.

Q You say you have discussed it? A No.

Q Never have discussed it with anybody? A No.

Q So that what you mean to say is, that so far as you know, his reputation is good? A Yes.

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P E T E R   W A T T, called as a witness in behalf of the defendant, being duly sworn and examined, testified as follows:

(Residence 270 - 71st street, Brooklyn).

DIRECT EXAMINATION BY MR. SIMPSON:

Q What business are you in? A Masonsmaterials, building materials.

Q Where is your place of business? A Bay and Locust Avenue, Brooklyn.

Q How long have you been in that business? A Sixteen years.

Q Do you know the defendant, Michael J. Whelan? A I do.

Q How long have you known him? A Eight or nine years.

Q Do you know other people who know him? A Yes.

Q The defendant has purchased a great deal of material from you in his business career? A Yes.

Q You know other people with whom he has dealt? A Yes.

Q Do you know what his reputation is for honesty and truth, good or bad? A Good.

CROSS EXAMINATION BY MR. O'MALLEY:

Q You never dealt with him as an inspector in the Borough of Manhattan? A No.

Q Did you ever have occasion to discuss his reputation prior to the time of his arrest, with any person? A No, only recently.

Q Since you were asked to be a witness? A Well, I spoke about the matter before that.

Q But it was after his arrest? A Yes.

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Q I suppose you talked about the case? A Yes.

Q The way he was arrested and going to be tried? A Yes.

Q And so far as you were able to hear, there was nothing against him? A Nothing against the man, no.

RE-DIRECT EXAMINATION BY MR. SIMPSON:

Q In your talks with the people with whom you have spoken to regarding the defendant, did you discuss his innocence? A I believed in his innocence, certainly.

Q Was that the consensus of opinion of the people you discussed it with?

Objected to.

MR. SIMPSON: He brought it out.

MR. O'MALLEY: Not as to his innocence or guilt.

MR. SIMPSON: Innocence or guilt.

Q (The question is repeated)

MR. O'MALLEY: I object.

THE COURT: That is absurd. Do you believe that people over in Brooklyn or anywhere else except this jury, are deciding that? A witness can come in and say I saw some people in Brooklyn to-day, and had a talk with them, and they said they did not think the man was guilty, but what sort of evidence do you think that is.

MR. SIMPSON: Mr. O'Malley brought it out. He asked the question of this witness, did you have occasion to ever discuss this man's reputation, and the witness said yes, and I have a right to go into it.

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THE COURT: That is his general reputation.

MR. SIMPSON: Yes.

THE COURT: That has nothing to do with this case.

MR. SIMPSON: Discussed this case -- he said.

MR. O'MALLEY: I asked him if he discussed the reputation of the man.

THE COURT: There is nothing in that, Mr. Simpson.

MR. O'MALLEY: I ask that the testimony of this witness respecting his opinion of the defendant's innocence, be stricken out.

THE COURT: Yes, any opinion some one may have expressed among his friends as to his guilt or innocence in this case, we have nothing to do with. <sup>not</sup> We are trying cases that way.

MR. SIMPSON: I respectfully except to your Honor's remarks in that respect with all proper respect. You will pardon me. I call your attention -- this witness was called as a character witness, and he was interrogated by me.

THE COURT: I think we have had enough of that, and you know better than that. You know you should not have asked that question.

MR. SIMPSON: Mr. O'Malley brought it out.

THE COURT: I would not continue it.

BY MR. SIMPSON:

Q Did you discuss this defendant's reputation as to honesty and truth? A Yes.

Q When? A Since this matter came up, since his arrest.

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Q And from the discussion that you had with those people with whom you spoke, regarding this defendant, you are now here testifying that his reputation for honesty and truth is good? A Yes

THE DEFENSE RESTS.

FREDERICK HAITZ recalled by the People, in rebuttal:

BY MR. O'MALLEY:

Q Did you at any time after the arrest of this defendant, tell the witness Powell that you had played a trick on the defendant? A No.

Q Did you ever tell Powell that you wanted to get rid of the defendant, or anything of that kind? A No.

Q Did you, at the time that the defendant was arrested have any personal feeling against him whatever? A No.

BY THE COURT:

Q Did you know of any trouble or hear of any trouble the defendant had caused up at 15th street on some other occasion when there was a fire up there? A No, sir.

Q Did you ever hear of that before? A I heard there was a fire, but I did not hear the building inspector had anything to do with it.

BY MR. O'MALLEY:

Q Never heard this defendant or any representative of the Building Department, had filed a violation against that building?

A No.

Q Never heard it discussed? A No.

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## CROSS EXAMINATION BY MR. SIMPSON:

Q Did you meet this defendant up in Mr. O'Malley's office, outside of Mr. O'Malley's office? A Outside of Mr. O'Malley's office.

Q Did you say to the defendant that Daugherty, after this defendant's arrest, had gone around with his chest sticking out at the clever work he had pulled off? A No.

Q Or words to that effect? A No.

Q What effect, if any? A The defendant came over to me and told me he was trying to communicate with me through his delegates and my delegates, to find out where I was living. He pulled a book out of his pocket and he said "I think it is somewhere on Madison Avenue, ain't it", and I interrupted him and I said "Yes, it is 2,028 Madison Avenue", and then he marked it in his book.

Q Was that all the conversation? A He asked me did I think Daugherty was on the job and I said "I have not seen him since the time I got out of the New York Mail Company", and I did not know if he was to be here or not.

Q Do you know the bricklayers' delegate? A I do not, I never saw him before.

Q Do you know your own delegate? A If I see him, yes.

Q What is his name? A McGrain.

Q Did this defendant go to McGrain and interfere with your work? A That I do not know.

Q At any time did McGrain interfere with you? A McGrain never said anything to me about him.

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Q Don't you know there was a violation filed against the 15th street place? A I never knew anything about it.

Q Don't you know that this defendant removed that violation November 19th, 1912? A I never knew anything about it.

THE COURT: Who removed the violation?

MR. SIMPSON: This defendant upon his recommendation on November 19th, 1912.

BY MR. SIMPSON:

Q Don't know anything about that? A Don't know anything about it.

THE COURT: I would like to ask the defendant if violations may be removed upon his recommendation.

MR. SIMPSON: After he makes an investigation. I will recall him. Is that so, may a violation be removed in the department upon your recommendation?

MICHAEL J. WHELAN resumes the stand:

MR. SIMPSON: I want to introduce this first -- the defendant introduces in evidence the records of the Building Department relating to 525 and 531 East 15th Street.

Paper is marked Defendant's Exhibit B.

MR. O'MALLEY: What portion of it do you want to get in?

MR. SIMPSON: I want to submit the whole of Defendant's Exhibit B in evidence, the whole of it.

THE COURT: Is it proper to encumber the record except for just what purpose you want it.

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MR. SIMPSON: I want to introduce in evidence first that there was a violation on premises 525 to 531 East 15th street - a violation was placed on there by another inspector and subsequently transferred to Mr. Whelan -- I cannot get the exact date.

BY MR. SIMPSON:

Q Did you place a violation on premises 525 to 531 East 15th?

A Yes.

Q When? A On October 26th, 1912.

THE COURT: Pick out the one that you filed, in your handwriting.

BY MR. SIMPSON:

Q The one in your handwriting, pick it out? A I have got it.

Q Read it to the jury?

BY THE COURT:

Q Is that in your handwriting? A Yes.

Q Signed by you? A Yes -- "I respectfully report that I have examined premises of building situated -- that is not necessary -

THE COURT: Just merely what it was.

BY MR. SIMPSON:

Q What was the violation? A Violation of Section 4.

MR. O'MALLEY: Of the Building Code?

THE WITNESS: Of the Building Code.

BY MR. SIMPSON:

Q You filed a violation of Section 4 of the Building Code on those premises? A Yes. As follows, "In that of making alteration

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without filing plans and receiving the approval of the superintendent of buildings, to wit, in that of erecting board partitions sixteen feet long by thirteen feet wide from floor to ceiling, to form rooms for storage -- also cutting out brickwork of rear wall to enlarge windows, first floor."

BY THE COURT:

Q Is that the violation you removed, or was removed upon your application? A This is the original I filed.

BY MR. SIMPSON:

Q Later on what did you do, what date? A On November 21st.

Q Go on? A I will give the report: "Sir, I respectfully report I have examined building herein described and find the violation thereon has been removed as follows: Slip application 4,610 of 1912 approved for this work on November 18th of 1912, covers this violation, and recommend case be dismissed" -- We call a violation a case.

BY MR. SIMPSON:

Q You recommended it? A Yes, I recommended that when the plan is approved for a building of that kind, we make a recommendation --

BY THE COURT:

Q Is there any evidence there that there were any plans filed?  
A That is the number of the plan, slip application.

THE PEOPLE REST.

THE DEFENDANT RESTS.

TESTIMONY CLOSED.

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MR. SIMPSON: I renew my motion made at the close of the People's case, that your Honor take away from the consideration of the jury the fifth count of this indictment which charges the crime of extortion.

THE COURT: No, it is a question for the jury.

Motion denied. Exception.

MR. SIMPSON: I ask your Honor to take away from the consideration of this jury and advise the jury to acquit upon the ground that the People have failed to sustain facts sufficient to constitute the crime mentioned in said indictment.

Motion denied. Exception.

MR. SIMPSON: I now ask your Honor to advise this jury that your Honor's denial of my motions are not to be regarded by them as an expression of any opinion as to the guilt or innocence of this defendant.

THE COURT: No, it is a matter for the jury entirely and not for me to decide.

MR. SIMPSON: I mean your denial of my motions.

THE COURT: Certainly.

MR. SIMPSON: And you so instruct them?

THE COURT: Yes.

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