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

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

against

MAX MANE.

: Before:

: HON. THOMAS C. T. CRAIN, J.,

: and a Jury.
: ----- X

New York, January 13, 1910.

Indicted for forgery in the second degree.

Indictment filed May 7th, 1908.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY ROBERT E. MANLEY.

For the Defendant, MAX STEUER, ESQ.

A jury was duly empanelled and sworn.

James E. Lynch,
Official Stenographer

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Mr Manley opened the case on behalf of the People.

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

DIRECT-EXAMINATION BY MR. MANLEY:

Q Mr Daiches, where do you live? A 43 Third avenue.

Q Talk out loud so that they can all hear you? A Yes,
sir.

Q 43 Third avenue? A Yes, sir.

Q Did you live at 43 Third avenue in the city and county
of New York in the month of April, 1908? A Yes, sir.

Q How long have you lived there? A Ten years.

Q What is your business? A Jeweler.

Q How long have you been in the jewelry business?

A Ten years.

Q You have been in that place then all the time? A In
that place all the time, yes.

Q And I suppose your jewelry establishment is on the
ground floor? A On the ground floor.

Q Were you in your store on the 10th of April, 1908?

A Yes, sir.

Q Did you see this defendant Max Mane upon that day?

A Yes, sir.

Q About what time of the day was it you saw him?

A It must have been about noon or little after, in the after-

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noon. I could not say exactly the right time, that is such a long while ago.

Q Well, what is your best recollection as to the time you saw him on that day? A About noon or some time a little in the afternoon, about 1 or 2 o'clock.

Q Was any one in your store besides yourself at the time? A There was several people there at the time.

Q And who were those people who were in there at the time? A Strangers, customers.

Q Customers, were they? A Yes, sir.

Q Was any employee of yours in the store at the time? A (No answer.)

BY THE COURT:

Q Any person that worked for you? A Yes, sir, a boy that worked for me.

BY MR. MANLEY:

Q Do you recollect who he is, what is his name? A His name was Levy. He does not work for me at present.

Q Did you have a conversation with this defendant when he came into your store on that day? A Yes, sir.

Q Just repeat that conversation; tell us as fully as you can what he said to you and what you said to him? A When the defendant came into my place I asked him what he wanted to see, and he claimed he wanted a necklace. I told him I did not keep necklaces in my place. Then he switched over, that he

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wanted a watch. He said he can't afford to pay too much for a watch, as he wants to make a little present to his wife. So I showed him a watch and he picked one out for \$15. Instead of paying for it he says, "I will tell you what I will do," he says, "I have a check here for \$109 and some cents; I will leave you the check and the goods," he says, "you don't know me, you will not give me any change from the check, and I will send," he says, "next week about Tuesday or Wednesday, I will either send my wife or a messenger boy, because," he says, "I cannot come myself, I will not have the time to come myself, and you deposit the check; if the check will be good and paid out, you will pay me the money and you will give the watch to the messenger or to my wife." All right, I took the check, and I asked him where he lives. I wanted to know where he lived in case anything is the matter with the check, so I can communicate with him, and he gave me his address, and I marked it right down on the back of the check. Now, this was on Friday. Saturday was a short banking day, and on Monday--

BY THE COURT:

Q You have answered the question, now.

BY MR. MANLEY:

Q Just a minute. How long do you think he had been there before he said anything about a check, or showed you a check? A About half an hour.

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Q And during that time what was he doing, during that half an hour before he showed you this check? A He picked watches, I showed him different watches before he selected one.

Q Just answer this yes or no, did he tell you what his name was? A He did not tell me what his name was, but he told me his name was Gottlieb, because when he gave me the check he had endorsed it.

Q What conversation was there about his name being Gottlieb, how did that come up? A Well, because he had to endorse the check and he endorsed the check "Gottlieb", and Gottlieb was supposed to be his name.

Q Now, I show you this piece of paper and ask you if you have seen it before? A Yes, sir, that is the check. There is my--

BY THE COURT:

Q No, now, you have answered? A Yes, sir.

BY MR. MANLEY:

Q You say that is the check? A Yes, sir.

Q You mean that is the check that this defendant gave you upon that day in your store? A Yes, sir.

THE COURT: Now, that is People's Exhibit 1 for Identification?

MR. MANLEY: Just one moment, if the Court please.

Q Did you see him write anything upon this instrument?

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A He endorsed "Gottlieb" on it, in my presence.

Q On the back side, "S. Gottlieb"? A Yes.

Q You saw him write that? A Yes, in my presence he endorsed that.

Q With what pen did he do it, a fountain pen or a pen you had? A I either gave him a pen or he had a pen of his own. I could not recollect that. I could not swear to that. I could not tell you exactly, but it was endorsed in my presence.

Q Now, you said a moment ago that you had some conversation with him as to his place of residence, did you say that?

A Yes.

Q Did he tell you what his place of residence was?

A He told me, and I marked it down on the check.

Q Look at that check, and see if you found there what you wrote as to his place of residence, of this defendant?

A 214 East 18th street, that is my own handwriting.

Q Did you write that down right after this defendant had told you where he lived? A Yes, sir.

MR. MANLEY: I now ask that this paper be marked for identification. I ask that each part be marked for identification.

(Marked People's Exhibit 1-A and 1-B for Identification--two pieces of the check, respectively.)

Q Now, just take, Mr Daiches, People's Exhibit 1-A and 1-B for Identification, and tell us whether or not they are in

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the same condition as when the defendant handed them to you,
aside from the writing you yourself put upon the back side?

A In the same condition.

BY THE COURT:

Q Well, was it one piece of paper or two that he handed
to you? A It was one piece.

BY MR. MANLEY:

Q It is now torn in two, but it was whole when you got
it? A Yes, sir.

Q Now, do you recollect whether you had any further con-
versation with this defendant at that time in your store, be-
sides what you have given us? A Well, that ended the con-
versation, when I took his name and address, that is, his
address, his residence. His name I knew, and he left the
store and left the check.

Q Now, as I understand you, ~~x~~ you have testified that
this defendant told you that he would send a messenger or his
wife for the change and the watch later on, is that so?

A Yes, sir.

Q Do you recollect when the defendant said he would do
that? A On Wednesday.

Q And was that the following Wednesday that he said?

A It was the following Wednesday.

Q Have you testified that this day that you first saw
the defendant it was on a Friday? A It was on a Friday.

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Q Now, did you later on do anything with reference to this check, just yes or no? A Yes.

Q How many days was it after Friday, the 10th of April, ~~at~~ that you did something in reference to this check? A Two days later. That was on the following Monday.

Q Tell us whether or not you went anywhere on Monday in reference to this check, just yes or no? A Yes, sir.

Q Where did you go? A To the bank.

Q What bank? A Where the check was made out to.

Q Take that and see if it refreshes your recollection, and tell us the bank you went to? A Yes, the Mechanics Bank of Brooklyn, Central Branch.

Q Did you go over there personally, yourself? A Personally.

Q Did you see some one in the bank? A I asked for the cashier of the bank. A gentleman answered.

Q Did you see the cashier? A Yes, sir.

Q Do you recall the name of the cashier whom you saw?

A I did not ask him his name, but I found out afterwards his name was Mr Baker. I found that out afterwards.

Q Just answer this yes or no, did you have a talk with Mr Baker about this check? A Yes, sir.

Q Did you show him the check? A Yes, sir.

Q Now, after you had had this talk with Mr Baker--

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MR. MANLEY: Question withdrawn.

Q Did you have at that time a bank account? A Personally?

Q Yes. A No, sir.

Q After you had had this conversation with Mr Baker in reference to this check, and after you had showed him the check, did you do anything further with regard to cashing this check or attempting to cash the check, yes or no? A No, sir.

Q Now, what did you do next with reference to this check, did you go anywhere? A I went to the party, to the maker of the check, to the supposed maker of the check.

Q Do you remember his name? A Mr Goldsmith.

Q Goldsmith? A Yes.

Q From whom did you obtain the address of Mr Goldsmith?

A From the cashier of the bank.

Q Do you recall where it was you went to see Mr Goldsmith? A I went to see Mr Goldsmith in Bath Beach.

Q Bath Beach? A Yes.

Q That day or some other day? A On the very day from the bank, directly I went to Mr Goldsmith.

Q On Monday? A On the same Monday.

Q Did you see Mr Goldsmith? A I met him, yes, sir.

Q Did you show him this check, People's Exhibit 1-A and 1-B for Identification? A Yes, sir.

Q Did he look at it? A Yes, sir, he looked at it.

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Q Just answer yes or no, did you and he have a talk about this particular check? A Yes, sir.

Q What did you do next with reference to this check, if anything? A I didn't do anything, but Mr Goldsmith, after I saw him, notified--

MR. STEUER: Objected to.

Q Now, one moment. The answer is that you did nothing?

A No.

Q Did you have a talk with Mr Goldsmith about doing something with reference to that check, or something being done with reference to that check, just yes or no? A Yes, I had a talk with Mr Goldsmith.

Q Did you yourself go to Police Headquarters or any police station? A I did not.

Q Now, were you in your place of business, No.43 Third avenue, upon the following Wednesday? A I was.

Q Did you remain there all day? A Not all day, no, sir.

Q What time was it, Mr Daiches, when you went out?

A It must have been about two or half past two in the afternoon that I was out.

Q When you went out, did you leave any one in your store? A Yes, sir.

Q Whom did you leave there? A My boy that worked

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for me, and a brother-in-law of mine.

Q What is the name of the brother-in-law? A Hayman.

Q Hayman? A Hayman, H-a-y-m-a-n.

Q That is the last name? A Yes, Morris Hayman.

Q He is your brother-in-law? A My brother-in-law.

Q Do you recollect the name of the boy whom you say does not work for you now? A Levy.

Q What is his first name? A I really couldn't tell you. I called him Levy.

Q When have you seen him last? A Several months ago.

BY THE COURT:

Q Where does he live? A That Levy, I don't know where he lives at present.

Q Where did he live when you last knew him? A He lived uptown somewheres.

Q What street? A I couldn't tell you exactly what street he lived in.

Q Have you got his address in your store? A I could find his address out. He works somewheres in a wholesale stationery house at present.

BY MR. MANLEY:

Q Now, when you left your store that afternoon, on Wednesday, was any one else in the store besides the two people that you have mentioned? A Yes, sir.

Q Who was there? A Two officers.

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Q Two police officers? A Yes, sir.

Q Do you recall their names? A Mr Kuhn, Officer Kuhn, and Officer--I can't recall the other name.

MR. MANLEY: Will the officers in this case please stand up in the court room?

A Are those the two gentlemen (indicating)? A Yes.

MR. MANLEY: Officers Kuhn and Lorber stand up in the court room.

Q What time was it when you got back to your store?

A About four o'clock.

Q You stayed away about how long? A About an hour and a half or two hours, something like that.

Q When you came back, were Officers Kuhn or Lorber there?

A No, they were not there.

Q After that, when you got back at 4 o'clock, did you receive any communication from the police? A Yes, sir.

Q That same day? A The same day.

Q And about what time in the day? A In about twenty minutes after I came into the place.

Q How did you receive that communication? A Mr Lorber and Mr Kuhn brought in the defendant to the place.

Q This man here? A Yes, sir.

Q Had you seen this defendant before he was brought in there by Officers Kuhn and Lorber? A That's the only time I saw him, when he selected the watch, when he gave me the check.

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I never saw him before.

Q And the man brought in by Kuhn and Lober you say is this defendant ? A Yes.

Q And you testified that this man is the one who gave you the check and had the negotiations with you about the watch ? A Yes, sir.

BY THE COURT:

Q Did you have any talk with the defendant when he was brought in by the officers ? A No, sir; he denied all.

BY MR. MANLEY:

Q Can you tell us whether or not any one came with this defendant besides Officers Kuhn and Lorber ? A On Wednesday?

Q Yes, when they brought him into your store ? A Nobody else was with them.

Q Who was there at the time besides yourself ? A My brother-in-law and my boy.

Q When you say your brother-in-law, you mean the same man you mentioned a little while ago ? A Yes, sir.

Q Now, did you hear the officers in your store say anything to this defendant ? A Yes, sir.

Q Did they -- did the officers say something to you before they said anything to this defendant ? A They asked me--

Q No, just yes or no. A Yes, sir.

Q During the time the officers asked you something, was this defendant there within hearing distance ? A Yes, sir.

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Q Tell us what the officers said to you, in reference to this defendant, in the presence of the defendant ?

MR. STEUER: I object to that as not binding upon the defendant.

MR. MANLEY: In reference to this charge.

THE COURT: I will allow it.

MR. STEUER: I make the same objection, and as absolutely incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

MR. STEUER: I respectfully except.

Q State, please, which officers ?

MR. STEUER: I respectfully suggest, may it please your Honor, that the District Attorney should first complete his question.

MR. MANLEY: Then I withdraw my question, and will reframe it. Question withdrawn.

Q Now, will you state to us what the officers said to you when they brought this defendant into your store, said to you in the presence of the defendant, and mention the name of the officer that made the particular remark to you in the presence of the defendant ?

MR. STEUER: I object to that as incompetent, and not binding upon the defendant.

Q (Continuing) About this charge.

THE COURT: I will allow it.

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MR. STEUER: Now, is the question complete ?

MR. MANLEY: Yes, now the question is complete.

MR. STEUER: I respectfully except.

A Officer Lorber when he brought in the defendant, he asked me whether this is, whether I can identify the defendant as the man that gave me the check, and I have identified him.

Q What did you say when he said that to you, Officer Lorber ?

MR. STEUER: I make the same objection, on the ground that it is incompetent, and not binding upon the defendant.

THE COURT: Same ruling. Exception.

Q What did you say to Officer Lorber when Officer Lorber made that remark to you ? A What remark ?

MR. MANLEY: Will you just repeat his answer ?

(Answer repeated by the stenographer as follows:

"Officer Lorber when he brought in the defendant, he asked me whether this is, whether I can identify the defendant as the man that gave me the check, and I have identified him")

THE WITNESS: I have identified him.

Q When you say you have identified him, just tell us what you said to Lorber ? A I told him this was the man.

Q Did Lorber say anything to you, or the defendant, after that ? A Yes, sir.

MR. STEUER: I make the same objection.

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THE COURT: Yes, Mr. Steuer, you are considered as objecting to this line of questions, and you have an exception.

MR. STEUER: If the District Attorney would call for the whole conversation at one time, then there would not be any occasion for any other objection.

MR. MANLEY: I will accept the suggestion of Mr. Steuer, and withdraw my last question.

Q Now, will you state to this jury everything that was said at that time, when the two officers brought in this defendant, in your presence, and in the presence of the defendant, about this charge ?

MR. STEUER: I object to that as incompetent, and not binding on the defendant.

THE COURT: I will allow it.

MR. STEUER: I respectfully except.

Q The whole conversation. A When the officers brought in the defendant, they asked me whether I can identify the man, and I have identified him, and they made him sign his name to a slip of paper as "Gottlieb", or "M. Gottlieb," whatever the signature was on the back, and he signed it, and they compared the two signatures, and it was the identical thing.

MR. STEUER: I respectfully object and --

MR. MANLEY: I consent that that be stricken out.

MR. STEUER: Now, the idea of a witness testifying

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to testimony of that kind, in the presence of the jury --

THE COURT: The answer of the witness is stricken out, and the jury are instructed to disregard it. The question will be read now to the witness.

MR. STEUER: I think, may it please your Honor, that testimony of that character is so highly prejudicial, that the mere striking out of it does not meet the damage that has been done, and it does not repair the damage that has been done.

MR. MANLEY: It was irresponsible, and I join in the request of counsel for the defense that it be stricken from the record.

MR. STEUER: I have not made the request that it be stricken from the record. I say it is so damaging and so clearly incompetent and so absolutely inaccurate and untruthful, that we cannot repair the damage that has been done by this voluntary remark by a man supposed to be disinterested, and I respectfully ask your Honor to withdraw a juror.

THE COURT: No, the application is denied, the Court being satisfied that by the striking out by the Court of the answer of the witness, the error in the answer is cured.

MR. STEUER: I respectfully except.

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BY THE COURT:

Q Now, pay attention to the question, and if you do not understand it, say so, and if you do understand it, answer it. Now, wait until the question is read to you.

BY MR. MANLEY:

Q Mr. Daiches, the question merely called for your giving the conversation, what was said, not what was done; first, what everybody said. A There was nothing further said in that store, and the officers left with the defendant.

MR. MANLEY: I ask that the last part be stricken out.

Q Nothing further said that you can remember? A No, sir; I did not understand. I thought you wanted the whole thing that went on in the place.

BY THE COURT:

Q No, now, wait. A Yes, sir.

BY MR. MANLEY:

Q Now, do you recall whether or not this defendant said anything as to why he was in the neighborhood of the Telegraph Office? A Repeat the question, sir?

Q (Question repeated). A No, sir.

Q Was anything done while these officers had the defendant in your place of business, just yes or no? A No.

Q Did you see the defendant do anything while he was there, just yes or no? A No.

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Q Did he do anything with his hands while he was there ?

A He was nervous; that's all.

MR. STEUER: I move to strike that out.

MR. MANLEY: Consented to.

THE COURT: yes, strike it out.

MR. STEUER: But that does not help a man who is being tried for his liberty, that the learned District Attorney consents to strike it out.

THE COURT: I am perfectly confident, Mr. Steuer, that it cannot by any possibility prejudice this defendant and because I am so confident, I order it stricken out.

MR. STEUER: I respectfully except.

MR. MANLEY: I have never thought that an irresponsible answer could be charged to counsel.

MR. STEUER: Now, it is not what the learned District Attorney thinks, upon which a man would be safe in hanging his liberty. I do not feel as if the defendant could do that with any degree of safety, and yet that does not disparage the fairness of the learned District Attorney, which I believe in absolutely.

THE COURT: I have ruled, and there is no occasion for comment, counselor.

BY MR. MANLEY:

Q Did you see the defendant write in your store? A Yes, sir

Q Did you hear any conversation between the defendant and

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anybody about writing while in your store, yes or no?

A Yes, sir.

Q And who was it that said something to the defendant about that, A The officers.

Q Did you see the defendant write after that? A Yes, sir.

Q Now, when was it that you next saw the defendant after that time, how many days afterwards? A When, on Wednesday?

Q Yes, after Wednesday, when next? A Next in the Police Court.

Q On the following day, you say? A It must have been on the following day, yes, sir.

Q And he was then in the custody of the police officers?

A Yes, sir.

Q And that was at the examination in the City Magistrate's Court? A Yes, sir.

Q Do you recall what court that was, on what street?

A 57th street.

Q 57th street? A Yes, sir.

MR. MANLEY: You may examine.

THE COURT: I think we will suspend the trial of this case for the day.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, nor to form nor express any opinion thereon until

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the same is submitted to you. You are excused until tomorrow morning at half past ten.

New York, January 14th, 1910.

Trial resumed.

S A M U E L D A I C H E S, a witness for the People, resumes the witness stand:

DIRECT EXAMINATION CONTINUED BY MR. MANLEY:

Q Mr. Daiches, near what street is 43 Avenue A ?

A 43 Third avenue, you mean ?

Q Yes. A Between 9th and 10th streets.

Q Now, at the time when you say that this defendant left this check in your store, did you give him a receipt for it ?

A Yes, sir.

Q I show you this piece of paper; is that the receipt?

A Yes, sir.

Q Is that in your handwriting? A My own handwriting.

Q And did you make that out after the conversation that you had with him about the check and the watch? A Yes, sir.

Q Did you then deliver it to him? A Yes, sir.

MR. MANLEY: I offer this in evidence.

MR. STEUER: I object to it as incompetent.

THE COURT: Before ruling on the objection, I will ask this question:

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BY THE COURT:

Q You say that you handed this to the defendant? A Yes, sir.

Q Did you see what he did with it? A Put it in his pocket.

Q And did he hand it back to you while he was in the store that day, or did he go out with it? A He went out with it.

THE COURT: The objection is overruled. I will receive it in evidence.

MR. STEUER: I respectfully except.

(Marked People's Exhibit 2 in evidence, and Mr Manley reads it to the jury.)

CROSS-EXAMINATION BY MR. STEUER:

Q Mr Daiches, the man whom you claim came to your place on the 10th of April, 1908, and who you say is the defendant at the bar, you never saw him before the 10th of April, 1908, did you? A No, sir.

Q Now, who was in your place, do you now say, when he was in your place, this man whom you saw on the 10th of April, 1908? A Who was in the place at the time?

Q Yes, sir. A Several customers.

Q Of course their names you do not know? A No.

Q And none of them have you ever produced? A No, sir.

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Q You were in the Police Court six days later, on the 16th of April, but you did not then have any of your customers?

A No, sir.

Q And you could not find any of your customers? A I did not look for them.

Q And nobody requested you to look for them? A No, sir.

Q You stated here yesterday that at that time you did not have a personal bank account, didn't you? A No, sir.

THE COURT: Now, his answer is ambiguous.

MR. STEUER: I am going to straighten him out.

Q Mr Daiches, the way my question read and the way your answer would indicate, it would mean that you did not say that yesterday, but that is not what you meant, is it? You meant to say this morning just as you did yesterday, that you had no personal bank account? A Positively.

Q And not to deny that you did not say that yesterday? A No, sir.

Q Now, was there a bank account connected with that business you were running up there? A Yes, sir.

Q Whose bank account? A I don't understand this question properly.

BY THE COURT:

Q Did you, as a business man, conducting that business, have in connection with that business a bank account? A Pre-

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viously.

Q Did you on April 10th? A Not on April 10th, no, sir.

Q Have a bank account either in your name or some one else's name? A No, sir.

Q In which you entered money received by you on the sale or merchandise or otherwise in connection with your business? A No, sir.

BY MR. STEUER:

Q There was no bank account in your wife's name or anybody else's name? A No, sir.

Q Now, did you keep books at that time? A No, sir.

Q No books of any kind? A I kept a stock book.

Q Well, did you keep a book in which you entered your sales? A No, sir.

Q Did you keep a book in which you made an entry of any kind with relation to this transaction that the jury is inquiring about now? A No, sir.

THE COURT: Counsel, we will suspend for three or four minutes, for the convenience of the District Attorney.
BY MR. STEUER:

Q What sort of business was this of yours, Mr Daiches, wholesale or retail? A Retail.

Q And you say you kept no book of any kind which showed this transaction? A No, sir.

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Q Did you have a cash book in your business, to show how much money you took in? A I make little slips of sales, little slips.

Q Yes? A And I know what I take in every day.

Q Well, did you make a slip of this sale? A I did not consider that as a sale at the time.

Q So you made no slip although you had a check for \$109? A I did not consider that as a sale then.

BY THE COURT:

Q In other words, you made no entry at all regarding this transaction? A No, sir.

BY MR. STEUER:

Q At what time, do you now say that the man whom you saw on the 10th of April was in your store? A About 1 or 2 o'clock in the afternoon.

Q You testified about that matter on the 16th of April in the Police Court, did you not? A Yes, sir.

Q The thing was pretty fresh in your mind at that time, wasn't it? A Yes, sir.

Q You heard the defendant say that he was not in that neighborhood on the 10th at that time, and that he had taken lunch with a man by the name of Abrahams at about 1 o'clock, did you not? A This I did not hear in the Police Court.

Q You did not hear it? A Not in the Police Court.

Q Don't you know that in the Police Court you said

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that the man whom you saw in your store on the 10th of April came in either at 2:30 or 3 o'clock in the afternoon? A In the Police Court I said it?

Q Yes. A Very likely.

Q You do not know that the reason why that change is made is because he proved where he was at 1 o'clock on the 10th?

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

Objection sustained. Exception.

Q Did you make the change?

THE COURT: Do you desire to call his attention to what he testified to in the Police Magistrate's Court? If so, the preferable way is to read to him the question as you contend that it was put and ask him whether he recalls such a question, and if he says he does, whether he made such an answer.

MR. STEUER: I will do all that, your Honor, but I think I am entitled to know whether the motive in the change is as I have stated.

MR. MANLEY: I have no objection to his showing that by competent evidence.

MR. STEUER: I surely cannot show it by any more competent evidence than by the man himself.

THE COURT: Repeat the question.

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(Question repeated by the stenographer as follows:

"Q You do not know that the reason why that change is made is because he proved where he was at 1 o'clock on the 10th?")

MR. MANLEY: Well, I will withdraw my objection, if that is the position of Mr Steuer.

THE COURT: Repeat the question again.

(Question again repeated by the stenographer.)

BY THE COURT:

Q Now, pay attention to the question. Do you understand the question? A I understand the question very good, your Honor.

Q Now, answer it? A There was no reason at all.

BY MR: STEUER:

Q Can you tell then why it was that on the 16th of April, if you did on the 16th of April, 1908, say that the man who came into your store came either at 2:30 or 3 o'clock, why yesterday you changed it to the noon hour, about 12 or 1 o'clock?

MR. MANLEY: I object to that as not being a correct statement of the testimony of this witness yesterday.

THE COURT: Yes, I sustain the objection.

MR. STEUER: I respectfully except.

Q Now, did you on the 16th of April, in answer to the Magistrate to this question, or I withdraw it in that form--Do you remember that on the 10th of April, 1908, the Magistrate

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asked you this question: "What time on the 10th of April was it that the defendant at the bar was at your store negotiating for this watch?"-- Do you remember that question? A I suppose that was put.

BY THE COURT:

Q Do you remember? A I don't remember, your Honor. It is two years ago.

Q Very well, then that is your answer? A Yes, sir.

BY MR. STEUER:

Q You have no recollection of that question? A I have no recollection what was asked in the Police Court two years ago, but I--

BY THE COURT:

Q Now, you have answered.

BY MR. STEUER:

Q And the reading of the question does not bring it back to your recollection? A Well, just what I answered, it was probably asked, that.

Q The reading of the question does not bring it back to your recollection? A It brings it back to my recollection.

Q Then now, you do remember that question was asked?

A I don't remember positively that it asked, because I did not have it in my mind all the time that a question like that was asked or not.

Q Well, you remember pretty well the conversation that you

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had with the man that was in your store on the 10th, don't you?

A Yes.

Q And this was six days later, wasn't it? A Yes.

Q And you were under oath at the time you were in the Police Court? A Yes, sir.

Q But you don't remember that question? A No, sir.

Q Well, do you remember having made this answer to the Judge: "In the afternoon, your Honor, about 3 o'clock, or half past two, or something like that." Do you remember that answer? A Yes, sir.

Q Do you remember the next question: "From half past two?" A Yes, about half past two or three in the afternoon." Do you remember that answer? A I don't remember the answer.

Q If you gave that answer was it true? A Yes, sir, if I gave it it was true.

Q And at that time you remembered the hour, didn't you? A Yes, sir.

Q Now, you say that the motive of the change is not because he proved where he was at half past 2 or 3 o'clock?

A I don't know what he proved. I don't know whether he proved or not.

Q You do not know what he proved? A No, sir.

Q Then you do not know that there was a lady who took the stand at the Police Court, who testified exactly where this

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man was at half past 2 or 3 o'clock, on the afternoon of the 10th of April?

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

Objection sustained. Exception.

Q Was not the testimony given by that lady in your presence and hearing? A Yes, sir.

Q And did not the Magistrate ask you what you had to say about that testimony?

MR. MANLEY: I object to that as an indirect way of getting at the testimony of another party, and as incompetent, immaterial and irrelevant.

THE COURT: I will allow the witness to answer.

Objection overruled.

A Yes, sir.

Q And after you heard what that lady said as to where he was on the 10th of April-- A (Interrupting:) Yes, sir.

Q (Continuing:) --between 2 and 3 o'clock in the afternoon-- A (Interrupting:) Yes, sir.

Q (Continuing:) --you now come here two years later, or about a year and nine months later, and you make it between 12 and 1, or thereabouts, don't you? A Yes, sir.

MR. MANLEY: I object to that as being an incorrect statement of the testimony yesterday. If the Court

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please, this witness says it was 12 or 1 or possible 2 o'clock.

MR. STEUER: I submit, your Honor, the learned District Attorney has no right in the making of a legal objection to argue evidence. In the first place, the witness has answered the question and said it was correct.

THE COURT: No, I think the District Attorney is within his rights, because he contends that your question is objectionable, on the ground that it embodies a statement as having been testified to by this witness, which, in point of fact, is not a correct repetition of the evidence as given by the witness, and the District Attorney brings to my attention that which the witness, as he contends, testified in that regard, so as to direct my attention to the fact that your question suggests as evidence in this case something that was not in evidence.

MR. STEUER: Let me submit to your Honor most respectfully, that in the first place, the witness has already answered, that that is what he said, and let me state to your Honor that the exact words that the witness used yesterday, and a reference to the record will bear me out, I believe, that he said twice that it was at the noon hour, about 1 o'clock. Now, the noon hour has a very distinct and ~~very~~ definite meaning in our language.

MR. MANLEY: No doubt about it.

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MR. STEUER: And I understand the noon hour to be from 12 to 1, and for that reason I incorporated that period subsequent thereto. I want to be as fair to the witness as I possibly can, and with your Honor, the District Attorney and the jury, because I know that I cannot profit by misrepresentations or anything here, and I know that the District Attorney is alert. I do not want to have the reputation of misrepresenting anything to the witness, and he has in his answer, when I asked him if he said it yesterday, stated that he did say it, and I will now make it more clear by asking him again if that was not the hour he said the man came.

MR. MANLEY: Now, I have no desire either, as I am sure Mr Steuer has no desire, to misrepresent the testimony. Mr Steuer, perhaps, in the form of his question, stated his recollection of what the witness stated yesterday in his testimony. I gave it as my idea that I had not understood the testimony that way. I remember the witness testified in response to about three question as to the hour, and it is my recollection that he made a leeway of from 12 to 2, and reference to the testimony of yesterday will disclose it, of course. Now, if I am wrong, why, I will withdraw my objection to the question of Mr Steuer.

MR. STEUER: His exact words were--

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MR. MANLEY: I object to that and ask that we have the official record.

THE COURT: I will hear what Mr Steuer has to say.

MR. STEUER: The words, may it please your Honor, were, that he saw him on the 10th of April about noon or a little after.

MR. MANLEY: That is correct in one answer.

MR. STEUER: Wait a moment. The second time the question was asked he said, "I saw him about noon or a little after, about 1 or 2 o'clock; there were several people in the store at the time."

MR. MANLEY: Now, I agree with that.

MR. STEUER: Now, that was the precise testimony, and I have given him the precise range as he put it, and there was not the slightest occasion for all this discussion about the matter, that to my mind is not so important.

MR. MANLEY: Well, it is not to my mind either important, and if the stenographer will read the question of Mr Steuer, and it incorporates those two answers, then I will withdraw my objection.

(Question repeated by the stenographer as follows:

"And after you heard what that lady said as to where he was on the 10th of April, between 2 and 3 o'clock in the afternoon, you now come here, two years later, or about a

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year and nine months later, and you make it between 12 and 1, or thereabouts, don't you.")

MR. MANLEY: I object to that.

THE COURT: Yes, the objection taken by the District Attorney was well taken, and is sustained.

MR. STEUER: I respectfully except.

BY MR. STEUER:

Q What did you mean yesterday when you said that the man came in about noon or a little after? A I understand noon is about 1 o'clock or after 1.

Q How much after 1 do you consider the noon hour to be?

A Between 1 and 2.

Q Well, then, did the man come in between 1 and 2?

A In the noon or in the afternoon, the afternoon may be half past 2 as well.

Q But I am speaking of the noon hour, is that at half past 2? A The noon hour is not half past 2. The noon hour is 1 o'clock or 12 o'clock is noon.

Q Well, now, at what time do you now say that the man came in on the 10th of April? A Between 1 and 2 o'clock.

Q How long do you now say that the man was in your store? A About half an hour. Twenty-five minutes or half an hour.

Q Have you read over your testimony at all? A No, sir.

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Q Are you aware of the fact that you have stretched that time a little that he was in your store? A Well, I could not say about that.

Q Did you say to the Magistrate on the 16th of April that the man was in about 15 or 20 minutes, or as long as it would take him to select a watch, and that would not be a year?

A No.

Q You did not say that? A I do not remember saying that, but I admit probably that I probably have said it, but I don't remember.

BY THE COURT:

Q Now, if you will just answer questions in as few words as you know how, you will get along a great deal better?

A Yes, sir.

Q You make your answers much too long.

BY MR. STEUER:

Q Was the question asked you in these words: "How long had you seen him on Friday, the 10th, while he was in your place, what period of time? A About 20 minutes, 15 to 20 minutes, as long as it takes to buy a watch. It don't take a year."-- Now, were those your words at that time? A If they are on the record they are, but I don't remember.

Q So that if they are not on record, you do not want to stand for them? A If they are not on record?

Q In other words, you do not come here swearing to this

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jury your recollection--

THE COURT: Now, Counsellor, I tell you, you are going a little too fast. You do not leave quite time enough between your questions to allow this witness to answer. Now, give the witness an opportunity to answer you fully before you begin to ask him another question.

BY THE COURT:

Q Now, Mr Witness, proceed and complete your answer.

THE COURT: The stenographer will repeat that.

(The last answer of the witness is repeated by the stenographer, and the last question of Mr Steuer is also repeated by the stenographer.)

THE COURT: Complete your answer, Mr Steuer.

BY MR. STEUER:

Q And you do not come here swearing to your recollection? You just want to know what is on record and then you will say the record is correct? A I say that it takes to buy a watch about 15 or 20 or 25 minutes. I did not look at the time when he bought the watch, how long it took.

Q Now, that is not what I asked you. I ask you with respect to your testimony, six days after this occurrence, that is what I am inquiring about? A Yes, sir.

Q And you say you have not any recollection of that?

A No, sir.

Q Now, yesterday, did you tell us that you were not present

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when the boy came with the sealed note? A Yes, sir.

Q Well, did you tell the Magistrate that the day after it occurred? A Yes, sir.

Q Are you sure about that? A If I was asked, I must have said it.

Q Now, you were before the Magistrate on the 16th of April, weren't you? A Yes, sir.

Q This boy came into your place on the 15th of April, didn't he? A Yes, sir.

Q Yesterday you said that when you came or when the boy came into your place, you were not there? A No, sir.

Q And you now say that that is what you said to the Magistrate on the 16th of April?

THE COURT: He says that that is what he said, if he was asked that question.

MR. STEUER: How, your Honor?

THE COURT: He says that that is what he said to the Magistrate, if the Magistrate asked him that question.

THE WITNESS: Certainly.

THE COURT: He does not say that he said it.

Q Did the Magistrate ask you that question? A If it was asked that, I answered that.

Q Did he ask you that question?

BY MR. MANLEY:

Q You are asked whether you remember whether he asked

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it? A I don't remember whether he did or not.

BY MR. STEUER:

Q Now, you do say, however, that if he did ask you, then you told him that you were not in the store when the boy came?

A Exactly.

Q Is that right? A Exactly.

Q And it is not the fact that you told him the day after the thing occurred that he came in and he handed you the note?

A No, sir.

Q Now, do you remember the Magistrate putting to you this question: "Q Now, what occurred then on the 15th of April, which was yesterday? A On the 15th, which was yesterday, a messenger boy came in with a sealed letter, with an order demanding the money and the watch. Q Was the messenger boy Charles Grouppe, who has been-- A Yes, that is the one, yes, sir. Q Where is the letter that he delivered to you, is it here? A That is the letter, your Honor"-- Do you remember these questions and making those answers?

BY THE COURT:

Q Now, yes or no? A Yes, sir.

BY MR. STEUER:

Q Do you remember that next question that the Magistrate put to you, "When this was delivered, what did you do? A The officers caught hold of the messenger boy and arrested the defendant." Did you say that? A That is just what happened.

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Q Is that what you said? A I don't remember whether I said it or not. If I said it, I must have--

BY THE COURT:

Q Now, you have answered the question? A Yes, sir.

Q If you do not remember, that is your answer? A Yes, sir.

BY MR. STEUER:

Q But yesterday, your story to the jury was, or your statement to the jury--I do not use the word story in any offensive sense, and that is why I change it to statement--your statement to the jury was that you were not in the store at all when the boy came? A Not when the boy came.

Q And he did not deliver the letter to you at all, did he? A Not to me, no, sir.

Q Now, the Magistrate asked you to tell him all that happened on the 10th of April, didn't he? A I suppose so.

Q Did you tell him all that happened on the 10th of April? A Whatever he asked me I told him.

Q Did you tell him all that happened on the 10th of April? A Whatever he asked me I told.

Q Did you mention anything about writing out any receipt on the 10th of April?

MR. MANLEY: I object to that, unless Mr Steuer directs the attention of the witness to the question asked of this witness by the Magistrate.

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THE COURT: Yes, sustained.

MR. STEUER: I respectfully except. And may I call your Honor's attention to the fact that that marks an exception to the rule? If you desire to prove that a witness said something, may it please your Honor, then, as I understand the rule, it is that the witness is entitled to have the question read to him, and the answer read to him, in order that he may pass upon ~~the~~ it categorically, but where the claim is that a witness did not say a certain thing at a certain time, and made absolutely no mention of it at all, then, may it please your Honor, it is utterly impossible to call his attention to it by question and answer, because the very claim is that nothing was said upon the subject. Now, how can I consistently ask him, your Honor, point out to him what he says about a receipt, when my contention is that there was absolutely no mention of any receipt, and that marks, I submit to your Honor, a change in the rule, and of course it cannot be requisite that I should read to him a non-existent thing.

THE COURT: The basis of my ruling is this: You contend that the Magistrate asked him to tell everything, or in substance everything that occurred on a certain day. In other words, you contend that there was a given question put to him, and, that in response to a given question he

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made a certain answer. It is requisite, therefore, for you to call his attention to the particular question which you say that he answered.

MR. MANLEY: Now, may I say one word, if the Court please? Mr Steuer evidently has not carefully examined People's Exhibit 2, now in evidence in this trial.

MR. STEUER: I have examined it very carefully, and if you want to call my attention--

MR. MANLEY: May I finish my remarks?

MR. STEUER: No, you cannot finish your remarks by saying I have not done a thing that I have done.

MR. MANLEY: I simply want to reply to his statement. I understand Mr Steuer to say--perhaps I am wrong, but I understand him to say that nothing was said by this witness in the Police Court about a certain paper which bears marks as being in the Police Court on that day.

MR. STEUER: Now, I say that is absolutely an improper statement.

THE COURT: Well, I agree with you, Mr Steuer.

MR. STEUER: And that that is absolutely an inaccurate statement, and that is part of what I am complaining about, that there are marks there which I say were not made, and I say to this Court that that paper was not mentioned, and that the record proves it, what I say.

THE COURT: Mr Steuer, my ruling on the objection

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that was taken by Mr Manley is based upon the circumstance that a particular question you contend was asked of this witness, and it must appear that this witness recollects that such a question was put to him. If you will read him the question and he then says that he recollects that the question was put in that form, your contention otherwise is, as I understand it, correct.

MR. STEUER: I will adopt that suggestion, your Honor, and I thank you.

BY MR. STEUER:

Q Now, did the Magistrate ask you on the 10th of April, "Did you have any transaction with the defendant at the bar?"

A Yes, sir.

Q And did you answer to that, "On the 10th of April, your Honor"? A Yes, sir.

Q Then, did the Magistrate ask you, "Q State what that transaction was?"

BY THE COURT:

Q Did he ask you that? A Yes, sir.

BY MR. STEUER:

Q Now, did you at that time and in answer to that question, or in answer to any other question, say anything to the Magistrate about having given the man that was in your store any receipt? A Well, the receipt was in the Police Court.

MR. STEUER: I move to strike that out.

THE COURT: Strike that out.

BY THE COURT:

Q Now, you pay attention to the question and answer it?

A There was nothing said about a receipt in the Police Court. I don't remember that question put to me.

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BY MR. STEUER:

Q What do you mean, you don't remember that question put to you, this question that I just read ? A Yes, sir.

Q You do not remember that ? A I don't remember put to me that question.

Q Do you mean to say now, do you change your testimony then ? I understood you a moment ago to say to the jury that the Magistrate did ask you the question "State what that transaction was". Do you now say that he did not ask you that question? A He did not -- I don't remember, I don't recollect that he asked me anything about a receipt.

MR. STEUER: I move to strike that out.

Well, let it stand, it does not matter, your Honor.

Q I asked you before whether you remember that the Magistrate asked you this question: "On the 10th of April did you have any transaction with the defendant at the Bar?"

A Yes, sir.

Q And did you say "On the 10th of April, your Honor".

A Yes, sir.

Q And then did the Magistrate ask you the question "State what that transaction was?" A Yes, sir.

Q And you made throughout your testimony there, absolutely no mention of any receipt ?

MR. STEUER: Exhibit what, Mr. Manley ?

MR. MANLEY: People's Exhibit 2.

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BY THE COURT:

Q Did any words pass your mouth regarding this receipt?

A No, sir.

THE COURT: People's Exhibit 2 is referred to.

BY MR STEUER:

Q Yesterday you testified that when the man was brought into your store on the 15th of April -- A Yes, sir.

Q (Continuing) Somebody asked him to write something ?

A Yes, sir..

Q Didn't you ? A Yes, sir.

Q Now, did the Magistrate ask you to tell what took place on the 15th of April? A No, sir.

Q Are you sure about that ? A When was the 15th of April ?

Q Why, that was the day before you were testifying. Do you mean to tell the jury now that the Magistrate did not ask you what happened on the 15th of April? A Was that in the Police Court ?

Q Yes. A Well, I suppose so.

Q Why, didn't he ask you in these words "Now, what occurred then on the 15th day of April, which was yesterday?"

BY THE COURT:

Q Did the Magistrate say that to you , A I can't recollect that, your Honor.

Q Very well, now, you have answered.

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BY MR. STEUER:

Q Did you in the Police Court say one word about the defendant having been asked by anybody to write or about his having done any writing in your store on the 15th of April ?

MR. MANLEY: I object to that, unless his attention is called to a question put to him. He is not responsible for the fact that the Magistrate does not ask certain questions.

THE COURT: No, it is contended that the Magistrate asked him a general question as to what took place on the 15th of April. Repeat the question.

(Question repeated by the stenographer).

MR. MANLEY: The objection is withdrawn.

A I can't recollect that, whether it was asked anything, or whether I have answered anything in the Police Court to that effect.

MR. STEUER: That is all.

BY THE COURT:

Q Did you have with you in the Police Court the paper which has been marked People's Exhibit 2 ? A My receipt ?

Q This receipt, did you have that in your hand in the Police Court, yes or no? A Yes, sir.

Q Did you look at it in the Police Court? A Yes, sir.

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RE-DIRECT EXAMINATION BY MR. MANLEY:

Q Now, I ask you, Mr. Daiches, when it was after the Friday upon which you delivered this receipt to this defendant at the Bar here, when it was, on what day that you next saw this piece of paper, People's Exhibit 2 ? A On what day ?

Q Yes. A Repeat that question ?

Q (Question repeated) .

BY THE COURT:

Q You saw it on Friday? A Yes, sir.

Q Now, when did you see it next ? A I saw that on Wednesday.

BY MR. MANLEY:

Q In whose possession was it, who had it when you saw it on Wednesday ? A The officers had it.

BY THE COURT:

Q What officer ? A The officers that made the arrest.

BY MR. MANLEY:

Q The officers that you spoke about on the stand yesterday ? A Yes, sir.

Q Where were those officers at the time when that had this paper on Wednesday? A In my store .

Q At 43 Third avenue ? A Yes, sir; at 43 Third avenue .

Q That was about what time in the day ? A It was in the afternoon. It must have been about 4 o'clock. Half past three or four o'clock, something.

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Q Did those officers when they left your store on that day, Wednesday, take that piece of paper, People's Exhibit 2 with them, or did you keep it ? A I was not at the place ^{time} at the when they left the store with that paper.

Q Well, you say you saw them have it in the store ?

A Yes.

Q Did you keep it that day, or did they keep it ?

A They kept it.

Q Where was it you next saw this piece of paper, People's Exhibit 2 ? A The Police Court.

Q Who had it when you saw it in the Police Court ? A The officers.

Q Now, as I understand it, you testified yesterday that you were not in the store at the time that the messenger boy came there on Wednesday ? A Yes, sir.

Q Now, did you afterwards have a talk with the two police officers, Lorber and Kuhn who were in that store at the time ?

BY THE COURT:

Q Just yes or no. A Yes, sir.

BY MR. MANLEY:

Q About what happened in that store ? A Yes, sir.

Q And then, when these questions which Mr. Steuer has read to you was asked you in the Police Court, about what happened in the store, you based your answers upon what ?

MR. STEUER: I object to that. Is not a man supposed

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to base his answers on the truth, your Honor, and on nothing else ?

MR. MANLEY: If Mr. Steuer objects, I will withdraw the question. That is all, Mr. Daiches.

RE-CROSS EXAMINATION BY MR. STEUER:

Q Now, Mr. Daiches, while you have given just now testimony of the fact that you claim to have seen that paper --

THE COURT: People's Exhibit 2.

Q (Continuing) Exhibit 2 in the possession of the defendant in your store on the 15th of April, I ask you again, did you say one word about that in the Magistrate's Court on the 16th of April ?

MR. MANLEY: There is no testimony that this defendant had this paper in the store of Mr. Daiches on the 15th of April.

MR. STEUER: Well, in the possession of the officer .
I will substitute that .

BY THE COURT:

Q Well now, the point that your attention is directed to is, did you say anything in the Magistrate's Court about that paper, People's Exhibit 2, did any words pass your lips to the Magistrate or anybody else regarding People's Exhibit 2 when you were in the Magistrate's Court ? A I don't believe so, your Honor.

MR. STEUER: That is all

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

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Schell, where do you live ? A 146 Suffolk Street.

Q You said 146 Suffolk Street ? A Yes, sir.

Q What is your business ? A Assistant manager.

BY THE COURT:

Q Will you talk so that the jurors hear you. A Yes, sir; assistant manager.

BY MR. MANLEY:

Q You are assistant manager of what ? A The American District Telegraph Company.

Q What business were you in in April 1908 ? A Manager.

Q Manager of what ? A American District Telegraph Company.

Q Whereabouts was your office ? A Eighth street and University Place.

Q What was that ? A The American District Telegraph office.

Q One of their sub offices, one of their branch offices ? A Well, no, an office.

Q And you were manager of that office, were you ? A Yes, sir.

Q On the 15th day of April, Wednesday, 1908, were you in your office ? A Yes, sir.

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Q What time did you get there in the morning, do you recall? A About eight o'clock.

Q Did you stay there during the day? A Yes, sir.

Q On that day did you see the defendant in your office?
A Yes, sir.

Q About what time was it when he came there? A About ten minutes after three.

Q In the afternoon? A Yes, sir.

Q Did you have any talk with him, just yes or no?
A Yes, sir.

Q Did he say anything to you? A Yes, sir.

BY THE COURT:

Q Why will you not talk so that you can be heard.
A Yes, sir.

BY MR. MANLEY:

Q What did he say to you, and what did you say to him?
A He asked me for a messenger boy, and I called up the next boy, and he said he wanted a big boy. So I called Charles Group. I called him out from the back.

Q Just a minute. What was the size of the first boy that you called, was he big or little? A He was a small boy, and he asked for a large boy.

Q What happened next? A I called Group out from the back, and I asked him where he wished to send the boy. He told me he wanted to send him over to 3rd avenue. I asked him to

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let me see the note, and he let me see the note.

Q Did the defendant have anything in his hands at the time ? A Well, he was carrying an umbrella with him.

Q What did he say about the note ? A He told me he wanted to send a boy over with a note to 3rd avenue, and he wants an answer to it.

Q Then you asked to see the note, is that so ? A Yes, sir

Q At the time when he said something to you about the note, did he have the note in his hand ? A Yes, sir.

Q Now, what took place next ? A I handed him back the note and he gave it to the boy, and he said he would be back for an answer later on.

Q What happened next ? A About twenty minutes or about half an hour --

Q Just a minute, did the defendant then go out of the office ? A Yes, sir.

Q Did the boy go out ? A Yes, sir, the boy went along with him.

Q And they went out together ? A Yes, sir.

Q And you have said that the name of the boy was Grouppe ? Was that Charles Grouppe, was his first name Charles, do you remember ? A I can't recollect, but I think it is Charles Grouppe

Q He is here in court, is he ? A Yes, sir.

Q What happened next ? A In about half an hour the boy returned with two plain clothes detectives, and they asked me --

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BY THE COURT:

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Q No.

BY MR. MANLEY:

Q You cannot state the conversation. Do you recall the names of those two plain clothes detectives ? A Yes, sir.

Q What are they ? A Lorber and Kuhn.

Q Lorber and Kuhn, and Charles Grouppe came in together ?
A Yes, sir.

Q At the time they came in was this defendant there ?
A No, sir.

Q You had some talk with them, just yes or no, with Lorber Kuhn and Grouppe ? Did they say something to you and did you say something to them ? A Yes, sir.

Q After you had had the talk with them and they had said something to you, did those three men Grouppe, Lorber and Kuhn stay in the telegraph office or did they go out ? A They stayed there about twenty minutes.

Q And did they go out after that ? A Yes, sir.

Q All of them? A Why, one of them stayed in the back.

Q Do you remember which one stayed in the back ? A I think it was Lorber.

Q When you say stayed in the back, do you mean the back of the telegraph office ? A The back of the office, yes, sir.

Q What became of the other officer and Grouppe, did they

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go out ? A Yes, sir.

Q Now, did you after that see Grouppe and the other officer, some time after that ? A When they returned with the defendant.

Q They returned with the defendant ? A Yes, sir.

Q About how long were they gone before they returned with the defendant ? A They were gone about half an hour.

Q Now, when they came in with the defendant --

MR. MANLEY: Question withdrawn.

Q Does that office consist of one room or more than one room? A Well, there is a store, and there is a dressing room in the back. It is divided off.

Q Well, there are two rooms ? A Yes, sir.

Q And the room next to the street, I suppose, is the place where the messenger boys are, is that it ? A Yes, sir.

Q Is that the room into which the officers and Grouppe and the defendant came ? A Yes, sir.

Q And were you in that front room? A Yes, sir.

Q Now, after they brought this defendant in there, did these officers in the presence of the defendant ask you any questions ? A Yes, sir, they asked me --

Q Just a minute. The defendant was right there within hearing distance ? A Yes, sir.

Q And what did the officers, and when you repeat the conversations, please tell whether it was Kuhn or Lorber, if you

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can remember -- what did the officers say to you in the presence of the defendant ?

MR. STEUER: I object to that as incompetent and not binding on the defendant.

Objection overruled. Exception.

Q Go ahead. Did the officers ask you any questions in the presence of the defendant, where the defendant was ?

A Yes, sir.

MR. STEUER: I make the same objection. Same ruling and exception.

BY THE COURT:

Q Go ahead, now. A They asked me was this the defendant and I said yes. I think it was Lorber that asked me.

BY MR. MANLEY:

Q Asked you what ?

BY THE COURT:

Q What did Lorber say to you in the presence of this defendant ? A He asked me was this the man.

BY MR. MANLEY:

Q These were his words ? A Was this the man that come in the office and sent the note there.

Q What did you say ? A I said "Yes, sir".

BY THE COURT:

Q What did the defendant say? A Nothing.

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BY MR. MANLEY:

Q Now, did you hear Charles Grouppe say anything in the office, in the presence of this man, when he came in ?

BY THE COURT:

Q Referring to the defendant. A I can't recollect.

Q When Lorber and Grouppe came into the office, with the defendant, who spoke first ? A Lorber.

Q And whom did he speak to , A To me.

Q And what did Lorber say to you ?

MR. STEUER: I object to that on the same grounds.

THE COURT: Yes, same objection and ruling and exception.

Q What did Lorber say to you? A He asked me was this the man that came in the office to send the note there.

Q What did you say ? A I said "Yes, that was the man."

Q And what did the defendant say, what did this man here, this defendant, say ? A I can't recollect. It is two years since that time, and I can't recollect.

Q Did officer Kuhn say anything in the presence of the defendant? A Well, he asked me "Are you sure this is the man?"

MR. STEUER: I make the same objection to all these questions, so that I will not interrupt your Honor, and I take an exception.

THE COURT: Yes, your objection covers this line, as also your exception.

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MR. STEUER: yes, sir; thank you.

Q Did Charles grouppe say anything to you at that time in the presence of the defendant ?

MR. STEUER: I beg your Honor's pardon, the answer was not complete.

THE COURT: repeat it.

(Repeated by the stenographer as follows: "Well, he asked me 'Are you sure this is the man'")

THE WITNESS: I told him yes, sir.

Q What did the defendant say then, if anything ? A I don't remember.

Q Did you hear either officer ask Charles Grouppe anything in the presence of the defendant ? A No, sir.

Q Did you hear Charles Grouppe say anything to either officer in the presence of the defendant ? A No, sir.

Q Did you hear Charles Grouppe say anything to the defendant in the presence of either officer ? A No, sir.

Q Did you ask the defendant any questions when the officers came in or the officer came in with the defendant ?

A I don't remember.

BY MR. MANLEY:

Q How long did the defendant Max Mane, stay in the telegraph office after the officers brought him in there ? A About ten minutes.

Q During any of the time that he was in there, the defend-

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ant Max Mane, at that time, did you see Mr. Daiches in there ?

A I don't remember.

Q Can you tell us about how this defendant was dressed when he was brought back in there, in your office ? A He had a sort of rain coat on, a black rain coat and had an umbrella in his hand.

Q Now, did you notice anything about the defendant when he was brought back by the officer ? Just describe him?

A Yes, sir.

Q What did you notice ? A I noticed he was dressed the same as when he come in.

BY THE COURT:

Q When you say "when he came in", what do you mean ?

A When he came in before, when he sent the note there, when he asked me for a boy.

BY MR. MANLEY:

Q Now, did you notice anything else about the man that the officers brought in, about how he acted or anything of that sort ? A I don't remember.

Q Did you see him doing any writing in there ? A Yes, sir.

Q Did he get the pen from there, from the office ?

A The pen was on the desk in the office.

Q While he was writing, did you notice anything at all peculiar about the defendant?

MR. STEUER: I object to that as calling for a con-

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clusion of the witness.

THE COURT: Yes, I will sustain the objection.

Q Just describe the defendant, just tell what you saw when he was writing, what you saw the defendant do, with reference to his body or anything of that sort when he was writing?

BY THE COURT:

Q Keep your voice up now, and talk to the jury. A Well, he wrote until he got about half ways, and then he stopped and then he finished up.

BY MR. MANLEY:

Q Well now, did you see what took place at the time when he stopped, when he wrote the first part, as to the defendant?

A I don't remember.

Q As to his hands, or anything of that sort ?

MR. STEUER: I object to that.

MR. MANLEY: I am trying to make the witness understand and still keep within the rule, but if counsel objects, I will withdraw the question.

BY THE COURT:

Q Now, in the first place, this writing by the defendant that you are now talking about, was it when the defendant first came into the place, or was it when the defendant came back with the officer, and with Charles Grouppe ? A When he came back.

Q And you say when he came back he did some writing ?

A The officers asked him to write.

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Q Which officer asked him , A I can't remember.

Q Did the defendant write something ? A Yes, sir.

Q And while he was writing was he standing or sitting ?

A Standing.

Q Was he standing at anything ? A He was leaning up against the counter.

Q About how high was the counter, about how far up to the defendant did it reach? A About five feet.

Q Now, on what did the defendant write ? A On a card.

Q And where was the card when the defendant was writing on it ? A On the desk.

Q And where was the desk with respect to the counter ?

A Well, this was on the counter, this was the counter, the counter of the office.

Q Now, you say that the defendant stood at the counter, which you have also called the desk; is that so? A Yes, sir.

Q And you say that the card was on the counter or desk ?

A No, sir; he took the card out of his pocket.

Q Who took the card out of his pocket? A The defendant.

Q The defendant took a card out of his own pocket ?

A Yes, sir.

Q And after he had taken the card out of his own pocket, what did he do with it ? A The officers-- he wrote a name on the card.

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Q When he wrote on the card, where was the card ? A On the counter.

Q Which hand did the defendant use in writing, his right or his left ? A I don't remember.

Q With what did he write, a pen or pencil, or what ?
A A pen.

Q And where did he get the pen? A The pen was on the counter.

Q One of the pens belonging to your company? A Yes, sir.

Q You do not remember whether he wrote with his right hand or his left hand ? A No, sir, I can't remember.

Q Do you remember while he was holding the pen in one hand what he was doing with the other hand ? A No, sir.

Q How close to him were you standing when he was writing?
A I was behind the counter.

Q That is to say, you were on the other side of the counter ? A Yes, sir.

Q Were you facing the defendant? A Yes, sir.

Q About how far away from him were you when he was writing ? A About two feet.

Q When he was writing, where were the officers ?
A Alongside of him.

Q Both on the same side of the defendant ? A I can't remember.

Q Where was Charles Grouppe ? A He was there too, along-

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side of them.

Q Did you see what became of the card after something was written on it by the defendant ? A One of the plain clothes men took it.

Q When you say one of the plain clothes men, you mean one of the men that you called officers ? A Yes, sir.

Q Do you know which one ? A I can't really remember.

Q Would you recognize that card if you saw it again ?

A I probably might.

THE COURT: Are you through with your examination, Mr. Manley?

MR. MANLEY: Yes, your Honor.

CROSS EXAMINATION BY MR. STEUER:

Q Now, it would greatly surprise you to learn that he never wrote on a card at all, wouldn't it ? It would give your recollection an awful jolt, wouldn't it, if you learned that he never wrote on a card ? A (No answer).

Q What's the matter, have you lost your voice. A Well, it is so long ago that I don't really remember, but I think it was a card he wrote upon.

Q But you knew about the card when the Judge asked you, and you thought you would recognize it if you saw it, didn't you ? A Yes.

Q Well now, don't you know as a matter of fact that the

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officers handed him a letter and asked him to write on the back of a paper that had already been written on ? A I can't remember.

Q Don't you know that they asked him to write backwards and forwards, both ? A I can't remember.

Q Well now, you did not go up to Daiches' place, did you ? A No, sir.

Q And you did not see any writing done up at Daiches' place, did you ? A No, sir.

Q If there is one thing that lingers in your recollection, it is the fact that the writing was done at the telegraph office, isn't it ? A There was some writing done down there, yes, sir.

Q But you don't remember that the officers stood around him, and all of you stood around him, and said "Write backwards and forwards both", and that he did write backwards and forwards with the pen that you gave him, and paper that the officers took out and handed him ? A I was behind the counter. I was not alongside him.

MR. STEUER: Now, suppose you produce that paper, Mr. Manley.

MR. MANLEY: Go right on with your examination.

MR. STEUER: No, I insist on the production of the paper.

THE COURT: I think I will not ask to have it pro-

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duced at this time, and I will not direct the production of it.

MR. STEUER: I respectfully move for its immediate production.

THE COURT: The motion is denied, counsel.

MR. STEUER: I except. Does the District Attorney admit that he has it in his possession?

MR. MANLEY: Is Mr. Steuer finished with his cross-examination of this witness?

MR. STEUER: No, I think that, while I may not be familiar with the procedure, your Honor, I do not plead ignorance of the rules of evidence, and I most respectfully urge upon your Honor that I have an absolute right to have that paper produced at this time for my inspection, so that I may cross-examine with respect thereto -- the witness has testified --

THE COURT: The difficult, counsel, with your position is, that you have not shown that that paper was ever in the possession of the District Attorney, nor have you given the District Attorney's office any notice to produce.

MR. STEUER: I do not have to, may it please your Honor. You never have to, to produce a paper that is in court, and the testimony with relation to that paper was given here yesterday, and I had a right to it then, but I did not want to use it, so I did not make demand for it.

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I want to use it now, and I demand it, and surely, may it please your Honor, the defendant is entitled to anything, he is entitled to see papers that are being used against him. What is the motive of the District Attorney in concealing it? While this witness is on the stand, what is his object in keeping it from us?

MR. MANLEY: May I reply to that?

THE COURT: Counsel, that is hardly in point.

MR. STEUER: Well, then, I withdraw it, may it please your Honor, and I simply urge upon your Honor the motion that I have made for the production of the paper.

THE COURT: well, the motion is denied on the ground that it does not appear that the paper is in the possession of the District Attorney.

MR. STEUER: Well then, I ask that the examination of this witness be suspended, that I may call the District Attorney to prove it is in his possession right now in this court room.

MR. MANLEY: If there is any such paper produced at any time in this court by the District Attorney or anybody else, I will very cheerfully join with Mr. Steuer in the request that he be permitted to recall this witness.

MR. STEUER: I do not want to be destroyed with kindness. I do not want the defendant's rights to be frittered away in that way, and I respectfully ask the

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District Attorney not to hand me things of that sort in the future in this trial. All I want are my rights, and those I am going to insist upon, as I understand them. Now, I understand it is my absolute right to suspend the examination -- not my absolute right, but I have a right to ask your Honor to exercise your Honor's discretion to that extent, to have the witness's cross-examination suspended, in order that it might appear whether that paper is now in court or not, that this man is said to have written on, and which the witness says he wrote on in that Telegraph Office on that day in April, 1908.

THE COURT: I think it would be proper to do that. I will allow the examination of the witness to be suspended.

MR. STEUER: Then I will call Mr. Manley to the stand.

THE COURT: I cannot see how, in view of the questions put to this witness, the examination of the paper would facilitate the cross-examination of the witness, and it would be merely a question of recalling the witness later, as ^{suggested by} ~~to justify~~ you. It is preferable that this witness be disposed of now, if possible, if for no other reason than his own convenience, as he is a business man, I take it.

MR. MANLEY: Well, I will very cheerfully say for the

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benefit of Mr. Steuer, that I have never seen such a paper.

MR. STEUER: You had it here in your possession yesterday, and I want you to take the stand.

MR. MANLEY: Very well.

ROBERT E. MANLEY, called and duly sworn as a witness on behalf of the defense, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Manley, did you show yesterday afternoon --

THE COURT: Now, just pardon me, for the purpose of the record, we will ask a preliminary question.

BY THE COURT:

Q Mr. Manley, you are a Deputy Assistant District Attorney? A I am.

Q And connected with the office of the District Attorney of the County of New York? A Yes, sir.

Q And you are now engaged as representing the District Attorney in the prosecution of this action? A Yes, sir.

THE COURT: Now, Mr. Steuer, you ask your questions.

BY MR. STEUER:

Q Did you show the witness Daiches yesterday a paper which you described as one that was brought to his place of business by the messenger boy? A Yes.

Q Will you produce that paper, please?

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MR. MANLEY: If the Court please, that is a paper that is not yet in evidence.

Q Have you got that paper here ? A I have no objection to producing it.

MR. STEUER: Has it been marked for identification?

MR. MANLEY: No.

MR. STEUER: Mark it for identification.

(The paper is marked People's Exhibit 3 for Identification).

MR. STEUER: May I see that ?

MR. MANLEY: I object to that as being a move on the part of counsel to obtain the inspection of the District Attorney's papers before the District Attorney introduces them in evidence.

THE COURT: Yes, you are not entitled to see it, counselor.

MR. STEUER: Does your Honor hold that the paper concerning which Mr. Daiches gave testimony yesterday, that I have no right to see it ?

THE COURT: I do.

MR. MANLEY: If the Court please, Mr. Daiches gave no testimony concerning the paper now marked People's Exhibit 3 for identification.

MR. STEUER: Mr. Manley, you want to be more careful,

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because you are under oath, because that paper was referred to by you.

MR. MANLEY: If the Court please, Mr. Daiches testified yesterday that he was not there at the time, when the paper was received from the messenger, and it was received by the officers in the back room, when his brother-in-law was there, and he was not there.

THE COURT: Counsel, I am perfectly clear that under the circumstances, you are not entitled to see this paper. For that reason, it is not shown to you, and you have your exception.

MR. STEUER: I respectfully except.

THE COURT: The paper is not in evidence. It is merely marked for identification.

MR. STEUER: How is that paper marked for identification, so that the record will disclose it? Will you just note that these questions were put in relation to that paper?

THE COURT: It is marked People's Exhibit 3 for Identification.

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BY MR. STEUER:

Q Now, Mr Manley, have you the paper upon which the defendant did the writing at the office of the telegraph office that was mentioned by the last witness? A I have not.

BY THE COURT:

Q When you say that you have not, you mean that so far as you are aware it is not in the possession of the District Attorney? A I mean, sir, that I have never seen it and know nothing about its whereabouts.

THE COURT: Any further inquiry?

BY MR. STEUER:

Q Where is the paper concerning which Mr Daiches said that the defendant wrote on? A I don't know. I have never seen it.

THE COURT: Now, I think, Counsellor, you have pursued your inquiry sufficiently. The inquiry was merely directed to the question as to whether the District Attorney's office was in the possession of a certain card referred to by the last witness.

MR. STEUER: May it please your Honor, the defendant contends, or will contend that he never wrote at the office of Mr Daiches, but he admits that he did at the request of the officers, as testified to by the last witness, write at the office of the telegraph company, and my theory about it, after having heard the testimony of the

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two witnesses, that Mr Daiches, having heard that the defendant did some writing, assumed that he saw it.

MR. MANLEY: Now, if the Court please, in response to that--

MR. STEUER: I object.

THE COURT: Now, it is unnecessary, Mr Manley.

MR. MANLEY: I wanted simply to reply. I thought he had finished.

MR. STEUER: Now, my reason for having asked your Honor for the paper that Mr Daiches spoke of was because I hoped that that would disclose that that was the paper that was written upon.

THE COURT: There has been at no time any reason to suppose that any paper referred to heretofore in the testimony was the paper referred to by the last witness, when he said that the defendant wrote on a card in the telegraph office.

MR. STEUER: Well, the witness was clearly in error about any card writing, as will be shown conclusively here. That is why I called for the paper, may it please your Honor.

THE COURT: Counsel, the witness has testified that he wrote on a card.

MR. STEUER: But you remember what he said on his cross-examination about that? He did not remember whether

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it was a card.

THE COURT: Now, are you through with Mr Manley?

MR. STEUER: Yes, sir.

MR. MANLEY: That is all.

THE COURT: Now, the last witness may return for further cross-examination.

DAVID SCHELL, a witness for the People, resumes the witness stand:

CROSS-EXAMINATION CONTINUED BY MR. STEUER:

Q What kind of card was it you saw that day?

BY THE COURT:

Q Just describe the size of it and general appearance of the card, about how large was it? A About four inches.

Q And that was about four inches long? A Yes, sir.

Q About how wide? A About an inch and a half.

Q Any printing on it? A I don't remember.

BY MR. STEUER:

Q The only day on which you claim to have seen this man was on the 15th of April, is it not? A Yes, sir.

Q You did not testify in the Police Court the next day, did you? A No, sir.

Q The first time you have given any testimony is today? A Yes, sir.

Q That is all.

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MR. MANLEY: That is all.

BY THE COURT:

Q Did you appear before the Grand Jury as a witness?

A No, sir.

CHARLES GROUPE, being called and duly sworn as
a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q Mr Grouppe, where do you live? A 63 West 115th
street.

Q What is your business? A Gents' furnishing line
now.

Q What was your business in April, 1908? A Messenger
boy.

Q You were a messenger boy for whom? A The American
District Telegraph Company and Western Union.

Q Where was your office Eighth street and University
place.

Q When you say you were a messenger boy, you were one
of the A. D. T. boys, is that it? A Yes, sir.

Q Were you in the office of the company at University
place and 8th street on Wednesday, the 15th of April, of that
year? A Yes, sir.

Q Did you see this defendant, Max Mane, on that day?

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A Yes, sir.

THE COURT: That was April, 1908, was it not?

MR. MANLEY: Yes, sir.

Q Where were you on that day when you first saw this defedant? A I was in the telegraph office.

Q Do you recall what time it was in the day, can you tell? A Well, it was in the afternoon. I don't really know the time.

Q Did you have any talk with this defendant, did he say anything to you and did you say anything to him? A When he come in--

QX I am not asking you what was said. I just want a year or no answer, whether you said anything to him or he at any time that day said anything to you? A Not the first thing when he come in the office.

BY THE COURT:

Q No, but at any time? A Why, certainly.

BY MR. MANLEY:

Q Any time? A Yes.

Q Did you hear this defendant Max Mane say anything to anybody in the office when he first came in, or anybody in the office say anything to him when he first came in? A Yes.

Q With whom did Max Mane talk when he first came in?

A The manager of the office.

Q What is his name? A Dave Schell.

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Q Is he the last witness that was on the stand here?

A Yes, sir.

Q You were right there where you could hear it when he first came in? A Yes, sir, I was there in the back, in the vack of the office.

Q How away were you when this defendant first came in, about how many feet from where the defendant was? A Eight or ten feet away.

Q Did Mr Schell call you up? A He called up a small messenger boy that was out next. They go by next, and he said he wanted a big messenger, and he called me out.

Q Did you hear the defendant say that he wanted a big messenger boy? A Yes, sir.

Q Tell us all the conversation you heard, all the talk you heard between Mr Schell and Max Mane and yourself in the office before you left the office? A That man come in the office and he said, , and he handed him out a letter and he said he wants a messenger boy. He called out the boy that was next, and he says--

Q Who called out the boy that was next, just call names?

A Mr Dave Schell called out the messenger that was next, and he was a small boy, and he says no, he wanted a big boy, and he called me.

Q Did you have any talk with Max Mane in the office?

A I did not have any talk with him in the office. All he

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said to me is, "Here is a letter, come on with me."

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Q Did he hand you the letter inside the office? A He handed me the letter inside the office.

Q Did you go out of the office with Max Mane? A Yes, sir, I did.

Q Did you have any talk with him when you got outside?
A When I got outside he told me, "Here, this is an important message." He says, "This is an important message and there will be an answer to it; you bring this to Mr Daiches on 43 Bowery, and there is an important answer to it, and I will be around the store and call for it."

Q Did he say 43 Bowery?

MR. STEUER: Now, that is what he just said, is it not?

MR. MANLEY: That is what the witness said. I am asking if the defendant said it.

MR. STEUER: That is what he said that the defendant said,

THE COURT: Now, the question is asked. Repeat the question.

(Question repeated by the stenographer.)

A I don't really remember if he said 43 Bowery or not.

BY MR. MANLEY:

Q Well, what else did the defendant say besides that?

A He said he will call around in the office for an answer.

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Q What office? A In the telegraph office.

Q How far did he walk with you on the street? A About a block away from the place, and about three or four blocks away from Mr Daiches' place.

Q Now, you say that you took the envelope with you, did you? A Yes, sir, I took the envelope with me, sealed.

Q Did that envelope have any writing on the outside of it? A Mr Daiches' name was on it.

Q And his address? A That's all.

Q Had you--

MR. MANLEY: Question withdrawn.

Q Did you go to Mr Daiches' place of business? A I did.

Q Had you ever gone there before? A I never did go there before.

Q Did you follow the direction that was on the card, or not the card, but the envelope that was written there?

A Why, certainly, I looked at the address.

Q And you went to Daiches' store, which corresponded to the address upon the envelope, did you? A Yes, sir.

Q About how long did it take you to get there from the time you left the telegraph office? A No more than it takes to walk over there. I don't know how long it took me.

Q You say you had never been there before? A Never been there before.

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Q Have you ever been there since? A I have been there a few times since.

Q When you got there to Mr Daiches' place of business, did you see Mr Daiches there? A I did not see Mr Daiches there.

Q Just answer this yes or no, did you ask for Mr Daiches? A I asked for Mr Daiches.

Q Do you remember who it was in the store that you asked about Mr Daiches? A There was a man, if I would see him I would recognize him, but it was not Mr Daiches. They answered that Mr Daiches is not in.

MR. MANLEY: Will you stand up, Mr Hayman?

Q Can you tell whether or not that is the man you asked for Mr Daiches (indicating a person standing up in the court room)? A That's the man that was there.

Q What part of the store was he in when you asked for him? A Well, he was in the store. He was in the front of the store, in behind the counter.

Q Did you have any talk about something, that you had, about the letter, with this man, this brother-in-law, just yes or no? A I don't really remember who asked me the question and who I answered to, but I had a talk with somebody. I don't remember who it was to. I asked for Mr Daiches. I says, "This is an important thing, and I want an answer to it."

Q Did you see anybody else in the store besides the

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brother-in-law, the man that has arisen in court? A I have not seen anybody at first, but in the meanwhile, while I handed him out the letter, two officers come out of the back there.

Q And you have since found out their names are what, those two officers? A Mr Lorber and Mr Kuhn, I believe.

Q They are here in court, and you have seen them to-day?

A Yes, sir.

Q Did they say something to you, yes or no? A They told me--

BY THE COURT:

Q No. Not what they said. Did they say something to you, yes or no? A No, sir.

BY MR. MANLEY:

Q Did you show them the letter? A I did not show them the letter. I gave the letter away first.

Q You had given the letter to the brother-in-law had you? A Yes, sir, I did.

Q Did you see the brother-in-law give the letter to the officers? A I did not see anything at all.

Q Did you see the officers have the letter or envelope? A Not when they come out to me, I did not see it.

Q Where did the officers come from, what part of the store, when they came out? A In the back of the store.

Q Did you see this brother-in-law go to any part of the store before you saw the officers? Did he stay right in the

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front before the officers came out, or did he go back to where the officers were? A He went back to where the officers were.

Q And then he came out with the officers, did he?

A The three come out.

Q And then they had some talk with you? A Yes, sir.

Q Did you go anywhere after that? A I went back to the office.

Q Who went with you? A They went with me, yes, sir.

Q Who? A The two officers.

Q Did you go to the office of the telegraph company?

A Yes, sir.

Q Did you see the defendant Max Mane there? A No, I did not see him there.

Q About how long did you stay in the office? A Well, I couldn't tell you how long it was. It was not very long, because we had to go away.

Q Did you go out after that with the officers? A Yes, I put on citizens clothes. I had my uniform on, and I took it off and put on citizens clothes.

Q Who went with you? A One of the officers. I couldn't tell whether it was Mr Lorber or Mr Kuhn, but one of them went with me, and we met Mr Goldsmith on the street.

Q Where was Mr Goldsmith when you saw him first on that day? A Mr Goldsmith?

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Q Yes. A I don't really remember if he was in back there too or if he went out after me. I don't know, but I know I met him on the street. I don't really remember if I seen him in the store or not.

Q And I understand you to say that one of the officers went out on the street with you after you left the telegraph office? A Yes.

Q Where did you go? A I walked around to 9th street and turned around 10th street and walked over and turned around to Broadway and 9th street again, and University place, until we came to University place.

Q Yes? A There I found this man.

BY THE COURT:

Q When you say "this man", who do you mean? A Max Mane.

BY MR. MANLEY:

Q Where was Max Mane when you saw him on the street, what block? A He was on University place. Well, it was the nearest part on 10th street to University place.

Q About how far from the telegraph office, how many blocks? A Well, it was about a block and a half away.

Q About how far were you and the officer from Max Mane when you saw him on the street? A Well, I was on one side of the street and the officers were on the other side of the street.

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Q You were not with the officer then, at the time?

A The officer walked on one side of the street and I walked on another side of the street.

Q When you saw Max Mane did you go to where the officer was? A I called the officer over to me.

Q Just answer yes or no, did you say something to the officer? A Yes, sir.

Q After you had said something to the officer, what did you and the officer do, if anything? A The officer locked the man up.

Q Well, did you stay where you were in the street, or did you go to where Max Mane was? A What do you mean?

BY THE COURT:

Q Now, you spoke to the officer; the officer was on the other side of the street; then what happened? A Then the officer locked the man up.

Q What did the officer do first? A I don't understand.

Q You were on the street? A Yes, sir.

Q And the officer was on the other side of the street? A Yes, sir.

Q You saw Max Mane? A Yes, sir.

Q When you saw Max Mane you say you called the officer? A Yes, sir.

Q What did the officer do then, first, what was the first

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thing he did? A He walked over to me.

Q When he got over to you, what was the next thing he did? A He locked the man up. I was near the man, and I walked over to the man first, and then he walked over to me.

Q Speak louder? A I walked over to the man first, and then the officer walked over to me.

Q When the officer got to where you were, you were alongside of Max Mane, is that so? A Yes, sir.

Q And what was the first thing the officer did, after he got over to you? A He locked the man up.

MR. MANLEY: I think I can bring it out, your Honor.

BY MR. MANLEY:

Q Did you hear the officer say anything to Max Mane on the street? A I don't remember what he asked him. I am not positive, but I think he asked him, "What are you doing around here?"

BY MR. STEUER:

Q Wait a moment. A I don't remember positively what he asked him.

BY MR. MANLEY:

Q Did you say anything to the officer in the presence of Max Mane? A I says, "This is the man that gave me"--

BY MR. STEUER:

Q Wait, just say yes or no? A Yes.

BY MR. MANLEY:

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Q Your answer is yes? What did you say to the officer, in the presence of Max Mane, on the street? A I says, "This is the man."

MR. STEUER: Wait a moment. I object to that as incompetent, and not binding on the defendant.

Objection overruled. Exception.

Q Go on, what did you say? A I says, "This is the man that handed me the sealed letter for Mr Daiches."

BY THE COURT:

Q What did the defendant Max Mane say when you said that to the officer? A I don't remember.

Q Did he say anything? A I don't remember.

BY MR. MANLEY:

Q Now, do you remember whether anything else was said on the street besides that, at the time? A I don't remember.

Q What happened next, did you go anywhere? A Went back to the telegraph office.

Q Who went in the telegraph office besides you? A Mr Mane and the officer, I believe.

Q When they got to the telegraph office, did you hear anybody ask any questions of Max Mane? A Yes, sir.

Q Who asked him some questions? A Well, the officer asked Mr Max Mane to write down "Gottlieb" on a paper.

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Q Did he ask him anything besides that? A I don't remember.

Q Did you see the defendant do any writing? A Well, I was around him.

Q Did you see him have any pen in his hand? A Yes, sir.

Q Did you see him write? A Yes, sir.

Q Now, at any time after they got the defendant Max Mane back to the telegraph office, did you hear Mr Schell say anything about the defendant in the presence of the defendant Max Mane?

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

A Yes, sir.

THE COURT: I will let his answer stand "Yes, sir."

MR. STEUER: Exception.

Q What did Mr Schell say about Max Mane?

MR. STEUER: I object to that as incompetent and not binding on the defendant.

THE COURT: I will receive it.

MR. STEUER: Exception.

Q What did he say, Mr Schell? A Schell said, "This is the man."

BY THE COURT:

Q Whom did he say that to? A The officer.

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Q What did Max Mane say? A Max Mane--

Q Yes, when Mr Schell said that? A I don't remember.

BY MR. MANLEY:

Q Now, do you remember whether or not any other questions were asked of Max Mane by the officers that you can recollect? A I don't remember.

Q What happened next, did they take Max Mane out?

A Yes, sir.

Q Did you go anywhere with them? A Yes, sir, I walked along to Mr Daiches'.

Q Mr Daiches' store? A Yes.

Q You went into the store with them? A Yes, sir.

Q Was Mr Daiches there at the time, when you first got there? A I don't remember.

Q Did you stay there until he came? A You asked if he was there? I said I don't remember. I didn't stay long. I don't know if he was there or not.

Q About how long do you think you stayed there when you went to Daiches' store? A I don't remember how long it was.

Q Did you ever see that envelope or paper from the time you gave it to the brother-in-law of Mr Daiches in the store, up to to-day? Have you seen it again, or did you see it in the Police Court? A I don't know if I have seen it in the Police Court or not.

Q Can you remember whether or not you have ever seen

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the envelope from that day to this, at the time you delivered it to Daiches' store? A The envelope?

Q Yes.

BY THE COURT:

Q Now, talk up, the jury want to hear you? A I don't think I did.

Q What was it this defendant wrote on when he wrote in the place, in the telegraph office, when you came back with the officers? A He wrote down "Gottlieb".

Q But on what? A I don't know what it was.

Q You don't remember what he wrote on? A I remember he wrote on "Gottlieb", but I don't know on what he wrote it, the paper or card or anything like that, I don't remember.

CROSS-EXAMINATION BY MR. STEUER:

Q He wrote what the officers asked him to write, didn't he? A Yes, sir.

Q And he was standing up when he wrote? A He did.

Q And they asked him to write backwards and forwards, didn't they? A I don't remember that.

Q How long did you see him write? A I don't know how long; it didn't take him long, but I don't remember how long it was.

Q You remember just what you said to the officer, when you were on University place, don't you? A Yes.

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Q You remember what the officer said, don't you?

A Possibly I don't remember it all. Whatever I remember I will tell.

Q Well, you remember something of what he said, don't you? A I remember some of it, yes.

Q You remember what the officer said when he came into the telegraph officer, to Mr Schell, don't you? A I remember some of it.

Q You remember what Mr Schell said to the officer, don't you? A I remember some of that too.

Q But you don't remember what the defendant said on University place, and you don't remember what the defendant said at the telegraph office, do you?

A No, I don't.

BY THE COURT:

Q You know by the defendant is meant Max Mane?

A Yes, sir.

BY MR. STEUER:

Q Now, you say to-day that Mr Daiches was not at his office on the 15th of April when you delivered the letter, don't you? A When I was there the first time, yes, sir.

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Q When you delivered the letter -- you only delivered it once, didn't you ? A Yes.

Q You have testified in answer to questions put by the District Attorney, that from that time on, you don't remember whether you ever saw it again, haven't you ? A I never saw the envelope again.

Q Well, did you see the letter again? A I don't remember if I have seen the letter in court or not.

Q Well now, you know that you delivered it at that store, don't you ? A At Mr. Daiches.

Q Now, in the Police Court on the 16th of April, the day after you delivered it, you saw Mr. Daiches, didn't you ?

A At the Police Court ?

Q Yes.

BY THE COURT:

Q The Magistrate's Court ? A Yes, I seen him there.

BY MR. STEUER:

Q You also had seen him in his store on the day before, hadn't you ? A I don't remember that.

Q Haven't you just testified that ~~xx~~ you walked back with Mr. Mane and the officer to Mr. Daiches' store ? A But I did not say that I had seen Mr. Daiches there.

Q You don't recollect whether you saw him there at that time or not ? A I don't remember if I have seen him there or not. Possibly I did, but I don't remember it.

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Q But on the 16th of April, you know you saw him in the Magistrate's Court ? A I did see him in the Magistrate's Court, yes, sir.

Q Now, at that time in the Magistrate's Court, did you say that you had delivered that letter to Mr. Daiches, do you recall? A I don't remember what I said when they asked me questions.

Q Did you receive \$94. from anybody that day ? A I didn't receive any money at all.

Q From any one ? A From nobody.

Q At any rate, you did not receive it from Mr. Daiches, did you ? A No, sir.

Q Now, in the Police Court or the Magistrate's Court, were you asked by the Magistrate these questions: "He, referring to the defendant, gave you a letter addressed to Mr. Daiches? A Yes, 43 Third avenue near 10th street." Do you remember that ? A Possibly I did answer that.

Q Do you remember the next question "Did you deliver it to him? A. Yes, and he gave me \$94." Do you remember that ? A No, sir, I don't remember it.

Q Was it true ? A He did not give me any money.

Q Did you deliver the ~~ma~~ letter to him, to Mr. Daiches ? A I delivered it in his place.

Q Do you know how you came to say that he gave you \$94., in the Police Court, the day after the thing occurred? A I

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don't believe I said that, because I couldn't say it, because I didn't receive any money off anybody.

Q You say you don't believe that you said that ?

A No, sir.

Q You did not use the words in answer to the question of the Magistrate "Q Did you deliver it to him? A Yes, and he gave me \$94." You say now to these twelve gentlemen that in the Magistrate's Court on the 16th of April, the day after the thing happened, you did not use those words ? A I don't remember it.

Q That is all.

M O R R I S H A Y M A N, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Are you a brother-in-law of Mr. Daiches' ? A Yes, sir.

Q Were you in his jewelry store at No. 43 Third avenue on Wednesday, the 15th of April, 1908 ? A Yes, sir.

Q Can you tell us about what time of day it was you got there ? A I was there all day.

Q And were you working for him at that time ? A No, sir.

Q Had you been coming there every day, or was that the first day ? A I was coming there every day, because I was not working that time.

Q And for how long had you been coming to Daiches' store

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every day ? A For a couple of months.

Q On that day, did you see this last witness on the stand, Charles Grouppe in that store, or in Mr. Daiches' store, the last boy on the stand, the messenger ? A Yes, sir.

Q Did he have on messenger clothes when he came there ?
A Messenger clothes.

Q Just answer yes or no, did he have some talk with you, did he say something to you ? A No.

Q What is that ? A He didn't have no talk with me.

Q Well, did he say anything when he came into the store?
A He handed me a letter.

BY THE COURT:

Q Talk up good and loud. A He handed me a letter.

BY MR. MANLEY:

Q What was on the letter ? A On the letter, on the envelope was the address, so I opened the letter and I read it.

Q What did it say, the address, what was the address ?

A "S . Daiches, 43 Third avenue."

Q And you say that you opened it ? A Yes, sir.

Q And you read it ? A I read it.

Q I show you this paper, People's Exhibit 3 for Identification, read it there, and tell me whether that is what you got out from the envelope and read. Take your time and read it over ? A Yes, sir; that's the letter.

Q Now, after you had read this piece of paper, People's

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Exhibit 3 for Identification, did you say something to the messenger about the piece of paper ? A I told him to wait, and I went in the rear room.

Q You went in the rear room? A Yes, sir.

Q When you got in the rear room, was anybody in there ?

A There was two detectives and the butcher. That is what I know about it.

MR. MANLEY: Will the detectives stand up, please ?

Q Are those the two men who were waiting in the back room (indicating two persons standing up) A Yes, sir.

Q And about how long had Officers Kuhn and Lorber, who now arise in the court room, whom you say were the two men in the back room, how long had they been in there ? A About an hour or more.

Q Was Mr. Daiches there at the time ? A No, sir.

Q Tell us about how long Daiches had been away from the store at that time ? A Perhaps about fifteen minutes or half an hour.

Q When you went in the back room where the two detectives and the butcher were, did you show them this paper ? A I showed them this paper.

THE COURT: Referring to what ?

MR. MANLEY: People's Exhibit 3 for Identification.

Q After you had shown the two officers the piece of paper we are talking about, did you and the officers go anywhere ?

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A I went back again, and one of the officers went with me, and we went outside to the messenger boy.

Q Did the officer say something to the messenger ?

A He said to the messenger --

BY THE COURT:

Q No, not what he said, did he say anything? A Yes, sir.

BY MR. MANLEY:

Q You cannot state what was said, and so just answer questions yes or no. Well, that talk that the officer had with the messenger, was that about this piece of paper we are talking about ? A Yes, sir.

Q After the officers had asked the boy some questions about the paper, did you see the officers go with the boy anywhere ? A Yes, sir, they went away.

Q And did you go with them or did you stay in the store ?

A I stayed in the store.

Q About how long was it after the officers got away before Mr. Daiches came back to the store ? A I can't recollect, about fifteen or thirty minutes, something like that.

Q Did you on that day see this defendant, Max Mane ?

A I seen him.

Q About how long was it after Mr. Daiches came in that you saw this defendant, Max Mane ? A I don't understand that question.

Q About how long was it after the officers had gone away

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and Mr. Daiches came in, that you saw the officers come back with this defendant Max Mane; how many minutes, just roughly ?

A I can't exactly tell. It was about a half hour or so.

Q Was Mr. Daiches there when they brought in Max Mane ?

A Yes, sir.

Q Did you hear Mr. Daiches say anything to the officers, in the presence of Max Mane, he being there ? A Yes, sir.

Q What did Mr. Daiches say ? A He said "This is the man."

Q And did you hear Max Mane say anything ? A He said "I don't know anything."

Q He said he did not know anything ? A Yes.

Q Did you hear him say anything besides that ?

MR. STEUER: I object to that line of testimony.

THE COURT: It is on the same line as that which you did object to, and I will consider that you took objection before to the questions that were asked, and that I had overruled the objection, and that you had an exception.

MR. STEUER: Thank you, and to that whole line of testimony ?

THE COURT: Yes, it is so considered.

Q Did you hear Officers Kuhn and Lorber ask Max Mane any questions in the jewelry store ?

BY THE COURT:

Q Yes or no. A Yes, sir.

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BY MR. MANLEY:

Q What did you hear them ask him ?

MR. STEUER: I make the same objection.

THE COURT: Yes, the same ruling and exception.

BY THE COURT:

Q What did the officers say to the defendant ? A They said he should write his name.

BY MR. MANLEY:

Q Did he do that ? A Yes, sir.

Q On a piece of paper ? A Yes, sir.

Q Did you see what name he wrote ? A Yes, sir.

Q What name was it ? A Gottlieb.

Q Did you see what became of that paper, what the officers did with it ? A The officers took it along.

Q Did they put it in their pocket ? A I suppose so.

Q How much writing did he do ? Did he write anything besides the word "Gottlieb" that you saw ? A Only the name, that I can recollect.

Q Did you hear Max Mane say anything else about the buying of this watch and about the check, besides what you have told us ? A No.

Q How long was he in there, Max Mane, how long did the officers keep him in the jewelry store before they took him away again ? A About ten minutes.

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THE COURT: We will suspend now.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, nor to form nor express any opinion thereon, until the same is submitted to you.

Recess until 2 o'clock P.M.

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After recess.

TRIAL RESUMED.

MORRIS HAYMAN, a witness for the People, resumes the witness stand:

DIRECT EXAMINATION CONTINUED BY MR. MANLEY:

Q Mr. Hayman, do you recollect whether or not there was another piece of paper in the envelope that you got from the messenger boy besides this? A Yes, sir.

THE COURT: Referring now to what?

MR. MANLEY: People's Exhibit 3 for identification.

Q I show you People's Exhibit 2 and ask you if you have seen it before? Just take it and read it over. A Yes, sir.

Q Where was this paper, People's Exhibit 2, when you saw it first? A With a letter.

Q When you say with a letter, do you mean People's Exhibit 3 for identification? A Yes, sir.

MR. MANLEY: I now offer in evidence People's Exhibit 3 for identification.

THE COURT: Received. It now becomes People's Exhibit 3 in evidence.

(Marked in evidence People's Exhibit 3 and Mr. Manley reads it to the jury).

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CROSS EXAMINATION BY MR. STEUER:

MR. STEUER: May I ask you a question? Is it the theory of the District Attorney that the paper, Exhibit 2, was taken by the person who was in the store on the 10th, and then returned in the envelope?

MR. MANLEY: Yes.

MR. STEUER: If I had known that this morning, I would not have raised any protest about it.

Q Mr. Hayman, just one or two questions. You stated on your direct examination that you were not working at this time, on the 15th of April, so that you were spending your time at your brother-in-law's place, is that right? A Yes, sir.

Q How long had you been out of work, Mr. Hayman?

A Several months.

Q About what time in the day would you get to the place of your brother-in-law, Mr. Daiches? A Sometimes at 10 o'clock, 11 o'clock.

Q In the morning? A In the morning.

Q How long would you stay there? A Sometimes all day, sometimes less, because meanwhile I had to see about getting some work.

Q But your custom was to practically spend the day there? A Yes, sir.

Q Now you said that you saw the defendant write at your brother-in-law's place of business on the 15th of April,

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do you remember that? A Yes, sir.

Q What did you see him write on, Mr. Hayman? A On a paper. I don't recollect whether it was on the back of the letters, on the same letters or not, but on a paper.

Q You saw him write on a paper? A Yes, sir.

Q What did you see him write with, Mr. Hayman?

A I don't recollect, but I think it was pen and ink.

Q You think pen and ink? A Yes, sir.

Q You were just going to say something about lead pencil, were you not? A I don't remember, I don't recollect, but I think it was pen and ink.

BY THE COURT:

Q What is your best recollection? A I will say -- I can't remember.

BY MR. STEUER:

Q Now, I do not recall what you said about what became of that paper that you say you saw him write on. Will you tell the jury please, what did become of it? A All these papers, the letters, were taken by one of the detectives.

Q No, what I am asking about is the paper that you say you saw the defendant write on, do you know what became of it? If you do not, why -- A No, sir, I don't.

Q Can you tell the gentlemen of the jury in whose possession it was when you last saw it? A In the hands of the detectives.

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Q That is all.

MR. MANLEY: (Calling) Officer Kuhn, Officer Lorber. Officer Kuhn, take the stand.

C H A R L E S K U H N, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You are a member of the police force of the City of New York? A Yes, sir.

Q And in April of 1908, what branch of the service were you attached to? A To the 15th precinct.

Q Where are you now? A The first inspection district.

Q Was your attention called to a check which had been presented in the store of Samuel Daiches in April, 1908, at about that time? A Yes, sir.

Q Do you recall what day of the week it was, Officer, when your attention was first drawn to that matter? A I believe it was on the 14th my attention was drawn to it.

Q In what manner was your attention drawn to it? Did you have a conversation with somebody in reference to it?

A I was assigned to the case. I was directed to go to the store.

BY THE COURT:

Q No, you were assigned to the case? A Yes, sir.

BY MR. MANLEY:

Q Who was it assigned you to the case? A One of the

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lieutenants in the 15th precinct.

Q Did you go to a store somewhere? A Yes.

Q Where is the station house of the 15th precinct.?

A Corner of First avenue and 5th street.

Q Where did you go after you were assigned to this case?

A No. 34 Third avenue, or 43 Third avenue, I believe.

Q Do you recall what day it was you first went there?

A I don't remember what day. It was either one or two days before the arrest was made.

Q Did you see anybody in that store at 43 Third avenue?

A I did.

Q Whom did you see? A I saw Mr. Daiches.

Q Did you have a talk with him, yes or no? A Yes, sir.

Q About a check? A Yes, sir.

Q Where was the check in question when you first saw it? A The first time I saw the check was when Mr. Daiches showed it to me.

Q I show you People's Exhibit 1-A and 1-B for identification, and I ask you if that is the check that Mr. Daiches showed you? A Yes, sir, that's the check.

Q Did you have something to do with the arrest of this defendant, yes or no? A Yes, sir.

Q Before making the arrest of this defendant, did you have any conversations with any one, with the exception of Mr.

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Daiches, yes or no? A Yes, sir.

Q With whom did you have any conversations? A With one Mr. Goldsmith.

Q Where was Mr. Goldsmith when you had the talk with him first? A I believe it was in the station house.

Q 15th precinct? A Yes, sir.

Q Do you recall whether or not that was on the same day that you had the talk with Mr. Daiches in his store? A Yes, we went there later to see Mr. Daiches.

Q When you saw Mr. Goldsmith, do you mean Mr. Isidore or Mr. I. Goldsmith? A Mr. I. Goldsmith.

Q Did you have talks with anybody prior to the arrest, besides Mr. Daiches and Mr. Goldsmith? A No, sir.

Q On what day did the arrest take place? A On the 15th of April, 1898, or 1908, I mean.

Q On that day, the day of the arrest, sometime before the arrest, did you go anywhere? A Yes, sir.

Q Where did you go? A Mr. Daiches's store.

Q Did any one go with you? A Yes, sir.

Q Who went with you? A Officer Lorber, Frank Lorber.

Q Can you tell us about what time of day it was when you got there? A I don't remember what time it was. I don't remember what time of day it was.

Q Was it forenoon or afternoon, do you recollect that?
A I can't even recall that. I know it was in the daytime

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sometime, but I can't recall the time.

Q Who was in the store at the time you got there?

A Mr. Daiches.

Q Anybody else? A Not that I can recall.

Q Did Mr. Daiches stay there? A He was talking to me there, talking to --

Q Did he stay, remain in the store? A Yes, sir.

Q How long did he stay there, Mr. Daiches? A Let me understand this rightly; this is before the arrest?

Q Before the arrest, yes. A The day we went there to investigate, to find out about the check --

Q I am not asking about that day. I am coming down now to the day of the arrest. A Oh, the day of the arrest?

Q Can you tell now? A Yes, I remember now; when we came there first, Mr. Daiches was there, then he left.

Q You got there about what time of the day of the arrest? A Somewheres around one o'clock, I believe.

Q Was anybody there besides Mr. Daiches? A Mr. Daiches and some other gentleman was there.

Q Do you know who the other gentleman was? A No, sir, I don't.

Q Have you seen him in court to-day? A I saw him there but I don't know whether he was the gentleman or not; I can't remember.

Q How long did Mr. Daiches stay there after you got there,

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on the day of the arrest? A He stayed there sometime. I can't tell how long; he left.

Q Well, did he go out after a while? A He did, he went away.

Q At the time Mr. Daiches went out, who was left in the store? A There was another gentleman left in the store. He was behind the counter. He was left in charge of the store.

Q Anybody else besides you and that other gentleman? A Officer Lorber and myself.

Q Before Mr. Daiches had gone, did you have any talk with him about the matter? A Yes, sir.

Q How long was it after Mr. Daiches left, and you three men you have mentioned were in the store, before some one came in? A I should judge about perhaps an hour or an hour and a half.

Q In what part of the store did you wait? A In the rear of the store.

Q Who was it came in while you were waiting in the rear of the store? A A messenger boy of the American District Telegraph Company.

Q You afterwards found out his name was what? A His name was Charles Grouppe.

Q Did you see him when he first came in? A Yes.

Q When he came in, and you and the other officer were in the rear of the store, this other man whom you say was in

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the store, in what part of the store was he? A He was behind the counter, I believe. I can't say, I don't remember if he was behind the counter or in front of it.

Q When the messenger boy came in, what did you see the messenger boy do first? A He asked for Mr. Daiches, and he handed him something in an envelope.

Q Did you hear him ask for Mr. Daiches? A I did.

Q Did you hear any of the other conversation between the messenger and the man in the store? A I did.

Q What else? A The messenger told him that that was a very important message, that he had --

MR. STEUER: I object to that.

MR. MANLEY: Well, it is objectionable, if counsel objects, of course I withdraw the question.

THE COURT: Yes, objection sustained.

Q You did then, I understand, hear some conversation between the messenger boy and the man in the front of the store? A I did.

Q Have you seen Charles Grouppe here in court this morning? A I did.

Q Is he the messenger boy that you saw in the store that morning? A Yes, sir.

Q After the conversation between the messenger boy, Charles Grouppe, and the man in the front of the store, did you do anything? A Yes, sir.

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Q Well, just before that, did I understand you to say that you saw Grouppe hand this man something? A Yes, sir.

Q Could you see what it was he handed him? A I could see it was an envelope.

Q What was it that you did after this took place, that you have described? A We came out to the front of the store.

Q When you say "we", do you mean the other officer and yourself? A Officer Lorber and myself.

Q Go on. A And Officer Lorber asked him who gave him that envelope.

MR. STEUER: Wait a moment.

MR. MANLEY: I consent to strike it out.

THE COURT: Strike it out.

Q You went out and some talk took place between yourself, Lorber, and the messenger boy Charles Grouppe? A Yes, sir.

Q At the time you got out to where the messenger boy was, who had the envelope? A The gentleman behind the counter had the envelope, or in front, I don't know, just where he was standing, but he had the envelope.

Q What did he do with it? A He handed it over to Officer Lorber.

Q What did Officer Lorber do with it? A He examined it to see what it contained.

Q When you say examined it to see what it contained,

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do you mean he tore it open? A No, it was already torn open. He took it out to see what was in it.

Q Did you see anybody tear it open? A No, sir.

Q When you say torn open, what do you mean? A It had been opened.

Q You mean the flap was turned down or the envelope was open, or what? A The envelope had been opened.

Q Did you see Lorber take anything from the envelope?
A Yes.

Q What did he take from the envelope? A He took some paper out of it and read it.

Q Can you tell how many pieces of paper he took from the envelope? A There was one piece.

Q You saw him take one piece? A Yes, sir.

Q After you had --

MR. MANLEY: Question withdrawn.

Q Did you yourself read the contents of the envelope?
A Yes, sir.

Q After you and Lorber had done that, did you have any further talk with the messenger, yes or no? A Yes, sir.

Q Was the letter taken by some one from the store later?
A Yes, sir.

Q Who took it? A Officer Lorber.

Q You say you yourself had read it before you left?
A Yes, sir.

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Q Now, was it as a result of a talk which you had with the messenger boy that you left the store? A Yes, sir.

Q How long after the messenger boy had arrived at the store was it before you left the store? A Perhaps ten minutes.

Q I show you People's Exhibit 3, and ask you if you have seen it before? A Yes, sir, that is the paper.

Q That is the paper that you saw where, first? A In the store at 43 Third avenue.

Q Who had that paper when you saw it first? A The man behind the counter.

MR. MANLEY: Mr. Hayman, will you stand up?

Q Can you recollect whether that was the man (indicating a person standing up)? A Yes, sir, that was the man.

Q I show you People's Exhibit 2; take it and look it over and I ask you if you have seen it before? A Yes, sir.

Q Where was that paper when you saw it first?
A Mr. Daiches had this paper.

Q Mr. Daiches? A Yes, sir.

Q On what day was that? A That was on the 15th, or was it before the 15th? I am not sure.

Q Was it on the day of the arrest or not? A Yes, sir, I saw it on the day of the arrest.

MR. STEUER: I object; I submit the District Attorney should not do that. He said he was not sure and the

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District Attorney should not suggest to him.

MR. MANLEY: Well, I do not know any more now than when I started, as to what day it was.

MR. STEUER: Well, your intentions may be very good, but your actions may be very detrimental.

THE COURT: Now, we will proceed in an orderly manner.

Q Now, as I remember, you testified that you have seen this paper before, People's Exhibit 2, is that so? A I have.

Q Can you tell us where and when it was that you first saw the paper People's Exhibit 2? A I can't just exactly say. I remember seeing it on the 15th.

Q Well, what is the 15th, what day of the week?

A I believe it was on a Wednesday.

Q Is that the date of the arrest? A Yes, sir.

Q Now, you say as a result of the conversation that you had with the messenger boy, you, the messenger boy and Officer Lorber left the store, is that so? A Yes, sir.

Q Where did you go? A To Eighth street and University Place.

Q What is that? A That is the American District Telegraph office, a branch.

Q Did you go there as a result of the talk you had with the messenger boy? A Yes, sir.

Q Did you see the defendant there when you got there?

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A No, sir.

Q Did you stay for any length of time in the telegraph office? A Just long enough to have a conversation with the superintendent.

Q And what was the name of the superintendent?

A David Schell.

Q After you had had the talk with David Schell, the superintendent, did you still stay there? A I remained.

Q Did you see Lorber do anything, did he stay there or did he leave? A No, sir, he left the office in company with Charles Group, the messenger boy.

Q Did you sometime after that see this defendant Max Mane? A Yes, sir.

Q About how long was it after Lorber and the messenger boy had left the telegraph office? A I can't say how long it was, perhaps half an hour.

Q Well; about a half an hour? A Yes.

Q Where was the defendant when you saw him? A He was in company with officer Lorber, Charles Group the messenger boy and Mr. Goldsmith.

Q Where was he at that time? A He was brought into the messenger office.

Q Did you hear any conversation between anybody in the messenger office, after the defendant was brought there, in the presence of the defendant? A I did.

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Q Who had those conversations, or talks that you refer to as having heard? A Both officer Lorber and I.

Q Who was it that officer Lorber and you talked to in the presence of the defendant? A To the messenger boy and to David Schell.

Q Tell what you and officer Lorber said to David Schell in the presence of the defendant?

MR. STEUER: I object to that as incompetent and not binding upon the defendant.

THE COURT: Same ruling.

MR. STEUER: Exception.

A I remember officer Lorber asking whether this was the man. He said, "Yes, this is the man that was in here before".

Q When he said "This is the man", what did he do?

A He denied that he was the man.

Q Who do you mean by "This is the man"? A This defendant here was the man that had been in there, that sent this Charles Grouppe out with the envelope, sent him away on that message.

Q Yes, now, you say that that was asked of Schell by Lorber, is that so? A Yes, sir.

Q Now, did Lorber ask Schell anything else besides that, that you can recollect?

MR. STEUER: I make the same objection and take an exception.

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A I can't just remember all the conversation that took place in the office. I can't recall it all.

Q Well, what did Schell say when that question was asked of him by Lorber? A He said that he was positive that this was the man.

Q When that was said by Schell, what did the defendant Mane say? A He denied that he was the man.

Q What did he say, what were his words? A He said that he was around there looking for a loft.

BY THE COURT:

Q What else did he say? A That's all that I can recall, your Honor.

BY MR. MANLEY:

Q Now, did you yourself ask Schell anything?

A Yes, sir.

Q What did you ask Schell in the presence of the defendant?

MR. STEUER: I object to that as incompetent and not binding on the defendant.

Same ruling and exception.

A I asked him if he had wrote anything on that piece of paper that was sent to Mr. Daiches, and he said no. I asked him, "Did you write this name Gottlieb"? He says no, and I then asked David Schell for a pen.

Q When you asked "Did you write this name Gottlieb" --

THE COURT: Pardon me a moment.

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BY THE COURT:

Q This is what you said to Schell or this is what you said to the defendant? A To the defendant, yes, sir, your Honor.

Q I want to understand; you are telling us now what you said to this defendant, is that so? A Yes, sir.

MR. MANLEY: I have the impression, sir, that that is irresponsive. May the stenographer read my question?

THE COURT: Repeat Mr. Manley's last question and the answer.

(Question and answer repeated by the stenographer as follows: "What did you ask Schell in the presence of the defendant? A I asked him if he had wrote anything on that piece of paper that was sent to Mr. Daiches, and he said no. I asked him, 'Did you write this name Gottlieb'? He says no, and I then asked David Schell for a pen.")

THE COURT: Strike out that conversation and I instruct the jury to disregard it. It is stricken out and you are told to disregard it.

BY MR. MANLEY:

Q Now, what was it that you asked Schell in the presence of this defendant Mane?

MR. STEUER: The objection stands to that question?

THE COURT: Yes, you repeat your objection and the

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same ruling and exception. I may conclude not to receive this evidence. It will depend upon what the answer of this witness is.

A I asked Schell if this was the man, if he was positive, and he told me he was.

Q What did the defendant say in response to that, if anything? A He denied that he was the man that had been there.

Q Do you recall the words that he used, as nearly as you can, his own language? A Well, as far as I can recall "You are mistaken, I am not the man, I am around here looking for a loft."

Q Now, did either yourself or officer Lorber ask any questions of Charles Group, the messenger, in the presence of the defendant, in the telegraph office? A What is that, counsel?

THE COURT: Repeat the question.

(Question repeated by the stenographer)

A Yes, sir.

Q Was it you or Lorber that asked the question, or both?

A We both asked questions.

Q What did you ask in the presence of the defendant, of Group?

MR. STEUER: Objected to upon the same grounds.

Same ruling and exception.

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A Also asked him if he was positive that this was the man.

BY THE COURT:

Q Referring to whom? A To be sure, -to the defendant.

Q What did the defendant say? First, what did Grouppe say? A Grouppe says yes, he was.

Q What did the defendant say? A The defendant denied it.

Q What did the defendant say? A He said that he was not the man.

BY MR. MANLEY:

Q After that, did you have any conversation about this charge with the defendant in the telegraph office? A Yes, sir.

Q What was it? A I asked him to write a name.

MR. STEUER: I object to that as incompetent and not binding. Oh, this is with the defendant?

MR. MANLEY: With the defendant.

MR. STEUER: I object to that as incompetent, on the ground that no proper foundation for the introduction of the evidence has been laid, the defendant then having been in custody and under arrest.

THE COURT: If you contend, counsellor, that what the defendant may have said to the officer, he said by reason of fear produced by threats, I will allow you to examine this witness preliminarily upon that point.

MR. STEUER: I have no desire to examine him.

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THE COURT: Very well, then, the witness may answer.

MR. STEUER: I respectfully except.

Q Go ahead. A I asked him to write the name "Gottlieb" on a piece of paper. He got a pen and ink and he wrote the name "Gottlieb" on a piece of paper. He wrote it several times.

Q Yes. A We kept these pieces of paper and put them with the other.

Q Just a minute, you are not asked about that yet. You say the defendant wrote several times the name "Gottlieb" on a piece of paper? A Yes, sir.

Q What was done with that piece of paper? Did you take it away or was it left there? A We took it with us.

BY THE COURT:

Q When you say "we", whom do you mean? A Officer Lorber and myself.

BY MR. MANLEY:

Q Was it one piece of paper? A It was one piece of paper. We took out of that office.

Q Did you take it or did Lorber take that one piece of paper? A Officer Lorber took it.

Q Did you have any further talk with this defendant in the telegraph office? A Not that I can remember, no, sir.

Q Did he write anything else besides the name "Gottlieb" on the piece of paper? A No, sir.

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BY THE COURT:

Q Did Officer Lorber in your presence have any talk with this defendant in the telegraph office? A He did, your Honor, yes, sir.

Q And what did Officer Lorber say to this defendant in your presence, in the telegraph office?

MR. STEUER: I respectfully object to that, may it please your Honor.

THE COURT: Yes, now, if you contend -- well, I will allow the witness to answer.

MR. STEUER: I respectfully except.

Q Tell me what Officer Lorber said to this defendant in the telegraph office? A I remember him also asking Schell--

Q No, to this defendant, now. What did Officer Lorber say to this defendant? A I can't remember, your Honor. We had a conversation but I can't recall the conversation.

Q You cannot recall what Officer Lorber said to this defendant in the telegraph office? A No, sir, I can't remember.

Q Did this defendant say anything to Officer Lorber in the telegraph office, yes or no? A Yes, sir, we had a conversation.

BY MR. MANLEY:

Q Did the defendant make any other explanation as to his being in that neighborhood, besides that he was looking for a

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loft? A No, sir.

Q Well, what did you then do with the defendant?

A We then took the defendant over to No. 43 Third avenue.

Q When you say 43 Third avenue, is that the store of Mr. Daiches? A Yes, sir.

Q Who was there when you got there? A Mr. Daiches.

Q Who was with you besides the defendant? A Charles Group, the messenger boy, Mr. Goldsmith, Officer Lorber and myself and the defendant.

Q Did Goldsmith come into the telegraph office at the same time Lorber brought the defendant there? A Yes, sir.

Q And that was the first time you had seen Goldsmith? A Yes, sir.

Q When you got this defendant over to 43 Third avenue, did you say anything in the presence of the defendant to Mr. Daiches? A Yes, sir.

Q What did you say? A I asked him if he knew this defendant.

Same objection, same ruling and exception.

Q What did Mr. Daiches say? A He said yes.

Q What else did he say? A He said, "Yes, this is the man that was here, this is the man that gave me this check."

BY THE COURT:

Q What did the defendant say? A He denied it.

Q What did he say? A He denied that he was --

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Q What did he say? A I cannot remember, your Honor, just the words that took place.

Q Very well.

BY MR. MANLEY:

Q Now, do you recall whether Mr. Daiches said anything else in the presence of the defendant, beside what you have told us? A There was a conversation but I cannot remember the conversation.

Q What was done with the defendant after that? A He was taken to the station house.

Q What precinct? A The 15th precinct.

Q And locked up? A Yes, sir.

Q Was he taken before the Police Magistrate on the following day? A Yes, sir.

Q That would be on the 16th of April? A Yes, sir.

Q Do you recall the name of the Magistrate? A Yes, sir.

Q Who was it? A Magistrate Butts.

Q Did the examination of the defendant take place before Magistrate Butts on the following day, the 16th of April?

A Yes, sir.

Q Now, at that time did either you or Officer Lorber have with you in the Police Court People's Exhibits 3 and 2?

A Yes, sir.

Q Was that exhibited to Magistrate Butts during the

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course of the examination? A Yes, sir.

Q Each of those papers, Exhibits 2 and 3? A I remember this one was, but I don't know positively about that one.

MR. STEUER: Which is "this one"?

MR. MANLEY: By this he means Exhibit 3.

Q You are not positive as to Exhibit 2? A No, sir.

MR. MANLEY: Exhibit 2 being the receipt.

Q Who took charge of Exhibits 2 and 3 on the night of the 15th and 16th of April, that is the night between the arrest of the defendant and the Police Court examination? A Officer Lorber.

Q Do you know whether or not Officer Lorber took away the exhibits after the examination before Magistrate Butts, or not? A He did not.

Q What did he do with them? A They remained in the Police Court.

Q Attached to the original complaint? A Yes, sir.

Q Now, did either you or Officer Lorber in the Police Court on the 16th, before Magistrate Butts, have the paper upon which the defendant had written the name "Gottlieb" on the day before in the telegraph office? A Yes, sir.

Q Which was it, you or Lorber? A I had them.

Q When you say "them" did you have more than one?

A Officer Lorber brought them to court and I took them when I came to court, I took them and showed them to the clerk.

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Q Well, when you say "them", did you have more than one paper with the word "Gottlieb" on? A There was only one.

Q Do you recall whether or not there was any writing by the defendant in Daiches's place on the 15th? A There was, yes, sir.

Q Tell us about that, what was that? A The word "Gottlieb" written on a piece of paper.

Q By the defendant? A By the defendant, yes, sir.

Q Do you know what was done with the piece of paper that he wrote that on in Daiches's place? A I don't remember. We just kept one of those pieces of paper, the one that we picked out of the whole lot, we picked one piece out and we kept that.

Q And you think that was the one that was written in the telegraph office? A Yes, sir.

Q Did you display the paper written by the defendant containing the word "Gottlieb" in the Police Court? A Yes, sir.

Q To whom did you show it? A I showed it to the clerk.

Q When you say the clerk, do you mean the clerk whose duty it is to draw up the complaint? A Yes, sir.

Q Against the defendant? A Yes, sir.

Q Now, did you have a talk with the clerk about that paper? A Yes, sir.

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Q Did you carry it away from the Police Court with you? A Yes, sir.

Q You took it away with you? A Yes, sir.

Q What has become of it? A Destroyed it.

Q When did you destroy it? A I don't remember when. I believe we destroyed it right in the court, threw it away in the court.

Q Did you have some talk with the Police Court clerk about that paper? A Yes, sir.

Q And did he say something to you about it? A Yes, sir.

Q Now, you are not allowed to tell what was said. Did you show it to him at the time he was preparing the complaint?

A Yes, sir.

Q Did you think it was material to the preparation of that complaint?

MR. STEUER: I object to that.

THE COURT: Objection sustained.

A I did.

THE COURT: The answer is stricken out and the jury will disregard it.

Q Did you see the clerk have that piece of paper in his hand? A Yes, sir, I did.

Q Did you take it away, or did the clerk take it, which?

A It was handed back to me.

Q Do you know what you did with it? A I believe I

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destroyed it right there in court. I can't just exactly remember what I done with it.

Q Did you ask the clerk to attach it to the complaint?

A Yes, sir.

Q Did he do it? A No, sir.

MR. STEUER: I move to strike out the statement made by the District Attorney "Did you ask him to attach it to the complaint?"

THE COURT: Well, it was open to objection, but --

MR. STEUER: Well, he does these things so suddenly.

MR. MANLEY: Well, I have no objection to your motion to strike out.

THE COURT: I will strike it out and the jury will disregard it.

MR. STEUER: No, let it stand. I withdraw the motion.

THE COURT: No, it is out, and the jury are told to disregard it.

MR. MANLEY: You may cross examine.

CROSS EXAMINATION BY MR. STEUER:

Q Officer, when you saw the defendant write on the 15th of April at the store of Daiches, what did you see him write with? A With a pen.

Q When you saw him write in the office of the Telegraph

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Company, what did you see him write with? A With a pen.

Q Do you remember, officer, whether you at the Telegraph office requested him to write more than one way on that paper that he wrote on? A I don't remember.

Q Do you remember if it was asked of him by your brother officer? A It may have been. I can't remember.

Q I understood you to say a few moments ago, officer, that he wrote it more than once? A He did.

Q That is the name "S. Gottlieb"? A The name "Gottlieb" yes, sir.

Q Didn't you ask him to write whatever appeared as a signature on Exhibit 3? A Yes, sir.

Q Well, that I think, if you will look at it, is "S. Gottlieb", officer? A Yes, sir.

Q And that is what you requested this man to write, wasn't it? A Yes, sir.

Q And he wrote it as soon as you requested him to, didn't he? A Yes.

Q And as often as you requested him to? A Yes, sir.

Q And don't you recall now from the circumstance that it was written a number of times, that he was requested either by you or by your brother officer to write it both back hand and frontwards? A I don't remember.

Q You do not recall that? You do not say that that was not done, do you? A I do not. I don't remember.

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Q At any rate, you are positive that he obeyed whatever suggestion you made in that regard? A He did.

Q Now, in the office of the Telegraph Company, officer, will you tell the jury about what the distance is from the main office to the room in which the messenger boys gather?

A That is, from the front?

Q Yes. A Of the window to the rear room where the messenger boys are?

Q That is it? A It may be 20 to 25 feet.

Q Did Mr. Schell occupy a desk in the office?

A There was a counter.

Q Will you locate that counter in that office, please?

A It was on the north side of the store, about the centre of the room.

Q And what character of counter was that, one that extended quite a distance along the office? A Perhaps three or four feet behind the counter.

Q I do not understand what you mean by that, officer?

A The room behind the counter, in the office.

Q You mean there was a space behind the counter about three or four feet? A Yes, where there was room for the man to be in.

Q And was that where Schell was? A That is where Schell was, yes.

Q Now, from that point where Schell was, to the point

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where the messenger boys gather, about what was the distance, officer? A Into the room?

Q Yes. A About 10 feet.

QZ There were people coming in and out of that office most of the time? A There was.

Q And just where is that office located? A It is on the northeast corner of University Place and Eighth street.

Q There are windows facing from that office both on University Place and on Eighth street? A Yes, sir.

Q And that section of the city is one in which there is quite considerable traffic, is it not? A Yes, sir.

Q Traffic both by pedestrians on foot, and by street cars in front? A Yes, sir.

Q And the cars that pass in front of the building have the general equipment of the street railway surface cars in this city, cable cars? A Yes, sir.

MR. MANLEY: You do not mean cable cars?

MR. STEUER: Electric cars, I meant to say.

THE WITNESS: Electric cars.

Q You say that when the messenger boy --

MR. STEUER: I withdraw that.

Q When you came from the rear room of Mr. Daiches's place, to the store proper, Officer Lorber had in his hand the envelope that the messenger boy had brought there?

A This was in the telegraph office, yes, sir.

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Q No, that was at Daiches's place, wasn't it, officer?

A Well, I was describing the telegraph office.

Q Yes, I understand that.

BY THE COURT:

Q Now, your attention is directed to something that transpired, according to your evidence, in Daiches's place; now, pay attention please. A Yes, sir.

BY MR. STEUER:

Q We go now from the telegraph office to Daiches's place, and at Daiches's place I understood you to say that you and Officer Lorber were in the rear of the place? A Yes, sir.

Q When you came out to the front, Officer Lorber, as I understood you, had this envelope? A No, he did not.

Q And who did have it? A This gentleman behind the counter had it.

Q The gentleman behind the counter? Now, do you remember saying here on your direct examination, in answer to the District Attorney, that you saw the gentleman that was on the witness stand, but you cannot remember positively whether he was the man that was in the store? A He is the man that was in the store.

Q Well, do you remember saying on your direct examination before, the first time you were asked the question, "I cannot remember whether that was the man, I saw him on the witness stand"? A I don't remember.

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Q You don't remember whether you said that this afternoon or not, is that it? A Yes, sir.

Q Well now, when you came out, the man behind the counter had the envelope, and he turned it over to Lorber, is that what took place? A Yes, sir.

Q And then you say Lorber took the contents of the envelope out, did you not? A Yes, sir.

Q And you say Lorber read it, and then it was turned over to you by Lorber, and you read it? A We both read it together.

Q Together? A Yes, sir.

Q One or the other held it while you were reading it? A Yes, sir.

Q And the paper which you then read is the paper that is marked People's Exhibit 3? A Yes, sir.

Q And that is the only paper that you read at that time? A The only paper I remember.

Q Now, you saw, you said, at ~~the~~ some time, in Mr. Daiches's possession, the paper which is marked in this case People's Exhibit 2? A Yes, sir.

Q Now, when did you see in Mr. Daiches's possession the paper that was marked in this case People's Exhibit 2? A I remember seeing it on the 15th.

Q Now, your testimony with respect to what occurred on the 15th, as I recall it, is that you came to the place of

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business of Mr. Daiches, in company of Officer Lorber sometime about one o'clock, is that correct? A Yes, sir.

Q And then you remained there, both of you officers, for quite sometime, and Mr. Daiches left? A Yes, sir.

Q Now, after he left, the incidents that you narrated as having occurred between the messenger boy and you and your brother officer took place, did they not? A Yes, sir.

Q And Daiches was not there when the envelope was produced in which was People's Exhibit 3? A He was not there.

Q No. Now then, did you see the People's Exhibit 2 before the arrival of the messenger boy? A I don't remember whether I saw it before.

Q You know that you did not see it at that time, don't you? A I don't remember.

Q Well, you know that Mr. Daiches was not there at that time, don't you? A He was not there then, no, sir.

Q Well, that is the time I am speaking of, at the time when the messenger boy came, and at the time when you read People's Exhibit 3, either you holding it in your hand or Officer Lorber holding it in his hand, Daiches was not there? A No, sir.

Q And you have no recollection of at that time seeing People's Exhibit 2, have you? A No, sir, I do not.

Q Now, is there any way that you can refresh your recol-

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lection as to when it was that you saw People's Exhibit 2 in the possession of Mr. Daiches?

THE COURT: Now, counsel, if you will permit a suggestion. You mean when he saw it for the first time in the possession of Daiches?

MR. STEUER: Yes, sir.

A Which, this paper here?

Q Yes. A I don't remember when I saw that the first time.

Q But when you did see it for the first time, it was in the possession of Mr. Daiches? A (No answer).

BY THE COURT:

Q Who had it when you first saw it? A I believe Mr. Daiches showed it to me.

BY MR. STEUER:

Q The defendant, at the office of the Telegraph Company, said that he had not been there that day, did he not? A He did.

Q And he said that he was not the man who wrote anything on the papers that you had? A He did.

Q And he said that he was not the man that had given any envelope to the messenger boy? A He did.

Q And it was after he had said that that you made the request of him, or Officer Lorber did, to do the writing?

A Yes, sir.

Q And he told you that he was at that time in that

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locality seeking a loft? A He did.

Q Did you ask him where he had looked at any loft?

A I did not.

Q Did you ask him to what agency he had been concerning any loft? A I don't remember.

Q Didn't he at that time give you the name of a person in whose loft he had been, and at which he had looked within half an hour of the time of the arrest? A No, sir.

Q Did you ask him for it? A No, sir.

Q Did he give you the names of the agents to whom he had been that very day? A No, sir.

Q Did he show you at that time any paper, card or anything of that sort with respect to the agents to whom he had been? A Yes, sir -- or, not to the agents to whom he had been, but he showed me cards.

Q Cards of what? A He showed me letters with his address, name and address on it.

Q Letters with his name and address? A And address, yes, sir.

Q And that was in the office of the Telegraph Company? A Yes, sir.

Q You knew then what he claimed to be his name, did you not? A After he had told us, he told us the name.

Q Yes, that is what I mean, at the telegraph office, and after he had shown you the envelopes that he had, and you had

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looked at them, then you knew so far as his information was concerned, what his name was? A Yes.

Q And what name did he give you as being his, Officer?

A Max Mane.

Q Now, that was before you took him to the office of Mr. Daiches, was it not? A Yes, sir.

Q And he had also furnished you with what he claimed to be his address at that time? A Yes, sir.

Q Do you happen to recall what he said was his address?

A I have got it in my memorandum book.

Q Well, you may lookat it to refresh your recollection.

A No. 65 West 113th street.

Q In Manhattan? A Yes, sir.

Q Now, officer, you knew before you went up to the office of Mr. Daiches that he claimed that his name was not S. Gottlieb? A Yes, sir.

Q Officer, is it true that when he came to the office of Mr. Daiches, he was asked to write his name, and then he wrote "S. Gottlieb"? A Yes, sir.

Q What, when he was asked to write his name?

A No, sir, he was not asked to write his name. He was asked to write the name of Gottlieb only.

Q Yes, he was not asked to write his name, but he was asked to write the name of S. Gottlieb? A Yes, that is the only name he wrote.

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Q Now, the testimony of Mr. Hayman was that the defendant was asked to write his name, and that thereupon he wrote the name "S. Gottlieb". Did that take place on that day?

MR. MANLEY: Objected to. Well, objection withdrawn.

A I don't remember asking him to write his name.

Q No. A He was asked to write the name of Gottlieb, I remember.

Q I think that is all.

F R A N K L O R B E R, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q You are a member of the police force of the City of New York? A Yes, sir.

Q And to what branch of the service are you now attached? A Attached to the 39th precinct at present.

Q Where were you in the month of April, 1908? A Assigned to the First Inspection district, and assigned to the 15th Precinct.

Q Did you have anything to do with the arrest of this defendant? A Yes, sir.

Q When was it that your attention was first drawn to this charge against this defendant? A Mr. Goldsmith --

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Q Now, I am asking for one thing.

BY THE COURT:

Q Now, when, in time? A April 15th.

BY MR. MANLEY:

Q Was that on the date of the arrest? A Yes, sir, the date of the arrest.

Q Did you go anywhere on that day? A I went to 43 Third avenue.

Q The store of Mr. Daiches? A Yes, sir.

Q With whom did you go there? A Officer Kuhn.

Q Can you tell us about what time of day it was you got there? A Between -- one o'clock.

Q In the afternoon? A Yes, sir.

Q Who was in the store when you got there? A His brother-in-law, I think, whatever his name is, was behind the counter.

Q Well, do you see him here in court to-day? A Yes, sir, I have seen the gentleman in court.

MR. MANLEY: Mr. Hayman, stand up.

Q Do you recall whether or not that was the gentleman (indicating person standing up)? A Yes, sir, that's the gentleman was there when I went in.

Q Was anybody else in there when you and the other officer got there beside Mr. Hayman? A No, sir.

Q To what part of the store did you go? A I went to

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the rear of the store, myself and Officer Kuhn.

Q Were you there for sometime when a messenger boy came in? A Yes, sir, we was.

Q About how long had you been there before he came in? A I judge about an hour.

Q Was that Charles Grouppe whom you have seen on the stand here? A Charles Grouppe, yes, sir.

Q Did you see Grouppe do anything when he first came into the store? A I seen -- yes, sir.

Q What did he do? A He came into the store at 43 Third avenue and asked for Mr. Daiches.

Q Whom did he ask for Mr. Daiches? A He asked this gentleman here.

Q Hayman, he says his name is, Mr. Hayman, the gentleman that raised his arm? A Hayman, yes, sir.

Q How far away were you at that time? A About five feet.

Q Were you in the same room or in another room? A A room in the back, a little partition there is in the rear of the store.

Q You are not allowed to state what the conversation was, but you heard some conversation, as I understand you, between Grouppe and Hayman, is that so? A Yes, sir.

Q Did you see anything in the hands of Grouppe, the messenger? A I did, I saw an envelope in his hands.

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Q Did you see him do anything with it? A I saw him hand the envelope over to the man behind the counter, Mr. Hayman.

Q After that, did you do anything? A Mr. Hayman went behind in the store and told us.

BY THE COURT:

Q Now, you cannot say what was said, just tell what you did?

BY MR. MANLEY:

Q Something happened before you did something? What was it that happened? A Mr. Hayman went behind in the rear of the store.

Q Where were you? A Yes.

Q Did he say something to you? A Nothing at all.

Q Did he give you anything? A No, he just walked back in the store with the envelope in his hand.

Q Well, did you do anything when he did that? A Yes, sir.

Q What did you do? A Officer Kuhn and myself went out.

Q Where did you go? A Went in the front of the store.

Q Did you have any talk with Group, yes or no? A Had a talk with Group, yes, sir.

Q Did you get the paper that Hayman had? A Yes, sir, he handed me the envelope.

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Q Did you have a talk with Grouppe about that envelope and the manner in which Grouppe had gotten it, yes or no?

A Yes, sir.

Q Did you take it and put it in your pocket? A After I read it, yes, sir.

Q I show you People's Exhibit 3 in evidence, and ask you if you have seen that before? A Yes, that is the paper I had.

Q That is the paper you took? A Yes, sir.

Q I show you People's Exhibit 2, and ask you if you have seen that? A I don't recollect seeing that on the 15th of April.

Q When do you recollect seeing that first? A I seen that next day.

Q In court? A Yes, sir.

Q Do you recollect who it was that had it the next day in court? A Yes, sir, I do.

Q Who was it? A Mr. Daiches.

Q After you had had a talk with the messenger boy, did you go anywhere with him? A I did, yes, sir.

Q Where did you go? A I went to Eighth street and University Place, an American District telegraph office.

Q Did Officer Kuhn go with you? A Yes, sir, he went with me.

Q Did you see the defendant there when you got there?

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A The defendant was not there when I got there, no, sir.

Q Did you stay there any length of time? A I stayed there about 15 minutes.

Q Then, did you go out? A Yes.

Q Any one go with you? A Charles Grouppe, the messenger boy.

Q Where did you and Grouppe go? A Me and Grouppe went out of the District office and we walked east through Eighth street and there we met Mr. Goldsmith. We walked down to Third avenue.

Q When you saw Goldsmith, you mean Mr. Isidore or Mr. I. Goldsmith? A Mr. Isidore Goldsmith.

Q Is that the first time you had ever seen Goldsmith? A The first time I ever seen him, that day.

Q Where did you go? A Walked east to Third avenue, through Third avenue to Ninth street and walked west through Ninth street to Broadway.

Q Was Goldsmith and Grouppe with you all the time? A Yes, at Broadway, Charles Grouppe went on the north side of the street and Mr. Isidore Goldsmith was behind me. We walked west then, and Charles Grouppe, the messenger boy, came over to me and told me --

Q No, you cannot repeat the conversation. A He said something to me, he said --

Q No, after he had said something to you, what did you

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do? A I walked along with him.

Q And what did you see or whom did you see after you had walked along with him? A I seen the defendant there.

Q Where was the defendant Mane when you first saw him?

A Standing on the corner of Ninth street and University Place.

Q He was standing at that time, was he? A Yes, sir, on the corner.

Q That is about how far from the telegraph office?

A That is a little over a block away.

Q Who spoke first after you got there to where this defendant was, you, Grouppe or Mane? A I spoke first.

Q To whom did you speak? A Spoke to the defendant.

BY THE COURT:

Q Were you in civilian clothes? A Yes, sir, I was.

BY MR. MANLEY:

Q Kuhn was not there? A No, sir.

Q You were in plain clothes? A Yes.

Q What did you say?

MR. STEUER: I object to that as incompetent.

Objection overruled. Exception.

BY THE COURT:

Q What did you say to the defendant? A I says to the defendant "Is this the man?" To Charles Grouppe.

Q2 Now, whom did you say that too? A I says in the

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presence of the officer, I mean in the presence of Charles Group, myself and the defendant --

Q Whom did you speak to when you got to where the defendant was? A I spoke to the defendant.

Q What did you say to him? A I says, "Is this the man?"

Q You said that to the defendant? A Yes, sir.

BY MR. MANLEY:

Q Well, did you say that to the defendant Mane or did you say it to Group?

MR. STEUER: Now, do not say "did you say it to the defendant Mane" or did you say it to anybody else. He has answered the Court three times.

MR. MANLEY: Why, this is so evident --

MR. STEUER: Yes, it is so evident that the story is going wrong, but that is no reason why the District Attorney should say anything.

MR. MANLEY: It is so evident that everybody in the court room laughed at it. Now, I withdraw my question and I will re-frame it.

BY MR. MANLEY:

Q I ask you what did you say and to whom did you say it? A I said it to Charles Group, "Is that the man?"

MR. STEUER: I submit to your Honor that there was no question asked either by your Honor or the District Attorney of what he said to Charles Group.

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THE COURT: A new question was asked by the District Attorney and the witness has made response to that question, and his answer is responsive.

MR. STEUER: Then I respectfully ask your Honor to permit me to note an objection. I thought that was a repetition of the question that had been asked.

THE COURT: Yes, it will be noted.

MR. STEUER: I object to that as incompetent and not bidding on the defendant and I respectfully except.

THE COURT: Yes.

Q When you said to Charles Grouppe "Is that the man?", about how far away was the defendant Mane standing from you at the time? A Standing right next to me.

Q Did you say anything else to Grouppe before saying something to Mane? A I says to Charles Grouppe "Is that the man?" And he says "Yes."

MR. STEUER: Wait. That only calls for yes or no.

THE COURT: Well, we will strike out the answer, and, Mr. Witness, you try and pay attention to the questions and just see if you can answer them.

THE WITNESS: Yes, sir.

BY MR. MANLEY:

Q Now, what else was said at the time? Did the defendant say anything in response to that?

MR. STEUER: Objected to as not binding.

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MR. MANLEY: I withdraw the question and will re-frame it.

Q When you said that to Charles Grouppe, and Charles Grouppe had made that answer, what did the defendant say, if anything? A The defendant says he was not doing anything, but "around here looking for a loft".

Q Give us the entire conversation you had at that time.
BY THE COURT:

Q Tell us what you said to this defendant and what he said to you? A I says "What are you doing here?" He says, "Looking for a loft".

Q What did you say to him then? A I said, "I am an officer, and I will have to take you down to the American District Telegraph office, Eighth street and University Place".

Q What did he say? A He says, "All right."

Q Now, is that all the talk you had with him then?

A Yes, sir.

BY MR. MANLEY:

Q Now, do I understand, Officer, that you have given us all the talk between yourself, the defendant and Grouppe before you got to the telegraph office? A Yes, sir.

Q When you got to the telegraph office, who was in there? A There was David Schell and Officer Kuhn.

Q Anybody else that you recall? A And myself.

Q Did some conversation take place in the telegraph

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office? A Yes, sir.

Q Did you ask Schell any questions in the presence of Mane? A I did, yes, sir.

Q What did you ask Schell?

MR. STEUER: Objected to.

THE COURT: The same objection, ruling and exception.

A I says to David Schell, I says, "Do you know this man?" He says, "Yes, he has been in here half an hour ago," he says, "he gave a letter."

BY THE COURT:

Q Keep your voice up. A "He gave a letter to Charles Group, a messenger boy, to deliver at 43 Third avenue."

Q What did the defendant say? A The defendant did not say nothing at all.

BY MR. MANLEY:

Q Now, did you hear any further questions put to anybody in there at that time? A Yes, sir.

Q What was said; give us the entire transaction?

A Officer Kuhn says to write his name on a piece of paper there, in the presence of Officer Kuhn.

Q Did he say that to Mane? A Yes, sir, he said that to Mane.

Q Did Mane write on the paper? A Yes.

Q What name or words did he write on the paper? A He

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wrote on "Gottlieb".

Q What was done with that paper, do you know? A I took that paper.

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

Q After you had got through in the telegraph office did you take the defendant anywhere? A I did, yes.

Q Where did you take him? A Took him down to Mr. Daiches's jewelry store, 43 Third avenue.

Q Was Daiches there when you got there? A Yes, sir, he was there when I got there.

Q Did you have any talk with Daiches after you got the defendant there, when the defendant was right there? A Yes, sir.

Q What did Mr. Daiches say in the presence of the defendant and what did the defendant say while you were there?
A I brought him before Mr. Daiches, and I said to Mr. Daiches, "Do you know this man?" He says, "Yes, sir."

Same objection, same ruling and exception.

THE COURT: Yes, your contention is that this defendant is not bound by anything that is said to any one in his presence not addressed to him. That is your contention?

MR. STEUER: And I note an exception to your Honor's admitting it.

THE COURT: Yes.

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Q Do you recall whether or not this defendant made any reply when Mr. Daiches said that this was the man that had been there? A He didn't say nothing at all.

Q Did you or the other officer at any time you had the defendant in your custody ask him any other questions as to his being in that neighborhood, or as to this transaction?

A No, sir.

Q Were you present in the Police Court the following day? A I was, yes, sir.

Q Mr. Daiches was there and Charles Grouppe was there?

A Yes, sir.

CROSS EXAMINATION BY MR. STEUER:

Q Will you tell us again, please, what was said to Schell when you brought the defendant into the telegraph office? A I says to David Schell, "Do you know this man?" He says, "Yes, sir", he says, "why, he has only been in here half an hour ago," he says, "he ~~speak~~ sent one of the boys out with an envelope down to 43 Third avenue".

Q He remembered the number? A Yes, sir, he did.

EDWARD Q. BAKER, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Baker, where do you reside? A 1350 Prospect avenue, Brooklyn.

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Q What is your business? A Manager of the Fifth Avenue Branch of the Mechanics Bank.

Q How long have you been connected with that branch of the Mechanics Bank? A Since June last.

Q Were you in the Central Branch of the Mechanics Bank in April, 1908? A Yes, sir.

Q In what capacity were you there at that time? A Assistant cashier.

Q Were you at that time familiar with the depositors in that branch of the Mechanics Bank? A Yes, sir.

Q Did you have a depositor there at that time in April, 1908, named I. Goldsmith? A Yes, sir.

Q Did you have more than one depositor in the bank at that time named I. Goldsmith? A No, sir.

Q What is his first name, I. Goldsmith? A Isidore.

Q I show you this piece of paper and ask you if you have seen it before? Take your time and read it over on each side. A Yes, sir.

Q Can you tell by looking at the date, refreshing your memory, when it was and where it was that you first saw that? A In the department of the paying teller of the Central Branch of the Mechanics, on the 13th day of April, 1908.

Q Now, you say that is in the department of the paying teller? A Yes, sir.

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Q How did you happen on that day to be in the department of the paying teller? A I had charge of the department of the paying teller, as he was absent on account of sickness.

Q About how long before that date, the 13th, had you had charge of the paying teller's department? A He was away probably a week all told.

Q Just tell us under what circumstances in the paying teller's department, on the 13th of April, 1908, you saw that piece of paper, but do not repeat conversations, but under what circumstances?

BY THE COURT:

Q Who had it and where it was and so on? A A party appeared at my window and presented this check for payment.

BY MR. MANLEY:

Q Can you tell about what time of day that was?

A I think just before noon, to the best of my recollection.

Q Now, did you see that party who presented this particular check for payment make any writing upon it?

A Yes, sir, but his back was turned.

Q Did you look at the check when he presented it at the window? A I did.

Q When you looked at it, did it bear any endorsement upon the back? A No, sir.

Q Did you have any conversation, now, just yes or no, about any endorsement with that individual upon this check?

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A May I answer this not to the extent --

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Q You cannot give conversation.

BY THE COURT:

Q Now, just pay attention, please.

THE COURT: Repeat the question.

(Mr. Manley's last question repeated by the stenographer).

A Simply asked him to endorse it.

BY MR. MANLEY:

Q Then you saw him go where? A To a desk at the window, right in front of our department.

Q Where there was pen and ink? A Pen and ink.

Q Did he return? A Yes.

Q And gave you this paper? A Yes.

Q Did it then have anything written on the back side?

A Yes, sir.

Q I show you the paper again and ask you if when he came back, after requesting him to endorse it, that was the endorsement that was written upon the back side?

A Yes, sir.

THE COURT: Referring now to the writing upon the back of the check.

MR. MANLEY: I ask that this be marked for identification.

(Marked People's Exhibit 4 for identification).

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Q Now, did you some days afterwards have occasion to talk with Mr. Goldsmith about this paper, People's Exhibit 4 for identification? A Yes, sir.

Q About how many days after the 13th of April?

A To the best of my recollection two or three days, not more than that.

Q And did that conversation have reference to this piece of paper, People's Exhibit 4 for identification, was that part of the conversation? A Part of the conversation, yes, sir.

Q Did that have something to do with therefreshing of your recollection as to the transaction involving People's Exhibit 4 for identification, the paper I have just shown you?

A Yes, sir.

Q And now, will you describe just as accurately as you can, the person who presented at your window on the 13th, this check People's Exhibit 4 for identification?

MR. STEUER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

MR. STEUER: I respectfully except.

BY THE COURT:

Q Go on now, just kindly tell us. A There were several people at my window at the time, and the party was in line, and glancing up, as it was a bearer check, and we do not pay

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as strict attention to a small check as we would a large --

Q No, tell us now his appearance, you are asked that?

A The appearance was somewhat my own build, dark, with a small dark mustache.

BY MR. MANLEY:

Q You say a small dark mustache? A Yes, sir.

Q When you say small dark mustache --

MR. MANLEY: Question withdrawn.

Q Can you be any more specific than what you have been, and say anything else about his features? A No, sir, I cannot.

Q He of course had a hat on, I suppose? A He had a derby hat on.

Q A derby hat? A I believe so.

BY THE COURT:

Q What kind of coat? A I believe he was dressed, your Honor, in dark clothes.

BY MR. MANLEY:

Q Can you state about how tall he was? A About my build. I am about five feet five and a half.

Q About your height? A Yes, sir.

Q Stand up, please, about your height? A Yes, sir.

(The witness stands)

Q How does his weight, can you say, compare with yours?

A I should judge he would weigh about 150 to 160 pounds.

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Q Now, this was in April, 1908? A Yes, sir.

Q Do you recall whether or not that individual had an overcoat on? A No, I can't say.

Q That is all.

MR. STEUER: Will you let me see People's Exhibit 4 for identification, please?

(Mr. Manley hands paper to Mr. Steuer).

CROSS EXAMINATION BY MR. STEUER:

Q How many people, Mr. Baker, did you see at that window during the week that you took the paying teller's place? A The number of people at the window?

Q Yes. A I never counted them.

Q Well, you have not counted them? A No, sir.

Q But a large number? A Yes, sir, a large number of people.

Q And is it very unusual that a check for \$2 and some cents should be received for payment at the bank?

A No, sir.

Q I think I understood you to say that when the amount was so small you do not pay any particular attention to it?

A Not -- do not pay as much attention to a person that presents a check like that as we do a large amount, a check made payable to an individual.

Q Yes, if it was a large check, and the person came to

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get money on it you would be very careful about it, naturally? A Yes, sir.

Q In order to safeguard the bank and to safeguard your depositor? A Yes, sir.

Q Now, on this occasion that you have reference to, when People's Exhibit 4 for identification was presented to you, do you say that there were a number of people in front of the window? A Probably half a dozen people, sir.

Q Now, this compartment that you were in, is ordinarily called a cage, isn't it? A Yes, sir.

Q Now, this cage, was it constructed about the same as cages, paying teller's cages in other banks, Mr. Baker?

A Yes, sir.

Q And you are familiar with the construction of the cages in the banks in the City of New York, are you not?

A In some of them.

Q I mean by that as to height, width and general appearance? A Yes, sir.

Q Now, about how broad is the window that you have to that paying teller's cage in your bank, Mr. Baker?

A About 18 inches.

Q And how high, or first, I withdraw that -- what is the frame work of the cage, from the outside, Mr. Baker?

A The upper portion is glass and iron work.

Q Glass and iron work? A Yes, sir.

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Q The iron is a lattice, isn't it? A Lattice work.

Q By that I mean, bars crossing each other rectangularly, some perpendicularly and others horizontally? A Yes, sir.

Q Making a square possibly an inch and a half or two inches square? A Openings, you mean?

Q Yes, bars, I am not speaking --

BY THE COURT:

Q (Interposing) About how much open space is there between the bars? A About an inch and a half.

BY MR. STEUER:

Q About an inch and a half, that is what I said. Now, the window that you have for the passing out of the money, there is a swinging door attached to that, is there not, so that you close and open it at will? A Yes, sir.

Q That, I suppose, opens from the inside, away from the lattice work, does it not? A Yes, sir.

Q And that you open at the opening of the bank, I presume, and close when you are through paying out money? A No, sir.

Q Don't you close it at the closing hour of the day? A That window is simply opened to pass out large sums of money and silver that is too bulky, that is, to pass through the small place for the money to go through.

Q Then, do you mean when you pass out a check, that you do not pass it through this little window? A The space

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between the iron work and the bottom, the money is passed through. This door is simply opened when the amount is too large to pass through that.

Q So that in front of you there is lattice work made of iron that we spoke of, and the glass? A Yes, sir.

Q And that glass is rather opaque glass, isn't it?

A Clear.

Q Like the windows here, is it, or isn't it heavy ground glass? A It is not ground glass. It is clear glass.

Q Well, you have the glass in front of you, and you have the lattice work in front of you, is that right?

A Yes, sir.

Q How high, Mr. . Baker, is the partition itself?

A The height of the partition?

Q Yes, sir. A I should judge about 7 feet.

Q And above that is the lattice work, or how high does the lattice work go? A No, sir. There is more lattice work, then large panes of glass and lattice work at the top.

Q And the partition you say ~~it~~ ~~was~~ is about 7 feet high? A About 7 feet. 

BY THE COURT:

Q In other words, from the floor to the top of the top of the lattice work is about 7 feet? A Yes, sir.

Q And from the top of the lattice work to the ceiling it is clear and open? A Yes, sir.

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BY MR. STEUER:

Q And the space from the window, or the little opening rather, to the level of the partition proper, how much is that? A Around four -- not four, three and a half feet, about. You mean from the floor to my counter, or the partition that I pay out?

Q From the floor to your counter, in height? A I should judge about three and a half feet, but not over four.

Q Now, can you tell the weight of any other person that presented a check for payment that day, on the 10th of April, or the 13th of April? A I can't tell the weight, sir.

Q And all that you saw, or that was the only time that you saw this man on the 13th of April, wasn't it? A Yes, sir.

Q All that transpired between you and this man, transpired in about two or three minutes, did it not?

A Yes, sir.

Q Less than that? A No, sir.

Q Is not that so? A In about three or four minutes.

Q And what you got was practically a glance at the man, wasn't it? A Yes, sir.

BY THE COURT:

Q You saw him, as I understand, on two occasions, which were within a few minutes of each other; first, when he handed in the check without any endorsement to you, and when you said something to him, and secondly, when he returned the

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check with the endorsement on it? A Yes, your Honor.

BY MR. STEUER:

Q Are you in a position to say that you saw the man write, Mr. Baker? A The party turned his back to me, went to the desk, as I told you, at the window, I saw him pick up a pen and he started to write, and I was attending to another customer.

Q So that you are as reasonably certain as a human being can be that the man who spoke to you on that day is the man who wrote the endorsement on this check? A Yes, sir.

I S I D O R E G O L D S M I T H, being called and duly sworn as a witness on behalf of the People, testified as follows:

MR. MANLEY: I simply wanted to ask Mr. Baker one question, or you will probably concede that \$2.30 was paid upon this check?

MR. STEUER: I will concede anything you want upon this check, Mr. Manley. I do not want the jury to misunderstand, that I am conceding it was paid to the defendant.

MR. MANLEY: Oh, no, to the person at the window. I simply desire a concession that the person who presented it on that day to Mr. Baker received the \$2.30 called for by the check.

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DIRECT EXAMINATION BY MR. MANLEY:

Q Where do you live, Mr. Goldsmith? A 8787 Bay 24th street, Bensonhurst.

Q Where did you live in April, 1908? A 1808 Bath avenue.

Q Were you in business there? A Yes, sir.

Q What was your business? A Meat business, butcher.

Q How long had you been in the meat business at that address at that time? A About 12 years.

Q Did you have an account in the Mechanics Bank, Central Branch, in Brooklyn, at that time? A Yes, sir.

Q How long had you had an account there? A About four years.

Q Can you tell us whether you had that account under the name of I. Goldsmith or Isidore Goldsmith? A Always under the name of I. Goldsmith.

Q What is your first name? A Isidore.

Q Did you see this defendant on the day of his arrest?
A I did.

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

Q Do you know a person named I. Gottlieb, or S. Gottlieb?
A No, sir.

Q Did you ever know a person by the name of S. Gottlieb?
A No, sir.

Q I show you People's Exhibit 1-A and 1-B for identifica-

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tion, and ask you when it was that you first saw those two pieces of paper? A The first of that check I saw on the 13th of April, 1908.

Q On Monday? A On a Monday morning, yes, sir.

Q In whose possession was it, who had it when you first saw it? A Mr. Daiches.

Q Where was Mr. Daiches when you first saw this check in his possession? A At my store, 1808 Bath avenue.

Q Just answer this yes or no, did you have a talk with him about this check? A Yes, sir.

Q Is that your signature on People's Exhibits 1-A and 1-B for identification "S. Goldsmith"? A It is not.

Q Did you draw that check, People's Exhibit 1-A and 1-B for identification, or authorize anybody to draw it?

A I did not.

MR. MANLEY: I offer this in evidence.

MR. STEUER: No objection.

(Marked in evidence with the same numbers, People's Exhibits 1-A and 1-B, and Mr. Manley exhibits same to the jury.)

Q I show you People's Exhibit 4 for identification, take it and look it over and tell me whether you have seen it before or not? A I did.

Q On what date did you first see that? A The date the check was drawn.

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Q The day that the paper was drawn? A Yes, sir.

Q What date was that? A April 9th.

Q 1908? A 1908, yes, sir.

Q Is that your signature "I. Goldsmith" at the bottom?

A Yes, sir, it is.

Q Did you write the body of the check, the words "bearer and two and 30/100"? A I did not.

Q Who wrote the body of the check, apart from the signature? A My bookkeeper.

Q Where was it you made out this check People's Exhibit 4 for identification? A In my store.

Q At Bath Beach? A Yes, sir.

MR. STEUER: Is that Bath Beach or Bath avenue?

THE WITNESS: That is the same thing.

Q Now, to whom was it you delivered People's Exhibit 4 for identification when you made it out?

BY THE COURT:

Q Whom did you hand it to? A To a stranger.

BY MR. MANLEY:

Q Had you ever seen that man before? A I did not.

Q Was it a man? A A man.

Q Did you know his name? A I did not.

Q Did he tell you his name? A I asked him his name.

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Q Did he tell you? A It was not necessary.

Q That is, he said it was not necessary? A Yes, sir.

Q Was that man this defendant? A No, sir.

Q Now, you say that you had a talk on the 13th with Mr. Daiches, is that right? A Yes, sir.

Q After the talk with Daiches, did you go to the Mechanics Bank, Central Branch? A I did.

Q The same day? A No, two days afterward.

Q What day was that that you went there?

A On a Tuesday, the following day.

Q That would be the 14th? A The 14th.

Q Just answer this yes or no: Did you there and then have a talk with Mr. Baker, the last man on the stand?

A I did.

Q And as a result of that talk, did you see People's Exhibit 4 for identification?

A I did; yes, sir.

Q Who had it at the bank when you saw it there?

A The bank -- the bookkeeper.

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Q Did you see Baker have it in his hands ? A Mr. Baker showed it to me, but he got it first from the bookkeeper.

BY THE COURT:

Q When you say bookkeeper, you mean the bookkeeper of the bank ? A Yes, sir.

BY MR. MANLEY:

Q Now, at the time when you delivered this check to the stranger on Monday -- A (Interrupting) Not on Monday, on Thursday.

Q Yes, on Thursday, that's right, that is my mistake, the 9th, the date of the check, did it have the words on the back of the check that it now has ? A There was no name on it whatever.

BY THE COURT:

Q You mean there was no name on the back ? A On the back of the check.

MR. MANLEY: I desire to offer in evidence this check, as a standard of comparison of the handwriting of Mr. Goldsmith.

MR. STEUER: How is Mr. Goldsmith's handwriting in issue in this case ?

MR. MANLEY: Do you object to my offering it in evidence at this time ?

MR. STEUER: As a standard of comparison of Mr. Goldsmith's handwriting, I do.

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MR. MANLEY: Then I withdraw it.

BY MR. MANLEY:

Q Now, after you had gone to the bank and had a talk with Baker, did you come to New York ? A I did, the same day.

Q Did you go to Mr. Daiches' store ? A No, I went to the station, corner of 5th street and First avenue.

Q To the station house ? A The station house.

Q Did you there have a talk with the police officers ?

A I did.

Q What officers did you see there ? A I saw the Lieutenant. The Lieutenant put Mr. Lorber and Mr. Kuhn on this case.

Q Then, you then saw officers Kuhn and Lorber, who have testified here on the stand, did you ? A Yes, sir.

Q Was any particular date given to you when you were to return to New York ?

MR. STEUER: I object to that as incompetent.

MR. MANLEY: I withdraw it.

Q Did you come to New York on Wednesday, the 15th ?

A Yes, sir.

Q Where did you go ? A To Mr. Daiches' store.

Q How long did you stay there ? A About fifteen or twenty minutes.

BY THE COURT:

Q What time did you get there ? A About 2 o'clock.

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BY MR. MANLEY:

Q After you left Daiches' store, where did you go ?

A I went with one of the officers, in fact the two officers, and the messenger boy, to University Place and 8th street, in the Telegraph Office.

Q When you got into the Telegraph Office, did you see the defendant there ? A He was not there.

Q Did you go outside then ? A I walked around for a little while.

Q Who did you walk around with? A One of the officers, Mr. Lorber.

Q Did you afterwards see Max Mane ? A Yes, sir.

Q Where was he when you first saw him? A 9th street, University Place near 9th street. I think that is the way it runs.

Q Did you hear any conversation between anybody and Max mane on the street before he was taken to the Telegraph Office ?

A Mr. Lorber approached --

BY THE COURT:

Q Just yes or no. A Yes, sir.

BY MR. MANLEY:

Q What conversation did you hear ? A Mr. Lorber approached --

MR. STEUER: I object to that.

THE COURT: I will allow it. The conversation now

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is between persons and this defendant in the presence of this witness.

MR. STEUER: That is after the arrest was made.

THE COURT: It does not appear so.

MR. STEUER: I respectfully except.

BY MR. MANLEY:

Q Go on. A Mr. Lorber approached --

THE COURT: If your contention is, regarding statements made by the defendant after arrest, that they were made as the result of fear produced by threats, or under compulsion of any kind, you are allowed to examine the witness always preliminarily, before the conversation is given. In the absence of a claim of that kind, the witness may give his testimony. Go on.

BY MR. MANLEY:

Q What was said on the street? A Mr. Lorber approached the defendant and asked him what he was doing there. He said he was looking for a loft.

Q What else was said? A So he says "This is a very funny place to look for a loft". He says "They are mostly private residences around here", and the messenger boy was present at the same time. So the officer asked this messenger boy if he was the man that sent him out with the note.

MR. STEUER: I object to the conversation with the messenger.

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BY THE COURT:

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Q Was the defendant there ? A Yes, sir.

THE COURT: I will allow it.

MR. STEUER: On the ground that it is not binding on the defendant, and I take an exception.

A He asked the messenger boy if this was the man that sent him out with the envelope about an hour ago, and he says " Yes, sir."

BY THE COURT:

Q What did the defendant say ? A He denied it. He says he was a peaceable citizen looking for a loft in that locality, and was an outrage that he should be disturbed.

BY MR. MANLEY:

Q Anything else said by anybody on the street at that time ? A Mr. Lorber asked this messenger boy particularly again "Are you positive this is the man that sent you out with the note?" He says "Positively, and if you bring him back to the Telegraph Office, I will leave it to my boss, to the superintendent of the office." Mr. Lorber took the defendant to the messenger's office.

Q What happened there ? A When we came there, he saw the manager of the Telegraph office and he says "Have you ever seen this man before?"

MR. STEUER: I object to that as entirely incompetent.

MR. MANLEY: I withdraw that.

THE COURT: The words "Have you ever seen this man

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before" are stricken out, and the jury are instructed to disregard them.

Q After you got to the Telegraph Office with the defendant, who was there in the presence of the defendant ? A There was messenger boys and the manager of the Telegraph Office.

Q Tell us what was said in the presence of the defendant Mane ? A Officer Lorber asked --

MR. STEUER: I object to that as not binding upon the defendant.

The same ruling and exception.

Q Go on. A Asked this manager of this office if he saw this man before. He said "Yes, sir, about forty or forty-five minutes ago, that same man was in the office and asked for a messenger."

Q Give us the entire talk you heard ? A The manager of the office told this Mr. Lorber that he showed him a small boy and this man objected to this boy and says he wanted the biggest boy he had in the place, and thereafter the manager of the office produced this Mr. Group -- something like that.

Q What else was said -- give us everything ? A Mr. Group and the defendant left the place, that's what the manager of the Telegraph office told Mr. Lorber at the time I was present.

BY THE COURT:

Q What did the defendant say, if anything ? A He denied that he was ever in the Telegraph Office before, and he never

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saw the manager or the messenger boy.

BY MR. MANLEY:

Q Now, did you leave the Telegraph Office after awhile ?

A Yes, sir, from the Telegraph office we walked to Daiches' place.

Q You went to Daiches' place ? A Both officers, the messenger boy, myself and the defendant.

Q Just tell us everything that took place in Daiches' place in the presence and hearing of the defendant ?

MR. STEUER: Objected to as not binding upon the defendant.

Same ruling and exception.

A The moment we came in Mr. Daiches' place, the officers, the defendant, the messenger boy and myself, Mr. Daiches turned right around and says "Why, this is the man that was here last Friday and presented me with this check."

BY THE COURT:

Q What did the defendant say ? A He denied it, he says he never saw Mr. Daiches before, and had never been in his place of business.

BY MR. MANLEY:

Q Go on. A Then the man inside the counter, he turned around and said "Why, sure, that's the man that was here last Friday."

Q Who was the man that said that ? A He was on the stand

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here, Mr. Daiches' brother-in-law.

MR. MANLEY: Mr. Hayman, stand up, please.

Q Is that the man that you refer to (indicating a person standing up). A That's the man.

Q Go on. A So they showed him the check and they showed him the note which he sent.

BY THE COURT:

Q Who did they show the check to? A To the defendant.

Q Yes. A And they wanted to compare his writing with the writing in the note and on the check, and it tallied, the same writing.

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

THE COURT: Strike it out, and the jury will disregard it.

BY THE COURT:

Q What else, if anything, was said to the defendant?

A Well, that he was the man that was in the place the previous Friday.

BY MR. MANLEY:

Q Now, as I understand it, you saw this defendant write in the Telegraph office, did you? A Yes.

Q What did he write? A He wrote his name.

Q He wrote what name? A S. Gottlieb.

Q Now, did you see the defendant Mane write the name

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"S. Gottlieb" ? A I did.

Q Did you see him write it more than once ? A He wrote it at least four or five times.

Q I now show you People's Exhibit 1-A in evidence, and ask you whether, in your opinion, the man that wrote the signature "S. Gottlieb" in this store, that is, in the Telegraph Office, also wrote the name "S. Gottlieb" on People's Exhibit 1-A in evidence ?

MR. STEUER: Objected to.

MR. MANLEY: A per son who has seen anothe r write, is competent to express an opinion. The weight of it, of course, is for the jury.

THE COURT: The witness is competent to express an opinion as to whether certain writing is the handwriting of a given person.

BY THE COURT:

Q You have seen the defendant write ? A I did.

THE COURT: You may ask him whether the writing on the back of that check is, in his opinion, in the handwriting of the defendant.

MR. STEUER: Will your Honor permit me to examine him with respect to that before that question is asked ?

MR. MANLEY: He has testified plainly that he has seen him write. That is all the law requires. Of course, having seen him write once, it goes to the weight of the

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evidence, but not to its admissibility.

THE COURT: I am inclined to think that he is qualified, counsel, to express an opinion, but that the weight, if any, to be given to his evidence, is for the jury, and of course it is open to you to cross-examine him.

MR. STEUER: You mean, after he has given the testimony ?

THE COURT: I mean to say after he has answered the question, it is competent for you to cross-examine him. I think that the situation now is very much the same as though I had not, as though, as the result of certain preliminary inquiries, I had determined that he was qualified to answer the questions.

MR. STEUER: I respectfully except.

THE COURT: Have you any authority on the point ?

MR. STEUER: I did not anticipate that this question was going to arise at all, the fact is, your Honor.

THE COURT: You know, ordinarily, on the question of the competency of a witness, it is a familiar rule that if it is contended that he is not qualified, and it appears that his qualifications are open to question, there may be a preliminary examination. I am rather inclined to think that, under the authorities, where a man says that he has seen another write, and is familiar with his handwriting, that he can express an opinion.

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MR. STEUER: The objection then is overruled ?

THE COURT: Well, is there anything you care to urge on the point ? I want to rule correctly on it, counselor.

MR. STEUER: I assume that your Honor does, but if a man can, two years ago, see a man write once while he is in the custody of two officers and surrounded by another person, and ~~he~~ sees him write one name, and then he is competent to judge of his handwriting, if that ever was the law, if it ever is the law, if it ever becomes the law, the law should be changed. I submit to your Honor, it never was the law, I am quite certain it is not the law, and I hope it never will be.

MR. MANLEY: Now, if the Court desires, I will show Mr. Steuer it is the law.

MR. STEUER: You want to show me the case of the People against Monahan ?

MR. MANLEY: Yes, that is one.

MR. STEUER: Now, please, do not show me that, because really I think every boy has read that.

THE COURT: The only question is, counselor, whether you have the right at this stage before the witness expresses in response to this question an opinion, the only question is whether you have the right to conduct what is commonly known as a preliminary examination, but inasmuch as -- I think you have the right, counselor, to in-

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terrogate him as to whether he ever did see this defendant write.

MR. MANLEY: Yes, that is true.

MR. STEUER: Why, he has testified to that. What is the use of asking him that, Judge?

THE COURT: That is for you, counselor, to determine.

MR. STEUER: If I am limited to the inquiry as to whether he saw him write, he has said he saw him write, and I do not hope to make a man change in two minutes what he has said, a man on the stand, who has said he saw him write, how can I get him to change that?

THE COURT: It is entirely for you to say, counselor whether you desire to interrogate him upon that point.

MR. STEUER: No, sir.

THE COURT: I overrule your objection.

MR. STEUER: I respectfully except both to the denial of the privilege to examine before he answers -- I mean to say that I except to that portion of the denial which limits me to ask anything except whether he ever saw the defendant write, because that privilege, of course, the Court has accorded me; I do not claim that has been denied, but I except to the ruling permitting him to answer on the ground that he is absolutely unqualified.

MR. MANLEY: I understand that is overruled?

THE COURT: Yes. Repeat the question.

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Q (Question repeated by the stenographer as follows):

"I now show you people's Exhibit 1-A in evidence, and ask you whether, in your opinion, the man that wrote the signature 'S. Gottlieb' in this store, that is, in the Telegraph Office, also wrote the name 'S. Gottlieb' on people's Exhibit 1-A in evidence". A In my opinion at that time --

MR. STEUER: No, wait a moment.

BY MR. MANLEY:

Q We simply want a yes or no answer.

THE COURT: Yes, the answer is stricken out, and the jury will disregard it.

BY THE COURT:

Q You pay attention to the question, and if you understand it, answer it.

THE COURT: Repeat the question again.

(Question again repeated by the stenographer).

A Yes, sir.

Q Now, at the time of this transaction, at about that time, did you look up your cancelled checks? A I did.

Q People's Exhibit 1-A bears the serial number 308; did you find among your cancelled checks serial number 308? A I did.

Q And you looked that up about how long after the 15th of April, 1908, that cancelled check, serial Number 308?

A A couple of days afterwards, when that check was --

MR. STEUER: Wait a moment, please. Do not volunteer

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so much.

BY THE COURT:

Q Now, you have answered.

BY MR. MANLEY:

Q Now, are you in the habit of keeping your cancelled, that is, your stubs of checks that you yourself retain after drawing checks ? A Yes, sir.

Q Do you have the book which you are using, the cancelled check book which you were using in March or April, 1908 ?

A I have not.

Q What has become of it ? A I generally keep it for a length of time, and then I destroy it.

Q Have you made a search for that particular cancelled check book of 1908 ? A Yes, sir.

Q Have you been able to find it ? A I destroyed it. I remember very well.

Q How long ago was it you destroyed it ? A Less than two months ago.

Q I understand you to say that you did find serial number 308, is that so ? A I beg pardon?

Q (Question repeated). That is, the correct check that you had drawn, No. 308 , A Yes, sir.

Q Do you know what has become of it ? A I kept it a year after this took place.

Q Did you ever have it in the District Attorney's office ?

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A I had it here in this court half a dozen times. I had it in my pocket and it finally went to pieces, and I threw it away. I didn't think I would have any use for it.

Q Did you ever show it to any of the Assistant District Attorneys, that you remember? A Yes.

Q Do you remember what their names are? A Assistant Smyth, Assistant Howe, and I forget the first name that was on this case.

Q Do you remember about how long ago it was you showed it to Mr. Smyth? A About nine or ten months ago.

Q Was that -- A (Interrupting) Probably less than that.

Q Was that on the top floor of this building? A The top floor of this building, yes, sir.

Q Did you take it away with you after you had shown it to Mr. Smyth? A Yes, sir.

MR. MANLEY: You may cross-examine.

CROSS EXAMINATION BY MR. STEUER:

Q Now, the only time that you claim to have seen this defendant write was in that Telegraph office, wasn't it?

A Yes, sir.

Q That was on the 15th of April, 1908? A The 15th.

Q Is that right? A Yes, sir.

Q And he was standing up at the time, was he? A He was on University Place, near 9th street.

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Q Well, he was standing up while he was writing, wasn't he ? A Yes, sir.

Q What did you see him write on ? A The officer made him write his name.

Q Made him write his name ? A "S. Gottlieb".

Q Oh, what did you see him write on ? A I did not take any particular notice if it was a card or piece of paper, I don't know.

Q You mean to say you did not pay sufficient attention even to see whether it was on a card or paper ? A No, I didn't pay any attention to that.

Q And in your opinion, it does not make any difference whether the writing is on thick cardboard or whether it is on paper ? A It was not on thick cardboard. It was on a business card, if anything.

Q So in your opinion it does not make any difference whether a writing is done on a printed card or whether it is done on a check ? A No.

Q The thickness of the paper does not enter into it with you at all ? A No.

Q The kind of pen does not enter into it at all ? A It does.

Q Then you knew, did you, with what kind of pen the signature "S. Gottlieb" was written on People's Exhibit 1-A ? You know the kind of pen that "S. Gottlieb" was written on

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that paper with , A A regular writing pen.

Q Why, did you see that written too? A No, I did not.

Q Well, how do you happen to know , A Well, my opinion it was a regular ordinary writing pen.

Q Oh, in your opinion it was an ordinary writing pen?

A Yes.

Q Have you made a study of handwriting? A Not a bit.

Q Now, was there anybody standing around the defendant while he was writing ? A Two officers.

Q You ~~at~~ do not think that makes any difference as to the appearance of a man's writing, do you ? A I don't know.

Q And he was writing just what he was told to write, wasn't he ? A He was asked to write "S. Gottlieb".

Q Wasn't he told even how to write it ? A Not that I recollect.

Q You don't recollect? A No, sir.

Q Was he told to write it more than one way? A He was asked to write it two or three times in the Telegraph Office, and several times in Mr. Daiches' store.

Q And both of these papers, the one he wrote in the Telegraph office, and the one he wrote in Daiches' office, have disappeared, haven't they ? A The officer I know had them next morning in court.

Q But they have disappeared since that time ? A I don't know anything about that.

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Q Now, I ask you if, in the Telegraph Office, he was asked to write more than one way ?

BY THE COURT:

Q He does not mean more than one time, but whether he was told not merely to write, but to write in different ways.

A No, only the name of "S. Gottlieb". That's all he was asked to write.

BY MR. STEUER:

Q But wasn't he asked to write that name backhand and also frontwards ? A No, sir; he was not.

Q Who was the one asked him to write ? A One of the officers.

Q Were you standing inside the counter or outside ? A No, sir, outside the counter.

Q Where was he , A Outside the counter.

Q Where were the officers ? A Outside of the counter.

Q On which side of him were the officers ? A I believe one to the right and one to the left.

Q And while an officer was standing to his right and another officer standing to his left, he was standing up writing, you could see him write ? A Yes.

Q That is all.

BY THE COURT:

Q How many times did you see him write the name "S. Gottlieb" in the Telegraph Office ? A Probably two or three times.

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Q How many times did you see him write it in Daiches' store ? A About the same amount, but I can't exactly stipulate the amount, but about two or three times.

Q So that you saw him write the name "S. Gottlieb" four or five times , A Yes, sir.

Q On two separate occasions , A On two separate occasions.

RE-DIRECT EXAMINATION BY MR. MANLEY:

Q I show you this book and ask you if you have ever seen one like it before ? A Yes, sir.

Q In April of 1908 did you have a blank check book on the Mechanics Bank like this , A I did.

Q With three checks on a page , A Yes, sir.

MR. MANLEY: I ask that this be marked for identification.

(Marked people's Exhibit 5 for Identification).

Q That is all.

RE-CROSS EXAMINATION BY MR. STEUER:

Q Just pardon me a moment. How long are you in this country? A About twenty years.

Q And did you go to school here , A No, sir, I did not.

Q Where did you go to school? A In Germany.

Q Did you ever learn to write English at all? A I learned it through business.

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Q You write English, do you ? A Yes, sir.

Q And all the English writing that you do yourself, is what you have picked up while you have been in business ?

A What I have picked up, yes, sir.

Q You never learned it in any school? A No, sir.

BY THE 9TH JUROR:

Q At the time the defendant wrote the several names "Gottlieb", was a comparison made at that time with the name "Gottlieb" on the back of the check? A You ask me that ,

Q Yes. A Yes, sir.

Q Was that signature on the back of the check, in your opinion, by the same party who wrote on the pieces of paper at either of the places ? A Yes, sir.

MR. STEUER: With all due deference to the juror, I respectfully object.

MR. MANLEY: Well, that is the same question I asked.

MR. STEUER: I mean no disrespect, Mr. Juror, but I certainly want to preserve the defendant's rights, and I do not think he is qualified to testify. That is why I would like to put an objection on the record before he answers.

MR. MANLEY: Well, you have one, because that is the same question.

MR. STEUER: I want everybody to understand just what

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the situation of the attorney for the defendant is.

MR. MANLEY: I have no other witnesses here at the present time, if the Court please, trusting there would be an adjournment at the usual hour.

THE COURT: Very well.

Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, nor to form nor express any opinion thereon until the same is submitted to you.

The Court will stand adjourned until Monday morning, January 17th, 1910, at 10:30 o'clock A.M.

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New York, January 17, 1910.

TRIAL RESUMED.

MR. STEUER: May it please your Honor, I should like to repeat the request that I have made of this Court once before, that these exhibits in this case should be placed where the defendant might have an opportunity to have somebody examine them. The learned District Attorney promised me that they would be at our disposal on Saturday, but they were at our disposal in a locked desk, with the man who held the key absenting himself from the building, under the absolute promise that at 9:15 this morning they would again be at our disposal where somebody might examine them. We went to considerable trouble and expense to get somebody to come down here again at 9:15 this morning, with the result that the person got them at six minutes after ten and they were taken from him at 22 minutes after ten.

Now, that gentleman must go to the United States Court and perform services there, and it will be impossible for him to examine them during the day, and I most respectfully urge upon your Honor that these exhibits, that it should be arranged that they should be placed at his disposal at 4:30 this afternoon, so that he might make a proper examination of them, in order that he may be able

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to give this jury some intelligent opinion.

MR. MANLEY: Now, I want to say in response to Mr Steuer, that when the exhibits were put in evidence, they went into the custody of the Court, and he has made this statement before the jury. I am perfectly willing that Mr Steuer should have these exhibits. He is entitled to have them to prepare his defence. Now, on Saturday I was in my office and somebody representing Mr Steuer came to my office and inquired for the exhibits. I told him they were in the custody of the Clerk of General Sessions, and that he should go there, and there was no reason in the world, as far as I know, why he should not see them, and to-day some one from Mr Steuer's office again comes to me and I told him the same thing, and I even myself joined in the request that he should see them.

MR. STEUER: Well, but do you dispute the fact that they were in a locked desk and that the man who had the key was peculiarly absent?

MR. MANLEY: I do not know that.

MR. STEUER: Then what is the use of making speeches. We are entitled all the time to have these exhibits. How can this man exculpate himself, when they say it is his signature and he says it is not, unless he has this opportunity afforded him?

THE COURT: I may say, Mr Steuer, for your informa-

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tion, that I have every reason to believe and do believe that every facility was extended to your office for the examination of these exhibits. I have every reason to believe and do believe that your office had ample opportunity to examine the exhibits.

MR. STEUER: When, your Honor?

THE COURT: And every opportunity will be accorded to your office to examine the exhibits during the trial, including an examination of the exhibits at half past four this afternoon, if you desire it, for such length of time as your experts may consider necessary.

Now, we will proceed with the trial.

MR. MANLEY: The man who was absent^{and}/had this key is not an employe of our office, and I do not know who he is.

THE COURT: Proceed now, Mr Manley.

MR. MANLEY: If the Court please, I forgot a matter. There is a juror that I understand wants to speak to your Honor.

THE COURT: Now, wait a moment, gentlemen, is it desirable at this stage of the trial that a juror should say anything to the Court?

MR. STEUER: I do not know anything about the matter. I am sure I have no objection to the juror saying it. I do not know what it is about or anything of that sort. I have not the slightest objection to it.

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MR. MANLEY: I certainly have not.

THE COURT: I will hear what you have to say, Mr Juror. You can stand up.

THE SEVENTH JUROR: If the Court please, before this case goes any further, I have discovered on Saturday last, Saturday evening last, that this defendant was introduced to me several months, and while this is the fact that the learned District Attorney has the selection of the jury, I thought it best to bring it up before the Court. I did not know at that time, but Saturday last I have discovered it.

THE COURT: Do you feel, Mr Juror, that you can try this case fairly and impartially upon the evidence?

THE SEVENTH JUROR: Yes, sir.

THE COURT: Do you feel that you can try this case without regard to the circumstance that this defendant was at one time introduced to you?

THE SEVENTH JUROR: Yes, sir.

THE COURT: Do you feel that that circumstance will wholly uninfluence you in the rendition of a verdict?

THE SEVENTH JUROR: Yes, sir.

THE COURT: It will not influence you at all in any way?

THE SEVENTH JUROR: Not in any way.

THE COURT: Is there objection to proceeding, Mr

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Manley?

MR. MANLEY: Not a bit.

MR. STEUER: I am perfectly willing that the juror be excused and go on with eleven jurors.

THE COURT: We will proceed. The criminal law will not permit of that. It might be in a civil case, but not in a criminal case.

MR. STEUER: Oh, I beg your Honor's pardon. I did not know that.

J O H N C. W H A R T O N, M. D., being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q You are a physician and surgeon? A Yes, sir.

Q Now, Doctor, speak up loud so that we can all hear you? A Yes, sir, I am.

Q Where do you live? A 214 East 18th street, New York.

Q About how long have you lived at that address?
A I think about four years.

Q Were you living in April, 1908? A I was.

Q And describe that house, what is it, an apartment house or a private dwelling? A A private dwelling.

Q How many stories has it? A Three and a basement.

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Q Did you have a person living at that address in April of 1908 by the name of S. Gottlieb? A I don't recall any such name.

THE COURT: What name, Mr Manley?

MR. MANLEY: S. Gottlieb.

Q That is all.

THE COURT: Any cross-examination?

MR. STEUER: No, sir.

J O H N J. H A N I F Y, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q Mr Hanify, what is your business? A Record Clerk of the Court of General Sessions.

Q Record Clerk of the Court of General Sessions?

A Yes.

Q Now, as such, ^{what} do you have charge of in that office, of the Clerk of General Sessions? A Care of the exhibits, among other things.

Q And when you say care of the exhibits, you mean exhibits from what courts? A Police Courts, Magistrate's Courts.

Q That is, if I understand you then, you take charge of the exhibits that come down from Magistrate's Courts after a man is held for trial? A Yes, sir.

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Q I show you original complaint in the case of the People against Max Mane, dated April 16, 1908, and ask you if you find any endorsements in your handwriting upon that complaint?

A Yes, sir, I do.

Q Do you find any endorsement upon that complaint in reference to a receipt? A Yes, sir.

Q What is that endorsement?

MR. STEUER: I object to that.

THE COURT: Objection sustained.

Q Did you make the endorsement at the time indicated in the date in that complaint? A Yes, sir, when the complaint was received here I detached the exhibits.

MR. STEUER: Wait a moment.

THE COURT: The answer is "Yes," Mr Witness.

Q Now, are you able to state from the records in your office, you now have before you, whether or not you received from the Magistrate's Court an exhibit known as a receipt?

A Yes, sir.

Q Did you? A Yes, sir.

Q Are you able to state from the records of your office which you made at the time and which you now have before you, what other exhibits you received from the Magistrate's Court?

A Yes, sir.

Q What are they? A One check and one order.

MR. MANLEY: That is all.

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THE COURT: Any cross-examination?

MR. STEUER: No, sir.

DAVID N. CARVALHO, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q Mr Carvalho, what is your business? A I am an examiner of questioned handwriting, inks and paper.

Q And how long have you been in that business? A Thirty-nine years.

Q Have you been exclusively in that business for thirty-nine years? A Outside of writing and matters connected incidentally with my profession.

Q I suppose you have given the subject of handwriting, the study of handwriting, the comparison of handwriting, much thought and attention? A No man more so, sir.

MR. MANLEY: I suppose, Mr Steuer, you will admit the qualifications of Mr Carvalho?

MR. STEUER: Yes, sir, except that I do not see how Mr Carvalho can say that no man gave it more thought. I admit he is qualified as an expert.

THE COURT: Very well, then, you can omit the preliminary inquiries.

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Q Now, Mr Carvalho, I show you People's Exhibit 1-A and 1-B, and People's Exhibit 3, and ask you if you have seen them before? A I have.

Q You have seen them where? A I have seen them at your office and seen them in the anteroom here.

Q And you have made a study of those exhibits, have you? A I have.

Q Now, first, Mr Carvalho, I show you People's Exhibit 3, and ask you whether or not you are able to say that the writing upon that sheet, which is in ink, with the exception of the writing at the upper left hand corner, No. 1, is in the same handwriting or not? A In my opinion, it is.

Q That is to say, Mr Carvalho, I call your attention to the words "S. Gottlieb" at the bottom of this letter, and also call your attention to the body of the letter, written above "S. Gottlieb," and I understand you to say that the words "S. Gottlieb" and the writing of the letter above "S. Gottlieb", are in the handwriting of the same person? A That is what I said, sir.

Q I now show you, Mr Carvalho, People's Exhibit 1-A and 1-B, and call your attention to the writing on the back side of People's Exhibit 1-A "S. Gottlieb", and ask you whether or not you are able to tell whether the writing "S. Gottlieb" is written by the same person who wrote the writing that I have

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just called your attention to in People's Exhibit 3?

MR. STEUER: That question is in form objectionable, your Honor.

THE COURT: Yes, it is. Are you able to express an opinion with reasonable certainty?

MR. MANLEY: Yes, I will accept that amendment.

MR. STEUER: I admit he is able to express an opinion. The question might be asked him what is his opinion without further ceremony.

THE COURT: Very well.

BY MR. MANLEY:

Q What is your opinion, Mr Carvalho? A I have formed an opinion.

Q What is that opinion? A In my opinion, the hand that wrote "S. Gottlieb" on back of Plaintiff's Exhibit 1-A, or People's Exhibit 1-A, is the same person, the same hand that wrote the ink writing contained on the letter signed "S. Gottlieb".

THE COURT: Being People's Exhibit what?

MR. MANLEY: People's Exhibit 3.

BY MR. MANLEY:

Q Now, I ask you, Mr Carvalho, if you are able to form an opinion as to whether the handwriting in the body of the check, People's Exhibit 1-A and 1-B, is written by the same

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person who wrote People's Exhibit 3?
the signature?

A Do you include

Q Not the signature "S. Goldsmith". A The signature
is left out?

Q Yes, the signature is left out? A I have formed an
opinion.

Q What is your opinion? A The person who wrote the
body of the check, the body writing in the check, is the same
person that wrote Exhibit 3.

Q That is to say, if I understand you correctly, in your
opinion, the person who wrote People's Exhibit 3, being this
letter, is the same person who wrote upon People's Exhibit 1-A
and 1-B "S. Gottlieb" and "One hundred and nine dollars and
eighty-six cents", and in figures \$109 86/100"? A That is
correct.

Q Now, I call your attention, Mr Carvalho, to the signa-
ture of the alleged drawer upon the check People's Exhibit 1-A
and 1-B, the words "S. Goldsmith". Will you tell me whether
or not you find anything peculiar with regard to that signa-
ture?

MR. STEUER: I object to that as immaterial.

A Viewed in its altogether--

MR. STEUER: Wait a minute.

THE COURT: I will allow him to describe the signa-
ture.

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Q Will you describe the signature, Mr Carvalho?

MR. STEUER: I object to that, on the ground that that is not any issue framed in this indictment. I do not understand the purpose of it.

MR. MANLEY: Well, I withdraw the question. That is all.

MR. STEUER: I have no questions.

MR. MANLEY: That is all, Mr Carvalho. Thank you.

THE COURT: Mr Carvalho, you might just wait a moment. Well, that is all?

MR. MANLEY: That is all.

DAVID SCHELL, a witness recalled on behalf of the People, testified as follows:

THE COURT: Mr Manley, let me ask you, is the complaint in the Magistrate's Court an exhibit in the case?

MR. MANLEY: No, sir.

BY MR. MANLEY:

Q Mr Schell, at the time when this defendant came to your telegraph office in University place and Eighth street and gave this letter to you for delivery, as indicated upon the envelope, did he pay you the price of the messenger fee? A No, sir.

Q Did he at any time? A No, sir.

Q That is all.

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ISIDORE GOLDSMITH, a witness recalled on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. MANLEY:

Q Mr Goldsmith, last Friday you testified as to drawing a check on the 8th day of April, 1908, for \$2.30 to a stranger?

A Yes, sir.

Q Did you owe that stranger anything? A I did not.

Q At the time when you drew the check for \$2.30 to him, did he give you anything? A \$2.30.

Q Gave you \$2.30 in money, did he? A Yes, sir.

Q Now, just answer this yes or no: Did he have a talk with you as to the reason why he wanted you to draw him that check? A Yes, sir.

MR. MANLEY: If the Court please, with the exception of a desire to recall Mr Daiches, who is not here at the present time, for the purpose of asking him one question, I have no other evidence and I rest.

MR. STEUER: What is the question? Is there any objection to telling me what it is?

MR. MANLEY: I wanted to ask him, having seen the defendant write in his jewelry store, whether in his opinion the person that wrote in his jewelry store also wrote the endorsement on the back side of the check People's Exhibit 1-A.

MR. STEUER: Well, except that I object to the com-

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petency of the testimony, I am willing to concede that Mr. Daiches will say so.

THE COURT: Very well. It will be considered that he was recalled, that he was asked that question, that objection as indicated by counsel was made, overruled and exception taken, and that he thereupon answered that it was.

MR. STEUER: May it please your Honor, with respect to this other objection in the testimony of Mr. Goldsmith, I should like to amplify that objection by putting in these words, in addition to what I then said, and equally in the objection to the questions propounded to Mr. Daiches just now, and I object to it on the ground that neither of them qualified to give opinion evidence upon the subject of the inquiry.

THE COURT: Yes, it will be considered that your objection embraced that ground.

MR. MANLEY: The People rest.

MR. STEUER: The defendant moves for a dismissal of the indictment, on the ground that no case has been made out against this defendant.

THE COURT: Motion denied.

MR. STEUER: The defendant excepts.

(Mr. Steuer thereupon opened the case on behalf of the defense).

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M A X M A N E, the defendant, being called and duly sworn as a witness on behalf of the defense, testified as follows:

BY THE COURT:

Q Now, when you answer questions, will you kindly talk loud enough so that all the jurors hear you? A Yes, sir.

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Mane, where do you live? A 65 West 113th street.

Q How long have you lived there? A Nearly three years.

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

Q How long have you been married? A Married eight years.

Q How long have you been in the City of New York, Mr. Mane? A I am here since 1891.

Q During that time, have you been employed in various employments? A Yes, sir.

Q With what firms? A I was with L. Mane & Company, Mane & Bernstein.

Q That is your brother's firm? A Mane & Parker; Erlanger & Reis and I was in business for myself.

Q How long were you in business for yourself? A Two years.

Q In what line of business? A Dry goods.

Q Where? A 139th street and Eighth avenue.

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Q Now, Mr. Mane, I want to show you a paper marked in this case People's Exhibits 1-A and 1-B. Will you look at the papers, please, that are marked People's Exhibits 1-A and 1-B, and look at the bottom of it and see if you notice there the name, on the back, I am asking you, if you notice the name S. Gottlieb"? A Yes, sir.

Q Is that your writing or did you write it? A I did not write it.

Q Did you know of its being written? A No, sir.

Q Did you have anything to do with its being written?

A No, sir, not at all.

Q Did you know anything of the existence of the paper?

A No, sir.

BY THE COURT:

Q When did you first see the paper? A First seen the paper when I was arrested. When I was taken to the telegraph office on Eighth street and University Place.

BY MR. STEUER:

Q Mr. Mane, will you look at the paper marked People's Exhibit 3 and tell the jury whether any part of that is in your handwriting? A No, sir.

Q When was the first time you ever saw that paper, Mr. Mane? A At the same place as I stated before, the telegraph office.

Q The same place you saw Exhibits 1-A and 1-B? A Yes.

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Q Did you know anything of the creation or existence of that paper before that time? A No, sir, I did not.

BY THE COURT:

Q When you say that you first saw it at the telegraph office, about what time of the day was that? A When the detectives brought me in there.

Q In other words, it was after you were placed under arrest that you first saw that paper? A Yes, sir.

BY MR. STEUER:

Q Now, Mr. Mane, will you please tell the jury how you happened to go to that telegraph office that afternoon?

A It was on April 15th, 1908, on a Wednesday afternoon, I was downtown looking for a loft. As I was employed to go in the postal card business for a firm from Chicago, the International Postal Card Company, they wanted to open up a branch here in New York, and I was recommended by Mr. Strauss, 97th street and Amsterdam avenue, to these parties in Chicago, to act as manager and salesman, and on Wednesday the 15th, I was, I met Mr. Henry, attorney for the company.

BY THE COURT:

Q Now, keep your voice up good and loud, twelve men want to hear you. A Yes, sir.

BY MR. STEUER:

Q Go on, Mr. Mane. A I met Mr. Henry, attorney for the company, and was with him until one o'clock, and then I

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took my dinner and I went downtown, and at first I went to the office of Julius Friend & Company, 793 Broadway.

BY MR. MANLEY:

Q Julius what? A Julius, or Frederick Fox & Company. I beg pardon, 793 Broadway.

BY THE COURT:

Q Try and talk a little louder, Mr. Mane, twelve men want to hear you. A Frederick Fox & Company, 793 Broadway, and I ^{and} seen Mr. Gerety there, ~~who~~ asked him for different places where I could have a loft, and he said that he was kind of busy, that he had to look it up, and he was going to mail me a list, and I would get it next day. So I gave him the address as 97th street and Amsterdam avenue, care of the Amsterdam Department store.

BY MR. STEUER:

Q Whose place is that? A Mr. Joseph Strauss'.

Q That was the gentleman that had recommended you to this Chicago concern? A Yes, sir.

Q Now, let me interrupt you there a moment. I will ask you, did you hear from Mr. Gerety next day? A Yes, sir.

Q r show you an envelope and letter, and I ask you if you received both of those? A Yes, sir, that's the letter.

MR. STEUER: I offer them in evidence.

THE COURT: They are marked for identification.

Defendant's Exhibits A and B.

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MR. MANLEY: I object to them being put in evidence.

(Marked Defendant's Exhibits A and B for identification).

MR. STEUER: I offer those in evidence.

THE COURT: Mr. Manley, you look at them.

MR. MANLEY: I object to them at this time, until they are connected.

THE COURT: I will receive them, subject to being connected. You may move to strike out if not connected.

MR. MANLEY: Moreover, this seems to be addressed to N. Mane.

MR. STEUER: May I ask your Honor what connection I am to make, so that I may understand your Honor? I have a right to account for his actions on the 15th of April, and for the purpose of showing that he was at that office, and that he was seeking a loft I have produced this letter in reference to his request for lofts. I do not see how I -- I can of course put Mr. Gerety on the stand.

THE COURT: You can produce the writer of the letter?

MR. STEUER: Oh, is that what you mean? I have no objection to that.

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THE COURT: /all that appears, it may have been written by the defendant himself.

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MR. STEUER: Very well, then, I will put the gentleman on the stand.

THE COURT: I will receive it subject to being connected.

(Marked in evidence as Defendant's Exhibits A and B and read to the jury by Mr Steuer.)

BY MR. STEUER:

Q What is your name? A My name is Max Mane.

Q There is not any "N" in your family, is there? A No, there is not.

Q That is obviously an error? A That is an error.

MR. STEUER: We will produce Mr Gerety to show you this is the man he saw.

Q Mr Mane, after you left the office of Frederick Fox & Company, where did you go? A I walked to the office of Julius Friend & Company, 732 Broadway.

BY MR. MANLEY:

Q Julius What? A Julius Friend & Company, F-r-i-e-n-d.

Q What did you do at the office of Julius Friend? A I waited there for a gentleman and when he came I told him I was looking for a loft to go into the postal card business for a firm in Chicago that wanted to open up a branch, and if he had any available place that I could go to.

Q Do you remember who the gentleman was that you saw?

A Yes, sir.

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Q What is his name? A Mr Hirschback.

Q Then, what did Mr Hirschback say or do? A He went to work and looked at a book and wrote down two addresses for me. One was at 401 Lafayette street and the other was down in Spring street, the Prescott Building.

Q Did you take the card upon which he wrote those addresses? A I did.

Q Will you look at this card, please, and tell the jury whether that is the one, and whether the handwriting on it is the handwriting of the gentleman whose name you gave?

A Yes, sir, he gave me that card.

Q Now, do you observe--

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THE COURT: Now, that will be Defendant's Exhibit C for Identification.

(Marked Defendant's Exhibit C for Identification.)

Q Do you observe in lead pencil writing figures and so on on that card? A I do.

Q Who put those on? A I did.

Q Where did you put those on there? A I put those on after I had seen the place.

Q Where did you go after you got this card? A I went to 401 Lafayette Street, to the firm of Glassbrook & Company, at that time.

BY MR. MANLEY:

Q Glassbrook? A Glassbrook & Company, at that time.

BY MR. STEUER:

Q Did you know any member of the firm of Glassbrook & Company? A I did not.

Q When you got to that loft, did you see anyone who was in possession of it? A I did.

Q Whom did you see? A I seen a gentleman which I found out afterwards was Mr. Rodberg.

Q Up to that time you had absolutely no acquaintance with Mr. Rodberg of any kind? A I did not.

Q What, if anything, did you do with Mr. Rodberg?

A I showed the card to Mr. Rodberg that I received from Mr. Hirschback, and he said All right, "I will show you the place

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what I have to offer", and he stated the price what I could have it at.

THE COURT: Is it not desirable to elicit from this witness the hours of the day?

MR. STEUER: Yes, your Honor, that is important, I am going to that.

Q Now, what time did you go to Messrs. Glassbrook & Company, whatever the name of that firm was? A I got there at 2:40.

Q And what time did you leave Mr. Rodberg, do you know?

A I left there at 3:10.

Q Where did you go from there? A After I left Mr. Rodberg's place I walked down to Lafayette Street and towards Astor Place.

Q Yes? A And along 8th Street to Broadway, and then along Broadway to 9th Street, and then west to University Place on 9th Street.

Q Now, at that time, what, if anything, happened? A Well, I had walked --

THE COURT: Referring now to what time, the time he got to University Place?

MR. STEUER: Yes, sir.

BY THE COURT:

Q Go on? A I walked down towards 8th Street, then turned back again, going on to 9th Street, and on the way

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back, in the middle of the street, there was a messenger boy and he had looked at me before I proceeded right on, and went on the corner, going, walking ahead, and when I got to the corner there was two men coming across the street, and one of them got hold of my arm and says, "Young man, you have to come along".

BY MR. STEUER:

Q Now, tell the jury just what the conversation was?

A I wanted to know by what right he had to stop me, walking along peacefully, attending to my business. He said that I had to go along. I said, "What for, who are you, anyway?" And he told me he was an officer and he had to take me along. I says, "Well, I have been looking around for a loft in this vicinity, and I can take you to the places where I was and prove to you that I am telling you the truth". He said he could not take me there, that he had to take me along, and if I was not the man they wanted, they would leave me go. So I says, "All right, I will go along with you", and he took me to the telegraph office on 8th Street and University Place, and there they asked the messenger boy whether I was the man, and the messenger boy said yes. Then I told the messenger boy, "You are mistaken, you never seen me before, I never was in this place before". Then the officer asked the man behind the counter whether I was the man, and he said yes, and the officer asked him then, "Did he have a red necktie on, did

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he have a scarf-pin, did he have an umbrella?" So he answered yes to those questions. Then the officer made me write. He says, he showed me papers first and asked me if I had written it, and I says, "No, I did not, I never seen these papers". Then he made me write. He says, "Write the name S. Gottlieb", and so I did.

Q How many times did you write it? A I wrote it twice. I wrote it regular straight way of writing, but I told him that I wrote back-hand sometimes, and I wrote it that way, and he says, "You wrote that, that is just like the letter". I says, "It is not, it is nothing like it." He says, "It is".

BY MR. MANLEY:

Q Who said that? A The officer said, "That is just like it." I said, "It is not, it is nothing like my handwriting at all, I never had these papers before, I don't know anything about that." So from there he went and they took me along to Third Avenue near 9th Street, in a jewelry store, and there they, when we came in there, there was a man behind the counter, Mr. Daiches, and he was asked whether I was the man, and he did not say yes right away, he was walking up and down behind the counter, and then he said, "I wish my wife was here". I told him that he is mistaken, when he did say yes. The officer wanted to know because he, because the officer said he had to say one way.

BY THE COURT:

Q Keep your voice up? A The officer said that he had

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to tell one way or the other, so he says he would make a complaint against me. Then they took me down to the police station. On the way one of the officers asked me if I ever lived in 18th Street, and I told him that I did not, I never lived downtown since I am in this country, I always lived uptown. When we got down to the police station they made a complaint, and the Sergeant in charge told the detective to search me, and he went through my pockets and looked at different papers, and then they took me downstairs afterwards. Just before that --

MR. MANLEY: Just a minute. Is this in response to any question?

THE COURT: Well, he is stating everything that happened.

MR. MANLEY: Well, I cannot move to strike out if it is incompetent, unless it is in response to some question.

THE COURT: Yes, that is a fact. You ask him questions, Counselor.

BY MR. STEUER:

Q Now, after that, you communicated with your family and you were released on bail? A Yes, sir.

Q Now, did you ever go to Mr. Daiches' store and there say that you wanted to purchase a necklace, and then when he said they don't keep any, did you there select a watch in his place? A No, sir; I did not.

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Q Did you ever go to this telegraph office and deliver anything for delivery to a messenger? A No, sir; I did not.

BY THE COURT:

Q When were you for the first time in Mr. Daiches' store? A The first time on April 15th, when the detectives brought me there.

BY MR. STEUER:

Q Are you willing to write for the jury right here?

A I am.

Q Anything that the District Attorney wants you to write? A Anything they require.

MR. STEUER: Now, may he be handed paper, may it please your Honor?

MR. MANLEY: Now, if the Court please, I should be highly delighted if the defence would produce samples of the handwriting of this defendant which is prior to the 15th of April, or rather the 9th of April, 1908. I should be delighted to receive such, if he will produce them. Under the rule, if a defendant wants to produce samples of handwriting, where the question of forgery is in issue, the law states that the writing which the defendant produces must be prior to the date of the crime charged in the indictment.

MR. STEUER: Well, as I understand, your Honor, I not only produce papers --

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THE COURT: Well, you are going to produce papers of that kind?

MR. STEUER: Yes, sir; but they are in the possession of the expert at this time.

THE COURT: Very well, then, permit me to make a suggestion at this time, Mr. Steuer. I perhaps have not followed it as closely as I should. Have all the People's Exhibits that are alleged to have been in the handwriting of this defendant been shown to him?

MR. STEUER: As I understand it, yes, your Honor.

THE COURT: You have shown him the check.

MR. STEUER: Yes, your Honor.

THE COURT: Did you show him the other papers?

MR. STEUER: Yes, your Honor. You will recall, Judge, that you asked him when it was that he for the first time saw Exhibit 3, and he told you it was after he was arrested.

THE COURT: But I think there are other exhibits.

MR. STEUER: If there are, I do not recall any, your Honor.

THE COURT: I think there is a receipt.

MR. MANLEY: There are only three exhibits. There is the check and receipt and order.

THE COURT: Yes, I think he showed him only two, I may be wrong.

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MR. STEUER: Well, where is that receipt? Your Honor is entirely right. I did not show him that. I thought I was right about that. That is not alleged to be in the defendant's handwriting. That is in Mr. Daiches' handwriting.

THE COURT: Is not there alleged to be a signature there in the defendant's handwriting?

MR. MANLEY: Not on that particular exhibit I handed to Mr. Steuer.

THE COURT: Very well, then, the only papers which are alleged to have been in the handwriting of the defendant and which are exhibits in the case have been shown him, is that so?

MR. STEUER: Yes, your Honor.

BY MR. STEUER:

Q Now, I show you a paper which has been marked in this case People's Exhibit 2, and ask you whether you ever received any such paper from Mr. Daiches?

BY THE COURT:

Q Whether you ever received that paper from Mr. Daiches?

A No, sir; I did not.

BY MR. STEUER:

Q Did you ever receive that paper from Mr. Daiches in your life? A No, sir; never in my life, I never met the gentleman.

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MR. STEUER: Now, may we have paper handed him so that he may write?

MR. MANLEY: If the Court please, I want to object to that and state my grounds. The sole question at issue is whether the defendant wrote People's Exhibit 1a and 1b. The rule is very well known and the law is so settled that there is no doubt about it, that a writing that a defendant produces for the purpose of comparison between the alleged false signature and his own, acknowledged to be his own, must be before the transaction happened with which he is charged. Nothing is easier than for a defendant, knowing what the signature is, to simulate on the stand the handwriting, and in the shape of the writings that are made since the time it happened. Now, I have no objection whatever to the defendant producing all the handwriting he wants to produce which is prior to the 9th day of April, 1908.

THE COURT: Do you contend, Mr. Steuer, that the rule is other than as stated by Mr. Manley?

MR. STEUER: I contend that he may write in the presence of the jury, and particularly in such a case as this, where your Honor has received evidence of two people, concededly not experts, one of whom stood behind and away from him when two officers stood alongside of him, and they were permitted to say that on that paper he

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wrote at that time, it looked like the handwriting, or that was the same as the handwriting on the check.

THE COURT: Mr. Manley, this particular question has not been presented to me before, and I will very much appreciate it if you will let me have your authorities.

MR. MANLEY: I am addressing the Court on the authority of the Mutual Life Insurance Company against Sweeter, 131 N. Y. 557. Now, that opinion reads as follows: "A party who claims that the signature in question in the action is not hers has the right under the acts of 1880 and 1888 to give in evidence specimens sworn by her to be her own signature and made before the controversy arose, in order to use them as standards of comparison." The same thing is reported in Molineux, in 168 New York.

THE COURT: Do these cases go to the point that that right is exclusive? That is to say, that there is not the additional right to write and offer in evidence something written at the trial?

MR. MANLEY: No. I think that they cover the entire point. They are very explicit.

THE COURT: In other words, do these cases say that a person may not offer and have received at the trial writings made during the progress of the trial?

MR. MANLEY: I understand them so, because it is

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simply otherwise a self-serving declaration, and nothing is easier than to disguise one's handwriting to make it look different, and if made before, then there is no reason for disguise.

MR. STEUER: Well, the jury will be able to see if he writes now --

THE COURT: Counselor, there is no necessity for any discussion. I will look at the authorities, and as soon as I get them, we will see. This case is what page?

MR. MANLEY: In 131, page 557.

THE COURT: There is a very brief note on the subject, Mr. Steuer, in Stevens, in his work on Evidence, and that note is to this effect, citing two cases, it says, "A person's signature or other writing made in court at the trial will not generally be allowed to be used for comparison". One case cited is a Massachusetts case; the other case is a New York case reported in 6 Daly, 29. In the Molineux case, at page 326, it says, "Writings created post litem motam, are inadmissible in favor of the party creating them", citing Chamberlain's Best on Evidence, 236; Hickory v. The United States, 151 U. S. 303 -- and it goes on, "But we have found no case holding that such writings should be excluded when offered by the adverse party except" so and so.

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Seemingly, Mr. Steuer, the objection is well taken. Now, have you any authorities to the contrary?

MR. STEUER: I have not examined for any authority, but I know what the situation was in the Molineux case. May it please your Honor, that was not a case where the People made any objection to testimony offered by Molineux. when Molineux did not take the stand ~~in~~ that case was decided. He did not offer to write in court or anywhere else. That objection was this, Molineux's counsel claimed that he was taken to the District Attorney's office and there was forced to write sitting in a particular position, holding the pen in a particular way, using a particular kind of paper and using a particular kind of pen, and they said that was not a fair specimen of the man's handwriting, when he was in that position.

THE COURT: I will just look at this case cited here, 151 U. S., 303. I will look at this one case, and this case that I am about to look at is decisive. When I get it I will rule. I will sustain the objection taken by the District Attorney, basing my ruling upon the remarks found at page 326, in the opinion of the Court by Werner, Justice, in the case of the People vs. Molineux, reported in 168 N. Y., the remark in question being, "Writings created post litem motam, are inadmissible in favor of the party creating them", and basing my ruling in particular upon the case there cited, namely,

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the case of the People vs. Hickory, reported in 151 U. S., at page 303. In that case it appeared that the defendant, being called in his own behalf, denied that a letter marked "A" was in his handwriting. His counsel offered a paper which the defendant testified he had written at the table in court that day, to compare with the writing on the document marked "X" as produced by a witness in that case, and also to compare the writing with the writing marked "A" offered in evidence in that case, and the Court excluded the evidence and the defendant excepted, and it was held by the Supreme Court of the United States that the ruling of the trial court in that regard was right.

Now, you may ask the next question.

MR. STEUER: I respectfully except.

BY MR. STEUER:

Q Now, on the Friday previous to that Wednesday, Mr. Mane, where were you between the hours of twelve and one, do you know? A I was to a dinner.

Q With whom? A With a party by the name of Abraham.

Q Where were you to dinner, do you remember? A 14th Street near Fifth Avenue.

Q How long, about, did you remain at dinner, until what time? A Until about a quarter to one.

Q What did you do then? A I went with Mr. Abraham to

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his office at No. 1 Union Square.

Q What did you do then? A And remained there with him until he went out, and I told him that I had a severe cold and I was going home, and he accompanied me to the subway station at 14th Street, and I went uptown.

Q Where did you go from the subway station at 14th Street?

A I went directly uptown, home.

Q There has been some testimony here that when you came into the telegraph office on the 15th of April, that you had a black raincoat on. Did you ever own a raincoat in your life?

A I did not, never had one.

MR. STEUER: You may examine. Or, pardon me, just a moment. Those papers have arrived.

Q How did you get whatever education you possess, Mr. Mane, in this city? A I went to night school here in New York City.

Q I show you two books, and I ask you to tell the jury, please, what they are? A Those are the books that I wrote in when I was at night school, when I came over from Europe in 1891, lessons that were given by the teacher.

MR. STEUER: I ask that they be marked for identification.

MR. MANLEY: Don't you think it would be better if you got the dates of them? What year was all this?

THE WITNESS: The dates are all in there.

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MR. STEUER: I do not know whether they speak for themselves or not, Mr. Manley.

(Marked Defendant's Exhibit D and E for Identification.)

Q Before you came to this country, did you know how to write? A Yes.

Q What language did you write in? A I wrote German and English both.

Q Where had you studied to write German and English?
A I studied in Germany, the City of Mannheim.

Q How old were you when you came over, Mr. Mane? A I was seventeen.

MR. STEUER: The dates, Mr. Manley, are in these writings.

MR. MANLEY: Well, the writings do not speak for themselves necessarily as to date, unless you connect them with this witness.

Q Were those written at the time you were going to night school, on the dates that are on these various copies?
A Yes, sir.

Q And is that equally true of the other book here?
A Yes, sir; the dates of each lesson.

Q Now I show you a little book marked on the outside, "Memorandum". Will you tell us, please, what that is? A These are the orders that I have taken from customers while I was in

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the employ of Erlanger & Reis, located at 10 West 18th Street.

Q In this city? A In this city; yes, sir.

MR. STEUER: Will you mark that for identification?

(Marked Defendant's Exhibit F for Identification.)

Q Those writings were all previous to the time when you were arrested? A Yes, sir.

Q Now, I show you a number of papers, checks, and I ask you in whose writing the signature on each one of those is?

A The signature on these checks is my signature.

THE COURT: Do you not think it desirable to have them all marked for identification?

MR. STEUER: I am having that done, yes, sir.

(A number of checks are marked Defendant's Exhibit G for Identification.)

Q I show you a paper and ask you in whose writing everything that is written on it is? A Yes, sir; my writings. I have written all these things.

THE COURT: That is also marked for identification.

(Marked Defendant's Exhibit H for Identification.)

Q I show you a number of papers in writing, and ask you -- first I show you an envelope with a letter enclosed in it, and ask you to tell us in whose writing it is? A That is my writing.

BY THE COURT:

Q You are referring now to the envelope? A Yes, sir.

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BY MR. STEUER:

Q How about the letter that is enclosed in it? A That is my writing.

Q From where was that written, Mr. Mane? A It was written from Madison, Wisconsin.

Q When? A On July 20th, 1902.

Q To whom was it written? A It was written to my wife.

MR. STEUER: Will you mark both the envelope and letter for identification?

(Marked Defendant's Exhibit I and J for Identification respectively.)

Q I show you two papers and ask you in whose handwriting they are? A That is my handwriting.

Q When were those written? A Those were written while I was in the employment of Erlanger & Reis.

Q And do you remember the dates of your employment with Erlanger & Reis? A I was there in the year 1907, up to the end of March, 1908.

Q What are those names written there? A Those are the names of people I called on while I was selling goods for them.

Q That was the trade that you visited? A The trade that I visited.

MR. STEUER: Will you mark that for identification?

(Marked Defendant's Exhibit K for Identification.)

BY THE COURT:

Q As far as possible, keep your voice up, because it

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is desirable that all the jurors should hear you?

A Yes, sir.

BY MR. STEUER:

Q Mr. Mane, what was it you were selling for Erlanger & Reis? A I was selling trimmings and ornaments to the cloak and suit trade, the manufacturing trade.

Q While you were selling for Erlanger & Reis, did you also have a right to collect moneys for them? A I did.

MR. MANLEY: I object to that as incompetent.

THE COURT: Objection sustained.

MR. STEUER: I except.

Q I show you some letters, not having any reference to the copies or typewritten replies at all, except the letters that are in ink. Will you tell us, please, in whose handwriting they are? A These letters are all in my handwriting.

MR. STEUER: Will you mark these for identification?

(Marked Defendant's Exhibit L for Identification.)

MR. STEUER: You may examine.

MR. MANLEY: You are not then offering these letters in evidence, but they are marked for identification?

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MR. STEUER: I want to use them as standards of comparison.

MR. MANLEY: Are you going to offer them, because I want to examine this defendant of course, if you offer them as standards?

MR. STEUER: Will you not just proceed and examine the witness?

MR. MANLEY: Yes, I will.

CROSS-EXAMINATION BY MR. MANLEY:

Q Now, you were arrested on Wednesday, the 15th of April, 1908, were you? A Yes, sir.

Q And where were you arrested? A I was arrested on 9th street, corner of 9th street and University place.

Q Corner of 9th street and University place? A Yes, sir.

Q On what corner were you at the time you were arrested? A The southwest corner.

Q About what time was it in the afternoon? A About half past three.

Q Were you walking or standing on the corner when you were arrested? A I was walking.

Q In which direction? A Walking towards 14th street.

Q South? A Going uptown.

Q Uptown? A Going uptown.

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Q Walking north? A Walking north.

Q You had just come from where? A I had previously been from 9th street and Broadway walking west to 9th street and University place, and then back to 8th street, and then turned back again and going to West 14th street.

BY THE COURT:

Q Just state that again? I want to get that in my mind. You had been where? A I was walking from 9th street back to 8th street, and at 8th street I turned back going towards 14th street.

Q In other words, you walked from 9th street to 8th street on University place, is that so? A University place, on the west side.

Q When you got to 8th street, and University place, you turned back? A I turned back and walked towards 9th street, towards 14th street, intending to go to 14th street.

Q And you were in the act of walking at the time you were placed under arrest? A Yes, sir.

BY MR. MANLEY:

Q I understood you to say that on Friday, the 10th of April, 1908, you took dinner with a man named Abraham, is that so? A I did.

Q At 14th street and Fifth avenue, is that right?
A 14th street near Fifth avenue, yes, sir.

Q What was the name of the place where you took dinner

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or lunch? A The name of the place is the "W h y" restaurant.

Q What time was it that you took lunch with Mr Abraham?

A After or--between 12 and 1, up to a quarter of one.

BY THE COURT:

Q What side of 14th street is that restaurant on, or is Fifth avenue? A It is on the north side of 14th street.

Q East or west of Fifth avenue? A East of Fifth avenue.

BY MR. MANLEY:

Q How long a time did you spend with Mr Abraham in the restaurant? A Spent half an hour.

Q You got there then at about what? A A quarter after twelve.

Q Now, you are pretty sure it was about a quarter ~~at~~ after twelve? A Yes, sir.

Q And you stayed there how long? A Stayed there half an hour for lunch.

Q Well, that would bring it up to a quarter to one, would it? A Quarter to one, yes, sir.

Q After you had got through there, where did you go?
A I went with Mr Abraham to his office.

Q Where is his office? A At 1 Union Square at that time.

Q Yes, and how long did you stay in his office? A I stayed with him until after 1 o'clock, about 20 minutes after

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one.

Q About 1:20? A 1:20, yes, sir.

Q What business were you transacting with Mr Abraham on that day? A I was just making a friendly call. I promised him I would meet him at lunch time that day.

Q You did not have any particular business then to talk over with him? A No, sir.

Q When was it you promised him you would meet him that day at luncheon? A I promised to meet him the day before, on April 9th.

Q Where had you seen him on April 9th? A I seen him on Fifth avenue.

Q Where, near what street? A Near--between 14th and 15th street.

Q Just happened to meet him on the street? A Happened to meet him on the street.

Q When was the last time before the 9th you had seen Mr Abraham? A It was two or three weeks previous to that.

Q And you had made an arrangement to meet Mr Abraham on the 10th? A I had just met him on the 9th in the afternoon, and I told him I would see him for lunch to-morrow.

Q What is Mr Abraham's first name? A Jacob Abraham.
BY MR. MANLEY:

Q Where was it you first saw Mr Abraham upon the 10th?
A First saw him in his office.

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Q Then you went out to lunch together? A Yes, sir.

Q Any particular reason why you should want to talk with Mr Abraham upon that day? Just having a social chat with him?

A No particular reason.

Q Why didn't you have your social chat when you met him on Thursday, the 9th? A I just told him I am coming down the next day and meet him for lunch.

Q Why didn't you say whatever you had to say to him, if you had anything to say, upon Thursday, the 9th? A I didn't have anything particular to say.

Q Is he a man that you had seen frequently? A I used to see him, meet him frequently, yes, sir.

Q Did he ever call at your house? A No, sir, he did not.

Q Did you ever call at his house? A No, sir.

Q You say that before Thursday, which was on the 9th of April, the last time before that you had seen him was about three weeks before that? A Yes, sir.

Q When was the time before that that you had seen Mr Abraham? A I don't recollect, but I seen him frequently around that district, because he was selling to the same trade as I was.

Q Well, what were you talking over on that day, Friday, in the restaurant? A Just talking about business, how business was.

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Q Then, there was no particular reason why you saw Mr Abraham, simply having a social chat with him? A Exactly.

BY THE COURT:

Q You sat at the same table with him? A Yes, sir.

Q Any one else at the table? A There was a number of diners there at the time.

Q At the same table? A At the same table.

BY MR. MANBEY:

Q Did you see anybody else on that day and have social chats with them? A I did not.

Q Now, there was no business of any kind that you transacted with Abraham, was there, on that Friday? A None at all.

Q Simply met as two friends would meet, and had a little chat and dined together and went out. Now, you were arrested on the following Wednesday, weren't you? A I was.

Q Then, after you were arrested you had an examination in court, didn't you? A I had an examination in court next morning.

Q Did you know what the charge was against you and the evidence against you before the 15th, in court, which was Thursday? A I was not told exactly.

Q No? Then, on Thursday, you remember that you had this luncheon with Abraham at such and such time upon the preceding Thursday, is that so? A I did.

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Q And the details of it?

THE COURT: The preeeding Friday.

MR. MANLEY: The preceding Friday, I mean.

Q You remembered then it was a quarter past 12 when you first went in to dine and it was a quarter to one you went out, and it was 20 minutes after one when you left the office of Abraham, is that so? A I did.

Q How can you tell it was a quarter past 12 on Friday when you went to dine with Mr Abraham? A Well, when I was in his office we looked at the time.

Q How did you happen to look at the time? A I always take a watch with me.

Q And could you remember that you had taken your watch out? A Yes, sir, I did.

Q And how do you know it was a quarter to one when you got through having lucn with him? A Well, we took half an hour for our lunch.

Q You just judge that it took half an hour; you did not look at the watch, of course, that time? A At that time I did not look at the watch.

Q Well, how do you know it was 20 minutes past one when you left Abraham's office, on Friday? A When we left at that time, I looked at the watch, because I had a severe cold, and I wanted to go home.

Q Well, you can remember that you looked at the watch

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twice out of three times on Friday that we have been talking about? A Yes, sir.

Q What was the connection between a severe cold and looking at the watch at 1:20 on Friday? A I wanted to go home, because I had a cold.

BY THE COURT:

Q Where was your home on that day? A 65 West 113th street.

BY MR. MANLEY:

Q Well, now, what did you take, what route to go home on that day? A I took the subway express, 14th street, and directly uptown to the 110th street station.

Q You got home about what time? A Got home about 2 o'clock.

Q Now, you are pretty sure you got home at two?

A I am.

Q Did you look at your watch? A I did.

Q How did you happen to look at your watch when you got home? A I looked at the time as I usually do, when I get home.

Q Can you remember that you looked at your watch on that day, it was at two o'clock, or do you imagine you did because you always do? A No, I am positive I looked at my watch when I got home.

Q And you can remember looking at your watch? A I

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remember that I was looking at my watch when I came home, and it was about two o'clock.

Q Did your watch register exactly 2 o'clock? A Yes, I had a very good watch.

Q And it was two, that you remember exactly? A Well, it was about two o'clock, not later.

Q When you say about 2 o'clock, you have it far better than I have, what is your best impression as to the time, was it exactly two, or before or after? A It was before two.

Q How much before? A Ten minutes, any way.

Q Now, what was the time you got home? Tell the jury.
A It was about ten minutes to two.

Q Well, a moment ago you said two o'clock. Now, we want to be as exact as possibly. If you cannot tell that, we want to know, can you tell? A Well, I looked at my watch.

Q What time was it you looked at your watch? A It was ten minutes to two when I looked at my watch, when I got out of the subway, it was before two.

Q And when you got in your house about what time was it? A It was just near two o'clock.

BY THE COURT:

Q In other words, you calculate it took you about ten minutes to go from the subway station at 110th street to 65 West 113th street, is that so? A Yes, sir.

BY MR. MANLEY:

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Q When you got home, what did you do? A I came upstairs and my landlady asked me--

BY THE COURT:

Q What is her name? A Mrs Emma Geizler.

BY MR. MANLEY:

Q Geizler? A Geizler, at that time it was Mrs David Geizler. Her husband has died since.

Q What did you ask her? A She asked me, "How is it you are home so early, Mr Mane?" So I said, "I have taken cold, and I have come home early," and I went upstairs.

Q To your house, to your rooms? A To my rooms.

Q Well, on what floor did you live? A Top floor, a private house.

Q And you had quite a severe cold? A Quite a severe cold.

Q That being so, I suppose you stayed in your apartment, did you? A I did, never left them.

Q Had you finished the answer, never left? A Never left the house.

Q When you arrived at the door of your house, 65 West 113th street, did you have a key to let yourself in, or did you let yourself in? A I have a key.

Q And you opened the door yourself? A I do.

Q You did that day? A Yes, sir, always carry a key.

Q Where was this Mrs Geizler when you saw her at about

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two o'clock? A She was on the second floor.

Q In that house? A In the house, yes, sir.

THE COURT: Very well, Proceed, Mr Manley.

BY MR. MANLEY:

Q Who was there in your rooms when you got there that day? A There was no one home.

Q No one home at all? A No, sir.

Q Were you there alone then, I suppose, that afternoon?

A No, sir, my wife came home half an hour later.

Q What time did your wife come home? A Well, my wife came home at half past two.

Q Were you and your wife alone for the rest of the afternoon? A We were.

Q In your rooms? A In our rooms.

Q How many rooms did you have there? A We got four rooms. We occupy the top floor in that private house.

Q And you and your wife stayed there for the rest of the afternoon in your rooms? A We did.

Q And I understand you to say you were alone all the afternoon, is that so?

A I was home all the afternoon.

Q You do not understand me. I understood you to say you were alone all that afternoon? A I was, with my wife.

Q Well, you and your wife were alone in your apartments all that afternoon? A Yes, sir.

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Q Now, you are sure about all that, are you? A Yes, sir.

Q You have a pretty good recollection about it?

A Yes, sir, I have.

Q Did you go out again all that day? A I did not.

Q Stayed there and went to bed in your rooms that night, I suppose? A That night I went to bed.

BY THE COURT:

Q Did you have your dinner in your rooms? A Yes, sir.

Q What downstairs? A No, in my rooms.

BY MR. MANLEY:

Q And you and your wife were alone all through the evening as well as the afternoon, is that so? A In the evening we went down to Mrs Geizler.

BY THE COURT:

Q Keep your voice up. The jury want to hear? A In the evening we went down to Mrs Geizler, between 6 and 7.

BY MR. MANLEY:

Q Between 6 and 7 in the evening you went down to Mrs Geizler. A We did.

Q On what floor did Mrs Geizler live? A Just one floor below. She occupies the balance of the house.

Q Mrs Geizler is the lady with whom you had the conversation when you came in at two o'clock? A I did.

Q Where did she stand when you had that conversation. A She was on the banister upstairs on her floor.

Q And she spoke to you about getting home so early, and you said you had a cold or were sick? A Yes, I was not feeling well, and I went upstairs.

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Q That being so, I suppose that was the last time you saw Mrs. Geizler until you went down in the evening in that house? A Yes, in the evening, after supper.

Q That is so, is it? A Yes, sir.

Q Are you positive as to that? A I am.
town

Q Now, why was it that you went down that day? A What day, Mr. Manley?

Q On that day we are talking about, Friday, the 10th of April? A About half-past ten?

Q In the morning? A Yes, sir; went down late in the morning.

Q For what purpose did you go down town? A On Friday?

Q Yes? A I went down to meet -- for the purpose of meeting Mr. Abraham at lunch time.

Q Is that the only purpose you had in going down town? A I stopped off to see two parties.

Q Give me the names of the parties you saw that day besides Abraham? A I stopped in at two different places, one firm was A. Davis & Company.

BY THE COURT:

Q Just wait a moment. Talk so that you can be heard.
A. -- what? A A. Davis & Company.

Q Whereabouts? A 21st Street, between Fourth Avenue and Broadway.

BY MR. MANLEY:

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Q Yes, what else? A From there I went to West 20th Street near Sixth Avenue.

BY THE COURT:

Q Whereabouts, what place? A A firm by the name of A. Greenberg & Company.

Q Whom did you see at A. Davis & Company? A I seen the lady that used to do the buying, that used to give me orders when I was employed for Erlanger & Reis.

BY MR. MANLEY:

Q Now, did you go to any other places that day besides A. Davis & Company and Greenberg? A No, sir.

Q Any others at all that Friday? A No other firms except I went to meet Mr. Abraham at dinner.

Q Now, you went down town, got down town about half-past ten, you went over to see Abraham, and that was the main thing for going down? A I went at half-past ten down.

Q Yes, I say, you went down at half-past ten and your main object in going down was to see Mr. Abraham and take luncheon with him? A Yes.

Q But being downtown you stopped in two places, Davis's and Greenberg's, is that so? A I did.

Q And you did not stop anywhere else? A I did not.

BY THE COURT:

Q Where did you get off the subway? A At 23rd Street and Fourth Avenue.

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Q And you walked from there to A. Davis & Company?

A Walked from 23rd Street to 21st Street, and then going west towards the place where A. Davis & Company were located at that time.

Q How long were you at A. Davis & Company that morning?

A About fifteen minutes.

Q What was the name of the person that talked to you there? A I knew her first name was Ray; I don't know her second name.

Q When you left A. Davis & Company, where did you go?

A I went to A. Greenberg & Company.

Q How long were you there? A About fifteen minutes.

Q Whom did you talk to there? A I talked to the trimming lady, that done the buying.

Q What was her name? A Her name was Bertha.

Q About what time was it you left there? A About half-past eleven.

Q Where did you go from there? A From there went to the office of Mr. Abraham.

Q And that was where? A That was at 1 Union Square.

Q How many flights up? A I took the elevator up.

Q Who was in that place when you got there? A Mr. Abraham.

Q Anybody else? A I don't recollect anybody else, sir.

BY MR. MANLEY:

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Q Now, coming down to Wednesday afternoon, what time did you leave your house? A On Wednesday I left in the morning and I met Mr. Henry.

Q About what time did you leave your house? A About ten o'clock.

Q Met Mr. Henry where? A I met Mr. Henry at the Hotel Marlborough, Broadway and 36th Street.

BY THE COURT:

Q What is his first name? A Mr. Louis Henry.

BY MR. MANLEY:

Q What business did you have with him? A He was the attorney for the Postal Card Company in Chicago.

Q You had had a previous engagement to meet him? A I did.

Q How long did you stay with him? A I was with him until one o'clock.

Q One o'clock in the afternoon? A One o'clock, yes, sir.

Q Where did you go next? A I went to dinner.

Q Where did you go? A I went from Broadway, walking through Sixth Avenue and went in a restaurant.

Q Did you dine alone? A I dined alone; yes, sir.

Q Where did you go next? A From there I went downtown.

Q What is there about a telegraph office that you were talking about, as having gone to, on your direct examination?

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Did you say you had gone to a telegraph office on that day?

A No, sir.

Q You did not? You did not go to a telegraph office at all on that day, anywhere? A I did not.

Q Where did you meet Mr. Fred Fox? A I did not meet Mr. Fox. I met a young man attending to business there, Mr. Gerety.

Q Is he the first man that you met, Mr. Gerety, the first man that you met in the office and place that you mentioned? A Yes, sir.

Q What time did you meet him? A Met him at 2:05, five minutes after two.

Q What is that? A Five minutes after two.

Q Did you go to his place directly after lunch? A After lunch, yes, sir, after I was through with my lunch.

Q Where is his place of business? A His place of business is between 10th and 11th Streets.

Q On Broadway? A On Broadway; yes, sir.

Q What business did you have with Mr. Fox? A I wanted to know what places there was available lofts that I could have for the postal card business.

Q Is he in the loft renting business? A They are renting lofts.

Q Fox was not there when you got there? A No, sir.

Q Gerety was there? A Yes.

Q You got there at 2:05? A Yes.

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Q How can you tell you got there at 2:05? A I know how long it took me to go down there.

Q What do you mean, you simply judged it was that long, because you know how long it takes you to walk from the place where you lunched, down to Gerety's place? A No, I left Mr. Henry at one o'clock and then I took dinner, and that took me three-quarters of an hour, about. Then I went directly down to the office of Frederick Fox to inquire for lofts.

Q How long did you stay and talk with Mr. Gerety? A I talked to Mr. Gerety?

Q Yes? A About ten minutes.

Q Where did you go next? A Next I went to the office of Julius Friend.

Q Where is his office? A His office is near Astor Place, 732 Broadway.

Q Did you have some talk with Gerety about a loft? A I did.

Q Why did you go to Julius Friend's place? A Well, Mr. Gerety did not give me any names. He told me he would mail them to me. So I went to the next office, expecting to get some places, and in the next office I got two places.

Q You went to Friend's place for the purpose of looking at lofts, finding out something about lofts? A Yes.

Q Is he in the loft renting business? A Exactly.

Q How long did you stay there? A About fifteen min-

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utes.

Q Did you see anybody else there besides Mr. Friend?

A I did not see Mr. Friend.

Q Whom did you see? A There was a young lady came out first. Then she sent a tall gentleman by the name of Hirschback.

Q Yes, and did you talk with him? A I talked with him, what I wanted, and he gave me two addresses.

Q Were you working at this time? A I was employed to look for that loft.

Q You were working for whom at this time? A I was working for Mr. Joseph Strauss and the International Postal Card Company.

Q What were you doing for Strauss and the International Postal Card Company? A They employed me to manage their business in New York, that they were going to start in it.

Q Did they have a business in New York at that time?

A No, sir.

Q How long had you been employed by them up to this time? A I was employed on April 5th.

Q And you had been looking for lofts since the 5th, up to Wednesday, the 15th? A No, I have not.

Q What did you do before the 5th? A I was waiting for Mr. Henry to come on the 5th from Europe.

Q What was the last job you had had prior to going into

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the employ of this Postal Card Company, on the 5th of April?

A The last job I was with Erlanger & Reis.

Q How long before that? A The end of March I left.

Q What did you do with Erlanger & Reis? A I was selling goods for them.

Q Where? A To the cloak and suit trade.

Q Where, outside of New York, traveling? A In the City of New York.

Q How long had you worked for them? A I worked for them for almost two years.

Q How did you happen to go with the Postal Card Company?
A Mr. Strauss, who was a customer of mine, to whom I also sold goods, he made the proposition to me.

Q Did you yourself ever have a loft in New York for the transaction of business? A Did I have a loft?

Q Yes? A No, sir.

Q What sort of business were you going to do in this loft you were looking for? A Why, the International Postal Card Company of Chicago, they are importers of postal cards.

Q Yes? A And Mr. Henry, one of the proprietors, was in Europe at the time, and he was expected back about April 5th, and they engaged me to run the New York branch and go out selling for them in New York City, to see the large trade and the jobbers.

Q Were you going to have a place there where postal

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cards were kept and shipped out? A Exactly.

Q Now, you say you saw Mr. Hirschback, is that so?

A Yes, sir; I seen Mr. Hirschback.

Q And you wrote some addresses down on a card he gave you and you have still got the card, have you? A He wrote them down.

Q You still have the card? A Yes.

Q What time was it you left Fox & Company's office?

A I left Fox's at about 2:35, twenty-five minutes to three.

Q How can you tell it was 2:35? A Well, just about, I know the time it took me in his office. I know how long it took me.

Q Well, took you about thirty minutes. You got there at 2:05? A I got to Frederick Fox's at 2:05. You are speaking about Julius Friend?

Q How long do you think you had been in the office where Hirschback was, before you left at 2:35? A In the office of Hirschback I was fifteen minutes.

Q And you left there at 2:35? A 2:35.

Q Where did you go next? A I went next to 401 Lafayette Street, to the address he gave me.

Q Now, this other place you had been, Frederick Fox, and Julius Friend, were on Broadway, were they? A They were.

Q Where had you dined or lunched on Broadway? A I had dined uptown.

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Q That is before you came downtown? A Before I came downtown, yes, sir.

Q After leaving the place where you saw Mr. Hirschback, where did you go? A I went to 401 Lafayette Street.

Q Whom were you going to see there? A The name was on the card, was Glassbrook & Company.

Q That was given you by Hirschback? A Yes, sir.

Q Did you see somebody at 401 Lafayette Street? A I did. I went up the elevator and the gentleman, Mr. Rodberg, came to find out what I wanted.

Q That is over on the east side of Broadway, isn't it?
A That is east of Broadway.

Q Did you see a loft? A I seen the loft, yes, sir.

Q How long did you stay there? A I stayed there half an hour.

Q And you left there, then, about what time? A I left there at 3:10.

Q Yes, where did you go to next? A Then I went to, walked along from Lafayette Street to Astor Place and through 8th Street on to Broadway.

Q Yes? A Then I walked to 9th Street and Broadway.

Q Yes? A The corner where Wanamaker's new building is. Then I walked west to University Place, through 9th Street.

Q Yes; now, what is the address of this other loft that

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Hirschback had written down on the card for you? A He put down the Prescott Building.

Q Where is that? A That is Broadway and Spring Street.

Q Did you go and look there? A I did not.

Q Well, had you decided to take the loft at 401 Lafayette Street? A No, sir.

Q It was not satisfactory? A Well, I was to report to Mr. Strauss and the other gentleman.

Q Why didn't you go and see the other loft in the Prescott Building? A It was too far downtown.

Q At that time, the only addresses as to lofts you had was one in the Prescott Building, and one at 401 Lafayette Street, wasn't it? A At that time; yes, sir.

Q Now, you say that you went over to University Place, is that so? A I did.

Q First up Broadway to 9th Street, did you? A From Broadway and 9th Street, to University Place.

Q Where did you go from Broadway and 9th Street?
A Broadway and 9th Street, I walked directly to University Place, right through that block.

Q Where did you go when you got to University Place and 9th Street? A I just walked down towards 8th Street, in Broadway.

Q Then you walked back to 9th Street? A I walked back to 9th Street.

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Q Why did you walk back to 9th Street? A I didn't want to go further down on that street.

Q Why? A I did not want to look any further.

Q Why? A Because I did not want to locate any further in that section.

Q What made you change your mind and go back a block; you walked down and then back? A Intending to go home then.

Q What changed your mind, that made you retrace your steps for a block? A I thought, I expected the addresses the next day from the office of Frederick Fox & Company, and I would look after them.

Q As I understand it, you went through from Broadway and 9th Street to University Place and 9th Street? A Yes.

Q Then walked down to 8th Street? A Yes, sir.

Q When you reached the corner of University Place and 9th Street, and walked down to 8th Street, what did you intend to do? A I was just looking in that block to see if there was any signs up.

Q Did you see any signs up? A I did not.

Q Then you went back to 9th Street and University Place? A I did.

Q Why did you go there? A I was intending to go home, walking towards 14th Street, to take the subway home from there.

Q Yes, then you were walking right along, were you? A I

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was walking right along.

Q Are there lofts in that neighborhood, University Place and 8th Street? A There is lofts, yes, sir.

Q Right along all through there? A There is business buildings around there.

Q On what corner did you go on University Place and 8th Street? A I beg your pardon?

Q To what corner did you go when you walked south from 9th and University to 8th? A It is on the uptown corner.

Q Northeast or northwest corner? A Northwest.

Q Northwest? A Northwest.

Q That would bring you right across the street, then, from this telegraph office? A Across the street, it would.

Q Right across the street? A Exactly.

Q Is the telegraph office on the northeast corner?
A Northeast corner. I was on the northwest corner and I turned back.

Q If you wanted to see whether there were lofts or not over in that neighborhood, why didn't you walk more than one block south? A I had made up my mind previous to that that I was just going to look between 8th and 14th Streets.

Q Merely between 8th and 14th Street? A Merely between 8th and 14th Street, to see if I could see signs up.

Q When did you get the idea that you would not look south of 8th Street? A I got the idea when I started from

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Broadway already, that I would not go any further than 8th Street.

Q Then you were walking north, were you, at the time you were arrested? A I was.

Q And you were taken over to the telegraph office in the same block where you were, only across the street, is that so? A Yes, sir.

Q Did you see Charles Grouppe there? A I did.

Q Did you hear him say anything about you on the street? A I did not.

Q Didn't he say a thing on the street about you? A I don't recollect that he said anything.

Q Who was it spoke to you first? A The officer.

Q What did he say to you? A He said, "Young man, you have to come along".

Q Did you see Grouppe with him? A I don't recollect that I seen him. There was another gentleman along.

Q When was it you first saw Grouppe, that you can remember? A In the middle of the block.

Q After the officer had got you? A No, I first saw him in the middle of the block, when I was walking between 8th and 9th Street.

Q When you were walking south, you saw Grouppe? A When I was walking north.

Q And that was before the officer arrested you? A That

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was before, yes, sir.

Q What was there at that time that drew your attention to Grouppe? A I was just walking along on the west side of the street.

Q What was there attracted your attention to Grouppe?
A None whatsoever, just walking along, looking about.

Q And you had remembered after you saw him later on, that you had seen him at that point? A I remembered.

Q He did not speak to you or you probably did not speak to him, did you? A He did not speak to me then.

BY THE COURT:

Q When you first saw Grouppe, what was he doing, waslking, standing or what? A He was standing about in the middle of the block.

Q Was he dressed in messenger clothes or not? A He was.

Q In a messenger suit? A In a messenger suit.

Q Sure of that? A A messenger suit.

BY MR. MANLEY:

Q Now, that was in the middle of the block, was it?

A Yes, sir.

Q And you are positive he was in a messenger suit? I suppose that helped you identify him, didn't it? A Exactly.

Q Well, now, after you were arrested by the officer, where was Grouppe when you saw him again? A He was in the telegraph office.

Q And you then remembered that you had seen him before?

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A Yes, sir.

Q Now, on the way to the telegraph office, did you have some conversation with the officer? A I told him that I was looking for a loft in that section.

Q Did you tell him anything else? A And that I visited different real estate places, and asked him to go there and find out ~~them~~ if I was not telling him the truth.

Q When you got into the telegraph office did you see Mr. Schell? A I did not know the gentleman.

Q Well, the man you afterwards found out was David Schell and whom you have seen upon the stand? A Yes.

Q Did you hear him say anything in reference to you? A He said I was the man.

Q What was it he said you had done? A He did not tell me. The officer asked him if this was the man and he said yes.

Q That is all he said? A That's all I remember.

Q Did the officers ask you some questions in the telegraph office, either Kuhn or Lorber? A Asked me what I was doing downtown.

Q Well, they did ask you some questions? A They asked me what I was doing downtown.

Q Did you hear Charles Grouppe say anything about you in the telegraph office? A I did not.

Q He said that before on the street, did he? A He did

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not say nothing to him.

Q Did he at any time say you were the man that had sent him out with the envelope? A I only recollect that he said, "This was the man".

Q Where was it he said that, on the street or in the telegraph office? A In the telegraph office.

Q Now, you say you did some writing in the telegraph office, is that so? A I did.

Q And you have already testified that someone there said that the writing was the same, is that so? A Yes, sir.

Q Who was it said that? A One of the officers.

Q Officer Kuhn or Lorber? A Officer Kuhn said it.

Q Afterwards you were taken over to Mr. Daiches' place, were you? A I was.

Q What time was it you were placed under arrest, do you think? A About half-past three.

Q Now, did you see Mr. Daiches when you got over to his place? A I did.

Q What did Mr. Daiches say about you? A He did not say anything at first when he was questioned.

Q Nothing at all at first? A I don't recollect that he said anything.

Q Who spoke first when you got into Mr. Daiches' place? A The officer.

Q What did the officer say? A He asked him if this was

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the man.

Q What did Daiches say? A Daiches hesitated. He did not answer right away, and he said he wished his wife was here.

Q Was his wife there? A I did not see anybody else.

Q Did he ask that his wife be first sent for? A They did not send for her.

Q What did Daiches say after that? A The officer wanted to know --

BY THE COURT:

Q Keep your voice up. A The officer wanted to know, to have an answer, if Mr. Daiches would appear, and Mr. Daiches afterwards said yes, and they took me away.

BY MR. MANLEY:

Q How long was it before Daiches said yes, how long had you been in there? A Possibly fifteen minutes.

Q What was it that the officer finally asked Daiches, to which he replied yes? A "Was this man bought the watch?"

Q Now, was Charles Grouppe there at that time, or David Schell? A The messenger boy was there.

Q Did the messenger boy say anything? A I don't know their names.

Q Did the messenger boy say anything in Mr. Daiches' place? A I don't recollect.

Q You did some writing there, did you? A I don't rec-

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ollect if I wrote anything, but if I was told to write anything, I wrote.

Q Well, did you write anything in Daiches' place? A I don't recollect whether I did.

Q Can't you remember whether you did or not? A I only wrote at the telegraph office that I remember, that I am positive of.

Q You were then taken where? A I was taken to the police station.

Q Now, you have seen Charles Grouppe on the stand here, haven't you, and heard him testify? A I did.

Q Now, is he the messenger that you saw on the street that day? A He was.

Q And you have seen here on the stand David Schell, haven't you? A I have.

Q Now, is he the man that you saw in the telegraph office when you were taken in there? A He was there.

Q No doubt about that, is there? A To the best of my recollection he was there; yes, sir.

Q And you saw Mr. Daiches for the first time when you were taken over there to his jewelry store? A I have seen Mr. Daiches.

Q And you have seen him here on the stand? A Seen him on the stand.

Q Is Mr. Daiches the man you saw in the jewelry store

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when you were taken over there that day, at 43 Avenue A?

A He was.

MR. STEUER: You mean Third Avenue?

A (Continuing) Third Avenue.

Q You have seen also here Officer Kuhn on the stand, have you? A Yes.

Q Is he the officer you saw in the telegraph office to-day? A He was.

Q No doubt about that, is there? A No doubt.

Q And Officer Lorber, you have seen him on the stand, haven't you? A Yes.

Q Is he the officer that placed you under arrest that day on the street? A Yes, sir.

BY THE COURT:

Q Now, you have seen a witness by the name of Isidore Goldsmith on the stand? When did you first see Isidore Goldsmith? A I believe that was the gentleman that was walking with Mr. Lorber, one of the officers coming across the street.

Q You saw him when first, the time you were arrested? A The time I was arrested.

BY MR. MANLEY:

Q Now, you say that upon Friday, the 10th of April, 1908, you got to the store of Davis & Company about what time?

A About eleven o'clock.

Q In the morning? A Yes, sir.

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Q What business did you have to transact with Davis & Company? A No particular business. I just used to sell them goods for Erlanger & Reis.

Q How long did you stay there? A Stayed there about fifteen minutes.

Q Left there at what time? A I must have left about a quarter after eleven.

Q And went where next? A Went to the place of A. Greenberg & Company.

Q And got there at what time? A I got there about five minutes after that.

Q Stayed there how long? A About ten minutes.

Q Where did you go after that? A Then I went to walk down to 14th Street, to meet Mr. Abraham at lunch.

BY THE COURT:

Q Where did you meet Mr. Abraham? A I had told him the previous day I was going to meet him for lunch the next day.

Q Where did you meet him? A I met him in his office, 1 Union Square.

Q You say you left the house on Wednesday at about ten o'clock in the morning? A I did.

Q Did you go on foot to the subway station? A I went downtown to meet Mr. Henry.

Q But how did you go from the house to the Marlborough?

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A With the 116th Street car, Columbus Avenue and Broadway.

Q You walked from 65 West 113th Street to the corner of Columbus Avenue? A No, to 116th Street. You get the car at 116th Street and Lenox Avenue.

Q You took that car that goes down through Columbus Avenue, and you got off where? A Got off at Broadway and 36th Street.

Q That was the Marlborough Hotel? A Yes, sir.

Q And whom did you first see when you got into the Marlborough? A I went to the clerk and asked for the gentleman's room.

Q Do you remember what room he said? A I do not. I believe it was No. 9. I don't recollect exactly.

Q What did you do then? A I waited until I was sent for.

Q You went upstairs? A I went upstairs to his room.

Q While you were with Mr. Henry, who was there besides yourself? A There was nobody else in the room.

Q When you left his apartment, where did you leave him? A I left him downstairs. He walked down in the corridor with him, in the hotel.

Q And came out of the hotel at what time? A It was one o'clock.

Q What did you do next? A I went to dinner then.

Q Where did you go to dinner? A I went to dinner at

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Sixth Avenue some place.

Q Between what streets? A I don't recollect exactly the street I was taking dinner. There was a bakery and lunch room.

Q That was on Sixth Avenue? A Yes, sir.

Q Do you remember which side of the avenue it was on?

A The east side of the avenue.

Q You left the lunch room at what time? A It must have been half-past one, between half-past one and a quarter to two.

Q You don't remember between what streets it was? A I do not.

Q About how far uptown was it? A It was not far away from the Marlborough Hotel.

Q Was it above 34th Street? A It was above 34th Street.

Q Did you take a car or did you walk when you left the lunch place? A I took a car downtown.

Q What car did you take? A I took a Sixth Avenue car.

Q A surface car? A A Sixth Avenue surface car.

Q And got off at what street? A Got off at Sixth Avenue, walked through 14th Street, over towards Broadway.

Q You got off at 14th Street and Sixth Avenue? A Sixth Avenue car to 14th Street.

Q Then you walked to Broadway? A Walked to Broadway.

Q When you got to Broadway and 14th Street, what did you do? A I went from there to the office of Frederick Fox &

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Company.

Q And that was between what streets? A That is between 10th and 11th Street.

Q When you left there, did you walk? A I walked; yes, sir.

BY MR. MANLEY:

Q Where were you on the 9th day of April, which was Thursday, 1908? A On the 9th of April?

Q Yes? A On Thursday, I was downtown in the afternoon.

Q Where? A I went to the office where I worked for Erlanger & Reis.

Q What office is that? A I was at Erlanger & Reis's place where I worked.

Q Were you working there at that time? A No, sir.

Q What did you go there for on Thursday afternoon?

A Just to see them.

Q Do you remember that you went there? A I remember I was there.

Q What time did you get there? A I was there in the afternoon.

Q What time did you get there? A About three o'clock.

Q How long did you stay there? A I did not stay very long.

Q About how long? A About fifteen or twenty minutes.

Q Can you now distinctly remember that upon Thursday,

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the 9th day of April, 1908, you went there? A I can tell very, very nearly.

Q Are you positive you were there? Can you remember it?

A I am positive I was there Thursday afternoon.

Q You can remember it? A I remember I was there.

Q And remember that it was Thursday, is that so? A I remember it was the day before I met Mr. Abraham.

Q Were you in Bath Beach on that day, or Bath Avenue?

A I was not.

Q You know where Bath Avenue is, don't you? A I do not.

Q You were never there? A I was never there, no, sir.

Q Where were you on Monday, the 13th of April, 1908?

A On Monday morning?

Q Yes? A I was to Mr. Strauss' department store, 97th Street.

Q What time did you get to Strauss' department store on Monday, the 13th of April, 1908? A Somewhere around the hour of nine o'clock.

Q How long did you stay there? A I stayed possibly an hour and a half.

Q Where were you between twelve and one o'clock that day? A I went home from there.

Q You went home? A I went home.

Q You were at your house on 113th Street at that time?

A I was. I went home to my wife.

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Q What time did you get home? A I was home at eleven o'clock, about that time.

Q How long did you stay there? A I did not go out any more that day.

Q You stayed there the rest of the day? A I stayed with my wife.

Q Can you remember now you went home and got home at eleven o'clock and stayed there the rest of the day? A Well, to the best of my recollection I was home that day.

Q Do you have any recollection about it at all? A I have.

Q You have some recollection? A Some recollection that after I was there I went home.

Q Tell the jury how strong your recollection is that you were home on Monday, the 13th of April, 1908, after eleven o'clock, and what it is that refreshes your recollection and makes you remember it? A Because I had a telephone from Mr. Strauss to come over to his store and meet the attorney from Chicago and to talk to him about the postal card business.

Q You can remember that? A I remember that was on Monday morning, that I did not go any place else after I had seen him.

Q That being so, of course you were not at the Mechanics Bank in Brooklyn, the Central Branch, sometime between

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twelve and one, and cashed a check for \$2.30, were you? A I was not.

Q Did you finally find a loft for your postal card company? A I did not look after that any more, after I was arrested.

Q Why didn't you look after it any more? A Because I did not go into it any more.

Q Well, why didn't you? You got bail and were out and have been out ever since? A I was offered another position with a brother of mine, the firm of L. Mane & Company, and I changed my mind and went with them.

Q You had a police court examination on the 16th, didn't you? A On the 16th, yes.

Q And you were bailed out on the 16th? A I was bailed out on Wednesday, the 15th, at night.

Q How many hours after you were arrested were you bailed out? A I was bailed out at eleven o'clock.

Q Eleven o'clock that night? A That's the time I left the station house.

THE COURT: Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, nor to form nor express any opinion thereon, until the same is submitted to you.

The Court takes a recess until 2 o'clock P.M.

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After recess. Trial resumed.

The defendant, M A X M A N E resumes the witness stand:

CROSS EXAMINATION BY MR. MANLEY:

Q Now, you said just before recess, that you did not do any more looking for a loft, after that day, on Wednesday, is that so? A No, sir.

Q Now, you were bailed out, you say, at eleven o'clock, on the very day that you were arrested. Is that right?

A Eleven o'clock at night.

Q And you have been out on bail ever since, haven't you?

A Yes, sir.

Q Why didn't you go down on the following day and still go ahead searching for a loft? A Next day was, I had to go to the Police Court.

Q Well, the day after that was on Friday? A On Friday I did not go there either, but I had met the gentleman the Sunday again in question.

Q Why was it you did not look any more for a loft?

A Because I had an offer from my brother to go into his business, and I left the matter open before going in any further looking for a loft.

Q When was it you first got the offer from the brother?

A I got the offer at different times before, but I had it on Thursday, the time after the Police Court. We were finished

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with the proceedings.

Q Right after you were finished with the Police Court proceedings in this case, you got the offer from your brother to go into a different business ? A He offered me to go into his business.

Q And you got that offer the same day, Thursday, after the Police Court proceedings, is that so? A I did.

Q Now, you have said you have been with this Postal Card concern since about the 5th of April, is that true ? A On the 5th of April I had the opportunity to meet the gentleman coming from Europe.

Q Well, the first you had ever heard about this Postal Card concernⁱⁿ which you had the opportunity of going with them, was on the 5th of April, is that so? A No, sir. It was during the month of March.

Q Did I understand you to say in your testimony this morning on cross-examination, that you had been working, practically working for the Postal Card Company since the 5th of April ? A I was not working for them.

Q Well, did you say anything of that sort this morning on Your cross-examination? I understood you to say so ? A I was engaged, I was told that it was all right, and to wait until the attorney came from Chicago to arrange further matters, and I should not accept another position until he came.

Q Well, about what date in April was it that you first

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began to do something for this Postal Card Company? A The first was on that Wednesday afternoon, when I went out looking for a loft.

Q By Wednesday afternoon you mean the 15th of April ?

A On the 15th of April.

Q See if I understand it The first that you had done at all for that Postal Card Company was to go out looking for a loft on the 15th of April, the day you were arrested ?

A Yes, sir.

Q You had not done a single thing for the Postal Card Company before that day, then? A Only had the meeting, we had a meeting at the store of Mr. Strauss.

Q When was that ? A On April 13th, in the morning.

Q And you attended the meeting ? A I was there with Mr. Strauss and the attorney from Chicago, a Mr. Henry.

Q Now, was anything said on the 13th, which was Monday, about anybody getting a loft for the Postal Card Company?

A We were talking about engaging a loft, and they left it to me to look for it any time I wanted to.

BY THE COURT:

Q Talk up a little louder. You will make it easier for the jurors. A Yes, sir.

BY MR. MANLEY:

Q Who was the manager of the Postal Card Company in New York? A Well, I was to be manager of the company.

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Q No, who was the manager that negotiated the proceeding whereby you were to have some connection with the company ?

A Mr. Strauss.

Q What is the name ? A Mr. Joseph Strauss.

Q How long had you known Joseph Strauss before that time?

A I had known him for some time.

Q About how long? A Ten to twelve years.

Q Did you ever owe him any money? A I did not.

Q Never at any time ? A Never at any time.

Q Did you testify in the Police Court that you went downtown on Wednesday afternoon for the purpose of paying Joseph Strauss ? A Not that I recollect. I said ^I went down for Joseph Strauss.

Q Did you ever owe Joseph Strauss any money at all, anybody by the name of Joseph Strauss ? A No, sir, I did not owe any money to nobody.

Q Now, I ask you this question, in the Police Court were you represented by an attorney named M. F. Adler ? A I was.

Q And you testified as a witness in the Police Court, didn't you ? A I did.

Q And did your attorney ask you some questions , A He did.

Q Now, the date of the examination, the day that you were asked questions in the Police court, was Thursday, the 16th of April, wasn't it, 1908 ? A Yes, sir.

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Q Now, did your attorney ask you these questions, and did you make the following answers: "Q By defendant's attorney: Are you employed now? A. I have employment, yes, sir." Do you remember that? A Yes, sir.

Q "Q Where? A Business brought me downtown yesterday." Do you remember that question being asked and your making that reply? A I made that reply; yes, sir.

Q "Q For what? A Pay Joseph Strauss." Do you remember that question and that answer? A I said "For Joseph Strauss" that I came down for Joseph Strauss.

Q Do you remember the question "For what?" meaning for what did you come downtown? Was that question asked you by your attorney? A I must have misunderstood the question.
BY THE COURT:

Q Just answer if you recollect? A I don't recollect that I -- I gave the answers to the best way I understood it.
BY MR. MANLEY:

Q I am asking you whether you recollect, whether or not your attorney put the following question, coming right after your answer "Business brought me downtown yesterday afternoon." Do you remember whether or not your attorney asked you the question "Q For what?" -- just those two words, do you remember them? A I do.

Q Now, did you thereto make this answer, three words only "Pay Joseph Strauss"? A I said "For Joseph Strauss."

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I remember I said that.

Q I am asking if you remember saying "Pay Joseph Strauss"?

A No, I did not.

Q What did you say in answer to that question? A I said I went down for Joseph Strauss.

Q In what business was Joseph Strauss at that time?

A At that time he was in the drygoods business.

Q Where? A 97th street and Amsterdam avenue.

Q And you did not owe him any money on account of drygoods? A No, sir.

Q Well now, as I understand it, on Monday the 13th you had some talk with certain people, among them Joseph Strauss, about starting a Postal Card Company, or a branch in New York, and getting a loft, is that so? A Yes, sir.

Q Where was the store of Mr. Joseph Strauss at that time? A 97th street on Amsterdam avenue.

Q 97th street and what avenue? A Amsterdam avenue, on the northwest side.

Q Did you say 3rd avenue? A Amsterdam avenue and 97th street.

Q He had a store there at that time, did he? A He did.

Q Was he thinking of giving up his store? A No, sir.

Q He was going to run a postal card business in addition to his store? A No, I was going to run the postal card business.

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Q Well, what was the part that Joseph Strauss was going to play in the postal card business concern? A He was to take an interest in the business, in connection with the people in Chicago.

Q Who were the people in Chicago? A The name was the International Postal Card Company.

Q Do you know how Strauss got acquainted with them?

A I do not. He is a friend --

Q Did he tell you? A He told me he was a friend of him.

Q A friend of whose? A A friend of Mr. Strauss.

Q Who told you he was a friend of Mr. Strauss?

A Mr. Strauss told me and Mr. Henry told me also that they were friends.

Q Who was Mr. Henry? A Mr. Henry was attorney from the company.

Q The attorney of the Chicago concern? A Yes, sir.

Q Did Mr. Henry at that time have an office in New York?

A Not that I know of.

Q Well, you never heard of Henry before Strauss spoke of him, then? A No, sir.

Q Had you seen Strauss very often before this happened?

A I used to call on Mr. Strauss when I was working for Erlanger & Reis; sold him goods.

Q Was anybody from Chicago present at the xx meeting when you saw Strauss on Monday? A Mr. Henry was there.

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Q Anybody besides Henry? A No, sir, just us three.

Q Just you three ? A Yes, sir.

Q Were you asked to do anything with this Postal Card concern besides to go out and look at lofts ? A Not at that time.

Q That is the first thing you ever did for the postal card concern? A Exactly.

Q Did you make a report after that to Joseph Strauss ?
A Well, I was arrested on Wednesday, and I telephoned him that night.

Q Yes. A From the police station.

Q Yes. A At least, I gave orders to telephone him.

Q Well, you caused some communication to reach Strauss about the lofts, did you ? A I told him that I was arrested.

Q I don't care anything about your arrest. You got right out on bail. After you got bail did you have a talk with Strauss about lofts? A Yes, I told him about what happened to me.

Q I am not asking about what happened to you. You went down there to get lofts and you were sent by Strauss. Did you afterwards have a talk with Strauss about the lofts ? A I did.

Q Where ? A In his place of business.

Q Up on 3rd avenue and 97th street ?

A Amsterdam avenue.

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Q Amsterdam avenue and 97th street ?

A Yes.

Q On what day ?

A I was up there following, on Friday.

Q You made a report to him, did you ?

A Yes, sir, and he handed me a letter.

Q Did you make any search for lofts after that day ?

A No, sir.

Q Why didn't you ?

A Because I was considering about the new proposition that was made to me.

Q Well, had you suddenly withdrawn from this postal card concern ?

A Not yet, but I considered the other position that was offered to me, and I had not given up the other one at that time.

Q Did you give the other address to Mr. Strauss, the other place that you got from Mr. Hirschback ? Hirschbach, you know, gave you two addresses for lofts, is that correct ?

A Yes, sir; he did.

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Q Did you tell Straus all about the loft in the Prescott Building? A I showed him the card at the time.

Q And you told him what you had done down there at 401 Lafayette street? A Yes.

Q You reported to him? A I told him what kind of place it was, yes, sir.

Q Were you paid anything for your services? A I was to be paid that week.

Q Did you get anything? A I did not accept anything.

Q So the only thing you ever did for the postal card concern, if I understand correctly, was to go down on the afternoon of Wednesday and look around for lofts? A I did.

Q What was this proposition that your brother made to you about taking a job with him? A He offered me to come back into the concern of L. Mane & Company, and take charge of his business while he goes to Europe.

Q Did you ever have a talk with your brother about that before the day of the police court proceedings? A Not before that. He gave me that offer that day after the proceedings in the court.

MR MANLEY: Do you want to show me, Mr. Steuer, the various papers you have marked for identification in the handwriting of this defendant?

MR. STEUER: I have submitted them to Mr. Kinsley. You can have them after they are returned to me, over night.

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MR. MANLEY: I suppose, if the court please, that these so called standards are at any time offered in evidence, that I will have the opportunity of recalling the defendant and examining him in reference to those standards?

THE COURT: Undoubtedly.

MR. STEUER: After they are put in evidence, I shall have no objection, your Honor, to have the District Attorney take charge of them so that he can have ample opportunity to have them examined.

Q How long had you had this cold?

MR. STEUER: Mr. Manley one minute. The card that was marked Defendant's Exhibit C for identification seems to be missing. Will you mind later looking at your papers to see if it got among them? I have not been able to find it.

MR. MANLEY: Oh, yes.

Q How long have you had this cold that you had on the 15th of April, on Wednesday? A The 10th of April, I had a cold.

Q You got it about the 10th? A On the 10th of April, yes, sir, in the morning.

Q As I understand, the reason why you came home so early upon Wednesday, the 15th, was on account of that cold?

THE COURT: No, on the 10th he came back so early.

A Wednesday, the 15th, I was arrested.

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Q Yes, on the 10th.

MR. MANLEY: Your Honor is right.

A On the 10th I came home early on account of a cold, yes, sir.

Q But it was unusual for you to come home so early?

A It was.

Q How were you dressed on Friday, the 10th of April, 1908?

A I don't recollect exactly what I had on, sir.

Q You do not recollect at all? A I don't recollect what I wore. I had a dark suit.

Q You cannot give us any idea what you wore? A I had a dark suit on.

Q Yes, did you have an overcoat? A No, sir, I don't recollect that I had.

Q What did you wear upon Wednesday, the day you were arrested? A On Wednesday I had an overcoat on.

Q Anything else? A I had an umbrella on Wednesday.

Q Are you sure you had an umbrella? A I am positive.

Q Do doubt about that? A No doubt.

Q Was it raining on that day? A It was, slightly.

Q That's the reason you carried an umbrella? A Yes, sir.

Q Was it raining at the time you were arrested on the street? A I didn't have my umbrella open at the time.

Q Was it raining at the time you were arrested on the street? A No, sir.

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Q What sort of tie were you wearing on the day you were arrested? Do you recall anything about it? A It was a wine color tie.

Q What? A Wine colored.

Q Wine colored tie? A Something to that effect.

Q When you say wine colored tie, do you mean a reddish tie? A No, sir, not so reddish, not reddish.

Q How red was it? A It is pretty hard to explain exactly.

Q For instance, juror No. 8 had a tie that is a little bit reddish; was it as red as that? A No, sir, it was not. It was not that color at all.

Q Was it as red as juror No. 3's tie? A No, sir, nothing like that.

Q Well, tell us what it was? Wine color, I take it, is a variety of red? A It was a pale shade.

Q Well, a pale shade of what color? Call red, white and blue, or some color of that sort and then we will get an idea? A It was wine color.

Q Well, there are red and white wines; which was it?
BY THE COURT:

Q Well now, do you see anything in the court room that is just about the color that your tie was? A I do not, your Honor.

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BY MR. MANLEY:

Q Well, was it a red or white tie? A It was not red or white. To the best of my recollection I call it wine color.

Q Wine color? A Wine color.

Q Well, was it redder than it was white? A No, sir, it was neither.

BY THE COURT:

Q Was it about the color of claret? A It was a paler shade, to the best of my recollection.

BY MR. MANLEY:

Q A pale shade of claret? Did you wear a pin that day, the day you were arrested, Wednesday? A I did.

Q Describe the pin? A The pin was a little leaf with three little red stones and white stones in it.

Q How many red stones and how many white stones did it contain? A Well, three red stones.

Q Three red stones, and how many white? A I don't know exactly. I never counted them.

Q Well, it is a pin you still have, isn't it? A I still have it, yes, sir.

Q How long did you have it prior to your arrest? A The pin was given to me by Mr. Reis.

Q You say it was a leaf; what do you mean by a leaf?
A It looked like a leaf.

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Q Were those various stones set above a leaf? A The leaf was below the pin.

Q Below the pin? A Below the stem of it.

Q About where or how long would that pin be after you had put it into your tie? A Possibly about half an inch.

Q And the leaf would show pretty plain, would it?

A Yes; it would show.

Q Were you wearing that pin on Friday, the 10th of April?

A I did.

Q Now, you are sure about that? A On the 15th of April, I beg your pardon.

Q Well, you already testified you wore it upon the 15th?

A On Wednesday.

Q Did you wear it upon the 10th? A I don't remember that I wore it on that day.

Q Well, you had probably been wearing it every day?

A No, sir, I did not. I changed off. I had different pins.

Q Well, were you wearing the pin on the 10th, on Friday?

A I don't recollect if I had or not that day.

MR. MANLEY: That is all.

MR. STEUER: That is all, sir.

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J O S E P H L . G E R E T Y , being called and duly sworn
as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Gerety, what is your business? A I am in the real
estate brokerage business.

Q connected with what firm? A The firm of Frederick Fox
& Company.

Q How long have you been connected with that firm?
A Since about the year 1905.

Q On April 15, 1908, where was the place of business of
the firm of Frederick Fox & Company? A At that date at 793
Broadway.

Q Will you look at the papers marked Defendant's exhibits
A and B and tell the jury who wrote them? A Who wrote them?

Q Yes, sir. This writing here is mine.

Q That is Exhibit what? The stenographer will tell you?

THE STENOGRAPHER: Defendant's exhibit A in evidence.

Q How did the envelope come to be written, Mr. Gerety?
A The ~~xxxx~~ envelope was written at my dictation through our
stenographer in our office.

Q And did you cause that letter to be mailed? A I caused
that to be mailed, yes.

Q Before it was mailed Mr. Gerety, did you have any
conversation with anybody with respect to the contents of that
paper? A Yes, sir, I did.

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Q With whom? A Mr. Mane.

Q When was it that you had the conversation, Mr. Gerety?

A To the best of my recollection it was in the afternoon preceding the mailing of this letter.

Q On the same day of the mailing? A I believe the same day, yes. Excuse me. It was mailed after Mr. Mane's visit to my office, on the day of his visit.

Q It was mailed in the evening? A In the evening, yes.

Q And it was the afternoon preceding that evening that same day that Mr. Mane had called at your office? A Yes.

Q Now, have you any idea of the time of day he called that afternoon at your office? A To my recollection it was in the afternoon.

Q You cannot fix any hour? A I cannot fix that, no.

BY THE COURT:

Q About what time in the afternoon? A I cannot state the time.

Q Was it after your lunch? A It was after my lunch, yes.

Q What time did you go out to lunch that day? A I usually go to lunch from twelve to two o'clock, between those hours.

Q What time did you go that day? A That I don't recall, that particular day, what time I did go.

Q How long had you been back from lunch that day when Mr. Mane came in? A I don't recall how long I was back from

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lunch.

CROSS EXAMINATION BY MR. MANLEY:

Q Have you had any conversation with Mr. Mane since the 15th day of April, 1908? A Since the 15th day of April, yes, I have.

Q When was the first time since the 15th of April, 1908, that you had a conversation with Mr. Mane? A Since that day of the writing that letter, you mean? I saw Mr. Mane several months ago.

Q About how many months ago? A Well, I can't state exactly. I think about six to seven months ago.

Q And that I suppose was the first time you had seen him since the 15th of April? A That was the first time I had seen Mr. Mane since then, yes.

Q Now, do I understand you to say that the day before the date of this letter, the 15th, that you had seen this defendant? A Is that dated the 15th of April?

Q Do you have any independent recollection of dates save from the letter itself? A Yes, I recall that Mr. Mane called at my office previous to my sending that list.

Q Yes, but can you tell apart from this letter, itself, now, what date it was that you wrote this letter, say?

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BY THE COURT:

Q Do you understand that question?

A No, I do not.

Q Now, aside from the letter itself, what the letter indicates by looking at it, have you a recollection as to what the date was on which you wrote the letter?

A I don't recollect the date, no.

BY MR. MANLEY:

Q Of course, having sent the letter, the letter has been in the possession of Mr. Manley since that time, hasn't it?

A I don't know.

Q Well, you have not had it yourself?

A I have not had it, no.

Q Do you find any date upon that letter?

A No, I do not.

Q Is there any date upon it at all, upon the letter?

A I do not see any date here.

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Q I have understood you to say, Mr. Gerety, that this is in your handwriting ? A That is my handwriting, yes.

BY THE COURT:

Q Did you write to Mr. Mane more than once ? A I did not, no.

BY MR. MANLEY:

Q Did you enclose this particular paper in a letter that you sent to Mr. Mane ? A I did not. I enclosed it in an envelope.

Q Merely in an envelope, this paper ? A That's all.

Q I do not suppose you are able to tell whether that is the envelope, are you ? A Can I recall if this is the envelope ?

Q Yes. A To the best of my recollection it is the envelope.

Q What is there about the envelope that recalls it to you ? A Why, it is our usual envelope that we use in our office. It is our particular form.

Q Yes, it is the usual envelope ? A Yes.

Q But there is nothing on it to connect it with this letter ? A Well, I recall when I dictated ~~xx~~ that that list should be sent in an envelope, and I personally mailed this envelope and that letter.

Q Can you remember that you mailed that envelope ?
not

A I can remember that I mailed that envelope.

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Q Why, certainly you cannot ? A Certainly I cannot, no.

Q Now, your name is not signed to that, is it ?

A My name is not on there, no, sir.

BY THE COURT:

Q Was Mr. Mane a stranger to you ? A Mr. Mane was a stranger at that time, yes.

BY MR. MANLEY:

Q Do I understand you to say that you had seen Mr. Mane in your office the day before you mailed the letter to him ?

A I saw him in my office preceding the mailing of that letter.

Q And on a different day , A It was the same day that the letter was mailed.

Q I was not very clear, when you testified on your direct examination, I understood you to say in response to one question put by Mr. Steuer that you had seen him the preceding afternoon. A I believe I did say that to Mr. Steuer, but I would like to correct that. I meant to say that I mailed that particular list on the day that Mr. Mane was at my office, to the best of my recollection.

Q Are you positive as to that ? A I am pretty positive, yes.

Q Well, are you positive or just pretty positive ? Is there anything about the entire transaction that recalls it to you , A No, there is nothing make it very positive to me, no.

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Q Now, as I understand it, you cannot tell what time of day it was you saw this defendant? A I cannot fix any definite time

BY THE COURT:

Q How long was it before you went home that day that you saw Mr. Mane? A That I can't say either.

Q Who was in the office when Mr. Mane called? A I don't recall who was in my office at that time. There were a number of people in our office, and I can't say who was there.

Q How long was it after Mr. Mane left that you wrote out this list? A Why, I believe I mailed it before coming home, but how soon after he left the office, I can't state.

Q Who did you dictate the envelope to? A Why, I dictated it to our stenographer at that time in the office.

BY MR. MANLEY:

Q Now, as I understand it, you had never seen Mr. Mane before the date ~~xx~~ of the writing of this letter? A I never did.

Q And you did not see him again until about a year afterwards, is that so? A Some several months ago.

Q Well, this happened in April, 1908? A April, 1908, yes.

Q Now, that is almost two years ago? A Yes.

Q About how many months ago was it that you last saw Mane? A I believe it was six or seven months ago.

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Q Now, are you positive that is the man you saw upon the 15th of April, 1908 ? A I am positive that is the man.

Q No doubt about it ? A No doubt about it, no.

BY THE 4TH JUROR:

Q Why didn't you give this defendant the particulars at the time he was in your office ? A I presume we were busy.

Q You told him you were going to send it, mail it ?

A I told him I was going to send it, yes.

J O S E P H S T R A U S S , being called and duly sworn as

a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Strauss, what is your business ? A I am proprietor of the Amsterdam Avenue department store.

Q Where is that ? A 97th street and Amsterdam Avenue, New York City.

Q Have you dealt with the firm of Erlanger & Reis ?

A I did.

Q And in what way have you dealt with them ? A We bought merchandise from them in the line of trimmings, buttons and such as that.

Q For how many years, Mr. Strauss ? A For the last two years or so, three years.

Q Do you know Mr. Mane ? A I do.

Q And who from Erlanger & Reis called upon you to make

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sales of their merchandise ? A Mr. Max Mane.

Q In that way, had you become acquainted with Mr. Max Mane ? A I did.

Q In 1908, did you have any negotiations with some postal card concern in Chicago? A Yes, sir.

Q And with whom were you conducting the negotiations ?
A With the attorney of the International Postal Card Company.

Q Who was the attorney? A Mr. Louis Henry.

Q Did you receive letters and exchange letters with Mr. Henry? A I did.

Q Upon the subject of that postal card concern? A Yes, sir

Q Have you been able to find, and did you produce here this morning some of those letters ? A Yes, sir.

Q Did you answer the letters that you had received ?
A I did.

Q And to the letters that you had received did you make--
of the answers that you made to letters that you received did
you keep carbons of them? A My typewriter had copies of all
letters going out of my office, yes.

Q I show you some papers and ask you to tell the jury
from whom you received them? A I received these from Mr.
Louis Henry, attorney for the International Postal Card Company
of Chicago, Illinois.

Q And did you make answer to that communication ?
A (No answer).

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THE COURT: Now, do you want that marked for identification ?

(Marked Defendant's Exhibit M for Identification).

Q I show you another communication, consisting of two papers, and ask you whether you can state from whom you received that ? A The same party, Mr. Louis Henry.

THE COURT: Mark it for identification.

(Marked Defendant's Exhibit N for Identification).

Q I show you a paper, and ask you to please state what that is ? A This here letter was written in answer to Mr. Louis Henry's letter.

Q Written by whom? A By my typewriter.

Q Is that the whole of it ? A No, it is not, it is part of it.

Q Did you find the balance of it ? A I did not think of these letters until this morning, and I have not had a chance to look further. I might be able ~~to~~ to find it.

Q Up to this time have you found it ? A I have not; no, sir.

(Marked Defendant's Exhibit O for Identification).

MR. STEUER: Will you look at these, now, in the meantime, Mr. Manley? I intend to offer them in evidence.

Q Will you look at this communication consisting of two papers, and tell us what that is ? A That is in answer to his letter of, I believe, March 30th or 29th.

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Q Well, that is a letter that you wrote, is it ?

A That I wrote.

Q A carbon copy of a letter you wrote ? A Yes.

Q And written in answer to Mr. Henry? A Yes, sir.

(Marked Defendant's Exhibit P for Identification).

MR. STEUER: I offer Defendant's Exhibits M, N, O and P for Identification in evidence.

MR. MANLEY: I object to them as incompetent, immaterial and irrelevant, having no reference to this issue, and being correspondence between third parties. If of course this witness can testify orally that he sent the defendant down to that neighborhood for a loft, why of course that is competent.

MR. STEUER: And the correspondence is clearly competent to show whether this man was or was not contemplated for the management of that branch of the business ?

MR. MANLEY: Well, that may be asked of this witness.

MR. STEUER: Well, no, I want to show by documents then in existence, as to whether or not that is an afterthought.

THE COURT: Objection sustained.

MR. STEUER: I respectfully except to the exclusion of each of them separately. Your Honor does not want to hear me upon the admissibility of these ?

THE COURT: I always want to hear you, Mr. Steuer.

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MR. STEUER: May it please your Honor, the learned District Attorney in cross-examination of the defendant, went into the subject matter of the negotiations that led up to his seeking the left on the 15th of April, 1908. The sole purpose that that could have had was to attack and discredit the statement of the defendant that that was his mission on that day in that locality, and he was the person, I mean the learned District Attorney, that elicited from the defendant the statement that it was through Joseph Strauss that those negotiations were being carried on. Now, here are the negotiations themselves, created at that time, that show whether or not such negotiations were in existence, and they show whether or not the contemplation of the parties was that this defendant should be the person that should manage the New York branch of that Chicago concern when one was created. Now, may it please your Honor, the oral testimony between the witness and Mr. Henry is clearly competent, and it has already been gone into by the learned District Attorney. Now, you cannot admit, I submit to your Honor, part of the negotiations and exclude the other. The defendant is entitled on another branch of the matter, to every circumstance that existed at that time, that would tend to corroborate his statement as to the purpose that he had at the time he was in that vicinity, and those documents are offered first, for

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the purpose of showing what were the negotiations between the witness on the stand and this Chicago concern through its attorney, and secondly for the purpose of corroborating the defendant in the purpose which he had at the time, when he was in the vicinity where he was arrested.

THE COURT: The objection is sustained.

MR. STEUER: And I except.

BY MR. STEUER:

Q Now, Mr. Strauss, did you negotiate during the month of March, 1908, with anybody for the purpose of opening a branch office in the City of New York? A Yes, sir.

Q And with whom did you negotiate? A With Mr. Louis Henry.

Q Were the papers which are marked, or the letters which are marked in this case Defendant's Exhibit M for Identification and Defendant's Exhibit N for identification, two letters that you received from Mr. Henry?

MR. MANLEY: I object to that. He has made an offer of these documents, and this is an indirect manner of getting in the proof.

THE COURT: Objection sustained.

MR. STEUER: I am not going to refer to the contents of them after your Honor has excluded them. I would not be guilty of that, but if I have not sufficiently identified them as part of the negotiations, I want to do that, but

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as far as referring to the contents of the papers, I do not refer to the contents of them after the Court has excluded them.

MR. MANLEY: If the Court please, the asking of preliminary questions regarding documents is merely preliminary to the offer, and merely for the purpose of ascertaining whether --

THE COURT: Counsel may ask other preliminary questions, because, non constat, as the result of those being then offered, a state of facts may have developed which will permit of their reception in evidence.

Q (Question repeated). A Yes, sir.

Q They were, of course, negotiations concerning this branch office ? A Yes, sir.

MR. STEUER: Now, I renew my offer of Defendant's Exhibits M and N for Identification.

MR. MANLEY: Same objection. Nothing has happened since the other objection.

THE COURT: Same ruling.

MR. STEUER: I respectfully except separately to the exclusion of each.

Q Will you tell us please, Mr. Strauss, when the negotiations started ? A Why, I had the International Postal Card goods in my store.

Q Speak up loud ? A I had the goods from the International

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al Postal Card Company during the month of December, for Christmas cards and New years cards. It was an exceptionally strong line, and Mr. Henry, a brother of the attorney who was interested in this International Postal Card Company --

THE COURT: I do not see how it is material, when the negotiations between this witness and the Chicago people started.

MR. MANLEY: No, it is ~~not~~ not material, and I object to it.

THE COURT: The time when the negotiations between this witness and the defendant started have perhaps some materiality.

MR. STEUER: Yes, sir. Well, did your Honor examine, in that regard, Defendant's Exhibits M and N for Identification? I do not know whether your Honor saw Defendant's Exhibits O and P for Identification. I am not sure about that.

THE COURT: Proceed, counsel, you may ask your questions.

Q When, if ever, did you first speak to Mr. Mane about this postal card business? A Some time in the month of March, 1908.

Q Now, tell the jury, please, what you said to Mr. Mane about it? A I have told Mr. Mane that I have friends of mine in Chicago in the postal card business who are about to open,

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or were to open, a New York office, and whether he has any idea of making a change, because, as I believe, there is opportunity for him which would appeal to him.

MR. MANLEY: I object to this testimony. If the witness is called to testify that he ~~saw~~ saw this defendant on a certain day in a certain place, it is entirely competent, but whatever negotiations passed between the witness and the defendant on prior dates about a certain transaction, does not seem to me to have any bearing.

THE COURT: I think that is so, counselor. You may elicit from this witness anything that transpired between him and the defendant relative to his search for lofts, or otherwise as bearing upon the defendant's movements on the day when he was arrested, or on the 10th day of April.

MR. STEUER: Your Honor, don't you recall that Mr. Manley asked the defendant when he started the negotiations with this witness ?

MR. MANLEY: Yes, I am bound by his answers.

THE COURT: I am of the opinion that many things are proper when asked on cross-examination which are not proper when asked on the direct. I considered it proper cross-examination on the part of Mr. Manley, and improper direct examination on your part.

MR. STEUER: I respectfully except.

Q Did you see Mr. Mane on the 13th of April, 1908 ?

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A I did.

Q Where did you see him? A I seen him at my store, the Amsterdam Department store, 97th street and Amsterdam avenue.

Q Who was present at that time? A Mr. Louis Henry, myself and Mr. Mane.

Q Will you tell us what transpired at that time?

A Mr. Henry --

MR. MANLEY: I object to anything of this sort, third parties.

THE COURT: Yes, I will allow anything bearing upon what the defendant was to do, if anything.

MR. MANLEY: If he gave this defendant any directions on that date, I will withdraw any objection.

THE COURT: I think your question, counselor, is a little too wide. I will allow this witness to state fully any directions that he gave to the defendant, or that were given to the defendant by Mr. Henry, in his presence, bearing upon what the defendant should do, if anything, in connection with looking for lofts or otherwise. Anything that bears upon what the defendants movements were on any of the dates that have been alluded to in the testimony here.

MR. STEUER: I respectfully except.

Q Will you please state, as stated by his Honor, whether anything was said as to what the defendant should do in connec-

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tion with that business ? A I introduced Mr. Mane to Mr. Henry, and going over the matter as to the New York office, we decided to open business here and get a loft somewhere downtown in the vicinity of 14th and 8th streets. Mr. Mane was instructed to look for that loft, and we have also made arrangements that morning that Mr. Mane should receive a salary of \$25. a week for his services, and have full charge of the and New York office, at the same time for him to take the goods out of the Custom House, instead of sending the goods to Chicago, Mr. Mane was to take them out in the New York Custom House.

MR. MANLEY: I object to the answer on the ground that it is not responsive. Whatever is called for by this question as to the direction given to this defendant or as to ~~his~~ his whereabouts on the 10th or 15th, is entirely unobjectionable.

THE COURT: Well, I think that the answer was responsive to the question, but I think that the question was a little broader than perhaps my question warranted. I think, counsel, that it is advisable for you to confine yourself to what, if anything, was said to the defendant respecting what he should do, insofar as his movements are in issue.

MR. STSUER: May it please your Honor --

THE COURT: In other words, it is not material whether this defendant was to take goods out of the Custom House,

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or whether he was a Custom House broker for that purpose; that is immaterial detail.

MR. STEUER: Well, the fact that they were going into details shows whether or not there was this contemplated movement, and the cross-examination of the District Attorney was clearly directed towards showing that there was no such employment, because he kept repeating to the defendant "Then the only thing you did for this concern was to go out and look for a loft on the 15th, the only thing you had to do was to go out and look for a loft on the 15th?" Now, you cannot pick out of a transaction one isolated circumstance, part of a conversation, and confine the witness to that. What possible intelligence would his testimony convey to the jury? How does the picture impress anybody? What is it that is established? The thing absolutely falls back without the jury getting the benefit as we desire it of the whole transaction, so that they might, after considering it, determine whether or not there was such a transaction. That is picking out one word or a line and saying "Didn't you say to the defendant thus and so?" It is making the thing itself seem highly improbable, but if you get the whole transaction from start to finish, you see that it is part of the whole transaction, and then it becomes extremely probable, and that is the difference, your Honor, and when a man is

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on trial, it does not seem to me that we ought to be confined --

THE COURT: Well, whether rightly or wrongly, I think at this stage, either through the medium of testimony or by comment upon the evidence given, you have the whole transaction before the Jury.

MR. STEUER: Would your Honor be good enough to frame a question as you desired it answered, in connection with this matter?

THE COURT: I think it is preferable that you do that counsel.

BY THE COURT:

Q Well, what, if anything, did you say to the defendant as to what he should do on the 10th day of April? A I have told him to look for a loft, and to get a loft big enough to take the goods out of the Custom House.

Q Did you tell him where to go? A Yes, between 14th street and 8th street, around that vicinity.

Q Did you tell him what kind of loft you wanted? A Big enough to get quite a number of cases in, in the postal card line.

Q Did you mention the locality? A Not any further than 14th and 8th streets.

Q Did you tell him where to go to make inquiries? A No, sir; I did not.

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Q What else, if anything, did you say to him respecting the search by him for a loft ? A Why, I told him to get ads. to find a loft as he possibly can at as low a rate as he possibly can for new beginners, not making it very expensive.

Q Did you tell him when to make the search? A At once. The goods were to come in that very week, some of the goods Mr. Henry purchased in Germany were to arrive that very week, the end of the week.

THE COURT: Anything along that line, counsel.

BY MR. STEUER:

Q How long had you known Mr. Mane ? A I have known Mr. Mane for the last twelve years.

Q Did you know other people that knew him ? A I did.

Q Do you know what his reputation is for truth and veracity? A I think it is very good.

MR. STEUER: You may examine.

BY THE COURT:

Q Do you know what his reputation is for honesty?

A Very honest. I trust him with everything I have got.

CROSS EXAMINATION BY MR. MANLEY:

Q When was it, Mr. Strauss, that you gave directions for this defendant Mane to go for the loft, on what ~~the~~ day did you first do that ? A On Monday, the 13th.

Q Not before that ? A Not for a loft, no.

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Q Did you tell him as to what date to go and look for the loft? A I beg pardon?

Q Did you direct that he should go upon any particular day? A No, no, just try and find it this week.

Q The 13th, I believe, was Monday, wasn't it? A Yes.

Q Did you see him on the following day, Tuesday?

A I don't believe I did. I can't recollect.

Q Did you see him on the following day, Wednesday?

A Oh, yes, I seen him Wednesday.

Q What time of day? A Down at the police station, on 1st avenue.

Q Did you see him on Thursday? A I did, yes.

Q Also on Friday? A I did.

Q Did you say anything to the defendant about a loft before Monday, the 13th? A No, nothing said about a loft before that day.

Q And you did not give him any directions to go to any particular place? A No.

Q You are sure as to that? A Positive.

Q Now, your place of business at that time was Amsterdam avenue and 97th street? A It is yet, still there.

Q You have been there some time, I suppose, haven't you? A I have.

Q What business are you in? A Department store, everything.

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Q And you had seen this defendant when he came there as a salesman? A I did.

BY THE COURT:

Q Was the defendant to hire the loft, or was he to report to you? A Well, he was to report to me before he engaged the loft.

BY MR. MANLEY:

Q How long a time had you been seeing the defendant coming to your place as a salesman? A Well, he was with Erlanger & Reis about a year and a half before that, and I have seen him very often, about every week, or he seen the girl behind the counter, the buyer for that department.

Q I have forgotten how long you said you had been in business up there? A Up there six years.

Q And have you had other businesses during the time you have been in that department store business? A Absolutely none.

Q None at all? A Except this store. I had stores previous to that.

Q Did I understand you to say that you had said something to the defendant about the loft being between 14th street and 8th street? A Yes.

Q How did it happen you gave such directions? A I wanted the defendant to see the big trade exclusively. I did not think it advisable for him to go down any further than 8th

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street, so that he can get near the big stores in the morning, and get back to the office as soon as possible.

Q. Had you and the defendant talked over the location of the place, had a talk about it? A Yes, with the defendant and Mr. Henry, the three of us.

Q. You had had a talk about the location? A Yes.

Q. Prior to the 13th had this defendant ever told you he had been in the vicinity of 14th street or 8th street looking for a loft? A Prior to the 13th, no, sir.

Q. You had had some talks, I suppose, about lofts before the 13th, hadn't you? A I don't believe so, no.

Q. I don't mean about any particular loft, but about getting a loft somewhere for the purpose of going into the postal card business? A No, sir, I did not make it positive until I seen Mr. Henry, and Mr. Henry was satisfied with the arrangement.

Q. Monday, then, ~~xx~~ is the first day you had any idea of a loft in your mind at all? A Yes, sir.

Q. Now, as I understand it, you had negotiated with this defendant for quite some time before Monday, the 13th, hadn't you? A Yes, sir.

Q. And talked the matter over with him? A I did.

Q. Now, did this defendant continue in the employ of the Postal Card Company after Wednesday, the 15th of April?

A Well, he did and he didn't. His brother came to me, and his

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partner died at the time, and he told me he could use Mr. Max Mane, his brother, in his own business, and consequently I thought his brother ought to get the preference, and withdrew from the concern. I gave it to a jobber here in this city.

E M M A G E I Z L E R, called and duly sworn as a witness

on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mrs. Geizler, where do you live , A At present I live at 120 West 117th street.

Q Where did you live, Mrs. Geizler, on the 10th of April and the 15th of April, 1908 ? A 65 West 113th street.

Q What part of that house, Mrs. Geizler, did you occupy?
A I occupied three floors, and Mr. Mane occupied the top, a four story building.

Q At that time your husband was alive, was he not ?
A Yes, sir.

Q Now, you remember that Mr. Mane one night, or one evening did not come home, don't you ? A I do.

Q And that was some holiday ? A That was the night of Passover, the night before.

Q The first eve of Passover ? A The first eve of Passover.

Q On the occasion he was arrested ? A Yes, sir.

Q Now, the Friday before the day on which he was arrested ~~was~~ the first eve of Passover, did you see Mr. Mane ? A The

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eve of Passover ?

Q No, the Friday before ? A On Friday I seen him between the hours of one and two, coming in.

Q Where did you see him?

MR. MANLEY: Just a minute. I move that be stricken out as not responsive. The question was if she saw him.

MR. STEUER: I consent to it, at this point.

THE COURT: Well, we will strike out the last part of it.

Q You say you did see him? A I did see him.

Q Where did you see him ? A I seen him enter upstairs.

Q Where were you at the time ? A I was going up on the second floor.

Q About what time of the day was it you saw him?

A Between one and two.

Q Now, the day after he was arrested, you were in the Police Court, were you not ? A Yes, sir.

Q And you were a witness there ? A Yes, sir.

Q And you were asked these same questions that you are being asked now ? A The very same, counselor.

CROSS EXAMINATION BY MR. MANLEY:

Q Madam, at that time, you lived at 65 West 113th street?

A Yes, sir.

Q On what floor did you live ? A I occupied the three

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floors, basement, parlor and first floor.

Q You yourself did ? A Yes, sir.

Q What is that, a private dwelling or an apartment house ? A Yes, sir; a private dwelling.

Q How many other families lived in there besides you, yourself ? A Nobody else but Mr. and Mrs. Mane.

Q What floors did they occupy ? A They occupied the third floor.

Q How long had they lived there prior to that date ?

A They lived there two years since before it happened.

Q That is, two years prior to the time of his arrest?

A Yes, sir.

Q Now, you say you were in upon Friday, the 10th, in your house, do you ? A Yes, sir.

Q The defendant was arrested upon the following Wednesday, the 15th of April? A The following Wednesday, on the 15th.

Q You have testified that on that day, this Friday, the 10th, you first saw this defendant at what time, or you saw the defendant at what time ? A Between the hours of one and two.

Q What time was it, was it one or two? A Well, it was about half past one, 1.30.

Q That is your best recollection, it was half past one ?

A That is my best recollection.

Q Now, Madam, ^{how} is it you can tell it was half past one ?

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Had you looked at some watch? A Well, I am generally done with my work on Friday, being that I am Orthodox and keep my Sabbath, and I know the time.

Q You got through at that time ? A Yes, generally around that time, between one and two o'clock.

Q Yes, you generally get through on Friday between one and two ? A Between one and two, yes.

Q And you assume that to be the time you got through work?
A Between one and two, going up from the kitchen upstairs, and there is nobody else can enter without their private key, and as I went up I seen Mr. Mane coming in.

Q What time was it on Friday you first saw Mr. Mane ?

A Between one and two.

Q That is the first time that entire day , A Yes, the first time.

Q You had not seen him in the forenoon at all? A No,sir;
I did not see him.

BY THE COURT:

Q Did you see him again that day at any time ? A I seen him towards evening, around between the hours of 6 and 7.

BY MR. MANLEY:

Q Now, he came in at half past one, did he ? A Yes,sir.

Q And where were you at the time ? A I was coming up from the kitchen, upstairs, into the second floor.

Q Your kitchen is down in the basement? A Downstairs in

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the basement.

Q Where were you going when you came upstairs ?

A Going upstairs to my second floor.

Q To your living rooms ? A Yes, sir; sleeping rooms.

Q And you were alone at the time ? A I was alone at the time.

Q And he was just coming in from outside ? A Just coming in. I said to him "Mr. Mane, what is the matter, you are coming in at this time of day?" He says he did not feel well, he had a severe cold.

Q Then you continued on upstairs ? A I continued on and he went upstairs further.

Q Then I understand you saw him again later in the day?
A I saw him between the hours of 6 and 7 on the second floor, where the bathroom is connected with the sleeping rooms.

Q Was he in the bathroom, A He was going into the bath room.

Q Where were you at the time , A I was going up to my own room.

Q Then you continued going on to your room, A Yes.

Q Did you see him again that night ? A I did not see him again that night.

Q You are pretty sure of that? A I am sure of it. I have a very good recollection.

Q And having a very good recollection, you say you did not

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see him again that night ? A No, sir.

BY THE COURT :

Q When you say "No, sir," you mean that you recollect you did not see him ? A I did not see him; no, sir.

BY MR. MANLEY:

Q Now, you did not have any occasion, of course, to remember about Friday until after this man was arrested ?

A After Mr. Mane was arrested.

Q That was on Wednesday ? A Wednesday, the 15th.

Q And then you could remember back, and tell about the times and places you had seen him on Friday? A Yes.

Q I suppose you saw the defendant Mane on Thursday, didn't you, before the Friday we have been talking about, that is, the 9th of April? A Yes, sir; I saw him around the house.

Q What time of day was that you saw him? A I generally saw him around 6 or 7 in the evening, when he came home from business.

Q You say generally, and that is not very specific. You are not very specific when you say generally? Can you tell us positively what time you saw him on that evening ? A Yes, sir; about 7 o'clock.

Q Well, do you remember you saw him on Thursday about seven o'clock in the evening ? A Yes, sir.

Q You remember that positively ? A Yes, sir; I do.

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Q That was the first time on that day, Thursday, that you had seen him ? A That was the first I seen him, generally always every evening when he come in.

Q You see, I am not asking you for generally, because that means usually. I am picking out a certain day, which is Thursday, or the day before the Friday that you have been testifying about, and asking you if you now can positively remember that you saw this defendant at 7 o'clock at night ? A I did.

Q You did ? A I did.

Q Now, you can remember that positively ? A Yes, I can remember.

BY THE COURT:

Q What floor was he when you saw him that night ?

A Going upstairs.

Q Where were you when you saw him ? A Standing in front of the door.

Q Who was with you when you saw him then ? A All alone.

Q Did you see him at any time on Friday with Mrs. Mane ?

A No, I didn't see him with Mrs. Mane. Mrs. Mane was not home at the time he came in. She came in later.

Q What time did she get home ? A She got home about half past two.

Q You did not see him at any time that day with Mrs. Mane?

A No, sir.

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BY MR. MANLEY:

Q Now, did you see the defendant upon the day before that, that is, Wednesday of that week, which would be the 8th ? A Never seen him much during the day. I generally seen him when he came in in the evening

Q Well, I suppose, Madam, you simply occasionally passed him in the hall when he was coming in and out ? A Yes, sir; I did.

Q You really cannot testify as to the time of any day, can you ? A No, not particularly any day.

Q Now, coming down to the day of the arrest, which was the 15th of April, did you see him then on that day ? A Going away in the morning around quarter to eight or 8 o'clock.

Q Do you remember his going away that time , A Yes, sir.

Q Did you see him the day before that, on Tuesday, when he went out ? A I seen him every morning going down, around a quarter to eight or eight o'clock.

Q Well, of course you used to see him going in and out, but I don't suppose you are going to tell this jury positively, on any day, that you saw this man at a certain time, are you ? A Well, I never seen him during the day. This is the only day I seen him, on this Friday, as I told you, between the hour of one and two.

Q The only time you had ever seen him between the hours

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of one and two ? A That is the only time, except on Sundays.

Q Now, you testified in the Police Court, didn't you ?

A I did.

Q How do you know his wife was not in until half past two on that day ? A Because we called up to her, and she was not in when Mr. Mane did not feel well, and he went up. I told him his wife is not in. There is not anybody coming in or out that ~~the~~ house unless to hear or see it.

Q Did you always come out when you heard somebody coming in ? A When I heard any one coming in there.

Q Did you hear his wife when she finally came in?

A I did, and I told her her husband was upstairs.

Q How do you know she came in about half past two ?

A Well, I generally know the time, around that time, Mr. Mane came in between one and two, and she came in about half an hour later.

Q About half an hour later ? A Yes, thirty minutes after that.

Q The first, of course, you knew about the trouble this defendant had gotten in to, was after he was arrested upon Wednesday? A Yes, sir, that's all.

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I S R A E L R O D B E R G, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q What is your business, Mr. Rodberg? A Wholesale millinery.

Q Where is your place of business? A It is now 589 Broadway.

Q How long have you been in business in the city of New York? A Eight years.

Q Where was your place of business, Mr. Rodberg, on the 15th of April, 1908? A 401 Lafayette street.

Q How long had it been at 401 Lafayette street?
A For four months.

Q Had you any loft or premises that you desired to let at that time? A Yes, sir.

Q What, if any broker, had you given those premises to?
A Well, there was quite a few. Among them was Julius Friend.

Q On the 15th of April did you see the defendant Max Mane?
A Yes, sir.

Q About what time did you see him? A It was between half past two and three o'clock.

Q What happened between you and Max wane on that occasion?
A Mr. Mane came into my place at between half past two and three, and inquired about a loft that I had to rent. I asked him who he was from, and he said "From Julius Friend," and I

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took him back and showed him the part that I had to rent. I asked him what he wants to use it for, and he told me for souvenir postal cards, and I told him the price of it, I think it was \$40., and showed him the amount of space it was, and he told me he was sent by a couple of men to look at this place, and he said he would let me know in a couple of days. The place seemed to be satisfactory to him, and we walked up to the front of the loft and stood there talking probably ten or fifteen minutes, and he left.

Q Now, when did you next hear of him after that ? A Two days later.

Q Was it in connection with his arrest that you next heard of him? A Yes, sir.

Q Now, if that arrest had not occurred, and your attention had not been called to it in that way, would you have remembered ~~any~~ anything about it? A No, sir.

Q You did not know Mr. Mane at all, did you ? A No, sir; I did not.

CROSS EXAMINATION BY MR. MANLEY:

Q When was it you next saw Mr. Mane ? A It was a Friday, Friday afternoon, the next Friday, the following Friday.

Q Where was it you saw him? A I did not see him. His brother, Mr. L. Mane came up.

Q And had a conversation with you? A He told me that --

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Q No, just answer questions. Had a conversation with you? A Yes, sir.

Q Now, when was it that you next saw the defendant after the 15th of April? A I think I was down at the District Attorney's office. I was summoned to come down, subpoenaed to come down.

Q When was that, how long ago? A That was probably about a year ago, I guess.

Q Well, that being so, it was about ten months after you had seen him on the 15th, is that so? A About that time, yes, sir.

Q And you saw him at that time, on that date, ten months afterwards? A Yes, at the Assistant District Attorney's office. I was summoned to come down.

Q I say, did you see him about ten months after the 15th of April? A After the 15th of April, 1908.

Q Well, answer. I say how many months elapsed before you again saw the defendant Max Mane? A I can't tell you just when, but it was quite some time after before I was called.

Q Well, never mind that. Your best judgment, about how many months? A Well, I guess probably six or seven months.

Q Well, six or seven months elapsed from the 15th of April up to the time you next saw Max Mane? A Yes.

Q Did you then recognize him as the man that had gone into your loft on April 15th? A Yes, sir.

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Q And you were not mistaken as to your identification that you made ? A Positively not, no, sir.

Q Now, you are positive this is the man you saw ?

A Positive, yes, sir.

Q Is there anything about him that makes you identify him, or enables you to identify him? A Well, his brother came up --

Q Not his brother, I mean his looks, the man himself.

A Not particularly, only that I know him from coming into my place of business.

Q And having seen him once, you recognized him ten months afterwards ? A Yes, sir.

BY THE COURT:

Q How was he dressed when you saw him on the 15th ?

A He had an overcoat on, and had an umbrella, as far as I can remember.

Q What kind of a hat? A He had a derby hat on, as far as I can remember.

Q What part of the loft did you stand in? A Middle of the loft, and took him back and showed him.

Q Where were the windows ? A Front and back. ^{The}left is 25 x 100, and he came up on the elevator and I took him right back and showed him what I had to rent. It was the rear part of the loft.

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BY MR. MANLEY:

Q As I understand it, you had never seen Max wane before the 15th of April, is that so? A wever did, no, sir.

RE-DIRECT EXAMINATION BY MR. STEUER:

Q You said that you were called down to the District Attorney's office, and you told the District Attorney what you knew about the matter? A I told, yes, sir; I told the District Attorney what I knew about it, just as I am telling you.

J A C O B A B R A H A M, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Abraham, what is your business? A How is that? My business is buttons.

Q What, A Button business.

Q Where is your place ~~xx~~ of business? A At present it is 119 West 23rd.

Q Where was your place of business, Mr. Abraham, on the 10th day of April, 1908? A One Union Square, Jefferson Building.

Q How long, Mr. Abraham, have you known Mr. Max wane? A About ten or twelve years.

Q Did you have any business relations with Max wane? A No, sir.

Q Did you know him very well? A Yes, sir.

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Q Did you hear of his being arrested ? A Well, I heard it two days after he was arrested.

Q Now, on the Friday previous to that, did you see Max Mane ? A Yes. The defendant came up about between a quarter to twelve and twelve, in my office, and he sat there a few minutes, and then we went out to lunch together, about between-- about ten minutes after twelve, we went over to 14th street near 5th avenue, to the restaurant that is called "Why".

Q The restaurant is called the "Why" ? A The "Why", and we stayed there about half an hour, or a few minutes more than that, I don't know. Then we went back to my office and we stayed up there, and I had to attend to something, and about a quarter past one or twenty minutes past one, we went out. I walked as far as 14th street subway, and I left him then, and I went downtown.

BY THE COURT:

Q About what time was it when you left him, A It was about twenty minutes past one.

CROSS EXAMINATION BY MR. MANLEY:

Q As I understand you, Mr. Abraham, you heard of his arrest first two days afterwards ? That would be upon Friday ? A Yes, sir.

Q And how was it that you heard of his arrest ? A Well, because the defendant came up to my place and told me about

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what had happened on Wednesday, that he was arrested and charged with passing a check on the Friday previous.

Q You, I understand it, heard it from the defendant ,

A Yes.

Q And then he had a talk with you, I suppose, about being at your place at a certain time, did he ? A No, we did not talk about that at all. I remember that he was there.

Q Well, did not he remind you at all that he had come to your place on Friday, a week before that , A No, he said he was arrested on Wednesday. I said "Friday we were out to dinner together".

Q You had a talk with him then about being there on Friday , A On Friday, yes, sir, that we were out to dinner together.

Q And what time was it when he came to your place on Friday ? A That was between a quarter to twelve and twelve.

Q A quarter to twelve and twelve ? A Between that time. Might have been ten minutes to twelve.

BY THE COURT:

Q Was that the first time that he came to your place that day ? A Yes, sir.

Q How many times did he come to your place on that day ? A That is when he come up for lunch, and after lunch he went back with me to my place, and I went with him over to the subway.

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Q So that he was at your place twice that day ?

A Twice that day.

BY MR. MANLEY:

Q He first got there, as I understand you, sir, at about ten minutes to twelve, is that so? A About that time, yes, sir.

Q Did he stay there long? A Well, about ten or about fifteen minutes, or twenty minutes. I don't know exactly.

Q Well, that would bring it about five or ten minutes past twelve? A About ten minutes past twelve, yes.

Q Then you and he went out to lunch? A Yes.

Q Well, what is there about it that makes you think it was on Friday, and not say, on Thursday? A Well, because he come up to me on Friday and told me he was arrested on Wednesday.

Q Well, how did that help you? A Well, it was just a week previous when he was with me to lunch.

Q Who, he said to you that you and he had been to lunch on the preceding Friday, is that it? There was not, I suppose, anything so important happened at the lunch that you could really tell yourself whether it was Friday or Thursday, could you? A Well, yes, it does, because I generally eat fish cakes on Friday. I like them.

Q Could you remember on that day when you had lunch with him that you had fish cakes? A I have them every Friday.

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Q Can you remember that on that Friday you had fish cakes ? A I can remember because he told me he was arrested on Wednesday, and it was just about five days before.

Q Well, all right. Now, that is your answer. Now, how long did you stay with him at lunch? A About half an hour.

Q And he left you then about what time ? A We went back to the office after lunch, up to my office.

Q Yes. A And stayed there until about quarter past one.

Q Then he left you ? A Then I walked over to the subway in front of the station, and left him then, and I went downtown.

BY THE COURT:

Q When before that had you last seen him, before that Friday, how long before that had you seen him? A I saw him the day before. I made an engagement for lunch with him.

Q Where did you see him then? A On 5th avenue ~~xx~~ near 15th street, between 14th and 15th street somewhere.

H A T T I E M A N E, called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mrs. Mane, where do you live ? A 65 West 113th street.

Q You are the wife of the defendant Max mane ? A Yes, sir.

Q And have been married how long ? A Eight years in February.

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Q Mrs. Mane, in April, 1908, where did you and the defendant live ? A 65 West 113th street.

Q You heard that your husband was arrested on the 15th of April, did you not ? A I did.

Q And you went down in the court next day when the examination took place , A I was.

Q Now, on the Friday previous to that, the day that he was arrested, do you remember whether you were in or out when your husband got home ? A I was out when he got home.

Q And when you ~~fx~~ came in, where did you find your husband ? A He was upstairs in the dining room.

Q About what time did you get home ? A 2.30.

Q Where had you been ? A I had been opposite, at my sister's for lunch, at 36 West 113th street.

CROSS EXAMINATION BY MR. MANLEY :

Q That is to say on Friday, Madam, that is what you have been testifying about, is it ? A Yes, sir.

Q You got in about 2:30 ? A 2:30.

Q Your husband was arrested on what day ? A April 15th, on the night of Passover.

Q How long had he had a cold ? A Well, he had not been feeling very well all that week. He had quite a cold, and that morning he said if he did not feel better, he will be home early in the afternoon.

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Q Had he been around the house some since he had had the cold ? A No, he went out to business.

Q Went to business every day ? A Every day.

Q Going out early in the morning ? A Early in the morning.

Q And you got there at 2:30, did you? A 2:30.

Q Did you have a watch with you , A No, but I looked at the time at my sister's before I left.

Q That is all.

BY THE COURT:

Q What time did your husband leave the house on Wednesday morning, April 15th? A A quarter of eight.

Q Sure of that ? A Yes, sir.

Q Did you see Mrs. Geizler at any time on Friday, April 10th ? A April 10th when I came in at 2:30, she says "Hurry up, Mrs. Mane, Mr. Mane don't feel well, he came home."

Q You did see her then? A Yes, I did. She was on the second floor.

Q And where were you between 6 and 7 o'clock on the evening of April 10th ? A I was on my floor. Mr. Mane went down in the bathroom.

A L B E R T B E U T L E R, being called and duly sworn as

a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Beutler, where do you reside ? A 61 Clermont Aven-

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ue, Jersey City.

Q How long have you lived there ? A Thirteen years.

Q How long ? A Ten years.

Q Where did you live before that ? A I have lived in Jersey City about, since 1888, and before that in New York.

Q Before that in New York? A Yes, sir.

Q You have lived between New York and Jersey City all your life, have you ? A No, I was born in California.

Q Born in California ? A Yes.

Q And came here at about what age ? A I came here when I was about three quarters of a year old. I was in Europe from my thirteenth to my twenty-fourth year, and then came back to New York, and have stayed here ever since.

Q Now, Mr. Beutler, do you know Max Mane ? A I do, sir.

Q Where are you employed, Mr. Beutler? A L. Mane & Company.

Q That is a brother of Max Mane, is it not, L. Mane ?

A Yes, sir.

Q How long have you been employed there ? A Going on thirteen years.

Q And in what capacity, Mr. Beutler? A As bookkeeper and cashier.

Q How long have you been a bookkeeper, Mr. Beutler?

A Since 1874.

Q Have you ever seen Max Mane write ? A I have.

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Q How many times ? A Innumerable times. I cannot count them.

Q Very often? A Very often.

Q And for how many years have you seen him write ?

A Off and on since thirteen years.

Q Did Max Mane have a Power of Attorney to sign checks in that business ? A He has it at the present.

Q And on what bank? A The Columbia Bank.

Q Who made out the checks that he signed ? A Well, ninety-nine times out of a hundred I write the body of the check.

Q And you saw Mane write in and about the place of business, did you not ? A Oh, yes.

Q Will you be good enough, Mr. Beutler, to look at People's Exhibit 3, and People's Exhibit 1-A and 1-B, or first look at people's exhibit 3, and tell the jury whether the ink writing that you are now looking at, is in the handwriting of Mr. Mane ?

MR. MANLEY: In his opinion.

Q (Continuing) In your opinion? A No, sir.

Q Will you look at People's Exhibit 1-B, and look at it and see whether the words "S. Gettlieb" written on the back of it are in the handwriting of Max Mane, in your opinion?

BY THE COURT:

Q In your opinion . A Certainly not, sir.

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BY MR. STEUER:

Q Will you look at the front of that check, People's Exhibit 1-A and 1-B, and tell the jury whether any part of that is in the handwriting of Max Mane ?

MR. MANLEY: In your opinion.

Q (Continuing) In your opinion? A No, sir; no part of it.

CROSS EXAMINATION BY MR. MANLEY:

Q I do not suppose that you claim to be an expert in handwriting, do you ? A I do not, sir.

Q Would you say that the ink writing on that page (indicating People's Exhibit 3) was all in the same handwriting ?

A I say I am no expert, I don't know.

Q What ? A I don't know. I am not an expert.

Q Well, would you say it was all in the same handwriting ?

A I don't know.

Q Well now, you have testified in your opinion that Max Mane did not write "S. Gottlieb"? A Precisely.

Q And you have testified in your opinion that he did not write the writing that is above "S. Gottlieb" ? A Yes, sir.

Q Do you see any difference on the face of People's Exhibit 1-A and 1-B, and the signature "S. Gottlieb" on the back?

A Well, this is pinned together. I cannot see the name.

Shall I take it apart ?

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Q Yes. A Yes, sir; different writing.

Q Different writing? A Yes.

MR. MANLEY: That is all. May I recall the last witness just a moment?

THE COURT: Yes, Mr. Beutler, you will come back to the stand for a moment.

ALBERT BEUTLER, witness for the defense, recalled for further cross-examination:

BY MR. MANLEY:

Q How long have you known the defendant, Max Mane?

A About thirteen years.

Q The last thirteen years? A Yes, sir.

Q You have been employed in his brother's firm, have you? A Yes.

Q In what capacity? A As bookkeeper and cashier.

Q You have seen Max Mane there very often? A Very often.

Q Does he work there now? A He does.

Q You work with him there? A I do, sir.

Q How long have you worked for the brother of this defendant? A Since thirteen years. How is that? How long?

Q Yes. A I say, I did not catch the question.

Q How long have you worked for the defendant?

A Since thirteen years.

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Q You have been in his employ constantly during that time ? A Constantly during that time, yes.

HERMAN REIS, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Reis, what is your business ? A Importer and manufacturer of dress and cloak trimmings.

Q Are you alone or a member of a firm? A Member of a firm.

Q What is the name of the firm, Mr. Reis ? A Erlanger & Reis.

Q Where is your place of business ? A 109 to 115 West 26th street.

Q And how long has your place of business been there ?
A About a year and a half.

Q And before that where was your place ~~if~~ of business ?
A In 10 West 18th street.

Q How long has the firm been in existence ? A Fifteen years.

Q Do you know Max wane ? A I do.

Q How long have you known him? A I think about between fifteen and sixteen years.

Q Was he ever in the employ of your firm ? A He was.

Q And in what capacity ? A Salesman.

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Q And when was he in the employ of your firm ? A From July, I don't exactly know what date, but during the month of July, 1906, until towards the end of March, 1908.

Q During that time what were his duties were with you ?
A General salesman.

Q And did he have the right, and did he collect moneys and checks for your firm ?

MR. MANLEY: I object to that as incompetent.

THE COURT: Objection sustained.

MR. STEUER: May I know whether it is on the ground that it is leading?

MR. MANLEY: No, it is incompetent, the subject matter.

MR. STEUER: Then it is not excluded because it is leading?

THE COURT: No.

MR. STEUER: I respectfully except.

Q Do you know other people who know Max Mane ? A Yes, certainly.

Q What is Max Mane's reputation for truth, veracity and honesty ? A Well, I can only tell you as far as I myself, what I know of him. Is that what you mean, or for others ?

Q Yes.

MR. MANLEY: Well, I object to that. That is immaterial what he thinks.

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BY THE COURT:

Q Do you know other people that know him? A Yes, sir.

Q Do you know what his reputation is among such people, for truth and honesty, yes or no? A I do.

Q Is it good or bad? A Very good.

MR. MANLEY: No questions.

I W A N P E L S, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. pels, what is your business? A I am manager of a jewelry store.

Q Where is your place of business? A 269 Sixth avenue.

Q How long, or what is the name of the firm? A I. Lokowitz.

Q How long have you been connected with that firm?

A About twenty-one years.

Q Do you know Mr. Max Mane? A Very well.

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

Q Did he ever do any work with I. Lokowitz? A Yes, sir.

Q At what seasons? A Around Christmas time.

Q And for how many years? A For about eight years.

Q You had occasion to observe him there, did you?

A Very well.

Q What did he do at your place of business? A He had

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charge of stock and sold goods.

Q Charge of stock and sold goods ? A Yes.

Q About what quantity of stock did you carry at the time he was connected with you ?

MR. MANLEY: Objected to as incompetent, immaterial and irrelevant.

THE COURT: I sustain the objection.

MR. STEUER: I respectfully except.

Q Do you know other people that know Max Mane ?

A Yes, sir.

Q Do you know his reputation for truth, veracity and honesty? A It is excellent.

CROSS EXAMINATION BY MR. MANLEY:

Q Did you ever hear his reputation discussed ? A Yes, sir.

Q You have heard it discussed, people talking it over?

A Yes, sir.

BY THE COURT:

Q When ? A On several occasions. First of all, I had to inquire about him when I first employed him, and I got excellent references about him.

J U L I U S H E I D E N, being called and duly sworn as a

witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Heiden, where do you reside ? A 118 East 74th street.

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Q What is your business, Mr. Heiden ? A I am an importer and manufacturer of buttons.

Q What is the name of the firm, if any? A Rothschild Brothers & Company.

Q What is your association with that business ? A I am general manager and salesman.

Q Do you know Max Mane ? A Yes, sir.

Q How long have you known him? A About fifteen years or more.

Q Have you transacted business with Max Mane ? A I have.

Q Just a few times or a great many times ? A Very often.

Q Do you know his family, his brother and the balance of his family? A I do.

Q And do you know other people that know Max Mane ?

A I do.

Q In your own business transactions with Max Mane, how many years does that cover ? A It covers fully fifteen years.

Q And in your transactions with him, how did you find him with respect to honesty, truth and veracity ?

MR. MANLEY: I object to that as being incompetent in form.

THE COURT: Objection sustained.

MR. STEUER: I respectfully except.

Q Do you know his reputation as to truth, veracity and honesty? A It is excellent. It could not be any better.

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MR. MANLEY: No questions.

GEORGE L. KARCH, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Where do you reside ? A Maplewood, New Jersey.

Q What is your business ? A Salesman.

Q Connected with what firm? A The United Button Company.

Q Did you ever have any occasion to transact any business with Max Mane ? A Yes, sir.

Q How many years have you been connected with the United Button Company? A Ever since they have been in existence, that is about seven years.

Q About seven years ? A Yes.

Q How long have you known Max Mane ? A About thirteen.

Q Thirteen years, do you mean? A Yes, sir.

Q Do you know other people that know him? A Yes, sir.

Q What is his reputation as to truth, veracity and honesty ?

MR. MANLEY: I object to that, unless he is first qualified as to whether he knows him or not.

THE COURT: Well, there is a preliminary question.

BY THE COURT:

Q Do you know what his reputation is among those who know him, for truth and so on? A Excellent, sir.

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THE COURT: Strike out the answer.

Q What is your answer, do you know him, the answer to that is yes or no? A Yes, sir.

Q Well, what is it, good or bad? A Good.

CROSS EXAMINATION BY MR. MANLEY:

Q How many times have you seen him prior to 1908, within the year prior to 1908? A I used to see him on and off -- prior to 1908?

Q Yes, prior to April, 1908, the year prior to that, had you seen him many times? A Yes, sir.

Q Where? A In his brother's place.

Q You used to do business with his brother? A Yes, sir.

Q And you occasionally saw him in there? A Yes, sir.

Q You do not know anything as to his finances at that time, do you? A No, sir.

S I M O N C. B E R N S T E I N, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Where do you live, Mr. Bernstein? A 14 East 60th street.

Q What is your business? A Real estate.

Q Do you know Max Wane? A I do.

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Q Do you know the members of his family? A Very well.

Q How long have you known Max Mane and his family?

A About fifteen years.

Q Do you know many other people that know him? A A great many.

Q Do you know what his reputation is for truth, veracity and honesty among those people? A The very highest.

Q No, do you know what it is? A Yes, sir.

Q What is it? A The very best.

CROSS EXAMINATION BY MR. MANLEY:

Q Do you know the brother of the defendant? A I do.

Q How long have you known his brother? A For about fifteen or sixteen years.

Q Do you have social relations with his brother? A I was in business with him.

Q How long ago was it you were in business with him?

A About five years ago.

Q For how long a time were you in business with him?

A About nine years.

RE-DIRECT EXAMINATION BY MR. STEUER:

Q While you were in partnership with his brother, did Max Mane work for the firm? A He did.

Q And for what period of time? A For about seven or eight years, I should judge.

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Q About seven or eight years ? A Yes .

Q And you had occasion to observe him then daily?

A Very closely.

Q What did he do for your firm?

MR. MANLEY: I object to this as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained.

MR. STEUER: I respectfully except.

J A C O B L. H E I D E N, being called as a witness, and having duly affirmed, testified on behalf of the defendant as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Heiden, what is your business ? A I am a manufacturer and importer of embroideries.

Q Embroideries ? A Yes, sir.

Q Where do you live ? A 118 East 74th street.

Q Where is your place of business ? A 71 Fifth avenue.

Q How long have you been there ? A On 5th avenue we are there now three years.

Q Before that, where were you ? A 594 & 596 Broadway.

Q How long were you there ? A Ten years.

Q How long have you been in business in the city of New York? A Since 1875.

Q Do you know Max Mane, A I do.

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

Q Do you know him well and intimately ? A Very well, yes, sir.

Q Do you know his family? A I do.

Q Do you know his reputation for truth, honesty and veracity? A Yes, sir.

Q What is it ? A The very best.

CROSS EXAMINATION BY MR. MANLEY:

Q Are you acquainted with the brother of Max Mane ?

A I am.

Q How long have you known his brother? A Nineteen years.

Q Are you a friend of his brother's ? A A business friend.

Q You have done business with his brother? A Yes, sir.

Q Where have you seen this defendant? A In his place of business and in my place of business.

Q You have seen him then in a business way ? A In my place of business and his place of business.

Q About this transaction for which he is being tried, you of course, do not know anything? A I do not know anything about it.

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HARRY ROSENTHAL, being called and duly sworn as
a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Rosenthal, what is your business ? A Handkerchiefs

Q Where ? A 71 Franklin street.

Q Is that wholesale or retail? A Wholesale.

Q How long have you been in business ? A About twenty
years or more.

Q Do you know Max Mane ? A Yes, sir.

Q Do you know his brother ? A Yes, sir.

Q And the family? A Yes, sir.

Q How long have you known Max Mane ? A Max Mane, about
ten years.

Q And do you know other people that know him? A Yes, sir.

Q Do you know what his reputation is for truth, veracity
and honesty ? A Very good.

Q Well, you know what it is, do you ? A Yes.

THE COURT: Well, we will let that stand.

CROSS EXAMINATION BY MR. MANLEY:

Q You say you are acquainted with the brother of the de-
fendant? What is his brother's name ? A Leo.

Q What is your business, Mr. Rosenthal? A Manufacturer
of handkerchiefs.

Q Where is your place of business , A 71 Franklin
street.

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Q Do you sell goods to Mr. Mane's brother, the defendant's brother? A We do.

Q How long have you been doing that? A Over ten years.

Q Where is it you have seen the defendant? A In his brother's place of business.

Q Have you seen him very, very long in his brother's place of business? A Well, I used to go around there quite often.

Q And he would be there? A He would be there.

Q And he has worked there on and off, as you understand it, has he? A Yes, sir.

Q Do you know the defendant socially? A Not socially, except that I used to see him down there.

G U S T A V E B O D E N H E I M E R, being called as a witness on behalf of the defendant, having duly affirmed, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Where do you live, Mr. Bodenheimer? A 24 Mt. Morris West.

Q That is in the Borough of Manhattan, City of New York? A Yes, sir.

Q What is your business? A Children's headwear, and children's dresses.

Q Where is your place of business? A 121 to 125 West

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17th street.

Q What is the name of the firm? A Bodenheimer & Merle.

Q How long have you been in business there? A Since Christmas we have moved there.

Q Where were you in business before that? A 520 & 522 Broadway.

Q How long were you in business there? A It will be eight years next April.

Q Do you know Max Mane? A I do.

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

Q Do you know many ~~ix~~ other people that know him? A I do.

Q Do you know his reputation for truth, veracity and honesty? A Very good.

Q You know what his reputation is? A Yes, sir.

Q And you say it is very good? A Yes, sir.

CROSS EXAMINATION BY MR. MANLEY:

Q You have stated, Mr. Bodenheimer, that your business is what? A Children's headwear and children's dresses, manufacturer.

Q Are you acquainted with the brother of this defendant, Mr. Leo Mane? A Yes, sir.

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

Q Have you done business with him? A Not before recently.

Q What is that? A Only recently we have done business

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together, the last two months.

Q Have you known him socially? A Yes.

Q You see him quite often, the brother? A Yes.

Q Have you had a talk with the brother about this case?

A No, sir.

Q He has not at any time said anything to you about it?

A No, sir.

Q Has he asked you to come here to testify as a witness?

A Well, the brother asked me to come.

Q When you say the brother, you mean Mr. Leo Mane? A Yes.

Q About how long ago was it Mr. Leo Mane spoke to you about coming down to testify as a character witness? A Well, the time he come, the time the case was to come on, he asked if I would volunteer.

Q Have you seen Max Mane very frequently in the last two or three years? A No, sir, I have not.

Q How often have you seen him in the last three or four years? A Well, about half a dozen times, I should say. We don't come together very often. I meet his brother more.

Q Much more than you do him? A Yes, sir.

EDWARD W. GRAY, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Gray, what is your business? A Real estate.

Q Do you know Max Mane? A I do.

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Q Where is your place of business ? A 146 Fifth avenue.

Q How long have you known Max Mane ? A About nine years.

Q Do you know other people that know him? A I do, yes.

Q Do you know his reputation among those people for truth, veracity and honesty? A Very good.

Q Do you mean that you know his reputation? A I beg pardon.

Q Do you know what his reputation is ? A Very good, I said

CROSS EXAMINATION BY MR. MANLEY:

Q Now, Mr. Gray, you say you are in the real estate business ? A Yes, sir.

Q For yourself ? A Yes, sir.

Q And your place of business is where ? A 146 5th avenue.

Q You have known this defendant nine years? A Yes.

Q Do you know his brother? A I do, yes.

Q Have you seen the defendant, Max Mane, frequently?

A I have occasion to see him frequently, yes.

Q When? A Up within about last year. Before that I used to be agent for the building No. 10 West 18th street, and when he was with Erlanger & Reis, I used to see him there, every day.

Q Used to see him every day where ? A 10 West 18th street.

Q What is 10 West 18th street ? A A loft building.

Q That is where his brother had his place of business ?

A No, that is where Erlanger & Reis had their place and he used to work for them.

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Q And you used to see him there with the rest of the employees? A Yes, I used to.

Q Did you have any social relations with the defendant?
A Yes.

Q What do you mean by that? A Well, I mean that his wife and my wife were very intimate.

REDIRECT-EXAMINATION BY MR. STEUER:

Q They are good friends and used to visit each other?
A Yes, sir.

S A M U E L L. S T E R N, called as a witness on behalf of the defendant, and having duly affirmed, testified as follows:

DIRECT-EXAMINATION BY MR. STEUER:

Q Mr Stern, what is your business? A Manager of Backer-Leon, Berlin.

Q Manager of what? A Backer-Leon, dress trimmings.

Q They cannot hear you? A I represent as manager Backer-Leon, of Berlin, importers of dress trimmings.

Q And where do you live, Mr Stern? A 519 West 143d.

Q How long have you been connected with this Berlin concern as manager? A About ten years.

Q And do you know Max Mane? A I do.

Q How long have you known him? A About the same

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length of time.

Q Do you know other people that know him? A I do.

Q Do you know what his reputation is for truth, veracity and honesty? A I do.

Q And what is it, Mr Stern? A Very good.

CROSS-EXAMINATION BY MR. MANLEY:

Q You say you have known him for about how long, Mr Stern? A About ten years.

Q Did he ever work for you? A No, sir.

Q Are you acquainted with his brother, Leo Mane? A I am.

Q How long have you known the brother? A About the same length of time.

Q Ever do business with his brother? A Yes.

Q How long a time have you done business with his brother? A The same length of time.

Q Do you know his brother socially? A No.

Q Did you ever hear the reputation of Max Mane discussed, spoken about? A No.

Q Where was it that you would usually see Max Mane?
A At his brother's business.

Q You would occasionally go to his brother's business and see him there? A Nearly every day.

Q And that is about the only place where you would see him? A That's the only place.

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Q You never had anything, as I understand you to say, to do socially with the defendant? A No, sir.

Q You would merely see him there, as you would see other people in Leo Mane's place? A Yes.

BY THE COURT:

Q Did you have any business relations with him? A Yes.

Q With this defendant? A In the way of his signing and giving ~~me~~ orders for his brother.

L E O M A N E, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT-EXAMINATION BY MR. STEUER:

Q Mr Mane, where do you reside? A 600 West 140th street.

Q Married man? A Yes, sir.

Q Where are you in business? A I am in business at 491 Broadway.

Q How long have you been in business in the city of New York? A Since 1891.

MR. MANLEY: Is this a character witness?

MR. STEUER: Both as to writing and character.

MR. MANLEY: Well, I will concede that the witness will testify that the defendant has a good character.

Q How long did you say you had been in business?

A Since 1891.

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Q Where? A Now at 491 Broadway, and for nine years at 496 Broadway; at 135 Grad street, and at Church street, 292 Church street.

Q Mr Mane, has your brother ever been in the employ of your firm? A He has been, at the time he came over from the old country.

BY THE COURT:

Q Now, you have answered, now? A Yes, sir.

BY MR. STEUER:

Q For how long a period? A From the time he came over from Germany until about 1902 or '03; I don't recollect just when, and then again since about, since my partner died about two years ago.

Q And you know a great many people who know your brother, do you not? A I do, certainly.

Q And you and your brother have come together socially, of course, a great deal? A Yes, sir.

Q Have you ever seen your brother write? A I did.

Q A great many times? A Certainly.

Q When you go to Europe, or do you go to Europe in connection with your business? A I go twice a year to Europe.

Q And in your absence who signs your name to checks?

A My brother has power of attorney to sign all checks and notes to the bank.

MR. MANLEY: I object to that and ask it be stricken

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out, unless it has some bearing on the qualification of this witness to express an opinion as to handwriting.

THE COURT: I take it it is for that purpose?

MR. STEUER: That is the purpose.

Q For how many years have you seen your brother write?

A Well, I saw him write as a school boy, you might say, and then I saw him since he was employed by me. I saw him all the time.

Q Have you received letters from your brother? A Certainly I have.

Q When your brother worked for you, did he go on the road? A He did.

Q And sold merchandise on the road? A Sold merchandise.

Q And how were the orders transmitted to your firm? A By mail.

Q Will you be good enough to look at People's Exhibit 3? Is the ink writing on that paper in your brother's handwriting, in your opinion? A Never.

Q Your answer to that is no, is it? A No, he could not write that paper.

Q I show you People's Exhibit 1-A and 1-B--
BY THE COURT:

Q (Interposing:) You are now shown People's Exhibit 1-A and 1-B, and your attention is called to the writing on

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the back of the check? A Yes, your Honor.

Q Are you able to express an opinion as to whether that is or is not your brother's handwriting? A I am.

Q In your opinion, is it your brother's handwriting?
A I am certain it is not.

BY MR. STEUER:

Q Is there any part of that paper that is in your brother's handwriting, whether it is on the front or back?

A It is not.

CROSS-EXAMINATION BY MR. MANLEY:

Q You say that you are a brother of the defendant?

A I am a brother.

Q Did you ever see your brother write the name "S. Gottlieb"? A Never did.

Q Now, you testify, Mr. Mane, that none of the writing that appears upon the face of People's Exhibit 1-A and 1-B, above the words "S. Goldsmith" are in your opinion in the handwriting of the defendant, Max Mane? A I do.

Q Do you see anything at all about it like his handwriting, anywhere? A No, nothing.

Q Not the least resemblance to it anywhere? A Not the least bit of resemblance.

Q You do not, I suppose, see the least resemblance in any of the words "S. Gottlieb" on the back of that exhibit?

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A No, sir, I don't. I know his writing very well.

Q And you think that, however he might desire or wish to disguise his handwriting, you could always tell it? A I could tell it if he disguised it, no matter how he tried to disguise it, I could tell his writing. I have got enough letters from him.

Q You think he could not so disguise it that you could not tell it? A No, not that.

Q Now, I show you People's Exhibit 3. Do you see any resemblance whatever there to his handwriting? A None.

Q None whatever? A None whatever.

Q Just read it all over? A I did read it.

Q None whatever? A None whatever, Mr Manley.

Q Would you say that the handwriting on that page was all in the same hand? A Well, I could not say anything like that, but I can tell my brother's writing.

Q I know, but you have told that, however he might disguise his writing, you could always recognize it? Now, would you say that writing is all in the same hand? A I would not say that, but I know it is not my brother's writing, nor that he could disguise his writing so that it could look like this.

THE COURT: Is it more agreeable to you, Mr Steuer, to stop at this time?

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MR. STEUER: Yes, sir.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, nor to form or express any opinion thereon, until the same is submitted to you.

This Court stands adjourned until to-morrow morning at half past ten.

(The Court thereupon adjourned the further trial of the case until Tuesday, January 18, 1910, at 10:30 o'clock A. M.)

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New York, January 18th, 1910.

TRIAL RESUMED:

MR. STEUER: I offer in evidence defendant's exhibit E for identification, as a standard of the defendant's handwriting.

MR. MANLEY: This appears to bear date October 13th, 1891,

THE COURT: I will receive it.

MR. MANLEY: I have no objection to it.

(Marked Defendant's Exhibit E in evidence).

MR. STEUER: I offer in evidence defendant's exhibit D for identification for the same purpose.

MR. MANLEY: I suppose, Mr. Steuer, the dates which appear on these various pages are the correct dates of the writing, are they, 1891? I have no objection.

THE COURT: I will receive it.

(Marked Defendant's Exhibit D in evidence.)

MR. STEUER: I offer in evidence defendant's exhibit H for identification for the same purpose.

MR. MANLEY: I believe the defendant has testified that this is his handwriting?

MR. STEUER: Yes, sir.

MR. MANLEY: No objection.

THE COURT: Received.

(Marked Defendant's Exhibit H in evidence.)

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MR. STEUER: I offer in evidence defendant's exhibit J for identification.

THE COURT: Received.

MR. MANLEY: May I glance at it just a moment, Your Honor?

THE COURT: Certainly.

MR. MANLEY: No objection.

MR. STEUER: I offer the envelope and letter in evidence defendant's exhibits I and J for identification.

THE COURT: Received.

(Marked Defendant's Exhibits I and J in evidence.)

MR. STEUER: I offer defendant's exhibit F for identification in evidence.

MR. MANLEY: No objection.

THE COURT: Received.

(Marked Defendant's Exhibit F in evidence.)

MR. STEUER: I offer the letter writings, defendant's exhibit L for identification, in evidence.

MR. MANLEY: You don't mean to offer the typewriting, do you?

MR. STEUER: No; I distinctly excluded that, Mr. Manley.

MR. MANLEY: Then I simply understand that defendant's exhibit L comprehends merely the ink writing?

MR. STEUER: The ink writing.

MR. MANLEY: No objection.

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THE COURT: Received.

(Marked Defendant's Exhibit L in evidence.)

W I L L I A M J. K I N S L E Y, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Kinsley, what is your business, occupation or profession? A I am an examiner of questioned documents, handwriting, typewriting, ink and paper.

Q How long have you made that your business? A For twenty-five years I have been a professional penman. For twenty-three years of that time, I have given particular attention to the study of questions involved in disputed instruments, and for something over fourteen years I have been testifying in courts of law in regard to those questions.

Q And have you testified in this court? A I have, in this very room, several times.

Q In behalf of the People? A Yes, the People vs. Molineux was one of the cases, I believe, tried in this room.

Q Were you ever connected with the "Penmans' Art Journal?" A I was; I edited the periodical for seven years.

Q When you took up the study of disputed handwritings, were you associated with any experts on the subject at that

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time? A I was, with Daniel T. Ames, author of "Ames on Forgery."

Q Did you have anything to do with the writing of the book? A I did; I helped edit it somewhat, and wrote four or five chapters for it.

Q Were you ever associated with the authorship of any work on handwriting? A I was joint author and publisher of a work known as "A Series of Lessons in Plain Writing."

Q Have you written in magazines upon that subject?

MR. MANLEY: I will admit that Mr. Kinsley is qualified as an expert.

Q Mr. Kinsley, for the purpose of giving testimony in this case, have you examined People's Exhibit III and People's Exhibit 1A and 1B? A I have.

MR. STEUER: Let me have People's Exhibit III and People's Exhibit 1A and 1B, Mr. Clerk, please.

Q Have you made a study of the context of both those instruments, Mr. Kinsley? A I have.

Q Have you had, for the purpose of enabling you to give testimony in this case, under observation and study, People's Exhibit F -- I mean, Defendant's Exhibit F? A Yes.

Q And Defendant's Exhibit H? A Yes.

Q And Defendant's Exhibit D and E? A Yes.

Q And Defendant's Exhibit I and J? A Yes.

Q And Defendant's Exhibit L? A Yes.

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Q Mr. Kinsley, have you formed-- have you made a comparison of the handwriting contained in the Defendant's Exhibits which you have just enumerated as having been in your possession, with the handwriting in People's Exhibit III and 1A and 1B? A I have.

Q Have you formed an opinion as to whether or not the same person or the same hand wrote People's Exhibits 1A and 1B and People's Exhibit III? A I have.

Q And have you formed an opinion as to whether or not the same hand that wrote People's Exhibit 1A and 1B and People's Exhibit III, wrote the various Defendant's Exhibits which you have in your hand? A I have formed such an opinion.

Q In your opinion, did the same hand write People's Exhibit 1A and 1B and People's Exhibit III that wrote the various Defendant's Exhibits that you have got in your hand? A In my opinion, he did not.

MR. MANLEY: May I have that read?

(Question repeated by the Stenographer.)

MR. MANLEY: Is that as you put it?

THE COURT: Why, the witness is asked to institute a comparison, as I understand it, or, rather, he is asked to express an opinion as to whether Defendant's Exhibits were written by the person who wrote the People's Exhibits.

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MR. STEUER: That is the point. Isn't that the meaning that is conveyed to your Honor by my question?

THE COURT: Yes.

BY THE COURT: That is, as you understand it, is it not?

A Yes, your Honor.

BY MR. STEUER: Now, Mr. Kinsley, you have examined particularly People's Exhibit III have you not? A I have.

Q Have you noted any characteristics in the handwriting contained in People's Exhibit III above the signature which are marked? A I have..

Q Now, will you tell us what your observations were upon that subject?

MR. MANLEY: That is objected to. That is matter for cross-examination, the grounds upon which his opinion is based.

THE COURT: I think that is matter of cross-examination, counsel.

MR. STEUER: Do I understand then that your Honor holds that I am not permitted to show these twelve gentlemen why Mr. Kinsley came to the conclusion and for the purpose of demonstrating to them, so that by an examination of the documents they can see the differences themselves, that I am not allowed to show that as part of my case?

MR. MANLEY: I think that it is quite well settled that it is for cross-examination to go into the grounds of

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the expert's testimony.

THE COURT: You have qualified this expert as a witness, and the witness has expressed his opinion.

MR. STEUER: And that is as far as your Honor will permit me to go?

THE COURT: I am inclined to think that that is as far as you are allowed to go on direct examination.

MR. STEUER: I respectfully except. Then whether or not the jury come to the conclusion assuming that there is no cross-examination, your Honor--

MR. MANLEY (interrupting): I object to a statement of that sort by Mr. Steuer, which is a well known method of getting in before the jury something that is not in evidence. Now, the Court has passed upon my objection and that ends it.

MR. STEUER: That is an absolute charge of unfairness against me, but I am not going to reciprocate by making such a charge against Mr. Manley; but I know in the civil courts no such charge was ever made against me.

MR. MANLEY: I am making no such charge and Mr. Steuer knows it quite well.

MR. STEUER: May I call your Honor's attention to the fact,- and this is a fact,- that an examination of the various trials held in this court in which handwriting was under examination-- Since my adversary says that what he claims is a well known practice-- you will find that when

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Mr. Kinsley and Mr. Carvahlo and all the other men testified that it was the uniform practice and procedure, may it please your Honor, for the expert first to state his conclusion and the next question was "Will you tell the jury, briefly, the reasons for the conclusion that you reached and the processes by which you reached it?"

THE COURT: Well, I will reconsider, Mr. Steuer, my ruling, and I will allow the witness to answer the question.

THE WITNESS: I find in--

MR. MANLEY: May I have the question repeated?

(Question repeated by the stenographer.)

A I noticed in People's Exhibit III a number of distinct, peculiar and marked characteristics. Some of these are in letter formations. Others are in the matter of pen pressure and still others in the matter of proportions. In the matter of proportions in the writing in this Exhibit, I find the loop letters from two and one half to four times the height of the small "e" and "I" and what we know as the minimum letters. I find a peculiar construction of the small "c", that when first looked at appears to be a small "s". The ordinary school or copybook method of making a small "c" is to carry the stroke up and turn and continue without lifting the pen.

In this Exhibit III we have the letter made somewhat in the style that I have indicated at the top (illustrating),

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and then the pen is lifted and dropped down the base line and finished with an upward stroke, so that when it is taken in the word "watch" in the fifth line, or the name "Daiches" in the sixth line, but particularly in the word "watch", it looks as if the word were spelled "watsh." That occurs in the word "Daiches", and , as I have said, in the word "watch", in the word "check", the word "receipt" and in the word "watch" again.

BY THE COURT:

Q Mr. Kinsley, I am going to interrupt you just for a moment and ask you a question. As the result of your examination of People's exhibits 1A and 1B and People's exhibit III, did you form an opinion as to whether those exhibits were or were not written by the same person? A I did, your Honor.

Q And what was that opinion? A In my opinion, the same hand that wrote exhibit III wrote 1A and 1B.

THE COURT: Now proceed.

MR. STEUER: I think Mr. Carvalho testified yesterday to exactly the same thing, didn't he?

MR. MANLEY: Without any doubt.

(Answer continuing): This peculiar construction of the small "c" is repeated five times, so consistently as to indicate , and especially when the speed with which it is made is taken into account, as to indicate quite clearly

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that this body writing is not a disguised writing. It is written rapidly, and that peculiar construction of the small "c", in my opinion, is a characteristic habit of the writer of exhibit III, and also, of course, the same thing in exhibit 1A and 1B, except there there are no c's.

This particular letter does not occur in the other exhibit, but, in my opinion, the same person wrote the body of the check that wrote the body of exhibit III.

This is a peculiar and significant combination in making this small "c", and its repetition and the speed with which it is made make it, in my opinion, very certain that the writer of this exhibit wrote, as he did, rapidly and unconsciously, and it is not a disguised writing above the signature, the body part of the writing.

The small "y" in the questioned writing varies from the copybook standard in the upper portion. The upper-- the small "y" for example, is an "h" but turned upside down, one of the methods we would have of characterizing it.

In this exhibit III we find a style of letter made so that the second or the first or what is known as the end part of the letter is flattened out. It does not drop and sag away down toward the base line. There is some slight variation in that, but nevertheless, that is the characteristic habit running through this writing. It varies from the standard or copybook "y" in the movement from left to

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right instead of going up and down. That is particularly a distinct peculiarity in this disputed handwriting. We have in the figure 8 the ordinary school or copybook method of making it somewhat like I have shown here (illustrating).

MR. MANLEY: You mean the figure 8 in number III.

THE WITNESS: Yes, in all of them, but I am illustrating now the school or conventional copybook. The characteristic in the handwriting is in the departure from the school or copybook characteristic. But I wish to show wherein the disputed writing is peculiar and characteristic and wherein it has departed from the conventional writing.

Take the 8. In order to see it at some distance I have exaggerated this curve (indicating). The originals themselves will give, of course, the exact degree of curve to which I wish to call attention, but the initial stroke of that figure 8 is a slight double curve. This is so gentle, so small and so elusive and made at such a high rate of speed that I believe it to be impossible for anyone to inject that in there as a disguised handwriting. It is too small a thing and would not be noticed. Disguises, in my experience, I have found to be great, big, perfectly obvious things and put on almost like with a white-wash brush, but this is such a little thing and occurs three times on the check, and this letter is so small and so elusive that I am clearly and strongly of the opinion that it is char-

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acteristic in the handwriting of the person who wrote this exhibit. That is so small I do not think it would be noticed unless attention was directed specifically to it.

Now, the figure 4 is not so small, but it is a significant and characteristic method of making that figure. The figure 4 in the school or copybook style should rest on the base line. This horizontal stroke should be practically horizontal with the base line. The second part should be a little higher than the first part. In the "\$94.86" that occurs on exhibit III, we have the two parts of the figure 4 the same height and then a very long extension below, and the upper part of the figure away up above the base line. The ciphers we also have made in a somewhat different manner from what they are frequently made. They are made here-- that is, one style in the check and in the bottom of the check; and in the bottom of the check it is made somewhat like that (indicating); that is not particularly peculiar or significant. But what is peculiar and significant in this writing is the construction of the capital "I". It is made--

BY MR. MANLEY(interrupting):

Now, what writing do you refer to? A Exhibit III; it is made in a different manner from the ordinary American type of "I." In the American type the letter is based on the inverted oval (illustrating), starting at the point I have indicated with the "X" and going in the direction I have put the arrow. In the disputed exhibit III that direction

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is reversed (illustrating), an extremely significant method of making the letter. It is used by some people and by a smaller number of people than those who make the style I first illustrated.

Well, those are, in the main, without going into some finer details, some of the peculiar and significant things in the exhibit itself, without referring to anything else.

BY THE COURT:

Q Are you still referring to number III? A Number III and 1A and 1B, partly.

BY MR. STEUER:

Q Now, those things that you have pointed out are peculiarities that you found associated with the person who did the writing on that paper? A Yes, sir.

Q Now, as to the general picture, the pictorial effect of the writing on exhibit 3 as compared with the writings on the defendant's exhibits, what have you to say to the jury about that? A In pictorial appearance, they are quite widely dissimilar.

Q In what way? A In the matter of speed first of all. The defendant's writings are , different pen pressure, carefully and more slowly made than the disputed exhibit, and in my experience in examining forged and disguised and questioned writings that is the reverse of the process, when we find a disputed document written more rapidly

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than a standard document. Ordinarily, in disguising a thing, a person will slow down his speed, go very formally and carefully. The reverse is true in this case. The disputed exhibits, both III and 1A and 1B, are written at a high rate of speed indicating a less degree of skill, a kind of scratch, off-hand style, and I believe it to be impossible to write at that speed and inject these peculiar and elusive characteristics and keep your mind on the work and disguise your writing at the same time.

Q. Now, Mr. Kinsley, both you and Mr. Carvalho have testified that exhibit III, this exhibit III in this case, is in one handwriting. I ask you now to state to the jury whether the person that wrote exhibit III wrote "S. Gottlieb" on exhibit III with the same freedom with which the words "S. Gottlieb" were written in the disguised hand? A In my opinion, "S. Gottlieb" is written in a disguised hand, much slower and much more formal than the body writing.

Q So that you find--
BY THE COURT(interposing):

Q Pardon me. You are referring now to the words "S. Gottlieb" on exhibit III? A Exhibit III.
BY MR. STEUER:

Q So that you find on that very paper a carrying out of the statement that you have just made,- that when a person disguises, he slows down, writes more formally and more care-

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fully than when he is writing freely in his natural hand?

A Yes, that is true.

Q What else have you to say with respect to the slant or distance or proportion on that writing, if anything, as compared with defendant's exhibits in the defendant's handwriting? A In the defendant's handwriting we have writing, as a rule, that has not so much slants to the right or vertical. It is more compact and has more curves in the upstroke, which is occasioned by the fact that if he didn't curve in the upstroke he has such a short distance to go and he wouldn't be able to make legible writing.

I called attention a while ago to the fact that in the disputed exhibit III and in 1A and 1B, the loop letters were long. We have an extreme pace in the "y" in the word "boy" and the "h" in "watch". The letters are extremely tall. Now, that is exactly the opposite habit of the writer in the standard. He makes his loops much shorter, usually about a proportion of one to one and a half, whereas the standard exhibit we have, or the disputed exhibits we have sometimes as high as four, a proportion of one to four. Take the small "p" in the word "April", we have an abnormal length made again at a high rate of speed. It extends an extreme distance above the line and an extreme distance below the line and is made with a quick dashy movement in contradiction to the habit of the slow drawings of the imitator or disguiser.

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We have the habit in the standard writings of frequent breaks or pen lifts. For example, it is rare to find two letters joined together. You do occasionally find two letters joined together but the habit is to disconnect those letters, very frequent disconnection. You take the word "Siegel". "Si" are connected, "eg" connected; "el" connected. In others there are breaks in them. Other times you will take a word and there will be hardly any two letters connected. Here is "Salomon". "S" is disconnected from the "a"; "al" are connected, and the "o" is disconnected; "m" and "o" are disconnected, "n" disconnected. In fact it is a kind of semi-print style of letter rather than a free, connected, dashy handwriting of a person, and we have much acquaintance with that in the standard. We are not hampered or limited.

Picking up the disputed exhibit the reverse is true. We have a connected style except for that peculiar disconnection in the "c" which I called attention to. That is an exception to the habit of this writer but in other places where the defendant disconnects the person who wrote exhibit III connects, and the defendant does not disconnect, does not make that style of "c" at all; that is foreign to his handwriting.

Q In your opinion, Mr. Kinsley, everything in exhibit III written above the signature, was that the natural handwriting of the person who wrote it or a disguised hand.

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A In my opinion it is a natural handwriting for the reason of the high rate of speed and the consistency from beginning to end that is maintained in the little elusive peculiarity. They are repeated.

Q In your opinion, these characteristics that you have pointed out in the handwriting on exhibit III above the signature, was the writer conscious of them when he made them or unconscious of them? A Unconscious, in my opinion.

MR. STEUER: You may examine.

CROSS-EXAMINATION BY MR. MANLEY:

Q Now, Mr. Kinsley, I suppose you have testified in a great many cases, haven't you? A Quite a number.

Q Well, a great many? A It depends on what you call a great many; several hundred.

Q Well, I should call that a great many. And on the subject of handwriting is that so? A Yes; sometimes it is ink, paper and allied questions. I have testified several hundred times on handwriting.

Q Now, you have examined the various People's Exhibits 1A and 1B and No. III, have you? A Yes.

Q And you think you can tell pretty accurately the rate of speed the writer employed when he wrote exhibit III? A No, I don't think so.

Q Well, you can often tell the rate of speed? A No,

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I didn't have any penometer.

Q No, I thought I knew that before I asked you. You probably didn't have a penometer on it. A Then how could I tell it accurately if it wasn't measured?

Q Now, I show you People's Exhibit III and People's Exhibits 1A and 1B. And as I understand your testimony, you have said that the same hand wrote those various exhibits?

A Yes.

Q Is that so? A Yes.

Q Would you say that the same hand that wrote the signature of the drawer of this check, "S. Goldsmith", also wrote the writing which is above on the fact of the check?

A I wouldn't be able to say.

Q You would not? A No.

Q Why can't you tell us that? Take it and look at it.

A I have looked at it before.

Q Well, look at it again. A I am looking at it.

Q And you can't tell us that? A There are somethings I don't know.

BY THE COURT:

Q Respecting handwriting? A Yes, sir.

BY MR. MANLEY:

Q Well, is it your opinion that it is a different handwriting Mr. Kinsley? A I don't know. I have an impression it is the same handwriting, but it isn't a strong, clear

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impression.

Q It isn't a definite impression that you want to convey to this jury? A No.

Q Do you find any evidences of speed employed by the writer in writing "S. Goldsmith"? A I do; a great many.

Q You think that it was written very fast? A It was written right off.

Q Without any hesitation? A Except where the pen is lifted. You might call that hesitation, but when the pen is on the paper there are no indications of pausing, stop or hesitations, and the pen travelled right along.

Q Well, your answer to my question then is, that there are evidences of speed employed by the writer in writing "S. Goldsmith"? A Oh, yes.

Q Do you know that it is testified to in this case that the signature "S. Goldsmith", is a forgery? Have you been informed of that? A Why, Mr. Steuer, told me that, I believe, some days after. I have a faint recollection of that.

Q Well, you are familiar with the fact that there has been such testimony? A I suppose there was something like that or I wouldn't be here. I was kind of guessing at that.

Q Is that the reason that you are here because there is such testimony? A. If there wasn't some question about that, I don't suppose I would be here; no.

Q Well, as I understand it, you haven't as yet testified

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with regard to the signature "S. Goldsmith" on People's exhibit 1A and 1B? A No, I haven't.

Q Well, then, you are here for another purpose? A I am here because somebody else, evidently, has testified to that.

Q Well, now, has it been your experience, Mr. Kinsley, that when a man sets out to commit the crime of forgery, he writes very rapidly? A No.

Q I suppose, Mr. Kinsley, that, as a matter of fact, your experience has been quite the reverse, hasn't it?

A It has been the reverse. In a large majority of cases, he writes slowly and more carefully, ordinarily.

Q And yet you say to this jury that the writer of "I. Goldsmith" on People's exhibit 1A and 1B wrote rapidly?

A He did.

Q Now, you testified, if I understand you correctly, that the man that wrote the words "S. Gottlieb" on People's exhibit III wrote the writing above "S. Gottlieb" on People's exhibit III? Am I right? A I don't recall that I testified to that, but I think you are right. My opinion--

Q Well, now, didn't you testify to that? A No, it wasn't asked me, as I recall, but, in my opinion, he did.

Q Why, Mr. Kinsley, wasn't it asked of you whether or not, in your opinion, the writing on People's exhibit 1A and People's exhibit III, were all in the same hand. A Just

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about the signature.

Q Wasn't that asked you? A About the signature was asked me, yes.

Q When you say above the signature, you , of course, refer to the signature "S. Goldsmith" on People's exhibit 1A and 1B? A Yes, and above "S. Gottlieb" on exhibit III.

Q You understood it above "S. Gottlieb" on People's exhibit III? A I not only understood but that is distinctly what Mr. Steuer said; I listened to the question very carefully.

Q I simply want to get at your state of mind, Mr. Kinsley. As I understand it, then, you haven't as yet testified that the writing on People's exhibit III is all in the same handwriting. You haven't as yet? A I did about a half minute ago.

Q I mean on your direct examination? A On direct examination, I didn't; no.

Q It is now your opinion, however, that the writing on People's exhibit III is all in the same hand, is that so? A It is now and was my opinion; that is, you haven't changed my opinion.

Q If you don't mind, Mr. Kinsely, just answer the question.

THE COURT: Just answer his questions, Mr. Kinsely, and as briefly as you know how.

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MR. MANLEY: This is not an intellectual contest between you and me.

THE COURT: Now proceed, Mr. Manley.

THE WITNESS: Will you repeat the question?

(Question repeated by the stenographer as follows):

"Q. It is now your opinion, however, that the writing on People's exhibit III is all in the same hand, is that so?"

A Yes.

BY MR. MANLEY:

Q Now, do you see some dissimilarities between the writing "S. Gottlieb" and the writing above that? A I do.

Q There isn't much doubt about that, is there? A No.

Q You say that the and that wrote this part of the writing, People's exhibit III, which is above "S. Gottlieb" wrote rapidly, is that so? A Yes.

Q And unconsciously? A Yes.

Q And you have described it pictorial. A Yes.

Q And you say that the time the writer wrote "S. Gottlieb" he was conscious? A Yes.

Q He attempted to disguise that? A In my opinion, yes.

Q Now, I show you People's exhibit 1A and call your attention to the endorsement "S. Gottlieb" on the back. Did the man that wrote that endorsement write the "S. Gottlieb" on People's exhibit III? A In my opinion, he did.

Q Are they identical, Mr. Kinsley? A No.

Q They are not? A No.

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Q Will you point out to this jury the differences between the "S. Gottlieb" written on People's exhibit III and the "S. Gottlieb" written on People's exhibit 1A? A The capital "G's" at once would show they are not identical. The one on III has a loop, the letter part; the one in the endorsement has not.

Q What other differences are there? A In exhibit A the pen is lifted between the "t" and the "e"; in the other one the pen is kept down.

Q Any other differences? A Differences in the size of the capital "G," the size of the "S". One of the "t's" is looped in exhibit III. Neither of them has a loop in exhibit 1A.

Q What else? A The "e" is filled in on exhibit III.

Q Yes? A And is open on exhibit 1A.

Q Now, I suppose you can find other differences there, can't you? A Well, those are very minor differences I would call them.

Q Well, give us, if you please, the minor differences.

A Well, I have given them. Those are all minor differences, all minor differences and of no consequence at all.

Q Are there any major differences there? A No.

Q In other words, those differences that you have characterized as minor are unimportant? A Unimportant differences.

Q Now, you thoroughly comprehend my question, and that

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is your answer? A Yes, sir.

Q Now, is this a disguised writing, Mr. Kinsley, referring now to the endorsement upon the back of People's exhibit 1A? A In my opinion, it is.

Q Have you any doubt about it? A No; I said, in my opinion, it is.

Q Well, have you any doubt that that is your firm opinion? A Why, no.

Q Alright. Now, Mr. Kinsley, when the writer of the words "S. Gottlieb" on the back of People's exhibit 1A disguised his handwriting, do you think that he could carry the picture of that disguise in his mind, and then about six days thereafter practically repeat the same disguised handwriting? A He might and could, yes.

Q Do you think that is probable? A I have known it to happen. So, of course, I am led to think it could happen.

Q Well, does it happen so often that it is probable? A Yes, I have known them to keep a dozen different handwritings in their minds and for them to separately pigeon-hole and repeat any of them at will.

Q Do you think that the man that forged this check, People's exhibit 1A and 1B and wrote People's exhibit III is an expert penman? A I do not.

Q Can you tell us that? A No, not very expert, from People's exhibit III, I don't think; he is not very expert.

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Q Well, how expert is he? A I haven't any means of measuring, but I wouldn't think he was above the average.

Q Just about the average writer? A Yes.

Q If I understand you correctly then, Mr. Kinsley, the only evidence of disguised writing that you find in People's Exhibits 1A and 1B and III are the signatures "S. Gottlieb", is that so? A Yes.

Q Are there any evidences of disguised writing upon the face of People's Exhibits 1A and 1B, that is to say, the words written in ink, "S. Gottlieb", and "One hundred and nine Dollars and Eighty-six cents", and the figures "\$109.86".

A I hardly think there is any disguise there.

Q Well, what is your opinion? You have testified positively as to People's Exhibit III? A Well, that is written on a sheet of paper with plenty of space, free and untrammelled writing, whereas this there--

Q (interrupting) Now, I just asked for your opinion?

A You asked for my reasons.

Q I asked for your opinion?

MR. MANLEY: Will you repeat my question?

(Previous question repeated by the stenographer).

A I don't think it is disguised. It is a little more formal and crowded.

Q You say then, Mr. Kinsley, that the writing above "S. Gottlieb" on People's Exhibit III and the writing upon

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the face of the check People's Exhibit 1A and 1B are practically the same? A Yes, considering the two places in which we find them.

Q Of course, if a man should write in his free and natural style, rapidly and unconsciously in such a manner as to have pictorial aspects, why, you would expect that the writing on two different sheets of paper would be absolutely the same, wouldn't you? A No, not to use the word "Absolutely"

Q Well, practically so. I modified the word "absolutely". A Practically so; if conditions are the same the writing would be the same.

Q Now, tell us if you can, whether the conditions at the time People's Exhibits 1A and 1B were written and People's Exhibit III was written, were the same or different? A They are different from the very nature of the papers themselves. I don't fill out a check the way I write a letter.

Q Well, don't you think that if a man should write upon one piece of paper with the same pen and at the same time he wrote upon a different piece of paper with the same pen and practically at the same time, that the writing on the check would be practically the same if he were writing unconsciously? A If he had two pieces of paper and unlimited space; but if he is filling in a check the writing doesn't always appear just the same as on the body of the instrument.

Q Now, do you find any differences between the writing

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upon the face of People's Exhibit 1A and 1B and People's Exhibit III, yes or no. A Yes.

Q Are those differences due to the fact that the space was limited in the case of People's Exhibit 1A and 1B?

A I think so.

Q Is that the only reason? A I don't know what is the other reason.

Q Why, if a man writing out a check, which is in a check book attached to one end, puts his fingers on the other end, and has his arm upon a table, do you think he is hampered in writing about four words? A It depends upon where the check is. If it is on the bottom of the page on a sheet of checks, and he has a book an inch thick, then he is hampered. If he is writing in the middle of the page he is hampered little. He doesn't have the freedom in writing a check that he does in writing on paper.

Q Well, do you say from inspection of this writing that he was hampered at the time he wrote it? A I don't know.
BY THE COURT:

Q Well, is there any indication that he was? A There isn't any indication that he was hampered. It is a little bit slower than the other writing, a little bit more compact, and I attribute it to those conditions.

BY MR. MANLEY:

Q Now, you have been shown here various writings which

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are in evidence here as standards and which it has been testified to are in the handwriting of the defendant. I call your attention to Exhibit III. You have examined it, have you? A I have.

Q What style of handwriting would you call that? A It is an Americanized German hand. It is a German struggling with the American type of script.

Q From examination of this book, you can even tell the nationality of the man that wrote it? A I think so, yes.
BY THE COURT:

Q It is that copy-book-- I mean to say does it appear to be a book in which someone is trying to imitate a standard set? A It is your Honor; it is a Spencerian copy-book. There are lapses in the German formations here and there, lapses from the American style.

Q In other words, that is a book in which the writer is endeavoring to imitate a style of writing that is before him? A Yes.

Q That writing is in a book where the writer is conscious, afraid-- A Yes.

Q (continuing) To do something other than that which he would otherwise do in the handling of a pen? A Yes, that is right your Honor.

Q He is endeavoring to write according to a simple set before him? Is his writing under such circumstances any

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indication whatever of the natural handwriting of the person?

A It is some indication but not much.

Q It is exceedingly slight? A Slight. I practically eliminate that book and the other book from my examination as standards. There are indications, I say, there that the writer was a German by his lapses into the German style even with the American type before him.

Q Because in those books which you refer to, the writer is consciously endeavoring to avoid his own peculiarity?

A That is right your Honor.

BY MR. MANLEY:

Q Would you say that the writer of this writing at the bottom of the copy-book succeeded very well in copying the original at the top? A Yes, he did, fairly well.

Q There are evidences of skill there, aren't there?

A I couldn't say that for an adult; no.

Q There are no evidences of skill then, is that the answer? A Well, I wouldn't say that. There are some evidences of skill but not enough to cause any comment, not sufficiently above the average to cause comment.

Q Now, as I understand you here, Mr. Kinsley, this, printed at the top, this line that is printed, of course that is a copy? A Yes.

THE COURT: Mr. Manley, I think it is desirable that you should refer to the Exhibits by number.

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MR. MANLEY: I have started out to question Mr. Kinsley with regard to Exhibit D, and I mentioned it at the start.

THE COURT: Very well.

Q And the object of the copyist is to copy the original?

A Yes.

Q Now, do you want to tell this jury that this man didn't succeed well when he wrote that? A He succeeded fairly well.

Q But you say you eliminate that from your consideration, do you? A yes.

Q I now call your attention to the Defendant's Exhibit E and ask you the following question: You have examined that, have you? A I have.

Q There is nothing to copy there in that book, is there? A No, not so far as I know.

Q As far as you know it is entirely in the handwriting of the defendant? A Yes.

Q Now, I refer again to the Defendant's Exhibit D; the writing there inclines to the right from the perpendicular? A Yes.

Q Now, is defendant's Exhibit E the same style of handwriting as Defendant's Exhibit D? A Yes, substantially.

Q Substantially? There are differences are there? A Minute, small differences, yes.

Q The writing in Exhibit E inclines to the right from

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the perpendicular somewhat, doesn't it? A Yes.

Q Are there evidences of German writing there? A There are quite a number.

Q Now, I show you Defendant's Exhibit H; that is almost a perpendicular style of handwriting, isn't it? A Yes.

Q Much more so than the two preceding Defendant's Exhibits to which I have been referring? A Yes.

Q In other words, it is a sort of different style of handwriting, isn't it? A Yes.

Q Now, I call your attention to Defendant's Exhibit L; how would you characterize that as to perpendicular, left, or right, or horizontal or what is it? A It is a slant to the right.

Q Slant slightly to the right. That is also, I should say, being a layman, a different style of handwriting from Defendant's Exhibit H, isn't it somewhat? A Somewhat, yes, sir. It is a little freer than the other one. The other one is a list of names.

Q Wouldn't you say that the writer of Defendant's Exhibit L had considerable skill as a penman? A Yes.

BY THE COURT:

Q What common characteristic do you find in the Defendant's Exhibits of handwriting which influences you to express the opinion that they are all written by the same person? A First of all, the matter of pen pressure or emphasis; second, pro-

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portions. His writing is much, quite compact and the short letters occupy a space of about one to one and a half for the tall or loop letters; third, the extreme curve in these very short letters; his writing is exceedingly legible. The loops in such letters as the small "e" are clear cut and well defined, and that is occasioned by the extreme curve on the upstroke; and we have in the handwriting, even where the slant varies, a number of characteristic peculiarities like the initial small "e", or where he makes a break between a preceding letter.

BY THE COURT:

Q I recall that you made substantially that statement on direct examination. A And that we find --

MR. MANLEY: That has all been testified to, if your Honor please, on direct examination.

THE COURT: Yes, I beg pardon.

BY MR. MANLEY:

Q I now show you defendant's exhibit I and J. Now that is also a distinct type of handwriting from defendant's exhibit L, isn't it? A Yes, I shouldn't say it is a distinct type. It varies decidedly in slant. It is written with a decided back hand slant.

Q That shows that the writer of the defendant's exhibit I is able to write back hand, does it not? A It does.

Q In other words the slant from the perpendicular is toward the left? A Yes.

Q Whereas, in these other exhibits that I have shown you, the slant has been towards the right, is that so? A Yes.

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Q Doesn't it indicate to your mind, Mr. Kinsley, that where a man can write as he has done in the two copy-books, the numbers of which I have heretofore referred to, and in Defendant's Exhibit L, and in this exhibit which I have called your attention to, Defendant's Exhibit I, that he possesses considerable skill as a penman? A Not necessarily, taking into account the two copy books and this, as regards the other exhibits. The two copy books, I think in all fairness should not be taken into account, because he was in school, following some model.

Q Well, I will eliminate the two copy books? A Yes, and they are written nineteen years ago.

Q What is your answer, provided I eliminate the two copy books? A Yes.

BY THE COURT:

Q What weight do you attach to the circumstance that they were written so long ago, as bearing upon the--- A (Interrupting) I attach considerable---or I attach but very little to the two copy books, except as showing the evolution of handwriting from the German character, at that period, and in school, but so far as the characteristics and individual handwriting is concerned, I would attach very little importance to these books. They are copying for imitating a style, rather than the free and unconscious habit of

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the writer.

Q Now, entirely aside from that circumstance, what importance has the circumstance that they were written nineteen years ago? A I think it detracts from their value. The nearer you get to the time of a questioned writing and that of the standard the better.

Q In other words, the longer the period intervening between the writing that is the standard and the disputed writing, the less the standard writing affords a basis for comparison? A Yes, that is generally true.

BY MR. MANLEY:

Q Now, Mr. Kinsley, I call your attention to defendant's exhibit F; now, that, is it not, is a style, in a different style the handwriting, from Defendant's Exhibit L and Defendant's Exhibit I? A No, I think it is in the same style as Defendant's Exhibit L, slightly more compact in form.

Q Well, the letters range the same as to their being perpendicular or diverging from the perpendicular? A Yes, they slant slightly to the right.

Q The same amount of slant as in Exhibit L? A Not quite so much.

Q Now the same slant as in Exhibit I? A No.

Q Now, wouldn't you say, Mr. Kinsley, being familiar

with handwriting, that the man that wrote Defendant's Exhibit F. had considerable skill as a handwriter? A I would.

Q You understand that all of these exhibits which have been shown to you and put in evidence, starting with D and down to F are in the handwriting of the defendant? A Yes.

BY THE COURT:

Q I take it, Mr. Kinsley, that you yourself have never seen the defendant write? A No, your Honor. He offered to write for me but I said that would not be of any particular service now, since the writing would be done after that date.

MR. STEUER: Your Honor, I would have had him write for Mr. Kinsley, but your Honor stated he could not use it as a standard, under your Honor's rule. If your Honor would receive it, as a standard---

MR. MANLEY: Now, is this an objection?

THE COURT: No, I just asked him the question, that is all.

BY MR. MANLEY:

Q Now, you would probably say that "Max Mane" there is in the handwriting of the defendant, wouldn't you? A Frpm some such signatures I have seen, yes.

Q What style of handwriting is that? A Why, that is a combination of American and German.

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THE COURT: Now, that had better be marked for identification.

MR. MANLEY: I do not care to refer to it, if the Court please.

MR. STEUER: Well, I do.

MR. MANLEY: Well, we will mark it for identification.

(Marked People's Exhibit 6, for identification)

BY MR. MANLEY:

Q As I understand then, Mr. Kinsley, as the result of the questions I put to you, you have testified that there are several styles of handwriting among the signatures submitted by the defendant? A Yes.

Q Both foreign and American? A Yes.

Q Would it have helped you any if at the very time or shortly thereafter, a certain man had written "S. Gottlieb" on the back of People's Exhibit 1-A, you had seen the same man write the same word "S. Gottlieb"? A Yes.

Q Now, I understood you to say that the capital "I" in People's Exhibit 3 is peculiar, in that it is not in the American type of handwriting, is that so? My notes indicate that you said that on your direct examination? A No, that is, not quite what I said.

Q Did you say that on your direct examination? A No. Will I tell you what I did say?

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Q Didn't you say it was not the American type? A No.

Q What was it you said on that? A I said it was made backwards. Some Americans make it that way. I did not characterize it as American or un-American.

MR. MANLEY: Will the Stenographer repeat that testimony on the direct, about the letter "I"?

(The Stenographer repeats the testimony as requested.)

Q Now, is it made in a different manner from the ordinary American type, the "I"? A Yes.

Q Now, as I understand you, Mr. Kinsley, the endorsement "S. Gottlieb" on the back of People's Exhibit 1-A is in a disguised hand, is that so? A Yes.

Q Is the hand pretty well disguised? A Fairly.

Q That is all.

RE-DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Kinsley, you said in answer to a question of the District Attorney, when he asked you to look at the signature "Max Mane", that you believed it to be his from some set signatures that you have examined? A Yes.

Q Will you be good enough to look at Defendant's Exhibit G for identification and tell the Jury whether those are such signatures as you examined?

MR. MANLEY: Now, just a minute. I object to

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that as incompetent, immaterial and irrelevant. These are not offered in evidence as signatures.

THE COURT: Objection sustained.

MT. STEUER: Well, I offer them in evidence, as standards of the defendant's handwriting.

MR. MANLEY: All right, no objection.

THE COURT: I will receive them.

(Marked Defendant's Exhibit G in evidence)

Q Now, I renew my question. Are these such signatures that you examined? A They appear to be the same package, the same dates.

Q Well, you produced them here this morning and had them over night, didn't you? A Well, I did not mark each one.

Q That is the package you had? A Well, that's the one, yes, that I looked at, just the signature.

Q That is all.

RE-CROSS EXAMINATION BY MR. MANLEY:

Q Now, Mr. Kinsley, this bunch of checks, Defendant's Exhibit G is in a different style of handwriting, isn't it, from Defendant's Exhibit I? A Yes.

Q Almost perpendicular, isn't it, the letters? A Nearly. It slants to the right from the vertical. I would not say it is altogether a different style of hand-

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writing. It is mainly in the matter of slant it differs.

BY MR. STEUER:

Q Mr. Kinsley, despite the difference in slant, would you have the slightest difficulty on an examination of the defendant's exhibits in this case, of determining that they are all in one handwriting? A No, they are all peculiar, individual, distinct, and with strongly marked characteristics running all through.

Q Marking the individual who wrote them? A Yes, strongly marked. Not the shadow of a doubt in connecting any one of the standards with any other standards.

BY MR. MANLEY:

Q Just a minute. You say not the shadow of a doubt. Do you claim that ~~is~~ your opinion here is absolute? A I did not say that.

Q All right? A I said I have not the shadow of a doubt myself in regard to those standards.

BY THE FIFTH JUROR:

Q I want to ask if the defendant were to have written would have been asked to have written and did on a piece of paper, on the day of his arrest, if Mr. Kinsley would compare that with the signatures on the back of the checks, that is, Exhibits 1-A and B and also Exhibits 3 for the people, would not that be of great benefit to see whether both signatures were in the same hand? A It might and proba-

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bly would be a great benefit. It depends on the individual. Some are so agitated at being arrested or by any unusual circumstance that the hand trembled and he does not give you a good specimen for examination, but ordinarily it would be of great assistance to have it.

Q But as an expert, don't you think you could use better judgment than from the other writings, if you had such paper in evidence? A No, unless he wrote the identical words. If he was asked---

Q I mean the identical words? A Yes.

Q I have reference now to the endorsement on the back of the check "S. Gottlieb"? A Yes, that is better to have the identical wording, and in that particular, that specimen would be better, and in other particulars it would not be as good because he would be more agitated.

Q No, I mean the exact words, there, the endorsement?

A Of course he would be more conscious then and his writing would lack a little of the spontaneity, rapidity and genuineness that ordinarily would appear in his writing, but the exact wording would be a help.

BY THE COURT:

Q Have you in connection with your examination of any of the exhibits produced by the defendant, received in evidence, taken any particular word and compared it with the same word appearing in the exhibits offered by the people?

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A I have, your Honor, as found in this order book, exhibit F, the word, the name "Gottlieb", "Charles Gottlieb & Company" and I used that particularly for comparison with the name "Gottlieb" Exhibit 3, and the back of the checks, Exhibit 1-A.

BY THE FIFTH JUROR:

Q I want to know, according to your opinion, if you would not think such a paper ^a very important document in a case of this kind? A I would. I would like to see it.

BY MR. MANLEY:

Q Now, when the writer of the words "Charles Gottlieb & Company" in Defendant's Exhibit F wrote "Charles Gottlieb & Company" did he write it naturally and rapidly and without any effort to disguise? A Yes.

Q Do you find any difference between the "l-i-e-b" on the end of "Charles Gottlieb & Company" in Defendant's Exhibit F and the letters "l-i-e-b" upon People's Exhibit 1-A? A I do, distinct differences.

Q Now, what are they? A One is--- the point that I made, the matter of proportions. In the disputed check we have in the usual---I will say again in the usual American type, and I am referring now to the copying book type of letter, the small "l" is three times the height of the small "i", and in matter the letter, the loop is three times the

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entire height of the letter; measured from the base line the loop occupies two thirds of that space. That is true in the disputed signature. The loop is full and tall, a well made loop. In the "Gottlieb" as it occurs in the order book, is a little harder to characterize the loop, because the "ts" are made in the German method of making them, crossing the "t" and connecting with the "l" and that is distinctly different from the questioned writing, and furthermore the small "l" in the standard Exhibit F is only about once and a half the small "i". That is the specific proportion to which I called attention awhile ago. The small "b" in "Gottlieb" is finished in a different manner in the disputed, from the standard. Here again in the main, in the standard writings we have---

BY MR. MANLEY:

Q (Interposing) Just a minute, Mr. Kinsley, I think they are not understanding you. they are examining the exhibits

A I say in the small "b" in the finishing part, there is a distinct difference. The standard has a decided curve. Now, the usual method of making the "b" is to take the loop of the "l" and add a second part like a small "v" or "w". In the standard writings they are made in a more bulbous form, and a decided curve in the finishing stroke. In the disputed Exhibits, both 1-A, the endorsement, the final stroke of the "b" and the final stroke of the "b" in the letter, Exhibit 3, we have the finishing stroke longer, and much nearer

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straight. Again it lacks that German curve, compactness that we find running through the standard writing.

MR. MANLEY: That is all.

A L B E R T S. O S B O R N, called and duly sworn as a witness on behalf of the defendant, testified as follows.

DIRECT EXAMINATION BY MR. STEUER:

Q Mr. Osborn, what is your profession and occupation?

A Examiner of questioned documents.

Q What have you done, Mr. Osborn, for the purpose of qualifying yourself as an examiner of questioned documents?

A I was teacher of handwriting something more than twenty five years. Have prepared some works on the subject.

MR. MANLEY: I will admit that Mr. Osborn can satisfy the term of the statute with regard to qualifying as an expert.

Q Have you testified on various occasions? A I have testified in this room several times, yes sir.

Q On behalf of the People? A Yes sir.

Q Now, Mr. Osborn, have you had submitted to you for examination People's Exhibit 1-A and 1-B and People's Exhibit 3 in this case? A I have.

Q And did you make a study of the handwriting upon

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People's Exhibits 1-A and 1-B and People's Exhibit 3? A I did.

Q Did you also have submitted to you for examination and study, the various exhibits on behalf of the defendant, that have been enumerated here and called for by the letters?

A Yes sir.

Q And did you make a comparison of People's Exhibits 1-A and 1-B with the People's Exhibit 3 for the purpose of reaching a conclusion? Whether the same hand wrote both? A I did.

Q And did you reach a conclusion after you made such comparison? A Yes sir.

Q What is your conclusion with respect to whether the same hand wrote 1-A and 1-B and People's Exhibit 3, A My conclusion is that they were written by the same hand.

Q Did you make a comparison as to whether or not Defendant's Exhibits lettered here, were all written by the same hand? A Yes sir.

Q And what conclusion did you reach with respect to that? A That they were.

Q Did you make a comparison of the defendant's Exhibits produced here, with People's Exhibits 1-A and 1-B and People's Exhibit 3, so as to reach a conclusion as to whether or not they written by the same hand? A I did.

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Q What conclusion did you reach as to whether or not they were written by the same hand? A That they were not.

Q Now, will you tell the Jury briefly what your reasons are for the conclusion that you reached, that the person who wrote Exhibits 1-A, 1-B and People's Exhibit 3 was not the same person who wrote Defendant's Exhibits that were submitted to you?

MR. MANLEY: I object to that, he has given his opinion. It is a matter of cross examination.

THE COURT: I will allow him to state.

A May I say this? I have made a comparison of these disputed writings, Exhibits 1-A and #3, with the conceded handwriting or standard handwriting, the defendant's Exhibits in this case, for the purpose of determining whether the same hand wrote both series of writings, and in arriving at a conclusion in the matter, I have compared the characteristics of these two series of handwriting, to determine whether a sufficient number of the characteristics of the writings of either class are shown in the other series of writings, so that the two handwritings may be connected.

In doing that, it is necessary for me to determine in my own mind what are the significant characteristics on which an opinion is based; for the reason that if fifty people write the same, practically the same

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matter, or similar matter in the same language, there is necessarily a resemblance in numerous particulars, but those particulars are exactly parallel with the comparison of individuals; for example, of the same race, but it is necessary in order to determine whether each particular individual did a particular handwriting, to discover what his individual and characteristic in that handwriting or in that particular individual.

Now, in order to do that, I examined this handwriting for the purpose of determining, in the first place, whether the characteristics in it are free and unconscious, careless and of a character that are difficult to imitate or difficult to exclude if one is disguising handwriting. Now, of course, there are certain obvious differences in handwriting by the same individual, that would have no significance whatever. That is, the matter of size, different size in handwriting is governed by conditions somewhat, or by the surroundings of the writer. That is to say, the amount of paper, the room, and all those things, although size has a certain value of course in such a connection, I mean the total size of the writings as compared with some other writings.

This is also true in the matter of slant. Slant is

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varied somewhat by conditions and there are certain writers, many writers that have more than one degree of slant at which they can write, particularly the difference between the right slant and the back hand. The difference in slant is largely due to a difference in relation of the arm in writing, to the writing line. Of course, if the paper upon which the writing is done is drawn around to the right, so that it is more nearly parallel, the lines with the position of the writer, just in proportion as it is drawn around to the right, the writing would incline over towards the back, and just as in proportion as the paper is drawn around the other way, the writing will incline to the right.

I do not mean to infer that slant has no significance, because it has, but the most important characteristics in my opinion in this matter, or in any examination of this kind, are the little unconscious things that it is difficult to see until you look for them. Under ordinary observation, they are not observed at all.

I observe, for example, in People's Exhibit 3, a freedom and carelessness and speed, and a repetition of the same things, the same characteristics, that leads me to the conclusion that those characteristics that appear in that way are the characteristics of the

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writer.

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BY THE COURT:

Q Now, when you say that, do you allude to all the writing upon that exhibit? A Well, I allude to all of the writing in certain particulars, but not all of the writing in others.

Q In what you last said regarding speed and ease and freedom and so on, you allude to all the writing upon that exhibit, is that so? A Well, I allude less to the signature. There is a distinction between the signature and the body writing on Exhibit 3. The signature, in my opinion, ---I can hardly describe it as a disguised hand; I mean I would hardly use that term. It seems to me it is a more formal and conscious hand. I would not say it was disguised. It would say it is more formal and conscious, that particular part of it, and in that particular it does differ from the body writing of that same exhibit; I mean that part above the signature; but in other particulars, it is in the same slant. That is to say, in the matter of proportions that have already been referred to in the preceding testimony, that is, the proportions between the letters, and this in my opinion is another one of those unconscious things that is significant as pointing to an individual. It is a part, really, of the system of writing that is learned by the individual writer, and one of those things that it is very difficult

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to change.

Now, it is very easy to change slant in writing, as I have said before, by simply changing the relation of the arm to the paper, it is possible to change the slant. The matter of proportions is more an unconscious thing, that is learned by the writer, and there are very many different proportions; taking the old round hand style, in American writing, the proportion is four to one in a certain old hand style, and the other was three to one. The Spencerian handwriting shown in this book here, is a proportion of three to one. The modern vertical writing that has been taught in public schools in certain parts of the country, not at the present time, is in proportion of two to one. This particular standard writing--these defendant's Exhibits here show a proportion of less than two to one, that is, the proportion of the minimum letters to the long letters, and in my opinion, those are or that is a very significant thing as indicating the individual, and I find throughout disputed writings this proportion divergent from the proportion in the standard writings by this writer, and in my opinion that is particularly significant, as it is one of those things that it is difficult to change. It is one of the unconscious characteristics; and as a part of this same characteristic, an accompaniment of it, it can

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readily be understood that just in proportion as letters are made short in proportion to their width, either an up-stroke or down-stroke must be curved in order to make loops, for ordinary script forms.

Now, that immediately introduced another feature into a handwriting, that is connected with the matter of proportion; that is, the matter of curvature. I find a very distinct diversion in the standard writings the defendant's exhibits in this case, and all of the writing in the disputed papers; that is, a difference in the degree of curvature of the strokes. Now, in my opinion, experience, and examination of handwritings on that score, that is almost an absolutely unconscious characteristic. The individual does not know anything about it at all, this matter of degree of curvature.

Now, in the standard, or in the disputed letter, People's Exhibit 3, the tendency is to make the up strokes straight, so straight, so straight that it is impossible, if the downward stroke is also made nearly straight, to make any loop at all in loop letters. The result is that the large number of the loop letters in this particular exhibit, and I refer to loop letters like "h" for example---now, I can make both lines straight in the "h"; it does not make any difference how long you make it, how long the letter is, there

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is no loop in it, because you cannot make a loop unless you curve one or the other line. If you make them both straight the result is they come together at a point, either line, or come back, the straight stroke or line, is pointed at the end.

Now, no matter how short that letter may be, if the first stroke is a distinct curve, and arc of a circle, the second stroke in an opposite direction from the first, will cross the first at some point, and the point of course is the determination of the length of the loop, which is of course due to the degree of curvature of the stroke.

Now, this standard writings, Defendant's exhibits here all have a very pronounced characteristic in the curvature of the upward stroke of all the letters, and the curvatures and the connections between the letters a tendency to the arc of a circle; in many letters, a very small circle, so that it is an extreme curve. In that particular these writings in my opinion are fundamentally divergent, that is, the writings of the defendant, and all of the writings in dispute.

I make no reference to the signature of this check in that answer. That is, the signature to People's Exhibit 1-A. In my opinion, that is a different hand-

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writing. I think it is a different handwriting from any of this handwriting, that is on this disputed paper, although of course, I have no standard to compare it with, but just simply taking it by itself, it is in my opinion a different handwriting.

Now, the particular individual characteristics, some of which or most of which have been referred to the small "c", the peculiar small "c" is repeated in the disputed exhibit #3 five times. That small "c" is made with an upward left curve and then a short downward stroke at the top; the pen is taken off and put on down below, goes just the opposite way. That is repeated five times, repeated five times in a very rapid unconscious manner, so that, in my opinion, it is a characteristic of the writer of that particular writing. Of course, there is no "c" appears in the signature. In the signature, written as I say, in a more formal manner or self conscious manner, the same degree of curvature is shown, or absence of curvature in this disputed writing, and the same manner of proportions in the letters, connecting these two parts in this particular word (Indicating).

Another result of this curvature of course is the degree of the broadness of the turn at the lower part of the letter, where it touches the base line. Of course,

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in proportion as the downward stroke is straight, just in that proportion the angle is narrowed at the base, connecting with the following letter, and the tendency in all of this disputed writing is to a straighter stroke in the downward line.

The small "y" has also been referred to. The small "s" is a divergent letter, and in my opinion, the body of the disputed Exhibit 3 is more open, and in a very distinctly handwriting.

MR. STEUER: You may examine, Mr. Manley.

CROSS EXAMINATION BY MR. MANLEY:

Q Now, Mr. Osborn, I suppose that you have seen out of court these various exhibits which have been introduced here as standards of the defendant, haven't you? A I think I have seen them all.

Q And I suppose you were informed that they were writings of the defendant? A I was so informed.

Q And you and Mr. Kinsley, I suppose, looked these over together, these various standards of the defendant? A We looked them over at the same time, partly together and partly separate.

Q Now, I suppose that it is your opinion, Mr. Osborn, isn't it, that these various exhibits introduced as standards

by the defendant, starting from Defendant's Exhibit D and coming down to F are in various styles of handwriting? A I don't call it various styles of handwriting, but I think it is a modification of the same style.

Q All right. It is one style with modifications? A Yes.

BY THE COURT:

Q Has that style a distinctive name, so as to distinguish it from other styles? A Yes, I think so.

BY MR. MANLEY:

Q What is the name of this style? A This is a style of writing based upon the German; that is, the English script as taught in German schools.

Q Well, is that the name of it, English script as taught in German Schools? A Well, it is old style of script.

Q Old style script handwriting? A Old style of English script.

Q Now, I suppose you find from examination of these exhibits that the words slope in a different direction on various exhibits, from the perpendicular, don't you, both from the right and from the left? A Yes, there are certain modifications, yes sir.

Q Some of them are written back hand and some front hand,

so to speak? A Yes.

Q Now, is or are the words "S. Gottlieb" written on the back of People's Exhibit 1-A in a disguised handwriting?

A I would not call it disguised, I think it is---

Q Did you hear Mr. Kinsley say that was a disguised handwriting? A Well, I think I would agree with Mr. Kinsley excepting perhaps in the characterization of it. I say that it is formal and self conscious handwriting, which is a characteristic of disguised handwriting.

Q In other words, it possesses the characteristic of a disguised handwriting, does it? A In some degree, yes, I would say that is true.

Q Well, would you say it is a disguised handwriting or not a disguised handwriting? A I should say that if I had that off by itself alone, I could not tell, because some people write naturally in a formal manner, but having given the opinion---shall I continue.

Q I just want your answer. Now, there are nine letters there. The material is too meagre isn't it, Mr. Osborn, to tell whether that is disguised handwriting or not? A Well, I should say, to say absolutely whether that was disguised handwriting by itself alone, it would be too meagre, but I have---

Q Now, you have answered. Would you say, Mr. Osborn, the words "S. Gottlieb" at the bottom of People's Exhibit 3

are in a disguised handwriting? A I should say it is "formal" and self conscious, but I have said that in my opinion this is written by the same hand. 461

Q I am not asking that? A Well, that really is part of my answer, in order to make it clear, because otherwise I would not be able to say whether it is disguised or not. Of course, if I say this is all in the same hand, and there is a distinction in part about it, then I would say part of it is more formal and conscious than other parts.

Q Now, as I understand it, Mr. Kinsley has testified that the words "S. Gottlieb" on People's Exhibit 3 are in a disguised hand. I ask you if you are able to give as your opinion whether or not the words "S. Gottlieb" standing by themselves without comparison with anything else, are or are not in disguised hand? A I don't think I would give an opinion, answering your question exactly as you have asked it.

Q That is all I want. I want to be as definite as possible.

Q Now, looking at that part of People's Exhibit 3 which is written above "S. Gottlieb", are you able to tell whether that part standing by itself is or is not in a disguised handwriting? A Yes, I think so.

Q All that appearing above "S. Gottlieb" in People's Exhibit 3, all the writing? A Yes.

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Q Didn't you hear Mr. Kinsley testify that when the writer wrote that part of People's Exhibit 3 above "S. Gottlieb", that he was unconscious that it was free and natural?

A That is what I said. I still say it.

Q I do not understand, then--- A (Interrupting)
You asked whether I could determine whether or not it was disguised hand, and I said I can determine.

Q And it is not disguised hand? A You have not asked me what I had determined.

Q Well, what is your answer on that point? A I should say it is not a disguised hand.

Q Perfectly free and natural? A Yes, free and natural.

Q Do you see any difference then between "S. Gottlieb" and the rest of People's Exhibit 3? A Well, I have already called attention to it.

Q As to naturalness? A As it is more formal and self-conscious.

Q Are there any differences as to naturalness in the word "S. Gottlieb" and the top of People's Exhibit 3. A That is what I have already said. Yes, there is.

Q Well, that is what I am getting at.

BY THE COURT:

Q Mr. Osborn, it is true, is it not, that no person writes invariably in the same way? A No, the indication,

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of an absolute identify in handwriting is an indication of forgery, usually; a matter of a traced signature, for instance,^{if} that is what you mean .

Q Writing depends in part upon the position of the person in writing? A That would affect the slant very materially.

Q That it depends in part upon the substance upon which the writing is made? A Yes.

Q That it depends in part upon the instrument used, the character of the pen? A Yes sir, and whether it is pen or pencil.

Q And it depends in part upon the ink? A Yes, whether it is thick or thin.

Q It depends in part upon the physical condition of the person at the time of writing, whether nervous or otherwise?

A Those conditions may be so abnormal that nobody can tell whether it is genuine or not.

Q Now, is it not true, Mr. Owborn, that a person desiring to write otherwise than in his natural style would make a conscious effort to avoid his dominant writing characteristics? A Yes.

Q Including the characteristics of proportion and curve? A Yes.

BY MR. MANLEY:

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Q I would like to get your opinion, Mr. Osborn, whether you think the man who wrote "S. Gottlieb", provided that man is the same man that wrote that part of People's exhibit 3 that is above "S. Gottlieb", tried to write in a different fashion? A Well, I don't believe I could say whether he tried to write in a different fashion.

Q Did he succeed as a result, that he wrote in a different fashion? A May I finish that?

Q Yes, question withdrawn. A Or whether the result as shown is simply an unconscious result of more care and attention given to this particular part of the writing.

Q Whether the result is conscious or unconscious, is there any evidence of a difference? A There is, I have already said three or four times.

Q Well, I want to be clear in my own mind, Mr. Osborn, that's all. Do you think it was written with a different pen, or are you able to state? A Why, I think not.

Q Do you think it was written with the same pen? A Well I have not made any measurements of these strokes, but I don't believe I would be able to give an opinion without a little more--- there is little more pressure on it. It is a little more, as I have said, a little more self conscious and formal than the other part of the writing.

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Q Do you find any evidences in that exhibit above "S. Gottlieb" of the same kind of pressure as in the word "S. Gottlieb". A Why, I think as a rule that there is less pressure above, in the upper part.

Q Pressure in the upper part is pretty uniform, isn't it? A Yes, I think so, yes. I should call it fairly uniform.

Q Now, do you find any differences in the handwriting upon People's Exhibits 1-A and 1-B, the face of it; that is to say, the words "S. Gottlieb \$109.86" and that part of People's Exhibit 3 which is above "S. Gottlieb"? A My opinion, in answer to that question is, that the whole of people's Exhibit 1-B---

Q 1-A and 1-B? A Is one side Exhibit 1-A?

Q One part is 1-A and the other is 1-B. A Yes, it is torn apart. I should say that all the writing on 1-A and 1-B is somewhat more formal and self conscious than the writing particularly the writing above the signature, of People's Exhibit 3. That is, in my opinion, it is in the degree of attention given to the writing process.

Q Now, in an attempt to write differently from one's normal handwriting, you mean? A Well, I am---I did not say that.

Q I know you did not, but I am asking you? A Well, I don't believe I could tell whether it is the result of un-

due and more than ordinary attention to the writing process, or whether it is conscious distinction between the two. I do not believe anybody can tell. The distinction is not sufficiently great to indicate, in my opinion, a distinct effort at an different handwriting, ^{if} that is what you mean.

Q Now, as I understand your testimony, you do not believe that the man who wrote "S. Goldsmith", that is, the drawer of this check, People's Exhibits 1-A and 1-B, that it is the same handwriting as appears above, on the body of the check? A Well, I should say I don't think it is. I don't believe it is.

Q That is all.

RE-DIRECT EXAMINATION BY MR. STEUER:

Q You say that, looking at the name "S. Gottlieb" alone, and not connected with any other writing, it would be impossible to tell whether it was disguised or natural? A That is what I said, because there are people who write just as formal as that is whenever they write.

Q Whenever they write? A Whenever they write.

Q And it is only by comparing that with the words, or the word "S. Gottlieb" with that which is written above "S. Gottlieb", that you see that there is more formality used in the one than in the other? A That is exactly

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it.

Q Now, you said when a man intends to conceal his handwriting, his effort then is to avoid his characteristics? A Undoubtedly.

Q Well, those are the characteristics that he knows about? A Yes.

Q And it is by looking for characteristics that a man has in his handwriting, which he does not know about, that you discover whether it is his handwriting or not? A Yes.

Q It is from the existence of these characteristics that you come to a conclusion? A I do.

Q When you find in a short note such as People's Exhibit 3, one characteristic is five times repeated, in a hand that you come to the conclusion is free, you then come to the conclusion that that is a characteristic of the writer? A Yes.

Q You draw a distinction between a characteristic of the writer and the characteristics of writing, do you not? A Very decidedly.

Q A characteristic of the writer is something that clings to the individual that he cannot shake off? A Yes, well, I would not say cannot shake off. I should say it would be difficult or require a very high degree of skill, and of course a man would have to analyze his own handwriting

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and he would have to compare it with others in order to see what it is.

Q And he would have to know each characteristic before he could shake it off? A Yes.

Q Having made a study of his own characteristics he would then have to make a study to avoid them? A Certainly.

Q But a characteristic of handwriting is something that attaches to the class of handwriting which is taught in any particular school or particular country or particular nation? A Oh, yes. Of course, English handwriting, has many characteristics, not as common as compared with Chinese handwriting, for instance.

Q Yes, and there are differences in the characters of these writings? A Yes.

Q But when you speak of the individual characteristic, then you mean the characteristic that accompanies a particular person? A Exactly.

Q And you find characteristics in the handwriting of the defendant that no where appear in the disputed handwriting, and you find peculiar characteristics, in the disputed handwriting, individual characteristics, that no where appear in the defendant's handwriting? A Exactly, I do.

BY THE COURT:

Q Now, do you find in the disputed handwriting, any

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characteristics which you also find in the defendant's hand writing? A Oh, yes.

Q A number? A Well, I should say those characteristics are characteristic, as Mr. Steuer has already referred to, characteristics of writing, instead of characteristics of the individual.

Q Well now, what, if any characteristics of individuality did you find in the defendant's handwriting, which you also find in the disputed writing?

MR. STEUER: He has said---

THE COURT: One minute, Mr. Steuer.

A I should say that the characteristic of slant, in as far as it is a characteristic; now, of course, sometimes slant is a fixed characteristic in an individual. Some writers always write vertically or back hand. Now, to that degree of course, some of these standard writings are the same as the disputed writings.

Q In other words, that is a characteristic in part, of individuality, which you find in the defendant's handwriting as well as in the disputed handwriting? A Yes.

BY MR. MANLEY:

Q I suppose, Mr. Osborn, a skilled writer may successfully disguise his hand, may he not? A It depends upon his skill, yes sir, and ability.

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

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REBUTTAL:

SAMUEL DAICHES, witness for the People recalled in rebuttal, testified as follows:

BY MR MANLEY:

Q Mr. Daiches, on the afternoon of Wednesday, the 15th of April, 1908, when the police officers brought this defendant Max Mane into your store, No. 53 Third Avenue--

A (Interrupting) 43.

Q (Continuing) For 43 Third Avenue, did you hesitate at all before you said this was the man that gave you the check? A No sir.

MR. STEUER: I object to that, on the ground that it calls for his conclusion, and I object to it further on the ground that his testimony as to what occurred at that time has been exhausted in the case in chief.

MR. MANLEY: Well, I withdraw the question, on the first objection, as to characterization.

THE COURT: Yes.

Q On the afternoon of Wednesday, the 15th of April, when this defendant was brought into your store by the officers, did you say right away after he was brought in that this was the man that gave you that check, or did you wait some time before you said it?

MR. STEUER: I object to that, and I say it is very hurtful, that they should be permitted at this time

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to re-try their case.

THE COURT: I will allow the question.

MR. STEUER: I except, and on the ground further that that calls for his conclusion.

A I looked at the defendant closely when he was brought in, and said this was the man that was here previously two days.

Q Did you wait any length of time before you said it?

A No sir; on the instant.

Q Did you say anything, that you wished you could see your wife first? A Never mentioned that.

Q Now, as I understand you, Mr. Daiches, you saw this defendant Max Mane right in your store upon that day when he was arrested, did you?

MR. STEUER: I object to that.

THE COURT: I sustain that objection. I will allow Mr. Manley to examine this witness now upon the re-direct, or rather in rebuttal on anything that was brought out by the defence. That is the limitation.

MR. STEUER: Yes; I have no objection to that.

MR. MANLEY: Do I understand then the ground of Mr. Steuer's objection is that it is not strictly rebuttal?

MR. STEUER: My objection is that you are re-trying your case, and we would have to recall our client

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again to contradict what you say. It is not rebuttal at all.

MR. MANLEY: I simply wanted to know the ground of your objection.

THE COURT: Anything that is proper rebuttal I will allow.

MR. MANLEY: That is all, Mr. Daiches.

MR. STEUER: I have no questions.

MR. MANLEY: Now, is Mr. Goldsmith in court? (No answer). If the Court please, I would like to recall Mr. Goldsmith and ask him two or three questions. I do not think I will have more evidence. He was sitting here all forenoon, and I suppose after listening to all this expert testimony he thought it would consume the entire forenoon, and left.

THE COURT: Very well; we will take a recess until two o'clock P. M.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until 2 o'clock P. M..

AFTER RECESS--TRIAL RESUMED.

MR. MANLEY: Is Mr. Goldsmith in court? (No answer). Will your Honor permit me to recall Mr. Osborn?

THE COURT: Yes.

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A L B E R T S. O S B O R N, witness for the defence, recalled for further cross-examination, testified:

BY MR MANLEY:

Q Mr. Osborn, I ask you if there is a greater variation or more of a similarity between that part of People's Exhibit 3, which is above "S. Gottlieb", and the body of the check People's Exhibits 1A and 1B, than there is between the "S. Bottlieb" at the bottom of People's Exhibit 3 and also the "S. Gottlieb" the endorsement on the check? Do you get my idea? A I don't hardly believe I do, Mr. Manley.

Q MR. MANLEY: I will withdraw it, then.

Q Does that part of People's Exhibit 3 which is above "S. Gottlieb" look more like the face of the check than it looks like "S. Gottlieb" at the bottom of People's Exhibit 3? A Well, I should say that in some particulars that it did.

Q If I understand you, then in some particulars the face of the check looks more like the body of "People's Exhibit 3 than the body of People's Exhibit 3 looks like the "S. Gottlieb" at the bottom of People's Exhibit 3? A Well, I don't know. That is a little difficult to--- You see, there are so many things to compare; but, take it as a whole, you would say?

Q Yes? A Well, I don't believe I could say.

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Q Well, let me put it this way: Doesn't the "S. Gottlieb" written at the bottom of People's Exhibit 3 look more like the "S. Gottlieb" written on the back of the check than the writing that is above "S. Gottlieb" on 3? A Oh, undoubtedly. That is a different question. That is not what you asked me before.

Q Well, that is the idea I would like to convey?
A You asked me the face of it.

Q Now, take this right here; holding the endorsement on People's Exhibit 1, placing the endorsement upon the check on the same line with the words "S. Gottlieb" on People's Exhibit 3, do those two "S. Gottliebs" look more like each other than they look like the writing that is above "S. Gottlieb"? A Oh, undoubtedly. I put those two in the same class.

Q Absolutely in the same class? A Yes. I mean the "S. Gottlieb" in the endorsement and the "S. Gottlieb" in the signature to the letter.

Q That is all.
BY MR. STEUER:

Q You said all that this morning? A I tried to.

MR. MANLEY: May I recall the defendant?

THE COURT: Yes.

M A X M A N E, the defendant, recalled for further cross-examination, testified as follows:

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BY MR. MANLEY:

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Q In April of 1908 did you have a bank account? A I did not personally.

BY THE FIFTH JUROR:

Q We cannot hear you? A I did not have a bank account personally.

BY MR. MANLEY:

Q Were you directed to make any payment for that proposed loft that you were to get? A No sir.

Q Now, as I understand it, you were directed to look at lofts from 8th to 14th Street, is that so? A Between 8th and 14th Street, yes sir.

Q Well, why did you go as far south as 401 Lafayette Street, Spring Street? A Well, they gave me that address, and I thought I would go in there, "because" it was right near 8th Street, very close to it.

Q Quite a difference between 8th Street and Spring Street, isn't there? A I didn't go to Spring Street.

THE COURT: I think, Mr. Manley---

MR. STEUER: (Interposing) He said he did not go to the Spring Street place on that account.

Q Didn't you say you did go to 401 Lafayette Street?
A I did go to 401 Lafayette.

Q I may be wrong, but I understood you to say that 401 Lafayette is the corner of Lafayette and Spring?

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A No.

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MR. STEUER: Nop he said the Prescott Building is at the corner of Spring Street.

MR. MANLEY: I am not asking about the Prescott Building. That is on Broadway. I am asking about Lafayette Street.

MR. STEUER: You can easily find out where 401 Lafayette street is.

Q Now, I may be wrong, but did I understand you to say that 401 Lafayette is at the corner of Lafayette and Spring? A I did not say that.

Q Now, where is it; the corner of what street, Lafayette? A 401 is not on the corner.

Q Well, where is it? Between what streets? A It is on the east side of Lafayette Street; it is on the east side of the street.

Q But Lafayette runs north and south?

BY THE COURT:

Q Well, between what streets is it, Mr. Mane? A It is between Astor Place and Fourth Street.

BY MR. MANLEY:

Q Between Astor Place and Fourth Street? A That is as much as I recollect of the location.

Q
That is all.

BY MR. STEUER:

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Q Astor Place corresponds with 8th Street? A It is in that section, yes.

Q The portion of it which meets Broadway is called Astor Place, and runs east to Lafayette? A Yes sir.

MR. MANLEY: That is all; the People rest.

MR. STEUER: We rest, your Honor. The defence renews the motion made at the close of the People's case, may it please your Honor, on the grounds then stated, and adds additionally, on the----.

THE COURT: (Interposing) I will send the case to the jury.

MR. STEUER: We except to your Honor's ruling; we also ask for the direction of a verdict.

THE COURT: Motion denied; you have an exception.

MR. STEUER proceeded to close the case on behalf of the defence.

THE COURT: (During Mr. Steuer's closing address): Mr. Steuer, we have reached the hour of adjournment, if you would rather resume to-morrow morning?

MR. STEUER: One of the jurors states he wants to go home. I would just as well adjourn, your Honor.

THE COURT admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until

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Wednesday, January 19th, 1910, at ten-thirty o'clock
A. M..

New York, January 19th, 1910.

TRIAL RESUMED:

Mr. Steuer completed his closing address on behalf
of the defence.

Mr. Manley closed the case on behalf of the People.

The Court admonished the jury in accordance with
section 415 of the Code of Criminal Procedure, and
took a recess until 1:45 o'clock P. M..

AFTER RECESS: TRIAL RESUMED.

THE COURT charged the jury.

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THE COURT'S CHARGE.

THE COURT: Mr. Foreman, and Gentlemen of the Jury, the defendant Max Mane is charged in this indictment with the crime of forgery in the second degree.

There are two counts in the indictment. The first count charges him under Section 887 of the Penal Law, and the second count in the indictment charges him under Section 881 of the Penal Law.

The purpose which the law has in mind in devolving upon the Judge who presides here at a trial the duty of charging a jury is that through the medium of the charge of the Court, a jury may be informed as to the law applicable to the case, so that, taking the law from the Court and as stated by the Court in the Court's charge, the jury may, when they retire to deliberate in the jury room, apply that law to the evidence in the case, as they recollect the evidence.

The purpose of a criminal trial is to determine, through the medium of a verdict to be rendered by a jury, the question whether or not the defendant upon trial is guilty of the charge or charges contained in the indictment, and in connection with a trial, the law imposes a certain responsibility upon jurors, and devolves upon jurors certain duties.

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It imposes a certain responsibility upon the Judge presiding at the trial, and devolves upon him certain duties.

In order that I may best discharge the duty devolving upon me, which, as I said to you a moment ago, was at least primarily to inform you as to the law applicable to the case, I invite your attention at the threshold by a mere reading of certain portions of sections of the Penal Law, to which I have already referred, to what the law is, as applicable to this case, and afterwards, and at a later stage in my charge, I shall refer again to the provisions to which I shall in the first instance direct your attention, and shall then attempt to analyze for your guidance those provisions, directing your attention more pointedly and specifically to the points to which the evidence must go, to that which the evidence must establish to your satisfaction and beyond a reasonable doubt, before the defendant can be convicted under either count of the indictment.

It is the law that a person is guilty of forgery in the second degree, who, with intent to defraud, forges an instrument or writing, purporting to be the act of another, by which a pecuniary demand purports to be created, by which false making any person may be bound, affected, or in any way injured in his property.

I have not read to you the entire section. I have

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omitted those portions of the section which, in my opinion in any conceivable view of the evidence, are inapplicable in this case.

I have read to you only those portions of the section which, in my opinion, in any conceivable view of the evidence in this case, may be applicable to the evidence.

The word "forge" and the words "forged" and "forging" are defined. The law says that the expressions "forge" "forged" and "forging" include false making, counterfeiting, of a genuine instrument.

The law applicable to the second count in the indictment is found in the following language of Section 881 of the Penal Law:

A person who, knowing the same to be forged, and with intent to defraud, utters, disposes or puts off as true, a forged instrument or writing, is guilty of forgery, in the same degree as if he had forged the same.

You, gentlemen of the jury, are the exclusive judges of the facts, which means that it is your duty to weigh the evidence that you may determine from the evidence what is the truth, so that your verdict may represent that which you believe to be true.

The evidence consists of the spoken word of witnesses, responsive to questions put, in so far as the answer of any witness has been allowed to stand, not being stricken

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out upon motion of the defendant's counsel, or upon motion of the Assistant District Attorney, or by the Court of the Court's own motion.

The evidence also includes all exhibits which have been offered and received in evidence, and, under the term "evidence" for the purpose of this charge, I include all concessions that there may be in the case. I do not include under the word "evidence", being that which you are to consider when you retire to deliberate, anything said by any witness upon the stand which was stricken out, either upon motion of the defendant's counsel, or upon motion of the Assistant District Attorney, or by the Court of the Court's own motion. I do not include any exhibit which was merely marked for identification, but not received in evidence. I do not include any colloquy or conversation between counsel during the progress of the trial. I do not include anything said by the Court in passing upon any objection. I do not include anything said by way of argument addressed to the Court in connection with the taking of an objection by counsel, or the argument of a motion. I do not include anything said by the Court in the decision of a motion. And, when you retire to deliberate in the jury room, you will be wholly uninfluenced by anything and everything not included in and comprehended by the definition which I have given of the word "evi-

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dence", as being that which you are to consider in your deliberations.

A ruling by the Court imports no opinion by the Court as to what your verdict should be.

How is the evidence to be weighed? That is a figurative expression and brings before the mind a balance. On the one side of the balance are supposed to be the weights of the scale, and on the other side of the balance is supposed to be that which is to be weighed. The evidence is that which is to be weighed. The law represents the weights on the other side of the balance. The law declares that a certain thing, done with a certain intent, is unlawful, and makes it criminal, and attaches to it certain consequences, and the question in a given case is, does the evidence establish to that degree of certainty which is requisite in a given trial, that that which the law forbids was done, and was done by the defendant who is charged in the indictment with having done it.

The law is the measuring stick. The evidence is that which is to be measured. The evidence is to be brought to a test of the requirements of the law, to see whether or not it measures up to those requirements.

The process of weighing the evidence involves probably logically, as its first premise, a recollection of the evidence, and I may say here, and it will doubtless

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not be matter of dispute, that just in proportion as you twelve men accurately remember the evidence in this case, in that proportion are you qualified to rightly discharge from the standpoint of mental ability, the duty devolving upon you as jurors in this case.

Recollecting the evidence of each witness, it may not be improper, when you retire to deliberate, to ask yourselves what, in point of fact, has a witness sworn to, not taking an isolated answer to an isolated question as representing necessarily that which the witness has intended to say upon any given subject, but preferably taking all that the witness has said upon the given subject, and as intended to embody that which the witness desires to say, and that which the witness has testified to respecting that subject.

To what extent does the evidence of the witness purport to be a narration of facts? To what extent does it purport to be an expression of opinion? What is disclosed, if anything, by the evidence as a whole, or by your observation of a particular witness, respecting the character of that witness? What was the witness's manner of testifying? Was it indicative of truth and accuracy, or was it indicative of falsification or inaccuracy? Is the story told by the witness consistent with itself? If inconsistent, is it inconsistent in a minor matter only, or

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in some important matter ? Does it harmonize with the evidence of the other witnesses ? Where there is a conflict, is that conflict an irreconcilable conflict ? Can the evidence of the witnesses be harmonized ? If not, who is mistaken ? If one has deliberately said that which was untrue, which one, or which ones ? What is the witness's relation to the controversy, biased or unbiased, interested or disinterested ?

These and other considerations are considerations which may not improperly be present to your minds when in the jury room you are discharging that duty which the law devolves upon you, which is figuratively described as the weighing of evidence.

If you should reach the conclusion that, during the progress of the trial, any witness has committed deliberate perjury, then, and in that event, you are at liberty to wholly disregard the evidence of such witness.

If you have followed me, gentlemen, to this point, you will recall that I stated to you in almost the first words which I addressed to you, the purpose which the law has in view in devolving upon the Judge presiding at a trial, the duty of charging the jury. I then directed your attention to the charge contained in this indictment against the defendant. I then read to you certain portions of certain sections of the Penal Law, applicable, in

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my judgment, to the consideration by you of the evidence in this case. I told you what your function was; that your duty was to weigh the evidence, and I suggested to you some possible ways in which you might with propriety proceed with the discharge of that duty, advising you that if you reached the conclusion that any witness has committed deliberate perjury, then and in that event, you were at liberty to wholly disregard the evidence of such witness.

I now invite your attention again, but more in detail, to the law applicable in this case, by way of analysis of those provisions of law which the People charge that this defendant has violated, and, first, more particularly to an analysis of those provisions of law applicable to the first count in the indictment, namely, that count which charges that this defendant, with intent to defraud, feloniously did forge a certain instrument or writing, being the check offered and received in evidence and marked in this case as People's Exhibit 1-A and 1-B.

Logically, the first question, possibly one about which there is no dispute, but, in any event, the first question to which you direct your attention is, is People's Exhibit 1-A and 1-B an instrument in writing purporting to be the act of some one other than the defendant ?

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If that question be answered in the affirmative, the next question to which you may properly direct your attention in its logical sequence, is, is it an instrument in writing by which a pecuniary demand is or purports to be created ?

There is very likely no dispute respecting that proposition in this case.

If that question be answered in the affirmative, the next to which you may properly, in its logical sequence, direct your attention is, if so, might some person have been in any way injured in his property by reason of its being falsely made or forged ?

Very possibly there is no dispute as to the answer required by the evidence in this case to that question.

Be that as it may, if that question be answered in the affirmative, the next question in logical sequence is, was it forged by the defendant? Was it falsely made ? Was it made in the likeness of something else ? Was it the attempted representation of another's personal act ?

If that question be answered in the affirmative, the next question and the last, in logical sequence, is, was it forged by the defendant, with intent to defraud ?

More briefly, first, attention is directed to the character of the instrument itself. Does it answer to the statutory description of that which may be the subject

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of forgery, and of forgery in its second degree? Was it forged by some one? was it forged by this defendant? Was it forged by this defendant, with intent to defraud?

If you answer every one of the questions which I have put in the affirmative, because you entertain upon the evidence, as you recall the evidence, no reasonable doubt that an affirmative answer is required, then, and in that event, and in that event only, may you find this defendant guilty under the first count in the indictment. If you answer any one of those questions in the negative, then, so far as the first count in the indictment is concerned, your verdict will be one of not guilty.

If you say that upon the evidence you entertain a reasonable doubt as to whether or not your answers to any one of those questions should be in the affirmative, or in the negative, then likewise your verdict will be one of not guilty, in so far as the first count in this indictment is concerned, in its relation to the defendant.

If upon the evidence you believe the defendant to be innocent of the crime alleged to have been committed by him, as set forth in the first count in the indictment, or if, upon the evidence, you entertain a reasonable doubt as to whether or not he is guilty of that crime, you will consider the question of the defendant's guilt or innocence of the crime charged against him in the second

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count of the indictment. And, as a moment ago I invited your attention to the elements entering into and forming part of the crime as set forth in the first count in the indictment, so now I direct your attention to the elements entering into and forming part of the crime as set forth in the second count in the indictment.

Before you can find the defendant guilty under the second count in the indictment, the evidence as you recollect the evidence must, in your opinion, require an affirmative answer to each one of the questions about to be suggested to you. Or, to put the matter more plainly to you, perhaps, you must entertain upon the evidence no reasonable doubt that the evidence requires an affirmative answer to each one of the questions now about to be suggested to you.

In their logical order, the first question is, is People's Exhibit 1-A and 1-B a forged instrument or writing?

If that question is answered in the affirmative, under the circumstances mentioned, and no other, the next question in logical sequence is, did the defendant have the same in his possession? And by that I mean did he have it in his possession on the 10th day of April, 1908, at the time when it is said to have passed from the hands of some man into the hands of the complaining witness Daiches?

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If you answer the last question in the affirmative, under the circumstances mentioned and no other, then, in logical sequence, the third question is, did the defendant know the same to be forged ?

If you answer that question in the affirmative, under the circumstances mentioned and no other, the next question, in logical sequence is, did the defendant utter it, dispose of it, or put it off as true ?

If you answer that question in the affirmative, under the circumstances mentioned and no other, then, in logical sequence, there is a remaining question. That remaining question is, did the defendant so utter it, dispose^{of} it, or put it off as true, with intent to defraud ?

Motive is the moving power which impels to action for definite result. Intent is the purpose to use a particular means to effect such result. Where an intent to defraud constitutes a part of the crime, it is not necessary to prove an intent to defraud any particular person.

At the risk of possible repetition, but for greater clearness, and to avoid all possibility of mistake, I charge you that this defendant cannot be found guilty under the second count in the indictment, unless you answer each and every of the questions last suggested in connection with that count in the affirmative, you entertaining respecting the propriety of an affirmative answer

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to each and all of such questions, no reasonable doubt upon the evidence, as you recall the evidence.

I now invite your attention, gentlemen, to certain rules respecting evidence, and the extent to which proof must go before a defendant can be found guilty, applicable in this case.

In that connection, I charge you that the indictment is an accusation, and nothing but an accusation. It creates no presumption that a defendant is guilty. On the contrary, the defendant comes to the Bar with the presumption of innocence, which means that, under our system of jurisprudence, he is not required to affirmatively establish the fact of his innocence, if it be a fact. The burden of proof is upon the prosecution, and that burden requires that, before you can find the defendant guilty, you must be satisfied from the evidence beyond a reasonable doubt of the defendant's guilt.

It has been said, and truly said, that it is a dangerous thing for a Court to attempt to define what is a reasonable doubt. The danger lies in the circumstance that a definition consists in the substitution of other words for the words used, and there are no two words in the English language in more common use or of plainer meaning than the two words "reasonable" and "doubt". As used in the law they mean what they do when properly used in every

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day life. They have been the subject of definition by the Courts, and I invite your attention very briefly to the substance of what was said not long ago respecting what constituted a reasonable doubt, by the Court of Appeals.

Proof beyond a reasonable doubt has been well defined to be that which amounts to a moral certainty, as distinguished from an absolute certainty. Doubt is a state of mind in which a conclusion cannot be reached upon the question before it. If it is not due to mental inability to coordinate facts in evidence, it must arise from the absence of some material fact, or because such a fact has not been sufficiently established by the evidence, and therefore the foundations for a belief are insufficient. A reasonable doubt is not a mere whim, guess or surmise, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing, but it is such a doubt as reasonable men may entertain after a careful and honest review and consideration of the evidence. It must be founded in reason, and must survive the test of reasoning or the mental process of a reasonable examination. It is a doubt back of which there is a "because", so that a juror says "I doubt the guilt of the defendant for such and such a reason." Differing from the rule in civil cases, which demands that the case for

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either party shall be proved by a preponderance of evidence, the rule in criminal cases requires that the People shall establish their case against a defendant beyond a reasonable doubt.

I now invite your attention specifically to certain evidence in the case, called character or reputation evidence, evidence going to the point that the defendant was, so far as is known by the witnesses who gave the evidence, a man of good repute.

It is now well settled that evidence of good character may, in and of itself, raise a reasonable doubt which would warrant a jury in acquitting a defendant, no matter how strong the evidence against him may be.

The principle upon which good character may be proved is that it affords a presumption against the commission of crime. That presumption arises from the improbability, as a general rule, as proved by common observation and experience, that a person who has uniformly pursued an honest and upright course of conduct will depart from it, and do an act so inconsistent with it. Such a person may be overcome by temptation and fall into crime, and cases of that kind often occur, but they are exceptions. The general rule is otherwise.

The language which I have used in this connection is,

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in substance, found in decisions rendered by the Court of Appeals in this State.

Of course, good character is no excuse for the commission of crime, and it is also true that every person has presumably had, at some time in his life, either more or less remote from the time of the inquiry, a good reputation.

I now direct your attention specifically to certain evidence in the case, as I recall the evidence, being certain alleged conversations had or alleged to have been had, by certain witnesses with each other, in the presence of the defendant, or with others in the presence of the defendant, or with the defendant, and to the purpose for which such evidence was received, and the connection in which it may alone be considered by you when you retire to deliberate.

Declarations or acts made or performed by others in the presence of the defendant, when received in evidence, are received not as evidence in themselves, but in a proper case, and under proper circumstances and conditions they are admitted to ascertain what the defendant, as the party to be affected, said or did.

If there is any such evidence in this case, the defendant is not to be prejudiced by the statements or acts

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of another in his, the defendant's presence, even if you should find that the defendant was silent -- and I do not say that the evidence indicates that he was silent -- unless the statements or acts are such as to call for some response or act upon the defendant's part.

If the claim is that the defendant was silent when he should have spoken, you will examine the evidence to see what, if any evidence there is, that the defendant heard the statement, if one was made.

If you have followed me to this point, gentlemen, you will have observed that I have made no comment upon the evidence, in the sense of attempting to give you my recollection as to what, in point of fact, was testified to by any witness, upon any given subject. But it may not be improper or amiss to suggest to you that the controversy in this case perhaps hinges around certain events which is alleged occurred in part upon the 10th of April, 1908, and in part upon April 15th, 1908.

If you believe, from the evidence, entertaining respecting your belief no reasonable doubt upon the evidence that a certain man came into the jewelry store of Mr. Daiches, on the 10th day of April, 1908, and had a conversation with Mr. Daiches on that day, in connection with which he handed to Mr. Daiches the paper, People's Exhibit 1-A and 1-B, a controverted question presents itself as to whether that man was this defendant.

What does Daiches say in that regard? How long was that man in Daiches' store on April 10th? Under what circumstances was he there? What was the character of the transaction, if any between himself and Daiches on that day? How long was he under Daiches' observation at that time? Between what hours was such a man at Daiches' store on April 10, 1908? How closely, if at all, is the time fixed? What is the earliest period named anywhere in the evidence as the time when such a man was there? What is the latest period named as that time when such a man was there, on the 10th day of April, 1908? Because, if you take the earliest period named on the one hand, and the latest period named on the other hand, if more than one period is named, as you recall the evidence, you will have the span of time to be covered by anyone claiming to have been elsewhere than at that place at the time when this man is alleged to have been there. Where was the defendant on April 10th between the earliest period named by Daiches and the latest period named by him, as the period at which a man was at his store on April 10, 1908? What does the defendant say himself with respect to his own whereabouts on that day between those hours. What is said by the witness Abraham as to the defendant's whereabouts on that day? What time purports to be covered by the testimony of Abraham? Where does Abraham purport to say

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that the defendant was during the time that he purports to testify as to his knowledge of the defendant's whereabouts on a certain day? What does the witness Mrs. Geizler testify with respect to the defendant's whereabouts on April 10, 1908? What time, according to her, did the defendant come under her observation? When, according to her, did he pass from her observation? What was there about the circumstance that fixed the date in her mind, if anything? What does the wife of the defendant testify regarding the defendant's whereabouts on April 10th during any portion of the period covered by the earliest hour on the one hand and the latest hour on the other, named by Mr. Daiches in his evidence? Could the defendant have been at the places testified to by Abraham on April 10th and at the house in 113th street, as testified to by Mrs. Geizler and by the defendant's wife, and yet, nevertheless, have been the man who was in Daiches's store, or is alleged to have been in Daiches's store on April 10, 1908, being the man who is alleged to have delivered People's Exhibit 1A and 1B to the complaining witness Daiches? Where was the defendant on April 5th, 1908, at the time when certain witnesses testified, as I recall the evidence, that a certain man was in the telegraph office on University Place and 8th street, and at the time when the witness Group testifies that he was walking with a man? That is important as bearing

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upon the question as to whether the defendant was that man, for it is the contention of the People that ^{if} the defendant is the man who was in the telegraph office on the 15th day of April, and who had a conversation with the witness Grouppe on the 15th day of April, and who gave the witness Grouppe the letter and the receipts which have been offered and received in evidence and marked as People's Exhibits, that is a strong circumstance, so the People contend, that he is the man who was in Daiches's place on April 10, 1908, and who handed to Daiches the check, People's exhibit 1A and 1B. How long was the man who came into the telegraph office on April 15th 1908, under the observation of the witness Schell? -- And I am speaking now about the man who asked for a messenger boy. What opportunities did Schell have to observe the man who was then, according to his evidence, before him and talking to him? How long was that man in company with the witness Grouppe and under what circumstances, and what opportunities did the witness Grouppe have for observing that man and his appearance? If Schell and Grouppe afterwards identified or claimed to identify the defendant as the man who had been in their place before, how much time elapsed from the time that they claimed to identify the defendants respectively to the time when each of them, according to his testimony, first saw the man who asked for a messenger boy? At what

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hour did the man who asked for a messenger boy get to the telegraph office? What light, if any, is thrown by the evidence upon that point? It is the time, if any, that is indicated by the evidence as covering the period of time that such a man was in the telegraph office or in company with Grouppe subsequent to being in the telegraph office, that must be covered by the defendant in connection with any defense predicated upon a contention that the defendant was not that man, because he, the defendant was elsewhere at that time. What evidence has been adduced here on the part of the defendant, showing or tending to show where he was at the time testified to by Schell as being the time when the man came into the office and asked for a messenger boy? What hour did the defendant leave his house that day, according to his own evidence? Where did he go? When was he on that day first in contact with any witness produced by himself at this trial? What time, if any, does the defendant fix as the time that he had ^{the} talk with Gerety? What time, if any, does Gerety state as the time when he and the defendant talked? Where did the defendant go after he left Gerety's place, if he was there? What time did the defendant get to 401 Lafayette street? What time did the defendant leave Rodberg? How near was that time to the time testified to as being the time that a person was in the tele-

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graph office asking for a messenger. How far apart are the two places? How long would it take, under ordinary circumstances, for a man to walk from one to the other.

If, upon the evidence, you entertain a reasonable doubt as to whether this defendant has or has not established an alibi, you will give the defendant the benefit of that doubt.

Gentleman, this is an important case, in the sense that every case that is tried involving on the one hand the possible vindication of the law and on the otherhand conditions affecting the liberty and reputation of an individual is important.

You have given to the evidence manifestly a careful consideration, and I have merely directed your attention to certain queries bearing upon the evidence, to aid you possibly in your deliberations in the jury room. It is of course entirely optional with you whether you will or will not pursue the particular methods of investigation suggested or outlined by those queries.

The remaining evidence in the case is evidence relating to handwriting, and is more immediately material if not indeed relative only to the first count in the indictment, namely, that which charges that the defendant himself forged, in the sense of personally writing, the check

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which has been offered and received in evidence. *441*

The handwriting evidence comes from two classes of witnesses; those who do not pretend to expert knowledge, in the more restricted sense, and those who have qualified as experts or who by reason of their conceded qualifications or established qualifications have given opinion evidence in this case.

You will recall what the evidence is and consider it in your deliberations in the jury room.

The case has been tried with marked ability, both by the Assistant District Attorney, Mr. Manley, and by Mr. Steuer, counsel for the defendant, and when a case is tried with ability, the evidence available is produced in clear and logical order for the consideration of the jury, and the facts as the respective sides contend that they are established, are properly marshalled in the summations. I have every reason to believe that both counsel for the defendant and the Assistant District Attorney made every endeavor, in commenting upon the evidence, to comment upon it as they believed it to be.

If your recollection of the evidence should differ from anything which has been said respecting it by either counsel for the defendant or the Assistant District Attorney, or which may have been ^{said} respecting it by myself in this charge, your recollection will control you in the jury room; and

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if a dispute or controversy arises between you as to what, in point of fact, the evidence was upon any given subject it is your privilege to ask to return to this court room, where, in the presence of the defendant and his counsel and of the Assistant District Attorney, that portion of the evidence as to which the controversy or dispute has arisen may be read to you, for greater certainty, from the stenographer's minutes.

MR. Steuer, will you glance over this and see if there is anything I have not covered?

MR. STEUER: Only one, your Honor has not covered, and I think you have charged to the contrary, and that was the last. I am quite content with respect to all the others.

THE COURT: Will you read me the last?

MR. STEUER: The last is, that if the jury do not believe the defendant wrote "S. Gottlieb" on the back side of Exhibits 1A and 1B, then the defendant is entitled to an acquittal, because the testimony, if your Honor will pardon me just a second, of Mr. Daiches was, that he stood alongside of the man in the store and saw him write "S. Gottlieb" on Exhibits 1A and 1B and that is the only man that he had the transaction with. Now, if that is so, if the defendant did not write that, your Honor, he could not have been the man in that store.

MR. MANLEY: Well, the jury are to determine the

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facts in the case. It is not for the Court to charge
as to certain facts, as to their weight. 443

MR. STEUER: I am not asking the court to charge facts. I have urged that fact upon the Court for the purpose of charging this which I claim to be a legal proposition, absolutely, in the case, and as far as the other requests to charge here are concerned, may it please your Honor, I consider them fully and satisfactorily covered by your Honor.

THE COURT: In other words, you withdraw your other requests and make that one request alone?

MR. STEUER: Yes, sir.

MR. MANLEY: The whole thing is a question of fact for the jury.

MR. STEUER: I admit it is a question of fact, but since the District Attorney or the learned Court has separately charged with respect to the two counts in the indictment, I deem it of the utmost importance that this proposition should be dealt with as a proposition of law, because, on the evidence, I contend you cannot possibly separate the writing of "S. Gottlieb" from the man who was in that store on the 10th day of April, 1908.

THE COURT: You will observe, Mr. Steuer, that that is not alleged in the indictment as having been a part of the

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forgery?

MR. MANLEY: That is what I was going to suggest. He is charged with forging the face of the instrument in count one.

MR. STEUER: I do not see how that could vary this proposition, as being applicable to this case, may it please your Honor, and furthermore, the conceded evidence all throughout the case on both sides is that the same hand that wrote "S. Gottlieb" on the back of the instrument that wrote the body of the check.

THE COURT: It is asking me in effect to charge this jury, Mr. Steuer, that in the event that they discredit an isolated statement made by a witness, then they must, as matter of law, reject entirely the balance of his evidence, and that aside from that isolated statement, there is not sufficient to take the case to the jury on that count in the indictment charging an uttering. You virtually by your request ask of me to charge that this defendant cannot be found guilty unless they believe that he was the man who wrote certain words.

MR. STEUER: "S. Gottlieb" on the back of this exhibit. As your Honor will recall, Mr. Daiches was positive that ^{the} man who was in his store wrote that name on that instrument, and your Honor must recall that the People are bound by their evidence, and everybody had conceded that

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the man who wrote on that instrument was the man who forged the face of the instrument. There is not any issue about that in this case, sir. I am only asking you to charge that which both sides concede, in a proposition of law, so that it shall be succinctly and plainly before the jury.

MR. MANLEY: The whole thing is a question of fact, and it is asking the court to characterize as to the effect of a certain class of evidence.

MR. STEUER: The effect of evidence, may it please your Honor, is not a question of fact. What is the evidence is a question of fact, but the effect of evidence is a matter of law. Whether the evidence measures up to a legal conclusion is a proposition of law, and not a proposition of fact. It may be a mixed proposition of fact and law, and when it is such, it is to be passed upon by the court.

THE COURT: I will just refer to his evidence for a moment.

MR. MANLEY. If the court please, I would like to suggest to you an authority on that subject, which I can produce directly. May I leave the court room?

THE COURT: Yes.

The test, Mr. Steuer, as to whether your proposition is a correct one or not, I think is to be found in the answer that should be given to this question: Suppose what Daiches says in that regard, say, with respect to the defendant

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being the man who wrote the words "S. Gottlieb" on that check is erroneous, suppose that is not so, suppose he is mistaken in that regard, is there not sufficient evidence other than that, given by Daiches and other witnesses, which, if believed by the jury would warrant the jury in finding the defendant guilty, or which would permit the jury to find the defendant guilty under the second count in the indictment?

MR. STEUER: I respectfully submit that Mr. Daiches has excluded that hypothesis or probability or possibility, because he said that "the only man with whom I had the transaction and at the time when I had it and the only man who delivered this paper to me, which is People's Exhibit 1A and 1B in this case, in my presence and in my observation, wrote 'S. Gottlieb' on that paper". Now, if you make that man the only man who delivered it to him, then the man who did not write it is not the man who delivered it to him. It makes it impossible.

THE COURT: Your statement rather leads me to believe that I may properly decline your request.

MR. STEUER: I respectfully except.

MR. MANLEY: Now, do you want these exhibits to go to the jury?

MR. STEUER: If they desire them.

MR. MANLEY: Just one request I ask your Honor to

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charge, which I forget, that the defendant's samples of handwriting are offered only for a comparison of the handwriting therein, and not as to the contents.

THE COURT: That is so.

MR. STEUER: As to the contents of them? I consent to that.

THE COURT: That is undoubtedly so, gentlemen.

THE ELEVENTH JUROR: Your Honor, is the jury entitled to take in all the exhibits in the jury room?

THE COURT: If both sides agree.

MR. STEUER: I agree, certainly.

MR. MANLEY: I agree to it.

THE COURT: Give them to the foreman. The foreman is responsible. Make sure that they have all.

Now, gentlemen, pass out, please.

The jury returned the following verdict: We find the defendant not guilty.

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