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I N D E X .

	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
Adolph Goldberger	8			
Herman Gross	15	25	27	
Joseph J. Leibner	46	53	60	
Otto Raphael	62	72		

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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
John J. Scott	83	99		
Henry Platt	103	111		
Adolph Goldberger	113	115		
Max Levy	133			

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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
Max Levy		176	226	230
Joseph Kerber	235	240		
Aaron Lener	241			
Solomon Munits	249	250		
Ruben Cohn	254	256		
Samuel S. Kessler	260			
Charles A. Scott	261			
Otto Rapharl	264			
Max Levy reld.,	266			

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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
Louis Eisen	270			
Charles Levy	272	283		
Casimir Svidersky	311	314		
John R. Vogel	316			
George A. Dookey	321			
Arthur G. Sullivan	324			
William H. Searing	329			
Louis Weissblum				
Pilate Pomerance	342			
Martin McCauley	345			
Herman Gross	353			
Ralph A. Hoover	358	363		
Morris Trohn	375	379		
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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C
Samuel Roseff	394			
Harry Hock	395	397		
Morris Pincus	400	402		
Walter Brahmhenburgh	406			
Louis Kendler	439	441		
Reuben Cohen	453			
Louis Kendler resumed	454	455		
Max Levy	468			
Louis Kendler "		470		
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Louis Kendler "		475		
Harry Dick	476			
Max Levy	487			
Harry Dick "	488			
Isaac Bernstein	491			
Max Levy Rold.,	496			
Isaac Bernstein resumed	500			
Max Walk	501			

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-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C
Max Walk	523	570		
John R. Vogel	597			
Max Levy resumed	607			
J. Fred Bammann	613			
Joseph D. Nichols	617	622		
Edward W. Vinton	622	623		

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COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York. Part III.

----- x #270

THE PEOPLE OF THE STATE OF NEW YORK,	:	Before:
-against-	:	HON. EDWARD SWANN, J.,
MAX WALK, impleaded with MAX LEVY.	:	and a Jury.
-----	x	

New York, January 20, 1910.

Indictment filed June 30, 1909.

Indicted for burglary in the third degree and grand larceny in the second degree.

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

For the People: ASSISTANT DISTRICT ATTORNEY CHARLES F. BOSTWICK.

For the Defendant: MR. NATHANIEL LEVY:

Peter P. McLoughlin,
Official Stenographer.

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MR. LEVY: Before Mr. Bostwick opens the case may I request that the witnesses on both sides be required to leave the court room.

THE COURT: Yes. The witnesses on both sides will step out in the hall and remain within easy call.

MR. LEVY: May I ask that the stenographer take down the opening address of the Assistant District Attorney?

THE COURT: Yes.

Mr. Charles F. Bostwick opened the case on behalf of the People as follows:

Gentlemen of the jury this is the case of the People of the State of New York against Max Walk and Max Levy, but under the statutes of this State it was the right and privilege of one of the parties to demand a separate trial and therefore the case now appears before you as the case of the People against Max Walk. I think I have a right to state that, Mr. Levy --

MR. LEVY: I have not objected.

MR. BOSTWICK: It simply explains the fact that only one defendant is now on trial.

The charge is burglary in the third degree, grand larceny in the second degree and receiving stolen property.

The People will attempt to prove to you that this burglary was committed on the evening of April 27, 1909;

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the place 143 Avenue D and the property that was taken and received were coats and one suit. There may be some difference in the evidence as to the number of coats but we hope to be able to prove to you that it was 34 coats and one suit.

The man who had possession of these coats and from whom they were taken by the burglars we hope to prove to have been Mr. Herman Gross.

Now, we will attempt to prove this by showing that one Adolph Goldberger, a night watchman, locked the place up securely and went out to get something to eat. When he came back he found that there had been a burglary perpetrated in the place. We will then prove what property was taken. Of course, no one can be produced who was an eye witness to the burglary.

We will then attempt to prove that this is one of that class of cases where the man who wished to profit by these transactions used a third person, sometimes spoken of as a fence, sometimes spoken of as a buffer and there are all sorts of terms by which he is designated.

We will attempt to show that by an arrangement with the defendant, Max Walk and the burglars the property was to be taken to one Max Levy. Max Levy was to be the buffer.

We will attempt to show that Max Walk furnished the

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money to Max Levy and told Max Levy that the burglars would come there and to give them the money and to take the goods. The burglars would come to the house of Max Levy and it is customary for the man who acts as the fence or buffer to get something out of it and this was no exception to the rule.

MR. LEVY: I object to that statement.

THE COURT: He says that was the case in this case.

MR. BOSTWICK: I said that this was no exception to that rule.

MR. LEVY: That is objectionable, if your Honor please, but if that is what he is going to prove it is another proposition.

THE COURT: That is what he says he expects to prove. If he does not you may make a motion to strike it out.

MR. BOSTWICK: I am going to go further than that and attempt to prove that 10% was to be paid to Max Levy based upon the sums of money paid by him to the burglars and that on some transaction five per cent. I will attempt to show that this money was paid.

MR. LEVY: Now, that last remark is objectionable. I respectfully ask your Honor to instruct the jury to disregard it.

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THE COURT: He may prove other transactions of the same general kind between the parties on the question of intent or guilty knowledge.

MR. LEVY: May I respectfully ask for an exception to your Honor's refusal to grant my request.

THE COURT: Yes.

Exception.

MR. BOSTWICK: I will attempt to show that in this particular transaction Max Walk made a purchase from the burglars himself in the rooms of Levy and yet paid Levy a commission the same as if Levy had consummated the transaction as the fence or buffer; that when the goods were left by the burglars it was the duty of Max Levy, if the goods which the burglars brought were not finished-- it was part of his arrangement with Max Walk and under the instructions of Max Walk to have those goods put in a finished condition.

I will attempt to show you that the defendant had property that had been bought in this way from the burglars and had been sent to the house of a man named Pommeranz and that when the officers of the law went to Pommeranz's house they found the goods there, many of them done up in bundles, stolen goods, and from the same burglars and addressed to this defendant Max Walk but

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all sent by Levy under a different name, names given to him by the defendant Max Walk.

I will show you that the officers sent for Max Walk and Levy to come over to Pommeranz's place where they were waiting for Walk and Levy after the officers found the goods there, the stolen property, and two of the officers went over and followed Walk and Levy as they came out of Levy's house in 4th street and at the proper time seized them and under Walk's arm was found two of the coats which had been taken in the burglary.

I will attempt to prove to you that Walk had stated to Levy that he was to pay the price that the burglars asked and in this case -- I will confine it to this case -- the amount paid for the property was in the neighborhood of 20% of its real value -- that Levy knew the goods were stolen and that he conversed about the matter with Max Walk.

Then when they got Walk and Levy they went to Levy's house and a very vital and important thing is that when the officers with Walk and Levy go to Levy's house there are the burglars waiting for their swag.

I will show you that the burglars had not been paid yet and I will show you that Walk had brought down the money to give to Levy to pay the balance and that upon being apprehended by the officers the first thing he said to

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Levy was "Give me the check that I gave you", and thereupon he destroyed it in the street. The burglars had not been paid entirely yet.

I think that I have told you now sufficient to follow this case. Remember that the crime of burglary was committed on April 27th and that it was subsequent to that time that this defendant is charged with having received this property knowing it to have been stolen.

THE COURT: We will suspend here.

MR. LEVY: May I ask, before we suspend, that Mr. Bostwick state now upon what count in the indictment he is going to trial?

THE COURT: He is not obliged to do so.

MR. LEVY: I know he is not obliged to but I am asking that as a matter of information.

THE COURT: We will suspend here until two o'clock.

While you have heard no evidence in the case yet the law requires me to admonish you not to make up your minds as to the guilt or innocence of the defendant. Do not discuss the facts in the case until the matter is closed and submitted to you for your determination.

Recess until 2 o'clock.

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AFTER RECESS.

TRIAL RESUMED.

A D O L P H G O L D B E R G E R , called and sworn as a witness
for the People, testified, through the Official Yiddish
Interpreter, as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 143 and 145 Avenue D with the
boss, Gross.

BY THE COURT:

Q Now, does he live there; is that his residence?

A Where I work and where I live.

BY MR. BOSTWICK:

Q Did he work there and live there on April the 27th,
1909? A Yes, sir.

Q State what he did, what is his occupation?

MR. LEVY: No, if your Honor please; I suggest
that he ask his questions in the first person; he is
a Jew.

Q What is your occupation? A Tailor.

Q What do you do as tailor? A I am a helper.

Q Do you remember the night of April the 27th, 1909?

A Yes.

Q What time of that night did you leave the premises 143
Avenue D? A It was after 8 o'clock; how many minutes, I

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don't know.

Q Why did you go out?

MR. LEVY: I object to that, your Honor, as incompetent, irrelevant and immaterial.

THE COURT: Well, where did he go then?

MR. LEVY: May I ask the Court to instruct the witness to talk a little louder so that we can hear him as well as the Interpreter?

THE COURT: Yes. Talk out loud, Mr. Witness, so that the last jurymen over there can hear you.

THE WITNESS: I went downstairs to a store and bought cigarettes and paper.

Q What did you do before you left the premises?

MR. LEVY: Objected to as incompetent and immaterial.

THE COURT: Well, this is a charge of burglary so it may be very relevant, I don't know. Objection overruled.

MR. LEVY: I object to it upon the ground that it is not binding on this defendant.

THE COURT: That I don't know yet.

MR. LEVY: I take an exception.

A I was watching upstairs to see whether the expressman would come to bring the work.

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

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Motion denied. Exception.

Q After that what did you do? A Then I closed the shop and went down.

Q How did you close the shop? A With a key, and outside was a big lock.

BY THE COURT:

Q Well, did he lock all the doors? A Only one door was there.

Q Did he lock that? A I think so that I locked it, that I put on the lock and locked it.

Q Did it have a padlock? A Yes, a large padlock.

BY MR. BOSTWICK:

Q How long were you away from the shop? A Perhaps an hour or an hour and a half, I don't know exactly.

Q When you returned to the shop what did you find? A The door was open.

Q How was it open?

MR. LEVY: We object to that upon the ground that it calls for the conclusion of the witness.

BY THE COURT:

Q Well, did you notice anything unusual about the condition of the door? A No. I went upstairs and I saw the door of the shop open and I got frightened.

MR. LEVY: Your Honor, I ask that the latter part of the answer be stricken out.

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THE COURT: Strike out, "I got frightened."

What did he do next?

BY MR. BOSTWICK:

Q Was any of the property which was in the shop when you left it, gone when you returned?

MR. LEVY: We object to that upon the ground that it is leading.

THE COURT: If he knows.

MR. LEVY: I object to it as leading, your Honor.

THE COURT: No, that is not leading.

Exception to defendant.

A When I went up to the shop all the goods that I had pressed was missing from the shop.

BY THE COURT:

Q Well, what did they consist of? A There were tuxedos and sack coats and my own suit was there among them too.

Q He missed his own property? A Yes, my own.

BY MR. BOSTWICK:

Q How many tuxedo coats were gone?

MR. LEVY: We object to that as calling for the conclusion of the witness.

THE COURT: Well, say how many tuxedo coats did you miss of those that you left there.

MR. LEVY: I object to that question, as to form.

THE COURT: What is your objection to that?

MR. LEVY: Upon the ground that there is no proof

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as to how many he left there.

THE COURT: Well, that would bring it out.

MR. BOSTWICK: That is a proper subject for cross-examination.

THE COURT: You might ask him as to how many suits had he pressed when he left at 8 o'clock.

Q How many suits that you had pressed did you leave there when you went out? A I did not count, I don't know. What is missing, I know.

Q Well, what was missing?

MR. LEVY: Objected to upon the same grounds.

BY THE COURT:

Q Can you tell approximately, state approximately how many tuxedo suits were there when you left at or about 8 p. m.?

MR. LEVY: We object to that; he has already testified that he does not know.

THE COURT: He can tell whether there were at least twelve or fifteen or whatever the fact was; he might not be able to tell exactly how many were there and it is not necessary that we know exactly the number.

Exception to defendant.

A Approximately, how many tuxedo coats were there when you left? A Do you mean ready already or only pressed?

Q Both; either way. A I can't tell, because there were

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many suits.

Q Well, were there as many as twenty-five? A Pressed ones?

Q Yes. A More than twenty-five.

Q Well, were there forty? A No, not forty.

Q Were there thirty? A I know there was thirty-four.

Q Thirty-four pressed. Now, we are getting down to some facts. Thirty-four tuxedo coats pressed. How many not pressed, not ready? A This I can't know; there were many.

Q Well, were there twenty-five not pressed? A This I can't know. I am working and I don't know what else is going on there.

BY MR. BOSTWICK:

Q Were those thirty-four pressed coats there when you returned? A They were not there any more, they were taken away.

MR. LEVY: I ask that the latter part of the witness' answer be stricken out as stating the witness' conclusion, I ask that the words "they were taken away" be stricken out.

THE COURT: It is a natural conclusion that if they were taken away they were ^{not} there.

MR. LEVY: We object to that natural conclusion.

Objection overruled. Exception.

Q Does he remember what day in the week it was, whether it was Monday, Tuesday or Wednesday-- do you remember whether it

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was Monday, Tuesday, Wednesday or what? A Tuesday.

BY THE COURT:

Q Did you observe anything peculiar in regard to the condition of the door different from what had existed when you left there at 8 p. m.?

MR. LEVY: We object to that, if your Honor please, as leading.

THE COURT: No; objection overruled.

Exception to the defendant.

A I know that I had locked it and the lock wasn't there.

Q The padlock was off when he returned? A It wasn't there any more.

Q Well, how about the other things in the shop, were they in the same condition as when you left at 8 p. m. or were they changed as to their position, etc., and if so, how? A The things they were there in the same place as they were, sure.

Q The other things? A Yes, sir, the other things.

THE COURT: Can he identify those tuxedos if you have any here?

MR. BOSTWICK: I think I can and I think I will want him to do so, but I have been waiting for Mr. Duvivier. I don't want to undo this bundle until I have spoken to Mr. Duvivier, and I would like to recall this witness for that purpose.

THE COURT: Identification? Very well.

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MR. LEVY: If your Honor please, will you instruct the witness to retire from the room and not to converse with anyone?

THE COURT (To the Interpreter): Direct that witness not to converse with any other witness in regard to this case.

HERMAN GROSS, called and sworn as a witness for the People, testified as follows:

The witness states his business address is 143 and 145 Avenue D.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q You live at 63 East 100th street, Mr. Gross? A Yes, sir.

Q Kindly speak so loud that the last juror can hear all your answers. A All right, sir.

Q What is your business, Mr. Gross? A Contractor of making coats.

Q And where is your place of business? A 143 and 45 Avenue D.

Q Were you engaged in that business and did you have your place of business at that address on April 27th, 1909? A Yes, sir.

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Q Were you at that place at about 7 o'clock? A About a quarter after 7 I left the place.

Q Did you leave that place in charge of anyone that night when you left? A Yes, sir. Adolph Goldberg.

Q And who is he? A My night watchman.

Q At what time did you return to the premises on April the 28th? A 7 o'clock in the morning.

Q Did you notice anything peculiar when you arrived at your place of business on the morning of the 28th? A Yes, sir; the place was broke open.

MR. LEVY: Now, your Honor, I move that the answer be stricken out as a conclusion of the witness.

MR. BOSTWICK: We consent that it be stricken out.

THE COURT: All right, strike it out.

Q State just what you saw, just what you noticed? A I said I found the door broke open.

MR. LEVY: I make the same motion, your Honor.

BY THE COURT:

Q What did you notice about the door which was peculiar or unusual?

MR. LEVY: May I ask that the answer be stricken out?

THE COURT: Yes, strike it out.

Q What did you notice about the door that was peculiar or unusual? A The lock, the big bulldog lock was knocked off,

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and the other one was slipped open.

Q Is that the padlock? A No, that is an outside lock hanging on the door and there is another one, the big lock from inside. The door was forced with a jimmy.

MR. LEVY: Now, your Honor, we ask that that be stricken out.

Q What became of that bulldog lock that you speak of?

A It was knocked off.

MR. LEVY: We ask that that be stricken out, your Honor; he can't testify of his own knowledge, he don't know what was on that door the night before. And he says the door was forced open with a jimmy.

Q Were there any marks on the door? A Yes.

Q In the first place, the bulldog lock was gone? A Yes.

Q Were there any marks on the door or on the jamb of the door? A There was marks on the door like the door was forced back with a jimmy.

MR. LEVY: I move that that be stricken out, your Honor.

THE COURT: Yes.

MR. LEVY: If your Honor please, won't your Honor instruct this witness to testify of his own knowledge?

THE COURT: He is doing the best he can; he doesn't know the rules of evidence and we have got to get the facts out of him as best we can.

MR. LEVY: Won't your Honor's instruct him to that extent?

THE COURT: He wouldn't be able to understand if I did.

MR. LEVY: I except to your Honor's refusal to instruct the witness.

THE COURT: I will strike out any part of it that is not within the rules of evidence. Now, witness, state only the facts as you saw them that are not conclusions. Is that what you want?

MR. LEVY: Yes.

Q Now, state just what you saw. You say in the first place that the lock was off, the bulldog lock was off? A Yes.

Q Did you see any mark on or about the door or any part of the door? A Yes, sir.

Q Tell us what they were, just what sort of marks they were? A They were scratches.

Q On what part of the door? A Alongside of the lock.

Q Was there any impressions in the wood? A Yes.

Q And how far from the lock? A About-- well, it was opposite the inside lock.

Q Was it between the door and the jamb of the door or was it under the door, or where? A No, between the door, where the door opens.

Q Right about where the lock is you say? A Yes.

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BY MR. BOSTWICK:

Q When you left your place of business on the evening of April the 27th, were there any tuxedo coats there? A Yes, sir.

MR. LEVY: We object, if your Honor please.

THE COURT: Get right down to what the property that the defendant is accused of having participated in the larceny of or in the criminal receipt of. If they were tuxedo coats let us get at them. We don't want him to tell how many needles he had or how many spools of thread or how many machines because those are not, as I understand it, the charge.

MR. BOSTWICK: I believe I could ask him if there were thirty-four or any other number, or fifty-four, if that is the number in question, but they would object to my leading the witness then.

THE COURT: That is the property we are interested in so far as I know; I haven't read the papers.

Q How many were there? A Do you want me to specify what kind or just exactly the amount?

Q Tell everything. A There were twelve tuxedos and ten smoking jackets, waiters coats, and twelve business coats and the watchman's suit.

Q Let us have that again? A Twelve tuxedos, ten waiter's jackets, twelve business coats and the watchman's suit.

BY THE COURT:

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Q One watchman's suit? A Yes.

Q Were they all new? A Except the watchman's.

Q And that was used? A Yes.

Q Had been used? A Yes.

Q Were those waiter's coats anything like the tuxedos,
or built after the same fashion? A The same; something like
them.

Q Now, the ten other coats? A Twelve business coats.

Q How were they made? A As usual, as every man has.

Q Sack coats? A Yes.

Q That makes thirty-three in all? A Thirty-five.

BY MR. BOSTWICK:

Q Do you know Samuel Leibner? A Yes.

Q Do you know his brother? A Yes, sir.

Q Do you know his name? A Whose name?

Q Samuel's brother's name. A I know his name is Leibner;

I don't know his first name.

Q What is his business? A Whose? Samuel's?

Q No, Samuel's brother? A I believe he is--

MR. LEVY: If your Honor please, how is that
material so far as this case is concerned?

MR. BOSTWICK: I want to see if he is an officer.
I want to ask this man about his relations--

MR. LEVY: We are burdening this trial with
immaterial matters.

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THE COURT: No, these are not immaterial.

MR. LEVY: I insist on my objection.

THE COURT: I can't help on that because I don't know the facts.

MR. BOSTWICK: I think these are relevant as introductory matters.

THE COURT: They may be; go right ahead.

Exception.

Q (Question repeated.) A I heard he is a detective.

Q Did you have a call from Samuel Leibner, the brother of the detective Leibner?

MR. LEVY: We object to that as not binding on this defendant.

THE COURT: Well, it can't hurt you.

MR. LEVY: I can't anticipate that, your Honor.

THE COURT: Well, it might do you good.

MR. LEVY: Well, I insist on my objection.

THE COURT: It is utterly impossible to try a case and have every bit of it put into one sentence. It has got to be by question and answer, and I can't tell in advance-- to enter the District Attorney's mind-- I know nothing of the facts in this case and I can't shut off inquiries without giving him an opportunity of expressing or putting before the jury all the facts. The objection is overruled.

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Exception to defendant.

Q Now, without telling us what was said at that call, as a result of that call what did you do? A I went over to see Mr. Leibner.

Q Which Leibner? A Samuel Leibner.

Q That is, now you say Samuel Leibner? A Yes.

Q You had a talk with him? A Yes.

Q Now, without telling us that talk-- it is improper for you to tell us that talk-- without telling us that talk, as a result of that talk where did you go and what did you do? A I went to Gerber's place.

Q What is Gerber's place? A A saloon.

Q And did you meet anybody at that place? A I met Mr. Levy there.

Q What Levy? A I don't know his first name.

Q What kind of a looking man is he? A I seen him last week here in court, an old man, the man that is in--
BY THE COURT:

Q With a beard? A Yes. He is locked up.

Q Is he one of the defendants in this case? A Yes.

BY MR. BOSTWICK:

Q He is one of the defendants in this case? A Yes.

BY THE COURT:

Q Did you see him sitting there at that table? A No.
I seen him here Wednesday when he pleaded guilty I believe.

MR. LEVY: Now, if your Honor please, I think

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you ought to direct the striking out of that answer.

THE COURT: Yes, we will strike out that Levy pleaded guilty.

Q Were you here at the time? A Yes, sir.

MR. LEVY: Now, if your Honor please, in the interest of justice I have a duty to perform as well as your Honor. I think you ought to instruct the jury not to regard any impression that is made by that answer.

THE COURT: The jury is directed to disregard the statement that Levy pleaded guilty.

MR. LEVY: I think I will ask the withdrawal of a juror on account of that statement as prejudicial to this defendant.

THE COURT: I deny the motion.

MR. LEVY: Exception.

BY MR. BOSTWICK:

Q Now, you met Max Levy in Gerber's saloon? A Yes, sir.

Q Did you have a conversation with him at that time and place?

Objected to. Objection overruled.

MR. LEVY: I object upon the ground that it is not binding upon this defendant, as incompetent, irrelevant, immaterial and not within the issues of this case.

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Objection overruled. Exception.

A Yes, sir.

Q State the substance of that conversation?

MR. LEVY: I object to it, if your Honor please, unless they show that this defendant was present.

THE COURT: Objection sustained, unless the People can show that Max Levy and Max Walk were in the pursuit of a common design or scheme for the purpose of either burglarizing the property in question or committing the larceny of the property in question or guilty of receiving the property in question which was alleged to have been stolen, knowing the same to be stolen.

MR. BOSTWICK: We offer to show that it was not in the presence of this defenant but it was in the pursuit of a common design and purpose and they were both principals in the transaction. Now, if your Honor please, we will either have to suspend with this witness and call another or we can let this witness testify and if there is any failure to connect this defendant it can be stricken out, but I think we can sustain it and that we had better finish with this witness.

THE COURT: No, I think you will have to connect the defendant Max Walk with the crime alleged before he could be in any way bound by the statements made

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by Max Levy.

MR. LEVY: May I cross examine this witness at this time so far as he has gone?

THE COURT: Yes.

CROSS EXAMINATION BY MR. LEVY:

Q Mr. Gross, you were in your place of business the entire day of April 28th? A Yes, sir.

Q And what time did you leave your shop on April 27th, in the evening? A Yes, sir.

Q And did you come back? A No.

Q Now, how many people were in your employment on that day? A About thirty-five.

Q And they came in and out all the time? A (No answer.)

Q They could go in and out whenever they desired? A Yes, sure.

Q And when you left the shop the shop was open, wasn't it? A I left the watchman there.

Q Answer yes or no, please, I didn't ask you whether you left anybody else there. A Yes.

Q If you don't understand me, please say so, and I will repeat my question. A All right.

Q Now, the shop was open when you left? A Yes.

Q And the people were working there? A No.

Q How many were working? A About three of them.

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Q When you left at 7:15, you left him there as the night watchman? A Yes.

Q Did he have any duties to perform there at night, such as work? A No.

Q Such as pressing clothes? A No, only sleeping.

Q Where did he sleep, right in the shop? A In the shop.

Q How many rooms were there in the shop? A Only one room.

Q And that is the room, of course, in which these tuxedos and business coats and waiter's coats were? A Yes.

Q Did you ever have any conversation with the defendant Max Walk? A I don't know the man.

MR. LEVY: I move, if your Honor please, to strike out the evidence of this witness with regard to whatever evidence he gave with regard to locks and the breaking of locks and the removal of locks on that door.

THE COURT: Motion denied.

Exception.

RE DIRECT EXAMINATION BY MR. BOSTWICK:

Q I show you two garments. A Yes, sir.

Q And ask you what they are? A Two coats of mine.

BY THE COURT:

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Q What kind of coats? A One is a tuxedo and one is a waiter jacket.

MR. LEVY: This time I desire to object to that question upon the ground that it is not binding on this defendant, and this proof is inadmissible and improper until they connect this defendant with it.

THE COURT: I tell you, Mr. Levy, that if they don't connect the defendant with the goods, with the property, why, it certainly won't hurt him because it will never get to the jury unless they connect your client with those goods.

MR. BOSTWICK: I ask that these coats be marked for identification.

THE COURT: Very well.

(The tuxedo is marked People's Exhibit 1 for Identification and the waiter's jacket is marked People's Exhibit 2 for Identification.)

BY THE COURT:

Q You are a tailor, are you? A Yes, sir.

Q Is one of those coats a tuxedo and the other is what?

A A waiter's jacket.

Q Now, were those made by you? A Yes, sir.

Q Can you tell your own goods by the general style of the workmanship? A Yes, sir.

BY MR. BOSTWICK:

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Q Which is the tuxedo coat? A This here. (Indicating People's Exhibit 1.)

Q And Exhibit 2 is what? A The waiter's jacket.

MR. LEVY: That is all taken under my objection.

THE COURT: Yes, they are marked as exhibits for identification and they don't go into evidence unless your client is connected with them.

Q Were these two of the coats that were in your place on the night of the 27th of April, 1909? A Yes, sir.

MR. LEVY: We object to that as to form, leading the witness. It suggests the answer, your Honor; that is the reason that I made the objection before, by his being shown these very garments.

THE COURT: He has already testified that there were twelve tuxedos and ten waiter's coats. I have told you that they have got to be put in some time, they have got to be exhibited to this man for identification and the case cannot be tried unless they are exhibited to the owner for identification.

Q Were those two coats in your place on the morning of April 28th, 1909? A No.

THE COURT: Ask him where he last saw those coats.

MR. BOSTWICK: I don't want to ask him that.

MR. LEVY: We object to that as incompetent.

THE COURT: When did he last see those in his own

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shop?

MR. BOSTWICK: On the 27th of April.

Q Now, I ask the question: Were they in your shop on the morning of the 28th of April, 1909? A No, sir.

MR. LEVY: Objected to as incompetent, irrelevant and immaterial, and I move to have the answer stricken out.

Objection overruled.

Q Was or was not Exhibit 1 for Identification one of the tuxedos which you have testified were missing on the morning of the 28th? A Yes.

MR. LEVY: I object to the use of the word "missing" in that question and in the answer and I ask that it be stricken out.

Motion denied. Exception.

Q And I show you Exhibit 2 for Identification and ask you whether that was one of the coats which you testified was missing on the morning of April 28th, 1909?

Same objection. Same ruling. Exception.

A Yes.

MR. LEVY: And I move to strike out the answer.

Motion denied. Exception.

Q How many years have you been in the clothing business?

MR. LEVY: Objected to as immaterial.

A You ask in business how long I have been?

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Q Yes. A Nineteen years.

Q Now where did the material of which these coats are made come from?

MR. LEVY: I object to this question, if your Honor please, upon the ground of the indefiniteness of the question. Does it mean from what mills or what company.

Objection overruled. Exception.

BY THE COURT:

Q Now state where the material of which those coats were made came from? A You mean, your Honor, the goods??

Q Yes, the goods? A I don't know.

BY MR. BOSTWICK:

Q Where did you get it?

MR. LEVY: Objected to as incompetent, irrelevant and immaterial and not binding on this defendant.

THE COURT: Unless he is connected with it it won't hurt him at all.

A From Bowe & Seligman.

Q You got it from Bowe & Seligman? A Yes, sir.

Q In what stage of the manufacture were the coats when you got this material? A They were cut and trimmed and I had to make them up.

Q You did not own these coats? A No, sir.

MR. LEVY: Now, if your Honor please, you see

the disadvantage I am under; this witness has already testified he was the owner. Now the District Attorney puts the words in his mouth that he was not the owner.

MR. BOSTWICK: He says he got them from Bowe & Seligman in cut and trimmed condition and it was his business, he has testified his business was that of a manufacturer.

THE COURT: It is wholly immaterial, it does not make any difference whether he held them as a manufacturing tailor for somebody else or whether he owned them absolutely himself; so far as he was concerned, he was the owner as to all the world except the man for whom he was making them. It won't make the least difference so far as the larceny charge is concerned; a man could be guilty of larceny from the manufacturer of goods just as well as the real owner who is entitled as against all the world to the possession of the goods.

MR. LEVY: You understand it is my duty to object because it is immaterial. Why should we be compelled to pay for so much testimony if we are put to the necessity of naving it?

THE COURT: It is immaterial as to the guilt or innocence of the accused.

MR. LEVY: That is why I object.

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BY THE COURT:

Q Did you manufacture those coats for somebody else?

A Yes, sir.

Q For whom? A For Bowe & Seligman.

Q Where is their place of business? A I don't know their number. They keep a place on Sixth Avenue and 54th Street.

MR. BOSTWICK: I would like to withdraw this witness, your Honor.

MR. LEVY: I would like to ask him some questions, if your Honor please.

THE COURT: Yes.

BY MR. LEVY:

Q The firm of Bowe & Seligman for which you made some coats, it is quite a large manufacturing concern, isn't it; yes or no. A They got the store.

Q Yes or no. A I don't know.

Q Well, they are wholesale manufacturers, aren't they?

A It is a store.

Q Please answer my question yes or no. A I don't know if they are wholesalers or not.

Q Where is their place of business? A Sixth Avenue and 54th Street and now they are at 53rd I hear.

Q Don't you know that of your own knowledge? A No.

Q Then you don't know. Now, what business are they

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engaged in? A In clothing.

Q Clothing business? A Yes.

Q Now when they shipped you cut goods to be made up into garments they had certain marks and tags on them, didn't they?

A Yes, sir.

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

Q And you don't know of your own knowledge whether Bowe & Seligman had other tailors working for them, do you? A No.

Q And you don't know whether other tailors made up garments for them, do you? A No.

Q And you don't know whether other tailors made up garments like these for them, do you? A No.

Q You could not positively swear that you made up these identical coats, could you? A Yes, sir.

Q How can you swear that you made these identical coats if others made them? A There is all the marks missing out of them, my marks.

Q And you can tell them because the marks are missing? A Yes, sir.

Q And there are no marks on these two coats? A They were taken out.

MR. LEVY: I ask that that be stricken out; he says no, there are no marks and we have it they were taken out.

Q You say that there are no marks of identification on

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those two coats? A Yes.

Q Where are they? A Right on the sleeve.

Q Well, show them to me? A And the price tag.

Q Show them to me? A Here was the label was taken out.

There is the holes in the sleeves what I made.

Q Sit down, please.

BY THE COURT:

Q He wants to know, Mr. Gross, if there are any marks now inside of the garments from which you can identify them.

A Sure; they are right here. (Indicating.)

BY MR. LEVY:

Q What are those marks? A The holes the buttons were in.

Q The button holes, aren't they? A Yes.

Q You aren't the only person in the world that makes button holes, are you? A Yes, I make them.

Q You make them personally? A Yes.

Q You yourself? A Me myself.

Q You aren't the only person in the world that makes those button holes, are you? A I made them.

Q Are you the only person in New York who makes those button holes? A I don't know.

Q What? A I don't know.

Q How many years have you been a sweat shop contractor?

A Nineteen.

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Q And you don't know whether there are other persons in this city who make button holes? A I can't be responsible for the whole world.

MR. LEVY: I ask that that be stricken out, that he can't be responsible for the whole world.

THE COURT: You have been insisting that he testify to matters only of his own knowledge and not from hearsay, and your question calls for whether he knew of anybody else doing it and he says-he does not purport to tell you because he would be speaking from hearsay.

MR. LEVY: He says he is not responsible for what others do.

BY THE COURT:

Q Do you know of anybody else making button holes of that same general kind in New York? A No.

Q Is there anything to distinguish that button hole from any other button hole made by any other tailor? A Yes.

Q What is the distinguishing feature? A This is a plain hole, and the button was pulled through on a string; never sewed it. This is one, the goods is torn. (Indicating)

Q The button is pulled through on a string, that is the way you make it? A Yes.

Q Do other people make them that way? A Maybe, I don't know.

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Q Do you know of anybody else making it that way? A No.

Q Did you ever hear of anybody else making it that way?

A No, sir.

Q Now you think that that is a peculiar feature of your own work? A Yes, sir.

BY MR. LEVY:

Q Is this the coat that you speak about the button holes?

A Yes, sir. They are both alike.

Q You say they are both alike? A Yes.

Q Sure of that? A Yes, the holes.

Q You mean this little slit, the cut in the cloth? A Yes.

Q You stick buttons through that? A Yes.

Q Did you ever see that done on uniform coats? A I don't know; I never made them.

Q What? A I don't know.

Q You won't ~~sear~~ that there are other coats with button holes like that through which they stick buttons? A No.

Q Now don't you know that mostly all of the sweat shop made garments are made that way? A No.

Q You don't know that? A No.

Q Don't you know that that is done on cheap garments?

A What?

Q Don't you know that that is done on cheap garments?

A If I don't know if that is done on cheap garments?

Q Yes. A No.

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Q You don't know that; and these button holes are the only things that enable you to say that those two garments were in your shop; is that so? A (No answer.)

BY THE COURT:

Q Is that a fact, Mr. Gross? A No, I identify the whole garment.

BY MR. LEVY:

Q What particular thing on the garment do you identify?

A Everything.

Q What, for instance? A I identify the whole garment.

Q You say that you were the only person in the world that had that kind of cloth at that time; yes or no? A Well, I don't understand that question.

BY THE COURT:

Q Were you the only person in New York, for instance, who had that particular kind of cloth? A Well, how can I answer that?

BY MR. LEVY:

Q Were you the only person in New York who made that kind of garments at that time; yes or no? A Well, I can't answer that question.

THE COURT: We will put it on the record that he was not.

Q And so far as you know, there are other tailors who made the same kind of garment? A I don't know.

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Q You won't swear that they weren't other tailors making the same kind of garments at that time? A No. What can I know what the world is doing?

Q Now, I ask you another question. You were working for Bowe & Seligman for some time, weren't you? A That was my first work.

Q And that was the first time you made that kind of coat for them? A Yes, sir.

Q And you don't know who was doing their work before you made them? A No.

BY THE COURT:

Q Is there anything about the general character of the workmanship or the cut of those coats that causes you to identify them as coming from your shop?

MR. LEVY: We object to that, your Honor; he has not said he knew the cut and doesn't know what it is.

THE COURT: I am asking him.

Exception.

Q (Question repeated.) A I don't understand what you mean by the word character.

Q You don't know the word character? A (No answer.)

Q Well, kind. (Question read by the stenographer.)

A Yes, sir.

Objected to. Overruled. Exception.

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Q Well, now, what are the peculiar features either of the workmanship or the cut of those coats that causes you to identify them?

MR. LEVY: Objected to as to form and upon the ground that there is no proof as to the cut of the coats.

THE COURT: He has already answered.

MR. LEVY: As to the cut?

THE COURT: Yes.

A Yes.

THE COURT: I said as to the cut or as to the kind of workmanship. I used the word character at which he hesitated some time and said he didn't exactly understand the word and now he thinks he does understand it.

Exception.

A If so, what? A There is no pockets in this coat, that is one thing. Only one pocket on the inside, on the left side.

MR. LEVY: Well, there may be other sweat shop contractors who make coats that same way.

Q Is there any peculiar feature there, either by the workmanship or the style of the coat, the shape of the coat, that leads you to identify them? A Everything, your Honor; I know the work and I know the style of the cut and I know every-

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thing.

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

THE COURT: No, he says he has been in the business how many years?

THE WITNESS: Nineteen.

MR. LEVY: Do you mean to say, your Honor, that you are going to leave it stand on that?

THE COURT: He says on account of the style of it and general cut of it and the workmanship and he says he has been in the business nineteen years. Now, it is a question for the jury whether a man nineteen years in that line of business and the evidence that he has brought out here, whether he has sufficiently identified it.

BY MR. LEVY:

Q Do you mean to tell this Court and jury that you--

MR. BOSTWICK: I would like to have, before this question is asked, it is noted by the stenographer that during the questions put by his Honor that the coat was in the hands of the witness.

THE COURT: Yes, let the stenographer note that the witness was examining the coat.

Q Mr. Gross, do you mean to tell this jury that you were the only person in New York who was making this kind of coats, of that kind of cut and that kind of material at that time?

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A I can't say that.

Q You can't say that, of course not. Now, you won't swear that there weren't other persons making the same kind of clothes, same kind of style and the same kind of cloth and same kind of make? A No.

Q Same kind of cut? A No.

Q Same kind of pockets? A No.

Q You won't swear that there was not any other person doing the same thing at that time? A No.

BY THE SIXTH JUROR:

Q Besides being a watchman, what other capacity did this former witness work for you?

BY THE COURT:

Q Adolph Goldberger, besides being a watchman, what did he do? A He was working in the shop during the day.

BY THE SIXTH JUROR:

Q Did he work day and night? A He worked until six and after six he went up for supper for an hour and came back and slept; in the night he was only sleeping, watching the place.

BY THE COURT:

Q Was he what is called a tailor's helper? A Yes, sir.

BY THE SIXTH JUROR:

Q How long did he work for you? A Two years, something around that. He identified the coats.

BY MR. BOSTWICK:

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Q Is he still in your employ? A Yes, sir.

THE TENTH JUROR: I would like to see the coats.

MR. LEVY: Your Honor, one of the jurymen desires to see the coats.

THE COURT: Yes.

MR. LEVY: Now, of course, you understand that these coats are not yet in evidence.

THE COURT: That is true, that is right; the jury ought not to examine the coats until they are in evidence.

MR. LEVY: And until they connect this defendant with the alleged crime.

MR. BOSTWICK: I offer those coats in evidence. They are part of the corpus delicti, they are a part of the burglary and I think we can show that these coats are the coats taken.

MR. LEVY: We object; they are not properly in evidence at this time and not binding on the defendant, and they have in no way connected this defendant with them or his possession.

THE COURT: Wait until you have your witness to bring home the possession of these goods to this defendant and then introduce them in evidence.

MR. BOSTWICK: That would be the most orderly procedure.

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MR. LEVY: Then I ask your Honor to instruct the jury on that.

THE COURT: Yes. Now, Mr. Juror, there is an arbitrary rule of evidence that articles cannot be examined by the jury until they are in evidence. These are merely marked for identification and not yet in evidence.

MR. BOSTWICK: I will want this witness on the stand again.

MR. LEVY: Will your Honor instruct this witness the same as you have the other?

THE COURT: Mr. Gross, you must not discuss the case with any of the other witnesses until the close of the case.

BY THE NINTH JUROR:

Q Where do you live? A Private residence, 63 East 100th Street.

Q Does the watchman know where you live? A I really don't know.

MR. LEVY: I ask that the answer be stricken out.

THE COURT: What did you say, Mr. Witness?

THE WITNESS: The juryman asked me if the watchman knows where I live and I says I don't know whether he does or does not know.

MR. LEVY: He says I think he doesn't know.

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THE COURT: Now, Mr. Levy, just explain to me how it could hurt your client one way or the other?

MR. LEVY: Except, your Honor, that I want to be fair to the Court and the jury and Mr. Bostwick and my client.

THE COURT: Well, Mr. Levy, you are taking up so much time on a matter that is not hurting you. Of course, counsel is entitled to object, but when you object I think you are merely consuming time. Now, how could that hurt your client, taking his garbled English saying "I think he don't." Now how can that hurt you? If you wouldn't object to so many immaterial trivial matters that can't hurt you and only has the effect of every minute breaking the thread and continuity of the testimony; that is all it has the effect of, it breaks the attention of the jury off to some immaterial matter that they cannot understand and does not do you any good. You can take objection to that, that I think your objections are frivolous. The only thing is, don't say that you are not taking up the time of the Court unnecessarily. Now, you object.

MR. LEVY: Yes, your Honor.

THE COURT: Mr. Levy objects to all that and takes an exception.

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MR. BOSTWICK: Have you any more questions?

MR. LEVY: No.

BY THE NINTH JUROR:

Q Now, then, you left that shop at 7:15 and the next morning you came and you found the door open? A Yes, sir.

Q Didn't that watchman notify you during that night?

A No.

Q Didn't know anything about it until the next morning?

A No.

BY THE COURT:

Q Did you ever leave your address with the watchman?

A No.

J O S E P H J . L E I B N E R , called and sworn as a witness for the People, testified as follows:

The witness states he resides at 258 West 55th Street.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Mr. Leibner, what is your occupation? A I am a special officer.

Q And in whose employ? A Employ of A. C. Vandiveer.

Q What is his business? A He represents the Adams Express Company.

Q Do you know whether he is an attorney at law? A He is.

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an attorney at law.

Q And he represents them as attorney? A Yes, sir.

Q Do you know of Special Officer Platt? A Yes, sir.

Q What is his occupation? A He is a special officer for Mr. Vandiveer, the same as I.

Q Do you remember being assigned to any case in which Max Walk was involved?

Objected to.

BY THE COURT:

Q Strike out Max Walk. Do you remember being assigned to any case in regard to the premises 143 Avenue D? A Yes, sir. In my position as special officer for Mr. Vandiveer who represents the Adams Express Company.

MR. LEVY: I object to whom he represents.

Q Yes, you can answer that very readily yes or no. Were you assigned to any matter connected with the premises 143 Avenue D? A If your Honor please, I am trying to explain my connection as special officer. I am not assigned to any special duties but I investigate them.

BY MR. BOSTWICK:

Q Do you know who Max Walk is? A I do, yes, sir.

Q Tell us how you came to know Max Walk?

Objected to.

Q Well, I will frame it around to suit.

MR. LEVY: Don't do me any favors, please; I

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want you to try the case in the proper way.

Q When did you first enter upon the investigation of a case involving thirty-four coats that it was alleged had been stolen from the premises No. 143 Avenue D? A On Friday morning, May the 28th, 1909.

Q How did you come to be assigned on that case?

Objected to.

THE COURT: Well, he can state who assigned him.

BY THE COURT:

Q At whose request? A At my own volition. I knew that there were several hundreds of trousers stolen and stuff, stolen property.

MR. LEVY: Now, that is not fair. I ask that that answer be stricken out and I ask that the witness be instructed not to volunteer outside information.

THE COURT: Yes, the witness mustn't tell about outside larcenies. If you know anything specific about the larceny of tuxedo coats go on and tell it.

THE WITNESS: At about 4 p. m. on Friday evening of May 28th, while in company with Officers Scott and Platt on East 4th Street, on the opposite side of premises 348 I believe the number is, Levy's house, I saw Mr. Walk in company of Levy come out from Levy's house and I shadowed him from that street east on 4th Street to Avenue C, then south on Avenue C to

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Ridge Street, where I saw Levy and Walk enter a saloon on the northwest corner. They stayed in that saloon about twenty minutes and came out again.

BY MR. BOSTWICK:

Q At this time did Walk or Levy carry anything or have anything with them? A Walk had a package under his arm.

Q After they came out of the saloon on the corner of Rivington and Ridge Street, how long did they remain there? A Twenty minutes.

Q Where did they then go? A They went right back the same way that they came down and went to 4th street, went to Avenue C on the corner of 4th street where they were met by a little girl who whispered something to Mr. Levy and then Levy and Walk--

MR. LEVY: If your Honor please--

THE COURT: Held a whispered conversation with Levy doesn't state what it was.

A (Continued) Then Levy and Walk turned back south on Avenue C and commenced to walk south. Walk stopped on Second Street and crossed over to the north side; they were walking down on the east side, and Walk stopped on Second Street and went on the east side, northeast side to a soda water stand, and bought some cigarettes. Levy proceeded south on Avenue C to Stanton Street; as Levy got on Stanton Street he went west to Attorney street; when he got to Attorney Street I ran

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into a cafe so that he wouldn't see me and then Walk came--

MR. LEVY: I move to strike out "so he wouldn't see me."

THE COURT: Yes, strike it out.

A (Continued) I went into a cafe; Walk then came down to Attorney and Stanton street and motioned to Levy; Levy then crossed Walk who was then standing on the northwest--

BY THE COURT:

Q What motion did he make? A Indicated his finger that way (indicating); indicated as though he didn't see --

Q Stopped on the signal he made to him and what was the result? A He waved his hands.

MR. LEVY: I object to the use of the word "signal".

BY MR. BOSTWICK:

Q State what he did?

MR. LEVY: I ask that that word be stricken out.

THE COURT: Strike out the word "signal."

THE WITNESS (Continuing): Levy went that way (witness spreads out his hands) to Walk and he crossed Walk who was then standing on the northwest corner of Attorney and Stanton and Levy went to the soda water stand on the northwest corner of Stanton and Attorney and bought some cigarettes. I was then afraid that I might lose one of them--

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MR. LEVY: I move that that last part be stricken out.

THE COURT: Yes, strike it out.

THE WITNESS (Continuing): So I ran out from the cafe and I grabbed Walk and then I took him to the other side and then I grabbed Levy; then when I grabbed Walk I said, "What have you got in that bundle;" he said, "I have a bundle of samples, linings," and I said, "I will take that from you and I took it away from him and took the two to 55 Cannon street, where Officer Raphael was waiting.

BY THE COURT:

Q What is 55 Cannon Street? A A tailor shop owned by a man named Pomerance.

BY MR. BOSTWICK:

Q Why did you take him to Cannon street?

MR. LEVY: Objected to as calling for the operations of the witness' mind.

BY THE COURT:

Q Who was at 55 Cannon street? A Officer Raphael was there, and it was understood between us that if--

THE COURT: No, never mind that. 55 Cannon street is where Officer Raphael was.

BY MR. BOSTWICK:

Q Did you know that Officer Raphael was there? A Yes, sir.

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Q How did you know that?

Objected to.

THE COURT: It will be immaterial as to how he knew it. Isn't the material part of it that he took him to Cannon street where Officer Raphael was? It does not make any difference, the reason why he took him there or any preconcerted arrangement between Officer Raphael and the witness Leibner.

BY THE COURT:

Q What is your name, Mr. Leinber, your first name?

A Joseph J.

Q Did you have any conversation with Walk except the statement that those were samples that he had? A No, sir; but when I brought Walk into the tailor shop I said to Officer Raphael--

BY MR. BOSTWICK:

Q In the presence of Walk? A In the presence of Walk. "Here is a bundle I got from Walk, and he told me that it was a bundle of samples, linings," and Raphael then opened the bundle and he exhibited two coats; one was a coat with labels and one was a coat with a shawl collar, a sort of a tuxedo, waiter's coat.

Q Would you know those coats if you saw them again?

A I would, yes, sir.

Q I show you two coats, marked respectively Exhibit 1 and

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Exhibit 2 for Identification--

MR. LEVY: May I interrupt at this moment and ask that I be allowed to cross examine the witness on that very subject?

THE COURT: Yes.

CROSS EXAMINATION BY MR. LEVY:

Q How many times did you see those two coats after that arrest? A I have seen them in the tailor shop, that was once; then I saw them again in the Police Headquarters at Allen street.

Q Mr. Leibner, you have been connected with the District Attorney's office, haven't you? A Yes, sir.

Q How many times have you seen those two coats? A About three times altogether.

Q And that was after the arrest? A After the arrest.

BY THE COURT:

Q What did you do with the coats? A I left them in the care of the police.

Q Police Headquarters? A Police Headquarters.

Q Who was it, you or Raphael? A I left it in the care of Officer Raphael and that was in the Headquarters at Allen street.

MR. LEVY: We object, if your Honor please.

MR. BOSTWICK: Now, we can stop right here and trace these coats from the time they were taken by

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Labner

Levy from Walk to the Police Department and trace it to Mr. Duvivier.

THE COURT: Is Officer Raphael here?

MR. BOSTWICK: I think he is outside.

THE COURT: We will put Officer Raphael on the stand whenever you are ready for him.

MR. LEVY: We object, if your Honor pleases, to this order of proof; it is becoming disconnected and unintelligible. No jury can correctly and carefully and logically consider evidence that is put in in this way, piecemeal and disconnected and at different times.

MR. BOSTWICK: We have done it simply because of the objection of the attorney for the defendant.

Objection overruled.

BY MR. BOSTWICK:

Q I show you two coats marked respectively Exhibit 1 and Exhibit 2 for Identification, and ask you whether those are the coats that were found in the bundle which Walk had under his arm on the day that he was arrested by you?

BY THE COURT:

Q And which you say that you gave to Raphael? A Yes, sir.

Q Are there any distinguishing features on those coats, that causes you to identify them? A Yes, sir. When I first saw these coats I looked into the pockets to see if there were

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any labels on them, and the marks then showed that the labels had been torn out, and I recognize these coats--

MR. LEVY: I object to that and ask that it be stricken out.

Q Well, they had no labels on them? A Yes, sir, and I recognize these coats by that.

BY MR. BOSTWICK:

Q Have you seen those coats since the day of Walk's arrest? A Only the last time I saw them in Police Headquarters, it was about a day after his arrest; I haven't seen them since.

Q Did you lose sight of the bundle from the time that you arrested Walk until you got to Pomerance's place? A No, sir.

Q And did you see the bundle opened there? A Yes, sir.

Q Did you see these coats taken out? A I did.

Q And then what did you do with these two coats?

A I believe Officer Raphael put them in the patrol wagon at the time we took the prisoners to the Allen Street Detective Branch.

Q And you did not take them? A No.

Q But you gave them to Officer Raphael? A Yes, sir.

BY THE COURT:

Q Did you examine them at 55 Cannon Street? A Yes, sir; we opened them up and we looked at them generally.

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Q Just as you do now? A Yes, sir.

BY MR. BOSTWICK:

Q Were you ever present when Mr. Gross saw those coats?

A No, sir.

CROSS EXAMINATION BY MR. LEVY:

Q Mr. Leinber, you were employed by the District Attorney last year, were you not? A No, sir, the year before that.

Q And at that time your present employer was a member of District Attorney Jerome's staff, was he not? A Yes, sir.

Q What is his name? A Almuth C. Vandiveer.

Q What was the firm name? A Whitman & Vandiveer.

Q And after Mr. Vandiveer left the office of the District Attorney he became a member of that firm, did he not? A Yes, sir.

Q And after you left the employment of the District Attorney's office you were employed by that firm? A I was.

Q And they were the counsel in this case, were they not?
A No, sir.

Q Who was? A Why, I don't know as there was any counsel.

Q Don't you know that of your own knowledge? A Counsel for who?

Q Any party interested in this case? A They were not counsel for anybody interested in this case.

Q Didn't they assign you to this case? A They did not.

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Q Who did? A Why, I wasn't assigned; nobody assigned me.

Q Didn't you say to this Court and jury that you were assigned by somebody to this case? A I did not.

Q What did you mean by saying that you were assigned to a case? A I said I was a special investigator.

Q For them? A For Whitman & Vandiveer. Without any special assignment I went out and whenever I caught a thief I arrested them.

Q Did you know at that time that anybody was a thief?
A I did.

Q Yes or no. A I did.

Q Who did you know was a thief at that time? A Max Levy.

Q Now were you specially designated by any person to find Max Levy? A I was not.

Q What interest did you have in finding Max Levy? A Max Levy was known to my partner and to me.

Q No, what interest did you have I asked you? A I will explain it to you if you will let me and give me a chance. Max Levy was known to my partner and me, he was a fence who received bundles from the Adams Express Company, and we followed him up and we learned that he brought one hundred pairs of trousers into Pomerance's tailor shop on 55 Cannon Street.

Q Was there any charge at that time lodged in any court against Max Levy? A No, sir.

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Q Was there any warrant issued by any court or any Judge for the apprehension or arrest of Max Levy? A I don't know that.

Q So at that time it was purely a matter of speculation on your part to investigate Max Levy? A Yes, sir; I knew of him.

Q Whitman & Vandiveer were the attorneys for the Adams Express Company, at that time, were they not? A They were.

Q And it was because you were tracing Max Levy for that firm as counsel for the Adams Express Company-- that is how you happened to come on that job? A I wasn't tracing him because they were the attorneys of the Adams Express Company. I traced him because I thought he was a thief that was receiving goods from the Adams Express Company,

Q That was the reason you were there at that time?

A And that was the reason I was there at that time, yes, sir.

Q Now, did you find any express packages belonging to the Adams Express Company at that time, at the time of the arrest? A No, sir.

BY THE COURT:

Q Does the Adams Express Company appear in this case at all? A No, sir.

BY MR. LEVY:

Q You were working in the interests of Whitman & Vandiveer, when you were working on this case? A I am always working

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in their interest.

Q Answer yes or no? 'A Yes, sir.

BY THE COURT:

Q Those gentlemen were practicing law at that time?

A Yes, sir.

Q And all this occurred before January 1st? A Yes, sir,
a year and a half ago.

Q Did it occur before the first Tuesday of October?

A Yes, sir.

THE COURT: The day of the nomination was the first Tuesday of October; I hardly think there could have been any anticipation. It hardly could have been anticipated that he could have been a District Attorney because it was in April or May that this happened.

MR. LEVY: I only meant to convey that at that time he was interested in the case of Max Levy and is now interested in the prosecution of that case.

MR. BOSTWICK: There is no testimony that anybody was interested in the case of Max Levy; the testimony that was given by this witness was that he was investigating to see if he could find any thefts against the Adams Express Company and by accident he fell into this case.

THE COURT: I don't find in his testimony that

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either Judge Whitman or Mr. Vandiveer had any interest whatever in any party in this case, witness or otherwise, but this witness was employed by Whitman & Vandiveer and he looked for men trespassing against the rights of a certain client of theirs, namely, the Adams Express Company, and during the course of his labors he found this particular transaction.

RE DIRECT EXAMINATION BY MR. BOSTWICK:

Q You were an investigator?

THE COURT: Ask him was he an investigator.

MR. BOSTWICK: I think this is cross examination, if your Honor please; this is now matter brought out by Mr. Levy entirely and only relevant to the case.

THE COURT: My point is this: That you frame it into a question and not a statement.

MR. BOSTWICK: I will correct it.

Q What were you trying to find?

MR. LEVY: We object, if your Honor please.

Q In your investigations?

MR. LEVY: We object to that as not binding on this defendant.

MR. BOSTWICK: No, but you have brought it out and I have a right now to have it explained. Your Honor, I feel that in view of the very peculiar

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testimony in this particular case in the relations of the District Attorney to this case, I think that it is only right to the District Attorney that we should be permitted to show by this witness that the firm of Whitman & Vandiveer had no interest with anybody connected with this case at all, that these people were hired--

MR. LEVY: Let Mr. Bostwick take the stand. I object to his remarks, on the ground that defendant's counsel has entire right to bring out any evidence that is relevant on cross examination.

MR. BOSTWICK: I have a right to have it explained.

THE COURT: It is wholly irrelevant to this case and has not connected wither of those gentlemen in any way with anybody in this case.

MR. BOSTWICK: I will bring it down to two or three questions.

Q Has Mr. Vandiveer any interest in any of the parties to this controversy or this suit, so far as you know? A No, sir.

Q Has the Adams Express Company any interest in this case so far as you know? A No, sir.

Q And the only people that you represented were the Adams Express Company and Mr. Vandiveer? A Yes, sir.

MR. BOSTWICK: I want to offer those coats in evidence, if your Honor please.

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THE COURT: Well, won't you get Officer Raphael?

MR. BOSTWICK: He has identified the goods as those found on the defendant and Mr. Gross has identified them as his goods.

THE COURT: Now, then, put Raphael on.

O T T O R A P H A E L , called and sworn as a witness for the People, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Officer Raphael, you are connected with the Municipal Police? A I am.

Q And where are you assigned? A To the First Branch of the Detective Bureau.

BY THE COURT:

Q And were you assigned there on May 27th, 1909? A I was.

BY MR. BOSTWICK:

Q You remember the day that Max Walk and Max Levy were arrested? A I do.

Q And were you assigned on that case that day? A I was.

Q Will you state where you went first that day while assigned on that case? A I went to the premises 55 Cannon Street kept by a man named Philip Pomerance.

Q Who was with you? A There was Officers Scott,

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Leinber and Platt.

Q Four of you? A Yes, sir.

Q And what did you find when you got to Pomerance's place?

MR. LEVY: Objected to, if your Honor please.

How is that connected with the defendant?

THE COURT: I don't know.

MR. LEVY: They can't bring in evidence that may be prejudicial to a defendant unless they connect him with it at the time.

THE COURT: Mr. Levy, suppose the answer was that at Pomerance's place he found Max Walk and Levy? Now suppose that was the answer and I ruled out all of the main question and answer, what sort of a ruling would that be?

MR. LEVY: Then he should ask did he find these men there before he asked what did he find in the place.

Q (Question read.) Who did you find there? A I found Pomerance, his daughter and his wife and children.

Q Find anybody else there? A No, sir, not at that time.

Q Did you find any property there? A I did.

Q State what property you found?

MR. LEVY: Objected to unless it is within the issues in this case.

THE COURT: If it is within the issues, if it

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is the property or what the defendant is accused of taking or connected with it; otherwise, we can't have it.

MR. BOSWICK: If your Honor please, we can show that there was property at Pomerance's, and I think not the property in this case was there, stolen property as bearing--

MR. LEVY: I object to these remarks and I ask for the withdrawal of a juror on the ground that it is prejudicial to this defendant.

THE COURT: On the ground or intent or guilty knowledge the testimony would be allowed but only on that ground; in other words, he may show similar transactions, transactions of a like nature within a short time before or a short time after and for the purpose of showing if he can guilty knowledge or intent on the part of the defendant.

MR. LEVY: And therefore the motion is denied.

THE COURT: The motion is denied.

MR. LEVY: Exception and in my objection is included the reason that it is not binding on this defendant and there is no connection shown.

A I found a quantity of pants at the premises mentioned.

Q All four of you remained in Pomerance's place, did you?

A We did not.

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Q Who stayed and who left? A I remained in Pomerance's place. Scott, Leibner and Platt left.

Q Now, tell us what happened after that in Pomerance's place?

MR. LEVY: Now, I object to that, if your Honor please; same objection.

MR. BOSTWICK: All right.

Q How long were you alone in Pomerance's place with only Pomerance and his family?

MR. LEVY: I object to that as injecting a lot of immaterial stuff into the record.

THE COURT: Get right to the point. Did he at that time see either Max Walk or Max Levy, that is what we want to get at.

MR. BOSTWICK: I would like him to answer the question how long he was in there with Pomerance and his family and any one else.

Objected to. Objection overruled. Exception.

Q About? A I would judge about two hours.

Q And then who appeared?

THE COURT: If anyone.

A Leibner in company with Levy and Walk.

Q What was said and done then?

MR. LEVY: We object unless they show who did the talking.

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THE COURT: Oh, by anyone. Just confine your conversation to anything that was said or done in the presence of Max Walk or Max Levy.

THE WITNESS: Your Honor, will you permit me to make a correction in a way?

THE COURT: Yes, anything that you have said that ought to be corrected, correct it now.

THE WITNESS: Previous to Walk and Levy coming there a son of Levy appeared at Pomerance's place.

BY THE COURT:

Q Do you remember his name? A Charles Levy.

Q What became of him? A He asked--

Q No, not what he asked; what became of him? A I placed him under arrest.

MR. LEVY: I object to that. How is that material in this case? He is not a party to this case.

Objection overruled. Exception.

THE WITNESS: I placed Charles Levy under arrest and detained him there and then Max Walk and Max Levy and Leibner arrived to the premises in question.

BY MR. BOSTWICK:

Q Why had you waited in Pomerance's place?

Objected to.

THE COURT: Yes, he can't state the operations

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of his mind.

Q Do you know the happening of any event that brought Charles Levy there?

MR. LEVY: I object to that, if your Honor please, as not binding on this defendant.

THE COURT: No, it would not bind this defendant unless it is connected in some way with Max Levy or Max Walk. This Charles Levy is charged with being in some scheme?

MR. LEVY: ~~ICK~~ This defendant is not charged as acting in concert with Charles Levy.

THE COURT: That is not necessary to allege it.

Exception.

A Charles Levy asked Philip Pomerance--
BY THE COURT:

Q Well, who was present? A Pomerance--

Q No, was Max Walk or Max Levy present? A They were not, not at that time.

THE COURT: We had better not go into any conversation.

MR. BOSTWICK: All right; I will recall this witness after the connection has been shown to bring this up.

THE COURT: Yes.

BY MR. BOSTWICK:

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Q Now, tell what happened when Walk and Levy came in?

A Max Walk and Max Levy when Leibner came in with them, what occurred?

BY THE COURT:

Q What was said by anybody, they being present, or what was done? A Pomerance told me in their presence that this man, pointing to Levy, was the one that sent the pants to his place to be pressed, and I believe it was four cents a pair that--

Q Talk as loud as you can. A Pomerance stated to me that this man, pointing to Levy, had been the man that contracted with him for the pressing of the pants at four cents a pair. I spoke to Levy and he told me--

MR. LEVY: At this time, before I forget it, I move to strike out that answer so far as it went, because it is in relation to something that is not the subject matter of this indictment and not binding on this defendant.

THE COURT: Well, the District Attorney promises to connect this with a similar transaction, and any similar transaction to the one at issue can be introduced in evidence on the question of intent or guilty knowledge.

Exception to the defendant.

THE WITNESS: I asked Mr Levy whether he did bring the pants or have the pants brought to

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Pomerance's; he says he did, and Pomerance stated that he had contracted to do that with Levy in a saloon on Broome street.

THE SIXTH JUROR: A little louder.

THE WITNESS: In a saloon on Broome street right near Ridge street. Leibner told me then--

MR. LEVY: Now, I object to what Leibner told him.

BY THE COURT:

Q If Max Levy and Max Walk were both present you may state what Leibner said.

MR. LEVY: No, not if they were present, if they heard what was said.

THE COURT: If they were present within hearing was what I meant.

A Leibner stated, handing me a package, that he had found this package in the possession of the defendant Walk.

BY MR. BOSTWICK:

Q What did you do with the package? A I took the package in conjunction with the quantity of trousers that we found there-- I had caused the patrol wagon to arrive at the premises in question, and I put the quantity of trousers found there and the package and also Levy and Walk--

Q What kind of a package was it? A It was a small package.

Q Did you open it? A I did at the Detective Bureau on

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Allen Street.

Q What did you find in it? A I found two coats there.

Q What kind of coats? A They were black coats.

Q I show you these coats and ask you if to the best of your knowledge those are the coats that you found in that package?

MR. LEVY: I object to the question as to form and not the best way to prove identity.

THE COURT: Well, show him the coats and ask him if he can identify them or not as the ones that were handed to him by Leibner.

THE WITNESS: To the best of my knowledge they are the same coats.

Q What did you do with the coats? A We finally caused it to be deposited with the Property Clerk at Police Headquarters.

Q Did you bring these goods here to-day? A No, sir; Officer Scott brought them here.

Q Is Officer Scott here? A Yes.

Q In the patrol wagon you took the bundles and the pants and the prisoners? A Yes, sir.

Q Did you go to the home of Max Levy that day? A No, sir.

Q When did you go there? A I never went to the home of Max Levy.

Q You never went to the home of Max Levy? A No, sir.

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BY THE COURT:

Q Did you ever go to his home? A I did, your Honor, but that was some time after to serve a bench warrant; I went to his home in Harlem.

THE COURT: Strike that out and the jury are instructed to disregard that.

MR. BOSTWICK: I should like to have the privilege of recalling this witness in case it be necessary in view of the fact that I have been put to the necessity of this order of proof. Are we trying a civil or criminal case here?

MR. LEVY: I don't see how I can do justice to this defendant, I don't see how this evidence can be submitted to a jury, disconnected, so that they can consider it.

THE COURT: If these goods have been in the possession of three or four different people, how would you prove their identity except by the calling of one after the other? Now just suggest to me how you would do it?

MR. LEVY: Let the District Attorney--

THE COURT: With the other side objecting at every point. Now how would you do it, could you do it except by putting everyone of them on the stand in regular order?

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MR. LEVY: I haven't objected; there is no objection before the Court now.

THE COURT: Well, I think I have heard about a hundred and they are all technical and if you object those goods will have to be proved by every man in whose possession they have been placed. Otherwise, they go into evidence without it. You know that that is the only way to do it, isn't it?

MR. LEVY: I raise no objection, your Honor, at all.

BY THE SECOND JUROR:

Q When Officer Leibner-- was that his name? A Yes.

Q When he came into this tailor shop, when they brought the prisoner into the tailor shop where you were, in Pomerance's place, did he at that time tell you what this prisoner said was in that bundle? A I don't recall that.

Q Did you open the bundle in those premises at all? A No; I opened it at the Detective Bureau at 17 Allen Street.

CROSS EXAMINATION BY MR. LEVY:

Q Officer Raphael, you have been a detective in the police department for some years, have you not? A I have.

Q And have had considerable experience in criminal cases?

A I have.

Q And you know it is important in a criminal case to be

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particular with regard to the evidence; isn't that so? A I certainly do know that.

Q And especially whatever property is involved that comes into your possession; isn't that so? A Yes, sir.

Q And especially whatever conversations are held by you and parties directly interested, namely, the defendants; isn't that so? A Yes, sir.

Q Now, you have said that you have never been to Levy's place; isn't that true-- weren't at that time? A No, sir, I never was.

Q And you don't know what became of that package which you say was taken from this defendant after it was placed into the patrol wagon, do you? A It was brought--

Q You don't know of your own knowledge? A I certainly do.

Q Was it always in your possession? A It was in the patrol wagon.

Q If it left the patrol wagon was it always in your possession, yes or no? A I brought it up to the office, 17 Allen street, from the patrol wagon.

Q After you brought it there was it in your possession? A No, sir, not always.

Q What? A Not always.

Q That is what I asked you. And how long after that did you see the same package? A It was the following morning.

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Q And where did you see the package then? A It the Essex Market Police Court to the best of my knowledge.

Q And after that? A Again at the office at 17 Allen Street.

Q And after that? A Again to the court, Essex Market Police Court.

Q How many days after that was it, the previous time?

A I couldn't tell you that, counsellor.

Q Well, when was the last time you saw that package?

A The last time I was that package I believe was Tuesday in this court.

Q Last Tuesday? A Yes, sir.

Q And when did you see it previous to last Tuesday? A The day we went before the Grand Jury.

Q Now on the occasion when the package was brought to you in Pomerance's place, the package was open, was it not?

A No, sir, I didn't open it there.

Q Didn't somebody open it? A I don't recall anybody opening it there; I opened it at the

Q Weren't you present when anything happened in Pomerance's after Leibner came in with Walk and Levy; answer yes or no.

A I was present on the premises.

Q And you saw everything that was going on there, didn't you? A Well, the premises--

Q Answer me yes or no? A No, sir.

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Q With these five people directly near where you were standing, didn't you see and hear everything that was transpiring?

MR. BOSTWICK: I object to that question.

THE COURT: What is the ground?

MR. BOSTWICK: It calls for an impossible answer; a person can't state whether they know everything that is going on around them.

THE COURT: He can say if he was in a position to hear everything that was said.

BY THE COURT:

Q How many rooms were there, officer, where you were there with these people at 55 Cannon street? A To the best of my knowledge, four rooms.

BY MR. LEVY:

Q What place are you talking about now? A 55 Cannon street.

Q Whose place is that? A Philip Pomerance's.

Q Is that a store? A It is a basement store.

Q Now, this all happened in the store, didn't it? A The most part of it was in the store.

Q Now, come down to the first happening, when Leibner and the defendant and Levy came into that place, who else was with them? A Leibner, the defendant Walk and Max Levy.

Q Who else? A Nobody else at that time.

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Q What did Leibner say to you when he came in, if anything? A Leibner told me that he followed the defendant Walk and Max Levy.

Q Well, you had started at that time, in the beginning of the day, for that purpose, isn't that so, you were on this job with him on that day, were you nor? A Well, counsellor, it is a peculiar chain of circumstances that led us to that.

Q Now say yes or no?

BY THE COURT:

Q The question was, did you set out voluntarily on this case against Max Walk and Max Levy? A Not against Max Walk and Max Levy. I had Max Levy in mind at that time; it afterwards developed.

BY MR. LEVY:

Q Now, what did Leibner say to you-- he is the one that arrested them, wasn't he? A They came in with him.

Q And what did he say? A He said he had followed these men.

Q Do you mean to say that they came in with him voluntarily or were they under arrest? A Well, they came in with him.

Q Did they come in voluntarily or were they under arrest? A Well, he is not a police officer.

MR. LEVY: I ask that the witness be instructed to answer the question.

MR. BOSTWICK: If your Honor please, I object,

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on the ground that there is nothing about a person to tell you whether they are under arrest, or whether they are in custody or not. A person may be under arrest in this court room and we may not be able to tell it.

BY THE COURT:

Q Do you know whether they were under arrest or not, or did Leibner say that he had them under arrest? A He said he had followed these men.

Q Did he use that expression, that he had put them under arrest or arrested them or anything like that? A "I brought them in;" words to that effect.

Q He said he had brought them in; he followed them and brought them in? A "Brought them in."

BY MR. LEVY:

Q He didn't tell you that he had them under arrest, did he? A I don't recall whether he used those words.

Q Well, do you recall any words that he used? A That he brought them in; that he followed them and brought them in.

Q What else do you recall that he said-- we are talking about Leibner now, Joseph J. Leibner, special officer. A Yes, sir; I thoroughly understand you on that point. He told me that the package was in the possession of Max Walk.

Q Sure that was all that he told you? A Yes, sir, he told me that.

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Q That was all he said-- is that all that Joseph J. Leibner, the special officer, said at that time? A That is about all I can recall.

Q How long were you in that place, in that store, with Leibner and Walk and Levy? A About twenty minutes.

Q Is that all that you can remember as to what took place or what was said by either of you four persons at that time during those twenty minutes? A Max Walk told me that he felt sick.

Q I didn't hear that? A Max Walk told me that he was feeling sick.

MR. LEVY: Your Honor, may the stenographer in my question change the word "either" to "any".

MR. BOSTWICK: So that it will read?

THE COURT: Yes.

(The question is read as changed.)

THE WITNESS: Yes, sir, Max Walk complained that he was sick to me.

Q What did Leibner say? A Nothing that I can recall about that

Q You are sure of that? A Just said this package was in Walk's possession.

Q Is that all? A Yes, sir, he told me that he got that in the possession of Walk.

Q Now, you then went with these gentlemen, or these two

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defendants, and Leibner to the police station; is that true?

A Yes, sir, we went in a patrol wagon.

Q And did Leibner say anything there? A Well, I don't exactly recall the conversation that took place on the way to the Detective Office.

Q You spoke to Leibner about this occurrence since the arrest? A I haven't spoken to Leibner-- the only time I can fix, the last time I spoke to Leibner about this is during the week that this building was closed.

Q That is, spoken to Leibner at any time since that arrest? A And this afternoon.

Q Those were the only times you spoke to him about this case against Walk? A Oh, no, no; I spoke several times at the courts, both at the Essex Market Police Court and when we went up to the Harlem Police Court.

Q And you had general conversations about this case with Leibner? A Certainly I did.

Q And the happenings and the conversations that took place in the presence of Walk and Levy? A No, they were not present.

Q But you recited or talked over those things, did you not? A Yes, sir, certainly.

Q And it is natural for an officer to do that with a witness, isn't it? A Yes, sir.

Q Now, do you remember anything else that Leibner said

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after you got to the station house after you left the patrol wagon? A Yes; we were speaking about getting the owners, to locate owners for the property found in the premises of Philip Pomerance.

Q Get what did you say? A That is, locating the owners of the property; at that time we didn't know who the owners were.

Q Did Leibner say that to you? A Why, we had it in the general conversation.

Q What? A In the general conversation between ourselves.

Q Well, do you remember anything that was specifically said by Leibner to you and you to Leibner at any time from the moment that the defendant Walk and Levy were brought into the Pomerance store and from there over to the police station house and were lodged in the cell; give us any conversation that was indulged in by you and Leibner? A It was in general in reference to the case.

Q Were you present when he was talking to Officer Scott? A Yes and no.

Q Well, when were you present when he was talking to Officer Scott? A At different periods; sometimes I would be present and sometimes I would not.

Q Do you remember anything that he said to Scott in your hearing? A Well, we all spoke about getting the owners of the property.

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Q That is all; that is the tenor of the conversations?

A Mostly upon that subject.

Q Didn't know on that particular occasion when the arrest was made to whom the two coats belonged that you say was found with Walk? A No, sir.

Q Didn't know that? A No, sir, only through an investigation.

Q Did Mr. Leibner say? A No, sir; I say we only learned that.

Q Did Officer Scott? A No, sir, none of knew at that time.

Q Now, you have told us all that you recall of what was said and done at the time of the arrest up to the time the man Levy and Walk were placed in the cell in the station house? A Yes, sir.

MR. LEVY: That is all.

THE COURT: All witnesses on both sides will attend here tomorrow morning at 10:30 without further notice.

Gentlemen, you are not, of course, to converse among yourselves on any subject connected with this case nor are you to form or express an opinion on the case until the same be submitted to you. We will come back tomorrow morning at 10:30 o'clock.

(The court then adjourned to tomorrow morning,

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Friday, January 21st, 1910, at 10:30 o'clock a. m.→

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New York, January 20, 1910.

TRIAL RESUMED.

J O H N J. S C O T T, a witness called on behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q You are a member of the Municipal Police Force?

A Yes, sir.

Q Connected with the Detective Bureau? A Yes, sir.

Q Do you remember being assigned with Officers Liebner and
Platt in any case? A Yes, sir.

Q In pursuance of that assignment do you remember
going to any place in Cannon street? A Yes, sir.

Q Whose place was that? A Mr. Pommeranz.

Q What is his business? A Tailor.

Q Will you state what happened at Pommeranz's place
at that time? A Yes, sir. I and Sergeant Raphael and
special officers Liebner and Platt went to 55 Cannon street,
the tailor shop owned by Mr. Pommeranz. We went there to
look for some pants, Officer or Sergeant Raphael asked

Mr. Pommeranz did he have any pants there and he said "Yes".
He asked him how many he had and he said about 104 or 105

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pair of pants.

MR. LEVY: Objected to.

Q Who was present?

MR. LEVY: It is objected to upon the ground that he is testifying to the subject matter of someother larceny with which this defendant is not connected and which is not the subject matter of this indictment and complaint and which is probably the subject matter of some other larceny in which the parties to this action are not alleged to to have participated in, but especially this defendant.

THE COURT: I shall only admit the evidence in regard to this transaction upon the promise of the District Attorney that he will connect it in some way with an offense committed of the same nature, committed by the defendant. It is admitted only for the purpose of showing guilty knowledge and intent, merely for the purpose of showing guilty knowledge on the part of the defendant. For instance, if the goods in question for which the defendant now stands on trial had actually been sold with guilty knowledge on the part of the defendant it would be admissible. He is being tried -- probably the real count of this indictment is criminally receiving property knowing the same to have been stolen. Anything that bears upon his guilty knowledge of where

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that property came from can be proved and also guilty knowledge of similar transactions of the same general kind.

Exception.

THE COURT: If the people attempt to prove any other transaction of the same kind we will spell him to the record and an objection and exception by the defendant so that all along to this general line of testimony there is an objection for the defendant and an exception wherever he deems it proper. On this line you may consider the objection overruled and the defendant has an exception.

Q Go ahead. A Sergeant Raphael in the presence of special officer Liebner and Officer Platt asked Mr. Pommeranz where he got those pants and he said he got them off a man named Mr. Levy.

Q Who said this? A Mr. Pommeranz.

Q Was Levy present? A yes, sir.

Q Max Levy was present? A Yes, sir.

Q This defendant? A Max Levy was not present -- it was special officer Lieber, Platt, myself and Pommeranz's working boy. We asked where Levy lived and he said he did not know where he lived but that he lived in Cannon street. Sergeant Raphael was --

THE COURT: These matters would be rather im-

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material beside s you could not give testimony of the conversations unless Max Levy or Max Walk were present.

MR. LEVY: I ask that it be stricken out.

THE COURT: It may be stricken out and the jury are directed to disregard any conversation that occurred during the absence of or the non-presence of Max Levy or MaxWalk.

Q As a result of the conversation you had with Mr. Pommeranz what did you do? A Well, Mr. Pommeranz said he would send his boy to Levy's house.

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

THE COURT: Yes, strike it out.

Q Now what Mr. Pommeranz said. What happened then?
A He told me that Mr. Levy's boy came there and told him that his father --

Q Don't say what he said. Tell what happened?
A We went in there with the working boy -- to Mr. Levy's house, 332 East 4th street.

Q Did Mr. Pommeranz's boy go into Mr. Levy's house?
A Yes, sir.

Q You followed him? A Yes, sir.

Q Who was with you? A Special officers Liebner and Platt.

Q Go on and tell what happened? A We went to this

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place, 332 East 4th street by following Mr. Pommeranz's working boy. We stood on the corner of 4th street and Avenue D for about 25 minutes and Liebner said --

Q Never mind what Liebner said? A Well, anyhow --

Q Just simply state what you did. Liebner said something? A Yes, sir.

Q As a result of what he said? A He said, "There goes Levy and Walk", and I says, "I don't know Levy and I don't know Walk."

MR. LEVY: I object to this conversation.

THE COURT: Never mind about the conversations were not present.

Q Tell what Liebner did? A He followed Levy and Walk and I and special Officer Platt stood around 4th street and covered the house.

Q How long did you stay there? A About a half an hour.

Q What then did you do? A I and Detective Platt went to 332 East 4th street.

Q What place is that? A Tenement house, second floor, room 6.

Q Who lives there? A Mr. and Mrs. Levy and --

Q What Levy? A Max Levy and his wife.

Q You went to the premises where Max Levy and his wife and family live? A Yes, sir.

Q Tell what happened there? A Detective Platt knocked

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at the door and Mrs. Levy's daughter came to the door. We asked was Mr. Levy in and she said no. Where is he -- he was out.

Q Who said that? A Mrs. Levy's daughter.

THE COURT: Strike it out.

THE WITNESS: Detective Platt went into Levy's room and as we went in the room there was two men there, one by the name of Brandenburg.

MR. LEVY: Objected to.

MR. BOSTWICK: I think this is relevant testimony. He may explain who those persons were that he found there.

MR. LEVY: I object to any explanation.

MR. BOSTWICK: I will subsequently prove who those persons were.

THE COURT: He may state who he saw there.

Q Who did you find there?

Exception.

A I recognized two men in the room, one by the name of Walter Brandenburg and Kambler.

Q Brandenburg? A Yes, sir, and Louis Kandler.

Q Is that Kindler or Kandler? A Kandler.

BY THE COURT:

Q They were in Max Levy's apartment? A Yes, sir.

Q Was it a house or an apartment? A His apartment.

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BY MR. BOSTWICK:

Q Was this on the 27th of May? A The 28th of May.

Q What property did you find in Max Levy's apartment?

A Detective Platt went into the back room?

MR. LEVY: I object to that. I object to the question as to form. It gives the witness an opportunity to refer to other property than that mentioned in this indictment.

THE COURT: He may show any similar transaction, property connected with similar transactions had between Max Levy and Max Walk for the purpose of showing intent.

MR. LEVY: Was that in connection with anything in which Max Walk or Max Levy had any connection?

THE COURT: Only bring out any other property in which Max Walk and Max Levy were connected where you can show a connection between Max Walk and Max Levy with reference to the property.

Q What property, if any, did you find in Max Levy's apartment?

MR. LEVY: I object to the question again.

THE COURT: On the District Attorney's agreement to connect Max Walk with it I will admit it. We will strike out the testimony if it is not connected.

Q What property did you find in Max Levy's apartment?

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MR. LEVY: I object to the question as leading.

A I had to keep a memorandum of it.

Q Don't you keep a book? A I got this off my book.

Q Don't you keep a book, Officer? A Yes, sir.

Q Will you refer to that book? A My book is not here.

Q Is that the book you make the original entries in?

A Yes, sir.

BY THE COURT:

Q Have you any independent recollection of what the property consisted of approximately? A Yes, sir; my recollection is there was three bundles of pants in this room marked, "Max Walk."

Q Have a mark on them? A Yes, sir, New Rochelle, N. Y. I asked Mrs. Levy who did those bundles belong to.

Q Never mind her reply because Max Walk was not present?

A In the apartment I found 83 pairs of loose pants and one blue skirt.

Q A lady's skirt? A Yes, sir, one striped lady's skirt and I found a vest and several other things I can't recall now.

MR. LEVY: I ask that the answer be stricken out under my objection as not responsive.

THE COURT: Motion denied.

MR. LEVY: It does not connect the defendant with that particular property the subject matter of this indictment.

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THE COURT: It cannot be done all in one breath under any circumstances.

Exception.

Q Have you any memorandum with you which might refresh your memory so that you could remember what you actually saw there? A I got it in my hand.

Q As to the balance of the property? A I got it in my hand but I haven't got the book with me. I made the memorandum out of the book on this paper.

BY THE COURT:

Q When did you make the memorandum that you now hold in your hand? A Yesterday.

Q Is it from your book? A Yes, sir.

Q Why didn't you bring that book with you? A Well, I had been out all night and I left it in my other overcoat. I just took it on this paper; I was out on that murder case in Montgomery street.

BY MR. BOSTWICK:

Q I ask you to look at that memorandum and state whether you can testify from your recollection what the other property was, you say you now cannot remember without refreshing your memory?

Objected to.

THE COURT: He says he has a memorandum he just recently made. I think he ought to have brought his book

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down so that he might testify from that because you made the entry in the book I presume under the rules of your department?

THE WITNESS: Yes, sir.

Q Directly, did you? A Yes, sir.

MR. BOSTWICK: The contention of the District Attorney is that it is not the book that is the evidence at all, but it is his memory, and if he can refresh his memory by a newspaper clipping or any other writing made by himself or another, made at that time or any other time, if the memory is so refreshed he can then speak from his own memory. The District Attorney deems this proper evidence, and that it is a proper use of the memorandum.

MR. LEVY: Not where it appears that the original memorandum made at the time of the occurrence is under the control of the witness and in his possession. I think it is improper to allow him to read from or testify from a memorandum made upon the day of the trial.

MR. BOSTWICK: I understand that it is only in the third case that a witness cannot testify that he remembers facts existing at the time the writing was made. If he cannot remember the transaction then under the McLaughlin case, the writing itself becomes evidence; but I understand that in cases 1 and 2 of refreshed memory

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where a party's memory -- I can refer to an excellent example of it in Stevens Digest.

MR. LEVY: The rule is that the original book in which the original writing was entered is not proof admissible in evidence but can only be used by Officer Scott for the purpose of refreshing his recollection. Now, it seems to me that this is a very remote method of refreshing a witness's recollection where the witness had written a paper which he said he copied from some paper or book. The original book itself is not evidence. The witness has a right under our law to refresh his recollection from the inspection of the original entry.

BY MR. BOSTWICK:

Q Did you make a memorandum about the transaction of the property that was found in Levy's place? A yes, sir.

Q When did you see that original memorandum? A Well, I have been looking at it for the last two or three days before the trial started on.

Q When was the last time you saw it? A Yesterday morning.

Q Did you make a copy of it? A Yes, sir.

Q Is the paper you hold in your hand a copy of it?

A yes, sir.

Q Is it a correct copy? A Yes, sir.

Q Now I ask you to look at that memorandum and state

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after examining it whether you can from your memory testify what goods were found in the place, as the other property?

MR. LEVY: May I ask the witness to show me that paper before he testifies?

THE COURT: Yes.

BY THE COURT:

Q Was the original of which this is a copy a true statement of what was found and taken from the flat of Max Levy? A Yes, sir.

Q You knew that to be correct at the time you made the original? A Yes, sir.

Q Does looking at that copy refresh your memory as to the contents of the original? A Yes, sir.

MR. LEVY: May I suggest that the witness read that paper and then put it in his pocket and then testify?

THE COURT: Yes.

MR. LEVY: That is the way to refresh his recollection. He cannot testify and then look at the next line and then testify again?

THE WITNESS: I have testified to all of it except those three bundles of goods.

MR. LEVY: I ask that he read the whole thing now and then put it in his pocket and then testify.

THE COURT: There is no objection to that although

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there is no rule that requires him to read it and put it in his pocket.

MR. BOSTWICK: I think it is well settled that he need not put it in his pocket. We don't object in this particular instance because he can in this particular instance do it.

MR. LEVY: I didn't mean that he should put it in his pocket, I meant that he should not read from the paper each word he testified to.

Q State what the other property was? A We found three bundles of trousers marked M. Walk , 19 Mechanic street, New Rochelle.

BY MR. BOSTWICK:

Q What did you do with that property? A The property I brought to 17 Allen street, the Detective Bureau, First Branch.

Q Did any one come in the room while you were there?

A In what room, sir?

Q Max Levy's apartments? A Only I and Detective Platt.

Q Did anybody come there while you and Detective Platt were there? A No, sir.

Q Don't answer this question until counsel has an opportunity to raise an objection. Do you know to whom this property , which you found in Max Levy's place, belonged?

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MR. LEVY: If he knows of his own knowledge.

THE COURT: If he can trace the history of that property. He probably would not be competent to testify to whom it belonged.

MR. LEVY: That is a conclusion of the witness.

THE COURT: But he can state if he knows anything -- what else he knows about the property and what became of it for instance.

MR. BOSTWICK: I would suggest that he might answer yes or no.

Q Do you know? A Not that day, sir.

Q Did you find out anything subsequently that would permit you to testify now who was the owner of that property?

A I don't know, Detective McCauley of the Detective Bureau in Brooklyn had charge of that.

Q One question more. Are any of these goods that were left at the Detective Bureau -- have you them with you?

A I have two coats here and have got the trousers over in the Detective Bureau and have got the skirts at Police Headquarters.

MR. LEVY: I object to that.

Objection overruled. Exception.

Q Is this a bundle you brought down from Police Headquarters (Showing witness a bundle) A yes, sir.

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Q Look inside of it and make certain?

MR. BOSTWICK: Your Honor recalls that we traced the property to the Police Department. Now we bring it from the Police department here.

THE COURT: This is the witness I called for.

MR. BOSTWICK: Yes.

THE WITNESS: There is a mark on there. (Indicating)

BY THE COURT:

Q Now in Police Headquarters you have an official custodian of property which has been taken in raids &c., or which has been the subject of larceny, you have an official custodian? A Yes, sir.

Q A man who takes charge of it? A Yes, sir.

Q Now did you get those goods from that source?

A Yes, sir.

Q You brought them over to court with you? A Yes, sir.

Q And handed them to the District Attorney? A yes, sir.

MR. BOSTWICK: You can see they have been in the possession of the District Attorney since they have been in court .

THE COURT: That is not necessary.

MR. LEVY: Certainly.

MR. BOSTWICK: Those are the same coats that we had here yesterday.

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MR. LEVY: Certainly if you say so.

Q They have been in the possession of the Court?

A Yes, sir.

MR. BOSTWICK: I offer the coats now in evidence.

MR. LEVY: Subject to my original objection.

Same ruling.

Exception.

Q Officer will you bring at the earliest possible moment from the office of the Property Clerk the other coats that were found in Max Levy's place such as are now in the possession of the property Clerk?

MR. LEVY: I object to that as incompetent and irrelevant, because it has no relation to this case or the issues in this case.

BY THE COURT:

Q You got them on the same day? A Yes, sir.

MR. BOSTWICK: Will the Court instruct the witness to bring those articles down?

THE COURT: Yes. Bring them down.

Q When can you bring them down? A As soon as I leave the chair.

MR. LEVY: The People are attempting to prove that this defendant stole the other garments that he is going to bring down? I think it is but fair that the District

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Attorney should state his position because of his promise to connect.

MR. BOSTWICK: I think it is but fair that the District Attorney should state his position because of his promise to connect. We propose to show that Max Levy and Max Walk were the purchasers of toher goods from the same burglar about the same time, for the sole purpose of showing the intent and the guilty knowledge at the time of the purchase of the coats mentioned in the present indictment.

MR. LEVY: It is not part of the same transaction.

Objection overruled. Exception.

MR. LEVY: It is not the proper way to prove guilty intent or motive.

Objection overruled. Exception.

THE COURT: The coats will be marked in evidence.

(The coats referred to are marked people's Exhibits 1 and 2.)

CROSS-EXAMINATION BY MR . LEVY:

Q Officer Scott, were you present at the time special officer Liebner made the arrest of this defendant? A I was not.

Q You were in Pommeramz's tailor shop at the time special officer Liebner brought this defendant in to that place? A I was not.

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Q Didn't you just testify that you were in Pommeranz's place when Officers Liebner and Platt came in with Officer Raphael? A Yes, sir, when we started out to investigate about the pants.

Q Now, Officer Scott, didn't you testify in answer to Mr. Bostwick's question that you and special officer Liebner were especially assigned to this case, didn't you, yes or no? A Yes, sir.

Q That is true, isn't it? A Yes, sir.

Q Who assigned you and special officer Liebner?

A By acting Captain Clark, First branch, Detective Bureau.

Q At the time the assignment was made it was personally by acting Captain Clark or Sergeant? A Captain Clark.

Q Liebner and you were present and Platt also? A Yes, sir and Raphael.

Q All four of you were there? A Yes, sir.

Q You got the assignment? A Yes, sir.

Q Just tell the Court and jury what acting Captain Clark told you at the time he made the assignment? A He assigned I and Sergeant Raphael with Liebner and Platt to go with these two men, Liebner and Platt, over on the East Side to see if we could find some trousers that were stolen.

Q From whom? A Well, I believe he said the American

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Express Company or somebody.

Q You don't know whether he said that? A No, sir, I don't know about that, all I know is --

Q You don't remember that at all? A All I know is I was sent out to locate, go round several small tailor shops to see if we could see any pants.

Q Did you ever find any pants in the defendant's possession? A No, sir, I did not.

Q Were you present when special officer Liebner arrested this defendant and brought him somewhere? A No, sir.

Q Weren't you present? A I saw him once when Liebener and Sergeant Raphael had him over in the Detective Bureau; they had him over there.

Q Were you present at any time when they had a conversation there? A No, sir, I was not.

Q Were you present when special officer Liebner made a statement there to Officer Raphael? A No, sir.

Q By the way. Is it Officer or Detective Sergeant Taphael? A Raphael is the sergeant of ~~the~~ police, what they call a roundsman.

Q What is Liebner? A He says he is a special officer.

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

Q You don't know whether he has a shield? A No, sir,

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I never seen his shield.

Q You don't know whether he is authorized to act as a special officer? A No, sir, I do not.

Q You knew at that time that he was connected with the office of Whitman and Vandiver, didn't you? A I didn't know it until afterwards.

Q A short time afterwards? A yes, sir.

Q Did you ever go with him to the office of that law firm? A I don't know where the office is.

Q You didn't go down there? A No, sir.

Q Now did you, at any time ever hear Liebner say anything to Sergeant Raphael in the station house or at the Detective Headquarters or in court? A No, sir.

Q With reference to what this defendant told you?
A No, sir.

Q Sure of that? A Yes, sir.

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W1.

H E N R Y P L A T T, a witness called on behalf of the

People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 83 West 53rd Street, Bayonne, New Jersey.

Q Officer Platt, you know Officer Liebner? A I do.

Q Were you assigned with him on this case? A We were not assigned; we always travel together to look after those all over the city who prey on the Adams express.

Q You were an employee of whom? A Whitman & Vandiver, now with Almuth C. Vandiver.

Q They are the attorneys for what express company?

A Adams Express Company.

Q They employed you what to do? A Through Mr. Vandiver.

Q What are your duties?

MR. LEVY: I object to that as incompetent.

MR. BOSTWICK: I withdraw the question.

Q Were you detailed specially on this case? A Not specially on this case but we --

Q How did you come to go to Pommeranz's, did you ever go to Pommeranz's place? A I did.

How
Q Did you come to have any connection with this case or to call at Pommeranz's place?

MR. LEVY: I object to that question.

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THE COURT: Frame it in some other way.

MR. BOSTWICK: What is the ground of the objection?

MR. LEVY: Calling for the operation of this witness' mind.

MR. BOSTWICK: I will then reframe my question as to form.'

BY MR. BOSTWICK:

Q State what occurred that caused you to go to the place of Pommeranz in Cannon Street?

Same objection. Same ruling. Exception.

MR. LEVY: I have no objection to what he found there.

THE COURT: He can state that he went there as the result of a conversation that he had with somebody but he cannot state what that conversation was.

THE WITNESS: From information that we received--

MR. LEVY: I object to that.

THE COURT: As the result of information, of something that was told you by whom?

THE WITNESS: By my partner Mr. Liebner -- we went to Pommerranz's store and found quite a number of pants, quite a large number of pants.

MR. LEVY: This evidence is being allowed

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in under my original objection?

THE COURT: Yes.

Q State who went with you to Pommeranz's place?

A My partner, Mr. Liebner, Officer Raphael and Officer Scott.

Q Do you remember when this was? A This was on the evening of May 28th.

Q Where is Pommeranz's place? A 55 Cannon Street.

Q When you got there state as minutely as you can just what you found there? A We found about a hundred pair of pants, if I am not mistaken, and there was something around 100 pair of pants in Pommeranz's possession. We asked Pommeranz where he got them from.

Q Never mind about any conversation that occurred unless Max Levy or Max Walk was present but you can say whatever was done, not what was said? A From information we received we went to Levy's house.

Q Who do you mean when you saw we? A That was Officer Liebner, Officer Scott and myself and we saw a boy employed by Pommeranz --

Q Did you leave anybody in Pommeranz's place?

A We left Officer Raphael in Pommeranz's place.

Q You left Officer Raphael in Pommeranz's place and the four of you, that is, you, Liebner, Scott and Pommeranz's boy went where? A To ^{4th} ~~41st~~ Street to the residence of Levy.

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4 -
Q When you got to ~~41st~~ Street what did you do?

A We sent the boy^{up} to Levy's house to tell him that a certain ^{lot} pair of pants were finished and that this here Pommeranz had no place to keep them and to send for them at once and the boy came down and told us.

Q Was Walk present? A No, sir.

THE COURT: You can't state what the subject of the conversation was. State what you did?

THE WITNESS: We watched Levy's house.

MR. LEVY: I object to that.

THE COURT: Objection overruled. Exception.

THE COURT: You can state that you watched Levy's house. That is what you did. You did that?

THE WITNESS: We watched Levy's house and saw Walk and Levy come down out of the premises, onto the sidewalk, and Walk had a package under his arm.

Q Just what was it? A That was a package containing two coats -- two coats as I later found out.

MR. BOSTWICK: Is there any objection to my showing him the diagram?

MR. LEVY: I don't see any reason why we need a map in this case.

Q What number ~~41st~~ ^{4th} Street did Max Levy then live at?

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A It was between C and D the number I think was 332 or 432.

Q Now state what happened after that? A When Levy and Walk came out of the house they walked towards Avenue C.

Q When they got to Avenue C? A My partner and the boy from Pommeranz's store followed Levy and Walk and Scott and I remained at this house and after Levy and Walk was on about 20 minutes we went in --

Q When Walk and Levy came out of the house ^{did} either one have a bundle with them? A Walk had a package under his arm.

Q Now you didn't see where Walk and Levy went? A I didn't; they went west.

Q Liebner followed them? A Yes, sir; Liebner followed them; Liebner and the boy that worked for Pommeranz followed Levy and Walk.

Q What did you do? A I then went up into the apartments of Levy with Officer Scott and we caught the two burglars in the premises who had stolen --

MR. LEVY: I object to that statement and ask that the jury be instructed to disregard it.

THE COURT: Yes. Strike out the word "burglars".

Q You went up and into Levy's apartments? A Yes, sir.

BY THE COURT:

Q You went back to Levy's apartments? A Went upstairs.

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BY MR. BOSTWICK:

Q Did you find any persons in Levy's apartments?

A We did, found two men and two women.

Q Do you know the names of the men? A They are ex-convicts, they are sent away.

MR. LEVY: I ask that the jury be instructed to disregard this witness' statement.

THE COURT: The jury are instructed to disregard the statement of the witness that the persons found in Levy's flat were convicts or that they were to burglars or any characterization of them whatever.

Q You found two men and how many women? A Two women.

Q What were the names of the men? A Lefty Brandenburg and another man called Mock, I think his name is Kandler.

MR. LEVY: He should state the names if he knows them instead of the alias.

THE COURT: A man's name is the name that he answers to.

MR. LEVY: He knows their names if he wants to give them.

Q What were their names, you can give all of their names?

A I don't know if his name is --

Q Were those men known to you? A They were not at that time.

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Q You afterwards found out that they were men that answered to the name of what? A Lefty Brandenburg and Mock Kandler.

Q Was this defendant there at that time? A He was not.

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

The defendant was not there.

THE COURT: That does not make any difference.

Motion denied.

Exception.

BY THE COURT:

Q How soon after, how many minutes elapsed between the time that Levy and Walk left this apartment and the time you went up and found these men and women there? A I don't think it was over 15 minutes.

BY MR. BOSTWICK:

Q During all that time did you have the front door of the premises under observation? A We were watching that all the time.

Q How about the women, who were they? A Mrs. Levy and a niece of the Levys'.

Q Levy's wife? A Yes, sir.

Q Now, state whether or not you found any property in Levy's apartment? A We did; we found three bundles.

Same objection. Same ruling. Exception.

THE WITNESS: Three large bundles ready to be

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shipped and on the bundles was the address of "Max Walk, 19 Mechanic Street, New Rochelle". From, I believe it was ^{hundred} Levinson, Division Street, and also about four or five pair of pants and other articles laying around the room that turned out to be stolen property.

THE COURT: Never mind that, what they turned out to be.

BY THE COURT:

Q You found a large quantity of pants there? A Yes, sir.

Q Were they all made up? A Some were made up and some were not finished but three bundles were ready for shipping.

BY MR. BOSTWICK:

Q They were marked? A Yes, sir; Max Walk, 19 Mechanic Street, New Rochelle.

Q Did anybody take any of this property away while you were there? A Not while I was there but it came around in the patrol wagon.

Q Were you there? A I was left in charge of the house.

Q Now, state what was done when the patrol wagon arrived?

A All the articles we found in Levy's house were taken to the Allen Street branch where the complainant came and identified the stuff that was stolen.

Q Did you go down in the patrol wagon? A I did not.

Q What became of you? A I stayed in the house until

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everything was cleaned up and then I walked over to the Allen Street branch.

Q When you go to the Allen Street branch who was there?

A There was Raphael and Scott and Liebner, Levy and Walk, and Brandenburg and Kandler. ^ Mrs. Levy, I believe that is all, I believe Pommeranz and the boy was also there.

CROSS EXAMINATION BY MR. LEVY:

Q Were you present when these two coats were taken over to Gross' shop for comparison and for the purpose of identification? A No, sir.

Q Do you know whether Gross had any goods in the police station, in the detective bureau for the purpose of comparison with these two coats? A I don't know anything about that .

Q Did you see that done? A No, sir.

Q As far as you know you don't know whether it was done or not? A No, sir; I don't know.

Q Are you attached to the New York police force?

A I am not.

Q What is your business? A Special investigator attached to Almuth C. Vandiver.

Q Also special officer? A Yes, sir.

Q Have you got a shield? A Yes, sir.

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Q Given to you by whom? A By the Police Commissioner.

Q Why haven't you got it on in the presence of the Court?

A I never use it, we generally are picked out, all the crooks generally pick us out so that they know us on the street --

Q Does that apply to officers and detectives in the same way? A I don't know about other detectives but I know about myself.

Q Do you know whether Liebner is a special officer?

A I do.

Q And whether he has a shield? A I do.

Q You have testified to everything that has taken place now and every conversation which took place? A As far as I can remember, unless you recall something to my mind.

Q Sure of that? A Unless you recall something to my mind, I might have forgotten. You might ask me certain questions. I testified to the best of my memory at the present time .

Q That is the best answer you can give? A Yes, sir; certainly.

Q Did you have any conversation at any time with Max Levy or Max Walk or in their presence-did you have any conversation with either of them at any time? A No, sir.

Q Or were you present when any conversation was had between them? A Since their arrest?

Q Yes. A I was up in the District Attorney's office

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one day.

Q Who was present? A Mr. Bostwick.

Q Was Max Levy there? A Max Levy was there.

Q Max Walk was not present? A No, sir.

A D O L P H G O L D B E R G E R, a witness for the People,
recalled:

BY MR. BOSTWICK:

Q I show you these Exhibits marked Nos. 1 and 2, and ask you whether -- I show you People's Exhibits 1 and 2, and ask you whether those two coats were in the premises No. 143 Avenue D on the night of April 27th, 1909, when you called at that shop?

MR. LEVY: I object to the question as to form.

MR. BOSTWICK: I don't know of any other way of asking the question.

THE COURT: He has already testified that there were a great many coats there when he left, and after dinner, or when he got back at eight o'clock, when he got back, whatever time it was, he found they had disappeared, they were not there. Now, he is asked if he can identify these two coats as among that lot.

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Exception.

A I know the label was torn on the inside of the pocket, I don't know for sure, I can't tell.

Q Were those that you left in the shop, were they or were they not of the similar nature to the ones now exhibited you?

MR. LEVY: Objected to upon the same ground.

A It was like this coat here, shaped like this.

Q How about the other coat? A The shape of both of these coats -- such coats were there.

Q Were they there on the morning of the 28th?

MR. LEVY: Objected to.

THE COURT: I will admit his testimony as to the identity of the coats. They jury may find it sufficient and may not. I am not telling them either one way or the other. It depends upon how they view it.

MR. LEVY: How can he testify to that?

MR. BOSTWICK: He can testify if those coats were there on the 28th.

MR. LEVY: He has not identified them.

MR. BOSTWICK: He can state whether those coats were there on the 28th.

Objection overruled. Exception.

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THE COURT: He said those coats were there when he went out and were not there when he came back -- that the coats resembled these as to shape and so forth. He cannot positively identify the coats because the coats that he left had tags on them, tailors' tags on them.

CROSS EXAMINATION BY MR. LEVY:

Q How many sweatshops did you ever work in in your life?

A Tailors' sweatshops do you mean in New York or in Europe?

Q All over, anywhere? A Since I am in America I worked in three shops.

Q In what capacity did you work in those three shops?

MR. BOSTWICK: I object to that. This witness was recalled for the simple purpose of identifying these garments. I think your Honor should restrict his cross examination to what I have brought out.

Q (Question repeated). A I learned to be an operator.

Q How long did you learn to be an operator in the first shop that you worked in? A (No answer).

Q Was it in the last shop that he was in that he learned to be an operator? A Yes, sir; I am a tailor.

Q Did you learn to be an operator in Europe? A Yes, sir, I am a tailor from home.

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Q An operator from the old country, are you?

A Yes, sir; I am a tailor from home.

Q How long were you a tailor or an operator in Europe?

A I was not an operator in Europe, I was a tailor. Altogether I am about 18 or 19 years -- 18, 19 or 20 years altogether a tailor.

Q How many years have you been in this country?

A In May it will be three years.

Q You have seen a number of coats in your lifetime of the same shape of these two that you hold in your hand marked People's Exhibits 1 and 2? A In Europe I have not seen such goods.

Q In America too? A No, sir; only in the shop of Gross I have seen them.

Q Do you know whether coats of the same shape are made in other shops, in other factories in America, especially in the City of New York, yes or no? A I don't know what other shops would do.

Q Did you ever see any of these kinds of goods in a sweatshop or in clothing stores in the City of New York, or in dry good stores? A No, sir.

Q Did you ever see coats of that particular shape in other places, in the store windows or in stores in the City of New York? A I don't go anywheres and I don't know.

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Q Will you hold up one of those coats and show us how that differs in shape from any other coat that we have in the courtroom, how does it differ from the coat that I have on now?

THE COURT: You better stand before him so that he can see your coat.

Q Have you got a sack coat on? A This is a waiter's coat and this is a tuxedo (referring to People's Exhibits 1 and 2).

Q The waiter's coat is an ordinary waiter's coat that is worn by waiters in hotels? A I don't know what the waiters are wearing in restaurants and hotels.

Q Did you ever see anybody wear a coat like that, yes or no? A I didn't see only in our shop.

MR. LEVY: Will your Honor instruct the witness to answer yes or no to my question.

Q Did you ever see anybody wear a coat like that?

A (No answer).

THE COURT: Tell him to hold only one coat in his hand at a time. Now he holds in his hand People's Exhibit 1.

BY MR. LEVY:

Q Now, take Exhibit 1. Did you ever see anybody with a coat like that, Exhibit 1? A No, sir.

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Q Did you ever make any coats like that since 1908?

A No, sir.

Q Did you ever make any coats like that before 1908?

A Before?

Q Before 1908? A No, sir.

Q Did you ever manufacture -- didn't you make or manufacture coats of this kind at any time? A No, sir.

Q What kind of work did you do in Gross' factory, were you a watchman or did you work in the shop? A I did various kinds of work; I helped them out.

Q You were an expert tailor at that time from Europe, yes or no?

THE COURT: He need not answer that.

MR. LEVY: He says he was a tailor for 19 or 20 years. I want to know what he was doing at this particular time. He says he was doing some kind of odd jobs around. First, I think he said he was a night watchman and then a tailor for 19 or 20 years and doing all sorts of things, a night watchman.

THE COURT: He has a right to do that.

MR. LEVY: The question is whether he knows what kind of coats these are.

THE COURT: I don't think it is material whether this man knows what kind of coats they are or not.

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MR. LEVY: I am entitled to show what kind of work he did.

THE COURT: Let him state what kind of work he does.

THE WITNESS: Various things.

Q Did you assist in the making of -- did you assist in the making of these coats, did you assist in the making of coats at sometime? A At this work I was helping.

Q What work did you do on that (pointing to Exhibit B)? A Shaped the lapel and I based the edges.

Q What I want to know is did you ever see any of these kind of coats? A No, sir.

Q You don't know whether there are such coats made elsewhere? A No, sir.

Q You won't swear that they are not made in other places? A I always swear. I swear.

BY THE COURT: Q Now, let us get the thing right. Let us understand it. Are you willing to swear that no coats of that general kind are made in any other shop in New York except in Gross' shop, of that general kind? A What do I know what they work in other shops.

BY MR. LEVY:

Q Why won't you swear?

THE COURT: That will do.

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BY THE SIXTH JUROR:

Q He left the shop at six o'clock to go down and buy cigarettes. Did he leave anybody in the shop? A Nobody.

Q Now, when he goes back to sleep every night how does he lock it, from the inside?

THE COURT: Mr. Juror, he did not say he left at six o'clock originally. I think the testimony is that he left about eight o'clock.

THE JUROR: He left about eight o'clock.

THE COURT: And he returned in an hour or an hour and a half.

MR. LEVY: The juror suggests a very vital question to me.

BY MR. LEVY:

Q As you went out for cigarettes at eight o'clock -- didn't you? A After eight o'clock.

Q When did you come back? A About a half an hour later.

Q Then you locked the door?

THE COURT: When did he lock the door?

MR. LEVY: When he got back.

Q You went upstairs and went to sleep, didn't you?

A Yes, sir.

Q You locked the door from the inside, didn't you, when you went to sleep? A Yes, sir.

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Q From the inside? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q Yes or no? A When I came up the door was opened.

I was so frightened I did not know what to do.

MR.LEVY: I ask that the answer be stricken out.

THE COURT: Yes.

BY THE COURT:

Q What we want to get at is when you discovered that these goods were not there what did you do?

MR. LEVY: That is not the question I asked this witness.

THE COURT: But your question was rather involved. and admitted of two different interpretations.

If you put it very clearly to him he may answer you correctly.

MR. LEVY: Your Honor will recall that Mr. Gross said he slept in the place that night.

THE COURT: Gross said he did not know of the larceny until the following day. He said this man usually slept in the place.

MR. LEVY: He testified he slept in the place that night.

BY THE COURT:

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Q Did you sleep in the shop on the night that you discovered the goods were lost? A I was upstairs in the shop but I did not sleep.

BY MR. LEVY:

Q Now, did you lock the door from the inside that night?

A (No answer).

Q After you came back and found the goods were gone then did you lock the door?

THE COURT: I won't allow you to put that question unless you put it specifically and clearly to this man so that he will know exactly what you mean. It should not be a catch question.

Exception.

THE COURT: What we want is to have this man known exactly what you refer to. He was in and out of that building all that day. Direct your attention specifically to the time you refer to and ask him another question which is proper but you cannot ask him a question which is susceptible of several meanings and then expect him to give you a meaning one way or the other.

BY MR. LEVY:

Q I will ask you whether when you went out for cigarettes

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and returned in about an hour and went upstairs did you lock the door first before you went upstairs?

THE COURT: How could he come back before he went upstairs?

MR. LEVY: He came back to the premises.

BY MR. LEVY:

Q How many flights up is the factory in that building?

A The third floor.

THE COURT: Your other question was "Did you lock the door before you went upstairs." The door was upstairs. This man is a foreigner. He is not quick; he is rather fatwitted. You have to deal very simply with him. The question that I asked him it seemed to me covered the case.

BY THE COURT:

Q After you returned to the factory that night and found that goods had been taken away did you lock the door after you got in?

MR. LEVY: I object to that as not my question.

THE COURT: Objection overruled. I ask the question.

Exception.

A No, sir; I ran downstairs right away and did not know what

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to do.

Q When did he come back to the factory finally that night? A I informed a policeman right away.

Q Where did you find the policeman? A Avenue D.

Q And what? A Between Seventh and Eighth Streets.

Q What did the policeman do? A He came upstairs and took ~~my~~ down my name and wrote something, whatever I knew I told him, whatever I could tell him I told him.

Q What further did the policeman do in your presence? A He was looking around everywhere, perhaps he could find him there --

Q Now, how long did the policeman stay in the factory? A He was there several times during the night.

BY THE COURT:

Q Did he ask you any question about the owner of the premises, Herman Gross, as to where he lived? A Yes, he wrote down where he lived?

Q Did he? A Yes, sir.

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Q What is that? A What he asked me he wrote down.

Q Did you tell him where Gross lived? A I told him he lived in 100th Street.

Q Did you give him the number, the street number? A No, sir, I didn't know it.

Q After the policeman went away what did you do? A I closed the shop and I was sitting there.

Q How did you close it? A With a cross bar, an iron cross bar.

THE COURT: Now give him time enough when he answers the question. You have to drag it out of him. Is there any juror that would like to ask the witness any question bearing upon any point. If so frame your question so that the man can exactly understand you.

BY THE THIRD JUROR:

Q While you were looking for a policeman did you leave the door open? A Yes, sir, with the key.

Q You mean an outside lock, or a lock in the door? A The lock that was in the door.

Q Was that in good order? A Yes, sir, it could be closed.

Q It could be closed? A Yes, sir.

MR. LEVY: May I examine the witness further?

THE COURT: Yes.

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BY MR. LEVY:

Q How did you know that Mr. Gross lived in 100th Street?

A I always heard about it that the boss was living in 100th Street.

Q You were the watchman in that place that night? A Yes, sir; I slept there.

Q Now, supposing a fire had occurred there or some calamity, did you know where to notify Mr. Gross, your employer?

A I asked him how about it, where I could inform him. The officer when called in took down the address of the boss.

Q Did you tell that to the District Attorney? (No answer)

Q Did you tell that to the District Attorney, that you called an officer in and that the officer came? (No answer)

BY THE COURT:

Q Did you tell the District Attorney that you called an officer in? (No answer)

THE COURT: It doesn't make any difference.

Q Did you tell the District Attorney that you called in an officer that night? A I don't know what the District Attorney is.

MR. LEVY: I am pointing to Mr. Bostwick.

THE WITNESS: At the present time I said it.

Q This was the first time you ever told it to anybody, is that true? A To-day is the first time.

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Q Had you ever been in Gross's home in 100th Street before May 28th? A At a later time I was there.

Q When did you go up there, when did you last go up there? A When these coats were found.

Q Who was with you when you went up there, who went there? A Two people were with me.

Q What were their names? A I don't know them any more, to look for the boss.

Q Were you ever in the bosses home in 100th Street in May, 1908? A I was there once but I don't know when it was.

Q Only once in the boss's house in your life in 100th Street? A Once.

Q Do you know the house? A I would recognize it but I don't know the number.

Q Do you know between what avenues it is? A It was near the park.

Q The night when this event happened did you go up to this house and tell them about it? A No, sir; how could I leave the shop?

Q Now, to come back to the original question which I put to the witness. I want to see if I can make him understand it. You say you went out of the shop at eight o'clock to buy cigarettes and you came back an hour afterwards. Did you lock the door after you from the inside before proceeding upstairs to

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the shop where you slept?

THE COURT: The shop was three flights up.

MR. LEVY: That is what I say. He slept in the shop.

THE COURT: It doesn't appear in evidence that he had anything to do with the street door. Ask him first if he ever locked the street door. It may be a tenement house or some sort of property and that he has no control over the street door. It doesn't appear that he had anything to do with the street door and unless you supplement your question in that way you will make it very confusing. The testimony, as I recall it, was that this shop consisted of only one room.

BY MR. LEVY:

Q Now, we will get at it in this way. You say the shop is on the third floor. Is there a door leading from the hallway into the shop? A Yes, sir, on the first floor there is a door.

Q There is a door called the street door? A Yes, sir.

Q Is that the door that you locked? A No, sir, that was open; that door is always open.

Q Now, the door which you locked after you was the door leading from the hallway into the shop on the third floor, is that so? A How do you mean, that I don't know.

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MR. LEVY: Your Honor said he was a fat witted witness. I call him a crafty witness.

MR. BOSTWICK: I object to that.

THE COURT: The jury have a right to take whatever view of him they wish. I think he is a thick witted foreigner. We don't know just what view the jury may take.

MR. LEVY: After he returned from buying the cigarettes at nine o'clock he went upstairs to the third floor to go into his shop through the door on the third floor --- that is the only door leading into the store. Did he lock that after, when he went inside?

THE COURT: He said he put an iron bolt or bar on it.

MR. LEVY: From the inside?

THE WITNESS: Yes, sir.

THE COURT: And that he did not sleep any that night but he came back several times. He said he was afraid after that and didn't go to sleep at all, that he stayed up all night, that he did not know where the proprietor lived except that he knew that he lived somewhere on 100th Street because he heard other people say so.

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BY MR. LEVY:

Q This door you claim was ^{broken} open was on the third floor?

THE COURT: The shop door.

Q Leading into the shop? A Yes, sir, on the third floor.

Q That is the only door that leads into the shop, leads into your shop? A Only one door that leads into the shop.

THE COURT: Mr. Gross described his shop as only one room, with only one entrance to it, that led from the hall. That it had two locks on it. Nobody ever spoke of the street door.

MR. LEVY: I think I know what is in that record.

THE COURT: Go ahead and ask him any question you want.

Q Were you a witness before the Grand Jury in this building before the 30th of June, 1909? A Was I sworn already? Yes.

Q Where was that? A I don't know where it was.

Q Was it in this building? A Yes, sir, in this building.

Q Did you see a lot of men sitting around a table up there, didn't you? A Yes, sir, many people were there.

Q You were asked a lot of questions, weren't you? A Yes, sir.

Q Did you tell them at that time or at any time that you reported this occurrence, that a policeman came in and investigated it and wrote down a report of everything? A I was not

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asked and I did not say that.

Q Were you a witness in the police court, in the Magistrate's court when this defendant was arraigned? A No, sir, I was not, I don't know where.

MR. LEVY: Can I see the original record of the Magistrate's court?

THE COURT: There does not seem to be any.

MR. BOSTWICK: Ask him if the time he went to the house of Mr. Gross was concerning the property which was missed on the morning of the 28th of April.

Objected to.

THE COURT: You brought it out yourself.

Objection overruled. Exception.

A Yes, sir, about the goods that were found.

MR. LEVY: I ask that the answer be stricken out.

Motion denied. Exception.

Q Ask him if he ever told me --- did you ever tell me anything?

THE COURT: I don't think it is material if he did.

MR. LEVY: He said he did not.

THE COURT: I would not waste any time on that.

MR. BOSTWICK: I should like to have it on the record that I never had a conversation with this defendant.

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THE COURT: It doesn't make any difference whether you did or did not. It has nothing to do with the case.

MR. BOSTWICK: The next witness that I have will probably be on the stand for about two hours. I should rather not take up the examination of that witness and have it interrupted by the lunch hour and if it is possible for the Court to adjourn 15 minutes earlier than usual and convene 15 minutes earlier it would be, I think, a wise thing.

THE COURT: Gentlemen of the jury, we will suspend until two o'clock. The same admonition holds that I have given you throughout this case not to make up your minds and not to discuss the case among yourselves or with anyone else until the matter is finally closed and submitted to you.

R e c e s s .

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PEOPLE v. MAX WALK.

A F T E R R E C E S S .

T R I A L R E S U M E D .

M A X L E V Y , called as a witness in behalf of the
People, being duly sworn and examined, testified through
the official interpreter as follows:

BY THE COURT:

Q Where do you live? A 9 Avenue D.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where did you live on April 27th, 1909? A I think
332 and 334 4th Street.

Q How old are you? A 47.

Q What is your business? A Peddler.

Q Do you know Max Walk? A Yes.

Q For how long? A Three years.

Q How did you come to meet Max Walk?

Objected to, overruled and exception.

A In Grand Street.

BY THE COURT:

Q State the circumstances under which you first met
him? A It was between Ridge and Pitt. I came from the auc-
tion and I met Max Walk. He asked me what I was doing and where
I was coming from, and I told him I come from the auction,
and he asked me where I live, and I told him I lived at 66
Cannon Street. Then he took out a book and put down the

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number where I live. Afterwards he told me that he would like to see me at my house. He came up to me four o'clock in the afternoon, and he told, as he has a party who could buy goods cheap, that he knows a party, and from this party one could buy goods cheap, but there was trouble, that the goods must be shipped to New Rochelle, and so he wants that I should buy the goods for him, and I will get commission, and I should ship the goods over there.

BY MR. BOSTWICK:

Q In whose name? A To Mr. Max Walk. I shall buy the goods and ship the goods to him.

Q Buy them in whose name? A In his name I should buy the goods.

Q Was Max Levy to pay for them or was he to get the money?

Objected to.

BY THE COURT:

Q What did he say in regard to the payment for them?

A I told him I have no money, and so he said he would give me money, and the next day he brought up a party into my room and presented the party to me, and he took out \$75 in cash and gave it to me that I should buy goods for him.

BY MR. BOSTWICK:

Q What was said by Levy and Walk as to any compensation that you, Levy, were to get, if any? A Five per cent commission.

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Q What were the names of the men that he brought to you? A One is Brandenburg and the other is Kindler, I think.

BY THE COURT:

Q Was that the next day? A Yes.

BY MR. BOSTWICK:

Q What was the next conversation that you had with Max Walk?

BY THE COURT:

Q Before you finish that, I would like to ask him. What did Max Walk say to you, if anything, when he brought Brandenburg and Kindler to you? A He said that men were jobbers and they sell goods cheap, and from them I should buy the goods for him.

BY MR. BOSTWICK:

Q Anything said as to the price? A He said if these people will name the price and if I see it is the right price, I should give. If I see that they demand more money, that I should make the price myself.

Q Did you make purchases in accordance with those instructions from Max Walk? A I don't understand the question.

THE COURT: From time to time.

BY MR. BOSTWICK:

Q Did you buy the goods from Brandenburg and Kindler according to the instructions from Max Walk, from time to time?

A Yes, sir.

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Q Now, did you have a conversation with Max Walk in regard to whether your work was satisfactory or not? A I bought goods several times and then he said I should not buy any more. I asked him why, and he said the goods are no good.

BY THE COURT:

Q Who said what? A Mr. Walk.

BY MR. BOSTWICK:

Q Then what happened after that? A I told him that if he will pay me a better commission I will buy and examine the goods better.

Q Was any conversation had which resulted in any new commission? A Yes, sir; he settled that from that day on he shall give me ten per cent commission.

Q What else did he say -- never mind, if you don't remember that -- do you remember the 22nd or 23rd of May?

A Yes, sir.

Q Did you have a conversation with Max Walk about that time? A Yes, sir; in May, about the 22nd or 23rd, he came up and told me that he expects to get a big lot of goods, and I should buy it for him.

Q Did he say whom he expected these goods from? A From the same people of whom I had bought before.

Q Brandenburg and Kindler? A Yes, sir.

Q Did he give you any money at that time? A \$150.

Q Do you remember the Jewish holidays, about the 26th and 27th of May, 1909? A Yes, sir-- Whitsunday.

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Q Did you see Brandenburg and Kindler about that time?

A When? A About the 26th or 27th of May, 1909? A They brought me up a lot of goods.

Q What did those goods consist of? A Pants and skirts-- two or three.

Q Was any conversation had with Brandenburg as to the price of this lot of goods?

DEFENDANT'S COUNSEL: I object, it is not the subject matter of this indictment and not within the issues and not binding upon this defendant.

THE COURT: I overrule the objection for the same reason, and the defence may take an exception. I allow it on the question of intent and guilty knowledge.

THE WITNESS: I made the price.

BY MR. BOSTWICK:

Q How much? A \$270.

Q Was any sum paid to Brandenburg and Kindler at that time?

DEFENDANT'S COUNSEL: I object, unless they connect this defendant with it.

THE COURT: Same ruling and exception.

THE WITNESS: \$150 I gave them -- \$120 I did not give them. I told them that Mr. Walk will come and they will get the money.

Q What made you think that Walk would come?

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DEPENDANT'S COUNSEL: I object to the form of the question.

Q Did you do anything that led you to believe that Walk would come down?

Same objection, objection overruled, exception.

A Yes, sir.

Q What? A When the goods came up to me I wrote a postal-card in the evening to Mr. Walk that he should come up and take the goods. He came up and examined the goods and he found that about 100 pairs of pants were not yet finished. Then he told me I should give them to be finished. I told him that I had a countryman whom I knew and that he will finish the goods properly. He said he was satisfied. He took my boy and told him to go for a wagon to send the goods to be finished.

Q To whom? A To Mr. Pomerantz, 55 Cannon Street.

Q Did he send the pants -- did you send the pants pursuant to Walk's instructions, to Pomeratz's place? A Yes, sir.

Q Where is Pomerantz's place? A 55 Cannon Street.

Q How were the pants taken to Pomerantz's place? A My boy took them over there in the wagon, and he gave my boy a tip that he should go along with the pants, that nothing should happen to the pants.

Q Which boy was that that went on the wagon? A Charlie,

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Levy, my boy.

Q Are the pants that you sent to Pomerantz the same pants that you had gotten from Brandenburg and Kindler?

A Yes, sir.

BY THE COURT:

Q Did Walk say why he wanted you to buy the goods from Brandenburg and Kindler instead of buying them himself directly from them? A He told me why, because it is trouble to these people to ship the goods to him, he living in the country.

Q Did he tell you why it would be any more trouble for them to ship them to the country than it would be for you to ship them to him in the country? A He told me that those people don't want to send the goods to the country; it is too much bother for them.

BY MR. BOSTWICK:

Q If the goods were not finished, were you to ship them in the unfinished state to New Rochelle? A That time when there were 100 pair of pants unfinished, he told me to have them finished.

BY THE COURT:

Q Was there any general agreement in regard to finishing up unfinished work that he might buy from Brandenburg and Kindler?

Objected to, objection overruled, exception.

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A He told me if there should happen to be goods not finished, I should have them finished.

BY THE COURT:

Q Did he tell you who this Brandenburg and Kindler were?

A At the beginning he did not tell me.

BY MR. BOSTWICK:

Q The last lot that you bought consisted of what?

A Pants.

Q About how many pair? A About 400.

Q That was about what date?

Objected to, overruled and exception.

A The 27th of May.

Q 1909? A Yes, sir.

Q Do you remember the 27th of April last? A The right date I don't remember.

Q Do you remember a purchase of what are known as the Gross coats -- do you remember the day when the Gross coats were purchased?

DEFENDANT'S COUNSEL: I object to the form of characterizing the goods.

MR. BOSTWICK: That is objectionable, and I will reframe it.

BY MR. BOSTWICK:

Q Do you remember the date when the goods were purchased, which were subsequently identified or called the Gross coats?

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Objected to.

THE COURT: Why not exhibit the coats to him in evidence.

MR. BOSTWICK: I am leading up to that.

BY MR. BOSTWICK:

Q Do you remember the day, that is the first thing I want to ask you? A Not exactly the date.

Q Do you remember the occurrence? A What is that?

Q The purchase of the Gross coats? A Either the 25th or the 26th or the 27th of May. I don't remember exactly.

Q Tell us what happened on that occasion? A Brandenburg and Kindler brought up the coats.

BY THE COURT:

Q What were they? A Black coats, and Mr. Walk just happened to be at my house, and he bought the coats from them and paid them about \$55. Then Mr. Walk made out the check and wanted to pay them for the goods. He made out the check to my order. They asked him, "Why do you make the check to my order?" He told me, "You are a foolish man; you don't understand it; don't you know that these boys are not quite right?"

DEFENDANT'S COUNSEL: I object. The witness said "These boys were left-handed boys".

THE INTERPRETER: Not right.

THE COURT: What is the literal translation of what

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he said?

THE INTERPRETER: Link means left.

THE COURT: What is the literal translation of his answer?

THE INTERPRETER: Don't you know these boys are left -- meaning, not from the verb to leave -- but not right, at the left.

BY MR. BOSTWICK:

Q I would like you to continue what Walk said; you were interrupted in the middle of your sentence.

THE COURT: Tell him to continue.

THE WITNESS: He said don't you know that the coats are not kosher coats; for those boys no one would cash a check, because they are known not to be kosher boys; therefore he made out a check to my name, to my order, and I went downstairs and cashed the check and brought up the money, and I paid the boys for the coats.

Q Did he say anything about how the boys had gotten the property, what kind of property it was? A He said they were stolen.

BY THE COURT:

Q Who said that? A Mr. Walk.

BY MR. BOSTWICK:

Q And when you came back with the money what did you do with it? A I gave the money to Mr. Walk into his hand,

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and he paid them.

Q To Brandenburg and Kindler? A Yes, sir.

Q Where did you get the money on that check? A I cashed the check myself.

Q Where? A Where I cashed that check exactly I don't remember, but I usually used to cash checks corner of Rivington and Ridge, because it is in my neighborhood, Mr. Schlanger.

BY THE COURT:

Q Is that a saloon? A Yes.

THE COURT: What is Schlanger's first name?

THE WITNESS: Samuel H.

MR. BOSTWICK: The name is spelled S-c-h-l-a-n-g-e-r.

BY MR. BOSTWICK:

Q Prior to the time that Walk told you that these were stolen goods, did you positively know if the goods you had purchased were stolen?

Objected to, objection overruled, exception.

A I did not know.

Q Had you suspected they were stolen goods? A They were too cheap.

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Q For a hundred dollars worth of goods what would you pay?

Objected to.

THE COURT: What did you pay.

MR. BOSTWICK: Well, I withdraw the question.

Q How much did you say was paid for the Gross coats?

A \$55.

Q How many coats were there? A I didn't count them.

Q You saw the coats? A Yes.

Q You know the kind of coats there were?

THE COURT: Ask him: Do you know the kind of coats they were.

Q Do you know the kind of coats they were? A Yes.

Q You examined them before you bought them? A Yes.

Q What is the lowest value of one of those coats?

MR. LEVY: We object, if your Honor please; they have not qualified this witness as an expert.

MR. BOSTWICK: I will do that; wait a moment.

Q Have you bought and sold many pieces of cloth? A Yes.

Q And for how many years have you been doing that?

A Ten or twelve years.

Q Attend auctions? A Yes.

BY THE COURT:

Q In the City and County of New York? A Yes.

BY MR. BOSTWICK:

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Q And you know the value of a garment when you see it, do you not? A Yes.

Q From the knowledge so gained, what would you say is the lowest market value of one of these coats?

MR. LEVY: Objected to on the ground that he is not proven as an expert in this particular garment.

THE COURT: Is he a tailor in cloth?

MR. BOSTWICK: He is expert enough to purchase them and be trusted by the defendant in this case, according to the testimony.

MR. LEVY: I object and except to those remarks.

BY THE COURT:

Q Are you a tailor in cloth?

MR. LEVY: One second, I want to make a statement. I object to the District Attorney's remarks and ask your Honor to withdraw a juror on that account.

THE COURT: Motion denied.

MR. LEVY: I ask that the jury be instructed to disregard it.

THE COURT: Argument of counsel, the jury may or may not regard it at their option, but merely as an argument of counsel not as a piece of testimony. The jurors can hear argument on both sides and they can reject any argument given by the District or the defendant's counsel, as they deem it is proven

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by the testimony given on the stand.

MR. LEVY: I object to it upon the ground that there is no proof showing that this man was an expert in the purchase of this particular kind and style of garment.

THE COURT: I have asked him.

BY THE COURT:

Q Are you a tailor in cloth? A Yes.

Q And how long have you been a tailor in cloth? A Ten or twelve years.

Q And your business is to buy and sell clothing? A I buy and sell.

Q And all that in the County of New York? A Yes, sir.

THE COURT: Objection overruled, exception to the defendant.

BY MR. BOSTWICK:

Q (Question read as follows: From the knowledge so gained, what would you say is the lowest market value of one of these coats?) A If it would have been a whole, an entire suit, as a coat, vest and pants then the market value would have been from twenty-five to thirty dollars, but as the other parts of the suit was missing, the coat alone couldn't be worth more than five or six dollars.

Q Could the thief have gotten that at auction?

Objected to.

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THE COURT: Well, he couldn't tell that. He couldn't tell what they could have gotten at auction.

MR. BOSTWICK: I withdraw the question.

Q What is the lowest price of garments of the same character and without the vest and pants, what would they bring at auction?

Objected to.

THE COURT: Yes, that wouldn't be material.

What the material part of it is, is the reasonable market value in this community. Now he has testified that the reasonable market value of these coats without the vest and trousers will be between five and six dollars.

MR. BOSTWICK: All right, we will leave it there.

Q You said that you bought the last lot of pants for \$270? A Yes.

Q And that Walk gave you \$150 with which to pay part of that bill? A Yes.

Q Did you pay that to the thief?

MR. LEVY: He has already testified to that and covered it, your Honor; we are going backwards.

Q Did you pay that to Brandenburg & Killner?

MR. LEVY: Objected to upon the ground that it has already been asked and answered.

MR. BOSTWICK: That is true.

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THE COURT: Yes, he did; he made the price \$270, \$150 on account, leaving a balance of \$120 which Walk agreed to pay.

Q Did you have a check or money for \$120 from Walk to pay the balance? A Yes. He gave me a check for \$120; I should pay them for the goods.

Q And state what became of that check? A When I went with him in the street my little girl came up to me and told me, "Papa, there is some officers upstairs looking for something." And Mr. Walk was standing nearby and he heard it and he told me, "Give me back the check, the check is not right, you wouldn't be able to cash it," and I returned him the check and he tore it.

Q How soon was that before you were arrested? A Five or six minutes.

Q Have Brandenburg & Killner ever been paid that \$120

Objected to.

THE COURT: If you know.

Q If you know? A I didn't pay them.

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

THE COURT: It doesn't do any harm either one way or the other; he says he don't know anything about it, so it doesn't do any harm or any good.

Q Do you know what became of the pieces of the check?

A It fell on the street, on the ground.

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Q Were you ever paid the commissions on this last pants transaction.

Objected to as immaterial. Objection overruled.

Exception.

A No.

Q Were you paid commissions for the purchase of the Gross goods for which you paid Walk in your house?

THE COURT: Which you say you paid Walk in your house would be better.

A Yes.

Q The day that you were arrested, where did you start from when you left your house-- wait a minute, the day that you were arrested, did you start out from your house? A Yes.

Q Who was with you? A Mr. Walk.

Q Did either of you have a bundle? A Mr. Walk had a bundle.

Q Where was he carrying it? A Under his arm. (Indicating.)

Q Do you know what he had in the bundle? A He told me he has two coats.

Q Did you ever see that bundle open? A When the officer arrested us the bundle was taken to the patrol wagon and Mr. Walk told me to open the bundle.

Q Did you do it? A No.

Q Why not?

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MR. LEVY: I object, if your Honor please, he says he didn't open it; now that settles it.

BY THE COURT:

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

BY MR. BOSTWICK:

Q I show you People's Exhibit 1 and 2 and ask you whether these are two of the coats that you bought from Brandenburg & Killner? Examine them carefully. A They were tuxedos and coats with plain shapes.

Q And are those two of the coats?

THE COURT: If you know.

A Yes.

Q And are those two of the coats that Walk brought in your house from Brandenburg & Killner?

MR. LEVY: Objected to as leading and calling for the conclusion of this witness.

THE COURT: Well, ask him when was the last time he saw those coats?

THE WITNESS: In my room he brought them.

BY THE COURT:

Q Have you ever seen the coats since that day, the day that he bought them in May, 1909, in your rooms? A Not after.

BY MR. BOSTWICK:

Q And who did he buy these coats from?

Objected to.

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THE COURT: He has stated.

MR. BOSTWICK: I think not, your Honor, on the record. It won't hurt to have it in, it is important.

THE COURT: I have it right here, Brandeburg & Killner, he brought up these black coats, Walk was in his house at the time he bought the coats.

MR. BOSTWICK: Yes, but not these two specific coats, that is the reason I ask him whether he bought these two specific coats.

BY THE COURT:

Q Was Walk at your house the day that you were arrested?

A Yes.

Q And when he left your house that day did he have anything in his hands, and if so what? A He came up to me with a bundle.

Q Did he bring that bundle into your house? A Yes, and he went out with the bundle.

Q Did he go out with the same bundle that he brought in? A Yes.

Q Did he have the same bundle in his hands when he was arrested? A Yes.

Q Did the officers take that bundle away from him if you know? A Yes.

Q Now, what did they do with you when they arrested you

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that day, what was the first thing that they did to you?

MR. BOSTWICK: There is lots more before that, your Honor, that I have to ask.

BY MR. BOSTWICK:

Q Did Walk state to you why he bought one of each kind of the coats down? A Yes.

Q Why. A He wanted to match goods to these coats to make vests and pants.

Q After you and Walk came out of your house in which direction did you go?

THE INTERPRETER: What's that?

Q When you and Walk came out of your house the day that you were arrested and he had the bundle in his arm, as you have testified to, in which direction did you go?

Objected to as immaterial.

THE COURT: How is that important?

MR. BOSTWICK: I think the actions of these people when they were notified that the officers were in their steps becomes important, and we have got to corroborate this man--

THE COURT: Hadn't you better begin right there? After your little daughter told you--

MR. BOSTWICK: It also, if your Honor please, will corroborate the testimony of the other witnesses in the case.

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THE COURT: I don't think that is material; it is not a material issue whether they went down Rivington Street and Richards Street, so far as that is concerned.

MR. BOSTWICK: I think the conduct of a defendant just prior to arrest, his conduct previous and conduct after is admissible.

THE COURT: Well, if he knew. He says he and Walk knew that both the officers were in his house. Now after that, the minute they discovered the officers were in the house I would like to know what they did and where they went. I think that is a material part of it.

MR. BOSTWICK: I will adopt your Honor's suggestion.

Q When you left your house, where did you go?

THE COURT: That was the day that Walk had the bundle under his arm?

MR. BOSTWICK: I qualified it, that the day that he was arrested, the day that he left the house with Walk with a bundle under his arm, as he has testified. It was before the arrest.

Q Where did you go? A We went to a saloon to cash the check for \$120 which he had given me. The saloonkeeper wasn't in and we went back.

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Q Where was the saloon? A Ridge, corner of Rivington, Mr. Schlanger.

Q And then they went back-- how far did they go back?

A From Ridge we went to Stanton and from Stanton to Avenue C.

Q And did they go up Avenue C? A Up to Fourth Street.

Q And did you meet anybody on the way?

(The witness answers in Jewish.)

MR. LEVY: I object to what the girl said.

THE COURT: Well, strike out what the girl said.

Q Your girl said something to you.

MR. LEVY: I object to that.

MR. BOSTWICK (To the Interpreter): Tell him not to say what was said.

Q Now, as a result of what your girl told you--

MR. BOSTWICK: Question withdrawn.

Q Was Mr. Walk with you when your daughter arrived?

A Yes.

Q What did your daughter say?

Objected to.

THE COURT: He has already said.

Q And then what did you do? A From Fourth Street we went back to Second Street and he told me to return him the check and I returned him the check and he tore it up.

Q Where did you go after you had your conversation with your daughter? A I went along Stanton street up to Attorney

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Street.

Q And then what happened? A Then I went up to a stand and bought a pack of cigarettes and the officer arrested me.

Q And had he arrested Walk before or did he arrest Walk after? A He held him by the hand.

Q And what was then said to Officer Leibner?

Objected to.

THE COURT: Yes, what was then said to the officer. Max Walk and Max Levy were both present, and the question is what was said by either of them to the officer.

MR. BOSTWICK: The apprehending officer.

MR. LEVY: This witness has not testified to that.

MR. BOSTWICK: We will bring him around to it.

Q Was Max Walk and you both in the custody of Officer Leibner? A Yes. He held me with one hand and the other with the other hand.

Q And did you or Max Walk, either of you, say anything to Officer Leibner? A Mr. Walk said to him that he should go in the saloon and he will make everything O. K.

BY THE COURT:

Q He said that to whom? A To Officer Leibner.

BY MR. BOSTWICK:

Q And what else did he say? A I don't remember.

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BY THE COURT:

Q What language did he speak in, Walk to Levy? A English.

Q Well, do you understand English? A I can understand it but I can't talk.

BY MR. BOSTWICK:

Q What did Officer Leibner say in response? A The officer answered that he will be fresh he will take out a pistol and he will shoot him.

Q What did he say in response to Mr. Walk's invitation to come into the saloon and talk business? A That was the answer.

Q Do you know Samuel Leibner? A Yes.

Q Who is he? A He is a brother to the officer Leibner.

Q Did you have any conversation with Samuel Leibner about these coats?

MR. LEVY: I object to that, if your Honor please. Now, it is very evident, and by his own admission that he understands English; we ought to try and examine him in English. I ask that the last answer be stricken out.

THE COURT: It has not been answered.

THE WITNESS: I can speak a little English too, but right straight I can't speak.

THE COURT: You will have to identify as to

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time--

MR. BOSTWICK: Your Honor, I only asked this witness if he had any conversation with Samuel Leibner. I can't get down to the time until I find out whether one was had.

BY THE COURT:

Q Did you have any conversation with Samuel Leibner?

MR. BOSTWICK: About the Gross coats.

A Yes.

Q Now you can say when was that? A The month of June.

Q June, 1909? A Yes.

BY MR. BOSTWICK:

Q What was that conversation?

Objected to.

THE COURT: I will have to sustain that objection, because any statement made by either Walk or Levy after the arrest, after that day, I should have to exclude because it would not bind.

Q As a result of that conversation did you go and see Mr. Walk? A Yes.

Q Did you repeat that conversation that you had had with Samuel Leibner to Mr. Walk? A Yes.

Q Tell what you told Mr. Walk that Samuel Leibner had told you? A Samuel Leibner told me that I should go to Walk--

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MR. LEVY: Now, I move that all conversation or admissions made to any of the parties after the arrest are inadmissible in evidence, and I object to their admission.

THE COURT: It does not make any difference to whom the admission is made.

Exception.

BY THE COURT:

Q What did you tell Walk was the conversation that you had with Leibner? A I told Walk that Gross is a nice man and he wouldn't make any trouble, it would be better that he should return him the goods. Walk said that he would return the goods if he would give him \$35.

BY MR. BOSTWICK:

Q Did you tell Walk that you had had a conversation with Leibner? A I don't remember.

Q After Walk told you this did you go to see Mr. Leibner? A Yes.

Q And did you have a conversation with Mr. Leibner? A Yes, after.

Q As a result of that conversation did you go back and see Mr. Walk? A Yes.

Q What did you tell Mr. Walk then? A After the conversation I came back to Mr. Walk and I told Walk that I saw Leibner and he saw Gross and Gross wouldn't spend a single cent.

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Q And he wouldn't pay the \$35? A No.

Q Did you tell Walk of any other proposition? A Yes.

Q What was that? A Two days later I saw Walk again and I told him, "You better give up the coats or else you will have trouble," so he answered me, "Bring me a release from Mr. Gross and then I will give up the coats." Then I went to Mr. Gross and told him he should give a release and he said he wouldn't give any release and I told Walk that Gross wouldn't give a release but that he is a nice man and he wouldn't trouble you, "You better give up the ~~gum~~ coats."

Q And what did Walk say? A Walk had the goods in Allen Street, 60 or 62, and then he had the bundles in my house brought down and gave them to me.

MR. LEVY: I ask that that part of the answer be stricken out where he said Walk had the goods in Allen street.

MR. BOSTWICK: Strike it out. Ask him this question:

Q Did you go with Walk to Allen Street? A Yes.

Q What to get? A Coats.

Q And what did they do with the coats? A Took downstairs two bundles of coats and he told me they were the coats of Gross, I should give them to him.

Q And what did you do pursuant to the instructions from Walk? A And I took the two bundles of coats and brought

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them to 117 Broome Street to a society brother of Gross, and I told him that Mr. Walk sent the bundles of coats for Gross and he should send them to Gross.

Q Who was the person that he left the coats with?

A 117 Broome Street, Mr. Kirber.

Q Were these the same coats that Mr. Walk had bought from Brandenburg & Killner in your presence? A Yes.

Objected to.

Q Did you get any receipt from Mr. Kirber? A No.

MR. LEVY: I didn't hear any ruling on my objection, your Honor.

THE COURT: Objection overruled; exception to the defendant.

Q Were they wrapped in bundles or boxes? A Two bundles.

BY THE COURT:

Q Who took the two bundles of coats to 170 Broome Street to Mr. Kirber's?

THE INTERPRETER: He did.

THE COURT: Who did, the witness?

THE INTERPRETER: Yes.

BY MR. BOSTWICK:

Q What is Mr. Kirber's business? A Saloon.

Q And these coats were left in the saloon with Mr. Kirber? A Yes.

BY THE COURT:

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Q Have you ever seen those coats since the time that you left them in Kirber's saloon? A No.

THE COURT: Now, have you those two bundles of coats that were left at 170 Broome street in Kirber's saloon?

MR. BOSTWICK: We will offer evidence of what became of those coats.

THE COURT: All right.

BY MR. BOSTWICK:

Q Besides the Gross coats, if I understand correctly, you testified you bought a number of pants from these same people, Brandenburg & Killner? A Yes.

Q I offer you a bundle, clothing, which I ask to be marked People's Exhibit 3 for Identification, and I ask you whether you can identify that bundle as being some of the property purchased from those same persons?

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

MR. LEVY: I object to that upon the ground that it is not a matter of this suit and not binding on this defendant and is not the subject of the same larceny.

THE COURT: Well, if the defendant was not connected with it it will be stricken out even without your motion, all reference to it will be stricken.

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out and the jury will be instructed to disregard all evidence in regard to it, unless the defendant is connected with it.

Exception.

MR. BOSTWICK (To the Interpreter): Tell him to examine them carefully.

Q I also show you another bundle, which I will ask to have marked People's Exhibit 4 for Identification, and another bundle which I will ask to have marked People's Exhibit 5 for Identification, and I ask you whether those bundles represent the goods that you purchased or any portion of them?

Same objection. Same ruling. Exception.

A This bundle (indicating People's Exhibit 5) I do not know.

Q Does he know about the other two bundles? A Yes.

Q After you bought those two bundles, People's Exhibit 3 and 4, where did you send them if any place?

MR. LEVY: I object to the form of the question, if your Honor please.

BY THE COURT:

Q What did you do with the bundles, if anything? A I sent them to be finished, to 55 Cannon Street, to Mr. Pomerance.

BY MR. BOSTWICK:

Q Did you ever get them back from Mr. Pomerance?

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A The officers took them.

Q The time that you bought these goods from Brandenburg & Killner was after Mr. Walk had told you that the goods that these men were to bring you were stolen goods, was it not?

Objected to as leading.

THE COURT: Yes, that is very leading; you will have to change it.

MR. LEVY: Why don't you go up there, Mr. Bostwick, and testify?

Q When did you buy these goods? A May 27th.

Q Now I repeat my question, with the word when before it.

THE COURT: The question was, was that after Walk had told you that these men were selling stolen goods, that is the question, isn't it?

MR. LEVY: That is objected to.

THE COURT: Yes. Objection overruled.

Exception.

BY THE COURT:

Q Was that after, was the purchase of those goods on May 27th after the day when you say Walk told you that Brandenburg & Killner were selling stolen goods? A Yes.

BY MR. BOSTWICK:

Q As near as you can give me the date what Walk bought the Gross coats in your place?

MR. LEVY: I object to that, if your Honor

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please, on the same ground.

Objection overruled. Exception.

MR. LEVY: It calls for a conclusion of this witness.

A That was in April.

Q Do you know whether it was the first part of April or the last part of April? A The last part of April.

Q The last part of April? A Yes.

Q Now, assuming that you got these coats on say the 28th of April, how near, in the natural course of events, would you ship them to Mr. Walk?

MR. LEVY: Objected to as speculative.

MR. BOSTWICK: All right; withdrawn.

Q Do you remember how near after Walk bought these goods in your place you shipped them to Mr. Walk?

THE COURT: If he did ship them.

Q About.

MR. LEVY: Objected to unless it is proven that this man shipped them.

THE COURT: Ask him first if he did ship these goods.

Q Were these goods shipped to Mr. Walk subsequent to his purchase of them in your place?

MR. LEVY: Objected to as calling for a conclusion of the witness.

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THE COURT: Oh, no.

MR. BOSTWICK: I withdraw it.

Q Did these goods leave your place after their purchase by Mr. Walk in your place?

Objected to as immaterial. Objection overruled. Exception.

A They were shipped to the Adams Express Company.

MR. LEVY: I ask that the answer be stricken out.

THE COURT: Yes.

BY THE COURT:

Q Who shipped them? A My boy.

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

Q By whose direction were they shipped, if anybody's?

A Mr. Walk always treated him so he should ship the goods.

Q Did Walk give any directions as to the shipment of those goods in your presence and hearing?

MR. LEVY: May I ask your Honor to strike out the last answer?

THE COURT: Yes, strike out the last answer.

MR. BOSTWICK: We will consent to the striking out of the answer, but we ask that the question be answered by a responsive answer.

Q (Last question read as follows: Did Walk give any directions as to the shipment of those goods in your presence

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and hearing?)

MR. BOSTWICK: Gross goods.

A Yes.

Q And where did he say?

MR. LEVY: I want the complete answer; he said more than "Yes".

THE COURT: Yes. What did he say? He said something about New Rochelle.

THE INTERPRETER: The goods would be shipped to New Rochelle to his place.

MR. LEVY: No, he didn't say that.

THE INTERPRETER: Well, he did say it.

MR. LEVY: He said he wrote down the address and told him to send the goods to New Rochelle.

THE WITNESS: He gave an order to my boy and my boy should ship the goods to his place.

Q Was that in your presence and hearing? A Yes.

BY MR. BOSTWICK:

Q Did you put on the bundle from whom these goods came?

THE COURT: Well, ask him if he put any mark on the bundle.

Q Was any mark on the bundle? A It was written on the bundle Mr. Walk, New Rochelle, but the shipper's name was not my name; it was always some different name.

Q Where did you get what name to put on the bundle?

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A He told the names, once he told me one name and the second time he told me another name and so on.

Q Give some of the names that Mr. Walk told you to use as the name of the shipper other than your own name? A The last time when the pants were shipped I remember the name of the shipper was given as that of Mr. Levinson.

Q Any other name that you think of that was used?

A Maybe my boy may remember it; I don't remember.

Q Do you remember seeing the Gross coats bundled and ready for shipment to Mr. Walk?

MR. LEVY: I object to that on the ground that it is leading.

THE COURT: Well, you could ask him did you see the Gross coats put in a bundle ready for shipment.

MR. LEVY: That is the same question, I object to it.

Objection overruled. Exception.

THE WITNESS: I saw how my boy sent them away.

Q You did or did not take them to the express office?

THE COURT: Did you or did you not take them to the express office?

THE WITNESS: My boy brought them over.

MR. LEVY: And I ask that the last answer be stricken out. How can he testify what his boy did at a distant place.

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MR. BOSTWICK: We consent that it be stricken out.

Q Did you see the boy go out with the bundle? A He went out of my house and went over to the company to ship them.

MR. LEVY: I ask that it be stricken out as not responsive.

MR. BOSTWICK: We consent that the last part be stricken out.

THE COURT: Strike out the latter part of the answer.

Q How many bundles did he have? A I think two bundles.

BY THE COURT:

Q That was your boy Charles? A Yes.

BY MR. BOSTWICK:

Q How many coats did you deliver at Kirber's saloon?

MR. LEVY: I object to that, if your Honor please, as not binding on this defendant and not within the issues.

Objection overruled. Exception.

A I didn't count them; there were two bundles; I brought them over with us.

Q Could you state about how many coats there were?

MR. LEVY: I object to that as calling for guess-work on the part of the witness.

THE COURT: Well, he says he didn't open them

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at all, but he can tell how large the bundles were by comparison with the bundles now in court, if he can.

BY THE COURT:

Q How large were the bundles that you took into Kirber's saloon and which you say Walk delivered to you from Allen Street? How big were the bundles? A Oh, it could be about ten coats in every bundle.

BY MR. BOSTWICK:

Q And there were two bundles? A Yes.

Q Did Gross say anything to you about the number of coats in the bundle?

Objected to. Question withdrawn.

Objection sustained.

Q Do you remember the date that you were arrested?

A The 28th of May.

Q 1909? A Yes.

Q And what was the last amount that you received from Mr. Walk as commissions for purchase of goods from Brandenburg and Killner? A \$28.

Q Was it all in cash? A \$25 in check and \$3 in cash.

Q And about when did you receive that? A The month of June, after the 20th.

Q Was this after you were arrested? A Yes.

Q And it was for transactions of about what period?

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MR. LEVY: Don't lead the witness, please.

MR. BOSTWICK: I am not, I am asking him what period.

MR. LEVY: I object to that form of the question.

Objection overruled. Exception.

Q (Last question read.) A From May it was.

Q Did you cash that check? A Yes.

Q Was it Mr. Walk's check? A Yes, Walk's check.

Q Do you know what bank it was drawn on? A On the bank in New Rochelle.

Q Do you remember where you had that cashed? A Yes.

MR. LEVY: How is that material, if your Honor please? I object to it.

THE COURT: I don't know whether it is material or not yet.

MR. BOSTWICK: We have got to corroborate this story.

BY THE COURT:

Q Where was it cashed? A By Mr. Eisen, 2 and 4 Lispenard Street.

BY MR. BOSTWICK:

Q When you were in the patrol wagon and taken to the station house, did Walk have any conversation with you about the bundle which he had been carrying under his arm earlier in the day?

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MR. LEVY: I object to this kind of testimony after the arrest.

Objection overruled. Exception.

A Yes.

Q And what did he want you to do?

Objected to.

THE COURT: Well, what did he say.

Q What did he say?

MR. LEVY: I object to it upon the ground that it is already asked and answered.

Objection overruled. Exception.

A He told me to untie the bundle and to throw down the papers.

Q Did you ever sell any of the goods that you got from Brandenburg and Killner? A All the goods were shipped to Mr. Walk.

MR. LEVY: I ask that the answer be stricken out as not responsive.

Motion denied. Exception.

Q Did Mr. Walk have any conversation with you about the Gross cotas any time after you had sent them up to New Rochelle?

MR. LEVY: I object to that, if your Honor please; it has already been asked and answered.

Objection overruled. Exception.

Q When I spoke to him about giving back the coats to

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Gross.

THE COURT: What do you mean, between the time he shipped them and the time of the arrest?

MR. BOSTWICK: I want to know whether Mr. Walk ever acknowledged the receipt of these goods to Mr. Levy.

THE COURT: What difference does that make? According to Mr. Levy's testimony here, he talks repeatedly with regard to turning back in case Gross gave him \$35. That is all in evidence.

Q Did you have any talk with Mr. Walk about the pants-- or wait a minute, were these pants ever shipped to Walk?

A No.

Objected to. Objection overruled. Exception.

THE COURT: State whether he shipped them or not.

THE WITNESS: No.

THE COURT: The jurors want to get off sharp at 4 and I promised to suspend at 4 o'clock.

MR. LEVY: The District Attorney is through now with this witness?

MR. BOSTWICK: I think so.

MR. LEVY: Will I be given an opportunity to cross examine him?

THE COURT: Oh, undoubtedly you will, yes, to your heart's content, but we have to suspend right

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now until Monday morning at 10:30.

MR. LEVY: May I ask the District Attorney to produce Brandenburg and Killner in court on Monday?

THE COURT: Why don't you produce them?

MR. LEVY: Why, because they have them here.

THE COURT: If he has been subpoenaed and he is here and if you want him he can be produced.

MR. LEVY: In the interests of justice I ask you to have the District Attorney order--

THE COURT: Mr. Levy, you mean to say that the District Attorney should subpoena your own witness for you?

MR. LEVY: I think so.

THE COURT: Well, that is a novel proposition.

MR. LEVY: That is being done all the time, your Honor.

THE COURT: It is startling in its novelty; I never heard of that before.

MR. LEVY: All right.

THE COURT: You have your mandatory subpoena issued by the Court to produce here any witness that you want.

MR. LEVY: Then I ask your Honor to make an inquiry as to whether they are here now in the pen, so that your Honor may give them further instructions

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without subpoena-- and furthermore, they are not answerable to a subpoena, they are under arrest, they are in custody in the pen and the only way I can get them is by habeas.

THE COURT: Is that so?

MR. LEVY: My understanding of the law is that a person under arrest cannot be subpoenaed.

THE COURT: Do you want them produced on Monday morning before the People's case is closed or would you like them for your own case?

MR. LEVY: I would like them produced here so we can put them on the stand.

THE COURT: Well, if they are in the City Prison they will be produced just the minute you want them. That is all I can do. If they are up in Harlem or over in Jersey I can't produce them, but if they are in the County of New York you can get a subpoena and serve them and if necessary the whole force of the Sheriff's office will bring them here.

MR. BOSTWICK: I understand that under the law if they are in the Penitentiary they cannot be subpoenaed except with the consent of the District Attorney.

MR. LEVY: I would like to have the District Attorney and I work in unison on this proposition.

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I think he would use them as witnesses as well as I would.

THE COURT: Tell me where they are, we are talking in the dark. Do you know where they are?

MR. LEVY: No, sir; the District Attorney knows where they are.

THE COURT: Very well; the Clerk knows where they are and they will be produced at the very minute you want them without your subpoena.

THE COURT: Gentlemen of the jury, we will suspend until Monday morning at 10:30, and in the meantime you will not discuss the facts in the case among yourselves and above all with anybody else at any time until this matter is closed and submitted to you, and you must not make up your minds as to the guilt or innocence of the defendant.

(Court then adjourned to Monday morning, January 24th, 1910, at 10:30 o'clock.)

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New York, January 24th, 1910.

TRIAL RESUMED.

M A X L E V Y , a witness for the People, resumed the stand:
CROSS EXAMINATION BY MR. LEVY:

Q Mr. Levy, how long have you been dealing at auction,
auction houses? A 10 or 12 years.

Q 10 or 12 years? A Yes, sir.

Q Give me the names of the auction houses with whom you
dealt during that time? A The name?

Q Yes. A Leonard Street auction house.

Q What is that? A Leonard Street auction.

Q What is the name? A Leonard Street auction house,
Townsend & Montant.

Q Did you sell goods there --- did you sell your goods
at auction there or did you buy goods at auction there? A I
sold goods there and sometimes I bought goods there --- no, I
didn't sell --- I didn't buy --- I only sold.

Q Give me the name of another auction house that you
dealt with? A In Delancey Street near Orchard, I don't remem-
ber the name.

Q Did you buy or sell there? A I bought.

Q Give us the next one please? A I only dealt with
those two houses, in one I bought and the other I sold.

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Q Quite sure you didn't buy goods of other auction places?

A Yes, sir.

Q During the 10 or 12 years? A Those two places, only those two places.

Q How long did you deal with the auction house in Delancey Street? A For the two years.

Q For two years? A Yes, sir.

Q You don't remember the name of the concern? A No, sir.

Q Sure of that? (No answer)

Q Is there more than one member of the firm? A What is that?

Q Do you know is there more than one member of the firm that conducted that auction business in Delancey Street? A I don't know.

Q How many times did you buy goods there? A Several times, I don't remember how many times.

Q Have you got their bills for merchandise which you bought of them? A Yes, sir.

Q Where are those bills? A I have them at home.

Q When did you last see those bills? A About eight months ago.

Q Didn't you handle those bills immediately before your arrest? A I have them at home.

Q That is not an answer to the question. Did you handle

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these bills immediately before your arrest? A I had them at home, whether I had them in my hands I don't remember.

Q When did you make the last purchase from that auction house in Delancey Street? A Last summer I think --- not the summer that was but the summer before.

Q When did you last deal with Townsend & Montant? A Also last summer.

Q Do you remember the last transaction that you had, the date of the last transaction which you had with that concern? A No, sir.

Q You also deal in --- buy job lots from small manufacturers, do you not? A These times I didn't buy any.

Q Well, have you been in the habit of doing that? A About five or six years ago I did.

Q You buy merchandise in bulk anywhere, where you get a chance to buy it? A No, sir.

Q You swear positively that you only bought goods at these two concerns during the last 10 or 12 years? A Those two firms I remember, maybe I bought from other firms but I don't remember. One man last year I bought goods also from Welz & Schiff, 29 Lispenard Street.

Q Try to remember the names of the other concerns you bought from recently? A I can't remember any more.

Q Please give us the names of the concerns from whom you

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have bought goods at all recently, in the last year and immediately before your arrest? A I can't remember exactly.

Q Sure of that? A Yes, sir, sure.

Q You have testified here that you were a pedler before your arrest. What goods did you peddle? A I peddled with tailor's trimmings.

Q. Where did you buy those? A I used to go to the shops and buy them from the tailors in the shops.

Q Give us the name of the shops that you used to buy those trimmings of? A There I don't get any bills; I go around in about 20 or 30 shops wherever I buy something and I don't get any bills there.

Q You buy trimming from the trimmers in those shops, do you not? A From the contractors, from the tailors.

Q Give us the names of some of these contractors from whom you bought these tailors trimmings?

THE COURT: At what time?

MR. LEVY: Immediately before his arrest, any time, your Honor.

THE COURT: At any time before his arrest.

THE WITNESS: I don't ask them for their name; I buy sometimes for a dollar, other places for 50 cents, other places for \$2, I don't care for their names and I don't get them.

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Q You went to a great many contractors during the day to buy trimmings, did you not, and that is the reason you can't remember the names, is that it? A I never asked them for names.

Q You are sure of that? A Yes, sir.

Q Give us the addresses of some of the contractors and where their shops are from whom you bought these trimmings before your arrest, immediately before your arrest? A In Attorney Street, in Lewis Street, in Clinton Street, First Street, Fourth Street, Fifth Street, wherever I think to go --- I peddle them.

Q You have been dealing with those contractors for some time, have you not? A Yes, sir.

Q How many years? A About two or three years.

Q Now, whenever you bought trimmings from these contractors did you buy the trimmings or the goods, whatever you bought, directly from the contractor or from some employee? A From the contractor.

Q And you cannot give us the names of a single one? A No, sir.

Q Now, give us the exact date of this conversation which you had with Walk with regard to Brandenburg and Kindler?

A It was in the month of December.

Q Last year? A 1908.

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Q 1908? A Yes, sir.

Q Do you know the date? A No, sir.

Q Where did you have that conversation, in a house? A In my house.

THE COURT: Who is this conversation with?

MR. LEVY: The defendant, your Honor.

BY MR. LEVY:

Q Who was present? A I was there, and my boy was there.

Q You say your boy. You mean Charles Levy, the co-defendant? A Yes, sir; Charles Levy.

Q He is also under arrest, is he not? A Yes, sir.

Q Are you sure of that? A Only the boy was there.

Q Now, after that conversation when did you sell Walk the first goods, the date, I want the exact date? A I don't remember when the two brought in the goods; I sent the goods to him.

Q When was that? A In December.

Q How did you send the goods, by express? A Adams Express Company.

Q Have you got the receipt? A The receipt Mr. Walk took.

Q I am talking about the first receipt? A He took all the receipts.

Q Who did? A Mr. Walk.

Q When did you first meet Brandenburg and Kindler? A Also

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in the month of December.

Q Now, when did you receive the first check from Walk for the goods which you sold to him? A I don't remember the date.

Q When did you receive the first check from Walk for goods which you sold him?

MR. BOSTWICK: I object to that, if your Honor please, on the ground that it has not been shown that any goods were sold by Max Levy to Walk. There is no proof of any sale of goods by Max Levy to Walk.

THE COURT: You cannot characterize it, Mr. Levy; you may ask him when was the first check, what was the first check he received from Max Walk, but you cannot characterize that and say "for goods sold by you to Max Walk", because this man testified that he never sold any goods to Walk but he brought them to Max Walk at Max Walk's request from certain thieves that Max Walk introduced to him. Now that is his statement and therefore you cannot change it or characterize it. At the same time you may not accept that statement of his. You cannot nevertheless change it by your statement but you can ask him "When did you first receive a check from Max Walk".

MR. LEVY: I most respectfully except to the

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remarks of the District Attorney and to your own remarks upon the ground that it is contrary to the evidence of this witness. Now, I understand that this witness directly and specifically testified in that respect as to the facts as I stated them. I will repeat the question to him.

BY MR. LEVY:

Q Have you got a memorandum of the goods which you delivered, the first goods which you delivered to Walk and the date when you received a check for these goods from him?

THE COURT: Don't characterize it as a delivery or a sale.

MR. LEVY: You see the danger I am in, the dangerous position I am in. Here is a witness who understands English thoroughly and making a statement of that kind practically gives him a cue to his answer, or frames his answer for him.

THE COURT: No. I simply state my recollection of what his evidence was up to date. Anyway I am very clear on this point that it is the contention of the People that such is the case. If you characterize the transaction in a way when it certainly has not been characterized in up to date in the testimony --- I will put it that way --- it is subject to objection

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and I have sustained the objection.

MR. LEVY: I take an exception. You see, of course, I understand that it is the contention of the People but the proof thus far taken proves the contrary, and that is the reason I am cross examining the witness on that very point. Now may I have an answer to my last question?

THE COURT: Yes.

Q (Question repeated as follows) Have you got a memorandum of the goods which you delivered, the first goods which you delivered to Walk and the date when you received a check for those goods from him? A No, sir; I did not write it down.

MR. LEVY: May I make a suggestion at this point --- and I trust I don't stretch your Honor's patience too much at this point by making these remarks --- you see I should like to ask your Honor and the District Attorney in making an objection, in the remarks upon that objection to use very few words for the reason that here we have a witness who has pleaded guilty to a crime and there may be some reason for his testifying in a certain way and these remarks may suggest to the witness an answer that perhaps will aid him whenever his case comes up for disposition.

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THE COURT: Well, I certainly will not make any remark that would indicate, in any way what the witness should answer because personally it is a matter of entire indifference which way he answers.

MR. LEVY: I understand that.

THE COURT: But at the same time I cannot refrain from expressing my reasons, on the record, why I make the ruling. It is proper that I should. In other words the jury ought to know the reason why these rulings are made and I shall put them in as few words as I possibly can.

BY MR. LEVY:

Q Now, Mr. Levy, do you know the date of the first transaction when you sold goods to the defendant? A No, sir.

THE COURT: Now, Mr. Levy, I want to say that I took a very careful memorandum of this witness's testimony and he says --- here is his testimony --- he said that these men ---

MR. LEVY: May I interrupt you?

THE COURT: "I want you to buy the goods for me". That is what the witness said.

MR. LEVY: That was his first remark.

THE COURT: That is all I am telling you about. Now he said --- that was the testimony of this wit-

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ness and I happened to make a memorandum of it very carefully at the time. You were in error when you said I was quoting the testimony wrongly.

MR. LEVY: If your Honor please ---

THE COURT: Whether it is right or wrong it is what the witness testified to --- that Walk introduced him to these men and said he wanted this man, this witness, to buy goods for him, Walk, and Walk would supply money, the witness having told Walk that he had no money. If the jury remember it differently we will have it read from the stenographer's notes.

MR. LEVY: I except to your Honor's remark. I believe that your Honor ---

THE COURT: That is the reason for my ruling.

MR. LEVY: Your Honor has only quoted from the first memorandum of this witness's statement. If you will look later on in the case --- if you made a memorandum on the subject --- you will find remarks emanating from the mouth of this witness which would substantiate my conclusion.

BY MR. LEVY:

Q Now, Mr. Levy, what was the second transaction which you had with Walk?

MR. BOSTWICK: One of the jurors suggests that the interpreter stand over here.

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THE COURT: Yes, that would be better.

(The interpreter changes his position)

Q (Question repeated as follows) Now, Mr. Levy, what was the second transaction which you had with Walk? A The boys brought the goods, I bought the goods and I sent them to him.

Q When was the second transaction, the date? A I didn't put it down.

THE INTERPRETER: And then he said in English

"I didn't write it".

BY MR. LEVY:

Q What kind of goods were they? A Different kinds of goods, sometimes ladies waists, sometimes pants and sometimes coats, different goods.

Q Now, do you remember the amount of that transaction, the amount of the check for that transaction, the second transaction? A I don't remember the second time, I don't remember the third time.

Q That applies to all the other transactions equally as well, does it not? A I know that once he bought goods himself from the boys and this amounted to \$55.

Q How many deliveries did you make, how many transactions were there between Walk and yourself between December, 1908 and May, 1909? A Well, 30 or 40 times, I don't remember.

Q You say that Brandenburg and Kindler brought all of

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these goods to your place? A Yes, sir.

Q 40 times? A Yes, sir.

Q Did they bring the goods themselves or did they ship them to you by express? A They brought the goods themselves.

Q Did you always pay Brandenburg and Kindler with checks?

A No, sir, cash. Mr. Walk gave me checks and I paid them cash.

Q Did you ever give Brandenburg and Kindler any of Walk's checks? Yes or no? A No, sir.

Q Now, Levy, each one of these transactions you had --- each one of these purchases which you made from Brandenburg and Kindler you say you shipped the goods to the defendant in New Rochelle? A Yes, sir.

Q Levy, don't shake your head. Say yes or no? A Yes, sir.

Q Now, did you mark the packages with Walk's full name and address? A Yes, sir.

Q Did you pay the express charges? A Yes, sir --- no, I didn't pay the express charges, no, sir.

Q You did not? A No, sir, I did not pay the express.

Q Now, Mr. Levy, you have told this jury that you knew that Brandenburg and Kindler were burglars, is that true? A I didn't listen.

Q (Repeated) A Yes, sir.

Q When did you first find that out? A In the month of

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April.

Q April when, what year? A 1909.

Q That was just about the time when you were arrested on this charge, isn't that so? Let me see the original papers please? A It was before the time when I was arrested.

Q But it was during the transaction for which you were arrested? A I do not understand what you mean.

Q During the last transaction for which he was arrested?
A I don't understand.

Q You know the date on which you were arrested, do you not? A Yes, sir.

Q What date was it? A May 28th.

Q 1909? A Yes, sir.

Q Now, did you know on that day that Brandenburg and Kindler were burglars?

THE COURT: What date was this?

MR. LEVY: May 28th, 1909. May I ask your Honor for the original papers?

THE COURT: Yes. What is the date of the arrest?

MR. LEVY: May 28th.

Q On that day did you know that Brandenburg and Kindler were burglars? A Yes, sir.

Q Answer yes or no. A Yes, sir.

THE INTERPRETER: He started to say something

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that Walk said ---

BY THE COURT:

Q Does he mean the day of his arrest? A Yes, sir.

BY MR. LEVY:

Q Now, Mr. Levy, when you were arrested what court were you taken to? A Essex Street court.

Q You pleaded not guilty there, did you not? A I didn't say anything.

MR. LEVY: May I ask the District Attorney to give me the records of the Magistrate's court?

THE COURT: Are there any? There is no complaint here. It appears from my papers to have been taken directly to the Grand Jury.

BY MR. LEVY:

Q You had a hearing before a Magistrate, did you not?

A Yes, sir; I had a lawyer and whatever the lawyer said there I don't know.

Q You signed a paper in that court, did you not, at the clerk's desk? A I signed a paper.

Q Don't you know that you stated in that paper that you were not guilty before you signed it? A No, sir; the lawyer told me to sign and I signed.

Q Do you remember what date that was on when you signed that paper in the Magistrate's court? A No, sir.

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Q Was that on May 28th., 1909 or was it on the next day?

A I was arrested on Saturday --- no, on Friday I was arrested and Sunday I think I was before the Magistrate.

Q Now, how long were you in the Tombs Prison after that date? A In the Tombs I was over five months, I have been in over five months.

Q Isn't it true you were bailed out in the Magistrate's court and that you ran away, skipped your bail? A No, sir; I felt weak, I was in the country and then I came back.

Q Didn't you go to Canada? (No answer)

Q Didn't they bring you back from Canada? A Never.

Q Was your bail forfeited in that case? A I returned and presented myself, cleared myself off ---

Q After you came back? A Yes, sir. When I came back I presented myself at the court here.

Q You surrendered yourself in this court? A Yes, sir.

Q Then you have been in jail ever since? A Yes, sir.

Q Is that true? A Yes, sir.

Q Now, when did you come back and surrender yourself?

A August 17th.

Q In this court? A Yes, sir.

Q Didn't you plead not guilty in Part I of this court, yes or no? A No, sir; not guilty.

Q You pleaded not guilty? A Yes, sir.

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Q At that time you had a lawyer also, didn't you? A Yes, sir.

Q What was his name? A Clark Jordan.

Q Clark Jordan? A Yes, sir.

Q Did you have any other lawyer? A Afterwards I took Aaron J. Levy, employed Aaron J. Levy.

Q You had many consultations with Clark Jordan and Aaron J. Levy in the Tombs, did you not? A No, sir.

Q Sure of that? A Yes, sir.

Q Well, how many consultations did you have with Clark Jordan and Aaron J. Levy, Esquire in the Tombs? A Well, Clark Jordan --- I only saw at that time when I surrendered myself.

Q How many times were you brought from the Tombs to the pen attached to the courtroom of this court house in your case,-- was it 14 or 15 times? A I think about 14 or 15 times.

Q Do you know for what purpose you were brought over?
A For the trial.

Q Did you ask District Attorney Jerome or any of his assistants to take a plea of any kind from you in your case at the time you were brought over? A No, sir.

Q You waited until the new District Attorney went into office before you took a plea of guilty? A I didn't wait exactly; they did not let me into the court before.

Q You were in the pen attached to the court room a good

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many times, were you not? A Certainly.

Q You had consultations with --- you were in the pen of the courtroom 14 or 15 times --- tell the Court and jury how many times you had consultations with your lawyers, their clerks and assistants?

THE COURT: Mr. Levy, suppose it was 100 or suppose it was 150. Now just whatever you think you would like to have put it on the record because it is wholly immaterial. Now that will save time. Let us say he had 100 interviews, just whatever you state, because it is wholly immaterial whether he had two or a hundred.

MR. LEVY: On cross examination, if your Honor please, I have a right to attack this man's credibility and to show --- to enable the jury to see whether they believe or disbelieve the testimony of this witness.

THE COURT: Yes, but you cannot, Mr. Levy, you cannot go outside of the issues in the case and take up the time of the Court on immaterial matters that do not bear even indirectly upon the issues. Your line of interrogation must bear even collaterally upon the issues if not directly. Now anything which bears even collaterally upon the issues you may inter-

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rogate him upon.

MR. LEVY: I beg your Honor's pardon, but I consider the testimony on this very point not collateral but direct, on the very subject ---

THE COURT: Then state upon the record what you expect to prove by this line of evidence which is, on its face, wholly immaterial.

MR. LEVY: Will your Honor permit me to refrain from making the statement in the presence of this witness?

THE COURT: I certainly will, but at the same time I make the suggestion merely in the interest of time.

MR. LEVY: I will tell your Honor so that the witness may not hear me.

THE COURT: Very well. Come around here and tell me.

(Mr. Levy confers with the Court.)

Q (Question repeated as follows) You were in the pen of the court room 14 or 15 times --- tell the Court and jury how many times you had consultations with your lawyers, their clerks and assistants at those times? A Once.

Q How many times did you consult with Aaron J. Levy?

A Once.

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Q Aaron J. Levy became your lawyer on October 22nd, 1909, did he not? A I don't remember exactly.

MR. LEVY: Will the District Attorney concede that for the record? There it is right there.

MR. BOSTWICK : Yes.

MR. LEVY: That is conceded.

BY MR. LEVY:

Q Now, you pleaded guilty on January 17th, 1910, did you not? A Yes, sir.

Q You pleaded guilty to the crime of receiving stolen property? A Yes, sir.

Q Was that the first day you knew you were guilty, was it? A What is that?

Q Was that the first time you found out and knew that you were guilty? A What do you mean the first time?

Q On that day you decided that you were guilty, did you not, and you took that plea? A They called me into court and I said I was guilty.

Q That was the day on which you discovered that you were guilty, is that so? A Last week, last Monday.

MR. BOSTWICK: Put that question to him please, Mr. Interpreter.

(The interpreter repeats the question)

A I don't understand that question.

Q That was the day on which you found out that you were

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guilty? A My lawyer ---

Q (Question repeated) A My lawyer told me to say I was guilty and I said that I was guilty.

Q Did your lawyer say you were guilty or did you say you were guilty? A I said I was guilty.

Q You did just what your lawyer told you to do, did you?
A He told me to say that I was guilty and I said that I was guilty.

Q You said you were guilty although you were innocent, is that true? A I had to say I was guilty because I bought the goods.

Q Now, Mr. Levy, do you want this jury to understand that you pleaded guilty because your lawyer told you to plead guilty or because you were actually guilty or that you were innocent at that time?

THE COURT: He says both. He says he knew he was guilty and his lawyer told him to plead guilty. You are asking this man to form a mental conclusion as to the legal effect of his act which he has already told you about. Now, you are asking him really when his mental operation arrived at the conclusion that those acts which he committed under the law of this state, amounted to the crime of which he was charged. You are asking him when his mental operation came to that conclusion. Now I think, probably, that if you

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asked him did he know or not that he had committed the particular act that he has testified to. Now as to their legal effect ---

MR. LEVY: Very well, I will follow your Honor's suggestion.

THE COURT: As to whether it was a crime or not he may or may not have come to a conclusion on the day he pleaded guilty or on the very day that he committed them. I don't know and it is very difficult to get at the operation of a man's mind.

MR. LEVY: Do you expect me to get from this witness a confession that he knew from the very moment he started these dealings that it was a crime, or wouldn't that be calling for some conclusion?

THE COURT: He has already testified that he had relations with these thieves after he knew or after he had been told they were thieves; that he bought these goods. I think that that is an argument for the jury. Whether this man says that his mental operation was such that he knew he was guilty of a crime why I don't think it of importance.

MR. LEVY: Does your Honor refuse?

THE COURT: No. Objection overruled. I think we are wasting time. He said he was told and knew

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these men were thieves and yet he dealt with them.
What more do you want?

MR. LEVY: Your Honor could not preclude me
from finding out the facts of the matter from his
standpoint.

THE COURT: You could not bring it out any bet-
ter than that. If you want it in any other way ask
it. You are asking him to give you conclusions. Now
you know that that is, strictly speaking, not evidence.
Never mind what his conclusion was. You go ahead and
ask him.

MR. LEVY: I^{am} asking him for his knowledge.

THE COURT: The logic of the facts are there.
He tells you he knew they were thieves and still con-
tinued to deal with them.

MR. LEVY: I am not asking for a conclusion but
for a fact.

THE COURT: When did he conclude that these
facts which he knew at that time were facts amounting
to a crime?

MR. LEVY: That is a matter of absolute know-
ledge on the part of any witness.

THE COURT: Never mind what his mental opera-
tions were, whether his mind works logically or not,
never mind whether he follows out the ideas of meta-

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physics and psychology in his mind --- what were the facts? He told you what they were according to his views. Ask him anything in regard to them. You may, if you want to, test the logical operation of this man's mind.

BY MR. LEVY:

Q At the time you bought the first goods from Brandenburg and Kindler did you know of your own knowledge that those goods were stolen property?

THE COURT: The first time.

A No, sir.

Q When you bought the goods the next time after that, the second time, did you know the goods were stolen property? A Not either.

Q When you bought the goods the third time from them did you know the goods were stolen? A No, sir.

Q When you bought the goods the fourth time and the fifth and sixth times after that did you know the goods were stolen?

A It seemed to me suspicious because the goods were very cheap.

Q When was that? A The sixth time; it was the sixth or seventh, I don't remember.

Q Now, do you remember the exact items of merchandise, the prices of which created this suspicion? A No, sir, I don't remember.

Q You never told your suspicions to Walk, did you, the de-

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fendant? A No, sir.

Q Now, let us come down to the day of your arrest on May 28th, 1909? Did you buy any goods from Brandenburg and Kindler on that day? A Yes, sir.

Q Did you know on that day that they were stolen? A Yes, sir.

Q Did you know on that day from whom they were stolen? A No, sir.

Q Did Brandenburg and Kindler tell you that they were stolen? A No, sir; they did not tell me.

THE COURT: You had better put that to him in Yiddish.

THE INTERPRETER: Did Brandenburg and Kindler tell you that the goods were stolen?

THE WITNESS: No, sir; they did not tell me.

BY MR. LEVY:

Q Now, do you remember what particular goods you bought from Brandenburg and Kindler on that day, May 28th, 1909?

THE COURT: The day you were arrested.

A Yes, sir.

BY MR. LEVY:

Q Well, give us the list? A Pants, four hundred

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pair of pants.

Q What is that? A About four hundred pair of pants and skirts two or three.

Q Do you know from whom those goods were stolen?

A No, sir.

Q By Brandenburg and Kindler?

A No, sir.

THE INTERPRETER: He said yes and then he said "Mr. Walk made three bundles and they were about to be shipped".

THE COURT: Repeat the question to him.

Q (Question repeated as follows) Did you sell those goods to Walk on that day?

A No, sir.

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MR. LEVY: What was the balance of the answer?

(The stenographer repeats the balance of the answer as follows: "Mr. Walk made three bundles and they were about to be shipped").

Q You mean to say that Mr. Walk packed up three bundles or your son packed them up? A I never sold goods to Walk, he only paid me a commission I should buy for him.

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

THE COURT: Motion denied.

Exception.

MR. LEVY: I ask that the question be repeated.

(Question repeated as follows: You mean to say that Mr. Walk packed up the three bundles or your son packed them up)?

A Mr. Walk did.

Q Where did he pack them? A In papers.

Q Where? A In my house.

Q Who was present? A I was there, my boy was there.

Q Charlie? A Yes, sir.

Q Your boy Charlie? A Yes, sir.

Q Who packed the packages, Mr. Walk? A I do not remember.

Q What is that? A I don't remember.

Q You don't remember whether Walk addressed the packages to himself or whether your son or you did that? A Perhaps my

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boy did.

Q Well, don't you know whether you did it or not?

A I didn't write; I don't remember who wrote.

Q The packages had Mr. Walk's right name and address in New Rochelle, did they not? A Yes, sir.

Q Now in your previous transactions with Mr. Walk, did you ever give him any bundles? A No, sir.

Q You didn't give him any bundle on this occasion?
A No, sir.

MR. BOSTWICK: What occasion?

MR. LEVY: The last occasion.

THE WITNESS: No, sir.

BY THE COURT:

Q Did you ever authorize anybody else to give Walk a bundle of the goods on any occasion? A (No answer).

BY MRQ LEVY:

Q Did you ever authorize your son Charles or anybody else to give Walk a bundle of goods? A No, sir; I never gave him any bundles --

BY THE COURT:

Q Did you ever authorize anybody else to make out bills?
A No, sir.

BY MR. LEVY:

Q Now you received those goods from Brandenburg and

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Kindler on that day, did you not? A The day I was arrested.

Q Are you sure of that? A Yes, sir.

Q You bought those goods from Brandenburg and Kindler on that day that you were arrested? A Yes, sir.

Q When did you see Walk on that day? A Between 11 and 12 o'clock.

Q Between what hours did you say? A Between 11 and 12.

Q Did you see him on that day earlier than 11 o'clock?

A Two days before that he was at my house.

Q Now on the 28th of May did you see him before 11 o'clock? A No, sir.

Q You are sure of that? A Yes, sir, sir.

Q When did you receive the goods from Brandenburg and Kindler on that day? A The goods were received from Brandenburg and Kindler on the 27th, yes, sir.

Q Are you sure of that? A Yes, sir.

Q What hour on the 27th did you get the goods?

A About five or six o'clock P. M.

Q When you received the goods, when you bought the goods from Brandenburg --

THE COURT: You see he is constantly telling you he didn't buy them, that he got them on commission for Walk but every time you ask him you put that word in his mouth "When did you buy them".

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MR. LEVY: This witness just says he bought the goods.

THE COURT: You have put it in his mouth. Every time he has answered your question he has told you that and that is why I told you it cannot be answered yes or no. He has reiterated that he never bought goods except for this defendant.

MR. LEVY: I take an exception to your remark.

THE COURT: He bought them on commission and all the money came from the defendant. Now you have constantly done that and I have called your attention to it every time, and you ask him the question over again. He has repeatedly told you he never bought them for himself. You put that in his mouth. Now if you said "When did you receive the goods" why that would be a fair question. Then you can ask him in every conceivable way and show, if you can, that the receipt and purchase was a purchase by him-- but purchase is a conclusion, and you are asking him that as a conclusion or his mental operation.

MR. LEVY: I am repeating the witness' own words. I take an exception to your Honor's remarks and state that I am merely repeating the witness' words. I have a right to do that on cross examination anyway

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even if the witness did not say so.

BY MR. LEVY:

Q What did you do with the goods immediately upon their receipt? A I bought them for \$270.

MR. LEVY: Now, remember that, your Honor.

THE COURT: Yes.

Q \$270? A Yes, sir; I wrote a postal card to Mr. Walk telling him I had to see him particularly.

Q Did he come to see you on the 28th? A Yes, sir.

Q Did he give you a check that day? A He gave me a hundred and fifty dollars cash.

Q Was that for any goods he bought from you? A For those pants which I bought on the 27th, which I received on the 27th.

Q Did you receive a check from Walk for those goods?

A Yes, sir.

Q What was the amount of the check? A \$120.

Q Was that check made to your order? A I think, yes.

Q Don't you remember? A No, sir.

Q Did you ever sign your name on the back of the check?

A No, sir.

Q You are sure you received a check for \$120 on that day?

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A Yes, sir.

Q From the defendant? A Yes, sir.

Q Did you have a bank account on that day? A No, sir.

Q What did you do with that check? A I gave it back to Mr. Walk.

Q You gave it back to Mr. Walk? A Yes, sir.

Q Didn't you go somewhere to have it cashed? A I went to cash the check.

Q Where did you go to cash it? A The man was not in so I returned it.

Q What day did you return it to the defendant Walk?

A Also on the 28th.

Q Did you ever see that check after that? A No, sir.

Q You are sure of that? A Yes, sir.

BY THE COURT:

Q What became of the check, if you know?

A Mr. Walk took the check and tore it up.

BY MR. LEVY:

Q When did you receive the balance of \$120 that was due on those goods? A I didn't get it.

Q You are sure of that? A Yes, sir.

Q Now, come back to your first transaction with Mr. Walk and tell us the date when you received the check for your first commissions? A I can't remember the date.

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Q Do you remember the second transaction? A No, sir; I don't remember.

Q Do you remember the largest commission you ever earned or received? A I don't remember.

Q Did you receive it in cash from Walk? A Sometimes in cash and sometimes in checks.

Q How long did you receive a five per cent commission according to your statement? A About two and a half months.

Q How many times did you receive a commission of five per cent during that time? A I do not remember exactly.

Q You don't remember that either? A No, sir.

Q When was the last time you ever received a commission from the defendant Walk? A In June.

Q In what year? A This year.

Q Now this year? A 1909.

Q How much commission did you receive in June?

A Check for \$25.

Q What is that? A A check for \$25.

Q Do you know upon what transaction that was?

A We had figured up there was coming to me \$25 and he gave it to me.

Q You don't know whether it was for any particular transaction according to your idea?

THE COURT: Or whether it was for a general

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balance?

THE WITNESS: Ladies' waists, I think it was.

BY MR. LEVY:

Q How many ladies' waists? A I can't tell; I do not remember.

Q How much commission were you receiving at that time in the month of June, 1909, what rate of commission?

A Ten per cent.

Q 10 per cent? A Yes, sir.

Q Do you remember any preceding transaction upon which you received any commission at the rate of 10 per cent?

A No, sir.

Q Now, whenever you received your alleged commissions in checks, what did you do with the checks? A I cashed them.

Q Did Walk cash them for you? A I cashed them myself.

Q Where did you cash them? A In different places.

Q Can't you give us the name of some place you cashed the checks? A Yes, sir; cashed the checks in 194 Rivington Street.

Q What is the name of the place? A Mr. Hirschlanger.

Q Who else? A And the other checks sometimes I cashed in Nos. 2 & 4 Lispenard Street.

Q Whose place is that in Lispenard Street? A Eisan & Company.

Q What business did you have with those people Eisan &

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Company? A No business at all.

Q What? A No business.

Q Just went in and asked them to cash a check for you?

A Yes, sir.

Q Did you know them long? A Eison & Company?

Q Yes. A About 25 years.

Q What business are they in? A Countrymen of mine.

Q What business are they in? A Cloak and suit manufacturers.

Q Did you ever deal with them? A No, sir.

THE COURT: Did you ever deal with them --
put that to him Yiddish.

THE INTERPRETER: He answers no, sir.

BY MR. LEVY:

Q The cashed the checks for you? A Yes, sir.

Q Did you endorse your name on the back of them each time? A Yes, sir.

Q You can write your name, can't you? A Yes, sir.

Q Do you read English? A No, sir.

Q Do you read checks? A Yes, sir.

Q Now, Mr. Levy, how many times were you in the pen, the prison pens attached to the courtrooms of this court building when your son Charles was in the same pen with you -- was he there each time you came over? A I don't understand.

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Q (Question repeated)? A (No answer).

(Question withdrawn).

Q Was your son Charles always with you in the pens whenever you came over from the Tombs to this court?

A No, sir; not every time.

Q He was with you a number of times? A Sometimes yes and sometimes no.

Q You were in his company in the Tombs exercising very frequently, were you not?

THE COURT: In the Tombs' yard you mean?

MR. LEVY: In the Tombs' proper, they sometimes exercise inside.

THE WITNESS: No, sir; he is on the sixth floor and I am on the eighth floor.

BY MR. LEVY:

Q Did you ever march with him for exercise in the yard outside? A No, sir, never.

Q Now, you say that your son Charles was present at your home whenever these transactions were had with Walk?

MR. BOSTWICK: I object to that, because it assumes a state of fact contrary to the record up to date.

THE COURT: The trouble of it is that he does not put it in the form of a question but rather in the form of a statement.

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MR. BOSTWICK: It is a statement and it is a statement which is inconsistent with the record.

THE COURT: You can put it this way:
Do you testify that everytime Walk came to your house your son Charlie was there?

MR. LEVY: Does not your Honor recall that this witness testified that his son Charles was present when these goods were packed up and his son Charles addressed them on the outside to this defendant?

THE COURT: Just repeat the question.

(Question repeated as follows: Now, you say that your son Charles was present at your home whenever these transactions were had with Walk)?

THE COURT: Your statement there was very much more embracive than that of the witness.

MR. LEVY: I have a right to do that.

THE COURT: You have a right to make a statement of any kind. You may ask him any relevant question but you cannot state, for the record, that this man has testified thus and so. You cannot do that.
You cannot spread upon the record that this man testified thus and so. You can ask him if he had testified and let him put upon the record if he

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so testified. But that is not a question at all. You have made a direct statement of fact and that is the trouble about it. You had better put it in the form of a question.

MR. LEVY: I am making a statement of facts borne out by the testimony.

THE COURT: There may be a great distance of opinion on that subject. If counsel on one side or the other could fill the record with statements what is the good of having any witnesses? You may put that in the form of a question but not in the form of a direct statement on the part of counsel.

BY MR. LEVY:

Q Have you stated here that your son Charles was present and took part in those conversations which ensued during the time that Walk was there either purchasing or paying for the goods?

THE COURT: Do you mean every one of the interviews -- do you state that while Walk was there at your house negotiating for these goods your son was there?

MR. BOSTWICK: I object to the form of Mr. Levy's question, unless he states it so that the witness can understand it.

BY MR. LEVY:

Q During every time Walk called at your house concerning

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the negotiations for goods of any kind was your son Charles always present? A I didn't observe that.

MR. LEVY: What else did he say?

THE INTERPRETER: I didn't observe ^{exactly} whether he was there or whether he wasn't there.

BY MR. LEVY:

Q Give us the occasions when you remember he was there, if at all? A In the first time when Mr. Walk came to me in the month of December I know for sure that he was there.

Q Who was there? A Charlie.

Q What year? A December, 1908, and the last time --

Q What was said there upon that occasion in Charlie's hearing and presence? A Mr. Walk told me that he had a party of whom he could buy goods cheap, but that party won't trouble himself to send me goods to New Rochelle, therefore he wants me to buy the goods for him and he would pay me five per cent and I should ship the goods to him at New Rochelle.

Q How many transactions did you say you had with Walk?

A Do you mean to ask me how many times I bought goods for him?

Q Yes, if you put it that way? A About 30 or 40 times, I don't remember exactly.

Q How many times was your son Charles present?

MR. BOSTWICK: Present at what?

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MR. LEVY: In his rooms on these occasions
in the presence of this defendant?

THE WITNESS: I didn't count.

Q Well, he was there nearly every time, was he not?

A I didn't notice exactly whether he was there every time or not.

Q Will you swear that he was not present always?

A I didn't notice. How can I swear.

Q But he was present on a large number of those occasions, was he not? A Certainly he was.

Q You don't write English, do you? A No, sir.

Q Charlie did the marking, didn't he? A Yes, sir.

Q How old is Charlie? A 18.

Q How old? A 18 years.

Q When did you say you first found out -- when did you say you first suspected that these goods that you were buying were stolen property? A It was the sixth or seventh time.

Q And that was sometime in April, 1909, wasn't it?

A No, sir, before that.

Q Didn't you testify that the first time you had suspicion was in April, 1909? A No, sir.

Q When was it? A It was the sixth or seventh time I bought the goods I had some suspicion.
BY THE COURT:

Q When did you know certainly they were stolen?
A That was in April, Mr. Walk told me that the goods were stolen.

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Q That is almost a year ago, isn't that so? A The month of April; he told me that in the month of April.

Q Now, did you ever buy stolen goods before that?

A Shall I tell you that?

Q Are you afraid to tell it to me? A Yes.

Q Why are you afraid?

MR. BOSTWICK: May I suggest that the witness ought to be advised that he is not compelled to incriminate himself?

MR. LEVY: I guess not, and I think it is my privilege to ask him this question.

THE COURT: I think it is your privilege to ask the question and it is the privilege of the Court to advise him as to the law.

THE COURT: The witness does not need to answer any question which would incriminate him or admit that he is guilty of any other crime except the one he has pleaded guilty here to.

MR. LEVY: May I suggest that that will apply also to this defendant?

THE COURT: That would apply to the defendant exactly. You may ask him if he was ever convicted of a crime. But in declining to answer he must state that he does so because it would tend to incriminate him, his answer might

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tend to incriminate him.

BY MR. LEVY:

Q Now, isn't it a fact, Levy, that you were a receiver of the goods where your son -- the receiver of stolen goods where your son is now in prison serving time for that crime-- weren't you the receiver in that case, your two sons I mean, stolen from the Adams Express Company? A (No answer).

MR. LEVY: He says "That he wants witnesses".

THE COURT: His answer didn't amount to anything.

MR. LEVY: He said, "Have I got any witnesses." He asks me if I have any witnesses.

BY MR. LEVY:

Q Now, Levy, isn't it a fact --

THE COURT: Let him give an answer to that question. Did he answer that?

Q (Question repeated as follows): Isn't it a fact, Levy, that you were a receiver of goods where your son -- a receiver of stolen goods where your son is now in prison serving time for that crime, weren't you the receiver in that case, two sons I mean, stolen from the Adams Express Company? A I didn't know.

BY MR. LEVY:

Q Do you mean to swear you were not the receiver in those cases? A Yes, sir.

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Q What are the names of those two sons? A Jacob and Wolf.

Q Then you wish to say that you were not the receiver in those two cases? A Sure not.

Q But your sons were guilty in those cases? A Yes, sir.

BY THE COURT:

Q Were your sons convicted, Jacob and Wolf? A Yes, sir; Elmira.

BY MR. LEVY:

Q Now, Levy, do you know whether your son Charles, who is now in prison in this case, or in one of these cases knew that these goods were stolen?

THE COURT: If you know?

MR. BOSTWICK: What goods.

MR. LEVY: These goods, in this case.

A This I don't know.

Q Did you ever talk to him about it? A No, sir.

Q Sure of that? A Yes, sir.

Q Did you ever discuss this case with your son, Charles in jail? A I cannot come together with him; he is on a different floor.

Q Do you remember the day when I called in the court prison pen to consult with this defendant, or to consult with another defendant in an arson case when you and your son Charlie

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were in the same pen -- do you remember that day when you asked me to call your lawyer Aaron J. Levy there? A Yes, sir.

Q Weren't you there with your son Charles? A In the pen.

Q I am talking about the pen? A I thought you were talking about the prison.

Q I am talking about this pen? A In the pen we are together.

Q How many times were you in that pen with your son Charles? A Five or six times.

Q Isn't it a fact you were there every time this case was called on the calendar of this court? A Yes, sir.

Q Isn't it a fact this case was called about 15 times as appears on the original record here of the calendar of this court? A Yes, sir.

Q Do you mean to tell this Court and jury you never talked to Charles about the facts of this case or the testimony that you were going to give in this case? A I will swear 10 times not only once .

Q You will swear more than 10 times, won't you?
A If I swear two I can swear 10 times two.

Q Your son Charles is innocent and you are guilty, is that so? A Yes, he is innocent.

Q Did you say that your lawyer had told you to plead guilty in this case?

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MR. BOSTWICK: I object to that question, if your Honor please.

THE COURT: He said that about six times. You know we want to get along with the testimony.

MR. LEVY: I am in as great a hurry as the Court is

Q Did your lawyer advise you to plead guilty?

THE COURT: Now, just stop that. We have had that over and over again. This is the seventh time.

MR. LEVY: I want to find out the name of the lawyer

THE COURT: Never mind. It doesn't make any difference whether he did or not. It has nothing to do with this case. He said he is guilty and has told that to us six or seven times.

Q Did you have any conversation with that lawyer who advised you with regard to the clemency that might be extended to you? A No, sir.

MR. BOSTWICK: I object to that.

THE COURT: It does not make any difference what conversation he had. You can ask him if the District Attorney has promised him any immunity or if his lawyer told him the District Attorney promised him any immunity.

MR. LEVY: I am laying the foundation for that.

THE COURT: Just get right down to it.

MR. BOSTWICK: I don't think you can bring out that

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professional communication if there was one between a lawyer and himself.

THE COURT: He could waive it but still that has nothing to do with the case.

BY THE COURT:

Q Did the District Attorney or any member of the District Attorney's staff promise the witness, promise you, that if you would plead guilty in this case and give your testimony in this case --

MR. LEVY: Against this defendant?

Q (Continuing) -- give any testimony in any way that any immunity would be granted to you or that your sentence would be lessened thereby. Now put that to him?

A No, sir, nobody did tell me that.

Q Did your lawyer tell you, or any of your lawyers tell you at any time that if you would plead guilty and give your testimony in this case that your sentence would be lessened or that you would receive any immunity of any nature whatever?

A The lawyer told me that I had to plead guilty because the goods were found in my possession.

BY MR. LEVY:

Q And that lawyer was Aaron J. Levy? A Yes, sir.

Q They did not advise you at all that it was for your benefit to plead guilty and testify against this defendant?

A No, sir.

Q There was no reason in the world which actuated you

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in pleading guilty and testifying against this defendant here except that you wanted to tell the truth, is that so?

A I have nothing against him. The reason is I shall not get into greater trouble.

Q What greater trouble could you get into if you told the truth?

THE COURT: Strike out "If you tell the truth".

Q What greater trouble could you get into? A Everything I say is the truth.

Q What greater trouble do you refer to in your last answer? A I shouldn't get into larger trouble, greater trouble.

Q You say that you pleaded guilty and testify in this way although no promise was made to you, although you don't expect any leniency or clemency when your day of sentence comes?

A I didn't talk to anybody and no one made me any promise.

Q Do you know when your day of sentence is on in this case? A How could I know that?

Q But you haven't been sentenced yet, have you?

A No, sir.

Q But you know that the date of sentence was adjourned indefinitely until after this trial? A No, sir, I don't know.

THE COURT: Now, if there is any member of the jury who would like to ask the witness a question while

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the matter is fresh in their minds he may do so.

Is there anything that bears upon the issues, anything at all that you would like to clear up, anything that is in any juror's mind in regard to the evidence?

BY THE SECOND JUROR:

Q Was your son Charles present there at the time that the agreement was made for these last goods that was purchased in his premises?

THE COURT: That is for the 100 trousers?

SECOND JUROR: Yes, sir.

BY THE COURT:

Q Was your sone Charles present at the time that Walk made the agreement with you in regard to the purchase of the 100 trousers?

MR. BOSTWICK: I don,t think it was 100 pairs of trousers. I think it was three or four hundred pairs.

THE COURT: 400, that is right. Put it as 400.

THE WITNESS: I don,t understand the question.

THE SECOND JUROR: Whether his son was there when the last pants was bought.

MR. BOSTWICK: Was his son there on the 27th of May when he bought the last trousers?

THE COURT: His testimony was that an arrangement was made a day or two before the 28th and then Walk came back on the day of the arrest, namely the 28th,

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THE SECOND JUROR: If I am mistaken I take that back.

THE COURT: He testified that Walk came two or three days before and said, "I expect a large consignment of goods and here is \$150 on account, I want you to buy them for me." He gave me \$150 on account to pay for them.

This was about 5 p.m., and then he came back on the 28th, so this witness testified, and the goods were done up in three parcels in paper. Now, you want to know whether his son was present. He testified his son was present at the time the goods were bundled up in three papers.

THE SECOND JUROR: Yes, sir.

THE COURT: I have a memorandum of that.

MR. LEVY: May I ask the witness one or two more questions?

THE COURT: Yes.

BY MR. LEVY:

Q You have testified in answer to Mr. Bostwick's questions that at the time this alleged conspiracy was entered into you said to this defendant you had no money with which to buy goods and he gave you \$75. Was your son Charlie present then?

THE COURT: That was the very first time?

A He was there, yes, sir.

Q Charlies was there? A Yes, sir.

BY THE COURT:

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Q You received a \$75 check? A No, sir, in cash.

BY MR. LEVY:

Q Charlie took part in the conversation, didn't he?

A He was there but whether he took part in the conversation I don't remember.

Q One more question. Isn't it true that you pleaded guilty and testify now as you do in order to help your son Charles? A No, sir.

Q Charlie has not pleaded guilty, has he? A (No answer.)

Q Has Charlie pleaded guilty, if you know, in his own case? A I don't know.

THE COURT: Now, gentlemen, we will suspend until 2 o'clock. Do not make up your minds as to the guilt or innocence of the defendant and do not discuss the facts in the case among yourselves until the matter is closed.

(Recess.)

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AFTER RECESS.
TRIAL RESUMED.

M A X L E V Y , resumes the stand.

RE DIRECT EXAMINATION BY MR. BOSTWICK:

Q Mr. Levy, how much in all did you receive from Mr. Walk
as commissions between December 1908 and June, 1909?

MR. LEVY: Objected to as having been gone over
on the direct examination.

MR. BOSTWICK: We didn't go over it on direct,
and that is just the point, he has opened the door
for this.

Objection overruled. Exception.

A Between two hundred and fifth and three hundred dollars.

Q And what is the total amount that you paid to Brandenburg
and Kindler between the same time.

MR. LEVY: Objected to as incompetent and im-
material and not binding on this defendant and not
within the issues.

Objection overruled. Exception.

A From three thousand five hundred to four thousand dollars.

Q And you said that the last payment was about June, 1909?

Objected to.

THE COURT: Did you say that the last payment
was about June, 1909?

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MR. LEVY: Objected to upon the ground it is not binding on this defendant unless they prove it was in the presence of this defendant.

THE COURT: It is merely just what you brought out. He is asked if he so testified.

Exception.

A Yes.

Q Did you not testify that at that time you received a check of \$25? A Yes.

Q Did you receive any cash at the same time? A \$3.

MR. LEVY: If your Honor please, that testimony was all gone over on the direct examination.

Objection overruled. Exception.

Q About what date did you receive the check for \$25 and the \$3 in cash? A It was in June, between the 20th and 1st of July.

Q I show you a piece of wrapping paper and ask you whether that is one of the pieces of wrapping paper around the bundle that Mr. Levy has just questioned you about? (Handing paper to witness.)

THE COURT: Do you refer to the bundle of pants?

MR. BOSTWICK: The three bundles that were done up.

A This I did not write, my boy wrote it.

MR. BOSTWICK: I ask that that be marked.

BY THE COURT:

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Q Do you identify that as the wrapping paper that was on one of the bundles of trousers in regard to which you have testified? A No.

Q No? It is not or doesn't he know? What does he testify, that he doesn't know?

THE INTERPRETER: I asked him if he could identify and he said no.

A The paper I don't know, but the writing is that of my boy.

BY MR. BOSTWICK:

Q The handwriting of which son? A Louis Levy.

MR. BOSTWICK: I ask that that be marked for identification.

THE COURT: All right.

(Marked People's Exhibit 6 for Identification.)

THE COURT: Is Louis Levy going to be produced or Charles?

MR. BOSTWICK: It just occurs to my mind, because I was laboring under the impression that it was written by Charles.

Q I show you another piece of wrapping paper and ask whether that piece of wrapping paper was around one of the bundles found in your place when you were arrested? (Handing witness another piece of paper.) A That is my boy's writing.

BY THE COURT:

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Q Which boy? A Louis.

BY MR. BOSTWICK:

Q Now ask him the question over again. (Last question read by the stenographer.) A The paper I can't identify, but the writing I identify.

Q From seeing that handwriting can you state whether these were the coverings of those bundles?

MR. LEVY: I object to it upon the ground that the witness has already stated that he couldn't, and he is cross examining his own witness.

MR. BOSTWICK: He says he cannot identify the paper; now I want to find out what he means by that.

THE COURT: He can say yes or no to that.

Exception.

A The paper I can't tell exactly.

Q Do you remember what kind of paper was around those bundles? A This color, the same color as this.

THE COURT: The officers probably could testify to that.

MR. BOSTWICK: Yes, I think that that is enough. I ask that this paper be marked for identification.

THE COURT: All right.

(The wrapping paper shown to the witness is marked People's Exhibit 7 for Identification.

THE COURT: Would any juror like to ask the

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witness a question?

THE SIXTH JUROR: Was he ever reimbursed for that \$150 that he paid for these goods?

MR. BOSTWICK: He says he got \$150 from the defendant--

THE COURT: My minutes here say "Walk came and said he expected a job lot of goods from some people and he wanted me to buy them for him; he gave me \$150 on account to pay for them. I made the price to the man \$270; I paid them \$150 on account, leaving a balance of \$120 to be paid by Walk. Walk subsequently gave me \$120 and a check, but he destroyed the check after that."

THE SIXTH JUROR: Didn't he get the \$120 again when the check was destroyed?

THE COURT: No, he never got the \$120 again. The goods were taken by the police. Now, if there is any question that the members of the jury would like to clear up while the witness is here we will ask him or have the testimony read, as you may prefer.

RE CROSS EXAMINATION BY MR. LEVY:

Q Since you pleaded guilty, since the day on which you pleaded guilty, have you had any interviews with Mr. Duvivier or Mr. Bostwick in regard to your testimony in this case?

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THE COURT: Either one or the other.

A I didn't see them.

Q Or did you speak to anybody from the District Attorney's office in regard to your testimony or what kind of testimony you were going to give? A No.

MR. BOSTWICK: We will concede that the witness was examined by the District Attorney.

THE COURT: But the question is since he pleaded guilty.

BY THE COURT:

Q Since this witness here pleaded guilty the other day, has he seen either Mr. Bostwick or Mr. Duvivier in regard to his testimony here; has he been interviewed by either one or the other?

MR. BOSTWICK: We will concede that.

THE COURT: He says he has not been. Now ask him that over.

A How could I speak to them; how could I come to them.

Q Now ask him if he did or if they came to him? A No.

Q That is, since he pleaded guilty here in court. I made an affidavit.

Q When was that? When did you make the affidavit?

A About two weeks ago.

THE COURT: That was before he pleaded guilty.

He pleaded guilty last Monday, did he not, January 17?

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MR. BOSTWICK: Last Monday.

Q Now, how long before that was it that you made the affidavit? A Three or four days before that.

Q Well, now, the question is: Have you seen Mr. Bostwick or Mr. Duivier on the subject of your testimony since the day that you made that affidavit? A No.

BY MR. LEVY:

Q Did they send for you three or four days before last Monday or did you send for them? A I sent to them.

Q Who did you see first? A Mr. Bostwick.

Q What did you say to him? A I told him that I have to plead guilty because I received the goods but I didn't receive them in my name, they didn't belong to me.

Q Is that all you said? A That is the main language I said, in substance.

Q What did Mr. Bostwick say to you? A I should tell the truth; that is all.

Q Now, how long were you with Mr. Bostwick at that time? A Perhaps half an hour, perhaps more; I don't remember.

Q Did he tell you at that time that it would go easier with you when you were sentenced if you would do that? A No.

Q Did you ask him that? A I didn't ask him and he didn't tell me.

Q And were you present when your statement or testimony was written out? A I signed it.

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Q Were you present when it was dictated and written up?

A Yes. There was a Jewish man who said everything.

Q Did you read the paper before you signed it? A It was read to me and everything was told me about it.

Q Did you assist in drawing it up? Did you help in dictating it? A I didn't know English. How could I do that?

Q Do you know, after it was drawn up, whether you caused any corrections to be made in that paper? A It was made ready and I was told to sign and I signed and swore to it.

Q Who read the paper to you? A There was a Jewish interpreter.

Q You did that after your lawyer advised you to plead guilty, did you? A No, that was before.

Q Oh, then you made the statement before your lawyer advised you to plead guilty? A Yes.

MR. BOSTWICK: I would like to have it placed upon the record that the affidavit was made in my office on the 19th day of January, 1910.

THE COURT: Two days after the witness had pleaded guilty.

MR. BOSTWICK: That was two days after the witness pleaded guilty.

MR. LEVY: He said it was two or three days before he pleaded guilty.

THE COURT: Is that a material question, whether

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it was before or after.

MR. LEVY: The jury asks if he understands he was reading in the statement. I say they have a right to infer that he may have perjured himself.

THE COURT: If they find that material they can, of course, weigh that any way they wish. I don't see any materiality about it, if it was two or three days after; but if you see any materiality about that or any wilfull false swearing on the part of Levy, why, you can handle the matter accordingly.

MR. LEVY: I except to your--

THE COURT: The counsel in his summing up can argue to the jury wherein he thinks that the discrepancy is material. The material part of it is that he made a confession to the District Attorney, put it in writing. Now, the day that he made it seems to me wholly immaterial, but if you find that is a material feature you can treat it accordingly.

MR. LEVY: It might be taken also in connection with the theory that he might have expected some promise or some consideration on taking that plea.

THE COURT: Well, if it had been taken before that it would be, but afterwards I don't see the materiality.

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J O S E P H K E R B E R , called and sworn as a witness for
the People, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live, Mr. Kerber? A 117 Broome Street.

Q What is your business? A Saloon.

Q And where? A 117 Broome Street.

Q Do you know Max Levy? A I know him only what I see
him from the court.

Q Do you remember Max Levy coming to your place with some
bundles? A Yes.

Q How many bundles did he have? A Two packages.

MR. LEVY: Don't lead the witness, please.

MR. BOSTWICK: I asked him how many. How am I
leading him?

Q What did he tell you when he gave you those bundles?

A I should keep that.

Objected to.

MR. BOSTWICK: Levy left the bundles for Gross
and we are now trying to carry the goods back to
Gross in response to a demand made of Walk.

THE COURT: Very true, but this conversation
which you are trying to bring out was something that
was subsequent to the act for which this defendant
stands charged and on trial, isn't it?

MR. BOSTWICK: Exactly so.

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THE COURT: Well, now, even although the defendant may have been an accomplice or the witness and the defendant were principals, nevertheless, the subject for which they had confederated and the very object had been accomplished, can you introduce in evidence the admission or declarations of one after the act, after the fact?

MR. BOSTWICK: I think that where a man has stolen property, for instance, and you make a demand that the property be returned to the true owner, I think the fact that he gives up the property to the true owner is a relative fact as bearing on the question.

THE COURT: That is quite true, but now Max Levy is the accomplice we will say, of the defendant Max Walk. Now, the proposition as you submit it is that this witness must testify as to what Max Levy, the accomplice, stated some month after the goods were stolen and would the declaration of Max Levy be at all binding on the defendant after the fact, after the goods were taken and entirely disposed of, after the arrest?

MR. BOSTWICK: Let us assume that Max Walk had said, "Here are your goods; I give them back to you". The testimony in the case of Levy is that Max Walk

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sent him with the goods to give them to Gross.

THE COURT: Quite true. Now, anything that he did in pursuance of that you may introduce in evidence. In other words, you can show if you can that if Max Levy actually did deliver the goods, as he said he was instructed to do by the defendant Walk, and he delivered them to this place, he delivered them at his store.

MR. BOSTWICK: Well, I press the question.

Q Max Levy said something to you? A I said take them two packages to Mr. Gross--

MR. LEVY: No, no, please.

MR. BOSTWICK: Strike that out.

A He said something to you, answer that yes or no. A That is all that he said to me.

Q Answer it yes or no.

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

THE COURT: Yes, strike it out; the jury are instructed to disregard it.

MR. LEVY: His previous answer.

Q Did he say something to you, did Max Levy say something to you?

THE COURT: Yes or no.

A He came in to me--

Q No, did he say something to you, yes or no?

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THE COURT: You can say either yes he did or no he did not.

Q Tell us, did he say anything to you? A Sure, he talked to me.

THE COURT: That is an answer to that.

Q Did he leave the bundles with you? A Yes.

Q Now, what did you do with those bundles?

Objected to.

A I gave them to Mr. Gross.

THE COURT: Objection overruled. Exception to the defendant.

Q Now, what did you do with those bundles?

Objected to. Objection overruled. Exception.

A I gave them to Mr. Gross, the two packages.

MR. LEVY: Will your Honor instruct this witness not to answer until I have had an opportunity to object?

THE COURT: Witness, don't answer until the counsel has had an opportunity to object; allow the Court to rule upon the question before you answer.

MR. LEVY: My objection is upon the ground that it is incompetent, irrelevant and immaterial and not binding on this defendant, not within the issues in this case.

THE COURT: There is not any conversation here;

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he is merely testifying as to what was done, that is all.

Exception.

Q What did you do with the bundles?

Objected to. Objection overruled. Exception.

Q Now you can answer it: What did you do with the bundles?

A I gave them to Mr. Gross.

BY THE COURT:

Q That was Herman Gross? A Yes, the contractor.

BY MR. BOSTWICK:

Q Did you know what was inside of those bundles?

MR. LEVY: Objected to on the same grounds.

A No, I didn't look at that, I didn't find anything what is inside.

Q How soon after the bundles were brought to you did you give them to Mr. Gross?

Same objection. Objection overruled. Exception.

A In the evening he brought the two packages and in the morning Mr. Gross took them.

THE COURT: Would any member of the jury like to ask the witness any questions?

(No answer.)

THE COURT: Has this witness testified that he knew Max Walk?

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MR. BOSTWICK: He did not.

BY THE COURT:

Q Do you know the defendant Max Walk? A No, only from the court what I seen him.

Q Do you know Max Levy? A Yes.

Q That brought the bundles to your place? A Yes, sir.

Q How long had you known Max Levy? A About six months since he had the trouble.

Q Did you know him before that? A No.

CROSS EXAMINATION BY MR. LEVY:

Q Didn't you just testify in answer to Mr. Bostwick's question that you didn't know him at all? A That is what I said.

Q Then why did you say six months just a minute ago.

MR. BOSTWICK: He said he only knew him since this trouble.

MR. LEVY: Now I renew my motion.

THE COURT: And he didn't know him at the time he brought the bundles there.

BY THE COURT:

Q Did you know him at the time he brought the bundles there at your saloon? A No.

Q Had you ever seen him before that? A Before I seen him once, but I didn't talk to him, he didn't talk to me, he

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didn't know me.

Q That is, you didn't know him? A No; maybe he knows me.

Q Did you know Mr. Gross? A Yes.

Q How long had you known Herman Gross before the different bundles were brought to your place? A A long time. My family knows him better.

MR. LEVY: I ask your Honor to strike out the evidence of this witness with regard to the delivery of these bundles to him.

Motion denied. Exception.

A A R O N L E N E R , called and sworn as a witness for the

People, testified as follows: (Through the Jewish Interpreter)

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 465 Sackman Street.

BY THE COURT:

Q Sackman or Sackett? A Sackman.

Q Where is that, Brooklyn? A Yes, Brooklyn.

Q Spell his name?

THE INTERPRETER: L-e-n-e-r.

Q What is his first name? A Aaron.

BY MR. BOSTWICK:

Q What is your business? A Pants contractor.

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Q Where do you have your place of business? A 93 Stone Street, Brooklyn.

Q Do you remember the 26th of May last? A Yes.

Q Did you have property in your place at that time?

MR. LEVY: I object, if your Honor please, as incompetent, irrelevant and immaterial, and not binding on this defendant and not within the issues.

THE COURT: Well, we don't know yet. Objection overruled. Exception to the defendant.

A Yes.

Q Did you have any property belonging to a man named Munitz?

A Yes.

Q What is Munitz's first name? A Solomon.

Q And for what purpose did you have those pants?

THE COURT: This property.

Q This property. I beg your pardon.

Objected to. Objection overruled. Exception.

A To make them.

Q What was the nature of the property?

THE INTERPRETER: He says various colors.

A Pants.

Q When did you last see those pants in your place? A I saw them up to the last time but they were stolen.

THE COURT: Strike that out. That was the 26th of May in the morning.

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Q About what time?

BY THE COURT:

Q What hour was the last time you saw them? A About 3 o'clock in the afternoon.

Q Well, tell what you did. What did you do on the afternoon of May 26th, 1909? A It was a Hebrew holiday.

Q Yes. What did you do just before you left? A I was in the shop.

MR. LEVY: Now, if your Honor please, I must object at this time unless that refers to the subject matter of this indictment, I think it is objectionable.

THE COURT: Well, we have already ruled on that. Motion denied. Exception to the defendant. I will give you an exception on this line all along.

Q State what you did at or about 3 p. m. on May 26th, just before you left your shop, what did you do? A It was a Hebrew holiday. I was sitting there and watching the shop and 3 o'clock I went for my dinner.

Q Well, what did you do with the shop when you went for your dinner? A I locked it.

Q Locked what door? A The front door I locked.

Q What sort of a lock did it have on it? A A round patent lock. I have the lock yet.

Q Well, now, then, what did you do? A I went to dinner.

Q How long did you stay for dinner? A About an hour.

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Q Then what did you do? A Then I went to New York and the watchman came at 5 o'clock.

Q Where did he go? He said he went back? A To New York.

MR. LEVY: I object to that and I move that it be stricken out.

Q Now when is the next time that you went back to your shop?

MR. LEVY: Exception.

A I went to New York and my wife went to the shop.

MR. LEVY: No, I object to that, if your Honor please, what she did.

THE COURT: Yes.

Q When was the next time that you went back to the shop?

A It was about 6 o'clock when I came back; that is, quarter after 6, about that time.

Q Yes. He went back to the shop. A I came to the house. (The witness speaks in Hebrew.)

MR. LEVY: I object to what the workman told him.

THE WITNESS: A workman of mine ran up to me and told me something.

Q Then when did you get to the shop?

Objected to.

Q When did you get back to the shop? A About half past six; between half past 6 and 7 o'clock.

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Q What did you find when you got to the shop? A The pants were stolen.

MR. LEVY: I object to that as a conclusion.

THE COURT: Yes, strike out "the pants were stolen."

Q What did you find when you got back to the shop? A I came back to the shop and I found pants finished, from the finishers, not yet pressed; that was prepared, when I left at 3 o'clock, on shelves, it was laid out when I--

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

THE WITNESS (Continuing): When I came to the shop I found that these pants were stolen.

MR. LEVY: I ask that this be stricken out as a conclusion.

THE COURT: Strike it out.

Q When you got back to the shop, did you find the same things when you left at 3 p. m.? A No, I didn't find it any more; they were stolen.

THE COURT: Strike out "they were stolen."

Q Who was there when you got back at 6:30? Who was there at your shop when you got back at 6 or 7 p. m.? A The lack was found there on the floor nearby and the door was fastened with nails. My witness who is here, he recognized the thief and he fastened the door with nails.

BY MR. BOSTWICK:

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Q Who is that witness? A Ruben Cohen; he is here.

BY THE COURT:

Q Well, what was the condition of the door when you got there between 6:30 and 7? A The hooks with which the lock fastens, they were broken out, the lock could not be broken.

Q The staples? A The staples.

Q The staples were pulled out? A And the door was nailed up.

Q How did you get in? A I tore out the nails.

Q And who was in the shop when you got in there at 7 o'clock? A Nobody . They was pants which were not finished, and the man was afraid he could come in and take more and so they nailed up the door.

MR. LEVY: I object to that.

THE COURT: Yes.

Q Did you find the same goods there at 7 p. m. that you left there at 3 p. m.? A Yes; that were not stolen were there, I found them.

MR. LEVY: I ask that that be stricken out, your Honor.

THE COURT: Yes.

Q Were there any goods missing? A Oh, yes, plenty.

Q Well, what goods were missing? A A slate color and dark color and stripes.

BY MR. BOSTWICK:

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Q How many? A One hundred and forty-nine.

BY THE COURT:

Q 149 what? A Pants.

(Mr. Bostwick shows witness bundle of pants.)

THE WITNESS: That is my goods.

Q I show you two pairs of pants and ask you whether you have ever seen them before? A Oh, yes, plenty; I made them myself.

Q Were these in your place on the 26th of May, 1909?

A Sure. These were stolen.

Q And were they there when you went out to dinner?

A Up until 3 o'clock they were there.

MR. LEVY: Of course, this examination with regard to the second larceny is all subject to my objection and exception?

THE COURT: Every bit of it.

BY MR. BOSTWICK:

Q Were they there when you came back from dinner?

A After dinner I went to New York. Before I went to New York and I seen in the shop they were still there; that was 3 o'clock.

Q Now, when you went out and stayed an hour and came back and found the door nailed up, were these pants there then?

THE COURT: He came back between 6:30 and 7.

Q What time did this alleged burglary take place?

A Somewhere between 3 and 6:30.

Q When you came back from New York were these pants in

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your shop? A Oh, no, no, no.

Q When did you next see them after that? A 17 Allen Street, in the Detective Bureau.

Q And did you recognize them then as your pants? A Sure.

Q And in addition to these two pair were there other pants?

A Plenty, yes, there were. 117 pants I took from Mulberry Street Headquarters from Officer McCaldin.

Q You have gotten back 117 pairs of pants? A Yes, 149 were stolen and 119 I found.

Q And were they pants like these? (Indicating) A Yes.

MR. BOSTWICK: I offer these in evidence.

THE COURT: Have they already been identified by some of these other witnesses?

MR. BOSTWICK: No, I think not.

MR. LEVY: Objected to.

THE COURT: You claim that they are part of the 400 pairs that were found on the day of the arrest at Max Levy's place?

MR. BOSTWICK: My understanding is that these were found in Max Levy's place on the day of the arrest.

MR. LEVY: If your Honor please, I object to that statement upon the ground that it is not evidence, it is a statement of counsel.

THE COURT: No, it is not evidence. The jury

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will disregard it unless he connects it. I asked him if he claimed that that is part of the 400 pairs that were found in Max Levy place on the day of the arrest.

Now you can have those marked for identification.

MR. BOSTWICK: I offer these in evidence.

MR. LEVY: Objected to upon the ground that it is incompetent, irrelevant and immaterial and not binding on this defendant and not within the issues and an attempt to prove a second larceny which is not the subject matter of this indictment.

Objection overruled. Exception.

MR. BOSTWICK: I will have this marked for identification.

(Marked People's Exhibit 8 for Identification.)

(No cross examination.)

S O L O M O N M U N I T Z , called and sworn as a witness
for the People, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

- Q Where do you live? A 221 South Third Street, Brooklyn.
Q Where is your place of business? A 15 Walker Street.
Q And what is your business? A Pants manufacturing.
Q How long have you been connected with the business?

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A Three years.

Q The beginning of May did you give out any pants to any contractors? A Yes, sir, I gave out pants to a contractor by the name of Aaron Lener, 390 Stone Avenue.

Q What kind of pants were they? A Men's pants.

Q I show you People's Exhibit 8 for Identification and ask you whether you recognize those pants? (Handing witness bundle of pants.) A Yes, sir, I do recognize them, these are pants they belong to me and were sent to A. Lener's to be made up.

Q How many pair were there? A These were a made pants; every day I sent him pants, every day, but these were made already but not finished, not altogether finished, some not altogether finished, and that were missed I helped him to figure them up, 149 pair were missing altogether.

Q Did you ever get any of those pants back? A Yes, sir, 117 I got back.

BY THE COURT:

Q From whom or where?

MR. LEVY: Objected to, if your Honor please.

Objection overruled. Exception.

A I got it here in Brooklyn. I didn't get it myself but the tailor got it and he was the man who complained; it was done at his place and he got it himself.

CROSS EXAMINATION BY MR. LEVY:

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Q Mr. Munitz, you are a wholesale manufacturer of pants, are you not? A Yes, sir.

Q Have you any records with you to show how many pairs of this particular style of pants were manufactured by you?

A I have the book you know.

Q Do you know how many you made? A I know.

Q Well, how many of those pants did you make? A About four to five hundred a week.

Q Of that kind? A That kind was 154 pair of pants in the lot.

Q You are quite sure of that? A I am sure of that, 154 pair.

Q They were all the same kind? A No, they were all kinds.

Q What were the lot numbers of each of them? A Before I have them I haven't got the lot number, I stamp it at my place.

Q Well, you have some number in your manufacturer's book, haven't you? A I haven't before I get it, I haven't got any lot number.

Q Will you answer me yes or no, please. Have you got a lot number for these goods in your manufacturer's book? A There is a lot number but I haven't got the lot number before I get the goods at my place.

Q Before you get the goods isn't there a lot number when

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you cut them? A No, sir, because they are jobs; they are not regular goods; I can't give them lot numbers before I have them done.

Q Oh, these were job lots? A When I buy the hooks at the top and then I can't have them numbered before I got them in.

Q And these pants are job lots? A The goods were bought in the shop.

Q And the goods were all bought up in job lots? A What do you mean by job?

Q Lots. A I bought the goods up at the auction by jobs and when I seen them on the commission house they haven't got any lot number.

Q So these pants had no lot number at all? A They didn't have any lot number, surely not.

Q Were you the only one that had that kind of goods in this city at that time do you know? A I don't know, but I could look and make--

Q I didn't ask you to make a statement, wait a minute.

A I don't know if somebody else--

Q I didn't ask you anything.

THE COURT: Well, ask him another question then.

Q Now, how many pieces do you know of that kind of material was sold in the City of New York by the mills that manufactured them? A I don't know; I only know what I buy.

Q And you won't swear that there weren't other quantities

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of the same kind of material sold in this market at that time?

A I can't tell things of that kind.

Q And you don't know whether you were the only person in this city that made up this kind of pants at that time? A What somebody else does I knn't know.

BY THE COURT:

Q These trousers that you now hold in your hand, did they have your ticket on them or your tag? A They haven't got any tags.

Q What does that ticket say? A I could only tell by my own mark. I marked it myself.

Q You mean that is your own handwriting? A Yes.

THE COURT: It is a tag with a number that is put there by himself.

THE WITNESS: My own handwriting, yes.

BY MR. BOSTWICK:

Q What are those pants worth a pair? A From two and a half to three dollars.

MR. LEVY: I object to the value.

THE COURT: He can state the fair market value if he knows it.

BY MR. LEVY:

Q When did you put those tags on those pants? A Before I sent it to the tailor.

Q And you marked it then? A When I have it out I pin

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on tags on each pair of pants.

Q You are sure of that? A Sure of that. You could see the place.

RUBEN COHN, called and sworn as a witness, for the People, testified through the Official Jewish Interpreter as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 390 Stone Avenue, Brooklyn.

MR. LEVY: If your Honor please, may I put on the record my motion to strike out the testimony of the last witness upon the same grounds that I imposed at the time the previous witness was examined?

THE COURT: Motion denied. Exception to the defendant.

Q What is your business? A Cleaning and dyeing store.

BY THE COURT:

Q Is he a helper or does he keep the store? A My store is in the front and in the back is the shop of Lener.

BY MR. BOSTWICK:

Q Do you remember the 26th day of May last? A Yes.

Q Where were you in the afternoon of that day? A In the store, in the office.

Q And did you notice anything that day? A Yes.

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Q What attracted your attention? A The express came there between 5 and 6 o'clock and took an empty sack from the wagon and went into the yard and after ten minutes it came back with a full sack. He threw it to the express wagon and he drove away.

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

Motion denied. Exception.

MR. LEVY: Objected to as incompetent, irrelevant and immaterial and not binding on this defendant and not within the issues.

Objection overruled. Exception.

Q At what place was this? A There where I live.

Q What is the number of the place that he refers to?

A 390 Stone Avenue. I have in the front my store and he has the shop in the back.

Q Who has a shop in the back? A Lener.

Q How many did you see with these sacks? A One man.

In the Essex Market jail I recognized him and that Officer McCauley--

MR. LEVY: Objected to and I ask that it be stricken out.

Motion denied. Exception.

Q Who did you recognize him as? A As the thief whom I saw took the sack with pants.

Q What is his name? A Louis Kindler.

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Q Who drove the wagon away? A He threw it into the wagon; as soon as he had thrown it into the wagon then someone drove away. That one I did not see.

BY THE COURT:

Q Oh, was there another driver? A I don't know. It was in front of my door. As soon as the sack was thrown into the wagon the wagon moved away.

BY MR. BOSTWICK:

Q Did the same man drive the wagon who put the sack into the wagon or did a different man drive the wagon? A He also jumped on the wagon but who drove away in the wagon I can't tell. I only saw Louis Kindler and nobody else.

CROSS EXAMINATION BY MR. LEVY:

Q Was that the first time you met that Kindler? A The first time.

Q Never knew him before that? A No.

Q And just caught a fleeting glance of him, did you?

A Yes.

Q And you didn't see him after that until how long? How long after May 26th did you see that man again? A Three days.

BY THE COURT:

Q Did you go up to Lener's shop and examine the door after you saw this man go out with the sack and throw it into the wagon?

A Yes.

Q What was the condition of the door?

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MR. LEVY: I object to that, if your Honor please, as incompetent, irrelevant and immaterial and not binding on this defendant and not within the issues.

Objection overruled. Exception.

Q What was the condition of the door? A The door was open and the lock was torn off and was lying on the floor. I didn't want to touch anything, I wanted to go for a policeman--

MR. LEVY: I ask that what he wanted to do be stricken out.

THE COURT: Yes.

Q What did you do? A The policeman was standing there and he told me I shall nail up the door.

Q And did you nail up the door? A Yes.

Q Well, now, you say the lock was lying on the floor?
A Yes.

Q What sort of a lock was it? A A patent slosch with rings.

THE COURT: Did he say a patent?

MR. LEVY: He says it is a patent snap lock.

THE INTERPRETER: It snaps.

Q Now, did you notice anything about the door, anything unusual about the door? A No, he only plainly tore off the lock and he went in.

Q No, what did you see about the door that was unusual?
A Plainly torn off, the lock, and then he went in.

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Q Well, what evidence was there that the lock was torn off, if any? A The lock was lying on the floor with the rings which were taken out of the wood.

Q Well, staples taken out of the wood, he probably means staples. Now, was anybody in the shop when you got there?

A No, nobody.

Q Had you often been in that shop before? A Yes. He comes to me and I come to him.

Q Was there anything peculiar about the appearance of the shop after you looked in the door? A All the goods were thrown together.

Q Where? A Over the tables, on the floor.

Q And did you find goods lying around on the floor?

A Yes, they were thrown together on the floor.

Q Now, how long was this after you saw the man come out of the yard and put the bundle on to the wagon, how many minutes?

A About a quarter of an hour later.

BY THE THIRD JUROR:

Q What time was that?

THE COURT: What time in the afternoon?

A Between 5 and 6 o'clock.

BY MR. LEVY:

Q Mr. Cohn, you weren't in that shop immediately before that man went into that yard, were you?

THE COURT: Ask him: Were you in the shop

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immediately before the man went into the yard?

THE WITNESS: It was a holiday.

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

Q Just give me a yes or no answer. Were you in the shop?

THE INTERPRETER: He says no.

Q Now, Mr. Cohn, you had been in that shop before that day, hadn't you? A The whole week I was up in the shop because I was busy.

Q Well, were you in that shop the week before that?

A Yes.

Q And you have seen the tailors working in that shop?

A Yes.

Q And you have seen work strewn around on the floor and on the tables while they were working, haven't you? A Yes.

Q So it is not an unusual thing to see goods made and unmade laying on the floor, is it? A Yes, all the time. Steady he is working.

MR. BOSTWICK: He evidently don't understand the question.

THE COURT: Well, ask him over again.

THE WITNESS: In all the shops goods are lying on the floor during the time they are working.

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SAMUEL H. KESSLER, called and sworn as a witness for the People, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live, Mr. Kessler? A 880 Blake Avenue, Brooklyn.

Q What is your business? A I am employed by Solomon Munitz as selling goods, managing his business; selling and buying all sorts of things.

Q I show you two pair of pants, marked People's Exhibit 8 for Identification, and ask if you ever saw those before?
A Yes.

Q Where? A I saw them in Munitz's place.

MR. LEVY: Now,,if your Honor please, I make the objection that it is incompetent, irrelevant and immaterial and not binding on this defendant, not within the issues and they are trying to prove again the subject matter of a second or other larceny.

Motion denied. Exception.

Q You say you saw them in the place of Solomon Munitz?
A Yes.

Q Where did you next see them after that? A I saw them afterwards in 17 Allen Street, in the detective office.

Q Were they alone or with other pairs? A These with some others.

Q Of the same kind or different kind? A The same kind.

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Q How many pairs were there in all? A There were 119.

MR. LEVY: I assume, your Honor, that this is all subject to my objection, with the same ruling and exception.

THE COURT: Yes, all throughout the case.

Q What place in Allen Street did you see these pants?

MR. LEVY: Same objection, as immaterial.

A It was on the corner of Canal Street.

MR. LEVY: Wait a minute, Mr. Kessler, until the Judge rules.

Objection overruled. Exception.

Q What kind of a place is this? A Detective office, Detective Bureau.

Q In whose possession were these goods at that time?

A Between the detectives.

Q Do you remember what officer was present when you saw these goods? A Yes.

Same objection, same ruling. Exception.

Q Who was it? A It was Raphael and Scott.

(No cross examination.)

C H A R L E S A . S C O T T , recalled by the People.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Officer, all the goods that were found in Levy's place,

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Max Levy's place, the day of his arrest, were taken where?

A First Branch, Detective Bureau, 17 Allen Street.

MR. LEVY: I object to it unless they prove that they refer to the particular goods which are the subject matter of this larceny.

Objection overruled. Exception.

Q And what was done with those goods? A We kept them in the Detective Bureau until we found some owners to the property.

Q Do you remember a man named Kessler coming to the Allen Street detective office? A No, sir.

MR. BOSTWICK: Is Kessler in court?

THE COURT: Do you know Kessler, Officer Scott?

THE WITNESS: If I saw the man I might know him.

(Samuel H. Kessler stands at the bar.)

THE WITNESS: Yes, sir, I seen him there. (Indicating Kessler.)

Q Do you remember seeing this man? (Pointing to Kessler.)

A Yes, sir.

Q And were the pants that he identified in the Allen Street station the same pants that you had brought from Max Levy's house? A Well, when I came into the Detective Bureau he was in company with Lieutenant Cauley and they were after going through the goods and Lieutenant Cauley says, "This is a man by the name of Kessler who identifies some of the goods."

Q Now, were the goods that he identified the same goods

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that you had brought from Max Levy's place down to the Detective Bureau? A Well, I don't know. There were some in bundles and there were some taken at Cannon Street, but I couldn't tell which articles were he identified, whether they came out of Fourth Street or Cannon Street.

Q But they either came out of Fourth Street or they came out of Cannon Street? A Yes, sir, because all the goods were all spread around and there had been so many people there looking over the goods that I couldn't tell exactly who owned them.

Q Were any of these goods given back to the owners? A I believe Lieutenant Cauley gave Hellerich some with an order from District Attorney Jerome.

Q Do you know whether any goods were given back to Munitz? A I do not, sir.

Q Who would know that if anybody? A Well, the officers in the Property Clerk's office; they keep a memorandum of all goods that comes in and goes out.

MR. BOSTWICK: I now offer these in evidence.

THE COURT: What are they?

MR. BOSTWICK: They are two pairs of pants that were taken from Mr. Pomerance's place or from Levy's house to the station house and they are identified by three witnesses as having been a part of the property that was stolen from the Brooklyn premises of Lener.

THE COURT: Is Officer Cauley here?

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THE WITNESS: He was outside, your Honor.

THE COURT: Is Raphael outside?

THE WITNESS: Yes, sir.

THE COURT: Well, bring them in and see if they can identify these goods.

O T T O R A P H A E L , recalled by the People, testified as follows:

THE COURT: I want him to see if he can identify any of this property.

MR. BOSTWICK: I know; my impression was that this witness don't know anything about it.

BY MR. BOSTWICK:

Q Do you know what property was taken from either Max Levy's or Pomerance's house to the station house upon the day that Max Levy was arrested? A Well, I took a quantity of trousers from 55 Cannon Street from Pomerance's place. Now the goods that were taken from Levy, I was not there at that time.

Q What property was taken from Pomerance's place? A They were trousers.

Q Did you see any of those trousers subsequently identified by anybody? A I was not present when the owners identified them.

Q Do you know whether the so-called Munitz trousers

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came from the Cannon Street place or from Levy's place? A I do not.

BY THE COURT:

Q What became of the 83 pairs of trousers that were obtained from Cannon Street-- were there 83 pairs? A I guess there were more than that, your Honor.

Q Well, what became of those? A Why, I put them in a patrol wagon and brought them over to the detective office at 17 Allen Street.

Q Now, what became of them after that, do you know? A We sent them over to the Property Clerk.

Q At Police Headquarters? A Yes, sir.

Q Well, can you testify of your own knowledge what became of it after that? A No, sir.

THE COURT: Who was the officer, Mr. Bostwick, who testified here that he went into Levy's place and found the 400 pairs of trousers?

MR. BOSTWICK: Officer Scott.

THE COURT: Well, that is the man we want.

MR. BOSTWICK: We just had him a moment ago and he said that he took those down, he took them in the patrol wagon down to the Allen Street station house and we have traced them from there here and we have shown that these were the subject of a burglary committed in--

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THE COURT: Well, now, let us have Cauley.

A COURT ATTENDANT: The officer is not here.

THE COURT: Well, he will have to come back tomorrow. (To Mr. Bostwick) Did you ask Max Levy if he could identify those trousers?

MR. BOSTWICK: I am just going to call him for that purpose.

M A X L E V Y , recalled by the People, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q I show you People's Exhibit 8 for Identification and ask you if you remember about how many pairs of trousers there were like that? A No.

Q Were there many? A It was a big lot, but how many there were I don't know.

Q Now, the day that you were arrested were they in your place or Pomerance's place?

THE COURT: Those particular trousers.

A These were in my place.

MR. BOSTWICK: I offer the trousers in evidence.

MR. LEVY: Same objection that I made when they were offered for identification.

THE COURT: Yes, the same ruling and exception.

(The trousers are received in evidence and marked

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People's Exhibit 8 in Evidence.)

Q Were these goods purchased from Brandenburg and Kindler?

THE COURT: Yes, he says so, he has gone all over that.

Q Will you state what is meant by the word "Kosher" when used in the way it was used by Mr. Walk to you?

MR. LEVY: I object to that, if your Honor please, as calling for this witness' operation of mind, as to his interpretation of the word. The Interpreter could give you the definition of the word if you want.

MR. BOSTWICK: Question withdrawn.

Q Is the word "Kosher" a Hebrew word? A Yes.

Q What did the word "Kosher" which was used by Mr. Walk to you, mean when translated into English?

Same objection.

THE COURT: Well, he could tell whether he knows the meaning of the Hebrew word Kosher, he could tell if he knows the meaning of it.

A If it relates to edibles it means that you dare not do it, you must not do it, and if it relates to goods it also means that you must not eat it he said.

THE COURT: Well, doesn't it mean just the contrary, if it is Kosher you can do it and if it is not Kosher you can't?

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MR. LEVY: Well, we will put the Interpreter on the stand.

A In the Hebrew language there are two expressions, "Kosher" and "Trafé", and if, referring to edibles, Kosher means what you can do and Trafé means what you can't do, but if it relates to goods Kosher goods means it is all right and Trafé goods means they are stolen.

MR. LEVY: I ask that all the evidence in regard to the word "Trafé" be stricken out.

THE COURT: Yes, strike out all about Trafé.

Q Well, ask him if the words "not Kosher" means what is Trafé.

Objected to.

THE COURT: Ask him what the term "not Kosher" means when applied to goods, if he knows.

THE WITNESS: It means stolen goods.

THE COURT: Well, gentlemen of the jury, I give you the same admonition as before, it will apply.

MR. LEVY: Your Honor, for the convenience of the Court as well as that of the jury, I would like to know now if it is possible for Mr. Bostwick to say how many more witnesses he is going to put on so that I can get ready for my defense if there is going to be any defense.

MR. BOSTWICK: That will depend upon how many

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similar transactions are attempted to be proven in this case. We have the main transaction, which is the Gross goods, we haven't proven one similar transaction, and I shall determine to night just whether we can safely close our case without any more corroborative evidence or cumulative evidence with the hope of bringing the case to an end.

THE COURT: You want to know about producing those burglars.

MR. LEVY: Your Honor, I ask that question because, if your Honor please, to go to the jury we have to prepare and I have got to know just what witnesses I have to have here. There is no use of having witnesses here and have them waiting in the corridor for a couple of days unnecessarily.

MR. BOSTWICK: I think he had better subpoena them for tomorrow afternoon for 2 o'clock.

THE COURT: Well, how many more witnesses have you, Mr. Bostwick?

MR. BOSTWICK: I have only one or two.

THE COURT: All right, subpoena them for two o'clock.

(Court then adjourned to tomorrow, January 25th, 1910, at 10:30 o'clock.)

Last People's Exhibit 8 in Evidence.

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New York, January 25, 1910.

LOUIS EISEN, a witness called on behalf of
the People being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 230 East 4th street.

Q Where is your place of business, Mr. Eisen?

A 204 Lispenard street.

Q Did you have any transaction with -- business transactions with Max Levy? A Yes, sir.

MR. LEVY: I object to that, if your Honor please, as incompetent, immaterial and irrelevant, not binding upon this defendant and not within the issues.

THE COURT: It depends upon the date and the circumstances.

Exception.

Q What was the nature of those transactions?

Same objection; same ruling; exception.

THE COURT: You better get the date approximately.

Q What was the general nature of those transactions?

A Well he cashed by me some checks.

BY THE COURT:

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Q He cashed checks with you? A I cashed the check.

BY MR. BOSTWICK:

Q You cashed checks for him? A Yes, sir.

Q Do you remember who drew any of those checks, who was the maker of those checks? A Yes, sir.

MR. LEVY: Objected to upon the ground that the checks are the best evidence.

THE COURT: Who has the checks?

MR. BOSTWICK: That we are trying to show -- that they are in Max Walk's possession.

THE COURT: He claims that they are Max Walk's checks and of course after the checks are cashed Max Walk would be the natural person to have them, or his bank. Now the People cannot produce them; in the natural order of things they could not nor could they force him to produce them under the law. They cannot force him to produce them. The only way they could do would be to prove it by other evidence if they can.

Objection overruled. Exception.

A Max Walk.

Q Do you remember cashing any check towards the end of May, 1909? A I remember one check, \$25, it was in June.

Q In June? A Yes, sir.

Q Do you know what date in June? A Well about the

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25th I think, or the 24th. I received the check back on the 25th of June.

Q What did you give Max Levy for that check?

A Cash.

Objected to; objection overruled; exception.

NO CROSS-EXAMINATION.

C H A R L E S L E V Y, a witness called on behalf of the people, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q What is your full name? A Charles Levy.

Q Where do you live? A 9 Avenue B.

Q Are you a son of Max Levy? A Yes, sir.

Q How old are you? A 18.

Q Speak so that the last juror can hear you?

A 18.

Q Did you ever take any express packages for your father to any place? A yes, sir.

Q Did you ever take any express packages for anybody addressed to anybody in New Rochelle? A yes, sir.

Q To whom were they addressed in New Rochelle?

A Max Walk, 19 Mechanic street.

MR. LEVY: I object to that unless it refers to the subject matter of this indictment -- it is objection-

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able.

THE COURT: He has got to connect it with the subject matter of this indictment, or one of the larcenies referred to.

MR. LEVY: ^{to} Am I wait until all the witnesses are examined to move to strike out irrelevant evidence?

THE COURT: No, you can make your motion now.

Motion denied.

Exception.

MR. LEVY: With reference to the other witnesses it is also denied?

THE COURT: Yes also with reference to the other witnesses, also denied.

Exception.

BY MR. BOSTWICK:

Q I show you two coats, marked Exhibits 1 and 2, the and ask you whether you remember doing up of coats like that in bundles and sending them to any place?

MR. LEVY: I object to that, if your Honor please, as incompetent, immaterial and irrelevant and especially as to the form of the question. He says, "Coats like that"

MR. BOSTWICK: The People claim that these two coats are the subject matter of the indictment and therefore I hold that that question in that form is proper. I

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think that is corroborative evidence. We don't have to prove that they are the identical coats although we, of course, do better. I think it is relevant testimony as bearing upon the particular man to whom these coats were sent.

THE COURT: You can ask him if on or about a certain date, naming it, that he did up parcels, a certain parcel or parcels and addressed them to Max Walk at his address in New Rochelle and took them to the Express Company.

MR. BOSTWICK: Answer that question.

THE COURT: I have asked the District Attorney for that information as to the date.

MR. BOSTWICK: (Question withdrawn.)

THE WITNESS: I could not talk very good English; I understand very little.

THE COURT: (To the interpreter) Suppose you stand over there. What is the date upon which those coats were done up?

MR. BOSTWICK: The latter part of April.

MR. LEVY: This boy is an American boy and talks English. I think we ought to qualify him and see if he cannot talk English. He is getting along pretty well now in English and I think it is only fair that

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we should hear him in English.

THE WITNESS: I am here 13 months. I am not born here.

MR. BOSTWICK: You see now how nicely he talks.

THE WITNESS: I learned it here, in this place.

MR. LEVY: You see how nicely he was born here.

MR. BOSTWICK: I don't see how nicely he talks but I hear him talk some.

THE COURT: He is the best judge of whether he can speak English or not.

MR. LEVY: Suppose we try him and see how we get along.

MR. BOSTWICK: We have tried him and he asks for an interpreter.

MR. LEVY: We all have understood him so far.

THE COURT: He may have an interpreter if he wants one. He is the best judge of it. I cannot open his mind and see whether he knows English or not.

MR. BOSTWICK: The date is about April 29th or 30th.

MR. LEVY: I object to that question as to form.

Objection overruled. Exception.

Q (Question repeated as follows) You may ask him if on or about a certain date, naming it, that he did up parcels, a certain parcel or parcels and addressed them to

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Max Walk at his address in New Rochelle and took them to the Adams Express Company about April 29th or 30th?

A I did not send them away right away, it took several days because I worked and it took some days.

Q Did you do them up in a bundle? A No, sir.

MR. LEVY: I object to the question as to form.

It is leading. Let him state what he did.

Q Who did do them up in a bundle? A Max Walk.

Q How many bundles were they done up in? A Two bundles.

Q What did you do with those two bundles, if anything?

A I took them away to the Express office.

Q What express office? A Well, I don't remember whether it was 4th street corner of Avenue B or whether corner of Attorney and Houston streets.

Q But was it one of those two places? A Yes, sir.

Q Did the bundles have on from whom the goods were sent?

A There was some kind of a direction, I don't remember what kind of a direction it was.

Q To what address were they sent to Max Walk? A Max Walk, 19 Mechanic street, New Rochelle.

Q By whom were they so addressed? A I don't remember.

BY THE COURT:

Q Did you address any of the bundles yourself?

A Yes, sir., sometimes.

Q Sometimes you addressed them? A Yes, sir.

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Q At other times did you see anybody else address any of those bundles? A Yes, sir, my brother.

Q What is his name? A Louis Levy.

BY MR. BOSTWICK:

Q Where is he? A He lives by us in No. 9 Avenue D.

Q What is that? A He lives in 9 Avenue D.

BY THE COURT:

Q Have you ever seen the defendant Max Walk at your father's place? A Yes, sir.

Q How often have you seen him? A I seen him often there.

Q What is that? A I seen him often there.

Q Do you know what he went there for? A Yes, sir.

Q What did he do when he got there? A Well, he gave him checks or gave him gold, gave him money and gave him checks.

Q He examined the goods? A Examined the goods, he looked at the goods and I sent them away.

Q At whose request did you send them away? A Max Walk.
BY MR. BOSTWICK:

Q Who told you where to send them? A He told me.

Q Who? A Max Walk told me the directions; I didn't know.

Q How did you happen to come to send them to this address such a name in New Rochelle, who gave you that address?

A Mr. Walk.

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Q How many bundles in all have you addressed and sent to that address in New Rochelle? A How many I addressed I cannot remember.

Q About how many bundles did you take to the express office that Max Walk addressed in that way, at his request?

A Between 25 and 40.

Q How many times, how many checks have you ever seen Max Walk give to your father at his place? A I saw the first time that he gave him and afterwards I saw several checks but I did not notice exactly how many checks.

BY THE COURT:

Q Can you give the denomination of any of those checks, about how much money they were drawn for? A The first check was for \$75.

Q Well give the names and amounts, the denomination of some of the other checks, the amount they called for. The first check you say was for \$75? A Yes, sir.

THE COURT: (Addressing the interpreter) Ask him that in his own language.

THE INTERPRETER: I understood him to say \$175, I repeated the question "Did you say 75", and he said 75 -- to make it sure.

THE COURT: Repeat to him again. Did you say 75 or 175?

THE WITNESS: 75.

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BY MR. BOSTWICK:

Q Now when was that, about when was that \$75 check given? A In December, 1908.

Q How do you know that that was the first check that Max Walk gave to your father? A Because I had never seen him before there.

Q You never saw who before there? A Max Walk.
BY THE COURT:

Q Now did you ever see these men Brandenburg and Kindler?

A Yes, sir.

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

Q At your father's house? A Yes, sir.

Q Who was there at the time you saw Brandenburg and Kindler, who was there besides yourself? A My father and mother.

Q Who else? A Sometimes some one else was there.

Q Well who? A Brother and sister.

Q Anybody else? A No, sir.

Q Did you ever see the defendant Max Walk there while Brandenburg and Kindler were there?

Objected to; objection overruled; exception.

A Mr. Walk bought this from these boys.

Q What are these?

MR. LEVY: I object to that and ask that it be stricken out.

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BY THE COURT:

Q What does he mean by these?

MR. LEVY: Objected to. Objection overruled.

Exception.

Q What do you mean by these? A These goods.

MR. BOSTWICK: Referring to Exhibits 1 and 2?

THE COURT: One and two. Are those the tuxedos and the waiters coats that he refers to?

MR. BOSTWICK: Yes, sir.

Q Were you present when those coats, Exhibits 1 and 2 were turned over to Max Walk, the defendant? A What do you mean turned over?

Q Well, handed to Max Walk? A He bought them.

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

Motion denied.

Exception.

Q From whom did he buy them? A From the boys.

Q What names? A Brandenburg and Kindler.

Q Were you present? A No, sir. I came when the boys went out -- when I came in.

MR. LEVY: I ask that this evidence on that subject be stricken out.

BY THE COURT:

Q Were you present at any time when the boys, Brandenburg

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and Kindler were in your father's house at the same time that Max Walk was there?

MR. LEVY: Objected to. May I have a ruling on my previous objection. I renew the motion.

Q Did you have any conversation with Max Walk in regard to the purchase of these goods that you hold in your hand, Exhibits 1 and 2?

MR. LEVY: I object to that. It is not binding upon this defendant.

THE COURT: I mean Max Walk.

Q Did you have any conversation with Max Walk, the defendant, with regard to his purchase of these goods you hold in your hand Exhibit 1 and 2? A No, sir.

Q Did you ever have any conversation with Max Walk in regard to Brandenburg and Kindler? A No, sir.

MR. LEVY: I renew my motion, your Honor.

THE COURT: Gentlemen of the jury all that this witness has said in regard to Max Walk purchasing these goods, these two coats, Exhibits 1 and 2, called here the tuxedo and waiter's coat, will have to be stricken out and you are instructed to disregard all that this witness has said in regard to Max Walk having purchased these two coats, this witness having been talking from hearsay. If he knows anything at all about it it is hearsay and

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must not be regarded by you, that is so far as there is anything in regard to Max Walk purchasing these two coats. His statement that Max Walk purchased them must be eliminated from your minds.

MR. LEVY: And that that must not be regarded by the jury as corroboration of the witness Max Levy on that subject.

THE COURT: There is no testimony by this witness at all in regard to Max Walk purchasing these coats.

BY MR. BOSTWICK:

Q When you saw Brandenburg and Kindler coming out and you went in was Max Walk in the house when you got there?

A Yes, sir.

Q Were these coats which you now hold in your hand, Exhibits 1 and 2, in the premises when you got there?

A Yes, sir; there were more than these.

Q Were they done up in a bundle at that time or not? A No, sir.

Q Were they done up in a bundle in your presence?
A Yes, sir; I don't remember -- I didn't make the bundle; I didn't put them in the bundle.

Q Did you see the bundle marked? A I only seen them by the company --

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CROSS-EXAMINATION BY MR. LEVY:

Q Charlie, what month did you come over to this country in? (No answer).

Q Is that your name, isn't it Charlie? A Yes, sir.

Q That is what you are called? A Yes, sir.

Q Now, Charlie, what month did you come over here?

A If I would have been able to speak English I would have spoken it but I cannot.

Q Didn't you say just now in answer to Mr. Bostwick's question -- I got the exact language of the interpreter -- didn't you just say "I don't remember the amount or number of packages I addressed"; now did you address them in English or in Yiddish or in Hebrew? A In English.

Q You can write English? A No, sir, not English, I can write Polish or German.

Q You understand English but you can't talk it?

A No, sir; I understand a little, I can go a little bit, I can talk a little bit, I couldn't talk with everybody to understand me. I am here only 22 months.

Q Now let us see if we cannot get along in English.

THE COURT: Well if this man says he cannot understand English it isn't fair to him to ask him in English. Nobody knows better than he does.

MR. LEVY: I want to be fair to this young man and we will have him talk in Yiddish.

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THE COURT: I think that is very much better.

BY MR. LEVY:

(Through interpreter Rosenthal)

Q Now, Charles, what month did you come over here?

A Thanksgovong Day, 1908.

Q Do you know what day it was? A The 26th, I think, or the 25th.

Q Either the 25th or 26th, and it was in what month?

A November.

Q Now, how many times were you present when the defendant Walk, bought merchandise from your father. Answer my question, how many times? A I can't tell exactly how many times I was there because I was working, I was.

Q Now, Charlie, how many times were you present when you saw this defendant Walk examining goods that he bought from your father? A I saw it several times but not all the time.

Q Now, your father buys goods at auction, does he not?

A What is that?

Q (Question repeated). A Yes, sir, he used to buy it.

Q He does a large business in auction goods?

A No, sir.

Q How large a business does he do with auction goods?

A I don't know, I don't care very much about his business.

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I am working myself, on my own business.

Q Now, did Mr. Walk tell you to pack up the goods he bought from your father or did your father tell you to pack them up? A Well Walk told me to do that and he also treated me for that.

Q Now did your father ever tell you to pack up goods that Walk bought of him?

MR. BOSTWICK: I object to that "Pack up goods which he had bought from his father". He is trying to characterize the transaction.

MR. LEVY: Now, I insist, your Honor, that it is unfair to this defendant -- I don't think his rights are being properly protected when such statements are allowed to be made in the presence of the young man who evidently understands English.

THE COURT: You are putting in the witness's mouth a statement which you are not entitled to do. I sustain the objection.

Exception.

THE COURT: I have told you, Mr. Levy, repeatedly not to do that. You yourself objected most strenuously when this young man testified that Max Walk bought the two coats. You objected to the words "bought".

MR. LEVY: Because it was a conclusion.

THE COURT: Why isn't it a conclusion now?

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MR. LEVY: Your Honor allowed it on direct and why not on cross-examination.

THE COURT: I have stricken it out in both cases.

MR. LEVY: Pardon me. You did not strike that part out, the question whether he bought goods from his father.

THE COURT: Yes, because I asked him if he was present and heard the transaction and he told me he was not. I immediately granted your motion. Of course, he was characterizing something he did not know anything about, he was not present and did not know. It was merely hearsay. Now, the same rule follows in both cases. This young man cannot characterize a transaction as a purchase when he doesn't know anything about it and it is a conclusion. Unless you can bring out something to show that he heard the conversation and knows the nature of it -- then let the jury judge whether it was a purchase or not.

MR. LEVY: We will go into that.

THE COURT: You can bring out any fact; you cannot bring out conclusions because the jury are to conclude and nobody else. The jury can conclude whether it was a purchase, whether it was done on commission but you cannot put in the mouth of every witness as he appears upon the stand the word "purchase". Suppose

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you call it a delivery. You can ask him if he heard the transaction and if so he may relate it and let the jury decide whether it was a purchase, or a sale on commission.

BY MR. LEVY:

Q Well, were you present at any time during a conversation between your father and this defendant as a result of which conversation goods were packed up and sent to this defendant? A They never spoke very long; they came and took the goods, packed them in bundles and sent them away.

Q Did you see Walk examine any goods there, ^{which} ~~at~~ your father was showing him? A Sometimes he examined.

Q Did you hear your father fix the price? A No, sir.

Q Did you hear anybody fix any price or mention any price? A The boys named the price.

Q I am talking about your father?

THE COURT: He answered the question.

MR. LEVY: I take an exception to your Honor's remark because he did not answer directly and it is not responsive to my question.

THE COURT: (To the stenographer) Repeat the question and answer.

Q (The stenographer complies).

MR. LEVY: I was talking about his father in the

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previous question.

THE COURT: The question was whether he heard anybody fix the price and he answered that directly, that he heard the boys fix the price.

Q Were you present, did you hear it --

A Do you mean when the boys made the price?

Q Yes. A Sometimes I was present, not every time.

Q Did they fix the price with your father, the boys?

A Sometimes.

Q Did they ever fix any-- were you present and heard the conversation-- what did they say? A The boys came in and said "These are the goods and so and so much money they wanted for it".

Q Your father looked at the goods? A yes, sir.

Q And your father said what? A Sometimes he gave them what they wanted and sometimes he took off something.

Q Now after the boys went away did you see Walk come there the next day, or some day after to your father?

A yes, sir.

Q Now what did your father say to Walk and what did Walk say to your father? A What they spoke among themselves I don't know; I wasn't standing there as an interpreter.

THE COURT: Let him state if he heard any conversation, if so, what it was at any time between his father

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and Walk.

THE WITNESS: I heard once when they came to an agreement about commissions, that is all.

THE COURT: Well, I will strike that out "when they came to an agreement about commissions". Let him state what it was and the jury will determine whether it was an agreement about commission or not. Let him state what the conversation was. He cannot characterize it.

THE WITNESS: I heard that Mr. Walk said he had a party who wants to sell goods, and that my father should buy the goods and send it to Walk and he would pay for it and give him 5% commission.

BY THE COURT:

Q When was this and where was it? A In our house.

Q When? A In the month of December, 1908.

Q Who else was present besides your father, Walk and yourself? A I cannot remember.

Q At that time had you seen these young men Brandenburg and Kindler? A No, sir.

MR. LEVY: May I ask that that evidence be stricken out as a conclusion of this witness about any agreement made with Brandenburg and Kindler.

THE COURT: I struck out the word "agreement".

MR. BOSTWICK: The details of which he testified to.

MR. LEVY: I ask that the details testified to

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be stricken out.

Motion denied. Exception.

THE COURT: That part of it where he characterized it and said it was an agreement for commissions the jury are instructed to disregard and they will make up their own minds whether it was an agreement for commission or not. You will draw your own conclusions from the facts.

MR. BOSTWICK: May I be sure that the last statement of the witness is on the record? Is what was said by Walk and Levy in regard to commission still in the record?

THE COURT: Yes, but the witness's conclusion as to what that conversation proved or established is stricken out.

MR. LEVY: I will take an exception.

THE COURT: The jury are to be guided by their own judgment in that.

BY MR. LEVY:

Q Now you are in prison, aren't you, you are a defendant in this case? A yes, sir.

Q And you are charged with the same crime that this defendant is charged with?

MR. BOSTWICK: I object to that. He is not a

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defendant in this action.

THE COURT: Not on this indictment.

BY MR. LEVY:

Q Well on another indictment, aren't you? A Was is that?

Q Answer yes or no, please? A I don't know what I am charged with; I didn't understand what the people were asking me --

THE COURT: Any fact that you want put it in evidence. What is the fact you want? Show him all of the indictment, and the one that you want may be spread on the record. You may tell the jury what it is.

MR. LEVY: I except to these remarks, if your Honor please.

THE COURT: Upon what?

MR. LEVY: With regard to the indictment.

THE COURT: Then don't do it; that's all right.

MR. LEVY: I only want the one indictment in which this boy is a defendant.

THE COURT: Just name it. Anything you want now. The remark will be withdrawn from the jury.

MR. LEVY: I want the indictment in which he is a defendant. I now object to the statement made by Mr. Duvivier in the hearing of this jury.

THE COURT: I do not know what it is.

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MR. DUVIVIER: I withdraw it. I just stated, in an undertone, "Here is another indictment".

THE COURT: You want the indictment of this young man?

MR. LEVY: I have that in my hand. This young man is indicted on a separate indictment. The one I have in my hand is "The People of the State of New York against Max Walk, Max Levy and Charles Levy", this is Charles Levy, is it not?

THE COURT: I assume so.

MR. BOSTWICK: It is.

THE COURT: Is that this indictment?

MR. LEVY: No, sir.

THE COURT: That is not the indictment upon which the defendant is being tried.

MR. LEVY: No, sir, this is No. 73,015 and charges this defendant, Max Levy and Charles Levy with grand larceny in the second degree and criminally receiving stolen goods.

Q Ask him if he is a defendant charged with these crimes. Are you a defendant, or one of the defendants in this case?

THE COURT: No, don't say this case. There is only one defendant in this case.

Q In the case of the People against Walk, Charles Levy and Max Levy? A I don't know what I am charged with, what

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I am accused of, I know I am sitting here.

Q. You know you are in prison on a charge? A I don,t know what the charge is.

Q. You don,t know anything at all about it? A Of what?

Q. About it, you don't know why you are in jail, upon what complaint? A I was called to Mr. Pommeranz's and I was arrested there, between 11 and 12 o'clock in the morning I brought the goods to Mr. Pommeranz and between two and three in the afternoon he sent for me and I was arrested.

BY THE COURT:

Q. Do you know why you were arrested, upon what complaint, what charge was made against you, do you know?

A I know that I was arrested among the others and I didn't do anything outside of that; what the charge was I did not know.

BY MR. LEVY:

Q. Don't you know you were arrested under two indictments and that you are a defendant in two cases?

MR. BOSTWICK: One of the jurymen suggests that the interpretation put upon the language used by the witness is not accurate. I don't want it to go to the jury unless it a fair interpretation. If there is any misunderstanding in regard to the interpretation I would like to have it repeated.

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THE THIRD JUROR: He said he did not steal anything.

THE INTERPRETER: You do not hear well.

THE JUROR: I heard it all.

THE COURT: Let him repeat it.

THE WITNESS: I say now I did not steal anything.

BY MR. LEVY:

Q But you know you have been arrested under two complaints

A No, sir.

Q You don't know that at all? A No, sir.

Q Wasn't Clark Jordan and Aaron J. Levy your lawyers in those two cases? A Aaron J. Levy was my lawyer.

Q Didn't he tell you what you were charged with?

A No, sir, I didn't ask.

Q Didn't your father tell you? A I didn't ask.

Q Didn't your father tell you? A No, sir.

Q Did your lawyer tell you or either of your lawyers?

A Nobody said anything to me.

Q How long have you been in jail? A Five months.

Q You have not heard during all that time what the complaints are against you? A I knew that the charge was receiving stolen goods, that is all.

Q Have you had any conversation in the Tombs at all with your father? A No, sir; I am on the sixth floor and he is on the eighth floor.

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Q Did you ever exercise together over there?

A No, sir.

Q How many times were you brought over to the court room pen whenever this case was called for trial with your father? (No answer.)

Q How many times were you called down? A I don't know exactly.

Q Was it seven times? A I don't know exactly, perhaps more, perhaps less.

Q You know it was a good many times, don't you?

A Yes, sir.

Q You were in the pen here attached to the court room or one of the courtrooms in this building at least seven times with your father? A Yes, sir.

Q Did you have any conversation with your father in these prison pens at any time concerning this case or the other case in which you were a defendant? A No, sir; he didn't talk about these cases.

Q Not a word? A No, sir; nothing.

Q When did you first make a statement to the District Attorney? A I did not make a statement.

Q You didn't make any statement? A No, sir.

Q Did anybody from the District Attorney's office ever speak to you about your going on the stand, with reference

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to what testimony you would give here? A No, sir.

Q Quite sure of that? A Sure I am sure.

Q You are certain, and you will swear the District Attorney put you on the stand in this case without first knowing what you were going to testify to? A No, sir, I was asked where I sent the goods to and I said.

Q Who asked you? A The District Attorney.

Q Which one? A Mr. Bostwick.

Q When did he ask you that? A Two weeks ago.

Q Where? A Up in the office.

Q Did he have you brought to his office? A Yes, sir; I said I wanted to go.

Q Who did you tell that to first? A To the sheriff.

Q What sheriff? A Well I don't know his name, I sent down a letter and I said I wanted to go to the District Attorney and I was taken there.

Q Did you make a statement in writing there? A No, sir; I didn't make any statement; I only said there I sent the goods and that is all.

Q Did the District Attorney ask you to plead guilty?
A No, sir.

Q He did not? A No, sir.

Q Who told you to plead not guilty? A No, sir, he didn't tell me nothing.

Q He didn't tell you anything? A No, sir.

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Q Did your father tell you what to do? A No, sir.

Q Did you know at that time that your father made a statement to the same District Attorney? A No, sir.

Q You didn't know that either? A No, sir; I could not see him.

Q Nobody ever told you -- didn't Mr. Bostwick tell you or anybody in his office, tell you that your father had been there and that he had made a statement and that his statement was to a certain effect and asked you whether you knew anything at all about it? A No, sir; he did not.

Q Do you know whether your lawyer Aaron J. Levy or Clark Jordan knew that you were going to the District Attorney's office to make such a statement? A No, sir; nobody told me and I didn't tell anybody.

Q You went there of your own accord? A Yes, sir.

Q Of your own volition? A Yes, sir; I saw that it lasts very long, takes a lot of time so I wrote a letter that he should see me and and an end should be made of it.

Q Shortly after you wrote the letter to the District Attorney did you talk to your father? A No, sir.

Q You did not? A I couldn't talk to my father.

BY THE COURT:

Q Were you on a different tier in the City prison?

A Yes, sir.

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Q Did you see your father in the City Prison?

A No, sir; when I looked up, high up, I could see him, he is about three floors higher than I am.

BY MR. LEVY:

Q Did you ever send to the District Attorney for permission to meet your father in his office so that you could talk it over with him? A No, sir.

Q When were you in the pen attached to the courtroom with your father the last time? A Whenever we go to court we are together.

Q You were together to-day, were you not? A Yes, sir.

Q You were together yesterday, weren't you? A Yes, sir.

Q You were together on January 20th, weren't you?

A yes, sir.

Q You were together in that pen in January 17th, 13th and January 6th, weren't you? A Yes, sir; several times I was together.

Q When did you send the letter to the District Attorney, what date? A More than two weeks ago.

Q Do you know whether it was before or after January 6th? A I don't remember the date.

Q Do you remember the date? A No, sir; I cannot remember; I didn't write it down.

Q Now, do you remember when you made the statement

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to the District Attorney? A I did not make a statement.

Q What did you do? A I said there and then I sent the goods and that is all.

Q Was the District Attorney writing it down? A I didn't notice that.

Q After you told the District Attorney that did you see your father in the pen? A Yes, sir.

Q Did you talk to him then about what happened in the District Attorney's office? A No, sir.

Q Did you tell him what you said? A No, sir.

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

Q Did he tell you what he had said to the District Attorney? A No, sir.

Q At any time when you spoke to him in the pen?

A No, sir; he didn't speak about the case at all.

Q Did he tell you that he had pleaded or was going to plead guilty? A No, sir.

Q Did he tell you that he had pleaded guilty? A No, sir.

Q Did he tell you that he had made a statement to the District Attorney? A No, sir.

Q Sure of that? A Yes, sir.

Q And that is as true as every other testimony you have made here to day? A Yes, sir; that is right true.

THE COURT: Would any member of the jury like to ask

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