

Q Where? A Either his place of business on Park Avenue or Broadway.

Q I said in Brooklyn? A That is his place of business in Brooklyn. He had a store on Broadway and one on Park Avenue, I don't remember which one.

Q Did you meet him any other place besides his place of business? A When do you mean, before this occasion?

Q No, during this time that you first spoke to him before Columbus Day and at the time this transaction was closed? A Yes, sir, there was a few conversations.

Q Where? A Another time at his place of business and then he came to my office.

Q Any other place besides your office? A Then they took us uptown, if that is what you mean.

Q During the month of October did you speak to him about this matter at any other time at any other place? A Four or five days prior to the time of this transaction taking place.

Q The first time you say was four or five days? A About that, I don't remember exactly.

Q After the telephone call where did you go and meet him? A I think he phoned me in my office and asked me could I --

W What did you say to that -- where did you go and meet him?

A At his place of business.

Q Did you have a talk with him there? A No, there happened to be another man and they showed me the samples.

Q Who was the other man? A Two men, Mr. Mitnick and

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another man.

Q Did Mr. Mitnick show you anything? A They gave it to Barron and Barron showed me and asked me to have it looked in--
Objected to.

THE WITNESS: I do not know who gave it to me.

MR. O'REILLY: I ask to strike it out.

THE COURT: Strike it out.

Q Did you see Mitnick give anything to Barron in your presence? A I cannot remember just which one gave it to him. The two of them were there.

Q Did you see anything pass between those three persons and yourself? A Yes, sir, they passed the samples of gold to Barron and Barron gave it to me to test.

Q What this gold given to you in the presence of Mitnick?
A Yes.

Q I show you People's Exhibit 1 for identification and I ask you if this is one of the pieces given to you? A I could tell much better after I tested it, because the brass looks almost similar.

MR. MANCUSO: Is it conceded that that is one of the gold pieces?

MR. O'REILLY: If you say so, yes.

Q Than that is one of the gold pieces conceded? A Yes, that is a sample, because I have some in my pocket here.

Q These pieces which are broken up together with the other

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with the other People's Exhibit 1 for identification were delivered to you or given to you at Barron's place of business at that time? A That was the first time I met him.

Q And what did you do with it? A I told him it was gold.

Q Did you examine them in Barron's place of business?

A No, in my place of business.

Q What did you do after you received them? A I told him it was gold.

Q Did you make any tests? A Yes.

Q Where did you make it? A In my place of business.

Q Did you do it at the same time, as soon as he delivered it to you or when -- after you received it where did you go?

A After I received it I went to my place of business and tested it.

Q What test did you make? A I rubbed it on a stone and put the acid test on it.

Q Is that the usual method of testing gold? A Yes.

Q After this test, when did you next see Barron and Mitnick? A I think this was about four or five days later they called me up.

Q Who called you up? A Barron.

Q What did you do after this conversation over the telephone?

A I went to Barron's place of business on Park Avenue.

Q What day was that, was it before Columbus Day or after?

A Before.

Q Now many days before? A No, it was on Columbus Day.

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Q Whom did you see at Barron's place of business? A That day I think I saw Mitnick and another man.

Q What conversation did you have there? A That they could not get the merchandise on account of this being a holiday, it is in the vault.

MR. O'REILLY: I object to the conversation unless he says who said it.

BY MR. MANCUSO:

Q Who said it, what did Mr. Mitnick say, if anything?

Objected to as leading.

THE COURT: I will allow the question.

Q Will you tell us what Mitnick said if anything on Columbus Day at Barron's store, you understand it? A Yes, but it was a holiday and the goods were in the vault and they could not get it out.

Q At the time you went there did you bring this piece of gold with you? A No.

Q On Columbus Day? A No.

Q Was anything said about your examination or your test? A Nothing on that day, but simply that they could not get the merchandise.

Q After this conversation in which they said they could not get the gold because it was in the vault, what did you do? A I said listen, I aint going to waste any more of my time. If you want that stuff tested you will have to bring it down to the office.

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Q Whom did you say that to? A To those that were around.

Q Did Mitnick make any reply? A No.

Q Where did you go then? A Being a holiday I think I went down to the office, I am not positively sure of that, though.

Q Did you leave the others in Barron's place? A Yes, I left them all there.

Q Had you received any money from Barron? A Previous to that, yes.

Q How many days before Columbus Day? A I think one or two days.

Q How much money did you receive? A \$1200.

Q In cash? A In cash.

Q Did you receive any notes or papers from him? A Yes, sir, that was later.

Q When? A After the transaction.

Q How many days after the transaction? A I received the note first including his partner's endorsement, I think one or two days after the transaction.

Q Was that after? A After it was found out it was not gold.

Q Did you loan him any money? A At that time?

Q Yes. A Yes, I advanced the other 1200.

Q You received notes for it? A Yes.

Q Have those notes been paid? A No.

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Q How many notes were there? A I first received one large note for the entire amount with his partner's endorsement on it and he came to me and told me they could not meet it and he was up against it, would I take small notes.

MR. O'REILLY: I object to this.

THE COURT: There is an objection made so you cannot prove this conversation.

MR. MANCUSO: I consent to have it stricken out.

BY MR. MANCUSO:

Q After the talk with him did you receive other notes?

A Yes.

Q How many? A He gave me 24 notes.

THE COURT: I struck out the matter objected to by counsel and the jury will disregard it.

Q You say these notes have not been paid as yet? A No.

Q The day following did you see the defendant, the day following Columbus Day? A Yes.

Q Where? A In my office.

Q Before the defendant came to your office had you received any telephone call? A I received a telephone call.

Q From whom? A From Mr. Barron.

Q After the telephone call who came to your office? A Mr. Mitnick and Mr. Barron.

Q What conversation was had in your place then? A They came in the office and they said they could not get the goods

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down here, bring your acid and we will take you to the place and have it tested. I said I don't want to bother with acid, the gold is stamped generally, and he said, this kind of gold you will need acid.

Q Who said that? A Mitnack and he says I will carry the acid.

Q I show you People's Exhibit 2 for identification and I ask you if you have ever seen that bottle before? A Yes, that is the bottle.

Q What did you do with this bottle? A Mr. Mitnick packed it up and took it with him.

Q What was in the bottle? A Muriatic acid.

Q Is that the acid which is used by you in making tests?
A Yes, sir, be jewelers.

Q Did you take any other testing apparatus with you?
A The stone.

Q I show you this stone, is that the one you refer to?
A Yes.

The stone is marked People's Exhibit 4 for identification.

Q To whom did you deliver the stone, who took it? A That was all wrapped together, the stone and the acid.

Q The three of you came out at one time? A Yes.

Q And where did you go? A We took a car and right opposite the Post Office, that is Park Row.

Q And where did you go from there? A If I remember

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right I think we met one more --we rode uptown to 19th or 20th, and took us down to about First Avenue and altogether there was two more, but I don't remember exactly whether we met that one at the Post Office or at 20th street.

Q Did you meet any other person when you alighted from the car at 19th Street? A Yes, sir, that I am sure of.

Q Were you introduced to this other person? A Yes.

Q By whom? A If I remember right by Barron or Mitnick, I cannot exactly remember by whom. I don't even think there was an introduction.

Q Did this person speak to Mitnick, if you say him? A Yes, -- now I remember, he met him at the Post Pffoce, this other person met him at the office.

Q Met whom? A Mitnick.

Q Did he ride uptown with you? A Yes.

Q When you got off at 19th Street, did you meet any other person on the corner? A Yes, they walked us down about two or three blocks and we met another man and they introduced us to this man.

Q Who introduced you to them? A I think it was Mitnick and the other fellow.

Q Did you see Mitnick speak to the other man? A Yes.

Q Then where did you go? A The other man suggested we go in and have a drink.

Q Did you go in a cafe? A Yes.

Q where? A On the corner 19th Street and First Avenue,

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I don't remember exactly.

Q Who went in the cafe for the drink? A Barron, myself, and these other men that we met.

Q Was this defendant there? A Not at the time.

Q Did he come later? A A few minutes later.

Q At the time the defendant was there whereabouts in the cafe were you together with Barron and these other three persons? A They had booths -- we sat down and had a drink in one of those booths.

Q Up to this time who had the bottle with the acid? A Mr. Nitnick.

Q When Nitnick came in while you were sitting there did Nitnick say anything to you? A No.

Q Not a word? A No, not that I can recollect.

Q How long did you remain in the cafe? A About ten minutes.

Q What took place after that? A The man that introduced us -- who took us into the cafe said to Barron you wait here with Nitnick and I will take him upstairs and show him the merchandise.

Q Did you go anywhere with this man? A Right opposite across the street.

Q What kind of a building? A A furnished room house, three or four story wooden building.

Q Before you left the cafe did Nitnick, the defendant return to you the testing stone and the bottle? A They walked to

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the doorway and gave it to me as I went upstairs.

Q Who gave it to you? A I think it was Witnick. I think so. I can't remember -- one of the two, I don't know which one.

Q Before you left your office on that day had you examined the acid that was in the bottle? A Yes.

Q What kind of acid was it? A Muriatic.

Q Examine People's Exhibit 2 for identification and tell us if it was the same quality of liquid? A No -- I think I can tell --

MR. O'REILLY: I object as incompetent, irrelevant and immaterial.

THE COURT: What do you want to show?

MR. MANCUSO: I want to show there was water substituted in the meantime.

THE COURT: You will have to account for the condition of the bottle from the time this witness first saw it until the time it subsequently came into your possession.

BY MR. MANCUSO:

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Q You said ~~from~~ the time you delivered the bottle to Witnick you had acid in the bottle? A Yes.

THE COURT: Understand him first to see if he understands the nature and quality of the acid and what his experience in the handling of it has been.

Q What was the acid in the bottle at the time? A Muriatic.

Q Is that the acid used for testing purposes by jewelers?

A Yes.

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BY THE COURT:

Q Have you used that on many occasions? A I wont say on many. Very seldom have a chance to use it, but we all have it in cases of necessity.

Q do you know the component parts of such acid? A No.

Q How do you know that was the kind? A Because I had it in the place.

Q You took it for granted? A No, we buy that testing acid of the refiners.

The Court admonishes the jury in accordance with section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, January 15, 1918, at 10:30 o'clock.

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Trial Resumed.

J O S E P H R I F K I N, resumes the stand.

DIRECT EXAMINATION (Resumed) BY MR. MANCUSO:

Q You told us yesterday before recess, that at the time that you delivered the bottle to the defendant Mitnick, that the bottle contained muriatic acid, is that right? A Yes/

Q And where had you taken the acid from? A From my office.

Q Did you have it in bottles, demijohns or what? A The same sort of bottle, just as you see it (indicating).

Q You then said you proceeded up to 20th or 19th street? A I just want to correct you about the acid, I started from another jeweller's office.

Q Was that the acid that you had given to the defendant? A Yes.

Q Did you get the bottle from him also? A Bottle and the acid.

Q Then you went up to 19th street and 1st avenue? A Yes, sir, we went to 19th street and 1st avenue.

Q When you got off there from the car where did you go? A We did not get off at First avenue, we got off at 19th street and 3rd avenue and walked down to First avenue.

Q Where did you go then? A Mitnick and the other gentleman and Mr. Barron met another man and they took us into a saloon to have a drink.

Q Was Mitnick in the saloon at the time you were drinking? A He came in later while we were drinking.

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Q When he came in did you have any talk with him?

A No conversation.

Q Who had the bottle with the acid in it all the time?

A Mr. Mitnick.

Q Then did you leave the saloon? A Yes.

Q Where did you go? A Right across the street.

Q Who went there with you? A Mr. Mitnick, Mr. Barron and the other two gentlemen.

Q When you crossed the street, did you go anywhere? A Just upstairs.

Q Who went upstairs? A The other two gentlemen and myself.

Q Where was Mitnick and Barron? A They stood downstairs.

BY THE COURT:

Q Do you know the names of the other persons? A No, I do not.

BY MR. MANCUSO:

Q You said you went upstairs, whereabouts did you go?

A One flight up.

Q What kind of a building or house was it? A It was a three or two story building, furnished room house.

Q Do you know the number of the street? A At that time I got it from Mr. Martin Sheridan -- I don't remember the number -- I think I got it -- he has it in his data.

Q Was it a corner house? A Yes, right on the corner.

Q When you went up one flight whereabouts or what part of the building did you enter? A After I got there?

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Q Yes. A One of the rooms in the main hall.

Q Describe the layout of this room? A There was a bed and a dresser.

Q Was there any light? A Electric light.

Q What time of the day was it? A In the morning I should judge about twelve o'clock at that time, noon time.

Q What about the shades to the window? A It was drawn.

Q Was there any gas light? A No gas light.

Q Electric light? A Electric light.

Q The same as we have in this room here? A They have a cluster of electric lights.

Q When you entered this room did you have a talk with the other two persons? A No conversation.

Q Tell us what happened? A All they said here is the --
Objected to.

Q Did any of the two men say anything to you? A Not to me.

Q Was anything said by those two persons? A They said test the gold.

MR. O'REILLY: I object and move to strike it out.

THE COURT: Strike it out.

BY THE COURT:

Q Yes or no. A Yes/

BY MR. MANCUSO:

Q After this talk or statement by one of the other two men, what did you see them do and what did you do?

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Objected to as incompetent, irrelevant and immaterial, and not binding upon the defendant.

THE COURT: Why not?

MR. O'REILLY: The defendant was not present.

THE COURT: The objection is overruled.

MR. O'REILLY: Exception.

THE COURT: If the District Attorney will show that this defendant was concerned in and connected with these men who were in the room with him, in this act, then whatever these persons did upstairs in the absence of the defendant should be considered by the jury, if he was a party to the transaction. In law when two or more persons enter into any scheme or arrangement or conspiracy, as you know any act or declaration in furtherance of the object of the conspiracy, whether in the presence or absence of the co-spirators is admissible.

MR. O'REILLY: There is no allegation of conspiracy here.

THE COURT: It is not necessary. I refer you to the case of the People vs. McCann, 133 N.Y., and the People vs. Katz, 209 N.Y., and the People vs. Blevin.

MR. O'REILLY: There is no attempt in the proof to show any conspiracy.

THE COURT: The District Attorney is attempting to show it by evidence, but in the indictment it is not alleged.

MR. O'REILLY: There is no attempt by evidence.

MR. MANCUSO: Oh, yes.

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THE COURT: This witness testifies that two other men met this witness and Mitnick and Barron remained downstairs while they went upstairs. I will allow the testimony.

Exception.

MR. MANCUSO: There is further testimony to the effect that the witness was introduced to this person who went to the room with him, by the defendant.

BY MR. MANCUSO:

Q The two persons who went up to the room, will you tell us who they are? A I do not know.

Q Did you meet them that day? A I met one.

Q Where? A At the street car, at the post office.

BY THE COURT:

Q Where? A That is Ann street and Park Row, opposite the Post Office.

BY MR. MANCUSO:

Q Did this defendant speak to the person at the time you came up to 19th street? A Yes, sir, they were together.

BY THE COURT:

Q What did they do? A I do not know. I was not interested. I was not sitting with them but they were speaking.

Q They were speaking to each other? A Yes.

BY MR. MANCUSO:

Q Did this person go up to 19th street with you? A Yes.

Q When you got up to 19th street, did you meet this other

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person? A Yes, the third man.

Q Did he speak to the defendant? A Yes, sir, the third - the three, I guess, were together.

BY MR. O'REILLY:

Q What? I did not hear you. A The three were together.

BY MR. MANCUSO:

Q Where did you meet the second person? A At 19th street and First avenue.

Q The two men who went to the room with you were the same persons you have just told us about? A Yes.

Q One you met at Park Row and the other at 19th street?
A Yes.

Q You said when you went into the room one of the men said something. And then what happened?

BY THE COURT:

Q Do you mean one of the two men who went upstairs met this witness at 19th street? A One downtown and the other at 19th street.

THE COURT: Develop something more about the man who was met by this witness at 19th street.

BY MR. MANCUSO:

Q The person you met at 19th street, did he go into the saloon with you? A Yea.

Q Did you have a drink with him? A Yes.

BY THE COURT:

Q Who were the persons in the saloon? A They all came in

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later.

BY MR. MANCUSO:

Q Who went in first? A First, Barron, myself and the person we met at 19th street.

Q Who came in later? A Mr. Mitnick and the other man.

Q Which other fellow? A I don't know his name.

Q Is that the one you met at Park Row? A Yes.

Q Did you call come out together? A Yes.

Q The five of you? A Yes.

Q When you crossed the street, who went upstairs? A Myself and the two other fellows.

Q Which two other fellows? A The one I met at Park Row and the other at 19th street.

Q Where was Mitnick?

THE COURT: Develop what occurred in the saloon in reference to acts or conversations.

Q Tell us all about what happened in the saloon. A He said we will have a drink.

Q Who said that? A The one we met at 19th street said let us have a drink. We had a drink; and I suppose Mr. Barron said to him --

THE COURT: Not what you suppose -- but if you heard anything.

THE WITNESS: The conversation was about the merchandise. He said the merchandise is across the street.

BY THE COURT:

Q Who said that? A The fellow we met at 19th street.

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Q This defendant was there? A Yes, sir.

Q In the party? A Yes.

Q How far were you away from each other? A All together in a little booth in the saloon.

Q You were all seated about a table? A The three of us were sitting and two others standing.

Q Which three were seated? A Barron and the one we met at 19th street corner.

Q What two were standing? A Mitnick and the one we met at Park Row.

Q You say some one said to go upstairs? A Yes.

Q Who was he? A The one we met at 19th street.

Q And that was said -- A In the presence of everybody.

BY MR. MANCUSO:

Q While you were in the room tell us what happened?

A This fellow we met at 19th street pulled out a bag of gold and laid it down on the bed, then he showed me some diamonds and jewelry.

Q I show you People's Exhibit 3 for identification and I ask you if that was the bag that was laid on the bed? A Yes.

Q Were the contents of the bag spread on the bed? A On the bed.

Q I show you the contents and I ask you if that is the substance which you saw spread out on the bed? A Yes.

MR. MANCUSO: I offer the bag in evidence.

MR. O'REILLY: I object as incompetent, irrelevant

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and not properly proven.

THE COURT: You may claim the witness and question him if you desire, with reference to his capacity for identifying the contents.

BY MR. O'REILLY:

Q How do you identify that as the contents of the bag that you saw or the stuff you saw at this house in 19th street? A How do I identify it?

Q Yes. A I was shown the same bag and the same bag was in my possession up until the time -- until Barron took it away from me.

Q How do you identify the contents of the bag as the same stuff you saw on that occasion? A Just by looking at it, that is all, that is the only way I can.

Q There are thousands of these things other than what you have in your hand or what is in that bag? A Yes.

Q How could you identify those as the particular ones which you saw or swear that those are the particular ones you saw on this day? A I cannot say that these are the particular ones. That bag I saw on that day.

BY THE COURT:

Q What means have you of identifying the bag? A Just by the looks of it.

Q What did you do with the bag and the contents? A I kept it in my office until Barron came.

Q What did you do with it then? A Barron took it out, be-

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cause there was no key to the bag.

Q Did he ever bring it back to you? A He went right to the District Attorney with it.

THE COURT: You have to connect that chain.

MR. MANCUSO: I will withdraw the offer of this bag at this time.

BY MR. MANCUSO:

Q Will you describe to the Court and the jury the nature of the substance or objects that you saw spread out on this bed?

A A lot of round discs, looking just like gold.

Q And what did you do then when you saw those discs? A I took a few of the discs in my hand and rubbed it on the stone and put the acid on it to see if it would stand the acid test and it remained on the stone. Now, if you put brass on stone and put acid on it, it takes it right off.

Q Before you went upstairs did the defendant Mitnick give you any package or anything? A Yes, the five of us went to the door and the fellow that was taking us upstairs, I cannot take you all in the room. It is a small place, and they gave me a package and he said I will only take up the man to test it.

Q Who gave you the package? A Either Mr. Mitnick or the other gentleman, I cannot say exactly who handed it to me.

BY MR. O'REILLY:

Q Which one do you have reference to? A The one I met at Park Row.

BY MR. MANCUSO:

Q The acid was with the stone? A Yes.

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Q Describe the usual method of making tests to ascertain what is gold and what is brass, demonstrate the methods in which tests are made to ascertain the difference. A Have you a piece of the original?

Q This is the piece conceded to be a gold piece? A (The witness rubs the article on the stone.)

Q Now, hold it up to the jury and tell them which is brass and which is gold. A They will tell after I put the acid on. On the stone they look almost similar. You rub metal on the stone, and by putting the acid on the metal, the brass comes off and the gold remains. The brass boils a greenish tint and comes off and the gold remains.

Q And the part that remains? A Is the gold.

Q And the mark made by People's Exhibit 1 for identification?

A Yes, sir.

Q The gold piece? A Yes, sir.

Q And the other which has been wiped off is made by the brass piece? A Yes.

Q That is the method used by jewellers in telling the difference between brass and gold? A Yes.

Q While you were up in this room did you make any such test? A Yes.

Q Tell the jury what you did. A Here is what it was. I came up to the room and of course I did not know what goods, what the goods were going to be. He said he had a lot of jewelry and showed me some diamonds and I seen the way the thing looked to

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me, that it was not right --

MR. O'REILLY: I ask to strike that out.

THE COURT: Strike it out.

Q Do not give us your opinion? A I just went to work and rubbed the supposed to be gold on the stone and put the acid on and tested it and it stood acid test and was supposed to be gold.

Q How many times did you make that test in that room?

A Just once.

Q Where did you take the piece you tested? A They put everything back in the bag.

Q Where did you take your piece? A From the bed.

Q Did you take it yourself or was it handed to you? A I took it myself.

Q Was that taken from the pile of the other discs? A Yes, sir, from the pile of the other discs.

Q Then what did you do? A I went downstairs and Barron said to me, Is this gold?

Q Before you went downstairs what became of the material or objects that you saw on the bed? A They put it back in the bag.

Q Who did? A The two boys that were up there.

Q Both or one of them? A Both.

Q In what bag did you see them put these objects? A That particular bag.

Q In this same bag? A Yes.

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MR. O'REILLY: I object.

MR. MANCUSO: Then I will withdraw the question.

Q In which bag did you see these men put the objects which were on the bag? A In which bag -- a bag similar to the one here.

Q And was the bag closed in your presence? A Yes.

Q And what did you do then, did you remain in the room?

A We went downstairs and they took the bag with them.

Q Who went downstairs? A The three of us.

Q You and the two men you had met before? A Yes.

Q While you were going -- or, from the time you left the room up to the time you went downstairs did you have the bag in your view at all times? A Yes.

Q Were the contents of the bag changed at any time?

A No, sir.

Q From the time you saw it closed in that room up to the time you reached the street? A No.

Q And when you reached the street where did you go? A As we reached the street we met the other two men.

Q Which other two? A Barron and Mitnick.

Q Where did you meet them? A Right downstairs.

Q Was any conversation had then? A He asked me --

Q Who? A Barron.

Q In the presence of the defendant? A Yes, in the presence of everybody.

Q What did Barron say? A He wanted to know what the test was and I said I looked at some diamonds, and I did not even look

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at them, I was not interested in them at that time because I did not think the merchandise was right, and the gold stands the gold test.

MR. O'REILLY: I object to this.

THE COURT: He is expressing his opinion. This is a conversation between Barron and the witness and is inadmissible. Upon what theory is it admissible?

MR. MANCUSO: It is not admissible, except I thought counsel would not object.

MR. O'REILLY: I have no objection.

THE COURT: Do you consent? A person might not object to a thing and yet he does not consent to it. It is incompetent testimony. If you wish it, we will allow it.

MR. O'REILLY: I want to know as well as he wants to know what this man said to Barron when he came downstairs.

THE COURT: You see he told Barron, he said in my opinion so and so. It is a conversation, and in that conversation he expressed his opinion with reference to the genuineness or the character of the metal.

MR. O'REILLY: I object to that. I simply want to know what he said to Barron about the test.

(The question and answer is repeated by the stenographer).

THE COURT: That is the conversation.

MR. O'REILLY: I object -- except as to the merchandise -- do you mean diamonds?

THE WITNESS: I mean everything.

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BY THE COURT:

Q Do you mean diamonds? A I mean everything.

MR. O'REILLY: I ask to strike it out.

THE COURT: As his opinion.

MR. O'REILLY: Yes.

THE COURT: That is part of the conversation.

MR. O'REILLY: Then I object to the conversation.

THE COURT: Then I will exclude it, and the jury are directed to disregard it.

BY MR. MANCUSO:

Q When you came downstairs you said you had a talk with Barron? A Yes.

Q Were the others present when you said it to Barron? A Yes.

Q Was anything said by the defendant at the time you met him downstairs? A I would not say that the defendant himself -- they were all talking together.

Q After this talk where did you go? A I wanted to go away and he said come on let us go in the -- we went to the restaurant.

Q Where was this restaurant? A About two blocks up on First Avenue.

Q You went in the restaurant? A The five of us.

Q Who were the five? A Mitnick, the one we met at 19th street, and the one we met at Park Row and Mr. Barron and myself.

Q When you went into the restaurant -- was the bag carried into the restaurant? A Yes.

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Q By whom? A By the gentleman who had it in the room, by one of the three gentlemen -- I cannot remember just which one.

Q When you went into the restaurant was anything said by the defendant or any of the others? A They started in coaxing Barron to buy it.

Q Tell us what was said? A I was not there -- they had Barron and I was sitting separate -- they were talking to Barron.

MR. O'REILLY: I ask to strike out the words "coaxing Barron to buy it."

THE COURT: Motion granted. Strike it out.

Q How large was this restaurant? A One of those large rooms, about one hundred feet, I guess.

Q In what part of the restaurant were you while Barron was with the other men? A In the rear.

Q How far distant from Barron and Mitnick and the other two persons were you? A About ten or fifteen feet.

Q When you first went in you were all together? A Yes.

Q While Barron was with the others, ten or fifteen feet distant away from you, did you see their lips moving? A Yes.

Q That is, you saw the defendant's lips moving? A All of them were in a conversation.

Q How long were they engaged in this conversation?

MR. O'REILLY: I ask now to have Mr. Barron excluded from the court room.

THE COURT: Yes/

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(The complainant Barron is excluded from the court room.)

BY MR. MANCUSO:

Q How long were they engaged in this group, while their lips were moving? A Close to half an hour. Pretty close to it. I don't know just exactly.

Q Did you at any time go near them during this half hour period? A Yes. Later, after they had the discussion, they came to me, they all walked over and he said he struck a bargain for \$2500.

Q Who said that? A Mr. Barron.

THE COURT: Do you consent, Mr. O'Reilly to its being received or do you move to strike it out?

MR. O'REILLY: That Barron said he struck a bargain for \$2500?

THE COURT: Yes.

MR. O'REILLY: I have no objection to it and I consent to it standing.

Q After Barron said that, was there any conversation had with this defendant Mitnick or the others -- was anything said by the defendant when the defendant came over to you, together with the others in the restaurant? A In the restaurant -- no, Barron made the remark --

Q Did he say anything to you? A Yes.

Q How long did you remain in the restaurant? A About half an hour.

Q After that what did you do? A While they were arguing,

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whatever they were doing there, I heard part of the conversation when they came back.

Q Who did you hear? A The whole four were together.

Q Can you tell us which one of the four spoke? A They were all speaking. Every one of them put in a few words.

Q Did you hear the defendant say anything? A He said something too.

Q What did you hear him say? A He said, "Don't miss the chance of a life time to make some money; it is an opportunity to make some money/."

Q What did the others say -- what did you hear the other two men say? A Different things in that reference, coaxing him to buy it.

Objected to.

MR. MANCUSO: I consent that it be stricken out.

THE COURT: Strike it out.

Q Tell us what you heard? A It so long ago I couldn't say to you the exact words.

Q Do you now remember what was said by the other two persons? A I don't remember the exact words.

Q After this conversation was over what did you do, go out of the restaurant? A Yes.

Q With whom? A With the entire five.

Q Who went out first? A I couldn't exactly say.

Q When you went on the side walk, where did you go?
A They called a taxi.

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Q Who called the taxi? A One of the three; I don't remember which one.

Q Did the taxi come there? A Yes.

Q And when the taxicab came there what did you do? A Mitnick and the fellow I met at Park Row and myself went into the taxi.

Q Did you have the bag with you? A Yes.

Q Who carried it? A One of the two men. I don't know which one.

Q Mitnick or the one you met at Park Row? A I couldn't say.

Q Did you go into the taxi? A Yes.

Q Mitnick go in? A Yes.

Q And the one you met at Park Row? A Yes.

Q Where was Barron and the other man you met at 19th street? A They remained standing.

Q Was anything said by Mitnick at the time that he got into the taxicab? A We had very little conversation.

Q Now, which direction did you go? A Towards downtown.

Q And how far down did you get? A I went down about five or six blocks when I said to him, Why, the man who has the key to this satchel is not here and I will not give my money for a coat in a bag.

Q What did the defendant or the other man say? A They said, Oh, it is all right; everything is all right, both spoke together, and I said No. So they drove back to Barron and the other fellow and when they got there the other fellow came in

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with the key, the man who had the key to the satchel, and Mitnick went out.

Q What other man? A The man we met at 19th street and First avenue.

Q Did anybody get out of the taxi? A Mr. Mitnick.

Q Who remained in the taxi then? A Myself, the one I met at Park Row and the one I met at 19th street.

Q When you three got into the taxicab did the defendant say anything to you or to the other men? A Well, I just can't remember.

Q Was anything said about money? A There was a conversation going on there and I simply -- I simply said I don't want to go down-- I was all confused at that time --

Objected to.

THE COURT: Strike it out.

Q Tell us what you did at that time? A We rode downtown.

Q Did you say anything to Mitnick or the other two men?

A I spoke to the three of them.

Q What did you say? A I said I would not give any money for a cat in a bag, and I wanted the key to the satchel and so Mitnick went out and the other fellow went in.

Q When the other fellow came in did Mitnick say anything to you or to the other two men? A He did not speak to me.

Q Did you hear him say anything to the other two men, the one you met at 19th street and the one you met at Park Row?

A He might have made some remark; I just can't remember.

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Q Do you remember now what was said or done, or don't you remember? A I can't exactly remember the remark he made unless there was some remark made that it makes no difference who gets the money. I couldn't say exactly.

Q Did you go down town with the taxi? A Yes.

Q Where to? A To my office.

Q 71 Nassau? A Yes.

Q When you reached the building 71 Nassau who came up to your office? A The one I met at Park Row.

Q What became of the one you met at 19th street? A He waited downstairs in the taxi.

Q When you went to the office who had the bag? A The one I met at 19th street.

Q Was the bag given to you by him? A It was brought up to the office, yes.

Q Did you give this person anything when he gave you the bag? A I gave him \$2400.

Q Was anything said by this person at the time that you gave him the money? A No.

THE COURT: Identify the person.

Q Which fellow was it? A The one I met at Park Row.

Q What did you do with the bag? A It remained standing in the office.

Q Did you have a key for it? A No.

Q Where did you take it? A Right in the office.

Q In a vault? A In a safe, yes.

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Q Did you have a key for it? A No.

Q Did you open the bag at any time? A No.

Q And how long did you keep that bag? A Barron came down a few hours later.

MR. O'REILLY: I ask to strike it out as not responsive.

THE COURT: Motion granted.

Q Who did you give it to? A To Barron.

Q Now, did you see Barron that day? A Yes.

Q How long or how many hours after you had seen him at 19th street? A Probably an hour or so, I cannot exactly remember.

Q When he came there did you have a talk with him? A No.

Q Do not say what he said or you said, but after this talk what did you do with the bag? A I put it in the vault for safe-keeping.

Q When Barron came down and you had a talk with him what did you do with the bag? A The bag was standing there.

Q Did you give it to anyone? A Yes, I gave it to Barron.

Q Do you understand English? A Yes.

Q Did Barron go out with the bag? A Yes.

Q Now, did you see Barron after that? A He telephoned me.

Q Did you have a talk with him? A I wasn't in the office at the time but somebody took the message.

Q Don't say what it was. Did you see him at any time that day? A That evening later.

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

Q Did you see the defendant since that day? A No.

Q Except in court? A No.

Q Now, you told us yesterday that these pieces were delivered to you or were given to you by the defendant in Barron's store on Columbus Day or the day before Columbus Day? A Yes -- part of it --

MR. O'REILLY: I object to the question upon the ground it assumes something not in the evidence. The evidence of this witness on that subject yesterday was that there was two men besides Barron in the place when he went there, the defendant and another man, and he could not say positively who it was that handed him those things, whether it was the defendant or the other man. That was the testimony of this witness.

MR. MANCUSO: I withdraw the question for the time being.

Q The other man you saw in Barron's store on Columbus Day, did you see him on the following day? A I saw this man in Barron's store before Columbus Day and then on Columbus Day.

Q Did you see him at any time after that? A That is the same man I saw at Park Row.

Q Which one of those two, the man you saw at Park Row, or was it the defendant who gave you --

Objected to as having been already answered. He said he did not remember.

THE WITNESS: I could tell who gave me that. I did

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not say that.

MR. O'REILLY: In answer to a question yesterday he said he did not know whether it was the other man or Barron.

THE COURT: The objection is overruled.

Q Which one of those two? A Mr. Barron gave me it.

Q Did you see either one of those men give it to Barron?

A One of them.

Q Which one? A That I don't remember.

Q Barron then gave it to you? A Yes.

Q Are these the pieces? A Some of those -- those are all the pieces.

(People's Exhibit 1 for identification is offered in evidence.)

Objected to as incompetent, irrelevant and immaterial.

(People's Exhibit 1 for identification is received in evidence and marked People's Exhibit No. 1.)

Defendant's counsel takes an exception.

Q When you returned to your office after your visit at 19th street in the restaurant, did you have the testing stone and the acid bottle with you? A Yes.

Q On that day did you examine the contents of the bottle?

A No, the next morning.

Q What did you do with the bottle from the time you received it from the defendant? A I kept it on my stand -- a window like.

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Q When you examined the contents the next day, what did you find?

MR. O'REILLY: I object and I would like to examine the witness.

THE COURT: Develop more the precise point, in order to see that no one else could have tampered with it.

Q Who else was in your office besides yourself? A Nobody.

Q How large a place have you? A The office is divided into three parts. Three different people in there.

Q When you went to your office on the 13th, after you had tested these articles up at the room, what did you do with the bottle? A I put it on the window.

Q Where? A On the window in my office. We have a window like.

Q And have you got a working room there? A No, just an office.

Q Was this bottle under your supervision and care?

Objected to as improper.

THE COURT: The form of the question is objectionable and I sustain the objection.

Q Did you give this bottle to anyone? A No.

Q Did anyone come to your room and use this bottle?

A No, sir.

Objected to as a conclusion.

Objection sustain and the answer is stricken out.

Q Did you take out the contents of the bottle from the

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time you brought it to your office until the next day when you examined the contents? A The next day --

Q Before that had you? A No, sir.

MR. MANCUSO: Now, do you wish to examine the witness?

MR. O'REILLY: Not just yet.

Q Have you a clerk or a stenographer or other person in your employ? A No.

Q And when you left your office that night of the 13th, did you lock your door? A Yes.

Q And when you came in the next morning did you find the door locked? A Yes.

Q Did you open it? A Yes -- you mean my door?

Q To your office? A Yes.

Q Was the bottle in the same place that you placed it in the day before? A Yes.

Q Did you examine the contents on the following day?
A Yes.

Q What did you find the contents to be?

MR. O'REILLY: I object as incompetent, irrelevant and immaterial. The proof is that this bottle was not in the possession of this witness during all this time, from the time he used it up at this place, until he brought it into the office and until he found it the next morning.

THE COURT: You may claim the witness if you wish.

BY MR. O'REILLY:

Q After you had tested this material in this house on 19th

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street, what did you do with the bottle? A I brought it back to the office.

Q Did you carry it? A Yes.

Q What in? A Wrapped up in a package.

Q What kind of a package? A Wrapped up, paper.

Q The package was in the bag? A No, sir, just wrapped up in ordinary wrapping paper.

Q What became of the bag in which it was carried up to the place? A It was not carried in a bag. It was wrapped up in the same way.

Q You carried it down in the taxicab? A Yes.

Q When you got to your office, what did you do with it?
A When I got to the office, I took another test of some of the gold --

Q What did you do with it? A I put it down on the window.

Q You took a test, you say? A I took another test.

Q Where did you place it? A On the window -- we have a little shelf in front of the window and that is where we do our testing and looking at things.

Q What time did you get back to the office? A I judge somewhere around one thirty. I cannot say exactly.

Q When you left your office to go uptown who did you leave in your office? A Nobody.

Q Did you close your office? A Yes.

Q And locked it? A No, sir, I do not lock it during the day.

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Q And what time did you get back to the office? A After I came back from uptown?

Q Yes. A About one thirty.

Q What time did you have your lunch? A Anywhere between twelve thirty and one; somewhere between one and twelve o'clock.

Q What time did you have your lunch on that day? A That is what I say, between twelve and one.

Q After you came back? A No, before I came back.

Q Where did you have your lunch? A In the restaurant on First avenue and somewhere, near 21st street.

Q Who was with you then? A Mr. Mitnick, Barron and the one I met at 19th street and the one I met at Park Row.

Q Where was this stuff at the time that you ate your lunch?
A In the restaurant.

Q Whereabouts? A Underneath one of the chairs.

Q Underneath one of the chairs in the restaurant? A Yes.

Q How long were you in the restaurant? A About half an hour.

Q Then you went from the restaurant to where? A Outside and got a taxi and went to the office.

Q In front of the restaurant you got a taxi? A In front or on the corner.

Q Who carried this bottle containing this acid and stone from the restaurant to the taxicab? A One of the gentlemen who carried bag. I don't know just which one.

Q You don't know who it was? A No.

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Q You did not carry the acid, the bottle of acid and the stone from the restaurant to the taxicab? A I don't think so.

Q You do not know who carried it? A I don't know.

Q You know you didn't carry it? A I couldn't say exactly.

Q Didn't you say one of the others carried it? A I said I think some one in the crowd carried it.

Q You don't know? A No.

Q You don't know if you had it in your possession or not?

A I could not say.

Q Barron might have carried it? A Everything is a possibility.

Q So far as that question is concerned? A Yes.

Q When you got in the taxicab you had two men with you?

A Yes.

Q Who carried it into the taxicab? A I really don't know.

Q You don't know if you had it in the taxicab or not?

A I know the acid was in the taxicab.

Q You don't know if you had it in your possession? A They placed it down in the taxi.

Q Wrapped up in paper? A Yes, wrapping paper.

Q You saw this package? A Yes.

Q It was not carried by you? A I couldn't say exactly.

Q In your hands? A I couldn't say -- perhaps I had it in my hands or it was me who put it there; I don't remember.

Q You got to your place of business? A Yes.

Q You do not know who carried upstairs to your place of business? A Yes.

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Q Who did? A I carried it.

Q When you got in there you had two men with you? A One.

Q Who was he? A The one I met on Park Row.

Q That is the man you met over in Brooklyn previously?

A Yes, sir.

Q You had some transaction with him there then, with this man in the place? A All I done was tested.

Q You had some transaction with him? A Yes.

Q You took this package that contained the stone and the bottle and put it where? A On the window.

Q What was it you put in the vault? A The bag.

Q This bag, the bag in which that stuff was carried?

A Yes, sir.

Q How many times did you leave your office that afternoon from the time you got back from this visit to 19th street to the time you left to go home? A I think once.

Q Where did you go? A Somewheres around the section, I was out about a half or three-quarters of an hour.

Q And you came back to your office? A Yes.

Q How many visitors did you have that afternoon? A Quite a number.

Q A number of people? A I don't know how many.

Q What were they doing there? A They came in to try to buy or sell jewelry.

Q Are you sure you left that office only once that afternoon? A Perhaps twice. I could not say exactly.

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Q You may have left it three or four times? A It is possible.

MR. O'REILLY: Now, I urge my objection.

THE COURT: The objection is overruled.

Exception.

BY MR. MANCUSO:

Q And what did you find the contents of the bottle to be when you examined it? A Water.

Q You then came to the District Attorney? A In Brooklyn first.

Q And then did you come to this office? A After we were sent to Police Headquarters and we were sent to Mr. Embree.

Q You had a talk with Mr. Embree? A Yes.

Q After your talk with Embree what did you do with the bottle? A He wanted me to demonstrate --

Q Do not say that. What did you do? Do not say what he said. A I had the bottle refilled and put in acid.

Q Is that the contents of this bottle now? A Yes.

Q What kind of acid? A Muriatic acid.

Q What did you do with the contents of the bottle on the day which you examined it? A What did I do?

Q Yes. A I think I spilled it out. I don't remember. I think I spilled it out if I remember rightly.

The bottle is offered in evidence.

Objected to.

THE COURT: How is this relevant?

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MR. MANCUSO: I will withdraw it.

THE COURT: The objection is sustained.

MR. MANCUSO: I withdraw it. The contents are not the same.

Q You said yesterday you received one note from Barron?

A Yes.

Q How much was that note for? A \$1200.

Q And you also told us that was endorsed by his partner?

A Yes.

Q Was that note returned to Barron or have you got it?

A I returned that note and took smaller ones in exchange.

Q Did you date them on the same day or later? A No. I think the notes ran for two weeks and he came to me and said he could not get the money he expected to get.

Q Do not say that.

MR. O'REILLY: I object to it.

THE COURT: Strike it out.

A About two weeks later.

Q You had a talk with him and he gave you this note?

A Yes, sir.

Q After the talk did you deliver the one note to him?

A Yes.

Q Did you get anything in return? A I got twenty-four small notes.

Q Have you got those notes with you? A Yes.

Q What is the amount of each note? A \$50.

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MR. MANCUSO: I offer the notes in evidence/

MR. O'REILLY: I do not object.

(The 24 notes are marked as one exhibit, People's Exhibit No. 5, and placed in an envelope.)

BY THE FOURTH JUROR:

Q Any interest?

MR. MANCUSO: They do not say so -- they do not say with what interest.

BY MR. MANCUSO:

Q You say none of these notes have been paid? A I did not make any attempt to have them paid.

CROSS EXAMINATION BY MR. O'REILLY:

Q You are in the jewelry business where? A 71 Nassau street.

Q How long have you been in that business? A Since I learned my business or in business for myself.

Q How long have you been in the business altogether, the jewelry business? A About fifteen years.

Q Continuously? A Yes.

Q How much of that time was it your own business? A About five or six years.

Q Where were you before that? A I was employed for different jewelry concerns, working as a diamond setter.

Q Wholesale? A A practical man, diamond setter.

Q Employed in a wholesale jewelry house? A Yes, sir,

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manufacturer of jewels.

Q How long have you known Barron? A Around five years, I guess.

Q As matter of fact, is it not true that you know Barron for ten or twelve or fourteen years? A Perhaps I might have seen him, by sight, but never was intimate with him.

Q I didn't ask you that, don't you know him ten or twelve years? A No.

Q By sight? A By sight, it is possible.

Q Where did you first meet him? A At the club house in Brooklyn.

Q What club house? A The Sixth Assembly District Republican club house.

Q About how long ago was that? A About four or five years ago I should say.

Q You just met him in a casual way there? A Yes.

Q As a member of the club? A Yes.

Q Where else did you meet him? A That is the only place I ever met him -- I have met him at affairs, perhaps, different affairs -- I think I met him in his brother's place, who had a cabaret and hotel -- something like that.

Q Just in a social way? A Yes.

Q You might have met him at some social functions?

A Yes, sir.

Q You think you met him at his brother's cabaret? A I did.

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Q Where was that? A The Arcadia Hall.

Q In Brooklyn? A Yes.

Q Is that where the cabaret is? A No -- not the cabaret-- he runs the Arcadia Hall, dancing and everything else.

Q That was the only acquaintance you had with him? A Just to meet him at the club.

Q At the club and those other places -- that is the only business? A I done a little dealing with him. He used to try to sell jewelry for me -- take diamonds on memorandum.

Q How often did he do that? A About three or four times.

Q He came to you to get some jewelry he wanted to sell to his wife or some friends? A For his wife and some times he says he thinks he might somebody that likes them.

Q That is the only acquaintance you have had with this man? A Yes.

Q When was your attention first called to this transaction we have been discussing? A Something like ten days before at the club house, there was a telephone call for me.

Q Before what day? A Before the transaction happened.

Q In 19th street, before that day? A Yes.

Q How many days before Columbus Day? A It happened on Columbus --

Q How many days was your attention called to it before Columbus Day? A About ten or eleven -- it happened the day after Columbus -- I don't remember the exact days.

Q This transaction of 19th street you say occurred on

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Columbus Day? A The day after Columbus Day.

Q You were called over to Barron's place of business in Brooklyn by him? A I was not called over, he asked me could I set some jewelry.

Q He asked you to come over there? A I said I would stop over on the way downtown because I live ^{near} there.

Q When did he ask you that? A The first time?

Q Yes. A I think it was six or seven days before this happened.

Q Before what? A Before the transaction happened.

Q I thought you said it was ten days before the transaction?
A He telephoned for me at the club about ten days.

Q Talked with you on the telephone? A I was not there.

Q It was two or three days after that that you first got in touch with him? A That is right.

Q That was at his place of business? A No, he telephoned me at my place of business.

Q Over the telephone you talked with him and then you came to his place of business? A That is correct.

Q Here in New York? A No -- from my home/ I lived in Brooklyn.

Q The next day? A Yes.

Q Telephoned to your place one day and the next day you came to his place of business from your home? A Yes.

Q What time? A In the morning before going to business, around nine o'clock or nine thirty.

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Q You saw Barron there and the defendant? A Barron, the defendant and I think another man.

Q You know there was another man there? A I cannot just exactly remember.

Q Did you ever hear the name of Heller? A No.

Q Were you not introduced to this man as Heller? A I can't remember the name if I was.

Q Didn't you learn this man's name during the entire transaction was Heller? A I cannot remember any names at all.

Q You won't say you were not told the man's name was Heller? A I won't say that either, no, sir.

Q You saw that man that you saw in Barron's place, that man whose name you don't remember, you saw him again at Ann street? A Yes, sir, in front of the post office.

Q The day you saw that man at Ann street, Barron came to your place of business, did he not? A Yes.

Q And he had Mitnick with him? A Yes.

Q And Mitnick and Barron came up the stairs in your place of business -- are you positive about that? A Yes.

Q Is it possible that instead of that, that Barron came upstairs and then took you down and met Mr. Mitnick at the door? A No, I am very positive.

Q That Mitnick was with Barron upstairs in your place? A Yes, sir.

Q And then you and Barron and Mitnick left your place of business and went to Ann street? A Yes, sir, they took a Third

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Avenue car.

Q You went to Ann street? A Yes.

Q And you met a man over there? A Yes.

Q The man you had previously met in Barron's place? A I met him on previous occasions.

Q In Barron's place? A I don't know if in Barron's place or we walked a block, but I did meet him once before.

Q Wasn't he the man you met in Barron's place? A Yes, he was the man I met before.

Q I ask you if he wasn't the man you met in Barron's place of business on a previous occasion? A Yes.

Q Is he or isn't he? A He was the man I met before, I don't know if I met him in the place or --

Q Didn't you say to the District Attorney this morning that you went to Barron's place of business and saw the defendant there and Barron and another man? A Yes, that is right.

Q Where is that place of business? A I don't remember whether it was on Park Avenue or Broadway.

Q In one of those streets? A Yes.

Q It was in a store or house? A Yes, sure.

Q In a building? A Yes.

Q Didn't you tell the District Attorney that the man you saw there that morning was the man you subsequently met at Ann Street? A Yes, surely.

Q That is the man, is it not? A Yes.

Q So you and Barron and Mitnick joined this man at Ann

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street? A That is right.

Q He knew Barron, that man, apparently, that you met at Ann street? A He met him before, surely, he must.

Q He spoke to him? A Yes.

Q Greeted him? A I won't say. We were talking together and I don't remember.

Q You do not recall? A No.

Q The four of you got on a car? A Yes.

Q And went to this place in 19th street? A We walked down 19th and did not go up to this place.

Q You understood, so you say, that Barron was going to buy some gold? A Some jewelry.

Q And you were going up there to test it? A Yes.

Q You understood that when you left your place of business? A Yes.

Q And before you got to this place in 19th street, you left the car and went in some saloon and had a drink? A Yes.

Q Then you came out and met another man? A No, did not meet anybody else.

Q You met the other man before you went in the saloon? A Yes, sir.

Q Did you ever hear that man's name? A I could not recall.

Q Was it spoken by anybody? A What?

Q Was it spoken by anybody that you know of? A He was introduced by the other two fellows, I guess, but --

Q I do not ask you to guess that. A He was introduced but

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I cannot remember the name.

Q Wasn't he introduced to you by Barron? A I won't say--
no, sir, not by Barron -- he was not introduced to me by Barron.

Q You won't say who introduced him? A One of the two men.

Q You don't remember which one it was? A No, but I know
it was not Barron.

Q He joined you? A Yes.

Q And went in the saloon and had a drink? A Yes.

Q Do you know who it was treated? A Who treated?

Q Yes. A This new man.

Q What? A This new man.

Q The new comer that you met at 19th street? A Yes, sir.

Q Did he have anything in his possession that you saw?

A Nothing.

Q Did he have a bag? A No, nothing.

Q When did you first see this material that you testified
you examined? A After we went out of the saloon and went up
stairs across the street.

Q It was in a building? A Yes.

Q In a room? A A furnished room house.

Q That was the first time you ever laid your eyes on it?

A On the satchel, yes.

Q Where was it when you saw it? A Under the bed, I think.

Q Who took it out from under the bed? A The gentleman
that bought us the drink.

Q The man you met at 19th street? A Yes.

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Q You tested it? A The two of them threw it out on the bed and I tested it.

Q Then you went back, came out and went in a restaurant and had lunch? A No. Walked downstairs and I went in the restaurant.

Q And had some lunch? A Yes.

Q Who carried the bag? A One of the three, I don't know.

Q It was in your sight all the time? A Yes, it was in my sight.

Q After lunch you came out and there was some little conversation there and then a cab was called? A Yes, sir.

Q Do you know who called the cab, do you remember? A One of the three men, I don't know which one.

Q Barron was there when the cab was called? A Yes.

Q You got in the cab? A He said go down and give them the money.

Q Barron said? A Yes.

Q He told Mitnick to get in the cab? A No, he did not tell him. They told him to stay -- he did not say anything -- they wanted him to stay --

MR. O'REILLY: I ask to strike that out.

THE WITNESS: He did not tell Mitnick anything.

Q Will you swear positively Barron did not tell Mitnick to get in the cab? A I am almost sure that he did not say anything.

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Q But you are not positive? A No, not positive.

Q Then Mitnick rode away with you some distance with those other men and the bag? A Yes.

Q And then you found there was no key to the back and you came back? A Yes.

Q For the key? A Yes.

Q Then Mitnick remained behind? A Yes.

Q Did you see him speak to Barron when he came back?

A Both of them remained behind, Mitnick and Barron.

Q When he came back, did not Mitnick speak to Barron or Barron to Mitnick? A It happened so quick. The other fellow got in the cab and the taxi rode right off.

Q Will you swear Barron did not speak to Mitnick or with him when Mitnick came back from the cab? A I cannot answer that. I do not know.

Q But Mitnick did get out of the cab? A Yes, sir.

Q And remained with Barron? A Yes.

Q Then you went down and you wanted the key? A Yes.

Q And you got the key? A No, I did not get the key. The other man got in the taxi with the key.

Q And it was opened up? Where was it opened up? A It was opened up first in the taxi and he said, You can test it again here, and I said, I won't test it here.

Q Who said you can test it again? A The man that had the key.

Q You had the testing materials in the taxicab with you?

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A Yes.

Q And you said no, I won't test it again? A Yes.

Q You got downtown? A They opened the bag and I pulled out a few of the discs. And they pulled them away, and they said you don't want so many, and they threw it back in the bag and gave me something else, and they gave me the real gold.

Q You then went down to your office? A Yes.

Q And the bag was taken upstairs? A Yes.

Q Did you open it there? A No.

Q What did you do with it? A I did not have any key and so the blank disc that he gave me, I put it on the testing stand, and tried to test it again and it showed the test of gold, and then I gave him the money.

Q What test did you put it through? A The ordinary test, rubbed the gold on the stone and put the supposed to be acid on it.

Q It stood the test? A Yes.

Q And then you put the bag in the vault? A In the safe, yes.

Q In the safe? A Yes.

Q And left it there how long? A Until late in the afternoon.

Q How late? A When he came down I guess it must have been an hour later, around half past two, something like that, I don't recall the exact time.

Q Then did you give it to Barron? A Yes.

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Q Did Barron open it in your store? A No, there was no key to it. He took it to a locksmith to get a key.

MR. O'REILLY: I ask to have that stricken out.

THE COURT: Strike it out.

Q He took it away with him? A Yes.

Q That was about what time? A Somewhere around half past two or three o'clock that he left my office.

Q Will you explain to me how you test that gold, not by doing it, but just by telling me? A You rub it on the stone.

Q Rub the material or metal on the stone? A Yes. And then put acid on. The idea of rubbing it on the stone, sometimes a piece is plated and if you rub off far enough, you rub off the plate and reach the proper material, and you put the acid on, and if the acid burns it off it is not gold, and if it remains it is gold.

Q Did you ever loan any money before this transaction to Barron? A Yes, on different occasions at the club house.

Q What did you loan him? A It never amounted to much because we have different games, twenty, twenty-five or fifteen dollars, different sums.

Q Just if you were playing a game and he was short?

A Yes, sir.

Q That was the only occasion? A He never asked in other ways.

Q When you were sitting playing cards and he got a little short you loaned him some money to make good his losses? A Not

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exactly to make good his losses. Always had the price to pay it, but needed some money for the next day.

Q Due to the fact that he had been made short in that game? A Yes, sir.

Q That was the only occasion you ever loaned him money?

A Yes -- outside of once a little after this happened, I loaned him a little money.

Q I mean before? A Before, no, just on different occasions at the club.

Q Did you have any money transaction with him on this day, the day of this transaction, in 19th street, did you have any money transaction with him? A No, not on that day.

Q Did you loan him any money on that day? A No.

Q None at all? A I won't say on that day -- if you want me to tell the story I can explain it. I did not make any particular loan on that day, but I paid out my money on that day.

Q I did not mean that? A Outside of that -- you mean after it happened?

Q Yes. A I think he came up --

Q I do not mean after that, I mean on that day, did you have any money transaction with him other than what was involved of this transaction? A Yes, sir, I think he took a small sum of ten or twenty dollars.

Q Where was that? A At my office.

Q Before you went uptown? A No, it was after I came back from uptown.

Q When you came back? A Yes, at the time he took the bag.

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Q You claim that you loaned him \$1200? A Yes, sir, through circumstances I loaned him \$1200.

Q Just tell us what the circumstances were of your loaning him \$1200? A Well, he called me up and he said he could buy some jewelry and that he has not got enough money, so I said, well if you haven't got enough money I can furnish the money if it is worth while. So in got in negotiations with his friends or whoever they were --

Q You don't know anything about that? A No.

Q Then do not say anything about that? A He told me to get as much money as I could, that I must have the money in the office. So I drew out -- he gave me what he had and I had as much as I could spare, and had \$2400 laying in the office, and the defendant Mitnick came in with Barron. They wanted to see the money and I showed him the money, and he said, you keep the money here, and I said sure I won't take it out of here.

Q How much money was there? A \$2400.

Q You were to go to the extent of \$2400? A No -- that is all we had at that time.

Q That \$2400 included how much money of yours? A \$1200.

Q Where did you get the other \$1200? A Off Barron.

Q How many days before the day of the transaction did you receive that \$1200 from Barron? A I think it was two days before, either a day or two.

BY THE TWELFTH JUROR:

Q Were you not to receive some recompense for loaning him

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that money? A No, it is not that. In this business we lay out money and if the man buys a bargain we give him a profit and we make money on his buy. That is the nature of the business.

BY THE COURT:

Q Who was to pay for this, you or Barron? A Barron. The only thing he left the money in my office for safe keeping.

Q You loaned Barron -- A \$1200.

Q Barron was to pay for it? A Yes.

Q And you were to give him the profit? A If I would buy the merchandise later -- that had nothing to do first, I laid out the money.

BY MR. O'REILLY:

Q Had you made any arrangement with Barron to buy it?

A No, sir.

Q Don't you know that Barron had made an arrangement with a man in Brooklyn to sell it to him? A No, sir.

Q Barron did not tell you that? A No.

Q So that this was just a pure loan? A Yes.

Q A simple loan, nothing else connected with it, but just you loaning Barron \$1200 to carry out this transaction, that is your contention, is it? A That is my contention.

Q After this transaction was over, Barron gave you a note? A Yes.

Q For how much? A \$1200.

Q A single note? A Single note.

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Q What did you do with that note? A I returned it to him.

Q When? A About a week or two later. It was made for two weeks. I was supposed to get the cash.

Q Never mind that -- Barron gave you his note? A His, including his partner's endorsement.

Q Who is his partner? A At that time he was in partners with somebody in the manufacturing of rain coats.

Q Who was it? A I don't know.

Q Do you remember the endorsement, the name? A No, I can't remember the name.

Q Was it his individual note? A Barron's individual note with his partner's endorsement.

Q Why did you get his partner's endorsement on it?

A Why because they were both partners in business.

Q It was his individual note, why did you get the endorsement of the partner? A That was much safer to have another endorser on it.

Q That was why you wanted it, and when you got that \$1200 note, you kept it for two weeks and then turned it back? A No, he called me up.

Q You gave it back to him? A Yes.

Q A couple of weeks after? A Yes.

Q And then you got what in its place? A Small notes, \$50 notes.

Q Didn't you get twelve \$100 notes? A No.

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Q At no time? A No.

Q You never had twelve \$100 notes? A No.

Q Endorsed by his partner? A They were not endorsed by anybody.

Q I say twelve \$100 notes, you never received twelve \$100 notes either made by him individually or endorsed by his partner?
A No.

Q He then gave you twenty-four \$50 notes? A Yes, sir, that is right.

Q And these are the twenty-four \$50 notes that you received from him, are they, those we have here? A Yes.

Q What day was the transaction of the notes had? A The date is right on the notes.

Q I say what day was the transaction had? A What do you mean by what date?

Q What day of the month? A It is on there.

Q Is that the date? A October 24th, yes.

Q How do you fix that date? A I cannot fix the date.

Q How do you fix it as the 24th? A We came there on that day and I gave him his note, it was October 24th that he gave me in exchange these notes.

Q You do not say it was the 24th simply because these notes bear the date of the 24th? A Yes.

Q Is that the reason you say it? A Yes.

Q If the notes were the 26th, you would say you were there on the 26th? A Yes.

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Q You do not fix the date by anything other than that the notes are dated that date? A That I changed the notes on that date.

Q You fix it by reason of the fact that these notes are dated on the 24th? A Yes.

Q That is the only reason that induces you to say that it was the 24th? A Yes.

Q How many days after this transaction was it that Barron gave you the first note? A I think it was on the following day.

Q A day after the transaction? A Yes, I think so.

Q He may have been two days after? A No, because I was supposed to get the cash --

Q Do not say that. I move to strike out what you suppose.
A The following day, yes.

Q Where was it that he gave you these notes? A In my office.

Q Did he come to your office? A Yes.

Q Where was the note drawn? A That I do not know -- where was it made payable do you mean?

Q No. Where was the note drawn by Barron, in your office?
A No.

Q You are sure it was the day after the transaction? A I am most sure the day after.

Q You mean by that that it might have been two days after?
A Well, I really doubt it, but I think it was the day after.

Q However, it was after the transaction? A Yes.

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Q Did you protest the original note? A No, sir.

Q Where was it payable? A I think at their place of business, either on Broadway or Park Avenue.

Q What statement or explanation did Barron make to you for wanting to borrow \$1200 from you? A He did not exactly make any statement that he wanted to borrow anything. I said I will lay out the money that was necessary -- he did not make any attempt to borrow. I did not stipulate any amount or anything.

Q He did not ask you for any amount at all? A He called me up and he said all he had was \$1200 and it took more money. And I said whatever it takes I could get it together. There was no stipulated amount.

Q As matter of fact, you were going to buy this stuff with him? A No.

Q He said he was going to buy some jewelry, and he only had \$1200, and you said whatever it took over that you would furnish? A That I would furnish, that is correct.

Q Can you tell us how long that was before the transaction that you had that conversation? A Well, I think that was two days before.

Q Was that at the first conversation that you had with him? A No, that was not at the first conversation.

Q Did he tell you then how much jewelry he was going to buy? A At the first conversation?

Q No. At this conversation in which you said you would lay out? A He did not tell me how much but he said it would

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take a lot of money, somewhere from three to four thousand dollars I think he said -- I don't remember -- he said it would take a lot of money/ I don't remember the exact amount.

Q When he said a lot of money didn't you ask him about how much that meant? A Yes, and I don't remember just what he said.

Q You were interested in knowing so you would know how much to lay out? A Yes, but it is so long ago I can't remember.

Q Were you not interested at that time to know how much you were going to lay out? A Yes, I asked him how much and he stipulated the amount.

Q He told you the amount? A He told me about how much.

Q That was some days before the transaction? A That was a couple of days before.

Q The first note was three months after date? A Yes.

Q That is the first one, payable three months after date?

A Yes.

Q You never protested these? A No.

Q You have not collected any of them? A No, I have not tried to.

Q Or any part of them? A I have not tried to. If you want to know the reason I can tell you.

Q No, I think I know the reasons.

BY THE SECOND JUROR:

Q Why did you return the note that was endorsed for 21 small ones unendorsed -- unendorsed notes are not as good as an

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endorsed one? A No. I did not know his partner so well, and I did not know his business so well until after these things happened, and then everything came out. I knew the man always had plenty of money, always lived like everybody else. He could go and spend forty or fifty dollars a night and do different things like that, and when he said he would give me his note with his partner's endorsement I thought it was good business, and everything else, and I took it because he was supposed to get money from his brother, a big business man in Brooklyn, and I took the note, and then when he called me up he said no use putting that note in and protesting it, you won't get paid for it, and after that I saw the conditions of the business and everything else, and I said I will tell you what I will do. I will help you out and take all small notes and take fifty dollars a month. He said I won't be able to pay everything in three months because I have lost everything I have got, and I says all right, partly you lost everything through me and I will try to help you out and when the first note came due he came to me and he said, Listen I have not got any money, I have a family and four or five children to support, and there is no sense putting these notes in and protesting them --

THE COURT: Mr. Juror, your question is objectionable in form, and the lawyer stands there and is possibly afraid to object because he fears some juror might jump upon him. The question "why" permits reasons to be given by the witness, and in a case of this character reasons

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should not be given. Upon my own motion I will have to strike out the testimony and request you gentlemen to disregard. A lawyer is always placed in an awkward position. These things might be elicited in some way. It is important for the jurors sometimes to know these things, but this witness is giving his reasons, and the question cannot therefore be answered and therefore I must strike it out and you will disregard what he has said.

BY MR. O'REILLY:

Q You knew Barron's brother was a man of means? A Yes.

Q And you did, as the juror asked you, you did give back this note endorsed by Barron's partner to him, after this transaction and took in its place these 24 smaller notes? A Yes.

REDIRECT EXAMINATION BY MR. MANCUSO:

Q Do you know Barron well? A Yes, for about five years.

Q You knew he was in the contracting business, rain coats?
A Yes, and I knew him when he worked, before he was in the contracting business.

Q You loaned him money from time to time in small amounts, ten and twenty dollars? A Yes, twenty and fifty.

Q He always paid it back to you? A Yes.

Q You knew him to be a good payer? A A very good payer.

Q You knew he would pay you this money when he would get it? A Yes.

Q And for that reason you asked him for no endorsement?

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A That is correct.

Q You say you had not presented these notes for protest?

A No.

Q Any reason for it? A The reason is there is no sense in adding expense, and the man has not any money at the present time, and it doesn't do you no good to protest any notes. Notes hold good for seven years.

BY MR. O'REILLY:

Q They have no endorser? A No.

Q You have not collected them? A No, I have not tried to.

Q No part of it? A No.

BY MR. MANCUSO:

Q Before the first note became due -- it is payable three months after date? A Yes.

Q Did you have any talk with Barron? A Yes.

Q And after this talk you kept the notes? A Yes.

Q You have kept them in your place of business ever since?

A Yes.

Q Except now they are produced in court? A Yes.

Q Since the arrest of this defendant did you have any occasion to talk with him at any time? A No.

Q You never spoke to the defendant Mitnick? A No.

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

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AFTER RECESS.

(Trial resumed).

M A X B A R R O N, recalled by the People.

BY MR. MANCUSO:

Q You told us yesterday that you received this bag, People's Exhibit 3 for identification, on the 13th of October from Mr. Rifkin, is that right? A I did not mention the date, but I said I received it from Mr. Rifkin.

Q The same day that you bought the material? A The same day, yes.

Q At the time you received it from him, did it have a key? A No, sir.

Q Was the bag closed? A Yes, sir.

Q Locked? A Yes.

Q Where did you go with it? A To Brooklyn.

Q To whom did you go? A To a man who fits keys in locks — a key smith.

Q Is this the key you had made? A Yes.

Q When you got the key made for this bag, did you open the bag? A Yes.

Q Did you examine it? A Well, I looked at it and no more than I looked at it —

Q Did you examine it, yes or no? A Yes.

Q Was there anything in the bag? A Yes.

Q What? A This same stuff.

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MR. O'REILLY: I object to that and ask to strike out the answer --

MR. MANCUSO: I consent that the answer be stricken out, "the same stuff."

Q Describe it, what you saw in the bag? A It was like a quarter piece.

Q What color, white, black, green or what? A Like gold color.

Q I show you People's Exhibit 3 for identification and I ask you if that is the same material or substance that was in the bag at the time you opened it?

MR. O'REILLY: I object. The witness is not qualified, and it is incompetent, irrelevant and immaterial.

THE COURT: The form of the question is objectionable.

MR. MANCUSO: I will withdraw it.

BY MR. MANCUSO:

Q At the time you examined the bag you say that you saw some substance or material in there the size of a quarter and gold color? A Gold color.

Q I show you some of the contents of this bag and I ask you whether this is the substance that you saw in the bag on that day?

Objected to as incompetent and that the witness is not qualified.

THE COURT: The form is objectionable, but he does not have to be an expert.

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BY MR. MANCUSO:

Q Was the material or substance you saw in the bag on that day the same in form and description as you see here now? A Yes.

Q After you examined it what did you do? A I went to a jeweler.

Q Did you take the bag with you? A Yes.

Q Did you lock the bag after you examined it at the locksmith? A I locked it up and took it to the jeweler.

Q What did you do with the key? A I put it in my pocket.

Q And did you leave the bag at the jeweler's? A No.

Q Did you take it with you? A Yes.

Q Where did you take it to? A The District Attorney's office.

Q Where? New York or Brooklyn? A Brooklyn.

Q Did you leave the bag there? A No, sir.

Q Did you have it with you at all times? A Yes, sir, it was with me.

Q From there where did you go with the bag? A Gates Avenue Court.

Q Did you leave it there with anyone? A No.

Q Did you take it with you? A Yes.

Q From there where did you go? A Police Headquarters, New York.

Q And did you leave the bag with any person there? A Yes.

Q With whom? A With an office by the name of Martin J. Sheridan.

Q From the time that you received the bag from Mr. Rifkin

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up to the time that you left it with Officer Martin J. Sheridan at Police Headquarters, did you remove the contents of the bag?

A Not me.

Q Did you? A No, sir.

Q And when you delivered it or gave it to Martin J. Sheridan did you give him the key with it? A Yes.

Q And you did not have the bag in your possession from that time on? A No, sir.

CROSS EXAMINATION BY MR. O'REILLY:

Q You received a bag containing something from Mr. Rifkin? A What do you mean?

Q You received a bag from Rifkin? A Yes, sir.

Q Containing something? A Yes.

Q And you took it to Brooklyn? A Yes.

Q Where did you bring it when you took it to Brooklyn, the first place you brought it? A Where they should put the key in the bag, to a key smith.

Q A locksmith? A Yes.

Q And where was that? A On Troop Avenue near Flushing.

Q Did you leave it there? A No.

Q Did you remain there? A Yes.

Q Then you took it from there where? A To a jeweler.

Q What time was that that you took it to the jeweler?

A I couldn't remember that.

Q About what time? A It is pretty two years and how

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could I remember.

Q About what time of the day was it? A I couldn't say.

Q Morning, afternoon or night? A I could not remember that.

Q What time was it that you got the bag or a bag from Rifkin, what time of the day, morning, afternoon or night? A I think it was afternoon.

Q And you took it over to Brooklyn to a locksmith that day?
A Yes.

Q And then from the locksmith where did you go, home or to your place of business? A No, to a jeweler.

Q And what time was it that you got to the jeweler, morning, afternoon or night? A I have no idea. It was in the afternoon but I have got no idea what time it was.

Q From the jeweler's did you remain with the bag in the jeweler's or leave it there? A I walked out with it.

Q You took the bag away with you? A Yes.

Q You remained there all the time the bag was there?
A Yes, sir.

Q And then took it from the jeweler's where? A To a booth, telephone booth to ring up --

Q From the telephone booth where did you take it?

THE WITNESS: (Continuing): To ring up Rifkin --

Q Where did you take it from the telephone booth? A I am not sure whether I took it to the place of business or to my home -- I don't think I took it to my home -- I took it to my place of

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business.

Q And the next day you say you took it to the District Attorney? A The District Attorney.

Q You left it in your place of business over night?

A Yes -- I won't say for sure -- I can't say. I am not sure.

Q Where did you leave it? At your place of business or at home over night? A I think it was at my home.

Q You may have left it at your place of business? A At the time maybe home.

Q Are you positive you took it home? A I am not positive.

Q You may have taken it to your place of business? A Yes.

Q You may have left it in your place of business over night? A I am not sure, one of the two places.

Q You got it the next morning? A Yes.

Q And then took it to the District Attorney's office in Brooklyn? A Yes.

Q Did you leave it there? A No.

Q You remained there with it? A Yes.

Q From the District Attorney's office where did you go? A Gates Avenue Court.

Q When you got to the Gates Avenue Court did you have it in your possession there? A Yes.

Q Or give it to somebody? A I did not give it to nobody. I always had it in my possession.

Q From the Gates Avenue Court where did you go? A Police Headquarters, New York.

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Q Direct? A Direct to New York.

Q Did not stop anywhere? A No.

Q Then it was that you left it with whom? A With Officer Martin J. Sheridan.

Q Did you meet Sheridan there then? A Yes.

Q Who did you see first? A There was a captain, I don't know -- a police captain.

Q He brought Sheridan to you? A He called Sheridan over and he says he will take care of your case.

Q He called him over -- never mind what was said -- but you turned the bag over to Sheridan? A Yes, sir.

Q When did you see him next? A I did not see it for a couple of days but used to --

Q I did not ask you that. A I don't remember.

Q You did not see it until a couple of days? A A couple of days.

REDIRECT EXAMINATION BY MR. MANCUSO:

Q You saw it when the case was before the Grand Jury in this building? A Yes, sir, that was before it was shifted over

Q Then you saw it again when the case appeared on this calendar? A Yes.

Q Up in my room? A Yes.

MARTIN J. SHERIDAN, called as a witness in behalf of the People, being duly sworn and examined, testified as

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follows:

DIRECT EXAMINATION BY MR. MANCUSO:

Q How long have you been a member of the Police Department?

A Eleven years.

Q You are now assigned to the First Branch Detective Bureau at Headquarters? A Yes, sir.

Q And were you a member of the Police Department during the month of October 1916? A Yes, sir.

Q During that month did you see the witness Max Barron?

A I did.

Q Where? A Police Headquarters, First Branch Detective Bureau.

Q There did you have a conversation with him? A Yes.

Q After the talk with the witness Barron what did you do?

BY O'REILLY:

Q Officer, Please put that paper away. A I went to 83 Bartlett street, Brooklyn.

BY MR. MANCUSO:

Q There did you speak to any person? A I did not go into 83 Bartlett street, which is a licensed liquor saloon or was at that time, run by an Italian. Barron went in the saloon and I waited outside.

Q Did you speak to anyone there? A No.

Q From there did you go to any other place? A I followed Barron and another man who came from the saloon around along some of the streets there.

Q Do you know who this other man is? A I do know -- Barron

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told me who it was then -- he is a brother of the defendant.

Q From there where did you go? A I went back to police Headquarters.

Q Did you go to Bartlett street? A 83.

Q Again, the following day? A About two days after this I went to Bartlett street again.

Q How many times did you go there all told? A Twice.

Q Did you know where the defendant lived? A Barron gave me an address at that time.

Q Did you go to that address? A I did not.

Q Is there any other place that you went for the defendant?
A No, not for the defendant.

Q At the time that Barron came over to see you at Police Headquarters, did he have anything with him? A Yes, he did.

Q What? A He had a bag containing a lot of --

Objected to.

Q I show you People's Exhibit 3 for identification, and I ask you if that is the bag that Barron had? A It is.

Q Did you open it at that time? A I did.

Q Did you examine it? A I did.

Q What was in the bag? A Pieces similar to the pieces contained in it now.

Q Did you receive the key from Barron? A I did -- I did not receive the key from Barron.

Q What did you do with the bag? A I kept the bag in Police Headquarters until October, I think it is the 31st -- I

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cannot testify as to the particular date. I can if I look at this paper.

MR. O'REILLY: There is no objection to your looking at it.

Q October 31st, the date of the indictment? A Yes, that particular date.

Q You kept it there until the matter came before the Grand Jury? A Yes.

Q And with whom did you leave the bag at Headquarters?
A With the property clerk.

Q Is that the person officially designated by the Police Department to take care of or custody of property? A Yes.

Q At that time who had the key? A I cannot answer that. I do not know where the key was for the bag.

Q When you came to this office before the Grand Jury, to whom did you turn the bag over? A To Mr. Embree.

Q Is that the gentleman in charge of the Indictment Bureau? A Yes, sir, at that time.

Q When the bag was at Police Headquarters, do you know of your own knowledge whether the contents were removed or taken from the bag?

Objected to. Objection sustained.

Q Did you have a talk with the witness Barron some time during the month of January or February of last year? A I did.

Q Did the witness Barron bring you a photograph or other paper or document? A He did.

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Q Whose picture or photograph was it?

Objected to.

MR. MANCUSO: I will withdraw it.

MR. O'REILLY: Do you want to show it was the defendant's picture?

MR. MANCUSO: No, I withdraw the question.

Q After the talk with Barron on this occasion, what did you do? A I had several conversation with Barron at different times.

Q In pursuance of any of those conversations did you do anything regard the defendant? A Yes.

Q What was it? A I sent a telegram to the Chief of Police of Boston with consent of Inspector Faurot, who has charge of the Detective Bureau.

Q Did you do anything else? A I sent a telegram --

MR. MANCUSO: That is all. You may examine.

No cross examination.

MR. MANCUSO: If your Honor please, I move at this time amend the indictment to conform with the proof. The indictment states on the 20th day of October in the year 1916, whereas the proof shows that this crime was committed on the 13th of October. It is probably a typographical error on the part of the person who prepared the indictment. I do not think the change or variance is so material as to in any way prejudice the defendant's right.

MR. O'REILLY: I do --

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THE COURT: Do you claim surprise, Mr. O'Reilly?

MR. O'REILLY: No. I do not think it makes any difference.

THE COURT: Then you consent to it?

MR. O'REILLY: Yes.

THE COURT: Then on consent, I will allow the amendment.

MR. MANCUSO: The People rest.

MR. O'REILLY: The defendant moves for a dismissal of the indictment and a direction of a verdict of acquittal upon the ground that the prosecution has not made out by legal evidence the charge contained in this indictment, nor have they proven any crime.

Motion denied. Exception.

MR. MANCUSO: If your Honor please, I omitted through an oversight to offer the bag in evidence, and I now offer it as one of the People's exhibits.

MR. O'REILLY: I object as incompetent, irrelevant and immaterial, and not proven.

THE COURT: I overrule the objection.

MR. O'REILLY: Exception.

(The bag, being people's Exhibit No. 3 for identification, is now received in evidence and marked in evidence People's Exhibit No. 3.)

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THE DEFENSE.

M A X M I T N I C K, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

(Residence, 22 Fayette Street, Brooklyn, N.Y.)

DIRECT EXAMINATION BY MR. O'REILLY:

Q How old are you? A Thirty years.

BY THE TWELFTH JUROR:

Q Who got the \$2400?

MR. MANCUSO: Well, according to the testimony of the witness Rifkin, the man whom he was introduced to on Park Row. We do not know his name.

BY MR. O'REILLY:

Q You did not get any part of the \$2400? A No.

Q How old are you? A Thirty.

Q Where do you live? A 22 Fayette Street, Brooklyn.

Q With whom? A With my widowed mother.

Q You are not married? A No.

Q Never have been? A No.

Q You are a single man? A Yes, sir.

Q What is your business? A Produce dealer, peddler.

Q Have you ever been convicted of any crime? A I never was arrested in my life.

Q Have you ever been convicted of any crime? A No.

Q Ever arrested? A No.

Q Not for anything? A No.

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Q Never in your life? A No.

Q Do you know Max Barron? A Yes.

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

Q Barron testified here yesterday that he had gambled in an establishment or place kept by you. Did you ever keep a gambling place? A No.

Q Did you ever conduct a gambling game of any character?
A No.

Q Have you ever gambled with Barron? A Yes.

Q Where? A In his place of business in Varet street.

Q What kind of a place is that? A A candy store.

Q Where did you gamble? A Back of his place.

Q Who conducted that game? A Barron.

Q What kind of game was it? A Stuss.

Q Just bring your mind to Columbus Day or the week of Columbus Day, 1916, did you see Barron about that time? A I seen him every day almost, previous to that.

Q Do you know a boy named Jaffe? A Yes.

Q Do you know for whom he worked about that time? A Yes.

Q Where did he work? A For Mr. Barron.

Q Did you see him shortly previous to Columbus Day?

A I did.

Q Where did you see him? A Wallabout Market.

Q You had a conversation with him, did you? A Yes.

Q Do not say what it was. Now, pursuant to that conversation did you go anywhere? A Yes.

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Q Where did you go? A Barron's place, Park Avenue.

Q Did you see Barron? A Yes.

Q Did you have a conversation with him? A He introduced me to a man by the name of Heller.

Q Not Keller? A Heller.

Q Was Heller there at the time you arrived? A Yes, sir.

Q Did you have a conversation with Barron at that time, did you have some talk with him then? A He just introduced me to him and they were talking. I did not listen to it.

Q Did you at that time, that day or subsequently, have a conversation with Barron about a transaction connected with some jewelry? A I did.

Q Where was that conversation? A In his place of business.

Q Tell us what that was? A He said that he and a man by the name of Mr. Rifkin was going to buy jewelery of Mr. Heller, and he said to me that I should come along with him to New York.

Q Did he say anything about Heller, who he was or what his business was? A Yes.

Q What did he say? A He said to me -- I said, How do you know Mr. Heller. And he said to me, Why, he had been knowing him selling jewelry and soap and dresses to inmates in disorderly houses, and he could get a whole lot of jewelry cheap, he buys it and sells it.

Q Do you know Mr. Rifkin -- how long have you known Mr. Rifkin? A I have known him all my life around the neighborhood I have known him.

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Q Did you subsequently go to Rifkin's place of business?

A I went with Barron.

Q With Mr. Barron? A Yes and Mr. Heller.

Q There is some testimony here that somebody showed or handed to Mr. Rifkin a piece of gold or piece of jewelry in Barron's place. Were you there on that occasion? A I was.

Q Did you hand any jewelry or any gold or anything that purported to be gold, or anything of that character to Mr. Barron or to Mr. Rifkin? A No.

Q Did you see anything of that kind handed to Mr. Rifkin by anybody? A I know Barron says to Heller, show him that. I did not see it.

Q After that you went to Mr. Rifkin's place with Barron?

A Yes.

Q What time did you go, in the morning or in the afternoon? A The morning.

Q Where was the place? A New York.

Q Did you go into the office? A Yes.

Q Who did you meet -- did you meet Mr. Rifkin there?

A Yes.

Q Was there anybody else there at the time? A Heller.

Q Was Heller in the place? A Yes.

Q Did you leave there with anybody to go uptown to the neighborhood of 19th street? A I did.

Q Who left? A Rifkin, Barron, myself, we took a car.

Q What became of Heller? A Heller went along with us.

Q Barron says that there was something said about acid,

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about using acid, something for testing purposes and that it was put in a bag and that you said you would carry it, or Barron said he would carry it, and then you said let me carry it, and then you took it and carried it uptown.

MR. MANCUSO: I object to that part of the question which says that the acid was put in a bag. There is no such testimony.

THE COURT: Barron says it was wrapped up in a package with the stone.

Q Well, wrapped in a package? A Just a minute, counsellor, do you mean coming from Rifkin's office?

Q When you left Rifkin's office to go uptown who went with you? A Barron, Heller, Rifkin and myself.

Q Was there anything carried by you from that place uptown? A No, sir.

Q Was there anything carried by anybody? A Yes.

Q Who carried this package? A Barron carried a small valise.

Q How big? A About that big (indicating).

Q What was the color of it? A Black.

Q From whom did Barron get it? A From whom?

Q Yes. Who gave it to Barron, where did he get it?

A Rifkin.

Q Did you have it in your possession at any time? A No.

Q How did you travel? A Took a car.

Q Barron and Rifkin say that when you left Rifkin's office that you and Barron and Rifkin were the only ones in the party

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and that you went over to Ann street and met a third man. A Just a minute. You have this wrong. When I went with him on the car, Rifkin, Barron and Heller got in a conversation in the car.

Q What I want to get at is this, was Heller in Rifkin's office when you went there with Barron? A Yes, sure.

Q Did you meet him in Rifkin's office? A Yes.

Q Did you go to Ann street subsequently and meet him there or did you meet him in Rifkin's office? A Met him in Rifkin's office.

Q Then the four of you went uptown together? A Yes.

Q Barron carried a small bag? A Yes.

Q That he got from Rifkin? A Yes, sir, from Rifkin.

Q When you got uptown you left the car? A We went on the car and Barron said to me, you sit in the back, you sit on the side, and then three got in conversation.

Q You sat separate from them? A Yes, sir. Barron said to me, sit in the other two seats below, we want a little conversation, and I did not hear it.

Q When you got uptown did you get off the car? A Yes.

Q All of you? A Yes.

Q Whereabouts was that? A About 19th or 20th.

Q Where did you go when you got off the car, did you go to any place? A Yes. Barron met a man -- we all met a man and Barron said to me, go away on the side, and I saw him shake hands.

Q Who shook hands? A Rifkin shook hands with Heller and this other man.

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Q The man you met on the corner of 19th street? A Yes, sir.

Q What kind of looking man was he? A Dark complexioned man.

Q Tall or short or stout or thin? A Short -- I don't know --

Q What kind of a looking man was Heller? A Dark complexioned, about my build, my size.

Q Had you ever seen this man before, that they met on the corner of 19th street? A No.

Q After they had shaken hands and exchange greetings, what did you do then? A Barron said, Come on, we will have a drink. They went into a saloon, the four of them got into a little booth there and got into conversation.

Q Did you sit with them? A No, I stood at the bar. Barron told me to stay at the bar. He said we have a little conversation, excuse me -- he said. And I stood there and took a glass of beer.

Q They had a drink? A Yes, they had a drink.

Q From there where did you go? A After the conversation we walked outside.

Q Where did you go from there? A They walked out to 19th street, and I went out to Second -- Barron did this to me (indicating).

Q Giving you a direction? A Yes, to go this way, and he went the other way and we met on the corner.

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Q Barron, Rifkin and the other two men and yourself were together on the corner? A Yes.

Q Whether it was 19th or 20th street? A Yes.

Q From there where did you go? A Barron says go up with these men upstairs.

Q To whom? A To Rifkin, go upstairs.

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Q With these men? A Yes.

Q Did Barron go into a building with them? A No, Rifkin and these two men went upstairs and Rifkin said to me -- no, it was this way, he said here is this valise, this satchel -- not this -- not a satchel like that, but a small one, he said here Rifkin you go up with Heller and the other man upstairs on the first floor or second floor.

Q Barron said that -- handing the little black bag he carried on the car to Rifkin? A Yes, he carried it all the time.

Q And Rifkin took it and went in the house with those men?
A Yes, sir, and Barron said you stay with me downstairs.

Q Did you stay with him? A Yes.

Q You and he remained on the corner? A Yes.

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

Q Did you see those men again? A Yes.

Q Where? A This Heller pulled his hat like that (indicating) or something, that xx means come on, and we walked down towards 20th.

Q Did they come out of the house? A Yes.

Q Heller and the other men? A And Rifkin.

Q Came out of the house? A Yes.

Q Did they have anything with them when they came out?

A Did they have?

Q Did they have anything? A Yes.

Q What? A A big valise.

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Q Did it look something like that? (Indicating People's Exhibit 3) A Something like that, yes. They met this man with something like that on the corner, too.

Q The man had the bag with him? A Yes, sir, the other, the dark complexioned fellow -- not Heller, but the other man.

Q He had the bag with him when they met him? A Yes.

Q When they came out one of them was carrying a satchel similar to this? A Yes, something like that.

Q Who was carrying it, which one of them? A I don't remember.

Q Now, Heller then made a motion for you to follow? A No, ^{we} made a motion to Barron and called him over and ~~they~~ went on the other side, like from here to the other side.

Q The other side of the street? A Yes, sir, there is where they went up in the house -- Rifkin, Heller and the other man went on the other side and this was the saloon and we stood on this corner.

Q Across the street? A Yes, sir, Heller went this way to Barron and called him over.

Q When they came out? A Yes.

Q Did you cross the street? A Yes, sir, with Barron.

Q And joined them? A Yes.

Q Where did you go? A Barron got in with the four carrying this little satchel, this black satchel.

Q Was the black satchel brought out again then? A Yes.

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Q When they came out? A Yes, Rifkin gave it to Barron.

Q Again? A Yes, sir, he carried it.

Q Where did you go then? A We finally got -- the four was walking down and Barron said to me keep back of us.

Q Moving his hand? A No, he said, keep in back of us and let us walk first and they walked direct to a restaurant.

Q Did you follow them? A Yes.

Q Where did they go? A Into the restaurant.

Q Did you go in there also? A Yes.

Q What did you do in the restaurant? A They sat there and we had something to eat.

Q After you had something to eat in the restaurant where did you go? A No, right in that conversation -- four, Rifkin, Barron and Heller and -- then four got into a conversation. Barron says to me you stay on the side and I went over, it was like a lunch room, and I went on the opposite side, there were chairs this side and chairs that side and they stood on the left or right side, I don't remember how it is situated, and I went on the opposite side and I stood there.

Q You had something to eat? A Yes, they got in conversation and they was talking, and I don't know what they were talking about.

Q Did they subsequently come out? A They left the place.

Q When you came out you all came out together? A Yes.

Q Then, what did you do when you came out, what did they do and you do when they came out again? A Barron says let us

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