

get a machine. I have bought a big bargain for \$2400.

Q Barron said? A Yes.

Q When did he say that? A He said that to all of us.

Q He said let us get a machine? A Yes.

Q Did he get a machine? A Yes.

Q What kind of a machine was it? A He and Rifkin -- an automobile.

Q Closed or open? A I don't remember.

Q When the machine came along who got in it? A Who got in it?

Q Yes. A Barron says to me I should take a ride with Rifkin down to his office. This Heller says you wait a minute, you get out of here, you come back to see Barron.

Q Heller said that to you? A Yes, and I went back to the corner and another man went in, this man that carried this here satchel similar to this. (Indicating People's Exhibit 3)

Q Went in the machine? A Went in the machine. Barron says to me you wait here with me. Mr. Heller says in the automobile, he said, you get out of here, you have no business with me, I don't know you, and I said, Barron told me to take a ride with you down to Rifkin's office." Finally they turned back and I went there and I stood with Barron.

Q They went away in the machine? A Yes.

Q Leaving you and Barron alone? A Yes.

Q Did the two men go with Rifkin, Heller and the man they met on the corner? A Yes.

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Q Did he get in the machine? A Yes.

Q You say he had the bag then? A Yes.

Q They drove away? A Yes.

Q You and Barron remained on the corner? A Yes, sir, and Rifkin says I will be back in about an hour and we waited there three hours.

Q You and Barron? A Yes.

Q Barron said you were there a few minutes with him and then you mysteriously disappeared as if you had been swallowed up in the street? A No, he rang up that place four times while we were up on that corner.

Q Rang up Rifkin's place? A Yes, sir, Rifkin's and being -- I said you might as well wait a little longer, may be he would have met some friend or something like that.

Q Didn't he get any answer? A No, sir, he did not.

Q After you waited there several hours what did you do?
A He said come back, what is the use waiting, I can see these people in Brooklyn.

Q What did you do then? A We went down and had something to eat.

Q Who? A Me and Barron.

Q In New York? A In Brooklyn.

Q You went over to Brooklyn with him? A Yes.

Q Where did you leave him? A I left him at Throop Avenue-- not Throop Avenue -- Varet and Broadway.

Q Did you see him again? A Yes.

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Q How long after that did you see him? A I saw him the same day and I saw him the next day and I saw him Saturday and I saw him Sunday and I saw him Monday.

Q You left Brooklyn after that and went to Toledo? A Yes.

Q Why did you leave, tell us why you left Brooklyn and went to Toledo? A Barron came over to me and he said you know that transaction I had with Rifkin. He said now, this stuff was not right, he said, and this money, he wants to hold me responsible for it. Now, the only way you go out of town. You understand he wants to use me as a witness against Barron -- Rifkin.

Q Who said that? A Barron said that to me, Rifkin wants to use me as a witness against Barron.

Q Barron told you that? A Yes, then I said, how could I leave my mother all alone, she is a widow and how will she get support. He said, this thing will be all over, and I was scared and I said, I have a few hundred dollars which I make my livelihood down in the market and he said I will donate to it and he gave me \$150, and I went away.

Q How long were you away?

BY THE COURT:

Q Why did you go to Toledo, why did you go so far from New York?

BY MR. O'REILLY:

Q Why did you go so far? A It is over there better for peddling business.

BY THE COURT:

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Q How did you know it was? A I have known a few friends in the State of Ohio, in Cleveland, who used to peddle in Brooklyn.

Q We are speaking of Toledo? A Yes, sir, they said in the State of Ohio it will be all right.

Q Did you peddle there? A Yes.

Q Did you get a license in your own name? A No, I peddled with a man by the name of Goldstein.

Q What did he sell? A He was selling fruit and vegetables.

Q Where does Goldstein live? A He lived at that time on Woodruff Avenue.

Q How long were you there? A Between five and six months.

Q All to accommodate Barron? A Not that -- I was afraid, I was afraid.

Q Afraid of what? A Being arrested.

Q You claim you were not concerned in any scheme to swindle anybody? A No, but Barron told me that.

Q What did Barron tell you? A Barron?

Q Yes. A Previous, before I went away?

Q Yes. Barron said -- what he said to me before I left?

Q Yes. A Barron said to me here is this money, he said, and go away.

Q What did he tell you about the case? A That Mr. Rifkin is going to put him in trouble, going to put Rifkin in trouble.

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BY MR. O'REILLY:

Q Barron in trouble? A Barron in trouble, and then finally I was frightened and I went away.

Q Now, you were away for how long? A Five or six months.

Q Why did you come back? A I come back. Why, I worried about my mother and my brother sent me a special delivery letter to come at once, and I figured it over and I came back and I surrendered to the District Attorney's office.

Q You came to my office? A To your office first and then surrendered to the District Attorney.

Q Here in New York? A Yes.

Q Did you know either Weller or this other man previous to the times you met them with Barron? A I was introduced to them.

Q Did you see them before that time in your life or know them? A Yes.

Q Did you see anything that was in that bag or whether it had anything in it or not? A No.

Q At any time? A No.

Q Did you have anything to do with this transaction other than what you have just narrated now? A No.

Q I think I asked you this question, one of the witnesses said that you said I will carry the acid, did you ever say that at any time? A No.

Q One of them testified that they went in a cafe at your request? A No.

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Q Did they go in at your request? A No, Barron's request.

CROSS EXAMINATION BY MR. MANCUSO:

Q You said you worked as a peddler in Brooklyn? A Yes.

Q You are thirty years of age? A Yes.

Q You went to public school here? A Yes.

Q To high school? A No.

Q When did you graduate from school? A I never graduated, I was in the first grammar.

Q How many years ago did you leave school? A Fifteen years.

Q At what places have you worked during the past fifteen years? A I have been in the fruit business and I have had three stores, fruit stores.

Q And the last work you worked as a peddler for yourself?
A With my brother.

Q What is your brother's first name? A Morris.

Q And did he have a marker place or a stand or a basement or a store? A He is what you call a speculator, he buys off the farmers and sells it right direct to the customers in the Wallabout Market.

Q What did you do in connection with that business with your brother? A At times he used to buy a load and I used to dispose of it, right there for him -- I used to buy fruits -- he is only in the vegetable line in the farmers' square as they

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call it.

Q How long did you work with your brother? A I have been partners with him.

Q How long have you been a partner with him? A All my life he is in business and we are in business today.

Q You told us about Toledo, Ohio? A Yes.

Q Have you told us all about Ohio? A Yes.

Q Were you not known there by the name of Max Brown?

A No.

Q Never known by that name? A No.

Q Where did you live in Toledo? A In East 12th Street.

Q Didn't you live at 339 North 11th Street? A No.

Q Did you know Becky? A No.

Q Don't you know a woman by that name at 804 Washington Street, Toledo, Ohio? A No.

Q You never visited her there? A No.

Q Haven't you been to Toledo, Ohio, before this? A No.

Q That was the first time in your life you had lived there? A The first time - was ever out of town in my life.

Q You were in Ohio you say six months, in Toledo? A Between five and six.

Q What work did you do there? A Well, most of the time peddled.

Q When did you arrive in Toledo, you said that you met Barron on Saturday and Sunday and Monday, is that right? A Yes.

Q After this transaction? A Yes.

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Q When did you leave New York for Ohio? Monday or Tuesday or Sunday, when? A A week later.

Q During that week were you home? A I was.

Q At varet Street? A Not varet -- 22 Fayette Street.

Q You arrived in Ohio a week later? A I started a week later.

Q From New York? A From New York.

Q How long did it take you to go to Ohio? A Two days, something like that.

Q Two days later you arrived in Ohio? A Yes.

Q In Toledo, and who did you go to live with over there?
A I went to live there, I went to a hotel.

Q What is the name of the hotel? A To a lodging house or rooming house.

Q What is the name of it? A No name.

Q You know the difference between a hotel and a rooming house? A It was a rooming house, furnished room and I walked right in.

Q What is the number of the street? A This was in 11th Street.

Q Isn't that 330 North 11th Street? A No, I don't know the number.

Q Was it North 11th Street? A It was 11th Street.

Q That is the only number you remember now? A Yes.

Q Who told you to go to 11th Street? A Who told me where to live?

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Q Yes. A I looked around and went to this place to get a room.

Q How far away from the station is 11th street? A I couldn't say exactly.

Q What station did you get off at when you reached Toledo?
A The Union Station I think it is.

Q Did you walk to 11th Street or did you take a car? A No, I didnot walk to 11th Street. I walked around the vicinity there to look for a room and couldn't get one and finally went to go to 11th Street and found a room.

Q Did anybody direct you to 11th Street? A No.

Q You walked there without any advice? A No, advice at all, I just went there and looked for a room, and couldn't get none, and couldn't afford to pay \$5 in a hotel and had to get a smaller place.

Q How much did you pay over there, at the 11th Street house? A \$3.50 a week.

Q were you alone when you left New York? A Yes.

Q Did you have any friends over there? A In Toledo?

Q Yes. A No.

Q Didn't you tell us a moment ago on your direct examination that you knew three or four people? A Where?

Q In Toledo. A No, I never said that.

Q Did you live at all times in 11th Street? A No.

Q Where did you move from there? A From there a man by the name of Goldstein came from Cleveland, Ohio, and he went

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huckstering in Toledo, and I met him coming from Detroit and he said to me, I got in conversation, I seen him coming there and I met him up on Woodruff, and he had a lot of stuff and I said to him if he needs a good man to work and he said to me yes, and he said you come around to East Woodruff Street tomorrow.

Q When did you meet this man Goldstein? A This man?

Q Yes. A Well, I met this man -- at the time I lived in Toledo.

Q You said you met Goldstein and he had a lot of stuff, I want to know when did you meet Goldstein, did you know him from New York? A No, I met him with a wagon.

Q Where? A In Toledo.

Q He told you he had a lot of stuff? A Not that he had a lot of stuff. He was disposing of stuff, selling it to people in the street.

Q You said the reason you went to Toledo was because Toledo was a good place for peddling? A Yes, not because it is a good place for peddling -- because I had to leave Brooklyn and go there.

Q Didn't you tell us -- A I did not do it for -- because it is a good place, I can make a living in New York City.

Q You said you went to Toledo because it is a good place for peddling? A Yes, well -- peddlers in the market said they heard in the State of Ohio it was pretty good there.

Q How did you know it was a pretty good place for peddling if you never had been there? A Being that the people that was

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in the state of Ohio came to Brooklyn.

Q What is that? A Being that the people that came from Ohio said, from Cleveland -- said that they were peddling in Ohio andr was pretty good.

Q So you had spoken to several people before you went to Toledo? A What -- I didn't speak to nobody.

Q How did you get it, by inspiration? A This was months previous, back, may be five or ten years back.

/ Q You had it in mind? A Not in mind.

Q Let me finish my question? A Excuse me.

Q You had it in mind when Barron told you to get out of town that Toledo was the proper place for you? A Not that I had it in mind, I never had Toledo in mind previous, no, sir. I thought that I could make my livelihood there and he said that he -- that everything will be all right and he is going to send for me and he is going to tell me to come back.

Q Don't you know what kind of a place Toledo is? A Now I do.

Q What kind of a place is it? A It is a place where the Overland automobile is.

Q Is that all? A And a lot of other things there.

Q That is all you have known about it since you have been there? A I have known a little.

Q Tell us what little you know about Toledo?

Objected to. Objection overruled.

Q Tell us what little you know about Toledo now? A I don't know much about it.

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Q You have known Barron for over 20 years? A About that.

Q Did you know Heller before you met him at Barron's place?

A No.

Q You met him for the first time how many days before this transaction? A I have met Barron -- who, Heller?

Q Heller? A I met him about ten days previous to the time. I met him in Barron's place of business.

Q You went frequently to Barron's place of business?

A Where he was on the other side, friendly, he came me and show me how things were going around.

Q You didnot go to Barron's place on this day by any appointment, didyou? A What day do you mean?

Q On the day you met Heller in there? A We sent for me.

Q When he sent for you he introduced you to Heller? A Yes.

Q What did he say to you? A We said, well, he said-- Mr. Barron said to me that he and Rifkin is going to buy some jewelry of Heller.

Q And what did he want you to do? A He said come along in case Mr. Heller misleads me, that he should have a witness to that effect, being he was my friend.

Q So that all Barron asked you was to have you as a witness in the event that Heller misled him? A In case that something happens that he would have me as a witness, that was why I went along.

Q You didnot examine this material or brass or gold? A I never saw ~~xxx~~ nothing.

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Q In all of these transaction you were kept aside? A Yes, sir.

Q You did not see the passing of the money? A No, I was not there.

Q You didnt know anything about the money? A Outside of him saying -- Barron says that he bought a bargain for \$2400 up in 19th street. The money I didnt see.

Q On this day when you met Heller at Barron's place, was Rifkin present? A In Barron,s place?

Q Yes, on the first day you met him ten days before Colombus Day? A Ten days before?

Q Yes. A No, I did not meet Barron -- I did not see Heller ten days -- I saw him the day, Colombus Day in Barron's place.

Q You said at the time you met Heller was ten days before Colombus Day in Barron,s place of business? A No, previous, on this occasion.

Q Ten days before the sale? A Did not know anything about this here, he met me and he introduced me, took me down to his brother's place, the Arcadia Hall.

Q W o did? A Mr. Barron.

Q Now, get this straight, when did you meet Heller in Barron,s store, how many days? A I met Heller previous to that in the hall, I met him.

Q How many years or months didyou know him? A Ten days or two weeks before I met Heller he introduced me in Arcadia

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Hall in Brooklyn, in Barron's brother's place.

Q Was that introduction with Heller by appointment with you or did you just happen to walk in? A Barron said to me, my brother opened the place Arcadia Hall, Broadway and Gates Avenue and he said to me come down there and there is where I met Heller with a lady.

Q What was the lady's name? A I don't remember.

Q Did you know the lady before? A No.

Q When you met Heller in this Arcadia Hall with Barron, did you have any talk with Heller? A Just introduced -- he said this is Mr. Heller and this is Mr. Nitnick and we had a drink and they were dancing. Barron says -- I says to Barron I am going to go home. They were left. Heller and Barron were left in the place in the hall and I went away home.

Q At the time that you went into the hall was Barron there before Heller came or did you find both of them there?

A No, I went with Barron into the hall.

Q Was Heller there at the time you went into the hall?

A Heller was there, yes.

Q Did Barron at that time say anything to you about this jewelry or gold? A No.

Q Not a word was said then? A No.

Q This is two weeks before this transaction, is that right? A Not two weeks, about ten days.

Q Is it two weeks or ten days? A About ten days.

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Q Ten days before this transaction you met Heller for the first time at this hall, is that right? A Yes, sir. Never got in any conversation about anything, just had a drink and that was all there was to it. I stood there about an hour and went home.

Q When was the next time that you met Heller? A Just a minute, let me interrupt you. I said to Barron, I said, who is your friend and he said to me this here man sells a lot of stuff, jewelry and kimonos and that stuff in disorderly houses, so I said, how did you come to know him. He said, I visit these places in New York. That was all that was said. And I said haven't you got any respect for your wife and you have four children you claim. And that was all that was said.

Q Was this said while Heller was there or after you left the hall? A That was two or three days after I met Heller, that conversation came in, where did you meet the man and how did you know him.

Q How many days after did you meet Heller again -- the first time you met him in the hall, when was the next time you met him? A The next time I met him was the time Barron sent for me down the market to come to his place of business.

Q Who came for you down to the market? A A man by the name of Jaffe employed by Mr. Barron.

Q So that Barron sent Jaffe after you at the market?

A Yes.

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Q And when Jaffe came there you went to Barron,s store?

A About an hour later.

Q Did you find Heller there? A Yes.

Q What was the conversation that you had then with Heller?

A Didn't have no conversation, he said this is -- I said, Hello, how are you.

Q Did you say that or were you introduced to him there, you were about to say this is Mister -- A No --

Q What did you have in mind? A I said, How do you do, Heller, I met him before in the hall.

Q What did you have in your mind when you were about to say this is Mister and you stopped, what did you have in mind then? A Nothing.

Q Nothing in your mind? A No.

Q Didn't you say in your direct examination that you met Heller for the first time in Barron's store? A No, I met him in the hall the first time. The second time I met him in his place of business.

Q You did not know the reason why Barron sent for you?

A When he sent Jaffe to the market?

Q Yes. A No.

Q When you came there you said how do you do Mr. Heller, or words to that effect? A I said good morning. He said how did you enjoy yourself that night, and that was all there was to it.

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Q What else was said? A So Barron said to me, take a ride to New York, with Mr. Heller.

Q Where did you go? A Went and met -- went to Rifkin's office.

Q What day was this? A I don't remember.

The court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes an adjournment until tomorrow morning, January 16th, 1918, at 10:30.

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New York, January 16, 1918.

Trial resumed.

M A X M I T N I C K, resumed the stand:

CROSS EXAMINATION CONTINUED BY MR. MANCUSO:

Q Yesterday on cross examination you told us that you met Heller for the first time at Barron's brother's dancing hall, is that right? A Yes.

Q Didn't you on direct examination in answer to your lawyer's question say that the first time you met Heller was when Barron sent Jaffe for you and then when you went to his store you were introduced to Heller? A No.

Q You say you did not say that? A No.

Q Didn't you make this answer to the question put by your lawyer yesterday, "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 Don't say what it was -- pursuant to that conversation did you go anywhere?

A Yes. Q Where did you go? A To Barron's place, Park Avenue. Q Did you see Barron? A Yes." Did you make those answers? A Well, I seen Heller previous to that.

Q Did you make those answers yesterday? A Yes, sir.

Q " Did you have a conversation with him? A He in-

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troduced me to a man by the name of Heller" Did you say that yesterday? A No, sir.

Q You say the stenographer did not take it down correctly?

A I did not say that, that he introduced me yesterday, no, sir.

Q Didn't you say that to Mr. O'Reilly's question "Q Did you have a conversation with him? A He introduced me to a man by the name of Heller." You say now you met Heller for the first time in the Arcadia Hall? A Yes, sir, first a week previous.

Q Why were you introduced to him again the following week?

A No, never was introduced to him.

Objected to. Objection overruled. Exception.

Q If you had met him the previous week in the Arcadia Hall, what was the necessity of introducing you to him again on this occasion? A He did not introduce me. He said good morning.

Objected to as calling for a conclusion.

Objection overruled. Exception.

THE WITNESS: I seen him a week previous to that in the hall. ^

Q Do you now deny that you made this answer yesterday in reply to Mr. O'Reilly's question "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." Do you deny you made this

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answer yesterday in answer to that question? A He met me before that. He met me a week previous to that. He said good morning to me. That was all he said. I met him a week previous to that, Mr. Heller.

Q Did you make these answers to these questions yesterday that I have read to you now -- you understand my question?

A Read it over again.

Q Yesterday Mr. O'Reilly asked you several questions, I will read them to you and you tell me whether or not you made the answers. "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." Did you make those answers to those questions? A Yes, sir.

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." Did you make those answers? A Yes.

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." Did you make those answers? A He did not introduce me.

Q Did you make those answers? A No, sir -- when, yesterday?

Q Yes. A He introduced me a week previous to that. He

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said good morning.

Q Do you get the question clearly -- did you make those answers to those questions yesterday when you were being examined by your counsel? A My lawyer did not ask me if this was the first time or second time I met this man.

Q Did you make those answers to those questions yesterday-- you understand my question, it is as plain as I can make it.

A I understand your question.

Q Did you make those answers yesterday in response to those questions? A This was the second time he met me.

Q Did you make those answers, yes or no. A Yes.

Q You now say that was not the first time you were introduced or met Heller? A The second time.

Q And when you met Heller the second time as you now state in Barron's place, what did Barron tell you about Heller?

A Barron said to me that him and Rifkin is going to buy some jewelry from Heller.

Q What did he want you to do in the matter? A He said to me I should go along with him.

Q Are you a jeweler? A No, sir.

Q Have you ever bought or sold jewelry? A No, sir.

Q Did he tell you why he wanted you to go along with him?

A He said in case if this man misleads me, that he should have a witness.

Q That in cas Heller misled him? A Yes.

Q Had you known anything of Heller? A No -- outside of

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what Barron explained to me about him.

Q Was there any jewelry at that time, or any gold shown in the place? A I didn't see nothing. No, sir, we just took a car and went to New York.

Q On that same day? A Yes.

Q Was Rifkin there at the time? A Where?

Q In Barron's place? A Barron's place?

Q Yes. A Which time do you allude to?

Q On this occasion when Jaffe came over to call you and then you went to Barron's store, and there he told you that he and Rifkin were going to buy some gold from Heller? A Rifkin was not there.

Q Did you ever see Rifkin at Barron's store? A No.

Q Sure about that? A Yes.

Q You did not see Barron give any gold bits or gold pieces to Rifkin in his store? A In his store, no sir.

Q While Heller was there? A No, sir.

Q And as soon as you got to Barron's store you then, the tree of you -- A It was no store, it was his place of business.

Q Factory or store or office? A Factory.

Q You then took a car and went down to Rifkin's office?

A Yes.

Q What conversation did you have there with Rifkin or Heller? A No conversation whatever.

Q Did Heller go into the office or did he remain downstairs?

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A Heller?

Q Yes. A Heller went upstairs with Barron and with me, Heller, Barron and myself went to Rifkin's office.

Q Now, a moment ago you told us that when you went to Barron's store or office Rifkin was not there? A Yes.

Q Was he there or wasn't he, was Rifkin there at the time?

A Where?

Q On this occasion when Jaffe came over to call you? A No, sir, Rifkin was not there.

Q Yesterday you were asked this question by your lawyer, "There is some testimony here that somebody showed or handed to Mr. Rifkin a piece of gold or pieces of jewelry in Barron's place, were you there on that occasion? A I was." Did you make that answer? A No, sir.

Q You did not make that answer? A No.

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 Rifkin? A No --

THE WITNESS: No.

Q Listen to the question before you answer, "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." Did you make that answer? A Yes.

Q "Did you see anything of that kind handed to Rifkin by anybody? A I know Barron says to Heller show him that. I did not see it." Did you say that? A Yes, sir.

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Q Now, when you got to Rifkin's office what was said by Barron or by Rifkin or Heller? A Barron says to Rifkin, Mr. Rifkin show Heller the money.

Q What? A Barron said to Rifkin show Mr. Heller the money -- some money.

Q Was the money shown? A The money was shown.

Q How much money was shown? A I don't know.

Q You did not count the money? A No.

Q You were not interested in it? A No.

Q You did not see any gold pass between the two? A No.

Q You did not see Rifkin there -- or you did not see Barron give any gold pieces to Heller, discs to Heller or Heller to Rifkin? A No.

Q What did you mean yesterday when you said that Barron said to Heller, "Show him that?" A I don't know what he meant by it.

Q What did you mean when you said that? A Barron said -- Mr. Heller show him that -- I don't know where it was.

Q Where was this said in Rifkin's or Barron's office?

A In Rifkin's office.

Q Was anything shown after those words were uttered, by Barron? A Yes.

Q What was shown? A Something, I don't know what it was.

Q After the money was shown, what did you do, did you remain in the office or go out? A We went out.

Q Did you see the bottle containing the acid? A What?

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Q Did you see a bottle containing acid? A No.

Q Did you see that testing stone? A No.

Q When you left Barron's store or office, it was you, Barron and Heller, is that right? A And Rifkin.

Q I talk about Barron's office? A You allude to Rifkin's office at present.

Q Barron's office I talk about? A Barron's office?

Q Yes. A No, sir, me, Barron and Heller.

Q That is what I asked you, there were three of you? A Yes.

Q Did you carry anything with you then? A No.

Q When you left Rifkin's office did you carry anything?

A No.

Q Did any of the men carry anything with him? A Barron carried a small satchel.

Q How big a satchel -- whom did he get the satchel from?

A He got it from Mr. Rifkin.

Q How large was the satchel? A Something like that)indicating); a black one.

Q You did not know what was in the satchel? A No.

Q You did not see Rifkin put anything in the satchel?

A No.

Q Was there anything said by Rifkin or Barron about the testing acids and the stone? A Not that I know of.

Q Was anything said by any of the persons about an examination or test of the gold? A No, sir.

Q All that you saw was the money shown to this person Hel-

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ler, you heard nothing? A No.

Q How far away from them were you? A From where?

Q From these three persons when they were talking in the office? A Well, I should judge from here to this man sitting there -- about that far.

Q From where? A From about here to there (Indicating)

Q Where the satchel is? A It was an office door like.

Q Were you in the same room or the adjoining room? A Right in the middle.

Q Between the two rooms? A They have an office -- office next door to it.

Q You were not in the same office at that time, you were in the next room? A No, I was right there standing here. For instance this is the office like this here and I was standing there and the office over there and there was Barron, Rifkin and Heller and there was the safe right there and Barron says to Heller -- Barron says to Rifkin, Heller show him the money, and I saw the money but don't know what it was.

Q Did you know Barron before that -- I mean Rifkin, did you know him before that? A I have known him by sight, you know.

Q You never had seen him at Barron's store or office?

A No.

Q You did not see him there on Columbus Day? A Where?

Q At Barron's office? A No.

Q Or factory? A No.

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Q Did you see him there two or three days before Columbus Day? A No.

Q You did not go to Barron's place on Columbus Day, did you, Columbus Day? A I don't know what day it was.

Q The 12th of October, the day before this transaction that you went downtown with Heller and Rifkin? A No, sir.

Q You never had a talk with Barron at his office on Columbus Day regarding this jewelry or gold? A No.

Q And you never saw those gold bits, People's Exhibit1?
A No, sir.

Q Or piece similar to it? A No.

Q This is the first time you saw them? A Yes.

Q You did not see them in Rifkin's office? A Rifkin, no, sir.

Q Or up at 19th Street? A No.

Q You then, the four of you left Rifkin's office and walked over through Ann Street to Park Row? A I don't know -- we took a car -- I don't know where we walked to. We took a car.

Q You did not meet anyone on the way over before you took the car? A No.

Q And when you got on the cab did you see with the others?
A No, sir, they sat -- them three sat together.

Q The three on one seat? A Well, two were sitting this way and one sitting on the bag.

Q Where were you? A Barron said to me sit on the other side.

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Q Did he tell you to sit on the other side or sit two seats behind him? A Two seats behind him, something like that.

Q Don't you remember what he said to you? A He said sit on the back or so -- something like that, and I sat on the back.

Q What else did he say to you? A That was all.

Q How many seats behind him did you sit? A I think two or three seats, I guess.

Q Did he tell you why he wanted you to sit in the back?
A No.

Q He wanted you nevertheless as a witness to see that Heller would not cheat him? A Yes.

Q In all these transactions up to the present time, whenever any conversation took place, he always told you to sit behind? A Yes.

Q Didn't you tell him "You want me for a witness, what can I do unless you take me along"? A That was what he told me and said to me.

Q You were working at that time for your brother? A No, sir, not for my brother. I was working for myself.

Q In business with your brother? A Yes.

Q Did you get any compensation for all this trouble of going to Barron's place and to Rifkin's and then to 19th St?
A No.

Q Did you expect any compensation? A No.

Q Or pay? A No.

Q You did it out of pure friendship to Barron? A Yes,

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sir, I know him for so many years.

Q And you sat in that position until you reached 19th Street? A Yes.

Q You did not say a word all this time? A No, sir.

Q Did you hear any conversation between them? A They were talking, I did not hear nothing.

Q Never heard a word? A No.

Q Don't know what was said by them? A No, not a word.

Q Who was carrying this small satchel as you state? A Barron.

Q Did you see him open the satchel at any time? A No.

Q And then you reached 19th Street and got off the car?
A Yes.

Q Who got off first? A Well, they went out through the front door.

Q Did you get out through the front door? A They went to the front door and I went to the other door.

Q To the rear? A Yes, sir, because I was sitting near the door and there were sitting towards the front like.

Q Did you know where you were going? A They jumped off first and then I was there.

Q Why didn't you follow them if you did not know where you were going, why did you go through the back and not through the same door? A There was the car and Heller was the first one off, you see, and then two fellows and I was on the other door like, the front entrance, and I jumped off there and jumped

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on the corner -- off on the corner.

Q Before you got on the car, did you know where you were going? A Going with Barron.

Q Did you know what street or what place you were going?
A No.

Q You were totally in the dark? A I did not know nothing.

Q Just following them? A Yes.

Q Wherever they took you you were willing to go? A Yes.

Q When you got off the car did you all meet, did you all reunite, you, Heller, Rifkin and Barron? A They met another man.

Q Where was this man? A On the corner.

Q What corner? A Corner of 19th Street.

Q Was he on the east side or the west side of First Avenue? A I don't know east or west.

Q You know where the Hudson River is? A Yes.

Q Was it on that side of the Hudson or the side of the East River? A On this side (indicating)

Q The East River side? A Yes.

Q Who spoke to this man first? A Barron said to me, "Get on the side, get over towards the saloon" and I did so and I seen him shake hands. What conversation I did not hear.

Q Did you speak to this man? A No.

Q Were you introduced to him? A No.

Q Yesterday you said we all met a man, what did you mean by that? A We met a man there.

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Q If you did not meet him and were not with him, why did you say we all met a man? A Why, I seen the man. I seen him.

Q When did you see him? A On the corner speaking with them.

Q Had you seen him before that day? A No, sir.

Q Now will you explain why you said this yesterday, listen to the question. "Where did you go when you got off the car, did you go to any plade? 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." What did you mean when you said we all met a man -- you started off to say Barron met a man and then you said we all met a man. A We were all together, Barron said to me, get on the side, and I don't know what they done, they shook haneds, but I don't know what they done or what theysaid, rather.

BY THE COURT:

Q Where was that? A 19th Street.

BY MR. MANCUSO:

Q Can you describe this man whom the se other three persons met on 19th Street? A Dark complexion.

Q How tall? A I think a little shorter than yourself, dark complexion.

Q You did not hear his name mentioned? A No, I did not hear nothing at all.

Q What is Jaffe's first name? A Jaffe, Herman, I guess.

Q How long was the talk on this corner when you were told

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by Barron to step aside? A About two or three minutes and they went into the saloon.

Q Did you go into the saloon at that time? A Yes, sir, I walked right in.

Q Did Barron call you in and tell you to come inside?
A Yes, Barron said come over and take a drink and I stood by the bar and they went in the little booth, one of those private booths.

Q Who was in the booth? A Barron, Rifkin, Heller and the other man.

Q And did you go into the booth at that time? A No.

Q Barron told you to step aside? A Yes, sir, and I had a beer there.

Q You stayed at the counter or the bar? A Yes.

Q How far away from the booth were you at the time that they were drinking? A I should judge as far as that last man sitting there. (Indicating) There is a bar here and that was the booth. (Indicating)

Q About fifteen feet? A I cannot exactly tell you how many feet it is, I can't tell you how many feet, might be ten, twelve or fifteen or twenty.

Q Well, you told us Barron said to you, excuse me, we have a little conversation to talk about? A Yes, sir, he said you stay on the side.

Q Who had the little satchel during this conversation in the saloon, the small black satchel? A Barron.

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Q You paid particular attention to the bag, to the satchel, rather, and you knew Barron had it all the time? A I seen him carrying it all the time.

Q Did you have any special reason to pay particular attention to the bag? A No.

Q So you are sure Barron was the person who was carrying it at all times? A Yes, sir.

Q And after you had this drink, did you all go out of the saloon? A They walked out first and I followed them. They walked out on the corner.

Q You followed them? A Yes.

Q When you went on the sidewalk was anything said to you? A Barron said to me "You wait here with me" and he said Mr. Rifkin and Heller and the other man is going on the other side in a house.

Q Was this on the same avenue, or did you walk one block west to Second Avenue? A No, on the other side of the street -- say for instance this is the saloon and there is the house and they went upstairs.

Q Did you go upstairs with them? A No.

Q Did Barron say anything to you about going upstairs?

A To me, no, sir. He said you stay with me.

Q What did he do with the satchel then? A Which satchel?

Q The small back satchel? A I think he gave it to Mr. Rifkin.

Q The satchel was not opened by anybody at any time?

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A No, sir.

Q The little black satchel? A No.

Q At the time that he gave it to Rifkin it had not been opened by anyone? A Not that I know of.

Q While you were downstairs with Barron did Barron say anything to you and while the other men were upstairs? A No, not a thing.

Q Up to this time did you ask him what he was doing there? A He told me that he is going to buy jewelry.

Q Did you ask him why he didn't take you upstairs if he wanted you to be a witness? A I did not think --

Q Did not think it was necessary? A I did not think it was necessary to ask him.

Q When these three persons, Heller and this other man that you met at 19th Street, and Rifkin, went up to this house, you knew they were going up there to examine the jewelry, did you not? A I don't know what they were going up there for.

Q Did not Barron say anything about it? A No, nothing at all.

Q You did not know what they were going to do in this house? A I don't know what they were going -- he told me they were going to buy jewelry. I never was in that line and never dealt in jewelry in my life.

Q Did you know what those three persons were going to do in the house? A No.

Q You did not know what took them up there? A No.

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Q You were not interested to find out and to ask Barron why they went into this house? A No, sir -- yes --

Q Do you remember the street this house is on? A The opposite side of where this saloon was, I think it was 19th Street.

Q How long did you stay on that corner waiting for the men? A I think it was about a half an hour or so, or twenty minutes, between that time.

Q During this half hour, Barron did not say a word to you? A No, sir -- talking about different things.

Q What was the conversation about? A Well, we were talking about how business is getting along and he cannot get no help, and short of money and all this and that.

Q Nothing was said about jewelry? A No, sir, not at that time.

Q At that time the conversation was about his business?
A About the business.

Q And help? A Yes.

Q When these three persons came down with Rifkin did they carry anything with them? A Rifkin carried the small satchel and another man carried another satchel.

Q Which other man carried the satchel? A The dark man, the man we met on 19th Street.

Q What kind of a satchel was it? A Similar to this.

(Referring to People's Exhibit 3)

Q You know if this is the one, why do you say similar to

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it? A Well, something like that.

Q You saw the satchel in the restaurant? A I saw something like it, I aint sure if that is the same one or not.

Q Take a good look at it and see if that is not the one?

A I aint sure.

Q You would not swear positively it was not the satchel?

A No, I aint sure of this one.

Q You say this other man was carrying it? A Yes, sir.

Q That was the first time you saw the satchel when these men came down from the house? A No.

Q When did you see it? A I saw him with the satchel at 19th Street, this dark man.

Q While he was waiting on the corner? A Yes.

Q He took it in the saloon with him? A Yes.

Q Did you ask Barron if he knew what was in the satchel?

A No.

Q When these men came down from the house did you make any inquiry about the satchel? A No.

Q It did not interest you? A No.

Q Then, when these three persons came from the house did you have a talk with any of them? A What came down from the house?

Q Yes. A Heller called Barron over and he walked over and I walked with Barron.

Q What did Heller say to Barron? A Just a minute, he called him over and he said Max Barron come here -- you under-

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stand -- and we walked on the other side of the street and those four got in conversation. Barron says "Walk in the back".

Q This was before you went in the restaurant? A Yes.

Q Barron again told you on this occasion to stay in the back? A Yes, sir.

Q He did not want you to hear what was being said by them, is that it? A Yes.

Q How far behind him or back of him did you stay? A Well, they were walking and I don't know, may be three feet or two feet or five, I don't remember.

Q From there you went into this lunch room? A Yes.

Q And when you went in the lunch room, did you sit at the same table with them? A No.

Q Where were you? A I went in and ordered something -- they ordered eat off the counter -- them four sat there on those kind of seats.

Q Chairs? A Chairs.

Q Where did you sit? A I sat on the opposite side there and had my coffee.

Q How far away? A From here to there, I guess. (Indicating)

Q About ten feet? A I don't know if it is ten.

Q Was there anybody else in the restaurant or lunch room at the time besides you five men? A There was a lot of people. I don't remember.

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Q How long did you remain in there? A I couldn't say, may be a half an hour or twenty minutes.

Q You did not hear any of the conversation? A No, I lips heard ~~Rickin~~ speaking, I heard conversation.

Q You saw lips moving but did not hear what was said?
A The lips were moving, I don't know what it was.

Q Why did you stay away from the others? A I did not they interest me, I had my coffee and I walked out and I walked out with them.

Q Did Barron on this occasions tell you to step aside, go away from them, because he did not want you to hear what was being said? A Being he told me before so I thought it best way to sit down and have my coffee by myself.

Q It did not interest you to know what was going on there?
A No.

Q You knew the jewelry was to be examined and the money was going to be paid that day? A I did not know anything about examined or anything at all. He told me he was going to buy jewelry.

Q It did not interest you to know up to that time what was being said or done by those persons? A No.

Q So up to that time you knew absolutely nothing about the transaction, that is you knew nothing about the gold and knew nothing about money or the terms or what was being said by those persons, is that right? A That is all he told me, he said he is going to buy jewelry. That is all I know.

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Q He told you that in the store or in his office? A Yes.

Q But on that day, after this visit at Rifkin's office, and then walking up to 19th Street and into the house while you stayed downstairs, and into the restaurant, you knew nothing at all about what was going on? A No.

Q Absolutely nothing? A Nothing.

Q You were just following these persons because he wanted you there as a witness? A Yes.

Q But about the terms of the gold or the payment you did not know anything about that? A No.

Q Sure about that? A Yes.

Q How long did you stay in the restaurant? A I think about twenty minutes or so.

Q And when you were in the restaurant you did not hear any talk about money? A They walked outside -- we walked outside and Barron said, we bought a bargain for \$2400 -- me and Rifkin bought a bargain by Mr. Heller for \$2400.

Q Did he tell you what he bought for 2400? A I suppose he bought jewelry.

Q Did he tell you? A Yes.

Q When? A At that time, he bought the jewelry for \$2400.

Q Did he tell you then in the restaurant that he bought jewelry at a bargain for \$2400? A No, that was outside of the premises.

Q Tell us what was said outside of the premises, outside of the restaurant? A He said me and Mr. Rifkin bought from

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Mr. Heller \$2400 worth of jewelry, which is a bargain.

Q You said he called the taxicab? A Barron and Heller went to get the taxicab.

Q Where did the taxicab come from? A I don't know what direction it came from.

Q Didn't you follow them when they went around the corner? A No, I stood on the corner.

Q Was the taxicab phoned for? A I don't know what it was -- I stood on the corner -- whether it was phoned for or it was there or they met him on the way, I don't know, I just stood there.

Q When the taxicab came there who got in the taxicab? A I got in the taxicab and Heller and Rifkin.

Q Why did you get in the taxicab? A Barron said to me ride with him to the office.

Q Did he tell you why? A No, he said take a ride with Rifkin to the office and on the way they came back.

Q You now tell us that when you came out of the restaurant Barron told you that he and Rifkin got a bargain from this fellow Heller for the jewelry. Now yesterday did you make this answer in response to the question put to you by your lawyer, "What did you do when you came out? A Barron says let us get a machine, I have bought a big bargain for \$2400." Did you say that? A He said something similar to that, yes.

Q You have been thinking it over over night? A No, sir, I did not think of nothing.

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Q Why didn't you tell us yesterday about the jewelry that he bought? A I am telling the true story as it happened.

Q When the machine came there then Barron told you to take a ride down to Rifkin's office? A Yes.

Q He did not tell you why he wanted you to go there? A No.

, Q Weren't you afraid of anything? A Why should I be afraid of anything?

Q You did not know Heller except that you met him on two occasions before that and you did not know Barron except by sight, or Rifkin by sight? A Rifkin.

Q Yes. A I have known Rifkin for years but not to talk to, just by sight. Barron I know for my lifetime.

Q You knew Rifkin was a jeweler? A A jewelry man.

Q He lives around the same neighborhood you do? A I don't know where he lives but I know he is around that section.

Q When you got in the machine who had the bag? A Which bag do you refer to?

Q This yellow bag? (Indicating People's Exhibit 3)

A This dark complexioned fellow.

Q Which one, the one you met at 19th Street? A 19th Street, yes, sir.

Q Sure about that? A 19th Street, yes.

Q You are sure it was not Heller? A What?

Q You are sure it was not Heller? A No, this other fellow.

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Q So that in the taxicab was you, Rifkin and this dark complexioned fellow? A Yes.

Q He carried the bag, and who had this small satchel, the black satchel? A I don't know what became of it. I did not see it.

Q How far did you ride in this taxicab before you came back? A About a block and a half.

Q And why did you come back? A Rifkin said to the automobile man go back to the same place and we came back.

Q You did not know why he wanted to come back? A No.

Q Did you hear any talk by Rifkin in the machine about the key? A No, he just said to the automobile man turn back to the same corner where we came from.

Q Did this Rifkin ask this dark complexioned man for the key of the bag? A No, sir, he just said to the automobile man go to the corner, that was all.

Q Was anything said by either you, this dark complexioned fellow, or Rifkin? A No, sir, but about that block and a half and he said turn back to the same corner.

Q Did you ask him why he wanted to turn back? A No.

Q Did the other fellow ask him why? A No, nothing was said, he just said to the chauffeur turn back to the corner.

Q He said that to whom, to the chauffeur? A Yes, to the chauffeur, sure.

Q When you went back to the corner what happened then?
A Mr. Heller -- they were talking -- Mr. Heller was talking

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with Barron -- Barron said you stay here and they went in the machine -- Heller, Rifkin and this dark complexioned fellow.

Q They went downtown? A They went downtown.

Q When you got in the machine the first time, did Barron remain on the corner? A Yes.

Q With Heller? A Yes.

Q When you went back who told you to get out of the machine, if anybody told you? A Well, Barron says come here.

Q He told you that? A Yes.

Q What did you say, if anything? A Didn't say nothing, he said come here and I stood there.

Q You stepped out and let Heller take your place? A He said you stay with me and they took the machine and went downtown, I don't know where they went.

Q What you tell us is what actually took place? A Yes.

Q No question about it? A No.

Q You would not want to change it later? A No, this is the truth.

Q Yesterday do you remember this question being put to you by your lawyer "When the machine came along who got in it?"

THE WITNESS: Just a minute.

Q You answer my question.

MR. O'REILLY: I submit the witness should be permitted to answer.

THE COURT: The witness will be given full opportunity to answer.

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BY MR. MANCUSO:

Q Go on, what were you going to say? A Heller was the man that went in first in the machine.

Q Why didn't you tell us about it before when I asked you?

A It was two dark complexioned fellows. I didn't remember which one you meant.

Q You know we have been talking about one dark complexioned man that you met at 19th Street? A Mr. Heller is dark complexioned.

Q You know that we have been talking about one dark complexioned man you met at 19th Street? A I did not know --

Q Did you at any time refer to this man at 19th Street by any other description than dark complexioned? A Two were dark complexion.

Q You always spoke of Heller by name. A The two of them-- I did not know which one you meant, but Heller was in the machine with me first and then the dark complexioned man went in.

Q You have told us now all that really took place in the machine? A Yes.

Q You would not want to change it later on? A No.

Q I am giving you all the opportunity to make any changes?

A No, Heller went in the machine with me the first time.

Q Was this question asked you yesterday and this answer made by you? "Q When the machine came along who got in it?

A Who got in it? Q Yes. A Barron says to me I should take a ride with Rifkin to his office. This heller says you wait a

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minute, you get out of here, you go back to see Mr. Barron."

Did you say that yesterday? A No.

Q It was a mistake? A No, I did not say that.

Q "Q Heller said that to you? A Yes, and I went back to the corner and another man went in, this man that carried this here yellow satchel, similar to this." Did you say that?

A Yes.

BY THE FOURTH JUROR:

Q May I ask one question, this testimony you gave, that was after the cab came back, that was after the taxi came back?

A What do you mean?

Q When Heller said you get out of here and Barron called you over, when the taxi came back -- you went a block and a half?

A Yes, we came back and went to the corner.

Q This testimony you give now was after the taxi came back to the corner? A Yes, sure, on the corner.

BY MR. MANCUSO:

Q Heller told you to get out? A Heller and Barron, the two of them.

Q Which one, Heller or Barron? A I don't remember, I aint positive.

Q Yesterday you were positive, you said Heller said to you wait a minute, you get out of here, you go back and see Barron?

A The two of them.

Q Was this said to you in the taxicab -- you go back to see Barron? A No, no, no.

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Q Why did you say it yesterday? A No, Rifkin told the chauffeur to go back to the corner, no conversation between the three of us inside the machine.

Q You now say that Heller and Rifkin told you when you went back to get out of the taxicab? A He did not tell me nothing but then they came over to the corner, he said to me -- Barron came right back to the machine and he said -- the two of them said get off.

Q In the machine Heller did not say a word to you? A On the way, came right up when we stopped, get out, and Barron was there, too.

Q When you stopped? A Yes, the machine stopped on the corner and he said get out and Barron said get out, too, and this other man got in.

Q Nothing was said before you turned back? A No, word was said outside of Rifkin speaking to the chauffeur to turn back to the corner.

Q From the time you ^{entered} ~~left~~ the machine up to the time Rifkin told the chauffeur to turn back not a word was spoken by anybody? A No, just when he came back, just before stopped he said get out.

Q Up to the time you stopped not a word was said only when you stopped? A He said get out.

Q You are sure about that? A Yes, go back, get out of here.

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Q Did you make this answer yesterday to a question put to you by your lawyer. "Heller said that to you? A Yes, and I went back to the corner and another man went in. This man that carried this here satchel similar to this." Did you say that? A Yes.

Q "Went in the machine? A Went in the machine. Barron says to me" --

THE WITNESS: Barron was not in the machine.

Q I ask you if you made these replies. A Barron was not in the machine, no, sir.

Q "Q Went in the machine? A Went in the machine. Barron says to me you wait here with me" -- now listen to this carefully -- "Mr. Heller says in the automobile, he said, you get out of here, you have no business with me. I don't know you and I said Barron told me to take a ride with you down to office Rifkin's." "Finally they turned back and I went there and I stood with Barron." Did you say that? A Yes, sir.

Q So something was said in the machine before you got out? A No, sir, nothing was said. He said you go back to the corner, that is all.

BY THE COURT:

Q Did you give that testimony yesterday? A I don't know what was read to me.

BY MR. MANCUSO:

Q "Went in the machine? A Went in the machine. Barron

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said to me you wait here with me. Mr. Heller says in the automobile, he said, you get out of here, you have no business with me. I don't know you and I said Barron told me to take a ride with you down to Rifkin's office. Finally they turned back and I went there and I stood with Barron." A Yes, sir.

Q You did say that? A Yes, sir.

Q When these three men went back you stood on the corner with Barron? A Yes.

Q Did you have any talk with him then? A I was talking about different things.

Q You said nothing about the jewelry? A No, we wait about, I think about an hour or so.

Q Did he tell you why he wanted you to wait there? A You know that aint the first time I have been with the man, I have been with him for years, I used to go all over with him.

Q Did he tell you why you should wait on the corner with him? A He said wait, and I waited and he rang up, and rang up again and finally decided to go to Brooklyn. We walked around a little bit and finally he said come on and we will have a little lunch in Brooklyn. We had a little lunch and then we parted and he went about his business.

Q There was no special reason why you waited on that corner? A He said wait with me and I waited with him.

Q Who said that? A Barron.

Q Rifkin did not say anything? A No.

Q Sure about that? A Yes.

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Q Did you make this answer yesterday to this question.

THE WITNESS: Just a minute. Rifkin said he would be back.

Q Why do you wait until I pick up the book to read you what you said? A You are questioning me too strong -- give me a chance.

Q So that Rifkin did say to you? A He would come back.

Q "Wait for me, I will be back in an hour"? A Yes, but he never came back.

Q You waited on the corner for three hours? A I don't know how long we waited.

Q While you were waiting there Barron went over and telephoned three or four times to Rifkin? A He went to the telephone and I guess to Rifkin.

Q Was Barron excited or cool? A Barron?

Q Yes. A Well, I didn't notice nothing.

Q Was he happy and glad that he struck such a bargain for \$2400? A I didn't know his feelings. I can't tell a man's feelings.

Q After coming out of the restaurant you told us that he said to everybody that he struck a bargain for \$2400: did he say anything more about this bargain while you were waiting on the corner with him for Rifkin? A On the corner he said it will be a chance, he will make a nice few hundred dollars and just needs it, just comes in handy to him.

Q Then you went to Brooklyn and had something to eat?

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A No, we walked around, we took a walk.

Q What time did you reach Brooklyn? A I think around five o'clock, something like that, may be half past five.

Q When was the next time that you saw Barron, you said you left him on the corner of where? A Varet and Broadway.

Q When did you see him again after that? A The next day or two days later, I don't remember.

Q Did you see him the same day? A No, sir.

Q Sure about that? A Yes, sir.

Q "Q How long after that did you see him? A I saw him the same day and I saw him the next day and I saw him Saturday and I saw him Sunday and I saw him Monday." Did you say that yesterday? A Yes, I did say that.

Q It was not true? A What?

Q Did you say yesterday that you saw him on the same day?
A I seen him but I did not speak to him. I seen him.

Q That is what I asked you a minute ago? A Sure I saw him.

Q I asked you whether you saw him the same day, I did not ask you if you spoke to him? A I did not speak to him, but I saw him every day at his place of business.

Q I do not want to confuse you, you listen to my question, and if you don't understand me say so. I think I speak plain English -- you did see him on that day? A I saw him every day after that.

Q Did you see him on that day -- you left him at five

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o'clock on the corner of Varet and Broadway, is that right?

A Yes -- I don't know if it was exactly five, I aint sure it was five.

Q Whatever time it was -- what time was it six o'clock?

A I don't know, I met him -- I left him at that time, I don't know, it might have been four or five or half past five.

Q You met him the same day, did you? A I saw him.

Q Where did you see him? A I saw him up on Broadway around that section.

Q Did you speak to him? A No.

Q Where were you when you saw him? A Where was I?

Q Yes, in a house or on the street or where? A On the street. He had a place of business on Broadway of rain coats, and he used to stay there and I walked past and I saw him in there but I did not walk in.

Q You did not speak to him? A No, not after that -- not on that day.

Q Did you speak to him on the next day? A The next day?

Q The 13th was Friday, the 14th was Saturday, the 15th Sunday and the 16th Monday? A Yes, I spoke to him.

Q On Saturday, the following day? A On Saturday -- I don't know if it was Saturday, I know I spoke to him.

Q The following day after this sale of the gold you saw him? A Yes, sir, I don't know what day it was.

Q Did you say anything to him then? A No.

Q Not a word? A Hello, that was all, and walked away.

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Q Did you meet him the following day on Sunday? A I don't remember if it was Sunday. I saw him mostly every day, every day I saw him.

Q Every day up to the time you went away? A Outside of -- let me see -- I saw him from that day until a week previous -- finally he came over to me -- just a minute -- he said to me listen "Mr. Rifkin and me, the stuff that we bought, the jewelry that we bought, now I heard a remark around that he is going to have me arrested, and so he said now listen, the best thing for you to do he says, if you go away, he says, he cannot use me as a witness toward him. I said why should I go away for. Then finally he started talking to me, talked to me and talked to me, and then finally gave me the money -- he did not give me the money the same day.

BY A JUROR:

Q By the week previous, do you mean a week after? A Yes.

BY MR. MANCUSO:

Q During this week you saw him from the day you had been in 19th Street with him, had you had any talk with him at all?

A I beg your pardon?

Q During this week you saw him every day did you talk to him? A To him?

Q Yes. A Well, yes, this was I think it was Monday or Tuesday, I don't remember, he said there is a man looking for you.

Q Looking for you? A I said there is a man looking for

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you.

Q You told him there was some man looking for him? A Yes, sir, looking for him in a saloon.

Q In what saloon? A In a cafe there.

Q Which one? A Bartlett Street.

Q What is the number? A I don't know the number, but it is in Bartlett and Throop.

Q Did you know who the person was? A No, he asked for Barron.

Q Did you have any talk with him up to this time about Rifkin and the jewelry? A Then he told me about that, he told me -- started to tell me about what he heard.

Q He heard Rifkin was going to make trouble for him?

A For him he said and he said you get out, I will give you the money you go away, and he cannot use me as a witness toward him, because Rifkin suspected him for doing this.

Q He wanted you to go out of town because he was afraid that Rifkin would use you as a witness against him? A Yes.

Q Did he say anything about Heller? A No, didn't mention the name of those two people or didn't mention nothing.

Q Did he say anything about the other man, the dark complexioned fellow that you met at 19th Street? A No, didn't say nothing.

Q He was only afraid of you, he said so? A What?

Q He said he was afraid of you? A Who?

Q That Rifkin might use you as a witness? A I didn't

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know -- he told me -- may be he meant the other people, too.
I don't know the other people.

Q How much money did you have at that time? A Of my own?

Q Yes. A I had about \$140 of my own.

Q And did you have that in the bank or -- A Pocket.

Q Pocket? A Yes.

Q What did he say to you then about the money -- did he give you money to go away? A Then he said to me -- you meet me tomorrow at Broadway and Myrtle Avenue and we will have a talk about it.

Q Did you meet him the next day at Myrtle Avenue? A Yes.

Q What talk did you have with him? A The same conversation about me going out of town and then he placed \$150 in my hand and frightened me away and I went away.

Q What? A He frightened me.

Q What did he do to frighten you? A He told me that you will get arrested and you will do this and do that and he told me a lot of other stuff and I went away.

BY THE TWELFTH JUROR:

Q Did you give yourself up? A Yes, I surrendered myself.

Q Before you went to Toledo or afterwards? A After Toledo I surrendered myself to the District Attorney's office. I engaged counsel and surrendered myself to the District Attorney after I was notified by my brother by special delivery letter in Toledo, Ohio that the police was looking for me and I con-

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sidered myself --

Q After you went to Toledo? A Yes, sir, after I came back.

BY MR. MANCUSO:

Q On this corner of Broadway and Myrtle Avenue, you tell us everything Barron said to you, how he frightened you, tell us every word as you remember it now, said by Barron? A He ^{he} said to me that is down and out and is a married man and has three or four children and to go away to jail and all this, and that you know me for so many years" and I don't know what else he said. I don't just remember. Finally I decided to do what he told me.

Q Did that talk frighten you? A Yes.

Q That was what you meant by frightening you? A What?

Q Is that what you meant when you said he frightened you away? A I don't know, that came to my head and I went away.

Q He gave you \$150? A Yes.

Q What denomination was this money, what kind of bills, cash, check or what? A Cash.

Q What kind of bills? A He gave me two fifty dollar bills and five tens.

Q Why did it take you so long to say it, did you have to figure it out? A That was what he gave me.

Q You had \$140 of your own? A Yes.

Q That made it \$290? A Might be a few dollars more, I

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aint sure.

Q About \$300? A Something similar to that.

Q And when you reached Toledo did you do any work there?

A I started to go and look for a room. That was my first place.

Q How long were you in Toledo before you got employment?

A About four or five days.

Q What salary were you receiving at the work you were doing? A I was peddling on commission.

Q For whom? A A man by the name of Goldstein.

Q You did not get work with Goldstein as soon as you went there, did you? A Yes, I met him.

Q About four or five days after? A Yes.

Q What commission were you making there? A Whatever he was selling -- selling bushels.

Q How much did you get a month or week? A It was no month, it was by the day. Sometimes I would make four dollars and three dollars and five dollars and two dollars and a half and six dollars.

Q You were paid every day? A Every day.

Q Did you have any money when you came back to New York?

A When I came back to New York I had a little money.

Q How much? A Well, I should judge I had a little over \$150, something like that -- or 140.

Q When you were in Toledo did your brother or your mother write to you? A Outside of once my brother wrote to me general

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delivery.

Q That is the only communication that you received from your family? A Yes -- and yes, I wrote -- I wrote to a friend of mine and he corresponded with my brother.

Q Who is your friend you wrote to? A He is drafted now.

Q What is his name? A He is out somewhere in the south.

Q What is his name? A Holman.

Q What is his first name? A Louis Holman.

Q You wrote to him? A Yes, I wrote to him at the time. He was in Brooklyn and I knew his address.

Q When did you write to Holman or Halpin? A I think it was Holman, something like that.

Q When did you write to him, how soon after you reached Toledo? A I wrote to him -- what have you reference to?

Q You said you wrote to him. A You want to ask me when my brother sent me a letter.

Q I asked you how many times you communicated with your family and you said only once -- you received a letter from your brother by general delivery? A Yes, to come back to New York.

Q Outside of that you said the only person you wrote to was this man Holman? A He wrote to me and that is how I knew about my brother.

Q Holman wrote to you? A Yes.

Q How did Holman know your address, had you written to him? A I wrote to him once.

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Q When did you write to him, how long after you reached Toledo did you write to Holman? A I don't remember.

Q Was it a month, two months, three months, four or five months? A It was about between -- four months, I think, about three to four months.

Q So the first four months you were in Toledo you did not write to your brother or to your mother or to any friend except this man Holman? A Yes, to go and see my people.

Q What did you tell him to do with reference to your people? A Should go and see how my mother is getting along because I knew I left her, and I was the only support of the family. She is a widow.

Q Did you send her any money when you were in Toledo for four months? A I never wrote to her.

Q You said you were worried about your mother, why didn't you write to her? A Yes.

Q Why were you afraid to write to your mother and brother if you had not done anything? A Why?

Q Yes. A Barron said to me don't write to anybody, I will look out for everything, before I went away.

Q Why didn't you tell us that in the conversation you said you had with Barron? A I said my mother, and he said don't forget, everything will be all right.

Q Did you just think of that just now that Barron told you not to write? A No.

Q So that you wrote to Holman in preference to your

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brother? A I wrote to him to go and see my brother.

Q Were you afraid that your mail -- A My brother was on the verge of moving from where he was and I did not know where he was going.

Q You live in the same house now as before you went away to Toledo? A My mother, but I didn't write to my mother I was writing to my friend because my brother was on the verge of moving from Myrtle Avenue to where he is living today.

Q Aren't you living with your brother? A No, with my mother, my brother is a married man. He is living with his family.

Q Where was your place of business, of you and your brother at the time? A We were speculators in the Wallabout Market.

Q Did you have an office there? A No, sir, we had a farm wagon.

Q Have you got an office now? A No office.

Q What place was your brother going to move, ~~to~~ his home or office? A Home.

Q When you wrote to Holman, did you give Holman your address? A I told him to write to General Delivery.

Q You had a street number at the house where you were living, why did you tell him General Delivery? A I told him to write to General Delivery, that was all.

Q No special reason why you told him that? A No, I

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just told him general delivery.

Q Now, when your brother wrote to you what did he tell you? A I should come back and should not be scared of nothing because you didn't do nothing, he said come back.

Q That was all he said? A Yes.

Q Didn't he tell you that you had been indicted and that the police were looking for you also, and there was a warrant out for you? A Yes, sir, he told me that, and come back and don't be scared.

Q Did not the police in Toledo tell you you were wanted in New York? A No, I didn't see no police.

Q Not a word from them? A No, I didn't see none of them.

Q Did your brother tell you that the police here had telegraphed to Toledo? A No.

Q In his letter? A No.

Q You knew about it, though, that was why you came back? A My brother wrote to me and he said they were looking for me.

Q You then made up your mind to come back so as to beat the police to it? A No.

Q What were your profits before you went away in your brother's business? A Profits -- it is speculation and some times we would make \$25 and \$50 a day and might lose that much.

Q Tell me what on an average a week you made? A Well, average a week -- during a month or a year.

Q During a month or a year? A Summer is the season and winter is not the season.

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Q Give us the best or the poorest season, select it yourself, whichever period you want to give me, what would you make on an average a month or a week? A In about a year?

Q Yes. A All through?

Q Yes. A About \$1500 a year.

Q That would give you about \$30 or \$40 a week? A About an average, sometimes --

Q About \$29 a week? A Yes.

Q You did not make that much money in Toledo? A What?

Q You did not make that much money in Toledo? A Well, in Toledo I was making an average about \$20, \$22, \$24 and \$19.

Q Before you went away did you tell your brother, your partner in business, that you were going away to Toledo? A No, sir.

Q Wasn't that a strange thing to do, to abandon your business and not to tell your brother about it, if you were interested in the business and sharing the profits? A I was scared and went away, and did not tell anybody nothing.

Q You left in quite a hurry, packed up in a hurry and beat it away? A Not in a hurry.

Q Didn't you think it was necessary to tell your brother, your partner, that you were going away from New York? A He could do without me.

Q He has been doing without you quite a number of years?

A What?

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Q He has been doing without you quite a number of years, for a couple of years? A No, I mean he can run the business himself.

Q Now, you told us that you went away because you were afraid? A Yes.

Q Afraid of what? A What Barron was explaining to me, he said, you will get arrested.

Q You had not done anything? A What?

Q You had not done anything? A No, but he said that Rifkin is going to have me arrested, too.

Q He told you that? A Yes, going to have me arrested with him.

Q Why didn't you tell me about that before, that Barron told you he was going to have you arrested also? A Sure he was going to have me arrested.

Q Did you just think of it? A No, I remember what he told me.

Q You did not say a word about it this morning that he threatened to have you arrested? A Sure he threatened.

Q Was that the reason you went away because you were afraid you would be arrested? A Yes, for nothing at all.

Q Nothing at all? A Yes.

Q You knew nothing about the transaction? A No.

Q Nevertheless you were afraid of arrest? A Yes.

Q Do you know a place located on 125 and 127 Varet St,

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Brooklyn? A Now?

Q Yes. A There is a house there -- there is houses there.

Q You knew it before you went away, you knew that place before you went to Toledo? A There is houses there, I don't know which house you have reference to, what business.

Q 125? A What business?

Q I don't know. A There is lots of houses there.

Q Did you ever visit the place or go in there? A 125?

Q 125 and 127 Varet Street? A I don't know if that is the number -- explain me the business and I will answer the question.

Q You know the nature of the business there, and I am not on the stand. A Explain to me what it is or is it a private house or a business, and I will answer the question.

Q Do you know such a place as 125 and 127 Varet Street, a woman is in business there, do you know that place, probably that may enlighten you a little bit? A No, sir.

Q You don't know a young lady by the name of Becky?
A No, sir.

Q Wasn't she in court this past day or two? A No.

Q She is not in court today? A No, sir.

Q How do you know whom I have reference to if you say no? A I don't say no -- there is no lady here.

Q You don't know Becky? A No.

Q Try to refresh your recollection and tell me whether

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the number you lived at in Toledo, Ohio was 339 North 11th Street? A I don't remember the number.

Q You read and write? A Yes, but I don't remember.

Q Don't remember the number? A No.

Q You lived on 11th Street how many months -- you were in Toledo about five months from October? A I lived there and in another place and then I lived in Woodruff -- Woodruff Avenue.

Q What was the other place you lived ~~next~~ besides 11th St. and Woodruff? A I lived all around there.

Q Give us some of the places, cannot you remember them, you have mentioned two? A I lived in 12th Street.

Q Who did you live there with? A A man by the name of Freedman. That was the man that had a furnished room house, Freedman I think -- yes, Freedman.

Q Who else? A And I lived by Goldstein.

Q That was in Woodruff Street? A Yes.

Q Who else? A Three or four places.

Q You did not live on Washington Street? A Washington Street?

Q Yes. A No.

Q You left New York about a week after this transaction took place, is that right? A A week or ten days.

Q And you stayed away until February 8th? A I don't know what time I came back.

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Q Some time in February? A I don't know what month it was.

Q Then you gave yourself up to the police? A I don't remember what month it was in.

Q How long had you been in New York before you gave yourself up to the police, how many days? A About two days.

Q When you came to New York where did you live? A What?

Q Where did you go to live when you came here, before you gave yourself up to the police? A I lived with a cousin.

Q Where? A I went to his place of business in 36 Montgomery Street.

Q Why didn't you go to your mother if you were worried about your mother? A I went to him and from there, a day later, we went down and engaged a lawyer and from there went to the District Attorney's office.

Q You did not go and see your mother until after you gave yourself up to the police? A Yes.

Q You did not see your mother until after you gave yourself up to the police, is that right? A No.

Q Is that right? A I don't understand.

Q When did you see your mother, before you gave yourself up to the police or after? A After.

Q You were worried about your mother? A After.

Q You did not think it was necessary to go to her first to find out how your mother was? A What could she do to help me? She is a poor woman and could not help me.

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Q You stayed away from your home and you went to this friend's house because you did not want the police to nab you or arrest you, is that right? A No, sir.

Q You wanted to walk into Police Headquarters like a gentleman and say here I surrender myself, is that right?

A (No answer)

THE DEFENCE RESTS.

THE TWELFTH JUROR: Will you please recall Mr. Rifkin to the stand.

J O S E P H R I F K I N, recalled:

BY THE TWELFTH JUROR:

Q Who did you give that \$2400 to? A To the man I met at Park Row.

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

Q Mr. Heller? A I don't know.

Q Did you give the defendant any money? A No.

M A X B A R R O N, recalled:

BY MR. MANCUSO:

Q The defendant Max Mitnick testified that about ten days or two weeks before this transaction of the purchase of the gold, you met him at your brother's hall, the Arcadia Hall, and introduced him to a man by the name of Heller, is that right? A I never met him in my brother's place.

Q Where is your brother's place? A R Broadway, Halsey and

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Broadway, and Saratoga Avenue.

Q How large a place is it? A Well, it is half a square block.

Q And that this man Heller had a woman with him, is that right? A No, sir, never been there.

Q Do you know Heller? A Not as I know -- he has never been there.

Q Do you know this man Heller? A No.

Q Did you at any time introduce him to this defendant?

A No.

Q The defendant further testified that about two or three days after that he met you somewhere on the street, either near your factory or somewhere in Brooklyn and that you then talked about this man Heller and told him that Heller was selling jewelry and diamonds and dresses to inmates of disorderly houses and that he could get a lot of jewelry cheap, he buys and sells it. Did you ever tell him that? A No.

Q The defendant also stated that on the day that you went to Rifkin's office you sent a man by the name of Jaffe to Wallabout Market to call the defendant, did you do that? A No.

Q And when the defendant came there Heller was in your place and you were there and that -- Question withdrawn.

Q You did see the defendant on a number of times before Columbus Day? A Yes.

Q The defendant stated that after he came there on the

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day that you sent Jaffe for him you, this man Heller, and the defendant went up to the office of Rifkin, is that right? A No.

Q And that when you went up to Rifkin's office, you and Heller and Rifkin remained in the room where Rifkin has his office, apparatus and so forth, and that he was between the door separating the other room, is that right? A No.

Q And that after a conversation Rifkin gave you a small black satchel, did you receive such a satchel from Rifkin?

A No.

Q Did you at any time see such a satchel? A No.

Q Black satchel? A No.

Q When you left Rifkin's office he says that the four of you walked out together, you Heller, Rifkin and the defendant, is that right? A No.

Q And that you then walked through Ann Street took a car -- you did take a car? A Through where?

Q Through Ann Street to the Post Office. A We went down --

Q To 19th Street? A Not four, Mr. Mitnick, myself and Rifkin.

Q Where did you meet this other person? A Downstairs. Mr. Nitnick went up to see if I had the real cash money.

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

THE COURT : Strike it out.

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Q The defendant states that at the time you got in the car you and Rifkin and this man Heller sat on cross seats together, the three of you together and that you told Mitnick to sit behind you, that you did not want him to listen to what was going on? A No.

Q Did you tell him that? A No, Mitnick was sitting with me and he did not want me to speak to Rifkin and Rifkin sat with the other fellow.

MR. O'REILLY: I ask to strike that out, that he did not want him to speak to Rifkin.

THE COURT: Strike it out.

BY MR. MANCUSO:

Q What did he say? A Mitnick sat with me and the other fellow, the friend of the gentleman, I don't know his name, was sitting with Rifkin. I was sitting this side and he was sitting this side.

Q Did you at any time tell the defendant that you were going to buy some jewelry from this man Heller and that you wanted Mitnick, the defendant, as a witness to the transaction, did you ever tell him that? A No.

Q The defendant testified that you rode on this car up to 19th Street and that you Heller and Rifkin got off of the front platform and that he got off on the rear platform, is that right? A No.

Q How did you get off? A We all got out through the back way.

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Q Together? A Yes.

Q And that when you crossed the street or reached the corner, you saw a man standing there -- this man described as a dark complexioned man, standing on the corner with a satchel, this satchel, People's Exhibit 3, or one similar to it? A No.

Q And that you went up to this man and shook hands with him and introduced him to Rifkin and Heller, is that right?

A No.

Q And that while you were talking to this dark complexioned man you told the defendant Mitnick to step aside that you did not want him to listen to the conversation, did you do that?

A No.

Q And that after you got through talking you suggested that you have a drink and you went to the saloon, did you say that? A No.

Q Did you go into the saloon? A Yes.

Q And the defendant further testified that when you went in the saloon, you, Rifkin, Heller and this man that you met on 19th Street sat in the booth and that you told the defendant to step aside that you did not want him to listen or see what was going on, did you say that? A No.

Q Did you at any time, either while you were at Rifkin's office or while you were riding on the car or while you were talking to this man on 19th Street, or while you were in the saloon ever tell Mr. Mitnick to step aside because you did not want him to listen to the conversation? A No, he was always

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with me, alongside of me all the time watching that I should not talk to Rifkin.

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

THE COURT: Strike out the last part of the answer.

BY MR. MANCUSO:

Q When you went in this saloon was Mitnick in the saloon at the time? A No.

Q Mr. Mitnick also testified that after you had this drink, all of you went out and that three men, Rifkin, Heller and this dark complexioned fellow that you met at 19th Street, went up to a house and that you gave this black satchel to Rifkin, did you do that? A No.

Q He also testified that you asked Mitnick, the defendant, to stay down with you on the corner while the other three men went upstairs, did you say that to him? A No, he kept me downstairs.

MR. O'REILLY: I object and ask to strike out the latter part of the answer.

THE COURT: Strike it out.

BY THE COURT:

Q Did he say anything about that? A He said, what is the use you going up, you don't know the difference between gold, you are leaving it to Rifkin and I said so I do, and he said stay with me, and so I stayed with him because I had con-

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fidence in him.

BY THE TWELFTH JUROR:

Q Mr. Rifkin could get his money at any time from you, couldn't he? A Absolutely all the time.

Q You were perfectly sound? A Yes, all the time and I can prove right away I am perfectly sound.

THE COURT: The jurors would like to know why it is you have not been able to pay this \$1200.

A I have been out of work for one year and been always excited about this case and I was trying to locate Mr. Nitnick and running to the courts and running all over to get Mitnick.

Objected to.

BY THE COURT:

Q That is not the point. A I was not working and I got a job three months ago with a contractor in three different big shops and I saw Rifkin pretty near every once in awhile, about once a week or once in two weeks when I was not working, and he said to me, don't worry, I am not worried about it.

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

THE COURT: Strike it out.

BY MR. MANCUSO:

Q Let us go back to the saloon, the defendant said that while you were sitting in this booth, he was at the bar, and you said to him, we have a little conversation, excuse me. Did you say that to Mitnick, we are having a little conversation, excuse me, and tell him to step aside? A In the bar?

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Q Yes. A No, sir, he was not in the bar with us at all.

Q Now, the defendant further testified that when these three men came down from this house, that you got hold of Heller and you started to walk along the avenue. That you told the defendant Mitnick to stay behind, did you tell him that?

A No, I did not.

Q Did you suggest going into this restaurant? A Yes.

Q Did you say or ask him to go into this restaurant?

A Not Mr. Mitnick, I asked Mr. Rifkin to go in the restaurant, I had not had my breakfast, and we will have a cup of coffee -- excuse me, I don't think I suggested -- I think one of the boys suggested and I said all right.

Q Which one? A I couldn't say, but I suggested I said yes, we will go in and have a bite.

BY MR. O'REILLY:

Q Who suggested that? A I don't think I suggested it.

BY MR. MANCUSO:

Q And that while you were walking towards the restaurant, the defendant stated that you told him to keep back of you, did you say that to him? A No.

Q Where was the defendant? A All the time walking with me, all the time.

Q The defendant further testified that when you went into the restaurant, you, Rifkin and these other two men ~~xxxxxx~~ sat together and he was about ten feet away from you, is that right? A No, all together.

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Q Where was the defendant? A With me all the time. I was sitting here and the defendant was sitting there, right next to me.

Q Did you call the taxicab? A No.

Q Who called the taxicab for you? A Mr. Mitnick.

Q And did you tell the defendant to go downtown to take a ride down to Rifkin's place? A No, sir.

Q Did you wait on the corner of 19th Street and First Avenue with the defendant for about three hours? A No, sir.

Q Did you tell the defendant to wait for you? A No, sir.

Q Did you on that day after waiting three or four hours go with this defendant to Brooklyn? A No, sir.

Q to a restaurant? A No.

Q And did you meet him on that day at about five o'clock at Varet Street and Broadway? A No.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until quarter of three o'clock.

After recess. Trial resumed.

MAX BARRON, resumes the stand:

BY MR. MANCUSO:

Q The defendant stated that on the day when this transaction was about through, that he left you about five o'clock that evening at Broadway and Varet Street, is that right? A No, sir.

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Q When was the last time that you saw him? A The last time I saw him was on First Avenue and 18th or 19th Street where he stood with me about twelve or fifteen minutes, something like that and he disappeared and that was the last time I saw him until we came to court here.

Q Did you go with him from 19th Street and First Avenue to Brooklyn on that day? A No. No more than he disappeared than I rang up Rifkin.

Q Did you see him that evening in Brooklyn? A No.

Q Did you see him the following day, Saturday? A No.

Q Did you see him on Sunday? A No.

Q Did you see him on Monday? A No.

Q The defendant stated that on Monday, following the day that this transaction was put through, that you saw him on Broadway and Myrtle Avenue, is that right? A No.

Q And that there you had a conversation with him and you told him that you were afraid that Rifkin was going to have you arrested because the stuff was not right, and that Rifkin was going to hold you responsible for the money and that the only way out of it was that the defendant should go out of town, did you say any such thing to him? A No, I never saw him that day.

Q He further testified that he said how could he leave his mother alone, that she was a widow and dependent upon him for support, did he say anything like that to you? A No, he

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never did.

Q That you said everything will be all over and that he said that he had \$140 and that you gave him \$150 to go out of town; did you give him any such money? A No, not one penny, I never saw him.

Q He furtherstated that you told him that you were down and out and did not have much money but that you would give him \$150, did you make any such statement? A I never saw him.

Q Did you make any such statement? A No, I did not.

Q Now, you told us when you were on the stand the other day that after you received the bag from Rifkin you went to a place to have a key made, do you remember the name of that person who made the key for the bag?

Objected to as not rebuttal. Object overruled.

THE COURT: The Court in its discretion has the power to allow testimony at this time that should have been given on the direct. This testimony is not in rebuttal, but nevertheless the Court has power to allow its admission.

BY MR. MANCUSO:

Q What is the name? A I found out -- I tried to find it out last night.

Q What is his name? A Mike Abena.

Q Where was his place of business on the 13th of October, 1916? A I couldn't say sure, about 148 or 160 Throop Avenue.

Q Did you go there last night? A Yes.

Q Did you find him there? A No, he moved.

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Q Did you go any other place? A I tried to locate him but could not.

Q Where did you go? A I tried to locate him where they told me he moved --

Objected to.

Q Tell us where you went? A Bushwick Avenue.

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

Objection overruled.

THE COURT: The people have a right to account for the absence of a witness.

THE WITNESS: I went to Bushwick Avenue and Jefferson Street.

BY MR. MANCUSO:

Q Did you see him there? A No, I did not.

Q Did you go to any other place? A Yes.

Q Where? A I went to Jefferson Avenue and Bushwick Avenue and could not locate the man.

MR. MANCUSO: Call Mr. Gross in court.

A gentleman giving his name as Albert Gross, 61 Sumner Avenue, Brooklyn, is now called into court.

Q Do you know this man? A Yes.

Q Now, when did you see that man Gross for the first time?

A When I tested the gold -- when I went to that man.

Q The defendant also testified that two or three days after he met Heller at your brother's dance hall or the Arcadia Hall, he asked you who this man Heller was and that you told

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him that Heller was your friend, that he sold a lot of stuff, jewelry, kimonos and that stuff in disorderly houses and that he said to you how did you come to know him and that you replied that you visited these places in New York, did you say any such thing to him? A No, I never did. I never visited such places in New York.

Q Did he say to you "Haven't you got any respect for your wife and for your four children?" Did he say any such thing to you? A No, I never saw him and never spoke to him.

Q Did the defendant make any such statement? A No.

CROSS EXAMINATION BY MR. O'REILLY:

Q You said in your direct examination that the jeweler you went to see was named Berrer? A I did not say no name.

MR. MA CUSO: He said that was the man to whom he wanted to sell the jewelry.

Q What is his name? A Berre.

Q When you left Rifkin's office with Rifkin and the defendant, the three of you left together, the morning of this transaction? A Before we bought this?

Q Before this transaction, yes, before you went uptown?
A Yes.

Q You left Rifkin's office with the defendant? A No, I went with Rifkin together.

Q What? A Rifkin, Mr. Mitnick and myself.

Q The three of you left Rifkin's office together? A Yes.

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Q And from there you went to Ann Street, did you? A I went mention no streets.

Q You went some place and then got on a car? A Yes.

Q And do you say the defendant was with you all the time?
A Yes.

Q Right in your company? A Right in my company with Rifkin and the other gentleman by the other fellow was with Mr. Rifkin and Mr. Mitnick in my company all the time.

Q You mean this man Heller who was met on the street was with Mr. Rifkin? A Yes.

Q And the defendant was all the time with you? A Yes, all the time.

Q And got on the car with you, did he? A Yes.

Q Is that what you say? A Yes, we all got on the car.

Q What car was it? A I couldn't say what car.

Q What avenue, Third Avenue was it? A I think it was Third Avenue.

Q It went up Third Avenue? A It went down Third Avenue.

Q Uptown? A Yes.

Q What kind of a car was it, a cross-seated car or --
A Two in a seat, cross-seated car.

Q Where did Rifkin sit? A Rifkin sat in front with the other gentleman and I was sitting with Mr. Nitnick in the back.

Q You and Mitnick sat together all the time? A Yes.

Q In that car? A Yes.

Q And Mitnick did not sit in the back of the car towards

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the rear door? A No, sir, Mitnick and I were sitting in this seat and his friend and Mr. Rifkin were sitting a couple of seats up.

Q You and Mitnick were the only two on that seat? A Yes.

Q There was not room for any other in the seat? A No.

Q And Rifkin sat with Heller in another seat? A Yes.

Q In front of you? A Yes.

Q And you sat that way all the way until you left the car?

A Yes.

Q Did Mitnick get up out of the seat and leave you at any time while you were in the car? A No.

Q Are you positive about that? A Yes.

Q When you came off the car did Mitnick get off the car with you? A Yes.

Q Right alongside of you? A Yes.

Q Out of the ^{rear} ~~xxx~~ door? A No, sir.

Q Which door? A The one where they get off front and back way -- we got off the back way.

Q You and Mitnick, the defendant? A Yes.

Q You did not get off the front door? A No.

Q Did Mitnick get off the same time you did? A Yes.

Q When you and Mitnick got off the car where did you and Mitnick go? A The four of us got off the car at the same time.

Q Was Mitnick right in your company or did he go behind?

A All the time in my company, he never let me go three feet away from him, all the time with me.

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Q And that was so when you got off the car? A The same way until we got on that corner.

Q When you left the car you walked to the corner of the street? A Yes.

Q To the sidewalk? A To the sidewalk.

Q You and Mitnick? A Yes, and Mr. Rifkin and the other gentleman.

Q Mr. Mitnick came with you in your sight all the time?
A Yes, sir, all the time.

Q Then you and Mitnick stood on that corner? A No, sir, we did not -- a fellow came walking right over and he introduced --

Q Another man came over? A Yes.

Q With a bag? A No bag.

Q With a big bag? A No, he did not have no bag.

Q He didn't have any bag? A No.

Q You didn't see the bag? A No.

Q Until after they came out of the house? A After they came out of the house.

Q They went in to have a drink somewhere before they went up in the house to get this bag or see this bag, you went in somewhere to have a drink all of you? A Not all of us.

Q Who? A Mr. Rifkin and myself and the man we met on 19th Street.

Q Who? A Mr. Mitnick introduced Mr. Rifkin to a man and he took us right in a saloon.

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Q Who bought the drink? A That gentleman I don't know-- Mitnick's friend.

Q How long were you in there? A A short time, about ten or fifteen minutes, I think.

Q What did you say you had? A I had a soda water, one drink.

Q Just in there long enough to have a drink? A We went in a booth and he called us right in a booth and he took a little whiskey and I had a soda and Rifkin had a soda.

Q Then you came out? A No, we did not. Mr. Mitnick called us out. He stood out with the other.

Q You did go out? A Yes, after he called us.

Q You came out and did not Mitnick go on the corner?
A He told me to stay with him.

Q I did not ask you that and ask to have it stricken out.

THE COURT: Motion granted.

Q You joined Mitnick again on the corner? A Yes.

Q Then after that these other men went upstairs into the house? A I wanted to go with them.

Q I did not ask you that and move to strike it out.

THE COURT: Strike it out.

Q After these other men went upstairs in a house you and Mitnick remained on the corner? A Yes.

Q They came down subsequently? A Yes.

Q And joined you folks and went into a restaurant and had some lunch or something? A Yes.

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Q And then you came out and some of them got in a cab and went away and finally leaving Mitnick with you on the street, is that right? A No.

Q Did not Mitnick remain with you on the street after the cab went away? A No, sir, first Mitnick got in the cab.

Q I said finally, when the cab went away finally. A You asked me a question and I want to answer you the proper way.

Q When the cab went away finally, the last time it went away to go downtown with Rifkin and Heller and the other man in the cab, at that time Mitnick and you remained on the corner, is that right? A Yes, the last time.

Q You say you remained there twelve minutes? A About twelve or fifteen.

Q What were you doing there? A Just standing on the corner, I asked what we were standing on the corner for and he said stay here.

Q You were talking? A Yes.

Q Did you walk? A Walked up and down a half a block and I said what am I doing that for.

Q You remained about twelve minutes? A Twelve or fifteen.

Q And then he disappeared suddenly? A Yes.

Q Then you went back to Brooklyn? A No, sir.

Q Did you go to Brooklyn? A No.

Q Did you go downtown? A Yes, sir, to Rifkin's office.

Q Later in the day you went to Brooklyn? A Later in

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the day, in the evening.

BY THE COURT:

Q Did this defendant say anything to you with reference to you remaining on 19th Street after the other parties left?

A Yes.

Q What did he say? A He said I am glad you got confidence in me, he said, I will make a couple of dollars and I think I am going to go in business and you wont feel sorry for it. I said Mr. Mitnick -- I called him Mopsy -- I said all I want to make out of this here parcel is \$200. I give you my word I will buy it and my word is my bond all the time it has been, and he said you are not taking no chances, nothing at all. I said, all over \$200 profit on this here \$2400 you can keep, and walked talking that way and we walked up to the corner and he said don't you think you had better go back to the business, you have people working for you, and I said don't worry about my people if I could spend so long I could spend a couple of minutes more, and I happened to look around, it did not take a second and Mitnick disappeared and no more than he disappeared than I jumped right in a telephone booth and figured I could stop that money, and no more than I telephoned than the money was paid out and Mr. Rifkin was downstairs and that was the end of it and I ran down to Rifkin's office and could not find Rifkin and I waited there until I got him and I took hold of the bag and I took it to Brooklyn.

Objected to.

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THE COURT: We have gone all over that.

BY THE COURT:

Q How long did you remain on the street before you telephoned to Rifkin? A Just as soon as Mr. Mitnick left me, as soon as I jumped in a booth to telephone.

Q Did you ask him why it was that you should remain there? A I asked him but I don't know, after a bit I acted like a kid, when I consider it.

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

Q You had a drink? A Yes.

Q And that had some effect upon you? A Absolutely.

BY MR. O'REILLY:

Q What do you mean it had some effect upon you? A Well, I don't know, I never felt that way before.

Q You had a glass of sode water? A Yes, and I felt --

Q You were in a saloon? A Yes.

Q And you ordered a glass of soda water? A Yes.

Q And the waiter brought it to you? A Yes.

Q And you drank it? A Yes.

Q And then you lost consciousness or something? A I did not feel right, the same way, no man living could tell me to stay on the corner.

Q What did you do with the notes, the original notes you gave to Rifkin for the \$1200? A The original note, that was my partner endorsed it.

Q What did you do with it? A I asked him to do me a

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favor.

Q I ask you what did you do with the note? A I give it back to my partner. We dissolved partnership to go back to get my job.

Q I ask you what did you do with it? A I gave it back to my partner, the man who endorsed it.

Q Didn't you tell us the other day that you gave him ~~the~~ originally twelve notes, didn't you tell us the other day that originally you gave Rifkin twelve one hundred dollar notes?

A I figured, I know I gave him \$1200 -- I gave him \$1200 worth of notes, but I was so sure --

Q Answer my question. A Yes, I did say that.

Q And the fact is you did not give him twelve one hundred dollar notes, did you? A Well, no, not after I saw it, but I know it was \$1200.

J O S E P H R I F K I N, recalled by the People:

BY MR. MANCUSO:

Q The defendant testified that when he came to your office with Barron, that you took a black satchel and gave the satchel to Barron, did you do any such thing? A No.

Q Did you have a black satchel in your office? A I don't recollect, I don't recollect what I had, but he was the one packed ~~knk~~ it up, whatever he packed it in I don't remember just exactly.

Q Did you give him a satchel? A No, I didn't give him

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anything. He done the packing himself.

Q Who carried the bottle of acid, together with the stone out of your office? A Mitnick.

Q Now, do you know Heller? A No.

Q The man you met at Park Row? A I don't know him.

Q Was that the first time you had seen him? A That was the second time I saw him, I think.

Q Where was the first time? A At Barron's place.

Q After you came back from 19th Street with Heller, and this other man you met at 19th Street, you paid the money in your office, is that right? A Yes.

Q After paying the money over to one of these men what did you do, did you remain?

Objected to as not rebuttal.

THE COURT: You have gone over this.

MR. MANCUSO: It is just one question I committed on my direct.

THE COURT: Put the question.

A About five minutes later I realized what I done --

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

THE COURT: Strike it out.

BY MR. MANCUSO:

Q Tell us what you did? A I paid the money out and did not the key and so I ran downstairs thinking I would. I ran downstairs trying to get them and they were gone.

Q Did you see them on the street? A No, they were gone.

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CROSS EXAMINATION BY MR. L'REILLY:

Q You say you don't know if you had a little black bag or not? A I don't know what it was packed in, I don't remember.

Q You did not pack it? A No.

Q You did not give it to the defendant? A No.

Q Are you sure about that? A What?

Q That you did not give it to him? A No, he took it.

Q Are you sure you did not give it to him? A Yes, sure.

Q If Mr. Barron says that he said to you to give him the acid and let him carry it and that then the defendant spoke up and said, no, let me carry it, that is not so? A No, the defendant came in and said he wanted to carry it and he suggested carrying it.

BY MR. MANCUSO:

Q Where was the acid? A On my window.

Q Who did you give it to? A I didn't give it to anybody, I told him to pack it up and take it.

Q Who packed it up? A Mitnick.

Q Did you see him do it? A Yes, sure.

Q What was it packed in? A I don't remember.

Q A paper, a bag or what? A It might have been a bag or a paper, I don't recollect.

Q Did you give him a black satchel to pack it up in, or put it in? A I don't recollect what I have him to put it in.

Q Did you have any such black satchel in your place?

A There is a possibility, I just can't remember.

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Q Don't you know? A No, I can't remember that part of it.

BY THE SECOND JUROR:

Q Did you examine the contents of the bag in the taxicab? A The gold?

Q Yes. A I did not examine it. They told me to take some of it out and test it and I put my hand in and pulled some out and as I done that they grabbed it away and put it back and said you don't want so much and they gave me some out of their hand.

Q During that time the bag was open? A Yes, but they closed it again, they snapped it.

BY THE COURT:

Q Did you take any drink that day? A Yes, in the saloon as we met them.

Q What did you drink? A I don't know, I ordered something, I don't recollect just what the drink was. I think it was a little whiskey perhaps, something like that, I don't just remember.

Q Are you accustomed to drink liquor? A No, I don't drink liquor.

Q Did it have any peculiar effect upon you? A The way I realized this thing --

Q Not the way you realized -- did it at that time? A The liquor, no, it did not exactly -- it just had me confused.

BY MR. O'REILLY:

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Q Do you know what you drank? A No, I couldn't remember.

Q Was that the result of what you drank that you cannot remember now what you drank? A No, I don't recollect what the drink was.

Q What did you order? A I don't remember.

Q What do you usually drink? A Sometimes I drink a glass of beer and sometimes a little whiskey and sometimes a cocktail, just how I feel.

Q And a highball? A Yes, just as I feel. It might have been a highball or a cocktail.

Q There was not anything extraordinary about it? A No.

Q You ordered it from the waiter? A Yes.

Q He brought it to you? A Yes.

Q In the saloon on the street? A No, in a booth.

Q The saloon was on the street? A Yes.

Q You went in the same as you would go in an ordinary saloon? A Yes, sir.

Q The waiter came to you and asked you what you would have and he brought it to you, one drink and you drank it? A Yes.

THE PEOPLE REST.

THE DEFENCE RESTS.

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