

THE WITNESS: Maybe three o'clock in the afternoon I might not have been down there at all that afternoon, because I have another business. This is a sideline with me.

BY MR. MARKEWICH:

Q Explain to me what locks if any you had on the door of your loft? A A Yale lock and Siegel lock.

MR. GOTTLIEB: I object as cumulative.

THE COURT: Do you want it in?

MR. MARKEWICH: I just wanted it made clear.

THE COURT: Very well.

THE WITNESS: A Yale lock and a Siegel lock.

Q On the 10th day of December, 1918, what time did you arrive at your place of business? A I arrived at my other place of business about quarter past nine or half past nine; I am not sure.

Q I mean London's? A No, that was Zabriskie, Gammon & Company. I am a member of the firm. When I arrived there they told me I better go right downstairs. Zabriskie, Gammon is on the thirteenth floor and London and myself are on the eighth floor, American Woolen Building, 225 Fourth Avenue. They told me I better go right downstairs that the place had been robbed the night before, and I went right down; I think it was about half past nine.

Q When you got there did you observe the condition of the locks? A No.

Q Did you see the door; did you see whether the locks were tampered with or broken? A Not at that time. I looked after-

CASE # 2654

wards with other people in the hall and from everything I could see the locks had not been tampered with.

Q The locks were not tampered with? A Not that I could notice?

MR. GOTTLIEB: I submit that this is a conclusion.

THE COURT: Yes. I will let him say that he did not see any marks on the locks or door.

BY MR. MARKEWICH:

Q You did not see any sign of any breaking? A I noticed nothing on the door.

Q Did you see what goods if any, were missing from the place? A When I arrived there they told me --

Q Never mind what they told you, did you see what goods were missing? A Yes; the bins were empty.

Q Subsequently did you see part of the goods which you identified as goods missing from your premises?

MR. GOTTLIEB: I object; there is no proof of any identification by this witness of any goods.

MR. MARKEWICH: I withdraw the question.

BY MR. MARKEWICH:

Q Did you see goods that belonged to you, that were in those premises, at any place, or at any time after the 10th day of December, 1918?

Objected to; objection sustained.

THE COURT: I think that calls for a conclusion.

CASE #2654



BY THE COURT:

Q Were you at any time in the office of the Property Clerk of the Police Headquarters? A No, I was not.

Q Were you in the Magistrate's Court? A Yes.

Q At the time that this defendant was arraigned? A Yes.

THE COURT: Mr. Markewich, you may show the witness the exhibits that you have in evidence and ask him if you care to whether that was in the court at that time -- I think we only have the tags in evidence.

MR. MARKEWICH: Yes, but we have a roll of cloth here.

BY MR. MARKEWICH:

Q Were you in the place of business of Harris Rubin?

A I was.

Q About what date was it? A That I have not been sure of and I have asked since. Since this trial was up. They told me it was about the middle of January.

Q About when? A About the middle of January.

THE COURT: You may get this witness to describe if he can, with clearness and with fullness, the articles which he claims were missing from the loft on the morning when the alleged burglary was discovered. Then you may get him to describe if he is able to the articles that he claims were seen in the Magistrate's Court, and you may get him to tell us, if he can, what there was about that article if anything, which enables him to say that that was the article which had been in his place of business.

CASE # 2654

MR. GOTTLIEB: If I can read two or three questions of the witness, your Honor, we can dispose of this quickly, with your Honor's permission, just to save time.

THE COURT: If there is a dispute in this case about the piece of goods which we have seen here in the court room and which has not been marked in evidence, that is to say if there is a contention that there is an absence of evidence that that piece of goods was inside of the place of London & Company, then I want to know from this witness or some other witness whether he claims that he can identify that piece as having been inside and if so, how.

BY MR. MARKEWICH:

Q Can you tell the Gentlemen of the Jury what goods were missing from your premises on the 10th day of December, 1918?

MR. GOTTLIEB: I object. They have not shown an active connection of this witness with the establishment.

BY THE COURT:

Q You were partner of the witness London, as I take it, prior to the 10th day of December, 1918; is that so? A Since October 15, 1918.

Q You have been a partner and you are a partner now? A Yes, I am still.

Q Do you know what property was contained inside of the loft of your firm when that place was closed, at the close of business on the night of the 9th of December? A I cannot tell you exactly, no,

CASE # 2654

because we have a stock-taking once a month.

Q Do you know, with respect to any particular article, the property of your concern, whether it was or was not inside of your place of business at the time the place of business was closed on the night of the 9th of December, 1918? A Well --

Q Yes, or no to that. A Yes.

THE COURT: The charge as contained in this indictment is, That a quantity of cloth that was inside of the place of business of your concern on the night of the 9th of December, was taken from that place sometime on the 10th of December, stolen from that place sometime on December 10th, that is the charge, you know that?

THE WITNESS: Yes.

BY THE COURT:

Q What time did you arrive at your place of business on December 10th? A About half past ten -- or half past nine, to the best of my knowledge.

Q In the morning? A In the morning.

Q When you got there, who, if anyone, did you find there?

A There was a crowd in the hall.

Q When you got inside of your loft, who, if anyone, did you find inside of the loft? A Inside the loft, there was Mr. London, my partner, and my partner Mr. Zabriskie of upstairs. Our office manager, several of the salesmen. This Alfred Schorr and -- they were about the people I recollect.

Q Did you look around at that time at your stock? A Yes.

CASE # 2654



Q Did you look around? A Yes, I looked around.

Q Did you fail to find anything that you had seen there the night before? A Yes.

Q What had you seen there the night before that you did not see when you got down on the morning of the 10th? A We had a lot of worsteds, piecegoods.

Q Where had they been on the night of the 9th when you closed up? A We have tills on each side -- there is twelve tills on each side. When I say a till I mean a packing case, piled on top of each other, to put goods into and we keep our better worsteds over there away from the door, towards the windows of the office, away from the entrance, and when I looked in that morning the tills where these better worsteds had been the night before we empty.

Q Will you describe the worsteds that had been in those tills on the night of December 9th, give us the color, give us the yardage, give us a description of the design, give us anything which is descriptive of those goods? A I can give you samples of the goods - I can give you quantities of the pieces taken -- I have samples with me.

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

THE COURT: I will strike it out.

THE WITNESS: I can describe to you.

THE COURT: Will you do what I asked you to do?

THE WITNESS: Yes.

CASE #2654

Q Tell the jury. A There was eight pieces of a kind of coarse wirey worsted manufactured by Gus Rosenberg.

Q What color was it? A Light gray -- there were two styles of light gray.

Q How many inches wide? A 54 inches wide.

Q How many yards in it? A I should say -- they were big yardage -- must have approximated about 45 yards apiece.

Q Was it a figure goods, or plain, without figure or design? A Rosenberg's stuff was a stripe.

Q What color did you say it was? A Light gray with a decoration stripe.

Q What do you mean by a decoration stripe? A A decoration thread to give the pattern.

Q About how wide were those stripes? A I couldn't tell you exactly. I should say three-quarters of an inch or an inch.

Q What shade was the stripe? A That I could not tell you.

Q Were the stripes of a different color from the body of the cloth or merely a different shade of the same color? A No, I think -- I could not answer the question authentically, but if I remember rightly they were black and white, what we call self-toned.

BY MR. MARKEWICH:

Q Just tell us what goods you had seen at Rubin's place of business when you were there? A When I went to Rubin's place I went there at the suggestion of Mr. Weinstein who was one of the ---

CASE # 2654

Objected to.

MR. MARKEWICH: I consent to strike it out.

Q You saw Weinstein before you went to Rubin? A Yes, I saw Weinstein.

Q Then you went to Rubin? A He took us to Rubin's.

Q When you were at Rubin's did you see <sup>thirteen</sup> ~~three~~ pieces of goods? A Yes.

Q Describe those thirteen pieces that you saw, the colors descriptions and styles? A There was two styles of this Gus Rosenberg's fabric I just told you about -- four pieces each. There was two styles of an American Woolen Company. I think it was two pieces and three pieces -- that is the American Woolen Company goods there.

Q Did you see that piece of goods there? A Yes, American Woolen.

Q When you saw them at Rubin's were they in the wrappers in which they were contained in your place of business? A No, sir, they were loose.

Q Were the labels -- the tags that were on the wrappers if any, when in your place of business, were they on when they were in Rosenberg's -- Rubin's place? A No, they had these Dennison's tags -- they had no mill tags on them.

Q I show you these tags marked People's Ex. No. 1, in evidence, and I ask you if you recognize them as the tags you had seen on those bundles? A Yes, sir; these are similar tags, but whether they are the tags or not, I cannot say. That is a sponger's

CASE # 2654



tag, this tag here (indicating.)

Q Sponger's tags, did you say? A That is a sponger's tag.

BY MR. MARKEWICH:

Q These thirteen pieces of goods were removed from Rubin's place and taken to the Property Clerk? A They were removed by --

Q They were removed? A Yes.

Q Sometime later did you see this defendant Wallack?

A I have only seen him once.

Q Where? A Outside of District Attorney Morton's office.

Q When was that? A That was on -- I am giving you this -- it was on January 28th. I did not remember. I had to refresh my recollection on it.

Q Do you recall that you did see him? A I did see him.

Q At Mr. Morton's office on the 28th day of January?

A Outside of District Attorney Morton's office I saw him and had a conversation with him.

Q What time of the day was it, do you recall? A When I got back, I was out in the morning --

Q What time in the day was it when you saw this defendant?

A I should say between 5:00 and 6:00 in the evening.

Q And did you have a conversation with the defendant Wallack at that time? A I spoke with him; yes.

Q Tell us what he said to you and what you said to him?

A Well, right as they came out of District Attorney Morton's office --

Q Who are "they" who came out? A I saw Mr. London and Mr.

CASE # 2654

Hayden the detective, and I do not know whether Braunworth was there or not, the other detective I am not sure -- and Praino, the private detective we had on the case was in the hall standing there when I came up. Anyway I saw Hayden and London come out of Mr. Morton's office; and Hayden says to Praino, he said, "Now, you watch, keep your eye on this boy, I have to go some place," and I went to this boy; I said, "So you are Mickey?" He said, "Yes." Then I went over and started to talk to London. I said, What about this ---

Q Never mind what you said to London. A Well, I had left him, after saying You are Mickey; and then I came back. In the meantime he had asked Praino who is this fellow who just spoke to me.

Q Just tell us what you said to this defendant and what he said to you. A I said to him, What business are you in. He said, I am in the junk business. I said, Are you working at that business now. He said, No, the man I am working for has just bought, at some sale, from the City a lot of fire engines and he is knocking those apart and he does not need me now. I think my next question -- I cannot tell you just how many questions were asked, but I can tell you my conversation with the boy. I said to him, Do you know ~~how~~ our boy Schorr-- He said, Yes, I know him. I said, Do you meet him often. He said, No, I don't know him; I was only introduced to him. I said, Who introduced you. He said, My friend Louis. I said, Have you

CASE #2654

seen Schorr often. He said, No; I have only saw him twice, when I was introduced to him by Louis and the night before the robbery when Schorr passed his keys over to Louis in Broome Street.

I said to him, You must be the fellow that the elevator boy tell me is -- he tells me there was three boys there, one was a pretty well-dressed boy and one was a rather fat boy and there was another little short fellow with a cap on. When I asked him that question he did not say anything. He just shrugged his shoulders and kind of laughed. I said, You did have a cap.

He said, Yes, I wore a cap that morning. I said to him, You got some money out of this job, didn't you; and he said, Yes, I got five hundred and twenty dollars. I said, Who did you get that money from? He said, Louis passed it over to me. He said he also passed it over to Schorr and a fellow Red. I said, I have heard of this Red, but he wasn't in on this job, was he?

He said, No, he isn't in on the job but he is Schorr's partner. Then I asked him, I said, You helped cart these goods out of our place the morning of the robbery; and he said, Yes, I helped put them on the elevator. Then I asked him did he go down on the elevator. What his answer was to that I am not clear on, whether he said he did go down on the freight elevator with the goods or whether he did not go. I don't know; I forget; I can't remember.

I said to him, I hear that you passed the keys back to Schorr that morning, --which I had heard from the detective. He said, Yes, we threw them back to him at 23rd Street and Fourth Avenue. I said,

CASE # 2654



Was he supposed to meet you there? He said, We told him to wait for us there. I asked him where they took the load of merchandise, did they take it directly to Weinstein's place. He said, We took the load of merchandise to Weinstein's and I helped carry the goods up and take the tags off-- the tickets off.

Now, as near as I know, that was my conversation with this boy.

BY MR. MARKEWICH:

Q Do you recall if there was anything said at the time about him being a witness before the grandjury? A No?

Q No, about Wallack being a witness? A I remember his case came up before the grand jury.

Q Do you remember having said anything or spoken to him about his being a witness before the grandjury at the time you spoke with him? A I tell you what I did say to this boy -- come to think of it -- I said to him, Now, we have our boy Schorr, he is held in the Magistrate's Court on a short affidavit and I asked him would he appear tomorrow when the case was coming on and tell in court what he had told me in the hall outside of District Attorney Morton's office. He said, No, you have got me and you can do just as you please with me, but, he said, I am not going to --- I think it was snitch on the other blokes, or some remark like that.

Q Do you know anything about a statement he made or is purported to have made before Mr. Morton? A No, I was not there, so I do not know anything -- I know it from hearsay, but personally,

CASE # 2654

I know nothing.

CROSS-EXAMINATION BY MR. GOTTLIEB:

Q You say you were engaged in another business in the same building? A I was and still am.

Q What was your business? A Commission woolen business.

Q Is that a large and extensive business? A Why, you can consider it so, yes.

Q This venture with Mr. London was a side affair? A A side line.

Q You did not pay much attention to it, from what I glean from your business -- to this business with Mr. London?

A Well, my understanding with Mr. London was --

Q Did you pay much attention to that business or did you let London run the business? A I paid attention to the business in a financial way mostly.

Q The purchase of stock, the woolen goods, was entirely with Mr. London? A No, I had to be consulted on every purchase.

Q Were you ever in the woolen business? A Was I what?

Q In the woolen business. A Your question is not clear.

Q What business are you in? A I am in the woolen business.

Q What business were you engaged in upstairs, also woolens?

A Yes, sir; the woolen business.

Q And the stock of London & Company, was that purchased by Mr. London? A It was purchased by Mr. London and myself.

Q Who actually made the purchase? A You mean the entire

CASE #2654



stock?

Q Yes. A Why, when a purchase is made as a rule, samples are looked over by both of us and the purchase is considered, and if we agree on the purchase, mutually agree, then we buy the goods.

Q From the sample? A Yes.

Q Mr. London took charge in the main of the business, except to confer occasionally with you in regards to your wishes, in the purchase of stock and other matters of finance? A No. My duties with Mr. London - the understanding is that I am to devote as much part of my time to the business of Abraham London & Company as I can spare from my main business.

Q Were you able to spare much time from your main business?

A I can never tell from day to day how much time I can devote to London's business.

Q I asked you whether you devoted much of your time to this business or to your main business? A It all depends what you consider much.

Q Were there weeks from the time you entered into business relations with Mr. London when you did not enter the business of London & Company at all, but merely received reports from London in your office? A Well, weeks? -- No, when I was not out of town I reported at London's every day morning and evening.

Q You did not go through the stock each day? A Yes, I found out what had been sold each day.

Q From the office? A From Mr. London.

CASE # 2654



Q From the office books or Mr. London? A From London himself.

Q You did not usually handle the stock? A I am conversant with the stock but never handle it.

Q Did you handle the stock, did you handle the rolls of cloth? A Do you mean did I keep the books?

Q Did you even keep the books? A No, we have a bookkeeper.

Q You stated here that you visited Mr. Rubin's place of business and there selected 13 rolls of cloth which were removed to Headquarters? A Yes, sir.

Q About how many rolls of cloth were there in Rubin's place that day? A That I can't tell you.

Q Were there fifty? A I should imagine there was more than fifty.

Q Was there more than 100? A I could not say.

Q Was there a large stock of woolen goods in Rubin's place on the day of your visit? A From what I -- my knowledge of the business I would say he was carrying a small stock.

Q Were there 100 rolls of cloth? A I answered that question before.

Q What was your answer? A I could not say.

Q There was more than fifty? A I should say there was more than fifty.

Q Were those rolls of cloth that you saw in Rubin's place similar to the rolls of cloth which you selected and had removed to Headquarters? A Similar in what respect?

Q Similar in style? A As to style only?

CASE #2654

Q As to style, yes. A You have no reference as to fabric?

Q I have reference as to style. A Just as to style I cannot say -- you cannot tell the style of a piece of goods when it is rolled up.

Q Did you open -- how many rolls of cloth were opened that day? A Just our own goods, to look at the style.

Q Did the other rolls of cloth which were examined in Rubin's place on that day bear sponger's tags similar to those produced here? A I could not tell you that.

Q Will you say that only the thirteen rolls removed to Headquarters bore these sponger's tags? A The only thirteen pieces I was interested in naturally -- I cannot say about the others.

Q Were these thirteen pieces of goods scattered in among the stock of Rubin? A No, sir; those thirteen pieces of goods were in one till in Rubin's place, being held for return to Weinstein's.

Q Did you identify these goods by the tag? A I identified these goods because --

Q I asked you whether you identified them by the tag? A Not by the tags, no, sir.

Q The style or fabric of these woolen goods taken from Rubin's at your instance, were they goods that were made by the American Woolen Company for other concerns? A Certainly,

CASE #2654

the American Woolen Company.

Q Just answer yes, or no. A Yes.

Q And does Gus Rosenberg manufacture goods for others similar to those of this quantity which was taken from Rubin's place on that day; yes, or no? A Similar fabrics?

Q Yes. A Similar style?

Q Yes. A I presume he did; I don't know.

Q Don't you know he did? A The question is so absurd, to ask a question like that.

THE COURT (To the witness): Make no comment, please.

BY MR. GOTTLIEB:

Q You presume that he did? A He did, I presume so.

Q And did you find <sup>on</sup> any of these rolls of cloth any indication outside of the file number, the pattern or fabric, any indication that they were your property, by way of any writing or tags or marks woven in the cloth or attached by paper, yes or no? A No, I did not.

Q Now, you saw this defendant in this building on the 28th of January you say? A I did.

Q Do you know or can you remember at what time on that day you saw this defendant here? A Between five and six in the evening.

Q Are you quite sure that it was between five and six in the evening? A I have testified that I was not quite sure.

Q Might it have been between twelve and one, try to think about that? A In midday? No, it could not have been.

Q Could not have been --- with respect to the time as being between five and six, will you say that you might be mis-

CASE # 2654



taken? A I am saying that the time as near as I can remember is between five and six. I cannot tell you more definitely.

Q Did you come down to this building alone on that day?

A I did.

Q Did you come down to this building in consequence of a telephone message that you received from Mr. London? A Not from Mr. London.

Q From whom? A Mr. Dunn telephoned to me for me to come down.

Q Mr. Dunn was an employe of your firm? A He is in a certain respect an employe.

Q Was he connected with your firm on that day? A He was.

Q When you got down here did you have a conversation with Mr. Dunn? A I did not see Mr. Dunn upon my arrival.

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

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

Q Did they tell you on that occasion when you arrived at this building that this defendant refused to sign a statement which had been taken down by a stenographer and dictated by detective Hayden? A At the time I ---

Q Did they tell you, yes, or no? A They told me nothing at all.

Q You were about to say at the time -- I will let you finish what you intended to say, proceed. A At the time I heard nothing at all regarding the conversation and the statement that he had given to District Attorney Morton, but since

CASE #2654

that time --

Q I asked you about not about "since that time", I talk about the occasion of your visit? A You told me you would let me continue the answer.

Q I am confining you and do not be too clever?

THE COURT: No comment.

BY MR. GOTTLIEB:

Q I confine you to your visit to this building on the 28th. You know my inquiry is directed to what you heard and saw done in this building on the 28th.

MR. MARKEWICH: I submit that counsel invited the answer. He told him to go right on.

THE COURT: I know.

MR. GOTTLIEB: But it had reference to the 28th.

THE COURT: It was seemingly an error on the part of counsel. Frame another question. Pay attention to the question and answer it as briefly as you know how.

BY MR. GOTTLIEB:

Q I am questioning about what happened in this building on the 28th of January, you understand that -- before you spoke to this defendant in this building on the 28th, did you have a conversation with Mr. London and Mr. Hayden, or anyone else with regard to this defendant? A I didnt.

Q You know Mr. London was in the criminal court building and was here pretty much that day? A I did not know that; no.

Q Did you know when you came down here that Mr. London was

CASE #2654

here? A When I saw him I knew he was here.

Q Did you know he was to be here? A I know he had been called up to appear here.

Q Did you not know that London's visit to this building was for the purpose of trying to bring about a statement from the defendant, yes, or no? A I do not know.

Q Do you mean to tell this Court and jury that you spoke to this defendant and that he made the statement you have testified to here without you ascertaining from the detectives or from Mr. London or from anyone else connected with the case as to whether he had made any statement to the District Attorney? A I questioned this boy without having spoken to anybody and at the time I questioned him I did not know whether he had been talking to the District Attorney or not.

Q Were you introduced to the defendant by anybody? A This boy?

Q Yes. A They pointed him out and told me that was Mickey.

Q Who pointed him out to you? A I think it was Praino.

Q You made no memorandum of this conversation? A No, sir.

Q Did you inform the detectives right there and then what the defendant had told you, yes or no? A No.

Q Did you inform Mr. Morton then and there of what the defendant had told you? A I had never had any --

Q Yes, or no. A No.

CASE # 2654



Q These rolls of woolens had not been turned over to your firm by the Police Department, had they? A No.

Q Is there now a contest between your firm and Rubin as to whether these goods ever belonged to your firm? A There is.

Q And is there now pending in the Supreme Court an action brought by your firm against Rubin? A There is.

Q For the recovery of these goods? A For the recovery of damage sustained and property lost.

Q To the extent of how many thousands of dollars? A I am not sure whether it is twelve or fifteen.

Q And that case is being contested? A I believe so.

Q Don't you know so? A No settlement has been made and so I presume it is being contested.

Q Are you quite anxious that the question of identity, which will be involved in the conviction of this defendant, shall be resolved in this court in your favor, for such effect as it would have on a civil suit for thousands of dollars?

Objected to as incompetent and immaterial.

MR. GOTTLIEB: His state of mind - motive is always competent.

MR. MARKEWICH: The question of identity of these goods I do not think is of such great moment.

THE COURT: We are inquiring into his state of mind and so I will allow it.

BY THE COURT:

Q Does that influence you; yes, or no? A Please

CASE # 2654

have the question read.

(The former question is repeated.)

Q Yes, or no. A No, it makes no difference to me.

BY MR. GOTTLIEB:

Q Was it any suggestion of yours that this case be taken from the Magistrate's Court and brought down to the grand jury in the first instance, so the defendant would not have an investigation of the case in the Magistrate's Court? A No.

Q Was it the suggestion of your counsel to the detectives to your knowledge? A It was the detective's suggestion. I had nothing to say about it at all.

Q You have private counsel here in court? A I believe so; yes, sir.

Q Has he been connected with this case throughout its pendency here? A No, sir; when this case first started, the robbery, we had other counsel.

Q But you have had counsel? A We had counsel and asked advice.

Q If Mr. Hayden made the suggestion to you that the matter be taken to the grand jury thereby depriving this defendant of his right to be faced by his accusers in the Magistrate's Court?

Objected to; sustained; exception.

THE COURT: Mr. Gottlieb, we might as well settle it once for all. There is no such right. In other words it is entirely optional with the District Attorney and the authorities whether they will present the matter in the first instance

CASE # 2654

to a magistrate or the grand jury.

MR. GOTTLIEB: I agree with your Honor, but when the case is taken from the Magistrate's Court to the grand jury without an investigation, going out of the beaten path and usual rule, I think it is a fair matter to argue that there was something improper done.

MR. MARKEWICH: There is no usual rule in the case.

THE COURT: Put another question now.

BY MR. GOTTLIEB:

Q Will you point out on the roll of cloth that is here now in court, produced here in court, the method by which you arrived at the conclusion that this roll of cloth belongs to your London company? A I can match it up with our original loss.

Q By whatever method you care; just let us know how you arrive at it, whether by comparison or otherwise.

(The witness compares a piece of cloth with the cloth produced in court.)

THE WITNESS: These are the clips -- the morning of the robbery I immediately had the stock taken --

Q I merely want to know how you arrive -- you arrive at it by comparison with that swatch? A By comparison with our swatch.

Q May I have that swatch? A No.

MR. GOTTLIEB: I ask the witness to permit me to inspect that swatch, from which this comparison is made and he de-

CASE #2654



clines to permit it to be done.

THE COURT: I think you may have it.

(The swatch of cloth is handed by the witness to the counsel.)

THE COURT: Don't you want to mark it for identification?

MR. GOTTLIEB: Yes.

(The sample is marked, for Identification, People's Exhibit No. 1.)

BY MR. GOTTLIEB:

Q This swatch that is produced here marked People's Exhibit No. 1, for Identification, is that a swatch of cloth or a piece of cloth given to your firm by the Woolen Company or the firm from which the roll of cloth was bought? A You mean from the American Woolen Company?

Q The American Woolen Company or from the concern from whom you bought it? A We did not buy this roll of cloth directly from the American Woolen Company.

Q From whom did you buy it? A A jobber.

Q What is the name of the jobber if you know? A That I could not just tell.

Q Now, this swatch of cloth -- A Samuel Ginsberg is the name of the jobber.

Q This swatch of cloth marked Defendant's Exhibit 1, where did you get that? A That I could not tell you. That swatch I have given you is an ordinary original reference sample from

CASE # 2654

the American Woolen Company and the chances are we went up and got it from the American Woolen Company and asked them for a swatch. I don't think it is off that piece. It could not be because the American company's original label is on it.

Q Are these swatches of cloth distributed promiscuously among the trade? A No, sir.

Q Among woolen merchants? A If you make a purchase from the American Woolen Company they will give you a swatch of the goods.

Q But this cloth was not purchased from the American Woolen Company by you? A No; but we might have gone to them and asked them for a swatch and they would have accommodated us to that extent, or we might have got this from Samuel Ginsberg. I am not sure.

Q This swatch of cloth apparently was cut from a large piece? A Originally it must have been.

Q Is it fair to assume that pieces of this same cloth as is produced here, were distributed to others than London & Co.? A Yes.

Q And it is merely an assumption on your part, in identifying this roll of cloth, that because it is similar to the swatch of cloth marked Defendant's Exhibit 1, that it necessarily must have been London & Company's goods? A No, it is not an assumption on my part, because when I made the identification of these goods in Harris Rubin's loft I was taken to the bin, the till, where these thirteen pieces were, by his stockman and he says, "There

CASE # 2654

are the thirteen pieces that we want Weinstein to take back because we cannot use this."

Q We are talking now of a comparison between this and the roll of cloth --- not any outside opinion or any talk with Rubin's employes -- if another roll of cloth were produced here and it compared with this swatch? A I could not tell the difference.

Q Then you could not tell the difference? A No.

M A R Y A. D A L Y, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:  
(Residence 83 Hamilton Place, New York City.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q You are employed as stenographer in the office of the District Attorney of this county? A Yes.

Q How long have you been employed in that capacity?  
A Over ten years.

Q On the 28th day of January, 1919, were you assigned by the District Attorney as a stenographer to the Indictment Bureau?  
A Yes.

Q Have you the original notes that you took on that day?  
A Yes.

Q Have you the notes taken in the case of The People v. Schorr and Wallack on the 28th day of January, 1919? A My statement just shows People v. Alfred Schorr.

Q Alfred Schorr? A Yes.

CASE #2654



Q Is there any reference made there to Wallack or any statement purporting to have been made by Wallack? A A statement -- an affidavit that was dictated to be signed by Wallack.

Q By whom was it dictated? A I think Mr. Morton.

Q That is your best recollection? A Best recollection.

Q That Mr. Morton dictated it? A Yes.

Q Is there any way by which you can tell from any memorandum you have? A Except the previous dictation was under the heading of his name and I remember being in his room on that day and taking the statement.

Q If there was an interruption by somebody else and somebody else had dictated, you would have put that name in? A Yes.

Q As dictated by somebody else? A Yes.

Q Because Mr. Morton dictated one proceeding and there is no other name appearing in Wallack's statement, you assume by that that Mr. Morton dictated this? A Yes.

Q That affidavit was never transcribed? A No, sir.

Q And was never signed? A No, sir.

Q You have no independent recollection outside of the minutes of the faces of the men who appeared in the office at that time? A No, I have not.

Q You see so many? A Yes.

Q Can you state with any reasonable degree of certainty as to whether or not Wallack was present at the time this affidavit was dictated by Mr. Morton? A I am pretty sure he was.

CASE # 2654

Q You are pretty sure he was? A Yes.

Q Please look at this defendant and state whether you can recall having seen him?

MR. GOTTLIEB: I think the last question before this shows she has no recollection of the faces of the men who appeared there.

MR. MARKEWICH: I do not know if she has, or not.

THE COURT: I will let her answer. Miss Daly, you have the kindness to look around this room and see if you see any body in the room who was present at the time that you took those notes.

THE WITNESS: I cannot say that there is anybody here that I remember seeing on that day.

BY MR. MARKEWICH:

Q There is no one you remember seeing on that day? A No; I see so many.

(No cross-examination.)

A B R A H A M L O N D O N, recalled by the People.

BY MR. MARKEWICH:

Q Were you in Mr. Morton's office? A Yes.

Q At the time Mr. Wallack, the defendant, was in there?

A Yes, sir.

Q You told us yesterday, I believe, that the defendant Wallack had made a statement in narrative form? A Yes, sir.

Q To some one; I do not recall to whom it was --c to whom did he make that statement? A A young lady took it down.

CASE #2654

Q Took it down? A Yes.

Q Was it the defendant who made the statement or was it dictated by someone, do you recall? A The defendant made the statement.

Q To whom -- was there anyone who questioned the defendant?

MR. GOTTLIEB: I do not think the witness should be prompted. He said yesterday the defendant made a statement to the stenographer.

THE COURT: I think he has already gone over it.

BY THE COURT:

Q Do you remember the testimony you have given in this case? A Yes.

Q Do you remember what you have said here as a witness? A Yes, sir.

Q You remember what you have testified to regarding something said by the defendant? A Yes, sir.

Q Is there anything you said in that regard that you wish to correct or change in any way? A Not that I know of.

Q Would you like to have it read to you, what you said when you were on the stand last? A I would like, yes.

THE COURT (To the stenographer): Will you have the kindness to turn to that part of the witness's evidence where he purports to give the circumstances under which the defendant is said to have spoken -- what the defendant is said to have said in <sup>Mr.</sup> Morton's office.

CASE # 2654



(The stenographer reads the following from the record:

"He simply told the story in a narrative way".)

THE COURT: Do you want to correct that at all?

THE WITNESS: As to what?

THE COURT: I think that answers it.

BY MR. MARKEWICH:

Q I want to know whether at the time the defendant had made the statement in a narrative way as you say, did anyone come into the room, some stranger to you? A I could not notice, because I was sitting with my back to the door.

Q Did anyone say anything to the defendant at the time, do you recall, or don't you. It is a very simple question, you can answer that? A I cannot recall now.

Q That is an answer -- that is all.

(No cross-examination.)

MR. MARKEWICH: The People rest.

MR. GOTTLIEB: I move that this jury be directed to acquit the defendant first upon the ground that there is no competent evidence before the Court and jury with regard to the identification of these goods as having been the subject matter of the larceny mentioned in the indictment upon which this defendant is now being tried. There has been offered absolutely no proof of identity except deductions and conclusions of these witnesses in their attempt to establish that this roll of cloth and the other twelve taken from Rubin's place was their property. It does appear

CASE # 2654

from the testimony that the goods in question were manufactured by Rosenberg and the American Woolen Company for other people.

THE COURT: I can shorten it very much. Suppose I take your view of it for the purposes of the argument and suppose no goods had been recovered at all. Suppose we were here without any claim by anybody, would there not nevertheless be enough to take this case to the jury?

MR. GOTTLIEB: Then I will entirely turn aside from that line of argument for the moment.

THE COURT: The question is now, Whether I should submit this case to the jury.

MR. GOTTLIEB: Yes; and I will ask your Honor in view of the lack of evidence, competent evidence to establish the identity of the goods in this case, that all reference to matters of identification of these goods taken from Rubin & Company, one of which is here, be stricken from the record as involving only deductions and conclusions.

Denied and exception.

THE COURT: I shall leave it as a question of fact, if I leave it to the jury at all -- I shall leave that as a question of fact.

MR. GOTTLIEB: I take an exception.

I move that the jury be directed to acquit upon the ground that the evidence as developed up to this point does not legally establish the guilt of this defendant and

CASE # 2654

the rule of law I believe is that no person may be convicted, legally convicted upon the evidence of concessions or admissions alone, without other evidence tending to show that the defendant is guilty of the crime charged. If a crime was committed<sup>and</sup>, a person should lie about his connection with it, it is for that reason this salutary rule has been incorporated in our Penal Code - without other evidence tending to connect the defendant. The statements of admissions coming from interested sources. May I just for another moment draw your attention to the very late case of The People v Moyer, in which the court laid down the rule as to the value and weight and scrutiny to be given to the evidence of detective officers as to confessions. It is for this Court to determine now upon this motion whether there is not even a reasonable doubt on the evidence as presented, let alone a prima facie case established.

THE COURT: The last part of the section relating to what must be proved in addition to an alleged confession is, that the crime charged must be committed -- there must be evidence -- that evidence need not be testimony going to the point that the crime was committed by the defendant. It is sufficient if impersonally there is evidence which tends to show that the crime was committed. In other words that there was a larceny.

MR. GOTTLIEB: In view of the condition of this case, the substantial variances on most important matters in this

CASE # 2654



case, does your Honor feel that the case such as has been presented here, can properly be presented to the jury?

THE COURT: I do.

MR. GOTTLIEB: You do?

THE COURT: I do; and therefore, I deny your motion and give you an exception.

THE DEFENSE

M I C H A E L      W A L L A C K, called as a witness in his own behalf, being duly sworn and examined, testified as follows:  
(Residence 258 Delancey Street.)

DIRECT EXAMINATION BY MR. GOTTLIEB:

Q How old are you? A Past twenty-one.

Q Speak up so the Twelfth Juror can hear what you have to say -- past 21; is that correct? A Yes.

THE COURT: Will you have the kindness to talk so that every one of the twelve men can hear you easily. They want to hear what you have to say.

BY MR. GOTTLIEB:

Q And with whom do you live at 258 Delancey Street?

A Mother and two sisters.

Q Now, what is your business? A Soda dispenser.

Q Where do you work? A A confectionery and ice cream parlor.

Q Where is that? A 99 Lewis Street.

Q Is that place a wholesale as well as a retail establishment? A yes.

CASE #2654

Q How long have you been employed there? A Since the middle of September.

Q Now, before that time what line of business were you following? A I worked in the Brooklyn Navy Yard.

Q How long did you work at the Brooklyn Navy Yard? A About a year and a half.

Q And what did you do there? A Laborer and checker.

Q Did you work steadily all through that year and a half?  
A Yes.

Q At the Brooklyn Navy Yard? A Yes.

Q Before that time, what were you doing? A Working for the United States, Quartermaster's Department.

Q How long did you work there? A About two years.

Q Now, were you at any time engaged in the junk business as one of the witnesses intimated? A No, sir.

Q Did you buy and sell wagons at auctions? A No.

Q Have you ever been convicted of any crime? A No.

Q Were you arrested once? A Yes.

Q What was that for? A For the AntiLoafing Law.

Q Where were you placed under arrest? A I was taking a day off in the Brooklyn Navy Yard -- as it was a day off, and while I was walking on Attorney Street I was arrested and held on the Antiloafing Law and later on dismissed.

Q What charge did the policeman make against you? A For burglary.

Q And what was done to you the next morning when you were

CASE #2654

brought into court? A It was changed, the charge was changed.

Q What was it changed to? A Antiloafing Law.

Q What was done to you? A Laid off and dismissed later on.

Q That is the extent of your criminal record? A Yes.

Q You were arrested in this case on the 28th day of January, 1919? A No, sir.

Q What day were you arrested? A January 25th.

Q In this case? A Yes.

MR. MARKEWICH: He refers to Newark

BY MR. GOTTLIEB:

Q Yes -- Now, what day were you first arrested in this case, I mean before the indictment? A January 28th?

Q January 28th? A Yes.

Q And where were you arrested? A I was arrested in my house.

Q And at what time of the day? A About seven or a quarter after seven.

Q In the morning? A Yes.

Q Who placed you under arrest? A Hayden and this other private detective.

Q Where were you taken to from your home? A They took me to Clinton and Delancey streets and they took me on a Fourteenth Street Crosstown Car and got off at Fourteenth Street and Sixth Avenue and took a Sixth Avenue car and got off at Sixth Avenue and Thirtieth Street and there was taken to a station house

CASE # 2654



at Sixth Avenue and Thirtieth Street.

Q Did you give your pedigree to the lieutenant at the desk?

A I think I did.

Q How long were you detained at the Thirtieth Street station? A Until about 10:00 or 10:30.

Q How long were you detained at the Thirtieth Street station? A Until about 10:00 or 10:30.

Q And what was done with you then? A Then they took me out and took me in to eat as I did not have no breakfast at my house, in Child's Restaurant, Sixth Avenue and Twenty-eighth Street. I took then a Sixth Avenue El down with Hayden and got off at Franklin Street and was taken to the Criminal Courts Building then.

Q Taken direct here to this building? A Yes.

Q Now, before this occasion of your arrest, did you see Detective Hayden? A Yes.

Q Where did you see him? A At the prosecuting attorney's office at Newark.

Q How many days prior to your arrest in New York? A The day before.

Q Now, then, when did you go to Newark? A Saturday, January 25th, visiting day.

Q How did you come to go to Newark? A I work in an ice cream parlor where Mrs. Dorch comes in and a few days before I went she asked me would I like to go -- we were talking and I

CASE # 2654

asked her - I don't know which way it was -- and anyway I told her that I will meet her that Saturday, January 25th at her house and we both went to Newark together.

Q Who did you both go to Newark to see? A Her son William Dorch.

Q William Dorch? A Yes.

BY THE COURT:

Q On the day that you went to Newark, on that day were you inside of this building? A No, sir.

BY MR. GOTTLIEB:

Q You say you went in company with Mrs. Dorch? A Yes.

Q Her son was under arrest over there? A Yes.

Q Did you learn he was under arrest in the same case with this man known as Fatty Walker? A Later on I did learn that he was arrested in the same case.

Q The same case with this man Fatty Walker whom these policemen in this case speak of? A Yes.

Q Did you know Fatty Walker? A No.

Q Did you ever meet him to your knowledge in your life, had you ever met him, when you went over there? A I would not know him if I seen him now.

Q How long did you know this young man Dorch, with whose mother you went to Newark? A As far back as I remember, I went to school with him.

Q You heard he was under arrest over there and went with his mother to pay him a visit? A Yes.

CASE # 2654

Q When you got over there, how did you go, where did you go from with the other, from what place in New York? A I met her in front of her house. Her house is in Mangen Street. We walked down.

Q About what time in the day? A About eleven or half past eleven or quarter after eleven. We walked from her house about seven blocks and there we got an Eighth Street Crosstown car which led us to Sixth Avenue and Eighth Street. We walked over to Ninth Street and took the Hudson Tube.

BY THE COURT:

Q You did not go down to Cortlandt Street? A No.

Q Did not take the tube at Cortlandt Street? A No, Sixth Avenue and Ninth Street.

BY MR. GOTTLIEB:

Q You both went then to Newark together? A Yes.

Q Where did you go when you got there, what place? A We walked to the jail house, Essex County Jail.

Q How far is that from the tube about? A About ten or twelve blocks I imagine so.

Q While you were in the county jail over there what happened? A While we were waiting to see William come out, William Dorch, two detectives came in and took me out, and they took me to Police Headquarters over in Newark.

BY THE COURT:

Q New York detectives, or Newark? A Newark detectives.

CASE # 2654



BY THE COURT:

Q They were Newark detectives? A Yes.

BY MR. GOTTLIEB:

Q What was done then with you? A Then they put me in a group of men and one man tried to pick me out for the same crime they were held over there for .

Q Were you let go or held, what was done with you? A I was not let go until Monday afternoon.

Q You were kept in jail then from Saturday morning until Monday afternoon? A I was kept in Jail from Saturday two o'clock or three o'clock until Monday about half past three or four o'clock.

Q Where were you brought when you were discharged, were you brought to any court? A No, sir.

Q Where were you brought to? A District Attorney's office, over in Newark.

Q Were you kept during all this time at Police Headquarters from Saturday until Monday? A Yes.

Q I gave you a letter yesterday to the officer in charge of Police Headquarters at Newark? A Yes, sir.

Q Did you visit him yesterday after the court session here? A Yes.

Q What did you go there for?

Objected to.

MR. GOTTLIEB: If your Honor please, our subpoena has no force or effect beyond the confines of this county, and

CASE # 2654

if this man's liberty is dependent upon the question of dates and where he was at certain times, then we ought to break away from any rule of law which will prevent -- that may seem revolutionary, but where the statute or the rule of evidence, the exclusion of evidence works an injustice, then I say smash the rule and the law and smash the evidence/

MR. MARKEWICH: I will say this. I do not see anything revolutionary about it at all. If Mr. Gottlieb insists that on the 23th he was in jail and was there from Saturday, the 25th, why, I don't think that there would be very much difficulty about our office telephoning to the prosecutor of Essex County and asking him as a matter of courtesy if he won't send the record over.

MR. GOTTLIEB: I will take your statement, whatever you say was the answer on the 'phone.

MR. MARKEWICH: It would take about 20 minutes to come from Newark here by tube.

MR. GOTTLIEB: You can get it over the 'phone and I will take your word.

THE COURT: Some one ought to come over from Newark who will be able to give testimony, after looking at this man, as to whether or not this defendant was in the jail there on that Saturday and continued there on Sunday in the jail -- somebody that knows, and I think Mr. Markewich, if you give to some public official over there my compliments and say it is a matter of importance and ask that the person

CASE # 2654

who would be able to testify one way or the other to come over -- Mr. Gottlieb will help you to pick out the party you ought to have over here, and very likely we can get them here by two o'clock. I will excuse you both so that you may go down to telephone and we will take a recess for ten minutes.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess until five minutes to one.)

After recess trial resumed:

MR. MARKEWICH: In order to save time it has been agreed by Mr. Gottlieb that whatever information I got over the 'phone he accepted on the part of the defendant as evidence, just as if the witness had appeared and testified. I was informed, upon ringing up Police Headquarters at Newark, that the defendant was arrested there on the 25th of January at the Newark County Jail, and that he was discharged on the 27th of January between the hours of nine and ten o'clock in the morning.

MR. GOTTLIEB: That is what I wanted and it is agreed that that is the information which Mr. Markewich received from the Newark authorities.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess until two o'clock.)

After recess trial resumed:

CASE # 2654



M I C H A E L      W A L L A C K, resumes the stand.

BY THE COURT:

Q About what hour of the day did you leave the jail in Newark on January 27th?      A I left Police Headquarters between nine and ten and o'clock and went to the Criminal Courts Building and there I was released between three and four.

Q The Criminal Court Building in Newark?      A Yes.

Q The jail you speak of was a cell in Police Headquarters in the City of Newark?      A Yes.

Q I understand you to say that you were in a cell in Police Headquarters in Newark from some time on Saturday, January 25th to some time on Monday, January 27th; is that so?      A Yes, sir.

Q And you were taken out of that cell at about what hour on January 27th?      A Between nine and ten.

Q In the morning?      A Yes.

Q And where were you first taken when you left that cell?  
A I was taken into a machine and taken to the Criminal Court Building at Newark.

Q And when you got to the Court House about how long were you in the Court House?      A About twelve o'clock before Hayden and this private detective seen me.

Q Then at about twelve o'clock what happened?      A I waited until about three.

Q Whereabouts?      A In the District Attorney's office.

Q In Newark?      A Yes, until the District Attorney was through with some case upstairs before closing the court.

CASE # 2654

Q Then you left the District Attorney's office at about what time? A About half past three or four o'clock.

Q What time did you reach Manhattan? A About five o'clock or half past four or five o'clock.

Q How did you go from the District Attorney's office in Newark to the Borough of Manhattan? A I walked from the Criminal Court Building to the Hudson Tube, Park Place, Newark, and there took the tube and got off at Eighth Street and Sixth Avenue and took an Eighth Street Crosstown car and went home.

Q Were you in the Borough of Manhattan at any time on the morning of January 27th? A No, sir.

BY MR. GOTTLIEB:

Q Now I believe you said you went to see Dorch, you have been over that? A Yes.

Q Who was arrested in a case with Fatty Walker? A Yes.

Q Now, on the 27th, on that Monday, did you see Hayden in Newark? A Yes.

Q Where did you see him? A At the District Attorney's office, at Newark.

Q And about what time of the day on Monday, the 27th, did you see Hayden? A About around twelve and one.

Q Was that after you had been brought back to Police Headquarters, after being discharged in the Criminal Court? A I was not yet discharged.

Q You were not yet discharged? A No.

Q And is the District Attorney's office in the same building

CASE # 2654

with the Criminal Court? A Yes.

Q About what time was it do you say you saw him? A About twelve and one.

Q Was Hayden alone or was anyone else with him? A This private detective.

Q The private detective who was on the stand in this case? A Yes.

Q Detective Praino? A Yes.

Q Now, what did Hayden say to you, if anything, and what did you say to him? A He asked me different questions in the New York case. I told him I did not know anything of the case; and he told me to wait there. I waited until about three o'clock or half past three.

Q From half past twelve? A Yes.

Q So that after you had been discharged you waited those three hours? A No; Hayden left me while I was waiting in the District Attorney's office. About half past three the District Attorney came down and told me I can go home.

Q Had you been already arraigned before a Judge in Newark, in the Criminal Court? A No.

Q You were not arraigned before any judge? A No.

Q But the District Attorney told you about half past three you could go? A Yes, sir.

BY THE COURT:

Q I do not understand that -- You were in the jail at Police Headquarters; that is to say, you were in the cell at

CASE # 2654



Police Headquarters in Newark during Sunday January 26th; is that so? A Yes, sir.

Q You were in that cell until some time Monday morning January 27th; is that so? A Yes, sir.

Q You were taken from that cell in an automobile; is that so? A Yes, sir.

Q To a court? A Yes, sir.

Q Before a judge? A No, sir; to the District Attorney's office.

Q You were taken to the District Attorney's office? A Yes.

Q You remained in the District Attorney's office until what time? A Three or half past three.

Q It was at that time that the District Attorney told you that you could go? A Yes, sir.

Q But you were not taken before any judge in Newark? A No.

Q Where were you when you were placed under arrest in Newark? A At the Essex County Jail.

Q That was not the jail in which you were locked up? A No.

Q In other words, while you were visiting or just about to visit or having visited, in the Essex County Jail, you were placed under arrest? A Yes, sir.

Q You were taken under arrest from there to Police Headquarters? A Yes.

Q In Newark? A Yes.

Q And placed in a cell in the Police Headquarters Building in Newark? A Yes.

Q And you were in that cell a part of Saturday? A Yes,

CASE #2654

Saturday afternoon.

Q All of Sunday and until Monday morning? A Yes, sir;  
until nine or ten o'clock.

BY MR. GOTTLIEB:

Q You left Newark about what time? A About half past  
three or four o'clock.

Q To come back to what Hayden said to you, what did he say  
to you over there about twelve or one o'clock? A Hayden asked  
me different questions.

THE COURT: What did he say to you; tell us.

Q What were the questions. A I don't know the questions  
he asked me but I remember regarding the case but about what I don't  
know.

Q Cannot you remember the questions he put to you, what  
he said and what you said? A No, I can't remember.

BY THE COURT:

Q Tell us as nearly as you can.

BY MR. GOTTLIEB:

Q Did he ask you about the London & Co. robbery, about  
stealing this cloth? A We asked me about a robbery held on  
Fourth Avenue but did not mention no names. I don't think he  
mentioned the name and he asked me if I knew Fatty and I told  
him I went to see Dorch.

Q Did you tell him you knew Fatty or did not know him?

A I told him I did not know him.

Q Did not know Fatty? A I must have told him that because

CASE # 2654

I don't know him.

184

Q You don't know him? A No.

Q Did he show you a picture purporting to be that of Fatty?

A No, sir; he did not show me no pictures at all.

Q He said upon the stand that he showed you a picture of Fatty Walker. A No, sir.

BY THE COURT:

Q He said he showed him a picture as I understand it while they were walking from criminal court building up to police headquarters in New York.

BY MR. GOTTLIEB:

Q Didn't he say he showed him a picture over in New Jersey?

A I think so, yes.

THE COURT: Yes, over here and over there.

Q You say he showed you no picture? A No.

Q Did you tell him why you went to Newark that day? A Yes.

Q What did you say to him with regard to your visit there?

A He asked me how did I come over to Newark; so I told him I went over to see a friend of mine, William Dorch. He asked me if I knew Fatty and I told him I did not.

Q Did you subsequently learn Fatty was arrested in the same case with William Dorch? A Yes, sir; when I got there.

Q Arrested in the same -- did you learn Fatty was arrested on the same case that William Dorch was arrested in? A Yes.

Q Now, when you were at the County Jail who was there with you on this visit? A William Dorch's mother.

CASE # 2654



Q It was that lady -- it was Mrs. Dorch with whom you went over? A Yes.

Q Now, after this conversation with Hayden, in Newark, what did you do? A I was waiting in the District Attorney's office; they told me to wait there.

Q You left there about half past three? A Yes.

Q And you came over to New York? A Yes, sir.

Q You did not see Hayden any more that day? A No.

Q Or anyone who has appeared as a witness against you? A No.

Q You went home, you testified? A Yes.

Q And slept home that night? A Yes.

Q And the following morning what happened? A The following morning Hayden and this private detective came up to my house about seven or quarter after seven and they told my mother they would like to have me as a witness in some case.

Q That was what they told your mother? A Yes.

Q And did you go anywhere with those two men? A I went with them. They took me out of my house without eating breakfast. They took me to Delancey Street and Clinton car and there I got on a Fourteenth Street Crosstown car and got off at Sixth Avenue and Fourteenth Street and took a Sixth Avenue car and got off at Thirtieth Street and Sixth Avenue and there was held in the police station until about 10:00 or 10:30.  
BY THE COURT:

Q Who were the men who were with you? A Hayden and this

CASE # 2654

private detective.

BY MR. GOTTLIEB:

Q You are quite sure of the statement you made? A Yes.

Q That you went into the Thirtieth Street station on the morning you were placed under arrest? A Yes, sir.

BY THE COURT:

Q Was that on the uptown, or downtown, side of the street? That station house? A Going toward Seventh Avenue, from Sixth Avenue it is on the lefthand side. There Hayden got some book, regarding some case which he went to the grand jury the same day.

BY MR. GOTTLIEB:

Q Some other case? A Yes.

Q Were you locked up in a cell in the Thirtieth Street or were you just detained in some room? A I was up in the detective room in Thirtieth Street.

Q Where is that room, what floor? A The first floor.

Q First floor above the ground floor? A Yes.

Q Had you ever been in that station house before? A No.

Q Never knew anything of the location of the detectives' room? A No.

Q At half past ten when you left who accompanied you? A Hayden himself.

Q On the way to the Thirtieth Street station did the detectives have anything to say to you? A No.

Q Did they have any conversation at all? A No, sir; they

CASE # 2654

told me they would let me know when they got to the police station house what was the trouble.

Q At the police station house did they let you know ?

A There was a certain man came in which questioned me regarding about this Hart Steamship Company case and they told me being I was in the neighborhood I was implicated in this steamship company's case too.

Q Being what? A Being I lived in the neighborhood, that I know something about the steamship company's case, too. Well, then I went with those men, Hayden and myself, came down to the Criminal Courts Building. This man was held as a receiver in this case. Late in the afternoon I was discharged - the Hart case was discharged from the grand jury.

Q That was the case Hayden was interested in? A Yes.

Q Trying to find out if you were one of the thieves in that case? A Yes.

Q You got off at Franklin Street and walked over to Centre? A Yes.

Q And came into the building? A Yes.

Q When you got into the Criminal Courts Building, where were you taken to? A I was taken to the grand jury room.

Q And is that on the same floor with Mr. Morton's room or was it the other grand jury room on the lower floor? A On the lower floor.

Q On the lower floor? A Yes.

Q On this General Sessions floor? A Yes.

CASE # 2654



Q That small anteroom? A Yes.

Q And who took you there? A When we came here, he met Braunworth and Braunworth took the book from him and went to the Grand Jury room with him, with Hayden and left me standing outside in the room with this private detective.

Q When you say outside the room, you mean in the corridor?

A No, a small room outside of the Grand Jury room, another room.

Q How long were you in the custody of this private detective?

A Until about twelve o'clock.

Q For how long was that about, an hour or more? A About an hour and a half.

Q Did the private detective have anything to say to you during the time he had you in custody in this building? A He was telling me that he seen me that morning come out of the building; he told me that he was on the truck with me.

Q You mean the morning of the robbery? A Yes.

Q He told you that he saw you come out of the building?

A Yes.

Q Meaning the 225 Fourth Avenue building? A Yes.

Q Trying to let you believe he saw you commit the crime?

A Yes.

Q Or help commit it? A Yes.

Q What did you say to him? A I asked him why didn't he arrest me. He said to me he wanted to get the whole bunch of us, the group of us together before he would make any arrest at all.

CASE # 2654

Q That was why he did not arrest you on the morning of the burglary? A Yes.

Q Was that about the sum and substance of that conversation? A Yes.

Q Now, then, Hayden appeared? A Hayden came out of that room and waited for Braunworth.

Q What did you do then after Hayden and Braunworth were together? A Went to eat.

Q In the neighborhood here? A Across the street here.

Q What time did you leave the dinner table? A About one o'clock.

Q Where did you go then with the men who had you in charge? A Took me to Police Headquarters.

Q Was that the first time that day that you had been to Police Headquarters? A Yes.

Q About what time did you get to Police Headquarters? A About 1:30.

Q And did you see anyone of the witnesses in this case when you got to Headquarters at 1:30; yes, or no? A Yes.

Q Whom did you see? A Abraham London and a man by the name of Dunn.

Q A man by the name of Dunn? A Yes.

Q And did you see certain material, goods, rolls of cloth there at headquarters? A Yes.

Q Did you have a conversation with Mr. London there? A Not as soon as I came in.

CASE # 2654

Q About how long after you came in? A About a half an hour later.

Q What was Mr. London doing during that half hour before he started to talk to you? A Measuring the goods and talking to Mr. Hayden.

Q What did he say, tell the Court and jury when he started this conversation with you, just what he said to you and what you said to him? A I don't just remember what he just told me but the main words were, Would I exonerate him of the robbery, which he told me a few days before the robbery occurred that he loaned five thousand dollars to Mr. Clarke and as he loaned him the money, Mr. Clarke thinks he has an idea that he was implicated in the case and he asked me to exonerate him. So I said to him, You don't even know my name, how do you want me to exonerate you? He said, Well, we heard all about you, this fellow Red, which Hayden went over to Newark - or over to Lakewood - told him the whole story. I said, "If he told you the whole story, what do you want from me?" He said, "I want your consent to exonerate me." I told him, "You are a business man, why don't you exonerate me if he told you the whole story." As I was talking there Hayden and Dunn came over and Mr. Abraham London went over to Mr. Hayden and told him that he cannot do nothing with me. Then I was held there and questioned by Hayden, Braunworth, Dunn and Abraham London and taken to the Criminal Court Building back here again. There they saw Mr. Morton. Mr. Hayden was talking to Mr.

CASE # 2654



Morton, but Mr. Morton was too busy. So, Mr. Morton sent in a stenographer in one of Mr. Morton's rooms or one of his offices and there I sat there with Mr. London and his private detective. Later Mr. Hayden came in and says to me, "Well, why don't you tell him what you know." I said, "You tell here what you know of the case. I told you" and so he said to me, "All right, I tell what you told me." So he told this story, different things, so he said to me, "Well, will you sign it now"; and I said, "Sign what?" He said, "What I told the stenographer." I said, "Why should I sign this confession. I never said it. He didn't mention my name in it".

Q Did you make any statement to the stenographer there?

A No, sir.

Q The statement was made by Officer Hayden? A Yes.

Q Which <sup>you</sup> declined you say, to sign as it was typewritten and presented to you? A Yes, sir.

Q Now, what happened then when you declined to sign the statement dictated by Officer Hayden to the stenographer, what did they do with you then? A He grabbed me and pushed me and took me to Police Headquarters.

Q Did he use you a bit rough because you would not sign?

THE COURT: Do not lead the witness.

BY MR. GOTTLIEB:

Q You say they grabbed you. Please state to the Court and jury how they grabbed you, what did they do? A Well, Braunworth grabbed me by the collar and threw me to Hayden and then took

CASE # 2654

me to Police headquarters.

Q About what time was it you left the building? A About three o'clock.

Q Headquarters was a short distance from here? A Yes.

Q Got there a little after three? A Yes.

Q Did you see anybody connected with this case then at Headquarters? A Only Hayden and Braunworth.

Q Anybody else? A No, sir.

Q Did you have any further talk with them that day? A No.

Q You were kept there overnight? A Yes.

Q Where were you brought to the following morning?

A 57th Street Court.

Q Arraigned before a City Magistrate, a Judge, you were brought before a Judge? A Yes.

Q And what plea did you make there that morning? A I pleaded not guilty.

Q And you were held under bail? A Yes.

Q Your case was adjourned, was it? A Yes.

Q And what bail were you held under? A \$2,000.

Q You were bailed, were you? A Yes.

Q When were you bailed? A The same afternoon or same evening.

Q Did you appear in court in your case again, did you appear again in court? A Yes, sir, the following week.

Q The following week? A Yes.

Q Do you remember the date? A No, sir.

CASE # 2654

Q What was done with the case when you appeared the following week?

Objected to as immaterial.

MR. GOTTLIEB: I am coming down to the point of his being brought down to this building by Hayden and Braunworth. That is my only purpose.

BY MR. MARKEWICH:

Q What was done with the case, was it adjourned again or did the Court dispose of it? A Well, when I was brought up before the Magistrate they took me right out and brought me downtown without any hearing of any kind at all.

Q Who brought you downtown? A Hayden and Braunworth.

Q Did you have any conversation with them -- How did you come downtown? A When I went downtown --

Q By what method? A By the subway.

Q Did you have any conversation with them coming down?

A The only thing they told me, that the man alongside of me was Alfred Schorr and he asked me if I knew him and I told him I don't. He said, "Well, if you don't know him, you know him now," and brought down here.

Q And <sup>arraigned</sup> ~~was~~ in this court? A Yes.

Q On the bench warrant issued on the grand jury's indictment? A Yes.

Q Now, did you up to that time when you saw Schorr in the subway train, had you ever to your knowledge met Schorr before? A No, sir.

CASE # 2654



Q Were you ever in the building, 225 Fourth Avenue? A No.

Q Do you know anything concerning the theft of woollens from London & Company's loft or room on the 8th floor of that building; yes or no? A No, sir.

Q Did you ever tell anyone connected with this case that you got \$520. as your part of the swag; yes, or no? A No, sir.

BY THE COURT:

Q What was your trade or occupation at the time that you were placed under arrest, what business if any were you engaged in? A Soda dispenser.

Q In other words you were employed -- was it in a drug store? A A confectionery store.

Q Whereabouts? A Lewis and Stanton streets.

Q What was the name of your employers? A L. Auster.

Q Were you actually working for him in December of 1918? A Yes, sir; I worked there since September -- started to work there in September.

BY MR. GOTTLIEB:

Q This burglary is alleged to have been on the 10th day of December, 1918, are you able to say where you were on December 10th? A They asked me where I was and I told them I don't know. I told them -- didn't even ask me where I worked. I said, "If you take me and have me locked up, you don't even give me a chance to tell you where I worked." He said, "Well, we will find out that later."

Q What time did you generally leave your home? A About a

CASE # 2654

quarter to eight.

CROSS-EXAMINATION BY MR. MARKEWICH:

Q Do you know where Yokel's saloon is in Broome Street?

A No.

Q You were never there? A No.

Q And you never knew Schorr before the time you were arrested? A No.

Q When you came to 57th Street Police Court, what lawyer represented you? A Mr. Barra.

Q Who? A Caesar Barra.

Q Was he your attorney then? A Yes.

Q And do you know who was Schorr's attorney? A No, sir; not at that time.

Q Do you remember when you were taken downtown from 57th Street Police Court? A Yes.

Q Were you talking to Schorr? A I was.

Q Have you been friendly with him since you were indicted?  
A Not exactly friendly, but every time I wanted to find any information I would go over and ask him -- not friendly.

Q Go over and ask Schorr? A Yes.

Q Did Schorr recommend you to Mr. Gottlieb, your lawyer?  
A No, sir.

Q Do you know Mr. Gottlieb was Schorr's lawyer in the police court? A Yes.

Q I suppose you just retained Mr. Gottlieb because you heard he was a very good lawyer? A No, I retained him because he

CASE # 2654

knew more of the case of Schorr than any other lawyer would know at the present time.

Q That is how you retained him -- Is Mr. Barra still your lawyer? A Yes.

Q And is Mr. Barra Schorr's lawyer now? A I don't know.

Q Don't you know? A No.

Q Were you not in court when Mr. Barra appeared on the call of the calendar and said he represented Schorr now?

Objected to.

THE COURT: I think we will pass from that.

Q Now, can you state now where you were on the 10th of December, 1918? A I cannot exactly state, but I know I was working. I don't say I was working at that time at the same hour they asked me -- they asked me where I was about seven o'clock or half past seven or eight o'clock that morning and I told them I must have been sleeping.

Q What is your regular work? A Laborer -- no work at all.

Q No work at all? A No particular work.

Q No profession at all? A No.

Q No occupation? A No.

Q How old are you? A Twenty-one past.

Q And when were you graduated from school? A 1914 - I did not graduate -- I went out of school -- left school.

Q You left school? A Yes.

Q What was your first position that you had? A I don't

CASE #2654



remember.

Q Do you know what you worked at after you left school?

A No. It is too far back to remember.

BY THE COURT:

Q How old were you when you left school? A About fourteen.

BY MR. MARKEWICH:

Q You left school in 1914 and you say you are going to be twenty-one now or just passed twenty-one? A Yes. I will be 21 July 7th.

Q That is this coming July? A Yes.

MR. GOTTLIEB: You are not passed twenty-one then.

THE WITNESS: I will be twenty-one July 7th.

BY MR. MARKEWICH:

Q So that you were about sixteen when you left school?

A No, sir; I was about fifteen when I left school.

Q What did you do after you left school? A I went to work.

Q Where? A I don't remember.

BY THE COURT:

Q You tell the jury -- whom you went to work for -- where the place of business was and what kind of work you did? A I don't remember where I went to work.

Q What was your second place, A I remember I went to the Quartermaster's Department -- went to work there and worked there about a year and ahalf, close to three years.

Q When was that? A Some time in 1916. I left there and went to work in the Brooklyn Navy Yard.

CASE # 2654

Q Do you remember when this country entered the war? A No.

Q Don't remember? A No.

Q Did you go to work for the Quartermaster's Department before this country declared war on Germany or after? A Before.

Q How long before? A I don't remember.

Q Who was your immediate superior in the Quartermaster's Department? A Lieutenant -- Captain Street.

Q And where was the office of the Quartermaster's Department where you were employed? A Hoboken.

Q What work did you do there? A Packer.

Q Packing what? A Uniforms and different things.

Q And they were shipped across? A I don't know where they were shipped to.

Q Do you know when you went to work there? A No.

Q Do you know when you left the Quartermaster's Department?  
A I got a record showing the time when I left there -- I have a resigned paper home from Washington when I left there.

Q Don't you know when? A No, sir.

Q How long ago was it? A About a year and a half or two years ago.

Q That you left? A Yes.

Q You have been working there how long? A About a year and a half or two years - about two years.

Q About two years? A Yes.

Q You left then about a year and a half or two years ago?  
A Yes, about a year and a half ago.

CASE #2654

Q So you went to work for them about three or three and a half years ago; is that right? A Yes.

Q Some time between 1915 and 1916? A Around that time.

Q At that time they needed civilians to pack uniforms -- you were retained at that time to pack uniforms, was that your work? A Yes.

Q In Hoboken? A Before I went to pack uniforms I worked over in Greenwich street in a warehouse, Greenwich and Washington, packing different chemicals.

Q Between the time you went to work for the Quartermaster's Department and the time you left school, you don't know for whom you worked? A No.

Q You don't know what you did, what work you did? A I worked as assistant shipping clerk.

Q Where? A For Joseph Rosenbluth & Company.

Q What firm was that? A A waist house, waist and dress house.

Q How soon after you left school did you go to work for them? A I don't know.

BY THE COURT:

Q What was the address of that firm, when you worked for them? A 152 West 25th Street.

Q What kind of work did you do for them? A Assistant shipping clerk.

Q About how long did you work for them? A About five or six months.

Q When you left them, what was the next place you went to?

CASE # 2654



A I went to work in the Quartermaster's. I received a notice to go to work in the Quartermaster's.

Q How much time passed between the time you left the firm you have just named and the time when you began to work for the Quartermaster? A I received a notice and went to work two or three days later.

Q In other words, two or three days after you got the notice from the Quartermaster's Department, you went to work at the Quartermaster's Department? A Yes.

Q Did you receive the notice while you were working at the waist house you have spoken about? A Yes.

BY MR. MARKEWICH:

Q You left the waist house of your own volition? A On the notice I got from the Quartermaster.

Q You have continued to work for the Quartermaster's Department until about a year and a half or two years ago and then you worked for the -- A Brooklyn Navy Yard.

Q What work did you do there? A Laborer.

Q Who was your immediate superior in the Brooklyn Navy Yard?

A Paymaster Olsen.

Q How do you spell it? A I don't know how to spell it.

Q Paymaster Olsen? A Yes.

Q What was the name of the lieutenant in the Quartermaster's Department in Hoboken? A Captain Street.

Q Hoboken? A Yes.

CASE # 2654

Q When did you leave the Navy? A Around September.

Q September, 1918? A Yes.

Q You had a certain number in the Navy Yard? A I had quite a few numbers.

Q You were given numbers from time to time? A Yes.

Q You worked in one department, or different departments.

A Different departments. Worked at the Brooklyn Navy Yard, worked at 43rd Street and second Avenue, and Brooklyn Navy Yard and Thirty-fifth Street and the pier, Brooklyn Navy Yard -- that was where I left.

Q Were you discharged or did you leave of your own volition?

A Discharged.

Q For lack of work? A For fighting -- I had a fight.

Q When you left the Navy Yard, or you were discharged, where did you go to work? A Where did I go to work -- went to work for L. Auster & Co.

Q That is -- A Confectionery and ice cream parlors.

Q Located where? A On Stanton and Lewis.

Q How far is that from where you live? A About five blocks.

Q Did you ever work as an ice cream or soda dispenser before? A No.

Q What salary did you get in the Navy Yard? A I was getting the different ratings - when I left I was getting three dollars and ten or three dollars and twelve.

Q Three dollars and twelve cents a day? A Yes.

Q What salary did you get in Auster's place? A Eighteen

CASE #2654

dollars a week.

Q What were the hours of your employment? A From 8:00 to 8:00.

Q Eight in the morning until eight in the evening? A Yes.

Q You were acquainted with Auster before you took up the employment? A No.

Q Did you just apply to Auster and get the job? A I did not apply. They told me they wanted some help and I went around there.

Q Who told you? A A friend of mine.

Q Who was that? A A fellow by the name of George Roth.

Q Where does he live and what does he do for a living?

A I don't know what he does for a living, but at that time he worked in the Brooklyn Navy Yard and I think he is working there now.

Q Where does he live? A Up on 81st Street.

Q Do you know whether he is related to Auster? A I don't know.

Q This fellow George Roth said that Auster on Houston Street wanted -- A On Lewis and Stanton.

Q On Lewis and Stanton, wanted a man to sell soda? A Not to sell soda, but he told me he wanted a man in the store.

Q You were not a cashier, you were just a soda dispenser? A I collected cash just the same as if I was cashier.

Q How much help did he have in the store? A Three or four helpers -- depends upon how busy they were.

CASE # 2654



Q When you went to work there how many did they have?

A There was the old man, two sons and myself.

Q How many tables were there in that place? A Seven or eight tables -- seven tables.

Q What did they sell besides ice cream and soda? A Cigars and make their own syrups.

Q Just doing a retail trade? A Yes.

Q Over on the East Side, Stanton and Lewis? A Yes.

Q Besides this man and his two sons working there, they engaged you to work there also? A They engaged me to work there because they were going to open up another store.

Q Did they open up another store? A Yes.

Q Where? A On Third Street and Avenue B.

Q Did they have that store in Stanton and Lewis also? A Yes.

Q Who worked in Stanton and Lewis? A The old man worked there until he opened up the store.

Q When did he open up the store? A About two months ago.

Q He engaged you in September? A Yes.

Q 1918? A Yes.

Q Or did this happy thought just occur to you because he opened another store? A He was trying to get --

MR. GOTTLIEB: I object to the sarcasm or characterization.

Objection sustained.

Q Now, he didn't have another store between September and two months ago? A It takes about two months or more before he is

CASE # 2654

able to open up his store -- it took about two months to fix the store up.

Q When did he take that store on Third street, do you know? A Around October.

Q October, 1918? A Yes.

Q And when did he open it? A About two months ago.

Q Do you remember distinctly what month he opened up the store? A No.

Q Do you know whether it was in May or April? A I don't remember.

Q Was it before April? A I don't remember.

Q You don't remember that? A No, about two months ago.

Q You worked for him from September until the time you were arrested? A Yes, until the present time.

Q You still work for him? A Yes.

Q And are his sons working in Stanton and Lewis Street?

A His sons, yes.

Q How many sons has he got working there now? A Two sons and an extra man besides me.

Q In that store? A Yes.

Q Who works in the store on Third Street, do you know?

A The old man works there himself. Mr. Auster works there and his son-in-law and another man and his wife -- his son-in-law's wife helps him out -- his daughter-in-law helps him out.

Q How long have you known Auster? A As long as I worked there

CASE # 2654

Q Never knew him before? A No.

Q How long do you know Dorch? A Dorch, I used to go to school with him.

Q Mrs. Dorch was a customer of yours in the soda store?

A Yes.

Q That was how you became acquainted with her? A Yes.

Q She happened to talk to you about her son? A She did not happen to talk. I knew about the case, that her son was arrested.

Q You talked with her about it? A I don't know who started to talk about it, but we were talking about it.

Q And what were your hours of employment? A From 8:00 to 8:00.

Q Every day? A Yes, sir; one day off a week.

Q What day did you get off? A But being that day I took off Saturday.

Q Do not anticipate what I am going to ask you but listen to the question -- On Saturday you went to Newark with Mrs. Dorch? A Yes.

Q That was not your day off? A No.

Q What time did you go to Newark? A I went around to meet her about eleven or wuarter after eleven around to her house.

Q Saturday is quite a busy day in the confectionery business? A It is busier in summer than in winter. I can get a day off in the winter while I cannot get a day off in the summer. Around January I was able to get a day off while now I cannot get a day off.

CASE # 2654



Q You went with her on Saturday to Newark and you visited the jail? A Yes.

Q You were questioned by some officers? A No, sir.

Q You mean to say an officer just stepped up to you and placed you under arrest? A He came over to me and asked me what my name was; I told him, and he arrested me.

Q And did you protest and ask them what they meant by arresting you? A If I protested they told me they would break my head.

Q Did you protest? A No, not after they told me that.

Q Not after they told you you were under arrest? A After they told me if I don't go along with them they would break my head.

Q They took you out of the jail and brought you to Headquarters? A Yes.

Q What was the charge they made against you? A No charge at all; just held me for investigation.

Q Did you communicate with any of your friends while you were there? A No, I could not communicate with nobody.

Q Do you know who it was that arrested you, do you know the name of the police officer? A No, sir.

Q Do you know if it was Lieutenant O'Gara? A I don't remember what the names were; I don't think that was the name.

Q You were kept in jail until when? A They took me out of my cell about nine or ten o'clock that Monday morning.

CASE # 2654

Q You were brought up to the District Attorney's office?

A Yes.

Q How long were you in the District Attorney's office? A I was there until about half past three.

Q In the District Attorney's office? A Yes.

Q Were you brought over to the Recorder or the Justice's court in Newark during that day? A I don't get you.

Q Were you brought over to court on that day in Newark.

A I was brought to the Criminal Court Building.

Q In Newark? A Yes.

Q Do you recall the street? A I don't understand you.

Q Do you recall the street on which the Court is situated, do you remember the street? A No; I was taken with a machine.

Q An automobile -- What time were you discharged, according to your best recollection? A About three or half past three.

Q Were you ever before that time in the Criminal Courts Building in New York? A On the Antiloafing Law I was.

Q When was that, that was away back in December; you have told us about that? A No, sir; that was the time I worked in the Brooklyn Navy Yard.

Q That was in December, 1918 -- you told Mr. Gottlieb your counsel about that? A About what?

MR. GOTTLIEB: Mr. Markewich says it was December, 1918, that Anti Loafing Law case.

A December - I don't remember the date - I don't think it was that date.

CASE # 2654

BY MR. GOTTLIEB:

Q It was in December? A No, sir.

BY THE COURT:

Q What month of the year was it that you were brought into this building charged with violating the Anti Loafing Law? A Around March.

Q Of what year? A 1918 -- I think it was in March.

BY MR. MARKEWICH:

Q You were discharged in the Police Court? A No.

Q You were held for trial? A Yes.

Q On the Anti Loafing Law? A I was held -- I was remanded for Special sessions until my trial came up.

Q How long did you have to wait for your trial? A About two or three months; I don't remember; around two or three.

Q Then you were discharged in Special sessions? A Yes.

Q How long ago was that, when were you discharged in Special sessions? A About eight or nine months ago or ten months ago.

Q So that you were arrested in 1917? A 1918.

Q 1918? A Yes.

Q We will pass that for a moment - was that the only time you were in the Criminal Courts Building, in this building? A Yes.

Q Were you ever with Mrs. Dorch in this building? A No.

Q You don't know Fatty Walker? A No.

Q Never met him? A No.

Q Did you ask Dorch about Fatty Walker? A What?

CASE #2654



Q (Question repeated.) A I didn't have no chance to talk to William Dorch.

Q Just as soon as you came to the Newark Jail you were asked who you were and placed under arrest? A While I was waiting to see William Dorch, before they let him out I was arrested.

Q You never met him at all? A No.

Q You never saw Fatty Walker? A No.

Q Don't know anything about him? A No.

Q Don't you know that Fatty Walker was under arrest in this building in the month of January, 1919? A No.

Q Don't know anything about that? A No.

Q Do you recall the morning of the 27th of January, 1919, when you say you were in Newark? A Yes.

Q Do you recall that distinctly? A Yes, I was in jail.

Q When you were discharged from Newark Jail, where did you go to? A I went home.

Q On Broome Street? A I live on Delancey Street.

Q What time did you get home? A About five or half past five.

Q And the next morning -- You stayed home that night?

A I don't know where I went that night.

Q You don't know where you went that night? A No, whether I went to loving pictures or a show; I don't know.

Q You don't recall that? A No.

CASE # 2654

Q I suppose you told your parents where you had been and what happened to you, didn't you? A Yes, I told my mother.

Q Let us go back to the date upon which you were arrested charged with burglary, you say it was changed to the Anti Loafing Law? A Yes, theybheld me on the burglary overnight so I should not get out on bail.

Q Wasn't it on the 2d of October, 1918, that you were arrested charged with burglary? A I don't know what date it was.

Q You would know whether you were at that timeworking for the Navy or not, you said that you were pretty certain that you were working for the Navy at the time you were arrested? A I was working for the Navy Yard when I was arrested.

Q You are sure of that? A Yes.

Q If you were arrested on the 2d of October, 1918, you were not working for the Navy Yard? A I was working for the Navy Yard.

Q You went home that night and don't know where you went?  
A No, sir.

Q After you got home? A No.

Q In the morning of the 28th you told <sup>us</sup> Police Officer Hayden and Praino, the private detective, were up in your house? A Yes.

Q And from there they took you directly over to -- A 30th Street and Sixth Avenue.

Q That is the police station -- now, this is the police blotter, if your Honor please.

CASE # 2654

THE COURT: Suppose you read in, if there is no objection, the entry in the blotter.

MR. GOTTLIEB: I have no objection.

MR. MARKEWICH: The entry in the blotter shows, "January 28, 1919, No. 311, degree F, name of prisoner, Wallack and first name Michael. Post 19; time of arrest, 4 p.m.; address of prisoner 280 Delancey Street. Sex M; age 20; color white; nativity of prisoner, U. S.. Time in this country 'blank'. Nativity of father and mother Russian. Social condition, single; read and write, Yes. Occupation, laborer. License number 'blank'. Employed, No; charge, Burglary, final charge, Section 571. Date and time of occurrence, December 10, 1918; place of the occurrence, 225 Fourth Avenue; inside; precinct 21; name of complainant, first name, London, Abraham, address of complainant, 225 Fourth Avenue; arresting officer, A. D. S, name Hayden; No. 661; Braunworth, Shield No. 657; Burke, No. 445; command, 'blank'. Judge, Court, action by Court, date and so forth; charge, While acting in concert with one Alfred Schorr arrested, forced loft door, stole cloth valued \$6,700."

BY MR. MARKEWICH:

Q Now, where was the first place you went to from your home on the 28th of January? A Took me to Sixth Avenue and Thirtieth Street station house.

Q Were you arraigned before the Deutenant at the desk? A I

CASE # 2654



think I was.

Q And what did Officer Hayden tell the lieutenant at the desk when you were arraigned? A I don't know what he told him.

Q Did you see the lieutenant writing, while you were being questioned? A If I saw the questions -- I haven't got no father and in the book I have a father. I haven't had a father for over ten years.

BY THE COURT:

Q You pay attention to what is asked you and try to answer it.

BY MR. MARKEWICH:

Q I ask you if you saw the lieutenant writing?

BY THE COURT:

Q In the police station did you see a man write in a book, what is your answer, yes, or no? A I don't remember.

BY MR. MARKEWICH:

Q Do you remember being questioned? A Upstairs, I do.

Q What? A Upstairs I do.

Q Where upstairs? A In the detectives room.

Q Where? A On the first floor.

Q In that precinct? A Yes.

Q What time in the day was it? A About nine o'clock.

BY THE COURT:

Q Evening, or morning? A Morning.

BY MR. MARKEWICH:

Q Were you in that detectives room? A Yes.

CASE # 2654

Q Do you tell me you were ever there before or after that date? A No, sir.

Q Is that the only time you were there? A Yes.

Q What floor was it? A On the first floor.

Q How did you enter the Detective Bureau? A I went through a side door of the station house and walked up on the first floor right off the stairs, it is on the lefthand side.

Q Do you recall that very distinctly? A Yes.

Q You do not recall whether you had been arraigned before the lieutenant there? A No, sir.

Q You do not recall that - and did you answer the questions that was put to you by either the detective or the lieutenant? A No, sir. I was questioned by <sup>a</sup> man of the steamship company's robbery.

Q Who was that, what was the name of the man? A I don't know the man's name, but he was held as the receiver.

Q Who was he? A I don't know his name.

Q Have you learned his name since? A No.

Q Don't you know there is only one entry there made about the London Robbery and nothing about the Hart Steamship robbery? A I don't know -- that was the one they questioned me on, this receiver.

Q You say all that took place in the morning? A Yes.

Q What time did you leave the station house? A About ten or half past ten.

Q You know there is an entry made in there that you were

CASE # 2654

arrested at four o'clock that day, did you hear me read that?

A Yes.

Q Did you hear me read that you were arrested on that day at four o'clock in the afternoon? A Yes.

Q Were you at the station house recently, in the 30th Street station house? A No.

Q Did you talk to your lawyer about having been in the 30th Street station or station house on that day? A Yes.

Q And don't you know as matter of fact that you were never in that station house and this information was telephoned in by the detectives? A I was in that station house.

Q You were in the station house? A Yes.

Q And you were there until half past ten that morning?  
A Yes.

Q When you left the station house you went from there where? A They took me to eat in Child's, Hayden himself.

Q What restaurant? A 27th and 28th on Sixth Avenue.

Q You recall that very distinctly also? A Yes.

Q How long did you remain there? A Until I got through.

Q How long? A About ten or fifteen minutes.

Q And where did you go to from there? A I took the 6th Avenue El on 28th Street and rode down as far as Franklin Street.

Q Where did you go from there? A We came to this building.

Q And you were upstairs in Mr. Morton's room? A No, sir.

Q Where did you go to? A I was waiting with this private

CASE # 2654



detective on the outside of the grand jury room.

Q You mean with Praino? A With Praino.

Q xWhat became of Hayden? A Hayden and Brainworth went in on the steamship company case.

Q What did you say to Praino when you were waiting with him? A I don't know what I said.

Q Did you ask him if you were under arrest? A They told me I was under arrest when they took me out of my house.

Q Did you ask him what it was all about? A Well, I learned, they told me in the station house, this steamship company -- arrested me on the charge of the steamship company which is holding me on.

Q In the station house they told you it was on the steamship company case charge that you were arrested? A Yes.

Q When you came down to the District Attorney's they told you also it was about the teamship company's case? A Yes.

Q Was there any mention made about London at all? A No.

Q Any mention made about the robbery of 225 Fourth Avenue?  
A He asked me --

Q Either at the station house or in the District Attorney's office that morning? A Didn't mention no name but mentioned robbery in Fourth Avenue.

Q What did you understand by that? A What did I what?

Q What did you understand by that. A I didn't understand nothing.

Q What did you say to him? A I didn't answer him.

CASE # 2654

Q You did not know anything about it, did you? A No.

Q What further conversation took place between him and you about that Fourth Avenue robbery? A I don't remember the conversation.

Q No further conversation? A I don't remember the conversation.

Q Do you remember having seen Hayden come out of the grand jury room? A Yes.

Q Do you remember having talked to him then? A Yes.

Q What was it you said to him and what did he say to you? A He said to me when he came out, he said, "Now we will attend to you."

Q What? A "Now, we will attend to you."

Q What did he do by way of attending to you? A He waited until Braunworth came out.

Q When Braunworth came out, what did he do, what did both of them do? A Took me out to eat.

Q Took you out to eat again, a second time? A Yes, sir, about twelve or half past twelve.

Q Where did you go to eat? A On the other side of the street here.

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

Q After you got through, where did you go? A Took me to Police Headquarters.

Q When you got there, were you taken up to the Property Clerk's office? A I was taken down to the Property Clerk's

CASE #2654

room.

Q Did you see Mr. London there? A Yes.

Q You saw London measuring goods? A Yes.

Q And did you say anything to London? A No, sir.

(The Court admonishes the jury in accordance with  
Section 415 of the Code of Criminal Procedure and takes an  
adjournment until tomorrow morning, June 26th, 1919, at  
10:30 o'clock.)

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CASE # 2654



New York, June 26, 1919.

Trial resumed.

M I C H A E L W A L L A C K, resumes the stand:

CROSS EXAMINATION CONTINUED BY MR. MARKEWICH:

Q Coming down to the time you went over to Newark, you say it was on the 25th of January? A Coming down from where?

Q From New York to Newark on the 25th of January?

A Coming down from Newark?

Q To Newark -- going to Newark? A I went with Mrs. Dorsch.

Q You went there on the 25th, did you? A Yes.

Q Do you know Mrs. Walker, Fatty Walker's wife? A No.

Q Do you know Walker by the name of Jacobs? A No, sir.

Q Didn't you as matter of fact go with Mrs. Walker on Saturday to Newark? A No, sir.

Q Wasn't it while you were talking to Fatty Walker at the Essex County jail that you were arrested by Lieutenant O'Garry? A No, sir.

Q Were you not in company with Mrs. Walker talking to her husband at the time? A No.

Q Sure of that? A Yes.

Q And what time of the day was it that you arrived in Newark on the 25th? A About quarter to one.

Q You remained in the Essex County jail how long? A About fifteen or twenty minutes.

Q And you spoke to Dorsch? A No, sir.

CASE # 2654

Q Did you see him at all? A No, sir.

Q Did you go to the county jail? A Yes.

Q Did you go there with Mrs. Dorsch? A Yes, sir.

Q And did you go up on any tier? A No.

Q Where were you arrested? A Inside of that room.

Q In the visiting room? A I got there about quarter to one and the door opens about one o'clock. I was arrested about five or ten minutes after one.

Q Before you had a chance to go out of the visiting room?

A Just as I got in --- waited about five minutes.

Q Prisoners are brought to the visitors' room? A I think it is.

BY THE COURT:

Q In other words you went in and asked to see Dorsch, is that so? A No. His mother asked to see her son.

Q You went in with Mr. Dorsch as you say and Mrs. Dorsch asked to see her son Dorsch? A Yes, sir.

Q And then you and she were shown into the visiting room, is that so? A As soon as you come in there is a man at the desk and he asks your name and calls out numbers and you wait until the party comes down to see you.

Q That is what happened when you got there? A Yes.

Q And where were you waiting? A Waiting at the desk.

Q What happened? A Then two detectives came in and arrested me.

Q Was Mrs. Dorsch there when you were arrested? A Mrs.

CASE # 2654

Dorsch was there.

BY MR. MARKEWICH:

Q Before you went to work for Auster, had you known Auster?

A No, sir.

Q Is it not a fact that Auster's place is what is commonly known as a hangout for you and your friends?

Objected to.

A No, sir.

THE COURT: I will let the answer stand.

Q Don't you know as matter of fact that Fatty Walker, alias Jacobs, and Dorsch, used to frequent Auster's place?

Objected to as immaterial.

THE COURT: I do not think it is immaterial, because he claims he never saw Walker.

MR. GOTTLIEB: I withdraw the objection.

BY MR. MARKEWICH:

Q Don't you know that? A I don't remember the question.

(The question is repeated)

A No, sir.

Q You say they did not frequent the place? A I don't know if they did or not.

Q You know that Dorsch did? A Dorsch was there, yes.

Q And Dorsch was an old school mate of yours? A Yes, sir.

Q And Mrs. Dorsch came to see you when her son was under arrest, she came to see you in Auster's place? A No, sir -- came to get a drink of soda.

CASE # 2654



Q Came in to buy a soda and met you by accident? A Not by accident. I worked there.

Q Do you know friends of Dorsch? A Know friends of Dorsch?

Q Yes. A Some I do and some I don't.

Q Do you know that Fatty Walker is a very intimate friend of Dorsch? A No.

Q Do you know Fatty Walker and Dorsch were both arrested charged with the same offence in Newark and both convicted of the same offence? A I --

Q Don't you know that? A I did not know it.

Q You knew Dorsch was arrested in Newark? A Yes.

Q You knew he was convicted? A Later on I learned he was convicted.

Q Did not his mother tell you he was convicted? A No.

Q Were you not interested in finding out what became of your schoolmates? A I found out later.

Q Do you know Nigger Willie and Stein, and Chink, friends of Fatty Walker and Dorsch?

MR. GOTTLIEB: I object. It can have no purpose except to prejudice the jury.

THE COURT: I think it has been held to be allowable.

MR. GOTTLIEB: I take an exception.

THE COURT: You need not proceed much along that line, Mr. Markewich.

Q Do you know them? A No, sir.

CASE # 2654

Q You went to the county jail and then you were arrested and taken over to Headquarters in Newark and kept in jail until Monday, the 27th? A Yes.

Q When you were discharged, did you at any time while you were in Newark see Detective Hayden? A Monday afternoon I did.

Q What time? A About two o'clock or half past two.

Q That was in the prosecutor's office? A Yes.

Q What was it he spoke to you about? A He asked me different questions about the case.

Q About what case? A About this steamship company.

Q And did he ask you about this London robbery? A No, sir, he never mentioned London to me before.

Q Did he ask you where you lived? A Yes.

Q And you told him? A Yes.

Q The next morning you told us you were arrested at your home? A Yes.

Q Then you were taken where? A Sixth Avenue and 30th Street.

Q To the station house, and came down to the District Attorney's office? A Yes.

Q How many times were you in the District Attorney's office on that day?

THE COURT: Here in New York.

THE WITNESS: I was inside once.

Q How many times were you in this building on that day, on the 27th? A Twice.

CASE # 2654

THE COURT: You do not mean the 27th?

THE WITNESS: The 28th.

Q On the 28th -- and you were down there the first time-- who was with you? A I came down here with Hayden himself.

Q Was Praino along? A We met Praino down here.

Q You met him in the building? A In the building.

Q Was he in front of Mr. Morton's room? A In the Grand Jury's room.

Q Do you know where Mr. Morton's office is? A I learned later on, yes.

Q Later on on that same day -- when, for the first time on that day did you go to Morton's room? A About half past two or three o'clock.

Q How long were you in Mr. Morton's room? A Ten or fifteen minutes.

Q Who was in there with you? A Mr. London, Mr. Dunn, Hayden and Barunsworth.

Q Did any of your friends come in to see you while you were in Mr. Morton's room? A No, sir.

Q Mr. London spoke to you in Mr. Morton's room? A I don't remember.

Q If he did, would you remember? A Nothing of importance and so I don't remember.

Q Was that the first time you met Mr. London? A No.

Q You saw him at Police Headquarters? A Yes.

Q Earlier in the day? A Yes.

CASE # 2654



Q Had you spoken to him at Police Headquarters? A Yes.

Q What was the conversation that London had with you -- what did he say to you? A When I first came down to Police Headquarters I came down with Mr. Hayden and Braunsworth. While Mr. London was measuring the goods with Mr. Dunn, Mr. Hayden introduced me to Mr. London. Told him I am Mickey, and that I know all about the robbery. He said I should tell him what I told him before in the morning, so Mr. London came over to me and he said to me if you know so much of the case I want you to do me a favor and exonerate me.

Q What? A Exonerate me.

Q Exonerate who? A Mr. London.

Q Exonerate him about what? A About the robbery.

Q Now, tell us all he said about that? A So I said to him, How do you come to ask me a question like that. You don't even know my name. So he said to me, will Mr. Hayden told me all about it, so I said, Mr. Hayden told you, well, go to Mr. Hayden then. So he said -- he told me that he loaned \$5,000 to Mr. Clark.

Q What? A He loaned \$5,000 to Mr. Clark.

Q He borrowed? A He borrowed \$5,000 from Mr. Clark a week before the robbery and he said Mr. Clark had an idea that he was implicated in the robbery, so I said if that is the case, if you want me to exonerate you, why don't you exonerate me, you are a businessman, you don't even know me. While talking Mr. Hayden and the rest of the people come over.

CASE # 2654

Q That was the talk you had with London? A Yes.

Q After that you went down to the District Attorney's office? A Came back here.

Q And after you got through in Mr. Morton's office, did you see Mr. Clark? A No.

Q Did you talk to Mr. Clark? A No.

Q Have you spoken to him at any time in your life? A No.

Q Sure of that? A Yes.

Q Have you heard Mr. Clark testify that you spoke to him outside of Mr. Morton's room? A Because, when I came out of Morton's room they grabbed me and took me down to Headquarters.

Q I ask you whether you heard Clark testify on the stand? A Yes.

Q You heard him say that he spoke to you outside of Mr. Morton's room? A Yes.

Q And you spoke to him? A He says so, only.

Q You say you did not? A I did not.

Q You never said anything to him? A No.

Q You never spoke to him? A No.

Q Did you say anything to Mr. Morton? A I did not -- Mr. Morton just came in and told the stenographer something and walked right out.

Q Were you told that Mr. Morton was the Assistant District Attorney? A Yes.

Q Who told you that? A Mr. Hayden.

CASE # 2654

Q Did you say anything to Mr. Morton? A No.

Q Did you ask him what you were there for? A No, he was too busy.

Q Did you inquire of him what you were there for? A He was too busy.

Q I ask you if you inquired of him what you were there for? A I didn't have a chance to talk to him.

Q You mean to say he just walked in and went out?  
A Walked in and told the stenographer something and he walked right out and went downstairs.

Q You don't know where he went, he just walked in and walked out? A He went downstairs to the Grand Jury.

Q Don't you know that Mr. Morton's office is on the third floor and the Grand Jury room is on the same floor, right next door to his room? A There is a Grand Jury floor below, too.

Q Do you know what Grand jury he went to? A He went downstairs.

Q How do you know that? A Because Hayden and Braunschworth had a case with the Grand Jury downstairs on some steamship company.

Q How do you know where he went on that day and what he was doing on that day? A Because later on I went downstairs and he came outside.

Q Oh, then, you went downstairs? A Yes.

Q To the Grand Jury room? A Yes.

Q And you waited for Mr. Morton? A No, sir.

CASE # 2654



Q What were you doing there? A Mr. Hayden went inside. He had that steamship company case.

Q What time was it? A About half past two or three o'clock.

Q Don't you know the Grand Jury adjourns at one o'clock?  
A No.

Q Don't you know there is no session of the Grand Jury after one in the afternoon? A No.

Q You don't know that? A No.

Q If I should inform you the Grand Jury does adjourn at one in the afternoon, do you still say that Morton was down before the Grand Jury at half past two or three in the afternoon? A Yes.

Q You still say that? A Yes.

Q And you would still say that you went down to the Grand Jury on that day with Mr. Hayden at half past two or three o'clock? A Yes.

Q A juror wants to know if you were in the Grand Jury room or outside in the anteroom? A Outside.

Q In the anteroom? A Yes.

Q On this floor? A Yes.

Q Did you say you were down in the outer room of the Grand Jury room on this floor? A Yes.

Q After you left Mr. Morton's office? A Yes.

Q And you saw whom downstairs on this floor? A Mr. Morton

Q Mr. Morton? A I did not see him -- Mr. Hayden saw him

CASE # 2654

and talked to him.

Q You did not speak to Mr. Morton at all? A No.

Q What time was it you came down to the District Attorney's office the last time on that day? A About half past two.

Q Don't you know it was after five? A No, sir.

Q Did you go back to the property clerk's room at Police Headquarters on that day? A No, sir.

Q Don't you know you were all told to come out of the Property Clerk's room, because they were getting ready to close the place? A No, sir.

Q Is it not a fact that you came down here after five o'clock? A No, sir.

Q When you saw Mr. Morton downstairs, did you ask him what you were wanted for? A No.

Q You did not say anything to Mr. Morton at all? A Mr. Hayden and Mr. Braunsworth were talking to so many people, I was not going to butt in. I was standing there with the private detective Mr. Praino.

Q Did not all this take place outside of Mr. Morton's room? A No.

Q Mr. Praino took care of you? A Downstairs here.

Q After you got through in this building you went where? A To Police Headquarters.

Q You remained there over night? A Yes.

Q Didn't you talk to Mr. Hayden? A Did I talk to him--

CASE # 2654

yes. He was talking to me and I was answering questions.

Q Tell us what you said to him or what he said to you?

A Hayden says to me that he just wants to take me just as a witness in this case, that everything I will do and say will be to my advantage; that I won't have to spend no money at all, to get myself out on bail, and won't have to get myself no lawyer and I should judge do what he told me to do.

Q Is that all that was said? A That was the main thing.

Q Did you ask him what he wanted you to do? A He wanted to have me as a witness.

Q Did you ask him as a witness in what? A I have already known, -- it was the London case.

Q What? A I have already known it was the London case.

Q It was the London case; did you tell him then anything about it? A No.

Q What did you tell him? A Didn't tell him anything at all.

Q Didn't you say anything to him? A I don't remember.

Q You don't remember what you said to him? A No, sir.

MRS MINNIE DORSCH, called as a witness in behalf of the defendant, duly sworn and examined, testified as follows:

(Residence 145 Mangin Street)

DIRECT EXAMINATION BY MR. GOTTLIEB:

Q You are a married woman? A Yes.

CASE # 2654



Q And live with your husband at 145 Mangin Street? A Yes.

Q How many children have you? A Nine.

Q If William Dorsch one of your children? A Yes.

Q And where is William Dorsch now? A The Caldwell Penitentiary.

Q Do you know the defendant? A Yes.

Q Do you know whether your boy and Mickey Wallack, the defendant, went to school together? A I understand they did.

Q Did you see the defendant here at the soda establishment of --

Objected to as leading.

Objection overruled.

Q Did you see the defendant at the soda establishment kept by Mr. Auster? A Yes, sir.

Q Did you have a conversation with the defendant? A A week before he went with me to the Essex County jail.

Q Now, what was the conversation, Mrs. Dorsch? A He asked me when I was going to visit William. I said Saturday. He said I will go with you. I will come to your house and what time do I have to be there, and I said about eleven o'clock in the morning.

Q Now, did you make an appointment then for the following Saturday? A Yes.

Q Did you give the defendant your address? A Yes.

Q Was he there the following Saturday at your home? A Yes.

Q What were the visiting days at the Essex County jail?

CASE # 2654

A Thursday and Saturday.

Q Now, then, on Saturday, upon which he came to your house by appointment, did you go with this defendant anywhere? A Yes, I went.

Q Where did you go? A To Avenue B and Second Street.

Q To what place did you go? A To the Essex County jail.

Q Where is that, what city? A In Newark.

Q Newark, New Jersey? A Newark, New Jersey.

Q When you left your house with the defendant how did you get over to Newark? A We walked down to Avenue B and Second Street and there we got an Eighth Street crosstown car and we got off at 8th Street and Sixth Avenue and walked one block to Ninth, to the Hudson Tubes and we went down the tube and got the tube and when we got out on the Jersey side we walked down to the Essex County jail.

Q About how many blocks did you and the defendant walk in order to reach the jail? A Well, I cannot exactly tell you how many blocks that is. It must be something like ten or twelve.

Q About ten or twelve, that is your just judgment? A Yes.

Q You got to the jail with the defendant? A Yes.

Q When you got to the jail with the defendant what happened? A When I got to the jail I asked for my son.

Q Did you give his name? A Yes, and there is quite a big rush on Saturdays there and I was watching, as a mother would, for her son to come down, and in the meantime detectives

CASE # 2654

came and arrested Wallack, but I had my face facing for my son to come down and when my son came down he said Hello, Mama, and he raised his head up and I said what is the matter, what are you raising your head up for. He said somebody is being taken out and then he said "Mama, did you have anybody with you" and I said a boy by the name of Mickey, your friend."

MR. MARKEWICH: I object to this as immaterial and incompetent.

THE COURT: I will strike out the alleged conversation between this witness and the son: I will leave in the balance.

MR. GOTTLIEB: I want to show the presence of this defendant at that jail.

THE COURT: I will strike out the talk and leave in the balance.

BY MR. GOTTLIEB:

Q Your son said something to you? A Yes.

Q Now, then, when your son said something to you, was there anybody there with your son when he made those remarks, yes or no? A Anybody with me in the jail?

Q No, with your son? A No.

Q Was this man Fatty Walker standing alongside of him?

A No.

Q He was not there? A No.

Q Of that you take your oath? A Yes.

Q Now, then, after your son told you something you say

CASE # 2654



you turned around? A Yes.

Q What had become of the defendant? A He was arrested. I said sure enough that must have been him arrested and then I heard That young fellow that was with you, Madam, was arrested just now. Somebody remarked -- the people there said "That young man that was there with you was arrested."

Q Said to you? A Yes.

Q That is all that happened in the jail? A Yes.

Q Did you give your name when you entered the visiting room or jail, did you give your name to anyone there? A They know my name.

Q They know your name? A Yes.

Q You had been visiting the jail for how long a time?

A It was just three months then.

Q When you went to visit your son each time, did anyone take down your name and write it in a book and put down the name of the person whom you were visiting? A Yes.

Q Did you on this particular day, the 25th of January, did you give your name to someone at a desk in the Essex County jail? A Yes, sir, when I came in they all knew I am Mrs. Dorsch, and I suppose they write my name down. There is a bookkeeper there.

Q There is a bookkeeper there? A Yes.

Q Do they write down, if you know, the name of the person who is visiting? A Well, you have to ask for whom you want.

CASE # 2654

Q But the person there is at the desk and makes certain records, do they? A Well, I guess so.

Q And the visitor's name and the person to be visited?  
A Yes.

Q Are you related in any way to the defendant? A No.

Q You have no interest in this case? A No, I don't know the first thing about it.

Q You were first brought into this case by way of a subpoena? A Yes.

Q You were subpoenaed to come to this court? A Yes.

CROSS EXAMINATION BY MR. MARKEWICH:

Q Do you know what officers arrested your son? A My son — no.

Q Do you know Lieutenant O'Gara? A Yes.

Q What officer was it who arrested Wallack? A That I cannot tell.

Q When you heard the people say around there the friend who was with you was arrested, didn't you turn around to see?  
A He had gone out. He was out already.

Q Did it all happen in a flash? A I was right near the door and before I turned around he had gone out.

Q Didn't you run out to find out whether he was arrested?  
A No, you cannot come in again when you go out.

Q You don't mean to say that? A Yes.

Q Have you made any inquiries there as to what he was arrested for? A No, it is not my business. I don't inter-

CASE # 2654

fere.

Q Wasn't it your business at all to find out what the young man who went with you was arrested for? A Well, I have nothing to do with him. He simply asked me when the visiting days are and I said Saturday and he said I will go along with you.

Q Did he give his name when he came in there, the same as you did? A I gave my name.

Q Did the young man give his name when he came in with you? A I suppose it is only necessary for the one to give their names.

Q This young man came with you? A Yes.

Q You say they knew your name? A Yes.

Q There is somebody writing down something in a book when you go in there? A Yes.

Q Now, do you know whether this defendant Mickey Wallack, whether he gave his name when he went in with you? A No, I asked for my son and there is three or four visitors --

Q Who did he ask for? A He didn't ask for anybody. He came with me with the intention of seeing my son.

Q You mean to say that just as he got in the place he was arrested at once? A Yes.

Q Had you not gone first to the District Attorney's office there? A Me -- No.

Q With Wallack? A No.

Q Sure of that? A No, I am sure of that.

CASE # 2654



Q Do you know Fatty Walker? A No, I don't know any of them. Don't know any of the -- the first thing about the case.

Q Do you know the one who was arrested with your son?

A I don't know, no.

Q You don't know him? A No.

Q Have you seen a Mrs. Jacobs? A I don't know anybody I told you. I don't know any of them. I am not interested in anybody.

Q You are not interested? A No -- in just my son.

Q Who was your son's attorney in Newark? A Miss Bloom.

Q Have you told Miss Bloom about your boy's friend having been arrested? A My boy's friend?

Objected to as immaterial.

MR. GOTTLEB: I object as immaterial. Is she to be criticized because she did not hire counsel for him?

THE COURT: She is not to be criticized, but she may be asked.

BY MR. MARKEWICH:

Q Did you tell anyone at all in Newark on that day that the one who came with you to see your friend had been arrested?

A Miss Bloom heard about it when he was arrested.

Q Did you tell her? A Did I tell her?

Q Yes. A No, I don't think I did. I don't remember that. I won't be sure. I don't remember that.

Q Did you go up to the District Attorney's office there to find out what he was arrested for? A No.

CASE # 2654

Q Did you ask anybody what he was arrested for? A No, there was quite a few detectives around.

Q Where do you live? A In New York, 145 Mangin Street.

Q That is right near -- A Near the river.

Q Right near Stanton and Lewis? A No, it is right on the corner of Houston.

Q How far is Stanton and Lewis from where you live?  
A About two blocks.

Q And do you go into the candy store often? A When I go out marketing I pass there and then they have the best class of soda there and I as a rule stop in to have a glass of soda.

Q When you came in the candy store before you went to visit your son, you found this defendant in there? A Yes.

Q What was he doing there? A Working there. I saw him waiting on the customers.

Q What time of the day was it? A About ten or eleven o'clock in the morning I generally go shopping -- marketing.

Q On Saturday you went visiting your son in Newark? A I am telling you when I went marketing a week before when I saw him there, he told me Saturday he was going with me.

Q What day were you in that candy store? A I think it was Monday or Tuesday; I can't remember.

Q You mean it was during the week before? A During the week, yes.

Q And did you tell this young man whom you were? A He asked me -- he said, Mrs. Dorsch, when are you going to see

CASE # 2654

your son, and so I said Saturday, and he says, Well, may I go along and I says if you wish to.

Q Did you ask him how he knew your son was arrested?

A I did not ask him any questions; he just asked me can he go visit him.

Q Did you ask him who he was? A I did not ask him anything.

Q Now, since this occurrence are you still visiting that candy store? A Oh, that candy store is there for years. I have always went in there.

Q You are still visiting it? A Before ever this happened I was in that candy store -- not in there -- not to make a practice of going in, but when I pass by to get a glass of soda.

Q Did you speak to the owner of that store? A Did I speak to the owner -- no, I have no business with -- to speak to them -- good morning or good afternoon.

Q Did you speak to the young man outside? A No, sir.

Q Suter's son? A No, sir.

Q One of the owners of that store? A No.

Q Haven't you spoken to him outside of this court room at all? A I spoke to him -- I said it was warm -- that was about all I know.

Q Haven't you talked about this case? A I am not interested in it so why should I talk about it. I don't know anything about it.

CASE # 2654



Q Did Mickey Wallack come to see you at your home? A He subpoenaed me.

Q Since he was arrested? A I know he subpoenaed me and he said Mrs. Dorsch now tell the truth whatever you know about the case.

Q Did you receive a subpoena? A Yes, I have it here in my pocket.

Q And you have been down here in court all the time? A Yes.

Q Do you recognize that gentleman? (Indicating Lieutenant O'Carra) A Yes, sir.

Q Is he the one who arrested your son? A My son, I think he is -- Yes, I think he did arrest him.

Q Isn't he the same officer who arrested Mickey Wallack? A I don't know -- that I don't know, I can't say.

Q You don't know? A No.

Q Was this boy up to see you since he was arrested on this charge? A No.

Q This Mickey Wallack? A No, sir.

Q You are sure of that? A Positive of that.

Q He has not seen you about this case? A No.

Q He did not speak to you about it? A No.

Q Did he tell you he wanted you to be a witness in the case? A When he subpoenaed me he told me I must --

Q He brought the subpoena to you himself? A He told me I must tell the truth.

Q What did he tell you about it? A He just told me he

CASE # 2654

was arrested and he said I must just say what I know about him.

Q When did you get your subpoena? A I guess last Wednesday or Tuesday.

Q As matter of fact you were not there in Newark when Mickey Wallack was arrested? A Yes, sir, I was there.

Q You don't know if it was Lieutenant O'Gara who arrested him? A No, I don't know. My back was turned and I can take an oath on that. I don't know.

BY THE COURT:

Q When you called as you say at the jail in Newark, did you write your name in any book? A No, they don't permit you to write your name. I have been visiting there three months.

Q Just answer my question, is there any book in which you write your name? A Never, no.

Q Did you sign your name to any card over there in the jail? A Not that I can remember.

Q Did you see anybody do any writing in any book when you were at the jail? A Well, there is a man at the jail, a keeper, and he has a book there but what he writes in I don't know.

Q You gave him your name, is that so? A The very first time I came and after that he did not ask for any name, he knew I was the mother of the boy.

Q The first time that you came did you see him do any writing in a book? A He always wrote in a book, whether he wrote my name always I don't know. That I don't know.

CASE # 2654

BY MR. GOTTLIEB:

Q You have visited my office? A Yesterday.

Q Yesterday? A Yes.

Q You have been there before? A No.

Q You were not there before? A The day before yesterday on my way going home.

Q You were at my office twice? A Yes.

Q And you spoke with me about the visit to Newark? A Yes.

Q Now be truthful about it? A Yes.

Q I asked you all about it? A Yes.

Q And got the facts from you? A Yes.

Q Yesterday was the graduation of one of your children?

A Yes.

Objected to as immaterial.

Objection overruled.

SAMUEL AUSTER, called as a witness in behalf of the Defendant, being duly sworn and examined, testified as follows:

(Residence 84 1.2 Lewis Street, New York.)

DIRECT EXAMINATION BY MR. GOTTLIEB:

Q How old a man are you? A 25 years of age.

Q What is your business? A Confectionery and ice cream parlor.

Q With whom are you in business? A With my father.

Q Where is the business? A 99 Lewis Street.

CASE # 2654



Q Where else have you a business? A 22 Avenue D.

Q Which was the first place opened, Lewis Street? A Lewis Street.

Q How many years has the Lewis Street establishment been there? A About 22 years.

Q Now, you have a soda stand there? A Yes.

Q And do a large business in dispensing soda? A Pretty big.

Q This defendant, look at the defendant, do you know him? A Yes.

Q Was he employed by you or your father in this place in Lewis Street? A He was hired by my father but worked for me the past couple of months.

Q When did he come into the employ? A Sometime in September, 1918.

Q And what were his duties there? A Soda dispenser.

Q Does he do general work around the place? A Yes, sir, helps clean up and so forth.

Q You people make your own syrups there? A Yes, sir.

Q And he generally helps? A He would fill up bottles and stuff like that.

Q What salary was he getting from you? A \$18 a week.

Q And when did he report for duty in the morning? A 8 o'clock.

Q And when did he quit his work? A 8 o'clock in the evening.

CASE #2654

Q That is all you know of Mickey? A As far as I know of him.

CROSS EXAMINATION BY MR. MARKEWICH:

Q You have how many tables in your store? A Six until about a week ago and then we had to make more room inside and sold two.

Q You just have four tables? A Yes.

Q You have four now? A Yes.

Q Accommodate how many customers around each table?

A Three chairs to each table.

Q You have how many in help there in that store? A I have got one middle aged man working for me, two brothers, myself, and in the evenings I have two little kids working for me washing bottles and one serving ice cream.

Q You had this man working for your besides? A Yes, sir.

Q At \$18 a week? A Yes.

Q Fatty Walker came around to your place -- did he come around when he was free? A Who?

Q Fatty Walker or Jacobs? A I don't know him.

Q Don't know him at all? A No.

Q Do you know Schorr? A I met him out in the corridor there.

Q That is the first time you met him? A A couple of days ago when I came down here, a few days ago when I came to the court room.

Q When was the first time you met this defendant? A This defendant, when he was introduced to my father by a friend of

CASE # 2654

mine.

Q Who was that? A George Roth..

Q Where is Roth now? A I don't know, I haven't seen him. He was in the army last time I saw him.

Q Did you ask this defendant if he ever worked at the soda business before? A Did not require any experience in that line.

Q Did you ask him? A No, sir. I know that he worked in the Navy Yard at the time.

Q You never knew him before? A Never seen him before.

Q And you took him to work for you? A Yes.

Q When did this defendant speak to you about this case last? A He never spoke to me at all about the case. All he wanted me to come down and tell what I know about him.

Q He asked you to come down and help him out? A Just to tell what I know about him. I know nothing about the case at all.

BY MR. GOTTLIEB:

Q You have spoken to his counsel, to me? A Yes.

Q And I have asked you about his employment? A Yes, sir, about his employment and that was all.

MR. GOTTLIEB: May I offer in evidence this letter of the War Department, accepting the resignation of the defendant from the employ of the Quartermasters Department.

MR. MARKEWICH: All I want is for him to state it

CASE # 2654



is a genuine document.

MR. GOTTLIEB: It appears so to me. It is a paper which the prisoner said he had at home yesterday.

MR. MARKEWICH: It is really not competent, but I want to be fair about it and I won't object.

The paper is received in evidence and marked Defendant's Exhibit 2.

MR. GOTTLIEB: The defence rests.

CHARLES O'GARRA, called as a witness in behalf of the People in rebuttal, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Lieutenant, pursuant to a telephonic communication that you received from me at Newark, you are now down here?

A Yes.

Q Have you placed under arrest one by the name of Jacobs, otherwise known as Fatty Walker? A I did.

Q And one by the name of Dorsch? A I did not arrest Dorsch personally myself. I arrested Walker or Jacobs, but did not arrest Dorsch.

Q Do you remember the incident which led to the arrest of this defendant Wallack? A I do.

BY THE COURT:

Q Were you present in Newark at the time that this defendant was placed under arrest? A I was. I arrested him.

BY MR. MARKEWICH:

CASE # 2654

Q You arrested him personally? A Yes.

BY THE COURT:

Q When and where and under what circumstances did you arrest him -- first when? A On information.

Q When? A On January 25th, at 1:25 in the afternoon.

Q Where did you arrest him? A The Essex County jail.

Q Whereabouts in the jail was he at the time you arrested him? A He was with Mrs. Walker, talking to Walker in the jail.

BY MR. MARKWEICH:

Q Talking to Walker in the jail? A Yes, in the jail.

BY MR. GOTTLIEB:

Q He was talking to Walker? A To Walker, in the jail.

BY THE COURT:

Q In what part of the jail was the defendant at the time you arrested him? A They were only allowed to talk to him through the screen -- talking to him through the screen.

THE COURT: Strike that out --

Q In what part of the jail was this man when you arrested him? A In the lobby of the jail.

Q How far from the entrance door, about? A About fifty or seventy-five feet.

Q About how long had you this defendant under observation before you placed your hand upon him and arrested him?

A I walked right up to him and placed him under arrest.

Q How long had you seen him before you arrested him?

CASE # 2654

A I was just -- when I went in the door I walked right up towards him. I knew Mrs. Walker and he was standing with her talking to Walker.

Q Did you see the man who is now on trial as he entered the outer door of the prison? A I did not.

Q Did you see him as he went to the place where the man is who has the book in which an entry is made of persons who seek admission as visitors in the prison? A I did not.

Q You know where that man, in what part of the jail that man is? A He is in the center of the hall, waiting room, where the visitors go to visit prisoners.

Q And about how many feet away from that man was this defendant when you arrested him? A He was in the back of him about -- might say fifteen, or twelve or fifteen feet; I wouldn't be positive.

Q That is to say he was about fifteen feet nearer to the entrance door than that man? A No, further away, in towards the cells, the prison cells there.

Q In towards the prison cells? A Yes.

Q For your information is there a hallway that leads from the entrance door towards the prison cells? A There is.

Q About how wide is that hallway? A About as wide as from here to where the District Attorney is standing.

Q Possibly twenty feet wide? A Might be fifteen or twenty feet wide.

Q And what is the official title, if you know, of the

CASE #2654



man who keeps the book in which the names of visitors are entered -- a bookkeeper? A He is a keeper.

Q And has he a desk in that hallway? A A small table with records of all prisoners kept there.

Q Was he sitting facing the entrance door? A No, he does not. The entrance door which is leading from -- come from the east, and as you come from the east he sits on that side facing the south.

Q But he can be seen perhaps as you enter the entrance door? A Yes, as soon as you come in.

Q As soon as you come in the entrance door you look down this hallway and a certain number of feet from the entrance door he would be seen seated at this table with his books in front of him? A Yes.

Q And visitors approach that table and give their names? A Yes.

Q The hall continues beyond where that desk is? A Yes, sir, about fifteen or twenty feet.

Q And it was beyond that desk that you saw this defendant? A Yes, sir.

Q Was the defendant standing at a cell door? A He was standing talking through a screen. There is no cell door there.

Q There is no cell door, but there is a screen at the end of the hall? A Screen at the end of the hall.

Q Who do you say he was talking with? A Harry Jacobs,

CASE # 2654

alias Walker. He had two names.

Q This Jacobs was at the time a prisoner in the jail?

A Yes.

Q He was on the inside of the screen? A Yes, sir.

Q Did you recognize any person standing immediately near the defendant? A Mrs. Walker.

Q In other words, you saw a woman there? A I know Mrs. Walker. I had seen her four or five times before that.

Q And how close to the defendant was she? A Right along side of him.

Q Also at that screen door? A Yes, sir, and she followed us outside after we brought him outside and said it was a shame this man knew nothing at all about anything that Walker had done.

(Mrs. Dorsch is now brought into the court room)

BY MR. MARKEWICH:

Q Was this lady there at the time when you placed the defendant under arrest? A No, sir. That is Mrs. Dorsch.

Q The mother of Dorsch? A Of William Dorsch.

Q You are sure she was not alongside of this defendant?

A No.

BY THE COURT:

Q Had you seen Mrs. Dorsch at any time before that day?

A Several times.

Q In the jail? A In the District Attorney's office over in Newark.

CASE # 2654

Q So she was a person who at the time of the arrest of the defendant you already knew by sight? A Yes, sir.

Q Do you remember whether there were any considerable number of people standing by that desk or table at the time you arrested the defendant? A There was nobody there but Mrs. Walker and the defendant and the keeper.

Q Nobody standing by the keeper, no line of visitors? A No.

Q About what hour of the day did you arrest this defendant? A 1:35 in the afternoon.

Q Of Saturday? A Saturday, January 25th, and I have not his return railroad ticket in my possession yet, which I took off him.

BY MR. MARKEWICH:

Q The defendant's return railway ticket? A Yes, sir, and four cards from a businessman whom he claimed he worked for.

BY THE COURT:

Q The papers you have handed to the District Attorney are the papers that you took from the clothing of the defendant when you arrested him? A Yes.

BY MR. MARKEWICH:

Q You say these business cards you found in the defendant's possession? A Yes.

Q And the defendant said he worked for this man? A Yes.

The cards are offered in evidence, received and marked as one exhibit, People's Exhibit 2.

CASE # 2654



Q Where did you take the defendant from the jail? A Police Headquarters.

Q That is in a different building? A Yes, sir, about three quarters of a mile or a mile away from the jail.

Q How did you take him, on foot or in a car? A In an automobile.

Q Alone or accompanied by another officer? A Accompanied by Lieutenant Patrick Ryan.

Q Was that Lieutenant present inside the jail when you arrested the defendant? A Yes, he was with me.

Q And when you arrived with the defendant -- was it to Police Headquarters you took him? A We took him to Police Headquarters from the jail.

Q When you got to Police Headquarters what was the first thing you did with the defendant? A We recorded him and then searched him.

Q In a book? A In a book.

Q That entry in the book was made by whom? A By the lieutenant in charge.

Q Do you know his name? A I would not be positive. I think it is Lieutenant McMahon. I won't be positive just as to who the lieutenant was in charge at that time.

Q After that entry was made what was the next thing done with the defendant? A I searched him.

Q After you searched him what was the next thing you done with him? A Put him in a cell.

CASE # 2654

Q At Police Headquarters? A Yes.

Q He entered that cell approximately about what time?

A About 3:30.

Q That was of a Saturday afternoon? A Saturday afternoon.

Q January 36th? A January 25th.

Q When did you next see the defendant -- I take it you left him in that cell? A I interviewed him several times that afternoon and I sent for --

Q In other words you went to the cell several times and talked to him? A Yes, sir, and I sent for citizens to go and look at him, too.

Q About what hour was the latest on Saturday that you saw him inside of that cell? A 7:30 in the evening.

Q When did you next see him after that? A Sunday.

Q About what hour? A About three o'clock in the afternoon.

Q When you saw him at about three o'clock in the afternoon on Sunday was he still in the cell? A Yes.

Q When after that did you next see him? A Monday morning.

Q About what hour? A Eleven thirty.

Q Where was he when you saw him at about eleven thirty Monday morning? A I took him out of his cell in company with Lieutenant Corbitt and we brought him to the prosecutor's office.

CASE # 2654

Q That is in another building? A In the criminal court building.

Q About how far from Police Headquarters? A About half a mile.

Q You took him there on foot? A In an automobile.

Q And you reached the county prosecutor's office about what time? A About 11:45 or 11:40.

Q 11:45 upon Monday? A Yes.

Q January 27th? A Yes.

Q And about how long were you inside of the county prosecutor's office with this defendant? A I met Detective Hayden and I think his name was Praino.

Q Where did you meet Detective Hayden that day? A In the prosecutor's office.

Q In other words, Hayden was in the office of the prosecutor when you entered the office with the defendant?

A He was sent for to meet me there.

Q You found him there when you arrived? A I did.

BY MR. MARKEWICH:

Q Before you placed this defendant under arrest did you receive a telephonic communication from the New York Police Headquarters? A I received --

BY THE COURT:

Q Yes or no. A I did not myself.

BY MR. MARKEWICH:

Q Had you heard of a telephonic call? A Captain

CASE # 2654



Connell in charge of the Detective Bureau.

Q Before the date the defendant was discharged did you see Detective Hayden in Newark, before the day Wallack was arrested by you? A No.

Q Had you seen Hayden on the 25th of January? A I did not.

Q Do you know whether Hayden was in Newark on the 25th of January? A I do not know.

Q You had a talk with the defendant Wallack in the cell?  
A I did, and before he went in the cell.

Q Tell us whether you spoke to him about Fatty Walker?  
A I did.

Q Did you ask him whether he knew Fatty Walker? A Yes.

Q What did he say? A He said he knew him.

Q Did he tell you he was over to see Dorsch or Walker?  
A Walker.

CROSS EXAMINATION BY MR. GOTTLIEB:

Q Now you are a member of the uniformed force, of the Police Force of the City of Newark? A Lieutenant of detectives.

Q You are now a lieutenant of detectives? A Yes.

Q How long do you know William Hayden, the officer in this case? A I met him in Newark on January 27th.

Q Had you ever met him, or Braunsworth? A I met Detective Hayden once before.

CASE #2654

Q Did you meet him in the course of your official duties in a case before this one, yes or no? A I did.

Q And were your relations with Hayden quite friendly?  
A No.

Q Because of your official connection with some case in which he was interested? A No.

Q Did your connection with that case in which Hayden was interested bring you to New York? A No, sir.

Q Did it bring Hayden to Newark? A This case here brought Hayden to Newark.

Q I talk of the case prior to this in which you made the acquaintance of Detective Hayden? A No, sir.

Q Where did you meet Detective Hayden before you met him in this case? A I met him in the Criminal Court here the day I was taking Walker from New York to Newark on extradition papers. He tried to take Walker away from me.

Q What date was that, if you remember? A I couldn't recall the date.

Q Was that the first time you had met Detective Hayden?  
A Yes.

Q Did you speak with Detective Hayden after you had made the arrest of Walker over the phone, did you speak with him? A No, sir.

Q Had you never had a telephonic conversation with Detective Hayden or Braunsworth? A No, sir.

Q Are you quite sure? A No, sir, never.

CASE # 2654

Q Are you sure you had not talked over the phone with Detective Hayden or with Detective Braunsworth? A When does he mean -- before this man was arrested?

Q At any time. A I was called by Detective Hayden to come here --

MR. MARKEWICH: I will say --

MR. GOTTLIEB: Do not say anything in the presence of the witness.

MR. MARKEWICH: I want to enlighten you.

MR. GOTTLIEB: Do so a little later.

MR. MARKEWICH: I want to say to you so that the matter be not misunderstood, that in my presence --

MR. GOTTLIEB: I must object to this.

THE COURT: Do not interrupt, Mr. Markewich. I know it is well meant, but I think we will let counsel go on.

BY MR. GOTTLIEB:

Q Were you spoken to yesterday on the phone by anyone connected with this case, yes or no? A I was talking to the District Attorney's office yesterday.

Q Did you yesterday speak to Detective Hayden? A I did not.

Q Did you speak to Detective Braunsworth? A I did not.

Q Did the party who was at the other end of the phone draw your attention to the necessity of having proof from New Jersey that this defendant was speaking with Fatty Walker.

CASE #2654



in the County Jail? A He did not.

Q Did you know when you came here today with reference to what your testimony would be required? A I did not.

Q You mean to say that up to the time you entered this building today you had no idea concerning what you would be questioned, if called as a witness in this case? A I was asked by someone who said he was from the District Attorney's office if I ever arrested a Micahel Wallack and I told him I did. He asked me about what date it was and at that time I told him I would have to look my records over to be sure of the date -- that it was sometime in January. I told him it was sometime in January and that I was not sure of the date, and I called the lieutenant who was in charge at Police Headquarters to connect, at the same time, and give me the records and look the records over and give me the date that Wallack was arrested.

Q Did that party who spoke to you on the phone mention the name of Fatty Walker or Jacobs to you? A He asked me what I arrested this man for.

BY MR. GOTTLIEB:

Q Did the person who spoke to you mention the name of Fatty Walker alias Jacobs? A I mentioned it to him.

Q You mentioned it to him? A Yes.

Q Did you mention to that person over the phone that you had seen this defendant in conversation with Fatty Walker at the County Jail? A I did not.

CASE # 2654

Q Do you know the name of the person with whom you spoke on the phone yesterday? A I would not say, I cannot recall the name.

Q Did you ask the person at the other end of the phone what the evidence was wanted for and why your presence here in New York County was required, yes or no? A I did not.

Q Did you come here today into this building without the slightest idea that inquiry would be made of you as to who it was that the defendant was speaking to in the County Jail, yes or no? A I told the party who called me on the phone that I arrested Wallack in the Essex County Jail; that he was over with Mrs. Walker to see Mrs. Walker's husband, and the party who was talking to me on the phone asked me if I would come to New York this morning and testify to that.

Q Without anyone directing your attention to this defendant, to the necessity of the State to prove this defendant was speaking with Fatty Walker in the County Jail, you volunteered the information which you have just stated? A No, sir, he asked me what I arrested Wallack for and where I arrested him and I told him that I arrested him in Essex County Jail in company with Mrs. Walker talking to Fatty Walker.

Q You did not arrest him because he was in company with Mrs. Fatty Walker? A No, sir, I did not.

Q You did not arrest him because he was speaking with Fatty Walker? A No, sir, we arrested him on suspicion.

Q What necessity was there for you to go into the de-

CASE # 2654

tails of the circumstances under which this defendant was arrested, without someone suggesting what they wanted of you?

A He asked me where I arrested him and what I arrested him for.

Q Is there a wire screen in this jail? A Yes.

Q That separates prisoners from the visitors? A Yes.

Q And is that screen made up of closely woven wire mesh?

A Yes.

Q And how far distance from that screen was the defendant when he was placed under arrest by you? A Standing up against it.

Q Did you go right square up to that wire mesh screen where the defendant stood and place him under arrest? A I did.

Q Do you say here now that William Dorsch was not standing on the other side of that screen? A He was not.

Q Did you know when you took the stand here today that it was the claim of this defendant that he had gone over to that jail to visit William Dorsch? A I did not.

BY THE COURT:

Q Are you certain that the person on the other side of the wire screen whom the defendant was speaking to, as you say, was not William Dorsch, but was Fatty Walker? A It was Walker.

Q Are you sure of that? A Yes.

Q You know Dorsch by sight? A Very well.

BY MR. GOTTLIEB:

Q Dorsch was arrested on the same case with Walker?

CASE # 2654



A He was arrested about -- he was arrested on the 26th of November; I think it was two months before.

Q Was it in the same case in which Walker was arrested?

A Yes. Dorsch turned State's evidence against him and that is how we got Walker in New York.

Q Now, about how many prisoners are there kept in this jail, the average number, if you know? A As high as three hundred, sometimes.

Q There are two visiting days a week? A There are.

Q Thursdays and Saturdays? A Yes.

Q And this visit, or the arrest of this defendant was made on a Saturday? A Yes.

Q What time do the visits start at that jail, about one o'clock? A I can't just recall, I don't know.

Q Have you no idea? A No.

Q When was the defendant placed under arrest there in that jail? A 1:35 in the afternoon.

Q Don't you know that that was within one half hour of the time when that jail was opened to visitors? A I don't know.

Q Have you often visited the County Jail in the course of your work? A I have.

Q How many years have you been visiting that County Jail? A Sixteen years.

Q And yet you are unable to tell us whether visiting on that Saturday started at one o'clock and whether that was the

CASE #2654

usual hour? A I do not know.

Q And you state here that there were only two or three people in the visitor's room outside of this wire screen, at the time that you saw the defendant speaking with Mrs. Fatty Walker? A There was only two, the defendant and Mrs. Walker.

Q With three hundred people, with an average of three hundred people in that jail at all times, and assuming there were three hundred there on that Saturday, you mean to say that there were but three people in that visitors' room?

Objcted to.

THE COURT: It is argumentative.

BY THE COURT:

Q About how many people were inside, if you know, of the visitors room, where the visitors would be?

MR. GOTTLIEB: He stated two, and I am trying now to cast doubt upon it owing to the large number of prisoners kept there.

BY MR. GOTTLIEB:

Q Mrs. Dorsch has taken the stand in this case and sworn that she was with this defendant in that jail that morning, about to speak to her son, when you placed the defendant under arrest of course she is telling an untruth, is she?

Objcted to. Sustained.

Q Now, this defendant left Newark on the 27th, Monday, about what hour, if you know? A I don't know. I left him there in the prosecutor's office about twelve o'clock.

CASE # 2654

Q Did you arraign this defendant before any judge and if so give the name of the judge before whom the defendant was arraigned? A He was taken, I think before Judge Martin, I am not sure of that.

Q Are you prepared to swear that this defendant was arraigned before Judge Martin on Monday, the 27th? A I would not say so. I did not arraign him.

Q Who did arraign him? A Someone of the prosecutor's detectives.

Q That was about half past two? A I don't know just the time -- some time in the afternoon.

Q It has been testified to here by a policeman that on November 27th at about ten o'clock of that day, this defendant came from the Criminal Court Building and was trailed down to the Cortland Street station of the Hudson Tubes and followed over to the prosecutor's office in Newark. I ask you where this defendant was at ten o'clock on the 27th, if you know? A He was in a cell at Police Headquarters, Newark.

Q You came to this building about what hour? A I got here about 11:35 or 11:40.

Q Did you report at once at Par IV, some right to this court room? A I went up to room 407.

Q Did the man with whom you spoke on the phone yesterday tell you to report to room 407? A No, he did not.

Q How was it you went to room 407 this morning? A He said that was the District Attorney's office.

CASE #2654



Q What District Attorney's office? A I can't recall the name.

Q You can't recall the name? A If you mention it --

Q Would you know the name, perhaps, if I mentioned it, Mr. Markewich's room? A Markewich, that is the name.

Q If you went to Mr. Markewich's room this morning instead of reporting here to Part IV, did you see Mr. Markewich? A I did not.

Q Did you see the gentleman to whom I now point, Mr. Horan? A No, I did not.

Q Whom did you see in Mr. Markewich's room? A I told some one who was sitting at a desk in the outer office that I was from Newark, New Jersey and I was called over here on a case and he said -- he told me that the District Attorney was down in General Sessions Court, Part IV, to go down there right away, that they needed me down there.

Q When you came down here to Part IV, did you see Detectives Hayden and Braunsworth? A I did not.

Q Have you seen either of those two men this morning? A I have not -- Braunsworth I do not know him at all.

Q Did you see Mr. Hayden this morning? A I did not.

Q Didn't you speak to him this morning? A I did not -- yes, I did, on the telephone, this morning at 9:15.

Q 9:15? A Yes.

Q Where did Mr. Hayden get you at 9:15, at your home?

A Police Headquarters, Newark.

CASE # 2654

Q Did you have a conversation with Detective Hayden this morning at 9:15 or thereabouts? A He told me to be over here at court this morning if I possibly could.

Q And do you mean to say that that was all that Detective Hayden told you this morning over the phone? A That was all.

Q If he had said to you we are trying to connect up the fellow on trial by the name of Mickey Wallack with Fatty Walker, whom you arrested in Newark, I would like you to come over and give us a hand, would you be prepared to tell that? A He did not say any such thing.

Q I say if he had said so?

Objected to.

Q Would you tell the Court and jury so? A If he said it I would tell it.

THE COURT: I will let the answer stand.

BY MR. GOTTLIEB:

Q You would? A Yes.

Q You knew yesterday from the person who spoke to you on the phone, you knew from Mr. Markewich yesterday while you were wanted today? A He asked me if I would come over and testify to what I told him.

Q Did you get from your conversation that you would be required to be here in Part IV of this court today to give evidence? A Did not say Part IV.

Q Did he tell you to come to his room in the building?

CASE # 2654

A He said that was his room.

Q You knew where to go to? A I had orders from Prosecutor Bernhardt to report to his office this morning.

Q You knew yesterday when you spoke to Mr. Markewich where you were to go to today in this building? A Yes.

Q And it required no message from Detective Hayden, did it?

THE COURT: Do not argue, Mr. Gottlieb. Go to something else.

BY MR. GOTTLIEB:

Q Now, from Mr. Markewich's room you came down to this corridor? A Yes.

Q And how long have you been in the corridor of this court house on this floor before being called as a witness? A I was standing out there about ten minutes when I was called in here by the District Attorney.

Q Did the District Attorney ask you if you had seen this defendant speaking with Fatty Walker in the jail? A He asked me now when he was questioning me.

Q You mean to say without any consultation with the District Attorney about the evidence that you were to give, that you took the stand? A I told him yesterday -- I think I told you before, that I told him where I arrested this defendant and he asked me if I would come to New York and testify to that.

THE COURT: You have been all over that, Mr. Gottlieb.

CASE # 2654



Q How long were you standing outside in the corridor before you were called to the stand? A I was out there about ten minutes when I was called in and he asked Mrs. Dorsch if she recognized me or knew me.

Q I talk before you were called as a witness? A I don't know, might have been there fifteen or twenty minutes, I couldn't say just how long.

Q And might have been there longer? A No longer.

Q In the corridor did you see Detective Hayden? A I did not.

Q Or Braunsworth? A I don't know Braunsworth.

Q Do you know Detective Praino, the private detective in this case? A What is the name?

Q Praino? A Praino, I think his name is -- yes, I know him.

Q How long do you know him? A I met him in Newark on January 27th with Detective Hayden.

Q Did you see him here this morning in the corridor? A I saw him standing about in the hall outside.

Q You knew he was connected with this case? A I did not..

Q Did you talk with him before you were called to the stand as a witness? A I did not.

Q You knew when you came over today, from the conversation you had with Mr. Markewich, that you were going to be questioned concerning the circumstances under which this defendant was arrested in the County Jail?

CASE # 2654

THE COURT: I think you have been all over that.

MR. GOTTLIEB: I will ask one more question on this.

BY MR. GOTTLIEB:

Q Did you go to the County Jail yesterday or today and ask to look at the book of visitors to that institution on the 25th of January? A I did not.

Q Did you realize as a detective -- how long have you been a detective officer? A Fourteen years.

Q And did you realize the importance of having in this court an original entry or record, if one were in existence, of the matter concerning which you were to be questioned?

Objected to. Sustained. Exception.

Q Police generally hang together, don't they?

Objected to.

THE COURT: I sustain the objection. It is an improper question.

REDIRECT EXAMINATION BY MR. MARKEWICH:

Q You do not recall the exact date when Walker was taken out of this building and brought over by you to Newark?

A I cannot recall the exact date.

Q Do you recall the month, how long before you arrested Wallack was it -- may be you can refresh your recollection in that way? A Well, it was only about a week or two -- it was in January we extradicted him from New York -- I think it was the early part of January.

Q In January Walker was turned over to you by Judge

CASE # 2654

McIntyre in this court? A Yes.

Q Court of General Sessions? A Yes, sir, and Detective Hayden tried to take him away from me in court that morning.

Q Hayden wanted to arrest him? A I had a fight with him.

MR. GOTTLIEB: I object.

THE COURT: Yes.

THE WITNESS: It was the early part of January. I cannot recall just the date.

J O H N A. M O S S E L, called as a witness in behalf of the people, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q You have been Warden of the Grand Jury of New York County how long? A Two and a half years.

Q And you have been Warden of the Grand Jury that meets on this floor? A I am -- the additional Grand Jury.

Q Have you been Warden of the Grand Jury on the 28th of January of this year? A I was.

Q Can you state whether or not there was a session of the Grand Jury on the afternoon of the 28th of January, 1919?

A There was not. There was no extra session or extra term outside of one o'clock this year -- that is the latest hour, may be five or ten minutes later.

MR. GOTTLIEB: If you say so, Mr. Markewich, that is enough.

Q Is there any room for the assistants on this floor?

CASE # 2654



A No.

Q Or adjoining the Grand Jury room? A No.

CROSS EXAMINATION BY MR. GOTTLIEB:

Q There is a Grand Jury Chamber? A Yes.

Q Then there is an outer room? A Yes.

Q Right on this General Sessions floor? A Yes, sir,  
the outer room is my personal officer.

Q Is there also a room off that small room, your office?

A There is the Judges' entrance and my private office.

Q The private officer and outer room and the Grand Jury  
Chamber? A Yes.

Q And Mr. Morton presents cases to the Grand Jury? A Yes.

Q As an assistant district attorney? A He does.

Q Presents them down on this part as well as the other?

THE COURT: As we have the record here, suppose we  
get from this witness, if we can, the date of the pre-  
sentation of that case which Officer Hayden is said to  
have appeared in.

MR. GOTTLIEB: Yes, that is very important. Look  
at that.

THE COURT: It appears from this record that on the  
29th of January -- You do not want a record of the 29th.

MR. GOTTLIEB: No, the 28th we are concerned with.

THE WITNESS: Officer Hayden did not appear in the  
Grand Jury I am almost positive on the 28th.

CASE # 2654

BY MR. GOTTLIEB:

Q Do you know if he was subpoenaed? A That I cannot say.

Q Oftentimes the officer comes there and the matter is adjourned and not presented to the Grand Jury? A Does not appear before me, he appears before the regular Grand Jury and there the assistant district attorney when the case is not complete disposes of it there.

Q The officer comes to the antechamber of this Grand Jury Chamber and presents his subpoena and for some reason or other, after sitting around, a case is not presented that day?

A Subpoenas are never presented to the additional Grand Jury room.

Q Having been subpoenaed, whether presented to you or not, oftentimes the Grand Jury inquisition adjourns the matter over?

A If the case is not ready.

Q And there would be no record in that book of the adjournment if the case had not been presented? A No, sir.

Q If it had been adjourned to any subsequent date, you would have no record of it? A No.

Q Is that book a matter which cannot be seen by the outside? A Only by direction of the Court. It is the secretary's record of the Grand Jury.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 1:30 o'clock P. M.

CASE # 2654

After recess. Trial resumed.

JAMES E. HAYDEN, recalled by the People:

BY MR. MARKEWICH:

Q How many times have you been in Newark in relation to the case of Fatty Walker? A On the 24th, 25th and the 27th.

Q The 24th, 25th and the 27th of January, 1919? A Yes, sir, and yesterday I was trying to think which was the first day, the 24th was the first day.

THE COURT: Just answer the questions put to you without further comment.

Q What day was it that you obtained a bench warrant in the Fatty Walker case in New York? A A magistrate's court warrant.

Q What date was it? A I took that over on the 24th at 3 P. M.

Q And you filed it where? A With Lieutenant Godfrey, Criminal Prosecutor's office, in Newark.

Q What was the occasion for your visiting Newark on the 25th? A The 25th, that was the morning, there is no doubt that I went following this man over. The confusion of dates was the reason --

Q You mean this man? A The defendant.

Q The defendant Wallack? A Yes.

Q That was Saturday morning? A That was Saturday morning. That was the part I could not just get clear.

Q And the 27th you were there again? A Yes.

CASE # 2654



Q The 27th you spoke to this defendant in the prosecutor's office? A Yes, sir, I spoke to him on the 27th.

Q So you were there on those two days? A I am positive of the day of the conversation. I knew it was on Monday the 27th I had the conversation.

Q The defendant said you spoke to him in the prosecutor's office in Newark on the 27th of January? A He is right.

Q That was the date? A Yes.

CROSS EXAMINATION BY MR. GOTTIEB:

Q Did you say here yesterday that you spoke to the defendant in Newark at the prosecutor's office?

THE COURT: I do not think the witness was on the stand yesterday.

Q Or the day before, did you state to this jury that you spoke to this defendant in Newark on a certain date?

A On the 27th?

Q Yes. A Yes.

Q And did you state unqualifiedly to the Court and jury that on the very next morning you placed this defendant under arrest? A After the date of the conversation?

Q Yes. A Yes.

Q Was the defendant arrested then on the 28th? A Yes.

Q Then your conversation must have been with him on the 27th? A Yes.

Q Did you say that on that very day you conversed with

CASE # 2654

him, the defendant, that you trailed him from this building down to Cortland Street station? A I did.

Q And did you not fix the date by reference to the date of the arrest and say that it was the day before, did you or not? A I was very positive it was the day before the arrest.

BY THE COURT:

Q Just pay attention to me for a moment -- you told me in answer to a question that I put to you that the first time that you had ever laid eyes, so far as you knew, upon the man who is being tried, was when he was pointed out to you on the platform of the Hudson Tube station at Cortland Street. Now today you say that you have testified before that you trailed this man from this building. A On that day that I tailed him from this building, that was the first time I ever knew this man to see him before in my life.

Q Why did you tell me that the first time you ever saw him was when you saw him on the platform of the Hudson Tube station at Cortland Street? A The day I tailed him that was the first day I ever saw him on the --

Q I asked you where you first saw him and you told him that you saw him first on the platform of the Cortland Street station of the tube? A Yes, sir

Q Now a moment ago you have said that you first saw him in this building? A No, I am positive -- I know that Praino knew him, knew him previous to that date. I saw him in the building and started off after him and I kept watching Praino

CASE #2654

on the way along until we got -- Praino said on the station -- I said, Where is he now, and he said this is him right over here and we entered the train going to Newark.

BY MR. MARKEWICH:

Q So that you really saw him for the first time on the platform? A The first look I got at him was on the platform, the first look I could get at him.

Q The Cortland Street station? A Yes.

BY MR. GOTTLIEB:

Q Did you say you trailed the defendant from this building all the way down to Cortland Street tube? A I was asked if I saw him -- where did I see him the first time that day.

Q And did you say that you saw this defendant leave this building and that you and this private detective trailed him down to the Hudson Tube at Cortland Street station? A No, sir.

Q You did not say that? A No.

Q Do you know Detective O'Gara? A Yes.

Q How long do you know him? A Since the date of the conversation in Newark with the defendant.

Q Have you ever spoken to him up to this afternoon?  
A Over the telephone this morning.

BY THE COURT:

Q When for the first time in your life, so far as you know, did you ever have a talk with Lieutenant O'Gara? A The day of that conversation with Wallack, that would be the 27th of January. The day I was interested in the conversation with

CASE # 2654



him in Newark.

Q In Newark? A Yes.

Q You had not talked with him here in New York sometime before that? A Oh, yes, I did -- pardon me -- the day that-- that may be about the 20th -- that Fatty Walker was taken out of the court downstairs here.

BY MR. GOTTLIEB:

Q Did you ever have any cases in which both you and O'Gara were interested outside of the Walker, Dorsch and Wallack case, yes or no? A No, sir, not that I can recollect.

Q Were you in Mr. Markewich's office yesterday, or at any time when he, Mr. Markewich, spoke over the phone to the man purporting to be Detective O'Gara? A Yes, sir.

Q And did you know when that conversation was going on that Mr. Markewich was seeking to have that detective come over here to this jurisdiction, yes or no? A Yes.

Q And did Mr. Markewich in that telephone conversation give directions to the man to whom he was speaking, Detective O'Gara, as to where Detective O'Gara should report this day, yes or no? A I think he did, I am not positive.

Q You knew that your testimony in this case was being subjected to very close scrutiny -- don't you know that? A Yes.

Q And that a very important point was about to be attempted to be determined by the presence in this court before this Court and jury of this Newark detective? A Yes.

Q And you knew that your evidence would be affected one

CASE # 2654

way or another by the evidence of this Newark detective?

A Well, I don't know.

MR. MARKEWICH: As matter of fact, that is all improper and I object to it.

Objection sustained. Exception.

BY MR. GOTTLIEB:

Q If Mr. Markewich had made the appointment with Detective O'Gara, telling him where to report and where to report today, why did you ring up this detective and converse with him-- why did you do it? A Because I was requested to go to Newark for the information, if this man could not come, to see if I could bring the information here and that I refused to do.

I refused the District Attorney unless he would make application to the Commissioner for me.

Q You were in a room with the District Attorney and heard the appointment made for this important witness to be here, is that right? A Yes.

Q If full directions were given to that witness and you know that witnesses were not to be permitted to communicate with each other here because of their exclusion during the trial, why did you attempt any conversation with this man over the phone before he arrived in this building to give his evidence? A I believed you understood -- you were there. There was not anything definite at that time as to whether he could be here or not.

Q Do you say I was present when the appointment was made

CASE # 2654

with Detective O'Gara? A Yes.

Q Where was that? A Up in the office of one of the -- one of the offices upstairs where the telephone was used.

MR. MARKEWICH: With me.

THE WITNESS: And this officer had to be in a court in New Jersey this morning at ten o'clock.

Q You say I was there? A Yes, you were there.

Q You know we communicated with the Newark author- ities with respect to the date of the defendant's arrest and the date of his discharge, is that correct -- will you state that was the only purpose of our visit to the phone?

MR. MARKEWICH: I won't state that was the only conversation had, because I have related the conversation, Mr. Gottlieb to you, as I got it over the phone, and he said he had to be in court this morning.

BY MR. GOTTLIEB:

Q You have been in conversation with this detective since he was on the stand, haven't you? A Since he has been on the stand in here?

Q Yes. A A few words of conversation out there, while he was here with the District Attorney.

Q Did he make any reference in his conversation with you with respect to the testimony that he gave here? A No, not exactly. He spoke to Mr. Swann here.

BY MR. MARKEWICH:

Q Judge Swann? A Yes.

CASE # 2654



Q And me? A Yes.

BY MR. GOTTLIEB:

Q Did you speak with him? A Yes -- to Judge Swann.

Q And did he tell you that he had informed the jury that you had spoken to him over the phone? A No, sir, he did not.

Q If you trailed this defendant to Newark, what day was it? A According to the records it is the 25th of January, Saturday.

Q According to whose records? A My records. Now the way I can --

Q Do you mean to say that three days elapsed from the day you trailed and spoke to him in Newark before you placed him under arrest at his home? A Monday I went back to Newark and the 28th he was arrested.

Q Then Sunday intervened and Monday intervened? A Monday I was in Newark. Sunday was the only day I was not working and I was not in Newark.

Q Did you say here just now that it is your belief that it was on Saturday, the 25th, that you trailed him to Newark? A I do.

Q And the 28th was the day of the arrest? A Yes.

Q Do you say that three days intervened between the time you saw him in Newark and trailed him there, and the date of his arrest? A Must have been three days.

Q Did you say yesterday it was the day following? A I

CASE # 2654

did.

Q Was that statement correct? A No, it was wrong.

Q And is your memory indistinct as to various matters connected with this case that occurred? A In that respect it was.

Q And only in respect to what the defendant told you of his criminal connection with this case are you at all certain, is that right? A I am certain in many ways.

Q Are you certain of the conversation that you had with the defendant? A Yes.

Q But on other important things, with respect to the case, you are not able to be positive about? A Yes, I am.

Objected to. Sustained and exception.

PEOPLE REST.

DEFENCE RESTS.

TESTIMONY CLOSED.

MR. GOTTLIEB: I renew the motion made at the close of the prosecution's case upon the grounds heretofore urged and further that now, since the making of that motion, we have the sworn denial of the defendant. Up to the time of the making of the motion it stood there uncontradicted. I believe that under the decisions which I referred to your Honor, the People against Moyer, that the prosecution's case, depending entirely upon alleged oral admissions made by the defendant, that as against the denial of the accused, such evidence may be well

CASE # 2654

viewed with suspicion. And I submit that the evidence in this case is of that unreliable, unsatisfactory character that it justifies the motion that I make to your Honor.

THE COURT: I will let the jury pass upon it and give you an exception.

MR. GOTTLIEB: I take an exception.

CASE # 2654