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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART II.

#3375

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T H E P E O P L E

-against-

FREDERICK J. ROBERTS

-and-

HAROLD A. FLYNN.
----- x

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:
: B e f o r e :
:
: HON. CHARLES C. NOTT, JR., U.
:
: and a Jury.
:
:
: x

New York, June 9th, etc., 1920.

Indicted for attempted robbery in the first degree.

Indictment filed February 13th, 1920.

A P P E A R A N C E S:

ASSISTANT DISTRICT ATTORNEY SOL. TEKULSKY:

FOR THE PEOPLE.

WILLIAM SOLOMON, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

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MR. SOLOMON: If your Honor please, before the District Attorney opens, may I move that the witnesses be excluded from the courtroom?

THE COURT: Yes, all the witnesses on both sides will step outside, and wait until they are called.

THE PEOPLE'S TESTIMONY.

JAMES M. LEWIS, of 479 Summer Street, Stamford, Connecticut, a witness called in behalf of the people, being duly sworn testified as follows:

MR. TEKULSKY: At this time, if your Honor please, the defendants concede that the New York, New Haven & Hartford Railroad Company is a corporation, located in the City of New York, and that Walker D. Hines was the Director-General of Railroads, under an act of Congress, appointing him as such. Is that correct?

MR. SOLOMON: Yes, sir.

DIRECT EXAMINATION BY MR. TEKULSKY:

Q Now, Mr. Lewis, what is your age? How old are you?

A Sixty-six.

Q Now speak, please, so that the last gentleman can hear you? A Sixty-six.

Q And what is your employment? A I am cashier in the

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ticket office of the New York, New Haven & Hartford Railroad, at the Grand Central station.

Q And how long have you been such cashier? A A year ago last July, I was appointed. I had been acting, handling the money entirely for five or six years, and, previous to that I was assistant ticket agent.

Q And how long were you assistant ticket agent? A From 1906 until a year and a half ago, nearly two years ago.

Q So, all told, how many years have you been employed by the New York, New Haven & Hartford Railroad Company? A It was thirty-seven years in October.

Q Of this year? A Yes, sir. I was in Hartford for six years, before coming to the Grand Central station.

Q Now, you know the defendant Robert, this defendant that I am pointing to (indicating)? A Yes, sir.

Q And how long have you known him? A Why, four or five years I couldn't tell exactly. He was a boy in the treasurer's office, or assistant treasurer's office, and I used to see him when I went in there with the money. He was there perhaps a couple of years, and he has been away from there probably two or three years. I can't say exactly.

Q Before he left there he was in the assistant treasurer's office? A Yes, sir.

Q And you say you used to see him when you came into that office with the money from the ticket office? A Yes, sir.

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Q And then he left the employ of the New York, New Haven & Hartford Railroad, and was away about two years? A Yes, sir, about that, I think.

Q And did he ~~return~~ to that employment? A Yes, sir.

Q When was that? A A year ago last March.

Q That was March 1919? A Yes, sir.

Q Did you see him then? A Yes, sir, he was in our office, the ticket office, for one week.

Q Where is your ticket office? A It is on both the upper and lower level, as it is called, and he was working on the books, as an accountant.

Q And were you employed in the same office? A Yes, sir.

Q And how long was he there? A Just one week.

Q And after that time, did you see him? A Not until he struck me.

Q Now, do you remember the 12th day of January 1920? A I do.

Q Do you remember where you were at the hour of about 4:30 or 4:45 on that day? A Yes, sir.

BY THE COURT:

Q A.M. or P.M.? A P.M.

BY MR. TEKULSKY:

Q (Question repeated). A Yes, sir. I had ^{put up} ~~to~~ pay the money collected from the different ticket sellers, who had closed their account, in a package about so long (illustrating), so wide

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and about so thick, with a string, a stout cord, around both ways, and I held that in my left hand, in this manner (illustrating).

Q With your fingers through the string? A Yes, sir. I can illustrate it better perhaps this way. The string went this way and this way, and my fingers went through the cord in this manner (illustrating).

And I walked from the office across the concourse, to the elevator, and took the elevator to the third floor; and Mr. Hall, the assistant treasurer's office, is at the extreme end of the corridor, corridor No. 6.

Q Now, will you tell us what part of the building that is in? A It is on the third floor of the office building of the Grand Central station.

Q And is it north, south, east or west; in what direction? A Well it is northeast, perhaps, from the main concourse. I went across from the east end of the ticket office, passed the package counter, into the little lobby where the elevator is running, and took that up to the third floor, and then I went to the north, almost to the end of the corridor.

Q That is, you walked north? A Yes, sir.

Q Towards 43rd Street? A Yes, sir.

Q And when you got towards the end of the corridor, did you see anybody? A Yes, sir.

Q Whom did you see, A First I met this young lady -- I can't

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pronounce her name.

Q Miss Thierich? A Yes, Thierich.

Q You mean one of the employees of the company? A Yes, sir. She was employed by the New York Central Company.

Q Now, down towards the end of the corridor, is there an elevator there? A No, there is a stairway.

Q Now, just tell us in your own way what happened when you got down towards the end of the corridor? A Well, these two young men (indicating the defendants) were standing there. I had met the young lady several times, but had never spoken to her, but had met her as I went up and down, every day, and her face was familiar, though I had never spoken to her.

And, just after I met her, these two young men stood there, and I went to go past them, and Robert, with his hat half drawn down on his face, stepped in front of me, with a smile on his face, and I thought there was something familiar with his face, and he hit me right here with his fist (indicating the left jaw), and down I went.

And the next I knew he was pulling on the bundle, the package, and I was pulling on it, and yelling, "Oh," that way.

Q Was there anybody else there at the time? A No, sir. This young lady -- I didn't see her, because my back was turned, but I had only just met her.

Q Was Roberts alone? A No. This other young man was there (indicating the co-defendant). They stood together.

Q And what did the other young man do, if anything? A When

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I yelled this, "Oh, oh," Roberts was pulling on the package, and then he, the other young man, took hold of the package, and pulled, and then I pulled with both hands. Flynn then pulled on it, but Roberts had hold of it first, and I held on with both hands; and when he had hold, too, and I yelled, "Help, help," they both let go, and ran to this stairway, which was as far as from here to the fourth juryman, perhaps a step further.

And I jumped up, and ran to the door, and they were going down the stairs as fast as they could go, and I yelled, "Stop thief, stop thief," as loud as I could yell.

Q And were you lying on the ground at the time? A No, sir, I got up when they let go of the package, I got up as quickly as I could, and followed them to the top of the stairs.

Q Now, how much money was in that package? A Well, I'll tell you just the amount, in a moment.

Q Very well. What was it? A \$14,933.07.

Q Did you report this matter after it happened? A Yes. Mr. Sheaf, the Claims Attorney of the road, it was almost in front of one of his office doors that the thing happened; and, as quickly as I saw that I couldn't stop the young men, and no one stopped them, I went to Mr. Hall's office, which is a few steps away -- I paced it afterwards, and it was 25 paces from the spot where I fell -- and Mr. Sheaf said --

(Objected to. Objection sustained.)

BY THE COURT:

Q Well, the young men got away? A Yes, sir; they ran down--

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stairs.

Q And when did you next see the, m after that? A In Mr. McMahon's office. He is the chief of the railroad detectives or police.

Q I ask you when it was? A Well, it was about ten days or so after that. I couldn't give you the exact date. I didn't make any record of that. It was the day they were arrested.

CROSS EXAMINATION BY MR. SOLOMAN:

Q Mr. Lewis, have you had any trouble with your sight in the last few years? A No more than age would bring.

Q Only that weakness which is due to age? A Yes, sir.

Q Now, how long have you known Roberts? A As I said, somewhere about four years, about that. I couldn't say positively.

Q And what position did he occupy in the New York, New Haven & Hartford Railroad Company? A He was a boy in the treasurer's office.

Q Did he have the handling of any cash? A Why yes.

Q Much cash? A Well I couldn't say how much. I presume as much as was in there. I guess there was no restriction.

Q Considerable cash? A Yes, sir.

Q And for how long a period did he have the handling of cash? A I think he was there for about two years, in the treasurer's office.

Q And during that period of two years, he had the handling of cash? A Yes, sir. Now, I don't want to be misunderstood when

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I say two years. I mean about that.

Q Well, you can't be very definite as to the time? A No, sir, not more than that.

Q And, during those years, did he have the handling of bonds? A That I couldn't say.

Q Do you know that at one time he was sent alone a long distance, with a considerable number of bonds, by one of the officers of the New York, New Haven & Hartford railroad? A No.

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

Q And how many times during the four years he was there did you see him? A I don't think he was employed there over two years.

Q I thought you said four years? A No. I said it was about four years since I first knew him. He was there about two years, and then he left the employ of the company, and then he went into the service.

Q Yes, I heard that. He returned to the employment of the company? A Yes, sir.

Q Now, how often did you see him while he was employed there? A Well, as a rule, every day.

Q Were you friendly with him? A So far as I knew.

Q Outside of this occurrence you thought well of the boy; didn't you? A I did.

Q And so did everybody who came in contact with him at the New York & New Haven Company? A So far as I know.

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Q Do you know what salary he started to work for when he first began to work there? A No, sir.

Q You don't know what salary he was getting when he resigned; do you? A No.

Q Now, the third floor, where you were assaulted -- A I didn't catch that.

Q The third floor. You were struck on the third floor?
A Yes, sir.

Q Is that fully lighted? A Yes, sir.

Q By artificial light? A Yes, sir.

Q It is pretty well lighted? A Yes, sir. It was dark outside, at that time.

Q yes, I understand, but it was light inside? A Yes, sir, oh yes.

Q And you saw a number of people on the third floor? A Yes.

Q And you saw this young lady, Miss Thierich? A Yes; I remember meeting her just before I was struck.

Q And did you speak to her? A I did not.

Q She passed you by? A We met. She was going towards the elevator, and I from it.

Q About how many people were there on the floor? Do you know? A I don't think there were half a dozen on the floor. There might have been and there might not have been so many.

Q Are there offices on that corridor, on that floor? A Yes, sir, on both sides of the corridor.

Q About how many offices? A Well I should think -- I am

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guessing -- I should think there were twelve or fifteen on each side.

Q You think there are twelve or fifteen on each side? A Yes, sir. But that's only a guess.

Q And are there employees of the railroad company to occupy those offices? A Most of them.

Q Do you know how many employees of the road occupy those offices? A No, sir, I have no idea.

Q You can't say whether it was a hundred or five hundred? A No, sir.

Q Now, was it your custom to carry this money unaccompanied? A Yes, sir, up to that day.

Q Up to that day? A Yes, sir.

Q And you say you saw the two defendants standing there? A Yes, sir.

Q And are you sure about that? A I am positive.

Q Is there any question about it, Mr. Lewis? A No. I told you I was positive I saw them.

Q Were you always positive? A Why certainly I was always positive.

Q You testified in the Magistrates' Court; didn't you? A Yes, sir.

Q Did you testify as positively in the Magistrates' Court as you testify here? A So far as my knowledge goes.

Q Didn't you say this in the Magistrates' Court, referring to Flynn, this boy (indicating): "I couldn't positively identify

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him?" Did you say that? A Yes, sir, and I say that now. But you didn't put the question that way, my friend. You said "The two young men."

Q Well, whom did you think I was referring to when I referred to the two young men? These are the only two young men I am interested in now (indicating the defendants). A But you said, "Did you see two young men?" And I said yes.

Q But didn't you say on your direct examination that you saw these two young men on the third floor? A Yes.

Q And didn't you mean these two young men? A Yes, I did. Now don't misunderstand me.

Q Now just wait a minute, Mr. Lewis. Then I asked you whether you were positive you saw these two young men there, and didn't you say yes? A I didn't understand you to say these two young men. I understood you to say, "Did you see two young men?" That's the way I understood your question.

Q All right. Now we will start again. Now, when I say two young men, I mean these two young men, and none others. Now you say you saw these two young men there? A I saw Roberts, that I am absolutely sure of, and I saw a young man that resembled Flynn so closely that I don't think I could be mistaken. But yet I never saw him before, and only saw him for an instant, and I wouldn't swear he was the one, although I firmly believe he is. Now, gentlemen, do you understand me there?

MR. SOLOMON: And I object to that voluntary statement

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of the part of the witness to the jury, and move that it be stricken out.

THE COURT: No, I will allow it to stand.

MR. SOLOMON: I respectfully except.

Q You have never seen Flynn before? A No, sir.

Q And you are not positive now that Flynn was the man with Roberts? A Well, I wouldn't swear that he was. I think he was.

Q Is that the best answer you can give me, you think he was?

A Yes, from his looks.

Q Now you say that you saw Roberts there? A Yes, sir.

Q And Roberts walked up to you, smiled at you, and then he struck you in the jaw? A Yes, sir; and his hat was pulled down (illustrating).

Q And then he and Flynn tried to grab the package from you?

A Yes, sir.

Q And you hollered? A Yes, sir.

Q And they both ran down the stairs? A Yes, sir.

Q And then you walked in, and reported the assault to Mr. Hall? A Yes, sir.

Q Is he here today? A I haven't seen him. He might be here I don't think he is here.

Q And did you have a talk with Mr. Ryan about the case?

A Not then. I didn't see him for, I should think, ten days afterwards.

Q Did you talk to Mr. McMahon about the case? A I did not.

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Q Did you talk to Miss Thierich, the young lady that passed you by? A Not until after I was assaulted. She came back, and she said, "Are you hurt, are you hurt?" And then she said, "Did they get your money?" Or, "Your package"-- I don't remember which she said. That was after I had delivered the money to Mr. Hall.

Q Now, when you walked in to see Mr. Hall, you told him somebody had assaulted you; didn't you? A Yes.

Q And tried to take the package from you? A Yes.

Q Did he ask you to make out a written statement of the occurrence? A No, sir, /Sheaf —
Mr.

Q Do you know whether Mr. Hall made a written report about the matter, or asked you to? A I don't think so, no.

Q Did you make any written report to Mr. Sheaf? A No, sir.

Q Did he make a written report about it to the company?
A I think not.

Q Do you know whether the case was reported to the Police Department of the city? A I don't know, I don't think so.

Q Now, when did you next see Roberts? A At Mr. McMahon's office, the day he was arrested.

Q And that was the 23rd of January? A I couldn't say the date he was arrested. I couldn't give you the date.

Q Now, the assault took place on the 12th of January? A Yes.

Q And he was arrested on the 23rd of January; was he not?

A I don't remember.

MR. TEKULSKY: It was about the 23rd or 24th.

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MR. SOLOMON: Very well.

Q And then you saw him on the day he was arrested? A Yes.

Q About the 23rd of January? A Yes, sir.

Q And where did you see him at? A At Mr. McMahon's office.

Q Who asked you to call at Mr. McMahon's office? A Ryan.

Q Mr. Ryan? A Yes, Detective Ryan.

Q Did he tell you the purpose of the call at Mr. McMahon's office? A He said that they had got hold of somebody that they suspected of assaulting me.

Q Ryan said that they had gotten hold of someone who, they suspected, assaulted you? Is that right? A Yes, sir, something to that effect.

Q Did he say anything else? A He said he wanted me to go up to Mr. McMahon's office.

Q Did he say anything else? A Not that I recollect. And I asked him who they had got, and he wouldn't tell me.

Q He wouldn't tell you? A No, sir.

Q You asked him who you had got, and he refused to tell you?
A Yes, sir.

Q And then did you go to Mr. McMahon's office? A I did.

Q And how big is his office? How large a room is it? A Why, there are three offices, one large one, and two at the end. I should say the large one was 20 by 20, and the small one perhaps about 10 by --

Q The office that you were led into, how large was that?

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A 20 by 20 I should judge.

Q Did Mr. Ryan go with you to Mr. McMahon's office? A Yes.

Q And he brought you there? A Yes, sir.

Q And whom did you find in Mr. McMahon's office? A There was the stenographer there, I suppose, and an assistant. There was a couple there, but I don't know their titles or occupations, or names. I don't know whether they were stenographers or officers, or what. There were two men there.

Q And Mr. McMahon? A Yes, sir.

Q And who else? A Well, Mr. McMahon was in one of the inner offices, and these two men were in the outer office.

Q Was Roberts there? A He was in the inner office, with McMahon?

Q And were you brought into that inner office? A Yes, sir.

Q Now, in the outer office, did you have any conversation with Roberts or any of the other men? A No, sir.

Q And then they brought you into the inner office? A Yes, sir.

Q And how large an office is that? A Well, I should say it was ten feet one way, by 12 or 15 the other.

Q Who brought you into that office? A I think they told me -- I don't know that anyone brought me in. I guess they called for me, and I walked in.

Q Whom did you find in the inner office? A Mr. McMahon and Roberts.

Q Those were the only people in that inner office? A Yes, sir.

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Q And when Ryan spoke to you originally, to bring you to Mr. McMahon's office, he said that they had someone in Mr. McMahon's office that they suspected, and wanted you to identify; is that right? A Yes, sir.

Q Yes or no? A Yes, sir.

Q And when you asked Mr. Ryan for the name of the man, Ryan ^{tell} refused to/you? A He did.

Q And, when you got into McMahon's office, the only two people you found in that office were McMahon and Roberts? A Yes, sir, as I recollect.

Q And that's the way they asked you to identify Roberts; is that right? A That's right.

Q What is your answer? I can't hear you, Mr. Lewis. A That's right.

Q Did Roberts get up when he saw you? A He sat in a chair, and, as I came in --

Q (Question repeated). A Not when I first stepped in.

Q Well, did he get up at any time after you entered? A Yes.

Q And did he walk over to you? A No, sir.

Q Did he shake hands with you? A He did not.

Q Now, when you walked into the room, as you walked in, did you say, "that's the man who assaulted me? A No, sir.

Q You did not? A No, sir.

Q What was done before you made up your mind that he was the man who assaulted you? What manouvers were gone through, what

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happened there? A Why, he sat on the opposite side of a table between him and the door that I came in, and Mr. McMahon sat on the left of the table.

In my description that I gave, I told Mr. Ryan and the officers that this young man had his hat pulled down over his face, and was tall and slim, and that he smiled, and I thought I knew his face, but I couldn't just locate him.

Q You knew that, in the description of the assault that you had given verbally to Ryan? A Yes, sir.

Q And to who else? A The Grand Central officers.

Q So that it was a young man, tall, and had his hat pulled down over his face, was it, and that you had seen his face before, but you didn't know who he was? A No. I said I couldn't locate him. That's the way I expressed it.

Q Now let's stop here for a moment. And that description you told verbally to Ryan; did you? A Yes, sir.

Q When? A It was a day or two previous to his arrest.

Q And what description did you give of Mr. Flynn?

A Shorter, darker complexion.

Q Now, you testified, Mr. Lewis, a few minutes ago, when I examined you, and also on the direct examination that, when you were on the third floor, you saw these two boys standing there, and you saw the boy Roberts approach you, and he smiled at you, and struck you in the jaw, and you had known Roberts for about four years, and now you testify that, in your description,

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given two days before the arrest, you told Ryan that it was a tall boy, and he had his cap pulled down, and you knew you had seen the face, but you couldn't say who he was. Now how do you reconcile that testimony? A I didn't say anything that is contrary to that.

Q All right. You did not? A No.

Q Now, when you got into McMahon's room, you had said already, I think, that you didn't say, as soon as you saw Roberts, "This is the boy that struck me;" you didn't say that right away?

A No, sir.

Q Well, what happened then? A As I went in, Roberts said, "How do you do Mr. Lewis," and flushed up, his face flushed up as red as --

Q And he said, "Good morning Mr. Lewis"? A Yes, just gave me a salutation like that, and I said, "How do you do."

Q And did you shake hands with him? A No, sir.

Q Or he with you? A No, sir. The cable was between us. And Mr. McMahon said, "Stand up, Fred."

Q And Roberts' first name is Fred? A Well, I couldn't be sure whether he said Fred or Roberts. And I had told Ryan that he had his cap pulled down over his eye, and I suppose he had told McMahon.

Q You suppose he had told McMahon? A Yes, sir, but I'm not sure whether he had told McMahon, or seen him before.

Q Well, go ahead. A And he said something to him -- I don't

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know what, so that he smiled.

Q Who smiled? A Roberts. And then I was positive he was the young man. It came to me instantly that that was the face that I couldn't locate.

Q When he got up, and McMahon asked him to do something, and he did it, and he pulled down his hat, then you were positive, for the first time, that he had struck you? A Yes, sir, that's the time I was absolutely sure.

Q Now, do you know why, Mr. Lewis, why Roberts was not lined up with a number of other men, and the usual identification made in that way? A No, sir, I don't. That is beyond me.

Q Now, who is McMahon? A He is the chief of the railroad detectives. I guess they call them -- I don't know what they do style them, detectives or police.

Q And was the identification of Flynn made the same day they were arrested? A Yes, sir, the same day.

Q And in the same way? A Yes, sir.

Q In McMahon's office? A Yes, sir.

Q Now, in your statement to Ryan, you said to Ryan you were not sure of the shorter man, didn't you, that you were not sure of the shorter man? A I said he looked like him, in general appearance, and his build and looks, but, as I had only a glance, I wouldn't swear he was the man.

Q How long did the occurrence take, the assault and the attempt to take the package; how long did it take altogether?

A I don't suppose it was two minutes. I couldn't say positively.

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I wasn't in a condition to measure time then.

Q Now, after you identified Roberts, were you taken into another room? A I went back into the main office.

Q And who escorted you around? Ryan? A Well, there was no escorting about it. I walked alone from one room to the other.

Q Well, were you told what room to go to? A When I went out of the office, you mean?

Q No. After you identified Roberts. A Well Mr. McMahon said, "All right Mr. Lewis," and I walked out into the main, outer office.

Q And didn't you identify Flynn immediately afterwards? A Oh no. It was two hours or more afterwards. I don't know how long. I know they kept us waiting there a long time.

Q Where were you waiting? A In the outer office, the main office.

Q And who was waiting with you? A This young lady, Miss Thierich?

Q Well, who ~~first~~ identified first; you or Miss Thierich? A I don't recollect.

Q But, after you both identified him, both of you were in the inside room; is that right? A No, the outer room.

Q You were both in the outer room? A Yes, sir.

Q And how long did you wait before you were called to identify Flynn? A Two or three hours. It was quite a long time.

Q And you and Miss Thierich waited all that time? A Yes.

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Q In the outer room? A Yes, sir.

Q Did you discuss or talk about this identification at all? Yes or no? A Slightly, yes, just a little.

Q And then you were taken into another room, were you, after waiting for two hours? A Yes, sir, back into the other room.

Q Who was taken first, you or Miss Thierich? A That I don't recollect.

Q And were you taken into McMahon's room, the same room as before? A Yes, sir.

Q And who did you find there? A Mr. McMahon and Flynn.

Q And Flynn? A Yes, sir.

Q This boy (indicating the defendant Flynn)? A Yes, sir.

Q And did you recognize Flynn as soon as you saw him as the man who struck you? A No, I said I was not absolutely sure.

Q Now what was done? Did McMahon tell Flynn to stand up? A I don't recollect about that.

Q You don't recollect what happened? A I think he did.

Q Did McMahon ask Flynn to turn around, with his back towards you? A Yes, I believe he did. I don't recollect positively whether he did or not, but I think he did. I'm not sure about that.

Q And when did you then think that Flynn was the boy? Was it after you saw his back? A No, it was the whole thing. I took the whole view, front and back, and weighed it in my mind, and thought he was the man, but still I didn't want to wrong him

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or anybody else. I didn't want to swear positively to him.

Q Well, then you had a doubt in your mind? A Yes, a slight doubt; that is, I felt as though I might be mistaken.

Q Now answer the question. A I have answered it, I think.

Q (The stenographer repeats the question and answer.)

Q Are you employed now by the New York, New Haven & Hartford Railroad Company? A I am.

Q Have you spoken to anybody about the case since the arrest?

A Yes, to almost everyone.

Q Now, at the time of the assault, did you know where Roberts lived? A I did not.

Q Was his name and address in the records of the New York, New Haven & Hartford Railway Company; do you know? A I couldn't say whether they were or not.

Q Did you try to find out? A No, because it didn't come into my mind.

Q That is, after they assaulted you, it didn't come into your mind about Roberts? A No, sir.

Q Now, from the time of the assault up to the time you saw Roberts in McMahon's office, you didn't mention Roberts to anybody; did you? A No, sir, I haven't thought of him.

MR. SOLOMON: That's all.

MR. TEKULSKY: That's all.

THE COURT: That is all, Mr. Lewis.

THE WITNESS: I am wanted at the office. Can I go back there now?

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MR. TEKULSKY: Do you need Mr. Lewis further?

MR. SOLOMON: Well I don't know.

THE COURT: Well, if you are needed, Mr. Lewis, you can be notified by telephone, and you can come down here in a short time?

THE WITNESS: Oh yes sir, I can be here at very short notice.

THE COURT: Then you may go.

S O P H I E T H I E R I C H, of 513 West 134th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TEKULSKY:

Q What is your employment, Miss Thierich? A Stenographer.

Q By whom are you employed as stenographer? A By the New York Central Railroad.

Q How long have you been employed there? A 10 years.
branch of the

Q And in what particular/work are you engaged? A The treasurer's department.

Q Where is the treasurer's department? A It is located on the third floor of the building.

Q Of the Grand Central Terminal Building? A Yes, sir.

Q Is it anywhere near the office of Mr. Hall? A Well, it is on the same floor, although there is about three or four blocks of walking through the corridor, if you count it by blocks.

Q Now, in leaving the elevator on that floor, and going along

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the corridor, where you say your office is, do you walk in a northerly direction from the elevator to your office? A No, in a southerly direction.

Q Well, in which part of the building is the elevator? In the south or north part of the building? A In the south part of the building.

Q And, when you get out of the elevator, do you turn and walk back to the elevator? A No. The elevator is located at 42nd Street, and my building is between 44th and 45th Street.

Q And your office is north of the elevator then? A No, sir, it is south.

Q But the elevator, you say, is at 42nd Street? A Yes, sir.

Q I am speaking now of going from the elevator towards your office? A Oh yes, that's north.

Q Now how long have you known Mr. Lewis? A Why, I haven't had any occasion to know him at all until this accident happened.

Q Have you seen him? A Well yes I've seen him.

Q Did you know him as an employe of the railroad company?

A No, sir, I did not.

Q Now, do you remember the 12th of January of this year?

A Yes, sir, I do.

Q Did you see Mr. Lewis on that day? A Yes, sir.

Q What time of the day was it? A 5:45.

Q Where were you at the time? A Well, I was leaving my office to go home.

Q And were you on this corridor? A Yes, sir.

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Q And where did you see Mr. Lewis? A Well, I had just passed Mr. Lewis, I had just passed him exactly, when I heard the squeak of the door, which caused me to turn around, and I saw two young men walking towards Mr. Lewis, and Mr. Roberts struck him.

Q When you say you heard the squeak of the door, what door do you mean? A The door to the emergency exit.

Q And what was on the other side of the door? A Well, there is a sort of a side corridor.

Q And is there a stairway there? A No, the stairway -- there is a doorway before you get to the stairway.

Q Here is the side corridor (illustrating), and, after you pass through that, there is a door leading to the stairway? A No, there are two exits, and you walk three or four feet, and you come to this wooden corridor.

Q Now you say you heard the door squeak that led into this exit, or corridor? A No, sir. The door that I speak of is on the main corridor, and this wooden corridor is a sort of a side corridor.

Q And do you know where this door on the main corridor leads to? A Yes, sir, to the upper end of the lower part of the building, too.

Q By stairs? A Yes.

Q Now, you say that you saw two men go into that door?

A No. When I passed through the corridor, about 5:45, Mr. Lewis and I were the only two people in the long corridor, and, of

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course, it was rather quiet, and, when I heard the squeak of the door, I turned and saw two men walking, and there was a very peculiar expression on their face, I may say.

Q And in what direction were you walking before you turned around? A I was walking south.

Q Towards the elevator? A Yes, sir.

Q And in what direction was Mr. Lewis walking? A North.

Q In the opposite direction to you? A Yes, sir.

Q And did he pass you by, before you heard the squeak of the door? A Yes, sir.

Q Now, your back was turned to Mr. Lewis at the time you heard the squeak? A Yes, sir. I had just passed Mr. Lewis.

Q And your back was also turned to where these two men were? A No, sir. When I heard the door squeaking, I turned around, and I saw them.

Q Now what happened after you saw them?

BY THE COURT:

Q When you turned around, who was the nearest to you, Mr. Lewis or the two men? A The two men, I would say.

Q They were nearer to you? A Yes, sir, and there was very little difference between Mr. Lewis and the two young men.

Q The door was about opposite where he was? A Yes, sir.

BY MR. TEKULSKY:

Q And were they to your righthand side, this group? A The boys were to the right, and Mr. Lewis to the left.

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BY THE COURT:

Q Now, what did you see them do? A I saw Mr. Roberts walk first, and he struck Mr. Lewis under the chin, which caused Mr. Lewis to fall over.

And then Mr. Roberts took a hold of the package, assisted by Mr. Flynn, and Mr. Lewis yelled, and they knocked him down.

And then he got up, and by that time there were quite a few people in the corridor.

And they ran down the stairway, but they didn't run through the doorway that they came through -- there is a space of about a yard between the two exits-- and, as they ran down, they nearly threw a girl down, that didn't want to come to court, didn't want to be implicated in any way in this case.

BY MR. TEKULSKY:

Q When you say "they", do you mean the two defendants? A Yes.

Q Where were you standing when this happened? A About four or five -- about three or four feet away. I stood there, and I was absolutely so terrified, that I couldn't scream or anything, because there was a door on either side of me that I might have opened and asked for assistance, but I was so frightened that I simply stood rigid, and, after it was all over I went and spoke to Mr. Lewis, and he said he still had the package in his hand.

Q Had you ever seen either of these two young men before?

A No, sir, I hadn't.

Q How long did this take? A Well, it didn't take very long,

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about three or four minutes, or so.

Q And after that you saw them on the day they were arrested; did you? A Yes, sir.

Q You didn't know either one of these two men before that time; did you? A No, sir.

MR. TEKULSKY: You may examine.

BY THE COURT:

Q Are you positive that these are the two men? A Yes, I am, because Mr. Miles, the chief of police of the New York Central-

MR. SOLOMON: I object to that.

BY THE COURT:

Q No. Don't give any reasons. You may be asked those by the counsel. But you are positive? A Yes, sir.

CROSS EXAMINATION BY MR. SOLOMON:

Q Are you employed now by the New York, New Haven & Hartford Railroad Company? A No, sir; by the New York Central.

Q And how long have you been employed by that company? A Ten years.

Q And what office are you in? A The treasurer's department.

Q The treasurer's department? A Yes, sir.

Q Do you know where the treasurer's department of the New York, New Haven & Hartford Railroad Company is? A Yes, sir. It's right on the door.

Q Is it on the same floor with you? A Yes, sir, on the same floor.

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Q And how far away from the office where you are employed is the treasurer's office of the New York, New Haven & Hartford?

A Well, about three blocks, I should say, measuring it by blocks.

Q On the same floor? A Yes, sir.

Q On the floor where this assault occurred, are there many offices? A Yes, there are quite a few offices.

Q About how many? A No, I haven't any idea. I couldn't answer that question.

Q More than ten? A Yes, I should say more than ten.

Q More than twenty? A Well I couldn't go into details like that, because I'm not dead sure about that.

Q Of course, you can't be absolutely certain about it, but I want the approximate number, whether there are more than ten offices on that floor? A Yes, I think so.

Q And do you know how many people work in the different offices? A No, I haven't any idea.

Q A great many? A I couldn't say.

Q At the time this occurred, were any other people on the floor? A No, sir, there weren't.

Q Are you sure about that? A I am positive. Before the —

Q Now that's an answer. You say you are positive? A Yes.

Q And, if Mr. Lewis testified he saw six people on the floor, he must have been mistaken? A Well, he probably saw six people after he yelled. I wanted to tell you that.

Q Did you see six people after he yelled? A No, there were

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more than six people then.

Q More than six people? A Yes.

Q And you saw Roberts strike Lewis? A Yes, sir.

Q And then you saw Lewis fall over? A Yes, sir.

Q Had you passed Lewis when Roberts struck him? A Well, I just passed Mr. Lewis, and I heard the squeak of the door, and I turned around.

Q And you turned to where the noise came from? A Yes, sir.

Q Now, what was there so extraordinary about the squeak of the door, that you turned around? A Well I'll tell you. That door isn't used very frequently. I don't think I ever saw anybody come through that door before.

Q So you didn't see them standing there? A No, there was nobody in the corridor before.

Q And you saw them come out through that door? A Yes, I saw Mr. Flynn come out. I saw Mr. Roberts come out first, and then Flynn came out. Mr. Roberts was out already, and Mr. Flynn was right after him.

Q And then you saw them walk over to Lewis? A Yes, sir.

Q And saw Roberts strike Lewis? A Yes, sir.

Q How far away from Lewis were you then? A About three or four feet, I might say.

Q And, after you saw Roberts strike Lewis, what did you do? A Well, I didn't do anything. I was so frightened that I just stood there.

Q Did you yell? A No, I didn't. I seemed to be speechless.

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Q What happened to Lewis after he was struck? A Well, his lip was bleeding, and, when he got up, he was just shaking like a leaf.

Q And did he yell? A Yes, sir.

Q And how many people gathered around when he yelled? A I haven't any idea, but there were more than six.

Q Did those two men look at you? A No, they didn't; I don't think so. Maybe they just side-glanced at me (illustrating).

Q You said in the Magistrates' Court, didn't you: "They took just one look at me, and went ahead at Mr. Lewis"? A Well, they took just a side look, perhaps.

Q They took a side look at you? A Yes, sir, they certainly did.

Q And then they attempted to pull the package away from Mr. Lewis? A Yes, sir.

Q And how long did they do that, before they ran away?
A Not more than a minute.

Q And they saw you standing there? A Yes.

Q Now, how long after Mr. Lewis was struck, did the people begin to congregate? A Well, almost immediately, but no one seemed to run after them, to run down the stairway. I don't think that there ever was an accident that happened --

Q Now you have answered me. Did you speak to anyone on the floor at the time? A I spoke to Mr. Lewis.

Q Did you speak to anybody else? A Well yes, there was

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quite a few people talking. I was in such a terribly nervous state that --

Q You were terrified? A Yes, sir.

Q Did you ask anybody to try to help Mr. Lewis, or go after the men? A No, sir, I couldn't utter a word.

Q Now you said in the Magistrates' Court, "I met another gentleman, and I said, 'Why don't you run and help this man?'"

A Yes, there was a man that had a pair of crutches, and one leg short, and he was standing close to me, and I said that to him.

Q He had a pair of crutches? A Yes, sir.

Q Is he in court? A No, sir.

Q And what kind of suit was he wearing? A Who was wearing?

Q The man with the crutches? A Well, I don't know.

Q But you noticed the crutches? A Well, I spoke to the man.

Q And you asked him to run after the boys? A Yes, and then I took --

Q That will do. Did you say anything about the crutches in the Magistrates' Court? A No, sir, I didn't. He is probably an employe of the New Haven.

Q I didn't ask you anything further. You have answered me. You didn't see the boys' full face; did you? A Yes, I did, full face, and side face, and from the back, and everything.

Q But in the Magistrates' Court you testified that you didn't

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see their full face; didn't you? A No, I didn't. I certainly did see their full face.

Q And, if you so testified in the Magistrates' Court you were mistaken; is that right? A Well, I did see their full face, and their side face, and I had a good view of them.

Q Did you see their full face, or did you see them sideways? A I saw them both ways.

Q And so, when you testified in the Magistrates' Court to that effect, which I have stated, you were mistaken? A Well, I can't remember whether I testified to that or not. That's four or five months ago.

Q Well, wasn't your memory better then than it is now? A Yes, but that's a small detail, I would say.

Q You think it was a small detail? A Yes, sir.

Q And what time of day was this? A A quarter of five.

Q And so, if Lewis testified -- did you testify before that it was 5:45? A Well, isn't that the same thing, 4:45 or a quarter of five?-- oh, no it was 4:45. If I said 5:45 it was my error. It was 4:45.

Q Did you give a description of the young men to Mr. McMahon? A No, sir.

Q Or Mr. Ryan? A No, sir.

Q Did you give a description to Mr. Lewis? A No, sir, they sought me --

Q Now one moment Miss Thierich. I will ask you questions

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and the District Attorney will ask you questions. Don't volunteer anything please. After that, when was the first time you saw Roberts? A The day he was brought into an office on the second floor, the chief of police's office, I guess.

Q Did you see him before then? A No, sir.

Q Are you sure about that? A Yes, sir, I am positive.

Q That you didn't see him before that? A Except that day that he assaulted Mr. Lewis, in the hall. But I didn't see him from that time until the time he was in the office on the second floor, the chief of police's office.

Q And that was on January 23rd? A Well I don't know. I'm not so keen about the date.

Q Was that the day you identified him? A The 23rd of January?

Q Yes? A Yes.

Q Now, who first spoke to you about the case on that day?

A Well, the New York Central police.

Q Give me the name of the man, please? A Mr. Miles asked me -- sent one of his men up that I should come down to his office.

Q Is that the first time you spoke to anybody in the railroad company about the case? A No, sir. Mr. Hall interviewed me about 12 o'clock, the next day.

Q And that was the first time after the assault that you spoke to anybody about the case? A Yes, sir.

Q And that was to Mr. Hall; is that right? A Yes, Mr.

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Hall.

Q Did you give him a description of the defendants? A Yes.

Q Did he write it down? A No, he didn't.

Q Did you write it down? A No, I didn't.

Q Was Mr. Lewis there at the time? A No, sir.

Q Do you know whether Mr. Lewis had been to see Mr. Hall, that morning? A Why Mr. Hall is Mr. Lewis's --

Q His superior? A I guess so, as far as I know.

Q And Mr. Lewis sees Mr. Hall every day, as far as you know?

A Yes.

Q Now, after you saw Hall, how long after that did you speak to anybody about this case? A Well, Mr. Hall had a detective of the New York Central with him.

Q What's his name? A I couldn't say.

Q Is he here in court, today? A No, sir.

Q And you told him about the case? A No; he asked me to come down to Mr. Hall's office, the chief of police of the New York Central Railroad.

Q And did you make a statement there? A Well, he put six or seven men in a line, and he asked me --

Q Did you make a statement there? A Yes, I did.

Q And then he put six or seven men in a row? A Yes, sir.

Q And he asked you to identify one of them? A No. I'll tell you that. He said --

Q I didn't ask you what he said. He put six or seven men in

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a row? A Yes.

Q And did you say anything to Mr. Hall? A To Hall?

Q Yes? A No; that's settled the case with Mr. Hall.

Q Well, wasn't he there? A No, sir, not at that time.

Q Who was there? A Mr. Miles, the chief of police.

Q And what did Hall say, if anything, to you, at the time?

A He didn't say anything. But Mr. Miles asked me if I was able to pick out any of the men who assaulted Mr. Lewis, and I said I couldn't pick them out, that there were no men in the row that answered the description of the two young men; and then he said --

Q Well, after that, were you called to identify anybody in the row? A No, sir. And he also asked me to come down to the Rogues-Gallery, to pick out anybody by a picture, and that I refused to do.

Q Well, were you asked after that to identify anybody in a row? A No, sir.

Q And when next did you speak to anybody about the case?

A Mr. Ryan came up to my office.

Q When? A I couldn't tell you the date.

Q Well, how long after the assault? A I should say a week.

Q And was that the day he asked you to come to Mr. McMahon's office? A No, no.

Q Now, let us come down to the day that you were asked to go to Mr. McMahon's office. Who came for you? A I believe Mr. Ryan came up, and asked me to step on the second floor.

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Q And you went down with Mr. Ryan? A Yes, sir, I think it was Mr. Ryan, as far as I can remember.

Q And you went down with Mr. Ryan? A I didn't go down immediately. I went down afterwards.

Q Did he tell you what he wanted you for? A No, he did not.

Q Did he tell you Mr. McMahon wanted to see you? A No, sir. He said I was wanted down in Room 2,000 and something.

Q And did you go down to that room? A Yes, sir.

Q Did you speak to anybody? A Yes, sir, I did.

Q To whom? A Mr. McMahon.

Q Did you see Lewis before you saw McMahon? A No, I did not.

Q Did you see Mr. Lewis, that day, at all? A Yes, I did, in the same office.

Q Did you speak to Lewis? A Yes, I spoke to him.

Q Were you and Lewis alone for any length of time? A No, sir, there was another gentleman accompanied us, and Mr. McMahon was there.

Q And for how long a period did you see Mr. Lewis, that day? A Well about an hour, I might say.

Q Where was he? A He was sitting there in a chair.

Q And in whose office was Lewis at that time? A Well, it is some office that has been abolished since then. It was then under Federal control.

Q And had Lewis identified both Roberts and Flynn when you saw him? A No, sir, I was the first one to identify them.

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Q And, when you came to the office, you found Lewis there; didn't you? A No, he wasn't there. He came in after I did.

Q And whose office were you brought into? McMahon's?

A I guess it must be Mr. McMahon's. But he seems to be located up in Providence Rhode Island somewhere.

Q Well, whom did you see there? A I saw a stenographer, a young man.

Q And who else? A And Mr. Ryan was there, and Mr. McMahon was there, and I guess that is all -- oh, yes, and Mr. Roberts.

Q And Mr. Roberts? A Yes, sir.

Q And you knew the stenographer; didn't you? A No, sir, I didn't know anybody.

Q Well, you knew Mr. Ryan? A Never, until this case came up.

Q Didn't you meet Mr. Ryan, that day, when he asked you to come down to Mr. McMahon's office? A Oh yes; but only at that time.

Q And who introduced you to Mr. McMahon? A I don't just remember. I won't tell an untruth, because I don't know.

Q Now, did you recognize Roberts as soon as you saw him?

A Yes, sir, immediately.

Q And you said to McMahon and Ryan, "That's the man that struck Mr. Lewis?" A I didn't say anything in the room where Mr. Roberts was standing.

Q You didn't say anything in that room? A No, sir.

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Q But, as soon as you saw Roberts, you recognized him?

A Yes, sir.

Q And where did you go from that room? A Where did I go?

Q Yes? A Well, I went into a sort of off-room, with a big desk in it, and I sat on a chair there, and Mr. Ryan and Mr.---

Q At the time you saw Roberts, he wasn't lined up with other men; was he? A No, sir.

Q He was sitting alone? A Yes, sir.

Q And was he asked to stand up? A Yes, sir.

Q Did you recognize him before he stood up? A Yes, sir.

As soon as I saw him, I recognized him.

Q Well, who asked him to stand up? A I couldn't say that.

Q Did you ask him to stand up? A I don't know. I don't remember that.

Q Did Mr. McMahon ask him to stand up? A I think he did, yes.

Q And did Mr. McMahon voluntarily ask him to stand up, or did you suggest it? A Well, I suggested it.

Q So that, when you suggested to Mr. McMahon to ask Roberts to stand up, you were not sure when you first saw him that he was the man? A Yes, I was positive, as soon as I saw him.

Q And then what was the purpose of asking McMahon to ask Roberts to stand up, if you were positive? A Well, I suppose, to corroborate my statement.

Q To make sure? A Yes.

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Q So you were not positive? A I was positive.

Q All right. Now, after Roberts stood up, did you ask McMahon to tell Roberts to put his hat or cap on? A Yes, sir, I did.

Q What kind of hat was he wearing? Do you know? A A soft slouch hat.

Q A Fedora? A Yes.

Q And did you ask McMahon to ask Roberts to turn around?
A Yes, sir.

Q And did Roberts turn around? A Yes, sir, he did.

Q You wanted to see Roberts's back; did you? A Yes, sir.

Q And then you walked out? A Then I walked out, yes.

Q And did you meet anybody in the hall, when you walked out?
A Did I meet anybody in the hall?

Q Yes. A Well there was an anteroom, like.

Q Did you meet Mr. Lewis then? A He came up later. I sat in a chair for a few minutes.

Q And did you meet Mr. Lewis? A Yes, sir. That was the first time I met Mr. Lewis, to be introduced to him. That was the first time I really was introduced to him.

Q Well, wasn't it the first time you ever spoke to him?
A No, sir; because I spoke to him in the corridor on the day of the accident.

Q Who introduced you to him? A Well, I can't say. Mr. McMahon and Mr. Ryan and everybody was there, and I couldn't say.

Q Did you speak to Mr. McMahon about this case? A No, sir.

Q Or Mr. Ryan? A No, sir.

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Q Or Mr. Lewis? A No, sir, I absolutely did not.

Q You were sitting outside together. Didn't you talk about this case at all? A No, sir, I did not.

Q Not at all? A No, sir.

REDIRECT EXAMINATION BY MR. TEKULSKY:

Q Are you sure that these are the two young men who committed the assault on that day?

MR. SOLOMON: I object to that, as calling for the conclusion of the witness.

THE COURT: Well, she has already said she was positive. I sustain the objection on that ground.

T H O M A S R Y A N, of 613 West 145th Street, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TEKULSKY:

Q What is your employment Mr. Ryan? A Lieutenant of police, New York, New Haven & Hartford Railroad.

Q And, in connection with your employment, you are required to detect any crimes committed on the railroad property; are you not? A Yes, sir.

Q And how long have you been such official? A 11 years.

Q And are you under Mr. McMahon, the chief of that branch of the service? A Yes, sir.

Q Did you know the defendant Roberts prior to the day of his.

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arrest? A Yes, sir.

Q Did you know him as an employee of the New York, New Haven & Hartford Railroad? A Yes, sir.

Q How long had you known him? A Since the year 1914.

Q Did you see him very often? A Well, yes, occasionally; whenever I had occasion to go into the treasurer's office, the same as in and out of any other particular office, ^{that} ~~but~~ my business called me to.

Q prior to the arrest, had you ever seen Flynn? A Never; not to my knowledge.

Q Now, do you remember the time you were first told about this assault? A Oh, pardon me. I saw Flynn two days before his arrest, on the 21st of January.

Q But, prior to the 21st of January, you had never seen him? A To my knowledge, no.

Q Now, you remember when you were told about this assault upon Mr. Lewis? A Yes, sir.

Q Do you remember now how long before the 21st of January you had been informed of it? A The day previous, on the 20th.

Q The day previous, on the 20th? A Yes, sir.

Q Now, after you were informed about it, and, I suppose, you were assigned to this case -- A Yes, sir.

Q Where did you go? A Down to Inspector Moore's office.

Q Who is Inspector Moore? A He is in charge of the secret service of the police section of the United States Railway Adminis-

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tration. We were under government control, at the time.

Q And, after you saw Mr. Moore, where did you go? A I interviewed Mr. Lewis, the defendant in this case.

BY THE COURT:

Q You mean the complainant in this case? aA Yes, sir, the complainant. And Miss Thierich.

BY MR. TEKULSKY:

Q And, after you interviewed them, where did you go? A I went back and conferred with Inspector Moore.

Q And after that where did you go? A I went to 3109 Third Avenue, the home of Roberts, and I arrived there on or about five P.M. on the evening of the 31st of January.

Q And did you see the defendant Roberts there? A Yes, sir.

Q Is that his home? A Yes, sir.

Q Did you see anybody else there? A Yes, sir; the other defendant, Harry Flynn.

Q This was on the 31st of January? A Yes, sir.

Q Did you have a talk with Roberts and Flynn? A Not with Flynn but with Roberts. Roberts introduced me to Flynn when I entered the house.

Q Now, tell us what conversation you had with Roberts?

A Well, on entering the house, Roberts said, "Hello Mr. Ryan," and I said, "Hello, Freddy."

And then he said, "Meet a friend of mine, Harry Flynn." He was standing in the kitchen, six or seven feet from where I was

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on entering the flat.

And so I accepted the invitation, and shook hands with Mr. Flynn.

And at that time, when I sat down in the kitchen, Flynn and Roberts went into another room, and had a conference.

MR. SOLOMON: I object to that, and move to strike that out.

THE COURT: Objection sustained. Strike that out.

BY MR. TEKULSKY:

Q Now go on. A And then Flynn came out, dressed up in street attire -- that is with his hat and coat on -- and said, "Good night all," and that included Mrs. Roberts and others that were there at the time.

Q You mean Mrs. Roberts, the mother of this defendant Roberts? A Yes, sir.

Q And who else was there besides Mrs. Roberts? A There was another lady, but I can't recall the name. I presume it was an aunt.

Q Anybody else? A Not to my knowledge.

Q Now, did Flynn go away after that? A Yes. From the time I went in until Flynn left, it was only about five minutes.

And Roberts then came to me, and asked me what I wanted to see him about, and I told him I wanted to see him about a little important matter, and to come downstairs.

Q And did you go downstairs together? A Yes, sir.

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Q And what was said there? A I asked him who that man Flynn was he introduced me to? and he said he was a young man that done service with him overseas, and was stopping at his house since he came back.

Then he said to me, "what do you want to see me for?" And I said, "Well, I have been instructed by Inspector Moore to ask you where you were on January 12th, between the hours of three and five o'clock."

So he stood there, and he looked , and he said, "I can't recall that."

And I said, "Then let's take a walk," and we walked up Third Avenue; and, going up Third Avenue, I said, "Now, just think, and see if you can't place yourself on that date," and he said, "Well, that's some time ago, January 12th."

And I said, "yes it is." And I said, "Were you in the neighborhood of the Grand Central Terminal on that day?" And he said, "I can't recall whether I was or not."

And I said, "You take my telephone number, my house call, 2994 Audubun, residence 613 West 145 th Street," and I said, "If you can recall where you were on January 12th, let me know."

And I didn't hear from him about that. And we walked to 125th Street, and nothing was said further, and I bid him good night," and I went home, and I presume he did, too.

Q Did you see him again after that? A Yes, sir, around the 23rd.

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I allowed one day to elapse, but didn't hear from him.

And, on the 23rd, at nine o'clock in the morning, I called at his home, and his brother, Mr. Paul Roberts, met me at the door, and I asked if Freddy was in, and he said yes, but he was in bed.

And I said I would like to see him, and he said he was asleep in bed, he thought.

And so I said, "I would like to see him."

And so Freddy came out, and I said, "Inspector Moore would like to see you down in his office," and he said, "Well, I can't go anyhow until this afternoon, because I expect a telegram about a job, at one o'clock."

And I said, "All right. Then I will call back for you."

And then we made an appointment for me to call back, at one o'clock, and I did.

And he was prepared to go with me, and we went down to Inspector Moore's office, and Inspector Moore was not there at the time.

And then Mr. McMahon, chief of the New Haven Police, was there, and we arrived there about two o'clock, or 2:15.

Q Did you see Flynn on that day? A Yes, sir, I was sent to Hoboken for him, later on.

Q Who gave you the address of Flynn? A Why, Mr. Roberts. Chief McMahon asked Freddy Roberts where the young man was that was in his house, a couple of evenings previous, when I called.

And he said, "Who do you mean? Harry Flynn?" And he said, "Yes."

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And he said, "Why, he is employed over at the United States Embarcation Department, over at Hoboken? New Jersey, under Major Woolworth."

And he said, "Can we get him?" And he said, "Yes. You can call up 3,000 Hoboken."

Then the chief clerk of the Secret Service Bureau was instructed by Mr. McMahon to call up that number, and ascertain whether Flynn was employed there, or any such man was employed there.

Q And was Roberts there at the time that number was called up? A Yes. He gave us the information. But he wasn't there at the telephone. It was called up in another room. And the chief clerk called up Major Woolworth at Hoboken, and he ascertained—

(Objected to. Objection sustained.)

BY MR. TEKULSLY:

Q Go on. A However, they found out that he was working there through the telephone.

Then Chief McMahon asked me to go over there, and ask him to come over to the Grand Central, instructing me to say that his friend Roberts would like to see him.

Q Did you go over to see him? A Yes, sir. And I had Lieutenant Charles A. Rizzo, of our Police Department, with me. He left with me on or about 4:30, and we got over there about 5 P.M.

Q Did you have any conversation with Flynn on the way over

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from Hoboken? A Well, I would like to tell the whole story, Mr. District Attorney.

BY THE COURT:

Q Well we don't want it. Just tell what you did.

BY MR. TEKULSKY:

Q Did you have a conversation with him? Yes or no? A Yes.

Q Did you tell him what you wanted him for? A No, I didn't tell him.

Q And did you have a conversation with him at the Grand Central station? A On the way over from Hoboken, I said, "The record shows that you were not working on January 13th," and he said, "That's right. I wasn't working January 13th, 13th or 14th," and he said, "And I got docked for it, too. They didn't pay me."

And I said, "Where were you, that day?" And he said, "I was sick in bed at home, and, in the evening, I went to Roberts's home."

Q Is that the entire conversation? A Yes, sir.

Q And did you have any conversation with him afterwards in the Grand Central station? A No.

CROSS EXAMINATION BY MR. SOLOMON:

Q When you went down to arrest Flynn, McMahon told you to go down and tell him that Roberts wanted to see him; is that right? A Yes, sir.

THE COURT: I think, before we begin the cross examina-

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tion, we will take a recess.

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

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AFTER RECESS.

T H O M A S R Y A N, his cross examination being continued,
testified as follows:

CROSS EXAMINATION (Continued) BY MR. SOLOMON:

Q How long have you been employed by the New York & New
Haven? A Eleven years.

Q And, during those eleven years, have you been a lieutenant
of police? A No, sir.

Q You don't mean the Police Department of the City of New
York, do you, when you speak of being a lieutenant of police?

A No, sir.

Q By whom were you appointed? A By J. R. McMahon, chief
of police, of the New Haven Police Department.

Q How long has he been employed by the company? A I
couldn't say. He was there when I entered that department.

Q When were you appointed a lieutenant of police? A Well,
I haven't got the exact date, but I should say it was on or
about January 1, 1919.

Q And before that what did you do? A Why, before that, I
was a policeman, known as a patrolman, of the New York, New Haven
& Hartford.

Q Watching cars? A Well, at times. My principal work
is investigating claims.

Q You were an investigator? A Yes, that is my principal
work.

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Q How long have you known Roberts? A Well I --

Q Your principal work was investigating claims, as I understand? A Yes, and general work, in addition to investigating.

Q How long have you known Roberts? A Well, to the best of my knowledge I think it was in 1914 that I first met him.

Q Where? A In the treasurer's office of the New York, New Haven & Hartford railroad.

Q And how long was he working there? A I should judge from 1914 to 1918, if my memory serves me right.

Q And then he resigned, to enlist in the Army? A I can't be sure on that. I couldn't say.

Q Did he have charge of O.K'ing your vouchers? A No, sir, not our vouchers. Our vouchers is O.K'd at New Haven.

Q Well, did he have charge of paying them? A Not to my knowledge. I don't know what his duties were at the treasurer's office. Mr. Hall would be better familiar with that than I am.

Q When was the first time anyone spoke to you about this case? A When was the first time?

Q Yes. A Why, on the 20th of January.

Q On the 20th of January? A Yes, sir.

Q Was any report made to the Police Department of the City of New York? A I don't know.

Q About the case? A I don't know.

Q Did you inquire, to find out? A I did not.

Q Did you seek the assistance of the Police Department of

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this city, to -- A Not in my investigation.

Q To investigate the case? A No, sir.

Q At what time were you given this case to investigate, on the 20th of January? A At what time?

Q Yes. A Well I heard of the hold-up on the 20th of January, according to your other questions, and I was assigned to investigate it at noon on the 21st.

Q And who assigned you? A J. R. McMahon instructed me to report to the inspector of the Secret Service of the United States.

Q I only asked you who assigned you? A J. R. McMahon, chief of police of the road.

Q And the first you heard of the case was on the 20th?

A Yes, sir.

Q Did you speak to Lewis on the 20th? A No, sir.

Q On the 21st? A Yes, sir.

Q And you spoke to him about the case? A I went and asked him the circumstances of the holdup. That is all.

Q Did he mention any names? A No. He gave me a description of the two, and the circumstances.

Q But he didn't mention any names, you say? A No, sir.

Q And on the 21st you were assigned to the case, about noon?

A Yes, sir, about noon.

Q And who gave you Roberts's address? A Why I got it off the records down there.

Q The New Haven records? A Yes, sir.

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Q And you went to his home? A Yes, sir.

Q Where his father and mother were? A Yes, sir.

Q And what time of the day was that? A Well, I guess I arrived there about five o'clock.

Q And, when you came in, you greeted Roberts? A Yes, sure.

Q And he greeted you? A Yes, sir.

Q Friendly? A Yes, sir.

Q He had known you for four years? A Yes, sir.

Q He knew you were a lieutenant of police of the New York and New Haven Railroad? A Well he knew I was connected with the Police Department of the company.

Q And he introduced you to Flynn? A Yes, sir.

Q He said, "Mr. Ryan, meet my friend, Harry Flynn?" A Yes.

Q Did Flynn have his hat and coat off? A He had his hat off but he had his undercoat on, as I am now.

Q Was there anything suspicious about that? A Well, no, not that I know of. I didn't say it was anything suspicious.

Q And then you asked Roberts to take a walk with you?
A Yes, after Flynn had left.

Q Did Flynn bid you good night? A He bid all hands good night. He said, "Good night all."

Q Did he shake hands with you? A No, sir.

Q Did he say he was glad to meet you? A Yes, sir.

Q And then Flynn left? A Yes, sir.

Q And then you asked Roberts to take a walk with you?

A Yes, sir.

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Q And he took a walk with you? A Yes, sir.

Q And did you tell Roberts that you suspected him of the assault on Lewis? A No, sir.

Q You were suspecting him; weren't you? Yes or no? A Yes.

Q And then you suddenly asked him where he was on the 12th of January? A I asked him -- I said Inspector Moore wanted to know where he was.

Q But you didn't say that you wanted to know? A No, sir.

Q And then he said he couldn't recollect where he was on the 12th of January? A Yes, sir, he said that.

Q And did you then tell him that he was suspected of assaulting Lewis? A No, sir.

Q During your -- is that all of the conversation? A Oh, we had a little conversation about an occurrence that took place a few years previous after that, but nothing pertaining to this case.

Q I am talking about this case only. A No, sir; only, as I say about giving him the telephone number of my home.

Q And then you left him? A Yes.

Q Did he ask you why you wanted to know where he was on the 12th of January? A Did he ask why?

Q Yes. A I told him Inspector Moore wanted to know of this information.

Q Did he ask you why Inspector Moore wanted to know? A Yes sir

Q And what did you say? A I told him I didn't know.

Q But you did know; didn't you? A Yes, of course I did.

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Q And when you said you didn't know, you were not telling the truth? A Why should I, under the circumstances? I had him as a suspect at the time.

Q I ask you again, did you know you were not telling the truth when you said you didn't know? A Of course I knew.

Q Oh, you did know? A Yes.

Q And then you were not telling the truth when you said you did not know?

THE COURT: Well, that can be inferred by anybody, if he said he didn't know, and did know.

MR. SOLOMON: Very well sir.

Q Did you meet Mrs. Roberts there? A Yes, sir.

Q Was Mr. Roberts there? A I don't know that he was there. I don't remember that. Yes, he was there.

Q Fred's father? A But I don't remember if anyone introduced me to him.

Q Did you speak to Mrs. Roberts? A Yes, sir.

Q Who introduced you to Mrs. Roberts? A Oh, her son Freddy. I met her before, about an occurrence that took place two years ago.

Q Were you introduced to Mr. Roberts? A No, I don't think I was. I don't remember that I was. I saw him in the house there.

Q And that is all the conversation you had with Roberts until he was arrested; is that right? A Yes, sir.

Q Now, you arrested him on the 23rd of January? A I didn't

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arrest him at all. I brought him down to the Grand Central depot, on the 23rd.

Q Did he go voluntarily? A Yes, sir.

Q When did you call at his house? A Nine o'clock on the morning of the 23rd.

Q And did you meet him there? A Yes, sir.

Q Did you have a conversation with him? A Just a few words.

Q And you told him who wanted to see him? A Yes, sir, I told him Inspector Moore would like to see him at his office, and he said that he couldn't go, because he expected a telegram about a position, about twelve o'clock, and I said I would call back at about one o'clock, and go with him; and I did call back at one o'clock, and he went with me.

Q Is that the day he was identified, A Yes, sir.

Q Whose room did you take him to, when you brought him down to the Grand Central? A Inspector Moore, of the Secret Service Section.

Q Was he identified in that room? A Yes, sir.

Q Who was there? A Chief McMahon and myself, in the case of Roberts.

Q And Roberts was there, too? A Yes, sir.

Q The defendant? A Yes, sir.

Q Anybody else? A Well, the party that come in to identify him.

Q But at that time was anybody else there? A No.

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Q When Roberts came in, did he say hello to Mr. McMahon?

A I can't recall whether he did or not.

Q Did he say hello to Inspector Moore? A He was not there when we arrived there.

Q Only you and McMahon and Roberts? A Yes, sir.

Q And you can't recall whether Roberts said hello to Mr. McMahon or not? A No, sir.

Q You were watching Roberts very closely, to see whether he was acting suspiciously; weren't you? A Not particularly.

Q You were not interested in his conduct at all? A The only time I was interested in his conduct was when I first interviewed him in his home.

Q And after that you were not interested in his conduct? A No.

Q When you called there, and took him to Inspector Moore's office, on the 33rd, did you tell him the purpose of the visit to the inspector? A No, sir.

Q And he didn't know what he was going to see Inspector Moore about; did he? A Not as far as I was concerned.

Q Did Mr. McMahon speak to Roberts when you brought him in? A He did say something to him. I can't recall what he did say.

Q Did Roberts sit down? A Yes, sir, he was sitting down.

Q Next to Mr. McMahon? A Mr. McMahon sat between Roberts and I. Roberts was over towards the window.

Q And McMahon talked to him in your presence, but you don't

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recall what conversation was had? A Well I didn't pay much attention to the conversation.

Q Then who was brought into the room? A Miss Thierich, a witness to the attempted assault and robbery.

Q Who brought her in? A I did.

Q Did you have any talk with her? A No, sir.

Q Did you tell her the purpose of your call? A No, sir.

Q Did you say anything to her? A No, sir.

Q You brought her into McMahon's office? A I would like to straighten you out on that, counsellor.

Q Now just answer my questions, Mr. Ryan. I asked you a simple question, whether you talked to her, and you said you did not? A I certainly did not.

Q And you brought her into Mr. McMahon's room? A Yes, sir, brought her to the office, from Mr. Hall's office.

Q And when she was brought in, did she see Roberts there? A Yes, she seen him in the room.

Q Did she say anything as soon as she saw him? A She looked him over.

Q Did she say, "That's the man?" A Yes.

Q In the room? A Yes.

Q Now, Miss Thierich testified that she said nothing in that room. Is she mistaken? A Well, I understood that she identified him.

Q I said Miss Thierich testified that she said nothing in

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the room, in the presence of Roberts. Is she mistaken? A I can't recall that, whether she is or not. I know she come in the room, and looked him over, and went out.

Q You said, a moment ago, she said, "That's the man, after she saw him; didn't you?" A Well, that's what I understood her to say, yes.

Q Now, I say Miss Thierich testified that she said nothing in that room, and I ask you whether she is mistaken? A Well, I don't say that she was mistaken, but I understood her to say, "That's the man."

Q Did she say that as soon as she saw Roberts? A No, sir, she looked him over very carefully.

Q How did she do that? A She asked Mr. McMahon to have Roberts stand up, and also sideways, in profile, and then I understood her to say, "That's the man," and then she walked out.

Q Well, the reason why she asked to see Roberts in profile, sideways, was because she saw him sideways when the assault was committed?

(Objected. Objection sustained. Exception.)

Q Did she say that she saw Roberts only sideways when the crime was committed? A I had no such conversation with her, whether she saw him in front of sideways.

Q Who identified Roberts first? A Miss Thierich.

Q When she came out, was Lewis waiting in the outside room?

A I couldn't say.

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Q You were inside? A I was inside.

Q And who brought Lewis into the room? A He was called in.

Q Who went for him? A Nobody. Only the door was open, and he was called in by the Chief.

Q Well, who told him to be there at that time? A Why, the chief did.

Q Mr. McMahon? A Yes, sir.

Q And did you go for Mr. Lewis? A Now you won't let me explain it to you. I was sent by Chief McMahon to bring both of them.

MR. SOLOMON: Now I move to strike that out, if your Honor please, as not responsive.

THE COURT: I will allow it to stand. I do not see how it has any materiality, anyway. It seems to me we are wasting a lot of time.

MR. SOLOMON: I respectfully except to your Honor's ruling, and to your remarks.

THE COURT: You have an exception.

BY MR. SOLOMON:

Q Did you bring Mr. Lewis to Mr. McMahon's room? A No, sir.

Q Now, when Lewis came in, did he say anything? A I didn't hear him say a word.

Q You didn't hear him say anything? A No, sir. He just looked at Roberts.

Q He just looked at Roberts? A Yes, sir.

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Q And, after he looked at Roberts, did he say anything?

A Yes, sir, he bowed his head, as much as to say he was the man (illustrating).

Q Did he shake hands with Roberts when he came in? A I can't recall whether he did or not. I don't remember seeing him do that.

Q Did he say hello to Roberts? A Well, I think he did.

Q And did Roberts shake hands with him? A Yes, sir.

Q Did Roberts say to Mr. Lewis, "How are you, Mr. Lewis?"

A I don't remember that. I couldn't say that.

Q Well, he greeted him as knowing him, anyway? A Yes, sir.

Q And where was Miss Thierich at that time? A Outside.

Q Was she waiting outside? A Well, I couldn't say whether she was waiting. She was outside. The identifications was made separately.

Q You couldn't say whether she was waiting outside then?

A No, sir, I couldn't, counsellor.

Q When Lewis came in, did Roberts do anything outside of greeting him? A No, not that I know of.

Q Did Roberts stand up? A Yes.

Q Who asked him to stand up? A Chief McMahon.

Q Did he turn around? A Not in the last identification. I don't think so.

Q Roberts didn't turn around? A No, sir.

Q Did he put his hat on? A I think he did, yes.

Q Who asked him to put his hat on? A Why, I think it was

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a suggestion from Lewis to the Chief.

Q And then after Lewis put his head on, and Roberts stood up -- I mean after Roberts did both of those things -- Lewis walked out? A Yes, sir.

Q Did you go out and talk to him? A No, sir.

Q Were you present when Flynn was identified? A What's that sir?

Q (Question repeated) A No, sir.

Q So that you don't know what happened when Flynn was in the room, and was identified? A No, sir, I couldn't tell you the first thing. I wasn't in there.

Q Have you ever seen identifications made, before the 23rd of January, 1920? A I can't say that I have.

Q Do you know the customary and usual way of making identifications by the Police Department of the City of New York? A No, I am not familiar with them.

Q And you have been a policeman 11 years for the New Haven, and you are not familiar with them, familiar with how identifications are made by the police department of the city of New York? A No, sir, I never had any occasion of this kind, before.

Q How many cases were you working on when you were assigned to this case? A Why, I have always half a dozen or a dozen investigations to work on, all the time.

Q Did you make any report in writing of your investigation? A No.

Q You did not? A Oh yes, of course I did. I didn't under-

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stand you.

Q To whom did you make that report? A ^{To} ~~The~~ Chief J. R. McMahon.

Q Who suggested this identification to you? A To me?

Q Yes. A I didn't participate at all in the identification. The Chief handled that himself.

Q Now, on the 23rd -- oh, after the identification was made, who told Roberts he was under arrest? A Why, I don't know. I was in Hoboken, I think, at the time, but I know Detective Jones, of the 51st Street police station house was there. He was there when I got back.

Q When did you go to Hoboken? The same day? A Yes; I think I left for Grand Central about 4:30.

Q And you went down for Flynn? A Yes, sir.

Q And Roberts told you where you could find Flynn? A Yes, sir.

Q Do you know whether McMahon told Roberts that he was suspected of this crime? A I never heard him say it.

Q And you don't know whether he told him or not? A No sir.

Q But, up to this time that he was identified, you haven't told him? A No, sir.

Q And then you asked Roberts where Flynn was, and he told you? A The Chief asked him; I did not. And then the Chief ordered me to go over, and tell him to come over.

Q Now, where did you find Flynn? A Why, over in the office-- I think it is Pier 2,-- of the United States Embarcation Depart--

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ment, in Hoboken.

Q Was he in the office when you got there? A Yes, sir, he was sitting in the office.

Q What did you tell him? A Why, I met this man who was his superior --

Q No. I ask you what you told Flynn? A He said hello to me, and I said hello to him, when I went into the room.

Q Did you tell him anything else but that? A No, sir, not at that time. We just greeted each other.

Q And he went with you; didn't he? A Yes, sir. He got his hat and coat.

Q And you told him nothing? A I told him nothing? I asked him some questions.

Q In the office? A No, sir, not in the office.

Q You didn't tell him anything in the office? A No, sir.

Q And he got up and walked out with you? A Yes, sir, certainly.

Q Without telling him anything, or asking him anything?
A Yes, sir.

Q Now, when you got out of the office, did you tell him anything then? A I asked him --

Q No. Before we come to that, did you tell him any reason why you wanted to see him? A Yes. I said Freddy Roberts wanted to see him; that there was a little investigation going on.

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Q Well, Freddy Roberts didn't want to see him; did he?

A Well, that's the way I understood it. He told the Chief where I could get him. When he was asked by the Chief, he told the chief where he could see him, find him.

Q Well, that was because the Chief wanted to see him?

A Yes, sir.

Q Well, Freddy Roberts didn't want to see him; did he?

A Well, I presume he did.

Q Well, he didn't tell you to go and get him; did he?

A No, sir.

Q And, although he did not, you said to him, "Freddy Roberts wants to see you?" A Yes, sir.

Q Now, when you got outside, you asked him where he was on the 13th of January? A I told him that the records showed he wasn't working.

Q (Question repeated). A Yes.

Q And he said he was sick, that day? A Home, sick, yes.

Q Where did this conversation take place? A Why, I asked him that question on three different occasions. The first was between the Embarcation Department and the Railroad tube in Hoboken, the tubes, or whatever you call it. And the second time was when we were sitting down on the train, coming across, one of the tube trains, Hudson Terminal.

Q And where was the third time you asked him that question?

A On the way over to New York.

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Q The first time you asked him the question was when you were going to the train? A Yes, sir; from the Embarcation Department.

Q And the second time was in the tubes? A Yes, sir; while riding in the tubes, of course.

Q And the third time when you were coming over to New York? A Yes, sir; and I asked him the same question each time.

Q Now, you testified in the Magistrates' Court; didn't you? A Yes.

Q You remember that you didn't testify to this, when you were first called in the Magistrates' Court; don't you, about this statement by Flynn, about Flynn making the statement that he was home, sick, on the 13th? A I asked him a question, and he answered it. He made no statement.

Q Oh, I see the distinction that you draw. That was not a statement? A Well I don't know. It was an answer to my question, counsellor.

Q But, in the Magistrates' Court, when you first testified, you didn't testify to that? A As far as I recall, that was my testimony, yes.

Q Did you or did you not so testify, when you were first called in the Magistrates' Court, that you asked Flynn where ymm he was on the 13th, and he said he was sick, at home? A Yes, sir.

Q You did testify to that? A Yes, sir.

Q No question about it? A No, sir. As far as my memory

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serves me, that was my testimony in the Magistrates' Court.

Q Well, we will ascertain that, later. Now, was anyone with you when you went down for Flynn? A Yes, sir.

Q Who? A Lieutenant Charles A. Rizzo, of the Police Department of the road, the same as myself.

Q And was this statement made by Flynn in his presence?
A Yes, sir.

Q And did Rizzo testify to that when first called in the Magistrates' Court? A Well, we were excluded. I don't know what his testimony was.

Q Are you working for the New Haven now? A Yes, sir.

Q You have talked with Mr. McMahon about this case; haven't you? A Well I have told him it was on trial on two or three occasions; nothing more than the case was on for trial. We didn't discuss the case at all.

Q Did you discuss it with Mr. Lewis? A No, sir.

Q Or Miss Theirich? A No, sir.

Q At no time? A No, sir, I didn't discuss the case with no one on the subject.

REDIRECT EXAMINATION BY MR. TEKULSKY:

Q When you went over to Hoboken, did you see Major Woolworth over there? A Yes, sir.

Q Was Flynn present at the time? A Yes, sir.

Q And did you have a conversation with Major Woolworth and Flynn?

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MR. SOLOMON: Objected to.

THE COURT: You may state what you said to Flynn or what he said to you. Objection overruled.

MR. SOLOMON: Exception.

A No, sir.

BY MR. TEKULSKY:

Q Was Flynn present at the time? A No, sir.

MR. TEKULSKY: That is all.

MR. SOLOMON: That is all.

CHARLES A. RIZZO, of 152 Beechwood Avenue,
New Rochelle, a witness called on behalf of the People,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TEKULSKY:

Q And what is your employment, Mr. Rizzo? A As a lieutenant
of police for the New York, New Haven & Hartford Railroad Company.

Q And how long have you been employed by the New York,
New Haven & Hartford Railroad Company? A Eleven years.

Q And were you doing police work all that time? A Yes, sir.

Q Do you know the defendant Roberts? A Yes, sir.

Q Did you know him as an employe of the New York, New Haven
& Hartford Railroad Company? A Yes, sir.

Q And have you seen him very often? A Yes, sir.

Q Did you know Flynn prior to the time, prior to the 23rd
of January of this year? A Yes, sir.

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Q When did you first see him? A January 23rd.

Q But did you know him prior to that day, I say? A Nosir.

Q Where did you first see him? A At the Embarcation Base at Hoboken, New Jersey.

Q And who was with you when you saw him? A Lieutenant Ryan.

Q The last witness? A Yes, sir.

Q And did you have any conversation with Flynn? A Yes, sir.

Q And what was the conversation? A When we left the base, and on the way to the tube, Lieutenant Ryan asked Flynn where was he on January 12th, and he said that he was home, sick in bed. And he claimed that he was off on the 12th, 13th and 14th.

Q Where was that question asked him? A As soon as we left the gate of the Embarcation Base, Mr. Flynn asked Mr. Ryan what he was up against, and Lieutenant Ryan told him that a friend of his, named Roberts, wanted to see him at the Grand Central station.

Q And did you have any further conversation with Flynn on the way to the Grand Central station? A We had the same conversation, asking him where he was on that day, and he said he was off on the 12th, 13th and 14th.

Lieutenant Ryan asked him where he was on those days, and he said he was off. And Lieutenant Ryan asked Flynn if he saw Roberts on the 12th, and he said, "Yes, I was up to his house, around about six o'clock in the evening."

Q And was there any further conversation before you got to

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the Grand Central Station? A That was the only conversation we had, from the Embarcation Pier until we took the tube.

Q Did you have any conversation in the tube, on the way over? A They had, yes, sir.

Q What was the conversation? A The same conversation.

Q Did you have any other conversation? A No, nothing more.

Q What time did you get to the Grand Central Station?

A About six o'clock, I believe.

Q Did you see Roberts there? A Yes, sir.

Q Was that the first time you had ever seen Roberts?

A No, I've saw him before..

Q When had you seen him before? A Oh, six or seven years ago.

Q I mean since the 12th of January of this year? A Well, I saw him previous, when I went after Flynn.

Q Where did you see him then? A In the Grand Central.

Q The same day you went to get Flynn, you saw Roberts in the Grand Central station? A Yes, sir.

Q And, prior to that date, you hand't seen him since he was working for the railroad company? A No, sir.

Q Is that right? A Yes, sir.

Q Did you have any talk with Roberts? A Yes, sir.

Q What did you say to him? A The talking was that Chief McMahon asked me if I knew Roberts.

MR. SOLOMON: I object to that, and move to strike

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that out.

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

THE COURT: Objection sustained. Strike it out.

BY MR. TEKULSKY:

Q Now did you have any talk with Roberts? A No, sir.

Q And were you present at the time Miss Thierich and Mr. Lewis came into the room, when Roberts was identified? A No, sir.

Q Or when Flynn was identified? A No, sir.

CROSS EXAMINATION BY MR. SOLOMON:

Q How long have you been working for the New Haven? A 11 years.

Q And you are an investigator for the railroad? A I am doing general work.

Q General work? A Everything.

Q What do you mean by everything? A I mean everything -- investigations, looking after wrecks, train wrecks, and looking after things in the yard, in general, thieves and everything.

Q You were sent down with Ryan to bring Flynn up to Mr. McMahon's office; weren't you? A Yes, sir.

Q You lost Ryan and Flynn on the way up; didn't you? A Yes, I did.

Q So part of the time you were not with Ryan and Flynn? A I lost them when I got off at the tube, and I caught them at the subway, in about five minutes.

Q Outside of the question that Ryan asked Flynn, where he was on the 13th, there was no other question asked Flynn? A Yes,

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that's all. He said to be sure of that.

Q And he repeated that question how many times? A About three times.

Q About three times? A Yes, from my estimation.

Q Was it four times? A Three or four times.

Q And he said, each time, "where were you on the 13th of January"? A Yes, sir.

Q And Flynn said, each time, he was home, sick? A Yes, sir.

Q And did Flynn ask Ryan why he asked that question three times? A No, sir, he didn't ask him nothing.

Q And that is all the conversation he had with Flynn? A Yes.

Q Did you talk with Ryan about what you were going to testify to here, today? A Why naturally, certainly.

Q And he talked with you? A Yes, sir.

Q Did you talk with McMahon? A Yes, sir.

Q Did you talk to the New Haven attorney? A No, sir.

Q He is outside here; isn't he? A Yes, I seen him outside.

Q Did you speak to him? A I spoke to him, but not relative to this case.

J A M E S R. M C M A H O N, of New Haven, Connecticut, a
witness called on behalf of the people, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. TEKULSKY:

Q Mr. McMahon, are you connected with the New York, New Haven
& Hartford Railroad? A Yes, sir.

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Q How many years have you been connected with that company?

A Eighteen.

Q And in what capacity? What designation have you? A Chief Special Agent.

Q And you have charge of special agents; have you not?

A Yes, sir.

Q And is their work in connection with the recovery of stolen property, and making investigations? A Yes, sir.

Q And having general control over the property in the yard? A Yes, sir.

Q Do you remember the 23rd of January of this year? A Yes, sir.

Q Were you in New York on that day? A Yes, sir.

Q Did you know the defendant Roberts prior to that day?

A Yes, sir.

Q How long had you known him? A I venture to say about four or five years.

Q Had you seen him frequently during that time? A I haven't seen him in two years, up until that day, I don't think.

Q Now, where did you see him on that day? A At the Grand Central Terminal.

Q What part of the building? A In the Secret Service office of the Railway Administration.

Q Who came in with him? A He came in alone -- with Mr. Ryan, I mean.

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Q And what time was it? A I should judge it was about three o'clock, between two and three.

Q And who was in the room when Ryan and Roberts walked in?
A I think Inspector Privette was there, and Mr. Hummel, a clerk.

Q Well now, do you remember Miss Thierich coming into the room, that day, when Roberts was there? A Yes, sir.

Q Who was in the room at the time she came in? A Mr. Ryan was there -- do you mean when she came into the room where Roberts was?

Q Yes, where Roberts was? A Mr. Ryan and Mr. Hummel.

Q He is a clerk in the employ of the Railroad Company; is he? A No, the Secret Service of the Railway Administration.

Q In what part of the room was Roberts, after he entered?
A He was sitting across the table or desk from where I was sitting, on the uptown side.

Q How big was the room? A I should judge about thirty feet square.

Q How long had he been in the room before Miss Thierich came in? A I think he had been in there about 35 minutes.

Q Had you had any conversation with Roberts? A Yes, sir.

Q Did you tell him what he was there for? A I questioned him, and told him he was under suspicion regarding a crime that had occurred there on January 13th.

Q Did you tell him what the crime was? A I did, later, yes.

Q Not at that time? A No, sir.

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Q What did he say? A Well he said -- I asked him, "Now, it's up to you. It's a serious matter, Fred, for you to account for yourself on or about that date."

And he said, "I couldn't remember where I was, yesterday, I can't remember where I was."

So, afterwards, when he had been identified, and Miss Thierich come in, and looked him over very carefully for about five minutes, I should judge, she walked out. So I went out, and she told me--

MR. SOLOMON: I object to that.

THE COURT: Objection sustained.

BY MR. TEKULSKY:

Q She went out, and she told you something, and then what happened? A I went back in the room, and inspector Privette-- he is an attorney -- I asked Roberts if he cared to make a statement about his movements on or about that date, and Privette was prepared to take his statement, and I told him he had better inform him of his rights, that any statement he might make will be used against him, and he refused to make any statement, and gave his reason, in the absence of counsel.

Q That is what Roberts said, after he had been warned of his rights? A Yes, sir.

Q And after that, did he make any statement? A No, he didn't.

Q Now, while Miss Thierich was in the room, tell us what happened? A Miss Thierich carefully looked him over.

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MR. SOLOMON: I ask that that be stricken out, as a conclusion, that she carefully looked him over.

THE COURT: Well, he has already testified to that.

Why ask him again. The word carefully may be stricken out.

BY MR. TEKULSKY:

Q And did she have any conversation with him? A No, sir.

Q Was anybody else other than Roberts shown to her? A No, there wasn't.

Q Now, were you present when Mr. Flynn was in the Grand Central station, on the same day? A Yes, sir.

Q Was that the first time you had ever seen Flynn, the defendant Flynn? A Yes, sir.

Q Who was in the room when Mr. Lewis came in? A You mean to identify Roberts or Flynn?

Q I will withdraw that question. Now, bring your attention again to Roberts. Who was in the room when Lewis came in, and Roberts was in the room? A Mr. Ryan and Mr. Privette. Now I recall, Ryan was in the room when Miss Thierich was there.

Q Now, when Mr. Lewis came in, was that prior to the time you had a conversation with Roberts, when Privette warned him of his rights? A No, that was afterwards.

Q After you had warned him of his rights Mr. Lewis came in? A Yes, sir.

Q Now, what happened when Mr. Lewis came in? A He came in, and carefully looked him over.

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MR. SOLOMON: I object to that, and ask that the conclusion "carefully" be stricken out!

THE COURT: Yes, strike it out.

BY MR. TEKULSKY:

Q What did he say or do? A He said that Roberts was the man that struck him.

Q What did he do before that? A Why, he looked Roberts over very carefully --

MR. SOLOMON: I object to that and move to strike that out. I object to it.

THE COURT: Yes, objection sustained. Strike it out.

BY MR. TEKULSKY:

Q Now, what did he do? A Lewis came in, and took a chair at the desk, and Roberts was sitting on the opposite side of the desk, and, after he had looked at him, he told me he was the man that had struck him.

Q And what did Lewis do? A Nothing.

Q Did he do anything outside of looking at him? A No, sir.

Q And how long was he in the room? A I should judge he was in the room five or six minutes.

Q Did he have any conversation with Roberts when he came into the room? A He spoke to Roberts.

Q What did he say to him? A "Hello, Fred."

Q And what did Roberts do? A He spoke to Mr. Lewis. I think he called him Mr. Lewis.

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Q And were you present at the time Flynn was brought over there? A Yes, sir.

Q How long after was that? A I think that was about 5:30 or a quarter of six.

Q Now, who was in the room when Miss Thierich came in there? A Inspector Previtte and myself.

Q Did she come in before Lewis? A Yes, sir.

Q And just you and Privette were in there? A Yes, sir.

Q Now, what happened when Miss Thierich came in the room where Flynn was? A Why, she identified Flynn.

Q No. Tell us what happened? A She came in, and looked at Flynn, and said she had recognized him when he walked through the outer office.

Q Did she say that in Flynn's presence? A Yes, sir.

Q And what did Flynn say? A I don't think he said anything.

Q Did you have any conversation with Flynn? A Yes, I did.

Q Was this after Miss Thierich left the room or before?

A It was after.

Q What did you say to Flynn? A Well I told him -- I asked him regarding his movements on January 12th, and he said that he was home, sick, January 12th, 13th and 14th.

I again asked him if he was positive sure of the dates and he said yes.

Q Did you tell him what he was there for? A Yes, sir.

Q What did you say to him? A I told him that he was suspected of a crime that had been committed, a holdup, on January 12,

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and he denied that he was there.

Q And after that did Mr. Lewis come into the room? A Yes, sir, Mr. Lewis came in.

Q And who was present at the time? A Inspector Privette and myself.

Q And what happened when Lewis came into the room? A Mr. Lewis told me that he couldn't identify Flynn. He said that, when he was struck, and knocked down, when he recovered himself, all that he seen of the second man was his back, going around the corner.

Q So he said he was unable to identify Flynn? A He said he was unable to identify Flynn.

Q And after that did you turn these two defendants over to the police? A Detective Jones was in the office. He had been there for an hour.

Q Well, he wasn't in the room when these men were identified? A He was in the room, talking to Roberts, when Flynn was brought into the other private office.

Q Was he present when either of these two people came in to identify Roberts? A No, he was not.

Q Or when they came in to identify Flynn? A No, sir; he talked to them in the outer office.

Q And after this did you turn the two defendants over to Detective Jones, of the New York Police Department? A Yes, sir.

MR. TEKULSKY: You may examine.

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CROSS EXAMINATION BY MR. SOLOMON:

Q Now long have you been employed by the New Haven, Mr. McMahon? A 18 years, next month.

Q In what capacity? A As a special agent.

Q Doing what character of work? A Well, I worked as a foreman of a department.

Q You were employed as a special agent doing what kind of work? A Doing police work.

Q And have you arranged, and been present at many identifications of persons suspected of crime? A I have.

Q Do you know the custom and rule of the Police Department in making identifications? A I do.

Q They line up a number of men? A After they are placed under arrest, yes.

Q Well, do they ever line them up before they are placed under arrest? A I never knew them to do so.

Q Do you think it was a fair thing to bring these boys into your room, in the presence of your attorney, one of your policeman, and a stenographer, and have them identified by two persons?

(Objected to. Objection overruled.)

A Yes, I considered it fair under the circumstances.

Q You did consider it fair? A Yes. I didn't know either of the witnesses, and never saw them before.

Q Didn't you know Roberts? A I knew Roberts, but I didn't know the witnesses.

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Q You didn't know Mr. Lewis? A No, sir, I didn't know him. Never spoke a word to him before.

Q You didn't know that he was cashier of the New York, New Haven & Hartford railroad? A I never did. I had no occasion to come in contact with him.

Q Now, the witnesses were not concerned in the case, but these two boys were concerned in the case, and I ask you if you think it was fair to bring these boys in? and have them identified, in the presence of your attorney, and your stenographer and one of your officers? A There was no New Haven stenographer, none was present, or the road's attorney. They were government employees.

Q How long did Privette work for the New Haven? A Not a day.

Q Or the stenographer? A No.

Q But you worked for the New Haven for 18 years? A Yes.

Q And did you consider yourself an employe during the time the government took charge of the road? A yes, sir.

Q And the stenographer was a New York Central employe, or a New York, New Haven & Hartford employe? A No, sir, he was a government employe.

Q Now, did you think that was a fair way of having them identified? A I did. There was no way in which I could place them in a line up, before they were arrested. Roberts was suspected of a crime, and, if Mr. Lewis and Miss Thierich couldn't

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identify him, it was my intention to turn him loose.

Q But you didn't want to put him under arrest, until he was identified? A No, I didn't. And I don't want ever to arrest any man until he has been identified.

Q And Mr. Lewis said Roberts was the man; did he? A Yes, sir, he looked at him and said he was the man.

Q Where was Roberts? A He was sitting across the desk.

Q And he said that in the presence of Roberts? A Yes, sir.

Q And Roberts heard him say that? A Well, I couldn't say that.

Q How far was he from Roberts? A About ten feet, I should judge.

Q And where were you? A I was sitting in front of the desk, and Roberts was on one side of the desk, and Lewis on the other, at the end.

Q You heard it? A Yes, sir.

Q And Roberts wasn't any further than you were from Mr. Lewis? A Yes, he was about five feet further.

Q Lewis looked at Roberts, and said, "This is the man"? A Yes, sir.

Q Now, Lewis testified that he didn't say anything in the room when he saw Roberts. Is Lewis mistaken? A Well, I don't know whether he could be or not.

Q Did you ask Roberts to stand up, when Lewis was in the room? A Yes, sir.

Q And did you ask him to turn around? A Yes, sir.

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Q And he stood up and turned around? A Yes, sir.

Q And Lewis, after he saw Roberts's back, said, "That's the man;" didn't he? A No, I couldn't say that.

Q Well, did Lewis say, "That's the man," before or after Roberts's stood up? A Lewis looked at him, and nodded to me, and he said, "Yes, that's the man," when he was going out of the room.

Q Then he didn't look at him, and say, "That's the man."? It was only after he stood up and turned around? A I didn't ask him any questions; I didn't ask Lewis any questions.

Q But you said, a moment ago, that Lewis looked at Roberts and said, "That's the man"? A Yes, sir; when he was leaving the room. I walked to the door with Lewis.

Q And then it was after Roberts stood up, and turned around, that Lewis said, "That's the man"? A It was after Lewis had looked him over, and was leaving the room, that he turned to me and said that.

Q Was it after Roberts had stood up? A Yes, sir.

Q And turned around? A Yes, sir.

Q And put his hat on? A Yes, sir.

Q And then Lewis said that? A Yes, sir. And that was the only word he said to me in the room.

Q But it was after Roberts stood up? A Yes, sir.

Q And turned around? A Yes, sir.

Q And put his hat on? A Yes, sir.

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Q And that was the only time Lewis said, "That's the man?"

A Yes, sir; when he was leaving the room.

Q Did you have any talk with Lewis about the case up to the 23rd of January? A Never spoke a word to Mr. Lewis in my life, up until that day that he entered that office.

Q That is the 23rd of January? A Yes, sir.

Q Did you speak to Miss Thierich? A I never did.

Q Were you in charge of the case? A No, I wasn't in charge.

Q Who was in charge of the case? A Mitchell, the Chief of the Secret Service of the Railway Administration, had requested-

Q I asked you who was in charge of the case? A Well, in charge of that investigation, I was. I was assigned to it by Mr. Mitchell.

Q Well, you said you were. That is the answer? A Yes.

Q And when was the case handed over to you? A January 20th.

Q January 20th? A Yes, sir.

Q By whom? A By Inspector Moore, for the Government.

Q Was any complaint made to the Police Department of the City of New York about this case? A That I don't know.

Q Did you take any trouble to find out? A I did, afterwards.

Q Well, was any complaint made to the Police Department?
A I don't know.

Q Well, you said you tried to find out afterwards. What did you find out? That there was or was not? A I inquired off

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Detective Jones, and he said he didn't know.

Q Well, you would know, if anybody in the New Haven road made a complaint; wouldn't you? A Nobody from the New Haven made a complaint, because it was a matter-

Q No, that is an answer. A If you want me to explain, I can.

Q No, I have your answer. How long have you known Roberts?
A Me?

Q Yes. A Well, I should judge about five years. It maybe a little longer than that.

Q He was employed by the New Haven; wasn't he? A Yes, in the treasurer's office.

Q Did he have the handling of cash? A Well, I suppose he did.

Q And bonds? A Well, I don't know what he would handle.

Q You say that, during the four years, you haven't seen Lewis at all around there? A Lewis?

Q Yes. A Yes; never in my life did I know him.

Q Where is your office? A In New Haven, Connecticut.

Q And have you any office in New York? A Yes, at 132nd Street, and Willis Avenue, we have a room.

Q Do you make your headquarters at the Grand Central? A I went in the government office there.

Q Isn't that the office of the New Haven? A No.

Q Is that the government office now? A No, sir, that is the

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New York Central.

Q And it was the office of the New York Central then?

A It was the office of the Railway Administration, Secret Service Division.

Q New York branch of the Secret Service? A Yes, sir.

Q But it is now the New York Central office, since the Government turned back the railroad? A Yes.

Q And what was the name of the attorney who was in the room? I would like to get that name, Mr. McMahon? A Privette.

Q Is he employed by the New Haven now? A No, sir.

Q When Lewis came into the room, did Roberts greet him?

A Mr. Lewis spoke to Roberts.

Q He said, "Hello Fred"? A Yes, sir.

Q And Roberts said, "Hello Mr. Lewis?" A Yes.

Q Did he shake hands with Mr. Lewis? A No, sir.

Q Did Roberts ask Mr. Lewis how his health was? A I don't recall that.

Q He might have asked him that, without your hearing it? A I don't recall him saying that.

Q Did you say to Roberts not to say a word while these people were in the room, identifying him? A I did tell him not to say anything, at first.

MR. SOLOMON: That is all, Mr. McMahon.

MR. TEKULSKY: That is all.

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W I L L I A M J. J O N E S, of the 29th Precinct, Detective Division, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TEKULSKY:

Q Are you the arresting officer in this case? A I am.

Q Were you at the New York Central -- at the Grand Central Terminal building on the 23rd of January of this year? A Yes, sir.

Q Did you see the defendant Roberts there? A I did.

Q And the defendant Flynn? A Later on.

Q You saw Roberts first? A yes, sir.

Q Did you have any conversation with Roberts? A I did.

Q What was the conversation? A I informed him -- I identified myself to him, and informed him what I was there for.

I told him I had been informed that he was identified as being one of twomen who tried to hold up and rob this cashier of the receipts of that day. At that time I didn't know the exact figures.

And he said that he had been informed of that same thing by Chief McMahon and some of the other officers.

I then asked him if he wanted to have anything to say to me, and he said, "I don't know anything at all about it."

And I said, "What were you doing that day?" Can't you tell me where you were or what you were doing?" And he said, "No, I can't recall."

I stood there for awhile, and again asked him if he could re-

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call what he was doing, that day -- oh, I said, "first of all, it is best, if you are in doubts about it, don't say anything, until you are, and, when you are, let me know about it."

And he said, "The best of my recollection is that I was over in Brooklyn --" I think he said at Pier 3 or 4 -- "aboard of the Nansimong or the Princess Niduke." I asked him what time it was, and he said he couldn't just say.

I asked him if it was morning, noon or evening, and he said he couldn't say.

And I then informed him that he should have known whether it was around noon, because the factory whistles around there would blow, and he said no he couldn't tell.

And I asked him what he did after that, and he said he went home.

I again asked him if he had any other information he could give me, and he said, "None at all," that that was the best of his recollection, that he was not positive what he had done that day or where he had been that day.

Q Did you ask him whether he had been at the Grand Central depot on that day? A Yes, sir; and he said not that he remembered.

Q Did you place him under arrest on that day? A Yes, sir.

Q And did you also arrest Flynn? A Yes, sir.

Q Did you have any conversation with Flynn? A Yes, sir.

Q What was the conversation? A I informed Flynn of the

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information that Roberts had given me, and I informed him of the charge, and I asked him where he was on the 12th, and he said, "I can't say where I was. I may have been sick, and I may have been off. I was off one or two days. I don't know whether it was that week or not, but I think I was off, sick."

And I said, "You think, by waiting awhile, you could probably recollect it?" And I did wait for him a short while, and he said, no, he couldn't recall whether it was that week, or a week before or after.

Q Did you have any other conversation with either of the defendant? A When they were arraigned in the Magistrates' Court on the 24th, the defendant Roberts informed me that, after speaking to the Defendant Flynn, they had come to the conclusion, and he knew then, that Flynn was working aboard the boat, that day.

Q What is that? A Roberts said Flynn was working aboard the boat, that day, but he didn't explain anything that he had done, or where it was.

Q Was that all the conversation you had with either of them?

A Yes, sir.

CROSS EXAMINATION BY MR. SOLOMON:

Q Did they seem to be dazed when you arrested them? A No, sir. In fact, I realized the seriousness of it, and I told him to take his time.

Q Well, did they seem to be surprised, dazed and upset?

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A Well, naturally they would seem to be.

Q And they both denied any connection with this crime; didn't they? A Yes; they said they knew nothing of it.

MR. SOLOMON: That's all.

MR. TEKULSKY: The People rest, your Honor.

MR. SOLOMON: I move for the acquittal of the defendants, on the ground that the People have failed to prove their case beyond a reasonable doubt, have failed to prove that the crime was committed, and that these defendants committed the crime.

THE COURT: Motion denied.

MR. SOLOMON: Exception.

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THE DEFENSE:

C H A R L E S H A Y E S, of 110 Erie Street, Jersey City,
a witness called on behalf of the defense, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q What is your business, Mr. Hayes? A Stenographer, clerk.

Q And where are you employed? A At present I am employed
by the American Express Company.

Q The American Express Company? A Yes, sir.

Q And how long have you been employed by the American Ex-
press Company? A Three weeks.

Q Sir? A Three weeks.

Q Where were you employed on January 13, 1930? A On the
United States Army Transport Nansimung.

Q Did you see Captain Brickley that day? A Yes, sir.

Q What time of the day was it? A It was about one o'clock
in the afternoon.

Q With whom did he come aboard on that day? A He came
aboard with Quartermaster Clerk Flynn.

Q Do you mean Harold A. Flynn, one of the defendants?

A Yes.

Q What day of the week was it? A It was a Monday.

Q And have you seen Captain Brickley and Flynn aboard that
transport, before that day? A Yes, I saw them on board, on the
previous Saturday.

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Q The previous Saturday, the 10th? A Yes, sir.

Q And you said you were a clerk on the transport? A I was a Quartermaster's Clerk.

Q And how long had you been a Quartermaster's clerk on that Transport? A From the 7th of January.

Q And who else was there, that day? A There was Clerk McDermott.

Q And what was he doing there? A He was assigned on the vessel.

Q What was his position? A Quartermaster's Clerk/

Q Did Captain Brickley and Flynn come into the office of the transport? A Yes, sir, they did.

Q And who introduced McDermott to Captain Brickley? A Mr. Flynn, I believe.

Q Was it the first time Brickely met McDermott? A Yes, I think it was.

BY THE COURT:

Q What day was that? A Monday.

BY MR. SOLOMON:

Q And what happened then? A After they came aboard, Captain Brickley and Quartermaster Clerk Flynn came aboard, we went around the ship, examining different state rooms.

Q Who did that? A The four of us.

Q Who were the four? A Captain Brickley, Quartermaster Clerk Flynn, McDermott and myself. We were preparing to go to sea, and Captain Brickley was to pick out his stateroom, and

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also one for his clerks.

And the reason for Mr. Flynn being aboard the vessel, that day, was to pay off some men. We had no funds aboard the vessel, and there were a couple of men on board who didn't desire to make that trip, and it was necessary for me to call them into the office, and have them paid off, those men.

And there was a number of the men sent to New York, and those who didn't go to New York come back to the ship, and they requested their money; and it was for that reason that Mr. Flynn came to the ship, with the payroll, to pay off these men. That was the intentions of him coming, that day.

Q Now, McDermott, you and Flynn and Captain Brickley went around, looking at the staterooms? A Yes, sir.

Q What was the object of that tour? A To get the stateroom ready to go to sea.

Q And to assign them to the various clerks and officers?
A Yes, sir.

Q Now, how big a ship is the Nansimong? A She is 574 feet in length.

Q And how many decks has it? A It is five decks, I think.

Q And what is her tonnage? A 12,000, I believe.

Q Now, did the captain inspect the ship, too? A Yes, sir.
We not only engaged in going around to the staterooms, but we went to the lower decks.

Q Well, tell us what you did? A You see the vessel had

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been laying idle in the port of New York for six months, and the Army took it over from the shipping board, to make the trip to the other side, with food for the Army of Occupation, and it was in a very bad condition at the time. In fact, the staterooms were not fit to live in or sleep in; and, as the vessel was only going to make that one trip, we were only figuring on staterooms for ourselves, and we were picking the best staterooms we could find, and have them ready for us when we were ready to sail.

Q And then you went allthrough the ship; did you? A yes.

Q And what time did you start? A We started, approximately, at 1:30.

Q And what time did you get through inspecting the ship?

A Well, about 3:30/

Q And where did you go to then? A We went to the office of the transport.

Q And on what deck is that? Is that on the upper deck?

A That's on A deck.

Q Is that the top deck? A No, sir, the boat deck.

Q The one below the top? A Yes, sir.

Q And you say you got back there about three-thirty? A Yes.

Q And so you were investigating the ship from 1:30 to 3:30?

A Yes, sir:

Q You and Captain Brickley and McDermott and Flynn? A yes.

BY THE COURT:

Q Where was the ship? A At Pier 3, Army Base, Brooklyn,

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New York, foot of 58th Street.

BY MR. SOLOMON:

Q Foot of 58th Street, Brooklyn? A Yes, sir.

Q Now, when you got back to the office at 3:30, what happened then? A Oh, we sat around and talked.

Q What were you talking about? ^{We} A/Were talking about the ship and the expected trip.

Q Yes. A And about the services in the war of the different men, and matters of that kind. We were waiting at that time to see if any men would show up to be paid.

Q Were any men paid, that day? A Yes, sir.

Q Now, who paid them? Captain Brickley? A Yes, sir.

Q Did he have the money in his pocket? A Yes, sir.

Q And what time did you get through talking? A It was 4:30 before we got through.

Q And Flynn was there all the time? A Yes, sir.

Q And Brickley, McDermott and yourself? A Yes, sir.

Q And at 4:30 what happened? A We prepared to go home.

BY THE COURT:

Q Where did you sit? A Up in the Quartermaster's office, on board the vessel.

BY MR. SOLOMON:

Q And at 4:30 you prepared to go home? A Yes, sir.

Q And who suggested that you go home? A Well, Captain Brickley.

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Q How did you know that it was 4:30? A Well, Captain
the
Brickley looked at his watch at/time, as I remember.

Q And you put your things on, and left the ship? A Well,
it took us some time to go. We didn't run out immediately.
It was fully 15 minutes before we left the ship.

Q Well, how did you get off the ship? A We went off the
gangplank.

Q And when you got down to the pier, what happened? A A
man named Reuben Smith, who was employed aboard the ship as a
messman, came along as one of the men to be paid, and Captain
Brickley assigned Mr. Flynn to go back aboard the vessel, and
secure Reuben Smith's signature to the payroll, which was done,
and Reuben Smith and Mr. Flynn returned.

Q Returned to the pier? A Yes, sir.

Q How long did it take them to go back to the ship and re-
turn? A About ten minutes.

Q And who was waiting for them at the pier? A Captain
Brickley, myself and McDermott. And he returned, and received
his money, and Captain Brickley, Mr. McDermott and Mr. Flynn and
myself proceeded home.

Q Where did you go? A We went up 58th Street, and, when we
got to Third Avenue --

Q That is, Brooklyn? A Yes, sir. Mr. McDermott took a
car there home, and Mr. Flynn, Captain Brickley and myself went
up one more street to Fourth Avenue, where we got the subway to

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New York.

Q You walked over to Fourth Avenue; did you? A Yes, sir. And I got on the train at that station, and was in the same car in company with Mr. Flynn and Captain Brickley, until we got to the Broadway station of the subway, at Canal Street."

Q How long did it take you to get to Canal Street? A Oh, I should imagine it was 15 or 20 minutes, because we had to wait for the train at 58th Street.

Q And what time was it then, do you know? A It was about 30 minutes past five.

Q And then did you leave them at Canal Street? A Yes; to go downtown to take the Hudson tunnel to my home in Jersey.

Q And then you left Flynn and Captain Brickley? A Yes, sir.

MR. SOLOMON: That's all.

CROSS EXAMINATION BY MR. TEKULSKY:

Q How long have you known Flynn? A I have known Flynn since I entered the Quartermasters' Clerks Service, December 29th.

Q What year? A 1919. I first saw Flynn there. I didn't know him to speak to at that time.

Q That was the first time you ever saw him? A Yes, sir.

Q And after that did you see him frequently? A Yes; in the office, every day, until I was transferred from the office to the vessel, on January 7th.

Q Was Flynn on the vessel before you were transferred over there? A No, sir.

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Q Where was he working at the time you were transferred?

A He was working in the office.

Q Where is that office? At 45 Broadway, sir.

Q Had he ever worked on the vessel? A No, sir, he was never assigned to the vessel.

Q Do you know Roberts? A I know Roberts to see him, yes sir.

Q When did you first see Roberts? A I first saw Roberts up in 45 Broadway, one day.

Q When he went up to see Flynn, I suppose? A No, sir; I was at 45 Broadway at the time.

Q Was Roberts working there at the time? A No, sir.

Q Well, you say him there, visiting Flynn? A Well, he was visiting different men there, because he was acquainted with all the men.

Q And he was not visiting Flynn? A No, sir.

Q Were you on that vessel every day from the 7th of January?

A Yes, sir, I was.

Q Flynn wasn't, though? A No, sir.

Q Well, what date was this that you say Flynn was over there with Captain Brickley, and did just what you say he did? A Paid the men?

Q Yes. A He was over there on the 10th and also on the 13th? X

Q How do you know it was those dates? A Because it was a few days after I was assigned to the vessel, and that was the first time I ever actually met Flynn to speak to.

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Q In other words, it was a few days after you were assigned?

A Yes, sir.

Q And that is how you figured it out to be the 13th? A No, sir, I remember the dates.

Q Well, why do you particularly remember the 13th? A Because of the occurrence at that time, because we paid the men on that day. We paid the men on the 10th and 13th, Saturday afternoon and Monday afternoon.

Q Do you remember what you did on the 14th of January?

A No, sir, because nothing occurred at that time.

Q You don't remember what you did on the 8th of January; do you? A No, sir, I don't.

Q You testified as a witness for the defendant in the Magistrates' Court; didn't you? A Yes, I did.

Q That was on the 34th of January? A I couldn't say just the date.

Q Well, it was a week or ten days after this crime is alleged to have been committed? A I couldn't say.

Q And how long was it after the time you claim that Flynn was on board this ship with you? A I couldn't say.

Q Was it a month afterwards? A No, sir, it wasn't a month.

Q It was less than a month, was it? A Yes, sir.

Q Before you testified, you had a conversation with Flynn about what your testimony would be; didn't you? A No, sir, I did not.

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Q Didn't you know what you were going to be asked to testify to? A No, sir -- yes I did. I had a conversation with Captain Brickley, just a sort of rough conversation. We didn't know, naturally, what occurred, what it was.

Q Well, didn't you know that you were going to be asked where Flynn was on the 12th of January? A I didn't know it until I was notified, a few days previous, two or three days previous.

Q Well, you knew it a few days before you went to Court; didn't you? A Yes, sir.

Q So that, when you went to the Magistrates' Court, you were then prepared to testify as to what you did on the 12th of January; weren't you? A I had to refresh my memory to do so. At that time the occurrence was fresh in my memory.

Q And how long did it take you to put your coat on, and leave the boat, that day? Did you figure that out, too? A No, sir.

Q You only figured out this fifteen minutes, because you didn't get up right away? A We took our time. We didn't leave the ship until five o'clock, or a quarter to five.

Q You had not sat down, and figured out to the minute what occurred on that day? A No, sir.

Q But you know that the time that you consume took you beyond six o'clock, or 5:20, rather, until you left Flynn? A Yes, sir.

Q You have that all figured out? A Yes, I do know that.

Q You didn't look at your watch; did you? A I didn't happen to have a watch.

Q You didn't look at any clock anywhere; did you? A No, sir.

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Q Now you left Brickley and Flynn at Canal Street, on the subway station? A Yes, sir.

Q And you don't know where Flynn went after that; do you?
A No, sir.

Q You didn't see Roberts on that day? A No, sir.

Q Did you ever call at Flynn's home? A No, sir,

Q or Roberts's home? A No, sir.

Q Where did you say McDermott went? A McDermott got on a car on Third Avenue.

Q Third Avenue, New York, or Brooklyn? A Brooklyn, sir.

Q And what time did he leave you? A It must have been about five minutes to five o'clock, at that time.

Q Then you and Brickley and Flynn came to New York? A Yes.

Q How did you travel? A We walked from Third Avenue one block, and took the Fourth Avenue subway.

Q Who was the paymaster on that ship? A The Quartermaster Captain was the Paymaster.

Q What was his name? A Captain Brickley.

Q Did he pay the men off, that day? A Yes, sir.

Q How many men were there? A I couldn't exactly tell you how many.

Q Were there more than a dozen? A No, sir; I don't think there were that many.

Q There were only about four or five men; weren't there?

A Yes, sir, about that. I don't think there were more than a dozen on the whole payroll.

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Q When did he pay off these four or five men? A In the afternoon.

Q What time? A Well, after 3:30.

Q Was that the usual time to pay off the men? A No. They were told to come there, that day, and they would be paid; and, during the inspection, any men that were there must have waited around for us.

Q Was that the regular pay day? A No, sir.

Q Well, what was unusual about paying the men off, on that day? A The Shipping Board had those men as members of the crew; and, when the Shipping Board turned the ship over to the Army Transport Service, those men stayed on board, and they were entitled to pay from the Army Transport Service for those days, and they demanded the money to which they were entitled, because they were going to quit the vessel.

Q And that's the best answer you can make as to the unusual occurrence on that day? A Yes, sir.

Q Did you see Flynn on the 13th of January? A No, sir.

Q Did you see him on the 14th of January? A No, sir.

Q Did you see him at any time between that day that you speak of and the time that you appeared in court? A No, sir.

Q When was the last time you had seen Roberts, prior to the day you appeared in the Magistrates' Court? A I can't state definitely. It was either the Friday or Saturday previous, in the afternoon.

Q Previous to your seeing him in the Magistrates' Court?

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A No; previous to the day we paid those men on the vessel.

Q What did you do before you went into the Government service? A I was in the United States Navy.

Q How long were you in the Navy? A 37 months.

Q That was since the outbreak of the war? A Yes, sir.

Q You had not been in the Navy prior to the war? A No, sir.

Q Where were you stationed while you were in the Navy?

A On the Transport Northern Pacific, the Seattle and George Washington. And I trained in Bensonhurst and Pelham Bay.

Q Did you go across? A Yes, sir.

Q And, before you went into the Navy, what were you doing?

A I was stenographer and clerk for the Barrett Company.

Q And how long were you in that employment? A Six months.

Q Were you ever arrested? A No, sir, never.

MR. TEKULSKY: That is all.

REDIRECT EXAMINATION BY MR. SOLOMON:

Q You went across during the War, didn't you, Hayes? A Yes, sir.

Q And you saw active service, of course? A Yes, sir.

MR. SOLOMON: That's all.

THE COURT: We will take an adjournment now.
(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Thursday, morning, June 10th, 1930, at 10:30 o'clock.)

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TRIAL RESUMED.

New York, June 10th, 1920.

HELEN OLSEN, of 1152 -58th Street, Brooklyn, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q Miss Olson, where do you work? A In the War Department, Hoboken.

Q I can't hear you? A In the War Department Hoboken.

Q Where were you working on the 12th day of January, 1920?

A 45 Broadway, New York City.

Q And what office is that, or whose office was it then?

A Major Woolworth's office. He was the officer in charge.

Q In charge of what? A Of the transport Quartermaster Section.

Q The jurors can't hear you. Raise your voice. Do you know the defendant Flynn? A Yes, sir.

Q And how long have you known him? A Since December 5, 1919.

Q And did he work with you in the same office? A Yes, sir.

Q At 45 Broadway? A Yes, sir.

Q What was his position; do you know? A Quartermaster's clerk.

Q And did you see him there on the 20th day of January last, on Saturday? A Yes, sir.

Q With whom was he? A He was with Major Woolworth.

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Q And any other officer? A Not that I remember.

Q Captain Brickley? A He might have been there.

Q Did you see the defendant Flynn there on the 13th of January.

Q At what time of the day did you see him there? A Between the hours of nine and ten.

Q And after that did you see him speaking to Major Woolworth? A I noticed him coming into the room, and telling Major Woolworth he was going some place, but I didn't hear what he said, where he was going.

Q Was anybody with him at the time? A No, sir.

Q And what time of the day was that? A That was around -- between the hours of 10, and 11 and 12. I don't just remember.

Q Did you see Captain Brickley there, that morning? A I didn't notice him.

Q Do you know Captain Brickley? A Yes, sir.

Q When did you first meet him? A Why, in the month of January.

Q Well, was it some time around the 13th of January? A Well, I met Captain Brickley before that.

Q Now, did you see the defendant Flynn there on the 13th of January? A I don't remember the 13th.

Q You don't remember the 13th? A No, sir.

Q Did you see him there on the 14th? A I don't remember that I did.

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Q Well, how do you remember the 12th of January? A Because I remember him going on the ship with Captain Brickley.

Q How do you remember that? A I remember that there was some decision about it, and I remember him coming in and telling Major Woolworth about it.

Q Do you remember him telling Major Woolworth about his going on the ship with Captain Brickley?

MR. TEKULSKY: I object to that, if your Honor please, as hearsay.

BY THE COURT:

Q I don't understand you. Did he say he was going on the ship or had been? A That he was going.

Q Well, that was in the morning? A Yes, sir; that he was going on the ship with Captain Brickley. I heard him say he was going. I didn't hear the whole thing.

BY MR. SOLOMON:

Q Do you remember anything else that occurred on that day, that would recall to your mind that Flynn was there, that day, in the office? A No, sir, I couldn't.

Q Now, let me see if I can refresh your recollection. Do you remember some girl getting sick? A Yes, sir, I remember Miss Shanley, or Shannon -- I don't remember her name exactly -- getting sick.

Q And what happened? A Mr. Flynn carried her out.

Q Was that in the morning? A Yes, sir, in the morning.

Q And Flynn carried her out of where? A Out of the room.

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I didn't follow him.

Q Was she one of the girls working in your room? A Why, she worked in the next office.

Q In the next office? A Yes, sir.

Q And did you see him, Flynn, carry her out? A Yes, I saw Flynn carry her out.

CROSS EXAMINATION BY MR. TEKULSKY:

Q You didn't see him then after ten o'clock on the morning of that day? A I didn't notice. No.

Q Just a moment. You said, a moment ago, something about Captain Brickley. You didn't see him at all, that day? A Well, I might have seen him but I don't just recollect it.

Q Well, you will not say that you did see him? A I know I saw him on Saturday.

Q And you don't remember whether Flynn was there on the previous Saturday; do you? A Well, if I remember right, Flynn was with Captain Brickley on that same Saturday.

Q On Saturday? A Yes, sir.

Q And then it was on a Saturday that Captain Brickley went over to the boat with Flynn? A Well, also on the 12th.

Q Well, but you didn't see Captain Brickley on the 12th; did you? A No, sir, I didn't see him; at least, I didn't notice him.

Q You have no independent recollection of it now; do you remember seeing him there on the 9th? A Why, if I remember, I

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don't think he was there on the 9th.

Q And then why do you remember that he was there on the 12th? A Well, Captain Brickley was assigned to the Nensimong at the time, and he needed someone to help him out with the payroll. He was assigned on the 9th, and the 15th was the time the crew got paid, and he needed somebody to help him on the payroll.

Q Then they didn't get paid on the 12th? A No, I don't think so.

Q Who have you talked about this case with? A I have spoken to Mr. --

Q To Mr. Solomon? A Yes, sir.

Q And who else did you speak to about this case, about this trial? A Why, I spoke to quite several people. I don't just remember the names.

Q Well, how many people? Four or five people? A Why, in January and February, Ryan, I think it was I spoke to.

Q That is the man who represents the New York, New Haven & Hartford Railroad? A Yes, sir.

Q And who else did you speak to about the case? A I think his name is Mr. Shaughnessy.

Q And who is he connected with? A I couldn't tell you. I don't remember.

Q Well, did you speak to any relatives of Mr. Flynn? A I have spoken to his mother and his father.

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Q Anyone else? A And his brother.

Q And anyone else? A His aunt, I guess.

Q And his aunt? A Yes, sir.

Q Did they tell you that the 12th of January was an important day for you to remember? A No, sir.

Q Well, they spoke about the 12th of January? A They didn't mention any date.

Q Do you want us to understand that, those you spoke to these relatives of Flynn about this case, a date was never mentioned? A There might have been, but I don't remember that there was. They spoke about the case.

Q Where did they mention the 12th of January? A Not that I remember.

Q And you have talked to them how often? A Oh, I don't remember.

Q Four or five times? A I couldn't say.

Q Well, was it four or five times, would you say? A Well, I don't know.

Q And in all those four or five conversations with his mother, father, brother and aunt, they never mentioned the date? A Not that I remember, no, sir.

REDIRECT EXAMINATION BY MR. SOLOMON:

Q Now you were sick, at the time? A Yes, sir.

Q And they took your testimony at home; didn't they? A Yes.

Q You were suffering with influenza? A Yes, sir.

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Q Now, how far was your desk from Major Woolworth's desk?

A Say, about eight feet.

Q About eight feet? A Yes, sir.

Q Where is Major Woolworth now? A Panama.

Q How do you know that? A He was transferred.

H E N R Y A . B R I C K L E Y, Port of Embarkation, Hoboken
New Jersey, a witness called on behalf of the defense, being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q Are you an officer of the United States Army? A I am.

Q Of the regular army? A Yes, sir.

Q And how long have you been in the regular army? A Since
April, 1917.

Q Are you a graduate of any military school? A No; a
graduate of Harvard College.

Q When did you first meet the defendant Flynn? A January,
1920.

Q Where? A At 45 Broadway.

Q Do you remember the date? A I do, sir.

Q When? A January 10th.

Q What day of the week was it? A It was on a Saturday.

Q At that time were you a captain in the United States
Army? A I was.

Q And what was the occasion of your meeting him? A Mr. Flynn

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had been detailed to make what we term an open roll, that is, a roll, a payroll, that is made up in order to pay off civilian members of the crew of the transports. It is a roll that is not necessary to be made up on any specified date.

The cause for making this roll up was that there were a number of men aboard the transport Nansemond, who had been transferred to the Edelwyn, which was then ready to make a trip to Vladivostock, with the President Grant and the America.

Mr. Flynn had been detailed to make this roll, at 45 Broadway. That was on January, Saturday, January 10th, about 10 or eleven o'clock in the morning.

He made the roll, and Captain Hubbard, who was then in the same office, called up Captain Picarelli --

Q Well, did you meet Flynn there at that time? A Yes, sir.

Q And what time of the day was it? A Between ten and eleven o'clock.

Q And what connection did you have with the transport Nansemond? A I had just been assigned as transport Quartermaster on the Nansemond.

Q And was that the first day you met Flynn? A Yes, sir.

Q And Flynn was to assist you in this payroll? A Yes, sir; Flynn had been assigned or detailed to make the roll up.

Q Who detailed him? A He was detailed in the office, That I couldn't say. I believe it was Major Woolworth.

Q Did you go with him anywhere that morning? A I did.

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After Captain Hubbard had called up Captain Picarelli at Eighth Avenue, to obtain funds, and also had called up Mr. Chapman at the Sub-Treasury in Wall Street, in order that I might get the money that afternoon, Flynn and I then proceeded to Eighth Avenue, where I obtained a check, and he and I then went to the Sub-Treasury, and obtained the money, and went from there over to the Army Base in Brooklyn, 59th Street, where the Nansemond was located.

And we went on the Nansemond, and paid off several members of the crew, and then went over to the Edelwyn, which was lying on the other side of the dock, and paid off some men over there.

Q Did you finish your work, that day? A No, sir. And, that being Saturday, I made an appointment with Flynn for Monday, at 45 Broadway, at 11 o'clock.

Q And were you at 45 Broadway, at eleven o'clock, on Monday January 12th? A Yes, sir.

Q And did you meet Flynn there? A Yes, sir.

Q And where did you go with him? A From 45 Broadway, Flynn and I both went over to the Army Base, in Brooklyn, then.

Q And from there where did you go? A We stayed there that afternoon, paying off the members of the crew.

Q Where did you stay? A On board the Nansemond.

Q And when did you reach Nansemond? A Around one o'clock.

Q And what time did you leave 45 Broadway? A We didn't leave Broadway until about noontime.

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