

START 2841 CASE

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

-----X

THE PEOPLE

-against-

FREDERICK J. ROBERTS

-and-

HAROLD A. FLYNN.

Before:

HON. CHARLES C. NOTT, JR, U.

And a Jury.

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

Indicted for attempted robbery in the first degree.

Indictment filed February 13th, 1920.

APPEARANCES:

ASSISTANT DISTRICT ATTORNEY SOL. TEKULSKY:

FOR THE PEOPLE.

WILLIAM SOLOMON, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,

Official Stenographer

MR. SALOON: 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 the 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 1930?

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 is pay the money collected from the different ticket sellers, who had closed their account, in a package about so long (illustrating), so wide

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 text 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

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 jurymen, 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 Claim 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 officer, 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 them after that

A In Mr. McMakon'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 her signed; 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 office?

A Well I should think - - I am

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 Magistrate 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

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

on 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. McMahan about the case?

A I did not.

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, Mr. Sheaf -

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. McMahan'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 33rd of January?

A Yes, sir.

Q And where did you see him at

A At Mr. McMahan's office.

Q Who asked you to call at Mr. McMahan's office?

A Ryan.

Q Mr. Ryan?

A Yes, Detective Ryan.

Q Did he tell you the purpose of the call at Mr. McMahan'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. McMahan'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. McMahan'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. McMahan's office?

A Yes.

Q And he brought you there?

A Yes, sir.

Q And whom did you find in Mr. McMahan'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. McMahan?

A Yes, sir.

Q And who else?

A Well, Mr. McMahan 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 McMahan?

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. McMahan and Roberts.

Q Those were the only people in that inner office?

A Yes sir.

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 refused to tell 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 maneuvers 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 She 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,

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 McMahan'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. McMahan 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 McMahan.

Q You suppose he had told McMahan?

A Yes, sir, but I'm not sure whether he had told McMahan, or seen him before.

Q Well, go ahead.

A And he said something to him - - I don't

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. Levis, 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 detective 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

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 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.

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

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 Roberta?

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 is 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?

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.

SOPHIE THIERICH, of 512 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 a stenographer?

A By the New York Central Railroad.

Q How long have you been employed there?

A 10 years.

Q And in what particular branch of the 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

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 employee 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.

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

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 women?

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. TUKULSKY:

Q And were they to your right hand side, this group?

A The boys were to the right, and Mr. Lewis to the left.

BY THE COURT:

Q Now, what did you see them do?

A I saw Mr. Roberta 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. TKKULSKY: 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.

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 officers?

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

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.

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

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 there 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 employee 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

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 than 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 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 jive a description to Mr. Lewis?

A No, sir, they sought me - -

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

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 33rd?

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 rail-, road 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 to 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. Levis, 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 Then 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. McMahan's office?

A No, no.

Q Now, the us come down to the day that you were asked to go to Mr. McMahan's office. Who came for you?

A I believe Mr. Ryan came up, and asked me to step on the Second floor.

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. McMahan 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. McMahan.

Q Did you see Lewis before you saw McMahan?

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. McMahan 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.

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? McMahan's?

A I guess it must be Mr. McMahan'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? And Mr. Ryan was there, and Mr. McMahan 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. McMahan's office?

A Oh yes; but only at that time.

Q And who introduced you to Mr. McMahan?

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 McMahan 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.

Q 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. McMahan ask him to stand up?

A I think he did, yes.

Q And did Mr. McMahan voluntarily ask him to stand up, or did you suggest it?

A Well, suggested it.

Q So that, when you suggested to Mr. McMahan 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 McMahan 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 McMahn 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 McMahan 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 and the day of the accident.

Q The 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 it 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 the day?

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

THE COURT: Well, she has already said she was posit age.

I sustain the objection on that ground.

THOMAS RYAN, 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 that same as in and out of any other particular office 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 31st 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 31st 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-

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?

A 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 2109 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, Fredy."

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

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. SALOMON: I object to that, and move to strike that out.

THE COURT: Objection sustained. Strike that out.

BY MR. TEKULSKY:

Q New 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 New, 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.

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 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 the Street," and I said, "If you can recall where you ware on January 13th, let me know."

And I didn't hear from him about that. And we walked to 135th 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.

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's was not there at the time.

And then Mr. McMahan, chief of the New Haven Police, was there, and we arrived there about two o'clock, or 3:15.

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 McMahan 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."

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

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 Wool worth 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

from Hoboken?

A Well, I would like to tell the whole storey, 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 12th," 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 town to arrest Flynn, McMahan 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 he 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.)

AFTER RECESS.

THOMAS RYAN, 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. McMahan, 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 of 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.

How long have you known Roberta?

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. King 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 Then was the first time anyone spoke to you about this case?

A Then 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

this city, to - -

A Not in any 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 30th of January, according to your other questions, and I was assigned to investigate it at noon on the 31st.

Q And who assigned you?

A J. R. McMahan 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. McMahan, chief of police of the road.

Q And the first you heard of the case was on the 30th?

A Yes, sir.

Q Did you speak to Lewis on the 30th?

A No, sir.

Q On the 31st?

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.

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 Roberta?

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.

Q And he took a walk with you?

A Yes, sir.

Q And did you tell Roberta 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 13th 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 13th 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.

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 "he 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

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 his 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 McMahan 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.

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

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 McMahan and Roberts?

A Yes, sir.

Q And you can't recall whether Roberts said hello to Mr. McMahan 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 23rd, 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. McMahan 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. McMahan?

A Mr. McMahan sat between Roberts and I. Roberts was over towards the window.

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

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 McMahan's office?

A I would like to straighten you out on that, counselor.

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. McMahan'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

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 Sow, 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. McMahan?

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 McMahan 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. SALOMON: 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. McMahan'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.

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 Roberta?

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, counselor.

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 McMahan.

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

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-

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 when 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-

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 get 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.

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 record 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.

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, counselor.

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 you he was on the 12th, 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

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 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?

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. TEKULSEY:

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.

Q When did you first see him?

A January 23rd.

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

A No sir.

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 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?

Q 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 13th, 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

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 Whet 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 13th 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 hadn'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

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 12th, there was no other question asked Flynn?

A Yes.

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 12th 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 Ryah 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 McMahan?

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.

JAMES R. MC NAHON, 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. McMahan, 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? That designation have you?

A Chief Special Agent.

Q And you have charge of special agents; have you no?

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.

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 as 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.

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 Robert 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.

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 Robert shown to her?

A No, there wasn't.

Q Now, were you present when Mr. Flynn was in the Grand Central station 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.

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 That 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 look 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.

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 Fynn'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 Tell I told him - - I asked him regarding his movements on January 12th, and ha 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,

and be 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 th police?

A Detective Jones was in the office. He had been there for an hour.

Q Tell, 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. TUKLUSKY: You may examine.

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 that 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 know Roberts, but I didn't know the witnesses.

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 employee during the time the government took charge of the road?

A Yes, sir.

Q And the stenographer was a New York Central employee or a New York, New Haven & Hartford employee?

A No, sir, he was a government employee.

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

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 over to arrest any man until he has been identified.

Q And Mr. Lewis said Roberts was the man; did he?

A Yes 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 head 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.

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.

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 30th?

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 tale any trouble to find cut?

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 cut afterwards. What did you find out? That there was or not?

A I inquired off

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

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 did your office?

A In New Haven, Connecticut.

Q And have you any office in New York?

A Yes 133rd 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

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 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.

Did Roberts ask Mr. Lewis his health was?

A I don't recall that.

Q He right 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. TELKULSKY: That is all.

WILLIAM J JONES, of the 39th 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 arresting officer in this case?

A I am.

Q Were you at the New York Central - - at the Grand Central Terminal building on the 33rd 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 Roberta 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 two men 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 name 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 therefore awhile, am again asked him if he could re-

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 when 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 hid 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

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 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 That 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.

THE DEFENSE

CHARLES HAYES, of 110 Erise 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 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 Nansimong

Q Did you see Captain Brickley that day?

A Yes, sir.

Q What time of the May 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.

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 a 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 That 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

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 13,000, I believe.

Q Now, did the captain inspect the ship, too?

A Yes sir. He not only engaged in going around to the staterooms, but we went to the lower decks.

Q Well, tell us did?

A You see the vessel had

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 all through 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.

Q where was the ship?

A At Pier 3, Army Base, Brooklyn,

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?

A We 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, McDremott 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 THE 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.

Q How did you know that it was 4:30?

A Well, Captain 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 ran 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 mess man, came along as one of the men to be paid, and Uaptain 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 return?

A About ten minutes.

Q And who was waiting for them at the pier?

A Captain Brickleys 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 went up 28th 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

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 Broad way 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.

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 wee 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 12th?

Q How do you know it was those date?

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.

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 12th, 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 that you did on the 9th 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 24th of January?

A I couldn't say just the date.

Q Well, it was a week or tea 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 beard this ship with you?

A I couldn't say.

Q Was it a month afterwards?

A No, sir, it wasn't 1 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.

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 13th 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.

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 He 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; were not there?

A Yes, sir, about that. I don't think there were more than a dozen on the whole payroll.

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 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 Magistrate Court?

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 27 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.)

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 13th day of January, 1930?

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, to Saturday?

A Yes, sir.

Q With whom was he?

A He was with Major Woolworth.

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 12th 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 someplace, 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 sometime 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.

Q Well, how do you remember the 13th 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.

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 8 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 13th.

Q Well, but you didn't see Captain Brickley on the 13th; 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

don't think he was there on the 9th.

Q And then why do you remember that he was there on the 13th?

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 13th?

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.

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 13th 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 13th 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 nick, at the time?

A Yes, sir.

Q And they took your testimony at home; didn't they?

A Yes.

Q You were Buffering with influenza?

A Yes, sir.

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.

HENRY A. BRICKLEY, Port of Embarcation, 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

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 Nansmond, who had been transferred to the Edelwyn, which was then ready to make a trip to Viadivostock, 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 Nansmond?

A I had just been assigned as transport Quartermaster on the Nansmond.

Q And was that the first day you met Flynn?

A Yes, sir.

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 office, That I couldn't say. I believe it was Major Woorworth.

Q Did you go with him anywhere that morning?

A I did.

After Captain Hubbard had called up Captain Picarely at Eight 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 Eight Avenue, where I obtained a check, and he and I then went to the Sub-Treasure, and obtained the money, and went from there over to the Army Base in Brooklyn, 59th Street, where 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 man 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 Nansmond?

A Around one o'clock.

Q And what time did you leave 45 Broadway?

A We didn't leave Broadway until about noontime.

Q About noontime?

A Yes; after that.

Q And what did you do when you got aboard of the Nansemond?

A Why we had paid off several of the members of the crew, who had come up for their pay; and, in the meantime, several of the officers connected with the Vessels Operation Branch came to inspect the ship; also to assist in assigning staterooms.

Mr. McDermott, who was one of my clerks at the time- -

Q When did you first meet McDermott?

A That was the first day I met McDermott?

Q On Monday?

A Yes. It was Mr. Flynn that introduced me to him.

Q The defendant Flynn?

A Yes.

Q And where were you introduced to McDermott?

A In the saloon of the Nansemond.

Q And was Mr. Hayes also there?

A yes, sir.

Q And who was with you when you made an inspection of the ship?

A Mr. Hayes, Mr. McDermott, Mr. Flynn and Colonel Colley.

Q Did the Colonel stay with you all that afternoon?

A No, sir, he left around three o'clock, or 3:30, and went over to the Edelwyn.

Q Now, what time did you begin inspecting the transport?

A I should say somewhere between 1:30 and 1:45.

Q And what time did you get through?

A Well it was after three. It must have been 3:15 or 3:30.

Q And were McDermott, Hayes and Flynn with you all the time?

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A Yes, sir.

Q And was that the first time you had visited the Nansemond?

A No, sir.

Q No, The first time was on the 10th, the previous Saturday?

A Yes, sir.

Q Now, after you got through inspecting the transport, what did you do?

A We went back to the office, and we sat there and had various conversations, various conversations were carried on.

Q What time did you get back to the office?

A probably a quarter to four.

Q And what office is it?

A In my office, upstairs, the Quartermaster's office, on B deck.

Q Is that the deck below the top deck?

A Yes.

Q And who was in the office when you were talking?

A Why, Mr. McDernott Mr. Hayee and Mr. Flynn.

Q Yes?

A And myself.

Q Now, how long did you stay in the office?

A We waited in the office until about 4:45.

Q And then what did you do?

A We started to leave, I decided that I didn't think another man, who was on the payroll, by the name of Reuben Smith- -

Q Was he the last man to be paid?

A Yes, sir. That he wouldn't come for his pay, I decided that I didn't think he would be there, that afternoon, and so I said, "The day is

finished, and let's go home," And, as we left the ship - - I had instructed Mr. Flynn to put the payroll in my desk.

Q The payroll?

A Yes, sir. And I had the money in my pocket.

Q And did he put the payroll in your desk?

A He did. And we got ready, and came down to the pier, and started to leave the pier, and, at the end of the gangway, we met Smith who had just appeared for his money.

Q And what did you do then?

A It was a pretty high climb up the ladder, and I detailed Flynn to go back up the ladder, and see how much money was coming to this man, and have him sign the roll on the ship.

Q And did Flynn go back on the ship?

A Yes. And he came back and told me the amount of money - - \$11.50, if I am not mistaken - - to be paid to Smith, and I paid Smith there on the pier.

Q And what did you do then?

A We started up the pier, Pier 3.

Q Who started up the pier?

A Mr. Flynn, Mr. McDermott and Hayes and myself.

Q Hayes and you and McDermott waited for Flynn to return?

A Yes, sir.

Q And Flynn went aboard the transport to have Smith sign the payroll?

A Yes, sir.

Q And where did you go after you walked off the pier?

A We

started up 58th Street, towards Fourth Avenue. At Third Avenue, Mr. McDermott and Mr. Smith left us, and Mr. Hayes and Mr. Flynn and myself went along to 59th Street, at Fourth Avenue Brooklyn, and there we took the express over to New York City; and that must have been 5:15 or 5:30 when we arrived there.

Q And where did Hayes leave you?

A I couldn't say definitely. At 14th Street, I think.

Q And how far did you go with Flynn?

A 14th Street, Union Square.

Q And did you then leave him?

A No, sir, I continued on up to 43rd Street, and Flynn said that he was going home.

Q Now, at Union Square - - is that the west side or east side Subway?

A I don't know which it is.

Q Well, what time was it when Flynn left you, that day?

A It must have been about 5:45 or six o'clock.

Q Now, where are you assigned now?

A Where am I assigned?

Q Yes.

A I am still aboard the Nansemond, but I expect to go to Washington, to be relieved, and assigned to Washington, shortly.

Q Have you seen Smith since the 13th of January?

A No, sir, I have not.

MR. SOLOMON: That is all.

CROSS EXAMINATION BY MR. TEKULSKY:

Q You say you got to 45 Broadway at eleven o'clock on the 12th of January?

A Yes, sir.

Q Is that the first time you got there, that day?

A Yes, sir.

Q What time did Flynn get there?

A I don't know.

Q Did you arrive first, or did he arrive first?

A He was there when I arrived.

Q Do you know what his hours were there?

A I don't know what his hours were. He had his hours assigned at 45 Broadway. He is shocked in by somebody down there.

Q Do you know what the regular hours are down there?

A I understand from 9 to 4:30.

Q Now, you didn't take out your watch when you left 45 Broadway, or look at your wrist watch, when you left to go to Brooklyn; did you ?

A I did.

Q Every movement that you made, you looked at your watch?

A No.

Q You just looked at your watch on certain occasions, is that it, when you did certain things?

A Irregularly, yes.

Q What time was it when you left the New York office?

A Around noon time.

Q You didn't look at your watch, though?

A I did.

Q How long did it take you to get over to Brooklyn?

A Approximately, an hour.

Q Where is that Army Base?

A At the foot of 59th Street, just this side of the Bayridge station, down by the water.

Q And you went there on the subway?

A Yes.

Q And it took you an hour to get there from 45 Broadway?

A Well, approximately that. It is nearly a fifteen minute walk to go down to the boat.

Q Did you go down to the boat?

A Yes, the Nansemond.

Q And how often have you talked about this case?

A Only once.

Q To whom did you speak?

A I spoke to the lawyer. He came over to the boat, the day after the boat docked, last Friday, I believe.

Q And how often before that time did you speak to anybody?

A No one.

Q Or to this lawyer?

A Never saw him before.

Q You spoke to him when the case was brought into the Magistrates Court; didn't you?

A No, sir.

Q Did you speak to anybody before this case was brought there?

A No, sir.

Q How many men had you to pay off?

A 15 and 16. It was a short roll.

Q And do you mean to tell the jury that it took from one o'clock in the afternoon, or half past one, to four-thirty in the afternoon, to pay off 15 or 16 men?

A Well, they came irregularly, apart from each other.

Q Well, what was the regular pay day on that ship?

A Well, there was no regular pay day. The ship had been transferred, and these men were transferred to the Edelwyn, to make the trip around

the world, and so that they should get their pay from the day they were assigned to the Edelwyn, an open roll, as it is called, was made up.

Q Now, was it a regulation that these men should be paid on the 15th of January?

A No, sir, there is no such regulation.

Q Do you know Miss Olson?

A Yes; she was there on the day I went down to the ship.

Q And a part of her duty is to familiarize herself with the dates on which payrolls are paid; is it not?

A No, sir. She has nothing to do with these rolls. They are made on board the ship, in the transport Quartermaster's office.

Q Does anyone connected with 45 Broadway have anything to do with paying those payrolls?

A No, sir, it is done on the ship.

Q Have you the payroll with you?

A No, sir, that goes to Washington. But there is a duplicate roll on the ship.

Q And it is in your custody and control?

A Yes, sir.

Q Have you brought it with you?

A No, sir.

Q You could have brought it here?

A Oh yes.

Q What are the names of the men you paid off that day? Do you recollect them?

A Oh no, sir.

Q You didn't look up that list, did you, before you came here?

A No, sir, I haven't looked at it at all.

Q You don't remember their names?

A No, sir; only one.

Q And you are not in a position to tell us at what hour you paid off any particular man?

A No, sir.

Q And you could not say whether you paid off three men in a half hour or three hours?

A No, sir.

Q And you can't remember that?

A No, sir.

Q But your memory is clear about Smith?

A Yes; because he was the last man.

Q Well, how do you know that it was 4:45 when you paid him?

A We left the ship at 4:45, and got down to the pier, and were going home, when I sent Mr. Smith back, to have him sign the roll.

Q Did you look at your watch at the time?

A Yes, sir.

Q Do you remember seeing Mr. Roberts at the ship, on that day?

A No, sir, I don't recall him. I've seen him at the Broadway office, and also around Hoboken.

Q Did you see him when he was over there to visit Flynn?

A No, sir, I don't remember seeing him.

Q And was he assigned to do any work there?

A No, not aboard my ship.

Q Well, under what circumstances did you see him?

A Well, he was just passing, and would say, "how do you do."

Q But he was not working with you?

A No, sir; I think he had been on some other ship.

Q You didn't see him on the Nansemond on that day, the 13th of January?

A No, sir.

Q And you didn't see him in Flynn's company while you were with him?

A No, sir.

Q And you were with Flynn continuously from 11 o'clock in the morning until 5:45 in the evening?

A Yes, sir.

Q And when did Flynn leave you?

A About 5:45 in the afternoon.

Q And he told you he was going home then?

A Yes, sir.

Q But you don't know where he went?

A No, sir.

REDIRECT EXAMINATION BY MR. SOLOMON:

Q How long would it take you to get that duplicate payroll, Captain?

A In about an hour, I suppose.

THE COURT: Well it is not necessary. I suppose no one doubts the captain's word.

THE WITNESS: It is a duplicate of the roll sent to Washington.

RECROSS EXAMINATION BY MR. TEKULSKY:

Q Would the roll show the time you left the ship?

A Oh no, sir; there is nothing there of that kind.

Q And there is nothing that would show the hour at which you paid the particular men?

A No, sir. That isn't necessary, and that isn't on the roll.

HAROL A. FLYNN, of 1663 Park Avenue, one of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q How old are you Flynn?

A Twenty-two years of age.

Q And where were you born?

A New York City.

Q Were you ever arrested before?

A No, sir.

Q Were you every in any trouble before?

A No, sir.

Q What schooling did you have, Flynn?

A I graduated at the public school, and attended evening school, the Mechanics Institute.

Q And after you graduated at the public school what did you do?

A I worked for B. A. & G. A. Williams, cut stone, 133rd Street and Walnut Avenue, Bronx.

Q And when did you graduate from school?

A In 1914.

Q And how long did you work there?

A I worked there for approximately a year and eight months.

Q And where did you go then?

A I resigned, and worked with the Corn Exchange Bank, Harlem branch.

Q And when did you begin working with the Corn Exchange branch?

A Began working in January, 1916.

Q What was your position?

A As an adjuster, in the adjusting department, general bank clerk, handling all sorts of banking business.

Q And how long did you work for the Corn Exchange Bank?

A One year and two months.

Q Did you have any occasion to handle cash?

A Yes, various kinds.

Q Tell us on what occasions and under what circumstances you handled cash in the bank?

A It was my duty, at times, to receive checks from the note stellar, checked off as N. G., which

had been drawn against, and it was my duty to go out, and collect cash for those notes from different people, who had deposited them in that bank, and shocked against them.

Q People who deposited checks?

A The money. And their account was running low, and these checks were sent by them, and were found to be N. G., and, at times, I had to go out, and go to these people to collect the money for the bank.

Q And did you have employment - - during your employment did you have to cash checks for the bank at the various banks in that neighborhood?

A Yes, sir.

Q Checks deposited at your bank?

A Yes, sir.

Q And drawn on the banks in the immediate neighborhood?

A Yes, sir.

Q Did you have to give a bond to the corn Exchange Bank, when you were employed there?

A I had to furnish a \$10,000 bond.

Q Did you furnish that bond?

A Yes, sir.

Q And what company furnished it?

A The Casualty a Fidelity I believe.

Q And how long did you work for the Corn Exchange Bank?

A From January 1916 up to April, 1917.

Q How, while you were working, did you attend any school, evening school?

A No, sir.

Q Did you attend any evening school when you were working for Williams?

A I attended Evening School when I was working

for Williams.

Q What school did you attend?

A I attended the Mechanics Institute, which is west of 44th Street and Fifth Avenue.

Q And what course did you take there?

A Architectural draftsman.

Q And how long did you attend that school?

A One year and six months.

Q And when did you resign from the bank?

A In April, 1917.

Q How old were you then?

A Seventeen.

Q And what did you do then?

A Enlisted in the United States Army, in New York City. In what branch of the service?

A The artillery.

Q And when were you sent overseas?

A May, 1918.

Q And how long did you stay overseas?

A Thirteen months.

Q Did you see active service?

A Yes, sir.

Q What regiment were you in?

A The 58th Artillery, C.A.C.

Q What battles were you in?

A In the Argonne Forest, two battles, and I was gassed.

Q In what battle were you gassed?

A In the Argonne.

Q And were you sent to a hospital?

A Yes, sir.

Q What hospital?

A General Hospital, 54.

Q Where is that?

A Outside of Toul, France.

Q And how long were you in the hospital?

A One month and three weeks.

Q And when did you return to New York?

A April 29, 1919.

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Q And when were you discharged?

A In May, 1919.

Q Honorably discharged?

A Yes sir.

Q Have you your discharge papers?

A Yes, sir.

MR. SOLOMON: Let me see them. I offer them in evidence.

MR. TEKULSKY: No objection. We will concede that he was honorably discharged from the Army.

(They are marked Defendant's Exhibit A.)

MR. SOLOMON: May I show it to the jurors? Some of the jurors want to see it.

MR. TEKULSKY: We make no question about that, if your Honor please. We have no objection to it.

THE COURT: Very well. You may show them to the jury.

BY MR. SOLOMON:

Q You were discharged on May 7, 1919?

A Yes, sir.

Q And when did you go to work after that?

A May 14, 1919.

Q Where did you go to work?

A Went as a checker at the Army Warehouse, at 14th. Street and Sixth Avenue, New York.

Q And how long did you work there?

A Three months.

Q And from there where did you go?

A To the Motor Transport Corps, 461 Eighth Avenue.

Q And how long did you work there?

A Two months.

Q And what were you doing there?

A I was working at the 55th Street garage.

Q As what?

A As an all around mechanic, automobile.

Q And where did you go from there?

A I left, on the 15th of September, to go with the Army Transport Service as a

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Quartermaster's clerk.

Q And where were you stationed?

A Stationed at 45 Broadway.

Q September 15th?

A September 15th.

Q 1919?

A Yes, sir.

Q And were you detailed to any transport?

A That afternoon, September 15th, I was detailed to the Princess Meturka, as Quartermaster's clerk.

Q And did Roberts work with you on that trip?

A Yes.

Q And what was his position there?

A He was Chief Clerk.

Q He was your superior?

A Yes, sir.

Q How long have you known Roberts?

A I've known Roberts ever since he has been 12 years old.

Q You have both been friends?

A Yes, sir.

Q Coming down to the - - you say you were detailed to the Princess Meturka, and you took a trip overseas on that ship?

A Yes, sir.

Q And when did you come back?

A October 15th, 1919.

Q And, coming to January, to January 10th, where were you working?

A On January 10th I was working at Pier 3, Army Base, Brooklyn, aboard the Nansmood.

Q Were you at 45 Broadway on January 10th?

A That morning, yes.

Q And who did you meet there?

A Captain Brickley.

Q And what was the occasion of your meeting him?

A Why,

because I was detailed to make a payroll up for his ship.

Q And what time did you meet Captain Brickley?

A About 10:30 or 11 o'clock in the morning.

Q And what time did you leave 45 Broadway?

A Left 45 Broadway around noon.

Q With Captain Brickley?

A Yes, sir.

Q And where did you go?

A 461 Eighth Avenue, to see Captain Piccarelly.

Q And what did you do there?

A We went to receive a check to cash.

Q And finally did you go to the transport Nansemond?

A Yes, that afternoon.

Q And what time did you reach the Nansemond?

A It was after two o'clock.

Q And this was Saturday, January 10th?

A Yes, sir.

Q And what was the purpose of your going to the Nansemond?

A To pay off those men who were aboard at that time.

Q How long did you stay there?

A I stayed aboard the Nansemond about half an hour.

Q And where did you go then?

A Aboard the Edelwyn, right opposite that ship at the pier, and stayed there until five o'clock.

Q And then did you have any talk with the captain?

A We arranged to meet on Monday morning.

Q At what time?

A Between ten and eleven o'clock.

Q Where?

A At 45 Broadway, in Major Woolworth's office.

Q And on Monday, January 13th, did you meet him there?

A Yes.

Q How, state to the jury, without any further questions what time you met him and all that happened, that day, up to the time he left you. How take your time, and tell us in your own way, and recollect everything that occurred on that day.

A I reported for work, as usual, at 45 Broadway, the office where I was at that time employed, at nine o'clock.

I had a little work to do between the time, nine o'clock and the time this girl had been taken sick.

This girl took sick around twenty minutes, or a quarter to ten, that very morning, and all the boys were talking about carrying her out, and so I said, "I'll take her down."

So I carried the girl down to the next floor, two floors below, which was the fifth floor, and put her down, and left her in the lady's restaurant.

Q What is her name?

A Miss Shanley. She awoke just as I got her down there, got conscious again, and looked at me, and didn't say anything, but she knew, the following couple of days, that it was me that carried her down.

Q Now, what time did you meet Captain Brickley, that day?

A I met him at 11 o'clock, that morning.

Q And at what time did you leave 45 Broadway?

A A ground noontime, 12 o'clock.

Q And where did you go?

A Took an Army oar to Pier 3,

Brooklyn, Army Base, to go aboard the Nansemond.

Q And what time did you reach the Nansemond?

A I reached the Nansemond around one o'clock.

Q And what did you do aboard the Nansemond? Who did you meet there?

A I met Mr. Hayes and Mr. McDermott.

Q Did Captain Brickley know McDermott?

A No, he didn't meet him before that time.

Q Who introduced him to McDermott?

A I introduced Captain Brickley to Mr. McDermott.

Q And how long did you stay aboard the Nansemond?

A Until around five o'clock.

Q What did you do there, on the Nansemond?

A Between the hours of 1:30 and 3:30, we held an investigation, and an inspection of the ship.

Q Did you walk around the ship? Captain Brickley was inspecting the ship?

A Yes, sir.

Q And was Captain Brickley paying off some of the men?

A Not until after 3:30.

Q What time did he get through inspecting the ship, do you know?

A Around 3:30.

Q And what did you do then?

A I come back to the office, and waited around, to see if some of the men would come in, to finish the payroll.

Q And who was in the office at that time?

A At that time, Hayes, McDermott, Captain Brickley and myself.

Q And what were you doing in the office?

A Talking about things that happened during the war, and different conversations.

Q And what time did you leave the ship?

A We left the ship, or got ready to leave the ship, at a quarter to five.

Q And what time did you leave, about ?

A Going on to ten minutes of five.

Q And who left the ship?

A Captain Brickley, Mr. McMormott, Mr. Hayes and myself.

Q And when you got down to the door, who came along?

A When we got down to the door, a man by the name of Mr. Smith, formerly a mess man on that ship, approached Captain Brickley or Mr. McDermott - - which I don't know, but captain Brickley turned around to me, and he said, "Flynn, you know more about this. You go back and have this man sign the payroll, and I'll fix him up."

Q And did you go with him to the transport?

A Yes, sir.

Q And did he sign the payroll?

A Yes, sir.

Q And did you then go off the transport?

A I left the transport then, with Mr. Smith.

Q And who was waiting down on the pier?

A Captain Briokley, McDermott and Mr. Hayes. And I told the Captain how much it was, and he took it out of his pocket, and paid the man off, and we said good bye to the man, and Mr. Brickley - - Captain Brickley, Mr. McDermott, Hayes and myself proceeded up to 58th Street.

Q And who left you then?

A I loft Mr. Hayes at Third Avenue and 58th Street, Brocklyn. He was going to take a car

home.

Q And you and McDermott and Brickley went where?

A McDermott, Brickley and I - - not McDermott - - but Hayes, I and Brickley.

Q Well, who left you at Third Avenue? You said Hayes, a moment ago?

A I said McDermott.

Q Did you?

A Yes, I think so.

Q All right. And who left you at Third Avenue?

A McDermott.

Q And Hayes and you and Brickley went where?

A Up to fourth Avenue and 58th Street, and took the Brooklyn subway to New York.

Q And, when you got to New York, what station did you get to?

A When we reached Canal and Broadway, we left Hayes.

Q You mean Hayes left you?

A Yes, sir.

Q And you and Captain Brickley did what?

A We proceeded to 14th Street, Union Square, and I left him there.

Q Where did you leave him?

A At Union Square station.

Q Why did you leave there?

A I left there to take the east side subway home.

Q And where did you get off?

A 116th Street and Lexington Avenue.

Q Do you live near that street?

A Yes, sir.

Q That is the nearest station to your home?

A Yes, sir.

Q And what time did you get home?

A I got home at 35 or half past six.

Q Now, will you tell the Court and jury what efforts you

have made to get Reuben Smith?

A I tried to get Mr. Smith by the means I thought would be best. I went down to the Seamen's Institute, and asked if they had a man by that name, and with that rating, and did they know if he had been stopping there for the past month, or week, or so, and they told me no, they couldn't give me any information whatever as to where he was, or where he was stationed, or staying at that place.

And, for days and days, and weeks and weeks, I tried the Army Transport Service Help and Labor Bureau, at 29 or 49. I don't know which it is, Whitehall Street, the Army Building, and I went there several times. I know the man personally that hires the seamen and mess men aboard ships, and I asked him to do me that favor, to try to get Mr. Smith's address, his home address, his city address, or his mother's address, so that I could get in touch with him, to have him here for this trial, so that, when we come, up on trial, to be here and say what he had to say.

And I tried for days and weeks, and for the past three or four months. I even wrote letters and telegrams.

Q And did you finally get the address of his mother?

A Yes, sir, and I sent a letter not longer than a month ago.

Q How many letters did you write his mother?

A I wrote three or four letters, and received no answer.

Q Did any of those letters come back?

A There was only one letter come back, the first letter. That was the wrong

address.

Q Now, what effort did you make to get Miss Shanley, the young lady you carried up, in the morning?

A She was employed by the Port and Zone Transportation Office, at Hoboken, New Jersey.

I tried the personnel department, where they hold the records of employees, and I tried to get her address from there. They gave me her address, but I called it up, and couldn't find her.

The people where she used to live told me that she had moved to some other place, and they didn't know where.

And I tried working her friends, calling them up, to see if I could get the proper address to have her here on time.

Q But you couldn't find out where she is?

A No, sir.

Q Now, where were you working in the month of January, 1920?

A Up until January 23rd, I was working with the Army Transport Service.

Q What are you doing now?

A Now?

Q Yes?

A I am working for the Carmichael Eight -in -one fuse plug Company.

Q As what?

A As salesman and all around office help.

Q When was the first time you met Ryan?

A The first time I met Ryan was on January 31st, at five o'clock in the evening.

Q Where did you meet him?

A At 2109 Third Avenue, Mr. Roberts's home.

Q And did you have - - and who introduced you to Ryan?

A Fred Roberts introduced me to Ryan.

Q What time of the day was it?

A Around five o'clock.

Q What were you doing at Roberts's house?

A I just happened to stop off.

Q You visited him?

A Yes, sir.

Q And you were frequently at his house?

A I was.

Q Now, when did you next meet Ryan?

A I didn't meet Ryan until the 33rd of January, two days later.

Q Where?

A At Pier 3, Hoboken, New Jersey, at Mr. Woolworth's office, at five o'clock.

Q Did you have a conversation with Ryan?

A No, what so over.

Q Did you go with him anywhere?

A When I approached Mr, Ryan, he said, "How do you do Harry?" And I said, "Hello Mr. Ryan." That's all I said.

Q And what did he say?

A He didn't say anything until we got out of the gate. He asked me, "Will you please show me the way to get to New York," and I said, "I will."

And then he said you know Mr. Roberts, or Fred Roberts. He wants to see you up at the Grand Central station. He is going away."

Q And I said, "I'll go up and see him," and I walked down- -

Q And then did you go with Ryan to see Roberts?

A Yes, sir.

Q Did you have any conversation on the way up?

A None

other than to show him the way to get to the Grand Central station faster.

Q Did he ask you where you were on the 13th of Januarys?

A He asked me that once, once or twice.

Q When was that?

A Just before we were going into the tube.

Q And what did you say?

A I told him I wasn't there, I was sick three days, but I wasn't sure it was the 13th, 13th and 14th that I was sick, I told him I was sick three days, but it might have been the week previous to that.

Q And what three days were you sick?

A The previous week; the 7th, 8th and 9th.

Q And you were at home on those three days?

A Yes, sir.

Q Did you say to Ryan or Rizzo that you were sick on the 13th, 13th and 14th?

A No, sir. And we proceeded on our way, and, when we got to New York, we took the east side subway to the Grand Central station.

Q And did you go then to the Grand Central Terminal?

A Yes, sir, and we took the elevator and - -

Q Was Rizzo with you all the time, all the way up?

A No, sir.

Q Now, where did he take you in the Grand Central Terminal?

A Up to the third floor, I believe, and into some secrets service agent's office. I can't just remember the number.

Q How do you know that it was a secret service agent's office?

A Because I remember seeing it on the window.

Q And what happened when you got into the room?

A He walked me into the anteroom and then into a door leading into another room, and eat me down on one side of the table; and there was a man there, which I now know his name is Mr. McMahan.

Q At that time you didn't know him; did you?

A No, sir.

Q And what was said and done?

A I sat down, and, about one or two minutes after, Mr. McMahan says to me, "Now, come on. Tell us everything."

Q And what did you say?

A I said, "I don't know what you are talking about."

Q And what did he say?

A He said, "Now we have got you right. It is a serious case. It is best to tell us now, and we will take time to think," and I said, "No, I know nothing whatsoever of this case. It all comes out in the wash."

Q And what did he say?

A He didn't say anything after that. But then he said, "You stay here and don't say anything, if anybody comes in; and that I didn't, I didn't say a word to them.

Q And then who came in?

A He turned and he said, "I'm going to have people in here who are going to "identify you," and in comes a girl. I didn't know her at the time, but now I know her name is Miss Thierich. And she walked in and I stood up on my own account.

Q Did anybody ask you to stand up?

A No, sir; I stood up, and turned around, and sat down again.

A And she didn't say to me that I was the man, and she walked out of the room, Mr. McMahon followed her out to the anteroom.

Q Yes?

A And he came back, two or three minutes later, and said, "That woman Identifies you." I didn't know what to do. I didn't say anything. I was cum founded.

Q Did he say anything else?

A Not then; no sir.

A At any time?

A After another man came in, which I how know is Mr. Lewis - - he come in the room, and looked at me a couple of seconds, and walked out. And then the same thing, Mr. McMahon followed him out, and come in, and says, "Mr. Lewis identifies you."

"Now," he said, "We know it is you. Do you want to make a statement?"

And I said, "I have no statement to make."

He said, "You might just as well tell us it all. You might have played it off as a joke. Maybe you didn't mean it. You know there is a whole lot of things happen, and, if you tell us, you will get off light. I know the last thing I think of is a friend of Fred's to do that, or Fred Roberts to do a thing like that."

And he sat down, and he said, "Now listen. Fred told me all about it, and you might just as well come across with it."

And I said, "I know Fred Roberts better, and I know he don't know anything about this."

Q And is that all that happened?

A Well, outside of the

New York City detective coming in, and saying, "You boys are in a serious case, and I'm going to take you to the station house. You are arrested." outside of that, there was nothing happened.

Q And then you were arrested?

A Yes, sir.

Q And that was the 23rd of January?

A Yes, sir.

Q And how long were you in jail?

A 36 days.

Q Now, Flynn, you are charged, together with Roberts, with having assaulted, and tried by force to "take from Lewis a package containing money, on the 12th day of January, 1920. Did you do any such thing?

A No, sir.

Q Did you at any time assault Lewis, or at any place?

A No, sir.

Q Did you at any time or place try to take any money from Lewis?

A No, sir.

Q You alone or with anybody else?

A No, sir.

Q Do you live with your mother?

A Yes, sir.

Q Have you ever lived with Roberts?

A No, sir.

Q Or at his house?

A No, sir.

CROSS EXAMINATION BY MR. TFKUL8KY:

Q What were your regular office hours in the work you were doing at that time?

A The regular office hours at the office in New York were from 9 to 4:30.

Q And what time did you get up to Roberts is house on the 31st of January?

A I got up at Roberts, house at a quarter of

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five.

Q You are sure you were not there all the afternoon?

A I am positive I was not there.

Q So that you say that Ryan came in there at five o'clock?

A Yes, sir.

Q And you were there only 15 minutes, and left?

A Yes, and left to go home.

Q Were you in the habit of doing that?

A Well, if I could get home early, I would stop off to see him, to see Fred. I used to stop off to see Fred, to give him a bit of good news from the office, if I had it.

Q Well, he wasn't working at the office; was he?

A No, sir.

Q He wasn't working anywhere then?

A No, sir.

Q He wasn't down on that boat with you, that day?

A No, sir, not that afternoon.

Q You did tell Mr. Ryan and Rizzo that you had been sick for three days; didn't you? Yes, but not which three days it was. I said that I didn't know which three days it was.

Q But you said you had been sick for three days?

A Yes, sir.

Q And you say all that Ryan asked you was how to get to the Grand Central Terminal?

A Yes, sir, and where I was on the 13th.

Q Well, he came over to Hoboken to meet you?

A Yes, sir.

Q Do you know how he got there?

A I don't know. I didn't ask him.

Q But he, nevertheless, asked you how to get back?

A Yes.

Q And he did ask you where you had been on the 13th of January?

A Yes, sir.

Q And Rizzo asked you the same thing?

A He didn't ask me anything.

Q But he was present at the time?

A Yes, sir, he was present at the time.

Q When you went along with Ryan, did he tell you what he wanted you to go along with him for?

A No, sir.

Q When did you see Roberts before that?

A The night before.

Q And you were very intimate friends?

A Yes, sir.

Q For many years?

A Well, not for many years. I haven't been going around with him continually.

Q Well, you saw him every day, for how long?

A For about a year.

Q And yet, when Ryan told you that Roberts wanted to see you, at the Grand Central Terminal, you claim he said that Roberts was going out of town?

A Yes, sir.

Q And did you believe it?

A Well, I couldn't help believing it.

Q Why?

A Because possibly he might have changed his mind.

Q Well, isn't it a fact that you knew why Ryan came over to meet you?

A No, sir, I didn't.

Q And you went with him without a question?

A Yes, sir.

Q Did he give you any reason why you should go with him.

instead of going to see Roberts by yourself?

A None whatsoever.

Q Did you suggest that you would go over to see Roberts, later?

A No, sir, I did not.

Q You just went along with this strange man?

A Yes, sir.

Q When did you first know what you were wanted for?

A At a quarter of six, at the Grand Central station, on the third floor in Mr. Moore or Mr. McMahon's office, on the 23rd of January.

Q And that was after you went into an office, on the door of which you saw "Secret Service"?

A Yes, sir.

Q And at that time did you think you were soon going to see Roberts, because he was going to be there?

A Yes.

Q And did you think that you had to be taken into this office, because Roberts was going out of town?

A Well, I didn't know, but I thought possibly he was being reinstated with the New York Central or New Haven, and was getting a position at New Haven.

Q Well, you say you had seen him in his home on the 31st?

A Yes, sir.

Q And he didn't say anything then about getting a position; did he?

A No, sir.

Q And you knew, as matter of fact, that Ryan didn't have anything to do with positions?

A No, sir.

Q You knew he was attached to the Police Department there?

A No, sir.

Q Did he well you at any time, coming across?

A No, sir.

Q So that you thought you were being taken in there by Ryan for the purpose of seeing Roberts, before he left town?

A No, sir.

Q You didn't hear anything about Roberts being possibly dying, and requiring your presence, or anything of that sort?

A No, sir.

Q And you believed you were told you were being taken into these rooms, only because you were to say good bye to Roberts, because he was leaving town?

A No, sir. After the first question was put to me, I had an idea of what was going to happen.

Q And what did you do after you had the idea?

A Just what I would do, when I went there, I couldn't do anything else, because I didn't know what they were talking about.

Q Well, nobody was holding you?

A No, but they wouldn't let me open my mouth.

Q Well, didn't McMahon ask you to speak?

A At times, at his will, not mine.

Q Well, didn't he tell you to tell him what you knew about this case?

A Yes, sir.

Q Well, then, he didn't stop you from opening your mouth?

A No, sir, not at that time. And I told him I knew nothing.

Q Well, did you ask to go out of the room?

A No, sir.

Q Or to telephone for anybody?

A No, sir.

Q Or ask for any friends?

A No, sir.

Q He told you that you had a right to refuse to make a state-

ment, if you didn't want to?

A Yes, sir.

Q So that he warned you then of any rights you might have, and told you what you said might be used against you; didn't he?

A No, sir, not that I remember.

Q Well, he advised you as to your rights; didn't he?

A Yes, sir, to a certain extent.

Q And you made no attempt to go to the telephone?

A No, sir.

Q Or even suggest it?

A No, sir.

Q And never made any attempt to call up anybody?

A No, sir.

Q And were you told that the 12th of January was the day you were supposed to have committed this crime?

A Yes, sir; after I was there.

Q And did you try to get hold of Captain Brickley, or anyone else at that time?

A No, sir; not until I sat, over night, at Police Headquarters.

Q Did you make mention to Mr. McMahon, or anybody else at the Grand Central Terminal, at that time, to this incident with Captain Brickley and Hayes?

A No, sir. It didn't draw on my mind at the time; but, when I sat down, that first night in prison, I had plenty of time to think, in Headquarters.

Q Then it came into your mind, you say?

A Yes, I had plenty of time to think.

Q Now you said before that Hayes left you at Third Avenue, in Brooklyn?

A No, sir.

Q Well, didn't you say Hayes left you there?

A Not that

I remember; no, sir.

Q You don't remember saying that in your direct examination?

A No, sir.

Q And then afterwards saying it was McDermott?

A I don't remember.

Q Is your memory good?

A Well, not very good. I couldn't say. It is passable.

Q Well, is it as good today as it was in January?

A Yes.

Q Well, don't you remember what you testified to, five minutes ago?

A Well, it might be a slip of the tongue; that's all.

Q Well, you didn't see Roberts at all on the 12th of January?

A Yes, I did.

Q When?

A About supper time.

Q But you didn't see him prior to that day?

A No, sir.

Q Did Roberts tell you on the 22nd of January that Ryan had taken him downstairs for a walk, and had questioned him about where he had been on the 12th of January?

A No, sir.

Q He didn't mention anything to you about the purpose of Ryan's visit to his home on the 22nd?

A No, sir. he didn't say a word.

MR. TEKULSKY: That's all.

REDIRECT EXAMINATION BY MR. SOLOMON:

Q After you were arrested, and led down to Police Headquarters you thought over, that night, where you were?

A Yes, sir.

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Q And the same testimony as you are giving here, you gave in the Magistrates Court?

A Yes, sir.

Q On the 34th?

A Yes, sir.

Q And these witnesses who appear here appeared in the Magistrates Court?

A Yes, sir.

THOMAS MC DERMOTT, of 2222 East 19th Street, Brooklyn, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q Mr. McDermott, where were you working on the 12th of January, 1930?

A On board United States Transport Nansemond, at the Army Base, in Brooklyn.

Q And when did you start working on that transport?

A January 7th.

Q 1930?

A Yes, sir.

Q Was that the day the transport was taken over by the United States Army?

A Yes, sir.

Q Did you work there on the 8th?

A Yes, sir.

Q Did you work there on the 9th?

A Half a day, the 9th.

Q Half a day on the 9th?

A Yes, sir.

Q Why didn't you work all day?

A I went home, sick.

Q And when did you come back to work?

A On January 13th, Monday.

Q Did you see Flynn there, that day?

A I did, about one o'clock.

Q With whom did he come aboard?

A He came aboard with Captain Brickley.

BY THE COURT:

Q What day was this?

A January 13th.

BY MR. SOLOMON:

Q That was the lay you returned to work after you were sick, on the 9th?

A Yes, sir.

Q And what day of the week was that?

A Monday.

Q And had you met Captain Brickley before that day?

A No, sir.

Q Who introduced you to Captain Brickley?

A Harold Flynn.

Q The defendant Flynn (indicating)?

A Yes, sir.

Q Now, how long did Flynn stay aboard the transport then?

A Flynn stayed aboard all the afternoon, being that we went on a round of inspection of the ship.

Q Who went on the round of inspection?

A Captain Brickley Mr. Hayes, Flynn and myself.

Q And what was your position there?

A Chief Clerk, Quarter-master's office.

Q And what time did you begin the inspection? Do you know?

A About 1:30.

Q And what time did you get through?

A About 3:30.

Q And what did you do, after you got through inspecting the transport?

A We sat around the office, talking.

Q What time did you leave the boat?

A Approximately, 15 minutes to five.

Q And was Flynn there all the time?

A He was.

Q You saw him there all that afternoon?

A Yes sir.

Q When you made the inspection of the transport, and when you were in the office?

A Yes, sir.

Q And did he leave the transport with you. Captain Brickley and Hayes?

A Yes. And, when we got down on the foot of the gangplank, on the pier, Reuben Smith, one of the men on the payroll to be paid, came along, and asked for his money, and we left the open payroll in the office; and, being I had a boil on my neck, and didn't want to climb up the side of the ship, you might say, Flynn went to the office, and got Smith to sign the payroll, and the captain paid him.

And then we walked up 58th Street, to Third Avenue, and I left them and went home.

CROSS EXAMINATION BY MR. TEKULSKY:

Q Where were you working?

A At 45 Broadway.

Q Is that where you were assigned?

A Yes.

Q How long had Flynn been working there?

A That I don't know.

Q Well, was he working there before you?

A well, I believe he was on board the princess Meturka, when I was working at 45 Broadway.

Q And he came to 45 Broadway, after you were working there; is that right?

A Yes, he did.

Q Now, do you know about when it was when he began to work at

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45 Broadway?

A No, sir, I don't.

Q Was it two weeks or a month before the 13th of January?

A I don't know.

Q Have you any idea?

A No, sir.

Q Did you see him every day for a certain period of time before the 13th of January?

A Yes, sir, I did.

Q Now, about how many days would you say you saw him?

A From the 31st of December, right up until the time I was assigned to the Nansemond.

Q So that from the 31st of December, 1919, until the 13th of January, 1930, you saw him every day; did you?

A No, sir.

Q Well, every day that you were there?

A Up to the day that I was assigned to the Nansemond.

Q What lay was that?

A January 7th.

Q And did you report at 45 Broadway, about January 7th?

A No, sir.

Q Where did you report then?

A I reported aboard the United States Transport Nansemond.

Q So that, from the 7th of January on, until the 13th of January, you didn't know where Flynn was; did you?

A No, sir.

Q Did you see him at any time during that period?

A Only the once.

Q Only on the 13th?

A Only on January 13th.

Q How many men were working on the Nansemond?

A That I don't know.

Q You don't know how many men you paid off?

A No, sir, being

that some man were paid, that day, and some that stayed on the ship were not paid, that day.

Q Some were not paid, then, on the 13th?

A Yes, sir.

Q What were you waiting for until a quarter of five?

A We didn't realize what time it was. We were sitting aboard the boat, talking.

Q So that you were not waiting, were you, for the men to come along, to be paid?

A Well, in fact, yes.

Q Now, wasn't Smith the only man who hadn't been paid?

A Yes, sir.

Q And then there were no others to be paid; were there?

A No, sir, not to my knowledge.

Q Didn't you just say that all the men were not paid off on that day?

A Yes, sir, but they remained on the ship, and were not to be paid on that day. They were not on that road.

Q Well, what were your duties over there?

A We were provisioning the ship to go to sea, and I had to sign for everything that came aboard.

Q And then there were other things that you were doing besides paying of the men?

A Yes, sir.

Q And you were not always with Flynn and Brickely; were you?

A You?

A I with Flynn and Captain Brickley, the whole time Flynn was aboard the ship.

Q Every time you did anything, Flynn was right alongside of you?

A Yes, when I was in the office.

Q You didn't look at your watch at any time did you?

A No, sir.

Q It was too much trouble; was It not?

A I didn't have one.

Q And you didn't look at anybody else's; did you?

A Well, three or four times a day I would ask Captain Brickley for the time.

Q And so you don't know what time you got to Third Avenue and 58th Street?

A No, sir, only as I asked him the time before we left the ship.

Q Now, you have testified about this case, haven't you, once before?

A Yes, sir.

Q And you spoke to Flynn at the time?

A Well, I spoke to the Judge, and Flynn was before the Court

Q Well, but you spoke to Flynn, did you not, before you testified?

A No, sir.

Q You didn't speak to anybody?

A No, sir.

Q You didn't know what you were in court for?

A Yes, I did, when I received a letter from the Port and Zone Department.

Q And with whom did you talk about it then?

A Captain Brickley.

Q And you knew that the 13th of January was an important question in the case; didn't you?

A I found that out, then.

Q Where did you find it out?

A Up in the courtroom, when I was asked if I was aboard on the 12th of January.

Q And that was the first time that you knew that the 12th of January was an important date in this case?

A Yes, sir.

Q And do you know where you were on the 13th of January?

A Yes, sir.

Q Where were you?

A On board the Nansemond.

Q And did you stay aboard all day?

A Yes, sir.

Q Do you know each and everything you did, that day?

A No, sir, I don't.

Q Where were you on the 14th?

A Aboard the boat.

Q But you have no special recollection of that; have you?

A I know I was on the boat; that's all.

Q It is because you were employed there that you say that?

A Yes.

Q But you don't know what you did on the boat, that day; do you?

A No, sir.

Q And where were you on the 10th of January?

A I was home.

Q You had gone home, sick, on the 9th?

A Yes, sir.

Q And you don't know what you did on the 8th of January; do you?

A No. All that I was doing was making out requisitions.

Q You were doing some regular, routine work?

A Yes, sir.

Q But you have no independent recollection of what you were doing?

A No, sir.

Q And you say that, because you were employed on the Nansemond you must have been working there; is that right?

A Yes, sir.

Q And did some other men come to be paid off, after the 12th of January?

A There were men paid off after that, yes.

Q On what day?

A I don't remember, being that I kept an open roll.

Q Well, was there a new open roll made after the 12th?

A Yes, when Captain Brickley received his money.

Q What did you do? Just make out rolls for any number of men, at random?

A No, sir. As each man came to be paid off, we kept one roll open, to pay the men that were resigning.

Q Then you didn't have a roll made up in advance; did you?

A No, sir.

Q And then there wasn't a payroll made up for a specific estimate of money, and certain number of men?

A No, sir.

Q Just as a man came along, if Captain Brickley was there, and had the money, he was paid off, and he signed the roll?

A Yes.

Q Then you were not waiting for anybody specially, when you left the Nansemond on the 12th of January?

A We had been waiting for Reuben Smith, yes. That was an open roll, made up at 45 Broadway, by Flynn, for these men that were being transferred, to the Edelwyn, that was going around the world, and other men that were going out of the Army Transport Service entirely.

Q Well, you said that men were added to the payroll whenever the men came along?

A Yes, sir, in the open payrolls, after the 12th of January.

Q Were you expecting them at any particular time?

A No, sir.

JOSEPH ROBERTS, of 2109 Third Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q Mr. Roberts, are you the father of Fred Roberts, one of these defendants?

A Yes, sir.

Q And what is your business?

A Waiter.

Q Now, where were you working on the 12th day of January, 1920?

A Downtown, 60 Pine Street.

Q 60 Pine Street?

A Yes, sir.

Q A club?

A Yes, sir.

Q And what hours of the day did you work there?

A I left the house at a quarter to ten in the morning, and get down on the job about 11 o'clock.

Q About what time do you get through?

A Half past two.

Q And where did you go after you left there?

A Right straight home.

Q How long have you been working there?

A What do you mean? Regular, or that day?

Q No. How long had you been working there up to the 12th of January?

A Two years.

Q And when you got home from work there, how long did you stay home?

A Well, I get home about half past three, and I lay down about an hour.

Q But I am asking you about your habits before the 12th

of January. Did you go home after your work was finished at the club?

A Yes, sir.

Q And how long did you stay home?

A Until a quarter to five.

Q And where did you go then?

A To the Carleton Terrace my evening job, and I work there from half past five to one o'clock in the morning.

Q And how long have you been working at the Carleton Terrace?

A Going on three years.

Q Now, were you working at the Carleton Terrace on January 12, 1920?

A Yes, sir.

Q What time did you leave your home, that morning?

A A quarter to ten.

Q What day of the week was it?

A Monday.

Q And what time did you return?

A Half past three.

Q When you returned, did you see Fred there?

A Yes, he was laying oh the couch in the dining room.

Q Was it your habit to lie down on the couch, in the afternoon?

A If there was nobody there, I would, but I generally went inside in my own room, and laid down for the hour.

Q Now, what did you do when you saw Fred Lying down on the couch in the dining room?

A I went into my own room and laid down.

Q And how long did you stay there?

A Half past four.

Q Anybody wake you?

A My wife.

Q When you got up, was Fred there?

A Yes, sir.

Q Where was he?

A He was in the kitchen, with the mother.

Q And what time did you leave the house?

A A quarter to five.

Q Did you see him there when you "left the house?"

A No, sir.

Q He walked out before you did?

A Yes, sir; he told the mother that he was going out for a minute.

Q You heard him say that?

A Yes. And she said, "Why don't you put on your coat?" And he said, "I'll be back in a minute."

Q Now, what recalls to your mind that he was there on that Monday, and that it was the 12th of January?

A Well, I came home at my regular time, and I never go nowhere but to my work and my home.

Q But, did anything happen in your home, the preceding Saturday or Sunday?

A No, sir, not that I know of.

Q You are pretty nervous; aren't you?

A No, not a bit.

Q Was there not a party in your family, the Saturday night previous?

A Oh, I misunderstood you. I didn't hear that. My married daughter gave a party.

Q Where was it?

A Up in Woodlawn.

Q Did the entire family go to that party?

A I believe they all did. I didn't go.

Q You worked, that, day?

A Yes, sir.

Q Now, when you left at a quarter of five, you didn't get home then until one o'clock?

A Yes, sir.

Q And when you got home, that day- - you say you got home at

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2:30?

A From downtown?

Q Yes?

A 3:30.

Q Was anybody else In the house besides Mrs. Roberts and Fred?

A That's call.

Q When you left, was there anybody else there besides Mrs. Roberts and Fred?

A Yes, my youngest son, just come in from school.

Q And anybody else?

A And Mrs. Roberts and Fred.

Q You testified in the Magistrates Court; didn't you?

A Yes, sir.

Q And you testified to what you are testifying to here?

A Yes, sir.

CROSS EXAMINATION BY MR. TEKULSKY:

Q Now, of course, you are the father of this boy, Mr. Roberts?

A Yes, sir.

Q He is married; isn't he?

A Yes.

Q Where is his wife?

A I don't know, sir.

Q Is she in France?

A I don't know. I couldn't say.

Q You never saw her; did you?

A No, sir.

Q How many children have you?

A I've just got the three boys.

Q Only three?

A And my married daughter.

Q Is he the oldest, this defendant (indicating)?

A Yes, sir.

Q You didn't remember about that party of your daughter, until the attorney for the defendants reminded you of it; did you?

A Well, I might have. I didn't hear him, that is, I misunderstood

him when he spoke.

Q You were not up to that party; were you?

A No, sir.

Q And you don't recollect what date it was; do you?

A Yes, sir, the 10th.

Q Well, how do you recall it was the 10th?

A Well, because my daughter invited me up, but I told her I couldn't go.

Q But how do you recall it was the 10th?

A Well, that was the night she gave the affair. She gave me a cordial invitation to come up, and asked me if I could get off, and I said no, because that was our busiest night, Saturday night.

Q And you didn't make any memorandum of the date; did you?

A No, sir. Only this trouble is how I come to remember it, on account of it being the 13th that this trouble happened.

Q Well, but you didn't know anything about this case until the 23rd; did you?

A No, sir.

Q When did you first hear about it?

A When did I first hear about it, about this case?

Q Yes?

A The night that the detectives come up there, Ryan and Jones.

Q And that was after they were arrested?

A Yes, sir.

Q And after that you talked about the case with your wife?

A Yes sir.

Q And your daughter?

A Yes.

Q And your sister-in-law?

A Yes, I certainly did.

Q And you talked about it with your son?

A Yes, sir.

Q And you, in that way, talked about the 12th of January a good deal; didn't you?

A Yes.

Q And the other members of the family that you spoke to knew that you were going to testify that you saw Fred lying on the couch, on the afternoon of the 12th of January?

A Yes, sir, laying on the couch.

Q That has all been gone never already; has it not?

A Yes.

Q Did you ever see any of the employees of the New York Central railroad, prior to the 23rd of January?

A No, sir.

Q Did you ever have any interview with anybody connected with the New York Central railroad, during the time that your son was first employed, before he went into the service?

A No.

Q Did you have any talk with any official of that road regarding your son?

MR. SOLOMON: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

PAUL ROBERTS, of 2109 Third Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q Are you a brother of the defendant Roberts?

A Yes, sir.

Q And what is your business?

A Assisting purchasing agent of the Marmon Automobile Company.

Q And did you testify in the Magistrates Court, in January 1930 in this case?

A I did, sir.

Q Do you remember what happened on the 10th of January, 1930?

A Yes, sir, I do.

Q On the 10th, I am talking about?

A Yes, sir.

Q What happened on that day in relation to the members of your family?

A On the 10th of January, my sister gave a birthday party in honor of her husband's birthday, which is the 6th, and my brother's is also on the 6th, and she had an idea of celebrating both birthdays together, and I was there, that evening and had quite a nice time.

Q And the 13th of January was the following Monday?

A Yes.

Q And did you go to work on that day?

A Yes, sir.

Q When did you return from work?

A Five o'clock.

Q And who was in the house when you came home?

A Fred was there, and my younger brother, and my mother.

Q And did you have a talk with, Fred?

A Yes, I did.

Q With reference to what?

A With reference to Seeing Captain Perry, aboard the Princess Meturka, that morning.

He said, Captain Perry had been very busy, and said that he would see him, later. We were all interested then in that, matter in reference to his reinstatement in the United States Transport Service.

Q He had been off on sick leave; had he?

A He was dismissed by Captain Perry, due to ill health, and Captain Perry made

a trip without him, and was to reinstate him when the ship came back from Panama.

Q And did you stay in the house all that afternoon, or that evening?

A Well, I ate supper, and left the house about a quarter past or half past six.

Q And was Fred there when you left?

A Yes; and we had supper together, and he was there until I left.

Q And, while you were having supper, did anyone come into the house?

A No, sir.

Q Do you remember your aunt coming in?

A No, sir, she didn't.

Q She didn't?

A Oh yes. I beg pardon.

Q When did she come in?

A Well, about supper time, and I remember my mother asked her if she would have supper with us, and she said she had had her supper.

CROSS EXAMINATION BY MR. TEKULSKY:

Q Do you remember anything about the 18th?

A No, sir, I have no occasion to remember that.

Q You have only occasion to remember about the 12th?

A Yes.

Q Because that's the date on which your brother is charged with having committed this crime?

A I understand that.

Q And did you see your father, that afternoon?

A No, sir, I did not. I got home at five o'clock, and he leaves the house there around a quarter of five, or a little after that.

Q Do you always come home at five o'clock?

A Almost every

evening.

Q When do you leave your office?

A Half past four.

Q And when do you go to your office?

A In the morning?

Q Yes?

A At nine o'clock.

Q Where was your office?

A At that time, Mr. Solomon, I meant to say I was with the Swiss Import company, 150 Nassau Street.

Q And that is down near Spruce Street?

A Yes, sir.

Q And you lived where?

A In Third Avenue, between 115th and 116th Street.

Q And what time did you leave the Swiss Import Company?

A About half past four. That was my usual time of leaving there.

Q Is it not a fact that you usually got home for supper at six o'clock?

A No, sir. In fact, my mother had supper every evening about a quarter past five.

Q Well, you know that the hour of five o'clock is also an important hour in this case; don't you?

A Well, I believe something occurred at that hour regarding the holdup, or something of that sort; but that was my absolute time of coming home from work each evening.

Q You don't know what had happened on the 13th or 14th of January; do you?

A No sir. I can tell you why I so distinctly remember the 12th, if you care to know.

Q Well, you paid on account of the party; didn't you?

A Yes, sir.

Q Have you any other reason?

A Because my brother had met

Captain Perry aboard the ship, because I was as much interested in the matter as he was, and he was to meet Captain Perry on the 12th, Monday morning; and on Saturday night, my brother spoke to me about meeting Captain Perry, on Monday, and I said, "I wish you luck, and I hope you will be reinstated," and, when I got home on Monday afternoon, I asked him about it.

Q Well, he saw Captain Perry at other times; didn't he?

A Well, I don't believe he did. The ship had just got in. Perhaps he had only seen him to make the appointment.

Q Well, on other days, he had spoken to you about conversations he had had with Captain Perry; hadn't he?

A Well not any particular, no.

Q Well, you were interested in his affair with Captain Perry weren't you?

A Yes.

Q And you spoke to him about it?

A Yes.

Q And you were anxious for him to be reinstated?

A I certainly was. We were all following it up. to see whether he was going to be reinstated.

Q And you may have had a talk with him on the 13th and 14th about it?

A Probably.

Q And so that there was nothing special about the conversation that fixes the date as the 12th?

A Yes, there was.

Q What was it?

A His appointment with Captain Perry, on Monday.

Q Did he see Captain Perry on Tuesday?

A No, sir. I don't know. He only told me that Captain Perry had postponed the meeting

until a later time.

Q And so that your sister's party was on the 10th, and you got home at five o'clock, on Monday afternoon?

A Yes.

Q And you knew that five o'clock was the important hour in this case, as to something that occurred at that time?

A I Yes.

Q And you have talked this matter over with your mother and sister and all the family?

A Yes.

Q And they knew that you were going to testify as you have testified in regard to the 12th of January?

A Yes, of course they knew I was interested in my brother's innocence.

MINNIE ROBERTS, of 2109 Third Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q Mrs. Robert, are you the mother of Fred Roberts?

A Yes.

Q And you remember what happened on the 10th of January, 1920?

A On the 10th?

Q Yes?

A My daughter gave a birthday party in Woodlawn, and we were all present.

Q Was Fred working on the 13th of January?

A No, sir.

Q Do you remember what time he left the house?

A On the 12th?

Q Yes?

A About nine o'clock in the morning.

Q Did he say where he was going?

A He told me he had an

engagement with Captain Perry, on the ship Princess Meturka.

Q When did he return?

A About two o'clock, and he had his lunch. He wanted ham and eggs, and I told him I had eggs, but no ham, and he went out and bought some ham, and I prepared it for him, and he ate it. and layed down on the lounge in the dining room.

Q And who else was there, if anybody?

A Mrs. Haake, my sister.

Q When did she come in?

A About two o'clock, around that time.

Q And how long did she remain there?

A Until about three o'clock. She lives next door, and I was ill at the time, and she came in several times a day.

Q And was anybody else there?

A Nobody else.

Q What time did your husband come home, that day?

A About half past three, he comes in every day.

Q Did he come home that day, at half past three every day.

Q And what did he do when he came in?

A He usually lays dawn on the lounge, and Fred was on the loygge*** that time, and I told my husband to go inside, and lay down.

Q Was there anything the matter with Fred at that time?

A He wasn't well; in fact, Captain Perry had given him leave of absence from the ship, due to his ill health.

Q What time did your husband leave the house, that day?

A About a quarter to five He leaves that time, every day.

Q What time did Fred go out?

A Well, he got up about half past four and went in the hall, and took his hat, and I called to him to put on his overcoat, if he was going out, because it was very cold, and he said, "Mother, I am only going to the corner, and I'll come back soon."

Q And how long was he out?

A Just about ten minutes. It might be more than that, but around that time. He was gone a very short time.

Q Did your husband leave after Fred?

A Yes, after Fred went out.

Q And what time was it; do you know?

A Around a quarter to five. My husband had to leave at that time.

Q And you fix it in that way?

A Yes, because he has to be at work by half past, and he leaves regularly every day at that time.

Q When did you have supper?

A Five o'clock. The boys were home, and I got dinner ready early.

Q Who was present at the meal?

A My three sons and myself and my sister, Mrs. Haake came in while we were still seated at the dinner table.

Q And when was that?

A It might have been a quarter or half past five.

Q And when were you notified first that Fred was arrested?

A Well, the first time Mr. Ryan came to the house, on the 22st- -

Q (Question repeated)

A Oh, on the evening of the 23rd,

at half past ten at night.

Q And you were a witness in the Magistrates Court on the 34th?

A Yes, sir.

Q The following morning?

A Not the following morning. There wasn't any testimony given before the following week.

Q Oh, there was no hearing held on the 23rd?

A No, sir, on the 24th- - no, the 28th.

Q And you testified then in the Magistrates Court?

A Yes, I testified in the Magistrates Court.

MR. SOLOMON: That's all.

CROSS EXAMINATION BY MR. TEKULSKY:

Q One moment. I just want to ask one question. Would you say it was four o'clock when Fred went out for the errand, that day?

A No, sir, he didn't get up until half past four, and I'll tell you what I know, because he got up, the same time his father did.

Q Art. you are sure it wasn't four o'clock?

A Yes. And the reason I know is because my husband has to get up at that house. That happens every day.

Q And Fred was at home there in the afternoon, when your husband had to leave the house?

A Yes. In fact, Fred never left the house while he was ill, until the evening.

Q Fred, was not working up to the 23rd; was he?

A No, sir.

REDIRECT EXAMINATION BY MR. SOLOMON:

Q Mr. Roberts, did you call your husband at 4:30, that day?

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A Yes, sir.

Q He didn't get up of his own accord, but you called him?

A Yes, I called him at half past four, because he usually sleeps very sound.

Q And he usually gets home at half past one o'clock in the afternoon?

A Yes, he gets off at one o'clock, and gets home usually about half past one.

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

AFTER RECESS.

KATHERINE HAAKE, of 2107 Third Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMONS:

Q Mrs. Haake, are you related to the defendant Roberts?

A Yes, sir.

Q Are you his aunt?

A I am his aunt, yes.

THE COURT: Will you please keep your voice up, madam, so that the jury can hear you?

BY MR. SOLOMON:

Q You are a sister of Mrs. Roberts?

A Yes, sir.

Q On the 12th day of January 1930 where did you live?

A 2107 Third Avenue.

Q And that was in the next house to the house in which Mrs. Roberts lived?

A Yes, sir.

Q Did you visit Mrs. Roberts, that day?

A Yes, sir.

Q What time did you call on her; do you know?

A About two o'clock; a few minutes past.

Q And were you there when Fred came home?

A Yes, sir.

Q About what time did he come home; do you know?

A Well, I couldn't just say. Probably it was a quarter past two.

Q And how long did you stay at the house?

A Well, I left at three o'clock.

Q You left about three o'clock?

A Yes, sir.

Q And was Fred there when you left?

A Yes, sir.

Q And did you return to the house, that day?

A No, I returned later, in the evening.

Q At what time?

A Between five and half past.

Q And were the Roberts's having dinner then?

A Yes, sir, they were at dinner.

Q Who was at home then ?

A The whole family was there; Mr. and Mrs. Roberts and the three boys.

Q Now, was Mr. Roberts there? Are you sure about that?

A Oh, Mr. Roberts wasn't there; no he wasn't. He was to work.

Q Was Fred there?

A Yes, and Fred and Paul and the other son, and Mrs. Roberts.

Q And Mrs. Roberts?

A Yes, sir.

MR. SOLOMON: That's, all.

CROSS EXAMINATION BY MR. TELULSKY:

Q How long did you stay, Mrs. Haake?

A What do you mean? In the afternoon?

Q Yes.

A Well, it was two o'clock when I got there, and I left about three, because my husband came home at 3:30, and I had to have his lunch ready for him.

Q Did you have dinner or supper with them?

A My sister asked me to have supper, but I had my supper or dinner at home.

Q And you had your supper at home before five o'clock?

A Yes, sir.

Q And what is your husband's business?

A He is a waiter.

Q And does he have supper with you before he goes to work?

A Yes, we have supper around four o'clock.

Q And where did he work at that time?

A I couldn't say. Somewhere downtown. Because sometimes my husband doesn't tell me where he works.

Q You had been in the Roberts home a number of times; haven't you?

A Oh yes, two or three times a day.

Q And were you there the next day?

A Oh yes I probably was, a couple of times.

Q Well, on the 14th and 15th, you may have been in there two or three times?

A Well, I couldn't say. It's hard to memorize these things.

Q Were you at this birthday party?

A No, sir, I wasn't very well at the time, so I didn't go.

Q Nothing particular happened that fixed the date in your mind; did it?

A It was Saturday the 10th that my niece had given a birthday party.

Q But there was nothing that fixed the date in your mind; was there?

A No, sir.

Q And you saw Fred Roberts at home on other days than this particular day; didn't you?

A Why yes.

Q And there was nothing special about his being home on that day?

A No, sir. My nephew was off on sick leave.

Q Yes, you were told that as the reason why he was home?

A Yes, he was home because he was sick. He was at home on sick leave. I know that.

Q And you have been told that the 12th of January was the

day on which this alleged attempted robbery was committed?

A Yes, sir.

Q And you were told also that the hour was a very important hour in the case; were you not?

A Yes, sir.

Q That that was the important date and hour involved in this case; you knew that didn't you?

A I don't seem to understand you.

Q Well, you knew that at five o'clock on the 13th of January, the crime was supposed to have been committed?

A Well, I didn't know it just then, but, after speaking to my sister, and talking over the case, my memory came to me that it was at that time.

HENRY A BRICKLEY, being recalled by counsel for the defendant, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q At my request, Captain Brickley, did you phone to Captain Perry, at Hoboken?

A I did, sir.

Q At what time?

A At 1:30.

Q And did you speak to him?

A I did.

Q Do you know Captain Perry?

A I know him personally.

Q And did you ask him to come here, this afternoon?

A Yes, I did ask him to come over here, but he said it was impossible to come, because he has a lot of business to attend to, today. He is in the Equipment Branch, and he is getting out a lot

of equipment for the transports due here.

Q Did you ask him whether he remembered seeing Roberts, on the morning of the 12th of January?

(Objected to. Sustained. Exception.)

Q Did he say when he could get here?

A He said that he could come here, tomorrow morning, at 10:30, if the case was still on.

FREDERICK J. ROBERTS, of 2109 Third Avenue,

One of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q How old are you Roberts?

A Twenty-two years of age.

Q And do you live with your parents?

A Yes, sir, I do.

Q Speak up.

A Yes, sir, I do.

Q Where were you born?

A Boston, Massachusetts.

Q And do you remember when you first began to work?

A Yes.

Q When?

A June of 1913.

Q What firm?

A Bonwit Teller Company. New York.

Q And how long did you work there?

A About a year and ten months.

Q And where did you go from there?

A Copperohwaite & Sons.

Q How long were you there?

A About six months.

Q And where did you go then?

A The New York, New Haven & Hartford Railroad, in June, 1914.

Q And how long did you work there?

A A little over four years, until May, 1918.

Q Now, while you worked there were you under bond?

A Yes, \$10,000.

Q And who furnished the bond?

A The Fidelity & Casualty Company of New York.

Q And did you have occasion, in the course of your work, to handle any funds?

A All the time, yes. That was my position there.

Q And securities?

A Yes, sir.

Q Did you have occasion to carry large sums of money?

A Every day, yes.

Q What was your position?

A I was a clerk in the Treasury Department.

Q Were you at any time entrusted by anyone connected with the New Haven road with a large amount of security, to take the same out of town?

A On one occasion, yes.

Q And how much securities did you have at the time?

A \$275,000, in bearer bonds.

Q Who gave you those bonds?

A Mr. Hall, the assistant treasurer.

Q And where did he tell you to take those bonds?

A To Stamford Connecticut.

Q Did you go alone?

A Yes, sir.

Q Do you remember when that was?

A No, sir, I don't remember the date but it was in 1917.

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Q In 1917?

A Yes, sir.

Q Do you know Lewis?

A Yes, sir, I know Lewis very well.

Q James M. Lewis, the complainant in this case?

A Yes, sir.

Q How long have you known him?

A Since I went with the railroad.

Q And how many times did you see him, as a rule?

A Twice a day, and sometimes more.

Q Did you resign from the New Haven in 1918?

A I did, yes.

Q Do you remember the date you resigned?

A Yes, May 31st, 1918.

Q And after you resigned, what did you do?

A I enlisted in the Army, that same day.

Q You enlisted in the Army, that same day?

A Yes, sir.

Q You were twenty years of age, at the time?

A Yes, sir.

Q In what branch of the service?

A Chemical Warfare Service.

Q And how long were you in the Chemical Warfare Service?

A Until February 1919.

Q Were you then discharged?

A Yes, sir.

Q Were you honorably discharged?

A Yes, sir.

Q Have you got your papers?

A Yes, sir. Here they are (indicating).

MR. SOLOMON: I offer them in evidence.

MR. TEKULSKY: No exception. We concede them.

(They are marked Defendants Exhibit B.)

BY MR. SOLOMON:

Q After you were discharged, what did you do?

A I went back to the New Haven Railroad.

Q You went back to the New Haven Railroad?

A Yes, sir.

Q And what position were you assigned to?

A I wasn't assigned to my old position. I was assigned to the ticket offices on the lower level of the Grand Central station.

Q And how long did you stay there?

A One week.

Q And did you resign?

A Yes, sir.

Q Why?

A Because I was working under compressed air, and I didn't like it.

Q And, after you resigned from the New Haven, where did you go?

A The Fifth Liberty Loan.

Q And how long were you with the Fifth Liberty Loan Association?

A Most three months.

Q And where did you go then?

A To the Motor Transport Corps.

Q And how long were you there?

A I went with the Motor Transport Corpse, as chief clerk, in June, 1919, and I was transferred to the Army Transport Service on September 15, 1919, aboard of the Princess Meturka, as chief clerk.

Q And how long were you aboard that ship?

A Until December 15th, 1919.

Q And, while aboard the Princess Meturka, did you have charge of any funds?

A All funds, yes.

Q About how much?

A Well, we had a standard - -the Govern

ment allowed each transport a fund of \$100,000, to cover all merchandise expenses while in foreign ports or here, and to pay the men.

We usually carry 40 or \$50,000 in cash, and the remainder in Government checks.

Q And did you have charge of the cash and checks?

A Yes, all funds.

Q And, where did you keep the cash and checks?

A In the cash vault. There was one that we had built especially for the safekeeping of the cash.

Q And who had the combination of that vault?

A I did.

Q Anybody there have the combination besides yourself?

A Just the ship's commander, Captain Perry.

Q Just the ship's commander, Captain Perry?

A Yes, sir.

Q Were there any other safes on board?

A Yes, six or seven others.

Q Did you have the combination of those safes?

A All of them.

Q And who had charge of the valuables of the different persons aboard the transport.

A I handled them personally.

Q And were they delivered to you?

A Yes, sir. I would take them, and issue receipts for them, and, when the people were leaving the transport at Brest or down south, I delivered them their valuables.

Q And you had charge of those valuables while the transport

was at sea or in port?

A Yes, sir.

Q And in December, 1919, what happened?

A I had a nervous breakdown in Porto Rico, and Captain Perry suggested that I stay ashore until the next trip, because it might do me good. He suggested that I remain in port for the next trip, because I wasn't in good health, having had a nervous breakdown while in the south.

Q And was the transport making another trip on December 15th?

A Yes, she was scheduled to leave for Panama.

Q Now, you didn't do anything then up to the - - you didn't work at all in November - - in the months of December and January?

A No, sir.

Q You were at home?

A Yes, sir.

Q Now, on January 10th, do you remember what occurred on that day?

A I do, yes.

Q Tell us what occurred on that day?

A I was aboard the Meturka had come in the lay before, Friday, and the 10th was Saturday; and I went aboard the ship on Saturday to see Captain Perry, and he was very busy, and he asked me if I wouldn't come again on Monday morning, the 12th, at 10A.M., and I did.

Q And, when you went home, did you tell of the appointment with Captain Perry for Monday?

A Yes, sir.

Q On Monday, January 12th, what time did you leave your home?

A Somewhere around nine o'clock. I can't say to the minute.

Q Who was home when you left?

A Just my mother and my

brother Pierre.

Q The boy?

A Yes, sir.

Q And where did you go?

A Pier 4, on a base, Brooklyn.

Q And what transport did you go aboard?

A The Princess Meturka.

Q And what time did you get there?

A 10 A.M., sharp.

Q And how long did you wait for Captain Perry?

A Pretty near an hour and a half.

Q And did you see Captain Perry?

A I did, yes.

Q And did you have a talk with him?

A Yes.

Q How long did you talk with him?

A Why, when I first saw Captain Perry, it was just about 11:30. He came aboard ship with Lieutenant Fillio, of New York.

Q And did you have a talk with Captain Perry?

A Well, he asked me to wait a few moments, that he was busy.

Q And did you talk to him again?

A Yes, sir.

Q And what did he say then?

A Well he said, unfortunately, that he was to be assigned in the Port, and wouldn't go out again on the Meturka.

Q And did he ask you to call again to see him?

A He did, yes.

Q Now, what time did you leave the transport?

A About 12:30.

Q And where did you go from there?

A I went over to the transport Nanaesmond, lying at Pier 3 or 4 - - I don't know which.

Q Well, why did you go there?

A To see Flynn.

Q Did you find anybody on the ship?

A No, sir, none of the ship's officers.

Q And where did you go then, after you left the Nansemond?

A Directly home.

Q And when did you reach home?

A About two o'clock.

Q And who did you find there?

A My mother and my aunt.

Q Mrs. Haake?

A Yes, And then I asked mother to cook some lunch for me, and she had no ham, and I went downstairs to buy some ham, and she cooked some ham and eggs for me, and I ate my lunch.

And I told her what had happened between Captain Perry and myself; and, after lunch, I laid down and slept.

Q And how long did you sleep?

A Until 4:30.

Q How do you know that it was 4:30?

A When I got up, I looked at the clock.

Q And was your father there then?

A Yes, sir, he was standing in the dining room with my mother.

Q And did you go out then?

A Yes, sir.

Q Where did you go to?

A To a own ship, on Third Avenue, between 111th and 113th Street.

Q And what did you do at the pawnshop?

A I pawned my little diamond ring, I had a little diamond ring then.

Q For how much?

A \$15.

Q Have you got the pawn ticket?

A Yes, sir.

MR. SOLOMON: I offer it in evidence.

MR. TEKULSKY: No objection.

(It is admitted and marked Defendants' Exhibit C.)

THE FOREMAN: What date is that on the ticket?

MR. SOLOMON: Here is the ticket, Mr. Juror. It is in evidence.

BY MR. SOLOMON:

Q Do you know what time you reached the pawnshop?

A Well, I didn't look at any clocks. It was a cold, dull afternoon. And I had no overcoat on, I remember distinctly, and it took me only a few minutes to run down there.

Q And where did you go then

A Directly back home.

Q Now, did you go up and speak to the pawnbroker about coming to court?

A Yes, sir.

Q What did he say?

A He said that he couldn't remember me because - -

MR. TKULSKY: I object to that, as to what the pawnbroker said.

THE COURT: Objection sustained.

BY MR. SOLOMON:

Q Did I give you a subpoena to serve on the pawnbroker?

A Yes sir.

Q And how many times did you go there trying to subpoena him?

A Twice.

Q Now, after you left the pawnbroker, where did you go to?

A I went directly home.

Q And how long did you stay home?

A Until about seven

o'clock, that evening.

Q And, at seven o'clock that evening, what did you do?

A Harold called for me, and he and I went to a show.

Q You mean the defendant Flynn?

A Yes.

Q Now, how often did you see Lewis while you were employed at the New Haven?

A Several times a day, two times or more; but every day I saw him.

Q How often did you see Ryan?

A Oh, possibly once a month, and sometimes once in two or three months.

Q You were friendly with Lewis and Ryan?

A Yes, sir, most friendly.

Q How much did you start in to work for when you started in to work for the New Haven?

A Eight dollars a week.

Q And how much did you get when you resigned?

A \$26 a week.

Q Now, after the 12th of January, when did you next see Ryan?

A On the night of January- -

Q I withdraw that question. When did you next see Ryan after the 12th of January?

A On the night of January 31, 1930.

Q Where did you see him at?

A He came to my home.

Q Was the defendant Flynn there when he came?

A Yes, sir.

Q Did you introduce Flynn to him?

A I did, yes.

Q Did you have a conversation with Ryan?

A I did, yes.

Q What did he say, and what did you say?

A Why, Ryan shook hands with my mother and my aunt. He had never met my aunt before,

but he knew my mother.

And he asked me would I take a little walk with him, and I said certainly.

And he and I went for a walk. As we were near 116th Street-- my home is between 115th and 116th - - he said, "Who was that fellow, Flynn, Fred?" And I said, "He is a friend of mine,"

"Does he live with you?" And I said, "No, he lives over here," pointing towards Park Avenue - - "Between 117th and 118th Street, on Park Avenue."

And he said, "Fred, Mr. Rathbun," whom I know very well, "asked me to me up here and ask you where you were on January 12th.

I didn't understand the question, and I didn't know why Mr. Rathbun or anybody else would want to know where I spent my time.

And I said, "Why, I don't remember off handedly where I was on that day."

And I said, "Why," and he said, "There is a man in the Grand, Central, named Mr. Moore. He would like to know where you were on that day."

And I said, "I don't remember, Mr. Ryan," and he said, "Well, in the event of your finding out or recollecting where you were, call me up, and let me know."

And I said, "No, I wouldn't let you know" - - I didn't see where it concerned anyone, where: I spent my time.

And I asked him regarding his son. Shortly before leaving the

system to enlist, he had asked me to try to secure a position for his son, and I forgot about it, and went away in the army. And he told me he was getting along very well. And Mr. Ryan left me at 125th Street, and Third Avenue.

Q When did you next see Ryan?

A On the morning of January 23rd?

Q Where at?

A My home?

Q What did he say when he came in?

A Well, it was Paul, my brother, that answered the door, and he came in and said Mr. Ryan wanted to see me at the door, and I went out in my bathrobe, because I was in bed yet.

Q When was it?

A Around ten o'clock. Mr. Ryan was standing in the hall, leaning up against the wall.

And he said, "Fred, Mr. Moore, of the Grand Central station, has asked me to come up here, and ask you to come down there.

He wants to see you down there."

And I said "All right, Tom. If you will wait a few moments, I will put on my clothes and go down with you,"

And he said, "Better still, Fred. I have a date uptown, and so I will come back at two o'clock this afternoon. Will that be satisfactory to you?" And I said certainly. And I was dressed and waiting for him at half past one.

Q Did he call at half past one?

A No, sir; nearer two o'clock.

Q And what did he say then?

A My mother and my aunt were there.

Q And what did you say?

A We just went down, after he said hello to my folks.

Q And where did you go to?

A To the Grand Central.

Q Whose office?

A I don't know whose office it was. I never had been in the office before.

Q Who did you meet there?

A Mr. McMahan.

Q Had you known him?

A Yes, sir.

Q How long?

A While I was in the employ of the system, for several years, I knew him.

And Mr. Ryan brought me into this big room, and then into the anteroom, and then he left me, and went out of the room.

About five minutes after that, Mr. McMahan came in, and I recognized him, and shook hands with him, and inquired about his health, and he inquired as to my own.

And then Mr. McMahan said, "Fred, can't you tell me where you was around January 12th?"

And it then struck me that Mr. Ryan had asked me that question, several nights before, and I told Mr. McMahan that Mr. Ryan had asked me, and that I had told him that I couldn't recall, and I couldn't recall then, because I had no reason to remember the date particularly at that time.

And I said, "Why did you ask?" And then he asked me where Harold Flynn was, and I said, "Before we go any further into detail, Mr. McMahan, I would like to know why you sent for me, and why you want to know where I spent that day."

And he said, "Don't you know Fred?" And I said, "No, sir."

And he said, "I'll tell you. There is three people here to identify you as the man who committed a crime in this building on that day. January 12th.

I was dam rounded. I didn't know anything about a crime whatever. And I tried to explain to Mr. McMahan that a big, serious mistake was being made, that he was all wrong.

And he said, "Now, I want to talk to you as a friend, Fred. Now, for instance, I am going to cite a little case to you. I really thing Flynn was the instigator of this, and led you into it," and I said, "No, you are wrong. He is a good fellow, and he's all right."

And he said, "Now, for instance, we have an agent up in Mamaroneck New York, and a young fellow used to see him carrying his money around very carelessly - - that is, the company's money - - and, one day he rushed up to this man and took the package of money from him, and it was more to scare him than anything else, and he returned the money, and I think that's the joke you played on Mr. Lewis."

And I said, "No, there was no such joke. I don't know of any such thing."

And then he asked where Flynn was and I told him.

And then Mr. McMahan left the room, and came back with a man named Rizzo - - as I afterwards learned.- - and Mr. Rizzo explained to Mr. McMahan that his boss wouldn't let him go somewhere.

And then he suddenly turned, and he said, "That's the fellow

I saw running down the stairs.

And Mr. McMahan said, after he left the room, "You see, Fred, that man identifies you."

And then Mr. Privette came into the room, and Mr. McMahan introduced me to this man, and Privette said, "Well, Fred, it's a pretty serious mix up you are in here."

And I tried to explain that a .mistake had been made, and I knew nothing about it. There were hundreds of people that know me up in the Grand Central, because I used to pay them off.

And they were both sitting there, smiling, and I was all excited, and couldn't explain anything to them.

And then Mr. McMahan left the room, and Mr. Privette said to me, "Fred, you don't know where you were the 12th?"

And, at that time, I couldn't have told them where I was, yesterday.

And he said, "Were you in the habit of going out with your uniform?" And I said "Yes." with Flynn."

"Do you ever remember passing a remark such as this, If a man is going to assault anyone, or take money from him, if he has no other way to get it, or can't follow any other vocation, to take it from a man who has money?" And I said, yes, that I was in a cross town car in 125th Street, going west, one night, and there was an old lady sitting - -

MR. TEKULSKY: I object to that, if your Honor please.

THE COURT: I will allow him to explain. It was a part of a conversation with Mr. Privette, he says.

BY THE COURT:

Q Go on.

A There was an old lady, very shabbily dressed, sitting about four seats to my right - - there were cross seats - -and suddenly she jumped up, and she said something to a big fellow a heavy set fellow, who was sitting on the outside of her seat (illustrating). She was sitting next to the window. It was a cross seat; and it seemed that that man was trying to pick her pocket.

And I turned to Harold, and I said, "That's shameful. If a man can't get money other than by stealing it. why can't he take it from somebody that has it, and not a poor woman like that."

And I left the car then. And there was a lady standing looking at me, like that (illustrating) and I asked Harry if he had noticed her. That lady was the lady that eat in this chair, and identified me as the man that assaulted Mr. Lewis. That's the truth. She was the lady that was in that street car, that night.

Q What else was said in that room?

A Mr. McMahan came in again, several moments later, with this lady behind him. I was sitting here, and Mr. McMahan about there (illustrating), and the lady took a seat on the other side of the desk.

She looked quite intently at me for a few moments - - well, I am ahead of my story, sir. Can I go back?

Q Oh yes.

A As she I was advancing towards me in the room, I said to Mr. McMahan, "I know that lady," and he said, "Roberts,

shut up. I don't want you to say a word to anyone who comes into this room from now on."

And she looked quite intently at me for a moment, and got up and walked out, with McMahan behind her.

And McMahan came back, and said, "That lady has identified you as the man who assaulted Mr. Lewis."

And I told him the lady was mistaken, that she was all wrong.

And then Mr. Lewis came in, about five minutes after that, with Mr. McMahan.

I shook hands with Mr. Lewis, and asked him how he was, and he asked me how I was.

And I sat down, and he sat down. And then Mr. Lewis got up a minute or so after, and walked out.

And Mr. McMahan came in, and said, "Fred, Mr. Lewis has identified you as being the man the assaulted him."

And I couldn't understand, I couldn't speak. I don't think I said any more, Mr. Solomon.

Q Did anybody say to you in that room that Harry had told the whole story, and you had better tell it, too?

A Yes.

Q Who was it?

A Detective Jones.

Q Detective Jones told you that?

A Yes, sir.

Q And what did you say in answer to that?

A I told Detective Jones he was mistaken.

Q And then you were arrested?

A Yes, sir.

Q And how long were you in jail?

A 27 days; 26 or 27.

Q Now, Fred, did you assault Lewis, the complainant?

A No, sir.

Q Yourself alone or with anyone else, on the 13th of January or any other time?

A No, sir.

MR. SOLOMON: That is all. Excuse me. Just one question.

Q Did you ever see Mr. Lewis and Mr. McMahon together before the 23rd of January?

A See them together?

Q Yes?

A No, not together that I know of. I don't remember.

CROSS EXAMINATION BY MR. TEKULSKY:

Q Now, have you told us all that you know about your connection with the New York Central Railroad Company?

A Yes, sir.

Q When you worked for them before, was it for the New York, New Haven & Hartford or the New York Central?

A For the New York, New Haven & Hartford railroad.

Q And did you say, on your direct examination, that you voluntarily left the employment of that company when you enlisted?

A Yes, sir.

Q Now, what were the circumstances under which you resigned?

(Objected to. Allowed. Exception.)

A Why, I resigned on May 31st, 1918.

Q Was there not some question between the railroad, and yourself about a check, at that time?

(Objected to. Overruled. Exception.)

A No, sir, not the railroad. Mr. Hall.

Q Mr. Hall, of the railroad?

A Yes, sir.

Q What did he say about that check?

MR. SOLOMON: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: Sustained, as to what he said.

BY MR. TEKULSKY:

Q What transaction did you have with Mr. Hall about a check?

(Objected to. Overruled. Exception.)

A Why, it was a matter of some money I owed Mr. Hall, sir.

Q Well, was it a check that you owed him?

A No, sir, cash on a check.

Q Cash on a check?

A Yes, sir.

Q A check that you had given Mr. Hall?

A Well, I had endorsed it.

Q But you had to do that, didn't you?

A Yes, certainly. I had given it to him. But it was not a personal check.

Q How large was it?

A \$250.

Q How long was that before you left the Railroad Company?

A Why, about January, I think, or February of the same year.

Q And when did you leave the company?

A In May.

Q Now, you say that you were over at the Nansmond on the 12th of January?

A Yes, sir.

Q On the day when this alleged attempted robbery occurred?

A Yes, sir.

Q And what time did you say you got there?

A Why, I left the Meturka about 12:30, and went directly over to the Nansemond. She was laying at the next pier.

Q And did you see anyone - - and there was no one on the boat, you say?

A None that I knew.

Q What reason had you to expect Flynn to be there?

A Because I couldn't locate him in New York, and thought - -

Q Had you been down to 45 Broadway?

A No, sir.

Q Did you try to locate him in New York?

A Yes.

Q In what way?

A I telephoned from the Nansemond when I got there.

Q But you didn't try to reach him before you got to the Nansemond?

A Yes, I telephoned to the Nansemond, and asked if Flynn was aboard, and they told me none of the ship's officers were aboard.

Q And, nevertheless, you went over?

A I went over, thinking probably some of the other clerks would know if he was coming, or whether he was working or not.

Q Well, you knew he was working at 45 Broadway; didn't you?

A Yes, sir.

Q Well, why did you think he might be on the Nansemond?

A Why, at the party on Saturday night, he told me he was at the ship, that day, and expected to be there, on Monday.

Q Well, you head his testimony here, today?

A Yes, sir.

Q Was he at that party?

A Yes, he was.

Q And then you went over to the Nansemond?

A Yes, sir.

Q And you expected him to be there; did you?

A Yes, because he said he had been with Captain Brickley all day on the Nansemond on Saturday, and he might be there on Monday.

Q Had you been out on Saturday, on the previous Saturday?

A Yes, sir.

Q Where were you?

A I was over at the Meturka, Saturday noon and I was up to a show - - no, up to my sister's house. It was on Saturday night I went to a show.

Q Now, which was it? You said a show, and then corrected yourself?

A My sister's house.

Q But you were still sick, and on sick leave, when you went out?

A I wasn't any sicker than I am now, but I wasn't in 100 per cent health; that's all.

Q And was it your custom to get up -- you say you got up at ten o'clock in the morning when Ryan came up there. Was that your usual hour of getting up?

A At that time, it was.

Q Now, on the 12th of January, you went to bed after you had lunch?

A Yes, until half past four. No. I just laid down. I didn't go to bed.

Q You laid down until half past four?

A Yes, sir.

Q What did you say to your mother when you went out?

A That I was just going to the corner, and would be back in a few minutes.

Q You didn't tell her about pawning the ring; did you?

A No, sir.

Q And you didn't ask her for any money; did you?

A No, sir.

Q And you say you had been up to that pawnshop to serve the pawnbroker?

A Yes, sir.

Q Did you serve him?

A No, sir, he wasn't there.

Q This case has been pending since January; has it not?

A Yes, sir.

Q And you made only two effort to find him?

A Yes, sir.

Q And you have been out on bail all the time; haven't you?

A Yes, sir.

Q Now, at the time you pawned that ring, did you see the pawnbroker make a record in his book?

A Why, I didn't particularly notice that, but I know it is the custom.

Q You didn't ask him to show you the records?

A He told me my name was the third from the last one, and then I asked him if there was a lady- -

Q I didn't ask you that, and move to strike out the answer as irresponsible. I asked you if you asked him to show you the book?

A No, sir.

MR. SOLOMON: I think the answer is responsive.

MR. TEKULSKY: No, I don't think it is.

THE COURT: Objection sustained.

BY MR. TEKULSKY:

Q What time did you get home on Monday?

A About two o'clock.

Q Now, after this alleged pawnbroker incident, what time

did you get home?

A I noticed it was half past four when I left my home, and I was back in ten minutes, or fifteen minutes.

Q You are absolutely sure you got home before five o'clock.

A Yes, sir, absolutely.

Q And, in your previous testimony you said you came right home, and got home before five o'clock; is that right?

A Yes, sir.

Q Did you tell your mother where you had been?

A What do you refer to, sir?

Q When you got back home?

A From the pawnshop?

Q Yes?

A No, sir, I didn't tell her.

Q You didn't say anything about the \$15?

A No, sir.

Q You had no money before you went to the pawnshop?

A No, sir.

Q You were badly in need of money?

A I wouldn't say badly.

Q Were you in the habit of going to pawnshops?

A No, sir.

Q Was this the first time you ever went to a pawnshop?

A No, sir, the second.

Q Well, when you went on the previous occasion, were you badly in need of money?

MR. SOLOMON: Objected to, as immaterial, irrelevant and incompetent.

A Why, I had no money. I wouldn't go, naturally, if I had any money.

Q So that on both occasions it was because you had no means, no other means of getting money?

A I had other means of getting money.

Q What means?

A I might have borrowed money from my mother.

Q And you were living with your mother, at this time?

A Yes.

Q And you were on Friendly terms?

A Yes.

Q And there was no dissent ion in the family; you were on good terms with all of your family?

A Yes.

Q And you say you went out at what time on the morning of the 12th of January?

A Around nine o'clock.

Q And, when you left the house, did you have any money?

A I had a couple of cents, carfare. I don't just remember the exact 1 amount.

Q Didn't you go to the pawnshop, at that time?

A No, sir.

Q Are you sure about that?

A Yes, sir.

Q You had only a few cents carfare?

A Yes, sir.

Q And you went around to the boat over there, to see Captain Perry, and then you went to the Nansemond?

A Yes, sir.

Q How did you get to her?

A Because they lay at opposite piers.

Q And, after you got back home, you had no place to go to; did you?

A No, sir, not at that time of day.

Q And at half past four, you had no place to go?

A I just went to the pawnshop.

Q But you didn't have to go anywhere on business?

A No, sir.

Q And then you needed the money more in the morning than in the afternoon; didn't you?

A Well, the carfare I had naturally spent. But of the \$15 I lent Harry five dollars.

Q He had no money at all either?

A No sir, I don't think so.

Q When did you give him that five dollars?

A That night, when I saw him.

Q And so when the crime was committed, neither you nor Harry had any money at all?

A I know I hadn't any.

Q Well, when did he tell you he had no money?

A That night he told me he had no money.

Q Now, when Ryan came up to see you on the 21st of January, what time did you say it was?

A Around five o'clock at night?

Q And you were at home?

A Yes, I opened the door for him.

Q And were you in as good health then as you are now?

A I think better.

Q You were not working at that time; were you?

A No, sir.

Q And you have not as yet been reinstated on the Princess Meturka?

A No, sir, I hadn't. She has just come in, on the 8th. Captain Hubbard was on her.

Q But she didn't come in again on the 31st; did she?

A No.

Q And you saw the Captain on the 12th?

A Yes, sir.

Q Did you see him again between the 12th and 21st?

A No.

Q You didn't go down to see about your reinstatement again; did you?

A I went down to 45 Broadway after that. That's the Headquarters.

Q You didn't see Captain Perry after the 13th; did you?

A I don't remember of seeing him, no, sir.

Q Now, when Ryan came up to see you on the 31st of January,

at five o'clock, did he say, anything else to you, outside of asking you if you remembered where you were on the 12th of January?

A That was the main part of his conversation, except I talked about his boy.

Q Well, did you ask him why he wanted to know about this date?

A Yes, sir? I did.

Q And what did he say?

A He said that Mr. Moore or Mr. Rathbun wanted to know it. I didn't know which of the men he meant.

Q Did you ask him why Mr. Moore wanted to know?

A Yes, sir.

Q And he told you he didn't know?

A Yes, sir.

Q And did he ask you to think it over, and tell him, if you recalled, where you had been on the 12th of January?

A Yes.

Q And what did you say?

A Told him I wouldn't let him know, because I didn't know why he wanted to know.

Q Did you go down to inquire of this man Moore what he wanted to know that for?

A Two days after.

Q Yes. But that was when Ryan asked you to go down with him?

A Yes, sir. I didn't think any more about it after that night.

Q Didn't you mention it to your friend Flynn?

A No, sir.

Q Didn't you say that you had told him, that you had told Flynn, about his visit?

A No, sir.

Q Did you hear Flynn testify that, when Ryan asked him where he had been on the 12th of January, he recalled that you

had told him that Ryan had asked you the same question?

A No, sir.

Q Up to that time you didn't know what they wanted you for?

A I thought it was a job.

Q A job?

A Yes, sir.

Q Had you applied for a job?

A No, but they had offered me positions on various occasions.

Q And you thought they had sent Ryan up for you, to bring you down to get a position?

A Yes, sir.

Q But you didn't ask Ryan if that was what they wanted?

A No, sir.

Q And yet you were in need of funds; weren't you?

A (No answer).

Q Weren't you in need of funds at the time?

A Well, I wasn't working, if that is what you mean.

Q And you needed a job?

A Certainly I needed a job.

Q Now, when you got down to the Grand Central station, you say you saw Mr. McMahan?

A Yes, sir.

Q And you knew him from previous acquaintance?

A Yes, sir.

Q You heard Mr. McMahan testify here, today; didn't you?

A No, sir.

Q Didn't you see him on the witness stand yesterday I mean?

A Yes, yesterday.

Q Now, you say that, in a conversation with Mr. McMahan, you told him that you recognized Miss. Thierich before she came into the room?

A While advancing into the room, I said.

Q Did you say that at that time, while she was advancing into the room?

A He wouldn't let me.

Q Well, when did you have this conversation that you testified to with McMahan, about a woman in a street car?

A It was about a week previous to my arrest. It was one night that it was snowing.

Q No. I am not asking you when this incident happened, but when did you tell McMahan about it?

A I never got an opportunity to tell it. He stopped me.

Q Didn't you say, awhile ago, that you eat down and told Mr. McMahan about this incident in the street car?

A No, sir.

Q You never told this to McMahan, at that time?

A No, sir. I started to, but he stopped me.

Q Before Miss Thierich came into the room, was that?

A Well, she was about standing where she afterwards sat down, at the time.

Q Well, after she went out, did you tell Mr. McMahan about the alleged attempt to pick a pocket, and that a woman stood near you in the car, whom you afterwards recognized?

A No, sir; I was too excited, when I realized what was going on.

Q Did you tell anybody about it?

A Yes, sir. Harry knows about it, and I told my people about it.

Q Now you never knew Miss Thierich before the day she came in, and identified you; did you?

A No, sir.

Q And you had no reason to believe she ever knew you; did you?

A No, sir.

Q And you had no reason to believe that, having appeared down there, she told McMahan the story of what happened in the street car; have you?

A (NO answer)

Q There was nothing that you know of as to how she could describe to McMahan that you were in the street car when this happened?

A I didn't immediately recognize her. It wasn't until I was in jail that I remembered where I had seen her.

Q Yes. But do you know how she knew that you were in that street car; do you know that?

A No, sir, I don't know. Mr. Privette said I was followed for seven days, and I put two and two together; that's all.

Q Oh, you put two and two together?

A Yes, sir.

Q And you don't know whether Miss Thierich ever saw you on that street car?

A I think she did; in fact I am positive that she did.

Q Did she ever tell you that she had seen that incident that you had just described in the street car?

A I have never spoken a word to that woman.

Q When she was in the room identifying you, did you talk about the street car incident to her?

A Mr. McMahan stopped me, wouldn't let me open my mouth.

Q Didn't you say, a moment ago, that the reason you didn't talk about it was because you didn't recall it until you were in jail?

A As I said before, when I started to tell that story, Mr. McMahan said, "Fred, don't say a word."

Q Well, were you about to speak to her about that street car incident?

A No, sir.

Q You were not?

A No, sir.

Q Now, just how do you explain this story about this street car incident with Miss Thierich's presence at this trial?

A Because that the only place I ever remember seeing her; and, when Mr. Privette asked me if I had passed that remark, I looked up and saw that woman, and I knew I had seen her, but not just when, or where, or how. But, when I was in jail, I done a lot of thinking, and I came to that conclusion.

Q But do you know whether she had ever seen you before?

THE COURT: He says she saw him in the street car.

BY MR. TEKULSKY:

Q Now my question is, whether you know that she had ever seen you any other occasion than in the street car?

A No, sir, I don't know.

Q She was a total stranger to you?

A Yes.

THE FOREMAN: May I ask a question?

THE COURT: Yes.

BY THE FOREMAN:

Q Did you testify in the Magistrates Court to that fact?

A I testified when I said to Mr. McMahon, "I've seen that woman before," and he stopped me.

Q You said that in the Magistrates Court?

A Yes, sir.

Q What happened on the car?

A I didn't mention the car.

because I didn't go that far. I didn't place her right then, but, when I was in jail, I recalled Mr. Privette asking me if I had passed that remark, and, when I was in jail, thinking of everything, I remembered where I had seen that woman. But I recognized her face as soon as I saw her.

BY MR. TEKULSKY:

Q Did she call you by name when she came into the room?

A No, sir, she didn't say one word.

Q Did she have any conversation with you?

A No, sir, to no one, to any of us.

Q How long was she in the room?

A About two minutes. Pardon me. I made a mistake there. I want to correct myself.

Q Go ahead?

A She asked Mr. McMahan to ask me to stand up, and turn around.

Q And did you do so?

A Yes, sir.

Q And, while you were doing that, did she look you over?

A Yes, sir, she was looking at me.

Q For how long?

A For about a half a minute or so.

Q Did she say anything in your hearing to anybody?

A Not other than that.

Q Not other than what?

A To ask me to stand up, and turn around.

Q And then she want out of the room?

A Yes, sir.

Q Who was in the room at that time?

A Mr. McMahan. But he left with her.

Q Now, at this time, did you know what you were there for?

A Oh certainly. I have been told.

Q Who told you?

A Mr. McMahan.

Q So that Ryan asked you originally where you had been on the 12th of January, and he asked you if you could recollect to notify them; is that right?

A To notify him.

Q And then, on the day you were down there, on the 23rd, Mr. McMahan told you what you were there for?

A Yes, sir.

Q And so you knew what it was all about?

A Yes, sir. Then I knew why they were so anxious to know where I was on the 12th.

Q Did you see Flynn at the Grand Central Terminal building on that day?

A Yes.

Q And were you present when Flynn was identified?

A No, sir.

Q Now, what happened when Mr. Lewis came into the room?

A Mr. Lewis came, in,, and I stood up when I saw him come in, and recognized him and went over, and shook hands with Mr. Lewis, and asked how he was, and he asked me how I was.

Mr. Lewis then sat down where Miss. Thierich had been sitting, and I sat down where I had been sitting; and Mr.

McMahan was talking to Mr. Privette, and he looked at Mr. Lewis, and he said something like; "I'm ready."

But, in fact, I don't think I really heard it. And Mr. Lewis got up, and Mr. McMahan walked out of the room with Mr. Lewis; and he came back without Mr. Lewis, and said that Mr. Lewis had identified me.

Q What did you do while Mr. Lewis was in the room?

A I just sat there.

Q You didn't do anything else while he was there?

A I had nothing else do.

Q Did you put a hat on?

A I don't remember that.

Q You don't remember that?

A No, sir.

Q Your mind is pretty good on everything else, or your memory, rather?

A I don't know how good it is; no, sir.

Q How long was Lewis in the room?

A Possibly two or three minutes.

Q How long did you say you had been working in the same ticket office where Lewis worked?

A One week.

Q And during that time you spoke to Lewis; didn't you?

A Yes.

Q And what were your hours there?

A Nine to five.

Q And what were Mr. Lewis' hours?

A That I don't know, because I was on the lower level, and Mr., Lewis was on the upper. But I remember, when I worked there before, Mr. Lewis lived in Stamford, and he always went up on that six o'clock train.

Q And Mr. Lewis came into the office where you were frequently?

A Yes sir.

Q He came in there to collect moneys didn't he?

A Well, I didn't handle any money down there, and I don't know.

Q But you knew it was his custom to take the money upstairs?

A No, sir, I didn't. I handled no money while in the ticket office I was on the books, as an auditor.

Q Now, how long did you work in the treasurer's office upstairs, before you went to the War?

A A little over two years, I think.

Q Didn't you know that it was the custom for the ticket cashier to bring the money upstairs?

A Yes, he always brought it up, with another gentleman.

Q Who?

A Mr. Lewis.

Q What time of day did he do that?

A Well, he never came on the dot. Somewhere between four and five.

Q And you had been on this third floor of the Grand Central Terminal building, after you went back to work for them haven't you?

A Yes, I was upstairs to see my old boss.

Q And you were pretty familiar with the location of the rooms on that corridor?

A Yes, sir. certainly.

Q And with the elevator and stair exits?

A I worked on that corridor for about three years, as I have said.

Q Now, you say that Mr. McMahon told you that perhaps Flynn had suggested this crime to you, and led you into it?

A Yes.

Q What did you say to him when he say that?

A I told him he was all wrong; that he was mistaken in both of us.

Q Did he have any conversation with Flynn in your presence?

A No, sir. I didn't see Flynn until they took me out of the room.

Q Did you have a conversation with Detective Jones in the presence of Flynn?

A Well, not while in the Grand Central; no, sir.

Q Where did you have the, conversation, if any?

A Up in

The police station.

Q Did you tell Detection Jones anything about this story about woman in the car, the street car?

A No, sir, because I didn't know her at that time.

Q Well, that incident occurred before that; didn't it?

A Yes, sir, but I hadn't placed her yet.

Q When did that street car incident happen?

A I can't remember the night. I've tried to.

Q Now, this crime was committed on the 12th of January, and Mr. Ryan saw you on the 21st. How long before Mr. Ryan saw you did this street car incident occur?

A I don't remember the night.

Q Was it two weeks before?

A No, sir, it couldn't be that long.

Q Well, how long?

A Possibly a few days, or a week.

Q Did you ever tell Mr. Ryan about that street car incident?

A No, sir.

Q Now, isn't this entirely your own theory, that Miss Thierich was the woman who was on that street car?

A I wouldn't call it a theory. I wouldn't express myself, if I did think so.

Q But you wouldn't swear that she was the woman on that car; would you?

A Yes; and I am swearing to it now.

BY THE COURT:

Q What street car was it?

A The Third & Amsterdam Avenue, your Honor.

BY MR. TEKULSKY:

Q You have heard her testify that she is the woman who stood in the corridor when this crime was committed?

A Yes, I did.

Q And you have heard her testify that she was only a few feet away from you, and she said it was you?

A Yes.

Q And, despite this testimony that you have heard, you say that she was in the street car?

A Yes, sir.

Q With you?

A Yes, sir.

Q A few days afterwards, overhearing the remark that you made- - I mean in the same street car that you were in. I don't mean that she was in your company?

A I remember that occasion, because Mr. Privette asked me the same question.

BY THE COURT:

Q This incident in the street car, did that occur before or after the 12th?

A After, your Honor.

Q It was after the 12th, and before you were arrested?

A Yes, sir.

BY MR. TEKULSKY:

Q Now, you say that you had reason to believe that Miss Tierich was following you?

A Surely. Someone was following me. That told me that much.

Q Who told you that?

A Mr. Privette.

Q Did McMahon tell you that?

A No, sir.

Q You knew he was the Chief of that department?

A I knew he was chief while I was there, but I didn't know he was in command on that particular day, because this other man was there, and I

Wasn't in Mr. McMohan's office.

Q You knew that Mr. McMohan was going to be a witness in this case; didn't you?

A Yes, sir.

Q And you knew that Miss Thierich was not in the police department of the railroad company; didn't you?

A I didn't know where she was.

Q Did privette tell you that Miss Thierich was assigned to follow you?

A No, sir, but he told me I had been followed for seven days.

Q He said that somebody had been following you for seven days?

A Yes, sir.

Q But whether that was so or not, you didn't know; did you?

A No, sir.

Q And you now state that the witness who claims to have seen you commit this crime followed you, and was in the street car at the time she overhead you say something?

A I don't know whether she followed me or not, but I know I saw her on that night .

Q And, do you know whether she saw you?

A It was the manner in which she was staring at me that attracted my attention, and made me direct Harry's attention to it.

Q Did you hear her testify, yesterday?

A Yes, sir.

Q Did you hear her say that the first time she ever saw you was the day this crime was committed?

A Yes, sir.

Q Did you hear her say that the next time she saw you was when she identified you at the Grand Central Terminal building?

A Yes, sir.

Q Don't you think you are mistaken about the fact that this is the same woman that you saw in the street car?

A No, sir, I am not.

Q You are absolutely sure about it?

A Absolutely certain.

Q And just as sure about that as you are about everything else you have said?

(Objected to. Sustained.)

Q Do you remember where you were on the 13th of January?

A Yes, sir.

Q Where were you?

MR. SOLOMON: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. SOLOMON: Exception.

A I was down in Captain Hubbard's office, in the main office at 45 Broadway.

Q How long did you stay there?

A I don't remember the exactly time.

Q Where did you go after that?

A I went home.

Q And how long did you stay at home?

A Well, my mother wasn't very well at the time, and I stayed home most of the time.

Q And what did you do on the 14th of January?

A I don't remember, sir.

Q Do you remember what you did at five o'clock on any other day than the 12th of January?

MR. SOLOMON: Objected to as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. SOLOMON: Exception.

A No, sir, I don't but I've had 27 days to think particular hour over.

THE SECOND JUROR: May I ask a question?

THE COURT: Yes.

BY THE SECOND JUROR:

Q I would like to know whether he remembers the time of the car incident. What time was it?

A (No answer).

BY MR. TEKULSKY:

Q What hour was it?

A It was between seven and 7:30, because Harry and I were going to a show.

Q Was the car going north or south?

A Going west, on 125th Street.

Q And where did you get on this car?

A 116th Street and Third Avenue.

Q And it was going north on Third Avenue then?

A Yes. At 125th Street it turns west.

BY THE SECOND JUROR:

Q What time was it did you say?

A Between seven and 7:30, because we were going to a show and wanted to get there early.

BY MR. TEKULSKY:

Q Where did this occur?

A Between Fifth and Lenox, on 125th Street, a block from where we got off to go to the theatre.

Q Did you see the woman strike the man who attempted to take her pocket book, as you say?

A Yes, I didn't interfere. I had nothing to say.

Q And where was Miss Thierich?

A She was standing here (illustrating). There were little handles on the seats, and the man was going out, and I turned to see him go out, and I see her then looking at me in that peculiar way (illustrating).

Q Well, where was she as to you?

A She was standing right by the end of the seat, and, when I looking up I seen her looking at me. She was right in the rear of me at the end of the same seat.

Q Now, was Flynn with you?

A Yes, sir.

Q And what was the remark that you say you made at that time?

MR. SOLOMON: I object to that, That question has been asked and answered.

THE COURT: I will allow it.

MR. SOLOMON: Exception.

A I drew Harry's attention to her.

BY MR. TEKULSKY:

Q All right, And what was the remark, I say?

A I just said, "Harry, look at the way that woman is looking at me."

BY THE COURT:

Q No, he means the remarks that caused her to look at you?

A I don't remember the exact words. I just said that fellow was contempt able, for trying to pick a poor old lady's pocket, and, if he had no other vocation that that, why didn't he take it from someone that had money.

BY MR. TEKULSKY:

Q And was that remark ever repeated to you by anybody?

A Yes, sir, by Mr. Privette at the New Haven office.

Q Did you ask him where he had heard that remark?

A No, sir.

Q Or from whom?

A No, sir.

Q Now, what was your conversation with him?

A He said, "Fred, do you remember ever passing such a remark as this?" And then he recited what I just told you, and I said, "Yes."

Q And what did he say you said?

A That I said, "If that man has to steal money, why don't he steal it from someone that has money?"

Q Did you ask him why he asked you that question?

A No, sir, I didn't.

Q You didn't think it was important; did you?

A Oh, everything was important to me, but I was too excited to think, or ask any questions.

Q Have you talked this case over with the other witnesses that you called, today?

A Yes.

Q And in that way you have all made up your mind as to what occurred on the 12th of January?

A Well, I know what occurred.

Q You say that you were with Flynn at the time you loaned him five dollars on the 12th of January. What time was that?

A That was at night.

Q But what time at night?

MR. SOLOMON: Objected to as immaterial, irrelevant

And incompetent.

MR. TEKULSKY: I desire to fix the time, if your Honor please; that's all.

THE COURT: I will allow it, to fix the time.

MR. SOLOMON: Exception.

A Harry came to my house, around seven o'clock, and he and I went out. And it was somewhere around that time, between seven and half past that I gave him the five dollars.

Q You remember that Ryan came up to your house, that day?

A No, sir, not on the 12th.

Q On the 21st, did you and Flynn and Ryan meet?

MR. SOLOMON: I object to that as already asked and answered.

THE COURT: Objection sustained on that ground.

BY MR. TEKULSKY"

Q Did you see Ryan after he left on the 21st?

A No, sir.

Q But you saw him on the 22nd; didn't you?

A No, sir, on the 23rd.

Q Didn't you say that you saw him on the 22nd?

A No, sir, the 23rd.

Q What time did you see him on the 23rd?

MR. SOLOMON: I object to that as already asked and answered.

THE COURT: Yes, Sustained. He says he saw him down at the railroad office.

MR. SOLOMON: Yes, sir; that he called for him in the morning, and came back for him in the afternoon, and went down with him.

MR. TEKULSKY: I mean Flynn. Excuse me.

Q Did you see Flynn on the 22nd.

MR. SOLOMON: Objected to, as already asked and answered.

THE COURT: I will allow it. I don't think it has been asked.

MR. SOLOMON: Exception.

A I don't remember.

MR. TEKULSKY: That's all.

REDIRECT EXAMINATION BY MR. SOLOMON:

Q Roberts, now let's have the story about that \$250 check, since Mr. Tekulsky brought it out. Tell the jury all about it.

A Mr. Solomon, I can't remember the dates in that affair.

Q Never mind about the dates. Go on.

A I was employed as a clerk in the Treasury Department of the New Haven railroad.

In my capacity, I handled all stokes and bonds, and all cash taken in at the Grand Central station, and I banked all that money.

Now, I cashed all checks that came into the department - - not all but some of them- -

My mother knew a lady, an old friend, in fact, that she had known for years, before I was born.

Q The jury can't hear you, raise your voice.

A My mother

Knew a lady about twenty odd years, and they had come from Boston with her, with my mother, and this woman's husband went west, and died there of tuberculosis.

And this lady returned with a new husband, about three years ago, and I was introduced to that man.

And he told me he was looking for work in the east here, that he was tired of the west.

I recommended him to an uncle of mine who is an official of the Erie Railroad, and my uncle tried to place him, but couldn't give him anything that he wanted.

He said he was an automobile mechanic, and he said, about two or three weeks after he was here, he had secured a position in an automobile school on Broadway, teaching men to drive cars.

And, two or three weeks after that, he came in the office, one afternoon, and I was in the general manager's office, and Mr. Broege was my boss.

And he said he hadn't been drawing any pay, but that the man was going to pay him in a lump sum, for six weeks work, and that he would get a check for about \$250.

And, three or four days after, he came in with a check, and it was certified.

Q A check for how much?

A I am going to tell that. For \$250., drawn on the Harriman National Bank, and certified to by the cashier.

Well, McCarthy asked me - - that was his name - - to cash that

Check for him.

And it looked to be all right, being certified, and I took it in to my old boss, Mr. Hall, and he said, "It looks all right, Fred."

Q Did he ask you to indorse it before he cashed it?

A Yes, sir, that was customary, and I done that, without being asked, to show who had brought the check into his department.

And Mr. Hall cashed the check, and I gave the money to McCarthy, and he left. And that was on a Tuesday or Wednesday.

The following Monday, Mr. Hall telephoned to me—I was in another department at the time – and asked me to come right into his office. And the check had been returned, and marked, "Fraud" and "Forgery".

And I tried to locate McCarthy, and he was gone. I did, however, locate him; the next morning, on the east side somewhere, somewhere in 40th Street, and I saw him.

And I told him what a position I was in on account of that check, and I said, "The best thing you and I can do is to go to the police department, or locate the man that gave you the check.

And we went up to 56th Street, to the garage where he was supposed to be employed.

And he said he had to go into the men's lavatory in the saloon on the corner, and I waited on the corner for him.

And I went over to this place where he was supposed to have been working, and, when I came back, he was gone. He was nowhere

In eight, and then I telephoned to the police station, for Detective Charles Picco.

I related to Mr. Picco just what had occurred, and everything, and we naturally formed the same conclusion, that he was putting one over on me, too.

Q Well, - -

A We went down to his room in 40th Street, and Detective Picco left me, that night, and I went down to the room in 40th Street, and I couldn't locate him or his wife.

The next day I went to the different express companies in the neighborhood, and asked them if they had moved any baggage from that house and one company said that they had, for a party named Thompson, and they took the baggage to the Pennsylvania station.

And I told Mr. Picco - - I met Mr. Picco and told him that, and he and I - - Mr. Ryan - - Mr. Ryan then came in on the case - - he and I and Mr. Ryan went down to the Pennsylvania Station, and the baggage was traced was being marked for Philadelphia.

Mr. Picco went directly to Headquarters, and wired for the Philadelphia police to hold that man, when he called for the baggage.

And Ryan and I went to Philadelphia, that night, and the next morning, they had McCarthy arrested. They had got him, the night before, when he called for the baggage.

And I was in the Police Department, when they brought McCarthy in - - extradition paper were filed - - I don't know how

They work that stuff, but they started and action to bring him back to New York City.

Q And he was convicted?

A Yes, sir. And I was a witness for the New Haven and Mr. Hall.

Q And, after he was convicted, did anyone connected with the company ask you to pay any part of that \$250?

A I thought I should do that, and I paid \$50, in small sums.

Q And the New Haven took it?

A Yes, sir.

Q Thought Mr. Hall cashed the check?

A Well, Mr. Hall did.

RE-CROSS EXAMINATION BY MR. TEKULSKY:

Q Well, Mr. Hall did it for you; didn't he?

A Yes, and that's why I thought I should pay.

Q And you have vouched for this man?

A Yes, sir.

Q And, when this thing happened, they asked you to give them what information you had about this man?

A And I did; everything I could.

Q Well, as matter of fact, you had participated in the transaction; hadn't you?

A Yes, sir.

FREDERICK J. ROCK, of 58 West 127th Street, a witness called by the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SOLOMON:

Q What is your business, Mr. Rock?

A I am an attorney and counselor at law.

Q And are you connected with the New Haven Railroad Company?

A Yes.

Q And how long have you been connected with that company?

A Oh, about 16 years.

Q As one of their counsel?

A Not all that time.

Q Not all that time?

A No, sir.

Q Were you one of their counsel on the 28th day of January 1920?

A I was employed in their legal department.

Q And were you the counsel of the New Haven on January 28th, 1920?

A I was employed in their legal department.

Q And were you in the Magistrates Court on that day and subsequent days?

A I was in the Magistrate Court on some days in January; but I don't remember the dates.

Q Assisting Mr. Shaughnessy in the examination there?

A I can't say that I was assisting him.

Q Were you suggesting to him anything?

A Well, I answered any question that he asked me.

Q Did you voluntarily make any suggestions to Mr. Shaughnessy?

A I don't remember at this time that I voluntarily made them.

Q Did you speak to the Magistrate who was presiding there?

A Yes, sir.

Q And did you speak to Mr. Saughnessy?

A Yes, sir.

Q And you had been in court since this case has been on trial?

A Not all the time. I wasn't here, this morning, at all.

Q Were you here yesterday?

A Yes, sir.

Q And all this afternoon?

A No, it was half past two when

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I came in .

Q You were suggesting to Mr. Tekulsky right along, this afternoon; weren't you?

A No, sir.

Q You were talking to him; weren't you?

A Yes.

Q Are you here representing the New Haven?

A No, sir.

Q Representing yourself?

A Yes.

Q Were you subpoenaed here?

A No, sir.

Q You represent nobody; you say?

A No, sir.

Q Except yourself?

A No, sir.

Q You are not interested in this case at all, then, are you?

A No, sir.

Q Well, what are you doing here, this afternoon?

MR. TEKULSKY: I object to that. He has a right to be here, at a public trial.

THE COURT: Objection sustained.

MR. SOLOMON: Exception.

BY MR. SOLOMON:

Q You attended the examination at the Magistrates Court, during all the time the case was on; didn't you?

A I was there part of the time, I wasn't there all the time.

Q Did you get the minutes of the case?

A No, sir.

Q Do you know whether anybody connected with your office got the minutes in your case?

A I do know that nobody got the minutes.

Q Do you know whether this case was referred to the police Department of the City of New York?

A I don't know.

Q You don't know?

A No, sir.

Q Did you make any inquires to find out whether it was or not?

A No, sir.

MR. SOLOMON: That's all.

MR. TEKULSKY: No questions.

MR. SOLOMON: That is the defendants case, if your Honor please, except, if your Honor will set this case over until the morning, I will have Captain Perry here. However, I don't think it is necessary to call him, and the defendants rest.

MR. TEKULSKY: The People only have a short examination on rebuttal. I want to recall Miss Thierich.

REBUTTAL.

SOPHIE THIERICH, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. TEKULSKY:

Q Now, Miss Thierich, where do you live?

A 512 West 134th Street.

Q And what is your usual hour of leaving your office, in the evening?

MR. SOLOMOON: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: Yes. You can ask her whether she was on that car, and saw that incident.

Q After the 12th of January, and before the 23rd of January of this year, were you ever on a Third Avenue surface car, between seven and eight o'clock in the evening; do you know?

A I have no occasion to use a car at that time, between seven and eight in the evening.

Q Now, do you remember whether you were on a Third Avenue surface car, which was going west on 125th Street sometime between the 12th of January and the 23rd of January, of this year, where a woman had her pocket picked, or an attempt was made to pick her pocket? Do you remember any such incident?

A No, sir, I don't. Let me see. No, sir, I don't recall anything of the kind.

Q Now, from the 12th of January until the 23rd, were you

Employed as you are now, in the same office?

A Yes, sir.

Q And did you go home every evening from your office, if you remember, between those dates?

A Yes, I go home, every night, because I keep house. I have no mother, and I keep house for my father and two brothers.

Q And do you attend to the evening meal?

MR. SOLOMON: I object to that, as immaterial, irrelevant and incompetent.

(Allowed.Exception.)

A I do.

Q And when are you usually through with your evening meal, and your household, duties?

A Well, that depends upon the time my brothers, com in. Sometimes they come in at 6:30. ; and if I do go out, I don't go out with no one but my gentleman friend.

Q And were you out alone, without this gentleman, on a Third Avenue car - - I am trying to get you to search your memory - - going west on 125th Street, between those dates that I have mentioned? Can you say positively whether you were or not?

A Well, I don't want to tell an untruth, but, as far as I can remember, I can say no, because I wouldn't have any occasion to be out that late, and take a Third Avenue car.

Q Now, do you remember being on any car at any time when there was an incident where an attempt was made to pick a woman pocket?

A I do not.

Q You testified, yesterday, that you saw Roberts on the day this crime was committed. Now did you see him at any time on any street car after that time?

A No, sir, I didn't. I haven't laid my eyes on either one of these boys, only in the courtrooms and here.

Q From the time you saw this crime committed?

A Yes. I saw them in the office on the second floor.

Q When you identified them?

A Yes, sir.

Q But, between the time you saw them in the office, and the time the crime was committed, did you see them anywhere?

A No, sir. The only parties I did see was some friends of Mrs. Roberts. I recognized them in the Magistrates Court, and I saw them at the Hoboken - -

Q Well this was at the time of the arrest; was it not?

A Yes, sir, in the Hoboken station. I just passed them by. I was with my friend.

Q That was after the arrest?

A Yes.

Q And after the Magistrates hearing?

A No, while the hearing was going on.

Q And I am asking you, between the time the crime was committed and the you went in to identify these men, did you see them anywhere?

A No, sir, I didn't. I can positively say that.

Q Did Mr. Privette or Mr. McMahon, or anyone connected with the Police Department of the Railway Company, ask you to follow Roberts?

MR. SOLOMON: Objected to, as immaterial, irrelevant and incompetent.

(Allowed. Exception.)

A No, sir, I had absolutely nothing to do with it, and knew nothing about it.

Q Did you know where Roberts lived?

A No, sir.

Q Did you know that he was the man who was suspected, until the day you identified him?

A No, sir. In Mr. Moore's office, he lined up eight or ten men, and asked me to pick out the young men that I saw, and

I told him I didn't recognize anybody in that line.

And then he wanted me to down and look at the Bogues Gallery, and I positively refused to do so.

Q And did you ever follow Roberts or Flynn?

A No, sir. What occasion did I have to do so?

CROSS EXAMINATION BY MR. SOLOMON:

Q They asked you once to identify seven or eight men who were lined up?

A Yes, sir.

Q And how many times you do that?

A How many times did I do what?

Q Yes?

A How many times did I identify them?

Q Yes. Only on one occasion, they asked you to identify some men that were lined up; is that so?

A Yes.

BY THE COURT:

Q And that only happened once, do you say?

A Yes, sir.

MR. TEKULSKY: The People rest.

MR. SALOMON: We rest.

THE COURT: Have you any motions to make, counsel?

MR. SOLOMON: Yes, sir. I move to acquit both defendants, on the ground - -

THE COURT: I think you had better make your motions separately as to each.

MR. SOLOMON: Then I move that your Honor directs the jury to acquit the defendant Roberts.

THE COURT: I think that as to the defendant Roberts, I shall deny the motion, and leave the question of identification to the jury. The motion is denied as to him.

MR. SOLOMON: And I move that you direct an acquittal as to the defendant Flynn.

THE COURT: I will hear the District Attorney on that.

MR. TEKULSKY: On that motion, if your Honor please, of course, we are confronted with this situation, that the complainant is unable altogether to identify Flynn. He says very frankly that he can't identify Flynn.

The only piece of evidence on the question of Flynn's identification is the testimony of Miss Thierich; and as against that identification, we have the defense of the alibi, testified to by Captain Brickley, whose word we have no reason to disbelieve, unless he may be mistaken.

As to that suggestion, of course, I have no suggestion to make, unless your Honor thinks that it is a question of fact

That ought to go to the jury.

THE COURT: I do not think, as matter of law, that it can be said that there is evidence in the case against Flynn that could be held to prove his guilt, beyond a reasonable doubt, gentlemen. The law requires that evidence of guilt must be introduced that establishes guilt beyond a reasonable doubt; and I shall, therefore, direct any acquittal in the case of the defendant Flynn.

In my judgment, his case differs quite materially from that of the other defendant.

One defendant, Roberts, is identified by two witnesses, one of whom had known him for months previous, and had worked in the same office, while Flynn is identified only by one witness, who had never seen him until this occurrence took place, and then only saw him for a minute or two, and didn't see him afterwards for some twelve days.

In addition to that, Flynn's alibi is supported by interested witnesses, while Roberts's alibi is supported by his family. I am not throwing any discredit on the alibi because of that, because that is for you to judge of that, whether that makes a difference.

And, in addition to that, it seems to be uncontradicted that somebody tried to rob Mr. Lewis, and it seems to be uncontradicted that whoever tried to rob him must have had some

Acquaintance with his movements and habits as to carrying this money, and the layout of the building and the corridor, and it has not been shown that Flynn had any such knowledge.

Therefore, I think there is a substantial difference between the two cases, and I shall send the case of Roberts to you, in the morning, to pass upon the question of fact involved. But, as to the case of Flynn, I advise you to acquit.

(The jury found the defendant Flynn not guilty.)

MR. SOLOMON: I except to your Honor's denial of the motion to acquit the defendant Roberts, and I ask your Honor to instruct the jury that, at this time, you have no opinion as to the guilt of your motion must not be accepted as indicating that you have.

THE COURT: I so instruction the jury. I have simply decided that there is a question of fact for you to decide, gentlemen of the jury, and that question will be submitted to you, tomorrow morning.

(The court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Friday morning, June 11th, 1920, at 10:30 o'clock.)