

Q. Not longer than that, and he got there at 12:20, then; and what time did you go away?

A. I left a little after one.

Q. How much after one?

A. I do not know, probably five or ten minutes.

Q. One-ten then; now, how much of the time during that time you were there did it take Conley to act what he acted, leaving out the conversation he had with the different men?

A. That would be a difficult thing for me to estimate, while he was acting, he was acting very rapidly, he kept us on the run.

Q. All right; now, leave out now the time that it took this man to answer the questions that were put to him by yourself and other men that accompanied him through there, leave that out now and give us your best opinion as to how long it took Conley to go through that demonstration?

A. There was no way to do that, there was no way to disassociate the time, and find out the difference between the two, between the time he was acting and talking; I didn't attempt to do that; in fact, the only time I was interested in was the time I would have to get back to the office.

Q. You got to the office, you say about 1:10?

A. Yes, sir.

Q. What time, then, you say, about, you left the pencil factory?

A. I left the pencil factory between five and ten minutes after one.

Q. You left the pencil factory then at about 1:10?

A. Yes, between 1:05 and 1:10.

The defendant objected to this testimony, because (a) this so-called experiment made with Conley was solely an effort upon his part to justify his story; (b) the sayings and acts of Conley, testified about as aforesaid were the sayings and acts of Conley, not under oath, had and made without the right of cross examination, the net result of which is but a reptition of Conley's story to the jury, without the sanction of an oath, and without cross examination. That Conley went to the factory immediately after making his last affidavit; that that last affidavit is not the way he tells the story on the stand; that he tells it wholly differently on the stand; at least differently in many particulars; that it can not help the jury for Conley to go and illustrate that affidavit when he says now on the stand that much of it was a lie, and that it did not happen that way at all; that this evidence was of another transaction, not binding on this defendant.

45. Because the Court declined to allow Dr. David Marx to give testimony in behalf of the defendant as to the character of the Jewish organization known as B'Nai Brith. Defendant's counsel stated at the time that Dr. Marx would testify that while the B'Nai Brith was an international Jewish charitable organization, its charity did not extend to giving aid to persons charged with a violation of the criminal law, as was Mr. Frank in this case.

The State objected to permitting Dr. Marx to make the answer sought, and the Court declined to permit the testimony to go to the jury.