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COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York.

-----X
THE PEOPLE

against

EDWARD DOOLEY indicted with CHRIS-
TOPHER WOODS.
-----X

Indictment filed 10th day of June, 1913.

Indicted for Assault in the first degree.

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

For the People,

ASSISTANT DISTRICT ATTORNEY STRONG.

For the Defendant,

FRANKLIN GRIER, ESQ.

Tried before HON. OTTO A. ROSALSKY, Judge, and
a Jury, on the 16th day of October, 1913.

The Court admonishes the jury in accordance with
Section 415 of the Code of Criminal Procedure and takes
an adjournment until to-morrow morning, October 17, 1913
at 10:30.

Thomas W. Osborne,
Official Stenographer.

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New York, October 17th, 1913,

Trial resumed.

MR. STRONG: Before I proceed with my opening, I would like to have all witnesses excluded from the court room.

(All witnesses are excluded by order of the Court).

MR. STRONG opened the case in behalf of the People.

MR. GRIER: If your Honor please, I wish to renew the application I made yesterday before the jury was empanelled, that there be a line-up under the direction of this Court, at which time the witnesses for the People be required to identify, if possible, the defendant as he stands among a number of other people. The issue depends entirely upon the identification and I am told there was none at any time, that is, a full line-up in this case.

THE COURT: The District Attorney informed counsel yesterday that in the Magistrate's Court or at the police station, the defendant was placed alongside of several persons, and what is commonly called a line-up was conducted there, and the witnesses for the People were afforded an opportunity to identify the defendant. Now, it will be an idle ceremony to conduct another identification here.

MR. GRIER: I am told the line-up was in this order, that the defendant was lined up with a number of other people.

MR. STRONG: I object to giving any testimony now in

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this case, in this connection. Four months have elapsed since this case arose, and for that reason I do not think it would be fair to go through any further line-up.

THE COURT: Then I deny the motion.

MR. GRIER: I except.

JOHN J. BURGGRAF, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 2,074 Vyse Avenue, Bronx).

DIRECT EXAMINATION BY MR. STRONG:

Q You are an officer attached to the police force? A Yes.

Q How old are you? A Twenty-four years last birthday.

Q When were you taken on the police force? A November 1910 -- 1911.

Q You were taken on the force in 1910? A 1911.

Q What precinct were you attached to on the 18th day of May, 1913? A 43rd precinct.

Q Were you on duty on the 17th day of May, that is, on Saturday? A I was at the parade, and it was my night off, this night was.

Q You had a night off, Saturday night the 17th of May? A Yes.

Q What did you do that evening? A My family received an invitation from Mrs. Huber who owns the Huber's Casino at 162nd street and Jerome Avenue, and she invited us over to this dance

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they were running of the Loyal Order of Moose, the Women's Auxiliary --

MR. GRIER: I object and move to strike it out as not responsive.

THE COURT: Motion granted.

BY MR. STRONG:

Q What did you do, did you go to the dance? A I went to this dance.

Q Who accompanied you? A My brother.

Q What is his name? A Joe Burggraf.

Q Who else? A A man by the name of Willie Mengevier; John J. Jennings and Grace Crowthers who was my lady friend at this dance, and Mrs. Carrie Audwine.

Q What time did you go to the dance? A About 9:30 or 9 o'clock.

Q You were there all evening? A I was there all evening.

Q Where do you live? A 2,074 Vyse Avenue.

Q Where is that? A In the Bronx.

Q Tell the jury in your own way what happened in the dance hall shortly after midnight? A It must have been about 12:15. I remember looking at my watch at 12:10. I just went out to dance with my lady friend, Grace Crowthers, when I was dancing around the floor I heard a commotion at the top of the stairs leading into the hat box, and while I was dancing I heard a police whistle blowing. I left my partner there and went over to

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see what the trouble was. When I got in there I seen a special officer laying on the ground and getting kicked by a couple of men there and some man in citizen's clothes fighting also. I recognized him since then as the officer in this case -- as an officer in this case. His name is Henners.

Q That is, somebody was attacking Officer Henners and a special officer? A Yes, sir.

Q And this special officer, how was he dressed? A He was dressed in a uniform, gray cap and gray coat.

Q Gray uniform? A Yes.

Q He was one of the special officers that they had there in the dance hall? A Yes.

Q You say somebody was attacking him? A They were attacking him. There was a whole band of about twelve of them around these two men.

Q What did you do? A I ran inside there and grabbed the first two I saw at the special officer, and pulled them away. The man on the right hand broke away from me, but I had the one on the left, and threw him in the corner, and I said "You are under arrest. I am a police officer," and I flashed my shield.

Q Where was your shield? A Inside of my coat. I flashed it upon him.

BY THE COURT:

Q Flashing it upon whom? A On the young fellow I placed under arrest at the time. I do not know who he was. I could

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not recognize him again I don't think.

Q Do you know who the other man was you took hold of? A No, I don't know who he was, but then I grabbed this fellow and as I told him I was a police officer, the special officer came over and he made a punch for me and I said "Don't you know who I am, I am a police officer, you stop it" and he helped me then as much as he could but they came at me as soon as I flashed my shield --

Q Who came at you? A The whole gang, must have been twelve or fourteen, because there was so many of them.

Q Did you recognize any of them? A Yes, sir, I recognized this man Dooley and Woods in that --

Q Among the twelve that came at you? A Yes, sir.

Q What happened after they came at you? A I pulled my billy out of my pocket and tried to defend myself as best I could.

Q What sort of a billy did you have? A A wooden billy, the regulation billy.

Q Do you always carry it? A I always did at that time, yes. They came at me then and they -- there were too many for me and I had to back out into the dance hall and when I did I was knocked down.

Q Where were you at the time these men came at you? A In the hat check box there.

Q What sort of a room is that? A Just a small room where they check hats.

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Q That is where you had this man that you placed under arrest? A Yes. That is where they all attacked me in that room. Then I backed out on the dance hall floor.

Q Out of the hat box room? A Yes, sir, and they knocked me down there and my billy was taken from me there. I received a number of blows. I couldn't tell you how many in the excitement, and I got up and I drew my gun and knew it meant business. When I got my gun out, I turned the gun in my hand, and I no more than turned it around, I know I said something, when I received a blow of a blunt instrument on the back of my head, and that knocked me down and left me dizzy for awhile. As I was getting up on my feet I saw a man pick up my gun and I made for him and grabbed him by the coat lapel, but he broke away from me and ran down the stairs.

Q Do you know who that man was? A I don't know who he was. I did not see him since.

Q Which stairs did he run down? A Down the stairs from the ballroom where the fight was.

Q Do you know where those stairs lead to? A To a drinking room underneath.

Q What did you do? A I pursued him down these stairs and I remembered reaching about the eighth step when I received a blunt instrument blow on my head again. As I fell I seen the axe go right in front of me, and that is all I remember. I lost consciousness after that.

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Q Do you know when you regained consciousness? A While I was sitting on the table -- or on a chair there at a table, and they were giving me something to drink. They told me it was whiskey.

THE COURT: Strike out what they told you.

BY MR. STRONG:

Q You had tasted whiskey before? A No, I never did.

Q You never drank? A I never drank.

Q You say you saw an axe drop besides you? A Yes.

Q Describe it? A It was an axe that had a point on one end and a flat part on the other. I remember seeing the red flashing by me on the handle.

Q You say the axe was red? A Yes, sir.

Q Have you seen it since then? A Yes.

Q You have seen a similar axe since then? A A similar axe.

Q How long have you known this defendant? A I have known him, it must be in May I went up to that precinct, in the 40th precinct, and on that post where I work, on 7th avenue post, I remember seeing --

THE COURT: Never mind that, you have known him since May.

BY MR. STRONG:

Q How long have you known him? A Since May.

Q Have you seen him often since that time? A I have seen him quite a number of times on my post.

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Q You know his face well? A Yes, I know his face well.

Q And you say he was among the crowd that came towards you at the time you had a man under arrest? A Yes, sir.

Q Where were you taken after you received this injury?
A I was taken to Fordham Hospital.

Q How long did you remain there? A I stayed there two weeks.

Q Then where did you go? A They took me home in an automobile and I was home for a month before I ever went out, under a doctor's care.

Q Are you back to work yet? A I have not been working since.

Q Are you on vacation? A No, I am on the sick list.

CROSS EXAMINATION BY MR. GRIER:

Q Officer, you say you recognized Dooley and Woods -- Woods was a co-defendant in this case, was he not? A Yes.

Q It was while you were in the Fordham Hospital-- A Yes.

Q That Woods and Dooley, this defendant, were brought to the ward before you? A Yes.

Q When they were brought there they were both in handcuffs?
A I don't know.

Q Do you know they were not in hand-cuffs? A I don't know, I know they turned around --

Q They were in the custody of officers, A They were.

Q They appeared there for the purpose, so far as you know,

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of being identified by you? A Yes.

Q You knew, before they came there, that they were bringing two prisoners there for you to identify? A I did not know it until they got there.

Q You knew the two people brought before you were under arrest for this assault upon you? A No, they told me these men--

Q You may tell us what was told you in the presence of these men? A Why --

Q You may testify what was said in the presence of the defendant -- you were under treatment in the hospital? A Yes.

Q When Woods and the defendant were brought there in the custody of officers? A Yes.

THE COURT: Counsel, do you realize that this evidence would not be competent if elicited by the District Attorney. You are opening the door.

MR. GRIER: The witness has testified that he recognized Dooley and Woods at the hospital.

THE COURT: No.

MR. STRONG: I think all he said was that he recognized Dooley and Woods as two of the men that came before him while he had a man under arrest at that time.

THE COURT: Exactly -- nothing was said about that visit to the hospital. You may proceed, Mr. Grier, but I only call your attention to the legal effect of your cross-examination.

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BY MR. GRIER:

Q Is not that the time you recognized Dooley and Woods as being of the party that were in this affray at Huber's? A Yes.

BY THE COURT:

Q Did you understand that question? A He asked me did I recognize them there as the men that were in the dance hall and I said yes, but I recognized them in the dance hall also.

BY MR. GRIER:

Q That is what I mean -- at the hospital you recognized this defendant and Woods as being two of the men that were in the affray? A Yes.

Q And they were brought before you in the custody of police officers? A Yes.

RE-DIRECT EXAMINATION:

Q At that time you were in a ward in the hospital? A Yes.

Q In bed? A No, I was just on my feet that morning. Just got on my feet.

Q Had you been out of the hospital since you were brought there? A No.

Q How long was this after you received your injuries?

A It must have been the ninth day, the ninth or tenth day they brought them up.

BY THE COURT:

Q Where were you struck? A On the side of my head. It runs from there down to here (indicating), and that much bone is

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out.

MR. STRONG: I shall have the doctor here to tell all about it, if your Honor please.

MR. GRIER: The defense will concede the seriousness of the injuries. There is no dispute about that.

MR. STRONG: I think in view of the fact that this injury is very serious, that I ought to have the jury understand all about it.

JAMES C. DONOVAN, M.D., called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Fordham Hospital).

DIRECT EXAMINATION BY MR. STRONG:

Q What are your duties there? A At present I am acting senior surgeon.

Q On the 18th of May, 1913, what were your duties there?

A I was acting ambulance surgeon at that time.

Q Do you remember going out on the case of John J. Burggraf? A Yes, sir, I do.

Q Do you see him in court? A Yes.

Q What was his condition when you found him -- where was he? A I found him at the Casino, called Huber's Casino, at 161st street and Jerome Avenue, on the ground floor, I believe, and I found him sitting in a chair with a wound about two inches and a

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half long on the left side of his head about midway between the top of his head and his ear, left side.

Q What did you do at that time? A It looked rather suspicious to me as a fractured skull, and the condition did not warrant me examining it there and I put on temporary sterile dressings and brought him to the hospital.

Q After you got him to the hospital did you see him again?
A Yes.

Q Do you know what injuries he received? A He received a compound fracture of the skull.

Q Do you know what was done to relieve his pain or condition? A He was operated on.

Q Do you know who operated upon him? A I believe Dr. Kenyon, assisted by Dr. Forman and Dr. Kirshbaum.

BY THE COURT:

Q Were you present? A No.

Did you diagnose the injury to be a compound fracture of the skull? A Yes, sir.

Q And you advised an operation to be performed? A No. I am not in a position to advise, I just report it to the man in charge.

BY MR. STRONG:

Q Were you present at the time the operation was performed?
A No.

(No cross-examination).

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NICHOLAS DOSSER, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 3,038 Bainbridge Avenue).

DIRECT EXAMINATION BY MR. STRONG:

Q Where do you work? A At 161st street and Jerome Avenue, Huber's Casino.

Q How long have you worked there? A Been there fifteen years working.

Q Do you remember the occurrences on Saturday night, May 17th? A May 17th, yes, there was some trouble up there.

Q What was going on there at that time? A I will tell you all I know about it.

Q What was going on that night? A The affair?

Q Yes? A The dance of the Lady Moose Association.

Q Do you remember about 12 o'clock that night or shortly after midnight, what happened? What happened downstairs--- I was not upstairs you know.

Q You were downstairs, A Yes.

Q What was downstairs? A I was in the bar.

Q There are stairways leading from the dance hall to the barroom? A No, there was not any stairways from that, but there is a stairway that leads from the dance hall to the concert hall downstairs.

Q You were downstairs? A Yes.

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Q Tell what happened, what you saw? A I heard police whistles, some one blowing a police whistle, and there was a gentleman there helping me out that night. I am cashier up there and the boss's nephew he said --

Q I want to know what you saw? A I walked out to see what the rumpus was.

Q On account of the blowing of the police whistle? A Yes, on account of that, and I walked out and walked over that way towards the stairway and I saw quite a crowd coming down. May be -- I couldn't say -- maybe twelve or fourteen or fifteen people coming down. All of a sudden I saw one man drop and lie still, and the other people all scattered and walked away, walkee out, and as I came over there he was laying stretched out unconscious.

Q Who was that? A This John Burggraf, the officer.

Q Did you see anything, any instrument near him? A There was a fire axe lying there. I took that out of the way and put it over to one side, threw it over to one side ^{out of} the way, and picked him up.

Q Would you be able to recognize the axe if you saw it again? A I think I could identify it as far as possible -- an axe -- those axes look mostly alike.

Q You have several fire axes in that place? A Yes.

Q And this was one of the fire axes you have on the wall?

A Yes. It was a new axe, pretty nearly new.

Q When you saw this man lying on the floor, what did you

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do? A I threw the axe over to one side, over towards my right, and picked him up and put him on the chair, sat him on the chair and sent -- by that time a porter came along and I sent him for some water and got a towel and sponge and started to bathe his head -- the blood had not started to run down until I sat him up straight and then the blood began to run out of the cut. Then I bathed that and a few minutes after I turned around again and the axe was still lying there and I picked it up and stood it up against the stairway going upstairs.

Q I show you an axe here and ask you if that is the one?

A To the best of my knowledge, that is the axe, because it was a new axe and there were new axes up there on that floor.

An axe is marked for Identification People's Exhibit 1.

CROSS EXAMINATION BY MR. GRIER:

Q Now about how many people as nearly as you can say, were in that crowd running down the stairs? A As well as I could judge, might have been twelve or fifteen people came down all in a rush, all in a bunch.

Q Was that before you saw Officer Burggraf fall? A Yes, sir, right about the moment that he fell. I should say I was away about fifteen feet or so, or twenty feet.

Q You were about fifteen or twenty feet away from the foot of the stairway? A Yes.

Q And this crowd was running down the stairway? A They were coming down.

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Q When you saw the officer fall? A Yes.

Q Was he leading the crowd or was he following the crowd?

A It seems to me he was --

Q Or was he in the midst of the crowd? A He was very nearly in the midst. There was some after him and there was a few in front of him, the best way I could judge.

Q Men and women all running out? A I couldn't say about the women.

Q Were there any women in the crowd? A I really couldn't tell you that, I couldn't tell if there was any women in that crowd coming down or not, because that is a thing I cannot say. I think they were all men, to the best of my knowledge.

Q You think they were all men? A Yes.

Q No women running down? A No.

Q Did you know any of the men in that crowd? A No, I did not, I was not near enough to know any of the men or to identify them.

Q After they reached the foot of the stairs, did they pass you in leaving the building? A No, they did not have to pass me because as they came downstairs there is a door leading out this way to go out on the street. There is an exit there right at the foot of the stairway almost directly to go out on the street and before I got there there was no person around him any more.

Q So all the crowd passed out in the street? A Out through that way into the street.

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Q And when they went out you were about twenty feet away?

A No, I guess I was probably nearer than that at that time. I was going towards him.

Q After the crowd went out, you came over to where the officer was lying? A Yes.

Q Was he lying on the floor or on the stairway? A Lying on the floor, right up against the stairway.

Q You say possibly the larger part of the crowd had to pass him in getting out of the building? A Jumped over him, exactly, that is right, they jumped over him.

Q You did not see the axe in its flight, before it struck the officer? A No, I did not see that.

Q You did not see the axe until after the officer fell and you came up and found the axe lying beside him? A Yes, that is right.

BY THE COURT:

Q You did not see any person strike the officer? A No, I did not.

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CHARLES MOSHIER, called as a witness in
behalf of the People, being duly sworn and examined,
testified as follows:

(Residence, 455 East 163rd Street.)

DIRECT EXAMINATION BY MR. STRONG:

Q What is your business? A Process server.

Q You are out for yourself, or do you work for
somebody? A For myself, in business for myself.

Q Do you belong to this society that was having a
dance at Huber's Casino? A Yes, I do.

Q That was on what date, do you remember? A I
believe that was on May 17th.

Q On Saturday night? A On Saturday night.

Q Do you hold some position in that society? A I am
Past Dictator of the Royal Order of Moose, Bronx Lodge
1002.

Q That is a Bronx Lodge? A Yes, Bronx Lodge.

Q Were you one of the men that got up the dance?

A No, I was over there in my official capacity to present
to the ladies a banner. The ladies is an auxiliary to
our lodge.

They were giving the dance? A Yes.

Q What time did you get there? A I got there perhaps
about half past nine or ten o'clock.

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Q About twelve o'clock do you remember what happened?

A Yes.

Q Tell the jury in your own way what happened just after twelve o'clock? A I was at the far end of the hall. There are practically two halls there. I call this hall where I was standing at that time the southerly hall. I was crossing the room to make arrangements for the presentation of the banner to these ladies, and as I got to the head of the stairs, the four ladies standing there intercepted a crowd of young men and women who were coming upstairs, and I stopped to listen to the conversation when I heard one of the ladies say you cannot come in, you have not been in here before and you cannot come in again.

MR. GRIER: I object.

THE COURT: Strike it out.

MR. STRONG: I will connect that up.

BY MR. STRONG:

Q Did you see who she said that to? A Yes.

Q To whom? A This gentleman right here.

Q To Deoley, the defendant? A Yes.

MR. STRONG: I now ask that it be allowed to remain on the record.

THE COURT: I will allow the conversation.

THE WITNESS: (Continuing) He said to her, I have been in before and I am going to come in again, and one

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of the ladies, I don't know which one said, if you have been in before, show me your hat check, and he said, we haven't got any hat check and it don't make any difference, we are going to come in. I took Deeley by the shoulder and pushed him downstairs, and I said to him, be a good fellow, go down, these ladies don't want to have any trouble and you have not been in before, and you are not going to come in now. He said, yes, I am, we are going to come in, don't you push me, you so and so.

Q What did he say? A There are some ladies in the room.

Q I don't care if there are any or not, tell the jury what he said to you? A Called me a cock-sucker, and he said, don't push me, you cock-sucker, and he kicked me in the groin, and I was standing at the stairs/^{and}when he kicked me I went down to the floor and my knees met and I got up just in time to strike him. At that time Officer Hanners, I believe it was, one of the officers who was in citizens clothes, came upstairs -- he had his mother and wife at the affair to take them home, I believe, he took hold of Deeley and pushed him in the side room, that is a little hat box or check room which adjoins the hall.

Q After this trouble started with Deeley, did you see what the rest of the crowd did? A Yes, sir, they were jumping over the railing of the stairs.

Q They got in the dance hall? A Yes, they were forcing their way in.

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Q You say Officer Henners took the defendant into the side room? A Yes, sir, he pushed him in the side room.

Q After that what happened? A He held him there, and said to him, to Dooley, I want you to get out of here, I am a policeman, and if you don't get out --

Objected to.

THE COURT: I sustain the objection. Strike out the answer.

BY THE COURT:

Q You say the officer took this man to the side room? A Yes.

Q And the officer said something to the defendant? A Yes.

Q Did the defendant make any reply to what the officer said? A That I do not know. I really do not know if he did or not. I could not say.

BY MR. STRONG:

Q You saw Officer Henners with the defendant? A Yes.

Q Were you near there? A Right alongside.

Q What did Officer Henners do to the defendant? A He held him there until Dooley broke away from him.

Q You saw Dooley break away from him? A Yes.

Q Did you see Officer Henners show him a badge or anything? A No, I did not see that.

BY THE COURT:

Q How was this officer dressed? A In citizens clothes.

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BY MR. STRONG:

Q Did Officer Henners place him under arrest? A I don't think he did. He had his uniform coat on his arm, folded over his arm.

Q He had an officer's uniform coat over his arm? A Yes, sir.

Q You say Dooley broke away from him? A Yes, broke away from him.

Q What happened after he broke away? A He run into the ballroom and at that time Officer Burggraf came over to the call of police -- somebody had blown a police whistle and called for police and he came over and then Officer West, I saw, who was a special officer detailed at the hall, he came over and took hold of Officer Burggraf and he had a little bit of a red club and started to strike Officer Burggraf over the shoulder and Burggraf said to him, don't hit me --

Q I do not care what he said.

BY THE COURT:

Q Did Burggraf show anything? A Burggraf opened his coat and he said I am a policeman.

Q Do not say what he said -- he exhibited a shield? A Yes.

Q Showed a badge? A Yes, sir, and Dooley saw the badge and he said, Oh, that is the son-of-a-bitch, get this fellow, that is the fellow we are after, get him.

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BY MR. STRONG:

Q Whom did he say that to? A To the gang, and his pals around him.

Q About how many were there? A About five or six.

Q What did you see them do? A Closed in on Officer Burggraf, and started to punch him.

Q Do you know a man by the name of Christopher Woods?

A I know him since this trouble, that was all.

Q Was he in that crowd that Dooley spoke to? A Yes.

Q And you say this crowd with Dooley and Woods in it went over at Officer Burggraf? A Yes, sir.

Q What did you see happen after that? A Dooley struck him in the mouth, Burggraf.

BY THE COURT:

Q Dooley struck Burggraf in the mouth? A Yes.

BY MR. STRONG:

Q With his fist? A Yes, sir, with his fist and knocked him down, and Burggraf got up and he drew his revolver and reversed it as a club in his hand, and he said, "Anybody that don't belong to this gang get out, because I am going to clean it up".

BY MR. STRONG:

Q That was what Burggraf said? A Yes.

Q After shewing his badge? A Yes, sir. And one of the

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defendants who is not here now had a revolver in his hand and pointed it over the crowd, and he said, I will shoot the son-of-a-bitch, I will shoot him, and he changed his mind and ran around in the back of Officer Burggraf and struck him on the head with the butt end of the pistol.

Q Who did that? A One of the defendants not here, and Burggraf was knocked then to the floor for the second time. His hands struck the floor and he lost control of his own pistol. Someone in the crowd picked up the pistol and when Burggraf got up he grabbed someone by the lapel of his coat and he broke away.

BY MR. STRONG:

Q The fellow that he grabbed broke away from him? A Yes. When this other defendant ran in the back of Burggraf to strike him on the head, Dooley ran over to the corner of the room where the hack axe was hanging and pulled the axe out of a bracket -- there is a little tin bracket fastened on the wall, and he came through the crowd swinging it, and I heard someone scream, oh, he has an axe, and I was afraid he was coming for me because I could not walk. I was pinned up against the railing of the stairs.

MR. GRIER: I object to that.

THE COURT: Strike out the words "I could not walk".

MR. GRIER: And the words "I was afraid".

THE COURT: Strike that out, "I was afraid, &c."

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BY MR. STRONG:

Q Where were you standing while this was going on? A Up against the railing of the stairs outside the hat box.

Q Did you help Officer Burggraf? A I could not.

BY THE COURT:

Q The defendant was coming swinging an axe? A Yes, sir, swinging the axe overhead, and Officer Burggraf was chasing one of the defendants down the stairway. When Dooley saw him going down he leaned over the banister and threw the axe at him, and I saw Burggraf fall.

BY MR. STRONG:

Q What happened to the rest of the crowd? A They dispersed and went all different directions.

BY THE COURT:

Q At the time Burggraf was running after one of the men, did Burggraf have any weapon in his hand? A No, he had nothing at that time.

Q At the time that the defendant threw an axe at Burggraf, did Burggraf face him? A No, sir, he had his back turned. He was going downstairs.

Q He had his back turned? A Yes, sir.

BY MR. STRONG:

Q These stairs he was going down, at the top of the stairs what is there? A That is the ballroom.

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Q And a railing? A And a railing.

Q Where were you standing? A Right up against the railing.

Q You were right next to the railing? A Yes, looking right downstairs.

Q How far away from the defendant were you at the time he threw this axe down? A From here to the end of the table.

Q I show you an axe and I ask you if that is the axe or similar to the one that he threw? A That is an axe very much like the one I saw in his hands.

BY THE COURT:

Q How far were you away from Dooley when he threw the axe?
A I should judge a distance of about from here to where the District Attorney is standing, or at the end of the table, no further.

Q About how many feet would you say, 12 feet? A 10 or 12 feet, I am not sure about measurements.

BY MR. STRONG:

Q When was the next time you saw Dooley? A I saw him downstairs on the sidewalk that same night when Officer Henners had his gun pointed toward him, and ordered him to go away.

BY MR. STRONG:

Q You went downstairs after Dooley went down? A I crawled downstairs the best I could to get on the sidewalk.

Q You saw Dooley out there? A Yes, sir, he was right

out in the street, right off the sidewalk, in the middle of the street, trying to come back again.

MR. GRIER: I object and move to strike that out.

THE COURT: Strike that out.

BY MR. STRONG:

Q What did he do? A He was standing there.

Q Did you see Officer Henners out there? A Yes, sir.

Q Did you hear anything take place between Dooley and Officer Henners? A Yes, sir.

Q What was it? A Officer Henners had the gun pointed at him, and he said, go on, if you don't go, I am going to plug you. I will plug you, and Dooley made reply, he said, well, we finished one cop and we will finish you if you are a cop.

Q Was it possible to go to this dance by paying admission?

Objected to.

Sustained.

BY THE COURT:

Q Those who paid an admission fee were admitted to the dance? A Yes, sir.

CROSS EXAMINATION BY MR. GRIER:

Q You had nothing to do with the dance, arranging for it, you went there in your official capacity to present them with a banner? A Yes.

Q You did not pay any admission fee? A I paid my

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admission fee.

Q Although you came there to present the banner? A Yes, sir, I did it to help the ladies along, to support the auxiliary.

Q You were there from nine o'clock to twelve? A Sometime between nine and ten I got there, I don't know just exactly the time.

Q Where was this dance being held -- you speak of two rooms, was it in one or two rooms? A The two rooms were used that night. Mr. Huber had given them the two rooms.

Q Those were two adjoining rooms? A Yes.

Q Up one flight of stairs? A Yes.

Q Large rooms or small rooms? A I don't know what room I would call large. They were fair sized rooms.

Q How large a party were there from nine to twelve? A Quite a number of people there.

Q Give us your best estimate of the number? A I couldn't really say. Quite a number of people, but how many I could not really say.

Q You danced from nine to twelve? A No, I do not dance.

Q Did you say you were going out on the floor to dance when this disturbance took place? A No. I was crossing the floor to make arrangements for the presentation of the banner.

Q When you were crossing the floor, was there a dance in progress, was there dancing at that time? A No, not when I

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crossed the floor.

Q Had there been immediately before that? A Yes, just before there was.

Q Was the dancing floor reasonably full of people dancing?
A There was not any dancing when I crossed over. Before that there was.

Q When they were dancing, the floor was reasonably filled with dancers? A Yes.

Q And in addition to the dancers there were quite some people sitting around the wall of the dancing room? A The only place they could sit was on the far side of the southerly hall, and in addition to that, then there was another room partitioned off from the ballroom where they go in to have refreshments.

Q There were people sitting around, quite a number? A On the sides of the hall.

Q What is your nearest estimate of the number of people in attendance at that ball that night? A I could not really make any estimate.

Q Were there fifty or a hundred? A Yes, sir, there were more than that, a great deal more than that.

Q Maybe 200 people? A Yes, and I think more than that.

Q They were fairly evenly divided as to men and women?

A No, the majority were ladies -- very few men there that night.

Q There were men there? A Yes, sir, some, but not many.

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Q Could you estimate the number of men there, 25 or 50?

A I don't suppose there was more than 25 or 50 men at the very very most.

Q Probably might have been 50 men there? A Probably.

I don't think so, but I will say 50.

Q It was quite an event, this presentation of the banner, was it not? A What?

Q It was recognized as quite an event there to the ladies, and your branch of the order, the presentation of the banner?

A It was the first affair the ladies held.

Q You were presenting them with a banner? A Yes.

Q They knew you were going to present it? A I do not think they did. Sort of a secret.

Q They knew you were making the arrangements -- you say you were crossing the hall to make some arrangements for the presentation and they knew what was going to happen then? A No, the banner was up on the stage wrapped up in the package where I put it, and the Deputy Supreme Dictator of the Loyal Order of Moose was there, and I thought it would be better for him to present it to the ladies than I, although I was Dictator--

Q You wanted to have him present it, or make the presentation speech? A Yes, sir.

Q There were a number from your branch of the order came along to add dignity to the occasion? A No, there was not more than five.

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Q Was there a committee appointed to present this banner?

A No, that was my banner. I was presenting that to the ladies. I instituted that Circle.

BY THE COURT:

Q This entertainment was conducted for the purpose of entertaining the friends and members of the association in addition to making it a profitable monetary affair? A Yes, sir.

Q And any person who came in that hall and paid ^{the} admission fee was welcome? A Yes.

Q Providing he was sober and orderly? A Yes, sir.

BY MR. GRIER:

Q Is that true, that it was open to the public, to anyone who paid the admission fee, or did they only come on invitation?

A No, it was a ticket affair.

Q Anyone could come? A Anyone who had a ticket could come and pay a hat check.

Q Where is your place of business? A 455 East 163rd.

Q Are you connected in business with anybody? A No, I have my own.

Q You say you are a process server? A Yes.

Q You are not a City Marshal? A No.

Q Now when you discovered or heard this first disturbance at the door of the hall or at the head of the stairway, you say you went over and there were four ladies there having some

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controversy with a party of people led by the defendant; were those ladies there for the purpose of admitting people or denying admission to anyone? A Collecting tickets at that time.

Q Who had charge of the door? A There were two ladies downstairs at the lower hall who were selling the tickets which had to be collected at the top of the stairs.

Q Two ladies at the foot of the stairs? A Yes.

Q There were two ladies at the top of the stairs? A Four there at that time when I came over.

Q Did you know those ladies? A Members of the Circle. I don't think I know them by name.

Q Can you give me their names? A I do not really know their names. Mrs. Rogers, I believe, was one. That is about the only one I know, because there were new members taken into the Circle since I had organized and instituted the Circle, and I did not know them by name.

Q Have you seen Mrs. Rogers or any one of those four ladies since that night? A Yes, sir, I saw Mrs. Rogers but don't remember that I saw any of the others. Mrs. Rogers I did see.

Q Is Mrs. Rogers in court? A Not that I know of. I really don't know. She may be here. I could not say who was subpoenaed.

Q Did you see her at the police court? A At the police court she was there.

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Q Mrs. Rogers? A Yes, Mrs. Rogers and her mother was there.

Q Any others of those four at the head of the stairs? A I really don't know. I did not see them, but I saw Mrs. Rogers with her mother at the police court, those are the only ones I recollect.

Q After something was said by these ladies to the defendant, and by the defendant to the ladies, then you interposed and took the defendant Dooley by the shoulder? A Yes.

Q And pushed him or started to push him downstairs? A Could not call it pushing. I just retarded his progress he was making in the hall. Just pushed him along and he threw my hand off his shoulder.

Q It was then that he kicked you in the groin? A Yes.

(The further cross examination of this witness is suspended in order that the People may call Dr. James H. Kenyon.)

J A M E S H. K E N Y O N, MD., called as a witness in behalf of the People, duly sworn and examined, testified as follows:

(Residence, Fordham Hospital.)

DIRECT EXAMINATION BY MR. STRONG:

Q Where are you practicing now? A 251 West 92nd Street.

Q Do you remember treating the case of John J. Burggraf

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at Fordham Hospital? A Yes, sir.

(The complainant is brought forward.)

Q Do you remember him? A Yes.

Q Now will you describe to the jury exactly what you found to be this man's condition when you examined him and tell what the nature of your treatment was? A He had a lacerated wound on the left side of the head, with a depressed fracture under it; marked contusion of the left eye, a stuporous condition. The operation was enlarging the opening and removing the pieces of bone, closing the wound with a drain. Then the after treatment in the ward, with subsequent dressings.

Q How large a hole is there in the skull now? A About an inch by two, I should think.

Q An inch by two inches? A Yes.

Q Will that ever heal over? A No t with firm bone. It will get firm tissue but not real bone over it.

Q Never get the real bone over it? A No.

BY THE COURT:

Q How did you bridge the injury? A It was not bridged.

No Cross Examination.

CHARLES J. MOSHIER resumes the stand.

CROSS EXAMINATION (Continued) BY MR. GRIER:

Q And up until that time you had done nothing but lay

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your hand upon the defendant's shoulder so as to prevent his going into the hall? A Yes.

Q You said something to him, didn't you? A I did. I told him he could not go in.

Q Will you please stand up -- and you stand up (referring to the defendant).

and

(The witness on the stand/the defendant rise to their feet.)

BY MR. GRIER:

Q How tall are you? A About 5 foot 7.

Q How much do you weigh? A I weigh now 153 or 155 pounds.

Q Do you know how much you weighed in May? A 175 pounds.

Q After the defendant kicked you what did you do, you struck him? A Yes.

Q Struck him in the face? A Struck him on the eye.

Q Struck him hard? A Yes, real hard. My ring struck him and cut his eye.

Q Did you knock him down? A No, I did not knock him down.

Q You struck him in the face before he kicked you? A Struck him before he kicked me? Oh, no.

Q After you struck him, then you say that there was some officer, Officer Henners came on the scene? A Yes.

Q Did you see where he came from? A He was coming upstairs right in back of him.

Q Back of this party of dozen or more people? A Yes.

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Q That you have described? A Yes.

Q Was there anybody with Officer Henners? A I really couldn't say that. I did not see anyone.

Q Officer Henners pushed through the crowd up to the landing where you and the defendant Dooley were having this altercation? A He was not all the way down the flight of stairs. He was just directly in back of Dooley, and someone else. There was two in the lead, Dooley and someone else. I can mention the name now, one of the defendants.

Q Give his name? A Breese, I believe it was.

Q The defendant and Breese were leading the way? A They were two, and Officer Henners was directly in back of Breese. He was the third one then in that line.

Q Where was the crowd that came in with Breese and Dooley? A They were all down on the stairs, the steps of the stairs.

Q Below Officer Henners? A Yes, sir, climbing over the railing.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2:00 o'clock.

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AFTER RECESS. Trial resumed.

CHARLES MOSHIER resumes the stand.

CROSS EXAMINATION (Continued) BY MR. GRIER:

Q Describe these stairs so we may know what you mean when you say they were climbing over the railing? A That is a stairway that leads -- what is termed the main entrance from Jerome Avenue up into the hall. The stairway runs down --

Q How far from the door of Jerome Avenue to the foot of the stairs? A There is a sort of vestibule when you come in from Jerome Avenue, before you strike the first step of the stairway.

Q Do the stairs lead directly up from that vestibule, away from the door? A No, the stairway begins probably 10 or 12 feet in from the vestibule, as you enter from Jerome Avenue. The stairway then begins and runs right up into the hall.

Q As it ascends, is the stairway going away from the door or is it parallel with the side of the house through which the door enters? A It runs right up straight.

Q You do not need to turn to the right or to the left?
A No.

Q In coming into the door to go up the stairway? A No, right directly in.

Q Now, is that stairway -- does it take up the whole of that vestibule, that is, is it the same width as the vestibule

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is? A No, sir, it is not.

Q In other words, there is a continuation of the vestibule past the stairs? A Yes, sir, that is right, downstairs.

Q A downstairs hall? A Yes.

Q And on the other side of the stairs is a wall? A That is right, a wall.

Q And the railing you speak of is on the outside of the stairway? A No, that is -- you refer now to the balustrade, I believe.

Q Yes. A No, this is a railing up in the hall that prevents anyone from falling down that opening. It is in the hall proper, this railing.

Q So that the railing is a railing around the opening of the second floor through which the stairway passes? A Yes, sir, that is right.

Q Is there a landing at the top of the stairway that is surrounded by a railing, or do the stairs open directly on the dancing floor? A That is it, just ends right there on the dancing floor, right on the floor.

Q Where does the railing stop, right at the beginning of the stairs or does the railing extend from the beginning of the stairs out in the dancing floor anyway? A Yes, sir, it runs along -- I will try to describe it if I can. The stairway, we will take for the purpose of describing it -- the stairway

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comes up this way (indicating), up into the hall. Then on the side there is a railing that forms sort of an L shape, leaving the opening to the stairs clear.

Q And that railing also extends in the same direction as the stairway, so as to prevent anyone stepping over? A Yes.

Q Into the open stairway? A Yes.

Q You say the crowd that was following the officer, that is, the crowd that you supposed were with Dooley, and immediately behind the officer, were climbing up over that railing? A As they came upstairs.

MR. STRONG: I object. I do not think there is any testimony at all that they were following the officer at that time when they were coming upstairs.

MR. GRIER: They were behind the officer.

MR. STRONG: I do not think the officer he refers to --

THE COURT: You mean the complaining witness?

MR. GRIER: No, Officer Henners. The witness testified first of all came Dooley and Breese.

THE COURT: You need not repeat the evidence. I remember it, -- mention the name of the officer.

MR. GRIER: Officer Henners.

BY MR. GRIER:

Q Now, Officer Henners was coming up the stairway behind

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Breeze and Dooley? A That is right.

Q And there was a crowd of people coming behind Officer Henners? A Yes, sir.

Q Is that true? A That is right.

Q At the time of your altercation with the defendant and Breeze at the head of the stairway, where was Officer Henners? A Directly in back of them.

Q What do you mean by directly in back of them, standing near them? A Why, this gentleman was first, and then another by the name of Breezy was second, and then Officer Henners was the third one, but Officer Henners did not remain there. He had passed by these men and come up into the hall.

Q Where was Henners when you had your first altercation with Dooley? A When I first intercepted him, Officer Henners was the third one, and then he passed up.

Q Did he pass before Dooley kicked you and before you struck Dooley? A Yes.

Q He had passed on into the dance hall? A Yes.

Q And had passed through a door? A Yes -- there is no doorway there. I did not understand that -- just a simple -- the top of the stairs is the landing, and that leads directly into the ballroom. There is no door there.

Q Coming to that point, where were the people that were with Dooley, the defendant? A As I said, some of them had climbed over the railing that encloses this opening. They had

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climbed over that, some of them.

Q Had climbed from the stairway up over the railing? A
As you come upstairs the railing is right there, and it is an
easy matter to get right over that railing.

Q They were climbing over that? A Some of them did.

Q After they were over that railing they were practically
in the dance hall? A Yes.

Q Can you give an idea how many climbed over that railing?
A No, I could not do that.

Q Your best judgment? A I could not -- I would not like
to express it.

Q Were they boys or girls or men? A Those who climbed
over were mostly young men -- none of the girls climbed over.
I did not see any climb over.

Q Were there any girls in the party? A I saw several of
them, three or four.

Q On the stairway? A Three or four of them, I don't know
how many more were there.

Q While you were having your trouble with Dooley, you saw
them on the stairway below? A Yes, the trouble only lasted a
few seconds, you might say.

Q Only for about a second? A A couple of seconds.

THE COURT: A few seconds.

BY MR. GRIER:

Q What occurred between you and Dooley was that he kicked

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you and you struck him? A Yes.

Q And then Officer Henners came to your relief? A Officer Henners grabbed hold of him and pushed him in this little room used for the checking of hats and coats -- right alongside.

Q Was anyone with Officer Henners when he did that? A Well, I don't know what you mean when you ask if there was anybody with him.

Q Was there anybody assisting him? A No, not assisting him, several around him, but nobody assisting him that I know of.

Q Did you lend a hand to put Dooley into the hat room? A I could not move. I was crippled. I was paralyzed like.

Q After he kicked you you say you struck him in the face? A As I got up I struck him from the same spot I was standing on. As soon as my knees hit the floor, I got right up and then struck him.

Q Then you went down again? A No, I only went down once.

Q You were paralyzed? A Yes, I was like crippled --in very much pain -- I don't know what you might call it.

Q You saw Officer Henners then take Dooley somewhere -- you did not follow them up to see where they went? A I had to stand right where I was. I could not move from where I was.

Q Where is that hat room in relation to the place where you were standing? A Just exactly as I described the stairway--

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coming up from Jerome Avenue, the main stairway -- this is the landing and ballroom proper, and the hat room is just in there (indicating).

Q Illustrate, if you can, as you stand with your back towards the stairway, as it comes up, was the hat room to your right or to your left? A To the left.

Q To your left? A Yes.

Q And was that room entered through a door or was it simply an archway? A The little room, you mean?

Q The little room, as you designate this hat room? A There are two entrances into that room, one from the left and one from the northerly ballroom.

Q The entrance nearer you, to your left, was that entrance through a door? A Yes, I believe there is a door there.

Q Was that room immediately off the landing at the head of the stairs? A Yes.

Q There was not a hallway leading from that landing some distance to your left?

THE COURT: Are these details really important, Mr. Grier?

MR. GRIER: Yes.

THE COURT: Then proceed.

BY MR. GRIER:

Q Now, when Officer Henners and the defendant went into that hat room you did not see what they did in there? A No

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more than what I have already testified to.

Q Answer my question, you were at the head of the stairs, you could not see from where you were standing what was taking place in the hat room? A I was in the hat room and in the ballroom at the same time, because there is only a little opening that divides this hat room from the ballroom, just a little opening there -- just a little opening -- as I say, just come around this post and I stand right here at the opening, and I cannot help but see everything that took place right there (indicating).

Q Off to your left? A This whole trouble was centred right in this hat box.

Q But the hat room, do you know what took place in the hatroom, you say Officer Henners took the defendant into that hat room? A Yes.

Q From where you were standing at the head of the stairs, you could see the whole of that hat room? A Yes, sir.

Q What happened in there? A Officer Henners had Dooley, and said to him, now I want you to get out of here, I am a policeman, and if you don't go out I am going to lock you up. At that time Dooley broke away from him.

Q Where did he go? A In the ballroom.

Q He went out through the other entrance? A Yes, right in the other entrance and came back again.

Q There is one entrance from the head of the stairs to

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the ballroom and he went out into the ballroom from that hat room? A Yes, sir.

Q Where were you, in the hat room or at the head of the stairs? A In the same position I was in. It is a peculiar place and hard to describe, and I am trying to do the best I can to show you the position I occupied at that time and from the position I occupied at that time I could see everything that took place in that hat box room, because that is where all the trouble was.

Q In the hat box room? A yes, sir, what we call the hat box room, right at the door.

Q How large a room is that? A Really I can't say.

Q Approximately? A I would not -- that is a hard thing to come down to measurement. I could not do that.

Q Ten feet square? A Just a regular square.

Q What is in that room, racks for hats? A In the lower part there is quite a space before you get to the hat checking proper -- there is quite a space there, I should say 10 feet -- I don't think I would be much out of the way.

Q Dooley broke away and ran out into the ballroom proper? A Right outside the hat check room and he came right back.

Q Then came back? A Sure he came back the second time.

Q When he went out who was in the hat room, when he went out of the hat room who did he leave in there? A There were several in there. I don't know who they were. Some of his --

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Q Officer Henners, he was there? A He had someone else in there at that time, after Dooley broke away from him -- he had someone else. Burggraf also had someone.

Q In that room? A In that hat room.

Q You say Dooley ran out and immediately ran back, do you mean that? A Yes, sir, Officer Henners had Dooley, and Dooley had broken away from him, and the crowd came in. The crowd -- his pals came in and he came directly back again.

Q They entered the door where you were standing? A They all got by at that time -- by that time they were all in.

Q In the hat room? A Yes, sir. It is hard to describe it -- I am standing right here --

Q You are describing it very well -- when Dooley came back, you say Officer Henners and Burggraf were in that hat room? A yes, sir, they were in there.

Q And a number of other people whom you cannot name? A I don't know who they were.

Q Among them were some friends of the defendant Dooley? A I say they were because they all had caps on them and that is how I figure they were his friends.

Q Were there any girls from the party -- were they mixed in there also? A No, I don't believe there were any of the girls in there. I don't remember seeing any.

Q Was there a loud talk and any threatening words at that time? A Only this that when -- after Officer Henners

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had declared himself to be a policeman and if Dooley did not
out of there he was going to look him up, at that time I heard
a police whistle blow and some one called for police. Officer
Burggraf then came over to Officer Henners' assistance, and he
was followed by this Special Officer West, and West in a mistake
struck Burggraf.

Q You do not know if it was a mistake or not -- West did
something to Burggraf? A yes, sir, he struck him over the
shoulder with a little bit of a red billy -- a little bit of
a pocket club.

Q Had you seen Burggraf earlier in the evening? A No.
I never saw him before that very time of the fight -- never saw
him before that.

Q When Dooley came back what was the next thing took place--
came back and found Henners and Burggraf and the special officer
and some other people in the little room, what took place after
he came back? A When Officer West struck Burggraf, Burggraf
turned around and said, don't hit me, don't do that, don't you
know who I am. I am a policeman. He opened his coat and
Dooley saw the shield.

Q Where was Dooley at that time? A Right alongside of
him, but they were centred right around the policemen, just
around like in a ring.

Q In the little room? A Yes. Some were right outside
the door and some were immediately in. When Dooley saw the

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shield he said, "That is the son-of-a-bitch we are after, get this fellow (meaning Burggraf).

Q You heard him say that? A Absolutely.

Q Go on. A And they immediately attacked Officer Burggraf, who then backed out into the ballroom.

Q What do you mean by that, by they attacked, what did they do? A Started to punching him.

Q Did you see who punched him? A Why, yes, I saw two or three of them strike him.

Q Who did you see strike him? A I saw Woods strike him, and some two others that I really don't know -- they did not catch them two.

Q The only one whom you saw strike Burggraf that you can name was Christopher Woods? A Well, yes, and there was another one, Mann, also struck him, and kicked him.

Q Are those two all that you can name, Woods and Mann? A These are the only ones I know and I only found out their names through the arrest.

Q You know that Woods and Mann struck Burggraf while in that small room? A There and outside, not altogether inside, outside as well.

Q After Woods and Mann struck Burggraf, what was the next thing happened? A Officer Burggraf backed right outside into the ballroom.

Q Past where you were, or through the other door? A

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Right alongside of me. This is all just inside this little partition like, and Dooley punched him in the mouth.

Q Was that in the ballroom or was it in the small room?

A No, that was in the ballroom.

Q Dooley then struck Burggraf in the mouth? A Right outside.

Q Were there many other people around there at that time?

A Yes, quite a number.

Q Up to that time you had not seen Dooley strike Burggraf?

A No, I did not up to that time. I did not see it.

Q What was the effect of the blow? A Knocked him down.

Q And after Dooley struck Burggraf in the mouth and knocked him down, what was the next thing that happened? A Burggraf got up on his feet and he took his revolver from his pocket and reversed it in his hand for a club, and raising his hand he said, anyone who does not belong to this gang, get out, I am going to clean it up.

Q At that time, when he was saying that, where was Dooley?

A Dooley was right in front of him.

Q Where was Woods? A Woods had the gun reaching over the heads and shoulders of those standing in front and said, "I will shoot the son-of-a-bitch, let me get him."

Q Was that before Burggraf took out his gun that Woods drew a gun and pointed it over the heads at Burggraf? A No,

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that was -- at the time he fell -- when he got up Burggraf did not have his pistol, until he was knocked down the first time and in getting up he took it from his pocket.

Q Before that time Woods had the pistol in his hand? A Before that time?

Q Yes. A I did not see it at that time. It was only when Burggraf had got to his feet and as I say he used the pistol for a club, and then I saw Woods with a gun.

BY THE COURT:

Q He said he was a police officer, did he? A He said that before that in the hat box, when they started to attack him.

Q In a loud or low tone of voice? A He said to Officer West, don't do that, don't you know who I am, I am a police officer, and he opened his coat and duly spied the shield and he said that is the fellow we are after, get the son-of-a-bitch.

BY MR. GRIER:

Q When Woods pointed a pistol over the shoulders of those who were standing around Burggraf, Burggraf had his pistol out in his hand held as a club? A Yes.

Q At that moment, where was Dooley, if you could tell? A He was standing just almost alongside of Woods, the two together.

Q Where was Mann? A That I do not know just where Mann was at that particular time.

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Q Where was Breese? A They were in the crowd, but to describe just where they were I don't know.

Q What was the next thing happened after that situation, Woods pointing a pistol at Burggraf and Burggraf with his pistol held ^a as a club -- what was the next thing took place? A Woods ran around to the back of Burggraf and struck him on the head with the pistol and knocked him down the second time. Then he lost his gun.

Q That is, it dropped out of his hands? A When his hands struck the floor, it just slid right out.

Q At that moment where was Dooley, if you knew? A He ran over to get the axe.

Q He ran across the ballroom? A yes.

Q Where was the axe? A Over in the corner.

Q Now give us an idea of the distance from the head of the stairs to the point on the wall where the axe was located? A Not at that time we are not standing there -- I am over then, pushed by the crowd over towards the other landing of the stairway that leads down into the restaurant itself. That is a different stairway.

Q Then, what was the approximate distance from the head of the first stairway that you have described and the head of the stairway that you have just now mentioned? A 12 feet, maybe; I couldn't say.

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Q Twelve? A I suppose so. I couldn't tell you about measurements.

Q What is the position at the head of that stairway in relation to that hat room? A That is on the outside of the hat room, -- a stairway that runs from the north to the south like, inside of the building, going downstairs into the restaurant or --

Q Is it not so that the hat room is in a sense between the two stairways? A I don't know what that is, -- whether that would be between them -- it is on the side of the -- stairway -- only one is near that hat box and that is the main stairway.

Q Let us see if we can get it located, the first stairway comes up to the end of the hat room, with the hat room right to the left of the head of that stairway; now the second stairway runs down from the ballroom, from the side of the hat room, does it not? A No, I do not think it does.

BY THE COURT:

Q How far away from the cloak room was the axe? A Possibly might be 12 feet or 14 or something, I couldn't tell you just exactly.

Q Could you see from what place the defendant took the axe? A Absolutely.

Q From where? A From where I stood I had a clear --

Q Where was the axe? A The axe was in the corner of the

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room. It was in the northerly corner of the northerly ballroom-- the only way I can describe it, there are two ballrooms, one being in the southerly part of the building and the other in the northerly part of the building -- that is where the axe was taken, from the corner of the northerly ballroom, in the same one where I was standing up against the railing of these stairs that led down into the music hall or restaurant or whatever it was down there.

BY MR. GRIER:

Q You had moved over from the first to the second stairway? A I was carried over by the crowd, pushed right over by the crowd, hanging on the railing.

Q How far away was this second stairway to the point on the wall where the axe was? A I say about 12 feet -- possibly might be less or more.

Q Was it on the same side of the room that the stairway is on? A Yes.

Q It was back of the stairway, was it not, on the wall?
A It was over from the stairway.

Q Is there a railing around that stairway? A Yes.

Q That railing is to prevent people from the ballroom stepping over into the opening? A yes.

Q Was the axe on the side of the railing or on the side of the wall? A On the side of the wall about four feet from

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the top step of that stairway leading down into the music hall.

BY MR. GRIER:

Q Then it was not in the corner of the room? A Yes, in the corner, on that side -- that is the westerly side. We will say the axe was in the northwest corner of that southerly ballroom. There are two stairways.

Q Is it not a fact that the axe was on the wall of the room back from the stairway? A It was over from the stairway. I cannot say it was back of it. I don't know what you mean by back. It was over from the stairway. The top of the stairway is here, and the axe was hanging like in this corner -- that would not be in back, but just on the line of the top steps.

Q Does the stairway go down along the side of the wall?
A Yes.

Q Was the axe on that wall along the side of which the stairway descends? A On that side, yes.

Q It was not back of the stairway? A Over from there. I could not say it was back of it. It was over from the stairway. Back would be on the other side.

Q When you saw Dooley go over towards that axe, what was Burggraf doing? A I don't know as I noticed just particularly what he was doing at that time.

Q Had he started downstairs? A That I really couldn't say. When this one man broke away from him I saw him moving towards the man as much as the crowd would allow him to do, and

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I kept my eye on Dooley, as I said for the reasons already stated, when I saw him coming with the axe.

Q Did you keep your eyes upon him when he was going for the axe? A When he ran over that way I saw him going over. I could not help but see where he was going, because he had to pass by me to go to the corner, and I saw him pull the axe -- did not lift it out -- it was in a tin case.

Q He came back towards you swinging the axe over the heads of the crowd? A Coming towards my way.

Q Burggraf was beyond you, you were between Burggraf and the defendant when the defendant was coming, swinging the axe?

A Yes, I guess about between them.

Q Did you see Burggraf start downstairs? A Yes, sir, I saw him going downstairs.

Q Did you see who had his pistol? A No, I did not see who had his pistol. I did not see that.

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Q Did the defendant stop where you were, or did he run on to the stairway? A No, the top of the stairway was probably about four foot from where I was standing up against the rail, and as Dooley came over Burggraf had already gone downstairs chasing two fellows.

Q Which stairs, the stairs to Jerome Avenue or the stairs into the concert hall? A The stairs leading down into the concert hall -- that was where he was hurt.

Q You were standing beside the railing of that stairway then? A I was carried through after the rush.

Q When you saw Dooley coming swinging the axe, you were standing at the railing of that stairway? A Yes, sir, exactly.

Q Burggraf was on his way down the stairway? A Yes, sir.

Q How far were you from the head of the stairs? A About four feet, right up against the railing.

Q Did Dooley pass you before throwing the axe? A No, just before he got to me he looked over, and Burggraf was going down and he took the axe and let it go down and I saw Burggraf drop.

Q Did you make any effort to stop Dooley? A No, sir, I could not.

Q Did anybody else? A One man was standing beside him, a man by the name of Kelsow, one of our members, and I said to him "Don't let this fellow get away," and he passed me and ran down the other stairs, the same stairway that he had come up.

Q That is, Dooley passed you and ran down the stairway to-

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wards Jerome Avenue? A Yes.

Q Did this man whom you have just named, seize hold of Dooley or did anybody seize hold of him? A I don't know as he did; I couldn't say. A whole lot ran after him going downstairs. What they done I don't know.

Q When was the next time you saw Dooley? A The very next time after that was downstairs on the sidewalk when I crawled downstairs.

Q Which stairs did you go down? A Down the Jerome Avenue stairway.

Q You did not go down the stairs where you had seen the axe thrown? A No. There was already some people had gone down there.

Q You knew Burggraf had been struck? A Yes.

Q Did you go immediately down the Jerome Avenue stairs?
A I cannot say immediately, I don't know, I was pretty badly hurt but I don't know. I got courage enough to go down, for what but reason I could not tell you I went down there.

Q After you got down there, what happened? A I saw Dooley standing in the middle of the street and not quite in the middle, more towards the sidewalk, facing Officer Henners and Henners had his revolver out and said "Go, if you don't go I will plug you."

Q You say in the middle of the street, that is, Jerome Avenue? A Yes -- might not be Jerome Avenue -- there is another little avenue comes in this side of Jerome.

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Q Which is it, you say you went downstairs leading into Jerome Avenue? A That is where the stairway --

Q You saw Dooley standing in the middle of the street?
A Yes.

Q What street, it was either Jerome Avenue or it was not?
A Some people call it Jerome Avenue, while others call it -- it is an approach to the viaduct -- Jerome Avenue comes in a V shape.

Q Do cars run on that street? A On Jerome Avenue they do.

Q On the street you speak of? A Yes.

Q Cars run on that street? A That is, Jerome Avenue.

Q Was he between the car tracks and Huber's Casino?
A No, sir, that little avenue that comes in there --

Q How far away from you was he when you saw him being threatened by Henners? A I couldn't tell you the distance -- about the distance between you and I.

Q About twenty feet? A Right under the electric light.

Q Did you hear what Dooley said to Henners? A Yes, Dooley said -- there was Woods alongside of him and Woods had his revolver in his pocket and just having his hand this way, when a young girl grabbed him and said "For God's sake don't shoot him." Dooley said to Henners "We finished one cop and we will finish you."

Q What did Henners say to that? A All I could hear Henners say was "Go or I will plug you," and he was blowing a police whistle himself, Henners.

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Q After that what did Dooley do? A I don't know, some of them got hold of him and dragged him away. I was too badly hurt and I went inside of the place at that time and could not stand it any longer.

Q Did you say anything to Hennes at the time he was there with Dooley? A Did I say anything to him?

Q Yes? A No, I don't think I did.

Q Did not tell him "That is the man that threw the axe"?
A No, sir, I do not think I did.

Q You made an affidavit in this case on the 27th of May, did you not? A I don't know what date it was, but I guess --

Q After this occurrence you made an affidavit? A Yes some time after that.

Q At the time you made that affidavit everything was fresh in your mind? A I believe it was as well as I could remember.

Q You remembered then all that had happened very distinctly did you not? A I believe I did as much as I remember to-day.

Q It was clearer then in your mind than it is to-day? A I do not know as it was, I think I have a pretty good memory.

Q Is this your signature to the paper? A Yes, that is my signature.

MR. GRIER: I offer this affidavit in evidence.

THE COURT: For what purpose -- you may call his attention to any specific matter.

BY MR. GRIER:

Q Now in that affidavit did you state that Christopher

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Woods, William Mann, Breeze and Edward Dooley, the defendant here on trial, that they set upon and beat and assaulted Burggraf, that Woods pointed a revolver at Burggraf, threatened to shoot him and Mann and Breeze each of them struck Burggraf several violent blows; that Dooley, this defendant, took an axe from the wall and threw it at Burggraf and struck him" -- you swore to that?

THE COURT: How does that contradict the present testimony. You have a right to offer in evidence any statement or affidavit made by a witness for the purpose of contradicting or impeaching his testimony.

MR. GRIER: It is rather what the affidavit does not contain than what it does contain. He does not state --

THE COURT: Does not state what?

MR. GRIER: He does not state in the affidavit that Dooley at any time struck Burggraf. He made it very emphatic in his testimony here.

THE COURT: I need not remind you how those affidavits are drawn.

MR. STRONG: That is just the point of my objection. It was drawn up by the clerk and his whole testimony was not taken at that time, simply the facts alleged in that affidavit to support the charge.

THE COURT: You may ask him whether the affidavit contains any averment to the effect that the defendant prior

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to having struck Burggraf with the axe had struck Burggraf with his fist.

BY MR. GRIER:

Q When you made this affidavit did you tell the clerk at the court that Dooley had struck Burggraf in the mouth with his fist and knocked him down? A I told my entire story to the District Attorney who is assigned to the Sixth District Magistrate's Court and he and the clerk of the court --

Q Afterwards presented this to you to sign, is that true?

A Yes.

MR. GRIER: I would like to offer this affidavit in evidence.

MR. STRONG: I have no objection to its going in evidence.

THE COURT: Then it is received without objection.

Paper is marked in evidence Defendant's Exhibit A.

BY MR. GRIER:

Q After Dooley kicked you, you were very angry at him?

A I don't know as I was angry, I was in pain. I don't know.

Q When you were in the station house before Dooley was arrested, when Breeze and Mann or Breeze and Woods were in company did you say to them or in their hearing that if you got hold of the fellow that kicked you, that you would fix him, or something to that effect? A Why no, I don't remember saying that. I said to Captain Price --

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Q Did you say the words I have mentioned?

MR. STRONG: I would like to have the witness answer the question.

MR. GRIER: That is not an answer to my question.

THE COURT: Repeat the question.

Q (The question is repeated)? A I can only answer it this way --

BY THE COURT:

Q Did you make any such statement? A No, when the policeman--

Q That is an answer "No."

RE-DIRECT EXAMINATION:

Q When you went to the station house was Dooley there, did you see Dooley in the station house at any time? A I did.

Q Under what circumstances? A There was a line-up of seven or eight or ten or twelve young men about his own age and size, and Captain Price asked me to look over --

THE COURT: Do not state what Captain Price told you.

BY MR. STRONG:

Q What did you do? A Picked him out --

BY THE COURT:

Q You had a conversation with Captain price? A Yes.

Q After that conversation, what physical act did you do?

A I picked out Mr. Dooley from others who were in the line.

THE COURT: Strike out the words "picked out."

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BY THE COURT:

Q What physical act did you do? A I placed my hand upon the defendant.

BY MR. STRONG:

Q Did you know any of the other men in the line? A No, I did not know any of them except those whom I identified as the four I picked out.

BY MR. GRIER:

Q Four men were all lined up together with others? A No, I picked them out on two different occasions. Woods I identified or picked him out Monday morning at 9 o'clock.

BY MR. STRONG:

Q Out of a line-up? A Out of a line-up of ten or twelve and then about 10 o'clock the same morning I picked out Breeze from a line-up of about eight or ten. Tuesday night I then picked out this gentleman here, Dooley, and Mann.

BY MR. GRIER:

Q Dooley and Mann were in the last line-up? A Yes.

J O H N M. T O Y, called as a witness in behalf of the

People, being duly sworn and examined, testified as follows:

(Residence Brewster, N. Y.)

DIRECT EXAMINATION BY MR. STRONG:

Q What is your occupation? A Fireman.

Q In what company? A New York Central.

Q New York Central Railroad Company? A Yes.

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Q And were you at Huber's Casino on the 18th of May last?

A Yes, sir, 17th to 18th.

Q You were there on Saturday night? A Yes.

Q And are you a member of the lodge? A No -- what lodge?

Q That was having a dance there? A No, sir.

Q The Loyal Order of the Moose? A No.

Q Do you remember seeing this defendant there, Doohey? A Yes.

Q What did you see him do, tell the jury in your own words what you saw him do? A From the start of the fight?

Q Yes? A I was dancing around at the south end of the dancing pavilion as the row started. I steered away from it quite awhile and then there was a young girl got mixed up in the jam, I don't know who she was and the young lady I was with said to me --

THE COURT: Do not state what she said.

THE WITNESS: "Please take this girl" --

THE COURT: Strike that out.

BY THE COURT:

Q State what you saw and do not state what anybody said to you? A While I was in the act of lifting this girl out of a crowd I got a strike in the jaw.

BY MR. STRONG:

Q Now do you know who hit you? A Yes, sir, the youngman right there.

Q The defendant? A Yes, sir.

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Q What did he do after that? A There was an axe on the wall and it was fastened with a piece of tin I suppose it was -- made a ripping noise and it came off the wall.

Q Who took it off the wall? A That young man.

Q This defendant? A Yes.

Q Did you see what he did with the axe? A No, I did not, that was all I seen.

Q You simply saw him take it off the wall? A Yes, take it off the wall.

Q When was the next time you saw the defendant Dooley? A In the police station.

Q Under what circumstances did you see him in the police station? A He was handcuffed to two or three more prisoners.

Q Were there any others? A There were seven there all told

Q There were seven? A Yes.

Q Dooley had the handcuffs on? A Yes.

Q Did you recognize him as being the same man you had seen in the dance hall? A Yes.

Q Dooley had the handcuffs on? A Yes.

Q Did you recognize him as being the same man you had seen in the dance hall? A Yes, I recognized him that night, because he had a scar on his eye.

Q You say he had a scar on his eye at that time? A Yes.

Q Was it a scar or cut? A It was a scar.

Q Looked like a scar to you? A Yes.

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CROSS EXAMINATION BY MR. GRIER:

Q That was the first time you ever saw him, at the dance?

A Yes.

Q What is your name? A John M. Toy.

Q Where do you live? A Brewster, N. Y.

Q What time did you go to the dance that night? A About 8 o'clock.

Q Did you go alone? A No, I was invited there by a friend.

Q You went there with some company? A Yes.

Q Did you know many people there? A I did not know anybody there.

Q Were there many people there at the dance up to 12 o'clock?

A Yes, quite a few.

Q Approximately how many? A I should judge two hundred and fifty.

Q How were they divided as to men and women, about equal numbers? A No, there were more women than there were men.

Q There were a great many men there? A There was quite a few men, yes.

Q When was the first time you noticed the defendant?

A The first time I noticed the defendant, this young man here, was when he struck me.

Q Was that near the stairway? A That was on the south -- on the northwest corner of the building.

Q Of the ballroom? A Yes.

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Q Now where is the Jerome Avenue stairway in relation to that northwest corner? A Well, I could not answer you that, because I am not very well familiar with the building.

Q You know what the northwest corner is? A Yes.

Q Now, assume that that is the northwest corner of this building (indicating)? A Yes.

Q Now from that point, where is the stairway where the trouble first began? A Where the trouble first began was off in this direction (indicating).

Q That would be in the southwest corner of the hall?

A Yes, that is where I noticed it first.

Q And from where you were, the northwest corner, where was the fire axe? A In the northwest corner.

Q It was over in that corner (indicating)? A Yes.

Q When you saw the defendant the first time, he was over there in the northwest corner, and he struck you? A I went over there to get this girl out of the crowd --

Q Did he say anything to you when he struck you? A No.

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

Q Did he strike you hard? A It was no love tap.

Q Knocked you down? A No.

Q After he struck you, what did he do? A I took this girl out of this jam and I went back.

Q Where did you take her? A Sir?

Q You were over in the northwest corner, where did you take

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her? A To this end of the building.

Q That is, over to the east end of the building? A Yes.

Q There was no crowd over there at that time? A Nobody there.

Q Was that immediately after the defendant struck you? A Yes.

Q You took the lady over to the east end of the building?
A Yes.

Q What did you do after you got over there, with reference to this trouble? A I went back to get the young man.

Q You came back to the southwest corner again where the defendant was? A The northwest corner.

Q Where the defendant was? A Yes.

Q What was he doing when you got back? A I did not see him. The axe was thrown, in the meantime from the time I left with the young girl to come back, the axe was thrown.

Q What were you doing when the defendant took the axe off the wall? A What was I doing at that time?

Q Yes? A Trying to get this young girl out of the crowd.

Q Was there a considerable jam around there, a crowd around that southwest corner or northwest corner? A Yes. They had the officer down and were beating him up very bad.

Q Was that in the northwest corner? A Yes.

Q How near the stairway was that -- there are two stairways?
A Yes, I realize that.

Q Where, with reference to that northwest corner, was the

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other stairway -- you said there was one in the southwest corner?

A Yes -- that is the stairway I came up into the building.

Q Where was the other stairway with reference to the northwest corner? A That went downstairs to the barroom.

Q How near that stairway were you when you were struck?

A I should say about twenty-five feet.

Q You were twenty-five feet from the stairway when you were struck? A Yes.

Q Now, where was the axe with reference to your position and the stairway? A The axe was directly over my head.

Q Where was the crowd, around the stairway or around the corner where the axe was? A When the axe was thrown?

Q No, where was the crowd when you started? A They were practically -- there was practically nobody around me, because I was on the extreme of the northwest of the building. I was trying to get this young girl out of there in that way.

Q As soon as you got her out, you came back? A I came back, because the young man had struck me for no cause whatever.

Q When you came back you were looking for him? A Yes, I was looking for him.

Q Did you find him? A No.

Q When was the next time you saw him? A The next time I saw him was in the police station.

Q Did you go down the stairway, that is, the second stairway that we have spoken of, did you go down there where the axe

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is said to have been thrown. A Afterwards, yes.

Q Did you see Burggraf laying down there on the floor?

A I did not see him lying on the floor, I saw him sitting in a chair. I did not care to go down.

Q What more did you do in looking for Dooley than simply to go over there towards where the crowd was? A I did not go any further. I got an insight of what was going on, and I did not go any further.

BY THE COURT:

Q What did you see the defendant do, if anything, with the axe? A The only thing I saw him do was take the axe off the wall and he struck me. That was all.

J O H N S C H M A L A C K E R, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 1156 Forest Avenue).

DIRECT EXAMINATION BY MR. STRONG:

Q You live up in the Bronx? A Yes.

Q What is your business, A Master printer -- called such.

Q Of what? A Master printer -- I have a shop of my own.

Q Talk so that all the jurors can hear you? A Please speak loud so that I can hear you.

Q You are a little hard of hearing? A Yes, sir, the last few days.

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Q Tell this jury in your own way what you saw happen at the dance hall, Huber's Casino, on the night of May 17th? A From the start to the finish of it?

Q Yes, tell from the start to the finish what you saw?

A When I went in there I was in the hall about ten or fifteen minutes and I was looking around to see Mr. Moschier --

Q Did you go there with anybody or alone? A No, alone.

Q You knew Mr. Moschier? A Yes, Mr. Moschier was the only man I in fact knew at this place.

Q Are you a member of the same fraternal organization that he is? A No.

Q Tell what happened? A As I was standing looking for Mr. Moschier I saw him come across towards the head of the stairs and it seems there was a little commotion right there and I turned around to speak to him and he had spoken to some of the ladies whom I don't know and I saw four or five -- I couldn't quite recall whom -- it happened so quick -- coming upstairs, and they seemed to be bent on getting into this hall.

Objected to.

THE COURT: Strike that part of the answer out.

BY MR. STRONG:

Q What did they do, try to get into the hall? A One, I found out his name later --

Q What did you find out his name to be? A Dooley. He seemed to be in the lead. He insisted on getting into the hall without

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paying, on the ladies objecting to his going in, and he said he was in before and he was going to go in. With that Mr. Moschier talked to him and he said "Now, be a good fellow and go outside, we don't want no trouble here" and he said "I was in and I am going in again," and with that Moschier leads him over towards the head of the stairs and he turns around and deliberately seemed to kick Moschier and I saw Moschier duck down to his knees, and Moschier then turned around and struck him, and from then there was a general mix-up and all of a sudden they rushed into the little off room of the ballroom and the hat check box is in that room, and there was a general mix-up and this here man, I found out his name later was Dooley, was in the corner with Officer Henners I think. I did not know he was an officer at the time, and now he said "You want to be quiet and go out of here like a man," and the first thing you know Officer Burggraf -- I did not know him either -- came running in, and I noticed a man by the name of West, a special officer in Huber's, tried to strike Burggraf. Burggraf said "Don't you know me," and he opened his coat and I was standing on this side and could see the side he opened his coat, a shield was in it, left side of his coat, and with that I heard five or six voices say "That is the son of a bitch and so and so, give it to him."

THE COURT: There is no objection to this evidence, Mr. Grier.

MR. GRIER: I understand the defendant was there.

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BY THE COURT:

Q Was the defendant one of the men? A That I could not swear to. I would not swear to it.

MR. GRIER: Then I move to strike it out.

THE COURT: Strike it out.

BY THE COURT:

Q You heard voices say something? A Yes.

BY MR. STRONG:

Q Then what happened? A From there there seemed to be a general commotion and they forced into the big ballroom --there is one ballroom on one side where the music was playing and there is another one on the north side of it, and the hat box is-- well on the west side -- they all rushed from this little hat check room out in this big ballroom which is almost as big as the other one, but no orchestra playing in there. They can just dance around -- little posts about three feet wide or square, and you could walk in there as you want to. The fight started and always drifting towards this big ballroom and I saw Dooley strike Officer Burggraf. I saw Officer Burggraf go down and I saw him get up, and yes, with his right hand he pulled out a revolver which was a gray color. The minute I saw the revolver I got behind one of these posts, which was natural. I watched him and he turned it around and said "Now, any man that don't belong in this crowd get out of here, I am going to clean it up." I stood behind there a minute and I was kind of afraid to tell you

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the truth, to go away from there. I edged out gradually and watched the proceeding as good as I could. I did not want to get mixed up in it. I was scared myself, and knew no one there but Moschier and the fight seemed to drift towards another stairs-- not the entrance stairway, but another stairs. As it was going towards this stairway, a man I found out his name was Woods -- I was not sure of it that night -- of his description -- I told the District Attorney so later. I saw him hit Burggraf and he went down the second time. From what he had in his hand, it seemed to be a white shiny metal -- what it was I would not swear to. It seemed to be a white shiny metal. I saw him hit him on the right side and he went down and must have lost his gun --

MR. GRIER: I object and move to strike it out.

THE COURT: Strike it out.

THE WITNESS: He had the gun in his hand --

BY MR. STRONG:

Q Who did? A Burggraf had the gun in his hand, using the butt end of it, and when he went down I see him make a leap for somebody, but who that somebody was, I couldn't say, but he dove right down so that he dove down the stairs -- you could not see his face -- right down the stairs -- coming from this side of the hall right around in a semicircle towards the stairs, and while Officer Burggraf was down I noticed a man go down and take an axe off the wall and that man was Dooley. While the man was running downstairs and Burggraf was after him, the crowd all

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surged towards the stairs and there is a bannister running along the stairs, and as near as I could get to it, I stand looking over and I saw the axe in the air and fired right downstairs.

BY MR. STRONG:

Q Now, did you see who fired it down? A Dooley fired the axe downstairs.

Q When was the next time you saw Dooley? A In the station house.

Q Under what circumstances? A There was a line-up I learned since of about seven or eight people.

Q Eight people in the line-up? A About.

Q What did you do? A I went over and picked out Dooley as the man being at that affair, throwing the axe.

CROSS EXAMINATION BY MR. GRIER:

Q Did you pick out anybody else at the same time? A No.

Q Was there another prisoner there by the name of Mann who was afterwards arraigned on this same charge? A No, I was not called upon only once, and only one I saw in that line was Dooley. I identified Mr. Mann as being there, later.

Q How long have you known Mr. Moschier? A I would say about ten years.

Q The only purpose you had in going there that night was to see Mr. Moschier? A No, a matter of business.

Q To see Moschier? A No, I wouldn't say to see Moschier, I say as matter of business.

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Q Was your business with Moschier? A No, with the lodge.

BY THE COURT:

Q Did you do the printing for the lodge? A Yes.

Q You went there to collect the bill? A Well, I had collected the bill, but out of consideration he said to me, "the least you can do is come over and see this affair and be real nice" and I naturally wanted to see Mr. Moschier.

Q What time did you get there? A Three or four minutes after twelve, to be sure -- five at the most.

Q Just a few minutes before this trouble began? A Practically, yes.

Q Moschier was coming across the ballroom when you first saw him? A Yes, sir, towards the head of the stairs, and I was standing at the main entrance stairway.

Q At the top of the stairs or bottom? A At the top of the stairs into the hall.

Q You had come up the Jerome Avenue stairs? A Yes, sir.

Q You were standing there when you saw Moschier come across?
A Yes, there was a dance in progress and I could not walk across the floor because they would have told me to get out and stand alongside to allow the dancers to go around.

Q When you got up to the head of the stairs, was there any argument going on between Dooley and some women there? A There was. When I saw -- while I was at the top of the stairs -- I was standing there all the time. The entrance comes from this

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way up (indicating) and I was standing over here and the head of the stairs is right about here (indicating).

Q You already had been admitted to the ballroom? A Yes, had been there well, five minutes at the most.

Q Then you saw Moschier coming over towards the stairway?
A Yes.

Q Was that before there was some argument between some people trying to get in and those four women? A The argument was going on at the same time Mr. Moschier was coming towards the stairs.

Q While you were standing there? A While I was standing there.

Q While you were standing by the railing? A Yes.

Q Did you hear what was said to Dooley, and what he said?
A The only thing I can recall is, he wanted to get in, and the ladies objected to his going in.

Q Then Moschier came on the ground? A Mr. Moschier came across then and Mr. Moschier started to talk to them and told him-

Q Did you hear what Moschier said to him? A "Be real nice about it" -- he said -- "Stop this racket around here. These ladies don't want any affair of this kind to start here. You run along and be a good fellow."

Q Who was with Dooley when he came in? A That is pretty hard to say.

Q Was there somebody with him? A Yes.

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Q More than one with him? A Yes.

Q How was the party made up, were they all men or were they men and women, boys and girls? A I could not put any women with this gang as I termed them later.

Q You cannot recall if there were any women came upstairs?
A No, not women being with them, but there was a lot of people at the affair. It was a ladies affair.

Q When did you first see Officer Henners? A Well, he came running right across the hall. I don't know from where, and he came running over and he started to say something to him. I did not pay no attention to what he said. I did not know who he was. I had saw this Dooley strike Moschier and naturally being his friend I was waiting for something else to start, and knowing Moschier, would naturally intercede in Moschier's behalf, but it did not go any further, it stopped right there.

Q After he struck Moschier, did you do anything to restrain Dooley? A I went over and took hold of him and said "You ought to know better than this," and with that there was a crowd came and forced us right in this hat box room.

Q Did anybody else come up and take hold of Dooley while you had hold of him? A Officer Henners, which I found out to be an officer later.

Q He came across the ballroom? A Yes.

Q Sure of that? A Positive.

Q Where was Henners when you first saw him? A I told you a

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little while ago I was not distinctly sure of where he was.

Q You are positive you saw him come across the ballroom?

A Yes, sir, four or five feet, as far as the vision, the side vision of the eye could carry.

Q He was not standing right behind Dooley on the stairway?

A Well, if you would term five feet standing behind--

Q Did he come up the stairs behind Dooley? A Officer Henners?

Q Yes? A Not that I know of.

Q You were there when Dooley came up? A I did not pay no particular attention to anybody. I did not know anybody to pay any particular attention to them.

Q You said a minute ago that you were positive he came across the ballroom? A Yes, I saw him come across the ballroom floor. I said I saw him come across the ballroom floor.

Q By him you mean Officer Henners? A Officer Henners.

Q He came over after you had taken hold of Dooley and told him -- A I did not take hold of him first, there was a lot --

Q Who took hold of Dooley first after he had kicked Moschier? A There was a jam at the head of the stairs there and I went over and I said "Why don't you be a good fellow" and with that I noticed this Mr. Henners, Officer Henners, come over and take hold of him and walked him into the corner.

Q Did he take anybody with him besides Dooley? A Not that I know of.

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Q In the hat room, A Not that I know of.

Q How far away from Dooley were you when you saw him take an axe from the wall? A A distance of from here to the end of this desk.

Q Was there anybody in this space between you and the place where the axe was? A All along this bannister, this is a sort of bannister, and there was shorter people than I standing there, and I could see the axe, me being tall.

Q When he took the axe down from the wall, what did you see him do with it? A Swinging it in the air.

(The distance is conceded to be nine feet).

BY MR. GRIER:

Q Swinging the axe? A I did not pay particular attention to the swinging part of it, but I saw him throw it.

Q How far away was he from you when the axe left his hands? A He was about right at the head of the stairs and allowing for the throw --

Q From you, how far was Dooley from you when you saw the axe leave his hands? A This distance (indicating).

Q About nine feet? A Well, that is something I would not care to say exactly. I say about that distance (indicating).

Q I come back to my former question, how far were you from the place on the wall where the axe was? A How far away?

Q Yes, when you saw Dooley take it down? A It is not an awful stretch -- you could add on about three feet more to that,

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as you term, nine feet.

Q About twelve feet from you? A Well, yes, as you call it the nine feet -- I wouldn't be sure of that exact figure.

Q Did you go down the stairway after you saw the axe thrown?
A Not right away, there was a lot of people --

Q Did you go down later? A Yes.

Q What did you find down there? A A man with his head partly split open.

Q Lying on the floor? A Well no, he had been propped up.

Q That was Officer Burggraf? A Yes .

Q Did you see Dooley again that night? A No, sir.

Q After he threw the axe, where did you see him go? A After I saw him throw the axe?

Q Yes? A Pretty hard to state where I saw him go. He disappeared.

Q Did you see where he went, did he go down the side stairway or front? A It was only one stairs he could have gone down without me seeing him again, and that would naturally be those stairs. All kinds of people rushed down those stairs.

Q You mean the stairs where the officer went down? A Yes, sir, where the officer had gone down and the axe thrown down.

Q But you did not see Dooley go down there? A No, I wouldn't be sure of that, but he did not pass me.

Q Would he have to pass you to go down those stairs? A No, he could have gone out on the other stairs, the way he came up.

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Q The next time you saw Dooley was in the police station?

A Yes.

BY THE COURT:

Q Did you see the axe actually strike Burggraf? A No.

BY MR. STRONG:

Q I shew you an axe and ask you if that is the axe or similar to the one that was thrown? A Yes, that is the axe -- just like them -- I would not swear this was the original axe, but it was an axe just like that.

MR. GRIER: I will concede that that is the axe or one just like it.

MR. STRONG: It is conceded on the record that People's Exhibit 1 for Identification is the axe which was thrown over and hit Officer Burggraf in the head.

MR. GRIER: or one exactly like it.

HERMAN HINNERS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Bridge Precinct A).

DIRECT EXAMINATION BY MR. STRONG:

Q What precinct are you attached to? A At the present time Bridge Precinct A.

Q Did you go to a dance at Huber's Casino on May 17th, Saturday evening? A Yes.

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Q Did you go there as a guest or as an officer? A Went there as a guest.

Q Tell the jury what you saw happen there around 12 o'clock?

A The traffic squad had a dinner that night in question, and after coming from the traffic squad dinner I went up to this dance. I belong to the Loyal Order of Moose, and as I got up to the head of the stairs, this defendant Dooley was at the head of the stairs and Moschier was arguing with him over the entrance fees and so one word borrowed another any way, and the next thing I knew, Moschier Pushed him and said "Get out of here" and with that Moschier pulled back then to soak him, and Dooley kicked Moschier and before Moschier dropped back, he soaked him again in the jaw and there was an all around tussle there. When I came to the head of the stairs I had hold of this Dooley by the arm and asked what the discussion was, and then this previous statement followed, and right after this Moschier struck Dooley, somebody hollered and as they did it distracted my attention and I lost this Dooley -- when I looked around again he was in the other room.

Q What room? A In the room that goes in the hat box.

Q You went in with him? A I lost him after this woman hollered or whoever it was in the hall -- I did not see the party who hollered -- and I went to go after him and when I looked up, he was in the other room and of course I naturally went in there to recover my prisoner.

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Q Did you tell him you were a police officer? A What time?

Q When you were at the head of the stairs? A No, sir.

Q You did not tell him then? A No, I did not have a chance to.

Q Now you say you went into the hat room after him? A Yes.

Q What happened in there? A When I got in the hat room this Burggraf -- I did not know he was a policeman at that time-- he was in between this Dooley and myself, and when I went to push him aside he said "Hold on, I am a policeman," and he showed me his shield, and naturally I dropped back, and with that they scuffled out in the other hall.

Q Who scuffled out? A The whole push went out and somebody walloped me and I walloped somebody else. They only got as far as the door when somebody -- to go into the other room -- when somebody walloped me and it kind of dazed me and I did not wait to see who walloped me but I walloped somebody else and the next thing that happened I heard a thud and right after the thud there was a police whistle blown. With that the gang all rushed--

Q Where were you at the time you heard the thud and the police whistle blown? A I was just about a foot inside of the door leading into the other hall.

Q You were in the hat box room? A No, I was just outside of it. Here is the hat box room and there you go in the other larger hall. So they all ran downstairs and I down after them.

Q Which stairs did they run down? A The one here, the stair-

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way that comes up from Jerome Avenue.

Q A lot of people rushed down that stairway? A Yes.

Q After the police whistle was blown? A Yes.

Q What did you do? A I went down after them, and I made up my mind once I got them out of the place I would keep them out, and when I got down out in the street, there is a little porch there, that is wider than this here (indicating) -- they all started to go away but this one man here, this Dooley, and I blew the police whistle downstairs and had the gun in my other hand, and he said "Stop blowing that whistle". I said "Now you beat it. I am a police officer, or I will plug you," and with that he started to put his hand towards his back pocket and I never waited and I said "Now go, if you don't you will get it," and he passed out of sight then, and five or ten minutes elapsed and I watched him to see they wouldn't come back, and passed out of sight.

Q When was the next time you saw him? A The next time I saw him?

Q Yes? A Was in the line-up.

Q Where? A In the 63rd precinct.

Q You recognized him as being the man you had seen come up those stairs and get in this hall? A Yes, sir, I picked him out of the bunch.

Q You did not see him take the axe off the wall? A I did not see any of that at all.

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CROSS EXAMINATION:

Q When you first came up the stairs into the dance hall, where was Dooley when you got to the top of the stairway? A Where was Dooley?

Q Yes? A He was about two foot above -- on the top step --
top
this is the step here and he was about two foot from where the top stairs were, away from the top stairs, and Moschier was wrangling with him there about the entrance fee.

Q You were just at the top of the stairs and Dooley and Moschier were about two feet beyond that? A Yes.

Q Having some argument? A Yes.

Q In the course of that argument, did I understand you to say that Moschier drew back to strike Dooley? A Moschier struck Dooley after Dooley kicked him.

Q In your direct testimony you said something about Moschier drawing back to strike Dooley and then Dooley kicked Moschier, now just how was that?

MR. STRONG: I do not think he said that on his direct testimony. I think he said Moschier started to push him downstairs and it was at that time he got kicked.

MR. GRIER: Let the officer state what happened.

THE WITNESS: I will try to tell you as near as I can remember.

THE COURT: Answer the question -- did Moschier strike Dooley before or after Dooley kicked him?

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A. Moschier struck Dooley after Dooley had kicked him and then I noticed Moschier go back and put his hand below the waist line.

BY MR. GRIER:

Q After Moschier struck Dooley, then what did you do?

A Some one hollered.

Q At that moment some one hollered? A Right after Moschier struck Dooley, after Dooley had kicked him, somebody had hollered and then in that moment I turned around to see who hollered and he slipped out of my grasp and the next time I saw him was in the other room.

Q But after Moschier struck Dooley, then you seized hold of Dooley, is that true? A I had hold of Dooley before -- while this thing was going on.

Q Was that before Moschier struck him or was it after Moschier struck him you first took hold of Dooley? A I came up and I seen this Moschier wrangling with Dooley, and I grabbed Dooley and I said "What is the matter here."

Q And while you were holding Dooley, he kicked Moschier?

BY THE COURT:

Q While you held on to Dooley, did Dooley kick Moschier?

A While I held on to Dooley, Dooley kicked Moschier, and then Moschier struck him and then somebody yelled.

BY MR. GRIER:

Q You were still holding on to Dooley when Moschier struck Dooley? A Yes, sir, I had him by the arm.

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Q And just at that moment somebody yelled and Dooley got away from you? A Yes, sir, slipped out of my grasp, when I turned around to see what was the matter.

Q Did you see where he went? A I did not see --

Q Did you see where he went? A Not at that time, but when I looked for him again he was in the other room.

Q The next time you saw Dooley then he was out in the ballroom? A No, he was in the hat room.

Q Which was it -- you testified in your direct examination that the next time you saw Dooley he was out in the ballroom?

MR. STRONG: I object, I do not think that is the testimony.

THE COURT: No -- I think he said in the hat room -- is that your recollection, gentlemen?

BY MR. GRIER:

Q Then your testimony is that the next time after Dooley got out of your grasp, at the head of the stairs, you saw Dooley in the hat room? A In the hat room and I went to recover him.

Q You went in after Dooley? A Yes.

Q Was there anybody else in there at the same time? A There was about fifteen of them in there I guess.

Q Men and women? A No, there was no women in there, just men in this room.

Q In the hat room? A Yes, in the hat room.

Q You went in and got hold of Dooley again? A I went in to

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recover Dooley and went to push this Burggraf to one side and he said "I am a policeman."

Q What did you do then? A Burggraf got hold of Dooley and I dropped back and as I did somebody crowded me.

Q You did not recover your prisoner, did you? A After Burggraf told me he was a policeman, I left Burggraf -- Dooley in Burggraf's charge.

Q Where did you go, you left Burggraf with Dooley in his charge?

THE COURT: He said he was struck and he struck some one else.

BY MR. GRIER:

Q After Burggraf took charge of Dooley, what did you do?

A There was an all around fight. We were fighting all the time. Somebody struck me, and I struck somebody else.

Q Were you still in the hat room when you were struck?

A Yes, I was in the hat room when I was struck first.

Q And you struck somebody else? A Yes, we were fighting all the time.

Q You don't know who struck you? A No, I did not look.

Q You know that you struck? A I did not look, I just walloped and that was all.

Q When you walloped -- A I wanted to get order in the place.

Q Were you still in the hat room or out in the ballroom?

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A When I was walloped first?

Q When you were walloped and when you walloped somebody, were you in the ballroom or in the hatroom? A After I was walloped first and walloped back I worked out in the ballroom.

Q Which way, out by the stairway? A There is the ballroom and you have to go through a partition there -- there is a doorway this way and a doorway that way, and come out of the ballroom and had to go through the doorway, out of the hat room, out of the doorway, to get into the ballroom.

Q You went out into another room? A Yes.

Q That was the second ballroom? A Yes.

Q What did you do? A I walloped back.

Q At that time do you know where Burggraf and Dooley were?

A I did not see where they went after that.

Q Did you see them come out in the ballroom? A I saw them come out in the ballroom with the whole fleet after.

Q After you got out in the ballroom and you were struck and you struck somebody else for the second time, the second round of strikes, what did you do? A I stood there fighting and with that I heard a thud and after the thud the police whistle was blown and then all hands flew downstairs, rushed past me.

Q Could you tell where that thud came from? A Well now --

Q There are two stairways there, which one was it from, if either? A There is the doorway leading out into the ballroom and the thud came from that direction -- away over where that other stairway was.

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Q On the side stairway? A Yes, and I saw that afterwards --

Q How far were you away from that stairway when you heard the thud and the police whistle? A Oh, I should judge from here to where you are standing.

Q And then after you heard that thud, where did you go and what did you do? A After the thud came, the police whistle right on top of that, and they all rushed out and I after them.

Q Rushed out which way, towards Jerome Avenue? A Out towards Jerome Avenue.

Q Down the stairway towards Jerome Avenue? A Yes.

Q You went out after them? A Yes.

Q Did you see Dooley again after you had left him in Burggraf's custody in the hat room? A I did not see him from that time again until I met him downstairs on Jerome Avenue.

Q When you got downstairs the crowd had dispersed? A They had -- the crowd started to beat it away, and this Dooley was the one man that came back towards me.

Q He came back alone? A He came back alone, yes, sir.

Q And met you near the porch? A Near the porch.

Q Did you speak to him then or did he speak to you? A I blew the police whistle and he said "Stop blowing that" and he made a pass for me, and with that he pulled back to his back pocket and at the same time I covered him.

Q Was he near to you? A He was from here to that hat away from me (indicating) -- about three or four feet.

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Q When he made the pass to his hip pocket, with his hand, you struck him then with your club? A I struck him with no club.

Q How did you strike him? A I did not strike him at all down in Jerome Avenue.

Q Let us have what you did do -- I misunderstood you -- when he made the pass to his pocket, hip pocket, what did you do? A I had the police whistle in one hand and a gun in the other. I blew the police whistle and when I seen him put his hand to his back pocket I told him I said "You beat it, I am a policeman, or I will plug you."

Q What did he say then? A He didn't say nothing.

Q What did he do? A He started to beat it away.

Q Now at that time did you see Moschier anywhere? A Moschier was behind me and Legstream was behind him.

Q Moschier was between you and the door? A Moschier was behind me and Dooley was in front of me and Legstream was behind Moschier.

Q Nearer the door? A Over here, where I could see them -- we were about a foot apart.

BY THE COURT:

Q Do not answer this question except by yes or no -- did Moschier at the time you had your gun pointed at the defendant, say anything to you? A Not that I recollect.

Q Or Legstream? A No, sir.

Q How far away was Moschier from you at that time? A About

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a foot or two and Legstream was about where your chair is.

BY MR. GRIER:

Q At no time did you take the defendant Dooley into the hat room, did you? A How could I take him into the hat room. I had him in the entrance to the hat room and when the woman screamed -- when the scream came, and when I turned around to see what the scream was about, I lost him, and then the second time I saw him was in the hat room.

Q You did not lose him in the hat room? A I did not lose him in the hat room, no, how could I, when Burggraf had him. When I went in to recover him Burggraf had him and I did not know he was a policeman until he told me.

Q When the woman screamed, you and the defendant Dooley were still out on the landing at the head of the stairs? A Yes.

Q At that moment Dooley escaped from you? A When some one yelled, yes.

Q And at the moment that he escaped from you, the two of you were not in the hat room? A I was not in the hat room, no, not until afterwards -- after I turned around to see what the scream was about and then recovered myself to look for my man, why, he was in the other room.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q How long did this all take from the time you first saw Dooley at the top of the stairs, until the time you went in the hat room and saw him in charge of Officer Burggraf? A Less than five minutes.

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Q At the time you saw Dooley on the sidewalk and told him to beat it, did you know that he had assaulted Burggraf with an axe and injured him? A No.

BY THE COURT:

Q Or that he had thrown an axe? A No.

Q You did not know at that time the condition of Burggraf?
A No, sir, but I found out later on -- there was a remark passed--

Q The District Attorney wants to account for why you did not place the defendant under arrest?

BY MR. STRONG:

Q You didnt know anybody had been seriously injured when you saw Dooley out on the sidewalk and told him to beat it? A I did not know at that time, no.

BY MR. GRIER:

Q Neither Moschier or the other man out on the sidewalk told you that Dooley had struck Burggraf with an axe? A No.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and also admonishes the jury not to go near Huber's Casino, and takes an adjournment until Monday morning, next, October 20th, 1913, at 10:30 o'clock.

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New York, October 20th, 1913,

Trial resumed.

HERMAN HINNERS resumes the stand:

CROSS EXAMINATION BY MR. GRIER:

Q Was there at any time, while you were down in front of the Casino on Jerome Avenue, that any man was menacing you with a revolver, apparently holding a revolver in his coat pocket and threatening you? A No.

Q Was any one with the defendant Dooley when you met him down there? A Not that I noticed.

Q Do you know the co-defendant Woods that was arrested and also charged with this assault? A I did not see him at all. I don't know anything about him. This is the only man I had any dealings with.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q Was there anybody else outside there on the sidewalk besides Dooley and you? A There was Legstream and Moshier.

Q Any other people? A I didn't pay much attention to them. May have been a few there.

Q Do you know if there were any other people out there or not? A There was, sure -- part of these people that were in the hall, after they run out.

Q So there were other people out there? A Yes.

Q You were attending to Dooley at that time? A Yes.

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BY MR. GRIER:

Q They were not immediately around you, they were off towards the middle of the street and apparently going away?

A There was part of them off in that direction, and a few over that way. I paid no attention to it except Dooley, the man I had in front of me.

Q There was nobody with Dooley at that time? A Not that I noticed at that time..

BY MR. STRONG:

Q Did you see Dooley before he came to that dance hall that evening? A He was -- he got off the car before the car stopped and he was about fifty feet ahead of me going into the dance hall.

Q He was in the same car with you going to the dance? A Yes.

Q How many people were with him getting off there? A I did not notice how many got off. I know there was quite a few but he was about fifty feet ahead of me and there was another fellow walking alongside of me for about -- not exactly alongside, but about a foot back -- I could see him.

Q Did you notice whether there were any marks on Dooley's face or not that night? A I did not at that time, no.

Q Were there any girls in this party that were with Dooley? A Certainly there were.

Q Do you know what these men were wearing that were with Dooley, on their heads? A They had Fedora hats, the latest

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style, that don't go all the way up, and pulled down over their eyes in front, these caps.

BY MR. GRIER:

Q There was a distance of fifty feet between you and Dooley -- were there a number of others between you and where Dooley was? A There were more behind me, following me up.

Q And more in front of you and between you and Dooley? A Dooley and a couple of more beat it up ahead. I was about fifty feet behind going into the dance hall.

Q You say Dooley and about two others were the only ones in this party that were in front of you? A In front of me.

Q And the others were coming behind? A Yes.

Q What is your best judgment as to the number in that party? A I did not look behind me. The best judgment I have, what I seen on the car, there was about more fellows than girls-- I should judge all told to be about twenty.

Q Did you get off the car after they all got off, or did you get off in the midst of the party? A I got off just as soon as the car stopped.

Q That dinner you were attending was not at Huber's? A No.

Q Where was the dinner you were attending? A At 34th street and 5th avenue.

Q You were on the car coming down Jerome Avenue? A Yes.

Q You were not coming from that dinner? A Well, after I left the dinner I took the subway up to 181st street and going

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up in the subway I asked the guard could he tell me --

Q Do not tell what you asked the guard -- tell us what you did -- you went to 181st street on the subway? A Yes, and then from there I took a crosstown car and went down Jerome Avenue.

Q Were you going to your station house or to your home?
A I was going to this dance.

Q Did you have your uniform on? A No.

Q Were you carrying part of your uniform? A I had my coat on my arm, turned inside out.

Q That was your uniform coat? A Yes.

FREDERICK KIESOW, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. STRONG:

Q What is your occupation? A At the present time in the real estate business, American Union Realty Company, 30 East 23d.

Q Are you in business for yourself or connected with this company? A I am connected with that firm. I am one of their agents.

Q Did you go to Huber's Casino the night of May 18th? A I was there with a party, my wife and two children and a committee from the Liberty Lodge and the Lady Forresters both -- about twelve women, young girls.

Q Do you remember what took place there about 12 o'clock?

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A I was sitting there with a party just overlooking the whole dancehall.

Q Which side of the dance hall? A On the east, on this side of the stage.

Q That is on the east side of the dancehall opposite the stairs on the other side of the dance hall? A The stairs are just in a triangular way -- triangular from where I was sitting.

Q Tell the jury what you saw happen, in your own words?

A About the hour of 12 or 12:15, the scrimmage started coming upstairs, and I said to my wife "Helen, there is a fight" --

THE COURT: Strike out the words "Helen, there is a fight."

BY MR. STRONG:

Q Continue and tell the jury what you saw happen? A I ran to the scene of the trouble.

THE COURT: Strike that out.

BY THE COURT:

Q Do not say that, but state the facts? A I ran to where the trouble was.

BY MR. STRONG:

Q Where was that? A That was at the staircase coming up from the main entrance, leading from the sidewalk up to the main entrance right upstairs to the hall.

Q When you got over there, what did you see? A When I got over there I seen a blackjack and a gun swinging, and I seen

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this Officer Burggraf, what they call him, the man that got hurted, he was going downstairs with a couple of these fellows and as he was going downstairs --

Q Which stairs were they? A The main stairs as you come into the hall. There is a partition railing around it. Just as I was in back of this man, he drew this obstacle over the stairs with both hands and he looked over.

Q What sort of an object? A They told me later on it was an axe.

THE COURT: Strike that out.

BY MR. STRONG:

Q What did it look like to you when you saw it thrown?

A It made a heavy report, looked to be about that big (indicating).

Q Did you notice the color or anything? A It was done so quick I did not notice the color.

Q You saw a man throw something over the bannister? A Yes, I then stepped about a foot and a half back of him, taking a description of the man.

Q Who was it -- did you notice who it was? A A man they called or named Dooley.

Q Is he here? A That is the gentleman there, sitting right there (indicating the defendant).

BY THE COURT:

Q Is that the man you saw throw this object that you have described? A Yes.

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BY MR. STRONG:

Q What did you notice about his face, anything? A He turned to me and looked, and when he got down to the sidewalk he was forced away with a gun by a man who after I found out was a policeman, but I did not know it at the time.

Q When you took a look at him after he threw this object down the stairs, did you notice his face? A Yes.

Q Did you notice anything peculiar about it? A I noticed that he was in a raving fight, his collar and tie off, and shirt open, and full of blood, and he was fighting like that all the time, and when the officer pointed the gun at him he started to go away and the officer went to put his gun back in his pocket and as he did this man came for him again and he had to pull the gun on him again, and he held a whistle in this hand, blowing it for all he was worth.

Q When was the next time you saw Dooley? A In the precinct, 161st street and 3rd avenue.

Q The station house? A Yes.

Q Under what circumstances did you identify him there, tell how you identified him? A I just walked in and put my hand upon his shoulder and said "You are the man, and you were there and you were there."

THE COURT: This evidence is admitted without objection on the part of counsel. Evidence as to what he said, as to what the witness said to the defendant, unless the de-

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defendant made any reply, cannot bind or affect him.

BY THE COURT:

Q Did Dooley say anything in response? A He simply was using violent and vulgar language.

THE COURT: Strike it out.

BY THE COURT:

Q Did he say anything in response, when you put your hand upon him and said "This is the man?" A He just gave a look as much as to say --

Q Did he say anything? A No.

THE COURT: Then strike out the testimony, and the jury are instructed to disregard it.

THE WITNESS: No, did not say a word.

THE COURT: And, gentlemen of the jury, you will consider the testimony only that he placed his hand on the defendant.

BY MR. STRONG:

Q You placed your hand on the defendant? A Yes, on his right shoulder.

Q Were there any other people there in the station house?
A There was about forty policemen in uniform.

Q Were there any people in a line-up there? A Altogether seven in line.

Q Among others this defendant? A Yes.

Q How did you know it was the same man? A Because one

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glance at him showed me it was the same man.

THE COURT: There was no objection to that question.

You cannot ask him to give reasons, and I exclude the question. Strike out the answer.

CROSS EXAMINATION BY MR. GRIER:

Q You say you were in the balcony at the end of the hall? ^{east}

A Yes, sir.

Q That hall is made up of two parts, is it not? A Yes.

Q Divided by a row of posts in the center? A Yes, on that side (indicating).

Q Now, what is your best estimate of the size of those two rooms together? A I judge they take in fully the width of 100 feet one way.

Q Which way from east to west or north to south, is it one hundred feet? A From east to west, because that hall is situated on a slant like.

Q Calling Jerome Avenue entrance the west entrance, does the whole room extend back from the Jerome Avenue entrance to a distance of about one hundred feet? A Yes.

Q And the side opposite the Jerome Avenue entrance is the east side of that hall. Now is the hall as wide from north to south as it is from east to west? A You mean to tell me that I was on the west side of that hall?

Q No, I don't mean to tell you anything -- I am trying to get the approximate size of that hall. You have said the dis-

tance from east to west is about 100 feet? A About 100 feet.

Q What is the distance the other way, from north to south?

A I should judge about 150 feet.

Q So, the long way of the hall is north and south and the short way of the hall from east to west? A Yes.

Q Where, in that ballroom, is the row of posts -- does the row of posts run from east to west or north to south? A It is a dividing line with like two halls. This is about the size of one hall, this court room, and there is another one adjoining it, just the same way.

Q Where are the posts, let us get the location of that row of posts between the two halls? A There is a box there in the centre of the hall that divides.

Q Where is the row of posts -- does the row of posts separate the ballroom into two halls? A Yes.

Q On one side the ballroom floor is about the size of this room? A Yes.

Q And on the other side of those posts it is about the size of this room? A Yes, sir.

Q So the row of posts run from the side towards Jerome Avenue to the opposite side? A To the rear of the building where the stage is.

Q That row of posts is about the middle of the two halls? A Yes, sir, as far as I can judge.

Q You say you were in the balcony? A Yes.

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Q In which of these two rooms was the balcony, where you were? A Where the stage is.

Q Which of the two rooms has the grand stand and stage?
A The east room, the room to the east side.

Q According to your description there is a south room and east
a north room? A The south side is the room where the --

Q The band stand is in the south ballroom at the east end?
A Yes, sir.

Q Into which one of those ballrooms does the Jerome Avenue staircase lead, the south ballroom or the north ballroom? A The southeast ballroom.

Q In the southeast ballroom? A Yes, sir, that is correct.

Q At the western end of the south ballroom? A On the western end of the south ballroom.

Q Where is the balcony where you and your party were sitting? A Right at the entrance of the stage, where the stage is on the east side.

Q In the south ballroom? A Yes, sir, right in the corner overlooking the whole hall.

Q At the eastern end? A Yes, sir.

Q And at the south side of the south ballroom? A Like over there (indicating), there is a stair comes like that (indicating)

Q And the hat room was at your right looking towards the Jerome Avenue stairway? A Yes.

Q But on the opposite side of the hall from where you were

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sitting, on the west side? A Cater-cornered.

Q You were the distance from that hatroom and the landing at the head of the Jerome Avenue stairway of at least 100 feet?

A Yes, sir about that, not quite one hundred -- because, I never measured it but my eye estimation is about 100 feet.

Q You were the whole width of the ballroom? A I run for all I was worth to get there, because there was a lot of my friends --

Q You had to go down the stairway from the balcony? A Yes.

Q Where is the stairway from the balcony -- is it over where you were, or did you pass through the balcony and come down a stairway over by the Jerome Avenue entrance? A I came right down on the east side of the hall and the staircase is right there and leads to the staircase leading down to underneath the south hall and passed that staircase to the main staircase, which is about ten feet or fifteen feet away.

Q From where you were sitting? A No, I had to run about 100 feet to get to that staircase that leads down to where these two staircases are situated.

Q That 100 feet you ran, you were still on the balcony, not on the ballroom floor? A I could not give you the measurements on that, because I don't know how many feet you would judge that staircase from the balcony down.

Q You say you ran about 100 feet about? A About 100 feet.

Q That space you ran, were you on the ballroom floor when

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you were running, or still on the balcony? A When I was running I ran on the balcony and downstairs until I got to the scene.

Q You ran on the balcony? A Yes.

Q Did you run to the stairway over by the Jerome Avenue entrance before you left the balcony? A No, I went down on the balcony stairs, on the east side of the balcony, the south hall as you call it, down past the first stairs and then to the second stairs where this trouble was.

Q You passed across the whole length of the ballroom floor after you left the balcony? A On the balcony, not on the ballroom floor, until I got to the stairs, and run down the stairs, took two steps at a time.

Q How far from the stairway coming up from Jerome Avenue is the stairway leading down from the balcony? A How far is the stairway from the -- leading down from the balcony?

Q How far is the stairway that you came down from the balcony, how far is that stairway from the stairway leading up from Jerome Avenue? A I should say about fifteen or twenty feet.

Q Comparatively near? A Yes, I haven't been in the hall since the trouble so I couldn't tell you exactly.

Q When you came down within fifteen feet or such a distance from the Jerome Avenue stairway, there was a fight going on there, and you were right in the midst of the fight? A Yes, right in front of the hat box and I stood back taking a description of these men.

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Q The fight was going on there at the head of the stairway?

A Yes.

Q When you came down from the balcony? A Yes, the fight was in full bloom.

Q And there were many guns out and blackjacks? A Yes, sir, even to a glass pistol.

Q A toy pistol? A Yes, sir, even up to a glass pistol.

Q At that time you came down there, did you see the People's witness Moshier? A He was standing at the landing of the stairs.

Q What was he doing? A When this man threw the obstacle over the staircase he said "Oh my God he killed him" and he said "There they go" --

MR. GRIER: I move to strike that out.

THE COURT: Strike it out.

BY MR. GRIER:

Q I ask you what Moshier was doing when you came down from the balcony; you say he was standing at the head of the stairway?

A Head of the stairs, after the officer went down chasing these fellows.

Q You confine yourself to my questions and we will get along better -- which stairway were you nearest to when you left the balcony? A The main staircase.

Q That is the staircase coming up from Jerome Avenue? A Yes, sir, where they rushed up first.

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Q Where the people first came up? A Yes, just like a lot of Indians.

Q And their coming up there is the thing that attracted your attention first? A Yes, that attracted my attention.

Q You started immediately over to that corner? A Yes, sir, because I had women friends of my wife's and mine on the floor there.

Q I did not ask you for the cause -- confine yourself to my question?

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MR. GRIER: I move to strike out the last part of the answer.

THE COURT: Strike it out.

BY MR. GRIER:

Q Now, when you got down there you saw Officer Burggraf start down that main stairway? A Yes, the officer that was Hurt.

Q You rushed down the stairway where you had seen these people coming up? A I did not rush down that stairway.

Q I say he rushed down? A He rushed down with the bunch of them.

Q Was he bleeding or anything about the face that you could see? A Well, his tie was ripped and collar ripped -- they were all with their collars and ties and shirts ripped out.

Q I speak of Officer Burggraf? A Yes, sir.

Q His collar was ripped off? A Yes.

Q And his tie was torn? A Yes, sir.

Q Was he bleeding about the face? A Yes, there was blood upon him, yes, a whole lot of blood.

Q Was he carrying anything in his hand? A He had something in his hand. I couldn't exactly know what it is. I know I saw blackjacks and guns.

Q Was Officer Burggraf, the officer that was hurt, was he carrying anything in his hand when he rushed down the stairway?

A He had something in his hand; I don't know as it was a

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billy or a blackjack or what it was. I know it was something.

Q Was he going fast? A Certainly.

Q How near the stairway were you when he dived down there?

A About two feet away.

Q Were you opposite the railing or immediately in front of the stairway so you could see down? A I will give it to you -- may I take this blotter -- (indicating). There is the staircase like that. There is the partition stairway, and here was I and here was this man they call Dooley, this gentleman here, and he threw this obstacle right over these stairs.

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

THE COURT: Strike out the answer.

BY THE COURT:

Q Were you near the side of the railing?

BY MR. GRIER:

Q Were you near the side of the stairs or immediately in front of the stairs so you could see directly down? A No, there was such a crowd in front -- Moshier in front --

Q Burggraf you say, was going fast down that stairway?

A Yes.

Q Was he in front of the crowd or behind the crowd or in the midst of the crowd? A He was in the midst of a crowd.

Q They were all running down as fast as they could?

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A Yes.

Q Now, did you go down that stairway? A No, I followed this man here down the other stairs.

Q When you got down the other stairs, what did you find down the other stairs? A Found this man here pasting his fist in another man's jaw, which I found out afterwards was a police officer too.

Q I ask you what you saw when you reached the bottom of those stairs? A I saw him fighting with another police officer -- I did not know it at the time he was a police officer.

Q Was that Officer Henners? A Yes, sir, Officer Henners.

Q You saw him fight with him? A Yes.

Q What did you see him do? A I saw Henners grab him and push him out and after he pushed him out he was still fighting.

Q Did he strike --

THE WITNESS: (Continuing) And he pulled his gun out and told him to get away from here and I said to Henners that man is after killing somebody inside, and the best thing you can do is --

Q Was Dooley still there? A Dooley was still there. A big electric light in front of him.

Q What did you tell Henners? A I told him to hold that man. I did not know who he was. He had a gun in his hand. I

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said hold him at the point of the pistol until the police arrives.

Q Did not Henners show his badge and say he was a police officer? A Yes, afterwards he said I am a police officer.

Q Did he show his badge to Dooley and tell him he was a police officer? A I could not say that.

Q You were there while Dooley was threatening the police officer with his fist? A yes.

Q You saw the officer pull his gun? A Yes, and Dooley stepped back and he went to put his gun back in his pocket again and then Dooley came for him again and then he had to take his gun out the second time and drive him away.

Q And during that time was Officer Henners blowing his whistle? A Yes, sir, with one hand he had the whistle and the other hand the gun.

Q Did you hear what Dooley said to Henners? A Well, he said -- he asked him who he was and all like that.

Q Dooley asked him who he was? A Who he was.

Q What did the officer say when Dooley asked him who he was? A I couldn't see that. I stepped to one side then because I thought I was going to get it myself then -- they were starting to come back.

Q You told the officer in the presence of Dooley to hold Dooley that he was after killing a man? A I told him to hold him when I seen the gun, yes.

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Q You said a moment ago, that you said to him to hold that man that he was after killing a man? A Yes.

BY THE COURT:

Q What officer was that? A Henners.

BY MR. GRIER:

Q What did Officer Henners say when you told him to hold him that he was after killing a man? A He said what can I do with a bunch like that.

Q There was a great crowd around there at that time?

A Yes.

Q About how many people were around there when Henners and Dooley were having this controversy there in front of the building? A To my estimation about 12 to 14.

Q They were all around Henners? A They were up towards the park -- some running and some in between and he was the most daring one of the bunch.

Q How far away from Henners were the others? A About two hundred feet away then, they were gone over the bridge -- over that central bridge.

Q So you say now that Dooley in front of Officer Henners, with no one else except yourself, within two hundred feet of him, that after you told Henners that the defendant Dooley was after killing a man, Henners did not arrest him or stop him?

A I will tell you just the words I said.

Q Answer me, is that so or is it not so? A Now, about

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200 feet they were struggling between themselves about 200 feet away -- I could not say this man Dooley was 200 feet from the officer, because he was right dose to him.

Q You do not say he was 200 feet away from the officer, you say, that Dooley came back and was threatening the officer with his fists? A Yes, sir.

Q And at that time the nearest of Dooley's friends was 200 feet away? A About that, about 200 feet -- in between there was a few or them, there was about two or three on the way up, and they were up where the bridge entrance is, the Central Bridge -- I should judge it to be about 200 feet from the Casino to the entrance of the Central Bridge. There is a little park -- when you get to the bridge -- and that was where they were arguing, and one said, "What could I do, Dooley had the axe and the other fellow had the gun and that was the way they were arguing.

Q About 200 feet away from where you were? A It was quiet and you could hear everything.

Q Everything perfectly still? A Yes sir, except right where these --

Q You heard a party over 200 feet away arguing among themselves? A Yes sir, about the fight, come on and let us go back and all like this.

Q How far at that time were you away from Dooley? A That was when Dooley left and went with the crowd.

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Q But at the time Dooley was having his argument with this officer, how far away from Dooley were you? A About three feet.

Q How far away from Dooley was Officer Henners at the time of this argument? A Right in front of him, right close to him. The gun almost touched his nose.

Q You say in addition to you three men, there in front of Huber's casino, the nearest others were about 200 feet away, over by the little park, having an argument over there?

A That was after the first of the trouble went, but while the trouble was in motion there was a few others there yet, back of Dooley, giving him a little more encouragement.

Q What do you mean by there were a few others? A There was one party there said he was his brother, I found out later.

Q He was there with the officer too? A Yes, sir, he was standing alongside of his brother.

Q You did not tell us about that before? A No, I did not, because I cannot think of everything all at once.

Q How many others were there besides Dooley and his brother? A It hasn't come back to me, you have to get your thoughts together and think of matters. If I did not think this man was guilty, I would not sit on this chair two minutes.

Q You do think he is guilty? A Yes.

Q Very serious thing you are testifying to just now?

A Yes, sir, very serious.

Q A moment ago you testified that Dooley yourself and the officer were there in front of that building? A Yes, sir.

Q And Dooley was menacing the officer with his fists? A Yes, sir.

Q And the officer was blowing his whistle? A With one hand and the gun in the other.

Q And had his gun in the other hand? A Yes.

Q Dooley was saying something to the officer? A Yes.

Q Asked him who he was? A Yes, sir, who he was and using vile language.

Q And you were not over three feet away? A That is about all.

Q You testified to that? A Yes, sir, and I stepped back after that, because I thought he was coming for me. When I see a man persist at the point of a pistol, I am going to move.

Q The crowd was over towards the park, going over in that direction? A Yes.

Q Now, you say that that is not true? A What is not true.

Q That you and the officer and Dooley were the ~~only~~ only ones there -- you changed that and say that is not true? A I did not -- I change it to a certain extent at the time the trouble was. This was after the trouble that Dooley joined his crowd and his brother and whoever the other fellow was there yet, a little white headed fellow -- I think he is in court,

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he was here last Friday. I could pick him right out.

Q Will you tell us just what you saw when you came down the stairway, exactly what you saw? A I have told you already.

Q Tell us again.

THE COURT: Why do you want to have it repeated?

MR. GRIER: He has already told two absolutely different stories.

THE COURT: The remarks of counsel will be disregarded by the jury. It will be for the jury to say whether the witness has told two different stories.

THE WITNESS: Do you want me to bring a dozen women here?

THE COURT: Mr. Grier do not characterize the testimony. If he told two different stories, you can argue that to the jury, by pointing to his testimony.

BY MR. GRIER:

Q Up until that night you had never seen Dooley? A No, not to my knowledge.

Q And after that night you never saw Dooley until you saw him in the station house? A In the station house and identified him there, yes.

MR. GRIER: I move to strike that out "identified him there".

THE COURT: Strike it out.

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BY MR GRIER:

Q How long after the fight until you saw Dooley in the station house? A How long after the fight, I think it was about five days.

Q At the time you saw Dooley in the station house, he was lined up with six other people? A Yes, seven altogether -- seven including him.

Q Immediately before coming into the station house or into the room where the defendant was in the line up, whom did you see? A I saw the policesergeant and Lieutenant at the desk.

Q Did you see Moshier? A Moshier and a man from Huber's Casino.

Q Was that at the station house -- A Wait a moment, and I will give you a fewmore. I saw Henners, he was there.

Q Officer Henners? A Yes.

Q When you went in did Officer Henners, Moshier and a man from Huber's come in with you? A I went in alone -- they told me to go right in --

Q I didnt ask you what they told you, you say you went in alone? A With the detective there, the man in charge of the business. I went in alone to identify this first --

Q You went in alone, that is your answer? A Yes.

Q I know what you mean? A A detective has to companion you to a thing of that kind.

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Q You went up to Dooley and put your hand upon him?

A Yes.

Q You went up to two others and put your hand upon them?

A Yes.

Q What were the names of the two others? A As far as I know --

Q If you know say so? A If you put them in front of me again, I will pick them out again.

Q What were the names? A They called one Woods and the other was Breeze.

Q Was there any one there by the name of Mann? A They claim there was a man there by the name of Mann. I have a slight recollection of him, but I did not pick him out.

Q You did not pick him out? A No, I had a slight recollection of him though.

Q You picked Woods and Breeze and Dooley? A Yes.

Q You testify that when you came over to the head of the stairs, just at that moment Burggraf was diving down on the stairway? A The officer that was hurt, yes.

Q Now, at that moment, did you see Dooley? A I was right in back of him.

Q Right behind Dooley? A Yes, sir, right behind him and after he threw this over the stairs he turned around and looked at me and then down --

Q I asked you if you saw Dooley? A Yes.

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Q You stop and answer my question so we will get along a good deal better? A Yes, sir.

Q You were directly behind Dooley? A Yes, sir.

Q How far behind? A About a foot and a half or two feet.

Q Was there anybody between you and Dooley? A No, sir, nobody between us.

Q Dooley was between you and the stairs? A No, the partition, the partition of the stairs, right in the center of the partition he was.

Q Do you mean the railing around the stairs? A Yes, sir, the railing, it is a partition railing.

Q He was between you and the railing around the stairs? A Between I and the railing, yes, around the stairs.

Q Was there anybody that you could see between him and the railing? A Moshier and Legstream.

Q Was Moshier and Legstream between Dooley and the railing of the stairs? A They were at the head of the stairs.

Q Dooley was along the railing at the side of the stairs? A Yes, sir, he had the whole row to himself and I was right back of him watching him.

Q You were a foot or so behind Dooley? A Yes.

Q Was there anybody else that was nearer to Dooley than you? A Not to my knowledge Except the officer on the street,

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Henners.

Q At that moment where was Henners? A I don't know.

Q Then don't tell us -- was there anybody nearer Dooley than you were, at the time the axe was thrown? A Well, not nearer than I was, no, sir.

Q You were the nearest there to him? A I was the nearest man to him, yes.

Q Then why did you want to say except Henners? A That was when he was on the sidewalk, when he run down the other staircase to the sidewalk, followed by me, Legstream and a few others.

Q We are talking about when you were at the head of the stairs and Dooley about a foot away from you? A Yes, sir.

Q Nearer the railing? A Yes, sir.

Q And Moshier and Legstream at the head of the stairs?
A Yes, sir.

Q How far were they away from where you werestanding?
A About six feet, five or six.

Q Were you nearer to them than Dooley was? A Well, probably three or four inches.

Q You were somewhat nearer to Legstream and Moshier than Dooley? A Three or four inches, yes.

Q Were there any other persons between where you were standing and where Moshier and Legstream were standing? A They were back of me.

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Q Between you and Moshier, was there anybody else?

A There was some women there and some others, but very few. There was a space in between, they were in back of me like.

Q Then they were not between you and Moshier? A I even put my hand out like that to keep them back and one of the women fainted.

Q At that distance of about a foot and a half, you say you saw the defendant with this object in his hand? A An obstacle; I don't know if that was the object or not, but he had the obstacle and just threw it over and it made a heavy report.

Q There was a light there in the hall? A Not in that stairway, it was dark.

Q There was light in the hall? A Downstairs, yes, there is a gas light.

Q No light on the ball room floor? A Yes, sir, plenty of light. I could see him throw that over.

Q At a distance of a foot away, you cannot tell whether this was the object he had or not? A No, it was done so quick I could not notice.

Q Illustrate how he held that object? A I will show you, like this here and over the stairs. Just got there on the impulse of the moment when he threw it over. I ain't sure it was an axe or not, but found out later it was an axe.

(The witness illustrates by holding the axe with two

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hands in a horizontal position on the handle.)

Q You got there in time to see Burggraf dive downstairs?

A Yes, I was there in time. I mean on the impulse of the moment, my eyes set on this Dooley when he threw this over.

Q He did not throw it until after Burggraf had dived downstairs? A Downstairs, yes.

Q What was Burggraf doing just after he dived downstairs?

A He was putting some of them fellows downstairs.

Q Forcing them downstairs? A Yes, sir, he had hold of this man they called Woods they claim.

Q Had hold of Woods forcing him down the stairs?

A Yes.

Q He had considerable struggle with Woods to get him downstairs? A Certainly.

Q But he finally did force him down and then he went downstairs after Woods, and there was a crowd coming behind Burggraf downstairs? A Behind Burggraf?

Q You said a moment ago he was in the midst of the crowd?

A He was in the midst of the crowd but Mosher stood at the head of the stairs.

Q You have told us that, answer the question, was there anybody going downstairs behind Burggraf? A Not while Burggraf was going down.

Q So he was following the crowd downstairs? A He was putting out some of those fellows.

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Q He was following them downstairs? A Yes, sir, following them downstairs.

Q And everybody that was on the stairway at that time when Burggraf was going down, was in front of Burggraf? A They were in danger of getting hit with the obstacle just as he was.

Q They were in front of Burggraf, is that true, going downstairs? A Yes.

Q And nobody was going downstairs behind Burggraf? A Not behind Burggraf.

Q What did you mean by saying he was in the midst of the crowd going downstairs? A The crowd collected right at the head of the stairs.

Q They were not going downstairs? A They knew Burggraf was an officer, I did not know who he was.

Q I did not ask you that? A I saw him driving these fellows downstairs and while he was driving them downstairs this man threw this obstacle over the staircase.

Q At the time he threw the obstacle over, you were within standing / one foot of him? A About a foot and a half, like that, yes, sir.

Q You did not see where he got the axe? A I don't know how he got possession of it.

Q You did not see where he got it? A No, some say it was slid across the floor.

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Q That it was slid across the floor? A Slid across the floor.

Q Did you see it slid across the floor? A No.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q Did you say you saw some light h aired man in the court room that is a friend of this defendant? A Yes, sir, he was here Friday, standing out at the post outside.

Q Is he in the court room now? A I have been looking for him and I don't see him here now.

Q Not in the court room? A No.

BY MR. GRIER:

Q Were you in the courtroom Friday while the trial was going on? A No, I was outside.

Q You did not see anybody? A The whole court is the courtroom isn't it.

Q When you saw a friend of the defendant Dooley outside of the courtroom, you then came to Mr. Strong and told him that? A Yes.

MR. STRONG: I heard him here.

THE WITNESS: I also am looking for two of them that threatened my life, and if I catch them I am going to have them arrested right on the spot.

Q Did Dooley threaten your life? A No, but two of his friends, at 135th Street and Broadway.

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THE COURT: Strike that out and this evidence the jury will disregard.

BY MR. GRIER:

Q You feel very bitter about this fight that was up there? A I don't feel any more bitter than any other citizen should feel about it.

Q You do feel bitter about it? A Why should I feel bitter about it any more than any other citizen.

Q I do not say whether any more than any other citizen or not -- any citizen should feel bitter about that fight up there? A Certainly.

Q So you feel bitter about it? A Not so bitter as you call it.

Q Do you feel bitter about that fight up there? A Not so bitter as you call it, but I judge if I got hit on the head with that axe I would want somebody to give me a helping hand in prosecuting a man of that sort.

Q You did not get hit on the head with the axe? A No, but I was threatened by two of his friends and I will get them if I have to look for them day and night. I have the authority.

THE COURT: You must not state that. That will be disregarded by the jury and stricken from the record.

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ALBERT E. HAZLITT, called as a witness in behalf
of the People, being duly sworn and examined, testified
as follows:

(63rd Precinct).

DIRECT EXAMINATION BY MR. STRONG:

Q How long have you been on the Detective Force? A About
a year and six months.

Q And on the police force? A Eight years the 1st of
this November.

Q Where have you been on duty, in what locality, most of
the time? A When first appointed I worked three years and
one month in East 88th Street, and then for three years and
one month, about three years I worked in the telegraphic
bureau, Manhattan.

Q That is down at Headquarters? A Yes, sir, and then
I was transferred to the 16th Precinct,--

THE COURT: Is this important?

MR. STRONG: I always like the jury to know what sort
of an officer it is.

THE COURT: I do not think it is necessary.

BY MR. STRONG:

Q Did you arrest the defendant? A Yes.

Q On what day? A May 19, about nine P. M.

Q Did anybody point him out to you?

Objected to; sustained.

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Q Was anybody with you when you arrested him? A I was in company with Officer Buddemeyer and Officer Meyers and Digilio and myself.

Q Where did you arrest him? A 144th Street and Seventh Avenue in a nickolet.

Q That is a moving picture show? A Yes, sir.

Q Did you go in there after him? A I did.

Q What did you say to him when you found him in there?

A I entered the place and I said Hello Ed, and he said my name is not Ed. I said I am a police officer and I want to arrest you. He said I cannot leave this place, meaning the moving picture house. I said why. He said I have to watch this place around here. I sent a party for the proprietor.

Q Was he an employe there, do you know? A He said he was.

Q You went up to him and the first thing you said was Hello Ed? A Yes.

Q Did you know him before? A No, sir.

Q And then he said his name was not Ed? A Yes.

Q Now, what happened after he said he had to stay and watch it. A I sent for the proprietor of the place and told him who I was and I wanted to take this man out of the moving picture place.

THE COURT: Do not state any conversation. You had a conversation with the proprietor?

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A Yes, sir.

Q What did you do after that? A Took him out and went up to 145th Street and waited for a cross town car. I said to him in the presence of Officer Buddemeyer, Digilio and Officer Meyers -- I said to him what have you got to say for yourself. He said, nothing.

BY MR. STRONG:

Q Did you tell him why you had arrested him before that?

A No, I did not.

Q You simply asked him what he had to say for himself? A Yes.

Q What did he say? A He said, "I have nothing to say". I said, what have you got to say about Huber's. That is where the assault was committed? He said well, I will tell you. I was no where near Huber's. so then he got -- started to shake as if he was nervous. I said --

THE COURT: Strike that out.

BY MR. STRONG:

Q He started to shake? A Yes, and I asked him what is the matter with him? He said he had a chill. So we went over to the station house and had another conversation. He said that he was too drunk that night and that he did not know where he was, did not know anything about it.

Q That was in the station house? A Yes, sir, third statement he made to me --

Q When was that? A That he was there, he admitted being

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there --

Q When was that? A That was the same night, Monday night.

Q He said he was at Hubers? A He said he was at Huber's -- no, that was Tuesday he said he was at Huber's. Monday night he denied he was there and then said he was too drunk he did not know where he was, and then Tuesday he said that he was up there and that he was leaving the crowd behind him, whoever they were, and was going upstairs, and he was black-jacked and was knocked unconscious, and he said that was all he knew.

Q Have you seen this People's Exhibit 1 for identification before? A I did.

Q Whereabouts? A The first time I saw that axe was Sunday morning up at Huber's -- it was laying in front of the barroom and up against the front windows. I spoke to the manager up there --

Q You took it from ~~there~~ there and brought it down?

A I took it from there and when I got my hands on it I put my initials and shield number on the axe.

CROSS EXAMINATION BY MR. GRIER:

Q That was on Sunday morning? A Yes.

Q What time Sunday morning? A Seven o'clock A. M.

Q Where is that moving picture show where you found the defendant working? A Northeast corner of 144th Street and

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Seventh Avenue.

Q What time of the day was it when you arrested him?

A About 9 P. M. at night.

Q Did you have a warrant for his arrest? A No.

Q Was there any officer with you when you placed him under arrest? A I was in the Casino alone.

Q Answer my question yes or no? A Not inside, no.

Q You went in alone? A Yes.

Q And came out with the defendant? A yes.

Q What officer was outside waiting for you? A Right outside the door was Detective Meyers.

Q You immediately took him to the station house?

A We did.

Q You say at that time the defendant denied being in Huber's? A He did, yes.

Q What did you say to him or what did he say to you, what were the words? A First he said -- he denied --

Q What did you say to him? A Asked him what he had to say about Huber's.

Q That was all you said? A Yes.

Q What have you got to say about Huber's? A yes.

Q And now when you said that to him what did he say to you? A First he said he denied being there -- he denied being there first.

Q You did not say anything about his being there, you said

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what have you got to say about Huber's? A That was what I said to him, yes.

Q What did he say in reply to that? A He said he did not know anything about it.

Q You said what have you got to say about Huber's and he said I don't know anything about it? A yes, sir.

Q What did you say then? A I said you were not up at Huber's Casino when the policeman was assaulted at all, were you. He said no, I was not. He said, to tell the truth I was so drunk, Saturday night I didn't know where I was.

Q That was the first conversation you had with him after you got to the station house? A Yes.

Q Had you said anything to him before you got to the station house about Huber's? A Only out at 145th Street and Seventh Avenue when we were waiting for the car.

Q What did you say to him up there? A I said what have you got to say about Huber's.

Q What reply did he make? A He said he did not know anything about it and denied being there.

Q You did not charge him with being there, did you?
A No.

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Q Without you charging him with being at Huber's, he denied being there? A Yes, sir, surely.

Q All that you said was "What have you got to say about Huber's"? A Yes.

Q What were his words, what did he say? A He said "I don't know anything about Huber's." That was all he said to me.

Q Did you make any reply to that? A No, not to that. We were talking about --

Q After he said "I don't know anything about Huber's, did that end the conversation then? A Yes, the car came along and I said "Come on over to the station house."

Q You said a moment ago that he denied being at Huber's? A Yes, he denied being there.

Q What did he say? A He said "I was never near Huber's".

Q He said in addition to his saying "I don't know anything about Huber's" he said "I was never near Huber's"? A Yes, sir.

Q Did he say when he was not at Huber's? A Did not say any time at all, not at that time.

Q He said he had never been at Huber's? A Yes.

Q He did not know anything about Huber's? A No.

Q That was all he said at that time over at 145th street when you were waiting for the car? A Yes.

Q Then you took him over to the station house? A Yes.

Q Did you say anything to him on the car going over, about

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Huber's? A Well yes, we were talking about the assault being committed, and everything.

Q What did you say to him and what did he say to you? A I told him about the policeman being assaulted up at Huber's, and I asked him was he up there. We kept at him on that one thing, asking him if he was up there, and he denied it.

Q That is more like it, you kept at him about being up there? A Yes.

Q You told him when it was? A Yes.

Q You told him what happened there? A Yes.

Q Told him that a policeman had been assaulted? A Yes.

Q And to all of this he denied being there? A Yes, at that time.

Q That conversation was not only at the corner when you were waiting for the car, but it was on the car going over to the station house? A Yes.

Q You kept at the defendant about it? A Yes.

Q When for the first time did he admit being at Huber's?

A That was -- I think -- pretty sure it was Tuesday morning.

Q This arrest was made on Monday evening? A Yes.

Q What time did you get to the station house, do you know?

A Well, it was close on to half past ten, about half past ten.

Q At night? A Yes, sir.

Q The defendant was then locked up in the station house?

A Yes.

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Q You left him there in custody? A Yes.

Q Tuesday morning, the next morning, you saw the defendant again? A Yes, sir.

Q Alone or with some other officer? A There were several officers, Meyers and others.

Q Did you have any conversation with the defendant then on Tuesday? A Yes.

Q What did you say to him and what did he say to you? A I asked him about Huber's again. I said "What have you got to say about Huber's."

Q You began just the same as you did before? A Yes.

Q What had he got to say about Huber's? A Yes.

Q What had he to say about Huber's? A He said he was too drunk that night -- no, Monday night he said he was too drunk, but on Tuesday he said he was there and he was going up the stairs of this hall when he was assaulted with a blackjack and knocked unconscious and that was all he knew.

Q When was it, Tuesday or Monday night that the defendant said he was too drunk to know what happened? A Monday night -- sure of that.

Q After you brought him over to the station house? A Yes.

Q And he had been telling you all along, coming over on the car, and on the corner, he had been denying being at Huber's? A Yes, sir.

Q And all at once over at the station house he admitted he

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was there and said he was too drunk to know anything about it?

A Yes.

Q And then you let him go, and on the next morning you questioned him again? A Yes.

Q This time what did he say? A Lieutenant Wines did mostly all the questioning.

Q Were you present? A Yes, and he said he was going up stairs of Huber's and he was leading some people behind him and he was ahead of the crowd behind him, and as soon as he got to the head of the stairs somebody blackjacked him -- struck him with something, and he became unconscious. That was all he knew.

Q What did he say about the hatroom? A Nothing, not to me.

MR. STRONG: I offer this axe, People's Exhibit 1 for Identification, in evidence.

MR. GRIER: I object to it.

THE COURT: Is there any evidence it is the precise axe that he used. Nobody has identified it except the witnesses stated that it was an axe similar to the one used.

MR. STRONG: There was one witness, I believe his name was Dossier who said that he saw the axe taken off the wall in a certain place in this building, saw it thrown over the stairs and fall beside Burggraf, and he went down to help Burggraf and put the axe to one side.

MR. GRIER: I object to the statement of the District Attorney.

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THE COURT: I will hear the District Attorney.

MR. STRONG: And the officer says that is the only axe that is missing from among the axes that they have up there.

MR. GRIER: That was not the testimony of Desser. Desser says he was in the barroom and heard a disturbance and came out and found this man lying at the foot of the stairs and an axe lying beside him. He does not say this was the axe.

THE COURT: You must identify the axe as the precise weapon.

MR. STRONG: I would like to have the testimony at the bottom of page 15 read, because counsel says I have misquoted the evidence.

THE COURT: Yes.

(The stenographer reads page 15 of the typewritten record, at the bottom of the page, and the first half of the following page, No. 16).

THE COURT: I really do not think it is material to offer the axe. There is evidence that an axe like it was thrown by the defendant.

MR. GRIER: There is no objection to that.

MR. STRONG: I think that concession covers it.

THE PEOPLE REST.

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THE DEFENSE.

J O S E P H O R L A N D O, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 300 West 141st street).

DIRECT EXAMINATION BY MR. GRIER:

Q What is your business? A Architectural draughtsman.

Q I show you a paper --

THE COURT: Let the District Attorney look at it, and if correct, why not admit it in evidence.

MR. GRIER: I ask that it be conceded that the diagram offered for the defense shows the Jerome Avenue end of the ballroom, the stairs leading up from Jerome Avenue on to the ballroom floor, and the stairs leading down from the ballroom floor, and also shows the ground floor, the main entrance, the stairs leading up from the ground floor and also the stairs that lead down from the ballroom floor, with the relative measurements of the west end of the ballroom.

MR. STRONG: The diagram that counsel for the defendant has spoken of I have examined carefully with one of my witnesses who is employed there, and it seems to be so incomplete that I do not think I can fairly concede that it is a correct diagram.

THE COURT: Proceed.

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MR. GRIER: It is only offered to show the east end of the ballroom and the seat of this trouble.

MR. STRONG: My own witness, when he was asked to examine it, pointed to certain parts of it, and he was incorrect in pointing them out, and I do not think it is a fair diagram.

THE COURT: You will have to offer a correct diagram of the place.

MR. GRIER: I offer this to the witness for the purpose of proving it is a correct diagram. I did not understand Mr. Strong's witness to say it was incorrect.

THE COURT: Proceed.

BY MR. GRIER:

Q Is the paper I show you a correct diagram of a part of the ballroom at Huber's Casino? A As far as my knowledge --

BY THE COURT:

Q Did you personally examine Huber's Casino? A Yes.

Q And you personally made this diagram? A Yes.

BY MR. GRIER:

Q Did you make the measurements from which that draft is made? A Yes.

Q When did you make these measurements? A This morning and last night.

Q You prepared the diagram this morning? A Yes.

Q From the measurements you made? A Yes.

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Q Will you explain on the diagram as far as you made it to correspond to measurements you took in Huber's Casino?

A We have here a diagram of the first floor showing a porch from which you enter into a lobby of the main entrance, and from there you go into your main staircase going upstairs, up into the hall. When you get up into the hall you get an entrance going into the coat room -- you get two entrances.

Q At the head of the stairs there is an entrance? A There is an entrance going into the coat room.

MR. STRONG: I must object to this. This diagram was made five months after the commission of the crime. I do not know what the condition of the premises is there at the present time. If the diagram had been made at or about the time of the commission of the crime, it would be some proof.

BY THE COURT:

Q Did you examine Huber's Casino five months ago, in last May? A No.

Q Do you know whether or not the condition of the premises was the same at the time you examined it as it was on the 18th of May? A No.

BY MR. GRIER:

Q You say the coatroom is to one side of the stairway as it comes up? A The main stairway from Jerome Avenue. And we have here the staircase going down from the other hall.

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Q Describe the ballroom first? A There are two ballrooms divided off by columns.

Q Does that diagram show those ballrooms? A Yes, sir, my diagram shows two columns eleven foot apart and the width of the columns is 11 by 16, that is, approximately.

Q What is the width of the ballroom towards Jerome Avenue?

A Towards Jerome Avenue?

Q At the main entrance? A I did not get that measurement. I got the width of the stairs, it is a five foot staircase.

Q Did you get the width of the coat room? A No.

Q Have you got the relative position of the coat room? A Yes

Q You started to tell us about the stairs leading down from the ballroom, the side stairs? A The side stairs leading from the coat room is five feet away from the door leading into the coat room and there is a stairway starting up five feet away from that door. The other stairway -- the railing of the stairway comes three foot two away from the newel post of the stairs going up. And, ten foot from the staircase going up is the starting of the staircase going down from the ballroom -- twenty-two foot approximately is the place where there is a fire axe.

Q There is a fire axe? A There is a fire axe at the present time -- three foot from the fire axe is the wall.

Q Is the fire axe on the wall? A It is on the wall now.

Q It is three feet from the corner? A Three feet from the wall of the ballroom.

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Q How far from the coat room door leading into this ballroom is the second stairway? A Leading down, 18 foot 2.

Q 18 feet from the door of the coatroom? A The starting of the stairs going down.

MR. STRONG: I object to this. This is the condition of the premises at the present time and not at the time of the commission of the alleged crime.

THE COURT: You have to show the condition -- that the premises have not been altered, before the diagram is admissible. You ought to be able to agree upon the diagram but, you cannot offer in evidence a diagram which is not a correct representation of the premises.

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MR. STRONG: I do not think the diagram is a fair diagram.

MR. GRIER: All it is offered for is to show the relative positions and directions in that place.

THE COURT: Were the premises changed -- call back that man and ask him whether Huber has made any alterations in the place.

BY MR. GRIER:

Q That is a correct representation of that west end of the ballroom that you found this morning and last night?

A As far as my knowledge can permit me to tell.

The diagram is marked for identification Defendant's Exhibit B.

CROSS EXAMINATION BY MR. STRONG:

Q You say you saw a fire axe on the wall there? A Yes.

Q Was it exactly similar to this one I show you? A I did not take very much of a look at it.

Q It was a fire axe? A It was a fire axe.

Q About the same size as this? A About the same.

Q Red color? A Well, it is an old axe.

Q Have a point on one end? A That I could not say. I think so. I wouldn't say for sure.

Q And similar to this on this side (indicating)? A Yes.

Q Hanging in a bracket on the wall? A Yes, hanging in a bracket.

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Q Were you ever in Huber's Casino before to-day? A I was -- years ago -- a year ago, I guess.

Q You don't remember the condition of the premises at that time? A No, I don't remember.

Q What you have represented here is the condition of Huber's Casino to-day? A Yes.

Q Does this diagram show the whole ball room? A No, only a portion of it.

Q You did not measure across the ball room to find how wide it was? A No.

Q All you have represented here are the stairways and just a portion of the ballroom around the heads of the stairs?

A Yes.

BY MR. GRIER:

Q It represents the coatroom and two stairs? A Yes.

Q And both at the bottom of the stairs and top of the stairs? A Yes.

Q And the west end of that ballroom, the end towards Jerome Avenue? A Yes, that is right.

N I C H O L A S D O S S E R, recalled by the defense.

BY MR. GRIER:

Q Have you been employed at Huber's Casino continuously since the 17th of May until the present time? A Yes.

Q You are employed in the bar there? A Yes, I am the cashier.

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Q Do you know whether any material alterations have been made in the ballroom or the end of the ballroom towards Jerome Avenue, as to the stairways and the hatroom, since the 17th of May? A In the hatroom, in the coatroom, between those two entrances there was not any doors at the time the accident happened. Since then we have had doors put on there.

Q At the time those doors were not on? A No. There are doors on now. They have been put on there since, at the entrances at the coatroom, and there has been a new axe put -- or at least there is an axe put in there where the axe formerly was that was missing.

Q There has been no alterations in the stairways? A No.

Q Or the railing around those stairs? A In the railing at the present time we have a screen up there -- they are using the hall for basket ball and we have screened the windows and there is a screen over the stairway, that inside stairway leading from the ballroom down into the concert hall. It is screened off with wire from the railing up.

Q But the railing is still there? A Yes, the railing is still there.

Q Examine that diagram and state whether it represents the condition of the ballroom and stairs on the 17th of May last -- I think I will withdraw that question --

MR. GRIER: I now offer the diagram in evidence.

MR. STRONG: I still object to it upon this ground,

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now that counsel for the defendant has brought out the evidence. You remember that there was certain testimony about the entrances to the coat room, and being able to see through them. It is now testified to that there are doors put on those very entrances.

THE COURT: With the modification as testified to by this witness I will allow the diagram in evidence.

BY THE COURT:

Q On May 18th there were no doors attached to the entrances into the coat room? A No.

BY MR. STRONG:

Q So far as you know are those the only changes that have been made up there, that you have testified to?

A Yes. The fire axe has been replaced, the space has been filled, because the fire department has been around and a screen put up over the railing of this stairway.

Q And that is temporarily used -- A For basket ball. Otherwise this is about the same.

The diagram is received in evidence and marked Defendant's Exhibit B.

B R U N O B R A S C H, called as a witness in behalf of the Defense, being duly sworn and examined, testified as follows:

(Residence, 302 West 154th St).

DIRECT EXAMINATION BY MR. GRIER:

Q What is your business? A Brakeman on the New York Cen-

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tral.

Q On the 17th of May last, were you at Huber's Casino?

A I was.

Q What time did you get there? A I believe it was around 15 minutes to 12.

Q And did you go there with anybody? A I did.

Q Who accompanied you? A A gentleman named William Smith.

Q Did you go into a ballroom where there was a ball being held?

THE COURT: Let him state how he went there.

THE WITNESS: There was a crowd of us, a few gentlemen and ladies going there and William Smith and I first went downstairs to the Gents' toilet.

BY MR. GRIER:

Q You are speaking about Huber's? A Yes, sir, about Huber's Casino.

Q State from the time you and William Smith went to Huber's, everything that took place? A All right. We went downstairs, as we came in Huber's first. We went down to the toilet.

Q After you had been up in the ballroom? A Before we went to the ballroom upstairs -- as we were going up we heard a little disorder upstairs.

Q What stairway did you go up? A The front stairway.

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Q From Jerome Avenue? A From Jerome Avenue and as I came up the front stairway I seen some gentleman out with a gun in his hand and I seen a little argument, I seen an argument there. This was about after we were in the place ten minutes.

Q Go on. A I was about 15 feet away from the stairway. As I came up the front stairway, I seen Ned Dooley, this gentleman over here.

Q The defendant? A The defendant. I seen him on the stairway coming down to the toilet and at the head of the stairway, with a special officer, and I seen the gentleman, his brother, James Dooley trying to pull him away, to get him away from there which I believe he did succeed in getting down the other stairway.

Q The stairway leading to Jerome Avenue? A The stairway leading to Jerome Avenue, the front stairway, that is the main entrance.

Q You know Dooley? A I know him by sight.

Q You saw him at the head of the stairway leading down from the ballroom towards the toilet? A That is when I seen him, yes.

Q You saw him first? A That is when I saw him with his brother.

Q Did you see what he and his brother did? A I saw him and his brother were trying to pull him away from there,

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to get away from the stairway through the front exit.

Q Did you see where they went? A I seen them come around -- there was a crowd there.

BY THE COURT:

Q The front entrance is the main entrance to the ballroom? A Yes, coming down from the ballroom.

BY MR. GRIER:

Q Did you see them come down that front entrance?

A No, I wasn't sure I saw them coming down.

Q How long were you in the hall before you saw Dooley?

A I was in that hall about 20 minutes, I believe.

Q Before you saw Dooley? A Before I saw Dooley.

Q Had you been dancing there in the hall? A I had one dance.

Q And now, how long had you been there until you heard this disturbance over the stairways? A About half an hour it was.

Q Until you heard the disturbance? A Yes.

BY THE COURT:

Q Let him tell what he saw, you are interrupting him. Is that all you saw? A All I seen then while he was pulling this Dooley away from the stairs, I seen a fellow with an axe.

BY MR. GRIER:

Q You saw a man? A I saw the man with the axe in a position like this over the bannister, and I seen the axe

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leave this man's hands over the stairway.

Q How far were you away from the man that you saw with the axe? A About 15 feet. There was the post there, the first post, from the main stairway.

Q At the time you saw the man with the axe, how far were you away from Dooley? A I cannot say.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2 o'clock P. M.

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AFTER RECESS. TRIAL RESUMED.

BRUNO BRASCH resumes the stand;

DIRECT EXAMINATION CONTINUED BY MR. GRIER:

Q How far were you away from the man who had the axe?

A About twelve feet from the man who had the axe.

BY THE COURT:

Q Do you know this man? A I have seen him.

Q Do you know him by name? A Know him by name.

Q What is his name? A A light haired man, Morty Walsh.

Q Do you state that the axe was thrown by Walsh while this defendant was in the custody of an officer? A I do.

Q And that at the time the axe was thrown, the defendant's brother was engaged in an attempt to take it from the custody of the officer? A Was wanting to pull him away, to take him away. He was with a special officer, I believe.

BY MR. GRIER:

Q The special officer and the defendant Dooley were struggling together? A Yes.

Q And the brother of the defendant Dooley was making some effort to get Dooley away? A Get him out of trouble, yes.

Q Did you notice what condition the defendant Dooley was in at that time, as to his physical condition? A His physical condition?

Q Did he show any evidence of having received any blows or anything of that sort? A He did.

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Q Describe it? A He seemed -- his hair was all mussed up as if he was rolling around the floor, and his suit was dirty as if he was on the floor.

Q What about his collar and necktie? A That was all in disorder, his collar.

Q Any blood upon his person? A Not that I noticed. I was too far away.

Q You did not see any blood? A I did not see any blood, I was too far away.

Q Did you see what became of the two Dooley boys? A I seen them from that stairway -- I see his brother Jim take him down the front stairway.

Q You were over near the stairway leading down from the ballroom? A I had a view of both stairways. There is a line of posts dividing the two hallways. I was by a post.

Q Did you see what became of Walsh? A Walsh ran down the stairs, I heard some one say.

Q What stairs did he run down? A I think he ran down the front stairway -- the very stairway from where the axe was thrown

Q The same stairway that the Dooley boys went towards?
A Yes, sir.

BY THE COURT:

Q Did you see the complaining witness in this case at the time the axe was thrown?

(The complainant, Officer Burggraf, is brought to the bar).

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BY THE COURT:

Q Did you see Officer Burggraf that night? A I believe I did, I am not sure.

Q Did you see the man who was struck with the axe? A No, sir, I did not.

BY MR. GRIER:

Q At the time the axe was thrown, you were in the ballroom and the axe was thrown over -- A I did not see the man after he was hit -- I seen the -- some man going down, going down the stairs as if trying to get out of the hall.

Q Did you see this officer, Officer Burggraf, going down the stairs before the axe was thrown? A I could not say for sure if it was that man or not.

CROSS EXAMINATION BY MR. STRONG:

Q What was the special officer's name who had custody of Dooley? A I don't know.

Q Will you describe him to me? A I believe he had eyeglasses on.

Q You believe he had eyeglasses on? A I believe he had eyeglasses on him.

Q Anything else? A Not that I can remember. He was kind of an oldish man, I believe.

Q What time did you get to the dance hall? A Quarter to twelve.

Q What time did the dance start there, do you know? A I

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don't know, I believe it started around half past eight, as all dances start.

Q You say you went there with a man by the name of Smith?

A Yes, sir, William Smith.

Q Is he here? A No, not that I know of.

Q When you got to the dance hall, you went directly into the toilet? A Yes, directly.

Q Where is that? A Right on the ground floor, just as you come in.

Q Off the lobby? A Through the lobby and in the rear, in the back, and the toilet is at the bottom of the stairway where the man was struck down.

Q Did Smith go in there with you? A Smith went in the toilet, and from there I don't know where he went.

Q He left you? A He left me.

Q What sort of a hat were you wearing that evening? A Hat?

Q Yes? A I had a derby on.

Q How long did you stay in the toilet? A I stayed in the toilet about two minutes and I had a drink downstairs.

Q Where? A There is like a sitting room and then the bar there.

Q How long did you stay in there to have the drink? For about ten minutes. I was downstairs ten minutes altogether.

Q When you came out of the toilet and started upstairs, you say the defendant Dooley was in the custody of the special

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officer? A I was upstairs then. I was upstairs for a few minutes before I saw him.

Q How many minutes? A I was upstairs for a few minutes, about a couple of minutes I should say.

Q Then you saw Dooley? A I saw --

Q Then you saw Dooley in the custody of the special officer? A Yes, in the cloakroom at that time.

Q In the coatroom? A As soon as I came up he was in the coatroom.

Q You arrived at 11:45? A Yes.

Q You were downstairs about ten minutes? A Yes.

Q You were upstairs a couple of minutes more when you saw Dooley in the coatroom? A Yes.

Q With the special officer? A With the special officer.

Q Did the special officer have hold of Dooley? A He did, I believe he did; I seen him have a gun, I believe, out.

Q What? A He had a gun out.

Q The special officer had a gun? A Had a gun.

Q What sort of a uniform did the special officer have on?

A The special officer's uniform like these Holmes detectives, I seen.

Q Gray uniform, A Gray uniform.

Q Was there anybody else in the coatroom at that time?

A I seen his brother Jim in there.

Q Jim Dooley? A Yes, sir, Jim Dooley.

Q What was he doing? A He was struggling to go away -- he was saying to let his brother alone, don't hit him.

Q Where were you standing at the time you saw Dooley in the custody of the special officer? A At the first post coming in, leading from the front stairway. There is a post dividing the two dance halls.

Q Near the coatroom? A I could see the coatroom and I could see both stairways.

Q I show you a diagram and I ask you to put a mark on there to indicate the position in which you were standing -- here are the posts dividing the two ballrooms and there is one ballroom here, the stairs leading down; here is the main entrance stairs coming up. There is the coatroom. Now will you put a mark at the place that you were standing when you saw Dooley in the custody of the special officer? A This is supposed to be the coatroom (indicating).

Q There is the coat room? A Yes. As we go up there is-- I was standing about right here, I should say. I had a view of the coatroom and both of the halls.

Q Will you put a mark where you were standing? A About here (indicating).

(The witness places the mark B B at that point.)

Q Did you stay there? A I did.

Q Were you at that same position when you saw this man throw the axe? A I was.

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Q In what part of the coatroom was Dooley and the special officer? A He was, just where they are taking the coats, when I saw them -- just at the office where they check the coats --that is about the center, I believe, of the cloakroom.

Q You say there were only three in there at that time?

A There was more than three.

Q How many? A I should say about seven or eight.

Q Were they all trying to get Dooley away from the special officer? A No.

Q Just his brother? A All I seen was his brother.

Q Is he here? A I believe so.

Q That is Jim Dooley? A Jim Dooley.

Q How long have you known him? A I have known James Dooley for about three years. We have worked together -- about four years I know him.

Q You have known Ned Dooley about the same time? A No, sir.

Q You call him Ned, don't you? A I do, from his brother.

Q On your direct examination you said you only knew him by sight? A By sight. I know him as Ned Dooley. When I see him I also says hello to him, a passing acquaintance. I never had an acquaintance with him.

Q How did you go to this dance, by what means of conveyance, did you go up on a car? A Yes, sir.

Q Did you see Dooley on the car? A No, sir.

Q Did you see Officer Hinnars on the car? A I don't know Officer Hinnars.

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(Officer Hinnern stands up in the court room).

Q That man (indicating)? A No.

Q Did you see him on the car? A No, I did not.

Q How many people got off the car when you arrived at the dance hall? A I didn't see.

Q Just you and your friend got off? A Well, there was about six or seven more -- about three ladies -- three girls and a few fellows.

Q Did they go into the dance hall at the time you did?

A Yes, sir.

Q Do you know any of them? A No, sir.

Q While you were standing in this position you say you saw Dooley in the coat room with the special officer? A That was the first time I saw him.

Q What did they do after that -- what did Dooley do?

A They came out -- they came out of the coatroom and went around towards like going down the back stairway.

Q Which stairway is that, is that the stairway (indicating)? A Going down.

Q Down which the axe was thrown? A Yes. I saw him right there at the head of the stairway with his brother and I believe the special officer was there at the time, and at the same time about, I should say about a minute after that I saw this Mort Walsh with the axe in his hand.

Q Morty Walsh? A Morty, I believe that is the name.

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Q Did you see any scuffle out in the center of the ballroom? A They were all excited and I heard a woman holler "Oh, don't shoot," to somebody.

Q You heard a woman holler "Don't shoot"? A Yes.

Q Did anybody have a revolver in their hand at that time? A They did. I seen an officer have a revolver -- some man I believe was an officer.

Q Wasn't it Officer Burggraf? A I wouldn't say for sure.

Q What was he doing with this revolver? A I seen him flourishing it around.

Q Did he say anything? A Not that I heard. I was too far away at the time to hear it.

Q You were a long ways from him? A I was at that spot where I said, near the post.

Q Between the two ballrooms? A Between the two ballrooms.

Q That was about twenty five feet away, wasn't it -- and is the head of the stairs about twenty five feet away --

A No, it wasn't that -- about twenty feet away.

Q Did you see where Dooley was at the time the axe was thrown? A He was at the head of the stairs with his brother, and there was quite a few around him.

Q So Dooley was at the head of the stairs at the time the axe was thrown? A Yes, sir, he was.

Q You saw him? A I saw him there.

Q Walsh was with him? A I don't know if Walsh was there

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with him. I saw Walsh over the bannister with the axe.

Q What? A I saw Walsh have the axe over the bannister.

Q How near to Dooley was he? A About five feet away, four or five feet away.

Q You were twenty five feet away from both of them? A I was about twenty feet away from there.

Q You were at the position you have marked? A At that time I was.

Q How many were there around the head of that stairs?

A I don't know, I should judge about fifteen.

Q Near Walsh? A Near Dooley -- Walsh was near the bannister where I had a full view of Walsh. I didn't have a very good view of Ned Dooley at that time.

Q You say Walsh was only about five feet away from Dooley?

A He was.

Q You were twenty five feet away from both of them? A About that, at the post.

Q Do you know a man by the name of Moshier? A I do not.

Q What? A I do not.

(The witness Moshier stands up by direction of the District Attorney).

Q Did you know this gentleman? A No.

Q You did not see him there at the railing? A Not that I remember, no.

Q After the axe was thrown, did you see what Dooley did?

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A After the axe was thrown?

Q Yes? A I went right out of the hall.

Q You did not see what Dooley did? A I did not.

Q You did not see him again? A I did not.

Q Did you notice a scar on his eye that evening? A On Dooley's eye?

Q Yes? A Well, I couldn't say that I did, although his face was dirty like as if he was around the floor, rolling around on the floor.

Q How close did you get to Dooley at any time that evening?

A I got about ten feet away.

Q When was that? A When I went to go out of the hall I saw his brother Jim at that time, after the axe was thrown, pulling him towards the front stairway.

Q I did not ask you that -- I said how close were you to Dooley at any time during the evening? A I should judge about ten feet away.

Q When was that? A After the axe was thrown.

Q Where was he then? A He was at the head stairway I believe coming around, looked like as if he was going to the other stairway.

Q Did you go out before he did? A I went out before he did, that I know of.

Q He was still in the dance hall at the time you went out?

A He was, I believe.

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Q You did not go any further into the dance hall than the place you have marked? A No, sir.

Q And you say that you only entered the dance hall about fifteen minutes before that? A Before that.

Q So you were in there only fifteen minutes? A About fifteen or twenty minutes.

Q Where had you been before you went to this dance? A I was up at the Wireless Hall.

Q Where is that? A I think it is 171st street off Jerome Avenue.

Q How long did you stay there? A I believe I was there about an hour and a half.

Q Was William Smith there? A He was.

Q How late did you stay there? A About quarter after eleven, I should judge.

Q You came direct from Wireless Hall down to this dance hall? A Yes.

Q Who else was up at the Wireless Hall? A There was quite a few up there.

Q Dooley was up there, wasn't he? A He was.

Q That is Jim, and his brother, the defendant? A He was.

Q Both of them? A Yes.

Q Did you see anybody else up there? A Smith who came with me, and the girls up there.

Q Who? A The girls.

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Q What are their names? A I believe one's name is Annie Murphy.

Q She is here? A Not that I know of.

Q Who else? A Annie Nichols I believe she is here and a few others, but I don't know their names, but I know they are here.

Q They are all here? A Yes.

Q They were all at the Wireless Hall? A Yes, they were at the Wireless Hall.

Q About how many left the Wireless Hall to go down to this dance? A I don't know -- when they came in the Wireless -- into the Hall, I went out before they did.

Q You went out from the Wireless Hall before they did?

A Yes, before they did, with William Smith.

Q So they followed you? A They must have come after me.

Q You saw them at Huber's later on? A Yes I did, upstairs, I saw them all up there, and I was surprised.

Q How many of them? A I couldn't say for sure, there was a few there already that I knew was at the Wireless.

Q Did they tell you they were going down to Huber's -- how soon after you got to Huber's did they get there? A About fifteen minutes.

Q Had the Wireless Hall closed? A It was not closed when I left.

Q You don't know what happened up there? A At the Wireless-

no, I do not.

Q Do you know who was giving this dance down at Huber's?

A Yes, sir.

Q Who was it? A I believe it was the Royal Order of the Ladies Auxiliary of the Bull Moose.

Q Did you pay an entrance fee? A I did.

Q What? A I did.

Q Get a hat check? A No.

Q What did you do with your hat? A I had my hat in my hand.

Q You went up in the hall with your hat in your hand? A Yes.

Q How much did you pay to get in? A Fifty cents I believe.

Q How many brothers has Dooley got? A I don't know.

Q You don't know the rest of the family? A No.

Q I show you an axe and ask you if that is similar to the axe you saw thrown? A It looks that way.

Q Take it in your hand and show how he threw it? A The position I was in -- the position I saw him in, he was over like this, over the bannister, and there is the stairway. There was a crowd right here with Dooley and them and Walsh he could not throw it down that way because the crowd was there, and I saw him go over the bannister and let it down that way, as much as I saw.

Q He threw it down with both hands? A I saw the axe in this position (indicating).

Q You say Dooley was in his way so he could not throw it down any other way? A He could not throw it down that way, because

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there was a big crowd there.

Q And Dooley was one of that crowd? A Yes.

Q And you were twenty-five feet away at the time that happened? A I was about twenty feet away.

Q When you were ten feet away from Dooley, did you see his face plainly? A No, I did not.

Q Could not see his face plainly? A No.

Q You do not know if he had a scar or a wound on his face or not? A No, I do not.

Q When he was twenty five feet away from you, could you recognize him easily? A I could.

Q His back was turned towards you, was it not, at that time? A He was sideways.

Q Walsh was sideways? A Walsh's back was turned to me over the bannisters.

Q At the time he threw the axe? A At the time he threw the axe.

Q So his body was between you and the axe that he threw?
A Yes, sir.

RE-DIRECT EXAMINATION:

Q When you say that you were there about fifteen minutes before Dooley and the rest of the party came, you did not take out your watch? A I did not, no, sir.

Q That is your best judgment? A My best judgment, about fifteen or twenty minutes.

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Q May have been more or may be less than that? A Yes.

Q When you say you were twenty feet away from the stairway, when you saw the axe thrown, you did not measure the distance? A I should say about that.

Q May have been less than twenty or may have been more?
A Yes, it was the first pole, I know.

Q How long have you known Walsh? A I should say about a few weeks.

Q Before this? A I don't know him really to speak to at all.

Q You know it was Walsh? A I know his name is Walsh.

Q You knew it was not the defendant Dooley? A I did.

Q Who threw the axe? A Yes, it was not.

Q Who left that Wireless dance with you? A William Smith.

Q And were there any others besides yourself and William Smith that left the hall at that time? A That was all I know. There were a few others must have came on the same car with us, or they might have been down the block further, because they got off the car at Huber's.

BY MR. STRONG:

Q How much did you say the admission fee was that night?

A I believe it was fifty cents.

Q You are sure about that? A Fifty cents that I paid down -- I ain't sure if it was for both of us, or for myself.

Q You don't know how much the hat checks were? A No, I did not check my hat.

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EDWARD REEDER, called as a witness on behalf of the defense, being duly sworn and examined, testified as follows:

(Residence, 10 Bradhurst Avenue).

DIRECT EXAMINATION BY MR. GRIER:

Q What is your business? A Butcher.

Q Where is your place of business? A 48th and 49th Street and Sixth Avenue, 855.

Q In business for yourself? A No.

Q By whom are you employed? A Tinguet.

Q Do you remember the night of the 17th of May when some trouble occurred over at Huber's Casino? A Yes.

Q Were you there? A Yes.

Q That night? A Yes.

Q Now, will you state in your own way just what took place there, when you got there, where you came from and who you went with and everything that took place? A Well, I was up at Wireless Hall, Jerome Avenue and 170th Street, to a party and I came down with a few friends named Smith and Brasch and Ed Dooley. He was in front of me and Ed was going upstairs and I was a few feet behind him when a few ladies, I heard them say they did not pay -- it was about 12 o'clock, and generally around 12 there is no admission. In fact there was nobody downstairs to take any admission. So it seems he was willing to pay but before he was

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willing to pay somebody hit him and a few of the special officer up there pulled him in the side room and started beating him. I ran upstairs and got on the inside of the hall and done the best I could to separate them and I got hit myself..

Q You got struck yourself? A Yes, one of the special officers struck me and I got out of the hall the best I could and stayed outside.

Q Did you see Officer Hinnars? A Yes.

Q What did you see him do?

BY THE COURT:

Q Do you know Officer Hinnars ? A If it was a fellow that came down in the car, if that is his name.

Q Was he in the car with you? A There was an officer sitting and I know he got off and came over to Huber's with us, that is how I know he was an officer.

Q How was he dressed? A He had on a yellow coat that night, overcoat.

Q What kind of an overcoat? A It was short, about up to here.

Q What kind of an overcoat? A I couldn't tell exactly.

Q What was the color of the overcoat? A It was light yellow.

Q What was there about this man to indicate he was a

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police officer? A His gun and shield and his club, that was about all I could recognize him by.

Q The man you met on the car had a shield on his coat ?

A Not before I noted, no, until he got over in Huber's.

Q What was there to attract your attention to him on the car, what occurred to attract your attention to him on the car? A I was sitting next to him on the car and when we came to Huber's, a lot of them pulled the bell and the motorman did not stop. I noticed him looking around in every way, in every direction, and when they all got off, he got off with us.

Q He followed them ri ght over to Huber's? A He followed us right over to Huber's and when the fight started over there I see him pull his revolver out and his club and showed his shield.

Q Was there any fight in progress before Dooley got up to the head of the stairs? A Not that I know of.

Q Was Dooley on the car? A Yes, Dooley was on the car.

Q With you? A With me.

Q Who entered the hall first? A To my estimation I think Ned Dooley was first.

Q Who was Ned Dooley? A Edward Dooley.

Q The defendant? A Yes.

Q He was the first one to enter the hall? A Yes.

Q How far behind him were you? A He was about to the

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head of the stairs when I started to go up.

Q When you started to go up, and while he was at the head of the stairs was it that you heard this commotion?

A Yes.

Q So when Dooley was at the head of the stairs you heard a commotion? A Yes.

Q What was it about? A About him not paying to go in, not paying his admission.

Q Who did not pay his admission? A Edward did not have a chance to pay because there was nobody downstairs and whoever the girl was who was with him --

BY MR. GRIER:

Q When you got up to the head of the stairs what was taking place, describe it fully? A When I got to the head of the stairs, I saw two special officers have him inside and were beating him, in the coat room. So I beat it outside and what took place in there I could not tell you.

Q Did you go in the coatroom? A No.

Q You said something about being struck yourself, where were you? A That was just outside the coatroom at the head of the stairs. There is a main stairs going down, what we go up, and right there there is the door leading into the coat room, and right there was where I got hit, as you go into the coat room.

Q What did you do after you got hit? A I ran out in

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the middle of the floor to get out of the fight so I would not get hit any more.

Q Do you know who hit you? A No, I don't think I could recognize him.

Q Do you know what you were hit with? A With a small billy.

Q Wooden club? A Yes.

Q When was the next time you saw Dooley, the defendant? A I did not see him any more. This is the first time since.

Q What did you do when you got downstairs? A Went right home.

GROSS EXAMINATION BY MR. STRONG:

Q You did not see the axe thrown? A Yes.

Q You did -- where were you standing at the time you saw this axe thrown? A I was about 15 feet from the stairway, I guess, on the off fall.

Q You know Bruno Brasch, the man who was on the stand just before you? A Yes.

Q He was one of the men who came to the hall with you? A Yes.

Q Dooley came with you too? A He was before me.

Q What? A He was up in front of me. He came with me, he was in front.

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Q I mean you and Brasch and Dooley came together?

A Might as well say we came together.

Q You were all in the same car? A Yes, we were all in the same car.

Q When you got to Huber's Casino, what did Brasch do, do you remember? A No, sir.

Q Did he go right upstairs? A I couldn't tell you exactly where Brasch went.

Q He was along with you? A He was with me, but I was not noticing where he went.

Q Do you know a man named Smith? A Smith?

Q Yes? A I think I do, yes.

Q Was there anybody with Brasch and you and Dooley?

BY THE COURT:

Q Do you know Smith? A Yes.

Q You say you think you do, do you know him? A I know -- I think -- if it is the same fellow he means or not-- I know a fellow named Smith.

THE COURT: Call in Smith.

MR. STRONG: I don't know if he is here.

BY THE COURT:

Q William Smith, do you know him? A I think that is the same fellow I know.

BY MR. STRONG:

Q Was there anybody along with you and Dooley and Brasch

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A Not that I know of. If they were back of me, I don't know, because I never looked.

Q You don't know what Brasch did when he came in there?

A No, I do not.

Q What did you and Dooley do? A That is all I know, Dooley got hit and got taken in the side room and I done the best I could to get him away.

BY THE COURT:

Q State what you did? A I seen they tried to beat him and I tried to get him downstairs.

Q What did you do? A In what way?

Q You said you tried to prevent Dooley from being beaten? A I tried to reason with the officers that hit him and tell them how it was that he was willing to pay his admission, but they would not listen to me so they hit me and pushed me aside and that was all I could do to get him away.

BY MR. STRONG:

Q Were there any ladies standing at the top of the stairs? A yes.

Q About how many? A Two -- two ladies talking about the admission.

Q Did a man come over and join those ladies after a while, a man named Moshier? A I don't know. There were so many hanging around the stairs, I don't know.

Q A lot of men were around the stairs? A A lot rushed

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over no more than they heard the commotion there.

Q What did the special officer do with Dooley, did he take him any place? A I couldn't tell you. I seen him drag him in that room there.

Q In the coat room? A In the coat room.

Q Who was in the coat room besides Dooley and the special officer? A I did not go in, I could not say exactly.

Q Did you see in the coat room? A Too many -- unless I got on a chair.

Q I thought you said a special officer beat him up in the coat room? A I saw them pull him in before the people were there.

Q You did not go in the coat room? A No.

Q Didn't you say you tried to get Dooley away from the special officer? A Yes, I did before he went in the coat room, by the door leading in.

Q Did you see where Dooley went when he came out of the coat room? A When he came out of the coat room?

Q Yes. A If I am not mistaken I think I saw his brother with him.

Q His brother James? A His brother Jim.

Q Where did they go? A I seen him trying to get him out if I ain't mistaken.

Q Get him out where? A Get him down the main stairs

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in the hall.

Q The same stairs he came up? A Yes.

Q You saw Jim Dooley and his brother the defendant Dooley who is on trial, you saw them trying to go to the same stairs they came up? A Yes.

Q So they did not go over to the stairs where the axe was thrown? A They did not go down that stairs.

Q They did not go over there at all? A They might have been over there during the fight or something like that.

Q I thought you said they were going down the same stairs they came up? Right after they came out of the coat room? A Jim tried to get him down the stairs -- tried to go downstairs the same way they came up. Jim tried to pull him downstairs.

Q After he tried to do that, did you see what either of them did after that? A Did I see either one of them after that?

Q Yes. A No.

Q You lost sight of them? A I lost sight of them that night, yes.

Q I show you a diagram and I want you to mark on this diagram, where you stood at the time that Dooley and the special officer went into the coatroom, just mark your initials in the place where you stood; this is the ballroom here and here are the stairs down which the axe was thrown.

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There is the entrance that you came up and here is the coatroom and here is the other ballroom, and here are the posts separating the two ballrooms, you know about that?

A Is that the door leading into the cloakroom?

Q There is the coatroom; you come upstairs here?

A Right at the head of the stairs, there is a door leading to the coatroom.

Q There is the coatroom (indicating); you come upstairs and the coatroom is on your left? A Yes.

Q And these are the posts separating the two ballrooms? A Yes.

Q Take this pencil and put your initial where you were standing? A That is the main stairway. There is the door leading into the coat room there and if this is the door here, that is where I stood right there -- right by that door.

Q Where you have marked the initials E. R., is that it? A By this door yes.

Q Did you move from that position at all? A Yes.

Q Where else did you go? A To the middle of the ball room, where the stairway is leading downstairs, where the axe was thrown.

Q You went over to the middle of that ballroom? A After I got time to get away from that place, where they dragged him in.

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Q Did you go over between the two ballrooms or right in the center of the north one? A In one.

Q The center of the north ballroom? A Of the off one. The north one I guess it is.

Q That is the north ballroom -- will you just indicate by your initials again where you went to? A This is north and that is south.

Q No, there is the south ballroom over there? A Let me see it this way -- I can tell it better -- that is the south ballroom over here and this is north.

Q Yes, that is right? A Well, about around in the middle here, I guess (the witness places his initials on the diagram).

Q Right at that place where you have marked E. R.? A yes.

Q Did you see the axe in this man's hands that you said threw it? A Did I see the axe in his hand -- yes.

Q Is that similar to the axe you saw (showing People's Exhibit 1 for identification)? A That is about the way it looked to me.

Q Where did he get it from? A I couldn't tell you where he took it from. I didnot see him take the axe.

BY THE COURT:

Q Who was the man? A Maud Walsh.

Q Where is he? A I couldn't tell you where he is.

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Q Did he go to the hall in your company? A Not in my company.

Q Is he a friend of yours? A No.

BY MR. STRONG:

Q Where did you know Maud Walsh? A Just know him from sight a month or so up around my neighborhood.

Q How long have you known him? A About a month or five weeks.

Q Have you ever spoken to him? A Once or twice yes.

Q Do you know where he lives? A No.

Q Do you know where he works? A No.

Q Where did you speak to him, what place? A At 145th Street and Eighth Avenue.

Q You never saw him any place except on the street corners? A Well, I was standing talking to a girl and myself one night and he came over and he got introduced to me and that is how I know him.

Q You don't know how to locate him? A No.

Q When was the first time that you heard that Officer Burggraf was seriously injured? A I hardly ever heard anything at all about him. Never thought --

Q You know Jim Dooley? A I never hardly saw Jim Dooley. Very seldom I saw him at all.

Q Don't you know the Dooley family? A No.

Q When was the first time you found out that Burggraf

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was seriously injured? A About a week ago, the first I ever heard of him.

Q Did you read about it in the papers before that?

A No.

Q Have you seen Jim Dooley since then? A I have seen Jim Dooley.

Q When did you first learn that Edward Dooley was arrested? A Oh, I think about a month ago or over a month ago.

Q That was very shortly after you had been up at Huber's, wasn't it, that you heard Dooley had been arrested?

A No, sir -- about a month ago, I said I heard it.

Q Did you know what he was arrested for? A No.

Q Did you make any inquiries? A No.

Q How did you learn he was arrested? A Through talking to a fellow, a friend of mine.

Q What is his name? A Jim Dooley.

Q So Jim Dooley told you a month ago that his brother was arrested? A He told me what his brother was arrested for too.

Q Didn't he tell you he was arrested for assaulting Burggraf at Huber's? A No.

Q Did you ask him? A No.

Q So at that time you did not talk over between you what you had seen in connection with this case? A I did not

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care to hear nothing about it.

BY THE COURT:

Q Did he say he did not know the members of the Dooley family?

THE WITNESS: I know Jim and the defendant, that is all I know of the family. I don't know the family.

Q You know the defendant? A I know him but don't know the family.

Q How long have you known him? A I have known him since -- about seven months, I guess.

BY MR. STRONG:

Q You had only known him about two months at the time this assault took place? A That is about it.

Q Did you know anybody had been seriously injured that night? A No.

Q Do you know Christopher Woods? A Yes.

Q He was arrested in connection with this, wasn't he?
A So I hear.

Q Where did you find out he was arrested? A About the same time I found out about Edward Dooley.

Q How about Breezy? Do you know him? A No, I don't know him.

Q William Mann, do you know him? A Yes.

Q He was arrested in connection with this? A Yes.

Q When did you find that out? A The same time -- found

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all out at the same time.

Q Is he a friend of yours? A Just by sight, that is all.

Q Never had spoken to Mann, had you? A Just since I have been down here, that is all.

Q Did he go with you to this dance, and the rest of them?
A Not with me.

Q Did Christopher Woods go along with you? A Not with me.

Q But you are sure that Brasch and Dooley went together to the dance with you? A Yes, they were with me when I went.

Q You say when you went to the dance hall you could not find any place to pay? A Yes, sir, there was nobody down to collect the money, nobody downstairs.

Q Didn't you see Brasch pay? A No, sir, nobody paid.

Q You are sure Brasch did not pay? A Yes, I did not see nobody pay going up.

Q You are sure Brasch did not pay? A Unless they paid upstairs -- there was nobody downstairs/

Q He did not pay downstairs? A If he paid upstairs I wouldn't say.

Q He did not pay downstairs? A He did not pay downstairs.

BY THE COURT:

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Q Did you pay your admission fee? A No, there was nobody there to take it.

Q Did you see where Brasch went when he entered the place? A I did not notice.

BY MR. STRONG;

Q You were right alongside of Dooley when he got to the top of the stairs, weren't you? A Yes.

Q Did you see that gentleman there (indicating Mr. Moshier)? A I could not recognize him. I don't know.

Q You did not see him grab hold of Dooley? A I don't know, I could not recognize him.

Q You won't swear that he did not grab hold of him?
A I wouldn't swear at all, no.

Q You are testifying under oath, you understand that, don't you? A Yes.

Q Did you see Dooley strike at anybody or kick at anybody when he was at the top of the stairs? A I saw him hit and saw him kick. I saw him kick at somebody that hit him, whoever it was hit him, I saw him kick back at him.

Q It was after that he was taken into the coat room?
A Yes.

Q Did you see where Brasch was standing? A No, I did not notice Brasch at all.

Q Did you see him up in the ballroom at all? A I did not notice him, I didn't see nobody up there hardly. I didn't look for anybody.

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Q But after Dooley was taken out of the coatroom, you say you went into the center of the south ballroom? A No more than he was taken in the coatroom, I went over in that ballroom, to get away from the special officers.

Q In going over there, what course did you take? A I went along the ballroom on the south side -- I went down there to about the middle post.

Q On the south side to about the middle post? A Yes, sir, the middle post, and then crossed over.

Q Anybody else with you? A No, sir.

Q Did you see Burggraf in the center of the ballroom there at any time? A No.

Q With a crowd around him? A No, I did not know him.

Q Did you see him with a revolver in his hand? A I saw a few men with them, I don't know who they were.

Q Did you see him with a revolver in his hand. (The complainant Burggraf stands up in the courtroom).

THE WITNESS: I think I did.

Q He had a revolver in his hand and what was he doing with it? A He was trying to stop them fighting I guess.

Q Who? A Ned Dooley -- Edward Dooley and the rest of the fellows that was in the mixup there.

Q They were all out in the center of the ballroom at that time? A No, they were by the coatroom. I was in the

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middle of the ballroom.

Q That officer was over at the coatroom with a revolver in his hand? A That was where the fighting went on by the coatroom and by the stairway.

Q You did not see any fighting in the south ballroom, did you? A At the head of the stairs, is where the fighting started and they went from there into the coatroom.

Q I talk about the south ballroom, the one you have indicated with your initials, the center of it? A That is the north one there, my initials.

Q I mean the north one, the one with your initials; you did not see any fighting in there? A By the stairway and the coat room is where the fighting was done.

Q Did you see that officer in the north ballroom with a revolver in his hand? A I think I did.

Q What was he doing there? A Trying to stop fighting is all I could see.

Q How many were around him? A There was an awful bunch of people around him.

Q Where was Dooley at the time that this officer had his revolver out? A He was right in the middle of them to my estimation.

Q And Woods? A Woods -- I won't say where he was.

Q Did you see that officer fall down? A This officer?

Q Yes. A No, sir.

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Q Did not see him knocked on the head and knocked down?

A No, I did not.

Q Did you see anybody else with a revolver? A No, sir, I did not see anybody else, I would not say.

Q Did you see this officer chasing anybody? A No, sir.

Q Did you see him run downstairs? A Yes.

Q So you saw Burggraf run downstairs? A I saw this man with a revolver in his hands start to run downstairs.

Q Did you see him with the revolver then? A I think it was knocked out of his hand or it was put in his pocket or something I don't know.

Q He did not have the revolver out when he was running downstairs? A I hardly think so, unless he had it in his right hand against his leg, or something, and I could not see it.

Q Was there anybody near Walsh, at the time he threw this axe? A There was a crowd of people around the stairway when it was thrown.

Q You were in the center of the ballroom? A Not just then. I was moving up so I could see everything that was going on.

Q I asked you before, at the time the axe was thrown, where you were standing, and you put your mark and said in the center of the ballroom? A When the axe was thrown?

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Q Yes. A during the fighting I was in the middle of the ballroom.

Q Where were you when the axe was thrown? A A few feet away from there.

Q How many feet? A About five feet or six feet away from there.

Q That is approximately in the center of the ballroom?
A Take that away from the center, and it is quite a bit.

Q This fellow Walsh, did he have his back turned towards you when he threw the axe? A Yes .

Q His body was between you and the axe he was throwing?
A His back was towards me and he was looking down towards the stairway.

Q Where was Dooley with reference to Walsh? A Dooley?

Q At that time, when the axe was thrown? A At that time I think his brother had him.

Q What? A His brother had him I think at that time.

Q Where? A Trying to get him out I think.

Q About where in the ballroom? A I guess he was on the main stairway going down or something like that.

RE-DIRECT EXAMINATION:

Q What time was it when you left the Wireless Hall?

A Must have been around 11 o'clock, I guess.

Q Did you look at the clock to see what time it was?

A No.

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Q It may have been later than that or it may have been earlier? A It could not have been much earlier; it might have been later.

Q When you left the Wireless Hall, did you leave in a large party or only a few of you leave together? A They came out in maybe two and a few more would come out, only three or four of us came out together and the rest came out behind us and some in front of us.

Q Had anybody left the Wireless Hall before you left there? A Left before us?

Q Yes. A I couldn't tell you.

Q May have left and may not, you don't know? A I did not notice anybody.

Q And coming down on the car did you notice particularly who all were on that car coming down? A No.

Q Did you notice who had been at the Wireless were on the car coming down? A No, only the fellows that came down with me.

Q What? A Only who came down with me, that was all, I did not notice anybody else.

Q You did not know anything about this case until a month ago, you say? A That is all.

Q You undertake to say now positively just who was in that party coming down from the hall? A Yes.

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Q With you? A Yes.

BY THE COURT:

Q Where do you work? A Wholesale butcher, A. Tingued.

Q How long have you worked for that concern? A All last winter and I got laid off during the summer and worked on the New York Central the last three months.

Q In what capacity? A Brakeman.

Q Steady employment? A No, sir, I got laid off about three weeks ago and I am back with this butcher now.

Q How often did you meet James Dooley prior to May, 1913? A Only met him just once and that is a month ago, I guess.

Q Prior to May? A I couldn't tell you.

Q About how many times? A I couldn't just exactly tell you whether I knew him before that time or not.

Q When you saw a man throw the axe did you notice whether it struck any person? A No, sir, I did not.

Q Did you see any person walking downstairs at the time the axe was thrown? A I did not notice anymore than I saw the axe thrown I went right out of the hall myself. I did not stay any longer.

Q Did you at any time thereafter make any inquiries with a view to learning whether any person had been hurt? A No.

(Officer Hinnars approaches the bar).

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BY THE COURT:

Q Do you know this man? A Yes.

Q Did you see him that night? A That is the man I think -- I think that is one of the fellows that was in the fight there in the hall, by the stairway there that showed his shield and club and gun, that is the only way I know him. Would not swear it is him or not.

Q Did he have hold of Gooley? A I would not say I could not tell you.

Q Did you see this person standing at the bar that night? A At the bar?

Q The one at the bar, did you see him at the bar that night, are you sure you saw this officer? A I am pretty sure, I would not swear to it.

Q You are pretty sure but you would not swear? A pretty sure I saw him there.

Q Did you see this man have hold of the defendant?
A No, sir, I did not.

Q Did you see the defendant in the coatroom? A I did.

Q Did you go in the coat room? A No.

Q Did you talk to the officer that night? A No.

Q Or to the men who were attired in a gray uniform?

A I tried to reason with him to see what I could do with him. That was all I seen.

Q With whom? A An officer.

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Q What officer? A One of the two in there.

Q Can't you recall who it was? A A fellow that was working in the hall as a bouncer or whatever they were.

Q Dooley was a friend of yours? A Not exactly a friend.

Q You saw this man strike Dooley and assault him?

A Yes.

Q You did not help him? A No.

Q You made no attempt to take him away from those who had him in custody? A I did not try to take him away.

Q You did not assault anybody that night? A No.

Q Why did you make an exit through the other way, why did you leave? A I went out the main entrance, the way I came in.

Q A good many people remained there? A Yes.

Q Why did you leave? A I did not want to stay in the hall any more.

Q Why did you leave? A I ain't got no reason to leave, but I did not want to stay in the hall, there was nobody there that I knew.

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Q Did you see Dooley downstairs that night after the trouble? A No, no more than I went out I saw a crowd downstairs in front of the hall, but did not wait to see who it was.

Q You did not strike anybody? A No.

Q Did you see Brasch strike anybody? A No.

Q Did you see Jim Dooley strike anybody? A No.

Q Did you see the defendant strike anybody? A I saw him kick, that is all, when he was struck himself. I don't know if he kicked anybody or anything else.

Q Did you see any other person in the place strike the complaining witness, Mr. Burggraf? A Did I see anybody else strike him?

Q Yes? A No, sir, I did not see, I went away. I did not, as far as I am concerned.

Q Where had you met the Dooleys that night before going to the hall? A At the Wireless Hall, at the party we had up there.

Q And who suggested that you go to this place? A I could not tell you. I heard a few fellows saying there was an affair at Huber's and we thought we would stop off and go there.

Q How many altogether constituted the party? A At Wireless Hall?

Q Yes? A I couldn't tell you, I didn't count them.

Q You were there? A Yes.

Q Brasch? A Yes.

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Q Smith? A Yes.

Q The two Dooleys? A Yes.

Q Were there any women there? A There were.

Q What are their names? A I couldn't tell you, I just know a few by sight and don't know none of their names.

Q Did you have any one's money with you? A I had a few pennies with me.

Q How much money did you have? A About sixty cents.

Q How were you dressed? A A blue suit.

Q What kind of a hat did you have? A A black slouch hat on

Q When you saw this man throw an axe, did you make any effort to take hold of him? A No I did not, there was too many around me.

Q How far away was Dooley from the man who threw the axe?

A He was --

Q How far away in feet? A Well about -- I would say about fifteen or twenty feet I guess, from that stairway to the other.

Q How far away were you from that man? A About the same distance I guess.

Q Did you make any effort to get hold of him? A No, I did not.

Q Was he one of the men who belonged to your party? A Not that I know of.

Q You say you know him under the name of Mort Walsh? A That is all. He was no member of our party. He was not with me that

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night.

Q Do you know of your own knowledge whether that party knows Dooley or his brother? A I think they do.

BY MR. STRONG:

Q Do you know where Walsh is now? A No.

Q Have you ever seen him since? A No.

Q Did you see him go into the hall? A I did not, no, sir.

Q Did you see anybody strike Walsh? A No, sir.

Q Did you see anybody do anything to Walsh? A No.

Q He was not a friend of your crowd, was he? A Not that I know of, no, sir.

Q He was not mixed up in the dispute between the officer and Dooley, was he, in any way? A I couldn't tell you if he was or not, he must have been.

Q Did you see him do anything which would indicate it? A No.

Q So that this man who was not in your party took this axe and threw it down the stairs? A He threw the axe. I did not see him take it, but I saw it in his hands, and throw it.

Q Did not see him take it off the wall? A No.

Q Don't know where he got it? A No.

Q And you were standing watching it all the time? A I saw him with the axe in his hand, but I didn't see where he took it from. I was not noticing him all the time.

Q Was the axe raised up when you did see it? A I saw him over the stairway and let the axe go like that. That is all I seen.

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BY THE COURT:

Q Can you give a description of Walsh? A I could give a pretty good description.

Q Give a description of him? A He is about five feet four high, I guess.

Q Five feet what? A Five feet four, weighs about 125 or 130 pounds. Wore a light suit the last time I saw him and a brown cap, and a brown overcoat, or generally wears a brown overcoat I think, if I ain't mistaken. I think he has got kind of lightish hair. Never noticed his eyes or anything. Smooth shaved fellow.

Q Is he taller than the defendant? A No, sir, I don't think so.

(The defendant stands up).

THE WITNESS: No.

BY THE COURT:

Q He was shorter? A Not much, a little bit shorter than him.

Q Did he wear a cap that night? A Yes.

Q A cap? A A cap.

Q What kind of a cap? A I think it was a brown cap he had on.

Q One of the peaked caps? A Yes, sir.

BY MR. STRONG:

Q Did he have it on when he threw the axe? A He had it on

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him all the time, I guess.

Q How long did you observe him there? A He must have had it on all the time.

Q When did you first see Walsh there? A The first time I noticed Walsh was when he grabbed the axe -- when he had the axe in his hands.

Q When he grabbed it? A Not when he grabbed it, when he had it walking over to the stairway with it.

Q He walked over to the stairway with it from where?

A That was where I noticed him, when he was walking with the axe.

Q From what direction did he walk? A I couldn't tell you -- he was coming right there from that door -- there is a door leading into the coat room and a door right opposite that leads into the other ballroom -- I wouldn't say if he came from the first post, or through that door, but he was coming in the direction towards the stairway, with the axe in his hand.

Q Will you just indicate on this diagram with a cross mark where you saw Walsh start from with the axe in his hand and make a line from that cross mark up to where you saw him throw the axe? A This is the coat room here (indicating).

Q That is right. A Where is the stairway supposed to be?

Q There is the stairway coming up? A The stairway where the axe that was thrown.

Q Here it is? A Well, about here is a door leading to the

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coat room and next to that is a door leading into the ballroom.

Q That is the door (indicating)? A That is the door leading into the other ballroom.

Q Leading into the north ballroom? A Yes, sir. Well, here is the direction he came -- is this post one of the posts?

Q No, these are the posts running right along here (indicating), separating the two ballrooms, a line of posts? A Here is the door here and there ought to be a post here by this stairway -- that is the post there (indicating).

Q Yes? A Here is the direction I saw him come.

Q Put a cross mark where you first saw him with the axe in his hand? A About in the center of the two.

Q Where you have marked the cross? A I wouldn't say that either. (The witness rubs out the cross mark he had already placed on the diagram).

THE WITNESS: About there, I guess (indicating and making a cross on the diagram).

Q Make a cross mark so we will know it? A About there (indicating). I couldn't tell you if he came from there or here.

Q Take a pencil and show the direction he went towards the head of the stairs? A That is the stairs?

Q Yes, and there is the head of it? A Well, right about to there (indicating).

Q Where you draw that line? A About to there. He did not go to the head of the stairs at all, it was thrown about in the middle of the stairway.

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Q You don't know where Walsh got the axe? A I do not.

Q Did you ever see Walsh on the other side of the head of the stairs? A I did not notice him, no, sir.

Q Where was Dooley standing at the time -- you have already testified to that --

B R U N O B R A S C H recalled:

BY THE COURT:

Q Did you get a good look at the man who threw the axe?

A Yes.

Q How long have you known him? A I did not know him. By sight I have seen him before.

Q Where did you meet him that night? A I had seen him in the Wireless Hall.

Q Where? A In the Wireless Hall.

Q He was one of your party? A He was in the party.

Q He accompanied you to this place? A I would not say for sure whether he did or not.

Q Let us see, you were there? A I was there.

Q Walsh? A Walsh.

Q Reeder? A Reeder.

Q The two Dooleys? A Yes.

Q Who were the other persons? A Mann was in that crowd,

I believe, and a fellow by the name of Woods.

Q Christopher Woods? A I believe so.

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Q Do you know him? A I know him by sight. Quite a few girls there.

Q Do you know their names? A I don't know all their names. I know a few outside. I don't know their names.

Q How was Maud Walsh dressed that night? A I ain't sure, I think he had a light suit on.

Q What kind of a hat did he wear? A I believe he wore a cap that night.

Q What was the color of the cap? A I believe it was brown; I am not sure.

Q Did he have a brown overcoat? A Yes, I believe he did -- had a light overcoat on, spring overcoat.

Q How did he wear his cap -- rather tightly on his head?
A Kind of down, yes.

Q He weighs about 125 pounds? A I think he weighs a little more than 125.

Q 130? A About 130 or 135.

Q About five feet four in height? A About 5 feet 6 I think.

Q Taller than the defendant? A Yes, a little taller.

Q Or shorter? A I should think he was about the same size.

Q What kind of a cap did the defendant wear? A I believe he had a blue cap on.

Q What was the color of his overcoat, Walsh's overcoat?

A A light overcoat, light brown.

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Q Sure he wore an overcoat that night? A Yes, he did wear an overcoat.

Q Did you go to the defendant's rescue at any time that night? A No.

Q How far away were you from Walsh when he threw the axe?
A About twenty feet away, between the two halls.

Q What did you do immediately thereafter? A After he threw the axe, after I saw that there was a crowd run down, I walked out of the place.

Q Did you see Reeder that night, young Reeder? A Yes, I seen him that night.

Q Did he walk out with you? A No, sir, not that I know of.

Q Did you leave first? A I don't know who left first. I seen quite a few at the bridge, going over the bridge before me.

Q Did you know at that time some one had been hurt that night? A Yes.

Q How often did you see Reeder after May 18th? A I have seen him a few times.

Q About how many times? A Well, about four or five times I believe.

Q Did you discuss with him the defendant's case? A I did not.

Q Never spoke to him about it? A No.

Q When did you learn of the defendant's arrest? A The night after he was arrested -- I am not sure -- right after he was arrested.

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Q Where do you live? A 302 West 154th.

Q Where does Reeder live? A I don't know, I think he lives in Bradhurst Avenue somewhere.

Q How far is that from where you live? A I think he lives down in 143rd street, somewhere around there.

Q And you live where? A 152nd.

Q Haven't you met Reeder frequently? A After that?

Q Yes, after May? A I have seen him, yes.

Q From May until October how often have you seen him?

A I seen him about five or six times. I seen him when he says he was working on the same road as I am.

Q Aren't you members of one club? A No, sir, there is no club that I know of.

Q Do you congregate any particular place? A Reeder and I?

Q Yes? A No, not that I know of. I have seen him at 141st street once or twice.

Q Did you go to the Magistrate's Court when the defendant was arraigned? A No, I did not know -- I was away and never heard anything about it until yesterday.

Q Where were you? A After I was with the Central I did not have much time after we go away, we go away two days or so ---

Q You had not heard about the defendant's case until yesterday? A Until yesterday, that is, how he made out or anything.

Q You were not in court Friday? A No.

Q When were you subpoenaed the first time to be here, or

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were you subpoenaed? A Yes, I received a subpoena.

Q When? A I believe it was Sunday. Yesterday morning I believe I was subpoenaed. I came in from Albany.

Q Who went in the hall at the head of the staircase first, you or Dooley? A I don't know, I went downstairs. As soon as I came in the hall I went to the toilet with William Smith.

Q You say that a party of you left the Wireless and agreed to go to Huber's? A Some of them, yes.

Q Wasn't Dooley in your party? A Not that I know of.

Q Did you see him on the car? A Not that -- no, sir, I was in the second seat to the motorman, front.

Q Did you see Reeder on the car? A I don't remember.

Q Name the persons who were on the car whom you met? A I was mostly with William Smith at that time. There were six or seven others behind and who they were, I don't know.

Q Who went in the place first? A I don't know. I know. I went in the place.

Q Did you pay? A We went in the toilet.

Q Did you pay for any hat check? A No, no hat check, not to my knowledge. We dropped fifty cents down. We went in the toilet and then went in the rear and I dropped fifty cents down, thinking to pay. I don't know if I really paid or not.

BY MR. STRONG:

Q Who did you pay your fifty cents to? A Who?

Q Yes? A Might have been at the other place. I might have

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been mistaken about paying there.

Q You testified on your direct examination that you did pay? A To the best of my knowledge I thought I did.

Q You were sitting in the court room when Reeder testified that you did not, is not that so? A I think so.

Q You were sitting in here when he gave his testimony?
A Yes, sir.

Q And now you don't remember whether you paid or not? A I think I paid.

Q You knew that some one was seriously injured that night?
A Yes.

Q And you knew who did it? A I did.

Q Who did you tell about it, anybody? A No, sir, no one at all.

Q You knew that Dooley was arrested for it? A After that I did.

Q Who did you tell about it? A Nobody.

H E L E N M c G R A T H, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(45 West 140th street).

DIRECT EXAMINATION BY MR. GRIER:

Q On the 17th of May did you attend a party or ball at Wireless Hall? A I did.

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Q At that ball did you see the defendant, Edward Dooley?

A Yes.

Q From the time you left Wireless Hall, tell the Court and jury just what you saw take place? A When we left Wireless Hall we came down in the car and stopped at 162nd street and Jerome Avenue and heard music playing, and thought we would go up there to dance. We went up and there was four or five couples went up before we did and we got as far as the stairs, and there was a lady dressed in white and she had a red band across her shoulders, and she told us that we could not come in without paying admission, so Ned Dooley went to take the money out of his pocket and a man about 5 feet 2 or 3 slapped him in the face, and Ned Dooley kicked this man, and then he was pushed into the coatroom and there was a special officer there at the same time and they were fighting with Ned Dooley, and Ned was pushed in the coat room and this special officer was pushed another side, and then there was a free for all battle. The people that were running the dance and these other boys were fighting and then I saw Ned Dooley get pushed out of the coatroom again, and they were over in the next hall and when they were over in the next hall, I saw a young man take an axe from the northwest corner of the hall, the second hall, and walk about four feet to the -- twenty feet to the staircase, and Ned Dooley and the officer, this special officer and Ned Dooley's brother was fighting, and Ned Dooley's brother was trying to pull him from this special officer and

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this other man didn't have a chance to drop the axe down the front of the staircase because they were in front of it, Ned Dooley and this special officer, and his brother, were fighting in front, so he went around to the side of the staircase and just took the axe and dropped it down. This man looked as if he was trying to run away by fighting to get out of the hall but this other fellow by the name of --

BY THE COURT:

Q Maud Walsh, A Maud Walsh, that is his name, dropped the axe down on this other man.

BY MR. GRIER:

Q Did you see him take the axe from the wall ? A Yes, sir, I did.

Q When you saw that, where were you? A I was standing about five feet from him.

Q In the ballroom? A Yes, sir. This man saw Maud Walsh take the axe from the wall and he tried to escape so he would not get hit and so he run downstairs.

Q Who do you mean by this man? A The young man that got hit with the axe.

Q Officer Burggraf? A I don't know the name of the man, but think I would know him by sight if I saw him.

Q How far were you from Walsh when you saw him drop the axe? A About four or five feet from him.

(The complainant Burggraf is brought to the bar).

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Q Is this the man you say saw Walsh take the axe from the wall ? A Walsh was standing right here and he was standing in front of him and it looked as if he was trying to run from the axe when he saw Maud pick it up, and he ran down the staircase.

Q This is the officer? A Yes.

Q That you saw run down the staircase? A Yes.

Q You say when you saw Walsh pick it up, what do you mean by that? A He took it from the wall and dropped it, and then picked it up again. When he saw this man run downstairs he picked it up again after he dropped it.

Q Dropped it on the floor of the ballroom? A Yes.

Q And picked it up? A Yes, again.

Q It was after that he dropped it over the railing? A Yes.

Q Did you see the axe strike any one? A No, I did not see it strike any one because I got excited and I fainted after that. I don't know what happened.

Q You say you fainted away? A Yes.

Q What was the next thing you knew? A The next thing I saw was Ned Dooley and his brother on the street going home. I was taken to the street.

Q How near the entrance to Huber's Casino was that when you saw Ned Dooley and his brother? A Well, about -- it was over by the bridge about, down at the bridge.

Q The entrance to the bridge? A That is about fifty or sixty feet away.

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Q Who went out of the hotel with you? A There was a girl by the name of Mabel Gilsay with me and we went home together.

Q When you went to the hall, who were you with? A Walking with Ned

Q You were with him when he reached the top of the stairs?

A Yes.

Q And heard everything and saw everything that was done there? A Yes.

Q Have you told all that you recall of that fight? A I know that not one of them had anything on them in the line of a concealed weapon. I know not one of the men or fellows had anything upon them.

Q You know they had no concealed weapons with them? A Yes.

Q Did you see Ned Dooley have at any time an axe in his hand? A No, sir, he did not. If anybody says he did he lies, because he was nowhere near it.

Q How near was he to Walsh when the axe was dropped?

A The special officer and Ned and his brother were fighting at the time the axe was fired and say here is the staircase and they were fighting right here.

Q At the head of the stairway? A Yes, and Maud Walsh came right here and dropped the axe down like that. He was about four feet away from where the axe was.

Q Walsh passed the head of the stairs? A Yes, sir, and passed the head and came like going north, and fired it down the railing.

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CROSS EXAMINATION BY MR. STRONG:

Q When you saw this trouble start at the top of the entrance stairs and saw Dooley getting hit by some special officer, you were very much frightened? A Yes.

Q There are two ballrooms? A Yes.

Q The stairway comes right up between the two? A Yes.

Q And the fight was all going over towards the stairways at the north ballroom? A Yes, sir.

Q The south ballroom was all clear? A No, there was quite a few people in that too.

Q But no fighting? A No, they were dancing in that room, the hall at the time.

Q You could have run over that way if you wanted to? A Yes, but I was with Ned Dooley and I thought as long as I went out with him why shouldn't I stay with him when he was in trouble.

Q You wanted to protect him? A Yes.

Q But you were very much frightened? A Yes.

Q You saw the special officer have hold of him? A Yes.

Q He did not pay his admission going upstairs? A He wanted to pay it and this man about 5 feet 3 came over and slapped him in the face.

Q You were right beside him at the top of the stairs? A Yes.

BY THE COURT:

Q Beside the defendant Dooley? A Yes. /

BY MR. STRONG:

Q When he came in did he check his hat? A No.

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Q Put that in his pocket, didn't he? A No, he had his hat in his hand. He had a cap, had hold of it in his hand.

Q Dooley wore a cap? A Yes.

Q You say he had it in his hand when he came upstairs? A Yes

Q Didn't you hear him tell a lady at the top of the stairs that he had been in before and was coming in again? A No, he did not. There was four couples up before us, and they said they had been in.

Q Before you? A And said they had been in, and when she said we could not enter, Ned asked her --

Q How long before you did they go up? A About five minutes before we went.

Q They had all come from the Wireless? A Yes.

Q They said they had been in before and were going in again? A Yes.

BY THE COURT:

Q Do you know who those couples were? A No.

Q Do you know Smith? A Smith?

Q Yes, William Smith? A No.

Q Do you know Bruno Brasch? A No. There was a lot of people there I had never met.

Q Do you know Edward Reeder? A By sight I know him, but not to talk to.

Q Did you see any persons strike any of the persons who had preceded you and Dooley? A No.

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Q Was there any fight between any of those couples and the officers of the Association? A Not that I know of.

Q What did those couples do? A When we got up there they were on the floor because the band had been playing.

Q They passed by? A Yes.

Q And then when Mr. Dooley came up there, what occurred?
A This woman came over and she said he couldn't go in without paying admission. He said "All right", and he put his hand in his pocket and with that this man as I told you --

BY THE COURT:

Q Can you identify the man? A I think I can.

(The witness Moshier is brought to the bar).

THE WITNESS: Yes, that is the man that struck Dooley and Dooley kicked him.

Q Did Dooley say something to him? A Never said a word to him, just asked him what was the matter when he hit him. He did not know what he hit him for.

Q What did Dooley do? A He kicked Mr. Moshier.

Q Can you recognize the officer who took Dooley into custody? A No, I don't think I could.

Q How long have you known Dooley? A Known him ever since I have been an infant.

Q Have you been at his home? A Yes.

Q Do you know his mother? A Yes, and his father and all his people.

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BY MR. STRONG:

Q Do you know Jim Dooley? A Yes.

Q How long have you known him? A Ever since I have been an infant.

Q How long ago was that -- what is your age? A Seventeen. I will be seventeen in February.

Q What time did you get to this dance? A Between ten minutes past twelve and twenty.

Q Who was with you when you came from Wireless? A Ned Dooley

Q Alone? A No, there were so many I could not exactly tell you all of them.

Q All on the same car? A Yes.

Q About how many? A About thirty altogether.

Q Bruno Brasch? A I don't know him to speak to, but I think I would know him.

Q What? A I don't know Brasch. I think I would know him if I saw him.

Q He was one of the men with Reeder and Dooley? A There was a good many fellows there I did not know.

Q So the only one you knew was Dooley? A Dooley and I think I know Reeder by sight.

Q Was he with Dooley when you went into the hall? A Reeder, I think he was, but I am not sure.

Q Reeder and Dooley were with you? A Yes.

Q You did not see Brasch? A No, I did not see Brasch.

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Maybe he was behind us or some place near us, I don't remember.

Q You say you have known Jim Dooley a long time? A Yes.

Q Did you have him arrested once for assault? A Yes.

Q So that is this defendant's brother? A Yes.

THE COURT: That testimony is not competent; although no objection is made, the Court will strike the testimony from the record and instruct the jury to disregard it.

BY MR. STRONG:

Q You say you are seventeen? A Yes.

Q Where were you standing when you saw this axe thrown?

A About four feet from where this Maud Walsh was standing.

Q Was Dooley near him, A Dooley was at the head of the staircase and he was fighting, but he was about four or five feet away from him, too.

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Q Walsh and Dooley were about four or five feet apart?

A Yes.

Q Was Walsh nearer you or Dooley nearer you? A Walsh was nearer me, than Dooley.

Q Did he have his back to you or was he facing you?

A He had his back to me.

Q He was facing towards Dooley? A Yes.

Q Were there any other people standing at that railing?

A No, not at the railing there was not, only Jim and Ned and this special officer at the head of the staircase. That is about all. They were around the stairs.

Q There was no one else at the railing over which Walsh threw an axe? A No.

Q You are sure of that? A I am positive.

C A R O L I N E L I T T L E, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence, 2707 Eighth Avenue).

DIRECT EXAMINATION BY MR. GRIER:

Q Were you at Wireless Hall on the night of May 17?

A Yes.

Q With a party? A Yes.

Q And afterwards you went to Huber's Casino? A yes.

Q Will you state, and keep your voice up so that all the jury can hear just what took place from the time you left Wire-

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less Hall until you left Huber's Hall? A When I got off the car I was with a gentleman friend, Wilfred Reeder.

BY THE COURT:

Q A brother of Edward Reeder? A Yes. And there were two couples ahead of us, and they went upstairs and we went upstairs, and there was a lady with a banner on her shoulder, she did not stop us and we went in the hall, and the band was then playing and we dancing. And then our crowd came up girls and boys with us, and they came up and an argument started at the head of the stairs, and I hearing it, we stopped dancing and I went over to find out what it was, and I saw a stout man strike Ned here; he had been giving him an argument about something and he struck Ned and Ned struck back and then the police started in to intervene between him and Ned and he got pushed in the cloakroom on the side by the head of the stairs, the men's cloakroom, and I stepped back and let them fight it out. I went in the next hall. There was two halls in one. I went in the next hall, and I stood there watching them and they came out and they started, kept on fighting and they were in the next hall fighting and had Ned down on the floor with a big man beating him, and then the crowd intervened between him and Ned, and there was a staircase leading down to the little areaway downstairs to go out, and somebody -- I did not see the throwing of the axe or any part of it, but I heard somebody fall downstairs, and the crowd looked over

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and somebody had fallen downstairs, and after that they all left the hall. I stayed there. I did not know they had gone out and somebody -- a fellow came back for me. I was the last girl out of the hall.

Q Which stairway did you go down, the same one you came up? A Yes, the same stairway I came up.

Q The crowd had gone out before you did? A Yes, sir, the crowd had all gone out before me and I guess they just missed me when they got half way across central bridge and they came back for me.

Q Now, what was Ned Dooley doing the last time you saw him in the hall, what was his condition and what was he doing? A When I saw him he was in the other hall. He was down on the floor getting beaten, the last time I saw him, because I moved away.

Q How long after that did you hear someone falling downstairs? A I should judge it was about five minutes, not that.

Q Not five minutes ? A Not five minutes.

Q Was it after you saw Dooley down on the floor that you heard the man falling downstairs or did you hear the man falling downstairs before you saw Dooley on the floor? A He was on the floor getting beat when I saw this happen.

Q With reference to that, when did you hear the man falling downstairs? A A good while after we had gotten in the hall they were fighting. I did not know who was in the fight

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but they were still fighting and they had gotten in the other ²¹⁷
hall by that railing that leads downstairs, long railing; they
all gathered around it when that person fell downstairs.

Q You did not see the axe thrown? A No.

Q Do you know Morty Walsh? A Yes.

Q Was he at the Wireless Hall that night before you
came down to the Huber's Casino? A Yes.

Q Did he come down on the car with your party? A I
really can't say.

Q Now, you say that two or three couples had entered the
hall before you did? A There was Billie Mann and two girls
with him.

Q Do you know who the man was? A Billie Mann and he was
with two girls. I came with Wilfred Reeder right behind him
and we went upstairs and were not stopped.

Q Wilfred Mann and two girls had gone in? A Yes, we
were right back of them. They started upstairs and we went
upstairs and was in with them.

Q Was anything said to you five with reference to pay-
ing? A No, nothing was said. The woman didn't say anything.
BY THE COURT:

Q No effort was made to prevent you entering the hall?

A No attempt was made to stop us.

Q There was no argument? A There was no argument at
all.

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Q The persons who were in your company did not say they had been in the hall heretofore, no such argument took place?

A No, no such argument took place.

BY MR. GRIER:

Q So far as you heard? A Yes.

Q You went to dancing as soon as you were on the floor?

A Yes.

Q You were dancing at the time you heard? A yes, sir, I heard the argument and knew it was our friends and we stopped.

CROSS EXAMINATION:

Q You did not hear anybody say they were in there before and were going in again? A No.

Q You did not say that? A What?

Q That you had been in before and were going in again?

A No. I did not hear anything. I did not say anything.

Q Nor your partner Reeder, he did not say that? A No.

Q To any lady at the top of the stairs? A No.

Q The couple that went in along with you, did they say it? A I really cannot say if they said it, but to my knowledge I don't think so.

Q You didnt hear it? A No.

Q You were right there when they went in? A Yes.

Q Did Wilfred Reeder have his cap in his pocket?

A No, Wilfred Reeder had a slouch hat on.

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Q Did he have that in his pocket? A No.

Q Did not check it? A No, sir, did not have time.

Q Walked right upstairs and entered the dancehall?

A Yes.

Q Is that the way you usually go into dancehalls without paying? A Yes, sir, if there is nobody down there -- they have a little lobby where there is a box and table at Huber's and it was 12 o'clock and nobody was down there and so we went right up and were not stopped.

Q How old are you? A 17.

Q What was the party up at Wireless? A A little social gathering they got up among themselves.

Q Had that dance closed? A We went down to Huber's.

Q Was there any trouble up at Wireless? A No.

Q Why did they close so early that evening? A I don't know, just a social gathering, and then happened to close.

Why, I don't know.

Q Don't you remember some trouble at Wireless? A No.

Q None at all? A No trouble at all.

Q How far is it from Wireless over to Huber's? A I can not say, I never judged the distance.

Q About how many came along on this car with you?

A I cannot say how many, because I don't know whether they came in that car or the car after. I don't know.

Q Did you see Dooley coming upstairs? A No, sir, I saw

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him when he was at the top of the stairs. I did not see him come up.

Q You did not see him come up? A No.

Q Did you see whom he went to the dance with? A No.

Q Don't you know a young lady by the name of Helen McGrath? A Yes.

Q She was with him? A I really don't know. They came back of us, I really don't know who was coming back of us .

Q Did you see this man take the axe off the wall?

A Mann?

Q Yes. A No, sir.

Q I do not mean Mr. Mann -- I mean anybody take an axe off the wall? A No, sir.

Q You did not see that? A No, I did not see that part.

Q You did not see anybody throw an axe? A No.

BY THE COURT:

Q How did you learn an axe was thrown? A I learned that Monday morning when Mr. Woods was arrested.

Q How long have you known the defendant? A I have known Ned Dooley since I have been living up in Harlem, that is going on four years.

BY MR. STRONG:

Q Who did you say was hitting Dooley when they had him down on the floor? A Several of them, I really don't know who

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they were, but there were several of them.

Q At the time that they had him on the floor did you see Officer Burggraf? A No, sir.

Q Do you know him? A No, sir.

(Officer Burggraf stands up at the bar).

Q Have you ever seen him before? A Not to my knowledge, only down here.

Q Did not see him there at the dance? A Might have been there but I did not notice him or take any particular notice of him.

Q When was the first time you learned anybody had been hit in the head? A Monday morning.

Q You knew the man had been seriously injured? A No.

Q Just knew that he had a skull fractured? A Yes, sir, I knew that part.

Q That is a serious injury isn't it? A Well, it was not given to me as information that he was seriously hurt.

Q You knew he had a fractured skull? A Yes, I knew from reading the paper.

Q You knew Dooley had been arrested for that? A Yes -- four of them.

Q Did you know at that time whether Dooley had thrown this axe or not? A I knew in my heart and soul he did not, because he is not the kind of fellow to do those thing.

Q That is the reason you come and testify for him, because

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you know in your heart and soul he would not? A I know he did not because mostlikely at the time the axe was thrown, as they say, at the time it was thrown he was down on the floor getting beat.

Q That is the time you heard a thud on the stairs?

A That was the time.

Q I thought you testified that you did not hear the thud on the stairs until five minutes after? A Yes, but he was still getting beat, still on the floor.

Q In the ballroom? A In the ballroom.

Q By whom? A By those two fellows that I cannot identify.

Q Were all his friends in the ballroom, too? A Yes.

Q How many? A There was about ten or 12 fellows, I should judge.

Q And he was getting beaten up by two? A Yes.

The Court admonishes the jury in accordance with Section 415 of the code of Criminal Procedure and takes an adjournment until tomorrow morning, October 21st, 1913, at 10:30 A. M.

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New York, October 21st, 1913,

Trial resumed.

ANNA NICHOLS called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:
(Residence 305 West 145th street).

DIRECT EXAMINATION BY MR. GRIER:

Q On the 17th of May, were you with a party at Wireless Hall at 171st street? A Yes.

Q Near Jerome Avenue? A Yes.

Q And what time did you leave there? A About 12 o'clock.

Q While there did you see the defendant Edward Dooley at that party? A Yes.

THE COURT: Let the witness testify. Do not lead her.

BY MR. GRIER:

Q Now will you state in your own way everything that you remember taking place from the time you left Wireless Hall until you finally left for home? A Yes.

Q And keep your voice up? A Yes. We got on the car to go home and we heard music playing in Huber's and we got off and went to go upstairs and I took my time going across the street and they all went ahead of me and went to go upstairs and I seen Mr. Dooley paying -- getting his money out to give to the man at the door, and I seen the man slap Mr. Dooley in the face. When I seen the fight starting I went downstairs. As I went downstairs I seen some one holding a gun up to Mr. Woods.

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Q What? A I saw some one holding a gun up to Mr. Woods and I went down and asked him couldn't I take Mr. Woods away, and I took Mr. Woods away and walked away with him.

Q That was down in front of the place? A In front of the door.

Q Where did you go then? A I walked home.

Q You were not up in the ballroom at all? A No.

Q You did not see any fight up in the ballroom? A No, I was not up there.

Q Did you see Edward Dooley that morning, or immediately after you left the hall? A Ned came across the bridge, caught up to me.

Q He was in the party that caught up to you going across Central Bridge? A Yes.

Q What was his condition, as to his physical condition, when he came up to where you were? A Just walked up with us.

Q What was his condition as to his clothes and his appearance? A All right.

CROSS EXAMINATION BY MR. STRONG:

Q Did not have any cuts upon his face? A Not that I could see.

Q His tie was all in order and shirt all in order? A Yes.

Q Collar in order? A Yes.

BY THE COURT:

Q No dirt on his clothes, A His suit was dirty.

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Q Are you sure about that? A Yes, his suit was dirty.

BY MR. STRONG:

Q You took a good look at him? A Yes.

Q How many got off the car to go up to this dance at Huber's with you? A A good many got off the car.

Q About thirty? A Yes.

Q You hung back? A Yes.

Q Behind the rest? A Yes.

Q With Woods? A Yes.

Q Woods was your companion? A Yes.

Q He is the man that was arrested with Dooley? A Yes.

Q You saw when he got up to the top of the stairs? A Yes.

Q He was ahead of the rest at that time? A Yes.

Q You saw him getting his money out? A Yes.

Q Did you see how much he had in his hand? A I was downstairs. I just saw him getting his hand in his pocket and getting the money out.

Q As soon as he got up the stairs, he put his hand in his pocket to take the money out? A Yes.

Q Did you see anybody standing at the head of the stairs?
A Yes, there was a man.

Q And some ladies? A Yes, sir, a lady in white.

Q Did you hear what Dooley said to the lady? A No.

Q Did you hear what the lady said to Dooley? A No.

Q Were any of the girls up alongside of Dooley when he was

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going in? A There was a short girl.

Q She was with Dooley? A Yes.

RE-DIRECT EXAMINATION BY MR. GRIER:

Q Did you take a good look at the man who was holding or pointing the gun towards Wood? A Yes.

Q Would you be able to describe him? A Yes.

Q What sort of a looking man was he? A He was a stout man with a dark mustache.

Q You did not know him? A No, I did not know him before.

(Officer Hinners is brought to the bar)

Q Do you recognize the man? A Yes.

Q Is that the man that you saw at the foot of the stairs in front of Huber's? A Yes, it was outside.

Q On the outside? A Yes.

Q He had a gun out? A Yes.

Q And was pointing it at Woods? A Yes.

Q Do you remember what Woods said to him and what he said to Woods? A He told Woods he would shoot him if he did not go away and so I took Woods by the arm and walked him away.

Q What did you say to this Mr. Hinners? A I told him Woods was my brother.

Q Told him he was your brother? A Yes.

Q He was not your brother? A No.

Q But he was your friend that night? A Yes.

Q You were in his company? A Yes.

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Q Did Woods come down on the car with you from the Wireless?

A Yes.

Q Did he leave you at any time after you reached Huber's?

A No, sir, went right home with us.

Q Did he go up in the hall? A No, sir, he was not up in the hall at all.

RE-CROSS EXAMINATION BY MR. STRONG:

Q You did not go upstairs at all, did you? A No, sir, I was part way upstairs.

Q Didn't you say that as you were coming downstairs you saw an officer pointing a gun at Woods? A Yes, sir, I was part of the way upstairs. I was not up in the hall.

Q Was Dooley out there, when you saw an officer pointing the gun at Woods? A No, Dooley was upstairs.

Q Didn't you say "For God's sake don't shoot," to Woods? A No, sir, Woods did not have a gun.

Q Didn't he put his hand in his pocket, pointing it like that (indicating)? A Woods did not have any gun.

THE COURT: Illustrate that again.

BY MR. STRONG:

Q Did he have his hand in his pocket pointing at the officer with a gun? A No, he did not have any gun.

BY THE COURT:

Q Did he have his hand in his pocket and point in the manner indicated by the District Attorney, at the officer? A No, sir, he did not have his hand in his pocket at all.

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BY MR. STRONG:

Q What had Woods done before the officer pointed the gun at him? A When I went downstairs the officer had the gun up to Woods, pointing it at him.

Q You were with Woods all the time? A I was going upstairs to the dance.

Q He was with you? A Yes.

Q What did he do to have an officer point a gun at him?

A I don't know.

J A M E S D O O L E Y, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 242 West 144th street).

DIRECT EXAMINATION BY MR. GRIER:

Q You are the brother of the defendant? A Yes.

Q Edward Dooley? A Yes.

Q Were you at Wireless Hall on May 17th? A Yes.

Q And afterwards did you go to another dance? A Yes.

Q Will you tell in your own way, and keep your voice up, everything that took place from the time you left Wireless Hall until you left the other dance that you attended later that evening -- who was with you and what you did and what you saw? A We came down from the dance 176th street and Jerome Avenue -- all came down -- I guess about fifteen or twenty-five -- I really

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couldn't tell how many -- came down in a car and half got off at 162nd street and Jerome Avenue, there was a dance going on there, and I guess there was about ten or fifteen went up together and with them my brother was amongst them and the girl, and I went over the bridge with two young fellows, and the girl came running down to me and said "Your brother is getting blackjacked up there by two men."

THE COURT: Strike that out.

THE WITNESS: I ran up in the hall when she told me that and with that I seen my brother in the cloakroom with two men holding him and one had a blackjack and another had a gun beating him. I tried to get my brother away from them and with that --

Q Don't you know those two men? A Yes, I know them if I seen them.

Q Have you seen them about the court? A Yes, I seen them here.

Q Did you know the names of those two men? A No.

Q Go on? A I said "Don't do that, please don't do that," and with that my brother was laid out on the floor unconscious and they left him alone and one man went outside with a gun in his hand, I think it was the officer, and about four or five women grabbed hold of him and told him to put the gun away, and he said "No, I want to shoot one of them," and the women grabbed hold of him and he tried to wrestle with the women and finally

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got the best of the women and a young man rushed over to the wall and the special officer came in and grabbed my brother then and started to wrestle with my brother again and tried to drag him to the head of the stairs and throw him down, or tried to take him down, and with that both of them wrestled on the floor. I tried to get my brother away from him and three or four more fellows helped me get him away, and with that a young fellow run to the wall and grabbed the axe on the wall and the axe fell and he picked it up again and then there was a kind of a rumpus around the stairs and as this officer was trying to get down -- it looked as if he was trying to get away to blow his whistle or something, as he was trying to get away he threw the axe that way -- I don't know if the axe hit him, and then I got my brother away and said "Ned, come on," and the special officer let him alone and I went downstairs with him and met an officer downstairs and he had a gun in his hand and he said to me --

Objected to.

THE COURT: That evidence is competent.

BY THE COURT:

Q Do you recognize that man? A Yes, I could recognize him.

Q Do you see him here? A Yes, I seen him here.

Q Do you see him around this court room? A Yes.

Q Is that Officer Hinnners? A I couldn't tell you his name.

(Officer Hinnners stands up in the court room).

Q Is that the man? A That is the man and I seen him out-

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side and he held a gun to my brother and he said "Get him away from here before I shoot him." I said to him "Please don't shoot my brother." There was a young man there with him by the name of Woods and this man said "Where is that man that threw that axe" and I said I didn't know, I didn't really know the man threw the axe -- I didn't know who got hit; he just threw it downstairs. He said "Get him away from here before I pill him" and I pleaded with that man to let him alone and he said "Take him down over the bridge" and everybody went down over the bridge and it was fully fifteen or twenty minutes they stood on the corner after that happened and that man was still there.

BY MR. GRIER:

Q What man? A He stood on the corner blowing his whistle. Everybody kind of scattered and scattered over the bridge -- nobody run but all walked.

Q Where you say you stood about fifteen minutes on the bridge, could you see Huber's from where you were standing on the bridge? A Yes.

Q The approach to the Central bridge? A Yes.

Q You say you saw somebody go to the wall and take down an axe, did you know who that was? A Yes.

Q What was his name? A Morty Walsh. He is the young man.

Q When he took down the axe from the wall, you say he let it drop? A He dropped it, yes.

Q And then what did you see him do after that? A He picked

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it up quick again and then he ran over to the stairs.

Q How far did he run? A I guess from fifteen to twenty-five foot.

Q Was there a large crowd around there at that time? A Yes.

Q You say there was an officer, you saw an officer struggling with some people, with a gun in his hand? A Yes.

Q Would you know that officer? A Yes, sir, I would.

Q Do you know what his name is? A I don't know his name.

Q Was it the officer that was hurt in that fight? A That I could not say, because it was kind of a tall man and everything was kind of excited at the time and I really couldn't tell; just took a glance at him and saw him wrestling with four or five women around.

Q At that time was he wrestling with your brother? A No, the special officer had hold of my brother, wrestling with him.

Q This officer that you have been speaking about before was not at that time wrestling with your brother? A No, he left him in the coatroom and went outside.

Q Would you be able to identify that officer? A What officer?

Q The officer that was wrestling, that was struggling with a number of people with a gun in his hand? A Yes I could.

(The complainant Burggraf stands up in the court room).

THE WITNESS: That is the officer.

BY MR. GRIER:

Q That is the officer you saw struggling with a number of

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people? A Yes.

Q Do you know the name of that special officer? A No, I could not tell you.

Q How was he dressed? A Had his uniform on.

Q What kind of a uniform? A Regular special officer's uniform.

Q What color? A Gray and had a badge and a gray hat.

Q Had you ever seen him before that? A Never saw him before that night.

Q Have you seen him in court? A No, I have not seen him in court.

CROSS EXAMINATION BY MR. STRONG:

Q How many brothers have you? A I did have seven I have got five left.

Q You are Helen McGrath's friend? A Yes.

Q Do you know that gentleman (indicating a gentleman who states that his name is Fleming)? A No, sir.

Q Never saw him before? A Never saw him before, no, sir.

Q Did you assault him? A Never -- never remember.

Objected to as incompetent, irrelevant and immaterial.

BY THE COURT:

Q What do you mean by never remember? A I never saw the man.

MR. GRIER: I object to it.

THE COURT: The District Attorney has a right to prove,

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if he can, any vicious, criminal or immoral act committed by a witness, for the purpose of having the jury consider the same as bearing upon the witness' credibility but, where the District Attorney has inquired and the witness answers in the negative, the People are bound by the answer and the jury must not draw any unfavorable inference because of the question propounded by the District Attorney, nor from the fact that the person is present in court who was called by the District Attorney. You gentlemen must not draw any unfavorable inference against this witness. The People are bound by what he says, it being a collateral matter.

BY MR. STRONG:

Q Do you know a man by the name of Connolly? A Yes, sir.

Q Do you remember a certain occurrence that took place between you and Connolly on about September 7th, 1912? A I remember when --

Objected to. Objection sustained to the form of the question.

Q What happened between you and Connolly on September 12th, 1912?

Objected to. Sustained.

Q Did you assault Connolly on September 7th, 1912? A No.

THE COURT: I will allow the question but, the people are bound by the witness' answer, and the Court again repeats that you gentlemen of the jury must not draw any un-

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favorable inference because of the question put by the District Attorney to the witness.

BY MR. STRONG:

Q Were you present when Connolly was arrested September 7th, 1912? A Yes.

Q You were? A Yes.

Q Did you do anything at that time? A No.

Objected to. Objection sustained.

Q You say you know Officer Hinnners? A Yes if I seen him.

(Officer Hinnners arises in the court room).

Q That is Officer Hinnners, you know him? A Yes.

Q He is the man who pointed a gun at your brother? A Yes.

Q Did he point the gun at anybody else? A He pointed the gun at Woods and my brother both on the sidewalk.

Q Did you hear anybody say anything out there? A No, sir, only this here man himself.

Q This man, the officer, Hinnners, said to you "Where is that man that threw the axe," is that right? A That I could not say because I was all excited.

Q Is that your testimony? A That I couldn't say because I was all excited trying to get my brother away from that man with the gun.

Q Is not that your testimony here? A I don't know if it is or not.

MR. STRONG: I ask to have it read.

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(The stenographer reads the following from the direct-examination of the witness: "There was a young man there with him by the name of Woods and this man said 'Where is that man that threw that axe,' and I said 'I did not know,' I did not know the man really threw the axe, I did not know who he hit, he just threw it downstairs.")

BY MR. STRONG:

Q You remember making that statement on the witness stand?

A That I could not say, I was excited when I came in.

Q You are the brother of the defendant? A Yes, sir, I am.

Q You did not go up in the hall with him? A No, I did not.

Q You do not know how the fight started? A No, I do not.

Q Who were you going in the hall with? A That I could not say because I was all excited when my brother got hit with the axe.

Q What? A I went in the hall, when my brother was fighting with these two men upstairs, and this girl came down and said my brother was getting hit.

Q Who did you go up to the hall with? A Morty Walsh and --

Q You went with Morty Walsh? A Yes.

Q It was your friend threw the axe, is that right? A I don't know if he is a friend of mine or who he is a friend of, but he went up in the hall with me.

Q You had known him before? A No, I just knew him by seeing him.

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Q How long have you known Christopher Woods? A About five months. I never talked to the man much at all.

Q You have been convicted of disorderly conduct, haven't you? A \$5. fine.

Q That is what I ask you? A Yes.

BY MR. GRIER:

Q There was a great deal of excitement among all of the people around there? A Yes.

Q A large crowd around there? A Yes.

C H R I S T O P H E R W O O D S, called as a witness in behalf of the defendants, being duly sworn and examined, testified as follows:

(Residence 225 West 148th street).

DIRECT EXAMINATION BY MR. GRIER:

Q You are co-defendant in the indictment with the defendant Edward Dooley? A Yes.

Q And you pleaded guilty on the indictment simple assault? A Yes, assault in the third degree.

Q You are now awaiting sentence in the Tombs? A Yes.

Q Will you state what took place from the time you left Wireless Hall, if you were there, until after you left Huber's Casino on the morning of the 18th of May? A I really couldn't tell you what time.

Q Tell us everything that took place, that you saw, what

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you did? A I went up in this hall and I started to dance and a quarrel started and a man hit me and I don't know who he was, and I hit him back and went out of the hall. That is all I seen.

Q You went out of the hall? A Yes.

Q Did you see Dooley when you were up in the hall? A No, I did not.

Q Did you see any axe being flourished by any one? A No, sir, I did not.

Q Did you see an axe taken off the wall? A No.

Q Did you see an axe dropped over? A No.

THE COURT: He said he was outside. He said a man hit him and he hit the man and he went out of the hall.

BY THE COURT:

Q You did not see Dooley in the hall? A No.

BY MR. GRIER:

Q What took place outside of Huber's? A Nothing took place outside.

Q Did you see anybody out there? A Yes, sir, a man stopped me and asked me was I in it and I said no, and I went about my business then.

Q Did the man have a pistol in his hand? A Yes.

Q Did you, while you were down in front of the door, and this man was speaking to you, have a pistol in your coat pocket aiming at the officer? A No, I never carried a gun in my life.

Meyer had no gun.

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Q Did you, while in the hall, have a pistol flourishing it over the heads of the people there? A No, sir, I did not.

Q Did you see Officer Burggraf in a fight with anybody out in the ballroom floor? A No.

Q Did you pass around behind him and strike him on the head with something that you had in your hand? A No, I did not see no officer at all.

Q Did you knock him down on the floor? A No, I did not.

Q Which stairway did you go down, the stairway towards Jerome Avenue or the side stairway? A The front entrance, what I came in.

CROSS EXAMINATION BY MR. STRONG:

Q You did not do anything up there that night except get hit and hit back once, is that right? A Yes.

Q You pleaded guilty to assault in the third degree? A Yes.

Q For this offense? A Yes.

BY THE COURT:

Q Whom did you assault? A I don't know who he was.

(The complainant Burggraf stands up in the court room)

BY THE COURT:

Q Do you recognize this man? A No, sir, I do not.

MR. GRIER: If your Honor please, I have directed subpoenas to be served upon three other witnesses -- one who has been under subpoena by the People every day until yesterday, and I directed a subpoena be served upon him last night.

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I was told it was served upon him but he is not here --that is William Mann. I would like an opportunity to have him produced. He has been here every day.

THE COURT: Was this man subpoenaed?

MR. STRONG: He has been on our subpoena list. I am informed he has given the excuse he has a mother in a very serious condition, and that is the reason he has not come down, but I was not going to use him. I have had him under subpoena.

MR. GRIER: He was here yesterday.

MR. STRONG: Yes, he was here every day.

THE COURT: What do you want to show by the witness Mann?

MR. GRIER: He was arrested at the same time or on the same charge, and was discharged by the Grand Jury. He was there, and it has been testified to here that he with two girls were the first to enter the hall of this party with which Dooley came.

THE COURT: The District Attorney might concede that. There is no claim that Mann assaulted the complainant, is there?

MR. STRONG: No, there is no complaint that Mann did anything.

MR. GRIER: There was a complaint he was arrested and held by the Grand Jury.

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THE COURT: Will you concede what he intends to prove by this witness?

MR. STRONG: I really don't know what he is going to prove by this witness.

THE COURT: Can you have Mann here by two o'clock?

MR. GRIER: I can make an effort to have him here. I think he said to the man that gave him the subpoena last night that he would not come.

MR. STRONG: I will concede that Mann was one of the men that went in the dance hall with the rest of this crowd, but that is all I can consistently concede.

THE COURT: And that he was arrested and discharged?

MR. STRONG: Arrested, and that the Grand Jury refused to indict him.

MR. GRIER: I do not know that the witness Mann could give anything except cumulative testimony. I cannot go far enough to say that he would give any original new testimony--probably it would be cumulative.

THE COURT: The District Attorney is willing to make the concession.

MR. GRIER: Then I have had under subpoena for several days William Smith. He has refused to come. That is the William Smith who has been mentioned a number of times in the testimony.

THE COURT: I will give you an attachment for him if

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he fails to appear. Where is he?

MR. GRIER: He is employed in some bank and says he would lose his position if he came to court. That was his reason. I have his address, 2325 Seventh Avenue.

THE COURT: I will issue an attachment for him if you make an affidavit that you served him and he failed to appear.

MR. GRIER: I did not serve him but I think the party who did serve him will make such an affidavit.

THE COURT: Make the affidavit and I will order his arrest. Do you want the case to go over until to-morrow?

MR. GRIER: Those three witnesses I think could be gotten here by to-morrow morning.

THE COURT: Then I will give you an adjournment until to-morrow but not later. You should have made this application yesterday.

MR. GRIER: Mann was here and I figured these other people would not be needed until to-day, but I have had them under subpoena.

THE COURT: You make your affidavit and I will grant you an attachment against the witnesses who fail to appear. The only thing is I do not like to delay the case.

MR. GRIER: I do not want to delay it.

THE COURT: Why is not the District Attorney's concession broad enough to cover the case?

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MR. GRIER: Probably covers Mann.

THE COURT: What do you want to prove by the others?

MR. GRIER: Wilfred Reeder was mentioned by one of the witnesses as being in the second couple that entered the hall. First Mann with two witnesses and then the witness with Wilfred Reeder. They were dancing and their attention was attracted to this.

THE COURT: Why can you not proceed. You have some other witnesses? Proceed with the other branch of the case.

MR. GRIER: The only other witness I have is the defendant but I will have to have some time to prepare the affidavit.

THE COURT: Can you not send up one of your officers, Mr. Strong, to-morrow morning, and bring those witnesses here?

MR. STRONG: We can send out now and try to get these men down here.

MR. GRIER: It is not out of place to say that I was assigned to the case and I have not been able to put the work and expense into it that I would like to have done.

THE COURT: You give the names of the persons you wish brought down, to the District Attorney, and he will send out officers to produce the witnesses by half past two.

EDWARD DOOLEY, the defendant, called as a witness in his own behalf, being duly sworn and examined, testified

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as follows:

(Residence 242 West 144th street).

DIRECT EXAMINATION BY MR. GRIER:

Q You are the defendant in this case? A Yes, sir.

Q Now Edward will you keep your voice up so that every member of the jury can hear you -- every word you say? A Yes.

Q Will you state now in your own way everything that took place on the night of the 17th of May and the morning of the 18th of May, from the time you left Wireless Hall? A Yes.

Q Until you got home? A Yes. Left Wireless Hall -- I don't know exactly what time it was, but around twelve or after; came down in the car and the car did not stop outside of Huber's -- pulled the bell and it did not stop. So a couple jumped up and pulled the bell again and it slowed down and stopped there. I got off and there was about six got off ahead of me -- three couples got off ahead of me and started walking before me and I and Helen McGrath walked along beside one another and then these three couple went up to the hall before we did -- walked right in and then we came and usually there is somebody in the door downstairs --

MR. STRONG: I object to that.

Objection sustained.

BY MR. GRIER:

Q Was there anybody downstairs? A Nobody there.

Q Go on? A There was nobody there to collect any money and

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so we went upstairs. When we got to the top of the stairs I stood there for a moment and then three women approached me and said "Where are you going?" I said "I want to go into the dance" and she said "You cannot come here, you were not here before." I said "Cannot I pay" and before I could say any more Moshier came and smashed me in the face. What he done it for I don't know. He smashed me in the face and when he smashed me, I kicked him back. As soon as I kicked him, Officer Nevins grabbed me by the arm and a special officer grabbed me and started to beat me. I don't know what happened from that time until the time -- well, about -- must have been an awful rumpus around the hall because my brother came over --

Objected to.

Q You say your brother came over to you? A Yes.

Q What happened? A Picked me up and stuck my hat on my head and he said "Come on Ned, come out of here," and went downstairs and Officer Nevins was there.

Q Officer Nevins -- do you use that name knowing whether that is his actual name or not? A Yes, since then I learned it was his name.

Q Have you seen him in court? A Yes.

Q Can you describe him? A After seeing enough of him to describe him.

Q Officer Nevins you say? A Yes.

Q You don't mean Hinnners? A Hinnners, that's the one.

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Q Now go on and tell us? A When I got downstairs he was standing there and he had a gun out and blowing a whistle and he was pointing the gun at everybody that came out of the hall. When I came down with my brother he said, "Get out of here or I will plug you." He said "Get out or I will plug you" and my brother said "Don't shoot him," and my brother dragged me away and we stood up on the bridge about two blocks away from it and then stood there about five minutes, I brushed my clothes off and then we walked down the avenue and went home.

Q When you were struck at the head of the stairs, you say you kicked back? A Yes.

Q That is, at Moshier? A Yes.

Q Did you see Officer Hinnars at that time? A I did not see him at that time, but there was some one had me by the arm and found out later it was him.

Q Did you see a special officer in uniform? A Yes.

Q At that time? A Yes.

Q What did he do? A He was the first ^{one} struck me after I kicked Moshier, struck me with a blackjack.

Q After he struck you with the blackjack, what did you do? A I lost my consciousness -- I was knocked out, and I then started getting kicked.

Q Do you recall any time you were out in the ballroom, in the midst of a fight outside of the coatroom, in the ballroom? A No, I cannot recall that.

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Q You do not recall a fight out in the ballroom? A No.

Q Do you remember going over to the wall and taking down an axe from the wall? A No.

Q Do you remember going over to the railing leading down from the ballroom, down to the side, going to that railing and throwing an axe over that railing? A No.

Q Do you remember seeing Officer Burggraf that night?

(Officer Burggraf stands up in the court room).

A I cannot recollect whether I saw him or not.

Q Do you remember seeing some officer open up his coat and show a badge and declare himself to be an officer? A I never knew there was an officer in the place until I got downstairs and saw Hinnere blowing his whistle, and his gun. He had a badge on at that time. That was the first time I found out there was a policeman around the place at all.

Q Did you say at any time, referring to Officer Burggraf, "That is the man that we want to get", or something to that effect? A No, never seen or took notice of Burggraf all the time I was in the hall.

Q You have been convicted and sent to the House of Refuge, have you not? A Yes.

Q When was that? A 1908, in May.

Q What were you sent there for? A I understood it was for truancy but put it up as arson, after I went there -- the truant officer arrested me and when I was arrested and taken down below,

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it was arson.

Q Did you know what was burned? A There was a fruit stand set on fire where they keep their fruit, that was set on fire and I was accused of being there that night at the fire. My mother had signed papers to have me put in the truant school because I was not going to school, and the truant officer, McManus, caught me one night and said "Ed, come on, I will take you home." I was to school that day but had not been for two weeks before that.

BY THE COURT:

Q How long ago was this? A That was in 1908, going on six years now.

Q How long were you in the House of Refuge? A I think it was sixteen months and a half.

Q When were you released from the House of Refuge? A October 16, 1909.

Q How old were you then? A When I left the House of Refuge I think sixteen, going on sixteen.

Q How old are you now? A Nineteen -- fifteen or sixteen, I don't remember just how old I was.

CROSS EXAMINATION BY MR. STRONG:

Q You were tried in the Court of Special Sessions and convicted of the crime of arson? A No, trial -- the Judge listened to my record and he said I had not been going to school or nothing, and sentenced me to the House of Refuge. The truant offi-

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cer spoke up and said I was not going to school.

Q You were convicted before that, weren't you? A Not that I know of, but I was arrested.

Q For disorderly conduct, \$5., wasn't it? A No.

Q Or three dollars? A I don't recollect it.

Q In the Children's Court, in the same court? A I never knew my mother to pay three dollars there.

Q Have you a brother named Edwin Dooley? A I am Edward.

Q Edwin or Edward? A Edwin or Edward, I don't know. It is mixed up.

Q Called by both names? A Yes.

Q When was the first time you were sent to the House of Refuge? A In May 1903.

Q And paroled? A Yes, sir, paroled after that.

Q How long had you been in before you were paroled? A I think it was sixteen months and a half or seventeen and a half.

Q And then when did your parole terminate? A It don't terminate until I am twenty one, my twenty first birthday.

Q It keeps on? A Yes.

Q Were you not paroled once before that? A Never?

Q That is the only time? A Yes, that is all I remember.

Q Now you remember Officer Hazlett who arrested you? A Yes.

Q Did you tell him you were drunk that night? A I did not tell him I was drunk, I said I had a little beer in me and he said you were intoxicated, and I said "I had a couple of drinks

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but was not drunk."

Q So you were not drunk on the night this happened? A I had a couple of drinks in me, but was not intoxicated.

Q That is what I want to know, you had your senses about you? A Yes.

Q You knew what you were doing, didn't you? A Yes.

Q Is to-day the first time you have ever seen Officer Burggraf? A No, I seen him in the hospital when he identified me.

Q I mean before you saw him in the hospital -- don't you remember when Officer Burggraf used to be on post in a certain locality? A I never saw him before. Officer Burggraf is in 126th street station house and I live in 144th street. He could not be up in that district. I never saw him before that.

Q When I talk of Officer Burggraf I mean that man (indicating the complaining witness)? A Yes, sir, I know whom you mean.

Q Don't you remember seeing him at the corner of 148th street and 8th avenue on post several times? A No, sir, never saw him there.

Q You and your gang used to hang out around there? A I don't hang out with no gang.

MR. GRIER: I object as improper.

THE COURT: I overrule the objection.

MR. STRONG: There have been witnesses on the stand here time and time again who spoke about the bunch and the crowd and the gang.

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THE COURT: I overruled the objection. Exception.

BY MR. STRONG:

Q That is where your gang used to hang out, is it not?

A No, I used to hang out down in 141st street.

Q And things have been made hot for them, by that officer, and they had to move out of that locality? A I never hung out in 48th street.

BY THE COURT:

Q Do you mean 48th or 148th? A 148th. Never was up in that neighborhood.

BY MR. STRONG:

Q How long after you got to the head of those stairs did you lose consciousness? A Right away. I was knocked no more than I hit the top of the stairs, knocked right out there, after talking to the woman about half a minute, I was knocked in.

Q When did you regain consciousness? A I couldn't say; I don't know how long it was after.

Q Where were you when you regained consciousness? A I was outside in the street when I really had my senses back, out on the street.

Q So from the time you were at the top of the stairs, hit on the head with a blackjack, until you got out in the street, you don't remember a single thing that happened? A No, sir.

The Court admonishes the jury in accordance with

Section 415 of the Court of Criminal Procedure, and takes a recess until 2 o'clock.

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AFTER RECESS. TRIAL RESUMED.

MR. GRIER: I understand the District Attorney has no report yet from the officers sent to subpoena the three witnesses that I named. I dislike to ask for an adjournment but I think perhaps in fairness to the defendant, I should ask for an adjournment until to-morrow morning.

THE COURT: Have you any testimony you can offer this afternoon?

MR. STRONG: I have only the evidence I wish to produce in rebuttal.

THE COURT: How many witnesses?

MR. STRONG: I think about four.

THE COURT: Then I think we might profitably use our time in examining them.

MR. GRIER: I have no objection to the witnesses being called in rebuttal at this time.

A L V I A R O G E R S, called as a witness by the People, in rebuttal, being duly sworn and examined, testified as follows:

(Residence 1038 East 165th street).

DIRECT EXAMINATION BY MR. STRONG:

Q Are you connected with some society who gave a dance at Huber's Casino? A I am.

Q What was that society? A Women's Loyal Moose Circle, is the name.

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Q Were you at Huber's Casino on May 17th? A Yes.

Q And did you have any special function to perform there that evening? A I was one of the door committee.

Q Do you remember what occurred about 12 o'clock at the door there -- where were you standing about that time? A I was at the head of the stairs.

Q That is, the stairs leading up from Jerome Avenue? A Yes.

Q Just tell the jury in your own way what happened at the head of the stairs?

MR. GRIER: I object to this as not being proper rebuttal.

THE COURT: I will allow the evidence as though it were given in chief, under a provision of the Code it is discretionary with the Court.

Exception.

BY MR. STRONG:

Q Tell the jury what happened when you were standing there at the head of the stairs? A There was some four or five boys and two girls tried to force admittance.

THE COURT: Strike out "Tried to force admittance" -- state the acts that took place. Do not characterize the acts. When you say they tried to force admittance, that is stating a conclusion of the fact. Let the jury infer.

BY THE COURT:

Q You say there were four or five boys and two girls; now

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state exactly what took place? A They were trying to come in without paying and I saw that there was going to be a disturbance and my mind was to get hold of some man.

Q What did you do? A I went from there to get a man.

Q Did any one offer to pay you? A No one offered to pay.

Q How many other ladies were there standing at the head of the stairs along with you? A Some six or seven.

Q Do you know their names? A I do not.

Q Did you have any mark or badge upon you showing that you were one of the committee? A Yes.

Q What did you have upon you? A I had the regular Circle badge, red with gold letters of the Women's Circle.

Q After these men tried to get in without paying, what did you do? A I went for a man to try to keep them out.

Q Did you come back again? A No, sir.

Q Were you able to recognize any of the boys and girls that tried to come in? A No, sir.

CROSS EXAMINATION BY MR. GRIER :

Q Now Mrs. Rogers, the other women that were there at the head of the stairs, also had badges? A Yes.

Q And they were there for the same purpose you were? A Yes.

Q Members of the door committee? A Yes.

Q And when these people, four or five boys and two girls came to the head of the stairs, you went to get a man to come there to your assistance? A Yes.

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Q You did not come back? A No.

Q Of course you don't know whether any of those seeking admission offered to pay the other women that were left there, when you left for the man -- you don't know what took place after you left? A Certainly I do not.

BY THE COURT:

Q Did you have any conversation with those persons, did you have any talk with them? A Those desiring admittance?

Q Yes? A None whatever.

BY MR. STRONG:

Q Did you hear any one of those who were trying to come in, say anything? A There was one said "I will show you if I don't get in."

THE COURT: Strike that out -- unless you can connect the defendant with it.

BY MR. STRONG:

Q You don't know if it was said in the presence of this defendant or not? A No.

GRACE CRUTHERS, called as a witness in behalf of the People, in rebuttal, being duly sworn and examined, testified as follows:

(Residence 458 East 144th).

DIRECT EXAMINATION BY MR. STRONG:

Q Did you go to Huber's Casino on the evening of May 17th?
A Yes.

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Q Who did you go there with? A John Burggraf.

Q Anybody else in the party? A Yes, sir, there was six couple I think.

Q Six of you? A Six of us.

Q Who else was along? A There was nobody else -- there was Joe Burggraf and Lillie Jennings and Ella Dalton.

Q Do you remember the time, about 12 o'clock, when there was some disturbance there? A Yes.

Q What did you see Burggraf do or what were you and Burggraf doing at that time? A I was dancing at the time with Mr. Burggraf when the fight started, and the music stopped and he left me and went to the check room.

Q Went to the coatroom? A Yes.

Q Did you see Dooley, the defendant here, after Burggraf went into the coatroom? A No, sir, I did not see him.

Q Did you see Dooley? A No, sir.

Q Do you know what happened in the coatroom? A I do not know what happened in the coatroom. When he left me I called for his brother Joe --

Objected to.

THE COURT: Strike it out.

MR. STRONG: I consent to have it struck out.

BY MR. STRONG:

Q After that what happened? A I called for his brother Joe, and then Mr. Burggraf came out of the checkroom and as he walked

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over towards the stairs --

Q Which stairs was that, the one that you had come into the dance hall or the other? A No, the other stairs.

Q He walked over there? A Yes, sir, and one of the fellows came along and struck him alongside of the face.

Q Do you know who that was? A Woods -- a fellow by the name of Woods.

Q After Woods had struck him, do you know what happened?
A I got caught in between some chairs, and one of the men that was at the dance picked me up and carried me a short distance over in the dance hall.

Q Did you see Dooley over there at any time? A I did not see him then but as I came back, when I was coming back, I was about ten feet away and I saw some young fellow come running past me with an axe and over to the stairs.

Q With an axe? A Yes.

Q Do you know who that was? A No.

Q You could not recognize his face? A No, I could not recognize it.

Q And you don't know who it was? A No.

Q Do you know who it was took care of you when you fainted?
A Yes.

Q Do you know who it was? A Yes.

Q What is his name? A A young man that is here, Troy.

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CROSS EXAMINATION:

Q Is that the Troy that was a witness here some days ago, I think on Friday -- does he live at Brewster? A I don't know where he lives.

Q Were you here Friday? A Yes, I was here Friday.

Q Was the person whose name is Troy, was he here on Friday as a witness, do you know? A I do not know really, I could not say.

MR. STRONG: I will concede it is the same man, but she was not in the court room.

BY MR. GRIER:

Q What part of the ballroom were you in when Troy took you away from where the fight was going on? A The northwest.

Q Northwest corner -- did you come back after that? A I came running right back.

Q You knew what you were doing when Troy took you over to the east end of the hall? A I knew what I was doing.

Q You were not in a fainting condition at that time? A No.

Q Was it before that that you were in a fainting condition? A I was caught in between some chairs and was afraid I would get hit or something would happen to me.

Q That was in the northwest corner? A Yes.

Q West of the stairway leading down from the ballroom -- you came directly back, and when you were coming back you saw somebody take an axe off the wall? A I did not see the axe being

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taken from the wall, but he rushed by me with the axe.

Q How far were you away when he rushed by you? A About eight feet.

Q A large crowd of people around there? A A large crowd.

Q You did not get a good view of the person? A No.

Q How far were you from Burggraf when you say he was struck on the side of the face? A I was about ten feet away from him.

Q Was that over in the northwest corner of the hall? A That was right over -- right a little ways from the checkroom, where the stairs go down and where the axe was thrown.

Q The stairway leading down from the ballroom is between the checkroom and the corner of the ballroom where you were, is it not? A Yes.

Q And Burggraf was over on the further side of the stairway beyond the stairway, at the coatroom or near the coatroom when you saw him struck in the face? A Yes.

Q What happened when he was struck in the face? A When he was struck in the face he staggered over towards the stairs.

Q And did you see what he had in his hands, A No.

Q Did you see if he had a pistol before he was struck or after he was struck? A No, I got caught in the chairs and I did not see anything and then I was picked up and carried over a little ways.

Q The last you saw of Mr. Burggraf he was staggering over towards the stairs? A Yes.

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Q Did you see him start downstairs? A No, sir, I did not see him start down the stairs.

Q At that time you were taken over to the east end of the hall? A Yes.

Q All the way over to the further end of the hall? A No, not all the way over, about twelve feet.

Q You were taken out of the crowd? A Taken out of the crowd.

Q And then did Mr. Troy leave you and go back? A Yes, he left me over there. I don't know if he came back or not. I did not watch to see where he went. I came running back.

Q You did not see what Troy did? A No, I did not see what Troy did.

Q You do not know if he came back towards the northwest corner or not? A I don't know where he went after he left me down. As soon as he left me down I came running back.

Q What did you do that for? A I wanted to see what happened

Q And at no time during that fight did you see the defendant? A No, sir.

Q You went there in company with Mr. Burggraf? A Yes, sir, as a guest.

RE-DIRECT EXAMINATION BY MR. STRONG:

Q I understand you to say that you do not know who there was in that gang ? A No, sir, I do not know.

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Q That were fighting? A No, sir.

Q You are not able to recognize anybody except Woods?

A That is all, yes, sir.

Q That is your testimony? A Yes, sir.

FREDERICK A. BUDDEMEYER, called as a witness in behalf of the People, in rebuttal, being duly sworn and examined, testified as follows:

(63rd Precinct Detective Bureau).

DIRECT EXAMINATION BY MR. STRONG:

Q How long have you been one of the detectives of this city? A Going on six years.

Q How long have you been a policeman? A Well, six years and a half.

Q Have you been in charge of the investigation of this case? A I was called to assist Detective Hazlitt.

Q You and Detective Hazlitt have been in charge of the investigation? A Yes.

Q At the time of the arrest of the defendants in this case, did you arrange the line-ups at the station house? A I arranged one line-up at the station house.

Q Which one was that? A That was I think two days after the defendant was arrested -- about two days after, as near as I can recall.

Q What did you do in that line-up?

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MR. GRIER: I object unless it is shown that the defendant was in that line-up.

BY MR. STRONG:

Q Was the defendant in that line-up? A The defendant was in the line-up.

Q What did you do in arranging that line-up? A I had four that was arrested for this particular case and I went outside to try to get some other boys about the same size as him.

Q As the defendant? A Yes, and I called three boys in. I have got their names here on the list, same paper I wrote it on that night.

MR. GRIER: I object to that as incompetent and immaterial.

BY MR. STRONG:

Q Put it up -- you got three boys in? A Three boys outside of the four defendants arrested in this case at that time.

Q You know their names, A Yes, I have their names.

Q You have them on your list -- now, who identified the defendant at that time?

Objected to. Sustained.

Q Just tell what witnesses were brought in, and how the defendant was identified? A There was a stand up and there was seven in the stand-up and the four defendants that were arrested in this case I told them to take any position that they wanted in the line-up and they did. I said any place you want to go,

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just take your position there. After they were ready to be seen I called Moshier --

Q You testify now from a memorandum you made at the time?

A Yes.

Q Can you testify from recollection? A Hardly.

BY THE COURT:

Q Does the memorandum refresh your recollection? A Yes.

Q And was that memorandum made by you shortly thereafter?

A Right after each one.

Q Is the memorandum in your own handwriting? A Yes.

BY MR. STRONG:

Q Since that time you have had other line-ups in different cases? A I know there was one other line-up that I was present at.

Q Now tell the jury what happened at this line-up? A At that line-up, Moshier, Charles Moshier identified Dooley--

Objected to.

THE COURT: I sustain the objection. Strike out the answer.

BY MR. STRONG:

Q Did you have a conversation with Strong before the line-up or anybody else? A Yes, I had a conversation -- no, not just before the line-up, but before the defendant was arrested.

Q Did you have a conversation with Moshier before the line-up? A No, only as much as to say --

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Q I do not care what you said, you said something to him?

A Yes, I said something.

Q After you said something to Moshier, what did you see him do? A He went along the line up and he picked out Dooley.

Q What did he do to Dooley, anything? A He picked -- I told him to place his hand on the man he identified --

THE COURT: Strike that out.

BY THE COURT:

Q What did he do, what did Moshier do, what act, if any-- what physical act did he do? A He walked right along the line and placed his hand upon Dooley and he said "There is the man that threw the axe."

MR. GRIER: I object to that and move to strike out what he said.

THE COURT: Strike out what he said.

BY THE COURT:

Q He put his hand on the defendant Dooley, is that right?

A Yes.

BY MR. STRONG:

Q Did you bring in any other witness? A Yes.

Q Who was that? A John Smoliker.

Q What did he do? A Went along the line and placed his hand on Dooley.

Q Was Smoliker in the room where the line-up was at the time that Moshier put his hand on him? A No.

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Q He was not, A No, they were in another room.

Q Did you bring in any other witness? A Yes.

Q Who? A Fred Kiesow.

Q Was Kiesow in the room at the time Moshier and Smoliker identified him? A No.

Q You brought him in afterwards? A Yes.

Q What did he do? A He placed his hand upon Dooley.

Q You had these same seven men standing up there together?

A Yes.

Q Did you have anybody else come in? A Yes.

Q Who else? A Patrolman Hinnners.

Q What did Patrolman Hinnners do? A He placed his hand upon Dooley.

Q Anybody else? A No, that is all I have here.

Q That was the only line-up in this case that you arranged and were present at? A Yes.

CROSS EXAMINATION BY MR. GRIER:

Q Did Moshier place his hand upon anybody else in the line-up? A Yes.

Q Who else? A Woods -- Christopher Woods, another defendant, Mann and Breeze.

Q Woods, Mann and Breeze and Dooley were in the line-up and besides them there were three others? A Yes.

Q Who were brought in from the street? A Yes.

Q Did Smoliker place his hands upon any others besides

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Dooley? A No, he did not.

Q Sure of that? A Well, I am sure of that according to my memorandum, yes, positive.

Q Moshier placed his hands upon the four defendants that were under arrest? A Yes.

Q And Smoliker placed his hand upon Dooley alone? A Yes, sir, that was the only one he could identify.

Q Was there a tall red-headed man in that line-up? A No, he was not tall, he was about -- just about an inch or two taller than the defendant.

Q But there was a red-headed man there? A Yes.

Q Now you say Kiesow put his hand upon Dooley? A Kiesow put his hand on Dooley. He identified Dooley and Woods in that same line-up.

Q He did not put his hand upon Mann or Breeze? A No.

Q Now Officer Hinners, on whom did he put his hand? A He identified Dooley.

Q He put his hand on Dooley? A Yes.

Q Not upon Woods? A No, sir, not in that line-up.

Q How many others besides Moshier, Smoliker, Kiesow and Officer Hinners, did you take into the room to that line-up?

A Grace Cruthers was in that room. She came in that room.

Q She passed alone the line-up? A Yes.

Q She put her hand upon Dooley? A No, she did not. She could not identify Dooley or any of them.

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Q Who else besides Grace Cruthers and these four men you have named? A Burggraf's brother, I don't know his first name.

Q Brother of the officer that was hurt? A Yes, he could not identify anybody.

Q Did Mrs. Rogers put her hand upon any of the men in that line-up? A No, she was not there.

Q Did other women besides Miss Cruthers? A There was no other woman outside of Grace Cruthers that night.

Q That was the only line-up that you were present at? A Yes.

Q You know there were a number of other line-ups connected with this case? A No, not a number; I think there was another one, that is, in Woods case.

Q Do you know if there were? A There were two other line-ups, but the defendant was not in those two line-ups.

Q Those line-ups were before the defendant was arrested?
A Yes.

Q After the defendant was arrested were there not five or six line-ups? A No, there was not.

Q That is, so far as you know there were not? A I am positive that there were only two line-ups after the defendant was arrested.

Q Did the witness Troy, was he called upon too, or was he present at the line-up you have been speaking of? A Not that night, no, sir, he was not.

Q Was the witness the printer? A Smoliker?

Q No -- is Smoliker the printer? A Yes.

Q Troy was not present at that line-up? A No, not that night.

ALBERT E. HAZLITT recalled :

BY MR. STRONG:

Q At the time you arrested the defendant, did you notice any mark upon his face? A Yes, a little scratch under the left eye, a little black mark.

CROSS EXAMINATION:

Q Were you present at any of the line-ups? A I was at that first line-up, yes, with Dooley in the line.

BY THE COURT:

Q Louder? A I was at the first line-up when Dooley was in the line.

BY MR. GRIER:

Q Do you know whether there were any other line-ups? A Yes there was, I believe there was two line-ups before Dooley was arrested.

Q Were you present at those line-ups? A Yes, I believe I was at the first line-up.

Q Were you at all the line-ups? A No, sir, I was not.

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HERMAN HINNERS recalled:

BY MR. STRONG:

Q At the time you were pointing the revolver at Dooley, the defendant, did you say to Dooley "Where is the man that threw the axe"? A No, sir.

Q At that time did you know that anybody had thrown an axe? A No, sir.

Q At that time did you know that anybody had been seriously injured? A No, sir.

(No cross-examination).

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal procedure, and takes an adjournment until to-morrow morning, October 22nd, 1913, at 11 o'clock.

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New York, October 22nd, 1913,

Trial resumed.

WILLIAM SMITH, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 2325 Seventh Avenue).

DIRECT EXAMINATION BY MR. GRIER:

Q Did you receive a subpoena in this case on Thursday or Friday of last week?

Objected to. Sustained. Question withdrawn.

BY MR. GRIER:

Q On the night of the 17th of May, were you at Huber's Casino? A Yes.

Q Prior to going there, where were you? A Wireless Hall.

Q At Wireless Hall did you see the defendant Dooley? A Yes.

Q What time did you leave Wireless Hall? A About 12 o'clock

Q Will you state to the jury everything that took place from the time you left Wireless Hall, who went with you, where you went, how you went there, and what you did and what you saw until you left Huber's? A We left Wireless Hall and waited for a car and got on the car and were passing Huber's and saw the place lit up and somebody made a motion to go over and go in the dance, go to the dance, and so we all got off the car and walked up. I was with a fellow named Brasch. We were one of the last to leave the car and we walked in, and there was a fellow downstairs with eyeglasses, seemed to be at the door -- and I wanted to --

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BY THE COURT:

Q Where did you go? A I went around to the toilet.

BY MR. GRIER:

Q From which side of the Casino did you enter, from the street? A The front door.

Q Towards Jerome Avenue? A Yes.

Q Then you went around to the toilet, what floor was that on? A The first floor, away in the back.

Q Who went with you? A Brasch.

Q Go on from there? A We came back and walked up the stairs to the hall, and there was nobody at the door, and we saw-- I seen Ned Dooley inside and a special officer and another man with a blue suit on, and the special officer had a blackjack in his hand and he had Ned Dooley in the corner, and they were striking him, and I walked out to the other end of the dance hall and then I saw Jim Dooley grab his brother and pull him outside and the special officer had Ned Dooley and so James Dooley, his brother, grabbed Ned away from the special officer. I think he left him downstairs, I am not sure. I did not see this part of it.

MR. STRONG: Then I move to strike it out if he did not see it.

THE COURT: Strike it out.

BY MR. GRIER:

Q State what you saw and heard? A They got out in the dance

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hall and I see a couple of guns pulled. I ran downstairs and waited at the door.

Q Which stairs? A The front stairs. I was waiting downstairs and I saw Morty Walsh running out, and he had a gray cap on and a light gray coat. He ran over towards the bridge.

BY THE COURT:

Q How was Walsh dressed? A Gray coat and light hat pulled down over his eyes.

BY MR. GRIER:

Q Cap or hat? A Cap. I waited fifteen minutes and I saw the bunch going down, and we walked over the bridge.

Q Did anybody come out with Walsh? A No, sir.

Q Was anybody with you when you saw Walsh coming downstairs?

A No, sir, I was waiting downstairs alone.

Q Just where were you waiting? A Right outside the door.

Q On the porch or outside of the porch? A On the stoop towards the curbstone.

Q Was there anybody else around there at that time that you saw? A There was a couple of people standing up on the corner, I did not know their faces.

Q On the corner? A Yes.

Q Now, after Walsh had left, how long until you say other people came down that stairs? A About five minutes.

Q Did you know any of the people that came down? A Yes, the boys I was up in Wireless Hall with.

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Q Can you name some? A James Dooley, a fellow named Brasch and Ned Dooley. Ned was walking with his brother Jim.

Q Any others you can name? A I am not acquainted with everybody, I just know their faces.

Q What did you see take place, if anything, when Brasch and the two Dooleys and some others came down the stairs? A I did not see anything outside.

Q What did they do outside? A Why, we all came downstairs and we started walking towards the bridge, towards home, and while I was walking home I heard Morty Walsh threw an axe --

THE COURT: Strike it out, the words "I heard Morty Walsh threw an axe."

BY THE COURT:

Q You did not see it? A No.

Q Do you know Morty Walsh? A Yes, I know his face.

Q Did you see him at the Wireless? A Yes.

Q You saw him on the car? A Yes.

Q Had a good look at him? A Yes.

Q And you say he wore a gray cap and a gray coat? A Yes.

Q Sure about that? A Yes.

Q Cannot be mistaken? A A light coat, -- not sure if it was gray or light brown. I did not take particular notice.

Q What was the color of the cap? A Light gray cap.

Q You know the difference between gray and brown? A Yes.

BY MR. GRIER:

Q Now, before you left the hall, you said something about

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seeing somebody pull some guns -- now tell us what else, if anything, did you see in the hall? A The special officer had a blackjack and a gun.

Q The special officer? A Yes.

Q How was he dressed? A Regular special officer's uniform on.

Q What was the color of his uniform? A Gray.

Q Gray? A Yes.

Q Do you know the name of the special officer? A No.

Q Have you seen him about the court room this morning? A No.

Q Had you ever seen him before that night? A No.

Q Now just where was Dooley and the special officer when you say you saw the special officer take out the gun, and, did you say a club? A A blackjack.

Q Where was that? A He had the blackjack out in the coat-room. When he got outside, when they pulled each other out in the hall, he had a gun out, and there was another gentleman there with a gun. When I saw that I run downstairs.

Q You saw the other man run downstairs? A No, I ran downstairs.

Q You say there was another man there with a gun? A Yes.

Q Would you be able to identify that man? A He was kind of a young fellow. He had light hair.

Q Do you know Officer Burggraf? A No, sir.

(Officer Burggraf stands up in the court room).

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THE WITNESS: I think that is the gentleman, I am not positive. I wouldn't say positively, but I think that is he.

BY MR. GRIER:

Q What did you see that man whom you have described and say you think is Officer Burggraf, what did you see him do? A He had a blue suit and light hair -- his light hair makes me think that way.

Q What did you see him do? A He pulled out his gun and there was a crowd surging around him and I saw the gun and ran downstairs. I did not wait to see anything else.

Q When Officer Burggraf pulled out his gun and the crowd was surging around him, did you see Dooley anywhere, the defendant? A No.

Q Did you see anybody else besides the special officer and Officer Burggraf flourish a pistol? A No, sir.

Q Did you see anybody have a pistol over the heads and point at Officer Burggraf and say something? A No, sir.

Q You did not see the axe at all? A No, sir, I did not see any of that.

Q Did you see Officer Burggraf start down the side stairs? A No, sir.

Q Did you see Officer Burggraf knocked down? A No, sir.

Q You did not see him struck at all? A No.

Q Did you hear any police whistles blown before you left the -- A When I was downstairs I heard police whistles.

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Q Could you tell where the sound of the police whistles came from, from the hall or from around where you were? A There was one blowing on the stairs, coming down from the hall.

Q Did you see that man that was blowing the whistle on the stairs, A No.

Q You heard the whistle blowing? A Yes.

Q From that direction? A Yes.

CROSS EXAMINATION:

Q You say you know Morty Walsh? A I know his face, just know him by Morty -- didn't know his last name until lately.

Q You did not know his name? A Just knew him by Morty -- met him at Wireless Hall.

Q Do you know any other man by the name of Morty? A No.

Q How tall is Morty Walsh? A I should judge about five foot five.

Q Taller or shorter than the defendant Dooley? A I think he is shorter.

Q Shorter? A Yes.

Q Sure of it? A About -- well, I guess they are about the same size. Morty is more stockily built.

Q He is stockier? A Yes.

Q And weighs how much about? A About 154, I should judge.

Q 150? A 154.

Q You cannot be mistaken about that? A That is just a guess. I have no idea.

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Q He had on a gray coat? A A light coat.

Q Gray was it? A I am not sure.

Q You said gray, didn't you? A I said gray, yes.

Q And a gray cap? A Yes, gray cap.

Q Did you see him in the hall? A Morty Walsh, no, sir.

Q Did you see Dooley in the hall? A Yes.

Q In the dance hall? A Yes.

Q Was Dooley's brother with him in the dance hall? A Yes.

Q All the time he was in there? A No, sir.

Q He was not? A No, sir.

Q Did you see Dooley on the floor in the dance hall, having fallen down on the floor? A In the coatroom, they had him in the corner. I don't know if he was on the floor.

Q He was not on the floor in the ballroom? A He was inside, but was not laying down.

Q He was not lying down on the floor? A No.

Q Did you see anybody beat him up in the ballroom? A I lost track of him. His brother grabbed him. I don't know if he went out or was inside.

Q When he was in the ballroom, was he in the custody of a special officer? A The special officer had him until Dooley's brother got him away from him.

Q In the ballroom? A Yes, right near the door.

Q Was he conscious? A I think so.

Q He could walk? A Yes.

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Q Easily? A Well, he seemed to stagger a little.

Objected to.

MR. STRONG: I consent to strike it out.

THE COURT: No, it is cross-examination. It is proper.

Q He could walk all right? A He seemed to stagger a little.

Q When? A After the special -- after Dooley's brother got him away from the special officer.

Q What was Dooley's brother doing with him? A He had him by the arm leading him out.

Q He was not carrying him? A No, sir.

Q He was not dragging him? A No, sir.

Q Did you see him dragged across the floor at any time by anybody? A No, sir.

Q How many times have you seen Walsh in your life? A That was the first night I saw him to recognize his face. I was introduced to him.

Q The first night you had ever seen Walsh? A Yes.

Q You were introduced to him at Wireless? A Yes.

Q Did they tell you his name then? A Yes, sir, Mr. Walsh.

Q I thought you did not know his name was Walsh until after this affair was all over and somebody told you that Morty's last name was Walsh, is that right? A I was introduced, but I forgot the name.

Q Now, where do you live? A 2325 - 7th Avenue.

Q How old are you? A Nineteen.

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Q Where do you work, A The Security Bank.

Q What bank? A Harlem branch.

Q Harlem branch of the Security Bank -- how long have you worked there? A A year.

Q Where did you work before that? A American Bank Note Company.

Q How long? A About four months.

Q Before that? A A law office downtown, 30 Pine Street.

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

Q Have you seen Morty Walsh since this affair? A No.

Q Do you know where he lives? A No.

Q Have you inquired? A No.

Q Do you know where he hangs out? A Yes.

Q Where? A 145th street and 8th Avenue.

Q How many times have you seen him there? A Once or twice.

Q Before this affair? A Before this affair.

Q I thought you said you only saw him for the first time that night? A I said I remembered seeing him before.

Q I thought you said you saw him for the first time that night -- am I right or wrong? A I don't remember saying that.

MR. STRONG: I ask the stenographer to read his testimony.

(The testimony of the witness is read by the stenographer).

Q You remember that? A That was the first time I saw him.

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to recognize him, but after I saw his face I remembered seeing him on 145th street corner.

Q You did not know him when you saw him before, did you? A No.

Q When was the first time you recollect seeing this man Walsh before? A After I saw his face up at Wireless Hall I remembered seeing him around 145th street.

Q How many of you came down in that car from Wireless? A I should judge about twenty, between twenty and twenty-five.

Q Was Jim Dooley on it? A Yes.

Q Was Walsh on it? A Yes.

Q Was Walsh with Ed Dooley? A No, sir -- I don't know.

Q What, A I don't know.

Q He came down with the whole crowd? A He came down with us, but I don't know if he was walking with Ned or not.

Q How many girls were along? A About eight girls.

Q Do you know Miss McGrath? A Yes.

Q Who else was there? A Miss Fitzgerald.

Q Anybody else? A Miss Murphy.

Q Is she in court? A No, sir, I don't see her around here.

MR. GRIER: I object to that question. There is no evidence this witness knows who is in court or who is to be called.

MR. STRONG: I just asked him if she is in court.

BY MR. STRONG:

Q You don't know who threw the axe? A No.

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Q You don't know where Dooley was at the time the axe was thrown, do you? A No.

Q The only thing you know is that Walsh left Huber's Casino?

A Yes.

Q Did you see where he went? A He ran over towards the bridge, south.

Q Did anybody go over with him? A No.

Q How long did you stay outside? A About five minutes after Walsh left, and then the crowd of fellows and girls came down and we walked home.

Q Did you see this crowd of fellows and girls come out and wait for them, A Wait for whom?

Q You waited for your crowd? A Yes.

Q Did you see an officer out there with a revolver in his hand? A No.

Q Did you hear a police whistle blown after the crowd came out? A No.

Q You are sure of that? A Yes, sir.

Q Was Woods in the crowd that went home with you? A I don't remember seeing him.

Q Was Dooley in the crowd that went home with you? A Yes.

Q And you did not see an officer out there with a gun?

A I can't remember seeing him.

Q You don't remember a person blowing a police whistle?

A On the stairs, the only time I heard it.

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Q I mean outside after Dooley came out? A No.

W I L F R E D R E E D E R, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 10 Bradhurst Avenue).

DIRECT EXAMINATION BY MR. GRIER:

Q Are you a brother of Edward Reeder who testified before in this case? A Yes.

Q Do you remember the 17th of May, the morning of the 18th, when there was some trouble at Huber's Casino? A Yes.

Q Where were you immediately before going to Huber's Casino?
A I was at Wireless Hall.

Q Where is that? A Up Jerome Avenue, I don't just know what street.

Q Do you know any of the people that were at Wireless Hall with you? A I went to the racket alone, but I knew a lot of people at the racket.

Q Did you see the defendant there? A Yes.

Jim Dooley

Q Do you know his brother? A Yes.

Q Can you name some of the people there at Wireless Hall?

A Mort Walsh, Jim Dooley, Annie Murphy, Ethel Liebley, Max Ward.

Q Tell us everything that you did and that you saw done from the time you left Wireless Hall -- you went to Huber's, did you? A Yes.

Q And until you left Huber's? A From the time I left Wire-

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less until I went to Huber's? -- I went into Huber's Casino with a girl by the name of Carrie Little and a fellow named Billy Mann, and his girl came in with us, and us four came in together, and there was nobody in the door to collect money and we walked in and we were dancing there and all of a sudden we saw a crowd over at the stairs and we went over and I saw Ned Dooley standing there and some one was arguing with him, and then I saw some one hit him, and he knocked him on the cloakroom and I looked in and saw a special officer in there and four or five more men and they were knocking him all over the cloakroom and then I saw a fellow with a blue serge suit, he had a blackjack and he was in the second hall there and he was running after every one there and then I saw him start to run for the stairs and as he went to the stairs I saw Mort Walsh standing there and I saw him throw an axe down on top -- I don't know who it hit -- I saw him throw the axe.

Q Where was Walsh standing? A At the head of the stairs like over the railing, and threw the axe down.

Q Over the railing? A Yes.

Q There is no railing across the head of the stairs -- what do you mean by that? A There is one hall where you come in and then you walk over to the other hall -- columns separate the two halls. It was in the second hall he threw the axe down that stairway. It leads down to the drinking room.

Q Before you saw the axe thrown, you say you saw somebody in a blue suit? A Yes.

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Q With a club in his hand? A Yes.

Q And in the midst of a fight? A Yes.

Q Will you describe that more fully? A He seemed to have light hair, a young fellow.

Q Would you be able to identify him if you saw him in court?

A I might; I saw him standing up there when I was in the back.

(Officer Burggraf now stands up in the courtroom).

THE WITNESS: Yes.

BY MR. GRIER:

Q That is the man? A Yes.

Q No doubt in your mind about it? A No.

Q Can you describe more fully the fight in which you say the gentleman in blue clothes was engaged in in the ballroom?

A I don't know how the fight started. All I know I walked over and saw it started and tried to keep out.

Q You saw it start at the head of the stairs? A I saw it start at the front stairs where they all came in. It started at the head of the stairs and I saw him have him in the cloakroom where they check the clothing, and he was against the wall with his hands out and I saw them all hitting him and I do not know the fellows who were in the fight. There was a lot of strangers in it.

Q Did you go into the hatroom? A No, I was standing outside of the railing.

Q Near the stairway from Jerome Avenue or the other stair-

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way? A Near the stairway you come in -- you come up, and a door is right beside the stairs.

Q And where were you when the fight shifted out to the ballroom? A After the axe was thrown I went down the front stairway and I went home. I went home all alone. There was no one came home with me.

Q Nobody went with you? A No, and then I was standing at 145th street and 8th avenue and I just don't know what time it was, but a fellow by the name of Woods came down and I was talking to him about the fight.

Q You need not tell us what you said to him -- now, after the fight in the coatroom and before you saw the axe thrown, did you see Officer Burggraf or the man in the blue suit that you have identified, with a pistol in his hand? A I don't remember if he had a gun.

Q Was there anything else you saw after the fight you have described in the coatroom, before the axe was thrown? A That is all and everybody was mixed up and I happened to be standing in the middle of the hall between the columns when I saw Walsh. He was standing at the stairs and I saw him throw the axe down but I did not know anybody was hit until the next day.

Q Did you see anybody going down the stairs when you saw Walsh throw the axe? A I don't remember.

CROSS EXAMINATION:

Q What is your occupation? A Plumber.

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Q How long have you known the Dooley boys? A I have known Dooley about two years.

Q That is Edward? A The two of them, Jim and Edward.

Q You know Jim also? A Yes.

Q They are close friends of yours? A No, not close friends of mine -- just know them to speak to.

Q Do you see them often? A Yes, I see them lots of times.

Q You go around to affairs with them? A I don't go around with them; I have met them at a few affairs.

Q You are not a friend of theirs? A No, I am not a close friend, I just know them, that is all.

Q You say that you found out the next day that some one had been hit on the head? A Yes.

Q And seriously injured, didn't you hear that? A Yes.

Q You knew who did it? A Yes, I knew who done it.

Q When was Dooley arrested, do you remember? A If I ain't mistaken, he was arrested four or five days after it occurred, but I ain't positive.

Q He was arrested for hitting this man with the axe on the head? A Yes.

Q You knew that? A Yes.

Q Did you tell anybody what you knew? A I didn't tell no one, no, because I was not interested in it.

Q You knew that Burggraf was on the point of death? A No, sir, I did not know he was dying.

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Q You knew he had a fractured skull? A Yes, I knew he had a fractured skull. I only heard about it once and that was some time up in Fort George --

Q But you knew about it? A Yes, I knew about it.

Q You heard the description of Walsh given by the previous witness, didn't you, here in court? A Yes, I heard the description.

Q You remember he had a gray coat on? A Yes, he had a gray coat.

Q You are sure of that? A Yes, sure of that.

Q And a gray cap? A I don't remember the cap.

Q But the coat was gray? A Yes.

Q Sure it was not brown? A No, it was gray.

Q About how tall was Walsh? A He was about my size.

Q Stand up? A A little huskier than I.

Q How old are you? A I will be twenty-one years in February.

Q Who did you say you went to the dance with? A I went to Wireless Hall alone, but from Wireless Hall to Huber's Casino I went with Carrie Little.

Q Did you see her in the dance hall? A Yes, I met her at the dance.

Q Where was she at the time the axe was thrown? A I don't know where she was, everybody was mixed up, and I lost her somewhere.

Q You say that you were in between the columns? A Yes.

Q Dividing the two dance halls? A Yes, sir, in the center of the two halls.

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Q You saw some special officers, you say, hitting Dooley?

A Yes, sir, hitting at Dooley.

Q Did he fall? A No, he did not fall; he was laying up against the wall.

Q Did you see him fall at any time? A No, sir, I didn't see him fall at any time.

Q Did you see him rendered unconscious at any time? A No.

Q Did you see his brother drag him out into the ballroom floor around to the stairs where the axe was thrown? A I did not see him dragging, but I saw him and his brother standing at the head of the stairs when the axe was thrown.

Q At the head of the stairs, A At the head of the other stairs, not the stairs the axe was thrown.

Q At the time the axe was thrown, Dooley and his brother were standing at the head of the stairs going down to Jerome Avenue? A Going out to Jerome Avenue, yes.

Q That is the stairs that come up to go into the hall? A Yes, sir, that is the stairs that come up.

Q They were not anywhere near Walsh? A No, they were not and they were going down, just going home, going out any way, and his brother was pulling him out.

BY THE COURT:

Q Approximately what is the distance in feet between the Jerome Avenue staircase and the staircase leading to the main entrance of the hall? A I should judge about twenty or twenty-five

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feet, I ain't sure.

BY THE COURT:

Q How far away were you from Dooley when Walsh threw the axe? A I was in the center of the hall. I was about, I should judge, twenty feet away from him, or fifteen.

Q How far away from Walsh? A About the same distance away from Walsh.

Q You got a good view of Walsh at the time? A Yes, sir, I knew Walsh.

BY MR. STRONG:

Q Do you know a girl named Helen McGrath? A I know a girl named Helen, I don't know if it is McGrath or not -- a short girl.

Q A young seventeen year old girl that wears a hat down over her face -- you know who I mean by Helen who was with you that evening, who went to Huber's? A She was not with me.

Q She went with Dooley? A I don't know if she went with Dooley or not. I saw her at the racket.

Q You saw Dooley come in? A No, I did not see him come in.

Q You did not see him come into the dance hall? A No.

Q Now, at the time that you saw the axe thrown, did you see where Helen was? A No, sir, I did not.

Q You saw Dooley? A I saw Dooley and his brother.

Q And Helen was not near Dooley at the time the axe was thrown? A I won't say she was not near him, because I did not see her. I did not recognize anybody else but Dooley and his brother.

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Q You were looking towards the head of the stairs at Walsh at the time the axe was thrown? A Yes.

Q You did not see Helen McGrath there? A No, I did not.

Q Was there a crowd around the stairs? A Yes.

Q You are sure of that? A Yes.

Q And a crowd along the railing protecting the stairs? A Yes.

Q Did you see Moshier there at the railing? A I don't know him.

Q Protecting the stairs? A I don't know who Moshier is.

Q You do not? A No.

Q Edward Reeder is your brother? A Yes.

Q What does he do for a living, I have forgotten? A He is working for a butcher, drives for a butcher.

Q Did you see him go into the dance hall? A I did not see him come in, I saw him in the hall.

Q Now did you see where this fellow you call Walsh, got the axe from? A No, sir, I did not. When I looked he had it in his hand, and he was standing over the stairs when I looked.

Q Was his back turned towards you? A Yes.

Q Was there anybody near him? A There was a lot of fellows around him, but I don't remember the fellows. In fact I might not have known the fellows that were standing with him.

Q You say Walsh's back was turned to you? A Yes.

Q There was a crowd around him? A Yes.

Q Men of his own size? A Well, I don't know if they were his own size or not.

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Q As tall or taller than he was, is that right? A I don't remember how big they were.

Q Were they about his own size? A Some may be and some were not; I don't know about that.

Q They were around him when he threw the axe? A Yes.

Q Between you and him? A The fellows were between him and I

Q Exactly? A Most of them were all by the stairs. Where I was standing there was not hardly anybody standing.

Q I know it, but these fellows that were standing all around Walsh were between you and him, some of them? A Most of them were along the railing.

Q Didn't you say there were men standing all around Walsh?
A Yes.

Q Were there any men between you and Walsh? A Might have been, I don't remember.

Q You were over between two pillars, two of these pillars separating the two ballrooms? A Yes.

Q How far did you say that was? A About 20 or 25 feet.

Q That is the only glimpse you got at Walsh, when he threw the axe? A Yes, I don't know where he went after that.

Q You did not see him go? A No.

Q You don't know if he moved away from the stairs? A No, I don't remember.

Q Did you ever see anything more than the back of his head?
A Yes, I saw his face.

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Q When? A When he was standing there. I was standing half on the side of him.

Q How long did he stand there before he threw the axe? A I only saw him about a minute. I saw him throw it.

Q You only saw him for a second? A Yes, I saw him throw it and then I walked away and went home and as I was walking back to the stairs I saw Dooley.

Q How long have you known Walsh? A I don't know him personally, but I know him from seeing him for about a year.

Q He is not a friend of yours? A No, he is no friend of mine.

Q Is he a friend of Jim Dooley's do you know? A I don't know

Q Was he at the racket with you that night? A He was not with me. I was there alone.

Q You came up from Huber's with the rest? A No, sir, the car we came down with, they only had a few in the car we came down. The other car came down with the crowd after we were in the hall.

Q A car full? A Yes.

Q Thirty of you did not go down altogether? A I came down ahead of them. I was in the hall about five or ten minutes before they came.

Q Who came with you? A Carrie Little went into the hall with me.

Q I mean who came from Huber's with you? A No one, I came home alone.

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Q You were all alone? A Yes, I came home alone.

Q Before the rest? A I don't say before the rest. There was a lot of people going over the bridge when I was going home, and I came home by myself.

Q I mean did you go in Huber's dance hall before the rest of the crowd? A Yes, sir, I was in the hall before that crowd came down, because I remember when they all came in and the fight started.

Q Where were you when the fight started? A I was dancing with Carrie Little.

Q And what did you first notice about this commotion? A I seen a crowd over there and we walked over to see what it was and the first thing I saw them hitting Ned Dooley.

Q What was he doing? A He was not doing nothing. Did not even have his hands up.

Q Were there some ladies standing around him? A Yes, there was a lot of ladies there.

Q Did you hear what he said to the ladies or what they said to him? A No, I did not hear him talking at all.

Q What was the first thing you saw done to Dooley? A I saw them hit him.

Q Who hit him? A I don't know just who hit him, but I saw some one hit him.

Q The special officer? A I won't say it is the special officer..

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Q Did he have a uniform on? A Special officers with uniforms were there, but I don't say they hit him because I don't remember.

Q You saw him hit? A Yes, sir, I did see a special officer hit him while he was in the room.

Q While he was standing at the head of the stairs you saw him hit? A Yes.

Q Was it a special officer or a citizen that hit him --one has a uniform and one does not? A I think it was a citizen hit him, a man in plain clothes that hit him.

Q Did he hit him before Dooley did anything? A Yes, I saw Dooley standing there and then he hit him.

Q Did he hit him before Dooley said anything to him? A I did not hear Dooley talk. I don't know if he said anything.

Q Did you see Dooley do anything after this man hit him?
A No, sir, the only thing I saw, they pushed him in the room.

Q Did you see Dooley do anything after this man hit him?
A No, I did not see him in the fight at all.

Q So he did not hit back? A I do not say he did not hit back, but I did not see him hit back.

Q You did not see him kick this man that hit him? A No, sir, I did not see him.

Q You had a good view of him? A Yes.

Q Here is a diagram, you come down here and there is the stairway leading up into the ballroom, and there is the coatroom

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alongside of it? A Yes.

Q On the lefthand as you go upstairs? A Yes.

Q Here are the posts separating the north ballroom from the south ballroom? A Yes.

Q And there is the stairs down which they say the axe was thrown? A Yes, sir, that is the stairs.

Q Will you mark your initials at the place at which you were standing at the time the axe was thrown -- there are the posts separating the two ballrooms?

(The witness puts his initials on the diagram).

THE WITNESS: About the center post.

Q Do you know how many posts there are there? A No.

Q You have marked the initials "W.R."? A Yes.

Q Make that "R." a little more distinct so we will recognize it -- was there anybody standing with you at that time?

A No, I was all alone.

Q Did you see your brother there? A I saw my brother in the hall.

Q Was he right near where you were at the time this fight was going on? A No, sir, he seemed to be over in the other hall, near where Dooley was.

Q Were you there in between the two ballrooms by these posts most of the time that this fight was going on? A Yes, I stood there and watched the fight.

Q Didn't you see your brother there? A I saw my brother

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over in the other hall, I told you, where Dooley was.

Q That is very near the stairway down which the axe was thrown? A Yes, sir, the stairway to Jerome Avenue.

Q Do you know Brasch? A Yes, I do.

Q Did you see him there? A Yes, I seen him in the hall.

Q How long have you known Brasch? A I guess I have known him about three years.

Q Do you know where he was standing at the time the axe was thrown? A No, I only saw him come upstairs with the fellows, that is all I seen.

Q He came up with the rest of the crowd? A Yes, sir, when the fight started, he was up with these fellows.

Q Did he come up with Dooley? A I did not see Dooley come in, I only saw Dooley in the hall, but remember seeing Brasch come upstairs.

Q Was not a crowd of your friends behind Dooley as he was coming into the hall? A They were not my friends, I only knew a few ladies there.

Q You knew Brasch? A Yes.

Q You did not see him come into the hall behind Dooley?

A I saw him come up into the hall, but I don't remember when Dooley came into the hall. I only saw Dooley in the hall.

Q I show you an axe and I ask you if you recognize that as being an axe similar to the one you saw thrown downstairs? A It was a fireman's axe, something like that.

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WILLIAM MANN, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:
(Residence 180 West 166th street).

DIRECT EXAMINATION BY MR. GRIER:

Q Were you at the Wireless Hall on the night of the 17th of May? A Yes.

Q What time did you leave there? A I believe it was about 12 o'clock, between twelve and half past.

Q Where did you go when you left the Wireless Hall? A Around to Huber's, got on the trolley car.

Q Went to Huber's -- now, state in your own way and keep your voice up so the jury may hear, all that took place from the time that you left Wireless, who you went with, how you went, what you did when you reached Huber's, and what took place there, give us in your own way a full account of everything that took place?

A I got on the trolley car with a girl friend I was in Wireless Hall with, got off the car at Huber's Casino, and I went in Huber's. I believe I was the first one in the hall. A lady came to me and asked me was I in before. I said "Yes, ma'am." I went right by her and the band was playing and I started dancing. I was dancing around the hall and I saw the fight start and heard a woman scream and I went over to see what the trouble was and I reached just by the hatroom at the top of the stairs and a special officer had hold of Edward Dooley and he had a blackjack, and Dooley had hold of his wrists. The special seemed as if he

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was trying to hit Dooley and Dooley was holding him back and with that he got thrown, this special did, in on top of me, and I did not see what happened to Dooley. The only possible place Dooley could have --

THE COURT: Do not state that.

BY THE COURT:

Q You did not see what happened to Dooley? A No.

Q Proceed? A This special got thrown in on top of me.

BY MR. GRIER:

Q Where were you at the time? A In the second hall.

Q Was that north or south? A The north, just as you come upstairs, the main stairs.

Q Go on? A This special officer went to strike me with a blackjack and I put up my hands to protect myself and I got hit on the hand. He drew back to strike me again, and I struck him and then I went around -- there is a small partition -- I ran around that partition and down the stairs and saw the girl I came in the hall with and she said "Come on Willie, and take me home." I took her by the arm and walked to the door and I seen a big man out there. I know since he was a policeman -- blowing a whistle, with a gun in his hand. I walked past him. I met Breeze outside and he was alone and I was alone, and I walked past him, and about a block over the bridge and the whole crowd came out of Huber's. I heard them yelling and they stopped there a minute, all in a bunch, and they walked over and passed me on the other

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end of the bridge, and went up on the viaduct towards the El, and on the El, and as I reached there they were just coming out of Sheeber's -- I guess it was closing up and they did not want to let them in. I walked by them down to 144th street to a chop suey restaurant and had some chop suey and then went home with the girl and then got on the car and went home myself.

Q You say the last time you saw Dooley in the hall was when he was thrown -- did you say he was thrown into the cloakroom?

A No, I did not say so.

Q The last time you saw Dooley he was struggling with a special officer? A Yes.

Q At the head of the Jerome Avenue stairs? A Yes.

Q Did you say Dooley had hold of the officer's wrist? A Yes.

Q And the special officer had a club in his hand? A Yes.

Q And up to that time where were you coming from -- where had you been? A On the other end of the hall.

Q You mean the end opposite the Jerome Avenue end? A Yes.

Q You had been dancing? A Yes.

Q Do you remember who came in the hall just after you?

A No, sir, I did not see anybody. Only the girl I was with.

Q You and your lady friend came in the hall and you said first? A I believe I was first. I did not see anybody before me.

Q Did you see anybody immediately after you? A No.

Q Then you say the special officer was thrown out against you? A Yes.

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Q Did you strike anybody?

THE COURT: He said he struck the special officer after he was struck by him.

BY MR. GRIER:

Q Did you strike anybody else? A No.

Q Did you see Officer Burggraf there? A No.

Q You did not see anybody throw the axe? A No.

Q Do you know Morty Walsh? A I know him by sight. I don't know him to speak to.

CROSS EXAMINATION BY MR. STRONG:

Q I just want to find out how well you know Morty Walsh -- how long have you known him? A I believe I did not see him more than twice in my life -- just saw him.

Q Did you see him there that night? A No.

Q And did you see him up at Wireless? A No, sir, I don't remember seeing him at Wireless Hall.

Q Have you seen him since? A No.

Q Do you know where he lives? A No.

Q Do you know where he hangs out? A No, I know he came from 8th avenue, that is all I know about him.

Q Do you know where he works? A No.

A N N A M U R P H Y, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

(Residence 2576 Eighth Avenue).

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DIRECT EXAMINATION BY MR. GRIER:

Q Do you recall the 17th of May last? A Yes.

Q Where were you on the evening of the 17th of May? A I was at Wireless Hall.

Q What time did you leave Wireless Hall? A About 12 o'clock.

Q Where did you go after that? A I came down in the car and got off at 161st street and Jerome Avenue.

Q Did you go to any other place that night? A I went to Huber's.

Q State in your own way everything that took place from the time you left Wireless Hall until you left Huber's, and keep your voice up? A I went to Huber's and I was dancing with Patrick Ward and I saw Ned Dooley and about thirty of them coming up and they stopped Ned Dooley at the stairs, two men in citizen's clothes, and Ned had his hand in his pocket and was going to pay and they did not give him a chance, and they hit him, these two men. Then I saw two men in citizen's clothes drag him in the dressing room and I waited and I saw one pull a blackjack and the other pull a revolver, and then I went downstairs, I was frightened, and did not wait for any more and I saw Jim Dooley with three fellows over the bridge and told Jim about it, that they had his brother, and he went up with three fellows and I stayed down. I did not go up after that.

Q Did you say you were dancing in the hall when you saw the party come upstairs? A Yes.

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Q How long had you been there before that? A Just about five minutes.

BY THE COURT:

Q Whom did you go there with? A I went with Patrick Ward.

BY MR. GRIER:

Q How many came down on the car from Wireless with you?

A About thirty -- twenty-five or thirty girls and fellows.

Q Did you go up the main stairway from Jerome Avenue? A Yes.

Q Did you friend pay admission, do you know? A No.

Q Did any others besides Mr. Ward and yourself come in at that moment? A Yes, sir, Bill Mann and some other girl.

Q Were they before you or after you? A They were before me.

Q And was there anybody immediately after you? A Well, I seen when I came around, they stopped Ned, and there was a bunch of girls and fellows in back of him.

CROSS EXAMINATION:

Q After you left Huber's, did you go around to a chop suey joint with the rest of them? A No, went right home.

Q Do you know where the rest went? A No.

Q You went with Patrick Ward? A Yes.

Q Is he in court? A No.

Q Do you know a man by the name of Walsh? A Morty Walsh, yes.

Q How long have you known him? A I don't know him very long

Q Do you know where he is now? A No, sir.

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Q Have you seen him since this affair? A No.

Q You did not see Morty Walsh throw an axe? A No, I saw him coming out of Huber's, and he was running.

Q What? A When he came out of Huber's I saw him when he was running.

Q Out of Huber's? A Yes. I asked him where he was going and he kept on running.

Q You saw him coming out of Huber's? A Yes.

Q Did you go out before the axe was thrown or afterwards?
A I did not go back.

Q You answer my question, and that is all I want -- did you go out of Huber's before the axe was thrown? A Yes.

MR. GRIER: I object upon the ground that there is no evidence that she knew.

Objection overruled. Exception.

Q You saw when Dooley went up these stairs he was assaulted by two men in citizen's clothes? A Yes.

Q Did you see any women there? A No, sir.

Q Were not any women at the top of the stairs? A No.

Q Did you see a special officer assault Dooley? A Yes.

Q Where? A Right at the head of the stairs.

Q He had a uniform on, did he not? A Yes.

Q He was not one of the two citizens that assaulted him first? A No, sir.

Q May I inquire your age? A Sixteen.

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Q How long have you known Dooley? A I guess about a year.

Q And did you know Brasch? A Yes.

Q And Reeder? A Yes.

Q And did you see them often? A Yes.

Q Do you go to school? A No.

Q Where do you work? A I was working in Macy's.

Q Have you seen Morty Walsh since this affair? A No.

Q Do you know where he is? A No.

Q Do you know his family? A No.

Q Do you know where he works? A No.

BY THE COURT:

Q How was Morty Walsh dressed that night? A Had a light coat on and a light cap. That is all I can remember.

Q Do you remember if he wore a light cap and light coat?
A Yes, he had a light coat, I remember that, and a light cap.

Q When did you discuss this case with anybody? A What do you mean?

Q When did you talk with anybody about this case? A I have not talked with anybody.

Q Since last May? A Since last May?

Q Did you know last May, after this incident, that you were to be a witness in this case? A No.

Q Do you remember that Morty Walsh wore a light coat? A Yes.

Q You mean light in color? A Yes.

Q What was the color? A It was dark and I could not remember, but it was light.

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Q Have you seen Walsh since then? A No.

BY MR. GRIER:

Q You said in answer to Mr. Strong, that you saw Walsh come out of Huber's? A Yes.

Q State fully all in reference to that? A When I saw him coming out I asked him where he was --

Objected to. Objection sustained. Exception.

Q You need not state what you said to him, just state what you saw -- what you did and what Walsh did? A I saw him run over the bridge and that was all.

Q Where were you when you came him come out of Huber's?
A I was on the bridge.

Q That is how far from Huber's? A Just on the opposite corner.

Q And was there anybody with you at that time? A No, sir.

Q Was that before or after you saw Jim Dooley? A That was after.

Q Was there anybody with Walsh when he ran out of Huber's?
A No, sir.

RE-CROSS EXAMINATION:

Q Did you see Reeder out in the street when you saw Walsh pass? A No.

Q Was the street crowded? A About ten minutes after I saw a crowd come down.

Q You saw Reeder come out about ten minutes after Walsh?

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A I did not see Reeder at all.

Q Was there anybody else running over towards the bridge?

A Chris Woods and a girl, and I walked over with them.

Q They were running? A They were not running, they were walking.

Q Was there anybody else running over towards the bridge?

A No, not that I can remember.

Q When you saw Walsh come out, did you call to him? A Yes.

Q How long after Walsh came out did Woods come out?

A Woods came out when the rest came out, about five minutes or ten minutes after.

Q Did you see an officer outside of the door of Huber's point a gun at Woods? A No.

Q Did you see Dooley come out? A Yes.

Q Did you see an officer point a gun at Dooley? A No.

Q Did you hear an officer blow a police whistle? A Yes.

Q Outside? A Yes.

MR. STRONG: If your Honor please, I want to recall Reeder for the purpose of proving that he does not know the whereabouts of Walsh at present, and has not seen him since this affair -- does not know where he lives or works. Counsel for the defendant has kindly conceded that.

MR. GRIER: I will concede that he would answer to that effect.

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CHARLES A. MOSHIER recalled by the defense:

BY MR. GRIER:

Q At one time you were city marshal? A No, sir, never was.

Q Now, just what do you do in your business as process server? A Dispossessing, serving summonses, regular process server.

Q What are your duties as process server, A Serve whatever papers I get.

Q Serving papers for lawyers? A Yes.

Q Serving dispossess notices? A Yes.

Q Serving summonses? A Yes.

Q And subpoenas? A Yes, sir, any papers I might get from the lawyers in and around that court, the Second District Municipal Court.

Q You say you were never a city marshal? A Never was.

Q Were you ever employed by a city marshal? A I was a deputy marshal.

Q Associated with whom? A Daniel Sullivan.

Q Where was his place of business? A In my place. That is my own property.

Q Is he there now? A No, Dan Sullivan is out of business some time now.

Q Was he removed as a city marshal while you were his deputy? A No.

THE COURT: How could you prove that. Under the law it has been held in the case of The People against Sullivan,

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13 N.Y. Criminal Report , as to a fireman or a policeman who is disciplined in the Police Department or Fire Department, or an attorney who is disciplined by the Bar Association, that such act cannot be proved unless it involves moral turpitude. It is the act of a third party.

THE WITNESS: That is not all of my business. I have control of an estate, my wife's estate -- she is the heir, \$250,000. that I have had control of for eighteen years and I have my office for the renting of the property and for the transaction of all my business, and in addition to that I am a United States pension agent.

Q Are you a Notary Public or a Commissioner of Deeds?

A Yes, foreign Commissioner of Deeds for the State of New Jersey.

Q At the time you were asked what your business was, you stated you were a process server at the beginning of your testimony? A That is my real business. I am a process server. I do more of that than anything else.

BY MR. STRONG:

Q Do you know a man by the name of Morty Walsh? A Morty Walsh -- no, I don't know anybody by that name. I don't know any of them fellows.

Q Did you see a man with a gray suit and a gray cap on his head take that fire axe and throw it over the bannister? A He had -- a gray cap -- it was not gray -- it was a little pepper and salt, what I might call checkered cap.

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Q And the man you saw throw the axe was Dooley? A Dooley, that is the man absolutely, positively.

Q He had a cap on? A Pepper and salt cap, yes.

Q Did he have a coat on, overcoat? A No overcoat.

Q Did you see a man with a gray overcoat on standing next to the rail?

MR. GRIER: I object, the witness has gone over that testimony.

THE COURT: I do not think you need go into that.

THE DEFENSE RESTS.

THE PEOPLE REST.

TESTIMONY CLOSED.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2 o'clock.

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