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

#2566

.....X
THE PEOPLE, : Before:
-against- :
JACOB GOODMARK. : HON. T. C. T. CRAIN, Jr.
: J.
: and a Jury.
.....X

New York, September 22, 1915.

Indicted for Arson in the Second Degree.

Indictment filed July 30, 1915.

A p p e a r a n c e s:

ASSISTANT DISTRICT ATTORNEY ROAL H. WELLER, ESQ., for the
People.

IRVING J. JOSEPHS, ESQ., for the Defendant.

(A jury was duly empanelled and sworn).

Mr. Weller opened for the People.

MR. JOSEPHS: May it please the Court, I now desire to
move that the witnesses on both sides be excluded. I make the
formal motion that they be excluded.

THE COURT: So ordered.

MR. WELLER: It is conceded by the defendant that the
Home Insurance Company had a policy of fire insurance of five
hundred dollars on the property of Jacob Goodmark, the defendant
herein, on the 5th day of July, 1915, at the time of the fire, and
that such policy was in full force and effect, that it was divi-
ded as follows: \$350 on the stock or merchandise, consisting
principally of materials of a merchant tailor, his own, or for

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which he may be legally liable and \$150 on the store fixtures including counters, shelving, gas fixtures, show cases, window shades, etc..

That is correct , Mr. Josephs. That is a concession you make?

MR. JOSEPHS: Yes.

MR. WELLER: It is conceded that this defendant had another policy, a fire insurance policy, in the Home Insurance Company of New York, in full force and effect on the day of the fire, July 5, 1915, by which this defendant, Jacob Goodmark, was insured for the sum of \$350 on a stock of merchandise, consisting principally of materials of a merchant tailor, his own, or for which he may be held legally liable in case of loss or damage by fire, and \$150 of store fixtures, etc. Both policies covering his tailor shop at premises 155 East 75th Street, Borough of Manhattan, City and County of New York.

I offer these policies in evidence.

THE COURT: Received.

(The policies referred to, Nos.113,328 and 137,725 were received in evidence and marked People's Exhibits Nos. 1 and 2 respectively).

I also offer in evidence this diagram of the defendant's premises 155 East 75th Street.

(Received in evidence and marked People's Exhibit No.3).

(Addressing the jury): This, gentlemen, is a diagram, blueprint as it is called, of the premises. I wish to call the attention of the jurors to certain portions of it This is the street, (indicat

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ing); this is north (indicating), northeast and west. This (indicating) is the street 75th Street. Can you see, gentlemen? I will bring it over there. This is 75th Street, and this is the door entering the premises, opening into the premises. This is the show window in the front, and this is the first section of the store, there being a wooden partition, seven feet in height. The distance from the show window to the wooden partition is 7 feet 7 inches from the front of the store to the wooden partition; in front of the wooden partition towards the street there are two tables. The rest is open.

Now, the wooden partition runs, extends across from the west side to the east side of the building. This wooden partition, with the exception of a door on the easterly side, which is 2 feet 6 inches wide, that door opens into the rear portion of the premises. The distance from the wooden partition to the rear portion of the premises is 9 feet 9 inches. The front portion is 7 feet 7 inches, the rear is 9 feet 9 inches. The width of the premises is 13 feet 8 inches, 13 feet and 8 inches wide. In this rear part of the premises, and in the rear of the partition, there is some press, a steam pressing machine towards the window in the rear, and there are one or two working tables in the premises, one on the easterly wall, and the other just to the left of the door of the partition. There are two windows in the rear, each having an iron bar grating, here (indicating), and here (indicating). This is 75th Street down here (indicating). There (indicating) is the front door. Is that clear to everybody? (The jurors thereupon individually examined the diagram).

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W.R.

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G E O R G E F I S T, called as a witness on behalf of the people, being first duly sworn, testifies as follows:-
311 Fulton St. Brooklyn.

DIRECT EXAMINATION BY MR. WELLER:

Q What is your business Mr. Fist? A Photographer.

Q How many years have you been a photographer?

A About sixteen years.

Q And during that time have you taken pictures?

A I have.

Q And developed plates? A Yes, sir.

Q And printed pictures and mounted them? A Yes sir.

Q You have been doing that for about how many years?

A About sixteen.

Q And you have been in that business? A Yes, sir.

Q You have been employed at different times by the District Attorney and the fire department to take pictures of different places in this city and interiors of buildings, have you not? A Yes, sir.

Q I ask you if you on July 5th, 1915 took a picture of premises 155 East 75th Street? A It was July 6th.

Q What time did you take the picture? A About between twelve and two o'clock.

Q And this set of pictures which I hold in my hand, did you take the pictures, these pictures (showing)? A (after examining) Yes, sir.

Q And did you develop the plates? A Yes, sir.

Q And print the pictures? A Yes, sir.

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Q And mount them? A Yes, sir.

Q And delivered them to the fire marshal's office, who in turn delivered them to me? A Yes, sir.

Q And these pictures, were they all taken at the same time? A Taken between twelve and two on the 6th.

Q That is on one visit up there? A Yes, sir.

Q Now I ask you if you took that picture, if that is a correct representation of the building? A Yes, sir.

Q As it existed at that time? A Yes, sir.

MR. WELLER: I ask that it be marked for identification.

(Received and marked People's Exhibit No. 4 for identification)

Q I ask you if you took that picture and ask you if that is a correct representation as it existed at that time?
A Yes, sir.

MR. WELLER: I ask that it be marked for Identification.

(Received and marked People's exhibit No. 5 for Identification)

Q I ask you if you took that picture and if it is a correct representation at that time? A Yes, sir.

MR. WELLER: I ask that it be marked for Identification.

(Received and marked People's exhibit No. 6 for Identification)

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Q I ask you if you took that picture and if that is a correct representation at that time? A Yes, sir.

MR. WELLER: I ask that it be marked for Identification.

(Received and marked People's exhibit No. 7 for Identification)

Q I ask you if you took that picture and if that is a correct representation of the premises at that time? A Yes sir

MR. WELLER: I ask that it be marked for Identification.

(Received and marked People's exhibit No. 8 for Identification)

Q I ask you if you took that picture and if that is a correct representation of the premises at that time? A Yes sir.

MR. WELLER: I ask that that be marked for Identification.

(Received and marked People's Exhibit No. 9 for Identification)

CROSS EXAMINATION BY MR. JOSEPHS:

Q Mr. Fiat, you took these at the request of the fire department? A Yes, sir.

Q And did you call at these premises with a member of the fire department? A Yes, sir.

Q Who is that man you called there with? A Fire Marshal Brophy and Fire Marshal Shields.

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Q Brophy and Shields? A Yes, sir.

Q You only took such pictures as you were directed to by the fire marshals? A Yes, sir.

Q You didn't take any pictures in general except as directed? A As directed, yes, sir.

Q You saw the condition of the place, did you not?

A Yes, sir, I did.

Q The place was very wet from where the water was pouring in? A Not at that time.

Q Was it wet at all? A Not extra wet.

Q But it was wet? A Yes, sir.

Q The floor was wet? A The floor was damp.

Q The wood work was damp? A Yes, sir.

Q And the walls were damp where the water had been pouring in? A No, the walls were not damp.

Q The walls were perfectly dry? A Not exactly.

Q What were the condition of the walls with reference to the water? A Showed dirt spots.

Q With reference to the condition of the place, was it wet or dry? A That I could not exactly say on the wet or dry.

MR. WELLER: Your Honor, I suggest that we will have a witness here that will enlighten counsel on these things. This man is a photographer, not a fireman.

MR. JOSEPHS: You don't think that it takes a fireman to see whether the place is wet or dry, do you?

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THE COURT: Now proceed.

Q Now, did you notice the wall at the east when you went into the premises? A I have a picture.

Q Did you notice it? A Yes, sir, I noticed it.

Q You looked at that with your own eyes? A Yes sir.

Q Was that wall wet or dry? A That I would not exactly say.

Q You don't remember. Was the west wall wet or dry?

A The west wall?

Q Yes. A That I would not say. That wall was eight inches from the floor. I would not say it.

MR. JOSEPHS: I cannot hear your answers.

THE WITNESS: Eight inches from the floor. I could not say whether it was wet or dry.

Q Eight inches from the floor it was wet? A No.

Q You don't know? A No. I would not say it was wet eight inches from the floor.

Q What was the condition eight inches from the floor?

A It might have been the dampness from the floor.

Q It might have been damp? A Yes, sir.

Q Damp from the floor? A From the floor.

Q But you don't know anything what happened in reference to the dampness eight inches below the floor? A Not that I could say.

Q You were in the premises? A Yes, sir.

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Q And photographed it? A Yes, sir.

MR. JOSEPHS: That is all.

THE COURT: Just one moment.

BY THE COURT:

Q Before taking the photographs did you yourself move any articles in those premises? A Did I?

Q Yes. A Yes, sir.

Q And before taking the photographs were articles in those premises moved by persons in your presence? A No sir.

Q In other words, all the moving of articles was done while you were there engaged in taking pictures, you yourself did? A Yes, sir, so that I could take the pictures.

THE COURT: I think a good plan would be to ascertain from this witness the various points at which the camera was when he took these different pictures.

MR. WELLER: Your Honor, I may say there was a fire marshal present at that time who had charge of the case and probably he would give us a more accurate description than this gentleman.

THE COURT: This witness might tell us where his camera was. However, just as you like, if you are going to prove it by somebody else.

BY MR. WELLER:

Q Where was your camera when People's exhibit No. 4 for Identification was taken? A Across the street, on the south side.

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Q And People's exhibit No. 4 for Identification, where was your camera when that was taken? A It was on the west side of the building looking east.

BY THE COURT:

Q The camera was inside the store? A Yes, sir, inside the store.

BY MR. WELLER:

Q That is a flash light, is it? A Yes, sir, on the inside of the partition.

Q People's exhibit No. 6 for Identification, where was your camera at the time that was taken? A Practically at the same point.

Q Where was that? A On the west side, looking east, that is an east wall.

Q And that is a flash light picture, People's exhibit No. 7 for Identification? A Yes, sir. That is the rear of the building, the camera was looking south.

Q People's exhibit No. 8 for Identification, where was your camera when that picture was taken? A The camera was about the center of the room, looking east -- northeast. That is the northeast corner building.

Q People's exhibit No. 9 for Identification, where was your camera when that was taken? A The camera was on the east side of the building, looking the southwest corner of the room.

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Q That is a flash light also? A Yes, sir.

Q Now you say that you moved some things around to take the picture? A I moved one article. That was the machine, I believe, it was to take this picture, People's exhibit No. 9 for Identification.

Q In order to take People's exhibit No. 9 for Identification you did what? A I just shoved a sort of table, whether a machine, I would not swear, moved it so I could stand my camera.

Q Did you move or interfere with any other part of the premises? A No, sir.

RE CRISS EXAMINATION BY MR. JOSEPHS:

Q Mr. Fist, all the interiors were flash lights?

A Yes, sir.

Q Did you in the course of your taking these pictures take a photograph showing the table of the machine?

A Of that machine?

Q Yes. A That I moved?

Q Yes. A No, sir.

Q You are quite sure you were not asked to take a picture showing of the sewing machine at any time? A I was not asked to take a picture of that object I moved.

MR. JOSEPHS: Let me have the chart.

(The chart was handed to Mr. Josephs)

Q Now I ask you to look at People's exhibit No. 3, and

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ask you is that the place where the sewing machine was, as indicated on this chart?

(Witness examines chart)

MR. WELIER: Study it carefully.

THE WITNESS: I am trying to study to get the location of the building. I want to get the idea where the partition was and the doorway leading in from the partition.

THE COURT: Any objection to pointing it out to him?

MR. JOSEPHS: No.

THE COURT: What do you want to know there?

(Addressing the witness)

THE WITNESS: The partition of the doorway leading to the rear.

THE COURT: This (indicating) is the entrance into the store. That line (indicating) is supposed to represent the partition separating the front room from the back room. That (indicating) is supposed to be the door.

THE WITNESS: This (indicating), is where the machine was that I moved just behind (indicating)

THE COURT: The witness points to an article of furniture which is marked table with a sewing machine attached, which is to the west of the door in the inner room and against the partition separating the two rooms.

BY MR. JOSEPHS:

Q Is that where the sewing machine was when you first

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saw it? A I would not say exactly if it is a sewing machine or a table. I will say either one of these was what I saw and I moved it.

Q Was it a little nearer to the west wall than that indicates? Look at that? A It was very close to the door.

Q And this table was all littered up, wasn't it?
A There was some stuff on it.

Q Quite a good deal of stuff on this machine?
A Not quite a good deal.

Q There was some stuff on it? A There was stuff on it.

Q You never took a photograph of that machine, did you?
A No, sir.

Q MR. JOSEPHS: That is all.

J O H N M A H O N E Y, called as a witness on behalf of the people, having first been duly sworn, testifies as follows:

(I reside at 49 Catherine Street, New York City)

DIRECT EXAMINATION BY MR. WELLER:

Q What is your business? A Fire patrolman.

MR. WELLER: Sit up and talk louder.

Q What is your business? A Fire patrolman.

Q What are your duties? A To watch for fires and help to protect property.

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Q Follow up the fire engines and go to the fire and guard the property while the property is exposed? A Yes sir.

Q And protect as far as you can the property, is that right? A Yes, sir.

Q On the 5th of July, 1915, did you go to premises 155 East 75th Street? A Yes, sir.

Q Those premises are in the County of New York? A Yes, sir.

Q And what time did you get there? A About six forty-five, between six forty-five and six fifty.

Q And when you got there, what did you find? A The firemen fighting the fire, which was practically under control.

Q Had the fire been put out at that time? A No, sir.

Q And did you go inside the premises? A Not then.

Q Where did you remain? A I stood outside near the curbstone.

Q Until when? A Until about five after seven, ten after seven, sometime around that time.

Q What occurred at that time? A Then we went in, ^{when} the fire department backed out.

Q Did you go in? A Yes, sir, I stood near the door.

Q Did you go in the premises or remain at the door?

A I went inside about five feet, inside the door.
charge of

Q Were you left in the premises? A Yes, sir, from
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seven fifteen to seven forty-five, half an hour.

Q You were there from seven fifteen to seven forty-five?

A Yes, sir, to seven forty-five.

Q P. M. on July 5th? A Until seven fortyfive P. M. on July 5th.

Q You were relieved by patrolman who? A Patrolman Warren.

Q While you were in those premises did anybody change things around or interfere in any way? A No, sir.

Q Was anybody permitted to enter the premises except officials of the fire department? A No, sir.

CROSS EXAMINATION BY MR. JOSEPHS:

Q Mr. Mahoney, whom are you employed by? A By the New York Board of Fire Underwriters.

Q You are not employed by the City of New York, are you?
A No, sir.

Q And ~~a~~ the Board of Fire underwriters is an organization representing the insurance companies? A Yes, sir.

Q And you were present at that time in the interests of the insurance companies? A Yes, sir.

Q And looked out as much as you possibly could to protect the insurance companies? A Yes, sir.

Q You are paid by the insurance companies? A Yes sir.

Q And it is your duty to protect in any way the financial interest of the company, that is all you were there for?
A Yes, sir.

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Q You didn't care about anything else? A No, sir.

Q After you got in, there, did you carry your blanket in?

A No, sir.

Q Or rubber sheets or anything? A No, sir.

Q You didn't cover anything up? A No, sir.

Q The place was pretty well soaked with water, wasn't it?

A Yes, sir.

Q How long did they keep pouring water in the place?
to

A I should judge about six forty-five.
^

BY MR. WELLER:

Q Do you know?

THE WITNESS: I could not tell you.

BY MR. JOSEPHS:

Q How far did the firemen have to go? A They only
had to go a block and a half.

Q Was it in an automobile? A A horse.

Q They had to go a block and a half? A Yes sir.

Q It took them probably less than a minute to get
there after the alarm was turned in.

Q Did you smell benzine? A No, sir. ✓

RE DIRECT EXAMINATION BY MR. WELLER:

Q Did you go in further than five feet from the door?

A No, didn't go five feet.

Q Let me ask you. Counsel asked you about blankets,
you took tarpaulin blankets? A Yes sir.

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Q Don't answer until you listen to the question. You take tarpaulins and blankets to fires, don't you? A Yes sir.

Q After a fire is over sometimes you spread these tarpaulins out, do you not?

MR. JOSEPHS: I object to that as leading.

THE COURT: I will allow it.

MR. JOSEPHS: Exception.

Q Is that right, after a fire on some occasions you spread your tarpaulins out?

BY THE COURT:

Q What do you do with the tarpaulins, spread them out?

BY MR. WELLER:

Q What for, for the purposes of saving property?

A For the purposes of saving property.

Q If the fire is up stairs and the fire comes down you spread tarpaulins out to protect the property? A Yes sir.

Q If there is any fire up stairs and no water dropping on the goods then it is not necessary to spread any tarpaulins out? A No, sir.

BY MR. JOSEPHS:

Q When you went into the store, you say you went in about five feet, is that right? A I didn't exactly say it was five feet. I went inside of the door a couple of feet; I was not inside five feet.

Q Did you go up to the partition? A No sir.

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Q You walked in a few feet? A Yes, sir.

Q Might have been five feet or two feet? A Two feet.

Q It might have been five? A Well, whatever it was.

Q How deep was the ~~store~~ store?

MR. WELLER: I object as not proper re cross examination. There is a map in evidence anyway.

THE COURT: I will let him answer.

BY THE COURT:

Q How deep was the store, if you know? A I can't exactly tell you.

BY MR. JOSEPHS:

Q About, you looked, you could not help but see?

MR. WELLER: I object. He said he did not know.

THE COURT: He said he did not know. I sustain the objection.

Q Did you look at the back or towards the rear of the store? A No.

Q You didn't look? A No, sir.

Q When you walked into the store, did you shut your eyes?

A No, no.

Q You were there to get information for a certain company? A Well, our commanding officer does that. We went inside and just stood and came outside, stayed a second.

Q Walked right in and walked right out, one second, is that all? A That is about all.

Q Might it have been two seconds? A Oh, no. ✓

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Q How long did you testify after that you were relieved by somebody else? A Seven fortyfive I was relieved by my man.

Q What time did you go in? A I went in around eight o'clock.

Q You went in around-- A (Interrupting) You mean to the fire? In the store you mean?

Q Yes. A I went in around ten minutes to seven.

Q Ten minutes to seven? A About that.

Q You were relieved at seven forty-five? A Oh, no. When I went in the store it was about ten minutes after seven.

Q And you were relieved at seven forty-five?

A Seven forty-five.

Q You were the first man there in the interests of the company? A Yes, sir.

MR. WELLER: Have we not had all this before, if your Honor please?

Q Mr. Mahoney, you were around the premises for thirty-five minutes and you were only in the store one second?

MR. WELLER: I object to that as he has already testified to it.

THE COURT: He said he went out of the store.

BY THE COURT:

Q Did you go back in the store? A Yes, sir.

THE COURT: He means he went in the store and remained there about a second while the firemen were

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there; isn't that so?

THE WITNESS: Yes, sir.

THE COURT: Then he came out and when they left
went in again?

THE WITNESS: Yes, sir.

BY MR. JOSEPHS:

Q You went in again? A Yes, sir.

Q And how long did you remain in the store?

A (No answer)

THE COURT: Gentlemen of the Jury, you are admon-
ished not to converse amongst yourselves on any subject
connected with this trial, form or express no opinion
thereon until the same is submitted to you.

The Court stands adjourned until half past ten to-
morrow morning.

Whereupon at 3:19, the Court adjourned until September
23rd, 1915, at half past ten.

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The Court met pursuant to adjournment.

Appearances as before.

J O S E P H W A R R E N, called as a witness on behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q You are a member of the Fire Patrol of the City of New
York? A Yes sir.

Q And what are your duties? A My duties?

Q Speak up loud so that all the gentlemen over here can hear
what you have to say? A My duties are to ~~save~~ whatever I can at
afire, salvage it is called.

THE COURT: If you will have the kindness to talk a little
louder we will be very much obliged. This is a large room and
there is some noise in it.

THE WITNESS: (Continuing) My duty is on the salvage corps,
to save whatever I can at a fire and to watch it when I am told
to watch it.

Q Did you go to premises No. 155 East 75th Street on the evening
of July 5th? A Yes sir.

Q What time did you get there? A 7:45 p.m.

Q And did you see a patrolman there, a fire patrolman?

A Yes sir.

Q Who was it? A Patrolman Mahoney.

Q That was the man who was here on the stand? A Yes sir.

Q And did you go on duty at that time? A Yes sir.

Q At 7:45 p.m. in the evening you were on duty continuously until

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when? A 7:45 next morning.

Q And during that time did anybody enter the premises or in any way disturb the premises? A There was a fireman there with me. There was nothing disturbed while I was there.

Q And when you were there during the night, wherewere you, whereabouts, where were you, what part? A I was at the door, sitting at the door.

Q Did you go inside the premises at all? A I was not inside the partition, I was inside the store, but not inside the partition.

CROSS-EXAMINATION BY MR. JOSEPHS:

Q Mr. Warren, you are connected with the Fire Patrol system, are you? A Yes sir.

Q You are not paid by the City? A No sir.

Q You have no interest in any city affairs at a fire? A No sir.

Q Your ~~xxx~~ only duties are to be present at the fire to protect the property of the insurance companies?

MR. WELLER: Your Honor, inasmuch as there are a number of these witnesses, fire patrolmen, I will concede --

THE COURT: I think to shorten the case that will be conceded.

MR. JOSEPHS: I am just leading up to another thing, if it please your Honor.

MR. WELLER: They are there to protect the insurance companies' property, and also to protect the insurance companies. That is their primary duty.

BY MR. JOSEPHS:

Q And it is your duty to save any moneys you can for the insur-

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³
ance company? A Yes sir.

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store,
Q This is a very small ~~store~~, isn't it? A Not so very small.

Q Well, how big is it? A The store?

Q The store? A The store I believe would be about --

MR. WELLER: If you don't know, say so.

I
MR. JOSEPHS: May it please your Honor, I am here examining
the witness or not?

THE COURT: I will allow the witness to answer.

BY THE COURT:

Q You know how long it is? A I could not tell you exactly
the length of it.

BY MR. JOSEPHS:

Q I don't want you to do so. Point out the distance from you
to me.

MR. WELLER: I object; we have a diagram in evidence.

THE COURT: For the purpose of testing the recollection of
the witness I will allow it.

Q About how deep is the store from you to me? A Yes sir.

Q That is about as large as the whole store is? A Yes sir.

Q And how far from you towards me is the partition from the
front door? A Well, about the end of this table, to the distance
of the stenographer's table.

Q How many feet do you judge that is? A 4-1/2 feet.

Q And the rest of the store comes all the way back? A Yes
sir.

Q Did you go up there to the partition? A I was not inside
the partition at all.

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Q Did you go to the partition? A Just to the partition.

Q Did you look in, A I looked in, I could not see anything. You can't help looking in when you walk in that space, there is a small space.

Q And you went up to the door, to the partition? A I was not to the door. I did not go noways near the door, about two feet away from it.

Q The only distance from the entrance to the store to the partition is from you to the end of that table? A Yes sir.

Q And you, as a fireman, there to protect property, never went near that door? A No sir.

Q To the partition? A No sir.

Q You were not ~~interested~~ interested in the property behind the partition at all?

MR. WELLER: One moment. I object to this. It is not a question of his being interested in the property. He was there primarily as a watchman to give general supervision of the property, not specific supervision.

THE COURT: Read the question.

(The stenographer read the question).

MR. WELLER: Question of interest. What does he mean by interest in the property?

THE COURT: Yes, sustained.

Q You were there to look out for the preservation of property, weren't you? A To see that there was nobody interfere with the store.

Q There was a window in the back of the store? A You could see

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that; you could see the light come through from the door. 25

Q Did you go back to test that window? A No sir.

Q And you didn't go to the door of the partition at all, as you say? A No sir.

Q It was as close from the entrance as you are to the end of that table? (Indicating stenographer's table). A Yes sir.

Q And you didn't take the trouble to walk to the door? A No sir.

Q Did you talk to anybody about this case since yesterday?

A No sir.

Q Are you sure? A Yes sir, I am sure of it.

Q Did you ever talk to anybody about this case? A No sir. ✓

Q Not at all? A (No answer).

Q Did you know the case you were being brought down on?

A Yes sir, I knew the case.

Q You were aware it was the Goodmark case? A Yes sir.

Q You didn't know what you were going to be asked to testify to? A No sir.

Q Did you see Mahoney since yesterday? A Yes sir.

Q Where did you see Mahoney? A At the quarters of the Fire Patrolmen.

Q Did Mahoney tell you about this case? A No sir.

Q Did he tell you he was called as a witness? A I was outside when he was called in. I knew that.

Q Did he say anything to you at all? A No sir.

Q Did any of the fire marshals talk to you since yesterday?

A Not anything concerning this case, only I was to call here to-

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morrow -- that is to-day.

Q And you never spoke to any fire marshal about this case?

A No sir.

Q Did you smell any benzine in that store? A No sir. ✓

M I C H A E L B O L E K, called as a witness on behalf of
the People, first being duly sworn, testified as follows:

(I reside at 349 East 92nd Street).

DIRECT EXAMINATION BY MR. WELLER:

Q What is your business? A Fire patrolman.

Q How long have you been a fire patrolman? A Two years and
three months.

Q Did you go to premises 155 East 75th Street on the morning
of July 6th? A Yes sir.

Q What time? A 7:45.

Q Now, take your hand away from your chin. Speak so that the
gentlemen away over here can hear what you have to say. What
time? A 7:45.

Q Were you on duty there at that time? A Yes sir.

Q And how long were you there? A Until 5:50.

Q That evening? A That evening.

Q Now, do you remember Mr. Fist, the photographer, came there
that morning? A Yes sir.

Q What time did he get there? A About 12 o'clock. ✓

Q And at no time while you were there did any one disturb any
property or the interior of the store? A No sir.

Q I show you People's Exhibit No. 4 for Identification, and ask
you if that is a fair representation of the exterior of the out-

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side of premises 155 East 75th Street? A Yes sir.

MR. WELLER: I offer it in evidence.

MR. JOSEPHS: May I see it?

(Handed to Mr. Josephs).

THE COURT: Received.

(People's Exhibit No. 4 for Identification received in evidence and marked People's Exhibit No. 4).

MR. WELLER: This is a picture, gentlemen of the exterior of the building of premises 155 East 75th Street, this (indicating) being Lexington Avenue.

Q There is a liquor store on the corner, is there not?

A Yes sir.

Q Now, what is the next door on 75th Street next to the liquor store? A I didn't notice.

Q Which store is the tailor shop where the fire was? A It is right here (indicating).

THE COURT: Put some mark there.

Q Just ~~mark~~ a circle around the store, a big circle right around the store? A (The witness does so).

(The District Attorney showed same to the jury, who examined it).

Q These premises are on the north side of the street, are they not? A Yes sir.

Q I ask you if People's Exhibit No. 7 for identification is a ~~fit~~ fair representation of the back of the store? A That is it.

MR. WELLER: I offer it in evidence.

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MR. JOSEPHS: I would like to ask some questions before that goes in.

BY MR. JOSEPHS:

Q Mr. Bolek, did you go out in the yard to look at this place? A No sir.

Q As a matter of fact, you never saw the building from that point of view? A I seen the photographer standing back of the yard taking the picture.

Q You didn't see the place yourself? A I seen the window when I looked at it.

Q Did you ever look at it in the position it was taken?

A No sir.

Q As a matter of fact, you don't know whether it is a correct representation? A I can tell the windows.

THE COURT: I may say, Mr. Weller --

MR. JOSEPHS: I will let it go in.

MR. WELLER: If there is any question about it, I will bring all the tenants.

MR. JOSEPHS: I have no objection to it, but it only goes to show that they will swear to anything.

MR. WELLER: These are men of integrity.

MR. JOSEPHS: No objection to the picture at all.

THE COURT: There being no objection, I will receive it.

(People's Exhibit No. 7 for Identification received in evidence and marked People's Exhibit No. 7).

MR. WELLER: (Addressing the jury) This is a picture of the two windows in the rear of the store, this being the front and

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this being the rear of the store on the ground floor.

Q Now, Mr. Bolek, you got there in the daytime, in the morning? A Yes sir.

Q It was daylight when you were there? A Yes sir.

Q Did you go inside of the premises? A Yes sir.

Q And will you state whether or not you found any fire between the door and the partition, these called partition -- you remember there was a partition, or don't you remember? A I remember that.

Q Was there any fire in the front part of that store? A I don't remember.

Q Did you go inside of that partition? A Yes sir.

Q What if anything, did you find inside? A I seen the remains of the fire.

Q And whereabouts did you find the remains of the fire, on which wall? A The west side of the wall.

Q Now, while you were there, was anything disturbed before these pictures were taken? A No sir.

Q I show you People's Exhibit No. 9 for Identification, and I ask you if that is a fair representation of the westerly wall as you call it? A yes sir.

MR. WELLER: I offer it in evidence.

MR. JOSEPHS: May I ask a question?

MR. WELLER: I object, if your Honor please, he has already attacked the integrity of these men. The witness is challenged, and I think it ought to be brought out regularly, of course, unless there is a valid objection.

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MR. JOSEPHS: I object on the ground --

THE COURT: I think the witness was in, inside of the store, and saw the walls, is that so?

THE WITNESS: Yes sir.

THE COURT: I will allow it.

MR. JOSEPHS: Exception.

(People's Exhibit No.9 for Identification received in evidence and marked People's Exhibit No.9).

MR. WELLER: This is the westerly side of the interior of the store back of the partition, this being a partition, this being the wall.

BY MR. WELLER:

Q Now, when you went in there and examined that section of the store what, if anything, did you find? A In where?

Q Well, did you see anything on the floor? A Well, yes sir, I found a few pieces of rags lying on the floor, clothing, cloth, whatever it was.

Q Did you smell of that? A I smelled one or two just for curiosity. I didn't find any smell, not on those I picked up. ✓

Q Did you examine any of the rags there? A No sir, not at that time.

Q Not at that time? A No sir, not at that time.

Q What time are you speaking of? A Between 7:45 and 8:20. marshal

Q Now, did the fire/come later in the morning? A At 8:22.

Q And who was the fire marshal that came there? A Fire Marshal Cashman.

Q Now, did you examine any of the rags at that time? A With

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the Fire Marshal.

Q And where were the rags that you examined at that time?

A On the pile, on top of the sewing machine.

Q And did you notice any odor to these rags? A I did kind of, but I didn't know what it was; there was an odor of some sort of chemical; I don't know what it was.

Q Were you able to distinguish the odor in any way? A To me it smelled like gasoline or benzine.

Q And you smelled gasoline or benzine before that time?

A Yes sir.

Q Did you examine any other portion of the interior of the store beyond the partition with the Fire Marshal? A With the Fire Marshal -- yes sir.

Q And whereabouts, and what did you find? A Right behind the door was a case and a box full of cuttings, pieces of silk stuff, which smelled pretty strong.

Q With what? A Something, gasoline or benzine.

Q Now, will you step down here, just a minute, please.
(The witness steps down from the witness chair).

Q Which is the box that you have reference to? A This here, (indicating).

Q That wooden box? A Yes sir.

Q And the clippings inside? A Inside.

Q Now, are those the clippings? A (The witness examines same).

Q Are those the clippings, if you don't remember, say so?

A I don't remember.

MR. WELLER: All right. Sit down.

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(The witness resumes the witness chair).

Q Now, did you examine the easterly wall of the premises in the rear of the partition? A Yes sir.

Q I show you this picture, People's Exhibit No.6 for Identification, and ask you if that is a fair representation of the easterly wall as it existed at that time? A Yes sir.

MR. WELLER: I offer it in evidence.

THE COURT: Received.

(People's Exhibit No.6 for Identification received in evidence and marked People's Exhibit No.6).

MR. WELLER: (Addressing the jury) This, gentlemen, is the easterly wall of the premises, ~~the~~ behind the partition.

MR. JOSEPHS: That is the wall opposite to which the fire took place.

MR. WELLER: Exactly.

Q Was there any fire on that wall, on that side? A I don't remember.

MR. JOSEPHS: There was no fire on that.

Q I show you People's Exhibit No.5 for Identification, and ask you if that is a correct representation of the section of the easterly wall nearest the street behind the partition? A Yes sir.

MR. WELLER: I offer it in evidence.

(Received in evidence and marked People's Exhibit No.5).

Q And does this picture show the wooden box that you saw over there? A Yes sir, that is the box.

(MR. Weller shows same to jury).

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Q That is the rear of the store on the ~~west~~ easterly side.

MR. JOSEPHS: That is where the fire did not take place.

MR. WELLER: Now, take these two photographs together, gentlemen. This photograph, People's Exhibit No.6, comes up to a point where People's Exhibit No.5 beings on the easterly wall.

Q I show you People's Exhibit No.8 for Identification, and ask you if that is a correct representation of the rear part of the premises? A yes sir.

Q In the back of the partition? A Yes sir.

Q Rear ~~of the~~ wall? A Yes sir.

MR. WELLER: I offer it in evidence.

MR. JOSEPHS: That is also where the fire did not take place.

MR. WELLER: Yes.

(Received in evidence and marked People's Exhibit No.8).

MR. WELLER: I don't know whether your Honor ^{has seen} ~~received~~ those photographs or not.

THE COURT: I will be glad to see them.

(MR. WELLER shows them to the jury).

Q People's Exhibit No.6 on the left, that is the one you hold in your left hand, is a continuation of People's Exhibit No.5 which you hold in your right hand. That is the same wall. That is the rear wall right under the window. That would be the north-easterly corner.

(Photographs handed by Mr. Weller to his Honor, who examines same).

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CROSS EXAMINATION BY MR. JOSEPHS:

Q Now officer Bokek, you are employed by the Insurance Company? A Board of Fire Underwriters.

Q Well, they are interested in the Insurance Company?

A I do not know.

Q What? A I do not know.

Q You don't know that you attend fires in the interest of the fire insurance companies? A

MR. WELLER: If your Honor please, I object to this line of cross examination.

THE COURT: It is conceded that that is the fact.

MR. JOSEPHS: I know it, we all know it, but it is almost impossible to believe that a man who has been in the employ --

MR. WELLER: I object to a stump speech in court.

THE COURT: Pardon me. He said he does not know.

Q You do not know that you are employed in the interests of the fire insurance companies?

MR. WELLER: I object on the ground that it has already been answered.

MR. JOSEPHS: I have a perfect right to ask it for the purpose of testing his veracity.

MR. WELLER: I object on the ground that it is immaterial.

THE COURT: Sustained.

MR. JOSEPHS: Exception.

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Q You say that you got there about seven forty-five
A. M. on the morning of July 6th? A Yes, sir.

Q When you got there did you immediately walk into the
store? A I relieved my man, and then walked in.

Q You relieved him on the sidewalk? A No, sir.

Q Where did you relieve him? A Right in the doorway.

Q You relieved him in the doorway and walked in?

A Yes, sir.

Q Did you go back to the partition? A Yes, sir.

Q And you walked inside the room, inside the partition?

A Yes, sir.

Q And you looked around? A Yes, sir.

Q You examined the premises? A Yes, sir.

Q And you picked up pieces of cloth from the floor?

A Yes, sir.

Q And you say they had no odor? A Not that I remember,
no, sir.

Q The first ones had no odor that you picked up from
the floor? A The few pieces that were on the floor.

Q Why did you pick them up? A It is our duty to
pick up all pieces on the floor and put them on high places.

Q And look if any odor attached to them? A No, sir.

Q It is not your duty to find out if a fire is incendiary?

A No, sir.

Q Why did you smell those few pieces? A Out of
curiosity.

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Q And the only reason was because you were very curious?

A Certainly.

Q Then when your curiosity ceased you did not try any more? A I didn't have any time, the fire marshal entered the premises.

Q What time did the fire marshal enter the premises?

A Eight twenty.

Q You got there at seven forty-five, you had no time between seven forty-five and eight twenty to pick up more than a few pieces of cloth and smell them and then you stopped and those few pieces of cloth to smell them took you thirty-five minutes? A Yes, sir.

Q And after smelling the two pieces of cloth for thirty-five minutes, you could not detect an odor?

A I did not smell them for thirty-five minutes.

Q You didn't smell them for thirty-five minutes?

A No, sir.

Q Then you stopped smelling? A I didn't stop smelling, I stopped everything, just walked out and stood at the door.

Q How long did you stand at the front door?

A Only until the fire marshal entered.

Q When was that? A Eight twenty.

Q What time did you stop smelling? A I do not know.

Q Well, about how long? How long did the fire marshal come after you stopped smelling, sniffing, I should say?

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A About twenty minutes.

Q And you didn't have time in that twenty minutes, you were so busy? A I didn't want to have time.

Q That is more like it. After the fire marshal came, then, you smelled benzine then, didn't you? A Not right away, no, sir.

Q How long after the fire marshal came did you smell benzine? A About half an hour.

Q Did he pick up the pieces and tell you to smell?
A Yes, sir.

Q Half an hour after the fire marshal came, you for the first time smelled benzine? A Yes, sir.

Q Were those pieces on the machine that you smelled?
A Yes, sir.

Q On the first pieces that you detected any odor of benzine were the pieces you picked up from the machine, is that right? A I didn't pick up any pieces.

Q Well, he picked them up? A Yes, sir.

Q You saw him take them from the machine and he said "have a sniff"? A He said, "have a smell".

Q He should have said, have a sniff. He said, have a smell, you smelled them? A Yes, sir, I did.

Q And you smelled some chemical, but you didn't know what it was at first? A Well, it was benzine or gasoline.

Q Benzine and gasoline have the same odor practically?

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A To my mind I thsnk they have.

Q You swore when you first smelled it it was some kind of a chemical you did not know what it was? A And I continued benzine or gasolene.

Q But you didn't know at first, you said some chemical?

A Well, benzine is a chemical.

Q Did you know it was benzine right away when you smelled it? A I didn't know, I would not swear about that.

Q You would not swear it was benzine or gasolene when you smelled it right away? A I have not used it; I don't know it; I smelled it a few times.

Q It might have been something else, if you didn't use it. It might have been something else, you don't know, do you?

A (No answer)

Q As a matter of fact you have not any idea what benzine smells like? A I have a little idea.

Q A little idea of it? A Yes, sir.

Q Have you got any idea-- the first idea you had of it was at this fire? A No, sir.

Q You knew what it was before? A I smelled it before.

Q As a matter of fact you smelled it many a time?

A Not many times -- benzine or gasolene.

Q You could pick it up and say that is benzine?

A No, sir.

Q You could not do it that way? A No, sir.

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Q Now, where was this table, this machine, you say, located? A Right behind the partition.

Q And on the left door, as you walk in, wasn't it?

A Yes, sir.

Q On the left door. And on the left door, in other words, the westerly wall was where the main fire took place?

A Yes, sir.

Q In other words these pieces of cloth were nearer to the fire than the easterly wall? A Right in the center of the floor.

Q How far from where the blazing fire took place was this table located with these benzine rags on? A There was no table.

Q Or a machine table-- or a sewing machine?

A I didn't measure it.

Q About? A Four or five feet.

Q Four or five feet? A Yes, sir.

MR. JOSEPHS: Let me have the picture of that westerly wall.

(Mr. Weller handed the picture requested)

Q I ask you to look at this picture, People's exhibit Bo. 9, and look at that wall, that partition, that white appearance, did that wall have that whitish appearance when that photograph was taken? A I don't remember; I didn't notice that.

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Q You didn't notice that wall at all? A No, sir.

Q Well now, you swore that was a correct representation? A I noticed the walls, I didn't notice it enough to see the white stuff.

Q You don't know whether it is a proper conditionation or not? A That is the proper condition.

Q You will swear that was the condition in which that partition was at the time that photograph was taken?

A Yes, sir.

Q Well you said you didn't notice it? A Not that piece of wall.

Q That is what the District Attorney asked you, a correct representation of that wall? A It is.

Q Did you notice it? A I am not going to go up and down every nook and corner to notice every part of the wall.

Q I am asking you is that partition white? A The partition is not white.

Q On that photograph, see if it is not white?

MR. WELFER: I submit it is rather hard to tell that on any photograph because colors can't be photographed ~~exactly~~ or shades.

THE COURT: The photograph speaks for itself as to what it showed. The witness may state what the color of the wall was if he recollects, if you want that.

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BY THE COURT:

Q Do you recollect Mr. Witness what the color of the wall was? A It was a papered wall.

BY MR. JOSEPHS:

Q I am talking about the partition.

BY THE COURT:

Q In speaking of the partition, although both might ~~may~~ be very properly called a partition, counsel refers, I understand to the wooden part. In other words, what was the color, if you remember, of the wood in the partition that separated the front room from the back room? A Oak.

BY MR. JOSEPHS:

Q The color was oak? A Yes, sir.

Q When you saw it, was it oak? A Outside it was oak.

Q I am talking about the inside? A On the inside I didn't notice whether it was oak.

Q You noticed there outside where there was no fire but you failed to notice the condition of the wall on the inside where there was a fire? A Yes, sir.

Q The partition on the outside is open? A Yes, sir.

Q There was no fire on the outside of the partition?

A No, sir.

Q That you observed very carefully? A Pretty sure of it, only where the glass was broken it was kind of scorched a bit.

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Q Not very much scorched? A Enough for me to see it was oak.

Q But the outside was not scorched at all to speak of, there was no fire at all there? A I don't remember that.

Q And the inside where the fire took place you didn't take any particular notice of it? A Not very, no, sir.

Q And still you swore here that that is a correct representation of that wooden partition at the time that photograph was taken; is that right? A Yes, sir.

Q You still swear it is a correct representation?

A Yes, sir.

MR. WELLER: One moment. The impression that counsel seeks to convey that it is a correct representation of the character of the fire. Now this man does not attempt to state in what way it was scorched or burned. He is talking about the position. It is a correct representation with reference to the position of the partition, and the position of the wall.

MR. JOSEPHS: Oh, no.

MR. WELLER: I don't want to get into any altercation or discussion with counsel. I object to the question because it is misleading, and unfair to this witness.

BY THE COURT: Mr. Witness, you said in substance some time ago that that picture is a representation, what do you mean by that? A The fire being in this here corner, inside that partition.

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Q In other words that picture showed a certain place; is that place where there was a fire? A Yes, sir.

Q And you testified that that is, as you observed it to be there in those premises? A Yes, sir.

THE COURT: Now, proceed, counsel.

BY MR. JOSEPHS:

Q Now, do you notice-- just turn that picture so that I can get a look at it--

(The witness does so)

Q Running your hand along the partition just where the glass is broken on that molding like underneath the glass is broken, do you notice there is a little box at the extreme left of that picture, just the corner, the beginning, a portion of a box? A I didn't notice what it was.

Q Did you notice there was a box there?

A I did not notice.

Q You don't know what that is at all, do you, that little thing in the corner; do you see what I mean? A I see what you mean.

Q What is that? A I don't remember.

Q You have no idea what that is at all? A No sir.

Q Do you know that is a correct representation of that room?

MR. WELLER: I object to the question as again misleading. The witness has testified as to what constitutes

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in his opinion that picture as a correct representation.

THE COURT: I asked him the question pointedly and limited his answer.

MR. JOSEPHS: May it please Your Honor anybody can come--

MR. WELLER: I object to any comment or reference.

THE COURT: I have asked this witness, counsel and questions, and in response to questions I put to him, he has now stated what he intended by his answer, that it was a correct representation.

MR. JOSEPHS: May your Honor please, I can see, and I am quite sure others can see that the object of that picture is to show the condition of those premises.

THE COURT: You are examining a particular witness. The witness is being shown a certain exhibit and the witness's testimony as to that exhibit is limited in certain regards. The witness himself has stated the extent of his observation, and as the phrase "which is a correct representation" is somewhat ambiguous as used by the witness, he has explained what he meant by it.

MR. JOSEPHS: With due respect to the court and I don't want to prolong this argument except so much as is necessary for the record, I brought out from the witness he did not know the condition of the premises, didn't take any notice of it.

THE COURT: Ask him another question.

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MR. JOSEPHS: On the testimony offered, I move to exclude from the evidence that picture.

THE COURT: Mr. Weller, I think I will, before receiving the picture in evidence, listen to other testimony in the case. You will have other persons testify as to it?

MR. WELLER: Yes, your Honor.

THE COURT: I will keep it out of evidence for the time being. We will hear more testimony regarding it, that is People's exhibit No. 9, which was in evidence.

BY MR. JOSEPHS:

Q Officer, did you talk to anybody about this case?

A No, sir.

Q Not a soul? And all you know is that you were coming down to testify in the Goodmark case? A That is so.

Q Without a subpoena? A Yes, sir.

Q Didn't know you were going to testify about these pictures? A No, sir.

Q You didn't know you were going to be asked about smelling the cloth, did you? A No, sir.

Q And you didn't talk to Mahoney, did you?

A At the time of the fire only.

Q But not since that? A I have not seen him since.

Q Did you talk with anybody else connected with the fire marshal's bureau? A No, sir.

Q Or anybody else connected with this case? A No sir.

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Q You didn't discuss it with anybody at all?

A No, sir.

Q And the first time you ever told your story was when you came in Court to-day? A Yes, sir.

BY MR. WELLER:

Q You talked to me about the case?

MR. JOSEPHS: One moment, I object to that. Of course he did and we all know that.

MR. WELLER: You said "anybody".

MR. JOSEPHS: You are somebody. I knew this man would say anybody. Of course he talked to the District Attorney and I object to Mr. Weller making his remarks.

THE COURT: From this moment on Counsel will kindly proceed in an orderly way, and don't let it occur again. I will allow the question.

MR. JOSEPHS: There is one question I forgot.

Q These rags you picked off the machine, they were regular rags, clothes? A I don't know what they were.

Q They were not burned up? A Some parts were burned and some were not.

Q They were half burned and half were not?

A I don't remember any more.

MR. JOSEPHS: That is all. Your Honor, I would like to have this witness remain in Court, and also the witnesses that have been examined remain in the court room.

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h
HENRY F. CARLSON, called as a witness on 47
behalf of the People, first being duly sworn, testifies as
follows:

(reside at 324 East 66th Street).

DIRECT EXAMINATION BY MR. WOLLER:

Q Mr. Carlson, you are a fireman in the employ of the New
York Fire Department? A Yes sir.

Q And on the 6th of July, 1915, where were you assigned for
duty? A Engine Company No. 44.

Q Look around at the jury and speak up in a loud tone?

A Engine Company No. 44, 221 East 75th Street, between Second
and Third Avenues.

Q Where is it? A On the north side, between Second and
Third Avenues.

Q And that is one block away from premises 155 East 75th
Street? A Yes sir.

Q A block and a half? A Yes sir.

Q Now, on that day in the performance of your duties did you go
with a fire apparatus to these premises? A Yes sir, I rode on
the hose wagon.

Q You went on the hose wagon? A Yes sir.

Q What time was the alarm sounded, do you know? A Around 6:40
in the evening.

Q And how long did it take to get over the block and a half?

A I should judge about a minute or a minute and a half.

Q When you got to these premises, what, if anything, did you
do? A The first thing we did we pulled off the hose when we

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arrived at the fire. The hose was stretched in the back, it is 2-1/2 inch material, and the officer with me went over to see what was doing.

Q Where did you go? A I went to the back of the wagon where all the men go that pull off the hose.

Q You got the hose off the wagon? A Yes sir.

Q Then where did you go? A I took the nozzle off, the engineer connected the hose, and we went to the front of the building.

Q When you got to the front of the building who was with you?

A The officer --

THE COURT: Try and talk right out, louder.

THE WITNESS: (Continuing) The officer and I were on the nozzle, and fireman Shelton was in the rear of us.

Q Was any other fireman in the premises, or were you in first?

A I was the first fireman and my captain -----

Q When you approached the building what did you see? A There was a sort of heavy black smoke, a thick smoke, coming out of the door, the door was --

Q Was there a front window in this store? A One large window.

Q Was that pane of glass intact? A Yes sir.

Q Was there a pane of glass in the door? A Yes sir.

Q Was that pane of glass intact? A Yes sir.

Q Did you notice whether or not as you approached the building, if there was a transom or fan light above the door leading into the premises? A I didn't notice it at first. After the fire

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was out the glass was cracked, but the transom itself was closed.

Q Now, was the door open or closed as you approached it?

A When we arrived there with the apparatus the door was open and our captain ran down and shut it. That is the rule in the Fire Department.

Q The door was shut by the captain until the hose was stretched? A Until the hose was charged with water.

Q And the door was open when the captain closed it? A That I could not say; I was not there.

Q Now, when you got in the nozzle of the hose, what did you do with it? A As soon as the captain started the water, we opened the door, and I had to crawl in on my hands and feet to get in the store.

Q Why did you have to do that? A The smoke was heavy and black, and there was a sort of a gassy smell. ✓

Q What do you mean by a "gassy smell"? A The smoke was black and heavy, a person could not walk ⁱⁿ upright, had to crawl in on the floor to get in.

Q Did you have to crawl along the floor? A Yes, sir.

Q What was the color of the smoke, was it white or black?

A A sort of heavy black smoke, and it had a gassy smell to it.

Q Now, when you got inside of the door, could you see anything in there, could you see around? A No, you could not see your hand in front of you until we got past the partition. Then

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we could see the fire.

Q Where was the fire? A On the west side of the building, right behind the partition, it all seemed to be confined in the one corner.

Q What did you do when you got behind the partition? A The first thing that I did I went in the door, I ordered them to start the water, I opened the nozzle and broke a glass panel, the bottom part was wood, and the upper part glass.

Q Of course you didn't know at the time you broke the glass panel -- A (Interrupting) With the line of hose there.

Q Did the water go through? A It didn't need any water; we had to get behind the partition to get at the body of the fire.

Q Did you notice when you got behind the partition whether there was a door in that partition? A There was a swinging door in the partition.

Q You went through that door? A Yes sir.

Q Do you recall whether that door was open or closed? A I could not say on account of the smoke -- we had to crawl in.

Q When you got behind the partition what did you see? A I saw the red flare. I did not know what was burning.

Q A red fire? A yes sir.

Q What part of the premises was the red fire in? A On the west side of the building, right behind the partition.

Q And what portion of the premises was burning? A Why, it seemed all to be under the shelf, or table, a sort of table on the west side.

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Q With reference to the partition, what part of the partition, if any, was burned? A Why, the part on the inside of the store, up against the wall.

Q Was there any fire in the walls? A Well, you could not see on account of the smoke. We saw the walls were all scorched

Q And the floor? A That was what I saw. When you overhauled the place you could then see it was burned.

Q How long did you have the nozzle working with water? A I should judge a minute, or about a minute and a half, that is an actual stream of water. We were told to shut off and start the water several times. We worked into the building and started our water again.

Q It was all out in about a minute and a half? A Yes, sir, actual working.

Q Now, when the fire was out did you notice the westerly wall? A Well, the truck company came in then and under the Chief's order --

Q Did you notice where the fire was? A That is what I saw on the floor behind the partition.

Q I show you People's Exhibit No.9, and I ask you if that shows where the fire was on the floor and the rear part of that partition? A All along this wall here, and this corner there is a sort of a shelf here, and the truck company tore it down, and a shelf on the wall and they ripped it down.

Q Could you see if there was any goods or debris on this

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shelf against the westerly wall? A That I could not say because the truck company does all the overhauling.

Q This smoke was very heavy? A Yes sir.

Q Is that a fair representation of the place at that time?

A That is the way it looked after the truck company left it, and we washed down.

Q Now, did you remain there at the fire, or did you leave?

A No, we were ordered back to quarters.

Q You don't know what occurred after that? A No sir.

CROSS-EXAMINATION BY MR. JOSEPHS:

Q Now, one thing that you do know is that there was a gassy smell there? A Yes sir.

Q You do know there was a gassy smell? A Yes sir.

Q Now, the fire was practically out when you left? A Yes sir.

Q Did you smell benzine around there? A I could not say whether it was benzine or not. The smoke there was so heavy.

Q I mean --

MR. WELLER: Let him finish his answer.

Q I am talking about after the fire was out? A After the fire was out the place was thoroughly ventilated.

Q Could you smell any benzine there? A That is not for me to describe.

Q There was some odor there? A Yes sir.

Q Before you left and the fire was out, you noticed an odor, is that right? A yes sir.

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Q You say you had to crawl in on your hands and knees, the smoke was so thick? A Yes sir.

Q Now, those glass partitions which were broken, that was not broken by the fire, that was broken by the hose? A By the line of hose.

Q The stream of water going in broke these two windows?
A Yes sir.

Q Broke these windows? A Yes sir.

Q And it was not the fire that broke them at all? A I could not say as to whether they ~~were cracked~~ or not, they might have been cracked by the heat. As I said before, the smoke was so heavy you could not see your hand in front of you.

Q You know you broke them? A Yes sir, thoroughly.

BY MR. WELLER:

Q With the hose or stream of water? A With the stream of water.

BY MR. JOSEPHS:

Q Did you have to crawl in to do that? A Yes sir.

Q How close to the glass partition did you have your nozzle when you broke these glass windows? A I should judge four or five feet.

Q Four or five feet? A Yes sir.

Q And how far did you crawl? A Well, I crawled until I got past the partition. When I got past the partition I put the fire out; it was not necessary then, we opened the windows.

Q When did you break the windows, before you went on the other

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side or after? A Before I got to the partition.

Q How far did you crawl on your hands? A Until I got to the door of the partition. There was still fire there after I broke these windows.

Q And you crawled up to the partition, and then you turned your hose on and you broke the windows with the stream of water? A Before I reached the partition I said --

Q That is what I want to know. How far did you crawl when you broke those two glasses? A As soon as we got inside the door -- we could see the glare -- I broke the glass.

Q How far did you crawl on your hands and knees? A About four or five feet; after I broke the glass I crawled further.

Q You crawled four or five feet on your hands and knees before you broke the glass? A Yes sir.

Q And you were about four or five feet away from the glass when you broke it?

MR. WELLER: I don't want to interrupt counsel, but the witness has said at least three or four times that. I think there ought to be some limit, ought not to be this continuous repetition.

THE COURT: Be as brief as you can consistently be, Counsel.

Q And you were lying down on the ground when you broke the glass? A No.

Q Standing up? A Crouched over, I was like this (illustrating), going in like this (illustrating).

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Q You were not lying full on the ground? A No sir.

Q Now, you had to get in that way because the smoke was so thick? A The smoke and heat was so heavy, yes.

Q You were afraid of the fire, too? A Yes sir.

Q Don't you always go into a fire that way? A Naturally the heat and smoke arises, there is less of it on the floor.

Q Was there very much where you were?

A All over the place.

Q On the ground where you were? A Yes sir.

Q You were not overcome by the smoke? A No.

Q How long were you in the place? A Until the fire was out.

Q How long? A About 20 minutes.

Q And you were not overcome with the smoke? A No sir.

Q Did you talk to anybody about this case? A No, sir, I didn't know anything about it until last night.

Q You didn't speak to a soul about it? A No sir.

Q No fire marshal or anybody else? A No sir.

Q Not to Mr. Weller? A I spoke to Mr. Weller this morning.

Q You did speak to somebody about the fire? A Not about the case.

Q But about your having to come here to testify? A I was ordered to report to Mr. Waller at 9:45 this morning.

Q You said, "I am here", and gave your name? A Yes sir.

Q You never spoke to the Fire Marshal, never spoke to anybody else? Did you ever tell anybody that there was a gassy smell in the place? A No sir.

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Q Never told that to a soul, that there was a gassy smell when you went in there? A No sir.

Q Did you pick up any rags to smell them? A No sir.

Q You were where the fire was on the westerly wall? A I said either a table or a shelf.

Q How close did the fire get to the table or shelf? A 3-1/2 or 4 feet.

Q As high as that table? A yes sir.

Q Did it have legs? A I could not say.

Q Are you sure it was a table or a shelf? A yes sir.

Q Positively? A Yes sir.

Q What was above that? A A smaller shelf, I imagine, that the truck company tore down.

Q Above that another shelf? A yes sir.

Q Were there not clothing hanging from a rack? A That I do not know.

Q You do not know whether there was clothing hanging from a rack? A No sir.

Q You know there was a table there? A yes sir.

Q You are positive there was a table there? A Yes sir.

Q There is no question, there was a table or a shelf? A Either a table or a shelf.

Q Where the fire took place? A Yes sir.

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JOHN R. SHELTON, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

(I reside at 429 East 142nd Street)

DIRECT EXAMINATION BY MR. WELLER:

Q Now, Mr. Shelton, you are a member of the New York fire department, and have been for how many years? A Two years and two months.

Q What company were you attached to on July 6th,-- July 5th? A Engine 44.

Q Same company as foreman Carlson? A Yes, sir.

Q About half past six or twenty minutes of seven that evening, did you go to a fire? A Yes, sir.

Q At premises 155 East 75th Street? A Yes, sir.

Q Were you first to arrive there? A Yes, sir.

Q What if anything did you see when you got there?

A Well, we seen smoke going out of the door, the door was open on a crack and ^{when} we got there we stretched out and my officer went to the door and shut the door until we got the water in our line.

Q And he closed the door? A Until we got the water.

Q Were the windows intact at that time?

MR. JOSEPHS: One moment. I have let him lead every witness up to date.

MR. WELLER: I object. He has not let me lead anything.

MR. JOSEPHS: Let him tell the condition. He asks

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if the place was intact and the officer will say yes.

BY THE COURT:

Q Well, what was the condition of the windows when you got there, if you observed, did you look at the windows?

A The windows were all up and everything tight, except the door, the door was on a crack when my officer pulled the door shut, when we got the water we got in mostly on our knees. The place was charged heavily with smoke and a gas substance of some description when we got in there.

Q Did you notice whether there was a fan light above the door, a transom? A Yes, sir, a transom above that door, it was not open, closed tight, everything was closed tight, except that door was on a crack when we got there. My officer shut the door quick to keep in the draft, a back draft from blowing on us if there was such a thing as that until we got water in our hose. When we got the water in our hose the three of us rushed in to put the fire out.

Q How did you go in? A Very low.

Q Show us how you got in? A We got in like this (illustrating), you got to keep low (illustrating).

Q Was it a heavy smoke? A A very heavy smoke, that was why we had to get low; we had to do that in order to enable us to get in.

Q What did you do? A I got as far as the partition and my officer said to me, Shelton--

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THE COURT: Not what the officer said.

Q What did you do? A I ventilated the room by breaking in the window in the back. I was told to ventilate the place. I got up on top of a sink.

Q Is that the window, the rear window in the store, large window? A That is right.

Q How did you break that? A With my hat.

Q Did you break that before or after they went in with the hose? A We were in with the hose and we had to ventilate it to stay in there. My officer said, "ventilate", and I tried to pull the window down to keep it from breaking. I then took my helmet and busted the glass with the helmet.

Q The windows were closed before that? A There was a small window besides that, which window was that which was closed? A All the windows were closed there. That is why we had to open them.

Q You say you detected a strong odor? A Yes, sir.

Q Can you describe that odor? A No, I cannot. We got so much of it we don't ~~xxxxxx~~ think about smoke; we go in there to put the fire out and you get charged with smoke of all descriptions, we take it and get into it. This smoke was charged.

Q This smoke was charged? A Yes, sir, charged heavily.

CROSS EXAMINATION BY MR. JOSEPHS:

Q You would not say it was benzine? A I would not. ✓

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Q Now, officer, as soon as you got in with the hose down, how much later was it you went back there and broke the window? A When g we got to the partition.

Q That is only about four feet from the door, isn't it? A I don't know how many feet it is.

Q It is a very short distance from the door, about four feet? A About two steps from the door? A I didn't say that.

Q It is a very short distance? A I don't know exactly how short it is or how long it is.

Q Well you know it was not one hundred feet? A We know that.

Q About how far do you judge you were at that fire? A Maybe eight or five feet.

MR. WELLER: There is no use of the officer guessing at it.

THE COURT: I will let his answer stand.

Q About five or eight feet. That didn't take you very long to go that distance, did it? A When you are working in smoke it seems quite some time to make headway.

Q You won't swear that smoke was very thick when you got to the partition? A The smoke was very thick when we opened the door.

Q I am talking of which was thicker, when you got to the partition? A The room was charged heavy from the door back, it was all the same from the door in.

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Q It was pretty thick when you got to the partition?

A The smoke seemed to be in the back when we went in.

Q Just answer the question -- you are a good fireman.
When you got to the partition the smoke was pretty thick?

A It was thick.

Q Were you overcome? A I was not, no, sir.

Q This was a gassy smoke? A Yes, sir.

Q Then the other man opened the window? A Yes sir.

Q You went back to the rear of the store? A yes sir.

Q Which is considerably some distance from the partition
than the front of the store? A It is not.

Q Less? A We were right on top of it, two steps to
take from my position when my officer told me to open the
window, it was about two steps, I should judge, to get on
top of the sink. I was standing there and I-- on the table
I took my hat and I could not pull it down quick and I slammed
it. In other words the window was only two feet from the
partition. From where I was standing it was only two feet.
We had to make a curve of the hose. Here (indicating) is the
partition. We came through the door. The fire was over in
this corner. We cannot turn the hose quick, so in order to
get in quick I make a scoop of the hose. My officer was
standing there and in order to get in we had to crawl in.
He shouted, "ventilate". I got up and opened the window.

Q Did you push it up from the bottom? A From the
top.

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Q And you could not pull it out from the top.

A No, sir.

Q So you broke the top window? A I broke the top window. It was pulled out by the truckmen later. ✓

Q You may have broken the bottom one? A No.

Q Now look at that picture, see if the window has not been open; see if you didn't break the bottom one; is that right? A I broke the top window.

Q You broke the top window? A I broke the glass in the top with my hat; I had to reach up.

Q That picture is not correct? A I don't know anything about the picture.

MR. WELER: If your Honor please, there are two sashes to a window.

MR. JOSEPHS: We know that.

THE COURT: We will proceed.

MR. JOSEPHS: Let the Jury decide that.

MR. WELER: Precisely.

THE COURT: Now proceed, counsel. This witness says he broke the top sash.

BY MR. JOSEPHS:

Q Did you talk to anybody about this case? A I didn't know nothing about it, until I came to work. I had had a day off. I was told to come down here on the tailor's case. ✓

Q You didn't discuss it with the fire marshal?

A Positively no.

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Q You didn't discuss it with your superior officer?

A He shouted, "Do you remember that fire up the street?", I said "yes, the tailor case". He said, "Yes." He said, "You remember that fire". He said, "Go down and tell it to the Judge". He was very sharp with me this morning. He said, go down and tell it to the Judge.

Q Did anybody tell you about that gassy smell?

A Positively no, only from my experience of fires.

Q No one used the word, "gassy smell"? A Not to me.

Q Is that a technical word in the fire department, "gassy smell", I mean, is that word gassy smell a technical word? A I wish you would speak plain, "technical", what do you mean?

Q When you talk about the smoke, what do you say?

A We use the common word, charged.

Q The word charged is the word which is used among the firemen? A And gas.

Q Now, when two firemen come in and use a different word, "gassy smell"/ that is a strange coincidence?

MR. WELER: I object.

THE COURT: Sustained.

Q That is a strange coincidence?

MR. WELER: One moment.

THE COURT: I will sustain the objection.

MR. JOSEPHS: That is all.

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JOHN O'Rourke, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

(I reside at 167 East 75th Street)

DIRECT EXAMINATION BY MR. WELLER:

Q Mr. O'Rourke, what is your business? A Plumbing.

Q And where do you live? A 167 East 75th Street.

Q And you have lived up there a number of years, have you? A I lived in the neighborhood about forty years.

Q On the 5th of July, Mr. O'Rourke, about half past six in the evening, where were you? A I was then standing on the southwest corner of Lexington Avenue.

Q And do you know the defendant, this defendant here? A I do, yes, sir.

Q Did you know him just as a neighbor? A Just as a neighbor.

Q You knew he was in the tailor business up there? A Yes, sir.

Q What did you see as you stood on the southwest corner, Mr. O'Rourke on the day? A I had crossed to the northwest directly and facing the east I had seen smoke issuing from, I could not tell whether the basement or the tailor store. I walked down in that direction and I found it was the tailor store. ✓

Q Whereabouts did you go? A From the west side of Lexington Avenue.

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Q Where did you go to? A Infront of the tailor's place.

Q Did you see the smoke at that time? A Yes sir.

Q Where was it coming from? A From the tailor's place.

Q You mean Goodmark? A Goodmark.

Q Now, did you see the defendant at that time?

A Shortly after Mr. Goodmark came along, and from what direction I do not know.

Q Did you see him as he came along? A I seen him as he turned abruptly to my right facing into his own door, he opened the door and pushed it slightly open, I should judge from eight inches to a foot open. Then he turned around and went towards Lexington Avenue. Now just as he was about on the point of turning Lexington Avenue I heard the fire engines, which attracted my attention and I looked east and I seen the fire engine coming up the street.

Q As he stood alongside of you opening the door, did he say anything to you or you say anything to him?

A I didn't speak to the gentleman.

BY THE COURT:

Q You don't know what direction he came from? A I do not know. I know he came from the west side, whether turning Lexington Avenue corner or not I do not know.

Q He approached you from the west? A Yes, sir.

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Q Walked back of you? A Yes, your Honor.

Q Stopped in front of the door? A Yes, your Honor.

Q Which I take it was closed at the time? A Yes, your Honor.

Q And opened it as you have described? A Yes, your Honor.

Q By unlocking it? A Unlocking it, I presume, or rather I think there were three locks on the door. There is more than one, I know.

BY MR. WELLER:

Q More than one? A Yes, sir.

Q Did he go in the premises at all? A No, sir.

Q Did he do anything to try to put the fire out?

A Well, he didn't do anything. I suppose the man was a little excited. I do not know. He didn't try to do anything anyway.

MR. WELLER: That is all.

CROSS EXAMINATION BY MR. JOSEPHS:

Q Now, Mr. O'Rourke, you saw Goodmark go up to his store and open the door?

MR. WELLER: That is incorrect testimony. I object to it as an improper statement of what the witness saw.

THE COURT: It assumes a statement a little different from what the witness gave.

Q You saw Goodmark come to the store, didn't you?

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A Not come. When he was directly turning to my right, as I described.

Q That was quite close to the store? A Yes, sir.

Q And he came from the Lexington Avenue direction?

A Yes, sir.

Q Did he hurry along and open the door? A Well, that I could not tell you because simply I was facing the window and he had walked behind my back and turned then to my right, which I presume is about two feet or less than that from the end of the railing, from the abrupt turn into the door.

Q He didn't come up himself? A By himself.

Q Did he come by himself? A By himself.

Q Did you see anybody pulling him? A No, sir.

Q Did you see any boy grab him and say, "come back with me"? A No, sir, I did not.

Q You are quite sure of that? A As I say I did not see the gentleman until he turned in.

Q Did you see anybody grabbing him or pulling him?

A No, sir.

MR. JOSEPHS: It is very apparent he could not see it from his own statement.

THE COURT: He has answered.

Q Do you know a boy by the name of Connolly?

A Not until you or a party told me his name this morning.

BY THE COURT:

Q Mr. O'Rourke, kindly tell me, as you were standing

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there about how far were you from the door leading into the Godmark's shop? A I should judge about two feet, your Honor, or something under that neighborhood, between two or three feet.

Q And you were a little nearer, perhaps to Lexington Avenue? A Yes, sir.

Q Is that so? A Yes, sir.

Q You were about two feet? A West of his door.

Q And about how close were you to the wall of the house? A I should judge about three feet six or something in that neighborhood.

Q In other words, you stopped up against an iron railing?

A In other words, I stand like this -- I could, I presume reach the window.

BY MR. WELLER:

Q The window of the door? A No, the window door recess. The window door recess is in, but I could reach the window proper.

BY THE COURT:

Q Mr. O'Rourke, you were where you could put your hand on the window of the defendant's door? A Yes, sir, that is right.

Q Was that window directly in front of you?

A Directly in front of me.

Q In other words, you could have looked right through

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the window? A I could look directly through the window.

MR. JOSEPHS: I ask that the witness Connolly be brought in.

(The Witness Connolly was brought in)

Q Do you see this boy? A Yes, sir.

Q Do you know him? A By sight, I didn't know his name until -p

Q Did you see him around the fire?

MR. WELLER: That we object to on the ground that it has been stated two or three times. The gentleman has stated three times his back was turned.

THE COURT: I will allow the question.

BY THE COURT:

Q Did you see this young man (indicating Connolly) on the night of the fire? A That I cannot recall.

Q At the moment you saw the defendant, did you see that young man standing there? A No, sir.

Q How long did you know Goodmark from being in the neighborhood? A Well, I should judge, I presume about two years, I think.

THE DEFENDANT: Four years.

THE WITNESS: You might have known me, but I didn't know you.

BY MR. JOSEPHS:

Q You knew him from the neighborhood? A Mr. Goodmark?

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Q Yes. A I never seen that gentleman before he went in there, into that store, or possibly a long time afterwards.

Q I mean after he moved in the store did you know him?

A He consulted me one day about a pressing machine in regard to connecting it up here, I told him--

Q Do you know what his general reputation is around that neighborhood?

MR. WELIER: We object to that.

THE COURT: Sustained. You will have to call him as your own witness.

MR. JOSEPHS: That is all.

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MONTGOMERY WADE, ⁷¹ called as a witness on behalf

of the People, and being duly sworn, testified as follows:
(I reside at 366 Senator Street, Brooklyn).

DIRECT EXAMINATION BY MR. WELLER:

Q Now, Fire Marshal, how long have you been in the Fire Department as a Fire Marshal? A Four years.

Q And during that time what have been your duties? A To investigate fires of all classes and incendiary fires, all fires in general that would be allotted to me in my particular locality where I work.

Q Which are called suspicious fires? A Yes sir.

Q During that time have you examined a number of fires?

A Yes sir, I have investigated on an average 150 fires a month.

Q On the 5th day of July, 1915, about half-past six in the evening where were you? A In front of fire headquarters 157 East 67th Street.

Q And did you hear the fire alarm go off? A Yes sir.

Q Where did you go? A I responded to station 640, went to 75th Street, and there hearing that the fire was at 155 East 75th Street on the north side of the street.

Q When you got to these premises, what, if anything, did you see? A The engine company first due there, engine company 44 was just pulling out in front of the door, just taking the line of hose going in front. I went with them.

Q You got there practically as soon as they did? A Not three minutes from the time I left 67th Street until I got to 75th Street.

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Q They hadn't gone in the door when you got there? A No sir.

Q After they went in did you follow? A Yes sir.

Q How soon after? A Went in directly with them.

Q Do you remember Officer Shelton? A Yes sir.

Q What, if anything, did you see as you came to the door of the premises? A When I got out of the automobile in front of the building I detected an odor of benzine.

Q How many fires have you examined the last four years in which benzine or gasoline has been used? A Probably 300 fires.

Q And are you familiar with the odor of benzine and gasoline? A Yes sir.

Q When did you first discover the odor of benzine or gasoline? A I detected the odor as soon as I pulled up in front of the door.

Q Was the smoke rolling out? A yes sir, of the window, the show window was cracking, the show window of the store was cracking at the end, and cracking at the top, and as I entered the building with the firemen the odor seemed ^{more} pronounced inside the tailor shop than it was outside.

Q Now, when you went inside how did you go in? A Went in the door.

Q And what was the position of your body? A I went in, low down on the floor. I followed the firemen in and assumed the position they did. Smoke was rolling out over our heads.

Q Will you show me what your position was then? A Down like this (illustrating), going in front of the door, a leaning

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position. I assumed a straight position, and went in right directly after that.

Q You have been ~~to~~ a number of fires of course? A Yes sir.

Q You are familiar with the color of smoke? A The smoke was black and it was live smoke, that is, it was smoke with heat behind it.

Q What behind it? A Heat.

Q When you speak of heat, or firemen speak of heat, you mean the regular heat that attends a fire? A The regular heat that is generated, that is caused by the combustion.

Q Was there an excessive amount of heat at this fire? A Yes sir.

Q Now, how long did it take to put the fire out? A Why, not over six or seven minutes.

Q And was the place ventilated so that the --

MR. JOSEPHS: I object to that as leading, he is leading him again. The witness will say, "yes, it was ventilated."

THE COURT: He is telling what was done.

MR. JOSEPHS: Two firemen testified it was ventilated. He will say it was.

THE COURT: Pardon me. It may be that it was.

BY MR. WELLER:

Q What was done? A The premises were not ventilated until the fire was entirely extinguished, because I examined the rear windows, and these windows were fastened on the inside and hadn't been opened until I made an examination of them.

Q When did you make the examination? A Immediately while the

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firemen were extinguishing the fire I passed them and went to the rear of the building, which was in the north side of the building, and these windows there were two windows, these windows were fastened on the inside.

BY THE COURT:

Q About the sash? A The sash was not broken, the glass was intact.

Q On both when you went in? A Yes sir.

Q At the time you examined them? A Yes sir.

BY MR. WELLER:

Q You say the sashes were locked? A Yes sir.

Q The regular sash? A The regular snap sash on the inner sash.

Q Was anything done in the progress of the fire while this was going on, while the fire was going on? A When the firemen were extinguishing the fire against the west wall of the building I passed through the rear to examine the windows to see whether the windows had been opened at the time of the fire. I found both windows fastened.

Q Now, later did you notice whether or not any pane of glass was broken? A The front window was cracked, the show window was cracked in three or four different places.

BY THE COURT:

Q How about the rear windows? A I didn't notice there was any glass at the time I made my examination there. ✓

BY MR. WELLER:

Q Now, you were in there while the stream from the hose was

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being put on the fire? A Yes sir.

Q About in what part of the premises was the hose directed towards the fire? A The hose was taken in front of the door and in through the door and the partition, and turned towards the west wall. There was no fire on the east side and no fire on the north side. The fire was entirely to the west wall of the building towards Lexington Avenue, and the hose was turned in that direction.

BY THE COURT:

Q You followed the hose as it was taken in? A yes sir, I followed it.

Q You saw the hose turned around? A Yes sir.

Q And at the time the hose was turned around ~~where~~ were you in the outer or inner room? A Inner room back of the partition.

Q And at that time, what, if anything, was done to the windows? A The windows were opened after the fire had been put out.

BY MR. WELLER:

Q After the fire was out did you examine the westerly wall of the premises? A Yes sir.

Q I show you People's Exhibit No. 9 in evidence, and ask you to examine particularly the partition? A Yes sir.

Q The wall and the floor, and ask you if that is a correct representation of the situation as it existed after the fire?

A Yes sir.

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Q Was there any shelf or table there at any time? A As my memory serves me, there were two clothes racks with garments upon, hanging on, one above the other.

Q Where they seemed before the fire? A They had dropped down to the floor.

Q Now, what if anything --

MR. WELLER: Now, I will offer that in evidence again, so there will be no question about it, People's Exhibit No. 9.

THE COURT: Received.

Q Now, did you make an examination of the premises after the fire? A I examined the west wall of the building and partition and came out into the front of the store. During that time I had been in there about 20 minutes, it was then 10 minutes after seven, and I stepped out into the front of the store.

Q Wait before we get that far. You made an examination of the westerly wall? A yes sir, and of the partition.

Q What did you find with reference to the wall and partition? A I found that the fire, that the mark of burning showed that the fire had originated at the extreme westerly wall, at the point of the partition nearest Lexington Avenue.

Q In other words, does People's Exhibit No. 9 in evidence, show the point of the origin of the fire? A Yes sir.

Q Now, did you find anything on the floor at that point, there was some burning debris? A Articles of clothing-- I think there was a motorman's uniform, a railroad conductor's coat.

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Q And did you examine any portion of that coat? A I just picked them up generally; I didn't examine them for any presence of benzine or anything like that; I picked them up generally and put them down again.

Q Now, did you see the easterly wall? A Yes sir.

Q Did you note the easterly wall of the premises? A Yes sir.

BY THE COURT:

Q That is the rear wall of the building, isn't it?

MR. WELLER: No, the rear wall would be the north wall.

THE COURT: The building fronts on Lexington Avenue.

MR. WELLER: No, your Honor, on 75th Street, on the north side of 75th Street is the front, and it runs north and south.

THE COURT: I see.

Q I show you People's Exhibit No.6 in evidence, and ask you if that is the correct representation of the easterly wall?

MR. JOSEPHS: When?

MR. WELLER: Immediately after the fire, when he saw it.
point?

Q What, if anything, did you find at that ~~time~~ point? A There were no marks of burning at that point; no evidence of fire.

Q No evidence of fire? A No.

Q In other words, the fire was confined? A In behind the partition.

Q At that time did you make any minute examination of the contents of the box or anything that appears on that table?

A No sir, I did not.

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Q Was it dark at that time? A It was getting dark very rapidly; I didn't make a physical examination of the premises other than what I had done at the point of the fire.

Q A patrolman was left in charge? A A patrolman and fireman at that time.

BY THE COURT:

Q How long had you been in those premises before you went in the rear room? A I went to the rear of the windows almost immediately.

Q When you speak of the sash and those windows being unbroken, do you refer to the condition of the sash at the time you went to the windows? A Yes sir.

Q Did you go to those windows again while you were in those premises? A No, I did not.

BY MR. WELLER:

Q Now, you made no physical examination that night of the premises? A No sir.

Q Did you see the defendant? A Other than the examination which I made of the west wall at the point of the origin of the fire.

Q You didn't examine anything of the premises that night?
A No sir.

Q Now, did you see the defendant there that night? A Yes.

Q What time? A Ten minutes after seven.

Q What time was the fire alarm sounded? A 6.40.

Q And did you note the time with your watch when you entered

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the premises? A Yes sir.

Q What time was that? A When I got to the premises?

Q When you got to the premises? A No, not at that time.

He

Q ~~Yes~~ came ten minutes after seven? A Yes sir.

Q Did you have a conversation with him? A Yes sir.

Q What did you say to him and he say to you?

MR. JOSEPHS: I object to that on the ground that under the statute such conversation is absolutely incompetent.

THE COURT: The statute does not apply to conversations of that kind. If it is otherwise permissible I will receive it.

MR. JOSEPHS: I most respectfully except.

THE COURT: That was decided in the case of the People against Snyder, 154 Appellate Division, page 204.

Q Preliminary to that question, the defendant was not under arrest at that time? A No sir.

Q Now, what was the conversation? A I passed out from behind the partition, ~~---XXXXXX---~~

MR. JOSEPHS: I ask leave at this point to ask one or two questions in reference to this conversation.

If

THE COURT: ~~Do~~ you contend anything that the defendant may have said he said because he was under duress is inadmissible as being involuntary, you have a right to a preliminary examination.

MR. JOSEPHS: That is the ground on which I wish to examine him.

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BY MR. JOSEPHS:

Q Mr. Wade, when did you see the defendant for the first time, or rather ten minutes after seven? A Inside the door of the store, just inside the front door.

Q Did you call him in? A No sir, he came in himself. ✓

Q He came in? A Yes sir.

Q Did you tell him you were a fire marshal? A Yes sir, I showed him my shield.

Q And you were there in the interest of making investigations, for the purpose of making an investigation? A Yes sir.

MR. WELLER: I object to the question as incompetent.

THE COURT: Yes. You may elicit from him what he told the defendant, but your question is now directed to what I understand, what the purpose of the fire was.

MR. JOSEPHS: Yes. I am sure it comes within the scope of his investigations, that was in the line of his duty.

THE COURT: I limit you to the inquiry as to whether or not a statement, if any, made by the defendant was or was not voluntary. You may question him for the purpose of ascertaining whether the statement was voluntary for the purpose of showing, if you please, if such be the fact, what the ~~condition~~ defendant said was involuntary within the definition of the Code of Criminal Procedure.

MR. JOSEPHS: I don't desire to examine him in view of that ruling, your Honor. I take my exception.

BY MR. WELLER:

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Q Now, what was said by you to him and the defendant to you?

MR. JOSEPHS: I object again, and take an exception, and I object to all this line of questioning, and I respectfully except.

A He came in through the front door from 75th Street. I was in the front of the store, just inside of the door, and I didn't know who he was when he came in at that moment. I asked him, I said, "Who are you?"

Q Keep up your voice. A I said, "Who are you?" He shrugged his shoulders. He said, "This is my business; this is my place." I asked him if he was the proprietor of the store. He said, "I am." I said, "What is your name?" He said, "My name is Jacob Goodmark." I took my shield out of my top coat pocket. I showed it to him. I said, "Mr. Goodmark, I am Assistant Fire Marshal investigating this fire", and I said, "I want certain information from you regarding this fire." "Now", I said, "anything you say to me in connection with this fire if a criminal prosecution ensues will be used against you." I asked him then what time, how long he had been in the premises.

MR. JOSEPHS: I again make my objection, in view of the testimony offered by the Fire Marshal on the ground that the same is incompetent, and under the statute --

MR. WELLER: Go ahead.

MR. JOSEPHS: Exception.

THE COURT: We will pause for the moment. I am not cer-

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tain that is competent. Did you tell him that he was not required to answer any questions that you put?

MR. WELLER: This man was not then under arrest, your Honor.

THE COURT: Did you tell him he was not required to answer any questions you put?

THE WITNESS: No, I did not in those words.

THE COURT: I will submit to the jury as to whether it was voluntary. I will receive it.

MR. JOSEPHS: Then I except. I object, and I think it is improper that a question of that kind be submitted to the jury, as it is a question of law for the Court, and I respectfully object and take my exception.

THE COURT: You may proceed.

THE WITNESS: (Continuing) I asked him how long he had occupied those premises. He said, "Between four and five years." I asked him, "What business he carried on there?" He said, "A general tailoring business." I asked him if he was insured. He said he was insured for \$1,000, and that he had two policies of insurance covering his premises. I asked him if he used any benzine or gasoline in his store. He said, "No, I never had any benzine in my place." I never used it. If I want it I buy five cents worth in the drug store." I asked him what ~~time~~ he got to his store that morning, and he said very early. I asked him how many workmen he had working for him. He said, "Only one", and he had sent that man away about one o'clock. I

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asked him when he left the store. He said, "I had been in the store all day. I left the store maybe about 5 o'clock, maybe 6 o'clock. First he said 5 o'clock, then he said 6 o'clock. I said, "Where did you go?" He said, "I took a bundle of clothing in a box to a customer on Park Avenue and then I went home to my house to get a cup of tea, now I have come back." He said, "I have just come back from my house where I have been to have a cup of tea." At that a point a man, whose name I subsequently found out to be Connolly, came into the store --

Q That is the young man, (indicating Connolly)? A The young tall man with reddish hair, he came into the store, and said, "Are you the Fire Marshal?"

Q One moment. Where was the defendant when this happened?

A The defendant was standing right there.

Q And you and the defendant were talking at that time?

A Yes sir.

Q When this young man Connolly came in? A Yes sir.

Q Now, ~~what~~ did the defendant ~~make any~~ answer to the inquiries that were stated? A The inquiries which I made of him?

Q No, the inquiries that Connolly made? A He said, "Yes."

Q Did he make an inquiry? A Yes sir.

Q Now, give the conversation? A Connolly said to me --

MR. JOSEPHS: I renew my objection to all this testimony.

THE COURT: It is received.

MR. JOSEPHS: Exception.

THE WITNESS: (Continuing) Connolly said to me in the de-

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fendant's presence, "I was passing the premises here and I saw this man come out of the store door and lock the door, and immediately upon his locking the door he said, 'I saw smoke come out through the window and under the door and this man had a paper box.' He described it as a suit case. He said, 'This man had a suit case in his hand and walked in the direction of Lexington Avenue.' He said, 'I called to him and told him that his place was on fire. He paid no attention to me. He kept on walking east or west towards Lexington Avenue and I ran after him and he turned the corner, and I ran up and put my hand on his shoulder, and I said, 'Your store is on fire; come back.' I brought him back to the store."

Q This was what Connolly was saying to you? A Saying to me in the presence of the defendant. He said, "I brought him back to the store and he took the keys out of his pocket and unlocked the padlock on the door and opened the door a small distance and looked in." He said, "I ran down to 75th Street, to send in a fire alarm", leaving the defendant in front of the store. "When I came back he had gone."

BY THE COURT:

Q What did the defendant say after Connolly had said what you have told us, what did Goodmark say? A He said, "Yes, yes, that is right; I go back to Park Avenue." He said, "I go in the direction of Park Avenue and this man bring me back and I open the store. I opened the lock, I unlocked the door. Then I look in and see smoke and then I get frightened."

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THE COURT: I may say to you gentlemen, that what is evidence in this case now is what the defendant said in response to what was said by Connolly. It is not to be taken at the present stage of the case, That that has been proved, and that what Connolly said was true. Merely that Connolly said certain things and that the defendant made certain remarks, after what Connolly said.

BY MR. WELLER:

Q Was anything else said? A I asked Connolly then if there was anybody present at the time that he saw the defendant leave the store and walk in a westerly direction toward Lexington Avenue, and he said, yes, these two boys, producing a boy named McCarty and a boy named Conlon.

THE COURT: I don't think I will receive that last. I will strike that out.

MR. WELLER: I consent that be stricken out.

Q Now, was anything said about the case? A Yes sir.

Q State what that was? A I asked him if he had the keys of the premises and he said yes, and produced the keys, two keys which were in his pocket.

Q Were there two keys, two locks or three locks? A There was a mortice lock on that door; there was not any lock but the mortice lock.

Q Under the knob? A Yes sir, a mortice lock.

Q Was there any other lock? A I didn't see the other lock.

Q You didn't notice them? A I didn't notice them, no sir.

Q Now, after this where did you go? A Why, there was quite

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a crowd in front of the door and they were clamoring.

Q Where did you go? A I took this man to fire headquarters with the witness.

Q With the witness? A Yes sir.

Q Did you go to the defendant's house? A I went back to the store later in the evening, and found the store still in charge of the fireman and that fire patrolman, and I didn't make any examination of the place. I went there and went to his house, I think at 238 East 79th Street.

Q Was there any other fire ~~marshal~~ marshal with you during all this time? A Yes sir, Assistant Fire Marshal Finn.

Q And he is in the corridor here? A Yes sir.

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CROSS EXAMINATION BY MR. JOSEPHS:

Q Mr. Wade, how many times have you testified in arson cases? A Probably two hundred and fifty times in the last ten or fifteen years.

Q You know pretty well what is wanted of you, don't you? A I refuse answer the questions without the directions of the court.

MR. WELLES: I don't see the use of being impertinent.

THE COURT: That is a question that may have an improper construction put upon it. The witness knows that he is called upon to testify respecting those matters and that he may have observed.

Q And in how many cases, marshal have you been interested in the preparation of these arson trials? A How many cases?

Q Yes. A Why, I have aided in the preparation of the evidence in all cases.

Q About two hundred and fifty, you have been a witness about two hundred and fifty times? A Not in connection with the fire marshal's office.

Q I mean in arson cases? A Arson cases generally.

Q Other people have retained you to testify in these arson cases? A No, they have not retained me. I was in the detective business working for the Pinkerton Detective Agency

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a great many years before I went in the fire marshal's office, and investigated a number of fires before for insurance companies who were clients of the detective agency.

Q How many years did you work for the Detective Agency?

A I worked for the Detective agency and worked for the United States Secret Service for probably ten years.

Q And about how many years in this department?

A Four years.

Q That is about fourteen years you have been investigating fires? A Yes, sir.

Q And by reason of your valuable services, you got into the fire department? A No, sir, I took--

Q With your great knowledge? A No, sir, I took a civil service examination for the position I hold now.

Q Now let's get down to the matter of the fire. You remember that call into headquarters? A I was right out in front of the door.

Q And as a result of that you finally came to the fire in your automobile? A No, sir. I was on the duty on the 4th of July, and it was my duty to respond to every fire I could possibly get to.

Q Just answer the question and we will not take up too much time. As a result of the alarm you got to the 75th street fire? A Yes, sir.

Q And you jumped out of your automobile? A Yes sir.

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Q And on the sidewalk you smelled benzine?

A I detected an odor of benzine when I pulled up in front of the door.

Q You know what I mean by smell? A No, an odor.

Q Were you still in the automobile? A When I got out of the automobile.

Q As soon as you got out on the sidewalk you detected the odor of benzine? A Yes, sir.

Q Now as a matter of fact didn't you detect that odor of benzine down in 57th Street? A No, sir, we didn't use it down there.

Q Didn't you smell it in 57th street --didn't you smell the 75th street fire in 57th street? A No, sir, I did not know where the fire was when I left 57th Street.

Q Didn't you detect the odor of benzine after you seen this defendant, you remember you seen him at 57th Street, and you made up your mind he was a pretty good subject for an arson fire? A No, sir.

Q Now benzine hasn't got any remarkable or peculiar odor itself, benzine? A It has got a very fine, very penetrating, a very delicate odor.

Q A very penetrating odor? A Yes sir.

Q And benzine is that which we usually smell around?

A Yes, sir.

Q And you smelled it out on the sidewalk?

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A Detected the odor of it on the sidewalk, yes, sir, the door of the premises.

Q And that odor was there at seven ten, wasn't it?

A Yes, sir, it was there at nine o'clock that night.

Q Wait a minute. The odor was there at seven forty-five in the evening, wasn't it? A Yes, sir.

Q The odor was there at seven forty-five next morning?

A I didn't go there next morning.

Q You went there about twelve o'clock?

A No, sir, twelve o'clock next day?

Q Well, about two o'clock? A Yes, about two o'clock in the afternoon.

Q You went there with a photographer? A No, sir, I did not.

Q Who was with the photographer? A I do not know.

Q Was the photographer still there? A I didn't see the photographer in the premises.

Q You were not the man that was with him at all?

A No, sir.

Q You examined these premises quite carefully, didn't you? A No, sir, it was too dark to enable me.

Q The next day? A No, sir, if an examination had been made there I didn't make an examination there.

Q You were not the man that made that examination?

A No, sir.

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Q You remember when you went in the crouching position with the firemen, you remember going in? A Yes, sir.

Q The first thing that struck your mind was to examine these windows to see if they had been closed? A Because I detected an odor of benzine in the premises.

Q And you were the first man back of those windows?
A Yes, sir.

Q And after the fire was over you examined the windows again? A No, sir. I examined the window in the first instance to find out if it was fastened from the inside or ~~was~~ whether these windows had been opened.

Q You found they were not open? A No when I examined them.

Q When did you look again? A I didn't look again.

Q Never looked again? A No, sir.

Q Did you go in before the firemen? A The firemen were busily engaged in putting out the fire while I examined the premises.

Q Did you examine the top of the windows to see if they were broken? A The window was not broken.

Q Did you look at the top of the window? A I examined the sash, examined the lower window panes and I examined those sashes and those sashes were fastened on the inside.

Q But the lower window pane was unbroken?
A Not that I recollect.

Q Well, you were there for the purpose of making an

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investigation, would you not know? A I was more interested in the sashes.

Q You didn't care if the window was broken as long as the sashes were not? A The window could not be open if the window was fastened.

Q What was the sense of opening the window, there was no glass in it? A Because it precluded the possibility of anybody getting in from the outside. ~~if~~ that was my point.

Q Did you see the iron bars? A Yes, sir.

Q What difference would it make if the windows were closed, the iron bars there? A It don't make any particular difference.

Q You want to make the case look bad? A There was no case established at that time; I didn't see the defendant; he was not under arrest.

Q You know it makes no difference whether those windows were open if the sashes were locked? A We instructed--

Q I am asking you? A It made all the difference in the world to me.

Q There were bars on? A My duty is to find out.

Q There were bars on? A It don't make any difference whether the bars are on or not.

MR. JOSEPHS: I didn't ask any such question.

THE COURT: You just pay attention. Just answer the questions, as briefly as you can, Mr. Witness.

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Q Mr. Wade, at the present moment, could anybody have gotten in those premises if the window were broken or closed?

A If the windows were opened or closed?

Q If the sashes were locked or unlocked?

A No, if those window sashes were locked from the inside it would preclude a possibility of anybody putting anything in to those premises making a fire whether the glass was broken in the window or not.

Q That is the point. But the point is you wanted to see if those windows were locked so that nobody could throw anything in to make a fire? A My duty was to examine those windows.

Q That was the idea--

BY THE COURT:

Q You examined the windows, I take it, Mr. Wade, in connection with your investigation which you make in determining the origin of the fire? A Yes, sir.

Q Examine the windows to see whether or not the fire had its origin from without or from within? A Precisely so.

Q Whether it originated from something coming in from the outside or from something on the inside? A Yes sir.

BY MR. JOSEPHS:

Q Mr. Wade, as soon as you saw these sashes were locked could you were satisfied? A I was satisfied that nothing could come from the outside.

Q But you didn't take the trouble to look if the glass

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was broken? A I didn't think the glass was broken.

Q After the fire did you look at it? A I didn't look again.

Q The smoke was pretty thick when you examined it?

A The smoke was thick in the front of the building, but not to the rear. There was no fire in therear, the smoke was thick to the front.

Q When you got through examining the window, you just climbed up and examined the window? A No, I passed through to the back of the store.

Q You examined the window at your leisure? A No, sir, not at my leisure.

Q There was not such heavy smoke--

BY THE COURT:

Q Did you stand up on the sink? A Yes, sir.

Q When you were looking at the window you were on the sink? A Yes sir.

BY MR. JOSEPHS:

Q The smoke was not too thick? A The fire was not at that point.

Q The fire at the other place, therefore you could get up and examine it carefully? A Yes, sir.

Q How far from the window did the main fire take place?

MR. WELLER: Look at your diagram, let us get it exactly.

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THE WITNESS: I can tell you pretty nearly without looking at the diagram.

Q All right? A I should say that store was about twenty feet deep.

Q And this fire took place in the partition?

A At the westerly side corner of the partition.

Q And how far back from the window, how far back from the partition was the window? A About six feet from the front of the store to the partition, and about nine feet.

Q About nine feet? A Just a moment, about nine feet from the entrance of the door in the partition to the point of the fire. That would make about fifteen feet. Then it was about, as I remember now, about four or five feet from the point of the fire across to the back, to the rear windows.

Q Now look at that map and see if it is twenty feet?

MR. JOSEPHS: It figures twenty feet.

THE WITNESS: I didn't measure it. I say twenty feet off hand.

Q All right. Let it go at that.

MR. WELLS: The witness has made a computation here which Counsel has put another construction on entirely. The witness has stated it is about twenty feet from the front of the door to the main body of the fire.

BY MR. WELLS:

Q Is that correct? A Fifteen feet from the front door.

Q About twenty feet is the distance from the front?

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A And the extreme rear.

MR. JOSEPHS: Pardon me.

MR. WELLER: Pardon me.

MR. JOSEPHS: I have no objection, but you don't want him to use a diagram.

MR. WELLER: I object. I never said anything that could be construed that I didn't want him to use the diagram. You are laboring under a misapprehension. I am very glad to have him use the diagram if he wants to.

MR. JOSEPHS: I think he will need it.

THE COURT: Now proceed.

BY MR. JOSEPHS:

Q Now Mr. Wade, how far from the point where the fire took place to the window was the distance in feet?

MR. WELLER: Now, which window are you talking about?

MR. JOSEPHS: The window he is examining so carefully.

Q How many feet? A By my calculation -- I didn't measure the depth-- I figured it showed twenty feet.

Q From where? A From the point of the fire was four feet.

Q The fire desperate and smoke was thick, and the smoke so thick that you had to get on the ground and the fire marshal went up and got on the sink and examined the windows four feet

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from the fire with the terrible thick smoke, is that right?

A Yes, sir, that is right.

Q How long were you in the hospital afterwards?

A In the hospital?

Q Yes. A I have never been in the hospital.

Q You were not in any hospital after this terrible experience? A No, sir.

Q Four feet from this blazing fire?

THE COURT: That is not proper.

MR. WELIER: This is spectacular and entertaining but has nothing to do with the innocence or guilt of this defendant.

THE COURT: Now, go ahead.

Q You told your story in the police court? A No, I was not examined at any very great length in the police court.

Q You told us you knew? A Magistrate Barrow only asked me one or two perfunctory questions.

Q Was not the District Attorney represented?

A The District Attorney was there, but he didn't ask me any questions. The Judge conducted the examination.

Q You were asked what conversation you had with the defendant, were you not? A No.

Q Now, let us see.

"And while I was making an examination of the premises"---

Did you make any examination of the premises that night?

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A No more than what I have told.

Q Now, when you stated, "while I was making an examination of the premises", that was not quite right, was it?

A The only examination I made was about twenty minutes after I reached there, the defendant came in; is that right?

A That is about right, yes, sir.

Q "I asked him if he was the occupant of the store and he said he was. I asked him if he could ascribe any reason for a fire having occurred in the place. He said, 'No,'-- You didn't say anything about that to-day? A I don't recall my examination in the police court.

Q He said, "No", he had locked the store a little while before that and gone to deliver a package of goods to a customer on Park Avenue? A Yes, sir, I testified to that.

Q "I took him through the store and showed him the fire point where the fire had originated and asked him for any reason he could ascribe for any fire occurring at that point-- You said nothing about that to-day. A (No answer)

Q "And he said he was the only one who had a key to the premises and he was only out of the place, he had only gone out of the place twenty minutes. There were several witnesses in the locality who have testified they had seen this man?

MR. WELLER: I must object, your Honor.

THE COURT: I will hear Mr. Weller's ground of objection.

MR. WELLER: I must object to counsel reading but

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a part of the minutes.

MR. JOSEPHS: I am reading it all. I am going to read it all if counsel will do me the kindness to wait for it.

MR. WELER: I object to reference to one part of the conversation and not to the other.

MR. JOSEPHS: Will you read it to him?

MR. WELER: I am not going to enter into any altercation. I am here to perform my duty.

THE COURT: I will sustain the objection.

MR. JOSEPHS: But your Honor--

THE COURT: Until you hear what I have to say.

MR. JOSEPHS: I thought your Honor was finished.

THE COURT: If you contend that any part of the testimony given by this witness when he was before the Magistrate, that is inconsistent with his testimony as given now, you may draw his attention to it.

MR. JOSEPHS: My contention is, if it please your Honor, that his whole testimony is inconsistent, that this is an after thought, and the conversation that he engaged in never took place. I was reading his entire testimony and there is just about four lines more to be read.

THE COURT: You may draw his attention to it.

MR. JOSEPHS: (Reading) "Mr. Heilbron; "Don't state what they told you.

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Q "What else, did you see this, (indicating the demijohn)?

A Not at that time, no, sir".

"Q You didn't see that? A No, sir".

"Q Did you see these bottles? A I saw those bottles there the following morning".

"Q You did not see them there that night? A No sir".
I didn't make any examination of the premises. I took this man right to fire headquarters".

Q Now return again to the conversation, you testified as follows:

"Q And you do not who was in the store while he was away, do you? A He said that he had locked the store up and took the key with him".

"Q He told you he locked the door and took the key with him? A Yes, sir."

"Q You found the door open when you got there?

A The door was open when we got there, yes, sir".

"Q And didn't the defendant say something about things being disarranged, as if a burglar, or somebody, had gotten in the store.

Q Did he say to you that somebody had been in the store? A No, sir.

Q Did he seem surprised when you told him the door was open? A He was not surprised. He was very nervous and very excited.

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THE COURT: This is entirely incompetent, counsel.
It is not the regular way of proceeding.

MR. JOSEPHS: But your Honor.

THE COURT: Pardon me. The regular way of proceeding is to direct the witness's attention to the testimony which you consider inconsistent. Ask him whether or not such question was put and if he recollects it, and if he says that he doesn't, ask him whether or not such an answer was given by him, either an admission or a denial. If he denies, you make your proper proof. Now you may continue.

BY MR. JOSEPHS:

Q Now, Mr. Wade, all that story that you have told us the details of this conversation you didn't tell in the Police Court? A I told the essential facts regarding the case and regarding the ownership of the premises before we went into a very great detail. Magistrate Barlow stopped the examination upon the advice, upon the request of this man's counsel, who waived an examination.

Q Well you were examined as your repeat the testimony, you were asked of the conversation and you didn't say a word about what you said here to-day?

MR. WELLER: I object.

THE COURT: Sustained. He characterized it.

You have now before the court and jury what the fact was,

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certain things have been read, Mr. Wade, your recollection of that is the testimony you gave in the Magistrate's Court?

THE WITNESS: Yes, your Honor.
BY THE COURT:

Q And that was all you said in the Magistrate's Court?

A Yes, your Honor.

BY MR. JOSEPHS:

Q You have been actively engaged in the preparation of this case, haven't you, Mr. Wade? A No, sir.

Q You haven't? A No, sir.

Q You know there is a demijohn involved in this case, where the benzine was kept in, isn't there? A Yes, sir.

Q Who has had charge of that bottle? A That has been locked up in the vault in the fire department, fire headquarters since directly after the fire.

Q Sealed up? A I presume so, I didn't have charge of it.

Q Did you see that demijohn in the building?

A I saw it in the property clerk's room.

Q Did you see this on this floor yesterday?

A It was brought down yesterday.

Q Who took charge of it while down here?

A Assistant fire marshal Finn. remained in charge of that while it was out in the ante-room.

Q Did you see the demijohn?

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MR. WELDER: The demijohn is right here in court if you want, I will show it to the Jury. I object to the question.

Q Did you see any one tamper with the demijohn yesterday? A I did not.

Q You are sure about that? A Yes, sir, if I did I would have called it to your attention.

Q Called it to my attention? A I would have called it to the attention of the District Attorney.

THE COURT: We will now take a recess.

Gentlemen of the Jury you are admonished not to converse among yourselves on any subject connected with this trial, form or express any opinion thereon, until the case is submitted to you.

The Court takes a recess until a quarter past two.

Whereupon at one P. M. the case was adjourned until 2:15.

AFTER RECESS.

MONTGOMERY WADE, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. JOSEPHS:

Q Mr. Wade, you are familiar with the properties of benzine, are you? A Only in a general sense.

Q You have experimented with it, have you? A Yes sir.

Q Now, benzine is highly inflammable, isn't it?

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A Benzine is a vaporizing liquid.

Q A vaporizing liquid? A Yes, sir.

Q That means that it vaporizes? A No, it means the vapor will explode when mixed with the air.

Q Not only when it is mixed when it comes in contact with actual fire will it burn, the vapors themselves will have been burned? A When mixed with air? yes, sir.

Q It is highly inflammable, isn't it? A I would say so, generally inflammable, would be better.

Q Generally inflammable? A Yes, sir.

Q It is very dangerous to go near benzine fire than you would imagine? A No, sir.

Q Benzine does not burn quickly? A The vapor, there is some vapor. From the vapor all of those articles vaporize the air, explode the air.

Q What do you mean by exploding the air? A Why the more air that they come in contact with the greater the degree of explosibility is possible, but it takes the fire back to the parent organization. That is, if you take a bottle of benzine and open it, the vapor will escape and the vapor will admix with the air.

Q And without touching it to a match at all it will burn? A No, it has to come in contact with the flame, then takes its fire back to the source, back to where you got it from.

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Q In other words, if you have a quantity of benzine, this benzine airs they come in contact with something inflammable which will naturally come back to where the most benzine is, the greatest quantity? A They will go back to where you got it from, yes, sir.

Q Go back to the spot? A Go back to the container.

Q Now, assuming for the purpose of argument that you were to expose benzine there (indicating) and expose benzine there (indicating), and these fumes arising, and it came in contact with a flame, that seeming with something inflammable, with a match, these vapors, where would that flame go to, to which side? A Well, if your fire was sufficient to destroy your benzine vapor entirely, why the bottle, or the container that contained the liquid would not be touched by the fire, but if you take a bottle of benzine and hold it in your hand alongside of the gas jet the vapors from that bottle of benzine would ignite and come back to the bottle, but if you take a container, containing benzine and leave it over in a corner, over there, (indicating), and you take some in a tin can and you brought it over here (indicating) and you poured it over a garment here and you lit that garment, if the volume of fire were sufficient to destroy your vapor it would not go back to the container over here.

Q Wouldn't destroy that? A No, not touch that at all.

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Q Before it ignited, what must it do? A It must come in contact with flame;

BY THE COURT:

Q In other words, a mere condition of ^{and} the nature of the flame will not cause the vapor to ignite? A No, sir.

BY MR. JOSEPHS:

Q And a spark of any kind is inflammable and can set a place afire, couldn't it? A No, it would not.

Q A spark from another fire? A Not unless your container in which you had your benzine was open and your benzine escaped in the air.

Q That is what I am saying, not about benzine in a tightly corked bottle; I am talking of exposed benzine?

A If your bottle containing the benzine is opened, your vapor, from the benzine is escaping into the open air, and if that comes in contact with a flame of any sort, and there is nothing there to consume that vapor, why the vapor will naturally go back to the source of greater production which will go back to the bottle, it will go back to its bottle, but if there is a garment along where that spark ignites, or vapor, your vapor will set fire to those garments and the efficacy of the vapor will be destroyed.

Q That is it. Now, let me ask you this: When you light benzine how does it go, goes right up, shoots right up, when the benzine is reached? A No, your benzine don't burn

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at all. It is your vapor that burns, not the product in itself.

Q All right. We will take your way. The vapors go right up in flame? A The vapor will ignite.

Q And almost the smallest amount of benzine will have what is known as a flash flame, won't it? A No, it will have a vapor.

Q The vapor will have a flash flame then? A No.

Q Will it burn slowly and quietly? A Your flash point is your point of ignition of your liquid, not the flash point of vapor.

Q We don't care where it does ignite, the place where it does ignite is what this jury and I want to know is if there is an ignition, how does it go, what is the nature of that fire?

A A quick flash fire, a quick burning fire.

Q A quick flash fire? A Yes, sir.

Q Now describe to the jury just what a quick flash fire is? A Why a flash fire is a fire that skims at the surface and does not burn into the interior. That is, for instance, if you take a bottle of gasoline and kerosene oil and throw it up on the wall and ignite it, or throw it into the wood work it would not burn into the woodwork a sixteenth of an inch, but would just skim the surface, flash over the surface.

Q Assuming I have benzine on this surface (indicating

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the table), and the vapors are arising, we have the point of contact of fire, is it at one given spot that immediately ignites the whole surface? A No, the point down through your vapor.

Q We have burned down there. We have the fire, the fire is right on the paper; now, it will burn the entire surface away? A It skims the surface.

Q A flash flame, it won't burn like a candle?
A It won't destroy your paper.

Q I grant that. I am talking of the nature of the flame; it won't burn up like a candle? A Yes, sir, burn over the surface where the vapor is. ✓

Q It makes a broad flame? A Yes, sir.

Q That is what I want to get at. It burns in a broad flame? A It covers the entire area of the vapor.

Q That is it, and it cannot be confined to one little spot because it goes where the vapor is? A Wherever the vapor is it will burn.

Q And this vapor will set anything else on fire that comes in contact with it. If it gets in contact with wood work it gets a long enough start, it will set the wood on fire, and if it gets up against a piece of cloth, it will burn the cloth? A That is entirely so.

Q After it is once ignited, it is the same as any other flame? A Yes, sir, once your point of fire is gone your

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vapor value as a cause of fire is destroyed.

Q The point I make is, it is a flame that spreads over the entire surface ? A As far as the vapor goes.

Q Did you ever hear of a quantity of benzine being burned that created fumes in a case of this kind that you could smell it out on the sidewalk and the smoke is so very thick there you had to go in there by crawling on the ground?

A Yes, sir.

Q That would require considerable of an area of vapor to create that kind of a fire? A Well, no, the vapor of benzine is very pungent, the odor of benzine is very pungent.

Q But it would take quite a quantity of the benzine to do that, for benzine to smell away out on the sidewalk?

A Benzine will generate when it burns a very thick black hot smoke.

Q Well, but a half an ounce of benzine will not create as much smoke as a gallon would? A Certainly not.

Q A gallon would not create as much as five gallons would? A Certainly not.

Q And therefore to make a tremendous smoke, which was a benzine smoke, in your mind, very thick and lasting six or seven minutes, so that the odor could be detected out on the sidewalk would require quite an amount of benzine?

A Quite a quantity of benzine, I would say.

Q Certainly it would take more than ten cents worth to

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do that? A Well, it would all depend on what it came in contact with.

Q We are talking about benzene odor; I don't care about any other odor now. I am talking about benzene odor because if it was not a benzene fire why the odor would have been a distinctly different one than the one you smelled? ✓

A I smelled an odor of benzene when I got there.

Q I am talking of benzene. It must have taken quite a quantity of benzene to create that? A No.

Q How much benzene would you say it would require?

A Why, in a store like that half a pint of benzene would have allowed the odor to be perceptible outside of that door, the odor I detected when I got there.

Q Half a pint of benzene, about two cents worth of benzene, that is what a half a pint costs? A I don't know what the market value is.

Q You have bought benzene? A Yes, sir.

Q You can get a gallon for twenty cents? A I paid ten cents in a drug store for some to clean spots off my clothes.

Q In a paint store? A Never.

Q Not in a paint store? A Never was in a paint store; in a drug store.

Q The paint store, is the benzene any different?

A Yes, sir, cheaper grade of benzene is sold in the paint

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store than the benzene sold in the drug store.

Q Benzene in a paint store is cheaper and you get more? A Yes, sir, and it is a cheaper grade.

Q How about twenty cents worth -- you could buy a gallon for twenty cents? A A half a pint of benzene.

Q How many pints are there in a quart, two pints? A Something like that.

Q If a pint costs a nickel? A (Interrupting) Somewhere along there.

Q That is about as accurate as everything else. And five cents worth of benzene burns in that store and creates so many fumes that you have to get down on your knees to get into the place, and you could smell it on the street?

A No, we got down to escape the smoke and fire.

Q That was a benzene smoke? A But your air was vaporized, that ~~door~~ door was open, the fumes were escaping from that door.

Q It was sufficient? A Sufficient fire to generate by the benzene.

Q A benzene fire we will call it? A Yes, sir. ✓

Q And the place was full of smoke and you could smell it out on the sidewalk and a half pint of benzene was sufficient to create that?

MR. WELIER: Objected to as repetition. We have been all over that a thousand times.

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THE COURT: Yes, sustained.

MR. WELDER: We drive our automobiles with it.

MR. JOSEPHS: You don't drive them on a nickel's worth.

Q A benzene fire is a very hot fire, isn't it?

A It all depends on what is ignited.

Q Benzene being ignited on cloth? A Ignites the cloth, yes, sir, and the cloth contributes to the intensity of the heat.

Q But it is a very hot fire? A As a rule. ✓

Q And it will blister paint work or varnish which it comes in contact with? A The flame will blister anything it comes in contact with.

Q But a benzene flame will blister it much quicker? A No, it will all depend on the intensity of the fire to the volume of the blister.

Q We will take it in this case: What was the intensity of the fire in this case? A Why it was a quick flash fire, that lasted probably five or six minutes before it was extinguished. It simply burned from the point of its origin and didn't extend generally throughout the store.

Q It extended all the way up to the ceiling?

A To the ceiling from the floor.

Q A benzene fire of this kind would be hotter than an ordinary fire set by a match? A It would all depend

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on what the match ignited.

Q The vapors of benzene? A You mean benzene being ignited and not igniting anything else?

Q You know what kind of a fire we had here?

A Yes, sir.

Q We are talking about this fire? A You are describing two fires Mr. Counsel.

Q I am describing one fire, the one fire we are interested in. Don't pay any attention to any other fires but this one. This was what they call a quick flash fire?

A Yes, sir.

Q You say there was evidence of the heat of that fire, what was the cause of it? A Why the garments in that place right at the point of fire.

Q And the fact of its being a benzene fire didn't make it any hotter? A No, the garments ignited contributed their share of the heat. The combustibility contributed to the heat.

Q To the benzene? A It was the stuff that ignited contributed the heat.

Q In other words a benzene fire is no hotter than any other fire? A No.

Q When you said before the benzene fire was a hotter fire, you were mistaken? A I meant what contributed, what it set fire to contributed ~~xx~~ its share of the heat.

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Q Does a piece of cloth saturated with benzene burn hotter than that piece of cloth, or just burns itself?

A Yes, sir.

Q That ~~is~~ what I wish to know. Is a benzene fire hotter than an ordinary fire? A Benzene contributed to by nothing else. You can take benzene and light it and it will burn itself out.

Q In other words in the event of a benzene fire of this volume it would blister varnish which was within say two feet of the fire, no question about it? A No question about it.

Q Because it was a benzene fire you form that opinion?

A Yes, sir.

Q And if it were not a benzene fire it might not?

THE COURT: Now Mr. Wade, the question is a very pointed one. I ~~want~~ you to pay careful attention. The point is this. Suppose you had an article of a certain size and of a certain material; now if that becomes throughout on fire, but that fire is not caused by benzene and you have another article of ~~precisely the same size~~ and of the same material, which becomes ignited throughout and ~~is~~ saturated with benzene, will the fact of benzene saturation make the heat coming from the second fire a greater heat than the heat coming from the first fire?

THE WITNESS: Yes, sir, the benzene soaked garment would have a greater degree of heat.

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THE COURT That is what you wish to find out?

MR. JOSEPHS: Yes, your Honor.

BY MR. JOSEPHS:

Q The next question, Mr. Wade, I ask you ~~was~~ in this particular fire in question, would you say that varnish -- you say that varnish within two feet of that fire would blister?

A Yes, sir.

Q No question in your mind about that? A No question about that.

Q I ask you to look at this little corner object here and if you know what is that? (Exhibiting People's exhibit No. 9)? A Which one, Mr. Counsel?

Q The little triangle there (indicating)?

A No, I could not tell you what that was; I do not know.

Q You do not know? A I do not.

Q It is some object hanging on the wall?

A Presumably, as far as the picture shows; I don't know what it was.

Q Let me looks. A If the picture shows it was there.

MR. JOSEPHS: No question about that. It was not put there afterwards.

Q Now on this photograph will you explain to me what this white is here on the wood work is; what is that white; what is that supposed to represent? A I would say that was

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caused by a heat wave from the original fire.

Q Was that really white on the wood work? A No, that is a blister.

Q All that white is blister? A All that white is caused by heat waves.

Q What is this black blister? A The heat wave did not progress there when the fire was extinguished.

Q What was the color of that as it really existed?
A That was a dark wood.

Q Did it turn out white on the picture? A That is a blister, that is the fault of the camera.

Q There was something the matter with the camera?
A That is undoubtedly a blister.

MR. JOSEPHS: Let me look at it.

Q Now can you see all these white streaks here, those are blisters you say? A That is a blister of the varnish on the wood work.

Q And what color, is that really any color as it existed? A I do not know what that color is, that is a blister from the heat wave; I cannot tell you what the origin was.

Q What are those little things over here (indicating) those black things? A Those are undoubtedly blisters also

Q Those are blisters down there? A Here, that is a burn.

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Q These are blisters down here? A That is a burn.

Q Isn't that a blister?

MR. WELER: Better look at it carefully, you are at some distance from it now.

(The picture was handed to the witness.)

A (After examining) That is a blister.

Q That is a different color of blister? A It might be entirely, according to the color of the wood work or varnish, I do not know what.

Q Blisters come on different colors? A I do not know what the color was there.

Q You don't really know why it is white in the camera. I am asking you the question you really don't know why it is white on the photograph? A I do not know.

BY MR. WELER:

Q Just describe, Marshal, the indications of the heat waves from that fire to the roof as it affected the wood work?

A When that fire was started at the westerly wall toward where that partition runs to the easterly wall was an open door. There were five separate and distinct glass panels leading from the westerly wall towards the easterly wall, and then the door came in and then beyond that door there was one panel.

Q A continuation panel? A Yes, sir, a continuation panel. There were six panels in all and then the space for

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a door. That door being opened there was more air in the through front of that store there, that open door, than what there was at the point of the fire. When that fire started the air at the open door sucked that heat waves across the inner side of that partition and that accounts for that blister.

Q Now does wood which has a varnish, or has a filler blister more quickly in a heat wave, for instance, than raw wood like that box (indicating) without any paint or varnish on it? A No, a varnished source would contribute to the degree of heat and fire on account of the painting parts used in varnish.

Q And therefore blister more readily? A Blister more readily, entirely so.

Q Besides the blister and the odor of gasoline or benzene, what other features indicated to you that it was what is called a quick flash fire because it didn't burn in. Describe to the jury what you mean? A A quick flash fire will skim off the fire, just exactly like taking a pail of water and throwing it against the wall in a straight direction or a diagonal direction. The fire will follow and skim over that surface, it won't generalize. Just skim off the surface.

Q Skim off the surface. It would consume the wood? A No sir, there would be a blister or char of the surface, and that would be the end of it. Scrape that off and it would be just as good as ever.

MR. WELLER: That is all.

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BY MR. JOSEPHS:

Q In other words, you could scrape the wood off, the top layer and the wood underneath would be all right? A Scrape the char off.

Q Well, if one of those panels was almost burned through, would you change your mind about this being a flash fire?

A But it was not.

Q I say if they were, you would not still change your mind? A No sir.

Q Then it could burn the wood through and still be a flash fire? A If there was anything there to hold the degree of heat at that point it would burn right through if nothing was thereto prevent it -- it would skim over the surface. If you arrested the progress of the fire and confined it at that point, and it could not get out it would burn through if you left any open space for the fire to follow along.

Q Would not any fire do that if the fire engines got there in time? A It all depends on what it came in contact with here. You might confine the fire to one space, and it might develop to the whole space before the fire department got through.

Q Suppose I put a piece of paper in that flame and let the paper with a match and permitted the fire to progress, as a result of that fire, and the fire engines got there in time within a very short time after the fire started would that fire do any more than char the wood? A If it came in contact with something else, but it would not be a flash fire.

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Q Now, look at these panels, see if these panels are not pretty nearly burned through and if the fire did not spread beyond that and run along that far, any fire will burn through if you don't stop it? A No sir, these panels are not burned through.

Q I didn't say they were burned through. See if the wood is not charred, actually burned? A The surface of these panels were simply charred.

Q Are you positive of that? A Yes sir.

Q And those panels can be used again? A Except where the glass is broken and the tops broken.

Q That fire would run along, wouldn't it? How far along on this partition?

MR. WELLER: I understand this is a reopening of the redirect, and it seems probable unless --

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

MR. JOSEPHS: He brought out the fact that this door had --

~~been set on fire~~

MR. WELLER: You were asking about the door.

MR. JOSEPHS: You brought out about the door being open.

THE COURT: Well, it is the same point you made.

Q What was your demonstration about that door being open along this partition --

MR. WELLER: I object to that as repetition.

THE COURT: I sustain the objection. I think you have been over it.

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Q You described this partition and you described a door in this partition, did you say the fact that this door was open drew the fire toward the door?

MR. WELLER: Objected to as already testified to, repetition.

THE COURT: I think he has testified in substance covering that.

Q Then it drew the fire towards the door?

MR. WELLER: Objected to as repetition.

MR. JOSEPHS: I did not examine him on that point. The mere fact that he answered the District Attorney's question does not bar me.

THE COURT: That does not, Counsel. I am inclined to think, however, you went over it on your cross examination.

MR. JOSEPHS: Your Honor, I did not.

MR. WELLER: I didn't say a word about drawing the fire towards the door.

THE COURT: Go ahead.

Q You say that drew the fire towards the door? A Yes sir.

Q And naturally during the fire it would have charred all the wood up to the door, wouldn't it?

MR. WELLER: If your Honor please, we are getting far afield, getting away from the fact as to whether or not this man is guilty of the crime of arson.

THE COURT: I take it you want to elicit from this witness how he determines or reaches the conclusion that this was a flash fire.

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MR. JOSEPHS: There is no question about a fire there.

MR. WELLER: I object to the question as purely argumentative and speculative.

THE COURT: I will sustain the objection.

Q Was the wood on the door charred? A The door was open.

Q Was the wood next to the door charred? A I would say it was.

Q Look at the picture? A You cannot see it there.

Q It shows the char over the other place, but does not show it next to the door? A That is not my fault.

BY MR. WELLER:

Q The point is, the picture does not show the door. A It does not show the existence of the door there.

Q Now, look at People's Exhibit No. 5 in evidence as part of the door there, just an end of the door, does that show a blister? A (After examining) It shows a little blister there on the upper part.

MR. JOSEPHS: Mark it with a pencil.

MR. WELLER: Pardon me a moment.

Q Now, how about on the lower part of the panel, there, is that blistered or is it heat? A Here (indicating).

Q It is very faint there, is it not? A Very slight in both cases.

Q Just make a mark on the door one place or two places where you can see the blister. A (The witness places a mark on the photograph).

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MR. WELLER: Your Honor, the third juror I think desires to ask a question.

BY JUROR NO.3:

Q I want to see the picture where it shows the glass broken in the window.

(Photograph shown).

MR. WELLER: That answers your question, Mr. Juror?

JUROR NO.3: yes sir.

MR. WELLER: That is all, Mr. Wade.

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JOHN J. CASHMAN, a witness called on behalf of the People, being duly sworn, testified as follows:

(I reside at 407 East 139th Street).

DIRECT EXAMINATION BY MR. WELLER:

Q You are an Assistant Fire Marshal in the employ of the City of New York? A I am, sir.

Q And how long have you been so? A Sixteen months.

Q In the Fire Marshal's office? A Yes sir.

Q Before that what was your business? A Superintendent of the Insurance Patrol, Brooklyn, New York Board of Fire Underwriters.

Q Superintendent of the Insurance Patrol? A Yes sir.

Q How many years connected with the New York Board of Fire Underwriters? A Twenty years.

Q Now, Mr. Cashman on the 5th of July, on the evening of the 5th of July, 1915, did you visit the premises 155 East 75th Street? A No sir.

Q Did you go there the next morning? A I did.

Q What time did you get there the next morning? A About 8:20 a.m.

Q And did you find this fireman patrolman in charge of the premises? A I did, sir.

Q Do you remember his name? A Michael Bolek.

Q Who testified here as a witness? A Yes sir.

Q Now, when you entered the premises will you state where you went, what you did, and what you saw; where did you go first?

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A I arrived there, as I stated, about 8:20 a.m., and entered the rear portion of the store.

Q Came to the front of the store first, you entered the door? A Yes sir.

Q Now, will you describe that portion of the partition and the front of the store? A The partition was all wood and glass, the upper portion glass which was broken out. I then entered the doorway.

Q You have not begun to get in the door? A Excuse me.

Q This was a panel glass, these were panels? A Panel glass.

Q Was that glass in those panels the kind of glass you can look through, a clear pane, or was it the smoky or foggy kind-- I don't mean smoke caused by fire? A I could not tell that, the glass was out.

Q Do you know whether the glass remained there? A I didn't notice that.

Q Did you find out whether there was a panel of glass in the show window which separated the outer window of the show window from the front part of the store? A Yes sir, there was one there.

Q Was that a glass panel or wooden panel? A That was a glass panel.

Q And is that kind of glass window pane glass? A No sir.

Q Or foggy glass? A Smoked glass, chipped glass.

Q Don't they call that glass Florentine glass? A I never knew the name of it.

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Q So that a man standing on the street and looking through the window, the show window, could not look into the inside of the store because of this smoked glass? A Could not.

Q The partition which was in the window? A Yes sir.

Q How high is that partition? A The one in the window?

Q yes. A I should judge about three feet above the floor of the show window.

Q How high is the floor of the show window? A I should judge a foot and a half, or two feet.

BY THE COURT:

Q I am not quite sure. There was a round glass in the back of the show window? A Yes sir.

BY MR. WELLER:

Q The point I make is, a man on the sidewalk could see over the top of the partition? A I should think he could, yes sir. ✓

THE COURT: Mr. Weller, let me understand. There was plate glass in the show window, then directly back in the show window there was smoked glass?

MR. WELLER: Which prevented you from looking from the street.

THE COURT: Even into the front part of the store?

MR. WELLER:

~~THE WITNESS~~ Yes sir, your Honor.

THE WITNESS: I understand you are right.

MR. WELLER: This witness is not sure. I have been up there to see.

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BY MR. WELLER:

Q How high is the partition which separates the front part of the store from the rear part of the store? A Seven feet above.

BY THE COURT:

Q That is from the level of the store floor? A Yes sir.

Q And is the store floor on the sidewalk level or above it?

A One step above.

BY MR. WELLER:

Q Now, did you find any fire, can you state what your duties are as Assistant Fire Marshal? A Investigating.

Q Did you find any part of the premises damaged by fire on the street side of the partition? A No sir.

Q That is between the partition and the street? A No sir.

Q You did find, I think you said, Mr. Cashman, that one of the lights of glass were broken? A I won't say how many there were -- some broken.

Q You went through the door into the rear part of the premises, is that right? A Yes sir.

Q What did you see when you went in there? A I found ^{the} a building burning and a pile of debris on the west side of the building. I went through this debris and picked up some burnt garments that contained an odor of a liquid resembling benzine.

Q Have you got those garments here? A They are here in court.

Q And where have they been since that time? A In the vault in

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the Fire Marshal's office.

Q Under lock and key? A Yes sir.

Q Until delivered to the District Attorney and then brought to court? A Yes sir.

MR. WELLER: Will you get those things out?

(The witness steps down to the witness table and takes out the articles requested).

MR. WELLER: The defendant consents these articles (referring to a number of articles) be marked in evidence. I offer them first.

(The articles in question were received in evidence and marked People's Exhibit No.10.)

Q You said these garments smelled of gasoline? A Saturated either with a liquid benzene or gasoline.
them

Q When you found/next morning was the odor strong or weak?

A In this particular case it was rather mild.

Q You found those alongside of where? A The west side of the building.

Q The westerly wall. Now, are you familiar with the smell of gasoline and benzene? A I am, sir.

Q And will you say with reference to People's Exhibit No.9, you found those things? A It does not show in the photograph.

Q Whereabouts with reference to it? A About here (indicating).

Q A little forward ~~in~~ of the right hand side of the picture. Now, have you had occasion to examine gasoline and benzene?

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A I have, sir.

Q Will you state whether or not gasoline or benzene vaporizes when exposed? A It does evaporate.

Q And does it evaporate slowly or quickly? A It depends upon the condition in which it is in, some of it will evaporate under conditions quicker than others.

Q Well, suppose it was placed in a room with doors and windows, and part of the windows open, then it would evaporate rather quickly.

Q Then after you found this debris where did you go next?

A I turned my attention to the east side of the building.

Q Before you did that, did you show that to anybody on the premises? A Yes sir.

Q Did anybody else smell it beside yourself? A There were, sir.

Q Now, you went to the east side of the premises next; what did you find, if anything, there? A Behind the doorway, behind the door of the partition, on the east side of the building, I found a wooden box in which was a quantity of clippings.

Q Clippings, what do you mean by clippings? A Clippings of linings of dress goods, I presume they are ~~pieces~~ clippings of cloth, also saturated with a liquid benzene.

Q I show you People's Exhibit 5, and ask you if that is the box you are now referring to? A Yes sir.

Q This wooden box behind the door leading into the front part

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of the store; this box in court? A Yes sir.

Q Where has that been? A In the office of the Fire Marshal, in the vault.

Q And is this the box here? A That is the box (indicating).

Q Now, did you examine the contents there? A I did.

Q Will you state ~~what the contents were~~ what you smelled there with reference to the contents? A The contents of that box were saturated with benzine or gasoline.

Q Now, was there anything on top of that box, and if so, what was it? A Yes sir, there was a corrugated paper box to the rear, set up in such a fashion as to resemble a flue.

Q Resemble what? A Resemble a flue.

Q Will you just show how that box was set up? A (The witness returns to the witness chair and illustrates how the box was set up).

Q Was there anything in the box? A ^{Can} /I cut it open? ~~xxxxxx~~

Q Yes. Was there anything in the box at that time? A Yes sir.

Q What was in it? A Another box and inside of that wooden box a white skirt.

Q Now, lift up that box please. Now, was the bottom of that box open or closed? A It was open.

Q Was the top of that box open or closed? A Open.

Q Now, put it in the box just as nearly in the position you

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can remember it was that day. A (The witness illustrates).

Q Now, what was inside of the pasteboard box which you say acted as a flue? A This wooden box, and in the interior of that wooden box was a white lady's skirt.

Q Have you got that skirt?

THE COURT: Don't you think the record ought to describe the position of that?

MR. WELLER: I thought the Marshal had done that.

THE COURT: He has put them physically in position, but the written record will not show that.

MR. WELLER: I thank your Honor for calling my attention to that.

A pasteboard box about two feet long, and a foot square, standing upright in a wooden box, about a foot and a half long and about a foot wide, and ^{the} a wooden box containing dress goods saturated with gasoline.

MR. JOSEPHS: These are not dress goods clippings.

MR. WELLER: All right.

Q Now, what is in the white box? A A lady's white skirt.

Q Was there anything on that? A That also contained an odor of benzene or gasoline.

Q And where was that put, in the same position? A Inside of the box, described as a flue.

Q Now, was there any other box in there? A Yes, another pasteboard box.

Q This picture only shows the back of this pasteboard box.

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(Shows to jury). Now, will you put the second pasteboard box in the position it was in in that wooden box? A (The witness does so).

Q What was in that second box? A Clippings, the second box standing on top of the wooden box, and alongside of the other pasteboard box.

Q Did you notice any odor on the clippings of that particular box? A They also contained an odor of benzene or gasoline.

Q Now, what next did you do? A On the east wall of this building wherein they ran two or three shelves I found some cheesecloth which had trailed down from the shelves through some combustible material on the table.

Q Now, will you show us, will you put a mark on here, this cheesecloth that was trailing down, you say; just put a mark, a cross. A (The witness does so).

Q Now, these trailers extend from the shelf on the east wall down towards the floor to what? A To some combustible material on the table.

Q Now, that cheesecloth, where is that? A It is here. (Witness produces).

Q Now, just show how that cheesecloth was draped. A (The witness illustrates how it was draped).

Q And what was on the cheese cloth? A That also contained an odor of benzene or gasoline.

Q And how many of those trails were there? A Three.

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Q And these led from the shelf down to the combustible material below? A On the table, yes sir.

Q And what was that combustible material below? A There was a collection of paper boxes there, and a wrapper of other clippings on the table.

Q Now, the material at the bottom of the trailers, what kind of material was that? A In one package there were clippings, and in the box were also clippings.

Q Did the clippings contain any odor? A No, they didn't.

Q Are they inflammable substances? A No, combustible substances.

Q Have you those clippings here? A No sir.

Q What is in this package here, (indicating)? A Three suits.

Q All right. I know about that.

THE COURT: Mr. Weller, I think we will have to take an adjournment now.

Gentlemen of the jury, you are admonished not to converse amongst yourselves on any subject connected with this trial, or form or express any opinion thereon until the case is submitted to you.

The court will stand adjourned until tomorrow morning at half past ten.

(Whereupon at 3)20 an adjournment was taken until September 24th, 1915, at 10:30 a.m.)

.....

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New York, N.Y. September 24th, 1915.

Court met pursuant to adjournment.

Appearances same as before.

JOHN J. CASHMAN, resumes the stand.

BY MR. WELLER:

Q Did you go to premises 155 East 75th Street last evening?

A I did, sir.

Q Were you able to get inside of the premises? A No sir; it is locked.

Q From your position on the sidewalk did you observe the height of the partition which is in the show case window? A I did, sir.

Q That is to say, not the wooden and glass partition which separates each part of the store, but the glass partition which is in the show window? A In the show window.

Q Now, will you state what is the height of the top of that partition? A About three feet.

Q Above what? A Above the floor of the show window.

MR. WELLER: That does not mean very much to us.

THE COURT: The floor of the show window; how high above the sidewalk?

THE WITNESS: About three feet more.

Q And therefore, the top of this partition would be about where, how tall are you? A It would come up to my eyes, on a level with my eyes.

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Q Will you stand up? A (The witness stands up).

Q How tall are you? A Five foot, seven.

Q Now, the partition itself, what is that made of? A A sort of chipped glass.

Q Is it like a window pane; can you see through it? A No competent vision there.

Q What you would call smoky or ground glass? A I would call it chipped glass.

Q It is not transparent? A It is not transparent, could not see through it.

Q Will you step down here? A (Witness does so).

Q In your examination, continuing your testimony of yesterday, in your examination did you find anything else on the easterly side of those premises that day? A Yes sir.

Q What did you find? A I found one gallon demijohn under the sink in the rear part of the first floor.

Q This demijohn, (indicating); now at the time you found that, did you smell, was there anything in it, first? A Yes sir.

Q Was in it? A There were some dregs in there of liquid.

Q When you say "dregs", what do you mean? A A few drops; I might say of a liquid.

Q Did you smell the liquid? A I did, sir.

Q Will you state what it smelled like? A Benzene.

Q And did you pour the dregs out to smell them? A There was not enough in it to come to the mouth of the demijohn, as it came down through the bottle it lost its shape.

MR. JOSEPHS: What lost its shape?

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(No answer).

Q I show you People's Exhibit 8 and ask you if that picture shows the position of the demijohn at the time you found it?

A Yes sir.

Q Now, what else did you find there? A Two milk bottles.

Q Two milk bottles? A Yes sir. (Producing same).

Q Three or two? A Two.

Q Under the sink? A Yes sir.

Q Did you find the third milk bottle, where? A On the table, on the east side.

Q Now, was there anything in these milk bottles? A These two unsealed were empty.

Q These two here were empty? A Yes sir.

Q Now, this one here, was there anything in that? A There were some dregs or drops of benzene in that bottle.

Q What did you do with that bottle? A Sealed it up.

Q Where has that bottle been since that time? A In the vault at fire headquarters.

Q Now, this has been held ever since, has it? A Yes sir.

Q The third bottle I am referring to. Did you put that paper on yourself? A Yes sir, I did.

Q Now, were those two bottles and the demijohn standing together under the sink? A Yes sir.

Q Where was the third bottle? A On the table on the east side of the building.

Q Is it shown in that picture, People's Exhibit No. 5 in evidence? A (After examining) Yes sir.

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Q Now, was any other bottle found there which contained either gasoline, saturated gasoline, or benzine? A No sir, that is all.

MR. WELLER: Now, if your Honor please, I offer this paraphernalia. I don't know/just what manner it can be kept.

THE COURT: As one exhibit.

MR. WELLER: Mark it as one exhibit.

MR. JOSEPHS: Just let me look at it. (Examined by counsel for the defendant).

THE COURT: Received.

MR. WELLER: I offer the box, wooden box, two large pasteboard boxes, and one small pasteboard box, and their contents, and three milk bottles and one demijohn in evidence.

(Received in evidence and marked People's Exhibit No.10).

MR. JOSEPHS: I ask that any of the jurors who want to smell them may be permitted to do so.

THE COURT: Those bottles are in evidence.

MR. WELLER: I am willing to concede that there is either a very faint odor or no odor at all.

MR. JOSEPHS: I will concede that there is a very strong odor to the demijohn.

MR. WELLER: I would not call it a strong odor.

MR. JOSEPHS: Let the jurors smell it. You have a cold. That is the reason you can't smell it.

THE COURT: Don't express any opinion as to the strength or otherwise of the smell. Pass the article around.

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(The jurors followed the instructions of the Court).

BY MR. WELLER:

Q Now, will you smell that cheesecloth, Marshal, tell me, do you notice any odor at this time of benzene or gasolene? A (After smelling it). No odor now.

Q Did you have any conversation with the defendant? A None whatever.

Q Well, I think you testified yesterday that benzene and gasolene evaporates quickly. A Very quickly.

Q Anything saturated with gasolene when exposed to the air of any kind, a current of air, evaporates quickly? A It evaporates quickly.

MR. WELLER: You may examine.

CROSS-EXAMINATION BY MR. JOSEPHS:

Q Now, Mr. Cashman, this bottle was taken away the day after the fire on the 6th? A It is marked on the tag the day it was taken away.

Q Do you know? A Yes sir.

Q When was it taken away, on the 6th? A Yes sir.

Q You know it was taken away on the 6th? A Yes sir.

Q And this is the cork it had? A Yes sir.

Q And this bottle has never been opened since the 6th? A Why, yes.

Q How many times has that bottle been opened? A It was opened when I first found it, in order to smell the contents.

MR. WELLER: Please face the jury.

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Q When was it opened again? A It was opened again in the presence of the Fire Marshal when he arrived there.

Q The same day? A Yes sir.

Q You kept it open a little while each time? A It had to be kept open a little while in order to smell the contents of it.

Q And when was it opened again? A My recollection is that is the only two occasions I know of. ✓

Q Was it opened since that time? A Not to my knowledge.

Q Was that bottle opened in the course of the preparation of this lawsuit? A Not to my knowledge.

Q Was that bottle opened in the other room? A Not to my knowledge.

Q How do you know -- you would know, wouldn't you? A If I knew it was opened I would tell you.

Q Was the bottle opened? A Not to my knowledge.

Q Now, whose, yes or no?

MR. WELLER: One moment. I object.

THE COURT: He is not required to do that.

Q Was the bottle in your possession all the time? A Except when it was under lock and key in this room.

Q You had it while in the other room for the past few days, didn't you, since you have been here? A My recollection is that it was there on the first afternoon that the trial opened.

Q The bottle was opened since then? A I didn't say the bottle was opened.

Q The demijohn? A Nor the demijohn. The first afternoon the

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trial was opened.

Q Was the demijohn outside? A With the other exhibits.

Q And it has been here ever since? A I would like to ask you what you mean by "here"?

Q This bottle has been in this building? A Since the trial opened?

✓ Q Yes. A Yes sir, in the property room, in the upper floor of the building.

Q While you were in the other room during the course of this trial waiting to be called as a witness, did you open this bottle? A I did not.

Q Did you see anybody else open it? A No sir.

Q It was under your control all the time? A Yes sir.

Q And then you can state with reasonable certainty that the bottle has never been opened?

THE COURT: He has told you already.

Q Don't shake your head. Say yes or no. Now, this is the same cork, isn't it, (showing cork).

MR. WELLER: Objected to as already testified to.

THE COURT: I don't think he has answered that.

MR. WELLER: He answered that was the same cork. There is a continual repetition.

Q This is the same cork that was in the bottle all the time. Is it customary in the Fire Department in the course of your police duties to put an official seal on this bottle? A No, I would not say it was.

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Q Did you ever do it? A Never, never done it.

Q You never put an official seal on ~~the~~ bottles and sealed them up? A Never.

THE COURT: He has said that he never did.

MR. JOSEPHS: What was the answer?

THE COURT: He has answered you, he said "never."

Q Do you remember of any single instance where a bottle of this nature has been officially sealed? A No sir.

Q The time you found this bottle there was not enough in the bottle to even pour out, was there? A No sir.

Q In other words, the bottle was empty except for the vapor, is that the idea?

MR. JOSEPHS: There is some in there yet. (Illustrating). That was unconscious.

Q At the time you had the bottle, there was not enough to reach the outside, reach to the neck? A There was some in it.

Q But you said in your direct examination there was not enough of benzene in that bottle to reach the neck of the bottle?

MR. WELLER: I didn't understand it so. I object to that as a misquotation of the testimony. He never said there was not enough to reach the neck of that bottle or demijohn.

MR. JOSEPHS: All right, the jurors know.

MR. WELLER: Of course they do.

Q This seems to be discolored, the contents of that bottle; you notice a sort of brownish liquid, do you notice that? A (Showing). A I see it in your hands, discolored.

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Q Do you know the color of benzene? A I do.

Q What is the color of benzene? A It is -- I would call it a whitish color.

Q Looks like water? A Somewhat.

Q Now, this bottle had an odor of benzene in it? A From the light. Pardon me. Is that the one that was sealed? The one that has no tag on was sealed.

Q This bottle contained benzene? A The odor of it.

Q And after awhile the odor of benzene disappears? A Always will.

Q And then there is no odor? A None at all.

Q Now, just sniff that bottle, what odor has it now? A There is not any.

Q Smell it? A I did smell it on the table.

Q No odor whatever -- he said no odor in the bottle? A You are talking of benzene.

Q Is there an odor in the bottle? A Of benzene, no.

Q Is there any odor in the bottle? A I cannot smell it. ✓

MR. JOSEPHS: I ask the jury to smell that.

THE COURT: Now, the jury are to express no opinion at all.

MR. WELLER: I object to the question. This witness has not sworn there was no odor at all. He was asked if there was an odor of benzene or gasoline and said, "No odor of benzene or gasoline."

THE COURT: Mr. Stenographer, read the last three or four

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questions.

(The stenographer read the questions as directed).

Q How many times have you been a witness in arson cases? A A dozen or fourteen times.

Q A dozen or fourteen? A Yes sir.

Q Any more? A That is about all.

Q And how many years are you a Fire Marshal? A Sixteen months.

Q And before that time whom were you employed by? A The New York Board of Fire Underwriters.

Q In other words, for how many years were you employed by the New York Board of Fire Underwriters? A Twenty years.

Q In what capacity? A Assistant Superintendent of the Fire Insurance Patrol.

Q In other words, investigating fires? A Yes sir.
in

Q And twenty years and sixteen months investigating fires you have been a witness, ten, twelve or fourteen times? ✓

MR. WELLER: One moment. In arson cases.

Q In arson cases, fourteen? A I would say twelve or fourteen.

Q And how many cases have you been interested in in the preparation of arson cases? A About the same number.

Q That is all, for twenty years and sixteen months you have been engaged in the investigation of fires, and you have only prepared the investigations in twelve or fourteen cases? A Along with my other duties.

MR. JOSEPHS: Of course.

Q Did you see those premises on the morning of the 6th of July?

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A I did, sir.

Q That was the first time you got there? A Yes sir.

Q That is after you talked to Wade about this case, Fire Marshal Wade? A I was present with Fire Marshal Wade on the evening before when the alarm came in.

Q Well, did you go to the premises? A That night?

Q Yes. A No sir.

Q But as a result of conversations with Wade you went up there the next morning? A No sir.

Q No? A No.

Q You just went there of your own will; is that right? A Why, no.

Q You were assigned there? A I was assigned there.

Q You didn't say a word to Wade about going up to this fire?

A Not a thing, no sir.

Q Not a thing; you didn't talk to Wade? A No sir.

Q Now, did you see those premises the following morning while you were in there, you examined them? A Yes sir.

Q Did you notice any windows were broken that morning? A Where?

Q In the store, in those premises? A After I entered the store?

Q Well, of course. In the rear of the store? A No, I did not.

THE COURT: Pardon me. Did you notice the rear of the store?

THE WITNESS: No sir.

THE COURT: So you don't know whether they were or were not

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broken?

THE WITNESS: I do not.

Q You went there to make a thorough investigation to see whether the fire was incendiary? A I went there to look over that burned material and debris.

Q To make an investigation? A Of that burned material and debris.

Q And that was all you looked at, burned material and debris?

A And the other material on the east side of the building.

Q In fact, you went there to look over -- A I told you.

Q You went to look there for everything? A I went to look over the burned material to find out what was giving out this odor of benzine.

Q That was what you were interested in? A That was all I was sent there for.

Q You were there to inquire? A I followed the instructions of my superior.

THE COURT: He has already told you.

Q Did your superior tell you to go and look at the debris and east wall and keep your eyes shut? A He told me, if I may be permitted to tell you, to look through the debris and find out what was giving off that odor.

Q You didn't look at the rear window?

THE COURT: You have already got that.

Q How large is that store, if you got in the rear part?

MR. WELTER: I object to that. If your Honor please, we

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have a map here.

MR. JOSEPHS: Let me look at it.

(Map handed to Mr. Josephs for examination).

Q Now, Mr. Marshal, the distance from the partition to the rear wall is seven foot -- is nine foot, nine inches -- I beg your pardon, is nine feet, nine inches; well, you agree it is about from that table to where he sits; it is probably more.

MR. WELLER: I should say that.

MR. JOSEPHS: It is from here to the stenographer's table, the far edge to the edge of that table. From where he sits.

MR. WELLER: Yes, that is about it.

Q And you walked further than the partition towards the rear; you didn't stay right close up, you walked in? A Yes sir.

Q Walked in half way? A All the way.

Q You were right plumb up against the windows? A I was. ✓

Q And you don't know whether they were broken or not? A I do not.

Q Now, you were there this morning to look into that store, were you not? A Who said I was?

Q Were you not at that store last night or this morning?

A You said "this morning".

Q Last night, then? A I was there last night.

Q What time? A About six o'clock.

Q Was it still light? A I was there the night before last.

Q It was still light then? A Yes sir.

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Q And you didn't learn more about the height of that partition last night and the night before? A Yes sir.

Q You learned more last night? A Oh, yes sir.

Q What did you go there the night before for? A I had been in the neighborhood.

Q You just thought you would drop in? A I had been in the neighborhood continuously since the fire occurred.

Q Did you look in the window yesterday? A The night before last.

Q What did you see when you looked in the window? A The ceiling.

Q Only the ceiling? A That is all.

Q You have been going there every day to look at the ceiling?

A No.

Q You have been there quite often? A I am in the neighborhood.

Q You always looked at Goodmark's place? A No.

Q You have been quite a number of times past his place?

THE COURT: You have got that.

Q And you always passed his place to take a look at the ceiling? A Oh, no.

Q Now, could you from the outside look back to the partition over this window partition, look at the height, seven foot partition? A See the top.

Q You could see that? A The top of the partition.

Q Then you could see more than the ceiling? A Yes sir, the ceiling, the top of the partition.

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Q And you could see the glass in that partition in the back there broken from the street? A Possibly see the upper part of this.

Q You could see more than that ceiling?

THE COURT: He has said that several times. I don't want to be unduly insistent upon it, Counsel, but I must advise you against repetition. It does no one any good, at least, the accused.

Q You say it comes up to here (indicating), you standing in the street? A Which?

Q The window of the partition?

THE COURT: I thought when you were talking and you said it came up to there (indicating), I thought you had reference to the partition in the show case window.

THE WITNESS: Still higher.

MR. WELDER: We have been referring to that as a show case window partition.

THE WITNESS: There is another one in the rear, which is much higher.

Q Keep your mind on what the Judge refers to.

THE WITNESS: The show case window.

THE COURT: I thought the Counsel in the last question alluded to the partition that separated the rooms.

MR. JOSEPHS: I said we can see over the window partition and see the rear of the partition.

THE COURT: I may have misunderstood your question.

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MR. WELLER: It appears the wooden partition separating the store is seven feet high, whereas the other partition is on the level with his eyes.

THE COURT: I understand that.

Q Now, Marshal, did you try to get up on your toes and look over?

MR. WELLER: I object, he tried to get up on his toes. I think there ought to be some limit to cross-examination.

MR. JOSEPHS: May it please your Honor, they are trying to --

BY THE COURT:

Q Did you stand on tip-toe or in the ordinary way? A In an ordinary way.

BY MR. JOSEPHS:

Q Could you look over then? A Yes sir.

Q Then you could look into the store with very little effort, you could look into the store? A I don't see what you are trying to get at. I told you I could look over the partition in the show window and see the top of the partition without running through the center of the store, and also see the ceiling. I cannot imagine what you are trying to get at.

Q The window of the partition was up to your eyes? A Yes sir.

Q I asked you if all you had to do was to stand on your toes and look over. A Look over which?

Q Over the window partition.

THE COURT: The point counsel wants to make, as I understand, is this: Are you able to say what portion of the interior of the front room of the store you could have seen standing

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on the sidewalk on tip-toe looking over the window of the plate partition?

THE WITNESS: The upper part of the partition that divides the room and the ceiling.

Q Now, the entrance to the store you have to walk up a little step, haven't you? A Yes sir.

Q How much higher does that bring you? A I didn't measure that, counsel.

Q Well, it is about that height (indicating). A There is a step there.

Q Did you try to look into the store? A I stood on the step.

Q Could you look in? A I stood on that step when I saw the window partition was up to my eyes.

BY THE COURT:

Q In other words, you were not standing on the sidewalk, but on that step? A Yes sir.
BY MR. JOSEPHS:

Q It was that high on the step and not on the sidewalk? Now, you are five foot, seven in height? A About that.

Q Then a man of my height would have no effort in looking in the store, five foot ten, or five foot, eleven. A What do you want to see in the store?

Q I can see ~~anything~~ anything you wanted to see. A No, you could not.

Q Although I would be three inches above the partition. Now,

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when you went to the store the next morning the firemen had been working their hose the night before? A The fire had occurred the night before and they used the hose to extinguish the fire.

Q Do you know what pressure they used there? A On the lines?

Q They are two and a half inch lines. A I could not tell you.

Q It is a pretty strong pressure? A That I know nothing about.

Q Then the condition of the store you saw it was after this hose, this two and a half inch hose, I think it was, had been played on the fire to put it out? A The fire was extinguished when I arrived.

Q In other words, the condition which is shown, as you saw it, was not the condition of the place was in before the fire? A That I could not tell you.

MR. WELLER: This witness has not attempted to state what occurred there the night before.

THE COURT: It will be conceded this witness saw conditions after the fire and not the conditions which were before the fire.

Q This fire hose opposite ends and there is other hose points to take up the ends? A I don't know how they operate the line of hose. I have seen fires extinguished when they disturbed nothing.

Q Now, you look at that object right there.

THE COURT: Referring to People's Exhibit No. 10.

Q (Continuing) What time of the morning did you get there?

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A 8:20.

Q Did you notice it was 8:20 then? A No, I didn't.

Q What time of the day did you notice it? A I didn't take the time.

Q About what time? A I arrived at 8:20.

Q How long after you were there did you notice it? A Oh, possibly -- I don't want to be nailed down to any particular time; I didn't take the time. I found that ^{possibly} within the hour, ~~xxx~~ I had got ~~xxxxxx~~ in there.

Q It took you an hour to see that? A No, I was not looking for that.

Q How could you help seeing it in such a little room? A I was looking to see what gave off the odor of benzene. I first turned my attention to the west side and later came to the east side and it was on this I found those.

Q There was not much on the west side of the building, was there. There was not much on the west side of the wall? A There was a pile of burned debris there.

Q That does not show on this picture? A It is this side of the photograph, (indicating People's Exhibit No.9).

Q It didn't take you long to examine the debris around where the fire was supposed to have started? A The Fire Department had been over a few, in order to make sure that there was no more there.

Q When did the Fire Department expose it? A They have in all cases.

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Q And this is one of those fires where they did disturb something? A That section was disturbed.

Q Everything was shoved over? A I won't say "everything".

Q Whatever they could disturb they did in that section? A They have to clean out ~~x~~ corner on account of the fire being there.

Q And you were there an hour before you saw that? A I won't say I was there an hour.

Q About an hour or three quarters? A I ~~was~~ say within the hour after my arrival I came across this plant here.

Q You will not say it was five minutes after? A No, I am positive it was not five minutes.

Q It might have been within the hour. All right. You looked at it, did you?

MR. WELLER: I object to that as repetition.

THE COURT: He has been all over that. It aids nothing to get the witness to repeat a thing that has already been answered.

Q When you saw that were you suspicious of it? A Why, no.

Q That didn't look at all suspicious. When did you first get suspicious of that arrangement? A If you will permit me to tell you the conditions as I found them, we got over that --

Q Just answer my question. Mr. Weller carries you along beautifully.

MR. WELLER: I object to that.

MR. JOSEPHS: I mean brought out all the facts.

MR. WELLER: I am not carrying him along.

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MR. JOSEPHS: I didn't mean that. Possibly the ablest man in the office.

MR. WELLER: Try the case and cut that out.

THE COURT: Proceed and try the case.

Q When did you get suspicious of these boxes? A After I found the garment saturated with the odor on the west side we still found an odor in the place and we could not trace it. We searched, as I say, the entire west side of the building, and we finally came back to the east side. This over here was behind the doorway in the partition. The doorway was pulled out. The box had been taken off the top. My hand went down into the debris and I pulled it up and said, here it is, here.

Q And then what did you do? A Turned to the fire patrolman who was with me and told him also to smell the clippings that was in that box.

Q Then what did you do? A I asked him what it was and he said benzene --

THE COURT: Not that.

Q You knew it was benzene and you did not need another man? A Yes sir, you feel better if you have another man with you.

Q Then what did you do? A Called the attention of the clerk who was also on the premises.

MR. WELLER: What is the name?

THE WITNESS: Harry Goldman.

Q When did you discover there were clippings in the wooden boxes? A At that time the clippings ~~the~~ I referred to were in the wooden boxes.

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Q When did you find the clippings in this box, (indicating)?

A Immediately after.

Q You took it out and found they were clippings? A Yes sir.

Q Did you take it out in the light and examine these clippings? A No.

Q You examined them right there? A Yes sir.

Q Then you lifted this box out, the brown one? ~~xx~~ A Which one?

Q The one that had the white skirt in it? A Yes sir.

Q Then you took the skirt and examined it? A Yes sir.

Q Then you lifted the brown box out and examined that, didn't you? A No.

Q You did not lift that out? A No.

Q How did you find it was open from the bottom? A I could look down and see the clippings underneath.

Q Then you put the skirt back? A In the box.

Q And how were those top things, just-as they are now, on the brown box, the flaps? A Yes sir.

Q Then you tied the gray box up? A Yes sir.

Q And then you put the gray box back? A Yes sir.

Q And that was at 8:20 in the morning? A Oh, no.

Q Around, in the morning? A I said it was within the hour of my arrival.

Q Within the hour? A Yes sir.

Q That was in the morning of July 6th? A Yes sir.

Q Then when the fire-patrolman said that nobody had moved any

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of the property except the man who took the pictures he was mistaken?

MR. WELLER: The fire patrolman didn't say that. The question was asked had any property been disturbed, whether moved from its original place and carried to another place. The only property that was moved in that way was what the photographer said in order to take a picture of the westerly wall, a certain table had to be shoved a little to one side.

BY THE COURT: Q You arrived there before the photographer?

A Yes sir.

Q And you took into your hands while you were inside of the room different articles? A Yes sir.

Q And when you left the room did you leave those articles in the same position? A Yes, your Honor.

Q In which you had found them? A Yes, your Honor.

Q In other words, while you picked them up and smelled them, you put them back where you found them, is that so? A Yes sir.

Q Is that so of every article? A Every article I had.

Q You put back where you found them? A Yes sir.

BY MR. JOSEPHS:

Q And you picked up other articles and put them back; is that right? A I cannot say that I did, Counsel.

Q Do you know whether you took up any other article afterwards, that you took it up, smelled and examined it, then put it back in its place? A To the best of my recollection --

Q Before or after the photographer was there,

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★ MR. WELLER: Before.

Q Now, what else was photographed ~~that~~ you had examined and put back in its original place? A The demijohn and those bottles.

Q The sealed bottles? A Yes sir.

Q Any of those pieces of cloth you smelled? A I cannot recall anything else.

Q You might have some cloth you smelled, you might have smelled it and put it back again? A I cannot recall anything else, Counsel.

Q How about the screens? A They were not disturbed.

Q You went over and smelled them? A Yes sir, and didn't disturb them.

Q Sure of that? A Positive.

Q Now, did you ask the patrolman, the fire patrolman, to smell some clippings that were on the sewing machine? A Anything that I found with an odor I asked the fire patrolman to examine.

Q As a matter of fact, were not those clippings the only things on the sewing machine? A No. Anything I found with an odor in I also submitted to the fireman, patrolman, and the clerk who was employed there to smell.

Q As a matter of fact, you know that the only thing, the clippings from the sewing machine, that you asked the fire patrolman to smell. A I told you that twice.

Q There were other things?

THE COURT: That is so. He said that twice.

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Q Now, it would make an ideal arrangement for a fire, wouldn't it, would start a good fire? A Yes sir.

Q A wooden box of inflammable clippings, soaked with benzene, a flue, with something in the middle, so that it would get a draft from the other side; is that it? A Yes sir.

Q And the paper box if saturated -- A Would make an ideal fire.

Q That would be really a scientific arrangement for the purpose? A I cannot say anything about its scientific properties.

Q When you went to school I suppose you saw something like that, a flue, or maybe ^{at} the University of Heidelberg ~~were~~ learned that?

MR. WELLER: Your Honor, I can't see where this is competent, and I think judicial notice should be taken of the fact that the University of Heidelberg does not develop fire bugs.

Q And after all these ideal arrangements for the fire with the scientific flue, with the streamers hanging down, the fire took place in another part of the store? A The fire was on the west wall of the building.

Q And this was on the east wall? A Yes sir.

Q Now, you have been a detective for twenty years, haven't you? A No sir.

Q Investigating fires? A I have been looking into the causes and origin of fires for that length of time.

Q That would be an idea place to start a fire, wouldn't it?

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A Now, I cannot grasp what you mean by saying an ideal place to start a fire.

Q Now, you know this is what is called a flash fire, don't you, you know what is called a flash fire? A I wouldn't call it a flash fire. ✓

Q You would not call this a flash fire? A No sir.

Q What would you call it?

THE COURT: I will allow the witness to answer.

MR. WELLER: I object to the question unless counsel makes this witness his own witness because he was not asked on direct examination.

THE COURT: I will sustain ^{it} to that extent if you make him your own witness on it.

Q Would you call it a flash fire? I will take the testimony for what it is worth. His Honor knows how to rule.

MR. WELLER: Will you pardon me one moment. I object unless it appears that this witness made an examination for the purpose of determining whether or not it was a flash fire.

MR. JOSEPHS: He is a fire marshal.

MR. WELLER: Did he make an examination?

MR. JOSEPHS: The man was appointed and passed an examination of the City of New York as an expert investigator of fires.

THE COURT: I think you will have to interrogate him as to what examination, if any, he made for that purpose.

Q Did you examine the woodwork of this place? A No, I did not.

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Q Did you know whether the woodwork was blistered or not? ✓

A That I don't know either.

Q You mean to stand here and swear, that you don't know whether that woodwork was blistered?

MR. WELLER: Objected to.

THE COURT: I sustain the objection.

Q You mean to swear to that?

MR. WELLER: I object to that.

THE COURT: I sustain the objection.

MR. JOSEPHS: Exception.

THE COURT: He has sworn to it.

Q Were you there when the photographs were taken? A I was.

Q You saw everything that was took, didn't you? A Every photograph that was made you have reference to?

Q Yes. A No, I didn't see all the photographs he made.

Q The photographs were taken under your direction? A No sir.

Q Well, who ordered him to take these pictures? A The Chief in charge of the Bureau.

Q Was the Chief there? A Yes sir.

Q What is the Chief's name? A Thomas P. Brophy.

Q And Brophy said, you take this picture, you take that picture, and you take that one? A I don't know what he said to him.

Q This room was only 15 feet by 9, and you could not hear --

MR. WELLER: That is not correct.

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MR. JOSEPHS : 13 feet, 8 inches, it is near enough,
9 by 9.

Q And you didn't hear instructions that Chief Brophy gave
to him to take these photographs? A No sir.

Q Did you see the flash lights go off? A I heard them. ✓

Q You were in the room while the pictures were being taken?

A That I cannot say either.

Q Why, you don't even know that. Well, where were you when
you heard the flash lights go off? A I heard one flashlight
while I was in the room. ✓

Q You didn't see it? A I cannot say I saw it. ✓

Q You in a room 13 feet by 8, probably within a few feet of
the camera, and you heard a flash, but you didn't see it? A He
was going about his business, I was going about mine.

Q Did you see him take a photograph of the partition? A No,
I did not.

Q That is where the fire is supposed to have started, you
know that, right in the corner by the partition? A I didn't
make any examination as to where the fire started, counsel.

Q And the only examination you made was to go around sniffing
and smelling the benzene? A Looking through the debris to find
where the odor came from.

Q That is all you did? A That is all.

Q Then you went away? A I waited there for further in-
structions.

Q How many hours were you in that store? A I didn't take the

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time, Counsel.

Q Did you get there at 8:20, about, you got there at 8:20, when did you leave? A Somewhere between 8:20 and 11.

Q You are sure you left by 11 o'clock? A I told you.

Q Might it have been 1 o'clock?

MR. WELLER: I object.

THE COURT: Sustained. He has been all over that.

Q Do you know that the photographer didn't get there until 12 o'clock? A I cannot say anything about the time, Counsel.

Q You were there when the photographer came? A When he arrived.

Q You were there when he took some pictures? A I recollect him taking some pictures.

Q And the photographs would refresh your memory if I told you he took all of the pictures between 12 and 2.

MR. WELLER: I am in doubt as to that.

MR. JOSEPHS: Well, look at page 4, Mr. Waller.

Q What time did you take the picture? A About between 12 and 2 o'clock."

MR. WELLER: That is right.

Q And you were still there at 12 o'clock? A - You cannot pin me down to any time, Counsel.

Q Will ~~you~~ it refresh your recollection if the photographer told you it was 12 o'clock? A I was on duty from 8 o'clock on July 4 until 12 o'clock on the night of July 6, 42 hours.

Q What has that got to do with this case? A Time is very vague with me, especially during those 42 hours.

Q Is anything else vague with you? A Time is particularly so.

Q You remember everything else? A I was on duty night and day, Counsel.

Q You remember you got there at 8:20? A Yes sir, that is on the record.

Q That is the reason you remember? A Yes sir.

Q You must have been pretty tired when you got to that place?

* MR. WELLER: I object.

THE COURT: Sustained.

Q You were there probably three and a half hours, is that right? A More or less.

Q And all you did was to take a few little smells?

MR. WELLER: Objected to as repetition.

THE COURT: You have been all over that.

MR. WELLER: Half a dozen times, your Honor.

Q Did you smell an odor of benzene immediately on walking in the premises the next morning, did you? A No, I did not.

Q Did you examine the ceiling of this building at all, this store? A No sir.

Q You didn't look up at all? A (No answer).

Q That gray box, was that tied up with a cord? A No sir.

Q It was not? A No sir.

Q You are sure of that? A I feel positive of that.

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Q That is one thing you remember positively? A Yes sir.

Q But you don't know if the wood was blistered? A No, I do not.

Q Let me look at that lady's skirt. I mean the blue lady's skirt. * (Skirt handed to counsel). Now, do you know if this is the skirt you picked up off of the floor? A Yes sir.

Q Now, that was lying in a lot of debris, was it? A Yes sir.

Q Did you notice where this skirt is burned, it has got a hole through? A Yes sir.

Q And you turn it around and it has got another hole there, and then one or two little spots. Now, have you ever experimented with burning articles saturated with benzine? A I have burned benzene.

Q Well have you ever taken a piece of cloth and saturated it and burned it? A Yes sir.

Q Now, is it not a fact -- you know this is a cleaning establishment, this little store is, they clean clothes there? A I believe that is so.

Q This is one of the garments you said was saturated with benzene? A Yes sir. Pardon me, Counsel, I said that garment had a mild odor.

Q This one was not one of the saturated ones. A No sir.

Q Now, if you have a large piece of cloth, which has a small spot of benzene on it, and you take a match that benzene will light up at once, won't it? A Possibly.

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Q And then when it strikes a non-saturated part of the cloth the fire will die, especially if it has wool contents? any wool? A There is no rule to follow in a condition of that kind.

Q You know wool does not burn? A No sir. ✓

Q Wool burns? A Yes sir.

Q Without benzene on it? A Yes sir.

MR. JOSEPHS: I will try to let you burn a piece of cloth.

MR. WELLER: I object.

THE COURT: What do you want to do, Counsel?

MR. WELLER: We don't want any fire in the court room.

THE COURT: What do you want to do, Counsel?

MR. JOSEPHS: He has testified that this skirt was burnt as a result, intimated, was because it was saturated with benzene.

THE WITNESS: I said a mild odor.

MR. JOSEPHS: It was used for the incendiary purpose of making this fire.

MR. WELLER: He said there was a little odor of benzene.

THE COURT: Well, we will have no fire.

Mr. Stenographer, read the last two or three questions.

(The stenographer read the last three questions).

MR. JOSEPHS: Now, I ask permission to burn a piece of woolen cloth.

MR. WELLER: Objected to as immaterial and outside of the issues.

THE COURT: I won't let him do it.

MR. JOSEPHS: Except to test the witness' veracity.

THE COURT: I have ruled on that. You may proceed to the next question.

MR. JOSEPHS: I except.

BY MR. JOSEPHS:

Q Now, isn't it likely in your mind, as a man who has experimented with clothing and dresses and burning of wool, that this skirt was burned just in spots where it was cleaned and didn't burn anywhere else?

MR. WELLER: I object to that as improper in form, incompetent.

THE COURT: You may ask him, if you make him your witness, whether he is able to express an opinion with reasonable certainty from his examination of articles partially saturated with benzene whether, or not, and so on.

MR. WELLER: You say whatever it would be, a remarkable case, this jury however is in a position to judge as to that.

THE COURT: I think the jury is in a position to judge. I don't think it is a matter of expert testimony.

MR. JOSEPHS: The jury is probably in a better position.

Q Does cotton material burn? A Yes sir.

Q And wool material burn?

MR. WELLER: I object to this continual repetition. We will never get this case completed.

THE COURT: I will sustain the objection.

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w.r. l.

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J O S E P H C O N N O L L Y, called as a witness on behalf
of the people, being first duly sworn, testifies as follows:-

(I reside at 1298 Third Avenue)

DIRECT EXAMINATION BY MR. WELLER:

Q I want you to keep your voice up. How old are you?

A Seventeen.

Q What is your address? A 1298 Third Avenue.

Q Are you past seventeen or coming seventeen?

A Past seventeen. /

Q Do you live with your family, is that your home?

A Yes, sir.

Q Are you working? A Yes, sir.

Q Whereabouts? A Esch, florist.

Q What did you do for him? A Drive.

Q How long have you worked for him? A About a week
now.

Q Where were you working before that? A For J.
Gittermann
~~Gittermann~~, 1298 Third Avenue.

Q What is his business? A Butcher.

Q How long have you worked for him? A Two years and
nine months.

Q Now on the 5th of July about half past six in the
evening of this year were you -- A (Paterrupting)
Passing through 75th Street.

Q And in what direction were you walking? A East.

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Q And did you know the defemant before that?

A Yes, sir.

Q Did you have a speaking acquaintance? A No.

Q What do you mean -- you knew him to the extent of your knowledge of him was what? A I came through that neighborhood every night or so from work. I seen him by the door in passing through the block.

Q And where do you live with reference to 75th Street and Third Avenue? A I live four houses from the corner of 75th Street and Third Avenue.

BY MR. JOSEPHS:

Q Northeast of Third Avenue? A On Third Avenue.

BY MR. WELLER:

Q You used to come through that street generally on your way home from work? A Yes, sir.

Q And that is how you knew this defendant? A Yes.

Q That evening when you were on your way home was it daylight? A Kind of light, yes, sir.

Q And did you see this defendant? A Yes, sir.

Q This man? A Yes, sir.

Q Where was he when you first saw him? A He was locking the door.

Q Of what? A Of his store.

Q And did you see how many locks there were on that door? A Two locks.

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Q Did you say anything to him at that time?

A Not while he was locking the doors.

Q Did you see anything else while he was locking the doors? A A package in his hand.

Q How large a package? A One of them two cases.

Q You mean a case like the tailors use to send home clothing? A Yes, sir.

Q Something like this, was it (indicating a case)?

A Yes, sir.

Q Like that pasteboard box inside there (indicating)?

A Yes, sir.

Q He had it under his arm? A He was carrying it by the string.

Q Did you see anything else at that time while he was locking the door? A No, sir.

Q Were you walking at that time? A Yes, sir, just passing his premises.

Q What next did you see? A He walked about eight feet when I noticed smoke coming out of his store, out of the "trans"

Q Out of what? A The "trans".

Q Out of the fanlight? A Yes, sir.

Q You mean the transom of the door? A Yes, sir.

Q The fan light? A Yes, sir.

Q Did you see very much smoke? A It was just coming

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out easy, just beginning to come out.

Q You say he walked eight feet at that time?

A Yes, sir.

Q In what direction did he walk? A Up towards Lexington Avenue.

Q And at that time where were you with reference to his doorway, had you come to it or passed there by it?

A Just come to it.

Q Just come to it? A Yes, sir.

Q When you saw the smoke coming out of the seams of the fan light, what if anything did you do or say? A I said to Mr. Goodmark "your store is on fire".

Q Yes, did he say anything? A No, sir, he would not answer.

Q Which direction was he going? A He was going towards Lexington Avenue, west.

Q Go ahead. What did you do from that time on; tell the court and jury in your own way? A He came out of his store with a package and locked the lock. He walked about eight feet. I said "your store is on fire". He would not stop but kept on walking westward. He walked about sixty feet. I went after him again. I told him, "your store was on fire"; he would not stop.

Q Did you go towards Lexington Avenue yourself?

A Yes, sir.

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Q He kept going all this time? A Yes, sir.

Q How many times did you tell him his store was on fire? A Twice.

Q And how close to him were you the second time that you told him his store was on fire? A On the right side, right close up to him.

Q Well, how close? A Walking almost with him, ✓ even with him.

Q Just like I am with this gentleman here (indicating)? A Yes, sir.

Q And did he make any answer? A No, sir, he would not answer.

Q When you told him the second time his store was on fire what did he say or do? A He made a motion like this (illustrating) threw his hands wide.

Q Had he got to the corner by that time? A Yes sir.

Q Did you notice whether he went in the saloon or around the corner at that time? A No, sir, I did not.

Q And he got to the corner the second time when you called him? A Yes, sir.

Q Well then, what occurred? A I forced him back; I made him come back and open the door.

Q Tell me what you did -- don't say you "forced" him.

THE COURT: I think I will strike out, "I forced him back".

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MR. WELLER: I consent to that your Honor.

Q Tell me what you did to him? A After he came back, after I made him come back and open the door--

Q No, yo u misunderstood me.

BY THE COURT:

Q What did you do when you came up to him, what did you do? A I put my hands on his two shoulders and I brought him back to open the locks on the door.

BY MR. WELLER:

Q Did he still have the package in his own hand at that time? A No, sir.

BY THE COURT:

Q How far about was he from the door when you put your hands on his shoulders? A Right over from the corner, turned around.

THE COURT: Stand up here Louis (addressing one of the attendants) for a moment.

Q Suppose that is Goodmark (indicating the attendant) just show us how you put your hands on him? A Just like this (illustrating)

MR. WELLER: With the left hand on the officer's left shoulder and the right hand on the officer's right shoulder

THE COURT: Sit down.

BY MR. WELLER:

Q When he came out of the store he had this package, but by the time you had run he didn't have the package? A No.

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Q That was the second time when you told him his store was on fire? A Yes, sir.

Q Did he come back with you to the store? A Yes sir.

Q Then what occurred? A He opened the two locks. As he opened the locks a cloud of smoke came out. I ran down to ring the alarm. Before I got down there somebody told me the alarm had been rung in.

Q Where was the nearest fire alarm box? A 75th Street and Third Avenue.

Q A block? A Yes, sir.

Q You started to run to Third Avenue? A Yes, sir.

Q How far did you get before you stopped? A Only a little way down.

Q Did you see what became of Goodmark? A When I came back he had disappeared.

Q Was he in the crowd watching the fire? A No, sir, not when I came back, but I seen him half an hour later.

Q Where did he come from a half an hour later? A I don't know where he came from, but he disappeared when I came back from ringing the box.

Q You say he disappeared. Was there a crowd watching the fire? A By that time, yes, sir.

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

Q How long after was it when you saw he came back?

A About a half an hour after the fire had been put out.

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Q And where did you see him? A In his store.

Q Did you go in the store? A Yes, sir.

Q Did you see fire marshal Wade in the store there?

A Yes, sir.

Q And did you see the fire marshal talking to the defendant Goodmark? A Yes, sir.

Q What if anything did you say to the defendant at that time? A I didn't say nothing to him at all.

Q Did you have any conversation with the fire marshal in the defendant's presence? A Just took my name, that is all.

Q And address? A Yes, sir.

Q And then you were taken in an automobile down to fire headquarters? A Yes, sir.

Q Where you made a statement that night to the fire marshal as to what you knew about the case? A Yes, sir.

BY THE COURT:

Q Did you have any talk with the fire marshal in the store or in front of the store? A No, sir. ✓

Q Did you have any talk with the fire marshal while the defendant was standing by? A No, your Honor.

Q Did you hear anything said by the fire marshal to the defendant, to the man who is now on trial? A No, your Honor.

Q Were you there at any time when the fire marshal was

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talking to the defendant? A I just came in that time. ✓

A policeman had already brought him in.

BY MR. WELLER:

Q Who brought you in? A The policeman. He asked for witnesses.

BY THE COURT:

Q When you say you were brought in, from where?

A I was brought in from the crowd.

Q Brought from the crowd into what place?

A Into Goodmark's store.

Q That was about how long after the fire?

A A half an hour after the fire.

Q Now when you were brought into Goodmark's store after the fire did you see any persons inside of that store; were there any persons inside? A Yes, your Honor.

Q About how many people? A The fire marshal, a cop and there was a couple of boys.

Q Was the defendant there? A Yes, sir.

Q This man who is on trial? A Yes, sir.

Q And when you were brought into the store what was the fire marshal doing? A He was writing down names.

Q He was sitting down or standing up? A Standing up.

Q And had some paper in his hand? A Yes sir.

Q He was writing? A Yes, sir.

Q Writing on what? A A book, I think.

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Q Your best recollection is that he was writing in a book,-- keep your voice up -- everybody wants to hear you?

A He made notes.

Q In a book? A Yes, sir.

Q Was there anybody near him when he was writing in the book? A We were all around him.

Q Now, at that time did you hear him say anything to Goodmark, did you hear the fire marshal say anything to Goodmark? A No, your Honor.

Q Did you hear him say anything to you? A He just took my name down, that is all he asked me if I was a witness and took my name.

Q Did he say anything to you besides taking your name?

A He asked me did I see him.

Q Did he say anything to you besides that, besides taking your name and address and asked you whether you saw him?

A No, your Honor.

Q The fire marshal asked you how many questions?

A Just asked me my name, that is all.

Q Then he asked you you say whether you saw anything?

A Yes, sir, if I knew anything about it.

Q Now after you said that to you, did you talk to the fire marshal, did you say anything to the fire marshal?

A No, your Honor.

Q Nothing at all? A Nothing at all.

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Q And did you hear the fire marshal say anything to Goodmark? A No, your Honor.

Q Did Goodmark say anything to the fire marshal? A No, your Honor.

Q Who left the store first, you or the fire marshal or Goodmark? A We all left together.

Q When you left together, that is, say, you, the fire marshal and Goodmark, did anybody else leave with you or were you three all alone when you left? A There was a couple of more boys with us.

Q Do you know the names of those boys? A No, your Honor.

Q So that you and a couple of boys, the fire marshal and Goodmark left the store together; is that so?

A Yes, your Honor.

Q Five of you? A Five of us.

Q Where did you five go? A To police headquarters? - I mean the fire headquarters.

Q How did you go from the store to fire headquarters?

A Along Lexington Avenue.

Q Walking? A In an automobile.

Q In an automobile? A Yes, sir.

Q And when you were riding in the automobile on which side did you sit? A On the back seat.

Q Did anybody sit in the back seat with you?

A Goodmark sat alongside of me.

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Q Anybody else on the back seat? A Two boys.

Q So there were four of you on the back seat?

A Yes, sir.

Q Who was in front? A The chauffeur.

Q Where was the fire marshal? A I think he was in the front seat.

Q He went in the car with you? A Yes, sir.

Q Was there any talk between you and Goodmark when you were on the back seat of the car? A No, your Honor.

Q Was there any talk between Goodmark and the fire marshal while you were in the car? A No, your Honor.

Q Was there any talk between you and the fire marshal while you were in the car? A No, your Honor.

Q And when you five got to fire headquarters, where did you go? A We went in and we made a statement.

Q Then you went into a room? A Yes, your Honor.

THE COURT: Go ahead, Mr. Weller.

BY MR. WELLER:

Q When the fire marshal asked you if you saw it, did you tell him you had? A Yes, sir.

MR. WELLER: That is all.

CROSS EXAMINATION BY MR. JOSEPHS:

Q Now Connolly on July 5th, who did you work for?

A I was not working at all at that time.

Q And how long have you been out of work?

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A About three weeks.

Q What? A About three weeks.

Q Then when you told the judge and this jury that you were coming home from work when you saw this man locking the door, that was not so?

MR. WELLER: One moment. I did not understand him to say that. This was a holiday.

Q You did not see him that very night? A I was not working that night.

Q As a matter of fact you were out of work?

A Yes, sir.

Q You had been out of work about three weeks?

A Yes, sir.

Q Now where is Gittermann's place of business?

A 74th Street and 75th Street on the west side of Third Avenue.

Q You used to see this man on your way home from work?

A Yes, sir.

Q Now, where do you live? A Third Avenue.

Q And the butcher shop is on Third Avenue; is that right? A Yes, sir.

Q Well how was it you used to come home by walking a about a block? A I used to go up town to 95th street with three dozen of eggs and I used to come that way.

Q Every night? A Yes, sir. ✓

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Q Did you go back to the store? A No, sir, it was closed.

Q What is the name of the people to whom you were to deliver the three dozen eggs daily? A Israelson.

Q What is his first name? A Isaac.

Q And where does Israelson live? A No. 17 95th Street.

Q Did you used to walk home? A I used to ride home on the car and get off at 75th Street and Lexington Avenue.

Q And that is where you came home every night?

A Yes, sir.

Q Now you say you saw this man locking the door? There was nothing suspicious about his locking the door?

A No, sir.

Q There was no reason why your attention should be drawn to this man at that particular time that you can think of now? A No, sir.

Q Did you notice that he locked two locks? A Yes sir.

Q You are sure that he locked two locks? A Yes sir.

Q What made you look so carefully to see him locking two locks? A I had my head turned that way.

Q It takes some time to lock two locks? A He had one of those large locks, he had already the thing turned down to turn it.

BY MR. WELLER:

Q You wear a pad lock? A Yes, sir.

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BY MR. JOSEPHS:

Q Did you see him lock the upper lock? A Yes sir.

Q Which did he lock first, the upper or lower?

A The lower.

Q You are sure you saw him lock the lower lock first?

A Yes, sir.

Q And the upper lock last? A Yes, sir.

Q How long did it take him to do that?

A A couple of seconds.

Q One, two -- or was it a little longer?

A A little longer.

Q Just count then; just how long did it take him to do it? A About ten seconds.

Q And you saw him just as you got up to his door?

A Yes, sir.

Q And you were anxious to get home, were you not?

A Yes, sir.

Q That was about your supper time? A Yes, sir.
Half past twelve--

Q And you were walking very slowly? A Yes, sir.

Q You were very anxious to get home to your supper and was walking very slowly? A Yes, sir.

Q And when you saw him locking that lock just as you got in front of him, you were right in front of the door when you saw him lock it? A Yes, sir.

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Q You would have to be to see him lock it? A Yes.

Q When you saw him lock it, you stopped for ten seconds and watched the door? A I could see him through the glass looking at it.

Q You saw him through two panes of glass?

A No, sir, it is just like a single one here.

Q There (indicating) is the shop window?

A Yes, sir.

Q And here (indicating) comes the door. You had to look through two panes of windows to see him lock the door?

A I didn't look specially there. I was coming there and I seen him locking the door.

Q How far away were you from the door when you first noticed him lock it? A About three feet.

Q How long did it take you to walk three feet at the rate you were going that night? A I do not know.

Q Show us how fast you were walking-- get up.

THE COURT: No, no, he will not.

Q It took you a second to walk three feet?

A I don't know.

Q What is the best belief as to how fast you think you were walking?

MR. WELLER: It seems to me it may be assumed that he was walking as other people walk along.

THE WITNESS: An ordinary ~~gait~~ gait.

THE COURT: He says an ordinary gait.

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