

Q You didn't see them in the Magistrate's Court? A No.

Q You didn't see them in this court? A No.

Q You know the defendants who are on trial, sit at this table, don't you? A Yes.

Q You know that this gentleman is a lawyer with me? (Indicating Mr. Oshrin.) A You just told me that.

BY THE COURT:

Q Do you know that Mr. Rosenberg is a lawyer? A Which Rosenberg?

Q The man that is questioning you. A I don't know the gentleman by the name.

BY MR. ROSENBERG:

Q Don't you know that the man who is on trial sits at the table? A Yes.

Q Have you spoken to Lidz about what he said on the witness stand? A When?

Q Today? A No, sir.

Q Or yesterday? A No.

Q Have you seen Lidz within the last ten days? A I did see him.

Q Where? A In the District Attorney's office.

Q Have you spoken to him in the District Attorney's office?

A Well, I guess he did speak.

Q What did you speak about? About what he was going to say, and what you were going to say? A No.

Q Did you tell anyone what you were going to say? A The

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District Attorney told me to say the truth, that is all what I¹⁷⁰ know.

Q Did you tell the District Attorney what you were going to say? A He asked me what I have to say. I told him the words I am saying now.

Q Was Lidz alongside of you when you were telling him that?

A Yes, he was there, too.

Q And Lidz was telling the District Attorney what he was going to say? A Yes.

Q And you both agreed upon it between yourselves what you were going to say? A We were saying; I suppose he said the truth, and I said the truth.

Q Didn't you talk it over with Lidz as to the different particulars you were going to tell Mr. Press, the District Attorney? A No, I simply said what I know to the District Attorney.

Q Have you seen Lidz there in the House of Detention? A No, sir.

Q Has his wife been to see you since? A No.

Q Have you seen his wife? A I have seen her just now in the hallway.

Q Did you speak to her? A No.

Q Did you see her up in the District Attorney's office? A Yes.

Q Was she there when you were telling the story to Mr. Press?

A No, sir.

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Q Where was she? A I don't know; I did not look for her.

Q Didn't you say she was in the District Attorney's office when you were there? A She was in the hallway by the District Attorney's office.

Q Wasn't she talking with her husband? A Yes. She said something too, there in the office there.

Q Were you there when she said something? A Yes, she said whatever she knew.

Q Were you there? A Yes, sir.

Q Was her husband there? A Yes, sir.

MR. ROSENBERG: That is all.

BY MR. PRESS:

Q I told you to tell the truth, is that right? A Yes, sir.

Q I didn't tell you that you must identify something, or that you would be prosecuted, did I? A No.

MR. ROSENBERG: I do not make any such claim.

THE COURT: We will take a recess until 2 o'clock.

In the meanwhile, Gentlemen of the Jury, you must be very careful not to discuss this case, and that means you must not talk about it among yourselves, and you must not talk about it with strangers, and you must not come to any conclusion on the question of the guilt or the innocence of these defendants, until you hear all that is to be said on both sides, and until the Court submits the case to you for your decision.

(The court takes a recess until 2 o'clock.)

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TRIAL RESUMED, 2 p. m.

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WILLIAM A. CLARK, (150 17th avenue, Patterson, N. J.) called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. Clark, what is your business? A New York representative of the National Silk Dying Company.

Q And their place of business is where? A Pennsylvania, and Patterson, New Jersey.

Q Have you a customer in the City of New York, known as Nozawaya & Company? A I have.

Q I show you People's Exhibit 2 for identification; was that printed at your mills? A The design is the same as what we have printed for that company.

Q Have you got the original of that design? A I have.

Q Will you show it to us? (The witness hands design to Mr. Press.)

BY THE COURT:

Q What do you do in the company? A I represent the printing and piece dying for the company.

Q Have you charge of the mechanical part, or merely the commercial part; you get the orders? A Yes.

Q You do not have anything to do with the manufacturing?
A No.

BY MR. PRESS:

Q But you turn in orders, and you turn in printing designs

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for work to be done? A I do.

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Q You are at the mills each day? A Every morning, one hour.

Q And you know of a particular print that is done, when it comes within your purview? A I do.

Q This is the original design? A Yes, sir.

Q Of People's Exhibit 2 for identification? A Yes, sir.

MR. PRESS: I offer this in evidence.

(Design marked in evidence as People's Exhibit No. 8 in evidence.)

Q Can you leave this here? A If I have a receipt for same.

BY THE COURT:

Q Who makes that design? A There are a number of engravers in this town and different other towns, who submit them to the commission house and our customers, and also to us, and we dye them.

Q You mean you get the exclusive right to make that pattern?

A The customer has the exclusive right to have it confined to him.

Q You only make that silk for one customer, is that what you mean? A Yes, sir.

BY MR. PRESS:

Q For whom was this design made? A Nozawaya Company.

Q And they got the exclusive right to it? A They have.

Q Can you tell us of your own knowledge the number of pieces that were manufactured from that design?

MR. ROSENBERG: I object to that; it appears by his own

W testimony, he was the New York representative of the printing.

MR. PRESS: And he is at the factory every morning and had charge of this particular order.

Q Had you? A Yes.

THE COURT: He can state all he knows about it, but it is not binding on the jury.

Q Do you know of your own knowledge; I am going to ask you to refer to data of the books of the concern.

THE COURT: You must understand that the books of a third party are not evidence against these defendants, but if he took an order for a certain number of pieces of goods, he may state, and if he needs any memorandum to refresh his memory, he may use it.

Q Do you know the number of pieces that were sold to the Nozawaya Company? A Yes.

Q Of your own knowledge? A 74.

Q That is of your own knowledge? A Yes.

Q You know that to be so? A Yes.

BY THE COURT:

Q You sold them 74 pieces? A Well, not in the word "Sold"; we printed it for them.

Q You contracted to sell them 74 pieces; you made that contract? A Yes.

Q That is the agreement you made with them? A We printed 74, so far on that pattern.

Q What do you mean by a piece? A Well, a piece may contain

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50 yards or 60, or 100 yards, but when a piece of goods is put up in a bolt, it contains so many yards.

Q Is there any limit to the size of these bolts, as you call them? A No, no limit.

BY MR. PRESS:

Q But all that was printed of that design was sold to the Nozawaya mill, is that correct? A Yes.

Q And the pieces that you figure that they got were 74 pieces, is that correct? A That is right.

MR. ROSENBERG: I object to the pieces that they got, the pieces he sold.

THE COURT: I will sustain the objection as to that.

BY THE COURT:

Q You do not know whether they got them or not, but you agreed to print 74 pieces for them? A 74 pieces is the amount that we have already printed on that design and delivered to them.

Q You did not make the deliveries, did you?

MR. PRESS: I will prove they got them.

BY MR. PRESS:

Q There were 74 pieces printed by you? A Yes.

Q And no others of that design? A No.

BY THE COURT:

Q The only person who had the right to receive them was Nozawaya & Company? A Yes.

Q If anyone else did receive them, it was not with your

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knowledge and consent? A No, sir.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Do you know anything about the printing of the design itself? A Not practically.

BY THE COURT:

Q Is the design printed or engraved? A Printed.

BY MR. ROSENBERG:

Q What is this design that is offered in evidence here, People's Exhibit 8 in evidence, is that printed? A That is printed.

Q Do you know the process of the printing? A To a certain extent.

Q Is there a plate made for it first? A There is a copper roller engraved. For instance, if the goods are 36 inches wide, there will be a 42-inch roller engraved so as to print 36-inch goods on same.

Q And that roller is like a type for a printing press, it acts as a type? A I don't know much about printing presses, but our rollers are 16-1/2 inches in circumference.

BY THE COURT:

Q You mean you print the silk from that roller? A Yes.

Q Before you make the roller from this design, the engraver takes this design and engraves that on the roller? A Yes.

Q And then you turn out the silk from that roller? A Yes.

BY MR. ROSENBERG:

Q You are a practical man, are you, in that business? A As

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far as the representative goes, but not in the printing of merchandise.

Q Haven't you had occasion to know that a number of manufacturers have the same designs; haven't you had that experience? A No, sir, not unless they infringe.

Q That is not copyrighted, is it, People's Exhibit 8 in evidence? A It is not copyrighted; it is confined to this customer.

Q So far as your knowledge is concerned, you would not print any more than what they order, is that right? A For nobody else, only them.

Q So far as your company is concerned? A Yes.

Q But there is nothing against any other company printing the identical same pattern, is there? A I do not see what could stop them.

Q Well, nothing would stop them, is that right?

BY THE COURT:

Q If they had an order for the same design, they could get a roller made as you did? A Yes.

Q But you do not know of any other company that has such a roller? A Yes.

BY MR. ROSENBERG:

Q The same designer would do the same work for a dozen people, wouldn't he? A He would.

Q Wherever there is a market for any particular design of goods, there is a number of houses that manufacture that iden-

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tical design of goods, isn't that right? A Not as I know.

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Q Hasn't it been your experience in representing these houses, that a number of silk houses manufacture the exact design?

A No, sir. They may infringe a little; there may be some little bit of difference, if I could explain.

Q Explain it. A You might say in the silk trade, it is a standing rule, and they all try to keep away from copying anybody else's design; that is, exactly. If they were to copy a certain design, they might change it a little, and it may look so much alike that you can hardly tell.

BY THE COURT:

Q You could tell? A Yes, I could tell.

Q You mean an ordinary person could not tell, but you could? A Yes.

BY MR. ROSENBERG:

Q It requires an expert to tell the difference? A Not exactly. If you look close you will see probably a line would be a little wider, or some lines be a little narrower, just a trifle to change it and yet not be the same thing.

Q Look at this polkadot silk, did you print that? your company? A That I could not say. There is so much designing that is free for everybody, you could not really confine it to anybody. The polkadot is a design which is used by almost all printers.

Q Is there anything unusual in printing it only on one side and not on the other? A Well, it would be just according to

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the material.

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Q Some material will stand both sides printing, whereas others will not, is that it? A Yes. In some materials, dye stuff will not penetrate through, and other materials it will go through very easily.

Q It is nothing unusual to have polkadots, for instance, with a right and a wrong side, as they style it? A Nothing unusual.

Q How about the other silk here, the stripes. For instance, Defendant's Exhibit 3 for identification; look at that; is that dyed on both sides or one side? A It is printed on one side, but the print penetrates through so that you would not notice whether it was printed on both sides or not.

Q Would you call that as an expert, a right and wrong side?

A Right side and wrong side.

Q But the ordinary person would not notice the difference, is that right? A Well no, hardly.

Q And the same thing with respect to the polka dots, Defendants' exhibits 1 and 2? A Just according to the material.

Q Look at Defendants' Exhibit 1 for identification; is that printed on both sides? A It is printed on one side, and penetrates through.

Q That is what is known as right and wrong side, so far as that is concerned? A Yes.

Q Could the ordinary person tell the difference between that printed only on one side, and printed on both sides? A If he

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W had any eyesight about him at all he would see one side was a little clearer than the other.

Q It would require an expert to tell the difference? A No, not necessarily.

Q Can you tell when the order was given for the manufacture or printing of that design, People's Exhibit 8 in evidence? A I can tell from data.

Q That is what I am asking. A (Referring to papers.) There is March 25th, 1915, April 24th, 1915, April 27th, 1915.

Q In other words, the order for the dates which you have given is for People's Exhibit 2 for identification, printing People's Exhibit 2 for identification? A Of this stripe.

Q Does your book show that those goods were delivered to the Nozawaya Company? A Yes.

Q What date; that is, speaking of the same stripe, People's Exhibit 2 for identification? A I can give you the piece numbers, yards, and so forth, if you wish.

Q And the date of delivery according to the books? A April 16th, 15 pieces, May 5th, 30 pieces, May 6th, 1 piece.

Q Does that refer to the same goods? A yes, sir, 28 pieces on May 5th. That is, two shipments on May 5th. That concludes that.

Q That is all the goods your firm manufactured for the Nozawaya Company? A On t his particular pattern.

Q Now, is there any pattern in this exhibit that you claim your firm manufactured or printed for Nozawaya & Company? A I

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don't claim any other pattern we might have printed, although, to my knowledge, I could not remember the other patterns.

BY THE COURT:

Q Have you looked at all these goods here? A The polkadot we may have printed, but I could not swear to it.

BY MR. ROSENBERG:

Q The polkadot you cannot tell, even if you had printed it, can you? A No, sir.

Q Why not?

THE COURT: Because it is a common design, he said.

BY MR. ROSENBERG:

Q Is that so? A The polkadot is a very common design?

A It is printed by every printer. It is a design which you cannot confine to any customer, because it is really omnibus.

Q That applies to the large polkadots as well as to the small polkadots? A Yes, all sizes.

Q And the color of the polkadots? A Any color at all.

MR. ROSENBERG: That is all.

ERNEST LALLY, (203 Trinton avenue, West Hoboken, N. J.) called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your business, Mr. Lally? A Engineer.

Q Where? A 25 and 27 West Houston street.

Q How long have you been there? A I have been there since

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the 21st of May.

Q During the month of June, was there a vacant loft in your building? A Yes, sir; there is three of them there.

Q How about the second floor? A That is the third floor.

Q The third from the bottom, counting the bottom? A Yes.

Q Two flights up, is that right? A Yes.

Q And that was vacant during the entire month of June, 1915?

A Yes, sir.

Q You were in that loft occasionally, were you not? A No.

Q When were you in that loft last? A When these officers came to investigate something.

Q And then you went in there? A Yes.

Q When you went in there, was that the 13th of July? A I could not tell you what date.

BY THE COURT: Q What officers do you mean, the police officers?

A Yes.

Q You mean that is the time you were in that loft? A I never went in them lofts at all, sir.

Q Had you ever been in that loft? A No, sir, not in that loft.

BY MR. PRESS:

Q When the officers came that day, you went into the loft?

A I took them up myself.

(At this point Officer Cook is called into the court room.)

Q Is this the man? (Indicating Officer Cook.) A That is one of them.

Q On that occasion, what did you observe in that loft?

MR. ROSENBERG: Objected to as not binding on the defendant.

THE COURT: Unless it is connected with the evidence it will not be binding. The District Attorney must prove his case item by item.

MR. ROSENBERG: Exception.

BY THE COURT: Q What did you observe in that loft in July?

A Empty cases.

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BY MR. PRESS:

Q Any wrapping paper? A Yes, sir, a roll of wrapping paper in the corner.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Do you know who put the wrapping paper there? A No, sir.

Q Do you know who put the cases there? A I don't know.

Q Do you know what kind of a firm occupied the loft before it became empty? A No, sir, I could not tell you.

Q Do you know when it became empty? A No, sir, the loft was empty before I ever went into the building at all.

BY THE COURT:

Q When you went there that loft was empty? A Yes.

Q Is it vacant now? A Yes.

Q It never had a tenant while you were there? A No, sir.

BY MR. ROSENBERG:

Q Did any of the tenants use that loft? A No, sir, not to my knowledge.

BY THE COURT:

Q Have you control of the lofts? A If I can let them out for the owner of the building, I shall do so.

Q But you have charge of the building? A I just give them steam from my building to No. 21. That is the building they are talking about.

Q He said 25 and 27? A I am the engineer of that, but I supply the steam running that engine in 21.

Q 21 is where the vacant loft was? A Yes.

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Q Where you found the empty cases? A Yes.

Q What were the cases? A Broken cases, lying on the third loft.

Q Wooden cases? A Yes.

Q Packing cases? A Yes.

BY MR. ROSENBERG:

Q You run that elevator in addition to being superintendent, don't you? A Once in a while I let the elevator man off for his dinner. I run between twelve and one o'clock when I let him go to his dinner.

Q That is, every day you do the same thing? A Yes.

Q Between one and two? A Between twelve and one and sometimes after one.

Q Do you remember the last of the month of June, about the 29th? Bring your mind back to the last days of June? A Yes, I got it back.

Q On a Tuesday, the last Tuesday of the month, do you remember ever taking this defendant, Mr. Maloney, and the other one? A I never seen them Gentlemen before.

Q Did you ever take any firemen up in the elevator? A No, sir.

Q Up into the building? A No, sir.

Q In through the elevator? A No, sir.

Q Did you see Mr. Lidz around the building this morning?

A No, sir.

Q Or Mr. Braslowsky? A No, sir; I never took anybody up.

Q Did you ever take any one up to that floor? A No, sir.

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Q What was the name of the elevator man? A Jerry Torelli.

Q Do you know where he lives? A I do not, no. He lives over in Prince and Mulberry, somewhere.

Q Is he working in the building still? A He is running there now.

Q Do you know Maloney or Ferrick? A No, sir, I never seen them before.

J O S E P H E N G E L, recalled, on behalf of the People, testified as follows:

BY MR PRESS:

Q Mr. Engel, have you consulted your books with respect to the designs that you sold in the month of June? A I have.

Q To the Dorothy Waist company? A I have.

Q Have you looked for the receipt for the delivery of those goods? A Yes, sir (producing papers).

Q And the date of that is what? A June 22nd.

MR. ROSENBERG: I admit that is the receipt.

Q Will you tell us the goods that that refers to; have you got the designs? A Yes, sir.

Q That were in that consignment?

MR. ROSENBERG: I object unless I be permitted to cross examine this witness as to his personal knowledge of the transaction.

Q Were you the one who sold these goods to the Nozawaya Company? A Not the Nozawaya, Dorothy Waist Company.

Q To the Dorothy Waist company? A Yes.

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Q Were you the one that submitted the samples and took the order? A Yes, sir.

Q And it was in pursuance of their agreement to buy from you, that you made up the order, is that right? A Yes, sir.

THE COURT: What do you mean by making up the order?

MR. PRESS: Well, I will withdraw that.

Q You turned the order into your concern? A Yes, sir.

Q Will you show us the patterns that you turned into your concern, that were turned in by you? A Yes, sir (showing papers).

Q Are those all of them? A Yes, representing that shipment.

MR. ROSENBERG: I object to that, and move to strike it out as not responsive.

THE COURT: He does not know anything about the shipment. There is a difference between a sale and a delivery. You can ask him about anything that he had anything to do with; what did he sell.

Q Are these the patterns that you made the sale of to the Dorothy Waist Company? A They are.

Q In the month of June? A Yes, sir.

MR. PRESS: I ask that these be marked for identification.

(Papers marked People's Exhibit 9 for identification, consisting of five cards of samples, and one page in the sample book, No. 6012.)

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MR. PRESS: I ask that this receipt be marked for identification also.

(Receipt marked People's Exhibit 10 for identification.)

Q I show you People's Exhibit 2 for identification: To whom did you sell that pattern of goods? A The Dorothy Waist Company.

Q How many? A Forty-four pieces.

Q Next? A Y. K. Waist Company 6 pieces, Irving Waist Company, 3 pieces, I. Sacks, 3 pieces, Wear Fine Waist Company 3 pieces. There were some sold out of town.

Q How many were sold out of town? A Fifteen pieces.

Q To whom were those sold out of town? A John E. Hurst & Company, Baltimore, Maryland.

BY THE COURT:

Q Do you know the date when you sold that? A Yes, sir.

BY MR. PRESS:

Q Give us the date, if you will, when you sold the out-of-town stuff? A John E. Hurst, & Company, 9 pieces, May 7th; Daniel Miller & Company, Baltimore, Maryland, 6 pieces, April 17th, th

Q That makes altogether 74 pieces that were sold?

A Yes.

Q What is the date of the Dorothy Waist Company? A June 22nd, and Y. K. Waist Company May 26th, Wear Fine Waist Company May 18th, I Sacks May 26th, Irving Waist Company May 27th.

Q And that was a total of 74 pieces in all? A Yes, sir.

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Q Of your own knowledge are there any more of these goods, People's Exhibit 2 for identification in your concern?

MR. ROSENBERG: Objected to?

A No, sir.

BY THE COURT:

Q You examine the stock yourself; it is your duty to know what is in stock? A Yes, sir.

Q You are the salesman for the concern? A Yes, sir.

Q And it is your business to know what you have for sale?

A Yes, sir.

Q Have you had any such articles as that for sale since you disposed of these 74 pieces? A No, sir.

Q You have not seen any of them around the store? A No, sir.

BY MR. ROSENBERG:

Q As a matter of fact you have testified concerning a shipment to Baltimore, haven't you? A Yes.

Q As upon your personal knowledge? A Yes.

Q Did you personally make the sale to Baltimore? A No, sir.

Q You don't know anything about that? A I simply know that these goods were shipped to those people from our firm.

Q The people that told you in your firm that they sold them? A Going through the records of the books.

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

BY THE COURT:

Q You were asked for the sales that you made? A Yes.

Q Did you make the sales to Sachs and these other people?

A Yes.

Q The Baltimore sale you did not make? A No, sir.

MR. ROSENBERG: I move to strike out with reference to the Baltimore concern. He has not any personal knowledge of that.

THE COURT: strike it out.

BY MR. PRESS:

Q Can you tell from your records who made the sales? A I can look that up.

MR. PRESS: I wish you would send the man down to me.

BY MR. ROSENBERG:

Q In what business are the several people who you claim part of these goods were sold to, People's Exhibit 2 for identification? A Waist manufacturers, part of that, and one was a jobber.

Q Who was a jobber? A I. Sacks.

Q That is, he buys goods from you and then sells them to other people, is that right? A Yes.

Q How many pieces did you sell to sacks? A 3 pieces.

Q And when? A May 26th.

Q How many yards in each piece? A About 50 yards.

Q And Sacks is in the City here? A Yes, sir.

Q Have you examined the contents of People's Exhibit 1 for identification? All these goods? A Yes, sir.

Q And you have found among those pieces of goods in that exhibit, People's Exhibit 2 for identification, is that right?

A Yes, sir.

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Q Now, how many yards of goods are contained in People's Exhibit 2 for identification? A I don't know how many yards is contained in that identical pattern. I just took the average of the entire lot.

Q You took the general average; is that so? A Yes, sir.

Q What do you mean, you made a general average? A Of the entire yardage, of the entire thing; not design for design.

Q In People's Exhibit 2 for identification, please tell the jury how many yards are contained? A In this here?

Q Yes. A I don't know, exactly.

Q Is it one piece or is it more than one piece? A These goods are cut up; so many waists were cut up and so many were half cut up, and I figured it out from that.

Q Can't you give the jury some idea of the yardage? A No.

Q How did you do it when you made the general average?
A I took so many pieces of goods and so many waists, half cut up, and so many waists all made up, and figured it up, so many yards to the waist.

Q How many yards to the waist? A About one and a half yards.

Q Did you figure on one and a half yards? A Yes.

Q How many in that piece? A There is about a hundred and fifty-three waists altogether.

Q I am talking about People's Exhibit 2 for identification? A I don't know.

Q Take that piece in your hand now, and tell us about

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how many yards it contained?

BY THE COURT:

Q Is that all of that pattern?

MR. PRESS: Oh, no, there are many more pieces of that.

Q Go over there and pick out all of the pieces of that pattern, People's Exhibit 2 for identification? A (Witness steps down and does as requested)

MR. ROSENBERG: We can measure that afterwards, and agree upon it afterwards without taking up the time now. I want to get the yardage in the record.

BY MR. ROSENBERG:

Q You have picked out all of the goods represented by People's Exhibit 2 for identification? A Yes, sir.

Q You cannot tell us the yardage, can you? A No, sir.

Q Is there anything on People's Exhibit 2 for identification or any of the goods similar to People's Exhibit 2 for identification which is now before the jury which can show you or prove to this jury that it was not sold to any other person whom you have mentioned? A What is that?

Question withdrawn.

BY THE COURT:

Q Is there any mark on that from which you can state to which of these customers it was sold? A There is no mark on it whatsoever.

BY MR. ROSENBERG:

Q That is, you cannot tell whether these goods were sold

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to any of the persons whom you have mentioned? A No, sir.

Q Nothing on it to show whether they were sold to any particular person? A No, sir.

MR. ROSENBERG: That is all.

CASIL KAVNER, (426 63rd street, Brooklyn) called as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your business, Mr. Kavner? A Shirtwaist manufacturer.

Q What company are you connected with? A Y. & K. Waist Company.

Q Where is your place of business? A 143 West 29th street.

Q Do you know the last witness who was on the stand, Mr. Engel? A Yes, sir.

Q Of the Nozawaya Waist company? A Yes, sir.

Q I show you People's Exhibit 2 for identification; did you buy any goods of that description or of that character and pattern from him? A I did.

Q How many pieces did you buy from him? A I believe it was six pieces.

Q Do you remember the date when you got those goods? A I do not.

Q Do you remember the month? A No.

Q What was done with the goods? A We cut it up into waists.

Q Were they manufactured? A Yes, sir.

Q Into waists? A Into waists.

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BY THE COURT:

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Q Where? A 143 West 29th street.

Q Right on your own premises? A Yes, sir.

Q You did not send them out to anybody? A No.

Q They were cut up under your supervision and made into waists? A Yes.

Q And sold by you? A Yes, sir.

Q You have personal charge of that business haven't you?
A Yes, sir, in this particular case.

Q What position have you occupied in the company? A I am the manufacturer.

Q You are the company? A One of the company.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Do you know the Rose Waist Company people, don't you?
A I don't.

Q Weren't you outside talking to Goldberg? A Yes, I don't know exactly whether he was Rose.

Q Who were you talking to outside? A To a few men.

Q You have talked to Mr. Goldberg? A I really don't know the name.

Q They were all strangers to you? A Yes.

BY MR. ROSENBERG:

Q You were talking about the case, weren't you? A No.

Q Were you talking about what you were brought down here for? A Yes.

Q Well, what were you brought down here for? A To state

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whether I bought the goods. 24

Q From whom? A I was subpoenaed by the court.

Q What were you brought down here to testify to? A Whether I bought the goods.

Q What goods? A Silk from Nozawaya.

BY THE COURT:

Q You did buy them? A Yes.

Q Nobody told you what to say? A No.

Q They told you to tell the truth? A Yes, sir.

BY MR. ROSENBERG:

Q Wasn't the question of the particular goods discussed outside, that you bought? A Not particularly that goods; we spoke of other goods. We have not spoken much of these goods at all.

Q The particular goods concerning which you were brought down here to testify about was that discussed outside? A I have been here two days; I could not recall that. I could not recall everything I spoke of outside during those two days.

Q Did you speak to Mr. Engel? A Yes, sir.

Q Did you speak to the people of the Dorothy Waist Company?
A I spoke to a few people outside. I don't know exactly their names. I know Mr. Engel, I have been doing business with him.

BY THE COURT:

Q You are a customer of Engels? A Yes, sir.

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A B E B O T O W I N I C K (236 East 165th street Bronx) a witness called in behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR PRESS:

Q What is your business? A Shirt waits.

Q What company are you connected with? A Irving Waist Company.

Q How long have you been connected with them? A Three years.

Q Where is your place of business? A 72 and 74 Madison avenue.

Q Do you know Mr. Engel of the Nozawaya Company? A Yes.

Q You bought goods from them did you not? A Yes.

Q I show you People's Exhibit 2 for identification; did you buy goods of that pattern and character? A Yes.

Q How many pieces did you buy from them? A Three.

Q When, do you know? A Well, sometime in the summer; the early part of the summer.

Q This is the month of September; did you buy it in the month of August or July, or the month of May or June? A Anywheres around those months.

Q What did you do with that stuff? A I cut it up into waists.

Q Was it then manufactured in your place? A Yes.

Q All manufactured in your place? A Every bit of the three pieces? A Yes, sir.

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Q You are sure of that? A Yes, sir.

Q And you sold those waists, did you? A Yes, to customers.

MR. PRESS: That is all.

MR. ROSENBERG: No cross examination.

I S A A C S A C K S, (42 Eldridge street) a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. Sacks, what is your business? A Silks.

Q Are you a broker? A No, jobber.

Q Did you buy any stuff from Mr. Engel? A Yes.

Q Of the Nozawaya Company? A Yes, sir.

Q I show you People's Exhibit 2 for identification, did you buy goods of that kind from them? A Yes, other kinds too.

Q How many pieces did you buy from them of this? A I don't remember exactly; about three pieces.

Q What did you do with those three pieces? A I sold them to small peddlers and storekeepers.

Q Did you sell the three pieces all to one peddler? A No.

Q How many peddlers did you sell the three pieces to?
A Maybe in ten carts or twelve carts.

Q Did you cut it up into pieces? A No, when the customer come I give him a cut, ten yards, or fifteen yards.

BY THE COURT:

Q Did you sell any fifty yard piece? A No.

Q You cut it up? A Yes.

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Q If he wanted ten yards he got it? A Yes.

Q Or five yards? A Yes.

BY MR. PRESS:

Q You sold it altogether to about ten different people?

A yes.

Q You never sold more than fifteen yards of it at a time?

A Maybe eighteen; I could not tell you exactly.

Q But you never sold to any one, one piece? A No.

CROSS EXAMINATION BY MR. ROSENBERG:

Q When did you buy the goods from the Nozawaya Company?

A If I look the bill up I could tell you.

BY THE COURT:

Q Was it last year or this year? A This year.

Q What part of this year? A About four months ago, four or five months.

BY MR. ROSENBERG:

Q Was it in the winter time? A I could not remember exactly. I do not remember exactly, because I buy every day there; I buy merchandise every day. That is the reason I don't remember on what bill that was.

Q Then when you bought the goods from the Nozawaya Company you don't remember that specially, do you? A No.

Q You paid no attention to it? A No.

Q It was the same as if you bought it from somebody else?

A Yes.

Q And when you sold those goods you did not pay any attention

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to it? A No.

Q You do not keep any books? A I keep only for that I sell steady all the time.

Q You keep books for people who owe you money? A Yes.

Q You don't remember how you sold the goods that you bought from the Nozawaya Company? You don't remember selling any of those goods? A Yes, some, a part of them I could tell you to whom I sell.

Q You remember selling a part? A Yes.

Q But you don't remember selling it all? A No.

BY MR. PRESS:

Have you any of it now? A No, not now.

Q ~~W~~ So that you have disposed of it in some way? A Yes.

Q You have disposed of it? A Yes.

MORRIS SCHLECKER (154 Newport avenue, Brooklyn)
called as a witness on behalf of the People, being first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your business? A Manufacturer of waists.

Q Where is your place of business? A 149 Spring street.

Q What is the firm name? A Wear Fine Waist Company.

Q Do you know Mr. Engel of the Nozawaya Company? A Yes, sir.

Q You have bought goods from him? A Yes, sir.

Q I show you People's Exhibit 2 for identification and ask
you if you bought goods of that pattern and of that character?

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A Yes, sir, I bought this particular pattern, with three different colors.

Q Of that color I am speaking of? A That is the pattern I bought.

Q Of that pattern in that particular color, how many pieces did you buy? A One piece of this particular color.

Q And the other colors? A There is blue and another color; three colors altogether.

BY THE COURT:

Q How many did you buy altogether? A Three pieces altogether.

BY MR. PRESS:

Q What did you do with those three pieces? A Made them into waists.

Q All of the pieces? A Yes, sir.

Q When you made them up into waists did you sell the waists? A Yes, sir.

Q Where did you manufacture them into waists? A In 149 Spring.

Q Your own place? A Yes, sir.

MR. PRESS: That is all.

MR. ROSENBERG: No questions.

ISADORE SANDBERG, recalled, testifies as follows:

BY MR. PRESS:

Q Mr. Sandberg, how many pieces of People's Exhibit 2 for

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identification did you purchase from Mr. Engel? A Forty-four pieces.

Q How many pieces did you turn over of that particular sample, People's Exhibit 2 for identification to the Dorothy Waist Company, to manufacture? A To manufacture? A Yes.

Q yes. A Twenty-two pieces.

Q What did you do with the other twenty-two pieces? A Eleven pieces I delivered to Mintz & Holub, one of my contractors.

Q How many pieces? A Eleven pieces.

Q Did you get it all back from them? A Yes, all back.

Q What about the other eleven pieces? A I delivered to the Rose Waist Company.

BY THE COURT:

Q You gave them twenty-two, you say? A No.

Q You bought forty-four pieces? A Yes. Twenty-two I manufactured myself.

BY MR. PRESS:

Q Twenty-two you manufactured yourself? A Yes.

Q And eleven you sent to the Rose Waist Company? A Yes, and eleven to Mintz & Holub.

Q From Mintz & Holub, you got that back? A Yes.

Q And the eleven pieces to the Rose Waist Company, you did not? A No.

BY THE COURT:

Q You never saw them since? A Never saw them since.

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BY MR. PRESS:

Q What would be the yardage, about of those eleven pieces, you sent to the Rose Waist Company? A About 550 yards; they usually run from 49 to 51 yards in a piece.

Q Have you a man named Rosenblatt in your concern? A He worked for me. He is in business for himself now.

Q He worked for you in June, 1915? A Yes.

Q You have seen him write? A Yes.

Q Do you know his signature? A Yes.

Q I show you this receipt People's Exhibit 10 for identification; is that his signature? A That is not the man I mean; that is the bookkeeper. That is the bookkeeper's signature. We have two Rosenblatts. That is the bookkeeper Rosenblatt.

Q That is the receipt for the goods from the Nozawaya Company? A Yes, signed by Rosenblatt, the bookkeeper.

Q Does that represent the consignment of goods you received on the 22nd of --

MR. ROSENBERG: I object. That receipt speaks for itself.

THE COURT: Yes.

MR. PRESS: I offer it in evidence, then.

(The receipt is received in evidence and marked People's Exhibit 10.)

BY THE COURT:

Q You saw these goods that were delivered to you? A I examined them myself.

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Q You would not take the goods unless you examined them?

A Yes.

Q And before you paid for them? A Yes.

BY MR. PRESS:

Q The goods represented in People's Exhibit 10 in evidence, are those the goods? A Yes.

(People's Exhibit 10 is read to the jury.)

Q When you were on the witness stand last you were asked when you received the polkadots, Defendant's Exhibits 1 and 2 for identification?

BY THE COURT:

Q Well, it was all received at the same time? A Yes, June 22nd.

Q It was one purchase? A I got it off the purchase I made. I made the purchase before, goods similar to that, but it was all made up in waists.

BY MR. PRESS:

Q I refer to this only. A Yes, sir, June 22nd was all received at one time

BY THE COURT:

Q Of the merchandise that you delivered to the Rose Waist company, that was received all at once? A Yes.

Q That was in this lot you speak about? A Yes.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Did you say yesterday that you paid \$8,000 for this job, or \$3,000? A I bought this job in a few shipments.

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Q How much did you pay? A I got the amounts here, I can tell you.

Q Tell us? A On June 3rd I bought 39 pieces.

Q How much did you pay for that? A At 30 cents a yard, about 50 yards to a piece. June 9th I got 66 pieces the same average. June 18th, I got 124 pieces. June 22nd, I got 109 pieces. June 24th, I got 109 pieces. June 28th I got 38 pieces. A June 29th I got 30 pieces, the entire amount 515 pieces.

BY MR. PRESS:

Q What was the total amount of your bill? A I Bought a few times. For every shipment I paid.

Q What did you pay for the shipment, or rather for what you received on June 22nd? A 109 pieces, about \$1700.

Q That was for the shipment that you received on June 22nd?
A Yes.

Q That refers to part of People's Exhibit 1 for identification.

THE COURT: There is no proof here that the property that was delivered to the Rose Waist Company was worth more than \$500.

MR. PRESS: That is conceded. There is a concession here that it was worth more than \$50.

MRS. FRANCES LIDZ, (98 Orchard street) called as awitness on behalf of the People, testified as follows, after having been first duly sworn:

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DIRECT EXAMINATION BY MR. PRESS:

Q You are the wife of Simon Lidz? A Yes.

Q And he is in the House of Detention now? A Yes.

Q You have some children, have you not? A Yes.

Q How many? A Four children.

Q Do you know this man here (indicating Defendant Maloney)?

A Yes, I know.

Q Did you see him in the month of June, 1915? A Yes.

Q You know Maloney this defendant? A Yes.

Q Do you remember what day of the week it was that he called at your house in the month of June? A Yes, I believe it was Friday.

Q Do you know what day of the month that was? A Not exactly. It was near the end of the month.

Q About what hour of the day was it that he called on you or called at your house? A It must have been, I suppose about two o'clock.

Q Was that the first time he was ever in your house? A Oh, no, my husband knew him; he used to come.

THE COURT: Strike out the last as not responsive.

BY THE COURT:

Q Was that the first time he was at your house? A No.

BY MR. PRESS:

Q How many times altogether was he at your house? A I could not just say.

Q Very often, or once or twice? A You know my husband

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used to buy things at auction.

BY THE COURT:

Q How often did you see him at your house? A It must have been about half a dozen times.

BY MR. PRESS:

Q On this occasion that he came to your house, were you and your husband there? A We were both there.

Q What did he say to your husband on that occasion? A I have told all this thing before.

Q You have told it to me, but I want you to tell it to the jury? A Well, what he said I don't know.

Q Had he anything with him? A Just a piece of goods he had.

BY THE COURT:

Q What kind of goods? A Some silks.

BY MR. PRESS:

Q Like anything on the table there? A Something like that.

BY THE COURT:

Q What was it? A I don't recognize that; it was some silk, figure silk I call it.

Q Did he say anything to your husband about it? A He told him that if they can make out well on this deal, why, then he can show him where there is more to buy. Then they talk a little. I didn't just listen to the cheap talk, you know, but afterwards my husband said, "Take the sample, I don't know whether the goods is in style or whether it is any good;

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take out the sample of it and let us see if it is worth anything, if it is up to date.

Q Did you go out with the sample? A I did. I found out if he pay something like a quarter he is making something on it.

Q Did you come back to the house and tell your husband that? A I came back and told him, certainly. I told him what I found out.

Q Was the defendant Maloney there at the time? A Yes, he waited.

Q Do you recall how he was dressed that day, whether he was in uniform or in citizen's clothes? A No, I don't exactly. I don't remember whether he was civil or fireman's clothes.

Q Did you see this other defendant (indicating Ferrick)? A No, ~~not~~ that day; the next day.

Q You saw Ferrick the next day? A Yes.

Q Where did you see him? A He came there with a satchel; a suitcase, I mean.

BY THE COURT:

Q Where did he come? A He came to our house.

BY MR. PRESS:

Q He came with a satchel? A Yes.

Q Did you see what he had in the satchel? A No, I did not look, because I was busy with the children. I went out.

Q Did you see what he brought in the satchel afterwards? A Afterwards is when I saw the goods.

Q What did you see? A I saw goods like this on the table.

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Q Were those the only two times that you saw these two defendants at your house about these goods? A That was the only time.

Q That was Friday and Saturday? A Friday and Saturday.

Q And they did not come back to the house any more that you saw? A No.

Q Had Ferrick ever been to your house before that day? A He was there, he bought a baby carriage himself.

Q When he called at the house, when he brought this suitcase, do you know whether he was dressed in uniform or in citizen's clothes? A I don't know really. He just passed like a shadow. I had to go to the hall with the children.

Q You don't remember? A No.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Are you sure that it was a Friday that you first saw Maloney? A Yes.

Q What time of the day was it? A Just as I was saying about two o'clock; I will not swear; it may have been a few minutes more or less.

Q Are you sure it was about two o'clock? A Yes.

Q How long did he stay? A I suppose that must have taken, the whole thing must have taken about an hour.

Q You came back in about an hour? A No, it must have taken from the time he came to the time he went away about an hour.

Q Are you sure it was Friday? A Yes, sir.

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Q You were there during all that time? A Yes, I am busy home Friday.

Q Don't you know Friday was your busy day? A Yes.

Q You were preparing for the Sabbath? A Yes.

Q And your duties require you to go out and buy whatever you needed for Saturday? A Yes. I don't go out at 2 o'clock. I am almost done then.

Q You had to do your cooking Friday afternoon? A Yes, but it didn't take me long? A The whole business took about fifteen minutes to go out.

Q It takes you longer than that? A Going out with the sample, I just went to Hester street and found out.

Q That was a pretty warm day? A I don't remember exactly. You have June days that are cool.

Q Was it raining? A No.

Q The following day was Saturday? A Yes.

Q Didn't you go to the Synagogue with your husband on Saturday? A No, I hardly have time. I got four little children, one is a tiny baby.

Q You don't have the time to go? A No.

Q But your husband goes? A I am sorry to say he hardly goes.

Q He went last week to the Synagogue, didn't he; did he go to the Synagogue? A I don't know, he was in the House of Detention. He was not home.

Q Did you go to the Synagogue last week?

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THE COURT: I will exclude that as immaterial.

Q You paid no attention to your husband and what he was talking about? A I understood he was talking about the case.

Q You paid no attention to it, did you? A Hardly.

Q Didn't you say you hardly paid any attention to him talking?

THE COURT: That is what she says now.

Q When was the first time that your attention was called to the conversation that you say you had with your husband and this defendant Maloney? A I was in the same room with my husband when he came in, so I heard the thing right away. I knew what the thing was. I knew what he was talking about.

BY THE COURT:

Q After that day, who first spoke to you about that occurrence?

BY MR. ROSENBERG:

Q Do you understand? You say this man came there and brought something, and went away? A Yes.

BY THE COURT:

Q That is ^{not} the first man who came to your house and brought something and went away? A Of course not.

Q There have been many men there since? A Not since.

Q Well, before he went to the House of Detention he was in business up to the last day? A Yes.

Q The lawyer wants to know to whom did you speak of this?

A There was no one in the house, only my husband and I.

Q Well, aside from in your house, what is the first time you ever spoke about this case to any one? A Then it was, there was a partner in it.

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BY MR. ROSENBERG:

Q There was a partner in it; who was the partner? A The man that loaned the money.

BY MR. PRESS:

Q Braslowsky? A Yes.

BY THE COURT:

Q Well, besides Braslowsky? A I did not speak to anybody about it until I came to Mr. Hill.

Q Who is Mr Hill?

MR. PRESS: He is a deputy assistant.

BY MR. ROSENBERG:

Q It was Mr. Hill? A The assistant deputy.

Q The Assistant District Attorney in the Jefferson Market Court? A No, not the Jefferson Market Court, right here.

BY THE COURT:

Q When did you speak to Mr. Hill about it? A That must have been about ten days after the purchase, or after they took my husband away; after they took him away, ten days.

Q You mean they took him away ten days after the purchase?

A No.

Q You speak of ten days after they took him away; how long was it after they took your husband away you spoke to Mr. Hill? A It was about ten days after.

Q And ten days after they took your husband away? A Yes.

BY MR. ROSENBERG:

Q Do you remember when your husband was arrested? A Yes.

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Q What day of the week was it? A It must have been a Monday.

Q What day of the week? A I think it was a Monday.

Q What day of the month? A It was the 13th of July; I will never forget that.

Q Did you talk with your husband about what you were going to tell Mr. Hill when Mr. Hill was examining you? A No, I did not.

Q You did not talk to your husband first? A No, they came in suddenly and took him away.

Q But between the ten days your husband was away, after he was arrested, didn't you talk with your husband? A You don't understand me; they arrested him ten days after he bought the goods.

Q Your husband was arrested on July 13th, is that right?

A Yes.

Q You did not talk with your husband from the time that he was arrested until you spoke to Mr. Hill? A I went to the cell there in Jefferson Market Court.

Q He was out on bail in the Jefferson Market Court? A No, he was not out on bail.

Q You went to see him in jail? A Yes.

Q Then he told you what he was arrested for? A He told me, but I knew it anyway.

Q What was he arrested for? A He was arrested for buying that off those two people.

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Q Didn't your husband talk to you about what he was going to tell Mr. Hill? A No.

Q Did he ask you what you were going to say to Mr. Hill?

A He and I made up our minds to tell the truth, whatever it was, and that is all.

Q You agreed between yourself and your husband to just tell the truth? A Yes.

Q Is that what you agreed? A Yes.

Q Wouldn't you tell a lie for your husband to help him?

A No.

MR. ROSENBERG: That is all.

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JAMES J. COOKE, (Officer of the First Branch Detective Bureau) called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q You are a member of the Police force of the City of New York? A yes, sir.

Q And have been for how long? A Twelve years.

Q When was your attention first called to the case of the People against William Maloney and John Ferrick? A On the 13th of July, this year.

Q What did you do? A I went over to 91 Allen street, to the Inflexible Waist Company.

Q With whom? A With Detective Shea, Mr. Goldberg, Mr. Sandberg and Mr. Kahane. As a result of a conversation I had with Jacob Meyrowitz in the Inflexible Waist Company, I went around to the apartment of Simon Lidz, at 98 Orchard street.

Q While you were in Meyrowitz's place, did you see any goods? A I did.

Q Then you went around to Lidz's place? A Accompanied by Meyrowitz, Kahane, Goldberg and Shea, I went around to the apartment of Simon Lidz, at 98 Orchard street. As a result of a conversation I had with him, I arrested him. I then went around to Morris Braslowsky, the jeweler's place on Broom street, and arrested him; then the party went back to the Inflexible Waist Company in 91 Allen street, where I pointed to these goods here.

Q These, People's Exhibit 1 for identification? A Yes, sir.

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Q You spoke to Simon Lidz? A Yes.

Q He looked up the goods? A Yes. We took the goods, Lidz, Braslowsky, to Police Headquarters.

Q All the goods were taken to Police Headquarters? A Yes.

Q And they have been there in the possession of the Police Department of the City of New York, until you brought them into court? A Yes.

Q You brought them from that place, and you have them? A Yes, sir.

Q You have them here under your custody? A Yes, part of the goods I did not get at the time. The flower design I afterwards got at the premises of Lade, Grand and Allen street. That was later on, about a week or two after. That was brought to Headquarters, and it has been there intact until brought here this morning.

Q After the conversation with Lidz, and after having arrested them, did you place the defendants under arrest? A No, not at that time, afterwards; later in the afternoon. Detective Campbell and myself went up to the quarters of Hook and Ladder 20, and arrested Fireman Ferrick. Fireman Maloney we arrested -- I have the exact date in the book.

MR. ROSENBERG: No objection to referring to the book.

(The witness refers to book.)

A (Continuing.) Fireman Ferrick was arrested on the same day, July 13th, the same day we got the goods, and the same day Lidz and Braslowsky were arrested. That was on the 13th of July.

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Maloney was arrested on the 26th of July on a bench warrant.

Q Maloney was arrested on a bench warrant? A Yes.

Q Where was he arrested? A He surrendered. His lawyer called up and surrendered him, and I arrested him at the corner of Grand and Centre street.

Q Ferrick was arrested on the 13th of July, and Maloney was taken into custody July 26th? A Yes.

BY MR. ROSENBERG:

Q You can tell where Maloney was in the meantime.

BY MR. PRESS:

Q Did you have any conversation with Ferrick at the time you arrested him? A No, sir.

Q Did you tell him what he was charged with? A I did.

Q What reply, if any, did he make? A He said he knew nothing about it.

Q When did you arrest Maloney?

THE COURT: He said Maloney surrendered.

BY THE COURT:

Q Did you talk with Maloney after the 26th of July? A Yes, I asked him if he knew anything about the case; he said, "I know nothing about it."

BY MR. PRESS:

Q That is all he said? A Yes.

MR. PRESS: That is all.

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CROSS EXAMINATION BY MR. ROSENBERG:

Q Didn't you learn that Maloney was on his vacation between the 13th and the 26th of July?

THE COURT: I will exclude that as entirely immaterial.

MR. ROSENBERG: Well, a bench warrant was issued; I want to show that he was on his vacation, and that he surrendered when his time was up.

Q Isn't that the fact? A He was on his vacation.

BY THE COURT:

Q You were only told that? A Yes.

Q How do you know whether he was or not; do you believe everything you are told? A No, sir.

BY MR. ROSENBERG:

Q Officer, when you questioned Ferrick about the charge, didn't he deny it?

THE COURT: That is excluded as repetition and entirely immaterial, whether he denied it or not.

Q Do you remember when you arrested Braslowsky and Lidz?

A I do.

Q You took them to the Jefferson Market Police Court? A Subsequently, yes, sir.

Q Was there a short affidavit drawn against both those men?

A There was.

Q By whom? A By Detective Shea.

Q You were present when they were discharged from arrest?

A Yes.

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Q On that charge? A Yes, sir.

Q Of receiving stolen property? A Yes.

Q Did either one of them take the witness stand? A No, sir.

Q Wasn't the discharge by arrangement with the Assistant District Attorney, Hill? A Yes, sir.

Q What did Mr. Hill tell the Court when the defendants Lidz and Braslowsky were brought up?

MR. PRESS: Objected to as immaterial.

THE COURT: That is excluded as immaterial. You can call Mr. Hill, if you wish.

Q Was Mr. Lidz and Braslowsky present when Mr. Hill made the statement to the Court?

THE COURT: That is excluded as immaterial.

MR. ROSENBERG: To which the defendants take and exception.

Q Will you please tell to the Court and jury what Mr. Hill said to the Court in Jefferson Market, in the presence of Braslowsky and Lidz?

THE COURT: I will exclude that as immaterial.

MR. ROSENBERG: To which the defendant excepts.

MR. PRESS: Excepting to look up my records and connecting one or two small items, I would like to ask for an adjournment until tomorrow morning, and I will rest, but I want to look over my records.

THE COURT: Gentlemen of the Jury, the court takes a recess until 10:30 o'clock tomorrow morning. Meanwhile, be

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extremely careful not to discuss this case among yourselves,
nor with anyone else, and do not come to any conclusion as
to the guilt or the innocence of these defendants, until
you have heard all the evidence on both sides, and until
the case is given to you by the Court for your decision.

(The court takes a recess until 10:30 o'clock, September 24th, 1915.)

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New York, September 24th, 1915.

TRIAL RESUMED.

JAMES J. COOKE, recalled for further cross examination, testified as follows:

CROSS EXAMINATION BY MR. ROSENBERG:

Q Officer, you arrested the witness Braslowsky, didn't you?

A Yes, along with Detectives Shea and Campbell.

Q Now, did you tell Braslowsky, when you arrested him that unless he identified the goods which were claimed to have been stolen, you would arrest him or words to that effect? A Positively not.

Q You did not advise him to identify the goods at all, did you? A Positively not.

BY MR. PRESS:

Q But you took him there for the purpose of identifying the goods? A Exactly.

Q You took the other man there for that purpose also?

A Yes.

BY THE COURT:

Q You mean you took him there to see whether they could identify them? A Yes, sir.

Q You did not say they must identify them? A No.

MR. PRESS: Last evening, your Honor will recollect,

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we were to have certain goods measured. I had them measured by two of the witnesses here, and the amount is six pieces, that is about 300 yards. Do you consent to that, Mr. Rosenberg?

MR. ROSENBERG: I said I would take Mr. Press's word for it.

THE COURT: That is People's Exhibit 2 for identification?

MR. PRESS: Yes, and now in evidence, I believe.

MR. ROSENBERG: I do not think it is marked yet.

THE COURT: Well, if it is not marked you can put it in evidence now.

(People's Exhibit 2 for identification is Defendant's Exhibit 2 in evidence.)

MR. PRESS: And I rest.

MR. ROSENTHAL: The defendant asks that the District Attorney be compelled to elect between the several counts mentioned in the indictment, as to which he intends to proceed to submit this case to the jury on.

THE COURT: That motion is denied.

MR. ROSENBERG: To which the defendants except.

MR. ROSENBERG: Defendant moves to direct the acquittal of the defendants on the ground the People have failed to establish the facts set forth in each count of the indictment, or in either of the counts mentioned in the indictment.

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THE COURT: Motion denied.

MR. ROSENBERG: To which the defendants except.

DEFENDANTS' CASE:

Mr. Rosenberg opens to the jury.

J O H N J. F A L L S, called as a witness on behalf of the Defendants, being first duly sworn, testifies as follows:

(Member of Hook & Ladder Company 20.)

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What position are you now occupying? A Fireman, First Grade, New York Fire Department.

Q Are you assigned to any particular duty? A Nothing outside of fire duty.

Q Are you chauffeur to the Chief? A Yes, sir, detailed to the Chief of the Third Battalion.

Q You know these defendants, don't you? A Yes.

Q Do you know Ferrick? A Yes, sir.

Q On the 29th of June, 1915, did your duties require you to be in the fire-house on Mercer street? A Yes, sir.

Q Do you recall when you got there on that day? A I reported back from vacation that morning, the 29th of June, Tuesday morning.

Q Did you see either of these defendants at the fire-house on that day? A I seen Fireman Ferrick. They all came into meal together; we were in in the afternoon.

Q What time do you fix as having seen Ferrick on that day,

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June 29th? A I probably seen him at roll-call.

THE COURT: Strike out the probable.

A I could not say all the men were together at roll-call; we do not look over them individually to see who is there.

THE COURT: Please do not make any speeches; just answer the questions.

BY THE COURT:

Q What time did you see Ferrick there that day, can you say? Yes or no? A I cannot say exactly that time.

Q You swear you saw him there that day? A Yes, I seen him in the house.

Q On that day; you swear to that? A Yes.

Q But you cannot specify the time? A No.

BY MR. ROSENBERG:

Q Can you fix the time you saw him? A Not very well.

Q Did you see him coming in that day? A I could not say; he might have been in; I could not say who came in.

Q Don't you recall the lunch hour or the dinner hour on that day, when you came in from your vacation? A I went out at 10:30, and I came in at one o'clock in the afternoon. I was in the house until five o'clock, five to about seven-thirty.

Q I want to know from you, do you recall seeing Ferrick when you came in from your lunch on that day? A I could not very well say I seen him any more than anybody else, outside of we were all there together. If he was not there I would naturally know it, because the house watchman reports if there

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is anybody absent, and naturally the man in the house speak of any one being absent, or off duty, so if he was not there I would know.

THE COURT: Strike that all out as entirely immaterial. (Now addressing the witness) I told you not to make speeches.

BY THE COURT:

Q Will you swear that you saw him in that house? A No, I could not.

Q At any time that day? A I could not say that.

BY MR. ROSENBERG:

Q Didn't you go before the Fire Commissioner in respect to this case? A No, sir.

Q You were not before the Commissioner? A No, sir.

MR. ROSENBERG: That is all.

MR. PRESS: No question.

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JERRY TORTI, (31 Cleveland Place, New York City)
called as a witness on behalf of the defendants, being first
duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Where do you work? A 21 West Houston.

Q What do you do in that building? A Run the elevator.

Q How long have you worked there? A I am working there
two years.

Q Is that the building that Mr. Lally is the engineer of?

A Yes, sir.

Q You are the elevator boy? A Yes, sir.

Q Do you remember last June working in that building? A
Yes, sir.

Q You work there every day? A Yes, sir.

Q When you go to your lunch, who relieves you? A My en-
gineer.

Q That is, Mr. Lally? A That is, Mr. Lally.

Q Do you know these men, Maloney and Ferrick? (Indicating.)

A Yes, I know them by sight.

Q What do you know them as? A Firemen.

Q That is, you are in the immediate neighborhood of the
fire house? A Yes, sir.

Q Did you ever take these men, Maloney and Ferrick up in
the elevator of that building on June 29th, 1915, or any other
day? A No, sir, never did.

Q Did you ever take these men, Maloney and Ferrick, to-

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gether with two other men, up into that building on the second
or third floors? A No, sir.

Q Did you ever take these men, Maloney and Ferrick to the
third or second floor into the loft of that building? A No, sir.

Q Did you ever give them permission to go up on the ele-
vator into the loft? A No, sir.

Q Was that loft open or locked in June? A It is open.
It is open all the time.

Q Who occupied that loft before it became empty? A Well,
that was before my time.

Q I am talking now of the loft on the third floor, is that
correct; do you understand that? A Yes.

Q The loft two flights up? A Yes.

BY THE COURT:

Q It was not occupied during the time you worked there, is
that so? A Yes, that is so.

BY MR. ROSENBERG:

Q Have you ever been in that loft? A Yes, sir.

MR. ROSENBERG: That is all.

MR. PRESS: No questions.

FRANCIS CANAVAN, (A member of Hook and Ladder No.
20) called as a witness on behalf of the defendants, being
first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Canavan, you know these defendants, Maloney and
Ferrick? A Yes, sir.

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Feerrick? A Yes, sir.

Q You are a fireman? A Yes, sir.

Q Attached to what company? A Hook and Ladder 20.

Q Do you re call the 24th day of June, 1915? A Yes, sir.

Q Between the hours of 3:30 and 8 p. m. of that day, what were your particular duties in that fire house? A I was on house watch.

Q Will you explain to the jury what is meant by being on house watch? A The one on house watch has to make an entry of all the men that go out and come in to quarters; the entry of all the stations that come in. We keep account of all the happenings that go on in the fire house, the man on house watch does.

Q If a person left the fire house between those hours to go outside of the house proper, would you make an entry of it in your official book? A Yes, sir.

BY THE COURT:

Q If you saw him? A Yes, sir.

Q That would be your duty, to do that? A Yes, sir.

Q That is what you are there for? A Yes.

Q Of course, if you did not see him, you would not make the entry? A No.

BY MR. ROSENBERG:

Q If anyone left the house, you would see him, wouldn't you?

A Yes, sir.

Q Where is your station with respect to the persons going

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in and out of the fire house, when you are on watch? A When I
am on watch, I am sitting at the desk, right closed by the door.

Q And that is the only exit to the place? A The only exit
to the place.

Q And that is the only entrance to the place? A Yes, sir.

Q And if a fireman leaves the place, he reports to you? A
He reports to me before he goes out.

Q And you make an entry of that in the journal? A Yes, sir.

Q Now, did either Ferrick or Maloney leave that house on
June 24th, between 3:30 and 8 p. m.; that is, did you see
either Ferrick or Maloney leave the house on that day between
3:30 and 8 p. m.? A Well, I don't recall seeing them.

Q Will you kindly refer to your journal and refresh your
recollection? (Witness looks at the book.)

BY THE COURT:

Q Do you know whether they were in the house or not that
day when you got on watch? A I could not recall.

Q Do you know, yes or no; do you go through the house
from cellar to roof to find out who is in it when you go on
watch; do you understand that? A No, sir.

Q Do you go through the house from the top to the bottom
and take a list of every one that is in it before you go on
duty at the door? A No.

Q All you can say is the men you saw go in or out, isn't
that so? A Yes.

Q And you did not see Ferrick go in or out that day? A

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No, sir.

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BY MR. ROSENBERG:

Q Will you refer to that journal and refresh your recollection?

MR. ROSENBERG: (Addressing the Court.) I would like to ask the witness to refresh his recollection by looking at that journal to see whether or not there is anything in the record which will convince him that these men did not leave the place between those hours.

Q Look and see whether there is any entry there showing that they left.

BY THE COURT:

Q You would not write down anything there that you did not see, would you? A No.

Q You would not write down there that a man went out, unless you saw him go out? A No.

BY MR. ROSENBERG:

Q Turn to the 24th of June, and after examining the journal, do you find anything in the journal?

THE COURT: The question is whether he can say now, after reading his record, whether he saw those men going out between those hours.

BY THE COURT:

Q Can you say, after reading that book, whether they went out that day or not? A They did not go out.

Q You mean, you did not see them go out? A I did not see

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them go out.

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Q Will you swear they were in the building that day at all?

A Yes, I will positively swear.

Q You saw them in the building? A I saw them in the building.

BY MR. ROSENBERG:

Q Between what hours did you see them in the building, while you were on watch? A When I was on watch, Fireman Maloney returned at 5 o'clock from his meal.

BY THE COURT:

Q He came back to the house at 5 o'clock? A Yes.

Q Did you see him leave before 5 o'clock? A No, sir.

Q So that he must have left before 5 o'clock? A He must have left before 5, as far as I know.

Q But you saw him come back to the house at 5 o'clock?

A Yes.

BY MR. ROSENBERG:

Q From 5 o'clock on to 8:30 while you were there on watch, did you see him go out of the house? A No, sir.

Q You were also on watch the following day, June 25th, in the morning between 6 and 8 a. m.? A Yes, sir.

Q What watch did you have on that morning? A From 6 in the morning, to 8.

Q What watch do you call that? A The dog watch.

Q Were Maloney and Ferrick in the house between those hours?

A Yes, sir.

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Q If you know? A Yes.

Q Isn't it part of your official duty when you go on watch to account for every man who is in the house? A Yes, sir.

Q And didn't you do that on the 24th of June? A The man that I relieve on watch, accounts to me for the men that are in the house. The man that was on watch before me, tells me all the members that should be in, that they are present, and if they are not, he tells me why they are not there. If there is any of them away that should not be away, he tells me about it.

Q Who was the man who preceded you on watch on the 24th of June? A Fireman Ness.

Q Do you know anything about the rules of the Fire Department with respect to permitting persons other than firemen to go up stairs into the dormitory?

THE COURT: You can ask him if he saw anyone, whether it is the rule or not, does not make any difference. You can ask him if he saw them or anyone else saw them.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. PRESS:

Q You say that you were on dog watch from 6 to 8, on the morning of the 25th of June? A Yes, sir.

Q And then did you go out for breakfast at 8 o'clock? A No, I cannot recall.

Q Do you know that Maloney went out at 8 o'clock and did not return till 10:30, on that day? A No, sir, I don't know.

Q I show you this book of your house --

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THE COURT: The entry in that book is no evidence of anything so far as this case is concerned.

MR. ROSENBERG: I will concede it.

THE COURT: I understand, but the entry is no proof of anything.

Q Will you look at the entry of the 25th of June; did you make any entry on that day concerning Maloney, the time he left the fire house and the time he came back?

(Witness refers to book.)

BY THE COURT:

Q Did you make the entry; you were on duty from 6 to 8?

A I would make all the entries between 6 and 8.

Q When did you go on watch again? A That was my last watch.

Q You had nothing more to do with entries? A No, for six or seven days.

Q Look at the entry there and see if it is in your handwriting.

BY MR. PRESS:

Q Concerning Maloney. A No, sir, there is no entry concerning Maloney or Ferrick between 6 and 8.

BY THE COURT:

Q In your handwriting? A In my handwriting.

Q Look at any other hour that day. A During the 25th?

Q Yes, during the 25th; is there an entry in your handwriting? A No, sir.

Q There is nothing in your handwriting after 8 o'clock that

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day, is there? A No, sir, not in my handwriting.

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Q Did you see anybody write anything in that book after 8 o'clock? A No, I didn't pay any attention to that.

Q Did you? A No, sir.

Q You do not know anything about that book, then, after 8 o'clock that day? A No.

BY MR. PRESS:

Q And your duty previous to that was on the 24th of June, from 3:30, to 8 p. m.? A Yes, sir.

Q You were on watch then? A Yes.

Q You know nothing of what happened between 8 and 12:45 next morning? A No, sir.

Q You were not on watch? A I was not on watch during that time.

BY THE COURT:

Q Do you know the firemen that made the other entries in that book, do you know the handwriting of the various firemen?

A I could not be positive about it.

Q You have seen them write? A Yes.

Q You know your own handwriting? A Yes.

Q And you only write in that book when you are on watch?

A Yes.

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R A L P H B. N E S S, (Hook & Ladder Company 20-) called as a witness in behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Ness, you know both the defendants, don't you?

A Yes, sir.

Q Do you recall what watch you were on on June 24th, preceding 3:30 p. m., of that day? You can look at the journal.

A I think I was on the 12 to 4 watch. I could tell you if I looked at the journal.

Q Look at the journal and refresh your recollection.

THE COURT: Of course, you will have to make legal use of that book. The only use of that that has been made so far is to refresh the memory of a witness. The book shows nothing as it stands now. The book may become legal evidence by proper proof, or it may be used to refresh the memory of any one who wrote in it.

(Witness examines the book.)

Q Have you examined the journal, Mr. Ness? A Yes, sir.

BY THE COURT:

Q Is your memory refreshed after reading that? A Yes.

THE COURT: He can refresh his memory by looking at his own note book, or scrap of paper, or anything else. The journal is used to refresh his memory now.

Q After reading that journal you can answer his question from his own memory. Do you understand that? A Yes.

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BY MR. ROSENBERG:

Q What watch were you on on June 24th, 1915? A I done part of the 8 to 12 watch, and 12 to 4 watch, up to 3:30.

Q What hours? A From 10:30 a. m., until 3:30 p. m.

Q That is the first time? A Yes.

Q And then the second watch was when? A From 12 o'clock midnight on the 25th instant, until 6 a. m.

Q You were what you call the house watch then? A Yes, sir assistant house watch.

Q Did you turn over to the preceding witness Canavan the names of the persons who were in that fire-house while you were there on watch? A I turned over the watch to him, and I turned over everything that was in the house relating to the firemen in the house. I left him with a sufficient amount of men, according to the meal list; whatever meal list is called for I left him with.

BY THE COURT:

Q You gave him a list of names when you went off watch, isn't that what you do? Do you give him a written report or oral? A No, written report; we have a board up there with the names on.

Q That is written? A Yes. I think printed on.

Q You tell them what members are in the house? A I say there is the men that is in.

Q And you believe that statement when you make it? A Yes.

Q But do you know whether or not they are in the house?

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BY MR. ROSENBERG:

Q Was Maloney and Ferrick in the house at the time that you turned over your watch to your successor? A That I don't remember.

Q Is there anything official from which you can refresh your recollection?

THE COURT: You can concede that their names were on the list or on the board when he went off watch.

Q Is there any entry in this book? Look at the journal and refresh your memory? A (Witness looking at the book) I would say that Maloney was in the house.

BY THE COURT:

Q That is not the question; were those names on the list of men in the house when you were relieved by Canavan? A No, I relieved Gurtelman at 10:30.

Q We are speaking about when Canavan relieved you at 8 o'clock in the morning.

BY MR. ROSENBERG:

Q At 3:30; you relieved somebody at 3:30? A No, Canavan relieved me at 3:30 p. m. on that day.

Q You said you went down at 3:30, and you were on from 12 to 6 next morning? A I said from 10:30 a. m. to 3:30 p. m., I was on watch.

Q That was on the 24th? A Yes.

Q Take that one period now between 10:30 to 3:30 p. m., of that 24th of June. Does that Journal show that Maloney and

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Ferrick were on duty in the house?

THE COURT: I will exclude that as immaterial; the record speaks for itself.

Q Do you know whether they were in the house, after refreshing your recollection from the journal? A Wait until I look at the journal. (Looking at the book) Maloney was in the house from 10:30 a. m., to 2:30 p. m.; he returned from his breakfast and left for his dinner at 2:30.

Q When did he return? A That I don't know; I was not on watch at that time when he returned.

Q That was on the 24th? A Yes, sir.

Q Now, how about Ferrick? A Ferrick left at 10:30 and returned at 2:30 p. m. (Witness looking at book)

MR. ROSENBERG: I want to show if possible where these men were from the 24th, in the morning, and covering the period of the fire.

THE COURT: There is no allegation in the indictment that anything wrong was done before 7 o'clock on the 24th of June, so what difference does it make where they were.

MR. ROSENBERG: If Mr. Press will state to us when he claims that this burglary took place, so that we may cover that time, all right.

THE COURT: It must have taken place between the time these men locked the shop, and the time the door was found open by the firemen.

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Q Between 12 midnight of June 25th and 6 o'clock in the morning, were you alone in the house on watch? A No, sir.

Q Who was with you? A Fireman Sauerbrey.

BY THE COURT:

Q There are two men on night watch? A Yes, sir. I was assistant, and he was house watch.

BY MR. ROSENBERG:

Q Did Maloney or Ferrick leave the house between 12 o'clock and one o'clock? A No, sir.

Q That night, except to go to the fire next door? A No, sir, nobody left the house, only the men that rode on the apparatus.

Q And that was at the fire? A That was to go out to respond to the station.

BY THE COURT:

Q That is, you did not see them leave the house, did you?
A No, sir; I did not see them two men leave the house between 12 and the time the station hit.

Q You saw them leave to go to the fire, didn't you, with the lieutenant? A No, sir. I was on watch. I was busy there, and I did not take notice of what men rode with the apparatus at all. I could not tell you who are the men rose with the apparatus.

Q Wasn't that your duty to know what men went out? A I done so many watches since that, I don't know.

Q Have you any memorandum or anything that will show you who went out that night? A No, sir.

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BY MR. ROSENBERG:

Q If any men did leave between twelve o'clock and that fire, you would have seen him? A Yes.

Q He would have to pass your desk? A Yes, pass out from the apparatus floor.

MR. ROSENBERG: That is all.

MR. PRESS: No questions.

THE COURT: I think you can simplify this matter a great deal by getting a stipulation, if it is the fact, of the period that Mr. Rosenberg wants to cover, according to the records of the firemen, that these men were in the fire-house or outside of the fire-house; that may be agreed on. Whether the records are accurate or not, that is another matter.

MR. ROSENBERG: I am willing to take the record as it stands and allow it to go in.

THE COURT: Yes, but it will not go in as absolute proof of anything. It is the record of a man whose duty it was to do a certain thing.

MR. ROSENBERG: All right, I am willing.

MR. PRESS: Only in so far as the record shows that they left for breakfast and dinner, or turned in; that is all that will appear in that book, but as to the times that these men could leave or did leave, just as you have said, that does not show it, because the book is not accurate in that respect and we will prove it.

THE COURT: Well, you better go on, then.

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WILLIAM H. BREUER, (A member of Hook and Lad-²³⁷
der No. 20) called as a witness on behalf of the defendants,
being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Breuer, do you know the defendants? A Yes, sir.

Q What watch did you have in that fire house on June 24th,
if you know. You may refresh your recollection from the journal
if you want to. A (Referring to book.) From 8 in the evening,
to 12, midnight.

Q Did you see these defendants in the fire house during
those hours? A yes, sir.

Q And if they left the fire house, or either of them left
the fire house between those hours, you would know it? A
Yes, sir.

Q Did you see either one of them leave the fire house be-
tween those hours on that day? A No, sir.

Q You were on watch? A Yes, sir.

Q What watch do they call that? A The evening watch, 8
to 12.

Q On the 29th of June, what was your watch, on the 29th of
June? A From 12, noon, to 4, in the afternoon.

Q From 12 to 4? A Yes, sir.

Q Were the defendants in the fire house during those hours?
A Ferrick returned to quarters at 1 o'clock, and Maloney, at
3:30, to the best of my knowledge.

Q Did they remain in the fire house continuously? A Yes sir.

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Q After that hour? A Yes, sir.

Q Do you know when Ferrick left the fire house on that day?

A He went out in the book at 10:30, one meal. He went out in the journal.

Q Do you know when Ferrick left the station house on that day? A Yes, sir.

Q What time did he leave? A 10:30.

Q What time did he come back? A 1 o'clock.

Q Did he remain in the house after that? A Yes, sir.

Q Did he remain in the house after that? A Yes, sir.

Q Now, Maloney, what time did he leave? A 10:30.

Q What time? A To the best of my knowledge, 10:30.

Q What time did he return? A He was due in at 3:30.

BY THE COURT:

Q When did he come in, if you know? A I don't know.

BY MR. ROSENBERG:

Q The leaving by Ferrick on that day, was that anything unusual, or was that his regular time off? A Well, he was not due until 3:30.

Q The time that Maloney and Ferrick left on both these occasions, was that the time assigned for each of them to leave?

A Yes, sir, on meals.

CROSS EXAMINATION BY MR. PRESS:

Q You were on watch on the 24th, from 8 o'clock in the evening, to 12 o'clock, midnight? A Yes, sir.

Q That is correct, isn't it? A Yes, sir.

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Q And you have a distinct recollection of all the men who were in the house that night? A Yes, sir.

Q You know each one who was in that house; now give me a list of the men who were in that house that night between 8 and 12 midnight? A You will find everybody there according to the eight o'clock roll-call.

Q Did you see them? A Yes, sir.

Q And you made a note of them? A It is in the book there.

Q Did you make the entry? A I made the entry when I relieved the book.

Q It is in your handwriting on the 24th? A Yes.

Q Now, look at it. Is that your handwriting, of the record of the men who were there? A Here it is (referring to page 102).

Q Did you make that entry? A Yes.

Q Tell us the men who were there.

BY THE COURT:

Q Can you tell from memory now? A Well, everybody would be in quarters outside of the men that are on vacation, and men detailed to theatres.

BY MR. PRESS:

Q Can you tell what men are in the fire-house now? A That is an impossibility.

Q Do you know? A No, sir.

Q You can find out the men that ought to be on duty there according to the regulations? A Yes.

Q But do you know the men who are in there now? A No, sir.

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Q Do you know the men who were in the house between 8 and 12 o'clock of your own knowledge? A I could not cite all of them.

Q Have you any writing which you made at that time which would refresh your recollection as to who was in there? Did you make any list of the men who were in there that night?

A No, sir.

Q You did not write down something in the same book? A I just relieved the journal.

Q What do you mean by that? A You relieve your man on watch.

Q I want to know what you did. A If any man is missing that should be there, he is supposed to notify me.

Q Did you write down anything that night? A Yes, sir.

Q What did you write down? Read it over and see if you can refresh your recollection as to who was in the house.

A (Witness looks at book)

Q Do you remember? A I can come pretty near telling it now.

Q Well, tell us? A There is fireman Murphy; Fireman Falls, myself, Fireman Trefcer, Ness.

BY THE COURT:

Q Can you think of any others? A Reilly, Ferrick, Maloney; I am not sure about Ott, and possibly a few detailed men.

Q Those are all the men you saw in there constantly between 8 and 12? A Yes, sir.

Q Where were you? A On watch.

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Q Where does the watch stay? A Downstairs on the apparatus floor.

Q Where were all those other men? A They were sitting out in front of quarters, until about half past ten.

Q Every one? A Yes, sir.

Q And then they went to bed? A All hands went to bed.

Q You went up and saw them in bed? A I had no occasion to go upstairs.

Q Did you go to see them in bed? A No, your Honor.

Q You made believe they were in the house, because you saw their names written there, isn't that so? A Well, they were in the house; I didn't see them leave the house.

BY MR. PRESS:

Q Are you prepared to swear that Maloney and Ferrick, to your knowledge, were in the fire-house between 8 o'clock in the evening and 12 o'clock midnight on June 24th? A Yes, sir.

BY THE COURT:

Q The whole time? A Yes, sir.

Q The whole four hours? A Yes.

BY MR. PRESS:

Q You had your eye on them all the time? A I had no occasion to follow them around.

Q Then how do you know? A Because they would have to go out of quarters by leaving the front way, and if they went out I would see them going out.

Q And of course you would be down there to make an entry?

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A Yes, sir.

Q You never saw a fireman leave the house for ten minutes to go down to the corner to answer a telephone call, did you?

A Not without notifying the man on watch and getting the permission from the officer.

Q Show me one entry in that book of a man having left for five minutes to go down to Green's saloon to answer the telephone, or to any other place, for five minutes or ten minutes. (Handing book to witness) A I might have a job looking it over, but I guess you could find an entry.

Q Did you ever make such an entry? A Yes, sir.

Q Within what period did you make that entry? A Sometimes in my twelve years in the Fire Department.

Q Do you see anything on the 24th of any entry of a man leaving for five or ten minutes? A No, sir.

Q So that on the 24th there was not a man left the firehouse, according to you for five or ten minutes? A No, sir, only in the tour of 8 to 12, my watch.

Q Or of any entry; any watch that day?

MR. ROSENBERG: Objected to.

THE COURT: That is sustained.

Q Now, on page 96 of the book, the entry for the 23rd of June 1915 appears, the entries? A Yes.

Q And on page 97 appears the entries for June 24th? A Yes.

Q That is another day? A Yes.

Q Can you tell me, or can you explain the following page,

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page 98, that has entries of June 24th? A Yes, sir.

Q Can you explain to me how these two pages were skipped and June 23rd appears on page 99 again? A It might have been an error in the man making a journal, or dating the journal. The man who was on watch could have made the error.

Q That is your explanation; it is not the inserting of another page for the purpose of covering the date? A No, sir.

THE COURT: There is no evidence of that, and the jury will disregard such remarks.

Q Have you ever during your period with the Fire Department when you were on watch had a man go out on you for five or ten minutes? A Not without notifying me or getting permission from the commanding officer.

Q Isn't it a fact, officer, that Firemen continuously leave the fire-house for five or ten minutes? A No, sir.

Q And it is not entered in the book at all? A No, sir.

Q Then you want us to believe here that a fireman when he is in the fire-house cannot leave the fire-house unless an entry is made in the book? A He first receives permission from the commanding officer, and then he is allowed to go. If the commanding officer does not want to let him go, he does not let him go.

BY THE COURT:

Q There is no dispute about the rule? A But it should be in the journal.

Q If you see a man leave you write it down? A I would

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notify the commanding officer and make the entry in the book.

Q The question is, did you see any one go out during that time? A No.

Q Could any one go out without you seeing them? A No, sir.
BY MR. PRESS:

Q But it is possible for a man to do that except in your case, isn't it?

MR. ROSENBERG: Objected to as speculation.

THE COURT: This is all speculation; those records do not prove anything.

Q You never have known of an instance where a fireman who was in the station house left for five or ten minutes and was not entered in the book? A No, sir.

Q And if an officer of the Fire Department said so, it would not be true?

MR. ROSENBERG: Objected to.

THE COURT: That is sustained.

Q You have never seen a fireman who ought to be in the fire-house, outside of the fire-house? A No, sir.

Q You have never been in a saloon having a drink with a fireman who ought to have been in the fire-house? A I don't drink anything.

Q Now, on the 29th of June, isn't it a fact that Ferrick left at 10:30 in the morning? A Yes, sir.

Q And returned at one o'clock? A One o'clock.

Q You saw him return? A Yes, sir; I made the entry in the journal; I was on watch from 12 to 4.

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Q At 10:30 he went out and you were on watch? A Not at 10:30.

Q Then you don't know what time he left of your own knowledge? A No, sir.

Q But you did see him come into the fire house at one o'clock? A Yes, sir.

Q What were you doing in the fire-house at that time? A I was on watch from 12 to 4.

Q From 12 to 4? A Yes.

Q Well, of course he did not leave the fire-house on that day between one o'clock and four? A No, sir.

Q You are prepared to swear to that? A Yes, sir.

Q Never left it for an instant? A No, sir.

Q Did you ever hear of your men going down to the telephone at Greene's saloon? A No, sir.

Q How long have you been in that fire-house? A Since the 1st of May.

Q Of what year? A Of this year.

Q That was your first experience in that fire-house? A I was there four years.

BY THE COURT:

Q How long have you been in the Department? A Twelve years.

BY MR. PRESS:

Q During those four years, you never heard of any man going down to the telephone at Greene's? A No, sir.

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Q Or of going down to that saloon at all? A No.

Q You know where Greene's saloon is? A Yes.

Q And there never was a fireman, to your knowledge, that went into Greene's? A Not while I was on watch.

Q Now, when these men came in after luncheon on the 29th day of June, 1915 ---

BY THE COURT:

Q Ferrick came in at one o'clock? A Yes.

Q When did Maloney come in? A That I don't remember. I don't remember whether I was on watch or not; I don't know.

BY MR. PRESS:

Q How many men returned from lunch at one o'clock on the 29th of June, 1915? A About four or five.

Q Who were they? A I could not remember that; that is an impossibility.

Q Did they all return at one moment, all march in together? A Yes, sir.

Q In other words, all of the men who were to return at one, marched in in a body together? A Yes, sir.

Q And thereupon you wrote down their names as they marched in together? A Returned to quarters, yes. Q They all promptly came in on the strike of one o'clock? A Yes, sir.

Q And at the same time a body of men left the station house all together? A For meals.

Q Not a minute intervened between them? A There might have been some time lost between the men going out, washing up,

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and so forth, getting ready.

Q You make an accurate record, don't you? A Yes, sir.

Q And you make a truthful entry? A Yes.

Q If a man left at 1:02, you would put down 1:02? A No, sir, not on that condition, because a man is liable to be stuck, that is, getting clothes on when he is in from a fire.

Q Wouldn't you give the man the benefit of it, so that he could return a few minutes later? A No, he is supposed to be ready to go to meals.

Q So that if a man left the fire-house at 1:10, you would put down 1 o'clock? A 1 o'clock, according to the meal list.

Q If he is supposed to go out at one o'clock, and he left at 1:10, you would put him down as one o'clock? A According to the meal list.

Q So that you are not governed by the actual accuracy of what transpires, or by the rule? A Yes, sir.

Q So if a man came in at twelve o'clock or twelve thirty, because he is not due there until one o'clock, you would not make an entry of his return until one o'clock? A You would notify the commanding officer that he reported for duty and gave up his meal time. Once he walks into the door he is reporting for duty, and the commanding officer is supposed to be notified.

Q Even though he is not on duty actually? A Yes.

Q Can you give me any instance of where that has occurred?

A Not in this particular company, but I have known of men on

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a day off, to go to a company to visit somebody, and the commanding officer put him down on the journal as being on duty while he was there.

Q But you have not had any incident of that in your experience? A Not in this particular house.

Q Was that entry made by you on page 123? A No, sir.

Q But if a man came in on ten minutes to one, would you put down that he came in at 12:50? A Well, some men run it that way, and immediately notify the commanding officer.

Q Do you? A Yes, sir.

Q Have you got an instance of that in this book to your knowledge? A Not to my knowledge.

Q So the men that returned on that day, according to your entry here on the 29th were Ott, Ferrick, Conners, Brown and Palmer, isn't that right? A Yes.

Q And at the same time Ness, Patzak, Maloney, Murphy and Prefcer, all left, and you were able to see them leaving and coming in at one o'clock, sharp, isn't that right? A Yes.

Q You state they came in a body and left in a body? A Yes.

Q So that we have got five leaving and six returning, all passing in there at one moment, and you were able to make a note of the fact, is that right? A Yes, sir.

Q Isn't it a fact that in every entry that you have in this book, you give the same time for leaving and the same time for returning in every instance? A Yes, sir.

Q And you do that pursuant to rule? A If the man is not

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there I cannot return him; it would be a violation of the rules.

Q You never broke the rule in that Department? A I did once, yes, sir.

Q What was that for?

THE COURT: That does not affect his credibility.

Q Do you know what time Maloney left on the 29th? A One o'clock, I believe.

Q And you know what time he returned on that day? A I am not positive when he returned.

Q Suppose you look at your book and refresh your recollection? A Yes. (Witness looks at book) He returned to quarters on Fireman Murphy's watch at 3:30.

Q What time did you go off watch? A 2:30.

BY THE COURT:

Q He did not return while you were on watch? A No, sir.

BY MR. PRESS:

Q That is, between one o'clock and two-thirty he did not return? A Yes.

BY THE COURT:

Q You said before you don't know when he returned? A Yes.

Q That is true? A Yes.

BY MR. PRESS:

Q The man on watch has got more than actual watching to do hasn't he? A Not during the tours, in day time.

Q Well, if there is anything the matter with the heating

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apparatus? A That is Fireman'Ott's work.

Q The man on watch does not attend to that? A No.

Q He never attends to the horses? A There are no horses in the house.

Q He never attends to anything except to sit at the desk?

A That is his duty to sit at the desk and do not leave it.

Q He never leaves the desk for a minute? A No.

BY THE COURT:

Q Does he not take a record of the alarms that come in?

A That is what he is supposed to be on the desk for; he received all messages. He is there to receive a message of telephone calls and alarms.

Q And of all people going in or out? A Yes.

Q Whether they are members of the company, or not? A Yes; if anybody visits or leaves, to put an entry in the journal, and notify the commanding officer.

BY MR. ROSENBERG:

Q Is there an entry made of visitors also? A Yes, sir.

BY THE COURT:

Q That is, the rules require that? A Yes.

BY MR. ROSENBERG:

Q If a visitor came to the house while you were on watch wouldn't you put his name in the journal? A Yes.

Q Mr. Press asked you about if a man left a few more moments late for lunch you would still mark it at the time he was supposed to leave? A Yes.

Q If a man came in a minute or two late, what would you

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do? A I would notify the commanding officer immediately.

Q Would he be marked at the actual time he came in? A
Yes, sir.

Q If he left a few minutes late he still would be
charged as to when he should have left? A Yes.

BY MR. PRESS:

Q How many men did you report in your day for coming in
five or ten minutes late?

MR. ROSENBERG: Objected to. No proof of any man
coming in late.

THE COURT: I will allow it.

Q Did you ever report a man for coming in five or ten
minutes late? A Yes.

Q How often? A Quite on numerous occasions in my time.

Q Anything in this book here? A No, sir, not in this
company.

BY MR. ROSENBERG:

Q Well, those men come in promptly in that house? A Yes.

F R E D J. T R E F C E R, (Hook & Ladder Company 20),
called as a witness on behalf of the defendants, being first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q You know the defendants? A I do.

Q How long have you been in the Department? A Over ten
years.

Q Do you recall the night of June 24th, 1915? A I do.

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Q Do you recall what time you went to sleep that night in the fire-house? A Yes, sir.

Q What time? A About half past ten; I am not sure of the exact time.

Q Was it before or after half past ten? A It may have been five or ten minutes before or after, I am not positive.

Q Do you remember seeing either of these defendants going to bed on that night? A Yes, sir, I saw the two of them going to bed with me.

Q About ten thirty? A About ten thirty; I could not be positive.

Q Did you respond to that call of fire that night? at 12:48? A I answered the floor, but I did not respond to the fire.

Q Where did Maloney sleep that night? A Maloney slept to my right, about two or three beds, I would not be sure, - and Ferrick slept directly in front of me.

Q When the gong sounded for the call of the fire alarm, did you get up? A I did; I had to.

Q Did you see Maloney or Ferrick in the dormitory getting up at the same time? A I did.

Q Were they dressed or undressed in bed? A The same as we all are, undressed and jumping in their boots and overalls ready to respond to the alarm of fire.

Q They did that that night? A Yes.

Q Do you remember seeing them go down on the pipe, sliding

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down? A I remember distinctly they were getting out of bed, and going down the pole, and that is the last I saw. Then they responded to the apparatus. That was the morning of the 25th.

Q Now, then, before 10:30 that night, before you went to bed, did you see Maloney or Ferrick around the fire-house?

A I was to my supper that night.

Q Did you see Maloney or Ferrick around the fire-house?

A Yes, sir.

Q Can you fix any hour that you saw them in the fire-house?

A I was to my meal until about 9 o'clock or thereabouts, but I saw them from 9 to half past ten. We were on the top floor singing and playing the piano.

Q On the top floor? A Yes, from 9 to about 10:30, or so.

Q You were there? A Yes. I would not be sure, but it was around that time.

CROSS EXAMINATION BY MR. PRESS:

Q Now, who were the other men who were sleeping there that night? A Ott and Patzak and Conners, I believe.

Q Don't you know; you are sure about those other men?

A Yes, I am sure of it; Canavan.

Q Canavan was sleeping? A He was in the house.

BY THE COURT:

Q He was asking you who was sleeping there? A They all slept there that night.

Q You saw these two men go to bed; who else did you see go to bed that night? A We all went into bed.

Q Then name "we all". A At 10:30 there was Patzak, myself, Maloney, Ferrick and Conners. There might have been a few others, I cannot recall their names.

BY MR. PRESS:

Q You have a clear recollection of who went to bed that night haven't you? You did not single out Maloney and Ferrick?

A I singled out Ferrick.

Q Why? A Because Ferrick is a very heavy sleeper, and he

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1w asked me to call him.

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Q Isn't Maloney also a heavy sleeper too? A Yes.

Q He told you to call him too? A No, he did not.

Q Didn't he? A Not that I can recall.

Q Are any of the other men heavy sleepers? A Yes.

Q Who are the others? A There were no others that told me to call them that night.

Q Did Canavan tell you to call him? A Canavan is not a heavy sleeper.

Q He was there? A Yes.

Q He was going to bed? A Yes.

Q And he had the same opportunity of seeing Maloney and Ferrick going to bed? A I am a light sleeper. That is the reason they asked me.

Q Their sleeping does not interfere with your seeing? A No.

Q So that, if you were going to bed at 10:30, and Ferrick and Patzak and Conners and Canavan were all there, they had an equal opportunity with you to see these two men, hadn't they?

A Yes, but I was asked to call Ferrick on account of he being a heavy sleeper.

Q This is on the night of the 24th, isn't it? A Yes.

Q On the night of the 23rd, were you sleeping in the fire house? A Yes.

Q You were sleeping in the fire house? A Yes.

Q What time did you go to bed on the 23rd? A I didn't pay any particular attention.

Q Do you know? A It was about 11 o'clock every night.

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Q You did not make a note of the time on the 23rd, did you?

A I know it was about 11.

Q Who all went to bed with you on the night of the 23rd? A I know Fireman Maloney went to bed that night.

Q What others? A I know Patzak.

Q What others? A Ness, but I would not be positive of any others.

Q Your recollection with respect to the 23rd, is not as good as it is with respect to the 24th? A No.

Q When was your attention first called to the 24th? A By the circumstances which have arisen since.

Q When; how long after the 24th was your attention called, that you would be required as a witness to testify concerning what happened? A When these men were accused it came to my memory. I could not place the date.

Q Was it yesterday? A No, whatever the date was that they were arrested; naturally, I thought it over.

Q Then you looked at the book to refresh your recollection? A No, sir, I did not need any book.

Q You did not need the book? A No.

Q Who went to bed on the night of the 25th, down there? A I could not say.

Q Did you go to bed that night? A I certainly did.

Q In the fire house? A Yes.

Q What hour did you go that night? A I always go about between 10 and 11.

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Q So that, it is because you always go to bed between 10 and 11, that is the way you fix the hour? A Yes.

Q Could you tell us any men that went to bed that night?

A No, not the 25th.

BY THE COURT:

Q Do you not ever sleep away from the fire house? A When I am off.

Q How many nights of the week do you sleep away? A I am off six days a month, and four additional nights. That is ten nights a month we are home, and I know the days I was off.

BY MR. PRESS:

Q Did you go to sleep when you went to bed at 10:30? A Yes, sir.

Q You slept from that time until when? A Until the alarm of fire.

Q That was what time? A I don't know the time. I know it was between half past 12 and 1; I believe it was, I am not sure.

Q But you have a good recollection? A Yes.

Q You refreshed it? A Yes.

Q Do you know what happened between 10:30 and half past 12 or 1? A I was in no position to know. I was asleep.

Q You were sound asleep? A Yes.

Q If any of those men had gotten up to go to the toilet, you did not discover it? A I was not there to watch them.

Q You did not lie with one eye open, watching two of these

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men? A I was not there for th at purpose. .

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Q But you did not do it? A No.

Q You don't know whether they got up and dressed and walked out, do you? A I don't know that, but they could not do it.

Q How do you know that? A It would be hard for them to do it without somebody else seeing them.

Q How do you know who saw them; have you talked to all the men in the fire house about this? A No.

Q Who did you talk to? A I have discussed it with the men in the fire house.

Q Tell me the men you have discussed this case with? A Everybody in the fire house talked it over.

Q Did you talk to Falls about it? A I don't know.

Q To Francis Canavan? A No, sir.

Q Didn't talk to Francis? A No.

Q Why not? A Because I never had any occasion to do it.

Q But he was there? A I did not single him out.

Q You never had any trouble with him? A With nobody.

Q Why didn't you talk to him? A I was not interested enough in that.

Q Didn't you say to Canavan, "Why, Canavan, you and I were asleep in the dormitory at that time."; do you remember it?
A No, I don't remember that.

Q Although he was actually sleeping there? A Canavan was sleeping there, but I did not refresh his memory on that.

Q You did not even mention it to Canavan? A No.

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Q You have been in the fire house continually since with him, since the date of this occurrence? A And before that.

Q But since that date you have been there? A Yes.

Q And you never mentioned it to him? A In an on-and-off way, but I never discussed it with him.

Q When did you mention it on, and when off? A I could not recall.

Q What did you say to him on, and what did you say to him off? A I don't remember saying anything to him.

Q Then you did not say anything to him on-and-off? A Nothing, almost, I can recall at present. I don't think I did.

Q Did you discuss it with Ness? A Never spoke to him.

Q Did you tell Ness what you were going to testify here today? A No, sir.

Q Sure about that? A Positive.

I did not know I would be called as a witness until today, until last night.

Q Did you go to a benefit to raise money for these men?

MR. ROSENBERG: That is objected to.

THE COURT: The jury will remember that they get evidence from the answers of the witnesses, and not from the questions. The jury will take the questions and answers.

The question is withdrawn, as I understand.

MR. ROSENBERG: Yes, but the injury is done when he asks the question.

THE COURT: That is not so, the jury will not pay any

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attention to any question not answered.

Q Did you discuss it with Breuer? A No, sir, I did not discuss anything. I might have talked it over on-and-off.

Q Tell us what you mean by on-and-off. A I did not discuss any testimony or anything like that.

Q You did not say, "Well, boys, I remember that night very clearly. I was up in bed that night, I went to bed with these men, and woke up at the alarm of fire, and I awakened Ferrick."; you did not say that? A No, sir, very seldom I saw Breuer. He is detailed to the deputy chief.

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

Q Did you discuss it with Murphy? A I might have talked it over with all these men.

Q Did you say to them if you were called, that you would say so and so? A No, I never said what I would say.

Q Didn't you discuss it with counsel? A No, sir.

Q Did you tell this gentleman here, Mr. Rosenberg, what you knew about the case? A He asked me what did I know.

Q Did you tell him? A I told him the truth.

Q What did you tell him? A I told him what I have told you.

Q And that was where? A That was out in the corridor.

Q Only this morning? A He served the subpoena on me last night, and spoke about it then.

Q The first time you spoke to this attorney was this morning in the hall? A About this case, last night, or this morning.

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Q Did you speak to him before this morning? A Not concerning this case.

Q Now, you tell his Honor and the jury here, that this attorney here subpoenaed you last night to testify, and he did not know what your testimony was to be until this morning, is that true?

MR. ROSENBERG: He is referring to Mr. Oshrin.

Q You were subpoenaed when? A Last evening.

Q By whom? A By Mr. Oshrin.

Q Up to that time, the time that that subpoena was served on you, had you talked with either of these gentlemen? A Yes, sir, last night I spoke to Mr. Oshrin, and I spoke to Mr. Oshrin this morning outside.

Q You spoke to him last night? A Yes.

Q Was that the time you got the subpoena? A Yes.

Q Was that before or after you got the subpoena you spoke to him? A While he was serving me.

Q And you told him at that time last night, what you are telling today? A Yes.

Q So that when you stated that you did not talk to him about the case until this morning, that was not correct? A Last night I told you, and this morning.

Q In fact, you told him both times? A He asked me what I knew about the case, on account of my being in quarters at the time.

Q Last night, you told him, and this morning? A Yes, what

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I really knew.

Q But between 10:30 and the time the fire alarm was given, you don't know what either of these men did?

MR. ROSENBERG: That is objected to as already answered.

THE COURT: Yes.

Q You were sleeping? A I was, that is all.

MR. PRESS: I ask that these witnesses be asked to stay in the court room after they have testified.

THE COURT: All right, they will stay in the court room.

MR. PRESS: One of them got out ahead of him.

MR. ROSENBERG: One did not get out ahead.

THE COURT: The jury will disregard those remarks; they are highly improper. You are going to decide this case on the evidence, and the evidence is given by witnesses produced before you under oath, and by documents introduced according to the rules of law.

FRANK PATZAK, (A member of Hook and Ladder No. 20) called as a witness on behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Do you know the defendants? A Yes, sir.

Q How long have you been a member of the Fire Department?

A Six years.

Q Do you recall June 24th, 1915? A Yes, sir.

BY THE COURT:

Q Where were you stationed on that day? A In the fire house.

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Q Hook and Ladder 20? A Yes.

Q Where is that station? A 157 Mercer street.

BY MR. ROSENBERG:

Q Do you recall seeing either of the defendants, Maloney or Ferrick, on the evening of that day, June 24th? A Yes, sir.

Q What hours? A From 6 p. m., until 10:30 p. m.

Q Who did you see at the fire house that day? A Both firemen, Maloney and Ferrick; Ferrick, in particular.

Q Why did you see him particularly? A Well, he was talking to me most of the time, and also went to bed with me at about 10:30 p. m.

Q When you went to bed that night, he went at the same time?
A Ferrick went with me at the same time.

Q Same bed? A No, in the dormitory.

Q You have separate beds? A Yes.

Q How many cots are there in the dormitory? A About 20.

Q That fire house consists of about 20 members? A About 30, including the officers.

Q And about 20 men sleep in the dormitory? A Yes.

BY THE COURT:

Q What floor is the dormitory on? A Second floor, one flight up.

BY MR. ROSENBERG:

Q Did you see Maloney going to sleep that night? A I could not say I saw him go to sleep. He was in the house at the time. In fact, I could not say I saw Ferrick go to sleep. We

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were together, however.

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Q Do you remember being awakened by an alarm that night, or the morning of the 25th of June? A Yes.

Q The fire occurred a few doors from the fire house? A Yes.

Q You remember that fire? A Yes.

Q Do you remember being awakened at that alarm for the fire?

A Yes.

Q Do you remember whether Maloney and Ferrick responded to that alarm? A Yes, sir, they responded.

Q Do you remember seeing them get out of bed? A No, I could not say I saw them getting out of bed.

THE COURT: There is no dispute they responded; the lieutenant testified to that.

A (Continuing.) It would be impossible for me to see them get out of bed.

Q You got up pretty quick? A Yes, in about half a minute.

Q You have got to get down on the floor? A Yes, and respond at the same time.

Q Put on your boots? A Yes, dress ourselves and go out.

Q Did you see either one of these men, Maloney or Ferrick leave the fire house from 6 o'clock that night, between 6 and 10:30? A No, sir.

Q If they did leave the fire house, you would have known it?

A Well, I was not on watch. If they went out for any particular case, I might have heard about it.

Q Did they leave your presence between 6 and 10:30 that night?

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A They may have done that to go on the apparatus floor and come up again, or go to the toilet, or something like that. They could do that, but otherwise, they were with us, because we had piano playing there after about 8:30 or 9 o'clock.

Q Were they playing cards? A Yes.

Q Were Maloney and Ferrick playing pinochle? A I did not go into the game, so I don't know who was playing.

BY THE COURT:

Q You saw them around there? A I saw they were there from 6 to 10:30, but they may have gone down stairs.

Q They may have gone out of the building? A No.

Q Without your seeing them? A They could possibly get out, yes.

BY MR. PRESS:

Q So they could go out of the building? A Yes.

Q Without you seeing them? A I not being the house watchman, yes.

Q And between 10:30 p. m., and the time you saw them again, they could have gone out without you knowing it? A Providing I was asleep.

Q Well, were you asleep; did you lie awake? A That all depends whether I did go asleep. I may lay asleep for two hours.

Q Did you? A That would be hard to say, I don't remember.

Q Who all went to bed with you? A The men that were present.

Q Who? You know all these men? A Fireman Trefcer went to bed for one, and Fireman Canavan.

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Q Canavan was there? A Yes.

Q Sure about that? A He was there; Fireman Ness was there. Then the second section men were there. I could not recall their names.

Q You were not paying the same attention to them that you were to Maloney and others? A I paid particular attention to all of those present.

Q You play cards there nearly every night? A Not me directly.

Q The others, I mean. A Yes.

Q So that was nothing unusual? A No.

Q You play the piano occasionally there? A Yes.

Q So that event was not particular either in fixing the occurrence in your mind? A No, sir.

Q When was your attention first called to this case? A To this case in particular, the arrest of the men.

Q I am speaking of this case here, the arrest and all together. A The arrest called my attention.

BY THE COURT:

Q You know what these men are charged with? A I don't know what they are charged with. I know they have been arrested.

Q But you know they are in trouble? A Yes.

Q When was your attention first called to it? A The arrest.

Q When was that? A That I don't remember, the date. It occurred somewhere in the afternoon, about 4:30 or 5 o'clock.

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W
BY MR. PRESS:

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Q Then you discussed the case with the other men? A Yes.

Q Talked to them all? A Yes.

Q And just before you came in here, you had a talk with Mr. Breuer, didn't you outside? A No, sir.

Q Didn't Mr. Breuer go out and speak to you in the hall, and the other men out there, as to what his testimony was in here?

A He did not speak to me. He spoke to some of the other men. I was speaking to some other men out there now.

Q Weren't you in the same crowd with Breuer, that Breuer was talking to as to what happened in here? A Yes, but not paying particular attention.

BY MR. ROSENBERG:

Q What did Breuer say? A I could not say that Breuer said anything. I did not pay any particular attention, thinking I was the next man to come in.

Q Did Breuer tell you about what happened on the stand?

A Not to me.

Q Did he tell it to anyone in your presence? A I don't know what he was telling them, I didn't hear.

Q If Maloney and Ferrick had left your presence between 6 and 10:30 the night of June 24th, you would have noticed it, for any length of time? A For any length of time I would have noticed.

Q For more than five or ten minutes? A Yes, I would have noticed it for fifteen minutes or more.

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W
BY MR. PRESS:

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Q If they left for ten minutes, you would not notice that?

A Likely to; it all depends how they left.

Q You would? ? A Likely to.

Q If a man went to the toilet that night could you tell us anything about it? A No, possibly not.

Q If he was there ten minutes, you would not make a note of it? A No.

Q You would not keep tabs of them going to the toilet? A No.

Q If he went down stairs and heard that there was a telephone call at Green's saloon and dropped over there for a minute and came back, you would not know that? A If the matter was discussed, and they called for him.

Q I say, if he went down stairs and heard he was called to the telephone, you would not have heard that, would you? A No, not if it was down stairs.

Q And if he went out there, you would not know anything about it, and came back again, you would not know anything about it unless it was discussed? A Unless it was discussed.

BY MR. ROSENBERG:

Q Mercer street where the fire house is, is pretty well lit up at night? A Yes. We have a big lamp directly across from the fire house, a little over.

Q You remember where the fire occurred that the house responded to? A Yes.

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Q How many doors from the fire house is that? A About three, the third door, I think.

Q On the same side of the street? A Yes.

Q Is that house pretty well alluminated by means of electric light outside the fire house? A That particular spot is, yes, on account of the lamp being directly opposite the place where the fire occurred.

Q Is there a policeman on the corner there? A There is a policeman patrols that beat; I don't know whether he is on the corner or not.

Q They do not have any fixed post there? A No, that has been disposed of. .

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A N D R E W O T T, (Hook & Ladder Company 20) called as a
witness for the defendants, being first duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q How long are you a fireman? A About seven years and six
months.

Q Do you know the defendants? A Yes.

Q Maloney and Ferrick? A Yes.

Q Do you recall the night of June 24th, 1915, the night
when the fire occurred two doors from that house? A Yes.

Q Did you respond to that fire at the time? A Yes.

Q Do you recall entering that building, the building which
was on fire? A Yes.

Q Do you recall how you gained entrance into the building
proper? A We knocked the lock off the door.

THE COURT: The People's Witnesses have testified to
that.

Q As a matter of fact, you broke in the outside door? A Yes.

Q It had a padlock? A Yes.

Q You got upstairs? A Yes.

BY THE COURT:

Q Was that upstairs door locked? A No, sir.

Q That door was open? A Yes, sir.

Q The lock was broken off; did you notice that? A I
did not notice the door. The Lieutenant pulled it.

Q Did you notice the wood of the jamb broken? A Yes.

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Q You didn't do it? A No.

Q And no fireman did it in your presence? A No.

Q No fireman that responded to this alarm did that? A No.

BY MR. ROSENBERG:

Q Do you recall about 10:30 going to bed that night?

A Yes, sir.

Q Do you know who went to bed with you upstairs? A I seen quite a few; pretty nearly all of them.

Q Did you see Maloney and Ferrick going to bed that night?

A I guess I did, yes.

Q Did you see them when they responded to the alarm getting up from the bed? A Yes, sir.

Q sure of that? A Yes, sir.

Q Did you see them around the fire-house between 7 and 10:30 the time you went to bed? A Before we went to bed?

Q Yes. A Yes, sir.

Q Can you tell us what they were doing? A We were sitting in front of the house; after a while we went up on the top floor, and then went to bed.

Q Was there any card playing that night? A Yes, some fellows were.

BY MR. PRESS:

Q You were sitting out in front of the door? A Yes.

Q How long were you sitting out in front of the door?

A Maybe half an hour or an hour.

Q What hour? A Around eight o'clock.

Q You were sitting there too? A Yes, sir.

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BY THE COURT:

Q From eight to nine, or from seven to eight? A About an hour.

Q What hour? A Well, around eight o'clock.

Q That is not an hour; you mean the whole hour of eight, - eight to nine, or seven to eight? A Seven to eight or half past eight; around that. About from half past seven to eight.

BY MR. PRESS:

Q It may have been from half past seven to half past eight?

A It may have been.

Q It may have been from nine to ten? A No. We went upstairs around that time.

Q Can you fix it a little more definitely what time you all were seated outside of the fire-house? A No; I went up to bed then.

Q What time did you go to bed? A Around half past nine or nine o'clock.

Q You went to bed at nine? A Half past nine to ten.

Q You did not go up to bed at 10:30? A I was in bed.

Q You were in bed at 10:30, and you went to bed at 9:30?

A No, later than 9:30.

Q Well, what time was it? A I could not tell you the time .

Q When you went to bed did you go alone and leave the others downstairs? A We went up on the top floor; I seen the rest sitting around the top floor, and I put on my turn-outs, and went to bed.

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BY THE COURT:

Q Did you go to bed alone or at the same time with the others? A I went down and then they all came down one after the other.

Q You went first? A I guess there was somebody in bed before me.

Q Who went to bed? A I don't know who went to bed.

Q You know what we mean? A Yes.

BY MR. PRESS:

Q When you went in the room to go to bed, how many men were taking off their clothes at the same time that you were?

A Three or four, I guess. I could not tell how many. We don't look around to see.

Q Who were they who were taking off their clothes at the same time you were taking off your clothes on that night? A I don't know; I never looked.

Q You never looked? A No.

Q You don't know who went to bed at the same time you went? A No, sir.

Q Do you know whether Maloney and Ferrick were taking off their clothes that night at the same time that you took off your clothes? A They might have been; I think they did. I think one of them went to bed then.

Q Are you sure? A I will not say for sure.

Q Did Patzak take off his clothes at the same time you took off your clothes? A I could not tell you who they were.

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Q Did Breuer take off his clothes at the same time you did? A I don't know; I could not tell you.

Q As a matter of fact, you don't recollect just exactly what occurred at the time you went up into your room to go to bed; isn't that true? A No, sir.

Q Now, before you went to bed, about how long before you went to bed was it that you were seated with the others outside the fire-house? A I was sitting there in the evening.

Q About how long before you went to bed? A Maybe an hour and maybe more.

Q You went to bed about 10:30? A I went before that.

Q About 10 o'clock? A Earlier, half past nine to ten o'clock, I was in bed.

Q I want you to give me your best recollection of what time you went to bed; you, - you? A I could not tell you what time I went to bed.

Q I am going to get it some way away from you? A I could not tell you.

Q Did you go to bed at nine o'clock? A It may have been nine. I never looked at the clock.

Q Might have been ten? A No, I was not up that late.

Q It may have been nine-thirty? A I don't think it was that late either; I don't know what time.

Q You went to bed between nine and half past nine, am I right? A It may have been that.

Q You left some of these people up in the fire-house,

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didn't you? A Yes.

Q Seated down below? A Yes.

Q Was Maloney down below? A No, he was on the top floor.

Q Were you? A Yes, sir.

Q And Ferrick was with you? A Yes, sir.

Q And they went to bed at the same time you went to bed, isn't that right? A I don't know what time they went to bed.

Q You were going to bed at 9:30? A There was a lot of them went down at the same time; they don't all go at once.

Q Did you go upstairs or downstairs to your bed? A We go on the top floor and put on turn-out clothes, and then we go downstairs to bed.

Q Down to your bedroom? A Yes.

Q Were Maloney and Ferrick with the other men playing cards, or at the music? A Yes, sir.

Q Then they were not with you, going to bed at the same time? A I could not tell you what men went to bed with me.

Q Then if you went to bed at 9:30 you were out on the street, seated in front of the fire-house only an hour before; that would be 7:30 to 8:30? A Yes, around that.

Q Now, you were all around the fire-house, seated in chairs, isn't that right? A Yes.

Q There is a chain across the door, isn't there? A Yes, sir.

Q Your chairs were all outside, up against the wall, isn't that right? A Yes, sir.

Q How many of you were seated there? A Six to eight, I could

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not tell you.

Q Who were the six to eight seated out there? A I don't know.

Q Maloney and Ferrick? A There may have been two or three; I don't recollect.

Q Maloney and Ferrick? A They were there for a while, yes.

Q Seated outside? A Yes, sir.

Q There was a man on watch at that time, wasn't there? A Yes, sir.

Q He was inside? A Yes, sir.

Q He did not make any note, to your knowledge, of your being absent from the fire-house, did he? A We were never absent that way.

Q You were outside the fire-house, outside the chain? A Yes, sir; we had that privilege; that was not absence without leave.

Q I am not saying that, but when it is a privilege like that it has not got to go into the book? A No.

Q And of any of those men during the time that you were seated there, did one of the fellows get up and stretch and take a little walk to the corner? A No.

Q Sure about that? A Yes, sir.

Q Do you remember that clearly? A Yes.

Q There was no telephone message came from Greene's saloon that night? A I don't know.

Q You don't remember? A I don't know.

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Q There may have been? A I don't know; I did not hear nothing of it.

Q You did not watch those men who were seated outside, all that time, did you? A No, sir.

Q Now, Maloney and Ferrick were seated there with you for a time? A Yes.

Q And then what did they do after that time had elapsed?
A I guess they went upstairs and went to bed, or to the top floor; they went upstairs, anyhow.

Q And that was just immediately before you went upstairs,
A Around that time.

Q You went up with them? A The whole gang went upstairs.

Q Are you prepared to swear, Officer, that any one of that group of men seated outside, left that body for a moment to go to the corner? A I don't know. I never seen any one go.

BY MR. ROSENBERG:

Q With reference to sitting outside, are you in full view of the man on watch? Are you immediately in front of the door?
A Standing right around the front of the door.

THE COURT: There is no claim here that the man on watch made any report that they went away.

MR. ROSENBERG: But Mr. Press makes a point that there was no report made in the book.

Q Do you know whether the Fire Commissioner permits firemen of that fire-house, during the summer time, to remain outside of the door? A I don't know.

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Q You know it is done? A Yes.

JOHN SAUERBREY, (Hook & Ladder No. 20), called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q You know the defendants? A Yes.

Q How long have you been a member of the Fire Department?

A Five and a half years.

Q What were your duties on the night from midnight of June 24th until the following morning, June 25th? A House watchman.

Q House watch? A Housewatchman.

Q You were on duty at the time of the alarm of fire next door, or two or three doors below, was turned in? A Yes.

Q You were the person who discovered that fire? A Yes.

Q You were at the desk? A Yes, sir.

Q You could see every one going in and out? A Yes.

Q Did any one did go in or out? A Yes.

Q Did Ferrick or Maloney go into the fire house between 12 and 12:48 that morning? A No, sir.

Q Did either of them go out of the building? A No, sir.

Q During those hours? A No, sir.

Q Do you remember seeing Ferrick and Maloney respond to that call? A No, sir.

MR. PRESS: No questions.

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GEORGE DRAKOS (55 Avenue A) a witness called on behalf of the defendants testified as follows: (Mr. Gould the counsel for Mr. Drakos, is present in the court room with the witness)

DIRECT EXAMINATION BY MR. ROSENBERG:

Q You kept a candy stand at the corner of Houston and Mercer streets, did you? A Yes, sir.

THE COURT: Before you answer, let your counsel make a statement.

MR. GOULD: There is no objection to that question.

THE COURT: (Addressing Mr. Gould) Why are you here?

MR. GOULD: I am here as the attorney for this man, Drakos, and ask that he be instructed as to his rights, and I also wish to instruct him, as his counsel, not to answer any questions in this case.

THE COURT: You ask him not to answer any questions?

MR. GOULD: Yes.

THE COURT: (Addressing witness) Well, you are there to answer questions or not; if you do answer questions here your testimony may be used against you at any other time, in any other proceeding which is pending or may be pending against you; do you understand that?

(No answer)

MR. GOULD: He does not speak very good English.

BY THE COURT:

Q How long have you been in this country? A I have been

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here five and a half years.

Q Do you understand that you are not compelled to answer here? A No, I don't understand that.

THE COURT: Have an interpreter here at 2 o'clock, and we can explain the matter to him then.

MR. GOULD: Is there any objection to my talking to him between now and 2 o'clock?

THE COURT: Not at all. You can talk to him at any time. You are his counsel.

THE COURT: Gentlemen, of the Jury, we will take a recess until 2 o'clock. Meanwhile be extremely careful not to discuss this case among yourselves, or with any one else, and do not come to any conclusion as to the guilt or innocence of these defendants until you have heard all of the evidence on both sides, and until the case is given to you by the Court for your decision.

(The court takes a recess until 2 o'clock.)

TRIAL CONTINUED, 2 p. ..

GEORGE DRAKOS, recalled. (Official Interpreter DeVille appears and stands beside the witness.)

THE COURT: (Addressing Mr. DeVille, Official Interpreter) Now, please tell this witness as follows, Mr. Interpreter, that he has been called as a witness by the lawyers for the defense. I understand from what has been said that he is also under arrest.

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MR. ROSENBERG: Yes, charged with this same crime.

THE COURT: Had he been indicted?

MR. ROSENBERG: Yes.

MR. PRESS: For criminally receiving.

THE COURT: He has been indicted for the crime of criminally receiving stolen property, the property which it is also charged was stolen by these defendants now on trial, and the defendants are also on trial charged not only with burglary and larceny of the property, but also with criminally receiving that property. Now, tell him that he may refuse to answer any question on the ground that it would incriminate or degrade him. That if he waives his privilege and testifies, that any answer that he may give may be used against him in his own trial, and that he is free to answer the questions or not.

THE WITNESS: (Through the Official Interpreter) I do not wish to testify on the ground it may incriminate or degrade me.

MR. ROSENBERG: May I bring out the one question of his location there?

THE COURT: You may ask him any question you please, and he may answer or not.

BY THE COURT:

Q Tell him that if the answer will not tend to incriminate or degrade him, that he ought to answer. A If I wish to answer.

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BY MR. ROSENBERG:

Q Now on June 29th, 1915, were you at your candystand at the corner of Mercer and Houston? A (In English) I refuse to answer.

BY THE COURT:

Q On what ground? A (In English) Maybe that make it bad for my trial.

THE INTERPRETER: Because it will tend to incriminate me at my trial.

THE COURT: I will not force him to testify.

BY MR. ROSENBERG:

Q Did you on the 29th of June enter the premises 21 East Houston street with Maloney and Ferrick and one or two other men and go up in the elevator? A I decline to answer on the same ground.

BY THE COURT:

4 You have been advised by counsel not to answer any question, is that so? A My attorney advised me not to answer any question, which will tend to incriminate me.

BY MR. ROSENBERG:

Q Well, did you ever go into the fire-house at the request of a man named Lidz, and ask Maloney or Ferrick to come outside to meet a man? A I decline to answer on the same ground, that it will tend to incriminate me.

BY MR. ROSENBERG:

Q Now, weren't you up in the District Attorney's office and

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saw Mr. Press two days ago? A Yes, I was taken up there.

Q And didn't you answer Mr. Press every question that he put to you? A I answered partially.

Q Didn't you answer the questions that he put to you? A Yes, to some of them I did.

Q Didn't Mr. Press ask you whether you ever went in the elevator with Maloney and Ferrick on June 29th? A He did.

Q What answer did you make to Mr. Press?

MR. GOULD: Now, I ask the Court to instruct him not to answer on the ground that it may tend to incriminate or degrade him.

THE COURT: He is here to answer or not.

A (In English) I refuse to answer. I do not want to answer.

MR. ROSENBERG: When a man openly talks about the same subject to another, he waives his privilege.

THE COURT: He was not under oath then. He may talk as he pleases, and to whom he pleases, but when he is called as a witness in a trial, that is a different situation.

Q Was there a stenographer present when you talked to Mr. Press? A I did not see any.

THE COURT: If he gave testimony here which you claim differed from statements he made elsewhere, you may call the stenographer.

MR. ROSENBERG: Can't I show hostility? And then cross examine him?

THE COURT: This man is a defendant, and his lawyer

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advises him not to answer on the ground that the answers will tend to incriminate and degrade him, and the law under those circumstances excuses him from answering. It is the law that any answers he gives here may be used against him. He may remain mute in his own trial, and he may remain mute here when these men are on trial. You cannot force him to testify.

Q Did you ever have any business dealings, or otherwise, with either of these two men, Maloney or Ferrick? A I decline to answer.

Q Did you ever receive any goods from these defendants, or from a man named Lidz, or participate in the receipt of these goods, People's Exhibit 1 for identification? A I refuse to answer.

BY THE COURT:

Q On the same grounds? A On the same grounds all the time.
BY MR. PRESS:

Q You were brought into my office, were you not?

MR. PRESS: I want to straighten this out as far as I am concerned. As a matter of fact, the man refused to answer me, and I want to show that.

THE COURT: That is not material here. This jury has got to decide this case on answers given here.

MR. ROSENBERG: Mr. Press made a statement of fact.

MR. PRESS: And that is true.

THE COURT: The jury will disregard Mr. Press's statement of fact. He is not a witness.

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MR. ROSENBERG: I ask your Honor, in view of Mr. Press's statement of fact, that your Honor instruct this jury they must not accept Mr. Press's statement of fact as any evidence in this case.

THE COURT: I so instruct them. No statement of fact made by Mr. Press is to be given the slightest attention by you, unless it is a deduction from evidence in the case. It is the witnesses that give the evidence, not the lawyers.

MR. PRESS: I ask permission to ask the witness concerning it.

THE COURT: I decline to let you. This witness has declined to answer and will give no testimony. Whether he made statements or not is entirely immaterial. The jury will understand that. He said he answered some questions and did not answer others.

MR. ROSENBERG: That is all.

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THEODORE MARTINS, (A member of Hook and Ladder No. 20) called as a witness on behalf of the defendants, being first duly sworn, testifies as follows:

BY THE COURT:

Q How long are you a fireman? A Two years and nine months.

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Do you know the defendants? A yes, sir.

Q Do you recall June 26th, 1915, the day after the fire in the Rose Waist Company? A Yes.

Q You recall that? A Yes.

Q Were you on watch at any particular hour of the day of June 26th, and if so, what hour; you can refresh your recollection by looking at the book.

BY THE COURT:

Q Do you remember whether you were on watch on the 26th of June? A I believe I was.

Q Have you any record or memorandum or paper that will refresh your recollection? A Yes, I could, by looking at the journal.

Q Well, look at the journal. A (Referring to page 113) Yes, I was on watch from 12 to 3:30.

Q 12 midnight? A 12, noon.

BY MR. ROSENBERG:

Q Until when? A Until 3:30.

Q Now, during that time did a man by the name of Lidz come into that fire house? A No.

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Q Did you strike or beat this man Lidz? A No.

Q Sure of that? A Positive.

Q Now, did Lidz go up stairs to the dormitory floor or anywhere up stairs with Maloney or Ferrick or alone? A I never seen him.

Q You would have seen him during that time --

THE COURT: I will exclude that as a conclusion. He said he did not see him.

Q What were your duties? A My duties as a house watchman is to report anybody, any strangers that come into the house, and make an entry of them in the book, coming into quarters, and notifying the officer of the same.

BY THE COURT:

Q And if anyone came in and you did not mark it in the book, it would be a breach of discipline? A Yes.

Q And render you liable? A To a charge, your Honor.

BY MR. ROSENBERG:

Q Do you remember distinctly that no person came? A I did not see anyone.

BY THE COURT:

Q You did not see anyone there? A No.

Q And you made no entry in the book? A No.

BY MR. ROSENBERG:

Q Where were you located while on watch during those hours?

A Right in front of the house, on the up town side of the house.

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Q At the entrance? A Yes.

Q Is that the only entrance to the building? A That is the only entrance to the building.

Q A person coming in the building would have to go in there, and would have to pass out there? A They could not come in or out without passing the house watchman.

CROSS EXAMINATION BY MR. PRESS:

Q You never had any quarrel with Lidz? A No.

Q Never in your life? A No.

BY THE COURT:

Q Do you know the man at all? A Yes, sir, your Honor.

Q How long have you known him? A Oh, I seen him come in there once in a while.

Q Into where? A In the fire house.

Q You said you never saw him come in, I thought. A On the 20th day of June.

Q Tell us when you saw him come in or out of that place? A I don't think I seen him six months before that.

Q You say you knew him; you said you saw him going in, is that so? A Yes.

Q Just tell us what he said or did when he came in there? A Why, to the best of my knowledge, he tried to sell goods there, rubber coats and rubber boots; that is all I know.

Q Did you mark in the book the time he came in? A Well, I don't know whether I ever was on watch while he came in.

Q You were not on watch then? A No.

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BY MR. PRESS:

Q You could not answer as to whether the other men entered it in the book? A I could not answer that.

MR. ROSENBERG: That is objected to, as to what the other men did.

THE COURT: You can ask him whether he ever saw the watchmen write down the fact that Lidz had been there trying to sell rubber goods, or for any other purpose.

BY THE COURT:

Q Can you recollect that? A No.

BY MR. PRESS:

Q When you were on watch, you had the book in front of you many a time, looking at it? A Always.

Q Did you not look over the book any time and ever see an entry of a visit by Mr. Lidz to the fire house? A No, sir.

Q Now, Martins, I ask you again, did you ever at any time have a quarrel with Lidz? A No, sir.

Q Did you at any time ever tell counsel here that you had a quarrel with Mr. Lidz? A No, sir.

Q Now, you are sure about that? A Certainly..

Q And if counsel had knowledge of a quarrel between you and Lidz, he did not get that information from you?

THE COURT: He said he never talked to him about it.

Q Did you ever buy anything from Mr. Lidz? A No, sir.

Q Were you ever at his house, 98 Orchard street? A Yes, sir.

Q When were you at his house at 98 Orchard street? A I

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don't know, about three years ago, maybe.

Q And what was the occasion of your visit? A I was trying to buy a table from him.

Q It was not to see if you could sell him a quantity of lace for 30 or 40 dollars, was it? A No.

Q You are sure about that? A Positive.

Q You have heard of that before, have you not? A I don't know whether I have or not.

Q Haven't you been up before the chief on that? A What chief?

Q Before the Commissioner? A Yes.

Q So you did hear of that before? A I don't remember hearing of it.

Q It is not so very long ago, is it, that you were up there about it, July 17th, 1915, isn't that the date? A I don't remember the date.

Q Was it in July? A Yes, sir.

Q And you heard about that charge being made against you, didn't you? A What charge?

Q Of having sold him lace? A Never no charges like that were made against me.

Q What charge, if any, was made against you then, on the 17th of July?

MR. ROSENBERG: Objected to, unless it is in writing.

THE COURT: If he knows he may state.

A The only charge that was made against me that I have been up

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before the Commissioner, was that of a neglect of duty. I neglected my duty. I was up there on a charge of neglect of duty.

Q In connection with Lidz? A No, sir. In failing to make an entry in the book, in the journal.

Q You did not hear of Lidz being at Headquarters, did you?

A No, sir.

Q Not at all? A No.

Q In connection with this case? A No.

Q And you don't know that he was examined by Commissioner Adamson? A I could not swear that he was.

Q Are you prepared to swear that he was not there and that you did not hear him? A I never seen him there when I was there.

Q Did you hear of it? A No, sir.

BY THE COURT:

Q You never injured Lidz in any way? A No, I had no occasion.

Q Never struck him? A No.

Q Never took anything from him? A No.

Q Never made him treat? A No, sir.

Q Never made him slide down a pole? A No.

BY MR. PRESS:

Q You did not make him treat and you did not choke him?

A No.

Q Are you sure about that? A Positive.

Q You did not sell any laces to him? A Positively not.

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Q But you were at his house to buy a table? A Yes.

Q Was that the only time you were there? A That is the only time that I remember.

Q Oh well, can't you remember how often you were at his house? A I was there I think it was only once.

Q Aren't you sure? A I could not swear to it.

Q Aren't you sure? A I could not swear to it.

BY THE COURT:

Q What part of the house was Lidz in when you saw him at the fire house? A When do you mean?

Q You said you saw him in the fire house? A I seen him on the apparatus floor.

Q That is the first floor? A Yes, where the apparatus stands.

BY MR. ROSENBERG:

Q That is, he would come in and try to sell the firemen rubber boots and rubber coats? A Yes.

Q Was that permissible under the rules of the Department?
A I don't know whether it is or not.

Q Do you know whether it is permitted? A I could not tell you.

Q Do you know whether it is a custom to allow people to come in to sell firemen different articles of wearing apparel?

A There is lots of people come around there trying to sell stuff, peddlers.

Q And their visits are not recorded in the journal? A

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They are supposed to be.

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Q When you are on watch, do you have to report a peddler coming in? A When I am on watch, if there is anybody comes in the house that is not a member of the company, I make a record of his being in the building, your Honor.

BY MR. ROSENBERG:

Q That would be your duty? A Yes, I am compelled to do that.

BY MR. PRESS:

Q Can you show me an instance in that book that you have there of having ever entered up anyone? A Do you want me to go all the way through this journal?

Q Yes; I will let you step down and look at it if you like.

THE COURT: You can call another witness in the meantime; are you through with him, Mr. Rosenberg?

MR. ROSENBERG: Yes.

THE COURT: Call another witness.

WILLIAM MALONEY, (603 West 179th street) one of the defendants, called as a witness in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Now, Mr. Maloney, talk loud so that the last juror can hear you, please; how long are you in the Fire Department? A Two years the 25th of September, this present month.

Q During the two years you were located where? A Hook and Ladder 20, 153 Mercer street.

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Q How old a man are you? A Thirty years old.

Q Before going into the Fire Department, what was your business? A I was foreman for James Butler.

Q How long were you with James Butler? A Three years.

Q In what particular place were you located? A 2288 Eighth avenue, and 1961 Amsterdam.

Q Before that where were you located and what was your business? A That was my first position in this country.

Q Now, you are charged with having burglarized the premises on Mercer street, of the Rose Waist Company, two or three doors below the fire house, on June 24th, 1915, or June 25th, 1915, and taking a quantity of property, consisting of silks, which have been produced in evidence; now, I ask you, did you on that day or those days, or either of them, or at any time, break or enter the premises on Mercer street occupied by the Rose Waist Company? A No, sir.

Q Positive? A Positive.

Q Did you open the door of those premises at any time before you went there in connection with your duties as a fireman? A No, sir, positive.

Q Did you go into those premises and take a quantity of silks which have been produced here, or any part of the silks?

A No, sir, positively not.

Q Did Ferrick do either of those things in your presence?

A No, sir.

Q Did you agree with Ferrick that he should do those things?

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A No, sir.

Q Did you thereafter take those goods and bring them into a loft on the second or third floor in the building No. 21 West Houston street? A No, sir.

Q Did you, on the 29th day of June, 1915, in company with Ferrick, the co-defendant, and Lidz and Braslowsky, enter those premises, 21 West Houston street? A No, sir.

Q And take those goods and turn them over or sell them to Braslowsky or Lidz, or to either or to both? A No, sir.

Q Did you sell any of those goods to either Lidz or Braslowsky? A No, sir.

Q Did you receive any money from either of those men for any goods which you sold them? A No, sir.

Q Did you go over to Lidz's home on Orchard street at any time and bring there a pattern of the goods which is said to have come from the Rose Waist Company, and deliver them to Lidz? A No, sir.

Q And receive 8 or 10 dollars for them? A Positively not.

Q Sure of that? A Yes, sir.

Q Now, was Lidz ever in the fire house on the 26th of June or any other time up in the dormitory? A I never seen him.

Q Did he ever go up there and see you? A No.

Q Did you ever give him a piece of silk and wrap it up or unwrap it while in the fire house? A Never.

Q Were you in the company of Lidz when he slid down the pole and there met Martins or some other officer, and was ques-

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tioned concerning his presence in the house? A No, sir.

Q Did any such incident take place? A Never.

Q Did you ever buy anything from Mr. Lidz? A Never.

Q What about a baby carriage, or something like that? A I never bought no baby carriage from him, I ain't married. I had no occasion.

Q Didn't you buy a pair of rubber boots from him? A I went over to his house and saw them, but they were too small for me.

Q How long before June 24th was that? A That was after I came into the Fire Department, two years ago.

Q Sure it was two years before the fire? A Well, it was a year and ten months. Next November two years, I went there.

Q Did you want to buy anything else from him over at his house? A On another occasion about maybe two weeks later on, I went there to buy an over coat which was too small for me, and I didn't buy it.

Q Other than those two occasions, did you ever go to Lidz's home on Orchard street? A I have never, never.

Q While you were at his home, did you meet his wife over there? A Yes.

Q Were you in fireman's clothes, or civilian's dress? A I was in civilian's dress, because I was not in uniform at the time. I was only on probation. I had no uniform to wear.

Q Now, was there ever any occasion where you and Ferrick were in the building at 21 West Houston street, and Lidz gave you any money for any goods? A No, there was never no occasion.

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Q Or that you sold him any goods in that building? A No, I never sold him nothing.

Q Did you ever sell any goods from the Rose Waist Company?
A No, sir.

Q You responded to the fire that morning, did you? A Yes, I responded.

Q You went up with whom into the building? A Fireman Ott, the lieutenant and I.

Q Lieutenant Gibney? A Lieutenant Gibney.

Q Do you recall whether the door was open or locked, the up stairs door leading into the place where the fire was; was that open or shut? A I didn't take any particular notice.

Q You did not break it open? A No.

Q At that time or any other time? A No, sir.

Q Were you ever convicted of any crime? A Never.

MR. ROSENBERG: That is all.

BY THE COURT:

Q Where was this fire you were speaking about? A 149 Mercer street.

Q On what floor? A On the third floor.

Q That is, two flights up? A Yes.

Q Any floors above that? A There is one.

Q Was there any fire up there? A No.

Q You went up to see, did you? A If there was a fire up there, I would have to go up and work.

Q You did not go up there to work? A No.

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Q How about the floor below? A On the floor below, there was a hole burned from the floor where the fire was, to the floor below. I went in there.

Q Could you tell that that fire came from the third loft?

A Well, it could come from the floor below and burn up. There was a hole burned through the floor below. It could have burned up.

Q Was there any fire on the floor of the second loft? A The ceiling was burned through.

Q That was the ceiling of the floor where the Rose Waist Company was? A Yes.

Q How about the floor below that, the loft below that? A There was no fire on any of the goods that were there.

BY MR. ROSENBERG: What were you doing between 7 and 12:48, the time of the fire alarm, on the night of the 24th, and morning of the 25th, of June? A I was in the fire house, up on the top floor.

Q During all the time? A Until 10:30, I went to bed.

Q What time did you get back from your supper? A I got back at 5 o'clock, I think.

Q What did you do after 5 o'clock? A I went up stairs and changed my clothes and got into my turnouts and got ready for duty and stood up there until 8 o'clock, when taps came in and we had to go down. All hands had to go down then.

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Q Eight o'clock taps? A Yes, the test came in on the fire-alarm at 8 o'clock, and we all hands had to hit the floor.

Q To go down to the ground floor? A Yes.

Q Did you do that on that night? A Yes.

Q June 24th? A Yes.

Q What did you do after that? A Well, we had three horses there. We had to bed them down, give them hay and oats and go upstairs then, played cards and piano to 10:30, and I went to bed.

Q Were you sitting outside the door at any time that night?

A I might be standing at the door, not outside; for a few minutes. After changing my clothes on the top floor I came down to see that my helmet was on the fire truck, and my coat, in case a fire-alarm came in, that I would have it. I might have walked out the front door for a few minutes, but that was all.

Q Were you sitting on the outside of the door? A No, sir.

Q Are you sure of that? A Yes.

Q At any time on that night? A No.

Q Did you leave the firehouse from the time you came down at eight o'clock until the call of the fire? A Never.

Q When you went into bed that night, what time did you go into bed? A About half past ten.

Q Did you get up out of bed after you went into bed? A No, sir.

Q Did you leave the building? A No, only when I heard the

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fire-alarm.

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Q Were you asleep when you heard that fire-alarm? A Yes.

Q You were awakened by it? A Yes.

Q Did you see Ferrick there that night? A He went to bed at 10:30.

Q With you? A Yes.

Q Did you see him from seven o'clock till the time you went to bed? A Yes. I was on the top floor with him.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. PRESS:

Q You have known Mr. Lidz for some time? A Two years.

Q Did you ever have any quarrel with him? A No.

Q You never had any quarrel with him at all? A No, sir.

Q But you visited him twice at his home? A Yes.

Q Once he tried to sell you a pair of boots that did not fit you? A Yes.

Q And the second time he tried on an overcoat that didn't fit you? A Yes.

Q Those were the only two occasions you ever were at his home? A Yes, sir.

Q Do you know of any reason why he should prefer charges against you?

MR. ROSENBERG: I object.

THE COURT: I will sustain the objection. The jury will disregard that question. The defendant is not obliged to give any reason. You may inquire into their re-

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lations. He is not called upon to explain the operations of Lidz's mind or any other mind.

Q Well, you never have had any quarrel with him? A No, sir.

Q You have never done him an injury? A No, only ---

Q What? A He came to the house with goods one day, and I would not let him pass in with them. I would not call that a quarrel.

Q When was that? A This was about last January.

Q You turned around and went away then? A Yes. I was on watch at the time.

Q Ferrick was not on watch at that time, too, was he? A No.

Q Just yourself? A Yes.

Q Did you ever sell to Lidz any silk? A Never.

Q Sure about that? A Yes, sir.

Q About two months before this fire isn't it a fact that you sold him some silk dresses, gray and blue and black? A No, sir.

Q Did you ever have him in the basement of the fire-house with you? A Never. I seen him only at the watch desk.

Q That was all you ever saw him? A Yes.

Q Except outside? A I did not see him except the twice I saw him in his own home.

Q You heard the statement that was made here that you were seated outside for about an hour with the other men; that is not correct? A I was not seated. I was standing at the door a few minutes.

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Q I say, you heard that statement made by one of the men here; you heard Fireman Ott testify that you were sitting there at that time for about an hour before you went upstairs?

A Did he say I was seated out there?

Q didn't you hear that? A No, I didn't hear.

Q Well, he did testify to that. A Well, --

Q Is that correct?

MR. ROSENBERG: I object to that, calling for the cross examination of another witness's testimony.

THE COURT: He has given his version of it. The jury will say whether those statements are both correct, or which is correct.

BY THE COURT:

Q You say your statement is the true one? A Yes, sir.

BY MR. PRESS:

Q You have been at the desk quite frequently. I mean on watch? A Yes, sir.

Q You never knew of any fireman going out for ten minutes?

A Not without the permission of the officer.

Q And not without you entering it in the book? A No, sir.

Q You have seen the book, haven't you? A Yes.

Q You have looked at it frequently? A Yes, on watch.

Q Do you know of a single entry in that book that was ever made where a man went out for ten minutes? A It might not be in that book, but I can show you books it is in.

Q I am speaking of that book there, the journal? A I don't

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know about that.

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BY THE COURT:

Q Isn't that the journal you must enter it in? A This journal only lasts for a certain time.

Q How long is that time? How long does that journal cover?

A Well, different periods; a couple of months, three months or four months, some less.

Q Well, this one; Mr. Press is asking you if you can point to a period in the book made by you, or anybody else, of a fireman going out for ten minutes? (Witness looks at the book)

Q What is the first day? A Monday, June 7th, 1915.

Q Where does it run to? A Friday, August 20th, 1915.

BY MR. PRESS:

Q In that time you have been on watch, and a number of other men had been on watch, daily? A Yes.

Q Can you show me one instance in that book where a man was excused for ten minutes.

MR. ROSENBERG: The defendant has been in the City Prison since July 26th.

Q Did you make any entry in it at any time, in the book, excusing a man for ten minutes? A I could not tell about this book, but I have it home in other books.

Q Did you ever know of a man being sent for to the saloon down at the corner, to come to the telephone? A No.

Q Were you ever in that saloon? A Yes.

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Q Did you ever meet Lidz in that saloon? A No.

Q Never? A no.

Q You never negotiated for the sale of anything to him in that saloon? A No.

Q Well, it is a fact that on June 25th you left the fire-house at eight o'clock, and returned at 10:30, isn't it?

A Yes.

Q That is true? A Yes.

BY THE COURT:

Q In the morning? A In the morning.

Q That was after the fire? A Yes, sir.

BY MR. PRESS:

Q Do you remember June 26th? A Is that Saturday?

Q Yes. A Yes.

Q It is a fact you left at 11:30 and returned at 4 o'clock, isn't it? A I could not say.

Q Would it refresh your recollection if you looked at the book? A Yes.

Q Take it. A (Witness looking at the book.)

BY THE COURT:

Q You did not make the entry in the book, did you? A Well, if it is entered there I can tell.

Q If it is entered there you think it is true? A I know what time I eat that day.

BY MR. PRESS:

Q Look at it on June 26th. A (Witness looking at the book)
What is it?

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BY THE COURT:

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Q Were you away from eleven o'clock on June 26th to 4:30?

A No.

Q On June 26th, you left for dinner at 11:30, and returned at 4, did you not? A No, sir.

Q What time did you leave? A At 1:30, I left and returned at 4; not 11:30.

BY MR. PRESS:

Q And you returned at 4 o'clock? A Yes, sir.

Q That was on Saturday, June 26th? A Yes, sir.

Q That is correct? A Yes, sir.

BY THE COURT:

Q Where do you live? A 603 West 179th street.

Q Do you mean to say you went up to 179th street for your dinner? A Yes, sir; I have to go there every day, two hours and a half in the subway.

BY MR PRESS:

Q On that day you went home? A Yes.

Q Now, on June 28th, can you tell me what time you went out? A I went out, I think, at 10:30, and came back at 3:30.

Q Now on June 29th, isn't it a fact you left at one o'clock, and returned at 3:30? A Yes, sir.

MR. PRESS: That is all.

BY MR. ROSENBERG:

Q Were those hours that you left on the several days your regularly designated hours to leave and return? A Yes, sir.

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Q During the other parts of the month you did not have such long hours to stay away, did you? A I got two hours and a half for two meals twice a day.

Q Every day? A After a day off, I only get one meal generally.

Q You are on duty how many hours a day? A About twenty.

Q Do you sleep at the fire-house? A Yes, for four days, and the fifth day I am off.

Q Did you ever have a talk with Lidz in a saloon at the corner of Houston and Mercer street? A No, sir.

Q At any time Braslowsky was there? A No, sir.

Q And go into the back room to discuss some matters of money? A There is no back room.

BY THE COURT:

Q Do you know Braslowsky? A No, sir, never seen him.

Q Never had anything to do with him at all? A No.

Q Did he ever see you? A I never seen him until I seen him on the stand here yesterday.

BY MR. ROSENBERG:

Q Do you remember when you were in the police court? Were you in the police court? A No.

Q Do you remember when you were arraigned in part I of this court? A Yes.

Q Was Braslowsky there at the time? A I did not see him.

Q On the 29th of June, when you say you were off from one to three-thirty, where were you? A I was up at a friend of

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mine's house to dinner.

Q Whose house? A John McMahon.

Q Where is his place? A 71 East 120th street.

Q How long did you remain at that house? A About an hour.

Q Who else was there when you were there? A His wife.

Q Any one else that you can recall? A No.

Q What were you doing there? A Having dinner with him;
he invited me up there.

Q What day of the week was June 29th? A Tuesday.

MR. ROSENBERG: That is all.

JOHN P. S. FERRICK, (226 West 4th street), one
of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Ferrick, how long have you been in the Department?

A Nearly four years.

Q Have you ever been convicted of any crime? A No, sir.

Q What was your business before you became a fireman? A
Shipping and receiving clerk for a wholesale whiskey house.

Q What firm? A Seneca Distributing Company.

Q How long have you been engaged with that firm? A Five
years.

Q Continuously? A Continuously.

Q Shipping clerk? A Shipping and receiving clerk.

Q Before that what were you doing? A I was conductor on
a street railway.

Q What street railway? A New York Street Railway.

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Q How long were you conductor? A About a year.

Q And before that? A I worked for B. Altman & Company.

Q How long? A About a year and a half.

Q And before that? A I left school.

Q How old a man are you? A Twenty-seven.

Q Now, did you on the 24th day of June, and the morning of the 25th day of June, 1915, break and enter into the premises owned by the Rose Waist Company? A I did not.

Q Did you take any goods from those premises? A No, sir.

Q In conjunction with yourself or with Maloney? A No, sir.

Q Did you take any goods from that building, and bring them over to premises 21 West Houston street? A No, sir.

Q Did you ever see the witness Lidz and Braslowsky in those premises 21 West Houston street? A No, sir.

Q Did you ever go to those premises with this man Maloney?
A No.

Q And there deliver to them goods which are produced in court? A No, sir.

Q Did you ever agree to sell them any of those goods which are now in court as People's Exhibit 1 for identification? A No, sir.

Q Did you ever steal any of the goods of the Rose Waist Company? A No, sir.

Q On that day or any other day? A No, sir.

Q Did you ever receive any money from Lidz for goods which you delivered as part of the delivery of the goods which are now in court? A No, sir.

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Q Did you ever go over to Lidz's home and bring over some of these goods to him? A No, sir.

Q Will you please explain to the Court and jury what you were doing with your time between 7 o'clock on June 24th until about 12:48 the following morning, June 25th, in your own way, and talk as loud as you can? A On June 24th I returned from Supper at five o'clock. I was in quarters upstairs until eight o'clock, and at taps came in. I came downstairs. I stood around the watch desk for half an hour and went upstairs, and heard the piano play, and went to bed about half past ten, and then I went to sleep, and the alarm came in some time after midnight, and I responded to same.

Q In responding to the alarm, what were your particular duties? A I was on the tiller wheel.

Q The tiller wheel is where? A The rear of the truck.

Q The rear wheels of the Hook & Ladder? A Yes.

Q Did the Hook & Ladder go out that night? A It did.

Q The fire only was two or three doors away? A The Hook & Ladder went out anyhow.

Q You were in the tiller wheel? A Yes.

Q Did you go up into the building where the fire was? A I did.

Q And assisted in extinguishing the fire? A I did.

Q Did you at any time leave the fire house from seven o'clock, until midnight, or until you were awakened by the alarm and entered into the premises of the Rose Waist Company?

A I did not.

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Q Did you go there with Maloney? A No, sir.

Q Did Maloney go there while you were at the fire-house? A Not that I know of.

Q Did he go with you? A No, sir.

Q Was Maloney in the fire-house during all the time you were there? A I believe he was.

Q I am talking now between seven and the time you went to bed? A Yes, sir.

Q You knew Lidz, don't you? A Yes, I did.

Q What business dealings did you ever have with Lidz? A I bought a baby carriage of Mr. Lidz.

Q Are you a married man? A Yes, sir.

Q Children? A Two children.

Q Was Lidz ever at your house? A No, sir.

Q Who brought that baby carriage to your home? A I don't know. The wife told me it was a boy.

Q It was home when you got there? A Yes.

Q Did you ever go with Lidz into the saloon on Houston and Mercer street? A No, sir.

Q With Maloney? A No, sir.

Q Or any other saloon with Lidz? A No, sir.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. PRESS:

Q since you were arrested, have you seen Braslowsky?

A Not until yesterday.

Q You did not see him in court? A No, sir.

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Q Sure about that? A Positive.

Q The first time you saw him was where? A Yesterday.

Q Yesterday was the first time? A Yes.

Q You had never seen him or had any business dealings with him? A Never.

Q Never had any quarrel with him? A No.

Q Never had any trouble of any kind with him? A No, sir.

Q As far as Lidz is concerned you never had any quarrel with him? A No, sir.

Q And never had the slightest bother of any kind with him?

A No, sir.

Q And the only dealings of any kind you had with him was when he sold you a baby carriage? A Yes, sir.

Q And I believe you said you never saw him at your house?

A I seen him at the chain in the fire-house.

Q At your house where you live? A Oh, no, sir.

Q You have seen him at the chain in the fire-house?

A Yes.

Q But you never have seen him beyond the chain, inside?

A No, sir.

Q You heard the testimony given here that he was seen on the apparatus floor? A Yes, sir.

Q You never saw him there? A No, sir.

Q You never sold him anything? A No, sir.

Q You remember being in the Jefferson Market Court, don't you? A Yes, sir.

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Q You were seated among the audience there, weren't you?

A Yes, sir.

Q Do you remember Lidz came into the court room on that occasion and picked you out? A Yes, sir.

Q In the court room? A Yes, sir.

Q Isn't that true? A Yes, sir.

Q You have seen this material that was here, People's Exhibit 1 for identification? A Yes, sir.

Q You never saw that before the day you came here? A No, sir.

Q That is true? A I said I did not.

BY MR. ROSENBERG:

Q Did you have your fire clothes on when you were identified by Lidz? A I was sitting next to a lieutenant in uniform.

BY THE COURT:

Q Lidz saw you many times did he not? A I don't know. I met him about two or three times.

Q How many times did you go to his house to buy anything? A Once.

Q And you say he came to the chain? A Yes, a couple of times.

THEODORE MARTINS, recalled, testifies as follows:

BY MR. PRESS:

Q Have you looked at the book? A Yes.

Q Do you have anything there? A I don't see anything there.

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Q Have you gone all through the book? A Not all. I have³¹¹ gotten to about page 270.

MR. ROSENBERG: I am willing to close with the exception of character witnesses, but I haven't got them here; I didn't think they would be reached so soon.

THE COURT: Well, do you want an adjournment?

MR. ROSENBERG: Yes, till Monday morning.

THE COURT: Have your character witnesses here at 12 o'clock, and any other witnesses you care to produce, and we will take a recess until that time.

Gentlemen of the Jury, the Court takes a recess until 12 o'clock Monday, September 27th; do not come here before that time, and in the meanwhile be very careful not to discuss this case with any one else, and do not talk about it among yourselves. Do not make up your mind on the question of the guilt or innocence of the defendants until you have heard all that is to be said on both sides, and until the case is given to you by the Court for your decision.

ADJOURNED to Monday, September 27th, 1915, at 12
o'clock m.

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THE PEOPLE vs. WILLIAM MALONEY and
JOHN FERRICK.

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New York, September 27th, 1915.

TRIAL CONTINUED.

CORNELIUS DUFFY, D.D., a witness sworn on behalf of the defendant, testified as follows:

(The witness states his address is St. Matthew's Church, Eastern Parkway, Brooklyn)

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Do you know the defendant Maloney? A Yes.

Q How long have you known him? A Well, about two years, I think.

Q Do you know other people who know him? A Yes.

Q Do you know acquaintances of his? A Yes.

Q Do you know what his reputation is; good or bad? A Good.

MR. ROSENBERG: That is all.

MR. PRESS: No question.

JOHN HUGHES, (521 West 185th street) a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Hughes, what is your business? A New York Life Insurance Company, representative.

Q Do you know Mr. Maloney, one of the defendants here? A I do.

Q How long have you known him? A About eleven months,

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I think it is, or twelve.

Q Do you know other people who know him? A I do, several.

Q Do you know his friends and acquaintances? A Yes, sir.

Q Do you know what his reputation is among his friends and acquaintances? A Yes, first class.

Q Is it good or bad? A Good.

MR. ROSENBERG: That is all.

MR. PRESS: No questions.

S I M O N R O M A Y N E (502 West 170th street) a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Romaine, what is your business? A I am a horse shoer.

Q Do you know the defendant Maloney? A About six years before he got on the department.

Q How long have you known him altogether? A About eight years.

Q Do you know other people who know him? A Yes.

Q Do you know his friends and neighbors? A Yes.

Q Do you know what his reputation is, good or bad? A It is good.

J O H N M c M A H O N (71 East 120th street) a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Mr. Mahon, where do you live? A 71 East 120th street.

Q Do you know Maloney, one of the defendants here? A Yes, sir.

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Q How long have you known him? A I have known him since I came to this country.

Q How long is that? A Nearly three years now.

Q Do you recall seeing Maloney in June of the present year, towards the end of June? A Yes, sir.

Q At your home? A Yes, sir.

Q What was he doing at your home? A Well, I went down.

Q What was he doing at your home? A He was having dinner.

Q Do you know what time did you have dinner with Maloney?
A He came to my house at 1:45.

Q What time did he leave? A He left about 2:45.

Q Can you fix the date when he was at your house for dinner? A Yes.

Q What date was it? A 29th.

Q Of June? A Yes, sir.

Q Who was present? A My wife, me and Mr. Maloney.

MR. ROSENBERG: That's all.

MR. PRESS: No question.

FRED J. TREFCER, recalled on behalf of the defendant, testified as follows:

CROSS EXAMINATION BY MR. ROSENBERG:

Q Mr. Prefcer, do you know Mr. Ferrick? A Yes, sir.

Q How long have you known Ferrick? A At least fifteen years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know his friends and acquaintances? A Yes, sir.

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Q Do you know what his reputation is? A Yes.

Q Good or bad? A Good.

WILLIAM H. BREUER, recalled as a witness on behalf of the defendant, testified as follows;

BY MR. ROSENBERG:

Q How long have you known the defendant Ferrick? A About three years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know what his reputation is, good or bad? A Good.

MR. ROSENBERG: That is all.

BY MR. PRESS:

Q Did you ever know of him having been up on charges for disobedience of orders?

MR. ROSENBERG: I object to that.

THE COURT: I will allow the question.

MR. ROSENBERG: Exception.

BY THE COURT:

Q Did you ever hear anything against him at all? A No, sir.

Q In all that time? A No, sir.

THE COURT: The fact that he was up on charges may or may not mean anything, but when you are speaking of reputation that question may be asked of him, and you may take an exception.

BY MR. PRESS:

Q Have you ever heard of his being up on charges? A I think so.

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Q Did you hear of it or not? A Yes, sir.

Q That would not alter your opinion with respect to his character? A No, sir.

BY MR. ROSENBERG:

Q There is nothing in the charges that you heard against him which would in any way affect his reputation for honesty?

A No.

Q Or as a good fireman? A No, sir; I have been up on charges myself.

Q A violation of a technical rule brought you up on charges? A Yes, sir.

J A C O B M E Y R O W I T Z, recalled as a witness on behalf of the defendant, testified as follows:

BY MR. ROSENBERG:

Q Mr. Meyrowitz, did you buy the goods which are in question here, concerning which you have already testified, at your store or any other place? A At my store.

Q Sure of that? A Yes, sir.

Q You bought them by sample, did you? A I bought them by sample pieces.

Q Now did you go into the jewelry store to examine those goods or any part of them? A Yes, sir.

Q You did? A Yes, sir.

Q Did you tell Mr. Oshri n when he served you with a subpoena this morning that you did not know and you did not think you went to the jewelry store? A I did not tell him anything.

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He gave me the subpoena, and I told him I would be at the Court at 12 o'clock.

Q Didn't Mr. Oshri n ask you about whether you bought those goods in the jewelry store? A He did not ask me anything.

Q Have you talked about the matter, or discussed the matter since you were served with the subpoena? A No, sir; I waited on the customers, and when I got through I came down to court. Mr. Oshri n gave me the subpoena. He said, "What is the best time you can come?" I told him 12 o'clock.

Q Did he tell you what he wanted you to come for? A No. I did not discuss anything, but I came to court.

Q Mr. Oshri n is the man that served you with the subpoena? A Yes.

Q Now, did you go to Mr. Braslowsky's place of business on Broome street, the jewelry store, to examine the goods? A Yes, sir.

Q Who was there when you examined the goods? A Braslowsky and Lidz.

BY THE COURT:

Q Do you often buy silks in a jewelry store? A No.

Q Why did you buy these? A Lidz told me he did not have enough money to buy it, and Braslowsky advanced him the money, so he keeps the goods as security, to look at them.

BY MR. ROSENBERG:

Q Lidz told you that? A Yes, in the presence of twenty

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people.

Q Then why didn't you give Braslowsky the check? A Because Lidz sold me the goods.

MR. ROSENBERG: Defendant rests.

MR. PRESS: The People rest.

MR. ROSENBERG: The defendant renews the motions made at the close of the People's case, that the Court direct the District Attorney to elect upon which count of this complaint he intends to proceed to submit the case to the jury.

THE COURT: I decline to give any direction. If the District Attorney wishes to elect, he may make his own election.

THE COURT: Does the District Attorney wish to make any election in the case?

MR. PRESS: No.

MR. ROSENBERG: To which defendant takes an exception.

MR. ROSENBERG: Now, at the close of the whole case, on behalf of each of the defendants, I move that your Honor direct an acquittal upon the ground that the facts stated in each of the counts of the indictment have not been established by competent legal evidence. The People have failed to establish the facts set out in each count of the indictment beyond a reasonable doubt, authorizing the conviction of this jury.

THE COURT: Motion denied.

MR. ROSENBERG: To which defendant excepts.

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Mr. Rosenberg sums up to the jury.

Mr. Press sums up to the jury.

THE COURT: We will take a recess until 3 o'clock.

Please be back promptly at that time. In the meantime, be very careful not to discuss the case among yourselves, nor with any one else, and do not come to any conclusion as to the guilt or innocence of the defendants until you have heard all that there is to be said, and until the matter is submitted to you by the Court for your decision.

(The Court takes a recess at 2:15 to 3 p. m.)

TRIAL CONTINUED, 3 p. m.

The Court thereupon charges the jury as follows:

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THE COURT'S CHARGE.

Gentlemen of the Jury, before submitting the case to you, I desire to express my thanks to you for the close, careful and unwearied attention you have given to the testimony in this case. I also desire to express my thanks to the learned counsel representing the defendants, and to the District Attorney representing the People, for their fidelity and zeal in the discharge of their duties.

If there have been any discussions between counsel, why, they must be attributed to their zeal and their desire to perform their duty, and they must not influence you in any way: because the statements and comments and arguments made by counsel on either side, when based upon the evidence and addressed to your reason, should receive consideration, but if they are not supported by the evidence and are merely remarks of a personal nature, they are valueless and they should not receive any consideration from you.

It is the duty of the Court to present for your consideration the rules of law which shall govern you in determining the guilt or innocence of the defendants. There is a sharp division between the duty of the Court in

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a criminal case, and your duty. The Court must see that the defendants receive a fair and impartial trial, and must instruct you in the law. You must take the law from the Court without question, and keep that law in mind; you take the facts from the witnesses; not from Counsel or the Court, but from the witnesses, the witnesses that have appeared before you and have given their testimony under oath. You are the sole and exclusive judges of the facts, and of the credibility of those witnesses.

The Court has not expressed any opinion in this case; you all know that. Not only have I expressed no opinion, but I have not formed any, and it is not my duty to do so at this time. It is your duty solely to form an opinion from the evidence, either of their guilt or innocence. You must endeavor to dismiss from your minds then every impression which may have a tendency to lead you away from an honest and impartial consideration of the facts. Neither sympathy nor prejudice should enter your minds in the consideration of the evidence. The rights of the People and the interests of the defendants demand that you coolly and neutrally determine the case.

There has been much said about the New York Fire Department in this case. We all know that the members of the Fire Department, the men wearing the uniform of

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firemen have the first place in the esteem and affections of our people, and they have won that place by a record of heroism, zeal and devotion that has never been equaled by any body of men in the world; but that does not give any member of that Department any right to commit any crime. I say this to you, because I want you to decide this case on its merits. You are simply to determine whether these two individuals have been proved guilty of the crimes charged, or not, and you must not be swayed by prejudice against them on the one hand, nor by sympathy for them on the other, but you must be absolutely cool, impassive and neutral, and make up your minds solely from the evidence and not go outside of the case.

The indictment in this case charges the defendants with the crime of burglary in the third degree, grand larceny in the first degree, and receiving stolen property knowing the same to have been stolen. You understand, of course, that the indictment is only a charge; it is not proof of guilt; it is not evidence. It is put in writing so that the defendants may know what crimes are charged against them, and so that you may know at the time of the trial: so that you must not assume that because they have been arrested and indicted they are guilty. There is no evidence of guilt in either of those acts. What does the indictment say? It says that "William Maloney and John Fer-

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rick, on the 25th of June of this year, in the County of New York, with force and arms, a certain building, to wit, the shop of Max Goldberg, Jacob Kahane and Jacob Krauss, co-partners in trade then and there doing business in and by the firm name and style of Rose Waist Company there situate, feloniously and burglariously, did break into and enter, with intent to commit some crime therein, to wit, with intent the goods, chattels and personal property of the said co-partners in said shop then and there being, then and there feloniously and burglariously to steal, take and carry away."

This charge is made against them by the People of the State of New York, a term that embraces every one living in this State, the name for organized society. All the people who live in this State desire to protect one another in the enjoyment of their rights, their property, their liberties and happiness, and they make certain rules or regulations which we call laws, which forbid the doing of certain acts. What act is complained of here? In ordinary English it says that Mr. Goldberg and the others were engaged in business as the Rose Waist Company, and that they had a shop in the County of New York; that they had some personal property in it, and that these defendants broke and entered that shop with intent to steal their goods. That is a very plain charge, and the statute is equally

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plain.

Section 404 of the Penal Law says:

"A person who with intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building, is guilty of burglary in the third degree."

There are two elements in the crime, the breaking and entry into a room feloniously, with the intent of committing a crime in the room. In this particular instance it is charged that the persons who broke and entered that shop intended to steal the goods stored therein. Those words "break" and "enter", are old terms; they have been interpreted by the courts and they have now been defined by the statute.

Section 400 says that "break" means breaking or violently detaching any part, internal or external, of a building. The term "building" includes not only the whole building, but any room or part of a building, separately used therein.

The evidence in this case is that there was a building with three floors; that the Rose Waist Company had the floor two flights up; that there was a floor above them and a floor below them; and that there was a door leading from their floor, which consisted of one room, to the hall and to the stairs that led down to the street. The owners of that shop have testified that when they went away at

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seven o'clock on the evening of June 24th, they looked that door; that the door had two locks on it, an ordinary lock set in the door, and a Fox lock, as it was called, which has some sort of a bolt or bar arranged on the outside of the door. Now, if anyone, after that door was locked in that way, broke off that Fox lock and broke off the woodwork of the door jamb around the other lock, or opened that door by any means whatever, for the purpose of entering to commit a crime, that would be a breaking. If they actually went into the premises to commit the crime, that would be an entry.

If the person or persons who so broke and entered did so to commit a crime they would be guilty of burglary, whether or not they committed any crime therein.

It is further testified that this condition of the door was discovered at about 12:48. There has been a good deal of discussion about the lower or street door. The firemen have testified, and their testimony is uncontradicted, that there was a padlock on the outside of the street door at 12:48. The lieutenant is borne out by the record he made, that he forced the street door. The indictment does not charge that anyone broke the street door. If any one broke the door of the shop of the Rose Waist Company, with intent to enter and commit a larceny, that act would be one of the elements of burglary, whether they

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broke the lower door, or whether the lower door was open or locked -- that is, the street door -- at the time of the breaking in upstairs. You may give the evidence that the firemen found the street door locked, any weight you think it ought to receive in this case, on the question of the guilt or innocence of these defendants, but it is not, and that is what I wish to impress upon your minds, an essential part of the burglary charge. The question is whether the shop door was burglariously broken or not.

The partners of the Rose Waist Company also testified that certain goods which they had in their place, which they had received from the Dorothy Waist Company, and which they had left in the loft when they went home, had disappeared the next morning. The firemen testify as to the discovery of the fire I think at about 12:48, I do not remember the exact time, but somewhere around that time. One of the partners testified that they at first, believing that these goods had been consumed, put in a claim for them to the insurance Company. Of course, if those goods were consumed in the fire, there was no larceny of them. If they were not consumed in the fire, but were taken from those premises with intent to steal by anyone, why, it would be a larceny. That crime is defined in Section 1290 and the following sections of the Penal Law.

The count in the indictment charging larceny is

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the second count, which says that William Maloney and John Ferrick, on the day and in the year aforesaid, that is, the 26th of June last, with force and arms, a quantity of cloth of an amount and description to the Grand Jury aforesaid unknown, and of the value of \$600, and one machine of a kind and description to the Grand Jury likewise unknown, and of the value of \$100, the personal property of Goldberg, Kahane and Krauss, doing business under the name and style of the Rose Waist Company, in the shop of the said co-partners there situate, then and there being found, in the shop aforesaid, then and there did feloniously steal, take and carry away.

The charge is that there was certain personal property in the shop of the Rose Waist Company, and that these defendants took it away, and that their taking was a felonious one; that they intended to steal it. These acts are forbidden by section 1290 of the Penal Law, which says:

"A person who with intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person, takes from the possession of the true owner, or of any other person, personal property, steals such property, and is guilty of larceny."

If a firm has personal property in a shop and the

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members of the firm lock up the door and go home, why, that property is constructively in their possession. It is their property, it is in their shop, and anyone who takes it from their shop with intent to deprive the owners of it, with intent to appropriate it to the use of the taker, or to take it for any other purpose except the uses of the owners, is guilty of larceny. There are two elements; the taking of the property, and the intent to deprive the owner of it; the taking plus the felonious intent. So that, if anyone went into that shop by any means whatever, in the day time or the night time, to take the property of the Rose Waist company, with intent to deprive the Rose Waist Company of it, with intent to appropriate it to the use of the taker, or the use of anyone other than the Rose Waist Company, that taking was a larceny; and if the value of the property exceeded \$50 and was less than \$500, it would be grand larceny in the second degree.

The count charged in the indictment is grand larceny in the first degree, but there is not sufficient proof of value to support that charge. But under our law you may find them guilty under that count, of grand larceny in the second degree if the evidence satisfies you of their guilt beyond a reasonable doubt.

The last crime charged in the indictment is that of criminally receiving stolen property. It says: "On the

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day and year aforesaid, in the Borough and County aforesaid, the same goods, chattels and personal property mentioned, described and set forth in the second count of this indictment, to which reference is hereby made, of the value mentioned and set forth therein, of the goods, chattels and personal property of the Rose Waist Company, by a certain other person or persons to the Grand Jury aforesaid unknown, then lately before feloniously stolen, taken and carried away from the said co-partners unlawfully and unjustly, did feloniously receive and have, the said William Maloney and John Ferrick, then and there, well knowing the said goods, chattels and personal property to have been feloniously stolen, taken and carried away."

In other words, the last count alleges that there was a larceny of certain goods, the goods described in the indictment under the second count; that those were the goods of the Rose Waist Company, and that some one stole them from them.

Secondly, that the defendants subsequently received those goods, and thirdly, that at the time they so received them, they knew they were stolen property. If those three elements are proved to your satisfaction beyond a reasonable doubt, then the defendants may be convicted of criminally receiving stolen goods knowing the same to have been stolen.

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I wish to call your attention to the fact, however, that they cannot be both thieves and receivers. If you find them guilty of burglary or larceny, or burglary and larceny, you cannot find them guilty of the crime of criminally receiving stolen property, because the same man cannot be a thief and a receiver. There must be a thief, and the receiver is the third person who takes the property from the thief with knowledge of its stolen character. But if you are not satisfied of the guilt of these defendants beyond a reasonable doubt on the first count or the second count, you may take up the third count, and consider whether the evidence proves there was a larceny, and whether these defendants received the proceeds of that larceny, knowing that they were receiving stolen goods at the time they took them into their possession. So that, if they are not guilty of larceny or burglary, why, you may still find them guilty for criminally receiving stolen property, if the evidence satisfies you beyond a reasonable doubt that you should do so.

I think that sufficiently explains the charges in the indictment and the law relating to the specific charges.

The fundamental principle or theory on which criminal actions are tried in this State, is that the defendants are presumed to be innocent. Unless the evidence produced by the People satisfies you of their guilt beyond a reasonable

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doubt, you must acquit them. That is an important principle for you to keep in mind. They are not required to prove their innocence. The People must prove them guilty. You must not regard them as guilty men seeking to escape. That is not the way the law regards them, but as innocent men who are entitled to go free, unless their guilt has been established beyond a reasonable doubt by the evidence in the case. And the burden of producing that evidence, the burden of proof, is upon the People. If the defendants take the stand and call witnesses, then you have to take the whole case and weigh it calmly and quietly, and the burden is on you of deciding which, if any of the witnesses, you will believe. That is, since facts must be proved by witnesses, since facts must not be established by guessing or surmise or conjecture, but solely by the testimony of the witnesses, you must decide what witnesses, in your opinion, are worthy of belief; that is to say, you pass on the credibility of the witnesses. There is no strict rule which may be laid down to control your judgment in that. All that the law asks you to do is to be honest men. You must be ever mindful of the importance of the work you are doing. You have been obliged to give up your own business cares and responsibilities to devote a good deal of your time to the consideration of this case. It is absolutely necessary to the welfare of all the people in the State that you should

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discharge your duty fairly, honestly and fearlessly. You should give an honest verdict.

In arriving at your verdict, as I said, you pass on the credibility of the witnesses. It may guide you to consider the manner of the witnesses who were produced here before you; you may consider the manner of the witness, whether the witness testified freely, or otherwise, on direct examination, and also on cross examination, whether he or she testified frankly, fully and freely, or was seeking to evade answering, or giving information. You may consider the intelligence of the witness, the knowledge that the witness had of the facts concerning which he or she testified, their opportunities for knowledge; the interest of the witness in the result of the controversy, whether they were entirely disinterested or whether on account of their connection with the case, or their relationship to any other witness or interested person they were influenced to give false testimony. You should consider whether any witness had a motive, or whether the witnesses were free from motive, which may have affected their testimony. But you must remember that even if it be clear to you that a witness may have had a motive, may have had something to gain by giving his or her testimony, you must carefully and fairly weigh their testimony, because they may be telling the truth, notwithstanding the fact that they

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have a motive or apparently have a motive which might be powerful enough to induce them to tell what was not the truth, and the same tests apply to all the witnesses on both sides.

I desire to have you approach the discharge of your duty with full knowledge of the law, and of your own responsibility. You understand I do not seek to control your judgment, but to indicate to you the method which experience has found to be of some service in determining the credibility of witnesses. That is your burden alone.

It does not concern you, as I told you in the beginning, what others may think of the witnesses, what others have said about it. I do not intend to review the testimony in this case, because the attorney for the defendants has done his work very well, and has carefully analyzed the testimony. Mr. Press has very ably represented the interests of the People, and has in his summation called your attention to the testimony. Therefore it would not be profitable or of any advantage to repeat it. You are the sole judges of what has been testified to here. You find all the facts from the witnesses, and you must determine whether any of the witnesses are telling the truth, the whole truth, or not, whether they meant to tell the truth or not; that is, whether, if they did not tell the truth, any erroneous or wrongful statement made by them was

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through inadvertence. In other words, whether they innocently made mistakes and gave testimony that was not true, or whether they intentionally and wilfully told what was not true. You have to determine that. If any of the witnesses wilfully and knowingly gave false testimony on the material points in the case, why, then they were guilty of perjury, and you might properly disregard all their testimony, although you are not obliged to. In other words, you believe all the testimony if you think it ought to be believed, or reject it all, or believe part and reject part, just as you think it is supported by the other facts and circumstances in the case, and is worthy of your credence or not.

It is not claimed here that these defendants were seen in or about those premises. You have heard the story as to their being firemen, detailed to a fire house in that neighborhood. You have heard the testimony of the witnesses who say the defendants were in that fire house continuously until the fire alarm rang; that they were there from seven o'clock until they were led by the lieutenant to the fire. You must carefully consider all the testimony. That defense is what is legally known as an alibi. If that testimony satisfies you that they were in the fire house continuously during all that time, you must acquit them of the crimes of burglary and larceny, because if they were in the fire house during all that time, they could not have committed

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this burglary or larceny; furthermore if the testimony raises a reasonable doubt in your minds as to whether they were in the fire house or not all that time, you must acquit them of those charges. As I said, no one has testified that he saw them commit the burglary, but the law does not require such testimony. There is a legal principle that if there be a burglary and larceny, one who is found a short while thereafter in possession of the stolen goods, may be convicted of the burglary or larceny, or both, on that evidence alone. In other words, recent possession of the stolen goods raises a presumption of guilt which places on them the burden of explaining the possession.

In this case there is no explanation. There is a denial that they ever had possession of the goods. Therefore if you are firmly convinced by the evidence beyond a reasonable doubt as to the identity of the goods that People's Exhibit No. 1 and the other exhibits are the goods which were in that shop on that night when the partners went home and that there was a burglary and a larceny, and that the goods produced in court are the stolen goods, and that those stolen goods within a short time thereafter were in the possession of these defendants, that is sufficient to convict them of burglary and grand larceny in the second degree, unless their explanation raises a reasonable doubt in your minds as to whether or not they were guilty. You

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know whether they have made any explanation or not. If there be a reasonable doubt on any of those points, viz., that any crime was committed in the first place, or of the identity of the goods, or that the defendants ever possessed them, you must acquit them. If you should have a reasonable doubt of their guilt, of burglary or grand larceny, you may take up the question of whether there was any larceny committed by any one on this night, and whether these goods are the proceeds of that larceny, and whether the defendants subsequently received ^{them} from the thieves with guilty knowledge of their stolen character.

You have heard the testimony of Lidz and the others on that point. Your attention has been called to other testimony in the case which the prosecution claims is sufficient corroboration. It is for you to say whether or not you believe the witnesses, or how much of their story you believe, or whether you believe the defendants.

If on the whole case the evidence convinces you beyond a reasonable doubt that they did have these goods in their possession, and that the goods were stolen, and if you are also satisfied beyond a reasonable doubt from all the facts and circumstances in the case that they knew those goods were stolen when they received them, you may find them guilty of criminally receiving stolen property knowing the same to have been stolen.

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I do not think that there is anything further that I should call to your attention. I have told you the law and you must find the facts from the witnesses. All that the law asks you to do is to be honest men, to render an honest verdict. If you are satisfied of their guilt beyond a reasonable doubt, say so. Name the crimes that in your judgment they have been convicted of by the evidence produced in this case. If you have a reasonable doubt on any of the essential elements, whether there was a crime committed, or that they were concerned in it, you must acquit them. That term "reasonable doubt" means a doubt based on reason. When an honest man on the jury makes up his mind to do his duty, when he weighs all the evidence on both sides carefully, when he keeps in mind the law that the Court gives him and then he is unable to say that he is fully satisfied to a moral certainty that that charge has been proved, his mind is in a state of reasonable doubt. The law requires proof to that extent; more than a mere preponderance of proof, it must remove every reasonable doubt. If you can reconcile all the testimony with the innocence of the defendants, you must acquit them, for the defendants are entitled to the benefit of the doubt. But if you apply your judgment and conscience to the consideration of the testimony as carefully as you would weigh it, if it concerned the most important affairs of your own

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life, and if the testimony weighed in that manner produces in your minds a firm conviction to a moral certainty that the defendants are guilty, that is all that the law requires. It does not require proof to an absolute certainty, but only a moral certainty. I hope you understand that. Keep in mind the amount of proof required, keep in mind the nature of the charges, review the testimony of all the witnesses, and render an honest verdict, either of guilty or not guilty, and if guilty, say whether guilty under the first counts of burglary or larceny or both, or under the count of criminally receiving stolen property knowing the same to have been stolen.

Have you any requests?

MR. ROSENBERG: I except to that part of your Honor's charge wherein you submit to the jury the question of permitting the jury to convict the defendants of the crime of burglary and grand larceny, upon the ground --

THE COURT: Burglary in the third degree, and grand larceny in the second degree.

MR. ROSENBERG: Upon the ground the facts stated in the second count of the indictment is not the charge of burglary and larceny or larceny and burglary within the meaning of Section 406 of the Penal Law, and that said count of grand larceny in the second degree in this indictment omits to charge the larceny under that section in conjunction with the burglary.

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I also ask your Honor to charge the jury that the burden of proof rests with the People throughout the case.

THE COURT: I have so charged them, and I repeat the charge. The burden never shifts from the People, but as I told you, if the People prove that these identical goods were in the possession of the defendants within a recent time after the 25th of June, and that the goods were the proceeds of a burglary or a larceny, committed on that day, that is sufficient proof to meet the requirements of the law and to warrant a verdict of guilty, unless their explanation of their possession is satisfactory to you, or raises a reasonable doubt of their guilt in your minds.

MR. ROSENBERG: I should like to except to that.

THE COURT: In other words, the law is that recent possession of stolen goods raises a presumption of guilt, and places on the defendants the burden of explaining such possession; and in the absence of an explanation, you may find them guilty of the crime charged.

MR. ROSENBERG: I take an exception to that.

MR. ROSENBERG: I ask your Honor to charge the jury that the defendants having introduced evidence of good character, that that evidence may of itself create a reasonable doubt where otherwise no doubt would exist.

THE COURT: I so charge; that is the law. You must

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consider the evidence of good character, and you must give it such weight as it is in your judgment entitled to receive. It is an essential part of the case, and may afford the basis for a reasonable doubt of a defendant's guilt, even in a case in which in the absence of such testimony the jury could not find a basis for such a doubt in the other evidence in the case.

MR. ROSENBERG: I ask your Honor to charge the jury that it is not the duty, and neither of the defendants are bound to prove a motive on the part of the prosecutor to institute this action, or to charge the defendants with the crime.

THE COURT: What is that?

(The stenographer repeats the request.)

THE COURT: I so charge. The question of the motive of the prosecutor is not involved at all. His opinion is not evidence. The District Attorney is here to do his duty by presenting evidence to you. You are not to consider any opinion that he expresses, as his opinion is no evidence of guilt. You must eliminate that from your minds altogether. You must obtain the evidence of guilt from the mouths of witnesses who went on the stand, and from no one else.

MR. ROSENBERG: In view of Mr. press's argument that we have not furnished a motive for Lidz to bring this charge against the defendant.

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THE COURT: The defendants are not obliged to establish any motive. The evidence must satisfy the jury beyond a reasonable doubt that the defendants are guilty. They are not obliged to make any defence in law, or to produce any evidence; and if the evidence they have produced which they do make, raises a reasonable doubt of their guilt when considered in connection with all the other evidence in the case, the jury must acquit them.

If it has been shown that any witness had a motive that might affect his testimony the jury must consider that fact on the question of the credibility of the witness, and determine what credence, if any, they will give to his testimony.

Is that satisfactory?

MR. ROSENBERG: Yes.

THE COURT: Mr. press, any requests?

MR. PRESS: None.

THE COURT: Remember your own recollection of the testimony must control, but if, however, there should be a dispute as to what the testimony was at any time, or if you wish the exhibits in the case, why, you may take the exhibits if the defendants consent, and you may have the testimony of any witness re-read, if you wish to refresh your recollection.

MR. ROSENBERG: The defendants will consent in open

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court that the jury may have the exhibits.

THE COURT: Well, have them do so now.

MR. ROSENBERG: (Addressing both defendants.) You consent?

(Both defendants say yes.)

MR. ROSENBERG: The defendants personally consent.

The jury retire at 3:42 p. m.

The jury return at 5:12 p. m.

THE CLERK OF THE COURT: Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have.

THE CLERK OF THE COURT: How say you, do you find the defendant guilty or not guilty?

THE FOREMAN OF THE JURY: Guilty of burglary in the third degree and grand larceny in the second degree.

THE CLERK OF THE COURT: Hearken unto your verdict as it stands recorded; you say you find the defendants guilty of burglary in the third degree and grand larceny in the second degree, so say you all?

MR. ROSENBERG: May I reserve the motions to set aside the verdict until the day of sentence?

THE COURT: You may; how much time do you wish?

MR. ROSENBERG: One week.

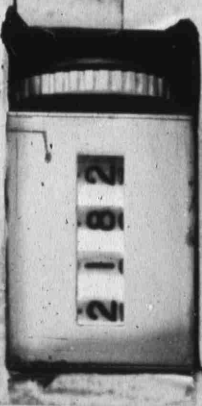
THE COURT: I will make it the first Friday in October in Part III.

(The defendants are remanded.) L. Lutz, Official Steno.

new York November 13, 1945
I hereby certify that the foregoing is a full and correct transcript of the proceedings in the case of People vs. Maloney & Herick. Signed by Lutz, Official Steno. New York.

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TRIAL TRANSCRIPTS

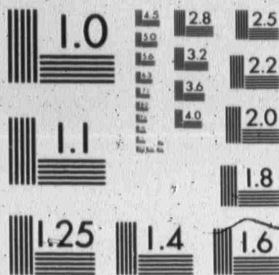
1883-1927

JOHN JAY COLLEGE

NEW YORK, NY

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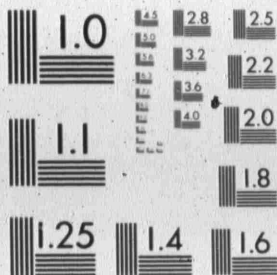
CASES 2094 TO 2103



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A



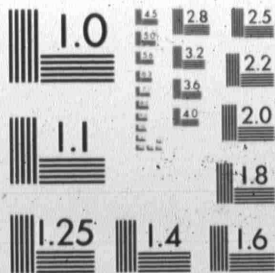
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