

tion?

CROSS EXAMINATION BY MR. MOORE:

Q Now, unquestionably Exhibit 1 and Exhibit 5 are in the same handwriting, are they not? A Yes, sir, I think so.

Q Do you notice that the defendant's handwriting is decidedly what is known as an angular hand, is it not? A You mean vertical?

Q Angular as distinguished from oval, the angular movement the up and down movement we may call it? A Well, I wouldn't call it a distinctly angular hand. perhaps I don't understand just what you mean.

Q It is the up and down movement, a tendency to form his letters by angles rather than curves, that is what I mean, more of an ovalar movement? A Well, there is a distinctively angular hand-- I do not know what you refer to generally, but I should think perhaps the handwriting is inclined to be somewhat angular.

Q For instance I will take Exhibit No. 6, that is inclined decidedly to an angular movement, is it not? A Well, I think not. Now, I am speaking of angular, of course, in its proper sense, that is to say, the connection between the strokes. Now this writing is angular at the top, but it is not angular at the base.

Q Let us see if it is not. Look at the W's there and see if they are not decidedly angular? A The W is angular at the base any way.

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Q These are anyhow? A Well, they are in the copybooks.

Q Never mind about some others. They are very decidedly angular at the bases, are they not? A Yes, sir.

Q I notice that the W which appears in this letter, People's Exhibit No. 5, that W is decidedly on the ovalar movement, is it not, at the base? A One is a capital and one is a small letter.

Q A small one in the beginning? A I say one is a capital and the other is a small letter. The one you called my attention to about that.

Q Well, look at that. (Showing witness a letter) That is a capital letter.

Q What is this? A A small letter.

Q That is at the beginning of a sentence, isn't it, in each instance? A But it is a small W.

Q I don't care whether it be small but it is the beginning of a sentence, isn't it? A Yes, sir.

Q In that letter, the disputed handwriting, the movement is decidedly an ovalar movement? A But one is a small letter.

Q (Repeated) A Yes, sir.

Q They are formed by an entirely different manner, are they not? A Well, these letters are not alike.

Q Let us see, if you take some more. There is another W in the word west. That has a decidedly angular movement at the base, has it not? A yes, sir.

Q Decidedly different in the movement from the W's you

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find in that letter, isn't it? A The movement is the same, the connections are round in one case and in the other they are angular, one being a capital and one a small letter.

Q Both about the same size, are they not? A But you might as well ask me to compare two different letters; one is a capital and the other is a small letter.

Q Why do you say this is a capital here in the middle of the sentence? A Because it appears so; that is all.

Q That makes every one of the W's written in the same way doesn't it-- take this paper here, this W-- west wall? A Yes, sir. Both capitals.

Q They are both made differently from the W in this paper, are they not? (Referring to people's exhibit 5? A Yes.

Q Do you not find the W's in this genuine handwriting, People's Exhibit 8 and the W in the other writing that was written in the presence of Mr. Fitzpatrick are also made with an angular base, are they not? A Yes, sir.

Q Every one? A They are in small letters; here these are capitals.

Q The jury will determine whether they are small or large? A I can determine it too.

Q We will determine for ourselves whether these are capitals or small letters. Another thing you notice in that paper the words are formed without breaks, are they not? A Well, some of them are and some of them are not.

Q Well which one is not? A The word Lappin and the

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wordcaptain and the word matron.

Q Isn't matron one word? A It is one word.

Q It is connected? A No, sir; not connected.
This

Q ^ You notice decided breaks in, do you not? A Yes, sir,
they are the same; some written connectedly and some broken.

Q Do you find anywhere either a capital or a small W made
like the W in this exhibit 1 for identification? A Not ex-
actly like it, no, sir.

Q Find any one looking anywheres near like it? A Well,
the capital letters on the -- you say anywhere near this, I
see some.

Q Very nearly vertical W's? A Yes, sir.

Q And this one on the pink paper is looped at the bot-
tom? A That does not appear in the west; otherwise they are
very similar.

Q Do you say that the W in the word west is very simi-
lar to the W in the paper Exhibit 5? A If you ask me how that
is I would say they are similar in a general way, but they
would not be similar enough for me to say they are the same
writing on that.

Q A decidedly different formation? A The pink W has a
loop in it.

Q Are they not of a decidedly different formation? A Yes,
sir, in that particular.

Q All of the W's that you find made by the defendant are
similar, are they not? A Yes, sir, I think so.

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Q There is another W that appears in this writing, is there not, in the word with? A Yes, sir.

Q That is made with an oval movement at the bottom, is it not? A Yes, sir.

Q And in that regard it is decidedly different from all the W's you find in the conceded handwriting of the defendant?

A Any small letter-- it is different in being a small letter.

Q (Repeated) A Yes, sir.

Q I call your attention to the S in the sir. Did you notice that S and compare it with the S's that appear in these conceded handwriting? A I compared the S's, all of them.

Q That capital S with those that appear in this handwriting. Did you compare them? A Yes, sir, I think so.

Q Do you notice the S appears here in this paper twice and it is made both times by a similar formation, is it not? A Yes, sir.

Q I call your attention to the S in store on people's Exhibit 6 of the conceded handwriting, that is a different formation is it not? A Yes, sir, a printed form.

Q What is that? A Printed form.

Q Well, it is a different form? A Yes.

Q I call your attention to the S in store on the paper that we have conceded to be in the handwriting of the defendant and I think in that connection, if your Honor, please, it should also be conceded that that was found in the precinct station house and made before the arrest of the defendant?

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THE COURT: Is that the fact?

MR. DONOHUE: Yes, sir.

BY MR. MOORE:

Q That S is of a different formation, is it not, or construction anyway? A The same kind.

Q But not the same kind as the two S's you find here?

A No, sir, but the same as the other one you showed me last.

Q In other words I showed you two S's made by the defendant and they are of different construction from the S's that are made in this letter are they not? A Yes, sir, different from these two.

Q These four S's are the only four before you? A No, sir, one of them is St. for street.

Q That St for street that abbreviation in that form is a very common form of making the abbreviation, is it not? A No-answer.)

Q In your experience a very common form? A Well, it is like others.

Q Now in making the word St. in this paper, People's Exhibit 1 for identification, that is a very common form of making it, is it not? A I don't know that it is any more common in St than it is in store or any other form for that matter.

Q I notice there appears on this paper another S under the word shield. Are you able to find an S in that document anywhere in the conceded handwriting of this defendant? A There are both kinds.

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Q I am talking about the S in shield? A Well, this particular paper you showed me shows both styles of an S.

Q Did you hear what I said. I asked you the initial S in shield. Do you find an S made like that in the conceded handwriting of the defendant? A Yes, sir, there is on the other paper, I think, there are two of them.

Q You find the same kind of S's that you find on this paper written in blue ink? A Yes, sir, there is the word store; that is what I had in mind.

Q That is a little S? A No, sir, that is a capital S in the word store like this S in the word street.

Q We have been over that. You want the jury to get enlightenment, don't you? A I do.

Q I asked you about the letter S in shield. Do you find anywhere in the conceded handwriting of the defendant an S made like that? A I think not.

Q Now, take this writing found on Exhibit 6 and 8, is that what is known as a cramped hand? A Well, I would ^{not} call it a cramped hand, no.

Q Do you call that a free hand movement? A Quite free, yes, sir.

Q Don't you see along through that movement a decidedly cramped hand, rather than a free hand? A Why, I should call that quite free writing.

Q You have had twenty five years experience? A Yes, and that is the reason I want to define it accurately.

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Q Which way will you class that, as a free hand movement or cramped hand movement? A I would call that medium.

Q Isn't the limitations of that writer bound within small limitations? A Why, I think not, no, sir, I should say that it is more free than cramped, for instance, the word receptable is written the whole length, without taking his pen off at all.

Q The A is off-- Of course it wasn't made right along?

A It is written with one impulse.

Q A person could write a whole word or a whole number of letters but still form them with a cramped hand, may he not?

A Well, that cramped hand, your definition of a cramped hand is an indefinite term.

Q Now, I am going to call your attention back again to this letter. Do you not notice in the making of the Y of Nicolay a decided free arm sweep in making the finishing Y? A Yes.

Q Is there any place in the handwriting on these two papers conceded to be in the handwriting of the defendant where you can see such an extended freedom of movement as that? A I think I can see an extended swing.

Q Or rather upon these two papers there is no where manifested an ability to make so extended a movement as this one word here ending in Y? (No answer.)

Q I am trying to get the scope of the ability of the writer. Can't you tell by looking at that whether he has the ability to perform this sweeping Y that is here? A The degree of skill exercised in the two papers I should say is about

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the same.

Q I didn't ask you that. I asked you if you find any place in the movement of these two conceded writings where you see such ability of freedom of writing as there is there? A I don't see anything just like this.

Q Do you see any place any such freedom of movement as that? A I don't see any just like that one.

Q Do you see any place where there is much freedom of movement as there is in that form? A I don't see any such extended flourish as that if that is what you mean. When you say freedom of movement now that is a different thing.

Q Well we do measure writing, do we not, by freedom of movement of the writer. In your deductions as to disputed writing that is of great importance, is it not? A I think it is one of the elements.

Q In other words after looking at a paper you are able to judge of the skill of the writer? A Yes, sir.

Q Are you not? A The general degree of skill, the muscular skill, yes, sir.

Q Now, will you take that paper there and see how many W's appear on it? A Two.

Q Will you take the conceded writing and see how many W's appear upon it? A Two.

Q Aren't there three on that one? A Yes, William is in the signature; I did not look at the signature.

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Q All of those W's are made with an angle at the base, are they not? A Yes, sir.

Q Now to go a little further. After the W here then take the U in would. That is also made with an oval movement at the base, is it not? A That is the ordinary letter in the copy book.

Q Is that the way it is always made? A That is a capital in here.

Q You volunteered something -- is the U always made in that form? A That is the copybook form.

Q You said it was always made that way? A I didn't say that; I said it was the copybook form of it; I mean the design of the W has no angle at the base; this is a small U and again no angle at the base but a turn.

Q That is not a peculiar thing in a W? A This one has a wide curve, however, a wide turn at the base.

Q I notice this N in Nicolay that is what style of N? A Well, that is described in some systems of writing as a capital stem N.

Q Do you find that same style of N in the other disputed handwriting, Exhibit L for identification? A Yes, sir.

Q I also call your attention to the A in Alexander, is that made in the same style, the old Spencerian capital stem, A Yes, sir.

Q There is a capital M in the conceded writing, People's Exhibit 8 is there not? A Yes, sir.

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Q It is not made under that style of M is it? A No.

Q It is another style of capital M, is it not? A Yes.

Q Distinctly different from the N in Nicolay? A Yes, sir.
from

Q The A is made ~~an~~ the same style of handwriting as the N in Nicolay, is it not? A Yes, sir.

Q It is made by an initial stroke with a capital stem?
A Yes, sir.

Q Do you find any such thing as that in making capitals of the defendant's handwriting? A I think not; just these forms.

Q I call your attention again to the other conceded handwriting being Exhibit No. 6. I find the word matron there, that is a capital M and that is not made with a loop as you find in Nicolay is it? A No, sir.

Q Now still another N is there not in Mr. Lappin?
A Yes, sir.

Q That N is not made with the stem that is employed in both of the disputed handwritings, is it? A No, sir.

BY THE COURT:

Q You took a good deal of time down there looking at these samples of handwriting. Was this a difficult matter or was it one easy of determination? A Well, I took the time there for I wanted to give the reasons--

Q Was it a difficult matter? A I should say that this is somewhat difficult.

BY MR. MOORE:

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Q You had seen these papers before? A Yes, sir.

Q Examined them fully and testified once before? A Yes, sir, but it is some time ago now.

MR. DONOHUE: I offer people's Exhibit 1 and people's Exhibit 5 for identification in evidence.

MR. MOORE: I suppose under the evidence that Mr. Osborne has given, he having stated that they are in the defendant's handwriting, I suppose they are admissible for what they are worth?

THE COURT: I will receive them.

Marked people's Exhibits 1 and 5.

HENRY MOSKOWITZ, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he lives at 147 East 38th street.)

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Moskowitz during the year 1917, were you president of the Municipal Civil Service Commission? A I was.

Q Up until what time? A October, from October 1914 to 1917.

Q Your commission has charge of the examination of patrolmen for promotion to sergeant? A Yes, sir.

Q Did you hold your examination sometime in May, 1917?
A Yes, sir.

Q For sergeant? A Yes, sir.

Q Do you know the defendant William Lappin? A I do not.

Q Did you ever authorize him to use your name in connection

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with that examination of sergeant? A I did not.

Q Did you ever authorized him to go out and say that for two hundred dollars he could put people on the list, on that particular list? A No, sir, I certainly did not.

Q Did you ever have any talk with him whatsoever? A None whatever.

CROSS EXAMINATION BY MR. MOORE:

Q Mr. Lappin is an entire stranger to you, is he not, Dr. Moskowitz? A Yes, sir.

Q Never saw him until you saw him in the court room?

A Just saw him in the courtroom here.

Q He is not in the employ of the Civil Service Commission?

A No, sir.

J O H N F. S K E L L Y, a witness called on behalf of the

People, being duly sworn, testified as follows:

(The witness states he lives at 523 West 143rd street.)

DIRECT EXAMINATION BY MR. DONIHUE:

Q Mr. Skelly, you are the assistant secretary of the Municipal Civil Service Commission of the City of New York? A Yes.

Q How long have you been secretary to that commission?

A About ten years.

Q Do you know William Lappin? A No, sir.

Q Is he one of the employees of that commission? A No.

Q Did you ever hear of him at all before this case? A No.

(At this point the jury inspect the exhibits.)

MR. DONOHUE: The people rest.

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MR. MOORE: I move for the direction of a verdict of not guilty upon the ground that the people have failed to corroborate the alleged accomplice to such a degree as would satisfy the jury to convict the defendant beyond a reasonable doubt. Your Honor will bear ^{this} in mind and I think it must be conceded that the only evidence in any sense which tends to corroborate the accomplice is that of the handwriting expert. And after his examination it seems to me that the whole case is bound up in his answer to your Honor at the close of the examination that it is exceedingly difficult for him to determine whether or not these papers are in the handwriting of the defendant. If it is exceedingly difficult for him to determine that it would seem to me that we ought not to let it go to the jury upon the theory that it is the defendant's handwriting when the expert testimony is of a very uncertain character. After his protracted examination he admits to your Honor that it is exceedingly difficult to say that the disputed writings are in the handwriting of the defendant.

THE COURT: Isn't there some evidence from Nicolay, slight though it may be, but some evidence and isn't that sufficient for the Court to deny your motion. Isn't the other matter which you have brought to the attention of the Court rather for your address to the jury.

MR. MOORE: I would say this in regard to Nicolay--

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there is absolutely nothing, I take it, in Nicolay's testimony that would in any sense tend to connect the defendant with the crime. It is not denied, for instance, that upon one occasion he was informed by this defendant that a man had been there to see him, that he did not know who it was. He says that on the next day he was told that the man had been there to see him again, and at that time the defendant said "I think he is one of those fixers from downtown." Now, I think that is entirely consistent with innocence because, if your Honor, please, along that line, Nicolay says that prior to that, some two or three weeks, a man had actually been to see him, and said he would come again which he did. So that would be consistent with the letter of July 2nd. and also with the fact that a third man whom Austin has kept in the background was in this transaction and that that man may very possibly have called at the station house to see this man. That would not be in any sense, it seems to me evidence of criminality. Now that is the only other evidence and it seems to me it is not sufficient.

THE COURT: I quite can see the force of what you say, but isn't it some evidence tending to sustain the accomplice, together with the gentleman here who gave some testimony as an expert. I am inclined to think that there is enough to go to the jury, as the case stands.

MR. MOORE: It seems to me that there must be more

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than some corroboration. Some of the cases go as far as to say that evidence must be such as identifies the defendant or tends to connect him with the crime.

THE COURT: I am sorry I disagree with you, I will deny your motion but you will be saved an exception.

DEFENSE.

JOHN BAUMGARTNER, a witness for the defendant, being duly sworn, testified as follows:

(The witness states he lives in West New York, New Jersey.)

DIRECT EXAMINATION BY MR. MOORE:

Q How old are you? A Fifty two.

Q Your business? A Plumbing.

Q Where is your plumbing establishment, where is your place of business? A 585 11th avenue, Manhattan.

Q How long have you been in business? A Fifteen years.

Q Do you know this defendant? A yes, sir.

Q How long have you known him? A I have known him about fourteen years.

Q Have you known him intimately during that period of time?

A Yes, sir, lived in the same house with me, where I have the shop.

Q How long a time did he live in the same house with you?

A About five years I guess.

Q How long ago is that? A That is about nine years ago.

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Q You kept up your acquaintance with him ever since?

A Yes, sir.

Q Do you know others who do know him? A yes, sir.

Q Do you know his reputation for truth and honesty? A Yes.

Q What do you say his reputation is? A He has got a good reputation as far as I know.

(No cross examination.)

J O H N S T A R R Y, a witness called on behalf of the

defendant, being duly sworn, testified as follows:

(The witness states he lives at 947 First avenue.)

DIRECT EXAMINATION BY MR. MOORE:

Q How old are you? A 47.

Q Your business? A United States Government.

Q You are employed by the Government? A Yes, sir.

Q In what capacity? A In the Custom House department.

Q Here in the city of New York? A Yes, sir.

Q How long have you been employed there? A Three years.

Q Do you know this defendant John Lappin? A I do, sir.

Q How long have you known him? A Well, about twelve years.

Q Have you during that time known him well? A Yes, sir.

Q Socially as well as in other ways? A Yes, sir.

Q Do you know others who know him? A Yes, sir.

Q Do you know his reputation for truth and honesty? A Very good.

Q What is it? A Very good.

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WILLIAM LAPPIN, the defendant being duly sworn
in his own behalf, testified as follows:

(The witness states he lives at 197 Fulton street, Brooklyn.)

DIRECT EXAMINATION BY MR. MOORE:

Q How old are you? A Thirty nine.

Q Married? A Yes, sir.

Q Living with your family? A yes, sir; wife and two children.

Q What is your business? A I am a caretaker in a police station.

Q Are you still there on duty? A No, sir, I am suspended.

Q Since you were arrested? A Yes, sir.

Q How long had you been caretaker at this precinct? A Well since January 2nd; I was transferred from another precinct.

Q This precinct, January of last year? A Yes, sir.

Q What precinct is that? A 149th street, Adams street and Murten avenue.

Q Before you were a caretaker at that precinct where were you? A 147th street, Butler street.

Q Brooklyn or New York? A Brooklyn.

Q How long were you employed there as caretaker? A Close on to six months there.

Q Before that? A The 14th precinct in New York, Charles street.

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Q How long were you there? A I was there five months.

Q How long have you been in the service of the police department, altogether? A Twelve years.

Q Where were you employed before you were employed in the Charles street station? A In the Marine division, on the river, the Harbor Squad, the steamer patrol, pier A, North River.

Q How long were you there? A Seven years and a couple of months.

Q Before that where? A I was working for the Interborough Railroad ; before I went into the police department I was there ten years and a couple of months, the rest of the twelve years when I was put in as a caretaker.

Q During this time that you have worked for the city how constantly have you worked? A Steady, right along.

Q Without any loss of time? A Yes, sir.

Q Have you ever been in any trouble before this, Mr. Lapin of any kind? A No, sir.

Q Do you know this witness William Austin? A Well, I know him very little.

Q When and where did you first meet him? A On 42nd street and 8th avenue in a cafe.

Q That was about when, Mr. Lapin? A That was in the fore part of August I think.

Q Now, at that time what was the talk that you had with him if you recall? A He was in with the rest of the boys who was in there, we met him, we had a conversation, it was nothing

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ing to do with this business.

Q Nothing except in a general social way? A Yes, sir, in a social way.

Q About how long do you suppose you and Austin were together in this cafe upon that occasion, how many minutes or hours? A About ten or fifteen minutes or so.

Q Did you see him again after that before his arrest? A Yes, once in Brooklyn.

Q That was where? A That was at Myrtle near Adams street

Q That was what? A In a cafe there too.

Q That was near the precinct? A Yes, sir, right around the corner.

Q Who was present at that conversation on that occasion? A Officer Owens.

Q Officer Owens, you mean by that a police officer? A Yes, sir, me and him were in the cafe first, and while we were speaking this other gentleman came in.

Q You and Owens were there? A yes, sir.

Q You had a conversation there? A We didnt talk there; we just had a social drink and went out.

Q Are those the only two occasions that you had ever met Austin or saw Austin before his arrest? A Yes, sir.

Q Did you after Austin's arrest at any time seem him in the Tombs prison? A I visited him twice, I think in the Tombs.

Q When was that? A I cant recollect when it was but it was sometime in August -- it must have been in September.

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Q Was that after you were arrested? A No, sir., before I was arrested.

Q Where did you see him? A I went right through the front entrance and visited him in the counsel chamber.

Q Who was present at that talk? A Nobody I don,t think was present but me and him.

Q Did you write him any notes while he was in prison?
A No, sir.

Q Do you remember when you were arrested and taken down to Mr. Fitzpatrick's office, the assistant district attorney-- I don,t care about the date? A About the 19th of September.

Q Do you remember the fact of being taken down there?
A Yes, sir.

Q Now, at that time was Austin present? A No, sir, I don,t think he was there.

Q You know he was not, don,t you, Mr. Lappin? A Well, he wasn't present there when I was taken there.

Q You were asked if you knew William Austin? A I can,t remember whether I was or not.

Q Now the only acquaintance you had with him was as you have described to his Honor? A That is all.

Q Did you at any time have any talk-- first I hand you People's Exhibit 1 in evidence and ask you if that is in your handwriting? A That ain,t mine, no, sir.

Q Did you give that to Austin or did Austin show it to you at any time before his arrest? A He didn't show it to me, no,

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Q The first time you ever saw this paper was in the court room on the other trial? A Yes, sir.

Q Was it not? A Yes, sir.

Q I show you people's Exhibit 5 in evidence and ask you if that is in your handwriting? A No, sir.

Q Did you mail that to Mr. Nicolay or to anybody else?
A No, sir.

Q Did you at any time or at any place ever have any talk with Austin about putting a patrolman on the sergeant's list?
A No, sir.

Q Did you at any time say to him that you had influence either with Dr. Moskowitz or any other person in the Civil Service Bureau whereby you could procure advancement of patrolmen for a consideration? A No, sir.

Q Did you tell him that the price for putting him in that list, in the first one hundred would be two hundred dollars?
A No, sir, I did not.

Q And after that when they were appointed sergeant, four hundred dollars more? A No, sir.

Q Or anything to that effect? A No, sir.

Q As a matter of fact did you know Dr. Moskowitz or Skelly in connection with that department at all? A No, sir, I did not.

Q You heard Mr. Nicolay's testimony about some man coming to the office and inquiring for him. Did you hear that here?
A Yes, sir.

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Q Well what was there to that? A Well, a man came in the station house -- the police sergeant at the desk--they asked if such and such a party is in and the first thing is they ask the boothblack or the man on the floor sweeping or cleaning and he says he is not here -- told him he was not in, he was off this day -- he wasn't off-- he was on his patrol but I didn't know it. When he came in from patrol I told him there was a party looking for him and that is all there is to it. The same gentleman came around in a day or two.

Q You reported that fact to Nicolay? A Yes, sir.

Q Did this man come back within a day or two? A Yes.

Q Now what conversation did you have with Nicolay with reference to the time when he came back the second time? A I didn't have no conversation at all with him.

Q With whom? A With Nicolay.

Q Did you have only one conversation? A A second time, yes, sir, I told him he waited.

Q Told him what? A I said he waited for awhile and said, "I would like to see him personally". I said "If you wait you will see him, he will be in a little after four o'clock", he always did come in after being on patrol duty-- at four you will see him sure. He did not wait. Nicolay came around and I told him the fellow waited for you, and he said "Who is it", I said, "I don't know, he looks like one of the fellows downtown", and he says, "Yes"? and I said, "Yes, he looks like one of them fixers." I don't think any other remark passed.

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Q Did you know the man? A No, sir.

Q Before this time had you had a talk with Nicolay, did you send any person to Nicolay? A No, sir.

Q To do anything with him? A No, sir.

Q What are your hours on duty? A From 8 till four; of course, I don't get out until about twenty or twenty five after four. I don't go out until after the patrolmen are sent out on post, and then it is fifteen or twenty monutes after four every day.

Q Those are your hours constantly? A Yes, sir, every day in the year, Sunday included.

Q You are required to be on duty during that time? A Yes, sir.

CROSS EXAMINATION BY MR. DONOHUE:

Q Now, then, as a matter of fact when you were in Mr. Fitzpatrick's office in the District Attorney's office, you did know Austin? A I did know him when I was in his office.

Q When you were in Fitzpatrick's office, you knew Austin? A Yes, sir, I knew him.

Q What was your idea in telling Mr. Fitzpatrick you didnt know Austin? A I don't remember Mr. Fitzpatrick asking me that question.

Q You don't remember him asking you that question? A No, sir, I don't remember anything I done there, I don't remember that he did.

Q Do you remember any part of the interview you had with Mr. Fitzpatrick at his office? A I don't think I do.

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Q You don't remember any part of it at all? A No, sir.

Q Did you go to the Tombs to see Mr. Austin? A Yes, sir, I did go to the Tombs.

Q How many times? A I think twice or three times.

Q You recall the last trial, don't you? A Yes, sir.

Q The last trial we had? A Yes, sir.

Q Do you recall telling me you never went to the Tombs to see Austin? A No, sir, I said on the trial--

Q Do you recall at first your telling me you had not gone to the Tombs to see Austin? A Yes, sir.

Q At first you denied you were at the Tombs at all to see Austin, and wasn't it only after we brought two wardens from the Tombs that you admitted being in the Tombs at all? A I couldn't hear you at the last trial. My ear was all-- I had an abscess in the ear-- I mean on the last trial.

Q Did you make any complaint about not being able to hear me at the last trial? A Yes, sir, I spoke to his Honor about it, I couldn't hear hardly anything.

Q You couldn't hear hardly anything at all? A No, sir.

Q Do you remember under what name you went into the Tombs to see Austin? A Yes, sir, Jerry Butler.

Q Was was your object in giving that name? A Well, Richard Butler sent me there to see him personally.

Q Didn't you go to the Tombs and tell the warden that you were Jerry Butler? A I told him who I was.

Q Did you or not go to the Tombs-- A It was his mistake.

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Q Did you go there and tell him you were Jerry Butler, yes or no? A No, sir, I did not.

Q How did you happen to give that name? A I will explain. Richard Butler told me to take a message for him down to Austin when I was uptown and I said, all right; I did; I went in there and told him just what he told me. He says, you tell him you are a friend of Richard Butler, and he will let you in to see him. I went there and told this deputy warden, Mr. Bremel I was a friend of Butler's, and he said, all right. He was doing that favor for Butler; he wasn't doing it for me.

Q Did you go there a second time? A I will explain.

Q (Repeated). A Yes, sir, I went there.

Q What name did you give the second time? A The same as I gave the first time.

Q Jerry Butler? A Yes, sir.

Q Then you told him you were the son of a former keeper, didn't you? A No, sir, I did not.

Q Why didn't you tell him your name was Lappin? A Well, maybe I wouldn't get in.

Q What was there to prevent you from getting in, anybody has a right to go into the Tombs? A No, sir, not in the front way.

Q Why did you go and see Officer Owens, and tell him not to admit every having seen you with Austin? A I went to him because he worked in the station house, that is all, to save my own job.

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Q Why did you go to him and tell him to say you were never with Austin? A I did not say that.

Q What did you say to him? A I didn't say that at all; I told him he had no right to bring my name in.

Q Did you tell Owens if Owens was called down to the District Attorney's office to deny ever making a statement that he was with you in a saloon with Austin? A Yes, sir; I didn't mention Austin's name to him.

Q Didn't you ask him to deny ever seeing you with Austin? A No, sir, I told him I wished he would not bring my name in.

Q What was your object in denying knowing Austin? A My position.

Q You did know Austin? A Yes, sir.

Q You knew him by his name? A Yes, sir; that is all I know him by name.

Q You know him as William Austin? A Yes, sir.

Q You met him at 42nd street and 8th avenue? A Once.

Q You met him over in this saloon in Brooklyn? A Yes, sir, once; twice altogether.

Q Owens was there at the time, wasn't he? A Yes, sir.

Q That was before you were arrested or was it after?

A That was before Austin was arrested.

Q Before you were arrested wasn't it -- Austin had been arrested? A Well, no, sir, I don't think so.

Q Don't you know? A Well, that was in August-- Austin

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was arrested in August.

Q Was it before or after you were arrested that you saw Owens in this saloon with your friend Austin? A Mr. Owens went into the saloon first and had a drink, and as he was coming out around twenty after four, when I was in there, Austin was coming in.

Q You knew Austin then, didn't you? A That is the second time I met him.

Q Did you know him, yes or no? A Yes, sir, I knew him.

Q Did Owens know him at that time? A I don't think so.

Q You introduced Owens, didn't you? A Yes, sir.

Q In other words you went over to see Owens, and you said to him, "Please don't say that you ever saw me with Austin" isn't that a fact? A I wasn't with Austin; I was with Owens at the time he came in.

Q Did you go to Owens and ask him to say he never saw you with Austin, yes or no? A I went to Owens and told him not to have my name mixed up in it; that is all there was to it.

Q Now, as a matter of fact, when you were on trial before, do you remember telling me that you never knew Austin before? A I don't remember.

Q Would you say you did not? A Well, I can't remember now.

Q Why can't you remember what you said at the last trial?

A A couple of times it was all balled up.

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Q What is that? A I was all balled up.

Q How are you now, all straightened out? A Yes, sir, pretty good.

Q Do you recollect at the last trial telling me that you never told the warden of the City Prison that your name was Butler? A I wanted to explain that to you.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Tuesday morning, January 8, 1918, at 10.30 o'clock.)

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New York, January 8, 1918.

Trial Resumed.

W I L L I A M L A P P I N, the defendant resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. DONOHUE:

Q Now, Mr. Lappin, when was the first time you met Austin?

A 42nd street and Eighth avenue.

Q When? A The fore part of August, I think.

Q The second week or the third week? A I ain't positively sure about that.

Q Who introduced you to him? A I was not introduced to him. He came over and spoke to me in the crowd.

Q Without being introduced? A Yes, sir.

Q What did he say? A He just asked me was I working in the Police Department and I said yes.

Q What else did he say? A That is all that I can remember.

Q Was Green there? A Yes, sir, Green was there.

Q This was 42nd street and Eighth avenue, Doherty's saloon?
A I don't know, I think it is Kelly's saloon.

Q When was the next time you saw him after that? A In Brooklyn at Doherty's saloon.

Q How many days afterwards? A That was the latter part of August.

Q The 29th was it not? A Around that time.

Q Before Austin was arrested? A Yes, sir.

Q Austin was arrested on the 29th? A Yes, sir.

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Q Before that? A Yes, sir.

Q How many days before? A I could not tell you, not many.

Q One or two? A I ain't sure how many days.

Q A week? A Yes, sir.

Q About a week? A Yes, sir.

Q So you did know Austin pretty well at the time you were arrested? A I had only seen him a couple of times.

Q You knew him well enough to recognize him in the saloon in Brooklyn? A He gave me a helloa, yes, sir.

Q Did you recognize him before that? A (No answer.)

Q When Austin came into this saloon in Brooklyn you recognized him, didn't you? A Yes, sir.

Q You introduced him to Officer Owens as Bill Austin?

A As Mr. Austin.

Q That was August 24th? A Yes, sir.

Q Is that right? A Yes, sir, about that time.

Q Did you know that Austin was arrested on the 29th of August? A Not until I seen it in the paper.

Q That was the 30th in the paper? A Yes, sir.

Q Is that right? A Yes, sir.

Q Some time in August? A Yes, sir.

Q When was the first time you went to the Tombs to see him?

A September, I think.

Q What time in September? A I can't recollect.

Q The early part or the latter part? A Around the fore part of September.

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Q The early part? A Yes, sir, the early part of September.

Q What was your idea in going to see him? A I heard that he mentioned my name here in the District Attorney's office first.

Q He had not been to the District Attorney's office at that time, had he?

MR. MOORE: I object to that as calling for a conclusion.

Q Do you know that he had been to the District Attorney's office at that time? A There was a rumor about it.

Q Where did you get the rumor from? A Around the station house.

Q 149th precinct? A Yes, sir.

Q They told you he had mentioned your name? A Yes, sir, rumors about it.

Q And that was your object in going to the Tombs to see him? A Yes, sir.

Q Do you recall the last trial that we had of this case? A Yes, sir.

Q Do you recall your explanation of why you went to see him? A Yes, sir.

Q What was your explanation at the last trial of why you went to see him? A I had a message for him.

Q Mr. Richard Butler sent you down? A Yes sir.

Q Is that true or not? A That is true.

Q Why did you go in the Tombs for that message or because of a rumor? A I went because of this rumor.

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Q It wasn't as you said on the last trial? A No, sir.

Q You just happened to be going to Brooklyn and Mr. Butler asked you to stop off -- that was not the only reason? A No, sir.

Q The other reason was you wanted to find out why he mentioned your name? A Yes, sir.

Q Did you know he had mentioned your name? A Well, he did not.

Q In the Tombs? A Yes, sir; he did not.

Q Do you remember when Lieutenant Valentine placed you under arrest? A Yes, sir, I remember it.

Q Had you been to the Tombs before that? A Yes, sir.

Q Did you tell Lieutenant Valentine you didn't know who Austin was? A Yes, sir, I did.

Q What was your object in doing that? A I didn't have to give him the information.

Q You could have told him this, couldn't you? A Yes.

Q What did you tell him? A Told him no I did not.

Q That was not true? A No, sir.

Q You did know him very well at that time? A I didn't know him very well.

Q Hadn't you written him letters to the Tombs at that time? A No, sir.

Q Look at that and see if you didn't write that letter to him? A No, sir.

Q Do you remember saying that you wrote that paper at the last trial? A No, sir.

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Q Do you remember telling me in response to a question whether or not you wrote that you were not sure? A That is right.

Q Are you sure now that you wrote it? A Yes, sir.

Q What is your answer, did you or not write that note?

A I did not; I did not write no noteto Austin at all in the Tombs; I didn't have to write him when I spoke to him.

Q At the last trial did you tell me that you were not sure whether you did or not? A I don't know what I said at the last trial; I don't remember it.

Q Will you say now you didn't write this note? A I will say no; I did not write it.

Q Do you remember my asking you this question and you making this answer at the last trial "Q. Did you write this People's Exhibit No. 6 for identification (handing paper to witness)? A. I ain't sure of that. Q. You can't say whether you did or not? A. No, I can't say, I am not sure." What makes you so sure now you didn't write it? A Well, I can recollect I didn't write no note to Austin at all.

Q You can recollect now you did not? A Yes, sir.

Q But on October 26, 1917 you could not recollect whether you did or not but now you are sure you did not write it? A I am sure I didn't write no note to him.

Q Do you know whether you met a man named Mr. Brown in Brooklyn? A Yes; I know a man named Brown in Brooklyn.

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Q He is an Alderman of the District in which your Precinct is included, is that right? A Yes, sir, that is right, Ex-Alderman Brown.

Q Did you write to him when you got into trouble, write him a letter? A No, sir.

Q Did you write or did you send a message from Headquarters, a message for him? A I think I send a telephone message to him.

Q Did you write that message to him? A Yes, sir -- I don't know if that is my writing.

MR. MOORE: I object to that.

Q Did you write that memorandum? A I ain't sure of that.

Q You are not sure whether you wrote that or not? A No.

MR. MOORE: That is conceded.

MR. DONOHUE: I don't want any concession.

MR. MOORE: It is nevertheless conceded to be his handwriting.

BY MR. DONOHUE:

Q Can you tell us, Mr. Lappin, whether you wrote that?

A I ain't sure whether I wrote that or not. Where is this supposed to be written?

Q Are you sure whether you wrote it or not? A It don't look like mine.

Q Will you tell me whether you wrote that memorandum or not? A No, sir, I ain't sure.

Q You are not sure? A No, sir.

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Q You don't recognize the writing? A No, sir, it don't look like my writing.

Q Did you write it, yes or no? A No, sir.

Q Do you recall being brought to the District Attorney's office by Mr. Lieutenant Valentine? A Yes, sir.

Q Do you remember seeing Mr. Fitzpatrick or Inspector Costigan there? A I don't know the gentleman personally.

Q Do you recall seeing some man there? A Yes, sir.

Q Do you recall being questioned about something, do you?
A Yes, sir.

Q Were you asked at that time whether or not you knew Mr. Austin? A I don't remember.

Q Would you say you were not asked that? A Well, I can't remember anything that went on in the District Attorney's office at that time.

Q Why can't you remember anything that went on at that time in the District Attorney's office? A I was all confused up; I don't remember.

Q So there is not anything that happened at the District Attorney's office at that time that you remember? A Not very well.

Q Do you remember being asked if you knew Mr. Austin? A No, sir, I do not.

Q Do you remember being asked if you had abrother named Green? A I think I remember something about Green.

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Q You think you remember something about Green? A Yes.

Q Do you remember what your answer was to that? A I think I told him he was a half brother if I ain't mistaken.

Q Do you remember being asked by Mr. Fitzpatrick: "Were you ever introduced to Mr. Austin through Mr. Green and do you remember answering No, sir". A That may be so.

Q Do you remember that? A That may be so. I don't remember.

Q What is your recollection as to that? A Very poor.

Q Why is it very poor? A I don't remember anything about Mr. Austin.

Q You don't remember anything about Mr. Austin at all?

A No, sir; not at that time.

BY MR. MOORE:

Q Were you attached to the 149th precinct on August 29th?

A No, sir.

Q Do you remember that? A No, sir.

Q Do you remember being asked if you went to the Borough Hall station on that day? A I don't remember.

Q How long have you known a police officer named Gerety?

A I do remember something about that.

Q Do you remember that? A Yes, sir.

Q Do you remember being asked if you knew an officer named Fallon? A No, sir, I don't remember.

Q You don't remember that? A (No answer.)

Q Do you remember being asked if you knew an officer named

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James Stryker? A No, sir, I don't remember.

Q Is there anything you can remember at all about the interview you had with Mr. Fitzpatrick? A Very little.

Q What do you remember? A About Green and I think Gerety and that is about the only things I remember.

Q You don't remember being in the office? A I did not know it was the District Attorney's office though.

Q What office did you think it was? A I didn't know what it was.

Q Who brought you yhere? A A couple of officers.

Q What building was it in? A It was in the Center street building.

Q The same building you are in now? A I ain't sure of that.

Q Do you remember mentioning Austin's name at any time you were talking to Mr. Fitzpatrick? A No, sir, I do not.

Q Do you remember mentioning Austin's name? A No, sir, I do not.

Q Did you tell Lieutenant Valentine that you never introduced Owens to Austin? A No, sir, I did not.

Q What did you tell him on that subject? A I told him that they should not blame me for speaking to Mr. Owens on that subject; that is all.

Q What subject did you talk about to Owens? A About what Mr. Owens claims I told him, not to mention my name.

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Q Did you tell that to Owens? A Yes, sir.

Q What was your object in telling him that? A About my position in the Police Department.

Q If you were not guilty that could not do you any harm?
A I was talking about my position.

Q You knew that, didn't you? A Yes, sir, I knew that.

Q Did you go to Mr. Owens and say don't go downtown and tell all that that you saw me talking to Austin? A No, sir, I didn't do no such thing.

Q What did you say? A I told him not to mention my name. That is all.

Q In what respect didn't you want your name mentioned?
A On account of my position, being in the precinct.

Q In what respect didn't you want your name mentioned. Tell me what you wanted Owens to cover up? A He didn't have anything to cover up only me being in the saloon with him drinking.

Q You weren't afraid of being seen with Austin? A No, sir, I was not afraid of being seen with Austin.

Q What was the reason of having Owens say he didn't see you with Austin? A Only not to have my name mentioned.

Q What were you afraid of? A My position in the Police Department. That is all -- a violation to go in a saloon being in company with an officer.

Q Is it a violation for you to be in company with an officer?
A Yes, sir, in a saloon.

Q In a saloon? A Yes, sir.

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Q You can go in alone all right? A Yes sir.

Q But to go in with an officer is a violation? A Yes, sir.

Q Was it any rule of the Police Department? A Yes, sir.

Q What rule? A Some rule in there to that effect.

Q Is it a rule in the Police Department that states an employee cannot go into a saloon with an officer? A Well, I think there is.

Q You think so? A Yes, sir.

Q You think there is? A Yes, sir.

Q Are you sure there is? A I ain't positively sure.

Q That is the only reason for not wanting Austin's name to be mixed up with yours? A Yes, sir.

Q And that is the reason you told Valentine? A I didn't tell Valentine -- I only spoke to Owens about it.

Q Did you tell Valentine you didn't know Austin? A Yes.

Q What was the reason for telling him that? A I didn't think I had a right to tell him.

Q Why didn't you tell him, what was the reason for not telling him? A I didn't think it was right to tell him.

Q Why didn't you think it was right? A I didn't think I had to tell him whether I knew him or not.

Q Why did you deny knowing Austin to Valentine? A Why did I deny knowing Austin to Valentine -- that is all there was to it; I did not care to tell him.

Q What was the reason for denying it? A No reason whatsoever.

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Q You were not afraid of Austin? A No, sir.

Q You weren't afraid to be seen in his company? A Only afraid of my position.

Q Did you know he was a fixer for the Civil Service?

A No, sir.

Q What was the reason for not admitting it? A Being he was in trouble.

Q You wouldn't get in trouble being seen with him? A No.

Q What were you afraid of telling? A That is the reason I didn't want to be implicated in it because of my position.

Q How many times did you go to the Tombs to see him?

A A couple of times, two or three times.

Q You went once on a message for Richard Butler? A Yes.

Q The second time what was the reason for going? A The reason for going was I heard that there was rumors around that he mentioned my name in the District Attorney's office.

Q That was the first time and he denied that? A Yes, sir.

Q That did not satisfy you -- A I went a second time and he denied it.

Q Why did you go the second time when he denied it the first time, did you hear rumors again about it? A Yes, sir.

Q A second rumor? A Yes, sir.

Q Heard rumors the third time? A Yes, sir.

Q Three different times you went there because of three different rumors you heard about mentioning your name? A Yes, sir.

Q That is the only reason you went there? A Yes, sir.

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Q Did you go to the Warden and ask for a special interview with Austin in the counsel room? A No, sir, I only asked could I visit Mr. Austin.

Q In the counsel room? A Yes, sir.

Q What was your idea in doing that? A That was my idea on account of the rumors I heard.

Q What rumors? A About him mentioning my name in the District Attorney's office.

Q Was it Austin asked you to ask the Warden to allow you to go in the counsel room with him? A Yes, sir, the first time I visited him.

Q Didn't Austin ask you to make that request of the Warden? A The first time.

Q To see him in the counsel room? A Yes, sir.

Q He had some papers with him at that time? A Not that I know of.

Q Didn't you have any of the papers? A No, sir.

Q Did you have this pink slip with you? A (No answer.)

Q Didn't he have it with him at that time? A No, sir.

Q So when you said at the last trial that the only reason you went to the Tombs was to deliver a message for Butler because you were on your way to Brooklyn -- A So I did deliver it.

Q That was only one reason why you went there?

Objected to. Objection sustained.

Q After you were let out on bail Mr. Lappin, was it then you

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went to see Mr. Owens in Brooklyn? A I ain't sure, what time it was, I know I vistied him once.

Q Three different times you went to see Austin in the Tombs you went there under the name of Butler? A Yes, sir.

Q The only time that the Warden knew you as Lappin was when you were brought in there by Lieutenant Valentine under arrest? A Yes, sir.

BY MR. DONOHUE:

Q Would you mind sitting down, Mr. Lappin, and writing what I ask you. Write Alexander Nichola. Appointed. Born in Belgium. Would like to see you on day off. Be home. Rating sargeant's papers. Joh Doe. Alexander Nichola. Would like to see you on day off. Now write Nicolay with a "y". Now write rating sargeant's papers. John Doe. (Witness writes as requested.

MR. DONOHUE: I offer these in evidence.

(Marked in evidence.)

Q Do you remember on the last trial Mr. Lappin being asked by me to write these specimens? A Yes, sir, I think I do.

Q Look them all over now? A Yes, sir.

Q They were written under the same conditions as this writing, these three exhibits? A Yes, sir.

(Offered in evidence.)

(The papers referred to are marked in evidence People's Exhibit)

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15 Q Do you remember being asked by Mr. Fitzpatrick to write 98
on a piece of yellow paper? A I don't remember.

Q Don't you remember writing People's Exhibit 6 in the
presence of Mr. Fitzpatrick, Inspector Costigan and Lieutenant
Valentine? A I don't remember this.

Q You have no recollection of it at all? A No, sir, not
this.

Q Is that you writing? A Looks something like my writing.

Q Is it yours? A I cannot be sure; I don't remember
writing this.

Q Does it look like your writing? A It looks like my
writing.

Q Is the writing above the signature yours? A I cannot be
sure.

Q Are you sure the signature is yours? A Well, it looks
something like it, a familiar signature, I don't remember writ-
ing this at all.

Q Is the signature yours Mr. Lappin? A I am not sure
of it, that is the truth, I can't tell you when I ain't sure.
BY MR. MOORE:

Q I think this should be straightened out. On the cross
examination the District Attorney asked the witness if he was not
shown Exhibit 6 and asked whether that was his writing. That
was an exhibit on the last trial and also on this trial.

MR. DONOHUE: Yes.

BY MR. MOORE:

Q Now, Mr. Lappin, at the time of the last trial were you

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suffering with deafness? A Yes, sir.

Q You were quite deaf, were you not? A Yes, sir, I was.

Q And under instruction from the Court you were treated in the hospital here? A Taken to the hospital, yes, sir.

Q What hospital were you treated at for that purpose?

A The Post Graduate Hospital.

Q About how long a time were you treated since the last trial? A Going there about two or three weeks.

Q Your hearing has been very much improved, has it?

A Yes, sir.

BY MR. DONOHUE:

Q Did you make any complaint to his Honor Judge Malone at that time about not being able to hear my questions? A Yes, sir, I did right here, I told him I was deaf and I was unable to hear.

Q Did you answer questions at the last trial without knowing what I said?

MR. MOORE: Objected to. It simply shows the possibility of misunderstanding.

BY MR. DONOHUE:

Q Did you understand the questions? A I didn't understand one question before.

Q Did you understand the questions of your own attorney?

A At times I did not.

Q You didn't make any mistake in answering his questions?

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A Yes, sir, I did.

Q You did? A Yes, sir.

Q What are the mistakes you made in answer to his questions? A I cannot answer that now.

Q But you did make mistakes in reference to mine? A Yes .

THE COURT: He said he did with reference to both.

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

(The witness states he lives in 1040 Herkimer street, Brooklyn.)

DIRECT EXAMINATION BY MR. MOORE:

Q Mr. Beck, where do you live? A 1041 Herkimer street, Brooklyn.

Q How old are you? A Forty-three.

Q What is your business? A Wine merchant.

Q With whom are you associated in business? A Myself and father.

Q Also in the real estate business? A Yes, sir.

Q You have been a member of Assembly for the State of New York? A Yes, sir.

Q From a district in Brooklyn? A Yes, sir, 1909 and 1910.

Q Do you know this defendant? A Yes, sir.

Q Do you know him intimately? A Yes, sir.

Q Well? A Yes, sir.

Q About how long have you known him? A About five years.

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Q Do you know others who know him? A I do. 101

Q Do you know what his general reputation for truth and honesty is? A I do know it to be very good, a good husband and a good father.

CROSS EXAMINATION BY MR. DONOHUE:

Q Does he live in your district? A Yes, sir, he does live about a block away.

THE DEFENSE RESTS.

R E B U T T A L.

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

(The witness states he lives at 469 Bay Ridge Avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Owens, on August 24th and some time before that were you a member of the Police Department of the City of New York?

A Yes, sir.

Q As a patrolman? A Yes, sir.

Q When did you leave the Department? A November 14th.

Q 1917? A Yes, sir.

Q Why did you leave the Department? A I went to work in a ship yard.

Q For the Government? A Yes, sir.

Q You resigned voluntarily? A Yes, sir.

Q Do you know the defendant William Lappin, Mr. Owens? A Yes.

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Q How long have you known him? A About a year I guess.

Q Did you meet him on August 24, 1917 in Brooklyn? A Yes.

Q Where? A Corner of Myrtle avenue and Adams street.

Q What place was that? A That was on the street I met him.

Q Was he alone or with somebody? A He was alone when I met him.

Q Where did you go and what did you do? A Went from there to Doherty's saloon about a half a block up Myrtle avenue.

Q Did he go in the saloon with you? A Yes, sir.

Q While in the saloon what happened -- did anybody come in?
A Yes, sir, as we stepped to the bar there was a man stepped up alongside of him and he said, he turned to me, he introduced him to me as Austin.

Q As Austin? A Yes, sir.

Q Is that the man, Mr. Owens (pointing to the witness Austin)? A Yes, sir, that is the man.

Q He introduced you to him under what name? A I think it was Austin.

Q What did he say at that time?

MR. MOORE: I object to that if the Court please upon the ground that it is incompetent, inadmissible and not in rebuttal.

BY MR. DONOHUE:

Q Now, Mr. Owens, did you have any conversation with

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Mr. Lappin with reference to your meeting Austin? A Yes, sir, he came on post one day, that was while he was out on bail in the Magistrate's Court.

Q What did he say to you?

Objected to. Objection sustained.

MR. DONOHUE: Does your Honor sustain it on the ground it is not in rebuttal?

THE COURT: I sustain it upon all grounds. It is incompetent.

Q Did you have any talk with the defendant William Lappin with reference to your meeting Austin? A I did.

Q When was that? A That was the day he met me on post.

Q What date was that? A I don't recollect the date.

Q About when was it?

MR. MOORE: I object to that as entirely immaterial.

THE COURT: Objection sustained.

Q Did Mr. Lappin ask you at that time whether or not you had made any statement with reference to your meeting Austin?

Objected to. Objection sustained.

Q Did Mr. Lappin tell you at that time whether or not he had been arrested?

MR. MOORE: I object to any conversation.

THE COURT: Objection sustained.

Q Do you say, Officer, you did meet him some time in September? A Yes, sir.

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Q About what date was that, what time in the month was it?

A It must have been around the 12th or 13th, around that part of the month.

Q Did you have a talk with him at that time?

MR. MOORE: He said it was after he was arrested and the case was pending in the Magistrate's Court. The date can be fixed positively.

THE COURT: The 29th.

Q You had a talk with him some time in September you say?

A Yes, sir.

Q Was that the early or latter part of September? A As near as I can figure the latter part of September.

Q Tell us what he said?

Objected to. Objection sustained.

CROSS EXAMINATION BY MR. MOORE:

Q I understood you to say upon this occasion you and the defendant went into a cafe together? A Yes, sir.

Q After you got in there Austin came in? A He was right in back of us; when we came in he followed right in back of us.

JULIUS BREMEL, a witness called on behalf of the People, being duly sworn, testified as follows:

EXAMINED BY MR. DONOHUE:

Q What is your business? A Deputy Warden City Prison, Tombs.

Q How long have you been Deputy Warden in the City Prison?

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A Four years and two months.

Q How long are you connected with the City Prison? A Twenty-two years and six months.

Q I ask you, Mr. Warden, if you recognize the defendant sitting here? A I do.

Q Did you ever see him in the City prison? A I did.

Q Do you recall the first time you saw him? A About September 8th.

Q When he came in -- do you know what name he gave?

MR. MOORE: I object to that, if the Court please, upon the ground that it is incompetent, inadmissible, collateral and counsel is bound by the answer of the witness.

THE COURT: I sustain the objection.

MR. DONOHUE: The People rest.

MR. MOORE: I renew the motion previously made.

THE COURT: I think the case is one for the jury.

It is for the jury to say whether a case has been made out.

I will have to deny your motion.

Exception.

Mr. Moore summed up the case on behalf of the defendant.

Mr. Donohue closed the case on behalf of the People.

THE COURT: Gentlemen of the Jury, do not discuss the case or form or express any opinion about it but keep your minds open and free and be in your places at two o'clock.

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AFTER RECESS (Two p. m.)

THE COURT'S CHARGE.

MALONE, J.

Gentlemen of the Jury, the form of your verdict will be either not guilty or guilty of an attempt to commit the crime of grand larceny in the second degree. In one or the other of these forms you will report back your verdict to me.

The defendant, William Lappin, is charged in the indictment with one William Austin with the commission of this crime on the 29th day of August of this year.

It is laid in the indictment that on that day when William Austin approached Alexander Nicolay and told him that if he would give to him the sum of \$500 he would be among the first one hundred names of police officers who had taken and successfully passed an examination for police sergeant on May 26, 1917; that if he did not give to him the said sum of money he would be below the first five hundred names of police officers who had taken and successfully passed such examination but that if he would give him the amount heretofore stated he would be among the first one hundred names of police officers who had taken and successfully passed the said examination; that by color and aid of representation, false and fraudulent in themselves, he attempted feloniously to secure from Alexander Nicolay the sum of two hundred dollars in lawful money of the United

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States; that he stated to him that he was in a position through means of the Civil Service Commission of the City to bring these matters about. It is laid in the indictment that these representations were false and fraudulent and that they were known to be false and fraudulent both to Austin and to the defendant William Lappin when they were made to Nicolay; that by means of these representations the crime against against both of these defendants was made out.

The defendant denies that he is guilty of that offense and you have been selected as a jury to properly decide the case for all time. It is not, as you will observe, charged that the consummated crime was committed but it is alleged that an attempt was made to commit the crime. The statute defines an attempt to commit a crime in this language:

"An act done with intent to commit a crime intending but failing to effect its commission is an attempt to commit a crime".

The theory of the prosecution is that this crime has been made out against the defendant; that a trap was laid by means of which the crime was not completed but that an attempt to commit the crime of grand larceny has been established. Grand larceny in the second degree is defined in this language by the Legislature.

"A person is guilty of grand larceny in the second degree

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who under circumstances not amounting to grand larceny in the first degree in any manner specified in this article steals or unlawfully obtains or appropriates property of the value of more than \$50 but not exceeding \$500 in any manner whatever."

Larceny itself is defined in this way by the lawmakers:

"A person who with the intent to deprive or defraud the true owner of his property or of the use and benefit thereof and to appropriate the same to the use of the taker or of any other person takes from the possession of the true owner by color or aid of fraudulent or false representations or pretenses any money, personal property, thing in action, evidence of debt or contract or article of value of any kind steals such property and is guilty of larceny".

The question that you are concerned with is whether the indictment has been established against William Lappin.

From the testimony of William Austin you must conclude that the representations made and laid in the indictment were made to Alexander Nicolay and a crime is made out as against him. He has confessed his guilt, he has pleaded guilty to the charge. In his testimony he involves the defendant and says that he was the inspiration of it and that he collaborated with him, and that he, the defendant, was a part of the crime, and, therefore, a principal in the crime. The law is that a person concerned in the commission of a

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crime, whether he directly commits the act constituting the offense or aids and abets in its commission and whether present or absent and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime is a principal."

That is a broad definition and a very useful one in order that the guilty hand may be taken wherever it can be found. If a person is brought soundly within the definition and the crime is established he may be considered a principal and found guilty of a principal.

There has been something said to you here about the character of the testimony of Austin. Under the law he stands as an accomplice and the statute is that a conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as tends to connect the defendant with the commission of the crime. That is the law of the State. I hope that you appreciate just what it means. You may take the testimony of an accomplice and believe that he tells the truth and another person was connected with him criminally but the law requires something more because of the rule which I have given to you. It is a rule wise in its enunciation and the reason must be plain to sensible intelligent men. It would be unsafe to accept the testimony of accomplices unless it was sustained. Great injustice might be brought about if a person was to be at

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the mercy of a criminal and a vagabond. It is not necessary that the corroborative evidence of itself should be sufficient to show the commission of the crime or connect the defendant with it. It is sufficient if it tends to connect the defendant with the commission of the crime; nor need the corroborative evidence be wholly inconsistent with the theory of the defendant's innocence. It becomes a matter of duty for the Court to pass upon whether there is any evidence of such a character and I have concluded that there has been some evidence which, if believed, tended to support and sustain the testimony of the accomplice. Whether it sustains it sufficiently or whether it is trustworthy is a matter for your determination and not for mine. The law puts upon you the responsibility for the determination of these matters. I desire, however, that you should get no impression from what I have said that I have any opinion as to this evidence or any of the evidence in the case. It is not for me to determine that. The weight of the evidence and the credit of the witnesses are matters that the law puts soundly upon the shoulders of the jury. I have nothing to do therefore, with any of the facts of the case because you are the exclusive controllers of the facts. My decision upon that subject, therefore, meant this only that I believed that there was sufficient evidence to be submitted to you for your determination and that is the extent

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of the matter. ///

Now it is contended that there is, apart from the testimony of the accomplice, evidence sufficient to support and sustain the charge which he makes. That is of the participation of Lappin criminally with him in the crime which he confessed he committed. That evidence has been taken within a short time in your presence. You have seen the witnesses, have heard them on cross examination. You have heard the testimony of Mr. Osborne depended upon by the People of the State as important testimony to sustain the testimony of Austin. Mr. Osborne you will recall was a witness who came here and testified as an expert upon handwriting. Several samples were submitted to him, samples that were conceded to be in the handwriting of the defendant. There were two writings that were disputed. He was also to give his opinion as an expert, speaking out from his experience, as to whether the same person wrote the disputed handwriting that had written the conceded. The disputed handwritings contained matter substantial and important and pressing against the person who wrote them. You heard Mr. Osborne's cross examination and you will give to his testimony its proper weight and no more. The testimony of experts generally and handwriting experts is of but slight importance. The weight is always for the jury and it is not considered of a very high order of proof. It is for the jury to say

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after examining these writings whether that testimony gives them any assistance in concluding whether the same person wrote all these samples of handwriting. Mr. Osborne says that he had difficulty himself and took some time in considering the matter before you. These are circumstances which you will not disregard but give proper weight to. You of course scrutinize with great care the testimony that comes to you from Austin because of the character of the witness established not by inference but by his own admissions -- a man who has confessed that he is guilty of this crime and has been found guilty and punished for another crime. It is testimony, however, that sometimes the public must rely upon and it sometimes enables the authorities to successfully prosecute criminal endeavors. You will, however, take the testimony and consider it fully and then say whether or not it has been supported by other evidence sufficient to sustain it. The People have the burden of the case and must prove the defendant guilty beyond a reasonable doubt. If there rests, after you consider all the evidence, a doubt in your mind upon the subject, you will give that uncertainty of mind to the defendant and acquit him. The State is required to prove a convincing case before it is entitled to a verdict of guilty. It must not be upon slight corroboration but upon heaping corroboration. The evidence must be satisfactory before the jury are entitled

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to go forward to the point of saying guilty. The defendant has gone upon the witness stand and has denied that he is guilty of this offense. He has told you about himself. That he was some twelve years working in a certain capacity in the Police Department in different houses doing the work of a cleaner. The witnesses here who have known him for some years have testified to his reputation. That evidence is always admissible and is to be considered fully by the jury in passing upon the question of the defendant's guilt. Good character evidence may be the only evidence that an honest man can bring to his assistance in time of peril and to refuse to admit it at such time would be to deny to the defendant the benefit of his virtue at the most critical time in his life.

I will recall to you the witnesses who have testified here. William Austin, Alexander Nicolay, Louis J. Valentine John R. Fitzpatrick, Joseph L. McCarthy, Albert S. Henry Moscovitz, John F. Skelly, John Skary William Lappin, John Baumgartner and two other gentlemen have testified to the defendant's good reputation. Take this case; sift it out fully and pass upon the question whether the defendant is guilty of the crime charged against him. Let no extraneous matter get into the equation. Confine yourselves to the matters that are legitimately before you and then say whether the defendant is guilty of an attempt to

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commit the crime of grand larceny in the second degree or
not guilty.

(No requests to charge.)

The jury retire at 2:32 p. m.

The jury return to Court at 3:35 p. m. and state
that they find the defendant not guilty.

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