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COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK  
PART II.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK : Before  
: - against - : HON. THOMAS C. O'SULLIVAN,  
GEORGE GLENN alias GEORGE GLEN. : Justice  
: :  
-----X

New York, Monday, April 17th, 1911.

THE DEFENDANT IS INDICTED FOR BURGLARY IN THE SECOND DEGREE,  
GRAND LARCENY IN THE FIRST DEGREE AND RECEIVING, as  
Second Offenses.

INDICTMENT FILED FEBRUARY 2nd, 1911.

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

T. CHANNON PRESS, Esq., Assistant District Attorney,  
For The People.

ALEXANDER SIDNEY ROSENTHAL, Esq.,  
For the Defendant.

-----  
(A Jury is duly impaneled and sworn.)

(On Motion of Mr. Rosenthal, all witnesses are  
excluded from the Court room.)

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THE PEOPLE'S CASE

(Mr. Press opens the case to the Jury on behalf of The People.)

FRANCES CLARK, 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 name ? A Frances Clark.

Q Where do you reside ? A 11 Park Avenue.

Q I want you to talk loud enough, Miss Clark, so the last Juror can hear you. Please talk up ? A Yes, sir.

Q On the 23rd of January, 1911, where did you reside ? A At 11 Park Avenue.

Q Is that your own residence, or are you employed there ? A I am employed there.

Q As what ? A As waitress.

Q As waitress ? A Yes, sir.

Q On the morning of the 23rd of January, 1911, how many others ~~were~~ occupied that house ? A Six in all.

Q And were they all on the premises that morning when you were awake ?

MR. ROSENTHAL: I object, unless this witness of her own knowledge knew they were on those premises at

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that time; and, if so, how did she know it?

Q Do you know of your own knowledge, Miss Clark, whether all those persons were on the premises that night?

A Yes, sir.

Q Had you been out on the evening of the twenty second of January, 1911? A No, sir.

Q Well, were you out on the night of the twenty third? A Yes, sir.

Q Oh, I see. And what time did you return to the house? A About half past ten.

Q Half past ten? A Yes, sir.

Q Was that on the twenty third, or twenty second? A Oh, that was on the twenty third. No, it was on the twenty second. It was on Sunday, the twenty second.

Q And you got in, you say, about half past ten? A Yes, sir.

Q Describe those premises? A At 11 Park Avenue?

Q Yes. A It is a brown stone front house.

Q A brown stone front? A Yes, sir.

Q How many stories high? A Four and basement.

Q Four and basement? A Yes, sir.

MR. ROSENTHAL: May I ask that Mr. Press not repeat every answer given by the witness all through the trial?

MR. PRESS: Mr. Press realizes, your Honor, that

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it is improper for him to repeat the questions after the witness, but, in order to assist the Jury, I will forbear, if the Jury can hear.

THE COURT: If you can, speak loud enough to have the Jury understand your answers.

THE WITNESS: Yes, sir; I will try.

Q Now, is there a grating in front of that house?

A Yes, sir.

Q Can you enter by that means into the basement?

A Yes, sir.

Q On the night in question, and when you arrived at ten thirty, was that grating open, or closed? A It was closed.

Q Were you the last one to enter the house that night?

MR. ROSENTHAL: I object to the question, unless the witness knows of her own knowledge.

Q Do you know? A I don't know.

Q You don't know. After you entered the house, did you retire? A Yes, sir.

Q What apartment did you enter? A I entered the room dining, and the parlors, and seen all the doors was locked, and locked the front door, and went up stairs.

Q When you entered the house, at ten thirty, and entered that dining room and parlor, did you see this clock (exhibiting the same to witness)? A Yes, sir.

Q What room was it in? A It was in the parlor, on

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the mantel piece.

Q After you retired, when were you awakened? A A little after four o'clock in the morning.

Q By whom? A By the ringing of the door bell.

Q What did you do? A I went right down and inquired who was ringing the bell.

Q Who did you see there? A The Officer said --- it was an officer.

MR. ROSENTHAL: I object to anything the Officer said.

THE COURT: Yes. Objection sustained.

Q Don't say what the Officer said. Who did you see when you opened the door? A The Officer and the night watchman.

Q Do you know what officer it was? A Yes, sir.

Q Do you know his name? A Yes, sir.

Q Who was it? A His name was Officer --- I can't think of it now.

MR. PRESS: May I assist her?

MR. ROSENTHAL: Yes.

Q Officer Schaffer? A Yes, sir.

Q Now, what did you do? Don't tell us what you said to the Officer, but what did you do? A I let the Officers in, and went through the house with them.

Q What is that? A I let the Officers in, and went through the house with them.

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Q Did you look at all at the grating? A Not that morning.

MR. ROSENTHAL: I object to anything this witness done not in the presence of this defendant, as not binding on him.

MR. PRESS: What she did, your Honor; not what she said.

THE COURT: Yes, proceed.

Q Now, what did the Officer and you do? A We went through the house.

Q What part of the house did you admit the Officers to?

A In the front door.

Q Is that up the steps? A Yes, sir.

Q And where did you go with him? A Downstairs,

Q Into the basement? A Yes, sir.

Q Now, what did you see when you went into the basement? A Saw the parlor clock.

Q Where was it? A It was outside, near the basement gate.

Q You refer to this clock here, (indicating clock)?

A Yes, sir.

MR. PRESS: I ask that this be marked for identification, only, if your Honor pleases.

MR. ROSENTHAL: I will agree to have it marked as an exhibit.

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THE COURT: For identification?

MR. PRESS: Counsel consents that it be marked in evidence.

THE COURT: All right; admit it.

(Clock is received in evidence and marked People's Exhibit Number 1 of this date.)

Q Where did you see it? A I saw it outside; between the storm door and the gate, the basement gate.

Q And did you then observe whether the railing in the front of the house, was open or closed.

MR. ROSENTHAL: I object to it, if your Honor please, as not binding on the defendant.

THE COURT: Yes, objection sustained.

Q Now, tell us just exactly then what was done after that?

MR. ROSENTHAL: If your honor please, I object to it for this reason: The last time this witness saw that gate was at half past ten o'clock Sunday evening. The next time she saw it was two o'clock in the morning.

MR. PRESS: No, you are wrong.

MR. ROSENTHAL: The Officer called her attention to it.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception; as not binding on the defendant, on those grounds.

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Q Will you tell us Miss Clark, what you did after that, after you found the clock?

MR. ROSENTHAL: I object to anything the witness done.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception.

A The Officer went down stairs, and the officer asked me if there was a clock here?

MR. ROSENTHAL: I object to any conversation between the witness and the Officer.

THE COURT: Objection sustained.

MR. PRESS: No conversations.

Q Just tell us what you did. After you found the clock between the storm door and the area way, what did the Officer and you do? A I took it right in.

Q You took the clock in? A Yes.

Q Where did you go after that with the Officer?

A Went down into the cellar.

Q Into the cellar? A Yes, sir.

Q And from the cellar where did you go? A Came up again, and went right out into the back yard.

Q What did the officers do there? A Well, they tried to close that fence.

MR. ROSENTHAL: Objected to.

THE COURT: Objection sustained.

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Q Did you see him do anything? A He went out into the yard.

Q How long did he remain in the yard?

MR. ROSENTHAL: Objected to, unless this witness knows.

A A little while.

Q Do you know? When did you next see the Officer, after he went into the yard? A Oh, it was about ten minutes after.

Q About ten minutes? A Yes, sir.

Q Now, was he in company with anyone, or was he alone, when you saw him? A Three others was there.

Q Three others? A Yes, sir.

Q Do you know who the three others were? A Officer Carberry was one, and Detective Finn was the other, and I don't remember the other one's name.

MR. ROSENTHAL: You can tell her.

Q Was it an officer? A Yes, sir; I think his name was Sullivan.

Q What? A Officer Sullivan, I think.

Q And Officer Sullivan. Now, when did you first see this defendant? A About five o'clock.

Q About five o'clock in the morning? A Yes, sir.

Q Now, what time was it that the officers were in the house? A A little after four.

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Q A little after four? A Yes, sir.

Q Now, when all those officers came in, did they stay in the house, or did they go into the yard? A Yes, sir, some of them went into the yard.

Q Some of them went into the yard? A Yes, sir.

Q And did any of them come in to the house with this defendant? A Yes, sir.

Q Who came in with him? A Schaffer and Carberry.

Q Officers Schaffer and Carberry? A And Detective Finn.

Q And what way did they come in to the house, through the back, or the front way? A They came in the front way.

Q Came in the front way? A Yes, sir.

Q Did you see the officers do anything to this defendant while he was there in your presence? A No, sir.

Q Did you see the officers search him while he was there? A Yes, sir.

Q Did you see the officers find anything in his possession? A Yes, sir.

Q What did you see them find on him? A Found a great many things.

Q Well, anything that you recognized? A He had the key of the clock.

Q Is that the key (handing key to witness)? A Yes, sir, that is the key.

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Q Are you sure about it? A Yes, sir.

Q And do you recollect what pocket it was taken from?

A It was the trousers pocket.

Q You don't know whether it was the right, or left, hand do you? A I think it was the right; I am not sure, though.

MR. ROSENTHAL: I move to strike out the answer, then, if your Honor please.

MR. PRESS: She says she saw it taken from a pocket.

MR. ROSENTHAL: It is merely a guess, or surmise.

THE COURT: Yes, she thinks it was the right pocket. I will let it stand.

MR. ROSENTHAL: Exception.

Q Which officer was it that took this key from the defendant? A Schaffer.

MR. PRESS: I offer this key in evidence, if your Honor please.

THE COURT: Admit it.

(Received in evidence and marked People's Exhibit Number 2 of this date)

Q Now, where was that key kept? A In the arch of the clock.

Q When you say the arch, where do you mean? Up here? (indicating on clock) A No, sir.

Q Here? (indicating on clock) A Yes, sir.

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Q Did you hear the defendant say anything while you were there? A Yes, sir.

Q What did he say, Miss Clark? A They asked him where he got those things?

Q And what did he say? A He didn't seem to know.

Q Did he offer any explanation at all? A No, sir.

Q Now, at the time the officers brought him in, were there any of the other girls or help in the house there? A Yes, sir.

Q Who was there? A A Mrs. Mouland.

Q Mrs. Mouland? A Yes, sir.

Q Had you ever seen this defendant before that?

A No, sir.

Q Have you got any colored help in your house? A No, sir.

Q And this house, Number 11 Park Avenue, is in the County of New York? A Yes, sir.

Q When you went in the house, at ten thirty, or rather when you came down stairs, did you find the rooms known as the dining room and the parlor in the same condition that they were in when you entered at ten thirty? A No, sir, no, sir.

MR. ROSENTHAL: I object to it, if your Honor please, on the ground there has not as yet been shown an exclusive opportunity in this case as to the condition of those rooms.

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THE COURT: Objection overruled.

MR. ROSENTHAL: Exception.

Q What condition was the parlor or dining room in at the time you were awakened and came down stairs?

MR. ROSENTHAL: I object to the question on the same grounds.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception.

A The drawers were all drawn out.

Q The drawers in what? A In the dining room and parlor.

Q Were all drawn out? A Yes, sir.

Q Were they in the same condition at ten thirty when you entered? A No, sir.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q You have spoken to other people about this case, haven't you, besides the District Attorney? A Yes, sir.

Q And you have discussed it with the Officers?

A No, sir.

Q Have you discussed this case with the other help in the house? A Yes sir.

Q When is the last time you spoke to the other help about this case, the last time? A Today.

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Q Did you go over the evidence with them today? A No, sir.

Q What conversation did you have with them in reference to this case today? A I didn't have any.

Q You just said today was the last time you spoke to them about the case, what did you say? A Just spoke about it coming down here, that is all.

Q And you say you retired at half past ten at night?

A About that time.

Q How many other persons had the opportunity of going in 11 Park Avenue on January 22nd, this year? A One other girl.

Q How many other help? A All the other help was in the house.

Q What? A They were all home.

Q In the house? A Yes, sir.

Q That is what I am asking you now. How many in all, all the persons that could have gone into 11 Park Avenue on January 22nd, this year, how many? A Five.

Q Besides the people that own the house? A Yes, sir.

Q And how big a family did they have? A One lady.

Q That is six. Did they all have keys to the premises? A No, sir.

Q How many persons had keys to the premises? A One lady.

Q Any of the help? A Not that I know of.

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Q Not that you know of? A No, sir.

Q Now, any person in those premises on January 22nd could have, without your knowledge, pulled out those drawers, couldn't they? A No, sir.

Q Why not? A Because they had no business there.

Q Is that the only reason that they could not have gone down the stairs and disturbed the furniture in the parlor?

A Well, they would not do a thing like that.

Q But, if they wanted to, they could have, couldn't they?

A Well, I suppose they could.

Q What? A I suppose they could, but I don't think they would.

Q And any of those five persons, the help in your house, could have taken that clock and put it into the dining room, if they wanted to, without your knowing it, couldn't they?

A I don't know.

Q Well, you know they could, don't you?

THE COURT: She says she does not know.

Q You know that they could don't you?

THE COURT: Her answer is that she does not know that they could.

Q And one of the help could have taken this clock and put it in between the storm door and the regular door if they wanted to, couldn't they? A I don't know.

Q Now, from half past ten until a little after four o'clock, you were not awakened by anybody, were you?

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A No, sir.

Q And the last time that you saw that door or that grating was at half past ten? A Yes, sir.

Q At half past ten on January twenty second, did you pay any particular notice to that bar or that grating? A Well, it was closed.

Q It looked to you as if it was closed, did it?

A Yes, sir.

Q That is all. You didn't lift it up, did you, to see if it was closed? A No, sir.

Q Now, you say there were things found in the possession of the defendant? A Yes, sir.

Q What things are they, or were they? A That key of that clock.

Q Yes. The other things belonged to him, didn't they?

A I don't know.

Q So far as you know, they did? A I don't know.  
if

MR. PRESS: She says she doesn't know, your Honor please, and I think that is a sufficient answer.

MR. ROSENTHAL: I will accept it as an sufficient answer.

Q How long have you been employed at Number 11 Park Avenue? A Since last October.

Q You say you never saw this defendant before that time?

A No, sir.

MR. ROSENTHAL: That is all.

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## REDIRECT EXAMINATION BY MR. PRESS:

Q Now, you were asked about this grating, Miss Clark, when you came down stairs, and while the officers were either outside or inside, did you observe the grating again?

A Yes, sir.

Q Was it in the same condition that it was when you came in, at ten thirty? A No, sir.

Q What was the difference in its condition? A It was open.

Q It was open? A Yes, sir.

Q Now, you were asked by Counsel as to what these various people in the house could do. Do you know if any of the persons in the house could have put this key in this man's pocket? A No, sir.

MR. PRESS: That is all.

## RECROSS EXAMINATION BY MR. ROSENTHAL:

Q You were very much excited, were you not, that night?

A Oh, not very.

Q Were you just as cool and calm as you are now?

A I don't know.

Q In other words, did you faint? A No, sir.

Q Now, why don't you know whether you were just as cool and calm at that time as you are now at this minute?

A I don't know.

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MR. PRESS: I think, if your Honor pleases, that the witness has answered the question.

THE COURT: Yes, she will answer that, if she can.

THE WITNESS: I don't know.

Q As a matter of fact, weren't you a little excited?

A I suppose I was, I don't know.

Q And weren't you more than a little excited by the thought of the house being open at that hour of the morning?

A Yes, sir.

Q Weren't you a little more than ordinarily excited when you found Officer -- any of the officers there? A No, sir.

MR. ROSENTHAL: That is all.

BY MR. PRESS:

Q You are not excited when you see an officer? A No.

MR. PRESS: That is all.

K A T E M O L A N D, 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 name? A Kate Moland.

Q Where do you live? A 11 Park Avenue.

Q On the twenty third of January, 1911, where were you employed? A At 11 Park Avenue.

Q You were employed there? A Employed there, yes, sir.

Q By whom? A By Miss Damond.

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Q She is the owner of the premises there? A Yes, sir.

Q At what hour did you retire on the night of the twenty second of January, 1911? A At ten o'clock.

Q Ten o'clock? A Yes, sir.

Q What time did you get up the next morning? A Between four and half past four, I woke up.

Q What? A I was awakened between four and half past.

Q You were awakened by what? A By the commotion in the house, by the burglary.

Q By the commotion in the house? A Yes, sir.

Q What did you do? A I came down stairs to the dining room.

Q Did you see any one there when you got there? A I saw the officers and the detective.

Q Did you see the last witness there? A I did, sir.

Q Did you see this defendant there? A Not when I first went down stairs.

Q How long after was it that you saw him there? A About fifteen minutes.

Q And did you see him searched? A I cannot say that I did.

Q Did you see the clock when you came down there?  
A I did.

Q Where was it when you saw it? A The officer had it in his hand.

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Q Which officer, do you remember? A I think it was Officer Schaffer.

Q Did you see the key of the clock at any time that morning? A No, sir.

Q You didn't lock up the house that night? A No, sir.

Q What condition was the dining room in when you came down stairs? A Well, the drawers had been pulled out in the side board.

Q That is really all you know about this case?

A That is all.

MR. PRESS: That is all.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q You know Miss Clark, don't you? A Yes, sir.

Q And how many persons are there in that house, or were there, at 11 Park Avenue, on January twenty second; that is, Sunday night? A There were five servants and Miss Damond.

Q That is, six persons. A Yes, sir.

Q May I ask you what time you arrived at 11 Park Avenue on that day? A I had not been out all day.

Q When did you for the last time on that date see the grating in that house? A I didn't see it. I am employed on the top of the house, consequently I didn't see it.

Q Now, when the officer was with the defendant, after he had been brought in your presence and the presence of Miss Clark, you said you did not see the officers search him; is

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that so? A That is so.

Q And Miss Clark was there at the time that you were there; isn't that so? A Yes.

Q And you paid particular attention to this colored man there, did you? A I can't say that I did, no.

Q Well, you watched him close, didn't you? A No, I was in the dark, so that I could not see him.

Q Were you in the same room? A Yes.

Q All the time, for about all the time? A Yes.

Q What, if anything, did you see them take from the person of the defendant? A I didn't see anything taken from him.

Q Did you see them search him? A No.

Q Did you hear them say anything about searching him?

A Yes.

Q And, after they said something about searching him, what did they do, or say, or show, if anything? A They said, "We have found the key of the clock".

Q Where did they say they had found it? A In his pocket.

Q Was that at the time of the search that you had seen made? A I didn't see the search. The officers were between me and the prisoner, so that I couldn't see it.

Q Did they take off his coat? A I don't think so.

Q Did they take off his overcoat? A I don't think so,

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they opened his coat, like that (illustrating), but they didn't take it off.

Q Did you, at the time, see them take anything out of his pocket? A No.

Q It is merely just what the officers <sup>had</sup> said, something about a key, isn't that all? A Yes.

Q Now, you will appreciate the fact that a person, any one of you five or six persons in that house, could have gone down stairs and disturbed the drawers in the parlor or any other part of the house, couldn't they, if they wanted to, after half past ten?

MR. PRESS: Your Honor, that is purely hypothetical.

MR. ROSENTHAL: No, it is a question of exclusive opportunity.

THE COURT: Objection sustained.

MR. PRESS: We are not going to show exclusive opportunity.

MR. ROSENTHAL: I don't think the learned District Attorney can show exclusive opportunity.

THE COURT: You may place the fact of the room, the halls, and house, you may place the fact before the Jury.

Q Couldn't you go to any part of those premises at any hour of the night if you wanted to, and pull out any of those drawers? A Yes, I could.

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Q And could the other persons in the house do so also?

MR. PRESS: Objected to.

THE COURT: Objection sustained.

MR. ROSENTHAL: Exception. If your Honor please, you will see that this case ---

THE COURT: I see it all. I have suggested to you the proper method, but you have not adopted it.

MR. ROSENTHAL: I didn't quite hear you.

THE COURT: You may set before the Jury the conditions existing up there with relation to the people who were in the house, and the room in which these drawers were said to have been opened, and from which the clock is said to have come. You may do that.

Q Now, on what floor was the clock setting on that date?

A On the parlor floor.

Q And how many floors above the parlor floor was your bedroom? A Three floors.

Q And Miss Clark was also three floors? A Yes, sir.

Q And you don't know of any person that set that clock in any other part of that building, do you, that night?

A No.

Q Had those premises ever been burglarized before?

A Not that I know of.

Q How long have you been in those premises? A Nearly thirty years.

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Q Thirty years. And did you ever see this defendant before. A No, not before he was --

Q Arrested. A Yes, sir.

MR. ROSENTHAL: That is all.

REDIRECT EXAMINATION BY MR. PRESS:

Q Do you know the name of the night watchman? A Richard Stofford.

MR. PRESS: Stofford. That is all.

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E D W A R D J. F I N N, 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 full name? A Edward J. Finn.

Q Where do you live? A 265th Street.

Q You are a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q And have been how long? A Six years.

Q Attached where? A Detective Bureau.

Q Do you remember the morning of the twenty third of January, 1911? A Yes, sir.

Q That morning, between three and five o'clock, were you at the Station House? A Yes, sir.

Q While you were at the Station House, did any one come

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into the Station House? A Yes, sir.

Q Who came in? A Some man, I believe he was a watchman.

Q Do you know him? A No, sir.

Q As a result of the information you got from him, what did you do? A I went around ----He says he thinks there is a burglar in Number 11 Park Avenue. I went around there. As I got there, I saw two officers.

Q What two officers did you see? A I think it was Schaffer and Carberry.

Q What did you do? A We tried to get in, and Officer Schaffer went up the front stairs, rang the bell, a woman came out by the name of Miss Clark. We went in there and looked around; went to the back parlor, looked around, went down stairs, and found a clock, this clock here (indicating) under the area way.

Q In the front or rear? A In the front the clock was found.

Q Now, after you found the clock, where did you go?

A We didn't find the clock.

Q Who found it? A Schaffer.

Q Did you see him find it? A Well, I was only about six feet away from him at the time; I seen it in his hand.

Q Where did you go after you found the clock? A We went around around, down in the basement, and looked around.

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We seen a door in the rear, the laundry, open.

Q The door of the house? A Yes, sir.

Q Of 11? A Yes, sir, of Number 11, was open. I saw footprints in the snow.

Q Yes. A And we looked around. It looked like he went over the fence so I said to Officer Schaffer ---

MR . ROSENTHAL: Objected to.

THE COURT: Objection sustained.

Q Did you follow the footsteps? A Yes, sir.

Q And where did they lead to? A They led into two yards in the rear of 104 East Thirty Fifth Street. I told Officer Schaffer ---

Q What did you do? Did you still continue following the footsteps? A Yes, sir.

Q And where did they lead ultimately to? A To 104 East Thirty Fifth Street.

Q Into 104, or into any building adjoining? A Well, into the yard, and into the rear building, I believe it was a store room, or something there.

Q Did you enter that building? A Yes, sir, after .

Q Who entered with you? A I didn't enter until after Officer Schaffer had the prisoner, the defendant.

Q Officer Schaffer went in first? A Yes, sir.

Q And then you went in afterwards? A Yes, sir, I met Officer Schaffer coming out.

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Q You met him coming out? A Yes, I met him at the front stoop, as I was going in.

Q And who had he with him? A The defendant.

Q Now, where did you take the defendant? A East Thirty Fifth Street, with Officer Schaffer.

Q Did you take him into Number 11 Park Avenue? A Yes we brought him around to Number 11 Park Avenue, and Officer Schaffer searched him.

Q Were you present when he was searched? A Yes, sir.

Q Did you see Officer Schaffer find anything? A Yes, sir, he found a key in his trousers pocket.

Q Which trousers pocket was that key in? A I ain't sure; I think it was the right hand trousers pocket.

Q Is that the key (showing you people's exhibit No. 2)?

A Yes, sir, that is the key.

Q Did the defendant explain how he became possessed of that key? A No, he did not.

Q Did this defendant make any statement to you?

A Well, he made it in front of us all, he said that he went in there with a colored woman.

Q In where? A In 111 --- In 104 East Thirty Fifth Street.

Q He had been there with a colored woman? A Yes, sir,

Q Did you go into 104 East Thirty Fifth Street? A Yes, sir.

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Q Did you find any colored woman there? A No, sir.

Q Did he make any further statement to you? A No, that is all. He says, he was in there with a colored woman. I made inquiries all around there. There is no colored --

MR. ROSENTHAL: Objected to.

Q When you came up to Number 11 Park Avenue, did you observe whether this grating was open, or closed, in front of the building? A Well, it was open. The top was taken off, like.

Q Were the two doors leading into the area way open?

A No, sir.

Q Was the door in the rear open? A Yes, sir.

Q Now, you mentioned having seen footprints in the snow at the rear of the house? A Yes, sir.

Q Did you look at those footprints? A Yes, sir.

Q Did they indicate to you whether the person was entering the house, or leaving it? A Leaving it.

Q Were there any footprints indicating that anyone entered? A No, sir.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. ROSENTHAL

Q You searched him in the station house, didn't you, officer? A Yes, after we did, officer Shaffer did.

Q Now, wasn't it in the station house that that key

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was found on his person? A No, sir.

Q Do I understand you to say that it was Schaffer who found the clock, and it was Schaeffer who went over the fence and came back with the defendant? A No, sir; Schaffer went out the front door. I told him to go around in one of the yards on Thirty-fifth Street, on account of him being in uniform, that he could get in. He goes in the rear. He hollers, "I got him".

Q He was the one that found the clock, wasn't he?

A Yes, sir.

Q Where did he find that clock? A Under the stoop, in the area way.

Q In the rear, or side, or front? A Front.

Q Where, if you know, between where? A The entrance going in from the iron gate into the entrance leading into the house, right under the stoop.

Q You didn't see him find it, did you? A Well, I was about six feet away. He says, "I got the clock".

Q What time was that? A About four o'clock, I guess, or a little after four.

Q At what time was the defendant arrested?

A He was brought to the station house about five o'clock.

Q How far away is the station house? A Two blocks.

Q And then you were looking for him one hour?

A No, we were not looking for him.

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Q You were looking for somebody for an hour, weren't you? A No, we were making inquiries in that hour, to find out was he in there with the colored woman.

Q Did you keep him with you for one hour?

A I won't say exactly one hour, no; about an hour, yes, we were making inquiries around.

Q Where did you make inquiries that took you one hour? A Well, all around, two or three houses there.

Q He told you specifically to go to 104 East Thirty-fifth Street; isn't that so? A He says that is the house he was found in; he didn't tell me to go there.

Q But isn't that the only place that you took him to?

A That is the only place, yes.

Q How does that hour figure in, then? A Well, the hour figures in that we were around in Mrs. Damong's house.

Q What number is that? A Number 11 Park Avenue.

Q That is the house where this here clock was?

A Yes, sir.

Q And how long long in that whole hour were you with officer Schaffer? A I was with him from -- all that time, from the time he put his hands -- as he was coming out, he says, "Come on around the corner, around to where he went in".

Q You went through the rear yard, didn't you, and over the fence? A Yes, sir, I went over one fence, and

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he hollered to me, "I got him"; so I came back again, and went out No. 11, and went around, and just as I was going into the house he was coming out.

Q Did you see a man named Frazier there? A I don't know anybody by the name of Frazier, no.

Q Did you see a little short man, about five foot three, at 104 East Thirty-fifth Street? A Yes, sir; I believe he is the butler.

Q Was he with Schaffer at the time that this man was arrested? A I believe he was.

Q And where did this man Frazier go, if anywhere, at that time, with Schaffer? A He stayed in the house.

Q What? A He stayed in the house.

Q Did you hear him say anything to Schaffer?

A No, I didn't, no.

Q How far away were you, or how many fences were there between 11 Park Avenue and 104 East Thirty-fifth Street?

A There is two wooden fences, and a brick fence, brick walls.

Q This defendant was found in a laundry of 104 East Thirty-fifth Street, wasn't he? A Yes, sir.

Q In the building? A In the building, yes, sir.

Q Not in the yard? A In the building; no, not in the yard.

Q Then, it was necessary for Schaeffer to come out of

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that building, where this defendant was arrested, to tell you, at least, tell you that he had the man? A No, he didn't tell me. I was in the yard, and he hollered to me, "I got him".

Q Doesn't that laundry take up the whole yard?

A No, sir, there is a space of about twenty feet from the building to the yard -- to the laundry.

Q Did you talk to Schaffer or Mrs. Clark about this case to-day? A No, sir.

Q To Schaffer? A No, sir.

MR. ROSENTHAL: That is all.

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J O H N T. C A R B U R R Y, 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 full name? A John T. Carburry.

Q Where do you live? A 130 West Ninetieth Street.

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

Q And are now? A Yes, sir.

Q On the 23rd of January, 1911, in the morning, were you at No. 11 Park Avenue? A I was, yes.

Q Did you see officer Schaffer and the last witness on the stand there? A Yes, sir.

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Q Did you see this defendant there? A Yes, sir.

Q By whom was he brought into 11 Park Avenue?

A By officer Schaffer.

Q Were you present when he was searched?

A In was, yes, sir.

Q Did you see People's Exhibit No. 2 found on him?

A Yes, sir.

Q What pocket was it taken from, do you recollect?

A The right hand pants pocket, trousers pocket.

Q Did you hear this defendant make any statement?

A I heard him say -- we asked him what he was doing there, and he said he was in bed with a colored girl.

Q Did you see where he was arrested? A Did I see when he was arrested?

Q Where he was arrested? A No, sir.

Q You did not go out into the yard?

A No, sir.

MR. PRESS: That is all.

CROSS EXAMINATION BY MR. ROSENTHAL

Q Where did this search take place, officer?

A In the dining room of 11 Park Avenue.

Q Did you find a knife on him also? A I didn't see no knife.

Q Did you see a knife taken from him? A No, sir.

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Q Did you see some more keys taken from him?

A No, sir.

Q What else was taken out of his pockets besides that key? A A couple of old pocket books and a ~~number~~ pair of gloves and a comb, a small comb, and, I believe, a pencil.

Q Was he searched at the station, house?

A I was not to the station house. He was searched in the dining room of 11 Park Avenue.

Q "We", meaning whom? A I. I didn't go to the station house.

Q Didn't Schaffer search him? A Schaffer searched him, in my presence, in the dining room on Park Avenue.

Q Did "I" search him, or did Schaffer search him?

A Schaffer searched him, and handed me the things he took out of his pocket, to hold. I was standing alongside of officer Schaffer.

Q Then, Schaffer searched him, and not you? A Not me, no.

Q What time did you first notice or hear anything in reference to this particular crime? A Well, I couldn't exactly state the time, but I heard the rapping of night sticks.

Q Were you on duty? A I was, yes, sir.

Q Can you tell the time you were supposed to be at

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that district there? A Well, I couldn't tell the exact time, not the exact time.

Q Didn't you come there after it was all over?

A No, sir, I did not.

Q Did you see Schaffer find anything? A The only thing I seen officer Schaffer is when he searched him, in the dining room, and I sat alongside of him, and he asked me to hold things he took off his person, and I did.

Q You didn't see him find the clock, did you?

A No, sir, I did not.

Q You didn't see him go into the rear of 11 Park Avenue? A No, sir, I did not.

Q Didn't see him go into 104 East Thirty-fifth Street?

A No, sir.

Q And you appeared there at the time Schaffer was about to search the defendant? A I was covering Schaffer, and he took the prisoner around in Thirty-fifth Street.

Q That is all you know about it? A That is all I know, sir.

Q He had his overcoat on? A Yes, sir.

Q Have his collar off? A Yes, sir.

Q No collar? A No, no, sir.

MR. ROSENTHAL: That is all.

RE DIRECT EXAMINATION BY MR. PRESS:

Q How many suits of clothes had he on?

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A I believe he had two suits.

MR. PRESS: That is all.

RE CROSS EXAMINATION BY MR. ROSENTHAL:

Q Did he have an overcoat? A Yes, sir.

Q You believe so? A Well, I aint positive whether he had two suits, or not.

MR. ROSENTHAL: I move to strike out the answer, if your Honor pleases.

MR. PRESS: Consented to.

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W I L L I A M S C H A E F E R, 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 full name? A William Schaefer.

Q Where do you live? A 1418 Katonah Avenue.

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 Seven years.

Q Do you remember the morning of the 23rd of January, 1911? A Yes, sir.

Q Do you recollect being at No. 11 Park Avenue on that morning? A Yes, sir.

Q At what hour did you go there? A About four A. M.

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Q Talk loud enough so the last juror can hear you?

A Four A. M., in the morning.

Q Who did you see there when you got to 11 Park Avenue?

A I saw the maid of No. 11 Park Avenue, and Miss --

Q Clark? A Yes, sir.

Q Any other officers? A Officers Finn and Carberry.

Q What did you do when you got there? A I rang the door bell of No. 11 Park Avenue.

Q You will have to talk louder, officer.

A I rang the door bell of No. 11 Park Avenue. The maid admitted me, and I searched the premises there for traces of burglars. I went down stairs, and in the area way we found the clock, officer Finn accompanying me.

Q When you say the areaway, is that in the front, or rear, of the house? A Front.

Q Who found the clock there? A I did, in company with officer Finn.

Q Go on. A Going to the rear, to the kitchen, I discovered the door leading to the yard open, and foot-prints in the snow leading to the yard of 102 East Thirty-fifth Street. Officer Finn told me to go around to Thirty-fifth--

Q Never mind what he told you. Officer Finn did what?

A Officer Finn stayed on the premises, and I went around

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to 104 East Thirty-fifth Street. I rang the door bell of Mr. Payton's home, and the butler admitted me. I told him --

Q Never mind what you told him. What did you do?

A I searched the premises down stairs, and, going into the yard, between the kitchen, there is a laundry situated about twenty feet from the yard, the outer yard, and an outer building.

Q It is an outer building? A Yes, sir. I went into the laundry. The butler was following me, holding a wax taper, for light. I entered the laundry, and searched around there, and didn't find anything. Right off from the laundry there is a small ante-room. I opened the door of that room, and as I did, I saw this defendant here crouch down behind a box. He jumped up, and I caught hold of him, and brought him out. I asked him what he had been doing there, and he said he had been to see a colored girl that was working in the house of Mr. Payton. I then took him down -- took him out, and as I come out Officer Finn joined me. I told Officer -- In the meantime, I <sup>called</sup> ~~went~~ over that I had him, and Officer Finn come running around. I took him out into 11 Park Avenue, and I searched him.

Q What did you find in his possession? A A clock key.

Q I show you Exhibit Number 2, and ask you is that what you found on him? A Yes, sir.

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Q What pocket did you find that in? A In the right hand trousers pocket.

Q Did he offer any explanation as to this key, People's Exhibit 2? A No, sir, he said he did not know where he got it from.

Q Did not know where he got it from? A Yes, sir.

Q Now, you say the butler of the house 102 and 104 was with you at the time you found the defendant? A The butler of 104, of Mr. Payton's home, yes, sir.

Q Did you, in the presence of this defendant, ask him whether there was any colored help in that house? A Yes, sir.

Q And what did he say? A He replied no, there was not.

Q You say you searched this defendant? A Yes, sir.

Q How many suits of clothes had he on? A Two suits.

Q And also an overcoat? A Yes, sir.

Q How did you find the front grating in front of premises 11 Park Avenue? A It had been forced open; the chain had been forced from the catch.

Q Had you ever seen this defendant before? A No, sir.

Q Now, when you discovered the door in the rear of the house open, you say you saw footprints in the snow.

A Yes, sir.

Q And where did those footprints proceed towards?

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A They led into the yard of 102 East Thirty Fifth Street.

Q Now, were those old footprints, or new footprints?

A They were new.

Q How was the footprint? Did it indicate coming from the house, or going from it? A Going from the house.

Q Later did you take this defendant to the Station House?

A Yes, sir.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Was it you, or Garberry, who found the key in the possession of the defendant? A I did.

Q What did you do with it after you found it? A I kept it in my possession then, till I got to the Station House.

Q And in the Station House did you search the defendant again. A We had searched him thoroughly in Number 11 Park Avenue.

Q Did you search him again? A Yes, sir.

Q If you searched him thoroughly in Number 11 Park Avenue, why did you search him again? A We searched him, looked into his socks, to see whether he had anything there concealed, in the Station House.

Q By looking into his socks, is that what you call a thorough search? A We had searched him thoroughly before, outside of that.

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Q Were you on that beat there? A Yes, sir.

Q You didn't see this defendant do anything, did you, that night, before that? A No, sir.

Q Where did you find the clock, Officer? A In the areaway of Number 11 Park Avenue.

Q Was it between the storm door and the regular door?

A Yes, sir, between the iron door -- iron grating door and storm door.

Q Did you take that clock to the Station House? A Yes, sir.

Q Right with you? A Yes, sir.

Q When did you find that key? Was it after you had found the clock, or before you had found the clock? A After I had found the clock, after I brought the defendant from 104 to 11 Park Avenue.

Q Had you been told by anybody that there was a key also to that clock? A No, sir.

Q How did you come to know that key was the property of this complainant? A Miss Damond's maid was present when we searched the defendant, and, as I drew the key from his pocket she exclaimed, "That is the key of our clock".

BY THE COURT:

Q Who said that? A Miss Damond's maid.

BY MR. ROSENTHAL:

Q Are you positive that he was searched in the house

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11 Park Avenue? A Yes, sir.

Q And re-searched at the Station House? A Yes, sir.

Q And the first time you searched him, you say you found that key? A Yes, sir.

Q Did you talk to the defendant at the time that you found this key in his possession? A I asked him where he got it from, and he said he didn't know.

MR. ROSENTHAL: That is all.

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WILLIAM HOCTOR, 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 name? A William Hector.

Q Where do you live? A 512 West 168th Street.

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 Nineteen years.

Q I ask you to look at the defendant. Have you seen him before? A Yes, sir.

Q When did you last see him? A February 18, 1908.

Q Where? A In the Criminal Court.

Q What part? A I am not sure whether it was part 2; I ain't got my book. It was Judge Mulqueen.

Q Before Judge Mulqueen? A Before Judge Mulqueen,

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yes, sir.

Q I ask you to look at this indictment --

MR. ROSENTHAL: I object to it.

MR. PRESS: For the purpose of refreshing his recollection, if your Honor pleases.

MR. ROSENTHAL: I object to the witness reading that paper which is now about to be presented by the District Attorney.

THE COURT: Objection overruled.

MR. ROSENTHAL: Exception.

(Mr. Press hands paper to witness)

THE COURT: With regard to what?

Q Had you arrested him? A Yes, sir.

Q And was it on a charge preferred by you that he was in the Criminal Court Building before Judge Mulqueen?

A Yes, sir.

Q What was he convicted of? A Receiving --

MR. ROSENTHAL: Objected to.

Q Were you present? A Yes, sir.

Q When he was convicted? A Yes, sir.

Q What was he convicted of? A Receiving stolen property, in his possession, and having it in his possession.

Q Do you know what he was sentenced to? A Four years and eight months in State's prison.

Q And this is the same man who was then at that time convicted? A Yes, sir.

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Q MR. ROSENTHAL: If your Honor please, I object to the testimony of this witness. I ask that the Jury be instructed to disregard it, for the reason that --

THE COURT: Oh, if that is all the testimony, and it is not connected, it will be stricken out.

MR. PRESS: Exactly, your Honor, it will be excluded.

MR. ROSENTHAL: Then do I understand, your Honor, that this is now being taken, presented before the Jury, under my objection and exception, unless it is proven or connected?

THE COURT: The Court has already stated its position with regard to that. Proceed.

MR. PRESS: That is all.

MR. ROSENTHAL: No questions.

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M I C H A E L D. G A L L A G H E R, 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 full name? A Michael D. Gallagher.

Q What is your business? Mr. Gallagher? A Deputy Clerk of General Sessions.

Q And what was your business on the 18th of February, 1908? A Same.

Q And for how long prior thereto?

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MR. ROSENTHAL: I will concede that he is a Clerk in this Court.

MR. PRESS: I don't want any concessions.

THE COURT: The District Attorney has a right to put in his evidence.

A Sixteen years altogether.

Q I hand you a paper, and I ask you what that is (handing paper to witness)? A This is an indictment against one George Glenn.

MR. ROSENTHAL: I object to it. The document speaks for itself.

THE COURT: Objection overruled .

MR. ROSENTHAL: Exception.

Q Whose writing is on the back of that? A It is my writing.

Q Do you recollect when that defendant was before the Court? A Yes, sir.

MR. PRESS: I offer this indictment in evidence, if your Honor pleases.

BY THE COURT:

Q What part of the Court, was it, Mr. Gallagher?

A Part Four, February 4th, 1908.

Q What Judge? A Unless I have the book, I can't answer that.

Q Refresh your memory. A This is Part Four, Gener-

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eral Sessions, Minute book September 15th (examining book).  
It was before the Honorable Joseph F. Mulqueen, he was the  
presiding Judge. I see here, on page 217, George Glenn ---

MR. ROSENTHAL: I object to the learned Clerk reading that.

THE COURT: Objection sustained. The last statement by the witness will be stricken out.

MR. ROSENTHAL: I ask that the Jury be instructed to disregard the statements.

THE COURT: Yes, that is, the last statement made by the witness.

MR. PRESS: I now offer this indictment in evidence.

THE COURT: Admit it.

MR. ROSENTHAL: I except to it, on the grounds--

THE COURT: Note the exception.

(Paper received in evidence and marked People's Exhibit  
Number 3, of this date)

BY MR. PRESS:

Q I hand you a book. What is that? A This is the  
Minute book of General Sessions, Part Four.

Q What year?

MR. ROSENTHAL: Objected to. This defendant is not  
bound by any thing this Clerk may have put in that book  
at that time.

THE COURT: proceed. Objection overruled.

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MR. ROSENTHAL: Exception.

A 1908.

Q And are the minutes in that book in your hand writing?

A Yes, sir.

Q And were they made at the time of that trial? A Yes, sir.

MR. ROSENTHAL: Objected to, unless he says he knows.

Q Do you know? A Yes, sir.

MR. ROSENTHAL: How does he know it was made at that time? I object to it on that ground.

THE COURT: Proceed.

Q Will you read the minutes with regard to the trial of this defendant, George Glenn.

MR. ROSENTHAL: I object at this time on the ground the defendant is being tried for a crime which is purported to have occurred at 11 Park Avenue in 1911, and I claim now that all this testimony is simply for the purpose of prejudice, and is against the defendant's rights, and I take an exception.

THE COURT: Proceed.

A On page 217, People versus George Glenn, on indictment for burglary in the second degree, grand larceny in the first degree, and receiving, filed January 29th, 1908, the defendant, by leave withdraws his plea of not guilty, and

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now pleads guilty of criminally receiving stolen property knowing the same to have been stolen.

Q What disposition was made of that case? A On Tuesday morning, February 18th, 1908, page 267--

MR. ROSENTHAL: Objected to.

THE COURT: He may refresh his memory from the record.

MR. ROSENTHAL: Unless is is for the purpose of refreshing his memory.

Q Go ahead. A Shall I merely tell the sentence ?

Q Yes. A The defendant was sentenced to State prison for four years and seven months --- not less than four years and seven months, nor more than four years and eight months.

MR. PRESS: I offer the minutes in evidence.

THE COURT: Admitted.

MR. ROSENTHAL: Objected to, on the grounds it has not as yet been identified as being connected with this particular defendant.

THE COURT: What about the previous witness, the Officer?

MR. ROSENTHAL: I am talking about this particular record.

THE COURT: If you want the Officer brought back, bring him back.

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MR. ROSENTHAL: I object to the record which has been written by this Clerk.

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WILLIAM H O C T O R, being recalled on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Do you recollect the day? A That he was sentenced?

Q Yes. A February 18th.

Q 1908? A 1908 .

Q And before what Judge? A Judge Mulqueen.

Q And what part? A I am pretty sure it was Part 4.

I would not say what part it was.

Q Of the Criminal Court? A Yes, sir.

Q General Sessions? A Yes, sir.

Q And is this the defendant? A That is the defendant.

BY THE COURT:

Q Were you present when the verdict was returned?

A (No answer)

BY MR. PRESS:

Q Were you present when he was sentenced? A (No answer)

BY THE COURT:

Q Were you present when the Jury came in? A He pleaded guilty.

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Q Were you present when he was sentenced? A Yes, sir.

Q Then this is the man whom you arrested and who was sentenced at that time before Judge Mulqueen, in Part Four, on the 18th day of January, 1908? A Yes, sir.

Q And sentenced to where, and for what? A Four years and eight months in Sing Sing prison, State prison.

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THE PEOPLE REST.  
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MR. ROSENTHAL: I ask your Honor to take from the consideration of the Jury the first count of the indictment, charging the defendant with burglary in the second degree as a second offense.

THE COURT: Motion denied.

MR. ROSENTHAL: Exception. I ask your Honor to take from the consideration of the Jury the second count in the indictment, charging the defendant with grand larceny in the first degree as a second offense.

THE COURT: Motion denied.

MR. ROSENTHAL: I ask your Honor to take from the consideration of the Jury the third count in the indictment, charging the defendant here with criminally receiving stolen property, as a second offense.

THE COURT: Yes, I think I will take that count from the Jury.

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MR. ROSENTHAL: Now, I ask your Honor to take from the consideration of the Jury the count in the indictment charging this defendant with burglary in the second degree and grand larceny in the first degree.

THE COURT: Motion denied.

MR. ROSENTHAL: Exception. I ask your Honor to dismiss the indictment as presented against the defendant.

THE COURT: Motion denied.

MR. ROSENTHAL: Exception.

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THE DEFENDANT'S CASE.  
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(Mr. Rosenthal opens the case to the Jury on behalf of the Defendant.)  
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GEORGE GLENN, the defendant herein, called as his  
a witness on own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q What is your name? A George Glenn.

Q Where do you live? A 328 West 37th Street.

Q What is your name? A George Glenn.

Q Now, George, you are arrested, charged with the crime of burglary, as a second offender, and grand larceny, as a second offender, as receiving stolen property, as a rec-

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and offender, which has been taken from the consideration of the Jury. Now, you are charged with having, on January 22nd, 1911, committed a burglary at 11 Park Avenue, in this county. I want you to tell the Jury the truth; I want you to tell it to them slowly and calmly; tell the entire story, and everything that you know about this case. A Yes, sir.

Q Now, take your time, talk to this eleventh man, he wants to hear you -- the twelfth man. A Well, Gentlemen of the Jury --

Q I can't hear you. Talk louder. A Gentlemen of the Jury, on the 22nd of February, 1911, I was in Sixth Avenue and Thirty Fourth Street, and I met a friend there, and so I went from there with her to 104 East Thirty Fifth Street. This was about twelve thirty. And so I was there up until the time I was arrested and taken out of there, and whensoever I was arrested there the Officer asked me what I was doing there, and I told him that I was with a woman there, and so he asked me who the woman were, and so I didn't give him any satisfaction about her, and he says to me, "Well, didn't you burglarize a house around here on Park Avenue?" I says, "No, sir, I don't know nothing about it"; and he taken me from there around to this number in Park Avenue there, and then I was taken to the Station House, and they searched off me there, and taken me my keys to my room door, two keys to my room door, and two keys to my trunk, and a key to my

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suit case, and a pocket book, and also two day books I had, and then they taken off all my clothes, and searched thoroughly, and there wasn't any key, or they didn't say anything to me about any key right at that time, but I was standing with my back to one of the officers. The clock was upon the counter, the desk, and this officer who had the clock, I doesn't know his name, exactly, I was a little excited at that time, and I doesn't know exactly which officer it were, but, anyway, he called my attention, and I looked around, and he had a key, and fitted it in the clock, and he says to me, "where did this key come from?" I says, "I don't know sir." He says, "Didn't you have this key on you?" I says, "No, sir". He says, "Well, you had it on you." I says, "I know nothing about that key." He says, "We will hold you on this key, anyway." And the other officer says, "Yes, that is the only way we will hold him; we will hold him on that key."

Q What time of the morning was that, George? A It was about five thirty.

Q Who was it that you had met, or this lady that you are talking about? A It was -- her name was Florence Fergus.

Q Did you know her? A Yes, sir, I have known her for about six or seven months.

Q Did you have an appointment with her for that night?

A Yes, sir.

Q Did you break open the grating at 11 Park Avenue?

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A No, sir, I did not.

Q Did you take that clock which is marked Exhibit 1, and put it in the arcaaway of 11 Park Avenue? A No, sir, I did not.

Q Did you at any time have in your possession that key which they call a French clock key? A No, sir.

Q Did you at any time that night go over a fence and into the premises 104 East Thirty Fifth Street? A No, sir, I did not.

Q Did you at any time ever go into the premises before your arrest, of 11 Park Avenue? A No, sir, I didn't know where that number were.

Q Did you remove any grating from 11 Park Avenue?

A No, sir.

Q Now, there was some question there about what things you were speaking of, that is, when they searched you.

A Yes, sir.

Q What did they find on you? A Well, they found on me a bunch of keys, my room key, the two keys to my room, and two keys to my trunk, a suit case key for my suit case, and I had a key -- they taken a key off me for the house where I work, 104 Twenty ninth Street, East.

Q Where do you live? A I live Three --- (witness examines photograph which he takes from his pocket.)--  
West  
Three twenty eight, Thirty Seventh Street.

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Q And what do you do for a living? A Waiter, a cook.

Q Where did you work last? A Where did I work last?

Q Yes. A Mrs. Smart's , 104 East Twenty ninth Street,  
I was waiter there.

Q You were convicted before for burglary? A I taken  
a plea, sir;

Q You pleaded guilty, rather? A Yes, sir.

Q And you were not tried? A No, sir.

Q No Jury? A No, sir.

Q You went up and took a plea of guilty, didn't you?

A Yes, sir; my lawyer made me take a plea.

Q And you were sent to State's prison? A Yes, sir.

Q How much punishment did you get there? A Not any.

Q How long did you serve there? A Two -Six. Two  
years and six months.

Q For the crime you had committed, you paid the penalty  
to the state , didn't you? A Yes, sir.

Q You said you did not do this unlawful act at 11 Park  
Avenue, did you? A No, sir, I did not.

Q Now, is there anything else you would like to say to  
the Jury? A Well, nothing in particular.

MR. ROSENTHAL: That is all, then.

CROSS EXAMINATION BY MR. PRESS:

Q What is your right name? A George Glenn.

Q Did you ever hear the name of William Collins Before?

A William Collins?

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Q Yes. A Well, I don't know exactly; perhaps I have.

Q Did you ever give the name of William Collins? A Not to my remembrance or recollection.

Q Do you think you could have forgotten if you had given it? A Well, I don't know. I have forgotten lots of things that I did.

Q Do you remember the name of Williams? Did you ever give the name of Williams? A Williams what?

Q George Williams? A George Williams?

Q Yes. A No, sir.

Q You never gave that name? A I don't remember it.

Q You don't remember it, but you would not swear that you didn't give that name, would you? A I can swear that I never went under that name.

Q Well, did you ever say that that was your name, to anyone? A I couldn't swear that; I don't know that.

Q You are in the habit of changing your name, are you?

A No, I am not.

MR. ROSENTHAL: Objected to, and I ask your Honor to instruct the Jury to disregard it. I think it is very unfair to a man who is charged with such a serious crime to make an insinuation of that kind.

MR. PRESS: The witness stated he does not remember whether he gave these names, and I am asking him whether he is in the habit of changing his name, for the purpose

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pose of ascertaining whether it is because of that that he cannot tell.

THE COURT I will sustain the objection.

Q You won't swear that you were not known at one time by the name of William Collins? A I was known at one time by that name? Yes, I swear that I was not.

Q Will you swear that you never gave that name to any one as your name? A Not to my recollection.

Q Now, when did you get out of State's prison. A Well, on the 19th of August, 1910.

Q On the 19th of August, 1910? A Yes, sir.

Q And when you got out, where did you go to work?

A Where did I go to work?

Q That is what I asked you. A I can't rightly think of the number.

Q For whom? A Mrs. Fisher.

Q Mrs. Fisher. How long did you work for her? A I worked there, I believe, about ten days, or near two weeks.

Q Where did you go after that? A I was arrested.

Q You had only worked for Mrs. Fisher. This arrest took place when? A I doesn't remember the exact date or month.

Q You don't recollect. Was it on the twenty third of January, 1911? A January?

Q Or the twenty second of January, 1911? A This ad-

1994

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dress ? Are you speaking of this address?

Q I am speaking of the time when you were arrested for the crime that you are standing trial now for. A It was on the twenty third; it was in the morning , about five thirty.

Q The twenty third of January, 1911? A Yes, sir.

Q Now, when did you get out of State prison?

I  
A Well, your Honor, just said I got out on the 19th of August, 1910.

Q Now, between the 19th of August and the 23rd of January, how many places did you work in? A Well, I worked for Mrs. Fisher; that is the first place I worked.

Q That was for two weeks? A Yes, sir.

Q Next? A Then I went down to the Anchor Line to work.

Q After you left Mrs. Fisher? A Yes, sir.

THE COURT: . He states he was arrested while he was working for Mrs. Fisher.

Q Oh, you were arrested? A Yes.

Q For what? A Well, I don't know.

Q And what happened to you in that case?

MR. ROSENTHAL: He is talking about this case.

MR. PRESS: No, he is not talking about this case at all, Mr. Rosenthal.

1911

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THE COURT: No, he is talking about another case.

Q You came out on the 19th of August?

A Yes, sir.

Q 1910? A Yes, sir.

Q And you worked for about two weeks for Mrs. Fisher?

A Yes, sir.

Q And then you were arrested? A Well, yes, sir.

Q What were you charged with on that occasion?

A It was larceny, I believe.

Q Petty larceny? A Yes, sir. You have it on the papers, haven't you?

Q Yes; and what happened to you on that occasion? What was done with you? A I was discharged.

Q You were discharged? A Yes, sir.

Q That was before Judge Crain, wasn't it?

A No, sir; I don't know who it was before.

Q Wasn't it grand larceny? A Well, it said petty.

Q Wasn't it in this building here? A No, sir, I think it were; I don't know.

Q After that, where did you go to work? A I went with the Anchor Line.

Q How long did you work at the Anchor Line?

A I worked there about two months.

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Q Two months? A Yes, sir.

Q That was September, October? A Yes, sir.

Q What happened in October? A October? Not anything happened. When I left there, I went to the Transport Line, Pier 68, West.

Q And how long did you work for them? A Up until after Christmas.

Q During the month of October, what happened to you?

A What happened to me?

Q Yes. A In October?

Q Yes. A I was working that month.

Q Weren't you in this building in the month of October, 1910? A In this building?

Q Yes. A I doesn't rightly remember.

Q You don't rightly remember? A No, sir.

Q Do you remember being arraigned before Judge Crain, in this building on October 7th, 1910? A Yes, sir.

Q For Grand larceny? A I guess it was grand larceny.

Q Your memory is not very good, is it?

A Well, not at all times. I haven't the best memory.

Q You say the officer, when he arrested you in this laundry, outside of 104 East Thirty-fifth Street, when he asked you about the woman, you said, "I didn't give him any satisfaction", why didn't you tell the officer the

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woman's name and all about her? A Well, that is the reason I didn't tell the officer who the woman was and her name, was simply on account of her reputation.

Q You were wanting to save her reputation?

A Yes, sir.

Q Now, when you and the woman came up to the premises 104 East Thirty-fifth Street, how did you enter that house?

A She had a key.

Q And she entered from the front? A Yes, sir.

Q And what took you into the laundry in the yard?

A Well, the door bell rang, your Honor, sir, and she didn't want to be caught there, so she says to me, "Go down down into the laundry until I find out who this is."

Q And what room were you occupying with her at 104 East Thirty-fifth Street? A I was not occupying a room.

Q What floor were you on? A I don't know what floor.

Q Couldn't you know whether you went up stairs or not, or is your memory too bad? A Yes, we went up stairs.

Q And did you go into her room? A Yes, sir.

Q And you stayed in her room from about twelve thirty--

A Well, that is when I met her, about twelve thirty.

Q About what time did you get to the house?

A About one.

Q About one o'clock? A Yes, sir.

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Q And you stayed there from one o'clock, in that house, until about four o'clock in the morning?

A Yes, sir, after four.

Q And then it was that the door bell rang?

A Yes, sir.

Q And then she told you to get up? A Yes, sir.

Q And why didn't you go out the front door?

A Because I didn't have on my clothes.

Q So, when you were making your retreat, you were carrying your clothes over your arm? A Yes, sir.

Q What kind of a night was it? A Well, it was a cold night.

Q And there was snow on the ground? A I don't know-- I know there was snow in the street.

Q And how were you dressed when you left the back-- went into the back yard? A Went into which back yard?

Q Of 104 East Thirty-fifth Street? A I wasn't dressed at all.

Q Hadn't you any clothes on? A I had on a night shirt.

Q A night shirt? A Yes, sir.

Q And what did you do with your other clothes?

A I left them there. I had my overcoat and my dress coat and vest and pants and shoes and hat.

Q How many suits of clothes did you have with you?

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A Only one.

Q Only one? A Yes, sir.

Q You didn't have two suits on? A No, sir.

Q And you went out in the yard in your night shirt?

A Yes, sir.

Q And you had your clothes under your arm?

A Had them on my arm.

Q On your arm? A Yes, sir.

Q And you went into the laundry? A Yes, sir.

Q And you there dressed? A Yes, sir, I there put on what I had.

Q And it was while you were dressing that the policeman disturbed you? A No, sir.

Q When did he disturb you? A Well, he disturbed me after I had got on my clothes.

Q After you had got on your clothes? A Yes, sir.

Q He came in? A Yes, sir.

Q Couldn't you have taken him back to the house and shown him the colored lady you were staying with? A I haven't said anything about any colored lady.

Q Was it a white lady? A I haven't said white or colored.

Q What was her color, may I ask? A ( No answer)

Q What was the color of the lady in 104 East Thirty Fifth Street with whom you staid from one until four?

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A She was supposed to be white.

Q She was supposed to be white? A Yes, sir.

Q But what is she? A I don't know.

Q Can't you see? A I can see.

Q Well, was she white or black? A Well, she was not black.

Q Well, was she yellow? A She was light.

Q She was light? A Yes, sir.

Q But she was colored? A Oh, yes, sir, she had a color.

Q And what was her position in that house, do you know?

A I do not.

Q What was her position at that time? A At that time, I don't know what her position was, she never told me what her position was.

Q Do you know how long she had been in that house working? A No, sir.

Q You say you have known her for about six months?

A Well, yes, sir.

Q You have met her several times, haven't you? A Yes, sir.

Q And you talked about where she was, didn't you, working? A No, sir.

Q Have you ever been to that house before with her?

A Yes, sir.

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Q How many times before? A Once or twice.

Q Did you ever see the butler in that house when you were there? A No, sir.

Q What hour of the morning were you in the habit of going in? A What hour in the morning?

Q Yes. A The times I did go there I went there with her.

Q You went there with her? A Yes, sir.

Q What do you say her name is? A George Glenn.

Q What is her name, I said? A Florence Fergus.

Q Fergus? A That is what she told me.

Q Do you know whether she is there now, or not? A No, sir, I do not.

Q Have you communicated with her since you were in the Tombs? A No, sir.

Q Now, I show you People's Exhibit Number 2, and I ask you did you ever see that before? (handing Exhibit to witness) A If I seen it before?

Q Yes. A I seen it in the Station House, or a key that looked something like that.

Q You didn't see it in Number 11 Park Avenue? A No, sir.

Q You didn't see it taken from your right hand trousers' pocket? A No, sir, it was not taken from my pocket at all.

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

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Q And you say there was only one suit of clothes on you on that morning? A On that morning one suit, and an overcoat.

Q How many people --- I ask you again how many people have you worked for since you left State's prison? A Well, I have worked for Mrs. Bisher and Mrs. Smart, and the Anchor Line and the Transport Line.

Q Are any of those people here today? A Not as I know of.

MR. PRESS: That is all.

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THE DEFENDANT RESTS.  
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(The Court then admonished the Jury, in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until tomorrow, Tuesday, April 18th, 1911, at 10:30 A. M.)  
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THE PEOPLE ETC. AGAINST GEROGE GLENN.

New York, Tuesday, April 18, 1911,

10:30 , A. M.

P r e s e n t ;

Hon. Thomas C. O'Sullivan, J., and a Jury.

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

(Same as before)

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THE DEFENDANT IS ARRAIGNED AT THE BAR.

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TRIAL CONTINUED.

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REBUTTAL TESTIMONY.

-----  
J A M E S F R A Z I E R, called as a witness on behalf  
of the People, in rebuttal, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your full name? A James Frazier.

Q Where do you reside? A 104 East Thirty Fifth  
Street.

Q Where did you reside on the twenty third of January,  
1911, Mr. Frazier? A 104 East Thirty Fifth Street.

Q Are you the owner of those premises? A No, sir.

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Q What was your employment on that date? A Butler.

A Mr. Paton, Mr. M. S. Paton.

Q And was Mr. Paton residing with his family at 104 East Thirty Fifth Street on the twenty third of January, 1911?

A He was.

Q On that date, name the occupants of that house?

A Mr. and Mrs. Paton, and Miss Sonheim. The family of Mr. and Mrs. Paton only.

Q Mr. and Mrs. Paton constituted the family? A Yes, sir

Q How many girls were employed in that house?

A Four.

Q Will you name them, please. A Johanna Samolson, Clara Malhquist, and Jennie Lindgrin.

Q Who else? A Mary Rainey.

Q Was she Swedish? A No, she was an Irish girl.

BY THE COURT:

Q All white women? A All white women, yes, sir.

BY MR. PRESS:

Q Three Swedes and one Irish girl? A Yes, sir.

Q And were you the only man employed in that house?

A Yes, sir.

Q And your occupation was that of butler? A Yes, sir.

Q How many stories high is this house? A Four.

Q Four? A Yes, sir.

Q The first floor is what? A The Dining Room and

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Front Library.

Q Is that a basement? A No; the basement is underneath.

Q The first floor is the Dining Room and what? A Library.

Q The next floor? A Parlor, and some sleeping rooms, Mr. and Mrs. Paton's rooms.

Q They sleep on that floor? A Yes, sir.

Q Any girls sleep on that floor? A No.

Q The next floor is the third floor? A Yes.

Q Who sleeps on that floor? A Mrs. Paton's maid, Clara Malhquist.

Q She is Mrs. Paton's maid? A A lady's maid, yes, sir.

Q On the next floor? A Three girls, and I on the last floor.

Q The maid sleeps on the third floor, on the same floor with Mr. and Mrs. Paton? A The floor above.

Q She has a room to herself, has she? A To herself.

Q Now, on the next floor, did the girls on that night have separate rooms? A Always have separate rooms.

Q All have separate rooms? A Always.

Q The three? A The three.

Q And you had a separate room? A All separate rooms.

Q At what hour did you retire? A About twelve o'clock.

Q And was the family in the house at that time?

A All in the house, and all in bed.

Q And the girls were all in? A All in, and all in bed.

Q Were you awakened that night by anyone? A By the maid.

Q What maid? A Clara Malhquist, the lady's maid.

Q How did she awaken you? A She, being down below, of course, heard the noise outside, and she came upstairs and called me, knocked at the door, and told me there was someone downstairs; she thought there was something wrong.

MR. ROSENTHAL: Objected to.

Q Never mind what she said: She knocked on your door?

A Yes, sir.

Q What did you do? A I got up and dressed.

Q About how long did it take you to dress? A About two or three minutes.

Q When you came out, was the maid at your door, or had she gone down stairs? A Just gone down stairs.

Q Did the maid say anything to you about having met a colored man on the stairs? A No, nothing whatever.

Q When you got up, where did you go? A Went down stairs. I searched the rooms down, but I saw nothing in the way down stairs, and I went down to the basement and let the policeman in.

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Q What policeman did you let in? A Officer Schaffer.

Q Now, when you let Officer Schaffer in, where did you go with him? A I went --, searched from the front of the house right through to the back.

Q When you got to the back of the house, did you find the back door open? A Oh, no, locked.

Q How was it locked? A It was locked with a key inside, the key turned and the outside gate was also locked.

Q There are two doors there? A Yes sir.

Q A door and a gate? A The door and an iron gate outside.

Q That is, at the rear of the house? A Yes, sir, both secured.

Q And they were both secured from the inside, or the outside, which? A Inside.

Q And, in order to let the policeman and yourself out, you had to undo those bolts? A I did.

Q It had been snowing that night? A Yes, sir.

Q When you opened the gate, did you observe, or remark footprints in the snow leading from the house?

MR. ROSENTHAL: Objected to as leading.

THE COURT: Yes,; objection sustained.

MR. ROSENTHAL: And I ask that the District Attorney confine himself to questions of "Yes", or "No", and direct questions.

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MR. PRESS: I don't know how "yes" or "No" could be an answer to anything but a direct question.

Q Did you observe any footprints in the snow when you opened the door?

MR. ROSENTHAL: Objected to.

THE COURT: Objection sustained. Tell what you observed, if anything.

Q What did you observe, if anything? A Well, I seen footprints, and followed them through to the back of the laundry, about twenty or thirty yards from the kitchen.

Q Did those footprints lead from the door of 104?

A From the fence.

Q From the fence? A I seen the marks before I went down from the Dining Room, on top of the fence.

Q And where did those footprints lead from? A From the next yard.

Q And then where, in your yard? A Right into the extension, right back, a little laundry place, or hallway, ante-room.

Q Did you go with Schaffer outside into the yard?

A I did, yes, sir.

Q Now, tell us what happened? A I held the light, while Schaffer was with me; I held the taper, and we both went in, and Officer Schaffer seen his head behind the box, and he sang out, "I got him", to somebody outside, I didn't

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✓ know who, but he caught hold of him; he struggled a little, while with him, and then he brought him thorough to the kitchen. That is the first time he entered that house, and, on coming through, on opening the basement gate, we found a citizen in private clothes, which I thought was, and afterwards found, was a detective.

Q When you came down the stairs, after having been awakened, did you see this defendant coming down the stairs with his clothes over his arm and in his night shirt?

A No.

Q How long have you been with Mr. Paton's family?

A Over ten years.

Q How long have these girls that you have named been with the family? A Some have been ten, others about five, some of them longer.

Q Is there anyone in the family of Mr. Paton who has ever stopped at that house by the name of Florence Fergus?

A Never.

Q Has there, during the time that you have been with that family, ever been employed by the family a colored girl?

A Never.

Q Or a mulatto girl? A Never. Mrs. Paton would not allow them inside the house, let alone employ them. She objects to the color line.

MR. PRESS: You may cross examine.

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CROSS EXAMINATION BY MR. ROSENTHAL:

Q Is there a laundry in the rear of 104 ? A There is.

Q And was this defendant in that laundry? A He was in a little hallway off the laundry.

Q And did you have to go through a door from the yard into that laundry? A We had two doors.

Q And this defendant was inside and behind the two doors in the laundry? A That is him; he was in there.

Q Had those doors or locks been broken, that you know of? A No, there was no locks required for that laundry. It is outside of the house altogether. He could not put if he a foot inside of that house, tried.

Q You only think so. A It is a separate place altogether. I am perfectly sure.

Q You only think? A No, I don't think, I am sure, perfectly sure.

Q You say it is impossible for a man to get into those premises? A Unless he had the tools, of course.

Q Then, it is possible, with the proper requirements.

A Well, it is possible.

Q Now, you say this defendant here was in that laundry; is that true? A In that little hall room off the laundry, yes.

Q Did he at any time tell you that he had appointment there with anybody? A I never seen the man before.

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Q When you did see him? A I seen him when the Officer caught him.

Q I say, when you did see him, did he say anything to you? A No, not a word.

Q Did you hear him say anything at all? A Not a word.

Q Did you see him searched? A No, I didn't see him searched. The Officer done that. I didn't need to bother about that.

Q Were you right there when the officer searched him?

A I was right there until the Officer got him out.

Q Did you see an officer search him in your presence, is what I want to know. A The officer searched him in my presence, certainly he did.

Q And that was in the rear of 104 East Thirty Fifth Street. A He brought him in the basement, and searched him there.

Q Did you see him find anything in the possession of the defendant? A I didn't see him find anything.

Q Did you see the Officer in 104 take that key out of the pocket of the defendant? A No, I did not see that. I was away back then.

Q How far do you mean, when you say way back? A He came into the kitchen, and I went away back, to see.

Q Which way? Into the yard? A Into the yard, right there, the laundry. I left him in charge of the man.

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Q When you go from the rear of those premises, how far is the laundry away from the rear of that building? A About twenty or thirty yards.

Q Twenty or thirty yards? A Yes, sir.

Q The length of this room? A No.

Q Don't you know the length of this room is not over fifteen yards? A From the kitchen?

MR. PRESS: I object: That is a question of opinion on the part of our friend.

THE WITNESS: Twenty or thirty feet.

THE COURT: Objection sustained.

Q Did you ever see a key like this before? A No.

Q Have they got any French clock in Mr. Paton's house?

A No.

Q You are positive that you never saw a key like that before? A Positive.

Q You did not see this taken from the possession of this defendant, did you? A No.

Q You did not see any weapons of any kind taken from him, did you? A No.

Q Any bars or instruments of any kind? A No, nothing.

Q Still, you did see him searched; is that right?

A I seen the man brought him to the kitchen. Then I went away back, to secure the other parts of the building and to search and see if there was anything further, while the

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officer had him in charge, in the other place, in the kitchen.

BY THE COURT:

Q You don't know what happened between him and the Officer? A No, sir.

BY MR. ROSENTHAL:

Q What kind of a wall is this, or fence, from the rear of 104 into the rear of Number 11 Park Avenue, or can you go from there into 11 Park Avenue? A Yes, sir.

Q Isn't there a fence in between there? A A fence where?

Eleven

Q From Park Avenue into 104, you have got to go over two fences, haven't you? A Yes, sir.

Q What kind of a fence is it in the rear of 104?

A It is a stone fence.

Q How high is that? A Oh, I should say about nine feet or so.

Q Nine feet? A Yes, sir; like a high wall. It is easily accessible from the other side, from 102, you can get up on a small house, and skip over; it is easy from the other side, but difficult from our side.

MR. ROSENTHAL: That is all.

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EDWARD J. FINN, being recalled on behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Officer, this defendant has stated that on the morning of his arrest, the twenty third of January, 1911, he had only one suit of clothes on. Is that true, or untrue?

A Untrue.

Q How many suits of clothes had he on? He had two vests, two pair of pants and two coats and an overcoat, and an undershirt.

MR. PRESS: That is all.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Do you say no collar? A No, sir.

Q What kind of a suit was the outer suit? A Either blue or black; I didn't take particular notice.

Q Did you notice that one was a waiter's suit?

A No, I did not; it was an ordinary suit.

Q Was it silk faced? A I don't know; I didn't pay much attention to it.

Q Was it a brown suit? A That I don't know. Either blue or black it was.

Q Where did you take particular notice of that suit?

A Well, I took particular notice at the Station House.

Q It was light in the Station House? A Yes.

Q Perfectly light? A Yes.

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Q Still, you did not notice the color of either one of those suits? A Well, I didn't pay any attention to it.

Q What kind of a hat did he have on? A He had a slouch hat, black Stetson hat.

Q How do you know it was a Stetson hat, and don't know the difference in the suits? A Well, I didn't pay any particular attention to the suits.

Q What particular attention did you pay to the hat, so as to know it was a Stetson hat? A Because I seen it on him.

Q Because he wore it, you call it a Stetson hat?

A Yes, that is what I call it, yes, a Stetson hat.

Q Is that hat on Juror Number three a Stetson hat?

A That is the sort of hat he had on.

Q Is that a Stetson hat? A That is what I would call a Stetson hat, yes.

Q Don't you know there are thousands of different manufacturers who make different kinds of slouch hats?

A Yes, there is.

THE COURT: Well, we have gone far enough on that.

MR. ROSENTHAL: That is all.

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TESTIMONY CLOSED.

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MR. ROSENTHAL: I renew my motion, if your Honor please, to take from the consideration of the Jury the charge of grand larceny in the second degree as a second offense.

THE COURT: Motion denied.

MR. ROSENTHAL: Exception. I ask your Honor to take from the consideration of the Jury the crime of burglary in the second degree as a second offense.

THE COURT: Motion denied.

MR. ROSENTHAL: Exception. I ask your Honor to take from the consideration of the Jury the crime charged in the indictment of grand larceny in the second degree as a second offense.

THE COURT: Motion denied.

MR. ROSENTHAL: Exception. I make a motion, at this time, if your Honor please, to take the case from the consideration of the Jury, for the reason that the code of criminal procedure and the Constitution of the United States and the State of New York allows a defendant a fair and impartial trial.

THE COURT: Don't you think he has had one? Don't you think he has had a fair and impartial trial?

MR. ROSENTHAL: Just merely to protect the defendant and for the purpose that when other testimony of a crime for which he paid the penalty to the State was injected

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into this trial, the defendant says, and his attorney says for him, that it was not a fair and impartial trial.

THE COURT: You know that question is not mooted at all. It is a well settled question, quite within the Constitution.

MR. ROSENTHAL: I call your Honor's attention to the case of the People against Nelson, 114 Appellate Division, that, until the defendant takes the stand, the People cannot prove any previous conviction.

THE COURT: That is true where there is a charge against the defendant, a single charge, whether it be a first or second offence, it does not make any difference, unless the offence is alleged in the indictment; then the matter is charged in the indictment, and is a subject of proof.

MR. ROSENTHAL: Exception.

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(Mr. Rosenthal sums up the case on behalf of the defendant to the Jury)  
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THE COURT: At this juncture, I shall have to take from the consideration of the Jury the charge of grand larceny in the first degree, because there has not been any value established in regard to the property, and it was not alleged to have been taken from the person, and

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in order to make it grand larceny in the first degree, the value of that should have been established to have been more than twenty five dollars, and , therefore, the matter left to your consideration, gentlemen, will be burglary in the second degree as a second offence.

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(Mr. Press sums up the case to the Jury on behalf of the People)

(Mr. Press, in the course of his remarks, says:  
Well, we have before us a very ingenuous man. )

MR. ROSENTHAL: I object to that.

THE COURT: What is it you object to.

MR. ROSENTHAL: I object to any statements in reference to what the District Attorney has just said.

MR. PRESS: I am not referring to Counsel.

THE COURT: Mr. Rosenthal has been assigned to the trial of this case, and the Court has nothing but compliments to offer him as to the manner in which has done his duty as a member of the Bar in this case. He has no hope of compensation from this defendant. The Court assigned Mr. Rosenthal to defend him, and the firm conviction of the Court is that Mr. Rosenthal has gone to his very last effort in the defence of his client.

MR. PRESS: And, if your Honor will pardon me, I will add to that that Mr. Rosenthal has invariably conduct-

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ed himself as he should.

THE COURT: But you referred to the gentleman at the other end of the table.

MR. PRESS: Well, I admit also that his client is a gentleman, up to date. The defendant at the bar has displayed wonderful ingenuity in this defense that he has submitted here. The gentleman at the bar, referring to the defendant, not to Mr. Rosenthal--

MR. ROSENTHAL: I object to that as sarcasm, if such it be, and I think the District Attorney should confine himself absolutely to the issues in this case.

THE COURT: I cannot place any limit on the expressions of courtesy which Mr. Press has to hand over to the defendant. Proceed.

MR. PRESS: I have said that the defendant has displayed wonderful ingenuity here in his defense. What is his defense? There can be no denial of the fact that he was found in the rear of the premises 104 East Thirty-fifth Street, and Mr. Rosenthal has not claimed that the police put him there.

The wisdom he has displayed in this case, he has displayed on two occasions before.

MR. ROSENTHAL: I object to that statement.

MR. PRESS: He stated it on the witness stand.

MR. ROSENTHAL: The wisdom he has displayed in

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this case he has displayed on two previous occasions;  
I object to that statement.

MR. PRESS: When he testified that he was  
discharged on two separate occasions.

MR. ROSENTHAL, I object to that statement  
as unfair and prejudicial.

THE COURT: The jury will remember the testi-  
mony. They are the sole judges of the testimony in  
this case; and whether or not there was such an ad-  
mission made of an arrest, it is not important, because  
an innocent man may be arrested; and, as I recall, the  
statement made on the stand, the statement concerning  
the arrest was followed by the statement that he was  
discharged; and whatever emphasizes the District Attorney  
cares to place upon that, he may do it, but I charge  
you that an innocent man may be arrested, and that you  
have nothing to consider here but the charges in the  
indictment.

(Mr. Press continues his summation to the Jury)

MR. ROSENTHAL: I object to the District Attorney's  
statement that the owner of that house had an absolute  
prejudice against colored help. No such statement  
was made here.

MR. PRESS: That testimony was given on the  
witness stand.

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THE COURT: I understand that is one of the facts before the jury, and you did not object to it at the time the witness made that statement in the hearing of the jury.

MR. ROSENTHAL: He is only a fellow servant in the employ of that house.

MR. PRESS: And he stated it, and it was not objected to, your Honor, and it is in evidence.

THE COURT: Yes.

MR. ROSENTHAL: Exception.

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