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

-----X
THE PEOPLE, :
vs. :
MORRIS KRAMER, indicted with :
SAMUEL ROSEN. :
-----X

Indictment filed May 13th, 1910.

Indicted for Burglary in the First Degree.

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

For the People:

ASST. DISTRICT ATTORNEY WASSERVOGEL.

For the Defendant:

MR. GONTERMAN.

Tried before HON. JAMES T. MALONE, Judge, and
a Jury, on the 20th day of May, 1910.

A jury duly impaneled and sworn.

Thomas W. Osborne,
Official Stenographer.

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MAX SALAT, called as a witness in behalf of the People, duly sworn and examined, testified through the Official Interpreter, Mr. Rosenthal, as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 24 Attorney street.

Q Do you live there with your family? A Yes.

Q What floor do you occupy? A Second floor.

Q You speak German, so the interpreter will translate --

24 Attorney street is in the county of New York? A Yes.

Q What time did your family retire on the night of the 29th of April? A After twelve.

Q Did you lock up yourself? A Yes.

Q Were all the windows locked at that time?

Objected to as leading.

Q Did you lock the windows? A I closed them, but did not lock them.

Q They were closed? A Yes.

Q Tell us what if anything happened at about three o'clock that morning? A I am sleeping in the last bed room and I heard my daughters who came from Brooklyn started to cry out "A thief is in the house." I went out and I did not see anybody, and in that time Nathan Gerson said, "Here he is," and I with him ran into the toilet and he was locked in there. Then Gerson pushed him in there and locked the door, and when I came there he opened the door and Nathan gerson said "Here he

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is."

MR. GONTERMAN: I object to what Gerson said.

MR. WASSERVOGEL: This is all part of the res gestae.

BY THE COURT:

Q Was it said in the presence of the defendant?

MR. GONTERMAN: Certainly not.

MR. WASSERVOGEL: The defendant is to be connected with this crime by this testimony.

MR. GONTERMAN: It is hearsay, pure and simple.

THE COURT: You may tell us what happened about three o'clock that morning.

A I heard people holler "A thief, a thief in the house." My daughters did cry out.

BY THE COURT:

Q You said that -- now come to something else? A I asked "Where is the thief?" And Nathan Gerson pointed to the toilet, and said "Here he is."

MR. GONTERMAN: I object to that.

THE COURT: That has been already testified to. What is the next thing?

THE WITNESS: I told the man to hold the door and not let him out until I would go and dress myself, because I was in my night clothes. When I passed through the dining-room I saw him going through a window and jump

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down to the yard, but not this one.

MR. GONTERMAN: I object as indefinite.

THE COURT: He saw somebody --he saw some person.

BY MR. WASSERVOGEL:

Q Did you see the person who jumped out of this window?

A Yes.

Q Could you recognize him now? A Yes, sir.

MR. WASSERVOGEL: I have sent for the other defendant.

BY MR. WASSERVOGEL:

Q Did you see this defendant there yourself? A This man I saw how the police led him down from upstairs, where he was I don't know.

Q Did you have any property in your apartments that night?

A Yes, sir, nothing was stolen.

Q Did you have any jewelry? A Yes.

Q Describe it? A I had very little. My daughter has.

Q You know what your daughter's jewelry is? A Earrings, diamond earrings and diamond rings.

Q Did you have any cash in the house that night? A Yes, sir.

Q How much? A About three hundred dollars. The money was not mine. It belongs to the landlord. I am only the janitor.

Q This was money you collected for the landlord? A Yes.

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Q After you saw this man jump out of the bath-room window, did you find your doors open or closed? A Closed.

Q How about the rear windows, were they open or closed?
A This I cannot say. I did not see.

Q You did not take notice?

(No answer).

CROSS-EXAMINATION BY MR. GONTERMAN:

Q You did not see this defendant in your house that night, did you? A No.

Q Did you see anybody in your house that night? A Yes, sir.

Q Where did you see this person? A In the toilet I saw him.

Q And did you see him anywhere else? A I saw him how he jumped down and then I saw him afterwards in the hall, how the policeman took him in there.

Q Were you the last person to bed that night? A No, my wife was the last one.

Q And when you went to bed the windows were open?

MR. WASSERVOGEL: He did not say that.

THE WITNESS: No, closed, not locked, but closed.

Q Where did you see this defendant? A This defendant I saw as the police took him downstairs.

Q Downstairs where? A From upstairs downstairs.

Q What house? A In the hall.

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Q Was it in the hall of your house? A It was a public hall for everybody.

Q It was the hall of another house, was it not? A No, of the same house.

Q Wasn't it a house on Grand street? A No, in Attorney street. The hall -- it is a corner house -- the hall is in Attorney street -- it is a corner building, Grand and Attorney.

J E N N I E S A L A T, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

BY MR. WASSERVOGEL:

Q Where do you live? A 24 Attorney street.

Q You are the daughter of the last witness? A Yes, sir.

Q And what time did you retire that night, the 29th day of April? A It must have been about eleven o'clock.

Q What time was it? A Eleven o'clock.

Q Do you know what the condition of the windows were in your apartment at that time? A The window in the dining room was shut.

Q About three o'clock in the morning, what if anything happened? A I saw a man going through the dining room and call for my cousin, Nathan Gerson, and when he got up he asked

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me what was the matter -- the man just ran through the kitchen door and I thought he was running out of the hall but he did not-- he got into the bath-room, and I did not know he got in there until my cousin got there, and he said he is here and he shut the door. In the meantime I went back and told my father he was in the bath-room. I went to the front extension and called for police -- a few police came. I went in and they were upstairs, and then they went downstairs to the cellar to see where he went to. He jumped down from the extension back roof to the yard. He ran right in the cellar and there is where the police discovered him.

Q Did you see this defendant there at that time? A I only saw him when they brought him down from the roof.

Q Did you see this defendant there at that time? A I only saw him when they brought him down from the roof.

Q That was what time? A Well, about a quarter of an hour later when the other one was found.

Q About half past three in the morning? A About half past three.

Q Do you know what the condition of the windows in the dining-room were at that time? A It was open at that time when I went back from the front extension, after I called for police.

Q Were those the windows which you say were closed at the time you retired? A yes, sir, it was closed when I went

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to bed.

Q Were you the last one to go to bed that night? A No, my father.

Q Could you recognize the other man if you saw him? A I could.

CROSS-EXAMINATION:

Q You say you retired about eleven o'clock? A About eleven o'clock. I just couldn't tell you the moment.

Q Whereabouts is your room? A My room is through the dining room.

Q Off the dining room? A Room right off the dining-room.

Q Did you have to go through the dining-room to get into your room? A Yes, sir.

Q Had your father gone to bed before you went to bed? A No, sir, I went to bed before my father.

Q Who else was up besides your father? A I couldn't tell you. They were all up, I suppose.

Q How many members are there of your family? A Two sisters -- a married sister came for that night -- three sisters, one brother and my cousin.

Q How many people were sleeping in your apartment that night? A Me and my married sister that came for that night.

Q And your father? A My father.

Q And your mother? A Yes.

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Q And who is Nathan Gerson, doesn't he sleep there? A I don't think he seen him in the dining room, but in the bath room.

Q I asked you where does Nathan Gerson sleep, was he sleeping in your apartment? A Yes.

Q What room was he occupying? A He slept in the dining-room.

Q Had he gone to bed when you went to bed? A No, I went to bed before that time. I couldn't tell you when he went to bed.

Q You don't know what the condition of the windows were at the time your father and the rest of them went to bed? A When my father went to bed -- I know I shut the window myself --

Q You don't know anything about the condition after eleven o'clock? A After eleven, no. I know when I went to bed the window was shut.

Q What windows are you talking about? A The dining-room window and my bed room window.

Q Did you shut them? A I shut them.

Q How long has this Nathan Gerson been sleeping in the dining-room? A He went to bed after me.

Q You don't know if he opened the windows to let air in or not? A I do not know.

Q You only know at the time you went to bed, the condition? A At the time I went to bed I shut the window.

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Q You did not notice the condition when you got up?

A What?

Q When did you next notice the dining room windows?

A When I saw that man through the dining room.

Q You saw him in the dining room? A Yes.

Q You did not see him enter the dining room? A No.

Q Did you examine the door of the apartment at all?

A When I went to sleep they were awake.

Q You don't know if the door was closed or open?

A No.

Q Where is the fire-escape? A On our floor there is no fire-escape. There is only the extension both sides. The fire-escape comes down as a stairway to that extension.

Q What floor of the building do you live on? A The second floor.

Q There is a public hall? A Yes.

Q How many apartments on that floor? A Four.

Q So when you went to bed there were how many other people to go to bed after you that night? A How many?

Q Yes? A All besides me -- I was the first one.

Q You did not hear anything from the time you went to bed until this noise about three o'clock? A No, I don't know what time they went to bed.

Q You never saw the defendant in your house? A I never

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saw this man, but that one there I saw (indicating).

Q I talk about this man, the defendant? A I saw him in the hall, come down from the roof, when two or three policemen took him down from the roof.

Q In the building? A In the building I live.

Q Came down the hall of your building? A Of our building.

Q He was accompanied by an officer at the time? A Yes, he was.

Q Where did the officer find this other man that you refer to? A Where?

Q Yes? A Down the cellar -- the other man.

Q Down in the cellar? A Down in the cellar.

Q You never saw this defendant in the cellar? A No, I hadn't seen him no place but coming down from the roof.

RE-DIRECT EXAMINATION:

Q Do you recognize the other man now in court? A Yes.

Q Point him out? A That man over there (indicating).

Q When you saw him in your apartment, did he carry a crutch? A No.

Q He was not lame then ? A No.

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NATHAN GERSON, called as a witness in behalf of the People, duly sworn and examined, testified through the official interpreter, Mr. Rosenthal, as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 24 Attorney street.

Q You live with the family of Max Salat? A Yes.

Q Try to talk English -- did you live with this family on the 29th day of July? A Yes.

Q Try to talk up, what time did you go to bed that night?

A It was about half past eleven.

Q In what room did you sleep? A The dining-room.

Q Did you open the windows of the dining-room? A No, sir.

Q What if anything happened about three o'clock? A I am sleeping in my bed and I saw my cousin, Jennie Salat, ask me "Nathan, somebody is walking in the house, but I do not see."

Q What if anything after that happened? A After, I am going looking -- I was in the kitchen and I saw the bath-room, and I opened the door of the bath-room and saw somebody was inside.

Q Do you recognize the person you saw in the bath-room, is he in this room now? A Yes, sir.

Q Is he in this room now? A That is the next room.

Q Do you recognize the person you saw in the bath room, is he here now, look around this room and see if you can see

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the man you saw in the bath room? A That man there (indicating the co-defendant).

Q Where was he? A He was in the bath-room.

Q What did you see him do? A I saw him standing there-- in the bath-room.

THE COURT: We better have the interpreter.

(The witness now testified through the official interpreter).

THE WITNESS: I was going to look where the man was and I opened the door of the bath-room and I saw the man there and I closed the door. Then I said "Here is the thief inside, and the people in the house cried out for police and I was holding the door. He was trying to open the door to get out, but I did not let him do that. I held the door. I was afraid he may have some weapon and would kill me if I let him out.

BY MR. WASSERVOGEL:

Q What was done, that is the question? A When the police came they asked where he was and I said "He is inside," and I opened the door and I saw him just jumping out of the window from the roof into the cellar.

Q At the time you saw this other man Rosen in this bath-room, did he carry a crutch? A No.

Q Did you ever see this defendant Kramer? A I saw him on the roof.

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Q This was about what time? A It was about quarter after three or half past three.

BY THE COURT:

Q What time did you go to bed that night? A Half past eleven.

Q Any windows in your room? A Yes, sir.

CROSS-EXAMINATION:

Q Don't you open your windows when you go to bed? A That night I did not.

Q Do you do it every other night? A I don't open the windows when I go to bed.

Q Do you really remember anything about it, whether you opened the windows or not? A I did not open the windows. Perhaps another one did.

MR. WASSERVOGEL: I ask to strike out the last part of the answer.

THE COURT: Strike it out.

BY MR. GONTERMAN:

Q Did any one come in your room after you went to bed? A No, nobody.

Q You did not notice the windows when you awakened? A I did not notice.

Q There were other people up when you went to bed, were there not? A I was awake with Mr. Salat and we both went to

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bed.

Q Did you go to bed at the same time Mr. Salat did?

A Yes.

Q Was there anybody else up then, had everybody gone to bed then? A Yes, sir, all had gone to bed.

Q Did you see anybody go in the bath-room or toilet?

A No, I did not see.

Q You just heard some one in the toilet, is that it?

A When Jennie Salat said a thief, then I was looking for the thief and I opened the door and I saw him in the bath-room.

Q Was not the door locked? A No.

Q Was it lighted, the bath-room? A No, not in the bath-room -- in the kitchen it was light.

Q Where is the kitchen with reference to the bath-room?

A From the kitchen one enters into the bath-room.

Q Did you see the face of the man who was in the bath-room? A The first time I did not see, but the second time when he wanted to push the door open, then I saw his face.

Q After the door opened -- I thought you said the door was open? A Yes, sir, but I had closed that door and could not open it.

Q Was he trying to open the door? A Yes.

Q Did he pull the door open? A No, I had locked the door.

Q Then he did not pull the door open? A He was pushing

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the door open.

Q The first time you saw the face of this man was down on the ground in the back?

THE INTERPRETER:.. I don't believe I can translate it.

BY MR. GONTERMAN:

Q Did you see the man jump? A Yes, I saw him just as he was jumping down.

Q What window did he jump from? A From the bath-room window.

Q Where were you at the time you saw him jump? A A policeman came and asked where the thief was, and I said "He is inside," and opened the door, and at that time I saw him jump out of the window.

Q The policeman opened the door? A Yes.

Q He was jumping out of the window then? A Yes.

Q His back was to you then? A Yes, his back.

Q You did not see his face then? A Before the policeman had come I had seen the face. When I saw him then I locked the door. I was afraid of him.

Q Where did he jump to? A Into the cellar. There is an extension there and from there he jumped into the cellar.

Q To the cellar? A Yes.

Q Inside of the house or outside of the house? A It was in the yard.

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Q Then he jumped into the yard, that is what you mean?

A Yes, there is the yard, the cellar is in the yard.

Q Could he walk after he jumped? A This I do not know. The policeman came and found him in the cellar.

Q Did he limp at that time? A Yes.

Q You saw this defendant with the police officer, did you? A Yes.

Q That was the first time you saw him, was it not?

A That was the first time.

Q That was coming down the stairs? A I was also on the roof with the policeman and he was under the water tank.

Q What building was that, where was the water tank? A It was on the next -- the building next adjoining ours.

Q It was not on the house where you live? A Both houses are even -- are alike, even, so you could go over to the next house.

Q But how far away is it from the roof of your house?

A Not far -- the two houses are together.

Q You don't know whether anybody came into your room after you went to bed or not, do you? A I do not know that.

Q You said some one might have opened the windows, what did you mean?

MR. WASSERVOGEL: I object to what some one might have done.

MR. GONTERMAN: He said that. I ask what he meant.

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Objection sustained. Exception.

Q Is it customary for any one to come in after you have gone to bed and open the windows? A No, I cannot say. I don't know.

Q Don't remember anything about that? A No.

Q You only saw one man in the house? A Yes, the man in the house and the other on the roof.

Q The roof of the adjoining house? A Yes, adjoining.

FREDERICK C. MUTTER, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 145 Hull street, Brooklyn.

Q You are a police officer of the City of New York, attached to the 13th Precinct? A Yes, sir.

Q Did you make the arrest in this case? A I arrested one of the prisoners, Rosen.

Q Where did you arrest him? A I arrested him in the cellar of the building, 24 Attorney street, crouched in the cellar, away back.

Q When was this? A That was about 3:25 a.m., April 29th.

Q What was his condition at that time, physical condition? A Well, when I got hold of him, subdued him and placed him un-

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der arrest I dragged him out. Looked around and saw the other officer right behind me, Officer Donovan. The two of us dragged him out of the cellar and took him into the hallway, and there had been great excitement and confusion in that hallway, and we had all we could do to save him from getting a good beating on the part of the tenants? and while I had hold of this prison a citizen told me and the other officer --

Objected to. Sustained.

Q I ask you what his physical condition was at that time? A It was very good except that when I had him upstairs he said, "Officer I hurt my foot."

MR. GONTERMAN: I object as not binding on this defendant and not in his presence.

MR. WASSERVOGEL: It will be connected with him.

Objection sustained.

BY MR. WASSERVOGEL:

Q Did you see this defendant there at all? A Kramer I did not see until he was brought down by Officer Donovan from the roof.

Q Did you have a talk with Kramer, this man? A After we placed him under arrest.

Q What talk did you have with him?

Objected to.

THE COURT: With the defendant?

MR. WASSERVOGEL: Yes, sir, with this defendant.

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Objection overruled. Exception.

A He frankly admitted he was guilty and that he was the lookout.

Q I want you to tell me the words he used, what you said to him and what he said to you? A We said, "What were you doing up there?" He said, "Well, I am hard up and he hired me for a dollar to watch --"

Q Who hired him, who did he refer to? A Rosen.

Q To do what? A So he could do his work, plundering flats.

Q What else did he say? A He said he was with him in Philadelphia where Rosen done a job.

Q What did he say about his presence on the roof at that time? A He said he tried to get away but the roof doors were all locked and he was caught like a rat in a trap on the next house -- not the house in which the attempted burglary or burglary occurred, but the next house.

Q The very next house? A Yes. He went as far as he could go and could not get any further, because the doors were locked from the inside.

BY THE COURT:

Q Is that what he said? A Yes, sir.

BY MR. WASSERVOGEL:

Q Did you have any other conversation with him on the way to the station house? A Not that I remember.

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Q Or police court? A He repeated that to the lieutenant in the station house that he was hired by the other man.

Q To assist him? A Yes, sir.

CROSS-EXAMINATION BY MR. GONTERMAN:

Q When you told the District Attorney what he said, did you use his exact words? A To the best of my belief, yes.

Q You mean to say that this man told you he was up there to assist this man in his business of plundering flats -- do you mean to say he used those words -- as matter of fact, haven't you finished it up a little bit? A He told me that he was hired by this man Rosen for a dollar, and watching for him, so that he could do his work.

Q That was all he said? A That was about all.

Q What did you mean by saying that he said he was up there to assist him up his work of plundering flats -- that was what you said a minute ago, is that true or not? A Yes, he did say that.

Q He did say that? A Yes.

Q Give the words he used? A He said --

Q Do not add anything to it, but just give us the exact words? A He was hired by Rosen for a dollar to do the watching. He said he was hard up and that was the reason he done it, and that Rosen told him that he was going to plunder the

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flat on the second floor.

Q Did he use the word plunder? A Well, rob, if you will have it that way.

Q I ask you for his word? A He said rob.

Q He said rob? A Yes.

Q What else? A I asked him what floor; he said the second floor. And I said "How do you know?" He said Rosen was there the day before to see this man Salat on the pretence of making inquiry --

Q Did he tell you that? A Yes.

Q Where did he tell you that? A On the way to the station house.

Q Anybody else present? A Officer Donovan heard the same thing.

Q Have you told us all he said? A All that I can remember, yes.

Q You did not tell the District Attorney this last statement? A What do you mean, last statement?

Q You did not tell the District Attorney about what he said about Rosen's going around there the day before -- did he say that? A Yes, sir, I told the District Attorney that.

Q He asked you to tell everything, did you forget it? A I did not forget it. I did not get a chance. I could relate the story from beginning to end. I would rather do it that way, and maybe bring out everything I do know. I am trying to

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answer the question as put to me .

Q Have you now told all he said, or is there anything else you want to add? A I think I have told all I know.

Q Told it all? A Yes.

Q You say this defendant told you where? A Immediately after he was brought down from the roof, he started to tell us this story, and on the way to the station house and in the station house.

Q You did not see him on the roof? A I did not. I was not on the roof myself. I had all I could do to keep that fellow.

Q Did he talk to you in English or some other language?

A This man?

Q Yes? A Spoke a broken English with foreign accent.

Q Do you speak Jewish? A Yes, I do -- not a Jew, but I have picked it up.

Q Did you speak Jewish to him at all?

BY THE COURT:

Q Did you or not? A No, I spoke English to him.

BY MR. GONTHERMAN:

Q Did you know he spoke Jewish? A I could tell by his accent, yes.

Q You did not try to speak to him in Jewish at all?

A No, I don't think so.

Q Did anybody else speak to him in Jewish? A Not that

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I know of.

Q You spoke English? A Yes, sir.

BY THE THIRD JUROR:

Q Was anybody with you at the time you had this conversation with the defendant Kramer, about being hired? A Officer Donovan was with me at the time we made the arrest, and another policeman with us, three of us.

D E N N I S J. D O N O V A N, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 432 East 148th.

Q You are connected with what precinct? A The 13th.

Q And did you make the arrest in this case? A Yes.

Q Where did you find the defendant? A Underneath a water tank on the roof of 430 Grand street, I believe the number is, next door to the roof 24 or 26 Attorney street, two adjoining houses.

Q Where was he at that particular moment when you found him? A Underneath the water-tank on these two iron bars about two inches wide that the tank sets on top of, and he was away inside and had to get a light or torch to see if there was anybody in there.

Q Did you have to drag him out? A Yes, had to drag

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him out by the foot.

Q Did you have a talk with him then? A Yes.

Q Did you ask him what he was doing? A Yes.

Q Tell us what you said and what he said? A I asked him what he was doing there and he said "Watching". The other defendant was in the cellar, and he denied all knowledge of this man.

BY THE COURT:

Q Who are you talking about?

CROSS-EXAMINATION BY MR. GONTERMAN:

Q Which one are you talking about now? A Kramer. When I searched the roof and found him under the water tank. I asked him was there anybody else in his company only the two, and he said "No."

Q Who did you ask that? A Kramer. I said "How did you get up here?" And he said "Up the fire-escape." I took him downstairs and showed him to all the tenants in the house going downstairs -- got his hat off and told them to look so they could see him, and no one seemed to identify him or know anything at all about him. On the way into the station house I asked him what did he know his partner or his pal. And he said "Yes," he knew him a few weeks in New York, and also had known him in Philadelphia." I said "Where did you see him last?" He said "The other night in a coffee saloon." A few more questions I asked him but he could not very well speak very good

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English, and quite a few people was interpreting to him and I could not get much out of him.

BY MR. GONTERMAN:

Q You have related all he said to you? A Well, partly -- I don't think he said any more touching on the subject.

Q You heard what he said? A Yes.

Q You did not hear a great many things the other officer testified to? A The other officer was speaking to him in German and I could not understand what they were saying.

Q He was speaking to him in German? A Yes, he was.

Q Did you hear him testify that he did not -- that he spoke to him in English? A He spoke English and German. What he could not understand in English.

Q You have testified all you heard him say, that was all he said in English? A That was all, might have said a few things that I don't recollect.

Q You did not hear him say anything about plundering? A He said in the court to me the following morning --

Q I talk about when you were going to the station house -- you did not hear anything about that? A About robbing the flat?

Q Yes, did you hear him use the word plundering? A No.

Q Did you hear him say anything about robbing the flat?

A Yes.

Q You did not say that? A He said Rosen hired him

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for a dollar to rob this flat or rob the janitor, that was the words he used, as he had a lot of money.

Q You did not say that a moment ago. A Well?

Q You forgot it? A I forgot it.

Q When the District Attorney was asking you? A That was about all.

Q Is there anything else you have forgotten? A No.

Q You don't want to add anything more to it? A No, I don't want to add any more to it.

Q You found him on the adjoining premises on the roof?

A Yes.

Q Did you talk to him much on the way to the station house? A Not much.

Q Did the other officer talk to him very much? A Yes.

Q Did you say he told you how he got on the roof?

A Through the fire-escape.

Q Through the fire-escape? A Yes, up the fire-escape.

Q Do you know where the fire-escape is? A Yes.

Q Where? A On the side of 24 Attorney street, on the Attorney street side leading to the extension.

Q There is a passageway that runs right to the roof on that building, 24 Attorney street? A What do you mean passageway -- hallway?

Q Did you go right up ^{to} the roof by the stairs? A Yes, sir, hallway.

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Q Nothing to prevent, there is a hall that leads to the roof? A Yes, from the hall.

Q In the next house the same way? A Yes, that door was locked.

Q You could get to the roofs by the hallway? A The door was locked to the roof.

Q You can get to the roofs of any of those buildings by going up the public hallway? A Yes.

Q Did he point out to you the fire-escape he came up? A Yes, Attorney street side, at 24 Attorney street.

Q That is the back? A Yes, the back of the house.

Q Did you take him down into the cellar, or where the other man was? A No. Took him in the main hallway, up the stoop. The other man was out on the street by that time.

Q The other man was out on the street when you got down? A Yes.

BY THE FIFTH JUROR:

Q Did you walk with Kramer to the station house? A Yes.

Q You did? A Yes.

BY THE FOURTH JUROR:

Q Did you put any questions to this defendant? A Yes.

Q Did he answer you? A Yes.

Q Did he seem to understand your questions? A Yes, sir, certainly he did.

Q Did you have to have any of the tenants help you put

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questions to him? A I not alone questions him, but the lieutenant in the station house questioned him.

Q I mean the tenants? A Yes.

Q Did they help you? A I asked if they knew this man, and they said "No."

Q I asked you if you had to have any of the tenants help to interpret your questions to this defendant? A No, sir.

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Q He seemed to understand your questions? A He understood.

Q And he answered you? A Yes.

BY THE NINTH JUROR:

Q In going up the stairway to get to the roof, how would you get ~~out~~ to that stairway? A It is a corner house. The entrance to the house is on Attorney street. It is a six story house. The stairway on the way up to the roof and on the side of the roof is a ladder that comes over down on the extension.

Q I mean if the man was in an adjoining room, how would he get out of the apartment to get to the stairs to go upstairs, not by the fire-escape? A From the extension, from the fire-escape.

Q There is a hallway there with stairs going to the roof? A Yes.

Q How would he get from that room, where would he have to go to get out into the hallway to go upstairs? A Had to go by the fire-escape and all the way to the roof.

Q Couldn't he get to those stairs from that apartment?
A No, except he go through the tenants room.

Q Did not that apartment open on that hallway at all?
A No. These windows all lead to an extension, two story extension right around the second floor.

Q He could not get out of that apartment and get into

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that hallway to go up to the roof, is that right? A No, sir.

Q He could not? A Not without going up the fire-escape.

Q The only way he could get to the roof was by the fire-escape? A Yes.

BY MR. GONTERMAN:

Q Couldn't he walk up the public hallway and go to the roof? A Yes.

Q You came down the public hallway? A Yes.

Q You took him down the public hallway of 24? A Yes.

Q You could have taken him down the public hallway of the adjoining rooms? A No, because the roof door of the adjoining rooms was locked.

Q You said that you could get to the roof of any of those buildings? A No, not if the door is locked. The door of 24 Attorney street was the only door open.

Q Did you examine to see if the door to the roof of the adjoining premises--if the door of the public hallway was open or closed? A Yes.

Q You were going to take him down there first? A No.

Q What did you examine it for? A I examined that before I searched under the water tank.

Q How did you get on the roof? A Some citizens said they saw a man on the fire-escape going to the roof.

Q How did you get upon the roof? A By the hallway.

Q Of what premises? A 24 Attorney street.

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Q When you found this defendant he was on the roof of the adjoining premises? A Yes, sir.

Q And there is a public hall from those adjoining premises to the street? A Yes, sir.

Q Did you examine that to see if it was locked? A I searched that roof before I searched underneath the water tank.

Q You had to walk back some distance to get--how far away is that, that water tank from the other stairway? A In my estimation about as far as I saw it that night, two or three feet--just a coping about 18 inches separates the two houses. The water tank is on two iron beams. I searched the whole roof, behind the chimneys and all over, and searched the door leading to Grand street and the door was locked, and looked underneath the water tank and pulled this man out.

Q You have told substantially all that you heard the defendant say about it? A Yes.

Q You were going along with him, you talked to him on the roof and you talked to him down there in the street, you walked along with him to the station house, didn't you? A Yes.

Q You were there in front of the Sergeant? A Yes.

Q You have substantially related all he said? A About all.

REDIRECT:

Q You found him on the roof? A Yes.

Q You did not see him on the fire-escape at all? A No,

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I did not see him on the fire-escape. That is how I came to get to the roof.

The Court admonishes the jury in accordance with section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

AFTER RECESS.

SAMUEL ROSEN, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 37 1/2 Allen street.

Q Where did you live on the 29th day of April this year?

A 29th of April of this year?

Q Where did you live then? A New York.

Q Where in New York? A The same house.

Q Where? A 37 1/2.

Q What street? A Allen street.

Q Do you know this defendant Kramer, do you know Kramer?

A Yes.

Q How long have you known him? A I couldn't tell you exactly.

Q Is it a year or more than a year? A No, not a year, about a month or so, or more than a month.

Q Did you see Kramer on the 29th of April of this year?

A No, I don't think I did.

Q Did you meet him anywhere?--Do you know what I am ask-

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ing you? A Yes.

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

Q Do you know what I mean by did you see him? A Yes, you mean if I saw him then. I did not see him then.

Q Did he come to your house that day? A The 29th of April?

Q Yes. A The day I got arrested?

Q Yes. A Certainly.

Q That is what I am talking about, that day did you see him, on that day? A Yes, I seen him.

Q What time did you first see him on that day? A I saw him about two o'clock.

Q In the afternoon? A In the afternoon.

Q Did you have any talk with him then? A I was talking with him and he asked me where I lived, and I told him I lived right at the corner of Hester street, 37 1/2 is right on the corner there, and he went up to my house.

Q Did he come up to your house that evening? A Yes.

Q What time did he come up to your house that evening?

A He came up to my house, it was about--it was about two o'clock and he said he had to take some money off somebody and he got up again about 8 o'clock in the evening.

Q How long did he stay there? A He was sleeping on the lounge until two o'clock.

Q Two o'clock in the morning? A Two o'clock in the

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morning.

Q Did you have any talk with him then at 2 o'clock in the morning? A No.

Q Did you say anything to him or he to you? A He said he is down and out and ain't got no money and he hocked his umbrella for 25 cents I remember, and he said, I want to try if I can see to make some money.

Q What else? A The same night I was a little intoxicated. I never drink, and it happened on a holiday, and I was sitting--

Q Louder? A I was laying down in my house, laying down, and he woke me up at 2 o'clock and he walked down.

Q Before you walked out of your house did he say anything to you? A Yes, certainly.

Q What did he say? A He was going to go up--he was going to see if he could make some money.

Q What did he say, & how was he going to make this money? A He said he will try to go up some place and see if we could find something.

Q Where did he say he was going to find something? A He said, We will try to go in any house.

Q For what purpose? A To see if he could make some money, to see if he could.

Q Take something? A Take something. I was a little intoxicated.

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Q Never mind that--I only ask for what he said--after he said that did you go out with him? A Certainly.

Q Where did you go? A On Grand street.

Q After you went into Grand street where did you go?

A I walked up into the house corner of Attorney street.

Q Was it 24 Attorney street? A I couldn't say exactly.

Q Was it in the house in which you were arrested? A Yes, sir.

Q Was the defendant Kramer with you? A Yes.

Q Did you enter into the main hall? A Yes, sir, right through the hall.

Q When you got into the hall where did you go? A I walked up right on the roof.

Q Where was he? A He was right after me.

Q On the roof? A On the roof.

Q After you were both on the roof what did you do and what did he do? A I walked down.

Q Walked down where? A He told me to walk down, there is a stepladder that goes down on the fire-escape.

Q From the roof? A Yes.

Q To the first fire-escape? A Yes; so I walked down.

Q Where was he? A He walked down right after me.

Q How many fire-escapes did you go down? A I think about three, because it was on the third--

Q Was he after you all the time? A Yes.

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Q When you finally stopped, what did you and what did he do? A The window was locked but it was not locked inside.

Q You mean that the window was closed but not locked? A Closed but not locked.

Q What did you do? A I pulled the window down.

Q After you pulled the window down what did you do? A I went inside.

Q Where was he at the time you went in? A He was right after me.

Q Go on? A As soon as I turned around, before I turned around in the house, some lady got up and said, Who is it, and I did not have my right mind then I suppose, so I thought I am on the first floor and I jumped down.

Q You ran into the bathroom? A No, I did not.

Q What room were you in when you jumped out of the window? A I was in the front room, but after I got out from the front room right through a window and then jumped down.

Q Which room was that window in from which you jumped? A Couldn't tell you exactly.

Q Where was he all this time? A When he heard the woman--you could see I suppose through the window if the woman was up or not, and I suppose if he saw, he went right back.

MR. GONTERMAN: I object to what he supposed.

THE COURT: Strike it out.

BY MR. WASSERVOGEL:

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Q What did he do, he did not go into the room right after you? A No, he did not come right after me, because she got up right away, before I turned around, and then he went right up on the roof.

Q How long were you in the room before this woman's voice was heard by you, about a minute? A About a second, because, you know, before I turned around she got up right away.

Q You jumped from that floor downstairs? A Yes, sir, downstairs.

Q And did you meet with any injury? A I broke my ankle.

Q You were arrested downstairs? A Downstairs.

Q In the cellar? A Yes.

Q You were taken to Gouverneur Hospital? A Yes, sir.

Q How long were you there? A I was there about seven or eight o'clock in the morning.

Q How long did you remain in the hospital under treatment?

A About--

Q How many weeks? A In that only about three hours, and after that I was taken to Bellevue.

Q Bellevue, and how long did you stay there? A I
Bellevue I was laying there for five days I think.
CROSS-EXAMINATION BY MR. GONTERMAN:

Q You pleaded guilty to this crime? A Yes.

Q I suppose you expect to get some consideration for testifying?

MR. WASSERVOGEL: I object to the form of the ques-

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Q After you saw this man jump out of the bath-room window, did you find your doors open or closed? A Closed.

Q How about the rear windows, were they open or closed?
A This I cannot say. I did not see.

Q You did not take notice?

(No answer).

CROSS-EXAMINATION BY MR. GONTERMAN:

Q You did not see this defendant in your house that night, did you? A No.

Q Did you see anybody in your house that night? A Yes, sir.

Q Where did you see this person? A In the toilet I saw him.

Q And did you see him anywhere else? A I saw him how he jumped down and then I saw him afterwards in the hall, how the policeman took him in there.

Q Were you the last person to bed that night? A No, my wife was the last one.

Q And when you went to bed the windows were open?

MR. WASSERVOGEL: He did not say that.

THE WITNESS: No, closed, not locked, but closed.

Q Where did you see this defendant? A This defendant I saw as the police took him downstairs.

Q Downstairs where? A From upstairs downstairs.

Q What house? A In the hall.

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Q Was it in the hall of your house? A It was a public hall for everybody.

Q It was the hall of another house, was it not? A No, of the same house.

Q Wasn't it a house on Grand street? A No, in Attorney street. The hall -- it is a corner house -- the hall is in Attorney street -- it is a corner building, Grand and Attorney.

JENNIE SALAT, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

BY MR. WASSERVOGEL:

Q Where do you live? A 24 Attorney street.

Q You are the daughter of the last witness? A Yes, sir.

Q And what time did you retire that night, the 29th day of April? A It must have been about eleven o'clock.

Q What time was it? A Eleven o'clock.

Q Do you know what the condition of the windows were in your apartment at that time? A The window in the dining room was shut.

Q About three o'clock in the morning, what if anything happened? A I saw a man going through the dining room and call for my cousin, Nathan Gerson, and when he got up he asked

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me what was the matter -- the man just ran through the kitchen door and I thought he was running out of the hall but he did not-- he got into the bath-room, and I did not know he got in there until my cousin got there, and he said he is here and he shut the door. In the meantime I went back and told my father he was in the bath-room. I went to the front extension and called for police -- a few police came. I went in and they were upstairs, and then they went downstairs to the cellar to see where he went to. He jumped down from the extension back roof to the yard. He ran right in the cellar and there is where the police discovered him.

Q Did you see this defendant there at that time? A I only saw him when they brought him down from the roof.

Q Did you see this defendant there at that time? A I only saw him when they brought him down from the roof.

Q That was what time? A Well, about a quarter of an hour later when the other one was found.

Q About half past three in the morning? A About half past three.

Q Do you know what the condition of the windows in the dining-room were at that time? A It was open at that time when I went back from the front extension, after I called for police.

Q Were those the windows which you say were closed at the time you retired? A yes, sir, it was closed when I went

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to bed.

Q Were you the last one to go to bed that night? A No, my father.

Q Could you recognize the other man if you saw him? A I could.

CROSS-EXAMINATION:

Q You say you retired about eleven o'clock? A About eleven o'clock. I just couldn't tell you the moment.

Q Whereabouts is your room? A My room is through the dining room.

Q Off the dining room? A Room right off the dining-room.

Q Did you have to go through the dining-room to get into your room? A Yes, sir.

Q Had your father gone to bed before you went to bed? A No, sir, I went to bed before my father.

Q Who else was up besides your father? A I couldn't tell you. They were all up, I suppose.

Q How many members are there of your family? A Two sisters -- a married sister came for that night -- three sisters, one brother and my cousin.

Q How many people were sleeping in your apartment that night? A Me and my married sister that came for that night.

Q And your father? A My father.

Q And your mother? A Yes.

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Q And who is Nathan Gerson, doesn't he sleep there? A I don't think he seen him in the dining room, but in the bath room.

Q I asked you where does Nathan Gerson sleep, was he sleeping in your apartment? A Yes.

Q What room was he occupying? A He slept in the dining-room.

Q Had he gone to bed when you went to bed? A No, I went to bed before that time. I couldn't tell you when he went to bed.

Q You don't know what the condition of the windows were at the time your father and the rest of them went to bed? A When my father went to bed -- I know I shut the window myself --

Q You don't know anything about the condition after eleven o'clock? A After eleven, no. I know when I went to bed the window was shut.

Q What windows are you talking about? A The dining-room window and my bed room window.

Q Did you shut them? A I shut them.

Q How long has this Nathan Gerson been sleeping in the dining-room? A He went to bed after me.

Q You don't know if he opened the windows to let air in or not? A I do not know.

Q You only know at the time you went to bed, the condition? A At the time I went to bed I shut the window.

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Q You did not notice the condition when you got up?

A What?

Q When did you next notice the dining room windows?

A When I saw that man through the dining room.

Q You saw him in the dining room? A Yes.

Q You did not see him enter the dining room? A No.

Q Did you examine the door of the apartment at all?

A When I went to sleep they were awake.

Q You don't know if the door was closed or open?

A No.

Q Where is the fire-escape? A On our floor there is no fire-escape. There is only the extension both sides. The fire-escape comes down as a stairway to that extension.

Q What floor of the building do you live on? A The second floor.

Q There is a public hall? A Yes.

Q How many apartments on that floor? A Four.

Q So when you went to bed there were how many other people to go to bed after you that night? A How many?

Q Yes? A All besides me -- I was the first one.

Q You did not hear anything from the time you went to bed until this noise about three o'clock? A No, I don't know what time they went to bed.

Q You never saw the defendant in your house? A I never

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saw this man, but that one there I saw (indicating).

Q I talk about this man, the defendant? A I saw him in the hall, come down from the roof, when two or three policemen took him down from the roof.

Q In the building? A In the building I live.

Q Came down the hall of your building? A Of our building.

Q He was accompanied by an officer at the time? A Yes, he was.

Q Where did the officer find this other man that you refer to? A Where?

Q Yes? A Down the cellar -- the other man.

Q Down in the cellar? A Down in the cellar.

Q You never saw this defendant in the cellar? A No, I hadn't seen him no place but coming down from the roof.

RE-DIRECT EXAMINATION:

Q Do you recognize the other man now in court? A Yes.

Q Point him out? A That man over there (indicating).

Q When you saw him in your apartment, did he carry a crutch? A No.

Q He was not lame then ? A No.

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NATHAN GERSON, called as a witness in behalf of the People, duly sworn and examined, testified through the official interpreter, Mr. Rosenthal, as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 24 Attorney street.

Q You live with the family of Max Salat? A Yes.

Q Try to talk English -- did you live with this family on the 29th day of July? A Yes.

Q Try to talk up, what time did you go to bed that night? A It was about half past eleven.

Q In what room did you sleep? A The dining-room.

Q Did you open the windows of the dining-room? A No, sir.

Q What if anything happened about three o'clock? A I am sleeping in my bed and I saw my cousin, Jennie Salat, ask me "Nathan, somebody is walking in the house, but I do not see."

Q What if anything after that happened? A After, I am going looking -- I was in the kitchen and I saw the bath-room, and I opened the door of the bath-room and saw somebody was inside.

Q Do you recognize the person you saw in the bath-room, is he in this room now? A Yes, sir.

Q Is he in this room now? A That is the next room.

Q Do you recognize the person you saw in the bath room, is he here now, look around this room and see if you can see

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the man you saw in the bath room? A That man there (indicating the co-defendant).

Q Where was he? A He was in the bath-room.

Q What did you see him do? A I saw him standing there-- in the bath-room.

THE COURT: We better have the interpreter.

(The witness now testified through the official interpreter).

THE WITNESS: I was going to look where the man was and I opened the door of the bath-room and I saw the man there and I closed the door. Then I said "Here is the thief inside, and the people in the house cried out for police and I was holding the door. He was trying to open the door to get out, but I did not let him do that. I held the door. I was afraid he may have some weapon and would kill me if I let him out.

BY MR. WASSERVOGEL:

Q What was done, that is the question? A When the police came they asked where he was and I said "He is inside," and I opened the door and I saw him just jumping out of the window from the roof into the cellar.

Q At the time you saw this other man Rosen in this bath-room, did he carry a crutch? A No.

Q Did you ever see this defendant Kramer? A I saw him on the roof.

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Q This was about what time? A It was about quarter after three or half past three.

BY THE COURT:

Q What time did you go to bed that night? A Half past eleven.

Q Any windows in your room? A Yes, sir.

CROSS-EXAMINATION:

Q Don't you open your windows when you go to bed? A That night I did not.

Q Do you do it every other night? A I don't open the windows when I go to bed.

Q Do you really remember anything about it, whether you opened the windows or not? A I did not open the windows. Perhaps another one did.

MR. WASSERVOGEL: I ask to strike out the last part of the answer.

THE COURT: Strike it out.

BY MR. GONTERMAN:

Q Did any one come in your room after you went to bed?

A No, nobody.

Q You did not notice the windows when you awakened?

A I did not notice.

Q There were other people up when you went to bed, were there not? A I was awake with Mr. Salat and we both went to

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bed.

Q Did you go to bed at the same time Mr. Salat did?

A Yes.

Q Was there anybody else up then, had everybody gone to bed then? A Yes, sir, all had gone to bed.

Q Did you see anybody go in the bath-room or toilet?

A No, I did not see.

Q You just heard some one in the toilet, is that it?

A When Jennie Salat said a thief, then I was looking for the thief and I opened the door and I saw him in the bath-room.

Q Was not the door locked? A No.

Q Was it lighted, the bath-room? A No, not in the bath-room -- in the kitchen it was light.

Q Where is the kitchen with reference to the bath-room?

A From the kitchen one enters into the bath-room.

Q Did you see the face of the man who was in the bath-room? A The first time I did not see, but the second time when he wanted to push the door open, then I saw his face.

Q After the door opened -- I thought you said the door was open? A Yes, sir, but I had closed that door and could not open it.

Q Was he trying to open the door? A Yes.

Q Did he pull the door open? A No, I had locked the door.

Q Then he did not pull the door open? A He was pushing

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the door open.

Q The first time you saw the face of this man was down on the ground in the back?

THE INTERPRETER:.. I don't believe I can translate it.

BY MR. GONTERMAN:

Q Did you see the man jump? A Yes, I saw him just as he was jumping down.

Q What window did he jump from? A From the bath-room window.

Q Where were you at the time you saw him jump? A A policeman came and asked where the thief was, and I said "He is inside," and opened the door, and at that time I saw him jump out of the window.

Q The policeman opened the door? A Yes.

Q He was jumping out of the window then? A Yes.

Q His back was to you then? A Yes, his back.

Q You did not see his face then? A Before the policeman had come I had seen the face. When I saw him then I locked the door. I was afraid of him.

Q Where did he jump to? A Into the cellar. There is an extension there and from there he jumped into the cellar.

Q To the cellar? A Yes.

Q Inside of the house or outside of the house? A It was in the yard.

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Q Then he jumped into the yard, that is what you mean?

A Yes, there is the yard, the cellar is in the yard.

Q Could he walk after he jumped? A This I do not know. The policeman came and found him in the cellar.

Q Did he limp at that time? A Yes.

Q You saw this defendant with the police officer, did you? A Yes.

Q That was the first time you saw him, was it not?

A That was the first time.

Q That was coming down the stairs? A I was also on the roof with the policeman and he was under the water tank.

Q What building was that, where was the water tank? A It was on the next -- the building next adjoining ours.

Q It was not on the house where you live? A Both houses are even -- are alike, even, so you could go over to the next house.

Q But how far away is it from the roof of your house?

A Not far -- the two houses are together.

Q You don't know whether anybody came into your room after you went to bed or not, do you? A I do not know that.

Q You said some one might have opened the windows, what did you mean?

MR. WASSERVOGEL: I object to what some one might have done.

MR. GONTERMAN: He said that. I ask what he meant.

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Objection sustained. Exception.

Q Is it customary for any one to come in after you have gone to bed and open the windows? A No, I cannot say. I don't know.

Q Don't remember anything about that? A No.

Q You only saw one man in the house? A Yes, the man in the house and the other on the roof.

Q The roof of the adjoining house? A Yes, adjoining.

FREDERICK C. MUTTER, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 145 Hull street, Brooklyn.

Q You are a police officer of the City of New York, attached to the 13th Precinct? A Yes, sir.

Q Did you make the arrest in this case? A I arrested one of the prisoners, Rosen.

Q Where did you arrest him? A I arrested him in the cellar of the building, 24 Attorney street, crouched in the cellar, away back.

Q When was this? A That was about 3:25 a.m., April 29th.

Q What was his condition at that time, physical condition? A Well, when I got hold of him, subdued him and placed him un-

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der arrest I dragged him out. Looked around and saw the other officer right behind me, Officer Donovan. The two of us dragged him out of the cellar and took him into the hallway, and there had been great excitement and confusion in that hallway, and we had all we could do to save him from getting a good beating on the part of the tenants; and while I had hold of this prison a citizen told me and the other officer --

Objected to. Sustained.

Q I ask you what his physical condition was at that time? A It was very good except that when I had him upstairs he said, "Officer I hurt my foot."

MR. GONTERMAN: I object as not binding on this defendant and not in his presence.

MR. WASSERVOGEL: It will be connected with him.

Objection sustained.

BY MR. WASSERVOGEL:

Q Did you see this defendant there at all? A Kramer I did not see until he was brought down by Officer Donovan from the roof.

Q Did you have a talk with Kramer, this man? A After we placed him under arrest.

Q What talk did you have with him?

Objected to.

THE COURT: With the defendant?

MR. WASSERVOGEL: Yes, sir, with this defendant.

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Objection overruled. Exception.

A He frankly admitted he was guilty and that he was the lookout.

Q I want you to tell me the words he used, what you said to him and what he said to you? A We said, "What were you doing up there?" He said, "Well, I am hard up and he hired me for a dollar to watch --"

Q Who hired him, who did he refer to? A Rosen.

Q To do what? A So he could do his work, plundering flats.

Q What else did he say? A He said he was with him in Philadelphia where Rosen done a job.

Q What did he say about his presence on the roof at that time? A He said he tried to get away but the roof doors were all locked and he was caught like a rat in a trap on the next house -- not the house in which the attempted burglary or burglary occurred, but the next house.

Q The very next house? A Yes. He went as far as he could go and could not get any further, because the doors were locked from the inside.

BY THE COURT:

Q Is that what he said? A Yes, sir.

BY MR. WASSERVOGEL:

Q Did you have any other conversation with him on the way to the station house? A Not that I remember.

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Q Or police court? A He repeated that to the lieutenant in the station house that he was hired by the other man.

Q To assist him? A Yes, sir.

CROSS-EXAMINATION BY MR. GONTERMAN:

Q When you told the District Attorney what he said, did you use his exact words? A To the best of my belief, yes.

Q You mean to say that this man told you he was up there to assist this man in his business of plundering flats -- do you mean to say he used those words -- as matter of fact, haven't you finished it up a little bit? A He told me that he was hired by this man Rosen for a dollar, and watching for him, so that he could do his work.

Q That was all he said? A That was about all.

Q What did you mean by saying that he said he was up there to assist him up his work of plundering flats -- that was what you said a minute ago, is that true or not? A Yes, he did say that.

Q He did say that? A Yes.

Q Give the words he used? A He said --

Q Do not add anything to it, but just give us the exact words? A He was hired by Rosen for a dollar to do the watching. He said he was hard up and that was the reason he done it, and that Rosen told him that he was going to plunder the

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flat on the second floor.

Q Did he use the word plunder? A Well, rob, if you will have it that way.

Q I ask you for his word? A He said rob.

Q He said rob? A Yes.

Q What else? A I asked him what floor; he said the second floor. And I said "How do you know?" He said Rosen was there the day before to see this man Salat on the pretence of making inquiry --

Q Did he tell you that? A Yes.

Q Where did he tell you that? A On the way to the station house.

Q Anybody else present? A Officer Donovan heard the same thing.

Q Have you told us all he said? A All that I can remember, yes.

Q You did not tell the District Attorney this last statement? A What do you mean, last statement?

Q You did not tell the District Attorney about what he said about Rosen's going around there the day before -- did he say that? A Yes, sir, I told the District Attorney that.

Q He asked you to tell everything, did you forget it? A I did not forget it. I did not get a chance. I could relate the story from beginning to end. I would rather do it that way, and maybe bring out everything I do know. I am trying to

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answer the question as put to me .

Q Have you now told all he said, or is there anything else you want to add? A I think I have told all I know.

Q Told it all? A Yes.

Q You say this defendant told you where? A Immediately after he was brought down from the roof, he started to tell us this story, and on the way to the station house and in the station house.

Q You did not see him on the roof? A I did not. I was not on the roof myself. I had all I could do to keep that fellow.

Q Did he talk to you in English or some other language?

A This man?

Q Yes? A Spoke a broken English with foreign accent.

Q Do you speak Jewish? A Yes, I do -- not a Jew, but I have picked it up.

Q Did you speak Jewish to him at all?

BY THE COURT:

Q Did you or not? A No, I spoke English to him.

BY MR. GONTERMAN:

Q Did you know he spoke Jewish? A I could tell by his accent, yes.

Q You did not try to speak to him in Jewish at all?

A No, I don't think so.

Q Did anybody else speak to him in Jewish? A Not that

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I know of.

Q You spoke English? A Yes, sir.

BY THE THIRD JUROR:

Q Was anybody with you at the time you had this conversation with the defendant Kramer, about being hired? A Officer Donovan was with me at the time we made the arrest, and another policeman with us, three of us.

DENNIS J. DONOVAN, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 432 East 148th.

Q You are connected with what precinct? A The 13th.

Q And did you make the arrest in this case? A Yes.

Q Where did you find the defendant? A Underneath a water tank on the roof of 430 Grand street, I believe the number is, next door to the roof 24 or 26 Attorney street, two adjoining houses.

Q Where was he at that particular moment when you found him? A Underneath the water-tank on these two iron bars about two inches wide that the tank sets on top of, and he was away inside and had to get a light or torch to see if there was anybody in there.

Q Did you have to drag him out? A Yes, had to drag

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him out by the foot.

Q Did you have a talk with him then? A Yes.

Q Did you ask him what he was doing? A Yes.

Q Tell us what you said and what he said? A I asked him what he was doing there and he said "Watching". The other defendant was in the cellar, and he denied all knowledge of this man.

BY THE COURT:

Q Who are you talking about?

CROSS-EXAMINATION BY MR. GONTERMAN:

Q Which one are you talking about now? A Kramer. When I searched the roof and found him under the water tank. I asked him was there anybody else in his company only the two, and he said "No."

Q Who did you ask that? A Kramer. I said "How did you get up here?" And he said "Up the fire-escape." I took him downstairs and showed him to all the tenants in the house going downstairs -- got his hat off and told them to look so they could see him, and no one seemed to identify him or know anything at all about him. On the way into the station house I asked him what did he know his partner or his pal. And he said "Yes," he knew him a few weeks in New York, and also had known him in Philadelphia." I said "Where did you see him last?" He said "The other night in a coffee saloon." A few more questions I asked him but he could not very well speak very good

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English, and quite a few people was interpreting to him and I could not get much out of him.

BY MR. GONTERMAN:

Q You have related all he said to you? A Well, partly -- I don't think he said any more touching on the subject.

Q You heard what he said? A Yes.

Q You did not hear a great many things the other officer testified to? A The other officer was speaking to him in German and I could not understand what they were saying.

Q He was speaking to him in German? A Yes, he was.

Q Did you hear him testify that he did not -- that he spoke to him in English? A He spoke English and German. What he could not understand in English.

Q You have testified all you heard him say, that was all he said in English? A That was all, might have said a few things that I don't recollect.

Q You did not hear him say anything about plundering? A He said in the court to me the following morning --

Q I talk about when you were going to the station house -- you did not hear anything about that? A About robbing the flat?

Q Yes, did you hear him use the word plundering? A No.

Q Did you hear him say anything about robbing the flat?

A Yes.

Q You did not say that? A He said Rosen hired him

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for a dollar to rob this flat or rob the janitor, that was the words he used, as he had a lot of money.

Q You did not say that a moment ago. A Well?

Q You forgot it? A I forgot it.

Q When the District Attorney was asking you? A That was about all.

Q Is there anything else you have forgotten? A No.

Q You don't want to add anything more to it? A No, I don't want to add any more to it.

Q You found him on the adjoining premises on the roof?
A Yes.

Q Did you talk to him much on the way to the station house? A Not much.

Q Did the other officer talk to him very much? A Yes.

Q Did you say he told you how he got on the roof?
A Through the fire-escape.

Q Through the fire-escape? A Yes, up the fire-escape.

Q Do you know where the fire-escape is? A Yes.

Q Where? A On the side of 24 Attorney street, on the Attorney street side leading to the extension.

Q There is a passageway that runs right to the roof on that building, 24 Attorney street? A What do you mean passageway -- hallway?

Q Did you go right up ^{to} the roof by the stairs? A Yes, sir, hallway.

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Q Nothing to prevent, there is a hall that leads to the roof? A Yes, from the hall.

Q In the next house the same way? A Yes, that door was locked.

Q You could get to the roofs by the hallway? A The door was locked to the roof.

Q You can get to the roofs of any of those buildings by going up the public hallway? A Yes.

Q Did he point out to you the fire-escape he came up? A Yes, Attorney street side, at 24 Attorney street.

Q That is the back? A Yes, the back of the house.

Q Did you take him down into the cellar, or where the other man was? A No. Took him in the main hallway, up the stoop. The other man was out on the street by that time.

Q The other man was out on the street when you got down? A Yes.

BY THE FIFTH JUROR:

Q Did you walk with Kramer to the station house? A Yes.

Q You did? A Yes.

BY THE FOURTH JUROR:

Q Did you put any questions to this defendant? A Yes.

Q Did he answer you? A Yes.

Q Did he seem to understand your questions? A Yes, sir, certainly he did.

Q Did you have to have any of the tenants help you put

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questions to him? A I not alone questions him, but the lieutenant in the station house questioned him.

Q I mean the tenants? A Yes.

Q Did they help you? A I asked if they knew this man, and they said "No."

Q I asked you if you had to have any of the tenants help to interpret your questions to this defendant? A No, sir.

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Q He seemed to understand your questions? A He understood.

Q And he answered you? A Yes.

BY THE NINTH JUROR:

Q In going up the stairway to get to the roof, how would you get ~~xxx~~ to that stairway? A It is a corner house. The entrance to the house is on Attorney street. It is a six story house. The stairway on the way up to the roof and on the side of the roof is a ladder that comes over down on the extension.

Q I mean if the man was in an adjoining room, how would he get out of the apartment to get to the stairs to go upstairs, not by the fire-escape? A From the extension, from the fire-escape.

Q There is a hallway there with stairs going to the roof? A Yes.

Q How would he get from that room, where would he have to go to get out into the hallway to go upstairs? A Had to go by the fire-escape and all the way to the roof.

Q Couldn't he get to those stairs from that apartment? A No, except he go through the tenants room.

Q Did not that apartment open on that hallway at all? A No. These windows all lead to an extension, two story extension right around the second floor.

Q He could not get out of that apartment and get into

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that hallway to go up to the roof, is that right? A No, sir.

Q He could not? A Not without going up the fire-escape.

Q The only way he could get to the roof was by the fire-escape? A Yes.

BY MR. GONTERMAN:

Q Couldn't he walk up the public hallway and go to the roof? A Yes.

Q You came down the public hallway? A Yes.

Q You took him down the public hallway of 24? A Yes.

Q You could have taken him down the public hallway of the adjoining rooms? A No, because the roof door of the adjoining rooms was locked.

Q You said that you could get to the roof of any of those buildings? A No, not if the door is locked. The door of 24 Attorney street was the only door open.

Q Did you examine to see if the door to the roof of the adjoining premises--if the door of the public hallway was open or closed? A Yes.

Q You were going to take him down there first? A No.

Q What did you examine it for? A I examined that before I searched under the water tank.

Q How did you get on the roof? A Some citizens said they saw a man on the fire-escape going to the roof.

Q How did you get upon the roof? A By the hallway.

Q Of what premises? A 24 Attorney street.

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Q When you found this defendant he was on the roof of the adjoining premises? A Yes, sir.

Q And there is a public hall from those adjoining premises to the street? A Yes, sir.

Q Did you examine that to see if it was locked? A I searched that roof before I searched underneath the water tank.

Q You had to walk back some distance to get--how far away is that, that water tank from the other stairway? A In my estimation about as far as I saw it that night, two or three feet--just a coping about 18 inches separates the two houses. The water tank is on two iron beams. I searched the whole roof, behind the chimneys and all over, and searched the door leading to Grand street and the door was locked, and looked underneath the water tank and pulled this man out.

Q You have told substantially all that you heard the defendant say about it? A Yes.

Q You were going along with him, you talked to him on the roof and you talked to him down there in the street, you walked along with him to the station house, didn't you? A Yes.

Q You were there in front of the Sergeant? A Yes.

Q You have substantially related all he said? A About all.

REDIRECT:

Q You found him on the roof? A Yes.

Q You did not see him on the fire-escape at all? A No,

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I did not see him on the fire-escape. That is how I came to get to the roof.

The Court admonishes the jury in accordance with section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

AFTER RECESS.

SAMUEL ROSEN, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 37 1/2 Allen street.

Q Where did you live on the 29th day of April this year?

A 29th of April of this year?

Q Where did you live then? A New York.

Q Where in New York? A The same house.

Q Where? A 37 1/2.

Q What street? A Allen street.

Q Do you know this defendant Kramer, do you know Kramer?

A Yes.

Q How long have you known him? A I couldn't tell you exactly.

Q Is it a year or more than a year? A No, not a year, about a month or so, or more than a month.

Q Did you see Kramer on the 29th of April of this year?

A No, I don't think I did.

Q Did you meet him anywhere?--Do you know what I am ask-

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ing you? A Yes.

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

Q Do you know what I mean by did you see him? A Yes, you mean if I saw him then. I did not see him then.

Q Did he come to your house that day? A The 29th of April?

Q Yes. A The day I got arrested?

Q Yes. A Certainly.

Q That is what I am talking about, that day did you see him, on that day? A Yes, I seen him.

Q What time did you first see him on that day? A I saw him about two o'clock.

Q In the afternoon? A In the afternoon.

Q Did you have any talk with him then? A I was talking with him and he asked me where I lived, and I told him I lived right at the corner of Hester street, 37 1/2 is right on the corner there, and he went up to my house.

Q Did he come up to your house that evening? A Yes.

Q What time did he come up to your house that evening?

A He came up to my house, it was about--it was about two o'clock and he said he had to take some money off somebody and he got up again about 8 o'clock in the evening.

Q How long did he stay there? A He was sleeping on the lounge until two o'clock.

Q Two o'clock in the morning? A Two o'clock in the

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morning.

Q Did you have any talk with him then at 2 o'clock in the morning? A No.

Q Did you say anything to him or he to you? A He said he is down and out and ain't got no money and he hocked his umbrella for 25 cents I remember, and he said, I want to try if I can see to make some money.

Q What else? A The same night I was a little intoxicated. I never drink, and it happened on a holiday, and I was sitting--

Q Louder? A I was laying down in my house, laying down, and he woke me up at 2 o'clock and he walked down.

Q Before you walked out of your house did he say anything to you? A Yes, certainly.

Q What did he say? A He was going to go up--he was going to see if he could make some money.

Q What did he say, & how was he going to make this money? A He said he will try to go up some place and see if we could find something.

Q Where did he say he was going to find something? A He said, We will try to go in any house.

Q For what purpose? A To see if he could make some money, to see if he could.

Q Take something? A Take something. I was a little intoxicated.

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Q Never mind that--I only ask for what he said--after he said that did you go out with him? A Certainly.

Q Where did you go? A On Grand street.

Q After you went into Grand street where did you go?

A I walked up into the house corner of Attorney street.

Q Was it 24 Attorney street? A I couldn't say exactly.

Q Was it in the house in which you were arrested? A Yes, sir.

Q Was the defendant Kramer with you? A Yes.

Q Did you enter into the main hall? A Yes, sir, right through the hall.

Q When you got into the hall where did you go? A I walked up right on the roof.

Q Where was he? A He was right after me.

Q On the roof? A On the roof.

Q After you were both on the roof what did you do and what did he do? A I walked down.

Q Walked down where? A He told me to walk down, there is a stepladder that goes down on the fire-escape.

Q From the roof? A Yes.

Q To the first fire-escape? A Yes; so I walked down.

Q Where was he? A He walked down right after me.

Q How many fire-escapes did you go down? A I think about three, because it was on the third--

Q Was he after you all the time? A Yes.

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Q When you finally stopped, what did you and what did he do? A The window was locked but it was not locked inside.

Q You mean that the window was closed but not locked? A Closed but not locked.

Q What did you do? A I pulled the window down.

Q After you pulled the window down what did you do? A I went inside.

Q Where was he at the time you went in? A He was right after me.

Q Go on? A As soon as I turned around, before I turned around in the house, some lady got up and said, Who is it, and I did not have my right mind then I suppose, so I thought I am on the first floor and I jumped down.

Q You ran into the bathroom? A No, I did not.

Q What room were you in when you jumped out of the window? A I was in the front room, but after I got out from the front room right through a window and then jumped down.

Q Which room was that window in from which you jumped? A Couldn't tell you exactly.

Q Where was he all this time? A When he heard the woman--you could see I suppose through the window if the woman was up or not, and I suppose if he saw, he went right back.

MR. GONTERMAN: I object to what he supposed.

THE COURT: Strike it out.

BY MR. WASSERVOGEL:

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Q What did he do, he did not go into the room right after you? A No, he did not come right after me, because she got up right away, before I turned around, and then he went right up on the roof.

Q How long were you in the room before this woman's voice was heard by you, about a minute? A About a second, because, you know, before I turned around she got up right away.

Q You jumped from that floor downstairs? A Yes, sir, downstairs.

Q And did you meet with any injury? A I broke my ankle.

Q You were arrested downstairs? A Downstairs.

Q In the cellar? A Yes.

Q You were taken to Gouverneur Hospital? A Yes, sir.

Q How long were you there? A I was there about seven or eight o'clock in the morning.

Q How long did you remain in the hospital under treatment?

A About--

Q How many weeks? A In that only about three hours, and after that I was taken to Bellevue.

Q Bellevue, and how long did you stay there? A I
Bellevue I was laying there for five days I think.
CROSS-EXAMINATION BY MR. GONTERMAN:

Q You pleaded guilty to this crime? A Yes.

Q I suppose you expect to get some consideration for testifying?

MR. WASSERVOGEL: I object to the form of the ques-

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tion.

Objection overruled.

A What--I couldn't tell you.

Q Do you expect to get a lighter sentence? A I don't know about that.

Q Has there been any lighter sentence promised you? A No. I have not talked to anybody.

Q No promises made to you at all? A Promises made with me?

Q No promises were made to you for pleading guilty and testifying? A I was down the first time, I was going to plead guilty the first minute I went to the court, but while I had the lawyer and I had not seen him in the court, so for this reason I did not want to plead guilty. I was waiting for him.

Q Now you say that you saw this defendant--when was the first time you saw him? A About 2 o'clock.

Q Two o'clock when? A Two o'clock in the daytime, in the afternoon.

Q The day before this burglary? A Well, I did not see him then.

Q Do you remember the day you were arrested? A I don't remember that.

Q Do you remember the day of the month? A No, sir.

Q Was it Thursday or Friday? A It was on Thursday, I remember.

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Q Thursday morning? A Yes, sir.

Q You saw this defendant the day before? A I seen him the same Thursday and I was locked up on the same Thursday.

Q You were locked up on Friday morning? A Well, I suppose it is, because after 2 o'clock, yes, sir, Friday morning.

Q You saw him Thursday before? A I had seen him on Thursday 2 o'clock in the afternoon.

Q The day before you were arrested? A Yes.

Q Where did you see him? A I saw him right in Hester street, it was the corner of Orchard or corner of Allen.

Q You had a conversation with him? A I did not have much conversation with him, I just--

Q Just a friendly conversation? A Yes.

Q Had you ever seen him before? A Yes.

Q Where had you seen him before? A I saw him before about a month or so.

Q Where? A I was in Philadelphia.

Q You saw him in Philadelphia? A Yes, sir.

Q You came to New York alone? A Yes.

Q He did not go to Philadelphia with you? A I did not come alone with him from Philadelphia.

Q You did not come together from Philadelphia? A No, I met him there and knew him by sight right when I met him on Hester street, he stopped me off.

Q You just about knew him by sight? A Yes.

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Q You had been at the same boarding house down there?

A No, but the same day, the same Thursday, he was up in my house.

Q Did you see much of him in Philadelphia? A No, not very much.

Q Just a mere acquaintanceship? A Just acquaintance.

Q You recognized him when you saw him on the street on Thursday? A No, I did not just recognize him.

Q Was anybody else with you at the time? A No.

Q Sure of that? A I am sure.

Q Where were you living at that time? A 37 1/2 Allen street.

Q And you say he went over to your room with you? A Yes, sir.

Q What did you talk about before you went over there?

A When he was in my house then he was talking about--he just simply asked me where I lived.

Q You invited him to come home with you? A I told him I lived right there and he walked up in the house with me.

Q You never said anything to him about going out and committing any burglary? A No, I did not tell him.

Q You never suggested to him that you were going to go out and commit a burglary? A I certainly did not.

Q You never said a word to him about that? A Never said a word to him? Because when he was talking about it I was

answering him.

Q Answer me, you never suggested to him that you two go out and commit a burglary, you never suggested it to him? A We were talking about it. I cannot tell you.

Q What I want to know is whether he led you into this crime or you led him into the crime? A He started to talk to me about it.

Q He was the man that led you into it? A Yes.

Q He led you astray, in other words, is that it? A Yes.

Q You have been convicted of crime before? A Not of this crime.

Q I want to know if you want this jury to think that this boy here led you into this crime?

Objected to as immaterial.

THE COURT: Has he not answered it?

MR. GONTERMAN: Well, I want to be certain about it.

THE COURT: I think you have it reasonably certain.

MR. GONTERMAN: Then I withdraw the question.

BY MR. GONTERMAN:

Q You say that he was the one to plan this whole business? A Yes, sir.

Q He suggested the street and the number of the house?

A He did not suggest it, he just walked along with me and walked up there.

Q And you went along with him? A Certainly I did.

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Q He did all the planning? A Well, there was no planning in it.

Q There was not any planning? A No.

Q You did not make any suggestion as to how to manage this? A I did not make anything, just walked up.

Q Did he tell you the name of the building you were going to rob? A No, he did not.

Q Had you ever been around there before? A No, sir.

Q You did not know anything--then you went with him?
A Yes, I went with him.

Q Did he take ~~me~~ you up on this roof, or did you go up a fire-escape? A We went up to the roof and from that roof--

Q Then when you got on the roof, who went down first?
A He told me to go down first and I did so.

Q Why didn't you tell him to go down first? A Why I didn't tell him to go down first, I got up in the middle of the night, it was about two o'clock the same Thursday I went down and had to fix my shoes, and the same Thursday I went down to my shoemaker and told him to fix it and he said, You cannot have it fixed right away, have it fixed to-morrow. And when I got up, I didn't have my shoes, and there was a pair of rubber boots lying there, lying on the floor, and I put them on.

Q You put on some rubber boots? A Yes, sir, I put them on, and so he said, Well, you got them rubber boots on and you go down first because they might not hear you. They were

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my brother's rubber boots.

Q Does your brother live with you? A Yes.

Q What business is he in? A He is a little boy.

Q How small a boy? A About 14 years.

Q And you put on his rubber boots? A Yes, sir.

Q Did they fit? A Yes, it fit. He has a bigger foot than I.

Q Were they too large for you? A No, they were small.

Q How long had the boots been around there? A I couldn't tell you about that.

Q Did you ever use them before? A No.

Q How did you happen to put them on that night? A Just because he woke me up and I didn't have no shoes.

Q You were asleep, you were not hardly awake? A Well, if I walked down I suppose I was not sleeping.

Q It was just an accident that you happened to put on your brother's, who is 14 years old, rubber boots? A It was no accident, because I did not have nothing to put on.

Q It never occurred to you putting them on would make it easier to go into a house while people were sleeping? A I did not put ~~xxx~~ them on for that purpose.

Q Did it ever occur to you it might be helpful in a case?
A No, I did not think of it, because I had no shoes.

Q Did you wake him up or he wake you up? A He woke me up.

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Q When he did so, you did not know what was going to happen, did not know where you were going? A He told me.

Q You did not know where you were going when you woke up? A He was talking about it.

Q When you went to bed you did not know you were going to get up at 2 o'clock in the morning? A Certainly, he made a date for it to go out.

Q Made a date to go out when you went to bed? A Yes, sir, when I went to sleep, that was the reason he was sleeping in my house.

Q And then he awakened you and you did not awaken him? A I did not get up, he got up and woke me.

Q What did he tell you he wanted you to do? A He said, Come on, and we will go.

Q Did he tell you to put on those boots? A He told me to dress, and while I did not have my shoes so I--

Q Did he tell you where you were going when you got up and put on the rubber boots? A Yes, certainly.

Q Where did he say you were going? A He said, Come on, and we will go out of the house.

Q Where did he say you were going to? A He said, We will try to see if we can make some money.

Q Did you know where you were going at the time? A No.

Q Did not have any idea where you were going? A No.

Q You did not know anybody lived over there in that

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flat? A No, I did not know about it.

Q You never heard of this complaint before, Salat, did you ever hear of anybody named Salat who lived at 24 Attorney street? A No.

Q You never had been around to his place? A No. If I live in New York it could happen I should pass the street.

Q You did not know where you were going--when did he first tell you where you were going? A When we were walking and we came to this house he walked up and I walked along with him.

Q How did you happen to pick out that house? A I couldn't tell you about that.

Q You did not know they had any money in the house? A I don't know anything about it.

Q You never heard anything about that--you had not been there the day before to find out that the man collected some rent? A No, I did not.

Q You just went in blindly with him in other words, is that it? A Yes.

Q When you got to this hallway, did you go up first or he go up first? A He went up first.

Q Did you know where you were going when you went up the hallway, did you know what you were going to do when you got up there? A Certainly.

Q What did you think you were going to do when you got up

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there? A I thought we were going in and see if we could find some money.

Q What made you think that? A I don't know.

Q Did he say anything to you about it? A I suppose so.

Q I want to know, did he, did you talk after he awakened you, did you have any conversation on the way from your room to this place on Attorney street? A I didn't have no conversation.

Q Didn't say a word to him--you had not said anything the afternoon before about where you were going the next day or what you were going to do? A The afternoon that I met him I did not talk anything about this subject. He just simply asked me where I lived.

Q You did not invite him to go over to your room for the purpose of enabling you to accompany him? A I did not take him along for this purpose.

Q You did not take him along for that purpose? A No, he asked me where I lived and I took him up there.

Q You did not offer to give him any money or anything?
A I offered him--

Q What did you offer him? A I did not offer him at all.

Q Did not offer him any money? A No.

Q Sure about that? A How can I offer him.

Q I ask you? A No, I did not offer him nothing.

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Q Did not offer him anything at all? A No.

Q You did not know what you were going to steal? A I suppose, I don't know.

Q Don't you know whether you knew? A I don't know anything about it.

Q What did you expect to find in that house? A I couldn't tell you.

Q Were you going to steal money or jewelry or what?
A I couldn't tell you anything about that.

Q He never suggested what was in that house? A He did not tell me anything about it.

Q When you got to the roof you went down first? A Yes, sir.

Q And did he stay up on the roof a while? A He did not stay, he walked right after me.

Q And came down the fire-escape right after you? A Yes, sir.

Q And who let down the window sash? A I did.

Q The only reason you went first was because you had on those rubber boots? A Yes, sir.

Q Didn't it occur to you as he planned this thing, that he was the one that should take most of the risk? A He was not planning at all. He is supposed to go after me, but while I walked down and before I turned around the lady says, Who is it, and I suppose he saw her getting up and he walked up right

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on the roof.

Q He never went into the house? A No, he did not have a chance.

Q He never went into the house--did you get in through the dining room window? A The dining room.

Q In the dining room--how did you get in the house?
A From the fire-escape. I don't know what kind of a room it is. I did not look around. I did not have no chance to look around.

Q Did you steal anything after you got in there? A No, nothing at all.

Q As soon as you got in you heard a noise? A As soon as I got in I heard a noise and I jumped away and he walked right up there.

Q How many flights did you jump down? A I thought it was one flight and it was two, I believe.

Q Weren't you afraid to jump down? A I was ^{n't} afraid. I was intoxicated a little.

Objected to as immaterial.

Q Did you ever do that before? A I never done it before.

Q What were you convicted of before? A Larceny.

Q When was that? A I think it was 1907.

Q How old are you? A Twenty-one I think.

Q How much? A Twenty-one.

Q Did you ever give your age differently from that?

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A What?

Q Did you ever give a different age? A I didn't give no different age.

Q Were you in prison, did you serve any time in the Penitentiary or Elmira? A I was in Elmira.

Q How long? A Thirteen or fourteen months.

Q How long have you been out of Elmira? A About a year or a year and a half or two years, I don't know.

Q What is your business? A Tucker of ladies' waists.

Q Where did you work? A Certainly I did.

Q New York City? A Yes, sir.

Q Did you say anything to the policeman? A Nothing at all.

Q Did you hear this boy say anything to the policeman?

A The policeman told me--

BY THE COURT:

Q Did you hear him say anything? A No, I did not hear him.

BY MR. GONTERMAN:

Q Did you hear the policeman talking to him? A Yes.

Q What language was he talking in? A I couldn't tell you because--

Q Was he talking in English? A I was painful. I fell down and broke my ankle.

Q What policeman did you see talking to this defendant;

Donovan or the other man? A I couldn't tell you their names.

Q Is that the man you saw talking (indicating)? A Yes.

Q How near were you when they were talking? A I was about three or four or five feet.

Q Where were you at the time you heard this conversation?

A It was in the police station.

Q Could you not hear if he was talking to him in English or Jewish? A I was painful, when I fell down.

BY THE COURT:

Q You were in pain? A Yes, I could not hear.

BY MR. GOTERMAN:

Q You heard him speaking? A I seen him, he was talking to him, but could not understand what they were talking.

Q Could you hear the words or sounds of any kind? A I couldn't hear anything.

Q You couldn't hear anything, you just saw? A No, he was about three or four feet away.

Q You did not hear this boy say --

THE COURT: He said he did not hear anything.

BY MR. GONTERMAN:

Q At no time did you hear anyone say that you had been around to this premises the day before with some excuse and talked to the --

MR. WASSERVOGEL: The witness asys he does not know what was said.

MR. GONTERMAN: I talk at any time, you never heard

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any such statement?

THE WITNESS: No.

THE PEOPLE REST.

MR. GONTERMAN: I move your Honor to dismiss the indictment upon the ground the People have failed to produce evidence sufficient to sustain the indictment; upon the ground that they have failed to show this defendant was ever in the premises alleged to have been entered; that the only evidence tending to connect this defendant with the crime were certain alleged admissions made by him to a police officer and there is contradictory testimony upon that point. One officer says that he talked to him in English and the other man said he talked to him in German and it is not entitled to the greatest weight. You will remember the testimony, and the testimony of this last witness is that of a self-confessed criminal twice convicted of crime and is entitled to great corroboration. He tells a story which is untruthful on its face; that this boy who is apparently mentally and physically deficient led him into this crime. They have not corroborated the testimony of this man, because they need corroboration themselves. The only fact they have shown is that this boy was upon the roof of the adjoining premises. That is all there is to it. No one saw him in the house and it

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seems to me in light of that evidence and the character of the witnesses and their method of testifying it is a very doubtful case and I ask your Honor to direct an acquittal.

Motion denied and exception.

MAURICE KRAMER, called as a witness in his own behalf, being duly sworn and examined, testified through the Official Interpreter, Mr. Rosenthal, as follows:

DIRECT EXAMINATION BY MR. GONTERMAN:

Q Where do you live? A 184 Allen street.

Q Maurice Kramer is the name you gave in the police court, have you given any other name? A Yes.

Q What is your real name? A Felig Lavine.

Q That is the name you are known by among your friends here in town? A Yes, sir.

Q Why did you give the name Maurice Kramer?

Objected to as immaterial.

MR. GONTERMAN: I think he is entitled to explain.

THE WITNESS: Because I did not want my friends to know I was arrested and they should not write to my folks.

Q Did you tell anybody in the police court anything about your name being Felig Lavine? A Yes, the magistrate.

Q You told him that? A Yes.

Q Now, when did you come to the United States? A In July, 1908.

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Q Where did you come from? A Warsaw, Russian Poland.

Q How old are you? A 19 years.

Q What did you do when you came to New York? A When I came to New York I went to a saloon and worked there.

Q How long did you work there? A Three months.

Q Then where did you work? A Then I went to work for the Greater New York Bedding Company.

Q How long did you work there? A Sixmonths.

Q Then were did you go to work? A 34 West 17th street, Morris Sharr, a button factory.

Q Were you ever discharged at any of those place? A No.

Q Why did you leave them?

Objected to. Objection overruled.

A I could not make a living.

Q When did you go to Philadelphia? A Last winter I went to Philadelphia.

Q What did you go there for? A I could not make a living in New York and I went to Philadelphia and figured out I will take a cattle boat and go back home.

Q Did you take a cattle boat? A No.

Q Why didn't you?

THE COURT: What difference does it make. He came back to New York, is that the fact?

THE WITNESS: April 26th I returned to New York.

BY MR. GONTERMAN:

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Q Where did you first meet Sam Rosen? A In Philadelphia.

Q Did you see him very often? A All the time in a lodging house.

Q When you came to New York what day was it? A Tuesday.

Q What did you do that day? A Hired a room and I slept there the night and on Wednesday I went out to look for a job.

Q Did you get a job? A No.

Q What did you do the next day? A Thursday I also went to look for a job and could not find any.

Q Did you meet Sam Rosen on Thursday? A Yes, sir, on Thursday afternoon.

Q Where did you meet him? A In Hester street.

Q Was there anybody else present? A Yes, sir, another man.

Q Did you have a conversation with Rosen? A Yes.

Q What did you say? A The other man told Rosen take the boy, pointing to me, he is broke, and give him a chance to make a dollar.

Q What did Rosen do then? A Rosen took me to his house.

Q What time did you go to his house? A About six o'clock

Q And did he say anything as to what you were going to do that night? A He had not told me anything, he only told me to go to bed.

Q You both went to bed? A Yes, both.

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Q In Rosen's rooms? A Yes.

Q What time did you wake up? A In the house I could not find out what time it was, but he sent me around to Eldridge street and there I saw it was half past two o'clock.

Q Did you both get up at the same time? A Yes, sir.

Q And did you wake first? A No, when I woke up he was up already.

Q Did he dress when you got up? A We were sleeping in our clothes.

Q And did he awaken you? A When he started to turn around in the room he made a noise and I woke up myself.

Q Did he tell you to get up? A Yes.

Q And did he have his boots on then? A No.

Q Were you there when he put on those rubber boots?

A Yes.

Q Did you suggest to him to put on the rubber boots?

A I did not know if he had any.

MR. WASSERVOGEL: I object. This is not a denial of anything brought out by the People.

THE COURT: Did not Rosen say he couldn't come on because he was having his other shoes mended and that he had to put them on because they were the only boots or shoes that he had?

MR. GONTERMAN: He said this man suggested that as he had them --

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THE COURT: That was later when he went into the house.

MR. GONTERMAN: I withdraw the question.

BY MR. GONTERMAN:

Q You left the place together? A Yes.

Q Did you know where you were going when you left the place? A No.

Q Did he tell you where you were going? A When we had walked a block he told me he had intention to go to a butchers place but it was too late.

Q Did you tell him you wanted him to go with you and steal?

MR. WASSERVOGEL: It seems to me it is immaterial.

MR. GONTERMAN: Your witness testified to one thing and I have a right to --

THE COURT: Ask him what happened. You are on the direct examination and perhaps you had better appeal to his memory and conscience rather than leading him.

BY MR. GONTERMAN:

Q Tell what happened, what he said to you and what you said to him before you left the room? A He put on the rubber boots and told me to go with him.

Q Did he tell you where? A No.

Q You went but together? A Yes.

Q Where did you go to? A We went out of Allen street

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and went into Grand street.

Q Where did you go next? A And we went along on Grand street up to Attorney street.

Q What next? A And in Attorney street we went into the hall, the door was open and we went up to the roof.

Q What did you do after you got on the roof? A He went up to the end of the roof and went down on a fire escape.

Q What did you do? A I remained on the roof.

Q Did you ever go off the roof? A No, I was standing on the roof.

Q That is until you went down with the officer? A Yes, sir.

Q Did you ever follow him down the fire escape? A No.

Q Did you see him open a window? A I could not see because I was standing on the roof.

Q Did you say anything to him after he went down the fire escape? A No.

Q Did you give any outcry of any kind? A He told me if anyone should happen to come on the stairs I should give him a signal.

Q Did you give him a signal? A No.

Q Then what next happened? A Then I heard people were calling police.

Q And then what did you do? A I remained standing on the roof until the policemen came.

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Q What did you tell the policemen? A The same thing I am saying here.

Q That is all you told him, is that what you told the policeman? A The policeman asked me what I was doing on the roof and I told him Rosen had promised me he would give me a chance to make a dollar and that is why I am there.

Q Did you know Rosen was going to steal? A Before I went up to the roof I did not know but when I saw him go down the fire escape I understood and I wanted to come down but it was too late; I heard already people calling police and the policeman came up.

Q Did he ever tell you he was going to steal? A No.

Q Did you at any time before you saw him go down the fire escape know that he was going to commit a crime or intended to commit a crime? A No.

Q He had never told you it? A No.

Q And this burglary was not suggested by you, was it?

Objected to.

Q Did you suggest to Rosen that this crime be committed?

Objected to as immaterial.

A No.

THE COURT: Is it not immaterial in view of the testimony you have elicited?

MR. GONTERMAN: Rosen has said so.

THE COURT: You may have it again if you want it.

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BY MR. GONTERMAN:

Q Did Rosen ever give you any money? A No.

Objected to. Objection overruled.

Q Did you ever tell the police officers that you had been with Rosen in stealing or committing any crimes in Philadelphia.

Q Did you ever tell any of the police officers that you went with Rosen and were in the business with him plundering flats? A No.

Q Did you talk in English all the time? A No.

Q What language did you speak? A Mixed German with Yiddish.

BY THE COURT:

Q Did you talk with the officer in German and Yiddish and English? A Yes.

Q Did the officer answer you in a different language?
A He answered me a little in German and a little in Yiddish. I understood him.

BY MR. GONTERMAN:

Q Have you ever been convicted of a crime? A No.

Q Have you ever been arrested before? A No.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You understand English? A No -- a little.

Q You speak a little English, too? A Yes, a little.

Q You understand what I say now? A Yes.

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Q Now -- (Wait a moment Mr. Interpreter) -- when did you come to New York?

THE WITNESS: (In English) July, 1908.

Q You came from Russia?

THE WITNESS: (In English) Yes.

Q Since you are hear you worked in three places?

A (In English) Yes.

Q You left every one of those places because you could not make a living? A (In English) Yes.

Q That is right? A (In English) Yes.

Q Then you went to Philadelphia? A (In English) Yes.

Q Because you could not make a living here? A In English) Yes.

Q You came back from Philadelphia because you could not make a living in Philadelphia? A No.

Q Why did you come back from Philadelphia? A I wanted to go from Philadelphia to England and from England to Russia.

Q But you came back here to New York? A Yes.

Q You could not find a job in Philadelphia? A Yes.

Q That is right? A Yes.

Q You never knew Rosen before you met him in Philadelphia, that was the first time you met him? A No, I saw him in Philadelphia.

Q You met him there -- did you know he had been convicted of the crime of grand larceny once, did you know that?

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A No.

Q Did he ever tell you? A No -- after.

Q When did he tell you? A He did not tell me it before I came back to New York.

Q You knew it? A Before I came back to New York.

Q Then he told you? A He did not tell me, he went two weeks before from Philadelphia.

Q He left Philadelphia two weeks before you left Philadelphia? A Yes.

Q When did he first tell you he had been arrested once before? A Here.

Q You did not know it before? A No.

Q You say you came back on the 26th of April? A The 26th, yes, it was a Tuesday.

Q How long were you in New York before you met him?

A What?

Q How long were you in New York before you met him, how many days were you here? A About a year.

Q How many days were you here before you met him?

A Oh, about two days.

Q You met him on the street? A Yes.

Q What street did you meet him? A Hester street.

Q He told you where he lived? A Yes.

Q You say some other man -- A He don't tell me where he lived -- he said come up to me and I came with him together.

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Q There was another man there, too, another man? A Yes.

Q Who was the other man? A The other man, from Philadelphia.

Q You knew him from Philadelphia? A Yes.

Q Who was he? A That man give me a job in Philadelphia and I worked in that place three weeks and came back to New York, that was the last three weeks I worked in this place and he went two weeks before me -- he went to New York.

Q The day you met Rosen was the other man with Rosen?

A I don't understand what you mean.

Q You remember the time you met Rosen?

THE COURT: On Hester street.

BY MR. WASSERVOGEL:

Q Was the other man there? A Yes, he was going with him.

Q The other man told Rosen to give you a chance to make a dollar? A Yes, sir.

Q Did you know what business Rosen was in? A No.

Q You knew Rosen from Philadelphia? A I knew Rosen from Philadelphia, he came to the same lodging.

Q You knew he had no business place? A No.

Q You knew that? A I didn't know.

Q You knew in Philadelphia he had no business? A I saw him in the same lodging house every day, that is how I know him.

Q What sort of work did you expect to do for him for which

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he was to pay you a dollar, what sort of work were you to do for him in order to earn a dollar? A He did not tell me nothing.

Q But you went along with him? A No.

Q Did you go with him to his house? A I came with him to his house.

Q To make a dollar? A He told me I give you ^{to make} a dollar.

Q Didn't you ask him what work you were to do to make it? A No.

Q You took it for granted you were to make a dollar?
A I didn't care -- he said he would give me work and I did not care what work.

Q He told you he would give you work and you did not care what kind of work it was? A Yes.

Q Did you ask him what he was doing for a living?
A No.

Q You did not care about that either? A No.

Q So you went home with him to Allen street? A Yes.

Q You got there about seven or eight o'clock? A Seven or eight o'clock.

Q You went to sleep about eight o'clock? A No.

Q What time did you go to sleep? A About eleven o'clock.

Q You both laid down on a couch, on a lounge or couch?
A A lounge, yes.

Q You both laid down with your clothes on? A Yes.

Q You did not undress at all? A No.

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Q Both laid down that way? A Yes.

Q You knew you were going out again later in the night?

A What?

Q You knew you were going out later in the night? A I knew I was going out in the morning. He told me that.

Q At the time you laid down on the couch, you knew you were going out about two or three o'clock in the morning?

A No, he told me I go out in the morning.

Q That you were to go out about two o'clock? A He did not tell me about two o'clock. He told me just I go out in the morning.

Q When you awoke at two o'clock in the morning it was still very dark, the sun was not up? A When?

Q When you got up at two o'clock, was the sun up?

THE WITNESS: (Through the interpreter) No.

BY MR. WASSERVOGEL:

Q It was very dark? A Yes.

Q You knew what time it was? A Yes.

Q You went around and looked at the clock? A In Eldridge street.

Q Right around the corner and you found out it was half past two? A Yes.

Q Then the two of you went out? A I came down with him to Attorney street.

Q And did he speak about the dollar again? A No.

Q Never spoke about that dollar again? A No.

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Q Did you ask him about the dollar you were to earn?

A He told me I give you a dollar and I give you a chance to make a dollar.

Q When did he say that? A He said that in the afternoon.

Q But after that he never mentioned the dollar again?

A No.

Q Never said a word about a dollar after that? A No.

Q When he said to you, come along, you simply got up and went down on the street with him? A Yes.

Q How many streets did you go through after that?

A From Allen to Attorney.

Q Direct to Attorney street? A Yes.

Q Right off? A Yes.

Q Did you know anybody living in Attorney street? A No.

Q You went into 24 Attorney street? A I couldn't tell you the number.

Q That is the house in which you were arrested -- and you and the other man Rosen walked right upstairs to the roof?

A Yes, sir.

Q Did you ask him why you were to go up on the roof?

A What?

Q Did you ask him why you were going up on the roof?

A No.

Q You did not hear about that either? A No.

Q The hallway was dark or it was light? A It was dark.

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Q You went right up on the roof? A Yes.

Q Is there a stairway leading from the top floor to the roof -- how did you get to the roof? A Hall door was open.

Q When you got to the top floor, was there a stairway leading to the roof or a ladder leading from there? A I stand on the roof.

Q Before you got to the roof, is there a ladder going from the top floor to the roof or is there a stairway?

THE WITNESS: (Through the interpreter) There was stairs in the hall leading right up to the roof.

Q So you arrived on the roof about three o'clock in the morning? A Yes.

Q Did you ask him what he was going on the roof for?

A No, I did not ask him.

Q You did not care about that either? A No.

Q When was it he asked you to give a signal to him if he heard anybody coming up? A That was sometime, about half an hour later.

Q While you were walking upstairs he told you to stay on the roof? A Yes.

Q And if you heard anybody to give him a signal? A Yes.

Q Did you ask him what he wanted the signal for? A Yes.

Q What did he say? A Balla Gulla, that was the signal.

Q You had a signal arranged and that was Balla Gulla.

Q What does that mean, Balla Gulla? A I don't know, that

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is a Hebrew word.

Q If you heard anybody coming upstairs you were to say the word Balla Gulla? A Yes.

Q What was the object of arranging for this signal, what did he say about that, that he should not be caught by anybody, was that the reason? A I had no time to ask him because he immediately started to go down on the fire escape.

Q You knew when he told you to cry out Ball Gulla if anybody came, that he was going to do something wrong? A At that time I knew.

Q And you had time to go downstairs? A No, because a few minutes somebody hollered police.

Q He was on the roof, that is a six story building?
A Yes.

Q He told you to give the signal Balla Gulla if anybody came? A Yes.

Q He was with you on the roof at that time? A He was right next to the fire escape at that time. I wanted to ask him so he told me don't say anything.

Q How far was he from you at the time when he mentioned the word Balla Gulla as the signal? A I can't tell exactly, about three yards perhaps.

Q You were still on the roof at the time? A Yes.

Q Why didn't you run downstairs then? A I could not run down because it was dark there and I did not find the door and I ran to the other roof. When I came back again I

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could not find it.

Q Why did you hide if you did not wrong? A When I heard the people holler police I got frightened and I did not know then what I was doing.

Q At the time when you were told balla gulla as the signal, there were no people hollering then? A No.

Q You testified in answer to your lawyer's question that when the officer arrested you you were standing on the roof?

A No, I meant to say I was under the tank.

Q At that time you were under the tank? A Yes.

Q When you came back from Philadelphia you had no money?

A Four dollars.

BY THE COURT:

Q How long have you been in this country? A July is two years.

Q Did you know any English before you came here? A No.

Q You learned your English here, what you know? A Yes.

M I C H A E L P A R L M U T T E R, called as a witness in behalf of the defence, being duly sworn and examined, testified through the official interpreter Mr. Rosenthal as follows:

Q Where do you live? A 2 and 4 Suffolk street.

Q What is your business? A Rag dealer.

Q Do you know this boy? A Yes.

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Q How long have you known him? A I know him from home, but know him also here since he came about two years and a half I think.

BY MR. GONTERMAN:

Q Do you know his father and mother? A Yes.

Q Do you know a good many other people who know him?

A Yes.

Q Do you know what his reputation for truth and veracity was in the old country and here among the people who knew him? A Yes, his father was a very fine man.

Objected to as immaterial.

THE COURT: It is the defendant himself and not any relatives that is the subject of the jury's investigation.

BY MR. GONTERMAN:

Q What is his reputation? A He is a fine boy, a decent boy. He used to come to my house.

Q Ever know him being in any trouble?

Objected to; sustained.

No cross examination.

CH I A N Y A S K O W I T Z, called as a witness in behalf of the defense, being duly sworn and examined, testified through the official interpreter, Mr. Rosenthal, as follows:

BY MR. GONTERMAN:

Q Where do you live? A 2 and 4 Suffolk street.

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Q What is your business? A Presser.

Q How long have you been in this country? A Two years here.

Q Do you know this boy? A Yes, I know him and know his father when he was a boy.

Q How long have you known this boy? A About 17 or 18 years since he was a baby.

Q You knew him in the old country and in this country?
A Yes.

Q And you know other people who know him? A Yes, all our countrymen know him.

Q You have heard other people talk about him I suppose?
A Nobody ever said anything wrong about that boy. His parents are very nice people and he comes here from ^avery good stock.

Q You know what his reputation was over in Russia among the people whom he knew here? A Nobody says anything wrong about him.

Q What is his reputation for truth and veracity?
BY THE COURT:

Q Good or bad? A I think it is good because I never heard anybody say anything wrong about him.

No cross examination.

J O S H U A T O F F E L, called as a witness in behalf of the defence, being duly sworn and examined, testified

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through the official interpreter, Mr. Rosenthal, as follows:

BY MR. GONTERMAN:

Q Where do you live? A 107 Forsythe street.

Q What is your business? A Book binder.

Q How long have you been in this country? A Three years.

Q Do you know this boy? A Yes.

Q How long have you known him? A I know him from Europe.

Q Did you know him in the old country, in Warsaw --

do you know where he was born? A No.

Q Did you know him from a child? A Yes, since he was ten years.

Q Do you know other people who know him? A I come from the same city -- I know him but how many people know him here I don't know.

Q Do you know friends of his? A Last summer he was boarding with me.

Q Do you know what his reputation is for truth and veracity, good or bad? A I know at home he was a very good boy and here in this country I have not seen and I have not heard anything wrong about him. He was working and came home in the evening and went to bed in time.

Q Did he live with you for a year at your house? A The whole summer.

THE COURT: He says his reputation so far as he knows

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is good, that is as far as I think you are entitled to go.

MR. ONTERMAN: That is all.

MAURICE GOLDFARH, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. GONTERMAN:

Q What is your business? A Butcher business.

Q Where do you live? A 107 Forsythe street.

Q Do you know this defendant? A Yes, I know him.

Q How long have you known him? A About a year and a half.

Q Since he came here? A Yes.

Q Do you know other people that know him? A The whole neighborhood knows him. I know the whole neighborhood.

Q Do you know what his reputation is among the people who know him? A Yes.

Q Did you ever hear them talk about him? A Yes.

Q What is it, good or bad? A Good fellow. Every time he came from work, he is very nice, every time he is nice.

No cross examination.

THE DEFENSE RESTS.

THE PEOPLE REST.

TESTIMONY CLOSED.

MR. GONTERMAN: I move your Honor to strike from the

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record the testimony of the witness Rosen upon the ground
that it has not been corroborated.

Motion denied and exception.

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THE JUDGE'S CHARGE.

MALONE, J.:

Gentlemen of the Jury: Selig Lavine, indicted as Morris Kramer, has been indicted by the Grand Jury charged with the crime of burglary in the first degree. He has interposed a plea of not guilty to the charge and you have been selected by the learned counsel upon both sides as a proper jury to determine the merits of the action.

Burglary in the first degree is regarded as a crime of the greatest malignity. If proven it carries with it the severest punishment known to the law. It is defined in this way by the Legislature: "A person who with intent to commit some crime therein, breaks and enters in the night time the dwelling house of another in which there is at the time a human being, being assisted by a confederate actually present, is guilty of burglary in the first degree.

The crime must be in a dwelling house -- a building, any part of which is usually occupied by a person, lodging therein at night. It must be committed in the night time when there is a human being in the dwelling house. If a person breaks and enters a dwelling house under such circumstances assisted by a confederate actually present with an intent to commit ^{therein such as larceny} some crime, then he is guilty of burglary in the first degree. All these matters being essentials

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must be established by the State beyond reasonable doubt. Two of the essentials are breaking and entry, and for particularity sake the Legislature has defined those essentials in this way: "The word 'break' as used in this article means and includes opening for the purpose of entering therein by any means whatever any outer door of a building or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle or other thing used for covering or closing the opening thereto or therein or which gives passage from one part thereof to another."

The word "enter" is defined thus: "The word 'enter' as used in this article includes the entrance of the offender into such building or apartment or the insertion therein of any part of his body or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate the inmates or to detach or remove property."

The premises must be secured. They must not be left open, in other words. The doors must be shut -- not necessarily locked by a key but closed and secured. The windows must be similarly secured. If open and a person should go in, no matter what crime was committed therein, it would not be burglary. Persons occupying dwelling houses are entitled to have their repose and homes pro-

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ected against burglarious intruders.

It is provided by our statute, that any person who aids or assists, counsels or advises another in the commission of a crime is a principal. In other words, in the case of burglary, just as efficient service may be rendered by a person on guard, or a look-out, as the person who makes the physical entry.

The contention of the People of the State of New York here is that this defendant did not enter the apartment of Max Salat, but that he was a conscious principal to the burglary, that he performed just as important a share in the crime as the other person who did the breaking and entry, Samuel Rosen.

It is set out in this indictment that on the 29th day of April this defendant and Samuel Rosen committed this crime and in the premises of Max Salat, and the burden falls upon the People of establishing its cause up to proof beyond reasonable doubt, and that means, that if, after giving due and proper consideration to the entire evidence in the case, and weighing it all, the jury entertain a doubt of the guilt of the defendant, that is the reasonable doubt that the law gives a defendant the benefit of and makes for his acquittal. If, after a fair, honest, conservative, painstaking analysis of the evidence there is no doubt of the guilt of the defendant, of course

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it would be unreasonable for a jury to acquit the defendant, but the duty of the jury would be to convict him.

To the consideration of the burden assumed by the People you will consider the testimony of Mr. Salat and Miss Salat, the police officer, Nathan Gerson, and that of Samuel Rosen. You will also consider the testimony of the defendant as well as the testimony of the witnesses who have been called here by the defendant.

The evidence of Samuel Rosen is that of an accomplice. By his own confession you will regard him in that aspect. If it was the only testimony in the case, the duty of the Court would be to advise you to acquit the defendant, because his testimony, coming from such a man as he admits himself to be, confessing to his own guilt in this crime of burglary in the first degree, requires corroboration before a jury ought to give any regard to what he says. If corroborated by uninterested evidence then the jury may give it the weight that it believes that it is entitled to have.

The People urge upon you that Rosen has been corroborated by the testimony of the police officers and by the testimony of the defendant himself. The defendant urges that it has not been corroborated. Your duty is to find the truth wherever the truth lies. Has it been circumstantially corroborated in the essentials? That is for

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you to say. You will give regard to the defendant's testimony and the version which he submits to you. Has it impressed you as being the truth of the matter? If so give him the benefit of your belief and an acquittal.

The People urge that it has established its case up to the requirements of the law. If that is so, your duty is to find a verdict in accordance with the law as I have indicated it to you. There has been some evidence introduced here on the part of the defendant of good character. You will examine that and weigh it as you do the other evidence and give it just the proper weight. Evidence of good character is always relevant in a criminal cause. If the jury are satisfied beyond reasonable doubt of the defendant's guilt, after all the evidence has been carefully weighed and sifted, including that of good character, then of course his previous good reputation would not protect him against the consequences of his crime. It is evidence for a jury to give heed to and to weigh with reference to the fact whether a person with such a character did commit the crime. There have been cases where such evidence has turned the scales in a defendant's favor and juries have properly and legally found a person not guilty largely through the weight of the character evidence submitted. It is to be weighed in an intelligent

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and conscientious way by the jury and given the weight that the law gives to it and no more.

I know, gentlemen of the jury, that you have listened carefully to this evidence and that you appreciate all the salient facts. They have been discussed here on both sides and the testimony is fresh in your recollection. You owe the duty to the defendant and to the People of the State to find a true verdict. You are to determine this case fairly, honestly and impartially between them on the evidence, taking for your guidance the Court's instructions upon all matters of law. You are to apply this law to the facts as you find the facts to be. You are to say whether the People of the State of New York have or have not established this charge in the indictment. If they have they are entitled to a verdict of guilty at your hands. If they have not the defendant is entitled to an acquittal.

MR. GONTERMAN: I ask your Honor to charge that if they believe that at the time this defendant went on the roof and while he remained there, he did not have a criminal intent to commit the crime, it is their duty to acquit him.

THE COURT: I so charge you. You may take the whole circumstances into account and determine the facts and the intent of the defendant with reference to all the facts

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found by you.

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MR. GONTERMAN: Also to charge that evidence of good character of the defendant, if believed by them, may in and of itself, apart from the other evidence, create in their minds a reasonable doubt.

THE COURT: I decline to charge further than I have already charged on the subject of good character. I think I have covered it.

MR. GONTERMAN: Will you charge in regard to the presumption of innocence?

THE COURT: A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt, whether his guilt is satisfactorily shown, he is entitled to an acquittal. You may retire for the consideration of your verdict.

The jury rendered a verdict of Guilty of Burglary in the First Degree with a recommendation to mercy.

MR. GONTERMAN: I move to set aside the verdict as contrary to law and contrary to the evidence.

Motion denied. Exception.

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- THE JUDGE'S CHARGE -

MALONE, J.:

Gentlemen of the Jury: Selig Lavine, indicted as Morris Kramer, has been indicted by the Grand Jury charged with the crime of burglary in the first degree. He has interposed a plea of not guilty to the charge and you have been selected by the learned counsel upon both sides as a proper jury to determine the merits of the action.

Burglary in the first degree is a serious crime, one of the most serious known to the law, and it is defined in this way by the Legislature: "A person who with intent to commit some crime therein, breaks and enters in the night time the dwelling house of another in which there is at the time a human being, being assisted by a confederate actually present, is guilty of burglary in the first degree.

The crime must be in a dwelling house. It must be in the day time. It must be in a dwelling house in the night time when there is a human being in the dwelling house, and if the person breaks and enters that dwelling house under those circumstances assisted by a confederate actually present, he is guilty of burglary in the first degree. The essentials must be established by the State beyond reasonable doubt. Two of the essentials are breaking and entry, and for particularity sake the Legislature

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has defined those essentials in this way: "The word 'break' as used in this article means and includes opening for the purpose of entering therein by any means whatever any outer door of a building or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle or other thing used for covering or closing the opening thereto or therein or which gives passage from one part thereof to another."

The word "enter" is defined thus: "The word 'enter' as used in this article includes the entrance of the offender into such building or apartment or the insertion therein of any part of his body or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate the inmates or to detach or remove property."

The premises must be secured. They must not be left open, in other words. The doors must be shut -- not necessarily locked, but closed. The windows must be not necessarily locked but closed. If open and a person should go in, it would not be burglary, but the security does not mean the locking by a key. If the door or the windows be closed, the person occupying the dwelling is entitled to his repose unaffected by any uninvited intruder.

It is a principle, established in our law, and provided by our statute, that any person who aids or assists,

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counsels or advises another in the commission of a crime is a principal. In other words, in the case of burglary, just as efficient service may be rendered by a person on guard, or a look-out, as the person who makes the physical entry.

The contention of the People of the State of New York here is that this defendant did not enter the apartment of Max Salat, but that he was a party to the burglary, and just as important a part as the other person who did the breaking and entry, Samuel Rosen.

It is set out in this indictment that on the 29th day of April this defendant and Samuel Rosen committed this crime and in the premises of Max Salat, and the burden falls upon the People of establishing its cause up to proof beyond reasonable doubt, and that means, that if, after giving due and proper consideration to the entire evidence in the case, and weighing it all, the jury entertain a doubt of the guilt of the defendant, that is the reasonable doubt that the law gives a defendant and makes for an acquittal. If, after a fair, honest, conservative, painstaking analysis of the evidence there is no doubt of the guilt of the defendant, of course it would be unreasonable for a jury to acquit the defendant, but the duty of the jury would be to convict him.

To the consideration of the burden assumed by the

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People you will give heed to the testimony of Mr. Salat and Miss Salat, the police officer, Nathan Gerson, and the testimony of Samuel Rosen. You will give heed to the testimony of the defendant testifying in his own interest and also the testimony of the character witnesses who have been called here by learned counsel for the defendant.

The evidence of Samuel Rosen is that of an accomplice. By his own confession you will regard him in that aspect. If it was the only testimony in the case, the duty of the jury would be to advise you to acquit the defendant, because his testimony, coming from such a man as he admits himself to be, confessing to participation in this crime of burglary in the first degree, requires corroboration before a jury ought to believe him. If corroborated, or if there be evidence that tends to corroborate it, then the jury may and should give it the weight that the jury believe that it is entitled to have.

The People urge upon you that Rosen has been corroborated, by the testimony of the police officers and by the testimony of the defendant himself. Your duty is to get the truth from whatever source the truth can be had. You will consider the argument on the part of the State that this evidence has been circumstantially and in detail corroborated, in some, if not many of the essentials.

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A No.

Q Did he ever tell you? A No -- after.

Q When did he tell you? A He did not tell me it before I came back to New York.

Q You knew it? A Before I came back to New York.

Q Then he told you? A He did not tell me, he went two weeks before from Philadelphia.

Q He left Philadelphia two weeks before you left Philadelphia? A Yes.

Q When did he first tell you he had been arrested once before? A Here.

Q You did not know it before? A No.

Q You say you came back on the 26th of April? A The 26th, yes, it was a Tuesday.

Q How long were you in New York before you met him?

A What?

Q How long were you in New York before you met him, how many days were you here? A About a year.

Q How many days were you here before you met him?

A Oh, about two days.

Q You met him on the street? A Yes.

Q What street did you meet him? A Hester street.

Q He told you where he lived? A Yes.

Q You say some other man -- A He don't tell me where he lived -- he said come up to me and I came with him together.

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Q There was another man there, too, another man? A Yes.

Q Who was the other man? A The other man, from Philadelphia.

Q You knew him from Philadelphia? A Yes.

Q Who was he? A That man give me a job in Philadelphia and I worked in that place three weeks and came back to New York, that was the last three weeks I worked in this place and he went two weeks before me -- he went to New York.

Q The day you met Rosen was the other man with Rosen?

A I don't understand what you mean.

Q You remember the time you met Rosen?

THE COURT: On Hester street.

BY MR. WASSERVOGEL:

Q Was the other man there? A Yes, he was going with him.

Q The other man told Rosen to give you a chance to make a dollar? A Yes, sir.

Q Did you know what business Rosen was in? A No.

Q You knew Rosen from Philadelphia? A I knew Rosen from Philadelphia, he came to the same lodging.

Q You knew he had no business place? A No.

Q You knew that? A I didn't know.

Q You knew in Philadelphia he had no business? A I saw him in the same lodging house every day, that is how I know him.

Q What sort of work did you expect to do for him for which

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he was to pay you a dollar, what sort of work were you to do for him in order to earn a dollar? A He did not tell me nothing.

Q But you went along with him? A No.

Q Did you go with him to his house? A I came with him to his house.

Q To make a dollar? A He told me I give you ^{to make} a dollar.

Q Didn't you ask him what work you were to do to make it? A No.

Q You took it for granted you were to make a dollar?

A I didn't care -- he said he would give me work and I did not care what work.

Q He told you he would give you work and you did not care what kind of work it was? A Yes.

Q Did you ask him what he was doing for a living?

A No.

Q You did not care about that either? A No.

Q So you went home with him to Allen street? A Yes.

Q You got there about seven or eight o'clock? A Seven or eight o'clock.

Q You went to sleep about eight o'clock? A No.

Q What time did you go to sleep? A About eleven o'clock.

Q You both laid down on a couch, on a lounge or couch?

A A lounge, yes.

Q You both laid down with your clothes on? A Yes.

Q You did not undress at all? A No.

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Q Both laid down that way? A Yes.

Q You knew you were going out again later in the night?

A What?

Q You knew you were going out later in the night? A I knew I was going out in the morning. He told me that.

Q At the time you laid down on the couch, you knew you were going out about two or three o'clock in the morning?

A No, he told me I go out in the morning.

Q That you were to go out about two o'clock? A He did not tell me about two o'clock. He told me just I go out in the morning.

Q When you awoke at two o'clock in the morning it was still very dark, the sun was not up? A When?

Q When you got up at two o'clock, was the sun up?

THE WITNESS: (Through the interpreter) No.

BY MR. WASSERVOGEL:

Q It was very dark? A Yes.

Q You knew what time it was? A Yes.

Q You went around and looked at the clock? A In Eldridge street.

Q Right around the corner and you found out it was half past two? A Yes.

Q Then the two of you went out? A I came down with him to Attorney street.

Q And did he speak about the dollar again? A No.

Q Never spoke about that dollar again? A No.

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Q Did you ask him about the dollar you were to earn?

A He told me I give you a dollar and I give you a chance to make a dollar.

Q When did he say that? A He said that in the afternoon.

Q But after that he never mentioned the dollar again?

A No.

Q Never said a word about a dollar after that? A No.

Q When he said to you, come along, you simply got up and went down on the street with him? A Yes.

Q How many streets did you go through after that?

A From Allen to Attorney.

Q Direct to Attorney street? A Yes.

Q Right off? A Yes.

Q Did you know anybody living in Attorney street? A No.

Q You went into 24 Attorney street? A I couldn't tell you the number.

Q That is the house in which you were arrested -- and you and the other man Rosen walked right upstairs to the roof?

A Yes, sir.

Q Did you ask him why you were to go up on the roof?

A What?

Q Did you ask him why you were going up on the roof?

A No.

Q You did not hear about that either? A No.

Q The hallway was dark or it was light? A It was dark.

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Q You went right up on the roof? A Yes.

Q Is there a stairway leading from the top floor to the roof -- how did you get to the roof? A Hall door was open.

Q When you got to the top floor, was there a stairway leading to the roof or a ladder leading from there? A I stand on the roof.

Q Before you got to the roof, is there a ladder going from the top floor to the roof or is there a stairway?

THE WITNESS: (Through the interpreter) There was stairs in the hall leading right up to the roof.

Q So you arrived on the roof about three o'clock in the morning? A Yes.

Q Did you ask him what he was going on the roof for?

A No, I did not ask him.

Q You did not care about that either? A No.

Q When was it he asked you to give a signal to him if he heard anybody coming up? A That was sometime, about half an hour later.

Q While you were walking upstairs he told you to stay on the roof? A Yes.

Q And if you heard anybody to give him a signal? A Yes.

Q Did you ask him what he wanted the signal for? A Yes.

Q What did he say? A Balla Gulla, that was the signal.

Q You had a signal arranged and that was Balla Gulla.

Q What does that mean, Balla Gulla? A I don't know, that

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is a Hebrew word.

Q If you heard anybody coming upstairs you were to say the word Balla Gulla? A Yes.

Q What was the object of arranging for this signal, what did he say about that, that he should not be caught by anybody, was that the reason? A I had no time to ask him because he immediately started to go down on the fire escape.

Q You knew when he told you to cry out Ball Gulla if anybody came, that he was going to do something wrong? A At that time I knew.

Q And you had time to go downstairs? A No, because a few minutes somebody hollered police.

Q He was on the roof, that is a six story building?
A Yes.

Q He told you to give the signal Balla Gulla if anybody came? A Yes.

Q He was with you on the roof at that time? A He was right next to the fire escape at that time. I wanted to ask him so he told me don't say anything.

Q How far was he from you at the time when he mentioned the word Balla Gulla as the signal? A I can't tell exactly, about three yards perhaps.

Q You were still on the roof at the time? A Yes.

Q Why didn't you run downstairs then? A I could not run down because it was dark there and I did not find the door and I ran to the other roof. When I came back again I

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could not find it.

Q Why did you hide if you did not wrong? A When I heard the people holler police I got frightened and I did not know then what I was doing.

Q At the time when you were told balla gulla as the signal, there were no people hollering then? A No.

Q You testified in answer to your lawyer's question that when the officer arrested you you were standing on the roof?

A No, I meant to say I was under the tank.

Q At that time you were under the tank? A Yes.

Q When you came back from Philadelphia you had no money?

A Four dollars.

BY THE COURT:

Q How long have you been in this country? A July is two years.

Q Did you know any English before you came here? A No.

Q You learned your English here, what you know? A Yes.

M I C H A E L P A R L M U T T E R, called as a witness in behalf of the defence, being duly sworn and examined, testified through the official interpreter Mr. Rosenthal as follows:

Q Where do you live? A 2 and 4 Suffolk street.

Q What is your business? A Rag dealer.

Q Do you know this boy? A Yes.

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Q How long have you known him? A I know him from home, but know him also here since he came about two years and a half I think.

BY MR. GONTERMAN:

Q Do you know his father and mother? A Yes.

Q Do you know a good many other people who know him?

A Yes.

Q Do you know what his reputation for truth and veracity was in the old country and here among the people who knew him? A Yes, his father was a very fine man.

Objected to as immaterial.

THE COURT: It is the defendant himself and not any relatives that is the subject of the jury's investigation.

BY MR. GONTERMAN:

Q What is his reputation? A He is a fine boy, a decent boy. He used to come to my house.

Q Ever know him being in any trouble?

Objected to; sustained.

No cross examination.

CH I A N Y A S K O W I T Z, called as a witness in behalf of the defense, being duly sworn and examined, testified through the official interpreter, Mr. Rosenthal, as follows:

BY MR. GONTERMAN:

Q Where do you live? A 2 and 4 Suffolk street.

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Q What is your business? A Presser.

Q How long have you been in this country? A Two years here.

Q Do you know this boy? A Yes, I know him and know his father when he was a boy.

Q How long have you known this boy? A About 17 or 18 years since he was a baby.

Q You knew him in the old country and in this country?
A Yes.

Q And you know other people who know him? A Yes, all our countrymen know him.

Q You have heard other people talk about him I suppose?
A Nobody ever said anything wrong about that boy. His parents are very nice people and he comes here from ^avery good stock.

Q You know what his reputation was over in Russia among the people whom he knew here? A Nobody says anything wrong about him.

Q What is his reputation for truth and veracity?
BY THE COURT:

Q Good or bad? A I think it is good because I never heard anybody say anything wrong about him.

No cross examination.

J O S H U A T O F F E L, called as a witness in behalf of the defence, being duly sworn and examined, testified

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through the official interpreter, Mr. Rosenthal, as follows:

BY MR. GONTERMAN:

Q Where do you live? A 107 Forsythe street.

Q What is your business? A Book binder.

Q How long have you been in this country? A Three years.

Q Do you know this boy? A Yes.

Q How long have you known him? A I know him from Europe.

Q Did you know him in the old country, in Warsaw --
do you know where he was born? A No.

Q Did you know him from a child? A Yes, since he was
ten years.

Q Do you know other people who know him? A I come from
the same city -- I know him but how many people know him here
I don't know.

Q Do you know friends of his? A Last summer he was
boarding with me.

Q Do you know what his reputation is for truth and
veracity, good or bad? A I know at home he was a very good
boy and here in this country I have not seen and I have not
heard anything wrong about him. He was working and came home
in the evening and went to bed in time.

Q Did he live with you for a year at your house? A The
whole summer.

THE COURT: He says his reputation so far as he knows

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is good, that is as far as I think you are entitled to go.

MR. GONTERMAN: That is all.

MAURICE GOLDFARH, called as a witness in behalf of the defense, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. GONTERMAN:

Q What is your business? A Butcher business.

Q Where do you live? A 107 Forsythe street.

Q Do you know this defendant? A Yes, I know him.

Q How long have you known him? A About a year and a half.

Q Since he came here? A Yes.

Q Do you know other people that know him? A The whole neighborhood knows him. I know the whole neighborhood.

Q Do you know what his reputation is among the people who know him? A Yes.

Q Did you ever hear them talk about him? A Yes.

Q What is it, good or bad? A Good fellow. Every time he came from work, he is very nice, every time he is nice.

No cross examination.

THE DEFENSE RESTS.

THE PEOPLE REST.

TESTIMONY CLOSED.

MR. GONTERMAN: I move your Honor to strike from the

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record the testimony of the witness Rosen upon the ground
that it has not been corroborated.

Motion denied and exception.

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THE JUDGE'S CHARGE.

MALONE, J.:

Gentlemen of the Jury: Selig Lavine, indicted as Morris Kramer, has been indicted by the Grand Jury charged with the crime of burglary in the first degree. He has interposed a plea of not guilty to the charge and you have been selected by the learned counsel upon both sides as a proper jury to determine the merits of the action.

Burglary in the first degree is regarded as a crime of the greatest malignity. If proven it carries with it the severest punishment known to the law. It is defined in this way by the Legislature: "A person who with intent to commit some crime therein, breaks and enters in the night time the dwelling house of another in which there is at the time a human being, being assisted by a confederate actually present, is guilty of burglary in the first degree.

The crime must be in a dwelling house -- a building, any part of which is usually occupied by a person, lodging therein at night. It must be committed in the night time when there is a human being in the dwelling house. If a person breaks and enters a dwelling house under such circumstances assisted by a confederate actually present with an intent to commit ^{therein such as larceny} some crime then he is guilty of burglary in the first degree. All these matters being essentials

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must be established by the State beyond reasonable doubt. Two of the essentials are breaking and entry, and for particularity sake the Legislature has defined those essentials in this way: "The word 'break' as used in this article means and includes opening for the purpose of entering therein by any means whatever any outer door of a building or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle or other thing used for covering or closing the opening thereto or therein or which gives passage from one part thereof to another."

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The premises must be secured. They must not be left open, in other words. The doors must be shut -- not necessarily locked by a key but closed and secured. The windows must be similarly secured. If open and a person should go in, no matter what crime was committed therein, it would not be burglary. Persons occupying dwelling houses are entitled to have their repose and homes pro-

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ected against burglarious intruders.

It is provided by our statute, that any person who aids or assists, counsels or advises another in the commission of a crime is a principal. In other words, in the case of burglary, just as efficient service may be rendered by a person on guard, or a look-out, as the person who makes the physical entry.

The contention of the People of the State of New York here is that this defendant did not enter the apartment of Max Salat, but that he was a conscious principal to the burglary, that he performed just as important a share in the crime as the other person who did the breaking and entry, Samuel Rosen.

It is set out in this indictment that on the 29th day of April this defendant and Samuel Rosen committed this crime and in the premises of Max Salat, and the burden falls upon the People of establishing its cause up to proof beyond reasonable doubt, and that means, that if, after giving due and proper consideration to the entire evidence in the case, and weighing it all, the jury entertain a doubt of the guilt of the defendant, that is the reasonable doubt that the law gives a defendant the benefit of and makes for his acquittal. If, after a fair, honest, conservative, painstaking analysis of the evidence there is no doubt of the guilt of the defendant, of course

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it would be unreasonable for a jury to acquit the defendant, but the duty of the jury would be to convict him.

To the consideration of the burden assumed by the People you will consider the testimony of Mr. Salat and Miss Salat, the police officer, Nathan Gerson, and that of Samuel Rosen. You will also consider the testimony of the defendant as well as the testimony of the witnesses who have been called here by the defendant.

The evidence of Samuel Rosen is that of an accomplice. By his own confession you will regard him in that aspect. If it was the only testimony in the case, the duty of the Court would be to advise you to acquit the defendant, because his testimony, coming from such a man as he admits himself to be, confessing to his own guilt in this crime of burglary in the first degree, requires corroboration before a jury ought to give any regard to what he says. If corroborated by uninterested evidence then the jury may give it the weight that it believes that it is entitled to have.

The People urge upon you that Rosen has been corroborated by the testimony of the police officers and by the testimony of the defendant himself. The defendant urges that it has not been corroborated. Your duty is to find the truth wherever the truth lies. Has it been circumstantially corroborated in the essentials? That is for

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you to say. You will give regard to the defendant's testimony and the version which he submits to you. Has it impressed you as being the truth of the matter? If so give him the benefit of your belief and an acquittal.

The People urge that it has established its case up to the requirements of the law. If that is so, your duty is to find a verdict in accordance with the law as I have indicated it to you. There has been some evidence introduced here on the part of the defendant of good character. You will examine that and weigh it as you do the other evidence and give it just the proper weight. Evidence of good character is always relevant in a criminal cause. If the jury are satisfied beyond reasonable doubt of the defendant's guilt, after all the evidence has been carefully weighed and sifted, including that of good character, then of course his previous good reputation would not protect him against the consequences of his crime. It is evidence for a jury to give heed to and to weigh with reference to the fact whether a person with such a character did commit the crime. There have been cases where such evidence has turned the scales in a defendant's favor and juries have properly and legally found a person not guilty largely through the weight of the character evidence submitted. It is to be weighed in an intelligent

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and conscientious way by the jury and given the weight that the law gives to it and no more.

I know, gentlemen of the jury, that you have listened carefully to this evidence and that you appreciate all the salient facts. They have been discussed here on both sides and the testimony is fresh in your recollection. You owe the duty to the defendant and to the People of the State to find a true verdict. You are to determine this case fairly, honestly and impartially between them on the evidence, taking for your guidance the Court's instructions upon all matters of law. You are to apply this law to the facts as you find the facts to be. You are to say whether the People of the State of New York have or have not established this charge in the indictment. If they have they are entitled to a verdict of guilty at your hands. If they have not the defendant is entitled to an acquittal.

MR. GONTERMAN: I ask your Honor to charge that if they believe that at the time this defendant went on the roof and while he remained there, he did not have a criminal intent to commit the crime, it is their duty to acquit him.

THE COURT: I so charge you. You may take the whole circumstances into account and determine the facts and the intent of the defendant with reference to all the facts

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found by you.

MR. GONTERMAN: Also to charge that evidence of good character of the defendant, if believed by them, may in and of itself, apart from the other evidence, create in their minds a reasonable doubt.

THE COURT: I decline to charge further than I have already charged on the subject of good character. I think I have covered it.

MR. GONTERMAN: Will you charge in regard to the presumption of innocence?

THE COURT: A defendant in a criminal action is presumed to be innocent until the contrary be proved; and in case of a reasonable doubt, whether his guilt is satisfactorily shown, he is entitled to an acquittal. You may retire for the consideration of your verdict.

The jury rendered a verdict of Guilty of Burglary in the First Degree with a recommendation to mercy.

MR. GONTERMAN: I move to set aside the verdict as contrary to law and contrary to the evidence.

Motion denied. Exception.

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- THE JUDGE'S CHARGE -

MALONE, J.:

Gentlemen of the Jury: Selig Lavine, indicted as Morris Kramer, has been indicted by the Grand Jury charged with the crime of burglary in the first degree. He has interposed a plea of not guilty to the charge and you have been selected by the learned counsel upon both sides as a proper jury to determine the merits of the action.

Burglary in the first degree is a serious crime, one of the most serious known to the law, and it is defined in this way by the Legislature: "A person who with intent to commit some crime therein, breaks and enters in the night time the dwelling house of another in which there is at the time a human being, being assisted by a confederate actually present, is guilty of burglary in the first degree.

The crime must be in a dwelling house. It must be in the day time. It must be in a dwelling house in the night time when there is a human being in the dwelling house, and if the person breaks and enters that dwelling house under those circumstances assisted by a confederate actually present, he is guilty of burglary in the first degree. The essentials must be established by the State beyond reasonable doubt. Two of the essentials are breaking and entry, and for particularity sake the Legislature

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has defined those essentials in this way: "The word 'break' as used in this article means and includes opening for the purpose of entering therein by any means whatever any outer door of a building or of any apartment or set of apartments therein separately used or occupied, or any window, shutter, scuttle or other thing used for covering or closing the opening thereto or therein or which gives passage from one part thereof to another."

The word "enter" is defined thus: "The word 'enter' as used in this article includes the entrance of the offender into such building or apartment or the insertion therein of any part of his body or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate the inmates or to detach or remove property."

The premises must be secured. They must not be left open, in other words. The doors must be shut -- not necessarily locked, but closed. The windows must be not necessarily locked but closed. If open and a person should go in, it would not be burglary, but the security does not mean the locking by a key. If the door or the windows be closed, the person occupying the dwelling is entitled to his repose unaffected by any uninvited intruder.

It is a principle, established in our law, and provided by our statute, that any person who aids or assists,

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counsels or advises another in the commission of a crime as a principal. In other words, in the case of burglary, just as efficient service may be rendered by a person on guard, or a look-out, as the person who makes the physical entry.

The contention of the People of the State of New York here is that this defendant did not enter the apartment of Max Salat, but that he was a party to the burglary, and just as important a part as the other person who did the breaking and entry, Samuel Rosen.

It is set out in this indictment that on the 29th day of April this defendant and Samuel Rosen committed this crime and in the premises of Max Salat, and the burden falls upon the People of establishing its cause up to proof beyond reasonable doubt, and that means, that if, after giving due and proper consideration to the entire evidence in the case, and weighing it all, the jury entertain a doubt of the guilt of the defendant, that is the reasonable doubt that the law gives a defendant and makes for an acquittal. If, after a fair, honest, conservative, painstaking analysis of the evidence there is no doubt of the guilt of the defendant, of course it would be unreasonable for a jury to acquit the defendant, but the duty of the jury would be to convict him.

To the consideration of the burden assumed by the

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People you will give heed to the testimony of Mr. Salat and Miss Salat, the police officer, Nathan Gerson, and the testimony of Samuel Rosen. You will give heed to the testimony of the defendant testifying in his own interest and also the testimony of the character witnesses who have been called here by learned counsel for the defendant.

The evidence of Samuel Rosen is that of an accomplice. By his own confession you will regard him in that aspect. If it was the only testimony in the case, the duty of the jury would be to advise you to acquit the defendant, because his testimony, coming from such a man as he admits himself to be, confessing to participation in this crime of burglary in the first degree, requires corroboration before a jury ought to believe him. If corroborated, or if there be evidence that tends to corroborate it, then the jury may and should give it the weight that the jury believe that it is entitled to have.

The People urge upon you that Rosen has been corroborated, by the testimony of the police officers and by the testimony of the defendant himself. Your duty is to get the truth from whatever source the truth can be had. You will consider the argument on the part of the State that this evidence has been circumstantially and in detail corroborated, in some, if not many of the essentials.

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That is of course for you to say. You will give regard to the defendant's testimony and weigh it as the defendant in his testimony has impressed you -- as to his mentality, his position as defendant and the interest that he has at stake in the verdict that you are about to render.

The People urge that it has established its case up to the requirements of the law. If that is so, your duty is to find a verdict in accordance with the law as I have laid it down to you. There has been some evidence introduced here on the part of the defendant of good character. You will examine that and weigh it and give it just the proper weight it is entitled to. Evidence of good character is always relevant in a criminal cause. It is to be given by a jury just the proper weight and no more. If the jury are satisfied beyond reasonable doubt of the defendant's guilt, then evidence of good character does not shield a person against his crime, nor is it a protection against the consequences of his crime, nor does it mean that the person of previously good character cannot commit a crime, but it is evidence for a jury to give heed to and to weigh with reference to the fact whether the person did commit the crime or not. There have been cases where the evidence was so balanced that that class of evidence has turned the scales and juries have found a person not guilty largely through the weight of the character

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evidence submitted. It is to be weighed in a proper way by a jury and given the weight that the law gives to it and no more.

I think, gentlemen of the jury, that you have listened carefully to this evidence and that you know the salient facts. They have been discussed here on both sides and the testimony must be fresh in your recollection. You have no duty to the defendant that does not go out also to the People of the State. You are to determine this case, fairly, honestly and impartially on the evidence. You are to take from the Court the instructions upon matters of law. You are to apply the law to the facts as you find the facts to be. You are to say whether the People of the State of New York have or have not established this charge in the indictment. If they have they are entitled to a verdict of guilty at your hands. If they have not the defendant is entitled to an acquittal.

MR. GONTKMAN: I ask your Honor to charge that if they believe that at the time this defendant went on the roof and while he remained there, he did not have a criminal intent to commit the crime, it is their duty to acquit him.

THE COURT: You may take the whole circumstances into account and determine the act and the intent of the defendant with reference to the act charged.

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MR. GONTERMAN: Also to charge that evidence of good character of the defendant, if believed by them, may in and of itself, apart from the other evidence, create in their minds a reasonable doubt.

THE COURT: I decline to charge further than I have already charged on the subject of good character. I think I have covered it.

MR. GONTERMAN: Will you charge in regard to the presumption of innocence?

THE COURT: The defendant and all persons charged with the commission of offences against the law are presumed to be innocent independent of the evidence. If at the end of the entire case and after the jury have considered all the evidence, the jury believe the evidence has not removed that presumption beyond reasonable doubt, it protects a person charged with crime. If the evidence, however, does remove the presumption of his innocence, it does not shield or protect the person whose guilt has been established beyond reasonable doubt.. You may retire for the consideration of the case.

The jury rendered a verdict of Guilty of Burglary in the First Degree with a recommendation to mercy.

MR. GONTERMAN: I move to set aside the verdict as contrary to law and contrary to the evidence.

Motion denied. Exception.

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