

- : I N D E X : -

WITNESSES:

Direct:

Cross:

Re-Dir.:

Re-Gro.:

Morris De Luca,

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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part III.

3250

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THE PEOPLE OF THE STATE OF NEW YORK

vs.

Before:
HON. JOSEPH F. MULQUEEN, J.,
and a Jury.

HENRY GROSSMAN, alias LITTLE HICK,
alias IRVING WEXLER, alias HARRY
GROSSMAN, alias LOUIS GREENBERG,
alias IRVING WECHSLER, impleaded
with HARRY GREENBERG, alias
LITTLE MARLO, alias SAMUEL HYMAN
and BARNEY GRUBER, alias CARUSO,
alias BARNEY GREENGRASS, alias
BENNY GREENGRASS.

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New York, January 13th, 1920, etc.

INDICTED FOR ATTEMPTED BURGLARY IN THE THIRD DEGREE,
AS A SECOND OFFENSE.

INDICTMENT FILED DECEMBER 8th, 1919.

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

For the People:

ASST. DISTRICT ATTORNEY OWEN W. BOHAN.

For the Defendant:

CLARK L. JORDAN, ESQ.

(Upon the calling of the calendar, the case was
called for trial and the District Attorney answers "Ready.")

THE COURT: In the matter of the application of
Clark L. Jordan, Esq., for an adjournment of the case

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of Henry Grossman and others, I have read the affidavits and there is not anything in them that in my opinion would justify me at this time to grant a further adjournment.

The People's case will go on this afternoon at two o'clock, we having enough business to occupy us until then.

I marked this case ready yesterday, for to-day, so that you had ample opportunity to produce any witness that was in Philadelphia, and furthermore, you show by your affidavit that Judge McIntyre set these cases for January 9th, and they should have been disposed of.

The cases were preferred by the District Attorney. I do not know whether you made any objection to the preference or not.

MR. JORDAN: Your Honor expressly permitted me to make application for a postponement in the Part to which it was sent.

THE COURT: Then your motions were made and not granted. Now, there is not any reason why these cases cannot be tried, and full fairness will be shown to both sides.

I know nothing about the case. The references to my statement there were merely on the question of fixing bail. It is a perfectly proper thing for the police to communicate with the Court and the District Attorney. It happened that the District Attorney to whom the statement was made was not in court, that is all. He was engaged in doing something else when these men were arraigned.

Now, bail has been fixed satisfactorily to me. I did my duty and I propose to do it now.

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You will not be forced on to trial this afternoon, that is, I mean, to put your side in if the People rest. I do not know one fact in the case and I do not want to know. I do not know anything about the facts. I merely say when a request is made to me by the Police Department that bail be fixed, I think it is proper to do it.

Now, what is the use of discussing this? The jurors are here in court. You may remove every shadow of doubt or fear from your mind as to the trial. You can bring your witness here from Philadelphia any time and put him on.

MR. JORDAN: Well, I cannot compel him to come.

THE COURT: Well, that is your misfortune.

MR. JORDAN: Well, it should not be a question of misfortune.

THE COURT: You have heard my ruling. The case will proceed at two o'clock.

MR. JORDAN: Does your Honor deny my application?

THE COURT: I do, for a further adjournment.

MR. JORDAN: Does your Honor deny my application to send it to some other Part?

THE COURT: I deny your application in every particular and every respect. It will be started here at two o'clock to-day.

MR. JORDAN: I take an exception.

THE COURT: Yes, you take an exception.

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MR. JORDAN: I want to ask the District Attorney which case will be moved first?

MR. BOHAN: The People will move indictment No. 38448, attempted burglary in the third degree as a second offense.

MR. JORDAN: The defendants will not be tried together. Which one will be tried?

MR. BOHAN: Will your Honor give me until two o'clock?

THE COURT: Mr. Jordan, at two o'clock the District Attorney will be compelled to elect which indictment he wishes to try. You will not be injured, as I said, if you want to produce your witness, you will have until tomorrow to do it. That is all now.

(A f t e r R e c e s s)

MR. BOHAN: I move the case of the People against Henry Grossman.

MR. JORDAN: I understood there was another case to be tried before this, your Honor.

THE COURT: No, it was disposed of. The other man came to the bar and pleaded guilty and then withdrew his plea. Then we ordered him on and I did not think it was fair to try him before that jury who heard the matter discussed, so it went over, as counsel wanted to have a talk with him.

We will take the People's evidence then, if you think you need an adjournment, and put in your evidence tomorrow.

MR. JORDAN: Now, your Honor, I do not want to go on with the trial of this case, and I will say to your Honor

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that I want to apply to the Supreme Court for an order staying it. I ask your Honor to allow me to do it. I believe it is my duty to do it. You know that I --

THE COURT: Now, you have done your full duty.

MR. JORDAN: No, I have not yet. I do not think that I have.

THE COURT: Well now, this case is ordered on. The record is complete so far as you are concerned, and we will not gain anything by further discussion.

MR. JORDAN: Well, I do not know as we will, but I ask your Honor to --

THE COURT: You are entirely in error in your view of the case, Mr. Jordan.

MR. JORDAN: Your Honor, I am not, I am right in this proposition.

THE COURT: No, no.

MR. JORDAN: I know I am.

THE COURT: Please proceed. Call the jury.

MR. JORDAN: Before proceeding, I desire to file in this case a protest against going on for the reasons stated in the affidavit filed by me, on my application this morning to postpone the case, and to transfer it to some other judge.

THE COURT: The motion is denied.

MR. JORDAN: And the defendant excepts.

THE COURT: Now, it has been sufficiently discussed,

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and I advise you not to have any further repetition of it.
Please proceed with the trial.

MR. JORDAN: If your Honor please, I have made all my
motions and do not desire to say anything more about it.

THE COURT: All right, then, proceed.

(The Clerk then proceeded to call a jury).

MR. JORDAN: May we have the answers of the jurors
taken down, your Honor?

THE COURT: Yes, certainly.

(The jurors were then examined individually by Mr.
Bohan and Mr. Jordan, and after the examination Mr. Jordan
stated:)

MR. JORDAN: There are no challenges.

MR. BOHAN: The jury is satisfactory to the People.

The jury was then duly sworn.

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Mr. Bohan opened the case on behalf of the People as follows:

May it please the Court and Gentlemen of the Jury: The defendant, Henry Grossman, has been indicted by the Grand Jury, together with one Harry Greenberg and Barney Gruber, and this indictment alleges that they did attempt to commit the crime of burglary in the third-degree, and in the case of this defendant, as a second offense.

On the question of the second offense, the People hope to prove to you that on the 27th day of October, 1912, this defendant, Henry Grossman, under the name and description of Louis Greenberg was convicted of the crime of criminally receiving stolen property, and under the other part of the indictment, the major part, that this defendant together with the co-defendants attempted to commit the crime of burglary in the third degree.

We hope to prove substantially the following, that on the evening of December 2nd, 1919, last month, the premises known as the Anchor Warehouse Company, were attempted to be entered by this defendant and two others.

The Anchor Warehouse Company is located in the County of New York, on Second avenue between 47th and 48th streets. I think it occupies two building house numbers on Second avenue, 885 and 887. It has an L-shape, that is, the building extends back from Second avenue, and then connects with the buildings on 47th street between Second and Third avenues.

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The house numbers on Second avenue to be exact, are 887 and 889, and the buildings on the 47th street side run from 223 to 241. There is a corner house on the north-west corner of 47th street occupied by tenants. 885 Second avenue is also a tenement house occupied by tenants, so that south of the warehouse on Second avenue there are two houses on the north-west corner of 47th street and Second avenue. These houses are on the level, that is, the roofs of the corner house and the second house from the corner, 885 Second avenue, are on a level with the roof of the warehouse on Second avenue.

The entrance to the corner house on the north-west corner of 47th street and Second avenue is entered on the side street. My recollection is that that is known as 245, I think, East 47th street.

On the roof of 885, between 885 and 887, there is a large iron railing, which separates and prevents persons from going from the houses I have indicated to the roof of the warehouse.

This warehouse, I forgot to say, is a Government bonded warehouse, operated by the Anchor Warehouse Company.

On the evening of December 2nd, at about eleven and sometime later, between eleven and twelve o'clock, a tenant named Mrs. Bannon, who lived in the premises 885 Second avenue, heard a sound which she will describe to you, and a flash, which the People will ask you to say in con-

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nection with the other evidence in the case, was an attempt to use dynamite on various parts of the roof of the premises 887. She lived, I think, on the third or fourth floor of 885, next to the warehouse, or the corner house, I have forgotten which, but there is a small airshaft where her rooms look out onto the walls of the warehouse, either that run to the L-shape on 47th street or the buildings on Second avenue.

She will testify that she saw this flash and heard this sound. She immediately left her apartment and went out to notify the police. She met Officer Antonio Schultz, a uniformed police officer, who was on duty on that post, and he went up into her apartment, and he likewise heard sounds and flashes, and then left Mrs. Bannon's home and went to the signal box and notified his precinct.

Shortly thereafter ten or fifteen police officers came from the East 51st street station house to the premises, and the buildings about this entire neighborhood were surrounded by the police.

Officer Schultz and Sergeant Jones of the 29th Precinct Detective Bureau, went to the roofs and made an examination. They came down to the street again, and Officer Schultz will testify that he saw, as he will describe, persons looking over the roof.

He then, together with Sergeant Jones entered, I think it was 345 East 47th street, and heard sounds in the hallway, and both of them started to ascend, and two men came

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down, and they struggled, in the sense that the officers placed this defendant Grossman together with the co-defendant Harry Greenberg, under arrest.

On the roof, it will be shown to you that that same afternoon these premises were all examined and found to be in good condition.

We will show you that at about this time - and the People will contend that it was by this defendant together with the others, - and under the scuttle which had been forcibly removed from the roof of 887 Second avenue, holes had been drilled, in an attempt to dynamite the roof of this warehouse, and also a hole was drilled in the extended part of the roof used as an elevator shaft.

You gentlemen know that where there is an elevator there is usually an extension where the machinery or wheel is placed on top, above the roof.

We will also show you that in this iron railing that prevented persons going from the adjoining roofs to the warehouse roof, a bar was removed.

We will show you, that in this same house in which these defendants were found coming down from this roof, were found a jimmy, flashlights, wrenches, a brace and bit, and other things, which we submit to you was a dynamite cap for the purpose of effecting an explosion.

At the same time we hope to show you that the other co-defendant was seen running from the premises 885 Second

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avenue by Officer Walsh, and this other co-defendant blazed away at this officer.

MR. JORDAN: I object to that, if your Honor please, to any statement about anybody blazing away at any one.

MR. BOHAN: Well, perhaps I have not described it. There were shots fired.

THE COURT: One minute, please. As I understand it, this was after the alleged crime had been abandoned? This defendant is responsible only for what he did after that. If two or more persons are concerned in the commission of a crime, why they are all liable for the acts done by any one of them to accomplish the corrupt purpose, but after the crime has been accomplished, or the conspiracy abandoned, then the acts and statements of each individual are binding only on himself, and not on the others; so I do not think that testimony will be received in evidence.

I will sustain the objection to any reference to it.

MR. BOHAN: All right, sir.

The defendant Grossman, together with the defendant Greenberg, as I said before, was found in the hallway, and the articles that I have described to you were found in this house.

The defendants were taken into custody, and they refused to make any statement whatever.

That in substance is our case.

MORRIS DE LUCA, called and duly sworn as a wit-

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ness in behalf of the People, testified as follows:

(Residence: 146 Sackett street, Brooklyn).

MR. JORDAN: If your Honor please, I desire to move to dismiss this indictment against this defendant, because it fails to charge a crime in the manner prescribed by the statute.

The law says that the indictment not only must state the formal part, but a brief statement of the acts constituting the crime, and the charge of crime is that the defendant attempted to commit the crime of burglary in the third degree, and the facts alleged are just the same. That is, it might just as well say that he attempted to commit the crime of burglary in the third degree ^{by} attempt-
ing to commit the crime of burglary in the third degree. Now, ^{the} vice of that, your Honor will observe, in the opening of the District Attorney. The District Attorney tells the jury and tells us for the first time the acts constituting the crime. He says that there was an attempt to commit the crime of burglary in the third degree by attempting to open a scuttle or attempting to open a door, or something of that kind. This indictment is absolutely barren of any act constituting crime, and the Court of Appeals has held, as your Honor knows, many times, that an indictment is just as ^{de} ineffective without the acts constituting the crime as it is without the name of the crime.

This is not like conducting a gambling house, because

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that is all you can say about it, that he conducted a gambling house by conducting a gambling house, but here, we attempt to commit the crime of burglary by attempting to commit the crime of burglary, and that is all there is in the indictment.

THE COURT: I think this indictment is sufficient in form. If you had needed any more details or information you could have moved for a bill of particulars, but at this time I will deny your motion.

MR. JORDAN: But your Honor, just a moment. A bill of particulars is a matter entirely discretionary with the Court, but the question of the sufficiency of an indictment is a matter of right.

THE COURT: I know, but I say, this indictment in my opinion meets all the requirements of the law.

MR. JORDAN: Well, I just wanted to raise the question.

THE COURT: And also, if they did not give you sufficient information or you thought you were entitled to more, you might have moved for an elaboration of it in the form of a bill of particulars, but I think this form of indictment is correct. It is the form that is always used here and has been used for generations.

MR. JORDAN: I understood it was an innovation. I do not think this has ever been passed upon. I have never had opportunity to have it passed upon.

THE COURT: Well, this is typewritten and the others are printed, that is all. I think, Mr. Jordan, that your

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motion must be denied.

MR. JORDAN: Well, your Honor will give me an exception?

THE COURT: Yes, I do not think it is necessary to set forth any further facts, so far as the legality goes.

MR. JORDAN: Well, I will be glad to submit authorities on the question if your Honor cares to have them.

THE COURT: Well, I am always open to conviction.

DIRECT EXAMINATION BY MR. BOHAN:

Q What is your name, Morris De Luca? A Yes, sir.

Q What is your business, Mr. DeLuca? A President of the Anchor Warehouses.

Q The Anchor Warehouses, a corporation? A Yes.

Q What is the name, the Anchor Warehouse? A The Anchor Warehouses, Inc.

Q That is, incorporated? A Yes.

Q Where is your place of business? A 887 and 889 Second avenue.

BY THE COURT:

Q Near what street is that? A Near 47th street.

Q On which side of the street? A On the Second avenue side.

Q That is, the west side, then? A The east side.

Q It is on Second avenue, I ask you on which side of Second avenue? A On the east side.

Q That is the side towards the river? A Yes, sir.

Q On the east side of the avenue near 47th street? A Yes, sir.

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MR. BOHAN: Then I was mistaken. I thought it was on the other side of the way.

BY MR. BOHAN:

Q What is the nature of your business? A President of the Anchor Warehouses.

Q Well, I mean what kind of business does the Anchor Warehouse, Incorporated, do? A Storage of merchandise.

Q Is that a Government bonded warehouse? A Yes, sir.

Q Are there any buildings on the 47th street side? A Yes, sir, one building.

Q What are the numbers on the 47th street side? A 233 to 241 East 47th street.

Q That is, it covers the building numbers from 233 to 241? A Yes, sir.

Q Do the buildings on the 47th street side connect with the buildings on the rear of the Second avenue building? A Yes, sir.

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

Q How many stories is the building on Second avenue? A Five.

Q How many stories is the building on the 47th street side? A Five.

Q How many entrances on the Second avenue side? A One.

Q How many entrances on the 47th street side? A Five.

Q Will you describe the roof - Question withdrawn.

BY THE COURT:

Q Well, is this all one building or separate series of

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buildings? A It is all one building separated into two.

Q What is that? A It is all one building separated into two.

Q It is all one building? A Yes, sir, separated into two.

Q Separated into two? A Yes.

Q Well, what two? A The second avenue building, we use the entrance from Second avenue. The 47th street building we use the entrance from 47th street.

Q When you get into the Second avenue building you have to go out into the street to get around to the other, do you? A No.

Q You can walk right through all the buildings on the inside? A Yes.

Q So that they are all one building? A It is all one building.

BY MR. BOHAE:

Q Is the roof all one, the 47th street building side and the 47th street side? A No, it is separate.

BY THE COURT:

Q What do you mean, it is separate? A The roof is separate.

Q Well, can't you walk all over the roof of the buildings?
A Yes, you can walk, but the roof is separate between Second avenue and 47th street.

THE COURT: Well, I do not understand that.

BY MR. BOHAN:

Q What separates them? A Separated by a railing.

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Q But there is no airshaft? A No.

Q Well, it is all one roof then? A No, it is not all one roof. It has been cut, the Second avenue building and the 47th street building, on account of the insurance.

Q Well, there is a space between the Second avenue building and the 47th street building? A Yes, there is about three feet and a half space, and when we want to go from 47th street to Second avenue we have to climb on the railing.

Q How many buildings are there on Second avenue, are there two buildings? A On Second avenue all one building.

Q I want to get this straightened out. Is the 47th street building between Second and Third avenues or between First and Second avenues? A Between Third and Second avenues.

Q Then 887 is on the west side of Second avenue, isn't it? A On the west side.

BY THE COURT:

Q I asked you if it was towards the river or towards Second avenue and you said towards the river, distinctly? A Yes, sir.

Q You know where the river is, don't you? A Yes, sir.

Q How long have you been in the United States? A Fifteen years.

Q Well, you ought to know which is the east side of the street and which is the west. You were asked were they on the east side of the avenue or the west side, and you said the east side. A Well, it is on the west side of the avenue.

Q The west side, all right, and then the buildings stretch

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from the corner of Second avenue over towards Third avenue, is that it? A Not quite, sir.

BY MR. BOHAN:

Q How many buildings between 887 Second avenue and the corner? A One building.

Q Just the corner building? A Just the corner building, 885 Second avenue.

BY THE COURT:

Q That is not within your warehouse? A It is not connected with the warehouse.

Q That is a separate building? A Yes, sir.

Q What kind of building is that? A A tenement house.

Q There is a tenement house on the corner? A Yes, sir.

Q Then you have two houses on the avenue? A Yes, sir.

Q And about a dozen, I think you said, or ten, on the street side? A On the street towards 48th street.

Q Towards 48th street? A Yes, sir.

Q They run towards Third avenue, don't they, you said that?

A Yes, sir, they run --

Q They are on 47th street, aren't they? A Yes, sir.

Q Well, can't you see what we want? We never saw those buildings. The jurors want to understand you. They are situated there, and now you have some buildings on 47th street?

A Yes, sir.

Q What numbers? A 245.

Q Only one number? A Only one number, 245.

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THE COURT: Did he not say before 323 to some other number?

THE WITNESS: That is our building. I mean the tenement house building.

Q We don't care about the tenement. We are asking about your buildings. You must make that plain to the jury. They must have a picture of that building. You have a warehouse on 47th street? A Yes, sir.

Q What number? A 323 to 341.

Q Now, where does 323 begin? A 323 begins from Third avenue.

Q You mean towards Third avenue? A Yes, sir.

Q It does not go all the way up to Third avenue? A No, sir.

Q 341, does that run right up to Second avenue? A No, sir.

Q How many houses between that and Second avenue? A One corner house.

Q There is one house only? A Yes.

BY MR. BOHAN:

Q Now, on Second avenue, does the warehouse adjoin, is it next to the corner house or is there another house between the corner house and your warehouse? A No, it adjoins next to the warehouse, the 345 building adjoins the warehouse.

BY THE COURT:

Q That is to say, there is a three-foot space between your

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47th street buildings and your others? A Yes, sir.

THE COURT: Well, they are distinct and separate buildings, that is all.

BY MR. BOHAN:

Q There is a space between your warehouse on the Second avenue side and the corner house on Second avenue, is there?

A No, sir, no space.

Q Will you describe the roof on the Second avenue side?

A Yes, sir.

THE COURT: Now, where do you intend to prove the attempt to commit the burglary?

MR. BOHAN: On the Second avenue side, 885.

Q Is there an iron railing that separates the corner house from the warehouse on the Second avenue side, on the roof? A No sir, they adjoin.

Q Where is the iron railing? A The iron railing is between the 47th street building and the Second avenue building.

Q That is, it runs north and south or east and west, the railing? A The railing runs east and west.

Q Where is the scuttle? A The scuttle is on the Second avenue building, on the roof.

Q Would that be on 885 or 887, or what number, about?

A Close to 887.

BY THE COURT:

Q Is that one scuttle or two? A One scuttle.

Q This is one building covering two separate lots? A One building covering two lots.

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50 feet front on the street? A Yes, sir.

BY MR. BOHAN:

Q That scuttle on Second avenue, is located where?

A Close to 887.

Q Near the street or near the rear of the roof? A Near the rear, just close to the rear.

Q About how far from the corner house? A About ten feet.

Q Now, on the evening of December 2, 1919, that was Tuesday? A Yes, sir.

Q Did you personally examine the roof on the Second avenue building? A Yes, sir.

Q What time did you examine it? A Five o'clock.

Q Was any person with you? A Yes, sir.

Q Who? A Mr. McCourt.

Q Who is Mr. McCourt? A F. H. McCourt, manager for the Anchor Warehouses.

Q What was the condition of this scuttle? A It was built in concrete and fastened with nails on top, tightly closed.

Q It was built in concrete? A Yes.

BY THE COURT:

Q What material was it? A It was wood and cement.

Q How high was the scuttle? A About eighteen inches.

Q It was a flat scuttle? A Yes, sir.

Q How long? A About four feet wide.

Q Do you mean square or four feet on each side? A No, four feet wide and about three feet long.

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BY MR. BOHAN:

Q Was that nailed to the concrete or was there wood in the concrete to which it was nailed? A There was wood in the concrete, the frame was wood in the concrete and the top was nailed on the frame.

BY THE COURT:

Q Well, did you ever open the scuttle? A No, sir, we had it tight, closed.

Q Never opened it, it could not be opened? A It had been opened before.

Q When? A About in the month of December or month of November.

Q When was the last time it was opened? A The last time it was opened was two weeks before Thanksgiving.

Q Why did you open it then? A Well, just to make the concrete inside.

BY MR. BOHAN:

Q You concreted the opening under this scuttle, did you?

A Yes, sir, we concreted it, then we nailed it up.

THE COURT: Well, how could they concrete an opening?

MR. BOHAN: Well, they closed it up.

BY THE COURT:

Q Then there was no scuttle there at all? A There was a scuttle there.

Q Was there any opening there? A Yes, sir, there was an opening.

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Q Well, you said you closed it up. Now, which is true? There was an opening there? A Yes, sir.

Q And it was covered by a wooden scuttle? A Yes, sir.

Q And that scuttle was nailed down, you say? A We nailed it down after we concreted it.

Q When did you nail it down? A Two weeks before Thanksgiving.

Q And you went up there this afternoon about five o'clock to look at it? A Yes, sir.

Q Well, why did you go up that afternoon? A Well, we go up every afternoon at five o'clock.

Q You do that every day, go up at five o'clock and look at that scuttle? A Yes, every day, in the night and morning.

BY MR. BOHAN:

Q So that under this scuttle, on the evening of December 2nd, there was no opening, it was concrete, was it? A It was concrete.

Q Were you there when the concrete was placed there? A Yes, sir.

Q How deep was that concrete? A About two feet.

Q How did you get to the roof after that scuttle was closed up? A From the 47th street building.

Q Could you get to the roof from the Second avenue building? A No, sir, no more after the concrete was put there.

Q So that this opening was closed up? A Yes, sir.

THE COURT: Then there really was no scuttle?

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MR. BOHAN: No, sir, it was just the appearance of one.

THE COURT: Well, I asked him. They could not put concrete on an opening or on the air. It has to rest on some foundation.

THE WITNESS: We put bars under the opening and then we put the concrete on top.

Q The top of the old scuttle was placed on top of this?

A Was placed on top after we finished concreting.

BY THE COURT:

Q Then there was no more scuttle really at all after you finished that? A No, sir.

Q Well, that is what I tried to bring out.

BY MR. BOHAN:

Q Was this fastened? A It was fastened, yes, sir.

Q Did you observe the other parts of the roof? A Did I what?

Q Did you examine the other parts of the roof? A Yes, sir.

Q On the Second avenue side and the 47th street side?

A Yes, sir.

Q How long had you been doing this before that? A This was after the 22nd of September.

Q On the morning of December 3rd did you examine the premises? A Yes, sir.

Q What time did you examine them? A Eight o'clock in the morning.

Q Had you received any notification from the police at

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that time? A Yes, sir.

THE COURT: Well, that is immaterial. Strike that out. Just ask him what he did.

Q What time did you go to the roof? A About half past eight, after we opened the place.

Q Was any person with you? A Yes.

Q Who? A Mr. McCourt.

Q Will you describe the condition of the roof on the Second avenue building? A The condition of the roof on the Second avenue building was that there was the scuttle off the concrete. There was a hole in the concrete about three inches wide and about two inches deep. There was a hole on the elevator shaft about two inches wide and about an inch and a half deep.

Q Anything else? A Nothing else.

Q Do you remember the iron bars on the railing? A There were iron bars off the railing which separated the tenement building and the warehouse building.

Q How large a hole did you observe in the elevator shaft? A About an inch and a half deep and about two inches wide.

Q Was that mark in the elevator shaft which you have just described there the night before? A It was not there the night before.

Q Did you observe anything on the roof immediately under that mark? A Yes, sir, we saw some kind of brick - you know what we call that dust that comes off brick?

Q You mean brick dust? A Yes.

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Q Right under this mark? A Yes.

Q Was that dust or mark there the night before? A No, sir.

Q Now, the holes under the scuttle, describe those again. How large were they? A About three inches wide and about two inches deep.

Q Did you see anything about the hole, near the hole? A No, sir, I didn't see anything near the hole. I only saw some kind of dust, cement dust.

Q Cement dust? A Yes, sir.

Q Where was the scuttle, this scuttle cover? A The scuttle they moved away about four feet from the opening, where the opening used to be.

Q Was that torn from the concrete? A Yes, sir, it was taken off. I believe pried off with some crow-bar or something.

Q Could you lift the top of this scuttle the night before? A No, sir.

Q What would you have to do, take a bar or something? A If we wanted to take it off there we would have to have a crow-bar.

Q Have you described the condition as you remember it now? A Yes, sir.

Q Or do you remember anything else? A No, sir, I don't remember anything else.

Q What kind of material and what kind of goods did you have in that warehouse? A All kinds of merchandise, drug-

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gists' and all.

Q That is, it is a bonded warehouse? A United States Bonded warehouse.

MR. BOHAN: That is all, your witness.

CROSS-EXAMINATION BY MR. JORDAN:

Q Mr. Witness, did any one suggest that you examine this scuttle and this roof in the evening, did any one tell you to do it? A No, sir.

Q What? A No, sir, we do it to take care of the warehouse.

Q Well, you said you were there at what time on the night before? A Five o'clock.

Q And who was there with you? A Mr. F. H. McCourt.

Q Did Mr. McCourt suggest that you go up there, did he mention going up or did you? A We mentioned it both. Every night and every morning.

Q You both mentioned it? A Yes, sir.

Q Had you ever talked with any police officer in regard to making an examination, night and morning? A No, sir.

Q Never at all, at any time? A Not at any time.

Q Is that right? A Yes, sir.

Q You say when you went there next morning you found this condition as you have described, you went with Mr. McCourt?

A I did not get you?

Q (Question repeated by the stenographer). A Yes, sir.

Q Do you mean that nobody else went with you? A Me and Mr. McCourt.

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Q And did not any police officer go with you? A No, sir.

Q Wasn't any police officer there? A There was a police officer there but not in our place.

Q But up on the roof I am talking about? A No, me and Mr. McCourt.

Q Wasn't there any police officer went up on the roof with you? A Not with me at that time, when we investigated the roof.

Q But you had heard about this before? A I know.

Q Didn't you? A Yes, sir.

Q Yes, where did you hear about it? A In the morning.

Q Where were you when you heard about it first? A I heard it on the street.

Q What? A I heard it on the street, that there was some kind of shooting during the night.

Q When you got there, did you see a policeman, when you got to the warehouse? A No, I didn't see no policeman. I see after.

Q Well, how long had you been at the warehouse before you saw a policeman? A After we got through, about half an hour after we got through the building.

Q Was there any policeman there in charge of the building when you got there? A No, I didn't see anybody.

Q At any of the entrances at all? A No.

Q Didn't see a policeman until after you had been up and made your investigation? A Yes, sir, I didn't see any policeman until after I made the investigation.

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Q Well, how long after that? A About half an hour.

Q Who was that, that you saw then? A I couldn't tell you the name.

Q Don't you know the name? A I don't know the name, no.

Q Didn't you ever hear it? A No, I never heard any particular name.

Q Didn't you go with the policeman up to look at it? A Afterwards, yes.

Q Now, have you described everything that you found up there? A Yes, sir.

Q Just tell us again. You found the framework? A The scuttle.

Q That wooden part of the scuttle? A Yes, sir.

Q (Continuing) Taken off? A Yes, sir.

Q You found a hole? A Yes, sir.

Q About how wide was it? A About three inches wide and two inches deep.

Q How deep? A Two inches deep.

Q That is, it was wider than it was deep? A Three inches wide and two inches deep.

Q More width than depth, do you understand? A It was more wide than deep, of course.

BY THE COURT:

Q Where was that hole? A On the concrete.

Q What part of the concrete? A On the opening.

Q On the opening? A Where we built the opening.

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Q In the middle of the concrete? A Yes, sir.

BY MR. JORDAN:

Q Was it just in the middle of the concrete? A Just in the middle of the concrete.

BY MR. BOHAN:

Q Under the scuttle? A Under the scuttle.

BY THE COURT:

Q How deep was the concrete? A About two feet.

THE COURT: Well, there was not any scuttle there any more. You cannot call that a scuttle. There was not any scuttle there.

BY MR. JORDAN:

Q Now, that place that you call the scuttle had iron bars under it? How close were they together? A Iron bars?

Q Yes? A The iron bars was about, there are six iron bars on the bottom, it's about two inches between them.

Q Two inches? A Yes, sir.

Q Well, then, that was the strongest part of your warehouse, wasn't it? A Well, of course we made a strong job out of it.

Q, I say that that concrete and your iron bars that were placed where the scuttle had been before, was the strongest place in the warehouse, wasn't it? A Yes, sir.

BY THE COURT:

Q The strongest part of the roof? A The strongest part of the roof.

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BY MR. JORDAN:

Q The strongest part of any part of the building, wasn't it? A Yes, surely.

Q Yes, the strongest part of any part of the warehouse. Now, where did you say there was another mark? A There was another mark on the elevator shaft.

Q What is that elevator shaft made of? A A brick wall.

Q Where does the brick wall lead to? A It is a square brick wall.

Q Yes, how big? A How big what?

Q How big is the brick wall?

BY THE COURT:

Q How high from the roof? A I should judge about ten or twelve feet high from the roof.

BY MR. JORDAN:

Q How big around is it, that is, how square? A I should judge about twenty, or about fourteen feet by fourteen, more or less, I don't know exactly.

Q How thick are the bricks in there, that is, how thick is this wall? A The brick wall, we consider it is supposed to be twelve inches of brick.

Q Twelve inches of brick? A Yes.

Q How much of a hole did you say was in there? A A hole about two inches wide and one and a half inches deep.

Q That is, there was something broken off there? A Yes, sir, something broken off there.

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BY THE COURT:

Q What part of it? A On the 47th street side of the wall.

Q But up near the top of the wall or at the bottom or where? A No, sir, it was about three feet and a half above the roof.

BY MR. JORDAN:

Q Now, what is the inside of that twelve-inch-wall?

A The elevator.

Q Is there an elevator in there? A Yes, sir.

Q Or just a shaft? A No, an elevator there.

Q Where is the elevator, where was the elevator at this time? A That time it was on the bottom floor, locked.

Q Locked down there? A Yes, sir.

Q It could not be brought up unless went down and unlocked it, is that right? A Yes, sir.

Q Now, how were your doors opening into the elevator locked, how were they fastened? A (No answer).

BY THE COURT:

Q Well, is there any door on the roof? A No, sir.

Q The doors are on the floors inside? A Yes, sir.

Q Well, how are they, what material are they, how are they fastened? A The elevator?

Q The elevator doors, is it a freight elevator? A It is a freight elevator.

Q Does it just come right up to the floor or is there a door that you have to open to go from the different floors into

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the elevator? A Yes, sir, we have fireproof doors there.

Q On every floor there is a fireproof door? A Yes, sir.

Q What material, iron or wood? A Well, of course they have to be iron, fireproof doors.

Q Well, I do not know, you will have to tell us that?

A Well, they are fireproof doors.

Q How thick are they? A About three inches thick.

BY MR. JORDAN:

Q How far is it from the place you saw this mark on the elevator shaft, down to where the elevator was, about how many feet? A About how many feet? It is five stories. I couldn't judge, but I can say practically about 75 feet.

Q What? A About 60 to 75 feet.

Q So that if a person got into this elevator shaft he would be about 65 feet above the elevator and above everything else, above anything in the elevator shaft, wouldn't he?

A Yes, but there is a floor on top where the engine sets.

Q Now, tell us about that, where is that? A It is on top, about three feet below the skylight, three to four feet.

Q Now, that is a platform on which the engine sets?

A Yes, sir.

Q Well, can you get in that from the elevator shaft, up above the building? A Yes, sir, You say you can get in there from where?

Q From the top of the building? A Yes, sir, you can

go on top of the platform.

Q What platform? A The top of the platform where the engine is.

Q How would you get into there from on top of the building? A From on top of the building you would have to break the skylight.

Q Is there a scuttle light?

THE COURT: Skylight, he says.

THE WITNESS: Skylight.

Q In other words, there is a skylight on top of this elevator shaft? A Yes, sir.

Q If you were going into the elevator shaft which would be the easiest way to go, through the skylight or drill a hole through the side?

MR. BOHAN: I object to that as incompetent, immaterial and irrelevant.

THE COURT: I will allow it.

MR. BOHAN': It is a hypothetical question.

THE COURT: It is not a hypothetical question. He asks him for his opinion. It is a perfectly proper question.

MR. BOHAN: The point of this case is that the People contend that the defendants were interrupted.

THE COURT: I understand that.

MR. BOHAN: They did not know there were bars under this scuttle.

MR. JORDAN: How do you know they did not?

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THE COURT: Well, now, the question is allowed. The objection is overruled. The jury will disregard the statement of the District Attorney as to what any one knew or did not know. You will have to get all the facts from the witnesses sworn here. It is proper cross-examination.

Q (Question repeated by the stenographer). Do you understand the question? A Yes, sir.

Q Which would be the best way? A Well, I couldn't judge. The best way, you can go up on top of the platform and break the skylight and go out on the roof.

Q Then if you get in from the roof through the scuttle, you would have the platform to stand on, wouldn't you?

THE COURT: From the skylight, you mean?

THE WITNESS: You mean from the skylight?

Q Yes? A Well, you can stand on the platform and then go down on the elevator shaft by the stairs.

Q Oh, there would be a platform up there that you could get on to from the scuttle? A Yes, sir.

Q If you went in about three feet above the roof where would you go through? A You would go inside the elevator shaft where you can go down.

Q How would you get down? A By the stairway.

Q Oh, there is a stairway inside the elevator shaft? A Yes, inside the elevator shaft, that would lead you to the fifth floor.

Q Do you mean inside that elevator shaft there is a stair-

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way leading downstairs? A There is a ladder leading to the fifth floor.

Q To the fifth floor? A Yes, sir.

Q Well, how do you get down from there? A You get on the fifth floor and if you were going down any further you go down by the stairway of the Second avenue building.

Q Is there a stairway inside the elevator shaft all the way down? A To the fifth floor.

Q No, but below that is there any? A Yes, from the fifth floor you can go to the ground floor by the stairway.

BY THE COURT:

Q But he is talking about the elevator shaft. You know what an elevator shaft is, do you not? A Yes.

Q It is the space that the elevator runs up and down in? A Yes.

Q Do you mean to tell the jury there is a stairway in that? A There is a little runway which would lead to the fifth floor, and from the fifth floor there is a stairway leading to the ground floor.

Q Do you mean a stairway is in the elevator shaft? A No, sir.

Q Well, that is what he asks you. What is in the elevator shaft? A In the elevator shaft is only down to the fifth floor.

BY MR. JORDAN:

Q Yes, and this is a six story building, is it? A A five story building.

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Q Well, let us see. Then it goes down just to the top story, to the top floor? A Yes, sir.

Q And that is all? Now, let us see, about this corner building. Your Anchor Warehouse is on Second avenue and it begins at what street, 47th and 48th? A Between 47th and 48th.

Q And on 47th street and Second avenue, down in that corner, your warehouse don't come, does it? A No, sir.

Q About how big a building is there in there? A The tenement building, you mean?

Q Yes, that's the only building there is, isn't there? A Yes.

Q All right, then that's the one I mean? A I am not a contractor, but I can tell you practically, I can judge it is about 20 by 100, the building, maybe.

Q 20 by 100? A 20 by 100 or 20 by 80.

Q Well, which way is the 80 or 100 feet, does it run along 47th street or along Second avenue? A Along Second avenue.

Q That is the wide part is along Second avenue, is that right? A That is not the wide part, the length.

Q What I want to know is, is most of the building on Second avenue, or is most of it on 47th street, which is the biggest front? A The biggest part is on Second avenue.

Q You mean that? A I mean there is a building on Second avenue, 885 Second avenue, that is the building there. I

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couldn't tell you how many feet it is.

BY THE COURT:

Q But can't you tell which way that building runs? Is it principally on Second avenue or principally on 47th street, which is the front? A The front is on Second avenue.

Q Then the rest of it runs along 47th street? A Yes, sir.

Q It runs back from Second avenue? A Exactly.

Q Well, that is what he asked you? A That's right.

Q Then you ought to be able to tell if the Second avenue front is longer than the 47th street front or not, of that building? A 47th street is longer.

BY MR. JORDAN:

Q Well, what is what I want. You said Second avenue was the longest. The fact is that there is more of that tenement house building on 47th street, it is longer on 47th street than it is on Second avenue? A Yes, sir.

Q Now, you think it runs back from the corner of Second avenue westerly on 47th street, from 80 to 100 feet, don't you? A Well, I should say about 60 to 75.

Q Why, you said 80 to 100, which is it? A 80, something like that.

Q What? A About 60 to 80, something like that. I don't know exactly the measurement.

Q I don't want you to be an expert here, but didn't you tell us it is about a hundred a little while ago? A Well, about a hundred, most likely.

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Q Well, which do you think it is? If you are going to make a good guess? A I should judge the lot is about 80 feet, whatever it is.

BY THE COURT:

Q Well, does the building cover the whole lot? A The building covers the whole lot, yes, sir.

Q Right up to your warehouse? A Right up to our warehouse, yes, sir.

Q No space at all? A No space at all.

Q No yard on the street? A No yard on the street.

BY MR. JORDAN:

Q Now, is there an alleyway in there between your warehouse and the building? A Yes, there is a little alleyway.

Q Well, how wide is that? A About eight feet.

Q Well, then, you don't mean that it goes right up against your warehouse, do you, if there is an alleyway between? A Not the building. The building don't adjoin on the 47th street building, the building adjoins on the Second avenue building.

BY THE COURT:

Q He is asking you about 47th street.

BY MR. JORDAN:

Q I did not ask you about Second avenue, I asked you about 47th street? A Well, 47th street, there is an alleyway there.

Q About eight feet? A About eight feet.

Q Now, how far back from the Second avenue end of that building is this scuttle hole, or this closed scuttle place?

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A How far away from 47th street?

Q From Second avenue? A From Second avenue?

Q Yes? A To the scuttle?

Q Yes? A Well, it is in the end of the rear building, it is right in the end.

Q About how far from Second avenue? A From the Second avenue front?

Q I don't care whether it is front or rear, but from Second avenue how far back is it to that scuttle? A About 30 feet, 23 feet, something like that, 25 feet, maybe.

Q Isn't it as far back as this alleyway? A In the back of this alleyway.

Q Isn't it as far back or as far west as this alleyway, between your building and the tenement house? A No, sir.

Q Then it is up in front? I thought you said in the rear, but it is up in the front part of your building as it fronts on Second avenue, is it? A Yes.

Q How long is that building from Second avenue west, your entire warehouse, how long is that?

THE COURT: Well, you mean the Second avenue numbers now, don't you? There are only two separate buildings as I understand it now, one set of buildings on 47th street and the other set on Second avenue.

MR. JORDAN: Well, I did not quite get it that way.

THE COURT: Then there is an eight foot alleyway between the buildings.

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MR. JORDAN: No, it is only between the tenement house and that. I will ask the witness.

Q Don't your building connect entirely, that is, commencing at Second avenue, doesn't it run back continuously, away back to the end of it, westerly, to the end of the entire warehouse?

THE COURT: 47th street, you mean, 345 East 47th street? I did not get that idea.

MR. BOHAN: I have a photograph that was taken the other day (Handing).

THE COURT: But you ought to have a diagram. The photograph does not show that. The photograph only shows the front of the building.

MR. JORDAN: If Mr. Bohan had taken that photograph I would say he is a poor hand at it or he did not get the camera in the right place.

THE COURT: But we do not know what roof this is (Indicating the photograph).

MR. JORDAN: I will withdraw that question and see if I cannot make it clear to the witness.

BY MR. JORDAN:

Q Your warehouse runs up to Second avenue, doesn't it?

A The Second avenue warehouse or building.

Q Are there two warehouses there? A There is two warehouses, 887 and 889, but they are connected, the two.

Q But it begins at Second avenue and runs west, doesn't it? A It runs west, yes, sir.

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Q How far does it run west? A About thirty feet, likely.

Q Well, then, have you got another warehouse further west than that? A Yes, sir.

Q Where does that begin? A About four feet away from the Second avenue building.

Q How deep is that warehouse? A How deep?

Q Yes, how deep running from Second avenue west? A About 30 feet.

Q Well, doesn't it run away down on 47th street? A The Second avenue building?

Q Yes? A The Second avenue building starts from Second avenue and runs about thirty feet.

Q Is that all? A That is all.

Q And then have you got another warehouse? A Then we have another warehouse.

Q Where is that?, A The 47th street building.

Q Where does that start? A (No answer).

BY THE COURT:

Q That starts at 223, did you say? A 223 to 241.

Q There are a number of houses between that and the corner aren't there? A Yes, sir.

MR. JORDAB: I do not think so.

THE COURT: Yes, 223 is five or six houses from the corner.

MR. JORDAB: I thought he said that the only building between their building and the street --

MR. BOHAN: I said 241.

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Q 341, is that house next to the corner up there? A 345 is the house on the corner.

Q 345 Second avenue? A 345 East 47th street.

Q Isn't there 343 between you and that? A No, they call it 345.

THE COURT: Well, you had better get some witness here who can describe that intelligibly.

MR. JORDAN: I think Mr. Bohan and I can agree on this.

THE COURT: If the District Attorney has ever seen the place he can tell what he saw, but I do not think he ever did.

MR. BOHAN: No, I did not.

THE COURT: Well, then, you cannot describe it if you did not.

Do you wish to ask the witness any more questions, Mr. Jordan?

MR. JORDAN: No, sir, I do not.

THE COURT: I would suggest that you have some one examine these buildings.

MR. BOHAN: Well, all that the District Attorney can do is to follow instructions. I have made every effort, my instructions have not been complied with. I am doing my best, your Honor.

THE COURT: Well, there is no criticism of you, Mr. Bohan. You must not think that, but when we want facts they have to be testified to by people who know them at

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first hand - unless you and Mr. Jordan can agree upon them.

MR. JORDAN: Well, I saw it from the street but I would not undertake to be accurate about it.

THE COURT: Well, I don't know what you have. I cannot tell.

MR. BOHAN: Just one more question.

THE COURT: I think it would be better to finish with this witness. Then if you think your case is in satisfactory condition, all right, but if Mr. Jordan wants this information he can either get it himself or perhaps it would be easier for you to get it.

RE-DIRECT EXAMINATION BY MR. BOHAN:

Q Were these marks in this concrete, underneath this scuttle cover? A Yes, sir.

MR. JORDAN: I object to that, the scuttle cover was not there.

THE COURT: Well, where the scuttle cover had been.

Q Yes, were these marks underneath where the scuttle cover had been the night before? A Yes, sir.

Q What room is underneath this scuttle cover? A There was about two feet of concrete.

BY THE COURT:

Q But the concrete is in the ceiling of the room. What is there there? A A room about six to eight feet high.

BY MR. BOHAN:

Q What kind of merchandise was in that room on December

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Q, 1919, do you know? A Yes, sir.

Q Well, what was there? A There was drums of acid.

BY THE COURT:

Q What do you mean by drums? A Big iron barrels.

Q Big iron barrels? A What we call drums.

Q But it is not a drum to beat on? A No, sir.

Q It was a big receptacle made of iron, is that it?

A Yes, sir, where they keep acid in.

Q Like a barrel? A Exactly.

BY MR. BOHAN:

Q Underneath this scuttle cover was there a stairway or ladder? A A stairway.

Q Did that lead all the way down through the Second avenue building? A All the way down to the ground floor.

Q Now, in this extension for the elevator, did the elevator run up to the roof or did it simply run to the fifth floor?

A The elevator ran up to the fifth floor.

Q Above the roof there was machinery, was there? A Not above the roof, under the roof.

Q Well, what was in this extension above the roof, above the level of the roof?

THE COURT: Well, that is not an extension. That is simply a continuation of the elevator shaft, as I understand it.

THE WITNESS: Yes, that is a continuation of the elevator shaft.

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BY THE COURT:

Q That has to be made of brick? A Yes, sir.

Q Under the fire laws you have to have your elevator shaft made of brick lined with fireproof material? A Yes, sir.

Q And when you get to the roof you carry that up fourteen feet, I understand it? A Yes, sir.

Q Then you had an engine set up fourteen feet above the roof? A Yes, sir.

BY MR. BOHAN:

Q Is that an engine or is it a spindle upon which a cable turns, is that what was in the extension? A Yes, there is a platform there.

BY THE COURT:

Q But this square building that you called an extension, it is a continuation of the elevator shaft, is it not? A Exactly.

Q How high is it? We do not know how high it is? A It is fourteen feet from the roof to the skylight.

Q And on the top of that fourteen feet is what you call an engine? You do not mean an engine, you mean a drum? A A drum, that's it.

Q How does it get up and down? A By a switch.

Q But there is a rope that pulls it up and down? A A rope pulls it up and down.

Q And that rope rolls around the drum? A Yes, on the drum.

Q That is what you mean ^{is} that, on top of your elevator shaft?

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A Yes, sir.

Q Not an engine? A Not an engine, no. We call it a motor.

Q Where is the motor? A On the platform.

Q Where, down in the cellar or where? A No, up above, three or four feet below the skylight.

MR. BOHAN: That is all of this witness.

THE COURT: We will take a recess now until to-morrow morning at half past ten.

Meanwhile, Gentlemen of the Jury, the law forbids you to discuss with any stranger the case in which you have been impaneled, and also prohibits you from discussing it among yourselves. In other words, you must not talk about this case with any one whatever. You must not form or express any opinion on the case until you have heard all the evidence on both sides. If the Court submits it to you, when all the evidence is in, then it is your duty to discuss it and decide it, but not before then, so you must keep open minds, and come back to-morrow morning at 10:30 o'clock.

It will be noted that at the request of counsel and on his assurance that the defendant will be here to-morrow, the Court continues bail.

(The Court then adjourned the further trial of the case until Wednesday, January 14th, 1930, at 10:30 o'clock A.M.)

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The Peoples. Grossman (Continued).

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New York, January 14th, 1920.

TRIAL RESUMED.

MR. JORDAN: If your Honor please, I desire to re-
new the motion I made at the opening of the case here,
upon all the grounds stated in the affidavit. We do feel
that we ought not to go on with this trial without the bene-
fit of that witness here, and under the circumstances I
ask that your Honor now withdraw a juror and put this case
over the term.

MR. BOHAN: In view of the affidavit filed and the
unfortunate and unjustified comments made in the affidavits,
I think it is no more than proper, in view of the statements
made, and in view of the fact that the Court has no way
of placing on record a denial of the statements made in
that affidavit, I feel constrained on the part of the
People to join in the motion made by the defendant, that
a mistrial be had in this case.

THE COURT: Well, Mr. Jordan, as I said to you and
Mr. Bohan, while there are some statements that are true in
that affidavit and there is a basis of fact for all of the
positive statements, yet, the inference drawn is absolutely
unwarranted. The inference is that the Court is acting
in concert with the police to secure a conviction of some
one.

MR. JORDAN: No, that was not the intent, your Honor.

THE COURT: I know, but that is only a fair inference.
Now, the honor of the Court is very dear. You were

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in court, I think, when these three defendants were arraigned before me to fix bail. The amount of bail in a case depends on the facts in the case, and on the character of the defendant more than on any other element, perhaps, and it is perfectly proper for the police to communicate any information they have on that subject to the District Attorney and to the Court.

Now, at the time of the indictment of these men, before they were arraigned, before the indictment was put on the calendar for pleading, a Police Commissioner came into open court and made a statement there, which it is unnecessary to repeat. He asked that a high bail be required. I told him to talk the matter over with the District Attorney. Well, the Commissioner asked that bail be fixed at \$50,000, but I said I thought \$25,000 would be enough. Subsequently, as you say in your affidavit, when the defendants were arraigned another District Attorney happened to be there and he said \$3,000 bail would be sufficient. It appears that he was not aware of the request made by the Police Department; and besides, it was stated that they were second offenders, but in some way the indictment came down charging a first offense.

Now, I did not know anything about these men and did not know where the alleged crime was committed; I never heard a single fact in the case until Mr. Bohan's opening here. The Police Commissioner simply discussed the amount of bail to

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be required, and the character of these men. The fact that I, feeling it was my duty, required \$25,000 bail, merely manifested my desire to help the police clean up the city. If the statements made by the police were true that bail was not too high, and the opinion of the Judge who reduced it does not at all affect my judgment in the matter.

Now, as to your statement that I refused to take bail for the defendants and displayed animus against them. I fixed bail at \$25,000 and sometime thereafter a bond was presented to me. I did not sign it. We are supposed to use some discretion, you know, and you yourself had stated that you would not apply to the Supreme Court to reduce that bail. I told you that I would pursue in that case the method I had pursued for twelve years; that is, when there was a controversy about bail, I referred it to the District Attorney and counsel, and if they would agree on an amount, it would be satisfactory to me; but if you could not agree then I would take it up, and the attorney for the defendant is invited to set forth his reasons for reducing the bail, in the form of an affidavit, so that there might be a record.

In this case I did not want the police to say that they asked for \$50,000 bail and the District Attorney and the Court made it \$3,000 bail. There are some police officials who would not hesitate to make that statement, and

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there are other people who might make such statements, but if a record is made, the record is there to explain why the request is not complied with, do you understand?

MR. JORDAN: Yes, your Honor.

THE COURT: That is all. When the bond for \$5,000. was submitted, I refused to execute it, because I had ordered it to be \$25,000. The \$5,000. bail bond was brought to me by a clerk or messenger from the District Attorney's office, and that was the first time I heard that bail had been reduced. I had no notice. I knew nothing about it. He said that Judge Newburger had reduced bail to \$5,000. Then I said, "Well, then, if that be true, let Judge Newburger take it." I regret that the Supreme Court interferes with our matters, because those judges may not be fully apprised of all the facts. We are able to decide these matters ourselves. If we were properly represented in such matters, I do not think they would change our rulings. They have a right to act, but they may be unaware of important facts.

I believe when I fix bail, I am acting as the equal of any Judge in the State, and there is no higher criminal Court than this. It is the highest court of original jurisdiction in the state, on such matters. When I have jurisdiction of a matter I believe they should not interfere with my disposition without at least hearing directly from the Judge. Our views are not always made known to them.

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That is my view. Perhaps I am wrong, but I say that without any lack of respect for any judge, especially Judge Newburger, who is a very dear friend of mine.

I did not show any bias or prejudice against these men. I have no bias or prejudice against any man.

In view of your statements, which may be thought to cause some atmosphere hostile to your client, I told Mr. Bohan and you that if you were still of the same opinion, and there has not been much testimony introduced -- that I would rather not try the case, that I would feel more comfortable if I did not try it.

Now, as to the allegation that I sent the case to this part in order to dispose of it, I do not know who is sitting in the different parts of the court. When I was in Part One, I could not send it to Part Four, because that part had a heavy calendar with a judge working overtime, and I could not send it to Part Six because that was practically in the same condition, with the understanding that the old bail cases should be disposed of there. So that left only three other parts, and Part V is for homicide cases, so that reduced it to Parts Two and Three; so when I sent it to Part Three if I were aware that I was to be here I did not have it in mind because I do not look at the calendar as to where I am going in the next month. We made these calendars many years ago, and I do not watch them. There was a time when we could tell, when we went from Part One to

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Part Two and then Part Three, and so on, but we do not do that now.— We may go from Part One to Part Six or Parts Two or Three, or any other part.

Now, I say these things because you are a man for whom I entertain a very high regard. I know you do your duty faithfully, but I think in this case you over-stepped the bounds of propriety. I do not think you had any right to go as far as you did, and I do not think you had any greater right than those lawyers in the case to which I called your attention, where Judge Davis punished some of the most eminent members of the Bar for contempt and fined them, and allowed a very great lawyer to go on the ground of his youth, and that he had committed error. Now, you could hardly plead youth here.

MR. JORDAN: Well, I could not if that were to-day.

THE COURT: Well, I have no ill will in the matter, but I think you owe the Court an apology.

MR. JORDAN: Judge Mulqusen, I want to say this, that if there is anything in the affidavit that could fairly be construed as asserting my belief or the belief of my clients that your Honor had engaged in a conspiracy with the Police Department, I want to say that that was farthest from my thoughts, and if any man would say that to me I would tell him he was a liar.

THE COURT: Well, what other inference can you draw from it?

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MR. JORDAN: Well, I just set up the facts.

THE COURT: But there are people who do not understand the situation in a court, and the reason I make this statement for the record is that people would not understand. You saw Mr. Alexander here to-day. He was the complainant against a defendant named Handy. When Handy pleaded guilty we said we would impose sentence on January 12th. Subsequently it happened that a large number of sentences were set for that day. I do not wish to feel like a butcher here; I do not want to have twenty or thirty sentences on one day, and I gave instructions to spread them over several days. I do not know exactly what sentences I have to impose or when they will be on. Yet Mr. Alexander demanded to know why the Handy case failed to appear on the Calendar for January 12th. My secretary explained. He was not satisfied, for he wrote a letter to me, in which he said he feared that "influence" was used in Handy's behalf. His conduct was not justified.

MR. JORDAN: No, your Honor.

THE COURT: Now, an attorney should not make a statement, that the Court has prejudiced his client's case.

MR. JORDAN: I did not make that statement and I did not intend it should be so construed.

THE COURT: I do not see what other inference can be taken from it, because if what I said was harmless and in the ordinary course of business, then there was no basis for

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your affidavit.

MR. JORDAN: Oh, yes; my notion of it is that that interpretation, while that might be one that would be taken, it was not intended.

THE COURT: Mr. Jordan, I know you have tried many cases before me; and you have of course excepted to rulings of mine, but there has never been the slightest intimation on your part, so far as I can recollect, that you were not entirely satisfied with the Court's attitude. I want to give you every facility. This case was important to the police, though there are more serious crimes than this man is charged with. Now, you ask until February 12th, do you?

MR. JORDAN: Yes, sir.

THE COURT: Now, I will not send the case to another part for this reason: My experience has shown me that when we send cases around from part to part they are apt to lose their place on the calendar. I have had that experience this month. There was a case sent from Part Six that should have been kept ⁱⁿ Part Six; and the attorney, Mr. Wasservogel's representative, and Mr. Sheridan, begged me to take it here. If I took it it meant taking up a lot of my time; I did not wish to take it, but I yielded to the pleading of counsel and District Attorney. In some instances, cases ought to be sent to a certain judge, according to our rules. I have often denied the request of the District Attorney when he wanted to transfer a case, because experience has

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shown that it might be tried by a new assistant who has not had a chance to properly prepare it. You see, all these things are to be taken into account, and yet heedless and thoughtless people do not take them into consideration, and demagogues and worse than demagogues take advantage of all those things. Now, an attorney like you, with a record like yours, should be extremely careful, under the circumstances.

I would prefer to adjourn this case -- and the District Attorney agrees with me. I talked with him in your presence, which is the only time I talked to him about it. So that if you still feel the same way, we can put it over peremptorily in this Part. I do not know who will be here. Some one has said Judge McIntyre will be here but I do not know. All these things are subject to change.

That will be the second Tuesday in February, February 10th. I understand then there will be no further application made for adjournment?

MR. JORDAN: Oh, no, we will be ready then.

THE COURT: Of course, you understand the police will be disappointed?

MR. JORDAN: Well, when it comes to the police --

THE COURT: But they have a right to be heard. If it were not for the police you and I would not be here. Perhaps we would have to have rifles in our hands defending ourselves. You do not like the word "crook" as I used it.

MR. JORDAN: Well, I may be oversensitive with regard

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to my clients.

THE COURT: Now, if it were not for the police they would destroy us all. I propose not to let them have a free hand in the pursuit of crime. Every proper request made by the police I grant, without doing any injustice, and every policeman in New York knows he cannot overstep the line. None of them ever make any suggestions to me about sentences, but they can all state facts, and there is no one who will help them further in a just cause than I. I do not interfere with them, and they must not interfere with me. That is my rule.

Now, I want this on the record so that it may be made perfectly plain that I do not admit that there is any real and substantial ground for grievance or complaint; that it is largely imaginary on your part. I do not say that with any view of attributing any ulterior motive to you, but as attorney for the defense you have imbibed some theories from your clients, which I think you will see in your judgment are not well founded. I do not know anything about this case and the first time I heard the facts was yesterday. It is only attempted burglary instead of burglary, as I got the impression at first, and I do not think any harm will result to the People by this action. If so, I would not grant this adjournment, but Mr. Bohan assures me it will not, and therefore I grant your request to withdraw a juror.

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MR. JORDAN: Thank you, your Honor. I want it distinctly understood that I never intended to charge that Judge Mulqueen entered into a conspiracy with the police or anybody else to deprive anybody of his liberty, and I would resent the assertion made by anybody that should do that, but I did object to statements made by your Honor at the time.

THE COURT: But those statements were in relation to a different matter. Bail is one matter and the trial is an entirely different matter. A lawyer knows that, but the man in the street does not know the difference between fixing bail and trying a man, though they are just as different as they can be. Men come into Part One to have bail fixed; from whom can we get information? Not from angels or the representatives of foreign governments, but from the police. That is the only source where we can get the information from, isn't that so?

MR. JORDAN: Oh, yes.

THE COURT: Well, that is all. I do not know anything about any case. I do not make arrests, and the men who are supposed to have the information are the police, but as I say, you have made some statements there, that were unjustified.

MR. JORDAN: I wanted an adjournment, Judge.

THE COURT: I know, but there are limits. I do not think, Mr. Jordan, I must repeat, that your conduct was

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justified.

MR. JORDAN: Well, I felt that it was, with the limitation that I did not intend to infer the matter which your Honor objects to, and which would be objectionable to me.

THE COURT: Well, your fears that this man would not get a fair trial were entirely groundless.

MR. JORDAN: Well, I would be willing to be tried before your Honor.

THE COURT: Your motion is granted and a juror is withdrawn.

(A juror was then withdrawn and the case was set down for February 10th peremptorily).

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