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COURT OF GENERAL SESSIONS OF THE PEACE.

IN AND FOR THE COUNTY OF NEW YORK.

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The People of the State of New York :

-against-

ENG HING and LEE DOCK.
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: Before :
: HON. T.C.T. CRAIN, J.,
:
:
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:-----c

New York, December 4th, 1913.

Appearances :

ASSISTANT DISTRICT ATTORNEY ISIDORE WASSERVOGEL,
FOR THE PEOPLE.

MESSRS. OLCOTT, GRUBER, BONYNGE & McMANUS, FOR THE
DEFENSE, REPRESENTED BY MR. McMANUS.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

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New York, December 4th, 1913.

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MR. ROMANUS: If the Court please, this is a motion for a new trial, on the ground of newly-discovered evidence, in the case of the People against Eng Hing and Lee Dock, who were convicted before your Honor, in February last, of the crime of Murder in the first degree.

The motion, your Honor, is founded on Subdivision 7 of Section 465 of the Code of Criminal Procedure. Section 465 provides when a Court has power to grant a new trial, and Subdivision 7 of that Section reads as follows:

"When it is made to appear by affidavits, that upon another trial, the defendant can produce evidence, such as if before received, would probably have changed the verdict; if such evidence has been discovered since the trial, is not cumulative; and the failure to produce it on the trial is not owing to want of diligence. The Court, in such case, can, however, compel the personal appearance of the affiants before it, for the purposes of their personal examination and cross examination, under oath, upon the contents of the affidavits which they subscribe."

Now, the situation is about this. After the second trial---your Honor will recall that there were two trials, the first resulting in a disagreement, and the second in a verdict of murder in the first degree---after the second trial, the defendants, who had maintained and protested

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their innocence all the time, and refused to accept a plea of a minor degree of crime, and insisted that they were innocent, and did not know these women, and were not at the scene of the homicide at the time that it took place--- one of the jurors stated in the hallway that the testimony which induced the conviction was the testimony of the two women, Flossie Wong and Grace Mack, coupled with the dying declaration of the deceased. The dying declaration I did not regard as of very much value, when the testimony relating to it is analyzed.

It will be recalled that, on the trial, all the Chinese witnesses who were present at 18 Mott Street, testified that the deceased was turned away from the door; that he was reading a paper; that the first shot hit him, and, immediately after being shot he fell over.

So, I directed my attention to investigating the story which these two women had told.

I employed an investigator, at the direction of the friends of the defendant, who found that the common rumor in Chinatown was that these women were not there at all, and that this was what is vulgarly termed a "frame-up".

The task of investigating was one fraught with a great deal of difficulty, beyond question. All these people are naturally suspicious, and it took some time to get any line at all on the real situation.

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The first step in showing the falsity of their narrative, was taken by way of a dictagraph, the use of the dictagraph, in getting statements from one of the Chinese hab- itues, who unearthed and exposed the whole story. But, of course, this was hearsay evidence, and does not form any part of the moving papers. It simply gave us a line on which to work.

As a result of the first interview, we went ahead, and we learned that a man named Frank Treglia, a witness on the first trial, a character known as "Rubber" in Chinatown, was the father of the conspiracy, which we felt had been formed for the purpose of getting testimony to insure a conviction.

It was necessary to get hold of some one who had the confidence of this man Treglia. Ultimately we got hold of a former police officer, one Carrette, who was on intimate terms with this man, when he was on the Police Force, and serving, I believe, as a detective in the Chinese Quarter.

A plan was devised by Carrette and our investigator, whereby a slumming party would be formed to visit Chinatown, and to secure the services of "Rubber"; and afterwards, an attempt was made to get him up to an apartment in West 134th Street, that had been hired, to see whether he could be induced to make any statement in regard to

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the matters which we believed were the real facts concerning the charge of homicide against these defendants.

An appointment was arranged between Carrette and this man Treglia. A slumming party was organized. They visited Chinatown, and they met this man Treglia, and he showed them some of the sights of Chinatown.

Then it was suggested that they go up to this apartment, which had been hired, in West 134th Street.

In this place a dictagraph apparatus had been installed. We have the testimony of the two stenographers, two very reputable gentlemen, one a Mr. Murray, a Stenographer at times, in the United States Court, and another, Mr. Harris, both stenographers for years, and of vast experience, as to going to the place where the dictagraph had been installed, and as to seeing where it had been located, and seeing where the receiving instrument had been placed, in one of the front rooms, and seeing where the transmitting end had been placed.

The party left for Chinatown, after the stenographers had first visited the apartment, to see that the dictagraph instrument was properly installed there.

The party consisted of Carrette, the former police officer, a man named Curran, the chauffeur and a couple of women.

They met at the Port Arthur Restaurant, I think, in

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Chinatown, and, later, after looking around, went up to the 134th Street apartment, where the dictagraph had been installed.

An opium lay-out was brought with him by "Rubber". This was really the excuse for getting him up there, that these women wanted to see how opium was smoked, and "Rubber" volunteered to show just what was done, and went with them for that purpose.

When they got up there, effort was made, by cajoling him, by talking to him, to get "Rubber" to make statements along the lines which our previous information led us to believe were the facts as to the manner of the formation of the conspiracy in question.

Ultimately, "Rubber" started to talk, and he made a statement, which is sworn to by two of these witnesses, Mr. Carrette and Mr. Curran.

After talking generally about various matters connected with Chinatown, he said, at page 75 of the printed brief--- this girl, who did all the talking for the two girls---said to "Rubber", "Well, how did they," meaning the defendants, "happen to be convicted?" And he said, "Well, I can be up here, and a murder can be committed down in Chinatown, and I will be there, if necessary, and, if we want to, we can get these Chinese whores to swear that they seen the murder."

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The girl then asked, "Who was it that swore that they seen that murder committed?" And he said, "Chinese-eyed Flossie and Gracie Mack."

The girl said, "Well, then, did they really see the murder, to which he replied, "What the hell difference does it make? When a Chinaman is murdered downthere, they grab some one, and they get Chinese whores to swear that they seen the murder. They grab any Chinaman, and the women will swear to anything."

Then the girl asked, "Well, how can any woman swear to a murder than she did not see?" He said, "Well, what's the difference? It's only a Chinaman; and when one Tong shoots and kills another Chinaman, they swear that some one of the other Society killed the man. No matter who they have got, they always identify them as the man who did the shooting. And the dying man himself, if he is not killed at once, always identifies any Chinaman as the murderer, as long as it is a Chinaman belonging to the other Society." He said, "That is the case with both Societies. The On Leongs will swear that a Hip Sing killed them and will identify the man arrested, whether he was the one who did it or not, and the same way with the Hip Sings, whether it is the right man or the wrong man, as long as he belongs to the other Society. Then they get a couple of Chinese whores to swear that they seen him kill the man, although

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they might be ten miles from the place at the time of the shooting."

He said, more than once, "I could be up here, and a murder committed downtown, and I would have a couple of girls swear that they seen the murder."

Now, Mr. Curran corroborates that statement as to "Rubber" naming these two witnesses, at page 85-86 of the brief, where he said, when one of the girls put this question, "What were those girls' names?" "Flossie Wong, or Chinese eyed Flossie, and Gracie Mack."

Now, that testimony started us on a further chain of evidence, a further effort to try to get statements from the witnesses, Flossie Wong and Gracie Mack.

It is to be noted here that these statements that were made by "Rubber" as we will call him, up in this place in 134th Street, were wholly voluntary. He was not conscious at all that they would ever be used. He thought that he was dealing with his own friends, and there was no motive, or occasion, or purpose for his falsifying or making any statement whatever at all, that did not agree with the strict facts. But he voluntarily makes this statement, that these witnesses were perjured witnesses, that they were told what to testify to, and that they so testified, and that they had never seen the killing which they testified they had seen.

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Now, we go a step further. We tried to get hold of Flossie Wong or Grace Mack, a task which was fraught with great difficulty. We made repeated efforts to get them, on some excuse or another, to go to different places. We got our stenographers down on a picnic ground in Brooklyn, Bumer Park, I believe it is, where we learned they were to be, at the picnic, but they did not appear after we had waited several hours and we tried to locate them at several Chinese Restaurants, around town. But finally we learned that Flossie Wong was going over to Philadelphia, and we traced her over to Philadelphia, and to the place that she is living in there.

We learn that she is in the habit of going to a sort of Chinese Restaurant on North Tenth Street, Philadelphia, and we bring a woman over, a former resident of Chinatown, bring her from her present home up in Massachusetts down to Philadelphia, and get her to go to this restaurant, in the hope of meeting this Flossie woman, and drawing her into a conversation.

On a particular Saturday, the date of which is mentioned in the affidavit, our witness placed herself in a place in the neighborhood, for the purpose of seeing if Flossie Wong comes to this restaurant, and she doesn't come, and ultimately she sends a note around to Flossie Wong's address, with the result that, shortly thereafter, Flossie Wong comes

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to the restaurant.

Meanwhile, before she gets there, this woman goes there, and we have two witnesses, two stenographers, whose services were retained through the Remington Typewriter people in Philadelphia, who are seated at the adjoining table, and make ready to take whatever statement is made by Flossie Wong and this woman, when Flossie Wong comes.

Flossie Wong comes into the restaurant, a few minutes later, and asks if any one sent for her, and this woman says, "Yes, I sent for you," and then she says, ---then gives her a note signed by another character, another Chinese character, known in Chinatown as "Little Chink", who is shown by our affidavits and those of the District Attorney to be a friend of Flossie Wong's as well as a friend of our witness. And, of course, this note induced confidence as between our witness, Hazel Trueman and Flossie Wong, and they have a desultory conversation, which leads up to a statement by Hazel Trueman to Flossie Wong, which is as follows:---at page 91 of our affidavits, at the top of the page:

"I asked her if she smoked hop (meaning opium) to which she replied she did. I asked/if she always smoked and she said that she did. After talking with her awhile, I said to her, "I am going to tip you off to something. It is none of my business, but, a week ago last Sunday, Rubber and

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Little Chink and I and my friend went on an excursion. We were all seated at a table, drinking, and "Rubber" commenced bragging what a wise guy he was. He said that he and Jim Gum went into room 8, 17 Mott Street, and told you and Gracie Mack what to say to send those two Chinamen up to Sing Sing to the Chair." I asked her if she knew "Rubber" She looked up at me, and turned white, and trembled for a second, and said, "Why, Rubber worked for the Society," and I said, "I know it, he makes twenty dollars a week." Whereupon she replied, "Well, you know those two Chinks ain't dead yet and I have to be careful, and if Rubber doesn't stop talking, he will put us all in jail."

Then there was a further conversation:

"I told her, however, that if I was she, I would send a letter or something to Rubber to tell him to shut his big mouth. She said that I was right."

And then there was conversation about opium. The witness asked her to get opium for her, and ultimately she got it for her, and delivered the package to her, and the package is annexed to the original papers.

Now, that was rather convincing, but we went further, and we made subsequent efforts here in New York, or made an effort to connect with them at a country place where I think Grace Mack went, in East Wyndam, Greene County, and made efforts to connect with them in restaurants in Chinatown,

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and our Investigator tried to get the consent of a restaurant keeper in Chinatown, a place where these women were in the habit of resorting to, to permit us to install a device there, the dictagraph, but we couldn't get his consent.

And so, finally, after trying to get it into the apartment of Grace Mack for some time, we finally got it installed there on the 27th of July, 1923, I think it was, and it was done by connecting it with the receiving device at which the stenographer sat, which was installed in the apartment on the fourth floor of 17 Mott Street, and the wire extended out from there, over the roof of 19 Mott Street, and down the fire escape of 17 Mott Street, and into the window of apartment 8, which was, I believe, occupied by Grace Mack, and installed at a point next to the window sill.

The operator remained there for one night, I think it was, without getting any information, and, the next night, he reports just what was said, and reports a conversation with a Chinaman, and then the Chinaman appeared to be robbed, and, later, the two women came in, the two women were there, and the conversation, which was taken down by a stenographer, and reported at page 100 and 101, occurred. This is what he reports:

"Flossie, come up, I want to see you. I saw that God

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"damn friend of yours,. Whp, Gracie? That son of a bitch Little Chink. Where did you see him?

Kitty and me were walking on Pell Street when we met him. Kitty was talking to him. I don't know what she said, but I didn't stop to talk to him. Say, Flossie, I wonder how they knew about that room. What did that girl say to you in Philadelphia?

She sent for me to come around to a restaurant. She said she had a note from a friend of mine in New York. When I saw her she asked me if I was Flossie Wong and I said I was. She handed me a note from Little Chink asking me to get her some hop and she said she would do me a favor. She told me how Rubber---and was shooting off his mouth, how smart he was and how you and me and Jim Gum and him were downstairs and he told us how to testify. Somebody must have talked, and you say you didn't, so who in Hell did. It must have been that---Rubber."

"Gee, if they found out that they will easily find out that I was in the pictures---are liable to get in trouble. Gee, I wish we hadn't let Rubber in that room that day for I knew damn well he couldn't keep his mouth shut, and besides my chink didn't want me to go and be a witness, for the last words he said were, I would get in trouble.

Now, the affidavit of Mr. Snow is corroborated by

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the affidavit of Mr. Kearney, who was with him at the time in 19 Mott Street, and took down from the dictagraph a record in his own minute book, of the statements that they had heard.

Now, if those statements are true, if these reports made in these affidavits by our witnesses are true, it is manifest to my mind that these defendants were convicted as the result of a conspiracy, that they were convicted as a result of suborned testimony, furnished as the outcome of that conspiracy.

It would seem to me that statements so important, so detailed, so full in character, should be met by more than the mere general affidavits which the District Attorney submits in opposition.

Now, we have a peculiar situation with respect to the affidavits that are submitted in opposition. We have, in the first place, the statement by "Rubber" that he was in this slumming party; that he went up to this place of 134th Street; that he was there; that he made statements.

He says, however, that he was so full of opium and so full of drugs and so full of liquor that he can't recall all the statements that he made. But, of course, he is ^{part} definite and exact in such/of the statement as relates to charges he made reflecting on women who testified in other cases, another one of these Chinese cases, a woman named

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Earl, who testified in a case where an On Leong man had been convicted.

This Earl woman was a witness for the Prosecution in that case. She is connected with, or associated with one of the men in the Hip Sing Tong, and was used by the Prosecution to convict. I don't know whether her story is true or false, but I am free to say that, as far as my own convictions are concerned, I would hesitate in any Chinese case, to convict upon the testimony of either women living with Chinamen or Chinamen themselves, I would hesitate to take men's lives from them. But that was the character of evidence that was used in this case, and that was the character of evidence which "Rubber" admits he attacked in that case.

He is only precise and clear in his mind upon the point that he did mention Kitty Earl, the witness in the other case, which was "a frame-up" and her testimony was perjured.

But, singular enough, he has no memory whatever as to different murders that he discussed, or as to the other comments he made as to his services, as a detective in Chinatown, except to say that he talked generally, and that he never said at any time or place that the women, Grace Mack or Flossie Wong had been coaxed and induced to testify falsely.

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Now, against that, we have the testimony of two witnesses, we have the narrative of the dictagraph, disjointed and incomplete as it naturally would be, under the conditions, which obtained up there, with a lot of women and men in this room, smoking, and with conversation passing from one to another; but, at least, enough to show that, from the beginning of the episode up there to the end of it, "Rubber" was conscious of every statement he made, knew everything he was saying, and knew everything he was doing, and was not under the influence of any drug, and not suffering from the consequences of any drink or liquor.

Now, with respect to the incident in Philadelphia. Again we have an admission by Flossie Wong that she was in Philadelphia. Again an admission of Flossie Wong that she received a note, that she went to the restaurant, that this woman talked to her about getting some hop, as it is vulgarly termed, opium; and she got the opium for her, and the only excuse with respect to the statements contained in the affidavits of Hazel Trueman and the stenographer's report contained in the affidavit of Mr. Snow, and the stenographic report contained in the affidavit of Kearney, is as to the damning admission that she made with respect to the job which resulted in her testifying.

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Only upon that point is there any dispute, and we have the word of three witnesses against her, coupled with her tremendous interest, and the necessity for denying the truth of the statement.

Now, we come to the episode in Chinatown, in Mott Street, and, of course, there is an absolute denial that any such conversation was ever had, because of the fact that we don't allege in our affidavits that we saw the two women in the room.

I take it that, if that allegation were made in our papers, that then we would have an admission that they were there, but a denial of the conversation. But every circumstance, every logical and rational conclusion that can be framed, and could be framed from this conversation, will support the truth of our side of it, and indicate that their motive for lying at the present time, and the necessity of keeping themselves out of trouble, would be strong enough to induce them to say that there never was any such conversation as related here.

Now, I submit that these facts will disclose a situation which, under the Section of the Code and decisions of the Courts in which that section has been considered, would demand that a new trial be granted.

In the first place, this evidence is clearly newly discovered evidence. There can be no charge of laches

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because it could not have been discovered before the trial, because it didn't exist at the time of the trial. The admissions were made subsequent to the trial. So we can't be charged with laches, and we show that the testimony is absolutely new in character.

Then it is surely material to the issue. It goes to the very vitals of the case. It can't be questioned that, when these witnesses are called upon the stand---if these witnesses were called upon the stand in a new trial, and if they were asked, with circumstance of time and place, whether they had made declarations of the character of that set up in the moving papers, and they had denied making these admissions or declarations, we would be entitled to show, on our part, the circumstances, the occurrences and the statements made, and it would be for the jury to consider who was telling the truth, and they would have the right to disregard and throw out the testimony of these women, if they believed that the circumstances, as related in our affidavits, were true. The testimony is not cumulative. It does not relate to any facts which were introduced in the case previously. It is all new matter.

It is not of an impeaching character. Goodness knows that, upon the trial, ^{I did all} I could, by way of cross examining to impeach the character of these ladies. I showed that

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they had been opium smokers, at different periods in their career, that they were living with Chinamen, that they were not married to the Chinamen, and I take it that about as much as could be done in the way of impeachment of character, was done then.

But this testimony is not by way of impeachment, and I will refer, in a memorandum that I will submit to your Honor, to the case of the People against Sullivan, reported in one of the miscellaneous reports, where a new trial was sought upon the ground that, since the trial, it had been discovered that a witness for the prosecution had been convicted of crime, though, on the trial, he had denied, in answer to questions on cross examination, that he had been convicted, and the Court there, indicating that this testimony was of an impeaching character, ~~did not~~ ^{said that} in view of the admissions made by the witness on the trial, it was not probable that the result of the trial could be changed, if a new trial was granted on that ground.

But here, the testimony is not of that character. We offer testimony showing admissions; we offer testimony showing that a conspiracy was formed, which conspiracy induced and brought about the giving of false testimony. Now, I submit that, if testimony of that character, under the circumstances of this case, in view of the conceded situation with respect to the calling of these two women

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witnesses for the prosecution, would not be likely to change the result, would not, in all probability, change the result, it is hard to conceive of testimony that would have changed the result.

Your Honor will recall that, on the trial, it appeared that these women had not appeared at any other stage of the case; that, although almost eleven months had elapsed between the shooting and the trial, they had never made a statement to any official, had never appeared in any Court proceeding, had never appeared before the Coroner, and were never called, until they were brought forward here.

I think the evidence shows that this man Treglia, a short time before the trial, brought them to Mr. Wasservogel's office at that time, and their excuses for not appearing in the matter before were weak, they lacked probability. There was no sense of shame in these women, or they would not have been leading the life that they had been leading for years in Chinatown.

They both knew, they said, that policemen were on the ground almost immediately after the shooting, and they could have told their story then, and they could have, as the Chinese witnesses did not, named the men who did the shooting.

The story they told, in the first instance, was such

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as would tax the credulity of most men, when we consider the brief interval, to almost infinitesimal space of time, which the shooting occupied; when we consider that these women were twenty or thirty feet away from these men, and that it was a dark night when the shooting occurred; that these two defendants had their backs to them at the time the shooting occurred; that they ran away from the doorway in the opposite direction to that in which these women saw the shooting; when they ran into the adjoining building, the Arcade, which was right next door; when only a second could have elapsed from the time of the shots until they got away; when they say with the positiveness that they do that they identified these two men, whose faces they could not have seen, except, perhaps, for the hundredth part of a second, when we consider with that the circumstance of their failure to appear until the last minute, I submit, if the Court please that, coupling that narrative that was told by them with cross examination as to these statements made since, with proof of these statements, made by our own witnesses, with the stenographic record of certain of these statements, I submit that no jury in Christendom would hesitate for a minute to acquit these defendants.

I have covered all the points I intend to cover in my oral argument, but, during the day, I will submit a

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brief memorandum, covering any matters which relate to the legal sufficiency of the moving papers.

MR. WASSERVOGEL: I desire, first of all, to remind your Honor of the fact, brought out on the trial, that, for some time, there has existed a feud in Chinatown, between the On Leong Tong and the Hip Sing Tong, and that this feud arose because of the desire of each of these Tongs to control the gambling business.

Then it becomes necessary to a proper understanding of the matters set forth in the motion papers, to call your Honor's attention to the fact that, in the past two years, there have been three trials for homicide in this County, wherein the defendants have been Chinese.

The first of these was the case of the People against Yung Hing, who was a member of the On Leong Tong, and the man that he was charged with having killed was a member of the Hip Sing Tong. In that case, a woman by the name of Kitty Earl testified for the People.

The second case is the case at Bar. The defendants in this case are members of the Hip Sing Tong, whereas the person slain was a member of the On Leong Tong.

In the first case that I have mentioned, the jury found a verdict of guilty of murder in the first degree.

The third case tried was that of Gee Doy Yung, who was a member of the On Leong Tong, and he was charged with

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killing a Hip Sing Tong man, and in this case Kitty Earl was a witness for the People, and Mr. James W. Osborne appeared for the defense, and I mention his name now because his name is mentioned in the motion papers. Now, I want to point out certain things which have come to my notice in examining these motion papers, and I wish to say to your Honor, because of the seriousness of the consequences that must follow the verdict of the jury here, I have gone into the matter with great care.

This man "Rubber" who has been mentioned by Mr. McManus, and who is frequently mentioned in the motion papers is a Special Deputy Sheriff, who makes his home in Chinatown.

"Rubber" was not a witness upon the trial which resulted in the conviction of these defendants.

Now, on the night when he went to this apartment to 134th Street, the stenographic report shows, "Rubber" was suffering from a very severe toothache---that toothache must have been mentioned at least twenty times, and Mr. McManus will agree upon that---and the Detective, Carrette, who was employed by Mr. McManus, sent out for some drug to cure it. I do not know what the drug was, but, at any rate, the drug was brought in by a friend of Carrette's, a liquid, which was placed upon some absorbent cotton, and placed upon the tooth of this man "Rubber".

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"Rubber" became drowsy, and lay down. The record shows that.

An examination of the stenographic report will show to your Honor the means employed by this man Carrette to get "Rubber" to talk about this case.

An examination of that report will show your Honor how unsuccessful Carrette was in the effort to get "Rubber" to talk about this case.

He started out by flattering this man, who was under the influence of drink, and who was smoking opium all night until his eyes watered, as the record also shows. He started out by saying, "Here, ladies, this is the most famous detective in Chinatown. Have you got your shield with you? Show the ladies your shield. Now, tell them how you nearly got killed yourself."

And the sole reply of "Rubber" to this was, "It's cool this morning."

And then he went on and said, continuing his flattery that Rubber was a great detective, the greatest detective in Chinatown. To all of this, no reply is brought forth which has any bearing on this case.

An examination of the record will show your honor that Carrette did almost all the talking, all for the benefit of the stenographers, who were in the adjacent room, ready to take down everything that was said.

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"Carrette: They started dilling, and a couple of
dirty old frames there swore their lives away and sent them
to---"

"Rubber" doesn't say that. Carrette says that.

And a woman answers, "What do you mean by a couple of
frames? Do you mean a couple of women?"

"Carrette: A couple of Chinatown girls.

"A woman: What do they do it for? For money?

"Carrette: For money, yes, for money."

"Rubber" doesn't say that, but Carrette says that.

Now, if your Honor will make a note of what follows;
at pages 45 and 46 of the motion papers, you will see that
the case that Rubber had in mind, when he joined in the con-
versation, was the case of the People against Yung Hing, for
at folio 135, he says, "The fellow that was killed was a
Hip Sing Tong man." In this case, it was an On Leong Tongman
that was killed.

Folio 136 of the printed papers, of the motion papers,
he mentions the date as March 10th. Now, Lee Kee, the decess-
ed in this case, was shot on February 27th, and did not die
until some time in June, as your Honor remembers.

On page 47, at folio 139, he mentions another date,
October 11th.

So you see that the cases that "Rubber" was talking
about had nothing to do with this case.

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Again Carrette says, at folio 161; "You know you have got to give it to 'Rubber'; that was the first time they ever sent a Chinaman to the Electric Chair; that is the first time."

Now, it was not the first time in this case. The case that "Rubber" was talking about was the case of Yung Hing, who was the first Chinaman convicted of murder in the first degree in this County, and that is the case they were talking about.

And at folio 170, we have Carrette again saying, "He got the witnesses, and everything. He is the whole shooting match. He is the one that never fails them in a case."

It is not "Rubber" that says that, but again we have Carrette speaking.

And again, "Well, he does the dirty work; he attends to the dirty work; when they want to do any dirty work, they get him to do it."

The cases discussed were those wherein Kitty Earl was a witness. And I refer your Honor to folios 166, 175 and 192, wherein the names of Kitty Earl and another woman are mentioned, in three separate places.

At folio 149, "Rubber" is reported to have said that a woman who had testified in one of these trials could not be broken down by Osborne.

Now, that case was the case of Gee Doy Yung, not this

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case. Mr. Osborne was counsel for him, and Kitty Earl was a witness for the prosecution in that case, and she was cross examined by Mr. Osborne in that case. That appears at folio 149. And again we see that "Rubber" was not talking about the case at Bar.

Now, during the entire interview, which takes up many pages of this record, the names of Florence Wong and Grace Mack are mentioned once only, at folio 194 and what follows.

Now, if your Honor will look at folio 195 you will see that, at that one place, that one time in the interview when these girls were mentioned, "Rubber" substantially states the testimony given by these two women upon the trial, for he says, "They lived in 17---he means number 17---"and that is right opposite, across the street, and this girl was with her, and when they got to the middle of the street, the shots were fired. If it hadn't been for the two girls, the little fellow could have got away; the women were right in the middle of the street, with every one there, and couldn't move."

And that is what they swore to on two trials of this case. That is at folio 194.

But, apparently, your Honor, Counsel for the defense--- well, I will not say counsel for the defense---but the detectives who were engaged by counsel for the defense, the detectives who were engaged by this Society, were not satis-

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ried with the stenographic report, and it became necessary to attach affidavits to these motion papers, and they attach the affidavits of Carrette, a detective and of Curran, who is also a detective, I believe.

MR. McMANUS: No, he isn't a detective, neither is Carrette.

MR. WASSERVOGEL: But Carrette was formerly a police officer, and is in your employ?

MR. McMANUS: Yes.

MR. WASSERVOGEL: And resort was had to the imagination of these detectives, because they wanted to add to the stenographic report, with which they were not satisfied; and by the way, when Mr. McManus called your attention to matters in the record, he did not read from the stenographic report. I did not wish to interrupt him, but he read from pages which contain the affidavits, which are in addition to the stenographic report, and not from the stenographic report itself.

Now, in these affidavits they say they heard this conversation, which the stenographers did not take down: "Well the Arcade shooting, nobody was there, but we had the girls drilled and they said they seen the shooting." "Then this girl said would they swear they had seen the shooting if they were not there at the time?" He said, "They will swear to anything." Then the girl said, "Who tells them to say that?"

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And he replied, 'We told them what to say.'"

Now, that didn't appear in any part of that stenographic report.

"We told them what to say, that they were standing in the middle of the street, and saw those two little Chinamen shoot this Monk and run in the Arcade.'" "Then the girl said to him, 'Who were those two girls?' He said, 'Chinese eyed Flossie and Gracie Mack.'"

And Curran, in his affidavit, says that "Rubber" said "We told the girls to say that they were standing right in the middle of the street, and seen those two little fellows do the shooting and run into the Arcade."

And again it becomes necessary for me to call your Honor's attention to folio 195 of the stenographic report, where you will find "Rubber" said:

"They lived in 17, and that is right opposite, across the street, and this girl was with her, and, when they got to the middle of the street, the shots were fired."

Nowhere in this record does it appear that "Rubber" said, "We told them to say".

THE COURT: The stenographic report purports to be a transcript of the dictagraph record, of what they heard by means of the dictagraph?

MR. WASSERVOGEL: Yes, sir; it is in the nature of a telephone, if your Honor please.

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THE COURT: Mr. McManus, how do you account for the absence of that statement?

MR. McMANUS: It is only fair to say, if your Honor please, that in the dictagraph report there were places where they did not get all the testimony, and the questions and answers are disjointed all through it, but it is logical and connected enough, when you recall that there were five or six people talking in this room at once. They got what they could; that's all, and these men are willing to come into Court and testified to what is contained in their affidavits.

MR. WASSERVOGEL: I contend, your Honor, that those statements were inserted deliberately by somebody, and were not spoken by "Rubber" that night.

Now, suppose that these two men, Curran and Carrette, heard "Rubber" make the statements contained in the affidavits, assuming that the affidavits are correct for the moment. Suppose that those two men had been called as witnesses on the trial. Would your Honor have allowed them to testify to statements made by "Rubber", who was not a witness, and had nothing to do with this case? Would you have allowed "Rubber" to testify to something that he had heard out upon the streets?

Surely this is not newly discovered evidence. I do not think that argument is necessary upon that point at all.

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Now, with respect to the statement alleged to have been made by this Flossie Wong, in Philadelphia.

It is true that Florence Wong met a woman in Philadelphia, who introduced herself to her as Helen, and who is probably the woman mentioned in the motion papers as Hazel Trueman. They talked about smoking opium and other things.

It is inconceivable, however, that Flossie Wong, if she had committed perjury, would have discussed that fact in a public restaurant, with a woman whom she had never seen before, and in the presence of two stenographers who were sitting at the very next table, taking down every word which was spoken.

Flossie Wong admits that she spoke to this woman, but says she never told her the things which are set forth at folio 288 of the printed record.

And those statements, even, do not constitute newly discovered evidence, but, at the most, would only be evidence of an impeaching character, because all that Flossie Wong says at that time is, "Well, you know these two Chinks are not dead yet, and I will have to be careful, and, if 'Rubber' don't stop talking, he'll put us all in jail." That is all she said there.

Well, what does that amount to, even if it were true, and she denies it?

Once again, the detectives employed by the defendants,

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returned to Mott Street. They claim that they rigged up a dictagraph machine in the home of Grace Mack. They may have done so; I don't know. They say that they had the wires go over one building and pass down from the roof into the apartment of Grace Mack. How they ever got in there, and in that section of the City, which is teeming with Chinamen---one house alone, I think there must be at least three or four hundred persons living in---how they could have got into that apartment without being observed, is beyond me.

But, I will assume that they did get in there, and did install a dictagraph instrument in the rooms of Grace Mack. But I contend that the matter which is set forth in these motion papers is not a truthful and correct transcript of what occurred.

In the first place, at this time, I want to call your Honor's attention to the fact that Grace Mack was not at home, that particular night. It should be borne in mind, your Honor, that it is impossible, by means---

THE COURT: When you say that particular night, you mean the night on which this alleged conversation took place?

MR. WALSERVOGEL: Exactly. And it should be borne in mind that it is impossible by the dictagraph, to see the persons talking, and, if the listener is not acquainted with the voice of the person speaking, he will not know

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who it is.

Now, there is nothing in these matters by which we can tell, by which the listener can tell, that the person that was talking in the apartment was Grace Mack. I do not charge these detectives with placing other women in the apartment, but, if they could place a dictagraph there, without Grace Mack's knowledge, they could just as easily have put another woman in the apartment in her place. But I contend that no such conversation occurred. There is nothing in the papers absolutely to show that Grace Mack was engaged in that conversation.

It is only necessary for me to call your Honor's attention to the conversation, to show your Honor how preposterous and unbelievable it is, at folio 299:

Grace Mack is supposed to be in her room, in room 9 or apartment number 9, number 17 Mott Street.

The persons who say they were listening at the dictagraph say that they heard a chinaman's voice, and they heard a woman's voice reply. It was necessary to identify the woman who was talking, so we have the man's voice, "What's your name?" And the woman's voice replying, "My name is Gracie."

Now, if he called upon her, he probably knew her name. But it was necessary to identify the woman who was talking so that the stenographer would know who was doing the talk-

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ing.

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And then comes this conversation, which is transcribed and put into this record, I think, simply to bring a little atmosphere into the case, and which really has no bearing on the facts at all. Your Honor has it before you, at folio 299.

The inference is to be drawn from that conversation that these two people went into an adjoining room, and had sexual intercourse, and, after a time they came out into the living room again, and that then they heard a door open and they heard the voice of one woman saying, "Flossie, come up."

Now, mind you, this is a house in which lived hundreds of people. They claim that this woman Grace Mack was there and there is nothing to show that she was there, or that Flossie Wong was there either. But they claim that she said to Flossie, "Come up," and, right then and there, they discussed the perjury which they had committed on two trials in this case.

THE COURT: Pardon me interrupting you. Let me ask you this right at this point. What, if anything, does the evidence on the trial show as to the relative positions of Grace Mack's room and Flossie Wong's room in that house.

MR. WASSERVOGEL: I don't recall that, sir, but they were both living in the same house.

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MR. McMANUS: And I can't recall which was living on the lower and which was living on the upper floor.

THE COURT: Well, if Flossie occupied a room on a floor above the floor on which Grace occupied a room, Grace, undoubtedly, would not ask her to come up?

MR. WASSERVOGEL: Certainly not, sir. It is absolutely ridiculous, your Honor, the entire thing, that these women should go into a conversation, just when two stenographers were waiting to hear just such a conversation. And how careful they are to put in something to show who was engaged in this conversation: "Is that you, Flossie?" "What's your name?" "Is your name Gracie?"

Now, if your Honor please, I don't care to discuss the questions of law now, because I think, in my memorandum, I have said enough to call your Honor's attention fully to that aspect of the case, and I think there is nothing in this motion whatever, and I think that, if Mr. McManus had not had a rich client, who could afford to have these papers printed, your Honor would have paid very little, if any, attention to the matter, and I don't think that this motion is at all formidable, except in the respect, perhaps, that Mr. McManus had a client rich enough to have all these papers printed.

MR. McMANUS: Now, first, if your Honor please, Mr. Wasservogel made a statement that he didn't see how the

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testimony as to the individual "Rubber" could be competent. I meet that statement with this suggestion, that, assuming that we shall, on a new trial---or, rather, question these women on a new trial, about a conspiracy, and about Rubber being a participant in such a conspiracy; if we question them with regard to the details narrated in these papers, the situation would be such as to demand that the District Attorney call this man "Rubber", or else have the assumption go to the jury that they might consider the fact that they had failed to call him as evidence against them.

Now, that situation would make it absolutely necessary for the People to call "Rubber", and we would then have the opportunity to confront him with these witnesses, confront him as to these declarations, and call our witnesses as to those declarations.

Now, as to the statement of "Rubber" referring to Kitty Earl, and the Chinese murder in which Yung Hing was convicted, the fact of the matter is that, in respect to that case, only one defendant was charged, and it is manifest that the situation is mixed up in the record, it is rather confused there, it is hard to distinguish as to which case is particularly referred to, but it refers, in every instance, to the plural, to "these Chinamen", "these Chinks", or "these two Monks", and indicating necessarily

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and only the two defendants, from the manner in which he tells it.

And, as indicating that our case was in mind at the time by referred to, on page 45, Mr. Wasservogel, I call your Honor's attention to page 52, at folio 156, where they had been talking about another matter, and this was said:

"A woman: Was she in the case that the two girls testified in?

"Rubber: Yes.

"A Woman: Oh, was that the case?

"Rubber: It was the other trial they were witnesses in, other girls by the name of Mabel Fitch and Katie Earl." Thus indicating that, prior to this particular phase of the conversation, he was referring to another case, a case in which two Chinamen were concerned, and not one, not the Yung Hing case or the Gee Doy Mung case, where only one Chinaman, in each instance, was shot.

Mr. Wasservogel suggested that we were not satisfied with the stenographic report, and that we induced the preparation of these affidavits.

Now, with respect to that, I want to make this statement, that as a matter of fact, right after this episode up in West 134th Street, and even before the stenographic dictagraph record was prepared or delivered, the stenographers sat down and prepared the affidavits from state-

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ments made to them by Mr. Carrette and Mr. Curran, without their knowing what the situation was, and I would, with his consent, if there is any question about it, produce those original statements from which my affidavits were prepared.

Have you any objection to those going with the papers, Mr. Wasservogel? They embody the same thing, in effect.

MR. WASSERVOGEL: You served them on us.

MR. MCMAHON: They were drawn, although rather crudely drawn. And that refers to the Philadelphia affidavit, and the other affidavits.. But it was no afterthought, in any instance. It was the immediate product of the event itself.

Now, there was another circumstance which Mr. Treglia did not call to the District Attorney's attention, and which Mr. Wasservogel did not embody in his affidavits, and that is with respect to another interview held between Curran and Treglia, at the Port Arthur Restaurant, some time in March, 1912.

Curran went there, and Mr. Murray and Mr. Harris, the stenographers, also went there, and tried to get to the table next to that at which Treglia and Curran were sitting. They were there purposely and manifestly to get further statements. We wanted to present to the Court every possible atom of light that could be thrown on this situation, I believing firmly that these men were convict-

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ed upon perjured evidence.

And Mr. Curran says, at folio 261:

"I went there pursuant to an arrangement made with the stenographers Harris and Murray. They were present at the time that Treglia and I went into the restaurant, it was our purpose to arrange matters so that the stenographers would be at the next table to that at which Treglia and I were seated. This arrangement, of course, had been entered into without Treglia's knowing, but, because of the crowded condition of the place, Murrau and Harris were unable to get near us. On this occasion, however, the said Treglia, in the course of conversation, repeatedly stated that the defendants in question were in Sing Sing as the result of the work of Jim Gum and himself, and that the women never had seen the murder, as they had testified."

Now, that statement he does not meet at all. I submit that the circumstance---

THE COURT: Pardon me. What affidavit is that?

MR. McMANUS: John Stevens Curran.

THE COURT: He is the chauffeur?

MR. McMANUS: Yes, sir. There grew to be quite an intimacy and he was with these men on several different occasions, he always thinking, because of Garrette, that Curran and he were friends. That is about the situation.

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And I note that, with respect to the particular part of the Philadelphia incident to which Mr. Wasservogel referred, he did not refer to the conversation which immediately preceded it, as to the question which Miss True-
man put to this witness, which called from an honest witness for an answer that the whole thing was false and fabricated, and that she had never been a participant in any ~~such~~ conspiracy or job, but, instead of answering that way, she answered, in effect, an admission that the whole thing was a job, and, if "Rubber" did not shut up, they would all be in State Prison, because the Chinamen were not yet dead. Now, will your Honor give me until this afternoon, or tomorrow morning, to submit a memorandum?

THE COURT: Yes. Now, there are some things that I want to ask you. In the first place, I have had occasion, two or three times, to examine the law applicable to motions of the character which you now make. On one occasion, a good while ago, I looked up the law somewhat carefully, and I recollect what I saw found the decisions to be at that time; but, of course, it goes without saying that, in connection with this motion, I shall re-examine the law, in the light of any authorities which you may submit to me.

In view of the fact that the defendants were charged with murder in its first degree and were convicted of

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that crime, this application will receive at my hands a consideration which is very careful, in the light of the gravity of the consequences of that conviction; and it is conceivable that, even after I have examined your motion papers, if I shall conclude, as a matter of law, that they are insufficient, I may feel that the proper thing to do will be to take oral testimony. You contend that, when Florence Wong swore that she recognized these defendants as the men who discharged pistols into the open door, she swore to what was not true?

MR. McMANUS: Absolutely.

THE COURT: And you contend that Grace Mack, when she swore to the same thing, likewise swore to what was not true?

MR. McMANUS: Yes, sir.

THE COURT: And you say that your motion papers indicates that the false testimony given by these witnesses was given at the instigation of the person whom you have named?

MR. McMANUS: Yes, sir.

THE COURT: And as the result of a conspiracy?

MR. McMANUS: Yes, sir.

THE COURT: And you say that your motion papers contain, in one place, what purports to be an admission by Grace Mack that what she did testify to was untrue,

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and that it was the result of a conspiracy?

MR. McMANUS: Yes, sir.

THE COURT: If those two witnesses, Florence Wong, and Grace Mack were at the place they said they were, at the time when they say they were there, there is reason to think that, if there was sufficient time for observation, they were not too far away to see who it was that did the shooting?

MR. McMANUS: Well, that is a question of fact which we haven't any right to quarrel with; that was for the jury to determine.

THE COURT: No, the question is, in connection with their testimony, were they where they say they were, at the time they said they were there? You do not suggest that you have any person who would take the stand and who would testify that, at that time, Florence Wong was elsewhere, or that at that time Grace Mack was elsewhere; do you?

MR. McMANUS: I haven't been able to get such testimony.

THE COURT: You do not say that you have any witness who would take the stand and who would say that, at the time of the shooting, either of these defendants was at a place other than the place at which Florence Wong said that he was, and that Grace Mack said that he was, at the time

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of the shooting?

MR. McMANUS: We have been unable to get any such testimony.

THE COURT: In other words, you have no testimony which you propose to offer to strengthen the testimony adduced on the trial, or to attempt to refute the testimony of these witnesses?

MR. McMANUS: No, sir. And may I interrupt here, to say this, that the difficulty in regard to that is tremendous, because we didn't know that these witnesses were to appear until the very last moment in the trial.

THE COURT: Well, the difficulty may be great, but I would suggest that you endeavor in every way to get such testimony. The testimony on the two trials indicated that there were other people there, and that there were other people there who could see what occurred.

MR. McMANUS: Well, if I read the testimony correctly, the two police officers who were first on the scene, said that they did not see any women in the street when they ran through the street. Isn't that so, Mr. Wasservogel?

MR. WASSERVOGEL: I don't recall that.

THE COURT: Well, I will read the testimony carefully. I was favorably impressed on the trial with the manner in which Florence Wong testified, and also with

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the manner in which Grace Mack testified. Their testimony on the second trial did not differ materially from what their testimony was on the first trial. As I recollect their testimony, there was no conflict of moment between the evidence given on the second trial and the evidence given on the first trial. They told their story as it seemed to me, in a reasonably clear way, and, as I say, they produced, at all events, on my mind, at the time the impression that they were telling the truth. I was unfavorably impressed with the circumstance that, on the second trial you failed to produce a witness whom you had produced on the first trial, whose testimony went to the point that one of these women was elsewhere at the time of the shooting than where she claimed to be.

MR. McMANUS: The testimony of the woman, your Honor means.

THE COURT: Yes.

MR. McMANUS: Yes, I know what your Honor means.

MR. GOULD: The woman was confined with a baby on the second trial, and we could not produce her.

THE COURT: I do not know why you did not produce her but I know it made an unfavorable impression on me, and the conclusion I reached was that you had satisfied yourself, on investigation, of the unreliable character of her testimony.

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MR. McMANUS: No, sir; not at all.

THE COURT: Well, Mr. McManus will probably recall that he told me, at the second trial, speaking of that witness, that he said to me, "Well, I don't want to put that slut on again."

MR. McMANUS: No, but not for that reason; but because jurors on the first trial had told me that she made a very bad impression.

THE COURT: If I believe, Mr. McManus, entirely apart from anything contained in your papers, that an investigation conducted by me would lead to the production of testimony throwing doubt upon the truthfulness of those two witnesses, I will conduct, in the interests of justice, an investigation.

MR. McMANUS: We would be very glad if your Honor would so decide.

THE COURT: But I would feel disinclined to go into it, if I reached the conclusion that it would only be taking up the time of the Court fruitlessly.

MR. McMANUS: Well, if your Honor saw the character of the witnesses, the two stenographers, and saw what Carrette and Curran look like, and compared them with the man Treglia---

THE COURT: Now, it is but fair to say to you, as the first impression conveyed by your argument---and I only say

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it that you may be informed for the purposes of your brief--- that there is only one statement contained in your motion papers which has made much of an impression on me, and that is the one that is found at folio 302, where somebody purports to say, "Gee, if they find out, they will easily find out that I was in the pictures---" "I suppose she means the moving pictures---" "are liable to get in trouble."

Now, in connection with that statement, suppose I grant a new trial, and suppose that on a new trial you produced the witness William F. Snow, who makes the affidavit in which that statement appears, and he testified that he heard a voice say that, what probative value would it have unless you could show that this was the voice of Grace Mack, and how could you show that it was Grace Mack that was speaking?

MR. MCMAHON: Well, from the surrounding circumstances, from the location. First, we identify the room wherein this dictagraph had been installed, and show that it was her room, by her own admissions, show all of the surrounding circumstances identifying the transaction, and the conversation with the transaction involved, and leaving the jury to determine whether or not she was the person who spoke.

THE COURT: And it would be met, undoubtedly, by a

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flat denial on the part of the witness Grace Mack, -and, I have the right to assume that from the character of the affidavit submitted by the District Attorney-that she made any such statement.

MR. McMANUS: Then it would be for the jury to determine whether it was true or not.

THE COURT: And then, again, is not that statement entirely inconsistent with this condition of affairs, this possible situation, namely, suppose she had given testimony on the trial which was entirely truthful, but that this man who was popularly known as "Rubber" was going about falsely asserting that it was given as the result of a conspiracy, or at his instigation, might she not then have said, with entire propriety and truthfulness, that it would get her into trouble, or that he would get her into trouble?

MR. McMANUS: No, sir. The inference we draw from that statement is that she couldn't have been there, because she was at the pictures, as she expressed it, and it would naturally get her into trouble.

THE COURT: But this occurred at a time when, under ordinary conditions, a person would not be likely to be in a moving picture place, did it not?

MR. McMANUS: Oh, no, sir; these small moving picture places on the east side and west side are going day and

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night; they never close, most of those places of the smaller character, especially the places in the vicinity of Chatham Square.

THE COURT: What efforts have you made, if any, as to finding out where, in point of fact, she was at the time?

MR. McMANUS: We have searched Chinatown with a fine tooth comb. That was our first line of effort. This man Cassidy, who makes the affidavit, knows pretty near everybody in Chinatown, and he got some information, which, of course, is not evidence, that Grace Mack was sick at this time, and under the care of a Dr. Kennedy and he went to see Dr. Kennedy and he said that he might have been treating a woman living with Chinamen about this time, but he had no record of it; he had an impression that he was, but he couldn't give the name or date when he was treating her, but he thought it was about that time; and so, of course, that had no probative value. And I went no further with that. And then he made inquiries all over Chinatown from people in whom he had confidence, who, he thought, would not disclose that he was looking for evidence of this character, visiting restaurants and other places around there. It is a most difficult matter, as your Honor realizes, to find out the truth, owing to the long interval elapsing between the date of the killing and the date of our knowing that they were to be called as witnesses.

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THE COURT: What efforts have you made to find the boy Dellia?

MR. McMANUS: I couldn't find him at all. He is some harum-scarum boy around Chinatown.

THE COURT: Have you advertised for him?

MR. McMANUS: No, sir; but we never could get any trace of him, or any better name for him than Dellia. But we have a statement taken from a boy named Dellia, or Daly and all that we knew of him that that was his name, but we couldn't find him or get any trace of him.

MR. WASSERVOGEL: But I presume that Mr. McManus knew what he was talking about when he told the jury that he was going to call him, but changed his mind.

MR. GOULD: Well, I am afraid I was responsible for Mr. McManus making that statement, and we certainly intended to call him, but we could never trace him when we needed him, because we didn't have his right name, and it was difficult to find him only from his appellation among the Chinamen, and I was satisfied that we could produce him on the trial, but unfortunately couldn't do so. I think, in fact, he understood that he was going to be called as a witness, because he was told so, I am informed, and he left Chinatown on that account.

THE COURT: At the time that the statement was taken, you undoubtedly got his address, did you not?

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MR. GOULD: No, sir; we didn't.

MR. WASSERVOGEL: They didn't think it of much importance then, I suppose.

THE COURT: If there is any reasonable ground to believe that an investigation would be fruitful in the discovery of anything that would move the Court to grant an application for a new trial, why, the lights will be turned on, and you will have it all. But you have been working on this matter now for months.

MR. McMANUS: Yes, sir; we have, and very hard, too.

THE COURT: And, not due, of course, to any lack of diligence or skill on your part, you present here something now that is rather vague and unsatisfactory.

MR. McMANUS: Well, but it is the result of all possible diligence on our part, your Honor.

THE COURT: I have no doubt of that. -- Well, what witnesses have you to support the testimony of the witnesses as to an alibi.

MR. McMANUS: No further testimony whatever than that which was offered at the time of the trial. As I recall the situation, I don't see how any other testimony could be furnished. As to the defendant Lee Dock, these people were the only people with him, so they swore, at the time that the shooting occurred, when he was in a place on Doyer Street---no, Division Street.

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THE COURT: Well, of course, the jury disbelieved⁵¹ the testimony of those witnesses who swore to an alibi?

MR. McMANUS: Yes, sir. But it was a pretty close proposition when we consider that, on the first trial, a majority of the jury were for the defendants.

THE COURT: I thought the case was stronger on the first trial than it was on the second.

MR. McMANUS: Of course, I am not inclined to agree with your Honor in that regard, except with respect to that one witness.

THE COURT: You produced a witness on the first trial who swore that one of these women was elsewhere than she said she was at the time.

MR. McMANUS: Yes, sir; but that woman didn't impress the jury favorably, I know. They were inclined to believe that she was not telling the truth, on the first trial. Her appearance was not very much in her favor, and Mr. Wasservogel made much of her environment on his cross examination of her. I don't think he was impressed much with her either.

MR. WASSERVOGEL: I certainly was not.

THE COURT: Well, I will take the papers, and any briefs that you submit, and I will examine the papers very carefully and I will not deny your motion, unless I feel that there is no likelihood that anything could be dis-

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closed to me that, were it disclosed to a jury, a different result might be attained.

MR. McMANUS: Very well, sir.

MR. WASSERVOGEL: And I wish to submit my papers now.

MR. McMANUS: And will your Honor give me until Monday to submit my papers?

THE COURT: Yes.

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